Hastings Law Journal

Volume 65 | Issue 1 Article 6

12-2013

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Notes

The True Man & the Battered Woman: Prospects for Gender-Neutral Narratives in Self-Defense Doctrines

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The recent rise of controversial Stand Your Ground laws has sparked discussions on self-defense law. Comparing the new Stand Your Ground laws with another self-defense doctrine—Battered Women's Syndrome—it becomes apparent that the law solidifies gender stereotypes by assessing when an individual is justified in using deadly force against an aggressor. "True men" are empowered to use deadly force in public without a duty to retreat, while a battered woman often must provide expert testimony on her psychological condition to prove the reasonableness of her use of deadly force in light of her severe helplessness. At their extremes, both of these doctrines are detrimental to the criminal law and potentially encourage dangerous policy and undesirable public conduct.

This Note argues that legal reforms should moderate these extremes and create a more gender-neutral process for proving self-defense claims no matter the theory. While the psychology of juror decisionmaking and the public's familiarity with the classic narratives likely limit prospects for reform, change is necessary to modernize and equalize self-defense law. Ideally, a new legal framework of individualization for proving self-defense claims can find the middle ground between the empowerment doctrine of true men and the helplessness ideology behind Battered Women's Syndrome, and will allow the jury to listen to each defendant's narrative regardless of whether it falls under the traditional paradigm.

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Introduction

The True Man Doctrine and Battered Women's Syndrome are two theories of self-defense that expose gendered distinctions in criminal law by differentiating between the courageous man protecting his family and home, and the subordinate, helpless woman left with no option but to kill. Such distinctions ignore the similarities of these two situations and the mutual zone of reasonable conduct under a threat of violence from an aggressor, whether a stranger or a familiar abuser. This Note argues that there should be a gender-neutral and individualized assessment of justification narratives available to reasonable people—both men and women—under dire circumstances that require the use of self-defense.

Affirmative defenses in the criminal law aim to limit or eliminate culpability. Defenses are divided into two categories: justifications and excuses. When a defense is treated as an excuse rather than a justification, the jury views the defendant's act as wrong and only tolerable because of her mental or emotional state.[1] Conversely, justified conduct is encouraged under the law, and the jury approves of the defendant's act due to surrounding circumstances.[2]

1. Elizabeth M. Schneider, *Equal Rights to Trial for Women: Sex Bias in the Law of Self-Defense*, 15 HARV. C.R.-C.L. L. REV. 623, 631 (1980).

2. *Id.*

In homicide cases, defendants often turn to the well-recognized self-defense justification. Self-defense generally requires imminence and necessity, and the defendant carries the burden to establish both elements.[3] As Joshua Dressler describes, "deadly force is only justified in self-protection if the actor reasonably believes that its use is necessary to prevent imminent and unlawful use of deadly force by the aggressor."[4] It is unsurprising that these two elements require a high standard of proof, as the result of a successful self-defense claim is an acquittal.

English common law provided a foundation for self-defense in the United States.[5] England required that an individual claiming self-defense could only do so when the individual used deadly force as a last resort after being physically backed against a wall with no opportunity to escape.[6] American common law adopted this English tradition in early self-defense doctrine.[7] Over time, the historical requirement of a duty to retreat eroded in favor of allowing an individual to "stand his ground" in order to protect his family and property.[8] Criminal law refers to this policy as the "True Man" doctrine, which recognizes the traditional role of men and the expectation that they are the sole guardians of the family and home.[9]

Historically, the state condoned the use of deadly force not only in and around the home, but also in public places so long as the defender lawfully had a right to be there.[10] This policy justified deadly force even when retreat was a viable option.[11] An individual needed only to show he had a lawful right to be somewhere, and the state condoned the person's use of deadly force to protect himself.[12] The rise of "Stand Your Ground" laws is the newest example of the use of True Man ideology as a valid justification for deadly force.[13]

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3. *See* 2 WAYNE R. LAFAVE, SUBSTANTIVE CRIMINAL LAW § 10.4 (2d ed. 2003) ("One who is not the aggressor in an encounter is justified in using a reasonable amount of force against his adversary when he reasonably believes (a) that he is in immediate danger of unlawful bodily harm from his adversary and (b) that the use of such force is necessary to avoid this danger.").

4. JOSHUA DRESSLER, UNDERSTANDING CRIMINAL LAW § 18.01[B], at 223 (5th ed. 2009) (emphasis omitted).

5. Jeannie Suk, *The True Woman: Scenes from the Law of Self-Defense*, 31 HARV. J.L. & GENDER 237, 240–43 (2008).

6. Benjamin Levin, *A Defensible Defense?: Reexamining Castle Doctrine Statutes*, 47 HARV. J. ON LEGIS. 523, 528 (2010).

7. *Id.* at 531.

8. *Id.*

9. Suk, *supra* note 5, at 244–45.

10. *Id.* at 246.

11. *Id.*

12. *Id.*

13. *Id.* at 261.

The long history of the True Man doctrine contrasts starkly with the development of another theory of self-defense: Battered Women's Syndrome ("BWS" or the "Syndrome"). Unlike the extensive presence of the True Man ideology in America, BWS is a fairly recent legal construct that came into existence in 1979 to provide domestic violence victims the ability to claim self-defense despite different experiences of imminence and necessity than under traditional self-defense law.[14] Currently, the majority of jurisdictions allow evidence of BWS to support a claim of self-defense.[15] However, courts generally "understand the syndrome in more diagnostic terms . . . as a subcategory of post-traumatic stress disorder."[16] This psychological classification has created problems for defendants whose experiences do not fit within this kind of medical condition.[17]

When comparing these two theories of self-defense, it is apparent that these doctrines fall along gendered lines. This Note argues that both narratives are dangerous at their extremes. Because these doctrines are so dependent on stereotypical gender roles, they preclude individuals from using either justification effectively if their experience falls outside of the accepted narrative. Women should be justified in using force against an abusive partner just as much as a man should feel empowered to protect himself, his family, and his home in the face of an attacker. Justification narratives should include a middle ground between helplessness and empowerment that could be used by reasonable people claiming self-defense. The creation of a gender-neutral framework based on reasonableness could counteract the threat of conventional stereotypes on criminal justice.

Unfortunately, legal reform may be insufficient to solve the problem. Social psychology demonstrates that juror decisionmaking depends so heavily on the commonly accepted narrative that jurors may cling to the historic interpretations of legal doctrines despite reforms.[18] Psychologists developed BWS to combat the restraints of the True Man narrative,[19] but in doing so they created an entirely different storytelling framework. The initial effort to create a separate doctrine for domestic violence victims has created problems for defendants seeking to draw parallels between their use of force and the traditional aggressor's. In practice, BWS creates more barriers between the narratives of abused women and "true men" than bridges. Any hope for successful changes to

14. *See generally* DAVID L. FAIGMAN ET AL., *Modern Scientific Evidence: The Law and the Science of Expert Testimony*, 2 MOD. SCI. EVIDENCE § 13:1 (2012).

15. 23 CORPUS JURIS SECUNDUM: CRIMINAL LAW § 1449, at 124 (2012).

16. *See* FAIGMAN ET AL., *supra* note 14, § 13:3.

17. *Id.* § 13:4

18. *See* Janine Young Kim, *The Rhetoric of Self-Defense*, 13 BERKELEY J. CRIM. L. 261, 264 (2008).

19. *See* FAIGMAN ET AL., *supra* note 14, § 13:1.

the legal doctrine must take into account jurors' use of narratives and the potential prejudices that coincide with traditional decisionmaking psychology.

Part I of this Note provides a historical overview of the True Man doctrine and the recent emergence of Stand Your Ground laws. Part II summarizes the evolution of BWS and its common interpretation as a psychological defect. Part II also details the evidentiary burdens that a defendant claiming BWS must overcome, including the importance of expert psychological testimony. Part III describes the social psychology behind juror decisionmaking and the interpretation of the "reasonable person" in the criminal law. Part IV proposes a gender-neutral framework for evaluating claims without the detrimental effects of stereotypes and the likelihood of success given the subconscious thought process behind juror decisionmaking.

I. THE EMPOWERED MAN: THE TRUE MAN DOCTRINE AND THE EMERGENCE OF STAND YOUR GROUND LAWS

A. HISTORY OF THE TRUE MAN DOCTRINE

> [T]he defense of one's self is a requirement of the masculine mystique.
> —Frederick Baum[20]

English common law enforced a duty to retreat in self-defense claims, and any person who used deadly force in self-defense "must have first retreated until his back was to the wall."[21] The so-called retreat requirement supported an individual's claims of necessity and imminence because a person could not physically escape a dangerous situation without the use of force. Despite the strict duty to retreat, the English still adopted an exception to the duty in the case of an attack inside one's own home.[22] Early self-defense doctrine "embod[ied] the common law idea that in his home, a man may forcefully defend himself, his family, and his property against harm by others."[23] This common law rule of the so-called "castle doctrine" carried over into early American law, and allowed an individual to use deadly force against an aggressor inside of his home to prevent harm to persons or property.[24]

In the late nineteenth-century, American law expanded the doctrine of self-defense and recognized the right to stand one's ground to kill in self-defense, both in his home and anywhere he lawfully had a right to

20. FREDERIC S. BAUM & JOAN BAUM, LAW OF SELF-DEFENSE 1 (1970).
21. Levin, *supra* note 6, at 528.
22. *Id.* at 530.
23. Suk, *supra* note 5, at 239.
24. Levin, *supra* note 6, at 531.

be.[25] Over time, this became known as the "True Man" doctrine and held that an individual is not required to retreat, even if he can do so safely, when he has a reasonable belief that he is in imminent danger of death or great bodily harm and is in a place where he has a right to be.[26] The majority of jurisdictions eliminated the traditional duty to retreat, and in doing so created "the paradigmatic case for understanding how the 'true man' ought to be expected to behave."[27]

The policy surrounding the rule initially aimed to protect a person from having to flee a dangerous situation in a cowardly way.[28] In 1877, the Indiana Supreme Court noted that "the tendency of the American mind seems to be very strongly against the enforcement of any rule which requires a person to flee when assailed, to avoid chastisement."[29] In other words, American culture supported the rule that retreat should not be required if it would lead to embarrassment. The ideology behind the true man "enabled judges to leverage this appealing idea of a man defending his home and family into a more general authorization of self-defense in public places, even where the home and family were nowhere to be seen."[30] Throughout the twentieth century, courts upheld an individual's use of deadly force against an assailant without retreat wherever the individual had a right to be, and this right was protected both in public places and locations where the individual had a proprietary interest.[31] In modern American law, a majority of jurisdictions do not require an individual to retreat before using self-defense.[32]

B. Current State of the True Man Doctrine

The True Man doctrine experienced a revival in the twenty-first century, largely thanks to the lobbying efforts of the National Rifle Association.[33] Beginning with Florida in 2005, state legislatures adopted renewed forms of Stand Your Ground laws that allow citizens to use

25. *See* Beard v. United States, 158 U.S. 550, 561–62 (1895) (quoting Runyan v. State, 57 Ind. 80, 83 (1877)).

26. *See* 1 Wayne R. LaFave & Austin W. Scott, Jr., Substantive Criminal Law § 5.7 (1986); 40 Corpus Juris Secundum: Homicide § 206, at 29 (2012).

27. Levin, *supra* note 6, at 531.

28. *See, e.g.*, Suk, *supra* note 5, at 241–44.

29. Runyan v. State, 57 Ind. 80, 84 (1877).

30. Suk, *supra* note 5, at 245.

31. *Id.* at 246 ("[T]he right accompanied the individual wherever he went. The rule of no duty to retreat was based on a right to be in any legitimate place. It was the intrusion on that right that relieved the person of the duty to retreat.").

32. LaFave & Scott, *supra* note 26, § 5.7(f).

33. Suk, *supra* note 5, at 260.

deadly force against aggressors in public places.[34] Specifically, the Florida Stand Your Ground statute provides:

> A person who is not engaged in an unlawful activity and who is attacked in any other place where he or she has a right to be has no duty to retreat and has the right to stand his or her ground and meet force with force, including deadly force if he or she reasonably believes it is necessary to do so to prevent death or great bodily harm to himself or herself or another or to prevent the commission of a forcible felony.[35]

Florida's prototypical self-defense law codifies and broadens the traditional True Man doctrine in three ways: "[I]t expands the circumstances in which the use of deadly force is permitted in the home; it abrogates the duty to retreat in public places; and it creates criminal and civil immunity for people who act in self-defense."[36]

The 2012 killing of Trayvon Martin, an African-American teenager, brought Stand Your Ground laws under national scrutiny and highlighted the potential for racial profiling and bias to influence an individual's perception of imminent harm.[37] Martin's killer, George Zimmerman, admitted to shooting the unarmed teen in self-defense, and a Florida jury acquitted him in July 2013.[38] The return of these statutes is unsurprisingly controversial, as it inserts the ideology of the Wild West into modern neighborhoods, and it permits a person to use deadly force outside of the home, even in situations where retreat is both possible and potentially more reasonable than facing a perceived aggressor.

For the minority of states that continue to impose a retreat requirement, nearly all of them have adopted an exception for the home.[39] However, even in the jurisdictions that exclude attacks within the home from the retreat requirement on the basis of the castle doctrine, they disagree as to whether this exception applies when someone is attacked by a cohabitant inside the home rather than an unlawful intruder.[40] In 1914, Judge Cardozo wrote:

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34. FLA. STAT. § 776.013(3) (2008).

35. *Id.*

36. Suk, *supra* note 5, at 261.

37. Although this Note does not focus on the racial aspects of Stand Your Ground laws, or of self-defense law generally, this is an important issue in the debate over the justified use of deadly force. *See generally* Jonathan Feingold & Karen Lorang, *Defusing Implicit Bias*, 59 UCLA L. REV. DISCOURSE 210 (2012); 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 (2012); Cynthia Lee, *Making Race Salient: Trayvon Martin and Implicit Bias in a not yet Post-Racial Society*, 91 N.C. L. REV. 101 (2013).

38. Lizette Alvarez & Cara Buckley, *Zimmerman Is Acquitted in Trayvon Martin Killing*, N.Y. TIMES, June 14, 2013, at A1.

39. LAFAVE & SCOTT, *supra* note 26, § 5.7(f).

40. *Id.*

> It is not now, and never has been the law that a man assailed in his own dwelling, is bound to retreat. If assailed there, he may stand his ground, and resist the attack. He is under no duty to take to the fields and the highways, a fugitive from his own home. . . . The rule is the same whether the attack proceeds from some other occupant or from an intruder.[41]

Judge Cardozo's opinion on the use of force against a cohabitant reflected the relationship between a man and his home, and reiterated the rights of the true man.[42] It is unclear how Judge Cardozo's reasoning should extend to cases of domestic violence, but his logic certainly supports eliminating a duty to retreat inside the home in such cases. Such an interpretation would give an abused woman the crucial legal authority to defend herself inside her home against a known attacker.

Courts have recognized the negative policy implications of imposing a duty to retreat inside the home during attacks from co-occupants.[43] Jeanne Suk raises an interesting comparison on the inability to use force against an abusive cohabitant and the implications for women attempting to use a Stand Your Ground theory of self-defense:

> If the American "true man" rule was based on the idea of a man being in a place where he has a right to be, the home was of course the quintessential place where a man had a right to be. If a person does not have a right to be at home, there is perhaps no place where he has a right to be.[44]

If the law authorizes individuals to use deadly force without a duty to retreat both in public and inside the home pursuant to the True Man doctrine, women should be able to use similar self-defense claims under BWS. Both of these doctrines involve situations in which an individual faces a threat of violence from an aggressor. For battered women, their experiences with their partners have taught them to expect an attack at certain times, such as when their partner is drunk or when he gets home from work.[45] Requiring women to retreat in these circumstances is not always feasible because many abused women have nowhere else to go, or alternatively, fear a retaliatory attack if they are able to escape temporarily.[46]

Conversely, individuals facing an unknown attacker are not always physically bound to the location of the attack. In public places, a person

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41. People v. Tomlins, 107 N.E. 496, 497–98 (N.Y. 1914).

42. Suk, *supra* note 5, at 249.

43. *See* Weiand v. State, 732 So. 2d 1044, 1051 (Fla. 1999) ("[I]mposing a duty to retreat from the residence has a potentially damaging effect on victims of domestic violence claiming self-defense."); *see also* State v. Gartland, 694 A.2d 564, 570–71 (N.J. 1997); State v. White, 819 N.W. 2d 473, 477 (Neb. Ct. App. 2012).

44. Suk, *supra* note 5, at 247.

45. *See, e.g.*, FAIGMAN ET AL., *supra* note 14, § 13:2.

46. *See, e.g.*, Suk, *supra* note 5, at 253.

standing his ground also has the opportunity to retreat to his home or otherwise avoid a more violent confrontation. While the attack in this case may appear more imminent, the necessity of force to protect oneself is likely less than what is required of abused women to fight off their abuser on a regular basis. Thus, the duty to retreat should similarly be excluded in the domestic violence context. Unfortunately, courts and juries often view the duty to retreat from an abusive partner differently than the duty to retreat when the aggressor is an intruder or even a co-owner of property.

II. The Helpless Woman: Battered Women's Syndrome and Related Evidentiary Burdens

The story of one New Jersey couple provides a helpful introduction to the legal struggles faced by battered women. Throughout Gladys and Ernest Kelly's seven-year marriage, Ernest beat Gladys as often as once a week.[47] The attacks generally occurred after Ernest drank, and he frequently "threatened to kill Ms. Kelly and to cut off parts of her body if she tried to leave him."[48] One afternoon, a drunken Ernest knocked Gladys down in public, choked her, punched her, and bit her leg.[49] When Gladys eventually got up to look for her daughter, Ernest ran toward her with his hands raised and appeared right next to her within seconds.[50] Gladys did not know whether her husband had armed himself while she searched for her daughter, so she grabbed a pair of scissors from her pocketbook.[51] Although she intended to merely scare him with the scissors, she ultimately stabbed and killed him.[52] The trial court convicted Gladys Kelly of reckless manslaughter and rejected her claim of self-defense because the jury determined that her perception of danger was unreasonable.[53] The *Kelly* case provides an example of how courts evaluated abused women's self-defense claims prior to the acceptance of BWS.[54]

Under traditional self-defense law, a defendant carries the burden of showing that he used force out of necessity to avoid an *imminent* attack by

47. State v. Kelly, 478 A.2d 364, 369 (N.J. 1984).
48. *Id.*
49. *Id.*
50. *Id.*
51. *Id.*
52. *Id.*
53. *Id.* at 368.
54. On appeal, the Supreme Court of New Jersey reversed the decision of the trial court and remanded the case due to the lower court's error in excluding expert testimony on BWS, and for the first time, the court held that such expert testimony is admissible to help establish claims of self-defense in homicide cases. *Id.*

an aggressor.[55] In cases involving domestic violence, many women fail to meet this burden due to the imminence element, which requires the actor to reasonably believe that an attack is just about to occur. For women who consistently face abuse by a partner, a reasonable belief that an attack might occur in the near future is insufficient to establish imminence.[56] Particularly in cases in which the woman kills while her abuser's back is turned, "[s]uch killings, under traditional self-defense concepts, are thought to be inspired by cowardice or revenge on the part of one of two equal combatants. In legal parlance, this type of behavior does not merit the privilege of self-defense because the danger does not appear to be imminent."[57] Therefore, women who killed their abusers outside of the moment immediately preceding an attack (when their abusers were asleep, for example) had no defense under the criminal law.[58]

In 1979, clinical researcher Lenore Walker originated BWS as a psychological doctrine, seeking to provide a stopgap between the traditional elements of self-defense and a logical extension of the policy to the context of domestic violence.[59] However, women still face significant obstacles due to the traditional imminence requirement because their opportunity to fight back may not occur immediately before a beating. A battered woman's perception of danger is wholly dependent on her experience of past abuse, which is generally considered irrelevant under the traditional self-defense paradigm.[60]

The Syndrome consists of two related psychological concepts. The first is the idea of "learned helplessness," in which an abused woman develops an unwillingness or inability to seek help from others, even when it is made available.[61] Learned helplessness helps to counteract common views that a woman failed to leave an abusive relationship and therefore consented to the abuse.[62] Psychologist Martin Seligman originally coined the expression of "learned helplessness" to describe laboratory dogs' behavior after being subjected to electric shocks.[63]

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55. *See* FAIGMAN ET AL., *supra* note 14, § 13:2.

56. *See id.*

57. Maryanne E. Kampmann, *The Legal Victimization of Battered Women*, 15 WOMEN'S RTS. L. REP. 101, 112 (1993).

58. FAIGMAN ET AL., *supra* note 14, § 13:2.

59. *Id.* § 13:1 ("According to Walker, the syndrome . . . explains why battered women sometimes kill their abusers under circumstances that do not mirror traditional cases of self-defense. Specifically, syndrome advocates seek to explain why battered women sometimes resort to deadly force when, seemingly, they are not confronted by an imminent harm.").

60. Kampmann, *supra* note 57, at 112.

61. FAIGMAN ET AL., *supra* note 14, § 13:5.

62. *Id.*

63. *See generally* Martin E.P. Seligman et al., *Alleviation of Learned Helplessness in the Dog*, 73 J. ABNORMAL PSYCHOL. 256 (1968).

Throughout his experiments, Seligman discovered that "[a]fter initial attempts to escape proved futile, the dogs began to submit to the shocks without resistance. When the procedure was changed to present the dogs with an opportunity to escape, the 'helpless' dogs failed to respond."[64]

Walker analogized these results to battered women and found that over time, women similarly became "learned helpless" and lost motivation to respond to violent stimuli.[65] According to one court, some women "become so demoralized and degraded by the fact that they cannot predict or control the violence that they sink into a state of psychological paralysis and become unable to take any action at all to improve or alter the situation."[66] Learned helplessness works in conjunction with the second aspect of BWS to explain the particular circumstances and perceptions of battered women.[67]

The second psychological aspect of BWS is the Walker Cycle Theory, in which a woman's sense of helplessness is reinforced by a cycle of violence consisting of (1) a tension-building phase; (2) an explosion of violence; and (3) a phase of loving contrition.[68] "[A]ccording to the cycle theory, the woman experiences the growing tension of phase one, develops a fear of death or serious bodily harm during phase two, and, perceiving that she will be unable to defend herself when the next attack comes, finally 'defends' herself at her only opportunity."[69] The theory demonstrates the relationship between two critical issues in a self-defense claim: the defendant's reasonable belief that force is necessary, and the reasonableness of the amount of force used.[70] A woman's knowledge of her abuser's violent history influences her perception of danger, and her experience throughout the cycles leaves her in a constant fear of an imminent attack.[71]

Because many BWS cases involve women who cannot physically defend themselves against larger and stronger aggressors, the amount of force used can seem disproportionate. Traditional self-defense law assumes two individuals equal in "size, strength, and physical training," but women are generally smaller, weaker, and lack similar physical training.[72] The woman may believe that her abuser is physically capable

64. *See* FAIGMAN ET AL., *supra* note 14, § 13:5 n.5 (citing Seligman et al., *supra* note 63).

65. *Id.* § 13:5.

66. State v. Kelly, 478 A.2d 364, 372 (N.J. 1984).

67. Feminist scholars have debated the validity of the learned helplessness theory. *See generally* Elizabeth M. Schneider, *Describing and Changing: Women's Self-Defense Work and the Problem of Expert Testimony on Battering*, 14 WOMEN'S RTS. L. REP. 213 (1992).

68. *See* LENORE WALKER, THE BATTERED WOMAN SYNDROME 95–104 (1984).

69. FAIGMAN ET AL., *supra* note 14, § 13:4.

70. *Id.*

71. *Id.*

72. Schneider, *supra* note 1, at 632.

of injuring or killing her without a weapon.[73] "If a woman perceives herself to be trapped in a cycle of potentially deadly violence, she may reasonably feel compelled to resort to deadly force in preempting the aggression of the unarmed but more powerful man."[74] Accordingly, in many cases it is perfectly reasonable for a woman to arm herself with a weapon to ward off a bigger and stronger aggressor.

Additionally, a woman cannot physically retreat any further than her own home. In *State v. Thomas*, the Ohio Supreme Court described that "a person in her own home has already retreated 'to the wall,' as there is no place to which she can further flee in safety."[75] This observation parallels the concerns about the duty to retreat in the castle doctrine and early self-defense law, yet it is treated differently in the domestic violence context.

Generally, the law considers BWS as a psychological condition apart from other legal defenses. Rather than focusing on a woman's testimony about her personal perception of the likelihood of an attack from her abuser, BWS relies on expert testimony to prove the woman's psychiatric condition and to show her subjective and honest belief that force was necessary to protect herself from an attack.[76] The requirement of expert psychological testimony objectively supports the woman's argument that she acted reasonably under the circumstances and in light of her experience with her abusive partner, but does not always permit the individual woman's story to be heard.

BWS critics take issue with the objective element of the self-defense standard, "arguing that even if a battered woman who killed under non-confrontational circumstances honestly believed that defensive force was necessary, her belief could not have been reasonable."[77] The importance of psychological evaluations overshadows the testimony of the woman herself. Indeed, in some cases, expert testimony entirely replaces the woman's testimony: the expert can testify that the defendant suffers from BWS and the defendant can avoid waiving her Fifth Amendment privilege against self-incrimination. Although there are cases in which the expert would provide better testimony than the defendant, the jury should be allowed to consider the abused woman's personal history of abuse in assessing her self-defense claim.[78] There are certainly situations

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73. *Id.*

74. FAIGMAN ET AL., *supra* note 14, § 13:4.

75. State v. Thomas, 673 N.E.2d 1339, 1343 (Ohio 1997).

76. *See* FAIGMAN ET AL., *supra* note 14, § 13:11.

77. Kit Kinports, *So Much Activity, So Little Change: A Reply to the Critics of Battered Women's Self-Defense*, 23 ST. LOUIS U. PUB. L. REV. 155, 164 (2004) (citing Stephen J. Morse, *The "New Syndrome Excuse Syndrome"*, 14 CRIM. JUST. ETHICS, no. 1, at 12 (1995)).

78. David Faigman, *The Battered Woman Syndrome and Self-Defense: A Legal and Empirical Dissent*, 72 VA. L. REV. 619, 622 (1986) (arguing that juries should be allowed to consider the abused

where the woman, and not the expert, is in the best position to describe her experiences and environment and how they relate to the reasonableness of her use of force. Defendants invoking Stand Your Ground defenses are not required to jump the expert testimony hurdle that can complicate matters for BWS defendants.

The most extreme view of BWS appears in Louisiana, where the law essentially treats the Syndrome as an insanity defense that might excuse the use of deadly force but not justify it.[79] Critics of Louisiana's approach argue that BWS is only meant to show the reasonableness of a defendant's actions.[80] Indeed, there is no language in Walker's original description of the doctrine requiring a woman to suffer from "any claimed psychological incapacity."[81] As David Faigman describes, much of the confusion over the purpose of the doctrine arises from the name of the doctrine itself:

> Foremost, the choice of the label "syndrome" suggests a medical/biological genesis for the condition, rather than a social or behavioral basis. Undoubtedly, advocates believe that likening the phenomenon to a medical condition or malady enhances its credibility. . . . What began as an attempt to educate the law on the realities and necessities of domestic violence has evolved into an excuse-based defense founded on the helplessness of the woman defendant. Moreover, the medical linkage makes the action "understandable" rather than "reasonable," and thus fails to explain why a battered woman kills with justification; instead, the syndrome defense merely makes triers of fact sympathetic to the woman's plight. This might explain why syndrome testimony has been mainly effective in reducing the severity of the offenses for which these defendants are convicted, instead of winning outright acquittals.[82]

Accordingly, it is necessary to distinguish the constructed syndrome from research on domestic violence generally.

Psychologists developed BWS as a proxy to get evidence in front of a jury when it would otherwise be excluded for failing to meet the traditional self-defense requirements.[83] Research on domestic violence explores the factors crucial to understanding the realities of battered women's lives, including anxiety, depression, fear of retaliation, death rate statistics, lack of support networks, and economic dependence.[84] All of these factors are relevant to battered women's self-defense claims and should

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woman's personal history of abuse in assessing her claim of self-defense).

79. *See* FAIGMAN ET AL., *supra* note 14, § 13:14; *see also* State v. Necaise, 466 So. 2d 660 (LA. 1985) (refusing to admit expert testimony to show a defendant suffered from BWS absent a plea of either "not guilty" or "not guilty by the reason of insanity").

80. FAIGMAN ET AL., *supra* note 14, § 13:14.

81. *Id.*

82. *Id.*

83. *Id.* §§ 13:14–15.

84. *Id.* § 13:8.

be admissible as evidence that supports the narrative. The generalized aspects of BWS cannot adequately address these issues because it focuses on psychological standards that do not necessarily apply to all battered women. Further, a woman need not suffer from a psychological syndrome or defect to experience these socio-psychological effects.

In practice, BWS doctrine reinforces the woman as subordinate and suggests that an abused woman eventually loses control over her own free will and is driven to kill by an inescapable state of helplessness. However, "learned helplessness, as a psychological construct, is fundamentally at odds with a situation in which a woman has exercised the degree of control reflected in the act of self-defense."[85] Self-defense is an inherently affirmative act, and the psychology behind BWS fails to take into account the will required by a person to kill another in defense of oneself. If battered women always faced helplessness to the point of paralysis, realistically they would not be able to use any degree of force against their abusers. Moreover, reliance on formal psychological evidence "turns a blind eye to the woman's history of abuse, to the social and economic pressures preventing her from leaving, and to her engrossing fear."[86] Indeed, expert testimony and psychological evaluations provides little relevant information when a woman's reason for staying in the relationship is not because of a psychological defect, but rather concerns about economic dependence or her children.[87]

The common law of self-defense provides a basis for applying the True Man rationale in cases of battered women, allowing a woman to stand her ground in her own house regardless of whether the aggressor is an intruder or an abusive significant other.[88] Instead, courts have distinguished between traditional castle doctrine cases where the aggressor is an intruder, and the castle doctrine as applied to battered women with a significant other as the aggressor.[89] Even benign distinctions between the two scenarios show signs of paternalism. For example, in *Weiand v. State*, the Supreme Court of Florida held that there is no duty to retreat inside the home before a defendant may use deadly force against a cohabitant in self-defense if it is necessary to prevent death or serious injury.[90] In *Weiand*, the court cited two policy rationales for its decision: (1) "imposing a duty to retreat from the home may adversely impact victims of domestic violence," and (2) "[a] jury

85. *Id.*

86. *See* Faigman, *supra* note 78, at 643.

87. *See* FAIGMAN ET AL., *supra* note 14, § 13:8; *see also* Schneider, *supra* note 1, at 627 (discussing practical reasons why battered women fail to leave their abusive relationships).

88. Suk, *supra* note 5, at 255.

89. *Id.* (citing State v. Gartland, 694 A.2d 564 (N.J. 1997)).

90. Weiand v. State, 732 So. 2d 1044, 1051 (Fla. 1999).

instruction on the duty to retreat may reinforce common myths about domestic violence."[91]

Despite these important policy goals, critics of the decision argue that the court relied not on the empowering common law tradition but instead replaced this narrative with a woman unable to retreat because of her subordinate power position.[92] In doing so, the court "replaced the true man acting within his rights with the subordinated woman unable to retreat" and "brought to bear a feminist critique to conceptualize violence in the home as subordination rather than intrusion."[93] Although the Florida Supreme Court created a rule in hopes of benefitting battered women, the rationale continues to place women in positions of inferiority.

Ultimately, the stereotypes embedded in BWS doctrine disadvantage women with valid self-defense claims. Courts remain uncertain about how to utilize evidence of abuse, and the focus on psychological infirmary distracts from the inquiry into the reasonableness of a defendant's conduct in light of her circumstances. This inquiry should not only allow a woman to describe her experience of helplessness, but should also rise to empowerment and her need to stand her ground and protect herself, her family, and her home from an attacker.

Some scholars argue that the rise of Stand Your Ground laws is actually positive for women because the statutes integrate BWS into the True Man doctrine.[94] In particular, the new Florida law permits individuals "to treat a cohabitant as an intruder if a [domestic violence] protection order commands him to stay away from the home" and therefore "embeds [domestic violence] within the home invasion paradigm."[95] Although this addition to the castle doctrine is an improvement, the statute still requires women to obtain a protective order before they are able to protect themselves in their own home.[96] The prerequisite of a protective order is not always feasible or obtainable, but it is necessary under the Florida law for women to treat their abusers the same as intruders.

Unfortunately, law enforcement often provides insufficient protection to abused women.[97] Sometimes police do not respond to the domestic dispute call at all, or the call does not result in an arrest of the

91. *Id.* at 1052–54.

92. Suk, *supra* note 5, at 257–58.

93. *Id.* at 258.

94. *Id.* at 264 (describing a new narrative in self-defense doctrine of the "true woman").

95. *Id.* at 240.

96. FLA. STAT. § 776.013 (2012). The Florida House has proposed a bill to repeal section 776.013, but at the time of publication, the legislature had not yet clarified what rules would instead apply to the use of deadly force in the home against a co-resident without a protective injunction. *See* H.B. 4003, 2014 Leg., Reg. Sess. (Fla. 2014).

97. Schneider, *supra* note 1, at 626.

abuser.[98] Reliance on law enforcement to receive legal protections could prove to be a deterring obstacle for some women who face the constant threat of angering their abusers and suffering retaliatory attacks. The failure of police to adequately protect battered women from their abusers demonstrates both the impracticality of Florida's requirement of a protective order and the need for abused women to sometimes take the law into her own hands.[99]

Moreover, Professor Suk concedes that the Florida law limits the right to stand one's ground in domestic violence situations to only when a victim is actually being physically abused.[100] In other words, women must be in the throes of a violent attack before they are permitted to use force under the statute.[101] Thus, even under the new and broadly construed self-defense law in Florida, a battered woman is not permitted to use force to protect herself in her own home against an aggressor when the aggressor does not fit into the typical intruder paradigm.

Until battered women can effectively prove the reasonableness of their use of deadly force without a near-showing of insanity or the need to jump through procedural hoops, self-defense law will continue to be embedded with gender stereotypes. Reforming self-defense doctrines to be more conducive to gender-neutral claims would allow defendants to prove their claims on the basis of reasonableness and remove the need for extreme ideologies about masculinity or femininity to make a successful self-defense claim. The challenge for reformers, however, will be changing biases and preconceived views of the jurors determining the outcome of these cases. The psychology behind juror decision-making is often so subconscious as to potentially prevent effective legal reform of these two gendered self-defense theories.

III. Juror Decisionmaking and Social Psychology

Social psychology plays an important role in evaluating how jurors make decisions. Juries, comprised of a diverse collection of the community, with varying degrees of education and exposure to legal subject matter, must interpret the multitude of facts put in front of them

98. *Id.* (citing Police Found., Domestic Violence and the Police 10–18 (1977)) ("85 percent of domestic violence cases, the police had been summoned at least once within the two-year period before the homicide occurred.").

99. *Id.* (citing Police Found., Domestic Violence and the Police 10–18 (1977)) ("[T]he law enforcement system fails to protect women from abuse. The police often fail to respond to domestic disturbance calls. When they do respond, arrest is unlikely; police policy and training manuals stress mediation of domestic disputes rather than arrest. One study reports that in 85 percent of domestic violence cases, the police had been summoned at least once within the two-year period before the homicide occurred. The dead person was usually the woman.").

100. Suk, *supra* note 5, at 268.

101. *Id.*

and decide what information ultimately supports a finding of guilty or not guilty. Psychologists Reid Hastie and Nancy Pennington suggest that in order to make sense of the overwhelming amount of information presented, a juror uses "story structures to organize and interpret evidence."[102] Dr. Hastie describes this "story model" of decisionmaking as being "constructed from information explicitly presented at trial and knowledge possessed by the juror. Two kinds of knowledge are critical: (a) expectations about what makes a complete story and (b) knowledge about events similar in content to those that are the topic of dispute."[103] This information tells the juror when relevant pieces of the story are missing, and when inferences should be made.[104] Story organization is crucial for jurors because it can not only determine their choice in verdict, but also affect their confidence in their vote.[105]

A. The Use of Narratives in Jury Trials

The success of self-defense claims often hangs on whether the jury believes a defendant's account of what happened. As a result, defendants tailor the facts of their case to track the legal definition of self-defense as closely as possible.[106] A defendant's success in a self-defense claim "will depend on both credibility and fit—that is, the rest of us must believe the defendant's recounting is true to both reality and the legal definition of self-defense before we, too, designate it self-defense and withhold punishment."[107] To appear more believable to a jury, the defendant's narrative "may entail some stretching of the definition to fit the facts, as well as facts to definition."[108] Therefore, a jury's interpretation of the defendant's story can make the difference between a guilty verdict and an acquittal.

The challenge is that even when a defendant has a logically constructed story, some jurors simply do not consider it believable or reliable.[109] Research on the story model shows that "jurors decide cases by fitting the evidence presented by the parties into one or more 'verdict stories,' and then selecting the story that appears most plausible and

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102. Nancy Pennington & Reid Hastie, *Explanation-Based Decision Making: Effects of Memory Structure on Judgment*, 14 J. Experimental Psychol.: Learning, Memory & Cognition 521, 521 (1988).

103. *Id.* at 522.

104. *Id.*

105. *Id.* at 530.

106. Janine Young Kim, *The Rhetoric of Self-Defense*, 13 Berkeley J. Crim. L. 261, 264 (2008).

107. *Id.*

108. *Id.*

109. Pennington & Hastie, *supra* note 102, at 530 ("Any advantage in confidence in a not guilty verdict that might arise from having the complete defense story may have been offset by its level of plausibility, even though knowing the complete story was sufficient to move verdict decisions substantially in the not guilty direction.").

coherent to them."[110] Moreover, jurors have "preconceptions and attitudes that lead them to entertain particular stories about what may have happened" and what verdict they should choose.[111] Ultimately, the defense must anticipate these expectations, because jurors, spontaneously and without prompting, construct their own story structure in order to mentally summarize the evidence.[112]

During trial, the story structure aids jurors in recalling events and constructing a mental picture of the alleged crime:[113]

> [T]he situational elaborations on which such judgments must be based imply the particular proposition so strongly that subjects believe they have seen the statement as evidence . . . . Moreover, subjects make false recognition judgments almost as fast as they make judgments about sentences that they have seen, and they make them systematically.[114]

These judgments, based on the information's position in the story's structure, have resounding effects on how much weight a juror gives an individual piece of evidence.[115] However, the coherence of one story is not the only factor to consider in predicting jurors' decisions, as perceptions of the importance of certain evidence depend on the strength of one story compared with the alternative narrative.[116]

From the opening statement onward, jurors begin constructing the evidence into the story that makes the most sense to them. Each attorney has a brief window of time to frame the most convincing story, because all else being equal, the "probability of obtaining a verdict consistent with a story increases when the story is 'primed' in the opening statement."[117] Defense counsel must simultaneously hook the jury with a believable and relatable story while not over-generalizing the individual defendant's personal narrative. This task is exceedingly difficult given the additional responsibility of proving that the defendant's actions were objectively reasonable in light of the specific circumstances.

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110. Donald Braman, *Cultural Cognition and the Reasonable Person*, 14 LEWIS & CLARK L. REV. 1455, 1472 (2010).

111. *Id.* (citing Lynda Olsen-Fulero & Solomon M. Fulero, *Commonsense Rape Judgments: An Empathy-Complexity Theory of Rape Juror Story Making*, 3 PSYCHOL. PUB. POL'Y & L. 402, 418 (1997)).

112. Pennington & Hastie, *supra* note 102, at 527.

113. *Id.* ("Furthermore, this chronologically ordered causal explanation also serves as a retrieval system when subjects are confronted with a memory task.").

114. *Id.*

115. *Id.* ("[S]ubjects' ratings of the importance of evidence items to their decision can be predicted from the items' story membership and from the position of the item in the story's causal structure.").

116. *Id.* at 530.

117. Reid Hastie, *The Role of "Stories" in Civil Jury Judgments*, 32 U. MICH. J.L. REFORM 227, 232 (1999) (noting the role of stories in criminal cases as a point of comparison).

B. Jurors and the "Reasonable Person"

In determining whether defendants are guilty or not, juries are often asked to evaluate what a "reasonable person" would have done in the same circumstances. The reasonable person is an elusive concept because it is meant to be an objective test, but necessarily must consider the particular context of a defendant's situation. On the one hand, if the jury envisions the reasonable person as exactly the same as the defendant in terms of background, experiences, and perceptions, then the reasonable person would naturally act similarly to the defendant under the same circumstances.[118] Conversely, "a purely objective standard is unduly harsh because it ignores the characteristics which inevitably and justifiably shape the defender's perspective, thus holding him (or her) to a standard he simply cannot meet."[119] One of the greatest challenges in assessing self-defense claims is "striking the balance between the defender's subjective perceptions and those of the hypothetical reasonable person."[120]

The elusiveness of the reasonable person standard is controversial because of its acceptance of cultural preferences as to who embodies the reasonable person and how a reasonable person should behave in a given situation.[121] The reasonable person standard calls into question "hotly contested normative disputes over racial anxiety, gender roles, physical violence, and other divisive issues, by shifting attention away from explicitly political valuations by the state and towards factual judgments during jury deliberations or in the judge's chambers."[122] By leaving the decision of who constitutes a "reasonable" person up to a random jury pool, the state avoids the blame for choosing between competing norms. This transfer of decisionmaking power from the state to the jury box comes at a high cost because it grants "fact-finders the freedom to privately succumb to the kind of bias that would, if made public, offend our liberal commitments not only to shared forms of justification, but also to equality, the universal value of human life, and public reason."[123] While this solution may temporarily dodge political confrontations, localized fact-finding by juries opens the door to individual prejudices and inconsistency.[124]

In the criminal context, this decentralization of normative judgments is even more concerning. Under a reasonable person analysis,

118. George P. Fletcher, Rethinking Criminal Law 513 (1978).
119. Susan Estrich, *Defending Women*, 88 Mich. L. Rev. 1430, 1434 (1990).
120. *Id.*
121. Braman, *supra* note 110, at 1457.
122. *Id.*
123. *Id.* at 1459.
124. *Id.* at 1457.

the issue of who should be punished for homicide (a normative judgment) is transformed into a factual question for the jury to decide. Accordingly, it is important to consider the relationship between factual issues and a juror's beliefs, which is also referred to as "cultural cognition."[125] Psychologists define cultural cognition as "a collection of social and psychological mechanisms that cause individuals to conform their factual beliefs to their core values and cultural commitments."[126] People often align factual ideas with their core values in a "strikingly consistent" way.[127] Studies explain that this occurs "both because individuals process information in ways that minimize the dissonance between their factual beliefs and their values, and because they are more likely to seek out and be exposed to information from those with whom they feel they share important values."[128] Despite an individual's attempts to be objective in evaluating evidence, such thought processes are nearly involuntary.[129]

This understanding of cultural cognition is directly related to Dr. Hastie's story model and his description of how a juror's expectations factor in to how he or she evaluates evidence. Donald Braman explains:

> [J]urors are less likely to even recall evidence that is inconsistent with their preferred verdict story, removing culturally unacceptable evidence from consideration. And of course, to the extent that jurors in a culturally diverse society are likely to enter the jury room with diverse and even antagonistic cultural prototypes, they will sometimes disagree over verdicts because they won't agree on what the evidence means—or even what the evidence is.[130]

Such studies emphasize how a juror's personal views on normative values affect her ability to recall and interpret evidence. When jurors disagree on the meaning of the evidence, cultural cognition leads people with different values to competing assessments of the defendant's culpability.[131]

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125. *Id.* at 1458.

126. *Id.*

127. Braman, *supra* note 110, at 1458.

128. *Id.*

129. *Id.* at 1474–75 ("Culturally diverse individuals honestly believe they are putting their own partisan commitments aside and basing their judgments on their perception of the facts of the matter—but those perceptions vary along culturally predictable lines. People with different outlooks may arrive at different assessments of culpability, then, but they do so through earnest attempts to be objective.").

130. Braman, *supra* note 110, at 1472–73.

131. *Id.* at 1473.

IV. Prospects for Legal Reform in a Legal System That Codifies Gender Stereotypes

Any hope for effective legal reform must take into account the jury's approach to processing and deciding self-defense claims. Through the story structure, juries compare moralities of the two actors involved.[132] Heroes and villains are created through the mere act of juxtaposing an unaware self-defender with a malicious assailant.[133] However, this construct exposes the clear masculine bias that pervades self-defense claims. From the Wild West to the home, "countering unjust violence with just violence evokes romanticized images of the [man], defending himself (and perhaps also his honor) against the perils of the lawless frontier."[134] The view of the strong and righteous man is fundamentally at odds with the picture painted by BWS narratives.

Unsurprisingly, fearful and helpless female defendants do not conjure images of honor and righteousness in the minds of jurors. Professor Janine Kim describes:

> [T]he violent ideal of self-defense does not so readily suit the conduct of women, who are generally expected to cry and fail in deadly confrontation. Accordingly, this gendered narrative implies that defensive violence under the paradigm is not so much heated and impulsive (i.e., emotional, like women) as it is rational and even judicious.[135]

One scholar accuses self-defense law of maintaining a set of boys' rules, or "rules that might make sense in the context of men fighting other men, but which have no place in the context of male-on-female aggression or, therefore, the case of female-on-male self-protection."[136] Indeed, reformers face challenges in persuading courts to allow self-defense jury instructions when the context of the homicide is non-confrontational, as are many homicides in BWS cases.[137]

Additionally, the gender bias in BWS increases the likelihood that the jury will merely excuse the woman's conduct, but find it unjustified under the law.[138] When a defense is treated as an excuse rather than a justification, the jury views the defendant's act as wrong and only tolerable because of her mental or emotional state.[139] Conversely, justified conduct is encouraged under the law, and the jury approves of

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132. Kim, *supra* note 106, at 266.

133. *Id.*

134. *Id.* at 266–67.

135. *Id.* at 267 (citation omitted).

136. Joshua Dressler, *Feminist (Or "Feminist") Reform of Self-Defense Law: Some Critical Reflections*, 93 Marq. L. Rev. 1475, 1480 (2010).

137. *Id.* at 1488.

138. Schneider, *supra* note 1, at 638.

139. *Id.* at 631.

the defendant's act because of the surrounding circumstances.[140] The jury first looks to see if the circumstances of the act justify self-defense, and if not, the jury then assesses the defendant's mental and emotional state to see if this particular actor should be excused.[141] Historically, excuse defenses have had a detrimental effect on women because even acquittal in homicide cases still results in involuntary commitment to psychiatric institutions.[142] The prevalent view that battered women acting in self-defense is an insanity defense (excuse) rather than a traditional self-defense claim (justification) is a significant disadvantage for female defendants trying to persuade the jury.[143]

The factual issues presented in True Man and BWS cases, as well as the type of inferences needed to resolve the issues, are practically indistinguishable.[144] Braman conducted a study based on two fictional defendants modeled after the real cases of Bernard Goetz and Judy Norman. Goetz shot and wounded three young African-Americans on the subway after one of them confronted Goetz and said "give me five dollars."[145] Norman shot and killed her husband in his sleep after years of abuse and failed attempts to obtain police protection.[146] Professor Braman's study found that a juror's likelihood of convicting each defendant related to their specific gender, racial, political, and ideological affiliations.[147] This study explicitly assessed the effect of cultural cognition on evaluating stand your ground versus BWS cases, and the results demonstrate that jurors' views on culpability significantly diverge along cultural lines.[148]

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140. *Id.* at 630–31.

141. *Id.*

142. *Id.* at 638.

143. *See* Dressler, *supra* note 136, at 1488 ("Ironically, the practical effect of BWS evidence is to pathologize the battered woman. Indeed, a juror simulation study has reported that 'the presence of expert evidence providing a diagnosis of [BWS], compared to a no expert control, [causes] the jurors to view the defendant as more distorted in her thinking, and less capable of making responsible choices, and less culpable for her actions.' . . . [U]se of BWS testimony potentially brings courts back, full circle, to the early battered women cases, in which women sought to defend themselves on grounds of temporary insanity or diminished capacity.").

144. Braman, *supra* note 110, at 1462–63 (noting similar issues included the danger posed by the aggressor, the defendant's insight informed by his or her personal experiences, and the feasibility of alternatives).

145. People v. Goetz, 497 N.E.2d 41, 43 (N.Y. 1986).

146. State v. Norman, 378 S.E.2d 8, 9 (N.C. 1989).

147. Braman, *supra* note 110, at 1465–66 ("Blacks were more likely to convict George than they were to convict Julie, while whites were more likely to convict Julie than George. Similar patterns emerged for women and men, Democrats and Republicans, liberals and conservatives, egalitarians and hierarchs, and communitarians and individualists. In each case, the former were more likely than the latter to see George as more deserving of punishment than Julie.").

148. *Id.* at 1468 ("[I]ndividuals will . . . [interpret legal standards] through interlocking social and cognitive mechanisms that cause them to rely on a culturally contingent situation sense; an implicit knowledge of how the material and social world works.").

Both BWS and the True Man doctrine are theories of self-defense that address similar issues of imminence and necessity, but each theory tells a completely different story. The process of proving a true man self-defense claim is also strikingly dissimilar to a BWS claim, as true men can testify upfront without expert testimony, without state-mandated psychological evaluations, and without pleading an insanity defense. With this evidentiary burden placed on BWS defenses, the law adopted a model for women's defense strategies that was essentially based on psychological defects. Even if the outcomes are the same under either theory, the fact that the models are so different creates problems and independent obstacles.

Furthermore, these distinct narratives rely on the most classic gender stereotypes. As such, self-defense law has solidified these stereotypes into the substantive law. The stereotypical origins of the true man have resounding effects on modern self-defense law. By codifying what a man should do when faced with an assailant, the law makes normative judgments on who is and is not justified in standing their ground. The title of the doctrine itself excludes a majority of the population from using the defense effectively because women do not historically fit into the framework.

One possible solution is increased individualization in the jury's evaluation of facts. Elizabeth Schneider, an expert in gender, law, and domestic violence, argues that allowing the jury to fully consider the defendant's circumstances and perspective is essential for battered women to have comparable treatment in presenting self-defense claims.[149] Individualization is necessary in order to equalize the burden battered women face in asserting their claims and to acknowledge the different circumstances in which homicides committed by men and women occur.[150] Schneider asserts that "[w]ithout individualization, the trier of fact may be unable either to overcome his stereotypical attitude toward the circumstances surrounding the woman's act or to understand the inapplicability of traditional legal rules."[151] Increasing the individualized analysis for self-defense claims would certainly improve a woman's ability to express her own perceptions and experience of abuse.

Further, individualization could work effectively in conjunction with the objective reasonable person analysis under a standard of the "reasonable person in a long-term violent relationship," which would necessarily take into account the defendant's experiences with violence and whether her actions were reasonable in light of those experiences.

149. Schneider, *supra* note 1, at 640.
150. *Id.*
151. *Id.*

Striking a balance between the reasonable person analysis and individualization would permit defendants to adequately present their claims without having to completely restructure how juries assess criminal defenses.

In the end, the jury is the decisionmaker and jurors must be invited to exercise their good judgment. Jurors cannot do this unless they understand or have an opportunity to understand why a defendant's conduct is justified. Because juries apply common sense and their own experiences, which might include gender stereotypes, to legal decision-making, the law may be stuck with the current doctrines because of the strongly held and easily understood narratives. At a minimum, legal reforms should aim to remove these two defenses from their current extremes. Within these narratives, there are extremes of both theories that are not reasonable, and a middle ground in both that are completely reasonable. Juries need individualization of defendants' claims to differentiate between the two. The reality is that reasonable people do what they have to do under the circumstances, and this is where the middle ground between battered women and true men lies. Individuals should have the freedom to effectively use either doctrine based on a showing of reasonableness, and not a showing of either John Wayne courage or borderline insanity. The solution is to allow a system in which the jury is permitted to truly understand the woman's narrative within the domestic violence context so that judge her behavior the same way it would judge a man standing his ground.

CONCLUSION

The recent expansion of the True Man doctrine in many states revived discussions of the self-defense law generally. Comparing the new Stand Your Ground laws with BWS, it becomes apparent that the law solidifies gender stereotypes by assessing when an individual is justified in using deadly force against an aggressor. True men are empowered to use deadly force even in public without a duty to retreat, while battered women must provide expert testimony on her psychological condition to prove the reasonableness of her use of deadly force in light of her extreme helplessness. At their extremes, both of these doctrines are detrimental to the criminal law, and potentially encourage dangerous policy and undesirable public conduct.[152] Legal reforms are needed to moderate these extremes and to create a more gender-neutral process to proving self-defense claims no matter the theory. While the psychology

152. The recent, tragic killing of Trayvon Martin, an unarmed, African-American teenager, reflects this concern, as well as the potential for racial stereotypes to affect an individual's perception of imminent danger in public places. *See generally* Dan Barry et al., *In the Eye of a Firestorm*, N.Y. TIMES, Apr. 2, 2012, at A1.

of juror decision-making and the roots of the classic narratives likely limit prospects for reform, change is necessary to modernize and equalize self-defense law. Ideally, a new legal framework of individualization for proving self-defense claims can find the middle ground between the empowerment doctrine of the true man and the helplessness ideology behind Battered Women's Syndrome, and will allow the jury to do its job by listening to each defendant's narrative regardless of whether it falls under the traditional paradigm.