

License to Kill: Trayvon Martin and the Logic of Exception

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Abstract

This essay presents two complementary culprits in the death of Trayvon Martin. First, Zimmerman's acquittal under Florida's self-defense codes demonstrates how simple communicative rites allow citizens to undergo a subjective transformation by which they are empowered to act "above the law." Second, this transformation illustrates a darker side of our cultural dichotomization of speech and violence. Although this dichotomy generally functions to enforce the state's exclusive privilege of violence, it also has the effect of constructing an escalatory logic between speech and violent acts. Fostered by vague self-defense codes, this escalatory logic of exception—by which the supposed failure of speech effortlessly escalates into its exceptional other—contributes to a cultural climate in which interpersonal conflicts easily escalate into lethal violence.

Keywords

Self-defense, rhetoric and violence, state of exception

According to Norman legend, Rollo I, the first Duke of Normandy, was so highly revered by his people that the mere sound of his name would cause criminals to halt in their tracks. This reverence was institutionalized into civic practice by a social ritual known as the "*clameur de haro*." When Rollo's subjects felt threatened by a potential attacker, they would attempt to spare themselves by performing the *clameur* and passionately invoking the name of their sovereign. According to Norman legal custom, the *clameur* involved a very specific sequence of communicative action: The potential victim would fall to her knees, remove her hat, clasp her hands, and cry out, "Hear me! Hear me! Hear me! Help me, prince, for someone is doing me wrong!" (Holden and Jowitt, 2008, p. 293). If the assailant failed to heed this invocation of the sovereign, it was the victim's right to react with any necessary degree of vigilance. In the words of Zoë Schneider (2008), "The *clameur* . . . provided a route by which any Norman could assume the judicial authority derived from his sovereign to arrest an act of injustice" (p. 177). The *clameur*, therefore, was more than a simple plea or hail: It was a ritual of subjective transformation. If an assailant ignored her victim's *clameur*, she performatively constructed a zone of indistinction wherein the potential victim was suddenly identified with the sovereign. As such, the assailant's continued aggression granted the victim the privileges of sovereign power, freeing her from the strictures of conduct that typically constrained the king's subjects. Through a performance of the *clameur*, therefore, the sovereign's exclusive privilege of legitimate violence—

perhaps the defining privilege of sovereign power—becomes transferable to his subjects via ritual fiat.

This essay examines how the spirit of *clameur* is reflected in today's legal and cultural norms of citizen violence, particularly as they naturalize an escalatory logic between communication and violence. I will argue that the American juridical apparatus sets the stage for tragedies like the Trayvon Martin murder by stipulating that killing is justifiable so long as it is preceded by pleas, warnings, or other communicative action that constructs an exceptional environment in which violence can be declared legal "self-defense." Those who followed the George Zimmerman trial will recall that in the courtroom of Seminole County Judge Debra S. Nelson—as well as in the court of public opinion—Zimmerman's culpability heavily rested on whether it was he or Trayvon who could be heard screaming on audio recordings of the shooting. To many of us, it might be quite immaterial if George Zimmerman was the person screaming, "Help!" and "I'm begging you!" After all, this would hardly provide Zimmerman with a *moral* grounding to shoot and kill an unarmed teenager. Yet, from the perspective of self-defense law, the question of who spoke those words is of central importance. Forensic experts from the

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prosecution and the defense battled over the audio recordings, leading at least one observer to remark, “Determining who was that voice could make or break Zimmerman’s assertion that he shot Martin in self defense” (Gutman & Tienabeso, 2013). Thus, in the Zimmerman trial—as in so many other “self-defense” cases—the prosecution simply could not convict if Zimmerman was found to have performed a communicative rite that established a zone of “self-defense,” in effect placing his actions beyond the traditional reach of the law. This transformative rite, in essence, provided Zimmerman with a license to kill.

American self-defense law provides a number of conditions under which citizen-subjects can transcend the bonds of nonviolence that connect them with their peers (and, correspondingly, separate them from the policing agents of the state). In a process reminiscent of the *clameur*, Americans can perform a simple rite of subjective transformation that momentarily places them beyond the reach of American criminal law, endowing them with full legal sanction to kill other subjects. When taking account of the myriad injustices that led to Trayvon’s death, then, we should turn our sights on these juridical and cultural norms that allow vigilantes like George Zimmerman to so easily serve as judge, jury, and executioner. Toward this purpose, this essay will analyze two complementary culprits in Trayvon’s death, the first of which is primarily legal and the second of which is primarily cultural. First, I will describe how these self-defense codes are structurally conditioned by the logic of *clameur*, thereby disfranchising juries by empowering some citizens to quite literally act above the law; second, I will analyze how the cultural dichotomization of speech and violence erects an escalatory logic of exception between them. That is, although the speech/violence dichotomy is oriented toward preserving the state’s monopoly on violence by confining citizen action to the communicative, Trayvon’s murder illustrates how this dichotomy often does just the opposite by naturalizing the escalation of speech into its exceptional other (violence).

Getting Away With Murder: Jury Disfranchisement and “Justifiable Homicide”

Although jury trials have long been celebrated as essential instruments of justice and democracy (see Abramson, 2001), many members of the Zimmerman jury argued that Florida’s self-defense laws actually prevented them from carrying out what they understood to be their mission—to dispense justice according to traditional moral and legal standards. When jury deliberations began after the case’s closing arguments, the jury vote was initially split: Three jurors wanted to convict Zimmerman, whereas the other three wanted to acquit him. Yet, when confronted with the

extraordinary nature of Florida’s self-defense codes, each juror finally succumbed to the realization that they simply could not convict Zimmerman according to the law’s ambiguous parameters of “self-defense.”

This frustration is perhaps most evident in the post-trial statements of the Zimmerman jury. Juror B-37, the only juror who has publicly supported Zimmerman, described why the jury was ultimately compelled to acquit him:

If he felt threatened that his life was going to be taken away from him, or he was going to have bodily harm, he had a right [to defend himself]. . . . There was a couple of them in there that wanted to find him guilty of something and after hours and hours and hours of deliberating over the law, and reading it over and over and over again, we decided there’s just no way, [no] other place to go. (Ford, 2013)

Therefore, although many jurors were convinced that Zimmerman deserved to be punished for his crimes, they found that the law prevented them from dispensing justice. Juror B-29, for instance, argued that Zimmerman “got away with murder”: “You can’t put the man in jail even though in our hearts we felt he was guilty. . . . We had to grab our hearts and put it aside and look at the evidence” (Schoichet, 2013). B-29 went on to lament that because of the way in which these self-defense laws are worded, the verdict had been decided from the outset of the trial:

As much as we were trying to find this man guilty . . . they give you a booklet that basically tells you the truth. And the truth is that there was nothing that we could do about it . . . I feel the verdict was already told. (*Chicago Tribune* Staff, 2013)

Several other jurors, in fact, shared B-29’s frustrations. In response to B-37’s tepid support for Zimmerman, a number of the jurors released an official statement that said, in essence, that the law imposed an unjust verdict on them:

Serving on this jury has been a highly emotional and physically draining experience for each of us. . . . The death of a teenager weighed heavily on our hearts but in the end we did what the law required us to do. (M. Schneider, 2013)

In a stark portrait of the justice system in 21st-century America, much of the Zimmerman jury felt as if the legal apparatus had acted as an impediment to the carriage of justice. As George Ciccariello-Maher (2012) so eloquently puts it, “although the legal system empowered Zimmerman to stand his ground, Trayvon’s death shows that some are left ‘without any ground on which to stand.’”

The jury’s verdict was primarily based on the guidance of two legal texts: the jury instructions that elaborated the legal definitions of the alleged crimes and Florida’s 2012 “use of deadly force” laws. Because Zimmerman’s legal team eschewed a “Stand Your Ground” defense in favor of

arguing that Zimmerman acted in self-defense, these texts provided the basic interpretive lens for the jury that decided Zimmerman's fate. As for the jury instructions, their central mission was to construct a difference between seemingly paradoxical legal concepts such as "excusable homicide" and "justifiable homicide." According to these instructions, excusable homicides are essentially accidental deaths, such as "when the killing is committed by accident and misfortune in doing any lawful act by lawful means with usual ordinary caution and without any unlawful intent" (Nelson, 2013, p. 4). "Justifiable homicide," however, is a different matter:

The killing of a human being is *justifiable* [emphasis added] and lawful if necessarily done while resisting an attempt to murder or commit a felony upon George Zimmerman, or to commit a felony in any dwelling house in which George Zimmerman was at the time of the attempted killing. (Nelson, 2013, p. 4)

Justifiable homicide, therefore, is a killing committed in so-called self-defense. As the court instructed the jury, "A person is justified in using deadly force if he reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself" (Nelson, 2013, p. 12). This notion of "justifiable homicide," therefore, required the jury to acquit Zimmerman if they found that he "believed" himself to be in imminent danger.

The official Florida legal code reinforces the standards laid out in the Zimmerman jury instructions. The "use of deadly force" provision, in particular, authorizes the use of deadly force as an extreme resort, when one "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" (Florida State Legislature, 2012). Similar to the jury instructions, by privileging the "beliefs" of the defendant, this statute gives rise to a legal scenario in which the *res gestae* of the case are relevant only to the extent that they contribute to an alleged state of "reasonable belief." Once this threshold of reasonable belief is supposedly met, then Zimmerman's escalation to murder is fully justified before the law. In fact, the jury instructions stipulated,

The danger facing George Zimmerman need not have been actual; however, to justify the use of deadly force, the appearance of danger must have been so real that a reasonably cautious and prudent person under the same circumstances would have believed that the danger could be avoided only through the use of that force. Based upon appearances, George Zimmerman must have actually believed that the danger was real. (Nelson, 2013, p. 12)

The legal code, therefore, entrusts the "justified" killer with an astonishing degree of discernment: Killing a fellow

citizen is legally legitimate if the killer *believes* her opponent was dangerous—and these anxieties about dangerousness, of course, rely on stereotypes about what kinds of people commit dangerous acts (see Goff and Richardson, 2013, p. 64; Hancock, 2012). To acquit Zimmerman, therefore, the defense did not have to prove that Zimmerman was in any real danger. Rather, they merely had to plant the seed of doubt that Zimmerman could have felt mortally endangered by a confrontation with someone like Trayvon.

Self-defense laws, then, provide a legal foundation for citizens to transcend the bonds of their common citizenship, allowing frustrated, vigilant citizens like George Zimmerman to momentarily occupy a metalegal space and commit "justifiable" killings. These laws tie juries' hands, forcing them to acquit even when they feel that the defendant—in the words of Zimmerman juror B-29—is "getting away with murder." Thus, we have a legal apparatus that in many ways condones, if not encourages, the use of deadly force in what might otherwise be routine communicative or physical altercations. As Hilda Kurtz observes, these laws give everyday citizens like George Zimmerman an astonishing amount of leeway to decide when lethal force is warranted: "Curiously, and to the horror of many law enforcement personnel, laws such as this allow private citizens considerably more leeway in the use of deadly force than is afforded to trained police officers" (Hilda Kurtz, 2013, p. 250). Recent statistics on self-defense killings demonstrate how this problem is being borne out in cities across America. During the last decade, America has suffered an explosion of these "justifiable" murders: Although the per capita murder rate in America declined slightly from 2000 to 2010, "justifiable" killings rose 85% over the same period. In Florida, which passed one of the nation's notorious "Stand Your Ground" laws in 2005, the figures are even more unsettling: Since the passage of these laws in 2005 until the statistics were last gathered in 2010, the number of justifiable killings had jumped 275%, from an annual average of 12 to an annual average of 33 (Palazzolo, 2012).

Speech/Violence and the Escalatory Logic of Exception

Understandably, these self-defense laws have become a popular object of critique, particularly in the wake of Trayvon's murder. Yet, a purely legal critique overlooks those elements of American culture that naturalize the escalation of simple quarrels into lethal violence. During the trial, Zimmerman's defense relied in great part on a narrative of exhaustion; that is, for Zimmerman to "reasonably believe" that shooting Trayvon was necessary to protect himself from "death or great bodily harm," he must have exhausted other options before he resorted to violence—that is, his *communicative* attempts to defuse the situation must have failed. Before being arrested and taken into custody, Zimmerman gave his

account of what had happened the night of Trayvon's death: After following the 9-1-1 operator's suggestion that he stop following Trayvon, Zimmerman claims that Trayvon approached him from behind, asking him if he had a problem. The two then had a brief exchange before, Zimmerman alleges, Trayvon attacked him, and the two wrestled one another to the ground. At this point, Zimmerman alleges that he was calling out for help, but that no one responded. Because his cries were ignored, Zimmerman explained, he finally had to resort to firing his weapon into Trayvon's chest (Park, McLean, Roberts, & Tse, 2012).

Much of the case's controversy, therefore, settled on the question of whether Trayvon or Zimmerman was the person yelling for help, with Zimmerman's advocates arguing that his unanswered pleas initiated a state of exception that allowed him to transcend norms of moral and legal conduct and thus escape culpability for his violence (see, for example, Jonsson, 2012). That is to say, Zimmerman's alleged rhetorical action—his pleas for Trayvon to stop punching him and his calls for help—was interpreted as a rite of subjective transformation that enacted a zone of legal exception. According to Florida's "use of deadly force" code, Zimmerman himself crafted the legally necessary environment of "imminent danger" through this simple communicative rite—that is, his alleged pleas and screams placed the onus on Trayvon to disrupt Zimmerman's escalation of speech into violence. When Trayvon failed to abide by the very particular rules of Zimmerman's game of command, he helped establish the zone of exception in which Zimmerman was legally free to respond with lethal violence.

This escalation is to a great extent rooted in the mendacious liberal dichotomy that places speech and violence—as complements to other civic dichotomies, such as subject and state—in a culturally loaded oppositional couple. This dichotomy, in fact, lies at the core of modern bourgeois liberalism: Citizen-subjects are given almost endless communicative freedoms; yet, the state maintains a monopoly on the legitimate use of violence. Although this dichotomy—which is sustained by diverse public and private technologies of government (see Greene and Hicks, 2005)—often has the effect of stifling casual violence among citizens, it also has the unanticipated result of establishing violence as speech's exceptional, prohibited other. That is, establishing violence as speech's other risks placing them into an etiological relationship, such that speech's state of exception is consequently violence. Such is the state of exception in general: If a practice reaches a threshold of perceived exhaustion, then by the very nature of the exception it invokes its other (see Dodd, 2011). Thus, when speech fails to resolve an issue, violence frequently materializes as its exception. We see this not only in local contexts like Trayvon's murder but also in international relations, such as when American politicians warn Iran or

other axes of evil that unspeakable violence looms should talks or negotiations "fail." Similarly, just as a state of exception within a democracy leads to the suspension of citizens' rights, speech's perceived failure too often progresses into violence, despite, of course, the countless other activities that could serve as speech's exceptional other. This pernicious cultural dichotomy, therefore, allows Zimmerman to rationalize killing Trayvon by simply appealing to an alleged failure of speech: Despite his oral pleas, Trayvon continued to punch him and his neighbors refused to help. Because of this failure of speech, Zimmerman claims to have had no other choice but to take the extraordinary next step of murderous "self-defense." As Trayvon's death illustrates, therefore, our cultural opposition of speech and violence often produces the conditions in which speech, if frustrated, can easily escalate into the most unrestrained violence.

Conclusion

The recent case of Tigh Croff, a Detroit resident who shot and killed an unarmed man who had attempted to break into his home, provides further illustration of how this logic of exception plays out in everyday life. When Croff returned home after working a shift as a security guard, he found two men breaking his windows in an attempted burglary. After yelling for the men to stop, Croff chased down one of the men—53-year-old Herbert Silas—and fatally shot him in the street. When rationalizing his behavior to a detective, Croff made a rather profound statement: "I told him he was going to die, and I shot him. . . . I ain't no angel, but I ain't done nothing stupid" (Oosting, 2011). Alas, Croff is basically right: He did not do anything stupid, if by "stupid" we mean illogical or culturally insensible. Croff merely abided by the cultural logic that naturalizes the escalation of speech into citizen violence. In the Croff case, this logic of escalation is exposed in all its absurdity: There was nothing necessary about the movement between (a) the attempted theft, the chase, and the failed attempts to hail the criminal, and (b) the cold-blooded shooting of Herbert Silas in the street. However, this sequence was in full accordance with the historical and institutional weight of the speech/violence dichotomy, particularly as that dichotomy is rigged with the exceptional logic by which communication's performative "failure" escalates effortlessly into violence.

Yet, the situation is worse still: Today, this logic is combined with a failing neoliberal policing project that abandons communities to crime, leaving many citizens legitimately disempowered and insecure. This is not to say, of course, that George Zimmerman, Tigh Croff, and other citizen-vigilantes are not personally culpable for the deaths of the people they kill in "self-defense"—far from it. However, we should be aware of how neoliberal policing policies have endangered citizens like Trayvon Martin by

slashing public resources and surrendering law enforcement to vigilant and typically frustrated amateurs like George Zimmerman and Tigh Croff (see Smith, 2012). Amid today's crisis of liberalism, America's vacuous self-defense codes—when rigged with speech/violence's logic of exception—help ensure that more and more personal confrontations will escalate into lethal violence.

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References

- Abramson, J. B. (2001). *We, the jury: The jury system and the ideal of democracy*. Cambridge, MA: Harvard University Press.
- Chicago Tribune Staff (2013, July 25). Zimmerman juror says he "got away with murder." *Chicago Tribune*. Retrieved from <http://www.chicagotribune.com/news/chi-george-zimmerman-trial-juror-chicago-20130725,0,4361149.story>
- Ciccariello-Maher, G. (2012). The dialectics of standing one's ground. *Theory & Event*, 15(3). Retrieved from http://muse.jhu.edu/journals/theory_and_event/v015/15.3.ciccariello-maher.html
- Dodd, J. (2011). Violence and nonviolence. In N. Eckstrand & C. S. Yates (Eds.), *Philosophy and the return of violence: Studies from this widening gyre* (pp. 137-153). New York, NY: Continuum.
- Florida State Legislature. (2012). *2012 Florida statutes*. Retrieved from <https://www.flsenate.gov/Laws/Statutes/2012>
- Ford, D. (2013, July 16). Juror: "No doubt" that George Zimmerman feared for his life. *CNN*. Retrieved from http://www.cnn.com/2013/07/15/justice/zimmerman-juror-book/index.html?iid=article_sidebar
- Goff, P. A., & Richardson, L. S. (2013). No bigots required: What the science of racial bias reveals in the wake of Trayvon Martin. In G. Yancey & J. Jones (Eds.), *Pursuing Trayvon Martin: Historical contexts and contemporary manifestations of racial dynamics* (pp. 59-72). Lanham, MD: Lexington Books.
- Greene, R. W., & Hicks, D. (2005). Lost convictions: Debating both sides and the ethical self-fashioning of liberal citizens. *Cultural Studies*, 19, 100-126.
- Gutman, M., & Tienabeso, S. (2013, June 7). George Zimmerman not screaming for help, two experts testify today. *ABC News*. Retrieved from <http://abcnews.go.com/US/george-zimmerman-screaming-experts-testify-today/story?id=19345658>
- Hancock, A. (2012). Trayvon Martin, intersectionality, and the politics of disgust. *Theory & Event*, 15(3). Retrieved from http://muse.jhu.edu/journals/theory_and_event/v015/15.3.hancock.html
- Holden, R., & Jowitz, M. (2008). *Jersey law course 2011-12: Civil procedure*. Jersey, UK: Institute of Law.
- Jonsson, P. (2012, June 21). Why police tapes of George Zimmerman may be key to his defense. *Christian Science Monitor*. Retrieved from <http://www.csmonitor.com/USA/Justice/2012/0621/Why-police-tapes-of-George-Zimmerman-may-be-key-to-his-defense-video>
- Kurtz, H. E. (2013). Trayvon Martin and the dystopian turn in US self-defense doctrine. *Antipode*, 45, 248-251.
- Nelson, D. S. (2013). *State of Florida vs. George Zimmerman: Zimmerman final jury instructions*. Retrieved from <http://www.wftv.com/documents/2013/jul/12/document-jury-instructions-zimmerman-trial/>
- Oosting, J. (2011). Vigilante Detroit homeowner Tigh Croff sentenced to two years prison in shooting of burglary suspect—But not for manslaughter conviction. *Michigan Live*. Retrieved from http://www.mlive.com/news/detroit/index.ssf/2011/02/detroit_homeowner_tigh_croff_g.html
- Palazzolo, J., & Barry, R. (2012, April 2). More killings called self-defense. *Wall Street Journal*. Retrieved from <http://online.wsj.com/news/articles/SB10001424052702303404704577311873214574462>
- Park, H., McLean, A., Roberts, G., & Tse, A. (2012). The events leading to the shooting of Trayvon Martin. *New York Times*. Retrieved from <http://www.nytimes.com/interactive/2012/04/02/us/the-events-leading-to-the-shooting-of-trayvon-martin.html>
- Schneider, M. (2013, July 16). George Zimmerman juror B37's comments are not representative of us, other jurors claim. *Huffington Post*. Retrieved from http://www.huffingtonpost.com/2013/07/16/george-zimmerman-juror-b37_n_3608057.html
- Schneider, Z. A. (2008). *The king's bench: Bailiwick magistrates and local governance in Normandy, 1670-1740*. Rochester, NY: University of Rochester Press.
- Schoichet, C. E. (2013, July 28). Zimmerman juror to ABC: He "got away with murder." *CNN*. Retrieved from <http://www.cnn.com/2013/07/25/justice/zimmerman-juror-b29-interview/>
- Smith, A. M. (2012). Deadly force and public reason. *Theory & Event*, 15(3). Retrieved from http://muse.jhu.edu/journals/theory_and_event/v015/15.3.smith.html

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