Barrock Lecture

Make My Day: "Feminism" and the Changing Law of Self-Defense

This is an excerpt from a *Marquette Law Review* essay by Joshua Dressler, Frank R. Strong Chair in Law, The Ohio State University, Michael E. Moritz College of Law, based on the George and Margaret Barrock Lecture on Criminal Law, which he delivered at Marquette University Law School on April 8, 2010. The lecture was titled, "Feminist (or 'Feminist') Reform of Self-Defense Law: Some Critical Reflections."

The retreat doctrine, specifically the requirement that a person retreat if she can do so at no reasonable risk to herself rather than stand her ground, is eroding at a particularly fast pace. The change may be, in part, a function of the violent nature of modern American life, but it is more likely the result of the ability of groups like the National Rifle Association to play on our fears of violence. But it is also the result of feminist "empowerment" efforts or, at a minimum, the astute (one might even call wily) efforts of conservative law-and-order advocates to use feminist arguments in support of their self-defense reform proposals, and thus co-opt some feminists.

The erosion of the retreat requirement, in part by invoking feminist rhetoric, is ironic. As I noted earlier, the retreat rule is perhaps the least "male" self-defense doctrine. Consider how Harvard Professor Joseph Beale explained the doctrine more than a century ago:

> A really honorable man, a man of truly refined and elevated feeling, would perhaps always regret the apparent cowardice of retreat, but he would regret ten times more, after the excitement of the contest was past, the thought that he had the blood of a fellow-being on his hands. It is undoubtedly distasteful to retreat; but it is ten times more distasteful to kill.

Since 2005, however, this seemingly pro-cowardice, anti-macho, doctrine of self-defense law has been successfully attacked. With the passage of Florida's "Make My Day" law, 26 other states have significantly expanded the scope of their self-defense rules.

Florida's law, a model for the other states, provides a person with the statutory right to stand one's ground and use deadly force outside the home—that is, to meet force with force—in any public place where the person has a right to be (as well as in one's automobile), as long as the individual "reasonably believes [deadly force] is necessary . . . to prevent death or great bodily harm to himself or herself or another or to prevent the commission of a forcible felony." As well, the new law provides the self-defender immunity from criminal and civil actions that arise out of use of deadly force in the preceding circumstances.

Thus, the castle doctrine has come to the public streets, bars, and other public areas. And the leading proponent of this change in Florida (and, indirectly, in the many states that have followed the Florida model) was Marion Hammer. Who is Hammer? She described herself in 2006 as a 4'11" 67-year-old woman who "wouldn't hesitate to shoot you" if she felt her life were in danger or she feared injury. Perhaps more pertinently, however, she is a past president of the National Rifle Association—the law was an NRA measure. One should not lose sight of the fact, however, that her rhetoric in support of greater use of deadly force in self-defense usually centered on the need to empower women—that is, her strategy was "to feminize the NRA's message through the linking of gun ownership with protection [of women] against male violence." She defended the Florida law this way:

> A woman is walking down the street and is attacked by a rapist who tries to drag her into an alley. Under prior Florida law, the woman had a legal "duty to retreat." The victim of the attack was required to run away. Not anymore. Today, that woman has no obligation to retreat. If she chooses, she may stand her ground and fight.