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Citizen's Arrest Doctrine: Enabling the Modern-Day Vigilante

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Citizen’s Arrest Doctrine: Enabling the Modern-Day Vigilante

*Courtnee Green**

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INTRODUCTION

Imagine someone running in a neighborhood. The person lives in the neighborhood but not everyone knows her name. She continues her run but to her alarm, a truck pulls up behind her. She does not recognize the truck, nor does she recognize the men in the truck, however, the people in the truck recognize her, or so they think. They think she is the cause of criminal activity in the neighborhood, not a resident. They yell for her to stop but she does not. The individuals continue their pursuit and later threaten to shoot her if she does not stop running. A struggle ensues, shots are fired, and the pursuit ends in the death of the runner. To many people, this story may seem absurd or fictitious. But this is modern-day America. This is the unfolding of events that occurred in the Ahmaud Arbery case. While Arbery’s murder appears to have no ambiguity, cracks are exposed as potential defenses are brought to light, one of these potential defenses being citizen’s arrest.

An arrest is often viewed as the right of an officer to exert her power over a civilian in situations where a law is being broken. While the

description may be fair and accurate, arrest extends far beyond the rights and privileges of an officer of the law - the extension is a citizen's arrest. Citizen's arrest is a doctrine that was adopted from English law into the American legal system.¹ While the doctrine is meant to promote tranquility and trust, it instead promotes death and division. Structured around malice, ambiguity, and immorality, citizen's arrest laws continuously yield harsh consequences, and the doctrine needs to be reformed or abolished. Ineffective restructuring attempts have increased societal misinterpretation in a broken nation, leaving justice unanswered.

The ignorance of civilians coupled with the vagueness of legislation has created a perfect storm for a misinterpretation of the law. This has resulted in citizens overreading and overexerting their assumed arresting powers.² Citizen's arrest is a doctrine that was not designed to be interpreted by laypersons. While it has a historic origin, the citizen's arrest doctrine has progressed in many states through validation by state courts.³ Today, to promote safety and trust in society, most states have codified citizen's arrest legislation.⁴ Unfortunately, the misinterpretation of the doctrine has continued devastation around the country.

While police officers are legally authorized to arrest individuals when they have an arrest warrant or probable cause, most states also allow ordinary citizens to arrest their peers in certain situations.⁵ These situations include when a felony is committed in an individual's presence; when

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* This article is dedicated to those who have been wronged by the justice system and to those who feel they don't have a voice. I would also like to dedicate this article to my family, friends, and mentors who helped me find my own voice. Thank you to all of you for believing in me even when I didn't believe in myself. I've learned through all of you how important it is to face adversity head on and address issues at their root. Although it is small, this is my contribution to addressing an ongoing issue and being the voice that some people have had taken away from them.

1. See Ira P. Robbins (2016) "Vilifying the Vigilante: A Narrowed Scope of Citizen's Arrest," *Cornell Journal of Law and Public Policy*: Vol. 25 Iss. 3, Article 1.

2. See *id.*

3. See Talib Visram, *The Troubling History of Citizen's Arrests – From Slave Patrols to Ahmaud Arbery to ICE* (July 20, 2020), <https://www.fastcompany.com/90528764/the-troubling-history-of-citizens-arrests-from-slave-patrols-to-ahmaud-arbery-to-ice> [<https://perma.cc/V3H7-UC2G>].

4. See *id.*

5. See *infra* notes 13-14 and accompanying text.

there is a breach of peace in the citizen's presence; and when the citizen has probable cause to execute the arrest.⁶

Still, the idea of an ordinary citizen, who lacks training in law enforcement, arresting a fellow citizen is problematic. There is simply too much risk that she will either misuse or abuse this power. For example, when Gregory and Travis McMichael attempted to arrest Ahmaud Arbery they claimed he resembled the description of a serial burglar in the neighborhood. The alleged citizen's arrest in this case ended in the McMichaels killing Arbery.⁷ This situation displays a modern example of the understanding individuals have developed of the doctrine.

In this comment, I will argue that the citizen's arrest doctrine creates disparate consequences and should either be heightened or abolished. Part I will explain the current status of the doctrine and examples of state citizen's arrest laws. Part II will address the racial motives behind the existence of the citizen's arrest doctrine. The discussion in Part III questions the ability of a layperson to properly interpret citizen's arrest legislation. Part IV of this comment interprets how the current doctrine enables modern-day vigilantes to act. In Part V, the comment then offers recommendations and solutions to abolish the citizen's arrest doctrine or heighten its scope.

A. Current Citizen's Arrest Doctrine and State Law

The common law doctrine of citizen's arrest has been used as a form for many states to structure their own citizen's arrest laws.⁸ While courts have historically relied on the common law doctrine, many states have adopted their own statutes through codification.⁹ The common law citizen's arrest doctrine permits a citizen's arrest when "(1) a person ... committed a felony in the citizen's presence; (2) a person ... committed a breach of the peace in the citizen's presence; or (3) upon probable cause, a person who had committed a felony in the past."¹⁰ There are eight states still using the common law doctrine.¹¹ The other forty-two states have modified their own statutes.¹²

6. See generally Alvin Stauber, *Citizen's Arrest: Rights and Responsibilities*, 18 *Midwest L. Rev.* 31 (2002).

7. Visram, *supra* note 3.

8. Robbins, *supra* note 1.

9. See *infra* notes 13-14 and accompanying text.

10. Stauber, *supra* note 6.

11. *E.g.* Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, Pennsylvania, Vermont, West Virginia, and Wisconsin.

12. Robbins, *supra* note 1.

The state of Georgia, for example, has incorporated modifications to the citizen's arrest common law doctrine in its own legislation. Its current citizen's arrest law reads, "A private person may arrest an offender if the offense is committed in his presence or within his immediate knowledge. If the offense is a felony and the offender is escaping or attempting to escape, a private person may arrest him upon reasonable and probable grounds of suspicion."¹³ Similarly, South Carolina citizen's arrest law provides that, "Upon (a) view of a felony freshly committed, (b) certain information that a felony has been committed or (c) view of a larceny committed, any person may arrest the felon or thief and take him to a judge or magistrate, to be dealt with according to law."¹⁴ While both the aforementioned statutes bear resemblance to that of the common law doctrine, the original doctrine has been narrowed in subsequent state legislations.¹⁵ Notably, the South Carolina statute requires a viewing of the crime regarding the commission of larceny.¹⁶ It also contains a provision providing that the arrestor may take the arrestee to a judge or magistrate.¹⁷ By including this phrase, the South Carolina legislation attempts to narrow the common law doctrine while the Georgia statute remains similar to the original doctrine.

By codifying the doctrine, many states have effectively narrowed its scope.¹⁸ While there may be similarities amongst states regarding the construction of drafted citizen's arrest legislation, the racial motivation behind the common law doctrine is still present.

B. Citizen's Arrest Doctrine Is Historically Racially Motivated

The general common law tradition of the United States is based upon the principles of England; the doctrine of citizen's arrest is no exception. Citizen's arrest was popularized in medieval England as a way to promote communal enforcement of the law.¹⁹ During that time, there were limited legal enforcement organizations, thus, the responsibility fell upon those

13. Ga. Code Ann. § 17-4-60 (Lexis Advance through the 2020 Regular Session of the General Assembly).

14. S.C. Code Ann. § 17-13-10.

15. The aforementioned states are not representative of every state in the country. *See infra* note 18 and accompanying text for other examples.

16. S.C. Code Ann. § 17-13-10.

17. *Id.*

18. *See, e.g.,* Neb. Rev. Stat. Ann. § 29-402 (West); Wyo. Stat. Ann. § 7-8-101 (West).

19. Visram, *supra* note 3.

who lived in the area.²⁰ As a result of this responsibility, a citizen's arrest carried as much weight as that of the arrest by an officer.²¹ No proof of the crime was necessary.²² Eventually, the idea of citizen's arrest grew and expanded to other nations.²³

Citizen's arrest transitioned to America as an essential enforcement mechanism against slaves.²⁴ The Slave Code allowed any white male to stop a slave and require the showing of the slave's pass – this system was a way of legal oppression.²⁵ Historically, it was viewed as the duty of citizens to police the slave population.²⁶ Considering the origin, it is clear that the doctrine was adopted with improper motives. Thomas R.R. Cobb, a Georgia lawyer helped to develop Georgia legislation in what is called the Cobb Code.²⁷ Cobb believed blacks were inferior to all others and his legal framework would later shape other applications of Georgia law.²⁸

Ideas like Cobbs', and others, would later justify violent acts against people. For example, Ku Klux Klan violence and lynching were accepted under Cobb's ideas and were considered to be citizen's arrests.²⁹ The hard truth is that scenarios like those in Georgia are not foreign to other states, furthering the reasoning that we continue to see erroneous citizen's arrests displayed at the forefront of society.³⁰

It is easy to comprehend why many people believe their right to exercise a citizen's arrest entails more than what is provided for by law when considering the acts enabled by citizen's arrest. Examples flow from history, specifically from periods of segregation. One example of the excessive meaning comes from the 1940s. In an attempt to execute what was considered a citizen's arrest, two black couples were shot sixty times

20. Robbins, *supra* note 1.

21. *Id.*

22. *Id.*

23. Visram, *supra* note 3.

24. *Id.*

25. *Id.*

26. See generally Jack Silvers, *Citizen's Arrest Laws Need a Reboot*, Harvard Political Review (Aug. 10, 2020), <https://harvardpolitics.com/citizens-arrest-laws-need-a-reboot/> [<https://perma.cc/N8RR-KBDT>].

27. See Paul Finkelman (1999) "Thomas R.R. Cobb and the Law of Negro Slavery," *Roger Williams University Law Review*: Vol. 5: Iss. 1, Article 4.

28. Silvers, *supra* note 26.

29. *Id.*

30. See, e.g., *Albuquerque Residents Attempt Citizen's Arrest of Police Chief* (May 8, 2014, 09:54 AM), <https://www.theguardian.com/world/2014/may/08/albuquerque-police-citizens-arrest-chief-protests> [<https://perma.cc/7G2K-NYRV>].

by a group of white men in Walton County, Georgia.³¹ The perpetrators were never brought to justice.³² It is because of situations like these that the doctrine needs to be heightened or abolished.

C. Citizen's Arrest Laws Cannot be Properly Interpreted By Laypersons

With the commission of the excessive acts, it is also likely that the individuals who complete the arrest also read the law to be broader than what it is. There are many legal principles that laypeople know and are encouraged to rely on such as Florida's stand your ground laws; however, the citizen's arrest legislation was not promulgated to be understood in this way.³³ Whether it be because of a general lack of understanding on the individual's part or the inability to understand terms of art, the doctrine was likely not intended to be interpreted by laypersons.

The current citizen's arrest doctrine and similar states' legislations require laypeople to make judicial determinations with minimal legal training.³⁴ For example, some states require the "reasonable belief" standard of the occurrence of a felony before the citizen's arrest can be made.³⁵ Others require that there be a "breach of peace."³⁶ These terms are inherently ambiguous because the terms have both a lay meaning and a legal meaning. Laypeople lack the legal training to determine the true meaning of either of the phrases. Deciding whether these standards have been satisfied would likely be judicial determinations. The ambiguity emphasizes the difficulty a layperson would have interpreting state laws and broadens the possibility of error.

The current citizen's arrest doctrine provides that a private citizen can exercise a citizen's arrest where there is "(1) a person who committed a felony in the citizen's presence; (2) a person who committed a breach of the peace in the citizen's presence; or (3) upon probable cause, a person who had committed a felony in the past."³⁷ There are three ambiguous terms in the doctrine: "felony", "breach of peace" and "probable cause".

31. See Hannah Riley, *House Judiciary Non-Civil Committee to Hear Testimony on Whether to Repeal Georgia's Citizen's Arrest Law*, Southern Center for Human Rights (July 12, 2020), <https://www.schr.org/house-judiciary-non-civil-committee-to-hear-testimony-on-whether-to-repeal-georgias-citizens-arrest-law/> [https://perma.cc/8XJB-G4WD].

32. See *id.*

33. See Fla. Stat. Ann. § 776.013 (West).

34. Visram, *supra* note 3.

35. *Id.*

36. *Id.*

37. Stauber, *supra* note 6.

All of the terms would be considered “terms of art.” A “term of art” is a “term that has a specialized meaning in a particular field or profession,” in this context, the legal field.³⁸ Many “terms of art” also have general definitions in references such as legal and ordinary dictionaries. While the general definition is sometimes sufficient, it often does not cover gray areas in the law. In instances where questions are left unanswered, the courts are asked to provide a firmer definition than what is already provided.³⁹

Oxford’s Dictionary defines a “felony” as “the act of committing a serious crime such as murder or rape,” but there are other felonies that exist outside of the two mentioned in the definition.⁴⁰ Some felonies also require the payment of a fine in addition to imprisonment.⁴¹ Descriptions like this are what a layperson would find if she searched for the definition of a “felony” for her common knowledge. Laypeople are not afforded the luxury of a full legal definition, further complicating their ability to understand crimes. In law, the “seriousness” of a crime is often determined by classification. “Serious” is a problematic word because it has multiple interpretations and leads to a subjective interpretation when it is applied in the analysis of a crime. Because of human subjectivity, there is strong reason to believe that many people, without legal training, are unable to distinguish a misdemeanor from a felony offense.

A “misdemeanor” is a crime that is normally punishable by a fine, incarceration, or a combination of both.⁴² A gray area exists between the definitions of a felony and a misdemeanor, creating greater complications in the analysis for laypeople. For example, petty theft is a misdemeanor and grand theft is a felony.⁴³ To a layperson, the general idea of a theft may be enough to execute the citizen’s arrest, but an arrest over the

38. *Term of Art*, Merriam-Webster’s collegiate dictionary (11th ed. 2003) (“a term that has a specialized meaning in a particular field or profession”).

39. See *infra* notes 46 and 48 and accompanying text.

40. *Felony*, Oxford Learner’s Dictionarie, <https://www.oxfordlearnersdictionaries.com/us/definition/english/felony> [https://perma.cc/4LD7-5YNA] (last visited March 3, 2021) (“the act of committing a serious crime such as murder or rape”).

41. See generally *Misdemeanor Sentencing Trends*, National Conference of State Legislatures, <https://www.ncsl.org/research/civil-and-criminal-justice/misdemeanor-sentencing-trends.aspx> [https://perma.cc/MYP9-DQVD] (last visited Feb. 1, 2021).

42. *Misdemeanor Sentencing Trends*, *supra* note 41.

43. See generally *Grand Theft vs. Petty Theft*, https://www.diffen.com/difference/Grand_Theft_vs_Petty_Theft [https://perma.cc/6BN6-YHHP] (last visited Feb. 22, 2021).

misdemeanor offense would not be permitted under the doctrine. Considering the potential punishments of both a misdemeanor and a felony, the true difference is only the seriousness of the crime, which could also factor in an individual's moral beliefs. As a result, the seriousness of a crime should be made as a judicial determination, not an individual determination.

"Breach of peace" is defined as, "the criminal offense of creating a public disturbance or engaging in disorderly conduct, particularly by making an unnecessary or distracting noise."⁴⁴ The term can be easily misconstrued using a subjective standard. For example, it is likely that an individual who has a low tolerance for noise, would argue that loud noises are a breach of their peace. Examples such as this encourage the United States Supreme Court to provide definitions for many "terms of art" to avoid interpretations from subjective standards. In *Cantwell v. State of Connecticut*, 310 U.S. 296 (1940), the Court stated that "breach of peace" includes violent acts and works that are likely to produce violence in others.⁴⁵ The Court went on to say that states have the power to prevent or punish threats to peace in society.⁴⁶ In following the Supreme Court, it should be the duty of the state to punish individuals for a breach of peace. Because the Court has previously defined the term, it is evident that laypersons are incapable of deciphering the meaning of the phrase without legal training.

In *Terry v. Ohio*, 392 U.S. 1 (1969), the Supreme Court defines "probable cause" as the reasonable suspicion that some sort of criminal activity is occurring.⁴⁷ From *Terry* comes the legal doctrine of Terry stop and frisk. The Court determined the definition of "probable cause" to aid law enforcement officers with a meaning of what they should look for when determining whether or not to stop and/or frisk a person. Following this decision, it is inappropriate for an individual without legal training to determine whether probable cause exists to complete a citizen's arrest. Some instances may be more easily determinable than others. The "close call" situations are the incidents definitions are meant to aid in. Therefore,

44. BREACH OF THE PEACE, Black's Law Dictionary (11th ed. 2019).

45. See *Cantwell v. State of Connecticut*, 310 U.S. 296, 308 (1940).

46. *Id.* ("When clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order, appears, the power of the state to prevent or punish is obvious.")

47. See *Terry v. Ohio*, 392 U.S. 1, 10 (1968) ("If the 'stop' and the 'frisk' give rise to probable cause to believe that the suspect has committed a crime, then the police should be empowered to make a formal 'arrest,' and a full incident 'search' of the person.").

such definitions should be made only by a judicial determination or by a person with adequate training to do so.

D. Citizen's Arrest Doctrine Enables Modern-Day Vigilantes

“Vigilantism” is a common term to describe much of the law enforcement that has existed in American history and now in the present day.⁴⁸ When people hear the phrase “law enforcement”, there is typically thought of police officers. “Vigilantism” is defined as “the act of being a vigilante.”⁴⁹ “Vigilantes” are people who tend to take justice into their own hands.⁵⁰ With this definition in mind, one can equate a vigilante with fictitious characters such as Batman or Superman. Yet the true people being referred to are our friends and neighbors, people who believe that justice can be served through their actions. Applying the definition, these people should be considered as good for society but modern-day circumstances have blurred the description of vigilantism by putting a bad “spin” on the phrase.

Individuals who misinterpret the common law citizen’s arrest doctrine take the doctrine much too far in both meaning and execution. While the doctrine does not outwardly allow violent events, there is a chance that a perpetrator pleading the doctrine as an affirmative defense would be able to escape a deserved punishment. A lot of the people who take the doctrine too far fall into the categories of vigilantes.

Recent years have exposed vigilantes around the United States. These individuals include, but are not limited to people like Amy Cooper, Gregory and Travis McMichael, Miya Ponsetto, and George Zimmerman. Each one of these individuals was involved in a scenario where they chose to take justice into their hands and innocent people suffered the repercussions.

In the summer of 2020, Christian Cooper, a black man, went to Central Park to participate in bird watching when he was approached by a white

48. See Paul and Sarah Robinson, *Shadow Vigilantes: How Distrust in the Justice System Breeds a New Kind of Lawlessness* 13 (Prometheus Books, 2018).

49. *Vigilantism*, *Oxford Learner's Dictionarie*, <https://www.oxfordlearnersdictionaries.com/us/definition/english/vigilantis> [https://perma.cc/P5WJ-W6BF] (last visited March 3, 2021) (“the act of being a vigilante”).

50. *Vigilante*, *Oxford Learner's Dictionarie*, <https://www.oxfordlearnersdictionaries.com/us/definition/english/vigilante> [https://perma.cc/P5WJ-W6BF] (last visited March 3, 2021) (“a member of a group of people who try to prevent crime or punish criminals in their community, especially because they think the police are not doing this”).

woman, Amy Cooper who began to harass him.⁵¹ While approaching Mr. Cooper with her unleashed dog, Ms. Cooper threatened to call the police when Mr. Cooper began to record the incident and continued as the event escalated.⁵² Ms. Cooper falsely alerted authorities, alleging that her life was being threatened by Mr. Cooper and that he assaulted her.⁵³ She was charged with the misdemeanor of false reporting but was never convicted.⁵⁴

In 2012, the killing of Trayvon Martin stormed a wave of rage throughout society.⁵⁵ The Florida teenager was walking through his neighborhood after a trip to the convenience store when he was pursued by George Zimmerman, a neighborhood watchman.⁵⁶ Zimmerman phoned 911 operators complaining of a suspicious black male he believed was connected to a series of break-ins in his neighborhood.⁵⁷ Zimmerman was instructed not to follow Martin but chose to continue the pursuit.⁵⁸ From a separate 911 call, it is heard that a struggle ensued, resulting in the fatal shooting of Trayvon Martin by George Zimmerman.⁵⁹ Zimmerman was charged with second-degree murder and was later acquitted by a jury, leaving justice unserved for Martin's family.⁶⁰

February 2020 brought to light the killing of Ahmaud Arbery.⁶¹ Arbery, a black male, was a Georgia citizen.⁶² While on a casual run in his neighborhood, Arbery was approached by Gregory and Travis

51. See Doha Madani, *White Woman Who Called Police on Black Bird Watcher in Central Park Faces False Report Charge* (July 6, 2020 01:42 PM), <https://www.nbcnews.com/news/nbcblk/white-woman-who-called-police-black-bird-watcher-central-park-n1233006> [https://perma.cc/NFV9-J5UK].

52. See *id.*

53. See Troy Closson, *Amy Cooper Falsely Accused Black Bird-Watcher in 2nd 911 Conversation* (Feb. 16, 2021), <https://www.nytimes.com/2020/10/14/nyregion/amy-cooper-false-report-charge.html> [https://perma.cc/8RXG-63U7].

54. Madani, *supra* note 52.

55. See *Florida Teen Trayvon Martin is Shot and Killed* (Nov. 12, 2013), History, <https://www.history.com/this-day-in-history/florida-teen-trayvon-martin-is-shot-and-killed> [https://perma.cc/7NEF-6BBK].

56. See *id.*

57. See *Rest in Power: The Trayvon Martin Story* (Paramount 2018).

58. See *id.*

59. *Florida Teen Trayvon Martine is Shot and Killed*, *supra* note 56.

60. See *id.*

61. See Richard Fausset, *What We Know About the Shooting Death of Ahmaud Arbery* (Dec. 17, 2020), <https://www.nytimes.com/article/ahmaud-arbery-shooting-georgia.html> [https://perma.cc/EU7S-BQMX].

62. See *id.*

McMichael, two white men in a truck.⁶³ Arbery was brutally murdered by the two men after they allegedly called for Arbery to stop running.⁶⁴ Similar to George Zimmerman, the two men claimed Arbery resembled a serial burglar in the neighborhood.⁶⁵ At the forefront of the case was the debate over Georgia's, now repealed, citizen's arrest law.⁶⁶

In January 2021, while staying in a New York Hotel, Miya Ponsetto, a Puerto Rican woman, falsely accused the African American teenage son of Keyon Harrold, Keyon Harrold Jr., of stealing her phone when she realized it was missing.⁶⁷ Ponsetto attacked Harrold Jr. for stealing her phone before she properly reported her phone missing to hotel management.⁶⁸ Although he did not sustain major injuries, Harrold Jr. was left traumatized.⁶⁹ It is believed that Ponsetto was racially motivated in her attack although she claims because she is a woman of color, she cannot be racist.⁷⁰ Ponsetto was charged with attempted robbery, grand larceny, endangering the welfare of a child, and attempted assault.⁷¹

The concern with the above-named incidents is that they have all been promoted by the citizen's arrest doctrine. While the doctrine does not have specific language promoting the response to the aforementioned stories, it promotes a favorable defense in situations where it should not. One could argue using citizen's arrest as a defense in the Trayvon Martin case would have allowed George Zimmerman to prevail in more ways than he did. In the Martin case, George Zimmerman was instructed by 911 services not

63. See AJ Willingham, *Citizen's Arrest Laws Aren't Cut and Dry. Here's What you Need to Know* (May 12, 2020, 07:32 AM), <https://www.cnn.com/2020/05/12/us/citizens-arrest-what-is-explained-trnd/index.html> [<https://perma.cc/7BE3-VCTN>].

64. See *id.*

65. Fausset, *supra* note 62.

66. Willingham, *supra* note 64.

67. See Diana Dasrath and Wilson Wong, *Police Arrest Miya Ponsetto After She Falsely Accused Black Teen of Stealing Her Phone* (Jan. 8, 2021, 6:53 AM), <https://www.nbcnews.com/news/us-news/police-arrest-miya-ponsetto-after-she-falsely-accused-black-teen-n1253443> [<https://perma.cc/5VN9-PGML>].

68. See *id.*

69. See *id.*

70. See *Miya Ponsetto Apologizes for Alleged Assault on Teen, But Family Says It's Not "Genuine"* (Jan. 11, 2021), <https://www.cbsnews.com/news/miya-ponsetto-apology-gayle-king-interview-accusation-black-teen/> [<https://perma.cc/TM9G-6B7K>].

71. See Nancy Dillon, *'Soho Karen' Miya Ponsetto Gets Beverly Hills Drunk-In-Public Case Dismissed* (Jan. 28, 2021), <https://www.nydailynews.com/news/national/ny-miya-ponsetto-beverly-hills-drunk-in-public-case-dismissed-20210128-fbb42k476jfwgtpplhe72cpze-story.html> [<https://perma.cc/BAD9-TTG5>].

to pursue Martin.⁷² If it were true that police officers did not and would not respond fast enough, Zimmerman may have been able to plead citizen's arrest as an affirmative defense, in addition to the stand your ground defense that was used. This acknowledgment amplifies the notion of vigilantism that the common law doctrine creates but the doctrine fails to place constraints on vigilante activities. In instances where there has been a blatant disregard for authoritative advisement not to pursue a person, it should not be the responsibility of the citizen to ensure that justice is carried out. She should remove herself from the situation and should not be able to use the common law doctrine as an affirmative defense.

The citizen's arrest doctrine would be greater justified in situations where authorities have not responded to a call or complaint. Because of the limited understanding of the doctrine, laypeople have taken it too far. It was created to enable the harmony of society by allowing citizens to participate in seeing justice through.⁷³ Unfortunately, as we see from prior incidents, justice has become subjective, and the meaning of the doctrine has morphed along with it. The doctrine does not set a clear standard as to what means should be taken to further justice. Therefore, many citizens have developed the idea that justice can come through whatever means necessary, ultimately harming society instead of being its saviors. Because of stories like those above and other incidents, standards should be set within the doctrine or the doctrine need not exist.

II. RECOMMENDATIONS/SOLUTIONS

The citizen's arrest doctrine is a doctrine that is far from being without fault. While the doctrine may have been suitable for the society it was originally created for, it is no longer suitable. The doctrine fails to speak to advancements in modern society. To "fit" modern times, the doctrine needs to be revisited.

A. Abolishing the Citizen's Arrest Doctrine

Because of the uncertainty that exists within the citizen's arrest doctrine, an arguable solution is to abolish the doctrine as a whole. Interpretations by the United States Supreme Court have reiterated that many phrases are not meant to be understood generally.⁷⁴ The Court's holdings on the meanings of the different phrases are not without purpose.

72. *Florida Teen Trayvon Martin is Shot and Killed*, *supra* note 56.

73. Robbins, *supra* note 1.

74. See *supra* notes 46-48 and accompanying text.

The need to analyze various phrases in this context reveals that in some situations, individuals with legal training struggle with the meaning of some terms of art. Recognizing the difficulty for officers, there is a revelation that a layperson will more than likely struggle as well, birthing the argument that if individuals with and without legal training misinterpret the doctrine, the privilege needs to be taken away from one of the groups.

It is well known that police officers have a duty to “protect citizens by preventing crime, enforcing laws, apprehending suspects, and monitoring traffic.”⁷⁵ Considering a police officer’s job description, it could be appropriate to remove a citizen’s ability to make an arrest. While some people believe the duty to enforce laws is best left in the hands of those trained to do so, others disagree.⁷⁶ The abolishing of the doctrine may leave society in greater struggle.⁷⁷ The concern is, if the doctrine is abolished, citizens will no longer be able to act in situations where there may be crime occurring. There may be truth to the argument that law enforcement officers should be the sole arresting authority. But where the police do not respond on time or at all, the perpetrator will have an opportunity to flee. Analyzing the arguments together, a more viable option is to allow the doctrine to remain and heighten its current scope.

B. Current Law Enforcement Requirements

The Fourth Amendment of the United States Constitution is one of the more commonly recognized amendments. The Amendment was drafted as a means to protect individuals from unlawful searches and seizures.⁷⁸ Within the Fourth Amendment are specific requirements that must be met

75. *Police Officer Job Description Sample*, <https://hiring.monster.com/employer-resources/job-description-templates/police-officer-job-description-sample/> [https://perma.cc/6MB9-BZT3] (last visited Feb. 2, 2021).

76. See Michael Gelb, *The Argument for Prison Abolition*, <https://thecrime-report.org/2020/06/25/the-argument-for-prison-abolition/> [https://perma.cc/CGK9-TBL7] (June 25, 2020) (Prison abolitionists would likely argue otherwise and advocate for continuing to allow, or even strengthening citizen’s arrest enforcement because many believe police further the violence that exists in society).

77. See *id.*

78. See U.S. Const. amend. IV.

by law enforcement before a search and seizure is executed.⁷⁹ It reads as follows:

“The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath and affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”⁸⁰

Using the text of the Constitution, case law has frequently reiterated the need for specific prerequisites before an individual can be searched and/or seized/arrested. For many legal doctrines and procedures, law enforcement officers must meet certain requirements before the doctrine or procedure can be implemented. For example, commonly known requirements are those in place for a police officer to conduct a Terry stop and frisk. The requirements for Terry stop and frisk are derived from the Constitution.⁸¹

In *Terry v. Ohio*, the Supreme Court held that the Fourth Amendment applies when a police officer detains an individual.⁸² Reading the language of the Fourth Amendment in comparison, to *Terry*, it is realized that the warrant portion of the amendment is not applicable to arrest, but the probable cause standard is. The Court said police officers must have “specific and articulable facts, which taken together with rational inferences from those facts,” point to the officer’s reasonable belief that a crime is in progress.⁸³

Many states have attempted to deviate from the common law doctrine of citizen’s arrest by drafting what appears to be a more narrow or heightened version of what the common law doctrine already provides. Two examples include legislation enacted by South Carolina and Wyoming. In South Carolina, a citizen’s arrest may be required only where

79. See David A. Harris, *Particularized Suspicion, Categorical Judgments: Supreme Court Rhetoric Versus Lower Court Reality Under Terry v. Ohio*, 72 St. John’s L. Rev. 975 (1998).

80. U.S. Const. amend. IV.

81. *Id.*

82. See *Terry*, 392 U.S. at 15 (“Under our decision, courts still retain their traditional responsibility to guard against police conduct which is over-bearing or harassing, or which tranches upon personal security without the objective evidentiary justification which the Constitution requires.”).

83. *Id.* at 21 (“And in justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.”).

there has been a felony or larceny committed.⁸⁴ While defining the type of crimes needed, the law further provides that once the citizen's arrest is completed, the person "may arrest the felon or thief and take him to a judge or magistrate to be dealt with according to law". Wyoming citizen's arrest law requires that the crime must either be a felony, theft, or property destruction.⁸⁵ Considering examples of state legislation and the standards needed for officers to conduct a search or seizure, there is no reason why citizens should be able to conduct an arrest on another individual without having to meet specific requirements first.

C. Requirements That Should Exist Within the Doctrine

Because officers are required to have probable cause and are trained to make arrests, citizens should have a greater burden of proof to meet before the arrest. First, citizens should witness the suspect committing the crime. Second, citizens should be required to alert authorities of the fact that a citizen's arrest will be conducted before authorities arrive. Lastly, there needs to be a provision providing a permissible level of force when executing the citizen's arrest.

While there are issues with the terms of art in the citizen's arrest doctrine, there is also an issue concerning the timing in which a citizen has to view the crime. The doctrine provides that the crime must occur in the presence of the person, however, there is no clarification as to whether "in the citizen's presence" means the individual has to witness the crime or if there is a requirement that the crime is come upon within a certain time.⁸⁶ A separate provision of the common law citizen's arrest doctrine provides that a citizen's arrest is allowed where there is probable cause and the felony was committed in the past.⁸⁷ South Carolina law provides in pertinent part that the citizen's arrest is acceptable "upon a view of a felony freshly committed."⁸⁸ A portion of Wyoming legislation provides that the felony need not be committed in the presence of the citizen.⁸⁹ These different provisions further the argument that the timing upon which an individual must approach the crime scene is ambiguous, furthering confusion of the doctrine as a whole.

Requiring that there be a physical viewing of the crime in progress will eliminate situations like the killings of Trayvon Martin and Ahmaud

84. See S.C. Code Ann. § 17-13-10.

85. See Wyo. Stat. Ann. § 7-8-101 (West).

86. Stauber, *supra* note 6.

87. *Id.*

88. S.C. Code Ann. § 17-13-10.

89. See Wyo. Stat. Ann. § 7-8-101 (West).

Arbery. In both cases, the perpetrators assumed each man was a suspect in a crime neither of the men committed, a pure case of mistaken identity. But had any of the men actually witnessed the crime of the accused, there is an increased chance that both Trayvon Martin and Ahmad Arbery would still be alive today. A citizen seeing a perpetrator committing the crime alleviates the possibility of mistaken identity because there is no longer room for speculation.⁹⁰ For example, months after the killing of Martin, the true perpetrator was found and put into police custody.⁹¹ In situations where the citizen views the punishable crime, there needs to be further communication with authorities.

Alerting authorities that a citizen's arrest is about to occur would be beneficial to law enforcement officials in many ways. By providing authorities with awareness, officers can advise the vigilante as to further actions. Law enforcement officers can more appropriately protect themselves because there will be a greater awareness of the potential scene upon their arrival. Not only would such a provision increase the safety of officers, but it would also increase the safety of the vigilante and the alleged perpetrator.

The doctrine also needs a listing describing the level of force allowed when executing the citizen's arrest. Providing a permissible level of force when executing a citizen's arrest will draw a line between what citizen's arrests are done appropriately and those that are punishable. The idea behind the citizen's arrest doctrine is to bring the perpetrator to justice.⁹² Therefore, it is inappropriate to believe that taking one's life is using acceptable force in the context of a citizen's arrest because it is impossible to punish a dead person. Reasonable force is a commonly accepted level of force throughout the law.⁹³ It is based on three factors: (1) the severity of the crime at issue; (2) whether the suspect poses an immediate threat to the safety of the officers or others; and (3) whether he is actively resisting arrest or attempting to evade arrest by flight.⁹⁴ Arguably, some of the analysis requires subjectivity to appropriately answer the questions posed by the Court. For example, to answer whether there is an immediate threat to the safety of the officers or others, it may be far to take the height and

90. *Rest in Power*, *supra* note 58 (The documentary states that the true perpetrator was arrested shortly after Martin was killed).

91. *See id.*

92. Visram, *supra* note 3.

93. *See Reasonable Force*, <https://law.jrank.org/pages/9665/Reasonable-Force.html> [<https://perma.cc/VF4F-SGYE>] (last visited Feb. 26, 2021).

94. *See, e.g., Graham v. Connor*, 490 U.S. 386, 396 (1989) (iterating the factors necessary to get a "precise definition or mechanical application" of the Fourth Amendment); *Bell v. Wolfish*, 441 U.S. 520, 559 (1979).

weight of the individual into consideration. But in most instances, reasonable force does not permit the killing of an individual nor does it permit excessive bodily harm where it is unnecessary. Drawing a distinction such as this will allow for the punishment of individuals who excessively exert force as compared to those individuals who do not.

III. CONCLUSION

The doctrine of citizen's arrest has been in place since medieval times.⁹⁵ Sadly, in the present day, it continues to be more detrimental to society than it has been helpful, whether through its explicit enforcement or through actions that individuals assume are implied by its existence. Citizen's arrest laws inherently promote bypassing a portion of the criminal justice system by allowing individuals to vindicate alleged harms by executing arrests. The need for citizen's arrest must be weighed against other considerations, such as implicit biases, the heat of the moment, and the misinterpretation of the enabling statutory citizen's arrest provisions. The lack of weighing these considerations has led to the enabling of modern-day vigilantes when this enabling was not the intended purpose. Innocent individuals have been harassed on too many occasions, increasing the turmoil that modern times already encompass. It is for these reasons that the common law citizen's arrest doctrine needs to be reformed.

95. Visram, *supra* note 3.