

Editorial ? The benefit of a single criminal law

Is there much doubt that George Zimmerman would have been convicted of at least manslaughter had the homicide and trial taken place in Canada?

In the aftermath of his recent acquittal in the fatal shooting of Trayvon Martin, an unarmed 16-year-old black, there is increasing pressure to have Zimmerman tried federally for denial of the teenager's civil rights, based on allegations of racial profiling.

There's no doubt that one factor in the six-woman jury's acquittal of the would-be cop is Florida's 'stand your ground' criminal law. A wave of such National Rifle Association backed laws, that began seven years ago in Florida and continues to sweep the U.S., has done more than just establish citizens' right to stand their ground against an intruder. It has added multiple chances in lethal-force cases for people to avoid prosecution and conviction using the same argument ? extra opportunities to keep their freedom which defendants accused of other crimes don't get.

The shooting has unleashed a nationwide debate in the U.S. on the validity of these laws, which exist in some form in most of the country and which prosecutors and police have generally opposed as confusing, prone to abuse and difficult to apply evenly. The total number of justified homicides by U.S. citizens rose from 176 in 2000 to 325 in 2010. When adjusted for population growth, total U.S. homicide rates actually dipped in the same period.

Florida's law broadly eliminated a person's duty to retreat under threat of death or serious injury, as long as the person isn't committing a crime and is in a place where he or she has a right to be.

One area that sets Florida's law apart from those in other states is that with the police and prosecutor having weighed in, a judge can dismiss a murder charge based on 'stand your ground,' and if he or she refuses, the issue still can go to a jury, as was the case with the Zimmerman trial.

One of the biggest differences between the United States and Canada is the existence in Canada of a single, constitutionally mandated Criminal Code.

In the U.S., the states have an unfettered right to enact their own criminal statutes. As a result, murder is punishable by death in some states but not others, and some states have 'three-strike' laws which mean a third conviction for anything defined as a 'felony' including purse-snatching means an automatic life sentence with no chance of parole.

Although the U.S. federal government cannot interfere with the states' criminal-law powers, it has passed laws that have led to the convictions in racially motivated homicides. It will be interesting to see whether the Obama administration bows to demands for such a trial in the Martin homicide.

Thankfully, despite the 'tough on crime' stances of the current federal government, there has thus far been no talk of adding a 'stand your ground' provision to the Criminal Code.

That isn't to say that facts similar to those in the Zimmerman case might not lead to an acquittal in Canada, since homicides are not culpable if the perpetrators 'believe on reasonable grounds that force is being used against them or another person or that a threat of force is being made against them or another person; (b) the act that constitutes the offence is committed for the purpose of defending or protecting themselves or the other person from that use or threat of force; and (c) the act committed is reasonable in the circumstances.' (CC s. 34)

And while racial profiling exists here, too, we thankfully don't routinely arm the likes of George Zimmerman.