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A Jurisprudential Perspective of Self-Defence

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Abstract

Natural law-based self-defense draws its moral force given that it is used in the presence of an immediate threat, giving the defender government no time for deliberation and placing them in a dreadful situation where they must choose between using force in self-defense or losing their lives. The self-defense right is an essential human right that has existed and been recognised throughout history. It is accessible to both individuals and, as states formed, to states as sovereign entities. Self-defense confines rather than widens the area for public officials' discretion, unlike other criminal justice systems that fulfil important political purposes. It rejects public interest and public justification in favour of private ones. The problem to be investigated in this article is the right of self-defense can still be imposed by the state at the same time preserving the natural law in the country. This article will analyse the view of the right to self-defense and jurisprudential analysis of the right to self-defense. The study is qualitative doctrinal research that derives its data from library-based sources. The article suggests that the state has the power to suspend our right to self-defense but certainly not extinguish it. A state may take away this natural law because of the welfare and safety of society. However, when facing immediate threat, natural law will be preserved as the State can't guarantee our safety is imminent.

Keywords: Self-Defense, International Law, Security Council, UN Character, International Peace.

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1.Introduction

It is a universal legal principle that is recognised by all nations because it is incorporated into all domestic criminal law systems and the main natural law traditions around the globe. Despite not being a human right in and of itself, it has significantly ensured that human rights are protected by international law. There are three layers of interaction between human rights and the right to self-defense. State-to-person level: Within strict parameters, the right to self and other-defense justifies governmental interference with fundamental human rights. It is the lone circumstance in which police can kill a person on purpose without a court order while there is relative calm. Rarely, the military's use of lethal force may be assessed under standards for self-defense. Individual-to-individuals: The degree to which local legislation enabling private individual self-defense may be designed liberally is constrained by international human rights law. Governments are compelled to recognise a genuine right to self-defense, even though international law does not grant a right to use force in self-defense. Person to state level: In rare instances, the right to self-defense helps people assert their human rights and gives them the means to retaliate forcefully against particular sorts of wrongdoing by government officials. However, tragically, governmental practice doesn't acknowledge a collective right to coordinated armed resistance in the face of genocide or other mass atrocities. (Jan Arno Hessbruegge,2016:17)

The justification for self-defense is a three-fold in the common law. It authorises the use of reasonable force by a person to (a) protect themselves against an attack. (b) Prevent an attack on another person a stated in R v Rose (1884), a defendant who killed his father while the latter was initiating a murder attack on the defendant's mother was acquitted of murder on the basis of self-defense. (c) Protect his property. Additionally, Section 3(1) of the Criminal Law Act of 1967 states that a person may use such force as is appropriate in the circumstances in effecting or assisting in the lawful arrest of offenders or suspected offenders or of individuals unlawfully at large.

In relation to any offense for which the defendant is accused, both the common law and statutory defenses may be brought, and if successful, will result in the defendant's complete acquittal.

International law has long recognised that a state has a natural right to use force in self-defense in the case of an armed attack. (Ian Brownlie,2008: 742) The Caroline event acted as the impetus for the legalisation of self-

defense force. The use of force is permitted under this accepted standard of self-defense in both the case of an armed attack and when one is about to occur. When the phrase "using force to avoid an imminent armed attack" is used, anticipatory self-defense is meant. UN Charter in Article 51 currently protects the "inherent right" of states to act in either individual or collective self-defense. As per the provisions of Article 51 of the United Nations Charter, in the event of an armed attack being perpetrated against a member state of the UN, the Charter shall not impose any restriction upon the inherent right of such state to employ individual or collective self-defense measures. The state may exercise this right until such time that the Security Council takes appropriate measures to ensure global peace and security. However, the exercise of this right by member states must be immediately communicated to the Security Council, which reserves the authority to take necessary action to uphold or reinstate international peace and security, as mandated by the current Charter .

The concept of the right to self-defense as it is popularly understood is considered to have a wider "linguistic" reach than the words "principle of self-defense" as used in Article 51. This is because Article 51 only acknowledges self-defense in response to an armed attack against the state. Yet, Daniel Webster emphasized that anticipatory self-defense is also included under the conventional definition of self-defense in the Caroline case.

Self-defense requires an actual attack with a real victim in order for force to be used; otherwise, it would be illegal. (Shah, Niaz A,2007:111) The Nicaragua case highlighted the significance of customary international law and state practice in establishing the necessity of self-defense. The International Court of Justice (ICJ) affirmed this principle by stating that the UN Charter's influence on customary international law can only be understood as a confirmation of its customary nature. This is because the existence of a "natural" or "inherent" right to self-defense is a prerequisite for the relevance of Article 51 of the UN Charter. It should be noted, however, that the UN Charter does not contain all the rules governing the use of force in international relations. The ICJ's pronouncement thus attests to the recognition of the inherent right of states to self-defense by both customary international law and the UN Charter.

2.Methodology

This article utilizes a doctrinal research method to explore self-defence rights. The study primarily collected data from library-based sources, including the HeinOnline database and LexisNexis. A qualitative approach was deemed appropriate for this type of research (Bagheri and et al., 2021; Althabhawi,2013). To analyze the data, the study employed content data analysis, which has proven effective in studying state policies (Althabhawi, 2022). Overall, this study provides a comprehensive analysis of the topic at hand through rigorous research methods and careful data analysis (Afzali and et al.,2023)

3.Limitations on the Right to Self-Defense

Under Common Law, a defendant is said to have acted unreasonable if they employ excessive force. As a result, the defendant won't be able to present a defence and will be found guilty of the crime. The following are the prerequisites and restrictions for exercising the right to self-defense.

3-1. Reasonable Force

In principle, the law only authorises the use of force when it is reasonable under the circumstances, and reasonableness is evaluated by how the accused understood those circumstances (whether reasonably or not. The court rejecting the approach of Beldham LJ in the case of Scarlett at 636 as permitting a subjective test to determine whether the force employed in self-defense is reasonable, according to the Court of Appeal in R v. Owino. The actual rule is that one may use whatever amount of force they deem to be (objectively) appropriate under the circumstances as he (subjectively) believes them to be.

3-2. A Duty to Retreat

There is no legal obligation for a person who has been attacked to flee if it is possible for them to defend themselves. In order to prove that the defendant was acting in self-defense, it is important to show that they did not want to fight at the time of the incident. While there may be situations where a person acts without hesitation, disengagement, or withdrawal, it is crucial for them to have a strong defense in such cases. (Smith and Hogan,1996:264.) Therefore, the jury will have to consider whether the defendant acted fairly by defending himself by standing his ground, or whether a reasonable person would have taken the chance to flee.

3-3. Imminence of the Threatened Attack

The concept of imminence of the threatened attack is crucial in determining whether a person's use of force in self-defense was justified. It is not necessary for the initial assault on the defendant to have already taken place. In fact, as stated by Lord Griffith in Beckford v. R., "a man going to be assaulted does not have to wait for his assailant to strike the first blow or fire the first shot; circumstances may permit a pre-emptive action".

This means that if a person reasonably believes that an attack is imminent and that they are in imminent danger of harm, they may use pre-emptive force in self-defense. The key is to assess whether the use of force was necessary and reasonable in the specific circumstances of the case.

It is important to note, however, that the use of force must be proportionate to the threat faced by the defendant. The force used must not be excessive and must be necessary to prevent harm to the defendant. The reasonableness of the defendant's actions will be assessed by a jury based on the specific circumstances of the case, including the imminence of the threat and the level of force used in response.

An international perspective, The UN Charter's Article 51 recognises that governments have the right to use force to defend themselves. The right to self-defense is not, however, absolute. It is accompanied by a few requirements. The requirements are: Force must be used only in reaction to an armed attack (Greenwood and Christopher,2011:66), the state must satisfy criteria like a necessity, proportionality, and immediateness (Martyn and Angus, 2002:31), and thirdly the Security Council must receive reports. The details of these requirements are provided below.

a) Facing an Armed Attack

The right to self-defense only applies when a state is the target of an armed attack, as the UN Charter explicitly states. However, the Charter does not provide a detailed definition of what constitutes an "armed attack". For clarity, it can be considered a physical occurrence of an attack by one state that crosses the borders of another state. Nevertheless, the lack of a clear definition of an "armed attack" under international law creates uncertainty as to whether certain actions qualify as such.

In addition to regular military forces crossing an international border, the sending of armed bands, gangs, irregulars, or mercenaries who carry out acts of armed action on behalf of a state should be considered an armed attack,

as confirmed by the International Court of Justice in the Nicaragua case. Article 51 of the UN Charter does not specify the origin of an armed attack, but it was presumed that it would come from a state since the Charter was primarily designed to govern state interactions. However, in the Nicaragua case, the ICJ determined that a non-state actor could also commit an armed attack. Under international law, a state's actions may be attributed to a non-state actor if they are closely related to one another.

The UN Security Council has acknowledged that the 9/11 incident was an armed attack in resolutions 1368 and 1373, and it reiterated the right to self-defense against non-state actors such as terrorist groups. However, attacks against non-state actors must have a certain magnitude and impact in terms of casualties and damage to be considered self-defense. Even if non-military actions such as economic or social aggression have significant and harmful consequences, states cannot invoke their right to self-defense.

b) Necessity, Proportionality, and Immediacy .

The "Caroline Doctrine" stated three" fundamental pillars: immediacy, proportionality, and necessity (Gracheva and Albina,2013:18). Both in international treaties and customary international law, they are firmly established as a condition of self-defense .

Necessity

The state had to employ force because there was no other practical way to stop the armed attack, which is what necessity means. (Van de Hole and Leo,2003:69) The state must first exhaust all non-violent options, including diplomatic channels, compensation, and so forth, before exercising its right to self-defense. Before the need test may be satisfied, it must be proven that peaceful solutions to the issue are ineffectual. An armed attack must be anticipated, and on the basis of solid evidence, preparations must be made. (Shaw and Malcolm N,2008:1131) Using force in self-defense should only be done if it is "necessary" and only after all other measures have been tried, according to the simple definition of need.

Proportionality

This section assesses how much force was required to repel an armed attack. Fundamentally, proportionality dictates that force should only be used to neutralise threats and shouldn't go beyond the scope of an assault. It suggests that using force should only be done when a state is defending itself from an armed attack and needs to put an end to or neutralise it. When

choosing which weapons to use in self-defense, the proportionality criteria as they relate to self-defense are taken into account. It's not necessarily necessary for self-defense weapons to be the same as those used in an assault.

Immediacy

Immediacy suggests that a prompt response is required in the event of an armed attack. However, it is impossible to accurately express the idea of immediacy because it could take some time for state authorities to decide how to respond to an armed attack. Hence, if the delay was obviously justified, the use of force might still be justifiable. (Dinstein,1994: 239-240). The State practice advises that a fair delay in action be permitted when gathering information about the assailant or providing the state's military force the required orders to respond accordingly. (Martyn,2002).

c) Article 51 states that any member state's use of self-defense shall be "promptly informed" to the Security Council .

The inclusion of Article 51 in the United Nations Charter serves the purpose of providing a framework for assessing whether an armed attack has occurred and whether the measures of self-defense was employed by the state meet the criteria of proportionality, necessity, and immediacy. It is noteworthy that reporting to the Security Council in accordance with customary international law (CIL) has not been implemented in practice. However, in the Nicaragua Case, the International Court of Justice (ICJ) established that it is incumbent upon the victim state to notify the Security Council of its use of self-defense measures in order to adequately defend its actions.

Jurisprudence analysis of the right to self-defence

In its broadest meaning, law is a necessary relationship that results from the fundamental nature of things. In this sense, every being has a unique law. God, the natural world, animals, and humans are all subject to the same laws. The Universal Declaration of Human Rights (UDHR) contains 30 articles that include fundamental liberties like the right to life, security of person, fair trial, freedom of expression, and travel. (Siti Munirah Edward and et al,2022) Our main concern is the right to life.

Natural Law

According to Jacques Maritain, a famous French philosopher and jurist, man

has a right to be treated with respect as required by natural law. Man is the subject of rights, naturally he enjoys rights. Jacques Maritain connected natural law with God and analyzed natural law and human rights from a theological point of view. He says that the idea of rights, like the idea of moral responsibility, is based on a certain freedom of the mind. In the interrelationship between human rights and natural law, it is this natural law that gives man fundamental rights. We all exist in accordance with the created universal order, and since humans are rational beings, the rule of pure intelligence governs their conduct. Every natural right that each of us enjoys comes from the pure justice of God. Therefore, God's law is the law of nature.

Economic, social, political, cultural, and civil rights are all guaranteed by the Universal Declaration of Human Rights (UDHR), as these are the foundations of a life devoid of fear for every individual. These rights are not rewards for conformity. These rights are universal across nations and are not restricted to any one time period or socioeconomic class. These are inalienable rights that cannot be denied to anybody, anywhere, at any time, regardless of gender, class, caste, creed, age, or sexual orientation, or of one's colour, race, ethnicity, disability, citizenship status, or immigration status.

The United Nations Charter, which is the foundation of modern international law, established its fundamental principles. In the UN Charter, the right to self-defense is referred to as a "natural right" of states. The United Nations' members are guaranteed under Article 51 the freedom to engage in either individual or collective self-defense. All States have the inherent right to self-defense, even if article 51 of the Charter mainly deals with the right of United Nations Members to self-defense. Under customary international law, every state is entitled to the right of self-defense. One academic believes that the fundamental principles of individual and collective self-defense laid out in the Charter have been incorporated into the general rules of international law and are applicable including both States that are members of the United Nations and the small number of States that are not. (Stanimir,1996.)

Natural rights were applicable to all forms of freedom, not simply those that existed at a particular historical moment. On the other hand, the idea of natural rights applied to all technologies, whether they were developed before or after the establishment of a political society. This includes having

access to and using tools of war like guns and printing presses. (Hobbes, 1953.)

There are one case concerning the question of to kill or to be killed. Three people, including the two defendants and the victim, a 17-year-old cabin boy, were abandoned in an open boat at sea during a storm in the R v. Dudley & Stephens (1884) 14 QBD 273, sometimes known as the "Lifeboat Case." They eventually experienced a food and water shortage, and Stephens advised drawing lots to choose who would be killed in order to supply food for the other two. But afterwards, Dudley and Stephens conspired and decided that the only way to ensure their survival was to murder the victim. They eat the victim for the next four days before being rescued. According to a naturalism perspective on the Lifeboat Case, the defendants were justified in what they did since they chose the most effective strategy to protect their survival in such a harsh environment. If the accused are not found guilty of the murder, the laws may be seen as prejudiced towards the victim because he was murdered despite not breaking any laws. Natural law would be unfair in this instance if the victim had to risk dying in circumstances over which he had no control.

Natural law, however, has been a cornerstone of democratic and human rights movements and policies around the world. Natural law is important to and applicable to all judicial systems since it is a universal principle. As natural law is founded on reason, everyone would be able to adhere to its principles, and since it does not rely on religious rules, it would allow people to stand up for what they believe to be morally and personally correct. Natural law, nevertheless, was not without flaws. Natural law's flexibility can lead to confusion and disagreements on whether an act complies with it because it is impossible for what is proper or wrong to be decided via natural means. As a result, consequentialism may be applied mistakenly, leading to outcomes that are contrary to natural law. This might have a twofold impact. Natural law also does not offer a resolution when two universal rules conflict with one another, despite the fact that it emphasises universality (Chin and et al,2023).

Thomas Hobbes is recognized as founding the modern liberal political theory (Hobbes,1953). Naturally, Hobbes considers the right to self-defense to be the core idea of his political philosophy. Everyone has an equal right to do anything they believe would help them survive in the wild, including

the right to kill others who they believe are going to kill them first. No one's life is secure when this freedom is exercised since it causes a conflict amongst all people. Everyone has an interest in choosing to submit to a common sovereign who has a responsibility to safeguard everyone's life by upholding law and order in exchange for giving up the right to use force first. This agreement is called the social contract.

According to the social-contract idea, in a state of nature, individuals would unanimously agree to establish a social contract that would form a political society in which each individual would be treated equally as a citizen. Then, this political body, sometimes referred to as "the people," would approve a constitution that gave a government political power with the support of the majority. To put it another way, the social contract theory proposed a two-step process for building political authority: first, a social contract to construct a polity, and then a constitution to form a government.

All people therefore have a natural right to self defence. In a state of nature before the establishment of a nation, everyone was free and equal, and they all had the unalienable rights they had at birth. After the nation was founded, people retained these rights. Everyone has the right to life because his or her first duty is to protect themselves from harm, and they will use any way they can, including weapons, to do so. However, because everyone is a human being with free will, they also have the right to freedom because they are free to act however, they see fit to protect themselves. However, the natural right ceased and positive law take place with the change of time.

Positive Law

In relation to legal positivism, John Austin will be discussed. He was a British legal philosopher who in the nineteenth century developed the first systematic alternative to both utilitarian and natural law theories of law. To Austin, law was the command of the sovereign. As a consequence, he has earned the title "Imperative Theory of Law". To him, there is no necessary connection between law and morals. He adopted the mode of analytical jurisprudence, which dealt with an analysis of existing legal institutions, without any regard for the ethical element. Both general and particular jurisprudence, as defined by Austin, are the two categories of jurisprudence. General principles, which are present in many legal systems, are the focus of general jurisprudence. For instance, legislation or precedents. Particular Jurisprudence deals with national systems of law. For example, law of property, customs, etc. (Zaferm,1994).

Legal positivism and natural law theories are frequently contrasted in legal philosophy. The term "natural law" is commonly used to describe a shared ethical and moral standard that is intrinsic to human nature or to the natural order. It is often associated with the concept of natural rights, which were famously referred to as "animal rights" by Thomas Paine. In contrast, positive law is an artificial system of rules and regulations that people establish and enforce to maintain order in society. Positive laws are typically expected to be adhered to by members of society, whereas natural law is viewed as inherent and may not necessarily require government enforcement.

A discussion concerning the relationship between law and morality has arisen as a result of the different perspectives taken by natural law and positive law. Are immoral laws valid laws? Or does a law need to include a moral requirement? The issue was the focus of debate between Professor Hart and Fuller in the 1950s, and arose out of a case discussing the validity of Nazi laws, namely "The Adulterous Wife". In that case, a wife was accused of depriving her husband’s liberty pursuant to an Adolf Hitler statue in 1934. The statute provided penalties for offenses that included criticism of Hitler'get rid of her husband, reported her husband's actions, which led to his arrest, conviction, and death sentence. The Second World War ended before the sentence could be enforced. Action has been taken against the wife. She argued that the husband's conduct had violated the law and that she was merely acting in accordance with the provisions of the valid statute. The German court declared in 1949 that the law was "contrary to the sound conscience and feeling of fairness of all human beings" and that the wife was culpable for her actions (Badariah,2005).

Professor Hart disagreed with the decision. Hart thought the question of legality should be separated from the question of the morality of the law and he defended the legality of the law, even if it was not moral. This was called the position of the positivist approach. Fuller disagrees with Hart. Fuller believes that law should have "inner morality" and that the positivist stance that separates law and morality has a defect. According to him, the German Statute that does not conform to morality cannot be recognized as law. As opposed to that, Hart's position is that a legal system must comply with justice or morals, but those elements are not the yardstick for the legality of the law (Greenwood and Christopher,2011).

In terms of self-defense by using force or weapons, people could no longer defend their private rights through self-help remedy once they left the state of nature. The natural right to self-defense was generally effectively turned into a positive right by the protection of the law. There is no denying that the state is meant to protect its people, so its obligation is to keep the people safe from harm rather than allowing them to exercise their natural right to respond to danger.

Here a question arises: how effective is manmade law in protecting its citizens? If a state is competent to protect, why does it restrict that right? By referring to the UN Charter, the requirement of exercising the right of self defense is listed, namely that force should only be used in response to an armed attack, the state must satisfy criteria like a necessity, proportionality, and immediateness, (Martyn and Angus,2002:12) and thirdly the Security Council must receive reports. When a natural right is acknowledged, the government can still impose restrictions on it. People interpret the law differently and subjectively, hence why states restrict the right to self defense. Limiting the right is essential because no state can grant its citizens an unrestricted right to self-defense for the sake of collective stability. Natural rights, according to social-contractarian theories, should only be restricted for the benefit of the community at large and not just one particular group.

The requirement of UN Charter also shows that there are some conditions and exceptions in order to exercise the right of self defense. When a state imposes positive law, it denies citizens their natural right to self defense. But the state cannot quickly protect a person when injury has been committed since the danger is imminent. In the circumstances where danger is imminent and unexpected, citizens retain their natural right, allowing them to react to the threat and defend themselves.

4.Amendment of Jurisprudence

After settling the original-meaning argument in favour of the individual-rights perspective in District of Columbia v. Heller 554 U.S. 570 (2008), the Court determined that a blanket prohibition on owning a gun in one's house is unconstitutional. This narrow decision raised a number of questions about the scope of the right and, subsequently, the nature and scope of the government's regulatory authority.

Some Puzzles in Heller

According to the Heller Court, a law from 1783 that forbade persons from bringing loaded guns into homes or other structures in Boston was the only rule that came close to resemble a handgun prohibition during that time. Nonetheless, the ban was implemented to protect firefighters from the dangers posed by the highly explosive black powder that was in use at the time. In any case, Boston's citizens were not prohibited from owning the guns themselves since modern gunpowder did not pose the same threat.

The Court ruled that the DC's regulation was unconstitutional because it made illegal a class of weapons that are currently popular among Americans and because handguns offer more practical benefits for self-defense than the rifles and shotguns that DC allowed its people to own.

When we look at the dicta in which the Court endorsed many modern gun control measures, Heller's failure to rely on text, history, and tradition becomes even more obvious. Long-standing bans on convicted felons and mentally ill people possessing weapons were initially upheld by the Court. If approved by the generation that passed the Second Amendment, such bans would certainly deserve at least a high presumption of constitutionality, just as laws against perjury and fraud are presumed not to violate the First Amendment.

Furthermore, Heller believes that the vast majority of the 19th-century courts that dealt with the matter "ruled that restrictions on carrying concealed weapons were constitutional under the Second Amendment or state analogues." It is clear that this reference to later state judicial rulings on state statutes provides little to prove that such federal government bans were or would have been lawful in 1791.

It is highly consistent with the goal of keeping a well-regulated militia to forbid the new federal government from banning the private possession of cannons (and implicitly machine guns as well), while leaving state governments generally free to regulate these weapons as they deem fit. In actuality, it is what the Second Amendment's text and history convey.

In conclusion, Heller did not require that cases involving the Second Amendment be resolved wholly, or even primarily, on the basis of text, history, and tradition. Despite some historical hand-waving, the court did not rely on these sources when making its unnecessary comments about various other gun control measures or when determining the specific issue

raised by the D.C. handgun prohibition (Nelson Lund,2020).

The Right to be Armed in Public

Text, history, and tradition can demonstrate that some popular gun control measures are unconstitutional, even if they cannot be relied upon to decide all Second Amendment disputes. Most law-abiding persons cannot own firearms under the rules that have the most practical impact today. The extremely strict law, which expressly prohibited citizens from carrying loaded weapons for self-defense, was passed in Illinois. Several other jurisdictions have passed laws requiring applicants for carry permits to prove that they have a justifiable need to own guns. These "may issue" regulations are implemented in a way that only a few people are eligible to get permission. This is because government officials were granted broad discretion to deny requests.

The circuit courts have supported more obviously unconstitutional laws than the firearm bans that Heller overturned. These laws are known as may-issue statutes. Unless there are other regulations to supplement the handgun ban, it is still legal to keep a loaded rifle or shotgun for self-defense. However, legislation that prohibits almost everyone from carrying a loaded rifle in public effectively contradicts the right to bear weapons guaranteed by the constitution. In this case, it is not necessary to apply means-end analysis to such legislation because the text and history provide sufficient details to resolve the issue.

Felon Disarmament Statutes

In Binderup v. Attorney General, United States of America 836 F.3d 336 (3d Cir,2016), Judge Hardiman stated that there is precedent for a rule wherein people who have shown a tendency toward violence may lose their Second Amendment rights.

He began by citing statements made at three of the conventions that ratified the Constitution. At the Pennsylvania convention, a small minority sought for a provision in the constitution that would prohibits the federal government from seizing anyone's weapons "except for crimes committed, or severe risk of public damage from people".

Judge Hardiman then referred to government restrictions on gun ownership at the period of the founding. Without taking into account any crimes committed by specific class members, all of these prohibitions were imposed on all individuals. Blacks and mixed-race persons (both slave and free), American Indians, and white people who refused to sign loyalty oaths

were among the groups who were singled out.
"A common thread running through the words and actions of the Founders provides us a distinguishing principle to shape our understanding of the Second Amendment's language in its original, widely understood interpretation," Judge Hardiman said in his conclusion. He stated that the Constitution "allowed the dispossession of people who showed that they would constitute a risk to the public if they were armed" in accordance with this principle (Nelson Lund,2020).

A Better Way

The Seventh Circuit's judges Diane Sykes and Amy Coney Barrett have established an analytical framework that is superior to all of Judge Hardiman's approaches. According to Judge Sykes' detailed discussion, in circumstances when the historical evidence does not support a categorical rule of the kind that Judge Hardiman would later adopt, the means-end approach should be used:.
If the historical evidence is inconclusive or suggests that the regulated activity is not categorically unprotectedthen there must be a second inquiry into the strength of the government's justification for restricting or regulating the exercise of Second Amendment rights. Deciding whether the government has transgressed the limits imposed by the Second Amendment-that is, whether it has "infringed" the right to keep and bear arms-requires the court to evaluate the regulatory means the government has chosen and the public-benefits end it seeks to achieve. Borrowing from the Court's First Amendment doctrine, the rigor of this judicial review will depend on how close the law comes to the core of the Second Amendment right and the severity of the law's burden on the right.
The Heller judgement definitely intended to indicate that the first places to look for an interpretation of the Second Amendment should be at the language of the Constitution and historical data that reveals how the Amendment was or would have been understood by those who created it. Judges Sykes and Barrett have loyally adhered to this teaching.

Judge Kavanaugh's Rejection of Means-End Analysis

As a result of Heller, the District of Columbia passed a complicated new legislation intended to limit access to guns by civilians as much as possible. In the Supreme Court case Heller v. District of Columbia (Heller 11), 670

F.3d 1244 (D.C. Cir,2011), the named plaintiff and several parties challenged three aspects of the new scheme: (1) the necessity of gun owners to register each of their firearms with the government and to satisfy certain conditions in order to do so; (2) a prohibition on a variety of guns that are semi-automatic; (3) a prohibition on magazines that can contain more than 10 bullets.

As to the D.C. Circuit's majority opinion, the basic registration requirement was legal since it was similar to long-standing requirements that Heller had allowed and only had a little impact on the plaintiffs' constitutional rights.

Then-Judge Kavanaugh dissented to it; the judge contended that Heller had rejected the application of the tiers-of-scrutiny approach. He stated that instead, in situations involving modern firearms and new circumstances, the Constitution's "text, history, and tradition" must be used to resolve the matter.

The opinion of Heller was not able to subject D.C.'s handgun ban or other modern gun control laws to an accurate history and tradition analysis. While that opinion demonstrates the limited effectiveness of tradition and history, Kavanaugh's dissent in Heller demonstrates the necessity to consider Heller as a precedent that requires avoiding means-end analysis.

New York State Rifle & Pistol Associa Ion v. City of New York

It is against the law for residents of New York City to keep a handgun at home without permission. The city also passed a law that prohibits people with permits from taking their weapons off of premises in general, with the exception of taking an unloaded gun to one of seven licensed shooting ranges, which they must do in a locked container and separate it from any ammunition.

There is no known historical precedent for New York's prohibition against bringing an inoperative weapon to nearly all of the locations where it may be legitimately possessed. According to Kavanaugh's view of Heller, the novelty of the law should be sufficient to render it unconstitutional, just as he believed D.C. 's registration and licensing laws were invalid because they were not a part of an established tradition. However, Heller was contrary to Kavanaugh's interpretation.

New York could not provide any evidence that the regulation might have an obvious effect on public safety. However, it has the conflicting consequence of forcing gun owners to leave their weapons unattended when they are out of the house. This increases the risk that burglars who supply the black

market may steal their guns. The New York law might not stand even a rational basis assessment, and it could not be supported under any sort of means-end scrutiny that viewed the Second Amendment as important part of the Constitution. The Court could conclude that New York violated the right of people to have a firearm for domestic self-defense.

Conclusion of Amendment of Jurisprudence

The rejection of the means-end analysis in Second Amendment cases by Judge Kavanaugh back then was erroneous. Undoubtedly, certain essential fundamental problems can be answered by the strategy he suggested. For instance, Heller's finding that the Second Amendment ensures a person's right to own weapons for self-defense rather than a collective right to maintain a militia is adequately supported by textual analysis and historical evidence (Nelson Lund,2020:171).

5.Conclusion

In conclusion, the right to personal self-defense, its nature and purpose in domestic and international law, and how it varies from a state's right to self-defense have all received very little in-depth and consistent research. Since it is used in the face of an immediate threat, leaving little time for reflection and putting the defender in a terrible situation where they must decide between using force in self-defense or losing their life, natural law-based self-defense gains its moral force from this aspect. Action and motive are important in natural moral law. One needs strong motivation and moral behaviour in order to be genuinely moral. A cardinal or theological virtue must underlying the motive: The four Cardinal Virtues are prudence, justice, temperance, and fortitude (Nabeel Mahdi Althabawi and et al,2022:89).

If obeyed, natural law provides a foundation that raises the likelihood that the use of force in self-defense will be recognised as legal. It represents the idea that all people, wherever, accept using force to defend themselves. This "truth" is obvious only by looking at "the rationale of the item," and neither legal knowledge nor cultural awareness are necessary to understand it. Even people who accidentally suffer injury are likely to concede that using action to combat an urgent threat was required in the given situation. On the other hand, the more we extend the definition of immediacy to include the use of force in response to allegedly nonimmediate dangers, the more we call into question the justification for our conduct .

Hence, self-defense is a natural law for everyone but we can't avoid that state has the power to suspend our right to self-defense but certainly not extinguish it. (Mohamad Ashyraf Hafiz and et al,2022:6) Natural justice is what allows humans to get along with one another, as humans are social creatures. A state may take away this natural law because of the welfare and safety of society. However, when facing immediate threat, natural law will be preserved as the State can't guarantee our safety in imminent.

References

1. Afzali, R.; Mahmoodi, A.; Bagheri, A. (2023). Explain the ethnic policies of the Islāmic Republic of Iran in popular films using content analysis methods. Geopolitics Quarterly, 19(69), 33-68.
2. Althabhawi, N. M.; Zainol, Z. A. (2013). Patentable novelty in nanotechnology inventions: a legal study in Iraq and Malaysia. NanoEthics, 7, 121-133.
3. Althabhawi, N. M.; Zainol, Z. A.; Bagherib, P. (2022). Society 5.0: A new challenge to legal norms. Sriwijaya Law Review, 6(1), 41-54
4. ArticleId=132579338&SearchId=0puukm1.
5. Badariah S. (2005). Jurisprudens dan Teori Undang-Undang dalam Konteks Malaysia .Sweet & Maxwell Asia.
6. Bagheri, P; Mahdi Althabhawi, N; Moslemzadeh, P. (2021). Legal Issues Tsunami in the Wake of COVID-19 and Contractual Breach. Geopolitics Quarterly, 17, 123-135.
7. Beckford, V. R (1988). AC 130.
8. Binderup, V. Attorney General (2016). United States of America 836 F.3d 336 (3d Cir. 2016).
9. Brownlie, I. (2008). Principles of Public International Law, Oxford University Press, 7th edn ,742
10. Charter of the United Nations.
11. Chin Jing Hui; Hew Min Min; Nabeel Mahdi Althabhawi. (2023). Lifeboat Case the Defence of Necessity for The Crime of Murder. Current Law Journal [2023] 1 LNS(A) ix. https://www.cljlaw. com. eresourcesptsl. ukm.remotexs.co/Members/DisplayArticle.aspx?
12. Criminal Law Act (1967).
13. Dinstein, Yoram. (1994). War, Aggression and Self-Defence, Cambridge University Press, 2nd ed ,239-40
14. District of Columbia v. Heller 554 U.S. 570(2008).
15. Gracheva, A. (2013). "Legitimation: The Case of the 1967 Israeli Strike against Egypt and the US-led Invasion of Iraq in 2003", Linkopings University
16. Greenwood, Ch. (2011). Self-Defence. Max Planck Encyclopedia of Public International Law https://opil.ouplaw.com/ display/10.1093/law: epil/ 9780199231690/law-9780199231690-e401? prd = epil [25 November 2020].
17. HISTORY 165-202 (1953); HARVEY C. MANSFIELD, THE SPIRIT OF LIBERALISM 43-46 (1978).
18. James Otis. The Rights of The British Colonies Asserted and Proved 28 (Boston, Edes & Gill 1764).

19. Jan Arno Hessbruegge, Human Rights and Personal Self-Defense in International Law (2016). Oxford University Press.
20. Jurisprudence University of Florida Journal of Law and Public Policy 30(2):171.
21. Law's Response to Terrorism." Vol 12(1) Journal of Conflict & Security Law 111.
22. Martyn, A (2002). The Right of Self-Defence under International Law: The Response to the Terrorist Attacks of 11 September.https://www.aph .gov.au/binaries/library/pubs/cib/2001-02/02cib08.pdf (25 November 2022).
23. Mohamad Ashyraf Hafiz bin Mohd Arif, Muhammad Harieth bin Zaini; Nabeel Mahd; Althabhawi. (2022). Justice in Malaysia: A Jurisprudential Approach. Current Law Journal.
24. Nabeel Mahdi Althabawi; Nurin Fatehah Binti Hussein; Nurul Najwa Binti Faris. (2022). Cases Review: Judges Always Promote the Concept of Morality, Justice, and Equality in Every Decided Case, Current Law Journal.On Hobbes as the founder of liberalism, see LEO STRAUSS, NATURAL RIGHT AND
25. Nelson Lund. (2020). The Proper Role of History and Tradition in Second Amendment
26. New York State Rifle & Pistol Associa Ion v. City of New York 590 US (2020).
27. Nicaragua v The United States of America (1986) ICJ 1.
28. R v Rose (1884) 15 Cox 54.
29. R v Scarlett [1993] 4 ALL ER 629.
30. R v. Dudley & Stephens (1884) 14 QBD 273.
31. R v. Hussey (1924) 18 Cr App R 160.
32. R v. Owino [1995] Crim LR 743.
33. Shah, Niaz A. 2007. "Self-Defence, Anticipatory Self-Defence and Pre-Emption: International
34. Siti Munirah Edward, Nurul Akmal Azerin, Nabeel Mahdi Althabawi. (2022). Limitation of The Freedom of Speech in Malaysia. Current Law Journal [2022] 1 LNS(A) iii .https://www.cljlaw.com.eresourcesptsl. ukm. remotexs. co/Members/DisplayArticle.aspx?ArticleId=132513795&SearchId=9puukm1 .
35. Smith and Hogan, Criminal Law, (1996). p264.
36. Stanimir A. A. (1996). Self-Defense against the Use of Forcein International Law .British Yearbook of International Law.
37. Van de Hole, L (2003). "Anticipatory Self-Defence Under International Law", American University International Law Review 19, no. 1: 69-106.
38. Zaferm. (1994). Jurisprudence An Outline. International Law Book Service.