

Slide 1



Thank you for attending the PS Conference.

Important we all come together in this format to continue our serious study.

We have set ourselves out as the ultimate moral arbiters.

“No Duty to Retreat”

Honor as Motive

Our Serious Study

If you are here, it is because you are a Practitioner, not just a shooter.

We all enjoy shooting. We enjoy studying various weapons platforms, even those that are not firearms, such as edged weapons, impact weapons and various alternative platforms.

We enjoy studying various deployment and employment techniques for these weapons systems. We spend endless hours trying to find ways to better refine these techniques.

In the final analysis, we are engaging in all of this study because we intend to use these tools and techniques on other humans.

For that reason, ours is a most serious study.

Part of that study, because we are moral men, is the study of men who are willing to use weapons on other men.

In past sessions we have looked at the VCA, his motives, execution strategies and susceptibility to forming restraining judgments at the point he chooses for engagement.

We have looked at organized gang behavior such as AQ. We have looked at instrumental and expressively motivated VCA and what actual incidents will look like.

In this session I would like to discuss you. What motivates you? How did you come to a set of values where you would decide that under a set of circumstances, you would use a weapon on another person? What separates you from a VCA?

"If you know others and know yourself, you will not be imperiled in a hundred battles; if you do not know others but know yourself, you will win one and lose one; if you do not know others and do not know yourself, you will be imperiled in every single battle."

Sun Tsu

Sun Tsu

Notice he does not refer to tools and techniques when he talks of winning fights.

What can he possibly know since he did not talk about 9 v 45 or isosceles v Weaver?

Statement analysis shows that you must know yourself as well as the other to win fights.

You can win if you know yourself.

If you know neither, you can not win.

In our past sessions we have studied the other, today we will study us.

Definitions

Before we can begin our examination of ourselves we must define a few terms.

Civilization

Laws, rules, customs and practices
by which a culture defines who
may, and who may not be killed
and how they may or may not be
killed.

In any culture, a violation of this definition is considered uncivilized. Gross violation of these norms is the definition of a savage. Persons or groups who routinely violate these norms are branded "evil".

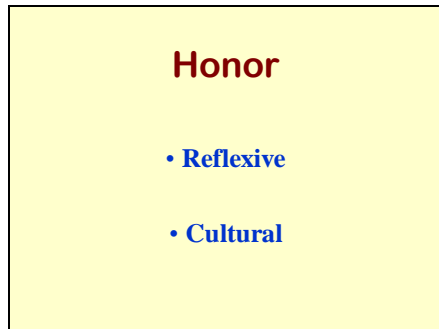
It is the collision of the respective definitions of who could be killed and how they could be killed between Western culture and the stone age culture of the American Indian that explain more about the actions between them than any other factor.

Seeming contradictions within a culture are common. Re: partial birth abortion and opposition to the death penalty.

Once a culture brands a person or group as savage and/or evil it marshals all resources and brings them to bear on that person or group.

Re: AQ

In any intra-cultural conflict between law and customs and practices the latter will prevail.



Honor

All persons have an honor code.

All cultures have an honor system.

What each form of honor shares is that they dictate a response to an offense offered by another.

Reflexive Honor

Reflexive honor is a response to a personal or cultural offense. The response is immediate and designed to set matters right.

Children learn it at a very early age. If one child takes another child's toy there is often an immediate striking back. If a child pushes another child the pushed child pushes back.

The offered offense, which is rude, evokes anger in the offended party which drives the response.

Proportionality of the response is imposed by culture and custom.

A pushed child learns it may be acceptable for him to return the push, but it is not acceptable for him to strike the offending child with a handy hammer.

We have devised all manner of ways to mitigate reflexive response. We preface comments with:

"I don't mean to offend you, but....."

"I am sorry to have to tell you this, but....."

I hope you will not take offense from this, but...."

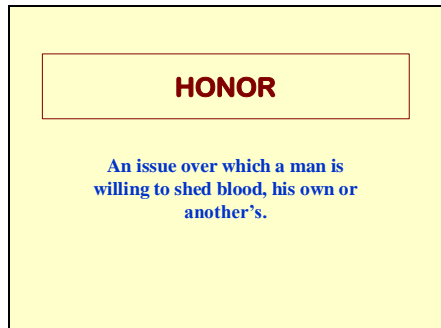
And then we go ahead and make the offensive comment.

Reflexive honor is about "saving face" in the eyes of those you consider co-equals.

Cultural Honor

Cultural honor is what wars are made of. They can be gang wars, feuds or nation on nation wars.

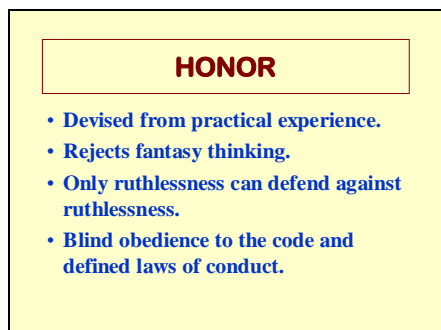
If the honor of the group is offended, however the group is defined, the group must respond.



Definition of Honor

Ultimately, an assertion of honor involves a willingness to shed blood over the issues involved.

The issue is more important than whose blood is shed.



Honor concept is derived from practical experience.

The practical concept as it defined in each culture rejects fantasy thinking.

It recognizes that only ruthlessness can defend against ruthlessness.

It requires blind obedience to the code. It demands unquestioned obedience to the laws of conduct.

The concept rejects loyalty to the tribe. It creates in each member of the honor group an **expectation** of conduct in all other members of the group.

A member of the group who fails to conform his conduct to the honor code in his dealings with another member of the group has intentionally delivered an offense to that person and should **fully expect a response**.

It is a system of ethics!

PROFESSIONAL

- Absolute self-control.
- Others determine the standard of conduct.
- Absolute attention to the client's needs.
- Respectable, predictable and expected conduct.

Members of the group have a right to expect any other member to behave to an understood standard of conduct for the position they hold.

Relationships are not to influence conduct.

TRUST

- Trusted with freedom.
- Trusted to have mastery over impulse, fantasies and desires.
- Trusted to have disciplined yourself to character building preparation for moral decision making.

Free men are to be trusted to behave in a manner that shows that they are worthy of freedom.

RESPONSIBLE

See to your own needs.

Attend to the needs of the Team without direction.

Take care of yourself.

Be loyal to the Team and immediately respond without prompting to any of the Team's needs.

Membership to the honor group is provisional. Fail in your responsibilities to the group and the group will reject you.

CHARACTER

- Conscience
- Sense of shame.
- Courtesy
- Produces a sense of honor.

Honor is a **gift** a man gives to himself. No one else can give it to you; no one else can take it away. **You must discard it!**

MINE

- The concept of “MINE” is the issue that governs honor.
- Men are willing to shed blood over “MINE”.
- Culture, ethics and character define which “MINE” is acceptable for the shedding of blood.

Once the concept of “mine” is established a **relative relationship between blood shedding and an object or concept is set in place.**

To claim something as “mine” is to say you are willing to fight, indeed, stake your life, over it.

It can be your wallet, your family, your home, your country or the deer you just shot. **Only you can decide what you are willing to make an enemy over and what you will, or will not, wager your life over.**

Gang fights are over “honor” and “mine”. They are not the same fight as yours.

Gangs are a meritocracy. Hierarchy is determined on a descending scale by the most ruthless and the greatest risk taker. It is a thuggocracy. Ethics are not involved.

Each culture defines the rules over which objects of “mine” can permit the shedding of blood.

The culture then puts in place elements of “character” which are imparted to its various members to guide them through the process of establishing the right to fight over “mine”. **Culture teaches its young “ruthlessness” in a fight over “mine”.**

A system of ethics helps to refine the way in which the fight may occur and establish the rules under which “ruthlessness” can be applied. Ethics and character allows the rest of the culture to know what to expect of you in a certain circumstance.

At the foundation of the “mine” concept is that if you are not willing to fight, or stake your life, over the object you claim, **your claim is illegitimate.**



The “Rules of Mine” exist even in the animal kingdom. Fights, even to the death, occur over the same issues as men of honor fight. They are basically **food, family and property.**

Attempts to disavow these rules are an exercise in futility.

Once a claim of “mine” is made it implies a willingness to defend against all comers.

One strategy of defense is the “bluff”.

That can only work if the other is willing to be bluffed.

The “bluff” can be applied by the aggressor.

There are two kinds of aggressor “bluff”. One is “posturing” the other is immediate and direct killing of the owner.

In this case the aggressor is not willing to “die” to assert his will.

His strategy of “ruthless bluff” works only so long as he is up against one who has not learned “contempt of death or other consequences”.

If you have complied by giving him your wallet and he starts looking around, that is your ¼ second “go” signal.

Other consequences mean disability or disfigurement or incarceration.

If you have not internalized the last rule, even if you go about armed and are well trained, you are a “bluffer”.

ENGLISH COMMON LAW

- Dealt harshly with homicide.
- Homicide as a public wrong.
- Self-defense viewed skeptically.
- Burden of proof on the accused.
- Crown's monopoly on dispute resolution.

English Common Law was designed to control the actions of the “Commoners”. It did not apply to the “gentry”. They were allowed to settle personal disputes by “dueling” because they were “men of honor”.

Gentry were not capable of being “common criminals”.

The first concept of government is to provide **safety for citizens**.

The **Norman occupation** led to the Coroner system. Hence, we have an accurate view of the number of homicides in England from about 1300 until the present time.

Under the English Common Law **all homicide was wrong**. Centuries of creative lawyering in England led to the concept of self-defense as a legitimate response to VCA.

Over a period of time rules were established for review of the circumstances of the encounter. The Rules became concepts that we carry with us even until today.

Self-defense was viewed skeptically out of a concern that it would be used as a dodge for homicide.

One of the steps along the way was the concept that self-defense was not homicide but a form of **suicide**.

We still see that concept in the current argument of “**suicide by cop**”.

Commonly, the **burden of proof** to prove the guilt of a defendant was, and is, on the government. A shift was made in the instance of self-defense in that the defendant was given the burden of proof for his actions.

That burden exists until to day in the concept of “**affirmative defense**”. Currently the defendant must prove his actions were within the Principles of Justification by a “**preponderance of the evidence**”. The government is still required to prove their case “beyond a reasonable doubt”.

English Common law and American law strives to reduce incidents of violence by asserting a monopoly over dispute resolution.

BLACKSTONE

- “the right to defend may be mistaken as the right to kill.”
- Two prong test:
 1. Avoidance
 2. Reasonable determination of necessity.

Blackstone's Commentaries were written in the early 18th Century. His work was a survey of legal principles and the historic experience at work in forming them. **American courts** used his commentaries as a guide for their own formulation of legal principles.

These concepts continued to serve as a guide after the Revolution.

Blackstone's work discussed the principles of self-defense. These principles included:

- Quarrels must be settled **peaceably in court**.
- If violence is offered you **must flee** the area.
- If you are unable to flee, you **may not stand** your ground, but flee until your “**back is to the wall**”.
- Only after your retreat is cut off may you turn and face your attacker.

We still see this standard in operation in some of the north-eastern states. Several years ago a woman was convicted of murder in Mass. when she fled to her basement from a husband who was trying to kill her. She stopped, stood her ground, and killed him. The court gave a jury instruction that said that she still had an avenue of escape she had not exhausted. It was the basement window that was seven feet from the floor and would have required her to crawl into a window well before she could reach the exterior of the house.

This case was appealed on the basis of the nature of the instruction. The case became a cause celeb among the feminist movement.

The feminist movement and their activism on behalf of battered women contributed significantly in what is presently a movement generally in the U. S. to return to the “**American Mind**” standard.

Ironically, the “**rule of thumb**” came from a New England law that permitted a husband to discipline his wife so long as his wooden discipline device was not thicker than a man's thumb.

The rules regarding self-defense as noted in Blackstone's Commentaries were **designed to reduce murder by moving quarrels from the street to the courts**.

Personal violence as a result of fights of honor was a major contributor to homicide.

That problem continues until today as seen in **street gang fights**.

BLACKSTONE

- Crown insisted on sequestering to itself the act of homicide.
“Justifiable”
Execution of criminals.
Police killing of an escapee or resister of arrest.

Under the English Common Law only killings **done by the Crown** were considered “justifiable”.

Successful claims of legal self-defense were identified as “**excusable homicide**”. That meant there was an **element of guilt**, but it was so slight that there was no penalty.

English Common Law theory was that it took **two to fight**. If the **attacked was required to flee** the attacker, there was no fight. The “back to the wall”, “necessity” and the “burden/standard of proof” standards would reduce the actual incidents of killing.

All of this was a product of a demand to avoid physical conflict.

This centuries old standard evolved in to a “**cultural**” format in England.

AMERICAN VIEW

No Duty to Retreat

As noted in our review of the concept of “mine”, culture determines the rules of what is acceptable to shed blood over.

American culture is derivative of a polyglot that came about as a result of immigration patterns into varied parts of the country.

The **north-eastern U. S.** was settled predominately by English merchants, tradesman and professionals who were largely city dwellers.

They are not as much anti-gun as they are anti-fighting. **They were the products of commoner stock from England.** To them, nothing is worth “it”. Honor, shame and fighting were not as strongly linked.

There were exceptions like the **Bowery Boys** and the **Son’s of Liberty**.

South of the Mason-Dixon Line the culture was heavily influenced by “second sons”. These were the second and subsequent sons of “gentry”. They were steeped in the traditions of “men of honor” where those who would not fight for “mine” were shameful.

American egalitarianism de-linked birthright and honor. Every American male felt he was an “honorable man”. In the birthright society only the gentry had “no duty to retreat”.

In America no honorable man had the duty to retreat. In the 19th Century the American courts converted this ethos into law.

SIR MICHAEL FOSTER

- English legal commentator.
- 1762, questioned the Common Law “duty to retreat”.
- No effect on English Law.
- Immediate effect on American Criminal law

Sir Michael Foster was an English legal commentator.

In 1762 he wrote a legal treatise that questioned the Common Law concept of a “duty to retreat”.

He proposed another standard that included:

- “the injured party may repel force by force in defense of his person” He mentioned attacks that involved murder or robbery.
- “was not obliged to retreat”
- “pursue his adversary till he findeth himself out of danger, (continue the fight) and if in a conflict between them he happened to kill, such killing is justifiable”.

He inserted the idea that such actions were justifiable, not excusable.

Foster’s treatise had no effect on English Law.

It had an immediate effect on American criminal law.

The idea that only the government had the right to kill VCA, much less citizens, and that the government could, by its dane, excuse a freeman for defending himself was repugnant to Americans.

Commonwealth v Selfridge

- Massachusetts Supreme Court
- 1806
- Adopted Foster's premise.
- Writers of American legal text books adopted the premise for their publications during the 1800's.

Joel Prentiss Bishop was an American writer of legal text books during much of the 1800's. He wrote 8 editions of his text book that covered this new principle of "duty".

He called his view of the law of self-defense a "living principle".

- "if a man murderously attacked by another flies instead of resisting, he commits substantially the offense of misprision of a felony".
- His assertion that the defender committed a crime if he ran was merely to make a rhetorical point; it was not proposed as a law for which one could be charged.
- He instead was suggesting that an attacked man was "commanded" to fight.

The American concept of "standing your ground" and "no duty to retreat" was set forth in the market.

Court Rulings

- Following the Civil War State Supreme Courts from Ohio to California adopted "no duty to retreat".
- True man standard.
- American Mind standard.

Erwin v State

- Ohio Supreme Court, 1876.
- A "true man, who is without fault in causing an action by a hostile, was "not obliged to fly" from his assailant and was free to stand his ground.

In this case Erwin owned a farm on which his son-in-law was a tenant farmer. At about mid-point on the shared land there was a shed. The two men disputed who had a claim on the use of the shed.

One day Erwin was in the shed when he was approached by his son-in-law who was carrying an axe. An argument began over the shed. Erwin told his son-in-law to leave. The son-in-law ignored the instruction and continued towards Erwin with the axe. Erwin drew a handgun and killed the son-in-law.

Erwin was convicted of murder. He appealed his conviction alleging the trial court erred in its instruction that Erwin had a duty to retreat. The Ohio Supreme Court agreed and commented in its decision that a **“true man” was not obliged to flee.**

Runyan v State

- Indiana Supreme Court, 1877
- In the “American Mind”, running from an assailant is cowardice and cowardice is un-American.
- It is a matter of “honor”.

Runyan was a wounded and crippled Union veteran as well as a Democrat. Pressnall was a Union veteran and a Republican.

The 1876 Presidential election of Hayes/Tilden was the first chance for the Presidency for the first time since 1860. It was the first election for the South since the end of Reconstruction.

Emotions were very high.

The results of the election were not final until a Commission declared Hayes the winner in 1877.

Pressnall had a history of bullying RUNYAN for his party affiliation. There were several near confrontations in the weeks before the election.

On Election Day as Runyan was moving about town he was verbally accosted. He borrowed a handgun. Eventually a fight broke out involving several men. Runyan shot and killed Pressnall, who was unarmed.

Runyan was convicted of murder at trial. The trial court instructed the jury on the duty to retreat.

Justice Wm. Niblick, writing for the Indiana Supreme Court, said that the ancient English doctrine of a duty to retreat had been greatly modified in America.

“Indeed, the tendency of the American mind seems to be very strongly against enforcement of any rule which requires a person to flee when assailed.”

State v Gardner

- Minnesota Supreme Court, 1905
- Duty to retreat was predicated on contact weapons.
- Firearms make that duty to retreat an obligation to be killed.

Gardner and Garrison were disputing the ownership of hay on a field each claimed.

Gardner went to Garrison with a document from a county official that settled the claim in Gardner's favor.

Gardner was 100 feet from a tree line which was his nearest cover. Garrison was 30 feet from his nearest cover which was also the location of his rifle.

Garrison rejected Gardner's county certification and said, "I'll show you!" and went for his rifle.

Gardner shot and killed Garrison before he could reach his rifle.

Gardner was convicted of murder at trial. The trial court's instruction to the jury was that Gardner was obliged to retreat.

The Supreme Court said he was not obliged to retreat because of the impractical circumstance.

Justice Jaggard said in his opinion, "The doctrine of retreat to the wall had its origin in medieval England before the general introduction of guns."

In his discussion of the case Jaggard said the doctrine was useful where contact weapons were involved but invited death where rifles and distance to cover made it impractical.

State v Bartlett

- Missouri Supreme Court, 1902
- Viewed standing one's ground as a sacred right of human liberty.
- Non-necessity of retreating from where is entitled to be is growing in favor, as it should be.

This new doctrine was hailed everywhere in the U. S. courts, though not in the "halls of ivy", and a few northeastern states.

Supreme Court of Washington, 1917

- Standing one's ground was "more in keeping with the dictates of human nature" than the requirement to retreat.

**"A man is not born to run
away"**

Justice Oliver Wendell Holmes,
1921

The SCOTUS, and in particular, Justice Oliver Wendell **Holmes** became involved in the discussion over the use of force in self-defense as a result of hearing appeals from death sentences out of the Western District of Arkansas in the mid-1890's. The trial judge for these cases was **Judge Isaac Parker**. Judge Parker was the only judge for the Oklahoma Territory which was "Indian Territory" at that time.

Parker, known as the hanging judge, was featured in a book titled "**He Hangs Them High**". Clint Eastwood starred in a movie titled "Hang 'Em High" that used that court as its story backdrop. In that movie there were several scenes that used some accurate history. One involved the actor who played Judge Parker lamenting he was the only law for the Territory, there was no appeal from his sentence of death. This was true for a period of time due to a legislative oversight in the drafting of the law that created his jurisdiction.

The other scene was a condemned prisoner watching the hang man prepares his equipment for the hanging. In the scene the actor talks about the professional nature of the particular hangman that is employed by Judge Parker. He pays a macabre compliment to the hangman in saying he used only the best hemp that he worked and oiled some it would snap the neck every time. That was true of the hangman who worked for Judge Parker, a German immigrant named **George Maledon**. **He hung 60** men and shot to death an additional 5 prisoners who tried to escape. He did not seek the job, but once he had it he determined to do the job the best he could and studied the craft so as to make the suffering of the condemned as little as possible.

Maledon was paid \$100.00 per hanging. He retired in 1896. He died in Jefferson City, Tennessee in 1911.

Judge Parker sentenced more than 20 men to be executed for being in fights that they won. He routinely gave a standard jury instruction that said the attacked killer was required to retreat when attacked. Those condemned appealed their case to SCOTUS alleging that the judge erred in that instruction.

SCOTUS returned those cases for re-trial based on Judge Parker's use of the "duty to retreat" instruction making it clear the law in the U.S. did not compel retreat. Many of those returned cases resulted in prison sentences for lower degrees of homicide.

Ultimately, Justice Holmes wrote his definitive opinion on the duty to retreat in the *Brown* decision. It was the *Brown* decision in which he made his "in the presence of an uplifted knife" comment that has become part of American legal folklore.

Other comments by Justice Holmes in the *Brown* decision include:

- "The law has grown... It has tended in the direction of rules consistent with human nature."
- "Detached reflection cannot be demanded in the presence of an uplifted knife."
- "Moreover if the last shot was intentional and may seem to have been unnecessary when considered in cold blood, the defendant would not necessarily lose his immunity if it followed close upon the others while the heat of conflict was on, and if the defendant believed that he was fighting for his life."

In this last comment Justice Holmes was referring to the case facts that *Hermis* received his last shot while lying on the ground. *Brown* testified that that shot was an unintended discharge. Justice Holmes swept this factual assertion aside to make his point that actions are to be gauged by the jury in its review of facts as they apply to the heat of battle.

In reading the cases on "duty to retreat" decided by SCOTUS during this period it is interesting to note how often they referred to the "right" to be armed.

We saw a jury from New York City make the same decision, without regard to the facts or the jury instruction in the *Bernhard Goetz* case. The "American Mind" standard is still very much alive in what would seem to be unexpected places.

None of this means you will be acquitted for any action you engage in no matter how closely you follow these concepts. It means that the courts of the past, and increasingly, the present, recognize the character of a free man and you will, in the jurisdictions that have adopted these concepts you will be given a chance to convince the jury of the justness of your actions.

The Castle Doctrine

- No duty to retreat at home.
- English Common Law.
- It is an issue of honor.
- Criminal law is about cultural moral imperatives.
- Rejection is a loss of moral authority.

The "Castle Doctrine" concept is derived directly from English Common Law. Even in England, until the 4th quarter of the 20th Century, "a man's home was his castle". He was lord there, which meant he had nobility and therefore, "honor".

Because he had "honor" in that location, he was entitled to the privileges of nobility and did not have to retreat.

It is this concept of individual honor, evidenced in the “no duty to retreat” that explains why Americans and American courts have, in the past, pronounced the duty to retreat as **outside the “natural” inclinations of man.**

In the final analysis, “no duty to retreat” is about the willingness to stake ones life, his “honor”, on the concept of “mine”.

Changes in state statutory criminal law in the mid-twentieth century reduced the “no duty to retreat” standard.

By the late 20th century state legislatures, responding to the will of the people, instituted “shall issue” CCW. That was followed by reciprocity between states for foreign state CCW holders. That was followed by “no duty to retreat” legislation.

These recent changes in the law, in effect returning to cultural moral imperatives that were settled in the U. S. more than a century ago, reflect the government understanding of their potential loss of moral authority if they did not respond.

Past as Prologue

- Slaves have no “mine” or “honor”.
- All Americans are Freemen.
- Freemen are entitled as birthright to honor and mine.
- In a contest between cultural morality and law, the former wins, or the later loses it moral authority.

Honor is only due to co-equals. Slaves have no honor and all that they have, including their lives, belong to the master. They have no “mine”. Because all they have, including their lives, belong to a master, they have no right to wager their lives unless ordered to do so in the interests of their master.

As an American, you are by birthright, a freeman, a man of honor.

Innate understandings within you, almost an **instinct**, brought you the point where you have decided that you will, under the right and lawful circumstance, wager your life over honor and “mine”.

American cultural morality led the law to conclude you have no duty to retreat when you are offered violence. The law back slid. Legislatures are in the process of re-affirming American cultural morality.

Still, as an American, a freeman, a man of honor, you must obey the law, or suffer the consequences. **You must avoid cheap displays** of honor lest you make a prostitute of the concept. The same cultural morality that has placed these concepts as part of the American fiber obligates you to avoid harming another man, no matter how obnoxious or vile his conduct if you may.

“If you know others and you know yourself, you will not be imperiled in a hundred battles; if you do not know others but know yourself, you will win one and loose one; if you do not know others and do not know yourself, you will be imperiled in every single battle.”

Sun Tsu

PRACTITIONER

A Practitioner of our study has the self-mastery of character to be trusted as a self-controlled responsible professional in executing his role as a man of honor while moving about society while armed.