15

Gun Control

LANCE STELL

Why Gun Control Matters

It is axiomatic that the state must suppress lawless violence within its jurisdiction. Yet, the "public service doctrine" holds that the state owes no duty to protect any individual from violence, irrespective of the fact that it regularly encourages reliance on its protective services. "Reliance," especially when encouraged, tends to be duty-creating, but the "no-duty rule" eliminates negligent failure to protect as a cause action against the state. Since no one has a right against the state to minimally adequate protection from violence, the state has no liability for discriminatory failure to protect – a Fourteenth Amendment, equal protection violation otherwise.

The problem of gun control for practical ethics arises from considering critically the following propositions: (1) the state prohibits violent victimization and must use its police power to suppress it; (2) the state must respect the fundamental individual right to bodily integrity; (3) the state's police power to suppress gun violence includes the authority to threaten non-felons with criminal penalties for having arms for self-preservation and defense; (4) the state has no duty to provide minimally adequate protection to any individual.

Affirming (1)–(4) is incoherent: (2) and (4) rule out (3) (Wheeler, 1997). Gun laws marginally affect the balance between (1) and (2) for each person, directly or indirectly. If the state bans civilian possession of "equalizers" by invoking a monopoly power under (1) and (3), it advantages stronger predatory persons (or gangs of them) at the expense of weaker, non-accompanied persons, yet incurs no liability to offset resulting risk unless it renounces (4).

Prohibiting civilian possession of "equalizers" also has distributional wealth effects, even among the law-abiding. It marginally increases the risks of violent victimization for poorer citizens who cannot afford the services of bodyguards, alarm systems, and the enhanced security associated with living in gated communities. Similarly, banning "cheap" Saturday Night Specials effectively discounts the (presumably) equal bodily integrity interests of all poorer citizens, not merely the interests of predatory criminals, who tend generally to be poorer than average. Banning "cheap" guns threatens to transform poor but otherwise law-abiding citizens into felons solely for choosing a product on the basis of affordability. In

addition, eliminating a class of "cheap" guns necessarily demotes "marginally non-cheap" guns to "cheap" gun status. Since gun laws implicate the fundamental interest in bodily integrity, affect the balance of advantage between felons and the law-abiding, and have distributional wealth effects among the law-abiding, every rational person has reason to care about gun control.

Practical ethics confronts public-policy issues by defining and analyzing relevant values and principles, paying critical attention to the evidentiary basis for empirical claims regarding social causation, and taking seriously incentive effects, administrative costs, and *imperfect compliance*. The assumption of imperfect compliance guides gun-policy analysis under a regime of risk where ethical, legal, and institutional rules prohibiting violent victimization are never fully effective, not against private violence, nor against official violence. The assumption is well founded. Prohibiting criminal violence does not eliminate it. Similarly, official violence, whether inflicted by alien governments in war or by one's own government under the color of law, has a terrible, enduring history. Private violence, mere criminality, pales in comparison (Wheeler, 1999).

In this chapter, I sketch briefly the "initial entitlement problem" concerning gun rights and distinguish it from the problem of regulating the exercise of rights. Then, I distinguish two major types of gun control, outline the ethical assumptions that support them, and critically evaluate the causal argument that gun proliferation among American civilians, irrespective of whether they possess them lawfully or not, is *sine qua non* for producing the nation's comparatively high homicide rate.

The Initial Entitlement Problem

Shall the state's police power incorporate a monopoly over arms? Or, should the power over arms be vested in "the people," incorporated among their inalienable rights? A society's constitution, whether a written document or a set of historically based, political understandings, distributes the initial entitlement. Incorporating an arms monopoly among the state's inherent police powers is a hallmark of monarchist or aristocratic constitutions. The state's monopoly renders all civilian gun possession a discretionary, unilaterally revocable privilege. If the state monopolizes power over arms, a civilian-wide possession ban cannot violate any citizen's rights. Gun rights are not among the "privileges and immunities" of citizens.

A republican-inspired constitution, by contrast, vests the initial entitlement in "the people," namely, those members of the political community who are recognized as its full and equal citizens. According to Aristotle, the right to possess arms, along with the rights to own property in land, to participate in community governance, and to hold offices of public trust constitute full citizenship under a republican constitution. A republic's citizens must have arms, "and in their own hands, too, in order to maintain authority both against disobedient subjects and against external assailants..." Classical liberalism accepted Aristotle's conception of citizenship. It incorporated the right to possess arms among "the privileges and immunities" of citizens (Hughes and Hunt, 2000). Since a republican constitution denies that the state shall enjoy monopoly power over arms, its control measures may not include

a ban on citizens' possession of arms. However, the state may, indeed must, give specification to the right and reasonably regulate the operation of it.

Despite the fact that Article IV, Section 4, guarantees a "Republican Form of Government" to every state in the Union, gun-control partisans disagree how the US Constitution distributes the initial entitlement regarding arms. Does the Constitution vest the initial entitlement in the federal government, in the several states, or in "the people?" The question of what content should be given to the Article IV, Section 2, "privileges and immunities of citizens" is clearly relevant to this debate; however, preponderant attention has focused on interpreting "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

Three theories of Second Amendment interpretation may be distinguished. The "states' right" view claims that the Constitution secures monopoly power over arms to the federal government or perhaps shares it with the several states because, allegedly, the Amendment *subordinates* any right of the people to keep and bear arms to the state's interest in maintaining a well-regulated militia. The "individual rights view," sometimes called the Standard Model Interpretation, claims that the clause recognizing a state interest in maintaining a well-regulated militia provides *a non-exclusive reason* for recognizing the right of the people to keep and bear arms. The "modified individual rights" view claims that the Amendment vests the initial entitlement in the people, yet only individuals actually enrolled in the federal militia have the non-infringeable right to keep and bear arms.

The states' right view is incredible. Not only is it inconsistent with the republican conception of citizenship, it requires denying the text's explicit language ("the right of the people to keep and bear arms") and the Constitution's consistency of usage. The Constitution distributes "powers" to the federal government and to the several states, but never "rights." The plausibility of the states' right view rests on confusing the states' power to regulate rights with the ownership of rights.

The modified individual rights view is not incredible. The Amendment's language clearly recognizes a state interest in maintaining a well-regulated militia. However, the Amendment's prefatory clause is not followed by "therefore, the right of militiamen to keep and bear arms shall not be infringed." On the contrary, the phrase "right of the people" is used instead. There is no non-arbitrary reason to give this phrase a different meaning in the Second Amendment than it has in Amendments 1 and 4. In addition, federal law declares that the militia of the United States consists of all able-bodied male citizens at least 17 years of age and under 45 years and those female citizens who are members of the National Guard. Ironically, if "the right of the people" were interpreted to forbid infringement of the right to keep and bear arms for members of the militia only, a huge body of citizens would be rendered immune from indefinitely many federal and state gun-control laws. The modified individual rights view entails substantial administrative costs, namely, a scheme that recognizes and defends militia members' rights as they age-in and age-out of liability to service.

The Standard Model's "right of the people" interpretation is simpler. It lends itself to unremarkable Constitutional jurisprudence. The ultimate superiority of the individual rights interpretation does not rule out gun control. On the contrary, the state

retains the responsibility to specify and regulate the right to keep and bear arms by due process of law (Stell, 2001).

The Regulatory Power

All rights, including those recognized as an entitlement *ab initio*, inalienably vested in the people, require specification and regulation by due process of law. The *process of specification* addresses at what age one becomes eligible to exercise the right, how eligible persons may establish qualifications for exercising it, what privileges are not included in the right, who has standing to complain about alleged government infringements in court, and which government official must respond to such complaints, what relief is available, and so on. The *process of regulating* rights addresses how the constitutive privileges, claims and immunities operate, how they may be acquired and lost, when and how they may be re-acquired (if ever) and when right-constitutive privileges must give way to compelling public interests.

Specification and regulation elaborate rights, but also limit them. Rights have little practical value without both. In America, "the freedom of speech" includes the right to display publicly a jacket embroidered with "Fuck the Draft" (*Cohen* v. *California*, 403, US 91 [1971]). It does not include the right to lie under oath about a material fact, to make fraudulent promises, or to shout "fire!" in a crowded theater. No one contends that the freedom of speech is absolute and incontestable. Nor should one infer from the fact that the state may regulate free-speech rights by due process of law that "the freedom" is really "collective" or that "the right of the people peaceably to assemble" is really one of the state's inherent police powers.

There is a complication. Sometimes, by intent or effect, the processes of specifying and regulating fundamental rights may amount to infringement – for example, when a "re-specification" of rights bans or prohibits possession categorically. But the state's regulation of gun rights may also infringe when the regulation manifests *inherent hostility to the right*, or imposes burdens on its exercise that *lack any reasonable foundation* or that invite *arbitrary and capricious* exercise of official discretion or if a scheme of regulation is *invidiously discriminatory*.

Dangerous-possessor Gun Control

Dangerous-possessor gun control (DPGC) refers to a regime of legally enforceable restrictions disabling from gun purchase, possession, and use persons who, by virtue of past wrongdoing, disloyalty, or legal incompetence, are widely perceived as untrustworthy. DPGC has long been the predominant form of gun control in America.

During the colonial period, persons regarded as ineligible or unfit for citizenship, namely, the indigenous population and imported slaves, were legally disabled from gun possession on grounds that they were naturally servile, untrustworthy, violence-prone, and/or incompetent. A widely shared republican political philosophy linked gun-possession disabilities with political inequality. Inequality-linked gun disabilities

were given a racist elaboration in the early days of the Republic as America's population of black freemen grew ever larger (Franklin, 1971). Enlightenment political philosophy denied that there should be a race-based legal distinction between "freemen" and "citizens." A culture based on race-slavery prompted the opposite.

Whites' unwillingness to recognize free blacks as political equals was expressed in gun-control laws. These laws imposed distinctive disabilities on "free persons of color." For example, North Carolina's 1840 law provided, "That if any free Negro, mulatto, or free person of color, shall wear or carry about his or her person, or keep in his or her house, any shot gun, musket, rifle, pistol, sword, dagger or bowie-knife, unless he or she shall have obtained a license therefore from the Court of Pleas and Quarter Sessions of his or her county, within one year preceding the wearing, keeping, or carrying thereof, he or she shall be guilty of a misdemeanor, and may be indicted therefore." Georgia's Supreme Court distinguished between citizenship-constituting rights, of which its black freemen were totally bereft, and personal liberty: "Free persons of color have never been recognized here as citizens; they are not entitled to bear arms, vote for members of the legislature, or to hold any civil office... They have no political rights, but they have personal rights, one of which is personal liberty."

Race-conscious interpretation of race-neutral laws often elicited candid commentary from the courts. Thus in 1824, the Supreme Court of Virginia opined:

> The numerous restrictions imposed on this class of people [free persons of color], many of which are inconsistent with the letter and spirit of the Constitution, both of this State and of the United States, as respects the free whites, demonstrate, that, here, those instruments have not been considered to extend equally to both classes of our population. We will only instance the restriction upon the migration of free blacks into this State, and upon their right to bear arms.

This "free-but-not-equal" regime reached its apogee in *Dred Scott*, when the US Supreme Court ruled 7–2 that blacks were not citizens of the United States, hence they lacked "standing" to bring claims into federal court (*Scott* v. *Sanford* [1856] 60 US 393). Chief Justice Taney reasoned that the set of initial entitlements (the "privileges and immunities") secured to "the people" by the Constitution excluded non-white persons. Therefore, blacks were estopped in perpetuity from claiming as their patrimony the privileges and immunities of national citizenship. To think otherwise would entail (in Taney's mind) an absurdity, namely, that manumitted blacks would be entitled to travel freely from state to state, to hold public meetings upon political affairs and "to keep and carry arms wherever they went." The history of the Fourteenth Amendment makes it clear that Congress explicitly intended to overturn Taney's *Dred Scott* jurisprudence. Today, gun-control laws no longer wear a racist face, *de jure*.

Currently, convicted felons are lifetime-disabled by federal law from purchasing or possessing any firearm or ammunition. Additionally, it is a federal offense to sell or dispose of a firearm or ammunition to: (1) anyone charged or convicted of a felony or of a crime carrying more than a one-year sentence (except for state misdemeanors); (2) fugitives from justice; (3) users of or persons addicted to illegal drugs; (4) anyone adjudicated mentally incompetent; (5) anyone admitted to any mental

institution; (6) anyone dishonorably discharged from the military; (7) anyone who has renounced US citizenship; (8) illegal aliens; (9) anyone under a court restraining order for stalking or presenting a credible threat to an intimate partner or partner's child (Halbrook, 1998). Violators face up to ten years in federal prison.

A DPGC regime recognizes that persons not specifically regarded as untrustworthy by law retain the liberty-right to purchase, possess, and use guns and ammunition, as further specified by regulatory law. For example, when the Gun Control Act of 1968 was enacted into the federal criminal code, Congress declared:

> it is not the purpose of this title to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms appropriate to the purpose of hunting, trap shooting, target shooting, personal protection, or any other lawful activity, and that this title is not intended to discourage or eliminate the private ownership or use of firearms by law abiding citizens for lawful purposes... (Korwin, 1995: 137)

Strict Gun Control

Strict gun control (SGC) refers to a legal regime that especially restricts handgun purchase, possession, and use to police and other officials and to civilians on a discretionary-permit basis. The disability holds irrespective of any due-process proven conduct deficiency, adjudicated incompetence, or danger-to-self-or-others mental illness. The resulting inequality between "the people" and the state could not be clearer. Machiavelli put it plainly. "There simply is no equality between a man who is armed and one who is not" (Machiavelli, 1981: 88).

Justification for SGC may rest on a conception of *initial entitlements*, namely, that *the state's inherent police power incorporates a monopoly over arms*. Alternatively, proponents of SGC may appeal to a *public necessity* argument to justify suspension of fundamental, constitutional rights in an emergency. Proponents of SGC commonly disclaim an interest in gun bans all at once. For tactical reasons, they pursue it "step by step." The American Academy of Pediatrics (AAP) has crafted "model" SGC, *sans* strategic disclaimers. The AAP's model law would ban the manufacture, purchase, and possession of handguns. Among the bill's legislative "findings" is: "except in the hands of law enforcement officers or others specifically authorized by law, handguns serve no legitimate lawful purpose, and constitute a hazard to the public health and welfare of the people, and especially the children, of this State."

The Academy's underlying political assumptions include the following: (1) since the legislation does not propose a suspension of recognized rights but rather proposes a permanent possession ban, it appeals to a theory of the state's inherent police power that includes a gun-rights monopoly, including the power to ban production, sale, purchase or possession of handguns on public-interest grounds; (2) by excluding self-defense as a legitimate lawful purpose for possessing a handgun and by recognizing "sporting purpose" as the only legitimate lawful purpose for possessing a gun of any kind, the law rejects one of the specific findings included in federal gun-control law, namely, that self-defense is a legitimate, lawful reason

for gun possession; (3) handgun scarcity among civilians is a *sine qua non* for reducing violent victimization, especially among children. The bill omits any provision for compensating handgun owners for confiscation of their property.

Pediatricians may plausibly claim expertise in the epidemiology of childhood injury and disease. This leads naturally to modeling handguns as vectors of injury or as environmental toxins. It also explains why their legislative proposal does not compensate for "taking." For example, a landowner whose stagnant pond is sprayed under the aegis of a mosquito abatement program cannot complain that the dead bugs should count as a property loss for which he is owed compensation under the Fifth Amendment. *Ipso facto*, neither should a citizen be permitted to complain that the state's eradicating a vector of injury should ground a claim for the "taking" of private property.

Were the legislation to include a compensation for "taking" provision, the entire medical/public health pretext would be undermined. Pediatricians cannot plausibly claim that their expertise in epidemiology and toxicology underwrites their offering an opinion on the taking of private property or on the legitimacy of using handguns in self-defense. By threatening non-felon citizens with criminal penalties for possessing handguns and by refusing to recognize the legitimacy of self-defense, and by further omitting to recognize a state duty to provide minimally adequate protection from violence to individuals, the pediatricians show contempt for the most fundamental of all individual rights – to bodily integrity.

Some pediatricians claim scientific expertise in evaluating the risk to children of keeping a house gun. They may even allocate time in the office interview to counsel parents against the practice. Doing so shows an inadequate grasp of real-world risk. Accidental gunshot death, whether inside or outside the home, is very rare, even more rare for children (ages 1–14).

The National Safety Council keeps statistics on unintentional injuries dating from 1903. Its data reveal that, in 1929 and 1930, an estimated 3,200 persons died from unintentional gunshot, the highest totals ever recorded (National Safety Council, 1999). In 1974, 2,513 died in gun accidents. In 1984, the total was 1,668. Over the decade 1988–98 unintentional gunshot deaths declined 40 percent. In 1998, fatal firearm accidents (inside and outside the home) fell to the lowest level ever recorded: 900 in total (all ages). The decline in annual aggregates makes the decline in the rate (n/100,000) remarkable, especially given the nation's population growth over the past century and the increase in the number of privately owned guns, especially handguns, over that period.

In 1998, for example, 110 children (ages 1–14) died in gun accidents. For comparison, 2,600 died in car wrecks, 850 drowned, 570 died from burns, and 200 suffocated by ingesting objects. If we expand the category "children" to include persons ages 1–24, NSC data show that, in 1998, 537 died by unintentional gunshot, whereas motor vehicles killed 13,376, 1,632 drowned, burns took 920 lives, poisoning 615, falls 335, and suffocation 275. Data from a single year place child death by gunshot in the context of all causes of accidental death, but obviously cannot reveal trends.

So-called "public health gun-safety research" alleges that unsafe gun storage has assumed alarming proportions. The allegation must be weighed against the

National Safety Council's documented steady decline in fatal firearm accidents, and an especially steep decline over the past decade.

Guns as Environmental Toxins

Gun exposure, *per se*, seems not to be an environmental factor in the creation of violent adolescent and young adult males. The US Department of Justice, Office of Juvenile Justice and Delinquency Prevention, has found a

> very strong relationship between owning *illegal guns*, delinquency and drug use. Seventy-four percent of the illegal gunowners commit street crimes, 24 percent commit gun crimes, and 41 percent use drugs. *Boys who own legal firearms, however, have much lower rates of delinquency and drug use and are even slightly less delinquent than nonowners of guns.* The socialization into gun ownership is also vastly different for legal and illegal gunowners. Those who own legal guns have fathers who own guns for sport and hunting. On the other hand, those who own illegal guns have friends who own illegal guns and are far more likely to be gang members. For legal gunowners, socialization appears to take place in the family; for illegal gunowners, it appears to take place on the street. (Office of Juvenile Justice and Delinquency Prevention, 1994: 18, emphasis added)

A sloppier study would have failed to distinguish boys who owned guns legally from those who owned them illegally. It would have "found" that "gun-owning boys" have had a delinquency rate much higher than non-gun-owning boys. The mutant study would have ignored that socialization and parenting are the key independent variables and urged more stringent gun control instead.

Since at least 1986, criminologists have had good evidence that felons, despite their life-time legal disability from possessing guns and ammunition, possess guns at a higher rate than the general population. Obviously, it is easier to research the relation between gun possession and violence than to investigate whether criminal violence significantly correlates with unlawful gun possession but not with legal possession. However, the resulting research fails to provide information needed for rational gun policy and provokes little but desultory political controversy instead.

Gun Prevalence as a Social Cause of the US Homicide Rate

The American crime rate is roughly comparable to that of the G7 countries. America's assault rate is also roughly comparable to those countries. However, the American homicide rate is much higher. The number of guns owned by American civilians is much greater. Does America's higher homicide rate result from the greater number of civilian-owned guns?

Firearms are used to commit approximately 70 percent of homicides in the United States. Handguns are used to commit the preponderant majority of firearm homicides. Indeed, the percentage of homicides committed with firearms has held remarkably steady since the 1920s (Kleck, 1991). Criminologists Zimring and Hawkins conclude that "The circumstantial indications that implicate gun use as a

contributing cause to American lethal violence are overwhelming." Therefore, "The most marked reduction in firearms violence cannot be expected until well past the introduction of legislation designed to achieve handgun scarcity" (Zimring and Hawkins, 1992: 205).

From the preceding argument, we can generate the following falsifiable hypotheses:

1 Homicide rates will be highest where handguns are most prevalent, geographically and by social group – by age, by race, by gender, by income.
2 Increasing the number of civilian-owned handguns will increase the homicide rate.
3 Significant reductions in the nation's homicide rate will not occur until handguns become scarce among the general civilian population (or at least scarce among the violence-prone).

An objective review of readily available government data shows that each of these hypotheses is dubious or false.

How Many Guns?

By federal law, every firearm produced by American gun manufacturers must bear a serial number. Each firearm imported must also bear a serial number. Domestic production totals, imports, and exports must be reported annually to the Bureau of Alcohol, Tobacco, and Firearms (ATF). The trade publication *Shooting Industry* also publishes annually the number of firearms produced, together with a running twenty-year cumulation. These data include totals by handgun type (revolvers and pistols) and by caliber. They enable an objective basis for evaluating market trends and for estimating and updating the number of civilian-owned guns.

Using ATF figures to establish a 1945 baseline, criminologist Gary Kleck has developed a production-based model that cumulates annual domestic production, adds imports and subtracts exports. From 1945 to 1994, the American civilian gun total rose from an estimated 46,909,183 guns to an estimated 235,604,001 guns, an increase of 502.25 percent. Over that period, the number of civilian-owned handguns increased from an estimated 12,657,618 to an estimated 84,665,690, a gain of 668.9 percent. From 1945 to 1994, Americans bought handguns at a higher rate than they bought long guns. The whole period handgun growth rate was 151 percent of the whole period long gun growth rate (a total handgun increase of 668.9 percent versus a total long gun increase of 440.7 percent). Between 1993 and 1999 the industry produced approximately 28.6 million firearms, including 12.5 million handguns. Allowing for imports and subtracting for exports, we may reasonably estimate that the current gun total approximates the size of the US population, including approximately 95–100 million handguns. Figured on a per capita basis, American civilians probably own guns at a rate of between 969 and 1,016 per 1,000 adults, including a rate of between 365 and 388 handguns per 1,000 adults.

America's Homicide Rate

According to the Bureau of Justice Statistics, 15,533 homicides were committed in 1999, a rate of 5.7/100,00. Assuming that 70 percent of these homicides were by gunshot, approximately 10,873 persons were killed by gunshot in 1999. If so, almost 5,000 homicides resulted from other mechanisms. The number of non-gun homicides committed in America exceeds the homicide total for all the G7 countries combined. The highest homicide total ever recorded in the United States occurred in 1991, when 24,700 were killed, all mechanisms of death combined. Since 1950, the homicide rate has varied from a low of 4/100,000 (in 1957) to a high of 10.2/100,000 (in 1980).

In January 2000, the Centers for Disease Control reported that, for the period 1993–7:

> declines in nonfatal and fatal firearm-related injury rates generally were consistent across all population sub-groups. The declines in non-fatal and fatal injury rates were similar for males (40.7% for nonfatal, 20.9% for fatal) and for females (42.1% for nonfatal, 23.2% for fatal). Declines in death rates for blacks and Hispanics were similar, and were both greater than the decline observed for non-Hispanic whites.

The National Center for Health Statistics has graphed the nation's homicide rate for the past century (figure 15.1). Over the period, the nation's civilian gun supply increased inexorably. However, the homicide rate fluctuated up and down. For the past decade, the homicide rate has declined sharply. Additionally, the Bureau of Justice Statistics has graphed victimization data (figures 15.2–15.4) and data regarding weapons used in homicides (figure 15.5). Non-association between the civilian gun supply and the nation's homicide rate over the long run makes a causal relation between these variables highly unlikely.

The data graphed in figures 15.1–15.5 show that an American's absolute risk of suffering homicide death by gunshot is very low. The incidence is approximately 3/100,000. However, when we consider comparative risk, there are noteworthy exceptions. Males, especially young males, commit homicides at disproportionate rates compared with females and are disproportionately at risk for homicide victimization (figure 15.2). However, the study of the Bureau of Justice Statistics, discussed above, shows that young males who own guns legally are less likely than their non-gun owning peers to commit crimes of any kind.

Young black males commit homicide at a rate six times higher than their white counterparts and are at six times the risk for victimization (figure 15.3), despite the fact that the African-American rate of handgun possession is lower than for whites. No study has investigated whether young black males who own guns legally are as likely to commit homicides as their unlawful-possessor peers. It is reasonable to hypothesize in the negative.

Risk of victimization by gunshot declines with age (figure 15.4), unless suicide counts as victimization. If it does, male gender and advancing age are associated with an increased risk for suicide by gunshot. However, "first-gun" acquisition is rare among elderly males. It is implausible to suppose that young males tend to acquire guns in order to kill themselves when they become elderly.

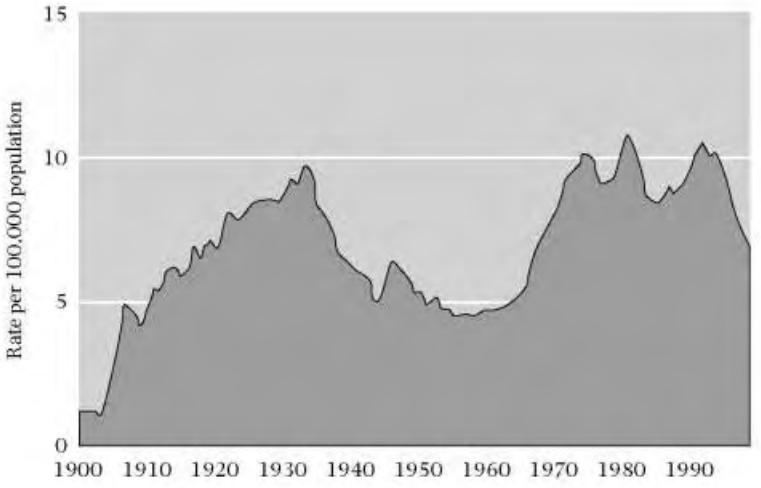

Figure 15.1 Homicide rate in the US, 1900–1998
Source: National Center for Health Statistics, Vital Statistics.

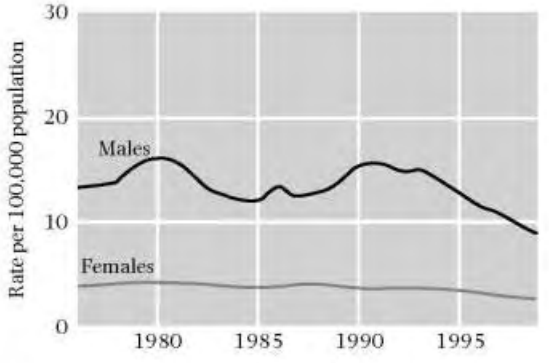

Figure 15.2 Homicide victimization by gender in the US, 1976–1999
Source: Bureau of Justice Statistics

How can we explain the recent sharp drop in the homicide rate? Handguns have not become scarce among American civilians. On the contrary, gun industry production data reported to the Bureau of Alcohol, Tobacco, and Firearms says that Americans own more high-capacity pistols and assault-style rifles than ever. But even more remarkable, *we have no evidence that handguns suddenly have become scarce among felons or other illegal possessors*. Nevertheless, the decline in the homicide rate of the past decade is almost entirely owing to a decline in handgun homicides.

Obviously, the addition of millions of handguns and assault-style weapons to the civilian gun supply during the past decade is compatible with a substantial decline in both the homicide total and the rate. An economic theory might hypothesize that

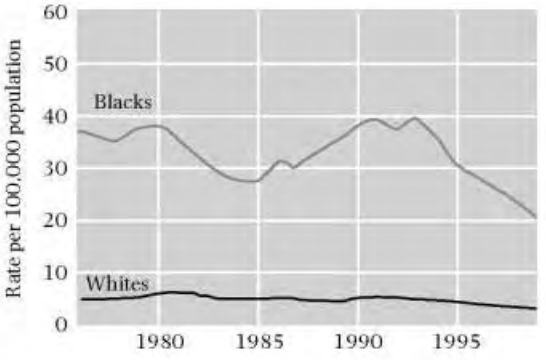

Figure 15.3 Homicide victimization by race in the US, 1976–1999
Source: Bureau of Justice Statistics

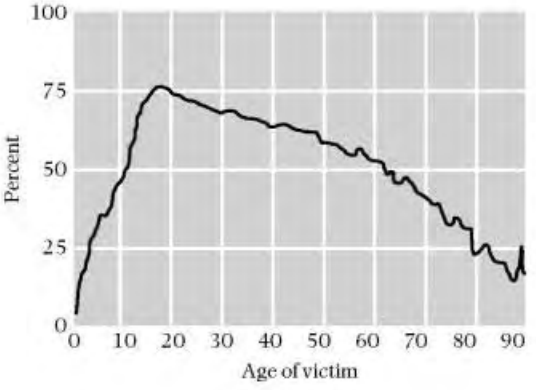

Figure 15.4 Percentage of homicides involving guns by age of victim in the US, 1976–99
Source: Bureau of Justice Statistics

a strong economy tends to reduce the homicide rate, while hard economic times tend to increase it. During the 1990s, the economy was very strong. *Ergo*....

The National Center for Health Statistics graph (figure 15.1) enables cursory examination of this hypothesis (and many others). The Great Depression was obviously a period of substantial economic stress, yet the homicide rate declined during the Depression. No theory of criminal violence can generate the graph for the nation's homicide rate for the entire century. Selective, *ad hoc* slicing and dicing may result in a tailor-fit, however. Smaller data sets, fewer years examined, and so on.

Perhaps the recent sharp decline in the homicide rate results from adding to the population 3.5 million civilians licensed to carry handguns concealed, a legal innovation that began in 1987 and now includes thirty-three states (Lott, 2000). The reasoning might go like this. Uniformed police officers, because of their high visibility, almost certainly have higher "reassurance value" to the law-abiding public than do undercover officers. But uniformed officers have lower deterrent effect

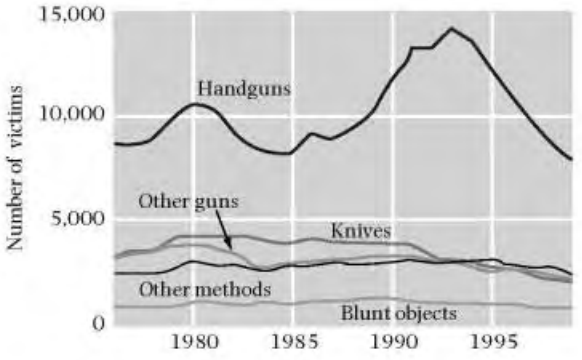

Figure 15.5 Homicide by weapon type in the US, 1976–1999
Source: Bureau of Justice Statistics

on violent criminals because their visibility makes them avoidable. However, the deterrent effect of undercover officers on predatory criminals is likely to be much higher than that of uniformed officers because their "camouflage" creates environmental uncertainty. Thus, it is not unreasonable to suppose that licensing civilians to carry concealed handguns deters criminal violence better than open-carry and that it generates positive externalities for the unarmed to boot. The violent-encounter criminal must weigh the expected gain (money, power, dominance, and so on) resulting from predation against an adverse and contemporaneous prospect: that his victim or someone nearby may be armed.

Perhaps the decline in the homicide rate results, in part, from the legalization of abortion in 1973. Legal abortions total between 1.1 and 1.6 million per year. Suppose half of aborted pregnancies are male. Had they survived, and had those individuals been socialized under circumstances highly productive of violence-prone males, then preventing their entry into the population would tend to have a substantial downward impact on the homicide rate 18–25 years after they would have been born.

Guns and Social Causation of the Homicide Rate

Social causation is a troublesome concept. Poverty, young-adult age and male sex correlate highly with the perpetration of violence. However, none of these is necessary nor are they jointly necessary, nor jointly sufficient conditions for homicide offending. Young black males are six times more likely to perpetrate and to be victims of violence than their white counterparts. However, most young males, whether black or white, never kill or assault anyone. Most predatory criminals are poor, yet most poor people never assault or kill anyone. Similarly, homicides are committed with myriad sharp and blunt instruments, as well as by kicking and punching. So guns are neither necessary nor sufficient for homicide. Are poor young males who own guns legally more likely to commit homicide than poor young males who do not own guns or who own illegally? We don't know, but the Bureau of Justice Statis-

tics' study of juvenile delinquency suggests that these distinctions matter. Obviously, characteristics significantly associated with an increased probability of homicide offending are not thereby social causes of homicide offending.

A theory of social causation does not ask whether gun possession might have helped to erode the meager self-control resources of a male unsure of his gender identity, thus contributing to his using a gun violently. Neo-Freudians have applied the theory of male deviance (namely, "phallic narcissism") to gun ownership. They argue that gun ownership sublimates subconscious distress resulting from obsessive fears of sexual inadequacy. Gun possession may indeed have interacted with his abnormal psychology in this way. But since legal gun possession may also serve to strengthen others' sense of personal responsibility and self-restraint, we can conclude nothing whatsoever about the *net social tendency* of gun possession, of illegal gun possession, or of legal gun possession. For example, Thomas Jefferson wrote to his nephew, Peter Carr, "A strong body makes the mind strong. As to the species of exercise, I advise the gun. While this gives a modest exercise to the body, it gives a boldness, enterprise and independence to the mind... let your gun, therefore, be the constant companion of your walks. Never think of taking a book with you." Anecdotes, however riveting or sad, show nothing whatsoever about the comparative net social effects of illegal versus legal gun possession among the population.

Establishing causation for rare events is a trickier business still. For example, the incidence of suicide in the US is approximately 11/100,000. It follows that 99.989 percent of the population do not commit suicide in any given year. Suicidologists have attempted to construct a model enabling reliable prediction of suicide – to no avail. Increasing model sensitivity yields too many false positives. Increasing model specificity yields too many false negatives (Jacobs, 1999). Honest researchers confess that predicting dangerousness to self is highly subjective and "clinical." Much is at stake in a wrong prognosis. Involuntarily committing someone on "dangerous-to-self" grounds not only costs a person her liberty, it stigmatizes her indefinitely.

Mechanism in Causal Accounts

An adequate account of "social causation" requires: (1) establishing the existence of a non-random, concomitant variation between a dependent variable (e.g. the homicide rate) and an independent variable (e.g. gun prevalence); and (2) a theory of mechanism explaining how the production of homicide tends to result from gun possession. How closely matched should the concomitant variation be in order to nominate it for candidacy as a causal relation: 90 percent? 50 percent? 20 percent? Even when the co-variance is "close enough" it remains to be determined – what causes what? Does violence cause people to acquire guns for protection or does acquiring guns make otherwise non-violent people marginally more likely to commit violent acts? Gun violence presupposes (loaded) gun possession. Suppose the preponderant majority of gun possessors never commit a violent act. If so, in what sense can (loaded) gun possession cause violence?

A theory of mechanism performs a crucial function: it gives direction to a causal relation by ruling out backward causation and by excluding spurious attributions of

causation. For example, suppose a study "found," by some criterion, "a significant relationship" between "increased risk of mortality" and "hospital admission." Further suppose that "hospitalization" was "independently associated" with a forty-eight times greater risk of mortality (compared to non-hospitalized patients). Should we claim straightaway that hospitalization "increases" forty-eight-fold a patient's risk of mortality? "Increases" insinuates causation. If so, shouldn't we vociferously challenge the assumption that a patient is ordinarily well advised to accept a medical recommendation of hospitalization?

In the United States, approximately 2.3 million deaths occur each year – the majority in hospitals. Typically, people are hospitalized because they are sufficiently ill to meet admission criteria or have symptoms that warrant careful study. Both factors are associated, by common sense, with an increased risk of mortality, quite apart from hospitalization. Thus hospitalization is a "marker" associated with the subpopulation at increased risk for mortality, not a cause of increased risk.

Mental Causation

A plausible theory of mental causation makes lethal violence the upshot of desire strength. Possession of a loaded handgun may play a causal role in the etiology of violence by (1) seeding the agent's motivational structure with a new, irresistible desire to inflict lethal injury; (2) strengthen an already-present desire to inflict injury sufficiently to overcome the agent's formerly effective inhibitory desires; or (3) weakening his otherwise effective inhibitory desires or some further combination (Mele, 1987). It is common sense that many of life's provocations stimulate an impulsive but transitory desire to inflict bodily harm. Because these desires are short-lived, albeit intense, most often they abate before causing an agent to inflict injury. However, if provocation and loaded-gun access coincide, the interactive effects with desire strength will tend to result in death or crippling injury.

Causation might proceed as follows. Joe Six-Pack acquires a handgun (and ammunition). Holding the loaded gun (intentionally) may render a provoked Joe Six-Pack unable to weaken his already-existing (or new-onset) lethal desire sufficiently to prevent his acting on it. The resulting motivational state may be such that Joe is unable to divert his attention from violence, say, by intentionally thinking of something else, for example, by vividly representing to himself the revolting physiological effects of gunshot on flesh, or the irreversible loss of his current way of life that reasonably would result from his pulling the trigger, and so on. Instead, he focuses exclusively on the favorable aspects of destroying what angers him. His will is overwhelmed. Without deliberation, he fires the gun. On this account, Joe Six-Pack's agency is destroyed. His abilities to access and to effectively employ his otherwise effective self-control techniques are undermined or overwhelmed by an irresistible desire. Joe becomes an impulsive automaton – as much a victim of gun possession as the one he shoots at.

However, the preceding causal account isn't yet plausible, nor is it easy to make it so. The irresistible desire to inflict crippling injury or death resulting in Joe's loss of self-control seemingly cuts off any further reference to Joe's intentions in explain-

ing what happened subsequent to the lethal desire's ascendancy to total dominance. It remains unexplained why Joe holds the gun by its grip rather than by its barrel or in some other way, why he places his finger inside its trigger guard rather than somewhere else, and finally, how it comes to pass that, of all the possible directions the gun might have been pointed, it was pointed at the victim precisely coincident with the gun's discharge.

In short, the "irresistible-desire-resulting-in-loss-of-control" account makes sense only when offered as a retrospective (self-serving?), psychological sketch. It makes less sense when offered as a plausible account of mental causation involving loss of intentional control. If the offender lost control at some point, we are deprived of making reference to the guiding force of his intentions after that, in which case it is hard to explain how things actually worked out as they did.

A refined version of mental causation might propose that the formation of the irresistible desire to inflict crippling injury or death by means of gun shot need not deprive Joe's intentions of a central role in producing what happens. On the amended account, Joe's loss of self-control is "focal," namely, loss of ability to access and to strengthen inhibitory desires sufficiently to counter the degree of strength that his lethal desire has acquired. The resulting lethal desire thus guides all the things he does subsequently. But he does them all intentionally, even if he acts contrary to his prior, all-things-considered, better judgment.

Such an account makes perfect sense. It is consistent with what the law calls a "hot blooded act" or "an akratic act." When an accused can present a convincing case that he killed in the heat of passion, or from weakness of will, pre-meditated murder is ruled out, manslaughter is the most that can be proved against him (waiving complications of felony-murder). However, neither law nor common sense thinks there is anything special about gun-access in the etiology of irresistible desires or weak-willed decisions to kill or inflict crippling injury.

The Paradox of Gun Control and Reasonable Policies

During the decade of the 1990s, domestic gun production totals varied from a low of 3 million (1992) to highs of 4.9, 5.1, and 4.3 million in 1993, 1994, and 1995 respectively. In 1996, production fell by 500,000. The Brady Law was proposed in 1992 and enacted on November 30, 1993. The so-called Assault Weapons Law was proposed in 1993 and enacted on September 13, 1994. In 1999, the Department of Justice published a study of the latter's criminological effects. It could not detect any because "the weapons banned by this legislation were used only rarely in gun crimes." However, the law had other effects that were clearly detectable. "Fueled by the preban speculative price boom, production of assault weapons surged in the months leading up to the ban. [Production] rose by more than 120 percent, from an estimated average of 91,000 guns annually between 1989 and 1993 to about 204,000 in 1994."

The paradox of gun control says that gun control laws whose announced goal is to restrict civilian access to specific types of guns and accessories ("assault-style" rifles and hi-capacity magazines) will stimulate production and increase

dissemination of the targeted items among civilians. A corollary says, in a mature gun market, where almost everyone who wants a gun probably owns several, exogenous factors (e.g., "reasonable" gun control) will stimulate demand more strongly than endogenous factors (e.g. product improvement or novelty). Thus the legislative proposals of gun controllers, no matter how "mild," are appropriated as advertisements by gun dealers.

Conclusion

When thinking about further gun-control measures in America, the following considerations should be kept in mind:

1 The civilian gun supply in America is very large.
2 A very large and growing gun supply is compatible with a sustained decline in the gun-violence rate.
3 Even "mild" gun-control proposals will stimulate gun sales.
4 Handgun ban proposals will strongly motivate supporters of strict gun control. They will likely fail to be enacted. They will strongly stimulate demand for items targeted by prohibition.
5 There is some evidence that concealed carry laws have a deterrent effect on criminal violence and generate beneficial externalities for non-carriers.
6 It is not reasonable to suppose that enacting additional legal restrictions on gun purchase and possession will reduce the homicide rate.
7 People who should not be trusted with firearms are, by current federal law, legally disabled from possessing guns and ammunition for a life-time.

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