

DEBATE

CAN HANDGUNS BE EFFECTIVELY REGULATED?

The FBI has recently reported that violent crime has increased for the second straight year across the nation. In particular, the FBI's report demonstrates that in major metropolitan areas, such as Philadelphia, homicides have increased by 6.7%.

In the midst of this upsurge in violent crime, Professors James B. Jacobs, of New York University, and David Kairys, of Temple University, reengage with America's long-running debate over the effectiveness of gun (specifically handgun) control regulation. Professor Jacobs initiates the debate by asking whether it is realistic to pursue a strategy of enhanced regulation of firearms in a country in which "there are 300 million firearms in civilian hands," and "the large majority of firearms used in crime . . . are either stolen or purchased on the black market." After providing a number of critiques of what he believes to be a shifting target set by pro-gun-control advocates, Professor Jacobs concludes that "[g]un control offers no magic bullet for reducing crime, suicide, or accidental deaths and injuries."

In contrast, Professor Kairys does not consider the current amount of handgun regulation to be nearly enough to satisfy what common sense should tell us is necessary to adequately ensure that handguns are not easily available to criminals and youth. He specifically notes that any emphasis on the "black market" in handguns overshadows the disturbing reality that "any person without a record can buy large quantities of cheap, easily concealed handguns and sell them to others indiscriminately, often without violating any law."

At a deeper level, both Professor Jacobs and Professor Kairys agree that the debate on handgun control "at its core is [related to] a personal, cultural, and political identification of guns with personal self-worth . . . , freedom, liberty, and . . . God and country." Whereas Professor Jacobs accepts this as a political reality and uses it as an anchor from which to engage in this discussion, Professor Kairys steadfastly disagrees: "The best hope for emerging from our disgraceful state of denial is to respectfully engage and challenge the cultural and political identification of guns with our nation's highest ideals and the deadly legacy of that identification as it is currently conceived."

OPENING STATEMENT

*What Can We Expect of Gun Control?*James B. Jacobs[†]

“Gun Control” is a topic that typically throws off more heat than light. Indeed, as an issue it functions symbolically, contributing to the “culture war.” Gun rights advocates and proponents of gun controls both stake out claims to the moral high ground. The former believe that the citizenry has a right and duty to be armed in defense of self and collectivity and that guns are good; the latter believe that guns are inherently evil, cause crime, homicide, suicide and accidents. Each side demonizes the other.

I do not wish to argue that guns are good or bad, or that a new country (created on a deserted island) would be better off with an armed or disarmed citizenry. My question is this: if guns are a problem in U.S. society today, what remedial policy options are available? This question forces us to specify the problem. In fact there are three possible problems: gun crime, gun suicide, and gun accidents. Gun crime seems to drive most proposals for gun control, although each year there are twice as many firearm suicides as homicides. Gun accidents are relatively few in number, and fatality rates (deaths per 100,000 population) have decreased over the twentieth century. In the limited space available here, I will predominantly focus on gun controls directed at gun crime, but it is important to keep in mind that some gun control proposals seem to be directed at the two other problems.

In my view, our policy options for addressing gun crime are sharply limited by certain facts: 1) there are 300 million firearms in civilian hands; 2) 40% of households have at least one firearm; 3) a large percentage of Americans, including elites, believes in a constitutional right to keep and bear arms, a belief that would not be shaken even by a Supreme Court decision to the contrary; and 4) most gun crime is committed by individuals who have criminal records or are significantly involved in crime, including violent gang behavior and drug trafficking.

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There are many types of gun control that range from imprisoning armed felons to imposing tort liability on manufacturers. The most politically popular type of gun control in the U.S. is the severe punishment of crimes committed with firearms. All Americans support severe sentences for firearms offenders, except for those who advocate reduced punishment and imprisonment across the board. Federal and state criminal codes already provide for long prison terms for armed felons. Many police departments and prosecutors' offices have special programs to identify, fast-track, convict, and assure long prison terms for armed felons. For at least the last decade, the U.S. Department of Justice has made enforcement of the federal "felon-in-possession" (of a firearm) law a top priority. Local police departments have launched initiatives to remove firearms from so-called "hot spots," locations where a disproportionate number of violent crime occurs. There is little, if any, political impediment to enforcing these laws and policies.

Tougher law enforcement action against those who commit crimes with guns is not what most gun control advocates seem to have in mind when they debate gun controls. Instead, they seem to believe that gun crime could be significantly reduced by *prohibiting or significantly restricting civilian (nonmilitary and nonpolice) access to firearms*. I disagree. Data show that there is no correlation, at the state or city levels, between firearms density (percentage of population owning firearms) and rate of gun crime. Even if there were, prohibiting or substantially restricting the extent of gun ownership of all firearms (300 million now in circulation) or, alternatively, just handguns (100 million now in circulation), is not a realistic option for the U.S. and serves only to energize gun owners and polarize the population.

There is no conceivable scenario whereby firearms prohibition could muster a majority (or supermajority if a constitutional amendment is necessary). The idea that gun crime in our inner cities (much of which takes place among drug dealers and gang members with significant criminal records) will be significantly reduced by taking guns away from ranchers, farmers, small town residents and suburbanites is, to say the least, a hard sell.

I have friends who, though they regard the current drug war as a disaster, welcome the idea of a war on firearms (meaning firearms owners). I urge them to think through the likely costs and benefits of firearms prohibition. They should look carefully at two previous prohibitions in American history: national alcohol prohibition (1919-1932), and the current prohibition of many mood- and mind-altering

drugs. Doesn't the history of those prohibitions lead to the conclusion that firearms prohibition would be a disaster?

Firearms prohibition would be harder to enforce than alcohol or drug prohibition. Firearms owners, unlike alcohol and drug users, do not need to replenish their supply constantly. A single purchase can last a lifetime. Indeed, several individuals (criminals) can share the same firearm. Admittedly, some alcohol and drug users are strongly motivated by physical or psychological addiction to purchase illegal drugs. However, gun ownership is also strongly motivated by anxiety about personal security, the ideological belief in the right to keep and bear arms, the enjoyment of hunting and target shooting (more Americans participate in target shooting than play tennis), and by criminal intent.

Just as millions of Americans continued drinking after national alcohol prohibition and millions continue to purchase and ingest illegal narcotics today, so would tens of millions of Americans refuse to turn in their guns. Is the country ready for an all-out enforcement drive against disobedient, but otherwise law-abiding, citizens who possess firearms illegally? Right now we devote massive resources to drug enforcement, including about one-fourth of our state prison cells. Whether this has reduced illicit drug use is debatable, but there is no question as to its devastating impact on individuals, families and communities.

Are we prepared to devote equivalent resources to enforcing a firearms or handgun prohibition? Are we ready to prosecute and punish tens of thousands of otherwise law-abiding individuals in order to prevent crime (and suicide?) committed by individuals who have already demonstrated their unwillingness to comply with gun laws as well as with homicide, assault, robbery and other criminal laws? Would district attorneys who have to stand for election aggressively prosecute otherwise law-abiding neighbors who refuse to turn in their guns? Would juries (unanimously) vote to convict? Surely there would be many states where law enforcement would be totally stymied. Even in states with pro-firearm-prohibition majorities, there would be counties where gun owners would be a majority or at least a vetoing minority (especially given the unanimous jury requirement).

Shouldn't we anticipate that, as with Prohibition and the current war on drugs, firearms prohibition would quickly spawn a flourishing black market? Black markets in firearms function efficiently in countries such as Japan, Britain, and Taiwan where there is no legal retailing of guns. If Congress were to consider seriously a firearms prohibi-

tion bill, gun sales would skyrocket as people positioned themselves for firearms scarcity. This is exactly what happened when “assault rifles” were banned in the mid-1990s. Under prohibition, firearms would continue to be produced in clandestine workshops and to be smuggled into the U.S. from abroad.

I know, of course, that gun control doesn’t only mean prohibition and that gun controllers often talk about better regulation. Typically, however, a particular regulatory strategy turns out to be just a “step.” Invariably, any successful gun control is followed by proposals for more controls. The 1994 Brady Law is a good example. The ink was hardly dry before gun control advocates put forward “Brady II,” a comprehensive proposal for mandatory licensing of gun owners and national registration of guns. This bill, which has been introduced in several Congresses, has never gotten out of committee. Some prominent gun controllers (e.g., sociology professor Amitai Etzioni and law professor Norval Morris) have criticized such regulatory “half-way measures” as inadequate and urged total “civilian” disarmament.

Gun control advocates (including New York City’s mayor, Michael Bloomberg) claim that a small number of federally licensed firearms dealers (known as FFLs) knowingly violate the law by selling guns to ineligible persons, some of whom are in the business of supplying guns to criminals. I agree that these criminal dealers should be shut down and punished. I support giving the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) more resources to audit, monitor and investigate retail firearms dealers. I would also support a ban on gun shows, which provide easy opportunities for the sale and purchase of stolen guns. However, it is important to point out that every study of where criminals get their guns finds that the large majority of firearms used in crime are not purchased from FFLs, but are either stolen or purchased on the black market (not surprising since individuals with a criminal record cannot legally purchase a firearm from an FFL). Thus, tightening up the legitimate market will do little to keep guns out of criminals’ hands. If guns can be fairly easily obtained on the black market in the Netherlands, Japan, Taiwan, and the United Kingdom, it is hard to believe that the U.S. can implement some regulatory strategy that will prevent criminals from obtaining firearms.

Gun control is hard to debate because the target keeps shifting. No matter which form of gun control I focus on, a pro-gun-control advocate will inevitably say, “That’s not the control I favor; what about XYZ (some other control)?” For example, some gun controllers favor policy initiatives like trigger locks, safe-storage laws, and smart-gun

technology. These proposals are aimed at firearms accidents rather than gun crime. There is nothing wrong with that, but the number of accidental firearms deaths and injuries in the U.S. is quite small, approximately 800 accidental firearms deaths per year—compared, for example, with approximately 4,000 deaths by drowning. Additionally, the effectiveness of these safety proposals is by no means assured. They would be difficult to enforce and irresponsible firearms owners (i.e., the ones most likely to have accidents) would be the least likely to comply.

Gun control offers no magic bullet for reducing crime, suicide, or accidental deaths and injuries. More than a crime control agenda, it functions as a symbol that polarizes society. In the midst of heated debate and conflict, it is important for gun controllers to remember that gun owners are not the enemy.

REBUTTAL

*Challenging the Normalcy of Handgun Violence*David Kairys[†]

The most prominent arguments against gun regulation have been made by John Lott, whose book title, *More Guns, Less Crime* (1998), says it all, and by the ubiquitous Mary Rosh, a phony identity Lott used to defend his widely discredited analyses. But Professor Jacobs is not John Lott, and this Debate need not waste bytes on the more-guns-cure-all approach. Professor Jacobs presents reasoned, contextual arguments in support of his conclusion that regulation of guns beyond measures more or less already in place, though well-intentioned, cannot succeed. His challenge to gun regulation is not a matter of principle or NRA doctrine, but practical: gun regulation cannot “significantly reduce” deaths and injuries.

However, Professor Jacobs ignores or underplays the reality and significance of the easy availability of handguns on urban streets and, increasingly, on the streets of many suburban and rural communities—which is enabled by the lack of regulation and the surprisingly legal channeling of handguns to criminals and youth. The terrible toll handgun violence exacts on individuals, families, communities and cities is traceable to the regularly ignored, essentially unregulated, handgun marketing system. Professor Jacobs makes some good points—some handgun regulation proposals that have gotten widespread attention seem more feel-good than effective, and there is no easy fix. But much can and should be done. The main problem is what I have called the “regrettable normalcy” with which we regularly approach handgun violence, the pervasive, numbing acceptance that fifty handgun deaths a day is a normal or inevitable aspect of life in the U.S.A.

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Easy Availability and Regulation

Some facets of the handgun marketing system that contribute to easy availability are well known: gun shows, mail order and online sales, and straw purchases. What is not commonly understood is that, in most states, within the law, anyone who does not have a record can go to a licensed gun store, legally buy as many handguns as he or she wants, and walk out the door with them. The only limit is the limit on the buyer's credit card.

In certain circumstances, a dealer is required to send a notice of multiple purchases by one person to the ATF. Professor Jacobs refers to this in his book as "regulat[ion]" of multiple purchases but does not subject it to the rigorous analysis he applies to proposed gun regulations not already in place. This reporting requirement has little significance because the purchase is not illegal and the purchaser has no legal duty to report or explain what he or she does with all those handguns.

Nor are there meaningful limits on resale of handguns. Under federal law and the law of most states, a gun owner can sell guns to someone else without any record check. Purchases from a nondealer, common at gun shows and on the streets, are not subject to a record check because the Brady Act only applies to licensed dealers. Convicted felons and underage youth are not allowed to buy or possess handguns, but the marketing system up to that point is largely legal. The person who sells a handgun to a person with a felony conviction or who is underage has no meaningful, enforceable responsibility. Nor are the identities of owners of handguns, or the persons to whom they transfer ownership, registered or maintained by any governmental entity unless state law so provides, and most do not.

So any person without a record can buy large quantities of cheap, easily concealed handguns and sell them to others indiscriminately, often without violating any law and usually without having to worry much about getting arrested, prosecuted, or convicted. Though the handgun debate is commonly cast in terms of "illegal guns" and what Professor Jacobs refers to as a "black market," one of the core problems resides in what continues to be legal and unregulated.

The level of multiple sales by licensed dealers is high, which is why limiting purchases to one per month, or twelve each year, is considered a reform. Criminals and youth gain access to handguns through distribution channels that start with a relatively small number of licensed dealers. The ATF has found that only 1% of the dealers sell

57% of the guns involved in crime. The manufacturers could easily monitor the distributors and dealers who sell their products; the ATF provides them data on a daily basis.

Professor Jacobs avoids the essentially unregulated market structure by the true but not germane statement that “the large majority of firearms used in crime are not purchased from [licensed dealers], but are either stolen or purchased on the black market.” The criminal usually gets the handgun after at least one prior owner, often a straw purchaser, got it from the dealer and passed it on in the “black” (but largely legal) market. ATF studies show a short “time-to-crime,” the period between the initial purchase from a dealer—the last transaction in the chain that existing regulations require to be recorded—and the crime. Few handguns used in crimes have been stolen, which is not surprising since it is so easy to get them new, right out of the box.

The recent Virginia Tech shootings have drawn attention to the inadequacies of the database used for Brady Act record checks. The more important, but usually ignored, truth is that it is easy for mentally deranged people contemplating mass murder to get handguns. The Virginia Tech shooter could have bought his semiautomatic handguns without any record check at the frequent gun shows in Virginia or from easily located nondealers.

A variety of regulatory measures are available that would significantly limit the easy access to handguns currently extended to criminals and youth and would save lives. Some have been tried and are supported by reputable studies. Many can be implemented without interfering with rifles and shotguns, hunting, target shooting, or reasonable self-defense and handgun ownership rights. They are usually more effective if done nationally, since local regulations are often undermined by a lack of regulation next door.

We should register handguns and license handgun owners. All sales, transfers, and thefts of handguns should be mandatorily reported, maintained in government records, and subject to the Brady Act record check. There should be strong, specific “straw purchase” laws. We should limit the number of handguns purchased. The large urban areas of the nation, where unregulated handgun markets have taken such a terrible toll, should have the power to regulate handguns within their borders.

Handgun prohibition, which Professor Jacobs addresses at length, is not on my list of national reforms, although strong arguments in favor of it have been made by the Violence Policy Center and others. Measures that create appropriate records and responsibilities con-

nected to purchase and ownership of handguns are more likely to be effective and politically viable. For example, there should be a duty to report any transfer or theft of a handgun, and some (less than full) criminal and civil responsibility for the harm subsequently done by that handgun if the transfer or theft is not timely reported. This addresses both new handguns and the huge stock of existing handguns. It also has the best chance of overcoming the longstanding resistance to regulation, which I agree with Professor Jacobs is cultural and political and should be respected. One difference between us is that I see such resistance as a barrier to reform that should be engaged and challenged, rather than a reason to reject regulation.

Challenging the Normalcy of Handgun Violence

Why is the virtually unregulated market in handguns that provides easy availability to criminals and youth allowed to thrive when the consequences are clear day after day, gloomy statistic after gloomy statistic?

The gun lobby, which includes the NRA, the gun industry, and other gun-focused groups, is well-funded and very influential, especially with politicians. They have had their way with Congress as well as with most state legislatures. After Bobby Kennedy was killed with a small handgun in 1968, Congress was moved to ban “Saturday night specials,” but added, at the last minute, an exemption for Saturday night specials manufactured in the United States. In 1976, Congress limited the jurisdiction of the Consumer Products Safety Commission (CPSC) to exclude anything to do with guns or ammunition, so the agency cannot entertain a complaint that, for example, defective ammunition is blowing up in the hands of hunters. In the early 1990s, Congress reacted to the leading public health studies showing the danger of handguns in the home by barring the Center for Disease Control (CDC), which had funded the studies, from any research on public health “to advocate or promote gun control.” Recently, Congress has let the ban on assault weapons expire; restricted the ATF from providing important data and information on guns used in crime to the public, scholars, or law enforcement; and granted a broad immunity to the gun industry in response to the city handgun lawsuits. The gun industry is exempt from the rules that apply to everyone else.

The gun lobby is well-funded and powerful, but there are many well-funded, powerful lobbies that do not succeed to this extent. Lead

paint and PCBs were banned despite rich, powerful lobbies representing those industries.

Something else is going on, and at its core is a personal, cultural, and political identification of guns with personal self-worth and with our highest ideals—freedom, liberty and, for some, God and country. Many Americans think and feel on a gut level that any attempt to put limits on guns or absolute Second Amendment rights is a terrible threat. Their thinking is similar to that of many more Americans about the protection of freedom of speech in the First Amendment. So I can disagree with what you say but defend your right to say it, even if what you say is deplorable or disgusting to me. One can deplore what some do with guns, but defend the unregulated right to them. There are, of course, differences, but the logic is similar and embodies a very American conception of rights.

The most extreme form of this identification of guns with freedom, the NRA version, leads to opposition to restrictions on Teflon-coated bullets, called “cop-killers” because they can pierce bullet-proof vests. Less extreme versions have more widespread and significant effects on American society and politics, contributing, for example, to the gun lobby’s success with the strategy of arguing that all that is needed is enforcement of existing laws. Gun identification in particular has been effectively tapped in recent times when combined with negative messages about government, cities, and urban-dwellers that often have a racial dimension.

In communities that are deprived and struggling, the easy availability of handguns has created a daily disaster, fed false stereotypes (only a small proportion of black young men shoot people), provided another rationalization for the failure to deal with poverty or discrimination, and sapped efforts to reform and regain hope. Though the casualty numbers are usually lower in wealthier and whiter communities and rationalizations for denial are as easy to come by as handguns, the current level of handgun violence undermines the social and moral fabric of American society.

The best hope for emerging from our disgraceful state of denial is to respectfully engage and challenge the cultural and political identification of guns with our nation’s highest ideals and the deadly legacy of that identification as it is currently conceived. It will take insightful and courageous leadership. Unregulated handgun markets have been imposed on urban and minority communities and have continuing broad support almost exclusively in rural areas. Large cities facing declining job opportunities, losses in population and tax revenues, and rising levels of deprivation are being forced to accommodate eas-

ily available handguns, which may well draw considerable opposition even in rural areas if explained and debated openly and honestly. In any event, denial and political expediency have reigned too long. The loss of life, the economic and social costs, and the undermining of safety and the quality of life in urban America are unacceptable.

CLOSING STATEMENT

James B. Jacobs

Professor Kairys offers several proposals for preventing criminals and the “mentally deranged” from obtaining firearms and suggests one strategy for preventing firearms accidents. A brief examination of these proposals demonstrates the difficulties and costs of implementing new gun controls, and casts doubt on the likelihood that they could reduce gun crime or gun accidents.

One Gun per Month

I suppose that very few law-abiding citizens (with the important exception of collectors) require more than twelve firearms purchases per year or more than one purchase per month. However, I doubt that this type of gun control would produce any discernible reductions in gun crimes.

What is the problem for which limiting firearms (handgun) purchasers to one per month is the solution? While not spelled out in Professor Kairys’ essay, that problem must be illegal firearms trafficking. Permitting a single purchaser to buy an unlimited number of firearms from a single retailer facilitates the business of selling firearms to criminals who themselves cannot legally purchase firearms from a licensed dealer. The logic of the one-gun-per-month strategy is, if purchasers were limited to twelve guns per year, traffickers would have fewer firearms to sell to criminals, fewer criminals would obtain guns, and fewer gun crimes would occur.

The proposal to limit firearms purchasers to one gun per month assumes that large-volume traffickers are supplying the criminal market. The studies I’ve seen find that most traffickers deal in very small quantities of firearms, usually engaging in intermittent sales. The criminal market itself probably doesn’t generate a huge demand for guns. Unlike drugs, which users need to replace constantly, criminals do not need to replace their guns often. A single gun could last for years, even for an entire criminal career.

If there are high-volume gun traffickers who aim to supply the illegal market, is it likely that they themselves purchase firearms in high volume from the same dealer? That would call attention to themselves and increase the risk of a law enforcement investigation. It is more likely that professional traffickers would direct associates to pur-

chase guns in small quantities from a large number of different FFLs. Indeed, isn't it even more likely that they would acquire their stock through thefts and purchases on the secondary (used guns) market? Certainly, they could shift to these acquisition strategies if a one-gunner-month limitation interfered with their ability to obtain sufficient stock.

Concocting a regulatory scheme to prevent criminals from obtaining firearms in a society in which 300 million firearms are already held by private individuals is like trying to come up with a scheme to prevent alcoholics from purchasing alcohol in a society saturated with alcohol outlets. If comprehensive criminalization of drug trafficking and mass imprisonment of drug sellers and possessors cannot prevent illicit drug users from regularly replenishing their drugs, how likely is it that criminals could be prevented from obtaining firearms? Even in prohibitionist Britain and Japan criminals are able to obtain guns.

Current federal law requires FFLs to inform the ATF of the identity of any person who purchases multiple (more than one) firearms within a five-day period. Failure to notify the ATF would put the FFL's license at risk. It is not clear whether Professor Kairys believes that there has been widespread FFL noncompliance with this law or whether he is more skeptical of the ATF's willingness and competence to investigate multiple sales. If so, I don't know the facts on which he bases that skepticism. But if the regulator won't or can't administer and enforce current law, I don't see the point of proposing more regulations.

Register Handguns

Professor Kairys believes that if handguns had to be registered, criminals could not obtain them. Presumably, criminals would not come forward to register, owners would not dare sell their registered firearms to criminals, and criminals would not be able to obtain guns on the black market.

Americans will not register their firearms as long as there is any possibility that firearms could be banned or confiscated. They are well aware that influential U.S. elites believe that the Second Amendment guarantees no individual right to keep and bear arms and prefer a society where only the police and limited others are "permitted" to possess firearms. The British example is indelibly imprinted on the minds of American gun owners. After the 1996 Dunblane massacre, Britain was able to implement a nationwide firearms confiscation be-

cause there was a preexisting registration system that provided information on the whereabouts of all firearms.

A program to register the 100 million handguns now in private hands would require a huge enforcement apparatus, perhaps something like the bureaucracy needed to administer motor vehicle registration. It would have to anticipate massive noncompliance and civil disobedience. In the mid-1990s, a number of states enacted laws requiring the registration of assault weapons. Estimates indicate that no jurisdiction was able to achieve more than 10% compliance. Are we ready to start jailing or heavily fining handgun registration resisters? And even if we are, do you really believe that criminals would be unable to obtain handguns on the black market?

License Handgun Owners

Would licensing handgun owners be a viable strategy for reducing gun crime and/or suicides and accidents? If, as I assume, a criminal record would make one ineligible to obtain a handgun license, most criminals would not apply. They would hardly be deterred by a law making it a crime to possess an unlicensed firearm; they are not now deterred by federal and state laws making it a felony punishable by a maximum ten-year prison term for possessing a firearm after having previously been convicted of a felony.

Many law-abiding gun owners also would not apply for a license fearing that it would be used to construct a list which, at some future point, would facilitate prohibition and confiscation. Enforcing a controversial licensing scheme would be no small challenge. The U.S. Supreme Court's decision in *Printz v. United States*, 521 U.S. 898 (1997) (holding that Congress cannot force state and local officials to conduct criminal background checks for firearms purchasers), makes it certain that Congress could not require state and local officials to do the enforcing. So, federal administration and enforcement would be required (imagine the size of such a program: suppose we needed just half the personnel required to administer motor vehicles registration). Before endorsing such a scheme, consider the difficulties we currently face in enforcing the federal immigration laws.

Preventing Mentally Ill Persons from Obtaining Handguns

Professor Kairys says that the Virginia Tech massacre (perpetrated by a mentally ill person) shows that the Brady background check sys-

tem isn't working effectively, but he doesn't propose a remedy. Any remedial proposal would have to recognize that, thankfully, incidents like the Virginia Tech massacre are rare and that their perpetrators frequently commit suicide in the course of the crime. Such individuals are practically impossible to deter.

The federal Brady Law prohibits a person who has ever been involuntarily committed to a mental hospital from ever purchasing a firearm. It is a federal crime to knowingly sell a firearm to such a person.

It's not the NRA that prevents the successful creation of an FBI database of names of persons whose mental illnesses may make them unreliable gun possessors. The mental health community adamantly opposes sending to the FBI (National Instant Check) database the names of those involuntarily committed to mental hospitals, much less the names of those who commit themselves voluntarily and those in outpatient mental health treatment programs. They argue that transmitting such information to the FBI would deter people from seeking help and, ironically, they fear the misuse of such lists (*cf.* gun registration). Moreover, of course, many potential deranged killers have never been involuntarily hospitalized.

Strong Anti-Straw-Purchaser Laws

Professor Kairys advocates strong anti-straw-purchaser laws. What does that mean? Would he criminalize a firearms purchase by a person who intends to transfer the firearm to someone else? If so, that would make it a crime to buy a shotgun, rifle or handgun as a gift (what if the owner transferred the firearm a year or two later?). I suppose that wouldn't be so bad; the gift giver could give the gift recipient a gift certificate or cash instead. But it is hard to see what such a law would accomplish.

More likely, Professor Kairys favors criminalizing the purchaser who intends to transfer the firearm to a person he knows is ineligible to purchase or possess a firearm. Of course, that it is already a federal felony. It is also a crime to conspire to transfer a firearm to an ineligible person. Perhaps Professor Kairys's idea is to expand the net of criminal liability to the phase of the transaction after purchase but before transfer. I have no problem with that, but don't see how it would add to deterrence or prevention.

Give the Consumer Product Safety Commission Authority To Regulate Firearms

This proposal is directed at accidental firearms injuries caused by defective firearms and ammunition. Is this really a problem? Accidental firearms accidents have been decreasing for decades. Nearly all of these accidents involve reckless and negligent handling of the firearm, not a defective product. In the event of an accident caused by an exploding bullet or weapon, the injured person can, under current law, bring a tort suit against the manufacturer. It is unclear what problem could be redressed by more Consumer Products Safety Commission regulation.

CLOSING STATEMENT

David Kairys

In many poor, mostly urban neighborhoods, it is easier for a young man or woman to get a handgun than an up-to-date school textbook or a regular job. For the past few decades, we have seemed content to do little or nothing about poverty. Professor Jacobs seems to say that we also have no alternative but to continue to sprinkle handguns on the most deprived and desperate among us in those and other communities. He employs a range of arguments: proposed regulations won't work, won't solve all or enough of the problem, will cause more problems, aren't politically viable, or cannot garner compliance. Mostly the message is Reaganesque—government action to help those in need or to remedy social problems may feel good but won't improve anything and usually makes things worse. Where that argument fails because reputable studies and common sense support some proposed regulations, the response is a simple declaration: Americans will not register their firearms.

Many Americans have registered their firearms, and a study done by the Johns Hopkins Bloomberg School of Public Health's Center for Injury Research and Policy (available with other important studies and information on their Center for Gun Policy and Research website, <http://www.jhsph.edu/gunpolicy/>) supports the effectiveness of registration and licensing. In cities in states without registration or licensing requirements, 84% of guns used in crimes were initially bought from a licensed dealer within the state; in contrast, in cities in states with registration and licensing systems, only 34% of guns used in crimes were initially bought from in-state licensed dealers.

What if registration and licensing were nationally required, along with record checks for all transfers; appropriate criminal and civil responsibility for violation of registration, licensing, transfer or record-check requirements; and some appropriate limit on the number of handgun purchases? Handgun violence would not disappear, but there is every reason to believe that it would be significantly reduced, and investigation of crimes involving handguns would surely be easier. This could be done without authorizing or implementing searches for some or all of the infractions. Everyone would know that if a handgun used in a crime once belonged to him or her, he or she could be prosecuted or face civil liability for failure to register or to report the transfer or theft of the handgun.

Professor Jacobs overplays the effectiveness of existing regulations while underplaying the effectiveness of proposed ones. He emphasizes, again, the existing requirement that licensed dealers report to the ATF purchases of more than one gun within five days, and suggests that I am challenging the ATF's "willingness and competence" to do their jobs. This misconceives my critique. No report is required if the purchaser buys a second handgun six days after the first, or buys one every six days. So a purchaser who has access to a calendar and can count to six can buy sixty handguns a year from the same licensed dealer—and sixty more from additional licensed dealers—without any dealer having any duty to report the sales to the ATF.

Most basically, however, the regulation does not restrict multiple purchases or render them illegal, no matter the number purchased. The purchaser can buy all sixty—or any number—on one day. A report would be filed with the ATF, but the purchaser legally owns those handguns, can legally resell them without doing a Brady Act check or keeping any records, and has no obligation to explain what he does with them to the ATF or anybody else.

This leaves the ATF with a nearly impossible task. Licensed dealers regularly tell multiple purchasers to say they are "collectors" if the ATF calls or knocks on the door, and that is usually the end of the matter. The ATF can focus on the higher-quantity purchasers, but there are a lot of them, and the ATF is left with surveillance or complicated stings to try to catch the multiple purchaser doing something illegal with handguns he legally owns and can legally resell. This takes a great deal of time and resources, and the evidence required is not easy to obtain. For example, if the ATF observes the multiple purchaser reselling to someone they determine is a felon, they still need proof that he knew the buyer was a felon.

If one is critiquing the effectiveness of regulations, this existing one—billed as a regulation of multiple purchases—seems a farce.

Further, straw purchasing (buying a firearm for someone else or with the intent to resell) is commonly discussed as if it were illegal, but generally it is not. Law enforcement is usually left with prosecutions for offenses they regularly call straw purchasing but are actually for lying on a government form. Prosecutions are often unsuccessful, because, for example, the "lie" often isn't a lie. One can answer, truthfully, "yes" to the common question that asks whether one is the actual purchaser, while also having the intent to resell immediately or later. A purchaser should be required to state at the time of purchase whether and to whom he intends to transfer ownership of a handgun, there should be a Brady Act record check on the transferee, and the

transfer should be mandatorily reported, record-checked, and maintained in government records. Buying with the unrevealed intent to transfer within a specified time period should be an offense, and the quantities and types of handguns purchased and subsequent transfers should be evidence of intent.

We license and register our marriages, our cars, our cats and dogs. Why wouldn't we keep track of a device that is designed to kill and that does such harm? Contrary to Professor Jacobs's unequivocal declaration, most Americans support registration and licensing of handguns. In polls, general questions about more gun control regularly split the population about evenly pro and con. But specific questions about registration and licensing of handguns regularly draw the support of about two-thirds to three-quarters of Americans, and of a majority of gun owners.

The arguments against regulation have lasting credence only because the gun lobby can tap into that moderate version of the identification of guns with freedom, which can make any regulation appear deeply threatening to many people. This is the basic problem, not a good reason to conclude that we should continue to provide criminals and youth easy access to handguns.

I have kept a rough tab of the handgun toll in the Philadelphia area as I have written my sections of this Debate in the late summer and early fall of 2007. Philadelphia, like many other large cities, is having a particularly bad time with handguns. Deaths and injuries are up the last two years, averaging about one death and five nonfatal injuries each day. We are right on that average as I write. Several of the shootings seem drug- or gang-related; some are insults and fights among teenagers that got out of hand; others include a conflict between former lovers, a bus driver and passenger caught in the crossfire, a three-year-old boy apparently hit by a stray bullet. Not long ago, another boy who has come to symbolize the daily tragedies of so many, ten-year-old Faheem Thomas-Childs, was killed by a stray bullet as he walked to his elementary school. I don't feel comfortable leaving them out of the mix of arguments, logic and studies that consumes most of this and the public debate, and the stories of real people killed or maimed are probably the best antidote for the dismal state of denial. Something can be done about it if we respectfully and concretely engage and challenge, and outvote, the notion that all regulation of handguns poses a threat to gun ownership or self-defense. We should appeal to shared values, and emphasize the terrible loss of life and limb, as well as the loss of the peace and safety of

our public places, that unregulated handgun markets impose on many communities and on the nation. Regulatory schemes are available that take gun ownership seriously and basically require individual responsibility by handgun owners to protect the public from one of the greatest threats to urban public health over the last several decades.

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