

The "Sporting Purpose" Issue in Gun-Control Policy

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In the context of gun-control policy, what does "sporting purpose" mean? Unfortunately, the term is ubiquitous but nowhere defined; its meaning must be divined from the legislative and enforcement debates. While the history of this notion in 20th-century gun control is itself very interesting, let's just take the most recent example: on February 28, 1994, the ATF reclassified certain 12-gauge shotguns as "destructive devices" on the basis of the following statutory provision (Section 5845(f)(2), Chapter 53, Title 26) of the United States Code:

" '[D]estructive device' means . . . any type of weapon . . . which will . . . expel a projectile . . . , the barrel or barrels of which have a bore of more than one-half inch in diameter, except a shotgun . . . which the Secretary or his delegate finds is generally recognized as particularly suitable for sporting purposes"

The archetypal "destructive device" this legislation meant originally to control was on the order of a grenade launcher or artillery piece. But the barrel of a 12-gauge shotgun, at .60 caliber, happens to be over half an inch in diameter. Hence, the explicit exemption for shotguns. However, this exemption leaves a discretionary loophole: it is limited to shotguns which the Secretary or his delegate finds is generally recognized as particularly suitable for sporting purposes. This provision evidently gives the Secretary of the Treasury (who oversees the ATF) the authority to add certain "non-sporting" firearms to the bin of banned weapons.

The express criterion for exemption is "sporting purpose." But what precisely is the standard for this privileged exemption? While the Secretary's discretionary judgment may legally be sufficient, the standard for guiding his appraisal of "suitability for sporting purposes" is whether a gun is generally recognized as such. But by what standard do we judge general recognition? This standard is nowhere defined. But the operative standard comes to this: the two most popular sporting purposes, hunting and target shooting, are evidently taken to satisfy the requirement.

Unfortunately, this statutory language governing "destructive devices" reflects the sum total specification of the "sporting purpose" standard available in federal law, as an internal ATF memorandum on the recent shotgun reclassification attests:

"This ruling represents a small step in imposing rational controls over the non-sporting assault-type weapons addressed in the Feinstein bill. With the exception of these large bore shotguns. There is currently no sporting purpose test in existing federal law governing the types of firearms that can be manufactured and sold commercially. [But] Feinstein's bill would ban . . . these shotguns as well as a host of other rifles and handguns that also provide tremendous firepower, while serving no legitimate sporting purpose."

(Tartaro, 1994, emphasis mine.)

In short, the ATF has the authority to ban only large bore shotguns; a ban on rifles and handguns which serve "no legitimate sporting purpose" must be effected by new legislation, such as the Feinstein bill. New legislation must now either beg the question of what constitutes "legitimate" sporting purpose or else clearly define a standard (which, of course, it does not do). But we see here a clue to the ulterior purpose of the de facto "sporting purpose" standard: to ban firearms that "provide tremendous firepower, while serving no legitimate sporting purpose." The targeted firearms are advisedly combat weapons that are currently legal to own. One combat weapon ban, the Schumer bill (HR 3527), is entitled (in part) the "Recreational Firearms Protection Act." By what principle of "legitimacy" or "recreational" utility are firearms nominated for such patronizing protection by our government? To paraphrase Uncle Remus, "The tar baby, he don't say nuthin."

The tacit hypothesis here is this: If combat firearms serve no "legitimate" sporting purpose, they may or should be banned.

I pose two problems for the "sporting purpose" hypothesis: (I) The hypothesis presupposes without argument that it is a proper function of government to prescribe "legitimate" leisure; such unprincipled and therefore arbitrary authority is politically pernicious, a threat to all socially harmless leisure, not to say morally controversial leisure. Hunting, as a so-called "blood sport," is morally controversial in many quarters of our society, but its tools as such are implicitly protected under the prevailing "sporting purpose" standard. With an essentially undefined and therefore arbitrary standard of "legitimate sporting purpose," just how long will the equally deadly tools of the recreational hunter or target shooter stay the ban? Be that as it may, (II) the assumption of this hypothesis is in any case demonstrably false _ namely, the assumption that combat firearms serve no "legitimate" sporting purpose.

Problem I

The "sporting purpose" hypothesis presupposes that government has the authority to judge what counts as "legitimate" leisure or sport and the power to curtail leisure activities which it deems illegitimate. The "Recreational Firearms Protection Act" decidedly does not protect all forms of firearms recreation, such as collecting and recreating with combat firearms.

This arrogation of authority is tantamount to legislating ethics in the discretionary realm of leisure, where our modes of creating meaningful lives are presumably innocent until proven guilty of actionable harm to others or to society. This arrogation of authority is pernicious because it offers no principled rationale or limitations and thereby threatens the freedom of moral choice at the heart of all leisure pursuits, not just those involving firearms.

We must distinguish here between two categorically different grounds for coercive limitations on liberty _ either for outlawing an activity itself (like gambling) or for outlawing the means for pursuing an activity (like child pornography or hard drugs). Two categorically different grounds for limiting liberty are: (1) moral disapproval and (2) demonstrable social harm. They are hardly on a par.

Of these, in our system of criminal justice, demonstrable social harm is presumably a necessary condition for criminalization: by this standard, not even all uncontroversial moral wrongs are proscribed by criminal law: for example, many forms of lying or promise-breaking are, at best, grounds for civil tort action. The burden of proof, then, is either to demonstrate serious harm, irrespective of moral disapproval, or else to produce a principled rationale for why certain activities which are morally controversial but not in themselves harmful should be criminalized. Moral disapproval by itself is no basis for criminalization, absent some further discriminatory principle that answers the perennial questions for legislating morality: What or whose standard of moral opprobrium shall prevail and be enforced by law in morally controversial cases? And by what rationale or principle?

One principle for prohibiting activities that may be morally controversial but that in themselves are not

harmful turns on the distinction between distributive and aggregative harms. Distributively harmful activity is such that serious harm or social cost attaches to each and every individual instance of the activity in itself. An example is murder, each act of which is harmful. Aggregatively harmful activity is such that harm does not accrue to each and every individual enjoyment of the activity in itself; rather, because some people's activity is harmful, serious social harm results in the aggregate. An example is the use of motor vehicles, which some people drive recklessly.

As a case in point, the civilian ownership of firearms is aggregatively rather than distributively harmful: merely owning a firearm produces no harm in itself; but a small minority who abuse firearms generate serious aggregative harm: the annual size of the offending minority happens to be small indeed _ less than 1/100th of one percent of the law-abiding gun-owning public¹ _ although the harm they do is serious. A prominent social philosopher puts the consequent dilemma in perspective:

"If the state prohibits [responsible and law-abiding] persons from possessing handguns [say, or firearms "not generally recognized as particularly suitable to sporting purposes"], it must tell them, in effect, that they cannot do something which is harmless, because others cannot be trusted to do the same thing without causing grievous harm." (Feinberg, 1984, p. 194).

On this view, the justification for gun bans (which disenfranchise a vast majority in order to try to affect a minuscule minority) must show at least two things: that the harms outweigh the benefits and that the prohibition in question will in fact redress the balance of harm over benefit. Both are problematic, particularly the latter: that disarming the law-abiding majority will in any wise affect the criminal minority (Polsby, 1993). But this is one proper function of government, balancing individual and social benefits and harms for the protection of the commonweal. If it is also a proper function of government to judge the "legitimacy" of leisure on moralistic grounds, absent a showing of harm, the standard of "legitimacy" must be specified; in the case of "legitimate" sporting purpose, the standard remains unprincipled and, thus, arbitrary.

The invocation of "sporting purpose" is also problematic because it presupposes without argument that "sporting purpose" should carry special privileged weight in the balancing of harms and benefits. I argue, on the contrary, that the weightiest interest in the balance scale of benefits is not the recreational value of firearms, but rather their value for the protection of innocent life against criminal threat.

The protective value of firearms has two dimensions: One is their defensive utility, the metric for which is the actuarial rate at which armed civilians successfully defend against criminal threats _ most recently estimated at over two million cases a year (Kleck, 1993). The other is the incommensurable residual value of this option in self-defense itself, regardless of the actuarial utility of having a gun or ever having to use it. This residual value includes our claim right to be allowed effective means of self-defense (namely, firearms), which is directly derivative from our paramount right to self-preservation.

Actuarially, a firearm happens to be one's best option in the gravest extreme² when, by the universal standard of justifiable homicide, an innocent person is in imminent and otherwise unavoidable danger of death or grave bodily harm. Removing this option imposes a severe limitation on the exercise of our uncontroversial right to self-defense.

Also included in the residual value of firearms for protection is our putative obligation to defend innocent life in the gravest extreme: many hold that this is not only a right but a moral and civic duty. In his article "A Nation of Cowards" (1993), Jeffrey Snyder put the matter forcefully:

"Although difficult for modern man to fathom, it was once widely believed that life was a gift from God, that not to defend that life when offered violence was to hold God's gift in contempt, to be a coward and to breach one's duty to one's community."

In addition to the distributive protective value of firearms, there are two aggregative benefits of armed citizens, a social value and a political value. Their social value consists in their role in the reduction of

criminal violence or social disorder by either deterrence or interdiction. Their political value consists in their role as a defense or deterrent against government violation of the social compact. These functions may be arguable, but they must be fairly accounted and weighed in the balance scales on their merits, not summarily ignored.

Now, the protective, social and political values of civilian firearms are all predicated on their utility for combat. Pace the more radical pacifists, combat is not inherently bad: combat can be defensive as well as aggressive and combat is therefore justifiable, and arguably obligatory, in defense of innocent life. There is a utopian concept that civil society must eschew the justifiable use of deadly force (or deadly weapons) in the hopes of thereby banishing violence; but a utopian mandate to eschew the moral right, nevermind the moral obligation, to defend innocent life belies the very value of human life itself. In his classic essay "Utopia and Violence," Karl Popper put the matter plainly:

". . . we must not allow the distinction between attack and defense to become blurred. We must insist upon this distinction, and support and develop social institutions . . . whose function it is to discriminate between aggression and resistance to aggression." (Popper, 1965)

As for delegating the obligation for the defense of innocent life to others, such as the police, Jeffrey Snyder poses another moral challenge:

"How can you rightfully ask another human being to risk his life to protect yours, when you will assume no responsibility yourself?" (Snyder, 1993)

". . . while we wait for laws to restrain men, we will be condemned to wonder why criminals have no respect for our lives, when we ourselves do not value our lives enough to assume the responsibility to defend them." (Snyder, 1994)

These are serious moral issues to weigh in the balance scales before dismissing combat firearms for serving "no legitimate sporting purpose."

Indeed, morally compelling (never mind "legitimate") interests in defensive combat place top priority on precisely those firearms that are "generally recognized as particularly suitable" for combat _ not merely sporting _ purposes.

The prevailing notion of "sporting purpose" in the gun-control debate is problematic in three respects: (1) because it assumes without argument that the government of a pluralistic society may legislate "legitimate" leisure absent demonstrable social harm, (2) because the privileging of "sporting purpose" firearms ignores the preeminent protective, social and political values of combat firearms and (3) because it is gratuitous if not disingenuous for the following reason: if "sporting purpose" or recreational value were the only interest in the balance scale to counterweigh the aggregative harms of civilian-owned firearms, gun bans would hardly be as controversial as they are today. Suppose, unrealistically (Polsby, 1994), that all combat firearms were effectively removed from both civilian and criminal hands. Hunting and sanitized target firearms would then become the tools of criminal violence: How long would their "sporting purpose" stay their banishment? The inexorable logic of selective gun bans is that they must evolve into total bans: in the end, "sporting purpose" would be revealed to be the gratuitous and question-begging ploy it has been from the beginning.

Problem II

Consider again the tacit hypothesis behind the prevailing notion of "sporting purpose": If combat firearms serve no "legitimate" sporting purpose, they may or should be banned. I argue by counter-example that the assumption of this hypothesis (that combat firearms serve no legitimate sporting purpose) is false. While I make a case for "legitimate" sporting uses of combat firearms, I do not hereby beg any questions about gun control. My argument here is simply that "sporting purpose" is quite beside the point in gun-control policy if only because combat firearms do in fact enjoy legitimate sporting uses.

The assumption that firearms can be neatly and categorically segregated by purpose and, hence, that firearms "generally recognized as particularly suitable for combat can serve no legitimate sporting purpose is based on a no-brainer fallacy, to wit:

"Some guns are useful only for assault, warfare, murder or mayhem _ like the so-called 'assault weapons' (which should properly be called 'combat' firearms).

"Law-abiding civilians have no legitimate interest in assault, warfare, murder, or mayhem.

"Therefore, law-abiding civilians have no legitimate interest in combat firearms."

The first premise and conclusion above are flatly false. Law-abiding civilians have a legitimate interest in combat for their own self-defense. Therefore, law-abiding civilians have a legitimate interest in combat firearms _ and, most certainly, in training therewith. This legitimate interest in firearms training for defensive purposes naturally gives rise to both legitimate and even socially useful sporting purposes for combat weapons, which I will call "combat weaponcraft," my own sport of choice.

Firstly: combat weaponcraft is a sport in any common sense of the term "sport" in which fishing, hunting, or target shooting are sports.

In fact, target shooting is itself but a variant of combat weaponcraft. Indeed, historically, in America and Europe, today's sanitized forms of target shooting_as "pure" sport_ are abstracted from the discipline of combat weaponcraft. Historically, in origin, target shooting was a practical sport with a clear social mission, promoting marksmanship and combat training; it served to ensure that the civilian population was "well regulated" in combat weaponcraft to perform their civic duties in maintaining the social order and serving the common defense. According to one leading historian of small arms:

"The concept of target shooting as a pure sport does not begin to emerge until after the First World War; indeed, Britain held aloof from the early development of international shooting competition because it was considered too abstracted from the military function of marksmanship.

"It was the goal of universal civilian training in marksmanship which also inspired the subsequent smallbore shooting movement. The .22 rifle, portrayed recently in the press as the archetypal 'purely sporting' firearm, was seen in urban Edwardian Britain as the prime tool of military training. At the same time, NRA service rifle marksmanship was directed by Lord Roberts towards the modern concept of 'combat shooting': rapid and snap shooting on moving and disappearing targets." (Munday, 1988)

Harking to these historical roots, and by contrast with more "pure" forms of target shooting, the regimens of combat weaponcraft include a vast variety of stress-inducing tactical drills and dynamic scenarios that test one's tactical judgment and moral decision making as well as safety and marksmanship under duress. Competition is both against the clock and rigorous standards of qualification as well as against other competitors. While there are hundreds of local, regional, national and international competitions, one can compete solo against the rigorous performance standards calibrated for survival in the gravest extreme. These rigors include the observance of ethical and legal standards for the judicious use of deadly force. Of the highest priority are firearms safety standards, which are religiously observed: the same rules of safety apply on the firing range and in a threat situation; there is no "double standard" for safety. Consequently, the practitioners of this sport are amongst the most reliable and conscientious in safety discipline. Amongst the many and varied competitions in combat weaponcraft, the epitome of this practical sport is the National Tactical Invitational Match. The NTI is attended by both law enforcement professionals and civilians, including leading police firearms instructors who are themselves private citizens, but it is organized by private citizens_an example of private enterprise with a socially responsible mission par excellence.

Secondly: The sport of combat weaponcraft is eminently and morally legitimate on the following forthright

grounds: those of us who engage in it do so safely and responsibly; we hold society and innocent others harmless thereby and continually improve ourselves in skill, judgment and responsibility. If there are other criteria of "legitimacy," I should like to know what they are. Certainly, general popularity is no more a requirement of legitimate sport than it is of religion or speech.

Thirdly: in addition, combat weaponcraft is a sport with a social mission and social utility: it serves as a technology-transfer mechanism by advancing the state-of-the-art of threat-management and defensive firearms training for both law enforcement and civilians.

Like most innovations in firearms training outside the military, the combat shooting arts have been pioneered by private citizens. Unlike the Olympic sporting events that were abstracted from age-old military experience (the marathon, biathlon, javelin, etc.), the practical shooting sports are devised to refine and inform modern technique "where the rubber meets the road" _with state-of-the-art combat weapons. Its techniques and technology are evolved through open competition, then applied, tested and refined through professional training and practical experience. The symbiotic feed loop is like that among research universities, industry, and government.

Many of the best ideas in combat training and technology evolve from the innovations of civilian practitioners. In my own case, one-handed mastery of combat weaponry proves informative to officer-survival training: necessity is the proverbial mother of invention, and my contributions to police survival training increase my satisfaction in my sport of choice. So I turn my recreation to a practical social purpose, by training police officers in combat weaponcraft as well as in the law and ethics of deadly force that properly delimit its use. Most of my colleagues do likewise, by sharing their knowledge and skills with others, either law enforcement or fellow citizens or both, thereby helping to ensure a safer and more responsible shooting public.

Finally, I must speak to the morally controversial nature of my sport, since some consider gun ownership itself, nevermind combat weaponcraft, "demented and bloodthirsty" (see the excellent discussion of moralistic objections to civilian gun ownership in Kates, 1991).

To quote Gerald Fain from his essay, "Moral Leisure" (1991), "Leisure. . . is the opportunity to choose how one 'ought live.' "

Spending one's discretionary time in the refinement of any of the combat or martial arts is such a choice. Combat weaponcraft is morally controversial in the important sense in which all moral choices are open to question and demand an accounting when moral sensibilities collide. I can only sketch the moral dimensions of my sport here; this stands as an account, not a proper defense against those who are radically and ignorantly at odds with the gun culture and regard it as "simply beastly" (quoted in Kates, 1991.) There, perhaps, n'er the twain shall meet.

". . . now a virtuous life requires exertion, and does not consist of amusement." (Aristotle, Nicomachean Ethics,1103)

The sport of combat weaponcraft is neither a leisurely recreation nor a mere amusement, but an avocation dedicated to the disciplined development of both moral virtues and practical skills in the service of an avowed moral obligation and social mission. While we may defend innocent life on the basis of the most fundamental of moral and legal rights, practitioners of combat weaponcraft also avow a moral and civic obligation as well _an obligation, at the least, to our loved ones, an obligation to prevent our spouses from being widowed or our children orphaned _or worse. Some take it further, as a civic or more altruistic obligation to defend any threatened innocent life. This is not a vigilante ethic; it is neither more nor less than the lawful defense of innocent life allows. (For a proper definition of vigilantism, see Kates, 1991).

Contrary to stereotype, practitioners of my sport are not training to shoot their way to glory in the Armed Citizen column of American Rifleman magazine. None but psychopaths and felons who understand the realities of lethal encounters romanticize the necessity of self-defense as an opportunity for glory. Law-

abiding practitioners of combat weaponcraft live in no such fool's paradise. The ethos that informs our sport is no less demanding than that of any serious martial art, wherein power and responsibility are commensurate: it requires soul-searching reflection on fearsome realities and on the rigorous requirements for transmuting the awesome responsibility for the judicious use of deadly force into decisive fortitude, a disciplined mindset, morally discerning judgment, well deliberated action, and the tactical skill to both "do the right thing" and survive in the "moment of truth," in the gravest extreme. Karl Popper's point bears repeating:

". . . we must not allow the distinction between attack and defense to become blurred. We must insist upon this distinction, and support and develop social institutions . . . whose function it is to discriminate between aggression and resistance to aggression." (Popper, 1965)

The lawful avocation of combat weaponcraft is, above all, a social institution that respects this distinction and defends this cornerstone of civil society.

Notes

1. The 1991 Chicago Police Department in-depth study of 20,264 homicides from 1965-91 found that 75% of criminal homicides are committed by recidivists with prior records of criminal violence. On this sample, assume that recidivists with prior records commit 75% of our homicides; then, 25% of our annual gun homicides are committed by previously law-abiding gun owners, such that less than 1/100th of 1% of the law-abiding gun-owning public turn homicidal each year: 18,000 gun homicides x .25 = 4500/60 million lawful gun owners = .000075 . .0075% = less than 75/10,000ths of 1% = .75/100ths = less than 1/100ths of 1%. This estimation is comparable to another measure of the minuscule number of irresponsible armed citizens: since the new concealed carry law in Florida was enacted in 1987, less than 1/100th of 1% of the issued licenses have been revoked for the commission of any crime involving a firearm (Snyder, 1993, p.49). Another telling indicator of the relatively low incidence of harm done by armed citizens is the following: only 2% of civilian shootings involve an innocent person mistakenly identified as a criminal, compared with an error rate of 11% for the police, while at the same time armed citizens justifiably kill three times the number of felons a year as do police (Snyder, 1993, p. 50).

2. According to Kleck (1991), resistors fare better than non-resistors and gun-defenders fare best of all. As stated by one prominent critic of defensive firearms ownership, Arthur Kellerman: "If you've got to resist, your chances of being hurt are less the more lethal your weapon. If that were my wife, would I want her to have a thirty-eight special in her hand? Yeah." (Japegna, 1994)

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