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Absolutist Politics in a Moderate Package: Prohibitionist Intentions of the Gun Control Movement

Gary Kleck

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I. THE ISSUE: OVERT MODERATE AGENDAS VS. COVERT PROHIBITIONIST GOALS

The debate over gun control has been described as a dialogue of the deaf. The combatants do not listen to one another, or pretend to be unable to understand what their opponents are saying. Gun control advocates, and sympathetic members of the news media, profess to be mystified why anyone would oppose moderate, "reasonable" controls over guns. "How," they ask, "can any serious person reject commonsensical measures like the licensing of gun ownership or the registration of guns? We license drivers and register cars, don't we?"

Gun control opponents, with boring regularity, consistently offer the same explanation: "We fear that moderate gun controls are steps down a slippery slope towards gun prohibition." Advocates then dismiss this response as sheer fantasy on the part of opponents, and even hint, by labeling such beliefs "paranoid," that those who believe such things must be mentally ill. This belief, however, not confined to a tiny fringe minority.

In December 1993, the Gallup organization asked a national sample of adults whether they agreed or disagreed with the following statement: "Gun control measures will eventually lead to stricter laws which will take guns away from all citizens." Among all adults, gun owners and nonowners alike, 50% agreed.¹

Gun prohibition can be defined for present purposes as any gun control measure that would preclude legal ownership or

possession of guns, or of handguns, by almost all of the civilian population. This state of affairs can be accomplished by a law labeled as a gun ban, but can also be achieved through restrictive licensing (*a la* New York City's Sullivan law or English law). Restrictive licensing of handguns can be every bit as restrictive as a handgun ban; under the Sullivan Law's restrictive licensing system in New York City, less than 1% of civilians have a permit allowing them to legally own a handgun.²

Likewise, one could gradually ban gun possession by first requiring registration of guns for lawful possession, then passing a law providing that no further guns will be registered. As existing owners died or moved out of the affected jurisdiction, the number of legally owned guns would eventually dwindle to zero. This is how handguns were banned in Washington, D.C. in 1976 and in Chicago in 1982.³ Or one could ban guns that are "unsafe" by virtue of not having adequate safety devices such as "smart gun technology," gradually increasing the stringency of safety requirements until no guns could meet the standards and still remain affordable for any but the wealthiest gun buyers. Or one could impose a prohibitive tax on guns to achieve the same state of affairs.

There are also partial gun prohibitions that ban gun acquisition or possession among subsets of the population such as convicted felons, alcoholics, young adults, or illicit drug users. Depending on how broadly one defines the prohibited groups, and how widely one expanded the presumption of unfitness to own a gun, combinations of such "partial" prohibition could approach total prohibition. For example, if one banned gun ownership to all persons who had ever been arrested or given a traffic ticket (on the quite reasonable grounds that such persons are relatively more likely to commit violent acts), this measure alone might well deny legal gun ownership to the majority of the population. Lest one think it unlikely that anyone would advocate banning guns among persons with an arrest record but not a conviction, Handgun Control, Incorporated (HCI) Founding Chair Nelson T. (Pete) Shields advocated banning handgun ownership among persons "with a record" of violence "even though such violence did not result in a conviction."⁴

Prohibition, if it were ever attained in the U.S., would almost certainly be achieved incrementally. One way to accomplish this would be to advocate bans on individual gun types one at a time until no major types were left unbanned. Thus, in 1979 HCI advocated banning "Saturday Night Specials" (SNSs) -- small,

cheap handguns -- at a time when HCI staff thought that SNSs accounted for as much as two-thirds of handgun sales.⁵ HCI then advocated, in 1989, banning “assault weapons,” which are an arbitrarily selected subset of semiautomatic guns, which in turn constitute the majority of the handguns (and a large share of long guns as well) sold in the past 20 years.⁶

Many supporters of moderate controls have condemned the National Rifle Association (NRA) for stoking the fears of gun owners that moderate controls will lead to prohibition. For example, Martin Dyckman, associate editor of the *St. Petersburg Times* asserted in 1993 that “no one is seriously proposing to ban or confiscate all guns. You hear that only from the gun lobby itself, which whistles up this bogeyman whenever some reasonable regulation is proposed.”⁷ Echoing this claim, law professor Andrew Herz denounced the gun lobby for “conjuring up visions of powerful gun-grabbing Washington confiscators knocking down the doors of law-abiding citizens” when in fact “virtually no one in the gun control movement calls for confiscation.”⁸ Or as one strongly pro-control scholar has put it, “NRA leaders have consistently employed a Chicken Little (‘the sky is falling’) rhetorical style, with constant prophesies of imminent doom.”⁹ Likewise, in an editorial endorsing national registration and licensing, the editorial writers of *the New York Times* responded to “gun groups that fear [registration] as a first step toward government confiscation of guns” very simply: “Their fear makes no sense.”¹⁰

On the other hand, some observers, and even some gun control advocates, regard it as obvious that many advocates of moderate controls really want prohibition. For example, self-described “proponent of gun control” Andrew McClurg stated that “there is no doubt that the agenda of many Brady bill proponents encompasses much more than the adoption of waiting periods and background checks. Many Brady bill supporters want to prohibit private possession of handguns altogether.” Pulitzer Prize-winning columnist Mike Royko stated it more bluntly: “the ultimate goal of the anti-gun lobby is to ban the private ownership of all weapons. That is their ultimate goal, although the anti-gun people won’t admit it. It would be foolish strategy.”¹¹

Among casual observers of the gun debate, there may be some honest confusion regarding the difference between (1) what gun control advocacy groups are currently “proposing” (note Professor Herz’s careful phrase “no one ... *calls for* confis-

cation” [emphasis added]) and (2) what they would eventually like to bring about, when and if it becomes politically achievable. In this particular dialogue of the deaf, control opponents express their fears of the *ultimate intentions* of control advocates, while gun control supporters act as if the issue was the *current overt agenda* of advocacy groups, i.e. what they overtly “propose” or “call for” at the moment.

It is unlikely that professional advocates do not understand the distinction between ultimate goals or intentions and an organization’s current overt agenda, although when responding to opponents’ claims, they sometimes act as if do not. Accused of harboring prohibitionist intentions, they cite their organization’s official current legislative agenda. For example, HCI Chairman Pete Shields seemed to deny any intent of his organization to push for stricter controls on long guns in future when he wrote: “Handgun Control, Inc., does not propose further controls on rifles and shotguns.”¹² Two features of this phrasing are noteworthy. First, the statement pertained to what HCI “proposes,” i.e. its stated policy agenda, rather than what its leadership ultimately wanted. Second, the statement was phrased in the present tense; it said nothing about what HCI might propose in the future. And in fact, within eight years, HCI did push for a ban on various rifles and shotguns.

In light of this confusion, it may be necessary to state more precisely what it is that gun control opponents fear. They argue that many, and possibly most, gun control advocates favor more than just control of guns via moderate regulatory measures, but also want to eventually make it illegal for Americans in general to own guns. They believe that these advocates pursue this goal through a step-by-step or incrementalist strategy, whereby success in getting mild controls passed makes it politically easier to pass stricter controls, eventually culminating, gun control advocates hope, in prohibition.¹³

Gun control opponents also believe (correctly) that most Americans do not support prohibitionist controls, and would be less likely to support moderate controls if they thought they would lead to prohibition, a point with which some control advocates agree.¹⁴ Recognizing this, some gun control advocates, according to opponents, conceal their prohibitionist intentions as a political tactic, and do not admit to such ambitions in their public statements of official policy.¹⁵ In any case, the fact that a group’s official agenda contains no call for prohibition indicates

nothing one way or the other about whether gun control opponents' claims are correct.

Both sides agree that the most prominent gun control advocacy group, HCI, which recently changed its name to "The Brady Campaign," does not openly advocate prohibition and does not include prohibitionist measures in its current policy agenda. Further, most people on both sides would also acknowledge the political truism that American political movements are more likely to achieve their ultimate goals in an incremental fashion than in a single big jump.¹⁶ Thus, if one imagined the strictness of gun control laws to lie along a scale from 0 (no controls) to 10 (prohibition), it is easier to move the law from 0 to 1, then from 1 to 2, and so on, moving gradually up to 10, than it is to jump directly from 0 to 10.

It is common for supporters of a moderate control measure to say something like "This measure may not be much, but it's a good first step," thereby acknowledging their intention to follow an incrementalist strategy. For example, HCI Chair Pete Shields admitted in 1976 that "we're going to have to take one step at a time, and the first step is necessarily -- given the political realities -- going to be very modest. The final problem is to make possession of *all* handguns and *all* handgun ammunition totally illegal." (Emphasis added.)

Likewise, Rep. William Clay (D-MO) described the Brady Act as "the minimum step" that Congress should take to control handguns. "We need much stricter gun control, and eventually we should bar the ownership of handguns except in a few cases." Similarly, Rep. Bobby Rush (D-IL) was quoted in 1999 as saying that "Ultimately, I would like to see the manufacture and possession of handguns banned except for military and police use. But that's the endgame. And in the meantime, there are some specific things that we can do with legislation." Likewise, Barbara Fass, Mayor of Stockton, California, supported "assault weapons" bans, explaining that "I think you have to do it a step at a time and ... the banning of semi-assault (sic) military weapons ... is the first step."¹⁷

Commenting on the 1994 federal "assault weapons" ban, syndicated columnist and prohibition advocate Charles Krauthammer identified a more subtle utility to moderate controls as a part of an incremental strategy: "In fact, the "assault weapons" ban will have no significant effect either on the crime rate or on personal security. Nonetheless, it is a good idea ... Its only real justification is not to reduce crime but to desensitize the public

to the regulation of weapons in preparation for their ultimate confiscation.”¹⁸

The current leaders of HCI openly acknowledge following an incrementalist strategy. In a newspaper interview, HCI Chair Sarah Brady’s views were summarized as follows: “[Brady] sees the Brady bill as ‘the cornerstone of a serious gun-control policy in America’ that will eventually include more restrictions.” Brady predicted “that passage of the Brady bill will soften up Congress for more. ‘Once we get this,’ she said, ‘I think it will become easier and easier to get the laws we need passed.’”¹⁹

Thus, there is little serious dispute that gun control organizations, including HCI, are pursuing a step-by-step strategy, where attaining moderate controls facilitates gaining stricter controls. The only point on which disputants differ is how far this incrementalist path will be followed. While some of the preceding proponents openly acknowledged advocating an incrementalist strategy that they hoped would end in prohibition, other proponents, such as the leaders of HCI, do not currently admit to any plans to pursue controls that far.²⁰

On the other hand, HCI’s leaders do not say exactly how far they will pursue further controls, i.e. what their ultimate stopping point will be. A generous interpretation might be that they are merely being practical, recognizing the limits on their ability to foresee the future, and the need to remain flexible. Regardless, their silence on this question effectively holds open prohibition as a future option.

HCI as an organization has never officially stated that it will never support banning possession of all guns or handguns, and it certainly has never said that it would actively oppose gun bans. Further, HCI has never in practice opposed a gun ban in its history. Quite the contrary, it has actively supported local and state proposals to ban handguns, and has actively defended existing handgun bans passed by local governments. When a ban on handgun possession was passed by the Village of Morton Grove, Illinois, and the ordinance was challenged in court, HCI filed an *amicus curiae* brief urging the appellate court to uphold the ordinance. In the brief, they described the local handgun ban as “a significant step toward effective state and national handgun regulation.”²¹ Likewise, in 1978, HCI, under its old name of the National Council to Control Handguns, filed an *amicus curiae* brief in defense of the Washington, D.C., handgun ban.²² More recently, in the 1990s, HCI President Richard Aborn urged other

cities to adopt the same law.²³ Thus, HCI at minimum supports local handgun bans.

HCI's support for handgun bans, however, has not been limited to local measures. In the Fall of 1976, under its old name of the National Council to Control Handguns, it contributed \$16,000 to a state referendum campaign to ban the private possession of handguns in Massachusetts, providing nearly 30% of the campaign's financing.²⁴ Thus, HCI has supported state-level, as well as local, handgun prohibition. It has never publicly repudiated this support.

Some advocacy groups can accurately, though somewhat misleadingly, deny including prohibitionist measures in any formal long-term agenda, for the simple reason that they do not have a formal long-term agenda. Rather, they have only a series of frequently revised short-term agenda, consisting of whatever legislative measures they are lobbying for at the moment. For example, HCI's website merely lists their "Legislative Priorities" for the current year, but includes nothing resembling a long-term plan²⁵ (A document on HCI letterhead purporting to be an outline of HCI's long-term plans was circulated on the Internet in 1993. It was almost certainly a hoax.)

Indeed, some elements of HCI's agenda often look like ad hoc responses to media coverage of spectacular instances of violence committed with guns or short-lived trends in gun violence, rather than part of any well thought-out long term plan. For example, HCI's push for bans on "assault weapons" came not at the time when sales of such guns were reaching their peak in the 1970s, or when their criminal use was growing prior to 1988, but rather came only after the news media devoted massive coverage to a handful of mass shootings involving such guns, beginning in 1989 with the Stockton, California schoolyard shootings.²⁶

In general, HCI appears willing to pursue virtually any further restriction on guns that is politically achievable. Following the defeat of the HCI-endorsed Massachusetts referendum to ban the private possession of handguns, HCI Chair Shields frankly described HCI's long-term strategy as follows: "We'll take any law we can get. We're prepared to win our battle in bits and pieces and we realize this is going to be a long, slow process."²⁷ Beyond this, there appears to be little rhyme or reason to changes in their policy agenda. The indiscriminate nature of HCI's support for virtually any increase in gun control restrictiveness, given political attainability, encourages the belief that it

would also support prohibition if it too became politically achievable.

Certainly there is no consistent relationship between HCI's agenda and emerging research findings, which are selectively cited to support positions apparently adopted on political grounds rather than used to choose among policy options. For example, HCI's 1979 advocacy of bans on Saturday Night Specials (SNSs) came in the wake of widely cited research (sponsored by the pro-control Police Foundation) indicating that these guns are *not*, contrary to HCI claims, the preferred weapons of criminals.²⁸

Further, HCI has continued its support for banning SNSs despite strong and unrebutted evidence from prison surveys that if gun-using violent criminals were denied SNSs, they would substitute more lethal handgun models or sawed-off long guns, thereby raising the fraction of gunshot victims who would die.²⁹ Of course, if one hoped to later ban the more lethal handguns and long guns, as well as cheap handguns, substitution would seem less of a problem.

In contrast to HCI, other major gun control advocacy groups openly support prohibition. After HCI, the most prominent national gun control advocacy groups are probably the Coalition to Stop Gun Violence (CSGV), formerly the National Coalition to Ban Handguns, and the Violence Policy Center (VPC). CSGV, organized by the Board of the Church and Society of the Methodist Church in 1975, unambiguously supports prohibitionist controls.³⁰ Its Web site states that it advocates "a ban on the sale and possession of handguns and assault weapons."³¹ CSGV does not, however, admit to any intentions to ban long guns (aside from the subset they regard as "assault weapons") as well as handguns, so they too could harbor covert prohibitionist intentions that go beyond their advocacy of bans on handguns and "assault weapons."

VPC also openly supports handgun prohibition, though a more indirect variant. It supports the Firearms Safety and Consumer Protection Act (H.R. 920), which would grant regulatory authority to the Department of the Treasury that "would subject the gun industry to the same safety standards as virtually all other products sold in America."³² This does not sound much like a gun ban, until one knows how VPC anticipates this regulatory power being used. In a 1999 *New York Times* op-ed article supporting this bill, VPC's executive director, Josh Sugarmann, wrote that "any rational regulator with that authority would ban

handguns.”³³ Further, it is hard to imagine regulatory power that would permit banning of handguns that would not also permit the banning of shotguns and rifles, which are both more lethal and more prone to accidental discharge than handguns.³⁴

Other organizations do not openly advocate prohibitionist goals as organizations, but are led by individuals who personally support prohibition. The HELP (Handgun Epidemic Lowering Plan) Network acknowledges only a miscellany of “policy priorities” that do not include any prohibitionist measures, but the organization’s Chair, Katherine Christoffel, has publicly expressed some of the most extreme and simplistic antigun views ever to appear in print: “Guns are a virus that must be eradicated... They are causing an epidemic of death by gunshot, which should be treated like any epidemic -- you get rid of the virus. Get rid of the guns, get rid of the bullets, and you get rid of the deaths.”³⁵

Still other organizations openly pursue prohibitionist goals without overtly advocating prohibitionist methods. That is, they support the goal of a “gun-free America” or “handgun-free homes” but do not explicitly advocate achieving this by legislation. For example, a recently (1995) formed organization called Ceasefire, Inc., runs newspaper ads and television public service announcements to persuade people that they should not own guns.³⁶ Thus, organizations of this type have the same goals as prohibitionists without overtly advocating prohibitionist laws.

Finally, there are many organizations that endorse gun prohibition but are not primarily concerned with the gun issue. For example, Common Cause is probably best known for its efforts to reform campaign financing. However, in a 1972 statement presented to a House Judiciary Subcommittee, the organization endorsed a “total ban on the sale and manufacture of all handguns” as well as a proposal that “private ownership of handguns also be prohibited.” Likewise the U.S. Conference of Mayors, the Unitarian Universalist Association, the American Civil Liberties Union, Americans for Democratic Action, the National Alliance for Safer Cities, the National Board of the Young Women’s Christian Association of the U.S.A., and the International Ladies Garment Workers’ Union have all at some time endorsed banning the private possession of handguns.³⁷

In contrast to CSGV and VPC, HCI does not currently openly advocate gun prohibition. This was not, however, always true. Even the leaders of HCI openly admitted their prohibitionist intentions at one time. In repeated public statements early in

the organization's history, the long-time chair of HCI, Pete Shields, explicitly supported handgun prohibition, and even acknowledged that HCI was following an incrementalist strategy to attain this long-term goal. In July of 1976, Shields told a reporter for the *New Yorker* that his organization's ultimate goal was "to make the possession of *all* handguns totally illegal" (emphasis in original) and was pursuing an incrementalist strategy in pursuit of the goal. He repeated these points in an interview in September of 1977 with *Parade* magazine.³⁸

Further, although HCI no longer mentions the fact in its official materials, it was once a member of the National Coalition to Ban Handguns, only withdrawing after its leaders decided that public opinion was too strongly opposed to a handgun ban for it to be, at that time, a politically achievable goal.³⁹ Sometime between September of 1977 and 15 November 1978, HCI changed its policy of open advocacy of handgun prohibition, though without any official public admission that it was doing so and without any public repudiation of its previous positions. This may have been partly a response to a June 1978 Cambridge Reports poll indicating that only about a third of Americans favored banning handgun possession (though this should not have come as a surprise, since a 1975 Gallup poll had already found that only forty-one percent favored this measure).⁴⁰ In a letter to HCI members dated 15 November 1978, Shields explained that "while many of us might prefer an outright ban of handguns, we are realistic enough to know that such a goal is unattainable in America today."⁴¹ Thus, HCI's change was apparently one of tactics rather than of ultimate goals, a response to political realities rather than a change of heart.

In his 1981 book, Shields acknowledged that polls showed that Americans do not support "an absolute ban on handguns" and he therefore called instead for "a set of strict laws to control the easy access to handguns by the criminal and the violence-prone -- as long as those controls don't jeopardize the perceived right of law-abiding citizens to buy and own handguns for self-defense."⁴² There are two noteworthy features of this passage. First, Shields' careful phrasing indicated that he did not concede there is any right to own handguns for self-defense -- it is merely something "perceived" by people. Second, the reference to public opinion strongly suggested that this limit on HCI's proposals represented a concession to contemporary political realities, and thus was not necessarily the limit of what HCI leaders really wanted to eventually achieve.

Thus, even in 1981, it was unlikely that Shields/HCI opposed handgun prohibition, as distinct from merely recognizing that it was unattainable at the time and should not, for tactical reasons, be openly pursued. Shields stated that HCI supported a ban on the manufacture and sale of SNSs, supposedly especially small and cheap handguns (p. 147), while also asserting that SNSs claimed one-third to two-thirds of handgun sales (p. 148). Thus, in Shield's own mind, HCI was pushing for a ban on a type of gun that may have encompassed the majority of handguns.

Likewise, it is easy to believe that Shields hoped for a future increase in public support for a ban on handguns when one reads his observation that at present (i.e., 1981) "the people do not want an absolute ban on handguns. A total ban is perceived as taking away their right to self-defense, and *until their fear is reduced* they will never agree to such a law" (p. 146, emphasis added).

By 1982, Shields had clarified somewhat the kind of handgun control he wanted: "I'd have restrictive licensing rather than permissive licensing. You would have to prove a need. All we have to prove (now) is that we're not baddies."⁴³ Shields evidently perceived a significant difference between restrictive licensing and handgun prohibition, given that he denied that his organization was calling for the latter. The most prominent example of restrictive licensing of handgun ownership in operation at the time was that of New York City, where it was extremely hard to get the permit required to own a handgun and, in the 1980s, less than one percent of the population had a permit.⁴⁴ Thus, in practice the difference between an actual restrictive licensing system and a hypothetical handgun ban is that under the former, 99% of the civilian population were forbidden handguns, while under the latter, 100% would be prohibited from having them. Further, given the exceptions that typically accompany handgun bans (e.g. security guards, collectible handguns, etc.), restrictive licensing regimes may in fact be the more restrictive of the two policies, a point conceded even by prominent gun control advocates.⁴⁵

Nevertheless, HCI has not openly advocated a policy explicitly labeled as handgun prohibition since 1978. Its overt advocacy of prohibition has been limited to SNSs and "assault weapons." HCI, however, has never officially stated that it regards gun prohibition as a bad policy. Instead, it has merely adopted the position that it is not yet achievable.

II. WHY DO PROHIBITIONIST INTENTIONS MATTER?

What difference does it make whether or not the more influential gun control advocacy groups harbor prohibitionist intentions, covert or overt? If prohibition would make Americans safer, why should this be a problem?

One problem is that advocacy, covert or overt, of prohibition makes it harder to get more politically feasible and potentially effective measures implemented. Don Kates has argued that the principal political obstacle to passing useful moderate gun controls is the insistence of advocates on extremist anti-gun principles that would facilitate achieving gun prohibition. This in turn triggers gun owner opposition to moderate controls that become perceived as steppingstones to banning guns.⁴⁶

Two of the more important extremist principles are (1) there is no significant defensive value to widespread civilian gun ownership, and specifically no significant life-saving or injury-preventing effects, and (2) the Second Amendment does not recognize any individual right to keep or bear guns, but rather recognizes only a right of states to maintain armed militias like the National Guard.⁴⁷ The natural implication of these assumptions is that there is no strong reason why we should not ban guns, once political obstacles can be overcome.

By adhering to these assumptions and declining to commit themselves to opposing prohibitionist controls, gun control advocacy groups effectively hold open the option of eventually pushing for prohibitionist controls. In Kates's words, this sort of "extremism poisons the well" for more moderate controls.

In a similar vein, sociology professor James Wright attributes the "white-hot ferocity of the debate over guns in America" largely to fears of gun owners that gun permits and registration are "'just the first step' toward outright confiscation of all privately held firearms." Wright notes that criminals rarely obtain guns through the channels that are effectively subject to such regulatory controls, and thus such controls, along with waiting periods, are unlikely to have much impact on criminals. The measures therefore appear to lawful gun owners to be largely aimed at themselves, stimulating speculation on their part as to why the government would want to focus its control efforts on them. "The distinction between ill-considered and evil is quickly

lost” and many gun owners end up attributing nefarious motives to advocates of such controls.⁴⁸

Public debate over important issues should be honest concerning what is at stake. Debate over moderate gun controls is dishonest if some advocates harbor unacknowledged desires for prohibition, which they may well pursue in future if the adoption of moderate controls increases the political feasibility of doing so. Such advocates should honestly concede that there is more at stake in conflicts over moderate controls than just the measure being debated at the moment. As even gun control proponent Andrew McClurg has conceded, specifically in connection with the “slippery slope” issue, “the consequences of a proposal are certainly relevant to deciding whether to adopt it,” and one of the consequences of passing moderate controls is that their adoption makes it easier (not inevitable) for stricter controls to be passed.⁴⁹ Those who favor banning guns, of course, see little problem with covert advocacy of prohibition. From their standpoint, if advocacy groups find it more effective to keep their prohibitionist preferences secret, so much the better.

A credible case for the desirability of prohibition, however, has not been made. Rational support for prohibition implicitly relies on an assumption that is no longer empirically supportable -- that gun ownership among noncriminals has no significant violence-reducing effects, and thus banning guns among non-criminals as well as criminals is bound to be beneficial or at least harmless. The best available evidence indicates that defensive gun use is quite common (probably more common than criminal use of guns) and that defensive use is effective, in the sense that victims who use guns in self-defense are less likely to be injured or to lose property than otherwise similar victims who do not use guns.⁵⁰

If gun ownership among noncriminal victims has violence-reducing effects, then disarming noncriminals via prohibition would have violence-increasing effects, which would counterbalance any violence-reducing effects of disarming criminals. And, almost by definition, prohibition laws would be obeyed at a higher rate by noncriminals than by criminals.

Contrary to the bumper sticker slogan, if guns were outlawed, outlaws would not be the *only* people with guns (except in the tautological sense that anyone who violated the law by retaining a gun would, by legal definition, be a criminal), mainly because there would be widespread disobedience by noncriminals as well.⁵¹ Nevertheless, it is almost certainly true that com-

pliance with gun ban laws would be lower among criminals than among noncriminals.

This means that any beneficial effects of gun ownership among noncriminals would be reduced by prohibition proportionally more than would the harmful effects of gun ownership among criminals. Consequently, to the extent that future gun bans actually achieved their proximate goal of reducing overall gun levels, the net effect would probably be harmful.⁵²

Banning only handguns, while leaving the more lethal shotguns and rifles available, is even more clearly undesirable. Surveys of criminals indicate that if they were denied handguns, seventy-three percent of those who commit gun crime frequently would substitute sawed-off shotguns and rifles. Long guns are, on average, far more lethal than handguns. Further, although they are less concealable than handguns, they can easily be made sufficiently concealable for most criminal purposes -- most gun crimes do not require a gun as concealable as a handgun.⁵³

Even partial substitution of long guns in attacks would outweigh the benefits of denying handguns to some criminals, leading to a net increase in the number of crime victims killed rather than nonfatally wounded. It has been mathematically demonstrated that even if the long guns substituted by persons who otherwise would have attacked with handguns were only twice as lethal as handguns (a conservative assumption), there would be a net increase in homicides following a handgun-only ban even if as few as forty-four percent of attackers substituted long guns, a considerably lower rate of substitution than evidence leads us to expect.⁵⁴

Prohibition of guns, like prohibition of alcohol, would also make criminals of millions of otherwise noncriminal Americans, stimulate the expansion of the black market in guns, increase the incentive to steal guns, and create a law enforcement burden of enormous proportions. A survey of Illinois adults in 1978 found that among gun owners (not just criminals), seventy-three percent said they would disobey a hypothetical federal law requiring them to turn in their guns.⁵⁵ If this predicted rate of noncompliance applied to the nation's gun owners today, it would imply that a national gun ban would, at a stroke, make criminals of 45 million Americans who chose to disobey the national gun ban (seventy-three percent of 61.2 million individual gun owners, based on a thirty percent adult gun owning rate among 203.8 million persons age 18 or over in 2000).⁵⁶ There are even a books sold at gun stores, book stores, gun shows, and by mail

devoted to advising gun owners how to avoid government confiscation of their guns by hiding or burying their guns.⁵⁷

It might be reassuring to dismiss the seventy-three percent noncompliance figure as hollow bravado, but actual compliance rates in connection with less stringent, and presumably less disobedience-provoking, measures are similarly poor. In 1989, California required that all “assault weapons” in the state be registered, allowing all of 1990 for gun owners to comply. When few guns had been registered by the 31 December 1990 deadline, the state passed another law allowing a 90-day amnesty period for late registration, and launched a \$330,000 publicity campaign to inform gun owners of the requirement. Of the 300,000-600,000 “assault weapons” estimated to exist in the state, only 66,303 had been registered by the end of the amnesty period.⁵⁸ Thus, even after extraordinary efforts to achieve voluntary compliance with a relatively mild control measure, about seventy-eight to eighty-nine percent of the guns remained unregistered, in defiance of the law.

III. EVIDENCE OF PROHIBITIONIST INTENT OF THE LEADERS OF THE GUN CONTROL MOVEMENT

If the official agenda of advocacy groups do not completely convey the full range of long-term goals and policy preferences of the groups’ leaders, staff, and activist members, what evidence might help establish their ultimate intentions? Given the impossibility of reading the innermost thoughts of movement leaders, it must be recognized that no evidence on this question can be conclusive. Nevertheless, a mass of circumstantial evidence, falling into the following categories, consistently supports the same conclusion.

1. Past political efforts of gun control advocacy groups in the United States.
2. Recent precedents of gun prohibition in other Western nations.
3. The manner in which advocates appear to deny prohibitionist intentions.
4. Survey data on the general population showing, among those who support moderate controls, the fraction who also support prohibitionist controls.
5. Public statements made by leaders and prominent supporters of the gun control movement.

6. The premises and logic of arguments marshaled in favor of moderate controls.

7. The advocacy of licensing and registration in addition to background checks.

A. Past Political Efforts of Advocacy Groups

Given the political truism that small changes are easier to bring about than big ones, it is no surprise that the history of the gun control movement has followed an incrementalist path, with each legislative victory leading to a push for further controls. Thus, the passage of the Brady Act in 1994 was immediately followed by lobbying by HCI for the “Brady II” bill, which requires the registration of guns and the licensing of their owners. Likewise, a ban on the further manufacture and importation of large capacity magazines (LCMs) (part of the 1994 federal “assault weapons” ban) was followed immediately by HCI advocacy of a ban on the possession of existing LCMs.⁵⁹

In each case, “loopholes” and limitations of earlier measures are identified and remedies proposed. The diagnosis is invariably an inadequate dose of gun control, and the prescription is a bigger dose, i.e. stricter or more extensive controls. Thus, HCI devotes a entire section of its website to discussion of “loopholes” that need to be closed with further legislation.⁶⁰ Indeed, each failure of previous control initiatives can be portrayed as further evidence of the need to increase the dosage of gun control. In this sense, nothing succeeds like failure. While each supposed success of a control measure could reasonably be cited as showing the likely value of still more controls, each apparent failure can be cited as evidence of the need for still stricter controls -- heads we win, tails you lose.

HCI has also shown a willingness to expand the scope of the controls they supported with respect to the types of guns covered. At one time they favored only banning SNSs and regulating other handguns. In his 1981 book, HCI Chair Pete Shields assured his readers that HCI had no intention of pushing for further controls over long guns, i.e. shotguns and rifles: “Handgun Control, Inc. does not propose further controls on rifles and shotguns. Rifles and shotguns are not the problem; they are not concealable.”⁶¹ Likewise, the Field Director of the National Coalition to Ban Handguns (later the Coalition to Stop Gun Violence [CSGV]), Sam Fields, insisted in 1979 that “neither the National Coalition to Ban Handguns, nor any other leading

group in the fight for handgun reform, is [sic] interested in banning long guns.”⁶²

Yet, within a decade, as soon as the political opportunity arose to restrict “assault rifles” (which are no more concealable than other long guns), both HCI and CSGV began to lobby for a ban on “assault weapons,” an amorphous category largely composed of long guns. The ban was eventually passed in 1994. This reversal of policy might be defended on the grounds that gun crime had changed in the interim, but in fact “assault weapon” use in crime was declining by 1989, the rifle share of gun crime was no higher in 1989 than in 1981, and “assault rifles” were in any case never involved in even as much as one percent of gun crimes.⁶³ This willingness to extend their control efforts to long guns undermines the credibility of HCI and CSGV promises concerning the limits of their future control ambitions.

There are also earlier precedents for moderate gun controls being expanded and made stricter until they reached the status of *de facto* gun bans. New York’s Sullivan Law, passed in 1911, initially allowed almost any adult to get the required permit for possessing a handgun, but legislative amendments and progressively stricter police administration of the law in New York City eventually produced a *de facto* ban on the private possession of handguns.⁶⁴ Likewise, Washington, D.C., initially required only the registration of handguns, but in 1976 passed a law providing that the District would no longer register handguns, effectively banning any further acquisition of handguns. This handgun “freeze” in the long run will become a handgun ban as registered handgun owners move out of the city or die.⁶⁵

While neither Congress nor any state legislature has passed bans on guns or handguns, this is not because no such legislation has been introduced. Proposals to ban the private possession of handguns have been under consideration by the U.S. Congress since at least 1974. For example, Representative Jonathan Bingham had one version or another of a bill banning private possession of handguns under consideration from at least as early as 1974 to as late as 1981. This bill was supported by HCI, when it was called the National Council to Control Handguns (NCCH 1974). More recently, Senator John Chafee (R-RI) introduced a bill in 1992 banning handgun possession, as did Rep. Major Owens (D-Brooklyn, NY) in 1993.⁶⁶

At the state level, South Carolina banned possession of all but the largest handguns in 1901.⁶⁷ (The law was later repealed.) A referendum measure to ban handguns, supported by HCI, was

put on the Massachusetts ballot, and defeated, in 1976.⁶⁸ And in 1999, the Attorney General of Maryland, J. Joseph Curran proposed banning handguns in that state⁶⁹.

While federal or state bills providing for gun prohibitions have been repeatedly proposed, none have passed in the United States. Nevertheless, several large cities, including Chicago and Washington, D.C., have banned handgun possession. San Francisco also banned handguns in 1982, though the law was later overturned by a state court.⁷⁰ And, as noted, New York City has a restrictive licensing law in place that is administered so strictly as to constitute a *de facto* handgun ban.⁷¹

Finally, it is worth noting that roughly 40% of Americans support banning the private possession of handguns, a figure that has occasionally approached a majority.⁷² In this light, it is scarcely reasonable to view the prospect of a national handgun ban as nothing more than a paranoid delusion of extremist gun control opponents. Nor can it be reasonably denied that gun control advocacy groups, including HCI, have followed incrementalist strategies or that milder controls have been regularly followed by calls for stricter controls. The only issue in serious question is exactly how far HCI and similar organizations will pursue the incrementalist strategy.

B. Recent Precedents of Gun Prohibition in Other Nations

There are ample precedents for moderate gun controls being followed by national gun bans and mass confiscation of guns in the recent history of other nations, in democracies and formerly democratic nations as well as dictatorships. When a military junta took over the formerly democratic government of Greece in 1967 and suspended part of the nation's Constitution, it issued an edict that ordered citizens to turn in all guns and ammunition to the authorities. They promised to return "sports guns" to their owners after inspection.⁷³

The formerly democratic Philippines had gun registration in place on 23 September 1972 when President Ferdinand Marcos declared martial law and adopted dictatorial powers. He declared that it was his aim to "establish a gunless society," decreed that all firearms and ammunition be turned in, and announced that anyone who retained an unauthorized gun would face ten to fifteen years in prison. Within three months the regime claimed that it had seized 482,248 firearms, though officials guessed that

a similar number of guns were still held illegally by the citizenry, and a suspiciously low number of rounds of ammunition had been surrendered.⁷⁴

Bermuda had gun registration in place in 1973 when its Governor and an aide were murdered. The government ordered the surrender of all handguns on the island.⁷⁵ A year later, in response to rising violence, Jamaica banned the private possession of firearms among all of the nation's two million citizens except the estimated 12-15,000 (less than one percent of the population) holders of private gun licenses.⁷⁶

In 1990, shortly before the breakup of the Soviet Union, Lithuania declared its independence. In response, Soviet President Gorbachev used his executive powers to order civilians in Lithuania to surrender private firearms to representatives of the Soviet government within seven days "for temporary keeping" and to authorize the Interior Ministry "to seize such weapons in cases of refusal to turn them in."⁷⁷ Registration of firearms was required under Soviet law, so lawful Lithuanian gun owners knew that the Soviet authorities had a list of people who, in effect, "owed them" a gun.⁷⁸

In sum, in recent decades a number of national governments, both democratic and dictatorial, have banned gun possession, required mass turn-ins of guns, and have usually done so with registration laws already in place. The fact that this has happened in other nations does not prove that it is inevitable it will happen in the U.S.; it only shows that it has happened.

Nevertheless, HCI's attitudes towards foreign nations' gun prohibitions may be symptomatic of the organization's view of prohibition in America. None of HCI's publications or website material condemn any of these foreign instances of gun confiscation or prohibition. Indeed, they include nothing but praise for the *de facto* ban on handguns and rifles in Great Britain, the handgun ban in Australia, and near-ban measures such as restrictive licensing in Germany, partially attributing foreign nations' lower violence rates to these laws.⁷⁹

C. "Nondential Denials" of Prohibitionist Intentions

If HCI and similar groups wanted to deny the NRA its most potent emotional tool for stimulating gun owner opposition to moderate controls, they would officially and publicly state that HCI was permanently committed to actively opposing prohibi-

tionist controls, perhaps amending their charter to institutionalize this commitment. They could further strengthen this position by officially endorsing the view that the Second Amendment recognizes an inviolable, though not unlimited, individual right to keep and bear arms, and forbids gun bans that would disarm the mass of American citizens, though it permits a wide variety of rational gun regulations short of prohibition.

Such a position would have the advantage of comports with the modern scholarly consensus on the Second Amendment. Of forty-eight law review articles published on the Second Amendment in the 1990, forty-two endorsed the individual rights position, and most of the six minority articles were written by employees of gun control advocacy groups. Such an endorsement would also have the added political benefit of bringing HCI in line with the seventy-eight to eighty-seven percent of Americans who believe that they have a constitutionally guaranteed individual right to keep and bear arms.⁸⁰ Further, HCI could concede the now well-established fact that defensive use of guns is commonplace and effective, and that gun ownership among noncriminals therefore has significant violence- and crime-reducing effects.⁸¹

HCI has never repudiated these two absolutist principles and is not likely to do so in the foreseeable future. Given how potent a political weapon such a move would be, why does HCI not make it? Concerning the Second Amendment and defensive utility issues, HCI leaders would presumably assert that their current positions simply reflect reality, as they see it. They largely ignore the scholarly literature on the Second Amendment--HCI's website as of February 28, 2000 listed just seven articles on the Second Amendment, all but one of them written by their own general counsel, Dennis Henigan -- and instead rely largely on ambiguous or even irrelevant federal court decisions as justification for their view that Americans have no individual, Constitutionally guaranteed right to own guns. Likewise, they either ignore evidence on the benefits of defensive ownership of guns or cite feeble one-sided speculations as to why evidence indicating utility is wrong.⁸²

On the other hand, another simple explanation of HCI's adherence to these key premises of prohibitionist thought is that HCI leaders in fact either support gun bans, or at least want to hold open bans as an option in the future. Consistent with this interpretation, HCI does not actually deny desiring gun bans in future. Rather, their official policy statements, as found on their

website, are silent on the matter and confined to addressing current legislative priorities.⁸³ When asked about prohibitionist intentions, HCI spokespersons commonly refer to their current agenda, saying HCI is not (present tense) “calling for” prohibition, a “nondenial denial” that obscures the distinction between long-term intentions and current agenda.

D. Support for Gun Bans Among Moderate Control Supporters in the General Population

It seems a safe assumption that people who belong to advocacy groups devoted to a given issue have, on average, stronger views on that issue than nonmembers and casual supporters in the general population. Thus, NRA members have more strongly anti-control views than nonmember gun owners or anti-control members of the general adult population.⁸⁴ Correspondingly, HCI members are likely to have more strongly pro-control views than nonmembers and pro-control members of the general population. Activist members are likely to have still stronger pro-control views than casual members, since it would be their stronger views that would motivate their greater involvement. And leaders and staff, who devote their lives to the issue, probably have the strongest opinions of all.

No surveys have been conducted on HCI members or the HCI leadership or staff (or at least no results have been publicly released), so we can only indirectly infer their views on handgun prohibition from surveys of the general adult population, using the aforementioned assumptions. Recent national surveys indicate that about sixty-seven to eighty-two percent of the U.S. adult population favors requiring permits to buy guns, sixty-six to eighty-one percent favor handgun registration, and sixty-seven percent favor limiting handgun purchases to one a month, all measures favored by HCI.⁸⁵ However, surveys conducted in 1999 also indicate that thirty-four to fifty percent of Americans favor banning the private possession of handguns.⁸⁶ Assuming that ban supporters are a subset of those who support less strict controls, these figures imply that most people who favor gun permits, registration, and similarly moderate controls also favor banning the private possession of handguns.

Thus, if one accepts the assumption that HCI members, staff, and leaders are more strongly pro-control than casual gun control supporters in the general population, these survey data imply that most HCI members, staff, and leaders personally

support banning handgun possession. Personal opinions do not directly translate into organizational policy, given the restraining effect of political realities, but these data do suggest that the personal views of HCI members would incline them to support banning handguns in the future, should it become politically attainable. And since public support for banning handguns occasionally has approached a majority, it is perfectly possible that achieving a handgun ban could become politically feasible in the near future.

E. Public Statements Made by Leaders and Prominent Supporters of the Gun Control Lobby

The impression among many gun owners that gun control advocates favor gun bans, and are following a step-by-step strategy to achieve prohibition, is reinforced by numerous public statements made by the leaders of gun control advocacy organizations and by many of their most prominent supporters. A selection of such statements follows.

Of most direct relevance, some leaders of gun control organizations have openly expressed their desires to achieve bans on gun ownership in the long run, as well as their intention to pursue this goal using a step-by-step strategy:

Nelson T. (Pete) Shields III, Chairman of Handgun Control Inc.: “Our ultimate goal -- total control of handguns in the United States -- is going to take time. My estimate is from seven to ten years. The first problem is to slow down the increasing number of handguns being produced and sold in this country. The second problem is to get handguns registered. And the final problem is make the possession of *all* handguns and *all* ammunition -- except for the military, policemen, licensed security guards, licensed sporting clubs, and licensed gun collectors -- totally illegal.”⁸⁷

J. Elliott Corbett, Secretary and Board Member of the National Council for a Responsible Firearms Policy, a gun control advocacy group operating prior to the advent of HCI: “I personally believe handguns should be outlawed ... Our organization will probably officially take this stand in time but we are not anxious to rouse the opposition before we get the other legislation passed. It would be difficult to outlaw all rifles and shotguns

because of the hunting sport. But there should be stiff regulations ... We thought the handgun bill [which eventually became the Gun Control Act of 1968] was a step in the right direction. But, as you can see, our movement will be towards increasingly stiff controls.”⁸⁸

Josh Sugarmann, Executive Director of the Violence Policy Center (describing the use that would be made of regulatory power granted by a bill VPC supported): “Any rational regulator with that authority would ban handguns.”⁸⁹

Many important political figures have likewise made clear their preference for gun bans in the long run, though they often revealed their true preferences to the public only after they left office:

Ramsey Clark, Attorney General of the United States, 1967-1969: “I think we should work for the day when there are no guns at all, at least in urban areas -- even for the police on normal duty.”⁹⁰

Pat Brown, former governor of California: “I feel that we should take the general position that handguns should be barred except by police officials and other authorized people, and then try to find out how to seize them in the days ahead.”⁹¹

Patrick Murphy, former New York City Police Commissioner and President of the Police Foundation: “The time has come for us to disarm the individual citizen.”⁹²

Many prominent academics have also publicly expressed explicit support for gun prohibition:

Marvin Wolfgang, arguably the nation’s best known criminologist: “My personal choice for legislation is to remove all guns from private possession. I would favor statutory provisions that require all guns to be turned in to public authorities.”⁹³

Noted sociologist Morris Janowitz: “I see no reason why anyone in a democratic society should own a weapon.”⁹⁴

Norval Morris, legal scholar and unsuccessful nominee in 1978 to head the federal Law Enforcement Assistance Administration “licensing of guns ... is an excessively cautious, only

marginally useful mechanism, other than as a wedge to more rational legislation. We seek a disarmed population.”⁹⁵

Amitai Etzioni, prominent sociologist and Special Advisor to the President in the Carter administration: “Domestic disarmament ... would result in a decrease in murder from 40 percent to 45 percent and an estimated decrease in armed robbery of 23 percent to 26 percent.”⁹⁶

Etzioni later founded the Communitarian Network, which in 1991 endorsed as part of its platform “domestic disarmament,” i.e. the total banning of the private possession of all firearms. Among the signatories to the platform, in addition to Etzioni, were Newton Minnow, Henry Cisneros (Secretary of Housing and Urban Development in the Clinton administration), Albert Shanker (President of the American Federation of Teachers), pollster Daniel Yankelovich, economist Lester Thurow, and distinguished sociologists Gary Marx, Alice Rossi, Robert Bellah, and Dennis Wrong.⁹⁷

Journalists affiliated with major news outlets also have publicly called for prohibition.

Juan Williams of the *Washington Post*: “I don’t understand why we’re piddling around. We should talk about getting rid of guns in this country.”⁹⁸

Michael Gartner, then President of NBC News: “I now think the only way to control handgun use in this country is to prohibit the guns. And the only way to do that is to change the Constitution.”⁹⁹

Jack E. White, National Correspondent of *Time* magazine: “Whatever is being proposed is way too namby-pamby. I mean, for example, we’re talking about limiting people to one gun purchase, or handgun purchase a month. Why not just ban the ownership of handguns when nobody needs one? Why not just ban semi-automatic rifles? Nobody needs one.”¹⁰⁰

Other prominent prohibitionists support gun bans covertly, so this support can only be inferred, with some uncertainty, from their public statements. President Bill Clinton is arguably the most prominent of all prohibitionists. One year into his first term, he was asked by a reporter for his opinion on “banning handguns.” Given a straightforward opportunity to state

whether he personally supported or opposed banning handguns, Clinton instead carefully confined his answer to an assessment of the short-term political achievability of such a measure: "I don't think the American people are there right now. But with more than 200 million guns in circulation, we've got so much more to do on this issue before we even reach that. I don't think that's an option now. But there are certain kinds of guns that can be banned and a lot of other reasonable regulations that can be imposed."¹⁰¹

For those who oppose prohibition, the issue of political achievability is irrelevant to their views -- if they feel prohibition is a bad idea on the merits, then there is no need to think about whether it is achievable. Consequently, Clinton's focus on achievability would seem to indicate that he supported, or at least did not oppose, the idea of handgun prohibition in principle. In any case, it is indisputable that, given an opportunity to indicate his opposition, if that were his position, Clinton chose not to do so. This in spite of the fact that it would have been in his political interest to do so, given his awareness that "the American people are not there yet," i.e. that opinion polls indicate that most Americans oppose banning handguns.

Further, Clinton managed, in very brief remarks, to twice refer to political conditions "now," thereby stressing that his assessment of political achievability pertained only to the present. The strong implication was that Clinton viewed these conditions as changeable, that the opinions of "the American people" could be "shaped" in future in a more strongly pro-ban direction. Clinton even outlined an incrementalist strategy by which stronger controls could be achieved: ban "certain kinds of guns" (presumably referring to, at minimum, "assault weapons") and impose "a lot of other reasonable regulations."

Among other "reasonable regulations" that Clinton eventually proposed, in addition to banning "assault weapons," was a ban on the possession of handguns by all young adults aged eighteen to twenty. The significance of this proposal is that the ban applies to noncriminals as much as to criminals, i.e. to both the vast majority of young adults who would never commit an act of violence with a handgun, and to the small minority who would. The rationale for this measure is that persons in this age group are more likely to be violent than people in other age groups. This is indeed true (and would also be true if the prohibition covered persons aged eighteen to thirty-nine), but it is also true that only a tiny share of eighteen-to-twenty year-olds will

commit an act of gun violence. Thus, we have a prohibitionist argument in its starkest form: everyone must be denied guns to stop the few who would misuse them.

In sum, prohibitionist goals and intentions are frequently endorsed by prominent gun control supporters, and even some leaders of gun control advocacy organizations. This does not prove that all such organizations, including HCI, currently have explicit covert plans to pursue prohibition via an incremental strategy. But it does mean that many prominent people seriously advocate prohibition, that the prospect of gun bans is not merely a phantom menace “whistled up” by the gun lobby, and that it is perfectly reasonable that the leaders and staff of organizations that do not openly advocate prohibition may nevertheless covertly favor it.

E. The Premises and Logic of Arguments for Moderate Controls

Perhaps the strongest evidence of prohibitionist intentions among gun control advocates, including the leaders and staff of HCI, are the premises and arguments that they use to argue in favor of moderate controls, since the premises and arguments logically lead to prohibitionist conclusions.

HCI now supports bans on both (1) SNSs, which are cheap and small (and thus more easily concealed) yet less lethal than other guns, and on (2) “assault weapons,” which are generally more expensive, larger (and thus less easily concealed) and supposedly more lethal than other guns. But if one advocates banning both big guns and little guns, both more lethal and less lethal guns, both expensive and cheap guns, what does that logically leave as guns that are *not* suitable candidates for banning? Can there be any serious arguments, other than ones based solely on changeable political realities, that banning both big guns and little guns is a good idea, but banning middle-sized guns, which are both moderately concealable and moderately lethal, is not a good idea?

HCI has supported and helped organize a campaign of lawsuits by municipal and county governments against gun manufacturers, through their Legal Action Project (LAP). HCI boasts that it has “pioneered innovative theories of gun industry liability” and that, as of 18 August 1999, their LAP was co-counsel for fifteen of the twenty-seven cities and counties that had filed suit.¹⁰² Opponents argue that the purpose of the lawsuit cam-

paign is to either drive the gunmakers into bankruptcy from the costs of defending against dozens of frivolous lawsuits, or to increase prices of guns to the point where most people could not afford to buy one, an outcome equivalent to a prohibitive tax. That is, they accuse HCI of trying to ban the further manufacture of guns, using lawsuits to achieve what could not be attained through legislative means.¹⁰³ HCI insists that it merely wants to induce the gun companies to “reform” themselves by making safer guns and exerting more control over the distribution and marketing of their guns.¹⁰⁴

The legal theories used by HCI and the way in which the lawsuits are targeted, however, are inconsistent with HCI’s stated justifications. For example, HCI’s lawyers have argued that gun companies should be sued for making guns that lack “personalized gun” technology, i.e. locking devices that are an integral part of guns and that permit only authorized users to fire the gun.¹⁰⁵ For most existing gun models, no demonstrably reliable personalized gun technology that would meet HCI’s implicit specifications currently exists, making it impossible for gun firms to have installed such devices in these models. For example, among currently manufactured guns, the Magna-Trigger can only be installed in large-frame Smith & Wesson revolvers.¹⁰⁶ Other technologies, such as the Oxford Micro Devices fingerprint lock or the Fulton Arms SSR-6 handgun, might be usable in many types of guns but exist only in the form of unproven prototypes. One such prototype, of the much-touted Colt Z-40, failed to function in one of its first public demonstrations.¹⁰⁷ Still other devices, not true “smart gun” technology, require an affirmative action, such as pushing a lever or putting a wristlet on, to either lock the gun or to make it operable. This makes the devices only marginally better than far cheaper low-tech gun locks. Reliable and affordable personalized gun technology may eventually be developed, but it does not exist yet and may be many years away.¹⁰⁸

This does not represent an obstacle to HCI lawyers, who assert that gunmakers should also be held liable for harm done due to the firms’ failure to develop *new* personalized gun technology in the first place. It is not certain whether it is even possible to develop any sufficiently reliable technology. But even if it could be developed, there is no conceivable technology that gun companies could adopt that would guarantee that HCI would not organize lawsuits against them based on the same basic legal theories. Guns will necessarily always be dangerous as long as they function as guns, i.e., fire a projectile at high velocity. Since

there is no known upper limit on human inventiveness and possible future technological developments, someone could always sue gun companies, regardless of the safety technologies they had already developed and installed in their guns, for making guns that are dangerous in a way that hypothetically could have been prevented by some future, theoretically possible, technology. Consequently, no matter how amenable to “reform” some gun manufacturers might be, there is nothing they could do that would guarantee protection from being sued into bankruptcy, under HCI-developed theories of manufacturer liability.

In contrast, if HCI were sincerely interested in merely motivating gun companies to become more “responsible,” the most effective tactics would be to sue the least responsible firms while “rewarding” the most responsible ones by not suing them. This is not, however, the pattern that HCI-assisted lawsuits have followed. Every major handgun manufacturer in the U.S. has been sued, regardless of their efforts to improve gun safety, including Colt’s, Smith & Wesson, and Beretta.¹⁰⁹ Thus, regardless of efforts to improve gun safety, no handgun maker has been immune, and no firm’s efforts were regarded as sufficient.

HCI also helped bring a private lawsuit in California (*Dix v. Beretta*) based on the argument that handgun makers should be held liable for harm arising from accidents involving one of their guns, if the firearm did not have a “gun loaded” indicator. Beretta is one of the few companies that make handguns with such a device, yet HCI helped sue Beretta, because, in HCI’s view, the gun-loaded indicator was inadequate. Likewise, Colt Industries and Smith & Wesson spent millions of dollars developing personalized gun technology of the very type that HCI wants (so far, no reliable prototype has been developed), but HCI nevertheless helped bring suits against these firms as well.¹¹⁰

In sum, neither the legal theories HCI has devised nor their choice of targets for lawsuits supports their claims about why they are supporting the lawsuits. On the other hand, HCI’s policies are completely consistent with the hypothesis that they are seeking to effectively ban the further manufacture of guns via a wave of lawsuits aimed at bankrupting the gun industry.

One of the bedrock premises of HCI ideology is that guns cannot provide any significant benefit in the form of defensive use. Empirical evidence is overwhelmingly contrary to this premise, but its factual accuracy is irrelevant for present purposes.¹¹¹ Rather, the irony of this position is that, given rejection of any constitutionally protected individual right to keep and bear arms,

it deprives those who claim to support only limited, non-prohibitionist controls of their only serious rationale for supporting only limited controls and not gun bans.

The pleasures associated with recreational uses of guns, such as hunting or target shooting, cannot compare in seriousness with the harms associated with violent uses of guns, such as death and injury linked with crime, suicide, or gun accidents. Therefore, if one accepts the premise that gun availability increases these harms, as gun control advocates obviously do, but also holds to the premise that guns provide no significant capability for reducing death and injury from criminal violence, the only reasonable policy conclusion is that the more we limit gun availability, the less death and injury there will be. Thus, the logical implication is that we should limit gun availability as much as we can, and should pursue gun prohibition as soon as it is attainable.

Indeed, under the assumption that there are no significant violence-reducing effects of gun ownership and use, there is virtually a moral imperative to pursue the strictest controls achievable under prevailing political conditions, right up to and including prohibition. Doing anything less would necessarily mean that there was more death and injury than there would have been with a gun ban. In sum, HCI's premises imply a moral obligation to pursue prohibition.

If the effect of gun availability is overwhelmingly a violence-increasing one, then the fewer guns there are, the better, from a violence-reduction standpoint. If, however, one permits the mass of the population to have guns, by having only the "commonsense" laws that HCI currently advocates, but not a gun ban, a huge supply of guns will remain in civilian hands and thus will continue to be available to criminals, as well as the suicide-prone and accident-prone. Even if all voluntary gun transfers, whether through dealers or private transfers, were somehow eliminated, there would still remain the estimated 750,000 guns stolen each year, mostly in residential burglaries (341,000 household gun theft incidents per year, times 2.2 guns stolen per household theft incident).¹¹² This is far more than enough to maintain a level of gun ownership among criminals sufficient to sustain the highest known levels of gun violence, since probably no more than a few hundred thousand different guns are used to commit crimes each year.¹¹³

These facts, when combined with HCI premises, strongly suggest a prohibitionist conclusion: the only realistic way one

can effectively deny guns to criminals is to deny guns to everyone: to ban gun ownership. Once one assumes there are no significant violence-reducing effects of gun ownership, nor any constitutional obstacles to gun bans, there is no significant cost to disarming noncriminals and thus no compelling reason *not* to ban the private possession of guns.

Another variant of this reasoning is evident when gun control supporters discuss the violence-increasing effects of gun ownership, but without addressing who possesses the guns. By omission, gun ownership itself is portrayed as increasing violence, or at best having no effect, independent of the character of those who possess and use the guns, since anyone might do harm with them. The possibility that the power-enhancing impact of weapons might have very different effects on violence depending on whether victims or aggressors possess them is simply not considered, or is superficially dismissed on the basis of one-sided speculation and selective citation of technically inferior or even irrelevant evidence.¹¹⁴

Statements by Clinton administration spokespersons defending its support of gun buyback programs perfectly exemplify this variant of prohibitionist logic. A spokesman for the Department of Housing and Urban Development insisted that even though the programs do not directly disarm criminals, eliminating *any* gun ultimately reduces the risk of death or injury, explaining that “the first purpose of [gun buybacks] is not trying to stop bad guys from robbing banks or bad guys from shooting each other. The first purpose is to get guns out of homes.”¹¹⁵ Thus, even disarming noncriminals (i.e., persons other than “bad guys”) was, according to the Clinton administration, likely to reduce deaths and injuries.

This reasoning is closely related to another premise of HCI/gun control ideology that leads to prohibitionist conclusions. This is the venerable article of faith that the typical killer is a “regular Joe” with little prior record of crime or violence, who therefore is not a “real criminal.”¹¹⁶ This element of the ideology was developed to deal with an obvious objection to gun control as crime control: if only lawbreakers commit crimes with guns, but lawbreakers will not obey gun laws, how can gun laws prevent gun crimes such as gun homicides? The solution to this rhetorical problem was to assert that there were significant numbers of people who, although they did commit a homicide or other crime with a gun, were nevertheless, prior to this isolated

violent act, law-abiding enough to obey gun laws. Therefore, gun laws could have prevented their violent acts.¹¹⁷

The “regular Joe” imagery of killers implies that a large share of homicides committed with guns are committed by persons who previously showed no significant signs that they were likely to be violent in future. That is, they had no prior criminal convictions, no known record of mental illness accompanied by violent outbursts, no known record of violent reactions to drug use, and so on. The higher the fraction of killers one believes fit this imagery of “normal” killers committing a single isolated act of criminal violence, the more necessary it is to support gun prohibition to reduce homicide, i.e., to deny guns to everyone, not just those with criminal convictions or similar official indicators of high-risk status. If anyone might become violent, everyone must be denied guns.

In its early years, HCI openly advocated handgun prohibition, as CSGV and VPC still do today. None openly advocate banning private possession of all types of guns, presumably because it is currently a political impossibility. Only about seventeen percent of U.S. adults support banning all gun ownership.¹¹⁸ Unfortunately, for reasons noted earlier, banning only handguns, but not long guns, is a fatally flawed policy. Banning only handguns, while leaving over 150 million shotguns and rifles available, would be likely to prove so counterproductive that handgun ban advocates would have to either repudiate their support for any kind of gun prohibition (an unlikely eventuality) or attempt to correct the mistake by pursuing a ban on long guns as well, in hopes of removing the more lethal substitute weapons.¹¹⁹ Thus, the flaws inherent in handgun-only bans would create strong pressures for an escalation to a complete ban on guns of all types.

F. The Advocacy of Licensing and Registration in Addition to Background Checks

The principal federal legislative initiative of HCI at the turn of the millennium was the bill informally known as “Brady II,” which mandates national registration of guns and licensing of gun owners.¹²⁰ It is called Brady II because it is a follow-up to the Brady Act, which required a criminal background check for all persons attempting to acquire a gun from a licensed dealer. Given that a background check already prevents convicted

criminals from legally acquiring guns from licensed dealers, what additional violence-reduction benefit could reasonably be expected from licensing owners and registering guns?

For those pursuing prohibitionist goals, the value of licensing and registration is obvious. Licensing and registration make administratively feasible what would otherwise be a utopian effort to disarm the civilian American population. If one eventually got a federal law passed that banned the private possession of guns, or handguns, compliance with the law would obviously be higher if the government possessed a list of all those known to own guns and of the guns that they owned. Under current political conditions, it is unlikely such a list would be used to guide massive, and very expensive, house-to-house searches and confiscations. Rather, the utility of registration records would primarily derive from their value for compelling compliance with gun confiscation, due to gun owners' knowledge that their gun ownership was recorded with the government, and thus that the government knew which citizens "owed" them guns.

Anyone who was on the registration lists who did not turn in all registered guns by a gun ban deadline could be presumed to be in violation of the possession ban, and would be a high-priority candidate for rationally targeted, and thus more constitutionally defensible, law enforcement attention. Since random searches of homes are not likely to be authorized in the U.S., registration lists could be used to establish probable cause for issuance of selectively targeted search warrants to find contraband guns.

Registration supporters sometimes even concede the advantages of registration for purposes of selective confiscation of guns from criminals.¹²¹ Pete Shields denied that registration would *lead to* mass confiscation, but never denied that it would be helpful in implementing mass confiscation. Nevertheless, HCI did not propose any government registry of guns in 1981. By 1994, however, after the Brady Act was passed, HCI had expanded its goals to include registration.¹²²

The perception that registration could lead to confiscation is by no means a rare one in the U.S. In a 1978 national survey, 51% of U.S. adults agreed with the statement that "A national gun registration program might well eventually lead to the confiscation of registered firearms by the government."¹²³ Thus, the belief that registration might have this consequence cannot honestly be portrayed as an idea confined to NRA members or right-wing extremists.

While the value of licensing and registration for enforcing a mass confiscation of guns is self-evident, its violence reduction benefits are completely undocumented. Advocates used to claim that registration would facilitate identifying and convicting criminals who used guns to commit violent crimes, apparently envisioning significant numbers of offenders who registered their guns and then abandoned them at the scene of a crime.¹²⁴ The implausibility of this scenario, and the rarity with which police used existing state registration systems to identify suspects, probably contributed to this rationale losing its popularity.¹²⁵ Nevertheless, HCI still justifies registration by asserting that it “allows for speedier and more reliable tracing of guns used in crime” and would reduce the number of criminals who “escape conviction because there is no paper trail or evidence linking them to the crime guns they used.” HCI does not, however, cite any data from existing state registration systems concerning how often registration records were instrumental in securing criminal convictions.¹²⁶

A second, marginally less dubious rationale is now generally preferred by registration supporters. HCI states that “registration is designed to reduce illegal gun trafficking by providing for more efficient tracing of guns used in crimes” to the dealers involved in illicit gun sales.¹²⁷ This rationale is based on the empirically unsupported claim, promoted by the U.S. Bureau of Alcohol, Tobacco and Firearms (BATF), that a large share of criminals acquire guns as a result of the activities of high-volume gun traffickers, and thus that criminal gun possession could be significantly reduced by identifying and prosecuting these traffickers.¹²⁸

Empirical evidence indicates that such traffickers account for only a tiny share of criminal guns, operate in large numbers only in a handful of places (a few large cities in the Northeast), and that most of the few criminals who get their guns from traffickers could also get guns from other sources if the traffickers did not operate. Instead, theft and private transfers by persons not in the business of dealing guns are the primary means by which criminals acquire guns.¹²⁹

It cannot be accurately argued that registration has never been tried, and thus not given a chance to show its merits. At least a half-dozen states have implemented registration (mostly of handguns). Empirical assessments of gun law impact have consistently indicated that state registration laws have no measurable effect on rates of crime or violence.¹³⁰

Licensing of gun owners likewise seems redundant for crime control purposes, once one has background checks on prospective gun buyers, as is already required for purchases from licensed dealers under the Brady Act. These checks could be extended to nondealer transfers by requiring private buyers and sellers to use licensed dealers as brokers, who would then perform the usual checks. This, however, would not require licensing. HCI claims that licensing is needed to permit more thorough background checks, involving fingerprinting and more time-consuming checks of paper records than are possible under the present “instant” background checks. They also argue that licensing would permit better residency verification, thereby disrupting interstate gun running, and would require completion of a gun safety course.¹³¹

What is most noteworthy for present purposes is that licensing of owners is not needed to accomplish any of these goals. The government could issue certificates of nonfelon status, based on background checks as thorough and prolonged as one could want, without retaining lists of persons receiving the certificates, and then merely require that prospective gun buyers present an up-to-date certificate before a gun could be transferred. Under such a system, there would be no government-controlled list of gun owners generated. Likewise, certificates of completion of a gun safety course, or of residency, could be issued without any government retaining lists of recipients.

Thus, the one goal that HCI’s licensing proposal would indisputably achieve that could not be easily achieved by these other means, is a federal government list of all legal gun owners. Likewise, the only goal clearly achieved by registration is that it would provide a complete list of guns legally owned by those licensed owners. Thus, the element that HCI appears most intent on achieving is government records of who owns guns and what guns they own. In sum, HCI places highest priority on giving the government a resource that would indisputably facilitate mass confiscation of guns, but that has no documented value for reducing crime or violence.

This does not imply that all supporters of licensing and registration secretly view these as tools for mass confiscation. Some advocates are simply honestly mistaken or unrealistically optimistic about the crime-control value of the measures, while more casual supporters probably have not thought very much about the full set of implications of licensing and registration. On the other hand, the potential that registration records could be used

to facilitate mass confiscation cannot have escaped the notice of professional gun control advocates, and is clearly not so dire a prospect that it deters them from supporting registration, on the basis of only the most weakly supported and speculative potential crime-control benefits.

IV. CONCLUSIONS

Of the three most prominent gun control advocacy groups, two, CSGV and VPC, openly support handgun prohibition, while the third, HCI, once openly advocated the same thing, but ceased to do so only when it decided that prohibition was, at least for the moment, politically unachievable. The evidence reviewed herein nevertheless supports the proposition that the HCI leadership continues to support handgun prohibition despite apparent disclaimers to the contrary. The premises and logic of HCI's arguments for moderate gun controls lead to prohibitionist conclusions, and its advocacy of federal registration and licensing, when background checks on prospective gun transferees are already in place, suggests a desire to gain the administrative tools for implementing prohibition. HCI currently supports bans on gun types such as SNSs and "assault weapons," has actively supported both state and local handgun bans in the past, has commented favorably on foreign prohibitions, and has neither repudiated its past support of prohibition nor committed itself to opposing prohibition in the future.

Another way to think about this issue is to consider whether there is any evidence that is clearly inconsistent with this conclusion, that affirmatively indicates that the leaders of HCI oppose prohibition, as distinct from merely regarding it as currently unattainable. This chapter was submitted to HCI, to give its leaders an opportunity to rebut any of its points prior to publication. HCI did not respond.

The American gun control debate is frequently dishonest. Sometimes the dishonesty is of the banal type common in all political debates -- exaggeration, selective attention to evidence and to the possible implications of the evidence, creation of distorted straw man versions of one's opponent's positions, and so on. However, many gun control advocates also distort the gun debate by concealing exactly what it is that they would ultimately like to achieve, and thereby obscuring the full set of conse-

quences of passing the “reasonable” measures that they currently advocate.

Most Americans oppose banning handguns or all guns, and would, as gun ban advocates have conceded, be less likely to support moderate controls if they thought that they would lead to prohibition. Consequently, some gun control proponents choose to be less than forthright about the full set of reasons why they support moderate controls. As a result, the debate over a given moderate control is distorted in that some of the consequences of the control becoming law are not honestly discussed.

In turn, some people who sincerely support only moderate controls and who oppose prohibition are misled as to the full set of possible consequences of their support for measures like registration or licensing. Further, their motives are unfairly impugned by gun control opponents who wrongly lump them in with the many prominent advocates who support moderate controls as stepping stones to prohibition.

As long as gun control advocacy groups like HCI continue to hold open the possibility of the group’s future support for prohibition, by declining to formally forswear any such future support, it will be impossible to confine debate to the merits of more moderate controls. Instead the debate over a given control will always be distorted by what ought to be, in an ideal world, irrelevant concerns about the slippery slope implications of passing the measure.

For example, when the Consumer Product Safety Commission (CPSC) was created, Congress denied the agency jurisdiction over firearms and ammunition precisely because of fears that a future administration might use the agency’s authority to declare guns and/or ammunition to be dangerous products and to ban their further manufacture. This was unfortunate, since the authority might also have been used, in a less politically toxic environment, to prevent the manufacture of guns with faults that any gun owner would acknowledge to be defects, such as a tendency to discharge if dropped on a hard surface.¹³² Now, HCI is pushing to give authority over guns to CPSC, supposedly to get manufacturers to produce guns that are not needlessly dangerous, but concerns over prohibition are again contaminating discussion of the potential merits.¹³³

Of course, if people took slippery slope thinking to its logical conclusion with respect to all social problems, it would imply that no solution, no matter how sensible or effective, could be adopted, for fear that it would lead to a harmful overdose of the

solution. Conservative advocates of the death penalty would, if they consistently applied slippery slope thinking in all problem areas, have to drop their support, for fear that providing capital punishment for murder would lead to capital punishment for shoplifting, then drunk driving, then speeding, littering, and disturbing the peace.¹³⁴

Thus, people are selective about where they choose to apply slippery slope reasoning. Gun control opponents, however, have sound reasons to suspect many advocates of seeking prohibition and for fearing that advocates are trying to create or exploit a slippery slope. Many, probably most, supporters of moderate controls do favor banning the private possession of handguns at minimum, and advocacy groups do believe in premises, and use arguments, that imply prohibitionist conclusions.

Nevertheless, despite decades of effort, gun ban supporters have not managed to increase popular support for prohibition.¹³⁵ There is nothing inevitable about a slippery slope leading from moderate gun controls to prohibition. It is perfectly possible to go only so far and then stop. There is, rather, a slippery slope only to the extent that (1) extremist advocates work to create one, by pushing, openly or covertly, for prohibition, and (2) the rest of the citizenry allow them to do so.¹³⁶

The gun control debate is carried out at two levels: (1) the overt debate over whatever moderate regulatory control is currently being considered, and (2) the subterranean or background debate over prohibition measures that are not even under formal consideration. To stop the overt debate from being distorted by the subterranean debate, prominent gun control organizations claiming to support only moderate “commonsense” measures will have to formally, and convincingly, commit themselves to permanent opposition to any future “control” measures that would disarm most of the American population.

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124. Blose and Cook, *Regulating Handguns*, 9-10, 16; U.S. Bureau of Alcohol, Tobacco and Firearms, *1994 Firearms Enforcement Investigative Report* (Washington, D.C.: Department of the Treasury, 1995), 5-6.
125. Compare U.S. Bureau of Alcohol, Tobacco and Firearms, *The National Tracing Center 1994 Yearend Report* (Washington, D.C.: Department of the Treasury, 1995), 5-6, with U.S. Bureau of Alcohol, Tobacco and Firearms, *Crime Gun Trace Analysis Report: The Illegal Youth Firearms Market in New York* (Washington, D.C.: Department of the Treasury, 1999), 7.
126. HCI Web site, "Licensing and Registration."
127. Ibid.
128. U.S. Bureau of Alcohol, Tobacco and Firearms, *Crime Gun Trace Analysis Report*.
129. Wright and Rossi, *Armed and Considered Dangerous*, 185.
130. Martin S. Geisel, Richard Roll, and R. Stanton Wettick, "The Effectiveness of State and Local Regulations of Handguns," *Duke University Law Journal* 4 (1969): 676; Douglas R. Murray, "Handguns, Gun Control Laws and Firearm Violence," *Social Problems* 23 (1975): 84-88; Joseph P. Magaddino and Marshall H. Medoff, "An Empirical Analysis of Federal and State Firearm Control Laws," in *Firearms and Violence: Issues of Public Policy*, ed. by Don B. Kates, Jr. (Cambridge, Mass.: Ballinger, 1984), 235-238; Gary Kleck and E. Britt Patterson, "The Impact of Gun Control and Gun Ownership Levels on Violence Rates," *Journal of Quantitative Criminology* 9 (1993): 267-271, 274.
131. Kleck, *Targeting Guns*, 388-390; HCI Web site, "Licensing and Registration."
132. Kleck, *Targeting Guns*, 312.
133. HCI Web site, "Federal Legislative Priorities."
134. Kleck, *Point Blank*, 11.
135. Kleck, *Targeting Guns*, 345.
136. Kleck, *Point Blank*, 9-12.

Off-Target: Gun Control in Canada

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In 1995, the Canadian government introduced universal firearm registration. The plan is to license all gun owners by January 1, 2001, and then register all firearms by January 1, 2003. It was claimed that firearm registration would cost no more than \$55 million (US) over five years. Freedom of Information requests have uncovered that firearm registration has cost at least \$400 million (US) over the past three years. Firearm registration has been criticized for its abuse of individual privacy and property rights. Few believe that forcing hunters and target shooters to register their firearms will actually reduce criminal violence.

The demonization of ordinary people who happen to own a gun lays the foundation for a massive increase in governmental intrusiveness in the lives of ordinary citizens. Firearm registration violates the basic principles of policing set forth by Sir Robert Peel, the father of the English "Bobbies." Passive resistance to firearm registration is expected to be widespread as it has been in other countries. The history of gun control in both Canada demonstrates the "slippery slope" toward eroding personal liberties, a process that begins with even the most benign-appearing gun control measures.

In the United States, universal firearms registration is demanded by groups such as Handgun Control, Inc., and the Million Mom March Foundation. These organizations' spokespeople say that registration will improve public safety. Firearm registration is supposed to encourage greater responsibility among owners and also provide police with greater methods of tracing lost or stolen firearms. Opponents argue that such a scheme is unworkable and just creates another costly federal bureaucracy. The recent introduction of a licensing scheme for Canadian gun owners has already provided a taste of the costs and pitfalls that will accompany full registration of firearms. The government has

proceeded in two steps.. First, by mandating that existing gun owners must have applied and received a license by 1 January 2001, and second by requiring that by January 2003, the firearms themselves must be registered.

In 1995, Jean Chretien's Liberal government pushed through the Firearms Act (Bill C-68). This act, among other things, mandated the licensing of all firearm owners and introduced universal firearm registration. This legislation is even more remarkable because Canada already had a firearm regime that was quite strict. Handguns had been registered since 1934, police scrutiny had been required for all firearm purchasers since 1977, a wide range of weapons were prohibited in 1977, and in 1991, a large number of military-style semi-automatic rifles and large-capacity magazines were also prohibited or restricted.

Universal firearm registration and owner licensing sounds reasonable to many people. Unfortunately, a number of practical problems have emerged in the past few years since the federal government has begun to implement it. First, costs are escalating, second, firearm registration violates basic principles of policing, and third, public support appears to be evaporating for registering firearms. This is not just a problem in fiscal mismanagement; firearm registration is another step along a slippery slope that could damage individual freedom for all Canadians. This article will examine the disturbing increase in police power that existing gun legislation has already created.

I. THE PROGRAM'S COSTS HAVE ESCALATED, SEEMINGLY OUT OF CONTROL.

When firearm registration was introduced, it was claimed by the federal government that it would cost \$55 million (US) over 5 years to introduce (Department of Justice, 1995). At the time this was announced, these estimates were subject to strong doubt, as registration involves the cooperation of several federal ministries (e.g., Customs, Secretary General – the RCMP, Justice, and Indian Affairs), all 10 provincial governments, as well as all three territorial governments.

The Canadian Firearm Centre (CFC) was set up in 1996 to administer firearm registration. Although firearm owners will have until January 1, 2003 to register their firearms, the cost of the CFC passed \$400 million (US) in early 2000, and the total is expected to reach one billion within another year. While Bill C-68 was before Parliament, I estimated that the final cost would

be pass \$1 billion (US) (Mauser 1995 a, b). I may have underestimated the true costs.

Despite the difficult fiscal situation facing the Canadian government during the 1990s, the budget for the CFC has grown rapidly, even exponentially. At the same time the total number of Royal Canadian Mounted Police (usually know as the “RCMP” or simply “the Police” -- only Americans call them “Mounties”) officers has declined, the number of employees working on firearm registration at the Canadian Firearms Centre, and associated government agencies, grew from a handful to at least 600 employees in mid-1999 and to over 1,700 by July 2000 (Breitkreuz, May 20, 1999; July 19, 2000). Despite this impressive growth, there is a backlog of more than a million applications. This situation has prompted the CFC to process incoming applications faster (reportedly one every five minutes), and declare a six month “grace period” for owners before they may be charged for not having a firearm license (Levant 2000).

More importantly in a time of tight fiscal constraints, this growth has meant that other governmental priorities have languished while costs have skyrocketed for firearms licensing and registration. The RCMP budget was virtually frozen between 1993 and 1999, and spending on justice services overall has been decreasing (Statistics Canada, 1999). RCMP salaries were frozen for seven years, and recruiting and training were severely curtailed. Despite declining numbers, a large number of RCMP officers have been seconded to provincial liaison jobs where they assist in the screening of license and registration applications. Although the number of police officers has increased slightly in the last couple years, the absolute number of officers declined between 1990 and 1998 (Besserer and Tufts, 1999). The statistics look even worse when considered as a ratio of the number of police officers to population. This ratio is at its lowest point since 1972 (Statistics Canada, 1996). The ratio of police officers per capita has continued to decline for the past seven years. In 1998, there were 181 police officers for every 100,000 population, but back in 1975, there were 206 police officers per 100,000. This means there is a shortfall of over 500 RCMP officers in BC alone (Besserer and Tufts 1999; Statistics Canada 1999).

These costs might be worth it if the benefits were substantial enough. But what are the benefits? It is true that gun deaths continue to decline, but this decrease does not appear to be linked to the gun laws. Firearm accidents started to decline in the mid-

1960s, before the federal gun laws were changed. Similarly, violent crime rates have declined over the past few decades, but no solid evidence can be found linking this fortuitous change to the new gun laws (Dandurand 1998; Mauser and Holmes 1992). Over three-quarters of all deaths associated with firearms are due to suicides. Unfortunately, there is no convincing evidence showing that stricter gun laws can help reduce suicide rates (Dandurand 1998). Despite the lower rates of firearm ownership in Canada than in the United States, Canada has a higher suicide rate than the United States.

The supporters of firearm registration argue that its benefits are that it controls violence by increasing the difficulty of obtaining firearms and by helping police solve crimes. There is no evidence that merely increasing the difficulty of obtaining a firearm through stricter gun regulations has any important effect on crime rates (Kleck, 1991). The conditions under which registration records might help solve a gun crime are quite narrow (Kleck, 1997). Despite there being a requirement to register handguns since 1934, eighty percent of all reported gun robberies are committed with handguns (Canadian Centre for Justice Statistics, 1999, p. 54). Department of Justice officials admitted that they could not identify a single instance where handgun registration helped solve a crime (Hansard, 1995, p. 12,259). The RCMP has repeatedly (e.g., in 1945, 1977, 1990) recommended against attempting to register long guns such as rifles and shotguns (Smithies, 1998). The benefits of firearm registration appear elusive.

II. UNIVERSAL FIREARMS REGISTRATION VIOLATES THE BASIC PRINCIPLES SET FORTH BY SIR ROBERT PEEL.

According to Sir Robert Peel, the father of modern policing, the police must have the support of ‘the policed’ for laws to be enforced effectively (Reith 1948). His principles were enunciated in 1822 when Sir Robert Peel founded the London “Bobbies.” However, many firearm owners do not accept the legitimacy of firearm registration. This rejection by the policed necessarily violates Sir Robert Peel’s basic principles of policing and accelerates the tendency towards an increasing militarization of police forces. As Peel warned, “the extent to which the cooperation of the public can be secured diminishes, proportionately, the necessity of the use of physical force and compulsion for achieving

police objectives.” The increasing use of physical force by the police to impose unpopular laws will divide the police from the policed even further.

Table 1. Peel’s Nine Principles of Policing:

1. To prevent crime and disorder, as an alternative to their repression by military force and by severity of legal punishment.

2. To recognize always that the power of the police to fulfill their functions and duties is dependent on public approval of their existence, actions and behavior, and on their ability to secure and maintain public respect.

3. To recognize always that to secure and maintain the respect and approval of the public means also the securing of willing cooperation of the public in the task of securing observance of laws.

4. To recognize always that the extent to which the cooperation of the public can be secured diminishes, proportionately, the necessity of the use of physical force and compulsion for achieving police objectives.

5. To seek and to preserve public favour, not by pandering to public opinion, but by constantly demonstrating absolutely impartial service to law, in complete independence of policy, and without regard to the justice or injustices of the substance of individual laws; by ready offering of individual service and friendship to all members of the public without regard to their wealth or social standing; by ready exercise of courtesy and friendly good humour; and by ready offering of individual sacrifice in protecting and preserving life.

6. To use physical force only when the exercise of persuasion, advice and warning is found to be insufficient to obtain public cooperation to an extent necessary to secure observance of law or to restore order; and to use only the minimum degree of physical force which is necessary on any particular occasion for achieving a police objective.

7. To maintain at all times a relationship with the public that gives reality to the historic tradition that the police are the public and that the public are the police; the police being only members of the public who are paid to give full-time attention to duties which are in-

cumbent on every citizen, in the interests of community welfare and existence.

8. To recognize always the need for strict adherence to police-executive functions, and to refrain from even seeming to usurp the powers of the judiciary of avenging individuals or the state, and of authoritatively judging guilt and punishing the guilty.

9. To recognize always that the test of police efficiency is the absence of crime and disorder, and not the visible evidence of police action in dealing with them.

Source: Charles Reith, *A Short History of the British Police*, (London: Oxford University Press, 1948).

In order to be useful to the police, firearm registration requires near-total compliance. However, experience in other countries shows that passive resistance to firearm registration is widespread (Kopel, 1992). Many normal Canadians who happen to own firearms are disaffected by the 1995 firearm legislation. Surveys show that in Canada a high percentage of gun owners will refuse to register their firearms. Willingness to comply may even have decreased. In 1995, 72% said they would comply (Mauser and Buckner, 1997). More recently, a 1997 Environics poll found only 58% who said they would comply (Breitkreuz, 1999c). Press reports of problems with the registry and growing public dissatisfaction suggest that percentage has shrunk since 1997. Many gun owners will sell all their guns; others will just register a few, or they may not register any. In addition to the gun owners forthright enough to say in a telephone survey they will violate the law, there are undoubtedly others who haven't heard about the requirement, or who resent the invasion of their privacy and who may not answer questions or answer them honestly, or who just won't get around to complying with the law. Experience in other countries shows that passive resistance to firearm registration is widespread among otherwise law-abiding citizens.

Although the chiefs of police support this legislation, surveys of serving police officers show that most other ranks do not. The Canadian Police Association has even voted to reconsider its support for firearm registration. Surveys of serving police officers show a high percentage of officers who do not support this legislation (Breitkreuz, 1999c).

Without resorting to military force, it is difficult to enforce laws that are not supported by the public. This can be seen by the Canadian and American experiences with Prohibition during the early part of the Twentieth Century. More recently, it may also be seen in the effort to prohibit marijuana and other drugs. Such laws are futile because they are exercises in morality. If Prohibition was an attempt to impose rural values upon urban residents, firearm registration may be seen as an effort to inflict urban values upon rural Canadians.

Although many existing gun owners will not comply with registration legislation, it is already having an adverse impact on gun purchases and it may be destroying the Canadian hunting and shooting culture. Many gun owners are abandoning hunting or owning firearms in the face of the increasing arbitrariness of firearm legislation. Parents are finding it increasingly difficult to pass on the values of their rural hunting culture to the next generation. The past two decades of arbitrary and punitive Liberal government gun control measures have devastated Canadian firearm businesses: three-quarters of all retailers selling firearms have gone out of business; over half of all retailers selling ammunition have disappeared (RCMP, 1999). Hunter numbers have declined during the same time period. Mandatory registration will accelerate this trend by turning many rural Canadians into scofflaws, and it will encourage hunting illegally.

Will gun owners register their firearms, drop out of firearm ownership, or continue to own and use firearms without bothering to register them? In assessing the reaction of Canadian gun owners to firearm registration, there are two important questions that need to be answered: first, how many people owned one or more firearms in 1995, and second, what are gun owners doing in the face of this legislation? Without solid answers to these questions, we are unable to evaluate the effectiveness of firearm registration.

How many gun owners are there? In 1995, Department of Justice (DOJ) Canada estimated that about 3.5 million people in Canada owned firearms. I believe 3.5 million is too low. Based on my re-analysis of the DOJ Canada's survey, and my own representative surveys, I estimated that there were about 5 million gun owners in Canada in 1995, not 3.5 million (Mauser 1995a,b).

What will Canadian gun owners do when they are faced with increasingly onerous ownership requirements? The latest DOJ Canada estimate is that there are only 2.4 million gun owners (Canadian Firearms Centre, 2001). The DOJ assumes that this

drop is entirely due to former firearm owners who have sold or turned all their firearms to the police, thus removing them from the category, "gun owner." Certainly, many have, however, it seems excessively naïve to assume that respondents will admit that they own a firearm even when they fear it might be illegal. Many, if not most, gun owners would be expected to be uncertain about their compliance with the gun laws, after government advertising over the past few years has stressed the draconian penalties for violating the complex new law. This new estimate by the DOJ implies that almost one million people got rid of all of their guns. Since each Canadian gun owner has slightly more than two guns on average, this means that about two million guns have been sold or turned in to the RCMP. However, there are no records that show this many firearms were sold or turned in for destruction over the past few years. Apparently, many gun owners have quietly kept their guns without getting the necessary license. They are now subject to a criminal penalty of ten years in jail if they "knowingly" refuse to comply with this law.

Many Canadians, particularly rural families, may decide to ignore the law.¹ For cost reasons, some people may choose to become gun 'users' rather than gun owners. All that is needed is that there be one 'official gun owner' per household. Many Canadians will not see the necessity to pay \$10 or even \$80 per person (See table 6.). If only one person in a household signs up as a "government licensed" gun owner, all family members will have access to ammunition and to a gun for protection. These Canadians will be acting illegally of course, but, given the low level of enforcement, many nevertheless will decide that there is no immediate need for them to conform to the law.² The RCMP has unofficially said they will not make any effort to locate such people, but if they encounter an unregistered firearm, they may have to lay charges. Hunting is more problematic; as it is easy to see that a hunting licensed typically implies firearm ownership. Thus, I predict this law will contribute to an increase in poaching.

III. PUBLIC SUPPORT IS DECLINING.

Voting patterns throw an important light on gun legislation in relation to Peel's policing principles and public acceptance of the law. Politicians are discovering, in both the United States and Canada that calling for more gun control does not contribute to winning elections. For example, even though former Vice President Gore is a strong supporter of stricter gun control measures,

he found it expedient to play this down in the Presidential elections last year (Palm, 2000).

It is easy to see why politicians get seduced into believing that calling for more gun control would be politically popular. Between elections, politicians can only gauge public support from public opinion polls. Polls are difficult to conduct, and even more difficult to interpret. Perhaps an illustration will be helpful. In 1995, Professor Taylor Buckner of Concordia University and I asked 1,500 Canadians directly about universal firearm registration (Mauser and Buckner 1997). Our results mirrored those of other polls that have asked this same question (See Table 2.). We found 84% of respondents supported requiring firearms to be registered, which is approximately what Angus Reid found in a survey conducted for the Canadian Coalition for Gun Control (Reid 1993). More recent polls have found that this percentage has declined to approximately 76%. But this still does not tell the full story.

Table 2. “Do you agree or disagree that all firearms should be registered?”

Responses	Atlantic	Quebec	Ontario	Prairies	BC	Canada
Agree	84%	94%	86%	73%	82%	84%
Disagree	13	5	12	22	17	14
Don't Know	3	1	2	5	1	2
(N = 1,505)	100%	100%	100%	100%	100%	100%

Source: Mauser and Buckner (1997)

In public opinion research, a distinction must be made between mass opinion and public judgment. Many respondents will readily volunteer opinions without thinking very deeply about the question; for example, it is easy to agree that poverty should be reduced. They may even agree to pay higher taxes hypothetically. But if people are asked to take money out of their own paycheck to do it, their “support” for eliminating poverty quickly diminishes. This illustrates that public issues involve making difficult tradeoffs. This is also true with firearm registration. Registration sounds like a good idea so long as it does not involve any cost or inconvenience. However, public opinion begins to shift on firearm registration as soon as people realize that it will inconvenience them personally, or cost them--as taxpayers--a fair

amount of money, or divert governmental resources from other desired programs (Wade and Tennuci 1994).

Table 3 shows that support for firearm registration drops over thirty points (to 50%), when respondents are told that it might cost \$500 million to register all firearms in Canada. Support for registration drops even further, to only 43% when the trade-off is a reduction in the number of constables on the street. Canadians were particularly opposed to diverting police officers from dealing with violent crime to handling paperwork required by registering hunters and target shooters. This appears to be actually the case. It is not known how much support would drop if respondents knew that the costs are now even higher than \$500 million.

Table 3. Support for firearm registration drops when respondents are informed of the probable costs.

Question: “If it would cost \$500 million, would you still agree [strongly or somewhat] that all firearms should be registered?” (Only asked of those respondents who answered they “agree strongly or somewhat.”)

Responses	Atlantic	Quebec	Ontario	Prairies	BC	Canada
Agree	45%	56%	52%	38%	50%	50%
Disagree	46	40	40	51	43	45
Don't Know	9	4	8	11	7	5
(N = 1,505)	100%	100%	100%	100%	100%	100%

Source: Mauser and Buckner (1997)

Question: “If registration would force the police to pull constables off the street to deal with the paperwork involved, would you still agree [strongly or somewhat] that all firearms should be registered?” (Only asked of those respondents who answered they “agree strongly or somewhat.”)

Responses	Atlantic	Quebec	Ontario	Prairies	BC	Canada
Agree	42%	52%	43%	31%	44%	43%
Disagree	48	43	48	57	50	50
Don't Know	10	5	9	12	6	7
(N = 1,505)	100%	100%	100%	100%	100%	100%

Source: Mauser and Buckner (1997)

But how does this analysis translate into votes? Many people who support additional gun control measures appear to do so on the basis of uninformed faith and lack of knowledge. A high percentage of supporters are unaware of what gun laws already exist, and, because they have no personal stake in the issue, gun control is not an issue that could be expected motivate them to vote. The costs—hypothetical governmental expenditures—are not immediately real. However, hunters, target shooters, and other gun owners are not uninterested. Gun laws directly affect them. Their costs are not hypothetical—they are real and immediate. The personal cost of further gun control motivates them to vote.

Opposition to firearm registration is deep. Six of the ten provinces, having a majority of Canada's population among them, mounted a constitutional challenge of the 1995 Firearms Act.³ They lost their challenge, but that should have been expected, given that the Prime Minister unilaterally appoints all of the judges on the Supreme Court of Canada. Despite this, another constitutional challenge has since been launched, based this time of violations of Charter rights by Professor Ted Morton at the University of Calgary.

Despite the absence of any national organization as powerful as the NRA in Canada (the Canadian National Firearms Association is much smaller), the gun issue has had an impact on Canadian politics. Five provinces have held general elections since the Canadian Parliament passed the Firearms Act of 1995 (Bill C-68): Ontario, New Brunswick, Nova Scotia, Saskatchewan, and Manitoba (Ontario is the population center of Canada). Bill C-68 was an issue in every one of them; no party supporting firearm registration was elected. In two of these provincial elections (New Brunswick and Nova Scotia), parties favoring the legislation were defeated and replaced by parties that oppose it. In another two (Saskatchewan and Manitoba), both major parties opposed the legislation, and in the last province (Ontario), the party opposing the legislation won reelection in the face of strong challenge from parties supporting additional legislation (Gunter 1999b). Of course, many factors influence voting patterns, but at the very least it's clear that support of gun legislation is not an electoral plus and is likely a negative.

Firearm registration also had a powerful if subtle impact on the federal election last year. Opposition to firearm registration was an important reason that the Liberals were all but shut out in Western Canada by the Canadian Alliance. Despite a poor campaign, the Alliance gained both votes and seats in BC as well

as throughout the West. Opposition to firearm registration even contributed to the Alliance gaining votes and seats in the urbanized Lower Mainland. Although firearm registration was not that important in Central Canada, opposition to firearm registration did help the Alliance to win two seats in rural Ontario, and contributed to the Conservatives holding on in Atlantic Canada.

IV. CANADIAN GUN CONTROL ILLUSTRATES THE “SLIPPERY SLOPE.”

The history of gun control in Canada, as in the United Kingdom, demonstrates the “slippery slope” of accepting even the most benign-appearing gun control measures. At each stage, the government either restricted access to firearms or prohibited and confiscated arbitrary types of ordinary firearms. Firearms served as a convenient target, as the public was frightened of them.⁴ Government claimed it needed more intrusive violations of basic rights and freedoms to protect the public. But after several increasingly restrictive laws, there is no evidence that these firearm laws actually reduced violent crime (Mauser and Maki, 1998, 1999). The government is unfazed. But the rights and liberties of all Canadians have been reduced.

Gun laws are passed during periods of fear and political instability, then, after the threat recedes, the government’s police powers have increased, and individual rights and freedoms have been diminished. The question seems never to be asked: where is the appropriate level of control for firearms? Politicians continually call for more gun laws, and the bureaucracy continues to grow.

The Great Depression of the 1930s was a period where the Canadian government feared labor unrest as well as American “rum runners.” As a result, in 1934 the government of Canada passed firearms legislation that mandated handgun registration. There were separate permits for “British subjects” and for “aliens.”⁵ The RCMP was authorized to issue and to monitor these permits, which were handled at the level of the local detachment. Unsurprisingly, very few “aliens” qualified for the permit.

World War II was a difficult period that saw another round of gun control laws introduced.⁶ In 1940, alien firearm permits were revoked, and firearms were prohibited and confiscated from “dangerous aliens” (including Japanese Canadians—even though Canada was not at war with Japan yet). In 1941 Orientals

were forbidden to own firearms in BC, including Chinese Canadians, even though China was officially our ally throughout the war. This was the unilateral decision of the BC Attorney General. All firearms (including long guns) were registered during the war years. Registration ended in 1945 at the request of the RCMP who didn't think it was useful.

Further firearm legislation was introduced during the "red scare" that followed the war. In 1951 the government introduced the registration of automatic firearms.⁷ In addition, a new offense, "possessing and carrying" an offensive weapon for "purposes dangerous to the public peace" carried a maximum penalty of 5 years in jail. The 1951 firearm legislation gave the police the authority to search without warrant "a person or vehicle or premises other than a dwelling house" they had "reasonable grounds" to believe they would find a weapon that would be or had been used for a criminal offense. They were also give authority to seize such weapons. This somewhat narrowed the authority police had been given during the war to search without warrant any "premises or person" where it is "reasonably suspected" there are firearms or explosives present.

The Front de Liberation du Quebec crisis in Quebec dominated the late 1960s through the first few years in the 1970s. In 1969, another firearm law was introduced. This legislation created the categories of "restricted weapon" and "prohibited weapon" for the first time. "Restricted weapons" (e.g., handguns) had to be registered and their use was subject to strict conditions—including the requirement that a permit must be obtained by the owner to transport it outside of the place where it is registered. However, citizens were allowed to purchase a restricted weapon if he or she applied for the proper permits.

"Prohibited weapons" (e.g., fully automatic firearms, silencers, switchblades, rifles and shotguns shorter than 66 cm) were made subject to even more stringent conditions than restricted weapons. It became illegal to purchase or to sell a prohibited weapon, with the exception that those individuals who happened to own them before the introduction of the legislation. Despite this exception, pre-existing owners could keep only certain types of prohibited weapons. Other categories—such as switchblades—were confiscated. Severe restrictions were put in place on transporting the exempted prohibited weapons outside the place where they are registered. As well, pre-existing owners were prohibited from buying or selling the weapons amongst themselves. However, until new legislation was introduced in 1978, non-

restricted firearms (ordinary rifles and shotguns) could be bought without a police permit.

The 1969 legislation, although passed in a period of crisis, set the pattern for all future firearm legislation in that the wording and conditions attached to restricted weapons permits were no longer established by legislation. The police were given the powers to administratively set the conditions for all firearm permits. Every permit from 1969 onwards must now be “in a form prescribed by the Commissioner [of the RCMP].” As well, the legislation allowed weapons to be designated as prohibited or restricted by Order-in-Council.

Police search and seizure powers were increased. The type of warrantless search and seizure allowed under the 1951 act remained largely unchanged but the grounds justifying such search and seizure were broadened. Under the 1951 Act, police had to have reasonable grounds to suspect the weapon was used for criminal activity. Under the 1969 act, police could utilize such powers on grounds “related to prohibited or restricted weapons” rather than on the grounds “it is being used to commit a criminal offense.” Mere ownership of a type of firearm for the first time is grounds for a police search—even though no offense had been committed.

The current registration system, requiring a separate registration certificate for each restricted weapon, also took effect in 1969. The position of “firearm registrar” within the RCMP was created and given the authority to attach any “reasonable conditions” to the “use, carriage or possession of the [restricted] weapon or ammunition, as he deems desirable in the interests of the safety of other persons.”

For the first time in Canadian history the government gave itself the authority to restrict or prohibit, through Order-in-Council, any firearm “not commonly used in Canada for hunting or sporting purposes.”⁸ Even these measures were too weak, for in 1970 the Canadian government declared the War Measures Act and with the acquiescence of the Premier of Quebec, occupied Quebec with the Canadian armed forces. The War Measures Act was rescinded in 1971, but not before over 4,000 warrantless searches took place in Quebec province; the Canadian Army arrested and detained without warrant or access to legal counsel more than 500 people, 95% of whom were released two months later without charges. The War Measures Act, like the firearm legislation of 1969, were acts of a desperate government struggling with a situation in Quebec that it did not understand.

Both measures seriously threatened long-standing Canadian liberties and freedoms.

Table 4. The 1977 Canadian Firearms Legislation
Proclaimed in August 1977. Came into force in 1978
and 1979

- *Required a police permit to purchase a firearm, the Firearms Acquisition Certificate,
- *Used Orders-in-Council to ban a large variety of weapons, including fully-automatic firearms
- *Centralized the registration requirements for “restricted weapons” (e.g., handguns, which had been registered since 1934)
- *Eliminated protection of property as a legitimate reason for registering handguns
- *Introduced penalty for “unsafe storage” of firearms
- *Introduced requirements for firearms and ammunition business permits
- *Introduced additional penalties for the criminal misuse of a firearm during the course of committing another crime (this section has rarely been applied)

New firearms legislation was introduced in 1977 as part of a log-rolling exercise with MPs in order to form a majority for abolishing capital punishment. In this new legislation: automatic firearms, which had had to be registered under the 1951 legislation, were reclassified as “prohibited weapons.” Owners of automatic firearms were “grandfathered,” in that they were allowed to keep them, but they were faced with confiscation without compensation when they died. For the first time since World War I, a police-issued permit was required to obtain “ordinary” rifles and shotguns (the Firearms Acquisition Certificate or FAC).⁹ A provision for a mandatory firearm safety course was abandoned because the provinces and the federal government couldn’t agree who would pay for it.

A new crime was introduced for “unsafe storage of firearms,” although no definition of safe storage was provided.¹⁰ The protection of property was eliminated as a suitable reason for acquiring a restricted firearm, and owners could no longer register handguns at their business address. The police, in practice, began and still continue to refuse an FAC to anyone who indicates she or he desires to acquire a firearm for self-

protection.¹¹ A variety of weapons-- including some firearms-- were prohibited over the next few years by Order-in-Council.

In 1991, significant changes were made in the firearm law in response to a horrific shooting that shocked the country. In 1989, Marc Lépine, a deranged loner, massacred 14 women at the University of Montreal and then committed suicide. The Montreal Police did not enter building until 30 minutes after Lépine began his rampage. After a lengthy investigation, the Quebec Coroner concluded that poor police response time was primarily responsible for high number of deaths, not the particular weapon used. Lépine's use of a semi-automatic mini-14 Ruger Ranch Rifle with several high-capacity magazines sparked calls for banning semi-automatic military style firearms as well as high capacity magazines.¹²

Kim Campbell, then Justice Minister, decided there should be new firearm legislation. The 1991 legislation, among other things, expanded the list of prohibited weapons, to include "converted full automatics" and a large number of semi-automatic military style rifles and shotguns (Owners of the newly prohibited firearms were faced with confiscation without compensation).¹³ In addition, the government further centralized the handgun registration system.

Bill C-17 passed in the House of Commons on November 7, received Senate approval and Royal Assent on December 5, 1991, then came into force between 1992 and 1994. This legislation made sweeping changes to the FAC system, including requiring applicants to provide a photograph and two references; imposing a mandatory 28-day waiting period for an FAC, and a mandatory requirement for safety training. At the same time, the application form was expanded to provide more background information. Answering "yes" to any of a number of personal questions initiated a deeper investigation. The new application grew to 4 pages long with 35 questions. For the first time, applicants had to provide the names of two people who would act as references for them, in a manner similar to a passport application. If the applicant was married or divorced, one of the references was required to be a spouse or former spouse.

Some of the questions in the application were quite personal, including queries about personal health, finance, and intimate relationships. For example, "During the last five years,

* Q31. Have you been treated for threatened or attempted suicide, depression, behavioral problems or

emotional problems, or are you currently under treatment or taking medication for such?”

* Q32. Have you been treated for alcohol or drug abuse or are you currently under treatment or taking medication for such?”

* Q34. Do you know if you have been reported to the police or social services for violence, threatened or attempted violence, or other conflict in your home or elsewhere?”

* Q35. “During the last two years,...

A. Have you experienced: divorce, separation, or relationship breakdown?”

B. Have you experienced failure in school, loss of job or bankruptcy?”

Bill C-17 required more thorough police screening of FAC applicants, which often involved telephone checks with neighbors and spouses or ex-spouses. Some other major changes included: increased penalties for firearm-related crimes; new Criminal Code offences; new definitions for prohibited and restricted weapons; new regulations for firearms dealers; clearly defined regulations for the safe storage, handling and transportation of firearms; and a requirement that firearm regulations be drafted for review by Parliamentary committee before being made by Governor-in-Council.

Table 5. The 1991 Canadian Firearms Legislation Proclaimed in Dec 1991. Came into force between 1992 and 1994.

October 1992—Registration of semi-automatic military-style rifles; ban of converted automatic military-style rifles; ban of high-capacity magazines; ban of “non-sporting” ammunition.

January 1993—Increase in the Firearm Acquisition Certificate fee from \$10 to \$25/\$50

June 1993–New FAC requirements: applicants have to:

- *Complete the firearm safety course
- *Fill out the long application form (35 questions, including questions about personal health, finance, and intimate relationships)
- *Provide a passport-type photograph
- *Obtain two references (one required to be a wife or spouse, for those who are married or in a common-law relationship)
- *Mandatory 28-day waiting period for an FAC
- *Increased regulations for firearms dealers
- *Specific regulations for safe storage, handling and transportation of firearms

January 1994 – April 1994: introduction of the requirement that applicants had to complete the firearm safety course for an FAC

A major focus of the new legislation was control of semi-automatic military-style guns. It also expanded the class of prohibited weapons to include semi-automatic firearms that had been converted from full-automatic. Owners of the newly prohibited firearms were faced with eventual confiscation without compensation. The legislation also prohibited high-capacity cartridge magazines for automatic and semi-automatic firearms. A series of Orders-in-Council prohibiting or restricting most semi-automatic, military-style rifles and some types of non-sporting ammunition.

The Bill C-17 requirement for FAC applicants to show knowledge of the safe handling of firearms came into force in 1994. To demonstrate knowledge, applicants had to pass the test or a firearm safety course approved by a provincial Attorney General, or a firearm officer had to certify that the applicant was competent in handling firearms safely. Bill C-17 added a requirement that safety courses had to cover firearm laws as well as firearms safety.

In late 1994, then Justice Minister Alan Rock announced his proposed gun laws. A few months later, Bill C-68 was introduced into parliament. At the time Bill C-68 was introduced, the government announced, without any discussion in Parliament, that over half of all registered handguns in Canada would be prohibited and eventually confiscated. These handguns had not

been misused, nor had any empirical study ever been conducted showing that the banned handguns posed a public threat. The bill was rushed through Parliament and Royal Assent was granted on December 5, 1995. Prior to this legislation being tabled in the House of Commons, the Auditor General of Canada reported that no evaluation of the 1991 firearm legislation had been undertaken (Report of the Auditor General, 1993, Queen's Printer, Ottawa, pp. 647-655). Bill C-17 hadn't even been fully phased in when radical changes in the firearm legislation were being considered.

Major changes included in Bill C68, the Firearms Act of 1995:

- *Criminal Code amendments providing harsher penalties for certain serious crimes where firearms are used -- for example, kidnapping, murder¹⁴

- *The creation of the Firearms Act, to take the administrative and regulatory aspects of the licensing and registration system out of the Criminal Code

- *The broadening of police powers of "search and seizure" and expanding the types of officials who can make use of such powers

- *The weakening of formerly constitutionally protected rights and freedom against being required to testify against oneself

- *A new licensing system to replace the FAC system, e.g. licenses required to possess and acquire firearms, and to buy ammunition

- *Stricter requirements for obtaining a firearms license (the application has now grown to six pages with 45 questions, retaining the personal questions included in the previous application);

- *Registration of all firearms, including shotguns and rifles.¹⁵

In October 1998, the Minister of Justice Anne McLellan tabled additional amendments to the 1996 regulations. These did

not need to be debated in Parliament. All she needed to do was to announce them. At that time, she also tabled over 1,000 pages of additional regulations, dealing with:

- *Firearms registration certificates
- *Exportation and importation of firearms
- *The operation of shooting clubs and shooting ranges
- *Gun shows
- *Special authority to possess
- *Public agents

The regulations were proclaimed in March 1998. The Firearms Act and regulations are being phased in starting December 1, 1998. The following dates are important for Canadian hunters and target shooters.

* By January 1, 2001, all firearm owners must have obtained a license to continue legally owning their firearms, and

* By January 1, 2003, all firearms must be registered.

Table 6. The 1995 Canadian Firearms Legislation
Proclaimed in December 1995
Comes into force between 1996 and 2003

February 1995. - Prohibition and confiscation of over half of all registered handguns (so-called "Saturday Night Specials")

Introduction of two new firearms owners licenses (if owner accidentally allows license to lapse, he is subject to criminal prosecution for illegal firearm ownership)

- POL – Possession Only License

- PAL– Possession and Acquisition License

1996 - Stricter requirements for PAL:

applicants have to:

take separate safety courses for rifle and handgun (at \$100 - \$150 per course)

fill out the long application form (35 questions)

provide a passport-type photograph

obtain two references, neither of whom can be a spouse

spouse or former spouse now asked in addition to two references

New stricter regulations for safe storage, handling, and transportation of firearms

1998 - New regulations for shooting clubs, shooting ranges, and gun shows

New regulations (and fees) for export and import of firearms

Expansion of police powers of search and seizure

Some suspects of Firearms Act required to testify against themselves

January 2000 – Licensing of firearm owners begun

July 2000 – Possession Only License fee “temporarily” reduced to \$10 from \$45; Possession and Acquisition License fees remain at \$60 to \$80

January 1, 2001 – All firearm owners are required to be licensed

January 2003 – All firearms required to be registered

According to Canadian law, the police need to go to court to obtain a warrant to search your home. In general, this still is true for people who own firearms. However, there are some frightening exceptions. Section 102 of the Firearms Act allows a “peace officer” to make “periodic inspections” of the home of anyone suspected of having more than ten firearms, or anyone certified as a “gun collector.” These firearms need not be found; all that is necessary is that the peace officer have “reasonable grounds” for believing that the firearms were there.

Section 103 of the Firearms Act states that firearms may be seized without a warrant, if a peace officer has “reasonable grounds” for believing “that it is not desirable in the interests of safety of that person, or of any other person, that that person possess or have custody or control of firearms, ammunition or explosives.” A peace officer may believe such a condition exists if a neighbor or a former spouse has laid a complaint. Obviously,

complaints may be laid maliciously by angry neighbors, spouses or former spouses.

The Firearms Act relaxes the conditions under which a warrant is required. Under Section 102, a police officer can seize a restricted firearm (e.g., handgun) if the person in possession cannot “then and there” produce a registration certificate. For example, if the only licensed firearm owner in a household is away at work, and if the spouse or children cannot immediately produce permits allowing them to possess the firearm in question, then that firearm can legally be seized and the family members charged.

Section 102 goes further. It permits a “firearms inspector” (anyone designated by the Registrar to carry out duties under the Firearms Act) to “inspect and sample” whatever he or she believes on “reasonable grounds” to be subject to the Firearms Act. This includes computer records, books, documents, as well as firearms. Section 103 requires “every person found in the place that is being inspected by an inspector under section 102” to (a) “give the inspector all reasonable assistance,” and to (b) “provide the inspector with any information relevant to the enforcement of this Act or the regulations that he or she may reasonably require.” In English, this means that anyone suspected of owning ten or more firearms is required to testify against him or herself.¹⁶

Immediately after the federal election in 2000, the government decided to classify many popular airguns as firearms; some even became restricted or prohibited weapons. No public announcements of these changes were ever made, so many Canadians are now subject to criminal penalties of up to 10 years in jail without knowing it for failure for registering a firearm or for even possessing a prohibited weapon (Breitkreuz, 2001).

The highly personal questions asked of applicants for a firearm license have recently prompted the Federal Privacy Commissioner George Radwanski to consider launching an official review of the process to license firearms’ owners (Elliott, 2001). He is concerned that the invasive questions may violate the privacy of gun owners and jeopardize their right to a fair trial. He was also concerned that the efforts by the Department of Justice to privatize the gun registry would erode existing Privacy Act rights (Gillis, 2001a, p. A4). He was particularly concerned about the appropriateness of placing personal information gathered by the registry in the hands of a private company rather than police

or justice officials. Critics say that privatizing the registry would make it less accountable to Parliament and to taxpayers.

V. CONCLUSIONS

Universal firearm registration and owner licensing may appear reasonable in theory, but in practice the approach manifests a number of serious defects. In addition to concerns about mismanagement, the firearm registration has been criticized for its abuse of individual privacy and property rights.

No country in the English Commonwealth has managed to introduce or manage firearms registration successfully. For example, in Canada, a number of problems have emerged in the past few years since the federal government has begun to implement firearm registration. First, the costs have escalated far beyond the original estimates and are seemingly out of control. Costs for owner licensing have already passed the costs of BC's fast ferry fiasco (\$400 million) and they continue to mount. And for what? Few believe that forcing hunters and target shooters to register their firearms will actually reduce criminal violence. This confirms my predictions that firearm registration is unworkable (Mauser 1995a). There is no criminological evidence that imposing strict controls on normal people using firearms has any effect on criminal violence (Kleck 1997, p. 383). Second, the groups that are the most closely involved with firearms, both gun owners and the police, are deeply disaffected by the legislation. As a result of these problems, public support for firearm registration is declining. Despite initially favorable public opinion polls, the Canadian government faces increasing political and legal challenges to firearm registration.

The recent reports that Justice Minister Anne McLellan is trying to privatize the firearm registry suggest that she is trying to distance herself from a poorly administered bureaucratic nightmare that has wasted millions of taxpayer's dollars (Gillis, 2001b, p. A1). Privatization might be commendable if such a step could create a cost-effective, user-friendly system. But many observers wonder if privatization is appropriate given that the registry is based upon criminal law. Failure to comply with it can result in criminal charges. It is difficult to believe that the first government agency to be privatized would be the gun registry. Why not CBC or Canada Post? It appears more likely that the government is simply trying to distance itself from a financial morass that is increasingly apparent to the Canadian public. Many gun owners worry about the eventual costs of firearm licenses if the registry

is privatized. Given the high costs inherent in firearm registration, how high will the price of firearm licenses go?

In this article, I have argued that firearm registration is ineffective, impractical, and horrendously expensive. More importantly, the history of gun control in both Canada and the United Kingdom demonstrates the “slippery slope” of accepting even the most benign-appearing gun control measures. At each stage, the government either restricted access to firearms or prohibited and confiscated arbitrary types of ordinary firearms. In Canada, registration has been shown to mean eventual confiscation. As well, police search powers have been increased. The expansion of the state’s search and seizure powers should be taken very seriously by all civil libertarians concerned with the erosion of Canadian’s individual rights. Canada’s democratic institutions may also have been damaged by the transfer of what many would consider legislative powers to both the police and cabinet under firearm legislation.

Firearm registration violate the basic rules of policing set forth in the 1820s by Sir Robert Peel, the founder of the first professional police force, the British Bobbies. In order for laws to be enforced effectively, the police must have the support of “the policed.” However, experience in other countries shows that passive resistance to firearm registration is widespread. Instead of seeing gun control as a policy response to violent crime, it is more useful to view it as the product of conflict between urban and rural cultures (Kleck 1996). Much like the temperance movement was an attempt to impose rural values upon urban residents, firearm registration may be seen as an attempt by urbanites to impose their cultural values upon rural Canadians.

The demonization of average people who happen to own a gun lays the foundation for a massive increase in governmental intrusiveness in the lives of ordinary citizens. Firearm registration and gun owner licensing threatens long-standing Canadian liberties and freedoms. The type of gun control legislation Canada has enacted is not consistent with many democratic principles and the protection of civil liberties. Nevertheless, Canada is spearheading a move in the United Nations to impose a similar regime of strict restrictions around the world.

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Notes

1. Canadians have long decided to ignore the 1934 law requiring them to register their handguns. The RCMP unofficially estimates that there are at least as many unregistered handguns in the hands of “ordinary” Canadians as there are registered handguns. A former BC Provincial Firearm Officer told me that he estimates there are 2 or 3 times as many unregistered handguns in Canadian households as registered handguns (Newson, 1992).
2. Firearm owners may be charged for “unsafe storage” if unauthorized persons have access to their firearms. Charges are still possible even if the firearms have trigger locks and have been locked in a safe.
3. Alberta challenged the legislation on the basis that the federal scheme violated the constitutional distribution of powers. According to the Canadian constitution, the provinces are responsible for regulating normal usage of private property. Three other provinces joined Alberta: Saskatchewan, Manitoba, and Ontario. New Brunswick, and Nova Scotia joined the challenge later after provincial elections changed their government. In addition, all three territories joined the challenge.
4. See Taylor Buckner, “Gun Control Will It Work?” 9 *Journal on Firearms and Public Policy* 175 (1997) <http://www.saf.org/journal/9_work.html>
5. Up until the law was changed in 1950, Canadian law defined an alien as any person who was not a British subject. Early in the Twentieth Century, few Orientals or Blacks qualified as British subjects, nor of course did many of the Americans then living in Canada.
6. For Canada, World War II started on September 10, 1939, when Canada declared war against Germany. Canada didn’t declare war on Japan until after Pearl Harbor.
7. An automatic—or fully automatic—firearm continues to shoot as long as the trigger is held down—or until the magazine is empty. The RCMP were concerned about their potential for misuse, even though automatic firearms are rarely involved in criminal activity.
8. Orders-in-Council are decisions made at the Cabinet level and therefore undergo no parliamentary review and are secret. Neither the public nor the Parliament (outside of the members of Cabinet) are aware of them until they are issued in the name of the Canadian Government.
9. The certificate cost (CN)\$10.
10. Accidental firearm deaths are rare, and in any case, firearm storage is already covered under provincial hunting regulations. Firearm accidents declined dramatically in the 1960s with the introduction of mandatory hunter safety courses (Mauser 1995a).
11. Nevertheless, Canadians still use guns defensively to save their own lives or the lives of their family members at least 60,000 times per year. See Gary Mauser, “Armed self defense: the Canadian case,” 11 *Journal on Firearms and Public Policy*, 47, (1999) <<http://saf.org/journal/11Mauser.pdf>>

12. Semi-automatic firearms are self-loading.—A separate trigger squeeze is required for each shot. Many common sporting firearms are semi-automatic.
13. No empirical studies had been conducted to determine which, if any, types of firearms posed a threat to public security. “Military style” firearms were restricted or prohibited primarily because of their “cosmetic” differences from other firearms.
14. Similar penalties have been included in each of the firearm amendments since the 1960s, but they have not been enforced (Meredith et al, 1994).
15. For more information, see Gary Mauser, “The Politics of Firearms Registration in Canada, 10 *Journal on Firearms and Public Policy*, 1 (1998) <http://www.saf.org/journal/10_politics.html>
16. These are only a few of the onerous provisions in the Firearms Act. Edward Burlew, a lawyer, provides a more thorough treatment of the implications of this legislation in his book. Edward Burlew, *Canadian Shooters Rights*, (Richmond Hill, Ontario: Gun Loss, 2000).

Penetrating the Web of Official Lies Regarding the Waco Incident

David T. Hardy with Rex Kimball

This article is an excerpt from the book This Is Not An Assault: Penetrating the Web of Official Lies Regarding the Waco Incident, by David T. Hardy with Rex Kimball. The material below is from chapter twenty, the final chapter of the book. Endnotes have been omitted.

*David Hardy served as a Department of the Interior attorney, representing the Fish & Wildlife Service, from 1982 to 1992. In 1996, he won the Supreme Court case *Printz and Mack v. United States*, in which part of the Brady Act was declared unconstitutional. He is the author of two books and numerous articles and chapters on the Second Amendment and firearms policy. Among these are *The BATF's War On Civil Liberties*, published by the Second Amendment Foundation in 1979. This study of abusive enforcement tactics was reprinted in 1979 oversight hearings before the Senate Appropriations Committee, and helped make the case for the *Firearm Owners' Protection Act*, which became law in 1986.*

Seven years after the fires died down at Waco, we still do not know the truth about the incident—but we know some truths.

The Bureau of Alcohol, Tobacco and Firearms (ATF) raid on Mt. Carmel was not meant to arrest David Koresh: that could have been done when he went shooting with his new neighbors, the men he knew to be undercover agents. The raid was instead meant to generate favorable press coverage at a time when ATF, as an institution, desperately needed such.

The Davidians were not a band of cop-haters; they sprung no ambush. The outbreak of gunfire took them by surprise, as Koresh stood in the open, attempting to talk.

The gassing assault was portrayed as an attempt to end the siege without bloodshed. But the FBI's own words show that this was not the real understanding. A "home movie" made by one FBI agent, and obtained in our FOIA suits, shows an FBI leader relating the contents of his last briefing with the Hostage Rescue Team (HRT) command staff. He explains to his team

that the commanders believed that, no matter how the gassing is carried out, the result would be a gun battle. He goes on to say that the White House was reluctant to make a decision because “the new administration, Clinton administration, did not want something of this magnitude being the first military or paramilitary bloodshed, domestic, on American soil.” The FBI team, spread around the motel room, looks on with only vague interest.

This “bloodshed on American soil” was not inevitable; it represented a conscious choice by HRT leadership. All courses that could have led to a bloodless resolution were ignored or subverted, specifically because HRT wanted to crush the defiant Davidians rather than talk them out. When Janet Reno, the Attorney General, favored waiting, she was swindled into believing immediate assault was necessary.

How and by whom the fire was started remains unclear to this day, but one thing is indisputable. Once it began, the agents took measures to ensure that Davidians would burn. Fire trucks were held at bay by agents even after the building collapsed in flames. A comment by the HRT commander that he hoped to save the children from an agonizing death was met with the retort, “they’re the only ones, I hope.”

Perhaps even more disturbing is the realization that our institutions hopelessly failed when confronted with these facts. Where was the Executive Branch? Busily protecting the actors and covering up its own role. Only years later did film-maker Michael McNulty find that the President’s advisor, Vince Foster, had been a key player, and that his Waco files had vanished. What they might contain was suggested by Foster’s then-aide, Linda Tripp. Speaking on CNN, Tripp stated that the order to assault was passed by Hillary Clinton to Foster, and thence to Webster Hubbell and a reluctant Janet Reno. Foster and Reno, she added, were crushed by the deadly result, but as for the First Lady, “Her reaction, on the other hand, was heartless.”

Where were our courts? Setting precedent that ensured that the HRT was above the law. Some months before Waco, HRT sniper Lon Horiuchi killed Vickie Weaver, during the “Ruby Ridge” standoff in Idaho. He had been trying to follow HRT commander Richard Roger’s order (itself illegal) to shoot any suspects seen bearing arms, had shot at Randy Weaver’s back, and instead hit his wife Vickie.

The State of Idaho filed manslaughter charges, and the Department of Justice defended. The case was moved to U.S. Dis-

strict Court, where the judge ruled—in a decision since upheld by the Court of Appeals (albeit under reconsideration as we write)—that a State could not prosecute a Federal employee for crimes committed in the line of his employment. [Editor's note: A *en banc* panel of the Ninth Circuit Court of Appeals ruled that Horiuchi could be prosecuted. The new Boundary County prosecutor then dropped the case.LLLLLLLL]

Since Federal agents could not be prosecuted by the Federal government, either (there is no Federal law against an agent killing a civilian), this literally gave Federal agents a license to kill. In the grand scheme of things, a civilian's life was literally worth less than that of a law enforcement dog: a civilian is subject to ten years' imprisonment for killing or seriously injuring a Federal law enforcement dog.

Where was our media during this period? The guardians of our freedom, the front line of free speech, the voices of authority from which most of us get the information from which we form our opinions and ultimately cast our votes? With almost no exceptions, ignoring the story. The "60 Minutes" response to the Waco FLIR tape (which was filmed from an airplane circling the Branch Davidian compound, and showed the heat signatures of FBI machine gun fire during the FBI assault), after FLIR expert Dr. Edward Allard's analysis was confirmed by their own experts, was typical: covering the story would not have been a "career enhancer." For the national media, coverage only became an acceptable risk after the Attorney General acknowledged the story.

Where was Congress? Giving the ATF a larger budget for training, and expanding the HRT from 51 to 90 men. "We need more Hostage Rescue Team people," Rep. Henry Hyde told the FBI during the 1993 House Waco hearings, "because if we have a hostage situation in the east coast and one on the west coast, why, we are in the soup, aren't we?" For politicians, too, attacking federal agencies is no career enhancer.

Waco was born in lies, it ended in lies, and it was filled with lies in between. Worse, all of the institutional safeguards which we expected to protect us failed.

We routinely accept that local law enforcement can become corrupt if it, and we, are not vigilant. Local law enforcement accordingly acts under the eyes of its internal affairs departments, the community, the media, and elected officials who answer at the next election. If the bloodshed at Waco had any one root cause, it is to be found in a disturbing lack of effective checks

and balances at the federal level, corresponding to the federal checks and balances that we see at the state level.

While we recognize that state and local police agencies may be vulnerable to corruption and brutality, we have historically acted as if Federal agencies, and particularly the FBI, were immune. The Los Angeles Police Department may beat suspects (and lie about it), the New York Police Department may shoot suspects (and lie about it), but we have formed a cultural myth that the Federal Bureau of Investigation, ATF, and other Federal agencies would never stoop to such measures; consequently no effective checks and balances are required. J. Edgar Hoover's legacy as a peerless administrator endures to this day: he was highly successful at creating an image of the FBI as an infallible organization whose character was beyond reproach. But that image is an artifact of 1950s America, and dangerously naive at the dawning of a new millennium. We have now had an object lesson that power tends to corrupt, and that absolute power tends to corrupt absolutely.

The simplest reality check would have suggested that the image of Federal incorruptibility was erroneous. A local police agency is, after all, directly responsive to its citizenry, and has far less elaborate tools for covering up the truth. A unit of a Federal agency is responsive to its regional head (often hundreds of miles away and perhaps only vaguely familiar with what is going on), who answers to its national director (often thousands of miles away, and perhaps without the foggiest idea of what is going on), who answers to his assistant cabinet official, who answers to their cabinet official, who answers to the President, who alone is responsible to the electorate and the people. A sheriff may lose an election over a botched case or an abusive use of force: a President never will. For most practical purposes and effects, a Federal agency operates much like an independent fiefdom ruled predominantly by its internal policies—in many ways, like a tiny nation-state. It is not merely subject to temptations of corruption and abuse: it is a near-perfect nurturing place for them.

These tendencies are exacerbated by the media's abandonment of its key role as critic of government abuse in this arena. Corruption at ATF was no secret. But for thirty years, the major national media treated the critics of the agency with derision rather than the open mind and balanced approach in which a free press may take pride. When Congressional hearings in the 1980s exposed ATF abuses—fraudulent cases, theft, entrap-

ment, harassment of honest “whistleblower” agents—nothing was heard of it in mainstream media. When teams of ATF agents beat three innocent New Yorkers, in the mistaken belief that they were erring informants, only a few local papers noted the event. When the head of ATF’s Air Transport Division was convicted of embezzling nearly a million dollars from the agency budget, only the Washington Times carried the story.

Indeed, the only part of the ATF story that made national news came when NRA then dared to call the agents “jack-booted thugs”—in the process, presenting itself as a target of opportunity for media attack. The remark, taken outside of the context of documented long-term ATF abuses, capped by the Ruby Ridge and Waco incidents, made little sense: it was thus showcased as an irresponsible statement by a group of angry fanatics. In the light of the evidence that has emerged, however, the remark seems not far off the mark.

The sad fact is that the incident at Waco was no isolated incident, but the natural result of our past inaction and silence. The Executive branch, Congress, and the media, all became parties in varying degrees in its cover-up. The reaction of the House Government Reform Committee (claiming that the truth was too explosive to be shared with the American people) to the revelations of Carlos Ghigliotti, its own paid consultant, suggests that the partnership in covering up is by no means past. Congress has little interest in unearthing wrongdoing unless it yields profit at the next election, and the corruption of career government institutions cannot easily be laid at the feet of whichever party happens to control the White House at the time. Sexual escapades in the Oval Office are one thing; exploring the homicides of dozens of women and children is another, particularly if that leads to questioning the basis of Federal power, rather than which party will wield it.

That’s not the worst news.

We have always, and rightly, feared the capacity of the military to influence civilian policymaking. When the military participates directly in politics, pressuring politicians to adopt policies that they favor, or even orchestrating coups which oust a regime from power, the phenomenon is called “praetorianism”—from the Praetorian Guard which, in the late Roman Empire, used its numbers and weapons to make, depose, and occasionally assassinate the emperors it supposedly guarded. Praetorianism is well understood to be a threat to functional democracy; typically, the term is applied to nation-states in the

Third World; but not to the United States. Americans have always expected their military to be subordinate to civilian authority, and to focus its efforts on resisting foreign threats. Fortunately, this tradition is strongly ingrained in our military, and the overwhelming majority of our officer corps takes pride in being above politics. For all the criticism we can level at military involvement in Waco, it is apparent that many officers questioned and restricted that involvement, and none were prepared to go outside the law.

Other threats to democracy are more subtle and rather new in inception. There is no word to describe a scenario in which a civilian bureaucracy with its own political agenda embarks upon a course involving projection of paramilitary force for its own institutional ends. We might coin a term to describe this phenomenon: “micro-praetorianism.”

Micro-praetorianism is what we see at Waco. One need only to view the “home movie” made by the one FBI agent. The FBI/HRT assault teams are dressed in camouflage. They are organized as soldiers, speak as soldiers, carry M-16’s, deploy belt-fed machineguns from behind sandbagged nests, live in military camps, drive armored vehicles. They operate, not under “departmental policy,” but under “rules of engagement,” the military description for orders governing the waging of war against an enemy force.

Let us face facts: from any rational perspective, this “civilian” unit is civilian in name only. The HRT was superbly trained for war, not for “law enforcement.” The military background from which so many HRT members were drawn has served to prepare them for all-out warfare in the international arena. Recruitment into an “elite” FBI organization, one that focused exclusively upon paramilitary training and tactics, made them a tightly bonded enclave within the FBI—an enclave which seems to share little in the way of the daily routine which might have effectively bonded them to their fellow agents outside of the HRT elite.

Little surprise then, that their attitudes reflected contempt for FBI negotiators and for solutions that were not the product of violence and coercive force. What we are looking at is an elite military force, merely one that draws civilian paychecks. A military force of growing size: nearly 10% of the FBI is presently enrolled in its HRT or SWAT units—and that does not count ATF’s Special Response Teams, or the many other SWAT-like units created by other agencies. As we see at Waco, these units

can draw upon formidable military support—tanks, aircraft, supplies, manpower, high-tech equipment.

While we were watching out for the danger of military involvement in civilian affairs, the civilian agencies generated their own military.

The danger from this force is probably far greater than any true military involvement could have been. These paramilitary units are not, like the military, bound by a sense of honor and a long tradition of noninvolvement in civilian affairs; after all, involvement in civilian affairs is their reason for existence. We would at least like to believe that if a captain of the 101st Airborne had told his men—as the FBI leader in the FBI “home movie” tells his SWAT team—that they were going to be involved in “the first military or paramilitary bloodshed, domestic, on American soil,” that serious consideration would have been given to mutiny. Instead, on the video, the camouflaged FBI troopers watch in a state of what seems to be complete relaxation and acceptance. Raiding American civilians is, after all, part of their job description.

Can these “micro-praetorian” forces be used by their leadership to further an agency’s own agenda? We do not have to look beyond Waco to see that answer to that question. The circumstances strongly indicate that ATF’s real motivation was not the good of the nation, but the good of the agency itself—the need to generate favorable press attention at the point when the agency was faced with political extinction. Indeed, a part of the motivation may have been ingratiating itself with the White House, through a spectacular seizure of the “assault rifles” whose prohibition had been a campaign promise. (That there is no evidence as yet that the White House knew of the plan actually underscores the dangers presented: agencies may see use of force as in their interest simply because they guess that the chief executive would be pleased by the outcome.).

The fact is that these micro-praetorian forces serve the agencies that control them, for better or for worse. The administrators of these agencies can indeed embrace ill-conceived, adventurist agendas which are politically motivated. The agenda need not be fascist or socialist, conservative or liberal; agencies and their bureaucrats do not think in such broad terms. The leadership’s priorities are agency survival, increased agency power, larger agency budgets, and neutralization of the agency’s enemies—those who resist, obstruct, or too effectively criticize the agency. Deadly force can be used to further these agendas,

and at the present time, none of the checks and balances which ensure that the regular military cannot be used against American civilians restrain these nominally “civilian” military forces.

We can take some comfort in the fact that the result is certainly not tyranny—at least not as it has been thought of in previous years—because its scope is far too narrow. We might also take comfort in the belief that those it directly affects generally been too few and too isolated to have generated the kind of backlash that creates revolutionary ideology, political unrest, and ultimately, armed conflict with the dominant paradigm. But disturbingly, the tragedy of the Oklahoma City bombing raises a question as to whether this may be changing.

In the wake of that bombing, new resources were devoted to “preventing domestic terrorism”—which “prevention” bears an unfortunately close relationship to “controlling political dissent.” By 1996, FBI had no fewer than fourteen “Joint Terrorism Task Forces” devoted to “attempting to neutralize terrorist groups.” Business may have been slow for the task forces: in that year, three incidents of domestic terrorism were reported—two bank robberies and a pipe bomb. (At that, it beat 1994, when none had been reported, and probably 1993, when the biggest domestic terrorism problem was a radical animal rights group.) But business is business, and between 1993 and 1999 a compliant Congress increased FBI’s antiterrorism budget from \$78 million to \$301 million. The Joint Terrorism Task Forces began sending questionnaires to city and county law enforcement, asking them to identify “Potential Threat Elements,” whether their supposed terrorist motivations were “political, religious, racial, environmental, [or] special interest.”

Where work does not exist, it can be invented. In 1999, FBI released a booklet, “Project Megiddo,” the theme of which was that American and foreign terrorist groups of every conceivable type (right down to the Black Hebrew Israelites) were going to focus on the year 2000 to strike at the helpless American people. Among other things, the report predicted that “Year 2K” computer crashes might fuel white supremacists’ reactions, or lead to militia uprisings in the belief that a New World Order takeover was in progress.

Nor was this paranoia confined to the FBI: it has become a staple of agency, and government, empire-building. President Clinton’s last State of the Union address predicted that “the major security threat this country will face will come from the enemies of the nation state: the narco-traffickers and the terrorists

and the organized criminals, who will be organized together, working together, with increasing access to ever-more sophisticated chemical and biological weapons.”

The American people could, of course, be protected from these menaces . . . in return for a lot of money and restrictions on their freedoms. When Congress authorized the FBI to order phone lines set aside to support its electronic surveillance, FBI promptly ordered up 60,000. To be sure, this represented its dreams for the future. But the fact is that, in the 1990s, as our only rival superpower, the Soviet Union, vanished, and international terrorism plummeted with the loss of financial and governmental support, FBI's national security wiretaps (approved by a special, secret, court, which has never denied a request) nearly doubled.

Of course, telephones are only one means of communication. To cover the risk that citizens might engage in unseemly e-mail, FBI developed its “Carnivore” program. Planted on an Internet server, Carnivore was designed to skim off any named target's emails and copy them for later examination.

Just in case some phantom terrorists slip through the net, military and civilian agencies are mustered to drill for the appropriate response—a response that generally involves deployment of combat troops against domestic targets. Portsmouth, New Hampshire, is shut down by an imaginary mustard gas bombing of a marathon run, and fictitious bombs detonate in Washington and Denver. A university's faculty receives messages informing them that “in cooperation with the U.S. Army, we are allowing a U.S. Army S.W.A.T. Team to participate in a training exercise on campus on Monday. . . .” In Texas, “Operation Last Dance” becomes a live fire exercise indeed, as troops accidentally destroy one civilian building and damage another. One hundred-sixteen such antiterrorism drills were conducted in 1998 alone.

Terrorism, to be sure, was not the only crime against which Americans must be protected. To inhibit ID misuse, the Secret Service cut a private firm a \$1.5 million grant to develop a national registry of drivers' licenses, complete with digitized photographs; the database would be accessed whenever a person used a license to board an aircraft, to cash a check, to negotiate food stamps, and so on. To inhibit street crime and carry out the Brady Handgun Act, the Justice Department created its “National Instant Criminal Background Check System,” which contains information, not only on all Americans convicted of felony offenses, but also on those who have received Veterans' Ad-

ministration psychiatric treatment, have received dishonorable military discharges, have renounced U.S. citizenship, or are subject to a restraining order in a divorce proceeding. To combat illegal immigration and locate “deadbeat dads,” INS and the Social Security Administration have established a “new hire” database, in which every newly hired employee is identified; there have been initiatives to allow the database to be used to track down student loan defaults and check voting registrations. To do its bit against drug trafficking, the Treasury’s Office of Thrift Supervision proposed a “know your customer” program, where banks would be required (in the words of the agency summary, published in the Federal Register) to “develop ‘customer profiles’ for classifying customers into risk-based categories to determine the information and monitoring that is appropriate for those customers,” and to “determine its customers’ normal and expected transactions.” The last determination, Treasury stated, would form “the basis for identifying transactions that are out of the ordinary, unexpected, and possibly suspicious.”

These are frightening developments, fundamentally inconsistent with the political ethos that has come to be known as the “American Way.” They may serve as an ominous harbinger of things to come as we enter the next century. Revolutionary new technological developments such as the microchip, sophisticated electronics and telecommunications, combined with increasingly powerful computers, mean that the Federal level of our government holds a degree of potential control over its citizens that no government in our history had ever held.

To be sure, we have seen totalitarian governments before—the word, “totalitarian” deriving from the root, “total,” implying a political system whose philosophical aim is as near-total social control as it is possible to achieve. But one crucial factor has changed: in their most depraved visions for the domination of humanity, neither a Hitler, on the political right, nor a Stalin, on the political left, could have envisioned the totalitarian potential embodied in the computer, the microchip, or sophisticated microelectronics. “Do you have your papers?” is an outdated, hardcopy demand, in a world where the presentation of a driver’s license can automatically be reported to a central database, where the whereabouts of every employee in the nation is already online, and where your every banking transaction can be checked, in an automated instant, against a profile for your appropriate earnings and deposit patterns.

Let's be blunt. We have created an Executive establishment which is capable, whenever it really wants to be, of violating the constitutional rights of its citizens, of shutting off (or co-opting) media investigation, and of shrugging off legislative oversight. This political force is capped by agencies' own military detachments, their private Praetorian Guards, with internal loyalties and assault training. These micro-praetorian forces are beyond the control of any elected political establishment, indeed beyond the control of their own agency heads; at Waco, even the orders of the FBI director could not stop HRT from moving up tanks when it wanted to. This establishment represents sufficient power that a growing number of citizens are genuinely beginning (for the first time in recent history) to fear their own government.

In two world wars, Korea, and many smaller conflicts, citizens went to fight for their government, in the belief that it was their government, that the United States was America. Today the political climate seems much different. Even a media giant like 60 Minutes hesitates to run with a story it knows to be true—because irritating a powerful government agency would not be good for anyone's career. That a major organ of the free press in this country finds it necessary to make such an admission should serve as a wake up call for all of us. If even the power of such a leviathan is insufficient protection, what hope does the ordinary citizen have of ensuring that their rights cannot be violated at will? What does this say for the state of democracy in America?

If a government can violate the rights of citizens, with it being extremely unlikely that any one citizen or group of citizens can realistically wield the legal power that would permit timely redress of legitimate violations, then to the degree that this becomes the norm, such an organization is practically and functionally above the law, and society which it governs has become to some extent post-democratic in character. American democracy, after all, presupposed a society in which the people were independently minded, individually powerful, and (let us not forget) heavily armed—in a phrase, far more powerful, in potential terms, than the government they created. That is hardly the case today, and as the preconditions change, so does the resulting government.

The result is not tyranny—but then one-man tyranny was the antithesis of the old democracy, in the days when monarchy was still a viable form of anti-democracy. The transition is not necessarily for the good. By and large, George III and Frederick

the Great were constrained by their own personal values, and Napoleon by the limits of how much one energetic man can undertake at one time. Dozens of impersonal “institutions,” each with its own bailiwick and organizational style, protecting itself and its agenda, served by tens of thousands of servants, are bound by neither.

We can carry this a step farther. The United States, perhaps more than any other nation-state, has set the standards for the evolution of democracy and human rights in the international arena. In this sense, it has in years past been a bright light for all people of conscience. The fact that such a powerful nation-state has also embraced social values that include a deep and abiding respect for human rights and the principle of equal justice under the law has been an important political icon that encouraged other nations to emulate the U.S. example.

To the degree that the abuses illustrated by the Waco tragedy are allowed to stand without a meaningful and legitimate accounting, the legitimacy of U.S. political institutions is damaged in the eyes of the attentive public. Worse, where such conduct becomes the *de facto* standard for U.S. policy makers (as it will, if allowed to stand), then we send a message to the world: the ideals of democracy and a constitutional republic are obsolete, if not mere hypocrisy from the beginning. This is to say that, not only our democracy is impaired, but the very concept of democracy itself is damaged, worldwide.

When, by contrast with our own history, one examines the institutionalization of democracy in nation-states with similar written constitutions, such as some of the fledgling Latin American democracies, one sees that the written ideals do not match the political realities. The paper guarantees of freedom and equality are there, but in practice social elites may be above the law, and government may do whatever its leaders feel is necessary. Areas of insurrection may be endemic, revolutions may result: if they are successful, there are no guarantees that those thrust into power will be able to govern, or that they will not unleash a reign of terror that makes the former government’s abuses look tame by comparison.

Those of us who live in stable, Western industrialized democracies may tend to regard the political distempers of these emerging nation-states with a certain smug disdain, but international relations theorists caution that these fledgling democracies may not be simply “backward,” or “primitive.” Rather, they may be hyper-modern in character—that is to say, just as the evolving

institutional practices of the early United States set new trends and standards which the older nation states eventually adopted, these emerging “democracies” may be setting similar standards for efficiency—or perhaps a better term might be “expediency”—in the governing of their respective populations. The levels of corruption, fiefdom, and elitism that we typically see in such nation may not be a function of political backwardness, but rather a harbinger of things to come. We have, after all, come to a pass where promoting citizens’ distrust and even paranoia of each other is a matter of public policy, and where White House functionaries can express their own constitutional role with a flippant “stroke of the pen, law of the land. Kinda cool.”

We end with a question of statecraft. The founders of our nation envisioned a nation-state that would contradict, and hopefully supplant, the withering feudal organizations of prior centuries. The underpinning of their new nation-state was the citizen, who empowered the nation in an abstract sense by giving consent, and in a concrete one by bearing arms in its defense. Although the citizen might be suspicious of those who ran his government—that was the reason, after all, for elections, constitutions, and arms—it was unthinkable for those who ran his government to fear him. His mind and his arms were the underpinning of the nation-state, and one that needed to fear either was unworthy of him. Those attitudes are passing now.

One need only enter a government building today to see the change. Ten years ago in Washington, a citizen who wished to research in the Library of Congress merely walked through the door; to borrow a book he showed a driver’s license. Today, entry to the Library requires specially issued picture ID and passage through a metal detector, with additional ID checks at each destination inside; surveillance cameras ring the exhibit halls. The person entering is not regarded as a citizen, nor a taxpayer, but an outsider, an intruder, a suspect—a stranger in his or her own country.

The change is a metaphor for a broad change of attitude, occurring at every level, from Capitol Hill to our schools. Members of governmental units are increasingly a privileged caste; in effect, the only truly enfranchised citizens of our nation-state. It is deemed essential that they have unlimited ability to conduct surveillance of the outsiders, the civilians. It is conversely necessary that the outsiders be permitted to know as little as possible of agency operations, in the interests of “national security,” or “protecting internal deliberations.” Members of the caste are by

definition trustworthy, and those outside it are by definition suspicious.

Lay this alongside the legal immunities for official misconduct: a Federal agent who kills a civilian cannot be prosecuted either by the Federal or the State sovereign. His work is too important to be burdened with considerations such as the homicide statutes, at least in the context of the death of one outside his caste.

In a very real sense, what was once a republic is becoming a hyper-modern feudal state.

It will not get better from here.

It's time for us to remember that Lincoln's words—that this Republic is the "last, best, hope of mankind"—were not a speechwriter's stunt. There was a time when we believed that, and, in so believing, made it true. At a time when most of humanity, was looking over its shoulder for the secret police, we stood as a demonstration that a free people and a stable government were by no means inconsistent.

What do we do now?

So what must be done?

The beginning would be simple: the entire record of the Waco affair, and all that led to it and came from it, must be exposed to the public eye, with an end to secrecy in the name of "national security" and "protecting internal agency decision making." Whatever harm might be done by revealing that which has been concealed would certainly be minor and quick in passing, in comparison to the damage that is being done by the continuing cult of secrecy.

As realists, we must face the fact that the chance of a full and public accounting seems remote. It took seven years of effort to partially reopen the matter, and within months the defending institutions had once again closed the door upon it, with "probes" that led only to the prosecution of the one government whistle-blower, assistant United States Attorney Bill Johnston. But a full, public, examination is essential. Waco is not merely a series of mistakes that "cannot happen again." It is important on a fundamental level, as a touchstone for the future of democracy in America.

Consider that Waco was described by an FBI leader directly involved in its execution as the first military operation conducted by government against American citizens—indeed, he attested that the White House itself was concerned about setting a prece-

dent for “paramilitary bloodshed” on American soil. That precedent was indeed set.

The description, “paramilitary bloodshed,” is both functionally accurate, and extremely ominous in its implications. The initial ATF raid involved a military-type operation directed against American citizens who had neither committed nor threatened acts of violence. Once set into motion, the situation escalated to acts that can only be characterized as acts of vengeance. Blindly driving armored vehicles through the walls of a dwelling and preventing firefighters from doing their jobs is fundamentally inconsistent with an operation whose first priority was supposedly to save the lives of innocent children.

Politically, Waco originated as a desperate ploy by an embattled bureaucracy, concerned with its own survival—an extremely serious abuse of power and the public trust, especially considering the inherent dangers of an armed raid. The ATF’s leadership, desperate to salvage the future of their bureau, hit upon a plan to avoid Administration “reinvention” or congressional defunding—a plan that was based upon the prejudices and weakness of a Congress that they knew all too well.

The Branch Davidians were in appearance, a flawless pawn in this plan—a non-mainstream, apocalyptic religion. Against a group that could be painted as the Branch Davidians could, public sympathy would be on the side of the ATF. The media would immediately realize the potential of Waco as a sensational lead story. It would run for days, perhaps weeks, and in such a politically charged climate, the future of the ATF would be assured.

The Davidians were bothering no one, but politically they were the perfect target, poster children for political incorrectness, who could be drawn as a caricature of the worst qualities that the political left envisioned in their arch rivals, the “religious right”—armed, dangerous, child molesting religious fanatics. Waco was to have been a symbol, held up to remind the Congress and the public that the ATF was doing important work to keep the country safe. The raid against the Davidians would be a vital shield for a scandal-ridden bureaucracy, a bureaucracy in immediate danger of extinction.

The tragic irony is that surely none of the officials responsible for this tragedy bothered to reflect that the tactics they were engaging in resembled those of the bad old days of Stalinist Russia, or of Hitler’s Germany. Indeed, they would probably be deeply offended by the comparison. These officials will concede that surely, mistakes were made, and that the outcome was tragic

and regrettable. But they will argue that it was an isolated incident, an anomaly that can never happen again.

And therein lies the danger: these kinds of operations can happen and have happened for decades, to hundreds of citizens in this country, albeit on a thankfully smaller scale. When they do happen, the justifications are made by trained and extremely articulate spokesmen, and reported upon—or more frequently not reported upon—by a media which has become far too complacent in sharing the views of the dominant power establishment. Waco did not happen in a political vacuum. There were reasons that it happened and those reasons can be detailed by objective analysis of the incidents and conditions that led to it. We must face those reasons as a first step.

The militarization of law enforcement, especially Federal law enforcement, must be reversed. To the extent that paramilitary assault is necessary, Federal agencies should rely upon local police units under control of local authorities. There is no reason why the ATF, the FBI, the Department of Agriculture, and countless other agencies should each have to their own private armies. It may be necessary for investigators to be agency-specific, to know the agency's own rules and regulations. There is no reason why "dynamic entry teams" must be familiar with the subtleties of a given chapter of the Code of Federal Regulations, or how an agency has historically handled permit applications.

We should reconsider the question of whether a paramilitary team such as the FBI's HRT is essential or even safe. Successful hostage negotiation tends to be a lengthy and frustrating process; boring the hostage-holders to tears is in fact part of the technique. In this setting, a unit whose training and background are derived expressly from quintessentially military origins poses a grave danger. As at Waco, it tends to dominate decision-making and decision-makers, and to press for an approach within its specialty, a sudden, violent assault. The fact of the matter is that HRT has rarely if ever been deployed in its intended role—as a master of the seven-second entry battle, stunning and then annihilating hostage-takers before they can react. For lack of any missions within its specialty, it has been deployed, repeatedly, to maintain perimeters and wait out sieges—missions for which negotiators backed by traditional police units are far better suited.

To the extent that a small, elite team such as HRT is necessary, it should be brought under the most elaborate of controls,

the type of controls we might impose upon a military unit, were we to authorize it to assault domestic targets. This is, after all, precisely what the HRT is.

These controls should be political—the unit may be deployed only on the personal directive of the one elected official who heads the Federal government, the President. His discretion should be constrained: the unit should only be committed to the specific type of high-intensity assault against for which it was designed, not to situations such as Ruby Ridge or Waco. The controls should also be institutional. Members of the HRT should have a specific term of duty, perhaps two years, and be drawn from and returned to the best personnel of State and local SWAT units. The conspiracy of silence that surrounded HRT actions at Waco could not have long endured if the unit was composed of local police, which then rotated back to their original units.

We should also give serious consideration to establishment of a Federal civilian review board for law enforcement misconduct. Such boards have of course been anathema to local police, which view them as an intrusion upon their functions. But local police are at least tied to the community and experience relatively close oversight by elected officials chosen by the community. Effectively, there is no civilian control of Federal law enforcement, and a review board or boards will be a minimal substitute for the direct popular control under which local law enforcement units have always functioned.

To a certain extent, media scrutiny can deter abuses; but for a video camera and a media decision to use the footage, Rodney King would be an unknown ne'er-do-well. At Waco, the compartmentalization of the press into a “media compound” miles away may well have laid the foundation for the final, bloody, outcome. Press have historically followed our armies, to the point where some, like Ernie Pyle, died beside the troops they depicted. At Waco reporters who left their assigned areas were manhandled and criminally charged. Congress must ensure that the press can never again be subjected to such a *de facto cordon sanitare*. Law enforcement that must be conducted in secret probably should not be conducted at all.

We must also rethink the numerous legal protections we have given to official misconduct, in the form of immunity from State law, and civil immunity for “discretionary acts.” In the name of protecting Federal employees’ freedom to engage in proper and legal conduct, we have largely insulated their im-

proper conduct and illegal conduct, as well. This is flawed reasoning; we expect ordinary citizens, and local law enforcement, to conduct their affairs within the bounds of the law, and do not reason that by punishing their wrongdoing we may inhibit their proper judgment—and it goes without saying that ordinary citizens do not have taxpayer-funded legal teams to defend their conduct. At a minimum, Congress should explicitly make Federal law enforcement agents subject to State laws on homicide, aggravated assault, and similar crimes. The “discretionary function exception” to civil lawsuit should likewise be curtailed, insofar as it protects “discretionary” actions that pose a risk of death.

Finally, we need to radically reconsider the entire function of the agency whose conduct began the incident at Waco—and also that at Ruby Ridge. ATF has a long history of corruption and abuse, and the record is clear that these abuses were largely directed at legitimate firearm owners.

Quite frankly, the simplest solution for ATF would be to abolish the agency—in fact, to abolish not only the organization, but also some of its core functions. A real criminal who carries or uses a gun will first come to the attention of local police. We need only establish a protocol for them to refer the case to Federal prosecutors. The main remaining ATF function is to regulate an industry, or actually three industries—make sure that manufacturer and dealer licenses are obtained where necessary, issued only where proper, and that the required records are kept. That function is best administered by the Commerce Department, which handles most regulated industries, and does so without the need for dramatic raids.

If ATF is to be kept around, it must be cleansed in the way in which corrupt police departments have been cleansed in the past—by an outsider. Its problems are not a matter of a few wayward agents. Historically, literally for decades, the agency has rewarded and promoted corruption and abuse, until it has become ingrained into the entire management structure, to the point where honest agents cannot report corruption to their superiors without worrying that the superior may be in on the matter, or that the perpetrator may “have something on” the superior.

One need only look at the sexual harassment charges, whose revelation may have played a role in bringing on the Waco raid. The agents who reported the near-rape were punished by their superiors. Or we might look at Waco itself: the two supervisors most responsible for the botched raid were fired, then rehired

after they hinted that they would talk about things better kept quiet. Agent Robert Rodriguez, the honest and responsible agent who tried to stop the raid by working the supervisors that Koresh knew the raid was coming, was virtually driven from the agency. These are just a few illustrations; the author has a large set of files on ATF corruption and misconduct, none of which has ever been redressed by the agency. The corruption is so deep and ingrained that it may be far easier to abolish the agency than to locate and punish the corruption within it.

While we are considering the agency whose conduct gave us the Waco incident, we might also consider the laws whose enforcement gave rise to the entire problem. To underline the question thus posed, we are dealing with a population of some 75 million gun owners, who are in possession of something over 200 million firearms, only a small percentage of which are recorded. This particular genie has been “out of the bottle” for some 200 years.

Here, the handwriting is on the wall: short of unbelievably draconian enforcement efforts, which would foment a resistance that would make the IRA's efforts pale by comparison, those guns will stay in the hands of their civilian owners. Those owners are, disproportionately, the type of citizens who are the best underpinning of a stable democracy, and the last group a rational policymaker would want to alienate—the type of citizens who vote, proudly serve in the military, pay their taxes, and take “duty, honor, country” and “*semper fidelis*” seriously. (Winners of the Congressional Medal of Honor are to be found at every NRA Convention, where they are treated by with the deference due demigods.). Historically, gun-owning individualists have been the segment of the population most likely to rise up and defend democracy, and certainly the segment most capable of doing so. These people are not innately anti-government: quite the contrary. They are inherently strong supporters of the nation, the government, the system, and are being driven into opposition by assaults on their values and insults to themselves.

The growing alienation of this segment of society has been deepened by a virtual media blackout of the issues it believes to be important. To take one example: in 1994, media cries for a ban on “assault rifles” led to a Congressional enactment supposedly banning future civilian production of the same. Most firearm owners know that the media cries were ridiculous: semiautomatic “assault rifles” are almost invariably less powerful than ordinary deer rifles. Congress had to face the fact that (apart

from this lessened power) there is no clear dividing line between an ordinary semiautomatic rifle that is routinely used in hunting, and an “assault rifle.” Thus the law simply applied to rifles with certain vaguely military accessories—bayonet lugs (although no criminal bayonetings have been reported of late), flash suppressors (a little cage-like device on the end of the barrel), folding stocks, a grip for the hand that is separate from the shoulder stock. How banning these could have any effect on crime is beyond explanation.

To secure passage of the legislation, statements were made which can only be described as lies. Senator Feinstein assured the Senate that one extremely expensive Swiss rifle had become the preferred weapon of gang shooters—when in fact no case could be found of its criminal use. There were responses to the claims of the legislation’s backers. These were, however, subject to a media blackout: the most that was reported was that the NRA, doubtless on behalf of piggish gun manufacturers, was obstinately opposing this vital legislation. That NRA comprised then three million (four million as we write) of our citizens, disproportionately veterans, servicemen, and law enforcement officers, did not entitle its interests and concerns to be heard.

Our point here is not the merits or demerits of the legislation, but rather, that a sizeable and valuable part of our citizenry was left with indelible impressions that: (a) Congress could and would enact irrational laws, for no better reason than to offend, restrict, or annoy them; (b) Congress and the media could and would lie and fabricate, to achieve this end; and (c) “the system” did not care about their interests, however logical and just—in fact, it took a malicious delight in offending them. This is a textbook formula for alienation of a large and valuable sector of our population, and for a public policy failure.

We cite this example as an illustration, not as the universe. Almost on an annual basis, this segment of our nation sees attacks on what they, with justice, regard as a constitutional right, attacks which do not even have the virtual of consistency. At one point, handgun owners are portrayed as the source of evil: their firearms are small and concealable. At another, rifle owners are demonized: their firearms are large and powerful. Physicians are asked to determine if their patients are firearm owners, and to lecture them on the subject; parents are coached to find out if their children’s friends’ parents own firearms, and to avoid those that do.

In the conflict between a modern republic and hyper-modern feudalism, this increasingly alienated segment of society may well be the key to survival of our system, a system for which many of them have in the past put their lives on the line. We need them, and we need their values.

The choice is upon us: modern democracy, or post-modern feudalism. How far we have come in the last ten years gives an indication of where we still stand ten, twenty, or fifty years from now. Failure to act will itself be a choice.

As we stand at this crossroad, we might well recall the response given by Ben Franklin, when a group of citizens asked what form of government the Constitutional Convention would give them.

“A republic,” the worldly-wise Franklin responded, “if you can keep it.”

Armed America: Firearms Ownership and Hunting in America

Clayton E. Cramer

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DISARMING THE AMERICAN PAST

Professor of History Michael A. Bellesiles's *Arming America: The Origins of a National Gun Culture* is a startling book that attempts to demolish many long-cherished beliefs about early America, violence, guns, and the effectiveness of the militia. *Arming America* received a flood of positive praise in book reviews¹ including reviews by some of America's most eminent historians and law professors.² Only a very few reviewers suggested that *Arming America* might have been in error or overstated the case in its astonishing revision of the place of guns in American history³--and only one of those critical reviews was by a history professor.⁴

What are these long-held beliefs that Bellesiles regards as myth? He argues that the militia was, throughout American history, an ineffective force;⁵ that guns were very scarce in America before about 1840; there was effectively no civilian market for handguns before 1848;⁶ and that few Americans hunted.⁷

The first question that the reader of this book might ask is, "So what?" Why does it matter if the militia was an effective alternative to a standing army? Why does it matter if guns were rare or if they were common? Why does it matter if early Americans hunted with guns, or obtained meat by trapping wild game and slaughtering livestock with knives and axes?

All of these questions play a significant, if indirect role in the modern debate about what sort of gun control laws should pass constitutional muster. Bellesiles argues that the population was not well-armed when the Bill of Rights was adopted, and that the Second Amendment's purpose was to have the population

armed for the benefit of the government. It was not for individual self-defense, and not for the purpose of rebellion against a tyrannical government. Judges, when asked to decide what gun control laws should be found constitutional, might persuade themselves, based on *Arming America's* claims, that they are free to allow strict gun control laws without violating the Second Amendment. Bellesiles's intent on this can be deduced from the argument advanced in an *amicus curiae* brief that Bellesiles signed for the government's appeal of *USA v. Emerson* (N.D.Texas 1999).⁸

Ideas have consequences. If Bellesiles's claims are true, it could provoke a significant change in American jurisprudence, because the individual rights' perspective on the Second Amendment has enjoyed a dramatic renaissance in the last twenty years.

Arming America makes very strong claims. There is, as Bellesiles acknowledges, a nearly unanimous tradition among American historians for more than a century that guns and hunting were a fundamental part of our frontier tradition. Bellesiles must provide strong evidence to claim otherwise, in the face of such overwhelming agreement. From the near unanimous praise that *Arming America* has received from American historians, one might conclude that *Arming America* makes this case with impeccable logic and overwhelming evidence.

The first of Bellesiles's claims—that the militia was quite ineffective—is the least controversial. Many Americans have grown up with a vision of Minutemen, running out the door, Kentucky long rifle in hand to take on the “Redcoats.” Historians have recognized for at least 40 years that for every success of the “citizen soldier” in defending home and nation, there were far more examples of militias turning tail in battle, or simply leaving for home because harvest time had come.

Bellesiles devotes enormous energy to demonstrating that the militias were almost never successful, and that only professional armies were an effective military force in America. He argues that the militia was unreliable, undisciplined, and usually more interested in socializing and drinking than in developing any useful military skills.⁹ Bellesiles also argues that Americans were poor shots, because they had little experience with guns;¹⁰ militia units did their best to avoid exhibitions of their marksmanship skills, because they were so embarrassingly inaccurate.

Bellesiles argues that the notion that armed citizens formed into militias would be a useful alternative to standing armies, or

that they could usefully act as a restraint on governmental tyranny, was a romantic delusion of the Framers of our Constitution. While the militia concept did not work out as the Framers envisioned, neither were militias the unrelentingly incompetent and drunken mob that Bellesiles portrays. Bellesiles is correct that militias were never as well-trained as standing armies, and seldom very effective in fighting against regular troops. Similarly, there was really no realistic alternative to at least a small standing army, especially on the sparsely populated frontier.

Why does Bellesiles put such an emphasis on the failure of the militia? One of the reasons that the Second Amendment protected an individual right to keep and bear arms was the colonists' mistrust of professional soldiers.¹¹ There was a belief among many of the Framers that the best security for a free society was a military that was united with the citizenry. Patrick Henry, at the Virginia ratifying convention, argued that the new federal government represented too great a centralization of power in the hands of the new chief executive:

If your American chief be a man of ambition and abilities, how easy is it for him to render himself absolute! The army is in his hands, and if be a man of address, it will be attached to him, and it will be the subject of long meditation with him to seize the first auspicious moment to accomplish his design; and, sir, will the American spirit solely relieve you when this happens? [T]he President, in the field, at the head of his army, can prescribe the terms on which he shall reign master, so far that it will puzzle any American ever to get his neck from under the galling yoke.¹²

One of the defenders of the new Constitution, James Madison, also believed that the militia, composed of the entire body of citizens, represented an effective force for restraining tyrannical government:

Let a regular army, fully equal to the resources of the country be formed; and let it be entirely at the devotion of the [Federal] Government; still it would not be going too far to say, that the State Governments with the people on their side would be able to repel the danger. The highest number to which, according to the best computation, a standing army can be carried in any

country, does not exceed one hundredth part of the whole number of souls; or one twenty-fifth part of the number able to bear arms. This proportion would not yield in the United States an army of more than twenty-five or thirty thousand men. *To these would be opposed a militia amounting to near half a million of citizens with arms in their hands, officered by men chosen from among themselves, fighting for their common liberties, and united and conducted by governments possessing their affections and confidence. It may well be doubted whether a militia thus circumstanced could ever be conquered by such a proportion of regular troops.*¹³ [Emphasis added]

If, as Madison and Henry believed, the militia represented an effective military force, then the “armed citizens restrain tyranny” argument has considerable strength. Whatever the merits of restrictive gun control today might be for crime control, it would be foolish to discard the protections of the Second Amendment without developing some other method of keeping tyranny in check. Auschwitz, the Khmer Rouge, and the Gulag Archipelago, all provide sobering reminders of what happens when governments operate without checks on their power, and professional armies are responsible only to their officers.

The ineffectiveness of the militia is really a sideshow in *Arming America*, and not even particularly new. The truly novel part is Bellesiles’s claim that guns were scarce in America until nearly the Civil War. Why were guns scarce? Because not only were guns expensive, but also because, “the majority of American men did not care about guns. They were indifferent to owning guns, and they had no apparent interest in learning how to use them.”¹⁴

Bellesiles asserts that this lack of both interest and knowledge was because of the fundamentally peaceful nature of early America¹⁵ and that hunting was very rare until the mid-1830s, when a small number of wealthy Americans chose to imitate their upper class British counterparts.¹⁶ Indeed, Bellesiles claims that by the 1830s, a pacifist movement, fiercely hostile to gun ownership, to a military, and to hunting of any form, was becoming a major influence on American society.¹⁷

Bellesiles first presented these ideas in a *Journal of American History* article in 1996.¹⁸ Bellesiles’s claim that guns had been rare in America until the Mexican War is intriguing, and was initially an attractive explanation for why eight slave states took the lead

in the development of concealed weapon regulation in the period 1813-1840. It might explain why so many of these laws regulating the carrying of deadly weapons (including handguns) appeared at a time that Bellesiles claims America was changing from a peaceful, gentle, almost unarmed nation, into a land of violent gun owning hunters.

Bellesiles is incorrect. The traditional view of early America as a place where guns and hunting—and at least in some regions, violence—were common, was repeatedly articulated in travel accounts, memoirs, and diaries. Bellesiles's choice of sources has been atypical and in his zeal to confirm a new and unique hypothesis, he has simply misread his sources, apparently in the pursuit of a dramatic new discovery. Unfortunately, novelty is, at times, of more value in the academic community than accuracy. Who wants confirmation of what is already conventional wisdom? The iconoclast—the revisionist—is always more interesting!

The phrase “revisionist history” carries a negative connotation to many who are not historians. To historians, however, “revisionist” simply means an historian who proposes a dramatic change of our understanding of the past. There is a grand tradition of scholarly revisionist history, and it is part of the process by which our imperfect knowledge of the past improves. Revisionism is simply the process by which historians advance radically different theories to explain why past events happened. Why did the American Revolution happen? Why did the Puritans settle New England, leaving the relative security of England for a howling wilderness? These are questions for which the explanations accepted a century ago have been supplanted by new theories that better fit established facts, or new facts obtained through research of either primary sources, or increasingly, archaeological evidence.

If *Arming America* were in the grand tradition of scholarly revisionist history, this article would also be in the grand tradition of responses to revisionist history. Such responses sometimes expose a fatal flaw. More commonly, responses to revisionist history may raise important questions about the new theory, but not completely demolish it. Over time, parts of the revisionist theory—appropriately tempered by criticism and perspective—may become part of the conventional perception of history. Such responses to revisionist history often include an analysis of the revisionist historian's logical reasoning errors, other possible explanations of the evidence the revisionist has cited,

and an examination of evidence that the revisionist has not considered. In some respects, this article is that traditional sort of refutation. Some of *Arming America's* ambiguous sources will be closely read, and it will be seen that Bellesiles has read those sources as evidence that supports his claims, while other legitimate readings could argue against those claims. Evidence that Bellesiles did not examine will also be brought to bear against his claims.

Unfortunately, *Arming America* is *not* in the grand tradition of scholarly revisionist history in one very disturbing and crucial respect, and consequently this article is also untraditional. The most damning evidence against *Arming America* comes from *Arming America's own* sources—many of which directly contradict Bellesiles's claims about what those sources say. *Arming America* contains altered quotes, altered dates, quotes out of context, and unambiguous sources that have been grossly and inexplicably misrepresented.

These factual errors do not concern minor points, nor are there just a handful of such gross misreadings. When reviewing Bellesiles's sources, it was rare to find that his representation of a source was correct. It was common to find that the cited source directly contradicted Bellesiles's claim. In some cases, the cited sources were utterly irrelevant to Bellesiles's claim.

The historical profession works on an assumption of integrity—that when an historian makes a factual claim, and cites a source, that he has actually looked up the cited source and that the fact cited appears in that source. *Arming America* fails on this count: repeatedly, bluntly, and unambiguously.

EVALUATING GUN SCARCITY

The most incredible of Bellesiles's claims is that guns were scarce in America, almost everywhere, until the 1840s, when modern manufacturing methods finally made guns cheap enough and modern marketing techniques effective enough for them to become common. Before asking the question: "How many?" we first need to ask, "How do we know how many?" How does one measure the number of guns present in different periods of American history? Bellesiles's claim is based on a combination on probate records, official reports, and letters.¹⁹

Attempting to deduce anything about gun prevalence from probate records has some problems. How representative are probate records of what average Americans owned? Were pro-

bated estates unusual in terms of wealth, literacy, or urbanization? Bellesiles has not made publicly available much of the data from which he drew these conclusions. (*The yellow notepads on which he recorded much of his data were destroyed in a flood at about the time that scholars first asked for copies.*)

At least *some* of the data sets from which Bellesiles draws his conclusions, however, are publicly available. Professor James Lindgren of Northwestern University School of Law and Justin Lee Heather, a law student at Northwestern, have examined some of these data sets and Bellesiles's claims do not stand up to independent review:

One run of probate records that Bellesiles cites is a published set of about 186 decedents' estates in colonial Providence in 1679-1729. Even though he finds high gun ownership in Providence in this period (48%), he undercounts the percentage of estates listing guns substantially—according to our careful count, 63% of white male estates with itemized personal property inventories had guns.

Bellesiles also claims that most of the guns in the (approximately) 90 Providence inventories listing guns “are evaluated as old and of poor quality.” In fact, only about 9% of the guns are so listed. Bellesiles claims that he included only white males in his 186 Providence estates when he apparently included 17 women. He claims that all 186 estates had both wills and inventories when less than half did.²⁰

Lindgren and Heather also examined other data sets of probate records and property inventories, and demonstrate that Bellesiles's claims about the completeness of probate records lead to some inescapable conclusions, one of which is that seventy percent of estates probated in 1774 had not even one penny in cash (a most unlikely possibility), and that twenty-three percent of colonial Americans owned no clothing of any kind (an even more unlikely possibility).²¹

The Providence probate records, for which Bellesiles makes especially striking claims about the relative scarcity of guns, when reviewed by Lindgren and Heather, are especially striking for how common guns are:

Thus if axe and knife ownership was near universal in Providence, then gun ownership was probably near universal as well, since guns are as commonly listed as axes (65%) and more commonly listed than knives of all kinds, including table knives (36%). If one compares gun ownership (63%) with the ownership of swords, cutlasses, bayonets, and other edge weapons (30%), the difference is particularly striking. Indeed, the odds of finding a gun in a colonial Providence inventory are 4.1 times as high as the odds of finding a sword or other edge weapon.

Guns were as commonly listed in Providence estates (63%) as all lighting items combined (60%): candles, tallow, candlesticks, oil, lamps, and lanterns. Gun ownership is as common as book ownership (62%) and much more common than the ownership of Bibles (32%).²²

My own limited examination of estate inventories more closely match Lindgren and Heather's results than Bellesiles's. The first volume of *The Public Records of the Colony of Connecticut* contains a small number of both wills and estate inventories covering 1639 to 1663. The wills are of no value for determining what items were commonly owned; some are detailed as to who will receive particular goods while others list only a few specific items to be left to particular heirs.

The thirty-five estate inventories are more useful, although even these have their problems with many household goods being lumped together under the category of "tools." These estate inventories provide a minimum count of guns actually owned at the time of death.

One problem with the estate inventories is that they represent a disproportionately older population--those who were less likely to be subject to militia duty and less likely to use guns for hunting because of physical infirmity and declining eyesight. Another problem is that there are wills recorded that lack estate inventories, such as those of Connecticut colonists William Froste and George Willis,²³ suggesting that not all deaths resulted in an estate inventory, raising questions about how typical such property distributions were.

We also find some reminders that guns were not just a male accessory, and so Bellesiles's focus on the estates of men may be misleading. Thomas Scott's estate inventory was divided into

two sections: one listing goods “delivered to the Wydow Scott for her use,” and another listing “Goods of Tho: Scots sett aparte for his 3 daughters.” Mrs. Scott received a fowling piece, a matchlock musket, a sword, and a pair of bandalers (used for carrying ammunition). The three daughters received a snaphance flintlock and “1 cok mach musket,” apparently a matchlock.²⁴

Nathaniel Foote’s estate inventory lists £5 of ammunition—but no guns. Thomas Hooker’s estate inventory lists £4 of ammunition—but no guns. Both estates were quite extensive²⁵ and one can assume that because guns were of fairly low value that they were not listed. Another possibility is that the ammunition was left over from a time when Foote or Hooker owned a gun, and the gun had been sold or given away, but the ammunition remained. For purposes of this analysis, we assume that estate inventories that list ammunition but no arms had no guns present at the time of the inventory.

John Porter’s estate inventory lumps together “five silver spoons; and in pewter and brass, and iron, and armes, and ammunition, hemepe and flax and other implements about the roome and in the sellar” valued at £35:14:0.²⁶ Were these “armes” guns? The inclusion of “ammunition” suggests yes, and so we assume at least one gun was included among “armes.” The same assumption can be made for Abraham Elsen’s estate inventory that includes “his arms and muniton” valued at £1:15:0, and John Elsen’s “his arms and ammunition” valued at £2.²⁷

Estate inventories list valuations of goods, but often guns are lumped together with swords and other military gear: “a musket, a sword, bandaleres & a rest” valued at £1:5:0.²⁸ This makes it difficult to determine the actual appraised value of the guns; we can only produce maximum values for these guns, perhaps far in excess of their actual value. The numbers are interesting and paint a very different picture from Bellesiles’s account of scarce and expensive guns. Of the thirty-five estates examined, 66% explicitly list guns, or list “armes and ammunition.”

The maximum number of guns in an estate inventory is six, for James Olmstead: “3 musketts, one fowleing peece, 2 pistols.”²⁹ The average number of guns in estates that list guns or “armes and ammunition” was 1.78. The average value of the guns was £1:2:0. If guns were actually scarce, one would expect their value to be high, not low.

Along with probate records, however, most of Bellesiles’s argument for gun scarcity is derived from official records and readily available documents. Before examining how Bellesiles has

misread those materials, it is worth asking how one would recognize gun scarcity in primary sources.

It is perhaps wise to start out by understanding what contemporary sources can and cannot tell us about a period. The truly mundane objects and concerns of life may receive no mention at all. Objects that are unusual may be mentioned precisely because they are uncommon. When examining sources from early America, it is important to recognize that the *manner* in which writers mention firearms may tell us as much about their scarcity as the mention itself.

For example, a resident of modern New York City who encountered a deer in Central Park would describe the experience very differently than would a resident of Cougar, Washington meeting a deer in downtown Cougar. The New Yorker would almost certainly comment on the presence of a deer with great amazement, perhaps writing a letter to the newspaper, leaving it for future historians to cite as evidence. The resident of Cougar, Washington, would find a deer so unremarkable that there would almost certainly be no written record. Yet we all recognize in which city today it is more likely that one might encounter a deer.

Another problem with the use of what are necessarily impressionistic sources is the human tendency to overgeneralize. If you were to ask most members of the academic community how many Americans own guns today, they would probably severely underestimate the actual percentage based upon their own circle of acquaintances. The results might be somewhat different the other direction if you asked people at a local shooting range.

If we find writers in early America identifying hunting and firearms as “common” or “widespread,” it might be argued that they have overgeneralized from their experiences. For that reason we might reject one writer’s observations. We might reject the accuracy of such an observation if the writer came from a nation where both firearms and hunting were less common than in America. The novelty of seeing firearms might cause a foreigner to overgeneralize from a small number of personal experiences. We cannot, however, reject large numbers of independent observations from writers both American and foreign, from different regions of pre-1840 America that reach similar conclusions without assuming some sort of shared delirium.

It is also important to distinguish those accounts that describe what *should* be from what *is*. Bellesiles’s 1996 *Journal of American History* paper quotes from an 1843 children’s book that

condemns guns themselves as evidence that the public was “completely uninterested in firearms.”³⁰ Lesson 42 in McGuffey’s 1836 *Eclectic First Reader*, another children’s book of the same era, heartily condemns rum and whiskey,³¹ but no one who has read *The Alcoholic Republic*³² would consider McGuffey’s condemnation to be evidence about the scarcity of alcohol in antebellum America. Those who wrote children’s literature often intended to discourage behaviors that were *too* common among the adult population or that were inappropriate for children.

Bellesiles relies heavily on official records to make his claims. These records include government contracts with arms makers, militia returns, and other primarily military data. If, as Bellesiles claims, there was little hunting or civilian interest in guns in early America, then information associated with the military use of guns might be an effective method of identifying patterns and levels of gun ownership and use. But if Bellesiles is incorrect, and guns were commonly used for sporting purposes, then records associated with military uses of guns will tend to understate the number of guns in America and distort the relationship that Americans had with guns.

One difficulty with evaluating primary sources is that they were not written with the goal of assisting the historian and are often ambiguous. How an historian interprets a particular text can reflect the assumptions that he brings to it. As an example, Samuel Wilson’s account of Carolina, published in 1682, devoted a paragraph to discussing the available game:

The Woods abound with Hares, Squirrels, Racoons, Possums, Conyes and Deere, which last are so plenty that an Indian hunter hath kill’d nine fatt Deere in a day all shott by himself, and all the considerable Planters have an Indian hunter which they hire for less than twenty shillings a year, and one hunter will very well find a Family of thirty people with as much Venison and Foul, as they can well eat.³³

One could interpret this passage as indicating by omission that whites did not hunt in Carolina but purchased wild game from Indians. An equally legitimate reading would argue that “all the considerable Planters” hire Indians to hunt their wild game, but this passage, by itself, tells us nothing about whether poorer whites hunted wild game. The discussion of the abundance of wild game could also be legitimately interpreted as an indication

that wild game was available for the taking, since Wilson's account encouraged immigration to the New World because of its bounty.

Another problem with evaluating primary source evidence is the question of what is meant by "arms." A dictionary definition of "arms" includes not just firearms, but also swords, pikes, clubs, and other weapons. Bellesiles makes the claim that historians have traditionally interpreted "arms" in primary sources to mean "firearms." Because guns were scarce in early America, Bellesiles argues that this interpretation is incorrect. It is certainly true that there are many primary sources that mention only "arms" without specifying "firearms." But we will see examples of how Bellesiles assumes the non-specific "arms" to mean that there were no guns present—even when his sources are explicit on other pages that "arms" included guns.

Some accounts that use the term "arms" almost certainly mean "firearms" because the events described make no sense otherwise. "The People of this place and countrey... rose up in Arms.... The Fort being Surrounded with above Fifteen hundred men was Surrendered...."³⁴ Why would a fort surrounded by people armed with swords and pikes surrender? Only if those "arms" included guns would the narrative make any sense.

In other cases, the characteristics of the "arms" clearly identify that "arms" means firearms and nothing else. When Connecticut in April 1775 directed purchasing "three thousand stands of arms... as soon as may be..." they also specified characteristics of these "arms" to be purchased: "the length of the barrel three feet ten inches, the diameter of the bore from inside to inside three-quarters of an inch..."³⁵ When Connecticut's government said "arms" in such a context, they meant "firearms."

One must examine the totality of evidence when studying what are necessarily incomplete documents. In particular, a recurring issue when examining Bellesiles's claims of gun scarcity is to see what the people who lived in that time said and did. Did they take steps that indicated that they believed that guns were widely available? Or did they operate as though guns were relatively uncommon? Eyewitnesses should be trusted more than the interpretations of later writers unless there is some clear evidence that the eyewitnesses are untrustworthy or wrong.

In some cases, travel accounts refer to guns or hunting but make no statement about whether these were common or unusual. But if multiple travel accounts for a particular period and

region make reference to guns or hunting, and none of them indicate that either is unusual, it seems a bit hard to believe that many travelers just happened upon something that was rare, and failed to make mention that this was an unusual item or event.

It is certainly true that an historian today has the advantage of hindsight and the ability to marshal a variety of pieces of evidence in a way that those living in 1700, or 1800, did not. But Professor Bellesiles's evidence does not stand up to careful analysis. Indeed, much of his evidence turns out to be false—not misinterpreted, not atypical of other evidence, but misquoted or misread. When Bellesiles's evidence simply evaporates under the most cursory examination, his argument collapses. *All* of Bellesiles's claims are severely wanting, in a few cases because of logical errors. But in most cases, because Bellesiles's claims are based on misquotations and misreadings of his sources.

Why Bellesiles's book is so remarkably full of errors—and overwhelmingly biased—is an interesting and disturbing question, but one that only Bellesiles will be able to answer.

GUN POSSESSION & GUN VIOLENCE IN COLONIAL AMERICA

Bellesiles emphasizes that the English colonies in America had few firearms and that the few guns that they had were beyond the ability of the vast majority of the colonists to use competently. Bellesiles portrays the Plymouth Colony as remarkably poorly armed: “[Myles Standish’s] was one of only four snaphances held by the settlers, though there were also some battered old matchlocks.”³⁶ How many guns did the Pilgrims have that first year? You might assume, from Bellesiles's description, that there were only four useful guns, and a few other, out of date weapons. (The snaphance was a new technology; but matchlocks were still considered an appropriate weapon, and were in use at Jamestown as well.³⁷)

Reading the sources that Bellesiles cites tells perhaps not a different story, but one that can be read with a rather different conclusion about gun scarcity and competence. When a party of twenty went ashore at Cape Cod on November 11, 1620, every man carried a firearm.³⁸ Since there were only forty-one adult men who signed the Mayflower Compact,³⁹ at least half of the men at Plymouth had a gun.

Bellesiles describes the first defensive use of guns by Plymouth Colony this way: “Arrows flew and the Pilgrims fired their four snaphances while the rest of the force lit their matches with a brand from the fire. They then let off a volley from these muskets and the Indians fled. No one was hurt, though the Nauset learned that the Europeans could make very loud noises.”⁴⁰ The phrase, “very loud noises,” is clearly intended to portray the Europeans as incompetent with guns.

Yet reading William Bradford’s account of the battle that Bellesiles cites indicates no firearms incompetence. The fight was fierce, unexpected and showed poor planning. (As Bellesiles acknowledges muskets were not accurate.) While most of the attacking Indians retreated, one stood behind a tree, “within half a musket shot of us,” and fired arrows repeatedly at the Pilgrims.

Contrary to Bellesiles’s description of the Indians being frightened off by the noise, Standish’s last shot, after taking “full aim at him,” “made the barke or splinters of the tree fly about his ears, after which he gave an extraordinary shriek, and away they wente all of them.”⁴¹ The lack of fatalities among the Indians was not because of poor accuracy, but good use of cover by Standish’s intended target. It also appears that Standish and company may have sought to scare the Indians away more than kill them:

We followed them about a quarter of a mile; but we left six to keep our shallop; for we were careful of our business. Then we shouted all together, two several times; and shot off a couple of muskets, and so returned. This we did that they might see that were not afraid of them, nor discouraged.⁴²

Bellesiles devotes considerable energy to telling us how incompetent with a gun even Myles Standish, the professional soldier of Plymouth Colony was; how incompetent the first settlers were in using guns for self-defense; and how short of firearms both Plymouth and Massachusetts Bay Colony were.⁴³

This is contradicted by the accounts of visitors. Emmanuel Altham, visiting in 1623, described the arrival of the Indian chief Massasoit at Governor Bradford’s wedding. Massasoit arrived with “four other kings and about six score men with their bows and arrows—where, when they came to our town, we saluted them with the shooting off of many muskets and training our men.”⁴⁴ Issack de Rasieres, a Dutchman visiting Plymouth about

1628 described a militia muster: “They assemble by beat of drum, each with his musket or firelock, in front of the captain’s door....” Since de Rasieres indicated that Plymouth had about fifty families, it stands to reason that there were at least fifty muskets or firelocks present.⁴⁵

Bellesiles neglects to mention that in 1630, only ten years after his arrival at Plymouth, John Billington was convicted of murdering a newcomer named John Newcomen by shooting him with a blunderbuss—and Bellesiles cites material from the same source that reports this murder.⁴⁶ According to Bellesiles, “in forty-six years Plymouth Colony’s courts heard five cases of assault, and not a single homicide.”⁴⁷ In a community that averaged only a few hundred souls, even one murder in ten years is quite dramatic, yet Bellesiles seems unaware of Newcomen’s murder.

There are incidents that suggest that guns and violent deaths caused by them were not quite as rare in Plymouth Colony as Bellesiles implies. A dispute over beaver trapping rights on the Kennebec River in 1634 led to the shooting death of Moses Talbot by a Captain Hocking, and in turn the shooting death of Hocking by Talbot’s partner.⁴⁸ Another incident at Plymouth—found when I picked a page at random in a book about Plymouth Colony—described how:

On 1 July 1684 Robert Trayes of Scituate, described as a ‘negro,’ was indicted for firing a gun at the door of Richard Standlake, thereby wounding and shattering the leg of Daniel Standlake, which occasioned his death. The jury found the death of Daniel Standlake by ‘misadventure,’ and the defendant, now called ‘negro, John Trayes,’ was cleared with admonition and fine of £5.⁴⁹

One would think if the goal were to give a full and accurate picture of gun availability and use in America, Bellesiles would include these three troubling incidents. Of course, such incidents might raise some questions about how scarce guns really were in Plymouth Colony and its environs. It would also raise some questions about Bellesiles’s claim about the England from which the Pilgrims came: “Most personal violence in early modern England occurred not on lonely highways but at public festivals, often between competing teams of Morris dancers and such other representatives of communal pride.”⁵⁰

This claim hardly needs refutation. There is no shortage of scholarly study of the problems of personal violence in early modern England, especially along the border counties between England and Scotland. This culture of violence transplanted from Britain played a major part in creating a similar culture of violence in the backcountry parts of the United States.⁵¹

Thomas Morton's description of the erection of the Maypole at Merrymount (a trading post established on Massachusetts Bay in the 1620s) tells us that, "And upon Mayday they brought the Maypole to the place appointed, with drumes, gunnes, pistols, and other fitting instruments, for that purpose...."⁵² Both guns and pistols were present at Merrymount, and more importantly, Morton found no need to explain the presence of long guns and pistols there.

What Morton needed to explain—and chose not to—was his trade with the Indians. When Miles Standish led an expedition to arrest Morton and close down his scandalous establishment, the Pilgrim's primary motivation was not suppressing licentious living by Morton and friends, but suppressing Morton's arming of the Indians. When the Pilgrims arrived in 1620, the Indians had no guns. John Pory's 1623 account reported that those Indians unfriendly to the Pilgrims had been "furnished (in exchange of skins) by some unworthy people of our nation with pieces, shot, [and] powder...."⁵³ By 1627, the Indians of Massachusetts Bay were believed to have at least sixty guns, largely supplied by Morton. Morton bartered guns for furs with the Indians, violating royal proclamation against supplying firearms, powder, or shot to the Indians.⁵⁴

Concerning the scarcity of guns in Massachusetts Bay, Belle-siles writes:

In 1630 the Massachusetts Bay Company reported in their possession: "80 bastard musketts, with snaphances, 4 Foote in the barrill without rests, 6 long Fowlinge peeces...6 foote longe; 4 longe Fowlinge peeces... 5-1/2 foote longe; 10 Full musketts, 4 Foote barrill, with matchlocks and rests," one hundred swords, and "5 peeces of ordnance, long sence bowght and payd For." There were thus exactly one hundred firearms for use among seven towns with a population of about one thousand.⁵⁵

The source cited for this claim is “Shurtleff, ed., *Records of Massachusetts Bay* 1:25-26.” But what is actually at that location is *not* a list of weapons in Massachusetts Bay colony. It is not even a list of guns owned by the company. It is a list of “Necessaries conseaued [conceived?] meete for o[u]r intended voiadge for New England to bee prepared forthwith”: a list of arms to be brought over by the company, only some of which were already owned.

There is nothing in the cited pages that indicates that this is a list of *all* the guns in the colony, or that it includes privately owned guns, as Bellesiles implies when he says “one hundred firearms” for a population “of about one thousand.” Even the year that Bellesiles gives is wrong. The dates on the document Bellesiles cites are February 26 and March 2 1628/9 (Old Style). The year 1630 does not appear. (If Bellesiles had given the correct year, most historians would have wondered how the Massachusetts Bay Company could have done an inventory of guns in the colony *before* the colony even existed.) The only part of Bellesiles’ claim that is correct is the list of weapons.⁵⁶

This same list of weapons appears in Harold L. Peterson’s *Arms and Armor of Colonial America*, several pages after a section that Bellesiles cites—but Peterson has the date listed as 1626, which is also wrong. Peterson, however, correctly identifies the meaning of this list: “As the Massachusetts Bay colonists prepared for their voyage, they made a list of the public arms they intended to take with them.”⁵⁷

Shooting was apparently a common enough pastime in 1638 Massachusetts that when an Emanuell Downing had “brought over, at his great charges, all things fitting for takeing wild foule by way of [decoy],” the General Court felt it necessary to order “that it shall not bee lawfull for any person to shoote in any gun within halfe a mile of the pond where such [decoy] shalbee placed....”⁵⁸

Examination of records of the Springfield, Massachusetts, court from 1639 through 1702 provides a number of examples of guns present, and in every case, treated as an ordinary item. There is trial of a woman in 1640 accused of selling her late husband’s gun to an Indian. Her defense was that she did not sell it, but lent it to the Indian, “for it lay [spoiling] in her [cellar],” and she expected to reclaim it shortly. The judge warned her that she should get it home again speedily, “for no commonwealth would allow of such a misdeme[a]nor.”⁵⁹

A few months later, there is a civil suit between two men, “for a gunn that he bought of him and paid 22*s. 6d.*” but had not been delivered.⁶⁰ There is a criminal case in 1650 involving Thomas Miller, convicted of striking an Indian “with the butt end of his gunn.”⁶¹ Two Indians are fined for drunkenness in 1662, and not having the money for the fine, one of them, “Left a gun with the County Treasurer till they make payment.”⁶²

In 1680, Isack Gleson complains that Isack Morgan beat his servant and “took away his Gun and knife.”⁶³ There are at least two other cases involving prosecutions for theft of guns, one involving a runaway slave who “stole a Gun in the next Town viz Southfeild” in 1681,⁶⁴ and another theft in 1699, in which the stolen gun was found in Daniel Nash’s shop for repair.⁶⁵ Another theft in 1697 involving lead and powder would suggest that the victim owned a gun.⁶⁶ (A civil suit involving “Rifles” in 1661/2 may be a misreading of the manuscript, since rifles were quite rare this early in New England.)⁶⁷

Even though this court did not normally handle probate,⁶⁸ there are at least three estate inventories contained in its records. One in 1641/2 lists “peeces powder and shott” valued at £3:1:0. Another in 1654/5 lists “a Muskett Sword bandaliers” valued at £1:2:0. The third estate inventory lists no guns.⁶⁹ It seems a bit strange, if Bellesiles is correct that guns “were to remain the property of the government”⁷⁰ that they would be appraised and inventoried like any other item of personal property.

Accounts of early Virginia routinely mention guns. Augustine Herrman, a Dutch diplomat en route from New Netherlands to Maryland in 1659, described large numbers of guns in use and unremarkable by their presence. “Nothing occurred on the way except hearing a shot fired to the north of us, which the Indians doubted not was by an Englishman. Whereupon we fired three shots, to see if we should be answered, but heard nothing.”

Two days later, having stopped at a Swedish settlement, Herrman was in a dispute as to the ownership of a boat. “Abraham with one Marcus, a Finn, came to our side in a canoe, and would not let us pass... and this Marcus drew a pocket-pistol and threatened to fire if we would not stop. They had, besides, two snaphances... On leaving the river, we heard heavy volley firing on Colonel Utie’s island... which we presumed must have proceeded from fifty or sixty men; it was mingled with music. This lasted until night....”⁷¹

One early account of Bacon's Rebellion describes an incident that led to war between Bacon's men and the Indians. In a dispute about a murderer sought among the Indians, "the King [chief] pleaded Ignorance and Slipt loos[e], whom Brent shot Dead with his Pistoll. Th' Indians Shot Two or Three Guns out of the Cabin, th' English shot into it..."⁷² There is no surprise expressed that the Indians were shooting back, or that they had two or three guns in one cabin. Similarly, a battle between Bacon's force and the Pamunkey Indians involving gunfire from the Indians is treated as unsurprising.⁷³

While a description of frontier Virginians during Bacon's Rebellion "taking their Arms into the Fields... no Man Stirrd out of Door unarm'd"⁷⁴ could be interpreted to refer to swords or pikes, it is a strained reading. The Indians had guns as the legislature had complained in March 1658/9, "the Indians being furnished with as much of both guns and ammunition as they are able to purchase..."⁷⁵ It seems unlikely that if the settlers were afraid, that they would be working in their fields without guns.

Similarly, a contemporary description of Bacon's first organizing of men to follow him against the Indians describes them as "about 300 men together in armes..."⁷⁶ When Bacon later marched into the capital to demand a commission from the governor, he confronted a force of "1000 men well arm'd and resolute..." Other references refer to guns in the hands of both Bacon's men and the governor's force.⁷⁷ Statutes of the time also made repeated references to impressing guns and assumed that guns were available for impressment.⁷⁸

Other accounts of seventeenth century rebellions also mentioned guns with no indication that they were at all unusual. A description of a 1677 insurrection in North Carolina described how a Captain Gilliam with thirty to forty men, "with armes of the [said] Gilliam, and headed by one Valentine Bird and Edward Wells... with force and arms *vid.* Swords, guns, and pistols, violently rush into the house..." The author also described threats he had received from others of "hanging, pistolling, or poisoning..."⁷⁹

Many other accounts and statutes suggest, by their sheer numbers, that guns must have been pretty commonly owned items. A statute adopted at the Massachusetts 1713-14 legislative session complained, "Whereas by the indiscreet firing of guns laden with shott and ball within the town and harbour of Boston, the lives and limbs of many persons have been lost, and others have been in great danger, as well as other damage has

been sustained,” the firing of any “gun or pistol” in Boston (“the islands thereto belonging excepted”) was prohibited.⁸⁰

In 1722, Governor William Keith of Pennsylvania offered to the Indians who would assist in capturing runaway slaves “one Good Gun and two Blankets for each Negro” whom they captured and returned to his master.⁸¹ This tells us nothing by itself, but does suggest that either there were few runaway slaves, or guns to be used as rewards were not in short supply.

William Black’s 1744 description of a practical joke played on some Maryland fisherman also suggests that guns were not scarce:

Towards the going down of the sun we saw a boat and canoe fishing inshore. We hailed them with, “Have you got any fish?” They returned with, “Have you got any rum?” We answered, “Yes, will you come on board and taste it?”

Then they untied and made directly for us, but were very much surprised with the manner of reception they met with. We had the [blunderbuss] ready loaded and aimed on the side while they were to board us. Mr. Littlepage, who was to act the part of the lieutenant of a man of war, was furnished with four loaded pistols and the like number of swords.

With his laced hat and romantic countenance he made an appearance much like another Black-beard. Several more of our company were armed each with a drawn sword and cocked pistol. Several pistols, three fowling pieces loaded, and some drawn swords were lying in view on a table on the main deck.

In this manner were we equipped and stationed ready to receive the poor fishermen. When they came near enough to observe our postures, they immediately lay on their oars and paddles with no small concern to know what we were. In a little time the ebb tide drew them alongside, and Littlepage asked them in a sailor-like manner if they would come on board and serve his majesty. To this they made no reply, but kept gazing at us like so many thunderstruck persons. At last, with a discharge of our great gun and small arms, flourishing our swords round our heads, we asked them to come on board directly, else we would sink them....

A call was made to haul up the barge and man her. This being done, Littlepage and myself got in with each a pair of pistols and a sword and made directly after them. Upon this, they quickened if possible their strokes, pulling for life directly to the shore. Now and then one or other of them would look behind and then cry out, "Pull away! Pull away! or we are all taken."⁸²

Yale's 1745 regulations for students include the following:

If any Scholar Shall keep a Gun or Pistol, or Fire one in the College-Yard or College, or Shall Go a Gunning, Fishing or Sailing, or Shall Go more than Two Miles from College upon any Occasion whatsoever: or Shall be present at any Court, Election, Town-Meeting, Wedding, or Meeting of young People for Diversion or any Such-like Meeting which may Occasion Mispence of precious Time without Liberty first obtain'd from the President or his Tutor, in any of the cases abovesaid he Shall be fined not exceeding Two Shillings.⁸³

If guns were scarce, why did Yale feel a need to pass such regulations? We know at least that Nathaniel Ames, a Harvard student, "went a gunning after Robins" one April day in 1758. It was worth noting in his diary, but so was the arrival of a relative from home with linen, attending a funeral, and going fishing.⁸⁴

Analogies involving guns can also be an indication that guns were common enough that the writer expected others to understand such uses. Benjamin Franklin's letter of December 25, 1750 [Old Style], described "an Experiment in Electricity that I desire never to repeat." Franklin attempted to electrocute a turkey with his static electricity capacitors, and distracted by his audience, shocked himself into unconsciousness. "The Company present... Say that the flash was very great and the crack as loud as a Pistol..." Where the shock entered his finger, "I afterwards found it raised a round swelling where the fire enter'd as big as half a Pistol Bullet..."⁸⁵

Franklin, in 1753, while castigating the German immigrants to Pennsylvania for their lack of patriotism, observed Pennsylvania and the lower counties, "raised armed and Disciplined [near] 10,000 men..."⁸⁶ Yet Bellesiles tells us that at the start of the American Revolution, more than half of the guns in America were 20,000 Brown Besses sent over during the French & Indian

War (1755-1763).⁸⁷ These figures allow for less than 20,000 guns prior to the French & Indian War. Yet Pennsylvania and the lower counties alone somehow managed to raise and arm 10,000 men more than 20 years earlier. One must conclude from this statement of fact that

Pennsylvania and Delaware had more than half of the guns in the entire American colonies.

There had been a lot of guns in the American colonies before the French & Indian War that had been broken, lost, or exported.

Franklin wasn't talking about guns when he said "armed," *or*

Bellesiles is wrong about the scarcity of guns in America before the Revolution.

Another example of Bellesiles's curious misreading of sources concerns the 1756 emergency call-up of the Virginia militia:

Colonel Washington reported on the militia to Governor Dinwiddie: "Many of them [are] unarmed, and *all* without ammunition or provision." In one company of more than seventy men, he reported, only twenty-five had any sort of firearms. Washington found such militia "incapacitated to defend themselves, much less to annoy the enemy."⁸⁸

Bellesiles misquoted Washington. Bellesiles leads the reader to believe that Washington was complaining that this was the *general* state of the militia. Washington was clearly referring to only *some* militia units:

I think myself under the necessity of informing your Honor, of the odd behaviour of the few Militia that were marched hither from Fairfax, Culpeper, and Prince William counties. Many of them unarmed, and *all* without ammunition or provision. Those of Culpeper behaved particularly ill: Out of the hundred that were draughted, seventy-odd arrived here; of which only twenty-five were tolerably armed.

Washington considered the militia arriving inadequately armed to be “odd behaviour,” and worth mentioning. This suggests that other militia units *were* adequately armed and brought ammunition. Washington sought to have the unarmed militiamen punished, which suggests that their behavior was exceptional, not typical.⁸⁹ Yet Bellesiles portrays this unusual situation among a “few” of Washington’s militia units as normal behavior for the militia that Washington commanded.

Governor Tryon’s struggle against the Regulators of the backcountry of North Carolina in the decade before the Revolution provides a number of clues to the level of gun ownership in that colony, and in a way that might not have otherwise ended up in any official records, if not for the rebellion. There *are* occasional hints that gunpowder is scarce in North Carolina in 1769, with Governor Tryon complaining, “in case of war, I could not purchase here twenty barrels of powder....”⁹⁰ But more careful reading suggests that Governor Tryon’s problems had more to do with a reluctance of the legislature to provide ammunition for the governor’s troops. Governor Tryon made several requests to the legislature, asking them to pay for ammunition “for the protection of the Country,” and found himself carefully rebuffed at first.⁹¹ When the legislature finally acceded to Tryon’s request, the language used suggests that the gunpowder and musket balls were to be purchased locally: “the Governor be empowered to draw upon either of the public Treasurers for money to purchase the same.”⁹²

Other evidence from a thorough reading of *Colonial Records of North Carolina* for 1769-1771 shows that guns appear in a number of contexts and they are not regarded as startling or unusual. One example is the depositions concerning murders committed by felons being pursued by the Sheriff of Dobbs County.⁹³ Another example is Governor Tryon’s order of February 7, 1771, that prohibited “for a reasonable time from vending or disposing of any fire arms and ammunition least the same should come into the hands of the said people called Regulators or the Mob....” This order applied to “all Merchants, Traders and others... till further notice.”⁹⁴

The Regulators were already armed with guns, and this was not considered remarkable. Colonel Spencer’s letter to Governor Tryon of April 28, 1768 describes how the Regulators “came up to the Court House to the number of about forty armed with Clubs and some Fire Arms....”⁹⁵ As a general rule, the Regulators were careful to keep guns out of town when engaged in vio-

lent disruptions of the court system, and some contemporary accounts express some uncertainty as to whether their men out of town had guns or not. What is interesting and suggestive is that the Regulators outside of town having guns is expressed as a possibility, and not a startling one.⁹⁶ If guns were actually scarce in 1769 North Carolina the writers of these accounts were apparently not aware of it.

As the crisis with the Regulators came to a head, there are other indications that guns were commonly owned. An Anglican minister named Cupples described the difficulties in mustering the militia in Bute County for an expedition against the Regulators: “The Col. of this county was by his instructions only to raise Fifty men exclusive of officers, yet he told me, when he called a general muster that though there were betwixt eight or nine hundred men under arms, there was not any would list... and proclaimed themselves for the Regulators....”⁹⁷

Militiamen were certainly armed with their own guns. The only mention of unarmed militiamen is the levying of fines on May 8, 1771, against some militiamen that showed up “without Arms....”⁹⁸ Governor Tryon complains that “this service was undertaken without money in the Treasury to support it, no armory to furnish arms, nor magazines from whence we could be supplied with ammunition....”⁹⁹ Orders to various militia colonels indicate that they were to purchase provisions, gunpowder, and lead for their soldiers, “and to defray the expence thereof I will give you a Draft on the Treasury.” “Ammunition to be provided by the men agreeable to Law and what is further wanting will be supplied from the Magazine in Newbern.”¹⁰⁰ The only logical reading of such documents is that guns were commonly owned, and ammunition was available for purchase in North Carolina.

Bellesiles claims that at the start of the American Revolution in 1775, “Most of the guns in private and public hands [in America] came from the twenty thousand Brown Besses supplied by the British government during the Seven Years’ War.”¹⁰¹ This means that there were *no more* than 40,000 guns in the American colonies in 1775. Yet in Bute County, North Carolina, alone there appear to have been at least eight hundred guns in private hands—or five percent of *all the guns* in the American colonies, if Bellesiles is correct.

Other evidence that there was a wide variety of guns in private hands can be found in the order from General Waddell, commanding Tryon’s forces, that twenty-four rounds of ammu-

nition be supplied to each soldier, “Bullets, Lead or Swan Shot at the discretion of the Captain of each company.”¹⁰² If the majority of guns in America were “Brown Besses,” of a standard caliber, then it made little sense to distribute such a variety of projectiles. Giving soldiers their choice of lead suggests that the militia commonly possessed guns of non-standard calibers.

Once Governor Tryon’s forces were mobilized, there were repeated accounts that demonstrated that the Regulators were well-armed with guns. Contemporary accounts are in agreement that about 4,000 men were part of the Regulator force that battled against Governor Tryon.¹⁰³ Governor Tryon described how the offer of amnesty, provided “the rebels... surrender up their arms, take the oath of allegiance and oath of obligation to pay all taxes” had led 3,300 to surrender themselves. While these 3,300 had only surrendered 500 arms (presumably firearms, from the accounts of the battle), Tryon clearly knew that far more had failed to do so: “many of those that surrendered asserted that they were not in the battle, while others pretended to be in the battle without arms.”¹⁰⁴ At least twenty-five guns were taken from the rebels immediately after the battle.¹⁰⁵

Morgan Edwards toured North Carolina the year following the battle. He described the results of the battle as 4,000 Regulators fighting 2,000 of Governor Tryon’s men, but that many shots hit no one: “lodging in the trees an incredible number of balls which the hunters have since picked out and killed more deer and turkies than they killed of their antagonists.”¹⁰⁶ Perhaps as Bellesiles claims, Americans were poor shots, but since the weapons of the time were slow to reload single shot muskets and rifles, there must have been *many* Regulators firing guns.

Another contemporary account, from the Boston *Gazette* of July 1771, similarly implied that the Regulators were well-armed with guns. It described how, “the Almighty Ruler of Heaven and Earth could guide the Balls from the Rifles of the Regulators to fly over the Heads of our Troops in the Day of Battle, as they did by ten Thousands; which otherwise, as they were at least five Times the Number of our Troops, must have cut them off by Hundreds, and left the Field a dismal Scene of Blood and Carnage.”¹⁰⁷ The *Gazette*’s account suggests that there was something rather miraculous about so many shots going astray. The Regulators might have been poor shots, but in the American context, this was regarded as miraculous, not the norm—and there were *many* guns being fired.

It would be foolish to claim to know how many of the Regulators were armed with guns. But as contemporary accounts make clear, the Regulators at that battle had, at a minimum, many hundreds of guns—or several percent of all the guns in the American colonies, according to Bellesiles.

Bellesiles's account of the Regulators is also remarkable in another respect. He claims that, "White Americans had long demonstrated a capacity for violence against Indians and blacks, but, at least in the Colonial period, indicated a remarkable hesitance to kill one another.... Political and social conflicts among whites almost never involved violence—until 1768. In that year English colonists exchanged deadly gunfire with other colonists for the first time."¹⁰⁸

This is a most amazing claim by Bellesiles since he previously writes about the Battle of Severn in 1655 Maryland. His version of that battle—in which Royalist colonists seize public arms from the provincial armory, and are defeated by "well-trained troops from a Commonwealth ship"—does not match the eyewitness accounts that Bellesiles cites.¹⁰⁹

According to Bellesiles's primary sources, 200 to 250 men "mustered in Arms," on the Royalist side, and at least 120 on the Puritan side. The 120 on the Puritan side were not "well-trained troops from a Commonwealth ship," but local Marylanders. The ship on the Puritan side, contrary to Bellesiles's term "Commonwealth ship" was a merchant ship with cannon, not a naval vessel at all. Dozens were killed or wounded.

The Puritans claimed that they commandeered the ship, acting under Parliamentary authority. According to the Royalists, the ship's captain was paid for his services. Neither side claimed that the ship, or those fighting on the Puritan side, were professional soldiers.¹¹⁰

The Royalists had plundered many homes for guns and ammunition, "taking all the Guns, Powder, Shot, and Provision, they could anywhere finde," not "from the provincial armory" as Bellesiles claims. A Puritan account described how the Royalists had stripped the Country bare of men, "as also of Arms and Ammunition; the poor women urging this to them, 'What should they do if the Indians come upon them?,' being thus strip'd of men and Arms to defend them...."¹¹¹ A Royalist account does not dispute that they took "Arms from those of Patuxent,"¹¹² and does not imply that public guns were used.

None of the primary sources that Bellesiles cites for the claim that the Royalist used "public arms" seized from the "provincial

armory”¹¹³ makes any reference to either; every reference to a gun seized by the Royalists is either silent as to its origin, or is explicit that the gun was seized from an individual’s home.¹¹⁴ The only public items seized by the Royalists were records.¹¹⁵

Bellesiles’s depiction of Leisler’s overthrow of the government of New York in 1689 is similarly at variance with primary sources. Bellesiles characterizes Leisler’s forces as armed with swords and clubs, based on one incident in which they drove four customs commissioners out of the customs collector’s office with swords, and the continuing use of the unspecific “arms” to refer to Leisler’s men being armed. In a like manner, Bellesiles’s description of Leisler’s men taking control of the fort, “They had hoped for a stockpile of English guns, but found instead... only fifteen useable cannon and one barrel of gunpowder” implies that Leisler’s men, before and after taking over the fort, had no guns.¹¹⁶

If the accounts of Leisler’s forces had only used the word “arms” it would be unclear if they were armed with guns. However, another account in Bellesiles’s source for this incident described how Leisler’s men fired into the city, “whereby several of his Majesties Subjects were killed and wounded as they passed in the street...”¹¹⁷ Other accounts in that same source, seeking to justify Leisler’s actions, reduced the number killed by gunfire from Leisler’s men, but do not dispute that it happened.¹¹⁸

Yet another account in that same source described how men under Leisler’s command went to him “and threatened to shoot him if he did not head them.” Another section described how Leisler “sends severall Armed men, with no other warrant their Swords and Guns” to arrest a prominent merchant.¹¹⁹ To assert that “arms” did not include guns in these accounts of Leisler’s rebellion is disingenuous.

Bellesiles’s depiction of Colonial America as a place where whites were never violent to whites is hard to believe. The Battle of Severn was not the only example of political violence. The accounts of riot and murder in Charleston between Dissenters and Anglicans in 1701/2 are appalling. Daniel Defoe quoted a petition to the England-based proprietors of Carolina: “some of the said Rioters, whilst the Riot was at the Church, went one Night to the House of John Smith, a Butcher in Charles Town; and there being a Woman big with Child in the said House, they with Force open’d the door, threw her down, and otherwise mis-used her, that she brought forth a dead Child, with the Back and Skull broken.”¹²⁰

Disputes over the borderline between Pennsylvania and Maryland turned into deadly gunfire in 1736. “[A]n armed Force of about three hundred Men was sent up by our Governor in a Hostile Manner...” Cressap, leading the Maryland forces, brought “a large Quantity of Arms and Ammunition.” By the time the dispute was over, at least one person had been killed by gunfire.¹²¹ The documents expressed horror that lives were taken, but the presence of the guns was not worthy of special note.

Bellesiles implies that the scarcity of gun violence in Colonial America was because guns were scarce. Since it is apparent that guns were not especially rare—and pistols of various sorts appear commonly in travel accounts—another explanation may be more appropriate. Misson de Valbourg in 1695 described the love of fighting in England. After observing that even among adults, minor disputes would turn into fights with large crowds gathered to egg on the participants: “They use neither sword nor stick against a man that is unarmed; and if any unfortunate stranger (for an Englishman would never take it into his head) should draw his sword upon one that had none, he’d have a hundred people upon him in a moment.”¹²² There was a notion of fair or proportionate use of weapons.

A description of the riots in 1746 New Jersey quoted the rebels, “And that they were resolved [should] they be opposed by Fire Arms, to take up Fire Arms to defend themselves.”¹²³ It would appear that the rebels had guns, and were prepared to use them only if guns were used against them. This might explain the North Carolina Regulators limiting themselves to clubs in Colonel Spencer’s account.

Another indicator that suggests guns were commonly owned appears in Pennsylvania Governor Thomas’s efforts to persuade the Assembly to pass a militia law. Governor Thomas emphasized that there will be little expense to the public in establishing a militia. There would be no need to raise even “One Shilling upon the People... and but little to each private Man, and much less if they are already Provided with Arms...”¹²⁴

There are *numerous* accounts from the Colonial period whose mention of guns suggests that firearms were not considered unusual items. Seven ads for runaway indentured servants in one newspaper in 1737 and 1738 mention that the missing man had either stolen a gun, or had a gun with them.¹²⁵ A 1743 ad in the *Pennsylvania Gazette* advertised for the return of two runaway indentured servants. “They took with them two Guns, one long

the other short....”¹²⁶ A 1746 ad complains of a deserter from the “Northampton Muster in North-Carolina” who stole, among other articles, a “Pocket Pistol.”¹²⁷

Runaway slaves also seem to have had no problem finding guns, including pistols. As early as 1737, two slaves who ran off were reported as having “robb'd a House, and took a Pair of Pistols....”¹²⁸ There are many other ads that list runaway slaves and indentured servants who managed to find and carry away guns and pistols.¹²⁹ A 1775 ad indicates that the runaway servants had carried away sizeable arsenals: “They had, and took with them, a country square-barrelled smooth bore gun rifle-stocked, one pistol, and other fire-arms.”¹³⁰ An ad reported in 1768 Cumberland County, Virginia, that a runaway slave had brought a horse and a rifle. The horse was appraised at £2:1:0; the rifle described as worth 12/6 (probably £0:12:6).¹³¹

Many accounts make references to guns as though they were completely ordinary and unsurprising items. John Andrews’s 1773 description of the Boston Tea Party describes the “Indians” as, “Each was armed with a hatchet or axe or pair of pistols.”¹³²

On June 4, 1774, the people of Hanover, Lancaster County, Pennsylvania met “to express their sentiments on the present critical state of affairs....” Among their resolves, “That in the event of Great Britain attempting to force unjust laws upon us by the strength of arms, our cause we leave to heaven and our rifles.”¹³³

The Committee of Observation for Lancaster County on May 1, 1775, shortly after the start of the war, made some interesting resolutions that, at a minimum, suggest that guns were believed to be available for purchase: “it be most heartily recommended to the inhabitants of the county of Lancaster, immediately to associate and provide themselves with arms and ammunition...”¹³⁴

A loyalist account of mob violence just before the Revolution describes how, “At Worcester, a mob of about five thousand collected, prevented the court of Common Pleas from sitting, (about one thousand of them had fire-arms,)....”¹³⁵ If we are to believe Bellesiles’s claim about the number of guns in America, then 2.5% of all the guns in America were present at this *one* event in Worcester.

A Failure of Critical Thinking By America's Historians

Arming America has the form of scholarship, but not the substance. There are accurately represented facts in the book but careful examination of the footnotes, and the manner in which the author misquotes, twists, and misrepresents sources, leads one to one of several possible conclusions.

One possibility is that the author is so intent on proving a particular theory for its current political value that he is unable to accurately read even the simplest documents. One might conclude that Bellesiles' desire to find a peaceful early America with almost no guns, few hunters, and almost no violence, has prevented him reading his sources accurately.

Arming America is not entirely false. There are individual statements of fact that are true though, sometimes, misleading. But the conclusions that Bellesiles draws—that Americans owned few guns before 1840, and that few hunted—are false. Not only are the conclusions of Bellesiles's *Arming America*'s in error but it is difficult to see how they could be based on unbiased scholarship with so many sources that do not match the author's claims for them.

How did *Arming America* receive such a sterling collection of reviews from some of America's most respected historians? First, the historical profession is based on trust and integrity. If a history professor at a prestigious university tells you a series of facts—even a very surprising series of facts—most historians assume that they are being told the truth.

The second reason that *Arming America* received such glowing reviews is that there is a lack of diversity among historians today. While history departments pride themselves on the diversity of their faculty in the areas of sex, sexual orientation, race, and ethnicity, there is really no political diversity.

And finally, *Arming America* has a clear-cut public policy agenda. On the back cover, Stewart Udall proclaims, "Thinking people who deplore Americans' addiction to gun violence have been waiting a long time for this information."

The premise that *Arming America* is intended to promote—that the Second Amendment's guarantee of a right to keep and bear arms is an anachronism today—is very popular in academic circles these days. Unsurprisingly, nearly every historian who reviewed *Arming America* has felt no need to check the accuracy of Bellesiles's more controversial claims—and that is unfortunate.

There is something terribly wrong with Arming America. That it has received such glowing praise—and that attempts to raise the integrity problems with historians has led to such a vigorous defense of Bellesiles for perpetrating this mass of altered quotes and misrepresentations—suggests that there is something terribly wrong with the state of American historians as well.

NOTES

1 “Take Another Look At Gun Rights History,” *San Francisco Chronicle*, September 25, 2000, A22; Philip Seib, “Arming’ takes aim at America’s gun ‘mythology,’” *Milwaukee Journal Sentinel*, September 24, 2000; Philip Seib, “Shooting holes in myth of gun-toting forebears,” *Dallas Morning News*, October 8, 2000, 13C; Richard Slotkin, “The Fall Into Guns,” *Atlantic Monthly*, November 2000, 114-18; Paul Rosenberg, “Historian explodes myth: Gun culture firing blanks,” *Memphis Commercial Appeal*, September 24, 2000.

2 A few examples: Edmund S. Morgan, “In Love with Guns,” *New York Review of Books*, October 19, 2000; Gary Wills, “Spiking the Gun Myth,” *New York Times*, September 10, 2000; Sanford Levinson, “A startling reassessment of gun ownership and gun culture,” History Book Club, November 2000;

3 Vin Suprynowicz, “Will rewrite nation’s history to suit new tenant,” *Las Vegas Review-Journal*, September 17, 2000.

4 John Whiteclay Chambers II, “Lock and Load,” *Washington Post*, October 29, 2000, X2.

5 Michael A. Bellesiles, *Arming America: The Origins of a National Gun Culture* (New York: Alfred A. Knopf, 2000), 174, 212, 220-1, 301.

6 Bellesiles, 378.

7 Bellesiles, 304, 320-23.

8 Chris Mooney, “Showdown: Liberal Legal Scholars Are Supporting The Right to Bear Arms. But Will Historians Shoot Them Down?” *Lingua Franca*, 10:1 [February, 2000].

9 Bellesiles, 276-8.

10 Bellesiles, 174.

11 A more detailed examination of the various threads underlying the Second Amendment can be found in Clayton E. Cramer, *For the Defense of Themselves and the State: The Original Intent and Judicial Interpretation of the Right to Keep and Bear Arms* (Westport, Conn.: Praeger Press, 1994).

12 Jonathan Elliot, *The Debates of the Several State Conventions on the Adoption of the Federal Constitution* (New York: Burt Franklin, 1888), 3:59-60.

13 James Madison, “Federalist 46”, in Jacob E. Cooke, ed., *The Federalist* (Middletown, Conn.: Wesleyan University Press, 1961), 320-1.

14 Bellesiles, 295.

15 Bellesiles, 314-15.

16 Bellesiles, 320-23.

17 Bellesiles, 300-1.

- 18 Michael Bellesiles, "The Origins of Gun Culture in the United States, 1760-1865," *Journal of American History*, 83:2 [September 1996] (hereinafter Bellesiles, *JAH*),
- 19 Bellesiles, 109-110, 148-9, 262, 266-7.
- 20 James Lindgren and Justin Lee Heather, "Counting Guns in Early America," unpublished paper presented at the Association of American Law Schools Annual Meeting, January 4, 2001, 4.
- 21 Lindgren and Heather, 10-11.
- 22 Lindgren and Heather, 24.
- 23 J. Hammond Trumbull (vol. 1-3), Charles J. Hoadly (vol. 4-15), *The Public Records of the Colony of Connecticut, Prior to the Union with New Haven Colony* (Hartford, Conn.: Brown & Parsons, 1850) (hereinafter *Public Records of Connecticut*), 1:465-6, 468-72.
- 24 Public Records of Connecticut, 1:455-6.
- 25 Public Records of Connecticut, 1:461-3.
- 26 Public Records of Connecticut, 1:476-7.
- 27 Public Records of Connecticut, 1:479, 480.
- 28 Public Records of Connecticut, 1:453.
- 29 Public Records of Connecticut, 1:448-9.
- 30 Bellesiles, *JAH*, 439.
- 31 William H. McGuffey, *The Eclectic First Reader for Young Children* (Cincinnati: Truman & Smith, 1836; reprinted Milford, Mich.: Mott Media, 1982), 138-40.
- 32 W. J. Rorabaugh, *The Alcoholic Republic: An American Tradition* (New York: Oxford University Press, 1979).
- 33 Samuel Wilson, *An Account of the Province of Carolina...* (London: G. Larkin, 1682), in Alexander S. Salley, Jr., ed., *Narratives of Early Carolina: 1650-1708* (New York: Charles Scribner's Sons, 1911; reprinted New York: Barnes & Noble, 1959), 170. Other sources indicating that Indians sold game to the settlers: *A Relation of Maryland*, in Clayton Colman Hall, ed., *Narratives of Early Maryland: 1633-1684* (New York: Charles Scribner's Sons, 1910; reprinted New York: Barnes & Noble, 1959), 98.
- 34 "Letter of Captain George to Pepys" (1689), in Charles M. Andrews, ed., *Narratives of the Insurrections, 1675-1690* (New York: Charles Scribner's Sons, 1915; reprinted New York: Barnes & Noble, 1959), 216. See also Governor Andros's description of "the greatest part of the people, whereof appeared in arms at Boston...." In "Andros's Report of his Administration," in Andrews, *Narratives of the Insurrections*, 232.
- 35 Public Records of Connecticut, 14:419-20.
- 36 Bellesiles, 59.
- 37 M.L. Brown, *Firearms in Colonial America* (Washington, D.C.: Smithsonian Institution Press, 1980), 83-84.
- 38 [William Bradford], "A Relation, or Journal, of the Beginning and Proceedings of the English Plantation settled at Plymouth," in Edward Arber, ed., *The Story of the Pilgrim Fathers, 1606-1623 A.D.; as told by Themselves, their*

Friends, and their Enemies (London: 1897), 432. Heath, 18-19, relates the same incident, but puts the number of men “well armed” at “fifteen or sixteen.”

39 Heath, 18 n. 6.

40 Bellesiles, 60.

41 William Bradford, *Of Plymouth Plantation*, Harvey Wish, ed. (New York: Capricorn Books, 1962), 66.

42 [Bradford], 433.

43 Bellesiles, 60-61.

44 James, 29.

45 James, 75-77.

46 George F. Willison, *Saints and Strangers*. (New York: Time-Life Books, 1981), 308. See Bellesiles, 470 n.82 for a citation to Willison’s *Saints and Strangers*. Willison’s book is apparently not universally regarded as scholarly history; see Eugene Aubrey Stratton, *Plymouth Colony: Its History & People, 1620-1691* (Salt Lake City: Ancestry Publishing, 1986), 1.

47 Bellesiles, 82.

48 Willison, 320-21.

49 Stratton, 188.

50 Bellesiles, 36. Joyce Malcolm, “Concealed Weapons”, *Reason*, January, 2001, 47-49, reports that the two sources cited by Bellesiles for this claim make no such statement.

51 See George MacDonald Fraser, *The Steel Bonnets: The Story of the Anglo-Scottish Border Reivers* (London: HarperCollins, 1995) for a discussion of violence in the border counties of northern England and southern Scotland during this time. Also on the same subject, Edward L. Ayers, *Vengeance and Justice: Crime and Punishment in the 19th-Century American South* (New York: Oxford University Press, 1984), 21-23; James G. Leyburn, *The Scotch-Irish: A Social History* (Chapel Hill, N.C.: University of North Carolina Press, 1962), 3-13, 147-148, 157-168; R. J. Dickson, *Ulster Emigration to Colonial America 1718-1775* (London: Routledge & Kegan Paul, 1966), 84-85, 96-97; Carlton Jackson, *A Social History of the Scotch-Irish* (Lanham, Md.: Madison Books, 1993), 82-83, 112-113; David Hackett Fischer, *Albion’s Seed: Four British Folkways in America* (New York: Oxford University Press, 1989), 621-632.

52 Thomas Morton, *A New English Canaan* (Amsterdam: Jacob Frederick Stam, 1637), 132, in Charles Francis Adams, Jr., ed., *New English Canaan of Thomas Morton* (Boston: The Prince Society, 1883; reprinted New York: Burt Franklin, 1967), 276-7. Also in Albert Bushnell Hart, ed., *American History Told by Contemporaries* (New York, 1898), 1:361-63.

53 Sydney V. James, Jr., *Three Visitors to Early Plymouth* (Bedford, Mass.: Applewood Books, 1997), 16. Emmanuel Altham at James, 32, gives a bit more detail that same year.

54 Adams, 21-28. Even after Morton’s banishment to England, there was apparently a problem with Englishmen selling guns to the Indians. See Shurtleff, 1:196, for the May 17, 1637 ordinance prohibiting sale of guns, gunpowder, shot, lead, or shot molds, or repair of guns, for the Indians.

- 55 Bellesiles, 63.
- 56 Shurtleff, 1:25-26.
- 57 Peterson, 325.
- 58 September 6, 1638, Shurtleff, 1:236.
- 59 Smith, 208.
- 60 Smith, 209.
- 61 Smith, 223.
- 62 Smith, 263.
- 63 Smith, 294.
- 64 Smith, 298.
- 65 Smith, 362-3. This Daniel Nash appears to be the grandson of Thomas Nash, New Haven Colony's armorer.
- 66 Smith, 349.
- 67 Smith, 256.
- 68 Smith, 172-3.
- 69 Smith, 212-3, 232, 241-2.
- 70 Bellesiles, 73.
- 71 Augustine Herrman, "Journal of the Dutch Embassy to Maryland," in Hall, 314, 316.
- 72 "The Beginning, Progress, and Conclusion of Bacon's Rebellion, 1675-1676," in Andrews, *Narratives of the Insurrections*, 17.
- 73 "A True Narrative of the Late Rebellion in Virginia, by the Royal Commissioners, 1677," in Andrews, *Narratives of the Insurrections*, 124-5.
- 74 "The Beginning, Progress, and Conclusion of Bacon's Rebellion, 1675-1676," in Andrews, *Narratives of the Insurrections*, 20.
- 75 Hening, 1:525.
- 76 "A True Narrative of the Late Rebellion in Virginia, by the Royal Commissioners, 1677," in Andrews, *Narratives of the Insurrections*, 111.
- 77 *Ibid.*, 130-1.
- 78 Hening, 2:434-5.
- 79 "Narratives of Thomas Miller, Sir Peter Colleton, and the Carolina Proprietors," in Andrews, *Narratives of the Insurrections*, 152, 156.
- 80 Acts and Resolves, Public and Private, of the Province of the Massachusetts Bay... (Boston: Albert J. Wright, 1878), 3:305-6.
- 81 *Pennsylvania Archives*, 4th series, 1:412.
- 82 William Black, "A Practical Joke" in Hart and Hill, 43-45.
- 83 Franklin B. Dexter, *Biographical Sketches of the Graduates of Yale College* (New York: H. Holt & Co, 1896), 2:8.
- 84 Hart, 267-8.
- 85 Benjamin Franklin, *The Papers of Benjamin Franklin*, Leonard W. Labaree, ed. (New Haven, Conn: Yale University Press, 1961), 4:82-83.

86 Franklin, 4:485. *Pennsylvania Archives*, 4th series, 1:831, may be referring to this when Governor Thomas indicated in 1743 that all the Assembly need do is “prepare a Bill for obliging them to appear well Armed and Accoutred...” There is no indication that the Assembly needed to provide them with arms. The following year, *Pennsylvania Archives*, 4th series, 1:851, Governor Thomas complained that without a militia law to compel it, “the Inhabitants will not appear... for their Instruction in Military Discipline, nor provide themselves with Arms or Ammunition.” This suggests that the problem was “would not,” not “could not.”

87 Bellesiles, 183.

88 Bellesiles, 159.

89 George Washington to Robert Dinwiddie, June 27, 1757, *The Writings of George Washington from the Original Manuscript Sources, 1745-1799*, John C. Fitzpatrick, ed. (Washington: Government Printing Office, 1931-44) (hereinafter *Writings of George Washington*), 2:78-79.

90 Col.Rec.N.C., 8:30.

91 *Col.Rec.N.C.*, 8:114, 130-1, 285.

92 *Col.Rec.N.C.*, 8:368, 436, 440.

93 *Col.Rec.N.C.*, 8:200-1.

94 Col.Rec.N.C., 8:498.

95 Col.Rec.N.C., 7:722.

96 Col.Rec.N.C., 8:243.

97 Col.Rec.N.C., 8:552.

98 May 8, 1771, *Col.Rec.N.C.*, 8:577.

99 August 1, 1771, *Col.Rec.N.C.*, 8:651.

100 February 7, 1771, *Col.Rec.N.C.*, 8:687-9.

101 Bellesiles, 183.

102 May 5, 1771, *Col.Rec.N.C.*, 8:601.

103 *Col.Rec.N.C.*, 8:647, 655.

104 August 1, 1771, *Col.Rec.N.C.*, 8:649. See also 8:608-11, 613, 615-16, 637, 642, 647, 693, for other evidence that the Regulators were armed with guns, and this was not regarded as unusual.

105 Col.Rec.N.C., 8:671.

106 Col.Rec.N.C., 8:655.

107 *Col.Rec.N.C.*, 8:615-6.

108 Bellesiles, 175.

109 Bellesiles, 84.

110 Leonard Strong, *Babylon's Fall in Maryland: a Fair Warning to Lord Baltimore...* (London: Leonard Strong, 1655), in Hall, 242; John Langford, *A Just and Cleere Refutation of a False and Scandalous Pamphlet Entitled Babylons Fall in Maryland...* (London: John Langford, 1655), in Hall, 266.

111 Strong, in Hall, 240-4 contains a Puritan account of the battle; Langford, in Hall, 260, provides a Cavalier version of events.

112 Langford, in Hall, 261.

113 Bellesiles, 84.

114 *Virginia and Maryland, or The Lord Baltimore's printed CASE...* (London: n.p. 1655), in Hall, 204; Strong, in Hall, 239-41.

115 Strong, in Hall, 239. Land, 50-54, accepts the descriptions from the primary sources that no professional soldiers or naval vessels were involved, and contains no mention of use or seizure of public arms. It bears almost no resemblance to Bellesiles's version of the Battle of Severn.

116 Bellesiles, 89.

117 A Letter From a Gentleman of the City of New-York To Another... (New York: William Bradford, 1698), in Andrews, *Narratives of the Insurrections*, 369.

118 *Loyalty Vindicated from the Reflections of a Virulent Pamphlet...* (Boston: n.p., 1698), in Andrews, *Narratives of the Insurrections*, 391.

119 [Nicholas Bayard], *A Modest and Impartial Narrative Of several Grievances and Great Oppressions...* (London: n.p., 1690), in Andrews, *Narratives of the Insurrections*, 333.

120 Daniel Defoe, *Party-Tyranny, or an Occasional Bill in Miniature...* (London: n.p., 1705), in Salley, *Narratives of Early Carolina*, 244; John Ash, "The Present State of Affairs in Carolina," in Salley, *Narratives of Early Carolina*, 273-4.

121 *Pennsylvania Archives*, 4th series, 1:586-95.

122 John Carey, ed., *Eyewitness to History* (Cambridge, Mass.: Harvard University Press, 1988), 192-3.

123 Hart, 2:83.

124 *Pennsylvania Archives*, 4th series, 1:700.

125 October 21 to October 28, 1737, [Williamsburg,] *Virginia Gazette* (Parks), in Thomas Costa, ed., *Virginia Runaways: Runaway Slave Advertisements from 18th-century Virginia Newspapers* (<http://www.wise.virginia.edu/history/runaways/>); January 13 to January 20, 1737/8, *Ibid.*; August 26 to September 2, 1737, *Ibid.*; August 26 to September 2, 1737, *Ibid.*; April 28 to May 5, 1738, *Ibid.*, ("Two Fowling-Pieces"); May 12 to May 19, 1738, *Ibid.*; March 2 to March 9, 1738/9, *Ibid.*

126 Hart, 2:300.

127 June 27 to July 3, 1746, [Williamsburg,] *Virginia Gazette* (Parks), in Costa.

128 April 15 to April 27, 1737, [Williamsburg,] *Virginia Gazette* (Parks), in Costa.

129 May 24, 1751, [Williamsburg,] *Virginia Gazette* (Hunter), in Costa; July 18, 1751, *Ibid.*; August 8, 1751, *ibid.*; October 24, 1751, *Ibid.*; November 7, 1751, *Ibid.*; January 30, 1752, *Ibid.*; April 10, 1752, *Ibid.*; June 12, 1752, *Ibid.*; July 30, 1752, *Ibid.*; October 17, 1755, June 6, 1766, [Williamsburg,] *Virginia Gazette* (Purdie & Co.), in Costa; May 28, 1767, [Williamsburg,] *Virginia Gazette* (Purdie & Dixon), in Costa; July 23, 1767, [Williamsburg,] *Virginia Gazette* (Rind), in Costa ("Brass mounted Pistols"); December 22, 1768, *ibid.* (mentions that the gun is a rifle); May 4, 1769, *ibid.*; September 14, 1769, *ibid.*; October 31, 1771, *ibid.*, ("two muskets"); February 4, 1773, *ibid.*; November 24, 1774, *ibid.* ("old

smooth Bore Gun”); June 16, 1775, [Williamsburg,] *Virginia Gazette* (Purdie), in Costa (“old smooth bore gun”); . June 30, 1775. Supplement, *Ibid.*, (“a brass mounted long smooth-bore gun, marked on the side-plate MM 1769, and on the barrel W. MORGAN, a shot-bag and powder-horn, a canister with 2 lbs. of powder”); August 16, 1776, Supplement, *Ibid.*, (“a smooth bore gun of the best sort, double breached, which had part of the stock broke off before, a shot bag and powder horn”); January 5, 1775, [Norfolk,] *Virginia Gazette or, Norfolk Intelligencer* (Duncan), in Costa;

130 April 21, 1775, [Williamsburg,] *Virginia Gazette* (Purdie), in Costa.

131 April 14, 1768 [Williamsburg,] *Virginia Gazette* (Rind), in Costa.

132 John Andrews, “Another Account of the Tea Party,” in Mabel and Hill, 166.

133 *Pennsylvania Archives*, 2nd series, 13:271.

134 *Pennsylvania Archives* 2nd series, 13:292.

135 Hart, 459.

Policy Research and Policy Initiatives: The Case of “Gun Control”

By Dr. Paul H. Blackman

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Over a dozen years ago, Marvin Wolfgang—who was then perhaps the most eminent criminologist in the United States—deplored the failure of politicians to adopt the gun control restrictions endorsed by a presidential commission’s policy research. He noted that in other areas such policy research had influenced crime-control policymaking. There has certainly been a considerable amount of policy research regarding firearms since then by criminologists and public health practitioners, although much has focused on the scope of the problem of gun-related violence rather than on specific remedial policy proposals. Most actual policy initiatives, however, have been pursued without specific policy research—handgun locks and firearm personalization, for example—or in defiance of policy-research findings—e.g., gun turn-ins, and bans on small-guns, “Assault weapons,” and magazines. For the most part, criminologists and public health professionals have not opposed adoption of policy proposals, even when they were not backed by scientific research.

I. INTRODUCTION

One of the common complaints about the “gun control” issue is that it is not driven by criminological research. In an entertaining polemic against the America’s gun culture and lack of gun laws, Robert Sherrill complained, “Logic and evidence have absolutely nothing to do with the gun debate in or out of Congress; only instinct and emotions and gut reactions count for anything” (1973, p. 180). A few years later, Harvard criminolo-

gist Mark Moore differed only slightly from that assessment, suggesting that the evidence had not yet been gathered, rather than that it was destined to be irrelevant. In a memorandum summarizing work in the field, and attempting to justify federal funding of research by Philip Cook and himself, Moore observed: "Close examination makes one think it is less the NRA's power than the failure of gun control supporters to make this case persuasive, that explains the lack of effective gun control legislation. If true, we are important" (memo to Edward D. Jones, III, Office for Improvements in the Administration of Justice, U.S. Department of Justice, August 11, 1976).¹

Others believed the research had already been done, and that gun policy simply was prevented from being driven by criminology because of the gun lobby's power. In the 1980s, while looking back on the impact of presidential crime commission work in a plenary session of the American Society of Criminology, Marvin Wolfgang complained that about the only area where the policy recommendations seemed consistently to be ignored by policymakers was in gun policy. In fact, by the time Wolfgang spoke, the Justice Department had funded extensive research on the gun issue (Wright, Rossi & Daly, 1983; Wright & Rossi, 1986) in addition to the research done by Moore and Cook. He nonetheless believed that legislative bodies, while responding to some criminological research, were neglecting that research with regard to firearms policy.²

Other criminologists too, see a gap between academic research findings and legislative policymaking and public opinion formation. In summarizing his position as a candidate for President-elect of the American Society of Criminology in 1998, Roland Chilton said he saw "ASC's efforts as an endless search for knowledge and a constant review of practice. Moreover, I believe this search and review can be more focused and more effective than it has been in the resolution of real-world crime problems [calling attention to research findings] might help to shape public opinion on crime and justice issues, and could occasionally have an impact on public policy."

But the gap is not based on the absence of a considerable body of research. Rather, the gap is caused by the indifference of researchers and policymakers to the results of research. In addition to research funded by the Department of Justice, largely through its National Institute of Justice and Bureau of Justice Statistics, federally-funded research on the gun issue was conducted done in the 1980s and 1990s by the Centers for Disease

Control and Prevention (CDC), with additional research funded by (generally anti-gun) foundations such as the Joyce Foundation and the California Wellness Foundation. Additional academic research was performed by academicians without such grants. Most of that research undermined commonly supported policy positions, or was irrelevant to policy positions. Most criminologists and public health professionals involved in gun research support policies either in defiance of research or lacking specific research. It is the NRA and gun-control skeptics now, more than supporters of restrictive gun laws, who bemoan the indifference of policymakers and the press to research findings on the issue.

II. POLICIES DEFYING EXISTING RESEARCH

A. ACQUISITION OF FIREARMS

Brady Act

When the Brady Bill—named after Sarah Brady, Chair of Handgun Control, Inc.—was being debated, the NRA cited research findings indicating that waiting periods and background checks failed to reduce violent crime (summarized in Kleck, 1991 and 1997). In a sense, the Brady Bill was a weaker control than those evaluated in criminological research, since the state laws generally mandated waiting periods and background checks. The Brady Bill established a maximum waiting period, which, however, could be cut short by either a state law with faster background check, or by action of the “chief law enforcement officer” for the jurisdiction in question. If a county sheriff, for example, simply faxed approval of a transfer to a gun dealer, the Brady Bill’s five-government-working-day waiting period could be ignored.³ In addition, state background check laws required background checks to be performed. Although the Brady Bill, as enacted, said local law enforcement officers were obligated to conduct background checks, it was generally recognized in Congress before adoption of the measure that the federal government could not constitutionally order local authorities to conduct background checks; hence, the federal checks were optional. Eventually, the Supreme Court confirmed that.⁴ So the waiting periods and background checks found to be ineffective prior to the enactment of the Brady Act were stronger measures than those in the Brady Act itself.

Once adopted, the Brady Act was subject to some evaluation.⁵ The federal government periodically claims that the law was effective, based on the fact that some handgun transfers were prevented. Others found that claim misleading, since the formal title of the legislation was the Brady Handgun Violence Prevention Act, not the Handgun Transfer Prevention Act. Transfers could be denied based upon mistaken identities, arrests where records failed to show acquittals or other dispositions, and various other reasons. Even when a person was denied firearms, harm was not necessarily prevented; one-time felons may well have been rehabilitated before attempting a purchase. Anecdotal evidence suggests that some prospective buyers, uncertain whether youthful records were disqualifying, have been told by dealers simply to fill out the forms and let the government decide. In addition, those denied lawful handgun purchases by dealers might either have purchased a long gun from a licensed dealer, without a background check or waiting period, or obtained a firearm from a non-licensee.

Evaluation of the Brady Act as a handgun violence prevention measure has found it to be a failure. Anti-gun economists/criminologists, working under a grant from the Joyce Foundation, found no evidence that homicide was reduced (Ludwig & Cook, 2000). That small-scale study confirmed the more sophisticated research by Lott (2000a, pp. 91, 162-163), finding a similar lack of statistically significant impact on homicide and robbery, but a statistically significant increase in rape and aggravated assault associated with the Brady Act, suggesting the Act was not merely ineffective, but harmful.⁶ Those findings confirm the Kleck (1991 and 1997) evaluations finding that state waiting period and permit laws are generally ineffective, although Lott (2000a, pp. 106-107) found some waiting periods associated with increased homicide rates.

2. Regulating gun shows

Following the shootings in Columbine High School, there was a concerted effort to regulate gun shows, since the culprits had, indirectly, acquired guns through that source. A few facts were generally ignored in the debate on the topic. First, to the extent anything is known on the topic, very few criminals obtain their guns from gun shows. When Wright and Rossi (1986) took a survey of felons to find out the source for their guns, gun shows were small enough an answer, less than 0.5%, that they

did not warrant even being listed (personal communication). A later survey of incarcerated juvenile offenders similarly failed to report gun shows as a source (Sheley & Wright, 1995, pp. 46-50). Based on questions from the Drug Use Forecasting surveys of arrestees in selected cities, less than two percent of criminals obtained guns from a gun show (Lattimore et al., 1997, p. 99). Cook and Ludwig have noted that only a very small share of teenagers and convicts get their guns from gun shows (2000, p. 8).

Second, most sales at gun shows are regulated in the same way as sales by licensees from their stores. When the 1986 Firearms Owners' Protection Act made it lawful for federally-licensed dealers to sell guns at gun shows, the dealers remained bound by all other regulations of dealers. With the imposition of the Brady Act, that included a waiting period/background check, which sunset into a national instant-check background check system at the end of November 1998. It has generally been estimated that about 60% of the tables at gun shows are rented to licensed dealers. Since some of the other tables are for persons selling gun-related products, but not guns, this means that the lion's share of gun transfers at gun shows are already regulated by federal law in the same way as transfers at gun shops.

Efforts were, however, made to have the federal government more stringently regulate gun shows, with the Senate adopting the Lautenberg amendment to its version of a juvenile crime bill in 1999. The Senate action occurred absent any criminological or public health research indicating that gun shows were somehow criminogenic, or that the proposed regulations would solve any problem.⁷ The House of Representatives also voted to regulate gun shows, although not so stringently. That policy was also endorsed by Texas Governor George W. Bush (Atlanta Constitution, 2000). Were they a problem, regulating transfers at gun shows would simply represent a step toward a waiting period and/or a license/permit system regulating firearms transfers, which generally fail statistical tests of effectiveness (Kleck, 1991 and 1997).

Licensing/permit to purchase

Vice President Al Gore, trying to demonstrate that he could be as anti-gun as primary opponent former Senator Bill Bradley, endorsed a licensing system for handgun ownership, a policy subsequently similarly endorsed by President Bill Clinton. Clin-

ton proposed no legislation regarding the matter, since it would not be seriously considered by Congress during his term in office (Clymer, 1999). The policy is frequently, albeit falsely, proposed as analogous to licensing motor-vehicle drivers.⁸

To the extent licenses and permit systems have been evaluated, they have been found ineffective, so no policy based on criminological research would support such a system. There have been two efforts pretending that licensing systems are effective. The more misleading one was the evaluation by Colin Loftin and his colleagues (Loftin et al., 1991), who evaluated the prospective ban on handguns in the District of Columbia as if it were “restrictive licensing.” No licensing—as generally understood to be a system whereby a person qualifies to purchase a handgun—was involved. Prior handgun owners were allowed to keep their handguns if they reregistered them, with no restrictiveness involved (except with regard to how the guns had to be stored thereafter). Non-owners were permanently and forever barred from acquiring handguns in D.C.

The other study which ostensibly endorsed licensing was a public health comparison of Seattle, Washington, and Vancouver, British Columbia (Sloan et al., 1988), finding that homicide rates were lower in Vancouver. The authors observed that the difference was primarily in firearm-related homicides, and asserted that the difference was actually a difference in handgun-related homicide.⁹ Sloan, et al., then suggested the Canadian licensing system might explain the difference. The finding has been disputed by others, noting that the data presented demonstrate that there was no statistically significant difference between the homicide rates among non-Hispanic whites in the two cities—Seattle’s rate was slightly lower—and suggesting that it was the dramatically different experiences of different ethnic groups in the two cities which explained the difference in homicide rates. Centerwall, noting that a study stratifying by race would probably cause the statistically significant difference between the cities’ homicide rates to cease, reported that the authors told him they were “disinclined to calculate a summary odds ratio stratified by race” (1991, p. 1246).

Regulating the Secondary Market

This is one of the proposals most popular with criminologists (Kleck, 1991 and 1997; Cook & Ludwig, 2000). It really seems simply to be licensing of handgun buyers, or issuing per-

mits for such purchases, under a different name, and with a slightly different enforcement mechanism. It is possible that Kleck, Cook, and Ludwig envision something less formal than an actual permit or license being required to purchase,¹⁰ but would require that (hand)gun transfers be conducted through licensed dealers, with whatever waiting period and/or background check was required for such a transfer to occur. However described, it is similar to systems which exist in several states, most prominently California, with no evidence purporting to support its effectiveness.

Experience in states which require private transfers to be run through dealers, or be approved in advance by the authorities, suggest that almost no one conforms to the law. For example, after California revised its law so that all guns (not just handguns), and all transfers (not just those through dealers) had to be run through the state background check system, the number of such background checks would have been expected to approximately quadruple, based on survey data and other evidence suggesting that handguns account for roughly half of gun transfers, and private transfers approximately half of transfers. Instead, the number of background checks approximately doubled, suggesting widespread (knowing or unknowing) disobedience of the law.

There is nothing surprising in this. Personal conversations with police in some states with such requirements (such as Tennessee) suggest all but universal non-compliance with the law. Survey research previously indicated that less than one-quarter of respondents expected general compliance with a requirement that gun transfers be run through dealers (with a waiting period), with the rest expecting half or fewer gun owners to comply (Decision Making Information, 1979¹¹).

Gun rationing

Another popular policy is gun rationing, which could establish any standards, but now, most commonly, is a policy to limit handgun purchases to one per 30-day period (casually referred to as a month). In some of the more ambitious days of congressional anti-gun activities, proposals would have rationed handgun purchases to two per 365-day period (casually referred to as a year), unless permission from the Attorney General were obtained for three or more purchases.¹²

It is more difficult to contemplate criminological research on the matter of gun rationing. For one thing, while most gun restrictions are aimed at curbing crime in the adopting jurisdiction, gun rationing is purportedly aimed at curbing gun trafficking from that jurisdiction to others, and thus to curbing crime elsewhere. In the 1970s, South Carolina was shamed into enacting such legislation based on reports that South Carolina's guns were being used in crime in New York. No study found that crime in either jurisdiction benefited from the rationing procedure. Rationing was similarly adopted in Virginia, in response to allegations of trafficking of guns into New York City, and, secondarily, into Washington, D.C. The most prominent such allegations came in a Batman comic book, developed for the rationing lobbying effort, and distributed to the state legislature, marking possibly the first time a policy was adopted, not because of research, but because of efforts by a violence-glorifying comic book (Ostrander & Giarrano, 1993).

One problem is that trafficking assertions are based on tracing data from the Bureau of Alcohol, Tobacco and Firearms, which are unrepresentative of crime guns, and are designed to exaggerate the amount of interstate trafficking (Kleck, 1999; Blackman, 1998; Kopel & Blackman, 2000). Where interstate trafficking occurs, it is not the sort of organized trafficking at which rationing is aimed, but a matter of an individual buying a gun for himself and friends (BATF, 1977; Vizzard, 1997). Because tracing is related to what BATF is looking for, and which policies it is promoting, enactment of a rationing law in one state satisfies BATF's policies, and it then can turn enforcement and tracing resources to other jurisdictions. So studies showing that tracing becomes less frequent in the affected jurisdiction (Weil and Knox, 1996) does not indicate that rationing is working, only that BATF has altered the focus of its attentions.¹³

The only effort actually to evaluate gun rationing—recognizing the problem of its only having been adopted in three jurisdictions—found it associated with higher levels of homicide, robbery, and aggravated assault, with rather large effects (Lott, 2000a, pp. 193, 201-202). But the author cautioned about how preliminary the results had to be, and that the increases could have been due to regional trends. At any rate, given no criminological research as the basis for adopting the legislation, the only study of its criminological effects has found the policy counterproductive. It remains one of the more popular gun policies among anti-gun politicians and advocacy groups.

B. OWNERSHIP/STORAGE OF FIREARMS

1. Registration

One traditional proposal calls for the registration of firearms, or at least of handguns. The precise meaning of the proposal varies, and is not clear. Cook and Ludwig (2000, p. 132) refer to their proposals to regulate the secondary transfer market as registration. In general, registration is understood to apply not merely to the acquisition of firearms, but to their possession (Licensing is similarly unclear, since in some contexts it refers to a license to acquire a firearm and in others to a license to possess. To the extent it is a license to possess, it is similar criminologically to registration, albeit of the person rather than of his gun.) .

To the extent that the goal is—as expressed by promoters of the policy such as former Senator, and former presidential candidate, Bill Bradley—to allow the government to keep track of who has what firearms, registration suggests a regulation of the ownership (and possibly the storage), rather than merely the acquisition, of firearms. Such certainly was the premise of S. 2099,¹⁴ a federal bill to require registration of handguns similar to the current National Firearms Act (NFA) registration requirement for sawed-off long guns, machine guns, and some other weapons.¹⁵

Criminologically, the policy is without evidence of effectiveness (Kleck, 1991 and 1997). There are additional problems as well, which would argue against its adoption. In terms of law enforcement, there is no evidence of its utility. When New Zealand scrapped its registration system in the 1980s, it was because the authorities testified that it had been of no use to them since its adoption around the time of the First World War (personal communication).¹⁶ To comparisons with motor-vehicle registration, the anti-gun Violence Policy Center (VPC) noted that “registration and licensing had virtually no effect on automobile death and injury,” crediting declines to changes in design and driving environment (VPC, 2000).

The same ineffectiveness applies to the NFA’s required registration of unusual arms. While the registered guns are rarely involved in crime, the registration requirement seems not to have affected the use of the regulated types of guns in crime. Machine-gun misuse diminished with the end of Prohibition, prior to adoption of the NFA in 1934. But misuse of sawed-off rifles and shotguns continues. BATF’s Operation CUE found a

substantial minority of long guns to be NFA weapons (BATF, 1977). A Justice Department sponsored survey of felons found the convicts more apt to admit to having owned an NFA shotgun than an un-sawed-off one (Wright & Rossi, 1986).

Registration is also expensive. The VPC noted that registration of firearms in Canada, originally expected to cost \$185-million (Canadian) over five years, including a one-time start-up cost of \$85-million, had already cost \$327-million by March 2000, and was running up an annual bill nearly ten times the government's original forecast (VPC, 2000).

In Durham, North Carolina, the authorities sought to abandon efforts to enforce an old city handgun registration law based on exorbitant costs (Curliss, 2000).

An additional problem with registration is non-compliance. When California and New Jersey prospectively banned so-called "assault weapons," requiring those already owned to be registered, the number registered amounted to only about 10% of those estimated to be privately owned in the two states. When New York City retrospectively banned long guns it designated as "assault weapons," the city noted about 90% compliance. What the city did not note was that, having long established long-gun registration, the number of registered rifles and shotguns lawfully registered amounted—based on survey research estimates on the number of long guns in the city—to about 10% of those owned.¹⁷ This is somewhat lower than popularly expected compliance, which was slightly higher than compliance expected for a law requiring that private transfers be conducted through dealers: 71% expected half or fewer gun owners to comply with a federal gun registration law (Decision Making Information, 1979).

Another example of non-compliance with registration is compliance with the Illinois law requiring that gun owners be licensed. Survey research for that non-restrictive licensing law suggests about one-quarter of gun owners do not comply (Bordua et al., 1979). It may be premature to estimate the compliance of Canadians with their registration/licensing law, but less than 10% of the estimated owners had complied with the registration law as of mid-June, and the fees were temporarily lowered from \$45 to \$10 (Canadian) in an effort to encourage compliance (Winnipeg Free Press, 2000).

2. Locks/Child Access Prevention (CAP) laws

Two related proposals are aimed primarily at gun acquisition by children, although the purported benefits include limiting access to some criminals and potential suicides. The first calls for locks of some kind to be sold with each handgun.¹⁸ The measure has been supported by such generally pro-gun politicians as Gov. George W. Bush (R-Tex.) (Hoffman, 2000), as well as by Vice President Al Gore (D-Tenn.), who was inspired to call anew for gun locks following a shooting by a teen-aged gang member at the National Zoo, in a city which banned handguns for adults as well as teenagers, and which required the pre-ban handguns to be stored unloaded and either locked or disassembled (McCaslin, 2000). One obvious limitation: “it is doubtful that a substantial number of gun owners will use gun locks, especially if they want immediate access to a weapon to defend against intruders” (Levin, 2000).

The second measure essentially requires that purchased locks be used, although that is not how it is written. So-called CAP laws make it unlawful—either felony or misdemeanor—for a gun owner to leave a gun where a child (defined by age) might have unsupervised access, with the crime generally based on a child getting access and misusing the gun in some way. Access alone is rarely enough. The laws generally exempt guns acquired by “children who are” in the residence without the owners’ permission, and guns acquired despite being locked up.

CAP laws are not uniformly supported or opposed by pro- and anti-gun advocates. The NRA has supported some such laws; the Johns Hopkins Center for Gun Policy and Research has been critical, primarily because researchers there support personalized guns and find various locking devices insufficient, and ineffective at preventing accidents (Hahn, 2000).

Some critics have noted, too, the threat of effectiveness at preventing self-defense. Lott found an increase in burglaries associated with such legislation, suggesting a reduction in burglar fear of armed victims, and increases in violent crimes as well (Lott, 2000a, pp. 199-201). But critics are not merely noting that a locked gun slows effective use by the adult. Some point out that guns can be used by children for protection.¹⁹ They cite a case where children trained in how to use guns were kept from using a gun to prevent the murder of two other children by a pitchfork-wielding man because the parents had dutifully com-

plied with California's CAP law (Lott, 2000b; Suprynowicz, 2000).

The goal of such legislation is rather modest, even if the total number of gun-related deaths and injuries is cited as part of the call for such a remedial measure. The law is aimed especially at curbing the number of accidental shootings of young children, which now account for approximately 0.4% of gun-related deaths and 14% of accidental firearm fatalities (Murphy, 2000)—and perhaps another 1,600 non-fatal injuries (CDC, 1999)—a number which has been falling during the past quarter century. A secondary goal is reducing gun-related criminal activity by children, although data on how many gun-related crimes involve children and teenagers covered by the legislation, who obtain unlocked guns from their own homes, are lacking. A tertiary goal is reducing suicide by youngsters. No data or studies prior to any adoption of such legislation focused on how the minority of suicides who used guns (Murphy, 2000) obtained that means of death, or the likely impact of CAP laws. At best, where it was adopted, the legislation was enacted without criminological or public health research indicating its likely success.

Any further enactment, at state or the federal level, would be in defiance of most criminological and public health research. One public health study, focusing solely on mortality, purported to find a statistically significant decrease in accidents, but not in suicides or homicides (Cummings et al., 1997). The study, however, ignored the general downward trend in accidents in other states, comparing the actual trend to the expected trend in the 12 states which then had such laws. No effort was made to determine whether the law was being enforced, or whether other factors (such as the NRA's Eddie Eagle GunSafe program teaching gun avoidance and safety) might have explained the trend. In addition, the study itself noted that the beneficial effect was only found in the three states where violation was a felony offense rather than a misdemeanor.

Critics from the Johns Hopkins Center for Gun Policy and Research noted that all of the change was accounted for by the (felony) state of Florida,²⁰ suggesting that, overall, the CAP law did not have any effect (Webster & Starnes, in press). More sophisticated criminological research suggests that the laws, by discouraging gun ownership and delaying access to guns for protective use, are associated with increases in burglaries, homicides and other violent crimes overall, and provide no protective bene-

fits against accidental deaths or suicides by children (Lott, 2000a, pp. 199-201; Lott & Whitley, 2000).

C. MANUFACTURE/DESIGN OF FIREARMS

1. “Assault” weapons

The “assault weapon” issue was invented, as one of its supporters noted, to take advantage of “the public’s confusion over fully automatic machine guns versus semi-automatic assault weapons—anything that looks like a machine gun is assumed to be a machine gun”(Educational Fund to End Handgun Violence & New Right Watch, 1988, p. 26). The confusion is enhanced by the fact that NBC News, from 1989 to the present, when discussing the issue of semi-automatic “assault weapons,” shows a videotape of a fully automatic machinegun being fired.

For a while, during the beginning of the extensive debate on to the topic, in 1989, it was alleged that there was a thriving cottage industry in converting the semi-automatics to full-auto; when that allegation was belied, the charge was switched to the argument that the guns were more dangerous as semi-automatics because they could be aimed better—a statement that, while accurate, fails to distinguish the military-looking semi-automatics from any other aimable firearm.

Shortly after the issue became topical, the Cox Newspapers (1989) campaigned for a ban by using BATF tracing data to allege that the guns were disproportionately used in crime. The tracing data were worthless, since they showed more extensive “assault weapon” tracing in various cities than city police reported “assault weapon” involvement in crime. Cox Newspapers, for example, found 19% of Los Angeles’s traces by BATF to be of “assault weapons,” while the city police reported 3% of their crime guns to meet that definition (Blackman, 1998). Cox Newspapers also underestimated, dramatically, the percentage of guns that were “assault weapons,” coming up with an estimate of 0.5%, where other data indicated that the actual percentage was closer to 2.5%, with most city police reporting 0-3% of crime guns to meet the definition of “assault weapon.” In short, criminological study showed there was no disproportionate involvement (Kopel, 1999; Kleck, 1997, pp. 112-117). The same was true of public health studies of shootings in various areas (Hargarten et al., 1996; Hutson, Anglin & Pratts, 1994; Hutson et al., 1995).

Even a study by anti-gunners noting a slightly greater tendency for “assault-type handguns” to be purchased by young men with non-disqualifying criminal records than by other young men, observed that “the use of assault-type firearms in crimes was uncommon even before their sale was banned” (Wintemute et al., 1998, p. 49). There was simply no problem justifying remedial legislation.

Nonetheless, the federal government included a ten-year prohibition on the manufacture or importation of various makes and models of guns called “assault weapons”—mostly rifles, although, to the extent “assault weapons” were misused in crime, it was mostly pistols—along with guns fairly identical to the banned models, and to others identified by various cosmetic features. In addition, more permanent bans were enacted in California, New Jersey, and New York City. In a pretense of fairness, the federal legislation called for there to be a study of the effectiveness of the “assault weapon” ban, although it is unclear how effectiveness could be measured, where there were no national or reliable data on misuse to begin with. Nonetheless, the Urban Institute came up with a study suggesting that nothing much had happened (Roth & Koper, 1997).

A similar result was found by anti-gun public health researchers in a small-scale study in Milwaukee (Hargarten et al., 2000). Others, too, have reached the conclusion that “assault weapons” were not a problem and the ban was not likely to achieve any effect on the overwhelming majority of murders (Levin, 2000): “the long-run effects are likely to be quite modest” (Cook & Ludwig, 2000, p. 129).

With no criminological or public health support for the enactment to begin with, or finding of beneficial effects, California strengthened its ban in 1999, and Massachusetts and New York State enacted their own (1999-2000). The prospect of the federal ban being retained after the current law sunsets in 2004 was strengthened by its support even by NRA-endorsed Senate candidates such as Virginia’s George Allen: “I would not repeal the existing ban. I would vote to continue the existing law” (O’Hanlon, 2000).

“Saturday Night Special” (SNS) or “junk” guns

Long one of the most popular policies proposed is a ban on what are commonly thought of as smaller—in terms of size

and/or caliber—and cheaper handguns, commonly referred to as “Saturday Night Specials,” although more recently referred to as “junk guns.”²¹ The precise definition is unclear, since various proposals over the decades since the issue was raised, would have banned some fairly large and/or expensive handguns. In addition, while opponents of the guns would, in the past, have identified them in terms of size, caliber, and price, more recently, it has been suggested that larger caliber handguns could still be so designated (Wintemute, 1996).

There have, over the years, been occasional efforts to show that smaller and cheaper handguns were disproportionately involved in crime (BATF, 1977; Hargarten et al., 1996; Wintemute et al., 1998). Those studies are all limited in some way by issues regarding the quality of the data. The BATF studies are generally based on tracing data and/or on undercover purchases where the buyers help determine the types of guns being bought (Blackman, 1998; Kopel & Blackman, 2000). The Wintemute et al. study was based on a relatively small sample of guns purchased by younger persons and not necessarily representative of criminals or of older qualified buyers. And the Hargarten et al. study compared guns involved in deaths in Milwaukee to national manufacturing data contemporaneous with the mortalities; using a longer time frame would have found the smaller handguns manufactured nationally and misused locally at approximately the same proportions, and handguns in urban areas may differ from those owned nationally. In addition, the Police Foundation long ago noted that guns seized by police may be very different from those involved in violent crimes, and those involved in fatalities may be bigger and better than those involved in less serious crimes (Brill, 1977). Surveys clearly indicate that criminals, adult and juvenile, prefer bigger and better handguns (Wright & Rossi, 1986; Sheley & Wright, 1995). The guns, in short, are not particularly significant in crime (Kleck, 1986).

In addition, efforts to curb the guns would appear to be efforts to discriminate based on income, disarming persons who cannot afford better firearms. Although a supporter of such restrictions, Philip Cook recognized that such bans would constitute, in effect, an effort by the government to raise the price of handguns, and thus disarm some less affluent citizens, where achieving the same goal by taxing guns might violate the Equal Protection Clause of the U.S. Constitution (Cook, 1981). Thus, journalist Sherrill suggested that such bans were really more ghetto control than gun control, and criminologist Kleck simi-

larly noted that such legislation is aimed at the politically weak (Sherrill, 1973; Kleck, 1997, pp. 130-135), and at persons who report lacking sufficient police protection (Lott, 2000a, p. 69). To the extent less affluent citizens purchase cheaper handguns, efforts to disarm them would clearly interfere with protective use of guns by persons who, surveys show, are more apt to use handguns for protection than more affluent, ethnic-majority citizens (Kleck and Gertz, 1995).

States which have enacted such bans have generally not used the traditional description of small size, low caliber, and cheap price as the basis. South Carolina, Illinois, Hawaii, and Minnesota used melting point temperature as a definition, although that temperature had nothing to do with the ability of guns to be fired without suffering damage. Maryland established a Handgun Roster Board which was to determine which handguns were lawful for sales in the state, using far broader criteria, and prohibiting focus on such limited criteria as size alone.²² Massachusetts and California recently have enacted laws ostensibly aimed at more than merely the size, cost, quality, and caliber of handguns—and have been adopted too recently for any evaluation. For the other states, no criminological or public health evaluation of the effectiveness of the guns has been conducted.

Kleck, and Wright and his colleagues, however, have noted that, to the degree such a law was effective, the results would be counterproductive. While disarming those disproportionately more likely to be in a position to use a gun for protection, the law would encourage criminals to use bigger and better guns. Those guns would, if fired, be more apt to seriously injure or kill the victims of the predators than smaller handguns (Wright, Rossi & Daly, 1983; Kleck, 1991 and 1997). In oral discussion at the Homicide Research Working Group meeting (June 1997), Kleck described Saturday Night Special bans as perhaps the most criminologically discredited of policy proposals. Since the anti-SNS policy of Handgun Control, Inc., was enunciated best in the wake of the research by Brill (1977) showing that SNSs were not the preferred weapon of criminals, it appears unlikely that policy research will affect anti-gun policy goals (Kleck, 2000).

Magazine restrictions

One of the less-discussed provisions of the 1994 crime bill (which mandated the redesign of some firearms) banned the fu-

ture manufacture of medium- and large-capacity magazines—those carrying over 10 rounds of ammunition—for sale to civilians. Since no magazines existing at the time the bill was signed into law were affected, manufacturers produced a substantial number of new medium- and large-capacity magazines during the time between which Congress passed the crime bill and President Clinton returned from vacation to sign the measure. Importation of already-manufactured magazines from abroad remains lawful. It would not be possible to evaluate the impact of the ban on the magazines since there was no opportunity for a dearth to develop. But efforts, led by Senator Dianne Feinstein (D-Calif.), have been made to curb import of all medium- and large-capacity magazines on the grounds that it is not possible to be sure which were manufactured before and which after the manufacturing ban went into effect.

There was never any criminological or public health support for the curb on magazines based on their capacity. Even studies purporting to show an increase in the number of gunshot wounds inflicted by criminals (e.g., Webster et al., 1992) report numbers well below those held in medium-capacity magazines, and fewer than the number contained in most revolver cylinders. Reports on shootings between police and perpetrators in New York City regularly report an average of fewer than three shots fired by the criminals (Cerar & Goehl, n.d.). A study of multiple shootings nationwide found that magazine capacity was irrelevant. Either the total number of shots fired was below that of even medium-capacity magazines, or there was plenty of time to reload (Etten & Petee, 1995).²³ One small study after the ban took effect found it to have had no apparent effects (Hargarten et al., 2000). With no criminological support for the ban, an extension of the manufacturing ban to all imports was included both in the 1999 juvenile crime bill as passed by the Senate (S. 254) and the NRA-backed Dingell amendment adopted by the House, which led to gun-related matters being stripped from the House version of that bill.²⁴

Personalization of handguns

In one sense, the proposals to personalize guns—often referred to as “smart guns”—constitute a policy made in the absence of research rather than in defiance of it. Since personalized firearms have not been developed, much less mandated, the impact of such a mandate cannot have been subject to direct crimi-

nological or public health research. There is, however, a current push for immediate legislation to mandate personalized guns within two or three years (DeFrancesco et al., 1996; Robinson et al., 1996). And such proposals have recently been considered by at least two states (Maryland and New Jersey), with New Jersey allocating at least \$1.5-million to study possible technologies (Associated Press, 2000b). And the lack of personalization was cited as a basis for municipal lawsuits against the firearms industry (O'Malley & Blackman, 1999).

There are two senses in which those proposals to mandate personalized guns defy existing research. First, the federal government studying the idea of developing personalized guns for law enforcement—envisioned as preceding that development for the general public—sees such technology as nowhere near completion (Weiss, 1996; Taylor, 2000).

Second, analogies with other such mandates suggest that consumer response to such products at least has to be considered in evaluating their likely effectiveness. Harvard economist Kip Viscusi (1984) has noted that one response to mandated efforts to make it difficult for children and adults to open prescription medications is for adults to remove the caps, making them less secure than ordinary containers. It is at least an issue worthy of study as to how gun owners would respond to mandated personalization. While the mandate may allow a variety of personalization mechanisms to be adopted, they are likely to vary in the difficulty owners—as well as criminals—may have in overriding the undesired feature (Blackman, 1999; Cook & Ludwig, 2000, p. 131).²⁵

However defined, personalization of handguns would add significantly to the costs, thus having the same impact—desired or not—as other policies that would increase the cost of guns. That is, purchase of guns would become more difficult for persons on limited incomes, who are more likely to need, and to have used, guns for protection (Kleck & Gertz, 1995), and who have less effective police protection (Lott, 2000a, p. 69).

1. Handgun ban

An actual ban on handguns is a policy position less espoused by politicians than by some advocacy groups and the news media. It is the formal policy of such groups as the Coalition to Stop Gun Violence (formerly the National Coalition to Ban Handguns), the HELP Network, the United States Conference

of Mayors, some religious denominations, and was the policy of the National Council to Control Handguns until it changed its name to Handgun Control, Inc., in 1979. It is also the official editorial stance of the Washington Post.

As a practical matter, handgun-ban proponents differ between those favoring a prospective ban and those wishing also that the existing supply be confiscated, with or without compensation.²⁶

Only two major American jurisdictions have banned handguns, Chicago and Washington, D.C. No effort has been made to pretend that Chicago's handgun ban worked, beyond the city's lawsuit against gun manufacturers and dealers noting that handgun abuse remains a problem in that city (O'Malley & Blackman, 1999).

The Washington, D.C., ban was studied a few times by persons who credited the drop in homicides there between 1974 and 1976 to the handgun ban which took full effect in February 1977 (e.g., Loftin et al., 1991). The studies have also generally ignored any other explanatory factors (such as gun-law enforcement efforts by BATF), ignored slightly greater reductions in homicide in the most likely control jurisdiction, Baltimore, and the like (Britt, Kleck, & Bordua, 1996). In fact, the homicide rate in Washington was below that in 1976 only one year after, immediately following the 1982 adoption of an initiative providing a mandatory penalty for misuse of a gun in the commission of a violent crime (Blackman, 1995).

No systematic evaluations have been done of the few foreign handgun bans, although there is some evidence that Great Britain's has not been followed by a decline in homicide and other violent crime (Wheeler, 2000).

While non-adopted policies are difficult to evaluate, criminological studies have warned against handgun bans—or, for that matter, other restrictive policies aimed only at handguns (Kleck, 1984). As has been noted, to the extent criminals are successfully encouraged to switch from handguns—the D.C. handgun ban has seen handguns increase as a portion of guns used in homicides, so substitution has clearly not been encouraged—a switch to rifles and shotguns means a switch to guns which are deadlier at close range (Wright et al., 1983; Kleck, 1984). And surveys indicate a willingness and ability of criminals to move up should handguns become unavailable (Wright & Rossi, 1986).

D. DISACQUISITION

1. Voluntary gun surrenders²⁷

Probably the greatest combination of continued popularity among policymakers and proven worthlessness by criminologists and public health researchers—regardless of their views on guns—is achieved with the various gun-surrender programs. Anti-gun public health researchers and institutions finding gun-surrender programs ineffective include Arthur Kellermann of Emory University (Kellermann et al., 1998, p. 285), Harborview in Seattle (Kellermann et al., 1998; Callahan, Rivara & Koepsell, 1994), the CDC (Kellermann et al., 1998), Garen Wintemute of the Violence Prevention Research Program of the University of California at Davis (Dorning, 2000), and the Johns Hopkins University Center for Gun Policy and Research (Romero, Wintemute & Vernick, 1998). Criminologists dismissing the programs include Gary Kleck of Florida State University, David Kennedy and his colleagues at Harvard, Richard Rosenfeld (Plotkin, 1996), Jack Levin at Northeastern (2000), Lawrence Sherman (Sherman et al., 1998), Philip Cook²⁸ and Jens Ludwig (2000, p. 123)—although Levin and Kennedy et al. suggested that the symbolic value—such as changing public attitudes toward guns, by stigmatizing gun ownership (Lott, 2000a, p. 18)—might be considered a possible benefit (Plotkin et al., 1996). Even Handgun Control, Inc., has said the programs have not been cost-effective (Crime Victims Digest, 1994).

But it seems universally agreed that there is no evidence that crime is reduced, and the guns turned in are not by persons apt to commit crimes, nor the sorts of guns used by criminals. Among those turned in are muskets, rifles from World War II, target pistols, and collectibles. Offered in exchange are amnesty, or cash, gift certificates, food, toys, and the like²⁹ (Brown, 2000; Washington Post, 2000; Department of Housing and Urban Development, 2000). Others have reported that most of the guns turned in for the equivalent of \$50 are not worth that much.

Occasionally, gun collectors have offered more than \$50 for the few real collectibles brought in (Day, 2000). When the price offered rose, police officers cashed in by submitting old service revolvers (Claffey, 2000). More problematic are those occasions when law enforcement officers collecting the guns diverted more valuable ones from destruction to their private collections, and the fact that the authorities collecting the guns apparently never

inform widows and others that their firearms are valuable and that they could make substantially more money—and still get the guns out of their homes—by selling them to licensed dealers.

Yet not only have numerous cities adopted the program, but the Department of Housing and Urban Development (HUD) has made gun-surrender programs a major item for expenditure, allocating some \$15-million to buy guns from urban residents (Lott, 2000a, p. 168). Under the program, HUD is providing 43 cents in matching funds for every dollar in HUD Drug Elimination Grant Program funds which local housing authorities set aside for the so-called “BuyBack America” program (Department of Housing and Urban Development, 2000a and 2000b). The Clinton administration has not only endorsed the programs but called for a study of their effectiveness. That last call is rather silly, since the Justice Department has already evaluated the programs and found them worthless (Sherman et al., 1998), confirming a study done as part of an anti-gun report for Congress in 1978 (General Accounting Office, 1978).

Nonetheless, so determined is the Clinton administration to proceed that it is willing to break the law, illegally diverting moneys budgeted for drug elimination to fund a program aimed at gun elimination (Washington Post, 2000; Dao, 2000).³⁰ Representative James T. Walsh (R-New York), with the support of Rep. Allan B. Mollohan (D-West Virginia), notes that the General Accounting Office agrees with his interpretation that the expenditures represent unlawful diversion, and, if they break the law, local housing officials could face fines or even jail (Washington Post, 2000; Dao, 2000). Responding both to the gun-surrender programs and to calls for locking devices, a pro-gun group in Maryland promoted a lock-surrender program at the Takoma Park Folk Festival, with the locks to be melted and used to make new handguns (Mizejewski, 2000).

2. Involuntary gun surrenders

While some handgun-ban proposals are prospective, banning the new manufacture or distribution of guns, some anti-gun advocates would like to call in the existing stock of firearms or some category of firearms (handguns, “assault weapons,” etc.). Both the United Kingdom (handguns) and Australia (“assault weapons”) enacted laws banning continued possession, and calling for the existing stock to be turned in for what the government determined to be fair value. It cannot be known to what extent law-abiding citizens complied, since it was never known

precisely how many such guns were owned before the ban. There are, however, reports of continuing, if not increasing amounts of violent crime and gun-related guns in both countries (Wheeler, 2000; Celom, 2000).

As with registration and secondary transfers, survey research indicates a low expectation of compliance with any confiscation law. While around one quarter of the people expected most or almost all gun owners to comply with a registration or private-transfer/waiting period law, less than one-twentieth of the people expected that much compliance with a handgun confiscation law—virtually identical to the percentage expecting general compliance with a state alcohol prohibition law. This is with another 15% expecting about half of gun owners to comply (Decision Making Information, 1979).³¹ A similar Illinois survey got similar results asking about a complete gun ban, with 95% of gun owners and 93% of non-owners expecting half or fewer to comply. “The response to the question, ‘Do you think you would comply?’ is a researcher’s dream. Of the non-owners 73% said ‘yes,’ and 73% of owners said ‘no!’” (Bordua, 1983, p. 350).

III. POLICIES PURSUED ABSENT RELEVANT RESEARCH FINDINGS

A. DESTRUCTION OF GUNS CONFISCATED, SURRENDERED, OR REPLACED

When New Orleans sued handgun manufacturers because of their distribution practices, the city government was quickly attacked as hypocritical, because the city used the same distribution practices, indirectly, to dispose of the law enforcement guns being replaced with newer models. The result was that New Orleans and various other cities and counties around the nation, whether or not they were involved in the municipal lawsuits, were pressured to refrain from selling guns they no longer needed to licensed dealers, who would, in turn, sell them to the public, in compliance with operable federal, state, and local laws (O’Malley & Blackman, 1999). Instead of making money from the sale of used guns, governments instead have to pay for their destruction.

There have apparently been no criminological or public health studies indicating that dealer sales of superfluous government-owned guns to the public have posed any sort of a problem. Similarly, there have been no studies indicating that such

destruction does either good or harm to the commonweal. The only obvious fact is that, instead of selling guns—generally acquired at discount or for free (when confiscated by, or turned in to, police)—at some profit to the government, the same government must pay for their destruction. Since, in some instances, the discounts meant that new guns were being practically exchanged for rather than purchased, the policy will probably, over the course of several years, cost American jurisdictions tens or hundreds of millions of dollars (O'Malley & Blackman, 1999). But no studies have been made on the topic.

Similarly exempt from any studies is the other approach: state laws requiring that confiscated firearms be sold. Their sales are to federally-licensed dealers, but the practice nonetheless offends those who generally oppose anything which enables private citizens, directly or indirectly, to acquire firearms, especially at reduced prices (Louisville Courier Journal, 2000; Hanna, 2000). To encourage that the guns not go on the open market, Senator Robert Torricelli (D-New Jersey) proposed a federal gun-surrender program for used police guns (Curran, 2000).

B. PERSONALIZATION

Similarly, there have been no studies, nor the opportunity for studies, on how mandatory personalization policies for firearms will affect society. The guns do not exist, and, for the most part, neither does the policy. The sole basis for evaluating the impact would be by looking at likely responses based on familiarity with firearms and their owners (Blackman, 1999), or by looking at analogous situations. Analogous situations might include regulations on how automobiles are manufactured, how regulated drugs are distributed, and the like.

Harvard's Kip Viscusi has suggested that pill bottles became less safe, overall, due to the way people adjusted to the new devices, following orders that they be made "child proof" (Viscusi, 1984). Mandated design changes for other products, which consumers might have opposed since the changes increased the products' cost, have not met with widely-publicized defiance of the new products—with one notable exception. An interlock keeping the car from being started unless seat belts were properly fastened, was overridden by so many buyers, and criticized by others, that the policy was quickly changed. The reason: that particular design change made the automobile less reliable in what might be an emergency situation. The same objection

would likely be made to mandatory personalization of firearms (Blackman, 1999).

C. "CONSUMER PRODUCT"

One popular proposal is to treat handguns, or firearms in general, as a consumer product subject to regulation by a designated federal agency. In general, such ideas suggest something similar to the Consumer Product Safety Commission, since guns are consumer products. Rhetorically, this usually involves noting that the design of toy guns (intended for transfer to children) is regulated, but not the design of real guns (whose transfer to children is generally proscribed by law), but that the NRA managed to get Congress to expressly keep firearms from the CPSC's jurisdiction.

The NRA did that after anti-gunners suggested that the CPSC would be in an ideal position to declare that ammunition was an unsafe consumer product and to ban its manufacture. The most thorough proposal, however, expressly chose another agency than the CPSC on the grounds that the CPSC was ineffective (Sugarman & Rand, 1994). The Violence Policy Center envisioned handguns as obviously being banned by such an approach, with actual regulations being aimed at rifles and shotguns.

While Congress has not seriously considered such a proposal, there have been three key legislative efforts to so regulate guns, or handguns, in addition to using litigation as a way, in effect, for judges so to regulate the industry (O'Malley & Blackman, 1999). Massachusetts recently enacted legislation regulating handguns as consumer products, demanding various features and qualities, in ways which seem to make most currently manufactured handguns unlawful. The measure was initially promulgated by the state's attorney general, supposedly based on the authority given him by the state's general consumer-fraud legislation. To prevent a court challenge from being successful, the legislature gave him the express authority he claimed, and has now exercised. Gun dealers have responded to the uncertainty regarding which handguns meet the standards by sharply curtailing sales of new handguns. Smith & Wesson handguns, from a Massachusetts manufacturer, are generally being sold, as are some guns from Sigarms.

Maryland established a Handgun Roster Board in 1988 to determine, using nine fairly vague criteria, which handguns would be lawful for sale in the state. Maryland was, and remains,

a high-crime state, and no criminological effort has been made to determine if the law had any impact at all on crime or gun use in crime. The Handgun Roster Board approved most handguns submitted to it by handgun manufacturers, but many handguns were not submitted, since the manufacturer deemed the likely profit from the Maryland portion of the market not to be worth the expenses of qualifying the handgun with the Board; in some case, the manufacturer may have expected that the handgun would fail to meet Maryland's criteria as they were likely to be enforced.

To the extent such regulations are similar to bans on "Saturday Night Specials," one might expect the same general impact: making guns more expensive and thus discriminating against those who are in greater need of protection, driving a few criminals to better guns, and not affecting crime. To the extent such regulations simply ban retail sales, the law would be equivalent to failed handgun bans. But, as a specific measure, treating guns as a consumer product has not been scientifically evaluated.

D. REDUCTION IN NUMBER OF FEDERAL LICENSEES

One of the gun policies adopted early by the Clinton administration was to reduce the number of federally licensed firearms dealers (FFLs). The number was reduced by roughly two-thirds between 1993 and 1998. This was done primarily by targeting the smaller dealers, generally referred to as convenience dealers or, pejoratively, kitchen-table dealers—that is, dealers who generally worked from their homes, rather than from storefronts. These individuals frequently had FFLs for the convenience of themselves and their friends, so that they could purchase guns at lower prices, and by mail order. The Clinton administration began by demanding that persons applying for, or attempting to renew, FFLs meet various state and local business regulations, including zoning ordinances applying to businesses. After applying those arbitrary standards for a while, Congress enacted legislation, as part of the Brady Act, having the same effect on FFLs, and making the administration's ultra vires actions lawful.

In a debate in Los Angeles, anti-gun researcher Garen Winemute, who has worked with BATF on a number of its reports related to firearms tracing, indicated that the policy was based on findings that the convenience dealers were disproportionately involved in transferring guns which were later traced back to

them as crime guns. No study has ever been produced to support the policy.

Kleck (1991 and 1997) found a difficult-to-explain relationship between state/local dealer licensing and assault reduction, but that finding dealt with types of commercial dealers, not with commercial versus convenience dealers; the data for the Kleck analyses preceded BATF's enforcement of state and local regulations, before which most convenience dealers did not bother with state or local dealer licensing.

The Northeastern University studies, conducted for BATF, indicated that a disproportionately large number of traces were to a small number of dealers, with no indication that these dealers were small-scale, convenience dealers, or the sort likely to be targeted by the policies of the Clinton administration (Pierce, Briggs & Carlson, 1995 and 1998). An American Bar Association publication noted that reported cases "overwhelmingly reflect that cases are brought against retail sellers, not federal firearms licensees who obtain licenses for their own personal convenience" (Bumann, 1999).

Essentially, the Clinton administration goal was to reduce the number of small dealers in order to make it easier for the agency to focus on larger dealers, to whom larger number of guns were eventually traced as possible crime guns. (The policy might thus be similar to the idea of sharply restricting driver's licenses being issued to persons over the age of 40 in order that police could concentrate their traffic enforcement efforts at the remaining drivers who are disproportionately involved in unlawful driving practices.). One response to the allegations, based on Pierce et al., that small numbers of dealers were responsible for large numbers of crime guns, was to suggest that those dealers were not necessarily sloppy, but that they were the subject of more traces because they sold more guns. This allegation was since confirmed by a small study in California, which noted that not all large-scale dealers were subject to large numbers of traces (Wintemute, 2000), but that study did not (yet) also determine what sorts of neighborhoods were served by the large dealers with lots of traces compared to large dealers subject to fewer traces.

E. "JUVENILE BRADY"

Another popular proposal is commonly referred to as "Juvenile Brady" legislation, even though it has nothing to do with

the Brady Act, since it deals with the qualifications for acquiring a firearm. The Brady Act dealt not with qualifications for acquiring or possessing a firearm, but established a procedure for determining whether prospective transferees were disqualified under terms established primarily in the Gun Control Act of 1968. “Juvenile Brady,” on the other hand, expands disqualification of firearms acquisition—and possession (Brady, of course, dealt solely with acquisition through a licensed dealer)—to persons adjudicated delinquent for offenses which would be serious violent felonies if they had been tried, with the standard protections of due process, as adults and convicted under federal law. Rhetorically popular, the provision was part of the Senate version of the 1999 juvenile crime bill, and was also part of the Dingell amendment which passed the House, and was then kept off the final version of the House crime bill along with other gun-related provisions. The NRA did not oppose the “Juvenile Brady” portion of the bill.

If enacted, such a proposal could have a racist impact. Laws denying voting rights based on an adult felony conviction are being challenged partly on that basis (Fletcher, 2000). It has been suggested that nearly one-quarter of Florida’s black males are ineligible to vote due to a criminal conviction, compared to less than five percent of Floridians generally. That also means the same proportion of the black male population is disqualified from gun ownership. One question would be how much larger a portion of the black male population would be disqualified from gun ownership if “Juvenile Brady” were adopted, compared to what percentage of the white population, and whether such a racist impact is acceptable, desirable, or constitutional. In terms of curbing crime, although there are no studies on the topic, those looking at where and how criminals obtain firearms would suggest no likely impact (Wright & Rossi, 1986).

IV. POLICY IN LINE WITH RELEVANT RESEARCH

There is only one major area in the debate over gun policy where relevant research supports a policy, and it is unclear that the policy research has played a significant role. After several states adopted laws making it relatively easy for law-abiding sane adult citizens to obtain licenses to carry concealed handguns, a massive statistical study of all the nation’s counties found that the laws effectively reduced violent crime (Lott, 2000a). There have been extensive criticisms of the study, and some reanaly-

sis—although, as John Lott has noted in defense of this study, both orally and in the book—those generally are of only parts of the country, and involve either fewer variables or so many that nothing would be likely to have a significant effect.³²

From Lott's point of view, studies of "right to carry" either support the conclusion that it is a crime-reducing policy or the conclusion that it is a policy with no significant impact on violent crime. Making it lawful for ordinary citizens to carry handguns for protection thus becomes either a positive good for the community, or a policy that does not harm society. While Lott has testified in support of the adoption of such laws by states which currently lack them, most states with such legislation adopted it prior to sophisticated statistical evidence that it was a good idea. In noting the states where "Lott's research findings have figured prominently in recent debates about concealed-carry laws," Jens Ludwig left out the fact that none of the five states named adopted "right to carry" (Ludwig, 2000, pp. 365-366).

V. CONCLUSION

In general, criminological research has found that most popular gun laws, to the extent adopted at the federal, state, or local levels, have failed to reduce crime, criminal access to firearms, and the like (Kleck, 1991 and 1997; Lott, 2000a). There are other proposals that have not really been tried or evaluated. Such include various design requirements, or tangential restrictions, such as changing the lawful age for gun or handgun acquisition or possession. For these proposals, the failure of general restrictions, and criminological research on the sources of criminals' guns, would provide scant reason for support.

For the most part, however, the political community simply ignores policy-related research in determining whether more, and which kind of, gun laws ought to be enacted—or, for that matter, rescinded. In discussing a number of issues where facts seemed irrelevant, conservative columnist Thomas Sowell (2000) wrote: "It is the same story with gun control. People argue fiercely on the basis of opposing beliefs and assumptions about what will or will not happen when gun ownership is either widely permitted or narrowly restricted. Although there have been large and careful empirical studies of this issue by John Lott of Yale and by Gary Kleck of Florida State, neither study is even mentioned in most controversies over gun control by either

politicians or the media. People have made up their minds and do not want to be confused by the facts.”

And, while criminologists like to voice concern that policymakers fail to take advantage of criminological findings when legislating, criminologists themselves pay relatively little heed to such research. Kleck, despite research finding little reason to expect much, if any, benefit from most gun laws, espouses restrictive gun laws. Cook, after a quarter-century of studying the issue with an eye toward finding support for gun laws, rarely actually evaluates the likely impact of various policies (an exception being a negative evaluation of the Brady Act in Ludwig and Cook, 2000), although some skepticism is mentioned regarding some restrictions (for example, “assault weapon” legislation). Nonetheless, as Cook and Ludwig note (2000, p. 215n): “Interestingly, our proposals are quite similar to those offered by Gary Kleck (1997) in his book *Targeting Guns*, even though his research is often used by opponents of gun control measures.”

Regarding the firearms issue, then, there is little evidence that policymakers pay attention to the findings of criminologists and public health researchers. On the other hand, there is little evidence that criminologists and public health researchers let their own policy-related research affect their positions on legislation, either.

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NOTES

1. According to Jones, interest in such research began when, "In April 1975 the Department of Justice determined that there was a need for data and objective research relating to handguns." Memorandum to Participants, [Law Enforcement Assistance Administration] Weapons and Violent Crime Workshop, February 8, 1978.

2. Later, Wolfgang (1995) recognized that some quality gun research failed to support his beliefs on the issue.

3. The Brady Bill originally called for a wait of up to seven calendar days. In its final form, under the pretext of compromise (although with whom it is unclear, since it was a change determined exclusively by proponents), the wait was changed to five business days. Five business days will generally equal seven calendar days, although, depending upon the timing of holidays, could take as long as ten.

4. *Printz v. United States*, 117 S.Ct. 2365 (1997).

5. Under the terms of the Brady Act, which took full effect in February 1994, the waiting period with (optional) local background check for handgun transfers by licensed dealers had a five-year sunset from the date of enactment, November 30, 1993, at which time a national instant-background check—the NICS (National Instant Check System)—took effect, affecting all firearm transfers by dealers (rifles and shotguns, in addition to handguns). Where authorities were not instantly able to determine eligibility, a transfer could be delayed for up to 72 hours, after which, failing a determination of ineligibility, the dealer could transfer the gun to its buyer.

6. Weil (1997), using a few selectively chosen states, found that the Brady Act somehow curbed interstate gun trafficking. That research, however, failed the standard scientific finding that the result be reasonable. The Brady Act was not aimed at interstate gun trafficking (unlike the original Gun Control Act of 1968). Brady was an effort to prevent dealers from selling handguns to in-state residents who were disqualified based on their criminal records, or some other individual wrongdoing. While interstate sales were proscribed in 1968, the

Brady Act did not call for local law enforcement officers to verify the residence of would-be buyers.

7. Lost in the debate was the fact that the Lautenberg amendment, ostensibly regulating gun show sales in the same way as dealer sales, actually would have defined gun shows, and required registration and regulation of such shows, with advance notice of participants, and the like, so that, in all likelihood, the gun shows, as operated in the 1990s, would have been outlawed rather than regulated. The debate instead focused on whether, absent instant approval or denial of transfers, the authorities would be allowed 24 or 72 hours to complete the background check—largely an irrelevancy if there were no gun shows with proposed transfers which could be checked.

8. A better analogy would be between licensing drivers and licensing persons to carry handguns. Both of those involve taking a product out in public. There are generally no restrictions on what one does with a motor vehicle on private property, nor are transfers of motor vehicles approved in advance by the government. Indeed, the closest analogy is between driver's licensing and "shall issue" carry permits, where the authorities are obligated to issue permits to non-disqualified individuals (Lott, 2000a). Discretionary issuance of licenses to carry is certainly in no way similar to the treatment of prospective drivers. A key distinction is that a driver's license allows one to drive in any of the American states (and, sometimes with an international license issued on the basis of the state license, in foreign countries), while only a limited number of states recognize the carry permits issued by other states. In addition, driver's licenses are regulated by each state (or other jurisdiction), not by the federal government—although Gore's proposal did conform to this slightly, by suggesting federal standards to be met by state licensing authorities. And the information sought for gun licensing/registration is more intrusive than that normally involved in motor vehicle licensing. For example, the Canadian system asks whether applicants have, in the past two years, experienced a divorce, separation, breakdown of a significant relationship, job loss, or bankruptcy (Laframboise, 2000).

9. In fact, the handgun-related homicide rate—rather than firearm-related homicide, generally—may be where the major distinction between the two cities lie. A visual look of the figure in the Sloan et al. article, portraying handgun and other-gun homicides in the two cities, does not appear to show that the difference is all accounted for by handguns, as opposed to firearms in general—which, in fact, may be equally available in both cities. But, despite repeated requests by this author, Congress, and other researchers, Kellermann and his colleagues have not released actual data from this federally-funded study either to this author or to the public.

10. Cook and Ludwig describe regulating the secondary market as "registration" (2000, p. 132).

11. Although privately funded, with no legal or moral obligation to be made public, the DMI surveys—with some proprietary questions stripped out—were given to ICPSR in the 1980s.

12. Senator Edward M. Kennedy (D-Mass.), S. 1936, 96th Congress, 1st Session, p. October 13, 1979. The House version was sponsored by Rep. Peter Rodino (D-N.J.), hence, the Kennedy-Rodino Bill.

13. Also, with Virginia's law, multiple sales were not proscribed, but permission was needed from the state police before rationing could be ignored. According to state police, there was no real drop in the number of multiple sales, and almost all multiple-purchase requests were approved (Blackman, 1998).

14. Senator Jack Reed (D-R.I.), S. 2099, 106th Congress, 2nd Session, February 2000. The registration fee would have been five dollars, compared to \$200 for National Firearms Act-regulated arms.

15. Another policy related to registration—since it would be worthless to the extent that tested firearms were not registered—is “ballistic fingerprinting.” This generally applies to keeping a copy of the markings left on a bullet—and possibly firing pin and ejector on ammunition casing—in order that bullets and casings associated with crime could be traced to the gun that fired them.

There are numerous reasons for thinking this form of registration would be ineffective. First, of course, is the problem of whether the person to whom the gun is registered is the person associated with the crime to which the gun is tied by ballistic fingerprinting. Second, there are apt to be relatively few gun-related crimes in which “ballistic fingerprinting” was relevant: the gun would have to be fired, leaving an undamaged bullet and/or casing. Third, the “fingerprint” would have to be the same as it was at the time it was taken. “Ballistic fingerprints” are not like human fingerprints. They vary over time, either deliberately or incidentally. Age and use alter the print the barrel and firing pin make, and guns can readily be altered, with files and other devices, to change the “fingerprint.” Fourth, while registration itself is apt to be expensive, “ballistic fingerprinting,” involving computerization of identification marks, is apt to make it substantially more expensive, with little chance that many bullets or casings will be successfully traced.

16. New Zealand retained licensing. The authorities now wish to revive registration, although the estimated compliance rate is expected by pro-gun opponents to be about 30%—noting that, since licensing means the authorities know licensees have some guns, at least a token gesture of compliance could be expected (Espiner, 2000).

17. New York City's experience does demonstrate the effectiveness of registration in helping to enforce compliance with a ban on guns.

18. Generally, these are referred to as trigger locks, although only some locks are of that type. Included in the legislative definition, generally, are locking devices which could be used on more than one firearm at a time, such as gun safes. Legislative proposals mandating that a locking device be sold with each handgun, while allowing safes to qualify, would still require an additional lock or safe to be purchased with the next handgun the safe buyer had acquired. S. 254, 106th Congress, 1st Session, May 1999. At the time, the NRA's official position was non-opposition to that particular feature of S. 254, although other features meant opposition to the bill. Non-opposition is distinct from support. There has generally be no opposition to voluntary efforts simply to give away locks to those who will take them (Associated Press, 2000a).

19. John Lott notes that, as a child, Secretary of Labor Alexis Herman was handed a handgun by her father when he left her in the car to face some Klansmen, with instructions to shoot if they broke into the car (Lott, 2000a, pp. 68-69).

20. Florida is probably the state where the Eddie Eagle program was adopted most extensively by school districts around the same time as the NRA-backed CAP law was enacted.

21. A still newer description is “pocket rocket,” the target of Rep. Rod Blagojevich’s H.R. 4876. His definition is based on the length of pistols, banning those shorter than 7.5 inches, a measure which would include numerous handguns of relatively high cost, high quality, and high caliber, and including numerous law enforcement side-arms, in addition to those suited for carrying by licensed citizens in the majority of states where such licenses are relatively easy to obtain. No studies really exist to indicate the involvement of guns meeting his definition in crime, although they are apparently disproportionately not among crime guns in the city of Chicago, part of which he represents in Congress.

22. As a practical matter, the establishment of the Handgun Roster Board had the effect of banning the sale of some handguns simply because the cost of presenting information on the handguns to the board exceeded likely profits, even from expensive guns—with small markets—certain to be approved.

23. A discussion of a particular protective use of guns prevented by California’s CAP law went on to note that, when police eventually arrived, it took “police 13 rounds of gunfire (interestingly enough, equivalent to one now-banned ‘high-capacity’ handgun magazine) to bring the killer down” (Simpson, 2000).

24. The NRA supported the amendment introduced by Rep. John Dingell (D-Mich.), while opposing the overall ban, or at least seeking for the ban to exempt magazines for curio or relic firearms, temporary importation for use by foreign visitors, and the like.

25. Arguably, of course, the legislation might be written in such a way that if the gun’s personalization feature can be permanently overridden, then the gun does not meet the mandate and may not be sold. In all likelihood, the inevitability of people overriding technological developments would imply a ban on guns.

26. When Massachusetts held a referendum in 1976 to determine whether handgun possession should be banned, the proposal called for compensating owners who turned their handguns in (Loving et al., 1977). The United Kingdom and Australia have similarly compensated gun owners who turned in proscribed firearms, although gun owners might disagree with the governments as to whether they were given fair market value. Most state and local bans of types of guns in the United States have not offered compensation, presumably because the owners had the option of storing the gun in a different jurisdiction or of selling the banned guns to some person or dealer in a jurisdiction where their sale and possession was not proscribed.

27. The most popular expression for gun-surrender programs is “buy back.” That term is both too limited and incorrect. It is limited because not all of the temptations are purchase. In some instances, other products—tickets to various events, vouchers for items, etc.—are offered in exchange for guns surrendered to the authorities, thus causing the programs occasionally to be called gun exchange programs. But some programs are simply amnesties, where nothing is offered except an exemption from prosecution for activities associated with the prior possession of the gun by the person turning it in. And buy *back*

suggests, erroneously, that the gun was previously the property of the government to which it is being restored.

While the term gun turn-in might be accurate and acceptable, gun surrender in some ways fits in with broader usage. Australian gun-ban advocate Rebecca Peters, working in the United States for the Soros Foundation, described the Australian program of reimbursing persons for surrendering their banned semi-automatic firearms as a gun buy-back program that, she said, worked. In that case, the Australians were indeed surrendering their guns to the authorities. Thus understood, one may readily distinguish between voluntary and mandatory gun-surrender programs.

28. Phil Cook has been quoted on both sides, saying, on the one hand, that having fewer guns in a jurisdiction through a surrender program could increase guns' value and the incentive for theft or gun-running from other jurisdictions (*Crime Victim Digest*, 1994) and, on the other, that a sustained program could raise the floor price for guns, pricing some teenagers seeking illegal guns out of the market (Eckholm, 1994).

29. In a spin-off on the idea, toys have been traded for toy guns (Wilson, 2000).

30. Actually, of course, the Clinton administration is willing to break the law as a matter of course, on matters of import and no import. It is that willingness which makes the Clinton administration easily the most corrupt administration in American history. The venal corruption allowed by Presidents Lincoln, Grant, and Harding cannot compete. Nor can the combination of ideological and political corruption attempted—generally without success—by President Nixon. The Clinton administration has combined venal, ideological, political, and moral corruption.

Clintonology could easily become a division within the American Society of Criminology, one including white collar crimes, crimes by government, and even violent crimes committed directly or through proxies. While it is not initially clear how many of the crimes were ordered, requested, suggested, or merely condoned by President Clinton, that could certainly be an aspect of Clintonological research. Some of his activities may merely involve going beyond the authority granted him by Congress, in terms of appointments, executive orders, and international agreements. And his law enforcement efforts, legislative and administrative, have involved pushing Fourth Amendment protections to the side.

Clinton developed an enemies list (Filegate), incomplete at the time it was stopped. Nonetheless, whereas Nixon unsuccessfully sought to have the IRS harass his administration's enemies, Clinton's IRS has used harassing audits against individuals and organizations critical of the regime. With Travelgate, in addition to firing the White House travel office to give patronage to friends, he went on to have the head of the travel office maliciously prosecuted to justify the lawful firing of at-will employees. His political fundraising activities involved domestic and foreign illegalities, to the point of selling militarily useful technology to an anti-American totalitarian regime.

And his Justice Department refuses to investigate illegal activities by his administration, either itself or through independent or special prosecutors. To avoid investigation of misdeeds by others, the administration has defied subpoenas from Congress and the courts, and FOIA requests from individuals,

organizations, and the news media. And, of course, Clinton engaged in unlawful sexual harassment, perjury, obstruction of justice, with the privacy rights of his various accusers unlawfully violated. His legacy is as a corruptionist without presidential peer or the likelihood of competition for that “honor.”

31. Three years earlier, a similar survey found a slightly higher nine percent expecting all or most gun owners to comply with a complete firearms ban. For those concerned about civil liberties issues in gun-law enforcement, that survey also found 21% responding affirmatively to the question: “If a law were passed by the Congress requiring all guns to be registered, would you favor or oppose letting police to search every home to make sure that no one had an unregistered gun?” (Decision Making Information, 1975). Gun-control supporters were disproportionately in the supportive minority.

32. One also used National Center for Health Statistics mortality data, rather than Uniform Crime Reports data, which would include justifiable homicides as negative measures of the effectiveness of the gun-law reform rather than positive (Ludwig, 2000, pp. 405-6).

