

DECEMBER 1, 2015 | NUMBER 784

The Costs and Consequences of Gun Control

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EXECUTIVE SUMMARY

In politicizing mass murders, gun control advocates, such as President Obama, insist that more laws against firearms can enhance public safety. Over and over again, there are calls for common sense gun controls, such as a system of universal background checks, a ban on high-capacity magazines, and a ban on assault weapons. And yet such proposals are not likely to stop a deranged person bent on murder.

Although universal background checks may sound appealing, the private sale of guns between strangers is a small percentage of overall gun sales. Worse, the background check bills are written so broadly that they would turn most gun owners into criminals for innocent acts—such as letting one's sister borrow a gun for an afternoon of target shooting.

Magazine bans are acts of futility because the extant supply is enormous. Today, magazines of up to 20 rounds for handguns, and 30 rounds for rifles, are factory standard, not high-capacity, for many of the most commonly owned firearms. These magazines are popular with law-abiding Americans for the same reason they are so popular with law enforcement: because they are often the best choice for lawful defense of one's self and others.

Gun-control advocates have been pushing for a ban

on assault weapons for more than 25 years. This proposal is essentially a political gimmick that confuses people. That is because the term is an arbitrarily defined epithet. A federal ban was in place between 1994 and 2004, but Congress declined to renew it after studies showed it had no crime-reducing impact.

President Obama points to the mass confiscation of firearms in Great Britain and Australia as models for the United States. Such confiscation would be impossible, as a practical matter, in the United States, and if it were attempted, the consequences would be catastrophic.

Policymakers can take steps to make treatment available for persons with serious mental illness, and, when necessary, to incapacitate such persons if they are proven to be at grave risk of perpetrating violent crime. Better care, treatment, and stronger laws for civil commitment (consistent with constitutional safeguards) could prevent some horrific crimes.

Finally, before adding new gun regulations to the legal code, policymakers should remember that several mass murders in the U.S. were prevented because citizens used firearms against the culprit before the police arrived on the scene.

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INTRODUCTION

Following news reports of the horrific murders on June 17, 2015, at the Emanuel African Methodist Episcopal Church in South Carolina, President Obama said Congress was partly to blame because it had not approved his gun-control proposals. “Once again,” Obama said, “innocent people were killed in part because someone who wanted to inflict harm had no trouble getting their hands on a gun.”¹ Obama added, “It is in our power to do something about it. I say that recognizing the politics in this town foreclose a lot of avenues right now. But it would be wrong for us not to acknowledge [the politics]. At some point it’s going to be important for the American people to come to grips with it.”²

It is unfortunate that Obama chose to disparage those who disagree with him for their supposed fixation on grubby “politics” and indifference to murder victims. Whether Obama realizes it or not, there are good reasons to be skeptical of gun-control policies. This paper will scrutinize the three most common gun-control ideas that have been put forward in recent years: universal background checks, a ban on high-capacity magazines, and a ban on assault weapons. These proposals are misguided and will not prevent the crimes that typically prompt officials to make pleas for more gun control. Policymakers can take some steps to incapacitate certain mentally ill persons who are potentially violent. Yet, it would be wrong not to acknowledge that gun laws often cannot stop a person bent on murder. Policymakers should not pretend otherwise.

UNIVERSAL BACKGROUND CHECKS

Under current law, persons who are in the business of selling firearms must perform a criminal background check prior to any sale. After the Charleston shooting, some gun-control advocates want to expand the background check system further—so that it would cover occasional private sales as well. In July 2015, community leaders from Charleston appeared

at a press conference on Capitol Hill with Dan Gross, president of the Brady Campaign to Prevent Gun Violence. They demanded that Congress vote on a bill to expand background checks.³ And in a speech to the U.S. Conference of Mayors, presidential aspirant Hillary Clinton said it made no sense that Congress had failed to pass common-sense gun control, such as universal background checks.⁴

Dylann Roof, the racist who attacked the churchgoers in Charleston, had previously been arrested, and he had admitted to law enforcement officers that he was a user of methamphetamine. That was sufficient, under the federal Gun Control Act of 1968, to prohibit him from owning guns, because the statute bans gun ownership by illegal drug users. However, as the FBI later admitted, the bureau failed to properly enter into its database the prohibiting information that had been provided by local law enforcement.⁵ This incident points to a key limitation to the background-check concept: bureaucratic errors. In 2013, the FBI conducted more than 21 million background checks for firearm purchases.⁶ Given the massive scale of the system, there are always going to be errors as those records get misplaced or neglected.

Three other shootings in 2015 that garnered media attention show the limitations of background checks. Muhammad Youssef Abdulazeez attacked two military installations in Chattanooga, Tennessee on July 16. Like the Boston marathon bombers, Abdulazeez was a radicalized jihadi. He apparently radicalized after visiting his Palestinian relatives in Jordan. Abdulazeez was a U.S. citizen and purchased firearms lawfully after passing background checks. Professor James Alan Fox of Northeastern University, who studies mass shootings, explains that “mass killers are determined, deliberate and dead-set on murder. They plan methodically to execute their victims, finding the means no matter what laws or other impediments the state attempts to place in their way. To them, the will to kill cannot be denied.”⁷

On July 23, John Russell Houser murdered several people in a movie theater in Lafayette,

Louisiana. Houser was severely mentally ill; in 2008, a Georgia judge issued an order to apprehend him so that he could be held for five days for a mental health evaluation. The mental hospital records have not been released, but the hospital apparently did not petition for a longer involuntary commitment.⁸ Had Houser been involuntarily committed, he would have become a prohibited person under the 1968 Gun Control Act.⁹ But he was not, and so he passed a background check and purchased a handgun from a gun store in February 2014.¹⁰ Houser shot 11 people, killing two, and then committed suicide when police arrived.¹¹ A background-check system cannot stop people like Houser, who are dangerous, yet have fallen through the cracks in the system and have no disqualifying record.

Christopher Harper-Mercer, who murdered nine people at Umpqua Community College in Roseburg, Oregon, on October 1, 2015, was not affected by one of the most severe background check statutes in the United States. The Oregon background-check law applies to almost all private firearm sales, not just commercial sales.¹² Despite this universal background check regime, all of the firearms recovered from the killer were legally purchased, either by him or his mother.¹³ Harper-Mercer appears to have been seriously mentally ill, but neither he nor his mother were in any way impeded by background check laws.

Gun-control advocates often claim that 40 percent of annual firearms sales take place today without background checks. The *Washington Post* “fact-checker” has debunked that claim, giving it “Three Pinocchios.”¹⁴ The *Post* noted that the survey data used for the study on which the 40 percent claim is based are more than two decades old, which means they were collected prior to the National Instant Criminal Background Check System becoming operational in 1998. The survey only polled 251 people, and, upon asking whether their gun transfer involved a federally licensed dealer—that is, a federal firearms licensee (FFL)—gave respondents the choice of saying “probably” or “probably not” in addition to “yes” and “no.”

From that survey, the report concluded that 35.7 percent of acquisitions did not involve a background check. But “acquisitions” is a much broader category than “purchases,” which is the term used by advocates for gun control. Gifts and inheritances between family members or among close friends are acquisitions, but not purchases. When the *Post* asked researchers to correct for that distinction, the percentage of firearms *purchased* without a background check fell to between 14 and 22 percent. The *Post* subsequently conducted its own survey of Maryland residents, and found that 21 percent of respondents reported not having gone through a background check to purchase a firearm in the previous decade.

Even that 21 percent, which entails transactions between private, noncommercial sellers, is regulated by the federal law against giving a firearm to someone the transferor knows, or reasonably should know, is among the nine categories of prohibited persons under federal law (e.g., mentally impaired; convicted felons).¹⁵ The assertion that nearly half of the gun sales in America are unregulated is simply false. Federal law governs as many gun sales and transfers as is practically enforceable already.

As a 2013 National Institute of Justice memo from Greg Ridgeway, acting director of the National Institute of Justice, acknowledged, a system requiring background checks for gun sales by non-FFLs is utterly unenforceable without a system of universal gun registration.¹⁶ For FFLs, enforcement of record-keeping is routine. They are required to keep records of every gun which enters or leaves their inventory.¹⁷ As regulated businesses, the vast majority of them will comply with whatever procedures are required for gun sales. Even the small minority of FFLs who might wish to evade the law have little practical opportunity to do so. Federal firearms licensees are subject to annual warrantless inspections for records review and to unlimited warrantless inspections in conjunction with a bona fide criminal investigation or when tracing a gun involved in a criminal investigation.¹⁸ The wholesalers and

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manufacturers who supply the FFLs with guns must keep similar records, so a FFL who tried to keep a gun off the books would know that the very same gun would be in the wholesaler’s records, with precise information about when the gun was shipped to the retailer.¹⁹

In contrast, if a rancher sells his own gun to a neighbor, there is no practical way to force the rancher and the neighbor to drive an hour into town, and then attempt to find a FFL who will run a background check for them, even though they are not customers of the FFL. Once the rancher has sold the gun to the neighbor, there is no practical way to prove that the neighbor acquired the gun after the date when the private sales background check came into effect. As the National Institute of Justice recognized, the only way to enforce the background-check law would be to require the retroactive registration of all currently owned firearms in the United States. Such a policy did not work in Canada, and anyone who thinks that Americans would be *more* willing to register their guns than Canadians is badly mistaken.²⁰

In *Printz v. United States* (1997), Justice Clarence Thomas suggested that a mandatory federal check on “purely intrastate sale or possession of firearms” might violate the Second Amendment.²¹ That view is supported by the Supreme Court’s 2008 ruling in *District of Columbia v. Heller*. In *Heller*, the Court provided a list of “long-standing laws” that were “presumptively lawful” gun controls.²² The inclusion of each item on the list, as an exception to the right to keep and bear arms, provides guidance about the scope of the right itself.

For example, the Court affirmed “prohibitions on the possession of firearms by felons and the mentally ill.” Felons and the mentally ill are exceptions to the general rule that individual Americans have a right to possess arms. The exception only makes sense if the general rule stands. After all, if no one has a right to possess arms, then there is no need for a special rule that felons and the mentally ill may be barred from possessing arms.

The second exception to the right to keep and bear arms concerns “laws forbidding the

carrying of firearms in sensitive places such as schools and government buildings.” This exception proves another rule: Americans have a general right to carry firearms. If the Second Amendment only applied to the keeping of arms at home, and not to the bearing of arms in public places, then there would be no need to specify an exception for carrying arms in “sensitive places.”

The third *Heller* exception concerns “laws imposing conditions and qualifications on the commercial sale of arms.” Again, the exception proves the rule. The Second Amendment allows “conditions and qualifications” on the commercial sale of arms. The Second Amendment does not presumptively allow Congress to impose “conditions and qualifications” on noncommercial transactions. At least *Heller* seems to suggest so.

Federal law has long defined what constitutes commercial sale of arms. A person is required to obtain a federal firearms license (and become subject to many conditions and qualifications when selling arms) if the person is engaged in the business of selling firearms. That means:

a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms, but such term shall not include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms.²³

A person who is “engaged in the business, but who does not have an FFL, is guilty of a felony every time he sells a firearm.”²⁴ Currently, the federal National Instant Criminal Background Check System law generally matches the constitutional standard set forth in *Heller*. It applies to all sales by persons who are engaged in the business (FFLs) and does not apply to

transfers by persons who are not engaged in the business.²⁵

After the 2012 Sandy Hook murders, Obama ordered the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) to inform FFLs about how they can perform a background check for private persons who would like such a check.²⁶ On a voluntary basis, that order was legitimate, but it would be constitutionally dubious to mandate it.

As a practical matter, criminals who are selling guns to each other (which is illegal and subject to severe mandatory sentencing) are not going to comply with a background-check mandate.²⁷ It would be irrelevant to them. Ordinary law-abiding citizens who sell guns to each other might be willing to take the gun to a firearm store for a voluntary check, provided that the check is not subject to a special fee, that there is no registration, and that the check is convenient and expeditious. The new ATF regulations for private-party sales comply with two of those three conditions; however, the regulations do require that dealers keep permanent records on the buyer and one of the make, model, and serial number of the gun, just as if the dealer were selling a firearm out of his own inventory. The dealer-based system of registration, created by the Gun Control Act of 1968, avoids the dangers of a central registry of guns, but it does have risks: a government that wanted to confiscate guns could simply harvest the dealer sales records.

Proposals concerning universal background checks have fairly strong support in public opinion polls, but those polls are premised on the idea that the check would be applied to the actual sale of firearms. To the contrary, in proposed legislation, the requirement for government authorization (via a background check and paperwork identical to buying a gun) would apply to far more than gun sales. The proposals apply to all firearms “transfers.”²⁸ A “transfer” might be showing a new gun to a friend and letting him handle the gun for a few minutes.

For example, Senate bill S.649 (2013), introduced by Sen. Harry Reid (D-NV), goes

far beyond controlling the actual sale of firearms. Consider a case in which a woman buys a common revolver at age 25, and keeps it her entire life. She never sells the gun. But over her lifetime, she may engage in dozens of firearms transfers:

- The woman loans the gun to her sister, who takes it on a camping trip for the weekend.
- While the woman is out of town on a business trip for two weeks, she gives the gun to her brother.
- If the woman lives on a farm, she allows all of her relatives on the farm to take the gun into the fields for pest and predator control.
- If the woman is in the Army Reserve, and she is called up for an overseas deployment, she gives the gun to her brother-in-law for temporary safe-keeping. When she goes out of town on vacation every year, she also temporarily gives her gun to her brother-in-law.
- One time, when a neighbor is being threatened by an abusive ex-boyfriend who is a stalker, the woman lets the neighbor borrow the gun for several days, until the neighbor can buy her own gun.
- If the woman becomes a firearms safety instructor, she may teach classes at office parks, school buildings, or gun stores. Following the standard curriculum of gun safety classes, such as those required by the National Rifle Association, the woman will bring some unloaded guns to a classroom, and under her supervision, students will learn the first steps in handling the gun, including how to load and unload the gun (using inert dummy ammunition). During the class, the firearms will be transferred dozens of times, as students practice how to hand a gun to someone safely.

Under S. 649, every one of the above activities would be a felony, punished the same as if the woman had knowingly sold the firearm

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to a convicted violent felon. Here is the pertinent provision: “It shall be unlawful for any person who is not licensed under this chapter to transfer a firearm to any other person who is not licensed under this chapter.”²⁹

This is not “gun control” in the constitutionally legitimate sense—reasonable laws that protect public safety without interfering with the responsible ownership and use of firearms. To the contrary, such grotesquely overbroad laws have the effect of turning almost every gun owner into a felon by outlawing the ordinary, innocent, and safety-enhancing ways in which firearms in the United States are “transferred” millions of times every year.

While S. 649 has a few exceptions to the ban on transfers, not one of them apply to the situations described above:

- One can make a “bona-fide gift” (but not a three-hour loan) to certain close family members, not including aunts, uncles, nieces, nephews, in-laws, or civil union partners.
- One can let someone else borrow a gun for up to seven days, but only within the curtilage of one’s house. Not on the open space one owns, and even a spouse cannot borrow a gun for eight days.
- One can leave a firearm to another in a written will. But on one’s deathbed, it would be unlawful to leave a gun to one’s best friend.
- One can share a gun at a shooting range (but only if the shooting range is owned by a corporation, not on public lands, and not at a shooting range on one’s own property).
- One can share a gun at a shooting match, but only if the match is operated by a non-profit corporation or the government—not a match organized by the National Rifle Association, and not a match organized by a firearms manufacturer.
- One can share a gun while out hunting in the field, but back at the hunting camp, it would be illegal to clean someone else’s gun.³⁰

Even if there was no Second Amendment, the arbitrary rules of the various exemptions would make Senator Reid’s bill of very dubious constitutionality. As interpreted by the courts, due process requires that all laws have a legitimate purpose and at least a rational connection to that purpose.³¹

HIGH-CAPACITY MAGAZINES

Another gun-control initiative that has been recently revived is the idea to ban high-capacity magazines. The Los Angeles City Council, for example, passed an ordinance that would prohibit city residents from possessing handgun or rifle magazines that hold more than 10 rounds of ammunition.³² The New York state legislature enacted a similar ban in 2013.³³ Such bans are unconstitutional and undermine public safety.

A magazine is the part of the firearm where the ammunition is stored. Sometimes the magazine is part of the firearm itself, as in tube magazines underneath barrels. This is the norm for shotguns. For many rifles, and almost all handguns that use magazines, the magazine is detachable. A detachable magazine is a rectangular or curved box, made of metal or plastic. At the bottom of the box is a spring, which pushes a new round of ammunition into the firing chamber after the empty shell from the previous round has been ejected.³⁴ The caliber of the gun does not determine what size magazine can be used. Any gun that uses a detachable magazine can accommodate a detachable magazine of any size. So, for example, a gun with a detachable magazine holding 10 rounds can also accommodate a magazine that holds 20 rounds.

The 1994 federal ban on assault weapons included a ban on large magazines. As indicated by the bill’s title (the Public Safety and Recreational Firearms Use Protection Act), that ban was predicated on the idea that recreational firearm use is legitimate, but other firearms use is not.³⁵ Yet for target-shooting competitions, there are many events that use magazines holding more than 10 rounds. For

hunting, about half the states limit the magazine size that a hunter may carry in the field, but half do not. In some scenarios, such as deer hunting, a hunter will rarely get off more than two shots at a particular animal. In other situations, particularly pest control, the use of 11- to 30-round magazines is typical because the hunter will be firing multiple shots. Such pests include the hunting of packs of feral hogs and wild animals, such as prairie dogs and coyotes.

More generally, the rifle that might be used to shoot only one or two rounds at a deer might be needed for self-defense against a bear or against a criminal attack. In 2012, Arizona repealed its limitations on magazine capacity for hunters precisely because of the possible need for self-defense against unexpected encounters with cartel gangs in the southern part of the state.³⁶ In that region, it is well known that drug traffickers and human traffickers use the same wild and lonely lands that hunters do.

For the firearms that are most often chosen for self-defense, the claim that any magazine holding more than 10 (or 7) rounds is “high capacity” or “large” is incorrect. The term “high-capacity magazine” might have a legitimate meaning when it refers to a magazine that extends far beyond that intended for the gun’s optimal operation. For example, although a semiautomatic handgun can accept a 40-round magazine, such a magazine typically extends far beneath the gun grip, and it is therefore impractical to use with a concealed-carry permit. For most handguns, a 40-round magazine could be called “high-capacity.”

The persons who have the most need for actual high-capacity magazines are those who would have great difficulty changing a magazine—such as elderly persons or persons with disabilities. For an able-bodied person, changing a magazine only takes a few seconds. Typically a gun’s magazine-release button is near the trigger. To change a magazine, the person holding the gun presses the magazine-release button with a thumb or finger. The magazine instantly drops to the floor. While one hand was pushing the magazine-release button, the other hand can grab a fresh magazine (which might be

carried in a special holster on a belt) and bring it toward the gun. The moment the old magazine drops out, a fresh one is inserted.³⁷

Although one can quickly change magazines, persons being attacked by criminals will typically prefer not to spend even a few seconds for a magazine change. The stress of being attacked usually impedes fine motor skills, making it much more difficult to insert the magazine.³⁸ That is why many semiautomatic handguns come factory-standard with a magazine of 11 to 20 rounds. Thus, a ban on magazines with a capacity of more than 10 rounds means a ban on some of the most common and most useful magazines purchased for purposes of recreational target practice and self-defense.

Why might someone need a factory-standard 17-round magazine for a common 9mm handgun? As noted, standard-capacity magazines can be very useful for self-defense. This is especially true if a defender faces multiple attackers, an attacker is wearing heavy clothing or body armor, an attacker who is turbocharged by methamphetamine or cocaine, or an attacker who poses an active threat from behind cover. In stressful circumstances, police as well as civilians often miss when firing a handgun even at close range, so having the extra rounds can be crucial.

It is important to consider the advantages a criminal has over his intended victims. The criminal has the element of surprise, whereas the victim is the one surprised. The criminal can decide at leisure what weaponry he will bring; whereas the victim must respond with what’s at hand at the moment of attack. A criminal can bring several guns, or lots of magazines; whereas the victim will usually have on hand, at most, a single defensive gun with only as much ammunition as is in that gun. Thus, legislation confining law-abiding victims to magazines of 10 or fewer magnifies the criminal’s advantage over his intended victim.

One fact that proves the usefulness of standard-capacity magazines is that most police officers use them. An officer typically carries a semiautomatic handgun on a belt holster as

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his primary sidearm. The magazine capacity is usually in the 11 to 20 range. Likewise, the long gun carried in police patrol cars is quite often an AR-15 rifle with a 30-round magazine.³⁹

Violent confrontations are unpredictable; for example, if a person is fighting against one or two perpetrators, he may not know if there is an additional, hidden attacker. Thus, defensive gun users need to keep a reserve of ammunition. So even though armed defenders do not usually fire more than 10 shots, reducing reserve capacity (e.g., from a standard 17-round magazine to a 10-round substitute) will reduce the number of defensive shots. Fewer shots fired at the attacker reduces the risk of injury to the attacker, and thereby raises the risk of injury to the victim.

Would a Magazine Ban Be Beneficial?

The National Institute of Justice study found that the 1994–2004 federal ban on the manufacture of large magazines had no discernible benefit because the existing supply of such magazines was so vast.⁴⁰

The types of criminals most likely to get into shootouts with the police or with other criminals are precisely those who are very aware of what is available on the black market. Although gun prohibitionists often link assault weapons to gang violence associated with the illegal drug trade, they miss the irony of their argument.⁴¹ They are, in effect, claiming that the very gangs operating the black market in drugs will somehow be restricted from acquiring high-capacity magazines by legislation limiting the manufacture and sale of such magazines. The claim—at least as it pertains to career criminals—is ludicrous. If gangsters can obtain all the cocaine they want, despite a century of prohibition, they will be able to obtain 15-round magazines.

What about the typical perpetrators of random mass attacks—mentally ill young men? They, too, could acquire magazines by theft, or on the black market. Given that 36 percent of American high school seniors illegally acquire and consume marijuana, it is clear that plenty of people who are not gangsters or career

criminals use the black market.⁴² Besides that, the truly high-capacity magazines, such as a 100-round drum, are very prone to malfunction. For example, during the 2012 mass murder at the movie theater in Aurora, Colorado, the murderer’s 100-round magazine jammed, allowing people to escape.⁴³ Hundred-round magazines are novelty items and are not standard for self-defense by civilians or police.

Advocates of a ban on standard-capacity magazines assert that while the attacker is changing the magazine, an intended victim might be able to subdue him—yet they cannot point to a single instance where this actually happened. They cite a trilogy of events that happened in Tucson, Arizona (2011), Aurora, Colorado (2012), and Newtown, Connecticut (2013). In fact, all of those events involved gun jams, not magazine changes. At Newtown, the criminal changed magazines seven times and no one escaped, but when his rifle jammed, people did escape. Clearing a gun jam takes much longer than changing a magazine. Fixing a gun jam involves all the steps of a magazine change (remove the empty magazine and insert a new one) plus all the intermediate steps of doing whatever is necessary to fix the jam. Similarly, in the Luby’s cafeteria murders (24 dead), the perpetrator replaced magazines multiple times. In the Virginia Tech murders (32 dead), the perpetrator changed magazines 17 times.⁴⁴

Advocates of banning magazines larger than 10 rounds call them “high capacity.” Again, this is incorrect. The standard manufacturer-supplied magazines for many handguns have capacities up to 20 rounds; for rifles, standard magazine capacity is up to 30. This has been true for decades. Indeed, magazines holding more than 10 rounds constitute 47 percent of all magazines sold in the United States in the last quarter century.⁴⁵ There are tens of millions of such magazines. A law that was really about high-capacity magazines would cover the after-market magazines of 75 or 100 rounds, which have minuscule market share, and which are not standard for any firearm. As of 2011, there were approximately 332 million

firearms in the United States not in military hands.⁴⁶ With the rough estimate that one-third of guns are handguns, most gun owners owning at least two magazines per gun, and 47 percent of magazines holding more than 10 rounds, the number of large magazines in the United States is at least in the tens of millions. When one also takes into account rifle magazines, the number of American magazines holding more than 10 rounds could be more than 100 million. That in itself is sufficient, according to the Supreme Court's *Heller* precedent, to make the ban unconstitutional.

ASSAULT WEAPONS

Gun-control advocates have been calling for a ban on "assault weapons" for more than 25 years, especially in the aftermath of a notorious crime, regardless of the facts. For example, the Charleston criminal used an ordinary handgun. Yet South Carolina state senator Marlon Kimpson immediately proposed a statewide ban on assault weapons.⁴⁷ Democratic presidential hopeful Martin O'Malley told his supporters that the Charleston crime was proof of a "national crisis" and that tougher gun laws were needed at the federal level, including a new ban on assault weapons.⁴⁸

Before examining the details of a ban, it should be noted at the outset that the term "assault weapons" is a political gimmick designed to foster confusion. The so-called "assault weapons" are *not* machine guns. They do *not* fire automatically. They fire only one bullet each time the trigger is pressed, just like every other ordinary firearm. They are *not* more powerful than other firearms. To the contrary, their ammunition is typically intermediate in power, less powerful than ammunition that is made for big-game hunting.

The Difference between Automatic and Semiautomatic

For an automatic firearm, commonly called a machine gun, if the shooter presses the trigger and holds it, the gun will fire continuously, automatically, until the ammunition

runs out.⁴⁹ Ever since the National Firearms Act of 1934, automatics have been heavily regulated by federal law. Anyone who wishes to acquire one must pay a \$200 federal transfer tax, must be fingerprinted and photographed, and must complete a months-long registration process with the ATF. In addition, the transferee must be granted written permission by local law enforcement. Once registered, the gun may not be taken out of state without advance written permission from the ATF.⁵⁰ Since 1986, the manufacture of new automatics for sale to persons other than government agents has been forbidden by federal law.⁵¹ Automatics in the United States have never been common; today the least expensive ones cost nearly ten thousand dollars.⁵²

The automatic firearm was invented in 1884 by Hiram Maxim. The early Maxim guns were heavy and bulky and required a two-man crew to operate.⁵³ In 1943, a new type of automatic was invented, the "assault rifle." The assault rifle is light enough for a soldier to carry for long periods of time. Soon, the assault rifle became a very common infantry weapon. Some examples include the U.S. Army M-16, the Soviet AK-47, and the Swiss militia SIG SG 550. The AK-47 can be found throughout the Third World, but there are only a few hundred in the United States, mostly belonging to firearms museums and wealthy collectors.

The definition of "assault rifle" is supplied by the Defense Intelligence Agency: "short, compact, selective-fire weapons that fire a cartridge intermediate in power between a submachine gun and rifle cartridges."⁵⁴ If you use the term "assault rifle," persons who are knowledgeable about firearms will know precisely what kinds of guns you are referring to. The definition of assault rifle has never changed because the definition describes particular objects in the real world—just like the definitions of "table" or "umbrella." In contrast, the definition of "assault weapon" has never been stable. The phrase is an epithet. It has been applied to double-barreled shotguns, to single-shot guns (guns whose ammunition capacity is only a single round), and to many

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other ordinary handguns, shotguns, and rifles.

The first assault-weapon ban was in California in 1989. It was created by legislative staffers who thumbed through a picture book of guns and decided which guns looked bad.⁵⁵ The result was an incoherent law which, among other things, outlawed certain firearms that do not exist since the staffers just copied the typographical errors from the book or associated a model by one manufacturer with another manufacturer whose name happened to appear on the same page.⁵⁶

Over the last quarter century, the definition kept shifting. The only consistency in what is dubbed an assault weapon seems to be how much gun prohibitionists believe they can outlaw given the political circumstances of the moment. One recent version is Sen. Dianne Feinstein’s (D-CA) bill introduced after the Sandy Hook murders; it bans more than 120 types of guns by name, and hundreds more by generic definitions.⁵⁷ Another is the pair of bills defeated in the January 2013 lame-duck session of the Illinois legislature, which would have outlawed most handguns by dubbing them assault weapons.⁵⁸ In Colorado, the legislature rejected a bill in 2013 that would have classified as assault weapons guns such as an old-fashioned double-barreled shotgun, or single shot rifles and shotguns, which can only hold one round of ammunition.⁵⁹

While the definitions of what to ban keep changing, a few things remain consistent: the definitions do *not* cover automatic firearms, such as genuine assault rifles. The definitions do *not* ban guns based on how fast they fire or how powerful they are. Instead, the definitions are based on the name of a gun, or on whether a firearm has certain accessories or components, such as a bayonet lug, or a grip in the “wrong” place. Most, but not all, of the guns which have been labeled assault weapons are semiautomatics. Many people who are unfamiliar with firearms think that a gun that is semiautomatic must be essentially the same as an automatic. That is incorrect.

Semiautomatic firearms were invented in the 1890s and have been common in the

United States ever since. Today, 82 percent of new American handguns are semiautomatics. A large share of rifles and shotguns are also semiautomatics.⁶⁰ Among the most popular semiautomatic firearms are the Colt 1911 pistol (named for the year it was invented, and still considered one of the best self-defense handguns); the Ruger 10/22 rifle (which fires the low-powered .22 Long Rifle cartridge, popular for small-game hunting or for target shooting at distances less than a hundred yards); the Remington 1100 shotgun (very popular for bird hunting and home defense); and the AR-15 rifle (popular for hunting game no larger than deer, for target shooting, and for home defense). All of these guns were invented in the mid-1960s or earlier. All of them have, at various times, been characterized as assault weapons.

Unlike an automatic firearm, a semiautomatic fires only one round of ammunition when the trigger is pressed. (A “round” is one unit of ammunition. For a rifle or handgun, a round has one bullet. For a shotgun, a single round contains multiple pellets of shot.) In some other countries, a semiautomatic is usually called a “self-loading” gun. This accurately describes what makes the gun “semi”-automatic. When the gun is fired, the projectile travels from the firing chamber, down the barrel, and out the muzzle. Left behind in the firing chamber is the now-empty case or shell that contained the bullet (or shot) and the gunpowder. In a semiautomatic, some of the energy from firing is used to eject the empty shell and load a fresh round of ammunition into the firing chamber. The gun is then ready to shoot again—when the user is ready to press the trigger.

In some other types of firearms, the user must perform some action in order to eject the empty shell and load the next round. This could be moving a bolt back and forth (bolt-action rifles); moving a lever down and then up (lever-action rifles); or pulling and then pushing a pump or slide (pump-action and slide-action rifles and shotguns). A revolver (the second-most popular type of handgun) does not require the user to take any additional action in order to fire the next round.⁶¹

The semiautomatic has two principle advantages over lever-action, bolt-action, slide-action, and pump-action guns. First, many hunters prefer it because the semiautomatic mechanism allows a faster second shot. The difference may be less than a second, but for a hunter, that can make all the difference. Second, the semiautomatic's use of gunpowder energy to eject the empty case and to load the next round substantially reduces how much recoil is felt by the shooter. This makes the gun much more comfortable to shoot, especially for beginners, or for persons without substantial upper-body strength. The reduced recoil makes the gun easier to keep on target for the next shot, which is important for hunting and target shooting, and very important for self-defense.

Semiautomatics also have a disadvantage. They are more prone to mechanical jams than are simpler, older types of firearms, such as revolvers. Contrary to the hype of anti-gun advocates and less-responsible journalists, there is no rate-of-fire difference between a so-called assault semiautomatic gun and any other semiautomatic gun.

Are Semiautomatics More Powerful Than Other Guns?

The power of a firearm is measured by the kinetic energy it delivers. Kinetic energy is based on the mass of the projectile and its velocity.⁶² So, a heavier bullet will have more kinetic energy than a lighter one moving at the same speed. A faster bullet will have more kinetic energy than a slower bullet of the same weight.⁶³ How much kinetic energy a gun delivers has nothing to do with whether it is a semiautomatic, a lever action, a bolt action, or a revolver. What matters is the weight of the bullet, how much gunpowder is in the particular round of ammunition, and the length of the barrel.⁶⁴ None of this has anything to do with whether the gun is a semiautomatic.

With respect to the rifles that some people call "assault weapons," semiautomatic rifles tend to be intermediate in power as far as rifles go. Consider the AR-15 rifle, a variant of the military's M-16, in its most common cali-

ber, the .223. The bullet is only slightly wider than the puny .22 bullet, but it is longer and heavier. Using typical ammunition, an AR-15 in .223 would have 1,395 foot-pounds of kinetic energy.⁶⁵ That is more than a tiny rifle cartridge such as the .17 Remington, which might carry 801 foot-pounds of kinetic energy. In contrast, a big-game cartridge, like the .444 Marlin, might have 3,040 foot-pounds of kinetic energy.⁶⁶ That is why rifles like the AR-15 in their most common calibers are suitable, and often used, for hunting small to medium animals, such as rabbits or deer, but are not suitable for big game, such as elk or moose.⁶⁷

Many of the ever-changing group of guns which are labeled assault weapons use detachable magazines (a box with an internal spring) to hold their ammunition. This is a characteristic shared by many other firearms, including many non-semiautomatic rifles (particularly bolt actions), and by the large majority of handguns. Whatever the merits of restricting magazine size (discussed above), the ammunition capacity of a firearm depends on the size of the detachable magazine. If one wants to control magazine size, there is no point in banning certain guns that can use detachable magazines, while not banning other guns that also use detachable magazines.

Bans by Name

Rather than banning guns based on rate of fire, or firepower, the various legislative attempts to define an assault weapon have taken two approaches: banning guns by name and banning guns according to certain features.

After a quarter century of legislative attempts to define assault weapon, the flagship bill for prohibitionists, drafted by Senator Feinstein, still relies on banning more than 120 guns by name. That in itself demonstrates that assault weapons prohibitions are not about guns that are more dangerous than other guns. After all, if a named gun really has physical characteristics that make it more dangerous than other guns, then legislators ought to be able to describe those characteristics and ban guns (regardless of name) that

“The power of a firearm is measured by the kinetic energy it delivers.”

“It is difficult to see how something that makes a gun more accurate makes it so bad that it must be banned.”

have those supposedly dangerous characteristics.

Bans by Features

An alternative approach to defining assault weapon has been to prohibit guns that have one or more items from a list of features. The problem here is that the listed features have nothing to do with a gun's rate of fire, its ammunition capacity, or its firepower. Here are some of the various items that Senator Feinstein finds objectionable:

BAYONET LUGS. A bayonet lug gives a gun a military appearance, but it has nothing to do with criminal activity. Drive-by bayonetings are not a problem in this country.

ATTACHMENTS FOR ROCKET LAUNCHERS AND GRENADE LAUNCHERS. Since nobody makes guns for the civilian market that have such features, these bans would affect nothing.⁶⁸

FOLDING OR TELESCOPING STOCKS. Telescoping stocks on long guns are very popular because they allow shooters to adjust the gun to their own size and build, to different types of clothing, or to their shooting position. Folding stocks also make a rifle or shotgun much easier to carry in a backpack while hunting or camping. Even with a folding stock, the long gun is still far larger, and less concealable, than a handgun.

GRIPS. The Feinstein bill outlaws any long gun that has a grip, or anything which can function as a grip. In the Rambo movie series, Sylvester Stallone would spray fire from his hip with an automatic rifle, which had a pistol grip. In real life, a grip helps a responsible shooter stabilize a semiautomatic or other rifle while holding the stock against his shoulder. It is particularly useful in hunting where the shooter will not have sandbags or a benchrest, or perhaps anything else, on which to rest the forward part of the rifle. Accurate hunting is humane hunting. And should a long gun be needed for self-defense, accuracy can save the victim's life.

Some gun-control advocates seem to oppose firearms accuracy. On the PBS *NewsHour*, Josh Horowitz, an employee of the Coalition to Stop Gun Violence, said that grips should be

banned because they prevent “muzzle rise” and thereby allow the shooter to stay on target.⁶⁹ Well, yes, a grip does help stabilize the gun so that a second shot (whether at a deer or a violent attacker) will go where the first shot went. Horowitz seemed to be saying that guns that are easy to fire accurately should be banned. Guns that are more accurate are better for all the constitutionally protected uses of firearms, including self-defense, hunting, and target shooting. To single them out for prohibition is misguided.

BARREL COVERS. For long guns that do not have a forward grip, the user may stabilize the firearm by holding the barrel with his nondominant hand. A barrel cover or shroud protects the user's hand. When a gun is fired repeatedly, the barrel can get very hot. This is not an issue in deer hunting (where no more than a few shots will be fired in a day), but it is a problem with other kinds of hunting, and it is a particular problem in target shooting, where dozens or hundreds of shots will be fired in a single session.⁷⁰

THREADED BARREL FOR SAFETY ATTACHMENTS. Threading at the end of a gun barrel can be used to attach muzzle brakes or sound suppressors.

When a round is fired through a gun barrel, the recoil from the shot will move the barrel off target, especially for a second, follow-up shot. Muzzle brakes reduce recoil and keep the gun on target. It is difficult to see how something that makes a gun more accurate makes it so bad that it must be banned. A threaded barrel can also be used to attach a sound suppressor. Suppressors are legal in the U.S.—although buying one requires the same severe process as buying a machine gun. They are sometimes—inaccurately—called silencers. Suppressors typically reduce a gunshot's noise by about 15–20 decibels, which still leaves the gunshot louder than a chainsaw.⁷¹

James Bond and some other movies give the false impression that a gun with a silencer is nearly silent and is only used by professional assassins. Actually, sound suppressors are typically used by people who want to protect their

hearing or to reduce the noise heard by people living close to a shooting range. Many firearms instructors choose suppressors in order to help new shooters avoid the “flinch” that many novices display because of shooting noise.

The bans on guns with grips, folding stocks, barrel covers, or threads focus exclusively on the relatively minor ways in which a feature might help a criminal and ignore the feature’s utility for sports and self-defense. The reason that manufacturers include those features on firearms is because millions of law-abiding gun owners want them for entirely legitimate purposes.

Would a Ban be Beneficial?

Connecticut banned so-called assault weapons in 1993.⁷² The Bushmaster rifle used by the Sandy Hook murderer, Adam Lanza, was not an assault weapon under Connecticut law. Nor was it an assault weapon under the federal ban that was in place between 1994 and 2004.⁷³ Feinstein’s most recent proposal would cover that particular model of Bushmaster, but it would allow Bushmaster (or any other company) to manufacture other semiautomatic rifles, using a different name, which fire just as fast, and which fire equally powerful bullets.

In order to pass the 1994 federal ban, proponents had to accept two legislative amendments. First, the ban would sunset after 10 years. Second, the Department of Justice would commission a study of the ban’s effectiveness. The study would then provide members of Congress with information to help them decide whether to renew the ban or let it expire.

Attorney General Janet Reno’s staff selected the researchers, who produced their final report in 2004, which was published by the Department of Justice’s research arm, the National Institute of Justice. It concludes: “we cannot clearly credit the ban with any of the nation’s recent drop in gun violence. . . . Should it be renewed, the ban’s effects on gun violence are likely to be small at best and perhaps too small for reliable measurement.”⁷⁴ As

the report noted, assault weapons “were used in only a small fraction of gun crimes prior to the ban: about 2% according to most studies and no more than 8%.”⁷⁵ Most of the firearms that were used in crime were handguns, not rifles. Recall that “assault weapons” are an arbitrarily defined set of guns. Thus, criminals, to the degree that the ban affected them at all, could easily substitute other guns for so-called assault weapons.

With respect to the ban’s impact on crime, the study said that “the share of crimes involving” so-called assault weapons declined, due “primarily to a reduction in the use of assault pistols,” but that that decline “was offset throughout at least the late 1990s by steady or rising use of other guns equipped with” magazines holding more than 10 rounds.⁷⁶ In other words, criminals easily substituted some guns for others.⁷⁷

What about state-level assault-weapons bans? As noted above, Connecticut has had such a ban since 1993. Economist John Lott examined data for the five states with assault-weapon bans in his 2003 book, *The Bias against Guns*. Controlling for sociological variables, and testing the five states with bans against the other 45 states, he found no evidence of a reduction in crime. To the contrary, the bans were associated with increased crime in some categories.⁷⁸ Whether the adverse effect Lott reports is a phantom of statistical analyses or random factors, the state-level data do not support the claim that assault weapons bans reduced crime rates. The National Institute of Justice study, discussed above, also examined state and local laws, and found no statistically discernable reductions in crime or its severity.

Regarding mass murders in particular, in 2012 *Mother Jones* examined 62 mass shootings since 1982, finding that 35 of the 142 guns used were designated as assault weapons.⁷⁹ The *Mother Jones* study has been criticized for its selective and inconsistent decisions about which incidents to include. To take one example of an incident not involving an “assault weapon” that *Mother Jones* did not include, a man murdered 22 people at a Texas cafeteria

“The National Institute of Justice study examined state-level assault-weapons bans and found no statistically discernable reductions in crime.”

“Tragically, in order to comply with laws against concealed carry, Suzanna Hupp left her own handgun in her car before entering that cafeteria, rendering her defenseless as the attacker murdered her parents and many others.”

in 1991 using a pair of ordinary semiautomatic pistols. He reloaded the guns several times.⁸⁰ Tragically, in order to comply with laws against concealed carry, Suzanna Hupp left her own handgun in her car before entering that cafeteria, rendering her defenseless as the attacker murdered her parents and many others, in circumstances when she had a clear, close shot at him while he was distracted.⁸¹ And recall that the most deadly U.S. firearms mass murder perpetrated by a single individual was at Virginia Tech University, where the perpetrator used a pair of ordinary handguns, not assault weapons, to murder 35 people.⁸²

CONFISCATION AND REGISTRATION

The most extreme form of gun control is confiscation. The Brady Campaign, and other gun-control groups, supported a 1976 Massachusetts ballot initiative for handgun confiscation.⁸³ Although the proposal was rejected by 69 percent of the voters, confiscation continues to surface whenever gun-control advocates believe that it might be politically viable.⁸⁴ For example, after the December 2012 murders in Newtown, Connecticut, Governor Dannel Malloy (D-CT) created the Sandy Hook Commission to make recommendations to enhance public safety. That commission released its final report in March 2015. Recommendation No. 10 would ban the possession of “*any* firearm capable of firing more than 10 rounds without reloading.”⁸⁵ If such a ban were in effect all across the country, it would cover tens of millions of guns already in the homes of gun owners. To avoid the criminal penalty for possession, gun owners would have to surrender their arms to the government. Malloy hedged his response to the commission’s recommendation. He said there was no appetite in the legislature for such drastic proposals “at the moment.”⁸⁶

Gun Controls in Great Britain

President Obama and other gun control supporters have urged the United States to follow the policies of Great Britain and Aus-

tralia, with mass confiscation of firearms.⁸⁷ Australia confiscated all semiautomatic rifles, all semiautomatic shotguns, all pump-action shotguns, and all handguns above .38 caliber. Great Britain confiscated virtually all handguns, and all semiautomatic and pump-action rifles above .22 caliber. Even nonlethal defensive arms, such as pepper sprays or stun guns, are prohibited. The President’s advocacy of confiscation helps explain why constitutional-rights advocates resist the registration of guns and gun owners, since registration lists have been used for confiscation.

Great Britain’s confiscation of semiautomatic rifles took place in the wake of a mass murder in 1987. The culprit murdered 16 people and wounded 14 more in an eight-hour killing spree in the small town of Hungerford.⁸⁸ Because it took a long time for anyone with a gun to arrive to stop the killer, the rate of fire from his particular guns was irrelevant. However, the British government chose to ban all semiautomatic rifles, since those had been some of the guns used by the killer.

Later, in 1998, after a known pedophile used a handgun to murder kindergarten children in Dunblane, Scotland, Parliament banned handguns. As a result, the Gun Control Network, a prohibition advocacy group, enthused that “British controls over firearms are regarded as ‘the gold standard’ in many countries.” According to the Gun Control Network’s spokesperson Gill Marshall-Andrews, “the fact that we have a gold standard is something to be proud of.”⁸⁹

Did the British ban reduce mass murders? Before and after the bans, such crimes were so rare in Great Britain that it is hard to say definitively. Great Britain is in some ways safer, and in more ways more dangerous, than the United States. The UK homicide rate tends to fluctuate between one and two per 100,000 population.⁹⁰ The U.S. homicide rate is 4.7 (as of 2011). The difference is not entirely due to guns, since the non-gun U.S. homicide rate is consistently higher than the UK total homicide rate.

The actual rates of criminal homicides in the two countries are somewhat closer than

the above numbers would indicate. The U.S. rate is based on initial reports of homicides, and includes self-defense killings (about 7–12 percent of the total); so the U.S. rate would be about half a point lower if only criminal homicides were counted.⁹¹

The statistics from England and Wales are based only on final dispositions, so an unsolved murder, or a murder that is pleaded down to a lesser offense, is not counted as a homicide. In addition, multiple murders are counted as only a single homicide for Scottish statistics.⁹² Even so, it is true that the U.S. homicide rate is higher than in the UK

In other categories of major violent crime, the UK is generally worse than the United States. In 2010, the assault rate per 100,000 population was 250.9 in the United States; 664.4 in England and Wales; 1449.7 in Scotland; and 80.6 in Northern Ireland.⁹³

For robbery, the results are closer, although the UK as a whole is still worse. The U.S. rate was 115.3; England and Wales had 137.9; Northern Ireland 75.0; and Scotland 49.

Burglary rates were: United States 695.9; England and Wales, 946.1; Northern Ireland, 658.7; and Scotland, 479.1. So the overall UK burglary rate is significantly worse (considering that England and Wales contain 89 percent of the UK population, and the burglary rate is more than one-third higher than in the United States). More important, the manner in which burglaries take place in the UK is much worse.

In the United States, only a fairly small percentage of home burglaries take place when the occupants are home, but in Great Britain, about 59 percent do.⁹⁴ In surveys, American burglars say that they avoid occupied homes because of the risk of getting shot.⁹⁵

English burglars prefer occupied homes because there will be wallets and purses with cash, which do not have to be fenced at a discount. British criminals have little risk of confronting a victim who possesses a firearm. Even the small percentage of British homeowners who have a legal gun would not be able to unlock the firearm from one safe, and then unlock the ammunition from another safe (as

required by law), in time to use the gun against a criminal intruder.⁹⁶ It should hardly be surprising, then, that Britain has a much higher rate of home-invasion burglaries than does the United States.

If success is measured by a reduction in handgun crime, then the Great Britain handgun confiscation was a failure. A July 2001 study from King's College London's Centre for Defense Studies found that handgun-related crime *increased* by nearly 40 percent in the two years following implementation of the handgun ban.

As the King's College report noted, with passage of the Firearms Act of 1997, "it was confidently assumed that the new legislation effectively banning handguns would have the direct effect of reducing certain types of violent crime by reducing access to weapons."⁹⁷ The news media proclaimed that the "world's toughest laws will help to keep weapons off the streets."⁹⁸ Yet faster than British gun owners could surrender their previously registered handguns for destruction, guns began flooding into Great Britain from the international black market, driven by the demands of the country's rapidly developing criminal gun culture.⁹⁹ By 2009, Great Britain's handgun crime rate had doubled from the pre-ban levels.¹⁰⁰

Great Britain was a much safer society in the early 20th century, when the nation had virtually no gun crime and virtually no gun control. Now it has much more of both.

Registration and Confiscation in the United States

Mass prohibitions of guns or gun components or accessories invite a repetition of the catastrophe of alcohol prohibition. Just as alcohol prohibition in the 1920s spawned vast increases in state power and vast infringements of the Bill of Rights, another domestic war against the millions of Americans who are determined to possess a product that is very important to them is almost certain to cause significant erosion of constitutional freedom and traditional liberty.¹⁰¹ Legal and customary protections against unreasonable search and

“In surveys, American burglars say that they avoid occupied homes because of the risk of getting shot.”

“When Canada tried to impose universal gun registration, the result was a fiasco.”

seizure and against invasions of privacy would all suffer.¹⁰²

Americans are well aware that gun registration can be a tool for gun confiscation, and not just in other countries. In New York City during the mid-1960s, street crime was rising rapidly. So as a gesture to “do something,” the New York City Council and Mayor John Lindsay (R) enacted long-gun registration. The per gun fee was low, just a few dollars.¹⁰³ Registration never did solve crimes, and crime continued to worsen. So in 1991, with the city becoming increasingly unlivable, Mayor David Dinkins (D) made a grand gesture of his own, convincing the City Council to enact a ban on so-called assault weapons.¹⁰⁴ Then, the New York police used the registration lists to conduct home inspections of individuals whose registered guns had been outlawed. The police said they were ensuring that the registered guns had been moved out of the city, or had already been surrendered to the government.¹⁰⁵

In California, in 2013, only strenuous opposition finally led to the defeat of a proposed law, AB 174, which, before it was amended to cover a different subject, would have confiscated grandfathered assault weapons that had previously been registered in compliance with California state law.

Precisely because of concerns about confiscation, many Americans will not obey laws that would retroactively require them to register their guns. During the first phase of the assault-weapon panic, in 1989 and 1990, several states and cities enacted bans and allowed grandfathered owners to keep the guns legally by registering them. The vast majority of gun owners refused to register.¹⁰⁶

Gun-prohibition advocates are quite correct in characterizing registration as an important step on the way to confiscation.¹⁰⁷ That is why Congress has enacted three separate laws to prohibit federal gun registration.¹⁰⁸ Obama apparently hopes to reverse federal policy with his euphemistic call for a national database of guns, and his imposition of registration for many long gun sales in the southwest border states.¹⁰⁹

Yet when Canada tried to impose universal gun registration the result was a fiasco. The registration system cost a hundred times more than promised. Non-compliance was at least 50 percent, and the registration system proved almost entirely useless in fighting crime. In 2012, the Canadian government repealed the registration law and ordered all the registration records destroyed.¹¹⁰

New Zealand’s Arms Act of 1983, enacted at the request of the police, abolished the registration of rifles and shotguns. Rifle registration had been the law since 1920, and shotgun registration since 1968. The New Zealand Police explained that long-gun registration was expensive and impractical, and that the money could be better spent on other police work. The New Zealand Police pointed out that the database management is an enormously difficult and expensive task, that the long-gun registration database was a mess, and that it yielded virtually nothing of value to the police.¹¹¹ Although some gun-control advocates began pushing in 1997 to revive the registry—since computers would supposedly make it work this time—the plan was rejected after several years of extensive debate and analysis.¹¹²

As for registration in the United States, the largest, most detailed comparative study of the effects of various firearms laws was conducted by Florida State University criminologist Gary Kleck, and published in his 1991 book *Point Blank: Guns and Violence in America*. His book was awarded the highest honor by the American Society of Criminology, the Michael Hindelang Book Award, “for the greatest contribution to criminology in a three-year period.” The Kleck study examined many years of crime data for the 75 largest cities in the United States. The study controlled for numerous variables such as poverty, race, and arrest rates. Kleck’s study found no crime-reducing benefits from gun registration.¹¹³ In 2013, at the request of the Canadian Department of Justice, Kleck prepared a report that synthesized all prior research in the United States and Canada. He found registration to be of no benefit in reducing any type of firearms misuse.¹¹⁴

WHAT CAN BE DONE?

When policymakers consider steps to address the problem of mass homicide, they should remember that highly publicized and emotionally wrenching events can distort our understanding of risk and what ought to be done about it. Airplane disasters, for example, get a lot of media coverage, but safety experts remind us that one is more likely to get injured in an automobile accident on the way to the airport than injured in an actual airline crash.¹¹⁵ We should similarly acknowledge that mass murders are rare in the United States. The risk of dying in a mass murder is roughly the same as being killed by lightning.¹¹⁶

And because favorable trends are not considered newsworthy, many people are unaware of some very positive developments. Since 1980, the U.S. homicide rate has fallen by over half, from more than 10 victims per 100,000 population annually, to under 5 today.¹¹⁷ Firearm accidents involving minors have also dropped. For children (age 0 to 14), the fatal-gun accident rate has declined by 91 percent since 1950. The annual number of such accidents has plunged from its 1967 high of 598. As of 2013, there were only 69 such accidents.¹¹⁸

These favorable trends have taken place during a period when American gun ownership has soared. In 1964, when the homicide rate was about the same as it is now, per capita gun ownership was only .45—fewer than one gun per two Americans. In 1982, there were about .77 guns per capita (about 3 guns per 4 Americans). By 1994, that had risen to .91 (9 guns per 10 Americans). By 2010, there were slightly more guns in America than Americans.¹¹⁹

It would be inaccurate to claim that the entire reason that crime has declined in recent decades is because Americans have so many more guns, but it would be accurate to say that having more guns is not associated with more crime. If anything, just the opposite is true. Policies that seek to stigmatize or criminalize gun ownership per se (such as a universal background check law that criminalizes loaning a gun to one's sister, as discussed above) have little to do with public safety, except to undermine it.

We must also recognize that mass murderers often spend months planning their crimes. These are generally not crimes of passion that are committed in the heat of the moment. Dylan Klebold and Eric Harris spent several months plotting their 1999 attack at Columbine High School. Dylann Roof allegedly plotted for six months prior to his attack in Charleston, South Carolina. Adam Lanza attempted to destroy the evidence of his plan to attack Sandy Hook students, but investigators uncovered the extensive research he had done on mass murders in the months leading up to that incident.

While the nature of these crimes makes absolute prevention impossible, there are, nevertheless, certain policy areas that deserve consideration. A large proportion of mass murderers—and about one-sixth of “ordinary” murderers—are mentally ill.¹²⁰ Better care, treatment, and stronger laws for civil commitment could prevent some of these crimes. The Tucson murderer, Jared Loughner, was expelled from Pima Community College because he was accurately found to be dangerously mentally ill; unfortunately, there was no follow-up. The Aurora theater murderer, James Holmes, was reported by his psychiatrist to the University of Colorado Threat Assessment Team because of his expressed thoughts about committing a mass murder. But once Holmes withdrew from the university, there was no follow-up. Newtown murderer Adam Lanza's mother was aware of his anti-social malignancy and recklessly left her firearms accessible to him.¹²¹

There are, of course, competing interests involved when debating the curtailment of individual rights based on mental-health screening. Any involuntary commitment must respect the Constitution, which, as applied by the Supreme Court, requires proof by “clear and convincing evidence” that the individual is a danger to himself or others in order for the person to be committed.¹²² Notwithstanding some similar traits among mass shooters— young, male, alienated, intelligent—it's important to remember that those traits are present

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“Over the last 25 years, there have been at least 10 cases in which armed persons have stopped incipient mass murder.”

in a great many young men who never harm anyone. It is also important not to stigmatize mental health treatment to such an extent that at-risk people, along with their relatives and friends, refuse to seek help for fear of the consequences.

These are nontrivial considerations that must be weighed before any expansion of the civil commitment system. Better voluntary mental health treatment is expensive in the short run, but pays for itself in the long run through reduced criminal justice and imprisonment costs, not to mention reduced costs to victims.¹²³

Unfortunately, misguided laws in recent years have made certain buildings vulnerable to sociopaths who, like Adam Lanza, aim to kill as many people as possible before there is effective resistance. By state law, Sandy Hook Elementary School was a gun-free zone: the state forbids carrying guns at schools, even by responsible adults who have been issued a permit based on the government's determination that they have the good character and training to safely carry a firearm throughout the state.¹²⁴ Thus, law-abiding adults were prohibited from protecting the children in their care, while an armed criminal could enter the school easily.

Over the last 25 years, there have been at least 10 cases in which armed persons have stopped incipient mass murder: a Shoney's restaurant in Alabama (1991); Pearl High School in Mississippi (1997); a middle school dance in Edinboro, Pennsylvania (1998); Appalachian School of Law in Virginia (2002); Trolley Square Mall in Salt Lake City (2007); New Life Church in Colorado (2007); Players Bar and Grill in Nevada (2008); Sullivan Central High School in Tennessee (2010); Clackamas Mall in Oregon (2012; three days before Newtown); Mayan Palace Theater in San Antonio (2012; three days after Newtown); and Sister Marie Lenahan Wellness Center in Darby, Pennsylvania (2014).¹²⁵

Gun prohibitionists insist that armed teachers, or even armed school guards, won't make a difference, but in the real world, they have—even at the Columbine shooting, where

the armed school resource officer (a sheriff's deputy, in that case) was in the parking lot when the first shots were fired. The officer fired two long-distance shots and drove the killers off the school patio, saving the lives of some of the wounded students there. Unfortunately, however, the officer failed to pursue the killers into the building—perhaps due to a now-abandoned law enforcement doctrine of waiting for the SWAT team to arrive.

The contrasts are striking and tragic. The attempted massacre at New Life Church in Colorado Springs was stopped by a private citizen with a gun; the massacre at South Carolina's Emanuel AME wasn't. The mass murder at Pearl High School was stopped by a private citizen (the vice principal) with a gun; the mass murder at Newtown's elementary school wasn't stopped until the police arrived. The shootings at Appalachian Law School ended when private citizens (armed students) subdued the gunman; the shootings at Virginia Tech continued until the police arrived. More licensed-carry laws that reduce the number of *pretend* gun-free zones are an effective way to save lives.¹²⁶

CONCLUSION

Firearms in the hands of law-abiding citizens enhance public safety. Firearms in the wrong hands endanger everyone. Responsible firearms policies focus on thwarting dangerous people and do not attempt to infringe the constitutional rights of good persons. Background checks on firearms sales can be improved by including more records on persons who have been adjudicated to be so severely mentally ill that they are a genuine threat.

Extending federal gun control to private intrastate sales between individuals—and to firearms loans among friends and family—is constitutionally dubious, and imposes severe burdens for no practical benefit. Such a system is futile without registration of all firearms. Gun owners have justifiably resisted gun registration because it has facilitated gun confiscation in the United States and other nations.

It is false to claim that common firearms are “assault weapons” and it is false to claim that common magazines are high capacity. Outlawing standard firearms and their magazines deprives innocent victims of the arms that may be best-suited for their personal defense. Sensational crimes are often used to push poorly conceived laws which criminalize peaceable gun owners. The most effective paths to preventing mass shootings are improving access to mental care and removing impediments to lawful self-defense and defense of others.

NOTES

The author wishes to thank Ari Armstrong for his research assistance in the preparation of this paper.

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7. Quoted in Ed Komenda and Jackie Valley, “What Now? Three Mass Shootings in a Week Leave Communities Wondering How to React,” *Las Vegas Sun*, June 15, 2014.
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13. Larry Buchanan, Josh Keller, Richard A. O’Connell Jr., and Daniel Victor, “How They Got Their Guns,” *New York Times*, October 3, 2015, <http://www.nytimes.com/interactive/2015/10/03/us/how-mass-shooters-got-their-guns.html?action=click&contentCollection=U.S.&module=MostPopularFB&version=Full®ion=Marginalia&src=me&pgtype=article>.
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- the Claim that 40 Percent of Gun Sales Lack Background Checks,” *Washington Post*, April 2, 2013, http://www.washingtonpost.com/blogs/fact-checker/post/obamas-continued-use-of-the-claim-that-40-percent-of-gun-sales-lack-background-checks/2013/04/01/002e06ce-9bof-11e2-a941-a19bce7af755_blog.html. Note also Glenn Kessler, “Clinton’s Claim that 40 Percent of Guns Are Sold at Gun Shows and Over the Internet,” *Washington Post*, October 16, 2015.
15. 18 U.S.C. § 922(d).
16. Greg Ridgeway, *Summary of Select Firearm Violence Prevention Strategies*, National Institute of Justice, January 4, 2013, <http://www.nraila.org/media/10883516/nij-gun-policy-memo.pdf>.
17. 18 U.S.C. § 922(b)(5), 923(g)(1)(A).
18. 18 U.S.C. § 923(g)(1).
19. 18 U.S.C. §§ 922(b)(5), 923(g)(1)(A).
20. See Adam Edelman, “NY SAFE Act Weapons Registry Numbers Released,” *New York Daily News*, June 23, 2015. (Low assault-weapon registration stats suggest low compliance with SAFE Act gun control law.) Canadian gun registration is discussed in more detail below.
21. 521 U.S. 898, 938 (1997) (Thomas, J., concurring).
22. *District of Columbia v. Heller*, 554 U.S. 570, 626–27 (2008).
23. 18 U.S.C. § 921(a)(21)(D).
24. 18 U.S.C. §§ 922(a), 924.
25. 18 U.S.C. § 922(t).
26. “Recordkeeping and Background Check Procedures for Facilitation of Private Party Firearm Transfers,” ATF Proc. 2013-1 (March 15, 2013), <https://www.atf.gov/file/4961/download>.
27. Mandatory sentences are specified in 18 U.S.C. § 924.
28. David B. Kopel, “Background Checks for Firearms Sales and Loans: Law, History, and Policy,” in *Harvard Journal on Legislation* 53 (forthcoming, 2015), <http://ssrn.com/abstract=2665432>.
29. Safe Communities, Safe Schools Act of 2013, S. 649, Section 122: Firearm Transfers, 113th Cong. (2013).
30. *Ibid.*
31. *Lawrence v. Texas*, 539 U.S. 558 (2003) (law against consensual sex by same-sex adults had no legitimate purpose).
32. “Los Angeles Passes Law Banning Large-Capacity Gun Magazines,” *New York Times*, July 30, 2015.
33. The New York law originally banned magazines over 7 rounds. But in March 2013, the New York legislature “suspended” the 7-round limit, replacing it with a 10-round limit, since there are many guns for which no magazines of 7 rounds or fewer are manufactured. The law still forbids the purchase of magazines holding more than 10 rounds, and requires that magazines that hold more than 7 rounds not be loaded with more than 7 except at target ranges.
34. A clip is also a device for holding ammunition. A clip is basically a rectangular strip that holds the base of several rounds of ammunition in a line. Clips were most typically used for some rifles from the 1940s. Some people use the word “clip” incorrectly when what they mean is “magazine.”
35. Public Safety and Recreational Firearms Use Protection Act, Pub. L. No. 103-322, Title XI, Subtitle A, § 110105(2), 108 Stat. 1996, 2000 (1994) (Sunset Sept. 2004).
36. State of Arizona, House of Representatives, House Bill 2640 (2012), amending Ariz. Rev. Stats. § 17-231.
37. See Clayton E. Cramer, “High-Capacity-Mag-

azine Bans,” *National Review*, December 19, 2012, <http://www.nationalreview.com/articles/336006/high-capacity-magazine-bans-clayton-e-cramer>.

38. For a detailed explanation of the problem of magazine loading under stress, see the amicus brief for the International Law Enforcement Educators and Trainers Association and the Independence Institute in *Peruta v. San Diego*, no. 10-56971 (9th Cir., May 11, 2011), <http://davekopel.org/Briefs/Peruta/Intl-Law-Enforcement-Educators-and-Trainers.pdf>.

39. See Bob Parker, “How the North Hollywood Shootout Changed Patrol Arsenals,” February 28, 2012, <http://www.policemag.com/channel/weapons/articles/2012/02/how-the-north-hollywood-shootout-changed-patrol-rifles.aspx>.

40. “The failure to reduce LCM [large capacity magazines] use has likely been due to the immense stock of exempted pre-ban magazines, which has been enhanced by recent imports,” the 2004 study speculates. The study notes that millions of assault weapons and large-capacity magazines were “manufactured prior to the ban’s effective date.” Christopher S. Koper, Daniel J. Woods, and Jeffrey A. Roth, “An Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence, 1994–2003: Report to the National Institute of Justice, United States Department of Justice,” University of Pennsylvania (June 2004), <https://www.ncjrs.gov/pdffiles1/nij/grants/204431.pdf>, p. 2.

41. Josh Sugarmann, “Drug Traffickers, Paramilitary Groups . . .,” in *Assault Weapons and Accessories in America*, Violence Policy Center, 1988, <http://www.vpc.org/studies/awadrug.htm>.

42. “Third of High School Seniors Take Marijuana,” *News Medical*, December, 22, 2012, <http://www.news-medical.net/news/20121222/Third-of-high-school-seniors-take-marijuana.aspx>.

43. Alicia A. Caldwell, “James Holmes’ Gun Jammed During Aurora Attack, Official Says,” *Associated Press*, July 22, 2012.

44. Will Grant, “Active Shooter Response: Lessons for Experts,” *Blackwater*, January 6, 2013, <http://blackwaterusa.com/active-shooter-response-lessons-from-experts>.

45. *Fyock v. City of Sunnyvale*, 25 F. Supp. 3d 1267, 1275 (N.D. Cal. 2014) (noting evidence that “magazines having a capacity to accept more than ten rounds make up approximately 47 percent of all magazines owned”).

46. The figure is based on over half a century of manufacturing, import, and export data recorded by the Bureau of Alcohol, Tobacco, and Firearms. The table with the annual figures is available online in chapter 12 of Nicholas J. Johnson, David B. Kopel, George Mocsary, and Michael P. O’Shea, *Firearms Law and the Second Amendment* (New York: Aspen Publishers, 2013). Chapters 12–15 are available at www.firearmsregulation.org. An earlier version of this table is available in the amicus brief of the International Law Enforcement Educators and Trainers Association, et al., in *District of Columbia v. Heller*, 554 U.S. 570 (2008), pp. App. 13–15, <http://davekopel.org/Briefs/07-29obsacreprintIntlLawEnforcementEduc&Trainers.pdf>. However, the numbers in the brief are too low because they omitted firearms imports in certain years.

47. Julie Calhoun, “S.C. Senator Pushing to Strengthen Gun Laws,” WRDW.com, August 18, 2015, <http://www.wrdw.com/home/headlines/South-Carolina-Senator-pushing-to-strengthen-gun-laws-322143841.html>.

48. John Wagner, “Martin O’Malley: ‘I’m Pissed’ at Lack of Action on Gun Control,” *Washington Post*, June 19, 2015, <http://www.washingtonpost.com/news/post-politics/wp/2015/06/19/omalley-im-pissed-at-lack-of-action-on-gun-control/>.

49. Some machine guns are, or may be, set to fire a certain number of rounds with one pull of the trigger. Tri-burst (three rounds) is common for many new machine guns.

50. 26 U.S.C. §§ 5801–02, 5811–12, 5821–22, 5841–54, 5861; 27 Code of Federal Regulations 478–79;

Bureau of Alcohol, Tobacco, and Firearms, *National Firearms Act Handbook* (ATF E-Publication 5320.8; revised April 2009), <https://www.atf.gov/file/58251/download>.

51. 18 U.S.C. § 922(o); “National Firearms Act (NFA)—Machine Guns,” <http://www.atf.gov/firearms/faq/national-firearms-act-machine-guns.html>.

52. Bureau of Justice Statistics, *Selected Findings: Guns Used in Crime* 4 (July 1995), <http://www.bjs.gov/content/pub/pdf/GUIC.PDF> (there are 240,000 registered machineguns); Gary Kleck, *Targeting Guns: Firearms and Their Control* (Hawthorne, NY: Aldine de Gruyter, 1997), p. 108 (half of registered machine guns are privately owned) (citing BATF, *Statistics Listing of Registered Weapons*, April 19, 1989). Because the manufacture of new machine guns for sale to ordinary citizens (as opposed to government agents) was banned on May 19, 1986, and because pre-ban machine guns are therefore very valuable (so owners have every incentive to keep them in working order), the 1995 data about private machine guns are likely still valid (there are about 120,000 legally registered ones).

53. Dolf L. Goldsmith, *The Devil's Paintbrush: Sir Hiram Maxim's Gun*, 2nd ed. (Toronto: Collector Grade Publications, 1993).

54. See David B. Kopel, *Guns: Who Should Have Them?* (New York: Prometheus Books, 1995), p. 162; *Defense Intelligence Agency, Small Arms Identification and Operation Guide—Eurasian Communist Countries* (Washington: Government Printing Office, 1988), p. 105.

55. State of Florida, Commission on Assault Weapons, Report of May 18, 1990 (summary of March 18, 1990 meeting), p. 3. (Commission member stating that California “chose those weapons from a book of pictures.”)

56. For example, the 1989 California statute outlawed the Heckler and Koch “H-93,” the “SIG PE-57,” and the Gilbert Equipment Company

“Striker 12,” none of which have ever existed. Also banned was the “Encom CM-55,” which is not a semiautomatic; it is a single-shot gun with a total ammunition capacity of one.

57. Assault Weapons Ban of 2013, S. 150, 113th Congress (2013).

58. In the 97th session of the Illinois General Assembly, see House Bill 0815, House Bill 263, and Amendment #1 to Senate Bill 2899 (amendment by Rep. Eddie Acevedo).

59. Colorado Senate Bill 197 (by Sen. President John Morse); David Kopel, Testimony on SB 197 before Senate Judiciary Committee, March 4, 2013, <http://youtu.be/FpzbS7XgfB8>.

60. See the 2011 manufacturing data from the Bureau of Alcohol, Tobacco, and Firearms, <https://www.atf.gov/file/4806/download>.

61. The energy that is used to turn the cylinder of the revolver (bringing the next round into place, ready to fire) comes from the user pulling the trigger. (The trigger is mechanically linked to the cylinder, and a trigger pull performs the actions of cocking the hammer and firing a round.) Thus, the revolver does not use gunpowder energy in order to load the next round. So even though a revolver is comparable to a semiautomatic handgun in that each pull of the trigger chambers and fires one round, a revolver is not a semiautomatic.

62. The formula is: $KE = \frac{1}{2} MV^2$. Or in words: the kinetic energy is equal to one-half of the mass times the square of the velocity.

63. Rifles have longer barrels than handguns, and rifle cartridges generally burn more gunpowder. Thus, a bullet shot from a rifle spends more time traveling through the barrel than does a bullet shot from a handgun. As a result, the rifle bullet receives a longer, more powerful push from the expanding cloud of gunpowder in the barrel, so rifles generally deliver more kinetic energy than do handguns. As for shotguns, the mass of shot pellets is often heavier than any single rifle or

handgun bullet, so shotguns have very high kinetic energy at short ranges. But their kinetic energy drops rapidly because the round pellets quickly lose speed because of air friction. Rifle and handgun bullets are far more aerodynamic than are shotgun pellets.

64. If the gun's caliber is .17, that means the gun's barrel is 17/100 of an inch wide and can accommodate a bullet that is very slightly smaller. So a .38 caliber bullet is bigger than a .17 caliber bullet, and a .45 caliber bullet is bigger than either of them. (Calibers can also be expressed metrically: 9 mm is nearly the same as .357 inches, which is slightly smaller than a .38 bullet). The bullet's size depends on its width (caliber) and on its length, so one .45 caliber bullet might be longer, and hence heavier, than another .45 caliber bullet. For any particular gun in any particular caliber, there are a variety of rounds available, some of which have more gunpowder than others. More gunpowder makes the bullet fly straighter for longer distances (especially important in many types of hunting or target shooting); less gunpowder reduces recoil and makes the gun more comfortable to shoot and more controllable for many people.

65. Measured at the muzzle. Kinetic energy begins declining as soon as the bullet leaves the barrel because air friction progressively reduces velocity.

66. Frank C. Barnes, *Cartridges of the World: A Complete and Illustrated Reference for Over 1500 Cartridges* (Iola, WI: Krause Publications, 2014).

67. Many gun manufacturers produce a single model of firearm in several different calibers. While .223 is the most common caliber for the AR-15, larger calibers are available, and some of those would be suitable for bigger game. The claim that so-called assault weapons are high-velocity is true only in the trivial sense that most guns which are called assault weapons are rifles—and rifles are generally higher velocity than handguns or shotguns.

As for the handguns which are sometimes mislabeled as "assault weapons," they are lower velocity, with less powerful bullets, than the most

powerful handguns. The most powerful handgun calibers, such as the .44 Magnum and .454 Casull (often carried by hikers and hunters for self-defense against bears), are mostly revolvers.

68. Bureau of Alcohol, Tobacco, and Firearms, *Federal Explosives Laws and Regulations* (2012), <https://www.atf.gov/file/58741/download>.

69. "Challenges and Implications of President Obama's Gun Control," PBS *NewsHour*, January 16, 2013, <http://video.pbs.org/video/2326406075/>.

70. The types of hunting that might include enough shots in a short period to heat the barrel include pest and predator control (e.g., prairie dogs on a ranch), and wild boars.

71. A chainsaw's decibel (dB) output measured at one meter away is 105 db. See Tontechnik-Rechner, "Decibel Table—SPL—Loudness Comparison Chart," <http://www.sengpielaudio.com/TableOfSoundPressureLevels.htm>. The use of a suppressor takes the dB level for a firearm down to the high 120s. That makes "silenced" firearms about 20 dB louder than a chainsaw. The decibel scale is logarithmic, not linear, so a sound 20 dB more sounds four times louder. See Steve Claridge, "How Loud Is Too Loud: Decibel Levels of Common Sounds," Hearing Aid Know, <http://www.hearingaidknow.com/2007/03/how-loud-is-too-loud-decibel-levels-of-common-sounds/>. For additional background, see Robert Silvers, "Results," 2005, <http://www.silencertalk.com/results.htm>. See also, David B. Kopel, "Silencers, gun," in *Forensic Science*, ed. Ayn Embar-Seddon and Allan D. Pass (Salem, MA: Salem Press, 2008); Alan C. Paulson, *Silencer: History and Performance: Sporting and Tactical Silencers* (Boulder, CO: Paladin Press, 1996).

72. Conn. Gen. Stats. § 53-202a-0; 1993, P.A. 93-306.

73. Jacob Sullum, "How Do We Know an 'Assault Weapon' Ban Would Not Have Stopped Adam Lanza? Because It Didn't," *Reason*, December 17, 2012, <http://reason.com/blog/2012/12/17/how-do-we-know-an-assault-weapon-ban-wou>.

74. Christopher S. Koper, Daniel J. Woods, and Jeffrey A. Roth, "An Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence, 1994–2003: Report to the National Institute of Justice, United States Department of Justice," University of Pennsylvania, June 2004, <https://www.ncjrs.gov/pdffiles1/nij/grants/204431.pdf>, p. 3.

75. *Ibid.*, p. 2.

76. *Ibid.*

77. Writing for *Salon*, Alex Seitz-Wald objects to calling the 1994 ban a failure simply because the 2004 study showed no evidence that it did any good. Seitz-Wald believes that the ban showed "some encouraging signs" since, for example, some criminals substituted non-assault guns for assault guns. Interviewing researcher Christopher Koper, Seitz-Wald found that he agrees with speculation that if the 1994 bans had stayed in effect, they might have eventually done some good, although there was as of yet no evidence to support this hope. Alex Seitz-Wald, "Fact Check: LaPierre's Big Fib," *Salon*, January 30, 2013, http://www.salon.com/2013/01/30/wayne_lapierre_hopes_you_dont_read_that_study_he_mentioned.

78. John Lott, *The Bias against Guns: Why Almost Everything You've Heard About Gun Control Is Wrong* (Washington: Regnery Publishing, 2003), p. 207. Looking at the raw crime data, Lott observes:

The comparison group here is the forty-five states that did not adopt a ban. For both murder and robbery rates, the states adopting assault weapons bans were experiencing a relatively faster drop in violent crimes prior to the ban and a relatively faster increase in violent crimes after it. For rapes and aggravated assaults, the trends before and after the law seem essentially unchanged.

Based on the crime data, Lott concludes that it is "hard to argue that . . . banning assault weapons produced any noticeable benefit in terms of

lower crime rates." In statistical analyses that seek to control for other possible factors in the fluctuations of crime rates, Lott finds that, if anything, the state-level assault weapons bans had an adverse effect on crime rates:

Presumably if assault weapons are to be used in any particular crimes, they will be used for murder and robbery, but the data appears more supportive of an adverse effect of an assault weapons ban on murder and robbery rates . . . , with both crime rates rising after the passage of the bans Murder and robbery rates started off relatively high in the states that eventually adopted a ban, but the gap disappears by the time the ban is adopted. Only after instituting the ban do crime rates head back up. There is a very statistically significant change in murder and rape rate trends before and after the adoption of the ban. . . . It is very difficult to observe any systematic impact of the ban on rape and aggravated assault rates. [See p. 214.]

See also Mark Gius, "An Examination of the Effect of Concealed Weapons Laws and Assault Weapons Ban on State-level Murder Rates," *Applied Economic Letters* 21, no. 4 (November 26, 2013): 265–67.

79. Mark Follman, Gavin Aronsen, and Deanna Pan, "A Guide to Mass Shootings in America," *Mother Jones*, December 15, 2012, <http://www.motherjones.com/politics/2012/07/mass-shootings-map>; see also Mark Follman, Gavin Aronsen, and Deanna Pan, "US Mass Shootings, 1982–2012: Data from *Mother Jones'* Investigation," *Mother Jones*, December 28, 2012, <http://www.motherjones.com/politics/2012/12/mass-shootings-mother-jones-full-data>. *Mother Jones* missed more than 40 percent of the cases which met its selection criteria. Nor did it consistently follow its purported selection criteria. See James Alan Fox, "Mass Shootings not Trending," *Boston Globe*, January 23, 2013, http://www.boston.com/community/blogs/crime_punishment/2013/01/mass_shootings_not_trending.html; Grant Duwe, "The Truth about

Mass Public Shootings,” *Reason.com*, October 28, 2014, <http://reason.com/archives/2014/10/28/the-truth-about-mass-public-shootings>.

80. Thomas C. Hayes, “Gunman Kills 22 and Himself in Texas Cafeteria,” *New York Times*, October 17, 1991, <http://www.nytimes.com/1991/10/17/us/gunman-kills-22-and-himself-in-texas-cafeteria.html>; David B. Kopel, “Hennard, George,” in *Notorious Lives* (Salem, MA: Salem Press, 2007).

81. Suzanna Gratia Hupp, *From Luby’s to the Legislature* (San Antonio: Privateer Publications, 2009).

82. The killer used a .22-caliber Walther P22 handgun and a 9mm Glock 19 handgun. Reed Williams and Shawna Morrison, “Police: No Motive Found,” *Roanoke Times*, April 26, 2007.

83. At the time, the Brady Campaign called itself the National Council to Control Handguns.

84. In *The Atlantic*, senior editor Robert Wright said that the assault weapons issue is a “red herring.” As he points out, “there’s no clear and simple definition of an assault weapon, and this fact has in the past led to incoherent regulation.” Wright’s preferred legislation would make it illegal to sell or possess a firearm—rifle or pistol—that can hold more than six bullets, and “illegal to sell or possess a firearm with a detachable magazine.” In other words, Wright wants to ban the very large majority of handguns, and most rifles. This plainly violates the constitutional right to keep and bear arms. And even if there were no right to arms, the enforcement problems would be worse than the American experience with alcohol prohibition. Wright uses the example of the Newtown murders, noting that the criminal carried a rifle and two handguns and that he shot about 12 rounds before reaching the students. Wright supposes, “At that point, as he headed for the classrooms, he’d have six more rapid-fire bullets left, after which he’d have to reload his guns bullet by bullet.” Robert Wright, “A Gun Control Law That Would Actually Work,” *The Atlantic*, December 17, 2012, <http://www.theatlantic.com/national/archive/2012/12/a-gun-control-law-that-would-actually-work/266342>.

But in a mass-murder scenario, a criminal would by no means be limited to three guns; he could easily carry many revolvers (or six-round semiautomatics). Like semiautomatics, double-action revolvers fire one round with each pull of the trigger. Besides that, revolvers can quickly be reloaded with speed loaders. The user does not have to put the fresh rounds into the cylinder one at a time.

For more on the effective firing rates of revolvers and other types of guns, see Kopel, *Guns: Who Should Have Them?* pp. 164–65.

85. Final Report of the Sandy Hook Advisory Commission, presented to Dannel P. Malloy, State of Connecticut, March 6, 2015, pp. 67–68.

86. Quoted in “No Appetite for More Gun Control in Conn., Governor Says,” Associated Press, March 6, 2015, <http://www.nydailynews.com/news/national/no-appetite-gun-control-conn-governor-article-1.2140449>.

87. “We know that other countries, in response to one mass shooting, have been able to craft laws that almost eliminate mass shootings. Friends of ours, allies of ours—Great Britain, Australia—countries like ours. So we know there are ways to prevent it.” Barack Obama, presidential statement, October 1, 2015, <https://www.whitehouse.gov/the-press-office/2015/10/01/statement-president-shootings-umpqua-community-college-roseburg-oregon>.

88. Joyce Lee Malcolm, “Two Cautionary Tales of Gun Control,” *Wall Street Journal*, December 26, 2012, <http://online.wsj.com/article/SB10001424127887323777204578195470446855466.html>.

89. House of Commons, Home Affairs, Second Report, “Controls over Firearms,” Session 1999–2000, April 6, 2000, at ¶22, <http://www.publications.parliament.uk/pa/cm199900/cmselect/cmhaff/95/9502.htm>.

90. UN Data, “Intentional Homicide, Number, and Rate per 100,000 People,” <http://data.un.org/Data.aspx?d=UNODC&f=tableCode%3A1> (1.6. in

1995, rising to 2.1 in 2002, falling to 1.2 in 2009).

91. Gary Kleck, *Point Blank: Guns and Violence in America* (Hawthorne, NY: Aldine de Gruyter, 1991), p. 114.

92. See Joyce Lee Malcolm, *Guns and Violence: The English Experience* (Cambridge, MA: Harvard University Press, 2002), pp. 228–31; and Patsy Richards, “Homicide Statistics,” Research Paper 99/56, House of Commons Library Social and General Statistics Section, May 27, 1999, p. 9. See also “Statistics Release: Homicides in Scotland in 2001—Statistics Published,” A Scottish Executive National Statistics Publication, November 28, 2002, <http://www.scotland.gov.uk/stats/bulletins/00205-00.asp>, at Note 2 (“A single case of homicide is counted for each act of murder or culpable homicide irrespective of the number of perpetrators or victims.”)

93. The assault, robbery, and burglary statistics are from the United Nations Office of Drugs and Crime, <http://www.unodc.org/unodc/en/data-and-analysis/statistics/data.html>. (For historical reasons, these three jurisdictions within the UK often keep separate crime statistics. In terms of population, England and Wales has about 56 million people, Northern Ireland fewer than two million, and Scotland about five million. Thus, England and Wales have about 90 percent of the UK population.) See “England and Wales Population Rises 3.7m in 10 years,” *The Guardian* (London), July 16, 2012, <http://www.guardian.co.uk/world/2012/jul/16/england-wales-population-rises>; Scotland: The Official Gateway to Scotland, “Population of Scotland,” <http://www.scotland.org/about-scotland/the-scottish-people/population-of-scotland>.

94. British Crime Survey, supplementary tables for 2010–2011, Table 1.8 (for 2010/11), <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/crime-research/nature-burglary>; David B. Kopel, “Lawyers, Guns, and Burglars,” *Arizona Law Review* 43 (2001): 345, 347, <http://ssrn.com/abstract=2594535>.

95. Kopel, “Lawyers, Guns, and Burglars,” pp. 354–55.

96. By the late 20th century, Great Britain had one of the lowest rates of gun ownership in the Western World. Only 4 percent of British households would admit gun ownership to a telephone pollster. David B. Kopel and Joseph Olson, “All the Way Down the Slippery Slope: Gun Prohibition in England, and Some Lessons for America,” *Hamline Law Review* 22 (1999): 399, 427, <http://ssrn.com/abstract=149029>.

97. “Illegal Firearms in the United Kingdom,” Centre for Defense Studies, King’s College London, Working Paper 1, July 2, 2001, p. 7.

98. Philip Johnston, “World’s Toughest Laws Will Help to Keep Weapons off the Streets,” *The Telegraph*, November 2, 1996.

99. “Illegal Firearms in the United Kingdom,” Centre for Defense Studies, King’s College London, Working Paper 4, July 2, 2001, p. 15.

100. Joyce Lee Malcolm, “The Soft-on-Crime Roots of British Disorder,” *Wall Street Journal*, August 16, 2011 (citing Telegraph reports on government statistics from October 2009), <http://online.wsj.com/article/SB10001424053111903918104576502613435380574.html>.

101. David B. Kopel and Trevor Burrus, “Sex, Drugs, Alcohol, Gambling, and Guns: The Synergistic Constitutional Effects,” *Albany Government Law Review* 7 (2013): 306–31, <http://ssrn.com/abstract=2232257>.

102. For a more detailed analysis of the civil rights implications of gun prohibition laws, see David B. Kopel, “Peril or Protection? The Risks and Benefits of Handgun Prohibition,” *St. Louis University Public Law Review* 12 (1993): 285, 319–23, <http://davekopel.org/2A/LawRev/lrstlupl.htm>.

103. Currently codified at N.Y.C. Administrative Code § 10-304; formerly § 436-6.9, enacted by Local Law 106/1967 § 1.

104. N.Y.C. Administrative Code, § 10-301(16).

105. “Firearms Registration: New York City’s Lesson,” National Rifle Association, Institute for Legislative Action, January 27, 2000, [http://www.nraila.org/news-issues/fact-sheets/2000/firearms-registration-new-york-city%60s.aspx?s=New+York+1991&ps=\(Jeremy+Travis,+N.Y.+Police+Department+deputy+commissioner+of+legal+matters,+quoted+in+New+York+Daily+News:+%22The+department+is+taking+owners+at+their+word,+but+spot+checks+are+planned.%22\)](http://www.nraila.org/news-issues/fact-sheets/2000/firearms-registration-new-york-city%60s.aspx?s=New+York+1991&ps=(Jeremy+Travis,+N.Y.+Police+Department+deputy+commissioner+of+legal+matters,+quoted+in+New+York+Daily+News:+%22The+department+is+taking+owners+at+their+word,+but+spot+checks+are+planned.%22))

106. Kopel, *Guns: Who Should Have Them?* p. 186; Seth Mydans, “California Ends Year with Rush to Comply with Firearms Law,” *New York Times*, January 2, 1991 (up to 20,000 persons registered grandfathered assault weapons by the California deadline of December 31, 1990, out of an estimated pool of 300,000); and Carl Ingram, “Few Takers for Assault Gun Grace Period,” *Washington Times*, February 17, 1992 (46,000 California assault weapons registered out of an estimated pool of between 200,000 and 600,000).

107. Pete Shields, an early president of the Brady Campaign, explained in 1977: “The first problem is to slow down the number of handguns being produced and sold in this country. The second problem is to get handguns registered. The final problem is to make possession of all handguns and all handgun ammunition—except for the military, police, licensed security guards, licensed sporting clubs, and licensed gun collectors—totally illegal.” Quoted in Richard Harris, “A Reporter at Large: Handguns,” *New Yorker*, July 26, 1976, p. 58. (At the time, Shields’ group was called the National Council to Control Handguns. It later changed its name to Handgun Control, Inc., and then changed again to “Brady Campaign.”)

108. Stephen P. Halbrook, “Congress Interprets the Second Amendment: Declarations by a Co-Equal Branch on the Individual Right to Keep and Bear Arms,” *Tennessee Law Review* 62 (1995): 597, 623–26.

In December 1940, Congress passed the Property Requisition Act to allow the military to

seize property (with compensation) for national defense needs. The Act expressly forbade the seizure or registration of citizens’ firearms. The House Committee on Military Affairs explained that the language to protect the Second Amendment was added “in view of the fact that certain totalitarian and dictatorial nations are now engaged in the wholesale destruction of personal rights and liberties. H.R. Rep. No. 1120, at 2 (1941), 77th Congress, 1st sess. In a floor debate, Rep. Edwin Arthur Hall (R-NY) stated: “Before the advent of Hitler or Stalin, who took power from the German and Russian people, measures were thrust upon free legislatures of those countries to deprive the people of the possession and use of firearms, so that they could not resist the diabolical and vitriolic state police organizations as the Gestapo, the OGPU, and the Cheka” Cong. Rec. 87 (1941): 6811. Rep. Dewey Short (R-MO) pointed out that “The method employed by Communists in every country that has been overthrown has been to disarm the populace . . .” Cong. Rec. 87 (1941): 7100. Lyle Boren, an Oklahoma Democrat, cited Trotsky and Hitler as executors of the kinds of gun control that must always be resisted in America. Cong. Rec. 87 (1941): 7101.

In 1986, the Firearms Owners’ Protection Act became law. It forbids the creation of a federal registry of guns or gun owners. See 18 U.S. Code § 926(a). When Congress set up the National Instant Check System in 1994 it required that once a check was completed, the record of an approved sale should be destroyed. See 18 U.S. Code § 922(t)(2)(C). The Clinton administration did not obey this requirement, but the Bush administration did. See David B. Kopel, Paul Gallant, and Joanne Eisen, “Instant Check, Permanent Record,” *National Review Online*, August 10, 2000, <http://davekopel.org/NRO/2000/Instant-Check-Permanent-Record.htm>.

109. By executive fiat, President Obama unilaterally imposed federal registration on anyone who buys two or more semiautomatic rifles within a one-week period in the four southwest border states. “Acting Director Announces Demand Letters for Multiple Sales of Specific Long Guns in Four Border States,” Bureau of Alcohol, Tobacco,

and Firearms, December 20, 2010, Agency Information Collection Activities: Proposed Collection, 75 Fed. Reg. 79,021 (Dec. 17, 2010). ATF began issuing demand letters for gun registration in July 2011.

110. 41st Parliament, 1st Session, Bill C-19, “Ending the Long-gun Registry Act,” (Royal Assent received April 5, 2012), <http://www.parl.gc.ca/LegisInfo/BillDetails.aspx?Language=E&Mode=r&billId=5188309>; and Gary A. Mauser, “Misfire: Firearm Registration in Canada,” Public Policy Sources, No. 48, Fraser Institute Occasional Paper (Vancouver, BC), 2001.

111. See David B. Kopel, *The Samurai, The Mountie, and The Cowboy* (Washington: Cato Institute, 1992), pp. 238–40.

112. Kelly Buchanan, “New Zealand,” in *Firearms-Control Regulation and Policy*, Law Library of Congress, February 2013, <http://www.loc.gov/law/help/firearms-control/firearms-control.pdf>, pp. 149–68.

113. Kleck, *Point Blank*, p. 420, Table 10.4.

114. Gary Kleck, “Expert Report on Canadian Long Gun Registration Law” (expert opinion presented to Canadian Department of Justice, September 27, 2013).

115. Ransom Stephens, “How Much Safer Is It to Fly Than Drive?” *Examiner.com*, January 24, 2011, <http://www.examiner.com/article/how-much-safer-is-it-to-fly-than-drive-really>. See also Bruce Schneier, *Schneier on Security* (Indianapolis: Wiley, 2008); John Mueller, “A False Sense of Insecurity,” *Regulation* (Fall 2004): 42–46; and Aaron Wildavsky, *Searching for Safety* (New Brunswick, NJ: Transaction, 1988).

116. According to the FBI, there were 37 mass shooting deaths per year, on average, between 2000 and 2013. J. Pete Blair and Katherine W. Schweit, “A Study of Active Shooter Incidents in the United States Between 2000 and 2013,” Texas State University and Federal Bureau of Investigation, U.S. Department of Justice (2014).

According to the National Weather Service, there were 32 lightning-strike fatalities per year on average between 2006 and 2014. National Weather Service, “U.S. Lightning Deaths in 2015: 25,” www.nws.noaa.gov/om/lightning/fatalities.shtml.

117. “Estimated Crime in United States—Total,” U.S. Department of Justice, Uniform Crime Reporting Statistics, <http://www.ucrdatatool.gov/Search/Crime/State/RunCrimeStatebyState.cfm>.

118. Data available at Centers for Disease Control and Prevention, “About Underlying Cause of Death, 1999–2013,” <http://wonder.cdc.gov/ucd-icd10.html>. Agree to the terms of data, then under option 6 on the next screen, choose “Injury Intent and Mechanism.” Then choose “Unintentional” for “Injury Intent” and choose “Firearm” for “Injury Mechanism.”

For persons of all ages, in 2013 there were 505 deaths by “accidental discharge of firearms.” This compares to 35,369 deaths that were caused by motor vehicle accidents; 38,851 deaths by accidental poisoning and exposure to noxious substances; 30,208 deaths by falls; and 3,391 deaths by accidental drowning.

Some of these successes can be attributed to changes in public policy, such as greater incarceration of violent criminals. Other successes have come from private initiatives, such the NRA’s Eddie Eagle gun accident prevention program for children, or the National Shooting Sports Foundation’s programs to give away free gun locks.

119. Nicholas J. Johnson, David B. Kopel, Michael P. O’Shea, and George Moscaro, *Firearms Law and the Second Amendment: Regulation, Rights, and Policy* (New York: Aspen Publishers 2012). Chapter 12 is online at http://firearmsregulation.org/FRRP_2012_Ch12.pdf.

120. Jason C. Matejkowski, Sara W. Cullen, and Phyllis L. Solomon, “Characteristics of Persons with Severe Mental Illness Who Have Been Incarcerated for Murder,” *Journal of the American Academy of Psychiatry Law* 36 (2008): 74–86, <http://>

www.jaapl.org/cgi/reprint/36/1/74.

121. “Danbury State’s Attorney Releases Additional Information on December 14, 2012, Incident at Sandy Hook Elementary School,” State of Connecticut, Division of Criminal Justice, March 28, 2013, <http://www.ct.gov/csao/cwp/view.asp?a=1801&Q=521714>. (“The gun locker at 36 Yogananda St. was open when the police arrived. It was unlocked and there was no indication that it had been broken into.”)

122. *Addington v. Texas*, 441 U.S. 418 (1979).

123. David B. Kopel and Clayton E. Cramer, “Reforming Mental Health Law to Protect Public Safety and Help the Severely Mentally Ill,” *Howard Law Journal* 58 (forthcoming, 2015), <http://ssrn.com/abstract=2564680>.

124. Conn. Gen. Stat. Ann. § 53a-217b (making such carry a Class D felony).

125. David B. Kopel, “Pretend ‘Gun-free’ School Zones: A Deadly Legal Fiction,” *Connecticut Law Review* 42 (2009): 515, <http://ssrn.com/abstract=1369783> (detailing Pearl High School, Edinboro, Appalachian School of Law, and New Life Church); Jeanne Assam, *God, the Gunman, and Me* (Denver: Jeane Assam Publishing, 2010); “Former Deputy Speaks On 2001 Santana High School Shooting,” *10News.com*, March 2, 2011, <http://www.10news.com/news/former-deputy-speaks-on-2001-santana-high-school-shooting> (in Santee, an off-duty officer was present while dropping off his daughter at school; he called for backup, and with an arriving officer, cornered the killer in

a bathroom, where the killer was reloading); Rain Smith, “Police Officers Kill Gunman at Sullivan Central,” *TimesNews.net*, August 30th, 2010, <http://www.timesnews.net/article.php?id=9025899> (the school resource officer held the armed intruder at bay; he was shot after two more officers arrived on the scene); Rebecca Bessler, “Three Men Killed in Winnemucca Shooting on Sunday,” *KTVN Channel 2 News*, May 25, 2008, <http://www.ktvn.com/Global/story.asp?S=8378732> (Players Bar and Grill); J. Neil Schulman, “A Massacre We Didn’t Hear About,” *Los Angeles Times*, January 1, 1992 (Shoney’s); Mike Benner, “Clackamas Mall Shooter Faced Man with Concealed Weapon,” *KGW Television*, December 17, 2012, <http://www.kgw.com/news/Clackamas-man-armed-confronts-mall-shooter-183593571.html>; and “Deputy Shoots Gunman at San Antonio Movie Theater Video,” *KOAI News*, December 16, 2012, <http://www.woai.com/articles/woai-local-news-sponsored-by-five-119078/terror-at-southwest-side-movie-theater-10644119/>; Meg Wagner, “Pennsylvania Patient Who Allegedly Killed Caseworker, Shot Doctor Had 39 More Bullets, Intended Mass Shooting: DA,” *New York Daily News*, July 25, 2014, <http://www.nydailynews.com/news/national/penn-psychiatric-center-shooting-suspect-abusive-ex-wife-article-1.1880052>. See also, Eugene Volokh, “Do Citizens (Not Police Officers) with Guns Ever Stop Mass Shootings?” *Washington Post*, October 3, 2015, <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/10/03/do-civilians-with-guns-ever-stop-mass-shootings/>.

126. See Massad Ayoob, “Arm Teachers to Stop School Shootings,” *Wall Street Journal*, May 21, 1999.

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