

Chapter 6

Firearms

Joseph L. Bast and Publius

10 Principles of Firearms Policy

1. Americans have an individual right to keep and bear arms.
2. Bans on “assault weapons” are incoherent and self-defeating.
3. An increase in the number of guns does not lead directly to more gun crime.
4. Firearms possession among law-abiding citizens deters crime.
5. Defensive gun use saves lives.
6. Right to carry laws do not increase crime and may generate social benefits.
7. “Stand Your Ground” laws have been the historical norm in the United States.
8. The risk of firearms accidents is small and falling.
9. Large-scale illegal gun-running is a myth.
10. International experience does not support gun control in the United States.

Introduction

Firearms policy debates often occur in a context of crisis, with emotion and simple intuition ruling the conversation. We see images of mass shootings of innocent people in movie theaters or other public places and the natural reaction of nearly everyone is: “This is unacceptable! What

can we do to make sure this never happens again?” Often the gut reaction to such gut-wrenching incidents is “Let’s ban guns!” But is that reaction any more doable, desirable, or constitutional than saying that to prevent 30,000 annual deaths in auto accidents, “Let’s ban cars!”?

Even during periods of calm, discussions of firearms policy are often burdened by a variety of erroneous assumptions about the risks and benefits of firearms and basic mistakes about firearms technology.

The Second Amendment to the U.S. Constitution states, “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”

The 10 principles provided here, with references for further research and documentation if desired, provide a framework for understanding and promoting sound policies regarding firearms in America.

1. Americans have an individual right to keep and bear arms.

The Second Amendment to the U.S. Constitution affirms the right of individuals to carry arms for private self-defense.

In 2008, the U.S. Supreme Court in *District of Columbia v. Heller* (554 U.S. 570 (2008)) recognized the Second Amendment to the Constitution affirms a preexisting right to arms for private self-defense. The Second Amendment “was not intended to lay down a novel principle but rather codified a right ‘inherited from our English ancestors.’... It was clearly an individual right having nothing whatever to do with a militia,” the majority opinion stated.

Already a Right

The *Heller* decision explained that even if militia concerns animated the codification of the right to arms, a motive for codification does not define the preexisting right. In his dissenting opinion in *United States v. Verdugo-Urquidez* (494 U.S. 259 (1990)), Justice William Brennan provided a classic articulation of this principle, explaining constitutional rights were not granted by the new federal government but predate the Constitution:

The Framers of the Bill of Rights did not purport to “create” rights. Rather, they designed the Bill of Rights to prohibit our Government from infringing rights and liberties presumed to be

pre-existing. See e.g., U.S. Const., Amdt. 9 (“The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people”).

Critics of gun rights today argue that because the Founders identified the need for militias in the Second Amendment, they meant to limit ownership of guns for individual needs. But the militia conversation in the founding era arose in the context of anti-Federalists’ objections to federal as opposed to state authority over the militia. Anti-Federalists lost that argument, and federal control of the militia was memorialized in Article I, Section 8, of the Constitution. The Second Amendment was not a repeal of the federal militia power granted in Article I, Section 8. Instead, the aim was to make explicit the Federalists’ assertions that the new government was one of limited, enumerated powers and would not infringe on pre-existing individual rights (Madison [1789] 1979).

Who Controls Militias?

Before *Heller*, some courts concluded the Second Amendment established only a state right. But if the “states’ rights” view of the Second Amendment were sound, conflict between federal and state governments over militia control is the place where it should operate. In the long history of state litigation objecting to federal control of state militia forces, the conflicts did not reference the Second Amendment (Heath 2001; *Pepich v. Department of Defense* 496 U.S. 334 (1990); *Selected Draft Law Cases* 245 U.S. 366 (1918); *Martin v. Mott* 25 U.S. 19, 28–33 (1827); *Houston v. Moore* 18 U.S. 1 (1820)).

Evidence affirming the individual right to arms is expansive. The post-ratification commentary (including treatments by luminaries such as St. George Tucker, William Rawle, and Joseph Story) richly demonstrates the constitutional right to arms is an individual right. The early nineteenth century cases interpreting the Second Amendment “universally support an individual right to arms unconnected to militia service” (*District of Columbia v. Heller* 554 U.S. 570 (2008)).

Guns and Civil Rights

The debate leading to and surrounding passage of the Fourteenth Amendment, which affirms equal protection of the rights of all citizens and passed in the wake of the freeing of slaves, overwhelmingly affirms the individual right to arms. The Second Freedman’s Bureau Act explicitly guaranteed to freed slaves “the constitutional right to bear arms” against explicitly racist gun prohibitions of the southern Black Codes. Newly formed black political organizations and state conventions filed numerous petitions with Congress pleading for protection of their right to arms for individual self-defense. Black newspapers widely

distributed the orders of the occupying Union army affirming the freedmen's constitutional right to arms for self-defense.

These concerns coalesced in the adoption of the Fourteenth Amendment, which Sen. Jacob Howard introduced by explaining "the great object" of the amendment is "to restrain the power of the states and compel them in all times to respect these great fundamental guarantees" that are "secured by the first eight amendments of the Constitution; such as ... the right to keep and to bear arms" (Cong. Globe, 39th Cong., 1st Sess. 2764, 2765–2766 (1866)).

The overwhelming evidence from the post–Civil War era affirms the individual right to arms. In the words of the *Heller* court (554 U.S. 570 (2008)), "Every late 19th century legal scholar that we have read interpreted the Second Amendment to include an individual right unconnected with militia service."

"Arms in Common Use for Lawful Purposes"

The Supreme Court's most significant treatment of the Second Amendment before *Heller* was *United States v. Miller*. In *Miller* (307 U.S. 174 (1939)), the Court considered whether ownership of a sawed-off shotgun regulated as a "gangster weapon" under the National Firearms Act was protected by the Second Amendment. The *Miller* decision was often misinterpreted, but its meaning is illuminated by considering exactly the arguments presented to the Court.

The government made two arguments in *Miller*. The first argument was that the Second Amendment "gave sanction only to the arming of the people as a body to defend their rights against tyrannical and unprincipled rulers" and "did not permit the keeping of arms for purposes of private self-defense." The government argued the right was "only one which exists where the arms are borne in the militia or some other military organization provided for by law and intended for the protection of the state" (*Miller* 307 U.S. 174 (1939)). This is essentially the argument made by dissenters in *Heller*.

The second argument was that "The term 'arms' [in the Second Amendment] refers only to those weapons which are ordinarily used for military or public defense purposes and does not relate to those weapons which are commonly used by criminals" (*Miller* 307 U.S. 174 (1939)).

The *Miller* court embraced the government's second argument, focusing on the gun and concluding there was no evidence it was part of ordinary military equipment, offering this widely cited phrasing: "In the absence of any evidence tending to show that the possession or use of a [sawed-off shotgun] at this time has some reasonable relationship to the preservation or efficiency of a well-regulated militia, we cannot say the Second Amendment guarantees the right to keep and bear such an instrument" (307 U.S. 174 (1939)).

However, the Court described the militia in terms consistent with an individual right of the people to keep and bear arms. The militia, said the Court, is “all males physically capable of acting in concert for the common defense” who when called “were expected to appear bearing *arms supplied by themselves and of the common use at the time*” [emphasis added]. The *Heller* court carried forward the *Miller* “common use” test to determine the types of guns that are constitutionally protected, explaining, “*Miller’s* reference to ordinary military equipment must be read in tandem with what comes after. ... The traditional militia was formed from a pool of men bringing arms in common use for a lawful purpose like self-defense” (554 U.S. 570 (2008)). As a result, the Second Amendment does grant a right to shotguns but not bazookas, howitzers, or nuclear weapons.

States Recognize Gun Rights

Another powerful indicator of the nature of the American right to arms is the state constitutions, which broadly affirm the individual right to arms for self-defense. Forty-four of the 50 state constitutions affirm a right to arms. Over time, the trend has been in favor of right to arms provisions. Since 1875, 13 new states have joined the union. Twelve of them included right to arms provisions in their constitutions. Since 1978, 12 states have added or strengthened a guarantee to own and bear arms. Some state constitutions refer generally to the right to keep and bear arms, and 37 states explicitly guarantee a right to self-defense (Volokh 2006; Johnson 2005).

These state constitutional guarantees demonstrate the individual right to arms is no outdated vestige of another era. The most recent state arms guarantee was Wisconsin’s 1998 constitutional amendment, in favor of which 74 percent of voters cast ballots.

The alternative policy of sweeping gun bans also has been tested by referenda in Massachusetts and California. On November 5, 1976, with 86 percent voter turnout, 69 percent of Massachusetts voters opposed banning private ownership of handguns. In 1983, California voters also considered a handgun ban initiative. Sixty-three percent of voters opposed the handgun ban (Bordua 1983).

Recommended Readings: John R. Lott, Jr., *The War on Guns: Arming Yourself Against Gun Control Lies* (Washington, DC: Regnery Publishing, 2016); Stephen P. Halbrook, *The Founders’ Second Amendment: Origins of the Right to Bear Arms* (Oakland, CA: Independent Institute, 2012).

2. Bans on “assault weapons” are incoherent and self-defeating.

Politically contrived categories such as “assault weapon” and “civilian sniper rifle” are technically indefensible and should not be the basis for public policy.

Some people still confuse “assault weapons” with machine guns. Early proponents of the term were counting on that confusion, and the calculation was political. A 1988 memorandum of the Violence Policy Center lamented the public had lost interest in handgun control, and it counseled the anti-gun lobby to switch to the “assault weapon issue.” According to the memorandum:

The issue of handgun restriction consistently remains a non-issue with the vast majority of legislators, the press, and public. ... Assault weapons ... are a new topic. The weapons’ menacing looks, coupled with the public’s confusion over fully automatic machine guns versus semi-automatic assault weapons—anything that looks like a machine gun is assumed to be a machine gun—can only increase the chance of public support for restrictions on these weapons (Violence Policy Center 1988).

Law professors Bruce Kobayashi and Joseph Olson (1997) identified the assault weapon characterization as a salient example of technically inaccurate pejoratives used to label regulated activity: “Prior to 1989, the term ‘assault weapon’ did not exist in the lexicon of firearms. It is a political term, developed by anti-gun publicists to expand the category of ‘assault rifles’ so as to allow an attack on as many additional firearms as possible on the basis of undefined ‘evil’ appearance.”

Assault Weapons vs. Assault Rifles

Some people confuse the manufactured political term “assault weapon” with “assault rifle,” which has an actual technical meaning. After World War II, “assault rifle” became a standard military term to describe *a specific type of machine gun*. The U.S. Department of Defense manual on Communist small arms states:

Assault rifles are short, compact, selective-fire weapons [i.e., machine guns] that fire a cartridge intermediate in power between submachine-gun and rifle cartridges. Assault rifles have

mild recoil characteristics and, because of this, are capable of delivering effective full-automatic fire at ranges up to 300 meters.

The usage became so accepted that the U.S. Supreme Court referred to the American Armed Forces M-16 selective-fire rifle as the “standard assault rifle” (Halbrook 2009).

In contrast, there are no boundaries on what may be called an “assault weapon.” Under the defunct 1994 Assault Weapon Ban, “assault weapons” were principally *semiautomatic* firearms. They were described as having features like pistol grips, folding stocks, and bayonet lugs that feed ammunition through a detachable box magazine. The label is sometimes used to include other types of guns as well. True assault rifles (i.e., fully automatic rifles) are regulated under the stringent provisions of the National Firearms Act of 1934, and there are fewer than 200,000 of these guns in civilian hands (Johnson 2005).

For current political purposes, assault weapons are generally some subset of semiautomatic firearms. Distinctions among semiautomatic firearms border on incoherent. This was evident under the 1994 Assault Weapons Ban, which put some of the *same guns on both the banned and permitted lists of guns*, depending on whether they had accoutrements like pistol grips, folding stocks, and flash hiders.

In Common Use

Some have claimed assault weapons are a dangerous new type of firearm. This is false. Semiautomatic technology is at least a century old. For example, the Browning Auto-5 semiautomatic shotgun was introduced in 1902; the Colt 1911 .45-caliber semiautomatic pistol was adopted as the U.S. military sidearm in 1911; the Remington Model 8 semiautomatic rifle was patented in 1900; and the Winchester Model 7 rifle looks like a modern assault weapon (with its detachable box magazine protruding below the breech) but was introduced in the market in 1907. These guns and tens of millions of other semiautomatic rifles, pistols, and shotguns have circulated in the civilian inventory for generations.

Estimating the total number of semiautomatics in the private inventory is difficult. Many were sold before even nominal recordkeeping was required under federal law. Many others were sold by the U.S. government under the century-old Civilian Marksmanship Program. In the early debate over the 1994 assault weapons ban, researchers from the Harvard School of Public Health found 60 percent of gun owners reported owning some type of semiautomatic firearm (Hemenway and Richardson 1997).

Semiautomatics with such features as pistol grips and detachable box magazines have dominated firearms sales in recent years. For several years running, the AR-15 has been the best-selling rifle type in the United States. In 2011, the D.C. Circuit Court of Appeals acknowledged the AR-15 (with several million in circulation) was a gun in common use (*Heller v. District of Columbia* 670 F.3d 1244 (2011)).

A Specious Designation

“Assault weapon” is a specious designation made up to suggest some special danger from guns that often had simply cosmetic differences from arms that have long been legal and pose no special danger. All guns have legitimate uses and dangers from illicit use that vary by circumstance.

When gauged against objectively measurable characteristics, the use of the term “assault weapon” inaccurately describes the class and more accurately describes guns that assault weapon legislation generally classifies as less dangerous and permissible. This renders the assault weapon category incoherent and ultimately self-defeating.

The 1994 Assault Weapon Ban was illusory because it defined the prohibited class by functionally less significant characteristics that some people thought were scary or aggressive looking, such as pistol grips, bayonet lugs, and folding stocks. With these characteristics removed, operationally similar guns remained available. However, the ban did cause a scare in the market that accelerated demand for and increase ownership of functionally similar guns and other substitutes.

The assault weapon classification is the current rendition of the “bad gun” regulatory formula that claims to ban only limited categories of firearms, such as guns “criminals choose” or exceptionally dangerous ones. This regulatory formula has a long history, but it has no basis in real-world gun safety or constitutional law.

The *Heller* decision determined guns in common use are constitutionally protected. Politically contrived categories such as “assault weapon” and “civilian sniper rifle” are technically indefensible designations that defy the constitutional protection of common rifles, shotguns, and handguns. They are constitutionally unsustainable distractions from useful policymaking.

Recommended Readings: Stephen P. Halbrook, “Reality Check: The ‘Assault Weapon’ Fantasy & Second Amendment Jurisprudence,” *Georgetown Journal of Law & Public Policy* 47 (2016); John R. Lott, Jr., “The Truth about Assault Weapons Bans and Background Checks,” *Fox News*, February 28, 2013.

3. An increase in the number of guns does not lead directly to more gun crime.

Gun crime has declined as the number of privately owned guns has increased to record levels.

Some people assume increases in the number of guns in the general population will lead to roughly proportionate increases in gun crime. This basic assumption has fueled supply-control initiatives ranging from gun buy-backs to sweeping gun bans. But the simplistic intuition that more guns equal more gun crime is refuted by the simultaneous increase in the gun inventory to record levels and decline of gun crimes.

Widespread Ownership

Since 1948, the rate of gun ownership per 100,000 population has increased steadily. Firearms ownership in the United States is at an all-time high. Estimates put the gun stock at roughly 350 million firearms in private hands. A 2016 Pew Research Center poll found 44 percent of American adults had a gun in their home—a seven percentage point increase in the past two years—and another 5 percent won't reveal whether they own a gun (Pew 2016).

People are not always truthful with pollsters, so surveys may undercount gun owners. One sign gun ownership is probably rising more rapidly than surveys show is the number of concealed handgun permits, which rose from 2.7 million in 1999 to more than 14.5 million in 2016 (Lott 2016b). New gun purchases, measured by Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) instant check data, have soared to record levels in the past decade. The National Instant Criminal Background Check System (NICS) shows the number of firearms background checks initiated through NICS nearly tripled from 1999 to 2016 (NICS 2017).

Homicide Rates vs. Gun Ownership

The rate of gun homicides in the United States has oscillated in a pattern that shows no support for the theory that more guns should lead to proportionately more homicide. From 1948 to 2009, the U.S. per-capita number of firearms rose by 186 percent. At the same time, the homicide rate varied widely. At its peak in 1980, the homicide rate was 82 percent higher than in 1948. In 2009, the rate was 11 percent lower than in 1948 (CDC 2014; Kleck 1997; ATF 2013; FBI 2006–2016).

In 2010 an estimated 1,246,248 violent crimes occurred nationwide, 13.2 percent below the 2006 level and 13.4 percent below the 2001 level. In 2017, FBI reported the number of violent crimes in the country fell 5.4 percent from 2012 to 2013, fell 4.6 percent from 2013 to 2014, rose 1.7 percent from 2014 to 2015, and rose 5.3 percent from 2015 to 2016 (FBI 2017).

In 2016, Florida State University criminologist Gary Kleck and coauthors examined data on gun ownership, 19 types of gun control laws, and violent crime rates in every U.S. city with a population of 25,000 or more. They found “gun control laws generally show no evidence of effects on crime rates, possibly because gun [ownership] levels do not have a net positive effect on violence rates.” They also observe, “requiring a license to possess a gun, and bans on purchases of guns by alcoholics appear to reduce rates of both homicide and robbery. Weaker evidence suggests that bans on gun purchases by criminals and on possession by mentally ill persons may reduce assault rates, and that bans on gun purchase by criminals may also reduce robbery rates” (Kleck *et al.* 2016).

In 2015, John R. Lott Jr. and coauthors found “between 2007 and 2014, murder rates have fallen from 5.6 to 4.2 (preliminary estimates) per 100,000. This represents a 25 percent drop in the murder rate at the same time that the percentage of the adult population with [concealed carry] permits soared by 156 percent. Overall violent crime also fell by 25 percent over that period of time. States with the largest increase in permits have seen the largest relative drops in murder rates” (Lott *et al.* 2015).

Most Killers Already Were Criminals

For criminal homicide in general, the killers are usually not law-abiding people, which suggests homicide rates are dependent on the overall incidence of criminality, not the number of guns in people’s hands.

Kennedy and Braga’s analysis of 1988 national data on homicide in 33 large cities showed 54 percent of killers had a prior adult criminal record; 2 percent had a juvenile record only; no information was available on 25 percent; and 20 percent did not have criminal records. They concluded, “Homicide offenders are likely to commit murders in the course of long criminal careers consisting primarily of nonviolent crimes but including larger than normal proportions of violent crimes” (Kennedy and Braga 1998).

Of Illinois murderers in 2001, 43 percent had an Illinois felony conviction within the previous 10 years and 72 percent had an Illinois arrest (Cook *et al.* 2005). City-level studies come to similar conclusions. A *New York Times* study of the murders in New York City in 2003–05 found “[m]ore than 90 percent of the killers had criminal records”

(McGinty 2006). In 1989, *The New York Times* reported that in Washington, DC, almost all the murderers and victims were “involved in the drug trade” (Berke 1989).

In Lowell, Massachusetts, “some 95 percent of homicide offenders” had been “arraigned at least once in Massachusetts courts,” the average being nine prior arraignments (Braga *et al.* 2006). Baltimore police records show 92 percent of murder suspects in 2006 had criminal records (Sentementes 2007). The Kennedy and Braga (1998) study of Minneapolis homicide offenders found 73 percent had been arrested at least once by the Minneapolis Police Department, with an average number of 7.4 arrests.

A comprehensive review of the data concluded, “The vast majority of persons involved in life threatening violence have a long criminal record with many prior contacts with the justice system” (Elliott 1998).

Recommended Readings: Gary Kleck, Tomislav Victor Kovandzic, and Jon Bellows, “Does Gun Control Reduce Violent Crime?” June 21, 2016; Don Kates and Gary Mauser, “Would Banning Firearms Reduce Murder and Suicide? A Review of International and Some Domestic Evidence,” *Harvard Journal of Law and Public Policy* **30** (2007): 649–94.

4. Firearms possession among law-abiding citizens deters crime.

Research shows criminal activity is discouraged by armed citizens.

Armed citizens are a disincentive to criminals. A famous study conducted for the National Institute of Justice interviewed felony prisoners in 11 state prisons in 10 states and found the following:

- Thirty-four percent of the felons reported personally having been “scared off, shot at, wounded or captured by an armed victim.”
- Eight percent said the experience had occurred “many times.”
- Sixty-nine percent reported the experience had happened to another criminal whom they knew personally.

- Thirty-nine percent had personally decided not to commit a crime because they thought the victim might have a gun.
- Fifty-six percent said a criminal would not attack a potential victim known to be armed.
- Seventy-four percent agreed with the following statement:
“One reason burglars avoid houses where people are at home is that they fear being shot” (Wright and Rossi 1986).

In these interviews, “the highest concern about confronting an armed victim was registered by felons from states with the greatest relative number of privately owned firearms” (Wright and Rossi 1986). Wright and Rossi concluded,

The major effects of partial or total handgun bans would fall more on the shoulders of the ordinary gun-owning public than on the felonious gun abuser of the sort studied here. ... It is therefore also possible that one side consequence of such measures would be some loss of the crime-thwarting effects of civilian firearms ownership (*Ibid.*, p. 238).

These findings suggest many criminals are rational actors. They make choices about committing crimes in a way that maximizes expected benefits, minimizes the risks they run, or both. Thus, they prefer soft targets (such as unarmed victims) and avoid hard ones.

A national study of how frequently firearms are used to defend against burglaries was conducted by the Centers for Disease Control and Prevention (CDC) (Ikeda *et al.* 1997). Extrapolating the polling sample to the national population, the researchers estimated that in the previous 12 months there were approximately 1,896,842 incidents in which a householder retrieved a firearm but did not see an intruder. There were an estimated 503,481 incidents in which the armed householder *did* see the burglar, and in 497,646 (98.8 percent) of those incidents, the burglar was scared away by the presence of the firearm.

In the United States, a household member is present during 27 percent of home burglaries. In 26 percent of burglaries in which a household member is present, he or she will be the victim of a violent crime (Catalano 2010).

Criminologists attribute the prevalence of daytime burglary to burglars' fear of confronting an armed occupant. Burglars report they avoid late-night home invasions because “that’s the way you get yourself shot” (Rengert and Wasilchick 2000; Conklin 1972). The most thorough

study of burglary patterns was a St. Louis survey of 105 currently active burglars. The researchers observed, “One of the most serious risks faced by residential burglars is the possibility of being injured or killed by occupants of a target. Many of the offenders we spoke to reported that this was far and away their greatest fear” (Wright and Decker 1994).

An American burglar’s risk of being shot while invading an occupied home is greater than his risk of going to prison. Presuming that the risk of prison deters some potential burglars, the risk of armed defenders may deter even more. Because burglars do not know *which* homes have a gun, people who do not own guns enjoy substantial free-rider benefits because of the deterrent effect from the known existence of many homes that do keep arms (Kopel 2001; Cook and Ludwig 1996; Kopel 2003).

Recommended Readings: David B. Kopel, “The Costs and Consequences of Gun Control,” *Policy Analysis* No. 784, Cato Institute, December 1, 2015; H. Sterling Burnett, “Suing Gun Manufacturers: Hazardous to Our Health,” *Texas Review of Law & Politics* 5 (2001): 433.

5. Defensive gun use saves lives.

Research shows armed citizens effectively use guns to defend themselves, even if only by showing the weapon to a would-be assailant.

There have been 14 major surveys inquiring into the frequency of defensive gun uses (DGUs) in the modern United States. The surveys range from a low of around 700,000 annually to a high of 3,000,000. The surveys asked respondents directly whether they had used a gun defensively.

One general survey did not ask this question directly and yielded far lower rates of defensive gun use. The data for this survey were derived from face-to-face interviews conducted in the subjects’ homes by the Census Bureau in conjunction with the Department of Justice. The National Crime Victimization Survey (NCVS) counts only defensive gun uses volunteered by survey participants. The NCVS data for the years 1992–2005 suggests about 97,000 DGUs annually.

One of the most thorough surveys of defensive gun uses was conducted by Kleck and Gertz (1995), who found guns were used defensively approximately 2.5 million times per year. They also found

80 percent of defensive uses involved handguns and 76 percent of defensive uses did not involve firing the weapon, rather merely brandishing it to scare away an attacker. The Kleck/Gertz findings received an important endorsement from Marvin Wolfgang, president of the American Society of Criminology and an ardent supporter of gun prohibition. Reviewing the Kleck/Gertz findings, Wolfgang wrote he could find neither methodological flaw nor any other reason to doubt the correctness of their figure:

I am as strong a gun-control advocate as can be found among the criminologists in this country. ... I would eliminate all guns from the civilian population and maybe even from the police. I hate guns. ... Nonetheless, the methodological soundness of the current Kleck and Gertz study is clear. ... The Kleck and Gertz study impresses me for the caution the authors exercise and the elaborate nuances they examine methodologically. I do not like their conclusions that having a gun can be useful, but I cannot fault their methodology. They have tried earnestly to meet all objections in advance and have done exceedingly well (Wolfgang 1995, p. 188).

Skeptics of the Kleck/Gertz DGU survey conducted their own survey for the Police Foundation and obtained similar results: an estimate of 1.46 million DGUs (Cook and Ludwig 1996).

Some of the resistance to crediting the DGU survey estimates is rooted in the difference between the total number of defensive gun uses (seemingly in the millions) and the very small number of justifiable homicides (by private parties and police), around 1,000 per year. This underscores the character of the typical defensive gun use. In most cases, no shots are fired, and where shots are fired, typically no one is hit.

The danger that someone using a gun for self-defense will have it taken away, or that resistance will enrage the criminal into a fatal attack, is very low. Victims' weapons are taken by attackers in no more than 1 percent of cases in which the victim uses a weapon. Data from the NCVS and other sources also show "there is no sound empirical evidence that resistance does provoke fatal attacks" (Kleck and Tark 2005). Resisting with a firearm does not increase the chance of victim injury. A study of data on robberies from 1979 to 1985 found resistance with a gun was in fact the most effective form of resistance. It was both the method most likely to thwart the crime and the method that most reduced the intended victim's likelihood of injury (Kleck and DeLone 1993; Kleck and Gertz 1995; Wells 2002).

"The use of a gun by the victim significantly reduces her chance of being injured" in situations when the robber is armed with a non-gun

weapon (Southwick 2000). If the robber has a gun, or has no weapon, victim gun possession did not seem to affect injury rates. Southwick (2000) concluded if 10 percent more robbery victims had guns, the rate of serious victim injury from robbery would fall by 3 to 5 percent.

Recommended Readings: Gary Kleck and Jongyeon Tark, “Resisting Crime: The Effects of Victim Action on the Outcomes of Crimes,” *Criminology* 42 (4): 861–909; William Wells, “The Nature and Circumstances of Defensive Gun Use: A Content Analysis of Interpersonal Conflict Situations Involving Criminal Offenders,” *Justice Quarterly* 19 (2002): 127–57.

6. Concealed carry laws do not increase crime and may generate social benefits.

Research suggests concealed carry laws deter criminals and generate billions of dollars of benefits per year in avoided costs of crime.

Seventy-three percent of violent victimizations take place away from the victim’s home (BJS 2016), making the right to carry a firearm for self-defense an important and necessary application of the right to bear arms. Forty-four states have constitutional provisions protecting the right to keep and bear arms, but restrictions on the right to carry or conceal weapons vary from state to state. Of the six states that do not constitutionally protect firearms ownership—California, Iowa, Maryland, Minnesota, New Jersey, and New York—one, New York, protects gun ownership via statutory civil rights law.

Firearm owners are subject to the laws of the state they are in, not where they reside, so traveling with a gun in a state with restrictive regulations can result in unintentionally breaking state laws. Some states recognize others’ permits in return for their permits being recognized by the other state, called reciprocity, but this is not always the case.

Concealed Carry Laws

“Concealed carry” laws protect the individual right to carry a weapon in public in a concealed manner, either on one’s person or in close proximity. Such laws may not refer only to firearms: In Florida, for example, carrying a pepper spray device with more than two ounces of chemical requires a concealed carry permit.

All 50 states have passed laws allowing qualified individuals to carry certain concealed firearms in public, either without a permit or after obtaining a permit. In most states, concealed carry legislation is mostly under “shall-issue” rules: After a background check and, generally, completion of a training program, permits shall be issued without further restrictions or requirements. State laws are not uniform, but 42 states are explicitly or essentially shall-issue jurisdictions.

In 2015, gun expert John D. Lott, Jr. and coauthors reviewed new research on the extent of concealed carry laws and reported the following statistics (Lott *et al.* 2015):

- 5.2 percent of the total adult population of the United States has a concealed carry permit.
- In five states, more than 10 percent of the adult population has concealed handgun permits.
- In 10 states, a permit is no longer required to carry in all or virtually all of the state.
- Since 2007, the number of permits issued to women has increased by 270 percent and to men by 156 percent.
- Some evidence suggests permit-holding by minorities is increasing more than twice as fast as for whites.
- States with the largest increase in permits have seen the largest relative drops in murder rates.
- Concealed handgun permit holders are extremely law-abiding. In Florida and Texas, permit holders are convicted of misdemeanors or felonies at one-sixth the rate that police officers are convicted.

Social Benefits of Concealed Carry

Lott argues one of the most substantial drivers of crime reduction is the proliferation of shall-issue concealed-carry licenses to law-abiding people (Lott and Mustard 1997; Lott 1999, 2010). More guns in the hands of honest people in public spaces deter criminals and generate billions of dollars of benefits per year in avoided costs of crime.

The majority of researchers who have tested Lott's hypothesis have at least partially agreed with him (finding some reduction in crime), although a significant minority have found concealed-carry laws to have no statistically discernible effect on crime.

In 2005, the National Research Council, the research arm of the U.S. National Academy of Sciences, National Academy of Engineering, and National Academy of Medicine, published the results of its assessment of Lott's claims (NRC 2005). While a six-member majority of the NRC panel concluded the data were inadequate to conclude whether right-to-carry laws increased or decreased crime, one panelist, political scientist James Q. Wilson, filed a blistering dissent (Wilson 2005). Wilson, one of the most respected political scientists of recent decades, had supported gun control measures in the past (Wilson 1994).

Wilson found "some of [Lott's] results survive virtually every reanalysis done by the committee." Specifically, "Lott argued that murder rates decline after the adoption of [right-to-carry] laws even after allowing for the effect of other variables that affect crime rates. The committee has confirmed this." Also, Wilson stated studies by Lott's critics "do not show that the passage of RTC laws drives the crime rates up (as might be the case if one supposed that newly armed people went about looking for someone to shoot). The direct evidence that such shooting sprees occur is nonexistent. The indirect evidence ... is controversial."

Wilson concluded: "This suggests to me that for people interested in RTC laws, the best evidence we have is that they impose no costs but may confer benefits. That conclusion might be very useful to authorities who contemplate the enactment of RTC laws."

Recommended Readings: National Research Council (NRC), *Firearms and Violence: A Critical Review*, Committee to Improve Research Information and Data on Firearms (Washington, DC: The National Academies Press, 2005); John R. Lott, Jr., John E. Whitley, and Rebekah C. Riley, "Concealed Carry Permit Holders Across the United States," *Report from the Crime Prevention Research Center*, July 13, 2015.

7. “Stand Your Ground” laws have been the historical norm in the United States.

“Stand your ground” laws— where a claim of self-defense does not require the individual prove he or she attempted to retreat—are not new in the United States.

“Stand Your Ground” (SYG) laws state a claim of self-defense does not require the individual prove he or she attempted to retreat from an assailant (Branca 2013). Similar “Castle Doctrine” laws apply to home invasion. These laws have come under heavy fire in recent years, with objections apparently rooted in a belief they represent some new and dangerous approach to resolving self-defense claims. That assessment is mistaken.

SYG laws are a codification of judicial rulings that have been part of American common law for more than a century. A recent detailed assessment counts 34 states as “no-retreat” states, where a claim of self-defense does not require the individual prove he or she attempted to retreat from an assailant (Branca 2013).

An American Tradition

In every U.S. jurisdiction, there are four basic things a defendant must show to make a successful claim of self-defense. In “retreat jurisdictions,” a defendant must make one additional showing to sustain a self-defense claim. In both SYG and retreat jurisdictions, a successful self-defense claim requires the following:

1. *Innocence*—the individual was not a criminal aggressor;
2. *Imminence*— the person was in immediate danger;
3. *Proportionality*—the force used was proportionate to the threat, meaning deadly force can be used only against the threat of death or serious bodily harm; and
4. *Reasonableness*—the conduct was objectively and subjectively reasonable under the circumstances.

In jurisdictions that require retreat, a successful self-defense claim requires a *fifth* showing: The use of deadly force could not have been avoided by retreating. The retreat rule is and always has been the minority rule in the United States.

Two early U.S. Supreme Court cases demonstrate this in detail. The first case includes the famous assessment by Justice Oliver Wendell Holmes: “Detached reflection cannot be demanded in the presence of an uplifted knife.” The fuller quotation below captures the Court’s assessment of the American rule:

Many respectable writers agree that, if a man reasonably believes that he is in immediate danger of death or grievous bodily harm from his assailant, *he may stand his ground*, and that, if he kills him, he has not succeeded the bounds of lawful self-defense. ... Therefore, in this Court at least, it is not a condition of immunity that one in that situation should pause to consider whether a reasonable man might not think it possible to fly with safety or to disable his assailant, rather than to kill him (*Brown v. United States* 256 U.S. 335 (1921)).

In *Beard v. United States* (158 U.S. 550 (1895)), the Court opinion authored by John Marshall Harlan, quoted in part below, shows modern SYG statutes are fully consistent with the century-old American rule:

The application of the doctrine of “retreating to the wall” was carefully examined by the Supreme Court of Ohio in *Erwin v. State*, 29 Ohio St. 186, 193, 199. ... Upon a full review of the authorities and looking to the principles of the common law as expounded by writers and courts of high authority, the Supreme Court of Ohio held that the charge was erroneous, saying:

“... The question, then, is simply this: does the law hold a man who is violently and feloniously assaulted responsible for having brought such necessity upon himself on the sole ground that he failed to fly from his assailant when he might safely have done so? ... [A] true man, who is without fault, is not obliged to fly from an assailant, who by violence or surprise maliciously seeks to take his life, or to do him enormous bodily harm.”

The Court ruled a person was justified in killing an assailant without retreating:

In our opinion, the court below erred in holding that the accused, while on his premises, outside of his dwelling house, was under a legal duty to get out of the way, if he could, of his assailant, who, according to one view of the evidence, had threatened to kill the defendant, in execution of that purpose had armed himself with a deadly weapon, with that weapon concealed upon

his person went to the defendant's premises, despite the warning of the latter to keep away, and by word and act indicated his purpose to attack the accused. The defendant was where he had the right to be ... [and] he was not obliged to retreat nor to consider whether he could safely retreat, but was entitled to stand his ground and meet any attack made upon him with a deadly weapon in such way and with such force as, under all the circumstances, he at the moment, honestly believed, and had reasonable grounds to believe, were necessary to save his own life or to protect himself from great bodily injury (*Beard v. United States* 158 U.S. 550 (1895)).

In *Runyan v. State* (57 Ind. 80 (1877)), which was an indictment for murder and where the instructions of the trial court involved the present question, the Court said:

The weight of modern authority, in our judgment, establishes the doctrine that when a person, being without fault and in a place where he has a right to be, is violently assaulted, he may, without retreating, repel force by force, and if, in the reasonable exercise of his right of self-defense, his assailant is killed, he is justified.

Deep Roots in Common Law

Opposition to requiring the fifth showing in self-defense cases, that use of deadly force could have been avoided by retreating, predates the founding of the United States. In Sir Edward Hyde East's *A Treatise of Pleas of the Crown* (1803), the author, considering what sort of an attack was lawful and justifiable to resist even by the death of the assailant, wrote:

A man may repel force by force in defense of his person, habitation, or property against one who manifestly intends and endeavors, by violence or surprise, to commit a known felony, such as murder, rape, robbery, arson, burglary, and the like, upon either. *In these cases he is not obliged to retreat* [emphasis added], but may pursue his adversary until he has secured himself from all danger, and if he kill him in so doing, it is called justifiable self-defense.

Similarly, Sir Michael Foster wrote in *Crown Cases* (1792):

In the case of justifiable self-defense, the injured party may repel force with force in defense of his person, habitation, or property against one who manifestly intendeth and endeavoreth, with

violence or surprise, to commit a known felony upon either. *In these cases he is not obliged to retreat* [emphasis added], but may pursue his adversary till he findeth himself out of danger, and if, in a conflict between them, he happeneth to kill, such killing is justifiable.

These early legal statements and later treatments by the U.S. Supreme Court confirm that very early on, consistent with modern SYG laws, U.S. common law did not require retreat. SYG laws reflect the longstanding common law assessment of the proper burden to place on a person who is fighting to defend his or her life. He or she must meet a rigorous four-part test that has long been demanded of those claiming self-defense.

SYG laws do not change traditional self-defense rules. They simply say people who have had to defend themselves against murderous assaults are not *also* forced to prove a negative: That in the middle of a deadly attack, they could not have safely run away.

The Current Debate

Concern over rising violent crime rates, especially in urban areas, has generated interest in passing or strengthening existing SYG laws. Early successes of this movement generated a tremendous backlash from anti-gun activists who accused advocates of SYG laws of being racists (e.g., ABA 2015) or responsible for rising homicide rates (e.g., Humphreys *et al.* 2017). Thankfully, these claims do not stand up to careful inspection.

In 2014, the American Bar Association released a preliminary version of a report it would eventually publish in 2015 purporting to show SYG laws had a disparate impact on African-Americans and other minorities, increased homicide rates, were unnecessary, and unnecessarily limited judicial discretion. The report got wall-to-wall uncritical coverage by the mainstream media, none of them reporting ABA's longstanding anti-gun bias. But surely that was relevant, since ABA is a lobbying organization for lawyers and not an independent research organization. The National Rifle Association—itsself a lobbying organization but on the other side of this issue—couldn't resist pointing it out:

The American Bar Association (ABA), which supports handgun registration and handgun owner licensing, supports a ban on general-purpose semi-automatic rifles like the AR-15, thinks the Consumer Products Safety Commission should dictate what kind of firearms are “safe” enough to manufacture, supports legislation to ban the manufacture of pistols that don't micro-stamp ammunition, thinks that anti-gun groups should be able to file frivolous lawsuits against the firearm industry, and opposes “shall

issue” carry permit laws and federal “Right-to-Carry” reciprocity legislation has come out against Stand Your Ground laws.

Who, pray tell, could have predicted it (NRA 2014)?

NRA goes on to describe how the ABA report relies on studies with small sample sizes, or that fail to distinguish between defensive homicides and murders, or that don't report whether a SYG law was invoked during defense proceedings. These are crippling defects for serious research, but it seems clear ABA never intended to conduct or even report serious research into the matter.

The idea that SYG laws discriminate against African-Americans is based on the assumption that blacks are more likely to commit violent crimes than whites, but the issue at stake in the SYG debate is the right of *victims* to fight back, and all empirical evidence suggests African-Americans are more likely than whites to be victims of violent attacks. John Lott wrote, “Who benefits from the law? Actually, since poor blacks who live in high-crime urban areas are the most likely victims of crime, they are also the ones who benefit the most from stand your ground laws. The laws make it easier for would-be victims to protect themselves when the police can't arrive fast enough. Therefore, rules that make self-defense more difficult disproportionately impact blacks” (Lott 2013b). Lott also pointed out African-Americans make up 16.6 percent of Florida's population but account for 31 percent of the defendants invoking the stand your ground defense (*Ibid.*).

In 2017, the *Journal of the American Medical Association* published a study purporting to show Florida's SYG had led to an increase in “murders” in the state (Humphreys *et al.* 2017). Attorney and legal self-defense expert Andrew Branca wrote a withering critique of the study (Branca 2016). The authors compared Florida's homicide rate to rates in four states they thought did not have SYGs, when in fact one of the four enforced statutes that were the equivalent of an SYG. Worse, the authors didn't distinguish between homicides and “murders,” even though the first includes justifiable use of deadly force while the latter does not. Wrote Branca,

By failing to distinguish between “murder” and “homicide,” the JAMA paper conflates unlawful and lawful killings. Indeed, it is quite possible that fully 100 percent of the increase in Florida homicides, which the paper attributes to the Stand Your Ground law, were in fact lawful acts of self-defense, the alternative to which would have been the murder, maiming, and rape of innocent victims. If so, the effect of the Stand Your Ground law has been to reduce the murder, maiming, and rape

of innocent victims, arguably the very social good intended by its passage (Branca 2016).

Recommended Readings: Jorge Amselle, “Why We Need ‘Stand Your Ground’ Laws,” *The Daily Caller*, March 11, 2014; Andrew Branca, “What to Make of the New Study of Florida’s ‘Stand Your Ground’ Law,” *National Review*, November 16, 2016.

8. The risk of firearms accidents is small and falling.

The accidental death rate from firearms, including accidental deaths among children, has been falling for the past four decades.

The image of a child killed by a firearm provokes our deepest emotions. That emotion is sometimes exploited and exaggerated in the political process. For example, Washington state initiative 676, a failed gun-licensing scheme, was pitched as a child safety regulation (Johnson 2005). But the truth about firearms accidents is that the risk is low and falling.

Small and Falling Risk

A careful analysis conducted by the National Safety Council (NSC) released in 2011 found the following:

How many children are killed by guns is a complicated question. If the age range is 0–19 years, and homicide, suicide, and unintentional injuries are included then the total firearms-related deaths for 2007 are 3,067. This is a figure commonly used by journalists. The 3,067 firearms-related deaths for age group 0–19 breaks down into 138 unintentional, 638 suicides, and 2,161 homicides, 60 of which the intent could not be determined, and 25 due to legal intervention. Viewed by age group, 85 of the total firearms related deaths were of children under 5 years old, 3,134 were children 5–14, and 2,669 were teens and young adults 15–19 years old (NSC 2011).

Gun ownership has increased greatly in the past few generations, yet this has not corresponded with an increase in fatal gun accidents. From 1948 to 2009, U.S. per-capita ownership of firearms rose by 186 percent, yet the per-capita death rate from firearms accidents fell by 88 percent. Over the same period (starting in 1950 when childhood accident data became available), the accidental gun death rate for children (ages 0 to 14) has fallen by 93 percent, from 1.10 per 100,000 population to 0.08. Thus, the fatal gun accident rate for all ages is today at an all-time low, while the per-capita gun supply is at an all-time high. The annual risk level for a fatal gun accident is around 0.18 per 100,000 in the population—less than the risk caused by taking two airplane trips a year or getting a whooping cough vaccination (Breyer 1993).

By way of comparison, swimming pools are involved in far more accidental child fatalities than are firearms (NSC 2007). In 2003, there were seven accidental firearms deaths for children under five, and 49 deaths for ages five to 14. For the same two combined age groups in that same year, there were 86 accidental deaths in bathtubs and 285 deaths in swimming pools. Swimming pool accidents cause more deaths of children under 10 years of age than *all* forms of death by firearm combined—accident, homicide, and suicide. For accidents, “the likelihood of death by pool (1 in 11,000) versus death by gun (1 in more than 1,000,000) isn’t even close” (Levitt and Dubner 2006).

The one in-depth study on firearms accidents among adults found the adult victims to have high rates of “arrests, violence, alcohol abuse, highway crashes, and citations for moving traffic violations” (Waller and Whorton 1973). In addition, about half of all fatal gun accidents involve hunting. Starting with New York State in 1948, all states have adopted regulations requiring those applying for a hunting license to pass a hunting safety class. These classes have probably reduced hunting fatalities from all sorts of carelessness, such as carrying a loaded gun while climbing over a fence or sitting in a tree stand without a safety harness.

Child Access Prevention Laws

In 2016, 18 states mandated safe storage of firearms with so-called Child Access Prevention (CAP) laws (What Works for Health 2016). Empirical studies of CAP laws have come to conflicting conclusions. Some studies have found the laws may decrease the number of firearm suicides (Santaella-Tenorio *et al.* 2016) and reduce unintentional firearm deaths and injuries among youth (DeSimone *et al.* 2013), but other studies find no impact (Gius 2015; Lee *et al.* 2013).

In 2001, Lott and Whitley compared crime, accident, and suicide trends in states with CAP laws with trends in other states, while controlling for the effects of numerous sociological factors (Lott and

Whitley 2001). They found no statistically significant reduction in accidents involving children or teenagers. Teenage gun suicide decreased, but not the overall teenage suicide rate. There were also large, statistically significant *increases* in violent crime and homicide, suggesting perhaps the guns were less available to scare or fend off home invaders.

Lawmakers considering enacting restrictions to lower the firearms accident rate should understand the rate is already very low, and more restrictive firearms laws may have negative unintended consequences.

Recommended Readings: John R. Lott, Jr. and John E. Whitley, “Safe Storage Gun Laws: Accidental Deaths, Suicides, and Crime,” *Journal of Law and Economics* 44 (October 2001): 659–89; Centers for Disease Control and Prevention, “Deaths: Final Data for 2014,” *National Vital Statistics Reports* 65 (4).

9. Large-scale illegal gun-running is a myth.

Research shows sellers of illegal guns generally are not professionals, specialists, or part of criminal organizations devoted to gun trafficking.

The worry about guns purchased from retail outlets in one state being trafficked illegally to states with more stringent limits on retail sales has commanded much public attention and has led to proposals for limits on retail purchases, such as “one gun a month” laws. Andrew Cuomo, then attorney general of New York, exemplified the simplistic and politically motivated nature of claims about gun-running when he stated in 2006, “A wave of illegal guns has been breaking over New York for years. Incredibly, 1 percent of gun dealers account for the majority of illegal guns. We need to crack down on their illegal behavior and put them out of business” (Cuomo 2006).

This policy is based on the assumption that a significant share of guns is diverted into criminal hands by corrupt or negligent federal firearms licensees (FFLs) and unlicensed, criminal gun traffickers. Some social scientists claim this is a major source of guns used in crime. But claims of a pipeline of illicit high-volume gun trafficking are not sustained by direct evidence of arrests and convictions of large-scale gun

traffickers. Instead, they are grounded primarily on proxies that researchers claim are indicators of gun trafficking. An example is labeling as “new trafficked crime guns” all guns with a time-to-crime of less than one year (a time of less than a year between purchase of the gun and a crime committed with it), and whose criminal possessor was not the original retail purchaser, even though some or even all of these guns may simply have been stolen from their lawful buyers within a year of purchase (Kleck and Wang 2009).

One of the most comprehensive and recent studies of how criminals acquire guns used in crime was conducted by prize-winning researchers Gary Kleck and Shun-Yung Kevin Wang. Kleck and Wang (2009) show how criminals obtain guns from a wide variety of largely interchangeable non-trafficker sources, such as (1) directly or indirectly as a by-product of thefts, primarily residential burglaries, not committed specifically for the purpose of obtaining guns; (2) buying guns one at a time from friends and relatives who neither regularly sell guns nor act as straw purchasers; or (3) if they have no criminal convictions, lawfully purchasing guns from licensed dealers, to whom they are indistinguishable from buyers who will not go on to commit crimes.

Kleck and Wang demonstrate high-volume or persistent traffickers are rare and, in the aggregate, are of little significance in the arming of criminals. Sellers of illegal guns generally are not professionals, specialists, or part of criminal organizations devoted to gun trafficking, and they do not sell guns persistently or in large numbers: “Illicit gun sellers are more likely to be thieves who sell a few guns (typically fewer than a half-dozen per year) along with other saleable property they steal, drug dealers who occasionally sell guns as a sideline to their drug business, or friends and relatives of the criminal recipient who do not regularly sell guns” (Kleck and Wang 2009, p. 1241).

City-level data on recovered crime guns show the actual number of verifiably trafficked guns is extremely small and gun theft explains most criminal access to firearms. Kleck and Wang wrote, “Even in ... exceptional urban areas with stringent gun controls, where traffickers are supposed to flourish, criminals pay *under* the retail price for handguns. Consequently, the notion that criminals could make significant profits by selling guns purchased at retail prices from FFLs is not plausible even in cities with unusually low gun ownership rates and unusually strict gun laws, such as New York, Washington, D.C. or Chicago” (*Ibid.*, p. 1251).

William J. Vizzard (2000), a political scientist and veteran ATF agent, summarized the empirical work on gun trafficking as follows:

Nothing in the available studies supports an assumption of a well-structured illicit market in firearms. Transactions appear to be casual and idiosyncratic. My own experience, and that of

most other agents I have interviewed, supports an assumption that the majority of sources is very dispersed and casual, and regular traffickers in firearms to criminals are few (p. 31).

Vizzard (2000) concludes “regular traffickers in firearms” are rare because of the huge reservoir of guns in the United States, which allows criminals to draw easily on many different sources for guns. In surveys of incarcerated criminals, 46 to 70 percent reported they owned and used stolen handguns.

Using data from 1987 through 1992, the National Crime Victim Survey estimated an average of 340,700 guns were stolen each year (NRC 2005). Another study estimated an average of 500,000 guns is stolen each year (Cook *et al.* 1995). More recent estimates put the number of stolen guns even higher, at 1.2 million per year (Kleck and Wang 2009).

The large number of gun thefts reflects the huge number of guns in the nation, but the data do not show large gun-running organizations are operating in the country. Illegal gun dealers and straw purchasers should be vigorously prosecuted. However, claims about massive illegal gun-running are unsupported and should not drive public policy decisions.

Recommended Readings: Gary Kleck and Shun-Yung Kevin Wang, “The Myth of Big-Time Gun Trafficking and the Overinterpretation of Gun Tracing Data,” *UCLA Law Review* **56** (2009): 1233–94; William Vizzard, *Shots in the Dark: The Policy, Politics, and Symbolism of Gun Control* (Lanham, MD: Rowman & Littlefield, 2000).

10. International experience does not support gun control in the United States.

Proposals that the United States adopt gun control policies in place in other countries ignore the large number of privately held guns in the United States.

Some anti-gun activists assert the United States should adopt gun control policies similar to those of other developed nations, including gun bans and confiscation of certain types of firearms. Such proposals, however, wrongly assume those policies are effective in reducing crime or

accidental deaths in other countries and fail to take into account the fact that the United States has far more privately held guns than other countries.

Unregistered Guns Overseas

Data from international experiments with gun prohibition and registration illustrate a powerful and nearly universal individual impulse to defy those controls. With data from 77 countries, the International Small Arms Survey (Berman *et al.* 2007) reports massive illegal parallel holdings, yielding two illegal guns for every legal one. This average is pulled down by rare cases like Japan, which the report notes has “unregistered gun holdings ... one-quarter to one-half as large as registered holdings.”

In England and Wales, where there were 1.7 million legally registered firearms in 2005, the number of illegal, unregistered guns was estimated as high as four million (Berman *et al.* 2007, p. 50). The Chinese reported 680,000 legal guns in 2005, with estimates of nearly 40 million illegal guns (*Ibid.*, pp. 47, 50). The German police union estimates Germany has “about 45 million civilian guns: about 10 million registered firearms; 20 million that should be registered, but apparently are not; and 15 million firearms such as antiques ... and black-powder weapons ... that do not have to be registered” (*Ibid.*, p. 51).

The German experience tells us something about the staying power of defiance. Registration was introduced in Germany in 1972, “when the nation’s civilian holdings reportedly totaled 17–20 million firearms” (Berman *et al.* 2007). Only 3.2 million of these guns were registered. “In the thirty-five years since then, roughly 8 million additional firearms were legally acquired, accounting for the rest of the registered guns thought to exist today. ... Similar totals come from scaling up regional estimates. ... [Bavaria] has some 1.5 million legal and 3 million unregistered firearms,” Berman and others (2007) note.

The International Small Arms Survey reports similar numbers for other nations. With close to seven million registered guns, Canada is estimated to have about 10 million unregistered guns. Brazil reports nearly seven million registered guns and estimates 15 million unregistered. India reports fewer than six million registered guns against an estimated 45 million illegal ones. France has fewer than three million guns registered and estimates nearly 20 million unregistered. Mexico reports fewer than five million registered versus about 15 million unregistered guns (Berman *et al.* 2007)

Although there are exceptions such as Japan, where unregistered guns are a fraction of those legally registered, nearly every country surveyed produced estimates of unregistered guns that are a multiple of registered guns.

Failed U.S. Bans

In recent years, several U.S. states and municipalities have passed laws mandating the registration (and subsequent prohibition) of assault rifles. These laws failed miserably, primarily due to owner resistance. In Boston and Cleveland, for example, the rate of compliance with the ban on assault rifles is estimated at 1 percent. In California, nearly 90 percent of the approximately 300,000 assault weapons owners did not register their weapons.

Of the 100,000 to 300,000 assault rifles estimated to be in private hands in New Jersey, only 947 were registered, an additional 888 were rendered inoperable, and four were turned over to the authorities (Jacobs and Potter 1995, p. 106). More recently, extensive noncompliance with the New York SAFE Act (banning certain semiautomatic rifles) has been reported. As of June 2015, fewer than 45,000 assault-style weapons had been registered in accordance with the 2013 law, of an estimated nearly one million such weapons in the state (Edelman 2015).

Extrapolating 90 to 99 percent defiance of state or municipal assault weapons bans to the nation as a whole may be too aggressive, but applying the international data conservatively indicates adopting aggressive supply controls like those of other developed nations would result in three or more people defying those restrictions for each one who complies.

Australia Is Not the United States

The Obama administration praised Australia's gun control efforts and suggested America emulate them (Obama 2015). After a mentally unstable man used a stolen semiautomatic rifle to kill 34 people in Tasmania in 1996, the government of Australia banned all semiautomatic rifles and all repeating shotguns (the equivalent of many tens of millions of guns in the United States). Owners of the roughly 700,000 existing guns were required to turn them in for destruction, and the confiscation was facilitated by a preexisting registration program that made it easier for the government to identify gun owners. The Australian government called this a "buyback," but gun owners were not given any legal choice but to cooperate.

This sort of confiscation cannot work in the United States. Our country has many more guns in private hands than other nations do (roughly 325 million, orders of magnitude more than any other country), tightly held by citizens steeped in a gun-rights culture with a constitutional guarantee of a right to bear arms. If a total ban were imposed, despite constitutional protections, and Americans defied it at just the average rate that has occurred internationally, 100 million guns or more would flood into the black market. That danger and the other

discernible consequences of an American gun ban would leave us far worse off than we are now.

The American attachment to the gun is exceptional. We own close to half the world's private firearms and buy half the world's output of new civilian guns each year. This demand and cultural attachment present a unique obstacle to gun-control legislation in the United States. Whatever courts say about the Second Amendment, a significant majority of Americans believe they have a right to own a gun.

U.S. adoption of gun control policies similar to those of Australia would result in a seismic shift of guns into the gray and black markets. Proponents of such policies have the burden of showing why that would not make things worse.

Recommended Readings: David B. Kopel, *The Samurai, the Mountie and the Cowboy* (Amherst, NY: Prometheus Books, 1992); Nicholas James Johnson, "Imagining Gun Control in America: Understanding the Remainder Problem," *Wake Forest Law Review* **43** (2009): 837–91.

References

- ABA (American Bar Association). 2015. *National Task Force on Stand Your Ground Laws, Final Report and Recommendations*.
- Amselle, Jorge. 2014. "Why We Need 'Stand Your Ground' Laws." *The Daily Caller* (website). March 11.
- ATF (U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives). 2013. *Annual Firearms Manufacturing and Export Report*.
- Berke, Richard L. 1989. "Capital Offers a Ripe Market to Drug Dealers." *The New York Times* (website). March 28.
- Berman, Eric G., Keith Krause, Emile LeBrun, and Glenn McDonald (editors). 2007. *Small Arms Survey 2007: Guns and the City*. Cambridge, United Kingdom: Cambridge University Press.
- BJS (Bureau of Justice Statistics). 2016. "The National Crime Victimization Survey (NCVS)." Unnumbered table titled "Average Annual 2004–2008." Washington, DC: Bureau of Justice Statistics. Accessed July 29, 2017.
- Bordua, David J. 1983. "Adversary Polling and the Construction of Social Meaning: Implications in Gun Control Elections in Massachusetts and California." *Law and Policy* **5** (3): 345–66.
- Braga, Anthony, Jack McDevett, and Glenn L. Pierce. 2006. "Understanding and Preventing Gang Violence: Problem Analysis and Response Development in Lowell, Massachusetts." *Police Quarterly* **9** (1): 20–46.

- Branca, Andrew F. 2013. *The Law of Self Defense: The Indispensable Guide for the Armed Citizen*. Maynard, MA: Law of Self Defense LLC.
- _____. 2016. "What to Make of the New Study of Florida's 'Stand Your Ground' Law." *National Review* (website). November 16.
- Breyer, Stephen. 1993. *Breaking the Vicious Circle: Toward Effective Risk Regulation*. Cambridge, MA: Harvard University Press.
- Burnett, H. Sterling. 2001. "Suing Gun Manufacturers: Hazardous to Our Health." *Texas Review of Law & Politics* 5 (2): 433.
- Catalano, Shannan. 2010. *Victimization during Household Burglary*. Washington, DC: Bureau of Justice Statistics. September.
- CDC (Centers for Disease Control and Prevention). 2014. "Compressed Mortality File" (website).
- _____. 2016. "Deaths: Final Data for 2014." *National Vital Statistics Reports* 65 (4).
- Conklin, John E. 1972. *Robbery and the Criminal Justice System*. Philadelphia, PA: J.B. Lippincott.
- Cook, Philip J., and Jens Ludwig. 1996. *Guns in America: Results of a Comprehensive National Survey of Firearms Ownership and Use*. Washington, DC: Police Foundation.
- Cook, Philip J., Jens Ludwig, and Anthony A. Braga. 2005. "Criminal Records of Homicide Offenders." *Journal of the American Medical Association* 294 (5): 598–601.
- Cook, Philip J., Stephanie Molliconi, and Thomas B. Cole. 1995. "Regulating Gun Markets." *Journal of Criminal Law and Criminology* 86 (1): 59–92.
- Cuomo, Andrew. 2006. "Andrew Cuomo on the Role of the Attorney General." *New York Law Journal* (website). November 1.
- DeSimone, J. et al. 2013. "Child Access Prevention Laws and Nonfatal Gun Injuries." *Southern Economic Journal* 80 (1): 5–25.
- East, Edward Hyde. 1803. *A Treatise of the Pleas of the Crown*. London, England: A. Strahan.
- Edelman, Adam. 2015. "Low Assault-Weapon Registration Stats Suggest Low Compliance with Gov. Cuomo's Landmark SAFE Act Gun Control Law." *New York Daily News* (website). June 23.
- Elliott, Delbert S. 1998. "Life-Threatening Violence Is Primarily a Crime Problem: A Focus on Prevention." *University of Colorado Law Review* 69 (Fall): 1081.
- FBI (Federal Bureau of Investigation). 2006–2016. *Uniform Crime Reports* (website).
- _____. 2017. "2016 Crime in the United States, Preliminary Semiannual Uniform Crime Report" (website).
- Foster, Sir Michael. 1792. *A Report of Some Proceedings on the Commission for the Trial of the Rebels in the Year 1746, in the County of Surry, and of other Crown Cases: To Which are Added Discourses upon a Few Branches of the Crown Law*. London, England: E. and R. Brooke.
- Gius, M. 2015. "The Impact of Minimum Age and Child Access Prevention Laws on Firearm-related Youth Suicides and Unintentional Deaths." *The Social Science Journal* 52 (2): 168–75.
- Halbrook, Stephen P. 2009. *Firearms Law Deskbook*. Eagan, MN: Thomson Reuters.

- _____. 2012. *The Founders' Second Amendment: Origins of the Right to Bear Arms*. Oakland, CA: Independent Institute.
- _____. 2016. "Reality Check: The 'Assault Weapon' Fantasy & Second Amendment Jurisprudence." *Georgetown Journal of Law & Public Policy* **14** (1): 47–76.
- Heath, J. Norman. 2001. "Exposing the Second Amendment: Federal Preemption of State Militia Legislation." *University of Detroit Mercy Law Review* **79**: 39–73.
- Hemenway, David, and Erica Richardson. 1997. "Characteristics of Automatic or Semiautomatic Firearm Ownership in the United States." *American Journal of Public Health* **87** (2): 286–88.
- Humphreys, D.K., A. Gasparrini, and D.J. Wiebe. 2017. "Evaluating the Impact of Florida's 'Stand Your Ground' Self-defense Law on Homicide and Suicide by Firearm, An Interrupted Time Series Study." *Journal of the American Medical Association Internal Medicine* **177** (1): 44–50. doi:10.1001/jamainternmed.2016.6811.
- Ikeda, Robert M., Linda L. Dahlberg, Jeffrey J. Sachs, James A. Mercy, and Kenneth E. Powell. 1997. "Estimating Intruder-Related Firearms Retrievals in U.S. Households, 1994." *Violence and Victims* **12** (4): 363–72.
- Jacobs, James B., and Kimberly A. Potter. 1995. "Keeping Guns Out of the Wrong Hands: The Brady Law and the Limits of Regulation." *Journal of Law and Criminology* **86** (1): 93–120.
- Johnson, Nicholas James. 2005. "A Second Amendment Moment: The Constitutional Politics of Gun Control." *Brooklyn Law Review* **71** (2): 715–96.
- _____. 2009. "Imagining Gun Control in America: Understanding the Remainder Problem." *Wake Forest Law Review* **43**: 837–91.
- Kates, Don B., and Gary Mauser. 2007. "Would Banning Firearms Reduce Murder and Suicide? A Review of International and Some Domestic Evidence." *Harvard Journal of Law and Public Policy* **30** (2): 649–94.
- Kennedy, David, and Anthony Braga. 1998. "Homicide in Minneapolis: Research for Problem Solving." *Homicide Studies* **2** (3): 263–90.
- Kleck, Gary. 1997. *Targeting Guns: Firearms and Their Control*. Hawthorne, NY: Aldine de Gruyter.
- Kleck, Gary, Tomislav Victor Kovandzic, and Jon Bellows. 2016. "Does Gun Control Reduce Violent Crime?" June 21.
- Kleck, Gary, and Miriam DeLone. 1993. "Victim Resistance and Offender Weapon Effects in Robbery." *Journal of Quantitative Criminology* **9** (1): 73–7.
- Kleck, Gary, and Marc Gertz. 1995. "Armed Resistance to Crime: The Prevalence and Nature of Self-Defense with a Gun." *Journal of Criminal Law and Criminology* **86** (1): 150–87.
- Kleck, Gary, and Jongyeon Tark. 2005. "Resisting Crime: The Effects of Victim Action on the Outcomes of Crimes." *Criminology* **42** (4): 861–909.
- Kleck, Gary, and Shun-Yung Kevin Wang. 2009. "The Myth of Big-Time Gun Trafficking and the Overinterpretation of Gun Tracing Data." *UCLA Law Review* **56** (5): 1233–94.

- Kobayashi, Bruce H., and Joseph E. Olson. 1997. "In Re 101 California Street: A Legal and Economic Analysis of Strict Liability for the Manufacture and Sale of 'Assault Weapons.'" *Stanford Law and Policy Review* 8 (1): 41–52.
- Kopel, David B. 1992. *The Samurai, the Mountie and the Cowboy*. Amherst, NY: Prometheus Books.
- _____. 2001. "Lawyers, Guns, and Burglars." *Arizona Law Review* 43 (Summer): 345–67.
- _____. 2003. "Comment on 'The Effects of Gun Prevalence on Burglary: Deterrence vs Inducement' by Philip J. Cook & Jens Ludwig." In Jens Ludwig and Philip J. Cook (editors). *Evaluating Gun Policy: Effects on Crime and Violence*. Washington, DC: Brookings Institution Press.
- _____. 2015. "The Costs and Consequences of Gun Control." *Policy Analysis* No. 784. Cato Institute. December 1.
- Lee, J.L., et al. 2013. "Value-based Insurance Design: Quality Improvement But No Cost Savings." *Health Affairs* 32 (7): 1251–7.
- Levitt, Steven B., and Stephen J. Dubner. 2006. *Freakonomics*. New York, NY: William Morrow.
- Lott Jr., J.R. 1999. "More Guns, Less Crime: A response to Ayres and Donohue." *Working Paper* No. 247. Program for Studies in Law, Economics and Public Policy, Yale Law School.
- _____. 2010. *More Guns, Less Crime: Understanding Crime and Gun Control Laws*. 3rd ed. Chicago, IL: University of Chicago Press.
- _____. 2013a. "The Truth about Assault Weapons Bans and Background Checks." *Fox News* (website). February 28.
- _____. 2013b. "Perspective: In Defense of Stand Your Ground Laws." *Chicago Tribune* (website). October 28.
- _____. 2016a. *The War on Guns: Arming Yourself Against Gun Control Lies*. Washington, DC: Regnery Publishing.
- _____. 2016b. "Gun Ownership Is Up in America. So Why Isn't the Media Telling You About It?" *Fox News* (website). September 8.
- Lott Jr., John R., and D.B. Mustard. 1997. "Crime, Deterrence, and Right-to-carry Concealed Handguns." *Journal of Legal Studies* 26 (1):1–68.
- Lott Jr., John R., and John E. Whitley. 2001. "Safe Storage Gun Laws: Accidental Deaths, Suicides, and Crime." *Journal of Law and Economics* 44 (October): 659–89.
- Lott Jr., John R., John E. Whitley, and Rebekah C. Riley. 2015. "Concealed Carry Permit Holders Across the United States." July 13.
- Madison, James. (1789) 1979. "From James Madison to Edmund Randolph, 15 June 1789." In Charles F. Hobson and Robert A. Rutland (editors). *The Papers of James Madison*. Charlottesville, VA: University of Virginia Press.
- McGinty, Jo Craven. 2006. "New York Killers, and Those Killed, by the Numbers." *The New York Times* (website). April 28.
- NICS (National Instant Criminal Background Check System). 2017. "NICS Firearm Checks: Month/Year." Federal Bureau of Investigation.

NRA (National Rifle Association). 2014. "No Surprise Here: ABA Opposes Self-Defense and Stand Your Ground Laws (website)." August 15.

NRC (National Research Council). 2005. *Firearms and Violence: A Critical Review*. Committee to Improve Research Information and Data on Firearms. Washington, DC: The National Academies Press.

NSC (National Safety Council). 2007. *Injury Facts, 2007 Edition*. Itasca, IL: National Safety Council.

———. 2011. *Injury Facts, 2011 Edition*. Itasca, IL: National Safety Council.

Obama, Barack. 2015. "Statement by the President on the Shootings at Umpqua Community College, Roseburg, Oregon." October 21.

Pew Research Center. 2016. "Opinions on Gun Policy and the 2016 Campaign." August 26..

Rengert, George F., and John Wasilchick. 2000. *Suburban Burglary: A Tale of Two Suburbs*. Springfield, IL: Charles C. Thomas Pub.

Santaella-Tenorio, J., *et al.* 2016. "What Do We Know about the Association Between Firearm Legislation and Firearm-related Injuries?" *Epidemiologic Reviews* **38** (1):140–57.

Sentementes, Gus G. 2007. "Patterns Persist in City Killings: Victims, Suspects Usually Black Men with Long Criminal Histories." *Baltimore Sun*. January 1.

Southwick, Lawrence. 2000. "Self-Defense with Guns: The Consequences." *Journal of Criminal Justice* **28** (5): 351–70.

Violence Policy Center. 1988. *Assault Weapons and Accessories in America* (website). Washington, DC: Violence Policy Center.

Vizzard, William. 2000. *Shots in the Dark: The Policy, Politics, and Symbolism of Gun Control*. Lanham, MD: Rowman & Littlefield.

Volokh, Eugene. 2006. "State Constitutional Rights to Keep and Bear Arms." *Texas Review of Law and Politics* **11** (1): 192–217.

Waller, Julian A. and Elbert B. Whorton. 1973. "Unintentional Shootings, Highway Crashes, and Acts of Violence—A Behavior Paradigm." *Accident Analysis & Prevention* **5** (4): 351–6.

Wells, William. 2002. "The Nature and Circumstances of Defensive Gun Use: A Content Analysis of Interpersonal Conflict Situations Involving Criminal Offenders." *Justice Quarterly* **19** (1): 127–57.

What Works for Health. 2016. "Child Firearm Access Prevention Laws." University of Wisconsin Population Health Institute and School of Medicine and Public Health.

Wilson, James Q. 1994. "Just Take Away Their Guns." *New York Times Magazine*. March 20.

———. 2005. "Appendix A, Dissent." In *Firearms and Violence: A Critical Review*. National Research Council, Committee to Improve Research Information and Data on Firearms. Washington, DC: The National Academies Press.

Wolfgang, Marvin E. 1995. "A Tribute to a View I Have Opposed." *Journal of Criminal Law and Criminology* **86** (1): 188–92.

Wright, Richard T. and Scott H. Decker. 1994. *Burglars on the Job: Streetlife and Residential Break-Ins*. Boston, MA: Northeastern University Press.

Wright, James D. and Peter H. Rossi. 1986. *Armed and Considered Dangerous: A Survey of Felons and Their Firearms*. New York, NY: Aldine de Gruyter.

Additional Resources

Additional information about firearms policy is available from The Heartland Institute:

- PolicyBot, The Heartland Institute's free online clearinghouse for the work of other free-market think tanks, contains hundreds of documents on firearms policy. It is on Heartland's website at <https://www.heartland.org/policybot/>.
- The Heartland Institute's multimedia offerings—high-quality video and daily podcasts—address a wide range of topics, including Second Amendment issues and firearms policy. You can search by topic at <https://www.heartland.org/multimedia/>.

Directory

The following legal scholars and organizations offer valuable information about firearms policy.

Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF),
<https://www.atf.gov/>

Firearms and Liberty, <https://www.firearmsandliberty.com/>

Guncite, <http://www.guncite.com/>

Gun Owners of America, <https://www.gunowners.org/>

Heartland Institute, <https://www.heartland.org/>

Nicholas James Johnson, professor of law, Fordham University School of Law, https://www.fordham.edu/info/23149/nicholas_johnson

Gary Kleck, David J. Bordua professor emeritus, Florida State University, <http://criminology.fsu.edu/faculty-and-staff/college-faculty/gary-kleck/>

David Kopel, research director, Independence Institute,
<http://www.davekopel.org/>

Library of Congress: United States: Gun Ownership and the Supreme
Court, <https://www.loc.gov/law/help/second-amendment.php>

Library of Law and Liberty, <http://www.libertylawsite.org/>

National Rifle Association, <https://home.nra.org/>

Uniform Crime Reporting (FBI), <https://ucr.fbi.gov/>