

# **Gun Rights, versus Gun Control – an Ongoing Debate**

PLS 135 Semester Research Paper

Dexter Guptill

Fall Semester 2007

Presented to

Dr. Rosemarie A. Pelletier

Dedicated to

Ms Jeanne Assam,

who saw what needed to be done, and did it.

## **Introduction**

WHEREAS The inalienable rights to Life, Liberty and Property entail, of necessity, a further right to defend them; and

WHEREAS in the United States of America, this right of defense is recognized and guaranteed; and

WHEREAS the most effective tool available for self-defense is a firearm; and

WHEREAS firearms are used defensively at least half a million, and possibly two and a half million times a year; and

WHEREAS the best defense of a free country is a militia, drawn from a generally-armed populace; and

WHEREAS firearms in the possession of individuals trained to their use are one of the more effective deterrents to violent crime,

RESOLVED that the Right of the People to keep and bear Arms, should not be further infringed, and that current laws which infringe said Right should be repealed.

Gun control, gun violence, and gun rights have been in the forefront of current events of late, and with every law proposed, court case, or high-profile shooting, the entire debate is hashed over again, and again. I elected to pick an issue with which I'm familiar, as I've needed to put down some coherent thoughts on the topic for some time.

With the abundance of news stories, online discussions, books, and articles available, I've chosen primarily to use online resources, with paper as a check. Sources include pro- and anti-gun websites, broadcast media sites, newspapers and magazines, and web fora, as places to find links for primary sources. In addition, government websites serve as sources for laws, bills, scientific studies, and information on politicians involved in the debate. Nota bene: links are given via tinyurl.com, for ease of typing from a paper document.

## Issue

### ***The Right to Arms, versus Gun Control Laws***

For purposes of this paper, “Gun Control” is defined as laws, rules, and regulations restricting the manufacture, sale, possession, and use of firearms. “Gun Rights” primarily addresses possession and carrying of firearms, primarily for self-defense.

When Jamestown, Virginia, was settled, every man of military age in the colony was, in theory, a soldier. By 1612, ownership of arms was mandatory (<http://tinyurl.com/yw94o7> – Virtual Jamestown, “First Hand Accounts of Virginia 1575-1705). Any male between 16 and 60 was issued arms, and turned out for military duty on a regular basis. Thus began a tradition in the New World, of men looking to their own defense.

Michael Bellesiles' Arming America (<http://tinyurl.com/2hqh2d> – History News Network, “How the Bellesisles Story Developed”) notwithstanding, the country did have widespread ownership of firearms by the time of the Revolution. After the Revolution, the American people enshrined the right to keep and bear arms, in the Second Amendment of the Bill of Rights. The phrasing of the Second Amendment occasionally confuses people. It says:

“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”( <http://tinyurl.com/gk9x2> – Eugene Volokh, Testimony to the Senate Subcommittee on the Constitution).

This is fairly straightforward, and in modern terms would be rendered, “Because a well-regulated militia is necessary to the security of a free state, the Right of the People to keep and bear arms shall not be infringed”.

The confusion arises in people who can't figure out whether the “Right to keep and bear Arms” applies to everyone, or only those in a “well regulated militia”. Looking at the history of the amendment, we see that it's an edit. The first draft is section 13 of the Virginia Declaration of Rights, which predates the Declaration of Independence by 32 days. It was, later, enshrined in Virginia's bill of Rights, as Article I, Section 13:

“That a well regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defense of a free state, therefore, the right of the people to keep and bear arms shall not be infringed; that standing armies, in time of peace, should be avoided as dangerous to liberty; and that in all cases the military should be under strict subordination to, and governed by, the civil power.” (<http://tinyurl.com/yeej44> – Constitution of Virginia).

Note that the Virginia article defines the militia as “the body of the people, trained to arms”. In short, it doesn't matter whether the right pertains only to those in the militia – the militia is most of the population. In fact, the Virginia version makes clear that the right itself is univesal. Incidentally, there was a slight change to Virginia's militia code around 20 years ago – from “able-bodied men” to “able-bodied residents...” (<http://tinyurl.com/2c8jy4> – Code of Virginia)

The Federal version is as follows:

“(a) The militia of the United States consists of all able-bodied males at least 17 years of age and, except as provided in section 313 of title 32, under 45 years of age who are, or who have made a declaration of intention to become, citizens of the United States

And of female citizens of the United States who are members of the National Guard.

(b) The classes of the militia are -

(1) the organized militia, which consists of the National Guard and the Naval Militia; and

(2) the unorganized militia, which consists of the members of the militia who are not members of the National Guard or the Naval Militia.”

In short, the Federal Militia is all males of military age, and females who want to be.

(<http://tinyurl.com/2xmu8f>)

Gun control laws are, for the most part, predicated on the notion that public safety trumps the individual right to arms and self-defense. Gun control measures range from outright bans of one or more types of firearms, to provisions for licensing those who wish to carry them. The strictures vary from Vermont's, that is to say none at all, to the District of Columbia's total ban on handguns, and draconian requirements for registration and disabled storage of long guns.

Gun control in the United States began with restrictions on bearing arms by slaves, later all blacks, in the 17<sup>th</sup> Century. Laws disarming blacks were prevalent throughout the slaveholding states. After the Civil War, southern states enacted Negro codes, barring blacks from bearing arms. This was ostensibly a public-safety measure. In actuality, the purpose was to hinder black self-defense.

(<http://kennblanchard.com/> – Kenn Blanchard, “Black Man With a Gun”)

Gun control in the urban Northeast was not primarily aimed at blacks. Instead, it was aimed at immigrants. The assumption was that these people had a higher proportion of criminally-inclined folk in their population, than did those whose great-grandparents had immigrated. An editorial in the New York Times of January 27, 1905, is instructive:

“[The proposed gun control] measure would prove corrective and salutary in a city filled with immigrants and evil communications, floating from the shores of Italy and Austria-Hungary. New York police reports frequently testify to the fact that the Italian and other south Continental gentry here are acquainted with the pocket pistol, and while drunk or merrymaking will use it quite as handily as the stiletto, and with more deadly effect. It is hoped that this treacherous and distinctly outlandish mode of settling disputes may not spread to corrupt the native good manners of the community.”

(<http://tinyurl.com/as8uj4x> – Anthonow.com, discussing New York's Sullivan Act of 1911).

Later gun control laws were, at least in some part, actually aimed at curbing violence rather than disarming minorities. The National Firearms Act of 1934 (NFA '34) regulated and registered machineguns, submachineguns, sawed-off shotguns, and “destructive devices” (bazookas, bombs, etc).

It was designed primarily to inhibit mayhem caused by organized crime. The Gun Control Act of 1968 (GCA '68) was passed in reaction to the assassinations of Martin Luther King and Bobby Kennedy, and the massive amount of civil unrest going on at the time. The Brady Act was passed in 1994, mandating background checks. It was designed to prevent those prohibited from owning guns under GCA '68, from obtaining them.

Let's examine some types of laws.

### ***Concealed Carry / Licensing Laws***

(source: <http://www.handgunlaw.us> – compilation of state gun control laws, handguns in particular)

With the exception of Illinois, which bans the carrying of concealed firearms, most states regulate and license concealed carry. Many states (like Virginia) permit unlicensed carry of firearms in plain sight. However, this right is frequently honored more in the breach than in practice. In many parts of the country, those who carry guns openly can expect to be harrassed. On the other end of the spectrum, Vermont has no gun laws. Vermont residents are subject only to Federal gun regulations.

Shall-Issue concealed-carry laws are also called right-to-carry laws. They state that the licensing entity *shall* issue, without discretion, a permit to all qualified applicants. Thirty-six States are currently Shall-Issue. In addition, many have provisions for non-resident permits, or recognize those of other States. Virginia's requirements are typical: a clean background with regard to felonies and some (violent) misdemeanors; no current drug, alcohol, or mental issues; and a modicum of training.

Alaska, Arizona, and Wyoming are slightly different from other shall-issue states. Their permits are optional. They have actually adopted so-called “Vermont carry” within the borders of the states themselves. However, their legislators recognized the difficulties that Vermont has with reciprocity and out-of-state carry. Therefore, they retained the concealed-carry permit for those who wish to get it so they can carry in other states.

Eleven States have “May-Issue” laws. The licensing authority *may* issue a permit, at their discretion. This varies widely, among the states. Alabama's and Connecticut's laws function almost as shall-issue. DC's former system was de facto non-issue. They are, now, completely non-issue. Places like California, Massachusetts, and New York vary from county to county. Robert Vanderbei of Princeton has a site usually referred to as “Purple America” (<http://tinyurl.com/4m5ut>)

Illinois, Wisconsin, and DC (De Facto, if not De Jure) do not issue concealed gun permits.

### ***Background Checks and Waiting Periods***

The Gun Control Act of 1968 established, among other things, categories of those prohibited from owning firearms. These include felons, those adjudicated mentally incompetent, persons dishonorably discharged from the military, and those who have renounced American citizenship. Later, the Lautenberg Amendment added persons convicted of a misdemeanor act of domestic violence.

(<http://tinyurl.com/yqxy2f>)

Following John Hinckley's attempt on the life of Ronald Reagan, campaigns began, to pass what eventually became known as the Brady Handgun Violence Prevention Act. It provided for a five-day waiting period to purchase a handgun, during which local authorities were supposed to check the background of the purchaser. The Brady Bill passed in 1993, and took effect in 1994. The National Instant Check System (NICS), came online in 1998, voiding the waiting period. Some States, like Virginia, already had an instant check system in place. Virginia's system exempted its residents from the waiting period.

## ***Licensing and registration, to purchase / possess***

(Source: <http://www.handgunlaw.us/>)

With the exception of items covered by NFA '34, and collectable curios and relics, there is no Federal licensing or registration of firearms possession by individuals. Manufacturers, importers, distributors, and dealers are heavily regulated and licensed. NFA firearms (automatic weapons, sawed-off shotguns, etcetera) require a more extensive background check, extensive paperwork including registration, and a \$200.00 tax stamp. Note that in 1934, a \$200 tax on a \$20.00 gun was as good as a ban.

States, however, vary in their degree of licensing and registration. Places like New York and Illinois register guns, and require permission to purchase and possess them. Virginia does not license or register, beyond some requirements additional to the Federal ones on NFA items.

## ***Bans on specific types of firearm***

Note that NFA '34 did not, per se, ban things like machineguns, cannon, and grenade launchers. Rather, it taxed them extortionately and added a burden of paperwork. A later amendment, tacked on to the Firearm Owners Protection Act of 1986, imposed a manufacturing cutoff date of May, 1986 for machineguns available to citizens.

The Assault Weapons ban of 1994 was, in essence, a propaganda ploy. It banned the manufacture in the US of nineteen firearms (and copies) by name, primarily because they resembled military firearms. It also banned any semiautomatic firearms which could take a detachable magazine, and had two or more “military” features such as pistol grip, bayonet lug, flash suppressor, etcetera. It also banned new manufacture, for other than law-enforcement use, of magazines capable of holding more than ten rounds of ammunition. It did not include a measure to confiscate existing firearms; those were grandfathered in. The ban expired in September of 2004. According to a study by the National Institute of Justice (<http://tinyurl.com/3815og>), its primary effects were to make preban assault weapons



into expensive collector's items. Because it banned guns based on cosmetic features rather than function, gun manufacturers simply altered their existing models to conform with the law. The ban had little or no effect on violent crime.

Other unintended consequences (see study) included a massive increase in production, immediately before the ban. In addition, the ban most likely cost the Democratic Party their majority in the House of Representatives.

## ***Pros***

### ***Positive aspects of the issue***

Possession, and the ability to carry, firearms has several benefits for firearm owners. The major benefit to carrying, is that firearms enhance one's capacity for self-defense. According to one National Institute of Justice report (<http://tinyurl.com/27ojru>, "Firearms and Violence") victims who resisted assailants with firearms were less likely to be injured than those who complied with the assailants, or who resisted with other means.

Firearms are also used recreationally, both for hunting and target shooting. Competitions range from shotgun sports such as trap and skeet, to defensive-handgun matches such as those sponsored by the International Defensive Pistol Association, or US Practical Shooting Association. For those with a historical bent, there is the Single Action Shooting Society, also known as "Cowboy Action" shooting, and the North-South Skirmish Association, which competes in Civil War uniforms, with arms of the period.

Furthering the historical-education theme, there are thousands of military reenactors who recreate battles, and man living-history displays around the country. These are not just Civil War, or Revolutionary War reenactors. The earliest firearm-using reenactors are demonstrating hand-gonnes from the Fourteenth Century. The most recent ones are educating visitors and spectators about Vietnam, and Gulf War I.

Firearms can also be works of art, or a financial investment based on rarity or historical interest. While used guns tend to depreciate, collector's items grow in value over the years. For collectors, there is a Federal license which allows them to purchase curio and relic firearms via mail-order, just like a dealer. The difference is, that a C&R licensee may not go into the business of selling firearms.

### ***Who will it help?***

The primary reasons for respecting people's right to keep and bear arms is for self-defense. University of Florida criminologist Gary Kleck, in a landmark study, estimated that people in the United States use guns defensively around two million times a year. Kleck began as an advocate of gun control, and wanted to see how much defensive value guns had. His own research transformed him into a gun-rights advocate, or at any rate a proponent of armed self-defense. (<http://tinyurl.com/28bolb> Kleck's book, Point Blank: Guns and Violence in America).

In states with liberal gun laws, criminals tend to be deterred by the prospect of armed victims. James Rossi and Peter Wright conducted interviews of convicted criminals in prison. They found that criminals worried as much about being shot by armed victims, as they did about being arrested and convicted. (<http://tinyurl.com/3xwf3o> Rossi & Wright, Armed and Considered Dangerous)

Most importantly, a gun is an equalizer. It allows a smaller, weaker defender to stand up to a larger, stronger assailant.

### ***Who's in favor?***

Speaking very generally, individual people who favor gun rights tend to be the philosophical descendants of the Anti-Federalists, rather than the Federalists. The division isn't necessarily right / left, or liberal / conservative. Rather, it falls along a spectrum of trust in, and reliance on, authorities. Groups that favor gun rights and, in particular, armed self-defense, range from the National Rifle Association, to Jews for the Preservation of Firearms Ownership, to the Pink Pistols (an alternate-lifestyle defense organization).

Legislators from Western and Southern States tend to vote pro-gun, regardless of party. Eastern and Northern States tend to divide up along Democratic versus Republican lines. Some examples are Jim Webb, D-VA; Max Baucus, D-MT; and John McCain, R-AZ. (<http://tinyurl.com/2f4r8l> VoteSmart.com, citing Gun Owners of America ratings)

## **Cons**

### ***Negative aspects of issue***

Guns are used with some frequency in crimes. If they are used, they are more lethal than other weapons. Guns are also used in suicides. Accidental (actually, negligent) discharges kill and injure people. The question is, does the bad outweigh the good?

### ***Who will it hurt?***

(Source: <http://tinyurl.com/ynmskf> USDOJ report on homicide distribution)

The majority of gun homicides tend to be gang related, or committed in the process of another felony (robbery, rape, burglary, etcetera). Intimate or family homicides tend to involve weapons other than guns. While mass public shootings tend to get a lot of press, they actually form a tiny percentage of the whole number of homicides.

Crime victims in general, including homicide and gun victims, tend to be lower-income, minorities, and in the 16-to-25 age range. (<http://tinyurl.com/24zv2k> USDOJ Victimization profile). Blacks are over-represented both as offenders, and victims, in proportion to their actual percentage in the population. A large amount of firearm homicide is gang- or drug-related.

### ***Who's against?***

Not surprisingly, urban blacks tend to be in favor of gun control, rather than a liberal interpretation of gun rights. Because of their environment, most of what they see around them with regard to guns is negative. For example, the NAACP is a strong proponent of gun control.

(<http://tinyurl.com/38ob3s>)

Most of the gun-control advocacy groups were started by people who had suffered injury or loss from gun violence. For example, Handgun Control Incorporated, now the Brady Campaign, was headed for many years by Sarah Brady, wife of James Brady who was shot in the attack on Ronald Reagan. Many of the leaders and activists of the Million Mom March had relatives or friends injured or killed by assailants with guns.

Among elected officials, there seems to be a split. Dianne Feinstein, D-CA, lost a friend in a mass shooting in San Francisco. Carolyn McCarthy, D-NY, lost her husband in the Long Island Railroad shooting. On the other hand, Charles Schumer, D-NY, appears simply to be catering to the perceived desires of his constituents. Others, like Adrian Fenty of DC, are emotionally convinced that gun control works.

## **What does the research say?**

### ***Kleck***

Gary Kleck, of the University of Florida, analyzed thirteen surveys of defensive gun uses, plus the National Crime Victimization Survey. Finding some flaws in their methodology, he conducted his own survey. The question was, whether there were sufficient defensive uses of guns, to counterbalance the criminal uses. With the exception of the NCVS, most reported annual defensive gun uses (DGU) ranging from a low end of 500,000, to a high of 2.5 million. The median / consensus figure is around two million DGU per year. The NCVS had the issue of being non-anonymous, and asking about defensive actions as a sidebar to the victimization study. (<http://tinyurl.com/ykcx3x>)

Professor Kleck, himself, went from skeptic about the defensive value of guns, to convert. Ironically, when his study won an award from a criminological association, it was presented to him by an anti-gun president.

## **Lott**

Dr. John Lott (<http://johnlott.blogspot.com/>), currently at the University of Maryland, did a landmark study in the late 1990s, on concealed-carry licensing and other gun laws. “Crime, Deterrence, and Right-to-Carry Concealed Handguns” (<http://tinyurl.com/22uf6m> U. Chicago study site) involved analysis of crime rates for three thousand counties in the United States, over eighteen years. The result was the most comprehensive research on crime versus concealed carry and gun ownership ever done. Prof. Lott had the study peer-reviewed by twenty-four colleagues prior to publication. The majority found no faults with the research; a couple who show an anti-gun bias in their own research, had issues with it.

Lott found that shall-issue concealed handgun laws have a major deterrent effect on violent criminals. In states that adopted shall-issue, there was an upsurge in violent crime in the border counties of neighboring states with stricter gun control. Meanwhile, violent crime tended downwards in the shall-issue states. Where states adopted waiting periods and restrictive gun control laws, there was a tendency for violent crime to increase. He has also noted in editorials, such items as the fact that mass public shootings tend to occur in so-called “gun-free zones”. Meanwhile, states which adopt shall-issue laws do not show an increase in unjustified shootings by permit carriers.

## **Rossi & Wright**

Rossi and Wright, summarized above, were trying to gain traction for gun control measures in the late 1970s under Jimmy Carter. Their interviews with convicted and incarcerated criminals yielded some interesting results. Their subjects had no major issues with gun-control laws, since they said they could obtain a gun with relative ease as soon as they were out of prison. Indeed, they tended to favor gun-control laws because those laws lessened the chance of being shot by armed victims. Few of them ever bought guns from retailers. Most of their guns were stolen, or picked up second, third, or fourth-hand from others who had acquired them illegally.

## **Current Events**

It is instructive to compare and contrast three recent mass public shootings. At Virginia Tech, Seung-Hui Cho killed thirty-two people, before shooting himself as police arrived. In Omaha, Nebraska, Rober Hawkins slaughtered eight people before he shot himself. In Colorado Springs, CO, Matthew Murray killed two (after shooting two others elsewhere), before he was shot by Jeanne Assam, a citizen with a concealed-carry permit. While Murray apparently committed suicide after being shot by Assam, there is absolutely no doubt that she stopped him.

Of the assailants, Cho acquired his guns from a licensed dealer. Hawkins apparently stole his from a relative. I have not yet seen any information on where Murray obtained his.

## **Conclusions / Summary**

I freely admit that I came to this project, knowing my conclusions. This is an issue on which I have lobbied for several years. My major work here, was in tracking down sources for arguments and information that I picked up over the years.

I have no problem with keeping firearms out of the hands of violent felons, or the dangerously insane. Those individuals have forfeited other civil rights, in addition to the right to armed self-defense. I have no problem with measures taken, to prevent said individuals from obtaining guns. The problem is that the devil is in the details.

If someone is erroneously denied on a background check, there are currently no adequate avenues of appeal. If a person has been through mental health treatment, and determined to be sane again as a result, it is well-nigh impossible to get off the prohibited-persons database. I do have an issue with a system that has potential for abuse.

There are close to ninety guns for every hundred people in this country. The vast majority sit quietly in gun cabinets, cases, closets, and sometimes holsters. Only a minuscule fraction are used in crime. The problem is, that “200 million guns didn't do anything today”, is not news. Perception is not

reality, in this case.

A gunowner has to pass a background check every time he or she buys a firearm, from a licensed dealer. In addition, permit carriers have to pass a check when they obtain, and when they renew, their permits. The types of people who rob, rape, murder, or go berserk are not those who get permits. Prof. Lott makes a point in his book, that people who commit gun crime generally have unstable lives all around. They have financial issues, family issues, car accidents, and so forth. They are not, by any stretch of the imagination, typical of the vast majority of gun owners.

There is a quote which spread over the 'Net almost instantly, in the wake of Tech. I haven't been able to track down a primary source, but it is now ubiquitous: "When seconds count, the police are only minutes away".

## **Bibliography**

Blanchard, Kenn. Black man with a gun (Nashville, TN : Winston-Derek Pub., 1996 )

Kleck, Gary. Point blank : guns and violence in America (New York : A. de Gruyter, c1991 )

Lott, John. More Guns, Less Crime (Chicago: Univesity of Chicago Press, 1998) and

Crime, Deterrence, and Right-to-Carry Concealed Handguns (Chicago: University of Chicago Press, 1998)

Sugarmann, Josh. Every Handgun is Aimed at You (New York : New Press : Distributed by W.W. Norton, 2001 )