

2016

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Recommended Citation

Williams, Brooke, "Federal Solutions to American Gun Violence: A Regulatory Framework in Three Parts". *The Trinity Papers (2011 - present)* (2016).

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Federal Solutions to American Gun Violence: A Regulatory Framework in Three Parts

Brooke Williams

To the Office of Senator John Cornyn (R-TX),

Gun violence remains one of the most prevalent threats to public safety in the United States. Firearm related deaths and injuries occur at an extremely high rate in the United States; it is estimated that “on an average day” almost “88 Americans are killed with guns”, and twice as many Americans are injured.¹ There is unanimous outrage at the magnitude of gun violence in the United States; outrage that has become increasingly recurrent in national dialogue. However, this appears to be the only point of consensus in discussions of gun control policy. Attempts at passing comprehensive laws to curb gun violence have failed due to the ideological gridlock that the policy issue creates. The brunt of this ideological gridlock is due to differing perspectives about the significance and utility of firearms. Gun owners view firearms as a means of self-preservation, hunting, sport — and in certain cases — a tool to maintain rural property. Others consider guns to be inherently destructive threats. These two conceptual understandings of firearms are treated as if they are diametrically opposed, and cannot coexist in any kind of gun control legislation. This catalyzes absolutist rhetoric that frames any attempt at regulation as unconstitutional, or any skepticism of government’s ability to mitigate gun violence as unfounded. Any real step towards a policy solution to curb America’s gun violence problem must forgo this rhetoric; something that Senator Cornyn has already had a history of doing. Earlier this year Senator Cornyn took “a rare step by a Republican” by introducing “a bill that would incentivize states” to send mental health information “to the federal background check system for firearm purchasers”, while punishing states that do not send this information.² In proposing this legislation, Cornyn refused to acknowledge the absolutist rhetoric that suggests any gun control legislation is diametrically opposed to the interests of gun-owners; rhetoric that impedes the safety of Texan constituents by dismissing any and all policy solutions to gun violence. This

memo is written with a similar philosophy. In this memo, policies to curb gun violence are made with the interests of the gun-owning rural population in mind, creating a legislative compromise that will ensure the safety of Texan constituents while simultaneously respecting their values, rather than dismissing them as misguided.

Before a proposal for successful gun control legislation is made, an analysis of unsuccessful gun control legislation is needed to contextualize the current policy problem. Policies both promoting and regulating gun carrying have all shown ineffective results at the state level. One of those policies promoting gun usage, statewide “stand your ground” laws, removes the requirement to “retreat if threatened” before resorting to using deadly force as a means of self-preservation.³ These laws thereby encourage citizens to escalate confrontations to a deadly point by removing legal repercussions against an individual shooting to kill. The use of deadly force can therefore be “based on nothing more than the person’s belief” that their life is in danger.⁴ These laws show “no evidence of deterrence effects on burglary, robbery, or aggravated assault”, despite the common belief that an armed civilian population will deter criminal activity.⁵ Stand your ground laws do, however, “increase homicides by a statistically significant 8 percent”.⁶ The failures of stand your ground laws – failures that affect Texas as a stand your ground state – reflect the larger problem with argumentation that supports recklessly escalating altercations in the name of self-defense. Despite the prominence of pre-meditated mass shootings in the media and public eye, “only a small proportion of murders are the result of careful and methodical planning”.⁷ Legislation that incentivizes the use of deadly force in confrontations is made with these outliers in mind. The narrative of a heroic good-guy with a gun halting the rampage of a mass shooter is the conceptual underpinning of state stand your ground legislation. The reality of American gun violence is far less grandiose. The majority “of handgun killings escalate from arguments that get out of control”.⁸ Since the main catalyst of handgun deaths in the US are due to escalating confrontations, it is no wonder that stand your ground legislation, which incentivizes escalating altercations to the point of deadly force, has had limited effects in preventing gun violence.

State policies that restrict gun usage have had just as statistically shaky results as those policies that encourage it. Comparing the crime rate of Chicago to the strength of Illinois’ gun restrictions

exemplifies the failures of restrictive state level gun control. The city of Chicago has seen a “40% increase” in its already large rates of yearly shootings.⁹ The total shooting victims thus far this year in Chicago exceeds 2,800.¹⁰ This figure is made even more alarming when compared to the average 12,000 yearly gun murders in the entirety of the United States, as this reveals that Chicago alone constitutes almost one-fourth of all gun murders in the US.¹¹ This large amount of gun violence in Chicago exists despite strict gun control laws in Illinois; strict gun laws that include a required three day waiting period before the purchase of a firearm, a ten year temporary license to purchase or even possess firearms or ammo, and a required background check for all applicants of this license.¹² Chicago specifically has “some of the tightest municipal gun regulations” that have eliminated the presence of all “retail gun dealers within city limit”.¹³ It is very easy to suggest that Illinois is an exemplification of how restrictive gun control is generally ineffective. However, the failure of Illinois’ strict state and municipal gun laws to curb murder rates is not due to the nature of restrictive policy in of itself, rather, the murders in Chicago are largely attributable to inter-state gun trafficking. Inconsistencies in state gun policies make it easy for guns to be trafficked from states with looser restrictions on firearm purchases, which is why a majority of the guns used in Chicago crimes are from gun shows or other private sales in “Indiana, where private sales are not recorded and do not require a background check”.¹⁴ Illinois, despite their comprehensive in-state gun regulations, can do nothing to prevent the importation of crime guns from other states with laxer policies. The reality of this inter-state gun trafficking network, often dubbed the “iron pipeline”, is that any comprehensive policy attempt to curb gun violence will be sabotaged by major inconsistencies in state laws. Mitigating the effects of the iron pipeline and maximizing the effects of gun safety policies requires a solution at the federal level.

This federal solution would bear the burden of creating a national standard for gun regulations, while simultaneously taking into account the variations in regional firearm cultures. By creating a set of consistent national standards for what type of firearms require what degree of commercial regulation, a framework is created that simultaneously mitigates opportunities for inter-state gun trafficking, while easing

regulation on firearms used commonly in rural gun cultures like Texas. An approach that regulates firearms based on technical properties of the gun is also well within constitutional boundaries, easing the concerns of many gun-owners about the constitutionality of federal gun control legislation. The most recent Supreme Court interpretation of the Second Amendment, *DC v. Heller*, states that while gun ownership is an individual right, that right “extends only to certain types of weapons”.¹⁵ By comparing the weapon instrumentality of the firearm to the utility that the firearm has for lawful purposes, like hunting and the killing of pest animals, three distinct tiers of firearms can be established, each with a distinct set of regulatory policies that vary in strictness.

The first tier would consist of manual action long-guns with little to no viable weapon instrumentality. Single shot bolt-action long-guns and multi round lever or pump-action long-guns have low weapon instrumentality, as their size prevents them from being feasibly concealed, and because the manual action required to reload these guns strongly inhibits their use in mass shootings. This low weapon instrumentality is seen statistically, as “on the average, rifles and shotguns are seven times less likely than handguns to be used in criminal violence”.¹⁶ Manual action long-guns are significantly less likely to be used in criminal activity, despite the fact that long-guns are the most commonly owned firearm in the US; outnumbering handguns at a ratio of “about two-to-one”.¹⁷ Furthermore, in addition to their low destructive potential, these weapons have high utility in gun cultures. Basic hunting, defense of property, and killing of both small and large pest animals can all be done using these manual action long-guns. Because this tier of firearm has so much utility in various gun cultures, as well as having very little utility for use in criminal activity, purchase of these firearms would require only a simple background check for outstanding mental health issues or criminal history, and a three day waiting period.

A set of stricter regulatory policies would be imposed on a second tier of more destructive firearms, namely semi-automatic long-guns and all handguns. These weapons have a higher potential for mass destruction due to their ability to fire multiple rounds without a manual reloading action. The weapon instrumentality of handguns in particular is due to their ability to be easily concealed. The small size of handguns contributes immensely to their use as crime guns, as they are “used in more than 75 percent of firearm-related

homicides and more than 80 percent of firearm-related robberies”.¹⁸ Furthermore, these weapons provide little utility that safer manual long-guns cannot provide. The ability to conceal handguns is often cited as being beneficial to self-defense outside the home; however, escalation of public altercations is more likely to increase the danger of the situation. Those who carry a gun in public, despite the common belief that this ensures self-preservation, are “4.46 times more likely to be shot in an assault than those not in possession” of a firearm.¹⁹ Due to the high weapon instrumentality and low pragmatic utility of semi-automatic weapons, specifically handguns, these firearms should be subject to a stricter set of regulatory policies. Namely, prospective buyers of these weapons should be required to obtain a license. The process of getting this license would not only include thorough background and mental health checks, but the completion of required gun safety courses, approval from a local police office, and renewals of the license every ten years. This ensures that the prospective buyers of these more dangerous weapons are trained in how to properly store and handle them, and also makes these guns easier to return to their proper owner if they’re ever misplaced or stolen by criminals.

The final regulatory policy involves the third tier of firearms and accouterments, a tier designated for weapons that have severe weapon instrumentality and almost no lawful utilities. This would include all fully automatic weapons, semi-automatic assault weapons such as Uzis, and magazines with an ammo capacity over fifteen rounds. The outright ban of these particularly destructive instruments is constitutionally sound, as the Supreme Court has stated that “the Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes”.²⁰ Furthermore, the ban of these weapons and accessories does not infringe on the individual right to bear arms, as the previous two regulatory policies allow for qualifying citizens to purchase and keep various firearms. Fully automatic firearms and large capacity magazines have no utility to any law abiding citizen, as they are specifically designed for the ease of rapidly killing multiple targets. “A national survey finds that nearly half of gun owners volunteer that the main reason they own a gun is for protection”, and “32% say they have a gun primarily for hunting”; both of the most common uses gun-owners cite for owning their firearm can be met very easily by guns with less weapon instrumentality, like

long-guns or even licensed handguns.²¹ National gun control policies should be made with the interests of the law-abiding American gun owner in mind, and the possession of assault weapons and large-capacity magazines has no utility in American gun cultures.

Rhetoric surrounding gun control often fails to take the realities of gun cultures and concerns of constitutionality into account. As a result, most dialogue regarding gun control policies have alienated Senator Cornyn's Texan constituents. However, the three regulatory policies proposed in this memo are designed to balance federal oversight with the needs of law-abiding gun owners, in the hopes of breaking the cycle of absolutist rhetoric and protecting the safety of American citizens.

ENDNOTES

¹ "Gun Violence by the Numbers," *Everytown for Gun Safety*, <http://everytownresearch.org/gun-violence-by-the-numbers/>.

² Matthew Speiser, "A Powerful Republican Senator Just Proposed A Gun Bill With Unlikely Support," *Business Insider*, <http://www.businessinsider.com/john-cornyn-gun-bill-nra-2015-8>.

³ Robert Spitzer, *The Politics of Gun Control: Sixth Edition* (Colorado: Paradigm Publishers, 2015), 84.

⁴ Ibid.

⁵ Mark Hoekstra, Cheng Cheng, "Does Strengthening Self-Defense Law Deter Crime or Escalate Violence? Evidence from Expansions to Castle Doctrine," *Texas A&M University*, http://econweb.tamu.edu/mhoekstra/castle_doctrine.pdf.

⁶ Ibid.

⁷ Spitzer, 57.

⁸ Ibid.

⁹ Aamer Madhani, "Murders, Shootings on the Rise in Chicago," *USA Today*, April 2, 2015, <http://www.usatoday.com/story/news/2015/04/01/chicago-murders-shootings/70787110/>.

¹⁰ "Chicago Shooting Victims," *The Chicago Tribune*, last updated December 11, 2015, <http://crime.chicagotribune.com/chicago/shootings>.

¹¹ "Gun Violence By The Numbers"

¹² "Illinois State Law Summary," *Law Center To Prevent Gun Violence*, September 17, 2015, <http://smartgunlaws.org/illinois-state-law-summary/>.

¹³ Gregor Aisch, Josh Keller, “How Gun Traffickers Get Around State Gun Laws,” *The New York Times*, November 13, 2015, <http://www.nytimes.com/interactive/2015/11/12/us/gun-traffickers-smuggling-state-gun-laws.html>.

¹⁴ Ibid.

¹⁵ DC v. *Heller*, 554 U.S. 570 (2008).

¹⁶ Franklin Zimring, “Firearms, Violence, and Public Policy,” *Scientific American* 265, no. 5 (1991): 48-54.

¹⁷ Spitzer, 54.

¹⁸ Zimring, 48-54.

¹⁹ Charles Branas et al., “Investigating the Link Between Gun Possession and Gun Assault,” *American Journal of Public Health* 99, no. 11 (2009): 2034.

²⁰ DC v. *Heller*, 554 U.S. 570 (2008).

²¹ “Why Own a Gun? Protection Is Now Top Reason,” *Pew Research Center*, March 12, 2013.

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