

ON THE ETHICS OF AMERICAN HANDGUN OWNERSHIP¹

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Introduction

Guns occupy a major—sometimes terrible—place in contemporary American life. From time to time, a momentous gun crime will arrest the nation’s attention. So it was with the murders of John F. Kennedy, Martin Luther King, Jr., Robert Kennedy, and John Lennon, and the attempted murder of Ronald Reagan. So it has been, more recently, with the Columbine High School and Virginia Tech University massacres. In the past two years alone, the nation’s attention has been riveted by the rampage that left Gabby Giffords severely disabled, the massacre at a Batman movie premier that set the American record for the most shooting victims in one spree, and the murder of several worshipers at a Sikh temple.

Although such tragedies arouse widespread public horror, little seems to change. The U.S. continues to have very high rates of gun ownership and gun violence as well as exceptionally permissive gun laws. More than 200 million firearms are owned by American civilians and at least one firearm can be found in 38% of all homes.² In 2009—the most recent year for which data are available—31,347 people in the U.S. were killed by guns for a rate of 10.2 per 100,000 people.³ Moreover, a disproportionate number of victims are children. A major Centers for Disease Control and Prevention (CDC) study found that the firearm death rate among American children was almost

¹ My thanks to Hugh LaFollette for comments, to Kathleen Smith for research assistance, and to George Washington University for a summer grant that supported this research.

² L. Hepburn, M. Miller, D. Azrael, and D. Hemenway, “The U.S. Gun Stock: Results from the 2004 National Firearms Survey,” *Injury Prevention* 13 (2007): 15-19.

³ Center for Disease Control and Prevention, “All Injuries” (www.cdc.gov/nchs/fastats/injury.htm)

twelve times higher than the average rates of 25 other developed countries.⁴ Not surprisingly, many families who are touched by such violence have urged government officials to adopt more restrictive gun policies. The broader American public, despite a much-noted dip,⁵ continues to favor gun control. In poll after poll, a majority (or at least a plurality) states that gun control laws should be strengthened rather than loosened or kept the same; and the numerical gulf between those favoring strict gun control and those who oppose it is substantial.⁶

Yet government officials have shied away from gun control for over a decade.⁷

Loose gun laws have not been tightened. Thus, it is easy to acquire firearms in the

⁴ CDC, “Rates of Homicide, Suicide, and Firearm-related Death among Children—26 Industrialized Countries,” *Morbidity and Mortality Weekly Report* 46 (February 7, 1997): 101-105

⁵ See, e.g., Pew Research Center Poll conducted in April 2012 (results presented in PollingReport.com at www.pollingreport.com/guns.htm) and Prithi Yelaja, “Gun Control Losing Support in U.S. Despite Mass Shootings,” CBS News (7/23/12; www.cbc.ca/news/world/story/2012/07/23/gun-control-polls.html). For an indication of the public’s stronger support for gun control in the 1990s, see Stephen Teret et al., “Support for New Policies to Regulate Firearms,” *New England Journal of Medicine* 339 (September 17, 1998): 813-18.

⁶ See CBS News/New York Times Poll conducted January 2011, Time Poll conducted June 2011, NBC/Wall Street Journal Poll conducted January 2011, ABC News/Washington Post Poll conducted January 2011, CBS News Poll conducted January 2011, and Gallup Poll conducted October 2010 (results presented in PollingReport.com at www.pollingreport.com/guns.htm). Among these polls, the only one in which stricter gun control earned a strong plurality, not a majority, of support was the CBS News/New York Times Poll.

⁷ Although the thrust of this paper is ethics, not politics, it would be remiss not to say something about the influence of the National Rifle Association (NRA) on American legislators, who have been so reluctant to pursue gun control measures or even provide means for thorough enforcement of existing laws. My understanding is that the NRA has dominated both parties of Congress, every presidential candidate since 2000, the Bureau of Alcohol, Tobacco, and Firearms (ATF), and even the CDC. See, e.g., David Fallis, “Sellers Shut Down by ATF Find Other Ways,” *The Washington Post* (December 14, 2010): A1, A6; Sari Horwitz and James Grimaldi, “Focused NRA a Force in U.S. Politics,” *The Washington Post* (December 15, 2010): A1, A10; David Fallis and James Grimaldi, “In Virginia, High-Yield Clip Seizures Rise,” *The Washington Post* (January 23, 2011): A1, A10; Adam Winkler, *Gunfight: The Battle over the Right to Bear Arms in America* (New York: Norton, 2011), chap. 1; Richard Aborn, “Reloading the Gun-Control Debate,” *The Washington Post* (June 1, 2012): [[page]]; Amy Gardner, “Shootings Unlikely to Change Gun Laws, Both Sides Say,” *The Washington Post* (7/21/12): [[page]]; Paul Kane, “After Shooting, Democrats Reluctant to Talk Gun Control,” *The Washington Post* (7/25/12): A8; and E.J. Dionne, “Eternal Gutlessness on Guns,” *The Washington Post* (7/26/12): A17. Here is a remarkably direct statement about NRA’s influence on the CDC through a co-opted Congressman:

From 1986 to 1996, [CDC] sponsored high-quality, peer-reviewed research into the underlying causes of gun violence. People who kept guns in their homes did not—despite their hopes—gain protection.... Instead, residents in homes with a gun faced a 2.7-fold greater risk of homicide and a 4.8-fold greater risk of suicide. The National Rifle Association moved to suppress the

United States. Private citizens may purchase not only rifles, handguns, and ordinary ammunition, but also—since 2004, when the Federal Assault Weapons Ban was allowed to expire—assault weapons and high-capacity ammunition clips. Adults who lack any specific disqualifying criminal or psychiatric history are eligible buyers. In many states, a typical background check takes twenty minutes. In most states, one does not have to provide any respectable reason for wanting a gun. (By contrast, in Canada and several European countries, prospective buyers must undergo an extensive background check, which may take weeks, and must demonstrate a valid reason for needing a gun such as a dangerous occupation or membership in a certified shooting club.) Moreover, the legal exclusionary criteria—such as having a felony conviction, being a fugitive from justice, having been committed to a psychiatric institution—leave many people with troubling histories eligible to purchase guns. On top of that, there is the “gun show loophole”: the exemption of firearms sold at gun shows from the federal requirement to conduct background checks.⁸

With this rough characterization of the American gun status quo in hand, we may turn to ethical considerations. Is the status quo—both current policies and individual choices regarding guns—morally acceptable? Should the American public tolerate this status quo or work toward changing it? In exploring ethical issues pertaining to gun ownership and use, it is helpful to distinguish several issues:

dissemination of these results and to block funding of future government research into the causes of firearm injuries.

One of us served as the NRA’s point person in Congress and submitted an amendment to an appropriations bill that removed \$2.6 million from the CDC’s budget, the amount the agency’s injury center had spent on firearms-related research the previous year (Jay Dickey and Mark Rosenberg, “‘Senseless’ is Not Studying Gun Violence,” *The Washington Post* [July 29, 2012]: [[page]]).

⁸ This paragraph has benefited from Jon Vernick, James Hodge, and Daniel Webster, “The Ethics of Restrictive Licensing for Handguns: Comparing the United States and Canadian Approaches to Handgun Regulation,” *Journal of Law, Medicine & Ethics* (Winter 2007): 668-678.

1. Do private citizens have an “undefeated” moral right to own guns (i.e., a moral right that is not overridden by competing moral rights or appeal to the general welfare)?

If so:
2. Do private citizens have an “undefeated” moral right to carry their guns in public?; and
3. Should government controls on private gun ownership be minimal, moderate, or extensive?

The present article will confine itself to the first issue. This may seem surprising. After all, despite their interest in stronger gun control, most Americans support a right (one undefeated by other moral considerations) to own guns.⁹ Further, the Supreme Court has affirmed a constitutional right to private gun ownership.¹⁰ Why focus on an issue that the American public and legal system appear to have decided already?

Certainly, all three of the aforementioned ethical issues merit sustained scholarly attention. But the first issue is the most fundamental. Without an affirmative answer to the question it raises, the second and third issues do not even come into play. Moreover, neither popular opinion nor the American legal system can determine what makes the most *ethical* sense. (If they could, then slavery would have been morally justified in the antebellum South.) Finally, there is a paucity of sophisticated ethical analysis on the

⁹ See, e.g., Pew Research Center survey conducted April 2008; CNN/Opinion Research Corporation poll conducted June 2008; CNN/Opinion Research Corporation poll conducted May 2009; Pew Research Center survey conducted March 2010; and ABC News/Washington Post poll conducted January 2011 (results presented in PollingReport.com at www.pollingreport.com/guns.htm).

¹⁰ The relevant cases are discussed in the next section.

topic of gun ownership¹¹—and only a fraction of it addresses the first issue mentioned above.

In exploring this issue, we will focus on handguns in particular. Somewhat roughly, we may distinguish three types of guns: (1) long guns, which are primarily associated with hunting; (2) handguns, which are commonly owned for household protection but also frequently used in crimes; and (3) assault weapons, which are designed to be able to shoot large numbers of people quickly. The ethics of long gun ownership is closely tied to the ethics of hunting, a complex issue beyond the scope of this article. And ownership of assault weapons cannot possibly be justified unless ownership of handguns is also justified. So this article will focus on handguns.

The remainder of the discussion is organized as follows. Because some readers may continue to doubt the importance of the ethics—as distinct from the law—of handgun ownership, the next section further motivates this focus. The section that follows situates the debate over gun rights within moral rights theory. The discussion then proceeds to the most central section, on the ethics of handgun ownership. Although much is clarified in this section, it concludes with uncertainty about the strongest case for a moral right to handgun ownership. The final section suggests a framework for steering sensibly through the uncertainty toward justified policy and responsible choice.

Why Focus on Ethics?

¹¹ See Samuel Wheeler, “Self-Defense: Rights and Coerced Risk-Acceptance,” *Public Affairs Quarterly* 11 (1997): 431-443; Samuel Wheeler, “Arms as Insurance,” *Public Affairs Quarterly* 13 (1999): 111-129; Todd Hughes and Lester Hunt, “The Liberal Basis of the Right to Bear Arms,” *Public Affairs Quarterly* 14 (2000): 1-25; Hugh LaFollette, “Gun Control,” *Ethics* 110 (2000): 263-281; Samuel Wheeler, “Gun Violence and Fundamental Rights,” *Criminal Justice Ethics* 20 (2001): 19-24; Hugh LaFollette, “Controlling Guns,” *Criminal Justice Ethics* 20 (2001): 34-39; Michael Huemer, “Is There a Right to Own a Gun?” *Social Theory and Practice* 29 (2003): 297-324; and Vernick et al., “The Ethics of Restrictive Licensing for Handguns.”

We will address the question, “Do private citizens have an undefeated *moral* right to own handguns?” Why focus on moral rights and ethics more generally? Why not simply appeal to the law in considering whether the American gun status quo is acceptable? There are two major reasons, one concerning acceptable policy, the other concerning responsible choice.

First, legality is not sufficient for acceptable policy. Earlier I mentioned laws permitting slavery in the U.S. Consider also laws at the heart of South African apartheid before that system was abolished. Such laws are unacceptable, so there is reason to change them. Ethical reflection is often needed to identify laws that need changing.

But why, one might reply, can’t we Americans today simply appeal to our laws as the basis of acceptable or appropriate policy? Our legal system and the Constitution that serves as its foundation are pretty sensible and respect-worthy. And debates about guns often focus on the question of the constitutionality of particular laws and policy proposals. Why is ethics needed in the discussion?

To answer this question, let us consider the American legal status quo. In the U.S., the legal right to private gun ownership is well-established. The laws of individual states have long permitted private ownership of guns, with Washington, DC a conspicuous outlier. The nation’s capital banned handgun ownership and required that all long guns—shotguns and rifles—be secured with a trigger lock or kept disassembled. The constitutionality of DC’s strict gun control laws was challenged in *District of Columbia v. Heller* (2008). Interestingly, the NRA hoped that this case would *not* be

taken up by the U.S. Supreme Court for fear that the high court would rule that the oft-cited Second Amendment does *not* secure a right to private gun ownership.¹²

The Second Amendment states the following: “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.” This statement’s meaning is ambiguous. The dependent clause referring to a militia invites a reading according to which what is protected is sufficient firepower for militias, or the military, not a right of private individuals to gun ownership.

In its 5-4 *Heller* decision crafted by Antonin Scalia, the Supreme Court majority deemphasized the reference to a militia and explicitly stated for the first time that a right to own guns is constitutionally protected as a means to self-defense.¹³ The Court also, importantly, allowed for the constitutionality of significant gun regulations—including most of those currently on the books in individual states. Further, the decision’s reasoning implied that the constitutional right to bear arms might be restricted to the home; it might not extend to carrying guns in public. In his dissent, Stephen Breyer argued that even if the Second Amendment guarantees individuals the right to own guns, the Court should uphold DC’s law as a legitimate effort to balance the individual’s right against the government’s interest in public safety. (In our terms, Breyer maintained that states should have the prerogative to decide that the right to own guns is *defeated* by considerations of the general welfare.) Not surprisingly, the court’s assertion of an

¹² For an excellent discussion of this Supreme Court case, see Winkler, *Gunfight*, chap. 1.

¹³ [[Citation for *Heller*.]]

undefeated legal right to private gun ownership has been both lauded and challenged by legal scholars.¹⁴

While the *Heller* decision was unquestionably a legal milestone, it was technically limited to federal enclaves such as Washington, DC. The Court's reasoning was extended in *McDonald v. City of Chicago* (2010).¹⁵ Chicago, like the nation's capital, had banned private handgun ownership. The *McDonald* decision explicitly stated that the right to own guns applied to the states—and, of course, to jurisdictions within them.

Thus, there is a clearly established legal right of private citizens to keep guns in their homes for self-protection. Ethics commands a significant role in the evaluation of current policy due to (a) the limits of legal authority as recognized at a particular time and (b) the potentially foundational role ethics can play for the law. First, laws can and do change. Even the Supreme Court's decisions in *Heller* and *McDonald* could be overturned someday. Second, constitutional interpretation is irrelevant to the question of whether there is a *moral* right—more precisely, an undefeated moral right—to own handguns. The latter question is distinct and arguably more fundamental: Whereas legal rights are determined by law, moral rights often serve as the basis for *justified* laws or decisions that establish particular legal rights. For example, human beings have a moral right not to be enslaved; and recognition of this right is the strongest basis for challenging legal regimes that permit slavery. Human beings have a moral right not to be killed. While precise interpretation of this right and its limits is notoriously controversial, on any reasonable interpretation this right was grotesquely violated in the Nazi holocaust and in

¹⁴ [[Provide example of a laudatory review.]] One especially interesting critique accuses Scalia's reasoning of "faux originalism." See Richard Posner, "In Defense of Looseness: The Supreme Court and Gun Control," *New Republic* (August 27, 2008): [[check cite and get pages]].

¹⁵ [[Citation for *McDonald*.]]

the Balkan “ethnic cleansing” of the 1990s. Recognizing a massive rights violation renders utterly trivial the question whether either of the two genocides might have been legal under the countries’ laws. That is one reason why laws, which are not self-justifying in any moral sense, often change over time. So the question of whether individuals in the U.S. have an undefeated moral right to own guns is not settled by reference to the Constitution or other legal arguments, and the question has independent significance. Indeed, from a moral point of view it has *greater* significance. For if there is no undefeated moral right to own guns, then there can be no legitimate appeal to such a right in defending the American gun status quo with respect to any of the three major issues: gun ownership, the carrying of firearms, and gun control.

There is a second motivation for our focus on ethics and moral rights. Even if the legal right to bear arms is taken for granted, individuals will still confront the ethical issue of whether to *avail themselves* of this legal right. We Americans have legal prerogatives to invest in socially irresponsible companies, to engage in certain forms of bigoted speech, to purchase and drive SUVs, to purchase and use degrading pornography, and to purchase and eat veal. It hardly follows that we ought to feel free to do so. Perhaps we have a moral obligation not to avail ourselves of these legal options. The same question arises with regard to gun ownership: Would it be ethically responsible to buy firearms? Not unless we have an undefeated moral right to do so. Highlighting the distinction between legal permissibility and moral responsibility further demonstrates the importance of the ethics of gun ownership.

Situating the Debate over Gun Rights within Rights Theory

The question of whether individuals have a *moral right* to own guns is central to the ethics of gun ownership. Answering this question will not settle all the important ethical questions regarding guns, as we will see, but its centrality is undeniable. So let us consider what such a moral right, if it existed, would amount to.

It is no small matter to answer this question because the term “rights” is used in varying ways. There is a vigorous debate among moral philosophers over the nature, content, limits, and to some extent even the existence of moral rights. In sketching what a moral right to own guns, if it existed, would amount to, I will try to keep my assumptions relatively modest and acceptable from a broad array of rights theories.

First, what is a moral right? What is a right more generally? Rights in general have been analyzed as involving one or more of four elements—privileges (liberties), claims, powers, and immunities—but I will follow the originator of this classification in holding that only claims are rights “in the strictest sense.”¹⁶ Thus I concentrate on what are sometimes explicitly called *claim rights*. According to John Stuart Mill, “[w]hen we call anything a person’s right, we mean that he has a valid claim on society to protect him in the possession of it.”¹⁷ Mill seems correct that moral rights, or at least many of them, have an importance that justifies an expectation that society will protect one’s possession of the thing (e.g., freedom of speech) to which one has a right. But this may not be true of all rights. If you make a promise to me, I seem to have a moral right against you to your keeping of the promise; your duty or obligation is the correlative of my right. But society need not involve itself in this matter. Feinberg understands rights simply as valid

¹⁶ Wesley Hohfeld, “Some Fundamental Legal Conceptions as Applied in Judicial Reasoning,” *Yale Law Journal* 23 (1913): 28-59.

¹⁷ *Utilitarianism* (1861), section [[complete cite]]

claims,¹⁸ which seems fair enough as far as it goes and does not necessarily implicate society as protector of the right. But it would be helpful to say more.

Providing such help, Raz maintains that one has a right only if an aspect of one's well-being—that is, an interest one has—provides a sufficient reason to hold someone else to be under a duty.¹⁹ I believe this is on the right conceptual track.²⁰ Consider the case of promising. A promisee's interest that the promisor keep her word seems sufficient to place the promisor under a moral duty. Moreover, while this duty is presumably not absolute, it is not to be taken lightly. The promisor may not break the promise just because she believes it would promote a slightly better balance of good consequences over bad consequences—a slight gain in utility—to do so. This is especially clear if the promise is very solemn and momentous (e.g., to adopt one's child if one dies) rather than trivial (e.g., to meet at 2 p.m. for coffee). Moral rights, I will assume, generally resist appeals to utility as grounds to override the rights. They are strict, even if not absolute, moral protections.²¹ In sum, *moral rights are valid moral claims that protect important interests and ordinarily trump appeals to the general welfare.*

¹⁸ Joel Feinberg, "On the Nature and Value of Rights," *Journal of Value Inquiry* 4 (1970): 243-257, at 257 [[check]]

¹⁹ Joseph Raz, "On the Nature of Rights," *Mind* 93 (1984): 194-214

²⁰ Thus, in the scholarly debate over the function of rights, I believe that the *interest theory*—which holds that the function of rights is to protect important interests—is closer to the mark than the *will theory*, which holds that the function of rights is to give its holders control over other people's duties (see, e.g., H. L. A. Hart, *Essays on Bentham* [Oxford: Clarendon, 1982] and Carl Wellman, *Real Rights* [New York: Oxford University Press, 1995]). One reason I reject the will theory is that it implies that young children and infants have no moral rights. For excellent discussions of this debate and efforts to incorporate elements of both approaches into a more pluralistic theory of rights, see Leif Wenar, "The Nature of Rights," *Philosophy and Public Affairs* 33 (2005): 223-252 and Gopal Sreenivasan, "A Hybrid Theory of Claim-Rights," *Oxford Journal of Legal Studies* 25 (2005): 257-274.

²¹ In contending that rights present strict moral protections that generally resist appeals to utility as grounds for overriding rights, I am in agreement with Robert Nozick (*Anarchy, State, and Utopia* [New York: Basic Books, 1974]) and Ronald Dworkin, *Taking Rights Seriously* [London: Duckworth, 1977]. At the same time, I think their theories attribute excessive strictness to rights and underestimate the importance of positive rights.

In addition to conceptualizing moral rights along these lines, I will assume that, in fact, there are some moral rights. For example, everyone has a right not to be enslaved and a right not to be raped. (Indeed, these are unusually strong candidates for absolute rights.) Even thinkers who have often been skeptical about rights—from consequentialists to feminists to communitarians—should acknowledge that people have some valid, ordinarily trumping moral claims including those that prohibit other people from enslaving or raping one.

Several distinctions among kinds of moral rights will be important in considering gun rights. One is the classic distinction between so-called *negative* and *positive* rights. The former are conceptualized as rights of noninterference, the latter as rights to be provided with something. For example, it might be asserted that you have a negative right to free speech, requiring others to allow you to speak freely, and a positive right to basic education, which society is required to make available to you.²² Theorists who emphasize this distinction tend to believe that the existence of negative rights is less disputable than the existence of positive rights, that negative rights are easier to fulfill than positive rights, and that the former take moral priority over the latter if the two ever conflict. Classic libertarians go so far as to hold that there are no general or free-standing positive rights (positive rights and duties emerging only from voluntary contracts and agreements).²³

²² Education can also be considered a negative right, something one should be allowed to pursue without interference. This is no trivial matter in some contexts, for example, where girls are forbidden by the Taliban from attending school.

²³ See, e.g., Nozick, *Anarchy, State, and Utopia*.

Increasingly, the conceptual and moral priority traditionally accorded to negative rights is questioned along with the clarity and/or usefulness of the distinction itself.²⁴ To cite just one of many reasons for these doubts, meaningful exercise of negative rights requires substantial positive steps from society to protect the rights-bearers from standard threats. For example, the negative right to free speech is not worth much if one isn't protected from assault from those who don't like what one has to say and if courts do not punish those who carry out assaults. But, of course, effective police and reliable courts represent a substantial public investment. So does a decent education, without which the thoughts expressed through one's speech may be significantly undeveloped. What really matters, the thinking goes, is being able to exercise one's rights meaningfully, not just to have them in some abstract sense.

While some traditional assumptions about negative and positive rights may be dubious, a rough distinction between the two kinds of rights is sometimes helpful. In particular, we should note that the putative moral right to gun ownership would be a negative right, a right not to be prevented by society from owning guns. It is not a claim that society must provide one with guns, as a positive right would assert.

Also noteworthy for our purposes is the distinction between (1) moral rights and (2) human rights. Human rights are alleged rights one has simply in virtue of being a

²⁴ See Jeremy Waldron, *Liberal Rights* (Cambridge: Cambridge University Press, 1993) and Henry Shue, *Basic Rights*, 2nd ed. (Princeton: Princeton University Press, 1996). Both authors argue that the important distinction is not among rights—negative versus positive—but rather among the duties that correlate to rights. Shue argues that all basic or fundamental rights (and most moral rights more generally) correlate to (1) duties to avoid depriving, (2) duties to protect from deprivation, and (3) duties to aid the deprived (*Basic Rights*, pp. 51-55). Somewhat similarly, Waldron asserts that each right correlates to “successive waves of duty, some of them duties of omission, some of them duties of commission, some of them too complicated to fit easily under either heading,” (*Liberal Rights*, p. 25).

human being or *person*.²⁵ Now, it is conceptually possible for one to have some *moral* rights not just in virtue of being a human being or person, but because one lives in a certain kind of society—such as a relatively wealthy, developed one. Human rights, by contrast, must be attributable to any human being or person at any time in any sort of society—or possibly even outside of society in a state of nature.²⁶ The difference here is important. It is perfectly intelligible (whether or not correct) to claim that Americans today have a positive moral right to access to a broad array of health care services; but it would be silly to assert this of prehistoric cavepeople or even of people living in societies that couldn't possibly provide such services to all who needed them. Human rights, assuming there are some, are a subset of moral rights. Moral rights, by crucial contrast, need not be pre-institutional and need not be universal across peoples and ages. A moral right to democratic participation is neither. If there is a moral right to gun ownership, it is *not* a human right because not all human beings—consider, for example, ancient Egyptians—could be plausibly thought to possess this right.²⁷ A right to gun ownership would be a negative moral (not human) right.

Let's now consider limits to rights, of which there are two primary kinds. First, there are limits to the *scope* of any particular right. For example, your right to freedom of bodily movement permits you to do many things: exercise in your house, stroll through

²⁵ For examples of human rights theories, see Thomas Pogge, "The International Significance of Human Rights," *Journal of Ethics* 4 (2000): 45-69; James Griffin, *On Human Rights* (Oxford: Oxford University Press, 2008); Charles Beitz, *The Idea of Human Rights* (Oxford: Oxford University Press, 2009); and Allen Buchanan, *Human Rights, Legitimacy, and the Use of Force* (Oxford: Oxford University Press, 2010). See also United Nations, *Universal Declaration of Human Rights* (1948), an enormously influential statement despite its theoretical inexplicitness.

²⁶ For classic, contrasting views of what were then called *natural* rights, see Thomas Hobbes, *Leviathan* (1651) and John Locke, *Two Treatises on Civil Government* (1690).

²⁷ In view of the fact that there were no guns in ancient times, could we assert that ancient Egyptians had a right to own *weapons*, even if not guns? Maybe, but gun advocates are not especially interested in a right to own weapons. Anything short of a right to own guns in particular would disappoint them.

the city, and dance in the park. But it does not include a prerogative to walk into someone else's house without permission or to hit someone in the face. These limits, importantly, are limits of scope. Your right to free movement does not extend as far as entering other people's property or touching their bodies without permission. It's not as if your right includes such actions but is overridden by other people's rights to property and bodily integrity. There is no conflict of rights in such cases because your right to free movement only extends so far. If a friend invites you into his house, or invites you to try to hit him in a boxing match, your doing so is permissible, but not in virtue of a right to free movement; rather, it is a permission conferred by someone's voluntary agreement.

In addition to being limited in scope, a moral right can be limited by justified instances of *overriding*. The scope of your right to free movement includes the right to walk around the city. But, if police arrive on a crime scene and (appropriately) order everyone to remain on the premises, where you happen to be, for the time being, your right to walk around the city is temporarily overridden by society's interest in facilitating police efforts to apprehend felons.

If there is a moral right to gun ownership, it will have limits. For example, it might apply to long guns and handguns but not assault weapons. The scope of weapons that the right encompasses might be limited by the legitimate purposes of gun ownership and the uses to which particular types of guns are ordinarily put. Another possible limit of the scope will relate to the frequency with which one can exercise the right—say, purchasing no more than one gun within some time period (consistent with a judgment about what might be reasonably needed for effective self-defense). Also limited will be the scope of its possessors: Children, the seriously mentally ill, felons, and others will be

excluded as unfit to possess firearms. Moreover, even among those who possess the right and within its limited scope, there may be situations in which it is justifiably overridden. To cite an extreme hypothetical, suppose that in past few years, 50% of all school children managed to commandeer their families' firearms and kill themselves or someone else with these weapons—despite requirements for safety locks and other measures designed to prevent children from using guns. In this scenario, the right to own guns might be overridden by forbidding the purchase of new guns or confiscating those already owned until reasonable safety is restored to households in the community. That rights may sometimes be justifiably overridden is consistent with the point that they *ordinarily* trump appeals to the general welfare. The hypothetical circumstances just sketched are far from ordinary.

In view of the possibility of justifiably overriding moral rights, some theorists speak of *prima facie* rights.²⁸ A *prima facie* right is a valid moral claim that ought to be respected unless overridden by another *prima facie* right, by an absolute right, or by the prospect of a sufficiently large gain in expected utility. Other theorists find talk of *prima facie* rights misleading or otherwise inapt.²⁹ I prefer to speak simply of rights, allowing that they may sometimes be overridden. When they prevail because they are not overridden, we can emphasize this point by speaking of *undefeated* rights. If there is a moral right to own guns, it is conceptually possible for it to be overridden or morally “defeated” as in the preceding paragraph’s hypothetical. The right would not be absolute.

One further distinction that is relevant to our discussion is that between basic rights and derivative rights. Basic rights, as I will use the term, are moral rights that (1)

²⁸ See, e.g., Richard Brandt, “The Concept of a Moral Right and its Function,” *Journal of Philosophy* [[vol.]] (1983): 29-45.

²⁹ See, e.g., Feinberg, “The Nature and Value of Rights,” note 7.

protect highly general interests that are vital to the prospects for living a decent life and (2) are not specifications or instances of more general rights. A plausible example of a basic right is the right to physical security. This is a vital, highly general interest of all human beings everywhere whose importance seems independent of particular circumstances. A derived right, by contrast, is a right that is derived—conceptually, empirically, or both—from one or more basic rights. The right not to be assaulted can be derived from the right to physical security; the former is one aspect of the latter, at least in all circumstances in which people might assault each other. The right to self-defense is similarly derived. Another plausible example of a basic right might be a right to liberty, but only if its scope is properly delimited; there is no right to liberty *sans phrase*.

A moral right to gun ownership would not be basic. It is not the case that owning guns, in and of itself, is necessary for the prospect of a decent life. For one thing, many and probably most people in the world who have decent lives do not have guns (or family members who do). Moreover, whatever value guns have concerns their function—what they can do.³⁰ If guns didn't protect anyone from assault and didn't work for hunting, they wouldn't have their present value. This suggests that gun rights, if they exist, must be derivative from more general rights. I will argue later that a right to gun ownership is most sympathetically construed as derived from a right to self-defense, which in turn derives from a right to physical security.

To sum up: *A right to private gun ownership, if it exists, is a negative, nonabsolute, derivative moral right whose existence in a particular society at a particular time depends on its role in enabling the realization of one or more basic*

³⁰ [[Cite LaFollette.]]

rights. With this theoretical background, let us proceed to the ethics of handgun ownership.

On the Ethics of Owning Handguns

The case for a moral right to own handguns will rest, ultimately, on an appeal to either liberty rights or physical security rights. Let us consider each appeal in turn.

The Appeal to Liberty

Although gun enthusiasts tend to regard their right to own firearms as importantly related to liberty, I submit that liberty is not the strongest basis for the alleged right. As Griffin and other scholars have persuasively argued, there is no general right to liberty—to do as one pleases—which is violated or overridden in every instance in which one’s liberty is curtailed.³¹ It is not as if people have a right to enter my house without my permission, and this right is *overridden* by my rights to property and physical security and laws prohibiting trespass and burglary. Rather, whatever your “right to liberty” includes, it does not include any prerogative to enter people’s houses without permission. Fair enough, one might reply, but how can we determine the boundaries of one’s liberty-based rights so as to evaluate the appeal to liberty as a basis for gun rights?

There are, I think, two good responses to this question, both of which dampen the prospects of the appeal to liberty. First, the scope of morally protected liberty is highly contested and contestable. Some think it includes flag-burning, breast-feeding in public, and the use of currently illegal drugs; others think not. To be sure, some authors offer a principled way of sketching the boundaries of morally protected liberty. For example,

³¹ See James Griffin, *On Human Rights* [[complete cite; add Waldron and maybe others]]

Griffin proposes that we determine the degree of liberty that is needed for the exercise of normative agency.³² But his proposal is meant as a foundation of *human* rights, not moral rights in general, and it has the striking implication that infants and other human beings who are not normative agents lack the rights in question. Moreover, one might reasonably doubt (I certainly do) that normative agency deserves such a foundational role. Suffice it to say that the scope of our “right to liberty” is too contested to serve as an optimal basis for a moral right to handgun ownership.

Consider a second reason to doubt the appeal to liberty. Everyone agrees that one’s morally protected liberty is circumscribed by a limit enunciated in the famous *harm principle*: that one’s right to live as one pleases does not extend to the point where one is harming others.³³ Now this principle concerns not only actual harm but also *excessive risk of harm*. Opponents of gun rights typically believe that handgun ownership is excessively risky—that widespread ownership of these weapons makes it too likely that children will get shot, family members will kill shoot each other in a rage, impulsive suicide attempts will succeed, and so on. As we will see later, there is much evidence to support the claim that widespread handgun ownership produces a net increase of risk in households and society at large. While that evidence might be challenged, it seems fair to say that appealing to liberty is not the most promising basis for a moral right to own handguns: The scope of protected liberty might not include gun ownership in view of the risks it (arguably) imposes on others.

³² *On Human Rights*, [[pages]]

³³ The primary purpose of the harm principle was to *restrict* forcible limitations of liberty to those necessary to prevent people from harming others. As Mill put it, “the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others” (*On Liberty* ...). In discussing guns, the point of emphasis is that the harm principle sets a limit to liberty. In the words of France’s *Declaration of the Rights of Man and of the Citizen* (1789), “Liberty consists in the freedom to do everything which injures no one else” [[check]].

The Appeal to Physical Security

The strongest basis for a moral right to handgun ownership involves an appeal to physical security. That people have a basic moral right to physical security is not particularly controversial and will be assumed here. Although there is disagreement about what steps a society must take to help to protect people's physical security, there is much agreement about certain negative aspects of the basic right. The right to physical security includes, uncontroversially, rights not to be assaulted, not to be raped, not to be tortured, and not to be killed. It also includes a right to self-defense. The derived right of self-defense is pivotal to alleged gun rights. For the sake of convenience, let us construe the term *self-defense* broadly (if not quite accurately) so that it refers not only to efforts to defend oneself but also to efforts to defend one's family and loved ones—especially in one's home. Clearly, people have a right to self-defense in this sense.

With this beginning, we may sketch what I believe to be the strongest argument in favor of a moral right to own handguns. Here is the essential argument:

1. People have a basic right to physical security.
2. This right is violated by (unjustified) assaults and is threatened by burglaries.
3. People have a right to take measures reasonably deemed to be necessary to prevent their basic rights from being violated.
4. The right stated in 3 supports a right to self-defense.
5. In present-day circumstances in the United States, adequate self-defense requires that competent adults have the option of private handgun ownership.

6. Thus, competent adults in the United States today have a moral right to private handgun ownership.
7. This moral right is not justifiably overridden by appeal to the general welfare or by any conflicting moral right—at least in the case of competent, law-abiding adults.
8. So the moral right to private ownership of handguns by competent, law-abiding adults should be protected by law in the United States.

This is a powerful argument. To evaluate whether it is ultimately sound, we need to examine the reasoning step by step.

Evaluating the Argument Based on the Appeal to Physical Security

The premise stated in Step 1, that people have a basic right to physical security, is an assumption I have granted.

Step 2 asserts that the right to physical security is violated by (unjustified) assaults and is threatened by burglaries. This seems correct. Assault is a paradigm violation of someone's right to physical security—except in those rare instances in which the assault is justified by an effort to prevent the person assaulted from harming someone else or violating her rights in a serious way. Self-defense often involves justified assault against someone who threatens or attempts an unjustified assault. As for burglary, even if the criminals' usual intention is to steal things of value, burglars so often harm people inside the house that burglary itself is reasonably thought to *threaten* violation of one's right to physical security. Of course, burglary also threatens one's right to maintain possession of one's property.

Step 3 claims that people have a right to do what's reasonably considered necessary to prevent their basic rights from being violated. This seems right. So does step 4, which asserts that the right just mentioned supports a right to self-defense. (Remember that we're using "self-defense" broadly to include defense of one's children, other family members, or loved ones, especially in one's own home.) If a person can't defend herself, she can't take reasonable steps to prevent others from violating her basic right to physical security—and perhaps other rights such as the right to maintain one's property.

Step 5 is much more open to challenge. It states that in the United States today, adequate self-defense requires that competent adults have the option of private handgun ownership. Limiting the claim's scope to competent adults reflects the commonsense idea that only they can be expected to be able to use guns properly. The claim, importantly, is not that *no competent adult* can adequately defend himself without a handgun. Maybe some can. The present claim, sympathetically construed, is that many competent adults in the U.S. can defend themselves adequately only if they possess one or more guns. Is this correct?

Since we are focusing on the moral right to own guns rather than the right to carry them in public, let us ask what is generally necessary to protect one's household from burglars and other potential assailants. Many of us who do not own guns feel secure in our homes by taking such measures as locking doors and any windows that can be opened from outside, and being prepared to call the police if someone appears to be attempting a break-in. Some go further and install house alarms. Some get noisy dogs

who are good at letting you know if anyone is on the premises. Perhaps these are sufficient means of self-defense.

Perhaps not. Especially aggressive burglars may pick locks, smash through windows, shoot the family dog, and the like. If moderate measures of house protection do not prevent someone from breaking and entering, what should someone do as the best way of protecting herself and the family? Those of us who do not own guns would probably call the police and stay as quiet as possible.

Many believe that such measures are inadequate means of self-protection. Especially those who live in very unsafe neighborhoods may have reasonable grounds for this belief. After all, many thousands of criminals in the U.S. are already well-armed. Thus, even if people living in unsafe neighborhoods secure their houses properly and call the police promptly, such measures may leave them unnecessarily vulnerable in the absence of firepower with which to threaten and possibly shoot intruders, who are likely to be armed. One has a right to use force to repel an intruder and, according to the argument, guns are the most effective means of doing so. (Knives and baseball bats are much less effective for obvious reasons.) This argument has a ring of plausibility.

It might be wondered, though, why we hear of so few cases in which someone used a handgun to ward off an intruder. The sense of wonderment increases when we consider how often we hear of privately owned handguns being misused—for example, in shooting accidents, impulsive killings, or suicides: fairly often.³⁴ Personally, I am familiar with more cases in which someone mistaken as an intruder was shot than cases in which an actual intruder was prevented from burglarizing or harming household

³⁴ I do not mean to imply that all suicides are unjustified. Rather, I assume that many suicides are impulsive, inconsistent with the individual's best interests and stable values, and completed only because a gun was available at home.

members.³⁵ On the other hand, if there are cases in which knowledge that someone owns a gun—or even just knowing the possibility that someone might own a gun—deters break-ins, these non-events are not the sorts of things one would hear about at all.

We have stumbled upon a difficult empirical question: *Does the option of owning handguns enable more adequate self-defense than would be possible if this option were unavailable?* If one simply consults an image of a home-owner using a gun to ward off an intruder, and being unable to do so without a gun, it might seem obvious that private handgun ownership promotes effective self-defense. But, as the question is empirical, the answer should be responsive to evidence.

There are many data we could consider in addressing this question and the data are notoriously subject to varying interpretations. I suggest, nevertheless, that an even-handed examination of available evidence casts considerable doubt on the thesis that private handgun ownership enables more adequate self-defense in the home. In order to promote more adequate self-defense in the home, handgun ownership would need to be effective in achieving its purpose and not self-defeating. In fact, there is much evidence that owning guns is self-defeating in the sense of making family members less safe, and the evidence is mixed as to whether owning guns helps with self-defense.

Regarding the first point, it appears that gun ownership makes household members less safe than they would be in the absence of guns. First, having a gun at home apparently increases one's likelihood of dying by suicide.³⁶ This is hardly surprising

³⁵ A well-known case of the former variety involved two Japanese students who went to the wrong house for a party. Unfamiliar with the idiom “freeze,” one continued to approach the house and was fatally shot. The case is described in Garen Wintemute, “Guns, Fear, the Constitution, and the Public’s Health,” *New England Journal of Medicine* 358 (2008): 1421-4, at 1421.

³⁶ See D. A. Brent et al., “The Presence and Accessibility of Firearms in the Homes of Adolescent Suicides: A Case-Controlled Study,” *JAMA* 266 (1991): 2989-2995; Arthur Kellermann et al., “Suicide in the Home in Relation to Gun Ownership,” *New England Journal of Medicine* 327 (1992): 467-472; Antoine

considering that many suicide attempts are impulsive, reflecting immediate stressors rather than long-term hopelessness, and that guns used at close range are highly likely to kill rather than merely injure. Second, the risk of death by homicide appears to be much greater in homes with guns than in homes without guns.³⁷ In homes with domestic violence, the chances that such violence will prove lethal are much higher if guns are present in the home.³⁸ The risk of accidental death also increases markedly in households with guns.³⁹ On the whole, having guns at home increases the risk of household members' suffering a violent death.⁴⁰ Thus, owning guns for the purpose of self-defense is, on average, self-defeating—in the sense that *household members, on average, face a greater chance of suffering a violent death if the house contains one or more guns than if the house is free of firearms.*

At the same time, guns are sometimes used for the defensive purpose of protecting oneself or one's family from an intruder. How often? It is especially difficult to know because such events, unlike fatalities, often leave no official trail. Thus there is

Chapdelaine and Pierre Maurice, "Firearms Injury Prevention and Gun Control in Canada," *Canadian Medical Association Journal* 155 (1996): 1285-1289; Yeats Conwell, Kenneth Connor, and Christopher Cox, "Access to Firearms and Risk for Suicide in Middle-Aged and Older Adults," *American Journal of Geriatric Psychiatry* 10 (2002): 407-416; Matthew Miller, Deborah Azrael, and David Hemenway, "Firearm Availability and Unintentional Firearm Deaths, Suicide, and Homicide among 5 – 14 Year Olds," *Journal of Trauma Injury, Infection, and Critical Care* 52 (2002): 267-275; and Matthew Miller and David Hemenway, "Guns and Suicide in the United States," *New England Journal of Medicine* 359 (2008): 989-991.

³⁷ See, e.g., A. L. Kellermann et al., "Gun Ownership as a Risk Factor for Homicide in the Home," *New England Journal of Medicine* 329 (1993): 1084-91 and D. J. Wiebe, "Homicide and Suicide Risks Associated with Firearms in the Home: A National Case-Control Study," *Annals of Emergency Medicine* 41 (2003): 771-782.

³⁸ See L. E. Saltzman et al., "Weapon Involvement and Injury Outcomes in Family and Intimate Assaults," *JAMA* 267 (1992): 3043-3047 and J. C. Campbell et al., "Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study," *American Journal of Public Health* 93 (2003): 1089-1097 [[check both studies]].

³⁹ See Matthew Miller and David Hemenway, "Firearm Availability and Unintentional Firearm Deaths," *Accident Analysis & Prevention* (2001) [[complete cite]] and D. J. Wiebe, "Firearms in U.S. Homes as a Risk Factor for Unintentional Gunshot Fatality," *Accident Analysis and Prevention* 35 (2003): 711-716 [[check both studies]].

⁴⁰ Wintemute, "Guns, Fear, the Constitution, and the Public's Health," p. 1422

no consensus about defensive uses of handguns.⁴¹ Estimates of defensive uses (both in the household and in public), drawing from surveys, vary enormously, ranging from 64,000 to 2.5 million defensive uses per year.⁴² It has been plausibly argued that projecting the number of yearly defensive uses from small survey numbers is vulnerable to methodological problems that can greatly distort estimates.⁴³

Even if we had a confident estimate of defensive uses of handguns in households per year, it would be difficult to estimate in how many of those cases (1) the handguns were used appropriately in response to a genuine threat and (2) they were actually necessary for self-defense. Suffice it to say that we are not in a strong position to say how often handguns are needed and effective in protecting household members' rights. To show that the appeal to physical security is sound, a proponent of a moral right to gun ownership would need to advance a stronger case than is currently available that gun ownership is the most effective means of protecting household members' basic right to physical security. And, again, there is strong evidence that handgun ownership is self-defeating in making people, on average and on balance, less safe than they would be in a gun-free household.

Does this last point decisively undermine the appeal to physical security by destroying the credibility of premise 5? It would be premature to say so. Gun owners are not all alike. Some are more cautious and judicious, and less impulsive, than others. Some live in more dangerous neighborhoods than others. Even if there is a compelling

⁴¹ Vernick et al., "The Ethics of Restrictive Licensing for Handguns," p. 671. The points made in the remainder of this paragraph are made *ibid*.

⁴² Committee to Improve Research Information and Data on Firearms, National Research Council, *Firearms and Violence: A Critical Review* (Washington, DC: National Academies Press, 2005)

⁴³ See David Hemenway, "Survey Research and Self-Defensive Gun Use: An Explanation of Extreme Overestimates," *Journal of Criminal Law and Criminology* 87 (1997): 1430-45.

case that gun ownership is self-defeating *on average across the American population*, it does not follow that it is self-defeating for everyone. There may well be individuals for whom gun ownership is not self-defeating and who are in a position to know this about themselves. If so, they may be well-positioned to claim a right to own handguns as a reasonable means of realizing their right to physical security. Further, one might argue, the law should not try to discriminate finely among those who are and those who are not in such a position, so the law should recognize a right to handgun ownership among competent, law-abiding adults. So let's regard it as an open question whether the appeal to physical security establishes a right to private handgun ownership among competent adults in the U.S. at this time, as asserted by the intermediate conclusion stated in step 6.

Assume, for argument's sake, that there is such a right. It was noted earlier in our discussion of rights theory that rights are limited in scope and may sometimes be overridden. A right to own handguns would be limited in scope by restricting it to competent, law-abiding adults. Only competent adults can be assumed to be able to use guns properly. And only those who qualify as "law-abiding" can be entrusted to do so rather than committing crimes with guns. (Here we need not concern ourselves with such details as what is to count as law-abiding and how to assess competence.) Within its scope, a right may "prevail" or it may be defeated—overridden—by conflicting rights or appeals to the public welfare. Step 7 maintains that the present right is not properly overridden by either of these considerations—among competent, law-abiding adults—an assumption that leads to the conclusion in step 8 that the moral right to own handguns should be protected in law. Our question is whether the assumption in step 7 is correct.

As with step 5, the correctness of step 7 strikes me as an open question. Let me present both a respectable case in favor of the assumption in step 7 and a respectable case against it.

Case in favor: “The right to gun ownership is not overridden by competing moral considerations. This is a negative right—a right to freedom from interference from the government—and negative rights are not to be swept away in the tide of appeals to social utility. Consider an analogy. People have a right to freedom from torture. Now suppose the police decided that gang violence could be greatly reduced if they had more information about gang leaders, their hideouts and plans, how they run their businesses, etc. Then the police realize that they can easily get this information by capturing a few gang members and torturing them until they squeal. If rights could be justifiably tossed aside in the name of the public good, then this proposal to torture gang members could easily be justified: However awful the torture is a for a few people, the harms of gang violence that could be prevented by using information gathered through torture are much greater. But this proposal to torture several gang members is a grotesque violation of their rights. It is not justified by appeal to the public good. Rights, or at least negative rights, serve as moral side constraints. They can be set aside, if at all, only in rare, truly extreme situations—such as a true ticking time-bomb scenario, which might justify torture—but the public harms associated with high rates of gun ownership do not come close to constituting such an emergency. Our right to own guns should be respected—and protected by law.”

This is a powerful argument. Given the assumption (which we have granted for now) that there is a moral right to gun ownership, the case in favor of step 7 invokes a

widely accepted understanding of the power of negative rights to resist appeals to utility. But there is another respectable way to view the matter.

Case against: “The right to own guns in the contemporary U.S. is overridden by consideration of the pernicious overall consequences of widespread gun ownership. First, there is the fact—which was emphasized in discussing step 5—that having guns in the home makes family members, on average, less safe than they would be in a gun-free household. In addition, if we consider society as a whole and not simply individual households, guns pose terrible overall consequences—as indicated by the fact that gun ownership rates within a population correlate significantly with murder rates in that population.⁴⁴ The moral overriding can be thought of in either of two ways. First, we may say that the right to own guns is overridden by the prospect of a massive gain in social good or utility: an enormous reduction in violent deaths. Alternatively, we may say that the right to gun ownership is overridden by a conflicting right: the right to a reasonably safe environment. Importantly, it is not true that negative rights (including the right to own firearms) automatically take priority over positive rights (including the right to conditions that foster a safe environment). Negative rights to property—that is, to noninterference with one’s property—can be overridden to save a life, for example. It would not be wrong for a starving wanderer to steal a few apples from an apple tree on someone’s property as a last resort to preserve his own life. Whether the grounds for overriding are understood as an appeal to the public welfare or as a competing right to a

⁴⁴ See, e.g., David Lester, “Crime as Opportunity: A Test of the Hypothesis with European Homicide Rates,” *British Journal of Criminology* 31 (1991): 186-88; Martin Killias, “International Correlations Between Gun Ownership and Rates of Homicide and Suicide,” *Canadian Medical Association Journal* 148 (1993): 1721-25; CDC, “Rates of Homicide, Suicide, and Firearm-Related Death Among Children—26 Industrialized Countries”; David Hemenway and Matthew Miller, “Firearm Availability and Homicide Rates Across 26 High-Income Countries,” *Journal of Trauma-Injury Infection & Critical Care* 49 (2000): 985-88; and Martin Killias, “Gun Ownership, Suicide and Homicide: An International Perspective,” *Journal of Criminology* [[vol.]] (2003): 289-307.

safe environment, the right to handgun ownership should be overridden in American society today.”

This clash between respectable arguments for and against step 7 leaves us with considerable uncertainty. It is an open question whether the appeal to physical security as the basis for an undefeated moral right to private gun ownership is successful. As we have seen, the possible success of this argument pivots on two crucial assumptions: that, in the U.S. today, the option of private handgun ownership is necessary and effective for self-defense, and, if so, that this right is not justifiably overridden. Of course, if the argument does succeed, it leaves wide open the issue of appropriate gun control, because significant gun control is compatible with the right to private ownership of handguns.

Where to Go Amid Uncertainty about Gun Rights?

Our evaluation of the argument based on the appeal to physical security has left us uncertain about its soundness. It is an open question whether there is a moral right to handgun ownership in the U.S. today and, even if there is, it is another open question whether this right stands undefeated by overriding moral considerations. At this stage in the debate, it seems that people can reasonably disagree about whether there is an undefeated moral right to gun ownership. It may seem that lack of closure on the central moral issue we have explored leaves us empty-handed from a practical standpoint. But I believe that digging a bit deeper into the points of disagreement suggests a pragmatic compromise between responsible thinkers on both sides of the gun rights issue.

In considering the argument for the existence of a moral right to handgun ownership, we found that gun ownership is self-defeating *on average across the*

American population. What prevented this point from decisively refuting the argument from physical security was the fact that, for some individuals, gun ownership is not self-defeating. Arguably, their prerogative to own guns for the purpose of self-defense should not be curtailed just because gun ownership is self-defeating for the majority.

Now, one might reasonably reject this argument. One might contend that it no more indicates a reason to allow gun ownership than the fact that some people can drink a lot of alcohol and drive safely—due, say, to exceptional physical coordination and a disposition to drive slowly while intoxicated—is a reason to allow drunk driving in general. I am very sympathetic toward this counterargument. But I would like to explore how granting the present pro-gun argument might lead in an unexpected direction that should be congenial to those who generally oppose gun ownership.

So let us grant that it would be unfair to those individuals for whom gun ownership would likely *not* be self-defeating to prevent them from owning guns just because gun ownership is self-defeating on average across the population. The question arises: For whom would gun ownership most likely not be self-defeating? A reasonable answer is: those people who (1) have a special need for guns and (2) can be trusted to store and use them safely. For most of us, apparently, it would be safer not to own guns and to secure the home through such ordinary means as locking doors and installing house alarms, and being prepared to call the police if someone appears to be attempting a break-in. But some people live in especially unsafe neighborhoods where ordinary measures are less likely to suffice; in effect, these individuals can't prudently delegate their right to fight off intruders to the police. Then again, these individuals might simply make their situation *even less safe* by owning guns (if they are among the majority for

whom gun ownership is self-defeating), so we need a way to make reasonable judgments that distinguish those for whom gun ownership would represent a net gain in safety and those for whom gun ownership would represent a net loss in safety.

My proposal is to constrain the scope of the presumed right to own handguns quite drastically. We should allow handgun ownership, I suggest, only under two conditions beyond the usual ones of passing background checks, not being excluded by psychiatric history or criminal record, and the like. First, as in Canada and some western European countries, we should allow individuals to own handguns only upon obtaining permits that are to be granted only to those who demonstrate a special need for handgun ownership. One might demonstrate, for example, that one's neighborhood is exceptionally unsafe or that one's profession (say, as a spy) presents a special need for handgun ownership. Second, in order to provide reasonable assurance that one's owning a gun will not be self-defeating, one should have to pass a demanding, in-depth course in handgun safety—with no exceptions. With these two conditions for handgun ownership, we can limit the exercise of a right to gun ownership to those for whom owning firearms will most likely confer a net benefit on themselves and other household members. Everyone else either doesn't need a handgun for physical security or cannot be trusted in owning one.

In effect, my proposal uses two elements of gun control to limit the scope of the presumed right to handgun ownership. There are principled reasons on both sides of the debate to accept this proposal. Those who believe that the appeal to physical security establishes an undefeated moral right must admit that my proposal is consistent with both the supporting argument (which appeals to adequate self-defense) and with available

evidence about the risks of gun ownership. Those who believe that the appeal to physical security is unsound should appreciate an approach that is designed to keep guns out of the hands of precisely those individuals whose misuse of guns provides the strongest reason to reject this argument.

A policy along the lines I have suggested seems likely, over time, to curb gun ownership—and, with it, gun tragedies—to a significant extent. Even if such a policy is never implemented, individuals who wish to make responsible decisions about gun ownership can accept the onus of realistically demonstrating that they have a special need for a handgun and, if so, taking an exceptionally demanding course in gun safety. Acceptance of such a standard by individuals could, in small ways, help to make the United States a safer place without treading on anyone's moral rights.