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The Case for Moderate Gun Control

ABSTRACT. In addressing the shape of appropriate gun policy, this essay assumes for the sake of discussion that there is a legal and moral right to private gun ownership. My thesis is that, against the background of this right, the most defensible policy approach in the United States would feature moderate gun control. The first section summarizes the American gun control status quo and characterizes what I call “moderate gun control.” The next section states and rebuts six leading arguments against this general approach to gun policy. The section that follows presents a positive case for moderate gun control that emphasizes safety in the home and society as well as rights whose enforcement entails some limits or qualifications on the right to bear arms. A final section shows how the recommended gun regulations address legitimate purposes, rather than imposing arbitrary restrictions on gun rights, and offers concluding reflections.

2012 was yet another bad year for gun violence in the United States. There were over a dozen mass shooting incidents with two standing out as especially tragic. On July 20, James Holmes entered an Aurora, Colorado, premiere of a Batman movie and, using an AR-15 assault rifle supported by a 100-round ammunition clip, killed twelve people while wounding 58 more before his gun jammed. On December 14, Adam Lanza worked a Bushmaster assault rifle in killing his mother, twenty elementary schoolchildren, six staff members, and himself in Newtown, Connecticut. The latter rampage, especially the slaughter of young children at school, prompted a national discussion of gun violence not seen in the US since the attempted assassination of President Reagan. Whether any new gun control measures will become federal law is uncertain, however; the US Senate recently failed to muster enough support to bring a bill mandating universal background checks to a vote.

What is the shape of appropriate gun control in this country? In addressing this question, the present essay will assume that there is a right,

both legal and moral, to private gun ownership. More precisely, competent, law-abiding adults in the United States have a right to own such ordinary weaponry as handguns and long guns (shotguns and hunting rifles). According to the US Supreme Court—whose judgment this essay accepts for the sake of discussion—a legal right to bear arms is grounded in the Second Amendment of the Constitution.^{1,2} A moral right to private gun ownership, meanwhile, is most plausibly thought to be supported by a more general right to self-defense, which itself may be understood to derive from a basic right to physical security.³ Arguably, the prerogative to own hunting rifles rests on one or more liberty rights. Although I believe that the case for a moral right to bear arms is quite debatable, in this article I simply grant its existence alongside the legal right.⁴ I do so because most Americans believe in gun rights (CNN/Opinion Research Corporation 2008, 2009; Pew Research Center 2010; ABC News/Washington Post 2011), because the legal right has been asserted by the Supreme Court, and because it is important to consider what sorts of gun control are justifiable against this background of established law and broad public conviction. This background is unlikely to change anytime soon, and we need to determine how to proceed in addressing gun violence in America.

*My thesis is that, assuming there is a right to bear arms, the most defensible policy approach in the United States would feature moderate gun control.*⁵ The discussion proceeds as follows. The first section summarizes the American gun control status quo and identifies several measures I will have in mind in defending what I call “moderate gun control.” The next section states and rebuts five leading arguments against gun control. The section that follows presents a positive case for gun control that emphasizes safety in the home and society as well as rights whose enforcement entails some limits or qualifications on the right to bear arms. A final section shows how the recommended gun regulations address legitimate purposes, rather than imposing arbitrary restrictions on gun rights, and offers concluding reflections.

THE STATUS QUO AND WHERE WE MIGHT GO

Currently, federal gun regulations in this country are *extremely* minimal. Adults who lack any specific disqualifying criminal or psychiatric history can easily purchase firearms. The Brady Handgun Violence Prevention Act⁶ mandates background checks of gun buyers, but only if the seller is a licensed dealer; private sales, including those at gun shows and those conducted online, are exempt. Remarkably, records of background checks

cannot be preserved because the Firearm Owners Protection Act⁷ prohibits the creation of a national registry of gun ownership. This legislation also limited the Bureau of Alcohol, Tobacco, and Firearms (ATF) from inspecting gun dealers more than once a year and raised the standard of proof needed to revoke their licenses. An amendment to a 2003 spending bill prohibits law enforcement from publicly releasing data showing where criminals purchased their firearms. As for the carrying of guns in public, the only federal legislation is the Gun-Free School Zones Act⁸. Meanwhile, 49 states permit the carrying of firearms and over 30 permit carrying without a license. And since the expiration of the Federal Assault Weapons Ban⁹ in 2004, guns that are legally available to the public include not only long guns and handguns but assault weapons as well;¹⁰ also available, in addition to ordinary ammunition, are high-capacity clips. It is worth recalling that the two deadliest rampages of 2012 featured assault weapons and high-capacity ammunition.

I will defend considerably more gun control than currently exists. The term “gun control,” as I understand it, refers to laws and policies designed to restrict the manufacture, sale, purchase, possession, storage, transfer, or use of firearms and/or associated ammunition. For convenience, I will consider various gun control measures, defined in this way, along with related political measures. In particular, I will defend the following as additions to the minimal regulations that constitute the legal status quo: (1) universal background checks; (2) a ban on assault weapons and high-capacity magazine clips; (3) the requirement of a license for all new gun owners, contingent upon passing a rigorous safety course; (4) safe storage requirements and required safety features on all guns; (5) tracing mechanisms on all guns and a national database of gun sales and gun owners; (6) “de-crippling” of the Bureau of Alcohol, Tobacco, and Firearms (ATF); and (7) restoration of funding to the Centers for Disease Control and Prevention (CDC) to study the relationships among gun ownership, specific gun regulations, and gun violence. Although it will clearly stretch the meaning of “gun control” to include (6) and (7) under the rubric of this term, for the purposes of this paper it will be convenient to do so.

I characterize these proposed regulations—considered together on top of existing regulations—as *moderate* gun control. What, then, would count as *extensive* gun control? The limiting case, of course, would be an outright ban on private gun ownership. Short of that, extensive gun control might include—in addition to measures collectively deemed “moderate”—severe limits on the number of guns one may purchase and own

and/or a mandatory buy-back of previously purchased assault weapons. It might also include a requirement that prospective gun buyers demonstrate a special need for owning a gun (e.g., inadequate police protection in one's neighborhood, a dangerous security job).

Naturally, such terms as "moderate gun control" and "extensive gun control" have no settled, precise meaning. Here I am just explaining roughly what I will mean by these terms. Moreover, I do not intend to suggest that my arguments support *precisely and only* the measures I defend; someone who accepts my arguments might propose a different—indeed, a better—specification of the sorts of gun regulations that are justified along the lines I intend. Later I will say more about what the measures I defend have in common in terms of promoting safety and accountability while respecting gun rights. This should help to establish these measures as reasonable suggestions within the spirit of moderate gun control.

Why defend moderate rather than extensive gun control? Given the background assumption of a right to gun ownership, extensive gun control is considerably harder to defend. At the same time, I do not preclude extensive gun control as the best approach.¹¹ What this paper defends is (at least) moderate gun control.

ARGUMENTS AGAINST MODERATE GUN CONTROL—AND REPLIES

Arguments against gun control are sometimes unclear regarding the extent of regulation they oppose. It will be helpful, therefore, to reconstruct existing arguments—the leading arguments against gun control of which I am aware—such that they oppose moderate gun control as I have characterized it. I will state each argument in italics before advancing a rebuttal.

1. *Moderate gun control violates the Second Amendment of the American Constitution: "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 establishes the right of private citizens to own firearms, notwithstanding the distracting phrase about a militia. But the sorts of regulation under consideration violate this right.*

This argument is unsound. As the Supreme Court clarified in its landmark *Heller* case,¹² the right to bear arms does not preclude significant gun controls. In its 5-4 decision, the court's majority deemphasized the reference to a militia—as the above argument does—and explicitly stated that a right to own guns is constitutionally protected for lawful activities

such as self-defense in the home. But the court also explicitly allowed for the constitutionality of significant gun regulations:

Like most rights, the Second Amendment right is not unlimited. It is not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose. . . . The court’s opinion should not be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms. *Miller’s* holding that the sorts of weapons protected are those “in common use at the time” finds support in the historical tradition of prohibiting the carrying of dangerous and unusual weapons.¹³

In this passage the court is explicit that the assertion of a right to bear arms does not imply the assertion of an absolute or unlimited right. In fact, the court suggests several limits on gun rights that would pass constitutional muster. The last sentence, for example, clears legal space for a ban on assault weapons.

In thinking about gun rights, it is important to recognize that all rights are limited in scope and at least most rights are subject to overriding. Even gun enthusiasts do not claim that young children, the severely mentally ill, or persons convicted of violent felonies have the right to bear arms. Gun rights are limited, at a first approximation, to competent, law-abiding adults. Moreover, few gun advocates would favor the legalization of machine guns. Both of these limits—who is eligible to buy guns and what sorts of guns are available—are limits in the scope of the right to gun ownership. But rights can also be overridden by considerations of the public welfare or by competing rights. This point is easily seen when we consider another constitutional right: the right to free speech. As everyone accepts, while this broad right protects nearly all public speech, it has limits. To cite the classic example, one may not shout “Fire!” (falsely) in a crowded movie house. One’s right to free speech is here overridden, and thereby limited, by consideration of other movie-goers’ welfare.

While the present rebuttal helps to show that the Second Amendment is compatible with certain gun regulations, it does not show that every measure I include under “moderate gun control” is constitutional. But I see no good reason to doubt that the regulations I have in mind are consistent with a right to gun ownership. They serve the interests of safety and accountability without substantially interfering with competent adults’ ability to purchase and own guns for legitimate purposes. The claim that

these regulations are consistent with the constitutional right will receive further support from the discussions in the last two sections of this paper.

2. Introducing moderate gun regulations would place us on a slippery slope leading to a government ban on private gun ownership. Such a ban would be unacceptable. Thus, any step that makes a ban inevitable—or even much more likely—is intolerable. Since moderate gun control measures would constitute such a step, they should be rejected.

In rebutting this argument, we can grant the assumption that banning guns would be unacceptable because we assume the existence of a right to gun ownership. The problem with the slippery slope argument is its claim that the introduction of moderate gun control measures would likely lead to a ban on guns. Why should anyone believe this? Many countries allow gun ownership with gun control far more restrictive than our own, and it is hardly the case that they are also marching inexorably toward gun bans. Indeed, some of these countries—such as Canada, Australia, and several in Western Europe—have policies that amount to what we have termed *extensive* gun control (see, e.g., Vernick, Hodge, and Webster 2007). At least as important is the Supreme Court’s finding that there is a constitutional right to bear arms. In view of this decision by the highest court, it is completely implausible that there could be a gun ban in this country even if we enacted moderate gun control: such a ban would be considered straightforwardly unconstitutional. Although slippery-slope arguments against gun control are a favorite political tactic of the National Rifle Association (NRA), they simply are not credible.

Any readers who are nevertheless inclined to take slippery-slope arguments seriously may be reassured by the explicit pairing, in the final section, of specific gun controls with particular purposes. The clear acceptability of those purposes enables us to be confident that they justify only certain types of gun control, not a ban, and that there is no reason to assume that the regulations’ true motivation is to move toward one.

3. The right to bear arms is a basic (or fundamental) moral right that would be violated by moderate gun control. As a basic moral right, it exists independently of the Constitution. Any legal regime that did not protect the right to bear arms would represent a failure, for all basic moral rights should be protected by law. The right’s status as basic implies that it may be subject only to minor restrictions such as limiting eligibility to competent, law-abiding adults. Such moderate restrictions as requiring a safety course constitute excessive interference with the exercise of this right.

This reasoning errs both in asserting that the right to gun ownership is a basic moral right and, more importantly, in asserting that this right is violated by moderate regulations. First, the moral right to gun ownership is not basic. The concept of a basic right has been analyzed in various ways (see, e.g., Gewirth 1978, Shue 1996, and Griffin 2008), so it is difficult to avoid begging some questions in advancing a definition. Nevertheless, we may understand basic moral rights as moral rights that (1) 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. An example of a basic right, which will be important to our discussion, is the right to physical security. 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. The moral right to gun ownership is not basic because it is false that owning guns, in and of itself, is necessary for the prospect of a decent life. For one thing, many people who have decent lives do not have guns (or family members who do). In addition, whatever value guns have must primarily concern their function—what they can do (LaFollette 2000, 265–66). 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 must be (1) derivative from more general rights and (2) contingent upon their serving certain purposes. In societies in which guns do not serve such purposes related to any basic rights, there is no moral right to gun ownership. But, once again, we have assumed that there is such a right in the US today.

Suppose we granted (incorrectly) that this assumed right is a basic moral right. It would not follow that it must be free of moderate limits or regulations. The right to freedom of movement—a plausible candidate for a basic moral right—does not permit me to walk onto private property or into another person’s body without her permission. These are significant limits on my right to free movement. Even basic rights may be subject to significant restrictions.

4. In the United States today, moderate gun control would threaten effective self-defense (cf. Wheeler 1997 and Huemer 2003).¹⁴ The moral right to gun ownership receives its strongest support from a broader right to self-defense. (Let us use the term “self-defense” broadly, if slightly inaccurately, to refer to defense of oneself and others in the household.)¹⁵ Even the legal right may be understood this way; the Supreme Court interpreted

the Second Amendment as protecting a right to own guns in pursuit of lawful objectives such as self-defense in the home. But surely the right to self-defense includes a right to reasonably effective means of self-defense. In this country today, many people cannot effectively defend themselves without guns. Moderate gun control measures would substantially diminish people's ability to deploy guns in self-defense and are, for this reason, unacceptable.

Much of this reasoning is cogent. The argument plausibly grounds the right to gun ownership in self-defense while insisting that what merits protection is the means of *effective* self-defense. But the argument stumbles in asserting that effective self-defense would (necessarily or even presumably) be undermined by moderate gun control. After all, child-proof locks—one type of gun safety feature—can be quickly disabled if necessary to confront an intruder. And it is hardly realistic that one needs an assault rifle and high-capacity ammo to keep one's family reasonably safe. Nor does having to take a rigorous safety course before becoming a gun-owner substantially interfere with one's ability to defend oneself. Although this requirement would cause some delay in being able to own and use guns in self-defense, *effective* self-defense requires a skill set that a safety course makes one far more likely to possess. Also, to anticipate a point that will be developed in the following section, self-defense is *not* effective if one's storage and use of guns are unsafe and constitute a major threat against the well-being of oneself and other individuals in the household.

5. Moderate gun control is unacceptable because it would violate our right to liberty. This violation would occur in several ways. First, by limiting the weapons one may use and the circumstances under which one may obtain them, moderate gun control would violate one's liberty to defend oneself as one sees fit. Second, by imposing these limitations, moderate gun control would violate one's liberty to recreate as one wants. Third, with the sorts of interferences just described, moderate gun control would violate one's liberty to adopt a particular lifestyle.¹⁶

Although this argument may resonate with many NRA members, it is significantly wrong-headed and provides no good reason to oppose moderate gun control.

First, it is misleading at best to speak of a general “right to liberty”—to do as one pleases—which is violated or overridden in every instance in which one's liberty is curtailed (Griffin 2008, chap. 9; Waldron 1993, chap. 2). It is not as if people have a right to enter my home without permission,

but this right is *overridden* by my rights to property and physical security and laws prohibiting trespass. Rather, whatever our morally protected liberty includes, it does not include a prerogative to enter people's homes without permission. Instead of asserting a general right to liberty, it is more perspicacious to assert specific liberty rights such as rights to freedom of worship and freedom of expression. After the inapt reference to a "right to liberty," the present argument does refer to specific liberty rights, which we may consider in turn.

The argument asserts that gun control would violate a right to defend oneself as one sees fit. Is there such a right? There is a right to self-defense. And it makes sense that one should enjoy considerable discretion, in exercising this right, as to how one might defend oneself. But, surely, legitimate discretion has limits. As the Supreme Court stated, the right to bear arms "is not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." From any reasonable perspective, one may not defend oneself with a grenade launcher, bazooka, or nuclear weapon, because those weapons are excessively dangerous and unnecessary for the sorts of threats that homeowners may reasonably anticipate. As will become clear in the next section, guns are also very dangerous in the sense of posing significant risks not only to burglars and assailants, but also to gun owners and others in their household. For this reason, gun controls that are reasonably (but not excessively) responsive to these risks do not violate one's right to self-defense or one's moral prerogative to do so as one wishes, because the limits of that right and prerogative are appropriately set by reasonable considerations of safety. I will argue that moderate gun controls are justified in exactly this way.

Consider now the assertion that moderate gun control would violate one's liberty right to recreate as one wants. Here the focus is on hunting, which many people value as a means of recreation. In this paper, I set aside the ethical issues associated with hunting and assume that Americans today have a right to own hunting rifles and to hunt with them. The first point to notice is that moderate gun control as envisioned in this paper will pose no significant obstacle to hunting. Having to take a safety course before buying one's first gun, for example, is not a significant obstacle. Second, as with the alleged right to defend oneself as one sees fit, there is no unlimited right to recreate as one pleases. Obviously, one may not shoot children for sport or own and use machine guns in hunting deer. Is there, more plausibly, a right to recreate as one pleases so long as one doesn't harm others (or other human beings)? Not, I think, if one's pleasure

involves use of a weapon that it is excessively dangerous to allow private citizens to obtain. Thus, an Old Chicago Mob Reenactors Club may be prevented from buying machine guns.

The third asserted liberty—to adopt a particular lifestyle—is much broader than the first two. In fact, because the spirit of this appeal refers to a lifestyle in which one celebrates gun ownership, the liberty in question really incorporates the two more specific liberties we have discussed. Accordingly, the liberty to adopt a particular lifestyle is similarly bounded by reasonable efforts to limit risks. Thus, this liberty right, properly understood, is compatible with moderate gun control.¹⁷

Having rebutted leading objections to moderate gun control, we turn now to a positive case for this approach to gun policy.

A POSITIVE CASE FOR MODERATE GUN CONTROL

The Consequentialist Argument

The consequentialist component of the case for moderate gun control (which will be followed by a rights-based component) focuses on the dangerousness of guns. This focus, to be sure, could support an argument for *extensive* gun control, even a ban on firearms or some large category of firearms such as handguns. But, as discussed earlier, the present discussion takes the right to bear arms as a point of departure. Given that starting point, the case for (at least) moderate gun control will appeal to guns' dangerousness *and to the possibility of mitigating the relevant dangers* in justifying particular gun control measures. After all, dangerousness comes in degrees. If a society has to accept certain things that are inherently dangerous—whether guns, automobiles, or tackle football—it makes sense to try to make them less dangerous within the constraints of respecting people's rights.

The consequentialist argument begins with a thesis that addresses society's interest in household safety while turning the most powerful argument for gun ownership rights into an argument for gun control. The thesis is that, *in the United States today (in which gun control is minimal), the presence of one or more guns in a house makes household members—on average—less safe than they would be in a gun-free household*. Available evidence strongly supports the following more specific claims. First, having a gun at home makes household members more likely to die by suicide (Brent et al. 1991; Kellermann et al. 1992; Chapdelaine and Maurice 1996; Conwell, Connor, and Cox 2002; Miller, Azrael, and Hemenway 2002; Miller and Hemenway 2008). Second, the risk of death by homicide is

much greater in homes with guns than in gun-free homes (Kellermann et al. 1993; Wiebe 2003a). Third, domestic violence is much more likely to prove lethal if guns are present in the home (Saltzman et al. 1992; Campbell et al. 2003). Fourth, the risk of accidental death increases markedly in households with guns (Miller and Hemenway 2001; Wiebe 2003b). Overall, having guns at home increases the risk of household members' suffering a violent death. Another study—which is only partly relevant to our discussion because it considered assaults both in and outside the home—concluded that assault victims who possessed a gun were far more likely to be shot than assault victims who did not possess a gun (Branas et al. 2009).

Thus, available evidence strongly supports the thesis that owning guns for the purpose of self-defense—at least in the United States today (in which gun control is minimal)—tends to be self-defeating: *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.* The qualification “on average” should not be overlooked. For the thesis is not that gun ownership is necessarily self-defeating for every individual who owns guns; gun ownership might, on balance, be neutral or even safety-enhancing for some individuals and households depending on their circumstances, their knowledge of gun safety, particular features (e.g., safety features) of the guns they own, and other details. As things stand, however, gun ownership in the United States today tends to be self-defeating from a safety standpoint.

Proponents of a right to commit suicide might respond that we should ignore the many cases in which guns kept at home are used for this purpose. After all, we do not normally think of self-defense as being necessary *against oneself*. But this response to the present argument does not cast significant doubt upon it, for several reasons.

First, even if we acknowledge a right to commit suicide, from any reasonable perspective the vast majority of suicides must be regarded as tragic. It is not very often that we carefully reflect upon the circumstances of someone who committed a suicide and think, “Yes, suicide was the very best option for that individual.” Sometimes we may, but not very often—especially when the victim of suicide is a child, a mentally ill person, or someone who acts impulsively. Often those who commit suicide are unaware of, or are momentarily unable to appreciate, the prospects for their lives going better. In a very real sense, then, many people who feel a desire to commit suicide *do* need protection against themselves.

Relatedly, if there is a right to commit suicide, it is plausibly limited to suicidal choices that are genuinely *autonomous*—choices, that is, that are carried out voluntarily (not primarily driven by external pressures or internal compulsions) with an adequate understanding of one’s realistic options (including those involving available forms of help), and with the psychological capacity to appreciate those options (as opposed to devaluing them due to the distorting effects of depression). An autonomous choice will accord with one’s values and stable preferences. Some suicides committed with the help of a physician meet these criteria; no doubt some suicides committed without such help do as well. But, of course, one doesn’t need a gun to commit suicide autonomously. And the presence of guns makes it more likely that one will kill oneself impulsively and non-autonomously. Thus, a right to commit suicide, plausibly construed, will not undermine the thesis that gun ownership for the purpose of self-defense is, on average, self-defeating.

While the first thesis in the consequentialist argument for moderate gun control concerns safety in the home, the second concerns safety in the broader society. The second thesis is that *widespread availability of guns makes a society less safe—as indicated by the fact that gun ownership rates within a population correlate significantly with murder rates in that population*. This point has been amply demonstrated both within the United States and internationally.

As for domestic comparisons, a literature review found that in American cities, states, and regions (as well as across high-income nations), where there are more guns, people are at higher risk for homicide (Hepburn and Hemenway 2004). Another study, comparing state firearm levels and controlling for poverty, urbanization, and region, found that children and adults, men and women, and members of all racial groups are significantly more likely to die from unintentional gun deaths if they live in states with higher levels of gun ownership (Miller, Azrael, and Hemenway 2001). Focusing on children, a third study concluded that a disproportionately large number of five- to fourteen-year-olds died from homicides, unintentional firearm deaths, and suicides in regions and states where guns were more prevalent (Miller, Azrael, and Hemenway 2002a). The basic picture of *more guns in a part of the US correlate with more homicides* has been confirmed in many studies (Miller, Azrael, and Hemenway 2002b, 2007; Violence Policy Center 2013).

A similar pattern emerges in international comparisons. Higher rates of gun ownership correlate significantly with higher rates of homicides and

suicides (Lester 1991; Killias 1993a, 1993b; CDC 1997; Hemenway and Miller 2000). It bears emphasis that we are talking about *rates* within a given population size, not total numbers, making comparisons between the United States and smaller countries more meaningful. A 2007 study, which estimated gun ownership rates among a large number of countries, found that the US leads the world with 89 guns per 100 people, with Yemen a distant second at 55 guns per 100 people (Geneva Graduate Institute of International Studies 2007). Meanwhile, the US gun homicide rate is 30 times that of Australia or France, and twelve times as high as the average for other developed countries (United Nations Office on Drugs and Crime 2011). 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 twelve times higher than the average rates of 25 other developed countries (1997). *The inescapable fact is that the US has enormously high rates of gun violence and gun ownership—and it is obvious that easy access to guns has a great deal to do, causally, with the frequent occurrence of American gun tragedies.*

One reporter who studied the international data appealed both to the data and to common sense:

In the United States, there are 3.2 gun homicides per 100,000 residents every year. Switzerland has the next highest rate of any advanced Western democracy, at 0.7 per 100,000. After Switzerland, the rate drops to 0.5 in Ireland and Canada; 0.4 in Sweden and Finland; 0.2 in New Zealand, Britain and Australia; and a flat 0 in Japan.

Want to argue that we have 32 times the rate of dangerous mental illness that they have in Australia? That Americans are characterologically 16 times more murderous than Spaniards or Germans? I thought not. (Meyerson 2012)

It is true that “correlation does not entail causation.” It is logically possible that the correlations under consideration do not reflect a causal relationship between gun ownership rates and death rates. But to deny the causal relationship is enormously implausible. Other factors, such as incidence of mental illness and willingness to kill, cannot account for such huge differences in rates.

John Lott, a prominent opponent of gun control, dismisses international comparisons, stating that “it is difficult to obtain gun ownership data both over time and across countries, and to control for all the other differences across the legal systems and cultures across countries” (2010, 116). Lott

is right about the methodological challenges posed by international comparisons, but to disregard international data seems irresponsible (as well as convenient for one who opposes gun control). Moreover, if we dig a bit deeper into the data, the picture becomes clearer. For example, in a comparison of homicides of children from ages five to fourteen among 26 wealthy nations, the US rate was 17 times the average of the other countries in homicides involving guns *but only twice as high in homicides not involving guns* (and six times as high overall); meanwhile, in the same age group, the US suicide rate was 10 times the average of the other countries where guns were used *but approximately the same where guns were not used* (and twice as high overall) (Hemenway and Miller 2000). These data cannot be satisfactorily explained without recognizing gun availability as a significant causal factor (LaFollette 2001, 36–37).

Other things being equal, the more guns are available for a population of a given size, the more murders, suicides, and accidental killings there will be. This fact recommends moderate gun control in the interest of promoting public safety. There are two basic ways to understand this point. First, if we think of gun control (as opposed to a gun ban) as not affecting the quantity of guns in a society, we may reasonably judge that we should make these dangerous weapons less dangerous through appropriate gun regulations. Alternatively, if we think of gun control as affecting the quantity of guns—for example, by restricting who can purchase guns and instituting universal background checks—we may reasonably judge that reducing gun ownership rates is a way of decreasing the harm likely to be caused by these weapons. Both of these judgments make good sense.

Thus, society's interests in both household safety and public safety serve as the basis for a commonsensical, consequentialist argument in favor of moderate gun regulations that are designed to promote safety without violating, or unduly restricting, the right to bear arms.

The Rights-based Argument

Careful reflection on our moral rights strengthens the case for moderate gun control. This is very important because some gun advocates believe that duly accounting for gun rights defeats the case for gun control by trumping consequentialist arguments in its favor. Let's see why they are mistaken.

People have a basic right to physical security. Although some of the details of what this right comes to—some of its implications—are controversial, some of its implications are not particularly controversial. For ex-

ample, there are rights not to be assaulted, raped, murdered, and tortured. There is also, again, a right to self-defense, which permits one to try to prevent others from violating one's rights not to be assaulted, etc. These rights all derive from a basic right to physical security. As we have seen, if there is a right to gun ownership—as we have assumed there is—this right is most plausibly thought to derive from the right to self-defense, which in turn is supported by one's basic right to physical security. But this same basic right also supports moderate gun control.

The crucial point is that one's rights not be assaulted, etc. need to be *enforced* if they are to be meaningfully honored.¹⁸ Enforcement, of course, has costs. For example, your right to walk around in public free of assault requires a reasonably effective police force and court system to punish violators and deter prospective violators. Maintaining a police force and a court system is costly, but the costs—which are imposed on taxpayers—are justified as a price to pay for the meaningful protection of one's rights not to be assaulted, etc. This, so far, is just common sense. After all, *nonenforcement* also has costs including a lot more assaults, rapes, and murders. These costs are unreasonably high, so they help to justify the costs of enforcement.

Now consider guns and household safety. Assume, as we have throughout the essay, that competent adults have a right to own guns. This right encompasses many prerogatives or specific freedoms, such as the option to brandish a gun if an intruder intrudes, while presumably excluding some others, such as shooting up one's guests without provocation. Consider now the specific freedom to leave a gun lying around the house unsecured. Suppose we propose that gun-owners have no right to do that; their gun rights do not encompass this prerogative but instead are limited by a requirement to store guns safely. This limit on gun-owners' rights would entail a cost involving some inconvenience. But consider the costs of *not* imposing this limit: household members are more likely to be killed or seriously injured through accidental, reckless, or homicidal gunfire. The point is especially clear in the case of child victims. They have a right not to be seriously injured or killed by gunfire. The costs to children (and other potential shooting victims in the household) of not requiring safe storage of weapons are very high. The costs to gun-owners of having to store their weapons safely are small. Here the gun-owners' interest in doing as they please with their guns needs to be balanced against household members' interest in not being shot. The balancing favors limiting the gun-owners' rights: they should be required to store their weapons safely

as a reasonable measure to protect household members' right not to be killed or seriously injured by gunfire.

The argument so far has discussed moderate gun control as part of what is necessary to protect people's rights not to be assaulted, etc. In the case of children, another right comes into play: their right not to die or be seriously injured as a result of gross negligence. If parents leave an opened bottle of liquid bleach around so that it is easy for their young child to drink it, and the child does so, then she is a victim of her parents' gross negligence. If a society allows people to keep unconstrained lions in their home and one such lion eats a couple's child, the child is a victim of the society's (and probably her parents') gross negligence. Children have a right not to be seriously harmed as a result of gross negligence just as surely as they and adults have rights not to be assaulted, killed, raped, or tortured. These rights derive from a basic right of physical security, the same basic right that undergirds the right to self-defense and the more specific right of gun ownership.

Because the right to gun ownership, on the one hand, and rights not to be assaulted, etc., and children's right not to be seriously harmed through gross negligence, on the other, are in tension, the appropriate boundaries of each must take the other rights into consideration. Given our assumption that there is a right to gun ownership, it would be improper to ban guns in the name of enforcing the various rights that may be violated in the household due to improper gun use. By the same token, the latter rights would not be duly respected if we interpreted gun rights so capaciously as to preclude gun control measures that are reasonably related to household safety.

So far we have been discussing the rights of household members as a basis for moderate gun control. Similar reasoning applies to members of society in general, whether they are at home or out in public. Everyone has rights not to be assaulted, etc., and therefore a right not to be shot. Responsible efforts to enforce this right include efforts aimed at public safety in the form of moderate gun regulations.

It is paramount to appreciate that the rights-based argument is not a redundant overlay to the consequentialist argument for moderate gun control, even if both arguments are tightly connected with considerations of safety. After all, many rights theorists think of rights as (ordinarily) *trumping* appeals to the general welfare or consequentialist considerations and *constraining* attempts to promote the general welfare (Dworkin 1977; Nozick 1974). Hughes and Hunt, for example, state that "from

a liberal point of view, the mere fact that a policy could save lives is not a sufficient reason for adopting it. [T]he pursuit of all social goals . . . is *constrained* [by individuals' rights]" (2000, 2; see also Huemer 2003).¹⁹ Rights are so important, from this perspective, that they should generally not be overridden even when a clear gain in overall utility is in prospect. My discussion of rights neutralizes the claim of some gun advocates that because we have *rights* to gun ownership, appeals to safety in the household and safety in society are irrelevant. It neutralizes this claim by showing that, in addition to gun rights, there are other rights that come into play. Proper enforcement of the latter rights, as we have seen, requires limits on the gun rights. These limits are characterized by moderate gun control. What remains is to show that the particular regulations I recommend are justified in a way that is responsive to the case for moderate gun control presented in this section.

A SKETCH OF JUSTIFIED GUN CONTROL MEASURES—AND CONCLUDING REFLECTIONS

Let us consider the measures enumerated earlier as characterizing moderate gun control. Each measure will be shown to be justified by being reasonably related to the goal of promoting safety—and, in parallel fashion, reasonably related to the enforcement of people's rights not to be assaulted, etc., and children's right not be seriously harmed as a result of gross negligence. This will not only complete the case for moderate gun control. It may also reassure readers who are especially fearful of government intrusion, including those who worry about a slippery slope leading to a gun ban, by showing that each recommended regulation is consistent with the assertion of a right to bear arms rather than arbitrarily limiting gun owners' liberty.

*Universal background checks.*²⁰ The purpose of this measure is to ensure that people who ought to be ineligible to buy guns—including felons, fugitives from justice, and the seriously mentally ill—cannot purchase them from friends, associates, or non-licensed dealers at gun shows or online. Successful exclusion of these individuals from gun purchases obviously promotes safety in exactly the same way that currently mandatory background checks (for sales by licensed dealers) do. Like most of the other measures proposed here, this one would be *prospective*—applying only to transactions that take place after passage of the relevant law. There would be no practical way of trying to enforce background checks on sales made prior to that time.

Ban on assault weapons and high-capacity magazine clips. These weapons and this ammunition are extremely dangerous and unnecessary for the legitimate purposes of household defense and hunting. They have enabled some of the worst rampages in recent American history. The purpose of the ban is to reduce the chances of massacres such as those that took place at Columbine High School, the Aurora, Colorado, movie theatre, and the Newtown, Connecticut, elementary school. This ban, too, should be prospective—although it could be coupled with a voluntary buy-back program of assault weapons and high-capacity clips in circulation. Because such a buy-back program would be voluntary, it could not be accused of restricting anyone’s liberty, much less of violating anyone’s rights.

Requirement of a license for all new gun owners, contingent upon passing a rigorous safety course. The United States has long required prospective drivers to obtain a license before being permitted to drive an automobile. Obtaining the license is contingent upon passing a driving test and a written test, after considerable hours of practice, where the tests are designed to assess basic competence. Although prospective drivers are inconvenienced by these requirements, everyone is safer because of them. In a similar way, everyone would be safer if prospective gun owners had to take a course and pass a test designed to assess basic competence with the storage and use of firearms.²¹ The right to bear arms is not a right to do so without restrictions, and this particular restriction is reasonably related to household and public safety. This measure, too, would be prospective, applying only to those who purchase guns after the new law was in effect. As far as I can see, there would be no reason not to apply the requirement to individuals who had obtained guns prior to the law’s passage but wish to purchase more guns after that time. The purpose of the regulation would be to reduce the chances of accidental killings and injuries.

Safe storage requirements and required safety features (e.g., child-proof locks) on all guns. The purpose of these closely related requirements, which can remain vague for the purposes of this paper, is to reduce the chances that a child will be able to commandeer and fire a gun. The storage requirements would be both prospective and retrospective in that they would apply to all guns no matter when they were purchased. The required safety features would apply only to guns manufactured after a legally determined date.

Effective tracing mechanisms on all guns and a national database of gun sales and gun owners. The purpose of these measures is to facilitate law enforcement and thereby public safety. This includes the fighting of illegal

traffic in firearms and the prosecution of those who fail to conduct, or ignore the results of, background checks. Tracing mechanisms—preferably less easily expunged than ordinary serial numbers—would be required of all guns manufactured in the United States after a specified date; after a possibly later date, all guns bought or sold in the US (even if manufactured in another country) would have to have this feature. All new gun owners, following passage of the relevant law, must be registered in a national database, a measure that should be relatively easy to implement given the universal licensing requirement.

“Decripping” of ATF. The NRA-sponsored budgetary and leadership crippling of the ATF (Horwitz and Grimaldi 2010; Higham et al. 2012; O’Keefe and Rucker 2013) should be reversed so that the bureau can have adequate staff and resources to do its job.²² The ATF should be freed of NRA-sponsored restrictions that have interfered unreasonably with law enforcement. For example, the law that prevents information about guns found at crime scenes from being made publicly available should be reversed. If, for example, drug lords or Mafiosi have been illegally obtaining and using guns obtained from a particular dealer in Ohio or Texas, it should be possible for both ATF officials and the public to learn about the pattern. ATF inspectors should not be restricted to one visit to gun dealers per year and should not bear an unreasonable burden of proof to revoke licenses. The purpose of these changes would be to strengthen law enforcement and thereby promote public safety.

Restoration of funding to the CDC to study the relationships among gun ownership, specific gun regulations, and gun violence. Consider this remarkably direct statement about the NRA’s impact on the CDC through a co-opted Congressman:

From 1986 to 1996, [the 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 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. (Dickey and Rosenberg 2012)

The purpose of the present measure would be to enhance public understanding of gun ownership, its risks, the effects of particular gun regulations, and the advantages of taking safety requirements and other appropriate regulations seriously.

This completes a brief sketch of specific measures that I recommend in the name of moderate gun control. Obviously, and to understate the point, to enact the full extent of these measures would be uncharacteristic of our governmental leadership and political culture. But, when it comes to guns, this leadership and this culture have long been dominated by the NRA and the interests of gun manufacturers (Horwitz and Grimaldi 2010; Higham et al. 2012; Luo 2013; McIntyre and Luo 2013). The gun lobby has its handprints on many of our extreme and bizarre gun laws, such as those that make it easy for criminals to buy guns—indeed, assault weapons—and those that interfere with law enforcement while eviscerating accountability for gun dealers and manufacturers. As one gun scholar put it, “The NRA often has this line, ‘Why don’t we enforce the laws on the books?’ but for the last few decades they’ve been making it harder and harder for federal agencies to do that.”²³ In addition, the NRA helped to manufacture a legal literature that was cited by the bare majority of Supreme Court justices who—quite debatably—minimized the reference to militias in the Second Amendment and declared a constitutional right to gun ownership (Finn 2013). In this essay I have simply assumed the existence of both a legal and moral right to gun ownership, taking this right as a fixed point for the foreseeable future. Given this fixed point, our question has been how we ought to proceed in view of the current state of American gun violence.

This essay has underscored the compatibility of gun rights and moderate gun control. It is the author’s hope that the present discussion will be part of a growing body of ethics literature that helps to correct the intellectual distortions, suppression of information, and legislative failures that have been promoted by the gun lobby and accepted by government officials who fear its leadership. We owe it to ourselves, and especially our children, to do all we reasonably can to stem gun violence and achieve safety in our homes and schools and on the streets. We owe it to the memory of twenty schoolchildren who were recently slaughtered by a disturbed young man who was able to commandeer an assault rifle and high-capacity ammunition owned by his mother. The time has arrived for moderate gun control in the United States.

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NOTES

1. District of Columbia v. Heller, 554 U.S. 570 (2008).
2. McDonald v. City of Chicago, 561 U.S. 3025 (2010).
3. I discuss the appeal to physical security in a forthcoming article. For a broader discussion of this basic right, see Shue 1996.
4. What I grant is the moral right to *own* guns, not necessarily to carry them in public. The Supreme Court was similarly noncommittal about the carrying of weapons in its aforementioned decisions.
5. The qualification “in the United States today” is important. Which gun control measures are justified depends significantly on such factors as what seems necessary for adequate self-defense and the state of the law at a given time.
6. Brady Handgun Violence Prevention Act of 1993, Pub.L. No. 103-159, 107 Stat. 1536.
7. Firearm Owners Protection Act of 1986, Pub.L. No. 99-308, 100 Stat. 449.
8. Gun-Free School Zones Act of 1990, 18 U.S.C. § 922(q).
9. Public Safety and Recreational Firearms Use Protection Act of 1994, H.R. 4296, 103rd Cong.
10. Some commentators complain that the term “assault weapon” is used inconsistently and has no established meaning. I intend to use the term roughly as it was used in the Assault Weapons Ban. Thus, the term does not refer to ordinary handguns or ordinary long guns.
11. In DeGrazia, forthcoming, I defend this more controversial view, but only after casting significant doubt on the existence of a moral right to gun ownership.
12. District of Columbia v. Heller, 554 U.S. 570 (2008).
13. District of Columbia v. Heller, 128 S.Ct. 2783 (2008) (syllabus). The passage makes reference to United States v. Miller, 307 U.S. 174 (1939).
14. I do not assume the authors would object to all of the measures I include under “moderate gun control.”
15. The restriction of other parties here to those in the household is appropriate because we are focusing on the ownership of guns and their use in the home rather than the carrying of guns in public.

16. In characterizing what they call “wide liberalism,” Hughes and Hunt (2000) state the idea in terms of government neutrality: “There are many people—private militia groups, for instance—whose conception of the good life involves owning, shooting, and training with automatic weapons. . . . As long as these people are peacefully pursuing their strange activities, harming no one, a wide-liberal state cannot coercively deprive them of the means of pursuing them” (12–13). Those who accept this position are likely to reject my proposal to ban assault weapons.
17. A different sort of liberty—freedom from a tyrannical government—is sometimes invoked by gun advocates. But this sort of appeal is only significant as an argument against gun bans (see, e.g., Wheeler 1999), not as an argument against moderate gun control—at least if we assume, as argued earlier, that there is no dangerously slippery slope from moderate gun control to a gun ban.
18. I owe the idea of emphasizing enforcement costs to Joe Millum.
19. By contrast, Lott’s reasoning seems straightforwardly consequentialist: “The primary focus [of my analysis] will be on whether gun laws save or cost lives” (2010, 20).
20. Even those who generally oppose gun control (without being ideologically extreme) tend to endorse universal background checks (see, e.g., Kleck 1991, 433–34).
21. One might protest the analogy, claiming that one has a *right* to bear arms whereas driving is just a privilege. But I stand by the analogy and reject the claim that driving is just a privilege. If the government interfered excessively with the efforts of competent adults to purchase and drive cars, this would be wrong—and the assertion that people had a right to drive would become prominent in public discourse. The moral right to drive cars is derivative from a basic right to freedom of movement and perhaps other basic rights.
22. The ATF went seven years, through July 2013, without a full-time, regular Director because the NRA persuaded a member of Congress in 2006 to insert a provision into the Patriot Act reauthorization that changed the position of ATF Director from one appointed by the administration to one requiring Senate confirmation.
23. The scholar is Arkadi Gerney of the Center for American Progress. The quotation appears in O’Keefe and Rucker 2013.

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