The Bird in Hand: A FEASIBLE STRATEGY FOR GUN CONTROL

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Policy analysis has failed to guide gun control policy away from its current impasse because analysts have avoided facing several crucially important features of the current reality: the existence of some widely held values in the United States public that favor the possession of guns; the limitations on the ability of public agencies in the United States to enforce restraints on the possession of handguns; and the implications of the fact that so many guns are already in the hands of the public. These factors greatly reduce the possibility that effective measures will be introduced to reduce the existing supply of guns. Some effective measures of gun control may be possible nonetheless, mainly through the mobilization of large metropolitan police forces.

Gun control policy is an area in which the U.S. public has paid an enormous price because policymakers and social scientists have persisted in looking for simple resolutions of the problem while refusing to face important substantive and institutional realities. For two decades, the debate among social scientists has focused on the empirical issue of whether gun availability affects crime. The notion, apparently, is that if this crucial empirical issue could be resolved, the appropriate policy would be obvious. Meanwhile, the debate among policymakers has generally concentrated on measures to restrict the quantity of guns. But the various contentions have produced nothing other than political impasse, accompanied by increasing bitterness among the adversaries. By any test of practical value, then, policy analysis has failed.

In my estimation, this sort of failure is common in policy

The research reported in this article was supported by a grant from the Ford Foundation. As the references indicate, I am greatly indebted to my collaborator Philip J. Cook of Duke University, although he bears no responsibility for any errors.

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Published by John Wiley & Sons, Inc. CCC 0276-8739/83/010185-11S02.10
analysis. One of the reasons that policy analysis often fails in this way is that it begins by posing the issues in a form that will lend itself most readily to formal analytic and quantitative techniques; and in the course of doing so, it abstracts from existing substantive and institutional facts. There are many virtues in this approach, of course. Objectives are sometimes clarified, important analytic insights about relationships among component parts of the problem disclosed, and uncertainty about crucial empirical relationships reduced. Moreover, the intellectual style that goes with the search for a simple, penetrating formulation of a problem is psychologically gratifying to the analyst; it permits the analyst to exercise the tools with which he is most proficient and to provide a test by which his peers can rate him.

By failing to take the existing political debate seriously enough, however, the analyst often ignores important social values that the disputants see at stake. By failing to consider how authority is distributed and how capabilities have developed among the various units of government, analysts may propose options that will not work or may overlook options that will. All this makes the resulting analysis less useful, and less responsive to actual circumstances.

An alternative approach would be to begin policy analysis not with an abstract characterization of the problem, but instead with a sensitive understanding of current realities, including the factors that determine how far and how fast governments can be moved to a new position. My contention is that the policy analyst who starts with such concerns is led in different directions and to different conclusions from the analyst who begins with abstract formulations. Indeed, in the gun control area, such an approach may be able to guide the United States away from the current impasse, and toward a plausibly effective agenda for government action.

OBJECTIVES OF GUN CONTROL POLICIES

To many, it seems obvious that the ready availability of firearms, particularly handguns, aggravates criminal violence. Intuition, now buttressed by analytic reflection and empirical evidence, suggests two distinct mechanisms. First, easy access to handguns may escalate criminal attacks from simple assaults or armed robberies to homicides. Second, the overall level of criminal attacks may increase as potential offenders gain the power to make attacks against victims who otherwise might be able to defend themselves. The corollary of this view—that reduced gun availability might diminish criminal violence—constitutes the primary justification for public interest in gun control policies.

Of course, there may be other reasons to be interested in gun control policies. One could see them as important mechanisms for reducing accidents and suicides as well as crime. Or they might be seen as a way of civilizing an outmoded frontier culture. But the most commonly advanced justification, and the one that is most prominently displayed by gun control advocates, is the argument that gun control policies could reduce violent crime.
Unfortunately, three awkward facts stand in the way of any easy decision to adopt and implement restrictive gun control policies. First, the empirical evidence on the relationship between guns and crime is slightly more mixed than one might hope. In cases involving assault or robbery, it does seem clear that guns increase the chance that a homicide will occur. It is less clear that guns increase the number of assaults and robberies. In fact, with respect to robberies, the evidence indicates that the number is impervious to the availability of guns. Guns in robberies, however, do seem to influence the choice of victims. A robber with a gun tends to attack more lucrative, better defended targets such as stores and young men; an unarmed robber goes after more vulnerable targets such as elderly people and women. Ironically, then, reducing gun availability to robbers may focus attacks on those least able to defend themselves.

Second, not all gun use, not even all handgun use, is useless or dangerous. Much use involves legitimate purposes such as self-defense, hunting, target shooting, and collecting. In fact, it seems likely that most handguns are used exclusively for these purposes throughout their working existence. Although one might expect these apparently modest pleasures to yield to the urgency of controlling crime, the politics of the issues suggest the opposite.

Third, 25–50 million handguns are already in private hands. There is no reason to expect that this enormous stock will deteriorate quickly. Moreover, it is available for redistribution through private transfers, sales, or thefts. In total size, this stock dwarfs both new production (about 2 million), and the current “demand” for handguns in illegal activity (roughly estimated at 100,000–300,000 per year). If any program of control leaves this stock untouched, it will delay benefits from such control for several decades, perhaps a generation. These observations suggest two basic guidelines that should govern sensible discussions of gun control policies:

- First, because the benefits of reducing crime by limiting the availability of guns are by no means certain, we should be both cautious and modest in developing gun control policies.
- Second, in designating gun control policies, we should recognize that legitimate uses exist for the possession of guns and that these uses deserve protection.

The second principle is crucially important—both politically and substantively. It is so important, in fact, that it is worth reflecting on its implications.

In political terms, recognizing legitimate uses of firearms is of crucial symbolic importance. Indeed, it is precisely this issue that has generated the acrimony and bitterness of the “great American gun war.” The gun controllers sneer at the values of the gun owners. The gun owners insist on their right to pursue their interests. Moreover, the gun owners worry—rightly, in my view—
that the gun controllers would be willing to sacrifice their interests even if the crime control benefits were tiny. In this situation, if the advocates of gun control were prepared to recognize and protect the legitimate uses of guns, fruitful negotiations leading to some measures of control might be possible. Of course, many pro-gun groups will refuse to discuss such measures on any terms, insisting that recognition of the "right to bear arms" has already been given in the second amendment of the Constitution. But others will be sensitive to the fact that the Supreme Court has failed to uphold an unconditional right to bear arms; accordingly, political agreement on the subject of control might be seen as having some value. In that case, recognition of legitimate uses of guns might do a great deal to move the political struggle from the current impasse.

However, there is a substantive price to be paid for recognizing the legitimate use of guns. First, the existence of a large group of legitimate gun owners inevitably will produce some criminal attacks, to say nothing of accidents. In fact, preserving a legitimate sector of gun ownership assures that some domestic quarrels of ambiguous origin will become tragic homicides. Second, the legitimate sector inevitably supplies the illicit sector. Guns can be sold, transferred, or stolen. For someone who wants to wring the maximum potential for crime reduction from gun control policy, then, it is expensive to recognize legitimate uses.

Despite the price, recognition seems the appropriate course for two reasons: one principled and one pragmatic. The principled reason is that individuals see value in being allowed to own and use firearms, and the country's political traditions encourage it to respect individual preferences in all except the most compelling cases of social or collective interest. The pragmatic reason has already been mentioned: 25–50 million handguns are already in private circulation, and it is difficult to think of a convenient way to withdraw them. In effect, history has resolved the issue for us. As a result, gun control policies must be designed to pursue the twin objective of reducing gun crime and preserving legitimate uses of guns.

AN ASSESSMENT OF ALTERNATIVE POLICIES

Broadly speaking, we can identify three approaches to gun control that are consistent with these principles. First, one can work at reducing the existing inventory of guns. This approach embraces more or less limited efforts to restrict the flow of new guns, as well as more or less coercive efforts to reduce the existing stock. Second, one can try to influence who has access to guns. The basic idea is to entitle those people to own guns who are considered "safe," and to proscribe those from owning guns who are considered risky. Third, one can influence uses of guns, by surrounding gun owners with rules (and sanctions) that govern gun usage. One version of this policy would consider gun use an aggravating factor in criminal offenses. Another version, however, would create restrictions about when and how one can carry, display, discharge, and otherwise use the weapon.
Note that each of these approaches can accommodate legitimate gun uses while still attacking criminal uses. The attack on the stock of guns, for example, can be concentrated on guns that have the greatest value in criminal activities and the least value in legitimate activities. This logic explains why control of sawed-off shotguns and silencers is tighter than the control of .22 caliber rifles. It also explains why sharp restrictions on handguns that can be concealed have greater political appeal than attacks on all handguns. Similarly, controls on the users and uses of guns are explicitly discriminatory: felons are proscribed, while those without criminal records are entitled; carrying guns in central cities is regulated more stringently than possessing guns or carrying guns in rural areas. But the question of how feasible and effective the different approaches might be still remains.

The first approach, controlling the national inventory, has sharp limitations. The central problem is the vast size of the existing stock. As was noted earlier, the current stock of handguns can sustain illicit uses for a decade or more. Yet no one can think of a practical proposal for reducing the current stock. The only options are to confiscate or buy the guns back from current owners. Confiscation policies have obvious limitations: the analogy to Prohibition and marijuana enforcement is too obvious to permit enthusiastic advocacy. Buy-back programs, on the other hand, are occasionally advocated and implemented. Compared with confiscation programs, the great virtue of buy-back programs is that they rely on state money rather than state authority to achieve their purpose. Unfortunately, buy-back programs have their own liabilities. For one thing, they must be national in scope; otherwise the state or locality that offers to buy guns will absorb unwanted guns from all over the country. In addition, such programs will be expensive because (1) the price required to buy guns back from owners will be larger than the price at which the guns were originally sold; (2) the high price would have to be paid for all guns, including those that would have been turned in even without a buy-back; and (3) there are lots of guns. Finally, even with a very generous offer, the government may fail to attract a significant fraction of the outstanding guns. The prevalence of bumper stickers proclaiming “I’ll give up my gun when they pry it from my dead fingers” suggests that it will take a very high price to recapture many guns on a voluntary basis. The obvious difficulties of these programs prevent them from being advocated strongly. Yet without such programs, one must face the fact that 25–50 million handguns will remain distributed throughout the society — slowly diminishing to be sure, but very slowly.

If the existing stock cannot be reduced very fast and if the national inventory of guns must be brought down, one must turn to restricting the flow of new guns. Thus, gun control advocates propose bans on importation, on new production, or on the production and importation of special kinds of guns such as inexpensive, concealable handguns. But even here, the existing
stock creates a problem. The political system would have to endure a decade long commitment to a policy of restricting the flow while the crime reduction benefits of the policy remain, in all likelihood, very small. Faced with this prospect, it is difficult to create the political will to act.

Moreover, even if proposals to ban the production of concealable handguns were adopted, and even if this succeeded in changing the composition of the national inventory in the course of time, it is not clear that these changes would alter existing patterns of use. Shotguns and rifles can be converted to a size that can be concealed, say 12 inches. Handguns, bought for self-defense, can be used in criminal attacks.

Finally, policies working on the national inventory of guns depend crucially on federal legislation. It makes little sense for Maryland, let alone New York City, to ban the production of handguns. Unfortunately, however, the federal legislative arena has not been hospitable to more restrictive gun control policies. Since 1900, despite significant political agitation, the U.S. Congress has banned only "gangster-type weapons," such as sawed-off shotguns and silenced, and the importation of weapons that failed to meet a "sporting arms" criterion, such as foreign-produced "Saturday Night Specials."

Affecting the Ownership of Guns

The second approach, controlling the allocation of guns among users, looks somewhat more promising. The difficulties of the approach are fairly obvious: It is hard to know where to draw the line between "safe" and "risky" users, and even harder to develop an enforcement capacity that keeps the guns more or less safely bottled up in the legitimate sector.

Still, the basic logic of this approach has great political appeal. In fact, it is entirely consistent with the National Rifle Association's view that it is not guns that kill people, but other people who do the killing. If it is the people who kill, and if it is possible to distinguish dangerous from less dangerous people, then a licensing system could succeed in reducing crime while preserving a great deal of legitimate use. The idea of distinguishing between "safe" and "risky" users may sound unconstitutional, or at least illiberal. In fact, however, if there is no constitutional bar to regulating the right to own guns, then the state can regulate access to guns just as it regulates the privilege of driving cars, burning trash, opening a bar, representing oneself as a plumber or electrician, and so on. The only requirement is that the licensing requirements should be linked to some rational state purposes such as reducing crime or accidents, and that it should be fairly administered.

Even more importantly, when compared with attempts to reduce the stock of guns, efforts to regulate their ownership are much more compatible with existing arrangements of governmental authority. Current federal law (the Gun Control Act of 1968) prohibits dealers from transferring handguns to people who are convicted felons, addicts, and minors. Many states have similar (or even tighter) restrictions. Obviously, the line between safe
and risky gun owners is now drawn conservatively. The presumption is that a person is safe unless there is clear evidence of risk. One can imagine expanding the restrictions by shifting the presumption, that is, by requiring gun owners to present affirmative evidence of good character, clear need, and demonstrated competence with guns. Such a change would radically shrink the size of the legitimate sector. If political factors bar such radical shrinkage, as appears to be the case, one might be tempted to consider making a series of incremental additions to the proscribed groups, such as misdemeanants and habitual drunks. But it is not clear that such incremental additions would reduce gun crime a great deal. The groups that could readily be added do not commit gun crimes at very high rates. Moreover, as one adds new groups to the proscribed category, one increases the administrative difficulty of doing the screening, partly because the number of groups is increased and partly because the system comes to be based on characteristics hard to observe.23

Drawing an appropriate line between the entitled and the proscribed is probably not the real problem. More important is the problem of keeping guns effectively sealed in the licensed sector. Those entitled to own guns can transfer them to a proscribed person; and guns can be stolen or acquired in the black market.24 Part of the difficulty in controlling these leaks is a lack of statutory authority. Under current federal law, individuals in the private sector who transfer only a few guns a year are under no obligation to avoid transferring them to proscribed persons.25 Moreover, even federally licensed dealers end their liability by securing a signed statement from a customer that he is not disqualified from buying a gun.26 It is easy to imagine a tighter set of federal rules relating to the transfer of guns to proscribed persons.

Recent research indicates, however, that the largest source of supply of crime guns comes from thefts and the black market.27 If these preliminary results are corroborated, closing the leaks from commercial distributors and private transferors would be off-target and of little use. The instruments necessary to reduce leaks through thefts and the black market differ from those necessary to control commercial transactions and private transfers. Large-city police departments could be turned to these tasks. To be sure, it is not at all certain that their efforts would substantially reduce such leaks. But when one compares the political, administrative, and operational difficulties of attacking thefts and the black market with regulating private and commercial transfers, thefts and the black market seem the much more attractive target. After all, attacks on thefts and the black market focus on a small number of transactions, all of which are clearly bad and already illegal, relying on the capacities of large-city police forces. The regulation of private and commercial transfers in the gun market, on the other hand, requires control over three million transactions, most of which are legitimate and many not even regulated, while relying on only a few thousand people in federal, state, and local regulatory agencies to perform the regulatory task.
In sum, the existing institutional arrangements give the second approach some potential for controlling gun crime while preserving the legitimate uses of gun ownership. The line between safe and risky users is now drawn in a way that probably serves to eliminate a large fraction of potential offenders. Moreover, although guns may move from entitled to proscribed persons through a variety of leaks, the most important leaks—thefts and the black market—can be attacked through the institutional apparatus of large-city police departments. It would also help, of course, if agencies could enforce the existing requirements on federal dealers more effectively, and if Congress would create more effective obligations for private transferors. But such moves are relatively less valuable in controlling crime, more of a nuisance to the licensed sector, and much more difficult to enforce than efforts to control thefts and black market operations.

Regulating Uses of Guns The third approach, regulating the uses of guns, also has potential—potential that is rooted in the appeal of its logic, as well as in the existing arrangements of statutory authority and enforcement capacity. The most attractive idea is to prevent “carrying” of guns in major cities. The idea that gun carrying in congested urban areas is a dangerous activity that cannot be justified easily seems to enjoy widespread support. Indeed, in many parts of the country where possession of a gun is routinely allowed, one must still make a special showing of need, competence, or character to secure a license to carry. Moreover, in principle, illegal carrying is a vulnerable enforcement target. It occurs in public. The police are entitled to “frisk” for a deadly weapon even when they stop someone on reasonable suspicion. And a convenient technology, the hand-held magnetometer, may now be available to assist in searches that would be less intrusive and more specific to dangerous weapons than current “frisks” or “pat-downs.” Finally, a bit of evidence indicates that deterring illegal carrying of weapons reduces crime: A study of a Massachusetts law that mandated a minimum one-year sentence for illegal carrying revealed that handgun robberies, assaults, and murders all declined a bit following passage of the law.

A PROPOSAL These observations and arguments lead to the following proposal for appropriate next steps in gun control policy:

- Our policy should explicitly recognize legitimate uses of guns, and guarantee the preservation of those uses.
- Instead of working on the inventory of handguns, our central policy emphasis should be to keep handguns away from criminal offenders and off city streets.
- Keeping guns from criminal offenders probably depends on controlling household thefts and small-scale, local black markets—tasks for which the operating capacities and scale
of local police departments are well suited. Local efforts can be supplemented usefully by improved federal capacities to regulate licensed dealers, and, to a lesser degree, to thwart interstate smuggling through criminal enforcement. But the most direct way to reduce the flow of guns to felons is to close off thefts and the black market.

- Keeping guns off city streets requires experimentation with more aggressive enforcement against illegal carrying. Although the evaluation of the Bartley–Fox law in Massachusetts indicated that stiffer sentences for gun carrying might reduce violent crime, it also revealed that important injustices and practical difficulties attended the application of the mandatory law. It may be wiser to generate deterrence of illegal carrying by more pervasive and persistent enforcement efforts instead of tougher sentences. A crucial question to be answered through experimentation is whether police departments enforce legal prohibitions against carrying guns in a decent and effective manner.

These proposals are shaped not only by the consideration of the substance of gun control policies but also by a concern with the institutional setting within which they will be adopted and implemented. The policy analyst is drawn from debating about national policy to concentrating on the conditions of metropolitan areas where both gun crime and support for gun control policies principally lie; from the struggle for new federal legislation to the opportunity to exploit existing local statutes; from fashioning federal enforcement devices to an interest in the unexploited potential of large-city policy forces; from aspirations to reduce the national inventory to a strategy that would regulate access to and uses of the existing stock. Viewed from one perspective, this may seem like a decision not to control gun crime. But viewed from another perspective, the shift in emphasis signals new possibilities because it offers the hope of breaking an impasse that has prevented action of any kind.

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NOTES

2. This effect is shown most dramatically in Zimring, Franklin, "The Medium as the Message: Firearm Calibre as a Determinant of Death from Assault," *Journal of Legal Studies*, 1(1) (January 1972): 97–124.


8. Cook, "The Effect of Gun Availability on Robbery."


10. Cook has developed an analytic model which estimates that the chance that a gun manufactured in 1977 will at some stage in its career be used for a criminal attack is about 1 in 3. Of course, in any given year, the chance that the gun will be used for inappropriate purposes is much less. See Cook, Philip J., "Guns and Crime: the Perils of Long Division," Journal of Policy Analysis and Management, 1(1) (Fall 1981): 120–125. For a different interpretation of the same analysis, see Vaupel, James W., "Statistical Insinuation," Journal of Policy Analysis and Management, 2 (Winter 1982): 261–264.


13. Ibid.

14. For a crude calculation about the delaying effect of the large stock of handguns, see Moore, "The Supply of Handguns," pp. 16–19. In making this estimate, I assumed something like a threshold effect—or at least a relationship between crime reduction benefits and diminishing stock of handguns that is flat through most of the range of reductions in the stock and then increases rapidly. If the relationship is smoother than this, then the benefits will come sooner, but will be less perceptible.


17. Rough estimates I made indicate that about half of assaults and homicides committed by people with handguns are committed by people who would be entitled to own a handgun under almost any licensing scheme. See Moore, "The Supply of Handguns," pp. 36–78 and Table 7.

18. For an analysis of the nature and size of these leaks from entitled to proscribed sectors, see Moore, Mark H., "Keeping Handguns from Criminal Offenders," Annals, 455 (May 1981): 92–109.

20. Moore, "Gun Control (A): The Legislative History."

21. U.S. Code, Title 18, Chap. 44, Sections 922(b) and 922(d).

22. For a review of these statutes, see Cook, Philip J., and Blose, James, "State Programs for Screening Handgun Buyers," *Annals*, 455 (May 1981): 80–91.

23. Ibid.

24. Moore, "Keeping Handguns from Offenders."

25. U.S. Code, Title 18, Chap. 44, Section 922(a). Only "those engaged in the business of dealing in firearms" are obliged to secure a federal license, and the various obligations for dealers (e.g., to refrain from dealing with proscribed individuals) attach only to federal licenses. Closing the loophole is the purpose of the Handgun Crime Control Act of 1979 urged by Handgun Control, Inc. and introduced to the Senate by Senator Edward M. Kennedy.

26. U.S. Code, Title 18, Chap. 44, Section 923(g).


28. For an analysis of the Bureau of Alcohol, Tobacco and Firearms capacities, see Moore, Mark H., "Gun Control (B): The Bureau of Alcohol, Tobacco and Firearms," Kennedy School of Government Case #C95-81-404.

29. The most important evidence supporting this view is the existence of "carrying" statutes in many states and localities. See Cook and Blose, "An Overview of Federal State and Local Firearms Regulations." In addition, there is the Western tradition of checking one's gun at the door when cowhands come to saloons. Surely the tradition seems as applicable to today's cities as it once did in Dodge City.

30. Cook and Blose, "An Overview of Federal, State and Local Firearms Regulations."

