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Abstract
In this paper, I shall argue that the evidence supports, at the very best for the anti-gun side, agnosticism about the negative criminogenic effects of gun ownership. Given the plausible proposition that there is at least a prima facie moral right (a right that can be outweighed given sufficiently weighty considerations) to keep and bear arms, I argue that agnosticism supports the proposition that there ought to be a legal right to keep and bear arms.
Beliefs about guns are almost invariably formed in response to highly publicised mass shootings and stories about violent gun crimes, and not on the basis of an impartial examination of the relevant criminological evidence. The emotional responses of people to these kinds of events have a significant impact on public policy, usually in the direction of gun control and outright gun bans. Outright bans and strict controls immediately followed the Dunblane and Port Arthur massacres in the United Kingdom and Australia, respectively. The situation in the United States is much more complex (because gun ownership rights are constitutionally protected), but calls for strict gun controls by high-level politicians (which were ultimately unsuccessful) immediately followed the infamous Aurora and Newtown massacres. In this paper, I shall argue that these kinds of immediate (largely emotional) responses are irrational in the light of the evidence. The evidence that the prevalence of gun ownership significantly increases violent crime is very weak. Indeed, the best evidence suggests either that there is a negative effect on crime or no discernible effect whatever. I shall argue that the evidence supports, at the very best for the anti-gun side, agnosticism about the negative criminogenic effects of gun ownership. Given the plausible proposition that there is at least a *prima facie* moral right (a right that can be outweighed given sufficiently weighty considerations) to keep and bear arms, I argue that agnosticism supports the proposition that there ought to be a *legal* right to keep and bear arms.

The central thesis of this paper is as follows:

(GVA) Nobody who has impartially examined the extant criminological evidence knows that the
criminogenic harms of gun ownership and carrying outweigh the benefits.

The philosophical significance of GVA will become clearer later in this paper, but I shall briefly state why it is significant, if true. If there is a prima facie right to own a gun, then a gun ban would be just (in the fact-relative sense) only if the harms of common gun ownership significantly outweigh the benefits (to a degree sufficient to override the right). Insofar as gun bans ought to be implemented by politicians only after they know that this consequentialist calculation is true on the basis of an impartial examination of the extant evidence, GVA implies that a gun ban in the US that is based on the proposition that the criminogenic harms of gun ownership and carrying outweigh the benefits would be unjust (at least in the evidence-relative sense).i

Let us now consider whether GVA is true. The truth of GVA depends importantly on whether the extant criminological evidence significantly supports the following three hypotheses:

   Crime-increasing hypothesis (CIH): Gun ownership causes significant increases in rates of violent crime.

   Homicide-increasing hypothesis (HIH): Gun ownership causes significant increases in rates of homicide.

   Anti-Carrying hypothesis (ACH): Laws that allow civilians to carry firearms concealed in public significantly increase violent crime rates.

After an impartial examination of the relevant evidence, someone knows that the criminogenic harms of gun
ownership and carrying outweigh the benefits only if she knows that CIH, HIH, and ACH are true, and she knows that they are true only if the evidence supports these hypotheses. Moreover, the evidence supports them in the relevant sense only if they are more probable than not given that evidence. In what follows, I shall argue that the extant criminological evidence very probably does not support CIH, HIH, or ACH in this way.

What, then, does the evidence say? It will be helpful to begin with a very recent methodological survey of the relevant evidence. Kleck (2015) reviewed 41 studies that tested CIH and HIH. He identified methodologically superior studies on the basis of the following criteria:

1. A valid measure of gun levels was used.
2. The authors made an attempt to control for more than a handful of possible confounding variables.
3. The authors ‘used suitable causal order procedures to deal with the possibility of crime rates affecting gun rates, instead of the reverse.’

It is very clear that the evidence does not support CIH. Of the 90 findings generated by the 41 studies reviewed, only 26 (~29%) support CIH, whereas 64 (~71%) found against CIH. None of the findings of studies for which more than one of (1) – (3) are true supported CIH. The same trend holds with respect to HIH. Only 36% of studies for which (1) is true support HIH compared to 62% of studies for which (1) is false. Of the studies for which (3) is false, 57% support HIH; no studies for which (3) is true found in favour of HIH. Of the studies for which (2) is false, that is, of the studies that controlled for fewer than five significant control variables, 59% found in favour of HIH. This drops to just 17% for studies that controlled for more than five significant control variables. Remarkably, 14 of the 41
studies reviewed by Kleck did not control for a single confounder and these were the studies that were most likely to find in favour of CIH and HIH. Importantly, only six studies controlled for more than five statistically significant control variables and all of them failed to support CIH and 83% found against HIH (they found either that there is no discernible effect or a slight crime-decreasing effect). Finally, there were only three studies for which all of (1) – (3) are true and none of them supported CIH or HIH. On the contrary, Kovandzic et al. (2013), who controlled for ten confounding variables, found that increases in noncriminal gun prevalence would moderately decrease both gun and total homicide rates. Of the studies for which all of (1) – (3) are false (23 of the 41 reviewed), 65% found in favour of HIH.ii Kleck concludes: ‘The overall pattern is very clear—the more methodologically adequate research is, the less likely it is to support the more guns-more crime hypothesis.’ Kleck’s conclusion, if correct, strongly supports GVA.

One implication of the above is that many of the arguments endorsed by anti-gun philosophers fail. Dixon (2011), for example, appeals to Killias (1993), Hemenway and Miller (2000), and Killias et al. (2001) in support of CIH and HIH. But, according to Kleck (2015), these were among the studies that controlled for no significant control variables and did not take into account the causal order problem. In other words, the studies to which Dixon appealed in support of his argument from net harms are among the methodologically worst studies available. The best studies cannot be used to support CIH or HIH in an argument for gun bans.

The general conclusion to GVA and against CIH or HIH is supported by two meta-analyses published by the U.S. National Academy of Sciences (NAS) and the Centers for
Disease Control (CDC). Wellford et al. (2004), on behalf of the NAS, reviewed 253 articles, 99 books, and 43 government publications and ‘failed to identify any gun control that had reduced violent crime, suicide, or gun accidents.’iii Specifically, they could not determine whether associations between gun ownership and homicide demonstrate a causal relationship. Indeed, they concluded that ‘existing research studies and data include a wealth of descriptive information...but...do not credibly demonstrate a causal relationship between the ownership of firearms and the causes or prevention of criminal violence or suicide.’iv Hahn et al. (2003: 18), on behalf of the CDC, also reviewed the then-extant literature and concluded that there was ‘insufficient evidence to determine the effectiveness of any of the firearms laws reviewed for preventing violence.’ Kleck’s (2015) recent review of the literature is an important update and coheres well with these earlier results. Once again, given these findings, GVA is very plausible.

What does the evidence say about ACH? So-called ‘shall-issue laws’ allow apparently law-abiding civilians to carry guns concealed in public. One might object by arguing that allowing people to carry firearms significantly harms society, perhaps by increasing violent crime. Presumably the idea is that permit holders are prone to commit violent crimes, particularly with their guns. This is far from obvious. The state with the greatest number of permit holders is Florida (1.2 million, or about 8.2% of the state’s population). From 1987 to 2014, Florida issued permits to more than 2.6 million people, but only ‘168 (about 0.006%)…have had their permits revoked for any type of firearms related violation, the most common being accidentally carrying a concealed handgun into a gun-free zone such as a school or an airport, not threats or acts of violence...For all revocations, the annual rate…is 0.012%.’v
By comparison, the annual rate of firearms violations by police (from 1 Jan 2005 to 31 Dec 2007) in Florida was 0.007%, higher than the rate for permit holders.\textsuperscript{vi} Moreover, far from supporting ACH, the evidence seems to support the hypothesis that these laws reduce violent crime. Of the peer-reviewed studies, 20 found in favour of the crime-reduction hypothesis\textsuperscript{vii} and 11 found no discernible effect. No peer-reviewed study published in an academic journal has hitherto supported ACH.\textsuperscript{viii}

Interestingly, the number of people with concealed handgun permits has increased significantly in the last few years. In 2011, at least 8 million people had permits, an increase from 4.6 million in 2007. This increased to well over 11 million people as of June 2014 (this is just over 4.5% of the total population).\textsuperscript{ix} If it were true that shall-issue laws contributed significantly to violent crime, we would expect significant increases in violent crime to follow significant increases in the number of permit holders and gun carriers. In fact, the opposite is the case:

Between 2007 and the preliminary estimates for 2013, murder rates have fallen from 5.6 to 4.4 per 100,000—a 22 percent drop in the murder rate at the same time that the percentage of the adult population with permits soared by 130 percent. Overall violent crime also fell by the same percentage, 22 percent, over that period of time. Using this new state level permit data from 2007 on, our analysis suggests that each one percentage point increase in the percent of the adult population holding permits is roughly associated with a 1.4 percent drop in the murder rate.\textsuperscript{x}

At the very best for the anti-gun side, the evidence supports the middle ground on which these laws do not contribute
significantly to rates of violent crime one way or the other. At worst, the evidence supports the hypothesis that these laws reduce violent crime. There is no evidence from the academic, peer-reviewed literature to suppose that ACH is the case. If the crime-reduction hypothesis is correct, the best explanation is that criminals are deterred from committing crimes in areas where there is a reasonable chance that potential victims will be armed. Because these handguns are carried concealed, criminals are not able to know in advance which of their victims will be unarmed. The risk to criminals in these areas is, therefore, far greater than in areas where gun carrying by civilians is prohibited.

Here is where we stand so far. The qualitatively best studies support neither CIH nor HIH. Studies that support either of these two hypotheses suffer from significant methodological flaws. If this is right, the conclusion we ought to draw is that the extant scholarly criminological research does not make CIH and HIH more probable than not, and because this is a requirement of knowing whether CIH and HIH are true (after an impartial examination of the evidence), it follows that anybody who is aware of these facts does not know that CIH and HIH are true. We saw, furthermore, that not a single published peer-reviewed article supports ACH and most support the hypothesis that carry laws decrease violent crime. Given the extant evidence on this question, we are at best warranted in believing that these laws do not contribute significantly to violent crime one way or the other. If all of the above is correct, then GVA is true. Knowledge that gun ownership and carrying causes more harm from crime than good requires knowledge that CIH, HIH, and ACH are true, which in turn requires sufficient evidence. As we have seen, we lack sufficient evidence to know that these hypotheses are correct. I conclude that GVA is true.
What is the significance of GVA’s being true? I claim that GVA, in conjunction with the proposition that we have a prima facie right to keep and bear arms, implies that there ought to be a legal right to keep and bear arms and that, therefore, a gun ban would be unjust. Before we see why, let us first examine the reasons we have to suppose that such a right exists. Most philosophers argue for the right to keep and bear arms from the right of self-defence.\textsuperscript{x} Elsewhere, I, with colleagues, have argued as follows: If $x$ (where $x$ is an artifact or tool) is a reasonable means of individual self-defence, then people have a prima facie right to be allowed to own $x$. Firearms are a reasonable means of individual self-defence. Hence, people have a prima facie right to be allowed to own firearms.\textsuperscript{xi} By a ‘reasonable means of individual self-defense,’ I mean a means of self-defense that is able to effectively and reliably deliver a proportionate amount of force and is able to discriminate between an aggressor and innocent bystander (unlike, say, nuclear weapons).\textsuperscript{xii} There is a good amount of empirical evidence that guns qualify as reasonable in this sense. Using data from the U.S. Department of Justice’s National Crime Victimization Survey, Kleck (2001: 289) found that using a gun defensively is very effective at reducing a victim’s risk of injury in assaults. After assault victims took self-protection action with a gun, only 3.6 per cent were injured, compared to 12.6 per cent of victims who screamed, 15.2 per cent of victims who tried to reason with the offender, 8.6 per cent of victims who attacked the offender without a weapon, 5.4 per cent of victims who attempted to flee, and 55.2 per cent of victims who took no self-protection actions whatever. In the vast majority of these cases, victims did not actually fire the gun; they merely had to brandish the weapon in order to break off an attack.\textsuperscript{xiii} But we do not need to argue from self-defence to get to this conclusion. Liberty considerations will get us to it, for we
may argue as follows. People have a right to be allowed to own x if owning x is not intrinsically immoral and there are no overriding contingent reasons for prohibiting the owning of x. That is, there is a defeasible presumption in favour of liberty. But ownership of guns is not intrinsically immoral. There are clearly situations in which gun ownership is not wrong. Consider cases in which one’s government is extremely repressive or in which one’s country is occupied by a foreign and brutal invader. It is very implausible to suppose that armed resistance of this kind of oppression is wrong (think about resistance fighters during the Second World War). Or consider cases in which one’s government has completely failed to fight violent crime such that there is a significant probability that one’s life will be threatened. Defence of the citizenry falls under the police powers of the state. It is plausible to suppose that when the state is unable to fulfill its obligations the power falls back into the hands of the citizenry. Would we say of someone who has decided to obtain a gun in order to protect his family when his government has failed to do so that he has acted wrongly? Surely not. If this is right, then ownership of firearms is not intrinsically immoral. Consequently, people have a right to be allowed to own a gun if there are not overriding contingent reasons for prohibition. This just is a prima face right to be allowed to own a gun.xv

So far we have the conclusion: given that there are no overriding contingent reasons for prohibition, people have a right to own a gun. In this paper, I have questioned whether one reason to suppose that there are overriding contingent reasons for prohibition succeeds, namely, that the criminogenic harms outweigh the benefits. But one can still question whether guns ought to be allowed given the obvious truth that some people are harmed as a result of their being permitted. In response, why should this fact be seen as an overriding consideration? Rights are supposed to
hold in the face of negative consequences; so merely pointing out that people sometimes use guns to wrongly harm other people is not sufficient to establish the conclusion that there is an *overriding* reason to ban guns. The proponent of this line would have to say that the harm caused by private gun ownership is so great that the prima facie right is overridden, but she cannot say that if there are no significant effects one way or the other. If what I have argued above is close to being accurate, it is unlikely, given the evidence, that this is the case. It is hard to see why guns should be banned because the harm they cause is so great if the same harm would obtain in the absence of guns. Moreover, for all the objector knows, more people would be harmed following a gun ban as a result of their not having a very effective self-defense tool, and these considerations seem to be at least on a par.

We now have the truth of GVA and the proposition that people have a prima facie right to own a gun. How do these two propositions imply that there ought to be a legal right to keep and bear arms and that a gun ban would be unjust? As previously mentioned, a prima facie right is a right that can be outweighed or overruled by sufficiently weighty considerations. The government ought to infringe on these rights only if (a) the reason for doing so is sufficiently weighty (i.e. is such that if it were true, it would justify infringement), (b) it knows that this reason is true (or at least that it is likely to be true, given the evidence), and (c) is based on an impartial examination and correct assessment of the extant evidence. Otherwise, the infringement will be unjust. Laws that will infringe on the rights of people on the basis of empirical considerations ought not be based on ideology, feelings, emotions, prejudices, etc. They ought to be based on a fair examination of the evidence. We would be entitled to criticize the government for basing a policy that infringes
on our rights on the basis of, say, one study that is inconsistent with the findings of all other studies on the relevant question. Given GVA, (b) and (c) are false, which implies that the consequent of the conditional claim is false. As we have seen, the extant evidence does not make it probable that any of the anti-gun hypotheses we have considered are true. If I am right about the evidence, then politicians who correctly impartially examine the evidence cannot justify their support for gun bans on the basis of that evidence. It follows that governments ought not infringe on the right of people to own guns. Gun bans are unjust in the light of these considerations.xvi

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NOTES

1 In this paper, I deal only with *crime* as a potential reason for gun bans, but it is also possible to construct an argument from gun *suicides* for gun bans. For the purposes of this paper, I shall assume that all such arguments fail.
ii There were 15 studies for which only one of (1) – (3) are true; seven supported CIH and eight failed to support CIH. There were no studies for which only two of (1) – (3) were true.

iii Kates and Mauser (2007: 654)

iv Wellford et al. (2004: 6).

v Lott (2014b: 7).

vi Ibid.

vii For example, Lott and Mustard (1997), Plassman and Whitley (2003), and Gius (2014) all found in favour of the crime reduction hypothesis.

viii See Lott (2014a).

ix Lott (2014b: 8-9).

x Ibid.

xi See, for example, Huemer (2003).

xii Bernstein et al. (2015a; forthcoming).

xiii Most other tools require the victim to physically engage her attacker, which is problematic for victims who tend to be physically weaker than their attackers (e.g. women, the elderly, the disabled, etc.).

xiv See Lott (2010: 3).

xv See Bernstein (2015b).

xvi Thanks to Tim Hsiao and an anonymous referee for helpful comments and suggestions.