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Is There a Right to Own a Gun?

by Michael Huemer

ABSTRACT: Individuals have a prima facie right to own firearms. This right is significant in view both of the role that such ownership plays in the lives of firearms enthusiasts and of the self-defense value of firearms. Nor is this right overridden by the social harms of private gun ownership. These harms have been greatly exaggerated and are probably considerably smaller than the benefits of private gun ownership. And I argue that the harms would have to be at least several times greater than the benefits in order to render gun prohibition permissible.

1. Introduction

Gun control supporters often assume that the acceptability of gun control laws turns on whether they increase or decrease crime rates. The notion that such laws might violate rights, independently of whether they decrease crime rates, is rarely entertained. Nor are the interests of gun owners in keeping and using guns typically given great weight.

I believe these attitudes are misguided. I contend that individuals have a prima facie right to own firearms, that this right is weighty and protects important interests, and that it is not overridden by utilitarian considerations. In support of the last point, I shall argue that the harms of private gun ownership are probably less than the benefits, and that in any case, these harms would have to be many times greater than the benefits in order for the right to own a gun to be overridden.

2. Preliminary remarks about rights

2.2. What Sort of Right Is the Right to Own a Gun?

First, I distinguish between *fundamental* and *derivative* rights. A right is derivative when it derives at least some of its weight from its relationship to another, independent right. A right is fundamental when it has some force that is independent of other rights. On these definitions, it is possible for a right to be both fundamental and derivative. Derivative rights are usually related to fundamental rights as means to the protection or enforcement of the latter, though this need not be the only way in which a right may be derivative. I claim that the right to own a gun is both fundamental and derivative; however, it is in its *derivative* aspect—as derived from the right of self-defense—that it is most important.

Second, I distinguish between *absolute* and *prima facie* rights. An absolute right is one with overriding importance, such that no considerations can justify violating it. A prima facie right is one that must be given some weight in moral deliberation but that can be overridden by sufficiently important countervailing considerations. Thus, if it would be

permissible to steal for sufficiently important reasons—say, to save someone’s life—then property rights are not absolute but at most prima facie. It is doubtful whether any rights are absolute. At any rate, I do not propose any absolute rights; I argue only that there is a strong prima facie right to own a gun.

3. Is there a prima facie right to own a gun?

Given the presumption in favor of liberty, there is at least a prima facie right to own a gun, unless there are positive grounds of the sort discussed in §2.1 for denying such a right. Are there such grounds?

(i) Begin with the principle that one lacks a right to do things that harm others, treat others as mere means, or use others without their consent. It is difficult to see how owning a gun could itself be said to do any of those things, even though owning a gun makes it easier for one to do those things if one chooses to. But we do not normally prohibit activities that merely make it easier for one to perform a wrong but require a separate decision to perform the wrongful act.

(ii) Consider the principle that one lacks a right to do things that impose unacceptable, though unintended, risks on others. Since life is replete with risks, to be plausible, the principle must use some notion of excessive risks. But the risks associated with normal ownership and recreational use of firearms are minimal. While approximately 77 million Americans now own guns, the accidental death rate for firearms has fallen dramatically during the last century, and is now about .3 per 100,000 population. For comparison, the average citizen is nineteen times more likely to die as a result of an accidental fall, and fifty times more likely to die in an automobile accident, than to die as a result of a firearms accident.

(iii) Some may think that the firearms accident statistics miss the point: the real risk that gun ownership imposes on others is the risk that the gun owner or someone else will ‘lose control’ during an argument and decide to shoot his opponent. Nicholas Dixon argues: “In 1990, 34.5% of all murders resulted from domestic or other kinds of argument. Since we are all capable of heated arguments, we are all, in the wrong circumstances, capable of losing control and killing our opponent.” In [303] response, we should first note the invalidity of Dixon’s argument. Suppose that 34.5% of people who run a 4-minute mile have black hair, and that I have black hair. It does not follow that I am capable of running a 4-minute mile. It seems likely that only very atypical individuals would respond to heated arguments by killing their opponents. Second, Dixon’s and McMahan’s claims are refuted by the empirical evidence. In the largest seventy-five counties in the United States in 1988, over 89 percent of adult murderers had prior criminal records as adults. This reinforces the common sense view that normal people are extremely unlikely to commit a murder, even if they have the means available. So gun ownership does not typically impose excessive risks on others.

(iv) Consider the idea that individuals lack a right to engage in activities that reasonably appear to evince an intention to harm or impose unacceptable risks on others. This

principle does not apply here, as it is acknowledged on all sides that only a tiny fraction of America's 77 million gun owners plan to commit crimes with guns.

(v) It might be argued that the total social cost of private gun ownership is significant, that the state is unable to identify in advance those persons who are going to misuse their weapons, and that the state's only viable method of significantly reducing that social cost is thus to prevent even noncriminal citizens from owning guns. But this is not an argument against the existence of a prima facie right to own a gun. It is just an argument for overriding any such right. In general, the fact that restricting an activity has beneficial consequences does not show that no weight at all should be assigned to the freedom to engage in it; it simply shows that there are competing reasons against allowing the activity. (Compare: suppose that taking my car from me and giving it to you increases total social welfare. It would not follow that I have no claim at all on my car.)

It is difficult to deny the existence of at least a prima facie right to own a gun. But this says nothing about the strength of this right, nor about the grounds there may be for overriding it. Most gun control advocates would claim, not that there is not even a prima facie right to own a gun, but that the right is a minor one, and that the harms of private gun ownership, in comparison, are very large.

4. Is the right to own a gun significant?

I shall confine my consideration of gun control to the proposal to ban all private firearms ownership. This would violate the prima facie right to own a gun. I contend that the rights-violation would be very serious, owing both to the importance of gun ownership in the lives of firearms enthusiasts, and to the relationship between the right to own a gun and the right of self-defense.

4.1. The Recreational Value of Guns

The recreational uses of guns include target shooting, various sorts of shooting competitions, and hunting. In debates over gun control, participants almost never attach any weight to this recreational value—perhaps because that value initially appears minor compared with the deaths caused or prevented by guns. The insistence that individuals have a right to engage in their chosen forms of recreation may seem frivolous in this context. But it is not.

One might claim that the value of the lives that could be saved by anti-gun laws is simply *much greater* than the recreational value of firearms. It is not obvious that this is correct, *even if* gun control would significantly reduce annual gun-related deaths. Many gun owners appear to derive enormous satisfaction from the recreational use of firearms, and it is no exaggeration to say that for many, recreational shooting is a way of life. Furthermore, there are a great many gun owners. At a rough estimate, the number of gun owners is two thousand times greater than the number of annual firearms-related deaths. Even if we assume optimistically that a substantial proportion of recreational gun users could and would substitute other forms of recreation, we should conclude that the net utility of gun control legislation is greatly overestimated by those who discount the recreational value of guns. For obvious reasons, the utility resulting from recreational use

of firearms is not easy to quantify, nor to compare with the value of the lives lost to firearms violence. Yet this is no reason for ignoring the former, as partisans in the gun control debate often do.

But our present concern is not chiefly utilitarian. The argument here is that gun enthusiasts' prima facie right to own guns is significant in virtue of the central place that such ownership plays in their chosen lifestyle. A prohibition on firearms ownership would constitute a major interference in their plans for their own lives. This suffices to show that such a prohibition would be a serious rights-violation.

4.2. The Right of Self-Defense

The main argument on the gun rights side goes like this:

1. The right of self-defense is an important right.
2. A firearms prohibition would be a significant violation of the right of self-defense.
3. Therefore, a firearms prohibition would be a serious rights-violation.

The strength of the conclusion depends upon the strength of the premises: the more important the right of self-defense is, and the more serious gun control is as a violation of that right, the more serious a rights-violation gun control is.

I begin by arguing that the right of self-defense is extremely weighty. Consider this scenario:

Example 1

A killer breaks into a house, where two people—"the victim" and "the accomplice"—are staying. (The "accomplice" need have no prior interaction with the killer.) As the killer enters the bedroom where the victim is hiding, the accomplice enters through another door and proceeds, for some reason, to hold the victim down while the killer stabs him to death.

In this scenario, the killer commits what may be the most serious kind of rights-violation possible. What about the accomplice who holds the victim down? Most would agree that his crime is, if not equivalent to murder, something close to murder in degree of wrongness, even though he neither kills nor injures the victim. Considered merely as the act of holding someone down for a few moments, the accomplice's action seems a minor rights-violation. What makes it so wrong is that it prevents the victim from either defending himself or fleeing from the killer—that is, it violates the right of self-defense. (To intentionally and forcibly prevent a person from exercising a right is to violate that right.) We may also say that the accomplice's crime was that of assisting in the commission of a murder—this is not, in my view, a competing explanation of the wrongness of his action, but rather an elaboration on the first explanation. Since the right of self-defense is a derivative right, serving to protect the right to life among other rights,

violations of the right of self-defense will often cause or enable violations of the right to life.

It is common to distinguish killing from letting die. In this example, we see a third category of action: preventing the prevention of a death. This is distinct from killing, but it is not merely letting die, because it requires positive action. The example suggests that preventing the prevention of a death is about as serious a wrong as killing. In any case, the fact that serious violations of the right of self-defense are morally comparable to murder serves to show that the right of self-defense must be a very weighty right.

We turn to premise 2, that gun prohibition is serious as a violation of the right of self-defense. Consider:

Example 2

As in example 1, except that the victim has a gun by the bed, which he would, if able, use to defend himself from the killer. As the killer enters the bedroom, the victim reaches for the gun. The accomplice grabs the gun and runs away, with the result that the killer then stabs his victim to death.

The accomplice's action in this case seems morally comparable to his action in example 1. Again, he has intentionally prevented the victim from defending himself, thereby in effect assisting in the murder. The arguments from the criteria for the seriousness of rights-violations are the same.

The analogy between the accomplice's action in this case and a general firearms prohibition should be clear. A firearms ban would require confiscating the weapons that many individuals keep for self-defense [308] purposes, with the result that some of those individuals would be murdered, robbed, raped, or seriously injured. If the accomplice's action in example 2 is a major violation of the right of self-defense, then gun prohibition seems to be about equally serious as a violation of the right of self-defense.

Consider some objections to this analogy. First, it might be said that in the case of a gun ban, the government would have strong reasons for confiscating the guns, in order to save the lives of others, which (we presume) is not true of the accomplice in example 2. This, I think, would amount to arguing that the self-defense rights of non-criminal gun owners are overridden by the state's need to protect society from criminal gun owners. I deal with this suggestion in §5 below.

Second, it might be argued that example 2 differs from a gun ban in that the murder is imminent at the time the accomplice takes the gun away. But this seems to be morally irrelevant. For suppose that the accomplice, knowing that someone is coming to kill the victim tomorrow (while the victim does not know this), decides to take the victim's gun away from him today, again resulting in his death. This would not make the accomplice's action more morally defensible than it is in example 2.

A third difference might be that, whereas we assume that in example 2 the accomplice knows that the victim is going to be killed or seriously injured, the state does not know that its anti-gun policy will result in murders and injuries to former gun-owners. This, however, is surely not true. Although the state may claim that the lives saved by a gun ban would outnumber the lives cost, one cannot argue that no lives will be cost at all, unless one claims implausibly that guns are never used in self-defense against life-threatening attacks. Some will think the former claim is all that is needed to justify a gun ban; this would return us to the first objection.

Fourth, it may be observed that in example 2, there is a specific, identifiable victim: the accomplice knows who is going to die as a result of his gun-confiscation. In contrast, a gun-banning government cannot identify any specific individuals who are going to be killed as a result of its gun ban, even though it can predict that some people will be. But this seems morally irrelevant. Consider:

Example 3

An ‘accomplice’ ties up a family of five somewhere in the wilderness where he knows that wolves roam. He has good reason to believe that a pack of wolves will happen by and eat one or two of the family members (after which they will be satiated), but he doesn’t know which ones will be eaten. He leaves them for an hour, during which the mother of the family is eaten by the wolves.

In this case, the fact that the accomplice did not know who would die as a result of his action does not mitigate his guilt. Likewise, it is unclear how the state’s inability to predict who will become the victims of its anti-gun policy would mitigate the state’s responsibility for their deaths or injury.

Fifth, the victims of a gun ban would presumably have sufficient forewarning of the coming ban to take alternative measures to protect themselves, unlike the victim in example 2. Unfortunately, statistics from the National Crime Victimization Survey indicate that such alternative means of self-protection would be relatively ineffective—individuals who defend themselves with a gun are less likely to be injured and far less likely to have the crime completed against them than are persons who take any other measures. Consequently, though the present consideration seems to mitigate the state’s culpability, it does not remove it. The situation is analogous to one in which the accomplice, rather than taking away the victim’s only means of defending himself against the killer, merely takes away the victim’s most effective means of self-defense, with the result that the victim is killed. Here, the accomplice’s action is less wrong than in example 2, but it is still very wrong.

Since gun prohibition is a significant violation of an extremely weighty right, we must conclude that it is a very serious rights-violation. The above examples initially suggest that it is on a par with the commission of (multiple) murders, robberies, rapes, and assaults—although the consideration of the preceding paragraph may show that it is somewhat less wrong than that. The point here is not that would-be gun banners are as

blameworthy as murderers and other violent criminals (since the former do not know that their proposals are morally comparable to murder and have different motives from typical murderers). The point is just to assess the strength of the reasons against taking the course of action that they propose.

5. Are gun rights overridden?

I have argued that there is a strong *prima facie* right to own a gun. Nevertheless, firearms prohibition might be justified, if the reasons for prohibition were strong enough to override that right. To determine whether this is the case, we consider three questions: First, how great are the harms of private gun ownership? Second, how great are the benefits? Third, what must the cost/benefit ratio be like, for the right to own a gun to be overridden? I shall argue, first, that the harms of private gun ownership have been greatly exaggerated; second, that the benefits of private gun ownership are large and in fact greater than the harms; and third, that the harms would have to be many times greater than the benefits in order to override the right to own a gun.

5.1. The Case against Guns

5.1.1. The 43-to-1 Statistic

One prominent argument claims that a gun kept in the home is 43 times more likely to be used in a suicide, criminal homicide, or accidental death than it is to kill an intruder in self-defense. This statistic is commonly repeated with various modifications; for instance, LaFollette mischaracterizes the statistic as follows:

For every case where someone in a gun-owning household uses a gun to successfully stop a life-threatening attack, nearly forty-three people in similar households will die from a gunshot.

The problem with LaFollette's characterization, which evinces the statistic's tendency to mislead, is that Kellerman and Reay made no estimate of the frequency with which guns are used to stop attacks, life-threatening or otherwise; they only considered cases in which someone was killed. Survey data indicate that only a tiny minority of defensive gun uses involve shooting, let alone killing, the criminal; normally, threatening a criminal with a gun is sufficient. To assess the benefits of guns, one would have to examine the frequency with which guns prevent crimes, rather than the frequency with which they kill criminals.

A second problem is that 37 of Kellerman and Reay's 43 deaths were suicides. Available evidence is unclear on whether reduced availability of guns would reduce the suicide rate or whether it would only result in substitution into different methods. In addition, philosophically, it is doubtful that the restriction of gun ownership for the purpose of preventing suicides would fall within the prerogatives of a liberal state, even if such a policy would be effective. One cause for doubt is that such policies infringe upon the rights of gun-owners (both the suicidal ones and the non-suicidal majority) without protecting anyone else's rights. Another cause for doubt, from a utilitarian perspective, is

that one cannot assume that individuals who decide to kill themselves have overall happy or pleasant lives; therefore, one should not assume that the prevention of suicide, through means other than improving would-be victims' level of happiness, increases utility, rather than decreasing it. For these reasons, the suicides should be omitted from the figures.

5.1.2. International Comparisons

A second type of argument often used by gun-control proponents relies on comparisons of homicide rates between the United States and other industrialized democracies, such as Canada, Great Britain, Sweden, and Australia. The United States is found to have vastly higher homicide rates, and it is argued that this is due largely to the high gun-ownership rates in the U.S.

Skeptics suggest that the United States has a number of unique cultural factors that influence the murder rate and that invalidate such cross-country comparisons. Some find this claim more plausible than do others. Fortunately, we need not rely on intuitions. Instead, we can test the claim empirically, by examining data within the United States, across jurisdictions with varying gun laws and gun ownership rates and over time periods with changing gun laws and gun ownership rates—this would effectively control for the cultural factors allegedly affecting the murder rate. When we do this, we find that (i) jurisdictions with stricter gun laws tend to have higher crime rates, (ii) shifts to more permissive gun laws tend to be followed by drops in crime rates, (iii) areas with higher gun ownership rates have lower crime rates, and (iv) historically, crime rates have fluctuated with no discernible pattern as the civilian gun stock has increased drastically.

I do not claim to have proved that gun laws cause increased crime or that civilian gun ownership fails to do so. Nor do I deny there is any evidence on the gun control advocates' side. What I am claiming at this point is that the evidence presented by gun control advocates fails to make a very convincing case for the net harmfulness of private gun ownership. The casual comparisons between countries discussed here typically use only a handful of data points; exclude many countries from consideration; and make no attempt to control statistically for any other factors that might affect crime rates. In contrast, far more rigorous studies are available to the other side, as we shall see presently. Thus, at a minimum, one cannot claim justified belief that gun prohibition would be overall beneficial.

5.2. *The Benefits of Guns*

5.2.1. *Frequency of Defensive Gun Uses*

Guns are used surprisingly often by private citizens in the United States for self-defense purposes. Fifteen surveys, excluding the one discussed in the following paragraph, have been conducted since 1976, yielding estimates of between 760,000 and 3.6 million defensive gun uses per year, the average estimate being 1.8 million. Probably among the more reliable is Kleck and Gertz' 1993 national survey, which obtained an estimate of 2.5 million annual defensive gun uses, excluding military and police uses and excluding uses against animals. Gun users in 400,000 of these cases believe that the gun certainly or

almost certainly saved a life. While survey respondents almost certainly overestimated their danger, if even one tenth of them were correct, the number of lives saved by guns each year would exceed the number of gun homicides and suicides. For the purposes of Kleck and Gertz' study, a "defensive gun use" requires respondents to have actually seen a person (as opposed, for example, to merely hearing a suspicious noise in the yard) whom they believed was committing or attempting to commit a crime against them, and to have at a minimum threatened the person with a gun, but not necessarily to have fired the gun. Kleck's statistics imply that defensive gun uses outnumber crimes committed with guns by a ratio of about 3:1.

5.3. Why a Gun Ban Must Have Much Greater Benefits than Harms to Be Justified

In order to be justified as a case of the overriding of prima facie rights, gun prohibition would have to save many times as many lives as it cost, for:

1. It is wrong to murder a person, even to prevent several other killings. (premise)
2. A violation of a person or group's right of self-defense, predictably resulting in the death of one of the victims, is morally comparable to murder. (premise)
3. If it is wrong to commit a murder to prevent several killings, then it is wrong to commit a rights-violation comparable to murder to prevent several killings.
4. Therefore, it is wrong to violate a person or group's right of self-defense, predictably resulting in the death of one of the victims, even to prevent several killings. (from 1, 2, 3)
5. Therefore, it is wrong to violate a group of people's right of self-defense, predictably resulting in the deaths of many of the victims, even to prevent several times as many killings. (from 4)
6. Gun prohibition would violate a group of people's right of self-defense, predictably resulting in the deaths of many of the victims. (premise)
7. Therefore, gun prohibition is wrong, even if it would prevent several times as many killings as it contributed to. (from 5, 6)

Similar arguments can be made concerning other rights—including, for example, the right to engage in one's chosen form of recreation—the general point of which would be that the overriding of a right for consequentialist reasons requires a benefit not merely greater, but very much greater than the harm to the rights-bearer. For simplicity, however, I focus only on how the argument works with the right of self-defense.

Consequentialists reject premise (1). But virtually all who accept the notion of rights would accept (1). Consider this well-worn example:

Example 4

You are a judge in a legal system in which judges render verdicts of guilt or innocence. You have a defendant on trial for a crime that has caused considerable public outrage. During the course of the trial, it becomes clear to you that the defendant is innocent. However, the public overwhelmingly believes him guilty. As a result, you believe that if the defendant is acquitted, there will be riots, during which several people will be (unjustly) killed and many others injured. Assume that the crime in question carries a mandatory death sentence. Should you convict the defendant?

Most people, including virtually all who believe in rights, say the answer is no. If this is the correct answer, then we must conclude that it is wrong to violate one person's rights (in particular, his right to life) even if doing so would prevent several rights-violations of comparable seriousness. This is because rights function as agent-centered constraints: each individual is enjoined from violating rights, himself, rather than being enjoined to cause a reduction in the total number of rights-violations in the world. Something like premise (1) is essential for distinguishing a rights-based moral theory from a consequentialist theory.

Premise (2) was supported by the argument of §4.2.

Premise (3) is supported by the idea that the requirements for overriding a prima facie right are proportional to the seriousness of the rights-violation that would be involved. Even if this assumption does not hold in general, it is plausible that it applies to this case, that is, that if it is unjustified to kill a person in order to save several lives, and if a particular violation of the right of self-defense is morally on a par with killing a person, then it is also wrong to commit that violation of the right of self defense in order to save several lives. It is difficult to see why the right of self-defense should work differently, by way of being much easier to override, from the right to life.

Step (5) is a reasonable inference from (4). Suppose that the judge in example 4 opts for conviction, acting wrongly. Suppose he is faced with similar situations four more times throughout his career, each time acting in the same wrongful manner. Presumably, the whole series of actions, consisting in sum of his killing five people unjustly in order to save several times that many people, is also wrong. Now consider one more modification: suppose that instead of coming at different times throughout his career, the same five innocent defendants had all come to him in a single, collective trial, that he gave a collective verdict convicting all of them, and that this action saved the same number of other people. [319] Presumably the judge's action is still wrong. It is for this sort of reason that we should accept the inference from (4) to (5).

Premise (6) is supported by the arguments of §5.2.

Finally, (7) follows from (5) and (6). Given the extremely serious nature of gun prohibition as a rights-violation, very severe strictures apply to any attempt to justify it morally—strictures similar to those that would apply to justifying a policy that killed many innocent people to achieve some social goal.