

Can Laws Cure America's Obsession With Guns?



To say that Americans are obsessed with guns is something of an understatement. We represent 3% of the world's total population and we own 25% of the entire world gun stock. No advanced country experiences more than a handful of gun homicides each year—we experience 11,000 intentional gun deaths annually, plus another five hundred or so unintentional gun deaths and another thousand or so gun deaths from what is politely called 'legal interventions;' i.e., civilians getting shot by cops using guns. We also suffer another 60,000 or 70,000 intentional gun injuries, many of which would be deaths except that we have very talented trauma surgeons in medical centers that are strategically located near neighborhoods where gun violence erupts virtually every day. The last shooting victim treated in the medical center near where I live survived the attack, even though he was brought to the hospital with a bullet lodged in his heart!

You might think that these statistics on our present-day gun carnage, in particular the contrast between gun violence in the U.S. and gun violence in every other advanced country, would at least create a public discussion, God forbid public action, leading to more regulations of guns. But the last time we passed a federal gun-control law was 1994, and following the horrific massacre in 2012 of 26 students and teachers at a public school in Sandy Hook, CT, 109 states [passed](#) new gun laws of which two-thirds of those laws actually reduced rather than increased the scope of gun regulations in those states.

Part of the problem is that we have a popular culture which promotes the ownership and use of guns. Since 1985, gun [violence](#) has tripled in movies rated PG-13, even exceeding the amount of violence depicted in R-rated films. And the study which produced this information [defined](#) cinematic gun violence as a scene in which someone carried a gun with the intention of using it to harm someone else.

But culture aside, there has also been an emerging consensus on the part of most Americans that possessing a gun will make you safe. According to the latest [Gallup poll](#), more than six out of ten Americans now believe that a home with a gun is more safe than an unarmed home. And this is not just the views of some rednecks down South—even 40% of Democrats who answered this

question positively, which is up from 28% recorded by Gallup back in 2000 when the poll was conducted for the first time. In fact, back in 2000, even less than 50% of Republicans felt that a home was safer if there was a gun, a number which has now climbed to more than 80%!

This belief about the positive value of gun ownership has been a difficult issue for folks and organizations who are working for a reduction in the number of people killed and injured with guns. And while gun homicides dropped precipitously from 1994 to 2001, it then [stabilized](#) and of late has been going back up. So the concern about arresting this upward trend is not just a function of increasing numbers, it's also a reflection of the fears that gun regulations might be further weakened during the Age of Trump.

In addition to unwinding various gun regulations pushed through by Obama without benefit of Congressional votes, the pro-gun community has set two major priorities: a national concealed-carry reciprocity law at the federal level, and a further elimination of gun-free zones within individual states. On the other side, the gun-control community (they would prefer to be referred to as the 'gun-sense' group) would like to extend federal background checks to all personal gun transfers and mandate serious safety training in the individual states.

Both of these positions, of course, are built on the assumption that there is an implicit connection between how guns are used and the laws that define and regulate their use. For the pro-gun side, the purpose of gun laws should be to shield gun owners from government intervention by protecting 2nd-Amendment 'rights.' For the gun-sense folks, further laws are needed to reduce the violence caused by guns. The purpose of this paper is to explore whether there is any direct connection between how gun owners behave with their guns and the laws which are aimed at regulating gun ownership and use.

I. THE ARGUMENT FOR AND AGAINST GUN REGULATIONS.

One of the basic assumptions which underlies just about every pro-regulation argument is the idea that our frightfully high rate of gun violence can be explained, in part, by the degree of legal access that Americans enjoy with guns. We are the only *OECD* country which allows unfettered ownership of any kind of non-military weapon to anyone who meets what can best be described as a porous and weak definition of what the words 'law-abiding' really mean. In this country you can own a gun legally even if you have been served with a restraining order for domestic abuse; you can own a gun legally if you have spent time in a mental-health ward; you can own a gun legally if you can't see the end of the barrel, never mind the target which you are allegedly trying to hit; you can purchase and walk around with a gun in your pocket having never pulled the trigger of a real gun.

Between the popular culture which exalts gun use to the ease with which people can buy and own guns, it should not come as any surprise that the American civilian gun arsenal probably numbers somewhere around 300 million guns. Which doesn't mean that almost everyone in America owns a gun; the best data we have on this issue is that probably 40 to 50 million people actually own all those guns, but most of these gun owners live in households with other adults and children, which means that roughly one out of every three American homes contains a legal gun.

The availability of guns in so many homes is, according to the most noted public health researchers, what drives our homicide rate to levels not seen in any other country within the *OECD*. The basic argument in this respect comes from Harvard's David Hemenway, who [found that](#) even in countries which experienced the same, general level of criminal violence, America experienced homicide at rates far beyond those found anywhere else. His research shows that the U.S. homicide rate is 7 times higher than other high-income countries, a rate driven primarily by a gun homicide rate that is 25 times higher than the rest of the *OECD*.

You will not find a single gun-sense organization which ignores these numbers when a plan or strategy for reducing gun violence is announced. And it is simply assumed throughout the length and breadth of the gun violence prevention (*GVP*) world that what is behind this enormous disparity is the ease with which Americans can get their hands on guns which is reflected in the further disparity between the number of guns in the hands of American civilians, as opposed to the number of guns everywhere else.

The connection between elevated gun violence rates and per-capita gun ownership is weakened, however, because it fails to differentiate between handguns and long guns, which invalidates cross-national comparisons of gun homicide rates. Since it is estimated that at least 80% of all intentional gun injuries in the U.S. are [committed](#) with handguns, the fact that more than half the U.S. civilian gun arsenal is comprised of long guns doesn't really tell us anything about whether the overall number of privately-owned guns can be connected to our elevated rate of gun deaths.

Further, the moment we leave the U.S. and look at the stock of guns in other *OECD* countries, any comparison of per-capita gun ownership between the U.S. and the rest of the *OECD* means nothing at all. For example, our per capita gun ownership per 100,000 residents is 89, the relevant number in Canada is 31. Roughly 10 [percent](#) of Canadian gun owners possess handguns, and many of these guns are 22-caliber target guns, securing approval to own a self-defense handgun in Canada is not a common thing. Chances are that if we could make a valid comparison between the U.S. and other *OECD* countries in terms of *handgun* ownership, the disparity between our numbers and the rest of the *OECD* would be much higher, much more extreme.

And the extreme would look something like this: right now our civilian gun arsenal is probably split about 50–50, which means there are some 135 million handguns floating around, or 45 handguns per American. The number for Canada would be 3 or 4, the number for Germany about 3, for England about .06. In other words, we would not own three times the per capita number of hand owned in Canada or Germany (which happen to be the next highest gun-owning countries in the *OECD*), we would own 15 times that number and for the U.K. the difference in per capita handgun ownership would be on the order of 85.

Now let's go back to gun [violence rates](#). Germany—.07, Austria—.10, England—.06, U.S.—3.4. 50 times higher than Germany, 30 times higher than Austria, 56 times higher than England (gun violence being designed as homicide committed with a gun.) But those are the differentials in countries which the overall disparity of gun ownership is 15 to 1 - nobody ever gets killed with or without guns in the U.K. If there is a direct link between rates of gun violence and per capita ownership of guns, imagine what our gun violence rate would be if we only controlled for

the per capita differential of the guns (viz. handguns) which are used in most violent acts. If anything, a per-capita comparison of handgun ownership and gun violence would show that the rate of U.S. gun violence is actually *quite low*, given how many handguns are lying around.

DO BACKGROUND CHECKS REDUCE GUN VIOLENCE?

Having now analyzed the data which *GVP* advocates use to justify their strategies to curtail or regulate the national stock of guns, let's turn to a discussion of those strategies themselves, and begin with the strategy which is endorsed, no questions asked, by the entire *GVP*.

Don't make the mistake of confusing illegally-owned guns with guns which were acquired without a background check. A [majority](#) of states do not require a background check for anything except the initial sale of a new gun or an over-the-counter transfer of a used gun, and while a private transaction without a background check makes it easier to move a gun into the 'wrong' hands, we simply have no idea how many gun transfers take place between law-abiding gun owners who simply can't be bothered to go through a background check unless the law in their locality demands same. In February, 2017, 3,500 personally-owned guns were transferred in the entire United States to new owners with a background check being performed during the transaction. This was .002% of the total guns transferred with a background check that same month. In other words, most guns which move from one person's hands to another, move without any legal intervention at all.

The organizations which promote the expansion of background checks to secondary transactions have no information on whether such an expansion would result in a decline of gun violence or not. In the year following Colorado's extension of background checks to all secondary (personal) sales, the *NICS* check [stopped](#) 6,590 transactions, most of which were for outstanding warrants or an arrest for assault. But did these denials mean that otherwise 6,500 people might have committed crimes with those guns? In fact, most of the outstanding warrants were for non-payment of traffic fines; in New York City there are now more than one million [warrants](#), most of which represent unpaid tickets and every such warrant means that someone is a fugitive, a reason that the *FBI-NICS* check might not go through.

There are now 8 states which have universal background checks which means that it is unlawful in these [states](#) for any transfer of any kind of gun to take place without intervention by the *FBI*. In December, 2015, New Yorkers purchased 35,000 guns, many of which no doubt ended up under Christmas trees. Personal gun transfers amounted to 650 handguns, shotguns and rifles. You can't tell me that less than two-tenths of one percent of all guns that were transferred from one person to another at a time when gift-giving often involves such transfers represented all the private movement of guns throughout the Empire State.

But let's say that in the states which have universal background checks that every, single private transaction actually follows the law. The problem is that we do not have a single before-and-after study which looks at whether one can find any connection between gun violence rates and an expansion of background checks. I'm not saying such a connection couldn't be made; I'm saying it hasn't been made, and the Johns Hopkins [study](#) which shows an increase in Missouri homicides when their requirement for background checks on all handgun transfers was nullified

doesn't really count because the Missouri law wasn't a federal background check, it was a much more deliberate permit-to-purchase (*PTP*) procedure conducted by the state police. Obviously a more comprehensive and widespread *PTP* process would keep more guns out of the wrong hands. But *PTP* is not being advocated by gun-control groups just because they call for expanded background checks.

In 1998, Massachusetts [enacted](#) a new gun law which made the Bay State the most regulated gun state of all fifty states. Not only did the law copy the California statute which requires that all new handguns be tested for various child-safety features before they could be sold in-state, but the law also not only empowered the Executive Office of Public Safety and the State's Attorney General to get in on the gun-control act. Know what the gun-death rate was in 1999, the year before the law took effect? It was 2.99 per 100,000 state residents. Know what it was in 2015? It was 2.98. There are many factors besides legal regulations which impact violent crime rates. But Massachusetts is frequently [cited](#) as a state with low gun violence because of its highly-regulated gun environment and this simply is not true.

Now let's go a bit up the Connecticut River and look at Vermont. In 1999, Vermont's gun-violence rate was 8.84, now it's 9.67. You might believe that these elevated numbers reflect the fact that Vermont is the only state of all 50 states which has no state gun laws at all. You still have to pass a federal background check if you purchase a gun from a dealer, but once you walk out of the gun shop with your gun, you can do anything you want to—keep it, sell it, carry it around or just stick it you no where. But there's only one little problem. In a state with no gun laws there are also few, if any gun homicides, at most the gun homicide rate may be 1.76 but the *CDC* says that the actual number may be far less. What pushes up the gun violence rate in Vermont? Gun suicide with a rate of around 8, although the state's overall suicide rate is not much higher than the national rate

III. THE 2ND AMENDMENT AND GUN-CONTROL LAWS.

I bought my first, real gun in 1956 when I was twelve years old. Over the next fifty-two years (until 2008) I probably bought and sold 500 personally-owned guns and during that time span the U.S. civilian gun arsenal probably grew by 100 million guns. Not a single one of those transactions had any Constitutional protection at all yet every, single one of them was legal, none were vulnerable to any kind of legal threat, and nobody ever mentioned the 2nd Amendment at all.

It would be seductively simple to ascribe the fight for 2nd-Amendment 'rights' to a vast, right-wing conspiracy to help grow the gun business to its present level by pushing the 2nd Amendment doctrine of personal ownership through the courts. But in fact the impetus for the 2008 ruling originated not from conservative-leaning lawyers but from the liberal side of the legal profession in the form of an essay promoting the 'individual right' interpretation [published](#) by Sanford Levinson in 1989. Levinson, a leading liberal legal scholar, moved the entire 2nd-Amendment perspective towards the idea that the Constitution protected individual gun rights, but gave discussions about the 2nd Amendment a liberal patina which quickly spread. By 2000, the embrace of 2nd-American personal 'rights' was announced by none other than the lion of

liberal jurisprudence, Lawrence Tribe, and once he [pronounced](#) in favor of the Constitutional sanction of individual gun rights the goose, so to speak, was fully cooked.

This endorsement of the 2nd Amendment which, incidentally, ran counter to legal precedents dating back fifty years and had absolutely no basis in historical facts, was also a prime influence in the decision by the organized, gun-control community to reshape their strategies around a push for gun-owning ‘rights.’ The first, national gun-control organization, National Coalition to Ban Handguns was founded in 1974, and as its name made clear, advocated a very strong regulatory environment for handguns to the point of basically restricting their ownership to law enforcement, armed security guards and sport shooters who would store their guns at shooting ranges and clubs.

The National Coalition morphed into a new organization called the Coalition to Stop Gun Violence in 1989, notice the disappearance of the word ‘ban.’ In fact, today the Coalition [describes](#) its current mission as seeking to ‘secure freedom from gun violence through research, strategic engagement and effective policy advocacy.’ In this regard, the organization promotes universal background checks, restrictions on assault weapons and hi-capacity magazines, policy goals that are [shared](#) by the other gun-regulation groups, none of whom call for any real limits on gun ownership at all. What started out as a movement to get rid of the most lethal guns; i.e., handguns, has become a movement that seeks to reduce gun violence by making communities ‘safer,’ whatever that means, or by making gun owners behave more safely, whatever that means, or by [making](#) the guns safer, whatever that means.

Ironically, while the gun-control community has moved away from what they consider an ‘extreme’ response to gun violence through eliminating guns, the pro-gun movement has become much more aggressive in promoting a 2nd-Amendment narrative that goes far beyond what the *Heller* decision actually says. Because the majority opinion in *Heller* specifically grants Constitutional protection for keeping a loaded handgun in a private residence and the opinion also grants government wide, discretionary authority to regulate how guns will be used. Meanwhile, the pro-gun community now pushes the notion of ‘Constitutional carry,’ meaning that legal gun ownership carries with it the uncontested and unregulated ‘right’ to carry a gun outside the home, and is also busily engaged in trying to eliminate all gun-free zones. What gun-control advocates have gotten for their willingness to ‘respect’ the Constitutional protection to bear arms is an aggressive and continuous effort by pro-gun zealots to widen the scope of 2nd-Amendment protections and reduce government’s ability to regulate guns.

Which brings us to the crux of the problem as regards using laws as an answer to the issue of gun violence, because as long as gun-control advocates rely passing regulations as the primary focus of their campaign, at best it will end up as a standoff, at worst they will lose. And the reason for this admittedly pessimistic position is that any law which would increase the government’s ability to regulate guns would, by definition, mostly impact the behavior of people who legally own guns. Yet when it comes to gun violence, with the exception of suicide, it is mostly committed by individuals who did not have any legal title to their guns.

Why do I say this? Because 80% of all gun injuries which occur every year, including intentional and unintentional self-inflicted injuries, are the handiwork either of individuals whose

backgrounds would prevent them from being legal gun owners or because they are too young to be in possession of a handgun, which is the instrument of choice in nearly all gun injuries. An [important](#) study based on interviews with prison inmates who were convicted of gun offenses found that only 15% of the guns possessed by this criminal group had been acquired in places where a background check would have been performed. Several years ago I interviewed 70 young men, ages 14–17, who were ‘residents’ of a youth jail located in a New England city with a high incidence of gun crime. Almost all of these kids were locked up for drug offenses, and most of them were facing weapons charges as well. All of them told me they either carried a gun or could get a gun when they needed one, and the answer to where the guns came from was uniform: ‘they around.’

IV. REGULATING ‘BAD APPLE’ GUN DEALERS AND STOPPING GUN ‘TRAFFICKING.’

The existence of a plethora of guns in high-crime neighborhoods and the ease with which such items circulate in these neighborhoods has been [noted](#) by numerous public health researchers and has given rise to another fanciful regulatory argument made by gun-control advocates, namely, the twin demands for stricter controls over gun dealers and tougher federal laws against gun ‘trafficking.’

Regarding ‘bad apple’ gun dealers, the Brady Campaign has been leading the charge against these bad guys and have published a detailed report which claims, among other things, that a small number of gun dealers “supply virtually every crime gun in the United States.” Much of the data which ‘proves’ this assertion is drawn from a [study](#) that is almost twenty years’ old, and the definition of a ‘crime’ gun, as we shall see, has nothing to do with whether a gun was actually used in a serious crime or not. But before we get into the question of what constitutes a ‘crime’ gun, let’s stay for the moment with the trafficking issue itself.

As I understand it, the word ‘trafficking’ means conducting an illegal transaction of some sort. When it comes to guns, this means purchasing a gun from a dealer with the immediate intention of selling or giving it to someone else; or simply selling or giving a gun to someone else who isn’t supposed to be able to have a gun. The former activity is usually referred to as a ‘straw sale,’ because in order to acquire a gun through purchase from a dealer, the purchaser must state that he/she is purchasing the gun for his/her own use, a statement which is made on the [federal form](#) (Form 4473) which is used to conduct the *FBI* background check. The latter activity is somewhat more ambiguous, but usually covers transactions that move a gun into the hands of someone who, under law, is not allowed to own a gun; i.e., a criminal often located in a state other than the state from which the gun first came.

Now in fact, both types of transactions are currently against the law; indeed the Supreme Court [ruled](#) on a case in 2014 (*Abramski v. US*) in which a legal gun owner purchased a Glock, knowing that he was actually purchasing the gun for another legal gun owner but claimed that on the Form 4473 that he was buying the gun for his own use. The Court held that the fact that both the buyer and the ultimate receiver of the gun were law-abiding gun owners made no difference and Abramski’s conviction for lying on the federal form was upheld.

As for gun trafficking, there are countless laws on the books making it illegal to sell a gun to someone who isn't allowed to legally own a gun, but the concept of gun 'trafficking' is usually applied to instances in which a batch of guns are put together in one state and then sold somewhere else. A major gun-trafficking case was [announced](#) recently in Brooklyn, NY, where more than 200 guns that started out in Virginia ended up being sold to some undercover cops in New York, a bust which was heralded as the biggest, single gun-trafficking case in the borough's history and, according to the Brooklyn DA, was a prime example of guns being trafficked into New York from states with more lenient gun laws.

In fact, according to a [report](#) issued by the New York State Attorney General, roughly half the crime guns whose origin could be traced between 2010 and 2015 came either from within New York itself, or from the neighboring states of Pennsylvania, Massachusetts and Connecticut, none of which are considered 'weak' states when it comes to handgun laws. More important, while admittedly it's easier to 'traffic' multiple guns when you can buy them in states where gun laws are allegedly 'weak,' taking even a single handgun across a state line and selling or even just giving it to a resident of the latter state is already a federal crime, it's just gun 'trafficking' by another name.

Under the laws and procedures that must be followed by federally-licensed dealers, other than performing a background check for every over-the-counter transfer of guns, the burden is on the dealer to decide whether or not a particular transaction might result in a gun ending up in the hands of a 'prohibited person,' whether the suspect individual is standing next to the person who fills out the background check form, or whether the gun is ultimately sold in some location far away from that particular shop. The dealer is required to validate the purchaser's information by comparing the information on a government-issued ID to the information supplied on the background check form. Dealers are also required to place an *ATF* warning about 'straw sales,' in a public space within the shop. But the *ATF* does not specifically require that dealers invoke any additional procedures to determine who should, and shouldn't be able to buy a gun. Why should the dealer be placed in the position of playing 'traffic cop' when he has no legal authority to enforce the laws?

As for numerous examples of how the internet is often used by individuals to buy and sell guns without submitting to a background check, at least internet websites like *Gunbroker* or *Armslist* at least go to the trouble of posting clear statements to the effect that users should refrain from engaging in transactions that do not follow relevant laws. In order to use *Armslist*, for [example](#), one must agree to abide by the site's rules and regulations, including approving a statement which says: "I am responsible for obeying all applicable enforcement mechanisms, including, but not limited to federal, state, municipal, and tribal statutes, rules, regulations, ordinances, and judicial decisions, any applicable Presidential Executive Orders, including compliance with all applicable licensing requirements." Does this mean that any particular buyer or seller will necessarily follow the rules? Of course not, but there are hundreds of community newspapers that allow private individuals to run ads for selling guns, and none of these publications carry any disclaimers about proper behavior at all.

V. THE IMBROGLIO KNOWN AS GUN TRACING.

We now arrive at the next issue involving regulatory procedures designed to reduce violence caused by guns, i.e., identifying the origin of all those ‘trafficked’ weapons which wind up in the ‘wrong hands.’ This is a process known as ‘tracing,’ and is considered a prime component in the *ATF*’s arsenal of tools and practices which they use to combat gun crime. The *ATF* [describes](#) its National Tracing Center as providing “investigative leads in the fight against violent crime and terrorism and to enhance public safety,” which would probably be a good use of agency resources if it were true, but unfortunately, how they describe themselves grossly overstates the value of their tracing effort and worse, the validity of the data that the Tracing Center creates.

In theory, a gun trace is supposed to tell law enforcement about the history of a gun from the time it was manufactured until the time it was first sold. This history is created by querying the manufacturer, the wholesaler and then the retailer with the relevant name and serial number of the gun which is being traced. Not only will the completed trace give law enforcement the identity of the first owner of the gun, it will also yield the date at which the initial retail transaction took place.

This latter information is used by the *ATF* to create an analysis of tracing information known as Time to Crime (*TTC*), with the assumption that the less time between the initial purchase of a gun and the date when the gun was picked up in a crime probably indicates a straw purchase or a trafficked gun. Of all the guns which are traced each year, the average *TTC* is more than ten years, so if a gun shop continues to be identified as a shop with a briefer *TTC*, then this may indicate a ‘rotten apple’ dealer who needs to be more closely regulated and watched.

There’s only one little problem with the entire *TTC* process, which is that the data being used to identify gun shops that are likely spots to be the origin of crime guns may be off by at least 40%. And this is because the *ATF* says that it can only trace guns to their initial point of sale, which means they have no way of knowing whether a gun was transferred from one owner to another at some point before it was picked up in a crime.

Which leads us directly to the little problem, which is that the inventory of most gun shops is comprised of 30%–40% used guns. So the first sale of a gun is often not the last sale, and the *ATF* can, in fact, recover the sale information for any gun every time that gun comes back into a shop as a trade-in, or a sale to the dealer for cash, or a swap for another gun—the *ATF* has legal access not just to the first sale, but to every time a gun goes across the counter, no matter how many times such a transfer occurs.

Every licensed gun dealer is required to keep a chronological record of the receipt and disposition of every, single gun. And this record, known as the Acquisition and Disposition (*A&D*) book, must be kept up to date and must be given to the *ATF* for inspection at any time. And since dealers are now encouraged (but not yet required) to keep their *A&D* data in an Excel file or some other type of digital cache, looking up multiple transactions of any gun by simply running a query with the gun’s serial number would take no time at all. Does the *ATF* run such traces? No. Are they legally entitled to conduct such a trace? Yes. But since they don’t, the use of *TTC* data is simply not going to yield valid results.

It's also not clear that when the *ATF* talks about tracing 'crime guns,' that the traces cover guns that were connected to an actual crime. In 2015, the *ATF* [traced](#) 190,538 guns, of which more than two-thirds were handgun calibers—380, 38, 357, 9mm, 40, 45. In fact, the *ATF* [initiated](#) 373,000 traces in 2015, which means that they were only able to respond with valid information slightly more than 50% of the time. And when they did identify the individual who received a gun in the initial transaction, less than one out of five of those traces involved a gun that was picked up during the investigation of a violent crime. The total for guns connected to violent crimes were less than the total for 'gun under investigation' and just slightly more than the traces conducted for 'found guns.' Incidentally, in the violent crime category, slightly less than 7,000 traces were conducted for guns picked up at homicide scenes. Which means that in 50% of all gun homicides committed in 2015, the cops who investigated the killings couldn't even be bothered to trace the gun, or maybe that particular 'crime' gun wasn't even found.

So here's where we stand when it comes to the *ATF*'s activity in tracing guns: (1). The number of guns connected to serious crimes which are traced is a small fraction of the number of guns that are used to commit serious crimes each year; (2). The *TTC* data which is used to identify 'bad apple' dealers may be off by as much as 40%; (3). The *ATF*'s claim that they cannot conduct a trace beyond the initial transfer of a firearm is simply not true.

And here's the biggest problem with the gun regulatory system as it now stands: while 85–90% of all gun crime is committed with pistols and revolvers, a.k.a. handguns, the individual who purchases a rusted, single-shot rifle or shotgun has to jump through the same regulatory hoops to get that gun as he has to jump through to get his hands on a concealable, high-powered handgun like a Sig or a Glock. If the whole point of expanding the regulatory activity of the *ATF* is to reduce gun violence, shouldn't we be asking whether the current system operates in way which focuses resources and energies on the guns that are used in crimes?

VI. DO REGULATIONS KEEP GUNS OUT OF THE 'WRONG HANDS?'

The *CDC* breaks down fatal and non-fatal gun injuries into two basic [categories](#): intentional and unintentional events. In 2014 the intentional injuries accounted for 97,849 (although the number of non-fatal injuries may be significantly higher) and the unintentional injuries accounted for 16,514 (although this number may also be substantially under-counted or overcounted by the *CDC*.) Altogether, this brings us to a grand total for gun violence of 114,363, a number which excludes the thousands of individuals who are shot each year by the police (it's pretty clear that almost 1,000 are shot and die, we do not have credible statistics on non-fatal police shootings).

I simply do not see how the overall number of gun injuries can be reduced to any great degree by increased regulations aimed at gun dealers or gun owners for reasons having to do with what I call the 'supply and demand' curve for guns. As to the supply side, we simply have no idea how and when guns move from the initial, law-abiding owner to the criminal market and the potential criminal misuse of those guns.

In 2015, the *ATF* was able to identify the origins of 1,642 guns that had been recovered and then traced. In 2014 the number was 1,643, in 2013 it was 1,809, the same number was recorded for 2012 and in 2014 it was 1,055. In other words, for the five years between 2011 and 2015, the

ATF completed traces on 7,958 stolen guns, a period when minimally, 1.5 million guns were [stolen](#) from law-abiding gun owners throughout the United States, a number that may be [underestimated](#) by half. And who are the only legal gun owners who are required to report stolen or missing guns to the *ATF*? Those ‘bad-apple’ gun dealers, that’s who, the 40 million or 50 million individuals who legally own guns aren’t required to report missing/stolen guns to the *ATF* at all. And in the handful of states who require that gun owners report gun thefts to the local cops, those agencies aren’t required to forward these reports to the *ATF*.

So on the supply side of the gun violence equation, we continue to go full steam ahead with strategies for regulating how to keep guns from getting into the ‘wrong hands,’ even though we really don’t have the faintest idea for how that process actually occurs. On the demand side of things, we also suffer from a basic lack of knowledge about why and how people behave who inflict accidental or purposeful violence with guns.

The one group which commits gun violence where there has been substantial research are the 20,000+ individuals each year who consciously use a gun to injure themselves. But this research focuses more on suicide *per se* than on the subset issue of suicide with a gun. And while it is known that roughly 50% of the suicides committed each year involve the use of a gun, what we do not know is how many gun owners commit suicide *without* using a gun. It does appear likely that less suicides would [occur](#) if legally-owned guns weren’t around, and a recent study about the results of a Connecticut law which makes it easier to remove guns from people at-risk for taking their own lives estimates that 100 lives may have been saved between 1999 and 2013. On the other hand, most of the states with the highest suicide rates are also states where the per-capita rate of legal gun ownership is far above the national norm, meaning that in these states many gun owners are choosing to end their lives without using one of their guns.

As for the other 100,000 interpersonal gun violence events which occur each year, we have substantial information about the victims of this violence, but we know precious little about the perpetrators themselves. We know they are usually the same race and age of the victims, we know that in 15% of all gun fatalities the victim was a woman but the shooter was a man, we know that in 80% of the gun-violence events, if not more, the shooter was socially involved with the victim and often it was an argument or dispute between the two parties which precipitated the shooting itself, and we know that most of the shooters, like the victims, were young men ages 15 to 34.

The problem, however, is that if we were to use that information to create an average profile of the ‘typical’ person who commits gun violence, this profile would also fit many, perhaps a majority of individuals who engage in violent behavior but do not use guns. So how do you create a regulatory infrastructure which would inhibit a certain type of violent behavior when we simply do not know why, when it comes to committing violence with a gun, that some people do but [many others](#) don’t?

And please resist the temptation to fall back on the idea that all we have to do is figure out how to keep guns out of the ‘wrong hands.’ Because I cannot believe that any law could ever be passed that would allow a gun owner to be charged with a crime simply because his gun was stolen away. There are somewhere around 300 million guns in private hands, a number which

grows by roughly 10 million additional guns every year. Which means that more guns are available to be stolen each year, which means that more guns will end up in ‘the street.’ The laws which exist in certain states that prohibit gun owners from leaving their weapons lying around are designed to prevent misuse of guns by children, family members and friends; they are not theft-prevention statutes at all.

In a not-yet published paper (but available for [download here](#)) Franklin Zimring proposes a fundamental distinction between what he calls the *incidence* as opposed to the *prevalence* of gun ownership, the former being the overall number of guns, the latter being the location of guns; i.e., how many households own guns. I am not sure if we should adopt Zimring’s nomenclature to describe what is going on, but the bottom line is that the total number of guns keeps increasing but the number of locations with guns (i.e., households) keeps going down. The recent survey on gun ownership by the Harvard-Northeastern group, soon to be published by Russell Sage and sourced by Zimring, supports his description of these trends.

The increased incidence of gun ownership, following Zimring’s argument, means that more guns are lying around which could be stolen or transferred hand-to-hand. On the other hand, the increased prevalence would “ directly increase the number of settings in which a gun is available for use in violence,” in particular, suicide, domestic assaults and other events which results from a gun being close at hand.

But here is where the attempt to reduce gun violence through expanding gun-control laws runs into a barrier which has been created by the advocates for ‘sensible’ gun laws themselves, namely, their commitment to the idea that any new expansion of the gun regulatory infrastructure has to leave room for the exercise of 2nd-amendment rights as those rights were defined in 2008. And basically, what the *Heller* decision rests on is the idea that within certain, narrow limits, each and every law-abiding American is entitled to own a gun. And not only can he own one gun, he can own multiple guns, and while *Heller* also gave government a certain amount of leeway to regulate what types of guns someone might own, nothing in that decision has or will prevent the gun industry from manufacturing and supplying the civilian market with millions of more guns

I think the attempt by the gun-control community (of which I happen to consider myself a charter member) has taken a turn in the wrong direction by incorporating a support of 2nd-Amendment ‘rights’ into their overall approach to the issue of guns. I do not believe that a substantive decline in gun violence numbers can be achieved as long as the only, real limit on how many guns are owned by law-abiding citizens is a decision made by the gun industry about how many guns it chooses to inject into the commercial market each year. And in case you haven’t noticed, it’s not as if the decision by gun-control advocates to ‘respect’ the 2nd Amendment has yielded any great victories for the ‘sensible’ use of guns.

What would the gun-control community give up if it decided to return to its ‘no handguns’ stance, notwithstanding the fact that such a position would place gun-control advocates squarely in opposition to a fundamental legal plank of the Constitution? Granted, there is no explicit protection for abortion within the text of the founding document, but I don’t see the forces

arrayed against pro-choice softening their stand or their rhetoric just because the Constitution's protection of privacy was used by the Supreme Court to justify a woman's right to choose.

There is no reason to doubt the numerous studies which show a positive correlation between gun violence and the fact that Americans own so many guns. These studies do not differentiate the identity or legal status of gun owners, they simply validate a basic idea that more guns = more gun injuries, no matter how those injuries occur. By trying to expand the regulatory infrastructure while, at the same time, differentiating who should or should not own guns, the gun-control community is not really confronting the primal cause of gun violence—the existence of a gun.

The problem with thinking that more gun laws will eliminate or at least substantially reduce gun violence is that the laws are all crafted to eliminate gun violence without eliminating guns. And what stands behind these laws is what stands behind our entire legal and judicial system, namely, that most people obey laws. And this is particularly true of most gun owners, who usually have to be law-abiding in order to own any guns at all.

So how do you create an effective response to gun violence without stumbling over the so-called 'rights' to gun ownership which the courts have said cannot be abridged? The precedent here was a 2013 law passed in the Lake Forest, IL, which banned ownership of AR-15 rifles by anyone living in the town. A [challenge](#) to the law arose based on the 2008 Heller decision but the appellate decision which upheld the ban stated that the law did not invalidate the ownership of all guns, or even semi-automatic rifles, but invalidated a *particular* gun model while letting stand the Constitutional right to own guns.

What if a municipality or some other polity were to decide, that in the interests of public safety, residents could own only a limited number of pistols, which happen to be the guns most frequently used in violent crimes? Gun owners could still own that particular type of product, they just couldn't own as many of these guns as they chose, which would mean that there would be less guns lying around either to be stolen or used impulsively by the owners themselves. Maybe such an approach would be declared unconstitutional, but maybe not.

The *Heller* [decision](#) did not take away from public authorities the responsibility for public safety and it also reaffirmed 'longstanding prohibitions' on allowing guns to end up in the hands of persons judged not suitable to own guns, as well as taking guns into 'sensitive places' like schools. More important was the fact that the decision overturned a local ordinance which amounted to a "prohibition of an entire 'class' of arms," in this case, all handguns.

But saying that a DC resident can keep a handgun at home for self-defense is not the same thing as saying that a homeowner needs 10 handguns to keep himself safe. And if pro-gun advocates want to continue trying to expand the limits of 2nd-Amendment 'rights' through laws allowing for carrying guns in public, on college campuses, or without any special licensing and mandated training at all, why shouldn't gun-control advocates follow the precedent set in Highland Park and begin demanding ownership limits by *law-abiding citizens* on the number of highly-lethal guns which can be privately owned?

If the gun industry were willing to own up to the fact that some of their products happen to be weapons of mass destruction (and when 100,000 people are killed or wounded each year, yes, we are talking about mass destruction) they would get no argument from me, or from just about anyone else. And what the gun industry should be supporting are the following steps:

1. Create standards to identify the most lethal weapons based on size, caliber and ammunition capacity (i.e., the smaller, the more powerful and the largest-capacity handguns being the most lethal.)
2. Require that such guns be sold only to the purchasers who have been issued a PTP license.
3. Require that the owner pass a mandated and officially-implemented safety and performance-certification test.
4. Require that the owner report the location and existence of the weapon on a regular basis.

These four steps would curtail straw sales, insure that the owners are themselves least likely to use the guns improperly and, most of all, would require that owners take steps to insure that such guns are properly and continuously stored. These dictates would not in any way infringe on 2nd-Amendment 'rights;' in fact, they would simply affirm that the [government](#) has a significant or compelling interest in public and community safety

I'm not saying that gun-control advocates shouldn't continue to expand the gun regulatory environment in areas (background checks, *CAP* laws) where some regulations currently exist. But if the gun-sense community believes that it gains credibility with pro-gun advocates by cloaking these restrictions in some kind of folderol about the protection of Constitutional guarantees, this position simply reflects how little the *GVP* community really knows about guns.

If GVP wants to redirect the 'more laws-less laws' argument into something that might actually provoke a serious and positive response from the other side, perhaps they would take seriously the underlying motivations that push some Americans to buy more guns. And for guidance on how to understand what the debate about gun violence should really be all about, the fundamental argument is found in an [article](#) published by the esteemed researcher Shannon Frattaroli and several colleagues in 2013. In making the case for understanding gun owners, Professor Frattaroli tells us that: "Fear figures prominently in decisions people make about guns.... Fear of strangers and chaos is the reason that some choose to be armed, whereas fear of the government is the motivation for others.

Telling gun owners to turn in their guns as a way to reduce gun violence and enhance public health simply won't work. Forcing law-abiding gun owners to jump through more legal hoops will create resentment, anger and violence at worst, or result in benign non-compliance at best. What the gun violence prevention community should do is embrace Professor Frattaroli's penetrating analysis and figure out how to give people options that can be used to mitigate their fears in ways other than turning to a gun.

Take it from someone (me) who has been involved with guns for over 50 years and will be a true gun nut and yellow-dog Democrat until the day he dies. There's only one reason and one reason

only which explains the violence caused by guns – the presence of a gun. No matter how you slice it or dice it, the uncontestable fact is that without a gun there's no gun violence and most of that violence is caused by small, concealable, very lethal handguns which serve no purpose other than to hurt yourself or hurt someone else.

Until and unless we begin to build a consensus around the idea that we do not need so many guns, particularly the concealable, high-capacity handguns which cause most of the gun deaths and gun wounds, we will continue to argue about this and that law, a few states and localities might even adopt a new statute or two, but the carnage will go on. And the community that wants to see an end to this carnage should consider engaging in a reasonable dialog with the other side without first pledging obeisance to 2nd-Amendment 'rights.'