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GUN VIOLENCE AND GUN CONTROL

Mark Greenberg and Harry Litman

This short essay was commissioned by the London Review of Books, but in the end we decided not to publish it, in part because we felt that there were empirical issues that we were not in a position to assess. A longer working paper that develops the argument further and contains supporting material is posted on SSRN under the title "Rethinking Gun Violence." We welcome comments on either paper.

From the European side of the Atlantic, the gun situation in the United States looks insane. The country is awash in guns, hundreds of millions of them, from handguns to assault rifles. And it is far more violent than the United Kingdom and other European countries. Yet the United States, in the view of Europe, does little to regulate guns, apparently impervious to the connection between the guns and violence. (During the recent Washington D.C.-area sniper's reign, U.K. editorial writers were astonished that Americans did not perceive the sniper as a manifestation of a gun problem and that the crisis did not renew discussion of gun control.) Guns in the United States are seemingly more legitimate than cigarettes.

Some aspects of this widespread European view are a myth. The U.S. federal and state governments have installed an elaborate network of gun regulations, and law enforcement efforts to reduce gun crime have grown stronger and more sophisticated over the last ten years. Firearms dealers are subject to a vast regulatory scheme that covers nearly every aspect of their businesses. Moreover, by some measures, violent crime in the United States is not so outsize: in 2000, the rate of violent crime rate was more than three times as high in England and Wales as in the United States (1400 offences per 100,000 of population in England and Wales to about 450 per 100,000 in the United States). The rates of homicide and of armed crime are, however, much higher in the United States. In 1998, for example, there were nearly four times as many homicides per capita in the U.S. as in the Britain; only fifty – less than a tenth – of Britain's homicides were committed with guns, as opposed to nearly two-thirds in the U.S.

Most importantly, violent crime in the United States has undergone a truly remarkable decrease in the last ten years. From 1992-2002, violent crime in the country decreased every year, with an aggregate decrease of over 40%. The decreases occurred in nearly every type of violent crime and every geographic sector in the country. Ten years ago, it was a question of serious debate whether it was possible for the level of violent crime to go down significantly; now the question is not whether it can happen, but what policies might best promote it.

But the gun-crime *debate* in the United States is in a sorry state. In general, what should be an empirical discussion about the efficacy and costs of various gun-violence-reduction

measures has been subsumed by an overheated cultural battle between passionate camps, each of which conceives its position in stark moral terms. Both sides wave the banner of crime prevention. Fundamentally, however, their fight is not a considered debate over how best to reduce crime, but a war of symbols. Guns for the anti-gun camp represent lawlessness, gangs, drug wars, rednecks, vigilantes, and survivalist, federal government-hating fanatics. For the pro-gun side, guns are good, a symbol of self-reliance, the frontier spirit, individualism, resistance to tyranny. The passion of this symbolic fight over guns has greatly infected, if not overwhelmed, serious empirical analysis of how to reduce crime. Instead of a careful discussion of whether there are specific gun-related regulations and policies that could significantly reduce crime, the public debate in the United States takes the form of a partisan shouting match over whether “guns cause crime.”

The question of how to use gun policy to reduce crime is of particular interest in the United Kingdom. Rates of violent and armed crime have been steadily increasing in recent years (though gun crime is still far more common in the U.S.). Robbery, for example, has increased more than sixfold in England and Wales since 1980, with particularly rapid increases since 1991. The United States is a natural place to look since, on the one hand, it has far more experience than the U.K. in dealing with armed crime, and, on the other, it has recently experienced an epic decline in such crime. Moreover, in several U.S. cities, a striking new approach to reducing gun crime has been pioneered by a number of innovative programs – with apparent success.

Joyce Malcolm’s recent *Guns and Crime* attempts to use a historical study of guns and violence in England, as well as a brief comparison with the U.S., to develop policy prescriptions for the U.K. Unfortunately, the book exemplifies the way in which the symbolic and partisan clash over guns impoverishes discussion of the relation between the regulation of guns and the reduction of crime.

Malcolm, a professor of history at Bentley College, surveys the history of guns and crime in England and the United Kingdom from the Middle Ages to the present. Her motivating idea is that a study of how the invention and spread of firearms affected crime over the centuries will shed light on the contemporary effects of guns on crime. The book’s main point is that violent crime and guns are not positively correlated over the last seven hundred years or so. For example, Malcolm notes, violence was most common in England before guns were invented, and, as guns became more common, violent crime continued to decline. Rates of violent crime began to increase in the United Kingdom only in the second half of the twentieth century, after the U.K. had for the first time severely restricted the private ownership of guns. Malcolm’s conclusion is that guns do not cause crime, and, in fact, that England has made a disastrous mistake in imposing strict gun-control laws.

It is clear from the start that Malcolm is not a careful historian engaged in a neutral investigation of the relation between guns and crime since the Middle Ages. She is a partisan in the symbolic debate over guns. Her tendentious attitude is evident even in her summary of the book’s contents. She describes the two chapters devoted to the English experience in the twentieth century: “The impact of a government strategy intended to reduce crime by removing any article that might deter it is carefully examined.” (p. 9). Aside from the evident inaccuracy

of the suggestion – the U.K. has not removed prisons, locks, alarms, or police – the quotation is a blatantly slanted characterization of the intentions of the U.K. government, especially inappropriate in an introductory summary.

Perhaps because of Malcolm's partisanship, the book's project suffers from two fundamental methodological problems. First, Malcolm thinks that the important issue is whether more guns make for more crime or for less crime. According to conventional wisdom, Malcolm tells us, the number of guns in private hands is equated with "the frequency of armed crimes" (p.1), and removing guns from private hands "seems the easiest means of reducing violence." In sharp contrast, according to the position Malcolm advocates, "having more guns in private hands will decrease crime." She sees only one other possibility: "the number of guns available to the public may have no appreciable impact on the rate of violent crime." (p. 2). It never occurs to Malcolm to ask more fine-grained questions – questions of a sort we will discuss later in this article – about how various kinds of gun-related programs or regulations might affect violent crime.

Second, Malcolm thinks that we can answer her central question – more guns, more crime or more guns, less crime? – or at least make important progress in doing so, by looking at the course of English history to see whether increases or decreases in the number of guns correlated with increases or decreases in violent crime. In order to make clear the problem with this approach, it is hard to do better than to quote Malcolm. If "guns cause crimes," Malcolm begins her study of the Middle Ages:

then a world without private firearms ought to have had a lower level of violent crime than one in which they were available. And the spread of guns ought to have announced itself through increased rates of murder, robbery, and other violent acts. Private firearms first came into common use in England during the sixteenth century. And so it is with the late Middle Ages, the fourteenth and fifteenth centuries, that our investigation must begin. (p. 14).

Since the Middle Ages turn out to have been a violent time, guns, Malcolm reasons, must not cause crime.

For comparison, suppose we want to know whether smoking cigarettes in bed causes house fires. If smoking in bed causes house fires, we reason, then a world without smoking in bed ought to have had a lower level of house fires than one in which smoking in bed did occur. Since there were lots of house fires in the Middle Ages in England, but no cigarettes and so no smoking in bed, smoking in bed must not cause house fires.

Obviously, something has gone seriously wrong, and one needn't look far to see what it is. The mistake is to think that the Middle Ages and subsequent periods in English history are similar enough to the present time with respect to factors that affect the level of crime (or of house fires) for those periods to provide a useful indicator of whether reducing the prevalence of guns (or of smoking in bed) will reduce crime (or house fires).

The first of the two methodological problems has the consequence that even if the project were well executed, the book wouldn't have much relevance to the question of how to reduce violence. It would at best shed light on the coarse question of whether eliminating or drastically reducing private ownership of private guns is likely to increase or decrease crime. Setting aside the complaint that the book's project is so crudely framed, perhaps there might be interesting things to learn about how and whether large-scale trends in the number of guns in private hands affects crime rates.

The second of the two problems, however, pervasively undermines the usefulness of the book. It's not that it is impossible to learn anything about the impact of guns on crimes by looking at history. It's just that in order to do so, one would have to be acutely sensitive to the impediments to such an undertaking and to be subtle, even-handed, and thorough in dealing with them. Malcolm is none of these things.

The crucial question for policy purposes is whether some factor – the presence of guns in private hands or the occurrence of smoking in bed – is in present circumstances contributing to some harm – violent crime or house fires. Or, to put it another way, whether removing or reducing the factor would likely reduce the harm. As the smoking example makes clear, in order to determine whether in our present situation some factor makes a contribution to a particular harm, we need to compare not just any situation in which that factor is absent, but a situation that is *otherwise relevantly the same as the present situation*. This is of course the notion of a control.

Malcolm apparently understands the need for a control: she actually asserts that her discussion of the Middle Ages “provides a control of sorts” (p. 9) for comparison with later periods in which guns became common. The problem of course is that the Middle Ages are, to put it mildly, not a satisfactory control for the study of whether guns in contemporary society increase crime. A multitude of highly relevant factors have changed almost beyond recognition. For one, there was no professional police force in England until the mid-nineteenth century. Malcolm doesn't even mention this fact in her chapter on the Middle Ages, and when the fact does emerge in later chapters, her main concern with it is not the effect of the police on crime. At one point she admits that the police's “activities are frequently regarded as one of the reasons for the dramatic decline in serious crime,” but she drops the matter there and does not seem to recognize the extent to which it undermines her argument (p. 115). Similarly, it will occur to the reader that the lack of a highly organized central government and the lack of modern means of communication and transportation would have made enforcement of the criminal law extremely difficult in the Middle Ages. Who knows whether having guns in such a society would have made crime worse or better? Certainly, nothing Malcolm says sheds any light on this question. And, perhaps more to the point, if we're interested in making policy for present day England, does it matter whether guns would have increased or decreased crime in a society without police, telephones, radios, cars, and trains, let alone computers and DNA analysis?

Chapters 2 through 6 follow a pattern. Each takes a period of English history, in chronological order. In each, we are told that guns become more and more common during the relevant period, but that crime continues to fall. And, typically, much of the chapter is focused

on a peripheral issue. At the end of that discussion, Malcolm pronounces conclusorily that the issue is resolved in the way that supports her overall argument. At some point in the chapter, usually near the end, Malcolm devotes a paragraph or two a number of factors, such as poverty, food shortages, domestic unrest, dueling, war, the demobilization of returning soldiers, that might be thought to have affected crime. After a desultory discussion, she rapidly concludes that those factors didn't make much difference. Finally, at the end of each chapter, Malcolm sums up her conclusion: the increase in guns during the period did not cause an increase in crime.

A serious substantive problem with Malcolm's main line of argument is that, despite her rhetoric, the evidence she adduces suggests that guns never became particularly widespread before the late twentieth century. Moreover, as we detail below, the timing of the increase in violent crime in the twentieth century better correlates with the increase in the number of guns in private hands than it does with the legal restrictions imposed on gun ownership. As she moves through history, Malcolm suggests again and again that were guns were widespread for centuries before about 1920: that guns were "commonplace" in the 16th and 17th centuries (pp. 35, 61); that the right to guns became well established (chapter 3); that guns proliferated (p. 90); that firearms were "plentifully available" (p. 130), that there was "easy availability of firearms before 1920." Malcolm's argument everywhere assumes that the *legal* availability of firearms translated into their widespread *possession*. But her appendix includes statistics, from a study that Malcolm praises highly, that tell a very different story. The total number of privately owned guns in the United Kingdom, including guns owned by military personnel and hunters, had reached only 100,000 in 1870, and was still below 250,000 in the 1930s. Even as late as 1964, the endpoint of the study, the total was a stunningly low 300,000. By way of comparison, in 1968, the United States was estimated to have a hundred million privately owned guns – on the order of sixty times more per capita than in the UK – and the current U.S. number is estimated to be between 200 and 250 million.

Moreover, Malcolm provides little or no evidence that what guns there were in private hands were ever held in significant numbers other than by wealthy, respectable landowners. For example, Malcolm summarizes: "The nineteenth century ended with firearms plentifully *available*" (p. 130, emphasis added), thus evading the question of how widespread they actually were, and, in particular, how common it was for relatively poor people to own guns. The overall impression one gets from the discussion of the nineteenth century is that there were in fact few guns in the hands of the poor and that, far from guns being available to everyone, the government was trying very hard to keep guns away from poorer people. For example, the 1870 licensing act was intended to make "all firearms too expensive for the poor to carry". Malcolm's discussion provides many other indications that only wealthy "respectable" landowners and tenant farmers had guns. (pp. 94, 99, 100, 101, 102, 104-105, 113). Yet she "sum[s] up": "Many Englishmen were armed or able to get arms when necessary." (p. 106).

With respect to factors other than guns, Malcolm conspicuously fails to give serious consideration to the obvious possibility that the vast growth of government, law, and organization generally, not to mention police and modern technology, are far more important than the spread of guns, in explaining the decrease in crime. For example, Malcolm thinks it counterintuitive that although guns were first introduced into England in the 16th and 17th

centuries, crime was down from the Middle Ages. But is it really counterintuitive that crime would decline in an era that saw a vast expansion of government and law, despite the introduction of some unquantified number of rather primitive guns? Similarly, she asserts: “The long decline in crime rates, as well as its recent reversal in most Western countries, also remains inexplicable.” She seems to be mistaking a lack of a consensus about the relative importance of various factors for inexplicability.

Similarly, along the way, though this is not Malcolm’s intention, we learn about vast differences between historical periods and the current day that shed grave doubt on the relevance of those historical periods to contemporary gun policy. These differences include the transportation of very large numbers of convicts to foreign colonies – more than 50,000 in the 1830s alone – the pardoning of convicts who joined the army, and extraordinarily frequent use of the death penalty (pickpocketing, for example, was punishable by death until 1808). Given the small number of guns in private hands in the 18th and 19th centuries, the practice of removing convicts from society, and the introduction of the professional police in the 19th century, Malcolm’s offering of those centuries as evidence that guns do not cause crime seems wrongheaded.

At points, Malcolm seems to recognize some of the difficulties of a historical study. But she never really sees the main point that myriad changes, especially the vast expansion in government and the technology available to it, may well swamp the greater availability of guns in explaining trends in crime from the Middle Ages through the twentieth century. When she does pause to address the obstacles to a historical approach, she tends merely to wave off the difficulties with platitudes, conclusory statements, or solecisms. For example, to assuage the worries that, through the course of history, many unaccounted-for variables affect the level of crime and that historical crime statistics are unreliable, she quotes a passage from another historian making the point that in the long term and at a large scale, incidental fluctuations won’t have a significant impact; she adds that modern crime statistics are still unreliable; and she insists that despite the problems “the issue of the relationship between weapons and violence is far too important to ignore” (p. 12). An appeal to the law of large numbers does address incidental fluctuations. But if an unaccounted-for variable pushes the numbers in a particular direction, large numbers only makes things worse. And the unreliability of current statistics and the importance of the issue are obviously no response to the difficulties of a historical study.

The denouement of Malcolm’s story is supposed to be that although crime continued to decline as long as guns were widely available, when the government finally in the twentieth century greatly restricted the ownership of guns, crime began to increase. It is worth taking a careful look at the late twentieth century since it is the most relevant period for evaluating both Malcolm’s thesis and contemporary policy.

As Malcolm tells it, in 1920, after a long series of attempts to restrict guns, the government finally succeeded in taking away the right to bear arms; the Firearms Act required a certificate from the local police for purchasing or possessing a firearm. Moreover, in 1933 the Criminal Use Act introduced very serious penalties for use of a gun in crime – seven years for merely having a gun in one’s possession during the commission of a crime. Violent crime in

England and Wales increased in the 1930s and 1940s, especially during the war, but the increases were similar to those in comparable European countries and left the rate of violent crime at very low levels by contemporary standards. In the 1980s and 1990s, however, England experienced exceptional increases in violent crime.

Malcolm's analysis of the second half of the twentieth century is not what one would expect. Based on the discussion so far, one would expect her to argue that when the government finally took guns away from people, crime began to increase. In fact, Malcolm claims that three kinds of government policies increased violent crime: "disarming the people, treating juvenile offenders leniently, and reducing prison sentences and police personnel" (pp. 170-171).

A preliminary observation is that to the extent that Malcolm is correct that the increase in violent crime was caused by the second and third of these factors, the second half of the twentieth century does not support her main claim that reducing the number of guns increases crime. But let's set this point aside and focus on her argument that the first of the three policies contributed to the increase in crime.

"Disarming the people" is in fact a misleading label for the first policy, for it encompasses both restrictions on carrying weapons, and changes in the law of self-defense. A good deal of the chapter is given over to a tirade against what Malcolm asserts was a revolution in the law of self-defense, eviscerating the right of a law-abiding citizen to defend himself when attacked. Much of Malcolm's discussion takes the form of informal accounts, based on newspaper reports, of apparently outrageous incidents in which the old or infirm were prosecuted for defending themselves against hoodlums. Malcolm badly misrepresents the legal developments. For example, she relies on a quote from a scholarly article that, out of context, seems to suggest that the right of self-defense has been abolished; in fact, the article suggests no such thing. The article concerns the issue of whether a statutory provision intended to codify the right to prevent crime had the effect of codifying the right of self-defense as well, or left it as common (*i.e.*, court-made) law. The issue is of theoretical interest, but has little practical import for the content of the right of self-defense. There has been no revolution in the law of self-defense, and in at least one important way it has become more protective. Moreover, the law of self-defense is tangential to the question of the impact of private ownership of guns on crime.

Next, and most importantly, although Malcolm emphasizes that the right of Englishmen to bear arms has been taken away in the twentieth century, the number of guns in private hands has in fact increased in the twentieth century, especially in the last few decades when violent crime has increased most sharply. Malcolm gives some numbers (e.g., pp. 207-209) that suggest that there now are very large numbers of guns – four million or perhaps considerably more – illegally in private hands in the U.K. – dramatically up from the 300,000 total guns, legal and illegal, in 1964 (and the 250,000 total guns at the beginning of the century). In a weird understatement, Malcolm tells us that "Eighty years of firearms controls have failed to eliminate or even substantially reduce that arsenal." (p. 209). Thus, the late twentieth century experience of England does not, by Malcolm's own account, support her overall thesis that reducing the numbers of guns in private hands increases crime.

Given the dramatic increase in guns in the U.K. in the late twentieth century, Malcolm would be better off relying on that period to argue not that reducing the number of guns increases crime, but that laws that *attempt* to reduce the number of guns in private hands are ineffective and therefore do not reduce crime. And she sometimes does make that sort of claim. It is indeed a very important issue whether there is a way to reduce guns in the hands of criminals. But merely pointing out that England has large numbers of guns in private hands despite a strict ban (and that crime rates have continued to increase despite the ban) doesn't settle the question. As we will see, a general ban on guns is by no means the only kind of policy that might reduce the number of guns in private hands, and, more importantly, in the hands of criminals or potential criminals.

In fact, the strongest conclusion that Malcolm's evidence could support is that increasing the number of guns in the hands of respectable, relatively wealthy citizens does not tend to increase crime. Malcolm's data nowhere suggest that guns were possessed in large numbers by all social strata. (At most, her evidence shows that at some points in English history, guns have been relatively available, in comparison with the present, to affluent citizens.) Guns became truly widespread only in the late twentieth century, coinciding roughly with a manifold increase in robberies, burglaries, and muggings.

It is true that this increase began after England severely restricted private ownership of firearms, and Malcolm attempts to suggest that the two are cause and effect. As noted, however, by Malcolm's own account, the severe restrictions on the private ownership of firearms began in earnest in 1920, and the exceptional increase in violent crime did not take place until the 1980s. The fact that crime rates continue to increase after new restrictions is of course consistent with the possibility that the legal restrictions were somewhat successful in mitigating the increase in crime. Far more plausible than the hypothesis that gun restrictions caused the increase in violent crime in the U.K. in the twentieth century is the commonsensical notion that the increase is the result of wider societal changes, perhaps including the spread of guns in the hands of potential violent criminals.

The idea that easy availability of guns to relatively well-to-do citizens does not increase crime may seem less than astonishing to many readers. On the other hand, it is worth noting that the anti-gun camp offers a number of reasons for thinking that guns in the hands of the law-abiding will in fact lead to crime. (We will leave aside the separate problem of gun accidents, which we touch on below). It is said, for example, that armed householders who confront burglars are likely to have their own weapons taken from them and used against them. And otherwise law-abiding citizens who own guns may use them in the heat of passion, with tragic consequences. Similarly, keeping guns at home risks their falling into the hands of children, as in the much-publicized school shootings. There is also the nutty idea, which Malcolm mentions when she sets up the debate as 'more guns more crime versus more guns less crime,' that "the mere presence or sight of a gun triggers hostile action" (p. 1). (In a moment, we will come to the more serious issue of whether guns in law-abiding hands increases their availability to criminals.)

One productive observation that we could take away from Malcolm's book, though she does not make the point, is that whether or not permitting law-abiding citizens to arm themselves reduces crime, there is little reason to believe that it significantly contributes to crime in any direct way. Thus, for purposes of preventing crime (as opposed to suicides and accidents), our chief focus should not be on preventing guns from getting into the hands of law-abiding citizens. Whatever the merits of the proffered reasons that ownership of guns by the law-abiding could increase crime, these factors are certainly insignificant in comparison with the importance of keeping of guns out of the hands of criminals or potential criminals.

The immediate point is that the real question should be how to keep guns out of the hands of the wrong persons (whether it does or does not require restrictions on the ownership of guns by the law-abiding is a subsidiary question). Strikingly, this is a question that Malcolm never asks. She expresses skepticism at the start "that statutes can actually deprive criminals of firearms" (p. 2) and then takes for granted throughout the book the view, popular with the National Rifle Association in the United States, that gun control inevitably will disarm the law-abiding while leaving criminals or potential criminals with guns. (Bizarrely, her summary of Parliament's motivations in restricting firearms in the first half of the twentieth century culminates with the attribution to Parliament, without much evidence, of the idea that "[u]narmed civilians and unarmed police could convince criminals that it was unnecessary to carry guns." (p. 163).) On the crucial question of what policies or laws could keep criminals from owning or using firearms, Malcolm has nothing to add.

PART II

A new book by Jim Jacobs, *Can Gun Control Work?*, focuses on how to use gun policy to reduce gun crime. The book is a welcome contribution to the gun-control debate. Jacobs, a professor of law and Director of the Center for Research in Crime and Justice at New York University, has been loosely allied with the anti-gun-control camp, but the project of the book is to sidestep the ideological debate and focus instead on the practical question of the utility of various gun-control measures in reducing crime. Jacobs sees the rut into which the cultural debate about gun rights has settled, and sets out to plow new ground. He starts from the assumption that some regulation of firearms is desirable and concentrates on what strategies hold out the greatest promise for reducing gun violence. It says much about the state of the gun-crime debate that this stance is so refreshing.

Moreover, Jacobs is clear-sighted in recognizing that the problem of gun control in fact comprises three discrete problems – accidental shootings, suicides, and gun crimes. Although they tend to be lumped together in public debate, each of these problems has distinct causes and distinct policy solutions. Thus, advocates often argue that gun control will reduce the risk of gun accidents in the home (particularly to children), but this risk in fact turns out to be fairly slight, and as gun-control opponents emphasize, it can be much reduced by commonsense measures that responsible gun owners generally undertake. More to the point for policy purposes, the feasible measures that would most effectively reduce gun accidents are different from those that show the most promise for reducing crime. With respect to the problem of suicide, Jacobs makes a good

case, though this is a controversial area, that the level of suicides does not vary significantly with the availability of firearms. And again, the sensible policy responses to suicide have little in common with sound policies for reducing gun crime more generally.

In discussing the efficacy of gun control, Jacobs also sensibly sets to the side the phenomenon of rampage shootings (as in Columbine, Colorado and Dunblane, Scotland). Such shootings, in addition to being quite rare, are extremely difficult to prevent through the criminal justice system (or otherwise). The evidence suggests that measures that may help keep guns out of most criminals' hands will not likely reduce the incidence of rampage shootings (since such crimes are not carried out by the usual offenders), and the issue needs to be addressed separately. Notwithstanding the suggestions in the British press, it was reasonable to think that the D.C.-area sniper did not manifest a national gun problem and that the occurrence of such incidents would not be significantly reduced by reducing the number of guns in private hands.

Books such as Jacobs's are thus valuable for helping to redirect debate away from the war of symbols and toward a disinterested evaluation of the crime-reduction potential of individual gun-control measures. Other examples of such constructive recent efforts are *The Crime Drop in America*, edited by Joel Wallman and Alfred Blumstein; *Evaluating Gun Policy*, edited by Philip Cook and Jens Ludwig, and *Guns, Crime, and Punishment in America*, edited by Bernard Harcourt. The pertinent question is not whether gun control or guns are good or bad, but rather whether specific policies, which need not be simply more guns or fewer guns, in fact reduce gun violence, and if so, at what cost.

We do not have to approach that question in a vacuum. An innovative group of gun-violence reduction initiatives in various cities around the United States provide a starting point for analysis and some ground for optimism about particular gun-violence reduction policies. The causes of the remarkable decline in violent crime nationwide over the past ten years are diverse, and it is difficult to know the relative contribution of various factors. But the gun-violence reduction initiatives have been associated with reductions in gun violence that are well in excess of the typical reductions in comparable cities without such initiatives over the same periods. The initiatives – in diverse communities, including Boston, Pittsburgh, Kansas City, Indianapolis, Richmond, and High Point, North Carolina – had different policy emphases, successes, and failures; still, taking them together, we can glean the beginnings of a basic blueprint for reducing gun violence.

Our point here is not to claim accomplishments for the various initiatives, but to show that they provide creative and promising methods for keeping arms out of the wrong hands. More generally, the initiatives make clear that more guns or fewer guns are not the relevant alternatives. Rather, the appropriate analysis entails careful consideration of two basic questions: 1) whose hands are the wrong hands? and 2) how do people in that group obtain guns? These questions give rise to two approaches to the gun-crime problem: the *demand-side* approach of focusing on the people to be prevented from having guns and the *supply-side* approach of focusing on the sources of guns for those people.

We can begin with the demand-side, and ask whose are the wrong hands. Several critical points are well established, but much less well appreciated. First and foremost, perpetrators of gun crimes constitute an extremely small group, or, to put it more precisely, a high percentage of violent gun crimes are committed by a very small number of recidivist offenders. In one study of such “violent predators,” in a one-year period (according to self-reported data), the average offender committed eight assaults, 63 robberies, 172 burglaries, 1,252 drug deals, and 214 other thefts. Criminologists have established that the number of such violent predators is strikingly small. For example, in Pittsburgh, Pennsylvania, a medium-sized urban area, law enforcement and community leaders compiled a list of about 150 men who were known to be responsible for the lion’s share of gun violence.

This point is the single most important one for formulating effective gun violence policy. It suggests that focusing law enforcement resources strategically on disabling a relatively small number of offenders is likely to yield significant reductions in gun violence. And in fact, a relentless focus on an extremely small group – the *targets*, for short – is the most salient common feature of the successful gun-violence initiatives.

The insight would be of limited utility if it were not possible to identify the targets in advance. The second critical point, however, is that the relevant people are largely identifiable: most of them are already known to local police and to members of the communities they prey on. For starters, almost all of them are men between the ages of 15 and 35 with a substantial criminal record. In the United States, for example, roughly 90% of adult murderers have adult criminal records (juvenile criminal records are generally not available). More importantly, most targets are already known to law enforcement officials and the local community for their propensity to violence. This is so in part because having a reputation for violence is valuable, and is therefore cultivated. Thus, it is possible for law enforcement officials to focus their resources on a very small number of people.

Jacobs would likely agree that a relatively small group of criminals is responsible for most violent gun crime, but he seems to miss the point that the members of the group are identifiable. Thus, he largely dismisses the promise of law enforcement intervention on the ground that it would require wholesale stopping and frisking of young men, especially members of minority groups, which he rightly points out would be of dubious constitutionality and otherwise unacceptable (pp. 211-212). Since the core group of offenders can be reliably identified, however, the police need not fish haphazardly for likely offenders.

Overall, Jacobs seems to accept the supposition of many gun-rights advocates there is little you can do to disarm potential criminals. (Thus the NRA tenet, endorsed by Malcolm, “if guns are illegal, only criminals will have guns.”) He argues that there are too many guns already in circulation to be able effectively to keep criminals from having access to them, and, in any event, that criminals are by hypothesis unresponsive to legal restrictions. This argument depends on a number of assumptions about the operation of the illegal market in guns, to which we turn shortly. But it is worth noting that the spirit of the argument is in tension with the background assumption of the criminal law (and one that Jacobs elsewhere relies on) that potential criminals, like other people, respond to incentives (and disincentives) if the incentives are sufficiently

powerful. As it turns out, the available ones are potent, and a core feature of the successful initiatives has been the methodical, and sometimes creative, bringing to bear of diverse sources of incentives.

This brings us to the third point: the targets, in large part because of their criminal records, are generally vulnerable to far more, and far more intrusive, government controls than the typical citizen. For one thing, most targets are on probation from previous offenses. Probation subjects the offender to government oversight, including random searches and drug tests, with the sanction of revocation of probation (*i.e.*, a return to prison) for violation of specified conditions (for example, for testing positive for illegal drugs, associating with specified persons, or failing to keep regular appointments with the probation officer). Second, by virtue of their criminal histories, targets are eligible for long prison sentences for conduct that generally would result in minimal sentences, or would even be permissible (for example, possession of a firearm). Third, targets frequently commit relatively minor offenses, such as small drug sales or disorderly conduct, that in general do not attract much attention from law enforcement officials. When the defendant is a target, such offenses can be aggressively investigated and prosecuted. Fourth, and often most potently, there is in the United States the threat of prosecution by the federal government (as opposed to an ordinary state prosecution), which carries the prospect of a substantially longer prison sentence under more restrictive conditions than in a state system, as well as other disadvantages for a defendant, most notably the greater availability of pretrial detention.

Many of these measures, such as random searches, cannot be employed in the run of cases, in part because of the administrative costs in a generally overrun system. But the availability of the measures gives law enforcement officials the ability to place tremendous pressure on a small number of targets.

These three points – 1) gun violence is largely committed by a very small group of people; 2) those people are known to the police and the community; 3) they are subject to a variety of potent controls – together suggest a commonsensical demand-side approach to reducing gun violence. The approach involves identifying the targets, communicating to them directly (typically face-to-face) a threat of serious adverse consequences if they engage in gun violence, and imposing the consequences when the threat goes unheeded. This approach is the common core of the successful gun-violence reduction initiatives.

The Boston Gun Project, the first of the initiatives, and in many respects the paradigm, provides a good illustration of the approach. Boston had been plagued by gang-related violence – shootings and reprisal shootings among rival gangs competing for control of the drug trade. The authorities and community members knew who the chief gang members were, including the ones who were most involved in firearm violence (indeed, intimidation, which requires notoriety, was part of the reason for the violence), but prosecuting individual homicides was a different matter, in part because of citizens' understandable reluctance to testify against gang members. Law enforcement officials therefore took a different tack. The result was the so-called Boston Miracle: a 60 percent drop in homicide victims aged 24 and under, to a level below what it had been in the 1970s before the crack epidemic.

As documented by Harvard researcher David Kennedy, a consultant on the initiative, the approach was premised on direct communication with offenders and a form of group accountability. Once prosecutors had identified the prime offenders, they obtained court orders requiring the targets to attend a meeting of law enforcement officials and community leaders. The court orders were possible because the targets were already on probation for other offenses and thus subject to continuing judicial supervision. The targets were told that, unless the violence stopped, they would be targeted for federal prosecution with its lengthy mandatory sentences. They further would be subjected to an aggressive regime of searches and drug tests (backed up by sanctions for contraband and positive test results), service of outstanding warrants, eviction from public housing, enforcement of child-support orders, and so on. The authorities added an extra element: group responsibility for individual acts of violence. In times of ongoing gang warfare, the police often know what gang is behind a shooting even if they cannot identify the individual perpetrator. So Boston officials warned the gang members that the gang as a whole would have the regime imposed on it for shootings by its members. In sum, potential offenders were warned that law enforcement officials would bring all the various powers of the state and federal governments to bear against them.

Such threats, of course, will not always persuade chronic offenders to forgo gun violence. When gun violence continues, therefore, the demand-side approach prescribes a prompt, stringent response – most typically, arrest and federal prosecution, with pretrial detention so the offender disappears from the streets – followed by a new meeting with the targets to communicate what has occurred. The Indianapolis gun-violence initiative provides a particularly vivid example. After gun violence recurred, authorities arranged for the targets be tested for illegal drugs. When, unsurprisingly, a large proportion of them tested positive (which, in ordinary circumstances, is often ignored given the mountainous demands of the probation system), the entire initial group of targets was made to attend another meeting. The targets were informed that since the gun violence had not stopped, most of them would not be going home. Federal marshals then entered the room and arrested the majority of the targets on charges of violating probation by testing positive for drugs.

The example illustrates the use of a form of control – drug testing followed by prosecution for positive test results – that is highly effective in practice and available against any person on probation, but that cannot feasibly be applied to all probationers (even assuming it were desirable). The fact that a very small number of known targets are responsible for a high proportion of gun violence is what makes it possible to deploy such methods of control with great impact. It also provides part of the answer to critics, including Jacobs, who suggest that federal prosecutions are too rare to contribute meaningfully to a reduction in gun violence, or that federal prosecutors are not generally interested in prosecuting so-called minor gun offenses, such as possession of a firearm by a felon. In the relatively few cases where the defendant is known to be a serious offender, federal prosecutors are keenly interested in prosecuting, including for relatively minor offenses. When defendants are well-chosen and prosecutions are publicized directly to a small group of targets, it takes very few actual prosecutions to maintain a credible threat of prosecution and thus to deter gun violence – which is the point. In Richmond, for instance, during the reign of Project Exile, police reported that during arrests, suspects were

spontaneously volunteering that they were not armed; the news had evidently reached the relevant people. Moreover, the initiatives have many tools for reducing gun crime other than federal prosecutions for possession.

One might wonder about the justice of focusing the criminal justice system's resources on a small number of targets, chosen on the basis of information that has never been proved in a court of law, particularly when the targets are overwhelmingly members of minority groups. In the United States, it has long been common practice to base decisions about whom to prosecute on information about a potential defendant's conduct other than that involved in the crime for which prosecution is under considered. The gun-violence initiatives are an application of this well-established practice. The moral and legal issues raised by the practice deserve much greater attention than they have thus far received,¹ but our concern here is primarily with the efficacy of the approach in reducing gun violence.

We come now to the supply side of the gun-violence problem. The gun-distribution network is a critical, and much overlooked, pressure point in reducing gun violence. As Professor Blumstein, commenting on the decline in gun violence over the last ten years, recently told Congress: "We're getting the low hanging fruit [*i.e.*, incarcerating the worst violent offenders]. The other piece of the puzzle we're not really touching on is the whole gun distribution network." Here again the muddled and tendentious thinking of partisans like Malcolm undermines policy analysis. There is a widely held misconception that nothing can be done to keep guns from reaching criminals' hands. Gun-rights advocates frequently oppose proposed regulations or enforcement actions on the ground that there is, for practical purposes, a limitless supply of cheap, stolen guns.

As on the demand side, a few critical facts, some of which have emerged only in the last decade, have important implications for reducing violent crime, though they have not been translated into policy measures even in most of the successful initiatives. The central and underappreciated fact in this area is that a substantial proportion of guns used in crimes have been recently obtained from a legal firearms dealer. There is an enduring myth, particularly among gun-rights advocates, that criminals obtain guns in haphazard, undetectable ways, for example in ordinary burglaries or as family heirlooms handed down over generations. Jacobs in fact adopts this view wholeheartedly (p. 165).

In fact, criminals are significantly supplied by a black market that operates on the back of the legitimate channels of commerce. A "straw purchase" is far more typical of the path that a gun travels into a criminal's hands than a one-off burglary. In a straw purchase, a person who is legally permitted to buy a firearm buys it from a licensed dealer, in what would otherwise be a lawful purchase, for the purpose of illegally reselling it to a person, such as a convicted felon, who is prohibited from possessing firearms.

The black market that supplies guns to criminals begins with the limitations of the legitimate firearms market. Firearms are a highly regulated industry. Under federal law, every seller must be federally licensed, and all licensed dealers are subject to significant oversight (for

¹ See Harry Litman, "Pretextual Prosecution," *Georgetown Law Journal* (forthcoming 2004).

example, searches of their purchasing records). Every buyer must fill out a form to establish his or her qualifications to possess a gun, and every gun in a dealer's inventory must be accounted for. (The well-known Brady law, of which Jacobs gives an extensive account, instituted a system for rapidly checking a buyer's background to prevent purchases by persons prohibited from possessing firearms; Justice Department statistics show that the law blocked around 750,000 illegal sales, two-thirds of which were to convicted felons, between 1993 and 2000.) A particularly significant, and chilling, fact is that nearly half of guns used in crimes in the United States that were traced back to their source come from 1% of the country's licensed firearms dealers (who may be honest but high-volume dealers who operate in high-crime areas).

In addition, every gun has a unique serial number, which generally permits law enforcement to determine where, when, and by whom it was purchased. (Recent advances in tracing technology, which exploit the unique "fingerprint" that a gun leaves on a discharged bullet, have also made it easier to identify the firearm that was used in a crime.) So if a gun turns up (or even is merely discharged) in a crime, police generally can rapidly determine where it was bought. (This is one of several important contrasts with the market in illegal non-prescription drugs, which has innumerable sources of supply, one of the factors that has been a severe obstacle to the supply-side strategy in the war on drugs.) And if, as is often the case, that gun was one of many sold to the same straw purchaser or sold by the same corrupt dealer, it may lead to the discovery of critical evidence of other crimes. Thus, for example, the Bureau of Alcohol, Tobacco, and Firearms undertook investigations of the provenance of "crime guns" (guns used in crimes including illegal possession) that had been purchased in gun shows. The investigation revealed that about 17% of the purchasers of the guns had purchased multiple guns, with an average of 59 firearms per person, including many other guns that had also been used in crimes. (One purchaser had no fewer than 53 crime guns traced to him). Once straw purchasers are identified, they are in turn a potential source of information about those to whom they have sold guns, thus helping to solve gun crimes.

Finally, federal law imposes strong penalties for providing a gun to a felon, including 5-year mandatory sentences in federal prison. These laws have typically not been a law enforcement priority, but they are a potent tool. Straw purchasers do not have criminal records (which is what makes it possible for them to purchase weapons from licensed dealers) and in practice tend to be far from hardened criminals. More typical is the gang member's girlfriend, gang-member wannabe, or drug addict employed by an operator of a gun ring. The rewards of reselling guns are small (often a hundred dollars or less for a gun) and for these actors, merely learning of the prospect of a long prison sentence (of which they are likely unaware) is itself a powerful disincentive.

Together, these facts suggest a simple and effective strategy for reducing the number of guns in the hands of criminals. Since a substantial percentage of guns used in violent crime come from licensed dealers, and since perhaps half of those guns come from only 1% of the dealers, the obvious approach is to crack down on straw purchases, and in particular on straw purchases from the crucial 1% of dealers. The technology that allows guns and even bullets to be traced back to the dealer together with the records that identify the purchaser of every firearm

make it possible to track down straw purchasers. Thus, for every crime in which a straw-purchased gun is used, a good possibility exists of prosecuting the straw purchaser.

As for the small number of dealers who provide a substantial proportion of the guns used in crime, the strategy is even more straightforward. It is a felony (resulting in automatic forfeiture of license) for a dealer to sell a firearm if they have reason to believe the prospective buyer is a straw purchaser. Dealers risk not just a criminal conviction, but their livelihood. And, as noted, the Bureau of Alcohol, Tobacco, and Firearms has significant oversight powers over dealers, including the power to search their records, though there are important ways in which those powers could and should be augmented. A focus on the crucial dealers, backed up by a serious threat of conviction and loss of license, should be enough to cut deeply into the supply of firearms to the black market.

Jacobs's analysis of the supply-side is reminiscent of his treatment of the demand-side initiatives. He recognizes the critical factors on which sensible policies could be based, for example that crime guns flow through the bottleneck of a highly regulated legal market and that a small number of gun dealers supply a high proportion of crime guns. But rather than making policy prescriptions, he dismisses the possibility of successful supply-side policies, claiming summarily that the incentives for illegal dealing in guns are large and the risk of punishment low. In the end, Jacobs seems to acquiesce fairly uncritically in the gun lobby's persistent supposition that criminals will manage to obtain guns anyway.

This position ignores basic economic reasoning. In general, making the expected costs of behavior even slightly greater (in this case by raising the risk of being caught and making the resulting punishment more severe) will change the behavior of those actors at the margin, and marginal effects can be significant. Thus, in order to be effective, supply-side policies need not wholly remove the incentives for dealing in guns. Moreover, as noted, the incentives for straw purchasers – who are a crucial link in the black market gun trade – are relatively low, and both licensed gun dealers and straw purchasers have a great deal to lose. Wise policies can alter the equation by increasing the risk of punishment and its severity.

It might be suggested that a crackdown on straw purchases would not reduce the guns available to criminals because, criminals would simply turn to stolen guns or hand-me-downs. Again, however, this kind of suggestion ignores economic reasoning. In the first place, criminals like other consumers prefer, and pay more for, new products and certain models. The Glock 9mm is admired for its similarity to police weapons. Such preferences are not mere fads; for example, some models will be more effective in intimidating other criminals. It is certainly true that some criminals, if prevented from buying new guns from straw purchasers, would be able to steal or borrow old guns. But over the very large numbers of potential criminals involved, making it more difficult to obtain new guns of the preferred model and, as a result, making all guns more difficult and expensive to obtain, will have the effect of preventing many crimes (and ensuring that others are committed without guns). As a rule, if you make a type of transaction or activity more difficult, people will engage in it less often.

The scandalous “gun-show loophole” provides another example of the same kind of point. The weakest link in the regulation of the supply of guns is that, as a result of efforts by the gun lobby, sales of guns by non-dealers are not subject to the ordinary regulatory scheme. Most importantly, this includes sales at gun shows, events that take place thousands of times each in arenas or fairgrounds around the United States. Gun shows are an easy way for black marketeers and straw purchasers to resell guns to potential criminals. Jacobs recognizes the problem, but suggests that regulating gun shows without regulating other sales by non-dealers would be largely ineffective: “private sellers could use the gun shows to display their guns . . . and complete the sales later in the privacy of their homes, cars, or even on street corners” (p. 131). Consider, for purposes of comparison, whether as many book sales would occur if book-sellers had to complete each transaction in their homes or cars.

Operation TARGET, based in Pittsburgh, is unique among the gun-violence initiatives in its emphasis on the supply-side of the gun violence problem. (TARGET was developed and led by one of the authors of this article.) The core of the initiative was vigorous enforcement of the laws against straw purchasing and against the selling of guns to and by straw purchasers, combined with a public-awareness campaign (featuring defense lawyer Johnnie Cochran of O.J. Simpson fame) to publicize the risks to potential offenders. The initiative used a variety of means to identify and deter straw purchasers. Law enforcement officials obtained the cooperation of licensed dealers in reporting straw purchasers and disclosing records of gun sales. From the other direction, defendants in drug cases were required as a condition of obtaining a plea bargain to supply information on the source of their guns.

It is clearly a myth that the supply side of the gun violence problem is hopeless, and that attempts to keep guns out of the hands of criminals can result only in disarming the law-abiding public. The guns used in crime largely come from easily identifiable and regulable sources. Focusing attention and regulation on these sources will inevitably make it much more difficult for criminals to obtain guns. The myth, which is accepted by both partisans such as Malcolm, and by serious students of regulation such as Jacobs, tends to impede serious supply-side efforts. For example, the NRA has lobbied strongly and successfully to minimize the Bureau of Alcohol, Tobacco, and Firearms’ oversight powers with respect to gun dealers. If there is no way of preventing criminals from obtaining guns and if criminals obtain their guns in burglaries, it can be reasonably argued that oversight of dealers impedes the work of legal businesses – with the inevitable side effect of making it more expensive and inconvenient for law-abiding citizens to obtain guns and without keeping guns out of the hands of criminals. Once it is recognized that sales by licensed dealers are the bottleneck through which most guns used in crime must flow, increased oversight of dealers looks like a sensible measure for keeping criminals from obtaining guns, while stopping far short of banning guns or severely restricting their ownership by law-abiding citizens.

The United States’ high homicide rate is probably not the result of its permissive gun laws or of the large number of guns in the country. And England’s low crime rate through most of its history and its low homicide rate today likely have little to do with gun policies and gun holdings. There is a lot of evidence that such things as a country’s homicide rate are the product of much broader cultural factors. Similarly, ordinary people don’t commit violent crimes

because they own guns. One could sum up points like these by saying that guns don't cause crime. But in the sense in which that slogan is true, it is largely irrelevant to wise policies for reducing criminal violence. The more relevant point is that a relatively few extremely violent people will predictably use guns to commit mayhem. A central question is how to prevent such people from obtaining or using guns. The commonly heard and seemingly commonsense idea that laws can't prevent criminals from obtaining guns falls apart on examination. In the United Kingdom, where the supply of guns is far more restricted and there is far less cultural opposition to regulation of guns, it should be that much easier to prevent violent career criminals from using guns. That would be a far more sensible goal for gun regulation than trying to prevent rare rampage killings or to eliminate all privately owned guns.