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# Rethinking Gun Violence

Mark Greenberg\* and Harry Litman\*\*

*This working paper develops the argument of "Gun Violence and Gun Control" (also posted on SSRN), a short piece commissioned by the London Review of Books. We decided not to publish either paper, in part because we felt there were empirical issues that we were not in a position to assess. We welcome comments on either paper.*

The gun policy debate in the United States is in sorry shape. To exaggerate only slightly, the debate proceeds as if there were only two possible positions: for guns or against them. Both sides wave the banner of crime prevention. Fundamentally, however, their fight is not a considered argument over how best to reduce crime, but a clash between those who hate guns and those who love them. Guns for the anti-gun camp represent lawlessness, gangs, drug wars, vigilantes, and survivalist, federal government-hating fanatics. For the pro-gun side, guns are 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 the efficacy and costs of possible gun-violence reduction measures, much of the debate in the United States takes the form of a partisan shouting match over whether we should have more guns or fewer guns. The focus on such a crude question would seem absurd in most other areas. Imagine a policy debate about the problem of automobile-related injuries that restricted discussion to the issue of more cars or fewer cars.

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The poor state of the gun debate is particularly unfortunate because there is reason to think that sensible gun policies can make a significant difference to violent crime. As a preliminary matter, recent developments demonstrate that the amount of violent crime is not immutable. Violent crime in the United States has fallen dramatically over the last ten years. From 1992-2002, violent crime decreased almost every year, with an aggregate drop of about 35%.<sup>1</sup> The decreases occurred in nearly every type of violent crime and throughout the country.<sup>2</sup> More to the point, in a number of communities, policymakers, sometimes in tandem with nonpartisan scholars, have created a variety of innovative programs to reduce gun violence, several of which have achieved impressive results. Unfortunately, critical analysis of such initiatives has been drowned out by impassioned and often silly exchanges about whether guns promote or reduce violence.

In this Article, we propose a new way of approaching the problem of gun violence, synthesizing features of a number of successful initiatives. We begin, in Part I of this Article, by examining the gun debate. We argue that it is focused on the wrong question. Once attention is focused on the right question, it becomes clear how to develop a gun violence reduction strategy that is not subject to the standard objections to gun control.

As an illustration of the wrong turn the debate has taken, we take as a case study Joyce Malcolm's recent *Guns and Violence*.<sup>3</sup> The book 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. Malcolm is a respected academic historian, and her work, both in this book and in

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<sup>1</sup> In 1992, the rate of violent crime (per 100,000) was 757.7. In 2002, it was 494.6. FEDERAL BUREAU OF INVESTIGATION, CRIME IN THE UNITED STATES, Table 1, Index of Crime, United States, 1983-2002 (2002).

<sup>2</sup> *See id.*

<sup>3</sup> JOYCE LEE MALCOLM, GUNS AND VIOLENCE: THE ENGLISH EXPERIENCE (2002).

the past, has helped give wide currency to the view that increasing the number of guns in private hands is an effective way of reducing violent crime. The present book adds an interesting twist, arguing that a historical study of England lends support to the view. Although the book has been widely praised by those on the same side of the debate, it has glaring defects in reasoning and scholarship. Malcolm fails even to notice that there is an option other than more guns or fewer guns. In this respect, the book is emblematic of the tendency of the current debate.

In Part II of the Article, we turn from the state of current scholarship to proffer a broad strategy for reducing gun violence. The essence of the strategy is to focus on keeping guns out of the wrong hands, rather than on reducing or increasing the number of guns generally. Although most writers (to the extent they consider the matter at all) assume otherwise, there is strong reason to conclude keeping guns out of the wrong hands – and doing so without reducing the number of guns in circulation – is a tractable problem, which is not to say that it is an easy or completely soluble one.

The strategy has two parts, a demand side and a supply side. On the demand side, the strategy begins from the fact that a disproportionate amount of violent crime is committed by a very small number of identifiable persons. Moreover, although it is not generally appreciated, the criminal justice system has tremendous leverage over these recidivist offenders, for example, because most of them are subject to parole supervision. Without the need for further convictions, great pressure can be brought on the targeted offenders not to carry or use firearms or to engage in violence. Moreover, certain tactics – such as federal prosecution of felons in possession – that are often claimed to be unfeasible because of the resources required are quite workable when the number of targets is very small. In general, tactics that would be impractical in wholesale can be highly effective in retail.

On the supply side, the crucial starting point is that the black market that supplies criminals with guns depends substantially on the legitimate market, and in particular on purchases of guns from licensed firearms dealers (as opposed to, for example, haphazard thefts). Importantly, black-market sellers of guns employ “straw purchasers” to buy guns from dealers. And sales at gun shows, which are a serious gap in the current regulatory scheme, are the source of large numbers of guns that are used, often in short order, to commit crimes.

Powerful tools are available for cutting off the flow of guns from licensed dealers into the black market. For dealers and for straw purchasers, the potential disincentives can be made very high in comparison with the potential gains. Indeed, merely publicizing the penalties for straw purchasers can be effective. The widely held view that there are simply too many guns already in circulation for supply-side policies to work<sup>4</sup> is unjustifiably dismissive of suppositions about human behavior that are fundamental to the law, as well as of the admittedly tentative empirical evidence of recent gun-violence reduction initiatives.<sup>5</sup>

## I

In this Part, we examine the state of the gun debate, using as a springboard Malcolm’s *Guns and Violence*. It is motivated by an intriguing idea – that a study of how the invention and spread of firearms affected crime over the centuries will shed light on the contemporary effects

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<sup>4</sup> See, e.g., Gary Kleck, *BATF Gun Trace Data and the Role of Organized Gun Trafficking in Supplying Guns to Criminals*, 18 ST. LOUIS U. PUB. L. REV. 23, 42-43 (1999) (arguing that supply-side gun control efforts are likely to fail because, as “gun criminals have consistently indicated, [...] multiple sources of guns were typically available to any one offender, [...] The sources of guns are numerous, diverse, and diffuse, a state of affairs that should not be surprising in a nation with over 240 million guns circulating in private hands, at least 750,000 of which are stolen each year.”).

<sup>5</sup> See *infra* notes 108-116 and accompanying text.

of guns on crime.<sup>6</sup> To this end, Malcolm surveys the history of guns and crime in England and the United Kingdom from the Middle Ages to the present.

The UK offers a fascinating contrast with the United States. It is often held up as a model for the effectiveness of gun control because it is assumed that its highly restrictive gun control policies are responsible for its low levels of violence.<sup>7</sup> Yet, in stark contrast to the situation in the United States, rates of violent and armed crime have been steadily increasing in the UK in recent years (though armed crime, and in particular firearm homicide, is still far more common in the U.S.).<sup>8</sup> Robbery, for example, has increased more than six-fold in England and Wales since 1980, with particularly rapid increases since 1991.<sup>9</sup>

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<sup>6</sup> MALCOLM, *supra* note 3, at 1-13.

<sup>7</sup> See, e.g., Don B. Kates, *Would Banning Firearms Reduce Murder and Suicide?: A Review of International Evidence* (June 9, 2003), at 10-11 (unpublished manuscript, available at <http://www.mail-archive.com/firearmsregprof@listserv.ucla.edu/msg00064.html>); David B. Kopel, *Peril or Protection? The Risks and Benefits of Handgun Prohibition*, 12 ST. LOUIS U. PUB. L. REV. 285, 292 (1993) (“[i]n Britain . . . , that the police are mostly disarmed is one of the important reasons why criminal and non-criminal civilians mostly avoid handguns.”).

<sup>8</sup> See U.S. DEP’T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, CRIME AND JUSTICE IN THE UNITED STATES AND ENGLAND AND WALES, 1981-96 iii, 3 (1998) (report by Patrick A. Langan & David P. Farrington) (finding that robbery rose 81% in England between 1981 and 1996, while assault rose by 53%, burglary doubled, and motor vehicle theft rose 50%. In contrast, robbery fell 28% in the U.S., assault fell by 27%, burglary was cut in half, and motor vehicle theft stayed virtually unchanged. At the same time, according to 1996 police statistics, “firearms were used in 68% of U.S. murders but 7% of English murders, and 41% of U.S. robberies but 5% of English robberies”). See also JAMES B. JACOBS, CAN GUN CONTROL WORK? 8-13 (2002) (“There can be no denying that the United States has a serious *violent* crime problem. [...] In 1998, there were approximately 9,100 firearm homicides (and 14,088 total homicides) in the United States, while there were less [sic] than 50 firearm homicides (750) total in Britain, which has 1/5 as great a population.”).

<sup>9</sup> According to the Annual Abstract of Statistics for the United Kingdom, the police recorded 15,000 robberies in England and Wales in 1980, when the population was about 49.2 million. ANNUAL ABSTRACT OF STATISTICS at 7, 101 (1982). This gives a rate of about 30.5 robberies per 100,000. In 1990, there were 36,200 recorded robberies and a population of about 50.7 million, for a rate of 71.4 per 100,000. ANNUAL ABSTRACT OF STATISTICS at 6, 75 (1992). In 2002, there were 121,400 recorded robberies, and a population of 52.5 million, for a rate of 231.2 per 100,000. ANNUAL ABSTRACT OF STATISTICS at 26, 160 (2004).

Just as John Lott has attempted to examine the effects of guns on crime by using comparisons across jurisdictions,<sup>10</sup> Malcolm uses comparisons across time. She argues that violent crime and guns are negatively correlated over the last seven hundred years or so. 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 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 widespread possession of guns likely prevents it. Thus, she urges that the UK has made a disastrous mistake in imposing strict gun-control laws.

Since we will use Malcolm's book as an illustration of the state of the gun debate, it is important at the start to make clear that Malcolm is by no means a marginal figure in the debate. Malcolm is an academic historian, not a paid gun lobbyist.<sup>11</sup> She is a Professor of History at Bentley College and a Senior Adviser to the MIT Security Studies Program, and is currently a visitor at Princeton University's James Madison Program in American Ideals and Institutions.

Her work has received substantial attention in the gun debate.<sup>12</sup> Her previous book, *To Keep and Bear Arms*,<sup>13</sup> which attempts to trace a full-bodied right to bear arms from English

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<sup>10</sup> JOHN R. LOTT, JR., *MORE GUNS LESS CRIME: UNDERSTANDING CRIME AND GUN-CONTROL LAWS* (1998). See also JOHN R. LOTT, JR., *THE BIAS AGAINST GUN CONTROL: WHY ALMOST EVERYTHING YOU'VE HEARD ABOUT GUN CONTROL IS WRONG* (2003), particularly at ch. 4.

<sup>11</sup> Malcolm's many publications include, in addition to *Guns and Violence*, *THE STRUGGLE FOR SOVEREIGNTY: SEVENTEEN-CENTURY ENGLISH POLITICAL TRACTS* (1999); *TO KEEP AND BEAR ARMS: THE ORIGINS OF AN ANGLO-AMERICAN RIGHT* (1994); *The Novelty of James Madison's Constitutionalism*, in *JAMES MADISON AND THE FUTURE OF LIMITED GOVERNMENT* 43-57 (John Samples ed., 2003); *Lessons of History: Firearms Regulation and the Reduction of Crime*, 8 *TEX. REV. L. & POL.* 176 (2004); and *Doing No Wrong: Law, Liberty and the Constraint of Kings*, 38 *J. BRIT. STUD.* 161 (1999).

<sup>12</sup> See, e.g., Kates, *supra* note 8, at 3 (praising *Guns and Violence* as "the definitive study on English gun control").

<sup>13</sup> JOYCE LEE MALCOLM, *TO KEEP AND BEAR ARMS*, *supra* note 11.

legal history into the Second Amendment has been cited approvingly by Supreme Court Justices Antonin Scalia and Clarence Thomas.<sup>14</sup> Malcolm has testified on the history of the Second Amendment before House and Senate subcommittees<sup>15</sup> and has been cited by other witnesses before Congress.<sup>16</sup> She has appeared on national news shows to discuss, among other things, gun control policies.<sup>17</sup> Malcolm's policy prescriptions are representative of a range of recent proposals based on the idea that arming citizens is the best way to combat gun violence.<sup>18</sup>

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<sup>14</sup> ANTONIN SCALIA, A MATTER OF INTERPRETATION 136-137 n.13 (1997) (referring to Malcolm's TO KEEP AND BEAR ARMS as "dispassionate scholarship" and an "excellent study"); *Printz v. United States*, 521 U.S. 898, 938 n.2 (1997) (Thomas, J., dissenting).

<sup>15</sup> See *The Second Amendment and the Individual's Right to be Armed: Hearing Before the Subcomm. on the Constitution, Federalism, and Property Rights of the Senate Comm. on the Judiciary*, 105th Cong. Y4.J89/2:S.HRG.105-890 (1998) (statement of Joyce Lee Malcolm); *The Origin and Intent of the Second Amendment: Hearing Before the Subcomm. on Crime of the House Comm. on the Judiciary*, 104th Cong. Y4.J89/1:104/43/PT.2 (1995) (statement of Joyce Lee Malcolm)

<sup>16</sup> See, e.g., *The Second Amendment: Hearing Before the Subcomm. On the Constitution of the Senate Comm. on the Judiciary*, 105<sup>th</sup> Cong. Y4.J89/2:S.HRG.105-890 (1998) (statement of Eugene Volokh) (citing JOYCE LEE MALCOLM, TO KEEP AND BEAR ARMS: THE ORIGINS OF AN ANGLO-AMERICAN RIGHT 122-34 (1994), available at <http://www.law.ucla.edu/~volokh/beararms/testimon.htm>); *The Right of the People to Keep and Bear Arms: Hearing Before the Subcomm. on the Constitution, Federalism, and Property Rights of the Senate Comm. on the Judiciary*, 105th Cong. Y4.J89/2:S.HRG.105-890 (1998) (statement of Charlton Heston, President, National Rifle Association of America); *Review of Gun Laws: Hearing Before the Subcomm. on Crime of the House Comm. on the Judiciary*, 104th Cong. Y4.J89/1:104/43/PT.2 (1995) (statement of Daniel D. Polsby, Kirkland & Ellis Professor of Law, Northwestern University); *The Second Amendment and the Need for Congressional Protection: Hearing Before the Subcomm. on Crime of the House Comm. on the Judiciary*, 104th Cong. Y4.J89/1:104/43/PT.2 (1995) (testimony of Robert J. Cottrol). Pro-gun constituents profitably cite Malcolm's research in correspondence with Congressional representatives, as do opinion leaders when encouraging individuals to contact Congress. See, e.g., Letter from Kalsipell, MT to Rep. Dennis Rehberg (R-MT) (quoting Malcolm in arguing against gun control, noting that while "violent crime in America has been plummeting for 10 consecutive years, British violence has been rising. Since Blair's 1997 total ban on armed self-defense, things have gone from bad to worse."); see also Paul Craig Roberts, Editorial, *How the British Maximize Crime*, TOWNHALL.COM. (August 1, 2002), available at <http://www.townhall.com/columnists/paulcraigroberts/pcr20020801.shtml> (last visited March 12, 2004).

<sup>17</sup> See, e.g., *NewsHour with Jim Lehrer* (PBS television broadcast, May 8, 2002) (transcript available at [http://www.pbs.org/newshour/bb/law/jan-june02/arms\\_5-08.html](http://www.pbs.org/newshour/bb/law/jan-june02/arms_5-08.html)) (last visited June 14, 2004); *Talk of the Nation: "To Keep and Bear Arms: The Origins of an Anglo-American Right"* by Joyce Lee Malcolm, published by Harvard University Press (NPR radio broadcast, Feb. 19, 1996).

<sup>18</sup> See, e.g., LOTT, JR. MORE GUNS, LESS CRIME, *supra* note 10; John R. Lott, Jr. & David B. Mustard, *Crime, Deterrence, and Right-to-Carry Concealed Handguns*, 26 J. LEGAL STUD. 1 (1997); Carlisle E. Moody, *Testing for the Effects of Concealed Weapons Laws: Specification Errors and Robustness*, 44 J. LAW & ECON. 799, 807-12 (2001); Florenz Plassman & John Whitley, *Confirming "More Guns, Less Crime,"* 55 STAN L. REV. 1313 (2003).



It is clear from the start that Malcolm has not succeeded in maintaining the posture of a neutral scholar assessing the historical record, but has been caught up 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."<sup>19</sup> Aside from the evident inaccuracy of the suggestion – the U.K. has not removed prisons, locks, or alarms – the quotation is a blatantly slanted characterization of the intentions of the U.K. government, particularly unfortunate in an introductory summary.

The book's project suffers from two fundamental methodological problems. First, Malcolm thinks that the important issue is whether, as she puts it in a chapter title, "more guns more crime or more guns less crime."<sup>20</sup> According to conventional wisdom, Malcolm tells us, the number of guns in private hands is equated with "the frequency of armed crimes,"<sup>21</sup> and removing guns from private hands "seems the easiest means of reducing violence."<sup>22</sup> In sharp contrast, according to the position Malcolm advocates, "having more guns in private hands will decrease crime."<sup>23</sup> 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."<sup>24</sup> It never occurs to Malcolm to ask more fine-grained questions – questions of a sort we will discuss later in this

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<sup>19</sup> MALCOLM, *supra* note 3, at 9.

<sup>20</sup> *Id.* at 217.

<sup>21</sup> *Id.* at 1.

<sup>22</sup> *Id.* at 2.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

article – about how various kinds of gun-related programs or regulations might affect violent crime.

Malcolm is by no means unusual in this respect. In fact, it is typical of the poverty of the gun debate that advocates on both sides tend to ask simply whether we should have more guns or fewer guns, thus leaving room for only two positions – for or against. Recently, for example, John Lott, has prominently and controversially argued that private gun ownership reduces crime.<sup>25</sup> And on the other side, Malcolm and Lott’s target is the widely held view that the United States has a great deal of violence because it has a high rate of gun ownership and could therefore effectively reduce violence by severely restricting private gun ownership. Malcolm is distinctive in enlisting history, but history proves of no help in escaping from the straitjacket of the “more guns, fewer guns” approach to policy.

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:

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<sup>25</sup> See generally LOTT, MORE GUNS, LESS CRIME, *supra* note 10. Malcolm discusses Lott approvingly. See, e.g., MALCOLM, *supra* note 5, at 226, 246-249. She calls his work “thorough, broadly based, careful, reasoned and scholarly.” *Id.* at 248. In fact, however, the validity of Lott’s work has been called into serious question. See, e.g., Ian Ayres and John J. Donohue, *Shooting Down the ‘More Guns, Less Crime’ Hypothesis*, 55 STAN. L. REV. 1193 (2003); John J. Donohue, *The Latest Misfires in Support of the ‘More Guns, Less Crime’ Hypothesis*, 55 STAN. L. REV. 1371 (2003); Franklin Zimring & Gordon Hawkins, *Concealed-Handgun Permits: The Case of the Counterfeit Deterrent*, THE RESPONSIVE COMMUNITY, Spring 1997, at 52, 54. See also Albert W. Alschuler, *Two Guns, Four Guns, Six Guns, More: Does Arming the Public Reduce Crime?*, 31 VAL. U. L. REV. 369 (1997); John J. Donohue, *The Impact of Concealed-Carry Laws*, in *Evaluating Gun Policy* 287 (Jens Ludwig & Philip Cook, eds., 2003); Dan Black & Daniel Nagin, *Do ‘Right-to-Carry’ Laws Deter Violent Crime?*, J. LEGAL STUD. 27, Jan. 1998.

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.<sup>26</sup>

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

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<sup>26</sup> MALCOLM, *supra* note 3, at 14.

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.<sup>27</sup>

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” for comparison with later periods in

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<sup>27</sup> Again, Malcolm – and the members of the pro-gun camp in general — are by no means alone in their sloppiness and partisanship. The academic historian Michael Bellesiles recently resigned from Emory University in disgrace after exposure of disastrous mistakes of scholarship in his prize-winning book, *ARMING AMERICA: THE ORIGINS OF A NATIONAL GUN CULTURE* (2000). See James Lindgren, *Fall From Grace: Arming America and the Bellesiles Scandal*, 111 *YALE L.J.* 2196 (2002). Joyce Malcolm was one of the historians who exposed Bellesiles. See Joyce Lee Malcolm, *Concealed Weapons*, *REASON* 47, Jan. 2001; Joyce Lee Malcolm, *Arming America*, 79 *TEX. L. REV.* 1657 (2001). Lott has also recently faced serious accusations of fabricating data. See Timothy Noah, *The Bellesiles of the Right*, *SLATE* (Feb. 3, 2003), at <http://slate.msn.com/id/2078084/>. Lindgren has discussed the issues online. See James Lindgren, *Personal Note*, at <http://www.cse.unsw.edu.au/~lambert/guns/lindgren.html> (Jan. 17, 2003).

which guns became common.<sup>28</sup> 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.<sup>29</sup> 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.<sup>30</sup> 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.<sup>31</sup>

Throughout the book, 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.<sup>32</sup> For example, Malcolm thinks it counterintuitive that

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<sup>28</sup> MALCOLM, *supra* note 3, at 9.

<sup>29</sup> *See id.* at 92, 103-05, 111-15.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 115. Malcolm's index entry for "Police, English" contains a subheading "impact on crime," which contains only two page references, to pages 115 and 116. Page 115 relevantly contains only the sentence quoted in the text. On page 116, Malcolm points out that recorded crime continued to decline through the second half of the 19<sup>th</sup> century. She suggests that this is surprising on the ground that the "greater sensitivity of the public and the close scrutiny of the police" would have increased the reporting of crime. She offers a quote from Gatrell that makes this point. In the last sentence of the quotation, Gatrell attributes the declining crime rates to "the policeman-state." *Id.* at 117. Malcolm ignores this aspect of the quotation, however. Her main point in this discussion is that English governments had an aim of "bring[ing] firearms under greater control" that was unjustified by the crime rates and that they "were not above resorting to subterfuge to accomplish." *Id.* at 117-30.

<sup>32</sup> In reading the book, one learns about vast differences between historical periods and the current day that, although this is not Malcolm's intention, 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). MALCOLM, *supra* note 3, at 107-15.

although guns were first introduced into England in the 16<sup>th</sup> and 17<sup>th</sup> centuries, crime was down from the Middle Ages.<sup>33</sup> But is it really counterintuitive that crime would decline in an era that saw a vast expansion of government and law, despite a legal right to possess firearms and the possession by private citizens of some unquantified but, by contemporary standards, relatively small number of rather primitive guns?<sup>34</sup>

Malcolm is making same mistake as her opponents. They infer from the United States's high level of gun ownership and high level of violence that the guns are the cause of the violence.<sup>35</sup> Malcolm infers from the claimed inverse correlation of guns and violence over the course of English history that guns don't cause violence.

We have argued thus far that in addressing the question of whether more guns lead to more crime or less crime, Malcolm fails adequately to consider the impact on crime of factors other than gun ownership. Quite aside from this problem, however, Malcolm fails to establish even the inverse correlation between guns and crime that is the heart of her argument. Despite her rhetoric, the evidence she adduces suggests that guns never became particularly widespread before the late twentieth century. Moreover, as we explain 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 guns were widespread for centuries before about 1920: that guns were "commonplace" in the 16<sup>th</sup> and 17<sup>th</sup> centuries;<sup>36</sup>; that the right

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<sup>33</sup> *Id.* at 34-63.

<sup>34</sup> We discuss below the numbers of guns in the U.K., *see infra* text accompanying notes 13-14.

<sup>35</sup> *See infra* notes 84-86.

<sup>36</sup> *Id.* at 35, 61.

to guns became well established;<sup>37</sup> that guns proliferated;<sup>38</sup> that firearms were “plentifully available,”<sup>39</sup> that there was “easy availability of firearms before 1920.”<sup>40</sup> 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, 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.<sup>41</sup> Even as late as 1964, the endpoint of the study, the total was a stunningly low 300,000.<sup>42</sup> By way of comparison, in 1968, the United States was

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<sup>37</sup> See generally *id.*, at chapter 3.

<sup>38</sup> *Id.* at 90.

<sup>39</sup> *Id.* at 130.

<sup>40</sup> *Id.* at 162.

<sup>41</sup> *Id.* at 259.

<sup>42</sup> These numbers come from a chart entitled “Number of guns in the United Kingdom, 1871-1964,” *Id.* at 259, Fig. A.3. We assume in the text that the chart is what it is advertised to be – an estimate of the total number of (privately owned) guns in the United Kingdom. Malcolm’s brief discussion of the study behind the chart leaves some doubt on this question, however. She begins by noting that “License fees obtained by the government provide a minimum estimate of private gun ownership during [the period 1870-1967].” “[A]n English economist and statistician,” Henry Neuberger, created “a sophisticated econometric model . . . based upon the number of gun owners per 100,000 people in the general population.” *Id.* at 257. Malcolm tells us that “Professor Gary Mauser, . . . an economist and expert on firearms statistics kindly undertook an analysis of Neuberger’s work for this book.” *Id.* This discussion leaves unclear whether Neuberger or Mauser used the number of gun licenses to estimate the total number of guns, or whether the chart is mislabeled and simply gives the total number of gun licenses. (Since Malcolm claims that guns were freely available in England before 1920, perhaps we can assume that the number of gun licenses at least approximates the total number of guns up until 1920. Malcolm suggests that in the twentieth century, however, there were far more illegally held than legal guns. *Id.* at 206-09.)

Malcolm’s discussion of three charts, including the one that purports to give the “Number of guns in the United Kingdom,” is also opaque. Malcolm tells us that the model Neuberger created is “statistically significant”. She then says that the three charts demonstrate that “private gun ownership rose and fell with other consumer goods as well as with the number of hunters and military personnel.” *Id.* at 258. The charts do nothing of the sort, for they do not include any data on other consumer goods or military personnel. They simply show gun licenses, gaming licenses, and total guns over time. (The charts do show a sharp increase in gun licenses at the start of each world war, from which one might infer that gun ownership rose with the number of military personnel.) Perhaps what Malcolm means to say is that Neuberger’s study shows that gun ownership was correlated with the three variables, for she otherwise does not explicitly say what the statistically significant results are. Malcolm concludes the discussion with another opaque sentence: “Given the numbers of gun licenses, there is no correspondence between the numbers of private firearms owners and the increase in rates of violent crime.” *Id.*

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 250 and 275 million.<sup>43</sup>

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*,”<sup>44</sup> 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.<sup>45</sup> Yet she “sum[s] up”: “Many Englishmen were armed or able to get arms when necessary.”<sup>46</sup> The denouement of Malcolm’s story is supposed to be that although crime continued to decline as

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<sup>43</sup> See JACOBS, *supra* note 8, at 38-43. Jacobs’s estimates are based on the U.S. Census Manufactures and the Bureau of Alcohol, Tobacco, and Firearms statistics on imports and exports. (Other estimates, based on household surveys, produce somewhat lower figures.) According to these estimates, in 1993 American households owned approximately 228,660,966 firearms. This figure steadily grew to 258,804,085 by 1999, a rate of growth of about 4.5 million per year. *Id.* at 39, fig. 3.1. See also LOTT, *supra* note 10, at 1; DAVID B. KOPEL, GUNS: WHO SHOULD HAVE THEM? 300-01 (1995).

<sup>44</sup> MALCOLM, *supra* note 3, at 130 (emphasis added).

<sup>45</sup> For example, Malcolm reports that, according to the (London) Metropolitan Police, “only 122 guns and 162 pistols had been purchased by poorer Londoners from local gunsmiths in the first half of [1848].” *Id.* at 100. Malcolm makes this point in the course of developing her theme that English governments tenaciously, dishonestly, and unjustifiably pursued a goal of taking away the right to arms. She does not note that these statistics tend to conflict with her claim that guns were widespread. See also *Id.* at 94, 99-102, 104-105, 113.

<sup>46</sup> *Id.* at 106.



long as guns were widely available, when the government in the twentieth century greatly restricted the ownership of guns, crime began to increase. She urges that the restrictions and the increase in crime are cause and effect.<sup>47</sup> 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.

Malcolm's discussion begins with a brief and unsystematic presentation of crime statistics designed to show that violent crime increased spectacularly in England and Wales over the twentieth century, particularly the second half, to the point where "England is no longer a peaceable kingdom."<sup>48</sup> She emphasizes that England and Wales now have higher rates of robbery, assault, and burglary than the United States,<sup>49</sup> and that armed crime has been rising.<sup>50</sup> The rise in violent crime has indeed been dramatic. It is important to keep in mind, however, that the rates for homicide and armed crime are still much higher in the United States, as Malcolm acknowledges. In 1998, for example, there were nearly four times as many homicides

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<sup>47</sup> See, e.g., *Id.* at 253 ("In England fewer guns have meant more crime. In America more guns have meant less crime.").

<sup>48</sup> See *id.* at 164-68. An example of the unhelpful and unsystematic nature of Malcolm's presentation is that she gives rates of crimes of violence in percentage terms using 1901-1905 as a baseline. Thus, for example, she tells us that by 1961 the murder rate "was still up 94 percent from the beginning of the century and by 1963 up 98 percent. *Id.* at 167. The total number of violent crimes in England at the beginning of the century was very low, however, so the percentage figures are misleading. Moreover, Malcolm's figures are not accepted by all sources. According to one authority, the murder rate remained highly stable between 1900 and 1972 (the last year covered), and was in fact lower in both absolute and per capita terms in 1961 and 1963 than in 1901. DANE ARCHER AND ROSEMARY GARTNER, *VIOLENCE AND CRIME IN CROSS-NATIONAL PERSPECTIVE* 164-68 (1984). Another example of the problems with Malcolm's discussion of crime statistics is that she is apparently confused about the nature of robbery. See MALCOLM, *supra* note 3, at 165 ("Robberies in England and Wales were . . . far more likely to take place while residents were at home.")

<sup>49</sup> *Id.* at 164-65.

<sup>50</sup> *Id.* at 166, 168.

per capita in the United States as in Britain, and only 50 – fewer than one in 15 – of Britain’s homicides were committed with guns, as opposed to nearly two-thirds in the U.S.<sup>51</sup>

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.”<sup>52</sup> She paints a desperate picture in which society has left citizens “at the mercy of criminals.”<sup>53</sup> To the extent that Malcolm is correct that the increase in violent crime was caused by the second and third of the three policies, the second half of the twentieth century does not support her main claim that reducing the number of guns increases crime. But let us 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. Malcolm asserts that there has been a revolution in the law of self-defense, which has eviscerated the right of a law-abiding citizen to defend himself when attacked. Much of Malcolm’s discussion is based on informal accounts – for example, in a gun magazine and in U.S. newspapers -- of apparently outrageous incidents in which ordinary citizens were prosecuted for defending themselves against hoodlums.<sup>54</sup> Malcolm badly misrepresents the legal

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<sup>51</sup> See JACOBS, *supra* note 8, at 8; *see also supra* note 8.

<sup>52</sup> *Id.* at 170-96.

<sup>53</sup> *Id.* at 196.

<sup>54</sup> Her references for these accounts of British cases include the *New York Law Journal*, a popular daily legal newspaper, the *Arizona Republic*, a daily newspaper, and bizarrely, the *Guns Review*, a gun-aficionado magazine. See Malcolm, *supra* note 3, at 306-307 nn. 43, 44 & 47. The piece she cites in the *Guns Review* is a one-and-a-half-page unsigned editorial, which shares its second page with an illustrated advertisement for an importer of Smith and Wesson firearms. See “Arms for Self Preservation and Defence: Part II, 35 *Guns Review* 750 (October 1995). (Malcolm cites the piece as “Cadmus, ‘Arms for Self Preservation and Defence: Part II,’” but “Cadmus” appears to be the name of the column, not the name of the author. In Greek mythology, Cadmus was the brother of Europa and

developments. For example, she relies on a quotation from a law review article<sup>55</sup> by Carol Harlow that, out of context, seems to suggest that the right of self-defense has been abolished; in fact, Harlow suggests no such thing. Given the prominence Malcolm accords to the supposed revolution in the law of self-defense, and as an illustration of the sorts of problems that are endemic in *Guns and Violence*, it is worth tracing Malcolm's misuse of authority here in a little detail.

Harlow's article concerns the issue of whether a provision of the Criminal Law Act 1967 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 law. The statute provides that a person may use such force as is reasonable in the prevention of crime, and that the provision replaces common law rules on the issue.<sup>56</sup> A puzzle arises because very often a person who acts in self-defense (or defense of another) is also acting to prevent a crime – the attack on herself.<sup>57</sup> The statute does not address its impact on the law of self-defense. Harlow argues that the best interpretation of the statute is

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founder of Thebes; he slew a serpent or dragon sacred to Ares, God of War, and was eventually himself turned into a serpent.) The same editorial is also relied on in a very similar account of the law of self-defense in the UK. See Joseph E. Olson and David B. Kopel, *All the Way Down the Slippery Slope: Gun Prohibition in England and Some Lessons for Civil Liberties in America*, 22 *HAMLIN L. REV.* 399 (1999). Olson and Kopel write, citing only the editorial: "Today, as a result of Parliament's 1967 abrogation of the common law rules on justifiable use of deadly force, should a person use a firearm for protection against a violent home intruder, he will be arrested, and a case will be brought against him by the Crown Prosecution Service." *Id.* at 435. (On the substantive point, see discussion in the text immediately below.) The sole appellate decision that Malcolm discusses, Malcolm, *supra* note 3, at 306 n. 40, is reported only in a very brief note in a law journal. See P.R.K. Menon, *Offensive Weapon*, 1974 *CRIM. L. REV.* 430.

<sup>55</sup> Carol Harlow, *Self-Defence: Public Right or Private Privilege*, 1974 *CRIM. L. REV.* 528.

<sup>56</sup> *Id.* at 528. Harlow explains that the Criminal Law Act abolished the common law distinction between misdemeanors and felonies. At common law, there was some argument that the extent of the right to use force to prevent crime depended on whether the crime was a felony. Thus, it was thought necessary to codify the common law standard to make clear that the reasonableness standard still governed the right to prevent crime. *Id.* at 532.

<sup>57</sup> *Id.* at 530.

that it leaves the right of self-defense as common law.<sup>58</sup> She also suggests that common law rules of self-defense that are inconsistent with the statutory standard of reasonableness (for the use of force in preventing crime) are “likely to be discarded.”<sup>59</sup>

Malcolm uses Harlow to support the claim that statutory developments “have seriously disadvantaged individual citizens.”<sup>60</sup> But the passage Malcolm quotes from Harlow in fact points out that it is not plausible to interpret the 1967 Criminal Law Act as “swe[eping] aside the ancient privilege of self-defence.”<sup>61</sup> And in the immediately following sentences, Harlow bemoans the fact that Parliament failed to make fundamental changes to the common law.<sup>62</sup> Malcolm also quotes Harlow as saying that the current law on the use of force is inadequate and as hoping for a legislative solution.<sup>63</sup> But Harlow in no way suggests that the statute reduced the protection given by common law to the right of self-defense.<sup>64</sup> Harlow’s main complaint about the situation created by the 1967 Act is that the current reasonableness standard, like the

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<sup>58</sup> Harlow, *supra* note 52, at 532, 537.

<sup>59</sup> *Id.* at 537.

<sup>60</sup> MALCOLM, *supra* note 3, at 182.

<sup>61</sup> Malcolm writes, referring to Harlow, “One scholar found it ‘unthinkable’ that in drafting the Criminal Law Act of 1967 ‘Parliament should inadvertently have swept aside the ancient privilege of self-defense. Had such a move been debated, it is unlikely that members should have sanctioned it.’” *Id.* (quoting Harlow, *supra* note 52, at 537).

<sup>62</sup> “By treating [the relevant provision] as a mere tidying-up operation necessitated by the abolition of felonies and misdemeanors, making no fundamental changes to the common law, Parliament lost an opportunity of considering the right to use force as a whole. This was a misfortune, since the common law on the topic is deeply encased in its historical origins, and embodies principles which might, on reflection, seem [sic] inadequate and anachronistic today.” Harlow, *supra* note 52, at 537.

<sup>63</sup> *Id.* at 182.

<sup>64</sup> She in fact suggests that it would be a bad thing for “curious relics” of the common law to remain in force. Harlow, *supra* note 52, at 533.

common law, fails to distinguish situations that should be distinguished and thereby “leads to condonation of excessive force.”<sup>65</sup>

There has been no revolution in the law of self-defense, and in at least one important way – the elimination of the duty to retreat – it has become more protective.<sup>66</sup> Moreover, the law of self-defense is tangential to the question of the impact of private ownership of guns on crime.

Malcolm’s attempt to show that reducing the number of guns in private hands caused the increase in violent crime faces far more obstacles than she acknowledges. First, although Malcolm emphasizes that the right of Englishmen to bear arms has been curtailed in the twentieth century, the number of guns in private hands has in fact increased sharply in the twentieth century, especially in the last few decades when violent crime has increased most sharply. Malcolm gives some numbers 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 guns in 1964<sup>67</sup> (and the 250,000 total guns at the beginning of the century).<sup>68</sup> In a weird understatement, Malcolm tells us that “Eighty years of firearms controls have failed to eliminate or even substantially reduce that arsenal.”<sup>69</sup> Thus, the late

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<sup>65</sup> Harlow gives three examples of ways in which the law should distinguish situations that it now treats in the same way. Two of them she explicitly says lead to the condoning of excessive force. The third – the law’s failure to distinguish between use of premeditated preventive measures as opposed to spur of the moment force – seems to cut in the same direction. That is, Harlow’s point seems to be that the law should be changed to restrict the amount of force allowed in the case of premeditated preventive measures such as guard dogs and electric fencing. *Id.* at 538.

<sup>66</sup> Harlow’s discussion makes clear that, by eliminating the duty to retreat, the reasonableness standard makes the law of self-defense more protective, though her interest is in the theoretical question of whether this change was accomplished by statute or by development of the common law. *Id.* at 534-37.

<sup>67</sup> On this figure, *see supra* note 39.

<sup>68</sup> *See MALCOLM, supra* note 3, at 207-09.

<sup>69</sup> *Id.*, at 209.

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,<sup>70</sup> Malcolm would be better off retreating to the claim that greatly restricting the legal right to guns but failing to reduce the number of guns in private hands caused the increase in crime. This claim would support the conclusion, at most, that *ineffective* gun control laws cause crime. Malcolm endorses the familiar idea that gun control laws inevitably leave criminals with guns,<sup>71</sup> but, as we will show in part II, this is wrongheaded.<sup>72</sup> The point for now is that 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) doesn't settle the question of whether other measures might be effective. 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 the hands of criminals or potential criminals.

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<sup>70</sup> *Id.* at 207-09.

<sup>71</sup> See, e.g., DAVID B. KOPEL, *THE SAMURAI, THE MOUNTIE, AND THE COWBOY: SHOULD AMERICA ADOPT THE GUN CONTROLS OF OTHER DEMOCRACIES?* 415 (1992) (writing that gun control laws would not prevent criminals from obtaining guns and that the whole purpose of gun control laws was to disarm law-abiding citizens.); Frank Espohl, *The Right to Carry Concealed Weapons for Self-Defense*, 22 S. ILL. U. L. J. 151, 166 (1997) (quoting Maurice Turner, ex-Police Chief of Washington, D.C., "What has the gun-control law done to keep criminals from getting guns? Absolutely nothing." Espohl concludes, "The gun control law reduced the number of felons killed in the course of felonies by two-thirds and increased crime by disarming victims."); John R. Lott, Jr., *Blown Away: Gun Control Misfires in Europe, What's Behind the Massacres in Germany, France and Switzerland?*, WSJ.COM OPINION JOURNAL (May 4, 2002), available at <http://www.opinionjournal.com/extra/?id=105002026> ("The problem with such laws is that they take away guns from law-abiding citizens, while would-be criminals ignore them, leaving potential victims defenseless. The U.S. has shown that making guns more available is actually a better formula for law and order.") Clayton E. Cramer & David B. Kopel, "*Shall Issue*": *The New Wave of Concealed Handgun Permit Laws*, 62 TENN. L. REV. 679, 738 (1995) (noting that "the problem with the laws proposed by the various 'gun control' groups [...] is that the very persons who have no compunction about perpetrating violent crime will also have no compunction about illegally carrying guns."). See also JAMES D. WRIGHT & PETER H. ROSSI, *ARMED AND CONSIDERED DANGEROUS: A SURVEY OF FELONS AND THEIR FIREARMS* 41 (1986) (reporting that 82 percent of incarcerated felons agreed with the statement: "Gun laws affect only law-abiding citizens; criminals will always be able to get guns.").

<sup>72</sup> Moreover, the evidence Malcolm cites suggests that many or even most of the illegally held guns in the UK are owned by otherwise law-abiding citizens and that few guns are used in crime. MALCOLM, *supra* note 3, at 207-209. If that is correct, then on Malcolm's view that privately held guns deters crime, that large arsenal of illegally held guns ought to deter crime.

A second problem with Malcolm's argument is that she makes no attempt to establish specific connections between changes in the law and increases in crime. As Malcolm tells it, in 1920, after a long series of attempts to restrict guns,<sup>73</sup> 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.<sup>74</sup> 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.<sup>75</sup> Then the 1953 Prevention of Crime Act banned the carrying of offensive weapons without “reasonable excuse.”<sup>76</sup> These were the most important restrictions until, in 1997, handguns were entirely banned. Malcolm reports, though, that over the years there was much tinkering with the gun laws,<sup>77</sup> including, for example, a series of secret instructions from the Home Office to the police that cut back on the permissible reasons for owning a gun, and reduced the number of gun certificates issued for reasons other than defense.<sup>78</sup>

Malcolm details these developments, but does not correlate particular changes in the law with subsequent crime spikes. One approach that would be helpful in getting at the question of causation would be to compare the UK's crime rates with those of relevantly similar European countries without strict gun control. She does not undertake such a comparison, except to report that another scholar “found similar increases [in violent crime to those of England and Wales in

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<sup>73</sup> MALCOLM, *supra* note 3, at 117-120, 124-127, 128-130, 136-141.

<sup>74</sup> *Id.* at 144-49.

<sup>75</sup> *Id.* at 151-52.

<sup>76</sup> *Id.* at 173-74.

<sup>77</sup> *Id.* at 197-205.

<sup>78</sup> *Id.* at 171.

the twentieth century] up to the 1970s in Germany, France, Sweden, and the Netherlands.”<sup>79</sup> This detail alone substantially undercuts Malcolm’s claim that England’s gun policies caused the increase in crime. By Malcolm’s account, the most important of England’s gun policies began in 1920 and were in place by the early 1950s, making it difficult to blame them for increases in crime that did not begin until the 1970s. (And the 1997 ban on handguns is too late to be responsible.) Also, as noted, Malcolm herself discusses other government policies that she thinks contributed to the increase in crime. For all that Malcolm would like us to believe otherwise, the evidence that she offers is consistent with the propositions that the gun policies were responses to increases in crime and that without those policies, crime, and particularly armed crime, would have been worse.<sup>80</sup> (And 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.) Even today, the level of armed crime in the UK is extremely low by U.S. standards.<sup>81</sup> As noted,<sup>82</sup> nothing in Malcolm’s book suggests that at any point in England’s history, violent criminals have possessed guns in significant numbers. By Malcolm’s own account, it is not even true that gun control has left guns mostly in the hands of violent criminals; according to her evidence, illegally-owned guns in the UK are

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<sup>79</sup> *Id.* at 168.

<sup>80</sup> Malcolm is skeptical of the government’s claims that the gun policies were responses to crime. She suggests repeatedly that the government had covert agendas, for example, distracting attention from the ban on capital punishment. Malcolm’s claims about government motivations are based heavily on works by gun lobbyists Colin Greenwood, Richard Munday, and Jan Stevenson. *See, e.g., id.* at 198-99, nn. 95, 97-100, 103. Indeed, Malcolm’s discussion of the 20<sup>th</sup> Century changes in the UK’s gun control laws relies heavily on works by these three. *See* Malcolm’s notes to chapters 5 and 6, *Id.* at 294-316. Peter Squires describes Greenwood, Munday, and Stevenson as “representatives of the ‘shooting lobby’” PETER SQUIRES, GUN CULTURE OR GUN CONTROL: FIREARMS, VIOLENCE, AND SOCIETY 177 (2000). Greenwood was formerly editor of *Guns Review*, a gun aficionados’ magazine.

<sup>81</sup> *See* JACOBS, *supra* note 8, at 8; *see also* MALCOLM, *supra* note 3, at 196-97, 208.

<sup>82</sup> *See supra* text accompanying note 15-19.



mostly held by otherwise law-abiding citizens (and thus, on her view, should deter crime).<sup>83</sup> 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.

At most, Malcolm's historical study lends some support to the idea, which she does not articulate, that easy availability of guns to relatively wealthy citizens does not tend to increase crime. This idea 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 violence. (We will leave aside the separate problem of gun accidents, which we touch on below). It is said, for example, that the use of self-protective measures by robbery or assault victims increases the risk that criminals will become more aggressive and makes serious injury more likely.<sup>84</sup> And otherwise law-abiding citizens who own guns may use them in the heat of passion, with tragic consequences.<sup>85</sup> Similarly, keeping guns at

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<sup>83</sup> MALCOLM, *supra* note 3, at 206-09.

<sup>84</sup> See U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, NATIONAL CRIME VICTIMIZATION SURVEY: CRIMINAL VICTIMIZATION IN THE UNITED STATES, Table 74 (2002), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/cvus02.pdf>. See also F. Zimring, *The Medium is the Message: Firearm Caliber as a Determinant of Death from Assault*, J. L. STUD 1, 112-124 (1972); William Tucker, *Maybe You Should Carry A Handgun*, THE WEEKLY STANDARD, Dec. 16, 1996, at 30 (research director at the Center to Prevent Handgun Violence states, "it's common sense. The more guns people are carrying, the more likely it is that ordinary confrontations will escalate into violent confrontations.")

<sup>85</sup> Carl T. Bogus, *War on the Common law: The Struggle at the Center of Products Liability*, 60 MO. L. REV. 1, 60-61 (1995) (asserting that "most murders are not premeditated; they are impulsive acts erupting from arguments, drunken brawls, lovers' quarrels. The notion that handguns are safe in the hands of "law-abiding citizens" is myth."); David Kairys, *A Carnage in the Name of Freedom*, PHILA. INQUIRER, Sept. 12, 1988, at A15 ("That gun in the closet to protect against burglars will most likely be used to shoot a spouse in a moment of rage. [...] The problem is you and me - law-abiding folks."); Arthur L. Kellermann & Donald T. Reay, *Protection or Peril? An Analysis of Firearm-Related Deaths in the Home*, 314 NEW ENG. J. MED. 1557 (1986) ("for every case of self-protection homicide involving a firearm kept in the home, there were 1.3 accidental deaths, 4.6 criminal homicides, and 37 suicides involving firearms"); JOHN LINDSAY, THE CASE FOR FEDERAL FIREARMS CONTROL 22 (1973) (pamphlet

home risks their falling into the hands of children, as in the much-publicized school shootings.<sup>86</sup> 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.”<sup>87</sup> 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.<sup>88</sup> (Our discussion in Part II will address the more serious issue of whether guns in law-abiding hands increases their availability to criminals.)

Opponents of gun control, relying on Malcolm’s work and other work that shows that high rates of gun ownership do not correlate with high rates of crime (across jurisdictions or across time), emphasize that guns do not “cause” crime. Don Kates, for example, has reviewed international comparative evidence and found that nations with more guns do not have higher

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published by NY City) (asserting that most homicides occur in the heat of passion by “previously law abiding citizens” who commit “impulsive gun-murders while engaged in arguments with family members or acquaintance.”); Kellermann, *supra*, at 1560 (claiming that guns kept in the home for self-protection are 43 times more likely to kill a family member, friend, or acquaintance than to kill an intruder).

<sup>86</sup> See John Kip Cornwell, *Preventing Kids from Killing*, 37 HOUS. L. REV 21 (2000) (concluding that pro-gun propaganda and children’s ready access to guns were at least partially responsible for violence among youth); G. J. Wintemute, S. P. Teret, J. F. Kraus, M. A. Wright & G. Bradfield, *When Children Shoot Children: 88 Unintended Deaths in California*, 257 JAMA 3107, 3107-08 (1987) (the majority of cases of fatal gun accidents involving children “occurred while children were playing with guns they had found. Easy accessibility to guns, the resemblance of guns to toys, and gun malfunctions were all contributing factors. Handguns, particularly those of .22 caliber, were frequently involved.”); Sheryl Gay Stolberg, *Considering the Gun to Child Ratio, It’s a Wonder That the Columbine Massacre Was an Exception to the Rule*, SEATTLE POST-INTELLIGENCER, May 30, 1999, at E1 (“given the vast number of school children who report carrying guns, it is surprising that shootings do not occur more often” and speculating that elimination of minors’ access to guns could eradicate school shootings); R. K. Lee & J. J. Sacks, *Latchkey Children and Guns at Home*, 264 J. AMER. MED. ASS’N 2210b (1990) (1.2 million children have access to guns at home).

<sup>87</sup> MALCOLM, *supra* note 3, at 1.

<sup>88</sup> See, e.g., Don B. Kates, Jr. *Introduction*, in THE GREAT AMERICAN GUN DEBATE: ESSAYS ON FIREARMS & VIOLENCE 9-14, (Don B. Kates & Gary Kleck, eds., 1997) (reporting data indicating that “unlike ordinary gun owners[,] roughly 90 percent of adult murderer have prior adult crime records, with an average adult criminal career of six or more years, including four major adult felony arrests”).

levels of violent death.<sup>89</sup> Kates concludes that “suicide, murder and/or violent crime rates are determined by basic social, economic and/or cultural factors to which the availability of any mere form of weaponry is largely irrelevant.”<sup>90</sup> Kates is probably right that social and cultural factors are more important factors than rates of gun ownership in explaining violence. It doesn’t follow, however, that gun measures cannot help to prevent crime. To come back to our earlier analogy to cars, it is likely that rates of car ownership do not correlate with rates of violent deaths (across jurisdictions or across time). For example, some jurisdictions with high levels of car ownership have relatively few traffic accidents. (And in many jurisdictions, cars may not be an important factor with respect to overall death rates.) But it doesn’t follow that there are no car-related measures that would effectively reduce the number of deaths. The most that one might reasonably infer is that simply reducing overall numbers of cars may not be a particularly effective or sensible method of reducing the rate of violent death. Similarly, reducing the overall numbers of guns may not be a particularly effective or sensible method of reducing the rate of violent death. But general bans or restrictions on gun ownership are not the only available gun policies.

The immediate point is that the question should be how to keep guns out of the hands of the wrong persons. Strikingly, this is a question that Malcolm never asks. She expresses skepticism at the start “that statutes can actually deprive criminals of firearms”<sup>91</sup> 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

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<sup>89</sup> Kates, *supra* note 8, at 11.

<sup>90</sup> *Id.* at 3.

<sup>91</sup> MALCOLM, *supra* note 3, at 2.

potential criminals with guns.<sup>92</sup> (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."<sup>93</sup>) On the question of what policies or laws could keep criminals from owning or using firearms, Malcolm has nothing to add.

## II

In the gun debate, the advocates at either extreme are the loudest, and their statements tend to drown out more nuanced analysis. Voices of moderation can, however, be found. In recent years, a few writers have advanced more pragmatic and constructive positions, engaging in serious evaluation of the prospects of specific gun measures. Even such figures are often linked to one camp or the other, though, and rarely have managed to advance new approaches either to the debate or to gun policy.

Jim Jacobs's recent *Can Gun Control Work*<sup>94</sup> is an example of such a welcome, but ultimately unsatisfactory, contribution to the 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

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<sup>92</sup> Andrew D. Herz, *Gun Crazy: Constitutional False Consciousness and Dereliction of Dialogic Responsibility*, 75 BOS. U. L. REV. 57, 83 (1995) (summarizing the pro-gun camp's three central claims as "(1) Guns Don't Kill, People Do; (2) Outlaw Guns and Only Outlaws Will Have Guns; and (3) There are already 20,000 state and national firearms regulations, and those places with the strictest gun control have the highest crime rates."). See also *supra* note 64. The idea the gun control only decreases gun ownership among law-abiding citizens is also the idea that underlies Lott's persistent advocacy not only for guns but also for concealed firearms ownership. See generally, LOTT, MORE GUNS, LESS CRIME, *supra* note 11, particularly at 1-20.

<sup>93</sup> MALCOLM, *supra* note 3, at 163.

<sup>94</sup> JACOBS, *supra* note 8.

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. Despite his constructive approach, Jacobs is generally pessimistic about the prospects of gun measures for reducing violence, for reasons that we will respond to in developing our own blueprint for reducing gun violence.

Jacobs is clear-sighted in recognizing that the problem of gun control in fact comprises three discrete problems – accidental shootings, suicides, and gun crimes.<sup>95</sup> Although they tend to be lumped together in public debate, each of these problems has distinct causes and distinct policy solutions. For example, advocates often argue that gun control will reduce the risk of gun accidents in the home (particularly to children),<sup>96</sup> 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.<sup>97</sup> More to the point for policy purposes, the feasible measures that would most effectively reduce gun accidents are different from those that

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<sup>95</sup> *Id.* at 4-10.

<sup>96</sup> See, e.g., G. J. Wintemute et al., *supra* note 36, at 3108; MARK DUGGAN, MORE GUNS, MORE CRIME (Nat'l Bureau of Econ. Research, Working Paper No. 7967, 2000), available at <http://papers.nber.org/papers/w7967.pdf> (last visited Mar. 13, 2004) (showing a positive correlation between gun ownership and gun accidents); Michael Reese, *A New Push for Gun Control*, NEWSWEEK, Mar. 15, 1982, at 22 (noting most experts agree that strict gun laws likely have a deterrent effect and reduce the number of accidental and impulse killings); Walter Isaacson, *The Duel over Gun Control: Slogans, Contradictory Statistics and Passionate Arguments*, TIME, Mar. 23, 1981, at 33 (citing Phillip Cook's conclusion that the presence of guns increases the severity of crimes committed).

<sup>97</sup> John R. Lott, Jr. & John E. Whitley, *Safe-Storage Gun Laws: Accidental Deaths, Suicides, and Crime*, 44 J.L. & ECON. 659, 686 (2001).

show the most promise for reducing crime.<sup>98</sup> With respect to the problem of suicide, Jacobs makes a good case, though the issue is not free from controversy, that the level of suicides does not vary significantly with the availability of firearms.<sup>99</sup> And again, the sensible policy responses to suicide have little in common with sound policies for reducing gun crime more generally.<sup>100</sup>

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).<sup>101</sup> Such shootings, in addition to being quite rare, are extremely difficult to prevent through the criminal justice system (or otherwise).<sup>102</sup> The evidence suggests that measures that may help

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<sup>98</sup> Jesse Matthew Ruhl, Arthur L. Rizer, III, & Mikel J. Wier, *Gun Control: Targeting Rationality in a Loaded Debate*, 13 KAN. J.L. & PUB. POL'Y. 13, 59 (2003) (claiming that firearms accidents could be reduced by proper firearm training); U.S. GEN. ACCOUNTING OFFICE, ACCIDENTAL SHOOTINGS: MANY DEATHS AND INJURIES CAUSED BY FIREARMS COULD BE PREVENTED 6, 33 (1991) (asserting that firearms accidents could be reduced by "mandating modifications to firearms, requiring training in gun safety, and enacting statutes to penalize gun owners who are negligent in their handling or storage of weapons").

<sup>99</sup> JACOBS, *supra* note 8, at 6-7 ("it would be a mistake to see suicide as primarily or substantially a 'gun problem.' It is hardly obvious that suicide would be substantially reduced, or reduced at all, if firearms were less available, as is the case in many countries with higher suicide rates."). See also GARY KLECK, TARGETING GUNS: FIREARMS AND THEIR CONTROL 265-92 (1997); Cynthia Leonardatos, Paul H. Blackman, & David B. Kopel., *Smart Guns/Foolish Legislators: Finding the Right Public Safety Laws and Avoiding the Wrong Ones*, 34 CONN. L. REV. 157, 177 & n.87 (2001) (arguing that gun availability is only crucial to impulsive suicides); *But see, e.g.*, Andrew J. McClurg, *The Public Health Case for the Safe Storage of Firearms: Adolescent Suicides Add One More "Smoking Gun"*, 51 HASTINGS L.J. 953, 686 (2000) (contending that suicide is a naturally linked to "the ready availability of firearms, especially in the homes").

<sup>100</sup> NAT'L. INST. OF MENTAL HEALTH, IN HARM'S WAY: SUICIDE IN AMERICA 1-2 (2003) (setting out risk factors for suicide and identifying the key suicide-prevention measures as treatment of mental disorders and outreach to people at risk of suicide).

<sup>101</sup> See, e.g., JACOBS, *supra* note 8, at 218-19 (noting that the "enormity of these tragedies understandably provokes calls to do something. But what? Those who commit such atrocities usually develop their plan over many months and may be indifferent to or even hoping for their own death. Thus, they can take whatever time is necessary to obtain a firearm from a dealer or nondealer, or they can steal a gun. [...] It is difficult to imagine any regulatory regime that could have prevented them from obtaining the firearms necessary to achieve that goal.").

<sup>102</sup> *Id.*; see also JUSTICE POLICY INSTITUTE, SCHOOL HOUSE HYPE: THE SCHOOL SHOOTINGS, AND THE REAL RISKS KIDS FACE IN AMERICA, available at <http://www.cjcj.org/jpi/schoolhouse.html> (last visited June 18, 2004) (declaring that "there is a less than one in a million chance of a school aged youth dying or committing suicide on school grounds or on the way to school").

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.<sup>103</sup> Notwithstanding suggestions in the European press,<sup>104</sup> 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 illustrative of the more constructive path the debate could take – away from the war of symbols and toward a disinterested evaluation of the crime-reduction potential of individual gun-control measures. Other examples of constructive recent efforts are *The Crime Drop in America*, edited by Joel Wallman and Alfred Blumstein;<sup>105</sup> *Evaluating Gun Policy*, edited by Philip Cook and Jens Ludwig,<sup>106</sup> and *Guns, Crime, and Punishment in America*, edited by Bernard Harcourt.<sup>107</sup> 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

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<sup>103</sup> JACOBS, *supra* note 8, at 218-19.

<sup>104</sup> See, e.g., Michael Skapinker, *A Constitutional Right to be Killed*, FINANCIAL TIMES (United Kingdom), October 19, 2002, at 12 ("Until we know [the identity of the Washington sniper], the world will suspect this is another only-in-America story, the inevitable consequence of allowing anyone to own a gun."); Alan Kelly, Letters to the Editor, NEWSQUEST MEDIA GROUP NEWSPAPERS, October 30, 2002, *available at* 2002 WL 102399401 ("Emerging from the case of the Washington sniper, reports show that, in 2000, more than 28,000 Americans were killed by firearms and that, since 1980, more than half a million Americans have been killed by guns."); H. E. Smith, Letter to the Editor, NEWSQUEST MEDIA GROUP NEWSPAPERS, October 30, 2002, *available at* 2002 WL 102399401 ("Now that the authorities have finally caught the sniper who has for weeks threatened the American public, the streets of America are now a safe place for drive-by shooters, racist police, armed robbers and semi-automatic carrying gang member to go about their daily killing.").

<sup>105</sup> THE CRIME DROP IN AMERICA (Alfred Blumstein & Joel Wallman, eds. 2000).

<sup>106</sup> EVALUATING GUN POLICY (Jens Ludwig & Philip J. Cook, eds. 2003).

<sup>107</sup> GUNS, CRIME, AND PUNISHMENT IN AMERICA (Bernard Harcourt, ed. 2003).

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.<sup>108</sup> But the gun-violence reduction initiatives appear to have promoted reductions in gun violence that are faster and greater than the typical reductions in comparable cities without such initiatives over the same periods.<sup>109</sup> As is so often the case in interpreting crime data in particular, such correlations do not establish that the initiatives are the cause of the reductions, and critics could certainly contend that the successes of individual initiatives trace to independent factors.<sup>110</sup> But it would be foolish to dismiss an aggregation of data from cities around the country that point to a set of effective strategies for reducing gun violence; certainly, the record is sufficiently encouraging for the initiatives to deserve further empirical study and a more central role in the gun debate. More important, and our focus here, is that a careful analysis of the gun-violence problem commends

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<sup>108</sup> See Alfred Blumstein, *Disaggregating the Violence Trends*, in *THE CRIME DROP IN AMERICA*, *supra* note 105, at 39; Daniel Richman, *Project Exile and the Allocation of Federal Law Enforcement Authority*, in *GUNS, CRIME, AND PUNISHMENT*, *supra* note 107 (“Determining the degree to which any drop in crime can fairly be attributed to policing tactics is frightfully difficult.”)

<sup>109</sup> See, e.g., Anthony Braga, David M. Kennedy, & George E. Tita, *New Approaches to the Strategic Prevention of Gang and Group-Involved Violence*, in *GANGS IN AMERICA* 279-82 (C. Ronald Huff ed., 2002) (discussing results from Indianapolis, High Point, North Carolina, and Stockton, California); Lawrence W. Sherman, *Reducing Gun Violence: What Works, What Doesn't, What's Promising*, 1 *CRIM. JUS.* 11, 17 (2001) (Kansas City and Indianapolis); John Eck and Edward Maguire, *Have Changes In Policing Reduced Violent Crime? An Assessment Of The Evidence*, in *THE CRIME DROP IN AMERICA*, *supra* note 105, at 237-39 (Boston, Kansas City, Richmond, Rochester); David M. Kennedy, Anne M. Piehl, & Anthony A. Braga, *Youth Violence in Boston: Gun Markets, Serious Youth Offenders, and a Use-Reduction Strategy*, 59 *LAW & CONTEMPORARY PROBLEMS* 147 (1996) (Boston); U.S. DEP'T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, *REDUCING GUN VIOLENCE: EVALUATION OF THE INDIANAPOLIS POLICE DEPARTMENT'S DIRECTED PATROL PROJECT* (2002) (report by Edmund F. McGarrell, Steven Chermak & Alexander Weiss, Crime Control Policy Center, Hudson Institute). See generally U.S. DEP'T OF JUSTICE, OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, *PROMISING STRATEGIES TO REDUCE GUN VIOLENCE* (1999), also available at [http://ojjdp.ncjrs.org/pubs/gun\\_violence/contents.html](http://ojjdp.ncjrs.org/pubs/gun_violence/contents.html) (discussing programs in different communities).

<sup>110</sup> See, e.g., Eck and Maguire, *supra* note 109, at 237-38 (given the overall decline in homicides, particularly youth homicides, during the relevant period, “it is possible that the declines in Boston and Richmond would have occurred without the interventions. . . . There is just enough evidence to suggest that gun-enforcement strategies contributed to the decline in homicides, but not enough evidence to be confident about such claims.”)



the general approach of the initiatives.<sup>111</sup> The initiatives – in diverse communities, including Boston<sup>112</sup>, Pittsburgh,<sup>113</sup> Kansas City,<sup>114</sup> Indianapolis,<sup>115</sup> Richmond,<sup>116</sup> and High Point, North Carolina<sup>117</sup> – had different policy emphases, successes, and failures; still, taking them together, we can glean the beginnings of a basic blueprint for reducing gun violence.

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<sup>111</sup> Critics in fact have questioned some of the dramatic claims associated with Richmond’s Project Exile, which along with the Boston Gun Project has received the most attention of the initiatives, particularly at the level of national politics. See Steven Raphael and Jens Ludwig, *Prison Sentence Enhancements: The Case of Project Exile*, in EVALUATING GUN POLICY, *supra* note 106, at 260-75 (arguing that most of Exile’s successes can be explained as by-products of an artificial spike in the homicide rate in the year before the initiative and the general declines in violent crime nationwide); Daniel C. Richman, *Project Exile and the Allocation of Federal Law Enforcement Authority* 43 ARIZ. L. REV. 369, 382 (2001) (noting zeal of both President Clinton and Senate Republicans to take credit for Exile). Project Exile, however, is an unrepresentative example of the initiatives, particularly because its signature feature was federal prosecution of virtually all gun offenders, an approach that is not generally practicable (and has not been employed in other jurisdictions). See Steven D. Levitt, *Comment*, in EVALUATING GUN POLICY, *supra*, at 283 (commenting on Steven Raphael and Jens Ludwig, *Prison Sentence Enhancements: The Case of Project Exile*) (“The value of a Project Exile approach may depend on the quality of the selectivity with which it is applied. . . . [A]s a normal response to every single ex-con found in possession [,] it will cost a great deal of money that could be better spent. . . .”)

<sup>112</sup> See Matt Viser, *Boston Reacts to a Rash of Summer Shooting*, N.Y. TIMES, Aug. 9, 2004, at A10 (“Homicides in [Boston] peaked in 1990 with 152, but plummeted a series of city and police initiatives to 31 in 1999, a drop in the homicide rate that far exceeded the nation’s.”); *Reducing Gun Violence: The Boston Gun Project's Operation Ceasefire* (Oct. 2001), at <http://www.ojp.usdoj.gov/nij/pubs-sum/188741.html>.

<sup>113</sup> See Brian O’Neill, *Gunning for the Bad Guys*, PITTSBURGH POST-GAZETTE, October 14, 1999, at B-2; Torsten Ove, *Operation Targets Weapons, Violence*, PITTSBURGH POST-GAZETTE, January 24, 2000, at B-1 (noting Operation TARGET identification by White House as one of four model gun programs nationwide).

<sup>114</sup> See Nancy Lewis, *Holder Says Gun Campaign Will Enlist 50 D.C. Officers; U.S. Attorney to Be Host of Summit This Week*, WASHINGTON POST, March 8, 1995, at D1 (noting that a federally funded pilot program in Kansas City, MO, that targeted areas with high gun-related crime reduced such crime by 50 percent).

<sup>115</sup> See Betsy Powell, *One City’s War Against Guns*, TORONTO STAR, March 13, 2004, at A21 (featuring Indianapolis’s Violence Reduction Partnership and gun-related crime reduction effort as a model for other American cities); Fred Kelly, *Indy Gun Violence Targeted; City Gets \$1.5 Million to Reduce Shootings Among Black Males*, INDIANAPOLIS STAR, Oct. 1, 2003, at B1.

<sup>116</sup> See Editorial, *The Exile Solution*, BALTIMORE SUN, Feb. 26, 2003, at A12 (citing Richmond’s Project Exile as a model anti-gun program); Editorial, *Taking Aim at Gun Offenders*, CHICAGO SUN, May 16, 2003, at 47 (advocating that Chicago adopt a program modeled on Project Exile).

<sup>117</sup> U.S. DEP’T OF JUSTICE: GUN VIOLENCE REDUCTION: NATIONAL INTEGRATED FIREARMS VIOLENCE REDUCTION STRATEGY, at 25, (reporting 82% reduction in homicides and 100% reduction in gang- or drug-related homicides under High Point initiative); David M. Kennedy, *A Look At . . . Reacting to Violence; But Boston Proves Something Can Be Done*, Washington Post, May 23, 1999, at B3 (discussing successes of Boston-style prevention program in High Point).

The initiatives make clear is that, notwithstanding the tendentious thrust and parry of much of the gun debate, 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. David Kennedy and his colleagues at Harvard University's Kennedy School have done the most comprehensive work to delineate the pattern: in a typical urban community<sup>118</sup> plagued by gun violence, 60% or more of gun homicides can be traced to a few dozen groups (gangs, though not necessarily in the established, organized sense typified by the Crips and Bloods) of violent offenders.<sup>119</sup> 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

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<sup>118</sup> Blumstein, among others, has shown that a disproportionate per capita percentage of gun violence occurs in large cities. CRIME DROP IN AMERICA, *supra* note 105, at 35. *See id.* at 36 (noting that in 1996, "fully one quarter" of the country's homicides took place in ten large cities).

<sup>119</sup> David Kennedy, *Pulling Levers: Getting Deterrence Right*, NATIONAL INSTITUTE OF JUSTICE JOURNAL, July 1998, at 5. *See also* Kennedy *et al.*, *Youth Violence*, *supra* note 102, at 161. The point that a relatively small group of repeat violent offenders is responsible for a high percentage of violent gun crimes is one critical fact that is well accepted on all sides of the gun debate. *See e.g.*, Kates *et al.*, *Problematic Arguments for Banning Handguns*, in THE GREAT AMERICAN GUN DEBATE, *supra* note 88, at 32 (in an essay taking issue with many arguments for gun control, authors note that "innumerable criminological studies show[] murderers to be violent aberrants with extensive histories of felony [and] violence." *See also id.* (citing government figures showing that 67 to 79 per cent of arrested murderers have prior records for a violent felony or burglary.)

responsible for the lion's share of gun violence.<sup>120</sup> In Boston, authorities identified some 60 groups comprising 1300 individuals;<sup>121</sup> in Minneapolis, the numbers were 32 and 2,650.<sup>122</sup> Much of the violence, moreover, is inter-group – shootings and reprisals between competing gangs – and 75% of the perpetrators *and* the victims have lengthy criminal records.<sup>123</sup> In one study of 2,190 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.<sup>124</sup>

This point – that in any given community, a small number of violent predators is responsible for the bulk of gun crime – 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. To begin with, almost all of them are men between the ages of 15 and 35 with substantial

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<sup>120</sup> See Torsten Ove, *Operation Targets Weapons*, Violence, PITTSBURGH POST-GAZETTE, January 24, 2000, at B-1.

<sup>121</sup> Research by the Boston Gun Project revealed 1,300 individuals from 61 gangs, who were responsible for at least 60 percent of youth homicide in the city. Kennedy, *Deterrence*, *supra* note 104, at 5.

<sup>122</sup> Braga et al, *New Approaches*, *supra* note 106, at 274-75.

<sup>123</sup> *Id.* at 282-83. See also Kennedy et al., *Youth Violence*, *supra* note 102, at 159, 162.

<sup>124</sup> Jan M. Chaiken & Marcia R. Chaiken, *Offender Types and Public Policy*, 30 DELINQUENCY 195, 210 (1984).

criminal records.<sup>125</sup> In the United States, for example, roughly 90% of adult murderers have extensive criminal records (juvenile criminal records are generally not available), with on average over nine previous arrests.<sup>126</sup> More importantly, most targets are already known to law enforcement officials and the local community for their propensity to violence.<sup>127</sup> This is so in part because having a reputation for violence is valuable, particularly in conflict with rival groups, and is therefore cultivated.<sup>128</sup> 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

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<sup>125</sup> MARK MOORE ET AL., DANGEROUS OFFENDERS: THE ELUSIVE TARGET OF JUSTICE 37-38, 46 (1984) (Rand Corporation Study showing high disproportion of violent offenses by relatively small cohort of repeat offenders); Kates, *supra* note 8, at 7 (approximately “90 percent of adult murderers have adult criminal records, with an average adult career of six or more years, including four major felonies”); Lawrence W. Sherman, *Attacking Crime: Police and Crime Control*, in MODERN POLICING 159, 178 (Michael Tonry & Norval Morris eds., 1992) (60% of arrests in Kansas City were among the small fraction of the population with multiple arrests); David M. Kennedy, *Pulling Levers: Chronic Offenders, High Crime Settings, and a Theory of Prevention*, 31 VAL. U. L. REV., Spring 1997, at 452 (noting that in Boston, “[o]nly about 1300 gang members—less than 1% of their age group city-wide—were responsible for at least 60%, and probably more, of all the youth homicide in the city. These gang members were well known to authorities and tended to have extensive criminal records.”); MARVIN E. WOLFGANG, DELINQUENCY IN A BIRTH COHORT (1972) (in survey of 9,945 Philadelphia boys, 6.3% committed over half of the offenses); Don B. Kates Jr. & Patricia Terrell Harris *How to Make Their Day*, NATIONAL REVIEW, 30 (1991) (“The typical murderer has a prior criminal history averaging at least six years, with four major felony arrests, [h]e is also likely to be a substance abuser with a record of traffic and/or gun accidents.”). The disproportionate clustering of violent felonies among a relatively small cohort of repeat offenders is particularly pronounced in large urban areas. *See* Blumstein, *supra* note 105, at 35-36.

<sup>126</sup> Kennedy *et al.*, *Youth Violence*, *supra* note 102, at 159 (among youthful murderers, 77% had “been charged before committing their homicides with an average of 9.7 offenses”).

<sup>127</sup> *See, e.g.*, Kennedy, *Deterrence*, *supra* note 104, at 5 (all the 1,300 targets in Boston were “well known to authorities and tended to have extensive criminal records.”)

<sup>128</sup> Ralph Cintron, *Listening to What the Streets Say: Vengeance as Ideology?* 567 ANNALS 42, 52 (2000) (describing many gangs’ “ideology of vengeance” and noting that badness as attitude hides fear, occults it behind a public persona of toughness that protects one from the challenges of others. [...] One way to cultivate badness and attitude was to acquire a reputation for violence and vengeance.”).

of minority groups, which he rightly points out would be of dubious constitutionality and otherwise unacceptable.<sup>129</sup> 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.<sup>130</sup> (Thus the NRA tenet, endorsed by Malcolm, “if guns are illegal, only criminals will have guns.”)<sup>131</sup> 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.<sup>132</sup> 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.

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<sup>129</sup> JACOBS, *supra* note 8, at 211-12.

<sup>130</sup> *Id.* at 215, 220-23.

<sup>131</sup> See *supra* note 64; see also J. Warren Cassidy, *The Case for Firearms*, TIME, Jan. 29, 1990, at 22, 22 (“Antigun laws - the waiting periods, background checks, handgun bans, etc. - only harass those who obey them. Why should an honest citizen be deprived of a firearm for sport or self-defense when, for a gangster, obtaining a gun is just a matter of showing up on the right street corner with enough money?”).

<sup>132</sup> JACOBS, *supra* note 8, at 215 (“There is no possibility that any gun control policy could succeed in denying the members of [drug cartels, drug distribution networks, street gangs, and career offenders] access to firearms. Indeed, even in Japan, where there is very little private ownership of guns, members of the Yakuza and other organized crime groups have no difficulty obtaining firearms. In the United States, career criminals possess, carry, and use guns, despite the threat of draconian punishment over state and federal felon-in-possession laws and of sentence enhancements for committing crimes with a gun.”).

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.<sup>133</sup> 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).<sup>134</sup> 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).<sup>135</sup> 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.<sup>136</sup> When the defendant is a target, such offenses can be aggressively investigated and prosecuted. Fourth, and often most potently, there is the threat of prosecution by the federal government (as opposed to an ordinary state prosecution), which carries the prospect of a

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<sup>133</sup> See Kennedy et al., *Youth Violence*, *supra* note 102, at 159 (65% of victims and 68% of murderers had been on probation and, at the time of the killing, 22% of the victims and 33% of the murderers were on probation). See also Kennedy, *Deterrence*, *supra* note 104, at 3-6.

<sup>134</sup> See, e.g., 21A AM. JUR. 2D CRIMINAL LAW § 907 (2003); CAL. PENAL CODE § 1203.1 (2004).

<sup>135</sup> 18 U.S.C. § 922(g)(1) makes it unlawful for persons who have been “convicted in any court of[] a crime punishable by imprisonment for a term exceeding one year” to possess firearms and ammunition. 18 U.S.C. § 924(e)(1), which codifies part of the Sentencing Guidelines, builds on §922(g) to mandate high sentences for gun possession by violent felons. §924(e)(1) states that “a person who violates [§] 922(g) of this title and has three previous convictions by any court [...] for a violent felony or a serious drug offense, or both, [...] shall be fined under this title and imprisoned not less than fifteen years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to such person...” See also Barry C. Field, *The Constitutional Tension Between Apprendi and McKeiver: Sentence Enhancements Based on Delinquency Convictions and the Quality of Justice in Juvenile Courts*, 38 WAKE FOREST L. REV. 1111, 1120 (2003) (asserting that “[a]fter the seriousness of the present offense, the most important factor affecting the length of a defendant’s sentence is her prior criminal record”); 21A AM. JUR. 2D CRIMINAL LAW § 866 (2003).

<sup>136</sup> See Kennedy, *supra* note 120, at 453-454.

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.<sup>137</sup>

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.<sup>138</sup> 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

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<sup>137</sup> Harry Litman & Mark D. Greenberg, *Reporters' Draft for the Working Group on Federal-State Cooperation*, 46 HASTINGS L.J. 1319, 1325-26 (1995).

<sup>138</sup> U.S. DEP'T OF JUSTICE, NAT'L INSTITUTE OF JUSTICE, *REDUCING GUN VIOLENCE: THE BOSTON GUN PROJECT'S OPERATION CEASEFIRE* (2001) (report of Anthony A. Braga, David M. Kennedy, Anne M. Piehl & Elin J. Waring) .

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 a sharp and steep (over 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.<sup>139</sup>

As documented by David Kennedy, a consultant on the initiative, the approach was premised on direct communication with offenders and a form of group accountability.<sup>140</sup> 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.<sup>141</sup> 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

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<sup>139</sup> *Id.* at 57-58

<sup>140</sup> Kennedy, *supra* note 119, at 2.

<sup>141</sup> *Id.*



that law enforcement officials would bring all the various powers of the state and federal governments to bear against them.<sup>142</sup>

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. There, as in Boston, the violence was largely gang-driven, and law enforcement delivered its admonition to the gangs as a whole. After one of the gangs continued to engage in gun crime, authorities arranged for those gang members who were on probation to be tested for drugs, and about one-third of them tested positive (which, in ordinary circumstances, is often ignored given the mountainous demands of the probation system). All the gang-member probationers were then required to attend another meeting. There they were informed that since the gun violence had not stopped, many of them would not be going home. Federal marshals then entered the room and arrested the gang members that had tested positive on charges of violating probation.

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

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<sup>142</sup> Kennedy, *supra* note 119, at 6-8.

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.<sup>143</sup> 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 would spontaneously volunteer that they were not armed; the news had evidently reached the relevant people.<sup>144</sup> 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

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<sup>143</sup> For a more thorough discussion, see Harry Litman, *Pretextual Prosecution*, GEO. L.J. (forthcoming 2004)

<sup>144</sup> JACOBS, *supra* note 8, at 209. Project Exile, first developed by the U.S. Attorney’s Office in Richmond, invokes the federal system, harsher sentences, and educational outreach to deter criminals. See *Review of Dep’t of Justice Firearm Prosecutions: Hearing Before the Subcomm. on Criminal Justice Oversight and the Subcomm. on Youth Violence of the Senate Comm. on the Judiciary*, 106<sup>th</sup> Cong., 36 (statement of Helen F. Fahey), available at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=106\\_senate\\_hearings&docid=f:59738.wais](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=106_senate_hearings&docid=f:59738.wais). See also Daniel C. Richman, “Project Exile” and the Allocation of Federal Law Enforcement Authority, 43 ARIZ. L. REV. 369, 402 (2001).

attention than they have thus far received,<sup>145</sup> 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 leading criminologist Alfred 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.”<sup>146</sup> 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.<sup>147</sup> 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.<sup>148</sup>

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

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<sup>145</sup> See Litman, *supra* note 143.

<sup>146</sup> *Project Safe Neighborhoods: America’s Network Against Gun Violence: Hearing Before the Sen. Comm. on the Judiciary*, 108<sup>th</sup> Cong. 59 (2003) (statement of Prof. Alfred Blumstein).

<sup>147</sup> See, e.g., Kleck, *supra* note 4, at 42.

<sup>148</sup> *Id.*

fact emphasizes theft, rather than illicit trafficking, as the major source of crime guns, and suggests that tighter regulation of trafficking would not reduce violent crime.<sup>149</sup>

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<sup>149</sup> JACOBS, *supra* note 8, at 165; see Philip J. Cook and Anthony A. Braga, *New Law Enforcement Uses for Comprehensive Firearms Trace Data*, in GUNS, CRIME, AND PUNISHMENT, *supra* note 107 (noting “the conventional wisdom that criminals, for the most part, obtain their guns from the huge inventory already in private hands.”). Jacobs relies on an estimate by Gary Kleck that as many as 750,000 guns are stolen each year. See Kleck, *supra* note 4, at 23. Professor Kleck in turn relies on a 1986 study by James Wright and Peter Rossi, which in fact appears to be the chief source of the idea that the preponderance of crime guns are stolen. See *id.*, at 38-39, citing Wright and Rossi, *supra* note 71. On analysis, however, the Wright and Rossi study provides little support for that view. Wright and Rossi surveyed about 1800 prisoners, about half of whom (943 prisoners) admitted to owning a gun. Of this group, 46% stated that their most recent gun was “definitely stolen,” 32% (presumably a subset of the 46%) said they had “stolen it themselves” and 24% said it was “probably stolen.” From this, Kleck suggests, fairly enough, that “perhaps about half of the guns obtained by criminals have probably been stolen at some point in the past,” a conjecture that Jacobs repeats. *Id.*, at 39; see, JACOBS, *supra* note 8, at 165. But there is clearly a long way to travel from this suggestion to the conclusion that illicit gun dealing is not a significant source of crime guns. First, while Wright and Rossi have become standard sources for the loosely related claim that theft is the primary source of crime guns (and the false corollary that supply-side regulation is unlikely to decrease gun violence), the survey provides evidence at most for the claim that a good fraction, but less than half, of crime guns have been stolen; by any interpretation, this leaves ample room for illicit commerce as another major source of crime guns. Indeed, Professor Kleck has elsewhere pointed out that the Wright-Rossi survey and other studies “indicate that 16-27% of handgun acquisitions by serious felons were purchases from licensed dealers. That is not a negligible fraction, and indicates some potential impact from regulation of such transfers.” KLECK, *supra* note 99, at 88. Moreover, a less cited datum in the Wright and Rossi survey is that only 47% of respondents said they personally had ever stolen a gun in their lives, meaning that more than half of them bought or were given their guns from another source. Wright & Rossi, *supra* note 71, at 37; see also Joseph F. Sheley & James D. Wright, *In the Line of Fire: Youth, Guns and Violence in Urban America*, in *Urban America* 6 (A. de Gruyter ed. 1995) (in 1991 survey of juvenile felons, slightly fewer than half reported ever having stolen a gun).

Second, the claim that the preponderance of crimes guns are stolen rather than trafficked seems to assume a false dichotomy between stolen guns and illegally trafficked guns. In fact, the categories are overlapping. Many crime guns can be, and doubtless many are, acquired illicitly in the secondary market, as for example, when a stolen gun is sold to a dealer, who in turn resells it in ordinary commerce to a criminal or a straw purchaser. (A different, but still relevant, sort of scenario is when an organized trafficker, perhaps with the assistance of an insider, steals a cache of guns from a legal dealer for resale in the black market.) It is therefore a non sequitur to move from the Wright and Rossi data to the conclusion that “organized trafficking of guns. . . accounts for no more than a tiny share of the guns obtained by criminals,” Kleck, *BATF Gun Trace Data*, *supra*, at 42, or that “the focus of some scholars on black market enterprises as sources of criminal guns appears to be misdirected.” KLECK, *supra* note 99, at 87 (citations omitted); see also HENRY RUTH & KEVIN R. REITZ, *THE CHALLENGE OF CRIME* 173 (2003) (citing Wright and Rossi in contending that “contrary to any contention that most crime guns are purchased at retail, theft of guns by criminals appears to play a major role.”) We are indebted to David Kennedy for this point.

To be fair to Professor Kleck, he seems to exclude individual straw purchasers from the pool of organized traffickers, see *id.* at 23, 40 (“unrecorded purchases from various relatives, friends, and acquaintances who are not in the business of selling guns are probably the primary means of directly obtaining guns, while theft may be the ultimate source of most crime guns.”) But on reflection this too is a false dichotomy, because straw purchasers – whether they be a one-time source such as a friend or a more organized large-scale trafficker – supply criminals precisely through exploitation of normal commercial channels, and that is the relevant question for policy purposes. If a crime gun turns out to have been bought from a gun dealer by the suspect’s girlfriend, it will likely be straightforward to document and prosecute the transaction. More generally, far from being a separate category of offenders, individual straw purchasers are often part of organized trafficking.

Third, other evidence does not fully support the original Wright and Rossi study, which after all relied on the impressionistic responses of one non-randomly chosen sample of criminals questioned nearly 20 years ago. See

In fact, criminals are, at least in significant part, 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 is a one-off burglary.<sup>150</sup> 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.<sup>151</sup>

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 example, searches of their purchasing records).<sup>152</sup> 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

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U.S. CENSUS BUREAU, SURVEY OF STATE PRISON INMATES 19 (1991)(only 9% of prisoners admit to having stolen the last gun they acquired before going to prison.)

Finally, as Professor Kleck again recognizes, KLECK, *supra* note 99, at 88, the important policy question is whether a stronger focus on illicit trafficking is likely to reduce the supply of crime guns. For that question, it is relatively insignificant whether it is a majority or an appreciable minority of guns that are illicitly trafficked. In either case, stricter regulation of illicit trafficking will be a valuable – and to date underutilized – weapon against gun violence. *See supra* note 146 (statement of Professor Blumstein).

<sup>150</sup> An additional source of evidence for this point is studies demonstrating that guns used in crimes appear to be on average of far more recent vintage than the average firearm in private hands. *See, e.g.* U.S. DEP’T OF JUSTICE, BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS, CRIME GUN TRACE REPORTS, Table 8.1 (1999) (showing about 15% of traced crime guns in five high-gun-violence cities were one year old or less and 32% were three years old or less). There is consensus that short “time to crime” is an important indicator of illicit trafficking. However, critics have challenged these data on the ground that the pool of gun crimes traced by the BATF is skewed in favor of short time-to-crime findings or is otherwise unrepresentative. *See e.g.* RUTH & REITZ, *supra* note 149, at 175; but see Cook and Braga, New Law Enforcement Uses, in GUNS, CRIME, AND PUNISHMENT, *supra* note 107, at 171 (even adjusting for possible overstatement in percentages of “new” guns submitted for tracing, such guns are still significantly overrepresented among crime guns.)

<sup>151</sup> U.S. BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS, FOLLOWING THE GUN: ENFORCING FEDERAL LAWS AGAINST FIREARMS TRAFFICKERS 1 n.1 (2000).

<sup>152</sup> 18 U.S.C. § 921 (1994); 18 U.S.C. § 922 (1994); 18 U.S.C. § 923 (1994); Ruhl *et al.*, Arthur L. Rizer, III, & Mikel J. Wier, *Gun Control: Targeting Rationality in a Loaded Debate*, 13 KAN. J.L. & PUB. POL’Y 13, 17 (2003).

accounted for.<sup>153</sup> (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.)

Just as gun violence is concentrated in a relatively small subset of career criminals, a substantial percentage – perhaps even a majority – of illegally trafficked firearms come from a small subset of federal firearms licensees. And as with the demand side, that concentration has obvious and important implications for regulation of the supply of weapons to felony. A much-noted, and quite startling, study by the Bureau of Alcohol, Tobacco, and Firearms of guns traced to crimes showed that about 57% of them came from just over 1% of federal firearms licensees (“FFLs”). And only 132 dealers -- .2% of dealers nationwide -- were sources of 50 or more crimes guns, together accounting for 27% of crime gun traces.<sup>154</sup> (That is not to suggest that most or even many of the dealers were corrupt; rather they could easily 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.)<sup>155</sup> So if a gun turns up (or even is merely discharged) in a crime, police generally can rapidly determine where

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<sup>153</sup> 18 U.S.C. § 921 (1994); 18 U.S.C. § 922 (1994); 18 U.S.C. § 923 (1994).

<sup>154</sup> U.S. BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS, COMMERCE IN FIREARMS IN THE UNITED STATES (2000).

<sup>155</sup> 27 C.F.R. § 178.92(a)(1) (1968); Philip J. Cook & Anthony A. Braga, *Comprehensive Firearms Tracing: Strategic and Investigative Uses of New Data on Firearms Markets*, 43 ARIZ. L. REV. 277, 280 (2001).

it was initially bought.<sup>156</sup> (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 have 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).<sup>157</sup> 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.<sup>158</sup>

Finally, federal law imposes strong penalties for providing a gun to a felon, including 5-year mandatory sentences in federal prison.<sup>159</sup> 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

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<sup>156</sup> Or, as is sometimes the case, from where it was stolen or purchased illicitly in an illegal, unrecorded transaction. See Cook and Braga, *supra* note 138, at 175 (noting that the importance of FFLs in straw purchasers may be even greater than suggested by the gun trace data based as a result of illicit unrecorded sales by FFLs.)

<sup>157</sup> U.S. DEP’T OF THE TREASURY U.S. DEP’T OF JUSTICE, BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS, GUN SHOWS: BRADY CHECKS AND CRIME GUN TRACES (1999). See also JOHN SCALIA, FEDERAL FIREARM OFFENDERS, 1992-98, U.S. BUREAU OF JUSTICE STAT. SPECIAL REPORT 6 (2000) (study group of cases against straw purchaser defendants involved on average 34 firearms).

<sup>158</sup> See Cook and Braga, *supra* note 138, at 169 (“Perhaps the most important use of the data generated from comprehensive tracing has been to make the case that FFLs play an important role in the diversion of guns to the hands of youths and criminals.”)

<sup>159</sup> See 18 U.S.C. §§ 922(d), 924(e) (1994).

practice tend to be far from hardened criminals.<sup>160</sup> More typical is the gang member's girlfriend, gang-member wannabe, or drug addict employed by an operator of a gun ring.<sup>161</sup> 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.<sup>162</sup>

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

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<sup>160</sup> U.S. BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS, FOLLOWING THE GUN: ENFORCING FEDERAL LAWS AGAINST FIREARMS TRAFFICKERS 22 (2000) (table showing that 8.9% of the straw purchasers working for traffickers had at least one prior felony conviction).

<sup>161</sup> *Id.* at 18 ("[s]traw purchasers were often friends (45 percent), relatives (23 percent), and spouses or girlfriends (18 percent) of the firearms traffickers. Almost 28 percent of the investigations involved a business relationship where the trafficker paid the straw purchaser money or drugs to buy firearms. Five percent of the investigations involved a straw purchaser who was a member of the same street gang as the trafficker"). See also Braga *et al.*, *Illegal Supply of Firearms*, *supra* note 137, at 337.

<sup>162</sup> See Cook and Braga, *supra* note 138, at 175 ("[T]he illicit, consensual transactions by which guns make the transition from the legal to the illegal market constitute a target that is vulnerable to ATF's capacities for regulation and enforcement. The trace data suggest that these transactions, including the sale of guns by FFLs to straw purchasers and traffickers, figure to a surprising extent as a direct source of crime guns.").



forfeiture of license) for dealers to sell a firearm to a known straw purchaser.<sup>163</sup> 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 make major inroads into the supply of firearms to the black market.<sup>164</sup>

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.<sup>165</sup> 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 pro-gun camp's persistent supposition that criminals will manage to obtain guns anyway.

This position, however, blinkers suppositions about human behavior that are fundamental to the criminal law and to economic reasoning more generally. Much of criminal law policy, and

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<sup>163</sup> 18 U.S.C. §922(a)(6); David Kairys, *The Governmental Handgun Cases and the Elements and Underlying Policies of Public Nuisance Law*, 32 CONN. L. REV. 1175, 1183 n.35 (2000).

<sup>164</sup> Significantly, an ATF follow-up study of the small group of dealers that accounted for the majority of crime guns, see *supra* note 154, indicated that 75% of them were in violation of some federal regulation, which in most cases authorizes additional oversight authority. Many of the violations were sufficiently serious to trigger a recommendation for license revocation. See U.S. BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS, REGULATORY ACTIONS: REPORT TO THE SECRETARY ON FIREARMS INITIATIVES (2000).

<sup>165</sup> See JACOBS, *supra* note 8, at 104 (citing Charles Schumer, *A Few Bad Apples: Small Number of Gun Dealers the Source of Thousands of Crimes*, 1999). Jacobs also quotes Jerry Singer, a Bureau of Alcohol, Tobacco and Firearms spokesperson, for the proposition that "even though the percentage [of dishonest Federal Firearms Licensees] might be small, the bad ones can put a lot of firearms out on the street." *Id.*; see also Garen Wintemute, *Guns and Gun Violence*, in THE CRIME DROP IN AMERICA, *supra* note 105, at 63

economic regulation, rest on the broadly accepted premise that 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.<sup>166</sup> 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.<sup>167</sup> This kind of reasoning would again be considered dubious in other areas of social science. In the first place, criminals like other consumers prefer, and pay more for, new products and certain models.<sup>168</sup> The Glock 9mm, for example, 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, which demand-side analysis suggests is a critical reason that violent offenders

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<sup>166</sup> Gary Kleck, a scholar whose work is often cited by the pro-gun camp, captures this point nicely. Discussing the argument that gun control measures are fruitless because “many criminals will ignore gun laws and get guns anyway,” Kleck writes, “This is indisputably true, but not decisive regarding the desirability of gun control, since it does not address the number of successes of gun control. There is no clearly established minimum level of compliance that must be achieved before a law is to be judged a success. And if there were such a standard, it certainly could not reasonably be 100%, and would not necessarily be even 50% or some other similarly high level. It is even conceivable that if just 1% or 2% of potentially violent persons could be denied a gun, the resulting benefits might exceed the costs of whatever measure produced this modest level of compliance.” KLECK, *supra* note 88, at 11; *see also id* (noting data suggesting that there is considerable – if not majority – compliance with gun control laws among even repeat violent offenders).

<sup>167</sup> *See e.g.*, RUTH & REITZ, *supra* note 149, at 176.

<sup>168</sup> Anthony A. Braga, Philip J. Cook, David M. Kennedy & Mark H. Moore, *The Illegal Supply of Firearms*, 2002 CRIME & JUST. 319, 337 n.7 (2002) (surveying criminals’ acquisition of firearms and noting that “[t]he preferences of criminal consumers for certain types of guns may partially explain why semiautomatic pistols have quicker time-to-crime distributions. In Boston, interviews with youthful probationers revealed that they preferred modern and stylish semiautomatic pistols”).

arm themselves. 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. There may be reasons why the rule applies with less force to gun acquisitions, but pro-gun advocates have not developed such an argument, and it is symptomatic of the politicized nature of the gun debate that principles that are elsewhere given presumptive validity may be set to the side when they interfere with one camp or the other's partisan dogmas.<sup>169</sup>

The notorious "gun-show loophole" (something of a misnomer, since the problem is really a regulatory gap that leaves sales at gun shows underregulated) 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 pro-gun groups, 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 year 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

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<sup>169</sup> The limited evidence that exists reinforces the supposition that criminals behave like other economic actors in their acquisition of firearms. In Wright and Rossi's survey of incarcerated adults, 21% of respondents who did not use guns in committing their crimes cited the difficulty and cost of obtaining firearms as an important factor in their decision. Wright and Rossi, *supra* note 71, at 128-29. See also Phillip J. Cook et al, *Regulating Gun Markets*, 86 J. CRIM. LAW AND CRIMINOLOGY 1, 59-92 (adducing similar anecdotal evidence with respect to incarcerated juveniles).

street corners.”<sup>170</sup> 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.<sup>171</sup> (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. The overall homicide rate in Pittsburgh declined by nearly 20% in the year following the program’s initiation.<sup>172</sup>

It is 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 come in significant part from easily identifiable and regulable sources.

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<sup>170</sup> JACOBS, *supra* note 8, at 131.

<sup>171</sup> See Torsten Ove, *Operation Targets Weapons, Violence*, PITTSBURGH POST-GAZETTE, January 24, 2000, at B-1.

<sup>172</sup> See Torsten Ove, *Program Targets Gun Offenders To Sway Them From Life Of Crime*, PITTSBURGH POST-GAZETTE, March 3, 2001, at B-1. The Pittsburgh police credited this decline in part to the initiative. See *id.* After the change in administration in 2001, the program was discontinued, and homicides, and violent crime in general, increased substantially, to above their pre-TARGET levels. See Jonathan D. Silver, *County Poised to Break 1993’s Homicide Record*, PITTSBURGH POST-GAZETTE, Dec. 30, 2003, at A-1; Jonathan D. Silver, *Downtown Shooting Sends Lunchtime Crowds Diving for Cover*, PITTSBURGH POST-GAZETTE, July 14, 2004, at A-3 (noting “marked increases” in 2002 in rapes, robberies, and aggravated assaults.) Recently, in the wake of a series of high-profile shootings, the United States Attorney’s office has announced a new initiative incorporating most of the key features of Operation TARGET.. See Jonathan D. Silver, *City/Federal Partnership Takes Aim At Gun Crimes*, PITTSBURGH POST-GAZETTE, July 12, 2004, at B-5.

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 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.<sup>173</sup> 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.

## Conclusion

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<sup>173</sup> See RUTH & REITZ, *supra* note 149, at 176; Bruce Alpert, *House tries to chip away at gun laws; Democrats are up in arms about proposal*, Times-Picayune, Dec. 10, 2003, at 4 (reporting that the House of Representatives approved a gun provision, backed by the Bush Administration and the NRA, that would “prohibit the federal government from requiring that gun dealers conduct annual inventories and maintain computerized records of dealers who go out of business”); Michael Isikoff, *Gun Dealers' 'Great Scam'; U.S. Licenses Grow Popular With Criminals*, Washington Post, May 8, 1991, at A1 (“As a result of NRA lobbying, Congress cut funding for BATF enforcement in the early 1980s and in 1986 passed a law that limited inspection of dealer records.”). See also OSHA GRAY DAVIDSON, *UNDER FIRE: THE NRA AND THE BATTLE FOR GUN CONTROL* 57 (1998).

Gun advocates like Malcolm attempt to connect gun crime to restrictions on private ownership; gun opponents attempt to connect it to the overall supply of guns in private hands. In fact, both the United States's high homicide rate, and England's historically low one, likely have little to do with gun-control laws and policies and with the numbers of guns in private hands. 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 violent crime. The current focus of much of the gun debate on the crude question of whether guns cause crime or prevent crime distracts attention from what should be the central question: how to prevent a relatively small number of violent recidivists from obtaining or using guns.<sup>174</sup>

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