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FOREWORD

Ten years ago it might have been said with some accuracy that there was virtually no informed scholarly debate about gun control. Although most observers recognized that there were political obstacles to the enactment of laws designed to restrict civilian ownership of firearms, the overwhelming weight of scholarly opinion was that gun control measures, if enacted, would be beneficial. Indeed, among academics and journalists writing on the issue, it was frequently said that the more drastic the gun control measure the better, thus aiming toward a society in which to the greatest extent possible guns were removed from civilian hands. This issue of *Law and Contemporary Problems* shows how far the debate has come in only a decade.

The underpinnings of the arguments for major restrictions on civilian firearms ownership are now under attack at almost every point that previously had been taken for granted. It is no longer so obvious that most gun control measures are free from constitutional doubt. Although there are no hints in the case law that the judiciary shares this perception, recent scholarship on the original meaning of the second amendment indicates that many of the framers contemplated the granting of an individual as well as a state right. It should not be assumed, however, that the second amendment prevents all of the gun control programs seriously advocated. After all, in the context of the Constitution, the first clause of the second amendment is very unusual. Only two constitutional provisions are prefaced by clauses that describe their purposes—and presumably restrict their meanings. The “Militia” clause of the second amendment is paralleled only by the phrase in article I, section 8 restricting issuance of patents and copyrights to uses that “Promote the progress of science and useful arts.” Nonetheless, what can now be said is that the constitutional issue is not as easy and simple as previously had been thought and that, regardless of what the courts hold, there will be many people who in good faith, and at least with some reason, hold to the belief that the Constitution protects gun ownership. Indeed, as evidence of these developments, this symposium contains two papers which differ primarily

over the issue of whether prohibitions against carrying weapons in public would be constitutional.¹ Naturally, all gun control advocates assume the constitutionality of such prohibitions, which in fact already exist in the law of almost all jurisdictions, but this assumption has increasingly been challenged.

More important, this symposium raises a host of issues that call into question whether, assuming their constitutionality, gun control laws represent sound public policy. One article² directs attention to the complex line-drawing problems that would likely result in large classes of the citizenry remaining in possession of firearms—thus casting doubt on whether, in practice, gun control provisions can be drawn fairly and equitably.

A central question, of course, is the practical one of whether an extremely effective gun control enactment would increase or decrease crime. Gun control advocates have always assumed that guns cause far more crime than they prevent. This may be true, but it is no longer obvious. Researchers do not know how many crimes guns in civilian hands now deter, but this may be a factor of considerable importance. Moreover, there is no indication whether even successful and completely enforced gun control laws would reduce crime by those at whom such laws would ultimately be aimed. It might be that those deprived of guns by a gun control law would use other weapons to do as much damage. The fact is, it is not clear what percentage of crimes presently committed with guns would have been committed anyway, with other weapons, if guns were unavailable. Weapon substitution may occur not only with respect to the class of predatory crimes we usually consider to be a major concern of gun control, but also with respect to domestic violence—the roots of which require a great deal more study before conclusions can be reached with any degree of confidence.

Superimposed on these questions about the likely consequences of a completely effective gun control law which would prevent civilian possession of firearms are the facts that no one could expect such a law to be completely effective, and that to the extent it is violated, those who would violate it would also probably be those citizens in whose hands guns would raise the strongest threat to the social order. Even if it were possible to calculate exactly the number of individuals who could obtain illegal firearms and use them for criminal purposes notwithstanding the complete criminalization of firearms, it would still be necessary to examine the likely effect of more probable and perhaps more cost-effective gun control options—such as laws restricting only handguns, or only cheap handguns. Decreasing the availability of some but not other firearms risks causing many more would-be criminals to use still-unrestricted long guns. Questions about the substitutability of long guns for

1. Halbrook, *What the Framers Intended: A Linguistic Analysis of the Right to "Bear Arms,"* LAW & CONTEMP. PROBS., Winter 1986, at 151; Kates, *The Second Amendment: A Dialogue,* LAW & CONTEMP. PROBS., Winter 1986, at 143.

2. Jacobs, *Exceptions to a General Prohibition on Handgun Possession: Do They Swallow Up the Rule?*, LAW & CONTEMP. PROBS., Winter 1986, at 5.

handguns in crimes and about their comparative lethality become quite important in this regard.

Finally, there is the quite distinct issue of the probable disregard of gun control laws by those whose constitutional, moral, or practical views about guns outweigh their fear of punishment and their desire to obey legislative commands. The effect of such disobedience, of course, will depend on many factors, including the precise nature of the enactment. In the case of severe restrictions on handgun possession, for instance, it is hard to believe that violation of the law by those without what criminologists call criminal identities would be less extensive than is violation of marijuana laws today. If so, the clogging of the legal system, the widespread disobedience which brings the law into disrepute, and the many other problems caused by an unenforceable law would represent an extremely high price for whatever gains in reducing criminality that might flow from additional gun controls.

All of this is not to say that most presently envisaged means of gun control would be unworkable or would do more harm than good. There is still plenty of argument to the contrary. Indeed, this symposium tends merely to help bring the discourse closer in balance. The opponents of gun control whose views are represented in this issue assert their positions on the ideological battlefield that until recently had been firmly held by the advocates of sharp firearms restrictions.

The time has come to begin the process of learning more about the issues raised in this symposium, so that future arguments may rely on far more thorough and reliable data. Franklin Zimring, probably the most productive analyst of the problems of firearms regulation, has bemoaned the absence of a stabilizing core of solid research. He is right. The fact of the matter is that, despite the great importance attached to the subject by large numbers of people on both sides of the issue, not much is known with any tolerable degree of assurity. A great deal more work and thought is required to change this situation—and in this endeavor the following symposium represents a step in the right direction.

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