



BY ROBERT A. LEVY

CHAIRMAN'S MESSAGE

Gun Control: Grounds for Compromise?

Three constitutional principles underlie gun control:

1. The Supreme Court has held that individuals have a right to bear arms in common use for lawful purposes.

2. Second Amendment rights are not absolute. Everyone understands that children can't carry automatic weapons to school. Some people, some weapons, and some circumstances are subject to regulation.

3. The right to bear arms is "fundamental," which means that government bears a heavy burden to justify its regulation. Government must show (a) public safety requires the proposed restrictions, (b) they will work, and (c) they are no more extensive than necessary.

Here are the major areas of contention and possible compromises:

1. *Assault rifles.* Millions of so-called assault weapons are now used for hunting, self-defense, target shooting, and even Olympic competition. Any attempt to buy them back would almost certainly backfire: Less affluent persons, who need money and are disproportionately victimized by criminals, would surrender their weapons. Lawbreakers, who rely on their weapons, would retain them, as would mentally deranged persons who aren't motivated by financial incentives.

Around 400 Americans are killed annually by rifles of all types. Americans own 3 to 5 million "assault rifles." Even if a different rifle were used in each killing, a ban would be more than 99.99 percent over-inclusive.

That said, some weapons can be banned. For example, automatic weapons have, for all practical purposes, been banned since 1934. But banning popular semi-automatic rifles, merely because they have a military-type attachment that doesn't affect their lethality, makes no sense. The task, therefore, is to identify semi-automatic weapons that are not commonly used and not needed for lawful purposes. The 1994 Assault Weapons Ban went too far, but a more limited version might be viable.

2. *High-capacity magazines.* There are hundreds of millions of magazines in circulation with a capacity of 10 rounds or more. Realistically, they cannot be confiscated. Homemade magazines are easy to assemble. Experienced users can replace an empty magazine in a couple of seconds. Moreover, semi-automatic rifles are configured for up to 30 rounds; handguns are routinely configured for 11–17 rounds. That's why 10-round limits encounter great resistance. Still, the FBI reports that magazines exceeding 10 rounds were used in 34 mass shootings between 1984 and 2015. To my knowledge,

no actual or potential (civilian) victim has fired dozens of rounds in self-defense. Perhaps that suggests a ban on magazines with more than, say, 20 rounds.

3. *Universal background checks.* Surveys indicate that less than 2 percent of guns used by criminals are bought at gun shows—and that includes sales through licensed dealers who are already subject to background checks. Meanwhile, violence-prone buyers who fail those checks can purchase weapons illegally, or steal them.

In a recent year, the National Instant Criminal Background Check System denied 76,000 would-be buyers. Of those, 44 were prosecuted and 13 were convicted. That's a conviction rate of two one-hundredths of 1 percent. Either the remaining denials were legitimate purchases that were unjustly blocked, or, if the denials were proper, then 99.98 percent of the 76,000 rejected applicants escaped punishment. Neither conclusion offers much hope for an expanded system of checks.

Despite those doubts, even staunch Second Amendment proponents might be receptive to background checks for private (non-dealer) sales at gun shows, over the Internet, and through published ads. The key is *quid pro quo*—concessions to gun rights advocates in return for closing the "gun show loophole." That was essentially the deal offered by the 2013 Manchin-Toomey bill, which garnered 54 Senate votes, but not enough to meet the 60-vote threshold.

It may be time to revisit and, if necessary, fine-tune Manchin-Toomey. Buyers with recently issued concealed carry permits would be exempted from background checks, as would transfers by gift or bequest, in-person sales outside gun shows, and buyers responding to unpublished (e.g., bulletin-board) notices. More importantly, interstate handgun purchases from dealers would be legalized, added safeguards would be implemented against a federal registry, the time required to complete a background check would be significantly reduced, and interstate transport rules would be liberalized. Those are consequential benefits.

It's doubtful that new gun controls—imposed mostly on persons who are not part of the problem—will be effective. Accordingly, they should expire automatically after a reasonable test period. If they work, they can be reenacted. The Second Amendment doesn't bar sensible regulations, but it demands rigor from our lawmakers and the courts in legislating and reviewing gun control measures.

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