

George's Primer on Stuff You Need to Know to Understand Debates on Gun Control

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Given that there are more guns than people in America, it is at first blush surprising how little most Americans actually know about guns and “gun culture”. This can be explained partly by the fact that fewer than a third of Americans own all the guns in the country. It can also be explained by the fact that politicians and journalists are a very poor source of accurate information about guns and the history of their ownership and use in the United States. If you would like to learn some relevant facts that might inform your thinking about what, if anything, should be done about guns in America, read on.

The Second Amendment

We can begin with the Second Amendment. Does it guarantee an individual right to gun ownership? The Second Amendment reads “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” I cannot offer a legal analysis, but I can provide what I think is relevant historical context that is often lacking in discussions of this language. From a layperson common-sense viewpoint, the critical issue is how to interpret the references to a “well regulated Militia”, and to “the people”. Does the Amendment only guarantee “the people” the right to gun ownership when part of a formal military organization, such as a “well regulated Militia”, or is that right broader?

Considering the historical context, a reasonable interpretation of the Amendment might support a modern unpacking and re-writing of the Amendment along these lines: “It is important to have an effective fighting force proficient in the use of firearms to protect the security of a free state. If the general population does not have access to firearms, there will be an inadequate supply of people proficient in their use when they are called to serve in defense of the state. Therefore, individual American citizens are guaranteed the right to private ownership of firearms.”

In support of this interpretation, I would point to the continuing existence of the Civilian Marksmanship Program (CMP). This program was established in 1903, is administered by the Secretary of the Army, and includes the National Board for the Promotion of Rifle Practice. As a youngster in the 1960’s I belonged to a local shooting club, where we learned to shoot .22-caliber rifles at targets 50 feet away. Many of the training materials were provided by the government as part of this program. The National Rifle Association was also heavily involved in supporting youth shooting training. In addition to its support of individual marksmanship training, this program also was and is a mechanism by which surplus US military equipment, including firearms, could be transferred to individuals. Many US military rifles, including thousands of M-1 Garands, the semi-automatic .30-06 battle rifle of WWII, and more recently M1911 .45 semi-automatic pistols, have been sold to individual Americans by the CMP. This program still exists, though a 1990 GAO report questioned its value.

Clearly Constitutional scholars can and will disagree on the proper interpretation of the Second Amendment, but one often hears pundits and journalists scoff at the idea that the Second Amendment establishes an individual right to firearms ownership. It is obvious, some of them say, that the Second Amendment confers the right to own firearms only on a “well regulated

Militia”, not on individuals. When the Amendment was drafted, there was no “Army Reserve” or “National Guard”. There were individuals who organized themselves into militia units in time of need. I think the fact that the federal government has actively supported firearms training for the last 120 years, and has in fact transferred tens of thousands of surplus military firearms to American individuals as part of the Civilian Marksmanship Program, suggests that the interpretation of the Second Amendment I offered earlier is quite plausible.

I’m a lifelong hunter, recreational shooter, and gun collector. I am glad that my right to enjoy these activities is spelled out in the Constitution. I do think, however, that the implied justification for private firearms ownership is much less valid and defensible than it was when the Constitution was written. At the time, a significant portion of the combat power in any national conflict would have to come from non-professional citizen-soldiers. The firearms citizens had hanging over their mantels or leaning behind their doors were muzzle-loading mostly smoothbore flintlocks. The firearms used by military forces were also muzzle-loading mostly smoothbore flintlocks. There would have been a fair amount of what psychologists call “positive transfer of training” in that situation, as the citizen-soldiers who didn’t arrive for duty with their own arms would require little or no training to pick up a flintlock musket and use it effectively. This is a good recipe for supporting a well-regulated militia.

Changes in the way we defend our country and technical changes in firearms design and function fundamentally weaken the logic of the militia clause, I think. We depend far less heavily on the concept of the citizen-soldier or “minute man” for the national defense than was the case when the Second Amendment was written. Instead, we rely heavily on a standing, professional military. We do have Reserve forces, but these mainly supplement non-combat specialties within

the military. We simply have less need for the makings of a “well-regulated Militia” than we once did.

One reason that such a large, professional military is needed now is that warfare is a great deal more complicated than it once was. Warfare now relies on highly sophisticated, technical weapons systems, systems that cannot be picked up and used effectively by someone with only a sporadic or casual acquaintance with them. Even small arms, such as rifles and pistols, now used by the military are very different from those typically owned and used by civilians, so there would be less positive transfer of training today than there was then. So as I see it, the Second Amendment absolutely guarantees individuals the right to own firearms, but the justification it offers for doing so is no longer quite so valid.

Assault Weapons

Much of the current discussion about firearms regulation concerns so-called “assault weapons”, which are usually used in high-profile mass shootings. Assault weapons, as the term is generally understood, refers to intermediate-caliber selective fire rifles, which began to appear at the end of World War II and thereafter. Military versions of rifles based on the AR-15 (such as the Army’s M-4 and variants) and the AK-family of firearms meet this definition. This is because these firearms are selective-fire: at the flip of a switch, they can fire in a fully automatic mode, in which the rifle will fire continuously as long as the trigger is pressed. Semi-automatic versions of these rifles do not have this selective-fire capability: they fire only one round for each pull of the trigger. It is the semiautomatic version of these rifles that are often used in the high-profile mass shootings that provoke debate about banning “assault rifles”. Often, the civilian versions closely

resemble the military rifles in all but this one respect: the civilian versions are semi-automatic only. One disturbing implication of the account I offered of the Second Amendment above is that based on the rationale implied by the militia clause, private ownership of so-called assault rifles, such as AR-15s, would actually come closer to being justified by the original intent of the Second Amendment than purely sporting firearms. This is because their similarity to firearms used by the military would indeed lead to some positive training transfer.

I want this to be useful to you no matter which side of the gun debate you are on, if you are on a side, so let's work through some of the issues surrounding an "assault rifle ban". This has been tried once on a national level in the United States, and proposed many times. The first problem encountered in devising such a ban is defining "assault rifle". As with Potter Stewart's definition of pornography ("I know it when I see it") it is in practice rather difficult to craft a clear definition that excludes those firearms we might want to exclude without also excluding many others.

It is perhaps worth taking a step back and asking what we are trying to accomplish with such a ban. Some argue that because the weapons commonly used in many high-profile mass shootings are "assault rifles", we should ban them. Some ban proponents go on to assert that "assault rifles" have no legitimate use beyond mass murder. This is simply false: recreational shooting and hunting are legitimate uses. Assault rifles are used in a limited way in hunting, often for predators such as coyotes, and very extensively recreationally. Society (our lawmakers) might decide that these legitimate uses are not as important as our collective interest in decreasing the likelihood of a mass shooting, but the claim that these firearms have no conceivable use except mass killings is wrong. From this point forward I'll use the shorthand "ARs" to refer to "assault rifles". This term is often used to describe the AR-15 family of firearms specifically, which are

one type of “assault rifle”. The “AR” in “AR-15” has nothing to do with the term “assault rifle” – it comes from “ArmaLite”, the company that developed the AR-15 platform based on a design by Eugene Stoner.

What makes ARs attractive to mass killers is that they fire a lethal cartridge rapidly and have the capability to accept large capacity magazines. I’ll call these the essential features. Other features that have been focused on when considering which firearms to ban include: the presence of a pistol grip; a folding stock; a bayonet lug; a flash hider; a push-button magazine release. I’ll call these the cosmetic features. An assault weapons ban might use the presence of some or all of these features to determine which firearms should be banned.

If our purpose is really to reduce the likelihood of mass shootings, the logic would dictate that we focus on the essential characteristics of ARs that make them especially lethal in that setting, and ban all firearms that possess those characteristics. The characteristics that make them especially lethal are that they fire a lethal cartridge rapidly and can accept large-capacity magazines. The cosmetic features, pistol grip, flash hider, and so on, contribute little or nothing to the damage they cause in mass shootings. And just as the makers of designer drugs make small alterations in molecules to circumvent bans on dangerous drugs, the manufacturers of firearms have been known to make alterations to the cosmetic features of firearms on which bans are based to circumvent the ban.

Opponents of bans argue that the focus on ARs is misguided, because the bans are usually based on cosmetic features of the platform. They have to be, because if the ban was based on the essential features of the firearm that make them attractive to mass shooters, many other firearms would be swept into the net, so many that the ban would be seen by most as overly broad. There are firearms that fire intermediate cartridges in a semi-automatic mode and are capable of

accepting large capacity magazines, but look nothing like ARs. Some argue that if we really want to make mass shootings less likely, we should ban all firearms that share those essential features. Why ban one subset based largely on their appearance when many firearms just as lethal for the purpose would be left in private hands?

The unfortunate but real answer to this is, because we can. Banning all firearms that share the essential features of “assault rifles” would cast a net so broad as to be politically impossible. Because “assault rifles” are distinctive in appearance (though not in function) they can be singled out and however imperfectly, defined in the public square in ways that weaken public support for permitting their ownership. We regularly hear them called “weapons of war that have no place on our streets”, “military-grade weapons”, and other terms meant to separate them from all the other guns in America, and to alienate them from traditional firearms used in sport and recreation. Because this ban would leave many firearms that share their essential features unbanned, we would have to accept that mass shootings will still be possible, but believe that removing this particular category of firearms will diminish their frequency.

Bans

There are tens of millions of ARs, including AR-15s, AKs, and other firearms meeting the assault rifle criteria legally owned by Americans today. Enacting a ban on the importation, sale, or transfer of these weapons would stop further growth in the number of them. Permitting continuing transfer of such firearms (as was done in the earlier ban) would allow existing firearms meeting the criteria to be bought and sold. This would mean that the number of “assault rifles” couldn’t go up, but the existing stock would remain and could be bought and sold just as they are now. Sadly, that would mean that the conditions which have obtained for a long time, and in which many mass shootings have occurred, would continue indefinitely. Stopping the

growth in the number of “assault rifles” might be a sensible thing, but it may not have much effect on the likelihood of mass shootings. It would probably increase the monetary value of existing, legally owned ARs.

Some people think that like Australia and New Zealand, we should go farther and ban the possession of “assault rifles”. This would presumably lead to compensated or uncompensated confiscation of these firearms from their currently lawful owners. The differences in scale between the US and these countries is enormous, and the political systems are very different. It should be noted that this step was not even taken in the US in the case of fully automatic weapons – some of which are actual, real assault rifles. Many people think it is illegal to own a machine gun in the US, but that is incorrect. Fully automatic (“Class III”) firearms cannot be transferred on a Form 4473 through the process used to transfer regular firearms, but there exists in this country a small stock (approximately 180,000) of fully automatic transferable firearms that can be bought and sold by private citizens. It is not easy or cheap, but it can be done. This is because in the 1980’s, in an attempt to smoke out the many automatic firearms that were in closets and attics but unknown to the government, it was made illegal to possess an automatic firearm unless it had been presented to the ATF in a kind of amnesty process, which involved paying the government a fee and undergoing a rigorous background check, more rigorous than the one used for regular firearms. Those automatic weapons that were submitted to that process are now legal and transferable (and comparatively expensive) provided the fee is paid again and the transferee can pass the rigorous background check. These guns are registered, in the sense that the government knows who owns them. Those that were not subjected to that process are indeed illegal to possess.

This same approach could conceivably be taken with “assault rifles”. What this would give the government is de facto registration of the “assault rifles”. Automatic firearms and suppressors (“silencers”) are essentially registered, because the more elaborate process required to purchase them provides the government the serial number of each such item you own. Many people mistakenly believe that because you have to submit to a federal background check when you buy a regular firearm, that there exists a registry of some sort in which the government has or can construct a list of all the firearms you have purchased. This is incorrect. The government does not have a list of all the guns we own. When federally licensed firearms dealers submit a background check request to sell a customer a firearm, they are only required to identify the item as a long gun, pistol, or other. The federal government does not receive a description beyond this categorical identification. The Form 4473 required by the federal government to transfer a firearm (if the background check is passed) does contain this information, but it is not submitted to the federal government - it is retained by the dealer. The dealer is only required to maintain these forms for 20 years, after which time they may be destroyed.

If a firearm is used in a crime and the government wants to trace its ownership, the process is thus laborious and uncertain. The government can start with the manufacturer and ask to whom the firearm was sold, which is normally a distributor. The distributor can tell the government which dealer bought the firearm. From that point forward, though, it gets tricky. If the firearm was sold more than twenty years ago, the records may not exist. If it was sold less than twenty years ago, many boxes of paper forms might need to be looked through. All that gets you is the first private citizen that bought it.

Most states permit citizens to buy and sell guns from one another with no paper trail whatever. Individual citizens are not required to maintain any records on the guns they buy and sell. There

are also firearms that came into the possession of people before the Gun Control Act of 1968 required the use of the Form 4473 – or firearms that people inherit that came into the owner’s possession before that time, because even the federal government permits paperless transfers between close relatives. These firearms are all “off the books”.

The upshot of all this is that we need to understand that a ban on “assault rifles”, depending on exactly how it was developed and implemented might (1) Not affect other firearms with same essential features of lethality but without certain cosmetic features “assault rifles” have (2) Merely freeze the stock of “assault rifles” in America at its current very high number. There is no guarantee that this would affect the likelihood of mass shootings. Whether the function relating total number of “assault rifles” in America to the likelihood of occurrence of a mass shooting is linear (more ARs, higher probability) or is a step function (given a certain number of ARs, likelihood of mass shootings does not change) is not known (3) Permit the buying and selling of that very high number of “assault rifles” just as is done today (4) Leave in place in the case of “assault rifles” the situation regarding registration that obtains for all other firearms, to wit, the government does not know who has them.

A couple examples of the complexities: the US House of Representatives recently passed an “assault weapons” ban. That ban included the Ruger Mini-14 rifle, which fires the same .223 cartridge as the AR-15, and can accept high-capacity magazines, if fitted with a pistol grip and/or folding stock. It exempted the same rifle with a wooden stock without pistol grip. The bill also banned the Kel-Tec Sub-2000, which is a folding carbine that can accept high-capacity magazines. But this firearm is chambered only in pistol cartridges, such as 9 mm, .40 S&W. Firearms chambered in pistol cartridges are not generally considered “assault rifles”.

Magazines

One of the essential features of the AR platform that makes it appealing to mass shooters is the capability to use high-capacity magazines. Several states have passed limits on magazine capacity. As a practical matter, these regulations are difficult to enforce. This is because there are millions of such magazines in the US, probably several times the number of “assault rifles”, and the vast majority of them are not dated or serial numbered. When states pass magazine limits, existing magazines are typically grandfathered in, just as “assault rifles” were in the 1994 Federal assault weapons ban. It is difficult to tell when a magazine was manufactured, so distinguishing legitimately grandfathered magazines from recently acquired ones is difficult or impossible.

“Gun culture”

Discussions of “culture” often contain large quantities of smuggled biases, stereotypes, and smug judgments, and discussions of “gun culture” are no different. My purpose here is not to rehearse grievances but to provide information.

There is a worthwhile discussion to be had about firearms and American culture. Those who think of us gun owners as slack-jawed knuckle-dragging rednecks mainly see the role of firearms in American history in a negative way – as manifestations of toxic masculinity, tools of racial and other forms of oppression, symbols of the myth of Western (US West) self-sufficiency, ornaments of vigilantism, and so on. Gun owners are not a monolithic group, and I’ll simply say that we should be judged as individuals.

But to loop back to my discussion of the Second Amendment, there is a strong tradition of connection between the defense of this country, military service, and private ownership of firearms. And because the last half-century or so has been marked by dramatic changes in the

way we think about national defense, I think the traditional connection between military service and firearms ownership has become somewhat problematic.

The tradition begins at the beginning – with citizen-soldiers bringing their own firearms (Pennsylvania long rifles, fowling pieces) to fight the British. I have no idea how widespread this practice really was, but culture isn't always about facts. In the Civil War, many Union soldiers brought their own sidearms to battle, and the Confederacy was always short of small arms and so many private firearms were used. Many of these firearms went back home with the soldiers after the war, to become treasured heirlooms, or hung in GAR (Grand Army of the Republic) meeting houses. By WWI and WWII firearms were government-owned and provided, and so they didn't go home with soldiers. But millions of captured firearms came home in both those conflicts, and still litter the tables of every gun show in America. Many of those “vet bring-backs” were sporterized (turned into hunting rifles) and thus brought into the mainstream of American life. I already mentioned the CMP, but the government also sold prodigious quantities of surplus firearms to private companies, who reworked them into sporting firearms and sold them to the public. Francis Bannerman of New York was perhaps the largest such concern. Springfield 1903 (WWI US military rifle) and Mauser 98 (WWI and WWII German military rifle) bolt-action rifles have been turned into cheap sporters and high-end works of art by the hundreds of thousands, at least.

The Luger Grandpa brought back from WWI or the P-38 Dad brought back from WWII often became honored touchstones of the service and sacrifice they symbolized. Vietnam was, I think, the last conflict in which it was relatively easy for soldiers to bring back captured firearms, but they are not all that common. This may reflect in part the fact that this was the first conflict in which many of the weapons used were fully automatic, and so not eligible to be brought back, or

perhaps more importantly the wrenching divisions Vietnam precipitated. Soldiers returning from Vietnam didn't get quite the same reception soldiers got after WWII, and maybe didn't quite see captured firearms as reminders of past glory in quite the same way.

After Vietnam, a couple things happened. I was in ROTC in the 1970's, and we weren't allowed to wear our uniforms on campus because it was deemed too provocative. The military was, to put it mildly, not a highly respected institution. The draft was ended (sort of), and Jimmy Carter (who ought to get credit for SOMETHING) set in motion a significant increase in military budgets which set the military on the path to becoming the vaunted all-volunteer force we have today. It is often remarked how few Americans now have a direct connection to the military. That may be so, but Americans now love the military they no longer have to worry about becoming part of with unbridled passion.

I have to admit that I am not a fan of the all-volunteer service. I think it makes it too easy for our politicians to start wars, and the adulation society heaps on the services has bloated their budgets and undermined accountability. I'd rather see some kind of universal public service system with the military as one option. But I digress. While American society adores its all-volunteer military, there are elements of our all-volunteer military that are not all that crazy about American society. The people who choose to join the military are not a random sample of society. These people self-select for many reasons, sometimes because they perceive the military to be a more morally pure place to be than society at large, for which some of them have contempt. I mention this because I think that connection between military service and firearms, that hitherto included a gauzy patriotism based on shared sacrifice in service of honorable goals, has changed.

The soldiers that fought in Iraq and Afghanistan for the last couple decades (!) fought with ARs, among other things. They couldn't bring them home, and they weren't allowed to bring home captured weapons very much, either. But when they GOT home, they could buy a firearm that looked pretty much exactly like the one they had in the service – a semi-automatic AR. And many have. So the current generation honors their service and the comrades they fought with, many of whom did not come back or came back forever changed, by owning and shooting firearms that look just like the ones they had in the service. There is a neologism, “tacticool”, which captures, in a somewhat pejorative way, the modern fascination with all the accessories and equipment that look *tactical* – and therefore *cool*! So in a way, the traditional connection between military service, defending America, and firearms has been preserved.

But the drumbeat these former soldiers hear in the press every day is that ARs are evil, have no place in America, and the government wants to take their ARs away, because they can't be trusted with them. They were trusted with more lethal versions of them when it suited the politicians' interests, but now, because a few crazies misuse them, they can't have them. This further undermines an already somewhat fraught relationship between vets and American society, and maybe what it stands for.

Hollywood

I'm a lifelong shooter, hunter, and gun collector. I may have mentioned that. But I have to say I am appalled by what I see on TV, on the silver screen, and in video games when it comes to the portrayal of firearms use in “entertainment”. I'm a social scientist, so I understand the methodological difficulties associated with connecting exposure to media images of firearms use with statistically rare but horrific events like school and mass shootings. But I can't help but think that there is a connection.

I have to confess that I like action movies, I guess because I'm not an especially smart person, and I enjoy the excitement and stimulation. *Dirty Harry* appeals to me more than *Little Women*, with apologies to Ms. Alcott. But do we have to be exposed to so many scenes of people mowing down large quantities of humans with ARs? Harry Callahan used a Smith and Wesson Model 29 .44 Magnum in *Dirty Harry*, which he called the "most powerful handgun in the world". Sales of the Model 29 were rather positively impacted by the release of the film, to say the least. Other iconic firearms, such as the Desert Eagle, which has been featured in films and video games, have seen increased sales after product placements in popular media.

The AR is now ubiquitous in films and video games. Not only that, you see it everywhere in these media. I'm an old geezer, but I have had the opportunity to take younger people (20s-30s) to the range and introduce them to shooting. Even when these kids have never fired a firearm before, they are really good at recognizing even pretty unusual firearms. How, one might ask, is this possible? Easy: they have fired M-1 Garands and Moisin Nagant 91-30 sniper rifles and MP-40s and MG-34s and M-79s and ARs and AKs and you name it zillions of times, in video games. The M-1 Garand makes a very distinctive *ping* sound when the *en bloc* (charger) clip is ejected after firing the last round. Imagine the irony when I heard a young person on the range exclaim that hey, that sounds just like it does on the computer! It's been sounding just like that since shortly before WWII.

Why do I mention this? Because I can't help but believe that the media representations of AR violence contribute to real AR violence. Call me crazy, but I believe that seeing characters in films, good guys or bad guys (the categories are no longer as distinct as they once were) wheeling and turning and wasting human after human with an AR has an effect on some of the people watching. Not a good effect.

So, along with all the measures that are being contemplated to address mass shootings, why is it that we never hear about the Hollywood actors and actresses who frequently use their celebrity to advocate for assault weapons bans and other gun control measures committing to not appearing in films or TV shows in which ARs are used to kill people? Now we are in the territory of another amendment, which precedes the Second Amendment by roughly one. The First Amendment. I get that those films showing AR violence cannot and should not be outlawed, because I am as firm a believer in the First as I am the Second Amendment. But “not illegal” is not the same as “responsible” or “in the public interest”.

Bottom Line

This is not a simple set of issues to discuss, but you would never know that by listening to politicians and journalists. If you’ve had the patience to read through this, perhaps you have learned something you didn’t know about guns and the people who own and use them. I don’t know a single gun owner (and I know LOTS of them) who doesn’t wish there were some way to square the circle and permit responsible firearms ownership while preventing evildoers from getting firearms. I’m sure there are such people, but I don’t know any of them. If we are ever going to make progress, we have to buckle down, stop listening to people who think they have all the answers but have never asked any questions, and do the hard work of seeking realistic and effective solutions to the problems we confront.