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A Challenge to Gun Rights

Published April 17, 2015 | By [Jeff McMahan](#)

Written By Professor Jeff McMahan

On this day in the US, around thirty people will be killed with a gun, not including suicides. Many more will be wounded. I can safely predict this number because that is the average number of homicides committed with a gun in the US each day. Such killings have become so routine that they are barely noticed even in the local news. Only when a significant number of people are murdered, particularly when they include children or are killed randomly, is the event considered newsworthy.

Yet efforts to regulate the possession of guns in the US are consistently defeated.

The case for gun rights rests primarily on two claims, one about facts, the other about moral principle. The claim about fact is that members of society as a whole are safer when more of them have guns, since potential aggressors are likelier to be deterred the more reasonable it is for them to believe that their potential victim is armed. The claim about principle is that each person has a right of self-defense and that this right entails a further right not to be deprived of, or prevented from having, the most effective means of self-defense. These claims are independent. Most of those who assert them think the second would be true even if the first were false.

Advocates of gun rights (to whom I will refer as “advocates”) usually defend the claim about fact by appealing to statistics – for example, those that suggest that when a city bans handguns, rates of violent crime and homicide increase rather than decrease. The claim about principle is often defended by appeal to an analogy with an individual case. Suppose a person is about to be killed by a culpable aggressor but has a gun that she can use to defend herself. As the aggressor approaches, another person takes the potential victim’s gun away from her, with the consequence that she is killed by the aggressor. It is clear that the intervening person violates the victim’s right of defense. The same is true, according to advocates, of a state that deprives its citizens of their guns, or prevents them from having guns. Whenever a person is harmed who could have defended herself if she had had a gun, and her lacking a gun is attributable to restrictions the state imposes on their possession, the state has violated her right of self-defense.

There is much that one could say about each of these claims. The statistics cited above, for example, do not show what happens when an area changes from one in which private citizens have guns to one in which they do not; at most they show what happens when cooperative people surrender their guns but determined criminals keep theirs. One might add that if advocates in the US really believed their own statistics, they would not have acted so successfully to stifle government funding for empirical research on gun violence. As for the example intended to support the claim about principle, there are various failures of analogy between disarming a victim faced with an immediate threat and limiting or prohibiting private possession of guns throughout a society.

The relevant analogy is with a situation in which a third party disarms both the aggressor and the potential victim and provides protection for the victim.

I will, however, present a different challenge to the central claims of advocates. I suggest that we test them by imagining a situation in which individuals are continuously at high risk of being wrongly attacked and even killed but in which the state aggressively prevents them from having guns, or indeed any means of self-defense at all. Instead the state compels them to rely for their security on third party defenders who, like the police in domestic society, cannot be continuously present to protect them. What advocates say scathingly of the police – “when every second counts, the police are only minutes away” – is often true of these third party defenders. The central claims of advocates ought to apply most forcefully to people in these conditions. It seems that such people, who are in constant danger of being attacked or killed, would be safer if they had guns to protect themselves and that the state violates their rights of self-defense by preventing them from having guns and confiscating guns from any who might acquire them.

I think, however, that this is false. Contemporary moral philosophers are noted, or perhaps notorious, for their use of hypothetical examples. The example I have just sketched is hypothetical. But it describes the conditions in an actual institution: prison.

Prison populations contain an unusually high proportion of people who are disposed to violence. And prison inmates often sort themselves into rival groups or gangs that reflect their affiliations prior to imprisonment, thereby importing preexisting antagonisms into the prison environment. Without protection, prisoners, and especially the weaker ones, would be far more likely to be assaulted than most people who are not imprisoned. Yet the state denies them any means of self-defense, forcing them to rely on armed guards and certain physical and institutional safeguards for their protection.

If the logic behind the advocates’ empirical claim were correct, prisoners would be safer if they were allowed to have guns and thus did not have to rely on guards for protection. Each would be deterred from attacking any other by the knowledge that the other was, or at least might be, armed. This parallels the advocate’s claim that citizens are safer if they are armed and do not have to rely solely on the police for their protection. Of course, if prisoners were armed, they might in many instances be able to defend themselves against guards, thereby decreasing the effectiveness of guards as protectors. But advocates presumably advance their empirical claim in the awareness that police would similarly be more often deterred or forcibly prevented from fulfilling their protective functions if most or all citizens were armed at all times.

It does not take much imagination to see that prisoners locked up together with guns but without guards would not be more secure than prisoners without guns but with guards. This is particularly obvious in the case of any prisoners who did not have guns when others did. The idea that only some prisoners might have guns is entirely consistent with the gun rights position. Advocates typically claim only that the right of self-defense entails a right not to be deprived of a gun, or not to be prevented from acquiring one. They do not argue that people have a positive right to be provided with a gun by the state. Their view thus seems to imply that while the state ought not to prevent prisoners from acquiring guns, it need not provide guns to those who cannot get them otherwise. Those who are unable to get a gun would then have to rely for protection on someone else who has one – just as in the advocates’ ideal society those who are unable to acquire or use a gun, such as children and certain disabled people, would have to rely on the generosity of others for their protection.

Advocates will no doubt respond by denying that their view commits them to the claim that the state violates prisoners’ rights of self-defense by denying them access to guns. They might, for example, argue that convicted criminals have forfeited their right to the possession of a gun. Yet no one can forfeit his right of self-defense against *wrongful* attack. Consider a modification of the advocates’ own example. Suppose a convicted criminal has a gun and will be wrongly killed by an aggressor unless he uses it in self-defense. Someone who then takes his gun away, thereby ensuring that he is killed, seems to violate his right of self-defense. That might not be true if the criminal would, after defending himself, use the gun to threaten innocent people. Similarly, prisoners might forfeit their right to effective means of self-defense if they could also use those means to threaten innocent people outside of prison. But it does not seem that they forfeit their right to effective means of defending themselves from wrongful attacks by other prisoners.

But does the state really violate the rights of prisoners by denying them access to guns for self-defense? Not if each prisoner has a higher expected level of security against assault and homicide when they are all protected by guards than each would have if all were allowed to have guns for self-defense. The right of self-defense is not fundamental but is derivative from the more basic right to physical security. Thus a prohibition of gun possession does not violate prisoners’ rights if it enhances their security by

reducing the occasions on which a prisoner might need a gun to defend his life. And the same is true outside of prisons – where, at least in the US, people are more likely to be murdered than they would be if they were in prison.[\[1\]](#)

[\[1\]](#) In the US, the murder rate in 2011 was 4.7 per 100,000 people. In local jails between 2000 and 2010 it was 3 per 100,000. See Brian Palmer, “Which is Safer: City Streets or Prison?” *Slate*, June 19, 2013. http://www.slate.com/articles/news_and_politics/explainer/2013/06/murder_rate_in_prison_is_it_safer_to_be_jailed_than_free.html

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16 Responses to *A Challenge to Gun Rights*

- *Dennis Whitcomb* says:
[April 17, 2015 at 7:07 pm](#)

Hi Jeff,

I think most of what you say here is right, but only if it is restricted to a certain sort of pro-gun view, in particular the (popular) pro-gun view that people should be allowed to carry guns in relatively highly populated areas such as cities and towns. Consider a much more restricted (and less popular among gun advocates) view of the matter, in particular the view that people ought to be allowed to carry guns, but only in relatively unpopulated areas where there is some reason for doing so (such as a self-defense reason). Suppose that a person lives in the middle of nowhere, in a place where there are regular sightings of bears and cougars, and that this person frequently walks around where these sightings have occurred, and that when he does so there are usually no other people in the vicinity. I would think that the things you say here don't give us reason to outlaw that person's carrying a gun in the scenarios where he is walking around his property. So I think a more restricted (and less currently popular) pro-gun view survives your critique here.

[Reply](#)

- *Tim Hsiao* says:
[April 17, 2015 at 11:20 pm](#)

Suppose a prison forbade its prisoners from mounting any kind of self-defense attempt on the grounds that resistance could incite a riot. Presumably this would be unjust, for even though the prison may deny prisoners access to certain means of self-defense, it cannot deny them the right to exercise self-defense in general. So given that prisoners should be allowed to mount at least some kind of resistance against unjust attack, the question then becomes “Which means of resistance should be available to them?”

You're right in noting that it would be silly to suppose that prisoners should be allowed to own guns, but prisoners are also denied access to many other weapons — pepper spray, knives, bats, anything that can be turned in to an improvised weapon, and much more. Indeed, it seems as if the only weapons that prisoners may use are their hands and feet. If the prison example is supposed to be analogous to common life, then we can extend the argument to rule out private ownership of all kinds of weapons, not just firearms. This, I think, goes way too far.

Many people who would otherwise consider themselves 'pro-gun' nevertheless support certain restrictions on gun-carrying (e.g. carrying a gun into police stations or high-security government facilities). Why is this? I take the rationale to be something like this: There is a right to carry a gun exists because the state cannot guarantee the safety of its citizens (something which would require a police state). If, however, this requirement can be met, then the right to carry a gun for self-protection can be overridden.

But if the state can't meet this requirement, then it is not at all clear why restrictions on gun ownership or carrying should be restricted. Suppose we have an understaffed and mismanaged prison in which the staff is utterly incapable of protecting its inmates from each other. There's a very strong case to be made that in this type of environment, prisoners have the right either to demand better state protection, or, failing that, access to an adequate means of self-defense to protect themselves. This need not be a firearm.

It also may be the case that while prisoners have no general right to own a gun, that they may gain this right in certain cases. If the state fails in its duty to protect a prisoner, it is not a stretch to suppose that said prisoner gains the right to take all necessary means in order to protect his life, even if that includes procuring and firing a gun. So it is possible for a prisoner's right of self-defense to be violated by confiscating his gun, even if he has no general right to own it. Applying this to common life, since the state regularly fails to protect common citizens from all sorts of crime, private citizens have the even