

THE GUN DISPUTE

BY ROBERT J. SPITZER

FEW TEACHERS could avoid a shudder when word of the most recent school shootings hit the media. In the last couple of years, it seems as though public schools have become shooting galleries for deranged students. What, exactly, is going on? What role can we ascribe to guns? And what can we, as educators, learn from these seemingly random and senseless acts?

Teachers know very well that schools do not exist in isolation from their communities. When students enter the schoolhouse door, they bring with them their own problems and attitudes, which are inextricably linked to those of society. So it seems reasonable to begin a search for answers to these questions by looking at our society's attitude toward guns.

Order First

The first purpose of government is the establishment of order, so that citizens can rely on a modicum of safety. Without order, the only freedom we can expect is the "freedom" of anarchy. The British political philosopher John Locke put it this way: "God hath certainly appointed government to restrain the partiality and violence of men." And the political scientist Samuel Huntington noted, "Men may, of course, have order without liberty, but they cannot have liberty without order." Schools are no different from society as a whole in their need for order. If we expect learning to take place, we must make sure students are, and

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feel, safe. Beyond the continuing effort to ensure such security at school—an obvious if painful lesson arising from the shootings in Littleton, Colo., and other U.S. schools—what else can such incidents teach us about the connection between guns and our children, our schools, and our society?

First and foremost, there is no single cause for this senseless violence. Video games, a popular culture infatuated with violence, the Internet, absentee parents, and flawed police work all share some blame, along with the easy access to guns. In the long run, our best approach is to separate these strands and try to identify the role of each. But just as it is clear that guns are not the only problem, so, too, is it clear that guns are a significant part of the problem. The two boys who carried out the Littleton killings reportedly brought fifty explosive devices into their school, as well as four guns. Yet all of those killed in the attack died from gunshot wounds, and accounts of the mayhem at Littleton's Columbine High School reveal that the guns gave the two boys immediate control over the parts of the school they occupied.

Further, it is well understood that introducing guns into any situation increases the lethality of a confrontation, meaning that the likelihood of injury or death increases significantly. Our ideal is to raise children who are free from the dark impulses that propel young people toward violence and mayhem. Since we are far from realizing such an ideal, however, we would do well to take whatever steps we can to minimize the danger that troubled youths will carry out their violent fantasies with guns in hand.

Not as Bad as You Think

National polls consistently reveal that crime is one of Americans' chief concerns. In fact, the fear of crime has continued to rise throughout the 1990s. Yet this has oc-



curred at the same time that crime has been declining in virtually every category. Students' attitudes about school safety follow a similar, contradictory pattern. In 1989, 6 percent of students ages twelve to nineteen reported fear of attack or harm at school. In 1995, this figure had risen to 9 percent.¹ Actual school crime rates reflect the opposite trend. So we need to begin with the fact that schools are relatively safe places, as compared with local communities and even homes. This alone is remarkable given that U.S. public schools enrolled almost 46 million students during the 1996-97 school year and the fact that teens and young adults compose the most crime-prone segment of the population.

Moreover, school shooting deaths are both rare and declining. According to the National School Safety Center, there were fifty-five such school deaths during the 1992-93 school year, fifty-one in 1993-94, twenty in 1994-95, thirty-five in 1995-96, twenty-five in 1996-97, forty-two in 1997-98, and until the April 20 massacre at Littleton High School, where fourteen students (including the two assailants) and one faculty member were killed, only nine such deaths were recorded for 1998-99.² But statistics notwithstanding, the rise in headline-grabbing multiple-victim shootings (from two during 1992-93 to six in 1997-98) coupled with their occurrence in what are supposed to be low-crime areas, have greatly intensified people's worries about school safety.

Downward trends apply to other crime patterns as well. In 1996 (the last year for which data are available), children ages twelve to eighteen were subjected to serious violent crime at a rate of twenty-six crimes for every 1,000 students away from school, totaling about 671,000 incidents nationwide. Also in 1996, the same age group was victimized by violent crime within schools at a rate of ten per 1,000 students (about 255,000 incidents, or 38 percent of the non-school crime rate). In addition, overall crime rates this decade—in and outside school—have been declining. From 1993 to 1996, the overall crime rate in schools for twelve- to eighteen-year-olds dropped from 164 incidents to 128 per 1,000 students. The rate dropped comparably for non-school crimes.³ These trends are even more significant when you consider that nationwide crime rates such as homicide are proportionately highest among eighteen- to twenty-four-year-olds, followed by fourteen- to seventeen-year-olds.⁴

Admittedly, these statistics provide little comfort for the families of students and teachers killed or injured in schools, and this is not a call for complacency. One wrongful death in a school is one too many. Nor are the fears of parents who wonder whether their child's school will be next easily quieted. Still, we need to remind ourselves that although serious, school violence occurs at lower rates than in society at large, and it is indeed following a downward trend.

Although children are the primary victims of most school crimes, their teachers are not exempt from such acts of violence. From 1992 to 1996, an average of thirty violent crimes per 1,000 were committed against teachers at public and private schools, amounting to about 123,000 per year. Concern about school violence is also fanned by large numbers of students who carry guns. Although the percentage of students

who report bringing guns to school has declined in grades 9-12, in 1997, about 9 percent of students reported carrying a gun onto school property within the previous 30 days (down from 12 percent in 1993).⁵

Except for a scattered few who would like to see teachers and administrators armed,⁶ virtually no one argues that guns belong in schools, except perhaps in the hands of properly trained security guards or police. In addition to the obvious problems that can follow from guns in schools—gun thefts, accidents, suicides, murders, and mayhem—there is the problem that guns lead to more guns. This kind of escalation occurs for the same reasons as it does in society at large. Students who decide to carry guns for security—and this is the reason they usually cite—do so because other students are already bringing guns to school. And predators seeking to do harm are encouraged to bring firearms, or more firearms, to top the firepower that may already exist. The rule that the presence of guns increases the deadliness of any confrontation holds for schools, too, and this accounts for the sharp rise in homicides by juveniles that occurred nationwide in the 1980s. Criminologists initially concluded that this spike was the product of a new generation of "superpredator" teens who were more prone to murder. More recent analysis has found, however, that the murder spike was instead almost entirely attributable to juveniles' gaining access to handguns.⁷

The gun phenomenon as it affects schools cannot be understood apart from America's love-hate relationship with the gun. The National Rifle Association (NRA), the organization most closely connected with gun possession and use, has steadfastly opposed new regulations, extolled traditional gun use arising from what is loosely termed "the gun culture," and trumpeted the U.S. Constitution's Second Amendment.

The Gun Culture

America's attachment to guns dates back to colonial times. Historians have noted that actual gun ownership from the colonial era to the Civil War has been greatly exaggerated: Gun ownership never exceeded 10 percent of the population from colonial times until after the Civil War, when mass-produced guns were heavily marketed to civilians.⁸ Nevertheless, the romantic attachment to guns is part of the American heritage. Today's gun culture, whose adherents are primarily males in rural areas and the South, rests mostly with about 15 million Americans who continue to hunt and engage in other sporting activities involving guns. This base of support has gradually declined since about 1960 for a variety of reasons. Hunting areas have shrunk, as has the population in rural areas. At the same time, the public has become increasingly suspicious of guns, and more Americans have therefore abandoned gun-related activities.

Many of the students who have committed acts of gun violence grew up in homes where guns were readily available and where gun use was taught. The shootings in schools at Moses Lake, Wash.; Bethel, Alaska; Jonesboro, Ark.; and Springfield, Ore., were all committed by young males who were exposed to, and trained in, the use of guns. An angry, isolated, alien-

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ated child is a child at risk. Put a gun in that child's hand, and "at risk" becomes "potentially lethal." If these murderous acts represent a distortion of a legitimate gun culture, they also cannot be divorced from the existence of this culture or its article of faith that guns should continue to be easily available. This conviction stems at least in part from an oft-invoked, yet little understood, constitutional amendment.

'The Right To Bear Arms'

Americans attach enormous importance to the rights, powers, and privileges that flow from the U.S. Constitution. In the gun debate, nearly any effort to tamper with gun laws or gun access provokes heated invocation of the Second Amendment. Speaking at the NRA's annual meeting on April 30 in Denver, virtually in the shadow of the deaths in Littleton, NRA president Charlton Heston sought to rebut gun control supporters by arguing that, "Our mission is to remain a steady beacon of strength and support for the Second Amendment, even if it has no other friend on the planet."⁹ Although Heston surely was not arguing that the young assassins were exercising their constitutional rights, the customary allusion to the Second Amendment indeed suggests that it somehow justifies citizens' possession and use of guns in modern America. This is a view that is shared by most Americans. For example, a 1995 poll reported that 75 percent of Americans believe that the Constitution's Second Amendment "guarantees you the right to own a gun."¹⁰ In fact, the amendment does no such thing.

Polemic aside, the meaning of the Second Amendment is relatively clear. The full text, often quoted in fragmentary form, states: "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." Former Supreme Court chief justice Warren Burger once wrote that this amendment should be read as though it began with the word "because." That is, the right to keep and bear arms assumes a government-organized and regulated militia (the courts have specifically eliminated from the concept of *militias* any self-created militias that are not expressly formed by, and under the control of, the government). The Second Amendment, added to the Constitution in 1791 along with the nine other amendments in the Bill of Rights, was written at a time when citizen militias were still a primary means of national defense, when suspicions of standing armies were still strong, and when the government itself could not be relied on to

provide arms to prospective soldiers—ergo, the need for citizens to have weapons of their own in case they were called in to service. All of the debate about the Second Amendment during the First Congress centered on matters of national defense and military organization. At no time did anyone argue that the amendment was designed to enshrine any personal use of firearms for purposes such as hunting, sporting, recreation, revolt against the government, or even self-defense (a matter already covered in common law).¹¹

This interpretation has been ratified in four Supreme Court cases: *U.S. vs. Cruikshank* (1876), *Presser vs. Illinois* (1886), *Miller vs. Texas* (1894), and *U.S. vs. Miller* (1939). In 1980, the court affirmed the reasoning of these cases in *Lewis vs. U.S.*, emphasizing that the Second Amendment comes into play only when the government calls citizens into military service as members of a militia and needs them to bring their own weapons. This interpretation has also been verified in nearly twenty lower federal court rulings. Although Congress still retains the power to call up the militia, since the Civil War the government has met military emergencies through mobilization of a professional army enlarged through the military draft, rather than by citizen militias, which were effectively abandoned after their abysmal performance in the War of 1812. And the government has long had ample resources to provide proper arms to the military. Finally, the courts have said repeatedly that the Second Amendment is no impediment to firearms regulations—including such sweeping measures as banning handguns.

In short, there is no connection whatsoever between the Second Amendment and any of the modern uses or purposes ascribed to it. That the amendment is constantly invoked, even in the aftermath of Littleton, is a testament to the political value of constitutional symbolism, rather than constitutional law.

The Link Between Guns and Crime

Much of this country's despair about guns arises from their sheer numbers. There are 200 million guns in the U.S., according to the best recent estimate. Given such a statistic, many argue that it is pointless to talk about gun control, especially because guns are a relatively durable commodity. However, the link between guns and crime is more precise and narrow. Two-thirds of all guns in this country are long guns—rifles and shotguns—which usually are easier to obtain than handguns. Yet 80 percent of all gun crimes are committed with handguns. Moreover, there is mounting evidence that most guns used in crimes are purchased legally and shortly before they are used. This contradicts the long-held belief that guns used in crimes are typically obtained illegally.

According to the Bureau of Alcohol, Tobacco and Firearms (ATF), nearly half of all handguns used in crimes were purchased from federally licensed dealers within the three years prior to the crime. Many of these purchases were through "straw purchasers," people who buy guns in quantity in a place where that is allowed in order to bring the guns to customers who, because of their background or residence, would not

be able to make such purchases. In New York state, which has one of the toughest gun laws in the nation, 90 percent of all gun crimes involve firearms that were purchased in states with lax gun laws, including Florida, Georgia, North Carolina, South Carolina, and Virginia. (These statistics are based on guns obtained by law enforcement officers who traced them to their origin.) Moreover, only 1 percent of all licensed gun dealers were responsible for selling almost half of all guns traced to crimes in 1998. For gun crimes committed by juveniles, half of all the traceable guns were purchased by straw buyers; 14 percent were sold by unlicensed private sellers, and 10 percent were purchased at unregulated gun shows, flea markets, or through magazine ads.¹² A 1999 ATF study found that 46 percent of the felons studied obtained weapons by purchasing them at gun shows.¹³ This should come as no surprise. After all, why steal or purchase something on the black market when it can be bought openly and without any trouble?

There are several points to be made here: First, access to guns continues to be relatively easy—a fact that applies to the young as well as to hardened criminals. Three of the four guns used in the Littleton assault—two shotguns and a Hi-Point carbine—were purchased at a gun show by the girlfriend of one of the shooters. Acting as a straw buyer, she bought the firearms shortly before the killing spree. The fourth gun, a semi-automatic pistol called a TEC-DC9 (with a large-capacity ammunition magazine), was also purchased at a gun show. Second, guns linked to crimes are typically funneled through ill-regulated but legal avenues. Third, in localities where law enforcement authorities have succeeded in cutting down gun-related crimes, they have done so by paying more attention to gun tracing, as well as through stricter regulation of the flow and possession of guns. Fourth, teenagers' access to guns warrants special attention by authorities because juveniles often react impulsively, and because introducing guns into a hostile situation dramatically increases the likelihood of injury and death.

Given the prevalence of guns in our society, there can be no guarantee against future Littletons; however, many steps can be taken to make such incidents significantly less likely. Gun control opponents often argue that since current laws cannot stop gun crimes, they should be repealed, and further regulatory efforts abandoned. However, no one proposes that we repeal laws against murder because murders continue to occur; nor does anyone propose that minors be given legal permission to smoke cigarettes because millions of minors do so illegally. In fact, society's response in both instances has been the reverse—to increase sanctions against these and other activities that cause harm, and there is no reason why we should not pursue this course of action with guns. Former New York City police commissioner William J. Bratton has called "easy access to guns...one of the biggest factors in violent crime."¹⁴ Such measures as regulating unregulated gun purchases at gun shows and flea markets, restricting multiple gun purchases, removing the grandfathering that currently applies to certain banned weapons and ammunition clips produced before they were banned in 1994, increasing penalties for those who provide firearms to mi-

nors, and requiring trigger locks (devices that prevent a gun from being fired and which can be installed in existing guns) are a few examples of regulatory reform that could yield measurable benefits. If the boys in the Littleton case had been able to obtain only the two shotguns and not the TEC-DC9 or the carbine, it might not have prevented the shooting spree, but it would have reduced their total firepower and perhaps the loss of life.

The Political Battleground

The key decisions concerning gun availability and regulation come out of the political process. If governing decisions were purely a matter of translating public preferences into public policy, national gun laws would be far more restrictive than they are. Since the advent of modern polling in the late 1930s, public opinion has consistently supported stronger gun laws. Indeed, public support for gun control is not only one of the most consistent trends in the history of public opinion, but among the most one-sided. To cite a recent example, a May 1998 Harris Poll found that 70 percent of adults favor stricter gun laws, and so did 57 percent of gun owners. Measures such as waiting periods for gun purchases; restriction or denial of citizen access to more destructive, higher-firepower weapons—like the AK-47, which fires bullets at 2,300 feet per second;¹⁵ across-the-board gun registration; and mandatory gun locks have long been supported by large majorities of Americans.¹⁶ Yet the general public normally takes notice of such matters only when national attention is focused by some catastrophic event. Thus, the first major national gun law, the National Firearms Act of 1934, was enacted in response to public outrage over gun-related gangster violence. The Gun Control Act of 1968 was enacted in the aftermath of the assassinations of Martin Luther King, Jr., and Robert F. Kennedy. The Brady Law of 1993 and the Assault Weapons Ban of 1994 were both responses to a series of multiple shootings that received national attention.¹⁷ Aside from these modest changes in law, the prevailing political pattern has been gridlock on the gun issue during the last several decades. Gun control opponents have mostly succeeded in blocking the enactment of major gun laws at the national level and in winning passage of "concealed carry" laws, which allow citizens to carry concealed weapons, in 32 states.

The Littleton shooting, followed quickly by the planned rampage in Fort Huron, Mich., and the shooting at Heritage High School in Conyers, Ga., has prompted a new wave of gun control fervor, and renewed scrutiny of gun practices and habits.

Significantly, on May 20 the U.S. Senate passed the first new federal gun restrictions since enactment of the 1994 Assault Weapons Ban. The bill, passed after tumultuous debate and despite the opposition of Majority Leader Trent Lott (R-Miss.), called for background checks for firearms purchases at gun shows and pawn shops, and revocation of gun ownership for those convicted of gun crimes as juveniles, as well as tougher penalties for juvenile offenders. It also required safety devices to be sold with all handguns and banned import of high-capacity ammunition clips (those that can hold more than ten bullets).

Despite widespread public support, the Senate bill

met a chilly reception in the House. Gun control opponents succeeded in putting off consideration of the bill until June, allowing control foes time to marshal their resources and supporters. From mid-May to mid-June, the NRA spent \$750,000 on mass mailings and \$300,000 on phone banks. The pro gun-control group, Handgun Control, Inc., spent about \$350,000 on similar activities. On June 17 and 18, the House capped a tumultuous week of politicking with a series of votes that gave a victory to gun control opponents, led by Minority Whip Tom DeLay (R-Texas) and senior Democrat and former NRA Board Member John Dingell (Mich.). The amendment, drafted with NRA guidance, included some control provisions—like mandatory locks for new handguns and a ban on the import of high-capacity gun magazine clips. But the measure also weakened the gun-show background check system, and opened the door to the interstate sale of handguns (rolling back a restriction that had been in place for thirty years). In the final vote, the now-weakened gun measure was defeated by a coalition of gun control supporters who found the bill too weak, and some control opponents opposed to any control measures. At this writing, a conference committee of representatives from both chambers is expected to offer a compromise plan, but the House is unlikely to accept a gun control measure anywhere near as strong as that passed by the Senate.

In the Statehouses

Less noticed, but perhaps more significant, has been a flurry of action in state legislatures around the country. Formerly dormant efforts to enact new gun regulations, such as one-handgun-a-month purchase limits and gun lock requirements, have gained momentum. Similarly, efforts in some states to relax state gun laws have been stopped in their tracks, although Texas Gov. George W. Bush signed a bill to bar liability suits by localities against gun manufacturers, making his the fourteenth state to enact such a restriction. In all, over twenty states have seen renewed attention to gun laws on both the pro- and anti-control sides. Finally, aroused public sentiment is likely to provide added fuel to recent efforts by cities to file civil suits against gun manufacturers to hold them liable for gun-related injuries and deaths.

As for our schools, the current national mood is now more receptive than ever to restricting and regulating adolescent access to guns and to imposing tighter restrictions on firearms that are especially destructive. States and local communities may well find support for new regulations that focus on gun access, especially as it affects the young. This does not mean that new regulations will be foolproof; the persistence of the gun culture means that some children will continue to have access to guns through their families. And tighter regulation in some communities is likely to be neutralized by lax gun laws in surrounding jurisdictions. Nevertheless, the government has both the right and the obligation to take steps to minimize the likelihood of future Littletons. That it cannot provide a perfect solution is no reason to abandon the effort; rather, it underscores the need to look carefully at all the influences on our young, including the family and the media.

The great nineteenth-century civil libertarian John Stuart Mill stated succinctly the special obligation of a society toward its young. In *On Liberty*, Mill said that “young persons below the age which the law may fix as that of manhood or womanhood...must be protected against their own actions as well as against external injury.” Nothing has happened, since Mill wrote these words, to release us from this obligation, which applies equally to our children in society, and in our schools. □

Endnotes

- ¹U.S. Departments of Education and Justice, “Annual Report of School Safety 1998,” p. 13.
- ²These data have been reported in various places, including Jerome G. Miller, “Juvenile Justice: Facts vs. Anger,” *New York Times*, 15 Aug. 1998; Edward Walsh, “Calm Year in Schools Is Shattered,” *Washington Post*, 21 April 1999.
- ³U.S. Departments of Education and Justice, “Annual Report,” pp. 8-11.
- ⁴James Alan Fox and Marianne W. Zawitz, “Homicide Trends in the United States,” Bureau of Justice Statistics Crime Data Brief, January 1999, NCJ 173956.
- ⁵U.S. Departments of Education and Justice, “Annual Report,” pp. 10-14.
- ⁶Larry Pratt, head of the Gun Owners of America, a group that takes an even harder anti-regulation line than the NRA, argues on behalf of arming teachers and administrators. Frank Bruni, “Speaking Up for Guns, Lots of Them, for Nearly Anyone,” *New York Times*, 26 April 1999.
- ⁷Fox Butterfield, “Guns Blamed for Rise in Homicides by Youths in 80’s,” *New York Times*, 10 Dec. 1998.
- ⁸Michael A. Bellesiles, “The Origins of Gun Culture in the United States, 1760-1865,” *Journal of American History* 83 (September 1996), pp. 426, 428.
- ⁹Katharine Q. Seelye, “A Defiant N.R.A. Gathers in Denver,” *New York Times*, 1 May 1999.
- ¹⁰“The Fight To Bear Arms,” *U.S. News and World Report*, 22 May 1995, p. 29.
- ¹¹Robert J. Spitzer, *The Politics of Gun Control* (Chatham, N.J.: Chatham House, 1998), ch. 2.
- ¹²Fox Butterfield, “New Data Point Blame at Gun Makers,” *New York Times*, 28 Nov. 1998; Fox Butterfield, “Most Crime Guns Are Bought, Not Stolen,” *New York Times*, 30 April 1999; Fox Butterfield, “Study Exposes Illegal Traffic in New Guns,” *New York Times*, 21 Feb. 1999.
- ¹³“Follow the Firearms,” *Newsweek*, 10 May 1999, p. 34.
- ¹⁴William J. Bratton, “Mr. Heston, the Police Are Not the Enemy,” *New York Times*, 20 June 1998.
- ¹⁵This is more than twice as fast as the bullet speed of typical handguns carried by the police. Physicians report more serious injuries from such weapons because of the greater muzzle velocity, the bullets’ tendency to tumble and thus produce greater injury, and the fact that large capacity clips allow more bullets to be fired before reloading.
- ¹⁶See Spitzer, *The Politics of Gun Control*, pp. 92-97.
- ¹⁷Two mass murders that helped galvanize national opinion were the 1989 schoolyard shooting of elementary school children in Stockton, Calif., where five children were killed and twenty-nine were wounded, and a 1991 incident when a man killed twenty-two people and wounded twenty-three others in a cafeteria in Killeen, Texas. That the Brady Law and the assault weapons ban were not passed sooner than 1993 and 1994, respectively, was attributable to opposition by President George Bush. The Clinton presidency’s receptivity to these measures was key to their passage. See Spitzer, *The Politics of Gun Control*, pp. 114-26.