

Absolutist Politics in a Moderate Package: Prohibitionist Intentions of the Gun Control Movement

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I. THE ISSUE: OVERT MODERATE AGENDAS VS. COVERT PROHIBITIONIST GOALS

The debate over gun control has been described as a dialogue of the deaf. The combatants do not listen to one another, or pretend to be unable to understand what their opponents are saying. Gun control advocates, and sympathetic members of the news media, profess to be mystified why anyone would oppose moderate, "reasonable" controls over guns. "How," they ask, "can any serious person reject commonsensical measures like the licensing of gun ownership or the registration of guns? We license drivers and register cars, don't we?"

Gun control opponents, with boring regularity, consistently offer the same explanation: "We fear that moderate gun controls are steps down a slippery slope towards gun prohibition." Advocates then dismiss this response as sheer fantasy on the part of opponents, and even hint, by labeling such beliefs "paranoid," that those who believe such things must be mentally ill. This belief, however, not confined to a tiny fringe minority.

In December 1993, the Gallup organization asked a national sample of adults whether they agreed or disagreed with the following statement: "Gun control measures will eventually lead to stricter laws which will take guns away from all citizens." Among all adults, gun owners and nonowners alike, 50% agreed.¹

Gun prohibition can be defined for present purposes as any gun control measure that would preclude legal ownership or possession of guns, or of handguns, by almost all of the civilian population. This state of affairs can be accomplished by a law labeled as a gun ban, but can also be achieved through restrictive licensing (*a la* New York City's Sullivan law or English law). Restrictive licensing of handguns can be every bit as restrictive as a handgun ban; under the Sullivan Law's restrictive licensing system in New York City, less than 1% of civilians have a permit allowing them to legally own a handgun.²

Likewise, one could gradually ban gun possession by first requiring registration of guns for lawful possession, then passing a law providing that no further guns will be registered. As existing owners died or moved out of the affected jurisdiction, the number of legally owned guns would eventually dwindle to zero. This is how handguns were banned in Washington, D.C. in 1976 and in Chicago in 1982.³ Or one could ban guns that are "unsafe" by virtue of not having adequate safety devices such as "smart gun technology," gradually increasing the stringency of safety requirements until no guns could meet the standards and still remain affordable for any but the wealthiest gun buyers. Or one could impose a prohibitive tax on guns to achieve the same state of affairs.

There are also partial gun prohibitions that ban gun acquisition or possession among subsets of the population such as convicted felons, alcoholics, young adults, or illicit drug users. Depending on how broadly one defines the prohibited groups, and how widely one expanded the presumption of unfitness to own a gun, combinations of such "partial" prohibition could approach total prohibition. For example, if one banned gun ownership to all persons who had ever been arrested or given a traffic ticket (on the quite reasonable grounds that such persons are relatively more likely to commit violent acts), this measure alone might well deny legal gun ownership to the majority of the population. Lest one think it unlikely that anyone would advocate banning guns among persons with an arrest record but not a conviction, Handgun Control, Incorporated (HCI) Founding Chair Nelson T. (Pete) Shields advocated banning handgun ownership among persons "with a record" of violence "even though such violence did not result in a conviction."⁴

Prohibition, if it were ever attained in the U.S., would almost certainly be achieved incrementally. One way to accomplish this would be to advocate bans on individual gun types one at a time

until no major types were left unbanned. Thus, in 1979 HCI advocated banning “Saturday Night Specials” (SNSs) -- small, cheap handguns -- at a time when HCI staff thought that SNSs accounted for as much as two-thirds of handgun sales.⁵ HCI then advocated, in 1989, banning “assault weapons,” which are an arbitrarily selected subset of semiautomatic guns, which in turn constitute the majority of the handguns (and a large share of long guns as well) sold in the past 20 years.⁶

Many supporters of moderate controls have condemned the National Rifle Association (NRA) for stoking the fears of gun owners that moderate controls will lead to prohibition. For example, Martin Dyckman, associate editor of the *St. Petersburg Times* asserted in 1993 that “no one is seriously proposing to ban or confiscate all guns. You hear that only from the gun lobby itself, which whistles up this bogeyman whenever some reasonable regulation is proposed.”⁷ Echoing this claim, law professor Andrew Herz denounced the gun lobby for “conjuring up visions of powerful gun-grabbing Washington confiscators knocking down the doors of law-abiding citizens” when in fact “virtually no one in the gun control movement calls for confiscation.”⁸ Or as one strongly pro-control scholar has put it, “NRA leaders have consistently employed a Chicken Little (‘the sky is falling’) rhetorical style, with constant prophesies of imminent doom.”⁹ Likewise, in an editorial endorsing national registration and licensing, the editorial writers of *the New York Times* responded to “gun groups that fear [registration] as a first step toward government confiscation of guns” very simply: “Their fear makes no sense.”¹⁰

On the other hand, some observers, and even some gun control advocates, regard it as obvious that many advocates of moderate controls really want prohibition. For example, self-described “proponent of gun control” Andrew McClurg stated that “there is no doubt that the agenda of many Brady bill proponents encompasses much more than the adoption of waiting periods and background checks. Many Brady bill supporters want to prohibit private possession of handguns altogether.” Pulitzer Prize-winning columnist Mike Royko stated it more bluntly: “the ultimate goal of the anti-gun lobby is to ban the private ownership of all weapons. That is their ultimate goal, although the anti-gun people won’t admit it. It would be foolish strategy.”¹¹

Among casual observers of the gun debate, there may be some honest confusion regarding the difference between (1)

what gun control advocacy groups are currently “proposing” (note Professor Herz’s careful phrase “no one ... *calls for* confiscation” [emphasis added]) and (2) what they would eventually like to bring about, when and if it becomes politically achievable. In this particular dialogue of the deaf, control opponents express their fears of the *ultimate intentions* of control advocates, while gun control supporters act as if the issue was the *current overt agenda* of advocacy groups, i.e. what they overtly “propose” or “call for” at the moment.

It is unlikely that professional advocates do not understand the distinction between ultimate goals or intentions and an organization’s current overt agenda, although when responding to opponents’ claims, they sometimes act as if do not. Accused of harboring prohibitionist intentions, they cite their organization’s official current legislative agenda. For example, HCI Chairman Pete Shields seemed to deny any intent of his organization to push for stricter controls on long guns in future when he wrote: “Handgun Control, Inc., does not propose further controls on rifles and shotguns.”¹² Two features of this phrasing are noteworthy. First, the statement pertained to what HCI “proposes,” i.e. its stated policy agenda, rather than what its leadership ultimately wanted. Second, the statement was phrased in the present tense; it said nothing about what HCI might propose in the future. And in fact, within eight years, HCI did push for a ban on various rifles and shotguns.

In light of this confusion, it may be necessary to state more precisely what it is that gun control opponents fear. They argue that many, and possibly most, gun control advocates favor more than just control of guns via moderate regulatory measures, but also want to eventually make it illegal for Americans in general to own guns. They believe that these advocates pursue this goal through a step-by-step or incrementalist strategy, whereby success in getting mild controls passed makes it politically easier to pass stricter controls, eventually culminating, gun control advocates hope, in prohibition.¹³

Gun control opponents also believe (correctly) that most Americans do not support prohibitionist controls, and would be less likely to support moderate controls if they thought they would lead to prohibition, a point with which some control advocates agree.¹⁴ Recognizing this, some gun control advocates, according to opponents, conceal their prohibitionist intentions as a political tactic, and do not admit to such ambitions in their public statements of official policy.¹⁵ In any case, the fact that a

group's official agenda contains no call for prohibition indicates nothing one way or the other about whether gun control opponents' claims are correct.

Both sides agree that the most prominent gun control advocacy group, HCI, which recently changed its name to "The Brady Campaign," does not openly advocate prohibition and does not include prohibitionist measures in its current policy agenda. Further, most people on both sides would also acknowledge the political truism that American political movements are more likely to achieve their ultimate goals in an incremental fashion than in a single big jump.¹⁶ Thus, if one imagined the strictness of gun control laws to lie along a scale from 0 (no controls) to 10 (prohibition), it is easier to move the law from 0 to 1, then from 1 to 2, and so on, moving gradually up to 10, than it is to jump directly from 0 to 10.

It is common for supporters of a moderate control measure to say something like "This measure may not be much, but it's a good first step," thereby acknowledging their intention to follow an incrementalist strategy. For example, HCI Chair Pete Shields admitted in 1976 that "we're going to have to take one step at a time, and the first step is necessarily -- given the political realities -- going to be very modest. The final problem is to make possession of *all* handguns and *all* handgun ammunition totally illegal." (Emphasis added.)

Likewise, Rep. William Clay (D-MO) described the Brady Act as "the minimum step" that Congress should take to control handguns. "We need much stricter gun control, and eventually we should bar the ownership of handguns except in a few cases." Similarly, Rep. Bobby Rush (D-IL) was quoted in 1999 as saying that "Ultimately, I would like to see the manufacture and possession of handguns banned except for military and police use. But that's the endgame. And in the meantime, there are some specific things that we can do with legislation." Likewise, Barbara Fass, Mayor of Stockton, California, supported "assault weapons" bans, explaining that "I think you have to do it a step at a time and ... the banning of semi-assault (sic) military weapons ... is the first step."¹⁷

Commenting on the 1994 federal "assault weapons" ban, syndicated columnist and prohibition advocate Charles Krauthammer identified a more subtle utility to moderate controls as a part of an incremental strategy: "In fact, the "assault weapons" ban will have no significant effect either on the crime rate or on personal security. Nonetheless, it is a good

idea ... Its only real justification is not to reduce crime but to desensitize the public to the regulation of weapons in preparation for their ultimate confiscation.”¹⁸

The current leaders of HCI openly acknowledge following an incrementalist strategy. In a newspaper interview, HCI Chair Sarah Brady’s views were summarized as follows: “[Brady] sees the Brady bill as ‘the cornerstone of a serious gun-control policy in America’ that will eventually include more restrictions.” Brady predicted “that passage of the Brady bill will soften up Congress for more. ‘Once we get this,’ she said, ‘I think it will become easier and easier to get the laws we need passed.’”¹⁹

Thus, there is little serious dispute that gun control organizations, including HCI, are pursuing a step-by-step strategy, where attaining moderate controls facilitates gaining stricter controls. The only point on which disputants differ is how far this incrementalist path will be followed. While some of the preceding proponents openly acknowledged advocating an incrementalist strategy that they hoped would end in prohibition, other proponents, such as the leaders of HCI, do not currently admit to any plans to pursue controls that far.²⁰

On the other hand, HCI’s leaders do not say exactly how far they will pursue further controls, i.e. what their ultimate stopping point will be. A generous interpretation might be that they are merely being practical, recognizing the limits on their ability to foresee the future, and the need to remain flexible. Regardless, their silence on this question effectively holds open prohibition as a future option.

HCI as an organization has never officially stated that it will never support banning possession of all guns or handguns, and it certainly has never said that it would actively oppose gun bans. Further, HCI has never in practice opposed a gun ban in its history. Quite the contrary, it has actively supported local and state proposals to ban handguns, and has actively defended existing handgun bans passed by local governments. When a ban on handgun possession was passed by the Village of Morton Grove, Illinois, and the ordinance was challenged in court, HCI filed an *amicus curiae* brief urging the appellate court to uphold the ordinance. In the brief, they described the local handgun ban as “a significant step toward effective state and national handgun regulation.”²¹ Likewise, in 1978, HCI, under its old name of the National Council to Control Handguns, filed an *amicus curiae* brief in defense of the Washington, D.C., handgun ban.²² More recently, in the 1990s, HCI President Richard Aborn urged other

cities to adopt the same law.²³ Thus, HCI at minimum supports local handgun bans.

HCI's support for handgun bans, however, has not been limited to local measures. In the Fall of 1976, under its old name of the National Council to Control Handguns, it contributed \$16,000 to a state referendum campaign to ban the private possession of handguns in Massachusetts, providing nearly 30% of the campaign's financing.²⁴ Thus, HCI has supported state-level, as well as local, handgun prohibition. It has never publicly repudiated this support.

Some advocacy groups can accurately, though somewhat misleadingly, deny including prohibitionist measures in any formal long-term agenda, for the simple reason that they do not have a formal long-term agenda. Rather, they have only a series of frequently revised short-term agenda, consisting of whatever legislative measures they are lobbying for at the moment. For example, HCI's website merely lists their "Legislative Priorities" for the current year, but includes nothing resembling a long-term plan²⁵ (A document on HCI letterhead purporting to be an outline of HCI's long-term plans was circulated on the Internet in 1993. It was almost certainly a hoax.)

Indeed, some elements of HCI's agenda often look like ad hoc responses to media coverage of spectacular instances of violence committed with guns or short-lived trends in gun violence, rather than part of any well thought-out long term plan. For example, HCI's push for bans on "assault weapons" came not at the time when sales of such guns were reaching their peak in the 1970s, or when their criminal use was growing prior to 1988, but rather came only after the news media devoted massive coverage to a handful of mass shootings involving such guns, beginning in 1989 with the Stockton, California schoolyard shootings.²⁶

In general, HCI appears willing to pursue virtually any further restriction on guns that is politically achievable. Following the defeat of the HCI-endorsed Massachusetts referendum to ban the private possession of handguns, HCI Chair Shields frankly described HCI's long-term strategy as follows: "We'll take any law we can get. We're prepared to win our battle in bits and pieces and we realize this is going to be a long, slow process."²⁷ Beyond this, there appears to be little rhyme or reason to changes in their policy agenda. The indiscriminate nature of HCI's support for virtually any increase in gun control restrictiveness, given political attainability,

encourages the belief that it would also support prohibition if it too became politically achievable.

Certainly there is no consistent relationship between HCI's agenda and emerging research findings, which are selectively cited to support positions apparently adopted on political grounds rather than used to choose among policy options. For example, HCI's 1979 advocacy of bans on Saturday Night Specials (SNSs) came in the wake of widely cited research (sponsored by the pro-control Police Foundation) indicating that these guns are *not*, contrary to HCI claims, the preferred weapons of criminals.²⁸

Further, HCI has continued its support for banning SNSs despite strong and unrebutted evidence from prison surveys that if gun-using violent criminals were denied SNSs, they would substitute more lethal handgun models or sawed-off long guns, thereby raising the fraction of gunshot victims who would die.²⁹ Of course, if one hoped to later ban the more lethal handguns and long guns, as well as cheap handguns, substitution would seem less of a problem.

In contrast to HCI, other major gun control advocacy groups openly support prohibition. After HCI, the most prominent national gun control advocacy groups are probably the Coalition to Stop Gun Violence (CSGV), formerly the National Coalition to Ban Handguns, and the Violence Policy Center (VPC). CSGV, organized by the Board of the Church and Society of the Methodist Church in 1975, unambiguously supports prohibitionist controls.³⁰ Its [Web site](#) states that it advocates “a ban on the sale and possession of handguns and assault weapons.”³¹ CSGV does not, however, admit to any intentions to ban long guns (aside from the subset they regard as “assault weapons”) as well as handguns, so they too could harbor covert prohibitionist intentions that go beyond their advocacy of bans on handguns and “assault weapons.”

VPC also openly supports handgun prohibition, though a more indirect variant. It supports the Firearms Safety and Consumer Protection Act (H.R. 920), which would grant regulatory authority to the Department of the Treasury that “would subject the gun industry to the same safety standards as virtually all other products sold in America.”³² This does not sound much like a gun ban, until one knows how VPC anticipates this regulatory power being used. In a 1999 *New York Times* op-ed article supporting this bill, VPC's executive director, Josh Sugarmann, wrote that “any rational regulator with that

authority would ban handguns.”³³ Further, it is hard to imagine regulatory power that would permit banning of handguns that would not also permit the banning of shotguns and rifles, which are both more lethal and more prone to accidental discharge than handguns.³⁴

Other organizations do not openly advocate prohibitionist goals as organizations, but are led by individuals who personally support prohibition. The HELP (Handgun Epidemic Lowering Plan) Network acknowledges only a miscellany of “policy priorities” that do not include any prohibitionist measures, but the organization’s Chair, Katherine Christoffel, has publicly expressed some of the most extreme and simplistic antigun views ever to appear in print: “Guns are a virus that must be eradicated... They are causing an epidemic of death by gunshot, which should be treated like any epidemic -- you get rid of the virus. ---Get rid of the guns, get rid of the bullets, and you get rid of the deaths.”³⁵

Still other organizations openly pursue prohibitionist goals without overtly advocating prohibitionist methods. That is, they support the goal of a “gun-free America” or “handgun-free homes” but do not explicitly advocate achieving this by legislation. For example, a recently (1995) formed organization called Ceasefire, Inc., runs newspaper ads and television public service announcements to persuade people that they should not own guns.³⁶ Thus, organizations of this type have the same goals as prohibitionists without overtly advocating prohibitionist laws.

Finally, there are many organizations that endorse gun prohibition but are not primarily concerned with the gun issue. For example, Common Cause is probably best known for its efforts to reform campaign financing. However, in a 1972 statement presented to a House Judiciary Subcommittee, the organization endorsed a “total ban on the sale and manufacture of all handguns” as well as a proposal that “private ownership of handguns also be prohibited.” Likewise the U.S. Conference of Mayors, the Unitarian Universalist Association, the American Civil Liberties Union, Americans for Democratic Action, the National Alliance for Safer Cities, the National Board of the Young Women’s Christian Association of the U.S.A., and the International Ladies Garment Workers’ Union have all at some time endorsed banning the private possession of handguns.³⁷

In contrast to CSGV and VPC, HCI does not currently openly advocate gun prohibition. This was not, however, always true. Even the leaders of HCI openly admitted their

prohibitionist intentions at one time. In repeated public statements early in the organization's history, the long-time chair of HCI, Pete Shields, explicitly supported handgun prohibition, and even acknowledged that HCI was following an incrementalist strategy to attain this long-term goal. In July of 1976, Shields told a reporter for the *New Yorker* that his organization's ultimate goal was "to make the possession of *all* handguns totally illegal" (emphasis in original) and was pursuing an incrementalist strategy in pursuit of the goal. He repeated these points in an interview in September of 1977 with *Parade* magazine.³⁸

Further, although HCI no longer mentions the fact in its official materials, it was once a member of the National Coalition to Ban Handguns, only withdrawing after its leaders decided that public opinion was too strongly opposed to a handgun ban for it to be, at that time, a politically achievable goal.³⁹ Sometime between September of 1977 and 15 November 1978, HCI changed its policy of open advocacy of handgun prohibition, though without any official public admission that it was doing so and without any public repudiation of its previous positions. This may have been partly a response to a June 1978 Cambridge Reports poll indicating that only about a third of Americans favored banning handgun possession (though this should not have come as a surprise, since a 1975 Gallup poll had already found that only forty-one percent favored this measure).⁴⁰ In a letter to HCI members dated 15 November 1978, Shields explained that "while many of us might prefer an outright ban of handguns, we are realistic enough to know that such a goal is unattainable in America today."⁴¹ Thus, HCI's change was apparently one of tactics rather than of ultimate goals, a response to political realities rather than a change of heart.

In his 1981 book, Shields acknowledged that polls showed that Americans do not support "an absolute ban on handguns" and he therefore called instead for "a set of strict laws to control the easy access to handguns by the criminal and the violence-prone -- as long as those controls don't jeopardize the perceived right of law-abiding citizens to buy and own handguns for self-defense."⁴² There are two noteworthy features of this passage. First, Shields' careful phrasing indicated that he did not concede there is any right to own handguns for self-defense -- it is merely something "perceived" by people. Second, the reference to public opinion strongly suggested that this limit on HCI's

proposals represented a concession to contemporary political realities, and thus was not necessarily the limit of what HCI leaders really wanted to eventually achieve.

Thus, even in 1981, it was unlikely that Shields/HCI opposed handgun prohibition, as distinct from merely recognizing that it was unattainable at the time and should not, for tactical reasons, be openly pursued. Shields stated that HCI supported a ban on the manufacture and sale of SNSs, supposedly especially small and cheap handguns (p. 147), while also asserting that SNSs claimed one-third to two-thirds of handgun sales (p. 148). Thus, in Shield's own mind, HCI was pushing for a ban on a type of gun that may have encompassed the majority of handguns.

Likewise, it is easy to believe that Shields hoped for a future increase in public support for a ban on handguns when one reads his observation that at present (i.e., 1981) "the people do not want an absolute ban on handguns. A total ban is perceived as taking away their right to self-defense, and *until their fear is reduced* they will never agree to such a law" (p. 146, emphasis added).

By 1982, Shields had clarified somewhat the kind of handgun control he wanted: "I'd have restrictive licensing rather than permissive licensing. You would have to prove a need. All we have to prove (now) is that we're not baddies."⁴³ Shields evidently perceived a significant difference between restrictive licensing and handgun prohibition, given that he denied that his organization was calling for the latter. The most prominent example of restrictive licensing of handgun ownership in operation at the time was that of New York City, where it was extremely hard to get the permit required to own a handgun and, in the 1980s, less than one percent of the population had a permit.⁴⁴ Thus, in practice the difference between an actual restrictive licensing system and a hypothetical handgun ban is that under the former, 99% of the civilian population were forbidden handguns, while under the latter, 100% would be prohibited from having them. Further, given the exceptions that typically accompany handgun bans (e.g. security guards, collectible handguns, etc.), restrictive licensing regimes may in fact be the more restrictive of the two policies, a point conceded even by prominent gun control advocates.⁴⁵

Nevertheless, HCI has not openly advocated a policy explicitly labeled as handgun prohibition since 1978. Its overt advocacy of prohibition has been limited to SNSs and "assault

weapons.” HCI, however, has never officially stated that it regards gun prohibition as a bad policy. Instead, it has merely adopted the position that it is not yet achievable.

II. WHY DO PROHIBITIONIST INTENTIONS MATTER?

What difference does it make whether or not the more influential gun control advocacy groups harbor prohibitionist intentions, covert or overt? If prohibition would make Americans safer, why should this be a problem?

One problem is that advocacy, covert or overt, of prohibition makes it harder to get more politically feasible and potentially effective measures implemented. Don Kates has argued that the principal political obstacle to passing useful moderate gun controls is the insistence of advocates on extremist anti-gun principles that would facilitate achieving gun prohibition. This in turn triggers gun owner opposition to moderate controls that become perceived as steppingstones to banning guns.⁴⁶

Two of the more important extremist principles are (1) there is no significant defensive value to widespread civilian gun ownership, and specifically no significant life-saving or injury-preventing effects, and (2) the Second Amendment does not recognize any individual right to keep or bear guns, but rather recognizes only a right of states to maintain armed militias like the National Guard.⁴⁷ The natural implication of these assumptions is that there is no strong reason why we should not ban guns, once political obstacles can be overcome.

By adhering to these assumptions and declining to commit themselves to opposing prohibitionist controls, gun control advocacy groups effectively hold open the option of eventually pushing for prohibitionist controls. In Kates’s words, this sort of “extremism poisons the well” for more moderate controls.

In a similar vein, sociology professor James Wright attributes the “white-hot ferocity of the debate over guns in America” largely to fears of gun owners that gun permits and registration are “‘just the first step’ toward outright confiscation of all privately held firearms.” Wright notes that criminals rarely obtain guns through the channels that are effectively subject to such regulatory controls, and thus such controls, along with

waiting periods, are unlikely to have much impact on criminals. The measures therefore appear to lawful gun owners to be largely aimed at themselves, stimulating speculation on their part as to why the government would want to focus its control efforts on them. “The distinction between ill-considered and evil is quickly lost” and many gun owners end up attributing nefarious motives to advocates of such controls.⁴⁸

Public debate over important issues should be honest concerning what is at stake. Debate over moderate gun controls is dishonest if some advocates harbor unacknowledged desires for prohibition, which they may well pursue in future if the adoption of moderate controls increases the political feasibility of doing so. Such advocates should honestly concede that there is more at stake in conflicts over moderate controls than just the measure being debated at the moment. As even gun control proponent Andrew McClurg has conceded, specifically in connection with the “slippery slope” issue, “the consequences of a proposal are certainly relevant to deciding whether to adopt it,” and one of the consequences of passing moderate controls is that their adoption makes it easier (not inevitable) for stricter controls to be passed.⁴⁹ Those who favor banning guns, of course, see little problem with covert advocacy of prohibition. From their standpoint, if advocacy groups find it more effective to keep their prohibitionist preferences secret, so much the better.

A credible case for the desirability of prohibition, however, has not been made. Rational support for prohibition implicitly relies on an assumption that is no longer empirically supportable -- that gun ownership among noncriminals has no significant violence-reducing effects, and thus banning guns among noncriminals as well as criminals is bound to be beneficial or at least harmless. The best available evidence indicates that defensive gun use is quite common (probably more common than criminal use of guns) and that defensive use is effective, in the sense that victims who use guns in self-defense are less likely to be injured or to lose property than otherwise similar victims who do not use guns.⁵⁰

If gun ownership among noncriminal victims has violence-reducing effects, then disarming noncriminals via prohibition would have violence-increasing effects, which would counterbalance any violence-reducing effects of disarming criminals. And, almost by definition, prohibition laws would be obeyed at a higher rate by noncriminals than by criminals.

Contrary to the bumper sticker slogan, if guns were outlawed, outlaws would not be the *only* people with guns (except in the tautological sense that anyone who violated the law by retaining a gun would, by legal definition, be a criminal), mainly because there would be widespread disobedience by noncriminals as well.⁵¹ Nevertheless, it is almost certainly true that compliance with gun ban laws would be lower among criminals than among noncriminals.

This means that any beneficial effects of gun ownership among noncriminals would be reduced by prohibition proportionally more than would the harmful effects of gun ownership among criminals. Consequently, to the extent that future gun bans actually achieved their proximate goal of reducing overall gun levels, the net effect would probably be harmful.⁵²

Banning only handguns, while leaving the more lethal shotguns and rifles available, is even more clearly undesirable. Surveys of criminals indicate that if they were denied handguns, seventy-three percent of those who commit gun crime frequently would substitute sawed-off shotguns and rifles. Long guns are, on average, far more lethal than handguns. Further, although they are less concealable than handguns, they can easily be made sufficiently concealable for most criminal purposes -- most gun crimes do not require a gun as concealable as a handgun.⁵³

Even partial substitution of long guns in attacks would outweigh the benefits of denying handguns to some criminals, leading to a net increase in the number of crime victims killed rather than nonfatally wounded. It has been mathematically demonstrated that even if the long guns substituted by persons who otherwise would have attacked with handguns were only twice as lethal as handguns (a conservative assumption), there would be a net increase in homicides following a handgun-only ban even if as few as forty-four percent of attackers substituted long guns, a considerably lower rate of substitution than evidence leads us to expect.⁵⁴

Prohibition of guns, like prohibition of alcohol, would also make criminals of millions of otherwise noncriminal Americans, stimulate the expansion of the black market in guns, increase the incentive to steal guns, and create a law enforcement burden of enormous proportions. A survey of Illinois adults in 1978 found that among gun owners (not just criminals), seventy-three percent said they would disobey a hypothetical federal law requiring them to turn in their guns.⁵⁵ If this predicted rate of

noncompliance applied to the nation's gun owners today, it would imply that a national gun ban would, at a stroke, make criminals of 45 million Americans who chose to disobey the national gun ban (seventy-three percent of 61.2 million individual gun owners, based on a thirty percent adult gun owning rate among 203.8 million persons age 18 or over in 2000).⁵⁶ There are even a books sold at gun stores, book stores, gun shows, and by mail devoted to advising gun owners how to avoid government confiscation of their guns by hiding or burying their guns.⁵⁷

It might be reassuring to dismiss the seventy-three percent noncompliance figure as hollow bravado, but actual compliance rates in connection with less stringent, and presumably less disobedience-provoking, measures are similarly poor. In 1989, California required that all "assault weapons" in the state be registered, allowing all of 1990 for gun owners to comply. When few guns had been registered by the 31 December 1990 deadline, the state passed another law allowing a 90-day amnesty period for late registration, and launched a \$330,000 publicity campaign to inform gun owners of the requirement. Of the 300,000-600,000 "assault weapons" estimated to exist in the state, only 66,303 had been registered by the end of the amnesty period.⁵⁸ Thus, even after extraordinary efforts to achieve voluntary compliance with a relatively mild control measure, about seventy-eight to eighty-nine percent of the guns remained unregistered, in defiance of the law.

III. EVIDENCE OF PROHIBITIONIST INTENT OF THE LEADERS OF THE GUN CONTROL MOVEMENT

If the official agenda of advocacy groups do not completely convey the full range of long-term goals and policy preferences of the groups' leaders, staff, and activist members, what evidence might help establish their ultimate intentions? Given the impossibility of reading the innermost thoughts of movement leaders, it must be recognized that no evidence on this question can be conclusive. Nevertheless, a mass of circumstantial evidence, falling into the following categories, consistently supports the same conclusion.

1. Past political efforts of gun control advocacy groups in the United States.

2. Recent precedents of gun prohibition in other Western nations.
3. The manner in which advocates appear to deny prohibitionist intentions.
4. Survey data on the general population showing, among those who support moderate controls, the fraction who also support prohibitionist controls.
5. Public statements made by leaders and prominent supporters of the gun control movement.
6. The premises and logic of arguments marshaled in favor of moderate controls.
7. The advocacy of licensing and registration in addition to background checks.

A. Past Political Efforts of Advocacy Groups

Given the political truism that small changes are easier to bring about than big ones, it is no surprise that the history of the gun control movement has followed an incrementalist path, with each legislative victory leading to a push for further controls. Thus, the passage of the Brady Act in 1994 was immediately followed by lobbying by HCI for the “Brady II” bill, which requires the registration of guns and the licensing of their owners. Likewise, a ban on the further manufacture and importation of large capacity magazines (LCMs) (part of the 1994 federal “assault weapons” ban) was followed immediately by HCI advocacy of a ban on the possession of existing LCMs.⁵⁹

In each case, “loopholes” and limitations of earlier measures are identified and remedies proposed. The diagnosis is invariably an inadequate dose of gun control, and the prescription is a bigger dose, i.e. stricter or more extensive controls. Thus, HCI devotes a entire section of its website to discussion of “loopholes” that need to be closed with further legislation.⁶⁰ Indeed, each failure of previous control initiatives can be portrayed as further evidence of the need to increase the dosage of gun control. In this sense, nothing succeeds like failure. While each supposed success of a control measure could reasonably be cited as showing the likely value of still more controls, each apparent failure can be cited as evidence of the need for still stricter controls -- heads we win, tails you lose.

HCI has also shown a willingness to expand the scope of the controls they supported with respect to the types of guns covered. At one time they favored only banning SNSs and regulating other handguns. In his 1981 book, HCI Chair Pete

Shields assured his readers that HCI had no intention of pushing for further controls over long guns, i.e. shotguns and rifles: “Handgun Control, Inc. does not propose further controls on rifles and shotguns. Rifles and shotguns are not the problem; they are not concealable.”⁶¹ Likewise, the Field Director of the National Coalition to Ban Handguns (later the Coalition to Stop Gun Violence [CSGV]), Sam Fields, insisted in 1979 that “neither the National Coalition to Ban Handguns, nor any other leading group in the fight for handgun reform, is [sic] interested in banning long guns.”⁶²

Yet, within a decade, as soon as the political opportunity arose to restrict “assault rifles” (which are no more concealable than other long guns), both HCI and CSGV began to lobby for a ban on “assault weapons,” an amorphous category largely composed of long guns. The ban was eventually passed in 1994. This reversal of policy might be defended on the grounds that gun crime had changed in the interim, but in fact “assault weapon” use in crime was declining by 1989, the rifle share of gun crime was no higher in 1989 than in 1981, and “assault rifles” were in any case never involved in even as much as one percent of gun crimes.⁶³ This willingness to extend their control efforts to long guns undermines the credibility of HCI and CSGV promises concerning the limits of their future control ambitions.

There are also earlier precedents for moderate gun controls being expanded and made stricter until they reached the status of *de facto* gun bans. New York’s Sullivan Law, passed in 1911, initially allowed almost any adult to get the required permit for possessing a handgun, but legislative amendments and progressively stricter police administration of the law in New York City eventually produced a *de facto* ban on the private possession of handguns.⁶⁴ Likewise, Washington, D.C., initially required only the registration of handguns, but in 1976 passed a law providing that the District would no longer register handguns, effectively banning any further acquisition of handguns. This handgun “freeze” in the long run will become a handgun ban as registered handgun owners move out of the city or die.⁶⁵

While neither Congress nor any state legislature has passed bans on guns or handguns, this is not because no such legislation has been introduced. Proposals to ban the private possession of handguns have been under consideration by the U.S. Congress since at least 1974. For example, Representative Jonathan

Bingham had one version or another of a bill banning private possession of handguns under consideration from at least as early as 1974 to as late as 1981. This bill was supported by HCI, when it was called the National Council to Control Handguns (NCCCH 1974). More recently, Senator John Chafee (R-RI) introduced a bill in 1992 banning handgun possession, as did Rep. Major Owens (D-Brooklyn, NY) in 1993.⁶⁶

At the state level, South Carolina banned possession of all but the largest handguns in 1901.⁶⁷ (The law was later repealed.) A referendum measure to ban handguns, supported by HCI, was put on the Massachusetts ballot, and defeated, in 1976.⁶⁸ And in 1999, the Attorney General of Maryland, J. Joseph Curran proposed banning handguns in that state.⁶⁹

While federal or state bills providing for gun prohibitions have been repeatedly proposed, none have passed in the United States. Nevertheless, several large cities, including Chicago and Washington, D.C., have banned handgun possession. San Francisco also banned handguns in 1982, though the law was later overturned by a state court.⁷⁰ And, as noted, New York City has a restrictive licensing law in place that is administered so strictly as to constitute a de facto handgun ban.⁷¹

Finally, it is worth noting that roughly 40% of Americans support banning the private possession of handguns, a figure that has occasionally approached a majority.⁷² In this light, it is scarcely reasonable to view the prospect of a national handgun ban as nothing more than a paranoid delusion of extremist gun control opponents. Nor can it be reasonably denied that gun control advocacy groups, including HCI, have followed incrementalist strategies or that milder controls have been regularly followed by calls for stricter controls. The only issue in serious question is exactly how far HCI and similar organizations will pursue the incrementalist strategy.

B. Recent Precedents of Gun Prohibition in Other Nations

There are ample precedents for moderate gun controls being followed by national gun bans and mass confiscation of guns in the recent history of other nations, in democracies and formerly democratic nations as well as dictatorships. When a military junta took over the formerly democratic government of Greece in 1967 and suspended part of the nation's Constitution, it issued an edict that ordered citizens to turn in all guns and ammunition

to the authorities. They promised to return “sports guns” to their owners after inspection.⁷³

The formerly democratic Philippines had gun registration in place on 23 September 1972 when President Ferdinand Marcos declared martial law and adopted dictatorial powers. He declared that it was his aim to “establish a gunless society,” decreed that all firearms and ammunition be turned in, and announced that anyone who retained an unauthorized gun would face ten to fifteen years in prison. Within three months the regime claimed that it had seized 482,248 firearms, though officials guessed that a similar number of guns were still held illegally by the citizenry, and a suspiciously low number of rounds of ammunition had been surrendered.⁷⁴

Bermuda had gun registration in place in 1973 when its Governor and an aide were murdered. The government ordered the surrender of all handguns on the island.⁷⁵ A year later, in response to rising violence, Jamaica banned the private possession of firearms among all of the nation’s two million citizens except the estimated 12-15,000 (less than one percent of the population) holders of private gun licenses.⁷⁶

In 1990, shortly before the breakup of the Soviet Union, Lithuania declared its independence. In response, Soviet President Gorbachev used his executive powers to order civilians in Lithuania to surrender private firearms to representatives of the Soviet government within seven days “for temporary keeping” and to authorize the Interior Ministry “to seize such weapons in cases of refusal to turn them in.”⁷⁷ Registration of firearms was required under Soviet law, so lawful Lithuanian gun owners knew that the Soviet authorities had a list of people who, in effect, “owed them” a gun.⁷⁸

In sum, in recent decades a number of national governments, both democratic and dictatorial, have banned gun possession, required mass turn-ins of guns, and have usually done so with registration laws already in place. The fact that this has happened in other nations does not prove that it is inevitable it will happen in the U.S.; it only shows that it has happened.

Nevertheless, HCI’s attitudes towards foreign nations’ gun prohibitions may be symptomatic of the organization’s view of prohibition in America. None of HCI’s publications or website material condemn any of these foreign instances of gun confiscation or prohibition. Indeed, they include nothing but praise for the *de facto* ban on handguns and rifles in Great Britain, the handgun ban in Australia, and near-ban measures such as

restrictive licensing in Germany, partially attributing foreign nations' lower violence rates to these laws.⁷⁹

C. "Nondenial Denials" of Prohibitionist Intentions

If HCI and similar groups wanted to deny the NRA its most potent emotional tool for stimulating gun owner opposition to moderate controls, they would officially and publicly state that HCI was permanently committed to actively opposing prohibitionist controls, perhaps amending their charter to institutionalize this commitment. They could further strengthen this position by officially endorsing the view that the Second Amendment recognizes an inviolable, though not unlimited, individual right to keep and bear arms, and forbids gun bans that would disarm the mass of American citizens, though it permits a wide variety of rational gun regulations short of prohibition.

Such a position would have the advantage of comporting with the modern scholarly consensus on the Second Amendment. Of forty-eight law review articles published on the Second Amendment in the 1990, forty-two endorsed the individual rights position, and most of the six minority articles were written by employees of gun control advocacy groups. Such an endorsement would also have the added political benefit of bringing HCI in line with the seventy-eight to eighty-seven percent of Americans who believe that they have a constitutionally guaranteed individual right to keep and bear arms.⁸⁰ Further, HCI could concede the now well-established fact that defensive use of guns is commonplace and effective, and that gun ownership among noncriminals therefore has significant violence- and crime-reducing effects.⁸¹

HCI has never repudiated these two absolutist principles and is not likely to do so in the foreseeable future. Given how potent a political weapon such a move would be, why does HCI not make it? Concerning the Second Amendment and defensive utility issues, HCI leaders would presumably assert that their current positions simply reflect reality, as they see it. They largely ignore the scholarly literature on the Second Amendment--HCI's website as of February 28, 2000 listed just seven articles on the Second Amendment, all but one of them written by their own general counsel, Dennis Henigan -- and instead rely largely on ambiguous or even irrelevant federal court decisions as justification for their view that Americans have no individual, Constitutionally guaranteed right to own guns. Likewise, they either ignore evidence on the benefits of defensive ownership of

guns or cite feeble one-sided speculations as to why evidence indicating utility is wrong.⁸²

On the other hand, another simple explanation of HCI's adherence to these key premises of prohibitionist thought is that HCI leaders in fact either support gun bans, or at least want to hold open bans as an option in the future. Consistent with this interpretation, HCI does not actually deny desiring gun bans in future. Rather, their official policy statements, as found on their website, are silent on the matter and confined to addressing current legislative priorities.⁸³ When asked about prohibitionist intentions, HCI spokespersons commonly refer to their current agenda, saying HCI is not (present tense) "calling for" prohibition, a "nondenial denial" that obscures the distinction between long-term intentions and current agenda.

D. Support for Gun Bans Among Moderate Control Supporters in the General Population

It seems a safe assumption that people who belong to advocacy groups devoted to a given issue have, on average, stronger views on that issue than nonmembers and casual supporters in the general population. Thus, NRA members have more strongly anti-control views than nonmember gun owners or anti-control members of the general adult population.⁸⁴ Correspondingly, HCI members are likely to have more strongly pro-control views than nonmembers and pro-control members of the general population. Activist members are likely to have still stronger pro-control views than casual members, since it would be their stronger views that would motivate their greater involvement. And leaders and staff, who devote their lives to the issue, probably have the strongest opinions of all.

No surveys have been conducted on HCI members or the HCI leadership or staff (or at least no results have been publicly released), so we can only indirectly infer their views on handgun prohibition from surveys of the general adult population, using the aforementioned assumptions. Recent national surveys indicate that about sixty-seven to eighty-two percent of the U.S. adult population favors requiring permits to buy guns, sixty-six to eighty-one percent favor handgun registration, and sixty-seven percent favor limiting handgun purchases to one a month, all measures favored by HCI.⁸⁵ However, surveys conducted in 1999 also indicate that thirty-four to fifty percent of Americans favor banning the private possession of handguns.⁸⁶ Assuming that ban supporters are a subset of those who support less strict

controls, these figures imply that most people who favor gun permits, registration, and similarly moderate controls also favor banning the private possession of handguns.

Thus, if one accepts the assumption that HCI members, staff, and leaders are more strongly pro-control than casual gun control supporters in the general population, these survey data imply that most HCI members, staff, and leaders personally support banning handgun possession. Personal opinions do not directly translate into organizational policy, given the restraining effect of political realities, but these data do suggest that the personal views of HCI members would incline them to support banning handguns in the future, should it become politically attainable. And since public support for banning handguns occasionally has approached a majority, it is perfectly possible that achieving a handgun ban could become politically feasible in the near future.

E. Public Statements Made by Leaders and Prominent Supporters of the Gun Control Lobby

The impression among many gun owners that gun control advocates favor gun bans, and are following a step-by-step strategy to achieve prohibition, is reinforced by numerous public statements made by the leaders of gun control advocacy organizations and by many of their most prominent supporters. A selection of such statements follows.

Of most direct relevance, some leaders of gun control organizations have openly expressed their desires to achieve bans on gun ownership in the long run, as well as their intention to pursue this goal using a step-by-step strategy:

Nelson T. (Pete) Shields III, Chairman of Handgun Control Inc.: "Our ultimate goal -- total control of handguns in the United States -- is going to take time. My estimate is from seven to ten years. The first problem is to slow down the increasing number of handguns being produced and sold in this country. The second problem is to get handguns registered. And the final problem is make the possession of *all* handguns and *all* ammunition -- except for the military, policemen, licensed security guards, licensed sporting clubs, and licensed gun collectors -- totally illegal."⁸⁷

J. Elliott Corbett, Secretary and Board Member of the National Council for a Responsible Firearms Policy, a gun

control advocacy group operating prior to the advent of HCI: “I personally believe handguns should be outlawed ... Our organization will probably officially take this stand in time but we are not anxious to rouse the opposition before we get the other legislation passed. It would be difficult to outlaw all rifles and shotguns because of the hunting sport. But there should be stiff regulations ... We thought the handgun bill [which eventually became the Gun Control Act of 1968] was a step in the right direction. But, as you can see, our movement will be towards increasingly stiff controls.”⁸⁸

Josh Sugarman, Executive Director of the Violence Policy Center (describing the use that would be made of regulatory power granted by a bill VPC supported): “Any rational regulator with that authority would ban handguns.”⁸⁹

Many important political figures have likewise made clear their preference for gun bans in the long run, though they often revealed their true preferences to the public only after they left office:

Ramsey Clark, Attorney General of the United States, 1967-1969: “I think we should work for the day when there are no guns at all, at least in urban areas -- even for the police on normal duty.”⁹⁰

Pat Brown, former governor of California: “I feel that we should take the general position that handguns should be barred except by police officials and other authorized people, and then try to find out how to seize them in the days ahead.”⁹¹

Patrick Murphy, former New York City Police Commissioner and President of the Police Foundation: “The time has come for us to disarm the individual citizen.”⁹²

Many prominent academics have also publicly expressed explicit support for gun prohibition:

Marvin Wolfgang, arguably the nation’s best known criminologist: “My personal choice for legislation is to remove all guns from private possession. I would favor statutory provisions that require all guns to be turned in to public authorities.”⁹³

Noted sociologist Morris Janowitz: “I see no reason why anyone in a democratic society should own a weapon.”⁹⁴

Norval Morris, legal scholar and unsuccessful nominee in 1978 to head the federal Law Enforcement Assistance Administration “licensing of guns ... is an excessively cautious, only marginally useful mechanism, other than as a wedge to more rational legislation. We seek a disarmed population.”⁹⁵

Amitai Etzioni, prominent sociologist and Special Advisor to the President in the Carter administration: “Domestic disarmament ... would result in a decrease in murder from 40 percent to 45 percent and an estimated decrease in armed robbery of 23 percent to 26 percent.”⁹⁶

Etzioni later founded the Communitarian Network, which in 1991 endorsed as part of its platform “domestic disarmament,” i.e. the total banning of the private possession of all firearms. Among the signatories to the platform, in addition to Etzioni, were Newton Minnow, Henry Cisneros (Secretary of Housing and Urban Development in the Clinton administration), Albert Shanker (President of the American Federation of Teachers), pollster Daniel Yankelovich, economist Lester Thurow, and distinguished sociologists Gary Marx, Alice Rossi, Robert Bellah, and Dennis Wrong.⁹⁷

Journalists affiliated with major news outlets also have publicly called for prohibition.

Juan Williams of the *Washington Post*: “I don’t understand why we’re piddling around. We should talk about getting rid of guns in this country.”⁹⁸

Michael Gartner, then President of NBC News: “I now think the only way to control handgun use in this country is to prohibit the guns. And the only way to do that is to change the Constitution.”⁹⁹

Jack E. White, National Correspondent of *Time* magazine: “Whatever is being proposed is way too namby-pamby. I mean, for example, we’re talking about limiting people to one gun purchase, or handgun purchase a month. Why not just ban the ownership of handguns when nobody needs one? Why not just ban semi-automatic rifles? Nobody needs one.”¹⁰⁰

Other prominent prohibitionists support gun bans covertly, so this support can only be inferred, with some uncertainty, from their public statements. President Bill Clinton is arguably the most prominent of all prohibitionists. One year into his first term, he was asked by a reporter for his opinion on “banning handguns.” Given a straightforward opportunity to state whether he personally supported or opposed banning handguns, Clinton instead carefully confined his answer to an assessment of the short-term political achievability of such a measure: “I don’t think the American people are there right now. But with more than 200 million guns in circulation, we’ve got so much more to do on this issue before we even reach that. I don’t think that’s an option now. But there are certain kinds of guns that can be banned and a lot of other reasonable regulations that can be imposed.”¹⁰¹

For those who oppose prohibition, the issue of political achievability is irrelevant to their views -- if they feel prohibition is a bad idea on the merits, then there is no need to think about whether it is achievable. Consequently, Clinton’s focus on achievability would seem to indicate that he supported, or at least did not oppose, the idea of handgun prohibition in principle. In any case, it is indisputable that, given an opportunity to indicate his opposition, if that were his position, Clinton chose not to do so. This in spite of the fact that it would have been in his political interest to do so, given his awareness that “the American people are not there yet,” i.e. that opinion polls indicate that most Americans oppose banning handguns.

Further, Clinton managed, in very brief remarks, to twice refer to political conditions “now,” thereby stressing that his assessment of political achievability pertained only to the present. The strong implication was that Clinton viewed these conditions as changeable, that the opinions of “the American people” could be “shaped” in future in a more strongly pro-ban direction. Clinton even outlined an incrementalist strategy by which stronger controls could be achieved: ban “certain kinds of guns” (presumably referring to, at minimum, “assault weapons”) and impose “a lot of other reasonable regulations.”

Among other “reasonable regulations” that Clinton eventually proposed, in addition to banning “assault weapons,” was a ban on the possession of handguns by all young adults aged eighteen to twenty. The significance of this proposal is that the ban applies to noncriminals as much as to criminals, i.e. to both the vast majority of young adults who would never commit

an act of violence with a handgun, and to the small minority who would. The rationale for this measure is that persons in this age group are more likely to be violent than people in other age groups. This is indeed true (and would also be true if the prohibition covered persons aged eighteen to thirty-nine), but it is also true that only a tiny share of eighteen-to-twenty year-olds will commit an act of gun violence. Thus, we have a prohibitionist argument in its starkest form: everyone must be denied guns to stop the few who would misuse them.

In sum, prohibitionist goals and intentions are frequently endorsed by prominent gun control supporters, and even some leaders of gun control advocacy organizations. This does not prove that all such organizations, including HCI, currently have explicit covert plans to pursue prohibition via an incremental strategy. But it does mean that many prominent people seriously advocate prohibition, that the prospect of gun bans is not merely a phantom menace “whistled up” by the gun lobby, and that it is perfectly reasonable that the leaders and staff of organizations that do not openly advocate prohibition may nevertheless covertly favor it.

E. The Premises and Logic of Arguments for Moderate Controls

Perhaps the strongest evidence of prohibitionist intentions among gun control advocates, including the leaders and staff of HCI, are the premises and arguments that they use to argue in favor of moderate controls, since the premises and arguments logically lead to prohibitionist conclusions.

HCI now supports bans on both (1) SNSs, which are cheap and small (and thus more easily concealed) yet less lethal than other guns, and on (2) “assault weapons,” which are generally more expensive, larger (and thus less easily concealed) and supposedly more lethal than other guns. But if one advocates banning both big guns and little guns, both more lethal and less lethal guns, both expensive and cheap guns, what does that logically leave as guns that are *not* suitable candidates for banning? Can there be any serious arguments, other than ones based solely on changeable political realities, that banning both big guns and little guns is a good idea, but banning middle-sized guns, which are both moderately concealable and moderately lethal, is not a good idea?

HCI has supported and helped organize a campaign of lawsuits by municipal and county governments against gun

manufacturers, through their Legal Action Project (LAP). HCI boasts that it has “pioneered innovative theories of gun industry liability” and that, as of 18 August 1999, their LAP was co-counsel for fifteen of the twenty-seven cities and counties that had filed suit.¹⁰² Opponents argue that the purpose of the lawsuits campaign is to either drive the gunmakers into bankruptcy from the costs of defending against dozens of frivolous lawsuits, or to increase prices of guns to the point where most people could not afford to buy one, an outcome equivalent to a prohibitive tax. That is, they accuse HCI of trying to ban the further manufacture of guns, using lawsuits to achieve what could not be attained through legislative means.¹⁰³ HCI insists that it merely wants to induce the gun companies to “reform” themselves by making safer guns and exerting more control over the distribution and marketing of their guns.¹⁰⁴

The legal theories used by HCI and the way in which the lawsuits are targeted, however, are inconsistent with HCI’s stated justifications. For example, HCI’s lawyers have argued that gun companies should be sued for making guns that lack “personalized gun” technology, i.e. locking devices that are an integral part of guns and that permit only authorized users to fire the gun.¹⁰⁵ For most existing gun models, no demonstrably reliable personalized gun technology that would meet HCI’s implicit specifications currently exists, making it impossible for gun firms to have installed such devices in these models. For example, among currently manufactured guns, the Magna-Trigger can only be installed in large-frame Smith & Wesson revolvers.¹⁰⁶ Other technologies, such as the Oxford Micro Devices fingerprint lock or the Fulton Arms SSR-6 handgun, might be usable in many types of guns but exist only in the form of unproven prototypes. One such prototype, of the much-touted Colt Z-40, failed to function in one of its first public demonstrations.¹⁰⁷ Still other devices, not true “smart gun” technology, require an affirmative action, such as pushing a lever or putting a wristlet on, to either lock the gun or to make it operable. This makes the devices only marginally better than far cheaper low-tech gun locks. Reliable and affordable personalized gun technology may eventually be developed, but it does not exist yet and may be many years away.¹⁰⁸

This does not represent an obstacle to HCI lawyers, who assert that gunmakers should also be held liable for harm done due to the firms’ failure to develop *new* personalized gun technology in the first place. It is not certain whether it is even

possible to develop any sufficiently reliable technology. But even if it could be developed, there is no conceivable technology that gun companies could adopt that would guarantee that HCI would not organize lawsuits against them based on the same basic legal theories. Guns will necessarily always be dangerous as long as they function as guns, i.e., fire a projectile at high velocity. Since there is no known upper limit on human inventiveness and possible future technological developments, someone could always sue gun companies, regardless of the safety technologies they had already developed and installed in their guns, for making guns that are dangerous in a way that hypothetically could have been prevented by some future, theoretically possible, technology. Consequently, no matter how amenable to “reform” some gun manufacturers might be, there is nothing they could do that would guarantee protection from being sued into bankruptcy, under HCI-developed theories of manufacturer liability.

In contrast, if HCI were sincerely interested in merely motivating gun companies to become more “responsible,” the most effective tactics would be to sue the least responsible firms while “rewarding” the most responsible ones by not suing them. This is not, however, the pattern that HCI-assisted lawsuits have followed. Every major handgun manufacturer in the U.S. has been sued, regardless of their efforts to improve gun safety, including Colt’s, Smith & Wesson, and Beretta.¹⁰⁹ Thus, regardless of efforts to improve gun safety, no handgun maker has been immune, and no firm’s efforts were regarded as sufficient.

HCI also helped bring a private lawsuit in California (*Dix v. Beretta*) based on the argument that handgun makers should be held liable for harm arising from accidents involving one of their guns, if the firearm did not have a “gun loaded” indicator. Beretta is one of the few companies that make handguns with such a device, yet HCI helped sue Beretta, because, in HCI’s view, the gun-loaded indicator was inadequate. Likewise, Colt Industries and Smith & Wesson spent millions of dollars developing personalized gun technology of the very type that HCI wants (so far, no reliable prototype has been developed), but HCI nevertheless helped bring suits against these firms as well.¹¹⁰ In sum, neither the legal theories HCI has devised nor their choice of targets for lawsuits supports their claims about why they are supporting the lawsuits. On the other hand, HCI’s policies are completely consistent with the hypothesis that they

are seeking to effectively ban the further manufacture of guns via a wave of lawsuits aimed at bankrupting the gun industry.

One of the bedrock premises of HCI ideology is that guns cannot provide any significant benefit in the form of defensive use. Empirical evidence is overwhelmingly contrary to this premise, but its factual accuracy is irrelevant for present purposes.¹¹¹ Rather, the irony of this position is that, given rejection of any constitutionally protected individual right to keep and bear arms, it deprives those who claim to support only limited, non-prohibitionist controls of their only serious rationale for supporting only limited controls and not gun bans.

The pleasures associated with recreational uses of guns, such as hunting or target shooting, cannot compare in seriousness with the harms associated with violent uses of guns, such as death and injury linked with crime, suicide, or gun accidents. Therefore, if one accepts the premise that gun availability increases these harms, as gun control advocates obviously do, but also holds to the premise that guns provide no significant capability for reducing death and injury from criminal violence, the only reasonable policy conclusion is that the more we limit gun availability, the less death and injury there will be. Thus, the logical implication is that we should limit gun availability as much as we can, and should pursue gun prohibition as soon as it is attainable.

Indeed, under the assumption that there are no significant violence-reducing effects of gun ownership and use, there is virtually a moral imperative to pursue the strictest controls achievable under prevailing political conditions, right up to and including prohibition. Doing anything less would necessarily mean that there was more death and injury than there would have been with a gun ban. In sum, HCI's premises imply a moral obligation to pursue prohibition.

If the effect of gun availability is overwhelmingly a violence-increasing one, then the fewer guns there are, the better, from a violence-reduction standpoint. If, however, one permits the mass of the population to have guns, by having only the "commonsense" laws that HCI currently advocates, but not a gun ban, a huge supply of guns will remain in civilian hands and thus will continue to be available to criminals, as well as the suicide-prone and accident-prone. Even if all voluntary gun transfers, whether through dealers or private transfers, were somehow eliminated, there would still remain the estimated 750,000 guns stolen each year, mostly in residential burglaries

(341,000 household gun theft incidents per year, times 2.2 guns stolen per household theft incident).¹¹² This is far more than enough to maintain a level of gun ownership among criminals sufficient to sustain the highest known levels of gun violence, since probably no more than a few hundred thousand different guns are used to commit crimes each year.¹¹³

These facts, when combined with HCI premises, strongly suggest a prohibitionist conclusion: the only realistic way one can effectively deny guns to criminals is to deny guns to everyone: to ban gun ownership. Once one assumes there are no significant violence-reducing effects of gun ownership, nor any constitutional obstacles to gun bans, there is no significant cost to disarming noncriminals and thus no compelling reason *not* to ban the private possession of guns.

Another variant of this reasoning is evident when gun control supporters discuss the violence-increasing effects of gun ownership, but without addressing who possesses the guns. By omission, gun ownership itself is portrayed as increasing violence, or at best having no effect, independent of the character of those who possess and use the guns, since anyone might do harm with them. The possibility that the power-enhancing impact of weapons might have very different effects on violence depending on whether victims or aggressors possess them is simply not considered, or is superficially dismissed on the basis of one-sided speculation and selective citation of technically inferior or even irrelevant evidence.¹¹⁴

Statements by Clinton administration spokespersons defending its support of gun buyback programs perfectly exemplify this variant of prohibitionist logic. A spokesman for the Department of Housing and Urban Development insisted that even though the programs do not directly disarm criminals, eliminating *any* gun ultimately reduces the risk of death or injury, explaining that “the first purpose of [gun buybacks] is not trying to stop bad guys from robbing banks or bad guys from shooting each other. The first purpose is to get guns out of homes.”¹¹⁵ Thus, even disarming noncriminals (i.e., persons other than “bad guys”) was, according to the Clinton administration, likely to reduce deaths and injuries.

This reasoning is closely related to another premise of HCI/gun control ideology that leads to prohibitionist conclusions. This is the venerable article of faith that the typical killer is a “regular Joe” with little prior record of crime or violence, who therefore is not a “real criminal.”¹¹⁶ This element

of the ideology was developed to deal with an obvious objection to gun control as crime control: if only lawbreakers commit crimes with guns, but lawbreakers will not obey gun laws, how can gun laws prevent gun crimes such as gun homicides? The solution to this rhetorical problem was to assert that there were significant numbers of people who, although they did commit a homicide or other crime with a gun, were nevertheless, prior to this isolated violent act, law-abiding enough to obey gun laws. Therefore, gun laws could have prevented their violent acts.¹¹⁷

The “regular Joe” imagery of killers implies that a large share of homicides committed with guns are committed by persons who previously showed no significant signs that they were likely to be violent in future. That is, they had no prior criminal convictions, no known record of mental illness accompanied by violent outbursts, no known record of violent reactions to drug use, and so on. The higher the fraction of killers one believes fit this imagery of “normal” killers committing a single isolated act of criminal violence, the more necessary it is to support gun prohibition to reduce homicide, i.e., to deny guns to everyone, not just those with criminal convictions or similar official indicators of high-risk status. If anyone might become violent, everyone must be denied guns.

In its early years, HCI openly advocated handgun prohibition, as CSGV and VPC still do today. None openly advocate banning private possession of all types of guns, presumably because it is currently a political impossibility. Only about seventeen percent of U.S. adults support banning all gun ownership.¹¹⁸ Unfortunately, for reasons noted earlier, banning only handguns, but not long guns, is a fatally flawed policy. Banning only handguns, while leaving over 150 million shotguns and rifles available, would be likely to prove so counterproductive that handgun ban advocates would have to either repudiate their support for any kind of gun prohibition (an unlikely eventuality) or attempt to correct the mistake by pursuing a ban on long guns as well, in hopes of removing the more lethal substitute weapons.¹¹⁹ Thus, the flaws inherent in handgun-only bans would create strong pressures for an escalation to a complete ban on guns of all types.

F. The Advocacy of Licensing and Registration in Addition to Background Checks

The principal federal legislative initiative of HCI at the turn of the millennium was the bill informally known as “Brady II,”

which mandates national registration of guns and licensing of gun owners.¹²⁰ It is called Brady II because it is a follow-up to the Brady Act, which required a criminal background check for all persons attempting to acquire a gun from a licensed dealer. Given that a background check already prevents convicted criminals from legally acquiring guns from licensed dealers, what additional violence-reduction benefit could reasonably be expected from licensing owners and registering guns?

For those pursuing prohibitionist goals, the value of licensing and registration is obvious. Licensing and registration make administratively feasible what would otherwise be a utopian effort to disarm the civilian American population. If one eventually got a federal law passed that banned the private possession of guns, or handguns, compliance with the law would obviously be higher if the government possessed a list of all those known to own guns and of the guns that they owned. Under current political conditions, it is unlikely such a list would be used to guide massive, and very expensive, house-to-house searches and confiscations. Rather, the utility of registration records would primarily derive from their value for compelling compliance with gun confiscation, due to gun owners' knowledge that their gun ownership was recorded with the government, and thus that the government knew which citizens "owed" them guns.

Anyone who was on the registration lists who did not turn in all registered guns by a gun ban deadline could be presumed to be in violation of the possession ban, and would be a high-priority candidate for rationally targeted, and thus more constitutionally defensible, law enforcement attention. Since random searches of homes are not likely to be authorized in the U.S., registration lists could be used to establish probable cause for issuance of selectively targeted search warrants to find contraband guns.

Registration supporters sometimes even concede the advantages of registration for purposes of selective confiscation of guns from criminals.¹²¹ Pete Shields denied that registration would *lead to* mass confiscation, but never denied that it would be helpful in implementing mass confiscation. Nevertheless, HCI did not propose any government registry of guns in 1981. By 1994, however, after the Brady Act was passed, HCI had expanded its goals to include registration.¹²²

The perception that registration could lead to confiscation is by no means a rare one in the U.S. In a 1978 national survey,

51% of U.S. adults agreed with the statement that “A national gun registration program might well eventually lead to the confiscation of registered firearms by the government.”¹²³ Thus, the belief that registration might have this consequence cannot honestly be portrayed as an idea confined to NRA members or right-wing extremists.

While the value of licensing and registration for enforcing a mass confiscation of guns is self-evident, its violence reduction benefits are completely undocumented. Advocates used to claim that registration would facilitate identifying and convicting criminals who used guns to commit violent crimes, apparently envisioning significant numbers of offenders who registered their guns and then abandoned them at the scene of a crime.¹²⁴ The implausibility of this scenario, and the rarity with which police used existing state registration systems to identify suspects, probably contributed to this rationale losing its popularity.¹²⁵ Nevertheless, HCI still justifies registration by asserting that it “allows for speedier and more reliable tracing of guns used in crime” and would reduce the number of criminals who “escape conviction because there is no paper trail or evidence linking them to the crime guns they used.” HCI does not, however, cite any data from existing state registration systems concerning how often registration records were instrumental in securing criminal convictions.¹²⁶

A second, marginally less dubious rationale is now generally preferred by registration supporters. HCI states that “registration is designed to reduce illegal gun trafficking by providing for more efficient tracing of guns used in crimes” to the dealers involved in illicit gun sales.¹²⁷ This rationale is based on the empirically unsupported claim, promoted by the U.S. Bureau of Alcohol, Tobacco and Firearms (BATF), that a large share of criminals acquire guns as a result of the activities of high-volume gun traffickers, and thus that criminal gun possession could be significantly reduced by identifying and prosecuting these traffickers.¹²⁸

Empirical evidence indicates that such traffickers account for only a tiny share of criminal guns, operate in large numbers only in a handful of places (a few large cities in the Northeast), and that most of the few criminals who get their guns from traffickers could also get guns from other sources if the traffickers did not operate. Instead, theft and private transfers by persons not in the business of dealing guns are the primary means by which criminals acquire guns.¹²⁹

It cannot be accurately argued that registration has never been tried, and thus not given a chance to show its merits. At least a half-dozen states have implemented registration (mostly of handguns). Empirical assessments of gun law impact have consistently indicated that state registration laws have no measurable effect on rates of crime or violence.¹³⁰

Licensing of gun owners likewise seems redundant for crime control purposes, once one has background checks on prospective gun buyers, as is already required for purchases from licensed dealers under the Brady Act. These checks could be extended to nondealer transfers by requiring private buyers and sellers to use licensed dealers as brokers, who would then perform the usual checks. This, however, would not require licensing. HCI claims that licensing is needed to permit more thorough background checks, involving fingerprinting and more time-consuming checks of paper records than are possible under the present “instant” background checks. They also argue that licensing would permit better residency verification, thereby disrupting interstate gun running, and would require completion of a gun safety course.¹³¹

What is most noteworthy for present purposes is that licensing of owners is not needed to accomplish any of these goals. The government could issue certificates of nonfelon status, based on background checks as thorough and prolonged as one could want, without retaining lists of persons receiving the certificates, and then merely require that prospective gun buyers present an up-to-date certificate before a gun could be transferred. Under such a system, there would be no government-controlled list of gun owners generated. Likewise, certificates of completion of a gun safety course, or of residency, could be issued without any government retaining lists of recipients.

Thus, the one goal that HCI’s licensing proposal would indisputably achieve that could not be easily achieved by these other means, is a federal government list of all legal gun owners. Likewise, the only goal clearly achieved by registration is that it would provide a complete list of guns legally owned by those licensed owners. Thus, the element that HCI appears most intent on achieving is government records of who owns guns and what guns they own. In sum, HCI places highest priority on giving the government a resource that would indisputably facilitate mass confiscation of guns, but that has no documented value for reducing crime or violence.

This does not imply that all supporters of licensing and registration secretly view these as tools for mass confiscation. Some advocates are simply honestly mistaken or unrealistically optimistic about the crime-control value of the measures, while more casual supporters probably have not thought very much about the full set of implications of licensing and registration. On the other hand, the potential that registration records could be used to facilitate mass confiscation cannot have escaped the notice of professional gun control advocates, and is clearly not so dire a prospect that it deters them from supporting registration, on the basis of only the most weakly supported and speculative potential crime-control benefits.

IV. CONCLUSIONS

Of the three most prominent gun control advocacy groups, two, CSGV and VPC, openly support handgun prohibition, while the third, HCI, once openly advocated the same thing, but ceased to do so only when it decided that prohibition was, at least for the moment, politically unachievable. The evidence reviewed herein nevertheless supports the proposition that the HCI leadership continues to support handgun prohibition despite apparent disclaimers to the contrary. The premises and logic of HCI's arguments for moderate gun controls lead to prohibitionist conclusions, and its advocacy of federal registration and licensing, when background checks on prospective gun transferees are already in place, suggests a desire to gain the administrative tools for implementing prohibition. HCI currently supports bans on gun types such as SNSs and "assault weapons," has actively supported both state and local handgun bans in the past, has commented favorably on foreign prohibitions, and has neither repudiated its past support of prohibition nor committed itself to opposing prohibition in the future.

Another way to think about this issue is to consider whether there is any evidence that is clearly inconsistent with this conclusion, that affirmatively indicates that the leaders of HCI oppose prohibition, as distinct from merely regarding it as currently unattainable. This chapter was submitted to HCI, to give its leaders an opportunity to rebut any of its points prior to publication. HCI did not respond.

The American gun control debate is frequently dishonest. Sometimes the dishonesty is of the banal type common in all political debates -- exaggeration, selective attention to evidence and to the possible implications of the evidence, creation of distorted straw man versions of one's opponent's positions, and so on. However, many gun control advocates also distort the gun debate by concealing exactly what it is that they would ultimately like to achieve, and thereby obscuring the full set of consequences of passing the "reasonable" measures that they currently advocate.

Most Americans oppose banning handguns or all guns, and would, as gun ban advocates have conceded, be less likely to support moderate controls if they thought that they would lead to prohibition. Consequently, some gun control proponents choose to be less than forthright about the full set of reasons why they support moderate controls. As a result, the debate over a given moderate control is distorted in that some of the consequences of the control becoming law are not honestly discussed.

In turn, some people who sincerely support only moderate controls and who oppose prohibition are misled as to the full set of possible consequences of their support for measures like registration or licensing. Further, their motives are unfairly impugned by gun control opponents who wrongly lump them in with the many prominent advocates who support moderate controls as stepping stones to prohibition.

As long as gun control advocacy groups like HCI continue to hold open the possibility of the group's future support for prohibition, by declining to formally forswear any such future support, it will be impossible to confine debate to the merits of more moderate controls. Instead the debate over a given control will always be distorted by what ought to be, in an ideal world, irrelevant concerns about the slippery slope implications of passing the measure.

For example, when the Consumer Product Safety Commission (CPSC) was created, Congress denied the agency jurisdiction over firearms and ammunition precisely because of fears that a future administration might use the agency's authority to declare guns and/or ammunition to be dangerous products and to ban their further manufacture. This was unfortunate, since the authority might also have been used, in a less politically toxic environment, to prevent the manufacture of guns with faults that any gun owner would acknowledge to be

defects, such as a tendency to discharge if dropped on a hard surface.¹³² Now, HCI is pushing to give authority over guns to CPSC, supposedly to get manufacturers to produce guns that are not needlessly dangerous, but concerns over prohibition are again contaminating discussion of the potential merits.¹³³

Of course, if people took slippery slope thinking to its logical conclusion with respect to all social problems, it would imply that no solution, no matter how sensible or effective, could be adopted, for fear that it would lead to a harmful overdose of the solution. Conservative advocates of the death penalty would, if they consistently applied slippery slope thinking in all problem areas, have to drop their support, for fear that providing capital punishment for murder would lead to capital punishment for shoplifting, then drunk driving, then speeding, littering, and disturbing the peace.¹³⁴

Thus, people are selective about where they choose to apply slippery slope reasoning. Gun control opponents, however, have sound reasons to suspect many advocates of seeking prohibition and for fearing that advocates are trying to create or exploit a slippery slope. Many, probably most, supporters of moderate controls do favor banning the private possession of handguns at minimum, and advocacy groups do believe in premises, and use arguments, that imply prohibitionist conclusions.

Nevertheless, despite decades of effort, gun ban supporters have not managed to increase popular support for prohibition.¹³⁵ There is nothing inevitable about a slippery slope leading from moderate gun controls to prohibition. It is perfectly possible to go only so far and then stop. There is, rather, a slippery slope only to the extent that (1) extremist advocates work to create one, by pushing, openly or covertly, for prohibition, and (2) the rest of the citizenry allow them to do so.¹³⁶

The gun control debate is carried out at two levels: (1) the overt debate over whatever moderate regulatory control is currently being considered, and (2) the subterranean or background debate over prohibition measures that are not even under formal consideration. To stop the overt debate from being distorted by the subterranean debate, prominent gun control organizations claiming to support only moderate “commonsense” measures will have to formally, and convincingly, commit themselves to permanent opposition to any future “control” measures that would disarm most of the American population.

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