



GUN CONTROL AND THE REDUCTION OF THE NUMBER OF ARMS

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S u m m a r y

1. The legal status of firearms varies over a broad spectrum as defined by the different legal systems. Therefor there does not exist a universal single distinction between "legal" and "illegal" firearms. This will have influence on the implementation of gun control.

2. Without doubt there exists an enormous global stock of privately owned firearms. So far, efforts to reduce that stock have been only marginally successful. The rates of compliance with stricter gun control measures are rather low, especially if there does not exist a precise registration regime beforehand. Non-compliance is augmented by the wide-spread and repeatedly confirmed suspicion of gun owners, that gun control tends to be a step-by-step program, which ultimately aims at total confiscation.

3. To the extent that stringent gun control has been effected, any reduction in the number of firearms has always been accompanied by various negative side effects.

3.1 Stringent gun control changes the profile of the gun-owning population. What ever the reason for keeping guns may be, remaining owners tend to cling even more tightly to firearms. Non-compliance with restrictive rules makes the remaining owners immune against even very reasonable measures of the authorities.

3.2 Much more dangerous is the creation and growth of an illegal black market in firearms. It's existence and it's interconnections with the global drug markets especially on the provider side have been proven beyond doubt.

3.3 Further, there is strong evidence of the adverse effects of gun control on armed crime. As gun control tends to affect almost exclusively the law-abiding part of the population, a reduction in the number of armed crime is not to be expected. On the contrary, disarming the law-abiding part of the population gives violence-prone criminals a distinct advantage. On various instances the development of the crime scene after the introduction of strict gun control measures points in that direction. This in turn will also create a black market for defensive firearms.

3.4 Finally, ever stricter gun control involves civil rights and constitutional issues too and therefor becomes a matter of wider concern. Applying these measures to legal gun owners tends to impair the integrity of private homes, property and the right of self-defence. An equally detrimental effect is the creation of an air of distrust within the own population, so that many non-owners view gun owners who are law abiding people as basically suspect, mentally unstable and dangerous. Over the long term this is detrimental to a democratic society.

4. There can be no doubt about the benefits which may be obtained of basic firearms control which minimises the access of risk populations to firearms and ensures responsible firearms ownership. If, however, gun control is implemented past it's optimum extent, any advantages obtained by reducing the number of firearms in circulation are offset by the adverse side effects, which even can be totally counterproductive to the intended objectives. Establishing the reduction of the number of legally held firearms as the overriding single principle of gun control is therefor definitely not advisable and should be avoided.

An extraordinary amount of research on gun ownership and its control has been performed and the results are available. For the purposes of this paper more data is not required, but rather a **critical evaluation** is made of its **concepts and questions involved**.

One of the most popular views on **civilian owned arms** is "**Gun control will reduce the amount of legally or illegally held firearms in circulation**". Assumptions such as this are called "**factoids**" by their opponents, in order to emphasise that they have much appeal on first sight but are intrinsically wrong. This paper attempts to investigate to what extent this assumption is true or invalid.

On examining the above assumption one receives the impression that it is at the same time stating and omitting the obvious. It is to be expected that because of their rather straightforward nature, "factoids" on gun control have great appeal to the media, the general public and some politicians. But as wishful thinking is no substitute for a sound scientific approach, this paper will first focus on **methodological issues**. This is followed by a discussion of the **relevant data** and following upon this, **conclusions** are drawn.

In this paper "guns" or "arms" will always mean **firearms**, designed for carrying and handling by one person. No particular distinction is made between **military** and **civilian firearms** and thus "**gun control**" of **civilian ownership** refers to **both**. Issues of the **disarmament** of military or paramilitary bodies, the handling of **surplus state owned arms** and measures against the **proliferation** of military small arms and light weapons are **not addressed in this paper**.

1 METHODOLOGY

1.1 Legal status of guns

(1) Strange as it may seem, at the very beginning the **meaning** of "**legal**" and "**illegal**" **guns** and its relation to "**gun control**" must be discussed. Although seemingly clear, those terms are rather complex. Failure to take this into consideration would certainly make any conclusions on the working of gun control questionable or even worthless.

(2) It is important to bear in mind that the issue of "**legal**" and "**illegal**" **guns**, although certainly being a legal concept, is quite **different** from the **system of legal restrictions** discussed in the next section. Whether a gun is "**legal**" or "**illegal**" can only be shown by **referring** to the relevant legal system of restrictions, that is a **particular gun law**. The classification of real guns according to both categories would therefore produce quite different patterns in different countries.

(3) **Legal restrictions of guns** come in a **variety of forms**. Nevertheless they usually fall into four **main categories**. For sake of convenience I will use the current EC nomenclature in designing them.¹

"A" - "**prohibited**" guns. As legal ownership if at all possible would be a rare exception, **in practical terms** any given gun of that kind would **at the same time** also be (at least most likely) an "**illegal**" arm.

By mere definition **all other kinds of guns** belong to the category of "**non-prohibited**" arms. Whether they are to be considered as **legal or illegal** depends on the **status of the owner**, according to the relevant gun law. Usually they comprise "**B**" - "**licensed**", "**C**" - "**registered**" and "**D**" - "**free**" guns (i.e. not subject to registration or licensing).

¹ Richtlinie des Rates vom 18. Juni 1991 über die Kontrolle des Erwerbs und des Besitzes von Waffen. (91/477/EWG), Amtsblatt der Europäischen Gemeinschaft Nr. L 256/51, 13.9.91

(4) Basic common requirements of guns laws notwithstanding, there is a **broad spectrum of legal provisions relating to guns around the world**. Having therefore to cope with a **variety of "legal" and "illegal" types of guns** might be **important for the success or failure of gun control**. Apart from rare exceptions (e.g. "shall issue" provisions²) **gun control today** means imposing **ever more restrictions** on civilian gun ownership. Therefor the following discussion will refer exclusively to the present restrictive legal practice in arms legislation.

1.2 Gun control

In order to know who owns what guns, to reduce the number of guns in circulation and to give less people less access to guns there have been developed **two different types of strategies**.

(1) One type of gun control relies on the **legal obligation to comply with a law**. Regardless of the actual impact on gun owners I will call this approach a **"hard" strategy**. Gun control of this type may range from the mere registration of a person as gun owner to a total ban of all kinds of firearms, backed by harsh penalties and the searching of persons, vehicles and premises without any further legal requirements. There might be offered additional benefits for complying, for instance "amnesties" or compensation schemes. However, there is **no formal choice**.

(2) But there exist also **"soft" forms** of gun control, in that **legal gun owners are offered a choice**, however different it actually might be. The state may officially offer various incentives to gun owners to voluntarily part with their arms. A very different approach indeed, is that without changing the basic requirements of gun ownership, the state may raise other legal thresholds in a way that makes further possession or future acquisition of a gun too much of a burden. "Buy back" schemes are an example of the first strategy. The second includes raising fees for licensing, creating time consuming and cumbersome procedures and huge amounts of paper

² Establishing a right for adult, reliable and technically competent persons to carry concealed a firearm. For the United States: John LOTT: "More Guns, Less Crime" 1998.

work or imposing very onerous storage requirements for guns, all of which at least in part are designed to reduce the amount of legally held arms.

(3) For the sake of completeness there should further be mentioned the well documented practice of a **restrictive administration of existing gun laws without any legal basis** to reduce the number of legal gun owners and legally held guns. This may happen "by mistake" or quite simply on purpose.

(4) "**Hard strategies**" create **legal restrictions** via a double approach: On the one hand **certain persons shall have no legal access to guns**. Besides an almost universally stipulated minimum age, there usually exist graduated requirements of age, health, conduct, basic firearms skill etc. On the other hand **certain types of guns** are either **totally prohibited** or legal access is **restricted**, depending on the technical characteristics of the various types of guns. In **existing legislation both aspects are combined** in various ways.

1.3 Quality of data

(1) There exists **definitely no information** on the **overall private gun ownership**. Any research on **illegal arms** suffers from the **fundamental shortcoming** that both their **number** and the **number of persons involved is** (almost by definition) **unknown**. This holds also true for **legal but unregistered arms**. State registration schemes do not always improve matters. If **persons are merely registered** as legal owners, **nothing is known** about the **number of arms** they hold legally. Very often even the number of actually **registered legal guns** may be **unknown in practical terms**, if for instance a central registration of the files of local authorities does not exist.

Furthermore, **crime** and other **social statistics**, which are considered prime instruments for evaluating legal and administrative measures on gun control are **notoriously flawed**. Their value is **further limited** if one tries to make **international comparisons**.

(2) All this may be viewed as reducing from the outset the application of any valid statistical research on gun control. Nevertheless a **huge amount of empirical knowledge on various aspects of gun control** coming from almost all over the world exists, however fragmented and of different quality it may be. It would be very unreasonable to insist on a purist point of view and discard it. It is to be noted that scientific research in social issues is hampered in general by problems of the same kind. We do nevertheless certainly use what information and evidence we have, at least as **guidelines**.

I feel compelled to add that from a pragmatic point of view, the lack of precise and comprehensive data is not always a critical factor in the development of arguments and policies. As has been clearly demonstrated, in the treatment of issues which are politically as hotly debated as gun control, scientific and socio-political arguments of the highest quality have little weight if they do not fit into a preconceived frame. However this is clearly no excuse for dubious argumentation.

1.4 Success

A mere reduction in the raw numbers of arms should not and cannot be taken to be an end in itself. Even if gun control is openly declared as a symbolic gesture, it only makes sense if there is the **underlying assumption** that having **less guns** will in some way result in **some benefits**. This is "stating the obvious" as mentioned above. But even if the reduction of the quantity of legally owned guns would at the same time reduce the number of illegally held guns, it would be a **grave and perhaps dangerous omission not to consider any side effects**. There is a **strong tendency to conceive gun control as needing no justification when confronted with empirical evidence**. That is "omitting the obvious" of above. Negating reality will not pay over the long term, though one cannot deny its benefits to certain interest groups over the short term, in an age where political actions tend to be guided by their daily media value. This paper will therefor deal especially with the **actual consequences of gun control measures**.

2 REDUCTION OF THE NUMBER OF GUNS

2.1 Estimating the existing stock

(1) However vague the estimates of civilian gun ownership might be, and there are certainly justified reservations against the methodology and findings of various studies, they show one thing very clearly: The **overall numbers** of civilian owned guns are **enormous**.

(2) On a state level, estimates of the **percentage of households** possessing **any type of gun** ranges up to about 50% in the USA, with countries like Norway, Canada and Switzerland in the 30% area, Australia at about 20 to 25%, Germany and Austria about 10% and England as low as 5%.³

Estimates of **gun ownership per capita** range from 85 000 per 100 000 inhabitants in the USA; Switzerland 43 000; New Zealand, Canada and Australia 29 000, 24 000 and 19 000 respectively; to 3 000 in England and a mere 400 in Japan.⁴

In **absolute numbers of guns** current estimates are for example about 220 millions or even more for the USA; 7 millions for Canada, 5 millions for Switzerland and 4,5 millions for England.⁵

³ Canada, USA: Thomas GABOR, "Firearms and Self-Defense: A comparison of Canada and the United States" 1997, p.3. Australia: James B. LAWSON "New National Laws - are they cost effective?" in: Public Affairs Review, December 1999. Austria: Gerhard HANAK, Arno PILGRAM "Privater Waffenbesitz und Bereitschaft zum Waffenverzicht", Institut für Recht- und Kriminalsoziologie, Wien 1998, unpublished.; about half of the total percentage of fourteen percents of households concerns tear gas or alarm pistols. Home Office "Gun Availability and Violent Crime: research evidence" 1999, tab. A.2; based on Martin KILLIAS "Gun ownership, suicide and homicide: an international perspective" in: "Understanding crime and experiences of Crime and Crime Control" del Frate, A., Zvekic, U. and van Dijk, J.J.M. (Eds.). UNICRI Publication No. 49. Rome: UNICRI 1993.

⁴ Canadian Department of Justice: "Review of firearm Statistics and Regulations in Selected Countries", 1995, cited according to: Crime and Criminal Justice Unit, Research and statistics directorate of the home office: "Gun availability and Violent crime: research evidence" table A.1, available at: http://www.cybersurf.co.uk/*johnny/dunblane/fhomemain.html .

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Canada: Thomas GABOR: "Firearms and self defense: a comparison of Canada and the United States" 1997, p. 3, unedited; USA: David KOPEL/ Jarret WOLLSTEIN: "Will you be safer if guns are banned?" available at: <http://rkba.org/research/kopel/kopel-wollstein.isil> ; Switzerland: Richard MUNDAY: "Most armed and most free" 1996, p. 12; England: David KOPEL: "The Samurai, the Mountie and the Cowboy" 1992, p. 89.

(3) Estimates of the **ratio** between **legally and illegally held guns** almost uniformly tend to show a **heavy preponderance of illegal guns**. Again a few examples suffice. In England at the end of the seventies the number of legal guns was estimated at about 2,5 millions, while the stock of illegal guns was thought to range from 2 to 3 millions or even more, 3 millions being a currently used figure.⁶ The German Police Union estimates some 10 million legal guns against 20 million illegal ones.⁷

2.2 Gun control and it's effects

(1) At first sight, tightening gun control in order to reduce the number of guns by what I called "hard" methods seems to be successful. Following the ban of semiautomatic rifles in Australia about 640 000 guns have been surrendered to the authorities.⁸ After the total handgun ban in England 162 000 pistols and revolvers were handed over between July 1997 and February 1998.⁹

However it should be kept in mind that by **legally restricting the ownership** of certain types of guns, a considerable **number of previously "legal" guns become "illegal"**. This might be viewed as academic hair-splitting, as it seems to be just a matter of definition. But it immediately becomes a real fact, because **non-compliance** with the new law **produces a very real stock of illegal arms**.

(2) **Non-compliance with harsher gun laws is a common event**. In Australia it is estimated that only about 20% of all banned self-loading rifles have been given up to the authorities.¹⁰ The remaining stock of illegally held banned firearms is estimated

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KOPEL supranote 5, p. 89; Peter WOOLRICH: "Britain`s tough gun control laws termed total failure" available at: <http://www.Freerepublic.com/forum/a3917144261c.htm> .

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Kurt HICKISCH: "James Bonds neue Dienstwaffe" in: Öffentliche Sicherheit 5/200 p. 26.

8

Chris GRIFITH: "Buyback blamed for illegal trade" in: Queensland "The Sunday Mail", 24/01/99.

9

Martin HICKMAN: "Handguns surrender not handled well" in: PA News 07/07/99.

10

James B. LAWSON: "New National Gun Laws - are they cost effective?" in: Institute of Public Affairs "Review" December 1999.

at between two and five millions.¹¹ The above mentioned figure of 640 000 rifles which were handed over to the authorities has to be seen in the context of the earlier legal import of about 2 million guns of only two particular types of that kind. In Queensland alone the number of all types of banned rifles was estimated as 1,2 to 1,3 millions before the implementation of the legislation. Only 130 000 have been handed in and 520 000 have been licensed. This yields a compliance rate of about 50%.¹² Following the restriction in 1983 of certain "military-style" rifles in Canada, the compliance rate was estimated as between 3 and 20% for different models.¹³

In Queensland, Australia, in the eighties only six rifles of a particular type have been handed in following a ban, even though a single dealer in Queensland had imported 2 000 of just one make of such guns.¹⁴ In Austria in 1995 pump-action shotguns were prohibited. While new acquisition is next to impossible since then, already legally held guns could only be kept on a special permit. Out of an original stock estimated at 60 000 guns, only 10 557 have been either surrendered or registered.¹⁵ As the estimate on imports covers only the last ten years, total legal imports must certainly have been even higher.

(3) Not surprisingly, the effects of changes in legislation which is to **reduce the number of already legally owned guns depends** on whether the **existing stock** has been **already registered**. There is an universal and strongly developed tendency to resist gun confiscation if there is any possibility at all. A particular striking example is provided by Austria after the end of the second world war. In the provinces under Russian control possession of any kind of firearm could mean either being shot at the spot or at least vanishing into the remote parts of Siberia. Nevertheless a considerable stock of all kinds of guns has survived from those years interred or sunk in cesspits.

¹¹ John TINGLE, NSW Shooters Party on Allan Jones AM radio, 2 UE NSW 30/09/97.

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GRIFITH supranote 8.

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KOPEL, supranote 8, p. 144.

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KOPEL, supranote 8, p. 218.

¹⁵

Paul KISS, member of the Austrian Parliament, on TV 11/11/97, cited after: Franz SCHMIDT: "Waffenrechtsdebatte" 3rd Edition, p. 4.

(4) Also **"soft" methods** to reduce the numbers of guns are **only partially successful**.

Under a **"buy-back"** scheme in Seattle, USA, 66% of gun owners were reported to have kept other (and better) arms than those sold and 3% later stated that they would buy another gun with the money received from selling a gun to the state.¹⁶

Concerning what I would call **"disarming by administrative measures"** again Austria may provide an example. The gun laws order that every five year the personal qualification of owners of licensed guns and the safe storage of their arms shall be reassessed. During the first year of these controls the total number of certificate holders was reduced by a 5 to 8% margin, although only the fifth part of all license holders had been controlled.¹⁷ After completion of the first five year cycle it is probable that up to 20 or 25% of all former license holders will have parted with their guns. However, it is not expected that there will be a similar reduction during future control cycles, as those certificate holders not really sure about future gun possession will have relinquished their guns during the first control cycle.

(5) The mere **registration of guns**, although by definition and perhaps also on the first intention is not directed at reducing the number of guns, is equally only **marginally successful**. In Germany the general registration of long guns was enforced in 1972. The existing stock was estimated at between 17 and 20 millions, while only 3,2 million guns have been registered within the legally set period.¹⁸ In England out of an estimated stock of 300 000 legally acquired semi-automatic and pump-action shotguns, it would appear that fewer than 100 000 have been registered.¹⁹ In Austria the registration of "C" category rifles of EC nomenclature

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Charles M. CALLAHAN, et al., "Money for Guns: Evaluation of the Seattle Gun Buy-Back Programme" in: 84 PUB: HEALTH REP. 474 (1994) cited after: David KOPEL: "The Madness of Gun buy backs" available at: <http://www.nationalreview.com/comment/comment051500b.html>

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Kurt HICKISCH: "Weniger Waffen" in: Öffentliche Sicherheit 6/2000 p. 10.

18

Ernst Ulrich DOBLER: "Schußwaffen und Schußwaffenkriminalität in Deutschland" 1994, p. 27.

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(any type except semi-automatic) was enacted in 1996. It is estimated that between 500 000 and 1 million rifles have been registered, while the existing stock has been estimated at about 2 to 3 millions.²⁰

(6) The above leads to the conclusion that even in terms of **mere reduction of numbers, gun control** has a **very limited rate of success**. What has been gained from the reduction of the numbers of previously legal and also registered guns is easily **counterbalanced** by the number of **guns not surrendered**, which have clearly now **become “illegal”**.

This should be viewed against the **costs** of those measures. In 1995 the costs of the then proposed registration scheme in Canada were estimated to amount at least 750 million dollars and possibly more than 1 billion dollars over the following five years.²¹ In England, 95 million pounds have been paid in compensation to former pistol owners²² and the national buy back scheme of semi-automatic rifles in Australia is said to have cost 500 million dollars.²³ To these figures must be added the enormous amounts of money needed for the **police and administrative workforce** to administer the laws has.²⁴

3 SIDE EFFECTS

Any effort to change the behaviour of the population by legislative and administrative measures is no simple straightforward task and results in the activation of a very complex social system of interactions. There are no effects without side-effects. Side-

David KOPEL: "Gun Control in Great Britain" 1992, p. 54.

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Personal communication from the head of Austrian Arms Traders Assoziation.

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Gary MAUSER: "An Outline of a Cost/Benefit Analysis of the proposed Firearms Owners Licence and Universal Firearms Registry" presented to the Standing Committee on Justice and Legal Affairs House of Commons Ottawa, Ontario. 15 May 1995 available at:

<http://teapot.usask.ca/cdn-firearms/Mausser/committe.txt>

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Bill HARRIMAN, member of the Firearms Consultive Committee, cited after: WOOLRICH, supranote 5.

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LAWSON, supranote 10.

24

Inspector John MCCOOMB cited after GRIFITH, supranote 8.

effects may easily be negative or outright counterproductive and just ignoring them is not advisable. There is strong evidence that there are very adverse side-effects which accompany the various arms reduction schemes.

3.1 Change in the population of gun owners

(1) If searches and seizures are not considered, **gun control** basically can only be enforced by **making the gun owners comply**. To whatever extent this is achieved it will always **leave a considerable number** of illegal (or in case of "soft" methods legal) **gun owners**. Invariably it will at the same time change the **characteristic structure of the group of remaining owners**. They will to a much higher degree than before consist of persons feeling a **more intense desire for owning a gun**, it may be mere interest in guns, an assumed or real need for defensive purposes or outright criminal intentions.

(2) As the overwhelming majority of (legal and illegal) gun owners are never involved in crime or misdemeanours related to gun-ownership, this change in population profile towards persons with stronger interest in guns may well not be expected to be even slightly significant. It could even be argued that **eliminating those persons with little interest in guns** would at the same time **reduce the danger of accidents** which occur through carelessness in handling and storing guns or because of lack of basic firearms knowledge. Though plausible at first sight this assumption has yet to be proven. As the frequency of gun related incidents is marginally in comparison with the existing vast stock of arms, verification of that idea **seems to be doubtful**. At any rate this change tends to **increase the proportion of gun owners** that cannot be addressed by **state initiatives however sensible** they might be, such as improving gun knowledge and handling skill or guaranteeing safe storage.

3.2 Black market

(1) With results similar to those which result from alcohol prohibition, **harsh gun control** is known to **increase the illegal production, trading and dissemination of arms**. Moreover **interconnections** between the **black market in arms and other, more general black markets** should be taken very seriously.²⁵ Viewed from the side of the illegal arms buyers this integration of markets will happen only with a very tiny fraction, namely those individuals already involved in other criminal business. For the great majority it will remain an isolated breach of a gun law only. However, viewed at a general level from the provider side there can be no doubt of the **world-wide integration of drugs and arms markets**.

(2) On a **global scale** during the last century the **overall production of guns** was **enormous**. Although most of it was built for military purposes, huge stocks are quite suited for civilian use, ranging from mere collecting, sport and target shooting, down to straightforward criminal applications. Following the **cold war** and the **collapse of the Soviet block**, as well as in the wake of **local armed conflicts** all over the world, a tremendous quantity of guns must have found its way on the black market.²⁶ In the final stages of the Russian occupation of former Eastern Germany Russian soldiers sold military equipment - including guns in order to buy everyday necessities for survival. The **fall of the former "Iron Curtain"** around the Soviet block together with the **Balkan conflict** has **supplied the large central and western European markets** with illegal guns. This is demonstrated by the rising involvement of the particular gun types in criminal activities.²⁷

(3) As with the trade in drugs, the **scope of illicit arms transactions** can be roughly estimated from **seizures** by the authorities. According to a Canadian study

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James WRIGHT/ Peter ROSSI: "Armed and Considered Dangerous. A survey of felons and their firearms" 1994² p. 203.

26

International Committee of the Red Cross: "Arms Availability and the Situation of Civilians in Armed Conflict" 1999.

27

Peter SALENDER, senior police official, cited after: Wolfgang PAUKERT: "Schußwaffengebrauch nimmt zu" in: Berliner Morgenpost 15/09/1998.

approximately 12 000 restricted firearms are smuggled into Canada every year.²⁸ Of course this business will function in the opposite direction too. Recently more than 1 700 world war II semi-automatic military rifles and more than 20 000 integral parts for this model destined for illegal re-import in the USA have been seized on both sides of the border.²⁹ In Germany on a single instance 1 004 full automatic rifles were intercepted during an attempted illegal import in 1995.³⁰

(4) Apart from an already established black market under a given legal situation, it is obvious that **tightening gun control stimulates and enlarges illegal trade** in arms. Following the handgun ban in England a steady flow of guns is coming from the former Eastern block, some still in their original packaging when seized.³¹ Alternative procedures to the outright prohibition of guns, such as **raising the thresholds for legal access to guns** can also **work in the wrong direction**. For example, in Austria the costs involved in obtaining a license for "B"-category guns (mostly handguns), including psychological screening and a basic firearms instruction, are already higher than the price of a quite serviceable handgun on the black market. This is a strong incentive for illegal acquisition even without criminal intent. Although no one would doubt the **benefits of checking the personal character and the technical knowledge of a prospective gun owner**, one invariably has to **accept** that there are **also disadvantages**.

(5) When considering the mechanisms of the legal and illegal markets it should finally be kept in mind that not only **demand creates its own supply**, but that **supply tends to create its own demand**, thus enlarging the overall stock of goods in circulation and the number of individuals engaged. Apart from legal markets, this is

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John C. THOMPSON: "Misfire: The Black Market and Gun Control" The Mckenzie Institute, May 1995 p. 26, 39, cited after: Canadian Institute for Legislative Action/ Ontario Handgun Association: "Are Rifles and Shotguns the `Weapons of Choice` in Canadian Violent Crime?" 1999.

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Crime & Justice International, June 2000 p. 13

³⁰ Bundeskriminalamt (Germany): "Waffen- und Sprengstoff-Jahresbericht 1995", p. 33.

31

Detective Superintendent Keith HUDSON of the National Crime Squad, cited after WOOLRICH supranote 5.

perfectly demonstrated by the drug market and will equally hold true with illegal gun markets.

3.3 Armed crime

(1) While the impact of tightening gun control on the overall characteristics of remaining gun owners and on the black market cannot be seriously disputed, possible **influences on armed crime** are **controversial**. At any rate, after the reduction in the number of legally held guns it would appear that there is **not a comparable decrease in armed crime**. This is to be expected, as the guns turned in are usually not the ones involved in crime, and the people who turn in weapons are generally the least likely to commit a crime.³² But although even ardent proponents of gun prohibition are known to concede that those measures are not aimed at reducing armed crime³³ there is **strong opposition** against the notion, that on the contrary **gun control might actually enhance criminal misuse of guns**. Even if crime statistics might show an increase in armed crimes following a stiffening of gun laws there is always the argument that a statistical correlation does not prove a causal relationship.

In a less refined version the argument is that "without the new restrictions the increase in armed crime might have even been stronger". Although irrefutable because its structure does not permit an empirical analysis, this proposition is certainly the most dubious and therefore senseless explanation in practical terms. In any other situation less controversial than gun control, nobody would dare to advance a similar argument based on the outcome of any measures to cope with a problem.

(2) The media has reported that according to the Australian Bureau of Statistics armed robbery rates in New South Wales rose from 48,66 per 100 000 people in 1996

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Ron SCHERER/ Howard LAFRANCHI: "New Gun Trade: Turning Them In" in: The Christian Science Monitor, 4 May 2000 p. 1, referring to buy-back schemes. The statement of course holds equally true with confiscation.

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Anne STANDFORD, press secretary for (Australian) Police Minister Bill McGrath, in: The Geelong Advertiser 11/09/97. Tony BLAIR is likely the most prominent politician on record with this view.

- before the new gun laws - to 79,34 in the following year. The number of persons robbed at gunpoint in NSW rose from 827 in 1996 to 1 252 in 1997.³⁴ This would be an increase of about 65%. The foremost police weapons expert of Queensland stated that in 1997, the year the buy-back was completed, robberies involving guns leapt 39%, and assaults involving guns 28%.³⁵ When the NRA of America openly claimed the Australian disarmament scheme a failure as it was followed by a severe rise in crime, there was immediately strong opposition by Australian government officials. They instead claimed a reduction in armed crimes following the national gun ban, accusing the NRA of completely distorting the facts and using wrong statistics. However, a recent media release of the Australian Bureau of Statistics on recorded crime in 1999 states the number of attempted murders involving a firearm increased to a seven-year high of 32 per cent from 1993.³⁶

The English statistics on "firearms offences" shows a slight increase in the total number of crimes with "real" firearms (other than air weapons) from 1997 (4 904) to 1998/9 (5 209).³⁷ During the same period the misuse of handguns remained stable, in

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Nathan VASS "Extra time for gun crimes" in: Sunday Telegraph, Sydney 28/02/99.

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Chris GRIFITH supranote 8.

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Australian Bureau of Statistics, Media Release 82/2000, 28. June 2000.

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Cited after a copy of a published Crime Statistic on England and Wales, bibliographical details unknown at present, Table 3A, p. 56

spite of the wholesale confiscation of the legal stock.³⁸ However it is pointed out that on 1 April 1998 there has taken place a change in counting rules (and obviously also in the reporting period) which is said to impair the validity of statistically based conclusions on the real development.³⁹ It is most unfortunate that the crucial change in statistics took place at the time of the latest radical gun ban. However flawed recent - or previous - English crime data might be, there are other observations which can not be dismissed on methodological grounds. Police reports a rise in shootings, a move toward more effective guns and modern weapons - these becoming fashion accessories among young drug dealers.⁴⁰

(3) In assessing the possibility of a negative feedback of gun control on armed crime, one need not engage in disputes about the validity of statistical evidence on short term effects. Plain common sense should tell that **guns can be more easily removed from the law abiding, giving those illegal gun owners willing to engage in crime a much greater advantage** than ever before. In England during the last century gun control meant enforcing ever tighter restrictions. Yet during that period armed crime has been constantly rising.⁴¹ A similar development is shown by a comparison of burglary situations in countries with different levels of private gun ownership. In England, according to Crime Surveys carried out between 1983 and 1992, between 43 and 53% of all burglaries took place when a victim was present. In the United States with a much higher rate of households owning guns, according to 1976 and 1985 data this happened only in between 9 and 13%.⁴²

(4) Summing up, there exists **reliable evidence of counterproductive effects of ill-devised gun control on armed crime**. It would be a grave omission either not to

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Supranote 37, p. 56, fig. 3.2, p. 57.

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Supranote 37, p. 55.

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Jon UNGOED-THOMAS "Armed force", The Times, London 16. January 2000.

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Collin GREENWOOD, "Firearms Control" 1972, p. 100, 158, 161; for the period from 1946-1969.

42

Lower percentages: Gary KLECK, "Targeting Guns", 1997, p. 183; higher percentages David KOPEL, "Gun Control in Great Britain" 1992, p. 56.

take them into consideration out of wishful thinking or to ignore them completely. Moreover it should be noted, that a **rising crime situation** following the disarmament of the non-criminal part of the population will create a **new demand for defensive guns**, which now can only be **satisfied on the black market**, thus giving the illegal trade in arms a stimulus from a quite unexpected direction.

3.4 Civil rights

(1) Ever stricter gun control finally involves **civil rights** and **constitutional issues** too. It therefore soon becomes a **matter of wider concern**. As it is known that the registration, let alone the surrender of guns are measures which are unsuccessful on a voluntary basis, the state feels justified in enacting **ever more severe restrictions** that not only **intrude in the private sphere of lawful gun owners** but are of **increasing concern to the plain ordinary citizen**.

(2) **Unannounced warrant-less searches** of private homes for possibly cached illegal arms **without any probable cause** are commonly performed.⁴³ They put **law abiding citizens in a much worse position than criminals**, as in the latter case a legal search usually requires a court order. Routine police controls of gun owners easily tend to become senseless disturbances of the private sphere by developing an intrusive character. **Confiscation** of guns and ammunition **without compensation** has been proposed time and again. In Austria this was recently enacted with regard to one particular type of handgun ammunition. Insignificant as this might be in terms of actual financial losses, this provision was to my knowledge the only expropriation by law of legally acquired and owned goods during “normal” periods of time in my country so far.

(3) It is already very common that **self defence**, after all still a **basic right in any developed country** (although already in a process of heavy erosion ⁴⁴) is **not**

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Joseph OLSON, David KOPEL, “All the way down the slippery slope” in: 22 Hamline L. Review 399-465 (1999), p. 445.

44 Supranote 43, 434pp.

accepted as **"good reason" for owning a gun** even at one's home, let alone for carrying one in public. To what end this attitude towards self defence can be carried is shown by the "Offensive Weapons" law in England, which even prohibits the carrying of pocket knives and tools of trade capable of being used in self defence against criminal aggression, and its actual application. Paradigmatic is the conviction of one American tourist, who used a pen knife to stab some attackers. Her intention to use her penknife for lawful defensive purposes converted her penknife into an illegal "offensive" weapon.⁴⁵

(4) As the global transition towards ever stricter gun control during the last decades took place, it was fomented by and at the same time has intensified a **sense of distrust within the own population**, paralleling in that regard the "war on drugs".⁴⁶ Facts notwithstanding, gun owners as a whole are increasingly conceived as an untrustworthy, mentally unstable and potentially dangerous group which has at least to be subjected to constant monitoring.

It is therefore not mere coincidence that possession or interest in guns is viewed in the pseudo-medical terms of **"disease control"**. As previous and ever more stringent approaches have failed to eradicate the disease "(N)ew and yet more restricting laws are enacted, and great sacrifices of civil liberties and privacy demanded and submitted to".⁴⁷ In a situation defined as an emergency, considerations of constitutional principles are easily left aside.

But **viewing people as a society of suspects** and denouncing opponents to a handgun ban as accomplices of the murder of school children⁴⁸ is **detrimental** to the very **basic assumption** of any modern society which freely adheres to the rule-of-law -

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Supranote 43, p. 435, 436, 446.

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David KOPEL, "Peril or Protection? The risks and benefits of handgun prohibition" in: Saint Luis University Public Law Review, Vol. 12, 1993.

⁴⁷ David POLSBY: "The False Promise of Gun Control" March 1994 issue of The Atlantic Monthly, available at: <http://teapot.usask.ca/cdn-firearms/Polsby/false.prm>

⁴⁸ Supranote 43, p. 432.

that it's **members have to be viewed as responsible, reasonable and law abiding citizens.**

4 CONCLUSIONS

(1) There can be no doubt that the **control of guns in order to reduce the number of civilian owned firearms in circulation** has had altogether a **very limited success.** There exists an **enormous stock of illegal guns all over the world.** Demand, supply and distribution are constantly **stimulated** by ever present **social disorder, armed conflicts and global migration.** A very strong impetus on a world-wide scale is provided by the **interrelations of the drugs and the arms markets.** Most of the elements augmenting illegal gun business are outright criminal. This contrasts unfavourably with the fact that **gun control almost exclusively can only be imposed on the law abiding** part of the population.

(2) The degree to which **arms reduction** in numbers can be achieved through the control of **previously registered and legally owned guns** can easily be **counterbalanced** by rather unpleasant or outright counterproductive **side effects.** The most important of these is the stimulation and enlargement of an **illegal black market.** This cannot seriously be disputed as it is well known from the consequences of other prohibitive measures. Moreover there is sufficient evidence for the **possibility of increased criminal misuse** of guns following a radical disarmament of legal gun owners, by **giving violence-prone criminals an ever greater advantage.** This is of course linked to the overall development of aggressive and predatory crime, which is quite likely in turn stimulated by rendering potential victims definitely helpless.

(3) In this context there should also be noted that a **reduction in the number of guns** available is of **no measurable influence on the incidence of other harmful events.** An example is provided by the occurrence of **suicides.** It is already proven, that the availability of guns is not correlated with the frequency of suicides as a

whole.⁴⁹ Furthermore, if guns are less available, there takes place a **substitution effect**. While gun-related suicides were reduced by Canada's handgun ban of 1976, the overall suicide rate did not go down at all: The gun related suicides were replaced 100% by an increase in other types of suicide.⁵⁰ These events and also gun-related accidents are extremely scare in comparison with the number of guns available and their occurrence depends on other causes.

(4) Given the **scarcity of state resources, gun control** also has to be seen in terms of **costs and benefits**. The outcome of such an analysis is clear: Registration is not only **costly, ineffective and achieves little**, but **diverts scarce resources away from other, more important duties**. Therefore, **police** in general are **not in favour of overly restrictive, let alone prohibitive gun control**. The New Zealand government discontinued firearms **registration** in 1984 after the New Zealand police recommended its termination.⁵¹ The Canadian Police Association was at the brink of withdrawing its support of the firearms registration (C 68, Firearms Act of 1995) because of its serious shortcomings.⁵² At the height of the Austrian gun debate some two years ago leading police officials stated, that a then called-for **prohibition** of handguns would not only be senseless and a waste of time and money, but that it would be outright dangerous because of its impact on the black arms market.⁵³

⁴⁹ Japanese gun ownership is about 2% of the Australian level, but their suicide rate is almost double that of Australia and the US. Review of Firearms Statistics and Regulations in Selected Countries. Draft Document. Research, Statistics and Evaluation directorate. Dept of Justice Canada. April 25, 1995, particularly table 1.1 . Cited after: James B. LAWSON supranote 9. Although legal gun ownership in Hungary is much more scarce than in Austria, the suicide rate in Hungary is very much higher.

⁵⁰ "Howard's Gun Ban. Buy-Back Analysis. Updated at Monday, October 20, 1997. Available at: <http://ozemail.com.au/~confiles/buyback.html> .

⁵¹ "Background to the Introduction of Firearms User Licensing Instead of Rifle and Shotgun Registration Under the Arms Act 1983" New Zealand National Police, cited after MAUSER supranote 20. S. W. WATERMAN: "Firearms – Is It a Police Responsibility?" Research Lecture Paper, Victoria Police College, Inspector's Course NO. 51 – 1986. NEWGREEN (Chief Inspector and Register):Registration Firearms System CRB File 39-1-1385/84, available at <http://www.ssanz.org.nz/articles/regex.html#step8>.

⁵² Resolution approved August 27, 1999, cited after SSAA Sporting.Shooters.Association@Adelaide.on.net .

⁵³ Personal communications.

(5) Finally, **coming down ever harder on legal gun ownership** in order to achieve some degree of success is almost by necessity linked with **severe erosion of civil rights**. Although **every single new restriction** on the way towards ever stricter gun control might be viewed as **small and reasonable**, in **total** it will amount to a **serious impairment of basic civil rights for everyone**. The tenet that the law abiding has nothing to fear from the state holds no longer true against a **growing tendency to view the very people as basically suspect**. All these tendencies, which are growing in other fields than the issue of private gun ownership too, will on the long run **destroy the very roots of a free and democratic society of reasonable and responsible citizens**. This holds equally true for the sometimes openly admitted intent to **use gun control for making grand symbolic gestures at the expense of the law abiding population**.

(6) Does all this mean that the state should **abandon any efforts on gun control** at all and leave things go their own way? **Certainly not**. It would be **irresponsible** to deny the benefits of **minimising the access of risk populations to guns** on the one hand, and to **ensure and improve responsible gun ownership** on the other hand. **In that very basic meaning gun control makes sense and is necessary**.

While this may be correct in general terms, **problems** start as usually with the **practical implementation** of these principles. As a whole, gun control as a social enterprise offers **no 100% solution, which yields only benefits**. The central issue is not one of maximising one particular aspect (for instance "no guns in private hands") but to **optimise the interdependence of all relevant factors**, which very often are outright antagonistic. There is a law of diminishing returns also in gun control, once the optimum area has been left behind.

In practice, the **efficiency of gun control** seems to be coupled with **social acceptance**. This basis has **suffered** from an **ever faster succession of ever more restrictions**, in most cases enacted **under severe media pressure**. Very often it is obvious that a new provision is far off the mark of a real problem, for instance when **neglect in administrating existent laws is hidden behind new laws**, or when **a new law is called for before the latest law has even come into effect**. Very often gun

owners feel completely **misled by ever repeated promises that the newest restriction will also be the last one**. As a consequence they tend to **refuse compliance with further control measures** as best as they can. This in turn is seen as proof for further legislative or administrative measures, following the erroneous principle of "more of the same".

As social and legal conditions vary over a very broad spectrum there obviously can be **no "one size fits all" way of gun control**. **Certainly it should not be founded on the assumption that "gun control will reduce the number of legal and illegal arms in circulation" as it's only credo.**