Welcome to the Gun Show…. Or Not: The Case Against Universal Background Checks

By Andrew Welton

***Resolved: The United States should require universal background checks for all gun sales and transfer of ownership.***

This CON case shows how universal background checks are harmful to minorities. Gun laws are structurally designed to exclude minority groups and rely on elitist policies that excludes them. For this reason alone, universal background checks would not work, at least not fairly, and a black market would evolve anyway.

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Contention 1: Structural Racism

Universal Background checks are harmful to minorities- Gun laws are structurally designed to exclude minority groups

Alex Gourevitch (assistant professor of political science at Brown University) Salon June 24, 2015. Gun control’s racist reality: The liberal argument against giving police more power. <https://www.salon.com/2015/06/24/gun_controls_racist_reality_the_liberal_argument_against_giving_police_more_power>

As multiple police killings of unarmed black men have reminded us, the police already operate with barely constrained force in poor, minority neighborhoods. From SWAT to stop-and-frisk to mass incarceration to parole monitoring, the police manage a panoply of programs that subject these populations to multiple layers of coercion and control. As a consequence, more than 7 million Americans are subject to some form of correctional control, an extremely disproportionate number of whom are poor and minority.

While it is commonly assumed that the drug war is to blame for all this, work by scholars like Benjamin Levin and Jeff Fagan demonstrates that already existing gun control efforts also play an important role. One of the most notorious areas of policing, the NYPD’s stop-and-frisk program, was justified as a gun control rather than a drug war measure. In the name of preventing violence, hundreds of thousands of poor minorities are subject to searches without probable cause each year. Further, a range of Supreme Court-authorized exceptions to standard Fourth Amendment protections against illegal search and seizure derive from a concern with gun violence.

This invasiveness is a necessary feature of criminalized gun possession. After all, policing guns is just like policing drugs. Like drugs, there are a vast number of guns. Possession is far more widespread than can possibly be policed so decisions have to be made about where to devote resources. Furthermore, since possession itself is the crime, the only way to police that crime is to shift from actual harm to identifying and preventing risks. As legal scholar Benjamin Levin argues in a forthcoming piece

Once individuals find themselves arrested gun control reappears as a reason for increasing punishment. Gun possession can be used to enhance sentences for other crimes and even functions as a kind of double punishment when that possession becomes the reason for also tacking on an extra criminal charge. Gun charges are also a part of the excessive and racially unequal over-charging practices that not only contribute to rising incarceration rates but also ends force numerous individuals away from trial and into plea bargains. Poor Blacks and Latinos are easily intimidated by charge-happy prosecutors into accepting plea deals, meaning they never see their day in court. Some even end up admitting to crimes they did not commit just to avoid the possibility of more severe punishments. More criminal gun laws would only feed this deeply unjust system.

UBCs also rely on elitist policies that excludes minorities

Kristin Goss 2010 (Associate Professor, Stanford School of Public Policy at Duke), Princeton University Press. Disarmed: The Missing Movement for Gun Control in America. December 16, 2010 <https://books.google.com/books?id=FFgQC1hZnpoC>

Finally, gun control advocates pursued political strategies that were not conducive to movement building. Taking the polling numbers and violence statistics as self-evident support for their cause, and relying on the backing of prominent lawmakers and other government officials, gun control advocates advanced a “rational national” approach to policy making, eschewing vertical and horizontal incrementalism in favor of bold steps. Thus, rather than organizing around local projects that stood a chance of advancing, they organized around efforts to pass comprehensive legislation in Congress. Rather than organizing around modest measures and allowing policy regimes to expand by accretion, leading gun control advocates started out by seeking bans on handguns. Thus, gun control advocates pursued a political campaign, emphasizing elite-driven policy change, without a social movement, which might have tilled the field. They pursued an inside game without an outside game. And they pursued “rational” policy over efficacious politics. The rational-national model failed politically because it was inherently self-limiting: Gun control became an issue for and by elites. Arguments were distant and intellectual, and opportunities for consequential involvement were scarce.

This is problematic because elitist policies inherently exclude minorities from participation. This is elaborated on by Clarence Dunnaville who explains that:

UBCs would be enforced in a biased way

Clarence Dunnaville 2000 (Lawyers Committee for Civil Rights attorney) Senior Lawyers Section. Unequal Justice Under the Law—Racial Inequities in the Justice System. December 2000 <http://www.vsb.org/docs/valawyermagazine/dec00dunnaville.pdf>

A recent report by the Leadership Conference on Civil Rights entitled, “Justice on Trial: Racial Disparities in the American Criminal Justice System,” shows that racial disparities may have increased rather than subsided over the past few years. The report concludes that, while in the past half century the United States has made significant overall progress toward the objective of ensuring equal treatment under the law for all citizens, in the critical area of criminal justice, racial inequality appears to be growing, not receding, and our criminal laws, while facially neutral, are enforced in a manner that is massively and pervasively biased.

This report reveals serious findings of systematic unequal treatment of African American and Hispanic Americans and other minorities, as compared to their similarly situated white counterparts within the criminal justice system. Disparate treatment of minorities begins at the very first stage of the criminal justice system: the investigation of suspected criminal activity by law enforcement officials. Innocent minority citizens are detained by the police on the street and in their cars far more than whites. Those stops involve inconvenience, humiliation and a loss of privacy that is heightened when the rationale for the police action is the color of a motorist’s skin or a pedestrian’s accent. Furthermore, during some investigations and interrogations, the police employ tactics that shock the conscience.3 The disparate implementation of justice continues through the trial, jury deliberation and sentencing. According to the report:

“Unequal treatment of minorities characterizes every stage of the process. Black and Hispanic Americans, and other minority groups as well, are victimized by disproportionate targeting and unfair treatment by police and other frontline law enforcement officials; by racially skewed charging and plea bargaining decisions of prosecutors; by discriminatory sentencing practices; and by failure of judges, elected officials and other criminal justice policy makers to redress the inequities that become more glaring every day.”

This system would force minorities into biased and racist courts due to structural issues in the criminal justice system. This bias begins with the implementation of UBCs and the enforcement of the laws on the street level.

Contention 2: UBCs do not work

First, private sellers would circumvent background check requirements

James B Jacobs 2016. (NYU Professor) NELLCO Legal Scholarship Repository, Universal Background Checking- New York State’s SAFE Act. April 2016

There are several reasons why private sellers may ignore the SAFE Act's universal background checking requirement (and, by so doing commit a class A misdemeanor). 71 First, they may wish to avoid the inconvenience of locating an FFL, especially in rural counties where there is no nearby dealer. 72 Second, many gun owners are opposed to the SAFE Act for reasons of principle and ideology. 73 (To say the least, the SAFE Act is not popular with gun owners; indeed, it has provoked much protest.) 74 The prevalence of private sellers who are willing to ignore the SAFE Act's universal background checking requirement is unknown. However, a 2001 undercover investigation conducted by then NYC Mayor Michael Bloomberg's office found that sixty-two percent of persons who advertised firearms online agreed to make the sale even after the feigned purchaser explained that he or she "probably couldn't pass a background check." 75 Sellers who already routinely and knowingly sell firearms to criminals have no reason to alter their conduct; 76 they are the firearms equivalent of drug dealers. Indeed, their business may increase if ineligible firearms purchasers, on account of the SAFE Act, find it more difficult to buy guns in the secondary firearms market.

This would create a huge black market, which is why Matt Machbradaigh explains that:

Black Markets would prevent UBCs from keeping guns off the streets

Matt MacBradaigh 2013 (Writer for PolyMic) Mic. Six Biggest Problems with Mandatory Gun Background Checks. 2013

Advocating universal background checks may leave the uninformed with the impression that this measure would solve the issue of criminals obtaining guns; it doesn't. According to a 2001 Department of Justice study, 78.8% of criminals get their guns from sources outside of retail store purchases. 39.6% get guns from friends or family while another 39.2% get guns from the street or other illegal means. Universal background checks don't address illegal trafficking.

Trafficking has been a huge problem in Australia and in the UK since their respective gun bans. Here in the United States, we have serious issues with border security. The FBI states gangs - which boast 1.2 million active members as of 2011 - engage in illegal guns trafficking, as well as narcotics. Universal background checks for purchases could easily be circumvented through illegal trafficking. This is not to say that legal purchases shouldn't have a check, but to demonstrate that this measure doesn't solve illegal gun possession.

Past examples do not prove, Missouri does not show solvency

Zoe Fuhr 2017 (NYU School of Law) Wake Forest Journal of Law and Public Policy Vol. 7, No. 2 The Potential and Limitations of Universal Background Checking for Gun Purchasers April 28, 2017 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2965717>

Public health professor Daniel Webster and his colleagues examined the impact of Missouri’s 2007 repeal of its permit-to-purchase law. Prior to the repeal, the licensing authority conducted background checks on permit-to-purchase applicants. Since repeal, permits are no longer required, but gun purchasers who buy a gun from an FFL are still subject to a NICS background check. The authors claim that the repeal of this law is largely responsible for the thirty-four percent increase in firearm Missouri homicides from 2007 to 2008.205 It seems implausible that repeal could have had such a dramatic effect, especially in just one year. Could it be that, prior to repeal, so many potentially homicidal people did not have, and could not get, a gun? In any event, looking at Missouri’s monthly homicide data after repeal, Clayton Cramer points out that there was a gap of eight months between repeal and the spike in firearm homicides. This delay, Cramer argues, casts doubt on a causal relationship between repeal and the spike in firearm homicides. He further observes that the spike in homicides during the spring and summer of 2008 coincided with increased gang violence in the St. Louis area. It seems likely that, before repeal, gang members would have had little difficulty acquiring a gun on the secondary market or on the black market.209 Webster supports his interpretation of the spike in homicides by pointing to a “relatively stable” Missouri firearm homicide rate from 1999–2007.210 In other words, the 2008 spike could only, or at least most plausibly, be explained by repeal of the licensing law. The data do not support this hypothesis. The firearm homicide rate in Missouri increased by 32.2 percent from 2003–2005. If repeal caused the 2007–2008 spike in firearm homicides, what explains the 2003–2005 spike? Moreover, Webster does not present any data on firearm suicides. In fact, the firearms suicide rate decreased by eight percent from 2007–2008.

Further, examples like Connecticut do not show the efficacy of UBC because their results were based on more comprehensive laws.

John Kuzel 2017 (Politifact Writer) Politifact Have Background Checks Been ‘Unequivocally’ Shown to Reduce Gun Violence? October 11, 2017 <http://www.politifact.com/truth-o-meter/statements/2017/oct/11/seth-moulton/have-background-checks-been-unequivocally-shown-re/>

But Webster cautioned that the associated reduction in gun violence [in Connecticut] could not be attributed solely to background checks, because they were part of a larger regulatory scheme under Connecticut’s permit-to-purchase law. The law required all would-be gun buyers to apply for a permit in person with the local police before making a purchase, regardless of whether the seller was a licensed dealer or private seller. The law also raised the legal age to buy a handgun from 18 to 21 years and obliged would-be purchasers to undergo at least eight hours in a gun safety training course. It also criminalized the sale of a handgun to anyone without a license. Webster said the effects of comprehensive background checks alone couldn’t be de-coupled from the other law’s other provisions. "Just passing a comprehensive background check law — without other measures relevant to standards for legal gun ownership and accountability and without commitment to really enforce the comprehensive background check laws — may not be sufficient to reduce gun violence if there is not concerted effort to enforce the law," Webster said. "Bottom line," he said, "comprehensive background checks laws saved lives, but when coupled with permit-to-purchase laws."

According to his reading of the scientific literature, Webster said background checks on all gun transfers are necessary to stop prohibited people from getting guns. But it hasn’t been established scientifically that background checks could do so alone, separate from a broader system of laws and regulations, he said.

The results paint a dim picture. Piecemeal policies that are ineffective are doing nothing to stop gun violence, but subjugating minorities to harsh racism. Vote CON to stop the criminalization and discrimination, and to give gun rights a chance.

CON-AT: The Case Against Universal Background Checks

Suicides

UBCs cause medical reporting pressure which increases suicide rates

Dinah Miller 2013 (Psychiatrist, President Maryland Psychiatric Society) Psychology Today Gun Control and Mandatory Reporting of Dangerous Patients- Does the New York SAFE Act Create or Fix the Problems? Jan 22, 2013 <https://www.psychologytoday.com/blog/shrink-rap-today/201301/gun-control-and-mandatory-reporting-dangerous-patients>

The most concerning issue with such legislation, however, is that it sets in motion a barrier to getting help for those who most need it. Who would willingly seek treatment, tell their clinician their dark thoughts, knowing such thoughts will be reported to an agent of the state, one who then decides (based on what?) whether he or she should be reported to the legal authorities? Certainly no gun owner, and certainly no troubled law enforcement officer. This legislation appears to requires that those who voluntarily seek treatment because they are suicidal must be reported. It’s an interesting quandry since insurers often permit hospital admission only if a patient is imminently dangerous, meaning this could possibly extend to nearly all persons admitted to psychiatric units. Perhaps they just won’t seek help. And for someone who is delusional, this may be one more reason not to trust psychiatrists and not to get treatment. The New York SAFE Act may well have the unintended consequence of increasing suicide rates and violence, and there is no doubt that other states will follow suit with similar legislation if we don’t re-consider the quick response of New York state.

UBCs would intrude on the doctor-patient relationship

Benedict Carey 2013 (New York Times Writer) New York Times Warning Signs of Violent Acts Often Unclear January 15, 2013 <http://www.nytimes.com/2013/01/16/health/breaking-link-of-violence-and-mental-illness.html?pagewanted=1&_r=0>

Some advocates favored the reporting provision as having the potential to prevent a massacre. Among them was D. J. Jaffe, founder of the Mental Illness Policy Org., which pushes for more aggressive treatment policies. Some mass killers “were seen by mental health professionals who did not have to report their illness or that they were becoming dangerous and they went on to kill,” he said.

Yet many patient advocates and therapists strongly disagreed, saying it would intrude into the doctor-patient relationship in a way that could dissuade troubled people from speaking their minds, and complicate the many judgment calls therapists already have to make.

The New York statute requires doctors and other mental health professionals to report any person who “is likely to engage in conduct that would result in serious harm to self or others.”

Under current ethical guidelines, only involuntary hospitalizations (and direct threats made by patients) are reported to the authorities. These reports then appear on a federal background-check database. The new laws would go further.

Gun control laws make it harder to remove weapons from a suicidal persons home

Reuters 2016 (Fox News publication) Reuters Fox News “Preventing gun suicides may require changes to background check laws” November 16, 2016

Gun control laws that mandate a background check before a gun can be temporarily transferred to a friend or family member may interfere with suicide prevention efforts, researchers say. The research team looked at what happens when people want to temporarily remove firearms from their home because they fear someone in the house might be considering a suicide attempt. In some states, they found, gun control laws may actually hamper the ability to easily transfer a gun temporarily to reduce suicide risk. What's needed, according to Jon S. Vernick of the Johns Hopkins School of Public Health in Baltimore and colleagues, are laws that allow for temporary storage of guns by federally licensed firearm dealers, law enforcement officers, family members and friends.

Databases are underused and not up to date- makes efficacy impossible

Alicia Parlapiano 2016 (writer, NYT) New York Times “Why People With Mental Illness Are Able to Obtain Guns” January 6, 2016 <https://www.nytimes.com/interactive/2016/01/06/us/how-people-with-mental-illness-are-able-to-obtain-guns.html>

Mental health records are overwhelmingly under-reported to the federal and state databases scanned during a background check. For example, while the majority of states now have laws that require them to submit records to the F.B.I.’s National Instant Criminal Background Check System, known as NICS, there is little enforcement, and the comprehensiveness of those records vary significantly.

Mr. Obama said Tuesday that the Social Security Administration would start to look at how to link mental health records with criminal background check data. He is also requesting $500 million from Congress to improve basic mental health care.

Terrorism

ISIS gets its guns from other countries, not the US

Julia Harte 2014 (Journalist at the Center for Public Integrity) Foreign Policy Where Does the Islamic State Get Its Weapons? October 6, 2014 <http://foreignpolicy.com/2014/10/06/where-does-the-islamic-state-get-its-weapons>

An independent arms monitoring group has collected evidence that fighters in the Islamic State (IS) group, labeled a "network of death" by President Obama, are using weapons and ammunition manufactured in at least 21 different countries, including China, Russia, and the United States.

Much of the Islamic State’s arms and ammunition were captured on the battlefield, but intelligence reports have suggested that the group’s income from oil sales and other sources is high enough to finance purchases of additional weapons directly from the companies and dealers that routinely profit from strife in the Middle East.

The presence of such weapons in IS’s hands makes clear that its fighters seized substantial stocks not only from Iraqi troops, but from Syrian troops as well. Another 26 of the recovered shells were made in Iran, an ally of Assad’s, and 18 were made in Syria itself, the report states.

The next-biggest country of origin for IS’s weapons was China. Of the cartridges recovered from Islamic State forces 445 came from China.

A lawyer for Sporting Supplies, Michael Faucette, did not respond to questions about the company’s ownership or its work for the Pentagon. But he said, "There are many United States businesses, including wholesalers and manufacturers, that supply ammunition and other products to the U.S. Government. Unfortunately, we are aware that [Islamic State] forces have overrun ammunition and equipment depots in Iraq …. Accordingly, it is entirely possible that those depots contained U.S. provided ammunition that have been repurposed against Iraqi Government forces."

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