Books in Review- Can Gun Control Work

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Can Gun Control Work?

By James Jacobs. Oxford University Press, 287 pages, $27.50

The terror recently inflicted by the Washington-area sniper may have been frightening enough to rouse the public once again to demand measures that would reduce the carnage caused by gun violence in America. But is there anything that Congress can usefully do? The answer to that question is not as obvious as many advocates of gun control believe. The harsh reality is that many proposed remedies would have no effect on gun violence. But a few policies can make a difference, and it is vital to understand what they are.

Four positions stand out in the debate on gun control: First, minimize the number of guns on the grounds that this would reduce the body count; second, maximize the number of guns to enable people to protect themselves and deter criminal attacks; third, take steps to keep guns away from certain high-risk individuals, primarily felons and the mentally ill; and fourth, do nothing (other than punish crime harshly) on the grounds that any gun policy would be futile in a country where 250 million firearms are in private hands and tens of millions of gun owners strenuously oppose even mild controls such as gun registration. While the National Rifle Association's preference is to maximize the number of guns (after all, that is in the best interest of gun manufacturers), it is quite happy with the futility position -- which is pretty much where James Jacobs ends up in his new book, Can Gun Control Work?

Much of the debate over gun violence is dominated by ideologues who muddy the waters, mesmerize the press and undermine the reasoned debate that is the heart of a true democracy. Jacobs, in contrast, adopts the clear-eyed analytical approach of a first-rate legal scholar (he is a distinguished professor at New York University). Some will view it as a strength, others as a weakness, that he does not rehearse gruesome gun crimes or discuss...
the pain families have experienced after losing a child or a parent to gun violence. The focus of this book is on what, if anything, might be done to alleviate the anguish.

Jacobs skillfully catalogues the vast array of legislative initiatives already adopted, as well as the large number of potential regulatory approaches to gun violence, and reaches a depressing conclusion: "To change the patterns of violence in a violent society will require more than a better gun policy, it will require changing society."

Jacobs recounts how time and again the competing anti- and pro-gun forces neutralize each other in a way that produces feckless legislation that allows both sides to declare victory to their devoted followers. Consider the first federal gun-control bill in 1927, which prohibited the sale of handguns to private individuals through the mail. As the politicians took credit for stopping "mail-order murder," the manufacturers circumvented the law by accepting orders by mail and shipping the handguns via private carriers.

Another sham arose in the aftermath of the Martin Luther King Jr. and John F. and Robert Kennedy assassinations, when the left tried to prohibit ownership of the cheap handguns that criminals were thought to use. In the face of strong NRA opposition ("Shouldn't the poor be able to defend themselves?"); Congress in 1968 banned the importation of certain kinds of cheap handguns -- but not their domestic production. Because the component parts could still be imported and then assembled domestically, nothing was accomplished except to help the domestic arms industry.

Jacobs suggests that we are in a relatively stable equilibrium in which the presence of guns in a world of criminal (and even terrorist) danger keeps the demand for yet more guns high, prompting more strenuous efforts to adopt (feckless) legislation, which in turn creates even more recruits in the battle to stop the assault on the "constitutional" rights of gun owners. Even the horrible events at Columbine High School in 1999, in which two teenagers used guns bought at a Denver gun show to kill 12 classmates and a teacher, could not shake the power of the mighty NRA. Jacobs writes: "Nothing better symbolizes American exceptionalism in the area of firearms regulations than gun shows. The fact that, even after the Columbine massacre, the U.S. Congress would not pass a federal law requiring a background check on all firearms sales at guns shows demonstrates the status of gun control in American politics."

The fallout from the 1993 adoption of the Brady Act -- the last major piece of federal gun-control
legislation -- has not encouraged politicians who would like to enact further gun-control measures. Even with the endorsement of Ronald Reagan and every major law-enforcement organization, it took a monumental legislative struggle to pass Brady, and the Democratic Party paid a considerable price in so doing. In areas where the NRA is strong, Democrats were punished at the polls in the next congressional election (and perhaps again in the 2000 presidential race).

And what has the Brady law accomplished? Although Brady-mandated background checks block roughly 80,000 individuals from purchasing guns (largely due to their criminal records), the law has not reduced homicide rates, according to research by Philip Cook and Jens Ludwig. That's primarily because the legislation left a gaping loophole: the unregulated secondary market of private gun transactions, "the source of most guns possessed by juveniles and criminals."

So wouldn't extending the Brady restrictions to the secondary market -- as California state law has done -- cure the problem? No, warns Jacobs. The felon wanting a gun in California may get a friend without a record to buy it for him, and even if he has no such friend, he can probably find a seller willing to evade the law. Sellers face little chance of getting caught because there is no registry of the roughly 250 million guns in private hands. Jacobs concludes, "The recent California law that extends the Brady background check to all handgun transfers is unenforceable, even if the police give it high priority, which is very unlikely given competing demands on their resources."

A national gun registry might seem to be the answer, but Jacobs again delivers the bad news. Such a registry, even if backed up by a massive federal bureaucracy, would face widespread noncompliance by purchasers in the secondary market of 100 million existing unregistered handguns. So what about banning handguns altogether? Even if the inevitable constitutional challenge could be overcome, Jacobs sees no basis for optimism: "Prohibiting possession would require disarming the citizenry; whether done quickly or over a long period, it would be a monumental challenge, fraught with danger. Millions of citizens would not surrender their handguns. If black market activity in connection with the drug laws is any indication, a decades-long 'war on handguns' might resemble a low-grade civil war more than a law enforcement initiative."
Jacobs marches the reader through all the other likely candidates to control gun violence: buyback programs, trigger locks, smart guns that could be fired only by their owners, safe-storage laws, civil liability for gun manufacturers, bans on the most dangerous guns, regulating ammunition, limiting gun purchases to one per month and prohibiting stockpiling. None can withstand Jacobs' critical gaze. Ballistic fingerprinting might have helped catch the Washington-area sniper earlier and thus saved lives, but adopting such a policy would doubtlessly lead determined killers to seek untraceable guns on the black market. Moreover, some argue that inserting rods into a gun's barrel to change the fingerprint would easily defeat the technique.

One option that warrants further study, though Jacobs dismisses it, is the attempt to limit youth access to guns. While it is impossible to disarm delinquent youth entirely, certain measures, such as higher taxes on guns or mandated safety features, may have the indirect effect of making guns too expensive for many delinquents to obtain. As scholars such as Cook, Ludwig and Mark Moore have argued, policy-induced price increases wouldn't eliminate gun crime but might reduce it in cost-effective ways.

Jacobs does see some promise in a budding technology that would allow police to identify guns from a distance by reading electromagnetic radiation. He is unduly pessimistic, however, in thinking that the Supreme Court would ban such devices on the ground that they violate the Fourth Amendment. My guess is that the technology's minimal intrusion and potentially substantial benefits would lead the Court to uphold its use. Jacobs may be right, though, that in the roughly 30 states that have adopted laws allowing the carrying of concealed handguns, the constitutional obstacles may be greater because many of those who would be "caught" by the scanning device would be lawful gun carriers.

Still, I suspect that if the technology really worked, it might encourage some states to repeal their laws allowing concealed weapons. The argument advanced by John Lott in his book More Guns, Less Crime, that "concealed carry" laws deter crime, is not supported by the evidence. As Ian Ayres and I have shown in recent research, crime dropped far more throughout the 1990s in states that never adopted these laws than in states that did.

In his conclusion, Jacobs suggests that rather than looking to gun control to reduce violence, we should try to figure out the responsible factors -- whether better policing, more incarceration, a better economy or even the legalization of abortion -- that explain the "unprecedented decrease of violent crime and gun crime" during the past decade. I'm not so sure, however, we should leave all gun-control measures completely out of the
picture, but Jacobs usefully underscores how difficult it would be to overcome all the obstacles -- constitutional, political and practical -- to the effective regulation of guns in a society that is not fully committed to that goal.