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Richard Aborn

Cover Page Footnote

C. Kates

SHOTS ACROSS NO MAN'S LAND: A RESPONSE TO HANDGUN CONTROL, INC.'S, RICHARD ABORN

Nicholas J. Johnson*

Introduction

Mr. Aborn's essay, *The Battle Over the Brady Bill and the Future of Gun Control Advocacy*,¹ reflects the wide chasm separating gun owners and the anti-gun lobby. Some of the reasons are not immediately obvious. I will try to illuminate a few of them here.

A. The "Bad Gun" Regulatory Formula

As his essay reflects, Mr. Aborn's organization, Handgun Control, Inc., is one of the primary advocates of a regulatory formula that aims to regulate severely or ban "bad guns".² This formula obfuscates what ought to be an honest debate and an affirmative societal choice between an armed citizenry or a disarmed one. His

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Because some will say it influences what I write here, I will disclose that I have been a member of the NRA off and on since age fourteen, when I got my first gun. Because the conclusion some will draw from that information is simplistic, here is a fuller picture. I have also been a registered Democrat since age eighteen. I am a member of the American Bar Association. Off and on I have been a member of Amnesty International, the ACLU, the NAACP, and the Urban League.

My father is a Baptist minister. I grew up in the First Baptist Church of White Sulphur Springs, West Virginia, though I am now leaning towards Unitarianism.

I am a brown skinned man, whose African, Native American, and Scotch-Irish hill-billy forbearers all had better reasons than the Framers of the Constitution to distrust government and exalt self-sufficiency. My wife is a blonde from Eastern European peasant stock. Combinations such as ours have been known to cause violent reactions in total strangers and hostility in public officials.

I was asked to write this response the weekend before this volume was scheduled to go to the printer. I would like to acknowledge the assistance of C. Kates.

1. Richard M. Aborn, *The Battle Over the Brady Bill and the Future of Gun Control Advocacy*, 22 *FORDHAM URB. L.J.* 417 (1995).

2. Although the name of his organization implies that handguns are the quintessential bad guns, his essay shows that, semi-automatic rifles (like those targeted in the Crime Bill) also are on the organization's agenda. See Aborn, *supra* note 1, at 422. See also *infra* part B.3.

commitment to this formula, however, makes Mr. Aborn's apparent gesture³ toward consensus building ring hollow.

The rhetoric suggests that bad guns are the ones criminals prefer. Obviously there are no boundaries on the weapons criminals prefer, and every gun has its unique dangers. The bolt action rifle fires the most powerful cartridges and is the weapon assigned to military snipers. The handgun is the most concealable. The shotgun is the most damaging at close range. Indeed, over the last three decades, the gun control movement has shifted the bad gun definition from scoped, bolt action rifles (in the 1960s in response to the Kennedy assassination and the event dubbed the "Texas School Tower Massacre") to inexpensive handguns (in the 1970s and early 1980s) and now to semi-automatic rifles. But, perhaps because there are so many semi-automatic rifles that they are politically impossible to ban outright, we are told not all semi-automatic rifles are bad, only those with bayonet lugs, as if bayonet charges by drug pushers is a major crime concern. Or, we are told semi-automatic rifles with pistol grips are the villains. This has even less cogency than the fear of bayonet lugs. Bayonets, after all, can kill, though I suspect the incidence of such is rare in America at the end of the Twentieth Century. But pistol grips?

Using portrayals of criminal preferences as a test, the bad gun regulatory formula is a recipe for creeping disarmament of good people. Every shift in criminal preferences, real, imagined, or, as in the case of "assault rifles," misrepresented⁴ is an excuse for banning other guns.

3. In what I believe is a softening of the organization's position, Mr. Aborn suggests that "Saturday Night Specials" are the only other type of gun his organization believes should be banned. Aborn, *supra* note 1, at 436.

See also DAVID B. KOPEL, *THE SAMURAI, THE MOUNTIE, AND THE COWBOY* 336 (Prometheus 1992)[hereinafter *THE SAMURAI, THE MOUNTIE, AND THE COWBOY*] (showing that the term "Saturday Night Special" appears to grow from a combination of "suicide special" and "Niggertown Saturday Night").

4. Assault rifles are not in fact the criminal's "weapon of choice." They account for approximately 1% of gun crime. See, e.g., Edgar A. Suter, "Assault Weapons" Revisited—An Analysis of the AMA Report, 83 J. MED. ASSOC. OF GA. 281 (May 1994); ERIC C. MORGAN & DAVID B. KOPEL, *THE "ASSAULT WEAPON" PANIC: POLITICAL CORRECTNESS TAKES AIM AT THE CONSTITUTION*, INDEPENDENCE INSTITUTE 23-29 (April 10, 1993); James B. Jacobs, *Assault Rifles are Bad Targets*, N.Y. NEWSDAY (Sept. 28, 1993) ("For 1991 the New York City police report 1,576 killings with handguns, three with rifles, and six with 'machine guns'").

David Kopel argues "Josh Sugarman authored the November 1988 strategy memo suggesting that the press and the public had lost interest in handgun control. He counseled the anti-gun lobby to switch to the 'assault weapon' issue, which the lobby did with spectacular success in 1989." *THE SAMURAI, THE MOUNTIE, AND THE COWBOY*, *supra* note 3, at 435 n.31.

This explains much of the opposition to regulation under the bad gun formula. Anyone with basic knowledge about firearms knows that the only thing special about the targeted "assault rifles" is that those are the ones we are talking about presently.⁵ Even if all semi-automatic rifles and handguns were out of the picture, it would only take one scoundrel misusing a bolt action hunting rifle to elicit cries for a ban on high powered "sniper rifles," whose value as deer harvesters is offset by the danger they pose to humans. Moreover, under the bad gun formula, the case is already made against shotguns, which, compared to any handgun, are several times more destructive, and which can be made concealable with an ordinary hacksaw.

The insidious thing about the bad gun formula's incremental disarmament is that it prevents us from ever openly choosing disarmament and its consequences. Worse still, it alienates an essential constituency, blocking political consensus on methods for attacking criminal misuse of firearms. With guns in approximately 50% of American households (every other house),⁶ we cannot expect a formula capable of banning any gun, or the demonizing of gun owners, to produce political consensus on measures that might make things less convenient for criminals.

B. Crucial Issues Submerged By The Bad Gun Formula

I want to present several vital questions and issues that are submerged by the bad gun regulatory formula. Absent serious discussion of these issues, the message of the anti-gun lobby will continue to alienate American gun owners.

1. Institutional Limits—A Physically Impossible Assignment

Once disarmed, peaceable citizens will rely completely on police officers to protect them from violent threats.⁷ The flawed assumption is that it is possible for police to do this. As a matter of pure

5. See *infra* text accompanying note 12 for a description of one of the many curious bad gun distinctions in the Crime Bill. See also Brady Handgun Violence Protection Act, 18 U.S.C. § 922, tit. XI, subtit. A, secs. 110101-110401 (1993).

6. See JAMES D. WRIGHT & PETER H. ROSSI, ARMED AND CONSIDERED DANGEROUS—A SURVEY OF FELONS AND THEIR FIREARMS 4 (Aldine De Gruyter 1986) [hereinafter ARMED AND CONSIDERED DANGEROUS]; see also THE SAMURAI, THE MOUNTIE, AND THE COWBOY, *supra* note 3, at 109 n.15.

7. I have argued elsewhere that forcing citizens into such a position undercuts our federal constitutional structure of limited government grounded in fear of federal power. See Nicholas J. Johnson, *Beyond the Second Amendment: An Individual Right to Arms Considered Through the Ninth Amendment*, 24 RUTGERS L.J. 1 (1992).

physics, police cannot protect citizens from violent attacks.⁸ If I am attacked here and now, a whole precinct of officers five minutes away is useless. A million new police on the street will not change this.

Even very quick police response assumes a victim or a witness with access to a telephone. There is no basis for this assumption. Additionally, in many rural areas there is little basis for assuming police are even close by.

This issue is even more troublesome where the police/community relationship is characterized by animus and distrust and slow police response.⁹

2. *Institutional Competency—The Practical Limits on Legislative Commands*

Why should we believe that a new round of strong words in the U.S. Code will suddenly control people who already ignore the prohibitions against murder, robbery and rape? I made this point to a colleague who smiled and said, "Isn't that just the NRA argument, 'When guns are outlawed, only outlaws will have guns'?" Yes, I guess it is. But this makes the argument no less powerful and the absence of a response no less troubling.

My colleague's reaction also underscores one of the more shameful aspects of our superficial public conversation about this issue. The implication is that certain questions can just be dismissed if the source can be stereotyped and disparaged. Ironically this tactic is sometimes practiced by those who are otherwise committed to respecting a cacophony of different voices and ways of knowing.¹⁰

8. The fact that police officers have no legal duty to protect any particular individual might be changed through legislation. See Johnson, *supra* note 7, at n.51. But taking it seriously by permitting unprotected citizens to claim damages would be enormously expensive.

9. See Johnson, *supra* note 7, at 74-75 & nn. 61 & 181.

10. David Kopel reports that "Handgun Control, Inc.'s Jeanne Shields calls NRA members 'macho men who don't understand the definition of a civilized society' ". THE SAMURAI, THE MOUNTIE, AND THE COWBOY, *supra* note 3, at 305. I cannot speak for other NRA members. But the ruthless exercises of collective power, particularly against political minorities, that have all too frequently characterized our "civilized society," are the very reasons I want a gun and hope that other good people will have them too.

See also Wendy Brown, *Guns, Cowboys, Philadelphia Mayors, and Civic Republicanism: On Sanford Levinson's The Embarrassing Second Amendment*, 99 YALE L.J. 661 (1989); Johnson, *supra* note 7, at n.227 (describing Wendy Brown's response to Sanford Levinson as an illustration of this ironic cultural bigotry); Laycock, *Vicious Stereotypes in Polite Society*, 8 CONST. COMMENTARY 395, 397 (1991) (same); see also

3. *Legislative Limitations Level Two*

Representative Schumer (D-NY) in the course of the Federal Crime Bill debates moved toward honesty on the question above. He acknowledged that criminals will ignore gun legislation. But he had a response. He said that is why we are aiming to prohibit the manufacture of the weapons targeted by the Bill. A moment's reflection shows this response is at once deficient and pregnant with gun owners' worst fears.

Representative Schumer's mistaken assumption is that our national borders will be more resistant to guns than they are to drugs. The failed drug war and our expansive borders show that it is a mistake to adopt a plan that hinges on the interdiction of an item for which there is demand.¹¹ Firearms technology is ancient. Even a successful nationwide ban on legitimate manufacturing would likely create an instant and lucrative black market for replacements that are simple to manufacture and assemble—a market that would cater to criminals and by its very nature would exclude many decent people.

Moreover, unless incremental disarmament is the subtext, Mr. Schumer's rationale is just silly. He certainly is not suggesting that a criminal whose preferences run toward the banned Uzi will give up violent crime once forced to move to the protected Ruger Mini 14 or Mini 30.¹² The Uzi Carbine fires either a 9mm or .45 ACP pistol cartridge, employing 32 round and 18 round magazines respectively. The Mini 14 fires the .223 cartridge (the M-16 round), while the Mini 30 fires the 7.62 x 39 cartridge (the AK-47 round). The two Rugers are, at least for now, on the Crime Law's list of good guns. Both guns accept readily available 30 round plus magazines. They do not, however, have the deadly pistol grips or bayonet lugs.

By any measure, the two Rugers' higher velocity rifle cartridges are more deadly than the pistol cartridges fired by the Uzi. Only a predator with a strong and peculiar aesthetic would fail to make the transition to the Mini 14 or Mini 30.¹³

Don B. Kates, *Bigotry, Symbolism and Ideology in the Battle Over Gun Control*, PUB. INTEREST L. REV. 31 (1992).

11. See Daniel D. Polsby, *The False Promise of Gun Control*, ATLANTIC MONTHLY 57, 59 (March 1994) (discussing the battles American gun control will fight against "The Demand Curve").

12. The Crime Law contains a long list of expressly protected "legitimate" guns. 18 U.S.C. § 922, tit. XI, subtit. A, sec. 110106, app. A.

13. Indeed if he were intent on continuing to use the relatively anemic pistol cartridges of the Uzi, he could switch to the 9mm or 45 caliber Marlin Camp Carbine.

The position that eliminating manufacture bad guns will affect criminal access is even superficially absurd, unless we expect eventually to ban the replacement weapons as well. This leads to the next submerged issue.

4. *Tragic Public Disaffection*

It is, of course, hard to achieve the goals that motivate manufacturing bans when there are over 200 million guns in the society already. A good number of these are existing specimens of "bad guns." Unless bad gun bans are merely window dressing, they ultimately must encompass existing firearms. The submerged issues are (i) how will this be attempted, and (ii) what are the likely consequences of the effort. There is some movement toward answers, although not from the anti-gun lobby.

If noncompliance with existing state and local gun bans is representative, it is a mistake to believe that those who choose to keep their guns will be some small, easily marginalized group.¹⁴ It will be some portion, perhaps a majority, of the tens of millions of gun owners now reposed in every other American home.

People who have seen little evidence that government can solve their personal problems will be forced to choose between their individual security and violating the law. Some of these people, because they choose self-reliance, will have their lives destroyed by the enforcement of gun laws. This is a recipe for mainstream disaffection from government.

Public disaffection will be even more severe where policy makers enjoy an enhanced level of security from armed tax-paid officers, while ordinary people get something much less. This problem is symbolized by a recent story from *New York Newsday*.¹⁵ It reports a precinct-sized security force guarding the fortress that houses the City's political elite. On the same page is a report of the plight of a hapless 911 operator whose only recourse against a knife attack was to call 911. This man was stabbed to death, while one of his fellow operators listened to him die.

The Marlin is also on the Crime Bill list of protected firearms. 18 U.S.C. § 922, tit. XI, subtit. A, sec. 110106, at app. A.

14. See Johnson, *supra* note 7, at n.221.

15. Manuel Perez-Rivera, *City's Elite Protected by 90 Cops*, N.Y. NEWSDAY, Aug. 8, 1994, at A4.

5. *Will Disarmament Embolden Criminals?*

So far, no one has suggested how disarming peaceable citizens will discourage criminals. It seems reasonable to believe that making citizens easier targets by disarming them will be an incentive to criminals. Indeed, criminological studies show that criminals are more afraid of encountering an armed victim than of being apprehended by the police.¹⁶ This is a sensible fear since there are millions more armed citizens than there are police. David Kopel has written in detail about the Jamaican experience with a gun ban, which caused criminals to become more brazen and led to an increase in crime.¹⁷

The freedom of good people throughout our nation, and especially in our increasingly dangerous inner cities, is constantly limited by criminal predators against whom the police are incapable of providing protection. The move to limit access to guns, however, is most intense in such communities as well-intentioned people try, in vain, to deny criminal predators guns by attempting to deny guns to entire populations.

If we consider places like Washington, D.C., where armed criminals have little to fear from peaceable, unarmed citizens, the results are worrisome. Criminals of course have guns, and they seem to be acting with relative impunity. It is not at all clear why the rest of us would want to emulate that.

6. *Corrosion of Civil Liberties*

Will gun bans that fail to work lead to other curtailments of freedom? Arguably this already has occurred. Consider President Clinton's recent initiative to require tenants in public housing to allow their apartments to be searched for guns as a condition for retaining or acquiring such housing. Chicago is most famous or infamous for this.¹⁸

The countries that have seriously regulated guns are also instructive. Starting with only a fraction of our 200 million privately owned guns, they have found it necessary to take steps that would obliterate our Fourth Amendment.¹⁹

16. ARMED AND CONSIDERED DANGEROUS, *supra* note 6, at 141-59; JAMES D. WRIGHT, ET AL., UNDER THE GUN: WEAPONS, CRIME AND VIOLENCE IN AMERICA 138-149. (Aldine de Gruyter, 1983).

17. THE SAMURAI, THE MOUNTIE, AND THE COWBOY, *supra* note 3, at 257-78.

18. See Steven Yarosh, Comment, *Operation Clean Sweep: Is the Chicago Housing Authority "Sweeping" Away the Fourth Amendment*, 86 NW. U. L. REV. 1103 (1992).

19. See, e.g., THE SAMURAI, THE MOUNTIE, AND THE COWBOY, *supra* note 3, at 20-58 & 257-77. The superintendent of the Chicago Police Dep't argued that to seize

7. *Will Disarmament Efforts Cause Tragic Misallocation of Resources?*

Should we take a lesson from the war on drugs? That experience suggests the expenditures required to pursue disarmament—expenditures on interdiction that cannot succeed, and on socially destructive confiscation efforts—will be tremendous. The class of gun criminals may expand by the tens of millions. Moreover, if we take armed citizens out of the mix, controlling traditional criminals will become an even more inefficient and unfair siphon on public dollars.

B. The Second Amendment

Perhaps the greatest barrier to a unified response to gun crime is the treatment of the Second Amendment by the anti-gun lobby. Mr. Aborn's closing invocation of Warren Burger's glib comments is a prime illustration. It trivializes an important debate.

If the opinions of Chief Justices are controlling, Mr. Aborn's omission of the view of the current Chief Justice makes his own charge of fraud supremely ironic. In *United States v. Verdugo-Urquidez*,²⁰ Chief Justice Rehnquist asserts that the "people" discussed in the Second Amendment are the same people as the people discussed in the First, Fourth, Ninth and Tenth Amendments.

Indeed, it is hardly credible to assume that the term "the People" was intended to protect the rights of private individuals to assemble peaceably and petition the government in the First Amendment, was somehow transformed in the Second into a right of states, and then miraculously was returned to a right of private individuals to be secure in their persons, houses, papers and effects in the Fourth Amendment with the residual rights and powers of private individuals recognized in the Ninth and Tenth Amendments.

If, as Mr. Aborn suggests, this is a contest of quotations from public figures, the words of Vice President Hubert Humphrey, that exemplar of the optimism and faith in the American people which once was the hallmark of American liberalism, are apt:

guns "some constitutional rights of citizens should be suspended." See *To Fight Crime Official Would Suspend Rights*, WASH. POST, July 13, 1991, at A6.

20. 494 U.S. 259, 264 (1989). This is a Fourth Amendment case, in which the Second Amendment is mentioned as an analogue.

Certainly one of the chief guarantees of freedom under any government, no matter how popular and respected is the right of the citizens to keep and bear arms. This is not to say that firearms should not be very carefully used and that definite safety rules of precaution should not be taught and enforced. But the right of the citizens to bear arms is just one guarantee against arbitrary government and one more safeguard against a tyranny which now appears remote in America, but which historically has proved to be always possible.²¹

Toward a more serious textual evaluation, we must acknowledge that "the People" is a broader term than the term "militia." Although the Framers envisioned a militia that would encompass virtually the entire adult white male population between the ages of eighteen and forty-five, the Framers, when construing the term "the people," certainly would have included white men over the age of forty-five, adult white women and arguably some free Negroes.²²

If Warren Burger's view of the intent of the Second Amendment is correct, it was the best kept secret of the Eighteenth Century. The vast majority of legal and historical scholarship concludes that the Second Amendment was in fact intended to preserve an individual right.²³ This scholarship includes serious study in prestigious

21. Robert J. Cottrol & Raymond T. Diamond, *The Fifth and Auxiliary Right*, 104 YALE L.J. 995, 998 n.10 (1994) (citing Hubert Humphrey, *Know Your Lawmakers*, GUNS, Feb. 1960, at 4); see also Johnson, *supra* note 7, at n.234.

22. See Robert J. Cottrol & Raymond T. Diamond, *The Second Amendment: Toward an Afro-Americanist Reconsideration*, 80 GEO. L.J. 310, 327-30 (1991).

23. Over thirty scholarly projects since 1980 that support the individual rights view of the Second Amendment are listed. See Robert J. Cottrol & Raymond T. Diamond, *'Never Intended to be Applied to the White Population': Firearms Regulation and Racial Disparity, The Redeemed South's Legacy to a National Jurisprudence?*, 70 CHI. KENT L. REV. — (forthcoming 1995); Glenn Harlan Reynolds, *The Right to Keep and Bear Arms Under the Tennessee Constitution: A Case Study in Civic Republican Thought*, 61 U. TENN. L. REV. 647 (1994) (extensively discussing the Second Amendment in relation to the Tennessee Constitution); David E. Vandercoy, *The History of the Second Amendment*, 28 VAL. U. L. REV. 1006; Stephan P. Halbrook, *Rationing Firearms Purchases and the Right to Keep Arms*, 96 W. VA. L. REV. 1 (1993); Robert J. Cottrol & Raymond T. Diamond, *The Fifth and Auxiliary Right*, 104 YALE L.J. 995 (1994); Glenn Harlan Reynolds & Don B. Kates, *The Second Amendment and State's Rights: A Thought Experiment*, 36 WM. & MARY L. REV. — (forthcoming 1995); Glenn Harlan Reynolds, *A Critical Guide to the Second Amendment*, 62 U. TENN. L. REV. — (forthcoming 1995); William Van Alstyne, *The Second Amendment and the Personal Right to Arms*, 43 DUKE L.J. 1236 (1994); Akhil Reed Amar, *The Bill of Rights and the Fourteenth Amendment*, 101 YALE L.J. 1193, 1205-11, 1261-2 (1992); Don B. Kates, *The Second Amendment and the Ideology of Self-Protection*, 9 CONST. COMMENTARY 87 (1992); Raymond J. Cottrol & Raymond T. Diamond, *The Second Amendment: Toward an Afro-Americanist Reconsideration*, 80 GEO. L.J. 309 (1991);

law reviews, including examinations by preeminent constitutional scholars like Akhil Amar, Sanford Levinson and William Van Alstyne.

For Mr. Aborn to cast the individual rights view as a fraud perpetrated by the NRA impugns the scholars who have studied this issue and is an irresponsible misrepresentation of the nature and tone of the scholarly debate. This is particularly galling in a law review forum, especially given the comparatively meager scholarly

Nicholas J. Johnson, *Beyond the Second Amendment: An Individual Right to Arms Considered Through the Ninth Amendment*, 24 RUTGERS L.J. 1 (1992); Pasqual V. Martire, *In Defense of the Second Amendment: Constitutional and Historical Perspectives*, 21 LINCOLN L. REV. 23 (1992); Stephanie A. Levin, *Grass Roots Voices: Local Action and National Military Policy*, 40 BUFF. L. REV. 321, (1992); Stephan P. Halbrook, *Bearing Arms, Arming Militias and the Second Amendment*, 26 VAL. U. L. REV. 131 (1991); Bernard J. Bordenet, *The Right to Possess Arms: The Intent of the Framers of the Second Amendment*, 21 U.W.L.A. REV. 1 (1990); Nelson Lund, *The Second Amendment, Political Liberty and the Right to Self Preservations*, 39 ALA. L. REV. 103 (1987); Morgan, *Assault Rifle Legislation: Unwise and Unconstitutional*, 17 AM. J. CRIM. L. 143 (1990); Akhil Reed Amar, *The Bill of Rights as a Constitution*, 100 YALE L.J. 1131, 1164 (1990); Sanford Levinson, *The Embarrassing Second Amendment*, 99 YALE L.J. 637 (1989); Don B. Kates, Jr., *The Second Amendment: A Dialogue*, 49 LAW & CONTEMP. PROBS. 143 (1987); Joyce Lee Malcolm, *Essay Review*, 54 GEO. WASH. L. REV. 582 (1986); Stephan P. Halbrook, *What the Framers Intended: A Linguistic Analysis of the Right to 'Bear Arms'*, 49 LAW & CONTEMP. PROBS. 151 (1986); Fussner, *Essay Review*, 3 CONST. COMMENTARY 530; Robert E. Shalhope, *The Armed Citizen in the Early Republic*, 49 LAW & CONTEMP. PROBS. 125 (1986); Don B. Kates, Jr., *Handgun Prohibition and the Original Meaning of the Second Amendment*, 82 MICH. L. REV. 204 (1983); Joyce Lee Malcolm, *The Right of the People to Keep and Bear Arms: The Common Law Tradition*, 10 HASTINGS CONST. L.Q. 285 (1983); Stephan P. Halbrook, *Encroachments of the Crown on the Liberty of the Subject: Pre-Revolutionary Origins of the Second Amendment*, 15 U. DAYTON L. REV. 91 (1989); David T. Hardy, *The Second Amendment and the Historiography of the Bill of Rights*, 4 J.L. & POL'Y 1 (1987); David T. Hardy, *Armed Citizens, Citizen Armies: Toward a Jurisprudence of the Second Amendment*, 9 HARV. J.L. & PUB. POL'Y 559 (1986); Robert E. Shalhope, *The Ideological Origins of the Second Amendment*, 69 J. AM. HIST. 599 (1981); Stephan P. Halbrook, *The Jurisprudence of the Second and Fourteenth Amendments*, 4 GEO. MASON U. L. REV. 1 (1981); Jay R. Wagner, *Comment, Gun Control Legislation and the Intent of the Second Amendment: To What Extent is There an Individual Right to Keep and Bear Arms?*, 37 VILL. L. REV. 1407 (1992).

I have not listed eight law review articles published since 1980 that were written by NRA staff.

Numerous treatments of the issue in book form also conclude that the Second Amendment protects an individual right. One of the best recently is JOYCE LEE MALCOLM, *TO KEEP AND BEAR ARMS—THE ORIGINS OF AN ANGLO-AMERICAN RIGHT* (Harvard U. Press), which was underwritten by the National Endowment for the Humanities, the American Bar Foundation and Harvard Law School. *But see* Lawrence D. Cress, *An Armed Community and the Original Meaning of the Right to Bear Arms*, 71 J. AM. HIST. 22-45 (1984).

support for Mr. Aborn's position.²⁴ Such tactics help to explain the visceral opposition from many gun owners and civil libertarians—tens of millions more voters than the four million member NRA—to anything originating from Handgun Control, Inc.

Conclusion

For years the Israelis and Palestinians could not talk to one another. It is after all rather senseless to compromise on small things with one who aims ultimately to drive you into the sea. The bad gun formula, the vital issues it submerges and the trivialization of the Second Amendment make it reasonable for gun owners to attribute similar motives to the anti-gun lobby. Mr. Aborn's essay suggests no real changes on the horizon. We seem doomed to exchanging shots across no-man's land.

24. Since 1980, the states rights view has been supported in five articles and three student written notes. See Note, *The Constitutional Implications of Gun Control and Several Realistic Gun Control Proposals*, 17 AM. J. CRIM L. 19 (1989); Michael T. O'Donnell, Note, *The Second Amendment: A Study of Recent Judicial Trends*, 25 U. RICH. L. REV. 501 (1991); Daniel Abrams, Note, *Ending the Other Arms Race: An Argument for a Ban on Assault Weapons*, 10 YALE L. & POL'Y REV. 488 (1992).

One article was written by a politician. See Warren Spannaus, *State Firearms Regulation and the Second Amendment*, 6 HAMLINE L. REV. 383 (1983)(State Attorney General). Another was written by a law professor. See George Anastaplo, *Amendments to the Constitution of the United States: A Commentary* 23 LOY. U. CHI. L.J. 631, 688-93 (1992).

Three others were written by staff of the anti-gun lobby. Two of these are cited by Mr. Aborn in his last footnote as "excellent examinations of the Second Amendment". See Aborn, *supra* note 1, at n.107. I have not cited them here, since my listing of projects endorsing the individual rights view above did not include eight articles written by NRA staff.

