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Abstract

Arguments in favor of an individual moral right to keep and bear firearms typically appeal to the value of guns as a reasonable means of self-defense. This is, for the most part, an empirical claim. If it were shown that allowing private gun ownership would lead to an overall net increase in crime or other social harms, then the strength of a putative right to own a gun would be diminished. But would it be defeated completely? I do not think so, and indeed I want to suggest in this paper that even if the harms outweigh the benefits, that neither an outright ban on handguns nor restrictive discretionary ownership policies are justified as an initial reaction. In other words, given that the overall harms outweigh the overall benefits, the *default position* is still one in favor of reasonably permissive gun laws over a total ban or restrictive discretionary policies.

S hortly after the 2014 Isla Vista shootings, Samuel Wurzelbacher—better known to many as 'Joe the Plumber' during the 2008 presidential election—penned an open letter to the parents of the victims in which he remarked that "[a]s harsh as this sounds—your dead kids don't trump my Constitutional rights."[i] Although the insensitive tone of his comments drew a swift backlash from both sides of the political spectrum, Wurzelbacher's letter touched on a legitimate point: rights are supposed to resist appeals to negative consequences. As Dworkin (1984) famously put it (and as Wurzelbacher unintentionally echoed), rights are 'trumps.' How then should we understand the relationship between the benefits and harms of private gun ownership?

When it comes to guns, arguments in favor of an individual moral right to keep and bear firearms typically appeal to the value of guns as a reasonable means of self-defense.[ii] This is, for the most part, an empirical claim. If it were shown that allowing private gun ownership would lead to an overall net increase in crime or other social harms, then the strength of a putative right to own a gun would be diminished. But would it be defeated completely? I do not think so, and indeed I want to suggest in this paper that even if the harms outweigh the benefits, that neither an outright ban on handguns nor restrictive discretionary ownership policies are justified as an initial reaction. In other words, given that the overall harms outweigh the

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[i] Wurzelbacher (2014).
[ii] See Wheeler (1997), Hughes and Hunt (2000), Huemer (2003), Hall (2006), Stell (2006), Hunt (2011), and Bernstein et al. (2015: forthcoming). I use 'guns' and 'handguns' synonymously in this paper.

overall benefits, the *default position* is still one in favor of reasonably permissive gun laws over a total ban or discretionary policies.

Let us suppose both that individuals have a prima facie right to own a gun and that handgun ownership under permissive gun laws leads to more social harms than it is supposed to prevent.[iii] In such a scenario, two questions present themselves. First, is a mere outweighing of negative consequences sufficient to defeat an individual moral right to own a gun? Second, given that gun ownership leads to more harms than benefits, what type of gun policy should we enact? Nicholas Dixon (1993; 1999; 2011) argues that a simple outweighing is enough to completely override the strength of any putative right to own a gun, and hence advocates a total ban on handgun ownership. By contrast, David DeGrazia (2014a; 2014b) takes a self-described 'moderate' position, recommending instead a restrictive discretionary policy under which handgun ownership is permitted only for those who can demonstrate a special need and who pass a rigorous course in handgun safety. This paper argues that neither approach is preferable and that gun ownership should instead be subject to non-discretionary oversight. I give two arguments against Dixon and DeGrazia's proposals. The first argument, which, like Dixon's argument, is framed in terms of utilitarian considerations, holds that a reasonable gun policy is one

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[iii] This is a dubious assumption, but one that I grant for the sake of argument. Kovandzic et al. (2013) found that a 10% increase in noncriminal gun prevalence would substantially reduce both the gun homicide and *total* homicide rates. Kleck (2015) assessed 41 English-language studies and found that those claiming to support the 'more guns, more crimes' hypothesis failed to control for three critical methodological problems. However, "research that avoids or minimizes these flaws consistently finds no support for the hypothesis."

that, all things considered, minimizes the social harms of guns while maximizing their benefits. Since guns provide numerous and very real benefits to many people, an effort should be made to maximize these benefits while minimizing their harms. This implies that at least some people should be allowed to own guns, for even if gun ownership leads to more harms than benefits, it does not follow that the immediate utility-maximizing solution is to enact a total ban on private gun ownership. Thus, a total ban is justified only as a *last resort*. According to the second argument, which is framed in terms of rights, both a total ban and restrictive discretionary policies violate the rights of those for whom gun ownership is not counterproductive. Even if gun ownership on *average* results in a net increase in social harms, it is false to say that therefore the prima facie right of *every* person to own a gun is defeated. For many individuals, defensive gun ownership is beneficial both to themselves and others. Hence these persons have an undefeated prima facie right to keep and bear firearms that ought to be respected by the state. A total ban clearly violates this requirement, and while DeGrazia's moderate gun control avoids some of the problems associated with a total ban by permitting gun ownership for certain qualified persons, it too violates the rights of gun owners insofar as it requires all prospective owners to justify their need to the state, a requirement which presumes that their right to own a gun has already been overridden. Additionally, 'special need' requirements misunderstand the purpose of gun ownership. What justifies the right to own guns is not the risk of unjust attack (which, for most people, is very low), but the effectiveness they contribute in fending off unjust attacks when they do happen to occur. It is therefore inappropriate to require that prospective gun owners demonstrate a need that goes beyond the desire for a reasonable means of self-defense.

I. THE DEFENSIVE BENEFITS OF GUNS

It is a fact that guns provide considerable defensive benefits. Simple armchair reflection reveals that guns are especially suited toward this end. Guns are commonly touted as equalizers that control for physical disparities that are often exploited in violent crimes. It is no wonder that the empirical evidence indicates that guns are frequently used for self-defense. According to a 2013 report by the Institute of Medicine and National Research Council, "[a]lmost all national survey estimates indicate that defensive gun uses by victims are at least as common as offensive uses by criminals, with estimates of annual uses ranging from about 500,000 to more than 3 million per year, in the context of about 300,000 violent crimes involving firearms in 2008."[iv] Perhaps the most famous of these surveys, conducted by Kleck and Gertz (1995), found that guns were used defensively more around 2.5 million times each year in the United States. Even if this number is exaggerated, as critics sometimes allege, it is no exaggeration that there are a large number of defensive gun uses, and that this number is non-trivial.[v]

[iv] Leshner et al. (2013: 15). Those interested in reading about particular instances where guns were used defensively can consult the National Rifle Association's *Armed Citizen* database, which collects news stories of defensive gun uses. <http://www.nraila.org/gun-laws/armed-citizen.aspx>

[v] Critics of Kleck and Gertz sometimes argue that their numbers are inconsistent with estimates taken from the National Crime Victimization Survey (NCVS). However, as Kleck (1997a; 1997b; 2001) points out, the NCVS is not specifically designed to measure defensive gun use. Additionally, an anonymous reviewer objects that 'the reporting of self-defense with a gun is problematic because in many of these studies, the stats can be skewed because an individual can believe that owning a gun has led to greater safety by preventing harm. Hence, according to the gun owner, the gun has helped defend his or her family.' However this is simply not true. The surveys in

In addition to the frequency of defensive uses, numerous studies have found that resisting violent crime with a gun is correlated with lower injury rates.[vi] Indeed, it has been consistently found that forceful resistance with a gun is more effective at fending off violent attack than both resistance with other forceful means and non-resistance. Kleck and Delone (1993) assessed eight different forms of robbery resistance and found that "victim gun use was the resistance strategy most strongly and consistently associated with successful outcomes for robbery victims." Southwick (2000) found that women who resisted an attack without a gun were four times more likely to be seriously injured than women who resisted with a gun. Men who resisted with a gun were also less likely to be seriously injured than men who either did not resist at all or who resisted without a gun.[vii] Kleck and Tark (2004: 861) assessed sixteen different forms of victim self-protection and found that "a variety of mostly forceful tactics, including resistance with a gun, appeared to have the strongest effects in reducing the risk of injury." Guerette

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question queried situations in which a gun was *used* in order to prevent harm. What was measured was not merely the gun owner's perception of safety given the presence of a gun in the home, but situations in which a gun actually contributed to repelling an attack. See Kleck (1997a: 186-187, table 5.1) for a comparison of fifteen surveys.

[vi] Leshner et al. (2013: 16), summarizing the literature, concluded that "[s]tudies that directly assessed the effect of actual defensive uses of guns (i.e., incidents in which a gun was "used" by the crime victim in the sense of attacking or threatening an offender) have found consistently lower injury rates among gun-using crime victims compared with victims who used other self-protective strategies."

[vii] Confirming the equalizer thesis, Southwick (2000: 363) also found that when 'the defender has a gun and the attacker has a gun, has some other weapon, or has no weapon, there was no significant difference between the injury probability or the loss probability between men and women. It would appear that having a gun really does result in equalizing a woman with a man.'

and Santana (2010) found that the odds of robbery and rape completion were decreased by 93 and 92 percent when a victim resisted with a gun. It should also be noted that in the vast majority of cases where guns were used defensively, the gun was not fired. According to Kleck (1999: 297), "there are about 7,700 to 18,500 reported legal shootings of criminals a year, which would be less than 1% of all defensive gun uses. The rest of defensive gun uses, then, involve neither killings nor woundings but rather misses, warning shots fired, or guns used to threaten, by pointing them or verbally referring to them." Lott (2010) found that in most cases, simply brandishing a gun was sufficient to repel an attack.

Since individuals have a right to self-defense, and since handguns are a reasonable means of self-defense, these considerations suggest at the very least that there is a *prima facie* right to own a gun for self-defense. There is also an additional argument from liberty: If private ownership of some item does not involve any intrinsic evil, then there is a defeasible presumption in favor of allowing individuals to own said item. Since handgun ownership is not in itself intrinsically evil, there is a defeasible presumption in favor of private ownership of handguns. The burden of proof is on the prohibitionist or restrictionist to justify any proposed gun control measures, a burden that is implicitly accepted by most gun control advocates when they appeal to the harms of gun ownership.

Taking stock of these points, Huemer (2003: 303) concludes that "[i]t is difficult to deny the existence of at least a *prima facie* right to own a gun… Most gun control advocates would claim, not that there is not even a prima facie right to own a gun, but that the right is a minor one, and that the harms of private gun ownership, in comparison, are very large." Indeed, both Dixon and

DeGrazia take this position, as does LaFollete (2000). Although they acknowledge the existence of a right to own a gun, they see this right as weakly grounded and easily overridden.[viii] Even amongst pro-gun philosophers, the structure, scope, and strength of the right to own a gun is a matter of dispute.[ix] But whatever else it may involve, there is agreement on both sides that the right to own a gun is at least a derivative right whose strength depends (in some sense) on the weighing of harms and benefits.

On this point, the same thing that makes guns especially suitable for self-defense also makes them suitable to malicious use and liable to deadly accidents. Many have argued that gun ownership is correlated with higher rates of suicides, accidents, and homicides, and that these harms outweigh any benefits that guns may provide. Although I think that the empirical evidence here has been overstated, I am assuming for the sake of argument that the overall social harms incurred as a result of permissive gun ownership outweigh their self-defense benefits. My point in mentioning the defensive benefits of guns is simply to highlight the seemingly obvious fact that guns do provide a very real and substantial benefit to self-defense. These benefits still count for something even if they are outweighed by the overall harms of gun ownership.[x]

[viii] See Baker (2014) and Hunt (2011) for a critique of their derivation of the right to own a gun.

[ix] For example, Wheeler (1997) and Hall (2003) analyze the strength of gun rights in terms of risk, whereas Huemer (2003), Hunt (2011), and Baker (2014) analyze gun rights in terms of a basic means-to-end condition.

[x] Even outweighed rights exert residual force that require us to ensure that any trumping is no more than is necessary to uphold a more important interest, and perhaps to render restitution for damages incurred.

II. AGAINST PROHIBITIONISM

It is sometimes thought that if it were shown that allowing private gun ownership resulted in more overall social harms than benefits, that this would be sufficient in justifying a total ban on gun ownership. Dixon seems to think so, but this does not follow—even if he is right that a total ban would reduce homicide rates. If we reason with the aim of utility maximization, then public policy decisions should attempt to minimize social harms while maximizing benefits. This is neutral with respect to what particular gun control policy we adopt. When it comes to guns, we want a gun policy that not only minimizes their social harms, but one that also maximizes their benefits. Given that there are strong and substantial defensive benefits associated with gun ownership, a reasonable gun policy is one that attempts to maximize these defensive benefits while minimizing the harms. This can be done, at least in principle, without enacting a total ban on gun ownership for *everyone*. So it is not the case that a mere outweighing is by itself sufficient to justify a total ban, even if it would achieve its desired goals. More needs to be said.

Again, suppose that gun ownership under permissive laws leads to an overall net increase in social harms. The key word here is 'net.' Even though guns may lead to more *overall* social harm, there remain certain persons for whom gun ownership would be effective at stopping or preventing crime. Saying that gun ownership increases overall harm does not tell us *who* would benefit from gun ownership and *who* wouldn't. Since we want a gun policy that maximizes their benefits and minimizes their harms, it would be overreaching and reckless to ban guns for everyone without first attempting to implement a less restrictive solution that preserves their benefits. In other words, the proper response is not to ban guns, but to develop a system restrictive

enough so that it minimizes the social harms of guns, but that at the same time is also permissive enough so that it maximizes the benefits provided by guns by allowing only competent persons to own them. We want a system that can reliably keep guns out of the 'wrong' hands while allowing the 'right' hands to own them. By jumping straight to the most restrictive method without considering other potentially viable solutions that fall short of a ban, Dixon's utilitarian argument for a handgun ban actually runs counter to utilitarian reasoning. What is needed is an argument that a ban is preferable over other less restrictive solutions, which Dixon does not provide.

Consider other risky activities that the state does not ban wholesale, even though the harms seemingly outweigh the benefits. Excessive alcohol consumption, for instance, is associated with more than 88,000 deaths annually.[xi] Yet the state does not ban alcohol, even though the health benefits of alcohol consumption are relatively minor when compared to the lives saved by using guns in self-defense. Instead, the state enacts measures so as to minimize the irresponsible consumption of alcohol while simultaneously recognizing the rights of those who can responsibly consume alcohol by allowing qualified persons to imbibe. A complete ban on alcohol may, we suppose, achieve the end of harm-reduction, but such a policy needlessly eliminates the many social benefits associated with alcohol. If such a policy is justified with respect to alcohol, then it is all the more justified when it comes to gun ownership, especially given the substantial benefits of guns considered earlier.

Hence, an outright ban should not be our immediate recourse, since it focuses only on minimizing harms and

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[xi] Centers for Disease Control (2013).

ignores benefits completely. While an outright ban may have a positive effect on overall crime reduction, it inherently excludes many individuals for which gun ownership would otherwise be beneficial. A gun policy that focuses on minimizing gun-related harm *and* maximizing gun-related benefits is likely to have a stronger effect at crime reduction than just a policy that focuses only on minimizing gun-related harms. This is true even if a ban is in everyone's interest and even if all guns are removed from criminals. Although a total ban may decrease or completely eliminate malicious usage of guns, it is plausible to suppose that there will still be many situations in which guns are necessary for resisting crime, such as those involving significant disparities in force and physical ability. Given the substantial benefits that guns provide in resisting crime, there ought to be provisions under which certain citizens can acquire guns for self-protection.

There is also a rights-based argument against an outright ban. This argument proceeds from the claim that prima facie rights should be presumed weighty unless shown to be defeated or overridden. Given that there are many people for whom gun ownership is or would be beneficial, their prima facie right to own a gun is undefeated and ought to be respected by the state. It is a mistake to think that because gun ownership *on average* leads to more social harms, that therefore each *individual* instance of gun ownership likewise leads to more social harms and is therefore overridden or defeated. Respecting the undefeated rights of those for whom gun ownership is beneficial is compatible with restricting the rights of those for whom gun ownership is likely to be counterproductive. Thus, a blanket prohibition is prima facie unjust because it is not narrowly tailored to its intended goal. As was the case with the utilitarian argument, the state's first recourse should be to find a less restrictive way of controlling for

the negative effects of firearms instead of jumping straight to a total ban.

In responding to a similar argument from Huemer (who appeals to the well-known example of the utilitarian judge), Dixon claims that a handgun ban would not violate the rights of the few because "we do not know in advance who the unlucky 'losers' from handgun prohibition would be." Additionally, since prohibition is "in everyone's best interests, it does not sacrifice a person's rights for the benefit of others, which is what does happen when the innocent person is executed."[xii]

Both of these claims are implausible.[xiii] First, why think a right can only be violated if the identity of the rights-bearer is known to the violator? Dixon gives no argument for this claim, which seems obviously false. A terrorist who indiscriminately detonates a bomb in the middle of a crowded city center may not know who he kills, but surely he has still violated the rights of his victims. Second, it is simply not true that a policy that results in greater net safety does not violate the rights of the few for whom safety is compromised. It is puzzling why Dixon asserts this, especially when the argument he is responding to is supposed to respond to this very claim. The utilitarian judge who sentences an innocent person to death in order to pacify a riotous mob presumably does so because it will bring about more safety than it would if the innocent person were set free. Yet clearly the innocent person's rights are still violated, even though his execution would increase safety by preventing deaths and property destruction from rioting. Dixon might respond by saying that this principle is only true in cases where *everyone* benefits from a safety

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[xii] Dixon (2011: 161).
[xiii] Also see Baker (2014) for a response.

increase. Since the condemned innocent is not better off as a result of the judge's action, this example is not analogous. But even if this is true, it only serves to undercut Dixon's argument. Since a gun ban will very likely result in some persons being worse-off in virtue of being deprived of a reasonable means of self-defense, it is false that *everyone* would benefit from a gun ban. Thus, Dixon's argument becomes irrelevant.

Another prohibitionist objection might be that since the state cannot reliably identify in advance those for whom gun ownership is counterproductive, that therefore a total ban is justified as the only possible way of reducing the harms of gun ownership.[xiv] However, this objection only works if there is no reliable pre-screening method that is less restrictive than a total ban, a thesis which seems quite implausible on the face of things.[xv] It is incumbent on the proponent of a total ban to produce empirical arguments as to why this is probably the case. Pointing out a mere possibility is not enough.

[xiv] Huemer (2003: 303) suggests this response on behalf of the prohibitionist.

[xv] If we look at data regarding the firearms-related revocation rates of individuals licensed to carry concealed weapons, we can see that at least one form of pre-screening schema is effective at excluding those for whom some kind of firearms-related activity is counterproductive. Lott et al. (2014) notes that revocation rates for Florida, Michigan, and Texas (states which account for 2.5 million of over 11.1 million current licensees) are extremely low. In the case of Florida, the annual rate of firearms-related violations by concealed weapons license holders is 0.003 percent, compared to a national rate of 0.007 percent for police officers. Those who are licensed to carry concealed weapons appear to be extremely law-abiding. It is not far-fetched to think that a similar system would be effective at detecting those for whom gun ownership in general is counterproductive.

One might charge my argument thus far as having made this same mistake. Perhaps it is the case that a less restrictive form of gun control is preferable to a ban. Nevertheless, since we are interested in the *actual* weighing of harms and benefits, any alternative proposals will have to be justified by the empirical evidence, otherwise they are unsubstantiated possibilities that carry no weight. This point is compatible with the claim that I am making, which is that less restrictive policies are, all other things being equal, in principle preferable to a more restrictive policy. What this means is that it incumbent upon a proponent of a more restrictive policy to justify its necessity against other policies that are less restrictive. Since we should not restrict autonomy beyond what is morally required, it is a good idea to explore various middle ground options before jumping to the extreme of banning gun ownership for everyone, even if it ultimately turns out that these middle ground options fail. There may be factors that weigh in favor of handgun prohibition, but a less restrictive policy is the *default position*. Accordingly, the success of Dixon's utilitarian argument for handgun prohibition depends on his first ruling out other less restrictive means of gun control, which he fails to do. Dixon simply takes it for granted that a handgun ban is the proper utilitarian solution. As we have seen, this is not the case.

III. AGAINST RESTRICTIVE LICENSING

An outright ban on guns violates both utilitarian and deontological considerations. What about a restrictive discretionary system? Under such a policy, the decision as to whether some individual may be allowed to own a gun is left to law enforcement or government officials to decide on a case-by-case basis. The rationale behind this policy is intuitive. As DeGrazia explains, it is based on the "likelihood that, for some individuals, gun ownership is not

self-defeating. Arguably, their prerogative to own guns for the purpose of self-defense should not be curtailed just because gun ownership is self-defeating for the majority."[xvi] Under such a system, prospective gun buyers would be required to demonstrate a *special need* for gun ownership, such as a high likelihood of attack due to one's profession or social status. Thus, in many arenas where such a system is in effect, the mere desire for a reasonable means of self-defense does not qualify as a special need. Contrast this with a non-discretionary ('shall-issue') system, where all applicants who meet a list of objective criteria *must* be granted permission by the government.

Although the reason for adopting a strict discretionary policy is rightly based on the desire to preserve the benefits of guns for those who are able to utilize them properly, any policy under which all individuals seeking to own a gun are required, among other things, to *demonstrate a special need* to own a gun that goes *beyond mere self-defense* will end up violating the rights of those for whom gun ownership would not be detrimental.

First, given the scope of our discussion, it is unjust to require prospective gun owners to justify their *need* to own a gun. If an activity is not otherwise immoral, then the burden of proof is on the opponent of said activity to give a reason in favor of restricting it. Even in cases in which the state has a paternalistic interest in restricting certain risky activities that are not in themselves immoral, those who show themselves to be capable of sufficiently mitigating the associated risk should be allowed to partake in said activities. Since we are assuming that there is a prima facie right to own a gun, it is incumbent upon the *state or licensing authority* to provide a reason to override the

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[xvi] DeGrazia (2014a: 17).

rights of prospective gun owners. Indeed, having a prima facie right to do something means that can one freely pursue some activity without having to justify his reason for doing so. Requiring someone to justify his reasons for exercising a right defeats the very purpose of having said right. For example, requiring someone to justify invoking his 5th Amendment right to not self-incriminate would defeat the purpose of having that right, for in the very act of doing so one makes statements that may be used against him. Rights function as *reasons in themselves*, such that their possession grants immunity from having to give further justificatory reasons.[xvii] By putting the burden of proof on all prospective gun owners to justify their need to own a gun, it is assumed that their prima facie right to own a gun is either non-existent or already overridden.

This true even if gun ownership is on average counterproductive, for merely pointing out a fact about *averages*, which DeGrazia does, is not in itself sufficient to justify a system under which the prima facie rights of *every* prospective gun owner are presumed to be overridden. Rather, it suggests the need for a test of some kind that can reliably and objectively determine who is qualified to own a gun. Any such test must be structured to the benefit of applicants, such that it is the state's job to find a disqualifying reason.[xviii] If no reason is found, then an

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[xvii] Thanks to Victor Hohlacov for discussion on this point.

[xviii] One might wonder if this rules out training requirements as well, since training requirements require an applicant to demonstrate competence, which might seem to assume that one's right to own a gun is defeated until proven otherwise. This is not the case. Need-based requirements are unjustified because the very idea of having a *right* to engage in some activity precludes the need to give an additional reason to do so (the right itself functions as the reason). But since competence is presumed in having the right to own a gun (having the right to own a gun for self-defense assumes that one is capable of using a gun for that

applicant must be allowed to own a gun. This is exactly what a non-discretionary licensing system is supposed to offer. This is not to say that licensing *standards* cannot be rigorous, only that a just licensing *system* for handgun ownership must put the burden of proof on the licensing authority.[xix] The fair and equitable thing to do would be to allow anyone who meets an objective list of rigorous criteria the ability to purchase and own guns instead of requiring that every applicant justify their need.

It might be objected that we use restrictive discretionary methods all the time in otherwise uncontroversial contexts. Don't airport security lines presume that everyone is a potential terrorist (and hence their prima facie right to fly is defeated)? Don't existing measures requiring background checks on guns purchased from a dealer with a Federal Firearms License presume that everyone is a potential criminal (and hence their prima facie right to buy a gun is defeated)? This is not the case. In both cases the burden of proof is on the regulating entity to find evidence that would disqualify someone from partaking in the relevant activity. Someone who wishes to fly does not have to justify their reason to the state, rather it is the state's job to find

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purpose), the state may require proof of competency in order to exclude those who are unqualified from owning a gun. Such a requirement would be largely *pro forma* for those who are already qualified.

[xix] Other problems with strict discretionary systems are practical and pertain to the fact that a licensing authority's discretionary power is often unfairly applied in areas where such a policy is in effect. Snyder (1997) argues that "[t]he most serious problem with discretionary licensing systems is the broad discretionary power that is wielded by government officials. Historically... the problems have been discriminatory application of those laws based on race, national origin, or political activities. The contemporary problems with those laws, however, tend to be (a) discrimination based on population density; (b) class discrimination; (c) arbitrary, inconsistent, and irrational application of the law; and (d) favoritism or corruption."

something that would disqualify said individual from flying. If no disqualifying factor is found, then individuals must be allowed to fly or purchase a firearm. There is, in other words, a presumption in favor of liberty that puts the burden of proof on those who wish to restrict others from rightfully partaking in an activity that falls under the scope of a prima facie right. It is not wrong to impose a test or some other standard in order to prevent certain ineligible individuals from partaking in an activity, so long as the test does not work by treating everyone's right to partake in that activity as defeated until proven otherwise. While background checks and other pre-screening tests meet this requirement, a need-based test does not.

Second, the requirement that prospective gun owners demonstrate a *special need* beyond mere self-defense misunderstands the core purpose of gun ownership. Presumably, someone who acquires a gun for self-protection does so because a gun is quite *useful* in fending off violent attacks when they happen to occur. This is quite different from the *risk* of one's being the victim of a violent attack.[xx] Consider a parallel example: Fire extinguishers are very useful in eliminating certain types of fires, even though the chances of a fire actually occurring are rare. Someone who owns a fire extinguisher presumably owns one not because the risk of a fire is exceedingly high, but because a fire extinguisher is very useful in putting out a fire should the need ever arise. The rationale for owning a fire extinguisher, first aid kit, or even a spare tire consists primarily in the fact that these items are very useful in fulfilling their intended purpose *when they are needed*, not in the likelihood that they will be needed (which, for most people, is exceedingly rare). Similarly, the rationale for owning a gun is so that one can fend off a violent attack

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[xx] Baker (2014) critiques Dixon on this point.

when such a situation arises, even if these situations are rare.[xxi] Hence it is sometimes said by those who carry concealed weapons that they carry 'for the stakes, and not the odds.' That one may face a high risk of violent attack may provide additional reasons in favor of being allowed to purchase or carry a gun, but it cannot function as a minimum requirement to which all prospective gun owners are beholden.

V. CONCLUSION

Even if gun ownership leads to increases in social harms, there should still be a presumption in favor of non-discretionary gun regulation, similar to what exists today with respect to 'shall-issue' concealed weapons licensing. The specifics of what such regulations would look like is beyond the scope of this paper. I have argued only that the mere fact that the harms of gun ownership outweigh the benefits is not enough to immediately justify either a total ban or restrictive discretion. Again, this is not to say that a total ban or restrictive discretionary policy cannot *ever* be justified, only that it would be premature to adopt either policy as our initial response to dealing with the harms of gun ownership. Instead, a strict *non*-discretionary policy is better structured toward meeting the concerns of both gun control and gun rights advocates. With that in mind, my arguments here should be construed as providing a guide that directs the process of how we should go about making decisions about gun policy. Since the debate over the merits of gun ownership is largely an empirical issue, there may

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[xxi] It is true that gun ownership may be more riskier than owning a fire extinguisher, given the greater harms that may arise from misuse, but this misses the point of the analogy. The claim is not that guns are just as safe as fire extinguishers, but that ownership of these items are justified on the basis of their effectiveness at handling emergencies, and not on the frequency with which they will need to be used.

be additional empirical considerations beyond a mere outweighing that weigh in favor of a particular gun policy.[xxii] Suffice it to say that decision-making about gun policy should start with the less restrictive methods of achieving the desired goal of reducing societal harms. Since a total ban and a restrictive discretionary policy are arguably the two most restrictive methods of reducing the harms of guns (with the former being more restrictive than the latter), they should be enacted only after other means have been exhausted.

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