

There was a time, not so long ago, though now it seems like an eternity, that I was shocked when I heard about mass shootings of people going about their daily lives, on their way to work, worshiping in church, buying groceries, meeting friends for a drink, or walking across campus. But, I forget: it is worse than this. Sometimes these were just young children in classrooms studying history or math, or something like that. (According to the CDC, guns are now the [number one killer of children!](#)) Sometimes shot by their classmates who brought guns from home, and sometimes by others. After all, guns aren't hard to get. It's easier to buy a gun in some places than it is to [register to vote or get a dog license](#).

It used to be the case that these events were plastered in bold type on the front page of every major newspaper and demanded continuous coverage by the media for days. But now, shootings occur so frequently that one almost doesn't notice. Wall to wall coverage has been replaced with a "breaking news" banner scrolling across the television screen or social media feed. And, I'm sorry to say, sometimes now I just shrug. I do pay more attention now, though, to my surroundings when I'm out and about; it pays to be cautious!

There are [more firearms today](#) than there are people in the United States. In fact, we are the only country in the world that has more guns than people. Many guns are used by farmers, hunters, and others for sport and recreation, for sure, but more guns are used for violence than ever before. [That's just a fact!](#) And not just on darkened street corners in drug deals late at night. Last year there were [200 shooting incidents on school grounds!](#) The statistics are numbing.

Only [six states](#) have enacted laws regulating ammunition sales, and no states regulate the caliber of ammunition. In Delaware, for instance, one can easily buy 50 caliber rifles sold as part of hunting stands. A 50 caliber bullet can blast through lightly armored vehicles, though not today's modern tanks. There are around [200 militia groups](#), all of which are armed. These groups vary in membership and ideology, but they generally share the belief that the government is tyrannical and must be confronted through armed force, if necessary. Many believe that the fall of the United States is inevitable, and that it is only prudent to prepare. Federal law bars the use of the National Instant Criminal Background Check System by law enforcement for any purpose of tracking gun owners. In 1996 Congress barred the CDC from studying the impact of guns on American society. Though technically the [law](#) targeted only gun control studies, the CDC, fearful of budget cuts, suspended all gun related studies.¹

When I think about our response to the rise of gun ownership, mass shootings, and gun violence, I am reminded of Nietzsche's observation that "madness is something rare in individuals -- but in groups, parties, peoples, ages, it is the rule. *Beyond Good and Evil*). We err, I think -- and this is important -- when we suppose that gun violence boils down to the mental health problems of a few. The problem is larger than this. There are many institutional and legal barriers that prevent the country from taking effective action at reducing gun violence.

¹ In 2018, after persistent calls from multiple medical associations for the repeal of the Dickey amendment, Congress partially lifted the CDC ban. The CDC can now conduct research into gun violence, but remains prohibited from studying gun control.

Consider the two recent Supreme Court decisions about the Second Amendment (Heller 2008 and Bruen 2022) that we were asked to read in preparation for this seminar. Arguably the Heller decision opened the floodgates to guns, and the Bruen decision has hampered the ability of law enforcement and states to protect us from gun violence. The question before the Court in the 2008 Heller decision was whether the Second Amendment preserves only the right to have guns for militia service or whether it also establishes a right for civilians to have guns in their homes. In 2008, the Supreme Court for the first time in our history ruled that it was the latter. (A later decision, *McDonald v. City of Chicago*, 2010, effectively extended this right of carry from homes to the public.)

Was the Heller decision rightly decided? People will argue about this, but it is undeniable that gun ownership exploded after the Heller decision, and with this came an explosion of mass shootings. In [2008](#), for instance, there were ten mass shootings in the United States. In [2022](#), there were 648, and there have been 33 thus far in 2023. But my information is already dated. The mass killings in Monterey Park and Half Moon Bay took place after I wrote this paragraph. It is hard to keep up with the numbers because they come so fast. It is an old adage that correlation is not causation and there is more to the proliferation of gun violence than a Supreme Court decision, but surely the burden of proof rests upon those who claim that the Heller decision did not significantly lead to the proliferation of guns in the United States.

In the seminar readings, Bob Barr argues that what matters isn't whether the Heller decision led to bad outcomes, but only what the Second Amendment says *regardless* of its implications. I suppose there are two ways to respond to such a claim. First, we might just argue, as many constitutional scholars have argued now for almost 15 years, that the Heller decision was badly argued and wrongly decided, but this is a short essay. Or second, we might just say that it is shameful to turn a blind eye to the carnage of innocents by pleading impotence in the face of Constitutional requirements. The situation is reminiscent of how the Court ignored the results of its decisions on the actual lives of people during the Great Depression, or more recently how Justice Alito in the *Dobbs* decision barely mentioned its impact on the lives of women. In the 1930s, the Court eventually reversed course. We can only hope that it does so again.

But aren't there steps we can take now to protect ourselves from gun violence? Must we despair? A fair amount of work has been done on what might be called an evidenced based, "[harm reduction](#)" approach to gun violence. For instance, guns can be made safer. (It is hard, for instance, to find a good concealed carry pistol these days with a good thumb safety or a single action/double action pistol which is inherently safer.) Training requirements can be stiffened. (Training requirements are state requirements and range from the [farcical](#) to strict.²) Liability insurance can be required. (Shooting accurately is much more difficult than it looks, and

² Consider here the [example](#) of the Czech Republic. As in the United States, the right of civilians to own firearms is constitutionally protected. Yet there were only seven homicides using guns in 2022, and the last mass shooting happened four years ago in 2019. There is a national system that regulates the sale and use of guns. Background checks with no loopholes and health clearance checks are mandatory, as well as specific requirements for the safe storage of guns. Anyone who wants a weapon must pass a comprehensive test covering such things as the details of safety legislation and the criminal code, be trained, and demonstrate accuracy with a pistol at 10 meters.

bullets often go astray in real life situations causing unintentional harm.) Age limits could be set. (Most gun violence is done by [young men](#), for instance.) Location requirements could be more stringent. (Do we really want guns in churches, bars, court houses, in state legislatures, and in other places where people wish [to peaceably assemble for protest](#)?) Weapons of war could be banned for civilian purposes. (One of the [most popular rifles](#) in the country is the AR-15, a civilian version of the military M-16.) Background checks and health clearance could be made mandatory. (Background checks are required *only if* a weapon is being bought from a federally licensed gun dealer.) Specific requirements for how guns are stored could be required. (Fewer than half the states have any [laws requiring safe storage of weapons](#).) There are many, many evidence-based, harm reduction strategies that could be tried. Some will work, and some won't, but experiments are already taking place. (Try [here](#) and [here](#) and [here](#).)

Although these approaches appear to be consistent with the Heller decision, the 2022 Bruen decision, unfortunately, has placed rather severe and inflexible restrictions on the ability of states to decide how they wish to regulate the sale and use of guns. The question before the Court was whether states may require those applying for carry licenses to show "proper cause" or need for carrying a concealed weapon in addition to meeting statutory requirements such as being of a certain age, proving residency, providing valid identification, undergoing specific training, passing a background check, etc. Justice Thomas, writing for the majority, didn't just strike down all "proper cause" requirements, but went on to order that the only restrictions that states may place on the sale and use of guns are those that are analogous to the requirements that were in place in 1791 or 1868 when the Second and 14th Amendments were passed. Just how far the Court will go in striking down evidenced-based, harm reduction strategies mentioned earlier as unconstitutional under the Bruen decision is unclear. Perhaps the Court will take the approach it did after the 1992 Casey decision on abortion, leaving it to the States to thrash out the implications.

The [results thus far are not promising](#), but polls consistently show that the [majority of Americans want sensible gun control laws](#), and the results of the 2022 midterm elections provide some evidence that [voters](#) will punish those who reflexively block all gun control. One is beginning to get the sense that most people have had enough. Even courts eventually have to heed the impact of their decisions on people. We can only hope so in this case.

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