

Guns, Violence and Federalism

Contributed by Frank Holland
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However sacred it may be, the Second Amendment is not the only Constitutional provision governing America's domestic arms race.

"Marcus Law was special to me," says Martin Higgins. "He was one of the sweetest and brightest kids that I've encountered, and he was uncharacteristically respectful and well behaved for his age—a leader."

When the 17-year-old was gunned down following a barbecue with friends on April 30, Higgins found himself searching for answers. "I thought Marcus would be one that avoided the violence," he says.

Higgins, the founder of a San Francisco youth mentorship program called "City of Dreams," has high hopes for kids like Marcus Law, but the reality of gun violence in communities like Hunters Point—the rough San Francisco neighborhood where Law lived and died—is too much to ignore. Law himself had narrowly avoided death in two previous shootings this year before his murder on April 30th.

Approximately three hours to the north, the Corning High School shooting team—which includes members even younger than Marcus Law—is learning about firearm safety and responsible handling. Many of these students can be found hunting game in their free time with family or friends in the wide open spaces of Northern California.

Gun control? Gun owners' rights? Depending on where you live, these topics can mean vastly different things. So why does the crux of the debate take place almost exclusively in Washington DC, where gun control advocates and the NRA square off to exchange verbal shots at one another?

Finding a useful perspective

Owning a gun is a peculiar American tradition, and it's not likely to change anytime soon. The vice-president's recent hunting accident blasted the issue back to the fore, but public sentiment toward the incident proved that residents of Manhattan take a fundamentally different stance than those in Texarkana or Cheyenne.

Debate over the constitutional right to keep and bear arms has raged since the republic's early days, but most of that discussion has focused on the esoteric wording of the Second Amendment and its contemporary relevance in light of increasing violence in our cities.

"The Second Amendment is the primary window through which the debate over gun ownership must be viewed because the right is of constitutional dimension," says Congresswoman Sheila Jackson Lee (D-TX). Jackson Lee is the author of H.R. 246, a bill that would amend the Brady Handgun Violence Prevention Act to raise the age of handgun eligibility to 21 (currently, 18), and prohibit persons under age 21 from possessing semiautomatic assault weapons or large capacity ammunition feeding devices, with exceptions.

"There are, of course, other social and economic issues impacted by gun ownership in America, such as the alarming incidents of crime and violence in our cities, suburbs and rural areas," Jackson Lee goes on to say.

In short, we have problems to think about. What goes unmentioned is the way we should think about them. Although the U.S. Bill of Rights is perhaps the most venerated political document in the world, each amendment is a natural outgrowth of greater principles that guided the Framers in shaping the Constitution and the burgeoning republic. The structural elements of that document—elements like federalism and separation of powers—are just as integral to contemporary U.S. democracy as any single right afforded by the Bill of Rights, be it the first or the second.

The United States in the 21st century is much larger, with a population much more diverse carrying much deadlier weapons. In light of these very stark realities, many gun control advocates argue that the old rules no longer apply. But what if they looked at a more useful set of old rules, like those provided by our federalist model?

Competing interests, or just different?

"In the American system of government, states are given wide latitude to conduct their affairs as they deem best so long as they refrain from actions that conflict with the U.S. Constitution or abridge the constitutional rights of citizens," says Jackson Lee. And although some may argue that any type of gun control law is an infringement of their Second Amendment rights, legal precedent has clearly said otherwise.

"New York has had the Sullivan Law since 1911, and if the Second Amendment is really supposed to be a constraint on it, they haven't found out yet," says Boalt Hall School of Law Professor Franklin Zimring.

The Framers envisioned the states as "laboratories of democracy" and expected that they would differ widely in their policy preferences, regulatory frameworks and organizational structures. That doesn't stop with firearm control policy just because the Second Amendment addresses the issue directly. "The U.S. Constitution has long been interpreted to permit states the authority to regulate ownership of firearms," says Jackson-Lee. "I believe that one size doesn't fit all when it comes to firearm regulation. Local conditions, customs and traditions should be taken into account."

The concept of subsidiarity—taking decisions closest to the parties affected by them—is one of the primary governing devices in unwieldy federations with wildly different members like the European Union. It gives local populations the opportunity to address practical concerns in an efficient manner, and it is a fundamental principle of our federal model. But sometimes procedural problems at the state or federal level can trip up the process.

"The California State Supreme Court ruled decades ago that cities can't create licensing standards on their own and enforce them," explains Zimring. "What the state of California needs more than anything is for the legislature to pass a local option law."

According to Zimring, a local option law in California would allow major metropolitan areas to set their own licensing standards for firearms. Furthermore, that law would include a stipulation that says gun sellers must ensure that buyers are eligible to own not only by California state law, but also by the law of the municipality in which he or she resides.

The need for federal legislation

Zimring is careful to point out the necessity for gun sellers to satisfy both state and local regulations. If not for strong legislation on this point, the devolution of authority to the states and municipalities hits a major snag.

"Many states—New York, Connecticut and New Jersey, for example—have good, strong gun safety laws," says Congresswoman Carolyn McCarthy (D-NY). "And yet, the guns are coming in from other states that have none. "So, the states aren't doing what they're supposed to be doing. That's basically why you need federal requirements."

McCarthy is the author of H.R. 1415, a bill designed to improve the National Instant Criminal Background Check System. She argues that it is time to rethink the gun control debate in more practical terms.

"We need to be discussing what gun violence is costing this country each year in health care," McCarthy says. Although the CDC has been disallowed from collecting data on the financial cost of gun violence in America, conservative estimates put the figure at around \$100 billion annually when the indirect costs such as lost productivity, mental health treatment and legal costs are factored in.

Making gun control a public health concern is certainly a feasible option for reframing the debate within less constitutionally-complicated boundaries. But McCarthy sees another option to rekindle the topic in the public sphere.

"Here we are dealing with terrorists," McCarthy says. "And although they're on a terrorist watch list and can't get on a plane, they can purchase a gun anywhere they want to." McCarthy points out that the 9/11 Commission argued that the expiration of the assault weapons ban would make terrorists' access to these weapons easier. "Why don't we see any legislation under homeland security that deals with the gun issue?" she asks.

Rethinking the problem

Although no one argues that the U.S. Constitution holds all the answers to the country's myriad problems, it's nevertheless important to look at the document as a whole when an issue appears bogged down in the minutiae of precedent or activist talking points.

Of course, looking at the topic of gun control as a federalism issue instead of a purely Second Amendment concern will not bring back victims of gun violence like Marcus Law. But by recalibrating the debate around more practical concerns for all parties involved, perhaps legislators can arrive at better solutions by asking more relevant questions.