

## Mass Shootings and Gun Laws A Talk with John Donohue

- Gun statistics
  - The US is home to less than 5% of the population but approximately 30-50% of civilian-owned guns in the world. <sup>1</sup>
  - Gun ownership is concentrated in a smaller segment of population: about 300 million guns total, 130 million of which are owned by 3% of adult population. <sup>2</sup>
- Constitutional standards
  - The Second Amendment
    - The Second Amendment reads: “[a] well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.”<sup>3</sup>
  - *District of Columbia v. Heller*<sup>4</sup>
    - The District of Columbia enacted local law Firearms Control Regulations Act of 1975. It banned handgun ownership and required that all firearms be kept unloaded and disassembled or bound by a trigger lock. In 2003, a suit was filed challenging this law.
    - The Supreme Court held that the Second Amendment protects an individual right to possess guns for lawful purposes, e.g. self-defense in the home, unconnected to militia use.
  - *McDonald v. Chicago*<sup>5</sup>
    - After the *Heller* decision, several suits were filed against Chicago challenging its gun regulations. Plaintiffs argued that the Second Amendment applied to the states as it applied for the federal government.
    - In the 2010, the Supreme Court held the Due Process Clause of the Fourteenth Amendment incorporates the Second Amendment right to keep and bear arms for lawful purposes, as applicable to the states.
- Semi-automatic weapons
  - Semi-automatic firearms have mechanisms that automate most of the process of shooting. It enables the shooter to fire a rapid succession of shots without pulling the trigger for each bullet. Some semi-automatic weapons are designed to cosmetically resemble fully-automatic military weapons.

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<sup>1</sup> Small Arms Survey, *Small Arms Survey 2007: Guns and the City* 46-47 (2007), available at <http://www.smallarmssurvey.org/fileadmin/docs/A-Yearbook/2007/en/full/Small-Arms-Survey-2007-Chapter-02-EN.pdf>.

<sup>2</sup> William J. Krouse, *Gun Control Legislation*, CONGRESSIONAL RESEARCH SERVICE (Nov. 12, 2012), <http://www.fas.org/sgp/crs/misc/RL32842.pdf> at 8.

<sup>3</sup> U.S. Const. amend. II.

<sup>4</sup> *District of Columbia v. Heller*, 554 U.S. 570 (2008).

<sup>5</sup> *McDonald v. City of Chicago*, 561 U.S. 742 (2010).

- Lapsed Federal Assault Weapons Ban
  - The Public Safety and Recreational Firearms Use Protection Act (Federal Assault Weapons Ban) of 1994 prohibited the manufacture, sale, and possession of semi-automatic assault weapons and high capacity magazines.
  - Sunset provision of 10 years. When it expired in 2004, efforts to renew the ban were unsuccessful.
- Right to Carry (RTC) Laws in the US
  - RTC laws trend
    - 1986: 16 states prohibited private gun carrying; 41 had some form of a licensing regime for gun ownership.
    - 2019: 0 states prohibit private gun carrying; 36 have some form of licensing, the rest do not.
  - States open and concealed carry laws vary significantly, and reciprocity between states exists only in some instances. Many states allow open carrying of firearms and have no licensing requirements.
- “More guns, less crime” hypothesis
  - Donohue’s study on RTC laws impact on violent crime
    - Using synthetic control estimates, Donohue found that across 33 states that adopt RTC laws between 1981-2007, violent crime is substantially higher after 10 years than would have been without RTC laws.<sup>6</sup>
  - Efficacy of armed civilians in shootings
    - Statistically, carry permit holders very rarely stop gun crimes or mass shootings. Most citizen permit holders do not have the training required to encounter an active shooter and successfully prevent further injury or casualties.
    - In fact, armed civilians may impede police response in an active shooter situation. When there are multiple people carrying guns, law enforcement are not able to as quickly determine who the active shooters are in a chaos situation.
  - Accidental gun-deaths
    - The precise number of accidental gun deaths is unknown, in part because some accidental gun deaths by children are classified as homicides in state databases.
    - An examination of 259 accidental gun deaths of children under 15 indicates that nearly half of those deaths occurred in the home, where adults leave the gun unsecured and easily accessible to a child.<sup>7</sup>

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<sup>6</sup> Donohue, John J. and Aneja, Abhay and Weber, Kyle, Right-to-Carry Laws and Violent Crime: A Comprehensive Assessment Using Panel Data and a State-Level Synthetic Controls Analysis (June 19, 2017). Stanford Law and Economics Olin Working Paper No. 508; Columbia Business School Research Paper No. 17-67; Stanford Public Law Working Paper. Available at SSRN: <https://ssrn.com/abstract=2990220> or <http://dx.doi.org/10.2139/ssrn.2990220>

<sup>7</sup> Michael Luo & Mike McIntire, *Children and Guns: The Hidden Toll*, The New York Times. (Sept. 28, 2013): <http://www.nytimes.com/2013/09/29/us/children-and-guns-the-hidden-toll.html>.

- Background checks and private seller loophole
  - Brady Handgun Violence Prevent Act (Brady Act) provides the federal background check regime for gun purchases. Requires background checks to buy handguns from federally licensed sellers. Prohibits certain individuals—such as convicted felons, those with certain mental illnesses, those who unlawfully used a controlled substance, or those convicted of domestic violence—from buying guns.
  - A gaping loophole in the Brady Act is that it applies only licensed sellers. That means private sellers at gun shows (flea markets for guns) and private sellers in a private transaction are not required to be licensed.
  - As part of the Brady Act, the FBI launched the National Instant Criminal Background Check System (NICS) in 1998. The NICS relies on reports and data from states and various agencies. States often fail to consistently send criminal and mental health information to NICS, making the database incomplete. When a seller does not receive a denial from the FBI within three business days, the seller is free to sell the weapon to the buyer.
  - These two systemic flaws allowed Dylann Roof to purchase a handgun at a store in South Carolina. Roof was ineligible to purchase the gun because he admitted during a misdemeanor arrest that he had used a controlled substance.<sup>8</sup> A few weeks later on June 17, 2015, Roof shot and killed nine people at a church in Charleston, South Carolina that he specifically targeted for its predominantly black congregation.
  
- Comparison of gun culture & legislation and response to mass shootings
  - Australia's regulatory response to a mass shooting
    - Australia's last mass shooting was in 1996. Martin Bryant shot and killed 35 and wounded 23 people in Port Arthur.
    - Following the shooting, Australia's federal government and the states and territories agreed to a uniform approach to gun regulation, including a ban on certain semiautomatic and self-loading rifles and shotguns, and a national registry. Australia also rolled out a mandatory buy-back program that substantially reduced private gun ownership and possession.
    - In subsequent years, gun-related violence decreased dramatically and has remained low. The success of these regulations is attributed to its uniform enactment and enforcement among the states and territories.
  - New Zealand

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<sup>8</sup> Carrie Johnson, FBI Says Background Check Error Let Charleston Shooting Suspect Buy Gun, NPR. (July 10, 2015): <https://www.npr.org/sections/thetwo-way/2015/07/10/421789047/fbi-says-background-check-error-let-charleston-shooting-suspect-buy-gun>.

- In the weeks after a mass shooting at a mosque in Christchurch, New Zealand, where 50 people were killed, Prime Minister Jacinda Arden announced a ban on semi-automatic weapons and assault rifles and a buyback scheme.
- New Zealand requires a person to obtain a license to buy and own a gun. They must pass a background check and a gun safety course. Licenses must be renewed every 10 years. Some guns are not required to be registered. The new legislation, however, closed a loophole that allowed lower capacity magazine assault weapons to not be registered by banning them outright.
- Switzerland
  - By some accounts, Switzerland trails behind only the U.S., Yemen, and Serbia in the number of guns per capita. Despite the high rate of gun ownership, gun-related violent crime is relatively low compared to the U.S., although still higher than other Western European countries that all have lower number of guns per capita.
  - Switzerland's gun culture is tied to the militia and hunting and less to self-defense as it is in the U.S. In Switzerland, most young men are enlisted into the militia whereupon they receive an assault weapon and sealed canister of bullets. They are forbidden from discharging the assault weapon in all circumstances except in the case of national emergency.
  - Switzerland passed by referendum stricter gun laws in line with the EU gun laws. The new rules require regular training on firearms use, special waivers to own certain types of semi-automatic weapons, and serial number tracking for gun parts. All guns are required to be registered.