

The Ethics of ‘Gun-Free Zones’

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Abstract I argue that location-specific gun bans (commonly known as “gun-free zones”) are typically unjust. If there is a right to carry firearms outside of one’s home, then the state cannot prohibit gun owners from carrying their firearms into certain areas without assuming a special duty of protecting those whom it coercively disarms. This task is practically impossible in most of the areas where guns are commonly banned. Gun owners should therefore be allowed to carry their guns in most public places, including college campuses.

Keywords Self-defense · Gun control · Gun ownership · Gun-free zones

While philosophers have recently started to pay more attention to the moral question of gun ownership, surprisingly little has been said about the ethics of *carrying* guns outside of one’s home and the extent to which one may do so.¹ Given just how widespread this practice has become, this is an important topic for anyone interested in the ethics of gun ownership.² This paper attempts to evaluate the permissibility of

¹For recent examples, see Dixon (2011), Baker (2014), DeGrazia (2014a, 2014b), McMahan (2015), Buchanan and Stell (2015), and Bernstein et al. (2015). A 2015 special issue of *Essays in Philosophy* featured six papers by philosophers on the topic of gun control. See Hunt (2013) for a useful (but now dated) summary of the philosophical debate on gun ownership. Unless otherwise noted, I use “guns” and “firearms” to refer to handguns.

²Kleck and Gertz (1998) estimate that “within a given year, about 16.8 million U.S. adults carry a gun, 7.1 million who carry do so on the person and 12.4 million do so in a vehicle. On an average day, 2.7 million U.S. adults carry a gun for protection on their person and 5.0 million carry one in a vehicle.” This number has almost certainly risen with the passage of right-to-carry laws in numerous states since 1998. As of 2014, more than 11.1 million Americans are licensed to carry a concealed weapon (Lott et al. 2014a). The actual number of gun carriers is likely higher, since this figure does not include data from states that do not make this information available. Moreover, this figure also does not include information about gun carriers from states that have abolished licensing requirements.

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location-specific gun bans, more commonly known as “gun-free zones.” By “location-specific gun ban,” I mean a targeted prohibition on carrying firearms in certain areas. These commonly include, but are not limited to: airports, bars, government buildings, hospitals, prisons, and schools (including college campuses). I argue that location-specific bans are justified only if they meet two stringent conditions.

The basic argument can be summarized as follows: there is a *prima facie* right to carry a gun. Accordingly, the state incurs a special duty of protection if it chooses to prohibit its citizens from carrying their firearms into certain areas. If the state cannot adequately meet this obligation, then a location-specific gun ban is unjust. This is extremely difficult if not practically impossible in most of the areas where guns are commonly banned. Gun owners should therefore be allowed to carry their guns in most public places.

The argument of this paper is that there exists a *moral* right to carry a gun, an issue distinct from whether there exists a *political* or *constitutional* right to carry guns. In the United States, the Second Amendment to the Constitution is commonly thought to protect an individual right to private gun ownership.³ Whatever the legal merits of this interpretation, my contention here is that even if a state did not have legal provisions protecting private gun carrying, it would still be obligated to enact laws allowing citizens to carry guns. Gun rights are not merely political rights, but moral rights derived from the basic right of self-defense.

Since my focus is on gun *carrying*, I assume for the sake of argument that at least *some* civilian persons have the moral right to *own* firearms for self-defense. This is a rather modest assumption, and the arguments in favor of this thesis have been given at length elsewhere.⁴ However few or numerous these persons are, my claim is that they should also be allowed to *carry* their guns in public. In other words: those with the right to own a gun also have the right to carry it. Although at certain points I draw from empirical data within the context of current licensing systems, my argument in this paper does not require commitment to any particular system of gun regulation or licensing system for carrying weapons. The points I make are compatible with virtually any gun regulation policy that falls short of a total ban on private gun ownership or carrying. As such, one cannot object to my argument on the grounds that a particular policy is ineffective or morally dubious.

1 The Right to Carry a Gun

It is understandable why even a state that permissively allows the ownership of guns would want to prohibit them from being carried in certain areas. But are restrictions of this kind morally justified?

³ This interpretation of the Second Amendment was affirmed by the United States Supreme Court in *Heller v. District of Columbia* and *McDonald v. Chicago*. See Halbrook (2013) for a survey of the moral and political history of the right to keep and bear arms, both in antiquity and in the United States.

⁴ See Covey (1997), Wheeler (1997, 1999), Hughes and Hunt (2000), Huemer (2003), Hall (2006), Stell (2006), Hunt (2011), Baker (2014), [removed], and Bernstein et al. (2015). Even philosophers generally critical of gun ownership, such as LaFollete (2000) and DeGrazia (2014a, 2014b), support some form of limited gun ownership.

Consider the case of Suzanna Hupp. On October 16th, 1991, Hupp was eating with her parents inside a Luby's Cafeteria when a gunman opened fire on patrons. Hupp, who owned a .38 Special revolver, had moments before stowed it in her vehicle in compliance with Texas law, which at the time prohibited the carrying of concealed firearms in public places. Although Hupp was in a position to intervene, she was unable to do so because she had just disarmed herself. The gunman subsequently shot and killed Hupp's father as he attempted to physically intervene and her mother as she tended to him.

Did the state, in requiring that Hupp disarm herself before entering this location, violate her right to self-defense?

The answer hinges on whether or not there exists a right to carry firearms in public, and whether this right should extend to the location in question. Suppose, plausibly, that *some* persons have a *prima facie* right to *own* handguns for self-defense.⁵ By "prima facie right," I simply mean that some persons have a defeasible presumption in favor of gun ownership. If someone has the *prima facie* right to own a handgun, then he also has the *prima facie* right to carry it outside of his home. The act of carrying one's gun for self-defense is simply an extension of the general right to own a gun, for one's interest in a reasonable means of self-protection clearly extends outside of the home. This fact is made all the more evident when we consider that in 2008, 82% of violent crimes (65% of rapes, 84% of robberies, and 82% of assaults) occurred away from the home.⁶ In light of this data, one would expect a majority of defensive gun uses to also occur outside of the home. This is confirmed by Kleck and Gertz (1995), who found that 63% of total defensive gun uses occurred outside or near the home. A gun policy allowing gun ownership but forbidding the carrying of firearms for use outside of the home would undercut the very point of gun ownership, which is to provide individuals with access to a reasonable means of self-defense wherever they may be.⁷ We can conclude, then, that those who should be allowed to own guns (however few or numerous they are) should also be allowed to carry their guns outside of their home.⁸

These facts alone do not tell us much about what a justifiable gun policy would look like. The fact that there exists a *prima facie* right to carry firearms in public shows only that the state must bear the burden of justification in choosing to enact restrictions on this activity. The state may justifiably restrict or even prohibit the exercise of this right in certain locations provided that (a) it does so for a good reason and (b) it assumes a

⁵ The existence of such a right is typically granted even by anti-gun philosophers (see note 4). Moreover, the existence of such a right is compatible with the thesis that gun ownership in general leads to more harms than benefits. Vernick et al. (2007) and DeGrazia (2014a, 2014b), who support restrictive gun control policies, rightly point out that the claim that gun ownership is *on average* counterproductive is compatible with the claim that certain persons should still be allowed to own guns. As DeGrazia puts it, "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."

⁶ Bureau of Justice Statistics (2011: Table 65).

⁷ It is therefore very strange why DeGrazia explicitly confines his discussion of gun ownership to ownership *within the home*. Although he considers his approach an "even-handed" assessment of the benefits and risks of guns, a truly even-handed assessment of gun ownership would not restrict itself to one location. Indeed, since every state (including the District of Columbia) has legal provisions granting certain citizens the right to carry weapons in public, DeGrazia completely ignores a very significant aspect of defensive gun ownership.

⁸ Given how closely related gun ownership and gun carrying are, it is highly questionable whether we can treat them independently of each other. One may reasonably insist that the right to own a gun and the right to carry a gun are really just distinct parts of a single right.

special duty of protecting those citizens whom it has intentionally disarmed. It is to these conditions that I now turn.

2 Good Reason

Turning first to (a), a concern for public safety is the reason most commonly given for enacting gun control measures. Some have argued that since carrying guns in public puts third parties at greater risk of being harmed, that therefore the state has an interest in restricting the carrying of guns.⁹ This rationale is straightforwardly utilitarian: gun carrying leads to more harm than benefits and should therefore be restricted to various degrees. While I am prepared to accept appeals to safety as sufficient in fulfilling (a), there are at least two reasons to exercise caution in using this justification.

First, the appeal to public safety only works if restricting the carrying of firearms actually makes people safer. If instead gun carrying makes people *better* off, then it is hard to see how restrictions on carrying would advance the goal of safety. On this point, there is empirical evidence that (1) defensive uses of guns are more frequent than criminal uses and (2) restrictions on gun carrying are in fact counterproductive to safety. Regarding (1), a 2013 report by the Institute of Medicine and National Research Council found that “[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.”¹⁰ In all, the results of nineteen surveys all yield considerably more defensive gun uses than criminal uses.¹¹ The methodologically strongest of these surveys, conducted by Kleck and Gertz (1995), estimated the annual number of defensive gun uses to be around 2.5 million. More than half of these defensive gun uses, according to Kleck and Gertz, occur outside or near the home.

On the other side, the only survey that suggests that defensive gun use is rare is the National Crime Victimization Survey (NCVS), which suggests around 70,000 defensive uses each year. The NCVS, however, was never designed to measure defensive gun use to begin with. Respondents to the NCVS are not asked about defensive gun use at all. They merely have the option to *volunteer* this information if they indicated that they were the victim of a crime. Among surveys that *are* designed to measure defensive gun use, there is unanimity that defensive gun uses are very frequent.

The second claim is more contentious than the first, but is supported by a sizable body of literature. In a widely cited study, Lott and Mustard (1997) found that “shall-issue” concealed handgun laws were associated with a 7.5% drop in the murder rate and 5% drop in rapes. The crime-reducing effects of right-to-carry laws were reaffirmed after Lott extended the study by an additional decade in 2010.¹² Indeed, although Lott’s work has been the subject of much controversy, his findings have been corroborated by at least twenty other studies.¹³ For

⁹ LaFollete (2000) and Dixon (2011) defend this claim in the context of gun ownership. Trivigno (2013) argues that gun carrying harms one’s own character.

¹⁰ Leshner et al. (2013: 15).

¹¹ See Kleck (1997) and Kleck and Kates (2001) for a further discussion of survey results, other corroborating surveys, and responses to critics.

¹² See Lott (2010).

¹³ See Lott (2012: Table 2).

example, examining data from 1980 to 2009, Gius (2014) corroborates the findings of Lott and Mustard and found that “states with restrictions on the carrying of concealed weapons had higher gun-related murder rates than other states,” which suggests that “restrictive concealed weapons laws may cause an increase in gun-related murders at the state level.” Moody et al. (2014: 71), also corroborating some of Lott and Mustard’s findings, found that right-to-carry laws “significantly reduce murder” and that “RTC laws are socially beneficial.”¹⁴

There is also evidence that right-to-carry laws are effective in mitigating the effects of mass shootings. Lott and Landes (2003: 135) found that “[r]ight to carry laws reduce the number of people killed or wounded from multiple victim public shootings” and that “[l]imiting the places where permit holders are allowed to carry their guns increases the number of murders, injuries, and shootings.” Additionally, Lott (2016: 123) found that from 1950 to February 2016, 99% of mass public shootings occurred in locations where guns are legally prohibited. A plausible explanation of this is that mass public shooters tend to select locations in which they know their victims will be defenseless. These findings suggest that gun carrying may actually contribute to public safety and deter mass public shootings.

In the spirit of fairness, it should be noted that there are also studies concluding the opposite, and it would be premature to definitively conclude based on what has been presented here that guns have a positive effect on society. However, the points just raised indicate that appeals to safety are at least controversial and very much an open question.¹⁵

But, although the empirical debate is interesting, it is secondary to the point I am making here. My argument does not require commitment to any particular system for carrying weapons. Even if gun carrying under some specific legal schema can be curtailed for reasons of safety, this does not show that there is *no* scenario in which gun carrying would be prohibited. My claim is only that those who are allowed to own guns—however few or numerous these people may be—should also be allowed to carry their guns in most public places. Or, even more modestly: *If* some people are allowed to own guns, then they should also be allowed to carry them in most places. Hence, appeals to safety may be decisive against particular policies, but it is implausible to suggest that safety *ipso facto* rules out gun carrying.

Returning to the point about safety, while the concern for safety is understandable, safety is not always sufficient to count as a legitimate reason to enact bans on certain activities, even if these activities pose a risk of harming third parties. As Hughes and

¹⁴ Also see Moody et al. (2013).

¹⁵ It is interesting to note, however, that when looking at gun ownership in general, most methodologically strong studies disconfirm the “more guns, more crime” thesis. Kleck (2015: 40) assessed 41 studies that found a causal relationship between guns and crime according to whether they accounted for three crucial methodological problems (valid measure of gun ownership, attempt to control for several statistically significant confounders, ruling out reverse causation). It was found that “most studies did not solve any of these problems, and that research that did a better job of addressing these problems was less likely to support the more-guns-cause-more crime hypothesis. Indeed, none of the studies that solved all three problems supported the hypothesis.” Similarly, Kates and Mauser (2007: 654), summarizing the findings of two government studies, reported that “[i]n 2004, the U.S. National Academy of Sciences released its evaluation from a review of 253 journal articles, 99 books, 43 government publications, and some original empirical research. It failed to identify any gun control that had reduced violent crime, suicide, or gun accidents. The same conclusion was reached in 2003 by the U.S. Centers for Disease Control’s review of then-extant studies.” It should be noted that the NRC conclusion was that there was insufficient evidence to make a definitive conclusion on the effectiveness *any* gun control measure, which perhaps highlights the complexity of the debate.

Hunt (2000) rightly note, in a liberal state the curtailment of rights in the name of safety is constrained by several factors. One of these is autonomy. It is easy to understand why the state restricts murder, rape, and theft: these activities involve rights-violations by their very nature. But activities that do not necessarily endanger others are a different story. Indeed, nearly every activity predictably creates some amount of risk that others will be harmed. In a liberal state, many of these activities are nevertheless tolerated even if these risks can be avoided by restricting the activity, and even if the risks outweigh the benefits. Unlike the paternalistic state, the liberal state is not a safety-maximizer.¹⁶ Upholding the value of personal autonomy is worth incurring some amount of risk. Thus, the state allows restaurants and bars to sell alcohol even though more stringent restrictions would plausibly reduce the number of harms caused by drinking and driving, and despite the fact that the value of human life is presumably orders of magnitude greater than the pleasurable benefits gained by imbibing.¹⁷ Similarly, it allows persons to own everyday household objects, even though restricting these objects might reduce otherwise preventable deaths, and even though their convenience benefits are relatively trivial when compared to the value of human life. Even when the state is concerned with reducing risk, the task of risk-minimization is largely left to private entities so as to be less intrusive upon personal autonomy.¹⁸ Thus, if the state is going to use its power to ban guns from being carried in a particular location because of the risk of harm they pose to third parties, this risk must be *significant*, especially given the enormous self-defense benefits that guns contribute.

But it does not seem to be the case that allowing gun carrying, even under very permissive “shall-issue” licensing systems, generates a significant risk to the public, where risk is understood to mean the likelihood of being harmed as a result of persons misusing their lawfully carried firearms. Using concealed carry license revocation data from Florida and Texas, the two leading states in terms of number of active licensees, Lott et al. (2014b) found that individuals licensed to carry concealed weapons are, in general, extremely law abiding. In Florida, where more than 2.6 million licenses have been issued since 1987, the annual firearms-related license revocation rate (that is, revocations stemming from the misuse of a firearm) is 0.003%, while the revocation rate for all violations is 0.012%. In Texas, where there are over 584,000 permit holders, the revocation rate in 2012 was 0.021%. To put these numbers in perspective, “the annual rate of such violations by police was at least 0.007 percent. That is about twice the 0.003 percent rate for permit holders in Florida.” Additionally, the “rate of all crimes committed by police is 0.124 percent – a number about 6 times higher than the rate for Texas and about 10 times higher than for Florida.”¹⁹ Statistically speaking, carrying a gun in public under a minimally regulated legal framework does not seem to be the kind of activity that imposes significant risks on third parties.

In light of these points, there is a very good case to be made that restrictions on gun carrying are counterproductive to public safety and that considerations of public safety

¹⁶ At least, it doesn’t use the state’s coercive power to advance every possible interest in safety.

¹⁷ According to the CDC’s “Alcohol and Your Health” fact sheet, over 88,000 deaths per year are alcohol-related. This number is more than 2.5 times the number of firearms-related deaths (33,000).

¹⁸ Another reason might be the liberal state’s commitment to a form of moral neutrality. Since restricting certain activities in the name of safety would involve endorsing some substantive conception of the good life over others, the liberal state is averse to paternalistic legislation.

¹⁹ Lott et al. (2014b: 4)

are not by themselves sufficient to meet the good reason requirement. Nevertheless, these points are not essential to my argument. Even if public safety does furnish a good reason to restrict gun carrying, there is still another more important condition that needs to be met before any restrictions can be justified.

3 The Special Duty of Protecting the Disarmed

If the state prohibits otherwise law-abiding citizens from carrying guns for self-protection, then it assumes a special duty of protecting its disarmed citizens in areas where these restrictions apply. This claim follows from the principle that one assumes a duty of special responsibility towards those whom he intentionally places in a position of dependency, vulnerability, or disadvantage. To take an obvious example, children are owed care by their parents in virtue of their parents having caused them to exist in a needy state.²⁰ Likewise, if I push you into deep water as part of a swimming lesson, then I owe it to you to make sure that you do not drown.

This is a basic principle of justice that applies equally to individuals and the state. It is recognized in law as part of the state's power of *parens patriae*, which allows the state to assume guardianship over those who are unable to protect themselves. It also forms part of the "state-created danger doctrine," which holds that the state bears a special responsibility to those whom it causes to exist in a state of danger. Finally, it is also reflected in the U. S. Constitution's Fifth Amendment guarantee that private property cannot be confiscated without "just compensation."

Suppose that Hannah is a law-abiding gun owner who wishes to carry a concealed firearm in public. If the state wishes to prohibit her from exercising her right to carry a gun into a particular location, then it assumes the responsibility of protecting Hannah should she venture into that location. This is because in entering a location where firearms are banned by the state, Hannah is required under threat of punishment to disarm herself, thus interfering with the reasonable exercise of her right to self-defense. This puts her into a position of greater vulnerability with respect to her safety. While Hannah may still have access to other means of self-defense, depriving her of a gun renders her more vulnerable because it significantly diminishes her ability to reasonably and effectively protect herself. Since it is the state who has deprived her of the exercise of her *prima facie* right to own and carry a gun, it assumes the responsibility of providing for her safety. If the state cannot meet this obligation, then Hannah's right to self-defense has been violated.²¹

One might object by noting that since the state already has the pre-existing obligation to protect the public-at-large, that it cannot be attributed a *special* duty to those whom it disarms. That is, in assuming the duty of protecting those whom it has disarmed, the state appears to add nothing over and beyond the general duty it already has to protect its citizens. Therefore, it has no obligation to provide the disarmed with special protection. According to the "public duty doctrine," which motivates this

²⁰ This is often pointed out by critics of Thomson's (1971) famous violinist argument in defense of abortion

²¹ Stell (2006: 279) nicely summarizes this point: "when the state disables a person from acting in her own interests, especially if it disables her from armed self-protection from bodily attack, the theory of *parens patriae* suggests that the state thereby incurs a fiduciary responsibility to provide what it has disabled the citizen from providing for herself."

objection, the state's obligation to protect the public is owed generally to the public-at-large, and not to any specific person or group of persons. The United States Supreme Court, relying on this understanding of the state's police powers, ruled in *Castle Rock v. Gonzales* (2005) and *DeShaney v. Winnebago County* that governmental entities could not be held responsible failing to protect individual persons.

All of this is compatible with the idea that the state has a special—in the sense of *heightened*—obligation to specific persons. While it is true that the state has a general obligation to the public at large, this obligation is modified when it intentionally acts so as to diminish the ability of citizens from exercising a reasonable and effective means of self-protection. By using the threat of legal sanction to coercively disarm those who would otherwise carry a gun for self-defense, the state bears direct responsibility for placing these persons in a disadvantageous position with respect to their self-protection. Hence those whom the state coercively disarms are owed a higher level of protection that is not normally enjoyed by others. The public duty doctrine holds only that the state's pro tanto obligation is toward the general public. It leaves open the existence of cases in which the state assumes a heightened obligation on account of some action on its part (a “state-created danger”), something that courts have affirmed.²²

This obligation is met when the disarmed are provided or allowed access to an equivalent standard of defense. Since the point of carrying a gun is to stop (and not merely to prevent) an unjust attack, an “equivalent standard” is something that is as effective as a gun in stopping an unjust attack. Here the state has two options. It may either provide disarmed citizens with protection in the form of armed security, or it can allow private possession of another weapon that parallels the effectiveness of a gun.

On this first point, the mere presence of an ordinary police force is clearly not enough to satisfy the protection requirement. Under the public duty doctrine just considered, courts have consistently ruled that the police are under no special obligation to provide protection to any individual. This fact alone is enough to show that the police cannot satisfy the protection requirement. But even if the police did have this duty, it is clearly incapable of meeting it. Police responses almost always come *after* a crime has been committed. According to data from the National Crime Victimization Survey, only 47.3% of all personal crimes in 2008 were even reported to police. Of these crimes, only 28% of police responses came within five minutes of reporting. 30.3% of responses occurred within six to ten minutes and 33.5% of responses occurred within *eleven minutes to one hour* of reporting.²³ Clearly, then, the police cannot play the same role as a gun when it comes to resisting attack. The only state apparatus capable of effectively intervening in the midst of a crime is one in which police or other law enforcement officials are present everywhere, something that is neither attainable nor desirable.

The second alternative is more fitting with the idea of a liberal democratic state, but it is unclear what, if any, means of self-defense can match the effective but reasonable benefits provided by firearms. Guns provide defensive advantages that knives, other melee devices, stun devices, and defensive spray cannot match. Unlike other weapons, guns require only a modicum of physical ability, can be deployed from a considerable distance, and can be quickly used multiple times. This is in addition to the benefits

²² See for example *Wood v. Ostrander*, 879 F.2d 583, 9th Cir. (1989).

²³ Bureau of Justice Statistics (2011: tables 91, 107).

provided by simply brandishing a gun, which, unlike brandishing other weapons, is more effective at generating compliance and warding off attack given the obvious differences in lethality.²⁴ These commonsense armchair claims are confirmed by the empirical data, on which there is widespread agreement that resistance with a gun is a very effective (if not the most effective) means of self-defense.²⁵ Consider the following:

- Kleck and Delone (1993): Out of eight different forms of robbery resistance, “victim gun use was the resistance strategy most strongly and consistently associated with successful outcomes for robbery victims.”
- Kleck (1997: 167–184): “Victim gun use is associated with lower rates of assault or robbery victim injury and lower rates of robbery completion than any other defensive action or doing nothing to exist. Serious predatory criminals perceive a risk from victim gun use that is roughly comparable to that of criminal justice system actions, and this perception may influence their criminal behavior in socially desirable ways.”
- Kleck and Kates (2001: 288–293): “The most effective form of self-protection is use of a gun” and “there does not appear to be any increase in injury risk due to defensive gun use.”
- Tark and Kleck (2004): Out of sixteen different forms of victim self-protection, “a variety of mostly forceful tactics, including resistance with a gun, appeared to have the strongest effects in reducing the risk of injury.”
- Southwick (2000): Men and women who resisted with a gun were less likely to be injured or lose property than those who resisted using some other means or who did not resist at all. In the case of women, “having a gun really does result in equalizing a woman with a man.” These findings were true regardless of whether criminals were armed and what they were armed with.
- Hart and Miethe (2009): Defensive gun use “is most often effective at helping the victim rather than hurting them.”
- Guerette and Santana (2010): Resistance with a gun decreased the odds of robbery and rape completion by 93% and 92%, respectively.

These facts strongly suggest that guns are perhaps the most effective means of forcefully resisting a crime. It is no wonder, then, why the gun has commonly been called the “great equalizer.”

²⁴ Lott (2010) reports that merely brandishing a gun is enough to break off a significant number of attacks. According to Kleck (1999: 297), “there were between 6300 and 15,300 reported nonfatal, legally permissible woundings of criminals by gun-armed civilians in 1990. Combining the defensive killings and nonfatal woundings, there are about 7700 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.”

²⁵ Leshner et al. (Leshner 2013: 16), writing on behalf of the Institute of Medicine and National Research Council, surveyed the literature and found 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.”

Needless to say, alternative defensive proposals for meeting the protection requirement are of dubious value. Requiring the state to provide protection involves a commitment to a view of the state that many are not keen on embracing (and one that is arguably unjust). And while it is possible that there might one day exist defensive weapons more effective than handguns, this technology does not currently exist. Aside from these two alternatives, there appears to be no other way in which the state can meet its duty of protecting those whom it has disarmed—unless, of course, it allows gun ownership.

One objection is that the argument I have given can apply to any kind of weapon, not just handguns. Hence, the state should also allow for the carry of fully automatic rifles, machine guns, grenade launchers, and flamethrowers, since these would ostensibly offer more benefits than handguns. But since it is absurd to allow the carrying of these weapons by private citizens, the same argument fails to justify the private carrying of handguns.

However, this does not mean that we cannot draw reasonable lines as to what weapons individuals should be allowed to use.²⁶ The response to a threat should be proportionate to the nature of the threat. Hence, whether a weapon qualifies as an appropriate means of self-defense will depend on the kind of threats that one can expect to encounter. On this point, fully automatic weapons, grenades, missiles, and flamethrowers are not required for self-defense given the sorts of criminal threats that face individuals in contemporary Western society. Home invasions, for example, are more appropriately dispatched by handguns, which, unlike military-grade weapons, are not prone to causing indiscriminate damage. A flamethrower or missile could perhaps stop a mugger, but the use of such weapons would be unreasonable given the excessive force involved—force that is not proportionate to the nature of threats that individuals are likely to encounter.²⁷ The likelihood of an person in contemporary America finding himself in a situation in which he must use a Patriot missile to defend himself is practically non-existent. Therefore, since military-grade weapons are not required for individuals in Western societies to reasonably exercise their right to self-defense, the state does no wrong in restricting their use by private citizens.²⁸

That said, since the type of appropriate weaponry that individuals may utilize depends on the kinds of risks that they are likely to encounter, there are situations in which individuals would be entitled to own, carry, and use military-grade weapons for their own self-protection. For instance, Christians in the Middle East living under the constant threat of attack by ISIS fighters are arguably entitled to the use of fully automatic weapons, explosives, and other heavy weapons for self-protection. If governments are not able to protect their citizens from foreign nations or other invading

²⁶ See Wheeler (1997), Baker (2015), and Bernstein et al. (2015) for further discussion on this point.

²⁷ Not to mention the technical expertise that is required in deploying such weapons, which would make them poor means of self-defense for the weak, elderly, and those similarly disadvantaged.

²⁸ Moreover, while the objection can be iterated forwards to encompass military-grade weapons, it can also be iterated backwards to rule out the carry of *any* kind of defensive weapon, including pepper spray, knives, handheld stun guns, and batons. This leaves recourse to one's hands and feet as the only way in which individuals can forcefully exercise their right to self-defense. This is both counterintuitive and morally problematic, since it leaves individuals without any way of equalizing physical and situational disparities commonly exploited in violent crimes.

bodies, then the same arguments I have given in favor of handgun carrying would extend to much stronger weapons.

It should now be clear why both (a) and (b) need to be met in order for a location-specific gun ban to be just. If the state satisfies (a) but not (b), then it has violated the self-defense rights of those whom it has disarmed by failing to provide them with an equivalent standard of self-protection. Conversely, if the state satisfies (b) but not (a), then it has violated the self-defense rights of those whom it has disarmed by needlessly restricting them.

One might object on the grounds that meeting (a) is sufficient for meeting (b). If restrictions do in fact make us safer, and given that safety is sufficient to meet (a), then doesn't this also mean that the state has fulfilled its special duty of protecting the disarmed?²⁹ Not so.³⁰ Suppose that Hannah, who is carrying a concealed handgun, unknowingly ventures into *L*, where *L* is a place in which the carrying of guns is prohibited by the state. Further suppose that the ban on guns in *L* is successful in increasing net safety within *L*. While in *L*, Hannah is accosted by a group of criminals intent on causing her grievous bodily harm. As she draws her handgun to defend herself, it is snatched away from her by the criminals. It is obvious that Hannah's right to defend herself has been seriously violated. What explains this violation is the fact that she was deprived of a reasonable means of defending herself, one to which she was entitled.³¹ But if we assume that her right to carry a gun for self-protection was defeated on account of the increase in net safety brought about by the handgun ban in *L*, then Hannah is wronged only insofar as her property rights are violated. But this is clearly mistaken. Even though the ban may have increased net safety, Hannah still retained her moral right to carry a handgun.

This is true regardless of who disarms Hannah. Tweaking the example slightly, suppose that an agent of the state (who we may assume is a police officer) happens to be present in the scenario. Upon encountering the criminals, Hannah draws her handgun, which is then quickly snatched away by the police officer. Since the ban has resulted in an increase in net safety, the officer reasons, he does Hannah no wrong in confiscating the weapon from her.³² I take it as obvious that Hannah's right to self-defense has been violated by the officer's action, even given that all things considered the weapons ban in *L* makes being in *L* safer than it would have been if weapons were allowed.³³ In disarming Hannah, the police officer is causally responsible for placing her into a situation of dependency and thus incurs a special duty of protection to her. If the officer refuses to further protect Hannah, then he has seriously wronged her; and at least one of the reasons why this is so will pertain to the fact that he prevented Hannah from defending herself, thereby violating her right to self-defense.

Even if there is no individual present to disarm Hannah, her right to carry a gun is still violated by the presence of a state edict barring guns from that particular location.

²⁹ Dixon (2011) makes a similar argument. Dixon argues that bans on handgun ownership do not violate the rights of the few, since they result in everyone being better off with respect to safety.

³⁰ The following thought experiments are motivated by Huemer (2003) and Hunt (2011).

³¹ On this, see Hunt (2011).

³² *Pace* a violation of property rights.

³³ Note the distinction between infringement and violation. Given the role of a police officer, the officer's act of disarming Jones was not, in itself, a violation of Jones' right to self-defense. If, however, the officer disarms Jones and refuses to protect him, then Jones' right to self-defense has been violated.

Suppose the state prohibits the carrying of weapons in L and imposes penalties such that those who carry a weapon in L face hefty fines and possible jail time. Hannah is aware of this, so she voluntarily disarms herself under the threat of sanction before entering L . In both this scenario and the one involving the police officer, the state has still coercively disarmed Hannah, whether it be through direct intervention or through the threat of criminal sanction. In disarming Hannah, the state greatly diminishes her ability to engage in effective self-protective actions. Since Hannah can no longer protect herself as effectively, and since the state is causally responsible for her being in this condition, the state assumes the special responsibility of ensuring an equivalent standard of protection. This responsibility can be met either through direct intervention by the state on Hannah's behalf, or simply by allowing Hannah to own a means of self-defense that is equivalent to the one that was taken from her (her gun). If the state cannot do this, then it has violated Hannah's right to self-defense.

Again, that those in L may be rendered safer as a result of the ban is irrelevant in meeting this requirement. Safety has to do with the likelihood that Hannah will be victimized, not with her ability to resist when she does come under attack, even if the chances of her facing an attack are reduced. While it is certainly *good* if the disarmed Hannah is safer than she otherwise would have been, this alone is not enough to meet (b). The state meets its duty of special protection only if it can provide a means of self-defense equivalent to the one that it has coercively taken away from her. In other words, the state must be able to take on the role that her gun is supposed to play, which is to provide her with a reasonable means of defense against attack. Meeting this condition will of course correlate with an increase in safety, but it is a mistake to frame the state's special duty to its disarmed citizens merely in terms of safety.

Taking stock of these points, we are left with two options. Either the state maintains a pervasive armed presence in areas where it chooses to disarm its citizens or it allows its citizens the liberty to carry guns. Since I take it that the former is unattractive even to most advocates of restrictive gun control, then it follows that the state must recognize the right of citizens to carry guns outside of the home. As Baker (2014: 242) nicely puts it,

Even in a state with a high functioning security apparatus the ordinary person's legitimate need to exercise self-defense is not zero (were that not the case self-defense would not be a meaningful legal defense). We could usefully picture each citizen ceding the right to use force to the state everywhere except within a thin time-space "bubble" around the citizen, where the precise size of that bubble is defined by the speed and effectiveness of the state's response to threats of violent harm. As the old saying goes, "when seconds count, the police are only minutes away": it is in those minutes that the citizen must, and may, exercise her right to self-defense personally. And it is in those vital minutes that the citizen must have the necessary means to effectively exercise that right.

Guns are carried for the purpose of self-protection within this bubble. This bubble exists only because the state's ability to protect its citizens is limited and imperfect. If it were able to provide perfect protection to its citizens, then this bubble would not exist, nor would there be any need for self-defense of any kind. Since this is obviously not the case, citizens must at times engage in self-protective actions. Since resistance with a

gun is a reasonable and very effective way of protecting oneself, there is a strong presumption in favor of allowing gun carrying by private citizens. If the state coercively disarms its citizens from carrying guns, then it assumes the responsibility of protecting them within this bubble, which it cannot do. Absent any equivalent weapon available to citizens and short of creating a police state, there is no way for the state to meet this extremely high burden of protection. All things considered, then, a general ban on carrying guns in public violates the right to self-defense.

McMahan (2015) argues that prisons provide a counterexample to the claim that the state must allow gun ownership when it cannot adequately protect its citizens. Since guards cannot always protect prisoners from unjust attack, it would seem as if the argument that I have given entails the conclusion that prisoners should be allowed to own guns. But since this is outrageous, there must be something wrong with the argument in favor of gun carrying.

There are several reasons to doubt the relevance of McMahan's comparison.³⁴

First, while prisoners do retain their moral right to self-defense, they have arguably forfeited the right to access certain means of self-defense, including firearms. Hence to say that prisoners do not have the right to own guns does not amount to a denial of their right to self-defense. Prisoners are incarcerated precisely because they have shown themselves to be untrustworthy or prone to violence, whereas this is not the case for most members of the general public. There is in other words a *presumption of maleficence* that overrides their *prima facie* rights to certain goods and activities, including their *prima facie* right to own a gun.³⁵

Second, prisoners are dependent on the state in a way that is significantly different from how a typical citizen is dependent on the state. As their incarceration suggests, prisoners forcefully delegate many of their rights to the state, which may then regulate them in a way that is similar to how parents oversee the rights of their children. Hence, while their rights are not forfeited *per se*, they lose much of the autonomy that most members of the public have in administering their own rights.

Third, the prison analogy only works because we have the intuition that prisoners are not the kind of people who can be trusted with firearms ownership (among other things) because the prison population is especially prone to violence. This intuition disappears once we realize that the general public are significantly different from those incarcerated in prison. So even if McMahan has a point, his prison analogy is not applicable to

³⁴ Also see Buchanan and Stell (2015).

³⁵ McMahan might respond by constructing a case where it would be unjust to deprive a prisoner of a gun (e.g. a prisoner is on the verge of being savagely beaten to death and can only defend himself by grabbing a gun). These cases, if they exist, they do not undercut my argument. A *presumption* of maleficence may be defeated, meaning that in extreme cases a prisoner may *temporarily gain* the right to use a gun when it becomes apparent that it is absolutely necessary for self-defense. Suppose an unwilling prisoner is caught in a murderous riot and can only save his life by utilizing a fallen guard's gun. In that scenario, the presumption of maleficence may reasonably be considered defeated, thereby granting the prisoner the right to take possession of a gun. This does not, however, mean that the prisoner will have *always* had this right, since without these extreme circumstances there would no reason to defeat the presumption of maleficence. Another implication of this response is that it provides a resolution to cases where (a) and (b) seemingly conflict. The state may justifiably prohibit felons and other dangerous possessors from owning firearms on the grounds that they have forfeited their right to own a gun. Since they no longer have this right, the state does not owe them a special duty of protection should it choose to prohibit them from owning firearms.

most cases of gun carrying by law-abiding citizens. The examples I have previously offered are more analogous, since they take place within a more representative context.

Another objection from Dixon (2011) and McMahan (2012) is that permissive gun laws themselves violate the rights of victims of gun crimes. According to this objection, a law that allows guns to be carried in public violates the physical security rights of gun crime victims in failing to remove guns that would otherwise have not harmed them. This attempts to turn the argument I have given against itself.

But there is an asymmetry that prevents the argument from being reversed in this direction. Bans on gun carrying violate the rights of gun owners in that the state fails to protect individuals for whom it has incurred a special responsibility of protecting. In other words, the violation consists not in the fact that the state has disarmed its citizens per se, but in the state's failure to meet its responsibility to those whom it has disarmed. This condition is not present in cases in which individuals are harmed by gun-wielding criminals, for the state has not done anything to interfere with their exercise of self-protection.³⁶ Unlike disarmed gun owners, who are prevented from exercising a certain kind of self-protection, victim of gun crime under permissive gun laws are not handicapped with respect to the kind of self-protection they are able to exercise. Hence there is no special duty of protection owed to victims of gun crime that would be violated in a state with permissive gun laws. Permissive gun laws may, we suppose, increase the *risk* of certain persons falling victim to gun crimes (and thus decrease their safety), but this is distinct from interfering with the exercise of self-protective actions. As we have seen, a mere interest in safety is not sufficient to enact gun control measures. Just because the state can improve safety by mandating some course of action does not mean that it violates citizens' rights to physical security if it chooses not to do so.³⁷ The extent to which the state may improve general safety is constrained by the fundamental rights of its citizens, of which includes the right to self-defense.³⁸

³⁶ Dixon (2011: 164) anticipates a response along these lines, but his reply is not applicable to my response here. My response is not phrased in terms of the act-omission distinction per se, but simply in terms of whether or not the state has a special duty that is being neglected.

³⁷ Baker (2014: 246) notes that "[w]hile securing the safety of those under its care is, as Dixon correctly points out, a general responsibility for the state, this responsibility is constrained by the greater responsibility of not violating the fundamental rights of its citizens. There are all sorts of ways that the state could make us safer that are simply inappropriate – for example, the state could enforce a daily exercise routine, or dictate a strict and healthy diet, or ban the private ownership and operation of motor vehicles, or monitor all of our conversations. It is no omission that the state does not do so."

³⁸ McMahan and DeGrazia also argue that the right of self-defense is derived from the more basic right to physical security, and that therefore reducing the amount of gun-related harms takes precedence to self-defense. This is mistaken. As Baker (2014: 239–40) points out, our possession of the right to self-defense is not explained by the fact that resistance increases our average safety. Rather, our right to forcefully resist unjust attacks is a basic dignity that is directly rooted in our right to life. Our right to defend ourselves is unremitting and not subject to a "likelihood of success" condition. This explains why it is permissible to a victim to resist an attack even if doing so would be futile. Moreover, the rights to security against attack and self-defense are independent rights that are both derived from the basic right to life, and so neither right is ranked more important than the other. While their source is the same, their content is different. Instead, they complement each other by providing distinct protections due to their being different types of rights (the former being a claim-right and the latter being a liberty-right). The right to security against attack obligates others to respect our right to life, while the right to self-defense empowers us with the ability to forcefully resist when someone infringes on our right to life.

4 Specific Applications

In light of the argument just considered, we can conclude that a general ban on carrying guns in public areas is unjust. But what about bans in specific areas? Earlier it was argued that in order for the state to meet its duty of special protection to those whom it has disarmed, it must provide them with an equivalent means of self-defense in situations where the need arises. In the real-world, this translates to an extremely demanding requirement: the state must provide a pervasive armed presence in areas where it coercively disarms its citizens.

It is beyond the scope of this paper to give a detailed treatment of every location in which gun bans are justified or unjustified, but it is useful to discuss one example that has received attention as of late: college and university campuses.

Most college campuses are very large places. This makes it quite difficult to maintain an effective armed presence throughout the campus. Even though many colleges and universities maintain their own dedicated police departments, they lack the manpower to maintain a constant police presence throughout their campuses. Given the scarcity of police protection considered in relation to the large areas they must protect, the state cannot adequately meet its special duty of protection. As such, qualified students, staff, and faculty should be allowed to carry guns on college and university campuses.

In defense of campus carry bans, it is sometimes pointed out that college campuses are already much safer than many other places.³⁹ Even if this is true, it is quite irrelevant. As we already have seen, the mere fact that a location is already safe (or that it would be safer with a carry ban) is not sufficient to justify a ban on gun carrying.⁴⁰ So long as the government coercively interferes with an individual's ability to effectively protect himself, it incurs a special protective duty. If this duty cannot be met, then it is violating the right to self-defense.

Another objection is that allowing weapons on campus harms education by generating a chilling effect on free speech. Since one's interlocutors might be carrying a weapon, students and faculty might be more reticent to express contrary points of view, which in turn impedes the goal of education.⁴¹

As an empirical claim, I regard this as extremely dubious. It resembles the sensationalist claims made by many that there would be bloody Wild West-style shootouts on the streets if right-to-carry laws were passed. These fears never materialized. There simply is no evidence showing that allowing campus carry would diminish academic freedom. No such effect has been reported in the several states in which campus carry is already legal. And even if this is a reason for which to enact restrictions on gun carrying, it is not decisive. Again, the state may enact a gun ban on the basis of a

³⁹ See Dieterle and Koolage (2014).

⁴⁰ It is not clear that allowing concealed weapons on campus would increase crime. Examining recent data on both violent and nonviolent crimes rates from college campuses in Colorado and Utah (two states in which campus carry is legal), Heyter et al. (2014) found "no evidence that allowing concealed carry of firearms makes campuses less safe." Indeed, they found "weak evidence of an inverse relationship between campus right-to-carry and the aggravated assault rates on the campuses allowing right-to-carry."

⁴¹ Dieterle and Koolage (2014: 134). "First and foremost, a college campus is a marketplace of ideas. This market is threatened when some are inclined to pay respect to the armed, rather than test ideas, engage in reasoned exchanges of conflicting thoughts, and explore the world in ways that some might be inclined to find displeasing."

good reason only if it provides or permits access to an equivalent means of self-defense. If this condition cannot be met, then a ban on campus carry is fundamentally unjust, even if enacting a ban would enhance the quality of academic discussion.

Earlier it was pointed out that those who carry concealed weapons tend to be extremely law-abiding. If this is true, then there is no good reason to fear those who are armed for self-protection. While the possibility that one's interlocutors may be armed may create fear and paranoia in some people, these fears are unfounded and promote a mistaken perception of gun carriers.

Indeed, the exact opposite may very well be true: In the same way that a police presence might lead to a greater perception of safety, many individuals may feel safer knowing that licensed students and faculty are carrying weapons for self-defense.

Many opponents of campus carry argue that college age students are more prone to excessive alcohol consumption and other reckless behavior. While this may be true when considering college students in general, this does not take into account the fact that license holders as a class tend to be more law-abiding than non-license holders across all age groups.⁴² The common stereotype of college students as reckless party animals simply does not apply to those subset of students who are licensed to carry concealed weapons.

Another argument is that if students and faculty are allowed to carry weapons on campus, then police officers responding to a mass shooting or crime will have difficulty distinguishing the "good guys" from the "bad guys." But this objection goes too far, as it applies to *any* situation in which the police encounter a victim who is successfully resisting an attack.⁴³ If the mere possibility of mistaken identity is enough to justify a ban on campus gun carrying, then it would also justify a ban on *any* kind of forceful self-protective measure. Simply because the police may have difficulty distinguishing aggressors and victims does not mean that victims forfeit their right to self-defense.

Indeed, it is absurd to think that one forfeits the right to defend his life simply by entering a classroom. The right of self-defense is essential to our very dignity as human beings. Although we may sometimes cede this task to others, it can never be forfeited completely. Even in the most secure college campus, the police response to an active shooter almost always comes after the shooting has concluded or after the shooter has been able to wreak havoc on defenseless victims. Until the police arrive, it is up to students and faculty to defend their own lives. And they cannot do this without a reasonable and effective means of self-defense. It seems, then, that bans on campus carry violate the right to self-defense.

While college campuses do not satisfy (a) and (b), there are some locations that do qualify as justified gun-free zones. Courthouses in which metal detectors and bailiffs are present, as well as airplane cabins and the sterile sections of airport terminals meet the criteria that I have sketched. The combination of access control, entrance screening, surveillance, and a dedicated ever-present security force can provide the sort of round-the-clock presence needed to protect those whom the state intentionally disarms. But while these security measures may be effective, they are difficult to establish in most public places. And for those with privacy concerns, such measures—even if they could be implemented— would be a step too far.

⁴² Lott et al. (2014a; b).

⁴³ Kopel (2009: 560)

5 Conclusion

I have argued in this paper that those who have the right to own guns for self-protection also have the right to carry them. If the state wishes to restrict this right in a particular location for the purpose of public safety, then it assumes a special duty of protecting those whom it forces to disarm. This duty can be met either by providing those whom it coercively disarms with protection or by allowing them to wield a means of self-defense equivalent to a gun. Since the former is undesirable and impractical and the latter non-existent, the state must allow the private carrying of guns for self-defense in most public places.

We may now answer the question that I raised in the beginning of the first section: in forbidding its citizens from carrying concealed firearms in public, the state of Texas violated Suzanna Hupp's right to self-defense. But her experience did not end on that tragic note. Due in part to her subsequent activism and testimony before the state legislature, Texas legalized concealed carry four years later.

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