



Guns, Fear, the Constitution, and the Public's Health

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It is 1992, and schoolmates Yoshihiro Hattori and Webb Haymaker have been invited to a Halloween party. Yoshi, a 16-year-old exchange student and avid dancer, wears a white tuxedo like John

Travolta's in *Saturday Night Fever*. By mistake, they stop at a house up the block from their destination. No one answers the doorbell.

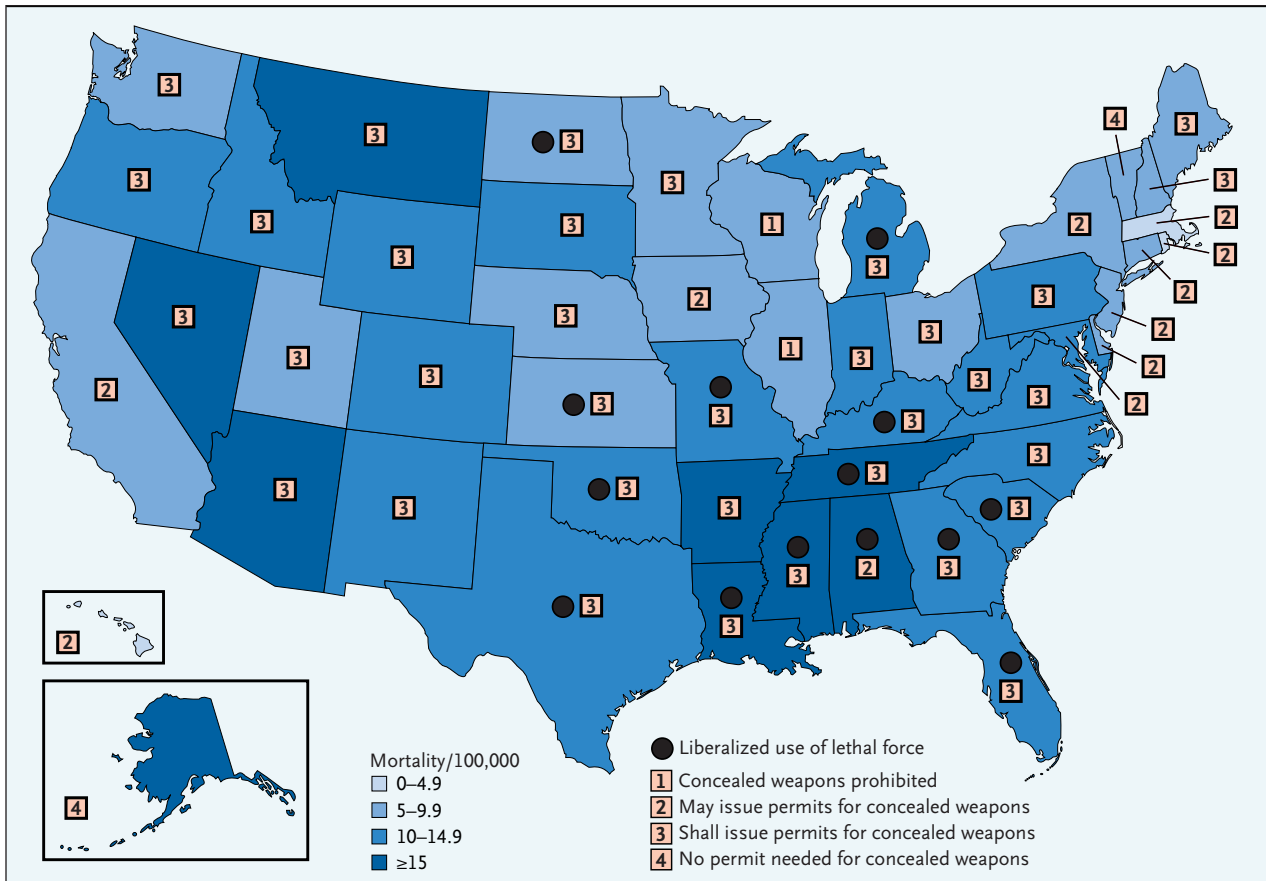
Inside are Rodney and Bonnie Peairs. She opens a side door momentarily, sees the boys, and yells to her husband, "Get the gun." He does (it is a .44 magnum Smith & Wesson revolver) and reopens the door. Yoshi and Webb, by now back at the sidewalk, start to return. Yoshi exclaims, "We're here for the party!"

"Freeze!" responds Peairs. Yoshi does not understand the idiom. He approaches the house, repeating his statement about the party. Peairs shoots him once in the chest. Thirty minutes later, Yoshi dies in an ambulance. Bonnie

Peairs would later testify, "There was no thinking involved."

Many health care professionals read of such cases without surprise, grimly recognizing in them the familiar picture of gun violence in the United States. That picture also includes the dozens killed and wounded this past year in a terrible series of mass-casualty shootings at educational institutions, shopping malls, places of business, and places of worship, beginning last April 16 at Virginia Tech (33 dead) and ending, for the moment, at a Wendy's restaurant in West Palm Beach, Florida. Many of these innocent people were shot with guns that had been purchased recently and legally.

In 2005, in this country, 30,694 people died from gunshot wounds; 17,002 cases were suicides, 12,352 were homicides, and 1340 were accidental, police-related, or of undetermined intent. Nearly 70,000 more people received treatment for nonfatal wounds in U.S. emergency departments. The disheartening 30% case fatality rate is 18 times that for injuries to motorcyclists. More than 80% of gun-related deaths are pronounced at the scene or in the emergency department; the wounds are simply not survivable. This reality is reflected in the fact that the \$2 billion annual costs of medical care for the victims of gun violence are dwarfed by an estimated overall economic burden, including both material and intangible costs, of \$100 billion.¹ It's unlikely that health care professionals will soon prevent a greater proportion of shooting victims from dying; rather, we as a society must prevent



State-Specific Firearm-Related Mortality per 100,000 Persons (2005) and Current Policies Regarding Expanded Use of Lethal Force and Permissibility of Carrying Concealed Weapons.

Data are from the Centers for Disease Control and Prevention, the National Rifle Association, and the Brady Campaign to Prevent Gun Violence. An interactive version of this map is available with the full text of this article at www.nejm.org.

shootings from occurring in the first place.

Gun violence is often an unintended consequence of gun ownership. Americans have purchased millions of guns, predominantly handguns, believing that having a gun at home makes them safer. In fact, handgun purchasers substantially increase their risk of a violent death. This increase begins the moment the gun is acquired — suicide is the leading cause of death among handgun owners in the first year after purchase — and lasts for years.

The risks associated with household exposure to guns apply not only to the person who buy

them; epidemiologically, there can be said to be “passive” gun owners who are analogous to passive smokers. Living in a home where there are guns increases the risk of homicide by 40 to 170% and the risk of suicide by 90 to 460%. Young people who commit suicide with a gun usually use a weapon kept at home, and among women in shelters for victims of domestic violence, two thirds of those who come from homes with guns have had those guns used against them.

Legislatures have misguidedly enacted a radical deregulation of gun use in the community (see map). Thirty-five states issue a

concealed-weapon permit to anyone who requests one and can legally own guns; two states have dispensed with permits altogether. Since 2005, a total of 14 states have adopted statutes that expand the range of places where people may use guns against others, eliminate any duty to retreat if possible before shooting, and grant shooters immunity from prosecution, sometimes even for injuries to bystanders.

Such policies are founded on myths. One is that increasing gun ownership decreases crime rates — a position that has been discredited.² Gun ownership and gun violence rise and fall together.



Another myth is that defensive gun use is very common. The most widely quoted estimate, 2.5 million occurrences a year, is too high by a factor of 10.³

Policies limiting gun ownership and use have positive effects, whether those limits affect high-risk guns such as assault weapons or Saturday night specials, high-risk persons such as those who have been convicted of violent misdemeanors, or high-risk venues such as gun shows. New York and Chicago, which have long restricted handgun ownership and use, had fewer homicides in 2007 than at any other time since the early 1960s. Conversely, policies that encourage the use of guns have been ineffective in deterring violence. Permissive policies regarding carrying guns have not reduced crime rates, and permissive states generally have higher rates of gun-related deaths than others do (see map).

In 1976, Washington, D.C., took action that was consistent with such evidence. Having previously required that guns be registered, the District prohibited further registration of handguns, outlawed the carrying of concealed guns, and required that guns kept at

home be unloaded and either disassembled or locked.

These laws worked. Careful analysis linked them to reductions of 25% in gun homicide and 23% in gun suicide, with no parallel decrease (or compensatory increase) in homicide and suicide by other methods and no similar changes in nearby Maryland or Virginia.⁴ Homicides rebounded in the late 1980s with the advent of “crack” cocaine, but today the District’s gun-suicide rate is lower than that of any state.

In 2003, six District residents filed a federal lawsuit alleging that the statutes violated the Second Amendment of the Constitution, which 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.” The case was dismissed, but in March 2007, a divided panel of the D.C. Circuit Court of Appeals reversed the dismissal, finding “that the Second Amendment protects an individual right to keep and bear arms,” subject to “permissible form[s] of regulatory limitation,” as are the freedoms of speech and of the press.⁵ The District appealed, and on March 18, 2008, the Su-

preme Court heard oral arguments in the case of *District of Columbia v. Heller*.

The Court is considering whether the statutes “violate the Second Amendment rights of individuals who are not affiliated with any state-regulated militia, but who wish to keep handguns and other guns for private use in their homes.” It will first need to decide whether such rights exist. The District argues, on the basis of the history of the Bill of Rights and judicial precedent, that the Amendment guarantees a right to bear arms only in the service of a well-regulated state militia (which was once considered a vital counterweight to a standing federal army). It argues secondarily that should the Court extend Second Amendment rights to include the possession of guns for private purposes, the statutes remain valid as reasonable limitations of those rights.

No one predicts that a constitutionally protected right to use guns for private purposes, once it’s been determined to exist, will remain confined to guns kept at home. Pro-gun organizations have worked effectively at the state level to expand the right to use

guns in public, and all but three states generally prohibit local regulation. If people have broadly applicable gun rights under the Constitution, all laws limiting those rights — and criminal convictions based on those laws — will be subject to judicial review. Policymakers will avoid setting other limitations, knowing that court challenges will follow.

Consider Yoshi Hattori's death in light of *District of Columbia v. Heller*. Rodney Peairs was tried for manslaughter. His lawyer summarized Peairs's defense as follows: "You have the legal right to answer everybody that comes to your door with a gun." A Louisiana jury acquitted him af-

ter 3 hours' deliberation. That state's laws now justify homicide under many circumstances, including compelling an intruder to leave a dwelling or place of business, and provide immunity from civil lawsuits in such cases. Thirteen other states have followed suit.

A Supreme Court decision broadening gun rights and overturning the D.C. statutes would be widely viewed as upholding such policies. By promoting our sense of entitlement to gun use against one another, it could weaken the framework of ordered liberty that makes civil society possible.

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1. Cook PJ, Ludwig JL. Gun violence: the real costs. Oxford, England: Oxford University Press, 2000.
2. Wellford CF, Pepper JV, Petrie CV, eds. Firearms and violence: a critical review. Washington, DC: National Academies Press, 2004.
3. Hemenway D. Survey research and self-defense gun use: an explanation of extreme overestimates. *J Crim Law Criminol* 1997;87: 1430-45.
4. Loftin C, McDowall D, Wiersema B, Cottey TJ. Effects of restrictive licensing of handguns on homicide and suicide in the District of Columbia. *N Engl J Med* 1991;325:1615-20.
5. *Parker v. District of Columbia*, 478 F.3d 370 (D.C. Cir. 2007).

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Interpreting the Right to Bear Arms — Gun Regulation and Constitutional Law

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On March 18, 2008, the U.S. Supreme Court heard oral arguments in *District of Columbia v. Heller*, a case challenging handgun-control statutes adopted in 1976 in Washington, D.C. The question before the Court is whether the District's prohibition of further registration of handguns, its ban on the carrying of concealed guns, and its mandate that guns kept in homes remain unloaded and either locked or disassembled violate citizens' rights that are guaranteed by the Second Amendment of the Constitution.

What we do about handguns is of course a question of public policy. Because of the Second

Amendment, it is also a question of constitutional law. And the point of constitutional law is to make it difficult for us to adopt some policies that seem to us to be good ones at the moment. The Supreme Court's upcoming decision in *District of Columbia v. Heller* dramatizes the tension between public policy and the Constitution.

The Second Amendment says that "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." Partisans on both sides think that the Amendment's meaning is clear. According to gun-control advo-

cates, the opening reference to a militia means that the right protected in the second clause is necessarily limited to keeping and bearing arms in connection with service in an organized militia. According to gun-rights advocates, the second part of the Amendment protects an individual right, no different in kind from the right of free speech protected by the First Amendment.

In fact, interpreting the Second Amendment is a genuinely difficult task, precisely because we have to determine the relation between the first clause, sometimes called the Amendment's preamble, and the second, sometimes called its operative clause. The