

Gun Control Policies And The Right To Bear Arms In America: A Utilitarian Perspective

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ABSTRACT

The purpose of this study is to utilize Bentham's Utilitarianism model to explain gun control policies and the right to bear arms in the United States of America. Meanwhile the literature and available evidence from mass shooting revealed that gun control advocates and gun rights advocate alike appear to be firmly rooted in their respective positions. Perhaps the quintessential question is this – Who's right and who's wrong. In an attempt to answer the question above, the researcher utilized the narrative research approach and the application of Utilitarian principles to explain the gun control policies, and gun rights of citizens to inform criminal justice reforms. It is evidenced in this study that in many ways, Bentham and his successors' writings, discussions and arguments for the application of the principle of utility can be felt in contemporary society, like the USA when it comes to issues like gun control. The United States is a Representative Republic and though not direct but a form of democracy. The study revealed that even though, the structure of the U.S. government is such that certain levels of accountability or checks and balances are in place to hold those in authority of governance accountable, but the system have failed to adequately enact and enforce laws to control the issues of homicides, and gun control to protect the lives of citizens. This finding aligns with Bentham's proposition in the literature that those who hold the "operative power" in government, administration, and judiciary are, like everyone else, motivated by personal interest but not for the greater good. Therefore, this study recommend that it is imperative to devise mechanisms that will ensure that only by acting in the public interest could they promote their own interests.

KEYWORDS: Utilitarian, gun control, gun rights, policy, firearms, assault rifles, Second Amendment.

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INTRODUCTION

Today's media, albeit the mainstream news such as (print, television or magazines), social media, and just to mention a few, appears to be inundated with reports regarding incidents of gun violence. According to Cummings and Jansen (2017), Recent mass shootings which occurred in the following areas, Uvalde, Texas; Buffalo, New York have called for the public and policymakers attention to look into criminal justice reforms. More specifically, the following mass shootings incidences that occurred in the Texas church shooting, Las Vegas concert shooting, Orlando night club shooting, and Sandy Hook Elementary school shooting in 2012 (Cummings and Janson, 2017), seems to suggest an uptick in fatalities resulting from the use of assault rifles for which policymakers, and law enforcement officers' attention have been drawn to the enactment and enforcement of gun control laws. From the period of 1993 – 2011, firearm (gun)¹ violence accounted for about 70% of all homicides in the United States (Planty and Truman, 2013). "From 2009-2016 in the U.S., there have been 156 mass shootings—incidents in which four or more people were shot and killed, not including the shooter" (Mass Shootings in the United States: 2009 - 2016, 2017). According to Gun Violence Archive (2022), in 2021, through August 2022, the United States recorded over 692 mass shootings that occurred in neighborhoods,

¹ Firearms and guns will be used often in this paper and therefore may be used, interchangeably.

supermarkets, and churches, just to mention a few. It was not surprising therefore that Congress in the early part of 2022 passed a gun bill into law, marking what is believed to be the most significant in several decades (Cochrane & Kanno-Youngs, 2022). Nevertheless, some believe the law still falls short, since many states have their own gun ownership policies that may align or contract the national law. Surprisingly, despite the new law and the alarming statistics cited above, continuing debate regarding gun control and gun rights policies in the U.S still remains. Firearms or guns have been a part of the fabric of American society from its inception. However, some question the utility of certain¹ firearms and therefore question the right of citizens to possess such firearms. The big question that this study tried to answer is the fact that whether the right of individuals to keep and bear arms, regardless of type, is for the greater good of society or not? Thus, the goal of this paper is first, to provide a brief overview of the foundations and origin of Utilitarianism. It will explore the effect and impact of Jeremy Bentham's Utilitarian philosophy and principles in light of contemporary gun laws and policies, particularly in American society. Next, an analysis of how the "Right to Bear Arms" clause of the Second Amendment, has impacted the ongoing debate regarding gun control laws. Further, this paper will review some of the current laws (and/or policies) in the U.S regarding firearm use and/or possession to inform policy. Finally, this paper will conclude with a discussion on a philosophical question: What is the *Greater Good* as it relates to gun control vs gun rights in American society?

A BRIEF OVERVIEW OF THE FOUNDATIONS AND ORIGIN OF UTILITARIANISM

Origins of Utilitarianism

According to Nathanson (2017), utilitarianism is one of the best known and most influential moral theories. Nathanson (2017) and Crimmins (2017) concurrently argued in the literature that the earlier moralists had enunciated several of the core ideas and characteristic terminology of utilitarian philosophy, most notably John Gay, Francis Hutcheson, David Hume, Claude-Adrien Helvétius and Cesare Beccaria. Meanwhile, Martin (1996) explained to readers that the origins of the concept of Utilitarianism is most often linked to the work of Jeremy Bentham, an eighteenth-century philosopher. He further argued that Bentham, who lived between (1748 and 1832) was an eccentric 18th century genius and was acknowledged as the leader of the philosophical radicals² (Martin, 1996). Bentham's most widely known book is his *Principle of Morals and Legislation* which sets forth the main assumptions of his outlook, that is, "Nature has placed mankind under the governance of two

¹ Certain firearms pertain to AK 47s which are Russian made and AR 15s which, involving more recent incidents, have become the popular gun of choice for mass killers are American made (Janson and Cummings, 2017).

² Philosophical radicals included other notable philosophers such as John Mill and his most famous son, John Stuart Mill.

sovereign masters, *pain and pleasure...*” (Bentham, 1780, p. 56).¹ These two masters control or determine to a greater extent what is right or wrong. Thus, right and wrong is judged by the utility of pain and pleasure, according to Bentham (1780). In other words, the extent to which pleasure is gained and pain is avoided both individually and collectively as a group or society, determines right or wrong (Bentham, 1789). Bentham's moral philosophy reflects what he calls at different times "the greatest happiness principle" or "the principle of utility"—a term which he borrows from Hume (Sweet, n.d.). To further expound on his philosophy, Bentham went lengths to explain the degree to which people value pleasure and pain. Though Bentham did not use this terminology, the calculus he devised—commonly known as the “felicific calculus”—describes the elements or dimensions of the value of a pain or pleasure. To an individual the value of a pain or pleasure will be more or less according to its “intensity”, “duration”, “certainty or uncertainty”, and its “propinquity or remoteness” (Crimmins, 2017). Bentham’s genius afforded him the capacity to expand the doctrine of utility to cover an array of subjects such as human nature², criminal justice, economics, law, philosophy, political science, public administration, public policy, social welfare and sociology (Martin, 1996). For instance, on the issue of criminal justice, Bentham propounded that offences must be classified solely on the basis of the harm perpetrated, and there must be an appropriate proportion between crimes and punishments (Crimmins, 2017). On social welfare, Bentham essentially rejects the distinction between deserving and undeserving, since he sees character as socially produced. For Bentham, the poor are already shaped (or damagingly unshaped) by the less controlled--less well-managed--environment outside his system³ (Stokes, 2001). Bentham, a lawyer by trade, didn’t practice but held strong criticism of the law and moved for reform. He saw the English and Roman law as “Fiction”⁴. Bentham declares that fiction is a wart which here and there deforms the face of justice (Stone, 1985). On government and political science, Bentham believed that utilitarian outcomes required various democratic procedures that function as “securities against misrule”. These procedures include: “virtual” universal suffrage, annual parliaments, the secret ballot, and provisions for transparency, publicity and unconstrained public debate

¹ Principles of Morals and Legislation (was printed in 1780 and published in 1789).

² Bentham believed that human behavior can be explained by reference to the two primary motives of pleasure and pain; this is the theory of psychological hedonism

³ Bentham’s representation of the poor here is believed to have a strong connection to the Victorian Workhouse alongside the literary works of Charles Dickens. This emphasis on the poor is also noted with the eventual passing of the Poor Law Amendment Act of 1834.

⁴ Fiction in the old Roman law, is properly a term of pleading. The object of the fictions was to give jurisdiction. Henry Maine, *Ancient Law: Its Connections with the Early History of Society and Its Relation to Modern Ideas*, intro. And notes by Sir Frederick Pollok (London: Murry, 1906), p. 30 (although it should be pointed out that jurisdiction may have been unwarranted to the particular plaintiff claiming such jurisdiction).

(Crimmins, 2017). These are a few among many areas that Bentham wrote and argued during his lifetime, some of which has transcended into future generations.

Act or Rule Utilitarianism

In the 5th chapter of Mills' book "Utilitarianism" he wrote the following; "We do not call anything wrong, unless we mean to imply that a person ought to be punished in some way or other for doing it; if not by law, by the opinion of his fellow-creatures; if not by opinion, by the reproaches of his own conscience" (Miller, 2017). The debate over whether it is morally right to allow citizens to keep and bear assault weapons may arguably be a subject of Mills' Act Utility or Rule Utility. Act utilitarianism is based on the notion that an action is right in the degree of its consequences. On the other hand, rule utilitarianism is based on the belief that an action is right if the rule that is followed brings about the most good. "The key difference between act and rule utilitarianism is that act utilitarians apply the utilitarian principle directly to the evaluation of individual actions while rule utilitarians apply the utilitarian principle directly to the evaluation of rules and then evaluate individual actions by seeing if they obey or disobey those rules whose acceptance will produce the most utility" (Nathanson, 2017). One objection to rule-utilitarianism is that in some situations the utility of breaking a certain rule could be greater than keeping it (Prevos, 2004). On the other hand, one advantage of act utilitarianism is that it shows how moral questions can have objectively true answers...Once we embrace the act utilitarian perspective, then every decision about how we should act will depend on the actual or foreseeable consequences of the available options. If we can predict the amount of utility/good results that will be produced by various possible actions, then we can know which ones are right or wrong (Nathanson, 2017). Gun control advocates¹ may then argue that there can be relatively foreseeable consequences with allowing citizens the right to possess military type weapons, i.e., assault weapons. For quite some time in America, possession of certain types of weapons were not allowed². This is not say that all gun control advocates are act utilitarians and that all gun rights advocates³ are rule utilitarians. However, an argument can be made that most gun control laws are act or consequence based where most gun rights policy are rule utilitarian based, particularly if the rule is that gun ownership and possession is necessary for self-preservation.

¹ Gun control advocates refers to individuals or groups that support regulation of the selling, owning and use of guns.

² In *U.S. v. Miller*, 307 U.S. 374 (1939), the U.S. Supreme court upheld The National Firearms Act that restricted, among other things, the use and/or possession of shotguns with barrels less than 18 inches long, without first being registered

³ Gun rights advocates refer to individuals or groups that opposes restrictions on or regulation of the selling, owning and use of guns.

Consequentialism Ethics

Consequentialism, as its name suggests, is the view that normative properties depend only on consequences (Sinnott-Armstrong, 2015). In other words, what is normal in society, thereby the right thing to do or the wrong thing to do, is based on the consequences produced by the thing done. “For instance, most people would agree that lying is wrong. But if telling a lie would help save a person’s life, consequentialism says it’s the right thing to do” (Consequentialism, 2017). Perhaps the most prominent example of consequentialism is about the moral rightness of acts, which holds that whether an act is morally right depends only on the consequences of that act or of something related to that act, such as the motive behind the act or a general rule requiring acts of the same kind (Sinnott-Armstrong, 2015). Historically and in modern times, gun possession and use has been an American pastime for various reasons. Hence, it may be argued that although it is not a requirement, firearms possession has long since become the norm, embedded in the fabric of American culture and by implication, tantamount to a general rule requiring an act of the same kind.

THE SECOND AMENDMENT TO THE UNITED STATES CONSTITUTION

Brief Origin and History

The Second (2nd) Amendment of the United States Constitution states, 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” (Second Amendment, 1992-2017).

The 2nd Amendment was made a part of the Bill of Rights to in large part, protect the people from any potential abuse of power of the Federal Government. It was expanded and made applicable to the states pursuant to the incorporation doctrine of the Fourteenth Amendment. Prior to its inclusion into the U.S. Constitution, the Second Amendment is rooted in multiple sources: English law; America's revolutionary experience; and contemporary European political thought. In short, the basic idea was that people have a right to defend themselves against tyranny; (World, 2017). In 1680s England, the Protestants were persecuted by King James II. In a perceived attempt to convert them to Catholicism, one of his key strategies was to disarm them. After King James was overthrown, England adopted a Bill of Rights. One of the “ancient” rights that it enumerated was the right to keep and bear arms (World, 2017). There has been a long-standing legal debate regarding whether the right to bear arms contained within the 2nd Amendment is an individual right or one preserved for a militia. A militia refers to

“A group of private citizens who train for military duty in order to be ready to defend their state or country in times of emergency (Militia, n.d.).¹” Article 1 section 8 of the U.S. Constitution arguably, provides some insight into the founding fathers’ intent or position on the formation of a military, from the inception of the structure of the federal government, as it reads in pertinent part:

“To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years; To provide and maintain a Navy; To make Rules for the Government and Regulation of the land and naval Forces; To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;” (Mount, 2010).

The argument can be made here that the last clause listed above, providing some of the powers of congress, clearly defined the duties of a Militia whenever Congress see it necessary to call upon one. Therefore, it appears implicit in the language, that Congress intended to grant rights to bear arms to a well-regulated Militia, absent of an individual right to bear arms. However, one may also look to the roots of the debate regarding the inclusion of the 2nd Amendment and the thinking of the framers regarding individual rights to bear arms versus collective rights to bear arms (Cornell, 2006).² In 1790, President George Washington admonished members of the House of Representatives that “a free people ought not only to be armed, but disciplined” (Halbrook, (Washington), 2008). Several members of Congress doubted that every man should be a member of the active militia, but there was a consensus that every man be armed (Halbrook, 2008). Representative Thomas Fitzsimons of Pennsylvania stated “As far as the whole body of the people are necessary to the general defence, they ought to be armed.

The notion of the right to bear arms in the minds of several members of Congress makes it evident that at least some, if not all, intended for (men³) to have the right to bear arms. Further insight may be deduced from the statements of Representative James Jackson of Georgia, who was attributed the following words, “the people of America would be highly displeased at being debarred the privilege of carrying arms.” He urged: “’tis our duty to prepare against contingencies, and to provide the means for every man to protect himself as well against tyranny and usurpation, as against assault and invasion (Halbrook, (Jackson), 2008).” While gun control and gun rights advocates have continued the 2nd Amendment debate since the first Continental Congress debates over 200 years ago, the U.S. Supreme court have not been highly active over the years. However, there are few of seminal cases that this paper would be remiss without discussing at this juncture.

¹ A militia is distinct from regular military forces, which are units of professional soldiers maintained both in war and peace by the federal government (Militia, n.d.).

² Collective rights are modern terminology sometimes associated with gun control advocates’ reference to the rights granted to citizens, by the well-regulated militia clause of the 2nd Amendment.

³ During this time (1790s), men refer to able bodied white men, since the second amendment was enacted prior to Civil War and the subsequent abolishment of slavery.

Landmark cases and the U.S. Supreme Court's Interpretation of the Right to Bear Arms

The United States Supreme court has been called upon to weigh in the debate of gun control versus gun rights. Much of the Supreme Court's work in this debate however, has been mainly to interpret the language and/or intent of the framers of the 2nd Amendment. In 1876, in the case of *U. S. v. Cruikshank*, in which the chief justice, in delivering the judgment of the court, said that the right of the people to keep and bear arms "is not a right granted by the constitution. Neither is it in any manner dependent upon that instrument for its existence. The second amendment declares that it shall not be infringed, but this, as has been seen, means no more than that it shall not be infringed by congress. This is one of the amendments that has no other effect than to restrict the powers of the national government..." In 1886, a State law barred "any body of men, other than the organized militia of the state and the troops of the United States, from associating as a military company and drilling with arms in any city or town of the state"; the Court thought it clear that the sections under consideration¹, which only forbid bodies of men to associate together as military organizations, or to drill or parade with arms in cities and towns unless authorized by law, do not infringe the right of the people to keep and bear arms (Presser, 1886). Nationwide, 41 states have laws that place restrictions on private paramilitary activity (Rathod, 2016). Figure 1 below provides a picture of various states'

¹ Herman Presser, the plaintiff in error, was indicted on September 24, 1879, in the Criminal Court of Cook County, Illinois, for a violation of the following sections of Art. XI of the Military Code of that state, Act of May 28, 1879, Laws of 1879, 192.

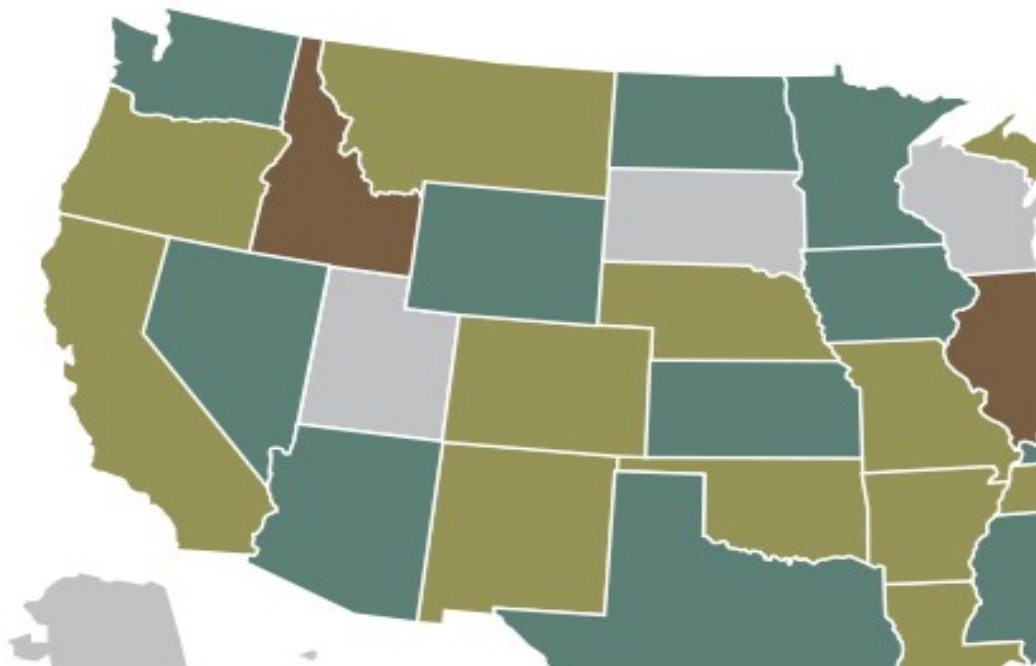


Figure 1: A Map Showing 41 States that Have Laws that Place Restrictions on Private Paramilitary Activity

regulation of militias. In a more (or relatively) modern case the court weighed in once again on issue(s) surrounding the 2nd Amendment. Defendants Jack Miller and Frank Layton raised a successful claim in the Federal District court of Arkansas, claiming among other things, that their constitutional right was violated under the 2nd Amendment pursuant to the National Firearms Act (NFA). The NFA prohibited defendants from transporting a sawed-off double-barrel 12-gauge shotgun in interstate commerce without having registered it and without having in his possession a stamp-affixed written order for it, as required by the Act (United States, 1939). Defendants argued that the NFA unlawfully infringed on their right to keep and bear arms. The Federal District Court found in favor of the defendants in that the NFA violated defendants' 2nd Amendment rights. The state appealed directly to the U.S. Supreme Court and the court reversed the decision of the District court. The court stated that "In the absence of any evidence tending to show that possession or use of a "shotgun having a barrel of less than eighteen inches in length" at this time has some reasonable relationship to the preservation or efficiency of a well-regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument (United States, 1939)." In the case of Miller, the Supreme court makes it clear, at least up to this point in the right to bear arms debate, that the type of guns possessed can be regulated and that

the 2nd Amendment does not necessarily grant the right of individual citizens to possess and/or transport any and all types of weapons.

Perhaps the two most important cases to date are the most recent ones. *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. Chicago*, 561 U.S. 742 (2010), respectively. In *Heller*, the Supreme court took on the question of whether Washington D.C.’s law banning handgun possessions in the home violated the individual right theory of the 2nd Amendment. In a 5-4 decision, the court held that the 2nd Amendment guarantees an individual right to possess firearms independent of service in a state militia to use firearms for traditionally lawful purposes, including self-defense within the home. This marked a change in direction from the “collective rights” view, a view that dominated much of the 20th Century and mainly as a result of the majority interpretation of *United States v. Miller* (Duignan, 2017). Just two years removed from the Court’s decision in *Heller*, the court was called upon to address the “individual rights” theory.

In the *McDonald* case, the city of Chicago and the village of Oak Park, a Chicago suburb, had laws effectively banning handgun possession by almost all private citizens. In *Heller* (supra), the court did not address whether the individual’s right to bear arm on the basis of self-defense applied to state government regulations. The seventh circuit earlier upheld a state ban on handguns. However, Justice Alito delivering the opinion of the Court with respect to Parts I, II–A, II–B, II–D, III–A, and III–B, concluding that the Fourteenth Amendment incorporates the Second Amendment right, recognized in *Heller*, to keep and bear arms for the purpose of self-defense (*McDonald*, 2010). Those two cases, though, did not resolve all the important questions about how and when and why the government can restrict Second Amendment rights. *Heller* and *McDonald* said that the right to possess commonly used weapons for self-defense in the home cannot be infringed... (Doherty, 2013). The Supreme Court did not specifically answer the question on what type of weapons could be possessed, in or out of the home. In the most recent case of note dealing with the 2nd Amendment, *Caetano v. Massachusetts*, 577 U. S. ____ (2016), the U.S. Supreme court struck down a Massachusetts law prohibiting “stun guns”.

In *Caetano*, the court continued its reasoning in *Heller* by holding that “the Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding. Finally, in his majority opinion in *Heller*, Justice Antonin Scalia stated that this (ruling in *Heller*) didn’t mean anything goes when it comes to Americans and their guns (*District of Columbia*, 2008). The language of Justice Scalia imply that the court was still undecided regarding the exact nature of the equipment that is adequate for citizens to possess notwithstanding the individual right to keep and bear arms.

GUN CONTROL LAWS AND POLICY IN AMERICA

A Brief History of Gun Control Laws & Policies in the U.S.

Over the years, there have been laws passed at the federal, state and even local levels regarding gun ownership, possession and/or use. Congress passed the National Firearms Act (NFA) in 1934 which mandated the registration of Title II weapons¹. The Federal Firearms Act (FFA) was enacted in 1938 requiring gun manufacturers, and persons in the business of selling firearms to have a Federal Firearms License. The Gun Control Act of 1968, passed in response to the assassinations of President John F. Kennedy, Attorney General Robert Kennedy and Dr. Martin Luther King, Jr., regulates interstate and foreign commerce in firearms, including importation, "prohibited persons", and licensing provisions.

The killing of twenty schoolchildren in Newtown, Connecticut, in 2012 prompted a new national discussion about gun laws. However, legislation that would have banned semiautomatic assault weapons was defeated in the U.S. Senate despite extensive public support (Masters, 2017). Notwithstanding the defeat of this legislation, the Federal Government have laws regulating gun ownership pursuant to NFA. Currently, NFA places restrictions on the sale or possession of short-barreled shotguns, machine guns, and silencers. In order to purchase one of these "NFA firearms or devices," owners must go through an extensive background check, purchase a tax stamp for the manufacture of the firearm or device, and register the weapon with the Bureau of Alcohol, Tobacco, Firearms, and Explosives' NFA registry (Gun Laws, 2017).

Another federal gun law is the Brady Handgun Violence Prevention Act of 1993 (Brady Act). Among other things, the Brady Act prohibits gun ownership and/or possession by convicted felons, fugitives from justice, those convicted of domestic violence, those who are mentally ill, etc. In conjunction with Brady Act, the Federal Bureau of Investigation (FBI) conducts background checks for firearm transactions. Pursuant to the Brady Act, the National Instant Criminal Background Check System (NICS) was implemented. The NICS is used by Federal Firearms Licensees (FFLs) to instantly determine whether a prospective buyer is eligible to buy firearms. Table 1 below provides a list of those states that uses the FBI directly² to perform background checks. Before ringing up the sale, cashiers call in a check to the FBI or to other designated agencies to ensure that each customer does not have a criminal record or isn't otherwise ineligible to make a purchase (NCIS, 2017).

¹ Title II weapons consist of those such as machine guns, short-barreled shotguns, short-barreled rifles, silencers, destructive devices, etc.

² Other states who do not contact the FBI directly, is allowed to use an alternative route, usually conducting the background checks in their own state.

Table 8: States in which the FBI Conducts NICS Checks for All Firearms Transactions

Alabama	Alaska	American Samoa
Arizona	Arkansas	Delaware
D.C.	Georgia	Idaho
Indiana	Kansas	Kentucky
Louisiana	Maine	Massachusetts
Minnesota	Mississippi	Missouri
Montana	New Mexico	New York
North Dakota	N. Mariana Islands	Ohio
Oklahoma	Puerto Rico	Rhode Island
South Carolina	South Dakota	Texas
Vermont	West Virginia	Wyoming

Source: Bureau of Alcohol, Tobacco, Firearms and Explosives

In 1994, President George W. Bush signed into law, the Gun-free Schools Act (Schools Act) as part of the Improving America’s Schools Act of 1994. Pursuant to Department of Education, Elementary and Secondary Education, Subpart 3 – Gun Possession, section 4141 – Gun Free Requirements, the Schools Act provided the following general provision:

(1) IN GENERAL- Each State receiving Federal funds under any title of this Act shall have in effect a State law requiring local educational agencies to expel from school for a period of not less than 1 year a student who is determined to have brought a firearm to a school, or to have possessed a firearm at a school, under the jurisdiction of local educational agencies in that State, except that such State law shall allow the chief administering officer of a local educational agency to modify such expulsion requirement for a student on a case-by-case basis if such modification is in writing (Dept. of Education, 2017).

In that same year, the Violent Crime Control and Law Enforcement Act of 1994 was passed prohibiting the sale, manufacture, importation, or possession of a number of specific types of assault type weapons for a ten-year period. However, the law expired on September 13, 2004, after Congress failed to reauthorize it (Longley, 2017).

Recent Developments in Gun Laws in the U.S.

Since the 1994, the debate over gun control and gun rights have continued into the new millennia. Also, in recent years, months and even weeks, various fatal or near fatal incidents involving guns have occurred only to ignite the debate even more. As a result of these incidents, Congress have put forth efforts to address them primarily by introducing more legislation. In 2004, Massachusetts becomes the first state to implement an electronic instant gun buyer background check system with fingerprint scanning for gun licenses and gun purchases and in 2005, California bans the manufacture, sale, distribution or import of the powerful .50-caliber BMG, or Browning machine gun rifle (Longley, 2017). In 2015, Congress introduced H.R. 3411 “Fix Gun Checks Act” to ensure that all individuals who should be prohibited from buying a firearm are listed in the NICS and require a background check for every firearm sale. In June of 2016, according to reports¹, a mass shooting occurred in a night club in Florida where 49 people were killed and many others injured by an American born gunman, Omar Mateen (Ralph Ellis, 2016). As a result of the shooting in Florida, President Obama again called on Congress to enact or renew a law prohibiting the sale and possession of assault-style weapons and high-capacity ammunition magazines. In September of 2017, Congress introduced H.R. 2406 entitled Sportsmen's Heritage and Recreational Enhancement Act or the SHARE Act. This bill revises a variety of existing programs to expand access to, and opportunities for, hunting, fishing, and recreational shooting (H.R. 2406 - Share Act, 2017). However, a provision added by Rep. Jeff Duncan (R-South Carolina) called The Hearing Protection Act would reduce the current federal restrictions on purchasing firearm silencers, or suppressors. Yet another shooting spree occurred in Las Vegas October of 2017. A gunman fired multiple rounds of bullets into a crowd of patrons of country singer Jason Aldean’s concert, killing 59 and injuring over 500 others (Las Vegas Shooting, 2017). The top lawman in Las Vegas says the gunman, Stephen Craig Paddock, who killed dozens of people at a concert last month fired, more than 1,100 rounds (of ammunition) (Sheriff, 2017). Paddock had purchased legally, a collection of AR-15 semi-automatic rifles. In order to gain more speed or rapid fire, an accessory known as a “bump-stock”² was attached to at least one of rifles found in Paddock’s possession. Some of the rifles were loaded with high capacity magazines up to 100 bullets in one magazine (Keneally, 2017). Many law makers on both sides of the political isle were taken aback by the automatic firing capability enabled by the so-called bump stocks. Shortly after this incident, U.S. Senator Dianne Feinstein (D-California) introduced a bill entitled the “Automatic Gunfire Prevention Act,” that would prohibit the possession or transfer of certain firearm possessions, including bump stocks (Rogin, 2017). Despite the

¹ Also, according to reports, his ex-wife stated that Mateen was bipolar although he was never diagnosed as being bipolar.

² Bump stocks allow semi-automatic rifles to become fully automatic. There can be a difference in the number of rounds fire

Gun Laws of Various Countries and States at a Glance

Americans possess more than 200 million firearms. Each year about 640,000 violent crimes, including 16,000 murders are committed with guns, mostly handguns. Some people believe gun-control laws, which restrict gun ownership, can reduce the bloodshed. Others believe that guns help protect Americans and gun laws should be less strict (Policies, 2012). The United States, with less than 5 percent of the world's population, has about 35–50 percent of the world's civilian-owned guns (Masters, 2017). A Council on Foreign Relations (CFR) report in 2007, Figure 2 (pg. 17), shows the number of firearms possessed per 100 people in various countries. United states rank highest among the countries listed in the report, displaying that approximately 88.8 out of 100 people in America possess firearms, while Japan comes in lowest with less than 1 out of every 100 people in Japan possess firearm. Figure 3 (pg. 17), depicts the number of homicides committed by firearms per 100,000 people. Again, the U.S. ranks highest with 3.54 homicides being committed using firearms every 100,000 people. Once again, Japan, ranks

Firearms per 100 People (2007)

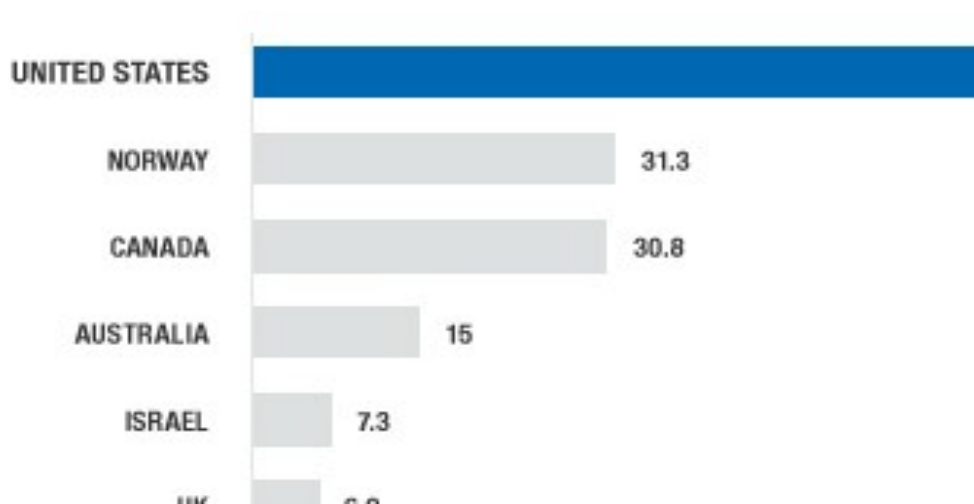


Figure 2
Council on Foreign Relations (Data: Small Arms Survey)

Firearm Homicides per 100,000 People (2013)

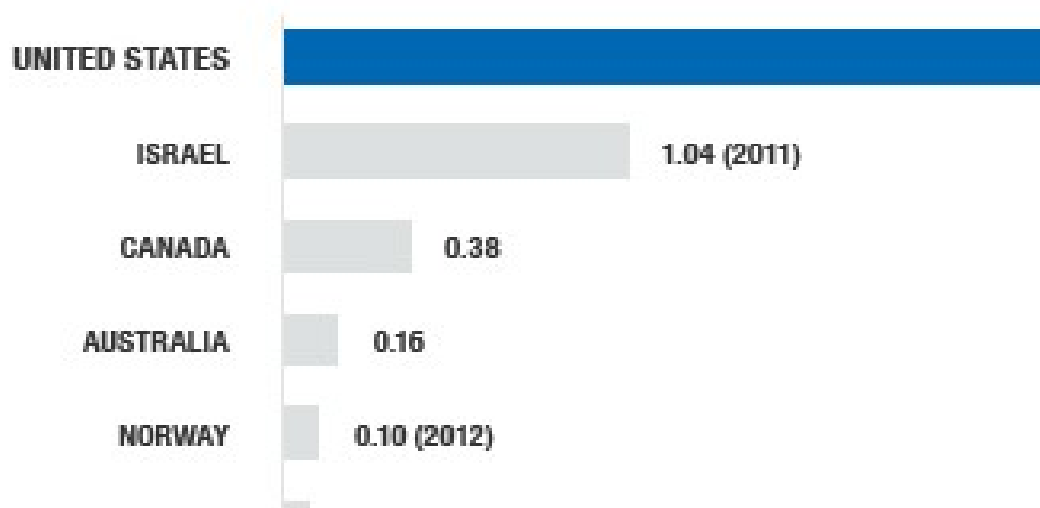


Figure 3
Jonathan Masters and Julia Ro (Data: gunpolicy.org, University of Sydney)

lowest with significantly less than 1 homicide committed using firearms per every 100,000 people. Gun laws vary widely from state to state, and states with stronger gun control laws have fewer gun deaths. Some states, such as Alaska, Kentucky, and Louisiana, do not require background checks for private sales, have lax open and concealed carry laws, and fail to restrict gun access from certain risky populations (Quandt, 2015). Some states, such as California, Colorado, Hawaii, Massachusetts and few others, place bans on “High capacity magazines.”¹ Restricting guns from being openly carried is of high importance in some states (i.e., California, Illinois, Florida and Washington D.C.), while other states (Mississippi, Louisiana, Nebraska, South Dakota, etc.) place little if any importance on such restrictions by not requiring permits to openly carry (Guardian, 2013). Over the years, some states have obtain a reputation for having strict overall gun laws. The state believed to have the strictest gun laws is California (Hartvigsen, (Strict), 2013). Conversely, the state believed to have the most lenient gun laws is Utah (Hartvigsen, (lenient), 2013).

NRA and It’s Influence on Gun Control Policy

¹ Magazines refer to the ammunition storage device attached to guns (rifles). Magazines are normally “high capacity” if it will allow a gun to store and/or fire off more than 15-20 rounds of ammunition (in some instances 10 rounds - see <http://thehill.com/blogs/floor-action/house/355367-democrats-propose-ban-on-high-capacity-gun-magazines>).

The National Rifle Association (NRA) was founded in 1871 by Union veterans Col. William C. Church and Gen. George Wingate to assist troops with their marksmanship after the Civil War had ended. Many would find it “hard to believe that the NRA was committed to gun-control laws for most of the 20th century—helping to write most of the federal laws restricting gun use until the 1980s” (Rosenfeld, 2013). The modern version of the NRA is believed to have emerged around the late 1970s or early 1980s. The organization therefore transitioned from a pro-gun control organization to pro-gun rights organization promoting and/or defending the individual right to bear arms. The NRA has emerged into perhaps most influential lobbyist in Congress and state legislatures in support of gun rights legislation. Claiming more than four million members, the NRA is widely acknowledged to be the most powerful gun rights organization in the United States, having “dominated and defined gun politics for most of the last century” (Spitzer, 2008, p. 80). It is perhaps further ironic that “an NRA that once encouraged better marksmanship and reasonable gun control laws gave way to an advocacy organization and political force that saw more guns as the answer to society’s worst violence” (Rosenfeld, 2013). The NRA has been adamant for sometime now about creating new gun control laws.

The NRA’s narrative is more or less that the gun laws already on the books should be enforced before new laws are added. The NRA has influenced gun laws and/or policies in a variety of ways. One way is through lobbying legislators or policy makers directly or indirectly by providing money to congress. Another method of influence is by lobbying bills in congress. In 2014, the NRA lobbied for 102 House and Senate bills ... the top issues those bills addressed were firearms, guns & ammunition, federal budget & appropriations, and civil rights & civil liberties (Musa, 2016). Other ways in which the NRA will their influence on gun laws and policy is by lobbying indirectly by massive advertisement ads and through its magazines, clubs, and ads against politicians that support gun control. Last but not least, the NRA’s impact on gun laws or policies has been made through the courts, particularly in the case of the District of Columbia v. Heller (*supra*)¹.

DISCUSSION ON A PHILOSOPHICAL QUESTION: WHAT IS THE *GREATER GOOD* AS IT RELATES TO GUN CONTROL VS GUN RIGHTS IN AMERICAN SOCIETY?

Gun control advocates and gun rights advocates alike appear to be firmly rooted in their respective positions. Perhaps the quintessential question is this – Who’s right and who’s wrong. Earlier in this paper, the concept of Utilitarianism was discussed. In an attempt to answer the question above, perhaps an application of

¹ During the Heller case, the NRA rallied gun rights enthusiasts and organizations that were interested in the individual’s right to bear harm pursuant to the 2nd Amendment to become involve at various levels with the case via amicus curiae briefs etc.

Utilitarian principles to the gun control versus gun rights debate may be a worthy venture. To reiterate, Utilitarian principle (or principle of utility) is also based on the pleasure principle. Right and wrong is judged by the utility of pain and pleasure. The extent to which pleasure is gained and pain is avoided both individually and collectively as a group or society, determines right or wrong. In addition, right and wrong is often attributed to, “the principle of utility or the greatest happiness for the greatest number, a quality in an act or object that produces benefit, advantage, pleasure, good, or happiness, or prevents mischief, pain, evil, or unhappiness” (Ebenstein, 1991). Gun rights advocates tend to support the idea that the individual right to gun ownership, possession and/or sale, satisfy the principle of utility. That is, this right produces the greatest good or benefit to the greatest number in society or what’s more, it prevents the mischief, pain, evil or unhappiness, particularly, when guns are used as a means of self-defense.

The oft expressed reasons put forth by gun rights advocates are that the utility of guns include: 1) its use in hunting, 2) personal safety and protection from aggressive attacks such as home invasions, and 3) national security both foreign (i.e., international terrorism) and domestic (to quash any threat of tyranny from the U.S. government). As stated earlier, the NRA being perhaps the most influential gun rights group espouses that their mission is to promote public safety, train members of law enforcement agencies, adopt and encourage the shooting sports, and to promote hunter safety (Musa, 2016). According to Gallup poll, in the last 10 years (2007 – 2017) there has been a moderate rise in the those favoring stricter gun laws (51% - 60%) (Guns, 2017). When asked the question whether there should be a band on hand guns, the public responses in the last 10 years has been only a slight percentage change from (2007 – 2017). Another Gallup poll question asked respondents if they would be for or against a law which would make it illegal to manufacture, sell or possess semi-automatic guns known as assault rifles. In the last 10 years (2007 – 2017) the responses produced a moderate overall change in favor of such a law¹ (Guns, 2017). Interesting to note however, between the years of 2016 and 2017 revealed a significant change the responses to the Gallup poll question.

In 2016, only 36% responded that they would be in favor of such a law versus 61% responded that they would be against banning the manufacture, sell or possess semi-automatic guns (assault rifles). Just one year later in 2017, 48% responded in favor of such a ban and only 49% stated that they would be against banning semi-automatic rifles. Perhaps, a explanation for the change could be in the recent mass shootings with assault

¹ 50% responded that they would be in favor of such a law in 2004 and 48% in favor in 2017. 46% responded that they would be against such a law in 2004 and 49% would be against such a law in 2017.

weapons¹. It appears to be clear the various information and data, court cases, etc. that for the most part, the right to bear arms is deeply rooted in the fabric of American society. Even gun control advocates do not necessarily advocate an overall gun ban in the U.S. However, the question may not be as clear cut when it comes to possession of assault weapons by non military individuals.

Utility of Assault Weapons

“The only reasonable response to the massacre in Orlando is to ban the sale of military-style assault weapons. All else, I’m afraid, is just noise.”² The foregoing quote by Eugene Robinson and opinion writer of the Washington Post perhaps echo the sentiment of many Americans. However, it begs the question, is it the sentiment for enough Americans to change the policy on manufacturing, sale and possession of assault weapons? The responses to the Gallup poll question mentioned earlier, regarding the banning of assault weapons, do not give a clear indication that Americans are willing to deprive themselves of the “right to bear... (assault weapons).” Perhaps the recent mass shootings (within the last year) have produced some level of sensitivity towards the issue of assault weapons possession. It may be important here to return the discussion regarding Bentham and Mill’s philosophy on Act and Rule Utilitarianism. Act utilitarians believe that the action that will create the greatest net utility should be the one followed. According to rule utilitarians, a) A specific action is morally justified if it conforms to a justified moral rule; and b) a moral rule is justified if its inclusion into our moral code would create more utility than other possible rules (or no rule at all) (Nathanson, 2017). Thus, when applying Act utilitarian principles, the question should be: Does possessing assault weapons create the greatest net utility? How one answers this question will be based on how that person value right to bear assault weapons, and the supplemental utilities that arms may provide such as hunting, using guns for sport, self-defense against personal attacks and/or home invasions, national security (against potential foreign and domestic attacks (or tyranny)), etc. Also, important in answering this question is somehow being able to measure the value one might place on preventing mass killings at the use of an assault weapon. Simply put, is the real and/or perceived utility of possessing an assault weapon by a non-military individual, outweigh the price paid though the loss of lives due to the ability of an assault weapon to create havoc via mass killing and injuries. If one were applying Rule

¹ The following mass shootings between 2016 – 2017 involving assault weapons include:

1) November 5, 2017 shooting at First Baptist Church in Sutherland Texas (27 killed – 20 wounded), 2) October 1, 2017 shooting at a concert in Las Vegas (59 killed – 441 wounded), 3) June 12, 2016 shooting in Orlando Florida nightclub (49 killed – others wounded).

² Quote taken from Washington Post article entitled “Assault Weapons Must be Banned in America.” https://www.washingtonpost.com/opinions/assault-weapons-must-be-banned/2016/06/13/0d6a58f4-3195-11e6-8ff7-7b6c1998b7a0_story.html?utm_term=.32bc327f9242

Utilitarianism to the assault weapons debate, the determination of the greatest good for the greatest number would be based on whether a specific action is morally justified if it conforms to a justified moral rule. It is hard to argue in modern times, in America that the right to bear arms has is not become a morally justified rule for most, if not, all Americans.

CONCLUSION

In many ways, Bentham and his successors' writings, discussions and arguments for the application of the principle of utility can be felt in contemporary society. The United States is a Representative Republic and though not direct but a form of democracy. The structure of the U.S. government is such that certain levels of accountability or checks and balances are in place to hold those in authority of governance accountable. Bentham held that those who hold the "operative power" in government, administration, and judiciary are, like everyone else, motivated by personal interest. It is imperative, therefore, to devise mechanisms that will ensure that only by acting in the public interest could they promote their own interests (Crimmins, 2017). In today's society, among other things, America seems to be headed for an impasse on gun control versus gun rights. Thus, the greater task for America's leaders, policy makers, and citizenry alike, is to determine and/or decide what policy moving forward should America as a nation have regarding assault weapons. There is a strong argument that using Act utilitarianism, the net utility of allowing American citizens (or non-military personnel) to possess assault weapons is outweighed by the consequences of mass shootings that seem to have taken root in the U.S. and has intensified in recent years and months. However, there is likewise a strong argument that can be made if Rule utilitarianism is used to determine the policy regarding assault weapons moving forward. This is particularly so, since the right to bear arms can be justified because it conforms to a justified rule, which is first and foremost, the right to defend one's self against aggressive forces, whether it is an attack in one's home, foreign aggression, or heaven forbid, the aggressive forces of TYRANNY!

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