
Firearms - A Comparative Analysis of Proposed Federal Controls

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tentional invasion. . . ."³⁹ Illinois courts have still refused to grant divorces, even though the cruelty be extreme and repeated,⁴⁰ if there is no physical violence.⁴¹

Thus, the problem is left for the legislature. If Illinois is to continue with her policy of granting absolute divorce on the ground of cruelty, it is inconsistent to ignore mental cruelty, which has statistically been shown not to have any material effect on the divorce rate, and which is universally recognized as being at least equally as severe as physical pain.

Donald Schiller

³⁹ *Knierim v. Izzo*, 22 Ill. 2d 73, 174 N.E.2d 157 (1961). See also *March v. Cacioppo*, 37 Ill. App. 2d 235, 185 N.E.2d 397 (1962); and *Zepeda v. Zepeda*, 41 Ill. App. 2d 240, 190 N.E.2d 849 (1963).

⁴⁰ Illinois requires at least two separate acts of cruelty, ILL. REV. STAT. ch. 40, § 1 (1963).

⁴¹ The Supreme Court's most recent decisions interpreting extreme and repeated cruelty state that the guilty party must on at least two separate occasions have committed acts of physical violence against his spouse resulting in pain and bodily harm. *Collinet v. Collinet*, 31 Ill. App. 2d 72, 77, 175 N.E.2d 659 (1961).

FIREARMS—A COMPARATIVE ANALYSIS OF PROPOSED FEDERAL CONTROLS

The events in Dallas on November 22, 1963, and the recent riots in Los Angeles thrust into the limelight this country's growing problem of firearms proliferation. Almost anyone can buy a lethal firearm for the price of a good steak dinner. The immediate concern is to guarantee that firearms do not fall into the hands of incompetents, juveniles or felons who are prone to use them in a careless, anti-social or criminal fashion. The Senate Judiciary Subcommittee, conducting investigations for three years into the relationship of firearms proliferation and crime, particularly juvenile crimes, has concluded,

It would be a gross inaccuracy to say that "guns cause crime". However, it can be definitely said that a causal relationship does exist between the availability of firearms and the commission of crime by individuals.¹

¹ S. REP. NO. 1340, 88th Cong., 2d Sess. 3 (1964).

In 1964, 55%, or 5,090, of all murders were committed with firearms, and fifteen per cent of all aggravated assaults or a total of 27,700 were committed with a firearm. Of 57 police officers killed in the line of duty in 1964, all but three were victims of firearms. Since 1960, 96 per cent of all police murders have been committed with rifles, shotguns or handguns, the latter predominating being responsible for 79 per cent of such murders. Firearms were used in 57 per cent of the suburban murders, 65 per cent of the rural killings and 53 per cent of those occurring in cities. Regionally, guns were used in 35 per cent of the murders in the Northeastern states, 53 per cent in the Western states, 57 per cent in the North-Central states and 64 per cent in the Southern

Presently, the interstate mail order dealer, rather than the local retailer, is the main source of firearms pollution. During the years 1958-1962, four dealers in California imported some 250,000 pistols and revolvers.² The estimate to date is that between five and seven million of these mail order type weapons have been imported into the United States.³

The mail order firearm is usually a cheap, foreign-made or ex-military pistol or rifle imported from overseas and offered for sale at a fraction of the price of high quality domestic firearms. The dealer advertises them in cheap pulp publications portraying the weapon in such a manner as to appeal to persons who are emotionally immature, thrill-bent or prone to criminal behavior. The purchaser need only complete the application blank and remit his payment. The dealer, to protect himself against federal law, will send to the purchaser a form statement wherein the purchaser declares he is over twenty-one and has never been convicted of a crime. Upon receipt of the order and statement, the dealer will ship the firearm by common carrier to the purchaser without ever inquiring into the truth of the statement. In one instance, a boy ordered and received a Russian bazooka, crated, and in full working order, by utilizing this mail order method.⁴

PROBLEMS WITH CURRENT LEGISLATION

Current federal and state law has been unable to cope with mail order distribution. Presently, there exist two federal statutes, the National Firearms Act of 1934,⁵ and the Federal Firearms Act of 1938.⁶ The former seeks to control by prohibitive taxes the sale, importation, and transfer of criminal-type weapons used by the underworld during the twenties and thirties. This act has little contemporary application, since fully automatic and clandestine weapons (e.g. sawed-off shotguns, palm guns,

states. The handgun was used in 70 per cent of the murders by firearms, the shot gun in 20 per cent and the rifle and other weapons in 10 per cent. Of the aggravated assaults committed in 1964, 20 per cent of those committed in rural areas were committed with a firearm. By region, in the Northern states, 9 per cent with a gun, North-Central states 15 per cent, Western states 16 per cent, Southern states 19 per cent. FEDERAL BUREAU OF INVESTIGATION, DEPARTMENT OF JUSTICE, UNIFORM CRIME REPORTS FOR THE UNITED STATES-1964 (July 26, 1965).

² S. REP. NO. 1340, *supra* at 6.

³ *Id.* at 27. Because a considerable volume of firearms is imported as scrap, this figure is only an intelligent estimate made by the committee.

⁴ *Hearing on Interstate Traffic in Mail Order Firearms Before the Sub-committee to Investigate Juvenile Delinquency of the Senate Committee on the Judiciary*, 88th Cong., 1st & 2d Sess., pt. 14, at 3203. (1964).

⁵ National Firearms Act (1934), INT. REV. CODE OF 1954, §§ 5801-03, 5811-14, 5821-31, 5841-49, 5851-55, 5861-62.

⁶ Federal Firearms Act (1938), 15 U.S.C. §§ 901-09 (1963).

cane guns, etc.) are not available through the mails. The Federal Firearms Act of 1938 contains provisions relative to the importation, manufacture, sale, and interstate shipment and transfer of firearms by importers, manufacturers, and dealers in firearms whose business involves the interstate transportation and receipt of such firearms. Specifically, this act prohibits licensed dealers from knowingly selling weapons to felons or those indicted for a felony, and from knowingly dealing in stolen weapons or weapons with obliterated serial numbers. Conversely, the act prohibits felons from shipping or receiving firearms in interstate commerce. This act, while applicable to the current problem, is completely impotent because scienter, or reasonable cause to believe that the purchaser is a member of the prohibited classes, must be proven.⁷ To date, the federal government has never obtained a conviction under the act.⁸

While many of our states have firearm laws, generally these laws can be circumvented because of the interstate delivery of firearms by common carriers.⁹ At present, no federal regulation calls for common carriers to notify local authorities of the impending delivery or to determine the genuineness of the purchaser.¹⁰ Furthermore, these mail order dealers employ the mail drop procedure to evade any impeding regulation of their own resident state by shipping the gun from another state without such prohibition.¹¹ Once the firearm reaches the hands of a person who intends to put it to an illegitimate use, it becomes virtually untraceable either by federal or state authorities. It is this anonymity of purchase and delivery that is most appealing to potential criminals, incompetents and juveniles. A purchaser can have the firearm mailed to an address not his own, under a false name, by means of false affidavits and statements.

⁷ 15 U.S.C. § 902(b)(d)(g)(h) (1963).

⁸ S. REP. No. 1340, *supra* note 1 at 2.

⁹ *Hearings on Proposed Amendments to the National Firearms Act and the Federal Firearms Act Before the House of Representatives Committee on Ways and Means, 89th Cong., 1st Sess., pt. 1, at 169 (1965)*. When comparing the state laws cited here with the crime statistics in note 1, *supra*, it is easily noted that more crimes are committed with firearms in states and areas with liberal firearms regulation.

¹⁰ However, although concealable firearms can be shipped by common carrier, they may not be sent through the U.S. mail. 18 U.S.C. § 1715 (1964).

¹¹ A mail drop is a privately owned service regulated by the Post Office Department which provides the lessee with a place from which he can ship and receive mail other than his true residence or place of business. Where the law of the resident state of the mail order dealer prohibits mail order sales of firearms, the dealer will receive orders at this mail drop address and fill them by merely shipping the merchandise to the mail drop who then repackages it and mails it to the purchaser. This procedure is used by unethical mail order firearms dealers to deceive their customers into believing such is their true address at which they may be contacted to receive complaints or make refunds. *Hearings, supra* note 4 at 3229.

PROPOSALS FOR NEW LEGISLATION

While all agree something must be done, debate flares as to what form the solution should take and what degree of inconvenience can fairly be placed on thousands of legitimate gun owners.¹² The proposed bills can be classified into five categories.

The first provides for direct penal action for the criminal use of firearms.¹³ This view, favored by sporting and conservationist societies because it would not inhibit their functions, in no way halts proliferation, since firearms remain fully available to those criminals and undesirables who do not weigh the consequences of their acts.

The second approach prohibits felons and other undesirables from shipping or receiving firearms carried in interstate commerce, and forbids carriers, manufacturers and dealers from knowingly distributing firearms to such individuals.¹⁴ This is tantamount to the current position of the Federal Firearms Act which, as stated previously, has been proven to be quite inadequate as a control over mail order distribution.

The third approach provides procedures to enhance the enforcement of state and municipal law. Generally, these bills require purchasers to submit an affidavit in duplicate to the dealer, which verifies the purchaser's name, address and age, and states that he is legally entitled to receive a firearm, naming the chief law enforcement officer in the purchaser's community. The dealer is obligated to send a copy by registered mail, return-receipt requested, to the named officer before he may ship the firearm.¹⁵ Some bills would require receipt of the officer's written approval by the dealer before shipping.¹⁶ While this approach has the highest consensus of approval, doubt exists as to whether this presents an effective solution.¹⁷ It is universally conceded that criminals, juveniles, and incompetents will not conform with these procedures or will falsify affidavits. Furthermore many fear that if approval of purchase by local police is required, arbitrary refusal of applications will follow as a matter of policy regard-

¹² For a short history of this legislation, see 23 CONG. QUAR. 1060-62 (1965). See generally, *Hearings, supra* note 4, pts. 14 and 15; *Hearings, supra* note 9, pts. 1 and 2; *Hearing Before the House of Representatives Committee on Commerce*, 88th Cong., 1st & 2d Sess., ser. 45 (1964).

¹³ H.R. 8195, H.R. 8209, H.R. 8482, H.R. 8503, H.R. 8509, 89th Cong., 1st Sess. (1965).

¹⁴ H.R. 510, H.R. 3322, H.R. 6346, H.R. 6561, H.R. 6783, H.R. 7752, 89th Cong., 1st Sess. (1965).

¹⁵ S. 14, S. 1965, H.R. 3322, H.R. 6346, H.R. 7752, 89th Cong., 1st Sess. (1965).

¹⁶ H.R. 1110, 89th Cong., 1st Sess. (1965).

¹⁷ S. REP. NO. 1608, 88th Cong., 2d Sess. 6 (1964). See generally, *Hearing Before the House Committee on Commerce*, 88th Cong., 1st & 2d Sess., ser. 45 (1964).

less of the legitimacy of the purchase. Nevertheless, the affidavit procedure would be a deterrent to mail order sales by removing, at least partially, the anonymity of the sale and by providing penalties for perjury.

The fourth and most recent approach is the direct prohibition of interstate mail order sales of firearms to private individuals. Only shipments between dealers, importers or manufacturers licensed under the Federal Firearms Act would be permitted. Licensed importers and dealers would be prohibited from selling a firearm, other than a sporting rifle or shotgun, to any person who is not a resident or businessman of the state in which the licensee's place of business is located.¹⁸ These proposals, either by prohibition or exception cover all firearms including destructive devices (bombs, grenades, etc.). These bills also prohibit the importation of firearms except those the Secretary of the Treasury designates as curios, lawful sporting weapons, weapons to be used for scientific research, or weapons for competition and training. Other exceptions from coverage include firearms in interstate transit for "lawful purposes" or those sent by carrier to dealers for service.

The main objection here is that these bills cover all firearms regardless of the good intentions of their purchaser. Since the Secretary of the Treasury is given authority to designate the exceptions and there is no provision for administrative procedure for hearings on classification, many gun owners fear their weapons will be arbitrarily classified. Opponents of the bill further allege that prices will increase, since wholesale transactions to private individuals will be virtually eliminated. It is also feared that the availability of parts and repair services will be reduced, since most local dealers through which such services are rendered, carry the merchandise of only one or two manufacturers.¹⁹ There is little doubt that these bills will be reshaped by amendment if enacted, although these proposals are strongly supported by the current administration.²⁰

The fifth approach is a direct attack on certain weapons themselves, and it is analogous to the position of the National Firearms Act. A few bills have been introduced which propose to include certain destructive devices and large-bore firearms under the taxing provisions and regulations of the National Firearms Act.²¹ Others aim directly at the curtailment of the importation of specific firearms.²² One novel bill would

¹⁸ S. 1592, H.R. 6628, H.R. 6783, 89th Cong., 1st Sess. (1965).

¹⁹ Statement by Frank L. Orth, Vice President of the National Rifle Association, before the Senate Subcommittee on Juvenile Delinquency, May 21, 1965. *Hearings*, *supra* note 9 at 194.

²⁰ See President Johnson's message to Congress on Law Enforcement and Administration of Justice. 23 CONG. QUAR. 395 (1965).

²¹ S. 1591, H.R. 6629, H.R. 6782, 89th Cong., 1st Sess. (1965).

²² S. 1592, H.R. 6628, H.R. 6783, H.R. 8383, 89th Cong., 1st Sess. (1965).

prohibit importing firearms classified as "unsafe," and provides that the National Rifle Association shall designate which weapons should be so classified to the Secretary of the Treasury.²³ However, these proposals are weak and are intended to be adopted as a compromise to the other more rigid approaches rather than as a solution.

CONCLUSION

The theory of this last approach deserves consideration. No reason exists why a weapon should be available to the public that by reasonable standards has no legitimate sporting, hunting or security utility, and has generally been adopted by criminals and undesirables to enhance their anti-social behavior. Aside from the availability and anonymity of sale, the chief attraction these weapons pose to the undesirable classes is the price at which they can be acquired (between \$12.50 and \$30.00), and the price clearly indicates their quality.²⁴ They can only be legitimately used as war trophies or curios. Nevertheless, they are extremely dangerous and meet the requirements of criminals and incompetents.

There is a paramount need for a positive comprehensive control. None of the present proposals offer such a program. Each approach aims at one or another phase of the problem in a piecemeal fashion without positing a theory upon which subsequent control regulations could be based. Each probes blindly at the millions of unknown, unseen, incompetent users of firearms while they should, on the contrary, aim at the guns themselves before they ever reach these users. Perhaps the Secretary of the Treasury, with the aid of the National Rifle Association, could designate the weapons which fall into the category of useless but deadly war mementos chiefly employed by criminals and incompetents, tax their transfers and regulate their ownership in the same manner as other criminal-type weapons are controlled under the National Firearms Act. Thus, a theory of regulation would be established, and precedents as to what specific weapons fall into this category would be established in administrative hearings. As criminals and undesirables adopt other types of novel firearms, these too would be subject to the general theory and could be restricted by administrative ruling. At the same time, those firearms of general legitimate use would remain fully available to the nation's sportsmen.

This is not meant to say that proposals providing preventive procedures to insure that criminals and undesirables cannot legally purchase weapons are bad in theory. However, past experience has taught that such procedures are impractical because the clever criminal or unscrupulous dealer

²³ H.R. 8323, 89th Cong., 1st Sess. (1965).

²⁴ Statement of Franklin L. Orth, *supra* note 19.