

# Guns, Truth, Medicine, and the Constitution

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## ABSTRACT

Many medical publications explicitly or implicitly support increasingly stringent gun-control laws, arguing from fear and promulgating assertions that are without foundation or that contradict existing evidence. They focus solely on harm caused by guns while neglecting benefits and basic human rights. Past Supreme Court decisions uphold the individual right to bear arms; a decision in *Heller v. District of Columbia*, which challenges the District of Columbia gun ban, is pending.

## Arguing from Fear

“Medical inertia” is the term I use when something in medicine is blindly carried forward into the subsequent generations of physicians, despite a glaring lack of evidence-based research to support it.

As I read the perspective piece by Garen J. Wintermute, M.D., M.P.H., entitled “Guns, Fear, the Constitution, and the Public’s Health” in the *New England Journal of Medicine*,<sup>1</sup> two things came to mind: medical inertia and fearmongering.

The author starts his article with a story about a foreign exchange student who mistakenly approached the incorrect house when trying to find a high school party, and was shot by a frightened homeowner. While this is undoubtedly a tragedy, it is an anecdote, not an argument, an appeal to fear rather than to reason.

Fear in the absence of fact has been used throughout history to manipulate opinion. In the Soviet Union, fear was used very effectively in propaganda, targeting even small children and adolescents. For example, a poster showing a very frightening skeleton-like figure under the wheels of a streetcar was captioned: “Remember that in 1925, 200 people died under the wheels of streetcars.” This was aimed at children to prevent them from “ski bobbing”—holding on to the rear of the car and sliding on the ice during the frozen winter months. It was a very mild example of widely used methods.

Should physicians and public health officials be adopting this tactic? The Centers for Disease Control and Prevention (CDC) has done so for many years—at least on the issue of firearms. It was said that “‘gun control’—which itself covers a variety of activities from registration to confiscation” was not the specific reason for the creation of the CDC’s Intentional Injuries Section of the Division of Injury Epidemiology and Control.<sup>2</sup> Its acting chief Patrick O’Carroll, M.D., however, was quoted as saying that “[T]he way we’re going to [achieve some form of regulation] is to systematically build a case that owning firearms causes death.”<sup>2</sup>

Later, O’Carroll stated that he had been misquoted: “Such an approach would be anathema to any unbiased scientific inquiry because it assumes the conclusion at the outset and then attempts to find evidence to support it.” He asserted that “we at the CDC have been careful to avoid such a biased approach.”<sup>3</sup> Or should he have said “the appearance of bias”? It has been pointed out that he did not claim being misquoted in saying, “we are doing the most we can do, given the political realities.”<sup>4</sup>

The fearmongering has acquired medical inertia, as in the oft-cited myth of the relationship between legal gun ownership and murders and suicides. Wintermute simply asserts, without references, that gun owners have a 90% to 460% increased risk of dying by suicide, and a 40% to 170% risk of dying by homicide.<sup>1</sup>

## Guns and Violence: the Facts

Wintermute’s assertion that “gun ownership and gun violence rise and fall together”<sup>1</sup> is simply not correct. In an article for the *Harvard Journal of Law & Public Policy*, authors Don B. Kates, a criminologist at the Pacific Research Institute, and Gary Mauser, also a criminologist and professor at Simon Fraser University, British Columbia, asked whether banning firearms would reduce murder and suicide. They conclude:

International evidence and comparisons have long been offered as proof of the mantra that more guns mean more death, and that fewer guns, therefore mean fewer deaths. Unfortunately, such discussions [have] all too often been afflicted by misconceptions and factual error, and focus on comparisons that are unrepresentative. It may be useful to begin with a few examples. There is a compound assertion that (a) guns are more uniquely available in the United States, compared with other modern nations, which is why (b) the United States has by far the highest murder rate. Though these assertions have been endlessly repeated, statement (b) is in fact false, and statement (a) is substantially so.<sup>5</sup>

Their findings are supported by multiple studies whose initial intent was to provide corroborating evidence to support banning firearms. For example, Professor Brandon Centerwall of the University of Washington compared Canada’s more restrictive gun control policies to those of the United States, in order to determine whether Canadian policies had been more effective in curbing criminal violence.<sup>6</sup> In an accompanying commentary, he states:

If you are surprised by our findings, so are we. We did not begin this research with any intent to “exonerate” handguns, but there it is—a negative finding, to be sure, but a negative finding is nevertheless a positive contribution. *It*

*directs us where not to aim our public health resources* [emphasis added].<sup>7</sup>

The U.S. National Academy of Sciences in an extensive 2004 review of hundreds of journal articles, books, government publications, and original research failed to identify any evidence that gun control had reduced violent crime, suicides, or gun violence.<sup>8</sup> The CDC had drawn a similar conclusion in a 2003 review of available research.<sup>9</sup>

Despite all the data to the contrary, many choose to pursue the fear approach, realizing its effectiveness in many people at an emotional level. Who doesn't want to see fewer people harmed by firearms? While scare tactics may be attempted, education at an early age is proven to be more effective, and as physicians we should be first and foremost educators. Most pro-gun groups support youth education programs in gun safety, because they realize this is a far more effective approach.

Not only does Wintermute promulgate fear, he denies that gun ownership has benefits. He states that increased gun ownership does not correlate with decreased crime rates, and even declares that this claim has been discredited. Yet the evidence for benefit is very strong. John R. Lott, Jr., reviewed the FBI's yearly crime statistics for all 3,054 U.S. counties over 18 years (1977-1994), the largest national survey of gun ownership and state police documentation in illegal gun use.<sup>10</sup> Some of his conclusions are:

- While neither state waiting periods nor the federal Brady Law is associated with a reduction in crime rates, *adopting concealed-carry gun laws cut death rates from public multiple shootings by 69 percent.*
- Allowing people to carry concealed weapons deters violent crime—without any apparent increase in accidental death. If states without right-to-carry laws had adopted them in 1992, about 1,570 murders, 4,177 rapes, and 60,000 aggravated assaults would have been avoided annually.
- Children 14 to 15 years of age are 14.5 times more likely to die from automobile injuries, five times more likely to die from drowning or fire and burns, and three times more likely to die from bicycle accidents than they are to die from gun accidents.
- When concealed-carry laws went into effect in a given county, murders fell by 8 percent, rapes by 5 percent, and aggravated assaults by 7 percent.
- For each additional year concealed-carry laws are in effect, the murder rate declines by 3 percent, robberies by more than 2 percent, and rape by 1 percent.<sup>10,11</sup>

Wintermute focuses on recent shootings in our public places—neglecting to mention that most of these occurred in “gun free” zones, effectively eliminating any chance of resistance to thwart the intended mayhem. What more could someone bent on this type of act hope for?

Take the example of the Dec 5, 2007 Omaha mall shooting.<sup>12</sup> The “gun free” zone even applied to the mall security guards, so there was no one to meet force with force, perhaps preventing further death. In the days that followed there were multiple Internet and blog postings by patrons of this mall. One such anonymous poster said:

I am not allowed to carry a gun at all in Westroads Mall.

If the laws did not oppress my rights ... I certainly would

have had it in the mall. Honestly, and as God as my witness, when I saw him shooting and as I watched for a few seconds trying to figure out what he was going to do and what I should do, the thought that went through my head was, “If I had a gun, I have a perfect shot.”

The next public shooting occurred on Dec 9 in Colorado. A man entered the Youth With A Mission training center and killed two, wounding two others. Several hours later he went to New Life Church in Colorado Springs. He murdered two sisters at the entrance, and was preparing to enter the building and campus, which was occupied by thousands at the time. He was met, however, by a member of the church's volunteer security force, Jeanne Assam, a private citizen who was armed with her handgun. She fired while being fired upon, and once the murderer was wounded he took his own life, likely sparing numerous other innocent lives.<sup>13</sup>

In a recent *Detroit Free Press* article on Michigan's six-year-old right-to-carry law, and the assumption that more gun permit holders would equate to more gun deaths, a statement by a spokesman for the Michigan Association of Chiefs of Police is very illuminating:

I think the general consensus out there from law enforcement is that things were not as bad as we expected.... I think we can breathe a sigh of relief that what we anticipated didn't happen.<sup>14</sup>

## The Second Amendment in the Courts

Current debate centers on a U.S. Supreme Court case, *District of Columbia v. Heller*. This case stems from a 2003 federal lawsuit filed by six D.C. residents who argued that the District's gun ban infringed on their Second Amendment rights. The question is whether the Second Amendment refers to the so called “collective right” of state governments to regulate their militias, or to an individual right of all citizens to “keep and bear arms.”

Many medical organizations filed amicus briefs in this case, citing fear for the public's health and omitting any benefits of gun ownership.<sup>15,16</sup> Like them, Wintermute sides with the District's interpretation that the Second Amendment only pertains those who are in the service of a well-regulated militia, the modern-day equivalent of which is the National Guard. This contradicts multiple previous Supreme Court rulings, which have consistently held that there is an individual right.

One such case is *Scott v. Sandford*, heard in 1857, in which the Court ruled that a free black man could not be an American citizen. Writing for the majority, Chief Justice Roger Taney explained that as citizens, black men would have the “right to...full liberty of speech in public and private upon all subjects which [a state's] own citizens might meet; to hold public meetings upon political affairs and to keep and carry arms wherever they went.”<sup>17</sup> It is evident in this statement that Taney includes the right to keep and bear arms along with other individual rights of citizenship, such as the right to free speech and the right to assemble, which are protected in the Bill of Rights.

*United States v. Cruikshank* was brought after a group of white rioters burned down a courthouse in Louisiana that was occupied by a group of armed blacks. Ku Klux Klan leader William Cruikshank

was held responsible and was on trial for conspiracies to violate the rights of the blacks that had been granted in the Constitution, such as the right to assemble and to be armed for self-protection. The entire premise was the then-existent Enforcement Acts, which criminalized private conspiracies to violate civil rights.

The decision, handed down in 1876, held that Cruikshank had conspired to deprive the blacks of their rights. Of interesting note, the Court ruled that the Enforcement Acts were unconstitutional, but that Congress did have the power to interfere to prevent violations of civil rights. The Court held:

The right of bearing arms for a lawful purpose is not a right granted by the Constitution. Neither is it in any manner dependent on that instrument for its existence. The second amendment declares that it shall not be infringed; but this means no more than it shall not be infringed by Congress...leaving the people to look for their protection against any violation by their fellow citizens of the rights it recognizes, to what is called...the powers which relate to merely municipal legislation....<sup>18</sup>

Thus, the Supreme Court's view was that the Second Amendment *protects* the right to bear arms, but did not *create* it; rather, it exists as a fundamental human right. There are many more cases to support this view, including *Robertson v. Baldwin*. This was a Thirteenth Amendment case, which raised the question of whether merchant seamen who had jumped ship could be forced back into service, or whether this constituted a form of slavery. The case's relevance to the Second Amendment concerns unwritten exceptions contained in the Bill of Rights:

The law is perfectly well settled that the first ten 10 amendments to the constitution, commonly known as the Bill of Rights, were not intended to lay down any novel principles of government, but simply to embody certain guarantees and immunities which we had inherited from our English ancestors, and which from time immemorial had been subject to certain well-recognized exceptions arising from the necessities of the case. In incorporating these principles into the fundamental law, there was no intention of disregarding the exceptions, which continue to be recognized as if they had been formally expressed. Thus, the freedom of speech and of the press (Article 1) does not permit the publication of libels, blasphemous or indecent articles, or other publications injurious to public morals or private reputation; the right of the people to keep and bear arms (Article 2) is not infringed by law prohibiting the carrying of concealed weapons; the provision that no person shall be twice put in jeopardy (Article 5) does not prevent a second trial, if upon the first trial the jury failed to agree, or the verdict was set aside upon the defendants motion.... Likewise the self-incrimination clause did not bar the admission of dying declarations.<sup>19</sup>

These 19<sup>th</sup>-century cases lay a solid foundation for an individual right to keep and bear arms. There are multiple cases in the 20<sup>th</sup> century that despite not directly involving the Second Amendment, do use it as a reference to support a whole view of individual rights.

## Conclusion

The medical and public health case against the right to self defense with firearms, as epitomized by Wintermute,<sup>1</sup> is primarily based on fear, buttressed by repetition of unfounded assertions or biased statistics. Logic, however, dictates that risks be weighed against benefits, and that an objective, complete assessment be made. Moreover, the inestimable importance of protecting liberty and individual rights requires that certain risks must be taken. The fundamental natural right of individuals to keep and bear arms is recognized in historical Supreme Court decisions, including some not specifically based on the Second Amendment.

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