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INTERNATIONAL PERSPECTIVES ON GUN CONTROL

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Thank you for inviting me to this very interesting conference. I'm not sure exactly why I'm here because I'm not a comparativist. I really am an Americanist who specializes in criminal law and criminology. One thing of which I'm certain is that we have a very, very severe crime problem, in particular a violent crime problem. And that problem should be provoking soul-searching throughout American society. Perhaps this conference is an illustration of just such soul-searching.

By nature I'm a skeptic, as perhaps most law professors are, and I rarely swallow received wisdom easily. Thus, I find it odd and somewhat ironic that in answer to so many Americans why there's so much violence in the United States, so many Americans respond by demonizing two categories of inanimate objects—guns and drugs. In other words, many people implicitly believe that: "It's got nothing to do with us; it's got nothing to do with our society. If only we could get rid of guns and drugs, all would be well."

The only country other than the United States that I know well is Great Britain. In the common law, with all deference to our New Zealand colleague, Mr. Hastings, the right to bear arms was considered a fundamental right. Blackstone, the great codifier of the common law, listed the right to bear arms as one of the five fundamental rights.

As Mr. Kopel says, there were no restrictions on firearm ownership through the nineteenth century, and, in Britain, not until the beginning of the twentieth century when, in response to fear of Bolshevik revolution, the government moved to disarm the lower classes.

The task before us today is to sketch out a comparative and international perspective on gun control and determine what it can teach us about U.S. gun control policy. The received wisdom seems to be that since other countries have strict gun laws and low rates of gun violence, strict gun laws cause low violence, and that if the U.S. adopted strict gun laws, we would experience a significant reduction in gun crime. I am skeptical about this syllogism. First, it's not so clear that all those countries with low rates of gun violence actually have strict gun laws. England is a good example of that. Second, and more importantly, the correlation between so-called strict gun laws and low rates of gun violence may be spurious because some other factors may be the cause of both

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strict gun laws and low rates of gun violence. Surely that's not implausible, for example, when talking about Germany.

There are also cases, like Jamaica, where strict gun laws coexist with high rates of gun violence. There are contrary cases like Israel where non-restrictive gun laws coexist with low rates of gun violence. Interestingly, the Israelis respond to threats of violence to their community, not by restricting guns, but by urging citizens to learn to use guns and to carry them. It's worth pondering why the Israelis see their security as being furthered by greater access to guns whereas many of us see our security as being furthered by greater restrictions on access to guns.

However, the main point I want to make is that even if strict gun laws produced low rates of gun violence in other countries, the same result might not occur in the United States. Is there any conceivable reason to believe that in the United States strict laws wouldn't work? Well, for one thing we have a tremendous amount of criminal law in the United States; at the same time, we have a tremendous crime rate. We have more felony arrests in the United States in a year than does all of Europe combined. We have 1.3 million people in prison, also more than the combined European total. Is there reason to believe that criminals who are already violating burglary, robbery and rape laws would comply with gun control laws? Note that it has long been a federal crime for a person who has been convicted of a felony to possess a firearm.

A second observation is that some U.S. states and cities do have strict gun laws. You cannot buy a gun in New York City very easily. You cannot get a license to buy a gun without a multi-month process of application to the police and a vetting that would probably make Canada, Britain, New Zealand look lax. In Washington D.C. you cannot legally buy a gun at all. Nevertheless, guns are abundant in both cities. Perhaps if a firearms prohibition blanketed the whole country, New York and Washington criminals would not be able to get guns, but such a belief, I think, requires a heroic leap of faith. I suppose it's ironic for a law professor to come before you and say that some of you and some policy analysts have too much faith in law. There exists an almost religious-like faith in the power of legislation to solve problems. I wish it were the case that we are just one law away from peace and security. This morning, Linda Fairstein said gun violence is primarily "a legislative problem." Is it really that easy?

Let's consider an analogous problem, illicit mind and mood altering drugs. I need hardly to tell you that legislators have not been hesitant to pass scores of law prohibiting and severely punishing every conceivable aspect of trafficking in controlled substance and we have devoted one-

fourth of our prison cells to drug offenders. But the drug traffic continues, seemingly undiminished. When I look out of my apartment's windows, practically any time of day or night, I can see people on every corner of Washington Square operating a 24-hour-a-day pharmacy. You can even purchase drugs within a stone's throw of some of the City's courts—all this despite a mountain of tough drug laws. I think our lack of success in suppressing drug markets should caution against optimism about our ability to shut down the firearms market. In other words, we should be skeptical that all we need to do to achieve the low rates of gun violence of other countries is to pass stricter licensing and other regulations.

Frequently one hears the refrain that licensing for possessing and carrying firearms should be at least as strict as licensing for driving a car. In a number of states, like New York, it is as strict. Indeed, it is much stricter; firearms licenses, unlike drivers licenses, are difficult to obtain. But the argument for equating gun licensing with driver licensing exaggerates the efficacy of the latter. Does the driving licensing system contribute significantly to traffic safety? People pay money for drivers licenses all over the country. Is this essentially a tax system or a driver regulatory system? I would suggest that the driver licensing system achieves little more than collecting money from people. It works because it's easy to obtain a license and the fee is low. If the fee was high, or if the test was difficult to pass, or if the licensing process required months of navigating through red tape, a great many people simply would drop out of the system; hundreds of thousands in New York have already done so, or never became part of the system in the first place.

To a large extent, the idea of reducing firearms violence through the passage of more law is a bedtime story that people understandably want to believe. The reality is that the story will not happen in real life. Placing so much importance on it may divert us from a more sober-minded analysis of the very devastating problems that we face. So is there anything to learn from comparative study? Obviously, there's always something to learn from examining other systems. We should continually ask whether there are programs, policies and technologies in other countries that are being aimed at regulating firearms that we have not tried. We must constantly be alert for ideas about regulatory models and strategies that we don't know about. My hunch is that other countries probably have not come up with many regulatory innovations because the gun violence problem is not as serious as ours. Thus, there's no reason for them to go to the lengths that we have, at least in some of our cities and states. The kinds of regulations that I hear about seem to be pretty

run-of-the-mill: licensing, registration, taxation and so forth. Nor have I heard anything about novel strategies of enforcement.

As a criminologist, I would like to know why criminals in many other countries do not use firearms. It seems to me very unlikely, at least in Britain, that the answer is lack of availability. If criminals in Britain wanted firearms they could obtain them, just as they obtain illicit drugs. It also seems very unlikely to me that the answer is effective deterrence, that the British criminal justice system somehow threatens its criminals into forgoing firearms. Their criminal justice system certainly hasn't deterred criminals from committing other kinds of crimes.

There are a number of comparative jurisprudence issues that would be interesting to pursue. Is it considered "fair" in other countries to punish people severely for exercising self-defense with an unlawful weapon? To take another question, what kinds of punishments are actually imposed for the essentially victimless crime of possessing an unlicensed firearm in the situation where the person possessing has not threatened anybody? Is that considered a serious crime?

There are some questions of comparative constitutionalism that occur to me. For example, are the developing nations in eastern Europe adopting a right to bear arms? Will the newly emancipated citizens of these countries see guarantee of individual access to firearms as an important or even essential predicate for maintaining a free society?