



Time to pull the trigger? Examining the ethical permissibility of minimum age restrictions for gun ownership and use

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ABSTRACT

A series of prominent mass shootings in the United States (US) has prompted renewed interest in revising gun policy. One proposal that has gained political traction is raising the minimum age for purchase and possession of guns to 21. While some commentators have suggested that the public mood may be shifting on gun policy, proposals to raise the minimum age have nevertheless provoked controversy. In this manuscript, we examine the ethical acceptability of raising the minimum age of purchase and possession of guns to 21. First, we examine the nature of the rights claim at issue. Second, we examine liberty-based objections to minimum age laws, and offer counter-arguments to these claims. Then, we examine the nature of the harm to be prevented via minimum age laws. We conclude that gun ownership is an important right, but one that nevertheless is ethical to regulate. We argue that liberty-based objections to minimum age laws are not as strong as critics of these laws claim. While we acknowledge the data limitations on assessing their likely success in reducing gun-related harms, we argue that minimum age laws are an ethically permissible policy strategy. We conclude with several recommendations for further research and policy responses to addressing the toll of gun-related morbidity and mortality.

1. Introduction

A series of prominent mass shootings in the United States (US) has prompted renewed interest in revising gun policy. One proposal that has gained political traction is raising the minimum age for purchase and/or possession of guns to 21. In the spring of 2018, following the shooting at Marjory Stoneman Douglas High School in Florida, the state legislature passed a measure raising the minimum age for purchase of long guns to 21, along with other measures aimed at reducing future school shootings. Similar proposals have been introduced in other states, and a bill raising the minimum age to 21 was introduced in the Senate (Feinstein and Flake, 2018). These proposals build upon existing age-based gun policies at the federal and state level. For example, federal law prohibits licensed gun dealers from selling handguns to anyone under 21 and long guns to anyone under 18. However, it permits individuals under 18 to buy long guns, and individuals under 21 to buy handguns, provided they do so from a private dealer. Some states set more stringent requirements, such as also prohibiting the purchase of long guns by those under 21.

Some commentators have suggested that the public mood may be shifting on gun policy, suggesting a window of opportunity for those supporting greater restrictions on gun ownership and use. Nevertheless,

proposals to raise the minimum age have provoked controversy. In this manuscript, we explore the ethical acceptability of raising the minimum age of purchase and possession of firearms to 21.

2. Assessing the liberty interest

In the US, the most common objection to minimum age laws is that such restrictions impermissibly violate the Second Amendment. The issue of constitutionality is an important question, and one which has been examined extensively elsewhere (Kates, 1983). However, as David DeGrazia has previously observed, legality is not sufficient for ensuring morally acceptable policy. Consider, for example, that both slavery in the US and apartheid in South Africa were, at the time, legal (DeGrazia, 2014). Therefore, in evaluating US gun policy, including whether it needs changing, we must examine the moral question: namely, *should* citizens have a right to bear arms? And if so, what is the nature of that right (DeGrazia, 2014)?

Opponents of gun policies, including minimum age laws, often present the right to bear arms as a *fundamental* right. Fundamental rights are those that protect special interests, interests that are “integrally related to a person’s chance of living a good life, *whatever her particular interests, desires, or beliefs happen to be*” (LaFollette, 2000).

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Common examples include the political liberties, including the right to vote and to hold office, freedom of speech and assembly, liberty of conscience, and freedom of thought.

Note that what makes a right fundamental is *not* that it is deeply cherished by any individual—or even by many such individuals. Such an interpretation would undermine the special value of fundamental rights, for nearly any interest is deeply cherished by someone (LaFollette, 2000). Instead, fundamental rights are those that are constitutive of an individual's ability to pursue her conception of the good life—whatever her interests may be. Consequently, there is good reason to believe that the right to own guns is not a fundamental right. While it is certainly an important means to a good life for many people, it is not constitutive of a good life for all persons. One can imagine an individual whose good life may never involve the ownership or use of a gun, yet we would be hard pressed to similarly imagine a good life absent the freedom of thought or the freedom of speech. As LaFollette explains:

the interests protected by paradigmatic fundamental rights—our interests in unfettered speech, freedom of religion, and freedom of association—are not merely means to my flourishing, they are elements constituting it. By contrast, having a gun in my bed stand, in my closet, or on my person might be means for me to achieve my ends, but they are not constitutive elements of my flourishing. Hence, owning guns is not a fundamental interest.

Yet, even if the right to bear arms is not a fundamental right, it may nevertheless be an important right, one meriting considerable deference by the state. In a liberal society, there is a strong prerogative for permitting individuals to pursue personally important activities. For many individuals, gun use and ownership may be among the most important activities in their lives. Consequently, a strong claim may exist that the right to bear arms is a *derivative* right, stemming from the fundamental right of noninterference (LaFollette, 2000). According to this understanding, individuals should be allowed to live their lives as they choose—including the right to bear arms, free from state interference—so long as they do not harm others.

Under either interpretation, however, acknowledging that a right exists to own or use guns does not preclude the state from regulating that right. Even fundamental rights can be circumscribed in the interest of securing similar rights for all. Thus, individuals are not permitted to shout warnings in a crowded theatre about a nonexistent fire, due to the risk of physical harm from ensuing panic. Similarly, as Vernick et al. have noted, regulation of guns might act to *promote* rights, restricting the interests of some gun owners to protect “the autonomy of the population that seeks to live in a safer society with a reduced risk of gun violence” (Vernick et al., 2007). The view that gun ownership and use may be both an important interest and nevertheless one that can legitimately face government regulation is reflected in the Supreme Court's decision in *District of Columbia v Heller*. While the Court acknowledged the individual's right to own guns in the home for self-defense, it was careful to note that this did not put guns outside the scope of regulation, holding “like most rights, the right secured by the Second Amendment is not unlimited” (*District of Columbia v Heller* 554 US 570, 2008).

3. Examining liberty-based objections to minimum age laws

Understanding the nature of the right to bear arms undermines several of the liberty-based objections made to minimum age laws. For example, one common objection to minimum age laws is the “inconsistency claim,” namely, that if an individual is old enough to vote or to get married, they should similarly be old enough to own a gun. The claim that restricting the purchase or possession of guns is inconsistent with public policies that give young adults the right to vote or get married is persuasive only insofar as gun ownership is similar to these other activities. As one of us has argued elsewhere in the context of tobacco laws, the right to purchase or possess a gun, to vote, or to get

married are all similar in that they involve elements of both benefit (pleasure, satisfaction, or opportunity) and risk (physical, emotional, or other burdens) (Morain and Malek, 2017). Yet the right to purchase or possess a gun is distinct from these other freedoms in at least two important ways. First, the risk-benefit profile of guns is not analogous to the other listed rights. Guns are associated with several potential benefits, including personal protection, sporting activities such as target shooting, hunting, and collecting for historical or related purposes (Vernick et al., 2007). However, guns have also been repeatedly shown to cause significant morbidity and mortality (Anglemyer et al., 2014). While there are certainly risks associated with other liberties typically granted at age 18, including voting or marriage, these risks are dwarfed by those associated with guns, which present the risk of substantial negative externalities for third parties, ranging from the direct health risks of intentional and unintentional shootings, to indirect costs such as the financial toll of gun-related violence on healthcare institutions and public safety programs. Consequently, gun ownership and use differs in important ways from other liberties typically granted at age 18.

Second, as described earlier, there is good reason to hold that the right to bear arms, unlike the right to marry the person of your choosing or the right to vote, is not a fundamental right. Thus, the permissible scope of regulation for gun ownership is broader than that for these other activities.

Furthermore, there is strong precedent for setting different minimum age limits for different types of activities. Most states in the US permit car rental companies to prohibit those under 25 from renting a car, or to impose substantial surcharges when renting to this population, with the highest surcharges for those aged 18–21. In many US communities, individuals under 21 may not legally purchase tobacco (Morain et al., 2016). Perhaps most notably, every state in the US prohibits the sale of alcohol to those under 21. Such restrictions are well-supported by public health data. Following Prohibition, the minimum legal drinking age (MLDA) in most states was 21, consistent with the contemporary voting age. However, after passage of the 26th Amendment in 1971, which lowered the voting age to 18, several states also lowered their MLDA. However, numerous studies demonstrated that lower MLDA was associated with increases in motor vehicle fatalities, prompting passage of the federal National Minimum Drinking Age Act of 1984, which required states to set a MLDA of 21 or risk losing 10% of their federal highway dollars (Wagenaar and Toomey, 2002; Toomey et al., 1996).

Finally, a growing body of psychology and neuroscience research provides further support for establishing different minimum age thresholds for different types of activities. By age 18, the cognitive maturity of adolescents is generally equivalent to adults, including the ability to reason, process information, and understand the consequences resulting from their decisions (Institute of Medicine, 2015). However, other aspects of their psychosocial development may still be incomplete. These include several processes of particular relevance to gun ownership and use, including reduced impulse control, greater susceptibility to peer influence, and greater sensation- and reward-seeking behaviors (Institute of Medicine, 2015). Development of these capacities may proceed until age 26, suggesting potential reasons why states might even consider age thresholds above age 21. Several examples of higher minimum age standards exist internationally, including Brazil (25) and Israel (27 for citizens who have not served in the Israel Defense Force) (Library of Congress, 2013). However, as current US policy approaches have focused on 21, we will focus our analysis on this threshold, rather than exploring other, more theoretical limits.

A second objection offered by opponents is that it is inappropriate to restrict the liberty of the responsible majority of gun owners aged 18–20. It is certainly true that minimum age laws would restrict access for many who would use their guns in a responsible, safe way. However, discerning between those who are and are not likely to use guns responsibly is infeasible, if not impossible. Efficient policymaking

requires establishing consistent rules. To take an analogy, not every drunk driver will cause an accident. Nevertheless, we commonly accept such laws as a permissible means to regulate harmful activities in the interest of a well-regulated society.

Furthermore, there may be especially strong reasons to regulate guns, which, unlike alcohol or automobile use, do not merely have the potential to harm, but were deliberately designed to do so (LaFollette, 2000).

The claims from liberty, therefore, are not as strong as supporters might present. This suggests that minimum age laws are not ethically impermissible. Arguing that they are good policy, however, requires further work. Among the relevant considerations are (1) the nature of the harm to be prevented (including the severity of harm and its extent or magnitude), and (2) the likelihood of the regulation to prevent that harm.

4. Examining the case for minimum age laws

4.1. The nature of gun-related harm

Minimum age laws clearly target a harm that is both severe and widespread. More than 38,000 persons die and another nearly 85,000 are injured by firearms each year (Centers for Disease Control, 2016a; Centers for Disease Control, 2015). Firearm injuries are among the top five causes of death for people under 65 in the US, accounting for 7.1% of premature death or years of potential life lost (Centers for Disease Control and Prevention, 2005). The annual homicide rate in the US is seven times that of other high-income countries—driven primarily by a gun homicide rate that is over 25 times higher (Grinshteyn and Hemenway, 2016). The toll is particularly high for younger individuals. Homicide is the leading cause of death for African American males age 15–24. Firearms are used in more than 90% of homicides in this group (Centers for Disease Control, 2016b). Suicide is the second leading cause of death for males age 10–24, and guns are used in more than half the suicides in this group (Centers for Disease Control, 2016b). Of all suicides among those under 21, guns are used in approximately 40% of deaths (Centers for Disease Control, 2016a).

Gun violence also takes a heavy economic toll; the best estimates on the economic toll of firearm violence puts the bill at \$229 billion per year, or \$12.8 million per day (Follman et al., 2015). This includes the costs of medical treatment and mental health care, legal fees, incarceration, emergency medical services, police resources, and associated security upgrades to prevent violence.

4.2. The likelihood of minimum age laws to reduce harm

There is a strong case that minimum age laws target a substantial harm. Whether minimum age laws will, in fact, reduce the harm of gun-related morbidity and mortality, however, is less clear. Assessing the likely impact of minimum age laws, like that of gun laws more broadly, is hampered considerably by the relative paucity of data on gun violence. The federal government spends considerably less on research into gun violence than it does on other comparable health risks. Thus, on the specific question of minimum age laws, data are limited (Rosengart et al., 2005; Webster et al., 2004). There have been few high-quality studies to evaluate the impact of minimum age laws. One potential explanation is that such laws may previously have been viewed as politically infeasible, making researchers reticent to dedicate scarce resources to evaluating policies perceived as having little likelihood of future implementation. According to a recent RAND analysis, there is some evidence that minimum age requirements may reduce firearm suicides among some individuals under 21. However, the effect of these laws on mass shootings, unintentional injuries and death, and violent crime is inconclusive (RAND Corporation, 2018). However, as emphasized by the report's authors, declaring that evidence is “inconclusive” should not be taken to indicate that a policy has no effect. Instead, it

may indicate that the effect is too small to detect, or that the data is not available or sufficiently specific to detect an effect (RAND Corporation, 2018). For example, a cross-sectional time series study examining the effects of state-level minimum age 21 laws for handgun purchase and handgun possession found no statistically significant change in firearm homicide or suicide. However, data were limited. Only one and three states had at least five years of post-amendment data for age-related possession and purchase laws, respectively, thereby limiting the ability to detect an effect (Rosengart et al., 2005). A more recent study of minimum age laws found no statistically significant effect of state minimum age laws for youth age 0–19 for firearm-related suicides or unintentional deaths. Yet this study found that both firearm-related suicide and unintentional deaths declined dramatically among those under 20 after passage of the Federal Crime Control and Law Enforcement Act of 1994, which banned the possession of handguns by persons under 18, suggesting that wide-scale implementation, such as that done at the federal level, may, in fact reduce firearm-related mortality (Gius, 2015).

Additional support for the hypothesis that minimum age laws could be an effective strategy for reducing firearm-related morbidity and mortality is provided by the strong association between the gun availability and gun deaths (Hepburn and Hemenway, 2004). The association between gun prevalence and homicide has been consistently documented at the household, city, state, and national level, supporting the argument that environments with more restrictive gun policies have lower gun-related morbidity and mortality (Hepburn and Hemenway, 2004).

5. Discussion

This analysis suggests two points. First, gun-related violence is a widespread and severe public health problem. Second, while individuals have an important interest in gun ownership and use, the government nevertheless has a legitimate role in preventing gun-related harm, particularly among those under 21. This suggests that minimum age laws are likely an ethically appropriate use of government authority. However, several questions remain regarding the broader question of what strategy—or more likely, what combination of strategies—will achieve the dual aim of ethically and effectively reducing the toll of gun violence in the US. Below, we offer three recommendations to guide policy efforts.

5.1. Liberty and public safety: striking the right balance

Jurisdictions considering minimum age laws have several options with respect to their breadth and coverage. In doing so, they must consider the tradeoffs between specific restrictions, such as those targeted to a high risk group (e.g., individuals with a criminal record), versus sensitive restrictions (e.g., population-based approaches). One approach would be to vary access based upon demographic predictors. For example, the National Rifle Association (NRA), in a recent lawsuit challenging Florida's minimum age law, asserted that the law disproportionately violates the rights of young women, who are far less likely than their male counterparts to commit school shootings, or violent crime more generally (National Rifle Association of America, Inc. v Bondi, 2018). However, classifications by individual characteristics, such as race, and sex, have a problematic and pernicious legacy in the US, which may make jurisdictions understandably hesitant to rely on these metrics. Alternatively, others have argued that laws should be focused on handguns only, not long guns, as handguns are more likely to be used in crime than long guns, and long guns have a legitimate purpose for hunting. However, long guns have often been the weapon of choice for mass shootings, including the shooting that precipitated Florida's recent minimum age law.

Rather than relying on demographic or firearm categories, jurisdictions might instead offer exceptions for hunting, such as requiring

individuals to obtain a permit certifying they have completed requisite safety trainings, and are affiliated with a recognized shooting club. Such strategies, we believe, offers the ability to permit individuals who are unlikely to use firearms in a way that will cause injury to others and to use them for legitimate sporting purposes, while reducing access from those who might be more likely to cause harm.

5.2. Importance of further research

Good policymaking requires good evidence. However, evidence-based policymaking on guns has been hampered by restrictions on the use of federal funds for gun research. In 1996, the Dickey Amendment instructed the Centers for Disease Control and Prevention (CDC) that none of the funds received for injury prevention and control be used to “advocate or promote gun control.” In addition, shortly after the amendment’s passage, Congress lowered the CDC’s budget by the exact amount it spent funding gun violence research the previous year. These actions sent a clear message that gun violence prevention was not an acceptable topic of research for the CDC. In the wake of recent school shootings, the federal government has signaled a potential willingness to permit gun violence research. Moving forward, the federal government, states, and private foundations should invest dedicated research dollars to explore the causes of gun violence, as well as the effectiveness of strategies to remediate it.

The recent passage of minimum age laws in Florida and related state laws offers the opportunity to study the effectiveness of these laws at reducing firearm morbidity and mortality, for both those under 21 and the broader population. A range of future research studies could offer important evidence to inform future policymaking, including intervention studies that assess differences in outcomes by state and year, as well as implementation studies to examine how these laws are implemented and enforced through legal practices. For example, prior research of another type of public health law targeting youth, youth sport concussion laws, found that, while the text of many such laws were similar across states, there was nevertheless tremendous variation in how these laws were actually implemented “on the ground” at the state level (Lowery and Morain, 2014). Understanding these features will be critical to informing future evidence-based policymaking to prevent firearm-related morbidity and mortality.

5.3. Background checks

The effectiveness of minimum age laws will be shaped by several implementation features. One critical variable is whether states with minimum age laws also have laws requiring background checks for private sales, known as comprehensive background check (CBC) laws. CBC laws play a critical role in the implementation and enforcement of other laws. They are also an important component of a robust set of gun policies to screen out prohibited purchasers, including individuals who have forfeited their right as a result of criminal behaviors or are otherwise deemed too risky to own firearms. CBC laws are necessary to ensure that those otherwise prohibited from gun ownership are not able to bypass laws and obtain firearms through unregulated mechanisms including private sales. Thus, jurisdictions seeking to restrict the access of those under 21 to firearms should couple this effort with the passage and implementation of CBC laws.

6. Conclusion

Recent mass shootings have prompted interest in gun policies aimed at reducing the toll of gun-related morbidity and mortality, including restricting gun ownership and access among those under 21. Opponents to gun policies argue that such restrictions unduly restrict individual rights. However, while gun ownership and use may, for many individuals, be an important interest, there are nevertheless legitimate reasons to limit access and use, particularly among those under 21.

Moving forward, responding to the toll of gun violence will require dedicated investment of research funds, and broader consideration of implementation features that will shape the effectiveness of gun policies.

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Conflict of interest

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