

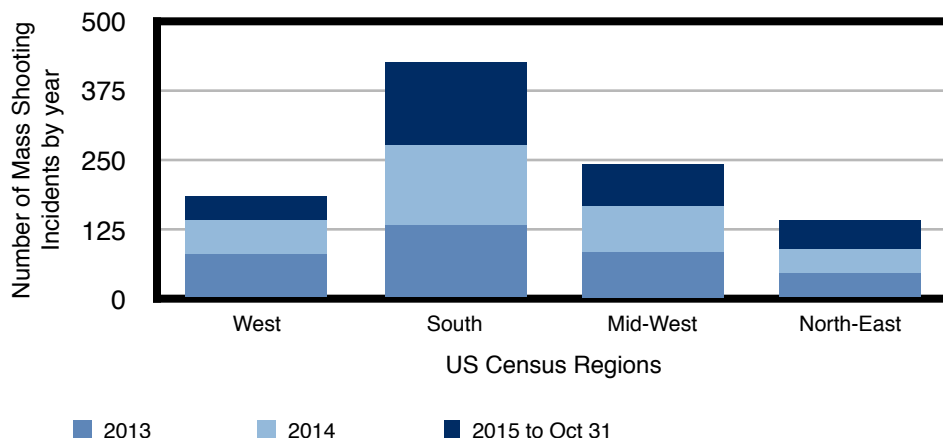
PRELUDE — DEATH IN NEWTOWN 2012

In December 2012, most of the news stories about the deaths of children and staff at Sandy Hook Elementary School in Newtown, Connecticut were reporting a massacre, a rampage-style shooting with 26 deaths. In fact 27 people died at the school. The one left off some casualty lists was the young man with the gun. He died because he killed himself. A very public suicide. In the USA, among 30 perpetrators, in one survey of rampage-style killings between 2001 and 2012, only 5 survived. Almost all died by suicide in public, in the very place they killed the others. A few died in the immediate aftermath at the hands of the police. Guns used in murder-suicides, including terror-suicides like Newtown, and guns used in the more ordinary, self-inflicted deaths we all recognize as “suicide” kill about 20,000 Americans every year. This is a phenomenon of our times; a gun story in which killers and their victims (almost always only themselves) are often older, largely male, and mostly white.

Our unique approach to gun rights -- associated as it is with individual power, the entitlement to own a gun and the right to respond with violence when protecting property or honor -- has deep roots, reaching back to the nation’s founding documents and social systems. Today’s progressive gun politics must include working on these roots, but in new ways. Specifically, we should use rights protected by the First Amendment to set criteria that ensure the right to bear arms, mandated in the Second Amendment, is “well regulated.” Other remedies I propose have nothing to do with endless debates about listing names in national gun registries. Computer registries give little confidence that they are reliable, and they understandably raise anxieties about the right to privacy. Beyond Constitutional remedies, my other suggestions draw on our extensive experience limiting other risky aspects of our social interactions, including driving and smoking. But the most important notion is that, if the individualist rights now claimed as inherent in the Second Amendment are to be “well regulated,” inspiration to achieve this goal is available to us in this nation’s passion for freedom of speech and assembly. The First Amendment is being threatened by ever increasing number of ways guns are carried into our public lives. The time has come to rise to its defense.

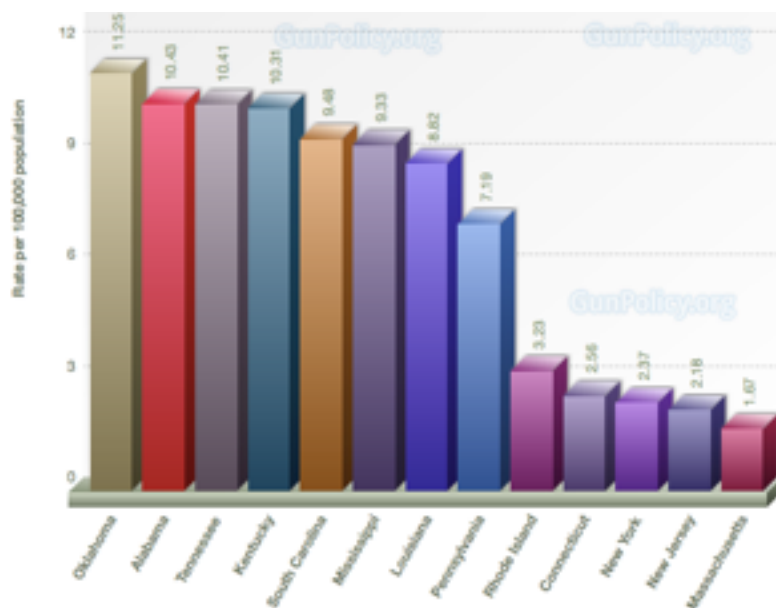
Descendants of slaves know deeply that violence was built into the country at its founding, in whippings and lynchings, and families wrenched apart. The slave owning class understood that its essence rested in part on an unconstrained right to act violently. Many people in the USA today claim for themselves an analogous power, which they cloak in the Second Amendment, asserting a right to own and use any kind of gun, for any reason, in public or in their own homes, at their own individual discretion. No matter how large the majority in favor of reducing gun violence, this minority is trying to craft and protect virtually unconstrained access to guns.

The Constitution made the entire nation complicit in the violence of slavery, by including the mandates of the Fugitive Slave clause and the 3/5 clause which gave slave owners disproportionate electoral and political power at the Federal level. Wars against the Indians and the “settling” of the West broadened the original violent tradition, but in the regional differences in current patterns of mass shooter violence, and in regional differences in patterns of suicide today, the USA is living out yet another iteration of the legacies of slavery. Both gun suicides and mass shootings in the former Confederacy disproportionately outnumber those in most of the original northern states. The selected states present a particularly dramatic contrast.



Mass Shootings By Census Regions 2013 - 2015

A Comparison Between States showing Rates of Suicide per 100,000 population.



Each suicide and each terror suicide is the work of one or perhaps two people, but their lives unfold in social structures shaped by politics and by values embedded in the culture. This essay focuses on the structures and, despite regional differences, the national consequences that are a part of all of our lives.

Newtown — The Political Context

Let me sketch briefly some of the political consequences of the Sandy Hook Elementary School crisis in Newtown, in 2012. An immediate display of grief -- intimate and dreadful at the scene, was accompanied by money and toys (because it was near Christmas), flowers and messages of dismay flowing in from all over the country. The flood of private donations quickly became a confusing public problem: how does a community in grief handle so many unsolicited and sometimes unwanted gifts? Bigger, tangible political

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consequences lay ahead. School officials would have to decide whether and how to rebuild the school, and whether to place armed guards in the buildings. Connecticut State officials took up legislation for sterner gun control, which passed and was signed into law on April 4, 2013. As a wider politico/economic consequence of Connecticut's action, a rush of conservative commentary claimed that this and similar legislation passed after an earlier massacre in Colorado, was "forcing" gun manufacturers to move factories to "greener pastures" including Texas. From grief to interstate economic competition in four short months. Several months later, in Colorado, a special election resulted in the recall of two women senators closely associated with the gun control legislation.

National political options in the face of these events erupted in complex and often hostile public debates. President Obama attended mourning ceremonies in Newtown and vowed, once back in Washington, to pass sterner legislation at the Federal level. He was checked at the very first post. Legislative filibuster rules allowed a bill improving purchaser background checks to be "defeated" by the minority on April 17, 2013, despite having a majority of 54 votes in favor. This seemed to bring the Federal story to a depressing climax. There was more, however. On May 8, a slightly larger majority (56 votes) was also deemed to have been defeated as it tried to do the reverse, to *expand* gun owners rights on Federal land.

The public debates did not end with these Senate votes and one challenge to the NRA position was set out in John Oliver's *Daily Show* stories about Australia, where new gun controls imposed in response to a gun massacre in the 1990s, have been effective and well received. Congresswoman Gabrielle Giffords, a victim of a mass shooting, also tried to challenge pro-gun norms, in a *New York Times* op-ed explaining how NRA threats lead a politician to fear for his/her political future. Her essay confirmed one of John Oliv-

er's more stunning interviews, in this case with a former aide to Senate Majority leader Harry Reid. The aide, Jim Manley declared on screen that a politician's first goal is "to get reelected." Passing legislation, he agreed, would be no higher than second priority.



Already tracking the very same electoral train of thought, the mainstream news media began speculating on the likely impact of votes on the gun measure by specific senators. Interestingly, given the male centered patterns

of gun ownership and use in the USA, the consequences for women senators seemed particularly worth calling into question. Sen. Ayotte of New Hampshire learned that her vote against gun purchaser background checks might hurt. Sens. Landrieu (Louisiana) and Hagen (North Carolina) were probably pleased to hear that they might be gaining supporters from their votes in favor of control despite representing high gun-ownership states. A Senator from North Dakota, Heidi Heitkamp, will not discover until 2018 which way the consequences of her vote will fall. Remember, it was women state senators who were recalled in protest against their gun control votes in Colorado.

The Senate vote was on the smallest of details, improved background checks for gun purchasers. No measures for serious change were proposed, and none were expected. Everyone understood the structural support undergirding commitments to guns and to the individual right to own them, commitments easily strong enough to override polls showing huge public support for change. Given the Congressional paralysis in Washington, DC in 2013, there was never really any need to consider the possibility that the

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public consequences of that public terror suicide in the school in Connecticut might change core dynamics in American politics.

Newtown — in global context

When “terrorists” kill themselves while detonating bombs in Kabul, Americans are horrified and also disgusted by their actions. “Suicide bombers” are easily relegated to a space beyond the fringes of human civilization. When Tibetans self immolate in the western regions of China and in Tibet, Chinese officials too relegate them to the fringes, as criminals and terrorists. American observers, by contrast, normally treat Tibetan deaths as human tragedies. We in the USA probably see both groups of activists as motivated by powerful beliefs, although suicides protesting injustices who are Buddhist are described with compassion, while Moslems who seek to glorify Allah through martyrdom are repudiated.

By contrast, we discuss our own, public suicides as though each case were an individual one, an isolated and random event disconnected from any overarching belief system. We search the biography of a single life for the personal traumas and destabilizing experiences that turn a human being into a monster.

In this essay I will argue that it is a fallacy to dismiss America’s public suicides as mentally troubled, isolated, monstrous individuals. Rather, each of them also is entangled in a powerful belief system. It rests on guns and on an individual’s right to take violence into his, or occasionally, her own hands, a belief system just as powerful and convincing as religious impulses are for Buddhists and Moslems. Furthermore, the political underpinnings of that belief system recently have been strengthened not weakened by official support for guns and the option to resort to violence. It is that belief system that lies at the heart of this piece. If we are to keep 20,000 people from killing themselves each year in this country, it will not be enough to put through a small increase in mental health spending.

In Part 2 the essay examines the agendas pursued by pro-gun advocates in recent years and the legal consequences of these agendas. In Part 3, the modern efforts are placed in US historical context, in which a pattern emerges of repeated reassertions that true Americans have the right to respond with violence, each reassertion coinciding with a time of significant change in the political status of African Americans. At the end come recommendations for action.

Part 2 -- THE NRA, DATA, AND THE LAW

The NRA

2012 which ended so horribly in the Newtown killings also began with a highly publicized gun death, this one in Florida. George Zimmerman, on official patrol as “neighborhood watch” in a gated community, shot and killed a 17 year old young man. Trayvon Martin had been walking home, towards the house where he was staying inside the community. Martin, young and black, was wearing a hooded sweatshirt. Laden as both men were with stereotypes about violence in the USA, their fatal encounter was replayed again and again in the media. One recurring theme centered on the fact that Zimmerman was not arrested and charged for nearly six weeks. Many attributed police inaction to the implied permission to kill in the name of “self-defense” that had been extended so broadly in Florida’s 2005 “Stand Your Ground” law.

One organization pushing relentlessly for the passage of Stand Your Ground laws was the National Rifle Association, the NRA, the institution that most clearly embodies rock hard commitment to gun rights in the

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United States. The NRA's origins lie back in the Civil War, when military leaders realized that their recruits were appalling marksmen. Its initial purpose was to train men in handling rifles effectively, first for war and later for hunting and sport. Rifles, "long guns" were the NRA's primary concern. For over 100 years, its programs focused on gun handling and its membership recruitment on recreation. The organization even supported much of the 1968 Gun Control Act, passed by Congress in response to the assassinations of the two Kennedys and Dr. King. But the late 1970s saw major changes in the NRA's organizing strategies and agenda; an extended internal policy debate ended in the gun "activists" triumph.

The selection as Executive Director of Harlon Carter in 1977 embodied the change. Tensions had been brewing about the organization's priorities for five years, once Carter became the NRA's DC lobbyist. As a teenager Carter had been convicted of second degree murder, a conviction later overturned by a ruling of "self-defense." His life long advocacy for the right to self defense made him willing to argue that weapons in the hands of felons and the mentally disturbed was the price he was willing to pay for the "freedom" of gun owners to take action into their own hands. By 1986 the organization had managed to get Congress to weaken the 1968 Gun Control Act. In 1991, and with the appointment of Wayne La Pierre as Executive Director, the NRA's trajectory was firmly fixed in the anti-gun-control direction. While the advertisements and language of the 1980s and 1990s linked gun rights to the nation's crime rate, after 2000 the organization took a more generally antigovernment position, joining with other single-issue focused groups in the small government movement. In a combination of state laws and litigation, the NRA now argues its "self-defense" agenda virtually entirely through the individual right to bear arms, as laid out in the Second Amendment, to them the core of the US Constitution.

Tropes but not much data

In the US in recent decades, public "opinion" about the value of guns has had to develop without much evidence-based data to support claims made by anyone. We have lived from sound-bite to trope with perilously little reliable information to temper our emotions or to use as the basis for policy. The NRA more than any other single entity, has determined the structure of public discourse on guns.

The absence of a larger body of explicit research into guns and suicide is, like "Stand Your Ground" legislation, a sign of the power of the pro-gun lobby. After Newtown, President Obama finally ordered the Centers for Disease Control to restart government-funded, scholarly studies of gun injuries, ending a 16 year long ban on the topic. Yes. 16 years ago Congress established a ban on government-funded, civilian research into gun injuries. The NRA drove the 1996 ban, and the restriction has been inserted into each of the annual CDC appropriation bills ever since.

Encouragingly, the trend towards denial may finally be reversing, and doing so more widely than just in Obama's White House. In 2012, an extension of the ban directed at the military was partially rescinded, allowing discussions about suicide with soldiers still in the services and known to be suicide risks. After Newtown, the mainstream media began carrying stories about the lack of research data and the need to determine the correct next steps. Media coverage and data showing a steady increase in the number of suicides in the Army and Navy may be encouraging officers to use the 2012 permission to talk to those whom they know to be at risk. The rest of us, however, the NRA still wants to keep in the dark.

In the face of a serious lack of carefully interpreted, widely available data, the USA has been awash in stereotypes and generalizations, masquerading as facts, about who uses guns and why. It is imperative

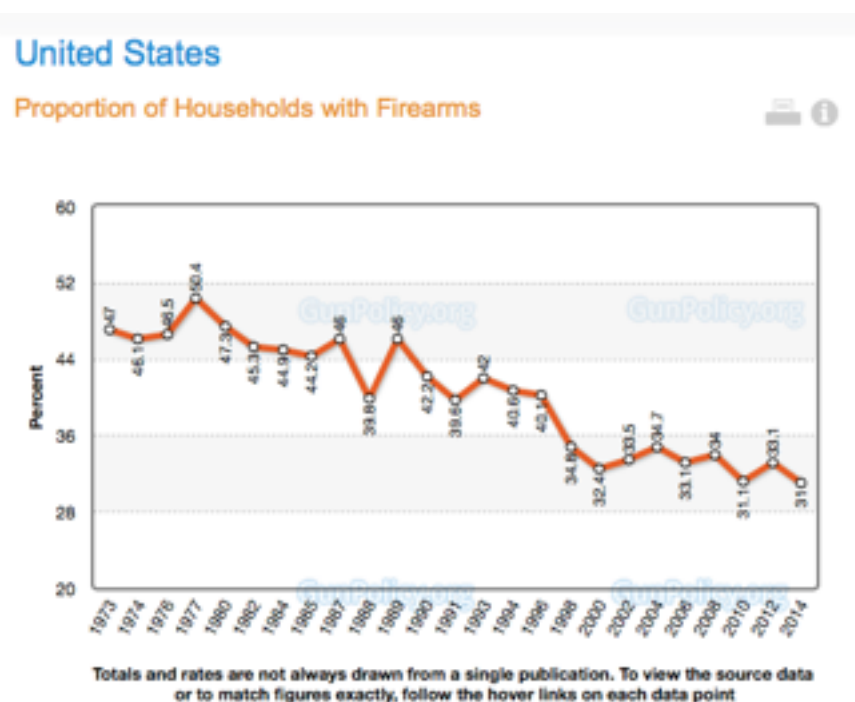
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we become able to hear and recognize differences between the stories we keep telling ourselves, including how we allocated blame, and findings from evidence-based research.

Stereotypes

1) Blame TV and Film. In the aftermath of each mass shooting, gun advocates return to the unsupported platitude that if mass violence seems commonplace in the United States today, then film, television and video games are to blame for making violence seem permissible. Despite the massive amount of fictional media violence, most mass-murder/suicides do not need that kind of inspiration. They already have clear personal connections to the people and places they target. It needs only to be added that, fictional shooters almost never turn their guns on themselves. Suicides, whether rampage killers or private people cannot be described as copy-cat versions of the violence on screen on a Saturday night.

2) Gun Purchases have increased dramatically in recent years. Well, yes and no. Each terror suicide and well publicized mass shooting leads to fearsome mass mailings by the NRA that Obama's government is about to restrict gun ownership. Which means that gun owners are often inspired to buy yet another weapon. In fact the percentage of American households which own a gun has been declining steadily. This chart shows the decline continues even in an era of well publicized mass shootings. The well respected GSS, the annual, nationwide social survey by the National Opinion Research Council, confirms that the total number of households owning guns has declined to close to 30% from over 50% when the survey began in the early 1970s. The remaining households are therefore stocked with ever more guns.



3) Most often when guns are used it is for self-defense. Self defense has become the dominant trope governing US policy in the new millennium, the one which gives such power to the Second Amendment. The right to self-defense will come up again in the section of this essay that traces attitudes to guns in 2015 back through US history to the Founders. Today the notion carries real weight as politicians and citizens argue through the political consequences of terror-suicides. For pro-gun advocates the argument is a “no-brainer,” and their sound bites, which saturated the media in recent years do not easily fade: “the only thing which stops a bad guy with a gun is a good guy with a gun,” is probably the most famous.

Definitive data on the use of guns in self defense is, in reality, extraordinarily hard to document. Scholarly surveys attempting to pin down whether a visible gun was used for hostile purposes or in self defense

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repeatedly find that hostile uses are more likely. Even a study favored by gun advocates found a ratio of six hostile displays to a single use for self defense.

Nonetheless, these same advocates, publishing *The Gun-Control Fact Sheet*, declare that guns are used for self defense millions of times each year:

“Even anti-gun Clinton researchers concede that guns are used 1.5 million times annually for self-defense. According to the Clinton Justice Department, there are as many as 1.5 million cases of self-defense with a firearm every year. The National Institute of Justice published this figure in 1997 as part of "Guns in America"—a study which was authored by noted anti-gun criminologists Philip Cook and Jens Ludwig.

In fact Cook and Ludwig's study argues that it is hard to estimate how many times guns are used in self-defense. They recognize that 46% of gun owners *believed* they needed the gun for protection, but they conclude that “Evidence suggests that this survey and others like it overestimate the frequency with which firearms were used by private citizens to defend against criminal attack.”

The Libertarian think tank, the CATO Institute, put out a striking challenge to the argument that guns are used millions of times for self-defense. CATO's study, dated 2012, claimed that self defense usage of guns was widespread and crossed all segments of society. Having decided that “survey data has severe limitations with respect to defensive gun uses” CATO embarked on “collecting accounts of self-defense as they are reported in news outlets [which] may be a better method of assessing the frequency and nature of self-defense with firearms.” They studied news stories from October 2003 to November 2011 and, despite an 8 year time frame, they managed to identify only 5000 reports of guns used in self defense across the entire USA. Clearly, the millions of “self-defense” actions claimed to result from gun ownership are fantastical, completely out of touch with the ways we actually keep ourselves safe.

Guns and The Law

In recent years the NRA has used political coercion — primarily donations and black-lists focused on the defeat of their opponents — to propel changes to the law and important changes in national constitutional priorities.

Stand Your Ground increased the settings in which shooting in self defense is legal. The core justification for killing in self defense is age old: facing imminent death or serious bodily harm. In Anglo-American common law two prerequisites were traditionally required: one had a duty to retreat if at all possible, and the only place this duty to retreat did not apply was in one's own home or property. Other cultures rarely take as absolute a view as we have in the US, that ones home is ones “castle.” In Japan they have never forgotten the killing of an exchange student, 服部 剛丈 Hattori Yoshihiro, who died in Baton Rouge on Halloween in 1992, trying to Trick or Treat at the wrong house. The Japanese were appalled that home owner, Rodney Peairs was acquitted because he had posted a notice (not easily understood by a Japanese speaker) warning visitors not to walk up to the house.

Florida and other states with Stand Your Ground legislation have extended the “no requirement to retreat” dramatically, to include wide areas, for example ones car and even places one is “entitled” to be: side-walks, parks, hotels, airports. Trayvon Martin was shot on a side-walk. After Florida, 25 other states passed similar laws within six years. The *Wall Street Journal* reports: “ ‘Justifiable’ homicides nearly dou-

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bled from 2000 to 2010 The data, provided by federal and state law enforcement agencies, showed a sharp increase in justifiable homicides.”

Businesses engaged in gun sales are now exempt from many lawsuits. 2005 saw another important new law, this one Federal, extending the likely uses of a gun, by curtailing liability law suits over deaths involving guns. The legislation, named The Protection of Lawful Commerce in Arms Act, guaranteed gun makers and gun dealers exemption from civil lawsuits whenever, as in terror-suicides and murder-suicides, the gun was used to commit a crime: “We prohibit causes of action against manufacturers, distributors, dealers, and importers of firearms or ammunition products, and their trade associations, for the harm caused solely by the criminal or unlawful misuse of firearm products or ammunition products by others, when the product functioned as designed and intended.” Unlike the tobacco industry which was ultimately forced to pay compensation for all smoking damage, even that from cigarettes bought or sold illegally, the gun manufacturers and dealers are safe from suits whenever a criminal uses a gun -- as long as their weapons functioned as “designed and intended.” Though criminal, using a gun to kill another person is conforming to the manufacturer’s design intentions, hence the industry is exempt from responsibility.

Suicide, however, is not a crime, and among the remedies available to turn the tide on gun violence to use civil courts and local tort cases to challenge the way gun advocates dismiss mandatory protections like gun locks, leaving weapons too readily available to people in anguish who kill no-one but themselves.

Expanding “Open Carry” Laws Including Opposing School-yard Gun Free Zones. Associated with the extension of the right to self defense in public places, the NRA opposes all “gun free zones.” The Newtown shooting proved yet another opportunity to challenge this particular kind of restriction. Just days after the children died, Wayne La Pierre blamed the government for the deaths:

“Politicians pass laws for Gun-Free School Zones. They issue press releases bragging about them. They post signs advertising them.

And in so doing, they tell every insane killer in America that schools are their safest place to inflict maximum mayhem with minimum risk.”

“When it comes to the most beloved, innocent and vulnerable members of the American family — our children — we as a society leave them *utterly defenseless*, and the monsters and predators of this world know it and exploit it. That must change now!

The *only* thing that stops a *bad* guy with a gun is a *good* guy with a gun. Would you rather have your 911 call bring a good guy with a gun from *a mile* away ... or *a minute* away?” . . .

“The NRA is going to bring all of its knowledge, dedication and resources to develop a model National School Shield Emergency Response Program for every school that wants it.”

By spring 2013 the Newtown school board had come to agree that ending “gun free” was a good idea so it voted to put armed guards in the schools. Perhaps to its surprise, just a few weeks later the citizens of Newtown voted down the budget to pay for those guards. In the three years since Newtown, the NRA agenda has also been focused on increasing, state by state, the settings in which it is legal to carry a concealed weapon, which now include college campuses, bars and even airports.

In 2015 preliminary research findings, made possible by ending the ban on government funding, begin to show the weakening restraints on gun ownership increase death rates. From the perspective of scholarly thinking, reasons to change are becoming clearer. However, they are not going to be enough if the deeper, race-based layers of this problem remain unchallenged.

PART 3: LEGALIZING VIOLENCE: SELF DEFENSE, VOTING POWERS AND THE SECOND AMENDMENT

This essay now takes an important turn, one which earlier readers have told me is challenging and perhaps incomplete. I recognize the concern and yet I remain convinced that the powerful race-based structures that have shaped this country since its Founding are, today, an important element in the view prevalent among gun owners, even among terror-suicides, that they have a personal right to take up violence whenever they chose. An African American in the White House, head to head with intransigent gun politics is a key part of the context today, and it is where this last part of my argument begins.

I am not alone in seeing the threat of violence underlying Obama's presidency as distinctive, because of his race. People of many political persuasions here and abroad seem to have known, deeply known, that President Obama's African heritage made him a target, way beyond the already huge, often lethal risks faced by previous Presidents. Still, if ending President Obama's life seemed an all-too-obvious risk, it turned out to be equally easy to raise doubts about its beginning, at least for Donald Trump and the "birther" movement. To them Obama's origins remain indeterminate, making him ineligible to be President. Politics everywhere brings out the odd and uncomfortable, but the deep craziness of the birther movement, the delegitimization of a sitting President, on the basis that his Africanness rules out his fundamental Americanness, echoes all too easily the notion, still in the Constitution written out for all to see, that Africans who came as slaves could not participate in public life.

Recently it has not been difficult to uncover linkages between a passion for gun rights and intense racism. Jim Porter, First Vice-President, since 2009 and NRA board member since the late 1950s, has been among the most explicit: "I get so sick and tired of all these people with this fake president that we got who wants to say, 'Well, you know he hasn't done anything bad for gun owners.' I say, let me tell you something bad that he's done. His entire administration is anti-gun, anti-freedom, anti-Second Amendment." In this particular speech Porter went on to describe then U.S. Attorney General Eric Holder, as "rabidly un-American" and he linked Holder to "trying to kill the Second Amendment at the United Nations." Valerie Jarrett, Domestic Advisor in the White House was linked to the notion that Obama's people wanted "revenge," even though Porter offered no evidence of what revenge might be for. What do the officials Porter connects to the urgent need to protect the Second Amendment have in common? They are African Americans.

At least three key standpoints make up the racial context that underlies our accommodation in the USA to high levels of gun violence. (1) Our Courts keep agreeing to new justifications for violent acts, specific expansions coinciding, over historical time, to changes in patterns of race relations (2) We tolerate disproportional allocations of political power so as to benefit the proponents of the right to resort to violence, which originated in the allocation of disproportionate political power to slave states and (3) Extremists among us take positions extrapolating from particular language in the US Constitution. Now, and once before, attitudes that are extremist even within their own historical context have coincided with a crisis over race and power. Each of these three confronts us today. Which means we are also, now, in a position to reexamine our debates about the structural violence that has marred the United States since its Founding.

(1) From "Correction" to "Self-Defense" to "Stand Your Ground"

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Violence, of course, was embedded in master/slave relationships from the very beginning. It was understood that only the risk of dreadful violence hovering over themselves and their families kept slaves on the plantations, and at work. Originally, this kind of violence was sanctioned in a series of state laws which, while making it a crime to “murder” a slave, made exceptions for violence that occurred if the slave was undergoing “correction.” Slave owners, naturally, described this “corrective” violence as a form of self-defense, a vital strategy to protect their homes and their property from slacking workers at a minimum and from slave revolts at the extreme. For example, Georgia’s Constitution, 1798, explicitly mentions insurrection as a justification for killing a slave.

The ending of the Civil War saw the ending of slavery but not the end of legal arguments affirming that unusual violence was legally justifiable, arguments based on ever expanding redefinition of aggressive violence as “self defense.” In the latter part of the 19th Century, Supreme Courts in several states and finally the US Supreme Court made rulings which repudiated the traditional basis for self defense — that one had a “duty to retreat” when under attack, until “ones back was against a wall.” State rulings confirming the right to attack when threatened peaked in the mid 1870s, the very same years that whites in the Confederate states were violently rolling back Reconstruction politics, stripping African Americans of their rightful access to governing power. The US Supreme Court’s succession of rulings that reclassified murder convictions as “self-defense” were made just before and just after 1895, the year segregation was ratified in the infamous Plessy v. Ferguson case. In 1921 Oliver Wendell Holmes, (Brown v. United States) wrote that it was not even necessary to be attacked: “Detached reflection cannot be demanded in the presence of an uplifted knife.” In this single line, Holmes declared that all a killer needed was fear itself.

Expanding the characterization of violent action as “self defense” is, of course at the core of the current enthusiasm for Stand Your Ground laws. By the 1870s, it had been deemed reasonable not to retreat, especially at home. By 1920 it was deemed reasonable to kill if one feared for one’s life. By 2012, when Michael Zimmerman was acquitted of killing Trayvon Martin, just because he was walking down the street, fear no longer had to be based on clear evidence of danger. A “true” man (1876), a “reasonable” man (1895), and a man with no law enforcement training at all should be entitled to stand and fire in self defense or to prevent crime “in public places” (2005), including public colleges, airports and bars (2015).

Generating the Census Count to Allocate Seats

In the sequence of events since the Founding which led us to this present, another reality is that certain rights can be deemed so pivotal they need special protection. At the Founding, owning slaves was such a right. Its protection was written into the Constitution in the 3/5s clause, because by counting the slaves those states were allocated more seats than they had citizens. The original mechanism was simple: Setting the rules in the census, mandated by the Constitution, to include 3/5 of each slave as the basis for representation in Congress. In 1793, slave states had 47 of the 105 members but would have had only 33 if no slaves were counted. In 1802 they held 64 seats instead of 50, in 1812, 76 out of 143 instead of 59, in 1820 they had 82 instead of 70 and in 1833, 98 out of 240 instead of 73.

This power impacted the selection of the Speaker, the confirmation of judges to the Supreme Court and critically the Electoral College. Between 1789 and 1837, all Presidents owned slaves while serving as President, except John Adams and John Quincy Adams who each only managed one term. No-one was elected to a second term who was not a slaveholder. A brief interlude of equality after the end of the Civil War faded once Reconstruction collapsed, returning the country to its prior condition: whites dispropor-

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tionately over-represented in political power in the former Confederacy, by means of a combination of biased voter registration laws and violent intimidation including lynching.

Troublingly, the issue of who is to be counted to determine the allocation of seats appears to be about to receive a major reassessment. US Census counts have always included non-voters and non-citizens — originally this meant women, children and indentured adults as well as 3/5 of every slave in the south. However, with the exception of slaves, the Constitution never explicitly mandated counting those who are not and cannot become eligible to vote. A case before the US Supreme Court this year, in the 2015-16 term, is set to determine whether this tradition of an inclusive count will continue, or whether representation will be allocated according to registered or eligible voters. The pro-gun advocates want to restrict the range of people included, because this too would result in their disproportionately greater representation. Here the rationale is that excluding immigrants reduces representation from high immigrant states, in particular the anti-gun havens of New York and California. It also reduces representation of cities where immigrants tend to congregate, and so biases in favor of rural, gun-centered regions.

The Second Amendment “Well Regulated.”

In recent years, however, the pressure for gun rights has moved beyond mere statutory affirmations of particular rights under particular circumstances, to return once again to the Founders. The NRA and their like-minded allies see in the Second Amendment an ideal that endows any American with an inalienable, individual right to own guns, of whatever kind, carried wherever he wants, to be used whenever he feels the need.

The Second Amendment is explicit (if not clear): “the right of the people to keep and bear arms shall not be infringed.” When the Supreme Court ruled against a total ban on handguns in private homes, which had gone into effect in Washington DC, it was easy to be sorry but hard to be surprised. That ruling was issued in 2008. Two years later the Court ruled on guns again, this time basing its decision on the amendment I personally consider to be the single most important one in the US Constitution: the 14th. “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.” The 14th Amendment is one of the keys to balancing the “states rights” momentum inherent in the Constitution, one of just a few features of the Constitution that make Federalism enforceable. It is the Constitution, of course, which makes this problem a Federal problem, a national problem. It is not merely regional. It is the Constitution which makes us all complicit in the violence.

Second Amendment claims, which intensify our national complicity in today’s violence, find a parallel prior to the Civil War in decisions to enhance the Fugitive Slave clause, also a part of the original Constitution. Nationwide legislation then, passed in a “compromise” package in 1850 went in two directions. On the one hand an increase in the number of slave states was blocked. On the other hand a new Fugitive Slave Law tried to spread slavery’s reach nationwide. The law mandated formal Conscription of Americans across the non-slave, northern states into official Federal posses to capture escaped slaves.

An immediate backlash against such explicit complicity drove many more northerners into a decisive repudiation of slavery. Outrage expressed by, among other things *Uncle Tom’s Cabin*, never faded again. While the law also impelled about 20,000 African Americans to move to Canada to escape capture, thousands of other slaves continued to escape. Furthermore, particular cases from Cincinnati to Boston, from Albany to Pittsburgh, found Federal Marshals overseeing the return of captured slaves in the middle of a

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political and legal storm. Few captured African Americans managed to avoid “rendition” back into slavery, but slavery as an institution came under attack as never before all over the north.

These days Second Amendment victories in the Supreme Court are widely publicized. But there are also countervailing energies. Since that first Second Amendment ruling in 2008, over 1000 law suits have been filed by gun advocates making challenges to local gun regulations on Second Amendment grounds. The advocates have lost in 96% of the cases. In Dec. 2015, with a fanfare of considerable publicity, the Supreme Court also ignored the advocates, refusing even to review a local ban on private ownership of specific varieties of assault weapons.

If the US continues as it has for more than 200 years, then the violence and the racialisms which underpin violence will continue. So will the terror-killings. Four more highly publicized cases, three ending in suicide, have happened in the last six months.

December 2, 2015 - at an office holiday party in San Bernardino, CA: 14 killed, the two killers also committing suicide.

October 1, 2015 - At a Community College in Roseburg, Oregon. 9 dead, with the killer shot by police, but the coroner ruled his death a suicide.

July 16, 2015 - At a military recruiting center in Chattanooga, Tennessee, 5 dead with the killer shot by police.

June 17, 2015 - At the a historic African American Church in Charleston South Carolina. 9 dead and the killer confesses saying he wanted to start a race war.

A further 12 cases in which four or more people died happened between June 1 and November 1, but never made it onto the national news. Meanwhile at average rate of 350 a week, perhaps as many as 10,000 people died by suicide using a gun. It is time to consider remedies.

CONCLUSIONS AND PROPOSALS

The best parts of the relationship in the USA between guns and people are to be found among serious hunters, women as well as men, who come from a wide variety of ethnic backgrounds. These are the people who own rifles, who go out for “their” deer/turkey/duck for food, as well as for sport. People in all parts of the USA learn marksmanship by shooting tin cans as targets. Guns can fit into modern America responsibly and ecologically.

Sadly, there is also grief and horror in the relationship with guns. If I am correct that our violence and our history as a slave-based nation are embedded in current cultural and social structures, then attempts to modify patterns of gun usage will continue to encounter huge challenges. It is hard for any nation to take ownership of the deepest shadows in its history. We will have to take a path back through the Constitution itself as well as along the local avenues where all remaining powers not in the Constitution can still be found.

Guns and the Constitution. Even granted a tradition of Presidents assassinated, when we assume and say out loud that an African American in public office is in more danger than any of his predecessors, we have to recognize the deep linkage between guns and race, a linkage which is particularly pernicious in politics. It is a reminder of the time when black men were slaves, that today gun owners can publicly describe a duly elected President as “fake,” that they can decide to attend public meetings challenging the very Americanness of his birthright, proudly carrying guns into the room.

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In Mississippi in 1874, black elected officials were destroyed by white gun owners, using egregious violence to strip them of their civic rights. We are not there now, but the history from which we have emerged should not be forgotten. In recent years for example we have endured the spectacle of political activists carrying guns into constituent Town Hall meetings, to protest the passage of the 2010 Health Care Reform Act. Surely the freedom to bear arms needs to be limited when free speech, whether political or academic is the object of a gathering. The Texas legislature certainly saw things that way when they defeated a bill that would have allowed guns inside government buildings, although they have forced public colleges and universities to accept them. **National civil rights organizations, for example the ALCU, should be working for a legal decision that juxtaposes the First and Second Amendments, to extend the existing ban on guns in the halls of Congress to bans whenever or whenever elected officials or others hold a public discussion about public issues.**

Guns and Individual Suicide Gun enthusiasts are concerned. The New Hampshire Firearms Safety Coalition is working with gun dealers to spread awareness about the risks of guns in the hands of suicidal people. In collaboration with the former head of an injury prevention center at Dartmouth University, they have distributed brochures and posters to gun shops and they report that: "Most of the gun shop folks had really never thought about firearm suicide in a systematic way. Almost everybody had a pretty direct experience with suicide by firearms, but they didn't realize how widespread and they didn't know that guns were the leading method." By 2013 the New Hampshire Coalition was working in four other states. To the collection of action options advocated by the New Hampshire coalition I would add another: **States should require gun owners to carry liability insurance just the way car owners do, an insurance with an explicit exclusion if the gun was used to commit suicide.**

Guns and Voting Rights The last few years have seen really public and explicit challenges to voting rights across a wide spectrum of states and circumstances. The linkage between the new laws and regulations and the US Constitutionally mandated model of disproportionate representation is reason enough to be discouraged about the fate of the census case now before the Supreme Court. At the same time, that case is an opportunity, an opportunity to build awareness, for dialogue for hope that we can face a deep shadow and chose to repudiate it. Even the intense electoral tempers raging around immigration, Moslems and civil rights ensure the time is now. **Embedded in this question is the biggest question of all. Is this 1850 all over again? Are the tensions about Moslems, immigrants, Ferguson, Voting Rights, Justifiable Homicide and guns creating catastrophic divisions or are they the beginning of a real commitment to change**

A few last words

Many people probably wonder whether we have reached the end of the line. The guns are here. Expression of political and racial hostilities is often intense. The courts too often seem to protect the extremes of gun ownership. Congressional legislation still curbs knowledge and a minority of strenuous advocates successfully silence or distort careful debate. The deeply engrained violence that was born in slavery endures. Gun owners have political power and they certainly have fire power to protect their right to kill. It is easier and easier for death and injury to wreak havoc on all kinds of very innocent bystanders.

AND YET

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The Second Amendment uses the words “well regulated.” The pathways for change offer genuine opportunities for meeting that standard “well regulated.” And there are 20,000 newly grieving families every year to press for change.

For suicide prevention in general the tools already exist: trigger locks, and gun safes, and the gathering recognition among gun owner groups that they ought to be interested in helping their members stay alive. We also have a legacy of valuable traditions -- the NRA began as an organization whose purpose was to train people to use guns effectively. They could refocus their energies and public role on that once again.

With the exception of a court case that would juxtapose the First and Second Amendments, so as to find a humane way to host our public speech, the other remedies I have suggested ask no more than that we deal with guns the way we have dealt with smoking and car safety. It does not seem likely that we can make change using Federal legislation. It is also probably easier to elect a local prosecutor interested in gun deaths, to get a state health insurance commissioner to approve the rejection of payments for gun injuries without supplemental coverage, and for public interest groups to use existing negligence statutes to guide social services towards protecting the young from guns. These are local remedies which means every community can begin to get a grip on its own gun tragedies.

And to return once again to the beginning of this essay, to public suicides: terror killers can count on the fact that the police will try to kill them. Of 25 who died between 2001 and 2012, five, that is 20% were killed by the police. Hence as a means to deter rampage suicides, the police may need to try to devise a protocol that injures but avoids killing the perpetrator. This is not to suggest such a strategy would be at all easy to achieve. It's an open question for me, though, not a closed one with an obvious answer.

Encouragingly, in the two years since the earliest versions of this piece went public, it has begun to seem possible that the intense challenges of the era 1979-2015 are being reoriented towards more positive directions. For African Americans, previously sanctioned police violence is now under continuous scrutiny and challenge, and incarceration rates for African American men begin to be reversed. For suicides, a single piece of research by Princeton scholars Anne Case and Angus Deaton shone enough public and media light on the deaths of older white men that this issue, too, may begin to receive new attention.

I cannot predict a change. I just hope it could happen. Among the saddest patterns of gun usage in the USA today is the 20,000 deaths by suicide. My core proposals are inspired by them.

We waste an awful lot of time and money in this country on proving blame for the sake of accountability. The Constitutional provisions set out in this essay make it clear that each one of us is responsible. The time has come to work together, to use our traditions and our better selves, in aid of wiser and longer lives for us all.

CODA: LOCAL OPTIONS TO REDUCE GUN DEATHS

(1) Guns and Terror Suicide The urge to act, to *DO* something is a powerful one in the US, and it's often beneficial. After a rampage killing, however, it is all too likely that people are trying to reach out to the devastated community with the wrong kind of help and with more help than it can absorb. Opportunities to contribute abound however, because the consequences of each action spread far beyond the immediate

impact area. My own campus changed its policies for arming the police after 9/11. These days it engages in “active shooter” training more often than it should have to. Help anywhere has to be given at the right time. Though the urge to act will be instant, understanding the smart thing to do is likely to take most of us some time. **Before sending aid to some other region, give active and visible support for something local which, in the light of recent public suicides, now has reason to wonder whether it too is a target: A university or local school with new worries about security. An abortion provider in your state. A minority congregation. The mental health center nearby which never has enough resources.**

(2) Guns used to prevent crime. This issue is one that fosters a bit of hope that we are, at least for the moment, in a time of dialogue, perhaps even change. Since Ferguson it has become commonplace to demand an investigation and possible charges each time a person is killed simply because an armed policeman or civilian saw what they assumed was a crime being committed. In medieval Europe thieves could be executed but not without some kind of trial. In 21st century America thousands of “thieves” have been executed, usually by police though sometimes by civilians without the executioner being arrested. This has been particularly true if the alleged thief is young, black and male. Community approbation for someone who uses a gun to kill a thief before has been tried and convicted bears a striking resemblance to the acceptance of lynching in the last two centuries. This topic is now visibly urgent given new consciousness of the frequency of police shootings of this kind. Surely anyone who uses a gun to kill should invariably be put through an investigation and a trial himself, even if his victim is a thief? Every time, without exception. **Community action to demand a trial does not depend on State or Federal Laws. If trials end in acquittals based on one or another justification, so be it. The deaths are local and decisions to prosecute are local. Changes to mandate a trial can become a local issue too.**

(2) Guns and tort There is barbarism in a society where very small children repeatedly find guns visible and accessible in their homes and, firing them “by accident,” end up having killed or maimed someone else, often someone even younger than they are. Two stories from April and May 2013:

A five-year-old American boy accidentally shot and killed his two-year-old sister with a rifle he got for his birthday, officials in Kentucky said. Caroline Starks' death follows two other incidents in recent months involving young children shooting others . . .

A four-year-old boy in Tennessee shot and killed a 48-year-old woman in early April, and just days later, a six-year-old boy was killed in New Jersey after being shot in the head by his four-year-old playmate.

In a society where neither the parents, nor the person who bought the gun, nor the grandfather who left a loaded gun unlocked in his house, nor the manufacturer selling guns especially for small children is held accountable for this truly untimely death, something is dreadfully wrong. But police call it an accident.

"It's just one of those nightmares - a quick thing that happens when you turn your back," Kentucky State Police Public Affairs officer Billy Gregory.

All those who lobby against a stricter regime in private homes for the responsible handling of guns, who advocate voluntary rather than compulsory trigger locks and gun safes in the name of more freedom and privacy are implicated in these children's deaths. There are advocates challenging gun rights advocates on this issue now, in particular the Law Center to Prevent Gun Violence. One option available to them or to any other interested party is **to bring a tort case about gun salesmen and states for encouraging negligent methods for handling guns. The particular legal tort standards, which apply to anyone who has “special skills,” is a standard that could be applied to hold people responsible if the weapons they own**

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are misused. And since these children did not die during a crime, gun manufacturers too can be sued.