

America and her guns: a theological account of the fear that immobilizes a country and a path forward with the help of public health ethics

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Preface:

This thesis will serve to examine our misconceptions and lack of knowledge about guns and gun violence in the United States. To understand why we as a country are in a political quagmire, a Christian theological account of the fear of death will be given. This understanding of how fear keeps us at polar extremes allows us then to navigate a way to make steps, even if small, with public health ethics as the discipline of choice in order to decrease the number of lives lost each year due to gun violence. This work reflects a culmination of interests of the author as a former medical examiner and a priest in the Episcopal church with an interest in ethics.

Introduction:

It is a safe wager that today in the United States there are no discussions more contentious than those that occur around gun rights, gun control, gun violence and the Second Amendment—in short, any discussion that has to do with anything about guns. As our political landscape in general has become more and more acrimonious with less ability or even desire to cooperate across party lines, those in politics or even those simply having political discussions operate more and more as if they are part of a dichotomous, driven machine that encourages entrenchment and refuses compromise. When this sort of absolutism is applied to the subject of guns, it is not just problematic, it is dangerous to public health.

Despite the immensity of the losses—bodily injuries and deaths—that result from the use of guns, fruitful discussions about guns are difficult to come by. Many in the political sphere expected that there would be some movement, some effort toward regulation of access to or availability of firearms after the December 2012 shooting at Sandy Hook elementary school in Newtown, CT, where 20 children and 7 adults lost their lives, including the shooter. It was

believed that the loss of children to gun violence would surely serve as a catalyst for some bipartisan action aimed at curbing the toll. Yet, this did not happen— the Manchin-Toomey bill, which would have required background checks for all gun sales, failed by six votes in the Senate.<sup>1</sup>

The number of injuries and deaths resulting from the discharge of a firearm are staggering, but that has been true and relatively static for some time.<sup>2</sup> It appears that the statistics, repeated every time a legislative or regulatory initiative is proposed, serve to numb the populace, allowing them to avoid the effect of this knowledge. More than eighty (80) people have their lives cut short each day as a result of gunfire in this country.<sup>3</sup> If these lives were those of eighty dogs and/ or cats instead of human beings that lost their lives to gunfire, there would be a public outcry. Again sadly, we are numb—numb and entrenched.<sup>4</sup>

Still, there are people who work tirelessly to make the public aware of the actual situation and to address stances that may be pro gun rights or pro gun regulation, often on perceived opposite sides of the national debate. Scholars in the fields of public health and mental health publish scores of studies. Religious figures stake their claims. The gun lobbies, representing gun owners and gun manufacturers and primarily led by the National Rifle Association (NRA),

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<sup>1</sup>Barry, Colleen L., Emma E. McGinty, Jon S. Vernick, and Daniel W. Webster. "Two Years after Newtown—public Opinion on Gun Policy Revisited." *Preventive Medicine* 79 (2015): 55.  
The study of 2013 referenced in this article found that 89% of the public overall and 84% of gun owners supported universal background checks for all gun sales.

<sup>2</sup> Atwood, James E. *America and Its Guns: A Theological Exposé*. Eugene, OR: Cascade, 2012, 259.  
The numbers are taken from the National Center for Health Statistics from years 1979-1997. More recent figures are in the body of this thesis and are not varied: combined deaths 30,000-33,000 per annum.

<sup>3</sup> Atwood, James E. *America and Its Guns: A Theological Exposé*. Eugene, OR: Cascade, 2012, 15, 157.

<sup>4</sup> Commercials paid for by the SPCA may make us aware of the dogs and cats that die every day. Nothing serves to make us aware of the number of people who die from gunfire. That someone commits suicide, let alone the mechanism of death, is usually not included in an obituary. Criminal homicides are typically located on the second or third page of the Metro section of a newspaper. Now that news is primarily electronic, these numbers are even harder to locate.

publish magazines designed to sway the undecided or keep supporters. Although many of these studies and publications are written in a scientific, non-vitriolic manner, not all the information purveyors are so careful. Some partisan publications, along with the general media coverage of the latest mass-shooting, showcasing a shooter who is almost exclusively a “crazy” loner, a white male with no previous psychiatric diagnosis who would have access to a gun under any current law or new legal proposal, serve to fuel the fires of fear – fear of violence and fear that nothing can be done to prevent it.<sup>5</sup> It is this fear that, consciously or unconsciously, has led and continues to lead to the intractable state in which, as a country, we find ourselves.

If we are going to find a way to deal appropriately and effectively with gun violence, we must first and foremost understand the extent of the problem. To do this, we must understand the factors that play a part in where we are and how we got here. The next step is to understand the fears of people and how they are played out and played on in the public square.<sup>6</sup> These fears, not facts, are too often what form public opinion and therefore influence how our political leaders engage or choose not to engage in discussion on the issue.<sup>7</sup> After looking at the situation and why we are seemingly immobilized with our fears, then we can look at those factors that can be changed. Sadly, without fruitful discussion, we are doomed to continue to repeat our mistakes.

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<sup>5</sup>The notable exception, of course, is the Muslim couple acting in a jihadist fashion in San Bernadino, which represents yet another source of fear. Schmidt, Michael S., and Richard Perez-Pena. "FBI Treating San Bernardino Attack as Terrorism Case." <i>New York Times</i>. N.p., 04 Dec. 2015. Web. 18 Feb. 2016.

<sup>6</sup> By this, I mean realistically able to be changed. Many have voiced the opinion that certain elements of “gun control” are so unlikely to change to the point that no change can even be entertained, and so possibilities are tabled and are not up for discussion.

<sup>7</sup> In this case, Swanson et al. opine this point as it pertains to the general public and their perception of mentally ill people being dangerous and posing a threat to public safety. However, this has validity beyond this particular perception.

Swanson, Jeffrey W., E. Elizabeth McGinty, Seena Fazel, and Vickie M. Mays. "Mental Illness and Reduction of Gun Violence and Suicide: Bringing Epidemiologic Research to Policy." *Annals of Epidemiology* 25.5 (2015): 367.

Addressing guns and the violence that they facilitate in America poses a special challenge to the search for a way forward through the fears of the parties on both sides of the issue and what might be called the political “non-negotiables.” Thus, this thesis will address the current state of guns in our country, examine the theological foundations of the fear of death which undergirds the fear of the presence or absence of guns, and then explore what role public health ethics might play in finding that *via media*. The gravity of the loss of life that gun violence produces will be considered as a public health issue.<sup>8</sup> The field of public health with its intrinsic ethics has been extremely useful in other situations that, although not as dire or as intractable, clearly necessitated and advocated a view that held up the common good, e.g. advocating for mandatory seatbelt usage and encouraging the wider availability of smoking cessation programs. Public health ethics almost always navigates a balancing act between paternalism and liberty, and any approach pertaining to guns would be no different.

NB: As one in the academy writing about a subject matter that is frequently covered in popular culture, I will use references from the mainline media as well as peer-reviewed journals.

Whenever something is not peer-reviewed or not from a reputable journalist source, I will indicate that in footnotes.

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<sup>8</sup> Although the NRA originally blocked Obama’s nomination of Vice Admiral Vivek Hallegere Murthy for Surgeon General because he chose to address the annual loss of life to firearms as a public health issue, this did not in and of itself stop the process. He eventually was appointed in a lame-duck session of Congress, when the world crisis of the Ebola virus outbreak strengthened the need for a director of public health.

Siddiqui, Sabrina. "How the NRA Lost Its Battle to Defeat Vivek Murthy as Obama's Surgeon General." *Huffington Post*. N.p., 19 Dec. 2014. Web. 6 Feb. 2016.

## Chapter 1

### The State of our Nation

The number of deaths from firearms in the US has stayed remarkable constant over the last several years. With only small variations from year to year, there are 30,000 to 33,000 deaths in the United States attributable to firearms— 35,563 in 2012.<sup>9</sup> Approximately two-thirds of these are suicides. Since accidental firearm deaths are extremely rare, the remainder are deemed homicides.<sup>10</sup> At least 690 deaths each year are believed to be related to domestic violence between spouses, ex-spouses, partners and ex-partners, although this number is thought to be underreported.<sup>11</sup> This total for domestic violence deaths does not include the killings of children when the parent (usually the father) kills the entire family and then commits suicide. Despite the prevalent public image, the number of homicides attributable to a mass shooting committed by a lone, male “lunatic” represents less than 1% of the firearm deaths each year. Most data compilations speak of a mass shooting as more than 4 people dead at one time. Similarly these “mass” events, which then include the death toll when a father kills his entire family and then perhaps himself, are not an iconic “lunatic” with a gun. There are also approximately

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<sup>9</sup> Swanson, Jeffrey W., and Alan R. Felthous. "Guns, Mental Illness, and the Law: Introduction to This Issue." *Behavioral Sciences & the Law Behav. Sci. Law* 33.2-3 (2015): 167. Swanson, McGinty, Fazel, and Mays, 366, (hereafter Swanson et al)

<sup>10</sup> Webster and Vernick provide figures of 31,000 deaths in 2010 with 62% suicide and 36% ahomicide and 2% “unintentional.” Webster, Daniel W., and Jon S. Vernick, eds. *Reducing Gun Violence in America: Informing Policy with Evidence and Analysis*. Baltimore, MD: Johns Hopkins UP, 2013, xxv, 3. Medical examiners classify the manner of homicide as ‘death at the hands of another.’ Intentionality is instead a legal construct (murder, manslaughter, etc.). Accidents are ‘acts of God.’ Medical examiner systems which directly employ forensic pathologists through the local governments (versus coroner systems who are elected officials who may employ or contract forensic pathologists) now represent a majority of jurisdictions at least in terms of populace. Yet, there is little homogeneity in terms of how physicians rule manners of death. Lack of homogeneity is illustrated by the following example: in one jurisdiction, a five year old child who shoots a 3 year old sibling may have the manner ruled ‘accident,’ due to lack of intentionality of the five year old. In another jurisdiction, the manner may be called a ‘homicide’ because: 1. it is ‘death at the hands of another’ and/ or 2. the overseeing adult placed or left the child in danger, given the firearm was available for the child to use it.

<sup>11</sup> Ring, Wilson. "Vermont Restricting Domestic Abusers' Access to Guns : Times Argus Online." *The Rutland Herald RSS*. Times Argus, 7 Feb. 2016. Web. 17 Feb. 2016.

70,000-90,000 injuries from firearm discharge each year—81,396 in 2012.<sup>12</sup> All of these injuries and deaths have both an emotional and a financial cost. It is estimated that gun violence costs the nation \$100 billion dollars per annum.<sup>13</sup> This figure is not exact, but it is based on the monetary cost of care provided by hospitals that will not be recouped, along with an estimate of wages lost from those injured or those who died from discharge of a firearm.

One of the factors that may contribute to this situation is the availability of guns in this country. Frequently articles in popular culture as well as academics make comparison between the rate of firearm deaths and gun prevalence across countries. A recent such study showed that the number of guns appeared to correlate with and predict the extent of firearm deaths across 27 developed countries.<sup>14</sup> Another study shows a marked difference between the United States and Australia in terms of the death rates from both suicide and homicide in the years following the 1996 Port Arthur massacre in Australia. After that event, the Australian legislature adopted laws that made most guns in Australia illegal.<sup>15</sup> But Australia is not America. There are many similarities between the United States and Australia and all other “developed” countries that are frequently compared with the United States. However, none of these countries shares with us the factors that make our social fabric what it is. We are not the only country to have a history of slavery and segregation, but we are unique in fighting for a way to maintain the slave system and in continuing to maintain a legal system, with its Jim Crow laws designed to limit the rights of

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<sup>12</sup> Swanson and Felthous, 166. Swanson, McGinty, Fazel, and Mays, 366.

<sup>13</sup> Cook, Philip J., and Jens Ludwig. *Gun Violence: The Real Costs*. Oxford: Oxford UP, 2000, 11.

<sup>14</sup> Bangalore, Sripal, and Franz H. Messerli. "Gun Ownership and Firearm-related Deaths." *The American Journal of Medicine* 126.10 (2013): 873, 875.

<sup>15</sup> The changes in Australian law were actually gradual, but the Port Arthur massacre did hasten the enactment of the law as well as additional legal addendums. The NRA also touts a marked increase of 30% for home-invasions in Australia following the illegalization of guns; this is erroneous. The number of home invasions has fallen. "The Curious Strength of the NRA; Lexington." *Economist (US)* 16 Mar. 2013: n. pag. Web.

people based on their skin color, long into the 20<sup>th</sup> century. We alone have a long history of inequality in access to health care based on income and a huge income disparity that combine to fuel many of our cultural battles. These differences are large and have us in a grip long before we ever speak of our gun laws and access. These social determinants factor into how we see and fear others.

The well-known bumper sticker slogan, “Guns don’t kill people; people kill people,” is technically true. But guns do make it easier for people to kill people. When one accounts and controls for other factors that influence crime (including poverty rate, household income, education, alcohol consumption, divorce rate, hunting licenses, etc.), gun ownership is a significant predictor of firearm homicide rate.<sup>16</sup> One also has a higher likelihood of committing suicide if a gun is owned.<sup>17</sup> In fact, it is estimated that it is eleven times more likely for a gun to be used “in a murder, an assault, an accident or to be stolen and used in a crime than [it is to be used] to stop an intruder.”<sup>18</sup> The belief that having a gun in the house is a means for protection against intruders may seem sound to those who are in fear, but it is not born out by the data.

#### A word about the Second Amendment and other landmark legislation and rulings

One cannot talk about guns in this country without dealing with the Second Amendment to the US Constitution. Most people have some awareness of what is guaranteed in the Second Amendment, i.e., “the right of the people to keep and bear arms.” Two recent Supreme Court rulings, *Heller vs. Washington, DC* (2008) and *McDonald vs. Chicago* (2010) clearly specified

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<sup>16</sup> Siegel, Michael, Craig S. Ross, and Charles King. "The Relationship Between Gun Ownership and Firearm Homicide Rates in the United States, 1981–2010." *Am J Public Health American Journal of Public Health* 103.11 (2013): 2101-2. This study included data from all 50 states and used negative binomial regression analysis of data from the Center for Disease and Prevention's (CDC's) Web-Based Injury Statistic Query and Reporting Systems (WISQARS) database.

<sup>17</sup> Swanson, Mcginty, Fazel, and Mays, 368, 370.

<sup>18</sup> Atwood, 118.

that, under the Second Amendment, individuals have the right to arm themselves with guns.<sup>19</sup>

There are many who argue that these decisions failed to properly acknowledge and deal with the opening words of the amendment, indicating that the purpose for the right to bear arms is based on the importance to the states of maintaining a “well-regulated militia.” Those on this side of the issue believe that too much weight is being accorded to individual liberties.<sup>20</sup> Even the late Justice Antonin Scalia, one of the most conservative voices on the Court, wrote in the majority opinion, that this right to arm oneself, like most rights, is not “unlimited.”<sup>21</sup> However, Scalia went on to say that “a prefatory clause does not limit or expand the scope of the operative clause.”<sup>22</sup> As interpreted by the NRA and many politicians who share the NRA’s views, specifically the former Arkansas governor and 2007 Republican nominee hopeful Mike Huckabee, the point of the Second Amendment is that it gives “the last line of defense against tyranny, even the tyranny of my own government.”<sup>23</sup> However, the protection of state militias reflects the world of the 18<sup>th</sup> century when America did not have, and did not envision having, a national standing army. Those militias would have been called upon to support the government rather than overturn it. A private militia proposing to rise against the United States is perhaps better known as treason, but this is beyond the scope of this thesis. One could easily argue that this is not at all what the Founding Fathers anticipated. In fact, it is the very author of the Second Amendment, John Adams, who noted that “Liberty may be endangered by the abuse of

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<sup>19</sup> The Second Amendment reads “A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be impinged upon.” Library of Congress, Congressional Research Service (1968) (enacted). Print.

<sup>20</sup> Atwood, 168.

<sup>21</sup> The District of Columbia v. Heller. Supreme Court of the United States. 26 June 2008. Print.

<sup>22</sup> Ibid.

<sup>23</sup> Atwood, 168.

liberty as well as by the abuses of power. The former rather than the latter is apparently most to be apprehended by the United States.”<sup>24</sup>

Prior to these latest court rulings, several pieces of legislation represented the country’s attitude on issues of gun control and rights and they indicated a willingness to restrict at least some aspects of gun availability. The first law that was gun restrictive was the Gun Control Act of 1968. This piece of legislation is the primary piece that prohibits those who have been convicted of crimes and those who are “mentally defective” (here read “mentally ill”) from owning firearms.<sup>25</sup> Other landmark legislation includes the Brady Handgun Violence Prevention Act of 1993, which established the National Instant Criminal Background Check System (NICS) in 1998. The NICS Improvement Act was passed in 2008 following the Virginia Tech shooting of 2007.<sup>26</sup>

As a federalist system, the United States permits states to enact laws that differ significantly from each other, as long as there is no conflict with a broader federal statute. As a result, on the subject of guns, there is little unity among states. There is also a wide difference in how the laws are reported. The number of laws that are “on the books” is a little over 300. A number often touted by the gun-enthusiasts is “20,000 laws.” This apparently is an “urban-legend” figure for which there is little or no supporting evidence. No one has been able to trace the origin of its appearance, primarily in non-academic literature; but its veracity is apparently nil.<sup>27</sup> Regardless of the number of laws, the fact remains that differences among state laws

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<sup>24</sup> Atwood, 180.

<sup>25</sup> Swanson and Felthous, 168.

<sup>26</sup> Swanson, Jeffrey W., E. Elizabeth McGinty, Seena Fazel, and Vickie M. Mays, 372.

<sup>27</sup> Atwood, 122. Reportedly this was said by Reagan in a speech, evidently something akin to the fictitious “Welfare Queen.”

permit people to travel from state to state to purchase firearms that would not be legal to obtain in their state of residence. One particular example of the danger of this diversity is what are known as “straw sales.” Straw sales occur when someone legitimately buys guns and then sells them to people who could not legitimately purchase a gun. Often this occurs across state borders; the initial sale is often in a state with more lax gun control laws, and the second sale take place in a state with stricter gun regulations. The initial purchase may also be from a private sale, which is not recorded. Straw sales are the main means by which those with a criminal record obtain a gun and also include stolen guns that are then distributed to criminals or would be criminals. Even the National Rifle Association (NRA) on their website acknowledges this, that “many purchases by criminals are made from straw purchasers who pass a background check. ‘No amount of background checks can stop these criminals’.”<sup>28</sup> This sort of gun trafficking is lucrative business, especially when it involves moving guns into places that have high crime rates and stricter laws, such as New York. A recent gun trafficking ring moved over a hundred weapons, a “small arsenal” into New York City from Atlanta and Pittsburgh. In the past few years, guns have arrived in private cars, commercial airliners and even interstate passenger buses.<sup>29</sup>

#### Relevant History During the Civil Rights Era and Concurrent Change of the NRA purpose

The NRA, founded in 1871 to promote rifle marksmanship and eventually gun competency and safety, in its early years supported legislation regulating firearms. In 1934, its president was

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<sup>28</sup> Associated Press. "Obama to Meet with Loretta Lynch to Discuss 'epidemic of Gun Violence'" *The Guardian* 01 Jan. 2016: n. pag.

<sup>29</sup> Associated Press. "Bragging Gunrunner Brought Small Arsenal into New York- Prosecutors." *The Guardian* 14 Oct. 2015: n. pag.

quoted as saying “I do not believe in the general promiscuous toting of guns.”<sup>30</sup> Yet, the advent of the Civil Rights Movement and the rise of the Black Panthers saw the concurrent passage of the 1968 Gun Control Act restricting access of guns for criminals and mentally “unfit.” At the time, it was common to label civil rights leaders as “violent and mentally ill” if they were Black and then to blame “Black Culture.” It was later learned the “FBI profilers spuriously diagnosed many ‘pro-gun’ Black political leaders with militant forms of schizophrenia” to couple political activism with insanity. Declassified documents revealed that “the FBI diagnosed Malcolm X with ‘pre-psychotic paranoid schizophrenia’.” Robert Williams, head of a chapter of the NAACP, was also diagnosed “as schizophrenic, armed and dangerous.”<sup>31</sup> As time progressed, the Black Panthers were armed with assault rifles and it was Reagan who pushed for gun control, fearing the Black Panthers.<sup>32</sup> It is not that these people were ever known to be legally barred from purchasing guns. It is also true that civil unrest associated with the Civil Rights movement and the many non-violent protests had the effect of provoking fear in those who lived by the *status quo*.<sup>33</sup> The eliding of White America’s fear of Black America along with a fear of mentally ill set the stage for demonization of the marginalized and a need to arm oneself in response.

On May 21, 1977, at what in “gun lore” is known as the “Revolt at Cincinnati,” the whole focus of the NRA changed. The stated purpose of the NRA going forward was not only to protect the Second Amendment but to ensure that people had unlimited access to guns. The result

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<sup>30</sup> Frederick, Karl T. "Eigen's Political and Historical Quotations: Frederick, Karl T." *Http://politicalquotes.org/node/57005*. Eigen—Arnett Educational & Cultural Foundation Inc., 01 Jan. 2011. Web. 2 Mar. 2016. <<http://politicalquotes.org/node/57005>>.

<sup>31</sup> Metz, Jonathan M., and Kenneth T. Macleish. "Mental Illness, Mass Shootings, and the Politics of American Firearms." *American Journal of Public Health* 105.2 (2015): 244.

<sup>32</sup> Achenbach, Joel, Scott Higham, and Sari Horwitz. "How NRA's True Believers Converted a Marksmanship Group into a Mighty Gun Lobby." *The Washington Post*. N.p., 12 Jan. 2013. Web. 18 Feb. 2016.

<sup>33</sup> Atwood, 117.

of the organization's vigilance in pursuing this purpose has created a virtual paranoia among its members and supporters that the government's goal is to confiscate privately owned guns, ratcheting up the fear quota significantly. Recently after each mass shooting, from Virginia Tech to Sandy Hook to San Bernadino, the NRA sounds the alarm, claiming that now is the time that the proponents of gun control will take control of the legislative process, limiting or perhaps eliminating the ability to purchase guns at will. Not surprisingly, the number of gun sales almost immediately following such incidents goes through the roof.<sup>34</sup> And yet, the NRA, based on its work in supporting gun sports and in safety training, has been able to maintain its tax-exempt status, even though its Institute for Legislative Action apparently serves primarily to agitate. When it agitates, gun sales soar, and so does NRA support. Fear causes more sales.<sup>35</sup> Policies that would favor universal background checks are opposed by the NRA and pro-NRA supporters have been reported carrying signs "Stand and Fight" and "Feels like Nazi Germany" portraying a profound distrust of the federal government, in addition to any others they perceive would limit their ownership of a gun.<sup>36</sup>

### Guns and/or Violence and the Mentally Ill

Even the NRA admits that not *everyone* should be able to own a gun. Most people in the United States have some opinion about who should be allowed to have or to own guns. One of the most talked about groups in terms of gun ownership is the mentally ill. However, mental illness

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<sup>34</sup> Thielman, Sam. "Smith & Wesson Gun Sales Soar after Spate of Mass Shootings in US." *The Guardian* 8 Dec. 2015: n. pag. Web.

<sup>35</sup> Achenbach, Joel, Scott Higham, and Sari Horwitz. "How NRA's True Believers Converted a Marksmanship Group into a Mighty Gun Lobby." *The Washington Post*. N.p., 12 Jan. 2013. Web. 18 Feb. 2016.

<sup>36</sup> Lexington. "Guns and the Mentally Ill: Why the NRA Keeps Talking about Mental Illness, Rather than Guns." *Economist (US)* 13 Mar. 2013: n. pag.

represents probably the most poorly understood dimension that intersects guns and gun violence. The questions that are least clearly understood concern their rights as well as whether or not there actually is a predisposition to violence among the mentally ill. In large part there are two factors that contribute to this mismatch between what is factual and what is opinion as far as it concerns the average US citizen. One primary factor is the impact of the news media and their coverage of gun violence. The unceasing replays of each mass shooting and the revisiting of all previous such events, and the frequent statements about the real or probable mental illness of the shooter(s) (statements often without foundation) serve to imprint the connection between mental illness and gun violence on the viewer, convincing them that the connection is solid and causal.<sup>37</sup> The NRA plays on this in its efforts to focus attention about the violence off of guns and onto the mentally ill.<sup>38</sup> In this case, it takes little imagination to discern that if one attributes the violence to the mentally ill, particularly the undiagnosed mentally ill whose condition would not have raised a red flag in a background check, then fear and blaming increase.

What we know about mental illness and how we diagnose and care for the mentally ill has changed tremendously since the Gun Control Act of 1968, but this is not reflected in the law or in people's attitudes and beliefs. There has been a steady de-institutionalization of the mentally ill, in large part because for most illnesses the efficacy of institutionalization is questionable at best.<sup>39</sup> Most importantly, as far as guns are concerned, is that mentally ill people across the populace are only minimally inherently more dangerous than those that are not

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<sup>37</sup> Swanson and Felthous, 169.

<sup>38</sup> Lexington, Economist. Swanson, McGinty, Fazel and Mays, 366.

<sup>39</sup> Swanson, McGinty, Fazel and Mays, 371.

mentally ill, and are more likely to be a danger to him or herself.<sup>40</sup> An examination of the data regarding perpetrators of violence generally shows that those who are mentally ill account for only 4% of the violent episodes in a year. Thus, 96% of the violent actions reported are perpetrated by people who are not mentally ill.<sup>41</sup> And even if we were to focus remedial efforts on that small proportion of violent acts that are committed by the mentally ill, the fact is that those who treat and care for the mentally ill are good at characterizing and describing their behaviors and then treating them after arriving at a diagnosis; but, they are not good at predicting who is going to be violent at any time, and who is not.<sup>42</sup> If one looks at the very small section of the populace represented by the “crazies” who obtained guns and went on shooting rampages, most of them did not have a preceding diagnosis of mental illness. Even if clinicians were able to accurately diagnose and identify those who are suffering from mental illness and predict their behavior, it is still possible that these perpetrators would not be caught. Many people are now voluntarily treated at private mental health facilities, which are not under the same legal obligation to report those affected with mental illness.<sup>43</sup> Lastly, the description of the typical shooter who completes a rampage is that of a “young male, loner” without a prior psychiatric diagnosis. One cannot lock up all “young male loners,”<sup>44</sup> nor can we keep them from getting guns.

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<sup>40</sup> Ibid, 370. Witt, Katrina, Keith Lawton, and Seena Hazel. "The Relationship between Suicide and Violence in Schizophrenia: Analysis of the Clinical Antipsychotic Trials of Intervention Effectiveness (CATIE) Dataset." *Science Direct: Schizophrenia Research*. Elsevier, 2014, 62, 64, 66.

<sup>41</sup> Swanson, McGinty, Fazel and Mays, 368, 372.

<sup>42</sup> Ibid, 371.

<sup>43</sup> Swanson and Falthous, 173.

<sup>44</sup> Swanson, McGinty, Fazel and Mays, 368, 372.

Aside from the difficulty in identifying and predicting the behavior of a mentally ill person, numerous studies would indicate that a person who is mentally ill is far more likely to use a gun against himself (i.e. suicide).<sup>45</sup> Decreasing lethality options decreases the chance of succeeding at the act of suicide. Typically the time between when one makes a decision to commit suicide and the instigation of the act is ten minutes.<sup>46</sup> Thus, removing any firearms from a home of someone with suicidal ideation, even if only temporarily, is known to decrease the likelihood of her or him succeeding at suicide. Contrary to common misperception (again), if a person lives through the attempt, s/he is not likely to attempt suicide again. Firearms are not the main means by which most people choose to commit suicide, but they are one of the most successfully lethal means.<sup>47</sup> This will be revisited when pragmatic solutions are offered later in the context of Public Health Ethics.

#### Homicides: where do criminals get their guns?

Although the collective voice of the nation, or at least of the national news media, is fixated on mass shootings, there are still well over 10,000 firearms-related murders that are neither mass shootings nor in the setting of domestic violence. Thus, several thousand people have been able to acquire and use a gun, typically a handgun, to commit a crime that involved taking the life of at least one person. What has been found repeatedly is that if someone wants to commit a crime,

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<sup>45</sup> Ibid.

Anestis, Michael D., Lauren R. Khazem, Keyne C. Law, Claire Houtsma, Rachel Letard, Fallon Moberg, and Rachel Martin. "The Association Between State Laws Regulating Handgun Ownership and Statewide Suicide Rates." *Am J Public Health American Journal of Public Health* 105.10 (2015): 2059-067.

Barber, Catherine W., and Matthew J. Miller. "Reducing a Suicidal Person's Access to Lethal Means of Suicide." *American Journal of Preventive Medicine* 47.3 (2014): S264-S272.

<sup>46</sup> Barber and Miller, S264.

<sup>47</sup> Ibid.

he (she) has the ability to obtain a firearm, typically a handgun, usually without much difficulty. In a study from Cook County jail in Chicago, under the protective veil of anonymity, criminals who had committed crimes involving the use of a firearm were asked where they obtained their guns. These conversational studies revealed that most people interviewed obtained their guns from friends or relatives. In some cases, the availability of stolen guns by the “crate-load” being distributed from gang members was cited. It is rare for criminals to buy from licensed dealers or to steal their guns directly. From the conversations, it was evident that the respondents were cognizant of the implications of being in possession of a “dirty” gun (a gun that previously was involved in a crime) – specifically, that there was a risk of being charged with the prior crime solely because of possession of the gun, a “legal liability.” Although one may wonder at the veracity of the statements from criminals, their answers were in accord with the results of tracing crime guns from their “first retail sale.”<sup>48</sup>

Where does the country believe we should be?

Although the country is anything but unanimous regarding guns, at least one notable study has examined what our country’s opinions are regarding guns and whether they have changed significantly in the two years since the Sandy Hook Elementary School massacre in Newtown, Connecticut. (The shooting was in December 2012; the first study was in January, 2013 and the follow-up study was from January, 2015, exactly two years later.) The results from 2013 showed that “large majorities of Americans – both gun owners and non-owners – supported a wide range of gun violence prevention policies, including policies to enhance the background check system for gun sales, prohibit certain dangerous persons from having guns, improve oversight of gun

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<sup>48</sup> Cook, Philip J., Susan T. Parker, and Harold A. Pollack. "Sources of Guns to Dangerous People: What We Learn by Asking Them." *Preventive Medicine* 79 (2015): 28-36.

dealers, and prevent people with mental illnesses from having guns.”<sup>49</sup> Using the same study design, and again polling both gun owners and non-owners, the results were extremely similar between 2013 and 2015. There was continued support (including the majority of gun owners) for 6 of 7 policies that would result in “stricter standards for legal gun ownership” than in current federal law. The only strategy that lost support was a decrease in support for prohibiting gun-ownership for “serious juvenile offenses.”<sup>50</sup>

The 2015 study additionally asked regarding any public support for new laws on the books; specifically, several states are enacting laws prohibiting individuals convicted of domestic violence from having guns.<sup>51</sup> Likewise, California has passed a law that lets members of a family ask for and obtain removal of firearms from another family member who is at risk of harming him/herself. These two measures saw overwhelming support in the survey, again from both gun-owners and non-owners.<sup>52</sup>

### Evidence based information on guns and gun violence: Is there any?

What we do know is that the “quest for evidence based policy related to gun control is commendable but sometimes beyond reach.”<sup>53</sup> At least one study conducted by Cook and

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<sup>49</sup> Barry, Colleen L., Emma E. McGinty, Jon S. Vernick, and Daniel W. Webster. "Two Years after Newtown—public Opinion on Gun Policy Revisited." *Preventive Medicine* 79 (2015): 55.

<sup>50</sup> *Ibid.*, 57-58. One has to wonder why this lost support.

<sup>51</sup> Ring, Wilson. "Vermont Restricting Domestic Abusers' Access to Guns : Times Argus Online." *The Rutland Herald RSS*. Times Argus, 7 Feb. 2016. Web. 17 Feb. 2016.  
Barry et al, 57.

<sup>52</sup> *Ibid.*

<sup>53</sup> Cook, Philip J. "How We Can Reduce Gun Violence." *Duke Sanford School of Public Policy* (2013): n. pag. 08 Jan. 2013. Web. 27 Jan. 2016.

Ludwig found that the Brady Law, which was aimed to have a waiting period before obtaining a permit, demonstrated “little evidence” of a reduction in either homicide or suicide rates.<sup>54</sup>

Regrettably what we do know is that knowledge is limited. Two years ago following the Newtown shooting at the elementary school, President Obama called for a lifting of the ban on CDC researching gun violence. Specifically, he ordered the US Centers for Disease Control and Prevention to get back to studying the “causes of gun violence.” However, this didn’t happen. It has been since 1996 that the CDC conducted firearms research. At that time, the NRA accused the agency of promoting gun control and Congress subsequently “threatened to strip the agency’s funding.”<sup>55</sup> In fact, within the 1996 appropriations bill, \$2.6 million were stripped, which was the exact amount spent on gun research the previous year. The wording of the bill was that “None of the funds made available for injury prevention and control at the Centers for Disease Control and Prevention may be used to advocate or promote gun control.” The CDC took this to mean— “Do not study guns.” And despite the order from 2013, the CDC did not return to gun violence research. The clear reason is that the funding is not there.<sup>56</sup> Each governmental agency has limited funding for overarching research to address the causes of gun-violence; this research simply does not have dollar backing. Furthermore, the CDC was not alone. In 2011, Congress passed similar restrictions affecting the entire US Department of Health and Human Services.<sup>57</sup>

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<sup>54</sup> Ibid.

<sup>55</sup> Frankel, Todd C. "Why the CDC Still Isn't Researching Gun Violence, despite the Ban Being Lifted Two Years Ago." *The Washington Post* 14 Jan. 2015: n. pag.

<sup>56</sup> Ibid.

<sup>57</sup> Leshner, Alan I., Bruce M. Altevogt, Arlene F. Lee, Margaret A. McCoy, and Patrick W. Kelley, eds. *Priorities for Research to Reduce the Threat of Firearm-related Violence*. Washington, DC: National Academies, 2013, 23.

### Obama's recent executive order

In early January 2016, President Obama issued an executive order on the subject of enforcing gun control measures. The order addresses many aspects that impact gun ownership and possession that have been discussed above. The president's order makes no changes in laws.

An outline of the aims of the order is as follows:

1. Keeping guns out of the wrong hands through background checks at the time of purchase.  
To this end, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) is changing a rule to require background checks on people trying to buy dangerous weapons through a trust, corporation or other legal entity. The FBI is overhauling the background check system to make it more efficient and plans to hire new examiners.
2. Making communities safer from gun violence. This is to be accomplished through new agents to enforce gun laws. Also there is a planned rule that if arms get lost or stolen in shipping that the dealer must notify the ATF.
3. Increasing mental health treatment funding and reporting to the background check system.
4. Shaping the future of gun safety technology by directing the Department of Defense, Department of Justice and Homeland Security to research gun safety technology.<sup>58</sup>

These measures, if they were able to be implemented, might work. As it is, according to the Bureau of Justice Statistics, the National Instant Criminal Background Check System (NCIS) has “prevented more than 2 million guns from getting into the wrong hands.”<sup>59</sup>

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<sup>58</sup> United States of America. The White House. Press Secretary. *Fact Sheet: New Executive Actions to Reduce Gun Violence and Make Our Communities Safer*. N.p., 04 Jan. 2016. Web. 11 Feb. 2016.

<sup>59</sup> Ibid.

Obama's order has plans for hiring new ATF officers; however, there are many ATF officers who are past or near retirement age and any new officers will merely take the place of the out-going officers and not add any more desperately needed officers.<sup>60</sup> It is noteworthy that almost all institutions that have any involvement in regulating gun laws and orders issued are all grossly underfunded. The National Institute of Justice, part of the US Department of Justice, has similarly had funding cut for studies involving guns.<sup>61</sup> Despite what has been frequently characterized as over regulated, big federal government, when Congress has chosen not to fund the governmental institutions on items that have to do with guns, they have effectively chosen a path that promotes a lack of regulation. Therefore, Obama's order actually has no teeth.

### In Summary

Deaths from firearms over the past twenty plus years are significant, but relatively static. The presence of a gun in a residence increases the likelihood of both suicide and homicide. Gun regulation varies greatly by state. The country believes that most of our problems with gun violence are rooted in ineffectual mental health care, which is only partly true, but may significantly contribute to the majority of deaths from firearms (suicides). Criminals who commit most of the homicides are able to obtain guns *via* straw purchases. Most attempts to block this would result in increased gun regulation which is opposed by gun-right supporters. Finally generation of any data on any facet related to guns and enforcement of federal laws is accomplished by federal agencies and so are impeded with Congressional lack of funding of those agencies.

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<sup>60</sup> Gambino, Lauren. "Agency Tasked with Enforcing Obama's Gun Control Measures Has Been Guttled." *The Guardian* 06 Jan. 2016: n. pag. Print.

<sup>61</sup> Frankel, Todd C.

## Chapter 2

### The Root of All Views: Fear

Since 1977, the time of the previously referenced Cincinnati Revolt, the NRA has focused its message on the argument that the purpose of the Second Amendment is to allow ready access to firearms. The Supreme Court has supported this, as we saw in their decisions in 2008 and 2010. However, the NRA and its supporters have also attempted, rather successfully, to raise the perception that there is a need for ordinary citizens to own firearms in order to protect themselves. As a consequence of their efforts, they have capitalized on a nascent fear and caused it to grow. To a significant extent, this fear of violence has been exacerbated by the media outlets controlled by advocates for gun ownership rights which publish propaganda that one's guns—the guns that are needed for protection—are at risk of being confiscated at any time. We are aware that people who favor gun rights advocate against any law that would provide for guns to be registered, account for guns going missing (misplaced or stolen), and prohibit any private sales that would not be reported to ATF. While measures such as these could decrease the number of guns that end up in the hands of criminals, they also raise the specter of an intrusive government presence and feed a fear that if the government can track a gun, then it is also able to confiscate that gun.

Conversely the media hype around each mass shooting also exacerbates a fear that violence is rampant and the government must do something to keep mentally ill individuals from obtaining guns. This particular fear does not acknowledge the difficulties faced with identifying the mentally ill nor the lack of an ability to predict propensity towards violence. Between the effect which the media (both mainstream and those focused on pro-gun rights) has on fanning the

fires of fear and how much any study of guns and/ or gun violence has been thwarted, it is no longer astonishing that people both arm themselves and call for major legislation to restrict people's ability to arm themselves— both at astonishing rates. Fearing an unknown danger is (perhaps) even worse than fearing a known one. One set of people is sure that God gave them the right to have guns to protect themselves... (“God, Guns and Country made this nation great!”). Another set of people is wooed by the media that the next “crazy” will go on a shooting rampage and feel vulnerable around the prospect of being shot. Both stances are fueled by similar deep-rooted fear— a fear of death— except one believes the answer is to better arm oneself and the other believes there shouldn't be guns available. It is *fear* that causes and entrenches these stances.

Fear, according to Webster's New World Dictionary, is “the general term for the anxiety and agitation felt at the presence or nearness of danger.” This is what we feel. But what do we do with that feeling? Beyond a physiologic “fight or flight” moment when the sympathetic nervous system is activated in response to a perceived threat, what a person *does* with fear is seemingly a socialized construct. For example, it is an understatement to say that there are differences in how we handle perceived threats between, say, some Asian societies that are more communitarian and Western societies that are more individualistic.<sup>62</sup>

America is home to many religions and philosophies and, contrary to the notions or claims of many, it is not a “Christian” nation, nor was it ever intended by its founders to be. Nevertheless, the essential values, expressed in both virtues and vices, consistently embraced by the majority of the populace (even those who do not consider themselves religious) have at their

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<sup>62</sup> I stress that here I specifically state how we “*handle*” perceived threats. Below in discussing Paul Tillich's *The Courage to Be*, I am aware that he believes these anxieties are universal for humanity. I concede they probably are.

roots the tenets of Western Christianity. Thus, even though we are a nation that is not Christian, Christianity is in our fabric. So, when we discuss gun control, gun rights, fear of confiscation of guns, fear of death, and fear of the “other,” it is paramount to recognize that the roots of all these are embedded not only within our political beliefs about guns, but framed in terms often reminiscent of concepts and values within Western Christianity (e.g., references to “God-given rights to freedom,” or “defense of the lives of those made in the image of God.”). Because Christianity is in the American cultural fabric, even as the percentage of people who self-identify as Christian has fallen, might it be apt to give a Christian theological account of this fear because people are accustomed to working in a Christian world view?<sup>63</sup>

### A Theological Account of Fear

It is not too far a stretch to conjecture that most of fear of the “other” comes from a fear of death. Christian philosophical theologian Paul Tillich best voices this in his words: “We are suspicious of the others as we would be of ourselves; we suspect that behind the manifest meaning of the demand something else is hidden... an unconscious hostility, the desire to dominate, the will to exploit...”<sup>64</sup> This fear of the other is a common theme in the Judeo-Christian Biblical context.

Even the mythical first murder of Cain bludgeoning Abel has at its root difference and fear. Fear

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<sup>63</sup> Given that the United States is a multi-religious nation in which no faith is “established,” the account that follows cannot, and is not intended to, offer a path forward to addressing the public conflict over guns. Still, precisely because no particular faith is established, any faith may be brought to bear in understanding the causes of our political entrenchment. The historical permeation of American public discourse by Christian values suggests that tools drawn from the Christian tradition may be particularly useful for that purpose. What follows is a Christian theological account of the role that *fear* plays in the impasse at which we find ourselves; and while this account cannot dissolve our entrenchment, it may help us understand why progress is so difficult to make; and help us identify both points where progress might be possible and the language and approach that might help us do so.

<sup>64</sup> Tillich, Paul. *Love, Power, and Justice: Ontological Analyses and Ethical Applications*. London: Oxford UP, 1960, 79.

of the “other” is old and examples are plentiful, to include the Israelites entering Canaan as well as fear of the Egyptians, Edomites, Moabites, etc.

Recent polls show that approximately 70% of those who own firearms say that they do so “for protection.”<sup>65</sup> This powerful need for protection is rooted in a fear of death, a fear that the Christian belief that God’s power can overcome death would seem to counter. Tillich distinguishes fear and anxiety in order to understand the inner spiritual and psychological workings of humanity and how this affects and impinges on one’s relationship with God and then how the work of salvation is freeing.

Tillich’s understanding of the difference between the words “fear” and “anxiety” is nuanced. In Tillich’s lexical specificity, anxiety is the “state in which a being is aware of its possible non-being, or anxiety is the existential awareness of non-being.” Fear instead is something that has a “direct object” and not something of existential angst. In contrast to anxiety, fear is something that can be confronted with courage.<sup>66</sup> Thus, one may have a concrete fear of dying in a car accident or experiencing pain or loss, but what we might term general anxiety or angst instead has more to do with one’s absolute existing or not (being vs. nonbeing). In terms of how fear and anxiety are associated with death, Tillich gives the example that a person may *fear* the pain and anguish of dying, but it is *anxiety* that is fueled by not knowing the beyond, what is after death. Even though fear and anxiety are distinguishable from each other, they are not completely separate but are interrelated. Fear and anxiety go hand-in-hand, but fear is the

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<sup>65</sup> "Why Own a Gun? Protection Is Now Top Reason." *Pew Research Center for the People and the Press RSS*. Pew Research Center, 12 Mar. 2013. Web. 04 Apr. 2016. <<http://www.people-press.org/2013/03/12/why-own-a-gun-protection-is-now-top-reason/>>.

<sup>66</sup> Tillich, Paul. *The Courage to Be*. New Haven, CT: Yale UP, 1952, 36-7.

response to something definite and anxiety surrounds the end result of that definite occurrence. Specifically in regards to death, it is not just that the beyond is unknown, but that it cannot be known that is the root of the anxiety.<sup>67</sup>

For Tillich, there are three types or forms of existential anxiety that are related to being over and against nonbeing. There is an anxiety of death, which he characterizes as being relatively threatened with fate, but absolutely threatened with death.<sup>68</sup> Likewise along the axis of anxiety pertaining to meaning, there is a relative threat to meaning with emptiness, but an absolute threat with loss of meaning (anxiety of meaninglessness). Finally there is anxiety of condemnation, again relatively threatened by guilt and absolutely threatened by condemnation (anxiety of condemnation).<sup>69</sup> Thus, one can think of fate and death as corresponding relative and absolute threats to life (being/ nonbeing); emptiness and loss of meaning are the relative and absolute threats of nonbeing to the spiritual life; and guilt and condemnation are the relative and absolute threats to the moral life, specifically with regard to what kind of man/ woman one has become.<sup>70</sup> One could think of the relative threats as a partial payment or not quite complete, but the absolute are completely accomplished, with no “out.” When sources of anxiety are partially threatened, fate acts on a life, emptiness impedes meaning and guilt creeps into the moral life. Ultimately on the spectrum, there is a non-being of life, a non-being of meaning (meaningless) and a non-being of moral life (condemnation).

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<sup>67</sup> Ibid, 37-38.

<sup>68</sup> Here I note that Tillich specifically addresses that collectivist and individualistic societies are similar in their anxiety about death that every “Man as man in every civilization is anxiously aware of the threat of non-being and needs the courage to affirm himself in spite of it.” Tillich. *The Courage to Be*. 43.

<sup>69</sup> Ibid, 41.

<sup>70</sup> Ibid.

One might expect that a theologian like Tillich, heavily invested in existentialism as one of the major sources of his theological system, would turn his attention to something like an analysis of fear, but in fact, one can find attention to that concern even in theologians that stand much more at the traditional fountain head of Christian dogmatics. Truly, for example, Augustine also has much to say about the fear of death and Dodaro dissects and gives structure to those thoughts in his book, *Christ and the Just Society in the Thought of Augustine*, particularly in his second chapter, “Justice and the Limits of the Soul.”<sup>71</sup> Augustine’s argument relies on his theological understanding of the resurrection and atonement. Augustine believes that “fear of death [is] the epitome of the effects of original sin on the soul...” and is thus “reflected in the inability of human beings to know and love God through the mystery of the incarnation.”<sup>72</sup> Along with this is an axiomatic belief of Augustine’s that humans are pretentious in believing that they can act justly on their own, and thus do not see God “who alone is the source of justice.”<sup>73</sup> Augustine seems to say that fearing death may take one away from God and God’s justice; or, in other words, the fear may be the manifestation of not living at one with God.

It is important how Augustine arrives and explicates a fear of death, which is by parsing death into two phases. For Augustine, there is a first death (*prima mors*), i.e., when the soul and body separate, and a second death (*secunda mors*), which consists of eternal damnation following by judgment. For Augustine, and the church fathers of his time, everyone is subject to

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<sup>71</sup> Dodaro, Robert. *Christ and the Just Society in the Thought of Augustine*. Cambridge, UK: Cambridge UP, 2004, 27-72.

<sup>72</sup> Dodaro, 27-28.

<sup>73</sup> Ibid, 29.

the first death. By baptism, Christians believe that they are saved from the second death, provided they live virtuous lives. The fear of death is most strongly associated with the “hour of death” but may occur even “while one is living relatively well.”<sup>74</sup> Given that the first death is present regardless of whether one embraces the Christian faith or not, there is much wisdom in Dodaro’s read of Augustine’s handling of the fear of this death:

“most human beings suffer some form of morally dangerous anxiety over death, which he calls ‘the most terrifying of all fears’ and likens to a ‘daily winter.’ In the midst of such a conflict, ignorance and weakness induce the soul to suppress or redirect the anxiety, often through efforts to distract itself or secure possession of temporal goods through injustices committed at the cost of permanent goods, such as virtue. He cites cases in which echoes of this fear prompt men to tell lies, to seek to amass fortunes, and to aspire to high positions in public office, all the while reasoning that deception, wealth, or power will ward off death.”<sup>75</sup>

It does not require much of a leap to suggest that, to Dodoro’s list of the activities in which human beings engage to deflect their fears, one could easily add reliance on personal weapons with which to protect oneself.

Across humanity, the commonality of the fear of death is with us. There is no convincing a person that death, acting as “the great equalizer,” should just be accepted. There appears to be an innate belief or, at least, hope that death can be avoided. Dodaro states as a given that Augustine believes that everyone naturally fears death. Reinhold Niebuhr, a more recent theologian, along with Augustine opposes Epicurus’s argument which alleges that, because death is a natural process, the knowledge that we all die should therefore translate into overcoming the fear of death. Niebuhr states that it is not enough to “prov[e] that there is no peril on the other

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<sup>74</sup> Dodaro, 33.

<sup>75</sup> Ibid, 34.

side of the grave... [for] man should inevitably fear death while animals do not.”<sup>76</sup> In effect, death’s certitude does not remove the fear of it.

Although Augustine uses older, more doctrinal language than Tillich does, and Tillich’s language is more nuanced, when we compare Tillich and Augustine we can still see among the differences their similarities on this point. These similarities perhaps align us closest to an explanation of the fear /anxiety of death that is useful and true. Augustine’s fear of the first death (*prima mors*) is akin to Tillich’s anxiety of fate and death. Augustine’s fear of the second death (*secunda mors*) does not have a direct corollary, but is similar to Tillich’s anxiety around condemnation but also anxiety around meaningless. It is that inability to know what is on the other side of death that keeps us anxious, and Augustine would hope it keeps us virtuous as well, with, God’s grace helping our will to be so. Perhaps Augustine would say that anxiety arises from a self-examination of our inability to be virtuous that brings us up short and then gives us added anxiety embedded in our guilt and anxiety of condemnation.<sup>77</sup>

Tillich and Augustine more than adequately characterize this apparently universal fear of death. Recognizing that this fear is constitutively human offers some deep understanding as to how one’s fears relate to one’s positions on gun laws and how Christian theological language can help to make sense of the world. On first glance, gun rights and gun control seem to be polar extremes and many or most people define themselves as somewhere in “the middle.” On many aspects of the gun debate that may be true, but where fear is a leading cause of entrenchment, the

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<sup>76</sup> Niebuhr, Reinhold. *The Nature and Destiny of Man: A Christian Interpretation*. Louisville, KY: Westminster John Knox, 1996, Vol 1 98-99.

<sup>77</sup> One could further understand Tillich’s anxiety of guilt and condemnation as potential fuel in the mind of one who might feel compelled to commit suicide. The feelings of self-abnegation, damnation and guilt may all factor in the thought of suicidal persons.

polar disparities are actually more significant. The stances can be distinguished by asking the following questions in Tillichian and Augustinian language: Do you believe that in order to ward off Tillich's anxiety of death and Augustine's fear of the first death you need to have a gun (or guns) to protect yourself and your family? OR do you believe that you have a slim, but possibly real, chance of having your life ended by a random mentally ill person with a gun and want the government to control a person's (or everyone's) access to firearms? In both scenarios, each side is just as possessed by the fear and anxiety that Augustine or Tillich identify.

Our polar entrenched stances, not surprisingly, can be viewed to correlate with two types of Christians: one type aligns to God as a protector of self and family (a warrior God of the Old Testament with an "outstretched hand and mighty arm"); and the other type aligns to the Jesus that calls us to lay down our weapons specifically in the Gospel of Luke.<sup>78</sup> I argue that neither is necessarily helpful when one does not extend the Christian message that addresses with consolation and hope the fear of death and anxiety that loom large in human consciousness. Reinhold Niebuhr summarizes this nicely: "death is no evil though it is an occasion for evil, namely the fear of death."<sup>79</sup> This type of evil acts on both types of Christians, and they are convicted and need to decide how to go forward.

The purpose of explaining and considering the fear within each of us is primarily to examine and name it. This extensive examination allows us to chart a path whereby we can navigate a way through the currents that will avoid these all-encompassing fears. The pragmatic solutions offered in the next chapter will attempt to sidestep these fears if at all possible.

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<sup>78</sup> It must be noted that the culturally depicted sharp contrast between the biblical testaments is not supportable from the point of view of biblical scholarship, but that this lies outside your present concern.

<sup>79</sup> Niebuhr, Vol 1, Human nature, 167.

However, before proceeding to those solutions, within a Christian theological account of the fear of death such as this one, it is logical to conclude this reflection by a brief consideration of the Christian turn to an eschatological hope.

### A Turn to Eschatological Hope

Where do we find any sort of hope in this quandary? Is it inherently wrong to have a fear of death? Perhaps it is, as Tillich would have us believe, that the anxiety of death – of nonbeing – is universal. When one has courage to confront one’s fears, when one can find the “courage to be” then one is not as affected by the anxiety. From a Christian point of view, this “courage to be” is found in our being, in what makes us be—God, and specifically in the “power of new being” that one sees coming to play in Jesus Christ.<sup>80</sup>

Augustine’s and Niebuhr’s theological accounts of fear are heavily based on Paul: that “mortality, insecurity and dependence... become the occasion of evil when man seeks in his pride to hide his mortality, to overcome his insecurity by his own power and to establish his dependence.”<sup>81</sup> And from Paul in the letter to the Romans, “neither life nor death... shall be able to separate us from the love of God which is in Christ Jesus our Lord.” Augustine would advise that our desires must be for God, and that we must live a virtuous life; by virtue of that, the acceptance of the first death allows one to avoid the second death.<sup>82</sup> Yet, even for our two cultural types of Christianity (the one aligning themselves to God as defender with an

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<sup>80</sup> Tillich, Paul. *Systematic Theology: Three Volumes in One*. Chicago: U of Chicago, 1967, 176-180.

<sup>81</sup> Niebuhr, vol 1, 174

<sup>82</sup> Dodaro, 35.

“outstretched mighty arm” and the other aligning themselves to Jesus admonishing Peter to put away the sword), definitions of virtue get muddy— again, does it consist of protecting family? or stopping all killing? — where these two are clearly expressed as opposites of each other?

Augustine instead addresses this Pauline concept in terms of contentment and justice: “Because happiness is predicated on the knowledge and love of God, death epitomizes the fundamental threat to the formation of a just society. Justice is not found wherever fear of death impedes action aimed at the attainment of lasting happiness,”<sup>83</sup> echoing Paul’s inseparability from Christ.

Niebuhr extends this fear of death as, instead the possibility of a source of wonder, a counterintuitive point, which actually serves to make us more hopeful in the face of it. Although he notes that death is inexorable a “law of nature, the fear of death is just as inevitable an expression of that in man, which transcends nature.” Niebuhr arrives at this conclusion by contemplating what it means to be anxious about a realm of meaning on the other side, noting “Hamlet’s soliloquy that ‘to die, to sleep’ may mean ‘perchance to dream,’ is the positive indication of man’s freedom transcending nature.”<sup>84</sup> Thus, Niebuhr gives a flavor of fascination rather than dread to the other side of death.

Timothy Jackson, in his book *The Priority of Love*, convicts both sets of Christians in their stances. “If one clutches after invulnerability and closes oneself off from risk, this will inevitably lead to sin against God and alienation from others; if, in contrast, one remains open and generous even in the face of threatened extinction, this is all that Christlike love could

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<sup>83</sup> Ibid, 35-36.

<sup>84</sup> Niebuhr, vol 2, 8.

ask.”<sup>85</sup> Simply put, being Christlike, i.e. being Christian, is not living in fear, even if anxiety about our nonbeing is inevitable. Serving the neighbor, despite our own threatened extinction, is what is called for. Christians are charged to embody Christ and love the neighbor, the “other.” This loving service of the neighbor also includes love of family, the family of humanity.

Timothy Jackson has some instructive words as well, although written in respect to Just War and perhaps nebulous in exactly how this should be enacted; he says “what we must fear as Christians is not our deaths at the hands of an unjust aggressor but how as Christians we might serve the neighbor without resorting to unjust means.”<sup>86</sup> Thus, there is hope, perhaps, that our country’s citizenry can see our very natural human fear of death as part of who we are, and thus come to some sort of peace as to why we as a country are profoundly stuck in this political quagmire.

Our fear of death will not be overcome, in the Christian imagination, until the eschaton; but, in the meantime, perhaps we could make some progress on decreasing the absolute loss of lives caused by gun violence if we name the fear to begin with and begin to focus on that. If people can recognize a shared fear, this might open a space for understanding, subject to imagination and hope. Within an eschatological commitment we could focus the discourse for a time on an agenda that doesn’t threaten our fears, and we might then open a space in which some as yet unimaginable substantive movement on the laws and policies themselves, however modest, might become possible.

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<sup>85</sup> Jackson, Timothy P. *The Priority of Love: Christian Charity and Social Justice*. Princeton, NJ: Princeton UP, 2003, 87.

<sup>86</sup> *Ibid*, 118.

### **Chapter 3**

#### **Public Health Ethics: forging a path forward to decrease gun deaths**

The field of public health ethics offers a natural location from which to address proposals for dealing with deaths from firearms. Because the marginalized in our society are disproportionately affected by gun violence (specifically including the mentally ill, the poor and racial minorities), there is a profound need for a perspective that does not villainize those same people who are likely to lose their lives. Public health ethics is extremely capable of maintaining a balancing act between producing benefits and ensuring that all stake-holders are treated with impartiality.

As noted earlier in this thesis, the medical community, particularly at points of intersection with government, recognizes that the number of firearm injuries and deaths constitutes a public health crisis. (It is probably fair to say that the CDC also recognizes the problem but, as discussed previously, also recognizes the likelihood that any funds earmarked for the study of firearms in one annual budget would subsequently be removed from the budget in the next fiscal year.<sup>87</sup>) It is not an accident that the current Surgeon General Vivek Murthy declared (by a tweet in 2012) that guns were a “health care” issue.<sup>88</sup> Numerous health professional organizations have joined with the American Bar Association to advocate for many

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<sup>87</sup> On March 15, 2016, the CDC called for physicians to stop prescribing opioids for chronic pain, citing that more than 40 people die every day from opioid intoxication. Szabo, Liz. "Doctors Told to Avoid Prescribing Opiates for Chronic Pain." *USA Today* 16 Mar. 2016. It does not go without notice that this is half the number of those who die from firearms.

<sup>88</sup> Siddiqui, Sabrina. "How the NRA Lost Its Battle to Defeat Vivek Murthy as Obama's Surgeon General." *Huffington Post*. N.p., 19 Dec. 2014. Web. 6 Feb. 2016.

measures “aimed at reducing the health and public health consequences of firearms.”<sup>89</sup> Just hours before the shooting at San Bernardino, California, a group of medical doctors delivered a petition to Congress signed by more than 2000 physicians asking Congress to lift the ban on the funding for CDC to conduct research on gun violence.<sup>90</sup>

Given the failure of the wider public health community to succeed in addressing the issue of identifying a solution to the issue of gun violence, it may be appropriate to turn to the more specialized field of ethics within the context of public health. This approach to dealing with gun violence is paradoxically more nuanced and in some sense more restrained. This inherent restraint of public health ethics is perhaps the most salient reason why any proposals that are potentially feasible might be better seen by the desired audiences through this lens. Such proposals, which can also work around the pitfalls of fear discussed in the last chapter, are worthy of consideration and probably implementation.

All public health ethics is inherently conceived in the context of understanding what political and legal implications are in any given situation, if only because most implementations of policy are forged in political/ legal environs. Within this construct, the balancing act between the ethical values of individual liberty and the protection of the general public from harm (often expressed in terms of paternalism) is probably the most important that will play out in any discussion related to guns, gun ownership, and gun safety.

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<sup>89</sup> Weinberger, Steven E., David B. Hoyt, Hal C. Lawrence, III, Saul Levin, Douglas E. Henley, Errol R. Alden, Dean Wilkerson, Georges C. Benjamin, and William C. Hubbard. "Firearm-related Injury and Death in the United States." *Annals of Internal Medicine* 162.7 (2015): 513-16. 24 Feb. 2015. Web. 23 Mar. 2016. <www.annals.org>.

<sup>90</sup> Dennis, Brady. "Hours before San Bernardino Shooting, Doctors Urged Congress to Lift Funding Ban on Gun Violence Research." *The Washington Post* 2 Dec. 2015.

John Stuart Mill, one of the primary thinkers in ethics and often touted in public health ethics, was a strong advocate for unblemished or untarnished personal liberties. He states, “No society in which [these] liberties are not, on the whole, respected is free, whatever may be its form of government; and none is completely free in which they do not exist absolute and unqualified.”<sup>91</sup> Even in the face of such a bold, libertarian declaration, Mill (much like Justice Scalia) provides a cautionary framework in which he acknowledges that one who does harm to another should be punished. *Liberty is not completely limitless*. Mill also acknowledges that there are times when one can be harmful to another by failing to act, and that in the case of such actions or, more appropriately, inactions, the liberty of the individual should be limited.<sup>92</sup> As applied to public health ethics, he is intent that individual liberties and societal concerns be separate. He rhetorically asks and answers, “What, then, is the rightful limit of the sovereignty of the individual over himself?...To individuality should belong the part of life in which it is chiefly the individual that is interested; to society, the party which chiefly interests society.”<sup>93</sup> Mill’s philosophy does provide for the government’s rights to act to protect individuals from unforeseen events; however, generally speaking, he is strongly against government interference.<sup>94</sup>

As to how liberties and safe-guarding the health of the public interact in the United States, Ronald Bayer, a public health ethicist, explains “debates about public health in the USA [demonstrate] conflicts that have been animated by a deep-rooted mistrust of overreaching

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<sup>91</sup> Mill, John Stuart, “On liberty” article, p22 of elibrary book

<sup>92</sup> Ibid, elibrary, 79.

<sup>93</sup> Ibid, elibrary 79

<sup>94</sup> Ibid, elibrary 136, 154-156.

authorities.” He further notes that when we ignore the tension between public health and individual rights we do so “at our own peril.”<sup>95</sup> Conversely Robert Goodin, a utilitarian philosopher, notes that “to a very large extent, the justification of public health measures, in general, must be baldly paternalistic.... in order to promote public wellbeing of people...”<sup>96</sup>

Particularly for medical and public health ethics, there is a fundamental difference between soft and hard paternalism. The term “soft paternalism” refers to a situation in which a person (or agency) interferes in the non-voluntary actions of another on the basis of beneficence or non-maleficence. Similarly, “hard paternalism” evokes a similar basis for acting, but the individual’s chosen action that is being prevented is informed and voluntary. Beauchamp and Childress note that the effect is that “[s]oft paternalism therefore does not involve a deep conflict between the principles of respect for autonomy and beneficence.”<sup>97</sup>

Additionally within public health, one frequently is forced to address harms to others — what Mill refers to as “third party harms.” Ronald Bayer addresses the ongoing conflict between liberty and paternalism as expressed in public health noting that frequently public health advocates “intervene because the social consequences or negative externalities of certain behaviors warrant intervention; thus, self-regarding harms are transformed into other-regarding harms. In any event, the state seeks to use its authority to change individual behaviour.”<sup>98</sup> Bayer seems strongly against paternalism; however, one is hard pressed to disagree with his statement that “clearly the public health— measured collectively in terms of the lives of individuals and on

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<sup>95</sup> Bayer, Ronald. "The Continuing Tensions between Individual Rights and Public Health. Talking Point on Public Health versus Civil Liberties." *EMBO Rep EMBO Reports* 8.12 (2007): 1099. Web.

<sup>96</sup>Goodin, Robert E. *No Smoking: The Ethical Issues*. Chicago: U of Chicago, 1989. Print, 30-31.

<sup>97</sup>Beauchamp, Tom L., and James F. Childress. *Principles of Biomedical Ethics*. New York: Oxford UP, 2013, 216-7.

<sup>98</sup> Bayer, 1101.

a population basis—requires intervention that involves restrictions of choice.”<sup>99</sup> Cast in that light, it is not only difficult to disagree, but with a pragmatist lens it is difficult to find anything wrong or unjust in the statement.

When we think about ethics in public health, it is important to consider whether the policies and laws enacted promote justice and equality, at least to the extent reasonably possible. It is not that all social determinants of health can be made equal—a goal that would be entirely unreasonable and unobtainable.<sup>100</sup> However, strides should be made so that the policies which, on one hand, protect one person’s liberty, do not also result in treating another person or community unjustly or creating inequality between the two parties. Dan Beauchamp raises the possibility that “another alternative is to redefine voluntary risks to an individual as risks to others.”<sup>101</sup> He further speaks of the deep “socioeconomic inequalities [which] form the backdrop to any public health policy...”<sup>102</sup> From a framework of social inequalities of health, one could potentially see how policies that protect certain people’s liberty to own guns might be in conflict with a sense of justice or equality for another community which is fearful of gun-ownership.

The ethics of public health policies must be founded on the cardinal moral principles of *beneficence, utility, prevention* and *public morality*. Perhaps the most critical principles are those of “positive beneficence and utility. Positive beneficence requires agents to provide benefits to others. Utility requires that agents balance benefits, risks and costs to produce the best overall

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<sup>99</sup> Bayer, 1102.

<sup>100</sup> In order for it to not be so we would have to live in a flat society where all incomes and living structures were equal.

<sup>101</sup> Beauchamp, Dan. "Community: The Neglected Tradition of Public Health." 1985. *Public Health Law and Ethics: A Reader*. Ed. Lawrence O. Gostin. Berkeley, CA: U of California, 2010. N. pag. Print.

<sup>102</sup> *Ibid*, 39.

results.”<sup>103</sup> Succinctly, a public health policy or law should do good (benefit others) and if possible in a way that balances these effects to give the optimal results. It should prevent death and/ or illness and it should also raise, or at least not lower, the morality of our society. These are what the aims of all public health policies should be.

Thus, what is proposed is a public health approach that is broadly utilitarian, cloaked in some amount of paternalism, which seeks to strike a balance that delivers as much societal justice and equality as possible, but with a preservation of individual liberty. This utilitarianism, through preserving liberty and avoiding harms, will serve to find a way through the dichotomy between liberty and paternalism and yet still navigate past the synchronous fears of death that keeps us entrenched. This process is akin to passing through Homer’s strait of Messina to avoid peril—the monsters that would be our fears, which maintain ineffectual gun legislation, Charybdis and Scylla, which could be fear of death and fear of paternalism or excessive liberty resulting in third party harms.

### Public Health History

Within the history of public health, the implementation of mandatory seat-belt usage laws and the widespread adoption of smoking cessation programs are touted as major public health achievements that are in place because of locally passed legislature. These are examples from which to draw regarding any gun regulation. These two achievements, unlike vaccination programs which are generally aimed at school-aged children and result in herd-immunity, link their success to people independently selecting a lawful behavior which is, at the time, not popular but becomes the norm. Although public health is not generally regulated by the federal

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<sup>103</sup>Beauchamp, Tom L., and James F. Childress., 202.

government, success in gaining acceptance of seat-belt usage in the states was the result of tying together the passage of state laws and the receipt of federal highway money. Smoking cessation programs are less successful, in part because there is less federal “coercion” (paternalism) to have the states implement policies. Smoking prohibitions are generally instituted locally and clearly do not affect smoking in one’s own home or car.

And yet, the effect of seatbelt usage has resulted in a marked decrease in traffic fatalities. In addition to number of lives saved, the burden of costs from those that survive with fewer injuries is dramatically reduced. Similarly, although originally structured to address second hand smoke, the smoking cessation programs, with clear “hard paternalism” by the local governments are justified using Mill’s “harm principle” with a heavy dose of paternalism, have resulted in a decrease in the percentage of Americans who smoke. Smoking cessation programs, likewise, have decreased the amount of money spent on health care for these individuals.

The adoption of laws requiring seatbelt usage demonstrates “soft paternalism.” In the name of public health and decreasing the ancillary cost to society of the injuries and deaths resulting from failure to use seat belts, there is an application of the heavy-hand of government by tying state eligibility for highway funds to the passage of specific legislation. This is clearly coercion, but effective coercion that still allows each state to make its own choice. Smoking cessation programs can be considered as local ordinances acting in fashions that exhibit “hard paternalism,” in that one is attempting to stop an addictive behavior and infringe on a person’s individual liberties. As alluded to before, this instance of hard paternalism has been justified by the “harm principle” on those receiving second hand smoke.

There is no “one-size-fits-all” approach to dealing with the issue of gun violence. The potential policies which I believe could be implemented legislatively are designed to be small and pragmatic steps aimed at decreasing the number of lives lost and injuries received as a result of that violence. At the same time these steps are designed not to stoke the fires of fear of mortality or the loss of individual liberty.

### Mental Health

We have previously argued that the media coverage, particularly of mass shootings, heightens the public’s collective fears of the lone “crazy” person who becomes unhinged and shoots numerous people. We know that psychiatry has essentially no good tools to predict whether any particular mentally ill individual will become violent, but we also know that the number who might do so it is a very small subset. Swanson’s and Felthous’s article outlines problems that beset our current approach to trying to make such a determination as well as outlines a way to deny guns from dangerous people without “unduly infringing on rights, privacy and therapeutic practice.”<sup>104</sup> They see that the current push, advocated by many,<sup>105</sup> to have universal background checks is problematic for two main reasons: (1) a background check process is only as good as the information that is obtained, and the fact that most involuntary commitments now occur through private facilities “outside the reporting purview of the state mental health authorities,” skews any reporting; and 2) background checks only provide data and do not limit the access a

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<sup>104</sup> Swanson and Felthous, 173-6.

<sup>105</sup> Webster, Daniel W., and Jon S. Vernick, eds. *Reducing Gun Violence in America: Informing Policy with Evidence and Analysis*. Baltimore, MD: Johns Hopkins UP, 2013, 95-132.

dangerous person may have to guns already available. Still the authors agree that persons experiencing “a mental health crisis are indeed at risk of harming themselves or others.”<sup>106</sup>

In answer to how guns can be fairly denied to dangerous people without infringement of individual rights, Swanson and Felthous note that three states (Connecticut, Indiana, and California) currently have laws that allow for temporary gun seizures from “dangerous persons.”<sup>107</sup> Of note, in Indiana, once firearms were seized, most of those from whom they were taken (64%) did not return to the police to regain possession of their guns. The laws are too recently enacted to have been the subject of any research that can serve as the basis for any assumptions, but the early results are promising. As to restoring gun rights to people after they are no longer deemed mentally ill, the NICS improvement Amendments Act of 2007 included grant money for states to develop programs to respond to those whose “rights have been rescinded due to a disqualifying mental health record.”<sup>108</sup> To this end, two states (New York and Oregon) have specific programs to restore gun rights. However, both programs rely heavily on mental health professionals to determine a person’s fitness to have guns and we know this determination is fraught with difficulty.<sup>109</sup>

By taking a closer look at Connecticut, which has a “permit to purchase” law, an approach that will be examined later, Jeffrey Swanson has found that the state’s ability to review more mental health records in advance of issuing permits has resulted in a “sharp decline in violent crimes committed by those with serious mental illnesses.” These health records of those

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<sup>106</sup> Swanson and Felthous, 171, 173-176..

<sup>107</sup> Ibid, 169. The authors define such persons as those “who pose a danger to others due to a pattern of impulsive angry behavior...[to include those] persons convicted of certain crimes that correlate with violence risk.”

<sup>108</sup> Swanson and Felthous, 174.

<sup>109</sup> Ibid.

mentally ill persons entered in the state system were compared to an inherent natural control group —those mentally ill who were admitted to a private institution, which therefore were not subject to mandatory reporting.<sup>110</sup>

A look at the new California law to address dangerous persons (section 5150 of the California Welfare and Institutions Code) shows that in most instances the “dangerous person” from whom guns have been confiscated are generally those who are considered a threat to themselves, (i.e. people at risk for suicide). The law allows removal of all firearms from a residence (whether or not the person owns them) if a petition is filed declaring the person is exhibiting “aggressive, violent or self-injurious behavior.” Further, this removal of firearms is time-limited, which could be thought of as only limited confiscation.<sup>111</sup>

Swanson et al. give a recommendation that states should create a new civil restraining order process to allow family members and intimate partners to petition the court to allow removal of firearms if the risk for harming self or others is plausible, even when domestic violence is not an issue.<sup>112</sup> The effort to identify methods to limit access to firearms by those with mental illness will require additional steps, beyond those mentioned above. For example, we know that mentally ill individuals who *do* have a demonstrated predilection to violence almost always have a concurrent diagnosis of substance abuse (either drugs or alcohol).<sup>113</sup> There is good reason to believe that addressing substance abuse in these individuals will result in a lower likelihood of violence. Thus, this must be addressed in any legislation adopted.

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<sup>110</sup> Cook, Philip J. "How We Can Reduce Gun Violence." *Duke News Sanford School of Public Policy* (8 Jan. 2013): n. pag. Print.

<sup>111</sup>Swanson and Felthous, 172.

<sup>112</sup> Swanson et al, p 375.

<sup>113</sup> Chappell, Duncan. "Firearms Regulation, Violence and the Mentally Ill: A Contemporary Antipodean Appraisal." *International Journal of Law and Psychiatry* 37.4 (2014): 399-408. Web. 401.

### Potential positive action by the NRA

Additionally there is a good argument to encourage the National Rifle Association to return to its roots by focusing on gun safety and thereby act in a manner that has beneficence at its core. The NRA enjoys a tax-exempt status based on its role in educating the public; and yet, for the more than 1 in 10 adult Americans who own a gun, there is comparatively little safety education available, let alone required.<sup>114</sup> Developing a program to educate around the warning signs of suicide would be an important way for the NRA to demonstrate real concern about the thousands of suicides by gun that occur each year. If the aim is to decrease the loss of lives from guns and confiscation of firearms raises the specter of violating the Second Amendment, wouldn't it then be better for the NRA proactively to teach about the dangers of suicidal-ideation when one has ready access to a firearm? Given its heavy presence in media, any steps that the NRA could make as public service announcements to de-stigmatize mental illness and keep people alive has the potential to make a large impact. This would be an ethical public health good of beneficence, and yet simultaneously ensuring liberty and avoiding hard paternalism. Other agencies could do similar work, but having the NRA pave the way might serve to recast their image and the image of the mentally ill as well.

### Permit to Purchase Laws

The Connecticut law not only requires a permit to purchase a handgun and raises the minimum age for gun ownership to 21 but goes on to fill a void that exists in most states where only

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<sup>114</sup> Unlike the tobacco industry where court cases were driven by morbidity and mortality of cigarettes, any similar court cases would instead be aimed at the gun manufacturers, not the NRA. The NRA could serve as an advocate. 1:10 statistic from Swanson and Felthous, 169.

“public” sales are regulated. While federal law requires that people who purchase firearms pass a background check, this requirement does not apply to sales by private sellers who are unlicensed. Only eighteen states (including Connecticut) and the District of Columbia require a private seller to also obtain a background check. Connecticut’s “permit to purchase” law “requires any prospective handgun purchaser to apply for a permit in person with the local police.” Once the permit is obtained, the law requires completion of an 8-hour safety course.<sup>115</sup>

These requirements have not only been connected to suicide reduction but also to a marked reduction in the number of homicides in the state, as discussed in a 2015 article in the *American Journal of Public Health*. Because gun research has inherent difficulties (given that very few studies have been prospective in nature), the homicides rates of Connecticut were compared with weighted data from other states based on “prelaw homicide trends.” In doing so, it is estimated that Connecticut saw a 40% drop in homicides versus what they would have expected from the time of implementation. Even without the extensive data analysis, the raw data (seen graphically in the article) demonstrate a marked drop in homicide rate. The authors note in their discussion that the state of Missouri has seen a marked increase in homicides following repeal of its Permit to Purchase Law.<sup>116</sup> Within the context of Public Health Ethics, such legislation is fairly paternalistic. However, the change in homicide rates after the implementation permit to purchase law in Connecticut and the repeal of the law in Missouri indicate that in this case, paternalism cloaked in the “no-harm principle” has resulted in a substantial decrease in loss of human life.

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<sup>115</sup> Rudolph, Kara E., Elizabeth A. Stuart, Jon S. Veronica, and Daniel W. Webster. "Association between Connecticut's Permit-to-Purchase Handgun Law and Homicides." *American Journal of Public Health* 105.8 (2015): e-49. Not all of the states require a safety course.

<sup>116</sup> Ibid, e49-54.

### Straw sales

As noted earlier, so-called “straw sales” are a prominent source of the guns used in homicides.

Looking for ways to decrease straw sales should have the net effect of decreasing homicides.

The permit to purchase laws have indirect effects on straw sales. One effect removes the private, secondary seller who would normally not have to have a background check. This results in at least a local universal background check.<sup>117</sup> The potential to decrease homicides by reducing straw sales is real, particularly if purchasers and sellers are punished in a manner more severe than drug purchasers and dealers. Particularly important to this sort of legislative intervention is that it occurs before the more serious crime has been committed. Other areas in which more stringent punishment could be proactive is in the area of gun transportation. Circumventing the states that have more stringent gun purchasing laws by transporting weapons from other states, particularly those in which it is easier to obtain guns, has the effect of arming criminals. Enacting federal laws that would increase punishment for these actions, which arguably are responsible for intentionally supplying arms to individuals who will commit murder, should not be seen as a threat to the responsible gun owner. The most common proposed way for guncontrol advocates to address straw sales is to advocate for universal background checks. Although it is possible, the current environment with both gun control and gun rights advocates entrenched in fear and the perceived potential for infringement on liberty with gun confiscation, instead necessitates a different method, such as one proposed, to curb straw sales.

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<sup>117</sup> Ibid, e-52.

### Gun safety mechanisms

Gun safety improvements are another avenue that should be pursued in the effort to decrease gun violence while not infringing on the right to own guns. Requiring the use of proven safety devices (such as personal grip recognition, similar to iPhone fingerprint readers) would likely result in a marked decrease in the number of lives lost in home shootings by young children. While there is not likely to be a possibility of retrofitting a firearm originally made without a personal grip mechanism, requiring one on all future guns manufactured and sold would allow the adults in a home to have their guns, but also prevent a child from accidentally shooting a parent, self or other child.<sup>118</sup>

### Increasing funding of agencies which regulate guns and study gun violence, to include

#### “enforcing laws we have on the books”

As with virtually every proposal that envisions new statutory requirements and government oversight, budget considerations, both state and federal need to be dealt with. For the most part the enforcement of federal laws relating to the sale of guns rests with the ATF. But, given the amount of guns sales and the information related to them that needs to be checked, there is a paucity of ATF agents. As noted, many agents are soon to retire and any new hiring of agents, proposed in Obama’s executive order, will only replace those leaving, not increase the total number of agents. If universal background checks were required by federal law, there would be no way to fully implement any such requirement with the current number of ATF agents.

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<sup>118</sup> It is Jamie Gilt, a gun advocate who was shot and injured by her toddler, who might now have additional positive thoughts to share regarding gun safety mechanisms. Although she faces up to 180 days in jail on misdemeanor charges of allowing a toddler access to a gun. Grenoble, Ryan. "Gun-Rights Advocate Whose Kid Accidentally Shot Her Could Go To Jail." *Http://www.huffingtonpost.com/entry/mom-shot-toddler-driving-florida-charge\_us\_56f2c55ae4b02c402f65fa5b*. Huffington Post, 23 Mar. 2016. Web. 4 Apr. 2016.

Even aside from government regulation, government funding of research in the area of gun violence is virtually non-existent. Although this thesis has culled data from many sources, it is note-worthy that these sources typically are not government-funded sources. The effect of this is to make insufficient data available to those seeking to evaluate the success of legislative and regulatory actions and to propose policy options based on their findings. For example, although universal background checks are often cited as an important step in reducing gun violence, at least one study by Philip Cook and Jens Ludwig found that the Brady Act, the first federal law requiring states to run checks, did not change homicide or suicide rates. However, as Cook notes, “Direct evidence of its (universal background checks, in this case in California) effectiveness is lacking, which does not mean that it is ineffective— only that it is difficult to evaluate.”<sup>119</sup> It is extremely difficult to make any sort of foundational statements about data if the data does not exist or if the data that does exist is not in compatible forms. Governmental agencies, state and federal, lack the autonomy to study what they feel is important to study. The Surgeon General has noted that gun violence is a public health concern but, as previously noted, if Congress does not fund the relevant agencies sufficiently to either enforce the laws or conduct necessary research, nothing can happen and, as a nation, we continue to live as an ostrich with our collective head stuck in the sand. Tactics that show promise of working are ones aimed to deter illicit carrying as well as community policing. Of course, these tactics also require resources.

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<sup>119</sup> Cook, Philip.

### Domestic violence

One area in which there has been successful movement in laws aimed to reduce gun deaths, even when the larger debate is polarized, is in association with domestic violence. Vermont has recently joined over a dozen other states in passing laws that limit the ability of a spouse with evident violent tendencies from possessing a firearm. The Vermont law (coinciding with Scalia's note that rights are not unlimited) prohibits those individuals convicted of "domestic assault, stalking, sexual assault and aggravated assault crimes" from possessing guns and even allows for their confiscation in cases of domestic abuse.<sup>120</sup> Again in this level of government intervention, the level of paternalism is high; however, the parties all seem to recognize that the lives of the innocent or powerless are at risk. This is not a case of infringing on someone's rights, so much as a limiting those rights when the risk of one person's behavior rises high enough to fall outside the construct of law-abiding. This action would encompass beneficence, and perhaps what could be characterized as paternalism, but the coercion is again to result in avoidance of "harm principle."

### Semi-automatic rifles

It is often proposed that a way to decrease gun violence would be to decrease or ban the sale of particular weapons, e.g., semi-automatic rifles. This proposal is usually a response to the general public's perception of the danger of a mentally-unhinged loner who enters a school/ Navy Yard/ church/ public space and is able to take many people's lives rapidly because of the numerous rounds. What has been found, in places where such a ban was adopted and subsequently

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<sup>120</sup> Ring, Wilson. "Vermont Restricting Domestic Abusers' Access to Guns." *Times Argus*. N.p., 7 Feb. 2016. Web. 9 Feb. 2016. <[www.timesargus.com](http://www.timesargus.com)>.

rescinded, is that there was not an increase in firearm deaths when these weapons were again made legal.<sup>121</sup> It might make intuitive sense that a person without proficiency in shooting would be more likely to be able to kill others if he could fire off many more bullets while pressing a single button without having to reload. However, the numbers do not bear out a difference in the number of deaths from gunshot wounds before and after lifting a ban on assault rifles.

Christopher Skoper, former director of research at the Police Executive Research Forum, looked at the effect of the military style assault weapons ban in effect from 1994-2004, and found that there was “no detectable effect on homicide rates in the United States.”<sup>122</sup> Yet clearly these guns are only designed for rapidly killing people; no one engages in the sport of hunting with a semi-automatic weapon.

#### Summary of Public Health Ethics addressing gun violence:

Because public health is concerned with all causes of large numbers of deaths, the deaths from gun violence fall within that area. Public health ethics looks for solutions to public health problems that navigate a path between preserving individual liberties and exercising too great a level of paternalism. Thus, public health ethics is a natural discipline from which to examine our country’s approach to gun violence and the enormous loss of lives that result from it. The goal of an ethics-driven approach to solving this major problem requires avoiding undue paternalism, i.e., exercising soft paternalism when possible, avoiding third party harms, but being willing to

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<sup>121</sup>Semi-automatic weapons became illegal under Reagan. The Brady Laws of 1993 were thought to be very restrictive. Gun enthusiasts do not want these returned.

<sup>122</sup> Cook, Philip J. "How We Can Reduce Gun Violence." *Duke News Sanford School of Public Policy* (8 Jan. 2013): n. pag. Print.

apply hard paternalism when necessary and legally appropriate. This provides for some possible solutions: addressing straw sellers/ purchasers, providing sufficient funding for government agencies to enforce existing laws, addressing mental health problems appropriately, e.g., temporary removal of weapons from people who are dangerous and providing therapy to address substance abuse, as well as looking for ways to disarm domestic abusers and moving forward with gun safety devices. Conversely ways which probably will offer no benefit are banning semi-automatic weapons and across the board universal background checks.

**Conclusion:**

The serious problem that gun violence poses for this country and the need for a new and more effective approach to resolving it has been the central focus of this thesis. It has examined where the country has complete blind-spots due to the ever present mind-numbing figures in the media that cease to raise concern as the current level of gun violence has become *status quo*. The thesis has also shown our misconceptions about mental illness and our lack of knowledge of the operation and impact of straw purchases; offered a history of various pieces of legislation dealing with gun issues and of the National Rifle Association and its role in the issue; and examined the impact of government funding (or lack of it) for enforcement of gun laws and research on matters related to guns and gun violence.

After laying this groundwork, the fear of death, a factor that plays a role on both sides of the debate on how to deal with guns, was examined in a Christian theological context in order to recognize it and to name it. A critical understanding for moving forward in resolving gun violence issues is the recognition that it is not the facts that determine the workings of our politics, but rather what we “believe.” Our fears inform what we believe to be true and it is important that we understand this. The recognition of the profound fear of death is tremendously helpful because people do not let go of fears in politics. It is possible that the true Christian message will be heard – to “fear not!” – but saying it louder or more often does not work. A turn of heart, eschatological hope, these are Christian distinctives, but a pragmatic solution to decrease the number of lives loss cannot wait for the eschaton.

Only when we can recognize how profound our fears are can solutions be offered that give a wide berth to our fears, do not impinge on our individual liberties, and are not overly

paternalistic. Because the loss of lives due to gun violence is a public health concern, it is appropriate for public health ethics to be instrumental in devising a way forward.

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