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Applied Ethics for Professionals: MA Research Report

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Is There a Moral Right for Civilian Gun Ownership?

ABSTRACT

The topic of firearm ownership is a current and topical one, with compelling arguments both for and against. In this paper, I set out to prove the existence of a moral right to civilian firearm ownership. In order to achieve this, I selected the strongest (and only) rights based argument for the complete banning of firearms as put forward by Jeff McMahan, and proceeded to analyse and critique his arguments, with the intention of presenting flaws in the arguments, and thus proving the existence of a moral right for firearm ownership through discounting the strongest argument against it.

DECLARATION

I hereby declare that this thesis is my own unaided work. It is submitted for the degree of Master of Arts in the University of the Witwatersrand, Johannesburg. It has not been submitted before for any other degree or examination in any other university.

Graham Lowe

12 March 2024

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Chapter 1: Introduction

Gun control is a common political and social topic in our modern society. Firearms have the capacity to cause much harm, as they are specifically designed to be able to inflict physical damage on targets and living beings from a distance. In an increasingly diversified and violent society, firearms therefore get a lot of attention, for they are often the tool used when people inflict unjustified harm on others. The questions of how and why to control firearms have become a contentious issue. From a philosophical view, as Lester Hunt states, "The issue of gun control is a case study for a number of important theoretical problems of ethics and political philosophy, including not only the ethics of risk prohibition, but in addition the relation between the interests of the individual and those of the community as reasons for and against coercion, the nature of rights as impediments to maximizing aggregate good, and the strengths and limitations of utilitarianism and consequentialism in general".[1] I found this to be particularly true when trying to separate out a purely rights based argument in this paper (for reasons outlined later), and at some stage there was always the looming cloud of, "Is this not just applied consequentialism?" I believe that I have, for the most part, stuck to this approach. What consequentialism does appear in the arguments, is generally in the manner of evaluating hypothetical rights based scenarios.

[1] Lester H. Hunt, "Gun Control," in *International Encyclopedia of Ethics*, ed. Hugh Lafollette (Oxford, UK: Blackwell Publishing Ltd, 2013), wbiee738, https://doi.org/10.1002/9781444367072.wbiee738.

The simplest answer to the question of gun control, and the one most closely examined in this thesis, is that all firearms should be banned. For example, Michael Huemer starts his paper entitled, "Gun Rights and Noncompliance: Two Problems of Prohibition," with this sentence: "Most of my fellow academics seem to harbour a visceral antipathy toward guns. Many, perhaps most, would like to see all private gun ownership outlawed". [2]

If this is such a strong opposition to guns, why then, do we even have guns in society? Surely if something is so universally destructive it should be a simple exercise to ban it? The answer, it seems to me, is rather more complicated. The very factors that make firearms so dangerous turn out to be the ones that also give it great utility. It is, for example a powerful tool for self-defence, enabling a levelling of physical factors like no other and giving weak, frail old ladies a viable means of defending themselves successfully against young, fit and strong thugs who would otherwise be capable of physically dominating others for their nefarious deeds. It also enables a number of other traditional leisure pastimes, from hunting to various forms of target shooting disciplines, some of which are well established enough to be included in the epitome of athletic achievement, the Olympic games.

When I first started researching this topic, I was confident that there would be a host of academic papers and opinions supporting the banning of firearms. It came as quite a

[2] Michael Huemer, "Gun Rights and Noncompliance: Two Problems of Prohibition," manuscript.

surprise, therefore, to discover that whilst there was within the realms of philosophical writing a spectrum of positions on strong gun control to weak gun control, and a few positions of no gun control, there was seemingly only one eminent writer calling for this position from a rights based perspective: Jeff McMahan in two articles entitled "Gun 'Control' is not enough"[3], and a follow up titled "A challenge to gun rights"[4].

I chose to look at the question of gun control from a rights based perspective as there is a vast amount of literature and studies looking at the question from a statistical and consequential standpoint from both sides, each predominantly claiming that their figures are correct, and alleging that the opposing side is using incorrect data, to the point that it is very difficult, if not impossible, to draw any meaningful conclusions from these arguments. Michael Huemer reaches a similar conclusion although much more eloquently when he sums up the situation quite clearly in his conclusion to the matter:

> I think the empirical issues are very complex and the evidence ambiguous, so that it is possible to reasonably draw opposite conclusions. The differing conclusions individuals draw are due mainly to very broad, background ideological differences that are nearly impossible to resolve, and not due, for example, to one side's being systematically smarter or more informed than the

[3] Jeff McMahan, "Why Gun 'Control' Is Not Enough," December 19, 2012, https://archive.nytimes.com/opinionator.blogs.nytimes.com/2012/12/19/why-gun-control-is-not-enough/.
[4] Jeff McMahan, "A Challenge to Gun Rights," April 17, 2015, http://blog.practicalethics.ox.ac.uk/2015/04/a-challenge-to-gun-rights/.

> other. An unbiased review of the empirical evidence would find it inconclusive on most of the questions studied.[5]

In addition to such extreme polarities, the rights based moral analysis of this situation gives an important method of evaluating the argument as it fundamentally deals with individuals removing something very dear, namely, life, from other individuals. As Bernstein *et al* put it: "Rights function as a moral shield that, in the words of one philosopher, "trump" or override interests when another right is not at stake. They impose corresponding obligations on others to respect them, be it through non-interference in a good or by providing their bearers with a good or service".[6] As such the possession of a device that can significantly harm or help individuals should not be evaluated in a statistically theoretical manner, but rather by the overarching concept of what an individual is inherently entitled to, i.e. a right. This seems to suit the gravity of the question. On the whole, most of the existing arguments for and against firearms focus on the right to life, presumably due to the fact that firearms can be an effective way of removing that right, but one of the other rights that is held to be highly cherished is that of the right to property, and should any arguments for the banning of guns due to the right to life fail, the right to property comes in, and citizens should have the right to own something that they wish to unless there is a satisfyingly good reason to override this right (as would be provided by a successful "right to life" based argument).

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[5] Michael Huemer and Department of Philosophy, Florida State University, "Gun Rights as Deontic Constraints," *Social Theory and Practice* 45, no. 4 (2019): 601–12, https://doi.org/10.5840/soctheorpract20201375.

[6] C'Zar Bernstein, Timothy Hsiao, and Matthew Palumbo, "The Moral Right to Keep and Bear Firearms," *Public Affairs Quarterly* 29, no. 4 (2015).

As such, my paper primarily focusses on the two arguments put forward by McMahan, with the intention of showing that, within an environment where there must clearly have been a lot of thought put into the issue of an outright ban on guns, if the only strong argument presented in the philosophical literature can be refuted, then there are unlikely to be good reasons in support of the extreme position. From this we can infer, I believe, then that there is by default a prima facie moral right to the private ownership of guns. This is not to say that this is an unrestricted right, either by restrictions to the type of guns permissible, or by the type of person who could possess them, but rather there exists in some form a weak right (for example, either that of liberty, or property) that a blanket ban in guns goes against. At any rate, my argument seeks to put the burden on the gun control proponent to justify the restrictions placed on gun ownership.

Since I will be focussing on McMahan's arguments almost exclusively, I wish to present a short review of the literature to give context to his arguments and show that there is an apparent spectrum of arguments from strict gun control through mild gun control to a more permissive society with nearly no gun control. Other notable authors who are in favour of gun control are Hugh LaFollette[7], David De Grazia[8] and Samuel C. Wheeler[9],

[7] Hugh LaFollette, "Gun Control," *Ethics* 110, no. 2 (2000): 263–81, https://doi.org/10.1086/233269.
[8] David DeGrazia, "The Case for Moderate Gun Control," *Kennedy Institute of Ethics Journal* 24, no. 1 (2014): 1–25, https://doi.org/10.1353/ken.2014.0003.
[9] Samuel C. Wheeler, "Gun Violence and Fundamental Rights," *Criminal Justice Ethics* 20, no. 1 (January 2001): 19–24, https://doi.org/10.1080/0731129X.2001.9992095.

who argue for the strict control of guns on the grounds that they are inherently dangerous objects; they also argue that guns are used to harm others and that their possession should only be permitted in the most strongly motivated cases. Similarly, Vincent Muller[10] argues from a European perspective that on a Rawlsian analysis gun control would be the preferred option, but once again does not go so far as to promote total gun control. These authors argue for strict gun control, but not for anything close to an absolute prohibition of guns, and for this reason I will set them aside since strict control is compatible with a right to own guns.

Other than McMahan, perhaps the author who comes closest to advocating for a complete firearm ban is Nicholas Dixon, who, in his paper, "Why We Should Ban Handguns In the United States,"[11] argues for the banning of handguns from an empirical argument based on the evaluation of the good and bad aspects of handgun use; however, he does note that it can be framed in a deontological framework equally well:

> My argument is primarily a utilitarian discussion of the beneficial consequences of a handgun ban (a reduction in the murder rate and a general decrease in violent crime, especially robbery and aggravated assault). The pleasure and additional self-defence which is alleged to result from owning and using handguns is trivial compared to the death and misery that is caused by their misuse. However, my

[10] Vincent Müller, "Gun Control: A European Perspective," *Essays in Philosophy* 16 (September 1, 2015): 247–61, https://doi.org/10.7710/1526-0569.1535.

[11] Nicholas Dixon, "Why We Should Ban Handguns in the United States," *The St.Louis University Public Law Review* 12 (1993): 243–83.

> thesis could be equally well expressed in terms of rights (the right to life, freedom from assault, and property of victims of handgun crimes).[12]

I will, however, not focus on Dixon's argument for two reasons. Firstly, as mentioned above, I find the empirical argument problematic due to the existence of vastly conflicting numerical studies and associated opinions, and, secondly, it is a similar argument to Jeff McMahan's (which can be broadly described as a consequentialist argument supporting or embedded into a deontological framework) in the appeal to the broader right to physical security, but more limited in scope. If McMahan's argument is successful, it would automatically transfer over to Dixon's, but the converse is not true as McMahan's argument is aimed at all firearms, not just handguns in the United States.

As mentioned, there are arguments for and against gun control. Of the arguments against, I wish to mention Michael Huemer's[13] paper, "Is There a Right to Own a Gun?" that deals with the apparent conflict between the right of society to be free from gun violence and the right of the individual to self-defence when needed. He concludes that there is no basis for the argument for the prohibition of guns as the prohibition would not prevent a significantly greater amount of harm than is caused by their ownership. As we shall see, McMahan argues against this, in that in his first paper he concludes that a society free from firearms will be, in overall terms, a safer one than one in which firearms exist. To the extent that I refute McMahan's account, I will then be supporting Huemer's

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[12] Dixon.

[13] Michael Huemer, "Is There a Right to Own a Gun?," *Social Theory and Practice* 29, no. 2 (2003): 297–324.

position that a society with the private ownership of guns will be a better society than one without the private ownership of guns.

McMahan's arguments are key to a number of philosophical positions on gun control, and as such I will be focussing on McMahan's arguments. Although neither of the McMahan articles are published in academic journals, his writing carries academic weight. He is a Professor of Moral Philosophy at Oxford, and a number of responses to his papers by other eminent philosophers such as Michael Huemer, Lester Hunt, and a host of others either referencing it as a seminal work, or responding directly to it, have appeared in academic journals, as well as responses by other philosophers like Lance K. Stell directly on the blog page[14]. For these reasons, it is clear that his arguments are taken seriously in the academic literature, and so it makes sense for me to focus on his writing as the source of the arguments that others are defending or attacking, and in the course of my discussion, I will note when McMahan's arguments intersect with those of other writers.

As you will see in my exposition sections of his papers, McMahan argues against the use of firearms for self-defence, and so I will briefly give a synopsis of this argument here. The argument primarily stems from the prima facie right to life, and the extension of that right, as C'zar Bernstein, Timothy Hsiao and Matt Palumbo put it in their paper, "The Moral Right to Keep and Bear Firearms,"

[14] Lance Stell and Allen Buchanan, "McMahan's Hazardous (and Irrelevant) Thought Experiment," n.d.

> The moral right to keep and bear arms is entailed by the moral right of self-defence . We argue that the ownership and use of firearms is a reasonable means of exercising these rights. Given their defensive value, there is a strong presumption in favour of enacting civil rights to keep and bear arms ranging from handguns to "assault" rifles. Thus states are morally obliged as a matter of justice to recognize basic liberties for firearm ownership and usage."[15]

As I see it, basically, the argument in "The Moral Right to Keep and Bear Firearms," states that the right to firearm ownership flows from the right to self-defence , since firearms are the most effective means of enforcing or enacting that right when it is required.

[15] Bernstein, Hsiao, and Palumbo, "The Moral Right to Keep and Bear Firearms."

Chapter 2: Exposition of McMahan's article 1, "Why gun control is not enough" (2012)

As I noted in the previous chapter, McMahan's article, "Why gun control is not enough" attempts to put forward a comprehensive argument in support of the complete ban on civilian firearm ownership. On this basis I distinguish four arguments that McMahan puts forward, as well as the concessions that he makes. I will give a detailed account of these arguments, and their interrelationship. This will lay the foundation for chapter 3, which consists of a critique of these arguments.

McMahan's Article 1 Arguments

Article 1:

In "Why Gun 'Control' is not enough,"[16] McMahan puts forward a series of arguments designed to prove that there should be a near total prohibition on civilian gun ownership. He makes a weak, but telling concession that will be discussed later, but for all intents and purposes, he advocates a complete ban on civilian firearms. The scope of his claim is clearly stated in his introduction, where he asserts that his logic "leads to the conclusion that the United States should ban private gun ownership entirely, or almost entirely." [17]

[16] McMahan, "Why Gun 'Control' Is Not Enough."
[17] McMahan, "Why Gun 'Control' Is Not Enough,"2012.

Although McMahan seems to imply that he is focussing on the United States, when one considers the porous global borders and existing smuggling operations, and the fact that the people that we do not want to have guns are, generally, criminals, I think that these features can be generalised to most societies, especially since he does not explicitly state that he is limiting himself to the USA. In addition, by not bringing the legal aspects of the 2nd amendment[18] into his argument, he seems to make it more globally applicable. McMahan's reason for situating his discussion within the American context is likely that the debate at the time was focussing on gun ownership in the United States due to the school shooting at Sandy Hook Elementary School in Newtown, Connecticut, in 2012. Nonetheless, his arguments are, as I interpret them, quite generally applicable.

McMahan sets his argument within the self-defence scenario for owning guns. As I explained in chapter 1, by this I mean the argument that McMahan thus bases his argument on the assumption that self-defence is the primary, and seemingly only justifiable, motive for the possession of guns and does not considering the many other reasons that people have for owning guns – reasons like sport, hunting, protection of farms and livestock from predation, and simply an intrinsic attraction to them. For the moment, I want to clearly note this point, but it will be of some significance for my response to McMahan in chapter 3.

[18] Amendment II
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 infringed. (https://www.law.cornell.edu/constitution/second_amendment)

McMahan's paper consists of several arguments, of which two are positive and two defensive, that is, responses to possible objections to his position.

His first argument attempts to prove that there is no inherent benefit to owning guns. The second tries to show that the ownership of guns by law-abiding citizens will cause a proliferation of increasingly heavily armed criminals, which in turn encourages law abiding citizens to become more heavily armed—and this pattern continues in a feedback loop. This situation then undermines the effectiveness of the police due to the police becoming relatively less heavily armed than criminals. Thus causes a situation that is generally worse for all, and especially for those who choose to remain unarmed. Citizens may have some guns, law enforcement will have more guns, and criminals will have the most guns.

McMahan presents a third and a fourth argument but, as just noted, these are unlike the first two in that they are not positive arguments for his view. Instead, they serve to defend his account against other potential arguments or existing pro self-defence gun ownership stances, namely their part in preventing state tyranny in argument three, and the practicality of a gun ban in argument four.

In my view, McMahan's second argument is the most important to the logic of his argument. For this reason, I will explain it in some detail. As will become clear in the next chapter, I will be taking issue with his claim that allowing any gun ownership at all will escalate increasing gun ownership with the private, public, and criminal elements seeking more and more powerful weapons. This assertion of ever-increasing gun ownership,

much like an arms race, has a number of critical logical flaws, and is the heart of my response.

McMahan's Arguments:

Argument 1:

McMahan seems to assume that self-defence is the strongest case for gun ownership. Indeed, self-defence is the only case he considers; as just mentioned, he almost (I say "almost", since he has a brief one line acquiescence which shall be discussed later) entirely neglects other possible reasons for gun ownership as valid reasons for owning a gun, which include target shooting, hunting, sports shooting, and other personal pastimes that use guns for leisure time pursuits. This assumption that the only legitimate use for guns could be self-defence sets the critical foundation for his claim that there should be an almost complete ban on the civilian ownership of guns. This is a very important point to note, which will be discussed in my critique of his argument.

This first argument attempts to prove that there is no inherent benefit to owning guns for self-defence. In this regard, McMahan begins by acknowledging the idea, central to the pro-gun position, that "we are all safer when more individuals have guns because armed citizens deter crime and can defend themselves and others against it when

deterrence fails".[19] McMahan later expands from his apparent critique of a pro-gun argument into the basis for his argument for a near complete prohibition on guns.

Let me spend a moment getting clear on this pro-gun argument. The key claim here, and one that McMahan picks up on is the idea that citizens have a right to possess guns for self-defence, and that instead of being useful for protecting oneself, guns for self-defence actually decrease the safety of the population as a whole. While court cases have examined and interpreted this right over the decades, and the details are complex, my focus is a philosophical one, dealing with the argument made by McMahan.

McMahan presents an example that gets to the core of his argument. This example, which is meant to recall a time when there were no gun restrictions, and, at least in modern thoughts and stereotypes, every citizen was armed, is encapsulated in the following sentence: "When most citizens are armed, as they were in the Wild West, crime does not cease." [20] As a juxtaposition to this generalization, Polsby and Kates, in "Of Holocausts and Gun Control," assert that, "Nonviolence was not the characteristic state of the world before there were guns, and it is not the characteristic state of the world now in places where access to guns is practically or legally restricted."[21] This demonstrates quite nicely the view that the correlation and causation effects between gun ownership and violence can be murky at best, and probably exist more as a belief than a fact.

[19] McMahan, "Why Gun 'Control' Is Not Enough,"2012.
[20] McMahan, "Why Gun 'Control' Is Not Enough,"2012.
[21] Daniel Polsby and Kates Jr, "Of Holocausts and Gun Control," 1997.

The example is questionable as a matter of historical fact—towns in the "wild west" were not like this, because most actually had a strict no gun or knife policy. This is demonstrated in the quote from Ross Collins's "Gun Control and the Old West": "Pioneer publications show Old West leaders repeatedly arguing in favour of gun control."[22]

The comment from McMahan in this regard states the basis for his view that civilian ownership of guns does not deter crime. The argument is used as a counterpoint to the pro-gun argument that asserts that legally owned guns are a deterrent to crime. The guiding idea here is of course that if a criminal has a reasonable expectation that his intended victim has the ability to shoot him should he (or she) commence with the crime, then the criminal would rather not commence the crime.

McMahan's example is intended to make the point that even in "Wild West" days when the free and abundant access to guns was potentially the case, there was still violent crime. In other words, even in circumstances that are most favourable for the defender of gun rights for self-defence, the proliferation of guns did not curb violent crime The point being made by McMahan is that gun ownership does not deter criminals from embarking on crime, nor does it cause a decrease in crime, and therefore it is not a valid reason to allow gun ownership. I suppose that his intention here is to show that more

[22] Ross Collins, "Gun Control and the Old West," 1999, https://www.ndsu.edu/pubweb/~rcollins/scholarship/guns.html.

firearms in circulation are not a deterrent to violent crime; however, this postulation does raise the unexplored corollary that fewer guns will not reduce violent crime either.

One of the main points worth emphasising here is what might be called "*gun inflation*" – the idea that the general proliferation of firearms in society will make the society more dangerous. In plainer English, quarrels and arguments that would have ended in a fistfight will now the end in gunfights and thus on occasion with the fatal consequence of gunshot wounds. (Note: I owe this phrasing to the examiner of my proposal, Ashley Coates.)

Argument 2:

As I noted above, the second argument is the central focus of McMahan's article. It is the logical grounding of his claim that the civilian ownership of firearms is ultimately a bad thing and that guns should be banned (almost) completely. As we will see, this argument follows closely from and expands on his critique developed in argument one. The core element of the argument is this: "the more people there are who have guns, the less effective the police become."[23]

McMahan's rationale is that criminals will arm themselves in order to match their victims' firepower, and should their victims be armed, then criminals will arm themselves to a

[23] McMahan, "Why Gun 'Control' Is Not Enough,"2012.

greater and greater extent, with the intention of causing a greater threat with greater firepower—in this way, we get a gun inflation as the number of weapons in civilian possession in the society increases. More specifically, as McMahan sees things, the police will then be left facing criminals with a greater level of firepower, and as such will be at a disadvantage in relation to them, unless they too become more heavily armed. As he puts the point:

> For the police to remain effective in a society in which most of those they must confront, or arrest are armed, they must, like criminals, become better armed, more numerous, and readier to fire. [24]

This scenario, he goes on to postulate, will cause a massive escalation in the amount and severity of violence in society, leaving those who choose to remain unarmed much worse off, and society in general worse off.

In a simplified logical format, his argument can be outlined as follows:

1. Criminals, insofar as they are rational, arm themselves to the level that makes them better armed than civilians.
2. If civilians are increasingly well armed, then criminals will also become increasingly well-armed.

C1. If criminals are better armed, then law enforcement is relatively worse off as they will no longer be better armed than criminals and will not be able to subdue them.

[24] McMahan, "Why Gun 'Control' Is Not Enough,"2012.

C2. Civilians who do not arm themselves will be relatively worse off because criminals will be better armed.

To unpack these arguments further, we must assume that there is an increasing level of sophistication in weapons, and that this bestows upon the holder of the weapon a greater advantage when it comes to winning a violent confrontation. This sophistication levels out at some point, or in other words is not on an ever-increasing scale, it is finite – at some point you reach a level where you are as well armed as possible, and that there is no further advantage to be gained from there on.

McMahan argues that criminals will arm themselves to be more threatening than civilians, as they are notoriously averse to being bested, and would like to secure their best chances of being successful in their criminal endeavour, whatever precisely it might be, and have the best chance of surviving a confrontation, should confrontation come about and turn violent. Hence, the better armed civilians are, the better armed criminals will be. This pushes criminals up the scale to the point where police forces do not enjoy a significant advantage over criminals in terms of firepower. For McMahan, this means that the whole of society will be worse off as the criminals will have little to fear from being apprehended, and the unarmed are left so far behind that they are significantly disadvantaged.

McMahan gives an analogy to support his case: a nuclear arms race between states, meaning countries, with each independent state obtaining nuclear arms in order to ensure its non-vulnerability against aggression by other states with nuclear weapons. This process continues until all states have nuclear weapons and then the risk of nuclear

catastrophe, either intentional or inadvertent, is greatly increased. It seems that all would have been safer had none of the states obtained nuclear weapons.

In essence, McMahan's analogy refers to the concept of a *"Balance of Terror"*, which was first used to describe the US / Soviet nuclear standoff[25]. In this scenario, each side had the ability to obliterate the other side, or even a sizeable chunk of the world, for which reason they avoided violent confrontation. In a similar way, the carrying of guns does not only have an influence in self-defence when it is actually used; the mere possession of the weapon is also a deterrence – a would-be attacker will be less likely to attack you, should they think that you have the ability to kill them. A nuclear weapon is, of course, not quite like a firearm – a firearm can be used for self-defence to stop an immediate attack on yourself by incapacitating the attacker directly – much like a countries' armies can stop invaders at their borders. By contrast, a nuclear weapon can only be used in a retaliatory / offensive fashion to harm others remotely. The more accurate analogy between firearms and nuclear weapons is that a nuclear weapon is like having a sniper aiming at an attacker's grandmother and telling them that if they attack he/she will shoot her. Thus, a nuclear weapon is effective as a deterrent, but not as a means of stopping a direct attack.

[25] Wikipedia, "Balance of Terror," 2024, https://en.wikipedia.org/wiki/Balance_of_terror#:~:text=It%20describes%20the%20tenuous%20peace,a%20world%2Ddestroying%20nuclear%20war.

Of course, McMahan uses the analogy to show that if both sides have this ability to completely destroy each other, then it is a very uneasy peace brought about by fear rather than a true peace. In addition, in order for McMahan's analogy to fit his argument, there would have to be another, impartial, benevolent, and immensely more powerful than any state, organisation that would step in and resolve disputes between states instead of them requiring the ultimate weapons in order to protect themselves. This assumption is needed to preserve the parallel with the police force and gun inflation.

Argument 3:

As I said above, McMahan's third and fourth arguments are less important. Hence, I will spend less time on them. In this section, I outline his third, defensive argument, which seeks to rebut the claim that privately owned guns are justified by their potential use in combatting state tyranny. This argument for the right to own guns stems from the United States constitution second amendment which states, "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 infringed."[26] The exact intention and scope of this clause has been the source of much debate, and as such I shall not be discussing it in detail suffice to say that one of the implied intentions is that armed citizens theoretically have the ability to revolt and withstand the advances of a tyrannical government.

[26] US Congress, "Second Amendment to the United States Constitution" (n.d.).

The assumption here is that should a state or military decide to go against the wishes of its citizens, the citizenry require the power or ability to resist, and that this ability is bestowed upon them by the possession of weapons in order to size up as a unified force and resist state violence. An important consideration to this argument is that it is essentially a legal right based argument as opposed to a moral right based argument. That is to say it has little to no bearing on the moral question of whether or not civilians *should* have guns, but is rather based on whether they legally *can* have guns.

McMahan's response to this state versus citizen argument is as follows: "Individuals with handguns are no match for a modern army."[27] He also states in several instances that state tyranny is impossible in America anyway, in statements such as, "It's also a delusion to suppose that the government in a liberal democracy such as the United States could become so tyrannical that armed insurrection, rather than democratic procedures, would be the best means of constraining it"[28] without giving any support for his implication. This defensive argument is to counter an alternative to the self-defence argument for gun ownership that in addition to self-defence there is the potential need for defence against state tyranny, essentially that an armed citizenry can only be ruled by agreement, and not by force. This argument is necessary as, especially in America (due, no doubt, to the wording of the second amendment as quoted above, and probably influenced by the American civil war that preceded it), the ability of citizens to resist state tyranny is taken to be an important Argument for firearm ownership.

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[27] McMahan, "Why Gun 'Control' Is Not Enough,"2012.
[28] McMahan.

McMahan's arguments for the banning of civilian guns would not cover this aspect of their ownership because it does not relate to an every day occurrence, but rather relates to the right to own a gun just in case the anticipated scenario comes about. As such, it is not something that can be related to any of his logical arguments, and so he has to nullify this argument. His counter argument against this situation follows similar logic to his argument against gun rights for the purpose of self-defence:

> The more people there are with guns, the less able the government is to control them. But if arming the citizenry limits the power of the government, it does so by limiting the power of its agents, such as the police. [29]

Once again, McMahan's central concern is that a police force or state agencies will be less able to effectively manage compliance with the state's laws if citizens are able to counter the violence necessary to subdue them should it be required with effective resistance of their own. In other words, essentially, no guns should be allowed in private ownership in order to enable state control through a monopoly of ability to implement effective violence.

[29] McMahan.

Argument 4:

McMahan's fourth argument is a defensive argument about the practicality of enforcing a handgun ban. Like the preceding argument, it is there to forestall possible objections to his position.

McMahan attempts to achieve this goal of defending the practicality of enforcing a gun ban through an analogy about other items that have been banned, both with demonstrably little success. He argues that "guns are not like alcohol and drugs, both of which we have tried unsuccessfully to prohibit,"[30] because, "the need for a gun for self-defence depends on whether other people have them and how effective the protection and deterrence provided by the state are."[31] In other words, McMahan is saying that drugs and alcohol were impossible to effectively ban because there was an individual, independent want for these items in people, whereas the need for guns (incorrectly to my thinking) stems from the fact that other people have them, and thus if other people no longer had them, the need, and thus the want, would be absent and people would not seek to possess guns illegally.

[30] McMahan, "Why Gun 'Control' Is Not Enough,"2012.
[31] McMahan, "Why Gun 'Control' Is Not Enough,"2012.

However, as I have discussed previously, state agents are not part of the self-defence equation in all but the most extreme and prolonged cases – their primary function is to determine reactively and after the fact who was responsible for the violence, with a minor deterrence factor in that they have to be present and visible in a situation in order to be a deterrent. That is logistically near impossible for most situations, especially given the logical behaviour that criminals will actively avoid such situations. Law enforcement agents are not there to intervene during a crime unless they are luckily present during its commission, but rather to investigate it once it has been committed. In addition, unless there is a global magical disappearance of ALL guns, there will likely be the desire by criminals to own guns, if for no other reason than to exert dominance over unarmed victims and protect themselves against armed state agents. McMahan himself concedes this point: "gun control can do a little to restrict access to guns by potential criminals." As such, given the argument that police are almost never there at the exact time and place that self-defence becomes necessary, it concedes that guns are an effective tool for civilian self-defence. Such concessions will now be analysed further.

McMahan's Concessions:

Having looked at his arguments for the control of guns, I will now look at the concessions he makes in order to address predicted or anticipated disagreements. Although McMahan defends a strong prohibition on gun ownership, he does not seem to think that *access* to

guns should absolutely be ruled out—this is why I have been referring to his argument for a **near** absolute ban. For example, he says:

> A prohibition of private ownership would not mean that no one could shoot guns. Guns for target shooting could be rented under security arrangements at the range. And there's perhaps scope for debate about private possession of single chamber shotguns for hunting.[32]

In this brief statement, he essentially grants an incredibly limited access to firearms for what he conceives as other valid reasons for the private ownership of guns, namely sports shooting and hunting. Sports shooting enthusiasts could, according to this concession, rent a gun at the shooting range. And hunters? Renting a gun to go out into the field and hunt removes locational control of the firearm, and once again puts guns in citizens' hands in public, which is fundamentally not allowed if McMahan's argument is to work. The way in which this concession is given shows lack of insight into recreational gun use, from care and culpability to sighting in and fitting a gun to each user to avoid bruising from recoil. It would have been nice to get more clarity on this concession, as it seems much like an afterthought, but I will deal with it further on in this paper. Dixon, too, in "Why We Should Ban Handguns in the United States"[33], makes a similar statement when he says: "A ban on the private ownership of handguns will restrict the freedom of United States citizens and require an adjustment in the way that some of them spend their leisure time."[34] However Dixon is firstly focussed mainly on handguns, and secondly he

[32] McMahan, "Why Gun 'Control' Is Not Enough,"2012.
[33] Dixon, "Why We Should Ban Handguns in the United States."
[34] Dixon.

too largely ignores the exploration of what exactly the leisure uses for firearms are and what they entail, choosing to rather spend the bulk of his time focussing on civilian self-defence, much like Jeff McMahan does.

The concession is a bit of a straw man argument though, when the gist of his augment relies so heavily on, as he puts it: "Either criminals and non-criminals will have them, or neither will."[35] Defining civilians as non-criminals could be the subject of another paper. By allowing a concession of any sort, it removes the backbone to McMahan's entire argument, which in turn severely weakens and to a great extent undermines it – McMahan relies entirely on there being a clear, no guns at all, society in order for his argument to work.

McMahan also brings in a correlative comparison to other western countries, in his statement, "Thus, in other Western countries in which there are fewer guns, there are correspondingly fewer instances in which people need guns for effective self-defence."[36] Once again, he is guilty of cherry-picking his arguments – although there are no countries with as high a per capita gun ownership of guns as America, there are lots of examples of countries with high rates of private gun ownership and low violent crime, as well as conversely, countries with low gun ownership and high crime. In addition, there is no

[35] Dixon.
[36] McMahan, "Why Gun 'Control' Is Not Enough."

numerical record or quantification in crime frequency that can be shown in countries that have implemented draconian, sudden firearm restriction laws such as Great Britain, Australia, and more recently New Zealand. This demonstrates that while McMahan's argument strikes a sentimental chord for some, it is by no means factual. His claims are based on assumptions without supporting statistics that might show causality between gun ownership and crime rates, in America, and other countries.

Conclusion to McMahan's arguments and concessions

Thus, as a brief synopsis of his argument, McMahan contends that if civilians own guns to defend themselves against criminals, then criminals will, in turn, arm themselves to a greater extent in order to prevail over armed citizens. This situation leads to a less than desirable condition, as the number of people capable of inflicting damages on others will be increased and, as such, society will be a more dangerous place, especially for those who have not armed themselves. Most importantly, this situation erodes the capabilities of the government to protect citizens as government agents will not have the monopoly on ultimate force and thus be on a more or less equal footing with criminals that they encounter.

Chapter 3: Critique of McMahan's article 1, "Why Gun 'control' is not enough" (2012)

In Chapter 2, I gave a detailed overview of Jeff McMahan's arguments for the position that nearly all civilian guns should be banned in an ideal society. As a brief recap, his main argument runs as follows: if private gun ownership is permitted, then criminals will arm themselves to a superior level to their intended victims, and as such, if their victims are increasingly armed, then so too will the criminals be. And this pattern will continue until a point at which the police will be ineffective, since the criminals will be so well armed as to make the police's job as enforcers of the law unmanageable.

This chapter will critically review these arguments and dispute their validity with the intention of demonstrating that McMahan's view is, indeed, incorrect and indefensible. Since McMahan's argument is the strongest argument against the right to private gun ownership to date, it follows that there are presently no good reasons to have an outright ban on guns in civilian society, and hence that civilian ownership of firearms should be allowed in a free and rational society.

My responses to McMahan's article 1 "Why Gun 'control' is not enough" (2012)

Argument 1:

McMahan's first premise is as follows: Criminals will, insofar as they are rational, arm themselves to the level sufficient to be better off than their victims, and the better armed their victims are, then the better they will arm themselves.

This premise sets the scene for gun ownership as a means of self-defence. I am almost certain that McMahan and I have common ground here, but we have totally different viewpoints and draw different conclusions from it. The common ground is that there is no correlation between gun ownership and crime levels, with McMahan contending that the high levels of gun ownership in the "Wild West" (although factually, it seems that gun control in those days was much stricter than in modern days, with many instances of "gun free" town ordinances being enforced) had no impact on levels of law obedience, and that therefore there is no obvious benefit to owning a gun.

I agree that there is no obvious correlation between gun ownership and violent crime, however I see this as therefore leading to no obvious drawback to owning a gun. The argument for gun ownership having an impact on crime has many iterations from both sides – Switzerland (and many of the Northern European nations) have relatively high gun ownership rates, but relatively low armed crime. Columbia has high gun ownership, and high armed crime rates. Japan has low gun ownership, and low armed crime rates.

While many causation and correlation scenarios can be put forward with more or less success, I am of the opinion that while they may, indeed, be true, it is not relevant to this argument, as it is based on the conceptual position of gun ownership and not grounded in real world scenarios.

To prove this, one simply has to look at the opposite case – if most citizens are unarmed, crime (and even violent crime) will not cease either. This is because crime seems to flow from human desire and is present in every human society, from Cain and Able in Biblical times to modern day organised crime and gang warfare. The fact that every organised society has structures in place to govern, rule, and arbitrate on members of the society that have deviated from the norms. In essence, being armed or not is not a causal factor in whether one commits crimes or not though it will, of course, affect the character of the crime. There are many armed criminals, but at the same time the legal gun owning community is often amongst the most law-abiding group of citizens. The tool is not the reason that people commit crimes.

In my view, any argument that attempts to use an 'ownership versus gun crime rate' method based on empirical evidence is destined to fail, due to the fact that by cherry-picking your case studies you can make either argument. To back up this claim, even a brief search will show that there is a vast set of empirical studies that support both scenarios. The reality is that (in all likelihood following on by a lack of causality), examples can be picked to support any position as can be clearly seen in the volumes of such 'research' generated by both sides of the gun control debate. Indeed, if it has no impact

on crime, either way, it does open the argument that in a crime ridden country, gun ownership by law abiding people would be in their best interests, not for the greater good of reducing overall crime, but for the specific instance of a violent crime being instituted upon their person, giving them a good means of defence in that specific instance. (this scenario is dealt with in quite a lot more detail in a following chapter based on McMahan's second paper which uses a prison environment to explore this) If you do not have a gun, are you still more worse off? No, because whether the criminal is 10x better armed than you, or 100 times better armed, it makes little difference. It is when you wish to defend yourself that the scales become relevant, and if you wish to defend yourself, you wish to be successful at it. McMahan's argument only works if you forego self- defence as an option when faced by a criminal.

Argument 2:

Premise two in McMahan's argument is that criminals will seek to arm themselves to the extent (or slightly more than) of their civilian victims. The mistake in this premise by McMahan is the assumption that criminals will aim to arm themselves to the level of their civilian victims. Given the relative definitions of criminals and police, it is highly likely (one hopes), that criminals will at some point in their career encounter police, and as such it would be prudent for the astute criminal to arm themselves at a level superior to that of the police in order to prevail at the time of this encounter. Indeed, should one follow the logic presented by McMahan in this article, the only losers in this situation would be an

unarmed public, given that they would then be encountering criminals increasingly armed in the arms race against the police.

McMahan explicitly states that the police should be armed – "But, as with nuclear weapons, we would all be safer if no one had guns — or, rather, no one other than trained and legally constrained police officers."[37] This analogy with nuclear arms is, once again, an emotive one that is not fully explored. If one lays out the analogy correctly, not all states should have nuclear arms, but only those states that are "members of a democratically accountable [police] force"[38] – my brackets to emphasize the use of his words in my argument. However, I think that the consensus is that, in fact, NO states should actually have nuclear weapons.

This stance would support his view on the gun control debate if it was not for the fact that it is at this point that his analogy fails. Nuclear weapons are massive scale, indiscriminate killers, and cannot EVER be selective in who they kill. With them there is no discrimination between the armed soldiers (who just war theory and common global current understanding say may be killed in a war), and innocent civilians who should not be killed. Firearms to a much greater extent have that discrimination. In theory every bullet fired was fired by a person looking down the barrel directly at what they hit, and

[37] McMahan, "Why Gun 'Control' Is Not Enough,"2012.
[38] MMcMahan, "Why Gun 'Control' Is Not Enough,"2012.

thus carry moral culpability for the direct consequences of their actions. Banning nuclear weapons will not stop wars, neither will it stop fatalities in wars, but it will limit the fatalities to a large extent to deliberate fatalities – i.e. the fatalities will be armed combatants of the opposing sides. In fact, firearms are probably the most selective and discriminate of all weapons used in war (when compared to, say, artillery or other explosive weapons), as every bullet is essentially aimed and sent deliberately at a target, as opposed to explosive style weapons that obliterate general areas with collateral damage. This is the distinction that allows for private ownership of guns but not the ownership of other large-scale weapons – guns are used deliberately against a target, and as such the person who pulls the trigger can be reasonably certain of, and in turn be held accountable for, their choice of target. McMahan's interpretation of the Nuclear Weapons analogy is, therefore, erroneous and emotionally bound to the common sentiment that all nuclear weapons should be banned. This argument suffers from false equivalence, in that neither nuclear armaments, nor state interactions are remotely similar to individuals in society or the role of guns. If we were to extrapolate McMahan's argument against guns further into his nuclear weapon analogy, it would be essential for some big, "good" states to hold nuclear weapons in order to control smaller rogue states and keep them in line. In short, the critical difference that invalidates the analogy between nuclear weapons and firearms with regards to self-defence is that nuclear weapons can be classed as weapons of mass destruction, and are of no use stopping an immediate threat, whereas firearms are more focussed weapons that can put an end to an immediate threat by selectively killing only the antagonist in order to stop him.

A further problematic aspect of McMahan's argument is tied to his assumption that the police will be able to defend citizens in the event of an attack, and that thus it is not necessary to permit citizens the most effective means for self-defence in their private capacity – he states that part of the social contract is the ceding of these functions to the state. However, in my view, McMahan is wrong about this, because police intervention in violent interpersonal conflicts is usually reactive and too late – to the point that essentially, they will, in all likelihood, not be around to stop an assault, but merely mop up and arrest the perpetrator after the fact. I say "usually reactive" but the point is actually stronger than this because the police force in a liberal country is, by its nature, unable to effectively monitor or collect information that would enable real time intervention for self-defence (and rightly so, as this would infringe individuals right to privacy to unprecedented levels), and neither can there be enough of them employed to be within effective range of every self-defence situation for them to effectively get there in time to render assistance.

If this is right, then M's position s leaves the general public vulnerable with no means of self-defence at the moment of the attack. Indeed, if the police need guns to arrest the perpetrator (because guns will be effective self-defence tools for the police to protect themselves during the arrest), as McMahan is happy to concede, this leaves the general public with an empty right to self-defence, given that they have the right but no effective means to affect that right.

As I see things, then, for McMahan's argument to succeed, he needs to argue for the universal removal of guns from all agents, including state agents; however, he does not do this, and his concession to police use of guns fatally negates his arguments. A further nail in the coffin of the argument is the levels of police and state brutality that occur, which will taint his rose shaded view of the impartiality and 'trained and legally constrained'[39] perception of police officers.

A further aspect of the principle of relative armament of police and criminals, is the fact that police do not exclusively rely on their superior force, but rather on organization and numbers. By this I mean that police officers usually have a large network of other police to call on when necessary to negate a threat. As an analogy, a criminal will not be able to outrun the police in a formula one car, despite the fact that it has vastly superior performance to individual police cruisers. In this case, police officers do not rely on being more heavily armed than criminals in order to remove them from society, but instead rely on more effective and overwhelming organisation. A large group of law enforcement officers responding to a situation all in good co-ordinated radio contact is far more effective than a single police officer armed with an M4 getting into a shootout with a criminal.

McMahan's assertion that the police are there to provide for the defence of citizens is also an error, in my view, since there are numerous legal precedents the state the opposite –

[39] McMahan, "Why Gun 'Control' Is Not Enough,"2012.

namely that the police have no specific responsibility for the protection of individuals in particular instances. The doctrine of "no-duty as it is called," states that the police have no liability for failing to protect individuals harmed in criminal attacks. This is a direct challenge to McMahan's claim that individuals have ceded the responsibility for protection to the state, and as such have no need for owning guns to ensure their own self-defence as that need should be significantly reduced if there are no guns in society. If the police, in turn, are not responsible for the defence of individuals when needed, then that responsibility goes back to the individual, who should be afforded the most effective means of enforcing that right.

Michael Huemer makes a telling argument against McMahan on this point. As he writes:

> To succeed, this argument must not merely claim that some citizens are rendered safer by gun prohibition while a smaller number are rendered less safe. To argue that prohibition does not violate anyone's rights, Dixon and McMahan must hold that *every individual* is rendered safer by gun prohibition; no individual's risk of suffering violent crime goes up.[40]

Although I am sure that it is a point that would be worthy of a debate on its own, Huemer, in "Gun Rights as Deontic Constraints,"[41] infers that McMahan (and Dixon) could frame it

[40] Huemer and Department of Philosophy, Florida State University, "Gun Rights as Deontic Constraints."
[41] Huemer and Department of Philosophy, Florida State University.

as an Ignorance defence, in that the state will have no idea who will be affected by their actions, but Huemer puts forward that this is false, for the state knows that the people affected will be victims of violent crimes whom the police are unwilling or unable to defend, and that they are by default the ones who would benefit from owning a firearm for self-defence . Huemer's conclusion can be encapsulated by

> The essential claim of the gun rights argument is that coercively interfering with individuals, in a way that prevents them from defending themselves from crimes, is morally on a par with committing those same crimes. On standard deontological ethical views, it would be wrong for the state to commit a number of murders, rapes, armed robberies, and assaults against innocent citizens, even if in doing so the state could prevent a slightly larger number of such crimes from being committed by private criminals.[42]

In that the overall good to society is not a critical factor in the specific individuals case when they are in urgent need of defence, and the state is essentially accountable to those particular individuals for the harms perpetrated on them as a result of the states actions, and the state can thus be held to have violated the individuals rights.

Argument 3:

McMahan's third argument is, as I explained in the previous chapter, a critique of other pro-gun arguments which fall outside of his ideal scenario. For this reason, McMahan has

[42] Huemer, "Is There a Right to Own a Gun?"

to negate them in order to render his scenario the only valid one, and is thus not central to the logic of his argument. According to this argument, which is put forward by many pro-gun advocates and alluded to by the wording of the second amendment and the American Civil War that preceded it, an armed citizenry can be an effective deterrent to state tyranny.

As farfetched as this may seem in our modern day first world societies, there is a very good paper dealing with the topic of the use of privately owned guns to combat state tyranny by Daniel Polsby and Don Kates, entitled "Of Holocausts and Gun Control"[43] which focusses on this in detail concerning both past tyrannical governments like Germanys Nazi party, and militia uprisings within the United States the detail of which I will not go into here. The reality (and the crux of the paper) is that globally, state oppression exists in certain governments, states can and have migrated from stable to oppressive (and even back again), and so state oppression can and does occur. As a result, to dismiss it offhand as inconceivable is naïve at the least, and that it is, at heart an argument that deserves fair evaluation that is missing in McMahan's account.

As for McMahan's s statement on the effectiveness of handguns against military, I would like to point him towards a curious gun called the FP-45 Liberator, a handgun manufactured by the US and distributed to the French resistance during World War Two

[43] Polsby and Jr, "Of Holocausts and Gun Control."

for use against the German occupying forces. (Its effectiveness is another debate, to be sure; however, to my mind the idea clearly has merit). If the state needs to control its citizens, it has a crime / criminal problem, and this is far larger than a gun problem. Law abiding citizens in agreement do not need control by the state, at least not to lethal levels of implementation. Even though McMahan asserts that the USA will never be a tyrannical state, the mere existence of tyrannical states should be cause enough to consider methods for avoiding them.

Argument 4:

The fourth argument is McMahan's discussion of the practicality of a gun ban, where he concedes that a complete ban will be impossible ("They will next argue that even if there were a legal prohibition, it could not be enforced with anything approaching complete effectiveness. This is true. As long as some people somewhere have guns, some people here can get them ."[44]) However, using McMahan's own logic, anything but a complete ban will be ineffective as if a ban is not complete it would leave some unarmed people worse off than if they were armed. If guns are in existence, then criminals with a desire will get them, or manufacture them, or find some other way of having them, which, looking at the South African context, can include attacking police officers for their guns. Of course, the fewer guns in circulation, the more difficult it will be for criminals to obtain

[44] McMahan, "Why Gun 'Control' Is Not Enough."

them, but if there is a desire (which is inescapable) coupled with the existence of guns, then there will always be guns in criminal hands.

At one point in his discussion, McMahon compares gun control to murder control. In this context, he states that "the prohibition of murder is more effective than a policy of murder control". What he means by this is that by analogy, in the same way that prohibiting murder is morally better than merely trying to control it, prohibiting firearms is morally better than trying to compromise and merely controlling them. However, this misses the point in that a prohibition on killing, to re phrase it (instead of murder, or at least, certain sorts of killing) as opposed to killing control gives a different analogy. Murder is, by definition, illegal. Much like illegal gun ownership. However, killing includes legally justified situations, such as self-defence. A complete ban on killing would lead to a prohibition on taking a life in self-defence, and this is almost universally regarded as a fundamental right.

So if criminals have guns regardless of whether citizens have them (as they are still in circulation by McMahan's admissions, and probably only by criminals as the law abiding will have forfeited their guns), and we consider the argument that criminals will not really stop when they are just better armed than the police, or will they seek to be much better armed than the police to gain an advantage in those situations? Or will they seek to be as well armed as possible in order to be as well off as possible? – much like the civilian

contemplating self-defence. In this situation, criminals will still have guns, and all ordinary citizens will be disarmed, placing them in McMahan's self-professed worst-case scenario.

Admittedly, this does raise the problem of Gun Inflation, whereby situations that would have ended with violence, but relatively non-lethal, are turned into a lethal situation as one or both of the participants have easy access to a gun. It is a tough scenario to justify – yes, in theory if no one had a gun then no one would get shot in confrontational situation. But would this stop violent confrontational situations? – No. And would it stop the use of weapons such as hockey sticks, tyre irons, golf clubs, rocks, etc.? No. So, if no one had guns no one would get shot through the escalation of aggression and the easy availability of a gun to vent the aggression, but then there is the consideration of self-defence against unwarranted attacks in this case, as the violence would still occur, and is very likely unwarranted for one of the parties concerned. Additionally, what if the victim of the aggression were armed? – either the presence of overwhelming force would deescalate the situation, or the aggressor would be shot, in what is (in this hypothesis in my scenario anyway) self-defence – the one of the very reasons that a civil, level headed person would carry a gun for.

My response to McMahan's concessions:

This section brings my primary objection to McMahan's argument to the fore, namely that there is a use for guns other than self-defence and the killing of other human beings.

McMahan does not take this seriously into consideration in his argument, as a single chamber shotgun is hardly effective for hunting or defence from predators on a farm, or even for any but one competitive shotgun sport, and proposing renting guns for competition shooting is like saying that formula one drivers should rent their cars as no one should have such fast cars due to the damage speeding cars cause when they crash on the roads.

McMahan focusses on the various aspects (both positive (protecting yourself through the use of a gun) and negative (gun inflation and increasing levels of armament)) of guns in society used for self-defence, however, a vast portion of civilian gun owners do not own guns for self-defence, nor for committing crimes against others, but rather for the leisure and sporting aspects of firearms, from target shooting in its numerous forms to the curating of historically significant artefacts in private gun collections, to enjoying hunting in the outdoors. The existence of uses for a tool other than the one of harming other people automatically leads to situations where the right to personal freedoms plays a role in the evaluation of the situation--and guns are no exception.

Cars, it is often argued, kill more people than guns, but the usefulness of cars in everyday life means that their ownership is permitted. However, if the argument that guns should be banned or severely restricted to the most unoffensive iteration possible, as McMahan proposes, then fast cars, and cars without all the safety features possible, and cars that

do not have continuous loud warning sirens to alert people should also not be permitted, because such restrictions would greatly reduce the carnage that cars produce on a massive scale in our societies. Similarly with guns, over and above the usefulness value (transport for cars and self-defence for guns), there will be an aspect of personal enjoyment to be derived from their ownership (a powerful or good looking car, or an accurate firearm) that will lead people to use them for leisure purposes above and beyond the strict functional usefulness. Thus, guns for sports shooting and hunting fulfil a purpose that is relevant to enjoyment of life over and above mere existence.

By ignoring these other uses, he creates a large flaw in his argument – even if, he is correct in his logic that self-defence guns increase the general risk to society as a whole (and I am by no means admitting this, merely posing a scenario), he will outlaw all of these other (legitimate?) users of guns, as for his argument to work there has to be a TOTAL removal of firearms from society. The removal of only self-defence guns still means that there will be other guns in circulation for other purposes, and as such available (even for self-defence should the need arise, as all laws agree that if you have a firearm at hand and require it for legitimate self-defence, it may be used regardless of the reasons for obtaining it). Thus, his scenario of gun escalation will hold true regardless of the reason for the possession of guns.

As we have seen, McMahan's argument is that the existence of guns in society will cause the escalation in numbers and capabilities of arms and therefore the emasculation of law enforcement, so to speak. For this reason, McMahan's argument is therefore reliant on there being NO guns in society at all. This abolition of all guns then raises questions around the rights of those who have a valid need or wish to own guns for other means. Are their rights being infringed on as a result of McMahan's proposal? Unfortunately, this aspect of firearm ownership is never looked at in McMahan's argument, and as such is essentially ignored even though it is a significant proportion of gun ownership. By ignoring it, McMahan essentially overrides several rights inherently accepted as universal barring good reason, namely the right to property, the right of freedom to pursue leisure activities, etc. which normal, law abiding citizens could expect to enjoy under a just and fair government.

To end my analysis of this paper, I will look at McMahan's conclusion with a view to highlighting one key point. At one point in his argument, he asks a question and draws a conclusion from an implied answer to it: "should we conclude that Americans are simply inherently more violent, more disposed to mental derangement, and less moral than people in other Western countries? If you resist that conclusion, you have little choice

but to accept that our easy access to all manner of firearms is a large part of the explanation of why we kill each at a much higher rate than our counterparts elsewhere."[45]

McMahan seems to assume that America is not a violence prone society, but in reality it seems to be, and as such blaming guns for the carnage is a false cause fallacy building guns as the big bad culprit, when the problem is actually the inherent structure of society itself. And here, he gives his answer to the underlying problem – namely that yes, American society is more prone to violence than other societies (and, obviously, less prone than other societies), and that banning the ownership of guns will not make the society less violent, but merely change the nature of the violence. Of course, changing the nature of the violence might be quite significant and the difference between death and minor injuries.

[45] McMahan, "Why Gun 'Control' Is Not Enough," 2012.

Chapter 4: Exposition of McMahan's article 2 "A Challenge to Gun Rights" (2015)

In this chapter, I consider McMahan's second influential argument against gun ownership, "A Challenge to Gun Rights" (2015). It is a relatively short article, and hence my exposition is moderately short. It is a powerful article that raises a number of interesting and relevant points. As such, McMahan packs a lot of weighty arguments into the paper, which has generated a number of interesting aspects to his argument. In the article "A challenge to gun rights"[46], he attempts to provide further justification for his proposal that all civilian guns should be banned, and to defend his argument based on the use of guns for self-defence through the use of an analogy. The logic of the analogy is to imagine a situation in which there is near total civilian disarmament, namely, a prison society.

As I understand McMahan's position, the second article backs up his original article by theoretically providing an example of the type of society contemplated in his original 2012 paper and which was subsequently labelled as unrealistic by many of his critics, for example, Huemer, who in his paper "Gun Rights as Deontic Constraints"[47] says, "I rebut Dixon's and McMahan's objections. I argue that these critics misconstrue the nature of deontic constraints and treat rights in an overly consequentialist manner."[48] In response

[46] McMahan, "A Challenge to Gun Rights."
[47] Huemer and Department of Philosophy, Florida State University, "Gun Rights as Deontic Constraints."
[48] Huemer and Department of Philosophy, Florida State University.

to such rebuttals, McMahan seeks to defend his prior argument by providing this analogy to show that the deprivation of firearms does not necessarily result in a violation of the right to self-defence.

After a discussion of the numbers of firearm homicides in the United States, as an indication of the severity and need to consider solutions to this issue, McMahan gives a brief analysis of what he considers to be the two main foundations of the argument to own guns: namely that civilian gun ownership deters criminals from attacking potentially armed victims, and thus decreases crime. This he classes as a factual claim and follows with the second foundational claim that individuals have a right to self-defence and a right to the most effective form of self-defence, which he classifies as an argument of principle.

According to McMahan, these two claims are entirely independent of one another. The scenario to which his analogy responds is one in which an armed victim is suddenly disarmed at the point of defending themselves, and as such is killed. This is a common scenario put forward by gun advocates to illustrate the fact that by removing self-defence guns, a government could be considered complicit in their demise and has violated their civil rights should they be unlawfully attacked and have no effective means of defence.

McMahan's purpose in this second article is to refute these two arguments, and thus undermine their effectiveness as a basis for gun ownership. He states that real world examples of disarming civilians do not accurately represent the morally relevant details as, in these examples, it is only the law abiding that are disarmed whereas the criminals remain armed. For this reason, he claims that there are no real-world situations that can be used as an example of a successful civilian disarmament programme – a true test would be if all firearms were removed from all people simultaneously, and a third party would have to ensure the safety and security of all. In this situation, no one except representatives of the third party tasked with enforcing defence of victims would have firearms.

In order to achieve this scenario, McMahan puts forward an analogy of prisons, an environment where all guns (and indeed, almost any other form of self-defence weapon) are banned from the possession of the general population by a third party, prison guards, who in turn provides protection for the parties involved. The reasoning, in this analogy, is that prisons provide a microcosm of human society in which denizens have no guns. In this way the situation, he argues, is comparable to one in which guns have been almost entirely removed from society and are exclusively in the hands of law enforcement officials.

McMahan starts by expounding the gun rights advocates' claims as to why civilians should be permitted guns for self-defence, which he thinks rest on two mutually exclusive arguments, to which I alluded above. The first argument is that criminals will be deterred from crime if they believe that their potential victim is armed, and the second is that people have a right to the most effective means of self-defence. McMahan then goes on to describe a society with strict gun control – not one in which the law-abiding relinquish their guns but the criminals do not, but one where both have their guns removed by a third party (the state) which then provides security to all. This situation, he then claims, is analogous to the situation in a prison where all prisoners are disarmed and have to rely on the prison guards for protection against possible violent attack.

McMahan extends the analogy by drawing some parallels to common self-defence scenarios involving disarming attacked people in order to show that his analogy is a reflection of the real-world situation; and from this he derives the conclusion that,[49] "each prisoner has a higher expected level of security against assault and homicide when they are all protected by guards than each would have if all were allowed to have guns for self-defence."[50]

[49] Stell and Buchanan, "McMahan's Hazardous (and Irrelevant) Thought Experiment."
[50] McMahan, "A Challenge to Gun Rights."

The crux of McMahan's analogy with regards to civilian gun control is contained in his contention that "a prohibition of gun possession does not violate prisoners' rights if it enhances their security by reducing the occasions in which a prisoner might need a gun to defend his life."[51] In essence, McMahan is putting forward the claim that should the state provide adequate protection against unwarranted attack, then it would be a safer environment for all if guns were banned in totality – the latter sentiment is not explicitly stated in this paper; however, it follows logically from his arguments in the first article, "Why Gun 'Control' Is Not Enough" (2012). In short, and contrary to the claims of gun-ownership advocates, the right to an effective means of self-defence will not have been removed if at the same time the environment is altered in such a manner that the requirement for that particular means of self-defence is no longer present.

[51] McMahan, "Why Gun 'Control' Is Not Enough,"2012.

Chapter 5: Critique of McMahan's article 2 "A Challenge to Gun Rights" (2015)

In this paper I outlined in the previous chapter that McMahan decided to use a real world analogy – that of a prison environment, to further support his point that a society in which there was no civilian gun ownership and in which only authorities had the right to bear firearms would be a safer society for all concerned, and that this should lead to the conclusion that a society without civilian firearms is the preferable and morally best option for a society due to the inference that the overall requirement for self-defence will be generally less. In other words, his position is that if there were no firearms in society, the amount and level of violence of crime would be lower, and hence overall the society would be better. When structured like this, his argument has a distinctly utilitarian flavour, and as such it makes sense that a number of the arguments that I will present against his argument have a rights based logic, for rights based moral standpoints are explicitly there to impose limitations in utilitarian logic where it crosses the boundary into infringing on things that people should inherently have a right to.

In this final chapter, I present a critical evaluation of McMahan's argument. I will be focussing my discussion and response on two questions: firstly, what I claim to be the inapplicability of the prison analogy to McMahan's position and, secondly, a look at the salient points of the analogy to determine if there are, in fact, any relevant arguments and counterarguments that can be gleaned from his thoughts.

My first criticism of the analogy relates to the society being described. Prisons are by definition occupied by criminals, many of whom have demonstrated, and been convicted of, violent behaviour. By their very definition, therefore, prisons are disproportionately filled with the very people that McMahan agrees should not possess guns. A blanket ban on all weapons is therefore prudent, given that the potential for violent attacks on others is so much more of a possibility in prison. This is evident in that, despite the draconian measures put in place to protect them, prisons still have a murder rate of 3 per 100 000 as per McMahan's own quoted statistics.

In addition, prison murders it would seem to me, are generally a form of assassination, or a specific, targeted killing, or a targeted attack where the death of the victim is the main aim instead of being a by-product of another crime. In contrast, killings in society generally occur as part of a different crime – carjacking, robbery, domestic violence, self-defence, etc. Should one compare the numbers of firearm assassinations per unit capita in society to that of prisons, I am sure that a completely different picture would emerge; however, such statistics have not been measured or published.

The fact that the murder rate in prisons is only a bit less than the murder rate of the general civilian population despite the makeup and conditions in a prison goes a long way towards proving that despite its best efforts, a state cannot provide adequate protection for its citizens despite its mandate and best efforts to do so, without imposing morally

offensive restrictions on a number of fundamental civilian rights. Some of these unjustifiable restrictions will be noted below.

In order to analyse the application of the analogy effectively, I will look at key aspects of the discrepancies between the analogy and real life. I contend that prisons, and prisoner control within prisons, are there for two reasons. Initially, it is logical to prevent prisoners from escaping to avoid their mandated punishment, and to protect society from violent criminals. However, if this was the case, then surely prisons would be structured like wartime prisoner of war camps, with the general population allowed to mingle relatively freely, and the bulk of the protections going towards protecting the perimeter of the prison and making sure that it is not breached. Yet when you look at modern prisons, this is not the case – prisoners are for the most part isolated into small, segregated groups, they are monitored 24/7 by guards and surveillance cameras, and they are locked up into small cells to prevent intermingling unless under increased guard surveillance. Since none of these internal structural restrictions is actually necessary to prevent an escape (or even necessary at all if you subscribe to Jeremy Bentham's Panopticon style of prison, but that is a separate debate not relevant to this paper), it must be to protect the prisoners from each other inside their prison – essentially to provide the state protection that McMahan envisions.

Next, I look at what happens when we extrapolate these conditions of weapon control that are necessary in a prison environment to justify protecting prisoners from unlawful attack into a civilian situation. In order to provide an environment where the state is capable of ensuring the personal safety of citizens, the state would have to, at a minimum, deprive citizens of their right to property by removing their guns, and any other implement that could be used as a weapon; in addition, it would have to deprive them of their right to freedom of movement by restricting them to areas where they are monitorable, deprive them of their right to freedom of association by restricting who and when they can mingle with prescribed groups, and deprive them of their right to privacy by monitoring and watching over them at all times, either with physical guards or electronic surveillance.

I am sure that it is obvious that to give up these fundamental rights is asking too much for any democratic citizen to accept - yet without the forfeiture of these rights, the state cannot provide for their safety in the same way that McMahan says a prison does. It is therefore clear that since the state cannot provide a safe and free environment for its citizens, it has to allow for its citizens to exercise self-defence in the most effective manner available to them – through the ownership of a gun. To this point, McMahan asks if "the state violates their rights of self-defence by preventing them from having guns and confiscating guns from any who might acquire them" and seems to think that the provision of guards is sufficient to replace this right, and as such their right to self-defence

is still intact. Timothy Hsiao, in his paper, "The Ethics of gun free zones," [52]makes the statement: "If the state prohibits otherwise law-abiding citizens from carrying guns for self-protection, then it assumes a special duty of protecting its disarmed citizens in areas where these restrictions apply. This claim follows from the principle that one assumes a duty of special responsibility towards those whom he intentionally places in a position of dependency, vulnerability, or disadvantage."[53] This quite effectively encapsulates the rights and associated responsibilities that the state will have to assume by removing the effective means of self-defence from the population.

I counter McMahan by asserting that the state has, indeed, very much violated the civil right to self-defence, but that this restriction to their right has been placed on themselves as a result of prisoners' own actions – it is widely understood that rights can be restricted, for example an attackers' right to life can be 'trumped' by the right to self-defence of his victim, and in much the same way a prisoner's right to effective self-defence has been curtailed by his actions that have shown that, due to the fact that self-defence weapons can also be used offensively, he cannot be trusted with them.

McMahan, to his credit, addresses this concern explicitly. He writes:

[52] Timothy Hsiao, "The Ethics of 'Gun-Free Zones,'" *Philosophia* 45, no. 2 (June 2017): 659–76, https://doi.org/10.1007/s11406-016-9789-5.
[53] Hsiao.

> Advocates will no doubt respond by denying that their view commits them to the claim that the state violates prisoners' rights of self-defence by denying them access to guns. They might, for example, argue that convicted criminals have forfeited their right to the possession of a gun. Yet no one can forfeit his right of self-defence against wrongful attack. Consider a modification of the advocates' own example. Suppose a convicted criminal has a gun and will be wrongly killed by an aggressor unless he uses it in self-defence. Someone who then takes his gun away, thereby ensuring that he is killed, seems to violate his right of self-defence. That might not be true if the criminal would, after defending himself, use the gun to threaten innocent people. Similarly, prisoners might forfeit their right to effective means of self-defence if they could also use those means to threaten innocent people outside of prison. But it does not seem that they forfeit their right to effective means of defending themselves from wrongful attacks by other prisoners.[54]

In short, then, McMahan's response to the objection is this: that prisoners cannot forfeit their right to self-defence, and that they still have it despite forfeiting their possession of any effective means of enforcing that right.

My answer to this would be that the prisoners have forfeited their right to effective self-defence through their prior actions, which have shown that they are possibly inclined to

[54] McMahan, "A Challenge to Gun Rights."

violate others' rights, but that equally, the state has indeed done them a grievous injustice by failing to protect them against an attack as is its duty, and one of its obligations through restricting so many of the prisoners' rights. If the state removes the ability for someone to act in their own self-defence for whatever reason (protecting other prisoners and even guards possibly in this case), the state has the obligation and responsibility to ensure that protection is never needed by the prisoner, or if it is needed, it is effectively handled by the state. Anything short of this is deemed negligent. This is a direct correlation to the state responsibilities and obligations should it take away private citizens' means to effective self-defence. To take it further, the state has removed the prisoners' right to free movement. If a prisoner could have run away, he/she would not have been killed. Does this mean that prisoners should be allowed to run away? A prison has a number of ulterior reasons for its structure and conditions, and as such there are a huge number of rights that a normal person would enjoy that are simply not applicable to prisoners, and unfortunately a number of these restrictions, either intentionally or through unavoidable clashes with other conditional necessities, impact the prisoners right to self-defence. It is a result of this, and because self-defence is such a fundamental right, that the prison has to step up and ensure that it can effectively replace the need for self-defence with its own reactive defence of victims within its system.

McMahan's view on self-defence focusses on the bigger picture, i.e. he does not focus on the individual, but on society as a whole – the aggregate of self-defence as such, instead of the specific, personal, instance of it. McMahan states that, "The right of self-defence

is not fundamental but is derivative from the more basic right to physical security. Thus, a prohibition of gun possession does not violate prisoners' rights if it enhances their security by reducing the occasions on which a prisoner might need a gun to defend his life." However, the state fails in its duty to protect unarmed prisoners, even with all of the other draconian restrictions placed upon them, and without these restrictions the state is even more unable to protect its free citizens, and so civilians should be afforded the right to protect themselves with the most effective means possible – even if it means that the police force has to deal with armed criminals as a result. As Timothy Hsiao, another gun rights philosopher puts it in his response to the second article in the online comments to the article, "But if the state can't meet this requirement, then it is not at all clear why restrictions on gun ownership or carrying should be restricted."[55] So the argument that is coming through, is that even if removing guns were on the whole safer, for specific individuals, it would not be safer, as they would not be able to defend themselves, and neither would the state be able to. Thus, their specific rights would have been violated, and the whole point of rights is that they are specific to individuals, and cannot be randomly overruled for spurious reasons at the expense of the individual. As Timothy Hall puts it in "Is There a Right to Bear Arms?": "Gun prohibition would deny to some people the only means of reasonable cost by which they might save themselves from violent victimization. Some of those people will be subsequently victimized only because they were denied use of a gun. Those facts suffice for rights violations, even if

[55] McMahan.

gun restrictions reduced the ex ante likelihood of being victimized"[56]. What Hall is succinctly stating is that the specific, individual case of self-defence using a gun is enough of a reason to allow gun ownership, even if the general abolition of guns would provide a safer environment for many more people.

In conclusion to this final chapter, it is evident that McMahan commits himself to a Nirvana fallacy (A fallacy in which a real world scenario is compared with an idealized one, resulting in the dismissal of the real world scenario as it is not as good as the perfect one[57]) in postulating this analogical argument in that he believes that the guards in prisons (or their police counterparts in civilian life) are capable and effective in their provision of defence to prisoners and civilians. Yet McMahan does not consider the fact that if people are getting killed then, by default, the state is not effective, and that the prison environment is too far removed from a functional society to be an effective example, and that if he is correct (which he is not), then the work of his argument is to remove ALL dangerous items from society, which even he will agree is not remotely feasible.

[56] Timothy Hall, "Is There a Right to Bear Arms?," *Public Affairs Quarterly* 20, no. 4 (2006): 293–312.
[57] Logically Falacious, "Nirvana Fallacy," n.d., https://www.logicallyfallacious.com/logicalfallacies/Nirvana-Fallacy.

Chapter 6: Conclusion

In this paper I set out to show that the extreme position of a complete ban on civilian firearms is not morally correct, and that as such, there has to exist a right, even if a very weak right, for firearm possession. In order to achieve this, I take the strongest deontological argument (indeed, the only one I could find advocating a complete ban), and critically analyse it. The argument was put forward by Jeff McMahan, in two articles, the first, "Why gun control is not enough" (2012), a presentation of his argument and defence against presumed counter arguments, and the second, "A Challenge to Gun Rights" (2015), using a prison analogy of his argument to highlight salient points and counter arguments raised against his first article. I believe that in this paper I have established enough logical evidence to refute McMahan's argument that civilian firearm ownership creates gun inflation and undermines the state authority to provide protection for its citizens (which, he asserts, would create a safer society for all should civilian gun ownership be banned). I have shown that McMahan's logic is flawed in several of his assumptions with regards to gun inflation and the reasoning behind the proliferation of civilian guns, and that his argument for the undermining of the state's ability to protect its citizens is also flawed. Additionally, I have shown that the conditions necessary for his scenario to be effective would grossly infringe on numerous other fundamental rights of citizens to the point where a society that functions without the need for civilian gun ownership for self-defence would be a tyrannical society to the point of rejection. I also unpack a further flaw in his argument that he predominantly focusses on the self-defence

need for firearms and effectively ignores other valid uses for them, and this oversight has significant bearing on the strength of his argument.

In conclusion, I believe that I have effectively refuted McMahan's arguments, and with them being the only argument for a complete ban on civilian firearms, I have shown that there is a de facto right to own guns.

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