



SHORT COMMUNICATION

Toward a Universal Libertarian Theory of Gun (Weapon) Control: a Spatial and Geographical Analysis

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ABSTRACT *The debate over gun control has taken place in complete isolation from geographical considerations. It focuses on, for the most part, whether legalization would bring about more or fewer accidental deaths, and murders of innocents, than prohibition, and in the USA on the precise meaning of the second amendment to the Constitution. However, these deliberations, argue the authors of the present paper, can be enriched by incorporating into them a spatial context. When this is done, and they are combined with the property rights philosophy of libertarianism, some very different conclusions are drawn.*

Introduction

No rational person can doubt that chemists must pick their way through an ethical minefield. The Nazi ovens owed their properties and attributes to members of this profession, directly or indirectly. Nor can it be denied that biologists are often faced with moral quandaries; genetic cloning and germ warfare spring readily to mind in this context. The same goes for doctors (Dr Mengele and Dr Kevorkian are cases in point),¹ veterinarians (just ask People for the Ethical Treatment of Animals) and physicists (the bomb).

However, what of geographers? Surely they are protected from this sort of risk? Not a bit of it. They, too, along with all these others, are exposed to the dangers implicit in ethical mis-steps in their professional capacities. For one thing, the Geographical Information Systems which emanate from this branch of knowledge are not at all irrelevant to the conduct of war. Indeed, the very opposite is the case. Surely, the spatial scientists who have helped develop such systems have acted in a manner intimately invested with ethical concerns. Some two millennia ago, Strabo (trans., 1949, p. 31) thus commented in this regard: 'geography as a whole has a direct bearing upon the activities of commanders'.²

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For another thing, there is the topic of the present paper, which involves a spatial, political, environmental and geographical analysis of gun, and more generally weapon, control. Second amendment rights in the US context certainly involve ethical issues, too. As we shall argue, the kinds of place, space, environmental and geographical assumptions employed in the analysis of gun control have a crucially important effect on the conclusions reached. In fact, given the political economic premises of libertarianism, on the basis of which we shall argue, there are virtually no other considerations involved *than* the geographical.

Libertarianism

Libertarianism is the political philosophy which would be beloved of the Occam of Occam's razor. It states, simply, that the one proscribed act is the use or the threat of force against a person or his legitimately held property. Property can justly be attained, first, through homesteading hitherto unowned property, and, second, through any non-invasive act such as trade or a gift (Spooner, 1966; Rothbard, 1970, 1973a, 1982; Tannehill and Tannehill, 1970; Woolridge, 1970; Nozick, 1974; Oppenheimer, 1975; Machan, 1982, 1990; Benson, 1989; Hoppe, 1989, 1993; Block, 1976, 1994; McGee, 1991; Boaz, 1997; Murray, 1997). All the rest is elaboration, explication, implication, clarification and justification.

What is the libertarian position on the second amendment to the US Constitution? At first blush, this philosophy is not compatible with any gun control legislation at all, since the mere ownership and possession of a rifle or pistol do not constitute an uninvited border crossing, or invasive violence. Nor do they even amount to a threat, for surely we must distinguish between the case of brandishing a weapon in a bellicose manner, on the one hand, and, on the other, with keeping one locked up in a drawer at home or in an auto, or with peaceably walking around with one safely holstered at the hip or even concealed, as in a shoulder harness. The former act violates the non-aggression axiom, while the latter two do not. Yes, there is a potential danger involved in private gun ownership and use,³ but if we were to prohibit all such occurrences, we would have to ban autos, knives, scissors, letter openers, arms (for boxers) and legs (for *karatekas*), etc.

Then there is the slippery slope objection; that if a pistol is not rights violate *per se*, then neither is a rifle, a machine gun, a bazooka, a howitzer, a tank, a battleship, a jet fighter plane; nor, for that matter, a nuclear bomb.

The libertarian response to this is predicated upon the issue of whether it is *possible* to use these weapons in a purely defensive manner; if so, there can be no objection to them *per se*. Consider a bazooka, for example. Can the power of this implement be confined to those at whom it is aimed? Yes. Therefore it can be used purely for purposes of self-defense, and its possession is not an *ipso facto* violation of the libertarian code. If it is not possible to limit, to its intended targets, the physical harm created by a weapon but, rather, this must necessarily spill over onto innocent parties, then such an implement must be eliminated from legitimate arsenals. When viewed in this manner, it is clear that all of the weapons mentioned above, except for the thermo-nuclear device, *do* allow for pinpointing,⁴ namely for confining their destructive power to the 'bad guys'. Therefore, it would be licit to own any of the former, but not the latter.⁵

This, then, is a fair summary of the consensus libertarian position on gun control, as it now exists. However, it is subject to criticism, when we take a wider perspective. Contemplate the possibility of meteors causing great damage to the Earth, and being

blown up, defensively, by nuclear power, as in the movie *Armageddon*, or alien creatures attacking us, as in the book by Robert Heinlein (1959), *Starship Troopers*, and the movie of the same name. In this astronomical context, not limited to the Earth, the hydrogen bomb, or even many of them all together, *can* be used purely defensively, or appropriately, e.g. to blow up a meteor before it hits us, or to kill giant enemy alien bugs on distant planets, who have already attacked us.⁶

What, then, is the libertarian response to the critic who offers the specter of the nuclear weapon in someone's basement, located in the midst of a large city? This attempt at a *reductio ad absurdum* could perhaps have been defeated when the context was limited to the Earth; here, at least by supposition, it is impossible to detonate an atom bomb without violating the rights of at least one other person.⁷

However, where extraterrestrial beings or meteors are concerned, the hydrogen bomb cannot be banned as intrinsically invasive. Now, it has, or at least can have, a defensive purpose. However, the idea of a Jeff Dahmer or a Ted Kaczynski in charge of one in a large city must give even a fanatical libertarian pause for thought. This is even more problematic given that the ability and knowledge needed for constructing these items are widely dispersed, and the cost of the raw materials, while expensive, is not prohibitive.

One possible answer to this conundrum is that the libertarian stance (nukes are prohibited because they are necessarily invasive) is quite sufficient for any reasonable scenario concerning the Earth; that meteors and unfriendly bug eyed aliens, etc. are the stuff of science fiction, not reality; and that libertarianism can only concern itself with the latter, not the former. This perspective offers the following possible response:

If the Earth were such a place as to be repeatedly threatened with meteors, our principles governing the legitimacy of nuclear weapons would be quite different. In *our* world, the view that such bombs are necessarily invasive, and hence should be prohibited, is the strongest. In another universe, it might be weaker. Another way of putting this point is that in the hypothetical world of *Armageddon* a nuclear weapon is not entirely and wholly offensive but serves a legitimate role in (planetary) self-defense.

The difficulty with this reply is that, at least ideally, libertarianism ought to be applicable as widely as possible: to all times, and to all places; to all possible universes. To the extent that this is not the case, this philosophy has less generalizability, and hence less validity than otherwise.

Fortunately, however, there is a better defense available. The *only* way the nuclear bomb can be used defensively is for off-world activity.⁸ Therefore, at the very least, the would-be stockpiler of this weapon must have at his disposal the wherewithal to launch it at an enemy planet or on-rushing meteor. Since rocketry of this sort costs billions of dollars, this consideration ought to be sufficient to preclude the specter of a nuclear device in numerous basements or attics.⁹

Let us reiterate. Libertarianism is in opposition to the prohibition of ordinary weapons since they do not *per se* violate its basic premise of non-aggression. When we focus only on earthly concerns, this philosophy favors the ban on nuclear weapons; since it is not possible to confine their force, their use must necessarily violate the libertarian axiom. However, when we incorporate the entire universe into our analysis, and science fiction considerations as well, then nukes cannot be banned, since a defensive purpose for them exists.

Proportionality

These considerations give rise to what might be called a geographical, spatial or proportionality thesis. We claim that there is an inverse relationship between population density and the power of a weapon that will be considered legitimate under libertarian law. Population density in the entire universe is extremely small, so armaments of mass destruction are legitimate in this context. On Earth, population density is relatively far higher; therefore, small arms would be allowed, but not atom bombs or worse. The key to legitimacy in both cases is the ability to pinpoint or limit destructive power. Other things equal, it is easier to do this, the lower the population density; hence the proportionality thesis.

Perhaps this point can be more easily made by use of a series of examples of decreasing population density. In the context of the entire universe, a person can own just about as many hydrogen bombs as desired since, given this vast arena, it is certainly possible for them all to be used defensively. Suppose that Jupiter were inhabited by only 1000 people, evenly spaced throughout the planet. Here, it would appear reasonable for each of them to own the proverbial atom bomb, and keep it in their basements if they wished. Given the low population density involved, this device would no longer constitute a *reductio ad absurdum* of the libertarian position, for the explosive power, even including the fallout, could easily be confined to the enemy, or to the owner of the territory himself, thus not imposing any negative effects on innocent third parties. Since defensive use would thus be possible, there would be no necessary violation of the libertarian postulate. The next level down in population density might be places on Earth such as the Sahara, or Antarctica. There might be no libertarian justification for owning an atom bomb with fallout even in relatively empty areas such as these, for detonation would affect at least a few innocent people. However, one could, conceivably, own a 'clean' atom bomb or a large amount of TNT in such deserted areas, but not in a more crowded venue.¹⁰

The proportionality thesis can be illustrated by use of a graph (Figure 1). On the y axis we plot the power of the weapon, with the hydrogen bomb at the top and fingernails at the bottom. On the x axis there is population density, with space the least populated and cities the most highly inhabited.

The relationship between these two could be depicted by any downward-sloping curve; this would indicate that the more crowded the situation, the less powerful the weapon that would pass muster under this libertarian criterion. If power and population density could be meaningfully integrated with one another (which is not being claimed here), the implication is that the downward-sloping curve would be a rectangular hyperbola, to indicate that the total of the two variables, when multiplied together, would yield the same sum, namely the amount of 'force times population density' which would be on the dividing line between legitimacy and illegitimacy.

What of 'cpb'? Depicted in this realm of the x axis is a world so crowded it would resemble a 'crowded phone booth'. What would be proper gun control policy under these extreme Malthusian assumptions? Again, contrary to what we have been calling traditional libertarian theory, the proportionality thesis yields a very different implication, namely the prohibition of firearms. However, the difference here is only with the conclusions that have previously been drawn on this topic, not with the underlying libertarian principle itself. In other words, we are putting forward the claim that proportionality theory leads to a more plumb-line libertarian position than previously achieved. That is because, paradoxically, it is *more* consistent with the premise that as long as a weapon's power can be confined to evildoers, that is, its purpose can be limited

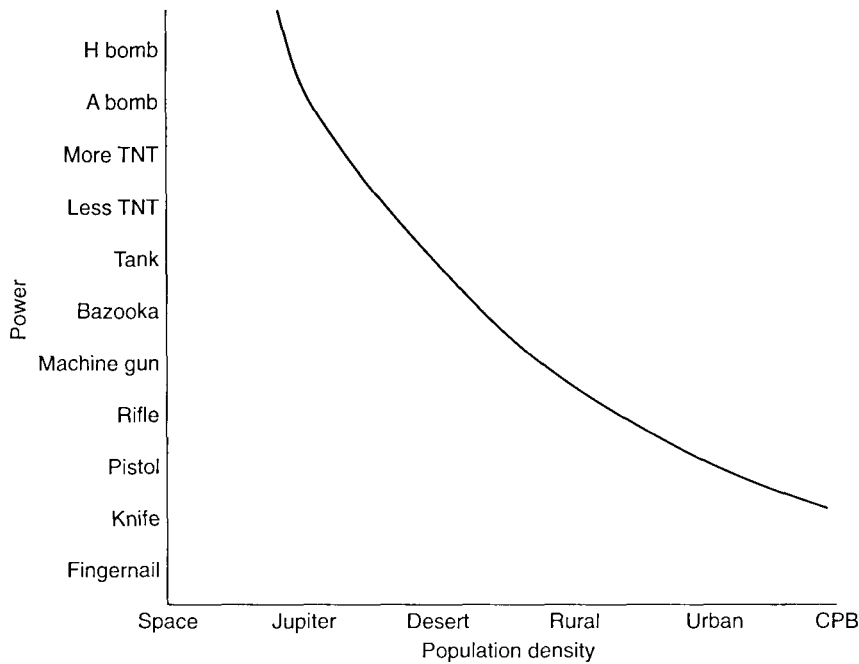


Figure 1. The relation between geographical size and type of legal weaponry.

to defense against aggression, it is not *per se* invasive and thus must be legitimate. However, in the hypercrowded world,¹¹ not even a pistol, perhaps not even a knife, can possibly be used without impacting innocent people. If so, then it may be banned just as today we properly prohibit ownership of nukes in cities.

This new way of looking at the matter leads to new conclusions only at both ends of the population density continuum. At the low end, extensive space, it allows ownership of thermonuclear devices, when traditional libertarian theory would not. At the high end, the 'crowded telephone booth' kind of world, it prohibits guns and knives, when traditional libertarian theory would legitimize these weapons. These changes are not the result of an alteration of libertarian theory; this remains the same. The different conclusions stem solely from very different assumptions about the world (or universe).

Objections

In closing, let us consider the objection to banning made by the person who wishes to possess a hydrogen bomb not for purposes of violence, but rather for contemplation, or for aesthetic or scientific reasons, or as a museum piece, etc. One answer is that the 'artiste' could indeed locate a nuclear bomb in his city basement, but only the outer contours of it, that is, the shell casing alone, not the nuclear device. This ought to suffice for sheer artistic contemplation.

Suppose, however, that this will not create the necessary artistic 'jolt'. For that, only an armed device will do. Too bad, from the libertarian perspective. It is impossible to confine the harm done by a such a weapon to the owner himself, or to a 'bad guy'.

In contrast, were a nuclear power station to blow up, its negative power could not be so confined either, and yet this is legitimate under libertarian law. What is the difference? The difference is that the one is a *weapon*, the other not. Were we to ban all appliances whose power, under the worst possible scenario, could not be confined to the appropriate people and their holdings, we would have to prohibit all aircraft, and laboratories experimenting with deadly viruses, etc. This applies, even, to roofless baseball stadiums (an escaping home-run ball can break a window). The difference between all these others and the 'artiste's' atom bomb is that the latter is a weapon, the others not.

Rothbard (1990, p. 243) adumbrates the principles under which a just determination can be made in this regard:

The basic libertarian principle is that everyone should be allowed to do whatever he is doing unless he is committing an overt act of aggression against someone else. But what about situations where it is unclear whether a person is committing aggression? In those cases, the only procedure consonant with libertarian principle is to do nothing; to lean over backwards to ensure that the judicial agency is not coercing an innocent man ... The presumption of every case ... must be that every defendant is innocent until proven guilty, and the burden of proof must rest squarely upon the plaintiff.

So far, it sounds as if Rothbard is taking the side of the 'artiste' who wishes to maintain for contemplative purposes an armed thermonuclear device in the basement of his home, located in the big city. However, this is merely a first approximation. Given that the burden of proof of criminal behavior is placed with this artiste's neighbors, how can these plaintiffs acquit their responsibilities?

States Rothbard (1990, p. 244):

... the best standard for any proof of guilt is the one commonly used in criminal cases: proof 'beyond a reasonable doubt'. Obviously, some doubt will almost always persist in gauging people's actions, so that a standard such as 'beyond a scintilla of doubt' would be hopelessly unrealistic. But the doubt must remain small enough that any 'reasonable man' will be convinced of the defendant's guilt. Establishing guilt 'beyond a reasonable doubt' appears to be the standard most consonant with libertarian principle.¹²

An obvious rejoinder to this is that it conflicts with the Austrian economic notion of subjectivism (Rothbard, 1962, 1973b, 1977, 1989; Mises, 1966; Buchanan, 1969; Buchanan and Thirlby, 1981). In this view, great weight is placed upon the subjective perceptions of the individual human actor: a hydrogen bomb may well be merely an object of historical contemplation, at least for some persons. The issue is, do we have to eschew Austrian subjectivism in order to argue, as libertarians, that the hydrogen bomb cannot legitimately be stored in a city art gallery?

Not at all, for under the libertarian code, to the extent that we accept the subjective evaluations of people regarding reality (as opposed to the 'reasonable man' standard), it is the subjective evaluation of the threatened *victim*, not the perpetrator, which is determinative.

Suppose A comes rushing at B carrying a knife in the up-thrust position, while yelling 'Kill!' in a blood-curdling manner, whereupon B draws his pistol and shoots A dead. Later, it turns out that A was merely an actor, practicing for a part, and that the knife

was made of rubber, as are most stage props of that sort. Is B guilty of murder? Not a bit of it. Rather, B would properly be judged to have done no more than exercise his right of self-defense. Even the reasonable man would have so concluded.

In similar manner, were we to take any subjective considerations into account as a matter of libertarian law, it would *not* be those of the contemplator of the A bomb; rather, it would be those of his neighbors, who, presumably, take a very different view of this device.

What, then, of a possible *reductio* regarding airplanes? Every once in a while these devices crash, killing people on the ground who did not agree to bear this risk, as did the passengers. As we have seen, the victim of the knife attack, not the perpetrator, was allowed to determine the reality of the situation. Why do we not allow such possible victims of airplane crashes to determine if these are invasive weapons (which they are, after the fact, from the perspective of those on the ground upon whom they crash). If such a determination were made, of course, it would spell the end of this industry.

The answer is that no reasonable person would ever come to any such conclusion. Yes, airplanes sometimes crash, but, apart from those used by Japanese kamikaze pilots in World War II, they cannot by any stretch of the imagination be considered as weapons. In contrast, the nuclear weapon located in the same geographical area as millions of innocent people, in any reasonable interpretation, would be understood as an armament, despite all the protestations of the contemplator to the contrary.

So far, we have looked at gun control from what we will call a macro-geographical perspective. In order to determine appropriate weapon restrictions, we must know the geographical context at large. If we are talking about the Earth, a 'doomsday' thermonuclear device, able to blow up the entire planet and all the people who inhabit it, is *per se* offensive. Its power cannot possibly be confined to the guilty. Harboring such a weapon is thus an offense, and may properly be prohibited, but not in the vastness of space, an altogether different geographical domain. Similarly, a pistol must be banned from the supercrowded 'phone booth' world, because, by stipulation, its offensive power cannot there be limited; in contrast, in our real world, revolvers would be allowed, since they most certainly can be pinpointed.

Now, in conclusion, we look at this issue from what might be called a micro-geographical perspective. Suppose there is a nuclear bomb which is at present able to explode, except for the fact that the trigger is located 1 mile away from the rest of the apparatus. Should this configuration be precluded by law in our real world, given our libertarian considerations? How about if the distance were 100 yards? Ten feet? One inch? One millimeter?¹³ The problem, of course, is that if the trigger and the remainder of the bomb are very close to each other, the device can explode if someone as much as sneezes. This would tend to incline us to demand a reasonable distance between the constituent elements of a bomb which would, when assembled, be illegitimate. On the other hand, a distance of even 1 mile can be overcome easily by a determined evildoer. Further complicating the analysis is the fact that, at least nowadays, the different elements of a bomb (e.g. copper, zinc and uranium, etc.) can be assembled without too much difficulty, and if we want to prevent illegal atom bomb holding, we seem to be set on a slippery slope which will outlaw stockpiling all such elements, a manifest absurdity.

There is no real solution to this micro-geographical issue, since it is really a continuum problem. How far from B's nose does A's fist have to be before B is properly entitled to launch defensive forceful countermeasures? Again, there perhaps is no better answer than relying on context and the opinion of the 'reasonable man'. This may not

be as satisfying philosophically as a more definitive answer, but, as the problem stems from the (continuous) nature of reality, this is the best answer that can be given.

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Notes

1. There is no implication here that both have acted improperly, only that their actions are fraught with moral implications. Indeed, according to libertarian principles (see below) the latter but not the former has acted in an entirely legitimate manner.
2. We owe this citation to an anonymous referee.
3. There is of course also a danger in public sector weapon ownership. However, since libertarianism in its pure form does not recognize a difference between the two spheres (there are only private individuals, some of whom illegitimately claim that their relationship with a 'government' allows them special privileges not available to their private counterparts), we will not pursue this matter here.
4. Some supposedly 'smart' missiles have been anything but accurate under recent war-like conditions. Are they therefore illegitimate *per se*? Certainly, projectiles which cannot be aimed at all, that fall at totally random places in the geographical environment, could not be deemed licit in the libertarian philosophy. However, there is a continuum here. For no weapon at all—not pistols, not rifles, not baseball bats, not knives, not even fingernails—comes with a guarantee of perfect accuracy. Mistakes occur in all these cases. It would be a bit harsh to conclude that no defensive weapon may be used, because all of them are imperfect. In contrast, we are employing a far less restrictive criterion: as long as it is possible to aim a weapon, and thus at least in principle confine its negative impact to malefactors, then there can be no *per se* objection to such an implement. We thank an anonymous referee for bringing this point to our attention.
5. Libertarianism is a principled theory, not a consequentialist or utilitarian one. 'Justice though the heavens fall' is an apt metaphor for this philosophy. Therefore, we are not concerned in this essay with the effects of gun control, only with its justification on pure libertarian grounds. For the utilitarian case against gun control, see Kates (1984, 1986, 1990, 1991, 1992), Kates *et al.* (1995), Barnett and Kates (1996), Halbrook (1995), Kleck (1991), Kleck and Patterson (1993), Mauser (1992), Mauser and Holmes (1992), Polsby and Kates (1998), Lott (1998) and Lott and Mustard (1997).
6. Rothbard (1998, pp. 190–191) has anticipated this point. He writes: 'while the bow and arrow, and even the rifle, can be pinpointed, if the will be there, against actual criminals, modern nuclear weapons cannot. Here is a crucial difference in kind. Of course, the bow and arrow could be used for aggressive purposes, but it could also be pinpointed to use only against aggressors. Nuclear weapons, even "conventional" aerial bombs, cannot be. These weapons are *ipso facto* engines of indiscriminate mass destruction. (The only exception would be the extremely rare case where a mass of people who were *all* criminals inhabited a vast geographical area.)' To this we have now in effect added only another exceptional case: where all of the bad guys occupy another planet.
7. On the other hand, if an extremely small 'tactical' nuclear weapon were detonated in the Sahara or Nevada deserts, or underground, without rights violation, there would be no justified libertarian prohibition against keeping it in such a place.
8. We here abstract from Rothbard's 'extremely rare case' of a 'vast geographical area' occupied solely by criminals.
9. This holds, at least at present. In the far future, of course, it is possible, given that we rely upon free enterprise at such times, that new technology will enable most people to own interplanetary rockets. Then, the specter of too-numerous nuclear capability may once again return to haunt us. However, in such a high-tech world, it might also be that defensive capabilities would be enhanced, rendering this less of a problem.
10. This is the Rothbardian exceptional case scenario, given that regions of this sort are populated only by criminals.
11. A fictional reference to this assumption is the planet Gideon from the *Star Trek* episode 'The mark of Gideon'. (We owe this example to Daniel L. Schmutter.) This, like the bug eyed monster scenario of *Starship Troopers*, is not put forth as a likely scenario. Rather, as in that case, it is being considered only in order to trace libertarian theory to its ultimate conclusion. For rejoinders to the thesis that we are or

- are likely to ever become overcrowded, see Bauer (1987), Block (1989), Block and Coffey (1999) and Simon (1981, 1989, 1990).
12. When it comes to standards of proof, we follow Rothbard in relying upon the 'reasonable man' criterion. However, regarding innocence or guilt, we again follow Rothbard in eschewing the 'reasonable man' standard in favor of strict liability. On the latter, see Rothbard (1990).
 13. A similar consideration applies to the Smith and Wesson and its bullets in the 'crowded phone booth' world. How far removed from one another must they be in order to be considered legal?

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