

Posted 6/21/16

A “BAN” IN NAME ONLY

Pretending to regulate only makes things worse

By Julius (Jay) Wachtel. It's as certain as taxes, and even less appetizing. We mean, of course, the incessant yammer by political candidates. One topic that inevitably worms into the discussion is guns. Here is [an extract from Hillary Clinton's CNN interview](#) on June 13, one day after Omar Mateen, 29, mowed down forty-nine persons at an Orlando nightclub using a SIG Sauer MCX .223 caliber semi-automatic rifle and a 9mm. pistol:

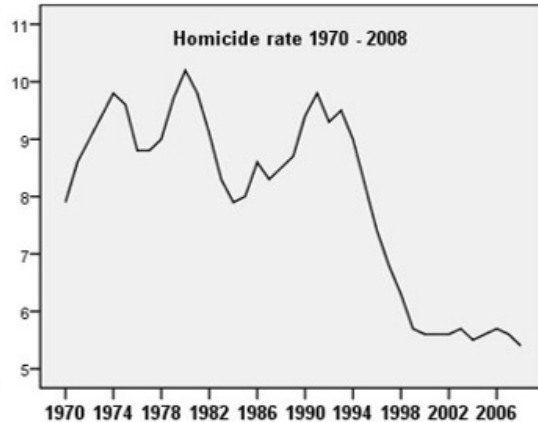
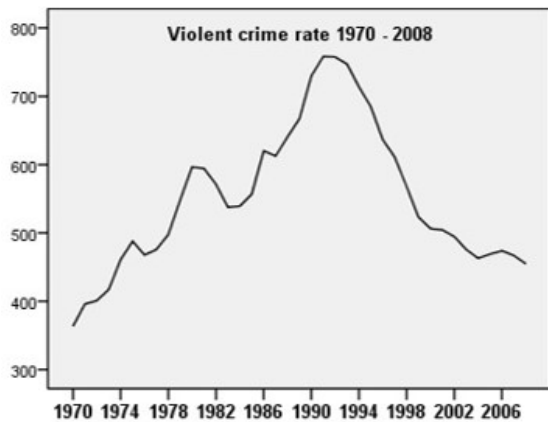
We know the gunman used a weapon of war to shoot down at least fifty innocent Americans, and we won't even be able to get the Congress to prevent terrorists or people on the no-fly list from buying guns. This is totally incomprehensible, and we've got to get back to into common-sense gun safety....We did have an assault weapons ban for ten years and I think it should be reinstated.

Here's [what her husband had to say](#) about this the next day:

All I know is this. We had a 10-year ban on assault weapons. And that was passed while I was President. I signed it and we pushed hard for it. And no small number of members of Congress lost their jobs because they voted for that and what was then a comprehensive background check law. We had a 33-year low in the gun death rate and a 46-year low in total illegal deaths by gun homicides. In other words, it worked pretty well.

If anything, our former President seemed even less concerned about the facts than his wife. As everyone who keeps tab on such things knows, the so-called “Great Crime Drop” was already well in progress in September 1994, when the assault weapons ban was enacted. Indeed, after peaking in 1991, national violence and homicide rates began a pronounced, multi-decade plunge. (Unfortunately, some cities got left out. See [“A Tale of Three Cities”](#) and [“Location, Location, Location.”](#))

	Violent crime rate	Homicide rate
1989	667	8.7
1990	730	9.4
1991	758	9.8
1992	758	9.3
1993	747	9.5
1994	714	9.0
1995	685	8.2
1996	637	7.4



Well, maybe the assault weapons ban didn't set off the drop. Couldn't it have sped things along? In a word, no. You see, there really was no "ban." Title XI of H.R.3355, the [Violent Crime Control and Law Enforcement Act of 1994](#) had three main provisions:

1. Nine specifically named weapons, or "copies or duplicates" thereof, could no longer be produced for sale to civilians. One was the Colt AR-15. And here it is:



2. All other semi-automatic firearms with detachable ammunition magazines could continue to be manufactured and sold to ordinary Joes and Janes as long as they didn't have *two or more* of certain external features such as a folding stock, bayonet lug, a pistol grip "that protrudes prominently," and a flash suppressor. In other words, a bayonet lug is OK, but that's it! Here's Colt's reworked rifle. Can you spot the changes?



3. Ammunition magazines that held more than ten rounds could no longer be manufactured for sale to civilians.

Gun makers and enthusiasts yawned. First, guns and magazines already in circulation could continue to be possessed and transferred, *ad infinitum*. Even better, manufacturers only had to make cosmetic changes (ditch that nasty, “prominent” handgrip) to keep making and selling guns that were functionally identical to those on the banned list. [So that’s what they did](#). Colt rebranded the AR-15, stripped it of a few external baubles such as the flash suppressor, and returned it to production. Thanks to the loopholes purposely built in to the law, things quickly went back to what passes for normal in gun-land.

Anti-gun groups who labored for the law’s passage tried to put the best face on it. On the day of the law’s enactment the executive director of the [Violence Policy Center](#) characterized the so-called ban as “[an island of regulation](#) in a vast sea of laissez-faire production. The question remains how effective it will be and how creative the industry will be in trying to work around the definitions.” A decade later, as the ban (it had a ten-year Sunset clause, and wasn’t renewed) mercifully came to an end here’s what the VPC had to say:

The 1994 law in theory banned AK-47s, MAC-10s, UZIs, AR-15s and other assault weapons. Yet the gun industry easily found ways around the law and most of these weapons are now sold in post-ban models virtually identical to the guns Congress sought to ban in 1994. At the same time, the gun industry has aggressively marketed new assault-weapon types such as the Hi-Point Carbine used in the 1999 Columbine massacre that are frequently used in crime. Reenacting this eviscerated ban without improving it will do little to protect the lives of law enforcement officers and other innocent Americans.

Gun enthusiasts still make fun of the ban. [Here are a couple recent posts](#) from an AR-15 forum:

“All the AWB did was ban ‘scary looking’ features.”

“I guess it also shows that whatever law they come up with short of banning all firearms, manufacturers can and do design their way around such laws.”

Exactly.

Could a weapons ban with real teeth be useful? Perhaps – but it would have to attend to two things: lethality and availability. As to the first, it may be possible to devise a scoring system that takes characteristics such as ballistics, rapid-fire capability, lack of recoil, accuracy and portability into account. For example, because of their extreme velocity, .223 caliber rounds commonly used in AR-15 style firearms causes especially devastating injuries. Not only are bullets far more likely likely to fragment inside the body, but on penetration they create temporary wound cavities as much as 12.5 times the diameter of the projectile (from Vincent Di Maio, *Gunshot Wounds*, extract [here](#).)

Say that we miraculously obtain agreement about lethality. What about availability? So many highly lethal firearms are in circulation that allowing them to remain in civilian hands would defeat a ban’s purpose. What have other democracies done? In the [Hungerford Massacre of 1987](#), a 27-year old British subject gunned down sixteen persons with a handgun and two rifles. Great Britain promptly responded with the [“Firearms \(Amendment\) Act 1988,”](#) banning all semi-automatic rifles beyond .22 rimfire. After the [Dublane school massacre of 1996](#), in which a man armed with four handguns killed sixteen children and a teacher, Great Britain [essentially banned handguns](#). In both cases the restrictions weren’t simply “imposed” but enjoyed widespread public support.

Laws supposedly manifest a people’s sense of right and wrong. Alas, we’re not Britannia, where a sense of community still prevails. Instead of reflecting a considered moral position, the cynically-crafted assault weapons ban capitulated to commercial and enthusiast interests, leaving any notions of a social contract in the dust. In America’s polarized climate, where moral reasoning plays second fiddle to egoism and self-indulgence, any gun laws that might come out of the Orlando massacre would probably be watered down to meaninglessness.

Thanks to the proliferation of ever-more lethal hardware, our expectations about public life and public space have dramatically changed. Who would have thought that cops would need armored cars? What’s badly needed isn’t more lawmaking – it’s a national conversation about where we are as a people – and, just as importantly, where we’d like to be.