

Gun Control – is it Really Necessary?

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Abstract

Comparisons are made between the legal and demographic ownership and use of firearms between Israel and The United States with discussion pertaining to the relationship of gun control and mass casualty shooting events. Regulatory and legal structures are described and limitations to the analysis of examples and data are highlighted. Two key differences between the nations are the diverse local approaches throughout different regions of the US and distinct legalistic definitions of gun ownership as a “right” guaranteed by law. Some "points for thought" are given, in case the legislators, in both countries, would like to put some changes in the current situation.

Introduction

Every time there is a mass casualty incident in the US, where guns are involved, the question emerges, “Should gun ownership be limited and controlled?”

Those who are in favor of increased regulations, often point to countries where gun sales and ownership are controlled, like Israel for example, and they claim that rate of crime is lower there and the chance of mass casualty incidents are minimized.

Those who are against increased regulations point first, to the Second Amendment in the American constitution, and to statistics which claim that most gun owners are not involved in any unlawful activity and that mass shootings mostly occur in places where firearm possession is the most restricted.

In this paper, we will introduce the different definitions for firearms, and/or weapons, in Israel and the US, the differences between gun regulations in those countries that may help answer these questions:

Does gun control really prevent mass casualty incidents?

Are gun control limitations in Israel effective and "sensible"?

What regulations are legally permissible under the second amendment?

Definitions of firearms in Israel and the USA

Definitions in Israel

In Israel there are different definitions, even though they share some similarity, for "Weapons" and for "Firearms".

The definition of "weapon", as written in Israel's PENAL LAW 1977^[1], includes three sub-definitions. The one relevant to this paper is:

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"144. (1) an instrument made capable of shooting a bullet, projectile, shell, bomb or its like, which can kill a person and it includes a part, accessory or ammunition of such an instrument;"

The definition of "firearm", as appears in the FIREARMS LAW of 1949^[2], is:

"An instrument with a barrel made capable of shooting a bullet, projectile, shell, bomb or its like, which can kill a person, and it includes a part, accessory or ammunition of such an instrument;"

As one can see, the definitions are very similar, but their legal interpretations are very different:

The definition of "weapon" engulfs every thing from a rubber slingshot to an intercontinental ballistic missile! It also includes all kind of "home made" weapons.

In order to prove that "an instrument" is a "weapon", it will have to pass two tests: It should be able to shoot "something" and that "something" should be capable of killing a person.

On the other hand, the definition of "firearm" basically describes guns, pistols, rifles etc. That means all types of firearms are weapons, but not all weapons are firearms!

Definitions in the United States of America

The definition, as appears in the ATF's FEDERAL FIREARMS REGULATIONS REFERENCE GUIDE 2005^[3], is:

"The term "firearm" means

- (A) Any weapon (including a starter gun) which will or is design to or may readily be converted to expel a projectile by the action of an explosive;***
- (B) The frame or receiver of any such weapon;***
- (C) Any firearm muffler or firearm silencer;***
- (D) Any destructive device.***

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The term "destructive device" means –

- (A) Any explosive, incendiary, or poison gas***
 - (i) Bomb,***
 - (ii) Grenade ..."***

Further in this document, and in other US laws, there are detailed definitions for many types of weapons: shotgun, rifles, pistols etc. That is much more intricate than the generality of the Israeli law.

So, in the American laws, the definitions are distinct from the Israeli definitions, which is interesting if we consider the fact that the Israeli law is based on the British law and American law ultimately shares some common origins.

Gun ownership criteria in Israel

Laws & regulations in Israel

The "right to bear arms" in Israel is not a constitutional one. Instead, the Penal Law requires that gun ownership will be accompanied with a legally owned license, issued by the government. That means any person who wants a gun needs to file a request and then wait to see if he is approved.

Through the years, many changes have happened in this area, the latest was the transfer of the Firearm Licensing Department from the Ministry of Interior to the Ministry of Public Security. The reasons for getting a license were also changed during the years and in this paper are based on the current ones.

In order to apply for a license, one should have to meet these threshold demands:

1. To be a citizen, or a permanent resident for at least 3 years, with basic knowledge of Hebrew.
2. To be at least 21 of age, if he had full military service or equivalent, or 27 in any other case.
3. Clean criminal record (approved by the police) and no physical & mental problems prohibiting him from handling a gun (approved by the Ministry of Health).
4. Have one of the criterions listed by the Firearm Licensing Department.
5. Passed the training requirements.

The criterions of the Firearm Licensing Department are given in this table:

The criterion^[4]	Type of weapon
Entitled residency	One hand gun (Pistol, Revolver)
Work in Entitled residency	One hand gun (Pistol, Revolver)
Explosives transporter	One hand gun (Pistol, Revolver)
Gold, precious stones dealer	One hand gun (Pistol, Revolver)
Fireman	One hand gun (Pistol, Revolver)
Paramedic (Red Magen David)	One hand gun (Pistol, Revolver)
Sportsman, active shooter	Sporting firearms as listed by the state
Varmint control	Small caliber rifles (22LR – 22 Hornet)
Hunter	Shotgun
Security services personal, From rank of Captain and above	One hand gun (Pistol, Revolver)

Security services personal (Active Reserve), From rank of Captain and above	One hand gun (Pistol, Revolver)
Security services personal (Veterans), From rank of Lt. Colonel and above	One hand gun (Pistol, Revolver)
Security services personal, A soldier in one of the Special Forces units	One hand gun (Pistol, Revolver)
Civilian security officer	One hand gun (Pistol, Revolver)
Inheritance/ Memento	Any firearm in decommissioned condition

Each of these criteria includes specific additional requirements, conditions and certifications, that one needs to fulfill but won't be discussed in detail, here.

The individual criterion of a person is tested all the time and if it changes he might lose his license. For example, if a person moves from an entitled residency to a non-entitled one, he might be required to sell his gun!

There are two major types of licenses:

Carrying – This kind of license is typical for hand guns or other weapons for self defense and for sporting weapon. The owner of a carrying license can transport his weapon to where ever he goes.

Possession – This kind of license is typical for Inheritance/ Memento weapons. The owner must keep the weapon in one place (home, office etc.) at all times and can move it only for renewing the license.

There are no restrictions on how to carry a weapon, it can be concealed or exposed. There are also few places where the law prohibits a person from carrying a gun: The Knesset (Israel's parliament), the Supreme Court, the president resident, government offices and all other courts. In all of these places, the owner is required to deposit their gun. It will be put in a locker with two keys: one for the owner and one to remain with the security personal.

Other organizations, public and private, may put additional restrictions on the owner visiting their location ranging from a demand to present a valid license up to demanding similar storage of the weapon. In the last case they must use the locker system like the official bodies.

Of course, any private person can deny access to his home or business to any person carrying a weapon.

Gun ownership in Israel

Up until ten or fifteen years ago, the number of privately own guns among license owners was approximately 400,000 and its majority were hand guns (App, 300,000). The rest were shotguns, small caliber rifles, military weapons (Assault rifles, Sub machine guns), given to settlers for self protection or held by citizens as mementos (from their military service) and weapons held by museums etc..

Illegally owned weapons, held by criminals and some Arab minorities, numbered about 150,000 and it was made up of mainly hand guns, shotguns and some military type weapons (weapons held by terrorists are not included in these figures).

In recent years, these numbers changed. The government changed many of the criteria and demanded from gun owners who no longer met them to deposit their guns at the police or sell them. For example, the Game & reserve Authority is no longer issuing hunting permits to the general public, as a result the Firearm Licensing Department revoked the licenses for shotguns and demanded that they will be either sold, deposited or will be decommissioned.

The same procedure was done regarding small caliber rifles. In order to keep them, one had to register to a shooting club, as an active shooter, decommission them or sell them.

By 2010, the numbers of legally own weapons dropped to approximately 180,000, including approximately 161,000 hand guns, 8,300 shotguns, 4,300 small caliber rifles and 6,800 air guns/pistols^[5].

At the same time, the number of illegally owned weapons increased dramatically and by some evaluations exceeds 400,000! Many of them are military types such as assault rifles (M16, AK-47, Galil etc.) and sub machine guns (Uzi, MP5 etc.). The source of these weapons is from the army or smuggling through the borders.

In the past the use of weapons was rarely heard of, now there is rarely one day without hearing of a shooting incident: drive by shooting among crime gangs, exchange of fire between rival minority families etc..

Gun ownership criteria in the USA

For the most part, gun ownership in the US is a right that must be denied by specific criteria or it remains in effect. Prohibitions to this ownership include not being of majority age (18 or 21), having renounced your US citizenship, illegal use/addiction to drugs, and criminal convictions of a felonious nature (penalties exceeding 1 year) or those specifically related to domestic violence. Certain categories of nonimmigrant aliens are also permitted to possess firearms.

Additional non-federal restrictions to firearm ownership are rare but can be imposed by certain local government entities. For example, all residents of the state of Illinois are required to obtain a Firearm Owners Identification (FOI) card in order to purchase any firearm or ammunition in the state. Also, while a law prevents the federal government from building a registry of most firearms, a number of states have instituted such requirements within their borders--these laws are often distinct from state to state. Washington State registers only handguns that are sold by licensed retailers of firearms while person-to-person sales are not restricted as such between non-prohibited individuals. Other states have no such registration programs or similar ones with greater restrictions.

A certain class of firearms regulated by 1934 National Firearms Act (NFA) must be registered by the federal government and the registration process is complex, time consuming, and requires a substantial tax. These NFA firearms are defined as long guns with short barrel or overall lengths (specified by statute), machine guns (including assault rifles and sub machine guns described above), firearm silencers, and firearms disguised as other items like flashlights and pens. As with other restrictions, individual states will have their own additional requirements that can include bans or further restrictions on these categories of firearm.

Laws & regulations in the USA

A majority of the laws and regulations of firearms in the US are focused not on ownership of firearms, but locations and conditions under which the lawful owner may carry or transport those firearms. In a majority of US states, a lawful owner of a firearm may apply for and obtain a license or permit to carry their firearm concealed from view in public provided they are not disqualified by pre-established criteria. Licenses of this type are described generally as “shall issue” in that the licensing authority of the state government in question is required to issue the license unless specific disqualifying factors are known to them (e.g.-disqualifying criminal record). Training requirements and details of when and where a license holder may carry their firearm vary by state. Most commonly, these guns can’t be carried in places that serve alcohol or restricted areas like schools and government buildings although there are exceptions and it’s likely that no two states share the same set of rules. Utah permits concealed carry in schools for example. Also, Montana permits the carry of a firearm in establishments that serve alcohol provided the firearm is openly carried and not concealed—it’s quite a thing to see a bar with patrons openly carrying firearms on their belts!

While each state is different, it’s perhaps best to examine three different examples in detail to see how they inter-compare. Arizona is one of the more firearm-friendly states in the US, Massachusetts is one of the least, and Texas is probably more typical of the overall level of restrictions seen at the state level. Here’s a basic breakdown of how those states each handle certain restrictions:

Issue	Arizona	Texas	Massachusetts
Open Carry	unrestricted	not allowed	discretionary permit
Concealed Carry	unrestricted	shall issue permit	discretionary permit
Registration	n/a	n/a	registration program
Purchase/Own	unrestricted	unrestricted	discretionary permit
Buy ammunition	unrestricted	unrestricted	discretionary permit
NFA Firearms	unrestricted	unrestricted	discretionary permit
non-NFA bans/limits	n/a	n/a	discretionary permit

Gun ownership in the US

Numerous estimates of gun ownership approximate that ~50% of US households have one or more firearms and that the total number approximates the number of citizens in the country (~315 million) but with the durability of firearms and the significant number of unregulated or untracked transfers and those taken out of circulation by numerous mechanisms it's very difficult to generate reliable figures. It's safe to say that in the aggregate they are a significant presence although the numeric disparity between urban and rural areas or specific states with diverse regulations probably tells a more interesting story. For all the reasons stated, these figures are equally difficult to obtain.

Attempts by law enforcement agencies to track relevant figures through crime statistics can't be expected to represent the greater body of firearm possession through non-criminal activity and are often plagued with their own other limitations. For example, adjacent and overlapping jurisdictions may have completely different policies regarding the tracing of firearms or recording of related statistics. Likewise, no consistent or comprehensive registration system is in place that could be used to generate such data.

Mass casualty incidents in Israel ^[6]

Most gun's related mass casualty incidents in Israel are connected to the Israeli-Palestinian conflict. The majority of these incidents were carried by Palestinian terrorists against Israeli citizens, but there were also opposite incidents. Some of the most known are described below:

- On October 28, 1984, David Ben-Shimol fired a LAW rocket, stolen from the army, at a bus full with Palestinian workers, murdering one and wounding 10 others. In his admission to the police he said he did not mean to kill anyone and if he wanted he could have done more damage with the stolen assault rifle he also had with him!
- On May 20, 1990, Ami Poper shot and killed 7 Palestinians, wounding 11 more, using a Galil assault rifle he stole from his soldier brother. He claims that it was revenge for being raped by an Arab person in his childhood. He is jailed until 2030.
- On February 25, 1994, Dr. Baruch Goldstein (MD) entered the Cave of the Patriarchs (Me'arat Ha'machpela) in Hebron, armed with his army issued Galil assault rifle and his privately owned Beretta pistol, and opened fire on Palestinian worshipers who prayed at the place. 29 Palestinians were killed and 125 were wounded before some of the worshipers jumped on him and killed him. This incident is considered to be the worst mass shooting incident that ever happened in Israel!

The motive for his action remained unknown but if you take into consideration he belonged to the extreme right wing and that through his position as an emergency doctor he was exposed to all the casualties of the Palestinian terror,

in the area of Hebron, one can assume that something "snapped" in him and he lashed out.

- On August 4, 2005, Eden Nathan-Zada, a defector from the army, boarded a bus heading to the Druze town of Shfar'am. When the bus entered the town, he opened fire with his M16 assault rifle, aiming first at the driver and then at the passengers. He killed the driver and three of the passengers and wounded 12 more. He was apprehended by a local security man but the angry mob entered the bus and lynched him!

In a letter he left behind he wrote he was going to stop the evacuation of Israeli settlements from the Gaza strip.

- On August 17, 2005, only two weeks after the murder in Shfar'am, Asher Weissgun drove some Palestinian workers back home from their work at an Aluminum factory in the settlement of Shilo. When he arrived to the gate, he went out, grabbed the guard's pistol and shot his passengers, killing two and wounding one more, then he ran to the factory and shot two more workers, bringing the death toll to four. He also claimed he had done it to stop the evacuation of Israeli settlements from the Gaza strip.

Except for those incidents, which are all related to the political situation in the area, there is only ONE incident which is related to a criminal motive, so to speak:

- On September 8, 1992, Eithan Mor entered a public clinic for mental health, where he was treated. He was armed with a UZI sub-machine gun he got from his work as a security guard!
He opened fire on the workers at the clinic and killed four women, two of them were pregnant, then he went to the roof, refusing to surrender, and opened fire on the surrounding buildings. A sniper of the YAMAM, Israel's police SWAT unit, shot and killed him.

Mass casualty incidents in the US

- On January 7, 1989, Patrick Purdy shot a semi-automatic copy of an AK rifle at a school in Stockton California killing 5 and wounding 30 (mostly children) before his suicide. His motives included a mix of mental health issues and racist motives against those he felt were Asian immigrants. He also had an extensive criminal record, although his convictions all fell short of offenses that would legally prevent him from acquiring the rifle. The state of California reacted by increasing restrictions on firearms.
- On October 16, 1991, George Hennard intentionally crashed his pickup truck into a cafeteria in Killeen Texas and then used two 9mm handguns to kill 23 and wound 20 patrons at the restaurant. He killed himself after being wounded and cornered by police. The motive may have been a mixture of depression and hatred of women, although substance abuse was also a potential factor. After the shooting, and in contrast to the previous example,

the state of Texas changed the law to allow more people to carry firearms (concealed) for self defense.

- On December 7, 1993, Collin Ferguson used a 9mm handgun against passengers trapped on the Long Island (New York) commuter train killing 6 and wounded 19 before running out of ammunition and being subdued by the passengers. His motive was racist and the political fallout included the election of the widow of one of the victims to the legislature on a predominantly gun control political platform.
- On April 20, 1999, Eric Harris and Dylan Klebold, two teenage students at Columbine High School in Colorado, used multiple firearms and home made explosive devices to attack fellow students and teachers. They killed 13 and wounded 21 before they committed suicide prior to being engaged by responding police. Motives include a number of issues from a response to bullying to a desire for notoriety by exceeding the body count of the Oklahoma City bombing and are complicated by numerous other factors including psychological issues and medications, obsessions with violent computer games, and the fact that the shooters were juveniles (who obtained their firearms through intermediaries).
- On April 16, 2007, Seung-Hui Cho locked doors of an academic building on the Virginia Tech campus from the inside before using two handguns to attack students and teachers within. Prior to his suicide, he killed 32 and wounded 17 and the motive appears to have been related to the shooter's chronically poor mental state. Despite his substantial psychological history, Cho was able to acquire his firearms legally because these issues were never made part of the record checked by authorities at the time of purchase.
- The shooting in Tucson, Arizona on January 8, 2011 by Jared Loughner that took the life of 6 and wounded 13 also involved a legally acquired handgun by a chronically mentally ill attacker whose status was never elevated to a level necessary to prohibit the purchase. In this shooting, would-be victims and an armed citizen nearby subdued the shooter before he could complete his attack. Despite the popularity of many of the victims and the political nature of the outdoor event (for a Democratic party US Representative), a legislative backlash did not occur and Arizona remains one of the most "firearm friendly" states in the US.

Conclusions about Israel's Gun Policy

If one is looking at all mass casualty incidents in Israel, it is very easy to see that the motive, in vast majority of them, is hate crimes: Israelis vs. Arabs and vice versa.

It is also clear that not having a licensed weapon did not stop anyone of the perpetrators from executing their evil deeds.

So if we are looking to answer the first two questions asked above, the answer for the first one, "Does gun control really prevent mass casualty incidents?" will be simply NO. In a militarized country, such as Israel, where many people carry weapons issued by the army or by private security companies, it is very easy to get a weapon simply by stealing it!

On the second question "Are gun control limitations in Israel effective and "sensible"?", the answer is more complicated. For the first part of the question, the effectiveness of the limitations, it seems that mental health screening helps to prevent mass casualty incidents motivated by mental health problems and keeps them at a minimal number. On the other hand, it is also clear that criminals have no problem of getting firearms, many times much better than the one they could have with a license!

As far as the second part of the question, the sensibility of the limitations, it is the opinion of the first author, Lior Nedivi, they are not!

The quote "**An armed society is a polite society. Manners are good when one may have to back up his acts with his life**", attributed to Robert A. Heinlein, was proved many times during the history of Israel. In a numerous occasions in the past, armed people, soldiers and policemen, on and off duty, and of course citizens, stopped crimes and terrorist's attacks before they escalated, saving many lives while risking their own. On the other hand, in recent years, when people tried to stop criminals with their bear hands (during armed robbery of their shop for example) they often end up shot and sometimes killed.

There is no sense in preventing a law bidding citizen, who carried an assault rifle during his three years of army service and continues to carry one during reserve time (at least once a year!), from having a pistol or even a rifle. The need is even larger when we think about all the weapons criminals have: sub-machine guns and assault rifles, not to mention anti-tank rockets and grenades!

One might ask: why the Israeli government is limiting the number of legally owned guns? And the answer for is: MONEY!

There are private security companies who gain from this situation as they became the sole suppliers of so called "trained" armed guards, while in the past any security company could hire any person with a gun license and use him as an armed guard.

Of course the reasons the government is giving are different. Government officials claims that citizens are not guarding their weapons properly and they are lost and stolen, ending in the hands of criminals, and that citizens are not trained enough and might cause more harm than good. This last claim derives validity from the fact that gun owners are only required to shoot once every three to five years, depending on their type of license, when they renew!

One answer to these claims might be very simple: the government could require that guns be carried at all times on one's body or kept in a safety box/vault. Further demanding frequent qualification (3-4 a year) and requiring a certain level of competence, could satisfy the training concern.

Putting these demands in place will bring to the following results:

- Guns will be kept in more secure ways and/or will be available when needed.
- Those people who want to have guns will have to invest a lot of time and money in training so the less serious will tend to discontinue the practice.
- The skills of the remaining gun owners will increase.

Conclusions about the US's Gun Policy

While the US examples cited above are by no means comprehensive, there are a number of common themes that emerge. In many cases, the victims are helpless students and children and the locations of attacks are places or events where individuals are unlikely to be armed or prepared to react. Motives appear to be a mix of specific hatreds (ethnic, women, etc.) and mental illness related psychology. What makes the US situation unique is the diverse political landscape and related regulations on firearm possession in public. The impact of laws prior to these events is difficult to quantify but the political fallout after tends to go in opposite directions depending on the state where the shooting occurred.

Perhaps the most interesting data in the issue comes from events that don't rise to the level of mass casualty events because there was an armed citizen or police officer close by to intervene in time. A number of such incidents have been recorded but rarely reach as many people through mass media outlets due to their low body count. For example, 5 years prior to the Virginia Tech shooting, a spree shooting at the Appalachian School of Law (also in Virginia) was cut short by two students responding with their own firearms.

As to the final question posed at the beginning, "What regulations are legally permissible under the second amendment?" the answer remains to be seen in the courts within the US. The Supreme Court established, in *DC vs. Heller* (2008) that the ownership and some form of lawful carrying of firearms are both distinct individual rights. While each state, so far, seems to have a unique version of regulations that apply to this right, in time, the fundamental limits of those regulations may also be decided by the Supreme Court but for now the issue remains legally unspecified.

Summary:

While comparisons between the two nations on this topic are illuminating, ultimately the situations may be too different to draw definitive conclusions. Anecdotal analysis of the motives and mechanics of mass/spree shootings show overlapping themes and may be difficult to categorize. Two key differences emerge that may be useful in evaluating these issues.

1. As the Israeli system tends to be established by requiring permission, approaches to keeping weapons out of the hands of the mentally ill through requirements imposed by the Ministry of health, can be expected to be more productive if the details of such a screening program are sound.
2. The US system of firearm ownership as a pre-existing right that can't be denied without due process creates a higher burden on exercising restrictions based on mental health or other related factors.

Both nations have different reasons for the availability and proliferation of firearms within their borders but the outcome may be the same in the end: no amount of controls will eliminate grey and black markets from providing firearms to those outside the legitimate legal structures.

Likewise, both nations have significant numbers of lawfully armed citizens who have and will continue to use them in circumstances that may stop or limit the actions

of spree shooters. These examples, while less publicized by press and media outlets, may provide more useful data in understanding the role lawful firearms play in ending or preventing such tragedies.

References

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