

jurisprudence

After Blacksburg

The gun law that would make a real difference.

By John T. Casteen IV

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Yesterday's rampage at Virginia Tech is pure tragedy: Families and friends are grieving, the university and Blacksburg need to make themselves whole again, and we all share something of the shock and loss caused by a horrific act of violence. With few of the facts resolved, and as survivors struggle to recuperate and victims are laid to rest, it's inappropriate to frame the tragedy in political terms. Yet as early as Monday afternoon, both gun-rights and gun-control advocates sought to use the killings to their advantage. The timing makes that an obscene gesture. Still, Monday's events will move gun policy near the front of the domestic political agenda for the upcoming election cycle.

The most sweeping and controversial bill currently before Congress, however, proves only that federal lawmakers engage in gun policy to further their self-interest, not to solve problems. The bill, HR 1022, would renew and strengthen the assault-weapons ban, which Congress allowed to expire in September 2004. Like its predecessor, HR 1022 is a great political tool for both sides, but would have very little practical effect. Assault weapons may be photogenic, but they're used in only a small fraction of violent crimes. (The Virginia Tech shooter apparently used two handguns, which neither ban would cover.) Furthermore, loopholes in the assault weapons ban allowed for open and legal sale of all banned guns and paraphernalia. These bans distract us from the smarter legal steps we should be taking.

The new bill's champions argue that it's necessary to prevent gun crime, and its opponents counter that it will ban millions of legitimate sporting weapons. Both claims are as empty as they are shrill. The bill will likely have almost no measurable effect on gun violence. The major gun-control groups know as much, which is why they haven't gotten behind it. And the proposed law is written specifically to exclude the semiautomatic rifles and shotguns Americans own for hunting, target-shooting, and self-defense. Both sides assume their constituents won't look up crime statistics or the text of the bill, and so will accept the hyped-up claims of politicians rather than assessing the policy more thoroughly.

HR 1022, which stands almost no chance of passage, is a fund-raising bill, a marketing tool, designed to exploit a wedge issue for the benefit of politicians who need to raise money for the next election. It's designed to get Congress off the hook for debating laws that would show national leadership and make a real difference in restricting violent peoples' access to guns.

The law we need doesn't address a narrow class of guns, and it relies on the principles of a law we already have: the Brady Law. Brady mandates a federal background check before the sale of a gun by any seller who holds a federal firearms license. It applies to Internet gun deals, gun-shop purchases, and sales by FFL sellers at gun shows. It does not apply, however, to the estimated 40 percent of gun transfers that take place between individuals: non-FFL sellers at those same gun shows, and person-to-person sales made through personal contacts or Internet and print classified ads. That's a far larger volume of guns and gun sales than HR 1022 would affect. As our law stands now, anyone may sell a gun to anyone else; the FFL is required

only of those who do so as a commercial venture. Sellers without an FFL may not buy and sell new guns for retail, but may trade in used guns—without background checks—to their heart's content. The bill we need would address that large loophole by requiring that every transfer of ownership be preceded by a Brady background check.

Background checks aren't perfect, of course. They can't absolutely predict future behavior; the Blacksburg killer may well have passed one, for example. No gun law, however, can claim to prevent future acts of violence. The universal check would be valuable because it would restrict access by those who go to private sellers knowing they'd fail the check at a gun shop. The checks don't keep people with clean records from becoming violent. But they keep those with criminal backgrounds from evading the check system we have in place now.

Despite the advantages, however, Congress isn't talking about closing the background-check loopholes because such a step requires an uncomfortable compromise on the part of advocacy groups and politicians on both sides. Gun-control advocates know that a universal background check would represent a financial windfall for FFL dealers. Those dealers would perform the checks and so reap the benefit of higher ancillary sales of ammunition, holsters, and orange hats—the merchandise on which they collect high profit margins. Person-to-person sales would continue exactly as they do now, except that the transaction would involve a trip to the local gun shop and the Brady check's nominal fee—sort of like the paperwork involved in selling a car. For the most part, gun-control advocates have not pushed for a universal background check; the exception is the Brady Campaign, which admirably has adopted the check as part of its legislative agenda. Gun-rights groups oppose such a measure because they contend, quixotically, that it would further erode their constitutional prerogatives.

While the Blacksburg tragedy reminds us that we cannot know for certain who will or will not turn a gun to violent ends, the universal background check could guarantee that no one with a criminal record could legally buy a gun in this country. That knowledge can't assuage the pain caused by yesterday's murders, or by monstrous acts of violence committed with guns every day. But as we resume the national debate over weapons, violence, safety, and freedom, let us demand of Congress meaningful change rather than placeholders and platitudes.

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