

THE ROLE OF AMMUNITION IN A BALANCED PROGRAM OF GUN CONTROL: A CRITIQUE OF THE MOYNIHAN BULLET BILLS

Scott D. Dailard*

I. INTRODUCTION AND BACKGROUND

"Guns don't kill people—bullets do."¹

This tired old line plucked from the repertoire of comedian, Pat Paulsen, has been reborn as the guiding principle of an innovative gun control strategy proposed by New York's senior senator, Daniel Patrick Moynihan.² A series of bills introduced by Moynihan to the 103d Congress propose to stall America's urban arms race and reduce levels of violent crime by regulating the manufacture and sale of certain classes of handgun ammunition.

Moynihan's proposed legislation emerges as an unexpected stepchild of sixty-five years of federal gun control legislation. Since the birth of national firearms policy in 1934, Congress has neither adopted nor proposed any primary gun control strategy based on the regulation of ammunition. Instead, the great American gun control debate has always hinged on the dual axes of the "bad gun" and the "bad user." From one end of the political spectrum, the gun control lobby decries the proliferation of firearms in society and calls for legislation banning private ownership of an expanding list of weapons. From the opposite extreme, a powerful gun lobby steadfastly resists any proposal to restrict the availability of guns, while pinning the blame for gun-related violence on a justice system too soft on the criminal misuse of firearms.

The middle ground is occupied by a largely ineffectual federal legislation of compromise featuring mild ownership restrictions,³ milder dealer licensing requirements, and a selective weapons ban proscribing a few handgun imports and some obscure if extravagantly dangerous gangland weapons that are no more a part of the contemporary crime scene than Scarface Al Capone.⁴

* Scott Dailard is a lawyer and a journalist living in the San Francisco Bay area. Dailard is a graduate of the Boalt Hall School of Law, University of California at Berkeley and Harvard College. He is currently serving as a judicial law clerk to the Honorable Samuel Conti in the United States District Court for the Northern District of California (San Francisco).

1. Christopher Simser, *Biting the Bullet*, NAT'L REV., March 13, 1987, at 30 (quoting comedian Pat Paulsen).

2. "If we are serious about reducing crime — if we are concerned about children killing children — ammunition to these guns ought be banned. After all, guns don't kill people; bullets do." 137 CONG. REC. S10,070 (daily ed. July 16, 1991) (statement of Sen. Moynihan).

3. Gun Control Act of 1968, § 902, 18 U.S.C. § 922 (g)-(h) (1988).

4. The National Firearms Act of 1934 banned the civilian ownership of machine guns, sawed-off shotguns, silencers and other relatively rare firearms that had acquired reputations as gangster weapons in the years preceding its passage. National Firearms Act of 1934, ch. 757, 48 Stat. 1236 (1934) (as amended in scattered sections of 26 U.S.C.). Restrictions on importation of certain foreign handguns, military surplus and other firearms

Both friends and foes of gun control legislation agree that the existing laws have failed. However, each group points to this failure as a confirmation of their antithetical positions. Proponents of strict controls argue that the failure of the 1968 Act proves that stricter controls are necessary. Opponents view this same failure as proof that no controls will work.⁵

While the legislature has deadlocked, statisticians have quietly measured the human price our nation pays for the lack of an effective firearms policy. During the 1980s, gunshots killed three times as many people as did AIDS.⁶ More than 60,000 Americans lost their lives to guns during the past two years alone—more than the number of casualties sustained by American forces during the Vietnam War.⁷ Today, the lifetime risk of death from homicide for U.S. males is one in 164.⁸ For black males this risk surges to one in twenty-eight, roughly twice the hazard of combat death faced by marines serving in Vietnam.⁹ During 1991, guns accounted for more than 8,000 deaths and injuries in Los Angeles County alone—thirteen times the casualties suffered in Desert Storm.¹⁰ While guns kill many, they wound five times more than they kill, and they terrorize far more than they injure.¹¹ Firearms inflict as many as 175,000 wounds each year.¹² In 1989, guns were wielded in nearly 600,000 crimes of violence, including 7,600 rapes and over 508,000 cases of aggravated assault.¹³ According to the Justice Department, assailants armed with handguns rape thirty-three women, rob 575 people and assault another 1,116 every day of the year.¹⁴

A new and alarming feature of these statistics is the abrupt appearance of young children on the lists of both perpetrators and victims of firearm violence. The record of gunshot wound admissions at the King/Drew Medical Center in Los Angeles reflect this disturbing trend. Prior to 1980, the center had not admitted a single child under the age of ten for gun-related injuries.¹⁵ However, between 1980 and 1987, the Center admitted thirty-four children for gunshot wounds, many resulting in the loss of hands, fingers, eyes, organs and brain tissue.¹⁶ These figures reflect a dramatic surge in juvenile violent crime and weapons violations commencing in the early 1980s.¹⁷

not "particularly suitable for or readily adaptable to sporting purposes" are contained in the Gun Control Act of 1968, § 902, 18 U.S.C. § 925(d)(3) (1988).

5. Franklyn E. Zimring, *Firearms and Federal Law: The Gun Control Act of 1968*, 4 J. LEGAL STUD. 133, 134 (1975); Harold W. Glassen, *Firearms Control: A Matter of Distinction*, 8 TRIAL, Jan.-Feb. 1972, at 52, 54.

6. Paul Cotton, *Gun Associated Violence Viewed Increasingly as Public Health Challenge*, 26 JAMA 1171, 1172 (1992).

7. Erik Larson, *The Story of A Gun*, THE ATLANTIC, Jan. 1993, at 48, 49.

8. 139 CONG. REC. S612 (daily ed. Jan. 21, 1993) (statement of Sen. Moynihan).

9. *Id.*

10. Larson, *supra* note 7, at 49.

11. Although imprecise, estimates derived from 1988 hospital discharge data indicate that for every firearm fatality there were more than seven non-fatal gun-related injuries. Cotton, *supra* note 6, at 1172.

12. This is Moynihan's estimate. 139 CONG. REC., *supra* note 8, at S612. Other estimates of annual gunshot injuries are substantially smaller. Cotton for example, estimates that 70,000 people were hospitalized for serious gun-related injuries during 1988. Cotton, *supra* note 6, at 1172.

13. BUREAU OF JUST. STAT., U.S. DEP'T OF JUST., 2 SOURCEBOOK OF CRIM. JUST. STAT., CRIM. VICTIMIZATION IN THE U.S., annual table no. 298 (1991).

14. Larson, *supra* note 7, at 49.

15. *Id.* at 49-50.

16. One three-year-old, shot through the rectum, endured a colostomy. An eight-year-old girl shot through the head was institutionalized for life. *Id.*

17. U.S. DEP'T OF JUST., UNIFORM CRIME REP., CRIME IN THE U.S. 283 (1991). Just as chil-

Although these statistics should kindle outrage in a stone, they have failed to rescue the issue of firearm violence from legislative inertia. Congress has not intervened with comprehensive gun control legislation for over 25 years.¹⁸

Given this long period of congressional malaise, the abrupt appearance of firearm legislation as novel and aggressive as Senator Moynihan's bullet ban properly merits close attention. The strategy of the legislation is broadly innovative: it seeks to wrest away the great American gun debate from the repetitive dialogue of the past two decades by restating the problem in different terms. No longer an instrumental function of the bad gun or a criminological problem of the bad user, the problem of firearm violence in America is recast as a crisis of public health, an unrivaled epidemic of "bullet-death" and "bullet-injury" susceptible to an epidemiological diagnosis and a scientific cure.¹⁹ Specifically, Moynihan frames the issue in terms of an epidemiological (with firearm-related death and injury as the "epidemic" or "disease") triad: violent behavior is the "environment" in which the gun-related injury occurs; the shooting victim is the "host", and bullets are the "pathogens" or "agents of injury" which must be eliminated through the "cure" of stringent legal controls.²⁰

Moynihan's reasoning begins with a repudiation of the dominant regulatory strategies of the past. In his eyes, user-based restrictions must fail because the problem of violent behavior is entrenched in deeper sociological problems that are not amenable to legislative solutions: "The environment in which these deaths and injuries occur is complex. Many factors likely contribute to the rise in bullet-related injury We simply cannot do much to change the environment in which gun-related injury occurs, nor do we know how."²¹

Weapon-based strategies which seek to remove certain problematic firearms from the marketplace are similarly futile given the vast inventory of arms already currently deployed in the society at large: "There are some 200 million firearms in circulation. The pistol is a simple machine, and with minimal care it remains working for centuries."²² In other words, Moynihan contends that society is so saturated with guns that firearm violence would continue unabated even if the government effectively shut down the manufacture and sale of all new arms tomorrow.

According to the Senator, the solution to this gun control quandary is to regulate

dren were being shot during the 1980's so too were they doing much of the shooting. Department of Justice analysts recorded an unprecedented surge in juvenile violent crime and weapons violations commencing in the early 1980's. *Id.* In 1990, there were 151 arrests per 100,000 juveniles for weapons offenses—the highest rate ever recorded. *Id.* One recent study of 11,000 teens from ten states found that forty-one percent of the boys and twenty-one percent of the girls said they could obtain a handgun whenever they wished. Larson, *supra* note 7, at 50.

18. Federal legislation in the area of firearms controls has been limited to relatively minor amendments of the Gun Control Act of 1968. Title II, section 13 of the Omnibus Crime Control Act of 1970 amended § 924(c) of title 18 to impose a mandatory sentence of one to ten years for federal crimes in which a firearm is used or carried unlawfully. The Law Enforcement Officers' Protection Act amended the 1968 Act to prohibit the manufacture, importation and sale of armor-piercing ammunition. Pub. L. No. 99-408, 100 Stat. 920 (1986), *infra* note 34.

19. 139 CONG. REC., *supra* note 8, at S612-13.

20. *Id.* at S612-13. According to Moynihan, this framework finds its inspiration in the Motor Vehicle Safety Act, in which the Senator was heavily involved and which was similarly steeped in an epidemiological idiom. *Id.* at S613.

21. 138 CONG. REC. S18,162-63 (daily ed. Oct. 8, 1992) (statement of Sen. Moynihan).

22. 139 CONG. REC., *supra* note 8, at S613.

the bullets that actually result in death and injury. Unlike the intractable problem of violent behavior, commerce in ammunition is readily amenable to legislative controls—bullets can be banned or taxed into obsolescence. Moreover, unlike the nation's inexhaustible supply of guns, there is, at any given time, only a four-year supply of bullets maintained in factory, commercial or household inventories.²³ Although the impact of the ammunition ban will be cumulative, the regulatory end in view is a nation of empty guns by sometime early in the next century.

This article evaluates the efficacy of ammunition controls as a new regulatory strategy. Part II focuses on the specific, selective ammunition restrictions employed in the Moynihan bills. This section examines the regulatory logic of the proposed legislation, focusing on Moynihan's theory of guns as all-too-durable goods and the principles of selection informing Moynihan's choice of regulated calibers.

First, I argue that the Senator's theory of diminishing ammunition supplies is flawed to the extent that it relies on the assumption that the regulated classes of ammunition will continue to be expended at current, pre-regulation rates. The success of the strategy depends, in part, on whether gun owners affected by the proposed legislation will stockpile or conserve sufficient ammunition to ensure that their handguns will be loaded and available for self-defense or other purposes. I suggest that while Moynihan's legislation is likely to drive certain weapons off the firing range, it is unlikely to significantly reduce the number of loaded, functioning handguns maintained in household inventories and available for impetuous acts of violence.

Second, I observe that even if one assumes Moynihan's bullet bans will gradually deplete inventories of affected firearms, the effectiveness of the legislation is likely to be undermined by changing fads in weapons selection. The cumulative effect of these selective restrictions may eventually disable the firearms that Moynihan identifies as problematic, but there is no guarantee that criminals will not first adopt other, equally deadly weapons to accomplish their purposes.

Third, I explore the closely related problems associated with the Senator's *ad hoc* approach to identifying regulatory targets. Moynihan's choice of regulated calibers relies on the current street reputations of a few popular handguns rather than concrete principles of ballistic performance or mechanical design. This regulatory approach may prove self-defeating to the extent that it will not reduce the availability of other, equally problematic weapons and cartridges.

Part III looks past the specific features of the Moynihan legislation to some of the broader implications of ammunition controls and suggests how such controls might be more profitably exploited in future, more comprehensive firearms legislation. Here, I argue that selective ammunition restrictions are unlikely to succeed where they are adopted as independent, exclusive regulatory alternatives to traditional gun control strategies. Instead, ammunition controls and weapon restrictions must compete on equal footing, as dual components of a balanced regulatory scheme that strikes at both the existing inventory weapons and the market for new guns. Part III concludes with several specific proposals, based on mutually reinforcing weapon and ammunition restrictions, that may dramatically reduce the problem of firearm violence in our communities.

23. 138 CONG. REC., *supra* note 21, at S18,162-63.

II. THE MOYNIHAN LEGISLATION

The substance and structure of the legislation is quite simple. Moynihan proposes that Congress elect between an outright ban and prohibitive taxes as a means of regulating a narrow range of centerfire handgun ammunition. These legislative alternatives are embodied in three separate bills.

Senate Bill 178²⁴ (S. 178), entitled the *Violent Crime Prevention Act* (of 1993), proposes to amend chapter 44 of title 18, United States Code, to "prohibit the manufacture, transfer, or importation of .25 caliber, .32 caliber and 9 millimeter ammunition."²⁵ This bill operates as a direct ban on all commerce in the proscribed calibers of ammunition, with special law enforcement exemptions for federal, state and local agencies.²⁶

Alternatively, Senate Bill 179²⁷ (S. 179), the *Real Cost of Ammunition Act*, would achieve substantially the same results by imposing a 1000-percent sales tax on the regulated calibers.²⁸ S. 179 similarly exempts transactions in ammunition entered into by law enforcement agencies.²⁹ Although the issues raised by these alternative regulatory pathways differ to some degree—for example, taxation may entail greater risks of black market activity than an outright ban—these differences are marginal to the concerns of this article. S. 178 and S. 179 are identical in their regulatory logic and objectives. For purposes of this discussion they will be treated interchangeably.

Senate Bill 1616³⁰ (S. 1616), the *Real Cost of Handgun Ammunition Act*, introduced in November 1993, differs in several important respects from its predecessors, S. 178 and S. 179. The bill contains three components. First, it would raise the federal excise tax on all centerfire handgun ammunition³¹ from eleven to fifty percent.³² Second, it would impose a \$10,000 "occupational tax" on importers and manufacturers of handgun ammunition,³³ and third, it would impose a 10,000-percent excise tax on two peculiarly lethal handgun rounds—Winchester's hollow point 9mm "Black Talon" cartridge and the .50 caliber "Desert Eagle."³⁴

Senate Bill 1616 was conceived of, at least in part, as a revenue-making measure and was drafted for purposes of inclusion in the Clinton Health Care Plan,³⁵ which arrived in Senator Moynihan's Finance Committee in the Fall of 1993. The stated purpose of the general excise tax is to bring the cost of ammunition in line with the

24. S. 178, 103d Cong., 1st Sess. (1993).

25. *Id.*

26. *Id.*

27. S. 179, 103d Cong., 1st Sess. (1993).

28. *Id.*

29. *Id.*

30. S. 1616, 103d Cong., 1st Sess. (1993).

31. Handgun ammunition is defined as any centerfire ammunition that has a cartridge case of less than 1.3 inches in length, which is to say, it is not rifle ammunition. According to the Bureau of Alcohol, Tobacco, and Firearms, this definition precisely targets all handgun ammunition except .22 caliber rimfire, which is the primary round used for target shooting and in sporting competitions. Rifle ammunition would not be affected. 139 CONG. REC. S14,958 (daily ed. Nov. 3, 1993) (statement of Sen. Moynihan).

32. *Id.*

33. *Id.* at S14,959.

34. Mass mail letter from Senator Moynihan (undated but received March 1994) (on file with the *Journal of Legislation*).

35. 139 CONG. REC., *supra* note 31.

costs it imposes on society.³⁶ Moynihan contemplates that the money generated by the new excise and occupational taxes could be incorporated into the revenue stream for a comprehensive federal health care program.

This article will focus only on the regulatory, as opposed to the revenue-making, aspects of S. 1616. To the extent that the excise tax provisions of S. 1616 simply represent one of many alternative proposals for financing the Clinton Health Care Plan, they are remote to the interests of this inquiry. By comparison, the prohibitive 10,000-percent taxation of the Black Talon and .50 caliber ammunition is purely regulatory in nature. Like S. 179, this measure frankly proposes to tax the covered ammunition out of existence. The regulatory component of S. 1616 will be evaluated in conjunction with selective ammunition bans contemplated by S. 178 and S. 179.

A. Guns as All-Too-Durable Goods and Moynihan's Theory of Diminishing Supply

Stated in summary, the Moynihan bullet bills strive to reduce levels of firearm-inflicted death and injury by gradually rendering obsolete the weapons most frequently used in the commission of violent crimes. The strength of his proposal relies heavily on the insight that while handguns are all-too-durable goods capable of repeated use over many decades, they must rely on a depletable inventory of cartridges which must be discarded after each shot. Moynihan estimates that there are some 7.5 billion rounds of ammunition in circulation.³⁷ Consumed at a current rate of about two billion cartridges per year, this inventory amounts to roughly a four-year supply of bullets.³⁸ Therefore, in the Senator's view, it must follow that if you freeze the supply of ammunition, you will effectively put the guns that rely on such ammunition out of commission over the course of three to five years.

Moynihan's theory is only as sound as its central assumption that people will continue to expend the restricted ammunition at current, pre-regulation rates. Modern pistol cartridges, which are simple amalgams of lead, brass, sulfur, and steel, are durable items. The shelf-life of these cartridges is scarcely shorter than that of the weapons that concerned the Senator in the first place. Unless discharged or carelessly exposed to rust and oxidation, these cartridges, like the handguns that fire them, will remain functional for many decades.

Although any estimation of future use is necessarily speculative, simple market principles dictate that consumption of the regulated calibers will decline as soon as the market for the regulated ammunition is closed. Gun owners will surely realize, as the Senator does, that their weapons are only useful so long as they are loaded. Currently, only a small fraction of the cartridges expended each year are used for violent purposes. The balance is released in the field and firing range for purposes of hunting, competition, casual target shooting, and firearms training. While these recreational uses of the regulated calibers are likely to decline, it is unclear that there will be significantly fewer loaded weapons on hand for impetuous acts of violence.

The bullet ban *would* tend to frustrate the purposes of the first-time gun buyer who enters the market with criminal intentions, but only to the extent that his choices

36. Letter from Senator Moynihan, *supra* note 34.

37. 139 CONG. REC., *supra* note 8, at S613.

38. *Id.*

are limited to weapons chambered in the regulated calibers. Moreover, the thrust of this legislation goes to handgun ownership, not handgun availability. Moynihan's stated purpose is to disable the weapons he considers to be the most threatening among the 67 million handguns *already* in circulation. The Senator concedes that the effects of the legislation would be cumulative, but it is unclear just how long it will be necessary to wait. More importantly, it is possible that the purposes of a slowly cumulating weapons ban may be overtaken by the natural flux of fad and fashion in weapons selection.³⁹ Significantly, none of the calibers strongly associated with violent crime today were identified as especially problematic in 1973. What calibers and weapons will be favored by criminals in the year 2010?

B. Principles of Selection

Perhaps the most striking and problematic feature of the Moynihan bills is their limited scope. This legislation constitutes a selective rather than a comprehensive regulation of firearm ammunition. These bills seek to regulate only five of twenty-five popular centerfire handgun cartridges currently available in today's market.⁴⁰ Why should Congress suppress the manufacture and sale of these particular calibers while leaving commerce in all other ammunition unmolested? Moynihan's reasons are three.

First, he contends that at least three of these rounds—the .25, .32 and 9mm cartridges—are disproportionately responsible for bullet-related death and injury.⁴¹ In support of this proposition, he observes that while these "three rounds compose only thirteen percent of licensed guns in New York City . . . they are involved in one-third of all homicides,"⁴² and nearly a quarter of all police shootings.⁴³

Second, he suggests that .25 and .32 caliber cartridges are principally used as fodder for "Saturday night specials" — cheap, easily concealed handguns that are the favorite choice of street criminals.⁴⁴ Nine millimeter rounds are similarly reviled as the ammunition used in assault weapons and in the semi-automatic handguns favored by drug dealers.⁴⁵

Third, Moynihan contends that these cartridges have no sporting or hunting application but are designed exclusively for violence.⁴⁶

39. Franklyn E. Zimring, *The Problem of Assault Firearms*, 35 CRIME & DELINQUENCY 538, 543 (1989) [hereinafter Zimring, *Assault Firearms*] (recognizing that changing fads in weapons selection is a significant element in the problem of violent crime in America).

40. FRANK C. BARNES, CARTRIDGES OF THE WORLD, 255 (Ken Warner ed., 6th ed. 1993).

41. 139 CONG. REC., *supra* note 8, at S613.

42. 138 CONG. REC., *supra* note 21, at S18,162-63.

43. 137 CONG. REC. S690 (daily ed. Jan. 14, 1991) (statement of Sen. Moynihan).

44. 135 CONG. REC. E1003 (daily ed. Mar. 23, 1989) (statement of Rep. Weiss).

45. 137. CONG. REC. S10,070 (daily ed. July 16, 1991) (statement of Sen. Moynihan) (1993).

46. 138 CONG. REC., *supra* note 21, at S18,162-63. While these three factors appear to account for Moynihan's principles of inclusion, the Senator is much less clear about what principles of exclusion, if any, he applied to his selection of regulated calibers. For example, the .22 rimfire and .38 special are probably the two most popular handgun rounds in the United States, yet they are conspicuously absent from the Senator's list of proscribed calibers. The .22 is scarcely less powerful than the .25; yet it is cheaper to buy, easier to fire accurately and more often employed in inexpensive, readily-concealable pocket pistols than any of the regulated calibers. In 1981, .22 caliber bullets fired from John Hinckley's auto-loading pocket pistol wounded President Reagan, permanently disabled his press secretary, James Brady, and injured two secret service agents. According to an aide in Moynihan's office the .22 rimfire was responsible for one in four shoot-

The problems Moynihan identifies can be characterized as either functional or sociological, depending on whether they are identified with a specific feature of the ammunition itself or, rather, associated with the people who use it. Functional complaints can be further divided into (1) problems inherent in the design or ballistic performance of the cartridges themselves, and (2) problems stemming from the design or mechanical features of the weapons in which the cartridges are used.

Although these categories will sometimes overlap, the distinctions are useful for measuring the regulatory efficiency or "fit" between the means and ends of the proposed legislative scheme. For example, the regulatory fit of a selective bullet ban is at its tightest when it turns on some unique functional characteristic of the proscribed cartridge that distinguishes it from other ammunition and justifies special legal controls. The armor-piercing "cop-killer bullet" of recent infamy—a hardened lead slug encased in a thick jacket of steel, brass, or hard tungsten alloys—serves as such an example.⁴⁷ By comparison, a selective ammunition ban based on some mechanical feature of the component weapon may be less efficient, as its purpose will be undermined to the extent that other unregulated weapons share the same offensive feature. Similarly, "sociological" ammunition controls which target certain cartridges and weapons because they are favored by criminal users may only be effective to the extent that such users cannot find other, equally threatening means of accomplishing their ends.

1. Functional Complaints

a. Ballistic Characteristics

All bullets are lethal, but some bullets are deadlier than others. Like a knife, a bullet kills by inflicting penetration trauma.⁴⁸ Apart from the site of injury, a bullet's deadliness is largely dependent upon the size and depth of the resulting wound tract. A bullet's lethality is also related to its force impact. High-velocity, high-energy bullets set up shock waves and often cause cavitation effects, resulting in unpredictable damage at sites far from the wound tract.⁴⁹ Serious wounds still occur with low-velocity, low-energy rounds, "but the damage is localized to the tissues adjacent to the wound tract, and the full extent of the injury can usually be determined at the time of sur-

ings in New York City during 1989. Why was this round excluded? Probably because of its wide range of sporting applications and long-gun interchangeability. The omission of the .38 special is more difficult to explain. Potent, compact, and widely used, the .38 would seem to be a good candidate for restrictions aimed at reducing the existing inventory of functioning handguns. Perhaps the .38 was spared because of its historically strong law enforcement constituency. However, if popularity among law enforcement officers should save a cartridge from regulation, Senator Moynihan should reconsider the 9mm cartridge which has recently become the caliber of choice among major metropolitan police departments. See note 66, *infra*, and accompanying text.

47. 137 CONG. REC., *supra* note 43, at S689. The Law Enforcement Officers Protection Act, banning the importation and sale of armor-piercing ammunition, was signed into law by President Reagan in the summer of 1986. 139 CONG. REC. S549 (daily ed. Jan. 21, 1993) (statement of Sen. Moynihan). Narrowly focused and relatively uncontroversial, the cop-killer bullet act enjoyed broad, bipartisan support in the 99th Congress and passed with the tacit approval of the National Rifle Association. *Id.* It comes as no surprise that Senator Moynihan and his House sponsors are marketing each of the current bullet bans as sequels to this popular legislation.

48. Council on Scientific Affairs, American Medical Association, *Assault Weapons as a Public Health Hazard in the United States*, 267 JAMA 3067, 3068-70 (1992).

49. *Id.*

gery.”⁵⁰

The ballistic characteristics of the various cartridges proscribed under the Moynihan bills fail to fully account for their special selection as regulatory targets. Clearly, two of the rounds—the Black Talon and the .50 caliber Desert Eagle—have uniquely dangerous functional characteristics that distinguish them from most other types of ammunition and invite special controls. However, the ballistic character of the other regulated cartridges proves more difficult to separate from broad categories of unregulated ammunition that would be freely available after the Moynihan ban went into effect.

The Black Talon bullet has a special “barbed” configuration designed to expand the size of wound tracts and maximize tissue trauma. When the Talon is fired into the body, tiny metal wings or barbs peel away from a lead core, expanding the diameter of the wound tract and exposing sharp edges that tear through soft-tissues and organs. One gun magazine described the effect of the Black Talon round as follows:

[The bullet expands] to expose razor-sharp reinforced jacket petals. These cut tissue in the wake of the penetrating core. Toward the end of the bullet travel, the Talon bullet typically turns sideways From this point on, it penetrates soft tissue like a throwing star—very nasty; very effective; a real improvement in handgun ammo.⁵¹

The .50 caliber Desert Eagle has similarly destructive characteristics that distinguish it from other handgun cartridges. It is an enormously powerful, high-velocity, armor-piercing round manufactured for use in tank-mounted machine guns that has been adapted for use in a few foreign made handguns.⁵²

Like the armor-piercing cop-killer bullet, the Black Talon and the .50 caliber Desert Eagle cartridges are best understood as special cases; their ballistic character poses unique dangers that are effectively addressed by the selective ban contemplated under S. 1616. However, like the cop-killer bullet act, Moynihan’s Black Talon and .50 caliber prohibitions follow along in the tradition of the earlier machine-gun and Saturday-night-special legislation measures that solved comparatively small problems at a small price without driving to the heart of the larger problem of firearm violence in America.

The unique functional attributes that justify special controls in the case of the Talon and Desert Eagle cartridges are wholly lacking in the other calibers subject to regulation under the Moynihan bills. Purely in terms of their ballistic specifications, the calibers regulated under S. 178 and S. 179 are demonstrably less dangerous, and less “lethal,” than most other calibers in the spectrum of modern handgun ammunition. Compared to virtually every other centerfire pistol cartridge, the .25 is a pip-squeak round. The energy it delivers at any range is quite low,⁵³ and its slender, jacketed slug inevitably results in a very narrow wound tract. The .25 is considered inadequate for hunting anything larger than a squirrel or a rat, and it is generally unsuitable for serious self-defense.⁵⁴ In the crudest terms, the difference between getting hit squarely

50. *Id.*

51. 139 CONG. REC. S14,958-59 (daily ed. Nov. 3, 1993) (Sen. Moynihan reading from HANDGUNS FOR SPORT & DEFENSE magazine).

52. *Id.*

53. BARNES, *supra* note 40, at 220.

54. *Id.*

with a .25 and, say, a .44 magnum is roughly analogous to the difference between falling off a ladder and falling off a bridge—a rather short ladder, a very tall bridge. Measured in foot-pounds, the striking power of the .44 caliber cartridge is twenty times greater than that of the diminutive .25.⁵⁵

The .32 caliber round is somewhat more formidable than the tiny .25. However, it is about the minimum size that can be seriously considered for self-defense, and its ballistic stature is dwarfed by several popular handgun cartridges that the Moynihan legislation would leave untouched. For example, a factory-loaded .32 caliber cartridge produces 145 foot-pounds of muzzle energy, compared to 450 foot-pounds for the .45 ACP and 935 foot-pounds for the .357 magnum.⁵⁶ The .32 has been uniformly rejected for police and military use in the United States. However, it has a stronger law enforcement constituency in Europe, where it also serves as an alternate (but unofficial) caliber for military sidearms.⁵⁷

The 9mm cartridge is substantially more powerful than either the .25 or the .32. Historically, it has proven to be the world's most popular military handgun cartridge; however, it is currently considered by law enforcement and military analysts to be the lightest of several calibers generally acceptable for combat or anti-personnel purposes. Depending on which bullet-weight is selected, the 9mm cartridge will typically generate between 332 and 408 foot-pounds of muzzle energy—a rating only good enough to reach the middle of the ballistic range for handgun rounds.⁵⁸

The search for a coherent regulatory principle among these numbers avails nothing. The ballistic performance of these three regulated rounds simply does not justify their selection for special legal controls.⁵⁹

b. Weapon Specifications

While there is nothing uniquely problematic about the potentially regulated ammunition, the weapons chambered in these calibers *do* present certain troublesome features. The diminutive size and relatively low power of the .25 and the .32 make these rounds unusually suitable for small, semi-automatic pocket pistols. Virtually all of the handguns chambered in these calibers tend to be very concealable and feature relatively high magazine capacities. Most are of high quality although several are of cheap manufacture.⁶⁰ Therefore, although there is nothing especially menacing about the cartridges themselves, it could be fairly said that the characteristics that qualify handguns for their unique role in homicide and violent crime are especially pronounced

55. Assuming standard factory loads, the .25 auto delivers 71 foot-pounds of muzzle energy. The .44 magnum delivers 1496 foot-pounds. *Id.* at 354.

56. *Id.* at 225, 354.

57. *Id.* at 225.

58. *Id.* at 233.

59. Of course nothing in this section is meant to minimize the danger of these or any handgun cartridges. Like all bullets, these rounds can and do kill. The significance of these finer distinctions among muzzle energies, bullet dimensions and all the other yardsticks used to measure performance in the ballistics lab is quickly lost when any gun is fired at a human being. Surely, such distinctions would be lost on Presidents Lincoln and McKinley, both of whom lost their lives to assassins' .32s.

60. GUN DIGEST 273-300 (Ken Warner ed., 47th ed. 1993). There are currently 25 models of small (measuring 7 inches or less in total length), auto-loading .25 or .32 caliber handguns available on the new gun market. *Id.* Prices range from \$54.95 for a QFI model SA25 Pistol, *id.* at 290, to \$1000 for a German Walther PP Auto, *id.* at 299. Eight of these weapons retail for under \$100. *Id.* at 273-300.

in the case of most handguns chambered in .25s and .32s.

However, many other weapons present the same problematic features, and the logic of the Moynihan legislation fails to account for this similarity. On the current market for new firearms, one can choose among at least thirty-seven different models of auto-loading pocket pistols measuring six inches or less in total length and featuring magazine capacities of six rounds or more.⁶¹ Seventeen of these weapons are chambered in either the .25 or .32 caliber; thirteen are chambered in .22 rimfire calibers; and seven are chambered in the .380 ACP.⁶² Nine of the seventeen models chambered in the .25 and .32 calibers are also manufactured in at least one other unregulated caliber.⁶³ In all, the availability of twenty-one models of highly-concealable automatic handguns which are functionally and often literally identical to those chambered in the regulated calibers would be wholly unaffected by this legislation.⁶⁴ Moynihan's special regulatory focus on the .25 and .32 caliber weapons seems misplaced to the extent that his legislation will not disturb commerce in these equally problematic handguns.

The 9mm presents a different picture. Introduced nearly a century ago in Bismarck's Germany, this caliber is still sold under its original denomination, *parabellum*—"for war." Handguns chambered in this round are exclusively auto-loaders and typically feature magazine capacities of fifteen to nineteen rounds. Berretta 9mm handguns were adopted as the official officer's sidearm in all branches of the United States military in 1985, and similar weapons are carried in most of the NATO forces.⁶⁵ Nine millimeter guns have recently attracted a large and enthusiastic law enforcement constituency. These handguns have largely replaced the .38 service revolver as the sidearm of choice in most metropolitan police departments.⁶⁶

Despite their military origin and character, 9mm handguns are functionally indistinguishable from most other large-frame semi-automatic centerfire handguns. Moreover, like the majority of .25 and .32 caliber handguns, many 9mm models are simultaneously manufactured in one or more comparable calibers that would be unaffected by the Moynihan restrictions.⁶⁷

The 9mm, however, is also chambered in a rash of semi-automatic sub-machine pistols that are functionally unique. Designed primarily for close combat, these paramilitary weapons are generally quite compact; they have enormous magazine capacities and are capable of discharging a large number of rounds in a very short time frame. While many of these weapons—commonly known as "assault pistols"—are purchased for collection, self-defense, combat competitions or plinking, they cannot be fairly characterized as sporting weapons.⁶⁸ Prompted by growing concern among law enforcement agencies concerning the enormous fire-power of these weapons, President Bush issued an executive order banning the import of most foreign-made, semi-auto-

61. *Id.* at 273-300.

62. *Id.*

63. *Id.*

64. *Id.*

65. BARNES, *supra* note 40, at 233.

66. *Id.* at 215, 233, 254.

67. Of the sixty 9mm handgun models sold today, twenty are offered in identical clones chambered in rounds such as the .380 ACP, 10mm and .41 Smith and Wesson Auto. GUN DIGEST, *supra* note 60, at 277-300.

68. This judgment is consistent with the ATF's official classification of these weapons as "military-style" small arms. See 139 CONG. REC. S548 (daily ed. Jan. 21, 1993) (statement of Sen. Moynihan).

matic assault pistols on March 14, 1989.⁶⁹ Earlier this year, Senator Moynihan introduced Senate Bill 108,⁷⁰ a bill which would permanently codify this executive prohibition under 18 U.S.C. § 925(d)(3).⁷¹

Unlike most of the other weapons implicated by the Moynihan ban, virtually all of the firearms fitting the description of an assault pistol are exclusively chambered for the 9mm cartridge. The regulatory logic of an ammunition ban premised purely on the functional characteristics of the component weapon would seem to make more sense in the case of the 9mm.⁷²

However, as a matter of mechanical design, assault pistols are not intrinsically bound to the 9mm cartridge. Other centerfire handgun rounds would function equally well in such weapons. The 10mm Auto and the .40 Smith & Wesson Auto are Johnny-come-lately cartridges steadily gaining popularity on the auto-loading handgun market. Both rounds are physically similar but ballistically superior to the 9mm cartridge, and both have proven to be compatible with a wide range of handgun models formerly chambered only in 9mm. There is every reason to expect that these increasingly popular rounds will be embraced as an alternative to the 9mm by manufacturers of assault pistols as well. Additionally, the .45 ACP and .30 caliber carbine—yesteryear's leading military cartridges—are also obvious conversion candidates.

2. Sociological Complaints

Neither the functional attributes of the regulated calibers nor the characteristics of the weapons in which they are used appear to account for the principles of selection informing this legislative scheme. Perhaps the key is hidden within the Senator's sociological assumptions.

Moynihan's regulatory themes suggest nothing so strongly as the image of a criminal user class. The .25 and the .32 are the calibers disproportionately employed by street criminals⁷³ and cop killers.⁷⁴ The 9mm is favored by violent street gangs and drug dealers.⁷⁵ However, Moynihan's evidence is somewhat thin: one in ten handguns recovered from New York City crime scenes during 1989 were 9mm.⁷⁶ During the same year, .25's and .32's were involved in over one-quarter of New York City's police shootings.⁷⁷

While these numbers give us some idea of weapon selection patterns in New York City, the national picture is more difficult to discern. This difficulty is largely due to the lack of any systematic federal record keeping on the types of firearms and calibers involved in violent crimes. Currently, the most reliable record on the criminal use of weapons by type is derived from a database of trace requests submitted to the Bureau of Alcohol, Tobacco, and Firearms (BATF) by law enforcement agencies seek-

69. *Id.*

70. S. 108, 103d Cong., 1st Sess. (1993).

71. *Id.*

72. Each of the five weapons identified by Moynihan as assault pistols for purposes of the import restrictions contained in S. 108 are chambered in the 9mm.

73. 137 CONG. REC. S10,070 (daily ed. July 16, 1991) (statement of Sen. Moynihan).

74. See 137 CONG. REC., *supra* note 43, at S690.

75. *Id.*

76. Sam Roberts, *Controlling Guns: One Idea Starts With The Bullets*, N.Y. TIMES, Dec. 6, 1990 at B1.

77. 138 CONG. REC., *supra* note 21, at S18,162-3.

ing to identify stolen guns or guns known to be associated with specific crimes.

Unfortunately, police departments across the country tend to vary in the frequency with which they request traces, and in the crime characteristics and weapon attributes that prompt such requests.⁷⁸ As a result, the sample of firearms for which traces are requested is not likely to be representative of all firearms used in crimes. Despite these limitations, the BATF data provides a crude approximation of the frequency with which criminals choose general types of weapons. According to this information, sixty-two percent of all traces requests submitted between January 1988 and March 1989 involved handguns, of which twenty-nine percent were auto-loaders and thirty-three percent revolvers.⁷⁹ Assault weapons, both foreign and domestic, were associated with roughly ten percent of all traces and only 8.4 percent of gun traces for homicides during this same period.⁸⁰

Curiously, the single firearm most frequently traced to violent crimes committed during the last two years would not be affected by this legislation. The weapon in question is not chambered in any of the regulated calibers; it is neither particularly cheap, nor particularly concealable. It is not even an auto-loader. The culprit? The Smith & Wesson revolver.⁸¹

Even assuming that Moynihan's ammunition ban correctly targets firearms disproportionately associated with crime, the purposes of this legislation will only be realized to the extent that the criminal users cannot easily adopt equally dangerous unregulated weapons. In other words, if the real difference between the handguns singled out for special restrictions and other semi-automatic handguns is the people who are using them, what is to stop them from switching to other semi-automatic weapons?

As the foregoing analysis demonstrates, there is nothing especially distinctive about either the regulated calibers or, by and large, the weapons in which they are chambered. Surely, some cheap and readily concealable pocket pistols would eventually be disabled by the selective restrictions these bills contemplate. However, most of these weapons would be unaffected in the first place, and, more importantly, nothing in this legislation would restrict the continuing availability of cheap, easily concealable handguns.

Similarly, these bills could reasonably be expected to slowly reduce the numbers of functioning 9mm handguns in circulation. However the vast majority of auto-loading handguns would be wholly unaffected by this ban, and virtually identical weapons chambered for even more powerful cartridges would continue to be freely available. Given these severe limitations in scope and effect, it is difficult to see how this legislation would present anything more than a mild inconvenience for anyone intent on obtaining a handgun for violent or criminal purposes.

C. Selective Ammunition Controls and "The New Gun Hypothesis"

The legislation's slow and uncertain cumulative effect, combined with the continuing availability of substantially similar unregulated firearms, presents significant problems which become all the more acute in light of studies suggesting that most firearm

78. Cotton, *supra* note 6, at 1174.

79. Council on Scientific Affairs, *supra* note 48, at 3068.

80. *Id.*

81. Larson, *supra* note 7, at 50.

violence is committed with new or nearly new weapons. Records of firearms confiscated in New York City indicate that fifty-eight percent of all handguns used in urban crime are purchased within three years of their use in a criminal offense.⁸² Confiscation of older weapons sharply declined in proportion to each successive year in circulation.⁸³

Other data suggest that the supply of new handguns correlates more closely to trends in firearm violence than levels of aggregate handgun ownership.⁸⁴ Both studies strongly indicate that newer guns are more "at risk" than older weapons, and that regulations aimed at reducing the supply of new handguns will have a greater impact on gun violence than efforts to reduce general levels of ownership. The Moynihan bills explicitly contemplate restrictions on handgun ownership rather than handgun availability, and they exclusively target older weapons in the existing inventory of handguns. Such a regulatory strategy is not likely to succeed under the "new guns thesis."

The Senator concedes that his legislation will not eliminate "handgun killings" and street crimes, but simply contends that "it just might reduce them."⁸⁵ The magnitude of this reduction proves difficult to estimate. In his introductory statements to these bills, Moynihan speculates that "[a] thirty-percent reduction in bullet-related deaths, for instance, would save over 10,000 lives each year and prevent up to 50,000 wounds."⁸⁶ Unfortunately, nothing suggests that this legislation would result in such a reduction.

Elsewhere, the Senator contends that even a single life saved from violent crime is worth the legislative effort.⁸⁷ This argument is not without moral force. However, one must recognize that Congress might pass any amount of arbitrary and ill-advised legislation each year that would save at least some lives. For example, lung cancer rivals firearm violence as a leading cause of death in America, and tobacco smoke is the principal cause of lung cancer. A selective ban of the most popular brands of cigarettes—say, Marlboros and Camels—might rescue some lives from the disease, but such an oblique and underinclusive measure could hardly be considered good legislation. Most smokers will simply switch to other brands. Congress might similarly tackle the problem of alcoholism by banning cheap red wines and malt-liquors, or address highway speeding by banning the Chevrolet Camaro.

However crude and imperfect, these analogies demonstrate with cigarettes and cars the regulatory dangers of indirection and underinclusiveness that are equally applicable in the case of cartridges and firearms. The Moynihan bullet ban is indirect insofar as it seeks to regulate problems that are not inherent in the ammunition itself, but are rooted in the mechanical characteristics of the weapons in which they are used, and in the criminal behavior of the user class that selects them. In this sense, Moynihan's regulatory emphasis on ammunition is best understood as a legislative sleight-of-hand—an attempt to do indirectly with a bullet ban what Congress has so long lacked the political will to do directly by banning ordinary handguns. Moreover, the Senator's legislation is underinclusive insofar as it would not restrict all classes of weapons that

82. Zimring, *supra* note 5, at 174.

83. *Id.* ("newer handguns are more 'at risk' [for confiscation] than older handguns")

84. *Id.* at 195-96.

85. 139 CONG. REC., *supra* note 8, at S612; 137 CONG. REC., *supra* note 45, at S10,070.

86. *Id.*

87. 137 CONG. REC., *supra* note 45, at S10,070.

possess the mechanical capabilities giving rise to their criminal cachet.

III. PROBLEMS IN THE PAST, PROPOSALS FOR THE FUTURE

Two legislative precedents in the area of gun-control law demonstrate the problems associated with Moynihan's regulatory strategy. First is the failure of President Bush's executive prohibition on imported assault weapons to restrict the availability of assault weapons generally or reduce their involvement in violent crime.⁸⁸ The second is the similar failure of the 1968 Saturday-night-special legislation to curb the criminal use of cheap, easily concealable handguns.

Both measures were unsuccessful largely because Congress interposed a selective rather than a general ban that impacted only a few models within a general class of problematic weaponry. Specifically, both restrictions failed to recognize that domestically-manufactured assault rifles and Saturday night specials were just as deadly as their foreign counterparts. Domestic manufacture of assault weapons surged after the imposition of the 1989 executive restriction, mirroring a similar spike in the domestic production of compact handguns in the wake of the 1968 legislation.⁸⁹ Why were the authors of this legislation blind to these obvious dangers? Probably because they tended to define assault weapons and Saturday night specials in an *ad hoc* way.⁹⁰

Moreover, the authors of both the 1968 and 1989 measures failed to anticipate the technical ease and facility with which gun makers, both foreign and domestic, could restore the market gaps temporarily opened by these selective restrictions. This phenomenon was first demonstrated when foreign gun manufacturers successfully skirted many of the Saturday-night-special restrictions by shipping massive quantities of cheap handgun parts to the United States for domestic reassembly and sale.⁹¹ More recently, many foreign assault weapon manufacturers have similarly circumvented the strictures of the Bush ban by reconfiguring their weapons and shipping them out under different model numbers.⁹²

The lessons of these ineffectual legislative efforts are readily applicable to the Moynihan bills insofar as they: (1) select their regulatory targets on an *ad hoc* basis, relying more on the current street reputation of a few notorious guns than concrete principles of ballistic performance or mechanical design; (2) fail to circumscribe a burgeoning inventory of functionally identical or superior weapons and cartridges; and (3) ignore the demonstrated capacity of gun manufacturers to evade selective weapon bans through rapid modification and conversion of regulated arms.

These problems point to three proposals for improving the quality of future am-

88. Council on Scientific Affairs, *supra* note 48, at 3072.

89. Kirk Johnson, *Assault Rifles: Despite Curb, No Shortage*, N.Y. TIMES, Sept. 16, 1989 at A1-10 (describing the failure of Bush's import ban to impact the availability of assault weapons).

90. See Zimring, *Assault Firearms*, *supra* note 39, at 542-43, for an incisive analysis of the *ad hoc* quality of both the 1968 Saturday-night-special legislation and more recent legislative efforts to define and regulate assault weapons. In Zimring's view, "What was wrong with cheap foreign handguns was the people who were using them. It was only after the same people switched to other weapons that the other weapons became the problem." *Id.* The same problem applies to assault rifles: "If the real difference between an AK-47 and other semi-automatic firearms is only the people who are using the AK-47 this month, what is to stop them from switching to other semi-automatic weapons?" *Id.* at 543.

91. *Id.* at 542.

92. Johnson, *supra* note 89, at A1-10; Zimring, *supra* note 5, at 168.

munition control legislation. First, the shortcomings of the Moynihan bills suggest that bullets cannot so easily be separated from firearms as a primary regulatory strategy for reducing violent crime. Instead, ammunition restrictions and gun controls must be allowed to compete on equal footing as mutually reinforcing components of a regulatory scheme that strikes at *both* the existing inventory of weapons and the market for new guns.⁹³ Implemented in isolation, neither approach is likely to succeed. If ammunition restrictions run too far ahead of gun controls, their benefits will be undermined by the continuing availability of alternative weapons. Similarly, if bullet bans fall too far behind the regulation of new weapons, the existing inventory of older guns is likely to become more dangerous than it is today.

This prediction follows from the simple insight that if the manufacture and importation of new handguns were halted by federal legislation, the primary source of handguns would become the existing civilian inventory. Market pressures would drive up the prices of these older weapons, creating incentives for both owners and thieves that would increase the risk that old handguns would be transferred to new owners with bad purposes.⁹⁴ Ammunition controls would then become the most effective means of curbing this tendency.

A second simple lesson of the Moynihan bills is that future gun control strategies should regulate on the basis of the most problematic ballistic features and functional capabilities of ammunition and firearms generally, as opposed to focusing on the calibers or brand-names of this year's most popular street weapons. This suggestion presupposes sufficient technical proficiency on the part of the legislature to draw intelligent distinctions among specific classes of weaponry and sufficient criminological data to determine whether such distinctions might be of legislative significance.

Aside from a limited Congressional inquiry into the special dangers associated with assault weapons, lawmakers have failed to engage in any systematic scrutiny of the features that make some guns and grades of ammunition deadlier than others, or more likely to be chosen for criminal misuse. Prompt congressional efforts to identify those weapons which pose an unreasonable risk of harm are clearly advisable.

However, even amidst our present ignorance, some meaningful distinctions of criminological importance can and should be drawn. Congress may decide, for example, that reducing handgun firepower is a desirable regulatory objective. To secure this end, the legislature would logically: (1) ban the manufacture and sale of all auto-loading centerfire handguns; and (2) reinforce this restriction with a ban of all of the centerfire cartridges currently utilized in the existing inventory of semi-automatic handguns. The results of such legislation would only be partial; unregulated revolvers would continue to be freely available and, as current trace request data reveals, revolvers are frequently associated with violent crime.

But compared to its auto-loading counterpart, the revolver is slow and cumber-

93. This notion of a multilateral regulatory regime would seem to contradict Moynihan's regulatory model of epidemiology and its particular emphasis on the bullet as the "agent of injury" responsible for firearm-related death and injury. However, the public health model does not necessarily implicate ammunition controls as the exclusive "cure" for firearm violence. It simply creates a set of criteria on which ammunition controls can be judged. The epidemiology of firearm violence should similarly lead to a multilateral regulatory strategy designed to address the multiplicity of its causes. See 139 CONG. REC., *supra* note 8, at S612.

94. For a further discussion of this hypothesis see Zimring, *supra* note 5, at 197.

some to load, difficult to fire rapidly with accuracy, and has an inherently low ammunition capacity. These features translate to reduced firepower and, thus, to a reduced capacity to inflict multiple wounds or wound multiple victims. Therefore, as a legislative compromise, a selective weapons ban favoring the continuing availability of the revolver appears to be quite reasonable from a criminological standpoint.

Similarly, Congress might reasonably decide to suppress the manufacture and sale of the high-velocity, high-energy handgun cartridges that tend to create the most massive wounds in shooting victims. Given the flexibility with which a cartridge of any size can be loaded, such a ban would not be conceived as a restriction on specific calibers. Instead, Congress would simply determine a maximum threshold or a benchmark of ballistic performance measured in muzzle energy that no caliber could legally exceed. If the paradox of legislating the design of "safer" bullets sounds absurd, one must realize that international law has proscribed the military use of expanding bullets for almost seventy years and still requires combat rounds to be fully-jacketed so as to limit the size of wound tracts and reduce the numbers of battlefield fatalities. The policy that limits the "lethality" of the weapons American marines must carry into combat should apply with double force to the civilian inventory of handguns.

Finally, the shortcomings of the Moynihan bills suggest nothing so clearly as the need for comprehensiveness. While functionally-sound selective controls will incrementally reduce the human toll of handgun violence, the surest solution is a categorical ban on future civilian sales of all centerfire handguns and centerfire handgun ammunition. If this proposal sounds politically naive, one should consider the political peril of supporting even the most modest gun control legislation. The cost of admission to the gun control arena is very high. Legislators with the wherewithal to effect change in this area may prefer to invest their political capital in a single comprehensive handgun initiative rather than squander it piecemeal on a series of milder measures.

The foregoing proposals for both selective and comprehensive controls are not without their costs; each would entail some significant intrusion into the prerogatives of legitimate gun owners and sportsmen. However, unless Congress is prepared to make some difficult, but principled choices concerning the appropriate role of the American handgun, firearm-violence will continue to compromise our nation's future.

