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# The Armed Society and Its Friends: A Reckoning

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# The Armed Society and Its Friends: A Reckoning

CHARLES W. COLLIER<sup>†</sup>

*This Article provides a selective introduction to some of the main social, cultural, historical, and intellectual issues surrounding gun violence and the desultory policy “debates” over gun control in America.*

*Unregulated gun violence, unrestricted gun violence, unlimited gun violence: these are the grave “new normal” (a term coined in financial economics) on the otherwise pastoral landscape of America. Sociologically speaking, this level of gun violence is no longer considered deviant, such that “special sanctions” would be imposed to prevent it.*

*Gun violence and the lack of gun control have also been described as “tragic”—a cultural tragedy—and so they are, though not in the sense usually meant. The tragedy is not that something awful and terrible happened that should never have happened, but that, as Georg Simmel puts it, “the forces threatening a culture arise from deep within that culture itself; that with its destruction an inner destiny is fulfilled, which represents the logical culmination and completion of that very structure on which the culture’s most brilliant achievements are built.”<sup>1</sup>*

*Today’s armed society owes its vitality to the brilliant achievements on the American frontier—from the resourceful and courageous conquering of a new world to the spirit of independence that was thereby nurtured. Yet, as a commentator on Alexis de Tocqueville cautions, “[f]or many reasons America was ill-equipped to deal with the hazards created by the ill-disciplined freedom democracy was bound to produce. . . . [Tocqueville] concludes with an almost admiring account of the risk-taking spirit of the Anglo-Americans as they swept West and then looked for worlds to conquer. He thought this spirit was bound to conquer all that lay before it. It was the expression of a recklessness, an abandon, that ran deep within the culture. This temper, or distemper, of American culture troubled him. If it was creative, it was also destructive.”<sup>2</sup>*

*A reckoning is long overdue.*

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1. Reem Abu-Lughod, *Gun Violence in the U.S.: A Muted Type of Terrorism?*, in *GUN VIOLENCE IN AMERICAN SOCIETY: CRIME, JUSTICE, AND PUBLIC POLICY* 162, 162 (Lisa A. Eargle & Ashraf Esmail eds., 2016).

2. ARTHUR KALEDIN, *TOCQUEVILLE AND HIS AMERICA: A DARKER HORIZON* 379 (2011).

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“I am going to be the next school shooter of 2018. My goal is at least 20 people. . . . When you see me on the news, you’ll all know who I am.”<sup>3</sup>

–Parkland, Florida school shooting suspect

“Whether arguments command assent or not depends less upon the logic that conveys them than upon the climate of opinion in which they are sustained.”<sup>4</sup>

–Carl Becker

## INTRODUCTION

Not long ago former President George W. Bush spoke at a memorial service in Dallas for five police officers who had been shot to death by a lone gunman, armed with a semi-automatic assault rifle. He seemed at a loss to explain how it happened: “[N]one of us were prepared, or could be prepared, for an ambush by hatred and malice. . . . Your loss is unfair. We cannot explain it.”<sup>5</sup>

Meanwhile, then-presidential-candidate Donald Trump was telling inner-city audiences: “I say to the African-American parent: You have a right to walk down the street of your city without having your child or yourself shot, and that’s what’s happening right now. . . . To the Hispanic parent, you have a right to walk outside without being shot.”<sup>6</sup>

Even the shell-shocked survivors of school shootings seem to accept their plight as “what’s happening right now,” as an American motif. “It’s been

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3. Frances Robles, *Taunting Words of Teenager: “You’ll All Know Who I Am. You’re All Going to Die.”* N.Y. TIMES, May 31, 2018, at A14 (recounting pre-recorded messages by school shooting suspect).

4. CARL L. BECKER, *THE HEAVENLY CITY OF THE EIGHTEENTH-CENTURY PHILOSOPHERS* 5 (2d ed. 2003). The medieval “climate of opinion—those instinctively held preconceptions in the broad sense, that *Weltanschauung* or world pattern— . . . imposed upon Dante and St. Thomas a peculiar use of the intelligence and a special type of logic.” *Id.*

5. Julissa Higgins, *Read George W. Bush’s Speech at the Dallas Shooting Memorial Service*, TIME (July 12, 2016), <http://time.com/4403510/george-w-bush-speech-dallas-shooting-memorial-service>.

6. Nick Gass, *Trump to Blacks, Hispanics: You Have a Right to Not Get Shot*, POLITICO (Aug. 24, 2016, 3:03 PM), <http://www.politico.com/story/2016/08/trump-black-hispanic-voters-shot-227369#ixzz4JZG1YtPE> (internal quotation marks omitted) (quoting President Trump).

happening everywhere. I've always kind of felt like eventually it was going to happen here, too."<sup>7</sup> And, indeed, it did.

But why would these issues even be on anyone's list of concerns in an advanced, post-industrial society like ours? How could these seemingly elementary problems not have been solved long ago?

#### I. GUN VIOLENCE AS THE NEW NORMAL

"It is invariably saddening to look through new eyes at things upon which you have expended your own powers of adjustment."<sup>8</sup> Once, on a jetliner preparing for departure from Frankfurt, Germany, I overheard a woman speaking from the row behind me. She was speaking softly to her husband. She was worried. "I'm almost afraid to go back," she was saying. Evidently, she had stayed in Europe long enough to adopt its perspective on laws, mores, and customs. She had begun to feel secure.

But now, from that new perspective, the prospect of returning to her homeland—the United States of America—took on a new and disturbing aspect. She began to dread again what she had almost been able to forget. With the prospect of returning, those old, familiar fears played out uneasily again at the margins of her mind, not because *You Can't Go Home Again*,<sup>9</sup> that is, things will have changed, so "home" would not be the same—but precisely because it *would* be the same.

The Furies did not disappoint. Garish news reports, rippling through the international press, raised the curtain on yet another lurid episode of gun violence back in America. This long-running melodrama, this epic, mind-numbing tragicomedy features new outrages each season against the background of a grand refrain:

Give me your tired, your poor,  
Your huddled masses yearning to be free,  
The wretched refuse of your teeming shore.  
Send these, the homeless, tempest-tost to me . . .<sup>10</sup>

*Bienvenue en Amérique!* But be well advised: with less than five percent of the world's population, the United States now accounts for nearly half of the world's civilian firearms, with no end in sight.<sup>11</sup> Indeed, from the vantage point

7. Charles M. Blow, Opinion, *Enough Is Enough*, N.Y. TIMES, May 21, 2018, at A23 (internal quotation marks omitted) (quoting Paige Curry, a student survivor of the Santa Fe, Texas school shooting).

8. F. SCOTT FITZGERALD, *THE GREAT GATSBY* 96 (Eleanor Lanahan, Matthew J. Bruccoli, & Samuel J. Lanahan eds., Scribner Classics 1992) (1925).

9. Cf. THOMAS WOLFE, *YOU CAN'T GO HOME AGAIN* 74–75 (Buccaneer Books, Inc. 1940) (1934).

10. Emma Lazarus, *The New Colossus*, in 1 *THE POEMS OF EMMA LAZARUS* loc. 28 (Douglas E. Levy & David Widger eds., Project Gutenberg 2009) (ebook).

11. See UNITED NATIONS OFFICE ON DRUGS & CRIME, *THE GLOBALIZATION OF CRIME—A TRANSNATIONAL ORGANIZED CRIME THREAT ASSESSMENT* 130 (2010), <https://www.unodc.org/documents/data-and-analysis/tocta/6.Firearms.pdf>; AARON KARP, *SMALL ARMS SURVEY 2007: GUNS AND THE CITY* 39, 46–

of Europe, America increasingly resembles a kind of surreal Magic Kingdom, whose hapless if not “deranged”<sup>12</sup> inhabitants routinely wander about “wear[ing] their handguns in holsters on their hips—or in shoulder holsters, Dirty Harry-style—openly displaying the fact that they are armed as they work, shop, dine and go about their day.”<sup>13</sup> Further, federal laws ban even the most basic research into gun violence and grant firearms manufacturers special legal immunity.<sup>14</sup> In America, it seems, “freedom of gun commerce is more important *per se* than freedom from gun violence.”<sup>15</sup>

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67 (2007), <http://www.smallarmssurvey.org/fileadmin/docs/A-Yearbook/2007/en/full/Small-Arms-Survey-2007-Chapter-02-EN.pdf>; Aaron Karp, *Estimating Civilian Owned Firearms*, 9 SMALL ARMS SURV. RES. NOTES 1, 2 (2011), [http://www.smallarmssurvey.org/fileadmin/docs/H-Research\\_Notes/SAS-Research-Note-9.pdf](http://www.smallarmssurvey.org/fileadmin/docs/H-Research_Notes/SAS-Research-Note-9.pdf). In distant second place on this distinguished list of gun-happy nation-states (civilian gun ownership per capita) is: Yemen. Karp, *supra*, at 1.

12. See Editorial, *Republican Panic over a Court Seat*, N.Y. TIMES, Feb. 25, 2016, at A22 (“These Republicans have stubbornly parked themselves so far to the right for so many years that it is hard to tell whether they can hear how deranged they sound.”).

13. Manny Fernandez & David Montgomery, *Texas Becomes Gun-Friendlier with New Law*, N.Y. TIMES, Jan. 1, 2016, at A1.

14. See Protection of Lawful Commerce in Arms Act, 15 U.S.C. §§ 7901–03 (2012) (sharply restricting lawsuits against gun sellers and makers and giving them industry-wide immunity from blame when their products are used in crimes). The full title of the bill is: An act “[t]o prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others.” Protection of Lawful Commerce in Arms Act, Pub. L. 109-92, 119 Stat. 2095 (2005); see also Editorial, *The Republican Fear of Facts on Guns*, N.Y. TIMES, Dec. 24, 2015, at A18 (“Imagine if the tobacco industry had been similarly favored by Congress with a ban on federal research about cigarette deaths. Imagine, too, if the auto industry had such a shield during the years when the government successfully fought unsafe cars in the cause of public health.”); Barack Obama, Opinion, *Our Shared Responsibility*, N.Y. TIMES, Jan. 8, 2016, at A23 (“Thanks to the gun lobby’s decades of efforts, Congress has blocked our consumer products safety experts from being able to require that firearms have even the most basic safety measures. They’ve made it harder for the government’s public health experts to conduct research on gun violence. They’ve guaranteed that manufacturers enjoy virtual immunity from lawsuits, which means that they can sell lethal products and rarely face consequences.”).

15. Andrew Cohen, *One Quick Answer to Sandy Hook? Repeal the 2005 Arms Act*, ATLANTIC (Dec. 18, 2012), <https://www.theatlantic.com/politics/archive/2012/12/one-quick-answer-to-sandy-hook-repeal-the-2005-arms-act/266371/>; see also U.S. CONST. amend. II (“A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”); Richard A. Posner, *In Defense of Looseness: The Supreme Court and Gun Control*, NEW REPUBLIC, Aug. 27, 2008, at 32. Posner notes:

In other words: since a militia, provided that it is well regulated, is a very good thing for a free state to have, the federal government must not be allowed to castrate it by forbidding the people of the United States to possess weapons. For then the militia would have no weapons, and an unarmed militia is an oxymoron.

Posner, *supra*, at 32. He continues:

[In *District of Columbia v. Heller*,] [t]he majority (and the dissent as well) was engaged in what is derisively referred to—the derision is richly deserved—as “law office history.” . . .

. . . The range of historical references in the majority opinion is breathtaking, but it is not evidence of disinterested historical inquiry. . . .

. . . .

The statements that the majority opinion cited had little traction before *Heller*. . . . But nothing has changed in the social environment to justify giving the Second Amendment a new life discontinuous with its old one . . . . Only the membership of the Supreme Court has changed.

Fitfully and ominously, the unseemly contours of an armed society are falling ineluctably into place.<sup>16</sup> “Guns in bars. Guns in airports. Guns in day care centers and sports arenas. Conservative state lawmakers around the country are . . . greatly expanding where owners can carry their weapons.”<sup>17</sup> These developments lend new meaning to the term *mortified*, of which “wounded pride” is now but a faint, quaint suggestion.<sup>18</sup> “Police officers in Maine and Texas have described coming across people displaying their weapons near schools and libraries, daring anyone to call the police and challenge their newly won rights.”<sup>19</sup>

“When may I shoot a student?” asks a puzzled biology professor from Idaho, only partly in jest.<sup>20</sup> Yet, today’s absurd jest has a way of becoming tomorrow’s incomprehensible reality. The biology professor “would like legal instruction in the rules of classroom engagement.”<sup>21</sup> For the concerned professor, the University of Houston Faculty Senate now offers helpful and timely advice:

You may want to

- Be careful discussing sensitive topics
- Drop certain topics from your curriculum
- Not “go there” if you sense anger
- Limit student access off hours<sup>22</sup>

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*Id.* at 35.

16. See, e.g., Simone Gubler, Opinion, *Philosophizing with Guns*, N.Y. TIMES: OPINIONATOR (Apr. 11, 2016, 3:21 AM), <https://opinionator.blogs.nytimes.com/2016/04/11/philosophizing-with-guns> (“In general, we do not feel apprehension about the presence of strong people in spaces reserved for intellectual debate (although we might in other contexts—a boxing ring, say, or a darkened alley), but we do feel apprehension about the presence of a gun. This is because the gun is not there to contribute to the debate. It exists primarily as a tool for killing and maiming. Its presence tacitly relates the threat of physical harm.”).

17. Campbell Robertson & Timothy Williams, *States Widening Gun Rights Lose Longtime Ally: Police*, N.Y. TIMES, May 4, 2016, at A10.

18. See *Mortified*, OXFORD ENG. DICTIONARY, <http://www.oed.com.ezproxy.sfpl.org/view/Entry/122483?rskey=YQaVvA&result=1&print> (last visited Mar. 16, 2019) (defining “mortified” as “deeply humiliated or embarrassed; annoyed, vexed, chagrined”). Mortified is derived from classical Latin *mort-*, *mors* meaning death. *Id.*

19. Robertson & Williams, *supra* note 17.

20. Greg Hampikian, Opinion, *When May I Shoot a Student?*, N.Y. TIMES, Feb. 28, 2014, at A23 (“[S]ince many of my students are likely to be armed, I thought it would be a good idea to even the playing field.”).

21. *Id.*

22. Rio Fernandes, *A PowerPoint Slide Advises Professors to Alter Teaching to Pacify Armed Students*, CHRON. HIGHER EDUC. (Feb. 24, 2016), <https://www.chronicle.com/article/A-PowerPoint-Slide-Advises/235418> (quoting presentation by Jonathan Snow, President of the University of Houston Faculty Senate) (“Instead of the traditional open-door policies some prefer, he has suggested they meet either by *appointment only* or in a *public place*.” (emphasis added)).

Likewise, for the uninitiated Halloween “trick-or-treater,” a misunderstood metaphor could be fatal;<sup>23</sup> this season’s costume of choice looks to be the classic bulletproof vest, in subtly understated shades of midnight black:

You have the absolute legal right in this country to answer your door with a gun . . . . In your house, if you want to do it, you have the legal right to answer everybody that comes to your door with a gun.<sup>24</sup>

Not long ago, in Colorado Springs, “[a] woman called 911 . . . when she saw a man toting a weapon in the street. She was told the gunman had that right under the open-carry law. The man began a shooting spree outside her door and randomly murdered three innocent people.”<sup>25</sup> Only a stickler for logical niceties would insist on distinguishing between “he had a right to carry the weapon” (which he then used to shoot and kill three people) and “he had a right to use the weapon” (to shoot and kill three people). What else is a weapon for, besides shooting and killing people?<sup>26</sup> (Whether they are “innocent” or not is another hotly-contested legal nicety, of little moment to the dead.)<sup>27</sup>

This reasoning is enshrined by common law in the presumption that everyone intends the natural, ordinary, and probable consequences of their voluntary actions or (as in the case of gun-control legislation) inaction.<sup>28</sup> And, in America, anyone and everyone, no matter how normal,<sup>29</sup> no matter how

23. “Freeze!” was the last thing one trick-or-treater ever heard, and unfortunately he didn’t know what it meant. *Acquittal in Doorstep Killing of Japanese Student*, N.Y. TIMES, May 24, 1993, at A1, A11 (“[Mr. Peairs] said he pointed the gun and yelled ‘freeze’ to the two teen-agers, but he said Mr. Hattori kept coming. Mr. Peairs testified that he saw Mr. Hattori holding something in one of his outstretched arms—a camera, it was later learned.”).

24. *Id.* at A1 (internal quotation marks omitted) (quoting defense attorney’s closing argument).

25. Editorial, *Two Ways of Dealing with Guns*, N.Y. TIMES, Jan. 1, 2016, at A22.

26. Lawrence Downes, Opinion, *Guns and Rights in New Hampshire*, N.Y. TIMES, Feb. 9, 2016, at A22 (“‘A gun is a tool,’ said the instructor to his class . . . . No, I thought. A gun is a weapon. A screwdriver is a tool. You can kill with it, but mostly you open paint cans.”).

27. See generally FLA. STAT. § 776.012(2) (2018) (use of force in defense of person) (“A person is justified in using or threatening to use deadly force if he or she reasonably believes that using or threatening to use such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony. A person who uses or threatens to use deadly force in accordance with this subsection *does not have a duty to retreat and has the right to stand his or her ground* if the person using or threatening to use the deadly force is not engaged in a criminal activity and is in a place where he or she has a right to be.” (emphasis added)); see also *id.* § 776.013 (helpful legal presumptions) (“A person is *presumed* to have held a reasonable fear of imminent peril of death or great bodily harm to himself or herself or another . . . if: . . . [t]he person who uses or threatens to use defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.” (emphasis added)); see also *id.* § 776.013(4) (“A person who unlawfully and by force enters or attempts to enter a person’s dwelling, residence, or occupied vehicle is *presumed* to be doing so with the intent to commit an unlawful act involving force or violence.” (emphasis added)).

28. See *Presumed Intent*, BLACK’S LAW DICTIONARY (5th ed. 1979) [hereinafter *Presumed Intent*, BLACK’S LAW DICTIONARY] (“A person is presumed to intend the natural and probable consequences of his voluntary acts.”).

29. See Caroline Porter et al., *Shooter Linked to Hate Group—Wisconsin Sikh Temple Gunman Veered from the Army to Skinhead Rock Bands*, WALL ST. J., Aug. 7, 2012, at A3 (“He was really laid back, seemed as normal as normal is these days.” (internal quotation marks omitted) (quoting a neighbor describing the shooter)).

innocuous,<sup>30</sup> no matter how anonymous,<sup>31</sup> no matter how depraved,<sup>32</sup> may assemble (with every legal blessing) a vast arsenal of firearms and ammunition they are just dying to use, for “reasons” known only to them.

The problem is how to keep guns out of the hands of these people—*not*, as former President Obama once put it, how to “keep guns out of the hands of criminals and dangerous people.”<sup>33</sup> “Criminals” and especially “dangerous” people are not the problem; ordinary, “normal” people are the problem.

Indeed, one might say that human nature itself—plus guns—is the problem. “Do you want every incident on your street to escalate to acts of gun violence?” asks Leonard Papania, the police chief in Gulfport, Mississippi.<sup>34</sup> “[W]e need to resist the conclusion that all . . . instances of senseless, wanton violence are due to mental illness,” cautions Jeffrey Lieberman, professor and chairman of the Department of Psychiatry at Columbia University.<sup>35</sup> “Behavior which looks abnormal to the psychiatrist or the judge . . . does not always look abnormal when viewed through the special lens of the sociologist.”<sup>36</sup>

In terms of gun violence, fatal accidents involving curious children and weapons may seem especially tragic, even though they are not especially

30. See OFFICE OF THE CHILD ADVOCATE, STATE OF CONN., SHOOTING AT SANDY HOOK ELEMENTARY SCHOOL: REPORT OF THE OFFICE OF THE CHILD ADVOCATE 106 (2014), <https://www.ct.gov/oca/lib/oca/sandyhook11212014.pdf> (“[T]here is no connection in the literature between [shooter Adam Lanza’s] developmental profile and an increased likelihood of violent actions. The likelihood of an individual with Autism Spectrum Disorder and/or severe problems with anxiety and obsessive compulsive tendencies committing an act of pre-meditated violence, much less one of [Adam Lanza’s] magnitude, is rare. . . . In [Adam Lanza’s] case . . . Autism Spectrum Disorder or other psychiatric problems neither caused nor led to his murderous acts.” (emphasis omitted)); see also Benedict Carey & Anemona Hartocollis, *Warning Signs of Violent Acts Often Unclear*, N.Y. TIMES, Jan. 16, 2013, at A1 (“The sort of young, troubled males who seem to psychiatrists most likely to commit school shootings—identified because they have made credible threats—often do not qualify for any diagnosis, experts said. They might have elements of paranoia, of deep resentment, or of narcissism, a grandiose self-regard, that are noticeable but do not add up to any specific ‘disorder’ according to strict criteria.”).

31. See Jack Healy & Serge F. Kovaleski, *Pain and Puzzles in Wake of Deadly Colorado Attack*, N.Y. TIMES, July 22, 2012, at A1 (“In interviews, neighbors and friends from Southern California and Aurora described [shooter James Holmes as] a young man as anonymous as a glass of water, more Invisible Man than Joker, who left the lightest of impressions on people.”).

32. See, e.g., Francis Wilkinson, Opinion, *George Zimmerman Is a Good Example of a Bad Problem*, BLOOMBERG (May 13, 2016, 11:02 AM), <http://www.bloomberg.com/view/articles/2016-05-13/george-zimmerman-is-a-good-example-of-a-bad-problem> (“George Zimmerman is a moral outlier, a public danger and more than a little creepy. . . . Zimmerman’s Wikipedia entry reads like a rap sheet—court-sanctioned anger-management classes, restraining order, domestic violence claims, allegations of threatening, at different times, both his wife and girlfriend with a gun. All this, of course, in addition to shooting dead a teenager walking through a residential neighborhood armed with a package of Skittles. But Zimmerman has never been convicted of a felony. He’s free to buy an arsenal of guns. And he’s free to sell his wares on the Internet, without a background check, to any criminal or loon who comes along.”).

33. Obama, *supra* note 14.

34. Robertson & Williams, *supra* note 17.

35. Elizabeth Bernstein, *In Quest to Explain Shootings, Probing Mental Illness*, WALL ST. J., July 27, 2012, at A5.

36. KAI T. ERIKSON, WAYWARD PURITANS: A STUDY IN THE SOCIOLOGY OF DEVIANCE 3 (1966) (“[E]ven the most aberrant forms of individual behavior may still be considered normal from this broader point of view.”).



unusual.<sup>37</sup> Sociologically speaking, unregulated, unrestricted, and unlimited gun violence is the “new normal” in America.<sup>38</sup> As one *New York Times* reporter observed on the eve of 2018:

“Las Vegas and the church in Texas have fallen off the map—two of the most heinous mass murders in recent American history,” said Tom Brokaw, the special correspondent at NBC News, flagging two episodes that would have, under previous circumstances, most likely remained seared in the national conversation. “It’s astonishing. It should be one of the defining stories not just of the year but of our time.”

There are a lot of those. . . . and, in the case of mass shootings, what many describe as a growing public imperviousness to horror.<sup>39</sup>

Everything cannot be “horrible.” Sociologically and psychologically speaking, that is a certain recipe for insanity. In financial economics, the term “new normal” was coined in the aftermath of the 2008–2009 financial crisis to describe new realities (for example, low inflation, low interest rates) that are here to stay indefinitely.<sup>40</sup>

Kai Erikson (following Durkheim) poignantly describes our implied social contract as to “how much crime we can afford” and “how many criminals we can afford.”<sup>41</sup> The terms (and the concepts) *crime* and *criminal* are inherently relative, relational. If everything is a crime or if everyone is a criminal, the terms lose all meaning. This is perhaps clearest in the case of *deviance*, which implies a marked departure—literally, a “swerve”—from the general norm. Obviously,

37. See, e.g., Richard Pérez-Peña, *A Toddler, a Loose Gun in a Car, and a Mother Is Shot to Death*, N.Y. TIMES, Apr. 28, 2016, at A10 (“[T]he person who fired the shot that killed a woman as she drove through Milwaukee on Tuesday . . . was 2 years old. . . . In the seven days that ended Tuesday, in addition to the death of Ms. Price, a 3-year-old in Georgia, a 3-year-old in Louisiana, a 2-year-old in Missouri and a 2-year-old in Indiana fatally shot themselves; a 4-year-old in Texas shot and wounded a family member; a 16-year-old in California killed a 14-year-old friend in a shooting that officials called accidental; a 15-year-old in Texas accidentally shot and wounded a 16-year-old friend; and a 13-year-old in Indiana accidentally shot and wounded herself.”); see also Jack Healy et al., *Guns in Tiny Hands: In a Week, Four Toddlers Shoot Themselves*, N.Y. TIMES, May 6, 2016, at A1 (“With shootings by preschoolers happening at a pace of about two per week, some of the victims were the youngsters’ parents or siblings, but in many cases the children ended up taking their own lives. ‘You can’t call this a tragic accident,’ said Jean Peters Baker, the prosecutor of Jackson County, Mo., . . . ‘These are really preventable, and we’re not willing to prevent them.’”).

38. See generally Charles W. Collier, *Gun Control in America: An Autopsy Report*, DISSENT, Summer 2013, at 81 [hereinafter Collier, *Gun Control in America*]; Charles W. Collier, *The Death of Gun Control: An American Tragedy*, 41 CRITICAL INQUIRY 102 (2014) [hereinafter Collier, *The Death of Gun Control*].

39. Matt Flegenheimer, *The Year the Traditional News Cycle Accelerated to Trump Speed*, N.Y. TIMES, Dec. 30, 2017, at A16; see also Sarah Parvini et al., *Professor Killed in UCLA Murder-Suicide Was Brilliant, Kind and Caring, Colleagues Say*, L.A. TIMES (June 1, 2016, 6:07 PM), <http://www.latimes.com/local/lanow/la-me-ln-ucla-shooting-20160601-snap-story.html> (“We’re at a point in this country where there’s some kind of small massacre every day, somewhere.” (internal quotation marks omitted) (quoting Los Angeles City Councilman Paul Koretz)).

40. The honor apparently goes to Mohamed El-Erian, formerly of PIMCO and Harvard Management Company. See Mohamed A. El-Erian, CEO & Co-Chief Inv. Officer, PIMCO, Lecture at Per Jacobsson Foundation: Navigating the New Normal in Industrial Countries (Oct. 10, 2010).

41. See ERIKSON, *supra* note 36, at 23–27.

not everything can be deviant, for then there would be no “norm” to depart from.<sup>42</sup>

Our grim “new normal” encompasses a level of gun violence that previously would indeed have seemed insane. The world has changed around us and gun violence is no longer considered deviant. No “special sanctions” are going to curtail it. For our own sanity, then, we must adjust accordingly, or be crushed in the cruel, uncaring cogwheels of time.

In the Aurora Theater shooting, for example, the fact that twelve people were killed and seventy wounded in no way indicates, in and of itself, that anything went awry.<sup>43</sup> Under prevailing thinking, a gunman has every right to acquire and assemble an arsenal in its entirety.<sup>44</sup> He has a right to bring it with him into the theater.<sup>45</sup> For purpose of self-defense, he has a right to point his weapons in your general direction; and, if you challenge him (and he feels “reasonably” threatened), he has a right to shoot you on the spot.<sup>46</sup> From the Wild West to our cultivated suburbs and, increasingly, on college campuses nationwide,<sup>47</sup> “‘difficulties’ . . . are commonly decided on the spot, by . . . the

42. See generally *id.* at 3–29. Erikson also observed that:

[T]he term “deviance” refers to conduct which the people of a group consider so dangerous or embarrassing or irritating that they bring special sanctions to bear against the persons who exhibit it. Deviance is not a property *inherent* in any particular kind of behavior; it is a property *conferred upon* that behavior by the people who come into direct or indirect contact with it.

*Id.* at 6. Erikson further noted:

At any given time, then, the “worst” people in the community are considered its criminals, the “sickest” its patients, no matter how serious these conditions may appear according to some universal standard.

*Id.* at 26.

43. See, e.g., Jack Healy, *Theater Gunman Is Spared Death in Aurora Case*, N.Y. TIMES, Aug. 8, 2015, at A1 (“[J]ust after midnight on July 20, 2012, [James Holmes] strode into Theater 9 in suburban Aurora, clad in black body armor and armed with tear-gas canisters, a shotgun, a handgun and an assault rifle, and began spraying the crowd with ammunition he had amassed over several weeks.”).

44. James Dao, *Aurora Gunman’s Arsenal: Shotgun, Semiautomatic Rifle and, at the End, a Pistol*, N.Y. TIMES, July 24, 2012, at A12 (“Mr. Holmes purchased all of his weapons legally, law enforcement officials said. In the four months before the shootings, he also bought 3,000 rounds of handgun ammunition, 3,000 rounds for a semiautomatic rifle and 350 shells for a 12-gauge shotgun, all over the Internet.”); see also Jack Healy, *Suspect Bought Large Stockpile of Rounds Online*, N.Y. TIMES, July 23, 2012, at A1 (“Unhindered by federal background checks or government oversight, the 24-year-old man accused of killing a dozen people inside a Colorado movie theater was able to build what the police called a 6,000-round arsenal legally and easily over the Internet, exploiting what critics call a virtual absence of any laws regulating ammunition sales. With a few keystrokes, the suspect, James E. Holmes, ordered 3,000 rounds of handgun ammunition, 3,000 rounds for an assault rifle and 350 shells for a 12-gauge shotgun . . . . It was pretty much as easy as ordering a book from Amazon.”).

45. See, e.g., Editorial, *New Man on Campus, Armed*, N.Y. TIMES, Aug. 29, 2012, at A26 (describing how college students in Colorado are now “allowed to carry their weapons around to classes or anywhere else, except to certain sports and cultural events”).

46. Cf. FLA. STAT. § 776.012 (2018) (use of force in defense of person); *id.* § 776.013 (helpful legal presumptions).

47. See, e.g., Joe Palazzolo & Steve Eder, *Push to Let College Students Carry Guns Picks Up Steam*, WALL ST. J., Sept. 22, 2012, at A3 (“[G]un-rights advocates working through the courts and state legislatures have

discharge of a revolver.”<sup>48</sup> (That was written in 1866.) *Plus ça change, plus c’est la même chose.*<sup>49</sup> The American people, in their considered, collective judgment, as expressed in their laws, or lack thereof, would not want it any other way. “[I]n essence, this is the way we in America want things to be. We want our freedom, and we want our firearms, and if we have to endure the occasional school shooting, so be it.”<sup>50</sup> Could this considered, collective conclusion somehow be “wrong”?

## II. SOME FINDINGS IN SOCIAL SCIENCE

In philosophy, one concept or measure of *objectivity* involves the idea of “intersubjectivity”:

I *experience* the world (including others)—and, according to its experiential sense, *not* as (so to speak) my *private* synthetic formation but as other than mine alone . . . as an *intersubjective* world, actually there for everyone, accessible in respect of its Objects to everyone. . . .

. . . .

. . . This is always cointended wherever we speak of Objective actuality.<sup>51</sup>

When you see a tiger but everyone else in the room, from all our shared vantage points, sees a little kitten—then you are the odd man out. Within the community of nation-states, “American exceptionalism”<sup>52</sup> with respect to gun violence is no longer a badge of honor (if it ever was). In splendid, self-imposed isolation from its developed-world counterparts,<sup>53</sup> “a nation turns its lonely eyes to you.”<sup>54</sup>

There are some exceptions to this rule. Seriously smart social psychologists (Asch, Milgram, Zimbardo) have rigged up elaborate experimental conditions that severely test the limits of nonconformity and show the sometimes-irrational power of conformity.<sup>55</sup> Asch, for example, “employed the

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managed to secure a significant expansion of gun rights at public universities. Students are now permitted by law to carry guns on public campuses in five states—four more than two years ago.”)

48. THOMAS J. DIMSDALE, *THE VIGILANTES OF MONTANA OR POPULAR JUSTICE IN THE ROCKY MOUNTAINS* 8–9 (Univ. of Okla. Press 1953) (1866).

49. This is a well-known French proverb meaning: “The more things change, the more they remain the same.”

50. Gregory Gibson, Opinion, *Why America Lets the Killings Continue*, N.Y. TIMES (Dec. 14, 2012), <http://www.nytimes.com/2012/12/14/opinion/why-we-let-the-school-shootings-continue.html?ref=contributors>.

51. EDMUND HUSSERL, *CARTESIAN MEDITATIONS: AN INTRODUCTION TO PHENOMENOLOGY* § 43, at 91, 92 (Dorion Cairns trans., Fifth Impression 1973).

52. See AMERICAN EXCEPTIONALISM AND HUMAN RIGHTS (Michael Ignatieff ed., 2005).

53. See, e.g., Adam Lankford, *Public Mass Shooters and Firearms: A Cross-National Study of 171 Countries*, 31 VIOLENCE & VICTIMS 187, 189–90 (2016).

54. SIMON & GARFUNKEL, *MRS. ROBINSON* (Columbia Records 1968).

55. See generally STANLEY MILGRAM, *OBEDIENCE TO AUTHORITY: AN EXPERIMENTAL VIEW* (1974) [hereinafter MILGRAM, *OBEDIENCE TO AUTHORITY*]; Solomon E. Asch, *Opinions and Social Pressure*, 193 SCI. AM. 31 (1955); Stanley Milgram, *Some Conditions of Obedience and Disobedience to Authority*, 18 HUM. REL. 57 (1965); Stanley Milgram, *Behavioral Study of Obedience*, 67 J. ABNORMAL & SOC. PSYCHOL. 371 (1963);

procedure of placing an individual in a relation of radical conflict with all the other members of a group . . . . [A] *minority of one* in the midst of a *unanimous majority*—was the object of investigation.”<sup>56</sup> “To get along, go along” is not always rational advice, as these studies amply document. But in the ordinary case of gun violence, no experimental deception or “illusion” is at issue; the deadly results can be tallied up, with exquisite precision, at the local mortuary. In these (normal) circumstances, the American position on gun control is equivalent to saying that line *A* is longer than line *B*—right after seven other people, one by one, have just said that line *B* is longer (Asch’s experiment).

Yet even in these circumstances, Asch challenges the prevailing “axiom that group pressures characteristically induce psychological changes *arbitrarily*, in far-reaching disregard of the material properties of the given conditions.”<sup>57</sup>

This mode of thinking has almost exclusively stressed the slavish submission of individuals to group forces, has neglected to inquire into their possibilities for independence and for productive relations with the human environment, and has virtually denied the capacity of men under certain conditions to rise above group passion and prejudice.<sup>58</sup>

“The more the subject is out of step with the group,” writes Asch in another work, “the more anxiously does he turn to the situation itself.”<sup>59</sup>

[O]ne effect of group opposition is to direct the person back to the situation and to induce a heightened objectivity . . . . It is as if these subjects were trying to eliminate the last possibility of indirectness involved in viewing the lines from a distance. . . . In this behavior these subjects are showing that *they are not accepting the group as the final arbiter* . . . .<sup>60</sup>

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Craig Haney et al., *A Study of Prisoners and Guards in a Simulated Prison*, NAVAL RES. REVS., Sept. 1973, at 1; see also Charles W. Collier, *Intellectual Authority and Institutional Authority*, 42 J. LEGAL EDUC. 151, 163–67 (1992) (“Milgram’s experiments demonstrate the important effects of institutional authority on judgment and obedience. . . . ‘With numbing regularity,’ observed Milgram, ordinary, decent, and responsible citizens were ‘seduced by the trappings of authority,’ by the control of their perceptions, and by their ‘uncritical acceptance of the experimenter’s definition of the situation’ into performing harsh and punitive acts they otherwise would never have performed. . . . Milgram’s experiments simply show what happens in the extreme case, and they demonstrate the extreme danger inherent in the complete and uncritical reliance on institutional authority.” (quoting MILGRAM, *supra*, at 123) (footnotes omitted)).

56. S. E. Asch, *Effects of Group Pressure upon the Modification and Distortion of Judgments*, in GROUPS, LEADERSHIP AND MEN: RESEARCH IN HUMAN RELATIONS 177, 178–79 (Harold Guetzkow ed., 1951). In Asch’s experiment, the naive subject “faced, possibly for the first time in his life, a situation in which a group unanimously contradicted the evidence of his senses.” *Id.* at 179. The subject is asked to make a simple visual judgment—*right after seven other peers, one after the other*, have inexplicably given obviously wrong answers to the same question. In these circumstances, about seventy-five percent of the subjects gave at least one obviously wrong answer too (as compared to “the virtual absence of errors in control groups”). See *id.* at 179, 181–82.

57. *Id.* at 178.

58. *Id.*

59. SOLOMON E. ASCH, SOCIAL PSYCHOLOGY 463 (1952).

60. *Id.* (emphasis added).

### III. FROM THE FRONTIER TO THE ARMED SOCIETY

Robert Heinlein, a pioneer of science fiction, gained a kind of cult following with his pronouncement that “an armed society is a polite society.”<sup>61</sup> (As he explained, “Manners are good when one may have to back up his acts with his life.”<sup>62</sup>) Heinlein’s slogan evokes an enduring ethos of self-reliance, individual responsibility, and resolute independence that dates back to frontier times.<sup>63</sup>

[T]o the frontier the American intellect owes its striking characteristics. That coarseness and strength combined with acuteness and inquisitiveness; that practical, inventive turn of mind, quick to find expedients; that masterful grasp of material things, lacking in the artistic but powerful to effect great ends; that restless, nervous energy; that dominant individualism, working for good and for evil, and withal that buoyancy and exuberance which comes with freedom—these are traits of the frontier, or traits called out elsewhere because of the existence of the frontier.<sup>64</sup>

On the frontier, it was indeed a good idea to be armed. But consider the obvious implications: Am I “polite” when I tiptoe around you, all meek and self-effacing, careful not to make the slightest false move (lest you shoot me dead on the spot)? Dissenters, take cover!

The successful litigant responsible for lifting Colorado’s concealed gun ban on college campuses felt that “the right to defend me and my family shouldn’t be taken away because some people are *afraid of firearms and nervous around them*.”<sup>65</sup> But well they should be: Colorado is an especially fitting place to be nervous about gun violence.<sup>66</sup> And in general, it seems that “[a]n armed society is an especially intimidating society,” one in which all citizens, armed or not, have every reason to be “afraid of firearms and nervous around them.”<sup>67</sup> It

61. ROBERT A. HEINLEIN, *BEYOND THIS HORIZON* 223 (1948).

62. *Id.* (“[G]unfighting has a strong biological use. We do not have enough things that kill off the weak and the stupid these days.”).

63. See Frederick Jackson Turner, *The Significance of the Frontier in American History* (1893), reprinted in *THE FRONTIER IN AMERICAN HISTORY* 1, 30 (1920) (“[T]he frontier is productive of individualism. Complex society is precipitated by the wilderness into a kind of primitive organization based on the family. The tendency is anti-social. It produces antipathy to control, and particularly to any direct control. . . . [I]ndividual liberty was sometimes confused with absence of all effective government.”). See generally Collier, *Gun Control in America*, *supra* note 38, at 83–85; Collier, *The Death of Gun Control*, *supra* note 38, at 116–20.

64. Turner, *supra* note 63, at 37 (footnote omitted).

65. Dan Frosch, *University Is Uneasy as Court Ruling Allows Guns on Campus*, N.Y. TIMES, Sept. 23, 2012, at A22 (emphasis added) (internal quotation marks omitted) (quoting John Davis).

66. See, e.g., Healy, *supra* note 43 (“The shooting [by James Holmes] during a midnight premiere of a Batman movie, “The Dark Knight Rises,” was one of the worst mass attacks in Colorado, a state also scarred by the 1999 massacre at Columbine High School. It turned a midnight movie filled with teenagers and families into a bloody melee in which victims fell between the seats and boyfriends died shielding their girlfriends. Seventy people were wounded, including some who now are paralyzed, walk with canes or live with nightmares and bolts of pain.”).

67. See, e.g., Editorial, *supra* note 25 (“More and more, the open-carry movement is being used to make confrontational and intimidating protest statements.”); see also Frosch, *supra* note 65, at A19 (“This is a place where we depend on being able to speak our minds and offer sometimes controversial opinions in a free and

matters not whether the guns in question are owned and operated by your two-year-old son,<sup>68</sup> your five-year-old brother,<sup>69</sup> a retired police captain,<sup>70</sup> or your own loving father.<sup>71</sup> On a dark night of the soul, in a moment of despair, the gunman might even be you.<sup>72</sup> So, be afraid. Be very afraid. This sad state of affairs is so obvious and predictable that our benighted legislators must be presumed to have intended it.<sup>73</sup>

“[T]o stay alive as an armed citizen,” warns Heinlein, “a man has to be either quick with his wits or with his hands, preferably both. It’s a good thing.”<sup>74</sup> And it’s a good thing, too, that these “squirmishes” all play out in “the land of the free and the home of the brave.” Virtually anywhere else, they would seem

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open place . . . . The feeling among a percentage of faculty is that this will create a climate of fear and intimidation.” (internal quotation marks omitted) (quoting Karen Jacobs, a professor at the University of Colorado, Boulder).

68. See Terrence McCoy, *The Inside Story of How an Idaho Toddler Shot His Mom at Wal-Mart*, WASH. POST (Dec. 31, 2014), [http://www.washingtonpost.com/posttv/national/2-year-old-accidentally-kills-mom-in-wal-mart/2014/12/31/54ea8927-0649-48c2-9ee2-7ddadb5802c1\\_video.html](http://www.washingtonpost.com/posttv/national/2-year-old-accidentally-kills-mom-in-wal-mart/2014/12/31/54ea8927-0649-48c2-9ee2-7ddadb5802c1_video.html).

69. Five-year-old Kristian Sparks, for example, recently exercised his constitutional right to bear arms by shooting and killing his two-year-old sister, “with a gun marketed for children as ‘My First Rifle’ in what the authorities said was an accident.” Trip Gabriel, *Girl’s Death by Gunshot Is Rejected as Symbol*, N.Y. TIMES, May 6, 2013, at A10 (emphasis added). In that case,

[t]he county coroner, Gary White, said Kristian’s gun, a .22-caliber single-shot Crickett rifle designed for children and sold in pink and blue, had been stored in a corner, and his parents did not realize it was loaded.

“Down in Kentucky where we’re from, you know, guns are passed down from generation to generation,” Mr. White told The Associated Press. “You start at a young age with guns for hunting and everything.”

*Id.* In an interview, a resident of the town stated: “Pointing fingers doesn’t really accomplish anything . . . . *Terrible mistakes happen*, and I think that’s what happened here.” *Id.* (emphasis added).

70. See Frances Robles, *A Movie Date, a Text Message and a Fatal Shot*, N.Y. TIMES, Jan. 22, 2014, at A1 (“Before the movie ‘Lone Survivor’ had even begun, Mr. Reeves had . . . snuffed the life from a Desert Storm veteran on a movie date with his wife.”).

71. See Erin Cawthon, *Connecticut Teacher Mistakenly Kills Son After Neighbor Reports Robber*, CNN (Sept. 28, 2012, 6:24 PM), [http://www.cnn.com/2012/09/28/justice/connecticut-father-kills-son/index.html?hpt=hp\\_t3](http://www.cnn.com/2012/09/28/justice/connecticut-father-kills-son/index.html?hpt=hp_t3) (“Giuliano . . . shot the boy when he ‘came toward him in a threatening manner,’ according to police.”).

72. See Matthew Miller et al., *Household Firearm Ownership and Rates of Suicide Across the 50 United States*, 62 J. TRAUMA INJ. INFECTION & CRITICAL CARE 1029, 1029 (2007) (“Household firearm ownership levels are strongly associated with higher rates of suicide, consistent with the hypothesis that the availability of lethal means increases the rate of completed suicide.”); Deborah M. Stone et al., *Vital Signs: Trends in State Suicide Rates—United States, 1999–2016 and Circumstances Contributing to Suicide—27 States, 2015*, 67 MORBIDITY & MORTALITY WKLY. REP. 617, 618 (2018) (“In addition to mental health conditions and prior suicide attempts, other contributing circumstances include . . . access to lethal means (e.g., substances, firearms) . . . .” (emphasis added)); Benedict Carey, *Slowly, Confoundingly, Suicide Became a Public Health Crisis*, N.Y. TIMES, June 9, 2018, at A21 (“One of the few proven interventions is unpalatable to wide swaths of the American public: reduced access to guns.”).

73. See *Presumed Intent*, BLACK’S LAW DICTIONARY, *supra* note 28 (“A person is presumed to intend the natural and probable consequences of his voluntary acts.”). See generally Michael Luo & Mike McIntire, *Children and Guns: The Hidden Toll*, N.Y. TIMES, Sept. 29, 2013, at A1.

74. HEINLEIN, *supra* note 61, at 223.

so fantastical and “fraught with death . . . that an immediate check [would be] required to save the country.”<sup>75</sup>

But *politeness* is a civic and personal virtue, practiced for its own inherent reasons and rewards. The faux politeness of an armed society is like the forced conversion of heathens to Christianity. As John Locke patiently explained, such “conversions” can readily be dismissed on both logical and religious grounds. “[I]t is not truth that is thus carried on,” he writes, “but interest and dominion that is sought in making proselytes by compulsion.”<sup>76</sup>

For who takes this course to convince anyone of the certain truths of mathematics? . . .

. . . Fear of your power, not love of your government, is that which restrains them . . . . At least this is certain that compelling men to your opinion any other way than by convincing them of the truth of it, makes them no more your friends, than forcing the poor Indians by droves into the rivers to be baptised made them Christians.<sup>77</sup>

#### IV. THE LONG ARC OF CULTURAL TRAGEDY

Faith or belief is a mental attitude that takes over when—and only when—scientific proof and explanations are lacking. The threat of forced “conversion” is not a (theoretical or speculative) reason to embrace faith or belief. It is a (practical) reason to dissemble or *pretend* to believe. True belief—like true politeness—is always freely chosen:

All the Life and Power of true Religion consists in the inward and full perswasion [sic] of the mind: And Faith is not Faith without believing. . . .

. . . [S]uch is the nature of the Understanding, that it cannot be compell'd to the belief of any thing by outward Force. . . .

. . . It is only Light and Evidence that can work a change in Mens Opinions.<sup>78</sup>

The armed society crudely interposes *force* for “Light and Evidence” and the *threat of force* for the power of persuasion. But forcing people to publicly profess their inherently subjective, inner opinions is like commanding them: “Choose for yourself; be free—or else!”

Locke introduced these simple but fundamental concepts in the late seventeenth century. About midway between his time and ours, Alexis de Tocqueville<sup>79</sup> wrote vividly on the ever-interchanging roles of reason and chance in American life:

75. *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting).

76. JOHN LOCKE, AN ESSAY CONCERNING TOLERATION, reprinted in JOHN LOCKE: A LETTER CONCERNING TOLERATION AND OTHER WRITINGS 105, 127 (Mark Goldie ed., 2010) (1667) (footnote omitted).

77. *Id.* at 127–28.

78. JOHN LOCKE, A LETTER CONCERNING TOLERATION, reprinted in A LETTER CONCERNING TOLERATION AND OTHER WRITINGS, *supra* note 76, at 7, 13–14; see also *id.* at 44 (“[T]o believe this or that to be true, does not depend upon our Will. . . . But (will some say) let men at least profess that they believe. A sweet Religion indeed, that obliges men to dissemble, and tell Lyes both to God and Man . . .”).

79. Tocqueville has been called “something of a modern prophet.” KALEDIN, *supra* note 2, at xiv.

The universal movement reigning in the United States, the frequent turns of fortune, the unforeseen displacement of public and private wealth—all unite to keep the soul in a sort of feverish agitation that admirably disposes it to every effort and maintains it so to speak above the common level of humanity. For an American, one's entire life is spent as a game of chance, a time of revolution, a day of battle.<sup>80</sup>

Ever since the decline of the frontier, starting around 1890,<sup>81</sup> the armed society (into which Tocqueville's America rather seamlessly evolved)<sup>82</sup> "has been stupendously successful in arguing that the best way to protect ourselves from violence is to have the entire population" armed.<sup>83</sup> Ironically, this is something on which ISIS, al-Qaeda, and the National Rifle Association can all happily agree.<sup>84</sup>

Still, confusion reigns. Everyone observes the same "facts," yet we differ, often fundamentally, on what they mean. Here the philosopher Alfred North Whitehead argues counterintuitively that "the development of abstract theory precedes the understanding of fact."<sup>85</sup>

80. 1 ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 388 (Harvey C. Mansfield & Delba Winthrop eds. & trans., Univ. of Chi. Press 2000) (1835); see also 2 *id.* at 528 (1840) ("Those who live amid democratic instability constantly have the image of chance before their eyes, and in the end they love all undertakings in which chance plays a role. They are therefore all brought into commerce, not only because of the gain it promises them, but for love of the emotions that it gives them.")

81. See Turner, *supra* note 63, at 1 ("In a recent bulletin of the Superintendent of the Census for 1890 appear these significant words: 'Up to and including 1880 the country had a frontier of settlement, but at present the unsettled area has been so broken into by isolated bodies of settlement that there can hardly be said to be a frontier line. . . .' This brief official statement marks the closing of a great historic movement.")

82. See KALEDIN, *supra* note 2, at 379. Kaledin states:

The first volume of *Democracy in America* . . . concludes with an almost admiring account of the risk-taking spirit of the Anglo-Americans as they swept West and then looked for worlds to conquer. [Tocqueville] thought this spirit was bound to conquer all that lay before it. It was the expression of a recklessness, an abandon, that ran deep within the culture. This temper, or distemper, of American culture troubled him. If it was creative, it was also destructive. He alludes to it in many ways at different times, though not always directly. . . . [H]e traveled much on riverboats at a time when they were swarming with gamblers and confidence men . . . [and he] well noted the spirit that animated them. They were Melville's "confidence men."

*Id.*; cf. Turner, *supra* note 63, at 37–38 ("For a moment, at the frontier, the bonds of custom are broken and unrestraint is triumphant. . . . [E]ach frontier did indeed furnish a new . . . freshness, and confidence, and scorn of older society, impatience of its restraints and its ideas, and indifference to its lessons . . .").

83. Gail Collins, Opinion, *Wanted: Straight Shooters*, N.Y. TIMES, Jan. 9, 2016, at A19.

84. See Eric Lichtblau, *N.R.A.'s Wins in Congress Grow with Lobbyist's Role*, N.Y. TIMES, Jan. 29, 2016, at A19 ("The day after the massacre last month in San Bernardino, Calif., Senate Democrats, sensing an opportunity, rushed to pass a measure denying guns to anyone on the no-fly terrorism watch list. The timing of the vote and the nature of the bill gave them reason to hope that they could, for once, thwart the gun lobby. But Chris Cox, the National Rifle Association's brash and boyish-looking chief lobbyist, was ready for them. Mr. Cox and more than a dozen N.R.A. lobbyists under him buttonholed Republican senators in a flurry of meetings, calls and emails, officials said. And in a message on Twitter, they directed the N.R.A.'s five million members to 'call your senators NOW and urge them to vote NO on any and all #guncontrol proposals.'" (emphases added)).

85. ALFRED NORTH WHITEHEAD, *THE FUNCTION OF REASON* 75 (Beacon Press 1958) (1929) (emphasis added). This priority of theory over observation might be expressed functionally and colloquially as: "I'll see that when I believe it!"



[E]xcept for the rarest accidents of chance, thought precedes observation. It may not decide the details, but it suggests the type. . . . For if there be no scheme to fit it into, its significance is lost. . . .

. . . It is hardly realized for how long a time such abstract schemes can grow in the minds of men before contact with practical interests.<sup>86</sup>

American society has certainly had plenty of time, punctuated regularly by ghastly episodes of grim-grave drama, to ponder the salient implications of an armed society. Indeed, the most important discussions date back to the time of Thomas Hobbes.<sup>87</sup>

The time is out of joint: Oh cursed spite,  
That ever I was born to set it right.<sup>88</sup>

Hamlet does not say that the state is out of joint, or the society, or the culture; he says the *time* is out of joint.<sup>89</sup> What could that possibly mean?<sup>90</sup>

“It is *we* who are Hamlet. . . . who cannot be well at ease, while he sees evil hovering near him like a spectre.”<sup>91</sup> But have we even now, at this exceedingly late date, attained to a credible “climate of opinion”<sup>92</sup>—a sufficiently serious state of intellectual development in which the evil specter *of our time* could be candidly, courageously, even rationally debated?<sup>93</sup> In all fairness I think we can,

86. *Id.* at 72–73.

87. With ever more guns in circulation, it becomes ever more “reasonable” to suspect (or fear) that someone else has one—and to shoot first: “[B]ecause a man cannot tell, when he seeth men proceed against him by violence, whether they intend his death or not.” THOMAS HOBBS, *LEVIATHAN* 93 (Richard Tuck ed., Cambridge Univ. Press rev. student ed. 1996) (1651) [hereinafter HOBBS, *LEVIATHAN*]. In this Hobbesian “war of all against all,” “there is no way for any man to secure himselfe [sic], so reasonable, as Anticipation.” THOMAS HOBBS, *DE CIVE*, reprinted in 3 *THE CLARENDON EDITION OF THE PHILOSOPHICAL WORKS OF THOMAS HOBBS* 49 (Howard Warrender ed., Clarendon Press 1983) (1642) [hereinafter HOBBS, *DE CIVE*]; HOBBS, *LEVIATHAN*, *supra*, at 87. Thus, it may be “reasonable” to attack one’s neighbor preemptively, if self-defense later might be inadequate for self-preservation. Here is fertile ground for miscalculation; the criminal law and the law of large numbers work together to ensure that such miscalculations are many, regular, and predictable. *See, e.g.*, JAMES BERNOULLI, *THE ART OF CONJECTURING* pt. 4 (1713), reprinted in BING SUNG, *TRANSLATIONS FROM JAMES BERNOULLI* (1966).

88. WILLIAM SHAKESPEARE, *HAMLET* act 1, sc. 5 (First Folio, 1623) (adapted). “What is the power of Hamlet’s mind over a universe of death, or a sea of troubles? That indeed is the question.” HAROLD BLOOM, *HAMLET: POEM UNLIMITED* 35 (2003).

89. “[T]he signal characteristic of Hamlet’s inmost nature,” observes the poet Swinburne, “is by no means irresolution or hesitation or any form of weakness, but rather the strong conflux of contending forces.” ALGERNON CHARLES SWINBURNE, *A STUDY OF SHAKESPEARE* 166 (William Heinemann 1918) (1879).

90. *Cf.* BLOOM, *supra* note 88, at 140–44 (“Perhaps there is an undersong in *Hamlet*: Shakespeare already has seen the best of his time.”); *see also* HAROLD BLOOM, *SHAKESPEARE: THE INVENTION OF THE HUMAN* 387 (1998) (“[T]he Ghost is a warrior fit for Icelandic saga, while the prince is a university intellectual, representative of a new age. . . . [T]he Archaic Age faces the High Renaissance, with consequences as odd as any we might expect.”); *cf. id.* at 404 (“Hamlet is . . . a prophet of a sensibility still out ahead of us, in an era to come.”).

91. WILLIAM HAZLITT, *CHARACTERS OF SHAKESPEARE’S PLAYS* 104 (3d ed. 1838).

92. *See* BECKER, *supra* note 4.

93. A serious debate would start with the freedoms we do not rationally want, such as the freedom to drive as fast as we like or to rob banks. “[L]ike the higher price in a competitive market,” these freedoms “must be available to everyone if they are available to anyone.” MANCUR OLSON, *THE LOGIC OF COLLECTIVE ACTION: PUBLIC GOODS AND THE THEORY OF GROUPS* 14 (1965). Logically, we do not want absolute “natural rights,” not

belatedly, expect to see “good ol’ American know-how” expended lavishly on revisiting every single aspect of gun violence that might possibly be relevant to a solution—except, of course, the guns themselves.<sup>94</sup>

“The stage, at the close, is strewn with clues as well as corpses.”<sup>95</sup> All the rest is silence.<sup>96</sup>

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even the absolute, constitutional “right to bear arms”—if this right has to be extended to everyone. *See, e.g.,* HOBBS, DE CIVI, *supra* note 87, at 49 (“But it was the least benefit for men . . . to have a common *Right to all things*; for the effects of this *Right* are the same, almost, as if there had been no *Right* at all; for although any man might say of every thing, *This is mine*, yet could he not enjoy it, by reason of his Neighbour, who having equall *Right*, and equall power, would pretend the same thing to be his.”); HOBBS, LEVIATHAN, *supra* note 87, at 91–92 (“It followeth, that . . . as long as this naturall Right of every man to every thing endureth, there can be no security to any man, (how strong or wise soever he be,) . . . And consequently it is a precept, or generall rule of Reason . . . *That a man be willing, when others are so too . . . to lay down this right to all things; and be contented with so much liberty against other men, as he would allow other men against himselfe.*”). In other words, it would be better for no one to have a gun than for everyone to have a gun.

94. *See, e.g.,* Erica L. Green, *DeVos Says New Panel to Assess School Safety Won’t Focus on Guns*, N.Y. TIMES, June 6, 2018, at A11 (“So we’ll look at gun violence in schools, but not look at guns? An interesting concept.” (quoting Sen. Patrick J. Leahy (D-VT))).

95. BLOOM, *supra* note 90, at 421.

96. *Cf.* WILLIAM SHAKESPEARE, HAMLET act 5, sc. 2 (Second Quarto, 1604–05) (“The rest is silence.”).

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