

LEGAL AND POLITICAL IMPEDIMENTS TO LETHAL VIOLENCE POLICY

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INTRODUCTION

In *Crime Is Not the Problem: Lethal Violence in America*, Franklin Zimring and Gordon Hawkins urge us to think differently about lethal violence.¹ They persuasively demonstrate that lethal violence is not just the most serious part of the crime problem, but rather an altogether separate crime and public health problem. They posit that because it is a distinct problem with a distinct etiology,² its remediation requires a specific multi-dimensional approach, utilizing public health as well as law enforcement strategies;³ in other words, reducing crime in general is not the most effective way to reduce lethal violence.

The authors' major contribution is diagnostic, not prescriptive. They do not survey current public and private responses to lethal violence nor specify which policy makers ought to be responsible for lethal violence prevention. In effect, they challenge us to reconsider our anti-violence policies in light of their comprehensive and penetrating examination of the problem. This article offers some observations about criminal justice policy making that may be useful in considering how to translate the authors' insights into effective policy.

Specifically, this article seeks to illuminate some of the complexities involved in improving policy making aimed at preventing lethal violence and the obstacles standing in the path of a policy maker attempting to act on the policy implications of Zimring and Hawkins's analysis. My focus is on the structure and process of policy making aimed at preventing lethal violence. In effect, I am asking whether "we can get there from here." Given the constitutional, political, and institutional constraints on policy making, can we design and implement the kind of

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1. FRANKLIN E. ZIMRING & GORDON HAWKINS, *CRIME IS NOT THE PROBLEM: LETHAL VIOLENCE IN AMERICA* 19 (1997).

2. *See id.* Part I.

3. *See id.* Part III.

sophisticated policy initiatives that would be responsive to the authors' challenge?

I. AT WHAT LEVEL(S) SHOULD DIFFERENT LETHAL VIOLENCE CONTROL STRATEGIES BE FORMULATED?

Who should bear primary responsibility for lethal violence prevention? Our federal system allows (indeed provides for) a great deal of overlapping authority and responsibility among federal, state, and local governments, and among the various branches of government at each level. All three levels of government have authority over crime-control policy, as do numerous private sector actors and organizations. For example, federal, state, and local governments have laws and programs on gun control,⁴ organized crime, drugs, and domestic violence. Additionally, there are all kinds of citizens' initiatives aimed at violence prevention, including conflict resolution programs in schools, anti-domestic-violence programs, and therapeutic interventions. Because of the problem of overlapping authority, bold initiatives and creative experiments launched at one level could easily be frustrated or neutralized by lack of cooperation or by incompatible initiatives at another level. For example, state legislatures might pass laws that county prosecutors choose not to enforce or that juries choose to nullify.⁵ For this reason, effective anti-lethal violence policy requires the harmonization and coordination of decision makers at three levels of government (four levels, if we take into account the division of authority between cities and towns on the one hand and counties on the other). Such harmonization and coordination do not come easily under the multi-level American system of governing.

At first blush, one would expect Zimring and Hawkins to favor a highly centralized national anti-lethal violence policy because the alternative—allowing diverse decision makers at different levels of government and in different departments to create, implement, and evaluate crime-control policy—would be inefficient. On second thought, one might argue that, because

4. For example, the Brady law imposes a federally-mandated eligibility checking system for handgun purchases from federally licensed dealers. See 18 U.S.C.A. § 922 (West Supp. 1998). Some states impose waiting periods, licensing, and registration. Some cities impose similar and even more restrictive requirements.

5. Cases of lethal self-defense against burglars might fall into this category.

rates of lethal violence vary from county to county and even from locality to locality, Zimring and Hawkins's analysis is more consistent with a locale-specific approach. Communities with high levels of lethal violence may have different kinds of lethal violence problems, such as: organized crime groups killing one another; domestic violence; armed robberies; or drunk driving.⁶ Perhaps an omniscient policy czar could factor such local differences into his or her planning, in effect allowing local initiatives to feed successful innovations to national policy makers who would, in turn, mandate or recommend innovations to localities nationwide. But it would be hard to assemble in one office enough information on local conditions to make anti-lethal violence policy effective across the nation.

To make matters more complicated, some aspects of lethal violence policy might optimally be *formulated* (from the Zimring and Hawkins perspective) by a centralized national-level office, but optimally *implemented* by state or local units. For example, the Brady law established a federal gun-control regime that had to be carried out by state and local police agencies.⁷ Other matters might best be formulated and implemented at the state or local level. Perhaps still other anti-lethal violence policies and programs ought to be left in the hands of non-governmental institutions and organizations. Determining the appropriate federal, state, and local relationship on lethal violence initiatives would be the first challenge in implementing the authors' approach.

The relationship *between* the different levels of governments is further complicated by policy making relationships *within* each level of government. (The courts are major policy actors in practically every area of criminal justice,⁸ including gun control,⁹

6. For example, a program called the Comprehensive Homicide Initiative in Richmond, California, has applied community and problem-oriented policing strategies in an effort to reduce its high rate of drug and gang-related homicides. The effort to target juveniles has included the establishment of a computer training center across the street from the city's only middle school, which serves 500 youths every month. See BUREAU OF JUSTICE ASSISTANCE, STRATEGIES FOR REDUCING HOMICIDE: THE COMPREHENSIVE HOMICIDE INITIATIVE IN RICHMOND (1997).

7. However, this foray into cooperative federalism was declared unconstitutional in *Printz v. United States*, 117 S. Ct. 2365 (1997).

8. See, e.g., MALCOLM FREELEY & EDWARD RUBIN, JUDICIAL POLICY MAKING AND THE MODERN STATE: HOW THE COURTS REFORMED AMERICA'S PRISONS (1998).

9. See *Printz v. United States*, 117 S. Ct. 2365 (1997) (declaring the Brady law unconstitutional).

but for simplicity of argument, their role is largely ignored in this essay.) A multi-dimensional response to lethal violence would require coordinating the entities (police agencies, prosecutors, corrections, probation, and treatment programs) within each governmental unit that have, or should have, responsibility to design and implement anti-lethal violence policies. (Of course, judicial decisions cannot be "coordinated" with the policy initiatives of the other branches; they operate as a check.) The current dispersion of such policy making authority, however, reveals the most significant challenges to a rational and efficient lethal violence agenda.

II. FEDERAL LETHAL VIOLENCE POLICY FORMULATION

The federal government, as currently constituted, is not structured to make decisive policy on preventing lethal violence. Until the 1970s, the federal government played a minor role in criminal justice policy making.¹⁰ Crime, including lethal violence, was regarded as a local problem requiring local remediation. Even today, there are different types and levels of lethal violence in cities, suburbs, and rural towns. And there is considerable popular and political resistance to the idea that a central policy planner in Washington, D.C. could better diagnose and remediate crime problems than state and local officials.¹¹

In the last two or three decades, Congress and the executive branch increasingly have federalized crime control and have augmented the resources appropriated to crime-control strategizing. The federal government sought to effect state and local crime-control policies ranging from drunk driving,¹² to truth in sentencing,¹³ to the size and deployment strategies of local police forces,¹⁴ to the punishment of students who carry weapons

10. See TASK FORCE ON ASSESSMENT OF CRIME, THE PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, ASSESSMENT OF CRIME (1967).

11. For an excellent survey of popular opinion on the proper federal role in crime control, and another perspective on the federal role itself, see generally John J. DiIulio, Jr. et al., *The Federal Role in Crime Control*, in CRIME (James Q. Wilson & Joan Petersilia eds., 1995).

12. See 28 U.S.C. § 158 (1994) (upheld in *South Dakota v. Dole*, 483 U.S. 203 (1987)).

13. See 18 U.S.C. § 3551 (1994). To qualify for federal prison construction funds, states must assure that prisoners serve 85% of their court-imposed sentences.

14. See Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C.

to school.¹⁵ Perhaps such federalization of crime-control policy lends itself to the kind of prioritizing and strategizing that Zimring and Hawkins recommend. However, to date, the federal government's authority is not exclusive and is still not nearly adequate for the kind of large-scale policy formulation, implementation, and evaluation called for in *Crime Is Not the Problem*.¹⁶ Even if it did have such comprehensive authority, the federal government currently lacks an individual or body empowered with the requisite authority and expertise to make the definitive judgments that Zimring and Hawkins envision.

Federal crime-control policy deals both with federal criminal justice and state and local criminal justice. Thus, someone in the federal government must decide whether to punish counterfeiters and, if so, how high a priority counterfeiting control should have in comparison to drug control, organized crime control, major fraud control, corruption control, terrorism control, and so forth. Such decisions are not made decisively or explicitly. Congress, the Department of Justice ("DOJ"), the Department of Treasury, the Federal Bureau of Investigation ("FBI"), the Drug Enforcement Administration ("DEA"), the ninety-three United States attorneys, the Bureau of Prisons, and other federal actors and agencies all make conscious and unconscious policy choices that commit various levels of resources to different objectives. Increasingly, each of these entities operates its own policy planning office. In short, the federal law enforcement establishment is not currently organized to produce a single and coherent anti-crime or anti-lethal violence plan. If lethal violence control is defined to include initiatives aimed at cultural representations of violence, emergency medical care, and consumer safety, policy making responsibility is even more dispersed and amorphous.

In addition to its authority to direct federal law enforcement agencies, the federal government has become steadily more involved in state sentencing and penal policies and in local government policing. A good deal of this involvement is motivated by a desire *to do something* about lethal violence. Under the Clinton Administration, for example, the federal government

§ 13701 (1994).

15. See Goals 2000: Educate America Act, 20 U.S.C.A. § 5801 (West Supp. 1998). Some states refused to apply for Goals 2000 funds, demonstrating the tensions and complexities involved in coordinating federal and state policies.

16. See generally ZIMRING & HAWKINS, *supra* note 1.

has used federal grants to promote state prison expansion, longer sentences for "serious" offenders, and more police officers. From Zimring and Hawkins's standpoint, the problem with initiatives like these is that they are too general and diffuse; they do not zero in on lethal violence with sufficient focus and specificity.

A. *Congressional Lethal Violence Policy Formulation*

Over the 1990s, Congress has been very much concerned about violence, or at least concerned that voters see them as doing something to reduce violence. This emphasis on violence is reflected in the number of laws with anti-violence titles as listed in Table I. These laws represent Congress's policy decisions, because, to a significant extent, Congress, through such legislation, dictates the federal crime-control strategy.

Table 1: Acts of Congress 1990-1997

Popular Name	Year
Indian Child Protection & Family Violence Prevention Act	1990
Child Abuse, Domestic Violence, Adoption & Family Services Act of 1992	1992
Brady Handgun Violence Prevention Act	1993
Violent Crime Control & Law Enforcement Act	1994
Violent Crime Control Appropriations Act	1994
Civil Rights & Remedies for Gender-Motivated Violence Act	1994
Violence Against Women Act of 1994	1994
Jacob Wetterling Crimes Against Children & Sexually Violent Offender Registration Act	1994

Congressional anti-violence policy is created primarily in the House and Senate judiciary committees. To a lesser extent, other committees, the leaders of both political parties, and sometimes rank and file senators and representatives also play a role. Congress's style of policy making avoids hardheaded cost-benefit analysis with associated concerns for the marginal impact of the next dollar expended. Rather, politicians respond to interest groups and constituencies that press them, for example, to pass

hate-crime legislation, more severe punishment for domestic violence, more death penalty laws, three strikes legislation, and community notification ("Megan") laws.¹⁷ Senators and representatives are always required by political reality to compromise with their opponents and to accept that which is feasible rather than programs that would be optimal from any single perspective.

B. Political Impediments to Effective Congressional Lethal Violence Policy

It is of no use to tell Congress that it should not respond to lobbying pressures and popular opinion, that it should not water down policy initiatives with compromises and accommodations, and that it should deploy resources optimally so as to prevent the maximum amount of lethal violence. Congress will, and should, respond to interest groups and public opinion; this is the nature of our political system. The several omnibus crime-control acts of the 1990s that Zimring and Hawkins effectively criticize are not just aberrations that could be corrected by better thinking by one or more persons. They are the product of the whole congressional policy making process. In the debates over the omnibus crime-control bills of the 1990s, the senators and representatives focused primarily on lethal violence and vigorously argued over the relative merits of prevention, increased incarceration, gun control, and other potential remedies. Their end results may be flawed and inefficient, but these laws may be the best achievable under our political system.

Might Congress itself become a wiser, more sophisticated policy generator? Probably not. Key staffers of the congressional committees involved with crime and justice issues could become better policy analysts, but ideological and political considerations will always dominate. Liberals and conservatives hold many strongly opposed values and priorities on crime and justice issues. If more sophisticated, realistic, logical, and efficient laws require radical changes in the way Congress handles crime-control issues, one must be pessimistic about the likelihood that such laws will

17. Megan's Law, 42 U.S.C.A. § 14071(b)(1)(A)(1) (West 1995 & Supp. 1998). See generally MALCOLM M. FEELEY & AUSTIN D. SARAT, *THE POLICY DILEMMA: FEDERAL CRIME POLICY AND THE LAW ENFORCEMENT ASSISTANCE ADMINISTRATION*. (1980); Robert F. Diegelman, *Federal Financial Assistance for Crime Control: Lessons of the LEAA Experience*, 73 J. CRIM. L. & CRIMINOLOGY 994-1011 (1982).

be enacted. I do not mean to say that Congress's performance in crime-control policy making could not improve through more informed and effective leadership, but rather that there are real limits to how much improvement there could be.

Removing Congress, and populist and symbolic politics, from the formulation of crime-control policy at the federal level would be very difficult. Conceivably, Congress could depoliticize certain features of criminal justice policy making by turning them over to the executive branch agencies or to independent administrative agencies, as in the case of the United States Sentencing Guidelines Commission.¹⁸ But would these agencies be up to the job of making the rational, finely-tuned choices that Zimring and Hawkins urge? True, the administrative agencies are more politically insulated than Congress, but they are not completely insulated. For one thing, the administrative agencies are subservient to Congress and the president. In the modern era, presidential candidates campaign on crime issues and thus come into office with politically-grounded priorities for crime control. For example, Bill Clinton, apparently reading the same polls as members of Congress, came to office as a strong proponent of capital punishment, the radical restriction of *habeas corpus*, and the war on drugs.¹⁹ Moreover, Congress's recent rejection of the Sentencing Commission's effort to implement parity between sentences for powdered and crack cocaine demonstrates that

18. See Sentencing Reform Act of 1984, 18 U.S.C. § 3551 (1994); 28 U.S.C. §§ 991-998 (1994).

19. In his 1992 campaign for the presidency, Bill Clinton supported the death penalty, giving college graduates the opportunity to pay off their federal student loans by working in law enforcement, expanding federal aid for communities to fight crime, community-based policing, drug treatment on demand, tougher measures on white-collar crime, increased cooperation among law enforcement officials at the federal, state, and local levels, the Brady Bill, "boot camp" prisons, and 100,000 new federally-funded police officers for localities.

In the 1996 election, Clinton campaigned for tightening or eliminating parole for violent criminals, supported the death penalty, expressed his belief in longer, tougher prison sentences, especially for violent criminals, proposed stiffer penalties for people convicted of domestic violence, called for a national registry of sex offenders, called for expansion of the Brady Bill to cover anyone convicted of domestic violence, called for a ban on "cop killer" bullets, called for legislation to ban guns near school yards, and called for legislation to give prosecutors more power to convict people who use guns in the commission of drug crimes. He also called for extension of the statute of limitations for violent crimes committed by gang members from five years to ten years. See 1996 Democratic National Platform, visited April 16, 1998 <www.democrats.org/party/convention/convplt.html> and <www.democrats.org/party/convention/platform.html>.

administrative agencies are not insulated from congressional oversight.

From 1968 until 1980, Congress, through the Law Enforcement Assistance Administration ("LEAA"), sought to force crime-control planning on the states by a program of criminal justice block grants.²⁰ To qualify for a block grant under LEAA, a state had to create a state planning agency, and that agency had to develop and submit for approval a plan to spend the federal money. However, the planning function often was not taken seriously but treated as a bureaucratic obstacle.²¹ In Philadelphia, for example, the planning apparatus merely served to reinforce the domination of established criminal justice interests.²² Hence, politics triumphed over policy science.

One of the major weaknesses of the LEAA was that there were no adequate procedures for evaluating the programs it funded. Many state programs did not keep adequate records, or the records which they did keep were not suited for data collection and analysis.²³ Primary questions about which programs were most effective remained unanswered. Another problem with the LEAA was the difficulty in terminating unsuccessful programs because localities became addicted to the grants.²⁴ In some states, such as North Carolina, the infusion of LEAA funds had little impact on changing the existing system or implementing needed reforms.²⁵

In 1976, the Twentieth Century Fund Task Force on the Law Enforcement Assistance Administration ("Task Force") evaluated the LEAA program and suggested that a Law Enforcement Assistance Institute ("LEAI") be created. LEAI would have as its primary function research, experimentation, and evaluation at

20. See Omnibus Crime Control and Safe Streets Act of 1968, P.L. 90-351, § 101, 82 Stat. 197, 198 (codified as amended at 42 U.S.C. § 3711 (1976 and Supp. IV 1980)).

21. See Milton G. Rector & Joan Wolfle, *The Law Enforcement Assistance Administration in Perspective*, 5 COLUM. HUM. RTS. L. REV. 53, 62 (1973).

22. See Charles A. Reid, *Philadelphia, Pennsylvania: City-State Relations*, 5 COLUM. HUM. RTS. L. REV. 117, 153 (1973).

23. See Gilbert Gude & George Mannina, Jr., *The Impact on Crime of the Law Enforcement Assistance Administration in the District of Columbia*, 5 COLUM. HUM. RTS. L. REV. 27, 53 (1973).

24. See Peter R. Gregware, *Massachusetts: Experiments in Crime Prevention*, 5 COLUM. HUM. RTS. L. REV. 1, 182 (1973).

25. See John Purcell, *North Carolina: Corrections and Juvenile Justice in a Rural State*, 5 COLUM. HUM. RTS. L. REV. 185, 193 (1973).

the national level, and it would directly control fifty percent of the federal apportionment for law enforcement assistance. In particular, the Task Force proposed that the LEAI evaluate selected state programs. It also recommended that LEAI provide leadership for criminal justice agencies, while at the same time allowing the agencies broad discretion in administering their grants.²⁶

The Task Force determined that the LEAA's mandate to reduce crime and improve the criminal justice system was too ambiguous, and possibly contradictory, to be effective. The Task Force report suggested that the LEAA might have an impact on criminal justice by "conducting and encouraging innovative research, experimentation, and evaluations as demonstration projects" and that its mandate should be revised accordingly.²⁷ Reacting to criticisms of the LEAA, Congress terminated its funding in 1980. The Task Force's proposal for a LEAI, however, was the impetus behind the creation of the National Institute of Justice ("NIJ") and the Bureau of Justice Statistics.²⁸

C. Other Federal Lethal Violence Policy Making Entities

Apart from Congress, crime-control policy formation and execution is scattered among many different federal agencies.²⁹ The DOJ³⁰ and the various agencies that fall under its umbrella engage in a great deal of criminal justice policy making. The Attorney General has substantial power to set investigative and

26. See VICTOR NAVASKY & DARRELL PASTER, *LAW ENFORCEMENT: THE FEDERAL ROLE* 10-11 (1976).

27. See *id.* at 121.

28. Justice System Improvement Act of 1979, 42 U.S.C. § 3701 (Supp. IV 1980).

29. There is no parallel in crime control to the aggressive federal control over regulating auto safety standards. Centralizing or coordinating crime-control policy would be a far larger and more complex undertaking than the centralization of authority over traffic safety, which the authors see as a model. See ZIMRING & HAWKINS, *supra* note 1, at 187. The authors applaud the extent to which traffic safety reform was depoliticized and handled by professional policy makers. Whether or not that is an accurate interpretation, it is inconceivable that crime and violence control could be depoliticized.

30. The Office of Justice Programs within the DOJ was established in 1984. Its purpose is to guide and coordinate policy, focus on the priorities established by the President and the Attorney General, and promote coordination among the many DOJ bureaus and offices. It is authorized to collect statistical data, develop and test approaches to criminal justice issues, evaluate program results, and disseminate their findings to state and local governments. See *Office of Justice Programs*, (visited Apr. 9, 1998) <<http://www.ojp.usdoj.gov/oaag>>.

prosecutorial priorities on issues like white collar crime, organized crime, and drugs. In theory at least, the law enforcement agencies within DOJ take their orders from the Attorney General. I say "in theory" because the FBI director is politically independent of the Attorney General. Moreover, the FBI, DEA, Immigration and Naturalization Service ("INS"), and other agencies with law enforcement responsibilities are huge bureaucracies often with their own congressional support systems. Their priorities can be imposed from above only to a certain extent. These agencies have important responsibilities other than lethal violence: they must attend to enforcing the nation's many other laws, especially since in many cases, enforcing those laws is an agency's primary purpose.

The NIJ, a unit of the Office of Justice Programs, has an important role in criminal justice because of its authority over research and action grants. NIJ, especially in recent years, has created a national research agenda in crime and justice. But NIJ's freedom of action is constrained by Congress. To a significant extent, NIJ's research agenda is tied to congressional priorities. When Congress passed the massive Community Oriented Policing Services program,³¹ NIJ received tens of millions of dollars to study policing strategies. Similarly, the Violence Against Women Act generated a domestic violence research agenda.³² In any event, NIJ's mission is not to formulate policy, much less to implement it. NIJ is primarily a research agency that seeks to make good information available to federal, state, and local decision makers. DOJ's Office of Policy Development ("OPD"), with fifteen to twenty professional staff, does play a role in formulating administration policy, but the key political choices usually are made elsewhere. Moreover, on issues falling within their bailiwicks, other DOJ divisions, like the civil rights division and the anti-trust division, have major policy making input. Should there be a new DOJ division devoted to combating lethal violence, proliferating policy making units, or would it be better to strengthen the OPD? Either way, it would probably make sense to consolidate DOJ's policymaking apparatus in some manner.

31. See Title I of the Public Safety Partnership and Community Policing Act of 1994, 42 U.S.C. § 3796dd (1994).

32. Violent Crime Control & Law Enforcement Act of 1994, 42 U.S.C. § 13701 (1994).

The Treasury Department shares with DOJ authority for federal law enforcement. The Treasury's Under Secretary for Enforcement has a portfolio that includes the Bureau of Alcohol, Tobacco & Firearms ("ATF"), the United States Customs Service, the Secret Service, and the Internal Revenue Service. Thus, federal firearms enforcement policy, at least with regard to the supervision of federally licensed firearms dealers and crackdowns on gun runners, is primarily a creature of the Treasury Department generally and ATF specifically. The Treasury Department's Office of Policy Planning and Development has a mandate that covers the full array of policy matters that come within the Department's law enforcement agendas. Prosecutorial policy on firearms violations is the responsibility of DOJ generally and of the ninety-three semi-autonomous U.S. attorneys specifically.

Are the U.S. attorneys in a position to focus more attention and resources on lethal violence? That depends on how much attention they now pay to lethal violence, how feasible it would be to transfer resources away from other priorities, and how productively they could use more resources to prevent lethal violence. The U.S. Attorney's office in the Southern District of New York, for example, has created a Crime Control Strategies unit, which seeks to organize and analyze information in order to allocate more resources effectively.³³ Perhaps such efforts will help decrease lethal violence in particular locations, but they will also tend to disperse decision making even further at the federal level, potentially hindering national efforts to effect solutions.

Moreover, even outside of the major justice-oriented agencies, the federal government is already involved in a great deal of public health work on lethal violence. Since the early 1980s, the Center for Disease Control ("CDC") Division of Violence Prevention has been promoting research and program evaluations of lethal violence.³⁴

33. For example, a computer mapping system which records the residence of the offender, the location of the offense, and the addresses of the cooperators for every crime. This mapping system synthesizes information which is relayed to the office by twenty-five investigative agencies including New York City Police, FBI, ATF, INS, and DEA. Telephone Interview by Jill H. Reinstein with Elizabeth Glazer, Crime Control Strategies Unit, U.S. Attorney's Office for the Southern District of New York (Feb. 13, 1998).

34. The CDC public health approach has four components: description of the problem; identification of the risk; evaluations of interventions and programs designed to reduce violence; and implementation of promising programs at the

Can better lethal violence policy be made and implemented within the context of such institutional fragmentation in the executive branch of the federal government or should policy making and implementation be much more centralized? If the answer is centralization, policy formulation might be assigned to a single existing or new cabinet-level agency.³⁵ If not, another possible strategy would be to create a non-cabinet agency, modeled after the White House Domestic Policy Advisor to the President or after the Director of the Office of Drug Control Policy, known as the "drug czar."

D. The Advantages and Disadvantages of a Federal Lethal Violence Prevention Czar

The Office of Drug Control Policy seeks to centralize and rationalize policy formulation in the drug control area, but it has had limited success. In an earlier work, Zimring and Hawkins were skeptical about the effectiveness of the national drug czar as a policy planner.³⁶ They pointed out that the drug czar's two roles, chief rhetorical officer and chief drug control policy planner, operate at cross-purposes. As a rhetorician, the drug czar essentially lobbies citizens, Congress, and states to invest in drug control programs, but as a policy planner, the drug czar needs to evaluate these same programs cautiously and skeptically. Zimring and Hawkins recommended separating these two functions or, alternatively, creating a policy planning group to advise the drug czar.³⁷

Would it make sense to create a czar to rationalize, systematize, and coordinate all federal crime-control initiatives, or more specifically, lethal violence control initiatives? Structuring the authority of the lethal violence director would be no small undertaking, especially if the director's authority were to extend to treatment, prevention, and education, as well as law enforcement. Despite the unofficial title of "czar," the Director of the

community level. Currently, the CDC's violence prevention program has four priority areas: youth violence, intimate violence, suicide, and firearms injuries.

35. In the past, proposals to combine all federal law enforcement in the DOJ have been criticized on the ground that it is important for the President to have diverse and competing advice on matters of criminal justice policy.

36. See FRANKLIN E. ZIMRING & GORDON HAWKINS, *THE SEARCH FOR RATIONAL DRUG CONTROL* 183-84 (1992).

37. See *id.*

Office of Drug Control Policy does not control or dominate drug policy making in the DEA, FBI, State Department, or Customs Service much less, of course, in state and local law enforcement agencies. Moreover, the drug czar does not begin to "control" drug prevention and rehabilitation, nor even to play an important coordinating role. Massive bureaucracies, like the National Institute of Drug Abuse, the National Institutes of Health, and the Department of Education, formulate their own anti-drug policies as they think best. Of course, the drug czar has even less influence when it comes to state, county, and municipal programs. An anti-lethal violence control czar could expect to be no more powerful.

III. STATE-LEVEL POLICY FORMULATION

State legislatures control the definition of crimes, criminal procedures, and sentences. They decide (subject, of course, to the governor's veto) how many prison beds there will be, whether to spend money on more prisons, and what prison programs to support. The state legislatures have primary authority for passing gun control laws. In addition, many states make block or categorical grants to local governments. In spite of this broad authority to implement lethal violence policy, however, the structure of state decision making will not easily lend itself to the Zimring and Hawkins approach.

Many of Zimring and Hawkins's recommendations point in the direction of more efficient sentencing. Some state legislatures, like Minnesota, have shown impressive success in rationalizing sentences by means of sentencing commissions. Nevertheless, the state legislatures, like Congress, have hardly insulated crime-control policy making from the whims of populist opinion.³⁸ Under the banner of violence control, three strikes laws and Megan's laws have swept the country.³⁹ Like Congress, the state

38. When the Minnesota Supreme Court struck down legislative sentencing disparities between crack and powdered cocaine, the legislature responded by "leveling up" so that all cocaine offenses would subsequently be punished the same as crack. Perhaps this demonstrates that even the otherwise dispassionate Minnesota policymaking apparatus is subject to the whims and caprice of populist politics.

39. These statutes, enacted both by some states and by Congress, allow or require public notification whenever certain convicted sex offenders are released from incarceration and move into a community. New Jersey's Megan's Law was

legislatures are the domain of politicians who must be answerable to constituencies and interest groups. In recent decades, state legislatures have generated a stream of criminal laws purporting to attack lethal violence but usually sweeping in most other crime as well.⁴⁰

The governor and the state executive branch formulate parole and prison policy (except that which is legislatively prescribed) and may encourage municipalities, via grants in aid, to adopt one specific crime-control policy over others. The executive branch may be better insulated from populists and lobbyists, but it is not immune. Indeed, many governors ride into office on the back of "get tough" crime-control proposals.

Some states have retained the criminal justice planning agencies mandated under LEAA; others, like New York, have created an office of state criminal justice coordinator.⁴¹ At least in New York, the position has been a staff position under the governor without line authority over state agencies, much less over local law enforcement agencies, to adopt various policies and to commit resources. Even if these offices had greater authority to carry out their policy objectives, they would still suffer from the same shortcomings as a federal lethal violence czar.

In any event, state-level criminal justice policy making initiatives need to be surveyed. For example, the Governor's Office of Crime Control and Prevention in Maryland claims to target grants and resources to areas of high crime, designated "hot spots," which are identified with the help of a computer mapping system. In allocating funds to reduce crime in these areas, the office requires that the recipients address six core elements: community mobilization, community policing, community probation, community maintenance, youth prevention, and local coordination. The community policing and community

found unconstitutional by a federal district court; although the Third Circuit, on appeal, dismissed the complaint as the petitioner had not yet been subject to the statute. However, the court noted the potential infirmities of the statute. See *Artway v. Attorney General*, 876 F. Supp. 666, 692 (D. N.J. 1995), *aff'd in part and vacated in part*, 81 F.3d 1235 (3d Cir. 1996).

40. For example, California claims to have passed just recently the toughest mandatory minimum sentences in the country for defendants who use a gun in the commission of a serious felony. See CAL. PENAL CODE § 12021.5 (West 1997).

41. See N.Y. EXEC. §§ 836-837 (Consol. 1997) (giving the Commissioner of the Division of Criminal Justice Services the responsibility to advise and assist the governor in developing policies, plans, and programs for improving the coordination, administration, and effectiveness of the criminal justice system).

probation elements require that police officers, adult probation officers, juvenile probation officers, and federal probation officers meet once a week to exchange information, and this information sharing among the different officers is said to have useful consequences. There are probably dozens of such ongoing initiatives around the country at any point in time and they all need to be reported and evaluated.

IV. LOCAL GOVERNMENT POLICY FORMULATION

Most law enforcement expenditures are made by local governments, mainly by the police, but also by prosecutors, jail personnel, pre-trial services, probation, and diversion program executives. Mayors and police commissioners create and implement crime-control policies, while county district attorneys decide where to focus their resources, often in the face of directives from state and federal officials that the district attorneys perceive as burdensome and conflicting. These directives create tensions between agencies at the county and city/town government levels.⁴²

Zimring and Hawkins fail to identify which, if any, local decision makers should be responsible for implementing their policy recommendations. Many local governments are currently experimenting with innovations in lethal violence prevention, ranging from career criminal task forces⁴³ and other specialized divisions⁴⁴ in police and prosecution agencies to agencies and programs aimed at family violence and gang activity. A successful multi-dimensional lethal violence approach would require policy makers to determine the cost-effectiveness of these and other programs, and to compare the payoffs of investments in such diverse areas as homicide squads and police technology.

Since 1994, New York City has had the office of the Criminal Justice Coordinator. The coordinator has a small staff and no

42. The Chabot Amendment to the crime bill (H.R. 728), in the first session of the 105th Congress, sought to equalize crime-control block grant monies to counties and cities. The Amendment pitted two local government lobbyists, the National Association of Counties and the National League of Cities, against one another. For an excellent analysis of local crime-control policies, see STUART SCHEINGOLD, *THE POLITICS OF LAW AND ORDER: STREET CRIME AND PUBLIC POLICY* (1984).

43. See MARCIA CHAIKEN & JAN CHAIKEN, *REDEFINING THE CAREER CRIMINAL: PRIORITY PROSECUTION OF HIGH-RATE DANGEROUS OFFENDERS* (1990).

44. The Manhattan District Attorney's Major Sex Crimes Division is a good example.

authority to impose policy on police, courts, corrections, or other organizations. Indeed, the position seems to be poorly defined and invested with little power. The coordinator functions as an umpire in disputes between criminal justice agencies and as a trouble shooter. Strengthening such offices may be necessary or, at least, facilitative, for developing a pointed attack on lethal violence. Local authorities could also contemplate creating a mayor's office on crime control or on lethal violence, although this local policy "czar" would face the same problems as the state and federal czars discussed above.

V. LOBBYISTS AND INTEREST GROUPS

In the United States, there is a phenomenal amount of grass roots activity directed at practically every social problem, including lethal violence. Table II lists some of this grassroots activity. Is this an impediment to rational lethal violence control policy or will it facilitate such policy? Organizations such as Citizens Committee for New York City, Mothers Against Violence in America, Students Against Violence Everywhere, and Pacific Center for Violence Prevention are pressing for a range of anti-violence policy and programs, not all of them compatible with those of the other groups. In addition to "general" crime-control reform groups, there is a plethora of single issue lobbying groups—such as Mothers Against Drunk Driving, Handgun Control, Inc., the National Organization Against Prejudice and Violence, and the Gay & Lesbian Anti-Violence Project⁴⁵—that draft statutes and attempt to get them passed by federal and state legislatures. These groups are not committed to wide-ranging rationality in sentencing, but typically (although not always) to more severe punishments of the crimes that concern their members.

These myriad lobbying groups have advantages and disadvantages for designing and implementing more effective policies on lethal violence. Arguably, they politicize the process and, by relentlessly demanding satisfaction of their own issues,

45. Some other groups include: Californians for Responsible Gun Laws, Coalition to Ban Handguns, Society Against Firearm Endangerment, Women Against Gun Violence, Firearms Coalition, Concerned Citizens About Gun Violence, Americans for a Non-Violent Society, Citizens for Safety, Stop Handgun Violence, and E.N.O.U.G.H.

distort priorities and squander resources. On the other hand, these groups are the repository of much expertise and are responsible for many of the best (as well as many of the worst) criminal justice initiatives in recent times. The challenge is to figure out a way to identify and channel the contribution of these groups into a rational national policy of lethal violence prevention.

History is informative here. In 1974, the Citizens' Initiative Office was created within the LEAA's Office of National Priority Programs with the goal of fostering citizen participation in crime prevention efforts. Although the office had a short life, it did stimulate grass roots activity; for instance, one proposal brought together such geographically disparate groups as BUILD in Buffalo, the Woodlawn Organization in Chicago, a Chicano group in Los Angeles, and a Filipino group in Newark in support of setting up a series of storefront community advocacy criminal justice centers.⁴⁶ This initiative shows how grass roots activity can be spurred on by federal funding and how federal crime-control policy can be responsive to citizen activism.⁴⁷

Table 2: State and Local Grassroots Anti-Violence Organizations⁴⁸

State	Organizations
Alabama	Society Against Firearm Endangerment Mothers Against Violence
Arizona	Handgun Control Activists
California	Californians for Responsible Gun Laws Handgun Control, Inc. Pacific Center for Violence Prevention Women Against Gun Violence Los Angeles Teens on Target/Youth Alive
Colorado	Colorado Children's Campaign Physicians for Social Responsibility

46. See NAVASKY & PASTER, *supra* note 26, at 62.

47. For an interesting look at partnerships between the government and non-governmental organizations in Britain, see ADAM CRAWFORD, *THE LOCAL GOVERNANCE OF CRIME: APPEALS TO THE COMMUNITY & PARTNERSHIPS* (1997).

48. Groups dedicated to preventing domestic violence exist in every state and are not listed here.

Connecticut	Connecticut Coalition Against Gun Violence
Florida	MAD DADS of Greater Ocala
Georgia	Georgians Against Gun Violence, Inc. Georgians United Against Gun Violence
Hawaii	Firearms Coalition Hawaii Firearms Control Coalition
Illinois	Illinois Council Against Handgun Violence Quad Citizens for Responsible Gun Laws Rise High Projects
Indiana	Concerned Citizens About Gun Violence G.R.I.E.F. of Indiana
Iowa	Iowans for the Prevention of Gun Violence
Kentucky	Kentuckian's Chapter for Handgun Control Kentucky Voice for Crime Victims
Louisiana	Louisiana Ceasefire
Maryland	Marylanders Against Handgun Abuse
Massachusetts	Americans for a Non-Violent Society Citizens for Safety Stop Handgun Violence
Michigan	Michigan Citizens for Handgun Control SOSAD Women Against Gun Violence
Minnesota	Citizens for a Safer Minnesota
Missouri	Ad Hoc Group Against Crime Coalition Against Concealed Guns Missourians Against Handgun Violence E.N.O.U.G.H.
Nebraska	Nebraskans for Responsible Gun Ownership
New Hampshire	Seacoast Advocates for Gun Control
New Jersey	Cease Fire New Jersey
New Mexico	New Mexico Ceasefire
New York	Fellowship of Reconciliation Handgun Control of New York Mothers Against Violence New Yorkers Against Gun Violence
North Carolina	North Carolinians Against Gun Violence
Ohio	Handgun Control Federation of Ohio L.E.N.A. Parents of Murdered Children
Oregon	Oregonians Against Gun Violence
Pennsylvania	Pennsylvanians Against Handgun Violence

South Carolina	Citizens for a Safer South Carolina The Alliance for South Carolina's Children
Tennessee	Tennesseans for Responsible Gun Ownership
Texas	Houston Area Violence Prevention Physicians for a Violence Free Society Texans Against Gun Violence Texans Against Violence Texas Crime Prevention Clearing House
Utah	Utahns Against Gun Violence
Vermont	Vermonters Against Gun Violence
Virginia	Virginians Against Handgun Violence
Washington	Mothers Against Violence in America Washington Cease Fire
Wisconsin	American Trauma Society Citizens Against Handgun Violence Mobilization for Survival

VI. FOUNDATIONS, UNIVERSITIES, AND LETHAL VIOLENCE POLICY FORMULATION

A number of university schools of public health, including those at Columbia and Johns Hopkins, have well established anti-violence programs. Certain grant-making private foundations also participate in policy development through funded research and action programs.⁴⁹ They can be very influential, but their priorities, at any given time, do not necessarily connect to the priorities of governmental decision makers or even to the priorities of other foundations. Thus these foundations add yet

49. The MacArthur Foundation sponsored an eight-year study of 11,000 young people in Chicago by Harvard University's School of Public Health which aims to study development of youths in various neighborhoods and economic circumstances in order to determine the best strategies for preventing crime. Researchers on the project are seeking to answer questions such as: Why do some communities have high rates of crime and violence while other similar communities do not? Since 1988, the Edna McConnel Clark Foundation's Justice Program has sponsored the State-Centered Program which funds efforts to reduce the prison populations and develop alternative sanctions. In 1996, the Foundation approved an award of \$10 million to establish an Institute of Criminal Justice at the University of Minnesota Law School. The SOROS Foundation currently is sponsoring various programs aimed at reducing crime and violence. Some recent grants have gone to agencies such as Anti-Violence Partnership of Philadelphia for school-based victims services and violence prevention programs and to KQED in San Francisco for a documentary series on how local jurisdictions are using new methods of reducing youth violence.

another possible impediment to designing and implementing clear and decisive lethal violence policy.

CONCLUSION

There are two basic models by which the United States might move toward a more deliberative, rational, and efficient policy on lethal violence that could build on Zimring and Hawkins's analysis. The first model is a "top down" model with leadership coming from the federal government utilizing a mixture of federal programs, grants, and direct assistance. The advantage of the top down model is that it has resources, expertise, and nationwide scope, so that gains in one area are not erased by inconsistent or non-existent policy moves elsewhere. The disadvantage is that bold decisive national policy is very hard to achieve, especially on highly politicized subjects like crime and violence. Furthermore, the federal government lacks authority and manpower to implement far-reaching anti-lethal violence reforms. The federal government's chief resource, pots of money that can be used to coax states and localities into preferred policy positions, is a blunt instrument for initiating major policy change.

The second model is a "bottom up" model. A grass roots citizen-based anti-violence movement could generate a tremendous amount of activity and experimentation. Just think of the anti-drunk driving movement. Groups in every town, country, and state pushed for more action in education, health, consumer safety, and criminal law and law enforcement. Although not labeled as such, perhaps many of the federal, state, and local crime-control laws and policies of the last few years are the consequence of an anti-violence movement. When such movements catch on, politicians respond. The problem, however, is that movements are impossible to control and fine tune. By definition, they are not controlled by policy planners aiming at efficiencies and optimum resource allocations. Thus, unsuccessful and inefficient programs may become entrenched because of their political popularity. The challenge for grass roots lethal violence control would be to energize and guide an anti-violence movement that, like the anti-drunk driving movement, would stimulate governmental and non-governmental initiatives and programs at all levels of government and civil society without producing over-reaching and inefficient policies and programs.

