

UNIVERSITY OF
COLORADO LAW REVIEW

Volume 69, Number 4

1998

**LETHAL VIOLENCE IN AMERICA: AN
OVERVIEW OF THE COLORADO LAW
REVIEW SYMPOSIUM**

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INTRODUCTION

It is important periodically to step back from the daily realities of the criminal law to ask: What are the most urgent problems confronted by the criminal justice system as a whole? Most people's list of top priorities would include the high rates of violent crime and victimization in America—especially in our inner cities. Compared to other nations such as France, Germany, Italy, Canada, the United Kingdom, and especially Japan, the United States suffers greatly from serious violent criminality.¹ The 1998 University of Colorado Law Review Symposium begins with this sobering assessment, and focuses attention on a new and significant book which argues that violent crime should be by far *the first priority* of U.S. criminal justice—and that serious programs to reduce lethal and life-threatening violence would be far different from the laws and policies we are currently pursuing.

Crime Is Not the Problem: Lethal Violence in America,² a book by Franklin Zimring and Gordon Hawkins, is the centerpiece of the 1998 Symposium. The book supplies multiple points of departure for discussions about (1) the nature and characteristics

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1. The 1990 U.S. homicide rate, for example, was more than three times that of Italy's homicide rate for the same year, more than four times Canada's rate, and more than ten times the rates in the United Kingdom and Japan. See FRANKLIN E. ZIMRING & GORDON HAWKINS, *CRIME IS NOT THE PROBLEM: LETHAL VIOLENCE IN AMERICA* 55 fig.4.3 (1997) (comparative homicide rates for G7 countries, 1990).

2. ZIMRING & HAWKINS, *supra* note 1.

of serious violent criminality in America, (2) what we know about the causes of the problem, and (3) strategies and proposals for governmental responses. The Law Review has invited eleven distinguished symposium participants, from a wide variety of professions and disciplines, to offer comments on *Crime Is Not the Problem* and, more importantly, to build upon the arguments and suggestions offered by the book's authors. Franklin Zimring, together with Gordon Hawkins, has authored a response to the symposium proceedings. Therefore, this volume is far more than an eleven-part book review; instead it aims to be a series of extrapolations on the questions of research, law, and policy raised by Zimring and Hawkins.

I. AN OVERVIEW OF THE BOOK

The central themes of *Crime Is Not the Problem* bear careful articulation: Zimring and Hawkins focus their attention on lethal and life-threatening violence—the types of criminal events (they argue) that the American public fears most. The term “lethal violence” in the book's subtitle is meant as a shorthand for events involving “death and life-threatening injury from intentional attacks.”³ Such episodes of lethal violence, it should be noted, comprise only a small fraction (on the order of ten percent) of all crimes usually categorized as violent offenses in the United States. Thus, many robberies, assaults, rapes, and episodes of domestic violence—while registered by the FBI or in victims surveys as violent episodes—fall outside the tight focus of Zimring and Hawkins's analysis. And this “thin layer” of lethal violence occupies a truly minuscule share of all criminal events in the United States (probably less than one percent of all violent, property, drug, and public order offenses counted together).⁴ Thus, one part of Zimring and Hawkins's argument is that lethal violence is both a discrete and *exceptional* sub-phenomenon within the larger frame of “crime in general.”

Added to this contention, the authors seek to refute a central assumption of U.S. criminal justice policy: that high rates of lethal violence are a byproduct of gross crime rates. Contrary to

3. *Id.* at xi. Despite the fact that the shorthand term is underinclusive, and possibly confusing for this reason, I will adopt it in this paper, to avoid repeating the longer phrase.

4. *See id.* at 50.

this view, Zimring and Hawkins see "crime in general" and "lethal violence" as separately determined phenomena. Thus, for example, they challenge the belief that a reduction of American homicide would require a concomitant reduction in crime overall. The case for crime-violence separability, the authors say, comes from statistical analysis of trends within this country and worldwide. Working with historical data from the United States and other countries, Zimring and Hawkins find that property crime rates have varied independently of rates of lethal violence in the latter half of the twentieth century. Most Western nations, including the United States, have seen generally increasing property crime over that period. But serious violence follows an up-and-down pathway all its own. Zimring and Hawkins conclude that the "theory of crime-violence linkage" is unsupported in the current knowledge base. America's lethal violence problem, they say, is separable from—and should be addressed independently of—America's crime problem.

The separability argument, for Zimring and Hawkins, is reinforced by the fact that the United States has an unusual amount of lethal violence when compared with other Western democracies, but the United States fails to distinguish itself for its rates of crime in general, including sub-lethal violence. London has more theft and burglary than New York City, for example, and Sydney, Australia has rates very close to those in Los Angeles.⁵ International measurements of violent crime (not the subclass of *lethal* violence, but the omnibus category) place the United States comfortably in the pack along with places like the Netherlands, West Germany, Canada, New Zealand, and Australia.⁶ Indeed, one recent assault victimization survey ranked America as being only slightly more dangerous than England and Sweden, and noticeably more placid than Canada, New Zealand, and Australia.⁷

All of this good news evaporates, however, when America compares itself to other English-speaking nations, or with Western Europe and Japan, on dimensions of *lethal* violence. Suddenly the United States leaps forward for its high rates of homicide, robbery (a much more dangerous crime for risk of injury than assault), and the number of assaults in America that

5. See *id.* at 4-7.

6. See *id.* at 37 fig.3.2.

7. See ZIMRING & HAWKINS, *supra* note 1, at 39 fig.3.4.

produce death or serious bodily harm.⁸ At the very top level of crime seriousness, the United States resembles the Third World far more than other countries we would like to compare ourselves to.⁹ Zimring and Hawkins argue, perhaps controversially, that the United States could live easily with the broadly defined "crime problem" of, say, the United Kingdom or the Netherlands.¹⁰ What we cannot tolerate, the authors say, is the tragic aberration of American lethal violence.

Part I of *Crime Is Not the Problem* holds up a mirror to the U.S. scourge of lethal violence, and explores its differential presence within our boundaries. Most Americans are far safer than the aggregate statistics would suggest. The highest risks of lethal-violence victimization are concentrated in the inner cities, in the poorest neighborhoods, especially those that are African American.¹¹ Rates of offending seem to follow similar geographic and demographic patterns. African-American arrest rates for homicide are greater than white arrest rates by a factor of 8.4; for robbery the multiplier is more than ten.¹² These large numbers are generated primarily within the inner city.¹³ As Zimring and Hawkins observe, however, the uniquely American problem of lethal violence cannot be viewed as only a black-urban problem. If the U.S. homicide statistics for 1990 were cut back artificially to erase all deaths attributed to African-American offenders, for example, the U.S. homicide rate would still have been more than twice that of Canada, more than four times the rates in France and Germany, and more than six times the rates in the United Kingdom and Japan.¹⁴

8. See, for example, the comparison of aggravated assault-to-homicide ratios for G7 countries in 1990 charted in ZIMRING & HAWKINS, *supra* note 1, at 42 fig.3.5.

9. For example, United Nations data, although of questionable precision, place U.S. homicide rates a bit below those of Brazil and Ecuador, and a bit above those of Lithuania, Venezuela, and Zimbabwe. We appear to have something like one-fifth the rate of crime-torn Colombia. See ZIMRING & HAWKINS, *supra* note 1, at 54 fig.4.2.

10. See *id.* at xi (opining that crime of this kind is no more than "a major annoyance").

11. See, e.g., *id.* at 87 ("African-Americans are no more than twice as likely as whites to become victims of property crimes; they are more than five times as likely to be killed.").

12. See *id.* at 76 fig.5.1.

13. See *id.* at 233-36 app.4 ("Race and Lethal Violence: A Five-City Comparison").

14. See ZIMRING & HAWKINS, *supra* note 1, at 80 fig.5.3.

The descriptive observations in Part I of *Crime Is Not the Problem* lead the authors to their general theme for the remainder of the book: Zimring and Hawkins believe that the legal and policy responses most likely to be successful in attacking the thin layer of lethal violence in America are those targeted to the task, rather than broad-based efforts aimed at the amorphous problem of "crime in general." Further, they contend that the focus of legal and policy activity has been exactly backwards in recent years. Too often, they say, we have attempted to deal with lethal violence as a part of overinclusive measures responsive to a broad spectrum of criminal behavior. According to Zimring and Hawkins, a successful strategy must be far more surgical.

In Part II of *Crime Is Not the Problem*, the authors address the issue of closely tailored research into the causes of America's high rates of lethal violence. We often ask what causes some citizens to become criminals. But Zimring and Hawkins's analysis pushes to a more specific inquiry: What accounts for the tiny minority of citizens—including persons with and without other criminal involvement—who take the highly unusual step of crossing the line into acts of lethal violence? Why is this statistically atypical group so much larger in the United States than in other First World countries? Why do we seem to have more lethally-violent criminals when we do not seem to have more criminals overall?

Part II illustrates rather than exhausts the possibilities for targeted causation research. In three chapters dealing with firearms, media portrayals of violence, and drugs and violence, Zimring and Hawkins conclude that:

- There is a strong causal association between the wide availability of handguns and high rates of lethal violence in America, but the presence of guns is a necessary rather than a sufficient cause; guns interact with cultural factors that give rise to an unusual willingness among some American subpopulations to use maximum force in the settlement of disputes;
- There is no evidence of an important link between lethal violence and media content (such as violence on television or in the movies), although there is a paucity of serious research studying the targeted question of media effects on rates of lethal violence; and
- There is a demonstrable relationship between America's illicit drug problem and lethal violence, but it is found mostly in "systemic" violence by drug marketeers aimed

at establishing territory or enforcing "contracts" within the drug economy,¹⁵ and, once again, drug-market-related lethal violence is fueled in important part by the number of handguns easily available to a population subgroup that is disposed toward serious violence as a means of dispute resolution.

From the evidence assembled in Part II of the book, Zimring and Hawkins draw the firmest of their policy conclusions: "No program for the prevention of lethal violence can possess even superficial credibility without paying sustained attention to guns. Without strategies for the reduction of firearm use in assaults, no policy can be accurately characterized as directed at the reduction of American lethal violence."¹⁶

Part III of *Crime Is Not the Problem* turns its attention to legal and policy responses that can be tailored to the exigencies of lethal violence, both within the criminal justice system and, more broadly, as a matter of public health policy reaching beyond the criminal law. A list of the highlights among Zimring and Hawkins's recommendations includes the following:

- The substantive criminal law should be mobilized toward pervasive handgun regulation (although the authors recognize the political difficulty of this recommendation in the near term);
- The substantive criminal law of deadly force, providing legal defenses in certain circumstances (both to private citizens and police officers), should be tightened to apply to fewer situations; for example, laws allowing citizens to shoot burglars (such as Colorado's make-my-day law) should be eliminated;
- American sentencing policy should be changed to emphasize the use of lengthy incarceration for offenders who have committed offenses of lethal violence, or involving a high risk of life-threatening injury, and our sentencing policy should de-emphasize the use of incarceration for other offenders, in order to pursue a more efficient incapacitation policy and a more effective policy of marginal deterrence aimed specifically at lethal violence;

15. Zimring and Hawkins think there is little evidence that American rates of lethal violence can be traced to such acts by drug users (1) who are intoxicated and therefore more likely to act violently, or (2) who are committing crimes to support their drug habit. See generally ZIMRING & HAWKINS, *supra* note 1, at 138-55.

16. ZIMRING & HAWKINS, *supra* note 1, at 200.

- Lethal violence should be confronted by a pragmatic “public health” response that is far broader, and less ideological, than a morally-driven “criminal justice” response;
- Public health approaches (supplementing the substantive criminal law) should embrace handgun regulation as a first priority;
- Public health approaches should be concentrated first on disadvantaged urban communities; the authors contend that there has been an historic lack of concern for minority victims of lethal violence;
- Public health approaches should be addressed first to the prevention of “stranger” violence rather than the more frequent events of acquaintance and domestic violence; the authors argue that, despite their smaller numbers, stranger crimes are the species of lethal violence that inspires the greatest public fear.

II. AN OVERVIEW OF THE SYMPOSIUM

The above summary of *Crime Is Not the Problem* has included a minimum of editorial comment. Even a cursory recitation of the book's major arguments, however, suggests areas that are ripe for disagreement, applause, supplementation, claims that the authors are going in the wrong direction, and suggestions for alternative courses of action. Such creative tasks have been assigned to the eleven symposium participants, and they have discharged their mission with distinction. The participants collectively have greeted *Crime Is Not the Problem* with mixed reviews including high praise, disparaging criticism, and much in between. More importantly, each symposium contributor has added in some meaningful way to our understanding of the problem of lethal violence in America, or to our ability to formulate legal and policy initiatives to address the problem.

The symposium papers are grouped into four parts. The first three sets of papers track the organization of Parts I through III of *Crime Is Not the Problem* (respectively: national and transnational patterns of lethal violence, causation, and prevention). The final three papers express overall views of the book, and its location within the larger domains of criminal justice scholarship, criminal law administration, and legal policy making.

The first two papers in the symposium address Zimring and Hawkins's descriptive and comparative claims about the breakdown of lethal violence in the United States, its relationship to

the U.S. "crime problem" as a whole, and the conclusions we can fairly reach when comparing ourselves with other nations.

Darnell F. Hawkins, Professor of African-American Studies and Sociology at the University of Illinois at Chicago, and a leading scholar of race, ethnicity, and crime in America, centers his comments on chapter 5 of *Crime Is Not the Problem*, "New Perspectives on African-American Violence." Professor Hawkins finds much in Zimring and Hawkins's presentation to agree with, but he argues that the authors' analysis could have been both richer and more persuasive. First, Professor Hawkins believes that Zimring and Hawkins have paid too little attention to social forces that, quite apart from actual patterns of offending and victimization, influence the public's fear of crime and white fears of black violence. Second, Professor Hawkins criticizes Zimring and Hawkins's emphasis on urban centers as hotbeds of lethal violence. Professor Hawkins claims that high rates of homicide, for instance, can also be shown in rural areas and among racial and ethnic groups other than African Americans.

Joan McCord, Professor of Criminal Justice at Temple University, raises numerous questions about the statistical findings in Part I of *Crime Is Not the Problem*. Professor McCord argues that the book's analysis is premised on empirical observations that are of dubious reliability (particularly when international comparisons are at stake), and that the available data are subject to interpretations quite different from those the authors produce. Professor McCord argues that Zimring and Hawkins have not proven their basic case that crime and lethal violence follow causally-independent tracks, which casts doubt on the wisdom of the book's policy contentions. Professor McCord writes that "[i]t would be foolish to argue that lethal violence can be completely explained in terms of the causes of nonviolent crimes, but if the causes of nonviolent crimes are among the necessary causes of violent crimes, it may be inappropriate to disregard the common causes in favor of only the distinguishing ones."¹⁷

The next series of papers build upon or critique the causation theories explored in Part II of *Crime Is Not the Problem*. Alfred Blumstein of the Heinz School of Public Policy and Management at Carnegie Mellon University opens this segment of the program

17. Joan McCord, *Confounding Factors and Fictions of Counting*, 69 U. COLO. L. REV. 943 (1998).

with an original analysis, meant to supplement the work done by Zimring and Hawkins, of the apparent contributors to rising and falling rates of lethal violence in America over the last twenty to thirty years. Professor Blumstein focuses his paper on a question that has gained much prominence in the last few years (too recently, in fact, to draw attention in *Crime Is Not the Problem*): Why have the extraordinarily high rates of lethal violence in some American cities been falling precipitously in the very recent past? In most respects Professor Blumstein's argument is friendly to the conclusions offered by Zimring and Hawkins: He finds that the convergence of drug market activity and patterns of handgun diffusion have been dominant factors in the recent makeup of U.S. lethal violence.

Next, Northwestern University Law Professor Daniel D. Polsby (in a paper coauthored with Don Kates, Jr.) examines the connection between firearms and "homicide exceptionalism" in America, and argues that high rates of lethal violence in the United States cannot be linked to the widespread availability of handguns. While Polsby and Kates do not deny the existence of a limited instrumentality effect (that guns transform some assaults into homicide), they argue that there are offsetting crime-reductive advantages in having firearms widely available for defensive purposes. Historically and cross-sectionally, Polsby and Kates show that the number of guns in circulation bears no consistent relationship to the number of lethally violent attacks. Finally, they contend that special characteristics of American criminals (a "perpetrator effect" rather than an "instrumentality effect") provide the most powerful explanation of rates of lethal violence in the United States.

Last in Part II, Lee N. Robins, Ph.D., from the Washington University School of Medicine, gives close attention to the question of predicting lethal violence before it occurs, both in individuals and in communities. She sees *Crime Is Not the Problem* as "a book that stimulates and challenges us all to make the history of fluctuations in homicide rates a science." Dr. Robins argues that our ability to predict future criminality in individuals is reasonably good and that we also have some capacity to identify those individuals who are most likely to engage in acts of serious violence. But our knowledge base about cultural and historical variables that affect aggregate patterns of violent offending is very thin, according to Dr. Robins. She identifies avenues of future research, building upon our knowl-

edge of individualized prediction, that might substantially improve our understanding of causation at the macro level.

The papers in Part III of the program move on to discuss specific legal and policy initiatives—including those proffered by Zimring and Hawkins and those favored by the symposium participants. Robert J. Cottrol, Professor of Law and History at George Washington University, takes issue with the most confident of Zimring and Hawkins's conclusions: that pervasive handgun control is a make-or-break component of a forward-looking policy. Professor Cottrol argues that cultural factors, not guns, are the important sources of America's lethal violence problem. In particular, Professor Cottrol focuses on the role of race, historic racial discrimination, and the subculture of despair that has developed among many Afro-Americans in modern urban America as a contributor to the American homicide rate.

Next Delbert S. Elliott, Director of the Center for the Study and Prevention of Violence at the University of Colorado, focuses his paper on chapter 11 of *Crime Is Not the Problem*, which lays out a public health framework for "Strategies of Prevention." Professor Elliott argues that Zimring and Hawkins's underlying distinction between "loss prevention" and "crime prevention" is an unpromising foundation for public policy. Professor Elliott believes that a comprehensive crime-prevention approach offers the richest available repertoire of prevention strategies aimed at lethal violence, including the primary concerns identified by Zimring and Hawkins of gun control, the "African-American imperative," and stranger homicide. Professor Elliott concludes his presentation with a tour of some promising up-and-running programs, built along the crime-prevention model, that have shown positive results in the reduction of serious violence.

Finally in Part III, James B. Jacobs, Director of the Center for Research in Crime and Justice at the New York University Law School, asks whether it is possible to implement the many suggestions made in *Crime Is Not the Problem* within the current U.S. legal and policy environments. Professor Jacobs argues that the current organization of governmental decision making in America makes it difficult if not impossible to undertake the kind of sophisticated strategic initiatives envisioned by Zimring and Hawkins. This leads Professor Jacobs not to dismiss the authors' recommendations out of hand, but to examine the constitutional,

political, and organizational changes that are necessary to carry out Zimring and Hawkins's program.¹⁸

Part IV of the symposium concludes with three papers exploring global perspectives on *Crime Is Not the Problem*, considered as a whole. Lawrence M. Friedman, Professor of Law at Stanford University and preeminent American legal historian, seeks to place the issues raised by Zimring and Hawkins in a broader context of U.S. history and international comparison than the authors themselves attempt. Professor Friedman suggests that the present rates of U.S. lethal violence are far from "off the charts" when we compare ourselves with Third World countries, horrific venues such as Rwanda, or earlier time periods in our own past. On the other hand, Professor Friedman sees stubborn persistence in historical patterns of lethal violence, and doubts the present ability of American society to engineer deliberate changes in the problem (however many erudite books are published on the subject). He ends with an ambivalent pair of observations: although the propensity for violence seems to endure in particular cultures, recent sharp downswings in lethal violence in America's cities offer a ray of hope that "[s]ome diseases, even social diseases, sometimes go into remission."¹⁹

Next, David Garland, a Professor of Law and a Professor of Sociology at New York University, and formerly the University of Edinburgh, offers thoughts about the placement of *Crime Is Not the Problem* within the criminal justice literature and the current policy environment. Although Professor Garland considers the book an important contribution to the crime control debate, he also believes that it has arrived at a singularly unpropitious time. Recent drop-offs in violent crime have overlapped with policy initiatives, such as zero-tolerance policing and James Q. Wilson's "broken windows" theory, that emphasize criminal law enforcement at the lowest level and focus on minor crimes and the preservation of the quality of community life. The operative theory of such programs is that they will have a "trickle up" effect that will, indirectly, lead to reductions in violence. As Professor Garland observes, the targeted approach recommended by Zimring and Hawkins suffers an "extra burden of proof" in light

18. James B. Jacobs, *Legal and Political Impediments to Lethal Violence Policy*, 69 U. COLO. L. REV. 1099 (1998).

19. Lawrence M. Friedman, *Some Remarks on Crime, Violence, History, and Culture*, 69 U. COLO. L. REV. 1136 (1998).

of the apparent successes of such low-level law enforcement measures.²⁰

Finally in Part IV, Colorado Attorney General Gale A. Norton comments on the usefulness of *Crime Is Not the Problem*, and academic work of its kind, from a state law enforcement and policy making perspective. One underlying theme of the 1998 Law Review Symposium is to explore the connection, or lack of connection, between academic research in criminal justice and the problems faced by law enforcement agencies and policy makers who deal with such issues on the state level. Attorney General Norton addresses her paper both to the substantive issues raised by *Crime Is Not the Problem*, and also the relevance of Zimring and Hawkins's analysis to criminal justice decisionmaking in the State of Colorado.

In response to these reactions and comments to *Crime Is Not the Problem*, Professors Zimring and Hawkins observe that, although many of the Symposium participants strongly disagreed with some of the fundamental theories of causation and prevention of lethal violence set forth in the book, the broad consensus among the participants was that lethal violence in America is a significant and a uniquely American problem. Moreover, Professors Zimring and Hawkins note that the significant conflicts that do exist are based largely on factual differences that can be tested and verified with further, more refined research. The response first answers the critiques of the statistical materials presented in the book. Next, the authors reply to the participants' reactions to the book's discussion of the causes of lethal violence and the proposals for a set of guiding principles for lethal violence policies. The response concludes with a reaction to some broader principles that arose out of the Symposium, including the role of political ideology on criminal justice policy, the opportunities presented by the late 1990s generally for criminal justice policy, and the importance of prioritizing lethal violence policies among other important social and governmental concerns. Professors Zimring and Hawkins hope that the result of a greater emphasis on the problem of lethal violence in America will be to lessen its prominence in American life and to allow for the

20. David Garland, *Criminology, Crime Control, and "The American Difference,"* 69 U. COLO. L. REV. 1149 (1998).

redirection of important resources to other important social concerns.

CONCLUSION

The 1998 Law Review Symposium was convened to recognize, critique, and expand upon the significant contributions offered by Zimring and Hawkins in their new study of lethal violence in America. Whether one agrees or disagrees with the substantive analyses and recommendations of *Crime Is Not the Problem*, the book provides a needed framework for the discussion of important issues. One goal of the book, as put by its authors, is to “change the subject” in criminal law and policy debates from crime to serious violence. At least within the confines of a single law review symposium, and through the thoughtful efforts of an elite group of participants, that goal has been realized.

