

Australia's New Gun Control Philosophy: Public Health is Paramount

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ABSTRACT

As a pressing issue of public policy in Australia gun control remains very much alive, with the legislative response to the 1996 Port Arthur massacre marking a new beginning in regulating gun ownership. This paper argues that this regulatory framework reflects an important departure from the conventional “criminal justice” approach to gun control towards a “public health” response to gun violence. Prevention is the hallmark of public health and the key to a more rational gun control philosophy designed to reduce the likelihood of gun violence. In conjunction with broader efforts to better comprehend the factors leading to gun violence in Australian society, as well as the continuing exercise of strong political leadership, a public health approach to gun control may well deliver on its promise — a safer community.

Keywords

Criminal Justice, Gun Control, Public Health

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The day will come (perhaps it is already here) when Australians will wonder what the fuss over the new gun laws was all about. They may even wonder why their elected representatives agreed to rigorous regulation of guns in combination with tougher penalties on their misuse. This paper makes the case that policy-makers in Australia have moved courageously towards a public health model on gun control. The implementation of this model is not yet comprehensive, but it offers a welcome turn around in gun control philosophy.

Attempts to restrict the proliferation of guns have generated controversy during the 1980s and 1990s. Tens of thousands of pro-guns protesters took to the streets, politicians feared for their lives, and a Queensland mountebank uttered the chilling battlecry, "The only currency you can purchase freedom back with is blood!" Dire predictions were made of northern invasions, rural collapses and dictatorial takeovers. One pro-gun magazine¹ claimed that the world market for scrap metal had been adversely affected by the Australian buyback of semi-automatic weapons.

Now, several years after the passage of the new laws, Australia's freedom appears to remain undiminished. Farmers can still shoot feral pigs that threaten their crops. Target clubs are thriving. The price of scrap metal has not altered significantly. But rates of firearm deaths have been declining since the early 1980s,² and there have been no massacres since the new laws were introduced, compared with the 12 or so in the decade before. Further, there has been a declining trend in the number of robberies involving firearms since 1997.³

It seems sensible and obvious that guns, like cars and other dangerous products, should be regulated for safety. Marching in the streets against gun control seems as silly as marching against seatbelts or against residential building standards. Lamenting the changes to the gun laws is like reminiscing about the good old days before immunization, when childhood was an exciting lottery in which the losers died from infectious diseases.

The 1996 Port Arthur murders bestowed upon Australia a grisly distinction as the location of the world's largest recorded massacre by a single shooter.⁴ However, those killings also propelled Australia to the forefront of the global movement for rational gun laws. The regulatory scheme created by our Police Ministers in 1996⁵

¹ LaPierre, Wayne (1997) "Welcome to Australia, Mate" *American Rifleman* October, pp10-11, where he wrote "More than a million guns will have been cut up — torched; so many that the Australian gun ban will have an effect on scrap metal prices worldwide."

² Australian Bureau of Statistics (1997) *Firearms Deaths in Australia 1980-95*.

³ Mouzos, Jenny *Firearm-related Violence: The Impact of the Nationwide Agreement on Firearms* Trends and Issues Paper No. 116, Australian Institute of Criminology, Canberra.

⁴ The incident was notorious not only because 35 people were murdered, but because 18 others were seriously injured.

⁵ At the meeting of the Australasian Police Ministers Council.

exemplified the new approach to gun policy: treating gun violence as a public health issue, rather than simply as a crime.

Public health vs. criminal justice

The difference between the public health and criminal justice approaches to violence is often summarised as “prevention versus punishment”. Not that criminal justice is totally unconcerned with prevention: deterrence and incapacitation, two pillars of the traditional law and order model, are both intended at least in part to prevent crime. However, the emphasis of criminal justice is on wrongdoers, and holding them responsible for their misdeeds. The offender’s state of mind is a crucial variable, since “unintentional” events are usually considered not to be crimes at all. The “seriousness” of a crime is determined largely by its place on a spectrum of moral wrongness. The finest moments in criminal justice are when especially evil wrongdoers are apprehended and severely punished. Put simply, the criminal justice system gets involved after the deed is done.

By contrast, public health focuses on preventing physical harm to victims, whether innocent or not. The finest moments in public health are when no victims can be identified, because the harm in question did not happen. The term “violence” is replaced by “injury” — although the semantic space covered by the two words is not identical. Events where no physical harm occurs are not considered injuries, but may still be violent crimes. On the other hand, unintentional events and suicide attempts are not considered crimes, but may result in serious injuries or death.

To illustrate the difference in the two worldviews, let us take four examples of events that disrupt normal happy life:

- A falls out of a tree in the backyard and breaks his neck,
- B has an argument in a pub one Saturday night and emerges with a black eye,
- C cuts through the security fence at ASIO headquarters and spray paints anti-government slogans across the walls and windows,
- D enters a bank with a gun, orders the teller to empty her cash drawer into a bag, and makes off with the proceeds.

On the spectrum of seriousness, the criminal justice model might rank these events from lowest to highest as $A < B < C < D$. (In A no crime is committed, whereas D is considered a serious violent crime.) The public health model could rank them as $C < D < B < A$. (In C no injury occurs, whereas in all the other three both mental and physical injury are incurred). Let us add another event, in which E attacks and

kills another person. This event, a homicide, would rank highest on both the crime and injury scales, illustrating the intersection of the two spheres.

From a narrow political perspective, the public health model comes at an electoral price. It involves an obvious encroachment on (perceived by some) rights, being the “right” to own or possess a firearm. The supposed encroachment on this perceived right is heightened in the minds of some gun owners, because, they would say, they have “done nothing wrong”. On the other hand, a law and order approach involves no obvious challenge to citizens’ rights. By this argument, only those who misuse guns are at risk, and since they are criminals, they have given up those rights. Of course, this over-simplification of community rights is badly flawed. Gun owners are not the only people with rights that need protection. Other rights⁶ include the right to live in safety and peace and without fear. This right is infringed in every instance of gun misuse, threatened or actual.

The public health approach to firearm injuries

Traditionally, gun control laws were primarily concerned with crimes — robbery, assault and homicide. The laws specified what behaviour would be punished, and what the punishment would be. As in the general criminal law, the strong presumption was of “innocence” until proven “guilty”: adults were allowed free access to most types of guns, but only until they were convicted of a violent crime. Once you had a violent criminal record, you were prohibited from owning guns. Thus, in terms of prevention, the main aim of traditional gun laws was to avert recidivism by known criminals. The criminal justice system was (and is) directed at the rehabilitation of offenders.

The great breakthrough in gun control in the last decade of the 20th century was the recognition that punishing crimes against the innocent by officially designated wrongdoers was an inadequate policy stance. For one thing, the notion that “prevention is better than cure” has begun to gain primacy in criminal justice as in many other professional fields. The physical, emotional, economic, social and political damage caused by violence cannot be adequately repaired or avenged by action taken against the perpetrator. Policies for fighting crime are increasingly emphasizing prevention: closing loopholes and channels upstream, minimising risk factors that facilitate bad things happening rather than simply hoping to catch and punish people.

A preventative policy that focuses specifically on criminals is also inadequate, because it overlooks the overwhelming majority of injuries associated with guns. Assaults and homicides constitute only a quarter of all serious gunshot wounds. The other 75% are from unintentional and self-inflicted shootings. Among gun deaths,

⁶ See the discussion by Dworkin, Ronald (1977) *Taking Rights Seriously* Duckworth.

almost four out of five are suicides.⁷ From a public health perspective, preventing a suicide is just as important as preventing a homicide. In fact, since suicide is the leading cause of injury death in Australia, suicide prevention is one of the highest public health priorities.

Even if homicide prevention were the primary concern, a gun law that relied entirely on criminal record checks would provide insufficient protection, because most homicide offenders have no prior convictions for violent crime. The career violent criminal is an extremely rare creature. The largest single category of homicide is domestic,⁸ although these killings are often preceded by assaults or threats, this violence is unlikely to have been reported to police, much less recorded as a criminal conviction. The gun lobby has a bumper sticker, "If guns are outlawed, only outlaws will have guns". Actually, if outlaws (previously convicted criminals) were the only people with guns, gun death rates in Australia would be tiny.

In fact, homicide and suicide can be seen as similar phenomena in many ways. Both involve the same population — young men — as the main perpetrators and main victims. Both tend to occur in the same immediate context of alcohol abuse, depression, anger or distress over personal setbacks (romantic, financial, academic or professional). Multiple homicides, perhaps the most shocking acts of violence, can often be seen in retrospect as "extended suicides". The typical examples are a married man whose business interests fail, and who then kills his family and himself; or a loner who decides to make a statement by ending his life in a blaze of glory, taking out colleagues or passers-by with him.⁹ All these are reasons why suicide prevention should be taken into account in drafting gun laws.

The public health approach to injury seeks to (a) reduce the likelihood of injury events occurring, and (b) limit the number and severity of the injuries that do occur. For example, in road safety, the function of speed limits is to (a) reduce the likelihood of a crash, and (b) reduce momentum and the impact on human bodies if the car does crash. A crash at 60kph is preferable to one at 100kph, because the victims are more likely to survive their injuries.

Likewise a gun law based on the public health approach seeks to reduce the likelihood of threats, assaults and suicide attempts, but especially to improve the victims' chances of survival if those events do occur. When an intoxicated, depressed and/or angry young man commits violence against himself or others, the outcome depends largely on what method of violence is employed. An assault with a machete

⁷ Australian Bureau of Statistics (1997) *Firearms Deaths Australia 1980-95*.

⁸ Mouzos, Jenny (2000) *Homicidal Encounters: A Study of Homicide in Australia 1989-1999* Australian Institute of Criminology, Canberra.

⁹ For example the massacres in Queen Street in Melbourne in 1987 by Frank Vicovic and Strathfield in Sydney in 1991 by Wade Frankum, where both perpetrators took their own lives after killing numerous others.

is preferable to one with a gun, because fewer people are likely to be injured and they are more likely to survive their injuries. For the same reasons, a suicide attempt by razor, overdose or car exhaust is preferable to one with a gun.

Obviously the availability of guns is not the only factor in violence. As other commentators have pointed out, Australian society must grapple with more profound problems affecting its youth — unemployment, bullying, declining opportunities for the marginalised and adverse impact on family structures, to name a few.

Gun laws based on the public health model

How do these preventive goals translate into legislation? The motor vehicle analogy is useful. For maximum prevention of motor vehicle injuries, a society could ban all cars. However, Australian States and Territories have chosen regulation rather than prohibition of cars. The regulatory scheme is quite complex, involving mandatory licensing of drivers (including testing of knowledge and skill, screening, photo ID and regular renewal), mandatory registration of vehicles (including inspection to meet minimum standards, yearly renewal, compulsory insurance and notification of transfer) and substantial fees that help pay for roads and for the regulatory system itself. Special licences are required for certain types of vehicles and activities considered especially hazardous. In addition, we have an elaborate set of laws for operating motor vehicles, infringement of which can result in licence cancellation, impoundment of vehicles, fines, imprisonment or other sanctions. Vehicles that are especially dangerous or fast (e.g. a Formula I racer) are proscribed. This system of regulation applies to everyone who owns or drives cars — even those who have not previously broken the law, even those who have no intention of speeding or drunk driving.

The public health approach to firearm regulation follows roughly the same model: screening applicants before they are allowed to buy or own the product, identifying the product and verifying that it meets minimum standards, requiring regular renewal and verification of ownership. Higher standards apply to certain types of weapons that are considered especially hazardous. An elaborate set of laws governs the use of guns, infringement of which can result in licence cancellation, impounding of weapons, fines, imprisonment or other sanctions. Rapid fire automatic and other military firearms are, in general, unobtainable. This system of regulation applies to everyone who wishes to buy or possess guns — even those who have not previously broken the law or who have no intention of shooting anyone.

One important aspect of motor vehicle regulation is that the same rules apply to new as to second-hand cars. Someone who sells their battered Holden via the classifieds is required to register the transfer with the state or territory government, just like the flash dealer in shiny new Ferraris fresh off the boat from Italy. The new gun laws

apply this same principle: sales of used guns anywhere in Australia now have to be registered. Under the old laws, some states did not require gun sales to be recorded unless the seller was a licensed dealer — and even then, the records did not have to be sent to the government. This made it easy for guns to be acquired by people who would not have qualified for a licence: all they had to do was buy second-hand. Regulation based on the public health approach recognises that most illegal guns are simply legal guns that have been stolen or sold second-hand. Since the supply source for the illegal market is legal owners, imposing greater accountability on legal owners will cut down the flow to the illegal market.

Of course, the gun laws do not precisely mirror the motor vehicle laws, because a different balance has been struck between product utility, injury risk, concealability and practicalities of enforcement. For example, the new gun laws require applicants to prove they have a legitimate reason for owning the guns they want to buy. No such requirement applies to cars, where a qualified applicant is only required to prove their age, clean record, good eyesight, knowledge of the law and skill at reverse parking. On the other hand, cars are required to submit to mechanical inspection and re-registration every year, a far more onerous and expensive process than gun registration.

Under the National Firearms Agreement, Prime Minister John Howard persuaded all the States and Territories to pass gun laws implementing a set of uniform standards: registration of all guns, a strict licensing regime based on background screening and proof of legitimate reason for owning each gun, a 28-day waiting period for each gun purchase, a minimum 5-year ban on gun ownership for domestic violence and other offences, an end to private and mail order sales, a ban on self-loading rifles and shotguns, strict storage requirements for guns and ammunition, and compulsory safety training. These measures were designed to increase accountability and deter “casual” gun ownership, while creating minimal inconvenience for genuine sporting and occupational shooters.

Community complacency

So why did it take so long to achieve a level of public protection from gun misuse that in general terms accorded with that provided in relation to pesticides and motor vehicles? One factor may have been complacency on the part of the general public and the media. They only became aware relatively recently¹⁰ of how many

¹⁰ It was in the decade beginning in 1987 that gun death rates came into public focus, with the Queen Street and Hoddle Street massacres, and then the Strathfield massacre. The size of the gun death rate — including suicides — became more widely understood, reflected in editorial expressions of concern for action to reduce the gun death rate.

Australians die from gunshot wounds — one every 18 hours or so.¹¹ This is slightly more than die from HIV/AIDS, and substantially fewer than are killed on the roads. The majority of gun deaths are suicides, occurring as single instances and resulting in little or no publicity. Gun homicides and unintentional shootings also tend to occur in mundane domestic settings, rather than as “random” violence in public places, which attracts more media interest. In other words, the gun death rate presents publicly as a trickle. It is only when there is a spate of shootings¹² or when several people are killed together that the misuse of a gun presents publicly as a problem. Clearly the perception of gun abuse would be dramatically different if the annual gun death toll occurred as a massacre or series of massacres.¹³

Community complacency was shaken by a series of mass shootings during the 1980s and 1990s, which brought the need for strict uniform gun laws into focus. Each massacre provoked a public outcry and a flood of media attention to the issue. Advocates for and against gun control addressed rallies and TV audiences; coroners called for reform; whilst politicians offered their condolences and proclaimed their abhorrence of violence. After each tragedy, commentators agreed the time had come to replace rhetoric with action. Ironically, these successive waves of media coverage created the impression, or at least the assumption, that action was being taken. In fact, with few exceptions, the reforms that occurred were piecemeal and inadequate. For example, Queensland, Tasmania and NSW brought in brand-new gun laws in the early 1990s — but they failed to include some of the most basic protective provisions, like firearm registration, a “good reason” test and total prohibitions on military style semi-automatic rifles.

The Port Arthur massacre shattered this public complacency by exposing not only the defects in our gun laws, but also the extremism of the pro-gun lobby. Although most Australians do not own guns, many had held a sympathetic view of gun ownership as part of a traditional or idealised rural lifestyle. However, the National Firearms Agreement elicited breathtaking displays of irresponsibility by militant gun enthusiasts: threats of violence, apocalyptic predictions, Rambo fantasies and wild conspiracy theories were aired in the mainstream media. Some of the people most passionate about owning guns appeared to be precisely the type who should not have them: hotheaded, irrational, grandiosely delusional, and with very little insight into their own condition. It was a graphic illustration of the need for tighter gun laws.

¹¹ Calculated on the basis of 450 gun deaths per year, or 1.25 deaths per day, gives a death each 18 hours or thereabouts.

¹² For example, the spate of shootings across NSW, Queensland and Victoria in late February 1999 with 21 people shot (and 4 dead) in a period of 3 days. Six out of eight of those incidents involved handguns.

¹³ 35 people were killed at Port Arthur on 28 April 1996, the equivalent of Tasmania’s usual total annual gun death toll.

(Among the litany of bizarre claims made by the gun lobby: that Martin Bryant, the Port Arthur killer, had not acted alone but was part of a team of assassins; that the massacre was arranged by government bureaucrats to justify disarming the population; that a conspiracy of silence was being perpetrated by the Tasmanian Director of Public Prosecutions, the Legal Aid Commission of Tasmania and, by inference, the Supreme Court of Tasmania.¹⁴ Furthermore, Tasmanian citizens needed semi-automatic weapons, in case the Indonesians invaded the Australian mainland and continued across the Bass Strait.)¹⁵

The theme of gun ownership for self-defence was heard with disturbing frequency. The new gun laws required proof of a legitimate reason to buy or possess guns, and self-defence was explicitly stated to be not a legitimate reason. This exclusion was little different from the old law — like Britain, Australia has never embraced the American idea of arming civilians. However, after Port Arthur it became apparent that some Australians did own guns for no other reason than to defend their households, either against foreign invaders or domestic criminals. Since this had been illegal even under the old laws, it was not surprising that many of these individuals indicated they intended to flout the new laws.

Handguns

The 1996 National Firearms Agreement dealt almost exclusively with long guns (rifles and shotguns), the weapons used by the Port Arthur murderer — and also by the perpetrators of the Strathfield, Queen Street and Hoddle Street massacres. Reform of the handgun laws was barely considered, presumably because every state and territory already required registration and proof of reason for handguns. In effect, the National Firearms Agreement brought rifles and shotguns under the same regulatory regime that applied to handguns.

Tightening the regulation of long guns while leaving handguns untouched has created a dangerous anomaly. Semi-automatic rifles and shotguns are no longer allowed for recreational use, but semi-automatic handguns continue to be available for this purpose. A Category H licence allows target club members to own semi-automatic pistols (some of which can carry 16 or more rounds) and to keep them at home. This was the same legal position as existed in Scotland in 1996, when a club member named Thomas Hamilton walked out of his house with four legal pistols under his jacket, went to the Dunblane primary school, and committed mass murder. That shooting led to handguns being banned in Britain.

¹⁴ Vialls, Joe (1997) "Port Arthur: Was Martin Bryant Really a 'Lone Nut' Assassin?" <http://tonypitt.net/palies1.html>.

¹⁵ Statements made by firearm owners at a public meeting at Devonport, Tasmania convened by the North-West Community Legal Service on 12 June 1996. Similar claims emerged in Queensland: see Roberts, Greg (1998) "One Nation... So many notions" *Sunday Age* 4 June.

Now that semi-automatic long guns are prohibited in Australia, semi-automatic handguns pose the major threat in terms of mass shootings. There are a number of pointers towards handguns looming as a potential problem. Firstly, whilst gun homicides overall are declining in Australia, handgun homicides are increasing.¹⁶ Secondly, between September 1993 and June 1998, 45,348 handguns were imported into Australia,¹⁷ a significant number by any standard. Further, it is estimated there are currently 300,000 handguns in Australia,¹⁸ though there are no data on the composition of this arsenal by type of handgun. Anecdotal evidence from shooters and gun magazines suggests that most handguns are either semi-automatic pistols or self-loading revolvers. Finally, while handguns can only be sold through dealers, these guns are frequently stolen,¹⁹ fuelling their availability in the criminal market.

A realistic view of violence

Politicians and the media have consistently envisaged the gun control debate as a tug-of-war, a matter of personal opinion that split Australia into two divergent but counterbalanced ideological camps. Yet, ironically, the opinion polls have shown consistently high support for tighter gun laws not only among city dwellers, but also in farming communities and among gun owners generally.²⁰

No doubt the main reason why politicians failed to grasp the nettle on gun control was party-political self-interest. Both major parties sought to placate the militant gun lobby, each fearing that the lobby would direct pro-gun zealots to vote for the other party. However, another factor may have been reluctance by politicians to embrace a more sophisticated view of violence than the stereotypes portrayed in tabloids and TV cartoons. Politicians like to keep things simple, and nothing is simpler than the

¹⁶ Graycar, Adam (1999) "Life Matters", Radio National, 11 March.

¹⁷ CSCAP Working Group on Transnational Crime Small Arms Project (1998) "Australian Firearm Imports: An Australian Perspective" Australian Institute of Criminology, Canberra.

¹⁸ There are no current figures available for the number of handguns in Australia. A survey in 1995 of State Police Departments by the Coalition for Gun Control showed approximately 4,000,000 firearms in Australia. The figure provided for the number of handguns in most states was 7%. This gives 280,000.

¹⁹ In Western Australia 50 guns are stolen each month, with a theft of 26 handguns reported from one shop in January 1999 (*West Australian*, 2 February 1999). On 6 January 1999, the *Daily Telegraph* reported NSW Police Commissioner Peter Ryan expressing concern about the rising number of illegal handguns on the streets of Sydney. In Brisbane (*Sunday Mail*, 10 January 1999) it was reported 77 pistols and revolvers were missing from a gun dealer.

²⁰ For example, a May 1996 AGB McNair Anderson national phone poll, which differentiated rural from urban respondents showed a ban on semi automatic weapons was supported by 90% overall: 91% of city people and 88% of rural. Further, registration of all guns was supported by 95% overall: 96% of city and 93% of rural dwellers. Also, in a media release issued on 26 August 1997, Federal Attorney-General Daryl Williams said: "Importantly there continues to be strong support for the firearms reform which has taken place, with 78 per cent of all adult Australians in favour of the laws and 56 per cent of people strongly in favour of the new laws."

binary opposition of the Good Guys versus the Bad Guys, the former clean-shaven in business suits and the latter wearing tattoos and facial hair. It is uncomfortable to realise that none of us are simply Good, few of us are simply Bad, and most of us are, unfortunately, all too human. The destruction wrought by a bullet tearing into human flesh does not vary depending on whether the trigger was pulled by a hitherto righteous person or a wrongdoer, whether the gun was bought brand-new or second-hand, in suburban Melbourne or rural Queensland.

We know from our own experience that good people sometimes do bad things out of anger, inebriation, fear, despair, tiredness, ignorance, stupidity or carelessness. We should not expect to pay for those outbursts or errors with our lives. The new gun laws recognise that we don't live in a cartoon world, but in a real world where hazardous products can and should be controlled.

Conclusion

The debate analyzed in this article will not subside. Acceptance by the shooting lobby of the inherent dangers of guns (no matter in whose hands they are found) is, in their eyes, as significant a step as acceptance that any one of their members is a potential killer. A recent example of resistance to the public health model followed an announcement on the 17th August, 2000 by Federal Minister for Justice of amendments to the Customs Regulations²¹ so as to require the Australian Customs Service to retain and store handguns imported into Australia until they have been sold to an authorised end-user. This policy, apart from evidencing a recognition that handguns pose a particularly significant threat to public health,²² confirmed that the Federal Government continues to pursue its public health approach to gun control.

Ensuring that handguns are not easily stolen from dealers is a public health approach *par excellence*, where prevention is paramount. Predictably, the shooting lobby opposed the move. In language that has changed little since gun law reforms were first mooted across Australia in the early 1980's, the Sporting Shooters Association maintained its staged bewilderment with a public health approach. "Its simply preposterous" said National Secretary Mr. Roy Smith. "The logical extension of this approach is to ban pharmacies from holding stocks of drugs to reduce drug abuse."

In fact, Mr. Smith may well be correct.

²¹ *Customs (Prohibited Imports) Regulations.*

²² Primarily due to their ease of concealment. There are two other reasons. Rapid fire rifles are not available for target shooting as a consequence of the 1996 APMC agreement, but handguns remain available for this purpose. Hence, a person with an infatuation or penchant for high-powered semi-automatic weapons can satisfy their need by taking up target shooting with handguns so as to obtain such weapons lawfully. Secondly, handguns are the most glamourised weapons in our media, setting an example for our young males to follow.