

GUN CONTROL AND HOMICIDE: THE SHOOTERS' PERSPECTIVE

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I SPEAK TODAY ON BEHALF OF FIREARMS OWNERS. I DO NOT APOLOGISE FOR being a firearm owner, nor do I ever conceal the fact that I am one. Why should I? There is nothing strange or unusual about being a firearm owner, a hunter, or a target shooter. Even those who have what, to me, is an unreasoning hatred of firearms admit that firearm ownership is nothing unusual. Figures show that in Victoria there are some 300,000 licensed firearm owners—and of course an unknown but quite sizeable number of unlicensed owners—out of a voting population of 2.74 million (persons aged over eighteen years, as at the last Victorian state election).

Except perhaps for a few extremists, even those ideologically opposed to firearm ownership, such as Harding (1981), concede that the vast majority of these firearm owners are normal, well-adjusted, law-abiding persons who will not in any way misuse their firearms.

The subject of firearms and firearm ownership will be addressed before firearm misuse in crime is looked at.

Firearms have been a part of human life for over 600 years. The earliest firearms—primitive, inaccurate, unreliable and not always safe to use—were one of the weapons of war of the fourteenth and fifteenth centuries, but as firearm design improved, they were introduced into hunting and, later, target shooting. For the last four centuries or more, firearms have played an important part in self-defence, the provision of food, and recreation for millions of people.

The percentage of citizens owning firearms privately varies throughout the world, depending on the nature of the country—whether mainly rural or urban—whether there is any opportunity to hunt, how popular target shooting is, and, of course, the nature of the government. Most totalitarian countries do not allow private citizens—except for those deemed of great importance—to own

firearms. On the other hand, in Switzerland, every male of military age has a military firearm in his home.

Most citizens in English-speaking countries who own firearms believe that they have a basic right to do so. However, many people who do not own firearms, have no wish to do so, and all too often cannot understand the attitude and interests of firearm owners, and argue that firearm ownership is a privilege, not a right. Such people are often aware the 'right to bear arms' is guaranteed by the American Constitution but that there is no corresponding wording in the Australian Constitution and, therefore, Australians have no such right. These people are saying, in effect, that a Constitution or Statement of Rights creates rights and that, unless a particular right is mentioned, it does not exist.

Firearm owners, in general, are not legal experts. They do not know the background of a Constitution or a Bill of Rights, but they are human beings, conscious of the dignity and rights inseparable from a human being. They believe that they have certain rights—including that of owning private property—and do not think they need any document to tell them so.

The question of the legal right to own a firearm is something that eminent legal figures might argue about indefinitely, but even if the right to own firearms—or for that matter, other types of 'arms'—is accepted, it would seem that the state can, and in fact must, legislate to prevent the possible misuse of firearms. There are some fairly general laws to which nobody could rightly object. One is a prohibition on discharging a firearm, and in some cases carrying a loaded firearm near a populous area. Again, a firearm is specially dangerous in the hands of children, and laws prohibiting children having access to firearms are fairly general. In addition, a person under the influence of alcohol or of unsound mind may be irresponsible or violent, and the law should prohibit him from having a firearm.

Many persons use firearms for hunting purposes and, over the centuries, the desire to provide more efficient firearms for hunting has contributed greatly to their development. Hunting dates back centuries before firearms, and its purposes have, in general, been the obtaining of meat for food, the control of vermin (or the culling of excess numbers), a test of skill, or a form of recreation. In the hunting of animals such as rabbits and deer or of birds such as duck, all or most of these factors are present.

A firearm is often an expensive item displaying considerable manufacturing skill and mechanical ingenuity. Older firearms in particular may have engraving and ornamentation which make them works of art. Their owners invariably have a pride of possession in them which makes those owners prepared to fight desperately to retain them in the face of police/government pressure.

Another aspect of firearm control is that of keeping firearms out of the hands of criminals. There is general agreement that this is impossible to achieve. Often a person hearing of a shooting or an armed hold-up will say 'the offender should not have had that gun'. In many cases the fact that the offender did have a gun is not the fault of the legislation, as the offender had obtained that firearm illegally.

Few persons—even those of the highest character—can legally own a pistol, since a pistol can only be possessed for a special purpose. Yet an investigation

carried out some years ago by police showed that over 38 per cent of robberies involving the use of firearms were committed with pistols (Millar & Milte 1978, p. 111). These robberies have occurred despite the controls on pistols and despite the fact that a person who has committed an offence and been sentenced to a gaol term of three months or more is prohibited by law from having a firearm for a stipulated period—sometimes five years. The great majority of armed hold-ups and many other crimes of violence are committed by persons who already have criminal records and are, therefore, prohibited by law from possessing firearms—yet these offenders nevertheless had firearms.

The system of supply of firearms to criminals operates outside the law. A criminal can obtain all the firearms so desired—including types not available to the law-abiding citizen, such as pistols and machine guns—and it seems that no law is able to stop this illegal trade. Apparently, there are places in Melbourne where, with the right sum of money, a specified pistol type can be obtained within hours.

Pistols are concealable and, except for special target shooting types, are intended for anti-personnel work. Accordingly, since the 1920s following the example of England, most countries in the British Commonwealth have restricted pistol ownership to those who have a special use for them. Whatever the situation regarding basic legal rights, the firearm owners of the day seem to have accepted these restrictions. The present generation also seems to have accepted these restrictions in principle, although, the administration of these controls has been the cause of much dissatisfaction. Yet it must be noted that this is an issue which affects only a few persons. Pistols are of little interest to the hunter, and the pistol target shooter, security guard or established firearm collector are usually allowed to possess pistols, but under strict conditions of use and custody.

There are persons who say 'no-one should have firearms'. These persons have a right to hold that view and to elect to parliament persons who will work towards that end. At the same time, the general right to hold an opinion and to try to impose it upon other persons is surely subject to the moral obligation to form that opinion in a spirit of justice and charity, and only after at least trying to find out something about the issues involved. The failure of far too many people to meet this moral obligation and the lack of technical knowledge of most persons who do not own firearms is one of the greatest problems a firearm owner has to face. This lack of knowledge produces uninformed criticism and unsatisfactory legislation.

It would seem that from the earliest days of settlement the percentage of Australians owning firearms has been high. It is only in recent years, however, that licensing systems have been introduced and surveys undertaken which have enabled more reliable estimates of firearm ownership to be made. For example, there was a nation-wide survey on firearm ownership carried out in 1975 by the Australian Bureau of Statistics (1979). It applied only to Australian capital cities and to towns with a population of over five hundred. Yet in these areas, the survey indicated that:

- there was, on average, a firearm in every fourth house;

- firearms owners came from all walks of life, all levels of income, and all age groups; and
- only a very few (an average of six per cent taken over all states) were members of gun clubs.

In Victoria, where there has been a Shooter's Licence system in force since 1973, there are some 300,000 licensed shooters plus an unknown number of persons owning firearms—thought to be in excess of 50,000—who hold an expired licence or who have never held a licence. The police estimate that each licensed shooter owns, on average, 2.8 firearms.

These figures make it quite clear that only a minute percentage of the firearms in Victoria are ever used in crime and, in any event, many firearms so used are possessed by unlicensed persons. The vast majority of law-abiding and responsible firearm owners should not be held responsible for the misdeeds, however serious, of a tiny minority, just as all motor car owners should not be held responsible for the misdeeds of a few irresponsible and perhaps culpable drivers.

Each Australian state has different legislation, although most essential items in the legislation are the same. The main differences between the states lie in the procedures involved in order to obtain a firearm. There are those persons—including some firearm owners—who seek an uncomplicated system and would favour a National Firearm Act, but those who have studied the problem recognise the historical differences between the states, the type of game available, the different shooting conditions, and so on. Those who have studied the idea of national firearms legislation believe that each state should continue to have its own Firearm Act, but that there should be as much uniformity between the Acts as possible. They also believe that each state should recognise a licence issued by another, as is the situation with motor car drivers' licences.

The firearm-owner bodies are as desirous as anyone else of having just and workable firearms laws which—as far as is reasonably possible—ensure that those persons owning firearms are fit and proper persons to have them. Over the years there has been considerable research carried out and discussions held with governments on the issue of firearm legislation, and it seems clear that the New Zealand Arms Act 1983 represents a proper approach. This Act is the result of several years of research by the New Zealand Government and the firearm-owning associations—conducted in an atmosphere in which party politics played no part. In general, the New Zealand legislation provides that:

- all firearm owners be licensed (all Australian states have or will soon have this), the licences being issued by the police;
- before a person obtains his first licence, he must attend a course in firearms law and safety practices conducted by a qualified instructor and then pass a written examination;

- the police thoroughly check the applicant as to character, record, and so on, and they are required to refuse the licence if the applicant does not appear to be a fit and proper person to have a firearm (there is a right of appeal to a court);
- there is no restriction on the number of firearms a person may own;
- firearms are not individually registered, except for pistols and restricted firearms (the system of registration of other firearms, which had existed since the 1920s, was abandoned, the police and Government having decided it served no useful purpose);
- the licence is issued for life (but the police and courts have wide powers of cancellation);
- an adult person may have an airgun without a licence, but a junior must be licensed. (This is reasonable when one considers that it is rare for an adult to commit an offence with an airgun, but that offences are often committed by juniors);
- there is provision for specially authorised persons with proper secure premises to collect restricted firearms (that is, firearms not available under the ordinary licence); and
- if a firearm is declared restricted, the owner may sell it to a person specially authorised to collect such firearms, but if the owner elects not to do this he may surrender the firearm to the state, which must pay market value for it, and the owner has the right of appeal to a District Court Judge if he is not satisfied with the amount offered.

Although certain aspects of the New Zealand legislation could be improved upon, the New Zealand Arms Act's approach to the matter is excellent and it could be regarded as a model for other legislation to follow. It is to be expected that any firearm owner, especially one familiar with the New Zealand Arms Act, would strongly oppose anything that departs from the spirit of that Arms Act. In particular, firearm owners can be expected to oppose:

- the banning of the possession of any type of firearm except for certain modern military type semi-automatic rifles and machine guns;
- any legislation which does not set up a licensing system under which, as in New Zealand, banned firearms may be held by authorised collectors and so preserved;
- any legislation that does not guarantee the owner of a banned firearm the right to obtain from the government full compensation based on the market value of the firearm;
- any restriction on the number of firearms a person may own;

- any system that forces a firearm owner (other than perhaps a pistol shooter) to join a shooting Association as a condition for obtaining a firearms licence;
- the individual registration of firearms;
- any legislation which directly or indirectly prohibits the average citizen from owning a firearm;
- any legislation which does not provide an informal and inexpensive means of appeal against decisions involving firearm licences; and
- any legislation which contains harsh or unreasonable penalties, or is unjust or unworkable by nature, and which does not pay due regard to the principles of natural justice and the principles of the United Nations Declaration on Human Rights.

Before leaving the subject of firearms control a brief reference must be made to the Canadian situation, which has been so misrepresented by anti-firearm followers in Australia.

Unfortunately, all the papers relating to the Canadian situation have not been found. However, the facts are that around 1980 the Criminal Code, under which firearms are controlled, was 'tightened up'. The more stringent controls seemed to be on pistols and certain 'restricted weapons'. As far as ordinary rifles and shotguns were concerned, a 'purchaser's permit' was introduced, but this purchaser's permit is not like that in Victoria. The permit lasts for five years and allows its holder to buy as many firearms as desired! There was no shooters' licence or registration of 'ordinary' firearms.

Around the mid-1980s—some four or five years after these amendments—government officials discovered that, since the new legislation had come into force, the firearm crime rate had fallen and a booklet of figures and statistics to support these claims was produced. This booklet was seized upon by various anti-firearms bodies in Australia as a support for their arguments. What seems to have been overlooked, however, is that:

- the Canadian crime rate had started to fall before the new legislation came into force;
- the firearm crime rate fell in the USA over the same period (no-one knows why); and
- the controls on ordinary firearms were not likely to inconvenience anybody or have much effect.

In the 1980s and 1990s in Australia, firearm ownership has become very much a political issue. The degree of polarisation varies from state to state—largely dependent upon the extremity of the views of the state Labor Party—and

in some eastern states there have been political campaigns conducted by firearm-owner groups against the Labor Party in state elections.

Discussion of firearms issues is characterised by both strong pro- and anti- views. As in many hotly contested issues, truth is often one of the first casualties and some sections of the anti-firearms movement seem to have established a reputation for not letting facts get in the way of a good story or a particular ideology. Unfortunately too much of recent discussion on firearms has been driven by ideology and not by fact and commonsense. Inquiries into violence and similar issues have been conducted by people with a known anti-firearm ideology whom the government knows will make the recommendations ideologically acceptable to the government—whether or not these recommendations are practical or in the public interest.

Australia has major problems with increasing violence in society. This increase is occurring on our streets, on our sports fields and in our homes. The ultimate form of violence results in homicide—but Australia must be concerned with violence at all levels.

Recently, far too much attention has been given to the means of homicide, suicide and the infliction of serious injuries rather than to the causes of these phenomena, and reductions in absolute numbers and rates will only be achieved when the causes are removed.

If it were possible to remove every legally-owned firearm from every licensed shooter in the community, this would not stop homicides. The idea that a reduction in the number of firearms in the community would reduce homicide or, worse still, the idea that the presence of firearms is the cause of some homicides, is at best a theory, held by certain groups of so-called 'experts'. Firearm owners object to being the guinea-pigs on which this theory is being tested.

Unless attention is focussed on removing the causes of homicide, removing one means of homicide will only lead to another means being found. A firearm is not necessary to a person bent on mass murder. Two readily available substances mixed together form a powerful explosive which can destroy a whole building or vehicle and can cause great carnage. For example, *The Age*, 27 March 1990, carried the story of a man in New York who had quarrelled with his former girlfriend at a social club and had been ejected by a bouncer. This man later returned to the club with a quantity of petrol and set the building on fire resulting in the loss of eighty-seven lives.

There is also the difficulty of measuring the incidence of homicide or suicide where the motor car is used as the means. If the current top five means of committing homicide could be removed from society, what effect would this have on the overall homicide rate? It is reasonable to expect that there would simply be a change in the means of committing homicide.

Perhaps one of the reasons means of homicide rather than causes of homicide are concentrated on is because one can feel warm and good advocating the removal of a means which does not affect us as an individual. But the removal of the causes of homicide is a much harder task to accomplish and we might be personally affected. For example, there appears to be agreement that alcohol plays a large part in violence in clubs, pubs and the home, and some of this violence leads to homicide. Yet there has been no

call to ban alcohol and so reduce this cause of violence and potential homicide. But how many calls have been heard to ban firearms—one of the possible means used by the person affected by alcohol to inflict injury or death? Is the reason why there is no call for the banning of alcohol that too many of us like alcohol too much to consider any ban? If one were really cynical, one could also suspect that governments would also strongly oppose a ban on alcohol because of the taxation revenue loss.

I, in common with many firearm owners, am becoming increasingly cynical and disgusted with the media in Australia. A culture of violence is increasingly being pushed onto Australians by the media. I watch very little television now because I do not regard violence as entertainment and have given up watching most programs. I am even getting sick of watching news on television because so much of the news program is devoted to violence and confrontation. Increasingly, the media are not interested in a story unless it contains a confrontation. One of my friends was recently involved with an environmental issue where the media deliberately distorted the facts to make it a confrontation issue and not one where there was a balanced position, which was the aim of my friend's organisation. Another example of the media's inconsistent attitude toward violence was seen when the media conducted an intense campaign against firearms after the Strathfield killings in Sydney. Yet, at the same time, the media continued to earn advertising revenue by screening drama programs which showed firearms being misused and suggested that violence is the solution to all problems.

I am greatly concerned at the problems Australia is already facing and the problems we will undoubtedly face in the future, problems which arise from the changing way governments and the medical profession are handling people with serious mental disorders. In the past, such people were confined to an institution and treated until they were determined to be of no danger to themselves or the public. The current trend is to give people with serious mental disorders a supply of drugs, directions for their use, and then let these people return to the community. If the person takes the prescribed drugs as directed there should be no problem, but if the directions are not followed, the potential consequences are frightening.

Of course, there are those in the community who claim that people with serious mental disorders have civil rights and should not be detained. In the next breath, these same people will lobby that I and the other 300,000 law-abiding, responsible firearm owners in Victoria should not be allowed to own firearms because they may be misused by a mentally-deranged person. What about firearm-owners' civil rights? Apparently, because firearm owners' interests are different from those of these 'do-gooder' individuals, firearm-owners' civil rights disappear.

There were howls of outrage from civil rights groups and sections of the medical profession after the Strathfield killings, when the Sporting Shooters Association advocated a register of persons with mental disorders so that police could check to ensure that persons on this list could not obtain or retain firearms. The Hoddle Street and Queen Street killers were known to have mental disorders or records of violence before the killings took place. If such a listing had existed, the police could have removed the firearms from the

offenders before the incidents occurred. Yet again the civil rights groups, at the same time as opposing the register of people with mental disorders, were calling for bans on firearm ownership. One must seriously question the true motivation of some of these groups.

In May 1992, a Labor Caucus committee in Victoria was opposing draft government legislation to empower courts to order continued detention of certain persons with multiple convictions for violent crime who were considered a threat to the community. One member of the committee was quoted as saying that such legislation would not have prevented the Hoddle or Queen Street killings (Victorian newspaper report). How many future crimes of violence and potential killings would be prevented is the real question? It would be interesting to know how many members of the committee would have readily supported increased firearms restrictions instead. It is important to note that the people at which the Bill was aimed would not be eligible to obtain a firearm legally under present legislation, but with their criminal background would have no trouble obtaining a firearm illegally.

Australia is seeing an increase in activity from various interest groups calling for action to reduce violence and improve their situation. While not knocking any of these many groups, I do wonder if the activities of the growing number of interest groups are distracting Australians from the problems of homicide as a whole. If each Australian were to find how to increase self-respect and respect for all human beings, and if the media began to serve us a diet against violence and promote respect for one another, and if governments began to repair the enormous economic damage they have wrought on Australia and its citizens in the last three years, Australia would see a reduction in violence and homicide. Oh, Utopia!

On behalf of firearm owners, the following suggestions aimed at cost-effective control of the use of firearms in homicide are put forward. It must be recognised that no controls will be effective in reducing the use of firearms by criminals. By definition, criminals do not obey laws and seventy years of rigid pistol licensing has not stopped the use of pistols by criminals.

- All persons seeking to own firearms be required to obtain a Shooters' Licence issued by the Police;
- before issue of a licence, the applicant be required to undertake a training course in firearms safety and firearm law and pass a written examination;
- all firearms owned by a licence holder to be securely stored when not in use;
- the licence of a firearm owner convicted for an indictable offence be cancelled;
- where domestic violence or threats of violence occur, all firearms be removed from the home and the firearms not restored until a magistrate rules they may be restored. We support the current

Victorian legislation on firearms in relation to domestic violence but have worries about proposed new legislation. We understand that under this proposal, police would be required to remove all firearms from a house if they were called to any domestic, even if there was no indication of violence whatever and if the report was made by any member of the family or neighbour. With firearms worth many thousands of dollars possibly involved and the possibility of one party using the call to 'get at' another party, we see the potential for creating greater problems;

- introduction of a notification system for persons with mental disorders so that police can take steps to remove firearms from the person if appropriate;
- mandatory heavy minimum penalties for carrying or use of a firearm during the commission of a crime;
- the scrapping of firearm registration as this is not cost effective. The only persons favouring registration of individual firearms are:
 - (i) those persons who see it as a means of confiscation or restriction by taxation and other means;
 - (ii) those in the police force who, perhaps in addition to the above motive, see it as a means of empire building. (Some years ago a South Australian police officer connected with the Firearms Registry there told one of our representatives that the South Australian system of registering firearms was the envy of the other states. However, a more recent report from the Deregulation Task Force in South Australia casts serious doubts on the need for and usefulness of the registration system);
 - (iii) those who know nothing about the system anyway and cannot distinguish between shooter licensing and firearm registration.

There are no recorded instances in Australia where firearm registration has solved a crime which would not have been solved by normal police investigative techniques.

Firearm owners do not want to see firearms used in homicide or other crime. For years firearm owners have been advocating the introduction of heavy mandatory gaol sentences for people who use firearms in crime. Firearm owners will strongly support moves to crack down hard on crime, but we will fight like hell for the right of responsible, law-abiding people to own and use firearms.

Reference

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