

2016

Gun Control in the United States: an Analysis of Federal and International Policies and Applications

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Gun Control in the United States: An Analysis of Federal and International Policies and
Applications

by

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An undergraduate honors thesis submitted in partial fulfillment of the

requirements for the degree of

Bachelor of Science

in

University Honors

and

Criminal Justice

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2016

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Introduction

On April 20, 1999, two students entered Columbine High School in Jefferson County, Colorado carrying shotguns and semi-automatic handguns, ultimately killing 13 people before committing suicide (Kennedy 1999). Before this, rarely were mass casualty events, at least those involving private citizens terrorizing the public with guns, something people worldwide heard about on a regular basis. Everyone, specifically the United States, stood in shock. The idea of someone entering a learning environment to carelessly take the lives of so many young, innocent people was abhorrent. Unfortunately, after Columbine, the recurrence of similar events at institutions of learning and other public places started to pick up speed, with the intensified media coverage only adding fuel to the nation's terror. The Virginia Tech massacre in April of 2007 killed 32 people, making the tragedy the deadliest shooting incident by a single gunman in United States history (Shapira & Jackman 2007). A gunman opened fire inside a full movie theater in Aurora, Colorado in July of 2012 killing 12 people and wounding 70 more (Lin II 2012). Less than five months later, another solo gunman took a rifle to Sandy Hook Elementary school in Newtown, Connecticut, killing 20 students and six adults (Vogel et al. 2012). The beach town of Santa Barbara, California was rocked to its core in May of 2014 when a gunman drove through the college community on the outskirts of UCSB shooting strangers on the streets and ultimately killing six people (Jaschik 2014). As recently as October of 2015, a gunman arrived at Umpqua Community College and shot to death eight students and a professor (Ford & Payne 2015). These events are only a handful of the similar tragedies occurring on a far too regular basis in the United States.

Unfortunately, when shootings like these occur, blame is usually quick to fall on the shooter's mental health status and the country just assumes that the shooter "went crazy". But the

debate about mental illness is somewhat beside the point. Research has shown that even though the U.S. has an alarming estimated number of mentally ill individuals, most mass murderers are not mentally ill and are instead upset or angry people in a crisis who get their hands on an easily accessible gun and wreak havoc by taking out their frustration on unsuspecting innocent people (Collier 2014). The common link between shooters in mass casualties in the U.S., and other gun-related deaths and incidents in general, is the easy access to high-powered lethal weapons. This points to the lack of gun control policies currently in place as being a major factor. However, like most controversial topics, there is debate. “The U.S. suffers from a gun violence problem, but we disagree what that problem is” (Hillenbrand 2015, p. 1451). Putting the gun control versus gun rights debate on hold, it is nearly impossible to claim that everything is under control with regards to guns in the U.S. when the country has 5% of the world’s population but 50% of its firearms, and has the world’s highest rate of gun-involved homicides (Collier 2014). While there are other influences involved, existing control policy is clearly not doing what it is supposed to be doing.

This paper will examine past and present U.S. gun control policies to better understand the current legal state of gun control, but also to assess gun culture in a nation that was built on its Second Amendment right to bear arms. In addition to U.S. policy, international agreements and gun control policies in other countries will also be analyzed to determine if those policies would be feasible in the U.S., or if the country’s gun culture and legal precedents would simply strike down any attempt to establish more thorough regulations.

Domestic Policy & History

Despite mass shootings and other rising levels of gun violence, very little federal legislation has been passed in the U.S. over the last century. More specifically, following the

initial establishment of the nation's first piece of gun control legislation, there have only been three changes to federal gun control over the last 75 years. The first major piece of federal legislation regarding firearms control was the National Firearms Act (NFA) of 1934. It targeted and banned machine guns, shotguns and rifles less than 18 inches in barrel length (sawed-off shotguns), mufflers and silencers, and also required that all of these weapons (including those already in an individual's possession) be registered with the Secretary of Treasury. Most importantly, it imposed two different kinds of taxes related to NFA firearms. The first was a \$200 tax on the making and transfer of any of the weapons listed in the Act, a tax has not changed since it was enacted a little over 80 years ago. The second tax is a specialized occupational tax that is imposed on people and entities who are in the business of importing, manufacturing, or dealing any of the firearms included in the NFA. The NFA was enacted by Congress under its authority to impose taxes since the main purpose and focus of the Act was to execute the previously mentioned taxes, but there was also an underlying motive. Congress at the time was hoping that the Act would also serve as a way to slowly move towards the prohibition of the firearms that were included in the legislation (National Firearms Agreement, n.d.).

The first major legislative change at the federal level did not come for some time after that initial policy was passed. After the passing of the NFA, legislatures and the public largely turned their focus away from firearms control. Senator Thomas J. Dodd proposed a bill restricting mail order sales of handguns but it did not gain much traction. After President John F. Kennedy was assassinated in 1963, Dodd added in pieces to his bill to cover all firearms, and hearings were started shortly thereafter. Over the course of the next five years, crime rates rose and more of the administration began paying attention. The assassinations of both Martin Luther King, Jr. and Robert Kennedy ended up being the catalyst that the country needed, and in 1968,

there was enough political support to get the Gun Control Act (GCA) through Congress (Vizzard 2015). Title II of the Act, as the addition was called, amended the definition of “firearm” and expanded the definition of “machinegun”.

The GCA was also crafted, in part, to fix a monumental flaw in the original 1934 NFA. In the 1968 Supreme Court case of *Haynes v. United States*, the Supreme Court ruled that the provision included in the NFA requiring people already in possession of the restricted firearms to register them with the Secretary of Treasury was unconstitutional since it violated an individual’s Fifth Amendment right against self-incrimination. The concern was that if people registered their NFA firearms, the Treasury Department could pass along that information to state authorities, and then state authorities could use the registry information to prosecute those people whose firearm possession violated state law (Gun Control Act, 2015). Since divulging information to the national registry was a form of self-reporting, using that information to prosecute someone was indeed a violation of the Fifth Amendment. The GCA removed the registry requirement for firearms already in an individual’s possession, and also added a provision stating that no information from the NFA application or registration could be used as evidence against someone during any criminal proceeding for a violation that occurred either before or at the same time as the application was filed (Gun Control Act, 2015).

The Gun Control Act of 1968 is still primary federal law regarding gun control, but the second major legislative change made quite a few revisions. In the 20 years following the passage of the GCA, opposition to firearms control increased and became more organized, and the resulting legislation reflected that shift towards the pro-gun lobby. The Firearm Owner’s Protection Act (FOIPA) was passed in 1986 and among its most significant changes were “reducing a licensed dealer’s record, reducing [the charges of] record falsification and failure to

record from felonies to misdemeanors, and redefining engaging in the business of dealing in firearms” (Vizzard 2015, p. 882). The new definition of dealing was that there must be proof of regular business with the main purpose being making a profit off of the repeated purchase and resale of firearms. The other main aspect was that the federal government was prohibited from implementing any regulations that would require the reporting of purchases or the creation of any kind of gun registry (Vizzard 2015). FOPA was fueled by the pro-gun community’s belief that the Second Amendment entitles them to their individual right to bear arms, which they were determined to protect that because they felt that firearms policy at the time was interfering with that right.

The third major legislative change occurred in 1993, and this time, it was a win for the pro-control side. The Brady Handgun Violence Prevention Act was signed into effect by President Bill Clinton following a decade-long campaign to restrict handgun access. James Brady, for whom the legislation was named, had been President Ronald Reagan’s press secretary and he was shot in the head during the 1981 assassination attempt on President Reagan, which left him permanently disabled. His wife was one of the main campaign supporters, and the Brady Act went through multiple revisions and rejections before it was finally accepted. It initially proposed a 7-day waiting period for anyone purchasing a handgun from when they bought it to when they were allowed to pick it up. Supporters claimed that the waiting period would give buyers a chance to “cool off” and make it less likely that handguns be used in crimes of passion or other violent acts often committed on impulse. Opposition, largely from the National Rifle Association (NRA), claimed that drug violence was the reason for high gun murders, so the waiting period wouldn’t have any effect (“Reassessing” 1991). Ultimately, the Act imposed a 5-day waiting period for anyone who is unlicensed to receive a handgun.

The other main change around the same time was the 1994 Violent Crime Control and Law Enforcement Act, which, among other things, contained a federal assault weapons ban on 19 different types of assault weapons (“Violent Crime Control,” 1994). This was largely due to assault weapons typically being the weapon of choice for mass casualty shootings at the time (Gerney & Parsons 2014). Some of the other provisions were a ban prohibiting people with family violence restraining orders against them from possessing firearms, and strengthening federal licensing standards (“Violent Crime Control,” 1994). Attached to the assault weapons ban was a “sunset” clause, meaning it would lapse in ten years if it was not voted on and passed again. When it came time for talks to resume on the legislation in 2004, House of Representatives Majority Leader Tom DeLay, a Republican from Texas, refused to bring bills extending the ban to the House floor for discussion without President Bush’s approval. Bush pointed the finger right back at Congress and said it was up to them, effectively preventing any bills from being talked about or voted on. As a result, the ban became ineffective in 2004 and semi-automatic weapons like AK-47s were once again legal (Adams 2004).

Firearms regulation in the United States is also one of the many issues caught in the crossfire between state and federal legislation, with both the pro-gun and pro-control advocates having had their fair share of wins and losses over the years as a result. Although federal law supersedes anything at the state level, nonspecific federal policies have left gaps that states, on occasion, have tried to fill. Towards the beginning of the 1900s, before the passing of the 1934 NFA, some states moved to restrict handguns in some fashion and others followed suit, but then those same states pulled back from those restrictions and both the state and federal level saw periods of inactivity where neither took action. More recently, things began to change. After the assault weapons ban sunsetted in 2004, pro-gun state legislatures started to take action again,

with many of them passing concealed carry laws. Another movement that caught on in the 1990s was the “shall issue” policy with regards to issuing gun permits. In essence, these policies guarantee all applicants the right to a permit, with the exception of those who are legally barred from possessing firearms, such as the mentally ill or violent felons. Washington revised its statute in 1961 but gained very little national attention, and it wasn’t until Florida passed its “shall issue” policy in 1987 that the trend accelerated rather quickly. Fast-forward to 2013, only nine states had retained their discretion to issue permits, and many were working through the process of eliminating permits altogether (Vizzard 2015). This is what is known as “constitutional carry”. Constitutional carry allows anyone who is not banned from possessing a firearm to carry a gun without any sort of government permit. It typically applies to people over the age of 21 and most states still follow concealed carry policies, but the need for any kind of weapons permit no longer applies. The nine states who have implemented constitutional carry laws are Alaska, Arizona, Arkansas, Idaho, Kansas, Maine, Vermont, West Virginia, and Wyoming, with Idaho’s policy going into effect on July 1st of 2016 (guns.com). Some states also implement open carry laws, where anyone with a permit can openly carry their weapons wherever they choose to. Proponents claim that it deters people from committing crimes, particularly armed robberies and assaults, and keeps the public safe when law enforcement is not around. Those against open carry argue that the policies turn every disagreement or argument into a potentially violent standoff with each party pointing a gun at the other and possibly pulling the trigger.

States are still facing a confusing array of regulations, and many of the inconsistencies from state-to-state can cause problems. For example, California restricts handgun purchases to one a month, bans some assault weapons, regulates gun shows, and requires people to register

their handguns (which is rare). Texas, on the other hand, has not made any legislative changes in addition to the federal regulatory system that is currently in place, and there are “reportedly more gun dealers than gas stations in Texas near the Mexican border” (Cook, Cukier and Krause 2009). Because of the variability in state policies, an illicit firearms trade has developed across state lines. In states with stricter controls, a majority of the guns are originating out of state in places with far weaker regulations and are then being transported across state borders (Cook et al. 2009). With fairly vague and difficult-to-enforce federal policies, states are left to their own devices, which results in policies that do not match up and legal arguments that appear to be endless.

In addition to the shift in policy activity to the states, there has also been a shift towards policies being decided in the courts, “where... the Second Amendment has been recognized as an individual and fundamental right” (Vizzard 2015, p.879). One of the most prevalent arguments stemming from the Second Amendment is the issue of individual rights versus government rights, and it has come up multiple times in court cases at the local, state, and federal level. Those in favor of an individual right to own a gun routinely cite the part of the Second Amendment that states “the right of the people to keep and bear arms shall not be infringed” (U.S. Const. amend. II) but the part that gun control supporters say they often overlook refers to the “well-regulated militia, being necessary to the security of a free State” (U.S. Const. amend. II). Many historians and legal scholars tend to agree that the right to carry a gun as provided in our Constitution is intricately linked to state militias, which we no longer have a need for because of our national military system.

Recently, there has been a slight change in thinking regarding the individual right to own a firearm in our culture as a whole, but more specifically in the courts. U.S. District Judge Sam

Cummings shocked both sides of the individualist argument when he tossed an indictment claiming a man who had had a handgun prior to receiving a restraining order violated the Brady Act. He ruled that the indictment violated the man's "individual right to bear arms", and his decision marked the first time a federal judge declared that owning a gun was an individual right. The decision was appealed and went to the 5th Circuit Court of Appeals where the indictment was reinstated, but two of the three judges still agreed with Judge Cummings that there was an individual right to carry a gun in the Second Amendment and stated so in their majority opinion (Adams 2004). Another example of individual rights winning in the courts was in the decision of the Supreme Court case *Printz v. United States*. The Court found that the interim provision listed in the Brady Act requiring law enforcement officers to conduct background checks on gun buyers was unconstitutional because it violated the Tenth Amendment, which serves to separate state and federal powers. Although the Tenth Amendment does not solely apply to firearms control, it does exist to set limits on what Congress can and cannot regulate with regards to state and local mandates, and the Court decided that it effectively bars the federal government from requiring state and local officers to conduct background checks (Vizzard 2015).

Perhaps the most important and influential Supreme Court decision regarding firearms policies was that following the case of *District of Columbia v. Heller*. Washington D.C. had an ordinance in place that prohibited keeping a firearm in a residence for protection, unless the person with the firearm received a one-year license issued by the police chief. When a D.C. special policeman applied for a permit to keep a handgun in his home and was denied, he filed a suit claiming the ban was unconstitutional because it violated his Second Amendment right, and the Court ruled in his favor (Hillenbrand 2015). In their 5-4 decision, the Court decided "The Second Amendment protects an individual right to possess a firearm unconnected with service in

a militia, and to use that arm for traditionally lawful purposes, such as self-defense within the home” (*DC v. Heller*, 2008). This landmark case was the first time the Supreme Court ruled that the Second Amendment protects the individual right to bear arms. They continued on to say “The Amendment’s prefatory clause announces a purpose, but does not limit or expand the scope of the second part, the operative clause. The operative clause’s text and history demonstrate that it connotes an individual right to keep and bear arms” (*DC v. Heller*, 2008). This goes back to the separation of individual and government rights, and the distinction between the two parts of the Second Amendment. The Court ruled that even though the first part of the Amendment states the purpose of bearing arms for militia purposes, it does not limit that individuals can only own a weapon for that purpose. The idea is still widely debated, but the fact that the Court landed on the side of individual rights was a significant step forward for pro-gun supporters.

While the *Heller* decision and others were incredibly impactful regarding firearms legislation, there are still many problems associated with enforcing certain legislation and deciding which policies are in line with federal criteria. Following the *Heller* decision, multiple other suits were filed at local and state levels challenging the constitutionality of other firearms policies. While the *Heller* decision cleared up whether or not the D.C. ban was constitutional, the Court failed to distinguish what level of scrutiny to apply when evaluating similar laws and policies in other jurisdictions, and as a result, lower courts are struggling with the inconsistencies when reviewing similar statutes (Dwarika 2015). Many of the defendants filing suits at the local and state levels are individuals who have previously been convicted of violating certain gun laws and are looking to get their convictions overturned on the grounds that those laws are unconstitutional, like the D.C. ordinance that was struck down. Since there is no clear way to

deal with these other gun laws, there are discrepancies among court decisions and a lack of consistency to rely on (Dwarika 2015).

Going hand-in-hand with the legal battles regarding gun control is the culture that exists throughout the country. Gun culture in the U.S. is something that has seen multiple evolutions over the last few centuries but always seems to be in a state of flux. With both pro-gun and pro-control groups existing simultaneously, there has not ever been a clear national response to issues regarding firearms control, and both sides have seen wins and losses with regard to swaying public opinion. Easily the most powerful and influential pro-gun group in existence is the NRA. Established in 1871 as primarily an organization encouraging rifle marksmanship, it has progressed into promoting firearms safety and understanding, lobbying for and against pieces of legislation, and largely promoting the Second Amendment right to bear arms (NRA.org). Over the years, it has grown to over 5 million members and currently has a budget of roughly \$348 million. Due to its size and resources, it has been very successful in lobbying for legislation and policies that promote individual rights as they relate to firearms, as well as blocking the passage of policies that they view as hindering or attacking those rights. On the other side of the gun rights argument is the Brady Campaign. Founded in 1974 in response to the assassination attempt on President Ronald Reagan, the Campaign worked for 20 years to get the Brady Act through Congress and continues to promote the need for more thorough gun control and fewer weapons in the hands of the general public (Brady Act 2015). However, with about 600,000 members and a budget of around \$3 million, their efforts are often dwarfed by those of the NRA. It has been argued that one of the reasons the pro-gun movement is often successful is because its supporters are more invested and they have events like marksmanship competitions and

firearms conventions to rally around, whereas the pro-control movement tends to lack those centralized events and does not have as many invested participants (Vizzard 2015).

One of the most controversial changes fueled by cultural pressure came about in 1997 when Congress passed legislation stripping the Centers for Disease Control and Prevention (CDC) of \$2.6 million of funding that was specifically reserved for firearm research. After the CDC had published two studies showing that there was an increased risk of homicides and suicides associated with homes where guns were kept, the NRA used its influence to encourage a predominantly Republican Congress to take action. The result was legislation stating that “none of the funds made available for injury prevention and control at the Centers for Disease Control and Prevention may be used to advocate or promote gun control” (Mantel 2013, p. 238). The legislation marked a significant win for the NRA and signified the beginning of a cultural shift towards legislatures recognizing and moving to protect the individual right to bear arms. However, using his executive power, President Obama asked Congress for \$10 million and told the CDC to resume research because it is not “advocating” for control (Mantel 2013).

President Obama has also expressed his disappointment that there was a severe lack of gun control legislation passed following the Sandy Hook shooting. As of 2013, over 1,000 firearms-related bills had been introduced to state legislatures, but only one New York bill was successful. While President Obama also issued 23 modest executive actions for launching a national responsible gun ownership campaign and other safety measures, the NRA responded with ads attacking the proposals, and the Republican party has issued comments like “Their efforts to restrict your rights, invading your personal privacy and overstepping their bounds with executive orders, [are] just plain wrong” (Mantel 2013, p.237). While the control debate might seem like it is largely decided in legislatures and the courts, public opinion and current culture

have much more of an influence than many people realize. Following events like mass casualty shootings, both sides respond by virtually yelling their opinions at one another, and often the changes that are made (if any), are the result of whoever was yelling louder.

Foreign Policy

For many of our domestic policies, we often look to other nations with regards to what their policies look like and whether or not their approach is something we could mimic or borrow and make our own. The reverse is also true, with many other nations looking to the United States for tips and tricks when crafting their policies. One area in which these policies interact and sometimes interfere with one another is within international firearms agreements. Over roughly the last 70 years, the United States has become a global arms player, supplying arms to other nations and purchasing weapons that are both legal and illegal to be transported into the country. It began around the time that World War II ended and the Cold War with Russia began, and both nations were supplying arsenals of assault rifles and small arms to the governments or guerilla groups of nations they favored (Felton 2012). The portability of small arms made them easy to transport and trade, and their popularity quickly grew, making them extremely dangerous. They have become so prevalent that former U.N. Secretary General Kofi Annan dubbed them “weapons of mass destruction” due to the fact that “the death toll from small arms dwarfs that of all other weapons systems” (Felton 2012, p.283). Unfortunately, there are no international laws mandating the regulation of weapons transfers or purchases. “We have international laws regulating the sale of iPods and bananas, but no treaty regulating the transfer of weapons being used to kill people the world over,” noted the president of the Sudan Evangelical Alliance, Bishop Elias Taban (Felton 2012, p.284). He is correct - there are no laws in place, and the closest restrictions are U.N. embargoes that do not carry much legal weight or impose very

serious consequences. The U.N. has issued 21 embargoes since 1990, and only about half remain in place, many of which are flawed. One that was adopted in 2003 prohibited the shipment of arms to insurgents and militias in eastern Congo, but not to any of the neighboring countries that were supplying them with arms in the first place (Felton 2012). The U.N. has also adopted over a dozen international agreements since 1996 to regulate weapons trading, but none of them are universal or legally binding, and therefore have very little impact on the global arms trade. The United States has refused to sign multiple treaties put forward by the U.N., including the 2006 Geneva Declaration, which was a “high-level diplomatic initiative designed to support states and civil society actors to achieve measurable reductions in the global burden of armed violence in conflict and non-conflict settings” (The Geneva Declaration, n.d.). One hundred and thirteen countries have signed it in the last nine years, but the United States still has not, largely in the interest of protecting gun owner’s rights, and multiple members of both the Bush administration and the Obama administration have stated that they would support a treaty that makes it more difficult to conduct illicit arms trades, but not one that makes legitimate arms trading more challenging (Felton 2012).

Even U.N. treaties are affected by U.S. gun control, showing just how much power we have over global trade and policy, and how our drive to protect our Constitutional rights is impacting nations who don’t have similar provisions in their governing documents. One review published by the Library of Congress analyzed firearms control policies in multiple countries all around the world, and while there were too many other variables to be able to definitively say there was a correlation between data on firearms events and the legal requirements in each country, there were other areas of interest in the report. For example, out of all of the countries surveyed, Mexico is the only country, aside from the U.S., that has a provision in its Constitution

recognizing the individual right to bear arms. On a different note, while all of the countries surveyed require licensing for civilians for all activities involving firearms and ammunition, there are several countries that don't recognize self-defense as a valid reason for needing a weapon and therefore will not issue a permit if that is the reason an individual is applying (Levush 2013). This is vastly different from how permits work in the U.S., and there are many pro-control advocates who feel that this is the direction we should be heading with regards to firearms control. On an international platform, rates of crime historically have been much higher in the U.S. than in many other countries around the world, and a large percentage are firearms-related deaths. Regardless of whether or not the weapon was legally purchased, gun homicide tolls in the U.S. are continuously higher than multiple other nations, and this is not a new development. One study by Handgun Control Inc. in 1988 recorded seven people in Great Britain, 19 people in Sweden, 53 people in Switzerland, 25 people in Israel, 13 people in Australia, and eight people in Canada died that year due to handgun violence in those nations. In the U.S. that same year, 8,915 died as victims of handgun violence ("Reassessing" 1999). Comparisons like this that present such stark contrasts to other nations show that it would be worthwhile to examine their policies more closely to see why such differences exist.

Two of the most critical and interesting countries to compare the U.S. to with regards to firearms control are Canada and Mexico, given that each borders the U.S. and has a reputation of having stricter control policies than the U.S. Given the cultural reputation Canada has earned of being friendly and safe, it often very startling when any kind of gun violence occurs. Much of that reputation is a result of their regulations and restrictions. Current federal law in Canada requires that any individual who wishes to own a firearm must have a valid PAL (Possession and Acquisition) license, and go through a fairly extensive application process to receive one. There

is a screening process that includes a safety course on gun usage, criminal history and background checks, personal references, and a mandatory 28-day waiting period (Dinshaw 2015). These are all steps taken just for owning a “non-restricted” firearm, and there are even more provisions for weapons that are classified as “restricted” or “prohibited” (also known as grandfathered). Since 1930, Canada has had strict laws with specific regards to handguns, mandating that applicants show “just cause” for ownership when being screened. Most apply under lawful occupation, member of a shooting club, or a legitimate collector. Personal protection is also an applicable category, but “personal protection is a justification only if applicants can demonstrate that their life is in danger and police cannot protect them” (Cook, et al. 2009, p.270). Only about 50 permits in the entire country are currently for personal protection, which is in stark contrast to how many people in the United States claim to own firearms for self-defense. One of the main policy differences between the United States and Canada was the national registry, before it was removed. Established in 1995, policy required that any and all firearms be registered, and that law enforcement had full access to these records (Cook et al. 2009). A somewhat staggering 90% of all gun owners complied with the registry requirements until the requirement was dropped by a bill passed in 2012, effectively eliminating the national registry for non-restricted firearms in all provinces and territories except for Quebec. However, in 2015, the Canadian Supreme Court ruled against Quebec and mandated that their registry records be destroyed too (Ahmad 2013). Firearms availability is also something that differs between Canada and the United States. One study done in 1988 compared gun availability and violence rates in Seattle, Washington and Vancouver, B.C. because the two cities are very similar with regards to cultural, ethnic, and economic characteristics. Results of the study showed that while the two cities had fairly similar rates for many different crimes, there were

seven times as many assaults with firearms in Seattle, and the risk of being murdered with a handgun was almost five times higher in Seattle than Vancouver (“Reassessing” 1991).

However, one of Canada’s main problems in controlling guns is that it borders the United States. Canada and the U.S. share the longest undefended border in the world, runs 5525 miles and contains a mere 22 crossing points (Cook et al. 2009), and gun trafficking unfortunately is a serious concern. It is well known the U.S. has a trafficking issue with Mexico, but the same holds true for Canada too. Their rates of violence and criminal activity may differ, but “Canada and Mexico have one thing in common when it comes to armed violence – the underground gun market in the U.S., which is a major source of supply to criminals and gangs in both nations” (Cook et al. 2009, p.266). While gang activity in Canada does not come too close to rivaling that of Mexico, it has seen a fairly dramatic increase in recent years, even though overall violence and homicide rates have declined. Multiple data sources have also discovered that a vast majority (two-thirds in one Toronto study from 2006) of guns recovered from crimes in Canada were found to have originated in the United States (Cook et al. 2009). Due to the stricter nature of Canadian gun control laws, these statistics are not that significant. However, the varying policies in different states and lack of thorough federal policy in the U.S. make it much easier to acquire firearms that can later be smuggled across the border.

In addition to Canada, Mexico has also seen illegal gun trafficking across the southwest border of the United States, which has created multiple issues for citizens of both countries. Many of the states that border Mexico, with the exception of California, have some of the least strict gun laws in the country. The lack of restrictions and the fact that the United States is one of the top producers of firearms for the global marketplace adds up to an overwhelming amount of firearms being purchased, either legally or illegally, and smuggled across the border. This issue

was front and center after a botched Alcohol, Tobacco, Firearms and Explosives (ATF) operation came to light in 2010. The ATF field office in Arizona had decided to run an operation starting in 2009 where they allowed licensed dealers to sell high-powered weapons, illegally, to “straw purchasers” (people who would buy guns for other individuals) and then track the weapons with the hope that they would lead them to Mexican cartel leaders. It turns out that they let the weapons “walk” into the hands of these cartels and lost track of roughly 2000 firearms. The operation was discovered when U.S. Border Patrol Agent Brian Terry was shot and killed in an altercation with suspected illegal immigrants at the U.S./Mexican border in Arizona in 2010, and the rifles involved in the shootout were traced to a shop in Phoenix that had been part of Operation Fast and Furious. Multiple other weapons also began to be discovered at gruesome crimes scenes by Mexican law enforcement, who were unaware of any ATF operation. As of 2012, only about 700 of the firearms involved in the operation had been recovered by either Mexican or U.S. law enforcement (Krantz 2013).

Article 10 of Mexico’s Constitution states that residents have the right to keep firearms in their homes for self-defense and security purposes, but it also states that federal law determines specific requirements and locations in which weapons are allowed to be carried, and historically civilians owning firearms has been fairly tightly restricted. In addition, the Federal Law of Firearms and Explosives determines which high-powered weapons citizens may not own (Krantz 2013), detailing that they are banned from possessing any firearms prohibited by federal law and weapons that are reserved for any branch of the military. Buying firearms is also generally much more difficult in Mexico, since there are no private gun shops and new weapons can only be purchased from one location, which is the Arms and Ammunition Marketing Division of the Mexican armed forces (Cook et al. 2009). Mexican drug cartels rely heavily on firearms to

maintain control of their trafficking corridors along the border, and since firearm availability is somewhat scarce and heavily restricted in their country, they frequently turn to southern-most states like Arizona and Texas to add to their supply. It has been estimated that almost 90% of the weapons cartels and other illegal organizations in Mexico use originate in the United States (Mehalko 2012). Any time the Mexican government attempts to reduce drug trafficking, they are met with an overwhelmingly violent response from the cartels, who are aided largely in part by the weapons they are acquiring in the United States. It is likely that any attempt by Mexico to crack down on weapons trafficking would be completely undermined by the lenient policies of the United States, and many Mexican officials have expressed their frustration with the United States' inability to pass and enforce stricter federal policy (Mehalko 2012).

While Canada and Mexico are often talked about in comparison to the United States, perhaps the most referenced country in the world with regards to firearms control is Australia. Australia was never at the top of the list for countries with high rates of violence, but one event prompted them to take action and assure that was never the case. In 1996, a gunman armed with a semi-automatic rifle opened fire on the tourist destination of Port Arthur, Tasmania, killing 35 people and wounding 23 others. The massacre was unlike anything Australia had seen, and the government's reaction was swift and clear. Within 12 days, the Australian Prime Minister Council for all six states and two territories sat down and agreed to a nationwide plan for regulating firearms, known as the National Firearms Agreement (NFA). The NFA had multiple different faucets such as a ban on all semi-automatic weapons and their magazines, the requirement for individuals to obtain a separate permit for each firearm they own, a 28 day waiting period after applying for a permit, the establishment of a nationwide registration system, a mandate that all sales must go through a licensed dealer, and a clause establishing that

“personal protection” is not a valid reason for needing a firearm (Buchanan 2013). One other significant aspect of the NFA was a buyback program in which over 700,000 firearms were bought by the Australian government and subsequently destroyed. While the program got a large number of firearms off of the streets and out of the hands of civilians, one study came to the conclusion that the buyback itself did not have any significant effect on firearm homicides or suicides, stating that “although gun buybacks appear to be a logical and sensible policy that helps to placate the public’s fears, the evidence so far suggests that in the Australian context, the high expenditure incurred to fund the 1996 gun buyback has not translated into any tangible reductions in terms of firearm deaths” (Lee & Suardi 2010, p. 76).

The passing of the NFA created what many researchers called a “natural experimental design”, and as a result, multiple studies have also been conducted to see if the legislation as a whole has had any effect on mass casualties or firearms-related deaths in general. Over the years, there have been reports published saying that it did indeed have an impact, and others saying it did not. More recently, researchers have been going back over previous projects and conducting more experiments, and ultimately, it appears that the NFA did not have a significant effect on firearm-related homicides and suicides (Baker & McPhedran 2015, Lee & Suardi 2010). While Australia did experience somewhat of a decline in firearm homicides following the enactment of the NFA, it is likely that it was not due to the legislation but rather was part of a pre-existing downward trend (Baker & McPhedran 2015).

Comparison

While the legislation passed in Australia likely did not have an overwhelming impact on firearm-related incidents, many still praise the Australian government’s quick action following the Port Arthur shooting, and in turn criticize the U.S. government for not taking similar action

following any of the mass casualty events that have occurred over the last few years. Following the mass shooting at Sandy Hook, bills at the state and federal level were introduced trying to combat firearms violence and tighten the “loose” statutes currently in place, but results were mixed. The Manchin-Toomey amendment (named after its authors) proposed expanding background checks to include gun shows and internet dealers, but it fell six votes short of what was needed to “overcome a procedural hurdle” in Congress (Vernick & Stevenson, 2015). This legislation is very similar to the provision in the Australian NFA that limited sales to licensed dealers only, and while it was approved with very strong support in Australia, that same approval level clearly did not exist in the U.S.

It is posited that two of the main reasons the U.S.’s response to Sandy Hook was so lacking in comparison to Australia’s response following Port Arthur are the NRA and the Second Amendment to the U.S. Constitution. While Australia has a number of pro-gun organizations, none are as loud or powerful as the NRA. The NRA has influenced the creation or downfall of multiple pieces of legislation regarding firearms ownership and regulation through efforts of the organization as a whole, and specifically the lobbyists they employ, and they are so well-funded that they can continue to do so for the foreseeable future. The NRA’s seemingly counterintuitive reaction to many mass casualty and other gun-related events is that the loss of lives could have been avoided simply if more people were armed. Wayne LaPierre, Executive Vice President of the NRA, stated after Sandy Hook that the gunman could have easily been stopped if there were armed security at the elementary school, and this is not the only time the NRA has offered a similar response. When the CDC funded studies that ultimately found the risk of having a loaded gun in the home to outweigh the benefits, the NRA was quick to push legislation that ultimately defunded the CDC’s gun research, likely because these findings contradicted their belief that

more guns solve all problems. Economist John Lott performed a regression analysis in his book *More Guns, Less Crime* and found that as permits for concealed carry increased, violent crime decreased (Vizzard 2015) which is a finding the NRA has used repeatedly as support for an increase in gun ownership. However, the correlation between permits and a decrease in violent crime was fairly weak, and many scholars have since criticized Lott's methodology.

In regards to the Second Amendment, the analysis of multiple nations around the world published through the Library of Congress found that of the countries surveyed, Mexico is the only country besides the U.S. that has a similar provision in its Constitution that provides citizens with the right to own a firearm (Levush 2013). However, even they have tighter restrictions on that right than the U.S. does. Whereas the U.S. has options for many different types of permits like open carry, concealed carry, and "shall issue" laws that make it fairly easy for citizens to gain access to personal firearms, the federal government in Mexico severely limits permit acquisition and only rarely allows for self-defense as a valid reason for needing a permit. The U.S. is a nation built on its Constitution and the individual freedom that goes along with it, so people tend to get very defensive when they feel something threatens that freedom. The right to bear arms as stated in the Second Amendment is a provision that many people feel very passionate about, and they view gun control as intruding on that right. What control proponents tend to respond with is the "well regulated militia" clause in the Second Amendment, claiming that we no longer have a need for a civilian militia since we have established our own armed forces. There have been legal scholars on both sides of the argument as well as court decisions, and many of the policies that control supporters attempt to enact, like background checks and a national registry, end up being struck down because they are found to be in violation of the Second Amendment. Canada's 28-day waiting period, their strict control over what "personal

protection” means, and their former national registry are all some variation of control measures that have been tried in the U.S. and have either not been passed or removed shortly after their approval because they are in violation of the Second Amendment. Some arguments that these measures count as violations are stronger than others, and some seem to be reaching quite a bit, but they all end up coming back to insisting the individual right to bear arms is being infringed upon. This back and forth regarding the Second Amendment is not likely to end anytime soon, making it highly improbable that what Australia did following Port Arthur, the restrictions Mexico has put on their constitutional right to bear arms, or the hurdles Canada has in place to owning a personal firearm would be viable options in the U.S.

Recommendation and Conclusion

While it may seem like fighting for gun control is an impossible uphill battle, looking at precedent set by other nations around the world and the U.S.’s history of implementing limited gun control policies, there is the possibility for some control measures to be effective if they are framed the right way and do not try to go for the extremes. For example, background checks are a something that is usually highly debated because gun rights activists feel that they directly interfere with an individual’s right to apply for a firearm permit. Since legislation has already been passed to restrict convicted felons and those deemed mentally ill from owning firearms, it is reasonable to assume that there needs to be a system in place to determine if individuals applying for firearms are not already restricted from owning them. What is complicated is how thorough and detailed these checks need to be. The systems already in place let individuals like the Sandy Hook shooter through, and a severe lack of communication between mental health professionals failed to catch the Virginia Tech shooter before it was too late (Wolf & Rosen 2015). If there is a background check system that is going to work, it needs to be fairly comprehensive, while also

asking for information that has not already been deemed protected. Court decisions that deal with the constitutionality of background checks need to determine which areas actually qualify as information that does not need to be divulged, and they should be as consistent across the board as possible so that new cases looking to reference precedent have all of the same information. While a federal requirement for background checks might seem like a violation of the Second Amendment to some, it is a rational assumption that there are individuals who should simply not have access to firearms for their own protection as well as the protection of others, and background checks are a key to keeping the system in check.

Another aspect of control that should be implemented in tandem with background checks is a longer waiting period, like those that exist in Canada and Australia. What tends to be overlooked when objections are made to a waiting period is that it does not mean that individuals applying for permits are going to be waiting forever, it just means that they will have to practice some patience and understand that they will not instantly be able to hold firearm in their hands. Waiting periods not only allow for background checks to be conducted more thoroughly, they also provide a buffer in the process or a cooling down period for those who might purchase firearms impulsively or for criminal reasons. For example, if people who are considering suicide are not able to get quick access to a gun, they may end up rethinking why they were going to purchase that weapon and perhaps change their mind. Abusers in domestic violence relationships would have to wait before possibly killing their spouses, which could turn a potentially lethal situation into something not quite as devastating, or give the spouses time to get out or seek protection.

What would be likely the most helpful for law enforcement and state and federal government is a national registry. This does not get in the way of or restrict individuals owning

firearms, so it should not directly be in violation of the Second Amendment. It would merely serve as a way for guns to be tracked so that when they are sold in straw purchases to individuals who are not supposed to own them or the guns are used in crimes, it is easier to locate the owners and hold them responsible. Rights activists often get upset at the idea of a registry because they claim it interferes with their privacy and therefore is infringing on their Second Amendment right, but if they are not participating in illegal activities with regards to firearms, there should not be any concern about the federal government knowing they possess guns.

Other new policies that would be both fairly feasible and not in violation of the Second Amendment would be imposing stricter and more comprehensive sanctions on gun trafficking and creating stronger, more thorough gun insurance mandates. As it stands now, one of the main factors regarding criminal sanctions for gun trafficking is what is known as varying standards of knowledge, which essentially refers to how involved individuals are in the trafficking process and how aware they are of what they are involved in, and lower standards are associated with either minimal criminal prosecution or none at all. Current statutes have the same punishment for trafficking two firearms as they do for 20, so criminalizing actions with lower standards of knowledge and amending sentencing guidelines to impose stricter punishments on trafficking larger numbers of firearms could help reduce the amount of trafficking and therefore keep fewer weapons from coming into the U.S., but just as importantly keep them from leaving and entering Mexico or Canada (Krantz 2013). There is also the potential for more expensive fines to shut down the top gun dealers who tend to traffic firearms and partake in more of the illegal transactions than legal ones (Adams 2004).

With regards to the insurance mandates, the idea is fairly simple. 49 states require car insurance to operate motor vehicles, so it stands to reason that a similar requirement could be

made for owning and using firearms. When the Supreme Court ruled against the D.C. statute banning firearms in the home in *D.C. v. Heller*, they did not find that D.C.'s licensing requirement violated any right, meaning they would likely not rule against any future insurance or licensing requirements. Since such mandates would not severely limit the possession of firearms for self-defense and other purposes, legislators could likely work with insurance companies to craft legislation that would still be in line with the *Heller* decision. The NRA has previously argued that a licensing requirement would prevent those who cannot afford the insurance from owning firearms, but no court has ever ruled that any car insurance requirements are "burdensome to the poor", and they are not likely to do so with any potential firearms licensing (Hillenbrand 2015). Such policies would help keep gun owners in check and potentially lower the rates of gun-related incidents, and since they would only dictate the manner in which the Second Amendment right to bear arms is exercised, not prohibit it, they have the potential to be successful.

Safety is also an enormous concern with regards to firearms, and the U.S. could benefit greatly from having a gun safety course requirement like Canada does. The NRA often says that part of their organization is helping train individuals in how to properly and safely use firearms, so there possibly may not be as much opposition to making it part of the permit process. The more trained people are in using firearms, the less likely they are to leave the safety off or pull the trigger on accident, and the better they hopefully are at keeping them locked up when they are not in use. An alarmingly large number of guns are accidentally discharged in the U.S. each year, and safety courses could potentially help prevent many of those incidents from occurring.

Information regarding potential policy changes could have been much more accessible had the CDC not lost its federal funding to conduct research on firearms, but now that President

Obama has asked them to resume that research, they will be better prepared to add research-supported input of their own to the gun control debate. Not only is there valuable research to be done within the U.S., many nations in addition to Canada, Mexico, and Australia could also be studied to gain insight into what policies are in place in those nations and what other factors might be at play with regards to their rates of firearms casualties. Additionally, if the U.S. does decide to make some changes regarding firearms policy, it would be beneficial if those policies were created with more of a consideration of international implications (Mehalko 2012). With the world trending towards globalization, it would benefit the U.S. to have more involvement in international policies and comply with some of the worldwide efforts to curb firearms violence, like the U.N. embargoes and treaties that have previously not been signed.

Americans often assume that tragedy will change things, but with regards to the country's excessive gun violence, that is not the case. Each time a new tragedy strikes, speeches are made, people get angry at both sides of the gun control debate, policies are drafted, but it is never enough. "Although such tragedies can act as a catalyst for public attention and political will, social movements cannot be sustained without broader rationale and credible champions" (Cukier 2005, p. 227). The pro-control movement has yet to find their champion, and since the NRA continues to dominate the discussion and intimidate elected officials who may take issue with some of their stances, it will take a monumental shift in public opinion and pressure to gain traction with any serious gun control legislation. Some people feel they have seen too many opportunities come and go to think things will ever change. Dan Hodges said on Twitter, "In retrospect Sandy Hook marked the end of the US gun control debate. Once America decided killing children was bearable, it was over." It may seem like an impossible uphill battle, but many people would like to believe that there is still hope. In light of the recent and frequent

increase in mass shootings, public opinion is starting to coalesce around limiting assault rifles and high capacity ammunition clips, requiring more and more thorough background checks, and support of the NRA beginning to wane. If the U.S. can be open to seeing the situation in some new and different ways, there may just be the potential for change after all.

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