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The Achievement of the 1996 National Firearms Agreement in Australia: Lessons for Federal Gun Control Reform in the United States

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**The Achievement of the
1996 National Firearms Agreement in Australia:
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in the United States**

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Senior Thesis

Trinity College
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Introduction

The United States leads the world by far in gun ownership and gun violence. According to a 2007 estimate, 270 million Americans out of more than 316 million own private guns (Alpers and Wilson 2013; “United States” 2013). The U.S. also has a private gun ownership rate of 88.8 per 100,000 people. In 2011 there were more than 32,000 gun-related deaths, a gun death rate of 10.3 (Alpers and Wilson 2013). The shocking disparity between the gun violence levels of the United States and other nations is a strong indicator of a serious problem. The low levels of gun violence in other nations help emphasize that there is a clear relationship between the United States’ gun violence, large gun stockpiles, and weak gun regulations.

However, some argue that international comparisons are not sensible because the United States is unique. While the United States Constitution includes a right to individual gun ownership, such a right does not exist in other countries. As will be discussed in Chapter 3, the Second Amendment is not absolute and does not bar many types of strong gun control measures that exist in other nations. But the Second Amendment does significantly hinder the policymaking process because it gives a powerful argument to those who oppose gun control. Buttressed by the Second Amendment, the power and influence of the American gun lobby on politics and the public are unparalleled.

Despite the unique conditions in the United States, international comparisons are still useful. It is true that the U.S. cannot merely appropriate the gun control system of another nation in the hopes that it will automatically be successful. The benefit of carrying out international comparisons is that other nations’ successful gun control systems and reform experiences can provide lessons. These lessons can then be used by the U.S. to guide its own gun control reform, both in terms of specific policies and the passage process.

Australia provides an especially useful guide for the United States to reform its federal gun control legislation. There are a number of similarities between the two nations' gun control histories, which makes Australia a particularly relevant model for reform. Australia has had strong gun ownership, an influential gun lobby, and a state-level gun control system. Australians have always valued guns for practical reasons in farming and hunting, as well as for recreation and sport. Gun laws in Australia can only be made at the state level. As a result, state laws varied in strength before the achievement of the 1996 National Firearms Agreement (NFA), which standardized gun control laws across the eight states and territories. Gun control laws also vary widely across the U.S. because states and municipalities can make their own laws. Prior to 1996, Australian gun control was weak overall and reform was always hindered by the gun lobby and politicians sympathetic to their gun-owning constituencies.

Australia ultimately overcame a history of significant resistance to achieve comprehensive gun control reform. The federal government created a national uniform gun control system that is not overly restrictive. The system is moderate because it recognizes the importance of gun ownership in Australian society, but public safety is the overarching objective. Although comprehensive federal gun control reform has failed throughout modern American history due to the influence of gun owners' interests, Australia's similar experience demonstrates that successful reform is still possible. Since the NFA was implemented, there have been no gun massacres with four or more deaths (Howard 2012; Chapman, Alpers et al. 2006, 365). In 2010 in Australia, there were only 236 gun-related deaths, a gun death rate of 1.06 (Alpers, Wilson and Rosetti 2013). The passage of the 1996 National Firearms Agreement in Australia provides many valuable lessons for the United States to finally strengthen its federal gun control legislation to decrease gun violence.

To assess the application of the Australian reform experience to the United States, one must consider the countries' differences. The Australian Constitution does not contain a legal right to private gun ownership. As discussed above, a legal right empowers those who oppose gun control. While Australia is only slightly smaller than the United States in land area, Australia is significantly smaller in population. Australia has just over 22 million people ("Australia" 2013). While there is almost one gun for every person in the United States, there are only an estimated 3.5 million guns in Australia (Alpers and Wilson 2013; Alpers, Wilson and Rosetti 2013; "United States" 2013). The size, population, and number of guns in each country affect the feasibility of certain policies. Australia has a parliamentary system and the U.S. has a presidential system. The different political systems determine the ease of gun control lawmaking and the legislative process. With these differences in mind, the U.S. can still draw important lessons from Australia's achievement of the National Firearms Agreement.

Chapter 1 examines the history of Australian gun control leading up to the 1996 National Firearms Agreement. Since Australia was established, handguns were strictly controlled, but long gun regulations were weak in many states. There was no push for long gun control until a number of gun massacres happened in the 1970s and 1980s. The public began to realize how the strength differentials among the states' gun control systems endangered the public. While some states passed new legislation, the changes were modest. By the 1990s, governments and police ministers sought ways to reform Australian gun control and found that a national uniform system was necessary. However, before 1996, the Australian jurisdictions could not come to an agreement over the policies to be included in a national uniform system.

Chapter 2 discusses the process of achieving the 1996 National Firearms Agreement (NFA) in Australia. This chapter examines the reasons why the NFA was able to be passed at

that time, despite Australia's past failed attempts to carry out strong reform. The reform effort was inspired by the 1996 Port Arthur massacre, Australia's most deadly gun massacre. Newly elected Prime Minister Howard took an unwavering stance in his commitment to carry out comprehensive gun control reform, despite a lack of support from his political party. With the overwhelming support of the public, Howard was ultimately able to convince unsupportive states to join the national agreement. The chapter also shows how the NFA policies have successfully decreased gun violence in Australia since 1996.

Chapter 3 demonstrates how the United States has perpetually failed to achieve comprehensive federal gun control. Ever since the first acts were passed in the 1920s, the U.S. has been unable to pass strong federal gun control legislation. Although comprehensive measures have had reasonable public support over the years, there has not been enough political will to push the legislation through. The gun lobby has been a very important contributing factor to the weakened legislation. This chapter discusses the weaknesses in American federal gun control and how these weaknesses endanger public safety. Presently American federal gun control cannot effectively regulate the differences in strength among state and local laws. The chapter concludes by considering how a 2008 Supreme Court case provides hope for the future feasibility of passing stronger federal gun control legislation.

Chapter 4 draws conclusions by presenting the lessons that the achievement of the National Firearms Agreement provides for the United States. Overall the Australian gun control reform experience can teach the U.S. a great deal about the importance of political leadership, public advocacy, and specific policies necessary to decrease gun deaths. This chapter also analyzes how well these lessons are currently being carried out after the most recent December 2012 mass shooting in Newtown, Connecticut. The best policymaking approach to ultimately

achieve federal legislation is also considered. Obtaining legislation at the state and local level first may be the best way to ultimately achieve federal legislation. The gun control lobby will be an integral actor in developing support for stronger federal legislation and there is evidence indicating that the gun control lobby may be more politically influential in the future.

Chapter 1

The History of Australian Gun Control: The Development of a Debate and the Failure to Achieve a National Gun Control Policy

Since its beginnings, Australia has valued gun ownership. Guns were not only important because they were necessary for settlers to confront the country's wild outback, but also shooting and hunting were new freedoms for the settlers. Throughout its history, Australia has been in agreement that handguns should be strictly regulated due to the belief that they were susceptible to criminal use. However, long guns were left uncontrolled because they were associated with hunting and shooting in rural areas. Not until modern times did a gun control debate arise in Australia over long guns. Increasingly frequent gun massacres suggested to the public that long guns could in fact be used in dangerous ways. Since the states hold the power to make gun control laws, gun regulations varied greatly among the states. The gun lobby had been influential in some states more than others, contributing to the existence of lax gun control laws in those states.

The occurrence of multiple massacres in the 1980s clearly illuminated to the public and governments the ways in which Australia's gun control system endangered public safety. At this time, scholars and gun control advocates agreed that laws needed to be strengthened and that the achievement of a national uniform gun control system was necessary. In the 1990s, the federal government and some state governments sought to find answers to solve the weaknesses in the country's gun control system. The major recommendations resulting from committee meetings paralleled those that been advocated by gun control advocates in the 1980s: achieve a national uniform system and strengthen the individual gun control policies.

Although the public, scholars, and some state governments were keen on strengthening gun control and obtaining a national agreement by the 1990s, the gun lobby continued to stand in the way. Overall the public did not favorably view the gun lobby, especially due to its growing ties with the American National Rifle Association (NRA) in the 1990s. However, the gun lobby held political power in a few states with strong rural gun ownership, which prevented the achievement of a national agreement. These states prevented the achievement of a national agreement because they rejected an individual policy to be included within it.

In this chapter I will discuss this evolution of Australian gun control and the accompanying debate. The chapter will illuminate the weaknesses in Australia's previous gun control system and the difficult struggle to strengthen gun control leading up to the achievement of a national uniform gun control system. Gun massacres had always inspired a public response and moderate gun control changes, but dramatic changes, like a national uniform system, were always blocked by shooters' interests. My discussion will begin with the country's settlement and end with the state of the gun control debate in the 1990s, just prior to the 1996 Port Arthur massacre and subsequent National Firearms Agreement.

The Settlement of Australia: Affection for Guns is Born

The settlement of Australia to an extent involved the expansion of the frontier (Kopel 1992, 194). However, the states not lying on the eastern seaboard of the country¹ were not settled by frontier expansion across the continent because settlers were stopped by the great interior deserts of the country (Kopel 1992, 193-4). By the 1820s, the settlers, soldiers, officers and emancipated convicts built successful farms with the land given to them by the government. Upon hearing that there was cheap land and plentiful job opportunities, many British emigrants

¹ South Australia, Western Australia, and the Northern Territory

traveled to Australia (“Australia’s history”). The 1820s was a decade characterized by a large amount of pastoral expansion in Australia, where settlers moved with their sheep and cattle hundreds of kilometers past the boundaries of settled districts (Clarke 2002, 41, 43). Settlers expanded the country by moving deeper into Aboriginal territories, often accompanied by a gun, looking for pasture and water for their livestock (“Australia’s History”; Clarke 2002, 37).

The gun was an important instrument of both colonization and settlement in Australia. Guns were used in both an offensive and defensive manner against the Aborigines (Davison 2000, 246). Aborigines resisted Australian settlement by carrying out attacks on settlers, their stock, and their property (Nettelbeck 2010, 358). The Australian mounted police responded to Aboriginal attacks, but it was largely ineffective due to the restrictions it faced (Nettelbeck 2010, 358, 360). The police were hampered by a lack of resources and the difficulty of keeping up with settlers’ frontier expansion. Due to these difficulties, the settlers often had to defend themselves. The police recommended to settlers to use their guns for protection, for example by arming their station hands (Nettelbeck 2010, 360).

Guns were also important for hunting, reducing stock, eliminating pests, and sport in early Australia (Davison 2000, 247). Gun ownership and shooting were new freedoms for early Australians. In England, hunting was only a right of the wealthy. Upon coming to Australia, ordinary citizens could partake in hunting and shooting for the first time (Davison 200, 247). Although gun ownership was very important in early Australia, some form of gun control had existed almost nearly from the beginning of the country’s settlement. Gun registration was first established in Australia in 1802, only fourteen years after the first penal colony was established there (Kopel 1992, 193).

Criminal Handguns and Legitimate Long Guns

The individual Australian jurisdictions have made their own gun control laws ever since the Australian Commonwealth was established. The independent nation of Australia was established on January 1, 1901. The six colonies became states under the Constitution and were given the power to govern (“Australia’s federation”). There was no explicit mention in the Constitution of the authority to make gun laws when the division of power was determined between the states and the Commonwealth. Therefore the power to regulate guns fell to the states (“Gun Politics”). The Commonwealth has only been able to regulate firearms by using its overseas trade and commerce power to prohibit the importation of certain types of firearms (Norberry et al. 1996). Since states have been able to make their own gun laws, different gun control systems arose in each state over time (“Gun Politics”; Harding 1981, 1).

The one area of agreement among all of the Australian jurisdictions’ gun control systems has been strict handgun regulations. Between 1921 and 1932, all six of the Australian states and two territories passed firearms control laws² (Harding 1981, 1-2). Overall the laws during the 1920s and early 1930s focused on regulating handguns (Harding 1981, 2). Since pistols were concealable, the public believed that they had a greater likelihood to be used in the commission of crimes than other guns (“History of Firearms”). For example, the goal of the New South Wales’ Pistol License Act of 1927 was to “regulate and license the use, carriage, possession, and sale of pistols” (“Pistol Licence Act” 1927, 131). South Australia’s Pistol Licence Act of 1929 also had the aim to “regulate and license the use, carriage and sale of pistols” (“Pistol Licence Act 1929, 1). Tasmania enacted the Firearms Act of 1932, but the term “firearm” is never used

² Pistol License Act 1927 (New South Wales), Firearms Act 1921 (Victoria), Firearms Licence Act 1927 (Queensland), Pistol Licence Act 1929 (South Australia), Firearms and Guns Act 1931 (Western Australia), Firearms Act 1932 (Tasmania), Firearms Registration Ordinance 1932 (Northern Territory), and Gun Licence Ordinance 1925 (Australian Capital Territory)

within the act itself. All of the Act's regulations specifically refer to pistols, suggesting that Tasmania believed the only type of firearm that needed control was pistols.

While there has always been consensus among the Australian jurisdictions that handguns should be regulated, no consensus on long gun regulations existed. This disagreement stems from the belief that handguns were used for criminal purposes, while long guns were legitimately used in the countryside (Davison 2000, 251). For example, a discussion of long arm restrictions in the New South Wales parliamentary debate over the 1927 Pistol License Bill is illustrative of the public perception of long arm usage. A concern was raised that restrictions on long arms would prevent farmers from using them for practical purposes ("History of Firearms").

Only Western Australia's legislation regulated long guns, revealing the government's belief that this type of firearm could also be dangerous (Harding 1981, 2). Western Australia's Firearms and Guns Act of 1931 is "an act relating to firearms, pistols, and guns," which differentiates between all three. The Act stated that the regulations within it also applied to pistols and air guns³, as well as firearms. The Act established a strong licensing system where one had to be licensed to possess, manufacture or repair, deal in firearms, and to conduct a shooting gallery ("Firearms and Guns Act" 1931). Over time, the strength of the jurisdictions' long gun regulations have varied greatly because legislators have not shared the same beliefs about the objectives of long gun control (Harding 1981, 2).

Between the 1930s and the early 1970s, all of the Australian jurisdictions amended their gun laws or implemented new acts (Harding 1981, 2; Abrahams et al. 1999, 9)⁴. During the

³ Air guns were defined as "any rifle or gun, not being a firearm or pistol or toy gun which is capable of propelling a projectile of any kind by mechanical means or by means of compressed air" ("Firearms and Guns Act" 1931).

⁴ See the Firearms and Dangerous Weapons Act 1973 (New South Wales), Firearms Act 1958 and Firearms Act Amendment Act 1972 (Victoria), Firearms Act 1973 (Western Australia), Firearms Act 1977 (South Australia), Firearms Ordinance 1956 (Northern Territory), amended in 1959, 1960, 1961, and 1964, and Gun Licence Ordinance 1959 (Australian Capital Territory), Firearms Act 1932 (Tasmania), Firearms Licence Act 1927 (Queensland)

1950s, Australia continued to grow in population and become more urbanized (Abrahams et al. 1999, 9). Again after WWII, veterans returned to Australia with ex-military firearms in hand (Davison 2000, 252). Since Australia's population of both people and guns was growing, the concern for gun misuse also grew. This concern is evidenced by the small changes made to gun laws by all jurisdictions by the end of the 1950s. While handgun regulations were fairly strong and uniform throughout Australia at this time, long gun regulations were still fairly weak. Western Australia continued to be the only state with legislation that exhibited a concern for rifles and shotguns (Abrahams et al. 1999, 9). During the 1950s, Western Australia amended its Firearms Acts of 1931-1939 twice, in 1953 and 1956 ("Western Australian Numbered Acts"). Of the other states, Victoria made the greatest progress with the Firearms Act of 1958 that established a form of licensing that required a long gun owner to have a certificate for each specific gun in possession (Abrahams et al. 1999, 9; "Firearms Act 1958" 218-9).

The Impact of Gun Massacres: The Development of the Australian Gun Control Debate

In the early 1970s, the Australian long gun control debate began to take shape and the disparities between jurisdictions' gun control laws became more evident to the public. For the first time, between 1971 and 1972, Australian citizens actively participated in a gun control debate. The teenage daughters of two immigrant families were killed in Victoria by firearms in two different incidents in 1968 and 1970 ("Gun Politics"; "Our History"). The killers were not criminals, but rather sporting shooters who had carelessly handled their rifles. These incidents were significant because they revealed to the Australian public that private ownership of long guns, not just handguns, could be dangerous and lethal. The parents of the deceased girls lobbied politicians to strengthen Victoria's lax long gun regulations. As a result, Liberal Party Premier Hamer introduced a Shooters License ("Guns and Politics"). In 1972, Victoria's

Firearms Act of 1958 was amended so that all gun owners must be licensed, not just pistol owners (“Firearms (Amendment) Act 1972” 255). However, during the 1970s, a Liberal/National Coalition was in control of Victoria and the parties’ premiers were sympathetic to shooters’ interests (Crook 2000, 6). After the 1972 Amendment, there was no further strengthening of the state’s gun control law during the decade (“Victorian Historical Acts”).

However, during the 1970s in Western Australia, the Liberal Party had also been in power, but it had increasingly strengthened the state’s gun control law throughout the decade (“Gun Politics”; “Western Australian Numbered Acts”). The Firearms and Guns Acts of 1931-1969 were amended in 1971 (“Western Australian Numbered Acts”). In 1973 the Firearms Act was established repealing the Firearms and Guns Act 1931-1971. The goal of the 1973 Act was to “...make provision for the control and regulation of firearms and ammunition, the licensing of persons possessing, using, dealing with, or manufacturing firearms and ammunition...” (“Firearms Act 1973”). The Act further strengthened its licensing system in which a person was given a different type of license based on their use for the firearms, such as licenses to carry or not, for firearms dealers, repairers, manufacturers, or someone conducting a shooting gallery (“Firearms Act 1973”). The 1973 Firearms Act was then subsequently amended in both 1976 and 1978 (“Western Australian Numbered Acts”). The 1976 Act made amendments in regards to interstate group permits for shooting clubs to engage in contests within the state (“Firearms Act Amendment Act 1976”). The 1978 Act then raised the penalties for various firearm offenses (“Firearms Act Amendment Act 1978”). The different level of attention given to strengthening gun control between Victoria and Western Australia is illustrative of the growing disparity between gun control strength among the country’s jurisdictions.

In the early 1980s, the Australian gun lobby first entered the political arena to try to affect electoral outcomes. For the first time, the gun lobby, in the form of the Shooting Sports Council of Victoria, blatantly tried to influence voters. The Council wished to prevent a Labor Party takeover because Labor had stronger gun regulations on the agenda. The Council raised \$100,000, but its effort failed in preventing the takeover. In 1982 the Labor Party took control of Victoria under Premier Cain. Nevertheless, the Liberal/National Coalition was still able to influence gun lawmaking because it exercised control in the Legislative Council. The Coalition's control hindered the Labor government from reforming the state's gun laws.

Stricter gun laws were imposed in 1983, but many of the proposed changes had failed in the Upper House (Cook 2000, 6). Victoria's Firearms Act was amended twice in 1983, modifying procedures involved with licensing and selling firearms. For example, the first amendment strengthened licensing by requiring that before a pistol license is granted, the applicant first must obtain a permit to purchase a pistol ("Firearms (Amendment) Act 1983" 715). The second amendment, modifying the previous one, ensured that sellers made the registrar aware of transfers even if the purchasers were not required by the Act to have firearms already in their possession registered ("Firearms (Amendment) Act 1983" 717; "Firearms (Further Amendment) Act 1983" 1250). Despite the gun lobby's ability to block Victorian gun legislation, overall the years between 1981 and 1987 were troubling ones for shooters and the gun lobby. Scholars, politicians, and regular citizens were beginning to challenge private gun ownership (Crook 2000, 7).

The facts of private gun ownership in Australia became known for the first time in 1981 with the publishing of Richard Harding's book, *Firearms and Violence in Australian Life: An Examination of Gun Ownership and Use in Australia*. His book was a breakthrough piece

because it was the first comprehensive analysis of private gun ownership in Australia and its effects on society. The book received attention from the media and Harding organized the first national conference to discuss firearms and control that year in Perth, Western Australia (Crook 2000, 6). Gun lobby leaders, as well as academics and criminologists, were present at the conference. The arguments made by the academics both shocked and worried the shooters present at the conference about what the future could bring in terms of gun control changes (Crook 2000, 7).

In 1981 the Commonwealth government used its customs powers to exercise control over and bring more uniformity to the types of weapons allowed into Australia. The Government established import restrictions on military-style firearms. At this time, military-style firearms were permitted in some states, while prohibited in others. John Moore, the Minister of Business and Custom Affairs, was mainly responsible for the introduction of the law, which prohibited machine gun style firearms and semi-automatic firearms (not a pistol) that incorporated a pistol grip in its design or incorporated one in its design when originally manufactured (Crook 2000, 7). The obvious flaw in this law was that it only prohibited firearms based on cosmetic appearance. It did not prohibit semi-automatic long guns in total. The decision to only prohibit the import of military-style long guns suggests that a compromise position was reached on this issue.

The year of 1981 was an important point in the Australian gun control debate because the battle lines of the debate were defined. The strong opposition between pro and anti gun control groups began in this year. In 1981 Australia's first gun control group was formed in Victoria called "The Council to Control Gun Misuse"⁵ (Crook 2000, 7; "Our History"). In the same year, in response to the public's growing concerns about the hazards of private gun ownership, an

⁵ The Council to Control Gun Misuse gained strength after the two gun massacres in 1987: Hoddle Street and Queen Street. Gun Control Australia, as it is presently known, was formed in 1988.

extremist pro-gun magazine had surfaced called *Lock, Stock & Barrel* (Crook 2000, 7). Despite all of the discussion of gun control during these years, there was no dramatic movement towards strengthening gun control anywhere in Australia until 1987 (Crook 2000, 8). However, during the 1980s, scholars and gun control advocates wrote about Australian gun control, highlighting the weaknesses in the system and the ways in which it needed to be improved. The weaknesses that they identified and the recommendations that they made will reappear later in the 1990s when Australian governments sought to compose gun control recommendations.

Scholars and gun control advocates agreed that national uniform gun control was necessary in Australia (Harding 1981, 35, 86; Harding 1983, 11; Fine 1985, 137; *Weapons & Violence* 1990, 66; Crook and Harding 1993, 43). A uniform gun control system was easier to achieve because the number of different sources of firearms laws in Australia was relatively small, with only eight jurisdictions to coordinate (Harding 1981, 86). To achieve a uniform gun control system, the level of strength of the legislation in the weaker states needed to be raised. The stronger gun control systems of some states provided a model for the reform of weaker states (Fine 1985, 137). Comparing data from the 1975 General Social Survey on the states' gun ownership figures revealed that the order of states with the highest to lowest rate of gun ownership coincided with the order of states with the lowest to highest strength of firearm regulation⁶ (Harding 1981, 59, 60). This direct parallel suggested that the strength of regulation influences people's ownership because weak law eases gun accessibility (Harding 1981, 61). This variation in the gun laws of the states allowed interstate movement of guns to occur. The strength of one state's laws was undermined by the weakness of another state's. The lack of uniform regulations had deadly consequences, which could be addressed only by a national uniform policy (Harding 1981, 86).

⁶ Tasmania, Queensland, New South Wales, South Australia, Victoria, Western Australia

A 1987 massacre exhibited the deadly consequences of the interstate movement of guns as facilitated by Australia's state-level gun control system. Joseph Schwab bought several guns in the weak gun control state of Queensland, and then killed five people in the Northern Territory and Western Australia (*Weapons & Violence* 1990, 65; Crook and Harding 1993, 3, 4). In the Northern Territory a person could not purchase a firearm without a license, while in Queensland obtaining a license was not required for purchase (*Weapons & Violence* 1990, 65; Crook and Harding 1993, 4). If there had been a police background check as part of a licensing procedure, Schwab's criminal record most likely would have been discovered, thereby preventing him from obtaining the guns (*Weapons & Violence* 1990, 65; Crook and Harding 1993, 3). This incident clearly showed how Australia's state-level system allowed the interstate movement of guns and highlighted the importance of having a universal licensing system. Specifically scholars and gun control advocates agreed that the states' disparities in its policies of licensing, as well as registration and firearms safety were of the greatest concern.

In the states that required licenses, police exercised discretion in the licensing procedure due to ambiguous law. Firstly, the law was ambiguous in that it allowed for the police to be subjective in determining who is "fit and proper" to obtain firearms (Fine 1985, 137; Harding 1981, 22). Licenses should only be given to those who fit specific criteria, such as having records of crime, violence, firearm misuse, or mental illness (Fine 1985, 137; Harding 1983, 11). Secondly, licensing authorities had not taken a clear stance on whether self-protection was a permissible motive (Harding 1981, 79). Data from the 1975 General Social Survey revealed that the motive of gun ownership for 23.1% of firearm owners was for some protective purpose (Harding 1981, 72-3). Scholars were concerned that allowing guns to be used for self-protection would endanger public safety. The use of firearms for self-protection was problematic because it

increased the probability for accidents to occur, especially if the firearms were continually kept in a state where they could be quickly used for defense (Harding 1981, 76). Firearms that were stored in the home for self-protection also left them liable to theft (Harding 1981, 77).

None of the Australian jurisdictions, if they required long gun licenses, required applicants to present a particular reason, and proof of that reason, to obtain a gun. This lack of a requirement had allowed people to obtain long guns for self-protection purposes. Merely asking an applicant to state the reason why they were obtaining the long gun allowed them to easily lie about the purpose (Fine 1985, 138). Therefore scholars suggested that licensing authorities should ask applicants for tangible proof showing that the long gun is to be used for hunting or shooting competitions (Fine 1985, 138; *Weapons & Violence* 1990, 66; Crook and Harding 1993, 43).

A universal licensing system must also be supported by a universal registration system. There needed to be a linked registration and licensing system because the former is ineffective without the latter (Harding 1981, 81; Harding 1983, 11; Fine 1985, 139). If both did not exist, guns could be transferred privately to people who would be prohibited from having a license (Harding 1983, 11). Having both systems would allow the government to monitor the movement of firearms in the community (Harding 1981, 85). Some argued that since the government required the universal registration of cars, firearms should also be registered (Fine 1985, 137). Scholars advocated that a registration system could help the police investigate crimes, such as when addressing a domestic violence call at a home. It would be useful for the police to know if guns were present at the home before arriving (Fine 1985, 138). To be effective, a registration system must be a national database that linked each jurisdiction's registries together (Fine 1985, 139; Harding 1981, 86).

Scholars also advocated for gun control to ensure firearms safety. A firearm license applicant must undergo a practical firearm safety test in addition to a written test (Fine 1985, 137). To obtain a driving license, one had to pass both a written and practical test. Western Australia had both written and practical firearm safety tests. South Australia had introduced a written test, but did not have a practical test. If an applicant failed the written test, they could retake it a mere two days later. None of the other jurisdictions had any tests at all to obtain a firearm (Harding 1981, 97). Passing a written test cannot truly determine whether a person could ably use a firearm in the same way that a written driving test does not demonstrate that a person knows how to actually drive a vehicle. A lack of skill in using a firearm could easily lead to firearms accidents (Harding 1983, 11). To abate gun misuse in the home, advocates argued that the law should also force all gun owners to comply with safekeeping standards when their guns are not in use. The license application process should require the applicant to prove that he or she would comply with the safekeeping law. At that time, any requirements for proof of safekeeping in the Australian jurisdictions only applied to applicants of pistol licenses, rather than all firearm licenses (Fine 1985, 142).

The year of 1987 was an important turning point for the Australian gun debate. Six gun massacres occurred during 1987, killing thirty-two people in total, making it Australia's worst year of gun massacres yet (Crook 2000, 8; "Gun Politics"). Each massacre was planned and most of them were carried out by individuals who obtained their guns legally ("Gun Politics"). The most media attention was given to the two massacres that occurred in Melbourne, Victoria, killing fifteen in total. The first occurred in August at Clifton Hill, an inner suburb of the city, on Hoddle Street, and the second occurred in December, right in the city's center on Queen Street (Crook 2000, 8; "Gun Politics"; Crook and Harding 1993, 10).

The Victorian Labor government under Premier Cain responded to the Hoddle and Queen Streets massacres by trying to implement stronger gun laws. However, the Police Minister was incapable of obtaining support for major changes from the Firearms Consultative Committee (FCC). In 1982 when the Labor government took power, this committee was established to advise the Police Minister on existing gun law. However, a sub-committee formed within the FCC dominated by shooters' interests, which strongly influenced the whole committee. The National Party, sympathetic to shooters interests, also controlled the Upper House (Crook and Harding 1993, 11). In January 1988, twenty-seven thousand shooters marched in the streets of Melbourne to exhibit their opposition to gun law reform (Crook 2000, 8). This outpouring of resentment towards gun control reform led Leader of the Opposition Liberal Party Leader Kennett, who initially supported reform, to change his view and oppose most of the proposed changes (Crook 2000, 8; Crook and Harding 1993, 12). Due to all of these factors, the changes that were made resulted in only modest improvements (Crook 2000, 8).

Governments Look for Answers to Australia's Gun Violence Problem

The most significant outcome of the 1987 Hoddle and Queen Streets massacres was the establishment of the National Committee on Violence (NCV). The NCV was initiated by the Federal Labor government led by Prime Minister Hawke (Crook and Harding 1993, 12; Norberry et al. 1996). In 1987 Prime Minister Hawke, the State Premiers, and the Chief Minister of the Northern Territory agreed to create the NCV, which was established in 1988 and funded by federal, state, and territory governments (National Committee 1990, xxi; Norberry et al. 1996). The Committee was chaired by Professor Duncan Chappell of the Australian Institute of Criminology in Canberra, Australian Capital Territory, which carried out criminological and criminal justice research for the country's governments (National Committee 1990, v; Crook and

Harding 1993, 12). The NCV intended to determine the state and level of violence in Australia, as well as offer recommendations on how to prevent and control the violence (National Committee 1990, iii; “Gun Politics”; Crook and Harding 1993, 12; Graycar and Mouzos 2002, 1).

In 1990 the NCV published its report, called *Violence: Directions for Australia* (“Gun Politics”; Mouzos 1999, 1). The report included 138 violence-reducing recommendations (National Committee 1990, xlvii). A number of the recommendations concerned gun control and mirrored those written about and advocated for by scholars in the 1980s. The foremost gun control recommendation in the report was for a national uniform regime among all states (National Committee 1990, xxxvi). Other gun control recommendations included: a gun buyback of unauthorized firearms, gun registration, firearms licensing, restrictions on the possession of semi-automatic weapons to those with specific needs, restrictions on private sales, and firearms safety and safekeeping standards (National Committee 1990, xxxvii). However, the main recommendation of achieving uniformity was not realized because it was never acted upon, like many of the other recommendations in the report (Peters and Watson 1996, 253; Mouzos 1991, 1). Only a few of the recommendations were implemented by states or territories (Mouzos 1991, 1; Graycar and Mouzos 2002, 1). For example, after the report was published, the New South Wales (NSW) government did not intend to further strengthen its laws, although the laws fell short of the Committee’s recommendations. NSW had just strengthened its gun laws in 1989, but only due to the great involvement of the gun lobby in drafting the accompanying regulations (Grigson 1990). The gun lobby’s influence continued to prevent gun control changes and national uniformity in Australia.

The one recommendation that the federal government did act upon was the proposal to prohibit the importation of military-style weapons and specify what types of firearms are

importable (National Committee 1990, xxxvi; Crook 2000, 8). In 1991 military-style rifles with magazine capacities exceeding five rounds were prohibited. However, those that already existed in the country were allowed to be kept (Norberry et al. 1996). Although the NCV's recommendations were not comprehensively acted upon right away, the fact that the Government called for them to be crafted was important. The NCV's recommendations provided the basis for the comprehensive gun control changes of the 1996 National Firearms Agreement, as will be discussed in the next chapter (Peters and Watson 1996, 254).

The Strathfield massacre continued to keep the issue of guns in the public arena. Wade Frankum randomly shot and killed six people with an ex-military semiautomatic rifle in a shopping mall in Sydney, NSW in 1991. The NSW Coalition government led by the Liberal Party attempted to ignore addressing gun control after this incident. However, there was public outrage and strong media support of gun control, so the issue became a central public debate ("Gun Politics"). Public pressure induced the NSW government, through a compromise of the Liberal and Labor Parties, to establish the NSW Select Committee Upon Gun Law Reform, a parliamentary committee involving all parties to inspect the state's gun laws ("Gun Politics"; Crook and Harding 1993, 37). Although the Committee's focus was on NSW gun laws, the Committee believed that there needed to be a national gun control system and that its recommendations should be a model for national uniformity ("Joint Select Committee" 1991). The successful outcome of the Committee, a report of recommendations, was largely due to the makeup of the Committee. The Committee was composed of a number of smaller political party representatives in favor of stronger gun laws, who influenced the Committee's recommendations ("Joint Select Committee" 1991; Crook and Harding 1993, 37). The establishment of the NSW

Select Committee Upon Gun Law Reform was important because it provided the basis for a discussion on national gun control by the Australian Police Ministers' Council (APMC) in 1991.

The Strathfield massacre inspired the APMC to meet in 1991 to discuss national gun control. The NSW Select Committee's report provided the basis for the meeting's discussion, from which the APMC made its own uniform gun law recommendations ("Joint Select Committee Upon Gun Law Reform Report" 1991; Egger and Peters 1993, 201). The APMC's recommendations mirrored many of the recommendations of the Select Committee's report ("Joint Select Committee Upon Gun Law Reform Report"; Egger and Peters 1993, 202, 203). However, the APMC recommended a national system of registration, which the Select Committee's report did not, because NSW did not favor it. Overall, the APMC's recommendations for a uniform gun control scheme were responded to positively by the states. However, NSW, Queensland, and Tasmania rejected gun registration because they believed it was not helpful in solving crime, and it wasted time, money, and police resources ("Joint Select Committee Upon Gun Law Reform Report" 1991). The disagreement over registration suggests that this was a key factor in the failure to achieve a uniform set of national gun laws at this time.

Resisting Change: The Australian Gun Lobby Looks to the NRA for Advice

The 1987 massacres and the 1991 Strathfield Massacre were also catalysts for anti-gun sentiment in Australia. Australian gun groups observed that the massacres caused the Australian public to increasingly disfavor guns upon seeing the threat they posed to public safety. The gun groups reacted in a more extremist way than ever before to try to protect gun ownership and prevent further gun control ("Gun Politics"). One of the ways in which Australian gun groups responded to increasing resentment of guns in the 1990s was developing close ties with the American National Rifle Association (NRA). The NRA had one of its earliest international

collaborations with Australia. The President of the Sporting Shooters' Association of Australia (SSAA), Ted Drane, visited the NRA headquarters outside of Washington, D.C. twice to learn about the NRA's lobbying and public relations expertise (Morton 2006, 63; Vest 2000). Ted Drane stated that he wished to emulate the NRA because it so successfully intimidates American politicians: the NRA “frightens the shit out of [US politicians]. We want to scare the shit out of them here too” (Chapman 1998, 104).

In 1992 NRA President Robert Corbin returned the visit by spending three weeks in Australia and New Zealand speaking about the NRA's beliefs and its political expertise. Corbin met with Australian shooters and participated in media interviews (Morton 2006, 63). In one 1992 television interview, Corbin stated that he did not intend to convince anyone of the NRA's beliefs while in Australia. He also stated that he did not intend to tell Australia what to do; it was up to Australians whether they wanted their gun laws to mirror those of the U.S. Rather he was there to educate the SSAA on how the NRA operates. In addition, he stated that he did not intend to financially support the SSAA (“NRA's Robert Corbin” 2008). In 1993 the SSAA established its own legislative action institute mirroring the NRA's lobbying institute, which carries out grassroots lobbying and seeks money donations from its members (Morton 2006, 63; Vest 2000). Despite Corbin's interview statements, the NRA supported the Australian gun lobby by providing some money to the SSAA for it to establish a lobbying arm and also paid for President Drane's \$20,000 travel expenses to visit the NRA headquarters (Vest 2000; Morton 2006, 63).

Australian gun owners furthered their efforts to protect gun ownership by establishing their own political party. The Australian Shooters Party won a seat in the NSW State Parliament in 1995 (Morton 2006, 63-4). Allegedly this seat is the only one in world that has been won

based exclusively on a pro-gun platform (Morton 2006, 64). By 1996 the SSAA was spending hundred of thousands of dollars to support pro-gun politicians. Prior to the SSAA's relationship with the NRA, any monetary exchange between the NRA and Australia was with Australian firearms companies. In 1988 the arms importer, Tasco, gave more than 1% of its sales to the NRA to resist anti-gun candidates. Also, the Australian subsidiary of the American arms manufacturer, Winchester, donated \$100,000 to the NRA (Vest 2000).

Overall, the NRA's visit to Australia was not largely successful in winning over the Australian public. Australians had already been greatly swayed by the media's negative portrayal of the NRA's extremism (Morton 2006, 64). Although the Australian public was not very accepting of a more extremist gun lobby, the Australian gun lobby still exerted a significant amount of political power in some states. The gun lobby's power in these states prevented a uniform gun control system from advancing politically (Egger and Peters 1993, 203). In the mid-1990s the Australian gun lobby was determined to protect gun ownership and willing to go to great lengths to do so, as evident through its dealings with the NRA and the establishment of a shooters political party. The Port Arthur massacre in 1996 came at an important time in that it hindered the Australian gun lobby's efforts to prevent gun control reform, as will be explained in the next chapter. If Port Arthur had not occurred and the other necessary conditions surrounding the massacre had not existed, the Australian gun lobby would have continued to block the push for a national uniform gun control system.

The Uncertain Future of National Uniform Gun Control in Australia

In May 1995, the APMC reconvened again to discuss the achievement of a national uniform gun control system. In this meeting the Council again emphasized the jurisdictions' varied gun control systems. The Council agreed to establish a Working Party of officials from

each jurisdiction to discuss the specific policies that had the potential to be achieved uniformly. Some of the policies to be considered were licensing, control of mail order firearm sales, firearms safety training, firearms storage, and pistol registration. These policies again reflected the types of policies supported by scholars and advocates since the 1980s. Victoria took on the responsibility of organizing the Working Party in a November 1995 APMC meeting. The Council then decided to further address these issues in February 1996; however, the meeting was postponed when a Federal election was called. The next time the APMC would assemble would be at an emergency meeting on May 10, 1996 in Canberra after the Port Arthur massacre, which finally established a national uniform gun control system in Australia (Norberry et al. 1996).

However, in the years just prior to the Port Arthur massacre, the likelihood of the achieving a uniform gun control system was not optimistic. Not only were various gun control policies especially contentious and disagreed upon, but the history of achieving national uniform laws in Australia had always involved compromise, delay, and sometimes failure. The usual process for drafting national uniform law was through the Standing Committee of Attorneys-General. Other state and federal bureaucracies called the Committee a black hole because “issues may disappear for inordinate amounts of time and emerge stripped of substance” (Egger and Peters 1993, 204). Due to these factors, some scholars recommended that it would be more practical for national gun control policy to be a long term goal. In the meantime, the jurisdictions with the weakest gun control systems needed to make improvements to their systems. Since gun lawmaking was a power of the states, it was the weak states’ responsibility to ensure that their laws did not undermine the country’s overall gun regulation effectiveness (Egger and Peters 1993, 204).

Conclusion

Overall Australian history has been characterized by strong gun ownership and weak long gun control legislation. Long guns have been barely regulated, while handguns have always been strongly regulated because of a shared belief that handguns were susceptible to criminal use. Over time some Australian jurisdictions recognized that long guns could be used in dangerous ways and so strengthened their long gun regulations, but not all did in a similar manner. During the 1980s, the weaknesses in the Australian gun control system became evident as gun massacres happened. Scholars and gun control advocates showed consensus on the types of regulations that needed to be reformed. The central weakness of the Australian gun control system that was emphasized during the decade was the jurisdictions' varying levels of regulation. National uniformity needed to be achieved, especially in the areas of licensing, registration, and firearms safety.

Although both federal and state governments explored answers to Australia's gun control problems in the 1990s, gun control recommendations were never comprehensively acted upon. The APMC attempted to strengthen and standardize gun laws after the 1991 Strathfield massacre, but a national agreement among states could not be reached. The electorate of strong rural gun ownership and the gun lobby's influence in some states hindered political support and feasibility. Finally in 1996, the weaknesses of Australia's gun control system, which had been discussed for decades, were eliminated. A gun massacre inspired reform, but unlike any previous ones, it ultimately led to the implementation of the National Firearms Agreement (NFA). National agreement on gun control was finally possible. The following chapter will explain the circumstances and factors making this gun control overhaul possible, despite a political atmosphere influenced by the gun lobby that made enacting change difficult.

Chapter 2

The Beginning of a New Era: The Achievement of National Uniform Gun Control in Australia

The achievement of strong and effective national gun control in Australia is truly a success story. In this chapter, I will show how national uniform gun control was realized. The previous chapter discussed the weaknesses in Australia's state-level gun control system that endangered public safety. The influence of the gun lobby and politicians dedicated to their rural gun-owning constituencies prevented national uniform gun control from being adopted for many years. Although scholars, gun control advocates, and Australian governments had advocated for a national approach, agreement could not be reached. The likelihood of a national agreement on gun control was poor just prior to its adoption. On May 10, 1996, the National Firearms Agreement (NFA) established uniform gun control law among all nine state, territory, and Commonwealth governments (Chapman 1998, 2). The United States, which also has a troubled gun control history, can look to the process of achieving the NFA and the positive effect of its policies as a sign of hope and a model for successful change.

Why was a national uniform gun control system achieved in Australia at this time, when it failed earlier? The conditions leading up to the NFA were different than in the previous attempts to achieve national gun control. Firstly, the Port Arthur massacre, the deadliest Australian gun massacre yet, incited strong public support for gun control more fervently than any past gun massacre. Secondly, newly elected conservative Prime Minister John Howard demonstrated strong political leadership to achieve gun control reform for the sake of public safety. Howard's unwavering commitment to national gun control was an essential contributing factor to its achievement. Facing disagreement among the states over the NFA, Howard threatened a national referendum to ensure that its original form was achieved with none of its

components weakened in a way that would endanger public safety. As a result, the NFA eliminated all of the weaknesses that plagued the former gun control system.

In the second half of the chapter, I discuss the successful impact of the NFA. Overall the Australian jurisdictions have uniformly implemented the NFA's measures with support and supervision from the federal government. The Port Arthur massacre and the adoption of the NFA irrevocably damaged the gun lobby's power and public opinion, thus hindering its ability to weaken gun laws in the future. Lastly, the most important effect of the NFA has been its positive effect in reducing gun deaths, especially the incidence of mass shootings. Although there is some disagreement among scholars over the NFA's effect, it is evident that Australia is a safer place today than in the years prior to 1996.

Part I: The Process of Achieving Uniformity

The Port Arthur Massacre

On April 28, 1996, a man named Martin Bryant used two military-style semi-automatic rifles to shoot and kill 35 people and wound 18 others at the historic tourist area of Port Arthur, Tasmania. Twenty-eight year old Bryant came from a suburb of Hobart, the capital city of Tasmania. He had no previous criminal record of violence or history of diagnosed mental illness (Chapman 1998, 1). Bryant used four different military-style semi-automatic rifles during the course of the incident (Chapman 1998, 73). The Port Arthur massacre was described in the *Sydney Morning Herald* as “the worst massacre by a single gunman in Australian history” (Chapman 1998, 1). The event was especially shocking to the nation because of the immense death toll. The death toll was almost half of all gun homicides in Australia in an average year, as well as equal to Tasmania's annual gun death rate. The event caused intense media attention and for the next three months, the country was engrossed in a debate between those outraged by the

event demanding stronger gun control (the public and the media) and those strongly opposed to gun control (the gun lobby, shooters, and supportive politicians) (Chapman 1998, 1). The Port Arthur massacre would prove to be a defining moment in Australia's gun control history because it was the first event in a process that ultimately led to the country's gun control system overhaul.

The Port Arthur massacre revealed the weaknesses in Australia's gun control system to both the public and politicians. It clearly exhibited the problems that have existed due to the country's state-level gun control system, which had varying levels of regulation. Two days after the massacre, an article in the newspaper, *The Australian*, described exactly how weak Tasmania's gun laws were and focused on the country's need for registration of all guns, a "genuine reason" for ownership, and a ban on semi-automatic firearms. In 1996, in Tasmania, an adult with no major criminal convictions in the previous eight years qualified for a lifelong license that allowed the purchase of an unlimited amount of guns. There was also no requirement of the purchaser to prove a "genuine reason" of needing the gun or that he or she had storage facilities for it. With that license, the person could buy a military-style semi-automatic firearm at a gun shop and travel with it to another part of Australia. No record of the gun sale was kept with any part of the government, so if the owner decided to sell it to someone else, the government would not know (Chapman 1998, 22). At this time all jurisdictions had banned new sales of military-style semiautomatic rifles except Tasmania and Queensland (Chapman 1998, 73). Tasmania's weak laws clearly revealed the danger of having jurisdictions with differing degrees of gun control strength.

The Port Arthur massacre did not itself bring about the comprehensive gun control reform in Australia. It did not cause a shift in public attitudes because there was already strong public support for gun laws, but rather it caused a shift in the political will to take advantage of

that public support (Scanlon and Handmer 2001, 206). A July 1995 AGB-McNair poll revealed that 64% “strongly supported” and 18% “supported” gun laws that would make it more difficult to buy guns in NSW (Chapman 1998, 61). A NSW Health Department state-wide poll in March 1996 included three questions on gun control. The number surveyed (2,251) was the largest Australian sample asked yet about gun control, in which 90% supported gun registration (Chapman 1998, 63).

Given that Port Arthur was the latest and worst in a number of recent massacres, there was a large outpouring of public support to ensure the prevention of similar incidents in the future (Scanlon and Handmer 2001, 200). According to *The Sydney Morning Herald*, letters continuously streamed in, of which most favored Howard’s reform (Chapman 1998, 71). Port Arthur also received massive media coverage keeping gun control on the national agenda and in people’s minds. For example, *The Sydney Morning Herald* gave broad coverage to the issue continually for about three weeks. Two days after the massacre, the *Herald* devoted a hefty 1108 lines to the issue. On May 11, the day after the NFA’s establishment, 809 lines in the *Herald* discussed May 10th’s events. Over the next few months, the media continued to cover the NFA, as Howard sought agreement from the states (Reynolds 1997). In late June, gun control was still the most discussed issue on NSW radio and TV stations (Chapman 1998, 71). Prime Minister Howard’s leadership and advocacy post-massacre to frame gun control as a public safety issue contributed to this widespread public support.

Prime Minister John Howard’s Gun Control Reform Leadership

Prime Minister Howard’s unwavering leadership to carry out gun control reform was an essential reason for the NFA’s ultimate success. Since Port Arthur, John Howard has been remembered in Australian history for his unprecedented leadership. Just one day after the

massacre, having only been in office 57 days, Howard stated that he wanted to implement the most comprehensive gun control law reform in Australia's history and considered by any previous government (Chapman 1998, 2). Kitney of *The Sydney Morning Herald* stated on May 11, 1996 that "John Howard yesterday marked himself as the leader who has probably changed the nation's future more decisively, more quickly than any prime minister before him" (Chapman 1998, 28). Howard's decision was shocking because the head of the shooter-sympathetic, conservative National Party and of the conservative government coalition of the Liberal and National Parties was leading the way on gun control reform (Costar 2011, 36, 38; Chapman 1998, 27).

Howard was personally dedicated to achieving gun control reform. It appears that Howard was interested in gun law reform prior to the massacre at Port Arthur. In a speech he made as Leader of the Opposition on June 6, 1995, he stated that while Australia should make "...proper allowance for legitimate sporting and recreational activities and the needs of our rural community, every effort should be made to limit the carrying of guns in Australia" (Chapman 1998, 24). After Port Arthur occurred, it became evident that Howard was genuinely concerned about the safety of Australians and believed gun control reform was the key. According to a *Sydney Morning Herald* article, Howard showed grief post massacre, and Howard's colleagues said he was "...clearly distraught, still struggling to come to terms with the tragedy. His eyes red-rimmed, his face still registering shock, Howard vowed to 'bury' any State which blocked the push for a national gun control code" (Millett 1996, "Howard's gun gamble"). Howard was dedicated to protecting the future of the Australian people. Howard believed he had a responsibility to the nation to enact reforms and was going to stand by them: "I will not retreat an inch from the national responsibilities I have in this issue. Not an inch" (Chapman 1998, 41).

Howard's strong leadership was especially successful because he was able to make use of his political power at the time.

Howard utilized his public support and political power at the time to further gun control reform. He had just swept the election for Prime Minister, so he had the overwhelming support of the Australian people. Because the Port Arthur massacre occurred so soon after the election, the event allowed Howard to exhibit his strong leadership and be a memorable first act as the Prime Minister. Howard may not have proposed such a bold policy change if Port Arthur occurred at the end of his first term facing an election. He was also supported by a parliamentary majority at the time. Liberal-National coalitions controlled seven of the eight Australian jurisdictions, which was useful for him when he interacted with their Premiers on the issue. The massacre at Port Arthur provided a "now or never" opportunity for gun law reform that Howard seized (Chapman 1998, 41).

Prime Minister Howard removed the partisan ties from gun control by advocating for gun control reform as a public safety issue that was supported by the Australian public. When Howard discussed gun control reform, he did not frame the proposals as radical or ground-breaking. He presented the changes as those that any ordinary Australian would see as reasonable and necessary (Chapman 1998, 27). Howard stated in Parliament that his gun control reform position was reflective of the Australian public: "It represents what we believe to be the collective aspiration of the Australian people at this particular time" (Millett and Lagan 1996). Howard believed that the NFA was going to give the Australian public a safer future, as indicated in a speech made on the night of the agreement: "I think we have done good work for the future of Australia today... We have done something that will build a safer environment for our children" (Millett 1996).

Howard's conservative political platform clashed with the strength of the gun regulations that he advocated for (Chapman 1998, 27). *The Australian* took note of the disparity between his political views and the regulations: Howard "believes in deregulation and getting government out of the lives of people; yet he has just imposed some of the most restrictive and intrusive regulations ever imposed on thousands of Australians" (Chapman 1998, 28). The disparity between Howard's political views and the strong gun regulations of the NFA emphasized his belief that gun control was a nonpartisan issue, an issue of public safety.

Deputy Prime Minister and National Party Federal leader, Tim Fischer, also supported Howard's aim for reform despite a lack of support from within the National Party. Supporting gun control reform was a great political risk for Fischer because the Shooters' Party targeted the National Party's rural seats. Nonetheless, Fischer traveled to rural towns to explain the new gun laws and to alleviate the panic created by the gun lobby in those areas (Chapman 1998, 40). The National Party had a long history of supporting shooters' interests and opposing gun law reform, as touched on in the previous chapter. Victorian Deputy Premier Pat McNamara of the National Party was present at the pro-gun rally in Melbourne after the 1987 Queen Street massacre, standing beside SSAA President Ted Drane. Drane was once a National Party candidate in Victoria (Chapman 1998, 38). The night after the Port Arthur massacre, Queensland National Party Police Minister, Russell Cooper, stated on television that he did not support the NFA by calling it a "massive knee-jerk reaction" and explained that he did not support gun registration (Chapman 1998, 38-9). Both Howard and Fischer broke with their political party on this issue of gun control reform.

Howard's strong stance on gun control reform in the name of public safety was supported by other mainstream political parties and their voters. Howard was supported by the Labor Party,

Green Party, and the Australian Democrats. The Greens and Australian Democrats had always advocated for stronger gun control laws (Chapman 1998, 34; Howard 1996). The Federal Labor Opposition stated at the time that it would "...do everything it can to support the measures" (Chapman 1998, 34). Premier Carr of the NSW Labor government stated four days after the Port Arthur massacre that he would introduce legislation to give NSW's gun lawmaking powers to the Commonwealth (Chapman 1998, 34).

Non-Liberal/National voters highly respected Howard for his willingness to break the political barriers that past gun politics had created in the name of public safety. In a letter to the Melbourne newspaper, *The Age*, one Labor voter said, "I have voted Labor all my life...for once, political differences are buried by concern for the safety of Australia" (Chapman 1998, 26). Overall, gun control was overwhelmingly supported by the Australian public and Howard's work to remove partisanship on the issue gained him a higher level of support by non-conservative voters. A national poll in the *Sydney Morning Herald* on May 7, 1996 revealed that 85% supported reform or a total ban on guns, while 15% supported gun ownership. Most of the gun ownership supporters were also National and Liberal Party voters. However, Howard chose to jeopardize his approval with National and Liberal Party voters, and instead focused on trying to persuade gun owners to support gun reform (Reynolds 1997).

Howard also used other persuasive techniques to gain greater public support. He advocated that it was an opportunistic time for gun control reform. There was no time for long debates; decisions had to happen before this good opportunity was lost (Reynolds 1997). Howard wrote an article for *The Sydney Morning Herald* called "We must act now or lose the chance" published just five days before the NFA was reached, which contains these persuasive techniques. Howard stated that unless the country acted immediately, "...the opportunity for

effective uniform gun controls will be lost” (Howard 1996). Howard acted on public support for reform before it faded away and helped convert it into political will. Australian leaders in the past have been unable to do this as a *7.30 Report* television journalist commented: “Australian massacres have a dulling familiarity. Public shock and outrage is soothed by assurances of tougher gun laws. But as public outcry dissipates, often so does political will in the face of the gun lobby” (Chapman 1998, 7). Howard also persuaded gun owners to support the reform by using the idea of “belonging.” He pushed gun owners to join the majority of Australia, which was supportive of gun control reform: “An Australian community...has demanded urgent and effective action on tougher, uniform and more effective gun laws” (Reynolds 1997; Howard 1996). Howard also referred to recent polls in his article that showed that there was an overwhelming support for the reform (Howard 1996).

Howard and the media also made the Australian public fearful by speaking about the deadly consequences of leaving Australian gun laws untouched. They used the United States’ experience with gun violence as a way to create fear in the Australian people to persuade them to support reform. They furthered the view that Australia was headed down the American path of gun violence. The new laws would prevent Australia from mirroring the gun violence seen in the United States. In a press conference, Howard advocated that by adopting the NFA, Australia would not follow in the footsteps of the United States: “[This decision] means that this country through its governments has decided not to go down the American path, but this country has decided to go down another path” (Chapman 1998, 24). In an address to the Queensland National Party at a party conference, aimed to gain the support of members, Howard utilized the United States analogy: “There is a deep feeling within the Australian community that we have an historic opportunity to ensure that this nation does not go down the American path and we

have an opportunity to deliver on that hope and aspiration” (Riley 1996). Howard emphasized the urgent need for reform by suggesting that Australia was emulating the American path of gun violence.

In the past, gun control advocates had used the image of the United States to promote gun control reform in Australia, but the use of the analogy now had more serious implications (Chapman 1998, 24). Professor of Law Richard Harding, believed Australia was on the same path as the U.S. in 1981: “We are on the same road as the United States, though nowhere near as far along it” (Harding 1981, 166). At that time Harding believed that the extent of firearms ownership in Australia was “well short of a crisis” (Harding 1981, 166). However, Harding believed that there were concerns that should be acted upon because they could lead to an unmanageable gun violence problem by the end of the century (Harding 1981, 166). The comparison of Australian gun violence with that of the U.S. in 1996 was more meaningful because the gun violence problem had in fact become more serious, as Harding had expected. The Port Arthur massacre was the culmination of a number of shooting massacres in the 1980s and 1990s, so the U.S. analogy was more powerful than before.

The National Firearms Agreement (NFA)

The resolutions that composed Australia’s new national gun control system were based on gun control recommendations made in the National Committee on Violence’s 1990 report. The new laws were drawn up by Attorney General Daryl Williams and the Commonwealth Law Enforcement Board. The resolutions were explained in the agreement between all nine state, territory and Commonwealth governments on May 10, 1996 in an emergency meeting of the Australasian Police Ministers’ Council (APMC). The National Firearms Agreement (NFA)

required that all states and territories pass laws in ten areas (Chapman 1998, 2). The ten areas of policy are explained below:

1. Ban on the import, ownership, sale, resale, transfer, possession, manufacture, or use of all self-loading centre-fire rifles (military style or not), all self-loading and pump-action shotguns, and all self-loading rim-fire rifles. There were exemptions allowed for low-powered (rim-fire) self-loading .22s and pump-action shotguns for primary producers, like farmers who could show that they had a “genuine need” based on their occupation and could not achieve the outcome through other means. Another exemption was later added that allowed some clay target shooters to own a semi-automatic shotgun, but there was no “sporting” exemption for the use of semi-automatic long arms.
2. The jurisdictions were to engage in a buyback of the prohibited guns under the new reforms. This buyback was funded by an increase in the nation’s Medicare tax. Gun owners had one year to surrender their guns and they were to be paid the market price of their guns by the government. If owners failed to surrender their guns during this time, they would face severe penalties for illegal ownership.
3. The registration of all firearms, which will be kept by the computerized National Exchange of Police Information (NEPI).
4. The licensing of all gun owners for which applicants must prove a “genuine reason” for owning a firearm. “Genuine reasons” can be occupational uses like stock and vermin control for farmers, membership to an authorized target shooting club, and hunting if the applicant can prove that they have permission to hunt by a rural landowner. The Agreement specifically states that “personal protection” or “self-defense” is not a genuine reason for gun ownership (Chapman 1998, 2).
5. The licensing of all gun owners is based on five categories of firearms (A, B, C, D, H). To obtain a license, an applicant must be the minimum age of 18 and must fulfill the criteria of a “fit and proper person.” Licenses are to be refused from people or licenses are to be cancelled if the person has been convicted for a violent crime or the subject of a domestic violence restraining order in the past five years (Chapman 1998, 3). Licenses are also to be refused or cancelled if the applicant has a mental or physical condition that would make them unsuitable to own a firearm (“Legislative reforms” 2012).
6. New license applicants must complete an accredited gun safety course.
7. A licensed gun owner must obtain a permit to purchase every time he or she chooses to purchase a gun. The permit application involves a 28 day waiting period so that the applicant’s background check and “genuine reason” for ownership is thoroughly checked.

8. Uniform, strict gun storage requirements (Chapman 1998, 3). The licensing authority, when determining whether an applicant is “fit and proper,” must also be satisfied with the applicant’s proposed storage of a firearm (“Legislative reforms” 2012).
9. Firearm sales must be executed only by or through licensed firearms dealers. This law illegalizes all private and mail-order gun sales. Licensed firearm dealers must keep detailed records of their sales which must be given to the police.
10. Ammunition can only be sold for firearms that a purchaser is licensed for. Limits would also be put on the quantity of ammunition that a purchaser can buy in a given period (Chapman 1998, 3).

**Maintaining Uniformity by Any Means:
Prime Minister Howard Threatens a National Referendum**

Although the majority of Australia supported gun control reform, the National Party was not supportive of Howard’s position, which posed a great threat to the NFA’s success (Chapman 1998, 38). Achieving the NFA involved political compromise, but Howard would not compromise in the form of weakened resolutions that pleased the gun lobby. After the May 10th meeting of the Australasian Police Ministers, where the law reform resolutions of the NFA were agreed to, debates and lobbying ensued in Queensland, South Australia, Western Australia, and the Northern Territory. These jurisdictions sought to try to weaken the agreed upon resolutions by broadening definitions and amending provisions.

The main issue that these jurisdictions were unhappy with was the federal government’s decision to forbid the crimping of prohibited guns (Chapman 1998, 29). Crimping is the structural modification of a five or seven shot semi-automatic or pump-action gun so that it can only fire at maximum two shots before it needs to be reloaded (Chapman 1998, 78). If crimping were to be allowed, owners of prohibited firearms would have been able to keep their guns. Owners would not have had to surrender them in a national buyback, as required by the NFA. Rural politicians advocated for crimping because it would have appeased their gun-owning

constituencies. A National Party politician stated that crimping would have appealed 60% to 80% of gun owners. Crimping advocates argued that gun owners would be more likely to comply with crimping than the NFA's buyback. The Department of Defense advised the federal government that crimping was a reversible process. Therefore Prime Minister Howard was unrelenting in his stance against crimping (Chapman 1998, 79).

Prime Minister Howard was fearful that the NFA would fall apart due to the crimping issue, so he was determined to find a solution that would ensure that the Agreement's resolutions would not be amended before implementation. Howard's solution was to threaten a national referendum to compel the states to implement the laws they had promised to in the NFA. The referendum would ask the Australian people for the consent to amend the Constitution to transfer the authority to make gun laws from the state governments to the federal government. The transfer of authority would allow the federal government to make national gun laws, and thus to implement the NFA without the states' approval. Newspaper opinion polls showed that the Australian electorate in each state, as well as the Federal Labor Opposition, would overwhelmingly vote in support of this change (Chapman 1998, 29). The unsupportive states had the choice either to cooperate with the Commonwealth or choose to be committed to keeping the state's gun lawmaking power, but yet risk losing that power (Laming 2007, 53). Executing a national referendum would have been costly for the unsupportive states. Also, removing the states' rights to make gun laws would irrevocably damage the political power of the gun lobby (Chapman 1998, 29).

Facing a referendum that they would undoubtedly lose, the unsupportive states made the pragmatic choice to cooperate (Laming 2007, 53). The last states that chose to support the NFA were Queensland and Western Australia. It is evident that Queensland's negotiations with

Howard influenced the state government's decision to agree to the NFA. In the weekend prior to Queensland agreement, Premier Borbridge stated that he had obtained some concessions in private talks with Howard: ““We’ve been able to win some very major and substantial concessions for those responsible people in the community who require access to firearms for professional purposes, and for those people who seek to use them for recreational purposes”” (Riley 1996). Borbridge believed that the NFA would bring ““some very major difficulties”” to rural Australians and the National Party, but it was the best deal that party could negotiate (Riley 1996). Borbridge also conceded that it was ““silly”” to risk losing the achieved compromises if Howard forced the referendum (Millett, Roberts, and Graham 1996). It is evident that the agreement of the unsupportive states was only achieved due to great negotiation and compromise led by Howard.

By accepting the NFA and choosing to implement its resolutions, the states participated in “cooperative federalism.” Cooperative federalism means that two levels of government are willing or at least accept that they have to work together to solve problems that are the constitutional responsibility of one or both of the levels. Each level must also be able to bargain and have the ability to decline participation (Laming 2007, 53). The Australian states that were unsupportive of the NFA had the ability to bargain and did obtain some bargains in the form of exemptions for clay target shooters and farmers to use semi-automatic guns, as indicated by Premier Borbridge's statements above. Although these compromises were made, they were not a great danger to public safety. Farmers and clay target shooters would have to apply to prove their “genuine need” for the firearms. However, most farmers, target shooters, and recreational hunters would not qualify (Chapman 1998, 93). Although public opinion, the press, and the Prime Minister were strongly supportive of the new reforms, the states were not coerced into

accepting the NFA, according to the definition of “cooperative federalism” (Laming 2007, 53). Due to Howard’s clever choice to threaten a referendum, the strength of NFA’s resolutions was not compromised in a way that could have endangered public safety.

Part II: The Impact of the National Firearms Agreement (NFA)

Guaranteeing the Effective Implementation of the NFA

After all the Australian jurisdictions agreed upon the NFA, the Government’s focus turned to ensuring that the jurisdictions implemented the necessary legislation to comply with the Agreement’s resolutions (Chapman 1998, 162). In the months after the 1996 agreement, all jurisdictions passed legislative acts to carry out the necessary gun law reforms (Chapman 1998, 164). The NFA was implemented by the jurisdictions in the following years in stages. During this time, the Government worked with the jurisdictions to develop the necessary policies to successfully comply with the NFA (“Legislative reforms” 2012). The Commonwealth government gave \$398 million to the jurisdictions to compensate owners of semi-automatic weapons who had to surrender them in the buyback. The Commonwealth government also set aside \$63 million for the costs of administering the buyback, of which \$56.6 million was given to the jurisdictions (Phillips et al. 2007).

The Commonwealth government was concerned that there would be a disparity between the Agreement’s resolutions and the jurisdictions’ translated provisions (Chapman 1998, 163). Although all the jurisdictions did not enact the Agreement’s resolutions in exactly the same way, the jurisdictions overall uniformly implemented the Agreement’s main reforms and they have remained unchanged (“Gun Politics”). Prime Minister Howard worked to ensure that implementation was monitored after the Agreement to ensure its success. The independent organization, the Australian Institute of Criminology (AIC), was commissioned by the

Government to help monitor the implementation (Scanlon and Handmer 2001, 1999). Also to help monitor the effects of the NFA, the AIC established the National Firearms Monitoring Program (NFMP), which had the purpose to study the short term and long term effects of the NFA (Mouzos 1999, 2). The National Coalition for Gun Control and government agencies, like audit offices, also monitored implementation (Scanlon and Handmer 2001, 203). By 1997 all jurisdictions had implemented the NFA, but each varied in their level of enforcement of it (Scanlon and Handmer 2001, 199).

Almost two years after the Port Arthur massacre, there was evidence that some states had plans to not fully implement the NFA provisions. In several states, amendments were introduced after negotiating with the gun lobby. In March 1998, the Victorian Government announced that it planned to make multiple amendments to its gun laws. The governments in South Australia and Queensland also expressed discontent with the laws imposed on them by the NFA. To prevent further momentum on the amendments, Prime Minister Howard decided to re-start the gun control debate on March 20, 1998, at a conference of Premiers. However, due to the Premiers' anger with Howard on a health care issue, the Premiers walked out of the conference before the gun control issue could be discussed (Chapman 1998, 165). As the premiers were leaving, sources reported to the *Sydney Morning Herald* that Howard angrily yelled: ““So what you are saying is that you refuse to discuss guns? This is very important. What you are saying is that I am going to have to address this myself?”” (Kingston and Cleary 1998). And so he did. Howard, still personally dedicated to the NFA and a strong leader of gun control, took it upon himself to ensure that any weakened laws passed by states would be ineffective.

On March 24, 1998, just days after the conference, Howard banned the import of all semi-automatic firearms. Exemptions were allowed for farmers who could prove they were

primary producers and for clay target shooters who had the written authority of the Federal Attorney General. The ban meant that if any state relaxed access to semi-automatic firearms, a newly licensed person would have few ways to legally purchase a gun unless they had special authorization from the Federal Attorney General. A limited numbers of licensed firearms dealers would be authorized to sell semi-automatic firearms legally to these special shooters. The imported firearms would be kept with customs until the dealer could prove that the firearm had been sold to an authorized primary producer or clay target shooter (Chapman 1998, 166). In the past, the Commonwealth government had used its trade and commerce power to regulate firearms importation into Australia. Howard exercised the Commonwealth's powers further by completely banning the import of all semi-automatic firearms to make accessing this type of banned firearm even more difficult.

The Negative Effect of the NFA on the Gun Lobby

The massacre at Port Arthur, the implementation of the NFA, and the gun lobby's response to the events damaged the gun lobby's political power in Australia. The event negatively affected the influence of the gun lobby: "Bryant's short rampage at Port Arthur marked a change in the gun lobby's smug and wholly disproportionate political power in Australia" (Chapman 1998, 3). The media consistently focused negative attention on the gun lobby by putting a spotlight on their desire to keep their military-style guns that would be banned and need to be surrendered in the buyback. These male shooters within the gun lobby came to represent for the general Australian population "...a subterranean, angry and potentially dangerous side of Australian life." The image of shooting that these men were promoting was not the image most Australians had of shooters, which was rural farmers (Chapman 1998, 3).

In a backlash to the NFA, the extremist One Nation Party arose headed by Independent Federal Member, Pauline Hanson. Hanson's policy on guns called for a return to the weaker policies of the pre-1980s (Crook 2000, 10). She believed Australians had a right to bear arms, which included high-powered semi-automatic rifles (Davison 2000, 239). Her gun policy stated that "Australians have a right to defend themselves and their families in their own homes'," although no such legal right existed (Davison 2000, 240). Aside from the gun policy, One Nation was a populist nationalist party that challenged free trade, unregulated competition, and free immigration (Davison 2000, 240). After the hard hit taken by the gun lobby after Port Arthur, One Nation's success in the mid-1998 Queensland state election was hopeful for the gun lobby's future. However, in the Federal election later in 1998, One Nation performed badly, even with financial support from the SSAA. The Shooters' parties also performed poorly (Crook 2000, 10). One Nation's influence was short lived; by 2002, the party had fallen apart ("Gun Politics"). The Port Arthur massacre and the NFA already harmed the gun lobby, and the rise of the extremist One Nation only further harmed the gun lobby's power.

The Successful Effect of the NFA in Reducing Gun Violence

National uniform gun control legislation in Australia is a success story not simply because political barriers were overcome to achieve it. Most importantly, the new system has enhanced public safety by reducing gun deaths since its implementation. Multiple studies have been done since the NFA to measure its impact, but there has been some lack of consensus on the results. Overall there appears to be consistent evidence to show that the NFA has had the strongest impact in reducing mass shootings, gun suicide and accidental deaths, while homicide has been the least affected. A significant problem in studying the NFA's impact has been that gun-related deaths were already decreasing prior to Port Arthur (Chapman and Alpers 2006). In

1979, the rate of all gun deaths per 100,000 people was 4.71, while in 1996 the rate was 2.82 (Alpers et al. 2013). Also, the rate of firearm death post-NFA could have been influenced by that the jurisdictions' gun laws greatly varied prior to the NFA, the implementation in each jurisdiction had occurred at different speeds, and each had different levels of enforcement (Mouzos 1999, 2).

The NFA has had a strong effect in preventing the occurrence of mass shootings. In the eighteen years before the 1996 Australian gun law reform, there were thirteen massacres in Australia, each with four or more deaths, amassing 102 deaths in total. Since the NFA's implementation, there have been no massacres with four or more deaths (Howard 2012; Chapman, Alpers et al. 2006, 365). The one incident comparable to the Port Arthur massacre that has occurred since was a 2002 shooting carried out by an international student at Monash University in Melbourne (Claiborne 2011). The licensed gunman killed two fellow students and wounded five others with several handguns (Phillips et al. 2007). The Government responded to this shooting in a similar way to the Port Arthur massacre. The jurisdictions agreed upon another gun control national agreement in 2002 called the National Handgun Control Agreement (NHA), which also had an accompanying national handgun buyback. The NHA consisted of 28 resolutions restricting the availability and use of handguns, specifically those that are easily concealable. It also restricted handguns based on caliber, barrel length, and magazine capacity ("Legislative reforms" 2012).

Just three years after the NFA's achievement, there was an indication that the laws were having a positive effect in reducing firearm suicide and accidental deaths. The results of a preliminary assessment done by the AIC in 1999 revealed there was a substantial decline in the number of firearm-related deaths from 1996 to 1997. Excluding the Port Arthur deaths,

firearm-related deaths decreased from 488 to 438. The total firearm-related death rate declined from 2.76 per 100,000 in 1996 to 2.36 in 1997. The firearm homicide death rate was similar to those observed in previous years, but the most evident decline was in firearm suicide and accidental firearm deaths. These declines contributed most to the overall decline in firearm-related deaths (Mouzos 1999, 3). However, conclusions at this time were premature because the effect of the NFA was examined so soon after its implementation (Mouzos 1999, 6).

The examination of the NFA's effect seven years after its achievement continued to find an accelerated decline in firearm deaths. There was an average reduction in firearm-related deaths of 3% per year in the eighteen years before the laws, but afterward the rate doubled to 6% per year. Firearm suicide and homicide rate reductions per year doubled after the laws were established (Chapman, Alpers et al. 2006, 367). Between 1979 and 1996, there was an average of 617 gun deaths per year. In the seven years after the NFA, between 1997 and 2003, the annual average nearly halved to 331 gun deaths (Chapman and Alpers 2006). The rate of accidental firearm deaths actually increased, but only by a small amount of an annual average increase of 1.4 deaths. The authors cannot determine a plausible reason why the removal of 700,000 guns, as well as the introduction of gun registration and stronger licensing procedures, would result in an increase in accidental shootings (Chapman, Alpers et al. 2006, 370). The authors believe that miscoding of the type of gun-related death may be a contributing factor (Chapman, Alpers et al. 2006, 371). Overall, it seemed that the NFA was successful in reducing the number of mass shootings, firearm homicides, and firearm suicides (Chapman, Alpers et al. 2006, 365).

However, among scholars, there has been some difference of opinion of the NFA's effect. The consensus seems to be that the NFA's greatest impact has been on firearm suicide and the

least impact has been firearm homicide. One study examined the impact of the NFA using firearm-related death data from 1979-2004 (Baker and McPhedran 2007, 455, 458). Results showed that the only type of firearm-related death affected by the NFA was firearm suicide (Baker McPhedran 2007, 461). The NFA did not influence firearm homicide. There also seemed to be a negative effect on accidental firearm death over the time period examined, but the number was small with large variability, so the effect of the NFA on accidental firearm deaths was not conclusive (Baker McPhedran 2007, 463). Overall there was insufficient evidence to support the assertion that reducing legally owned firearms will lead to a reduction of firearm or overall sudden death rates (Baker and McPhedran 2007, 467).

Another study examined the effect of the NFA's buyback's by using a different type of test that was not used in the other studies. This study used both cross-state and time series variation, while most other studies have only used time series variation. The authors of this study chose to look at variation both across states and over time because there were different rates of firearm buyback in the states. Therefore, they sought to see if there was a greater decrease in gun death rates in states where more guns were surrendered (Leigh and Neill 2010, 3). The largest reductions in firearm deaths did occur in the states where more firearms were surrendered (Leigh and Neill 2010, 33). Estimates of the buyback's effect on firearm homicides were less clear, but it appeared that the rate dropped significantly at a point estimate of 36% (Leigh and Neill 2010, 3, 22). Overall the firearm suicide rate decreased by close to 80% and there was no statistically significant effect on non-firearm death rates (Leigh and Neill 2010, 3). This study contributed to the consensus that the occurrence of firearm suicides was significantly reduced by the NFA.

Since there has been a lack of consensus on the NFA's impact, some scholars have reanalyzed the data used by other authors to find out what accounts for the lack of consensus. Lee and Suardi reanalyzed the same data on firearm deaths used by other authors (2010, 65). Their study concluded that there was little evidence to support that the NFA had any significant effects on firearm homicides and suicides. In addition, they found that there did not seem to be any substitution effects, meaning that those with reduced access to firearms did not use alternate methods to commit homicide or suicide (Lee and Suardi 2010, 76). McPhedran and Baker found that studies have been very consistent in their statistical findings, although they used different statistical methodology (2008, 2). The disagreement over the impact of the NFA is not due to different statistical analysis outcomes, but rather scholars have interpreted the results differently (McPhedran and Baker 2008, 15).

Overall it has been difficult for studies to measure the impact of the NFA and buyback because gun deaths were falling in the early 1990s. Nonetheless many studies have found strong evidence supporting the NFA's positive impact. Most studies have assumed that this pattern would have continued to occur if the NFA had not been implemented, even though they did not explain why this pattern was expected to continue (Hemenway and Vrinotis 2011, 3). Of those studies that are less supportive of the NFA's positive effects, the way they were designed in terms of the assumptions made and tests used, made it extremely difficult to find any effect from the NFA (Hemenway and Vrinotis 2011, 2, 3). For example, one study assumed that the linear trend of decreasing firearm deaths would have continued without the NFA. However, the chosen beginning year for trend analysis was 1979, while there is available data going back to 1915. Examining 1915-2004 data shows that firearm suicide and homicide declined significantly after the NFA (Hemenway and Vrinotis 2011, 2). Between 1996 and 1997, firearm homicide and

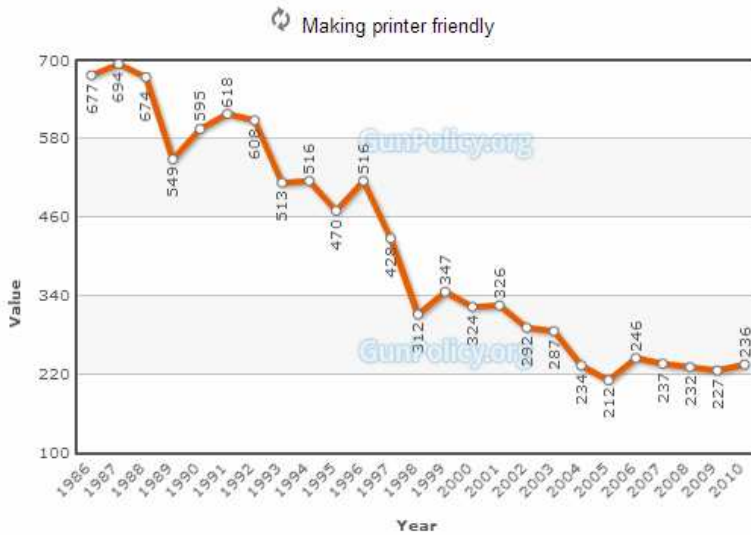
firearm suicide dropped by 46% and 43%. No two year period between 1915 and 2004 had such a strong drop in firearm suicide (Hemenway and Vriniotis 2011, 3). Overall it is clear that the NFA was not a wasteful endeavor when it comes to reducing gun violence in Australia:

“...Everyone should be pleased with what happened in Australia after the NFA—the elimination of firearm massacres (at least up to the present) and an immediate, and continuing, reduction in firearm suicide and firearm homicide” (Hemenway and Vriniotis 2011, 3).

Although scholars have been the most unsure about the extent of NFA’s impact on firearm homicide, the most recent firearm homicide study by the AIC reveals that it has declined since the NFA’s implementation. Firearm homicides increased to 12% in 2008 from 9% in 2007, but this is still a historical low for Australia. The majority of firearms used in homicides were identified as unregistered and/or unlicensed (Vireuda and Payne 2010, 2). The NFA’s strong licensing and registration provisions have made it difficult for unsuitable individuals to legitimately own firearms, so they are forced to obtain them illegally (Mouzos 2000, 6). Since Homicide Monitoring has begun by the AIC, firearm homicide has decreased by more than half. Between 1989 and 1990, twenty-five percent of homicides involved a firearm compared to 2007-2008 where only 12% of homicides involved a firearm. The use of knives, on the other hand, has remained relatively unchanged since 1989-1990, suggesting that method substitution has not occurred (Virueda and Payne 2010, 14). While firearm homicide has slightly increased in recent years, it is clear that it has largely decreased in the years since the implementation of the NFA and the 2002 NHA, which speaks to the impact of the strong policies embodied in these agreements.

Australia

Total Gun Deaths



Citation for this chart

Alpers, Philip and Marcus Wilson. 2013. *Guns in Australia: Facts, Figures and Firearm Law*. Sydney School of Public Health, The University of Sydney. GunPolicy.org, 22 March. Accessed 24 March 2013. at: http://www.gunpolicy.org/firearms/compareyears/10/total_number_of_gun_deaths

Australia

Rate of All Gun Deaths per 100,000 People



Citation for this chart

Alpers, Philip and Marcus Wilson. 2013. *Guns in Australia: Facts, Figures and Firearm Law*. Sydney School of Public Health, The University of Sydney. GunPolicy.org, 22 March. Accessed 24 March 2013. at: http://www.gunpolicy.org/firearms/compareyears/10/rate_of_all_gun_deaths_per_100_000_people

Conclusion: The Australian Model

The successful achievement and positive effect of the NFA has been due to a number of factors. Disasters alone cannot bring about change, but the Port Arthur incident revealed that they can if the social and political climate are favorable to the impetus for policy change that a disaster provides (Scanlon and Handmer 2001, 200). Gun law reform had to be persistently advocated for after the massacre to maintain people's outrage and public support. Political support was not unanimous for the gun control reform, but Prime Minister John Howard's dedication to advancing it was critical. Gun violence was effectively framed as a nonpartisan issue of public safety. Compromise was a key aspect in obtaining the cooperation of the unsupportive states. However, compromise was not achieved at the expense of specific resolutions in the NFA. Rather the unsupportive states chose to cooperate with the rest of the nation by consenting to the Agreement's resolutions due to Howard's threat of a referendum. Although some states' threatened to pass weakened gun laws, Howard was committed to ensuring they would not succeed to protect the strength of the NFA's resolutions (Chapman 1998, 164, 166). It is evident that a contributing factor to the NFA's success in reducing gun violence has been that none of the resolutions were weakened through compromise and that they were effectively implemented.

The Australian experience of achieving national uniform gun control is a guide for the United States, which struggles to bring about bold gun policy change. Achieving national uniform gun control legislation in Australia was not possible for many years because the gun lobby blocked reform. Prime Minister Howard admitted that he would have thought it unthinkable just prior to the Port Arthur massacre that a national gun control scheme would have been politically feasible: "This is an agreement I don't think anybody would have thought

remotely achievable three weeks ago or even a few days ago” (Chapman 1998, 26). Presently the United States suffers the effects of weak federal gun control legislation brought about by an extremely powerful gun lobby. Between 1980 and 2010 in the United States, there have been on average 20 mass murders per year with an average death toll of about 100 per year (Fox 2012). In the past few years, mass shootings have become especially frequent, yet continuously politicians fail to take strong leadership positions to act upon them and advocate for gun control reform. No American political leader has acted with the same resolve to achieve dramatic gun control reform as Prime Minister Howard did in 1996 after the Port Arthur massacre.

The United States can learn much from the Australian experience of the Port Arthur massacre and the NFA: the specific policies and their uniformity, the political leadership, advocacy, smart compromise, and effective implementation. In the last chapter, this thesis will discuss how these lessons can be realized in the U.S. to help achieve strengthened federal gun control legislation. However, the next chapter will discuss the evolution of American federal gun control law and the contributing factors that have led to its weaknesses, as well as how its weaknesses endanger public safety.

Chapter 3

American Gun Control History: The Failure to Achieve Comprehensive Federal Gun Control

While Australia's 1996 National Firearms Agreement has been successful, American federal gun control legislation has perpetually failed. Unlike Australia, the United States has never been able to achieve comprehensive federal gun control legislation. American federal gun control legislation has always had a narrow aim to target criminals or firearms dealers. Throughout American history, federal gun control has consistently had debilitating weaknesses. Like Australia's gun control history, that of the United States has also been characterized by strong resistance from gun owners, the gun lobby, and sympathetic politicians against establishing stronger gun control measures. The National Rifle Association (NRA) has always advocated against more comprehensive measures meant to target all gun owners based on its belief that only criminals should be burdened by gun control. The Australian gun lobby also used the same argument when resisting gun control reform. However, the Australian government led by Prime Minister Howard overcame the resistance of pro-gun individuals to achieve the National Firearms Agreement. The present Australian gun control system is comprehensive and effective because the legislation's language was not significantly weakened to cater to gun interests. To achieve comprehensive federal gun control legislation in the United States that is effective, damaging compromises must be avoided.

This chapter explores how the achievement of comprehensive gun control has failed in the U.S. and discusses how the legislation's specific weaknesses endanger public safety. Although a significant amount of the public and some political leaders have supported comprehensive reform over the years, there has never been the widespread public pressure needed to instigate enough political will in Congress to see the reform through. Also, the

powerful influence of the NRA's lobbying efforts has hindered comprehensive reform. The first part of this chapter examines early American gun control in order to show that strong gun control measures are not contrary to American history. The NRA has successfully argued that a balance cannot exist between a right to gun ownership and comprehensive gun control, but in fact it has already existed. Since its beginnings, the United States, like Australia, sought to balance gun ownership with gun control to protect public safety.

The second part of the chapter presents and discusses the weaknesses of the pieces of federal gun control legislation achieved between the 1930s and 1990s. The legislation was always motivated by social problems such as mob crime and race riots, or high profile shootings, such as assassinations and massacres. During this time a majority of the public supported stronger gun control and although political leaders pushed for comprehensive measures, gathering enough congressional support to pass the legislation was difficult. Ultimately in order to achieve the legislation's passage, compromises had to be made. Provisions were changed and removed, weakening the legislation's overall strength and devastating its effectiveness.

The last part of the chapter discusses the negative effects of the present American gun control system that must accommodate the dual authority of the federal government and the states. By achieving more comprehensive federal gun control legislation, a strong minimum standard would be put in place. A strong minimum standard would better moderate the negative effects of the large difference in strength between state and local gun laws across the country. The chapter concludes by discussing how the 2008 Supreme Court decision, *District of Columbia v. Heller*, has firmly established that the Second Amendment is not absolute, which provides hope for the feasibility of achieving the necessary gun control reform in the future.

Part I:

Early American Gun Control: A Balance Between Gun Ownership and Public Safety

The Revolutionary Era: Early Forms of Gun Control

As long as guns have existed in the United States, there has been gun control established to protect public safety. During the Revolutionary Era, every man was legally required to own a gun for military purposes. Since the country did not have a standing army, an armed citizenry was necessary to repel European invasions or Native American attacks (Winkler 2011, 113). Governments used forms of gun registration in order to know where guns were in case they were needed to defend the community. Men were required to assemble at public gatherings a few times a year for government officials to inspect their guns and record them on public rolls. New Hampshire and Rhode Island carried out door-to-door gun ownership surveys. Sometimes the government confiscated people's guns temporarily if they were needed for public defense purposes. These guns were returned to their owners afterwards (Winkler 2011, 113). Overall these practices reveal that the government believed that public safety sometimes was of greater importance than the individual's need for a gun.

Governments also believed it was important to institute various types of safe storage laws (Winkler 2011, 116). In 1692, the Massachusetts colony barred citizens from carrying guns in public (DeConde 2001, 21). Before the Revolution in South Carolina, slave owners were required to lock up their guns to ensure slaves could not access them (Winkler 2011, 117). Due to Maryland's large Catholic population, the state's assembly passed a law in 1756 that prohibited the possession of guns and ammunition by Catholics (DeConde 2001, 22). A 1783 law in Boston required that loaded firearms could not be kept inside buildings. Those found with loaded guns in a building or home could have had their guns confiscated. This law hindered a person's ability to use the gun in a moment of self-defense (Winkler 2011, 117). Again, these

laws reveal that the state governments believed that the public safety concerns surpassed the individual's need to keep guns in the home.

The Civil War Era: Guns, Gun Control, and the Second Amendment

The South is known today for its strong gun ownership and weak gun laws, but historically it has been a region that instituted gun control laws due to a concern for public safety. Both before and after the Civil War, white Southerners were concerned about the threat of armed blacks to public safety, so gun disarmament became an important objective (Winkler 2011, 131, 136). This concern grew out of the occurrence of slave revolts in the South in the early 1800s (Winkler 2011, 131-2). Laws prohibited slaves from possessing guns, but they were further strengthened to prevent free blacks from owning guns. An 1844 North Carolina Supreme Court case stated that the ““only object”” of disarming blacks ““is to preserve the peace and safety of the community from being disturbed by an indiscriminate use on ordinary occasions, by free men of color, of firearms and other arms of an offensive character”” (Winkler 2011, 132). This statement shows that the white Southern population believed that use of guns by blacks could endanger public safety. Therefore, guns needed to be removed from the black population in order to help prevent gun violence from occurring.

Throughout the United States, citizen militias had become obsolete by this time. Militias were not well trained and attendance was not strong. The poor performance of state militias in the War of 1812 revealed that a standing army was necessary for any long term war effort. Since the militia justification for the Second Amendment became less pertinent to the current conditions, the understanding of the Second Amendment was shifting towards an individualist interpretation. Twenty states joined the Union between 1790 and 1860 and fourteen of them included the right to bear arms in their state constitutions. Specifically the right to bear arms in

many of these constitutions referred to the individual using guns to defend themselves, as well as the republic (Winkler 2011, 133). In the South during this time, both an individual right to gun ownership and gun control measures coexisted. However, as will be discussed in this chapter, throughout American history, gun owners believed that an individual right to gun ownership precludes comprehensive gun control measures. The Second Amendment is an individual right, but it does not prevent stronger gun control measures from being established in the name of public safety. This will be furthered discussed at the end of the chapter when the Supreme Court case of *District of Columbia v. Heller* is presented.

The American Frontier and the “Wild” West

The passion for gun ownership in the United States is often attributed to its frontier history. On the frontier guns were a necessity for American settlers (Spitzer 2008, 8; Winkler 2011, 160). Guns were used for hunting game as a source of food. Guns were also used for protection against dangerous animals, as well as hostile Native Americans (Spitzer 2008, 8, 9). However, the widely held belief in contemporary American society is that the West was a dangerous, violent place that was settled by guns. This is an exaggerated understanding of what the actual conditions on the Western frontier were like (Spitzer 2008, 10). Gun usage on the frontier is a combination of truth and myth (Spitzer 2008, 7).

It is true that there was the widespread prevalence of guns on the frontier. During the 1800s thousands of people moved westward with guns in hand, specifically handguns. By the mid-1800s handguns were gaining great popularity. Samuel Colt contributed to the popularization of gun ownership by making it easier for people to be a gun owner. Colt created lighter, more powerful, and cheaper guns than ever before (Winkler 2011, 160). Colt has also contributed to misrepresentation of the gun violence on the frontier in American history. Colt

advertised and marketed his guns by glamorizing the frontier and the importance of gun usage there (Spitzer 2008, 8). One of Colt's taglines, which emphasized the importance of the gun in keeping peace, was "'God created men. Colonel Colt made them equal'" (Winkler 2011, 161). Colt used testimonials from celebrities, as well as military and adventure heroes to promote his guns (Burbick 2006, 10). William Fredrick Cody's "Buffalo Bill's Wild West" show, first seen at the 1893 world's fair in Chicago, also emphasized violence on the frontier and the importance of gun usage in quelling the violence (Winkler 2011, 161, 164). Despite the ubiquity of handguns and the glamorization of gun violence on the frontier, in fact, public safety was an important concern there.

Although gun ownership was common on the frontier, Western towns did not tolerate gun violence in the way that Colt and Cody advertised. Gun control measures to protect public safety were present in frontier towns (Spitzer 2008, 11). For example, concealed carry was not acceptable in many places. Cowboys were expected to check their guns at the town's entry or at the livery stable (Courtwright, 1999, 96). In 1873 people were required to leave their revolvers with the police while in Wichita, Kansas (Winkler 2011, 165). At the same time, Dodge City, Kansas had a law that prohibited the concealed carry of guns (Winkler 2011, 166). The West was full of guns, but moderate gun control laws existed to protect the public. The true conditions on the Western frontier continue to show that private gun ownership has always been balanced by reasonable gun control laws in the name of public safety.

Part II: American Federal Gun Control Legislation

Controlling Crime: The Establishment of Federal Gun Control Legislation

Federal gun control legislation was first established in the United States as a means to more effectively control crime. The activity and gun usage of mobs escalated when Prohibition

went into effect through the 1920 Eighteenth Amendment (Winkler 2011, 189, 190).

Specifically gangsters were partial to the “Tommy Gun,” an extremely deadly submachine gun that was small and easy to carry (Winkler 2011, 190). Up until this time gun control was a type of law that was only addressed either by state or local governments (Winkler 2011, 187-8)

According to Winkler, national firearms legislation came about because the federal government recognized that local law enforcement was ill-equipped to address mob gun crime. Local law enforcement had not been successful in combating mob activity and gun usage. Local police forces were often corrupted by the gangsters, but the main reason it had failed was the improved ease of travel. During the Prohibition era, the ownership of the automobile largely increased and the national highway system connecting cities was built (Winkler 2011, 193-4). The combination of these technological advances allowed criminals to move easily across state lines with firearms in hand. The ease of firearm movement across state borders is still a serious problem that faces gun control today. President Franklin D. Roosevelt recognized that crime had to be addressed on a national level because its effects were not just felt in its area of origin: ““The consequences of lax law enforcement and crime-breeding conditions in one part of the country may be felt in cities and villages and farms all across the continent”” (Winkler 2011, 198). To target the crime, the Justice Department worked on creating gun control narrowly aimed at those types of guns used by criminals, such as registration of machine guns, submachine guns, handguns, silencers, and sawed-off shotguns (Spitzer 2008, 120).

Federal gun control legislation aimed at targeting mobster gun use came to fruition in the National Firearms Act of 1934 (NFA). The NFA put a heavy tax on the manufacture, sale or transfer of machine guns, sawed-off shotguns, and sawed-off rifles (Winkler 2011, 203). The law did not address any other types of firearms, such as pistols, revolvers, shotguns or rifles.

Firearm manufacturers, dealers, and importers had to register, maintain records, and pay a tax (DeConde 2001, 144). The burdensome tax dissuaded law-abiding people from purchasing these types of weapons. Owners of these types of firearms had to register with federal authorities and be fingerprinted within sixty days (Winker 2011, 203). They also had to undergo a background check and a waiting period of months (DeConde 2001, 144). Gangsters would have been able to afford the heavy tax but would not have wanted to submit to these other requirements. Criminals were not expected to comply with these requirements, but if they were found with a firearm of these types, they would be sent to jail for up to five years merely for noncompliance (Winkler 2011, 203). The NFA successfully targeted the criminal use of these types of dangerous weapons, but was not comprehensive because it did not address other types of firearms.

Originally the NFA aimed to be more comprehensive than its final version that passed through Congress. Roosevelt's attorney general, Homer Cummings, initially proposed to include taxes on and the registration of handguns in the NFA (Vizzard 2000, 89; Winkler 2011, 210-11). The NFA bill, H.R. 9066, was introduced into the House by Congressman Sumners. The Committee on Ways and Means carried out public hearings on the bill in 1934. During the hearings, New York Congressman Crowther explained that he had received a number of telegrams from various rifle associations and clubs stating their opposition to any legislation that would put an undue burden on them (U.S. House 1934, 63). In the testimony of NRA Vice President Karl Frederick, he explained his belief that the NFA's application to pistols would prevent citizens from being able to adequately defend themselves:

I think that the result of this provision here will be to deprive the rural inhabitant, the inhabitant of the small town, the inhabitant of the farm, of any opportunity to secure a weapon which he perhaps more than anyone else needs for his self-defense and protection. I think that it would be distinctly harmful to destroy the opportunity for self-defense of the ordinary man in the small community, where police forces are not adequate (U.S. House 1934, 43).

Frederick further explained that by forcing a person to go to a federal official to fill out documents puts a burden on inhabitants of rural communities because there are more licensed dealers in the cities (U.S. House 1934, 43-4). The final bill that passed Congress was nearly identical to the one that entered the Committee, except pistols and revolvers were removed (Brabner-Smith 1934, 406). The resistance shown by rifle associations to any regulation of handguns in the NFA suggests that their influence was a contributing factor to the final legislation which lacked comprehensiveness.

In 1938, the Federal Firearms Act (FFA) implemented further federal gun control legislation. The Act obliged manufacturers, importers, dealers, and those involved in interstate or foreign gun trade to obtain a federal license and to keep records. However, the license fee was extremely small, only a dollar. The Act prohibited firearms shipments from going to individuals without permits in those states that required them. It also prohibited convicted felons from obtaining firearms shipments and aimed to hinder the movement of stolen guns or those with altered serial numbers (DeConde 2001, 147). After the NFA, Cummings had proposed a comprehensive bill that would have extended the Act to all types of firearms. He believed a national registration system was necessary. He believed those who refused to comply had something to hide because registration was a reasonable measure: “no honest man can object to it. Show me the man who does not want this gun registered and I will show you a man who should not have a gun” (DeConde 2001, 146). However, ultimately no type of registration system was included in the FFA.

The FFA was not a strong or an effective regulation. People, including felons, could easily skirt compliance with the provisions by lying. Evasion was also possible because the Treasury Department did not fully enforce the FFA (DeConde 2001, 147). The Justice

Department was unable to enforce the FFA because the power to prosecute those who supplied guns to criminals was effectively eradicated. Language in the FFA made successful federal prosecution reliant upon proof that a person provided a gun to a criminal knowingly. The Justice Department was not able to meet this requirement easily because a person selling firearms was not required to validate the purchaser's eligibility (Spitzer 2008, 120). Only less than one hundred arrests per year were made under the law between the 1930s and 1960s (Spitzer 2008, 121). While the FFA applied comprehensively to gangster weapons, handguns, shotguns and rifles, it weakly controlled their interstate commerce (Vizzard 2000, 90, 93).

The framework of the FFA was largely due to the NRA's input. New York Senator Royal S. Copeland introduced the bill into Congress in 1935, which he had worked closely with the NRA to create (DeConde 2001, 142, 146). In a 1935 Senate hearing on the bill, NRA Executive President Milton Reckord said he supported the bill, to which Copeland stated, "'You ought to be. You had a lot to do with writing it'" (DeConde 2001, 141, 146). Overall it is evident that for the federal firearm acts to pass, compromises had to be made with the NRA. These compromises involved eliminating provisions and collaboration in bill writing. Gun organizations would not accept gun control law that they understood to treat honest gun owners and criminals in the same category (DeConde 2001, 148). Karl Frederick's statement from the 1934 NFA hearings reveals this belief: "In my opinion, most of the proposals [of] the regulation of firearms, although ostensibly and properly aimed at the crook, do not reach the crook at all, but they do reach the honest man" (U.S. House 1934, 58). However, the public did support more comprehensive gun control measures that targeted all gun owners. The first *Gallup* poll on gun control in April 1938 revealed 84% of those surveyed supported pistol and revolver registration (DeConde 2001, 147).

Overall the NFA and FFA were weak and ineffective because their main objective was narrowly aimed to control crime. The regulations were inadequate because they only controlled individuals who were looking to obtain or already held firearms of a certain type. They only targeted firearm possession by criminals, but they did not in any way try to burden the firearms industry or regular firearms customers (DeConde 2001, 147-8; Zimring 1975, 143). For example, the extremely low dealer license fee of one dollar required by the FFA instigated private individuals to obtain dealer licenses to profit from the benefits of being a dealer, although they were not actually dealers (Spitzer 2008, 121). The focus of the laws was to deny criminals' access to guns. However, the laws' narrow focus on criminals ignored the reality that presumably law-abiding gun owners, as well as blatant criminals, could use guns in criminal ways.

The Civil Rights Era: “Comprehensive” Federal Gun Control is Achieved

During the 1950s gun ownership grew, but the public simultaneously favored gun control measures. American gun ownership boomed after WWII. It was cheap to purchase and import military surplus guns and importation numbers were increasing by the mid 1950s (Winkler 2011, 247; Zimring 1975, 144). Between 1955 and 1958, the number of imported rifles increased from 15,000 to 200,000, while handgun imports increased from 67,000 in 1955 to 130,000 in 1959 (Zimring 1975, 144). Between 1958 and 1968, Americans added more than 30 million guns to their collections (Winkler 2011, 250). A 1959 *Gallup* poll revealed that about half of all American homes contained guns. Nevertheless, three out of four people surveyed believed that one should be required to obtain a police permit to purchase a gun. Also, 59% of those surveyed believed private handgun ownership should have been prohibited. Private gun ownership largely increased in the 1950s, but it is evident that the public was not opposed to strengthening gun

control (DeConde 2001, 165). Starting in the late 1950s, gun control advocates pushed for further gun control in Congress, but to no avail. No further federal gun control legislation was passed from the 1930s until 1968 (Winkler 2011, 247).

Despite the lack of legislation, high profile shootings emphasized the need for the federal government to further address gun control in the 1960s. President John F. Kennedy was assassinated in 1963 by Lee Harvey Oswald using a bolt-action rifle, which had been purchased under a fake name from an ad in the NRA's *American Rifleman* magazine (DeConde 2001, 180). Kennedy's assassination revealed the need for restrictions on mail-order firearms sales and ways to prevent a purchaser from using a fake name (Winkler 2011, 248). In 1966, Charles Whitman killed sixteen and wounded thirty-three by shooting from a tower above the University of Texas at Austin campus (DeConde 2001, 180). As a result of these incidents, Democratic Senator Christopher Dodd of Connecticut and President Lyndon Johnson became leaders of gun control reform. Five days after Kennedy's assassination Dodd proposed legislation to restrict mail-order sales of shotguns and rifles (Winkler 2011, 248). However, Dodd's bill failed in the Senate Commerce Committee in 1964 simply because the Committee chose not to do anything with it (Zimring 1975, 146; DeConde 2001, 174). Johnson annually proposed comprehensive gun control measures, like universal federal registration and licenses for carrying guns (Winkler 2011, 249). Overall his proposals never made any progress in Congress (Winkler 2011, 249). However, public opinion supported firearm registration. In September 1967, 66% of the public favored and 28% opposed federal laws that would control sales of guns, such as requiring a person to register all gun purchases despite where they were bought ("Harris Survey, Sep, 1967").

The civil rights movement and new political assassinations reinvigorated the campaign for stronger gun control. During 1967, violent race riots broke out across the nation (Winkler

2011, 249-50). There had been a recent spike in firearm sales and permit applications in the few years before 1967 (Winkler 2011, 250). An average of 600,000 handguns were sold a year between 1960 and 1964. Between 1964 and 1968, the U.S. gun homicide increased 89%, while other means only increased 22% (Zimring 1975, 148). A 1968 Stanford Research Institute report determined that the increased gun ownership was “directly related to the actuality and prospect of civil disorders” (Winkler 2011, 250). With guns in hand, rioters could more easily protect themselves while carrying out criminal activity. The report also concluded that firearms controls were needed to lessen the violence (Winkler 2011, 250). By 1969, the majority of homicides in major urban areas involved handguns (Zimring 1975, 148).

The assassinations of Martin Luther King and Robert Kennedy only two months apart in 1968 finally provided the necessary political will to push through further federal gun control legislation. The day after Kennedy’s death, Congress passed the Omnibus Crime Control and Safe Street Act. When the Gun Control Act of 1968 (GCA) was adopted a few months later, provisions were amended and added to the Omnibus Crime Act (Winkler 2011, 251). Although the GCA was an improvement from the FFA in that it was more comprehensive, the changes were still small and weak.

Although President Johnson advocated for strong regulations in the GCA, such as universal registration and licensing, Congress failed to support him (DeConde 2001, 186; Spitzer 2008, 124). During debate over the GCA bill, Johnson had said to Congress: “in the name of sanity...in the name of safety and in the name of an aroused nation to give America the gun-control law it needs” (Spitzer 2008, 123). Johnson had been a gun control leader throughout his presidency, proposing gun control legislation every year since 1965. In fact Johnson is responsible for more legislation in his presidency than any other president, which is the result of

his great legislative skills. If any leader could have achieved strong gun control legislation, it seems Johnson should have been the one. While he did achieve the GCA, it was not without the compromise of eliminating the comprehensive measures in the legislation that he believed were necessary (Spitzer 2008, 121, 122). There was also a divide between rural and urban members in the Senate that contributed to the failure to pass stronger measures (Vizzard 2000, 104).

However, during this time, the public still supported stronger measures. A March 1968 survey found that 71% of the public favored and 23% opposed federal laws that would control the sales of guns, such as requiring people to register their gun purchases despite where they were bought (“Harris Survey, Mar, 1968”).

The Omnibus Crime Act and the GCA were narrowly tailored, focused on regulating gun dealers. They prohibited the shipment of guns across state lines to anyone but federally licensed gun dealers and collectors. It was illegal to sell guns to “prohibited persons” such as felons, the mentally ill, substance abusers, and minors. They also expanded the federal dealer licensing system that was established in the FFA (Winkler 2011, 251). The GCA focused on ensuring that bona fide importers, manufacturers, and sellers were involved in foreign interstate firearm trade by raising the dealer license fee. However, the fee was only increased to ten dollars (DeConde 2001, 186). President Johnson had also hoped to achieve a ban on Saturday night specials (small, cheap, low quality handguns), but the GCA only achieved a ban on their import (DeConde 2001, 186; Winkler 2011, 252).

The GCA’s key failure was that it did not enact any comprehensive system of regulating individual private ownership of firearms, but rather focused on the commercial transactions of firearms (Vizzard 2000, 98). Although it focused on regulating dealers, the regulations did not diminish gun sales. Despite a higher dealer licensing fee, the number of dealers also increased,

and the restrictions put on dealers did not significantly curb firearm sales ((Spitzer 2008, 124; Winkler 2011, 252; Vizzard 2000, 104). Saturday night specials were defined ambiguously, so handguns not falling under the definition continued to be imported (Winkler 2011, 252; Spitzer 2008, 125). It is evident that the GCA was aimed at preventing the criminal possession of guns and was not meant to burden gun owners. However, while the GCA prohibited dealers from transferring firearms to felons and other prohibited classes, it did not address the possession of firearms by these people. The GCA also did not address the transfer of firearms by individuals to people of prohibited categories (Vizzard 2000, 99).

The weaknesses of the GCA also hindered the Bureau of Alcohol, Tobacco, and Firearms (ATF) from being able to properly enforce federal gun control regulations. Not only is the GCA a weak piece of legislation to begin with, but its weak effect is further compounded by its language that makes enforcing the laws difficult. The ATF was responsible for overseeing the GCA's federal dealer licensing process. The laws were ambiguous in regards to who was required to have a license. The laws required people who "engaged in the business" of dealing firearms to be licensed, but it did not define those terms. Also, since the dealer license price was a low \$10, people could easily get licenses that allowed them to buy or sell guns across state lines (Winkler 2011, 255). Due to a lack of clarity in the law, the ATF's actions were sometimes inconsistent. For example, under the law, the ATF could deny license renewal because the dealer sold only two or three firearms. At the same time, the ATF could prosecute an unlicensed dealer for selling two or three firearms (Vizzard 2000, 123). This inconsistency opened the ATF up to criticism by gun owners because the ATF's actions seemed to be only focused on prosecuting gun owners for technicalities rather than focusing on actual criminals (Vizzard 2000,

123; Winkler 2011, 255). But in reality, due to the ambiguity of the law, the ATF was unable to clearly distinguish between the law-abiding and lawbreaking individuals.

The Development of the Extremist NRA and the Weakening of the Gun Control Act (GCA)

The origins of the present-day extremist NRA lie with the organization's backlash to the GCA. Divisions within the organization began during the debate over the GCA bill when the NRA's Executive Vice President, Franklin Orth, showed some support for the bill by saying that "any sane American" could not protest the bill that would control the "instrument which killed" President Kennedy (DeConde 2001, 205). Orth was one of the association's moderates who wanted to shift the NRA's focus back to hunting and conservation and away from politics (Spitzer 2008, 96). However, the majority of the association's voting members were hardliners (DeConde 2001, 205). Since 1968, the hardliners had been upset by the organization's movement towards refocusing its purpose to hunting and conservation. In 1975, the NRA's lobbying arm, the Institute for Legislative Action (ILA), was established and run by Harlon Carter. However, the ILA was not well-funded, which was partly a result of the organization's refocusing. A debate was growing within the organization about whether it should be lobbying at all (Davison 1993, 34). The NRA leadership also planned to build a National Shooting Center in New Mexico. The plans included shooting facilities, but the leadership also considered adding other programs such as camping training and conservation education. Thus the leadership considered calling it the National Outdoor Center. This name choice revealed to the hardliners that the organization's purpose was truly moving away from being a gun organization (Davison 1993, 35). The division among the NRA leaders would come to a head in 1977.

A major turning point for the future of gun control reform feasibility in the United States occurred at the NRA's convention in Cincinnati, Ohio in 1977. At the convention, the hardliners

executed a coup, removing the leadership and placed Harlon Carter in charge (DeConde 2001, 205). This event marked a permanent change in the NRA's purpose. From there on out, the NRA rejected all gun control proposals, big or small, based on the belief that it would create a "slippery slope" to more gun control. The NRA no longer considered compromise as an option when it came to gun control legislation (DeConde 2001, 205). By the mid-1970s, NRA leaders started pushing for the GCA's repeal (Winkler 2011, 256). In a March 1980 issue of the *American Rifleman*, President Woodson Scott stated that he wanted the GCA repealed and described it as "a legislative monstrosity saddled upon the people in a period of emotionalism" (Winkler 2011, 256). After the coup, the NRA worked towards gaining back rights for gun owners.

The 1986 Firearms Owners' Protection Act (FOPA) significantly damaged the GCA by expanding the rights of gun owners, further weakening federal gun control's comprehensiveness. FOPA eliminated what the NRA viewed as unnecessary burdens on law-abiding gun owners. The law permitted the interstate trade of rifles and shotguns if the sale was legal in the states of the purchaser and seller (DeConde 2011, 229). The Act removed ammunition dealer's responsibility of record-keeping and lessened gun sale restrictions by unlicensed individuals. The ATF could not require gun dealers to preserve centralized records. It also allowed dealers to sell guns at gun shows without federal licenses (DeConde 2001, 230). This secondary market of guns at gun shows is one of the most problematic weaknesses contributing to gun violence in America today.

According to the NRA's Institute for Legislative Action (ILA), the NRA had been working towards FOPA's passage since 1979, when the ILA drafted the legislation. The legislation was introduced into the House by former Democratic Congressman Harold Volkmer

from Missouri, also a member of the NRA Executive Committee, and Republican Senator James McClure from Idaho. Over the next seven years, the NRA worked with these individuals to achieve the legislation. This involved altering provision language, determining the most viable way to get it passed, like attaching it to an appropriations bill, and gathering signatures from politicians who would vote for it. According to the NRA, FOPA was a “victory” (Hardy 2011).

FOPA also severely handicapped the ability of the ATF to carry out law enforcement. For example, FOPA has hindered the ATF’s ability to prosecute gun traffickers who sell firearms unlicensed. Before FOPA, people were supposed to obtain a federal license if they were selling five or more guns per year. FOPA amended this rule so that those who make occasional gun sales or buy guns as a hobby do not have to become federally licensed. However, there is no clear definition indicating the number of guns or profits requiring a person to become federally licensed. This hole in the law allows guns to be transferred to criminals and minors. Since the traffickers are operating in the secondary market, there are no records of their transfers. They can avoid prosecution by lying and saying that they were only selling a few guns from their private collection (Braga 2001, 547). Not only did FOPA largely damage American federal gun control legislation, it made even the enforcement of the weak laws very difficult.

The 1990s: A Push for Federal Gun Control Reform

Assault Weapons Ban

A 1989 schoolyard gun massacre inspired gun control reform in the United States focused on regulating semiautomatic assault weapons (Spitzer 2008, 129). The shooter used a Chinese AK-47 assault rifle to wound 29 children and kill 5 children in Stockton, California (Spitzer 2008, 129, 130). The event immediately brought about public concern over assault weapons. *The Gallup Report* in 1989 indicated that 75% of the public was in favor of a federal

ban on semiautomatic rifles (DeConde 2001, 237). Just weeks after the shooting at least thirty states and numerous localities considered enacting assault weapon bans (Davidson 1993, 206).

The eventual assault weapons ban originated as a bill proposal by Arizona Senator Dennis DeConcini in 1989 (Davison 1993, 211, 212, 226-7). DeConcini was greatly favored by the NRA. He had never voted against the NRA and was a key member in the Senate Judiciary Committee to get the FOPA legislation passed (Davison 1993, 211). DeConcini's bill would have banned a few domestic and imported semiautomatic assault weapons, but allowed present owners to keep their firearms (Davison 1993, 212). DeConcini proposed his "reasonable middle position" bill in response to Senator Howard Metzenbaum's bill. DeConcini thought Metzenbaum's bill was "far-reaching" because it intended to ban many imported and domestic weapons, as well as confiscate guns from present owners (Davison 1993, 211). DeConcini's bill passed the Senate, but then died in the House (Davison 1993, 226; Luo and Cooper 2012).

The difficult process of passing the assault weapons ban reveals the pervasive resistance to comprehensive gun control legislation in Congress. The slim passage of the assault weapons ban required support across party lines. The eventual assault weapons ban was part of a bigger crime bill (Spitzer 2008, 131). A version of DeConcini's ban did not pass the Senate until 1993 after Senate ban supporters, led by Democratic California Senator Dianne Feinstein, were able to add it to the crime bill (Luo and Cooper 2012). When the bill reached the Senate, there was a significant amount of bipartisan support, which was hopeful and necessary to offset the opposition of anti-gun control Democrats. However, the bipartisan support deteriorated because the House had uncharacteristically amended the original conference committee version of the bill (Spitzer 2008, 133). The ban passed the House only by a two-vote margin. Understandably, the politicians with the greatest opposition to the bill came from the South and West. Congressional

voting on the assault weapons ban was reflective of voting on past gun control bills where there was a lack of party discipline. While more Democrats supported it (177) than Republicans (137) in the House, a significant number of Democrats (77) opposed it and some Republicans supported it (38) (Spitzer 2008, 131). The Senate was only able to pass the bill in 1994, due to almost full support of the Democrats and the support of six Republicans (Spitzer 2008, 133).

Like previous pieces of federal gun control legislation, the assault weapons ban was only minimally effective because it was not comprehensive. The ban was able to survive within the crime bill because compromises were made: the sunset provision, a shorter list of banned guns, and a larger exemptions category (Luo and Cooper 2012). The ten year ban prohibited the sale and possession of 19 types of weapons, as well as a number of copycat weapons that shared two or more characteristics with the specified types. The ban did not include 661 types of sporting rifles. Assault weapons already in possession were exempted from the ban and Congress could choose to include more weapons to the ban later on. It also banned gun clips that held more than 10 bullets (Spitzer 2008, 133). The ban defined assault weapons by their military-style visual characteristics, rather than the capability of rapid fire. However, the visual characteristics do not have any influence on the gun's lethality (Winkler 2011, 38). Gun manufacturers were also able to evade the terms of the ban by making slight alterations to the appearance of guns that were functionally the same as assault weapons (Winkler 2011, 39).

To effectively eliminate highly lethal weapons, a comprehensive ban on semiautomatic long guns would have been necessary, not a ban merely based on cosmetic appearance. The large amount of exemptions under the law could otherwise be considered assault weapons if the law had banned semiautomatic rifles (Winkler 2011, 38). However, a more comprehensive ban was not possible because of a lack of congressional support according to David Yassky, who

worked on the ban as the chief counsel to the House subcommittee on crime: ““A broader definition of assault weapons would have been safer, would have resulted in fewer highly dangerous weapons making their way through the ban – but there just were not the votes for it”” (Luo and Cooper 2012). Once again, compromises had to be made, which led to a piece of federal gun legislation that lacked effectiveness.

In 2004 the extension of the expired assault weapons ban failed. The Democratic Party had been in control of the House since 1954 and the passage of the ban had occurred just before the 1994 elections. In the 1994 elections, the Republican Party gained House majority (Winkler 2011, 39). Former President Clinton believes that the NRA’s discontent with the assault weapons ban played a large role in the Republicans gaining House control in 1994: ““They were mad about this whole weapons ban and the Brady Bill, and they probably took 15 of our House members out. That was their number, they said between 15 and 20, and I’d say, at least on the low side, they were right”” (“Clinton Detects” 2010). In March 2004, supporters of the ban in the Senate attached the renewed ban to a bill to protect gun manufacturers and dealers from lawsuits, which had already passed the House (Spitzer 2008, 135). The original ban had passed the Senate by a vote of 52 to 47 with the votes in favor composed of 10 Republicans, 41 Democrats, and one Independent. However, the vote to renew the ban was overwhelmingly disfavored and failed due to a vote of 90 to 8 (Stolberg 2004). The Senate’s reversal was shocking (Spitzer 2008, 135). Republican Arizona Senator John McCain said, ““I’ve been around here 18 years and I’ve never seen anything quite this bizarre”” (Stolberg 2004). According to *The New York Times*, just prior to the vote for the overall bill was held, NRA executive vice president Wayne LaPierre sent emails to senators insisting that they vote against the bill. Specifically, Senate Democrats were seen reading the email on their BlackBerry pagers.

The email message warned senators that the NRA would use the vote “in our future evaluations and endorsements of candidates” (Stolberg 2004). According to Senator Feinstein, the NRA was to blame for the failed ban renewal: “They had the power to turn around at least 60 votes in the Senate. That’s amazing to me” (Stolberg 2004). Both the House takeover by the Republicans in 1994 and the Senate vote turnaround in 2004 suggests that the gun lobby influenced the failed outcome of the ban renewal.

The expiration of the ban was a great defeat because it further weakened the strength of American federal gun control. Although the ban had large flaws weakening its effect, it did appear to have some impact in decreasing the number of assault weapons involved in crime. In a 2004 study, the Brady Center to Prevent Gun Violence found that during the ban, the percentage of assault weapons in the ATF’s crime gun traces decreased by 66% in comparison to the pre-ban rate (“On Target” 2004, 7). The Center also found that manufacture of copycat weapons did not completely undermine the positive effects of the ban in reducing the frequency of use of assault weapons in crimes. Comparing pre and post ban periods, there was a decline of 45% of assault weapons in crime gun traces, even when including copycat firearms in the assault weapons category (“On Target” 2004, 10). Although the ban had significant faults, the expiration of the ban again allowed the free flow of all types of assault weapons and eliminated the positive effects that the ban did have.

The Brady Act: The Establishment of Background Checks

Yet another high profile shooting in American history led to a movement towards achieving more comprehensive gun control legislation. In the 1981 assassination attempt on President Ronald Reagan, the President, Press Secretary Jim Brady, Secret Service Agent Tim McCarthy, and D.C. policeman Thomas Delahanty were all shot. Brady experienced a serious

head wound that would permanently partially paralyze him. When the shooter, John Hinckley, purchased the gun that he used in the assassination attempt from a Dallas pawnshop, he lied about his address by using an outdated driver's license. If a background check had been required during the purchase, his lie would have been detected ("The Brady Law"). As a result, Brady and his wife, Sarah, embarked on seven year long campaign in 1986 to achieve background check legislation on handgun purchases ("The Brady Law"; Spitzer 2008, 135).

The achievement of the Brady Handgun Prevention Act of 1993 is yet another example of a failure to achieve comprehensive gun control. The Act established a federal background check system, but the legislation adopted did not come without far-reaching weaknesses. The Brady Bill was first introduced into the Senate in early 1987 by gun control proponents and it was defeated in the House in September 1988. The NRA spent between \$1.5 million and \$3 million on a media campaign and grassroots efforts to advocate against the bill. Then in May and June of 1991, the House and the Senate voted in favor of a seven-day waiting period (Spitzer 2008, 136). However, the June 1991 Senate version of the bill required a five day instead of a seven day waiting period. The Brady Bill was also attached to an omnibus crime bill. The bill was voted on by the Senate twice in 1992, but both failed due to filibusters⁷ (Spitzer 2008, 137).

The gun lobby favored an instant check system because it was less burdensome on the purchaser (Winkler 2011, 71). The NRA had shown that it favored an instant check system for handgun buyers since 1988 when the McCollum amendment was introduced, asking the U.S. Attorney General to create such a system. The NRA spent \$2 million on advertisements and letters to Congressional members to support it at the time (Davidson 1993, 198, 250). In 1990

⁷ The Senate can delay or block legislation by using a filibuster, which allows debate on legislation to continue until a two-thirds majority Senate vote is reached to end it ("Powers & Procedure"; "Filibuster")

the NRA had full page advertisements in Washington, D.C. newspapers explaining that a waiting period would prevent honest people from buying handguns, not criminals (Davidson 1993, 250).

Finally in 1993, the Brady Act passed, but as the result of a further compromise. One amendment, of the several sponsored by Republicans, was added to the bill before the final vote that phased out the waiting period after five years (Spitzer 2008, 138). In its final form, the Brady Act required a five day waiting period on handgun purchases (Winkler 2011, 71). In five years the federal government had to create a computerized national database, which federally licensed gun dealers would use to verify that purchasers of all types of firearms did not fall under one of the GCA's categories of prohibited persons (Winkler 2011, 71; Krouse 2012, 23).

In 1998 the Brady Act's five day waiting period on handguns expired and the National Instant Criminal Background Check System (NICS) was established by the FBI. Between 1993 and 1998, 12.7 million background checks on handguns were carried out in which 312,000 applicants were denied. This is the minimum standard background check; states can implement a more stringent background check, such as establishing waiting periods or licenses for possession. The applicant's information is checked in three computerized databases to determine their eligibility: the NICS index, the Interstate Identification Index, and the National Crime Information Center (Krouse 2012, 23).

The FBI manages the background checks for some states, and some states are full or partial points of contact for background checks. States that are points of contact must contact a state agency which then contacts the FBI to do the checks. The NICS process is allowed to take up to three days to provide a decision back to the dealer, but if it does not, the dealer has the discretion to sell the firearm to the applicant. The background check process may not be as quick in point of contact states because the check goes through a state agency, but it may be

more meticulous because state agencies may have better access to records that are not available through the NICS (Krouse 2012, 24). It is evident that state agencies do in fact carry out a better check. Of the 95.1 million checks done between December 1998 and 2009, 54.2 million were completed solely by the FBI and had a denial rate of 1.4%, while 40.9 million checks done by a full or partial contact state had a higher denial rate of 2.1% (Krouse 2012, 26). Given the more elaborate, yet more thorough background check procedure in point of contact states, three days is a very short period of time for the check to be carried out. The dealer's ability to choose to sell a gun after three days allows for the strong possibility that the gun will go to a prohibited person in these situations. The evident flaw in this system is its convoluted nature. There is a clear need for a more efficient process. However, if points of contact states are to continue to exist in the meantime, then it is essential that the waiting period is increased.

The present federal background check system can also have deadly consequences because the NICS lacks comprehensive information. Such consequences were fully realized when the 2007 Virginia Tech mass shooting occurred. Seung-Hui Cho killed 32 people on the Virginia Tech campus with two handguns he had purchased from Wisconsin and Virginia gun dealers after having passed the federal background check done by both dealers. However, two years prior, a state judge found that Cho was a danger to himself due to mental illness, thus charging him to obtain outpatient psychiatric treatment (Jost 2007, 459).

Many states have failed to provide information to the NICS due to a number of different challenges. Overall states face technological and legal challenges ("Sharing Promising" 2012, 9). According to the General Accounting Office (GAO), the Department of Justice and state officials have said that they face technological barriers, such as the need to update old computer systems or integrate existing systems to try to provide mental health records to the NICS ("Sharing

Promising” 2012, 11). Also state privacy laws hinder making records available. For example in Idaho, officials must defer to privacy law, since there is no explicit state-level statutory authority to share mental health records (“Sharing Promising” 2012, 12). In general, states have often declined to provide mental health records because state mental health, patients’ rights, and privacy laws forbid disclosure. The DOJ stated in congressional testimony following the Virginia Tech massacre that about half of the 70 million criminal history records in the Interstate Identification Index were lacking final dispositions. Situations such as these often result in a slowed background check process, so the check is not completed in the three day maximum, thereby allowing a firearm transfer to happen. The DOJ also reported that many states had not forwarded records to the FBI indicating that people were determined to be mentally defective by the court. As of April 30, 2007, the NICS index only contained 168,000 mental defective records from 22 states (Krouse 2012, 28). The number of mental defective records increased from 175,000 to 400,000 after the massacre. The number increased again to 859,000 by May 2010, largely thanks to federal grants given to states to improve their electronic access to records. Nevertheless, about half of states had not provided any records or only some, revealing the great extent of the information gap (Krouse 2012, 29).

The Brady Act also does not require unlicensed individuals to carry out background checks when making a gun sale. Since the NICS only applies to gun sales by federally licensed dealers, the private sale of guns, or the “secondary market” is not subject to background checks (Spitzer 2008, 140). This is a devastating weakness because forty percent of all gun sales in America are private (Cook and Ludwig 1997, 6-7). A study of the impact of the Brady Act revealed that the Act was not associated with a reduction in overall homicide rates or suicide rates (Ludwig and Cook 2000, 588, 590). The study recognized that since private sales compose

such a large part of gun sales, it can largely limit the effectiveness of Brady's regulations on legal gun sales (Ludwig and Cook 2000, 590). Cook and Ludwig believe that the secondary market is the most compelling explanation for the Brady Act's limited impact because its background check had no effect on the private transactions that provide guns to criminals (Cook and Ludwig 2013, 28).

The "gun show loophole" is a component within the secondary market of guns that allows prohibited categories of people to easily obtain guns (Winkler 2011, 73). Gun shows are a popular venue for unlicensed individuals to carry out private gun sales. Gun shows also attract those who know they would not be able to pass a background check due to the volume of private sellers there (Winkler 2011, 74). Private sellers are often willing to sell to "prohibited" categories of people. An investigation by the City of New York of seven gun shows in three states found that 63% of private sellers sold firearms to people who said they probably would not pass a background check ("Gun Show Undercover" 2009, 6). The investigators also found that multiple private sellers were clearly "engaged in a business" because they made statements indicating that they sold numerous firearms regularly and for profit ("Gun Show Undercover" 2009, 24-25). One Columbus, Ohio private seller demonstrated these "business" characteristics: "We keep a nice selection. We got revolvers...We have nice automatics..." and when asked by the investigators if he sold a lot, he replied, "Mmm – hm. A lot" ("Gun Show Undercover" 2009, 24).

Federally licensed dealers selling at gun shows are legally required to carry out the federal background check, but in many cases this law is not obeyed (Winkler 2011, 73). However, at gun shows it is easy for licensed dealers to pretend to be private sellers in order to make quick and easy sales (DeConde 2001, 277). The City of New York investigators found that

94% of licensed dealers illegally sold to people they knew were straw purchasers (“Gun Show Undercover” 2009, 7). A straw purchaser is a person who masquerades as the actual firearm purchaser but is actually obtaining the firearm for another person (Krouse 2012, 18). Straw purchases are illegal under the GCA and it is illegal if the straw purchaser knew that the recipient was a prohibited person (Krouse 2012, 18). It is difficult for the ATF to prosecute corrupt licensed dealers because they can easily conceal their activities in their records by making false entries and choosing not to keep the required information about the purchase. FOIA also lessened the severity of many of these record-keeping violations from felonies to misdemeanors (Braga 2001, 547).

The Brady Act has also been weakened in such a way that straw purchases or other firearm-related crime investigations are nearly impossible for the ATF to complete (“The NRA: A Criminal’s” 2006, 17-18; Krouse 2012, 33). Since 2004, federally licensed dealers are required to destroy approved federal background check records within 24 hours (“The NRA: A Criminal’s” 2006, 18). NRA allies in Congress were able to add a rider provision into an appropriations bill that achieved the 24 hour period (“The NRA: A Criminal’s” 2006, 17). This rider was adopted in 2004 as part of the Tiahrt Amendments, a set of appropriations riders named after Republican Kansas Congressman Todd Tiahrt who introduced them on behalf of the NRA (Stachelberg et al. 2013, 4, 5, 6, 13). Overall the Amendments aimed to prevent the ATF from being able to use and share crime gun trace data with other law enforcement agencies and the public (Stachelberg et al. 2013, 5, 6). This data can link guns to the manufacturer, the original dealer, and the perhaps the owner (Stachelberg et al. 2013, 5). The GAO was opposed to this proposal because it believed keeping records for 90 days was important for the government to properly audit the NICS system for accuracy (“The NRA: A Criminal’s” 2006, 17). The

elimination of the background check records just one day after the purchase seriously inhibits the ATF from investigating any criminal transactions.

The deadly consequences of the secondary market, the gun show loophole, and straw purchasing can be seen most clearly through the 1999 Columbine High School massacre. Eric Harris and Dylan Klebold shot and killed twelve students and one teacher, wounded more than twenty others, and killed themselves at Columbine High School in Littleton, Colorado (Winkler 2011, 73, 74). Since the boys were minors, they could not obtain firearms legally. Klebold's eighteen year old girlfriend agreed to be their straw purchaser and bought the guns they would use in the massacre at a gun show from private sellers (Winkler 2011, 73; Spitzer 2008, 71). Addressing the devastating weaknesses of the secondary market, the gun show loophole, and straw purchasing are absolutely essential in order to make federal gun control legislation more comprehensive.

Part III: Improving the Present Federal Gun Control System

The Need for a Strong Minimum Standard

The main purpose of a federal gun control law is to create a minimum standard that prevents a state with a more permissive system from undermining one with a more restrictive system (Cook and Leitzel 1996, 93). However, the U.S.'s federal gun control system is weak, which allows for the easy flow of guns across borders. Based on the ATF's 2010 crime trace data, thirty-one states with the weakest gun control laws export nine times as many crime guns as the six states with the strongest gun control laws ("Brady Issues 2011 State Scorecard" 2012). After grading state gun laws in 2012 based on regulation strength, the Law Center to Prevent Gun Violence found that twenty-four of the twenty-five states that transfer the most crime guns per capita to other states were given a grade of D or lower. The Center also found that 95.6% of

the states with gun death rates above the national average were give a grade of D or lower. The data indicates that the states with weak gun laws have both more crime gun transfers and gun deaths (“Gun Laws Matter 2012”). The federal minimum standard must be raised to a higher level of regulation to moderate the disparities between state systems. Also, if a stronger minimum standard is achieved, states can only further increase their level of regulation.

Federal gun control cannot effectively moderate the disparities in the country’s gun laws if the enforcement agency does not have the proper resources. If interstate firearm transfers are well regulated, then the movement of guns from high to low regulation states is not easily facilitated. The GCA only allows mail-order firearm shipments to federally licensed dealers, who then must observe state and local laws in conducting firearm sales (Cook and Leitzel 1996, 93). However, effective enforcement by the ATF is in general not common due to structural weaknesses in the laws, as has been discussed in this chapter, and gun advocates’ work over the years to ensure that the agency has not had the proper resources (Spitzer 2008 151-2; Winkler 2011, 74). For example, between 1980 and 1993 the number of federal firearm licenses increased by 59%, but the number of ATF inspectors decreased by 13%, which means that 90% of applicants did not have an inspector interview (Spitzer 2008, 151-2). In 1990, only 2% of all gun dealers were inspected by the ATF (Spitzer 2008. 152). The ATF’s funding has also stagnated over the last decade, having only increased by \$250 million despite that the immense amount of gun dealers continues to grow (Braga and Gagliardi 2013, 150-1). As will be further discussed in the next chapter, improving federal gun control legislation requires also improving the funding and staffing of the ATF.

The Supreme Court Clarifies the Meaning of the Second Amendment

The most recent event in the history of American gun control, having great implications for the future feasibility of strengthening gun control, is the 2008 Supreme Court decision of *District of Columbia v. Heller*. Since 1876, when the Court first ruled on the Second Amendment, it has continued to interpret the right to bear arms as connected to government regulated militias (Spitzer 2008, 29-33). However, throughout the U.S.'s modern history, gun ownership has been treated as an individual right. This case has changed the Court's course of interpretation of the Second Amendment and the constitutionality of future gun control measures.

The Supreme Court determined the constitutionality of Washington, D.C.'s handgun ban and the requirement that all long guns are disassembled or trigger locked when not in use (Winkler 2011, 6). In a 5-4 decision, the Court found the laws to be unconstitutional under the Second Amendment. First, the Court found that the Second Amendment grants an individual right to possess a firearm for self-defense, such as at one's home. In addition, the Second Amendment does not grant an absolute right that cannot be limited. Justice Scalia, who authored the majority opinion, stated that the Second Amendment is not an absolute individual right:

There seems to us no doubt, on the basis of both text and history, that the Second Amendment conferred an individual right to keep and bear arms. Of course the right was not unlimited, just as the First Amendment's right of free speech was not, see, e.g., *United States v. Williams*, 553 U. S. ___ (2008). Thus, we do not read the Second Amendment to protect the right of citizens to carry arms for any sort of confrontation, just as we do not read the First Amendment to protect the right of citizens to speak for any purpose ("Opinion of the Court" 2008, 22).

The Second Amendment permits many types of gun control measures. The Court provides the example that concealed carry prohibitions are constitutional, as well as those on the possession of firearms by felons or the mentally ill. Thirdly, the Court found the handgun ban and the trigger lock requirement unconstitutional. The ban prohibits an entire group of firearms that Americans choose to use for self-defense. The requirement to disassemble or trigger lock a

firearm when not in use is unconstitutional because it hinders a person's ability to use the firearm for self-defense purposes ("Syllabus" 2008). Although the *Heller* decision eliminated the possibility of handgun bans or certain safe keeping requirements, it has confirmed the constitutionality of other forms of gun control that do not unreasonably hinder a regular citizen's ability to use a gun for self-defense.

The Court's decision and opinion were a victory for both sides of the gun debate. The outcome of the *Heller* decision is aligned with the early history of American gun control where there was a balance between the individual right to self-defense and the protection of public safety. The *Heller* decision established that individuals have the right to bear arms for self defense, but this right is not absolute and can be regulated in the name of public safety (Winkler 2011, 294). The "slippery slope" argument used by the gun lobby to oppose any gun control measure is neutralized by the *Heller* decision because it clearly states that civilian disarmament is unconstitutional (Winkler 2011, 295). Two years after *Heller*, the Supreme Court evaluated Chicago's handgun ban in *McDonald v. Chicago*. The Court found that the Fourteenth Amendment incorporates the Second Amendment to the states ("McDonald v. Chicago"). Together the *Heller* and *McDonald* decisions confirmed that the Second Amendment does not provide a barrier to strengthening gun control at the federal, state, or local level, which provides hope for the improvement of America's weak federal gun control legislation.

Conclusion

The United States desperately needs to eliminate the weaknesses in its federal gun control legislation in order to establish a stronger minimum standard. Since gun control laws are made at the state and local levels, having a strong minimum standard in the United States is essential to help mitigate the deadly effects of those states with weak gun laws. While the Australian gun

lobby prevented national legislation from being achieved for many years, federal gun control legislation has already been achieved a number of times in the United States. However, whenever federal legislation was achieved, it was always weak and largely ineffective. It is crucial that compromises made in the future during the legislative process do not hinder the effectiveness of the policy in such a way that significantly endangers public safety. Over the decades, comprehensive gun control legislation was introduced by supportive political leaders and somewhat favored by the public, but passage was not achieved. A lack of widespread political and public will combined with the NRA's influence prevented comprehensive gun control reform from being successful.

The decisions made in *Heller* and *McDonald* have established that many of the gun control measures embodied in Australia's 1996 National Firearms Agreement would be constitutional for the United States to adopt. Australia's National Firearms Agreement has been so successful because it lacks any damaging compromises that hinder its effectiveness. In the next chapter, I will discuss which policies of the NFA are most necessary and feasible to achieve based on American gun control history, the current political atmosphere, and public opinion. I will also discuss the application of the lessons learned from the NFA's achievement process towards the passage of more comprehensive federal legislation in the United States.

Gun-Related Deaths in U.S. Set to Pass Auto Fatalities

The number of people killed by firearms in the U.S. is projected to exceed traffic fatalities for the first time by 2015.

Deaths caused by: — Motor vehicles — Firearms



Notes: Projected data from 2011 to 2015 based on 10-year average growth rate or decline. Firearm fatalities include homicides, suicides and accidents.

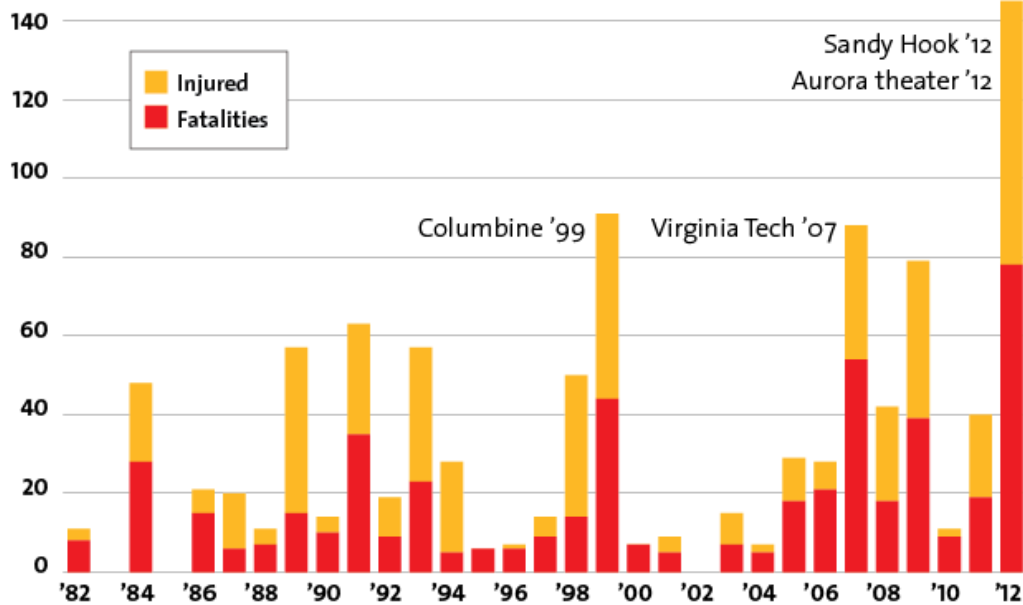
Source: Centers for Disease Control and Prevention data compiled by Bloomberg.

Graphic: Alex Tribou
BGOVgraphics@bloomberg.com

Bloomberg
GOVERNMENT

(Christoff and Kolet 2012).

Annual mass shooting casualties*



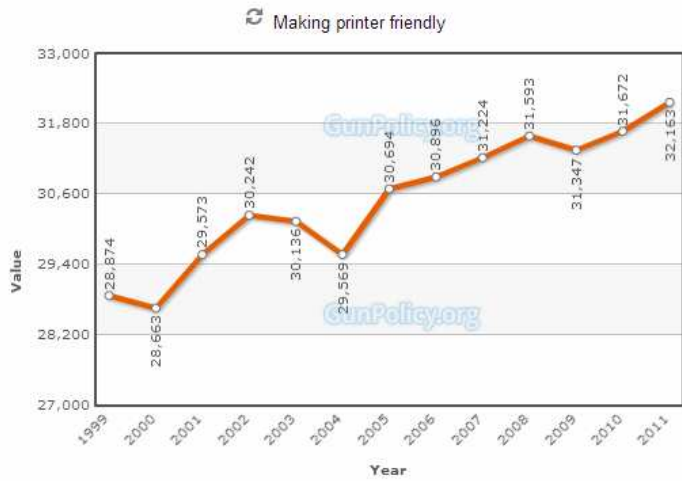
*Many years include multiple cases

Mother Jones

(Follman 2012).

United States

Total Gun Deaths



Citation for this chart

Alpers, Philip and Marcus Wilson. 2013. *Guns in the United States: Facts, Figures and Firearm Law*. Sydney School of Public Health, The University of Sydney. GunPolicy.org, 14 March. Accessed 24 March 2013. at: http://www.gunpolicy.org/firearms/compareyears/194/total_number_of_gun_deaths

United States

Rate of All Gun Deaths per 100,000 People



Citation for this chart

Alpers, Philip and Marcus Wilson. 2013. *Guns in the United States: Facts, Figures and Firearm Law*. Sydney School of Public Health, The University of Sydney. GunPolicy.org, 14 March. Accessed 24 March 2013. at: http://www.gunpolicy.org/firearms/compareyears/194/rate_of_all_gun_deaths_per_100_000_people

Chapter 4

Lessons from the National Firearms Agreement for the Achievement of Comprehensive Gun Control Reform in the United States

The achievement of the National Firearms Agreement (NFA) in Australia can impart some important lessons to the American federal government about political leadership, advocacy, developing public support, and specific policies concerning gun control reform. This chapter considers these lessons and their implications for American federal gun control reform. The chapter also examines how these lessons are already being carried out by the American federal government and the public in response to the recent December 2012 mass shooting. The response of the government and the public to the shooting has been a sign of hope for movement towards the achievement of gun control reform in the near future. The response to the shooting has been somewhat comparable to that of the Australian Government and public after the Port Arthur massacre.

The first part of the chapter presents the important lesson of strong political leadership advocating for national gun control reform. The NFA was achieved so soon after the Port Arthur massacre because Prime Minister Howard demanded it by making national gun control reform a top priority issue. Howard also advocated for gun control reform in terms of public safety, as a neutral way to appeal to all citizens. While Howard did have overwhelming support for reform from the public, recent public opinion research does show that a majority of Americans now support more comprehensive gun control measures. President Barack Obama has begun to show strong leadership, reminiscent of Howard, through his public statements after the shooting and through the administration's release of a gun control proposal.

The second part of the chapter presents the most important policy lessons from the NFA. Due to the existence of the Second Amendment individual right to gun ownership and differences in political systems, the ease and feasibility of achieving the NFA policies as national legislation in the United States is not the same as in Australia. The policies cannot be recreated in the United States, rather they must be a guide for the U.S. The strength and the components of the policies must be adapted to fit American conditions so that they can be more politically feasible. The most valuable NFA policy lessons for the U.S. are an assault weapons ban, the regulation of the secondary firearms market, and national registration and licensing systems. To effectively enforce these policies, as well as existing American federal gun control legislation, the ATF will need improved funding and staff. Also, in order to formulate effective gun control policies based on those of the NFA, the American government must sponsor and fund gun violence research. Ever since the NFA's achievement, the Australian Government has continued to study gun violence and patterns of firearms usage.

The chapter ends by considering the best policymaking approach for achieving federal gun control legislation. Given the difficulty of achieving bold national change in America, small gun control reform victories at the local and state level may provide a pathway towards national-level reform. This approach will help to improve the strength of the country's body of legislation overall, while simultaneously working towards national legislation. The gun control lobby can play an important role in achieving national reform, especially if this policymaking approach is used. Evidence shows that the gun control lobby can effectively influence congressional voting on legislation through its grassroots lobbying efforts. With adequate funding, the gun control lobby has the ability to more successfully overcome the NRA's power.

Part I: Lessons of the NFA for Political Leadership on Gun Control Reform

Strong Political Leadership

The most significant lesson that the achievement of the NFA can impart to the U.S. is the importance of strong political leadership on gun control reform. The NFA would not have successfully passed if immediately after the Port Arthur massacre, Prime Minister John Howard had not taken a staunch public position of achieving national gun control legislation. Even without the support of his party, Howard stood firm in his goal of achieving the NFA. Had a different prime minister had been in office during the Port Arthur massacre who had not been supportive of national gun control legislation, the NFA would not have been achieved in 1996. While the massacre did provide an impetus for change, Howard acted upon and took advantage of the opportunity that the event provided. As described in Chapter 1, numerous gun massacres have occurred in Australia, but none of them led to national change. In the past, American federal gun control legislation has been achieved in the aftermath of shootings, but no political leader has been able to achieve truly comprehensive gun control legislation.

In order to achieve more comprehensive gun control legislation, future American political leaders need to take an unyielding stance. The December 2012 Sandy Hook Elementary school shooting in Newtown, Connecticut, killing 27 people including 18 children, has provided yet again another opportunity to pass more comprehensive gun control legislation. Immediately after the tragedy, President Obama showed a level of gun control reform leadership that has not been seen by any president in recent years. On the day of the shooting, President Obama stated in an address from the White House that the federal government would need to act as a result of the tragedy, but he did not refer to any specific policy changes. Obama wiped away tears and said, “We’re going to have to come together and take meaningful action to prevent more

tragedies like this, regardless of the politics” (O’Sullivan 2012). Three days after the tragedy, Obama asked his Cabinet members, led by Vice President Biden, to prepare a set of proposals to reduce gun violence (Wilson and Rucker 2012).

On January 16, 2013, only a month after the Newtown shooting, Biden’s gun policy task force released its recommendations marking “the most sweeping effort at gun control policy reform in a generation” (Stein and Rudolf 2013). The proposal contains four sections: law enforcement, the availability of dangerous firearms and ammunition, school safety, and mental health. According to one senior administration official, the administration “...tried to be as comprehensive as possible” with the proposal. The proposal relied upon the advice of many different groups (Stein and Rudolf 2013). Biden and Cabinet members met with 229 groups, such as law enforcement agencies, public health officials, gun officials, gun advocacy groups, sportsmen and hunters, religious leaders, Congressmen, mayors, governors, and county officials (“President Obama’s remarks” 2013). Some of the recommendations include requiring background checks for all gun sales, reinstating and strengthening the assault weapons, a ten-round limit of ammunition magazines, eradicating armor-piercing bullets, and increasing criminal penalties for straw purchasers (Stein and Rudolf 2013; “What’s in Obama’s” 2013). Obama stated that he is committed to using all of the powers of his position to see the proposal’s recommendations through: “I intend to use whatever weight this office holds to make them a reality” (Stein and Rudolf 2013). This statement suggests a level of commitment to reform that is comparable to the staunch dedication shown by Prime Minister Howard.

The proposal also included twenty-three executive orders, revealing that Obama is willing to use his executive powers in any way possible to address gun violence (Stein and Rudolf 2013). A way in which federal gun control policy can be improved without needing

Congress's approval is through presidential executive orders. Executive orders can be useful for gun control legislation because it is such a contentious legislative area. An executive order is a directive handed down by the President that has the power of federal law. Congress can try to overturn an executive order by passing a bill against it. The President can veto that bill, which then requires Congress to override the veto. The Supreme Court can also pronounce an executive order unconstitutional ("Presidential Executive Orders"). The most significant executive orders in the proposal address improving the federal background check system. Some of the orders include: requiring federal agencies to make necessary data available, addressing legal barriers that might prevent states from making information available to the background check system, and the publishing of a letter by the ATF explaining to federally licensed gun dealers how to run background checks for private sellers (Ungar 2013).

Although these executive actions are supposed to go into operation immediately, their effect will hinge on whether the necessary action is actually taken. These orders will not have a full effect unless the actions embodied in the executive orders are actually taken or certain legislation is passed. For example, the ATF letter to the federally licensed dealers will only be effective if Congress passes legislation that requires private sellers to sell through federally licensed dealers. Also in regards to the background check system executive orders, action must be followed through for them to be effective. While the executive orders overall address very important issues in the American federal gun control system, they can only be considered rhetoric until they are actually acted upon by the government (MacBradaigh 2013). These executive orders, if fully implemented, will help eliminate some of the weaknesses in American federal gun control. However, the greatest weaknesses in American federal gun control legislation can only be eliminated by passing federal legislation through Congress. The most

important pieces of federal gun control legislation that are needed in the U.S. will be discussed in second part of this chapter.

The gun control proposal is a great achievement in and of itself, but it is only a proposal. It is evident that the Office of the President fully supports the gun policy reform, but the administration's full support behind the proposal will not be enough to make it a reality. Converting the policy recommendations into real legislation will be the difficult task. Although the executive orders are a start, the administration needs the citizenry's support to bring about the political will to push the proposed legislation through Congress.

Framing Gun Control Reform as an Issue of Public Safety

A key aspect of Prime Minister Howard's political leadership was his advocacy of gun control reform in terms of public safety. When Howard spoke of gun control reform after the Port Arthur massacre, he referred to the proposals as moderate ones and that passing the NFA would ensure a safer future for Australians. Howard made gun control reform nonpartisan because he framed it as an issue that affected the safety of all Australians. President Obama must do the same since gun control is such a deeply partisan and regionally based issue. Framing gun control reform in terms of public safety is the best way to obtain broad public support for more comprehensive measures.

Since the Newtown shooting, it is clear that President Obama has sought to frame gun control reform as rational measures meant to protect public safety. On the day of the shooting, Obama referred to the need "to take meaningful action...regardless of the politics" which implied that the partisan nature of gun control legislation must be ignored (Stein 2013). Also two days before the gun control proposal was unveiled, Obama stated in the last press conference of his term that he wanted proposals that were rational and did not conflict with the Second

Amendment: ““My starting point is to focus on what makes sense, what works, what should we be doing to make sure that our children are safe and that we’re reducing the incidence of gun violence. And I think we can do that in a sensible way that comports with the Second Amendment”” (Stein 2013). In this statement, Obama suggests that gun control reform legislation will be moderate by aiming to protect public safety, but balanced against the right of gun ownership.

When the gun control proposal was unveiled, President Obama continued to speak of gun control reform as rational, having the support of the American majority, and meant to protect public safety. Obama explained that he supported the Second Amendment and respected the country’s strong tradition of gun ownership. However, he proposed reaching a balance between gun ownership and “commonsense measures” that “have the support of the majority of the American people” (“President Obama’s remarks” 2013). He stated, “I also believe most gun owners agree that we can respect the Second Amendment while keeping an irresponsible, law-breaking few from inflicting harm on a massive scale” (“President Obama’s remarks” 2013). Obama also specifically referred to the politicians and special interest lobbyists who will aim to block the commonsense measures. Obama then called for the support of the public, who have backed these pro gun advocates, to change their views in the interest of public safety: “The only way we will be able to change is if their audience, their constituents, their membership says this time must be different, that this time we must do something to protect our communities and our kids (“President Obama’s remarks” 2013). As Congress formulates gun control proposals, it will be necessary for Obama to continually advocate publicly for reaching a balance between gun control measures and the Second Amendment in the name of public safety.

It is challenging to use the public safety argument to advocate for gun control reform. According to Goss, gun control can be both a social regulation⁸ and a policy that furthers a public good,⁹ being public safety. Any type of social regulation is difficult to advocate for because of America's strong desire for individual liberty and a limited federal government (Goss 2006, 27). Viewing gun control as a comprehensive social regulation that provides a public good, rather than a regulation narrowly aimed at criminals, is difficult for many gun owners to accept. People's perception of the Second Amendment being absolute and Americans' strong individualism undermine the public safety argument. However, social movements in American history have previously successfully used public safety to frame the issue, such as the Prohibition movement and the anti-tobacco movement (Goss 2006, 27-8).

As described in the previous chapter, modern federal gun control legislation has lacked comprehensiveness because its goal has consistently focused on criminal behavior. Because gun control has been framed as crime control, people do not perceive gun violence as an issue of public safety. Goss claims that many people do not think an attack by an armed stranger will happen to them. If citizens do not understand the threat to be imminent and directly affecting them as individuals, then they will be less likely to support a preventative measure affecting all of society. Framing gun control in terms of crime makes it seem that only criminals are capable of gun violence. Americans must come to understand that anyone, including people close to them, can use a gun in a dangerous manner (Goss 2006, 109). The Newtown shooting has helped further emphasize to Americans that an unsuspecting neighbor can easily wreak havoc with a gun within their communities. More specifically it has emphasized that community

⁸ A social regulation controls individual behavior and community relations (Goss 2006, 27).

⁹ Public goods are goods that blindly benefit everyone in society (Goss 2006, 27).

spaces that are presumed to be the safest, such as an elementary school, are not exempt from gun violence when gun control laws are weak.

Gun control reform must be framed as a solution to eliminate the shooting deaths which have come as a price of weak laws. American gun control history has shown that even in the face of frequent shootings, protecting gun ownership has continued to outweigh achieving comprehensive gun control reform. However, a right to gun ownership and comprehensive gun control are not mutually exclusive; gun ownership can be protected while gun deaths can be avoided. The NFA's passage showed that Australians were no longer willing to accept shooting massacres as a "blood price" that a gun-owning community must pay as the result of having weak laws (Chapman 2001, 1228). Accepting the "blood price" can no longer be an accepted norm in American society. President Obama touched on the "blood price" of America's weak laws when he referenced the difficulty of achieving universal background checks and bans on assault weapons and high-capacity magazines. If these policies had been achieved in the past, he said, "More of our fellow Americans might still be alive, celebrating birthdays and anniversaries and graduation" ("President Obama's remarks" 2013). Obama ended his speech implying that gun control must be a social regulation to prevent future deaths: "We don't live in isolation. We live in a society, a government for and by the people. We are responsible for each other... Lets do the right thing...for this country we love so much" ("President Obama's remarks" 2013). President Obama must continue to frame gun control reform as a public safety issue that affects all Americans, in the hopes of increasing the public's support for more comprehensive measures.

Increasing Public Support for Gun Control Reform

An important contributing factor to the successful passage of the NFA was the widespread public support of the reform. The NFA's passage provides a lesson showing that

public support is needed to pass comprehensive gun control legislation. While Prime Minister John Howard's political leadership was an indispensable component of the NFA's passage, the majority of the Australian public was behind Howard's push for the NFA. Although the majority of the Australian public was ready for gun control reform, Howard had to publicly call on gun owners to support the reform. Upon the release of the proposal, Obama called for support from citizens, especially in strong gun ownership areas: "I will put everything I've got into this and so will Joe [Biden]. But I tell you, the way we can change is if the American people demand it. We are going to need voices in those areas and congressional districts where the tradition of gun ownership is strong. It can't just be the usual suspects. This will not happen unless the American people demand it" (Stein and Rudolf 2013). Through these statements, President Obama has begun to advocate for reform to gun owners and the public as Prime Minister Howard did in Australia. This type of public advocacy by Obama must continue as the push for federal gun control reform goes forward.

An important underlying reason explaining Prime Minister Howard's success in raising public support for gun control reform is Australia's lack of a legal right to gun ownership. During Australia's gun control history, some gun lobbyists and pro-gun groups had advocated for a right to gun ownership, such as the One Nation Party discussed in Chapter 2. However, these claims have never gained a significant amount of public support and were not taken very seriously since there is no legal right to gun ownership in the Australian Constitution. Public support for gun control reform is inherently more difficult to achieve in the U.S. because Americans are able to claim a Second Amendment right to gun ownership and political leaders are forced to take their claims seriously. As discussed in the previous chapter, the *Heller* decision has established that Americans cannot claim an absolute right to gun ownership and use.

However, overcoming some Americans' resolute belief in the absolute nature of the Second Amendment is extremely difficult. In order to gain overwhelming public support for comprehensive gun control reform, Americans must be convinced that the Second Amendment does not prevent the establishment of stricter gun control legislation. Both public advocacy of gun control reform framed as an issue of public safety and advocacy of the effect of the *Heller* decision on the meaning of the Second Amendment are needed. Obama's statements indicate that he is beginning to carry out this type of advocacy.

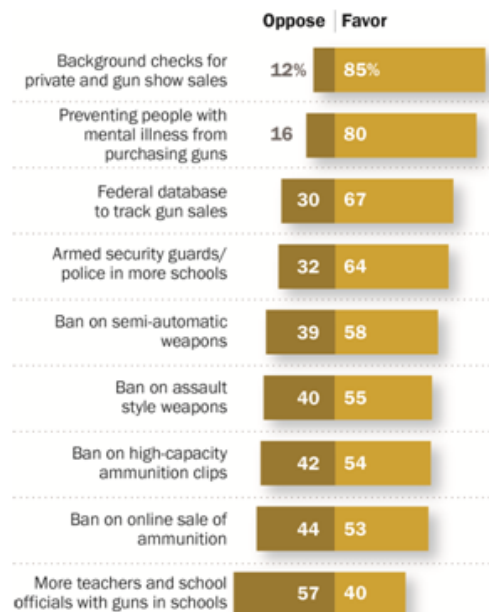
The results of public opinion research since the Newtown shooting are hopeful indicators that American public support for gun control reform is growing. There has been a slight shift in public opinion towards controlling gun ownership and addressing gun violence. Pew Research Center's poll from February 13-18, 2013 found that 50% of Americans believe controlling gun ownership is a more important priority, while 46% believe the right of Americans to own guns is more important. The support for gun control has increased since a poll taken in April 2012 found support for controlling gun ownership to be 45% and support for protecting gun ownership to be 49%.

Although the shift in public opinion on gun ownership has been small, the majority of Americans support important gun policy reform proposals. The February 13-18, 2013 Pew poll found that the majority of Americans support a ban on assault-style weapons and a ban on high capacity ammunition clips. However, the poll found great support for background checks on private and gun show sales, 83% favoring them and only 15% opposing them. A January 9-13, 2013 Pew poll also found that public opinion supports a federal database to track gun sales, as well as a ban on buying ammunition online. Another gun control policy with great support is

preventing people with mental illnesses from purchasing guns, favored by 80% and only opposed by 16%.

According to Pew, just over half of the public supports the Obama gun control proposals, composed of 39% who believe they are “about right” and 13% do not think “they go far enough.” Thirty-one percent of the public thinks the proposals “go too far” (“Gun Control: Key Data”). It is clear that many of the necessary gun control policies do not have overwhelming public support. However, the fact that the public is in support of the most urgent and necessary components of gun control reform overall provides hope for Obama’s gun control proposal and the future increase of support. This evidence of majority support further emphasizes the importance and urgency for Obama to take a leadership position on gun control reform advocacy. Continuous advocacy is key to overcome the claims of those who interpret the Second Amendment in absolute terms.

Broad Public Support for Many Gun Policy Proposals



PEW RESEARCH CENTER Jan. 9-13, 2013.

Broad Support for Making Private Gun Sales Subject to Background Checks

	Favor %	Oppose %	DK %
Background checks for private & gun show sales	83	15	2=100
Ban on assault-style weapons	56	41	3=100
Ban on high-capacity ammunition clips	53	44	3=100

PEW RESEARCH CENTER/USA TODAY Feb. 13-18, 2013. Q20. Figures may not add to 100% because of rounding.

Part II: The Application and the Achievement of NFA Policies in the United States

Parliamentary vs. Presidential Political Systems: Implications for National Gun Control Legislation

In order to consider the feasibility of achieving some of the policies embodied in Australia's National Firearms Agreement (NFA), it is important to understand the differences in political systems between Australia and the United States. In many ways passing legislation in Australia is easier. The United States has a presidential system, while Australia has a parliamentary system. Policymaking in the American system is often characterized by gridlock, while the parliamentary system is not (Black 2012). In the American system, the president is often from a different party than the one that controls Congress. The president is independently elected, while in a parliamentary system, the prime minister is chosen by a vote of the party or coalition that forms the government (Black 2012; "Parliament v. Congress").

In a parliamentary system, the party which has the majority has both legislative and executive control. The majority party has the votes and the executive authority to pass the legislation that it desires. However, in the American system, no party has enough votes to pass bills without some degree of cooperation from the other party. The president also has the power to veto bills (Black 2012). Legislation not only has to pass Congress, it also has to be approved by the president ("Comparing The American"). In Australia, once the legislation passes both houses of Parliament, the House of Representatives and the Senate, it is given to the Governor-General¹⁰ who automatically assents to it. The Governor-General's assent marks the law's passage ("Comparing The American"; "The Senate"). The Australian state legislative process mirrors that of the federal process; however, the Governor assents to legislation. Also,

¹⁰ The Governor-General, appointed by the Queen of England, acts as the Queen's representative in Australia. The Governor-General has certain constitutional and statutory powers. He or she is supposed to protect the Constitution and oversee the work of the Commonwealth Parliament and Government ("Governor-General's Role").

Queensland has a unicameral legislature, while the others are bicameral (“Government of Australia”).

However, the process of achieving national gun control laws in Australia requires a special type of legislative process. Since the Commonwealth does not have the power to make federal gun control laws in the Constitution, as discussed in Chapter 1, federal legislation has to be achieved through a national agreement. In the time after the Port Arthur Massacre leading up to the achievement of the NFA, the Australian government considered amending the Constitution to transfer the states’ gun lawmaking powers to the Commonwealth. Prime Minister Howard was thus able to threaten a referendum because after passing both houses of Parliament, the majority of the electorate in a majority of the states must approve any amendment to the Constitution (Norberry et al. 1996). This characteristic of Australia’s political system was vital to the NFA’s passage. Threatening the referendum was a saving grace for the NFA. If the referendum had not been an option, the NFA would have likely failed because Queensland, South Australia, Western Australia, and the Northern Territory lobbied to weaken the NFA’s provisions immediately after the agreement (Chapman 1998, 29). Although these aspects of Australia’s political system helped create a situation which increased the NFA’s feasibility, Prime Minister Howard’s strong political leadership was indispensable to convincing the unsupportive states to join the Agreement.

In the United States, the normal legislative process must take place to pass federal gun control legislation since the power to control guns lies with both the federal government and the states. This process is difficult because, as described above, it is usually stricken by gridlock if a majority of the two parties in the Congressional houses do not agree on the legislation. As discussed in the previous chapter, the passage of federal gun control legislation requires

cooperation across party lines. However, passage has been difficult because there has been a considerable amount of pro-gun support in the Democratic Party and a small amount of support for gun control reform in the Republican Party. In addition, the Senate has certain powers that can hinder the passage of legislation (“Powers & Procedure”). For example, the Senate can delay or block legislation by using a filibuster, which allows debate on legislation to continue until a two-thirds majority Senate vote is reached to end it (“Powers & Procedure”; “Filibuster”). Despite the obstacles that the American political system has to hinder legislation, the power of political leadership cannot be dismissed.

Assault Weapons Ban

The United States desperately needs to reinstate an assault weapons ban to help avoid future mass shootings. More than half of the perpetrators of 62 mass shootings in the last thirty years have possessed assault weapons (Follman et al. 2013). Since 2007, there have been 11 mass shootings where the perpetrator used assault weapons or other type of semi-automatic gun with a magazine larger than 10 rounds to wound or kill eight or more people (Koper 2013, 157-8). The first policy of the NFA was the ban on all self-loading and pump-action rifles and shotguns (Chapman 1998, 2). This provision provides a guide for the U.S. in composing a strengthened assault weapons ban. The NFA ban is more comprehensive than the U.S.’s former 1994 assault weapons ban. Since the assault weapons ban only prohibited 19 types of weapons, in which assault weapons were defined by their cosmetic appearance, many dangerous guns that are functionally the same as assault weapons were exempted (Spitzer 2008, 133; Winkler 2011, 38). The NFA policy does not have such a weakness because the ban covers all semi-automatic rifles and shotguns, whether they are military-style or not. Visual characteristics do not define the type of prohibited guns, but rather it is the fact that they are self-loading.

The feasibility of achieving an assault weapons ban as comprehensive as the NFA's would be near impossible. The assault weapons ban was difficult to pass initially and the attempt to extend it in 2004 failed (Winkler 2011, 39). Nonetheless, reinstating an assault weapons ban is better than having no ban at all. A feasible goal for reinstating an assault weapons ban would be to include more firearms on the prohibited list of firearms. The definition of assault weapons, which implicates the type of guns included in the ban, must change. Rather than defining guns based on their cosmetic aspects, guns should be banned based on their degree of lethality, as was achieved in the NFA.

There has already been action towards reinstating an assault weapons ban, which seeks to be more comprehensive than the 1994 ban. Obama's January 2013 gun control proposal includes reinstating and strengthening the assault weapons ban and limiting ammunition magazines to 10 rounds ("What's in Obama's" 2013). California Senator Dianne Feinstein has also introduced a new assault weapons ban bill. The new legislation seeks to improve the former weak definition of assault weapons by distinguishing the firearms by their lethality. The legislation focuses on banning firearms that allow the shooter to fire a large number of bullets without needing to reload. This definition is a better way to distinguish between sporting/self-defense firearms and military-style firearms that are meant to kill many (Follman et al. 2013). For example, the bill changes the two-characteristic test to a one-characteristic test¹¹ ("Assault Weapons Ban of 2013"). It also removes certain characteristics from the characteristic test, such as the easy-to-remove bayonet mounts and flash suppressors, which made the original ban easy to evade ("Assault Weapons Ban of 2013"). It also seeks to prevent gun manufacturers from evading the assault weapons categorization by making superficial modifications to the firearms

¹¹ The 1994 ban had a characteristics test provision which stated that, in general, semi-automatic firearms were prohibited if they had two or more military-style features (Koper 2013, 159).

(Follman et al. 2013). For example, the legislation bans aftermarket modifications and workarounds. Overall the bill bans 157 specific firearms, a large increase from only 19 specific models in the 1994 ban (“Assault Weapons Ban of 2013”). The NFA banned the importation of self-loading firearms (Chapman 1998, 2). The proposed bill bans the import of assault weapons, as well as large-capacity magazines, which the 1994 ban did not do (“Assault Weapons Ban of 2013”).

The NFA’s second policy and accompaniment to the firearms ban was the national buyback. The buyback was very important because it sought to eliminate all the prohibited guns already in people’s possession. As discussed in Chapter 2, it appears that the buyback contributed to the overall success of the NFA. Through the NFA buyback, the Australian Government was able to swiftly remove over 700,000 guns from the population in one year (Chapman, Alpers et al. 2006, 371; Chapman 1998, 2). A weakness of both the 1994 and proposed 2013 assault weapons ban is that they do not ban the possession of already existing assault weapons, but rather ban their future manufacturing. Since the policy will not regulate the existing stock of assault weapons or magazines, it will take many years before the policy causes significant reductions in crimes involving banned weapons and/or magazines (Koper 2013, 168). Nonetheless, this should not prevent the passage of a more comprehensive assault weapons ban. Over time the existing assault weapons and magazines would become more expensive and difficult to find and repair, so the stock would naturally decrease (Eisgrau 2013).

However, a comparable national buyback would not be feasible in the United States, although it would help quicken the effects of an assault weapons ban. A mandatory buyback would not be able to pass Congress or have the support of the public. Firstly, members of Congress, the gun lobby, and citizens would challenge a mandatory buyback using the Second

Amendment. Pro-gun individuals would argue that the forceful removal of their guns directly conflicts with their legal right to gun ownership. Since the gun lobby resists every piece of gun control legislation because it believes that each is a step towards the government's confiscation of all guns, a mandatory buyback would be viewed as a large step forward. The NFA buyback was a large national endeavor that cost the Australian Government \$461 million to administer and compensate gun owners (Phillips et al. 2007). Given the United States' larger size, an enormous amount of funding would be necessary for a comparable buyback. Funding for the NFA buyback also required an increase in the country's Medicare tax (Chapman 1998, 2). Not only would a mandatory buyback receive pushback from Congress and the American people on Second Amendment grounds, they would not favor another tax-increase to implement it. Scholars agree that the NFA buyback would not be as easily replicable in the U.S. (Hemenway 2011, 3; Lee and Suardi 2010, 66; Leigh and O'Neill 2010, 2-3). Although a national mandatory buyback scheme is not a possibility, other smaller-scale, voluntary publicly and privately sponsored buyback programs still should be carried out in order to remove as many assault weapons as possible from the population (Eisgrau 2013).

Regulation of the Secondary Firearms Market

Another important NFA policy lesson for the United States is the requirement that all private gun sales must go through licensed firearms dealers. As discussed in the previous chapter, forty percent of gun sales in the United States are private sales (Cook and Ludwig 1997, 6-7). Since such a large proportion of gun sales are private, many gun sales occur without background checks, which largely increase the likelihood that guns will come into the hands of criminals and prohibited categories of people. There is evidence to show that requiring a

background check for all firearm sales is both feasible and effective in preventing guns from going to prohibited persons.

A 2007 study compared gun shows in California, a state which requires background check on all gun sales and separate regulations for gun shows, with four states¹² that do not have such policies. At the observed California gun shows, private party sales occurred using the assistance of a licensed dealer as the transfer agent. The study did not observe any direct private party sales occur between attendees at the California gun shows (Wintemute 2013, 102). The study suggests that if regulations are put in place that require private sales to go through licensed dealers, fewer illegal sales will occur, such as at gun shows. Illegal straw man purchases were also six times as common in the comparison states than in California (Wintemute 2013, 103). Including California, eleven states already have a comprehensive background check policy, such as New York and Pennsylvania, revealing that establishing such a regulation is feasible (Wintemute 2013, 105). This policy must be expanded nationally through federal legislation.

Obama's 2013 gun control proposal recognizes the importance of regulating the secondary market. A proposed congressional action is to require criminal background checks on all gun sales, including private sales. The proposal also includes increasing the criminal penalties for straw purchasers ("What's in Obama's" 2013). Including the regulation of private sales in the gun control proposal is an important first step, but actually achieving federal legislation mandating these policies will prove to be difficult. However, achieving such a piece of legislation is absolutely essential to prevent guns from going to prohibited categories of people, which happens due to the large percentage of private sales that occur in the U.S.

The current difficulty of passing universal background checks legislation was made clear on April 17, 2013 when the Manchin-Toomey amendment was defeated in the Senate. This bill

¹² Arizona, Nevada, Texas, and Florida

sought to require background checks on all commercial sales of firearms. Fifty-four senators voted in support of the bill, while forty-six voted against. The bill needed sixty votes. The bill was not supported by four Democrats: Senators Max Baucus of Montana, Mark Begich of Alaska, Heidi Heitkamp of North Dakota, and Mark Pryor of Arkansas. Each senator comes from a rural state with strong gun ownership. Except for Heitkamp, all also have impending difficult reelections in 2014. It is clear that these senators voted against the bill to appeal to their constituencies. The close vote on this bill does reveal that there is significant political support for universal background checks. However, the support for the legislation is very much divided on party lines and there is not much bipartisan support. Only four Republicans voted for the bill: Susan Collins of Maine, Mark Kirk of Illinois, John McCain of Arizona, and Pat Toomey of Pennsylvania (Blake 2013). As discussed earlier in this chapter, the American public overwhelmingly supports universal background checks legislation. However, this amendment, widely desired by the public, was defeated due to only a few senators' votes. The bill's defeat reveals that presently universal background check legislation is not politically possible. But, as will be discussed later in this chapter, the gun control lobby has recently been increasingly active at the grassroots level due to increased public and financial support. The bill's close vote and the gun control lobby's increased activity provide hope that those few necessary votes can be obtained and the legislation will be achieved in the future.

National Registration and Licensing Systems

An area of gun control legislation that is not addressed in Obama's gun control proposal is a national firearms registration and licensing system. Throughout American gun control history, attempts at achieving various federal licensing and registration systems have been unsuccessful. The feasibility of achieving a national licensing and registration scheme in the U.S.

is extremely weak, but if achieved would make federal gun control legislation much more comprehensive. As discussed in Chapter 1, registration and licensing systems were long debated in Australia. Australia has always had strong regulations of handguns, but the regulation of long guns was long resisted. The NFA finally applied the licensing and registration systems that always existed for handguns to long guns.

The NFA achieved both a comprehensive registration and licensing system for all firearms. The NFA states that the registration of all firearms will be kept by the National Computerized Exchange of Police Information (NEPI) (Chapman 1998, 2). However, gun registration is now handled by CrimTrac. CrimTrac, established in 2000, was meant to replace NEPI, which shares information between each of the nine policing agencies of Australia (“The Implementation”; Molloy 2012). In Australia, each jurisdiction has its own firearms registry within the jurisdiction’s police department (“Firearms”). The NFA also requires that a person must first obtain a license to purchase a firearm. The license applicant can be refused if the person has been convicted of a violent crime, subject to a domestic violence restraining order in the past five years, or has a mental or physical condition that makes them unsuitable to possess a firearm (Chapman 1998, 3; “Legislative reforms” 2012). The licensing process also involves completing an accredited gun safety course. In addition, a licensed gun owner must acquire a permit to purchase every time he or she wishes to purchase a gun. The permit application involves a 28 day waiting period so that the applicant’s background check can be thoroughly completed (Chapman 1998, 3).

The Port Arthur massacre revealed the dangers of not having licensing and registration systems. The perpetrator of the massacre, Martin Bryant, was able to obtain his guns from a licensed gun dealer despite not having a license. Although the state of Tasmania had a licensing

system, it did not have a long-arm registration system. Without a registration system, it was easy for the dealer to sell guns to Bryant because there would not be a record of the purchaser (Chapman 1998, 83, 84). During the 1980s in Australia, scholars advocated the benefits of a universal registration system, licensing system, and required firearms safety course, as discussed in Chapter 1. Completion of a firearms safety course, including both theoretical and practical components, is an important part of the licensing process. Like a driving test, it helps ensure that the individual knows how to properly handle the firearm.

Registration and licensing systems can provide many benefits. Registration allows law enforcement to track a gun's movement owner to owner, which in turn allows authorities to see if people are amassing arsenals, and provides a way for authorities to connect a gun used in a crime to its owner. Registration and licensing systems are not fully effective unless both are in place. Licensing provides a major obstacle for criminals and prohibited categories of people from obtaining a gun. However, a licensing system does not provide a strong impediment if there is not an accompanying registration procedure. As evidenced by how Martin Bryant obtained the guns used in the Port Arthur massacre, dealers do not have an incentive to check for a purchaser's license if there will be no record of the sale. When there is no gun registration, there is no paper trail for law enforcement to follow (Chapman 1998, 85). According to a January 2013 Pew poll, public opinion significantly supports a federal database to track gun sales with 67% in favor and 30% in opposition ("Gun Control: Key Data").

Presently in the United States, no comprehensive national firearms database exists. There is no database which has information about ownership, the number sold annually, or how many exist (Associated Press 2013). The 1986 Firearm Owners' Protection Act, which was discussed in the previous chapter, contains specific language that prohibits the creation of a registry of

firearms, firearms owners, or firearms transactions (“18 USC § 926”). The lack of a national firearms database makes the process very difficult and convoluted for the ATF to trace a gun’s history. The ATF is only permitted to trace a gun’s history when it was used in a crime. Gun dealers are also required to keep a record of the federal forms showing who bought guns as well as a log of their sales, which they must share with the ATF. The ATF sends all the information it has to its National Tracing Center, where officials call the manufacturer of the gun to obtain the wholesaler. This call may then lead to contacting the second distributor to find the dealer who sold the weapon. However, this is as far as the firearms paper trail can go, since the law has clearly prohibited the government from accumulating information about gun owners (Associated Press 2013).

The efficiency of the Tracing Center’s activities is also hindered by poor technology. The Tracing Center carries out traces using an unsophisticated computer system. The records are stored as digital pictures that can only be searched manually one image at a time. A routine trace can take about five days and may involve going through paperwork by hand. The ATF must also sort through many records of dealers that have gone out of business in order to find the relevant information that it needs. According to Charles J. Houser, who runs the ATF’s National Tracing Center, “We are...prohibited from amassing the records of active dealers. It means that if a dealer is in business he maintains his records” (Associated Press 2013). Despite the tracing obstacles that the ATF faces, Houser says that in 2012, the Center traced 344,000 guns for 6,000 different law enforcement agencies at a success rate of 90%, given that it had enough information. Houser says every successful trace gives at least one lead in a criminal case (Associated Press 2013). This information suggests that if the ATF had access to a registration system, supported by strong technology, it could significantly help the ATF find the information

needed to solve criminal investigations. A national registration system would allow the ATF to be more efficient by simplifying the tracing process.

A thorough background check accompanied by a waiting period must be a component of the licensing process. As discussed in the previous chapter, the process involved in doing a federal background check is complicated. Therefore, the waiting period of three days does not provide enough time for a sufficiently thorough background check. The NFA's waiting period of four weeks provides ample time for a background check to be done. Currently Congress would oppose such a long waiting period. Nonetheless, the United States should look to Australia's waiting period length as a lesson that a longer waiting period is necessary. Increasing the U.S.'s federal background check waiting period to five days or week may be a feasible possibility. Before the instant federal background check was established in 1998 as part of the Brady Act, there was a five day waiting period on handgun purchases (Winkler 2011, 71). Since a longer waiting period has existed once before, there is hope that it could be achieved again. However, the previous five day waiting period applied only to handguns, but a future waiting period must apply to all firearms.

Although a universal registration and licensing system is ultimately necessary, it will be extremely difficult to achieve. Pushing for registration and licensing systems for handguns first may be more feasible. In Australia, handguns have always been strictly regulated because they have been considered to be more likely to be used in criminal activity than long guns. Although handguns are largely viewed as a gun to be used for self-defense in the United States, they are also associated with criminal activity. Handgun licensing systems have shown to be feasible because they already exist in some states. Presently nine states have a licensing system for handgun purchases. Of these nine states, five of them require the applicants to apply with a law

enforcement agency and be photographed and fingerprinted. Three of the states also allow the agencies to use discretion to deny the license application in the interest of public safety (Webster et al. 2013, 111).

Permit to purchase regulations have also shown to have positive effects in the U.S. Missouri's permit to purchase law was repealed in 2007. The law required handgun purchasers to apply for a permit through the local county sheriff, as well as it required a permit on all handgun sales by both licensed and private sellers. A study found that the law had helped the prevention of gun diversion to criminals. When the law was in existence, the proportion of crime guns that originated in Missouri was an average of 55.6%, which increased to 70.8% in 2011 (Webster et al. 2013, 114).

In another study of state gun sales laws in the 48 contiguous states found that discretionary permit to purchase gun laws were the strongest deterrent to interstate gun trafficking (Webster et al. 2013, 117). The study concluded that discretionary permit procedures like in-depth examinations by law enforcement, longer waiting times, high fees, and strict standards may decrease gun ownership and the opportunities for criminals to find people willing to sell them guns or who would be good gun theft targets. Statistically controlling for gun ownership levels, geography, and other gun laws, the study also found a strong negative relationship between nondiscretionary permit to purchase laws¹³ and the export of guns to criminals in other states. This finding again suggests that permit to purchase laws discourage gun trafficking (Webster et al. 2013, 118). Overall permit to purchase laws are both feasible and effective, so the achievement of them on a federal level would be a positive way in which to make federal gun control legislation more comprehensive.

¹³ Nondiscretionary permit to purchase laws require a permit to buy a firearm but do not oblige the applicant to be fingerprinted by agencies (Webster et al. 2013, 115).

Increased ATF Funding and Staff

In order for an assault weapons ban, secondary market regulation, and national licensing and registration systems to be effective, the ATF must be able to enforce them. The effectiveness of all present and future federal gun regulations rides heavily on the efficiency of the ATF. Without improved funding and staffing, the ATF cannot successfully enforce federal gun control regulations. As discussed in the previous chapter, as well as earlier in this chapter, laws passed by Congress have purposely weakened the ATF's power and ability to enforce gun control regulations. The ATF has also been weakened by perpetual underfunding and understaffing. A lack of funds and staff has hindered its enforcement activities, such as inspecting licensed dealers and investigating criminal firearms trafficking (Braga and Gagliardi 2013, 147, 150-1). Although there are 130,000 federally licensed gun dealers in the United States, the ATF's budget has not adequately risen to meet the increasing number of gun dealers. The ATF's budget has only risen to \$1.1 billion in FY 2012 from \$850 million in FY 2002 (Braga and Gagliardi 2013, 150-1). The ATF only has about 2,500 special agents and 800 inspectors. This amount of staff is not adequate to accomplish all activities the ATF is responsible for. The current ATF is only about the same size of a city police department, like the Boston Police Department which has 2,250 officers. Since the ATF is extremely understaffed, it is only able to inspect licensed firearm dealers every ten years (Braga and Gagliardi 2013, 151). The President previously had the power to choose a director of the ATF without needing congressional approval, but the law was changed under pressure from the gun lobby in 2003 (Schmidt 2013; Murphy 2013). Since then any nomination must be confirmed by the Senate (Murphy 2013). Thus the ATF has been lacking leadership since the agency's last director resigned in 2004 (Braga and Gagliardi 2013, 151).

Obama's 2013 gun control proposal addresses some of the weaknesses of ATF that have hindered federal gun control enforcement. One of Obama's executive actions seeks to address the ATF's lack of leadership, by nominating an ATF director. Since Congress must confirm any nomination for ATF director, one of the proposed congressional actions is to confirm Obama's nominee. Some of the other components of the proposal also implicate the actions of the ATF. Another proposed congressional action seeks to eliminate a restriction on the ATF that requires the agency to allow the import of weapons more than fifty years old. An executive action demands that a rule be proposed that allows law enforcement authorities to run a background check on a person before returning a seized gun. Another executive order states that Obama is going to issue a presidential memorandum requiring federal law enforcement to trace guns recovered in criminal investigations ("What's in Obama's" 2013). The President has also asked the Department of Justice to release a report that has analyzed information on lost and stolen guns, and make it widely available to law enforcement (MacBradaigh 2013). In addition, the proposal makes a general demand to maximize enforcement efforts to prevent gun violence and prosecute crime ("What's in Obama's" 2013).

Although the gun control proposal addresses the important issue of ATF leadership and specifies the type of activities that law enforcement should be engaging in, it does not propose legislation to increase ATF funding. In order for the ATF to do its duties, as well as to comply with the directions in the proposal, the agency must obtain the necessary funding. However, the government's treatment of the ATF in recent history has shown that Congress is opposed to strengthening the ATF in the name of protecting gun owners' interests.

Government-Funded Gun Violence Research

Another lesson from the NFA's implementation is the importance of devoting government funding to gun violence research. As described in the second chapter, to monitor the effect of the NFA's implementation, the Australian Government commissioned the Australian Institute of Criminology (AIC) (Scanlon and Handmer 2001, 1999). Established in 1973, the AIC is the country's national research center on crime and justice, which aims to promote justice and reduce crime through doing evidence-based research to influence policy and practice ("About the AIC"). Upon commission by the Government, the AIC established the National Firearms Monitoring Program (NFMP) to study the short term and long term effects of the NFA (Mouzos 1999, 2). The NFMP is still in existence and continues to publish its findings yearly. Mainly the NFMP focuses on collecting information about firearm offense patterns, the numbers and types of registered firearms in the jurisdictions, the number of people licensed to use firearms, and deaths and injuries using firearms ("National firearms"). The AIC also conducts other monitoring programs that address gun usage and gun violence: national homicide, national firearms theft, and national armed robbery ("National monitoring").

However, in recent years, the American federal government has failed to adequately support gun violence research. Between 1986 and 1996, the U.S. Centers for Disease Control and Prevention (CDC) carried out high-quality, peer-reviewed research aimed at understanding the causes of gun violence. But in 1996, legislation passed that would prevent the distribution of this research and block government funding of further research. An amendment to an appropriations bill removed \$2.6 million from the CDC's budget, which was the amount spent on firearms-related research in the year before. The amendment also contained wording that prevented the CDC from doing research that would implicate gun policy: "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”” (Dickey and Rosenberg 2012). According to Jay Dickey, a former Republican Arkansas Congressman and lifelong member of the NRA, a Republican in Congress acted for the NRA by submitting the amendment (Dickey and Rosenberg 2012). As a result, since 1996, the U.S. government has spent \$240 million per year on traffic safety research, but barely any research on firearm injuries. The passage of and failure to repeal this legislation reveal yet again that Congress continues to favor gun interests through hindering the work of a government agency that can influence the effectiveness of gun control legislation.

If scientists cannot carry out the research to understand the nature of American gun violence in America or the effectiveness of certain gun policies, there is little hope for the achievement of successful gun control policy (Dickey and Rosenberg 2012). However, there is some hope for future gun control research at the CDC. One of the executive orders included in the proposal is to issue a presidential memorandum directing the CDC to research the causes and prevention of gun violence (Ungar 2013). Despite these instructions by the President to refocus the CDC’s research efforts, in the long run it will need more funding to carry out gun violence prevention research, which will require legislation. The gun control proposal does not include any legislation to increase CDC’s funding of gun violence research. The Obama administration presumably chose not to include such a piece of legislation in the proposal because it is not feasible in the current Congress, in which the Republican Party controls the House. The defeat of the Manchin-Toomey amendment also revealed that it would not be feasible in the present Senate, although controlled by the Democratic Party.

Part III: The Policymaking Approach to Achieve Federal Gun Control Legislation

Small Steps Towards Bold National Change

Raising the standard of federal gun control legislation in the United States is necessary and must be the ultimate goal. As discussed earlier in this chapter, nationalizing any proposed policy, especially gun policy, is difficult. In the few years prior to the Port Arthur massacre, some scholars seriously doubted the feasibility of achieving national gun control legislation in Australia. Egger and Peters stated that not only was gun control an especially contentious policy area, which provided a barrier, but also the history of achieving national uniform laws in Australia had involved compromise, delay, and sometimes proposals had completely failed. Due to the obstacles at that time, they believed achieving gun law uniformity should be a long term goal. The states with the weakest gun control systems needed to make improvements in the meantime. Since the states had the power to make gun laws, it was the states' responsibility to ensure that their laws were effective. Weak regulation in one state undermined the effectiveness of the country's gun regulation overall. Achieving a national uniform gun control policy was a "highly desirable" goal that should remain on the reform agenda, but they did not believe that it should be the top priority (Egger and Peters 1993, 204).

The resistant political atmosphere to national gun control in 1993 Australia is similar to the situation of the U.S. today. Egger and Peters were both pessimistic and practical in their view, but only three years later national uniform gun control was achieved. Achieving national uniformity seemed impossible at the time in Australia, but it was eventually achieved. Achieving more comprehensive national legislation is not impossible in the U.S., although it will be very difficult. Strong national gun control is what the U.S. desperately needs and must remain the ultimate goal. However, achieving improvements at the local and state level may be a

more feasible approach in the mean time, as a way to move towards strengthened uniform law across the country, while pushing for national legislation simultaneously.

According to Goss, policy incrementalism¹⁴ is the best gun control policymaking approach. Goss explains that in American history, members of social movements have disagreed over whether to obtain large policy change through a slow incremental approach by gaining local victories, or rather waiting for the right, yet rare, opportunity to achieve national change (2006, 147). Social movements like the anti-abortion, anti-alcohol, and the anti-smoking movements have used the approach of winning modest measures at the local and state levels before pushing for national legislation (2006, 186). The NFA could be categorized as a rare opportunity where bold change was achieved. Although the NFA was achieved in a different political system that is more conducive to change, large changes were never achieved after the 1980s and early 1990s gun massacres. When the Port Arthur massacre occurred, Australia was ready for bold national change in gun control. Since the American political system is not conducive to the easy achievement of bold policy change, Goss believes that incrementalism is the best strategy (2006, 146).

Incrementalism is also a policy strategy that may help produce broader based gun control support and participation. People are more likely to participate in a movement when there is reasonably strong expectation that their participation will contribute to achieving the desired outcome. To attract participants, movements must show that they have had successes and there is a strong possibility of future successes. An incrementalist approach works towards these small successes (Goss 2006, 146). The incrementalist approach that Goss suggests has strong implications for the gun control lobby's future actions and how they can successfully inspire

¹⁴ "Policy incrementalism: small policy steps that might be expected to aggregate toward ever larger political goals." (Goss 2006, 145).

citizen support and participation at the local level. Grassroots efforts are an important component of an incrementalist policymaking approach. For example, Goss claims that through a local-approach to gun control reform, which focuses on achieving local ordinances, grassroots coalitions and activists mobilize naturally because people believe they have more power and access to elected officials (2006, 182). Overall grassroots efforts are essential to achieve local level gun control policies. The achievement of numerous state and local level policies creates a foundation on which widespread support can be developed for reaching bolder policy change, being federal gun control legislation.

The Grassroots Work of the Gun Control Lobby

The gun control lobby will be indispensable towards achieving more comprehensive gun control change. Although the NRA has proved to be extremely powerful and wealthy, there is evidence to show that the gun control lobby can overcome the NRA's wealth with grassroots lobbying efforts. A study investigating the effect of lobbying of the McClure-Volkmer Bill (1986 Firearms Owners' Protection Act) reveals some important lessons for the gun control lobby's work of obtaining federal gun control legislation. The study examined the political effectiveness of the gun lobby and the gun control lobby in affecting votes in the House. The study examined the impact of elite and grassroots lobbying, as well as campaign contributions (Langbein and Lotwis 1990, 413). The results showed that campaign contributions for both the NRA and Handgun Control, Inc (HCI) influenced how members of Congress voted on the bill when controlling for the member's position prior to the debate, ideology, constituency, and lobbying efforts. The NRA spent more than HCI, but per dollar HCI's contributions were more powerful (Langbein and Lotwis 1990, 430). Also, the NRA's grassroots lobbying seemed to

have been effectively countered by the lobbying work of HCI supportive local and national police groups (Langbein and Lotwis 1990, 433).

Overall this study seems to suggest that the gun control lobby would be more influential than the NRA if its wealth matched that of the NRA. HCI's monetary contribution had a statistically marginal impact, but their lobbying was successful compared to the NRA's. If HCI had given as much money as the NRA, they would have had a greater overall impact than the NRA. Langbein and Lotwis concluded that "The fact that both groups were effective, but in different ways, suggests that relative wealth does not determine overall effectiveness but rather affects how groups chose to exercise influence" (1990, 434). Making a significant difference lies more in the lobbying efforts, rather than merely campaign contributions. This is an important discovery for gun control advocates because it indicates that the influence of the NRA's wealth can be moderated by effective grassroots lobbying efforts. However, grassroots lobbying efforts need money to be effectively executed. This study makes clear that if the gun control lobby had comparable wealth to the NRA, it could finally have the ability to significantly influence policy.

Now it appears that the gun control lobby may finally have the necessary funding to carry out the grassroots lobbying and advocacy that is needed to pass meaningful gun control legislation. On March 23, 2013, New York City Mayor Michael Bloomberg announced that the coalition, Mayors Against Illegal Guns, would carry out a \$12 million television and ad campaign. Bloomberg co-founded the coalition in 2006. According to *The New York Times*, Bloomberg personally contributed the funding. The goal of the campaign is to target 13 states¹⁵ that are divided over gun control. The campaign aims mainly to lobby senators to support comprehensive background checks legislation. According to Bloomberg, the ads advocate for

¹⁵ Arkansas, Arizona, Georgia, Indiana, Iowa, Louisiana, Maine, New Hampshire, Nevada, North Carolina, North Dakota, Ohio and Pennsylvania.

universal background checks by presenting the legislation as something that the majority of Americans support: ““These ads bring the voices of Americans – who overwhelmingly support comprehensive and enforceable background checks – into the discussion to move senators to immediately take action to prevent gun violence”” (“Michael Bloomberg” 2013). The two television ads represent new gun control legislation that will balance gun rights with gun safety. The man in the first ad states that he will defend the Second Amendment, but also says that ““rights come with responsibilities”” (“Michael Bloomberg” 2013). The second ad features a male hunter who says that ““background checks have nothing to do with taking guns away from anyone’,” and then explains that the checks will prevent criminals and the mentally ill from acquiring firearms (“Michael Bloomberg” 2013). The coalition’s campaign is reminiscent of Prime Minister John Howard’s advocacy of the NFA. One way Howard advocated for the NFA was by presenting it as sensible legislation that the majority of Australians supported.

Also on March 28th, 2013, the coalition carried out over 100 events across the country to advocate the passage of new gun control legislation. These events involved elected and law enforcement officials, as well as survivors of gun violence and their family members (“Michael Bloomberg” 2013; “Mayors Against” 2013). Mayors Against Illegal Guns has described the day as “one of the largest days of advocacy in United States history to address gun violence” and that it is “part of the largest field campaign in United States history to address gun violence” (“Mayors Against” 2013). Sparked by Bloomberg’s initiative, there is hope that the gun control lobby can continue to grow, both in terms of wealth and size, and as a result, finally have the ability to effectively counteract the NRA’s power.

Conclusion

Political leaders, citizens, and the gun control lobby each must unwaveringly press for change. Without dedication and commitment, as the successful passage of the NFA has shown, change is not possible. The most significant lesson that the NFA can teach the U.S., aside from its policy lessons, is that strong political leadership on gun control reform must be taken to achieve the policies. Obama's leadership after the Newtown shooting and the release of the gun control proposal one month later is a promising sign of achieving reform in the near future. The proposal addresses a lot of important weaknesses in American federal gun control, although it should be more comprehensive. However, as American gun control history has shown, the more comprehensive proposed legislation is, the more difficult it is to achieve. The proposal is still an important achievement that must be acted upon quickly in Congress. Although the shooting has revealed that there is substantial public will for reform, achieving more comprehensive legislation will not be easy. The recent Senate defeat of the Manchin-Toomey amendment clearly showed the present difficulty of passing more comprehensive legislation. Public support must continue to become widespread in the hopes of influencing legislators to pass legislation. President Obama and other political leaders must show the way on gun control reform advocacy, by framing the issue as an important means to improve public safety. The recent strong leadership and growth in both support and wealth of the gun control lobby is a promising indicator of achieving change in the near future.

Conclusion

The achievement of the 1996 National Firearms Agreement (NFA) in Australia provides a guide for comprehensive federal gun control reform in the United States. Given the similarities and differences between the two countries, Australia is the best example from which the U.S. should model its reform. For most of Australia's history, long guns were not regulated because only handguns were viewed as dangerous. Some Australian states developed stronger gun control systems than others, but overall Australian gun control was very weak. After a number of gun massacres happened between the 1970s and early 1990s, some Australian governments sought answers to the gun violence. The National Committee on Violence and the New South Wales Select Committee Upon Gun Law Reform found that a national uniform gun control system was necessary. However, when the Australian Police Ministers' Council met in 1991, the jurisdictions could not come to an agreement on a national uniform system. Before the 1996 Port Arthur massacre, the feasibility of achieving a national agreement was not very hopeful.

The passage of the 1996 NFA eliminated the weaknesses of the Australian gun control system. Since the Port Arthur massacre was Australia's latest and worst gun massacre, it inspired significant public support for the NFA. Also for the first time, Australia had a prime minister who was staunchly dedicated to achieving comprehensive gun control reform. The most meaningful lesson for the U.S. from the passage of the NFA is political leadership. Howard was intimately involved in all aspects of the NFA from its conception to its implementation. His contributions were instrumental to its success. Howard threatened to call a referendum to transfer the states' gun lawmaking rights to the Commonwealth. He personally spoke with politicians from unsupportive states to persuade them to join the NFA. Howard also did not allow any of the NFA policies to be significantly weakened by gun interests. As a result, there

have been no mass shootings with four or more deaths since the Port Arthur massacre, and there has been a decline in firearm homicides and suicides.

The NFA's achievement does not serve as a simple template for the passage of American federal gun control legislation. Throughout modern American history, comprehensive federal legislation was consistently introduced into Congress, but due to a lack of political will and the gun lobby's influence, it was always weakened in order to pass. Even in the face of riots or shootings, members of Congress have not been compelled to support stronger federal measures. Legislation passed between the 1920s and 1960s was narrowly aimed at controlling criminals or firearm dealers, but never gun owners in general. The gun lobby has also specifically set out to achieve legislation meant to expand gun owners' rights, such as the 1986 Firearms Owners' Protection Act. Sympathetic members of Congress have also attached riders on appropriations legislation that specifically hinder the ATF's enforcement abilities. In the 1990s, gun control proponents introduced a comprehensive assault weapons ban and background check legislation. However, these pieces of the legislation were weakened in the passage process, rendering them largely ineffective. The gun lobby will undoubtedly continue to be a hindrance to the passage of stronger gun control, but evidence shows that the gun lobby's influence may be effectively countered in the future. The Supreme Court's clarification of the Second Amendment, President Obama's leadership on gun control reform, and the gun control lobby's increased support are hopeful indicators.

Overall federal gun control legislation in the United States must be strengthened to effectively moderate the differences between state and local level laws. While some states have extremely strong gun control systems, others are quite weak. Both the Australian and American experience clearly show that a lack of uniformity among gun laws facilitates the flow of criminal

guns across borders. The Second Amendment does permit stronger federal gun control legislation. The 2008 Supreme Court case, *District of Columbia v. Heller*, confirmed that the Second Amendment is an individual right, but also confirmed that many types of strong gun control measures are constitutional. In spite of this decision, the gun lobby will surely continue to litigate against gun control laws as a way to obstruct the gun control reform process. However, this decision does lessen the validity of the gun lobby's arguments against moderate gun control laws, declaring that the laws are inconsistent with the Second Amendment. While the Second Amendment will always provide a barrier to gun control reform, it is not an immovable obstacle. Going forward, the gun control lobby must advocate and explain the meaning of the Second Amendment to counteract the gun lobby's false advertising of its meaning.

The NFA, as a whole system, would not be feasible in the United States, but some of its policies provide a guide for reform. An assault weapons ban and the regulation of the secondary firearms market are the most important and feasible policies. The Australian experience has also shown the importance and necessity of universal licensing and registration systems. These systems would be the most difficult to achieve since the gun lobby has long resisted the government holding information about gun owners. Although the present federal legislation is ineffective, it is further weakened by poor enforcement. Increased ATF funding and staffing are essential to improve the operation of present and future legislation. To compose effective federal gun control legislation in the future, government must fund and perform gun violence research.

The prospect of federal gun control reform in the United States is both optimistic and uncertain. Before the Port Arthur massacre in Australia, the likelihood of achieving a national agreement was doubtful. The resolve shown by President Obama after the December 2012 mass shooting is admirable. The establishment of a gun control policy task force and the demand for a

gun proposal was a huge step forward for American gun control reform. While many of the proposal's policy recommendations are very moderate and the public significantly supports some of the most important measures, such as universal background checks, strong opposition still exists. To overcome this opposition, framing the recommendations as common sense measures that do not impinge on Second Amendment rights will be crucial. Not only will political leaders, such as President Obama, need to promote gun control reform, but grassroots advocacy by the gun control lobby will be key. Mayor Bloomberg's leadership and recent financial support of Mayors Against Illegal Guns provides some hope that its efforts will be an effective political influence in the future.

The achievement of comprehensive federal gun control legislation is not feasible in the United States of the present or near future. The lessons from the Australian gun control reform experience, American gun control history, and the present American political climate indicate that modest reform is the most likely to be successful. Modest reforms must be achieved first as a stepping stone, before more comprehensive measures can be achieved. Gun control reform, at all levels of government, must be advanced without delay because it is critical to save the thousands of American lives lost each year due to firearms. Prime Minister Howard prioritized gun control reform until it was achieved due to the urgency and severity of the issue. He framed gun control reform in terms of public safety because gun violence can touch the lives of all citizens. The United States must do the same. Early American gun control history and the meaning of the Second Amendment clearly show that public safety was not supposed to be sacrificed for the right to gun ownership. Only time will tell if American federal gun control can realize this balance once again. When both the American public and political leaders demand to live in a safer society, comprehensive federal gun control legislation will be achieved.

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