



Opinion by
Adam Fletcher

What does human rights law say about gun control?

Opponents of gun control in the United States have a powerful ally in domestic law, because their Constitution contains a right to 'keep and bear arms.' Since the Heller Supreme Court case in 2008, this has been interpreted as an individual right which can trump legislative gun bans.

In the context of the 2016 Presidential primaries, gun control is once again being hotly contested in the US, and Australia has been drawn into the debate. In 2016, then Prime Minister John Howard ramped up Australia's already strict handgun controls by effectively banning **private ownership of 'long guns' (especially [semi-automatic and self-loading rifles and shotguns] and initiating a huge national buyback** in the wake of the Port Arthur massacre. Spurious claims by US presidential hopefuls about the effectiveness of such measures have led him to defend this policy, which is one of his Government's most important legacies. In his CBS interview (which, by the way, is not as entertaining as his fantastic one with John Oliver on the same subject), Howard said:

People used to say to me, 'You violated my human rights by taking away my gun', and I'd (say), 'I understand that. Will you please understand the argument, the greatest human right of all is to live a safe life without fear of random murder'.

Q: So is there really a human right to own a gun?

No there isn't. John Howard was probably just being polite. The US Constitution is alone (at least amongst democracies) on this one.

According to the preamble to the International Covenant on Civil and Political Rights (ICCPR), human rights 'derive from the inherent dignity of the human person' and are aimed at achieving 'freedom from fear and want.' Human rights are essentially the opposite of guns.

Amnesty International, as it happens, has called gun violence in the US a human rights crisis. Even the pro-gun Independence Institute, which argues that gun confiscation has led to increases in human rights abuses in some countries, does not claim that there is a right to possess arms or defend yourself with them at international law.

Q: Isn't it a government's duty to keep people safe? What if they just want to defend themselves from criminals?

Well yes, governments have a duty under the ICCPR to ensure people are secure (article 9) and that they are not arbitrarily deprived of life (article 6). That's what police are for (or, in extremis, the military). A government acting in accordance with its human rights obligations, along with criminological evidence, would seek to maximise the chances of personal safety for its citizens by minimising circulation of deadly weapons. The deadlier the weapon, the more control is likely to be justified.

In Australia, guns are not completely banned. The line has been drawn at rocket launchers, flame throwers, portable artillery assault rifles, sawn-off shotguns and (essentially) any other gun without a demonstrably legitimate purpose (such as target shooting, farming or hunting). There are also background checks and other precautionary measures.

Does this provide a 100% guarantee of safety? No – for example, in 2002 there was a tragic shooting event in which two people died right here at Monash University, just metres from the office in which I'm writing this post. The student had obtained his weapons legally through membership of a pistol club. Overall though, the chances of being killed by gunshot in Australia are very low – around 1/10th of the US rate. In countries such as South Korea and Japan, which have even stricter laws, the rates are an order of magnitude lower again.

Given that the right to self defence is not really an individual 'right' at all (legally speaking, it's just a defence which negates what would otherwise be a violent crime), it does not make sense to prioritise it over gun control policies which are a reasonable, rational means of ensuring (or at least promoting) collective safety and security.

On the other hand, policies which seek to ensure security but which restrict freedom (broadly defined) unduly are anathema on an instinctive level for some. For example, one of our Senators portrays Australia as a 'nation of victims' when it comes to gun crime. On the whole, our political leaders after 1996 (like those in the UK after similar trauma) made an assessment that the majority of Australians would be willing to trade some freedom to defend themselves for greater collective safety, yet they have still taken a more libertarian approach than South Korea or Japan. All other things being equal, it could be argued that those nations are better fulfilling their ICCPR art. 6/art. 9 obligations in this regard, but as we know international law is not the only consideration in national policy-making.

Q: OK I get the picture – human rights law wants the Government to take care of the gun toting criminals... but what if I need to protect myself from the Government?

History has shown that only the rule of law can protect you from your Government. The police and military have more guns and almost infinitely more resources than you do. Even if you have your own militia and lots of guns, you cannot win.

Finally, it is worth noting that a growing number of nations (78 at last count) are now party to the Arms Trade Treaty, which links their gun sales to trading partners' human rights records. This treaty represents a historic step in the struggle between human rights protection and the proliferation of guns.