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# Briefing Document

**February 1998**

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**Self−defence and the British Constitution.**

During the past hundred years or so, the government of this country has become increasingly despotic. I do not mean by this that I live in anything approaching a totalitarian police state. Indeed, I will say that I live in one of the freest and generally the most fortunate societies that has ever existed. Though I have spent at least a decade now denouncing the government of my country, I do not fear for my personal safety or for my career. I will also say that those foreigners who favourably compare life in their own countries with life in modern England are seldom entirely wrong.

Even so, the power of the British State is both more concentrated and less restrained than at any time in the past. The old notion of the State, as limited by custom and law, has given way to the common belief that there should be no impediment whatever to the clearly expressed will of the people − or of those who can, with any show of reason, claim to represent this will. For a long time, the effects of the change were largely confined to certain economic areas. Of course, these are of the highest importance, and no definite boundary can be drawn between them and other areas. In practice, though, a boundary was observed; and areas of life that, by common agreement, lay outside were usually left unaffected. We could therefore argue for or against socialism within an undisputed framework of civil and political rights.

However, the intellectual collapse of socialism within the past generation has tended to break down the old boundary. So far from allowing the State to be rolled back, this collapse has had the unexpected result of letting it roll uncontrollably forward into every other area of life. This should not have been unexpected. Once established, beliefs about the duty of the State to intervene, and the benefits of intervention, are unlikely to die simply because the old justifications for it have died. Therefore, when politicians have realised the futility − and, more importantly, the danger from a mercantilist point of view − of trying to manage things like the telephone network or the prices of food, they will turn naturally to trying to control our lives in non−economic matters.

And these new controls will be accepted, and even demanded, by a people so accustomed to control that they cannot accept the lifting of it in one area without a compensatory extension of it into others. Therefore the controls on smoking and driving and sport and amusement and child rearing, and even on the expression of ideas. Therefore the new supervision of private life that would never have been attempted or accepted in the days of exchange control and the Selective Employment Tax. Therefore the breaking down of any legal safeguards that seem to frustrate the smooth working of the new controls.

And so the threat of unlimited government is actually greater today than it was in the late 1970s, when it first became a popular concern. It is greater because it is less well defined. The slide into despotism will not come because someone like Arthur Scargill wants to nationalise everything in sight. It will come because of a push that is weaker at any one point, but applied over a far larger area.

Now because the nature of this threat is new, so the response to it must be new. The concentration on economic issues, that for most of the present century, has been the main feature of conservative and libertarian argument is no longer appropriate in an age when the debate over economics has mostly come to an end. We must turn to a far greater degree than has so far been the case to putting the argument for limited constitutional government. Instead of dealing with one aspect of the changed conception of the State, we must deal with the changed conception itself.

Our fellows in the United States are more fortunate in this respect than we are in England. They have a written Constitution that derives from an earlier age of English civilisation, when the limiting of state power was taken as the main end of politics; and they can appeal to the letter of their Constitution in opposing the spirit of their actual government. Efforts, no matter how determined, to disarm the American people can be countered by insisting on their Second Amendment. Every effort to restrict what can be made available on the

Internet has broken so far without success on the rock of the First Amendment. They have a text around which conservatives and libertarians and civil libertarians can unite in the defence of liberty.

But we also have a Constitution. It may not be digested into a single clear document that was intended to stand forever. But the materials that were digested into the American Constitution all had their origin in England. Granted, these materials are scattered through customs, charters, legal judgements, textbooks, and Acts of Parliament that accumulated over about eight centuries. But their existence is a matter of record. They are still a flat challenge to the modern conception of the British State as the instrument by which the untrammeled legislative supremacy of the House of Commons is expressed.

Or they would be a flat challenge if they could be made generally available. At the moment, they are not available. Last summer, for example, an argument started on the Cybershooters List over the extent to which the Bill of Rights 1689 guaranteed the right to keep and bear arms. Before this could be settled, it was necessary to circulate a copy of the Bill. I had an old copy in print too small for scanning. it was nearly a week before Bob Allen found or produced an electronic copy that could be circulated.

Again, I am something of a legal antiquarian − yet I have never found a complete edition of Sir William Blackstone's great Commentaries on the Laws of England, first published in the 1760s. These are one of the main influences on the American Constitution. They were a powerful force in shaping understanding of the English Constitution well into the 19th century. Yet I do not know of any modern edition. There are the State Trials, published in the early 19th century, with some highly valuable commentaries − these have never been reprinted, and they are only available in a few specialised libraries.

In short, the primary materials from which an understanding can be gained of the English Constitution are unavailable to ordinary people. The intention of this WebPage is to make these materials available on the World Wide Web, and thereby to assist in the growing debate on the preservation of freedoms that we once took for granted, but which are now under growing threat.

I said at the top of this Page that I would lay particular emphasis on the right to keep and bear arms for self−defence. This means that my first main job will be to publish the reports on and the parliamentary debates about the various Firearms Acts of the 20th century, together with any legal judgements, both ancient and modern, that shed light on the destruction of this particular freedom. But my ambitions are far wider, and are limited only by the amount of time that I can afford to spend in the relevant libraries and then at home with my scanner. I hope to make this the resource page for English constitutional thought. It may take some while, though, before hope and reality can be made to resemble each other.

**Sean Gabb**. London, May 1997. (English Constitution Resource Page, with Emphasis on the Fight against Victim Disarmament. Texts Selected and Introduced by Sean Gabb).

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**Safety And Freedom for Everyone.**

Sean Gabb's "Self−defence and the British Constitution" was circulated on the Internet and led indirectly to the formation of an association of like−minded persons who shared the author's concerns and feared for the future liberties of themselves and their heirs. The nucleus of the group met each other for the first time by chance at a meeting that was held at Bisley, home of the National Rifle Association. The purpose of the gathering was to register protest by licensed pistol owners against the latest tranche in the progressive suppression of an ancient right. Our initial focus was on the single issue of firearms legislation. We began to research the British Constitution to find out what had become of the right to have defensive weapons. Accounts of this Right had been passed on to us by word of mouth from our predecessors. Our aim was to determine what were the legal rights of the law−abiding person to acquire and use the tools of self−defence. Much time was spent in libraries and in correspondence with MPs and Government departments. Home computers and the Internet made communication and the processing and exchange of information easier than it would have been in earlier times. What we found went far beyond the narrow interests of a small minority of sportsmen. When the conclusions, which are set out below, became apparent a name for the project was chosen. Safety And Freedom for Everyone is a group of new friends and a Post Office box. We have pooled our personal and professional resources and expertise to prepare the document that follows. The work continues and contributions and constructive criticism are welcome. We believe that the state of affairs, which we have uncovered, should not be allowed to continue. Too many innocent victims cry out for justice. To that end this document is being made public. It is time for the policy maker's bluff to be called. This may be the last opportunity to make a stand as the slide to tyranny accelerates. It is the lesson of history that dictators disarm their victims first. And the first steps are made by stealth. We do not know what is in the minds of the proponents of the policy of victim disarmament in so called "pressure groups" and in the organs of the State. They have conspired to give themselves the power of life and death over us. Whatever their present intentions are they should not have the capability which a disarmed populace gives them. We are certain that they do not have the right to expose their fellow countrymen to assault by the lawless. Violent criminals have grown bolder and more numerous as the futile policy of the disarmers has been pursued by successive governments. The responsibilities of weapon ownership are great, but they are not beyond the capability of the honest citizen.

**SAFE**. January 1998.

**"Do British subjects of good character have a legal right to possess arms for self defence?"**

Recent original research by members of SAFE has determined that the ancient right of British subjects to possess arms for self defence has been concealed behind an official "policy" which has no basis in law. Thousands of innocent persons have been exposed to attacks from the lawless. The time has come for this immoral situation to change.

The purpose of this document is to set out what has been discovered so that the information and deductions, which it contains, can be confirmed by interested parties and used in legal action to reclaim the right to acquire and carry the tools of self−defence. The information below has been collated from Acts of Parliament, Hansard, legal textbooks and the Judgements in appeal cases that have restated the law.

The term "arms" includes weapons of types that are suitable for personal self−defence. Because firearms and irritant sprays are the most effective weapons of defence available at the present state of technology, their legal possession will be the main topic considered here. Edged weapons are generally prohibited in public places by the Criminal Justice Act 1988, as are "martial arts" weapons such as rice flails. Irritant sprays are

classified as firearms by Section 5 of the Firearms Act 1968.

The question that this essay seeks to answer is, "Do British subjects of good character have a legal right to possess arms for self defence?" If we have such a legal right, we are entitled to exercise it.

### *Understanding the law.*

The Interpretation Act 1978 and related case law sets statutory rules for determining the meaning and therefore the effect of Acts of Parliament. It also lays down rules for the repeal and reinstatement of legislation. For example, "the title and preamble can help in ascertaining the scope of the statute and supply the key to the meaning of doubtful or ambiguous expressions." "The long title states the function of the Act." and, "Acts are to be construed according to the intention of Parliament, which is to be sought only in the words used in the Act unless they are imprecise or ambiguous. The grammatical, ordinary and natural sense of all the words, read in the context of the statute in which they appear is to be used. Where the meaning is plain, it is to be adopted." The word "may" is permissive and "shall" is imperative.

### *The will of Parliament and Pepper v. Hart.*

The judgement in the case of Pepper v. Hart (1993) means that clarification about what the intentions of Parliament expressed in an Act were can be found in the statements of the Bills sponsors when it was debated in Parliament. A Court "may make reference to Parliamentary material, such as Hansard, where legislation is,

a. ambiguous or obscure,
b. the material relied upon consists of one or more statements by a minister or other promoter of the Bill together with such other Parliamentary material as is necessary to understand such statements and their effect; and
c. the statements relied upon are clear".

" In the light of the dicta in Pepper v. Hart, the following rules can be extracted as to the professional duty of legal advisors and advocates as a consequence of the decision,

1. In practically every case involving the construction of an enactment, there must be a search in Hansard. This is because it is rarely possible to be sure, without full knowledge of the background, that the Pepper v. Hart conditions are not satisfied.

2. The duty extends to the construction of delegated legislation and not only where it is debated in Parliament. The sponsor may have made a statement in debates on the Bill for the parent Act that indicates the way the delegated power was intended to be exercised.

3. The duty may extend to Hansard reports on other related Bills, as happened in Pepper v. Hart itself.

4. A relevant passage in Hansard must be studied in the light of parliamentary proceedings as a whole. In particular, care must be taken to ensure that a statement by the sponsor was not affected by subsequent developments, e.g. a later amendment to the Bill.

5. Practitioners need to know how to find and search parliamentary materials competently.

6. Practitioners need to understand the parliamentary legislative procedure in order to evaluate the significance of passages found and present them to the Court."

(All England Law Reports Annual Review 1992, page 386.)

Any legal advice which does not take the above principles into account will not be valid. None of the submissions to the Cullen inquiry were made on Bill of Rights grounds. This was because the government gave instructions to Lord Cullen to only consider sporting uses of arms. As far as we are aware, SAFE has made the first study of the constitutional rights of the subject which takes Pepper v. Hart into account.

The case of Pepper v. Hart was referred to in Parliament and caused The Speaker of the House of Commons to issue a reminder to the Courts and all other persons of their duty to take notice of the Bill of Rights, confirming that it is an operative Statute (Hansard, 21 July 1993) She said, "This case has exposed our proceedings to possible questioning in a way that was previously though to be impossible. There has of course been no amendment of the Bill of Rights (see below) ... I am sure that the House is entitled to expect that the Bill of Rights will be required to be fully respected by all those appearing before the Courts".

The reference to the fact that there has "of course" been no amendment to the Bill of Rights is because all Crown servants are bound by their oath of allegiance to respect its provisions as a Statute in force. All other persons are obliged to respect it by the Crown and Parliament Recognition Act 1689. Parliament does not have authority to remove the rights of the subject that it protects, as will be shown below. This is because individual MPs are bound by their Oath of Allegiance to respect the laws including this one above all. Attempts to overthrow the laws and Constitution are treason. New rights may be conceded to the subject, for example if the European Convention on Human Rights were to be added to British law, but existing rights may no be taken away. The only method by which the Constitution and the rights that it protects could be changed would be by revolution. For this to occur all Crown servants would have to be persuaded to take a new Oath of Allegiance.

The principle of Pepper v. Hart allows, perhaps for the first time, the layman to determine the meaning of Statute law. In the Judgement, Lord Oliver of Aylmerton stated that "A Statute is, after all, the formal and complete intimation to the citizen of a particular rule of law which he is enjoined, sometimes under penalty, to obey and by which he is both expected and entitled to regulate his conduct".

### *"Offensive" weapons.*

Weapons such as telescopic batons are allowed to be carried by responsible persons in public places because the Bill of Rights gives lawful authority for them to be possessed for self−defence. This was recognised in the debates on the Prevention of Crime Act 1953. The stated purpose of the Bill was to "tackle the ruffian and those on the fringe of the community who would go out armed with a cosh, knuckle−duster or similar and terrorise others in the neighbourhood. Its main effect was to be not in the vast number of prosecutions, but the "in terrorem effect". It was intended only to "discourage" certain persons from carrying offensive weapons unless they had "lawful authority or reasonable excuse" while respecting the liberty of the subject.

The Bill only applied to the carriage of weapons in public places. Lord Lloyd (a sponsor of the Bill) reminded the House of Lords that "it should be noted a person who remains on his own property may with impunity go around positively festooned with weapons. If he has a firearm he would need the appropriate certificate. His house may be a veritable arsenal. He will be committing no offence under this Bill". (Hansard, 14 April 1953.) Maxwell Fyffe (also a sponsor) assured the Commons, "it excludes the whole class of persons who are on their employers property and doing their work. The night watchman who carries a bludgeon or a life

preserver would not come within the scope of this Measure when carrying out his duties on his employers property." (Hansard, 26 Feb. 1953.)

The definition of "lawful authority" was not described in the debates in the Commons. However, the Bill of Rights is a statute in force, which means that the police and Courts are obliged to accept that the subject may possess arms for defence. The Interpretation Act confirms this by saying that the liberties of the subject are to be assumed. A search of legal textbooks has shown that the Courts have only given rulings on what is, or is not, "reasonable excuse" For example, nightclub bouncers carrying truncheons in a public place was not excusable. The status of the Bill of Rights as "lawful authority" has not been questioned because Crown servants are obliged to respect it. No cases where the "lawful authority" of an ordinary person (i.e. not a Crown servant off duty) was an issue have been placed before the Courts by the police as far as we have been able to determine.

In the debates on the Bill in the House of Lords it was confirmed by Lord Lloyd, that "it is the Common Law duty of every citizen to take what steps he can to prevent a breach of the peace, and that this duty may include the bringing of assistance to the victim of an unlawful assault of which he may be a witness". (Hansard, 28 April 53.) This also is a form of lawful authority to carry weapons. The duty and right of the citizen to have arms comes from the obligation to join the "hue and cry" to catch criminals and to assist in the defence of the realm in an emergency.

The meaning of the term "reasonable excuse" was described in the Lords, "If a woman has reasonable cause for thinking she was going in danger of her life, she can carry a weapon. There is no absolute prohibition." (Lord Lloyd, Hansard, 14 April 1953.) The Home Secretary Sir Frederick Maxwell Fyffe, (also a sponsor) said in the Commons " it is not the intention of the Bill to place in peril (of breaking the law) the innocent citizen pursuing his or her daily round." (Hansard, 26 Feb. 1953.)

Lord Saltoun, who had spoken vigorously on behalf of the liberties of the subject, summarised the position by reminding the Lords of the importance of the statement made by Lord Lloyd, who represented the Government, saying, "it is not the purpose of this Bill to prevent people from carrying weapons if they think it is necessary for their defence. I hope that is noted." The principle from Pepper v. Hart now allows us to reclaim the right to carry the tools of self−defence which has been unlawfully encroached on by Government as a matter of "policy."

The Home Office has pursued this "policy" which discourages the carriage of defensive weapons by giving incomplete summaries of the law in their crime prevention advice publications which are distributed by police forces. They recommend "instant arming" with everyday objects such as rolled up newspapers as likely to be effective. Some older, pre Pepper v. Hart, publications claimed that there was no right to carry arms for self−defence. Recent examples are more carefully worded, presumably because the civil servants concerned are aware of their legal responsibilities as Crown servants to respect the subjects rights. The training given to police officers has selectively described the law by focusing only on "reasonable excuses."

### *Firearm Legislation.*

The legal controls on firearms in the UK derive from the Firearms Act 1920. The legislation was reviewed by a Working Party led by Sir John McKay in the early 1970's. Their report is not available to the public but some observations and recommendations from it were published by the Home Office in a consultative document in May 1973 (*The Control of Firearms in Great Britain*. HMSO),

"The Firearms Act 1968, following earlier firearms legislation, makes no attempt to define what should, or should not be regarded as a good reason for possessing a firearm. The stringency of the legal control over Section 1 firearms therefore rests in practice upon the way in which chief officers exercise the wide power of decision vested on them by the law, and on the decisions of the Crown Court in the relatively infrequent cases taken to appeal... There has been no general disagreement over the way in which these powers have been exercised. To put the matter very broadly, sporting purposes and target shooting have been accepted as good reasons ... personal protection has not". However, "the time might come when a chief officer or the Crown Court decided to allow a firearm for personal protection ... this decision might be treated as a precedent."

The Home Office expressed "grave concern" to avoid such a development and proposed that a Statutory Instrument be created allowing them to issue instructions to chief officers of police as to what should be "good reasons" in future. SAFE understands that no such Instrument has been created. We believe that it would be unlawful to attempt to do so for the reasons set out below. The Home Office has instead promoted a "policy" which claims that "firearms are not considered appropriate for personal protection in this country." (*Firearms Law; Guidance to the Police*. HMSO.)

Since the Firearms Act of 1920, firearms may be lawfully held only by persons who have obtained in advance a firearm certificate or exemption permit (except for Crown servants). The procedures for obtaining these documents are laid out in the Firearms Acts.

Hansard records that the intention of Parliament in the Firearms Act 1920 was, "to afford an effective system of control over the possession, use and carrying of firearms so as far as possible to secure that they do not come into the hands of criminals or otherwise undesirable persons..." (The Earl of Onslow in presenting the second reading 27 April 1920.) He stated on 29 April that " speaking generally, it must be assumed that the grounds on which a revolver may be applied for and the application (for a firearm certificate) may be granted by a chief officer of police is for protection of the applicants house" i.e. for self−defence.

The principles of repeal which are specified in the Interpretation Act mean that provisions in the Firearms Acts of 1920 and 1937 are brought forward into the Firearms Act 1968. Section 59 of the Firearms Act 1968 states "things done under an enactment repealed by this Act ... shall so far as may be necessary for the continuity of the law be treated as done under the corresponding enactment in this Act. Earlier enactments are therefore recognised in the current law."

Sponsors of the Bill confirmed this during the debates on the 1968 Act in replies to questions from Lord Swansea on 4 April 1968 in the Lords. Mr. Graham Page confirmed in the Commons on 13 May 1968 that no Statutory Instrument was created for the guidance of chief officers of police that removed the right to arms for defence.

### *The duties of the Police.*

"The primary object of an efficient police is the prevention of crime, the next is that of detection and punishment of offenders if crime is committed. To these ends, all the efforts of the Police must be directed. The protection of life and property, the preservation of public tranquillity, and the absence of crime, will alone prove whether those efforts have been successful and whether the objects for which the Police were appointed have been attained." (Sir Richard Mayne, Joint Commissioner of the Metropolitan Police, 1829.)

"In attaining these objects, much depends on the approval and co−operation of the public, and these have always been determined by the degree of esteem and respect in which the Police are held. Therefore every member of the Force must remember that it is his duty to protect and help members of the public, no less than

to bring offenders to justice. Consequently, while prompt to prevent crime and arrest criminals, he must look on himself as the servant and guardian of the general public and treat all law abiding citizens, irrespective of their race, colour, creed or social position with unfailing patience and courtesy."

(Paragraphs 2 & 3 of the Metropolitan Police Instruction Book, which were required to be memorised by all recruits 1829 − c1985.)

The Police are regarded as a civil, not military force, under the control of the locally elected authorities and as a consequence, look upon themselves as servants of the civil community locally, and not as state servants under military discipline.

So much for the theory. In practice the Home Office controls the police. Parliament debated the introduction of a Police Bill in July 1919. The police in general had suffered from poor pay and conditions. There had been a police strike in 1918. Protests to the government had brought no results and in desperation, the police had formed their own union with which to represent themselves. During the debate, the Government agreed to improve pay in and conditions following the recommendation of a committee. However, the improvements were subject to certain conditions. The House was asked to agree to the proposals for improved pay etc. on condition that the police union was suppressed by an act of Parliament. In place of the union the Government proposed to set up "Police Federation". This in effect meant that the Home Office would then have control over pay, promotion and discipline, clothing, pensions, expenses and conditions of service.

Mr. Shortt (Secretary of State for the Home Department) and a sponsor of the Bill said, "May I remind my hon. Friend that the Home Office is not any sense the employer of the police. So far from that, the Home Office, as head of the police, is part of the police force itself." "In this Bill we have taken power to enable the Secretary of State to make regulations as to Government, pay, allowances, pensions, clothing, responsibility and conditions of service of the members of all police forces in England and Wales, and every police authority shall comply with the regulations so made." (Hansard, 18th July 1919.)

This meant that the intention of the Government was to take control of the police. Many MPs raised objections about this new and unconstitutional development,

"It seems to me that these Clauses, and the attitude of mind which has brought them into being, with the subsequent idea of a federation of the Police, to be formed with due regard to the interests of the officials of the State and the mind of the State official is a product of the war mind. We regard this once again as the thin end of the wedge. We know there is in this country a growing opinion in favour of State ownership and of State control thereby bringing larger and larger numbers of the citizens of this country under the State umbrella, and we see in this a deliberate attempt to undermine the liberty and freedom of individuals when they are working for the State. We regard this Bill as contrary to public policy. We say it is not the right way of dealing with the problem, and we are amused at the attempts by the government to set up a federation under the auspices of officialdom and expect that this federation is going to be a useful tool in the hands of these menIt is foreign to the spirit of the time in which we live, and so far as we are concerned we will offer it − and I am convinced the same will occur in the country − our strongest opposition inside this House and use every legitimate effort to frustrate the intentions of the Government as incorporated in this Bill."

(Mr. A Short)

"The policeman − there is no question of the military system − acts as the representative of the ordinary citizen...it is important to bear in mind that the constable, even in the execution of his duty for the preservation of peace acts not as the agent of the Government exercising powers derived from them, but as a citizen representing the rest of the community."

(Sir Henry Craik)

Mr. Shortt replied in the Commons, "The inclusion of the word "government" does not in the least take the real executive power out of the hands of the local watch committees or local authorities"

Similar objections were raised in the Lords. In the final debate Lord Monk Bretton reminded the House that even the County Councils Association objected to the word "government" because it implied executive powers. Furthermore, he said,

"The adoption of direct central control of the Police would be foreign to the constitutional principle to which we have referred, by which the preservation of law and order in this country is primarily the function of the proper local authority. It would alter the whole basis of the Police system, and, in particular, would prejudice the intimate relations between the police and the localities where they serve, which many experienced witnesses have regarded as one of the most desirable characteristics of the present system, and to which they attribute in great measure the happy relations which have existed between the Police and the general public in this country."

(Hansard, 8th August 1919)

In his reply, Viscount Sandhurst gave the following assurance from the Government,

"only general regulations will be made, and that the clause cannot be used to transfer to Whitehall the control of the Police now carried out by Standing Joint Committees and by Watch Committee."

We may conclude two principles from the above;

1. The Home Office has no mandate to "govern" police forces by taking executive power away from watch committees, their successors or local authorities. "Policy" cannot be imposed on chief officers by the Home Office.

2. Regulations as to pay, allowances, pensions, clothing, responsibility and conditions of service of the members of all police forces in England and Wales are decided by the Home Office.

Can it be a coincidence that Home Office "policies" are almost invariably enthusiastically endorsed by the Police Federation and the Association of Chief Police Officers? Victim disarmament is one example and persecution of licensed gun owners is another. Perhaps the fact that promotions to senior ranks are from a list of names selected by the Home Office has something to do with it. And by what authority is promotion a Home Office responsibility?

### *The Firearms Act 1920.*

When the Home Office presented the Firearms Bill to Parliament in 1920, the authority to issue firearm certificates was placed in the hands of chief officers of police. This was contrary to normal practice where licensing was the responsibility of local magistrates. Commander Kenworthy objected,

"I very much object to power being given to the police to judge whether a person is fit to have a firearm or not Under the original Pistols Act (1903) that power was placed in the hands of Magistrates in petty sessions, and this giving the right to the police to decide a point of this kind is quite a new development in this country, and is contrary to English practice. In England the police are very respected public servants, on the Continent they

are petty officials with tremendous powers, which they use to the full and which are not conducive to the free development of those nations. We do not want that kind of thing here, and I hope that the power will be given, not to the police, but to the magistrates at petty sessions, and that there will be no attempt to make police officers petty officials to control the concerns of private people. Any such attempt should be resisted by the House to the utmost. We have here a chance at any rate of stopping one more attempt to set up a petty police bureaucracy in this country."

(Hansard, 10th June 1920)

This observation refers to Magna Carta which states;

"No sheriff, constable, coroners, or other royal officials are to hold lawsuits that should be held by the royal justices."

This debate continued for eight pages covering a variety of related subjects including the application of the Bill to Ireland and how treaties with foreign Governments should affect British law. Commander Kenworthy had begun the debate with the following observation,

"There is a much greater principle involved than the mere prevention of discharged convicts having weapons. In the past one of the most jealously guarded rights of the English was that of carrying arms. For long our people fought with great tenacity for the right of carrying the weapons of the day...It has been a well know object of the central Government in this country to deprive people of their weapons... I do not know whether this Bill is aimed at any such goal."

The Home Secretary Mr. Shortt did not answer the points that had been raised saying, "These are mainly Committee points which it will be impossible to deal with at this stage." Research is continuing and it is not yet know what justification was given for the apparent infringement of Magna Carta. This is another important point of law that appears not to have been tested in a Court.

### *Firearm certificates and the Bill of Rights.*

Section 27 of the Firearms Act 1968 states, "A firearm certificate shall be granted by the chief officer of police if he is satisfied that the applicant has a good reason for having in his possession, or for purchasing or acquiring, the firearm or ammunition in respect of which application has been made and can be permitted to have it in his possession without danger to public safety or to the peace."

The constitutional and legal position of the chief officer of police was been stated by Lord Denning in the Blackburn case (1968) as,

"I hold that it is the duty of the (chief officer) to enforce the law of the land....in these things he is not the servant of anyone, save of the law itself. No Minister of the Crown can tell him that he must or must not keep observation on this place or that, or that he must not prosecute this man or that one, nor can any police authority tell him so...The responsibility for law enforcement lies on him. He is answerable to the law and to the law alone".

The Oath required by the Bill of Rights to be taken by all police officers includes, "I, A. B., will be faithful and bear true allegiance to our sovereign lady the Queen... I will, to the best of my skill and knowledge, prevent all offences against the persons and property of Her majesties subjects."

In making his decision about the issue of a Firearm certificate the chief officer is bound by his Oath of Office to comply with the laws, including the Bill of Rights 1689 to "prevent all offences against the persons and property of Her Majesties subjects". The Bill of Rights is a Statute in force which, as Madam Speaker reminds us, has not been amended. It was the first passed by Parliament after the civil wars and the "Glorious Revolution". It remains our "central constitutional document, the nearest approach to a constitutional code which we possess." (Sir William Anson 1922, from *Bill of Rights* by Richard Munday.) Its long title is "An Act declaring the Rights and Liberties of the subject and Settling the Succession to the Crown." It is in effect a job specification and employment contract for Crown servants.

Included amongst these "ancient rights and liberties of the subject" is Article 7 which states,

"The subjects which are Protestant's may have arms for their defence suitable to their condition and as allowed by law."

The right of Protestants to arms was affirmed because it was they who, as the preamble makes clear, had been disarmed "contrary to law" after the Restoration. The right to defensive weapons was not restricted to them as was made clear by another Act of the same year (W & M Sess 1, c. 15.). The wording "suitable to their condition" reflected the Bill of Rights appeal to ancient usage. It means the personal service weapons of the day. The Bill did not seek to create rights, but to reaffirm immemorial principles of common law. Constitutional commentary and case law would later confirm that this condition could not be construed to exclude "people in the ordinary class of life" (R. v Dewhurst, 1820). As has been shown above, the current Firearms Act respects the provisions of Article 7 of the Bill of Rights and the subject is "allowed arms by law."

The Bill of Rights insists that its provisions be respected. Article 13 states, "And for the redress of all grievances and for the amending, strengthening and preserving of the Laws Parliaments ought to be held regularly."

'The word "amend" means to make improvement to something. Article 13 confirms that Parliament has no authority to diminish the subjects rights under the law. It is a reference to Magna Carta and Common Law and the reason why it would not be possible to make a Statutory instrument which directed a chief officer of police not to respect the right to arms for defence. The Bill of Rights makes this clear in the following passages, "No declarations Judgements Doings or Proceedings to the prejudice of the people in any of the said premises ought in any wise to be drawn hereafter into consequence or example." "All and singular the rights and liberties asserted and claimed in (this) declaration are the true ancient and indubitable rights and liberties of the people of this kingdom and so shall be esteemed, allowed, adjudged, deemed and taken to be and that all and every the particulars aforesaid shall be firmly and strictly holden and observed as they are expressed in the said declaration and all officers and ministers whatsoever shall serve their majesties according to same in all times to come."

In the case of Bowles v. Bank of England (1913) it was ruled that " the Bill of Rights remains unrepealed and practice or custom, however prolonged ... can not be relied on by the Crown as justifying any infringement of its provisions". Self−defence is therefore a statutory good reason for a chief officer of police to issue a firearm certificate, and is one of the rights or liberties of the subject. A chief officer of police may not refuse a legitimate application because to do so would be an offence against the person of one of Her Majesties subjects.

Magna Carta states that the Crown will appoint as officers and constables, "none but sure men who know the law and mean to keep it." Ignorance is no excuse and Halsbury's *Laws of England* confirms that breach of Magna Carta is an offence at common law. This provision is the reason why Crown servants take Oaths. The form of the oath is specified by the Bill of Rights.

The Oath, which is required by the Bill of Rights to be taken by members of the Judiciary, includes, "I will do right to all men according to the laws and usages of the Kingdom." A person who has been refused a Firearm Certificate for defensive purpose may appeal to the Crown Court. If the facts of the case are established and the appeal is well founded the Judge is obliged to respect the liberty of the subject and allow the appeal.

The reader will now see why the McKay report said, " the time might come when a chief officer or the Crown Court decided to allow a firearm for personal protection ... this decision might be treated as a precedent."

### *Allegiance.*

"Natural allegiance is found on the relationship every man standeth in to the Crown considered as the head of that society whereof he is born a member, and on the peculiar privileges he deriveth from that relation which are with great propriety called his birthright; this birthright nothing but his own demerit can deprive him of; it is indefeasible and perpetual, and consequently the duty of allegiance which ariseth out of it and is inseparably connected with it, is in consideration of law likewise unalienable and perpetual."

(Frost C.L. quoted with approval in R v. Casement (1917).)

The duty of Allegiance comes from the ancient principle that a ruler is expected to provide protection for his subordinates. Therefore the term "I will bear true allegiance to the Crown" in an Oath is a promise to respect the rights of subjects of the Crown.

### *Home Office "policy".*

A Home Office "policy" which seeks to discourage applications for arms for defence has no basis in law. The judgement in the case of R v. Wakefield Crown Court, ex. p. Oldfield (1978) states, "A person entrusted by law with a discretion may formulate a general policy for the exercise of that discretion but that policy must not he applied so rigidly that he does not in fact exercise any discretion at all."

In a debate on the 1988 Firearms (Amendment) Bill in the Commons on 21st January 1988, Douglas Hurd (Secretary of state for the Home Department) spoke about good reason for applying for a shotgun certificate. He said, "The existence of a good reason is not a matter for arbitrary decision. I know there is a real worry that a future Labour Government might seek to use this to give expression to their views on what they call blood sport to declare, for example, that sporting purposes should not constitute a good reason for having a shotgun. That is why we have put on the face of the Bill, that is, in primary legislation which could be changed only by further primary legislation, that a good reason includes sporting or competition purposes and vermin control."

### *Firearm certificates and Magna Carta.*

In making his decision, the chief officer must then determine if the applicant for an FAC, " can be permitted to have arms without danger to public safety or the peace. The decision must be on the facts of the case and the applicant is entitled to the presumption that he is to be considered innocent of wrongdoing until proven guilty. If there is no evidence against him, the applicant is to be regarded as a fit person. Article 39 of Magna Carta (confirmed in the Statue Law Review Act 1967) states " no free man shall be seized or imprisoned, or

stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, except by the lawful judgement of his peers or by the law of the land" (British Library 1989).

"Lawful judgement" means a conviction based on evidence from credible witnesses in a public trial before a jury. "By the law of the land" does not apply in this case because, as has been shown above, the Firearms legislation has not removed the right to arms for defence.

This principle was also stated in the case of R. v. Casement 1917 "nothing but his own demerit can deprive the subject of his birthright." Article 12 of the Bill of Rights has the same meaning; "All grants and promises of fines and forfeitures of particular persons before Conviction are illegal and void".

The term "otherwise undesirable person" which was used in the original debate in 1920 as justifying disqualifying a person from the issue of a license, is defined as "of intemperate habits or unsound mind" in later Acts. A minimum age of 14 years was also specified in the legislation.

A person of "good character" (i.e. one who has no criminal convictions and is not disqualified by law) is therefore entitled to exercise his liberty and claim a Firearm Certificate for weapons to be held for self−defence purposes.

The intention of the Firearms Acts is only to ensure that firearms do not come into the hands of criminals and otherwise undesirable persons. The provisions of the Bill of Rights and Magna Carta are not contradicted or repealed by firearms legislation since 1920.

### *The consequences of refusal of firearm certificates.*

The effect of being denied the use of defensive weapons on the individual can be death, maiming and a life spent in fear. It may also cause disillusion with the political process and non−compliance with the law to become widespread.

A refusal of a Firearm Certificate for defensive use may be appealed against in the Crown Court under Section 44 of the Firearms Act 1968. The Judge hearing the case would be obliged by his own Oath to uphold a well founded appeal, "I will do right to all men according to the laws and usages of the Kingdom." It should be noted that the ruling in the case of Dyson v. Attorney General (1911), states that the litigant cannot be driven from the seat of judgement by any use of the Rules of the Supreme Court in cases of constitutional importance.

The consequences for a chief officer of police who could be shown to have acted unreasonably and not "to the best of his skill and knowledge," could include convictions for perjury (for breaking his Oath of Office) and the common law crime of misconduct in office for wilfully neglecting to perform a duty he is bound to perform by common or statute law. A jury who decides whether a case has been made out when they have heard the facts can try this offence. This provides a flexible and publicly accountable system of control on public servants.

The present Home Secretary has proposed that misconduct in office be replaced by an equivalent statutory provision. He has claimed that new legislation is required because MPs cannot be prosecuted for misconduct because they are "privileged". He would say that. As has been noted above, the only legal immunity that MPs have comes from Article 9 of the Bill of Rights. They are not, or should not, be immune from the consequences of criminal acts.

The penalties for offences of perjury and misconduct in office can include disqualification from public office. This derives from Magna Carta; "We will appoint as officers none but sure men who know the law and mean to keep it". Any breach of the provisions of Magna Carta is itself against common law.

The subjects rights are also protected by Article 1 of the Bill of Rights which states "the pretended power of suspending laws and the execution of laws without consent of Parliament is illegal" and Magna Carta "to no one will we deny or delay right or justice". These principles were recognised in the case of R v. Lord Chancellor, ex parte Witham (1997) where it was held that "A citizens right of access to the courts was a common law constitutional right which could only be abrogated by specific statutory provision or by regulations made pursuant to legislation which specifically conferred the power to abrogate the right....to do so was ultra vires ("beyond the power") and unlawful."

During this case Mr. Justice Laws said, "Access to the Courts is a constitutional right: it can only be denied by the Government if it persuades Parliament to pass legislation which specifically − in effect by express permission − permits the executive to turn people away from the court door."

He explained the basis of his conclusion as follows; "What is the precise nature of any constitutional right such as might be outwith the power of government... to abrogate? In the unwritten order of the British state, at a time when the common law continues to accord a legislative supremacy to Parliament, the notion of a constitutional right can in my judgement inhere only in this proposition, that the right in question cannot be abrogated by the state save by specific provision in Act of Parliament, or by regulations whose vires in main legislation specifically confers the power to abrogate. General words will not suffice. And any such rights will be the creatures of the common law, since their existence would not be the consequence of the democratic process but would be logically prior to it."

The authors of this document believe that it has been shown that the common law right to possess arms has not been abrogated. It has instead been protected and preserved by "our principle constitutional document, the Bill of Rights". The ancient rights and liberties that it enumerates are protected from subversion by adherence to the Oaths that it specifies to be taken and respected by "all crown servants... in all time to come".

### *The House of Lords and the Bill of Rights.*

The Judiciary may only recognise statute law as valid when Parliament has passed it. The constituents of a valid Parliament are specified by the Bill of Rights They are the Monarch who gives Royal Assent, the Hereditary Peers in the House of Lords, and MPs sitting in the Commons as representatives of the people. Any attempt to alter this arrangement would be an unlawful breach of the Bill of Rights.

The New Labour party has threatened to alter this arrangement by removing the voting rights of hereditary peers. We understand that this has caused the Law Lords to warn the present Government that they will resist any such attempt.

The Law Lords are as the final Court of Appeal in this country and would have final jurisdiction in any such case put before them. They are of course bound to uphold the provisions of the Bill of Rights. Since the Parliament Act of 1911 the Commons have claimed that they can override the Lords and pass any Bill despite objections from the Lords. However, this is another matter that has not been tested in the Courts. It is likely that the Government will find it difficult to win such a case.

We are confident that the Law Lords would uphold any case involving the subjects right to arms for defence. We understand that no appeal connected with the subjects liberties can be prevented from being placed before

the House of Lords by a lower court.

### *International treaties and firearms legislation.*

Ministers of the Crown have, from time to time entered into "arms control treaties" on behalf of the UK. It should be noted that the Ministers concerned must seek authority from the Crown by the Royal Prerogative before signing. Because the Monarch is constitutionally bound to respect the provision of the Bill of Rights, such Royal Prerogative has the following restrictions.

(a) Prerogative cannot be used in an innovatory way. If this were not so, the executive could dispense with Parliament and Judiciary and become an unlimited tyranny. Any future Attorney General could claim that an edict was part of a treaty and it would become unquestionable.
(Governments since the 1972 European Union treaty have claimed this power. However, like the firearms issue it has not yet been tested. An attempt was made to bring this matter to Court in 1972 by Ross McWirter of the Freedom Association. He invoked the Bill of Rights to show that the government did not have authority to sign the treaty. He was mysteriously assassinated before the matter was decided. His brother Norris made a similar attempt to question the legality of the Maastrict treaty in 1993. Summonses were issued against the Foreign Secretary for treason. The Attorney General used a purported power to take over the case and then drop it as "not in the public interest". This would appear to be contrary to the prohibitions in the Bill of Rights against "suspending laws or the operation of laws". It was also contrary to natural justice because the Attorney General was sitting in judgement in his own case. He was a member of the Cabinet with joint responsibility for the actions of other members of the Cabinet. (From *Treason at Maastrict* by Norris McWirter) If the UK did not join the EU lawfully then European legislation should not be binding on British subjects. We understand that the European Treaty specifies that a nation can only join if the requirements of its constitution have been met. European legislation is imposed on the UK in the form of Statutory Instruments. The Witham case (p.15) makes the point that such Instruments are only valid if the primary legislation which authorises them is valid.)

(b) The use of Prerogative power may not be subversive of the rights and liberties of the subject. (The case of Nichols v. Nichols stated "Prerogative is created for the benefit of the people and cannot be exercised to their prejudice".)

(c) Royal Prerogative may not be used to suspend or offend against Statutes in Force. This comes from the Bill of Rights and the Coronation Oath Act which specifies the following form of words; "Archbishop: Will you solemnly promise and swear to govern the peoples of the United Kingdom of Great Britain and Northern Ireland...according to their respective laws and customs." Prospective Monarch: "I solemnly promise so to do." Note the similarity to the Judicial Oath. This is because the Courts dispense justice on behalf of the Crown.

(Command Paper 3301, 1967, Legal and constitutional implications of UK membership of the European Community.)

It is a fact that International treaties are often given as justification for new British firearms legislation. This occurred in 1920 and 1934. There was an arms control conference sponsored by the UN in Cairo in 1995. Mr. Major signed the agreement without reference to Parliament. A coincidence perhaps?

Provisions of treaties, which are to the prejudice of the rights and liberties of the subject, are not to be taken into consequence or example.

### *Health and Safety at Work Legislation and the police.*

From April 1998 the full rigor of Health and Safety at Work Act (HSAW) legislation applies to police forces. They can no longer claim legal immunity for their unlawful "policy" on the carrying of defensive weapons by responsible members of the public.

Both chief officers and members of police authorities will be personally liable for their actions because HSAW legislation places a duty on an employer to prevent danger to any person affected by his undertaking.

### *Involuntary Manslaughter.*

If death results from an omission to comply with a duty imposed by Statute or common law, the person responsible may be convicted of involuntary manslaughter. Criminal and civil penalties for themselves and their organisation could follow.

### *Civil damages for assault victims.*

A person who has survived a criminal assault may make a civil claim for compensation. For example the victim of a rape who had been told by the police or Home Office that they were not entitled to arms for self defence would have grounds to claim damages against the individuals who were responsible for the breach of their legal duty to respect the rights of the subject. This would be in addition to a claim from the Criminal Injuries Compensation Scheme.

### *Police monopoly to carry defensive weapons.*

The Lords debates on the Prevention of Crime Act 1953 show that the police have no legal monopoly to carry defensive weapons. This matter was raised by Lord Soulton quoting from Lord Halsbury's Laws of England on a private person's common law power of arrest who said,

"I have always held that the preservation of the Queen's peace was the duty of everyone of her subjects, and the police were only citizens with special responsibilities"... "In fact, the idea that a person could not defend himself was, in Lord Halsbury's time, unthinkable. This was not the first time that it had been sought to make the police into a privileged class, but the attempt had always been rejected, and I hope that it will be rejected again"... "If the citizen was not allowed to defend himself, the Government would have to accept responsibility for his defence, at least in public places."

"The Government will have the sole responsibility. Are they prepared to accept a benefit from their failure to discharge the duty they have undertaken? If no−one is allowed to carry any sort of weapon to defend himself or herself against the strong and armed, and defence becomes a peculiar function of the policeman, will the relatives of the killed or injured have a right to compensation if the Government fail in the discharging of the duty they are undertaking? If I am wrong, then it must be that the theory is that the Government are the shepherds of Her Majestys subjects, with the right to shear, kill or let die as best please themselves."

The Lord Chancellor said that this was not a Bill tipped against the poor person. It was designed to protect all people alike and it would give a wrong balance to suggest that it favoured one section of the community.

### *Rifle clubs.*

The right to have arms is not restricted to individual use for private self−defence, as the following Judgement demonstrates:

"The right of His majesties subjects to have arms for their own defence, and to use them for lawful purposes, (such as hunting) is most clear and undeniable. It seems, indeed, to be considered, by the ancient laws of the Kingdom, not only as a right, but as a duty... And that this right which every (subject) most unquestionably possesses individually may, and in many cases must, be exercised collectively, is likewise a point which I conceive to be most clearly established...

"It seems to follow, of necessary consequence, that it cannot be unlawful to learn to use them (for such lawful purposes) with safety and effect. For it would be too gross an absurdity to allege that it is not lawful to be instructed in the use of anything which is lawful to use...

"The lawful purposes for which such arms may be used (besides immediate self defence) are the suppression of violent and felonious breaches of the Peace, the assistance of the Civil Magistrates in the execution of the laws, and the defence of the kingdom against foreign invaders.

"To strengthen the civil power, and to keep themselves at all times prepared for a vigorous and effectual discharge of their duty as citizens ... are, in my view, sufficient visible and legal objects for the continuation of the London Association."

The Recorder of London, 1795.

(From "*The Origins and Development of the Second Amendment*". David T. Hardy. 1995). The London Association was ancestral to the volunteer movement of the Victorian period which led to the establishment of the UK National Rifle Association. (The NRA).)

The Royal Charter of the NRA, whose Patron is HM The Queen, states that the object of their activities is " to train Her Majesties subjects in marksmanship in the interests of the permanence of the Territorial Forces". The NRA and their affiliated rifle clubs therefore continue to exercise their rights to train together in the use of arms for defence. This was recognised in the debates in Parliament on the Firearms Act 1920. On 9th August 1920 Lt. Comdr. Kenworthy MP said, referring to disorder in the world that threatened British interests in the period after the Great War,

"I endorse the value of the rifle practice before the War. We are faced with another war now... Having utterly failed to establish the reign of peace we were promised, I think we had better encourage rifle clubs in every possible way and train young men to the profession of arms. Let us give up the idea of disarmament and the reign of peace which the Government have taken."

The Home Secretary, sponsor of the Bill, replied " I can assure my Honourable and gallant friend... the last thing which the Government intend is to bring discouragement to any single rifle club. The Bill makes specific provision to give privileges to members of rifle clubs. It is necessary for those members to get permits to use their rifles. Anyone who wants to use his individual rifle can do so on getting a permit. This is a small thing and must be done in future."

The Ministers assurance is thus part of the law of the land which subjects are entitled to regulate their conduct by. The Home Secretary is empowered by the Firearms Act 1968, to "approve" rifle clubs and is obliged to co−operate fully. This is because the power to authorise collective training in the use of arms which was specified in the Unlawful Drilling Act 1819 was amended by the Firearms Act 1920 and given to the Home secretary of the day. The subjects right to arms and the provisions of the Bill of Rights were raised in the debates in Parliament in 1819 and were accepted by the sponsors of the Bill. They therefore continue in force.

Other Crown servants, such as the Charity Commissioners, chief officers of police and officials of the Ministry of Defence who allocate the use of service rifle ranges to clubs have the same responsibilities. Certain local authorities that have recently adopted policies of non co−operation with clubs are acting unlawfully.

### *Defence of the Realm.*

Throughout history, this country has always been able to call upon men who were prepared to test their skill and courage against their countrys enemies;

"Those men whose pleasure it is to use their spare time making themselves proficient in the use of the rifle, in preference to playing golf or tennis or idling on the river, amusements which, while pleasant, have a very small national valueI suggest that no unnecessary obstacle should be put in the way of these men practicing and becoming efficientso that in the event of the country being confronted with another war, we may be able to rely on that great reservoir of semi−trained men who proved so useful in 1914."

(Colonel L Ward, in the debate on the 1920 Firearms Bill)

At the outbreak of World War 1, over 50% of the recruits of territorial units came from Rifle Clubs. Prior to the formation of territorial units, the counties had largely relied on the militia ("volunteers" and later "Territorials") for their defence. They also relied on the militia for county policing until Sir Robert Peels Police Act. The exceptions being towns and cities which had their own watch system to uphold the law. Had it not been for these men, it would have been impossible to send Territorial units to France in the early days of September 1914.

This tradition was commended in evidence to the Cullen Inquiry;

"The Army regards high standard of marksmanship with all forms of weapons to be a vital skill for most members of the armed forces...Far from rendering such skills obsolete, the technical advances which have occurred in modern weaponry have provided the means for more effective use of small arms, but this effectiveness is still wholly dependent upon the skill of the soldier with the weapon. Precision is important − whether it be in making sure that the enemy is hit with the first shot (in modern warfare you seldom get a second chance) or in ensuring that innocent bystanders are not hit. This is of particular importance for all Arms as been highlighted in some current UK peacekeeping operations.

"We value immensely the co−operation and assistance we receive from the NRA and the civilian sector in achieving improvements in the overall standards of military marksmanship, and I am quite certain that the present level of skill, particularly among our snipers who form an important element of every infantry battalion, could not have been achieved without it.

"The sniping rifle itself bears this out: the rifle, its sights and our sniping ammunition have been designed and developed out of equipment tried, tested and improved within the civilian target shooting worldOur

encouragement of civilian rifle and pistol clubs continues particularly in the context of their use of military ranges: this has benefits in both directions, because not only do many members of the Armed Forces benefit from being able to join civilian clubs practicing on ranges with which they are familiar, but the civilian clubs, the NRA and the NSRA (National Smallbore Rifle Association) are able to provide us with training in coaching techniques. In recent years these techniques have been developed largely in the civilian sector as the clubs have been able to devote considerable time and effort to the subject which we have been unable to match with the pressure on our limited resources.

"In addition, much of the sophisticated modern targetry and range development, essential to the training of special forces and for advanced combat shooting, have been derived from current civilian practice through the activities of the NPA (National Pistol Association) the UKPSA (United Kingdom Practical Shooting Association) and their affiliated clubs.

"I feel I should also stress the benefit which the Armed Services derive through recruitment as a direct or indirect result of the activities of rifle and pistol clubs. Current information suggests that considerable recruitment into the Forces comes through the TA and cadet movement. There is no doubt whatsoever that rifle and pistol shooting is one of the main reasons why most cadets and TA join the movement in the first place, and (it is recognised) how reliant upon the NRA and a great many civilian clubs the TA and cadet movement are for support.

"Finally, the nation has called upon the skill of civilian marksmen and the resources of the clubs in every major conflict this century to augment the training organisation. There are no plans for a third line reserve on this basis, but it would be rash to discount circumstances in which the Services would again look to this reservoir of support.

"To sum upthe Army regards a high standard of marksmanship as being an essential skill for the majority of soldiers, and we regard target shooting by civilian rifle and pistol clubs, along with the activities of the NRA and other major bodies, to be fundamentally important in achieving that high standard."

(Lt. Gen. Sir Peter Duffell, Inspector General Doctrine and Training.)

"While of course the military train themselves in the use of their own weapons, the value of the civilian clubs is − first of all − that they provide an arena for competition, particularly for long range sniper−type shooting, over and above what the military can offer. Secondly − and more importantly − there is the experience of the senior members of those clubs, who provide coaching expertise beyond what is available in military training."

(General Sir Roger Wheeler, Commander in Chief)

The Government ignored the report of the Cullen Inquiry. As a result many rifle clubs have closed. A loss of recruits has already been noted by the armed forces. At the time of writing, morale is reported as being at a new low and mass resignation of key personnel has been threatened. Yet the world is a more dangerous place than before with the threat of a new Gulf War, terrorist attacks on the UK mainland, and the resurgence of Nazism in the German Army which is the largest and the most powerful in Europe.

### *Police marksmanship training.*

A former member of the Association of Chief Police Officers Police Use of Firearms Advisory Committee recently made the following remarks.

"One fact which might not be appreciated is that the majority of policemen are introduced to shooting only by reason of their police duties, few come to police firearms training with any pre−knowledge, unlike driving etc. Consequently their knowledge and ability is confined and measured by that given during police training which gives few opportunities to regularly handle and use firearmsPolice who have received only in house training are initially surprised and embarrassed by the standards displayed by civilian shooters. In consequence many policemen become motivated to improve and during my period with the Police, I encouraged officers to consider taking up shooting as a sport, knowing they would benefit.

"In the same way that sniping and camouflage for the military evolved from deer stalking and hunting skills, so police shooting techniques have often developed from competition shooting. Police instructors scour shooting magazines for all developments relating to techniques and equipment and much of current police equipment has evolved from civilian ideas.

"In police Firearms Training, shooting is just one of the many skills to be acquired, but from them all, shooting skills (or lack of them) continues to be a worry for many policemen. It troubles them that other demands within the service do not permit more time/training to ensure higher standards. It is here that civilian clubs can and do offer additional opportunities to improve skills and confidence to those Police who become members The consequences of private individuals being denied the right to shoot and possess firearms would in my opinion, lead to a drying up of knowledge and skills that in the past have served our country well."

(Supt. Waldren. From *Guns and Violence* by Munday and Stevenson.)

### *The constitutional position of the armed forces.*

Members of the forces swear personal loyalty to the Monarch to defend her against all enemies. As a constitutional monarch it is her duty and therefore the duty of her forces to protect the rights and liberties of her subjects. We understand that senior members of the armed forces are aware of the constitutional implications of the Governments disregard of the subjects liberties expressed in the Bill of Rights. The problems described in the previous paragraph are undermining the ability of the armed forces to perform their sworn duty. One of the checks and balances put in place by the framers of the Bill of Rights to protect the constitution, was the implied duty of the armed forces to act against her majesties enemies from within the kingdom. We understand that the forces may issue military arrest warrants for persons guilty of treason. The Habeas Corpus Act could then be used to place the person before the High Court where the evidence against them could be heard.

It is believed that the Army refused to be involved in the seizures of arms resulting from the Firearms (Amendment) Act 1997 because they were concerned about the constitutional implications. Royal Ordnance PLC, a private company, were used by the Government instead.

### *Conspiracy theory.*

Students of the history of British firearms legislation will be aware of the Blackwell Committee report which was prepared by senior civil servants in 1918 and has recently been de−classified. Its recommendations were adopted and formed the basis of the 1920 Act which has been carried forward to the present day. The spirit of the report was contrary to the Home Secretaries statements in Parliament. The principle in the case of Pepper v. Hart is that the Ministers words in Parliament are part of the law. What may have been said and done elsewhere to the detriment of the rights and liberties of the subject is not to be taken into consequence or

example.

### *The Home Office "Operational Policing Policy Unit".*

Correspondence between members of SAFE and the Home Office "operational policing policy unit", which is the department responsible for giving advice to MPs and Ministers on firearms matters, has been collated. The present regime appears to have changed their admitted perception of the legislative basis of their policies of firearms control since early 1996. They initially claimed that Firearms legislation since 1920 was "perfectly proper" in their standard letter to persons who raised the issue of the subjects right to arms. They now accept that their policies merely "have not been challenged" and in any case are the responsibility of chief officers of police. We believe that they know that their position is untenable because the McKay report warned them in 1972.

It is rumoured that a large number of MPs now realise that they were misled by the OPPU as to the true legal position of the right to arms. Apparently many of the present generation of MPs did not know of the existence of the Bill of Rights. One of our members has reported that when he raised the subject with an official of the OPPU in October 1996 the reply was "What Bill of Rights? Er...Im sure our lawyers will have looked into it a long time ago". When the same member contacted Her Majesties Stationary Office for a copy to send to the Home Office the answer was "Not another shooter. We have had a run on the things and are out of stock". HMSO later gave authority for the Bill to be privately printed by the Bill of Rights Appreciation Society.

We understand that consideration has been given to impeaching the senior Home Office official responsible for the OPPU at the bar of the House of Commons because faulty advice was given to the House.

Historians have noted that it can be difficult to determine what was once "common knowledge" because it is usually the rare event which is recorded. The knowledge of the rights and liberties of the subject may have faded in recent years for this reason. The other main lesson of history is that "those who forget history are doomed to relive it."

### *Use of arms for self−defence.*

Persons who have duly licensed firearms are entitled, when threatened with death or serious injury to themselves or those whom they are obliged to protect, to use those arms. The legal defence of "duress" excuses them from any conditions that may be applied to their use of weapons in normal circumstances. It is part of the Common Law that every subject, unless excused by infirmity, has a duty to prevent any breach of the peace in his presence. It is said that a shotgun certificate holder decided not to engage Michael Ryan at an early stage of the Hungerford incident in 1988 "for fear of the consequences". If that person had been trained in the use of arms and the rights and obligations of the subject, history would have taken a different course.

The common law rights of the subject to use force in self−defence and to effect the arrest of offenders were recognised in the debates on the Criminal Law Act 1967. Research is continuing, but it seems the right to use lethal force against a nocturnal housebreaker and to be absolved of legal responsibility for injuries or death so caused, or in self−defence, or in efforts to arrest offenders have been preserved. This interpretation has not yet been confirmed to the same level of confidence as the remainder of this work.

Section 3 of the Criminal Law Act 1967 states "any person may use reasonable force in self defence, for the prevention of crime or to arrest offenders". The word "may" is permissive and the subjects rights cannot be

denied to them. The policy of some employers to forbid staff to use force in self−defence, for example teachers or social services employees, is therefore unlawful.

Part of the debate revolved around the term reasonable force and its interpretation. It was suggested that reasonable force meant moderate force but the Joint parliamentary Secretary of State (Lord Stonham) clarified this point by illustrating that reasonable force could in fact be force of a major kind, even to the point of fatal consequences. This was consistent with Section 7 of the 1861 Offences Against the Persons Act, (Justifiable Homicide), which was repealed by the Criminal Law Act. Section 7 stated that no offence was committed if a person should kill another "by misfortune or in any other manner without felony in self−defence". Section 7 was in fact incorporated in the Criminal Law Act and the infliction of death in the protection of a person or property may therefore be considered excusable. It was further argued that it was not necessary for someone to know of the particular provision and interpretation of "reasonable force" or have to stop and think what his rights were. The provision was provided to protect someone who, on the spur of the moment, behaves in a common sense and public−spirited way. It would not be right therefore for this provision to give rise to nice, exact questions, argued with hindsight, after the event, in the sedate atmosphere of the law courts, as to whether the action taken was strictly necessary, or as to what alternatives there may have been. The Common Law rules on justifiable homicide appear to have been incorporated into this Act. In a Coroners Court a verdict of "death by misadventure" can be decided by a jury.

### *The Firearms (Amendment) Act 1997.*

The Firearms (Amendment) Act 1997 changed the classification of pistols to Section 5 of the 1968 Firearms Act. It did not otherwise change the law because no mention was made in debate of the Bill of Rights. The interpretation Act specifies that a statute may be repealed only by words or where a later enactment is incompatible with an earlier one. Neither of these conditions applies in this instance. A Section 5 Authority is therefore required for pistols to be lawfully owned. The Home Secretary has the same obligations in law to issue such authorities as a Chief officer of Police has for Firearm Certificates and can be held to account through the Courts.

The fact that the 1997 Act and all previous firearms legislation did not revoke or repeal the right to arms is the best evidence that we are protected by the checks and balances provided by our forefathers. If Governments had been able to abolish the subjects rights in this respect they would have done so long ago. We believe that the Government in 1997 did not dare to raise the issue of the right to arms. If they had tried to revoke it the public would have become aware that they had been lied to and would have taken their revenge to the guilty parties through the Courts and at the ballot box.

### *The duties of the Speaker of the House of Commons.*

A member of SAFE wrote in late 1996 to the Speaker of the House of Commons. He reminded her of the Speakers responsibility to read the relevant section from the Bill of Rights to the House before any debate where the subjects liberties might be called into question. She replied;

"The Bill of Rights remains on the statute book, and will do so until such time as it is amended by Parliament. I enclose a copy of the Bill of Rights for your information.

"The questions that you raise are relevant to the current debate but since these matters are in contention between the political parties it would not be appropriate for the Speaker to express a view".

(Personal letter. 12th November 1996).

Note the use of the word "amend". The Speaker does not say that the provisions of the Bill of Rights can be repealed, only "amended". As noted elsewhere in this document the term means "to improve". The House of Commons library later reported that "virtually no mention of the Bill of Rights was made in the debates in the House". The authors of this document can remember no mention in the mainstream media either. There was one exception. The illustrious politician and toe fancier David Mellor was interviewed on daytime TV shortly after the Amendment Bill was announced. He argued with another guest and shouted "As for the idea that is being put about by the wild men of the Conservative party that we have some kind of right to bear arms in this country, its nonsense". Mr. Mellor is a Barrister and would have taken the Oath of Allegiance. He must have been telling the truth.

Other SAFE members wrote to as many MPs as possible to register their concern about possible infringement of the Bill of Rights and to warn them that they could be held to account through the Courts for their actions if they did not comply with the law.

It is believed that this correspondence is the reason why the library of the House of Commons felt obliged to issue the following document for the information of members;

**Gun control and the Bill of Rights.**

The library has received a large number of enquiries, which appear to be the result of campaigns among shooters opposing the new provisions on firearms control. Because of the initial influx of such enquiries, I prepared a section on the alleged constitutional implications of the then Bill as part of our research paper which we published for its second reading debate.

There are a numbers of variants of the message sent to members which contain a reference to the Members oath of allegiance. I assume that the argument put forward by shooters is along the following lines;

(1) The Bill of Rights 1689 requires all officers and ministers to serve the Monarch according to its provisions.

(2) The Bill of Rights 1689 protects citizens rights to bear arms and not to have their property confiscated.

(3) Therefore Members who support this sessions legislation may be in breach of their oath of allegiance.

The 1997 Act does not appear to refer at all to the 1689 Statute, and any claims that the earlier statute has been impliedly amended or, indeed, that Parliament has no power to make such amendments, would have to be matters for the Courts if put before them.

It is perhaps of interest that, notwithstanding the apparently widespread lobbying on Bill of Rights grounds, virtually no mention of this argument was made during the Bills passage through Parliament"

(Document Ref. 4321 97/3/14HA BKW/aor. 4th March 1997)

The briefing document referred to is available from constituency MPs as Research Paper 96/102 dated 8th November 1996 Page 75 quotes the case of Bowles v. Bank of England which was referred to above and confirms that the Bill of Rights remains an operative statute. Page 10 contains the following passage,

"The underlying purpose of firearms legislation in the UK is to control the supply and possession of all rifles, guns and pistols which could be used for criminal or subversive purposes while recognising that individuals

may own and use firearms for legitimate purposes..."

The authors of this essay have no objection to the sentiments expressed here. They are concerned to point out that there should be no distinction between "criminal or subversive purposes". If there is no evidence of criminal intent then mere possession of weapons by an individual should not be regarded as subversive to the state. In other words there should be no forfeitures of rights without conviction.

Fact sheet no.8, "The Glorious revolution" is available on request from the House of Commons information office. It contains a brief history and summary of the provisions of the Bill of Rights; including the following example, "the Bill of Rights set forth certain points of existing laws and simply secured to Englishmen the rights of which they were already legally possessed." (Quoting Thompson, *Constitutional History of England*, 1938.)

### *Exemption Certificates.*

Section 7 of the Firearms Act 1968 states that chief officers of police may issue exemption certificates where a full Firearm Certificate would not be appropriate. It is believed that many thousands of individuals have personal protection weapons in the UK by this means. This subject has been raised in the Commons but Home Office Ministers have declined to comment. We believe that the principles which govern the issue of FACs apply to these permits also. The only difference is that no appeal against refusal is provided for in legislation. Any refusal could however be tested by means of Judicial review.

### *Home Office policy.*

The recent seizure of pistols following the passage of the Firearms (Amendment) Act 1997 is unlawful because it contravenes the principles described above. When pistols were re−classified to Section 5 of the Firearms Act 1968 those persons who were exercising their right to have arms for defensive purposes as members of rifle clubs should have been given the opportunity to apply for Section 5 Authorities to the Home Secretary. The arbitrary withdrawal of approval to use pistols from clubs was also unlawful. It is the sworn duty of the Home secretary to comply with the law and respect the rights and liberties of the subject.

To do so would after all have been "a small thing which must be done in future."

### *The presumption of innocence.*

"Throughout the web of the English criminal law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoners guiltNo matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained."

Stones Justices Manual. Preface to 1990 Edition.

An authoritative book entitled "*Taylor Upon Evidence"* has this to say about burden of proof,

"The right which every man has to his character, the value of that character to himself and his family, and the evil consequences that would result to society if charges of guilt were lightly entertained, or readily established in Courts of justice:− these are the real considerations which have led to the adoption of the rule that all imputations of crime must be strictly proved."

The Firearms Act 1920 and the Prevention of Crime Act 1953 are based on the principle that Parliament can create new offences that everyone is guilty of from the date of their adoption, and then allow exceptions at the discretion of the police. They have shifted the burden of proof onto the defence, which is something that never happened before.

This purported power of Parliament was objected to strongly by many MPs in the debates on the Prevention of Crime Act 1953. They generated about 90 pages of debate in Hansard on a Bill that was little more than one page long. Several MPs were only prepared to accept the Bill as a short−term emergency measure to be reviewed after five years. The Government claimed that the measure was necessary to deal with an outbreak of violent crime. James Carmichael (MP for Glasgow, Bridgeton), pointed out that Scottish crime figures had actually dropped significantly in the preceding years and the Bill was an over−reaction to misleading press reports (Hansard, 26 March 1953). Several references were made to the fact that at that time the assurances given by Ministers that the police would act responsibly and with restraint was worthless because what had been said in Parliament could not be referred to in the Courts. The Bill was passed, and soon the presumption of innocence was set aside in other legislation without a murmur.

This has resulted in the proliferation of Statutory absolute offences. In the common law guilt could only be inferred from a persons actions and evidence of his mental intent at that time. Thus stealing is the taking of property belonging to another with evidence of an intention to permanently deprive the owner of it. The Statutory offence of simple possession of a "prohibited weapon" is a crime regardless of the circumstances as are selling apples by the pound or beef on the bone. Statutory "crimes" are whatever the legislature decides. A victim or intent is not required.

We have come to a point where the ancient rightness of the common law has been set aside. As Mr. Justice Laws said in the case of Witham,

"What is the precise nature of any constitutional right such as might be outwith the power of government... to abrogate? In the unwritten order of the British State, at a time when the common law continues to accord a legislative supremacy to Parliament..."

We believe that is the key. The Courts have given up legislative supremacy to Parliament. And they have been allowed to do this because no one has gone before a Court and claimed his common law rights. Those rights of the subject are written, but have been hidden and forgotten.

And here lies the danger to us all. The only power that Government has is to manufacture criminals. If Government believes that it can do as it wishes without the restraint of a Constitution then no one and nothing is safe from the whims and prejudices of the legislators. John Locke the philosopher, was a major influence in the education of the generation that debated what became the English Bill of Rights in 1688. We can have an insight into the mischief that the participants sought to avoid with the passing of the Statue which "Declares the Rights and Liberties of the subject...in all time to come".

"Man is a maker of things, and a property owning animal... From the right to self−defence and protection of property comes the right to the rule of law, and a multitude of like rights, such as the right to privacy expressed as An Englishman's home is his castle. A ruler is legitimate only in so far as he upholds the law. A ruler that violates the law is illegitimate. He has no right to be obeyed; his commands are mere force and coercion. Rulers who act lawlessly, whose laws are unlawful, are mere criminals."

### *The responsibilities of the Judiciary, and a little history.*

The situation in which we find ourselves has happened before. It seems that Governments will, from time to time, attempt to subvert the liberties of the subject. In the first instance we are entitled to appeal to the Courts for redress of our grievances. The Courts function on the basis that they will adjudicate in disputes that are put before them. That is why we say that the time has come to test the validity of the Firearms Acts. The principle at stake is wider than the issue of arms. The reversal of the presumption of innocence is a threat to us all.

The question therefore is; will our judiciary stand on the ramparts of justice and the ancient constitutional rule of law? Would our judiciary act, resign or abandon their judicial oaths and state freely that they are no longer prepared to serve a country entitled to be called a free democracy?

Does Parliament have the power to deprive the Court of its authority to hear a citizens claim to enforcement of a fundamental legal right?

Parliament derives its sovereignty and privileges from the Bill of Rights 1689 and from a body of authority. As described above, the Speaker was at pains to remind the Court which was considering the case of Pepper v. Hart to respect Article 9 of the Bill of Rights which states " That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any Court or place out of Parliament". How can Parliament then justify ignoring the other Articles when it suits them to do so? And what are the other privileges of Parliament? The Clerk of the Commons was invited to explain to that Court what they were. And he did not answer.

In the Bill of Rights the victors in the Revolution sought to protect, not to change, the fundamentals of the constitution. The framers of that document were simply declaring common law that already existed and would continue to exist. The preamble to the bill reads:

"And thereupon the said Lords Spiritual and Temporal, and Commons...do in the first place (as their ancestors in like cases have usually done) for the vindicating and asserting their ancient rights and liberties declare"

Clearly, the intent and true meaning was not to abolish their ancient fundamental rights and liberties for a pretended parliamentary sovereignty, which is generally believed and accepted today. They were vindicating and asserting them, and reclaiming them, from a despotic King James II whom had grievously violated them, as had his predecessors.

Applying the principle of Pepper v. Hart to the debates on the Bill of Rights itself, Sir Robert Howard, a member of the Committees which prepared the Bill, said;

"The Rights of the people had been confirmed by early Kings both before and after the Norman line began. Accordingly, the people have always had the same title to their liberties and properties that Englands Kings have unto their Crowns. The several Charters of the peoples rights, most particularly Magna Carta, were not grants from the King, but recognitions by the King of rights that have been reserved or that appertained unto us by common law and immemorial custom."

The intent throughout that debate was clear; − The Bill was intended to reserve fundamental rights. Edmund Burke also extolled the virtues of the Declaration of Rights;

"In the 1st of William and Mary in the famous statute, called the Declaration of Right, the two houses utter not one syllable of a right to frame a government for themselves. You will see that their whole care was to

secure the religion, laws, and liberties, that had long been possessed, and had been lately endangered...You will observe that from Magna Carta to the Declaration of Right, it has been the uniform policy of our constitution to claim and assert our liberties, as an entailed inheritance derived to us from our forefathers, and to be transmitted to our posterity; as an estate specially belonging to the people of this kingdom without any reference whatever to any other more general or prior right."

(Burke, *Reflections on the Revolution in France* (Penguin ed.) 118ff)

In fact, at the time of James II it was the Parliament who was on the defensive and it is the Parliamentarians who deployed fundamental law first. Magna Carta became the focus of the debate, and its clauses on the due process of law caused Parliament to frame a proposal to James that said:

"That according to Magna Carta and the Statutes aforenamed, and also according to the most ancient Customs and Laws of this Land, every free subject of this realm hath a fundamental propriety in his goods, and a fundamental liberty of his person."

(Gough, Fundamental Law in English Constitutional History (2nd ed.) at 63.)

Parliament in this instance claimed the right to use fundamental law to rebel as a lawful step in securing adherence to the fundamentals, just as the Barons had explicitly negotiated a right to rebel with King John in Magna Carta over four hundred years before. The historical parallels with the present situation are clear. If we are rebels, then we are entitled to claim the protection of the Article of the Bill of Rights that states;

"That it is the Right of subjects to petition the King and all commitments and prosecutions for such petitioning are illegal."

SAFE is aware of several persons who have applied the their chief officers of police to exercise their right to arms for defence and had their firearm certificates revoked. Chief officers are Crown servants and such actions by them are in breach of this provision of the law.

Winston Churchill was well aware of the significance of Magna Carta and as a historian wrote this warning and reassurance to future generations,

"The facts embodied in it and the circumstances giving rise to them were buried or misunderstood. The underlying idea of the sovereignty of the law, long existent in feudal custom, was raised by it into a doctrine for the national State. And when in subsequent ages the State, swollen with its own authority, has attempted to ride roughshod over the rights or liberties of the subject it is to this doctrine that appeal has again and again been made, and never as yet, without success."

(Churchill, *A History of the English Speaking Peoples* (1956) Vol. 1, 201−202)

### *Postscript.*

"As nightfall does not come at once, neither does oppression. In both instances, there is a twilight when everything remains seemingly unchanged. And it is in such twilight that we all must be most aware of change in the air − however slight − lest we become unwitting victims of the darkness."

Justice William O. Douglas

"Where did the men of honour go that made Britain great? Many gave their lives in the cause of liberty that we carelessly give away without a second thought. Who will take their places?"

John Pate. 1996.

"Give us the tools− and we will finish the job".

Winston Churchill. 1940.

"You may have to fight when there is no chance of victory, because it is better to perish than to live as slaves."

Winston Churchill

"There's no way to rule innocent men. The only power any government has is the power to crack down on criminals. Well, when there aren't enough criminals, one makes them. One declares so many things to be a crime that it becomes impossible to live without breaking laws."

(Ayn Rand "*Atlas Shrugged"*)

Criminals prefer unarmed victims. What greater ally does a criminal have than a Government that guarantees most victims will be unarmed and helpless?

**Blackstone on Arms for Self−Defence.**

"The fifth and last auxiliary right of the subject, that I shall at present mention, is that of having arms for their defence, suitable to their condition and degree, and such as are allowed by law. Which is also declared by the same statute 1 W.& M. st. 2, c.2, and it is indeed a public allowance under due restrictions, of the natural right of resistance and self−preservation, when the sanctions of society and laws are found insufficient to restrain the violence of oppression. In these several articles consist the rights, or, as they are frequently termed, the liberties of Englishmen: liberties, more generally talked of than thoroughly understood; and yet highly necessary to be perfectly known and considered by every man of rank or property, lest his ignorance of the points whereon they are founded should hurry him into faction and licentiousness on the one hand, or a pusillanimous indifference and criminal submission on the other. And we have seen that these rights consist, primarily, in the free enjoyment of personal security, of personal liberty, and of private property. So long as these remain inviolate, the subject is perfectly free; for every species of compulsive tyranny and oppression must act in opposition to one or other of these rights, having no other object upon which it can possibly be employed. To preserve these from violation, it is necessary that the constitution of parliament be supported in full vigour; and limits, certainly known, be set to the royal prerogative.

And lastly, to vindicate these rights, when actually violated or attacked, the subjects of England are entitled, in the first place, to the regular administration and free course of justice in the courts of law; next, to the right of petitioning the king and parliament for redress of grievances; and, lastly, to the right of having and using arms for self−preservation and defence.

And all these rights and liberties it is our birthright to enjoy entire; unless where the laws of our country have laid them under necessary restraints − restraints in themselves so gentle and moderate, as will appear upon further enquiry, that no man of sense or probity would wish to see them slackened.

For all of us have it in our choice to do everything that a good man would desire to do; and are restrained from nothing, but what would be pernicious either to ourselves or our fellow−citizens."

(This extract is taken from pages 143 and 144 of the first volume (of four) of the 21st edition of Sir William Blackstone's book 'Commentaries on the Laws of England' dated 1884 in which it Is stated that it derives from the edition of 1783 with the author's last corrections. It is commonly to be found in law libraries and in the larger reference libraries.)

**The Common Law: Tradition & Stare Decisis.**

**By Peter Landry.**

"I now deal with a species1 of law known as the common law. Common law is law that comes from the common people, vers, legislation, which, comes from the "experts."

It took a long time to learn the true nature and office of governments; to discover and secure the principles commonly indicated by such terms as 'Magna Carta,' the 'Bill of Rights,' 'Habeas Corpus,' and the 'Right of trial by jury;' to found the family home, with its laws of social order, regulating the rights and duties of each member of it, so that the music at the domestic hearth might flow on without discord; the household gods so securely planted that 'Though the wind and the rain might enter, the king could not'.

It took a long time to learn that war was a foolish and cruel method of settling international differences as compared with arbitration; to learn that piracy was less profitable than a liberal commerce; that unpaid labor was not as good as well−requited toil; that a splenetic old woman, falling into trances and shrieking prophecies, was a fit subject for the asylum rather than to be burned as a witch.

It took a long, long time after the art of printing had been perfected before we learned the priceless value, the sovereign dignity and usefulness of a free press.

But these lessons have been taught and learned; taught for the most part by the prophets of our race, men living in advance of their age, and understood only by the succeeding generations. But you have the inheritance.

The common law is a great scientific lab, the resources and results of which are brought to bear on the populations which are fortunate enough to possess an English common law tradition, such as exists, for example, in: Canada, the United States and Australia. My use of the adjective, "scientific," will be better appreciated after one reads my essay, Siren's Song. Sufficient to say here, at this place, that nature is the great and ultimate scientific testing lab, and it always, in time, shakes out the truth. Whether we appreciate it, or not, for hundreds of years: the common law tests, observes, adjusts and re−observes on a continual basis.

The fact of the matter is that there exists all around us a great body of law which has not ever been (nor could it be) written down in one spot. In a way, its, its more of a process which has a single guiding rule, the "golden rule," a negative rule: "Don't do something to someone that you don't want to have visited on yourself, either directly or through the agency of a government." Though it has suffered much at the hands of legislators, common law is yet followed in all major English speaking nations around the world.

Common law to England was and is its very force. The greatness of England, certainly in the past, is attributable, I would say fully attributable, to the stabilising and enriching institution that we have come to

know as common law. This subject of the common law is a great and wonderful subject: its evolutionary development and its great benefits make it the most superior law system known in the world, as history will readily tell. The common law is as a result of a natural sequence which hardened first into custom and then into law. It did not come about as an act of will, as an act of some group aware only of the instant moment, unaware of the nature and history of man. It come about as a result of a seamless and continual development, through processes we can hardly begin to understand; it evolved along with man.

Primitive man knew nothing of laws, all he knew was custom. Custom, or tradition, evolved into rules for living. They grew spontaneously, viz., not deliberately designed by some particular human mind. While no one can point o the origins of our traditional moral rules, their function in human society is clear enough. These moral rules, or traditions, are necessary to preserve the existing state of affairs; such that culture was allowed to evolve; and in turn, with culture, civilisations came about.

Thus, as David Hume wrote, man developed in an evolutionary fashion −− not only biologically, but also culturally. That, like the lot of all animals, man evolved in accordance with certain natural rules, in that "no form can persist unless it possesses those powers and organs necessary for its subsistence: some new order or economy must be tried and so on, without intermission; until at last some order which can Support and maintain itself, is fallen upon."

The preservation of existing laws as was represented by traditions and cultural rules, to early man, at least, was of greater concern then putting up with bad laws: change was what men feared: change and its social upheaval was what brought on suffering and death. I quote from Bagehot's work:

In early societies it matters much more that the law should be fixed than that it should be good. Any law which the people of ignorant times enact is sure to involve many misconceptions, and to cause many evils. Perfection in legislation is not to be looked for, and is not, indeed, much wanted in a rude, painful, confined life. But such an age covets fixity. That men should enjoy the fruits of their labour, that the law of property should be known, that the law of marriage should be known, that the whole course of life should be kept in a calculable track, is the summum bonum of early ages, the first desire of semi−civilised mankind. In that age men do not want to have their laws adapted, but to have their laws steady. The passions are so powerful, force so eager, the social bond so weak, that the august spectacle of an all but unalterable law is necessary to preserve society. In the early stages of human society all change is thought an evil. And most change is an evil. The conditions of life are so simple and so unvarying that any decent sort of rules suffice, so long as men know what they are. Custom is the first check on tyranny; that fixed routine of social life at which modern innovations have, and by which modern improvement is impeded, is the primitive check on base power. The perception of political expediency has then hardly begun; the sense of abstract justice is weak and vague; and a rigid adherence to the fixed mould of transmitted usage is essential to an unmarred, unspoiled, unbroken life.

(Walter Bagehot, The English Constitution, at pp. 229−30.)

Stare Decisis:− This idea, as expressed by Bagehot, is picked up in the law as it exists today. When a court decides a case it does so on the merits of the case before it. The court's decision is meant to only effect the rights of the parties, the litigants, before it. The court, however, is obliged to apply settled principles of law. The decision of any respected court amounts to a recap of the law needed to resolve the case before it. The law as it is used in the particular case has a universal applicability to all future cases embracing similar facts, and involving the same or analogous principles. These decisions, many being years and years old, thus became statements of law, to be applied by all courts when measuring the private and public rights of citizens. It is this stream of cases, within the arc of the great pendulum of time, which changes the banks of the law: the common law, thus, as it turns out, is a living, creeping, creature.

Do not, however, be mistaken − there is a conscious effort by those involved (lawyers and judges) to keep the law pure: not to change it, but to apply it. This principle is called stare decisis, Latin, which literally translated means, "stand by things decided." Stare decisis has come to us as a most sacred rule of law. A judge is to apply the law as it is presented to him through the previous decisions of the court; it is not the judge's function to make or remake the law that is the function of the legislature.

However, judges do make law even though they try not to; indeed it is their function, under a system of common law, to do so; but not consciously and only over the course of time, many years, as numerous similar cases are heard and decided. The common law has been and is built up like pearls in an oyster, slowly and always in response to some small personal aggravation, infinitesimal layer after infinitesimal layer. It is built up upon the adjudications of courts:

"...built up as it has been by the long continued and arduous labors, grown venerable with years, and interwoven as it has become with the interests, the habits, and the opinions of the people. [Without the common law a court would] in each recurring case, have to enter upon its examination and decision as if all were new, without any aid from the experience of the past, or the benefit of any established principle or settled law. Each case with its decision being thus limited as law to itself alone, would in turn pass away and be forgotten, leaving behind it no record of principle established, or light to guide, or rule to govern the future."

(Hanford v. Archer, 4 Hill, 321.)

Tyrants can only get a hold of a central system where the rules issue from a single authority (government); tyrants cannot get a hold of a system which depends on a spontaneous participation in the law−making process on the part of each and all of the inhabitants of a country, viz, a system of common law.

**"Bill of Rights 1688"**

**An Act Declareing the Rights and Liberties of the Subject and Setleing the Succession of the Crowne**

Whereas the Lords Spirituall and Temporall and Commons assembled at Westminster lawfully fully and freely representing all the Estates of the People of this Realme did upon the thirteenth day of February in the yeare of our Lord one thousand six hundred eighty eight present unto their Majesties then called and known by the Names and Stile of William and Mary Prince and Princesse of Orange being present in their proper Persons a certaine Declaration in Writeing made by the said Lords and Commons in the Words following viz

Whereas the late King James the Second by the Assistance of diverse evill Counsellors Judges and Ministers imployed by him did endeavour to subvert and extirpate the Protestant Religion and the Lawes and Liberties of this Kingdome

1. By Assumeing and Exerciseing a Power of Dispensing with and Suspending of Lawes and the Execution of Lawes without consent of Parlyament.

2. By Committing and Prosecuting diverse Worthy Prelates for humbly Petitioning to be excused from Concurring to the said Assumed Power.

3. By issueing and causeing to be executed a Commission under the Great Seale for Erecting a Court called The Court of Commissioners for Ecclesiasticall Causes.

4. By Levying Money for and to the Use of the Crown by pretence of Prerogative for other time and in other manner than the same was granted by Parlyament.

5. By raising and keeping a Standing Army within this Kingdome in time of Peace without Consent of Parlyament and Quartering Soldiers contrary to Law.

6. By causing several good Subjects being Protestants to be disarmed at the same time when Papists were both Armed and Imployed contrary to Law.

7. By Violating the Freedome of Election of Members to serve in Parlyament.

8. By Prosecutions in the Court of Kings Bench for Matters and Causes cognizable onely in Parlyament and by diverse other Arbitrary and Illegal Courses.

9. And whereas of late years Partial Corrupt and Unqualifyed Persons have been returned and served on Juryes in Tryalls and particularly diverse Jurors in Tryalls for High Treason which were not Freeholders.

10. And excessive Baile hath beene required of Persons committed in Criminall Cases to elude the Benefitt of the Lawes made for the Liberty of the Subjects.

11. And excessive Fines have been imposed.

12. And illegall and cruell Punishments inflicted.

13. And severall Grants and Promises made of Fines and Forfeitures before any Conviction or Judgement against the Personsupon whome the same were to be levied.

All which are utterly and directly contrary to the known Lawes and Statutes and Freedome of this Realme.

And whereas the said late King James the Second haveing Abdicated the Government and the Throne being thereby Vacant, his [Highnesse] the Prince of Orange (whome it hath pleased Almighty God to make the glorious Instrument of Delivering this Kingdome from Popery and Arbitrary Power) did (by the advice of the Lords Spirituall and Temporall and diverse principall Persons of the Commons) cause Letters to be written to the Lords Spirituall and Temporall being Protestants and other Letters to the severall Countyes Cityes Universities Burroughs and Cinque Ports for the Choosing of such Persons to represent them as were of right to be sent to Parlyament to at Westminster upon the two and twentyeth day of January in this Yeare one thousand six hundred eighty and eight in order to such an Establishment as that their Religion Lawes and Liberties might not againe be in danger of being Subverted, Upon which Letters Elections haveing beene accordingly made.

And thereupon the said Lords Spirituall and Temporall and Commons pursuant to their respective Letters and Elections being now assembled in a full and free Representative of this nation takeing into their most serious Consideration the best meanes for attaining the Ends aforesaid Doe in the first place (as their Auncestors in like Case have usually done) for the Vindicating and Asserting their auntient Rights and Liberties, Declare;

1. That the pretended Power of Suspending of Lawes or the Execution of Lawes by Regall Authority without Consent of Parlyament is illegall.

2. That the pretended Power of Dispensing with Lawes or the Execution of Lawes by Regal Authoritie as it hath beene assumed and exercised of late is illegall.

3. That the Commission for erecting the late Court of Commissioners for Ecclesiasticall Causes and all other Commissions and Courts of like nature are Illegall and Pernicious.

4. That levying Money for or to the Use of the Crowne by pretence of Prerogative without Grant of Parlyament for longer time or in other manner than the same is or shall be granted is Illegall.

5. That it is the Right of the Subjects to petition the King and all Commitments and Prosecutions for such Petitioning are Illegall.

6. That the raising or keeping a standing Army within the Kingdome in time of Peace unlesse it be with Consent of Parlyament is against Law.

7. That the Subjects which are Protestants may have Arms for their Defence suitable to their Conditions and as allowed by Law.

8. That Election of Members of Parlyament ought to be free.

9. That the Freedome of Speech and Debates or Proceedings in Parlyament ought not to be impeached or questioned in any Court or Place out of Parlyament.

10. That excessive Baile ought not to be required nor excessive Fines imposed nor cruell and unusuall Punishments inflicted.

11. That Jurors ought to be duely impannelled and returned and Jurors which passe upon Men in Trialls for High Treason ought to be Freeholders.

12. That all Grants and Promises of Fines and Forfeitures of particular persons before Conviction are illegall and void.

13. And that for Redresse of all Grievances and for the amending strengthening and preserveing of the Lawes Parlyaments ought to be held frequently.

And they do Claime Demand and Insist upon all and singular the Premises as their undoubted Rights and Liberties and that noe Declarations Judgments Doeings or Proceedings to the Prejudice of the People in any of the said Premisses ought in any wise to be drawne hereafter into Consequence or Example.

To which Demand of their Rights they are particularly encouraged by the Declaration of his Highnesse the Prince of Orange as being the onley means for obtaining a full Redresse and Remedy therein. Haveing therefore an entire Confidence That his said Highnesse the Prince of Orange will perfect the Deliverance so farr advanced by him and will still preserve them from the Violation of their Rights which they have here asserted and from all other Attempts upon their Religion Rights and Liberties. The said Lords Spirituall and Temporall and Commons assembled at Westminster doe Resolve that William and Mary Prince and Princesse of Orange be and be declared King and Queene of England France and Ireland and the

Dominions thereunto belonging to hold the Crowne and Royall Dignity of the said Kingdomes and Dominions to them the said Prince and Princesse dureing their Lives and the Life of the Survivour of them And that the sole and full Exercise of the Regall Power be onely in and executed by the said Prince of Orange in the Names of the said Prince and Princesse dureing their joynt Lives And after their Deceases the said Crowne and Royall Dignitie of the said Kingdoms and Dominions to be to the Heires of the Body of the said Princesse and for default of such issue to the Princess Anne of Denmarke and the Heires of her Body And for default of such Issue to the Heires of the Body of the said Prince of Orange. And the Lords Spirituall and Temporall and Commons doe pray the said Prince and Princesse to accept the same accordingly.

And that the Oathes hereafter mentioned be taken by all Persons of whome the Oathes of Allegiance and Supremacy might be required by Law instead of them And that the said Oathes of Allegiance and Supremacy be abrogated.

I A B doe sincerely promise and sweare That I will be faithfull and beare true Allegiance to their Majestyes King William and Queene Mary Soe helpe me God.

I A B doe sweare That I doe from my Heart Abhorr, Detest and Abjure as Impious and Hereticall this damnable Doctrine and Position That Princes Excommunicated or Deprived by the Pope or any Authority of the See of Rome may be deposed or murdered by their Subjects or any other whatsoever. And I do declare That noe Forreigne Prince Person Prelate, State or Potentate hath or ought to have any Jurisdiction Power Superiority Preeminence or Authoritie Ecclesiastical or Spirituall within this Realme Soe helpe me God.

Upon which their said Majestyes did accept the Crown and Royall Dignitie of the Kingdoms of England France and Ireland and the Dominions thereunto belonging according to the Resolution and Desire of the said Lords and Commons contained in the said Declaration. And thereupon their Majestyes were pleased That the said Lords Spirituall and Temporall and Commons being the two Houses of Parlyament should continue to sitt and with their Majesties Royall Concurrence make effectuall Provision for the Setlement of the Religion Lawes and Liberties of this Kingdome soe that the same for the future might not be in danger againe of being subverted, to which the said Lords Spirituall and Temporall and Commons did agree and proceede to act accordingly.

*Now in pursuance of the Premisses the said Lords Spirituall and Temporall and Commons in Parlyament assembled for the ratifying confirming and establishing the said Declaration and the Articles Clauses Matters and things therein contained by the Force of a Law made in due Forme by Authority of Parlyament doe pray that it may be declared and enacted That all and singular the Rights and Liberties asserted and claimed in the said Declaration are the true auntient and indubitable Rights and Liberties of the People of this Kingdome and soe shall be esteemed allowed adjudged deemed and taken to be and that all and every the particulars aforesaid shall be firmly and strictly holden and observed as they are expressed in the said Declaration And all Officers and Ministers whatsoever shall serve their Majestyes and their Successors according to the same in all times to come.

*And the said Lords Spirituall and Temporall and Commons seriously considering how it hath pleased Almighty God in his marvellous Providence and merciful Goodness to this Nation to provide and preserve their said Majestyes Royall Persons most happily to Raigne over us upon the Throne of their Auncestors for which they render unto him from the bottome of their Hearts their humblest Thanks and Praises doe truely firmely assuredly and in the Sincerity of their Hearts thinke and doe hereby recognize acknowledge and declare That King James the Second haveing abdicated the Government and their Majestyes having accepted the Crowne and Royall Dignity [as] aforesaid Their said Majestyes did become were are and of right ought to be by the Lawes of this Realme our Soveraigne Liege Lord and Lady King and Queene of England France and Ireland and the Dominions thereunto belonging in and to whose Princely Persons the Royall State Crowne and Dignity of the said Realmes with all Honours Stiles Titles Regalities Prerogatives Powers Jurisdictions and Authorities to the same belonging and appertaining are most fully, rightfully and intirely invested and incorporated united and annexed.

*And for preventing all Questions and Divisions in this Realme by reason of any pretended Titles to the Crowne and for preserveing a Certainty in the Succession thereof in and upon which the Unity Peace Tranquility and Safety of this Nation doth under God wholly consist and depend The said Lords Spirituall and Temporall and Commons doe beseech their Majestyes That it may be enacted established and declared That the Crowne and Regall Government of the said Kingdoms and Dominions with all and singular the Premisses thereunto belonging and appertaining shall bee and continue to their said Majestyes and the Survivour of them dureing their Lives and the Life of the Survivour of them And that the entire perfect and full Exercise of the Regall Power and Government be onely in and executed by his Majestie in the Names of both their Majestyes dureing their joynt Lives And after their deceases the said Crowne and Premisses shall be and remaine to the Heires of the Body of her Majestie and for default of such Issue to her Royall Highnesse the Princess Anne of Denmarke and the Heires of her Body and for default of such Issue to the Heires of the Body of his said Majestie And thereunto the said Lords Spirituall and Temporall and Commons doe in the Name of all the People aforesaid most humbly and faithfully submitt themselves their Heires and Posterities for ever and doe faithfully promise That they will stand to maintaine and defend their said Majesties and alsoe the Limitation and Succession of the Crowne herein specified and contained to the utmost of their Powers with their Lives and Estates against all Persons whatsoever that shall attempt any thing to the contrary.

*And whereas it hath beene found by Experience that it is inconsistent with the Safety and Welfaire of this Protestant Kingdome to be governed by a Popish Prince or by any King or Queene marrying a Papist the said Lords Spirituall and Temporall and Commons doe further pray that it may be enacted That all and every person and persons that is are or shall be reconciled to or shall hold Communion with the See or Church of Rome or shall professe the Popish Religion or shall marry a Papist shall be excluded and be for ever uncapeable to inherit possesse or enjoy the Crowne and Government of this Realme and Ireland and the Dominions thereunto belonging or any part of the same or to have use or exercise any Regall Power Authoritie or Jurisdiction within the same [And in all and every such Case or Cases the People of these Realmes shall be and are hereby absolved of their Allegiance]

*And the said Crowne and Government shall from time to time descend to and be enjoyed by such person or persons being Protestants as should have inherited and enjoyed the same in case the said person or persons soe reconciled holding Communion or Professing or Marrying as aforesaid were naturally dead [And that every King and Queene of this Realme who at any time herafter shall come to and succeede in the Imperiall Crowne of this Kingdome shall on the first day of the meeting of the first Parlyament next after his or her comeing to the Crowne sitting in his or her Throne in the House of Peeres in the presence of the Lords and Commons therein assembled or at his or her Coronation before such person or persons who shall administer the Coronation Oath to him or her at the time of his or her takeing the said Oath (which shall first happen) make subscribe and audibly repeate the Declaration mentioned in the Statute made in the thirtyeth yeare of the Raigne of King Charles the Second Entituled An Act for the more effectual Preserveing the Kings Person and Government by disableing Papists from sitting in either House of Parlyament

*But if it shall happen that such King or Queene upon his or her Succession to the Crowne of this Realme shall be under the Age of twelve yeares then every such King or Queene shall make subscribe and audibly repeate the same Declaration at his or her Coronation or the first day of the meeting of the first Parlyament as aforesaid which shall first happen after such King or Queene shall have attained the said Age of twelve yeares.] All which Their Majesties are contented and pleased shall be declared enacted and established by authoritie of this present Parliament and shall stand remaine and be the Law of this Realme for ever And the same are by their said Majesties by and with the advice and consent of the Lords Spirituall and Temporall and Commons in Parlyament assembled and by the authoritie of the same declared enacted and established accordingly.

And bee it further declared and enacted by the Authoritie aforesaid That from and after this present Session of Parlyament noe Dispensation by Non obstante of or to any Statue or any part thereof shall be allowed but that the same shall be held void and of noe effect Except a Dispensation be allowed of in such Statue [and except in such Cases as shall be specially provided for by one or more Bill or Bills to be passed dureing this present session of Parliament.]

Notes:

1. The item numbering has been added for clarity.

2. The asterisked paragraphing in the second half of the document is not original, but has been added for easier reading and place−finding.

3. The familiar title Bill of Rights 1688 comes from the Short Titles Act 1896.

The full title of the Act is as given.

4. According to the authoritative Halsbury's Statutes (4th edition, 1995 Reissue), all parts of this Act are still in force in England, Wales and Northern Ireland save that the Preamble was repealed in part (Juries) in so far as extending to Northern Ireland by the Statute Law Revision Act 1950.

5. This Act is sometimes dated as 1689 and sometimes called the Declaration of Rights.

6. At the time this Act was passed, the years began at Easter and the Julian Calendar was in effect. In 1752 Britain adopted the New Style Gregorian calendar and the beginning of the year was set as 1 January.

7. Authoritative copies of the original printed version of this Act are available from the House of Lords Record Office − 0171 219 3074. Ask for copies on A3 paper − they're a great deal easier to read.

**Magna Carta 1215.**

**JOHN**, by the grace of God King of England, Lord of Ireland, Duke of Normandy and Aquitaine, and Count of Anjou, to his archbishops, bishops, abbots, earls, barons, justices, foresters, sheriffs, stewards, servants, and to all his officials and loyal subjects, ...

Greeting. KNOW THAT BEFORE GOD, for the health of our soul and those of our ancestors and heirs, to the honour of God, the exaltation of the holy Church, and the better ordering of our kingdom know that;..

TO ALL FREE MEN OF OUR KINGDOM we have also granted, for us and our heirs for ever, all the liberties written out below, to have and to keep for them and their heirs, of us and our heirs:

No sheriff, constable, coroners, or other royal officials are to hold lawsuits that should be held by the royal justices.

In future no official shall place a man on trial upon his own unsupported statement, without producing credible witnesses to the truth of it.

No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgement of his equals or by the law of the land.

To no one will we sell, to no one deny or delay right or justice.

We will appoint as justices, constables, sheriffs, or other officials, only men that know the law of the realm and are minded to keep it well.

For a trivial offence, a free man shall be fined only in proportion to the degree of his offence, and for a serious offence correspondingly, but not so heavily as to deprive him of his livelihood. In the same way, a merchant shall be spared his merchandise, and a husbandman the implements of his husbandry, if they fall upon the mercy of a royal court. None of these fines shall be imposed except by the assessment on oath of reputable men of the neighbourhood.

... all these customs and liberties that we have granted shall be observed in our kingdom in so far as concerns our own relations with our subjects. Let all men of our kingdom, whether clergy or laymen, observe them similarly in their relations with their own men.

SINCE WE HAVE GRANTED ALL THESE THINGS for God, for the better ordering of our kingdom, and to allay the discord that has arisen between us and our barons, and since we desire that they shall be enjoyed in their entirety, with lasting strength, for ever, we give and grant to the barons the following security:

We will not seek to procure from anyone, either by our own efforts or those of a third party, anything by which any part of these concessions or liberties might be revoked or diminished. Should such a thing be procured, it shall be null and void and we will at no time make use of it, either ourselves or through a third party.

IT IS ACCORDINGLY OUR WISH AND COMMAND that the English Church shall be free, and that men in our kingdom shall have and keep all these liberties, rights, and concessions, well and peaceably in their

fullness and entirety for them and their heirs, of us and our heirs, in all things and all places for ever.

Both we and the barons have sworn that all this shall be observed in good faith and without deceit. Witness the above mentioned people and many others.

Given by our hand in the meadow that is called Runnymede, between Windsor and Staines, on the fifteenth day of June in the seventeenth year of our reign (i.e. 1215: the new regnal year began on 28 May).

G R C Davis Magna Carta Revised Edition, British Library, 1989.

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**THE CASE AGAINST GUN CONTROL**

By David Botsford

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**FOR LIFE, LIBERTY AND PROPERTY**

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Whoever controls the weapons makes the rules. Political power, that is, the power of one individual over another, rests partly on assent on the part of the ruled, whether through perceived self−interest or belief in the justice of the ruler's claim to power (or a combination of both), and partly on the capacity of the ruler to enforce his power over the subjugated by his control of more physical force than the latter. These factors are related: the majority of people throughout history either have not been in a position, or have not had the inclination, to make up their minds about abstract political ideas and then decide whether or not their current political arrangements suit these ideas; the very fact that the claim or assumption of power is made, backed up with sufficient capacity for violence to enforce it, is enough to make most people not only go along with the wishes of the ruler, but few will question the abstract legitimacy of his right to assert them. State power is a combination, in varying proportions, of violence, fraud, extortion and conspiracy to rob other people. In politics, unfortunately, might makes right, generally speaking. And neither is this true simply of conventional political relationships: psychologists record many cases of victims of terrorist hijackings falling in love with their captors, and in situations, such as the end of the American civil war, or the abolition of slavery in other countries, where slaves have suddenly been released from bondage, plentiful evidence exists that many ex−slaves were far from happy about their new situation.

The same principle applies to situations where the individual is simply trying to preserve power over himself

or herself, rather than impose it on someone else. Where the individual has the capacity, if necessary, to defend himself and his property by force, and to inflict injury or death on those attempting to violate them, that factor will always be present in the thinking of those seeking to exercise coercion over him, whether by political power or by more honest forms of robbery. While this capacity will by no means make anybody immune to such coercion, it will nonetheless be a limiting factor in what potential coercers will attempt to get away with.

### *Weapons and The Individual*

This history of technology has, in general, been partly one of continuous enhancements in the power of the individual (interrupted by various Dark Ages and relatively static periods), and partly one of attempts by those in power to restrict the spread of such improvements: for centuries after the invention of printing, Church and state authorities attempted to restrict the spread of both printing presses and printed books. Many inventions have been used both for the benefit of individuals, and for state control over individuals. Barbed wire greatly assisted the farming of cattle, and also made possible the development of concentration camps. With the expressed fear that they would facilitate totalitarian controls by the state over the individual: in fact, while such fears have proved far from groundless, more significant is the use of personal computers in setting up alternative networks of information which have helped to undermine totalitarianism, particularly in the Soviet bloc.

Nowhere is this dichotomy clearer than in the field of weaponry. Throughout most of history the technology of weaponry made it rather difficult for the individual effectively to defend himself against more powerful enemies. This led to political dependence on somebody else. In Europe in the early middle ages, for instance, the development of feudalism meant that the peasantry lost what individual autonomy they had: unable effectively to defend themselves against invading barbarians, the peasant had to accept an arrangement with a local lord whereby he became the latter's vassal in return for protection. The lord was rich enough to pay for the castle and knights which were able to defeat the barbarian raiders; this capacity, and the political arrangements consequent on it, gave him in most cases virtually the power of life and death over his villeins and serfs. While feudalism varied greatly from place to place, control over effective weaponry clearly reflected political power. In 1215, the barons of England, each with their own feudal armies, succeeded in forcing King John to sign Magna Carta because they had the military power to do so when the king was temporarily unable to finance sufficient forces to resist them. In 1381, by contrast, the great uprising against prices and incomes policy and poll tax known as the Peasants' Revolt (but actually lead by merchants, craftsmen, clerics and townspeople) was tricked and then brutally repressed by the royal authorities because, according to a

contemporary source, "some carried only sticks, some swords covered with rust, some merely axes and others bows more reddened with age and smoke than old ivory, many of their arrows had only one plume."[1]

The development of gunpowder, artillery and other firearms brought about a changed situation. On the one hand, the king was able to destroy the power of local barons and establish a centralised monarchy in which his power was exercised throughout his realm, as only he could afford the huge cost of armies equipped with artillery, which could destroy the barons' castles' walls, if they failed to submit to the king's wishes. On the other hand, the development of small arms made it increasingly possible for the ordinary individual to provide for his own defence, either alone or in concert with others. The introduction of repeating rifles and revolvers in the 19th century marked one of the most important technological revolutions in history in this respect. Before the introduction of small firearms, the individual armed with a sword, axe or pike would stand little chance against a group of marauders similarly armed; the bow took years of practice to master, and even an expert bowman could almost never prevail against a number of similarly−armed enemies, who could strike

him down as he notched another arrow. Even the musket had a lengthy and complicated reloading procedure, during which its possessor was vulnerable, and could be rendered ineffective if rain extinguished the fuse. Another problem was that early muskets and pistols could only be produced expensively by hand, thus restricting the number of people who could afford to buy them: the many fine specimens with intricate silverwork that we see in museums were specially made by gunsmiths for wealthy customers; the more plain ones were generally for the use of soldiers in royal armies.

But the repeating rifle and revolver enabled the user to fire several shots in succession without having to reload; the chances of a skilled marksman against several enemies were greatly improved. These could also be mass−produced in factories at very low cost, bringing them within the reach of almost everybody. The individual armed with these weapons, and practised in their use, therefore achieved considerable autonomy in terms of the defence of his own life and property. One political implication of this was that, since political authority, whether that of the feudal master or the modern state, had rested largely on the claim that the powerful were protecting the powerless, who in return owed the powerful (whether an individual monarch or noble or an idea, such as "state", "nation" or "society") allegiance, the scope of this authority could therefore be reduced to the extent that the previously powerless were now able to defend themselves. In response to this situation the state sought to restrict private ownership of weapons and establish a monopoly of legal force within society, in order to reinforce and increase its own power. Indeed, if the state could convey the illusion that the private ownership of weapons, and the willingness of individuals to use these weapons to defend themselves if necessary, was itself a "threat to society" of some sort, for example by associating it with the use of weapons in robbery and murder, then this progressive technological development could be used as a justification for even further extending state power at the expense of individual liberty. Not only would the individual be made dependent on whatever the state may or may not effectively provide for his protection against aggressors, but he would be incapable of self−defence if the state itself should become the aggressor.

### *Police Monopoly*

This, of course, describes the situation in Britain today. Britain has by far the strictest controls on the private ownership of firearms and other weapons of any western country, and the smallest distribution of (legally−held) firearms. During unrest in Soviet Georgia early in 1989, in the course of which 21 demonstrators were shot dead in Tbilisi by the Soviet authorities, one measure introduced by the regime to put down the protests was the seizure of all privately owned firearms in Georgia. The number seized proved to be almost exactly the proportion of legally−held firearms per head as those owned by the British population. It is a sobering thought to anyone who has noticed how short and insecure in history are the periods of relative freedom compared to the periods of oppression that the British people would be in no better position to defend themselves from any future tyranny imposed by a British government than are the oppressed people of Georgia.

Indeed, we are not even allowed adequately to defend ourselves from violent assault by individual aggressors. In 1987 Eric Butler, aged 55, who had been entirely law−abiding throughout his life and who was, among other charitable activities, a fund−raiser for the Royal National Lifeboat Institute, was assaulted on the London Underground by a gang of drunken young men. Evidently motived by entertainment rather than material gain, the youths first punched, strangled and kicked Mr Butler, then held him against the door of the train and repeatedly punched him and pushed his head hard against it. He succeeded, however, in drawing a sword−stick which he carried with him and wounding one of his assailants in the stomach (the attacker ended up in hospital for several days), thereby breaking free. At the next station he immediately informed the police, who proceeded to arrest Mr Butler and charge him with carrying an offensive weapon and causing grievous bodily harm, while releasing the two attackers. Mr Butler was fined, thereby gaining him a criminal record, and his sword−stick was confiscated. After a public outcry, two of the attackers were eventually charged with

assault and themselves fined.

The individual is expected to rely exclusively on the police for protection, and to use no force against attackers beyond what is officially considered the level of force being used against him (or her). Neither may the individual attack or even warn off a burglar with any form of weapon. In 1987 John O'Connell, aged 40, a south London grocer, whose shop had been burgled seven times in just over a month, kept watch at night in his cellar and attacked the eighth burglar with a piece of lead piping which broke his jaw: the burglar spent two weeks in hospital. When he called the police Mr O'Connell himself was arrested and tried for grievous bodily harm! Fortunately the jury acquitted him, and it was reported that he had not been raided since (although neighbouring properties had been hit as hard as ever). What is instructive is what the burglar, who was given a sentence of 80 hours community service for four burglaries (in practice gardening and other activities many people do as a hobby), said after the trial:

"Good luck to him. I don't blame him at all, but I just wish he had not hit me so hard. I know he had to protect his property, and I probably would have done the same thing in his position. This has certainly stopped me committing any more crime."[2]

A burglar, in other words, accepts his victim's right to self−defence far more than does the law of the land! If all victims of burglary and other crimes were legally allowed to defend themselves with effective weapons, including firearms, a large number of other criminals would be stopped from committing any more crimes.[3]

A recent Government Statistical Office survey reveals that the official clear−up rate for burglary throughout the country is 26.9%; robbery 20.9% and criminal damage 22.1%.[4] This does not, of course, mean that the victim will get any of his property back, even if the case is solved, but demonstrates the low efficiency of the monopoly police service which the taxpayer is forced to pay for, and which will be used against him if he attempts to provide for his own protection. On 17 July 1989 Douglas Hurd, the Home Secretary, admitted that in the London area seven out of every ten reported crimes (outside certain "serious" categories) are ignored by the Metropolitan Police as a matter of policy, with "non−aggravated" burglary and car break−ins top of the list of offences to be ignored. The individual is, in short, unilaterally disarmed by law against potential attackers and robbers.

What is striking, in examining the history of weapons ownership control in England, is how recently this situation has developed, and what a striking departure from historical practice it represents.

### *The History Of Weapons Control*

In examining the history of weapon controls in England, a distinction should be made between the private ownership of weapons by individuals, and the use of weapons by the militia system, which was the main method of law enforcement in England throughout most of its history. From Anglo−Saxon times onwards, individuals were enrolled in groups of about ten families called *tythings*, which were responsible for local law enforcement, and, where necessary, for the defence of the realm, as there was no police force or standing army. Every freeman had a duty to keep arms in order to carry out these functions. The Assize of Arms (1181) detailed the type of weapons to be kept by persons of various ranks. The Statute of Winchester (1285) commanded

"that every man have in his house Harness for to keep the Peace after the ancient Assize; that is to say every man between fifteen years of age and sixty years shall be assessed and sworn to armour according to the quality of their lands and goods."[5]

The spread of firearms in the early 16th century, then regarded as inefficient novelties, caused concern about armed crime and the neglect of archery, and in 1541 Henry VIII forbade the use of "crossbows, handguns, hagbutts and demy−Hakes" by anybody with an income of under UKP 100 a year. Even this latter class were to have handguns "not less than three quarters of one whole yard in length".[6] However, exceptions to this law permitted the use of such weapons by the inhabitants of towns "for shooting at butts or banks of earth" and by anyone to defend a house outside the limits of a town.

In 1671, in order to reserve game for the wealthy, Charles II enacted that any person without an annual income of over UKP 100 (except those of or above the rank of esquire and owners and keepers of forests) were not allowed to keep any gun, bow, greyhound, setting dog or long dog. Neither of these laws, however, affected either the duty to keep arms under the militia system, or the right to private ownership of other weapons (principally pikes for the lower orders by 1671). The Roman Catholic king, James II, however, violated these traditional rights, among others, by dismissing many Protestants from the militia and prohibiting them from owning weapons. When William of Orange overthrew James in 1688, parliament presented him with the Bill of Rights, which complained that James did "endeavour to subvert and extirpate the laws and liberties of the Kingdom" in thirteen ways; the sixth of these was that James had

"Caused several good subjects, being protestants, to be disarmed at the same time when papists were both armed and imployed, contrary to law."

Claiming that they were asserting no new rights, parliament declared "that the subjects which are protestants may have arms for their defence, suitable to their condition and as allowed by law".[7] The Bill, which was accepted into law by William and Mary, did not seek to disarm Roman Catholics, but to end discrimination against Protestants in arming themselves.

Sir William Blackstone's Commentaries on the Laws of England, first published in 1765, is a study of common law rights and the (unwritten) constitution which is still regarded as the definitive statement of the common law at that time. Blackstone wrote:

"The fifth and last auxiliary right of the subject, that I shall mention at present, is that of having arms for their defence, suitable to their condition and degree, and such as are allowed by law. Which is also declared by the same Statute I W & M St 2 c2 and it is indeed a public allowance under due restrictions of the natural right of resistance and self preservation, when the sanctions of society and laws are found insufficient to restrain the violence of oppression ...

"And we have seen that these rights consist, primarily, in the free enjoyment of personal security, of personal liberty and of private property. So long as these rights remain inviolate, the subject is perfectly free; for every species of compulsive tyranny and oppression must act in opposition to one or other of these rights, having no other object upon which it can possibly be employed ... And, lastly, to vindicate these rights, when actually violated and attacked, the subjects of England are entitled, in the first place, to the regular administration and free course of justice in the courts of law; next to the right of petitioning the king and parliament for redress of grievances; and, lastly to the right of having and using arms for self preservation and defence. And all these rights and liberties it is our birthright to enjoy entire; unless where the laws of our country have laid them under necessary restraints; restraints in themselves so gentle and moderate, as will appear upon further enquiry, that no man of sense or probity would wish to see them slackened."[8]

A comparison between this view and current official attitudes to the desire of individuals to provide for their own defence gives a good idea of the decline of liberty in this country over the past two centuries. The right to possess arms was vigorously defended and upheld by parliamentarians throughout the 19th century.

Following the industrial unrest of the 1810s, when the government believed a revolution was brewing, the repressive administration of Lord Liverpool introduced the Seizure of Arms Act 1820, which authorised a Justice of the Peace, on the oath of a credible witness, to issue a warrant to enter any place to search for

"Any pike, pike head or spear in the possession of any person or in any house or place; or any dirk, dagger, pistol or gun or other weapon which, for any purpose dangerous to the peace is in the possession of any person or in any house or place."[9]

Weapons seized were to be detained unless the owner satisfied a JP that they were not kept for a purpose dangerous to the peace. Although the Act applied only to the industrial areas affected by disturbances (Lancashire, the West Riding of Yorkshire, Warwickshire, Staffordshire, Nottinghamshire, Cumberland, Westmoreland, Northumberland, Durham, Renfrewshire and Lanarkshire, and the cities of Newcastle−upon−Tyne, Nottingham and Coventry), and was limited to two years, several members of Parliament objected to the infringement of liberty the Bill entailed. George Bennet protested that the distinctive difference between a free man and a slave was the right to possess arms, not so much to defend his property as his liberty. Neither could he do battle, if deprived of arms, in the hour of danger. T. W. Anson protested that the principles and temper of the Bill were

"so much at variance will the free spirit of our venerated constitution and so contrary to the undoubted right which the subjects of this country have ever possessed − the right of retaining arms for the defence of themselves, their families and properties that I cannot look upon it without loudly expressing my disapprobation and regret."[10]

George Canning, a senior minister (and later Prime Minister) replied:

"I am perfectly willing to admit the right of the subject to hold arms according to the principles laid down by the Honourable and Learned Gentleman, having stated it on the authority of Mr Justice Blackstone. The doctrine so laid down, I am willing to admit, is no other than the doctrine of the British Constitution. The Bill of Rights, correctly quoted and properly construed, brings me to the construction of the Bill which, in fact, recognises the right of the subject to have arms, but qualifies that right in such a manner as the necessity of the case requires."[11]

The Gun Licences Act 1870 required that, with certain exceptions, any person carrying or using a gun elsewhere than in or within the curtilege of a dwelling−house should pay a revenue fee of 10 shillings. This was purely an excise measure, with no intent of controlling firearms: licences were available without question at any post office. Nonetheless, in committee P. A. Taylor condemned the Bill as "an attempt to bring our laws and customs into harmony those of the most despotic Continental Governments − it is an attempt to disarm the people!"[12]

It should be noted that during the 19th century, when British people were completely free to arm themselves, although the population grew to several times its original size (from 11 million in 1801 to 41 million in 1911), the crime rate fell not only in relative but also in absolute terms. Nonetheless, the final decades of the 19th century saw a marked increase in the control by the state over the life of the people in many fields, and demands were increasingly put forward for various measures of gun control. A leader in the Daily Telegraph, of 5 November 1888, for instance, argued that

"We can conceive instances in which it is justifiable, or at least excusable, for civilians to have revolvers in their dwellings ... The carrying of a revolver on the person is quite another matter; and it is distinctly a cowardly, bloodthirsty, and un−English habit ...

"Let the proprietors of revolvers be registered and let no person be placed on the register until he can show his right to possess such a weapon, which should be numbered, and let infraction of the law be made a misdemeanour punishable by fine and imprisonment."[13]

In this new mood, the government introduced the Pistols Bill 1893, which sought to impose restrictions on pistol sales and use, but the Bill was defeated. C. H. Hopwood objected that

"It attacked the natural right of everyone who desired to arm himself for his own protection, and not harm anyone else."[14]

In 1895 a private member's bill which sought similar restrictions was again defeated, the same Hopwood arguing that

"To say that because there were some persons who would make violent use of pistols, therefore the right of purchase or possession by every Englishman should be taken away is monstrous."[15]

Colin Greenwood, former Chief Inspector of the West Yorkshire Constabulary and now editor of Guns Review, in his definitive study Firearms Control, summarises the legal situation with regard to firearms in 1900:

"England entered the twentieth century with no controls over the purchasing or keeping of any types of firearm, and the only measure which related to the carrying of guns was the Gun Licence Act, requiring the purchase of a ten shilling gun licence from a Post Office. Anyone, be he convicted criminal, lunatic, drunkard or child, could legally acquire any type of firearm and the presence of pistols and revolvers in households all over the country was fairly widespread..." "guns of every type were familiar instruments and ... anyone who felt the need or desire to own a gun could obtain one. The cheaper guns were very cheap and well within the reach of all but the very poor ... the right of the Englishman to keep arms for his own defence was still completely accepted and all attempts at placing this under restraint had failed."[16]

### *Gun Control In Our Time*

The Pistols Act 1903 introduced the first restriction on retail firearms sales, albeit an apparently mild one. It made unlawful the retail sale or hire of a pistol unless the purchaser either held a gun licence under the Gun Licences Act 1870, or proved that he was a householder seeking to use the pistol in, or within the curtilege of his own house, or produced a signed declaration from a magistrate or police inspector that he was about to go abroad for at least six months. More significantly, it was made unlawful for persons under 18 to buy, hire, use or carry a pistol, and for anyone to sell or deliver a pistol to a person under 18, or knowingly to sell a pistol to anyone intoxicated or of unsound mind. Also, retailers were required to maintain full records of all pistols sold, and show these on demand to a police or revenue officer. This could have little practical effect on retail sails to adults, as a gun licence was available on demand to anyone for 10 shillings, and no restriction was placed on private sales or gifts between individuals. Nonetheless it removed the freedom of a large group of British subjects − those under 18 − to arm themselves with pistols, and also subjected the right of everybody else under the control of statutory legislation, however apparently innocuous, for the first time. Although other firearms were not affected, this was a dangerous precedent, in that when, in a more intolerant atmosphere, the state sought further restrictions on firearms, and these were objected to, it could point to the existence of the Act as justification for the principle of further statutory controls.

Such an atmosphere emerged with the First World War and its revolutionary aftermath. In 1918 the Sub−committee on Arms Traffic saw the vast quantities of surplus weapons that would come onto

international markets after the war as a possible threat to the British Empire, both from "Savage or semi−civilised tribesmen in outlying parts of the British Empire" and "The anarchist or `intellectual' malcontent of the great cities, whose weapon is the bomb and the automatic pistol. There is some force in the view that the latter will in future prove the more dangerous of the two."[17]

It is important to stress that the government was not seeking to disarm the broad mass of responsible British people. Indeed, at the end of the war the government gave away nearly all its huge stockpile of captured German weapons to individuals who had contributed to the war savings scheme. Each person who had given a small amount received a rifle; those who had given more received a machine−gun; and those who have given particularly large donations were given a piece of German field artillery each![18]

The Firearms Act 1920 introduced major firearms control for the first time in British history, although in theory it did not extinguish the right to keep arms to defend the person and household. Under Section 1, with certain exemptions, an individual could only purchase or possess a firearm or ammunition if he held a firearms certificate, valid for three years and renewable for three−year periods, which "shall be granted by the Chief Officer of Police" in the applicant's district, if the applicant had "good reason for requiring such a certificate"; could be permitted to possess, use and carry a firearm without endangering public safety; and on payment of a fee. The Chief Officer was to deny a certificate to anyone he considered "unfitted to be entrusted with firearms". The certificate, which was to be shown on demand to a police officer or magistrate, would list the number and nature of the firearms. Section 2 introduced the registration of firearms dealers; trade in firearms was restricted to those who registered with the local Chief Officer of Police; registration could be refused if the police believed the dealer "Could not be permitted to carry on business without danger to the public safety or the peace."[19] It was made an offence to supply a firearm to persons under 14, persons drunk or of unsound mind, or certain convicted persons for specified periods. The Act also introduced the concept of "prohibited weapons", which means any "designed for the discharge of any noxious liquid, gas or other thing". (One result of this section of the Act is that anti−mugging aerosol cans which discharge CS or Mace gas in the face of an attacker without doing him permanent harm − and would thus be ideal for those who wish to defend themselves without risking killing anyone − are illegal.) In parliamentary discussion of the bill, Mr Kiley objected that a burglar seeking firearms could easily burgle a place where they were stocked and steal them wholesale.

"While it achieves no useful purpose, so far as I can see, it does interfere with legitimate traders. So far as burglars are concerned it will have no effect."

Only Lt−Commander Kenworthy objected on constitutional grounds, pointing out that there was

"... a much greater principle involved than the mere prevention of discharged prisoners having weapons. In the past one of the most jealously guarded rights of the English was that of carrying arms. For long our people fought with great tenacity for the right of carrying the weapon of the day, the sword, and it was only in recent times that it was given up. It has been a well known object of the Central Government of this Country to deprive the people of their weapons."[20]

Nonetheless the Bill became law. It should be noted that the 1920 Act was never intended as a measure against the ordinary criminal use of firearms, and did not prevent it. Nonetheless, it was typical of the slap−dash and superficial treatment of British firearms legislation this century that in 1934 the Bodkin Committee assumed, presumably without examining the background to the 1920 Act, that that had been its purpose, and regarded the well−publicised (though not much increased) criminal use of firearms as evidence that further restrictions were necessary. The Committee recommended, along with several minor changes, the classification of machine−guns as "prohibited weapons", and the law was updated in the Firearms Act 1937.

During the Second World War, the government, which was short of small arms, repeatedly appealed to the public to offer privately−owned firearms for sale, and thousands were bought in this way. At the end of the war, despite prohibition from military authorities, thousands of servicemen brought home weapons as souvenirs. In 1946, under a six−week amnesty (under which illegal weapons could be surrendered without fear of prosecution), 75,000 illegal weapons were handed in, including 59,000 pistols and 1,580 machine−guns. In October 1946 the Home Secretary went further than previous legislation in controlling private arms when he said:

"I would not regard the plea that a revolver is wanted for the protection of an applicant's person or property as necessarily justifying the issue of a firearm certificate."[21]

The legislation of the 1960s, which gave Britain the strictest firearms control in the western world, was in Greenwood's view the result partly of a political trade−off with the abolition of the death penalty, partly based on ignorance of facts and misinterpretation of data connected with firearms and crime. In 1965 the government was seeking to abolish the death penalty, a step strongly opposed by public opinion and many MPs. At that time, a number of well−publicised robberies and murders, committed with firearms, had taken place (although the statistical incidence of such offences was no higher than in the late 1940s). As a concession, in order to be seen to be "cracking down on crime" and thus obtain support for the Murder (Abolition of the Death Penalty) Bill, and also fearing an increase in armed crime after the passage of that Bill, the government very hastily introduced the Firearms Act. As well as minor further restrictions, this introduced the offence of carrying firearms with intent to commit an offence; further restricted carrying firearms in public; extended the powers of the police to require that weapons be handed over for inspection, search persons and vehicles suspected of carrying arms, and to arrest without warrant; and drastically increased the penalties provided in the 1937 Act. The police were empowered to impose conditions on registered firearms dealers, and for the first time those who dealt in shotguns were required to be registered, and to keep records of all transactions.

In an incident in August 1966 three policemen were murdered in London by a criminal gang using pistols. Massive protests from the public, the Police Federation and other bodies demanded the return of the death penalty for murder, arguing that the criminals would not have killed the officers if it was still in force. Roy Jenkins, the Home Secretary promised new restrictions on firearms in order to head off this pressure and avoid restoring the death penalty. In the important Criminal Justice Act 1967, which brought about a major overhaul of the criminal justice system, Mr Jenkins introduced, in Part V, a system in which, for the first time, persons had to obtain a licence before acquiring a shotgun. In the Lords discussion of the bill, Lord Mansfield described the first parts of the Bill as the "Criminal Justice (Encouragement of Evildoers) Bill" and Part V as the "Criminal Injustice (Harassment of Citizens) Bill". Lord Stonham, Under−Secretary of State at the Home Office, admitted that

"Of course a determined criminal can get one [a shotgun] illegally, as he can get a pistol despite the 1937 Firearms Regulations, stringent though they are. Of course he can; and this Bill will not stop a determined criminal from getting a shotgun."[22]

Nonetheless the Bill became law, and all the legislation relating to firearms was amalgamated into the Firearms Act 1968. Even the more powerful air weapons were brought under firearms control legislation with the Firearms (Dangerous Air Weapons) Rules 1969, although there was not a single incident in which an air−gun had been used in a crime, making a mockery of the number of police man−hours required to process the paperwork relating to them.

In 1972, in the only academic study ever made of British firearms legislation and its effects, Greenwood showed that none of the legislation had been based on proper research, and that all if it had been a complete failure in controlling the criminal use of firearms, which had increased − often dramatically − after every act

of firearms control.

"The use of firearms in crime was very much less when there were no controls of any sort and when anyone, convicted criminal or lunatic, could buy any type of firearm without restriction. Half a century of strict controls on pistols has ended, perversely, with a far greater use of this class of weapon in crime than ever before."[23]

He compared the use of (strictly controlled) firearms with that of shotguns (uncontrolled until 1968) in robberies in the following tables and concluded that "despite the fact that they were unrestricted until 1968, shotguns were used in only a relatively low proportion in the periods immediately before and after the imposition of controls."[24] An armed robber's choice of weapon for any particular "job", in other words, is based on what he considers the most appropriate weapon, and not the legal restrictions on it.

On the elaborate licensing system established by the legislation, he concluded that;

"The voluminous records so produced appear to serve no useful purpose. In none of the cases examined in this study was the existence of these records of any assistance in detecting a crime and no one questioned during the course of the study could offer any evidence to establish the value of the system of registering weapons ... it should surely be for the proponents of the system of registration to establish its value. If they fail to do so, the system should be abandoned."[27]

### *The Hungerford Massacre*

Nonetheless, Greenwood's conclusions had no apparent effect on official attitudes towards firearms legislation. In August 1987 Michael Ryan murdered 16 people and wounded another 14 in a few hours in the town of Hungerford with a legally−owned semi−automatic rifle, one of five legally−owned firearms he possessed (along with two illegally−owned, indeed "prohibited", sub−machine guns), before committing suicide. The government's response was to introduce still further restrictions with the Firearms (Amendment) Act 1988. An informed person, however, would make three observations about this appalling mass murder.

First, it was proof that the most restrictive system of firearms control and registration in the western world had failed legally, to deprive of firearms exactly the sort of person it was supposed to deny them to, demonstrating the sheer futility of such restrictions. As the government's White Paper, published shortly after the massacre, admitted:

"... legislation cannot offer a guarantee against the repetition of the tragic events of Hungerford. It cannot eradicate entirely the possibility of the abuse of legitimately held firearms by an unstable or criminal individual."[28]

Second, even if Ryan had been refused firearms certificates, or if there had been a total ban on the private ownership of firearms, he could still have carried out the massacre with the two sub−machine guns he owned, in spite of the fact that they were "prohibited weapons" and illegal for any private citizen to possess without written permission from the Home Secretary, which simply is not given.

Third, the restrictiveness of the system deterred the large majority of law−abiding citizens from seeking to obtain firearms certificates and thus be allowed to own and become proficient with firearms; a potential maniac like Ryan who would use guns for mass murder would persevere through the bureaucracy and obtain a certificate (or else buy from the huge illegal market in firearms). The result was that the people of Hungerford were unilaterally disarmed against Ryan, who could shoot them down at will.

Had there been a large proportion of law−abiding Hungerford people who owned guns and knew how to use them, they could have shot down Ryan at an early stage in his rampage. As it was, they had to wait until the police realised what was happening, obtained and deployed police marksmen, located Ryan and surrounded him − all of which took several hours in which lives could otherwise have been saved. This should be compared with a similar tragedy in a rural area in western France in July 1989, in which a man armed with a sporting rifle murdered 14 people, again without motive, before being brought down (but not killed) by police fire. The ownership and use of long guns is widespread in rural France, and a local man armed with a rifle succeeded in hitting and wounding the murderer during the rampage.

The British government, however, learnt none of these lessons. The Firearms (Amendment) Act 1988 simply introduced further restrictions along the lines of previous legislation. Along with other minor restrictions, semi−automatic weapons were classified as prohibited weapons, although for the first time compensation was paid to owners of them when they were surrendered: this category includes many pump−action and self−loading rifles, some models dating from 1882. The more powerful shotguns were brought to the same rigid level of control as pistols and rifles, requiring a firearms certificate. All shotguns had to be individually registered, ending the practice of holding several on one licence. The police were empowered to refuse a shotgun licence if they were not satisfied that the applicant had "good reason" for possessing a shotgun. The practice of converting a weapon to place it in a less strictly controlled category was outlawed. The penalties for violating the new shotgun legislation were increased drastically. In 1975 Douglas Hurd, later Home Secretary, was fined UKP 5 for possessing a shotgun without a certificate (he had forgotten to renew his certificate); under the 1988 Act the maximum possible penalty was increased to three years' imprisonment.

Such is the law as it stands at present, and it is interpreted in a strict manner by the police and Home Office authorities. It has been official Home Office policy continually to reduce the number of legally−owned firearms, and this is reflected in the number of certificates (on which details of each firearm, and purposes for which it may be used, are included) held by members of the public: in 1969 there were 216,281 firearms certificates held by private individuals; in 1986 the figure was 160,285. A less harsh view was taken of shotgun certificates during this period (before the 1988 Act): in 1969 637,108 people were licensed shotgun owners (i.e. permitted to own any number of shotguns); in 1986 there were 840,951. Virtually all these certificate holders are either members of gun clubs (for target shooting), people who engage in hunting game for sport, or farmers (for the control of vermin). Government and Home Office policy is that self−defence is not considered a good reason for requiring a firearm or shotgun certificate, although this is not written in any law, and is a purely bureaucratic decision. The attitude of the police has varied from one place to another, with some chief officers of police openly taking the view that the law should prohibit even sporting firearms. The following remarkable piece of logic is from Ken Sloan, legal editor of Police Review, in 1987, rather than a Chief Constable, but is not atypical of some of the opinions of the latter:

"My personal view of this is that anyone wishing to possess an automatic or semi−automatic weapon such as a Kalashnikov or M1 carbine, must be of unsound mind or unfitted to be entrusted with such a firearm."[29]

How many firearms are in illegal ownership in Britain? In the Police Review, of 7 January 1988, Michael Yardley, one of Britain's leading experts on firearms, estimated the figure at a remarkable 4 million.[30] Some indication of the size of the stockpile of illegally−owned weaponry is given by the number of firearms handed in during amnesties, in which the police encourage the public to hand in uncertified weapons for a period of several weeks, with no questions asked.

Firearms surrendered in England and Wales under amnesties since 1933:[31]

1933 16,409

1935 8,469

1937 14,000

1946 76,000

1961 70,000

1965 41,000

1968 25,088

1988 42,725

These figures exclude rounds of ammunition surrendered (795,000 in 1968; 1.5 million in 1988), other "offensive weapons" (4,280 in 1988), and the substantial numbers of firearms handed in other than during amnesties; 58,006 firearms were handed to the Metropolitan Police alone from 1946 to 1969, for instance.[32] In the 1965 amnesty a man in Royston, Hertfordshire, handed over an anti−tank gun, four service rifles, 12,000 rounds of ammunition, several live grenades and three booby traps.[33] In 1988 a man in Windsor surrendered 88 boxes of ammunition, three machine−guns (one with tripod), four rifles, three revolvers, a flare pistol and an anti−aircraft gun.[34] (Weapons handed in during amnesties, except those of historical interest, are melted down.)

One must remember that only those law−abiding people who wish to divest themselves of their firearms would hand them in in this manner, and the number of firearms involved clearly shows that the supply is not drying up. Certainly criminals have no problem in acquiring firearms for robberies: from 1974 to 1984 the number of robberies using firearms in England and Wales rose from 650 to 2,098.[35] On 26 July 1989, Donald Kell aged 67, attempted to tackle two men, armed with a pistol, who had just robbed a security van, and was shot dead.[36] Firearms control has kept guns out of the hands of people like Mr Kell, while failing to keep them from his murderers. As Greenwood comments:

"Criminals have proved to us that firearms controls will not deny their small class of people access to firearms whenever they want them, but even if it were possible to deny them guns, little would have been achieved if they simply turned to other weapons such as coshes, ammonia sprays and the like which, in fact, cause more injuries than firearms."[37]

Gun control has, in short, been a complete failure in terms of the objectives which people normally associate with it. It has succeeded in giving a virtual monopoly of privately−owned guns to professional criminals and those otherwise law−abiding individuals who own illegal firearms, the number of who can only be guessed at. Let us now propose positive arguments against firearms control and for the legal right of the individual to possess firearms and other weapons for his or her own protection.

### *Taking The Law Into Our Own Hands*

Generally speaking, most people would pay at least lip service to opposition to slavery, in that they would defend the right of the individual to the ownership and control of his or her own mind and body. It follows therefore that the individual also owns the products of his own mind or body, which he or she is free to use, exchange, sell or give as he or she wishes. This is the fundamental justification for property rights, which are absolute in the sense that nobody has any right to use violence against anybody else to violate that person's rights. Within this context of non−coercion, the individual is free to obtain whatever items of property he or she chooses without interference from others, and this includes all forms of weapons. Following from the

above principles, an individual also has the right to use force to defend his or her self or property, or someone else's self or property, when they are subjected to coercive force. No individual has the right to initiate force against anybody else or his or her property.

The state, however, makes the claim that we should depend exclusively on the power of the law and the state monopoly of policing for our protection, and have no right to "take the law into our own hands". Yet the police and the criminal courts spend a large proportion of their time pursuing people who have violated no property rights, and as we saw above, only a small proportion of crimes against the individual and property are solved. Quite large numbers of people, usually on low incomes, do not pay their television licence fees; when they are caught watching without a licence they are charged and fined; unable to keep up the payments on the fine, a total of about 600 a year are imprisoned for defaulting on fines. Yet violent criminals who have viciously beaten their victims are routinely given a suspended sentence, which means no real punishment at all. It is hardly surprising that violent crime is rising and getting nastier. In the past, the violent criminal was generally satisfied with using force sufficient to get what he wanted; today, horrifying stories about gratuitous torture, beating, mutilation and rape of robbery victims, evidently for fun rather than gain, are routine newspaper reading. Knowing their victims to be unilaterally disarmed, such is the contempt these people hold for their victims that they treat them in this manner. I submit that the widespread ownership of firearms among ordinary people would drastically reduce these assaults. In a study of criminals in US prisons, three−fifths said that a criminal would not attack a potential victim known to be armed; two−fifths had decided not to commit a crime because they thought the victim might have a gun.[38] In 1982 the small town of Kennesaw, Georgia, USA, passed a law making it compulsory, for householders to keep a firearm and ammunition on the premises; house burglaries fell from 65 per year to 26, and to 11 the following year.[39] Of course, the libertarian would not support such a coercive measure any more than he would, for example, force children to go to school, but the lesson stands. If even a small number of victims shot and killed their attackers, it is reasonable to assume that the message would get to the other criminals and violent crime would drop. For this to happen, though, the legal right to use force − if necessary lethal − in self−defence would have to be enshrined in law.

But actual crimes of violence are only the tip of the iceberg. "Kill one, frighten ten thousand." For every burglary, robbery, mugging, rape or other assault, many individuals are frightened to go out at night, some even by day, and often feel fear even in their own homes. This is particularly true of those groups with the smallest degree of real power in our society: old people, people on low incomes, "working class" women, residents of council estates, and non−whites. While there is never any shortage of hot air merchants in parliament, pressure groups, local government and the bureaucracy, who are quick to sound off on behalf of these "underprivileged" people, these latter always make proposals which will enhance their own power, and avoid the issues which really concern those whom they claim to represent, of which violent crime is the most important. It is hardly surprising that the police, short of manpower and resources and often not wishing to strain "community relations" are quicker to respond to complaints by the better−off, who can kick up a more effective fuss if they are dissatisfied with the police, than to those of the lower orders, who are generally cut off from political influence. (It is worth pointing out here that some elements of the left have in the past had more wisdom on the subject than others. The Banner of the London School of Economics students' union, made in the 1960s, and still carried on demonstrations, carries the bold legend "ARM THE WORKERS AND STUDENTS". One can only agree.)

### *Gun Control By The State, For The State*

But it is not just the private criminal from whom the ordinary citizen needs the right to protection. Even more important is self−defence against the state and its actual or potential violence. Throughout the world, tyranny is more common than freedom. In our century, tens of millions of human beings have been murdered by

oppressive regimes which believed that their victims stood in the way of creating some utopia or other by violence. Hundreds of millions − if not billions − more have had to live under totalitarian tyrannies, deprived of the most basic freedoms that we in Britain take for granted. In every case, the one distinctive difference between the agents of the regime and their victims was the fact that the former had a monopoly of weapons. Before coming to power, Adolf Hitler wrote:

"The most foolish mistake we could possibly make would be to allow the subject races to possess arms. History shows that all conquerors who have allowed their subject races to carry arms have prepared their own downfall by doing so."[40]

In 1937 the Nazi regime introduced a Firearms Act which stipulated that no civilian was to have a firearm without a permit, which would not, according to a contemporary commentary, be issued to those "suspected of acting against the state. For Jews this permission will not be granted. Those people who do not require permission to purchase or carry weapons [include] the whole S.S. and S.A., including the Death's Head group" and Hitler Youth Officers.[41]

Would it not have been better if the Jewish and other victims of the Nazis had been armed and able to resist being dragged to concentration camps? The fact that the victims could not effectively resist and overthrow these regimes made mass murder and tyranny possible. Dictators as diverse as Ferdinand Marcos, Fidel Castro, Idi Amin and the Bulgarian communists have ordered firearms confiscations immediately on taking power, for good reasons. The current suppression of the democracy movement in China, for instance, would be impossible without a state monopoly on weapons.

Totalitarian regimes know that disarming the people must be an early step in consolidating their tyranny. In the early days of communist rule in both Russia and China, the private ownership of firearms was prohibited, and spies and informers in the villages were rewarded for revealing the names of those who defied the regime's decrees. These measures were preludes to the seizure of the peasants' land in both countries, accompanied by the extermination by artificial famine of millions, along with the deportation to slave−labour camps of millions more who attempted to resist.

Such events seem, thankfully, to be a remote possibility in Britain today, but how do we know what might happen a hundred, two hundred or five hundred years in the future? Might the British people one day face a situation where they have to use force to resist a domestic tyranny? Indeed, it makes a decisive difference in the relationship between the state and the people if the latter is known to be armed. The fact that the people are armed creates a "bottom line" of oppression below which the government may be resisted, if all else fails, by force. If the people cannot defend their rights directly, then any freedoms they are permitted by the state are, strictly speaking, temporary privileges which can in practice be removed by the one institution which has a monopoly of legal violence in society. Soon after the Hungerford massacre, one regional English Chief Constable publicly urged that it be made illegal for members of the public to own bullet−proof vests and similar equipment, so that it will be easier for the police to shoot them! He was, of course, talking in reference to events like Hungerford, but the totalitarian implications are obvious. Any political authority seeking to remove basic human rights will tread very warily if it knows its subjects to be armed. In its measures it will always seek to err on the side of caution, not wishing to provoke resistance. A disarmed people, however, is ultimately at the mercy of those in power, dependent on their goodwill for their own survival.

Some indication of the degree of totalitarian pressure that can already be applied in our supposedly free society was given by the notorious events in Cleveland, County Durham, in 1987. Certain paediatricians working for the Cleveland Social Services Department (who happened, not coincidentally, to be socialists) engaged in a piece of empire−building by alleging that an epidemic of child sexual abuse was taking place in Cleveland. As a result hundreds of children were − apparently at random − forcibly taken away from their parents, and a totalitarian atmosphere imposed on the town. With none of the normal protections of the law,

such as the presumption of innocence, parents were accused of abusing their own children, and attempts were made to blackmail them into confessing. Attempts were also made to threaten and trick the kidnapped children into denouncing their parents. As a result of the trauma involved, many parents had nervous breakdowns, others split up, and others attempted suicide. After several months, the scandal was exposed, the children returned and the whole exercise proved to be completely fraudulent, although the psychological damage had been done.

It is here that the private ownership of firearms for self−defence becomes relevant. Hundreds of innocent parents had to undergo the smarting humiliation and shame of their own children being kidnapped from them and turned against them by individuals whose salaries they − the parents − were paying through taxes on their earnings. One just has to imagine the ordeal of neighbours, colleagues, relatives and friends knowing about the appalling accusations made against these parents, and perhaps wondering for years afterwards if there might have been something in it. Had the falsely accused parents, however, been armed, and had the legal right to defend their children against kidnapping by anybody, regardless of whether the latter were state employees or not (after it was established in court that the intervention was groundless), I submit that the bureaucrats would have kept their ghastly fantasies to themselves. If they had been so foolhardy as to proceed under these circumstances, they would have done so entirely at their own risk.

Many people are horrified at the idea that the individual should resist the intervention of the state by force, even in cases such as the Cleveland outrage. Yet most of the people who express this horror are more sympathetic to the right of parents to resist kidnappers who seize children for their own private gain. There is surely little moral difference between the two; indeed, the professional kidnapper is arguably preferable: he acts purely selfishly, and wants nothing more than the money he can extract from the parents, at which point he has no reason not to return the child. The "altruistic" Cleveland paediatricians had little interest in personal financial gain, and, probably convinced of the righteousness of what they were doing, were prepared to use the coercive power of the state to destroy families and reduce their victims to nervous wrecks in order to enhance their power. Why is it less moral for the individual to resist the latter than the former? And why should the law deny him or her the means to do so?

### *International And Regional Comparisons*

A comparison of international and regional policies on firearms control gives no evidence to suggest that legal restrictions on firearms have any effect in reducing either crime, or the criminal use of firearms, while by definition prohibiting or restricting the ownership of firearms by law−abiding citizens. Within the UK, the Channel Islands, with their wide degree of self−government, have very moderate gun controls, and the private ownership of firearms, including sub−machine guns and other automatic weapons, is widespread. It also has a very low rate of violent crime, and the use of firearms in crime is negligible compared to the mainland. In Northern Ireland, on the other hand, and also in the Irish Republic, gun controls even more draconian than those on the mainland have been imposed as a result of the terrorist situation there, and even air pistols and rifles are subject to the most severe controls. Yet the IRA and other terrorist groups have no difficult in obtaining effective military weapons, whether from abroad or on the black market, only in finding the men to use them. No comment is needed on the murder rate using firearms in Northern Ireland. Indeed, individuals in the province, whether Protestant or Roman Catholic, are at much greater risk of being murdered in "retaliation" attacks, in which a paramilitary group will target a law−abiding person of the other religion virtually at random, than people on the mainland. Their need for personal protection is much greater, and one can envisage that if a few cases took place in which terrorist gunmen were shot by their civilian victims, the deterrent effect would be enough substantially to reduce the terrorism in the province.

Switzerland has the highest level of private firearms ownership in the world, with pistols freely purchasable by adults from gunshops on presentation of a permit obtainable as easily as a television licence here. Retail sales of rifles and shotguns, and private sales of pistols between individuals are completely unregulated. Despite, or rather because of, the fact that several firearms are held in almost every home, the criminal use of firearms is so low that it is not even recorded separately in police statistics.[42] Denmark has a similarly high rate of firearms ownership, with small−calibre guns completely unregulated and an easily−obtained permit needed for larger ones. In Belgium private citizens can buy hunting and sporting guns with a readily−granted permit, with a stricter licensing system for more powerful guns. West Germany and France have found strict gun controls, introduced as a response to terrorism, impossible to enforce. In 1973, following the Baader−Meinhof, Middle Eastern and other terrorist campaigns, the West German government imposed severe firearms control, including registration of all guns.[43] In 1973 there were between 17 and 20 million privately−owned guns in West Germany; by 1976 only 3.2 million had been registered. Over 80% of firearms in West Germany are illegally held, the large majority by otherwise law−abiding people who have been criminalised by this action, and a series of police raids to find them has, fortunately, been a failure.[44] The French government introduced strict gun control in 1983 after violence inside France by Middle Eastern terrorists; again, the laws have been defied on a massive scale by French people who do not regard their freedoms as subject to bureaucratic removal as a result of somebody else's terrorism.[45] It is well−known that Malaysia has the death penalty for drug traffickers; the same penalty exists for illegal firearms ownership. Recently a Thai salesman visiting Malaysia was found with a .22 calibre pistol and ammunition: simply for possessing these, he was hanged. So much for the argument that strict gun control prevents unnecessary deaths!

Japan has much stricter gun control than most parts of the USA, yet Japanese−Americans, who have much easier access to firearms, have much lower violence rates than Japanese in Japan. Mexico has more restrictive gun control than the USA, and also a much higher murder and armed crime rate. In Taiwan, like Malaysia, the death penalty can be imposed for illegal ownership of guns, and gun control is stricter than Japan. Yet the murder rate in Taiwan is four times higher than that of Japan, and 30% higher than in the USA. South Africa has much stricter firearms control than the USA, yet has twice the murder rate.[46]

Before independence in 1962, Jamaica had a tolerable level of crime, and permitted private ownership of guns, subject to having a police permit. From 1962 to 1973 the homicide rate rose by 450% and violent crimes, including armed robberies, rose even more sharply. In 1973 (after an incident to which four businessmen were murdered by shooting) a total ban on the private ownership of all types of guns and ammunition was imposed. Police seized all legal firearms and were given the power to search any vehicle or house they believed to contain guns or ammunition, arresting without warrant any violators. These were taken to a "gun court", with no bail allowed, and, after a delay of perhaps weeks, arraigned in secret courts without representation, and those convicted were imprisoned in a "gun stockade" for an indeterminate period. For three months after the introduction of this system the rate of armed crime dropped, and then it grew completely out of control. Any political activity was accompanied by armed men roaming the streets, and armed troops had to preserve order during elections. Murders by shooting, armed robberies and other crimes set new world records, and spread throughout society. Later the Commissioner of Corrections admitted that the ban had not affected the hard core criminals, and the worst excesses of the system were corrected.[47].

The example of the USA is usually cited in arguments against the relaxation of British firearms control. It is alleged that the high rate of murder and other violent crimes in the USA is caused by the wide legal availability of firearms, and this would occur in Britain if firearms controls were removed. Many anecdotes, perhaps true, perhaps apocryphal, are put forward to support this proposition: a man in Kentucky shot his brother for using too much toilet paper; a dispute between two men in a New York City cinema over who would have the last bag of popcorn became a gunfight in which one of them was shot dead. The defence by many Americans of the Second Amendment to the US Constitution, which guarantees the right to keep and bear arms, is cited with feigned horror by some British observers, who are ignorant of the fact that this was a

fundamental principle of English law which was carried over from the unwritten British constitution, and which, as it has never been formally removed by parliament, and no court has ever ruled that it no longer exists, can be still said, legally speaking, to exist in England.

In the first place, the US has over 20,000 laws at Federal, state and local level which restrict firearms ownership and use. The cities with the highest levels of violence and criminal use of firearms, including New York City, Washington DC, Detroit and Chicago, have gun control even stricter than that of the UK. 20% of murders in the USA take place in these cities, which have only 6% of the population. Firearms bans are widely defied in cities where in some areas the police are effectively losing control of the streets. New York City, for instance, has had a virtual ban on handguns since the 1911 Sullivan Act, yet has an estimated 2 million illegal pistols (including those used in the anecdote mentioned above). If it is replied that guns can easily be brought in illegally from other states with less gun control, one can reply that surely the same would be true of, for instance, Minneapolis, which has no gun ban and a murder rate of 2.9 per 100,000, compared to 17.5 in New York. As in Britain, no correlation has ever been shown between the legal availability of firearms and armed crime.[48] The fact is that the USA has a higher rate of murder without firearms (i.e. using knives, poisons, blunt instruments, etc.) than any western European country: quite apart from the huge illegal markets in guns, murderers could simply substitute other weapons if guns were further restricted, while knowing that they victims would be disarmed. It is in the USA, more than any other country, that firearms control is a hotly−contested political issue, and the media, the bureaucracy, academia and most politicians are almost unanimous in seeking to disarm law−abiding citizens, who have had to fight a defensive political action against repressive legislation seeking to remove their freedom. The Bureau of Tobacco, Alcohol and Firearms uses every possible legal and illegal device to make life difficult for law−abiding American gun owners. Only one side of this debate − no need to say which one − ever gets heard in the British media.

### *National Defence*

The private ownership and civilian use of firearms can also play an important role in defence. The best known example is that of Switzerland, where every adult male is required to be a member of the militia (which numbers 625,000), to store a fully−automatic rifle and ammunition at home and to practise with it regularly. Separately from these government weapons, Switzerland has the world's highest level of private firearms ownership. Firearms, including semi−automatic rifles, can be bought freely from gunshops on presentation of a purchase permit which is issued without question to any adult (except those with certain criminal convictions or records of mental instability). Yet armed crime is negligible: firearms homicides have not increased since records began in 1931, and armed robberies are so few that they are not even recorded separately.

Denmark is second only to Switzerland in its level of private firearms ownership, and considerably ahead of the USA. It has a Home Guard of 75,200 the members of which store semi−automatic rifles and sub−machine guns at home and can be mobilised in one hour. In 25 years, only 13 homicides have been attributed to the 60,000 of these Home Guard weapons. Norway and Sweden also have Home Guards which store military weapons and ammunition at home: the misuse of these weapons is almost non−existent. The US government's Directorate of Civilian Marksmanship has sponsored civilian military arms to rifle clubs and semi−automatic rifles to individuals. In 1965, the Little Report, sponsored by the US Department of the Army, "failed to uncover a single incident where DCM arms have been used in crimes of violence".[49]

Before its present official attitudes to civilian firearms use developed, Britain used to have a similar system. From 1859 until the end of the First World War the government kept a quarter of a million Rifle Volunteers under arms; in 1900 Lord Salisbury, the Prime Minister, said that he would laud the day when there was a rifle in every cottage in England.[50] Our present system, in which nearly all peaceful citizens are both disarmed

and ignorant about firearms as a result of government policy, would lead to a disastrous situation if Britain should ever be faced with invasion. The people would be virtually incapable of organising effective guerrilla resistance to an invader, or of providing auxiliary forces to the regular army, because of the resources and time needed to train people in the use of weapons, quite apart from the availability of these weapons themselves. Should the regular military forces be defeated, the people would be completely at the mercy of an invader.

(One of the most fraudulent aspects of the position of the Campaign for Nuclear Disarmament is their claim that they support the possibility of guerrilla warfare as a major aspect of Britain's defence after the unilateral nuclear disarmament and withdrawal from NATO which they propose. I have often discussed the issue with CND supporters, and when I press for details of how this guerrilla force is to be organised, these are either vague or non−existent. When I ask whether they would encourage the widespread civilian ownership and use of military firearms, and the training of individuals in guerrilla warfare by official and private sponsorship, they react in a hostile manner to the very proposals they were arguing for − in a vague and offhand way − only minutes before!)

The private ownership of firearms by civilians can be remarkably effective in resisting even a modern technological invader. For centuries the Afghans and Pakistanis have been skilled both with using firearms and making copies of standard models in primitive workshops with simple tools and materials. When the Soviet Union invaded Afghanistan in 1979, the Afghans, despite their enormous technological inferiority, were able to offer immediate effective resistance and quickly developed rifles that could fire the same ammunition as the Soviet AK47. While their eventual success in forcing the Soviet forces to withdraw was due to the later availability of sophisticated modern weapons such as the Stinger missile, this would have been impossible without the early stages of military resistance made possible by the widespread knowledge and ownership of firearms.

### *Women And Guns*

"Be not afraid of man,
No matter what his size;
When danger threatens, call on me
And I will equalise."

(motto engraved on a 19th century Winchester rifle)[51]

Although capitalism has succeeded in giving women throughout society a wide degree of independence, for example through labour−saving devices, it cannot alter the biological fact that the average man is some 50% physically stronger than the average woman, nor that the average attacker, burglar or rapist is probably rather stronger than this average. And there is no doubt that the threat of attack is very real in Britain today, and poses a major restriction on the effective freedom which women enjoy.

But women are not permitted to take any measures for their own protection. In 1981 in Yorkshire, at the height of the murderous rampage of Peter Sutcliffe through the county (that is, before he had been caught), one woman who carried a small clasp knife in her handbag as a protection against the "Yorkshire Ripper" was convicted and fined for carrying an offensive weapon!

This situation could be transformed by the introduction of the legal right to own and use firearms and other weapons for self−defence. The possession of firearms by women would provide a virtual revolution in introducing real equality between the sexes in this area. In 1966, following a major increase in rapes in

Orlando, Florida, USA, the local police began a well−publicised training course for 2,500 women in firearms. The next year rape fell by 88% in Orlando (the only large American city to experience a decrease that year) and burglary fell by 25%, although none of the trained women actually fired their weapons: the deterrent effect was enough. Five years later Orlando's rape rate was still 13% lower than it had been before the training, while the surrounding standard metropolitan area had undergone a 308% increase.[52]

If the authorities here are unlikely to take such an enlightened attitude, at least they can remove the legal impediments for groups of women, private entrepreneurs, or others to organise such training, and for the purchase of weapons to supplement it. If they refuse to do so, at least victims of assault, robbery and rape will know who is partly to blame through the denial of the legal means of self−defence. Indeed, if the authorities would hesitate immediately to abolish all laws restricting the ownership of weapons, a more "Fabian" approach suggests itself. On a provisional basis, the legal right to possess firearms and other weapons could be given to one group which even the authorities must agree is both particularly vulnerable and particularly unlikely to use weapons for criminal purposes: old age pensioners. If after, say, two years, this resulted (as the reader will agree it doubtless would) in a decrease in the number of attacks on pensioners, the same right could then be extended to all women. A gain, if after a two year experimental period attacks on women were reduced, the political atmosphere would surely be improved for the restoration of everyone's right to provide for their own defence.

### *The Gun Control Debate Now*

British firearms legislation, then, has not been based on either reason or evidence. So how have such strict controls, which have effectively removed what was once regarded as a fundamental right of every individual, achieved the status of law with the almost unanimous approval of all major political parties, the police, the media and (taking their cue from them) public opinion? This is not an area which can be addressed with anything like scientific precision, but I believe it can be largely summed up, first, by a 20th−century official British attitude one might describe as "political fetishism". Britain has for centuries been, on the whole, a "law−abiding" and deferential country in the sense that the bulk of the population will go along with virtually anything the authorities demand; many, indeed, will go beyond that. This therefore creates in the authorities a fallacious assumption that the act of removing or restricting by law an object, or tool, that is used for something they disapprove of, will of itself remove the intention of and ability to perform the unapproved act. Even if only a small minority are committing the unapproved act, the large majority must be punished in advance for the actions of the few − must, in short, be punished for doing something that they as individuals have not done. That this is a peculiarly British attitude is demonstrated by a comparison with France.

France is by no means a free country − the absence of individual civil rights against the police and the criminal justice system would rightly appal any informed Englishman, as would the bureaucratic interference which, for instance, requires parents to name their children only from a state list of approved names − but this "fetishistic" attitude is largely absent. There is a liquid which can be used to remove the ink stamps on official documents, season tickets, and so on, without damaging the design of the paper underneath. Freely available at any stationers' in France, it is banned in Britain. In Britain, the taxation on alcoholic drink is continually increased to discourage its consumption, and the hours at which it can be bought still restricted, yet the incidence of drunken violence continues to rise, a phenomenon almost unknown in France, where alcoholic drinks are much cheaper (and which has diminished drastically in Scotland, where licensing hours are almost unrestricted). Again, France has no film censorship and most television channels regularly show "pornographic" material that would be unthinkable on British television, yet the believed link between pornography and sexual crimes, taken for granted here, hardly exists in France (which has a much lower rate of sexual crime): at rape trials in Britain, for instance, the defendant usually attributes partial blame to having seen a pornographic film; this is a rare defence in French rape trials. This sharp difference is clearly visible in

weapon control. In any knife shop in France, the visitor can find freely available for sale all manner of "offensive weapons" that it is a criminal offence to buy or possess in Britain, from flick−knives (known as switchblades in America, where they are banned in every state but Oregon) to Mace and nunchakas and other Kung Fu weapons. Yet France has a rather lower rate of violent crime than Britain.

Another broad characteristic, specific to British socialism since at least the First World War, is a belief that the common people whom socialism was supposed to help were purely an object, not a subject. The experience of the "working class" under capitalism, as (incorrectly) interpreted by the early 20th−century socialists, led them to believe that they were not capable of spontaneously organising themselves, and had to have their lives completely reorganised for them by bureaucrats and "experts". The "slums" in which the working class lived could not be improved and had to be destroyed and replaced by high−rise, concrete−jungle council estates. The masses were incapable of acting as informed customers in health, education and welfare, and the "welfare state" therefore gave very little individual choice or control to the people who were made dependent on it and whose taxes financed most of it.

It is this general attitude, now recognised as disastrous in so many areas (surviving 19th−century "slum" houses in east London are selling for UKP 200,000 long after high−rise blocks from the 1960s have either collapsed or been demolished), which has helped to introduce such harsh firearms control in Britain. In his excellent Libertarian Alliance essay Gun Control in Britain, (1988), Sean Gabb, after demonstrating the absurdities of firearms restrictions, concluded on a pessimistic note:

"The Firearms Bill will become law, and after a decent interval will be followed by another, and then by another, until guns are in theory outlawed among the civilian population. There is no opposing the general will on this point. There is no place for fantastical schemes of deregulation. All that can usefully be done is to observe and record the progress of folly − and hope that its worst consequences will be felt by a later generation than our own."[53]

Surely, however, one cannot allow such ill−informed, ill−thought out, irrational, repressive and unjust laws to continue to oppress the people without challenge. History provides many examples of repressive state actions, such as the witch mania of the 16th and 17th centuries, which commanded general approval in spite of their appalling consequences. They should always be opposed, however difficult the odds may seem to be.

Firearms control in Britain is one of those areas where a rigidly statist regime has been introduced which has become almost universal orthodoxy without being introduced on behalf of some ideology or other. As we saw above, firearms legislation was introduced on the basis of unclear thinking, ignorance about the purposes and results of previous legislation, political trade−offs and temporary hysteria. It is precisely for this reason that it is a difficult area to reform. With other areas of statism, such as the nationalisation of industries, or the development of council estates in the form they took, the measures were carried out in accordance with a specific ideology and with specific ends in mind, such as to make industry more efficient and accountable, or to create an ideal urban living environment. At least when the measures fail to produce the ends for which they were introduced, this can be demonstrated, and the policies altered, as has happened to some extent in recent years. With firearms control , however, no such objective standards by which it can be judged were ever proposed, yet firearms control commands more general political support than nationalisation or council estates ever did.

It also encourages the most officious and bloody−minded forms of policing, which undermine civil liberties. Several years ago a 16−year−old boy who habitually dressed in top hat and tails and carried a long walking cane with a large spherical handle was, as I remember reading, arrested by the police and charged with "carrying an offensive weapon". On 30 June 1989 Robert Manning, aged 31, was lawfully shooting pigeons with a shotgun in a field near Coventry when he saw a police helicopter overhead, which contained three policemen, one of them filming him with a video camera. He put the gun down and made querying gestures to

the policemen, who told him through a loudhailer to walk to a clearing, remove his jacket and shirt and turn round. He did this, and found himself facing 20 to 25 policemen with police dogs and two with Armalite rifles. One of them told him to march towards them and lie down, whereupon they handcuffed him and removed his boots. The helicopter landed, and he was taken in it to a police cell despite explaining what he had been doing. The police contacted the farmer who owned the field and confirmed that Mr Manning had had permission to shoot there. The police then allowed Mr Manning to leave the station, but refused to return his shotgun, even though he was licensed and had not used it unlawfully. He refused to leave, and returned to the cells until the police finally agreed to let him take the gun.[54]

It might be objected that if the right of the individual to own weapons is conceded, where does it stop? Are we to accept the right of individuals to have private armies, for example? I would reply that it does indeed follow, while accepting that in tactical political terms the climate is not yet right to put that forward as an immediate demand. Those who express horror at the idea of private armies seem unaware that there already is a legal standing private army, fully equipped and trained as a fighting force with sophisticated, modern weapons and other equipment. Comparatively small though it is, it belongs to the Duke of Argyll, who is the only individual in the United Kingdom legally allowed to keep a private army (the privilege was granted by the Crown to one of his ancestors). Yet I have never heard any report of this army creating any kind of danger to the public peace, or indeed, of anybody making any political objection to it. Given that His Grace's right to maintain an army is given such universal acceptance, if only by default, one could envisage a "Fabian" political process whereby it is extended, over a period of years, first, to all hereditary peers above the rank of baronet, then to the lesser aristocracy, and finally to us common folks, in a process analogous to the progress of the 19th−century Reform Acts and subsequent legislation extending the franchise.

### *Let Us Ask The Question*

That, I accept, lies in the future. But right now the newspapers are full of tragedies in which the availability of a firearm would have saved lives or enabled people to defend themselves. In two cases in 1989 families living on crime−ridden council estates have been burned to death because they have installed such heavy security, including locked steel bars at the windows and multiple−locked steel doors, that they were unable to escape form their own homes when fires broke out. If they have been allowed to possess firearms for the defence of their home from burglars and attackers, such precautions would have been less necessary. Not content with herding people into the violent, inhuman environments of so many council estates, the state removes even their right to defend themselves with weapons against the crime it has exposed them to. Every week, many shocking cases of violent crime are reported, but I was particularly appalled by a recent case in which three men broke into the home of a 54−year−old Cypriot woman in south London, trying to obtain her life savings of UKP 900, which were hidden in her brassiere. They tortured her for several hours in the most horrifying ways, one of which was thrusting an air pistol up her nostril and firing it, as a result of which she lost the sight of one eye. Nonetheless she never revealed the location of the money, which was all she had in the world. It was reported that the police had no clue as to the attackers' identity.

Who could doubt that the outcome would have been different if the victim herself had been armed − with a firearm? By what right do those who make our laws deny such people as this woman the natural right to self−defence? Let us ask this question of our political masters, and put the onus on them to explain why they are denying us the most fundamental human right of all, without which any others are not rights at all but merely temporary privileges granted by the powerful on their sufferance and removable at will − the right of the individual to arm against all aggression.

Notes

1. W. Marina, "Weapons, Technology and Legitimacy", in D. B. Kates, Firearms and Violence, Pacific Institute for Public Policy Research, San Francisco, 1984, p. 429.

2. Daily Telegraph, 7 April 1987.

3. See D. B. Kopel, "Trust the People", Cato Institute Policy Analysis 109, 11 July 1988.

4. Evening Standard, 10 July 1989.

5. C. Greenwood, Firearms Control, Routledge and Kegan Paul, London, 1972, p. 7.

6. Ibid,., p. 9.

7. Ibid,., p. 11.

8. Ibid,., p. 13.

9. Ibid,., p. 14.

10. Ibid., p. 15.

11. Ibid., p. 15.

12. Ibid., p. 16.

13. Daily Telegraph, 5 November 1988.

14. Greenwood, op. cit., p. 23.

15. Ibid., p. 25.

16. Ibid., p. 25−26.

17. Ibid,., p. 38.

18. Times, 15 September 1988.

19. Greenwood, op. cit., p. 46.

20. Ibid,., p. 54.

21. Ibid., p. 72.

22. Ibid., p. 86−87.

23. Ibid., p. 243.

24. Ibid., p. 243−244.

25. Ibid,., p. 244.

26. Extracted from C. Greenwood, "Comparative Statistics", in Don B. Kates, ed., Restricting Handguns: The Liberal Skeptics Speak Out, North River Press, np, 1979, p. 54.

[Note: This reference refers to a complex table which is not reproduced in this version of this text]

27. Greenwood, Firearms Control, op. cit., p. 246.

28. T. Jackson, Legitimate Pursuit, Ashford Press, Southampton, 1988.

29. Times, 26 August 1987.

30. Times, 7 January 1988.

31. Combined from data in Greenwood, Firearms Control, op. cit., p. 235, 236 and Times, 3 November 1988.

32. Greenwood, Firearms Control, op. cit., p. 237.

33. M. Bateman, This England, Penguin, London, 1969, p. 112.

34. Times, 15 September 1988

35. Jackson, op. cit., p. 45.

36. Daily Telegraph, 27 July 1989, p. 1.

37. Greenwood, Firearms Control, op. cit., p. 173.

38. Kopel, op. cit., p. 2−3.

39. Ibid., p. 3.

40. Quoted in Kates, Restricting Handguns, op. cit., p. 185.

41. Ibid., p. 185.

42. R. A. I. Munday, "Civilian Possession of Military Firearms", Salisbury Review, March 1988, p. 45−49.

43. Times, 26 August 1988, p. 3.

44. Munday, op. cit.

45. Times, 26 August 1988, p. 3.

46. USA Today, 18 Aprilv 1984.

47. Greenwood, "Comparative Statistics", op. cit., p. 37−38.

48. Ibid., p. 35−36.

49. Munday, op. cit., passim.,

50. Ibid.

51. Kopel, op. cit., p. 18.

52. Ibid,., p. 3.

53. S. Gabb, Gun Control in Britain, Political Notes No. 33,
Libertarian Alliance, London, 1988, p. 4.

54. Sunday Telegraph, 30 July 1989, p. 20.

Further Reading

C. Greenwood, Firearms Control, Routledge and Kegan Paul, London, 1972. The definitive academic study of the problem; a comprehensive historical, legal, statistical, criminological and practical survey of firearms control in England and Wales. Written by a former senior police officer who now edits Guns Review, the leading firearms journal in the country and is a voice of reason on the subject. Iconoclastic and indispensable to any understanding of the subject.

Don B. Kates, ed., Firearms and Violence, Pacific Institute for Public Policy Research, San Fransisco, 1984. An encyclopaedic collection of studies by 17 academics and lawyers, covering every area of the issue from a perspective sympathetic to gun ownership. Some of these scholars, including Professor James D. Wright, former president of the American Sociological Association, began their studies advocating stricter firearms control, and became convinced of the opposite case as a result of their researches. A complete demolition of the case for totalitarianism in firearms.

Don B. Kates, ed., Restricting Handguns: The Liberal Skeptics Speak Out, North River Press, np, 1979. Essays by eight experts on the subject of legal controls on pistols and other firearms. Most of the authors are American "liberals" in law and academe who dissent here from the gun−control orthodoxy of US "liberalism", and explain why.

T. Jackson, Legitimate Pursuit, Ashford Press, Southampton, 1988. Sponsored by the British Association for Shooting and Conservation as a response to the 1988 Firearms (Amendment) Bill, and covering only sporting guns, this short book, by one of Britain's leading experts on the subject, gives useful technical information about different guns and solid arguments, based on facts, against further firearms restrictions, while being rather defensive and not challenging the basic principles of British gun control. The use of guns for sporting purposes has hardly been mentioned in my essay, which emphasises the use of firearms for self−defence.

Law and Policy Quarterly, volume 5, number 3, July 1983. An interdisciplinary American academic journal with contributions by eight experts from a viewpoint critical of further restrictions. Some of the essays were later included in Firearms and Violence in extended forms.

D. B. Kopel, "Trust the People", Cato Institute Policy Analysis No. 109, 11 July 1988. A short pamphlet by an American lawyer that contains most of the relevant facts and arguments in an easily digested form.

S. Gabb, Gun Control in Britain, Political Notes No. 33, Libertarian Alliance, London, 1988. A short and useful critique of gun control from a libertarian perspective.