

LESSONS OF HISTORY: FIREARMS REGULATION AND
THE REDUCTION OF CRIME

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I. INTRODUCTION

The headline, splashed across *The Sunday Times of London* on its first edition of 2003, read, “Silenced by the Rule of the Gun.” The photo beneath showed four young gang members posing proudly with their illegal firearms.¹ Flamboyant, yes, but the article’s content certainly justified its grim title. Just after 7 p.m. on New Year’s Day, a man sitting in his car on a suburban street in Sheffield was shot in the head at point-bank range.² In the early hours of the next day, four teenage girls, while leaving a New Year’s party in Birmingham, were sprayed with bullets from a machine gun—a weapon banned for sixty-seven years.³ Farther down the page, another article reported a siege in Hackney, a borough described as “long used to gun law,” where, for the tenth straight day, police were attempting to lure a gunman out of his flat. The gun violence over New Year was not an anomaly; a gun crime protest march in Southwark a month earlier had to be re-routed after a young man was shot.⁴

Behind the tragic January shootings lie sober statistics. Firearm and handgun crimes have risen sharply, despite England’s increasing restrictions on firearms over the past eighty years and the ban of handguns for the past five years. Since the 1997 ban, handgun crime has more than doubled.⁵ In 2002, gun crime rose—for the fourth consecutive year—by thirty-five percent; crime with banned handguns rose by forty-six percent. That year also saw nearly 10,000 firearm offenses committed.⁶

1 *Silenced by the Rule of the Gun*, THE SUNDAY TIMES (London), Jan. 5, 2003, at 12.

2 *Id.*

3 *Id.*

4 Tony Thompson, *Shooting Re-Routes March Against Guns*, THE OBSERVER (London), Dec. 1, 2002, available at http://observer.guardian.co.uk/uk_news/story/0,6903,851654,00.html.

5 All crime statistics are for England and Wales, not for Great Britain. From the outset, crime statistics have included England and Wales, but not Scotland or Northern Ireland. *Handgun Crime Rises by Forty-Six Per Cent*, THE SUNDAY TIMES (London), Jan. 9, 2003.

6 *Id.*; *Police ‘Winning London Gun Crime Battle’* (Feb. 16, 2003), at <http://news.bbc.co.uk/1/hi/england/2769569.stm>.

II. CRIME RATES OF ENGLAND AND OTHER NATIONS

Armed crime is only part of an increasingly lawless English environment. The English rate of violent crime is also high when compared to those of other developed nations.⁷ A United Nations study in 2002 of eighteen industrialized countries, including the United States, found England and Wales at the top of the Western world's crime league.⁸ England had the worst record for "very serious" offenses and boasted nearly fifty-five crimes per hundred people.⁹

The comparison with the United States is especially interesting because those who support gun restrictions are fond of contrasting the crime rates and strict gun laws of England with the laws in America. Thirty-five states now permit law-abiding residents to carry a concealed weapon. The comparison with the United States no longer fits the old stereotype of England as the peaceable kingdom, and America as the violent republic. By 1995, England's rate of violence for every type of violent crime, with the exception of murder and rape, had substantially surpassed America's.¹⁰ Of course, murder is an important exception, and the American murder rate has been substantially higher than the English rate for at least two hundred years.¹¹ However, the English and American rates are now converging. While Americans have enjoyed a decade of sharply declining rates of homicide, English rates have risen dramatically.¹²

None of this was supposed to happen in Britain, where the strictest gun regulations of any democracy were customarily credited with producing a low rate of armed and violent crime.¹³ The safety of the British people has been staked on the thesis

7 Sophie Goodchild, *Britain Is Now the Crime Capital of the West*, INDEP. ON SUNDAY (UK), July 14, 2002, at 1.

8 *Id.*

9 *Id.*

10 PATRICK A. LANGAN & DAVID P. FARRINGTON, CRIME AND JUSTICE IN THE UNITED STATES AND IN ENGLAND AND WALES, 1981-96, at iii-iv (1998) (Bureau of Justice Statistics from the U.S. Department of Justice).

11 ERIC H. MONKKONEN, MURDER IN NEW YORK CITY 178-79 (2001).

12 As measured by police statistics in 1981, the U.S. murder rate was 8.7 times that of England. In 1996 it was 5.7 times England's, and the figures for 2002 place it at 3.5 times the English rate. LANGAN & FARRINGTON, *supra* note 10, at iii. See also Gary Mauser, Address at Symposium on The Legal, Economic and Human Rights Implications of Civilian Firearms Ownership and Regulation (May 2, 2003) (transcript on file with author).

13 JOYCE LEE MALCOLM, GUNS AND VIOLENCE: THE ENGLISH EXPERIENCE 2 (2002) [hereinafter GUNS AND VIOLENCE].

that fewer private guns means less crime: a weapon in the hands of any man or woman, however law-abiding, poses a danger to society, and disarming that person lessens the chance that criminals will get or use those weapons. In the name of public safety, the government first limited the right to private firearms, then forbade the carrying of any item useful for self-defense, and finally limited the permissible scope of self-defense itself.¹⁴ With gun crime becoming an increasingly serious problem, it is fair to ask whether strict gun legislation has, in fact, produced the claimed low levels of violent crime. Has this trade-off, this restraint on personal liberty, which involves restricting the right and the ability to defend oneself, actually enhanced public safety? The historical record can help answer that question.

III. THE EFFECT OF ENGLAND'S GUN CONTROL ON VIOLENT CRIME

There are two fundamental flaws in the proposition that England's strict firearms legislation is responsible for its low levels of violent crime. First, the level of violent and armed crime was extraordinarily low *before* gun controls were introduced in 1920.¹⁵ Secondly, a centuries-long decline in interpersonal violence ended in 1953-1954, and violent crime has been generally escalating ever since, despite increasingly strict gun regulations.¹⁶ Both of these statements merit further consideration.

A. *Violent and Armed Crime Before Gun Control*

Historians agree that from the late Middle Ages to 1954—nearly five centuries—interpersonal crime in England was declining. Lawrence Stone estimated that the homicide rates in Thirteenth-Century England were about twice as high as those in the Sixteenth and Seventeenth Centuries, and that those of the Sixteenth and Seventeenth Centuries were some five to ten times higher than those today.¹⁷ This decline in interpersonal violence occurred even with: 1) the introduction and increasing popularity of firearms from the Sixteenth Century; 2) the 1689

¹⁴ *Id.*

¹⁵ *Id.* at 20.

¹⁶ *Id.*

¹⁷ *Id.* at 19-20; Lawrence Stone, *Interpersonal Violence in English Society 1300-1980*, 101 PAST & PRESENT 29 (1983).

Bill of Rights, which guarantees that Protestants could have arms for their defense; 3) Nineteenth-Century judicial opinions affirming the right of every Englishman to be armed; 4) the lack of—until the 1830s—a professional police force; and 5) the complete absence of government control on the ownership of firearms.¹⁸ As a result, Englishmen of all classes owned guns. Furthermore, the principles of common law expected that the people would protect themselves, their families, and their neighbors with their weapons. If Englishmen witnessed a crime, they were obligated to intervene. Statistics show that ordinary Englishmen did not misuse this trust and, as the law expected, they may have deterred crime. A government study of handgun homicides for the years 1890-1892 found an average of one per year in a population of thirty million.¹⁹

England's first restrictive gun legislation was the Firearms Act of 1920, but attempts to bring guns under control had begun some fifty years earlier. The Gun Licence Act of 1870, introduced as a revenue measure, proposed a very high fee for a gun license.²⁰ It met with stiff opposition in Parliament.²¹ Many members of Parliament condemned it as operating unfairly on the poor—as a piece of class legislation—and as “an attempt to disarm the people.”²² Indeed, in his introductory remarks to the Commons, the Chancellor expressed hope that the measure would “put an end to the practice of carrying revolvers,” and he judged it a good object to discourage the working classes from habitually carrying deadly weapons.²³ The act, as eventually passed, was considerably weakened and left a major loophole exempting guns that were kept and used on one's own property.²⁴ Finally, the act does not seem to have been seriously enforced.²⁵

Furthermore, members of Parliament greeted with anger and derision attempts by both the government in 1893, and a private

18 For a discussion of legal opinions on the right of Englishmen to be armed, see JOYCE LEE MALCOLM, *TO KEEP AND BEAR ARMS: THE ORIGINS OF AN ANGLO-AMERICAN RIGHT* 130, 134, 167-68 (1994) [hereinafter *TO KEEP AND BEAR ARMS*].

19 Herbert J. Gladstone, *Returns Giving Particulars of Cases Treated for Revolver or Pistol Wounds in Hospitals During the Years 1890, 1891 and 1892*, HOME OFF. 73 (1893).

20 See GUNS AND VIOLENCE, *supra* note 13, at 117.

21 See *id.*

22 *Id.* at 117-18.

23 202 PARL. DEB. (3rd ser.) (1870) 855.

24 See GUNS AND VIOLENCE, *supra* note 13, at 118.

25 *Id.*

member in 1895, to pass legislation restricting private ownership of firearms measuring less than fifteen inches long, despite minimal armed crime. Members charged the proposed legislation as “utterly futile and inoperative,” stating that it attacked the natural right of everybody who desired to arm himself for his own protection and not to harm anybody else.²⁶ Members also said that the proposal was an example of not only grandmotherly but also “great-grandmotherly” legislation, and called it “silly” and “babyish.”²⁷ The bills were withdrawn; but in 1903, Parliament did approve the Pistols Act, which placed restrictions on the purchase of a pistol (defined as a gun with a barrel not exceeding nine inches).²⁸ The act was weak, which is probably why it was able to win parliamentary approval, and had the almost immediate effect of ensuring that pistol barrels grew to a length exceeding nine inches.²⁹ None of this legislation was a response to armed crime.

B. Gun Control and the Rising Level of Crime

The first serious gun controls were imposed in 1920 not because of fear of crime, but due to fear of revolution. In the wake of World War I, the government faced massive labor disruption, feared a Bolshevik revolution, and worried about the return of thousands of soldiers brutalized by an especially ferocious war.³⁰ The new act required a prospective gun owner to obtain a certificate from the local chief of police, who was charged with determining whether the applicant had good reason for possessing a firearm and was fit to have one. Parliament was assured that the sole intention of the law was to keep weapons out of the hands of criminals and other dangerous persons.³¹

However, from the start, enforcement of the law was far more restrictive than expected and became increasingly so, due to Home Office instructions to police (classified until 1989) that

²⁶ 30 PARL. DEB. (4th ser.) (1895) 1659, 1667, 1673.

²⁷ *Id.*

²⁸ See COLIN GREENWOOD, FIREARMS CONTROL: A STUDY OF ARMED CRIME AND FIREARMS CONTROL IN ENGLAND AND WALES 32 (1972).

²⁹ *Id.*

³⁰ For a discussion of the passage of this act, see TO KEEP AND BEAR ARMS, *supra* note 18, at 170-76.

³¹ DEPARTMENTAL COMMITTEE ON THE STATUTORY DEFINITION AND CLASSIFICATION OF FIREARMS AND AMMUNITION, 1934 [Cmd. 4758], at 21, 26.

periodically narrowed the definition of “good reason.” At the very outset, police were instructed that no matter how fit the person who requested the certificate, it should only be granted if he “lives in a solitary house, where protection against thieves and burglars is essential, or has been exposed to definite threats to life on account of his performance of some public duty.”³² Under this policy, only under circumstances as specific as these would the applicant have sufficient reason for a revolver.³³ By 1937, police were advised to discourage applications to possess firearms for house or personal protection.³⁴ And in 1964 the police were informed that “it should hardly ever be necessary for anyone to possess a firearm for the protection of his house or person” and that “this principle should hold good even in the case of banks and firms who desire to protect valuables or large quantities of money.”³⁵ Finally, in 1969 the police were told, “it should never be necessary for anyone to possess a firearm for the protection of his house or person.”³⁶ There was no public debate or consultation at any stage about this ever-restricting Home Office policy, a policy that thwarted the original intent of the Firearms Act and effectively denied the 1689 right of Englishmen to have arms for their defense. According to the Home Office, the only acceptable reason for having a firearm was gun sports, and sports were not constitutionally protected.³⁷

In addition to narrowing the criteria for a certificate over the years, a series of modifications were made to the basic 1920 Firearms Act. The evolving Firearms Acts of 1934, 1936, 1937, 1965, 1968, 1988, and 1997, brought the eventual result of a ban on handguns. Additional gun controls were incorporated within broad criminal justice and criminal use acts. The actual reason for these acts deserves consideration. Some gun control statutes were passed because governments, distrustful of the public, wanted to ratchet down the number of firearms in private hands. Other statutes were an opportunistic response to shooting incidents and were designed to placate public opinion, often in lieu of meaningful action that would have actually

³² *Firearms Act 1920, Memorandum for the Guidance of the Police*, HOME OFF. 3 (1920).

³³ *Id.*

³⁴ *Firearms Act 1937, Memorandum for the Guidance of the Police*, HOME OFF. 9 (1937).

³⁵ *Memorandum for the Guidance of the Police*, HOME OFF. 7 (1964).

³⁶ *Memorandum for the Guidance of the Police*, HOME OFF. 22 (1969).

³⁷ See GUNS AND VIOLENCE, *supra* note 13, at 172-73.

enhanced public safety. Few of these acts were expected to reduce armed crime except very indirectly; nearly all of the acts concentrated on limiting the access of law-abiding citizens to weapons, rather than reducing the pool of illegal firearms or otherwise deterring violent crime.

The shotgun certificate program incorporated into the Firearms Act of 1968 is an example of opportunistic firearms legislation that had little to do with preventing crime.³⁸ The notion of bringing shotguns within the certificate system had been considered for some time by 1968; however, in 1965, when Home Secretary Sir Frank Soskice studied the matter, he decided that requiring certificates for the 500,000 to as many as three million shotguns in legitimate use would “burden the police and not be justified by any benefits which might result.”³⁹ Later the same year, Roy Jenkins replaced Soskice at the Home Office, but Jenkins reconsidered the shotgun certificate matter and came to the same conclusion.⁴⁰ Then on August 12, 1966, fate intervened as two London policemen approached a parked car containing three men. One of the men fatally shot both policemen while an associate dashed to the waiting police car and shot the driver three times, killing him also.⁴¹ Britain’s greatest manhunt was on. The murder weapons were handguns, not shotguns.

The public was enraged and demanded the reinstatement of capital punishment, which the government had abolished provisionally the previous November. Instead, Jenkins announced plans “to end the unrestricted purchase of shotguns” claiming that “the criminal use of shotguns [was] increasing rapidly, still more rapidly than that of other weapons.”⁴² The evidence he cited was the same evidence available to him when he had concluded that requiring certificates for shotguns was an unproductive use of police time. His motive seems to have been to divert attention from the reinstatement of capital

³⁸ *Id.* at 197-99.

³⁹ *Id.*

⁴⁰ GREENWOOD, *supra* note 28, at 81-82.

⁴¹ *Id.* at 82.

⁴² *Id.* at 83 (quoting Home Secretary Roy Jenkins). While it was claimed that shotgun offenses had trebled since 1961, the figures were collected on a different basis every year following that date. They included all indictable offenses involving shotguns, which counted every sort of crime from armed robbery and poaching to the theft of old weapons; an antique weapon that was stolen was listed as a gun involved in crime. *See id.* at 83-84.

punishment. If that was his goal, he succeeded, but “at the cost of approximately half a million man hours of police time per year over the ensuing twenty years, and far more than that since 1988.”⁴³

Shotguns were again the targets in 1988 after former paratrooper Michael Ryan went on a shooting spree in the town of Hungerford.⁴⁴ Before an unarmed police force and an unarmed public were able to stop him, he had killed sixteen people and wounded another fourteen. In response, the Labor government introduced a firearms bill to place shotguns—the last type of firearm that could be purchased with a simple show of fitness—under controls similar to those on pistols and rifles.⁴⁵ Shotguns were to be registered for the first time, and a condition to keeping the weapons was imposed that enabled the police to demand costly security arrangements before granting a certificate. The government was anxious for the people to see that it was taking some action.

A Conservative government had hesitated to impose a “good reason” requirement on the purchase of shotguns for fear of massive non-compliance. As it turned out, the Conservatives had been right. Some 300,000 pump-action and self-loading shotguns had been sold in the years prior to the 1988 Act, but at most only 50,000 with restricted magazines were either submitted to proof, handed in to police, or granted certificates.⁴⁶ Thus, a quarter of a million shotguns simply disappeared.

When these measures were being debated in Parliament, the government conceded that the town of Hungerford could have no absolute guarantee against a similar shooting incident, nor could “changes to statutory law prevent criminals from gaining access to guns.”⁴⁷ Some members of Parliament argued that since most criminals could easily obtain unlawful weapons on the black market, imposing more stringent regulations on firearms would not prevent another tragic crime.⁴⁸ Nevertheless, the government took advantage of public demand for action.

43 GUNS & VIOLENCE: THE DEBATE BEFORE LORD CULLEN 166 (Richard Munday & Jan A. Stevenson eds., 1996) [hereinafter THE DEBATE BEFORE LORD CULLEN].

44 See GUNS AND VIOLENCE, *supra* note 13, at 201-02.

45 *Id.*

46 *Id.* at 206-07.

47 121 PARL. DEB., H.C. (6th ser.) (1987) 36, 65-66.

48 See generally *id.* at 46-59.

Judging by the growing number of armed crimes since 1988, the government's hopes were illusory that this regulation would "make it more difficult for criminals to get guns."⁴⁹ What the regulation did was consume millions of hours of police time for enforcement, hours that could have been, and should have been, spent protecting the public.

The handgun ban of 1997, enacted in response to the terrible shooting of children and teachers in Dunblane, Scotland, is another example of misdirected efforts.⁵⁰ Although the perpetrator, Thomas Hamilton, had a certificate for his weapons, the community had repeatedly warned the local police that Hamilton was not a fit person to have guns. Despite carrying out some seven investigations on Hamilton, the police never invalidated his firearms certificate.⁵¹ In urging a handgun ban, the Labor party insisted that the number of crimes from legal firearms were unacceptably high. At the time, only nine percent of English homicides were caused by firearms, of which just fourteen percent of the weapons involved had ever been legally held.⁵² Before the Dunblane incident, the number of licensed guns involved in crime in Scotland was even lower. Of the 669 homicides between 1990 and 1995, only forty-four were committed with firearms, and of these, only three homicides, or .4%, involved licensed firearms.⁵³ Nonetheless, public pressure—spurred by a campaign led by parents of the Dunblane victims—called for a complete ban on handguns. Attempts to permit exemptions for the British Olympic target-shooting team and for handicapped target shooters were defeated; *all* licensed handguns were to be turned in to the police.⁵⁴

Forbidding the use of firearms for self-defense has allowed government policy to reserve itself a monopoly on the use of force. In 1953, the government went beyond disarming the public of firearms and, with the Prevention of Crime Act, forbade individuals from carrying any article in a public place "made, adapted, or intended" for an offensive purpose "without

49 *Id.* at 66.

50 *See* THE DEBATE BEFORE LORD CULLEN, *supra* note 43, at 322-23.

51 *Id.*

52 *Id.*

53 582 PARL. DEB., H.L. (5th ser.) (1997) 944. Although the text in the Parliamentary Debates has .04%, the math is wrong; it ought to be .4%.

54 *See* GUNS AND VIOLENCE, *supra* note 13, at 205.

lawful authority or excuse.”⁵⁵ Carrying something to protect oneself was branded antisocial. Any item carried for possible defense automatically became an offensive weapon. Furthermore, police were given extensive power to stop and search everyone. Individuals found with offensive items were guilty until proven innocent. The government admitted that the approach was drastic but claimed it was necessary to combat rising crime. However, just two weeks earlier, that same government defeated an effort to reinstate corporal punishment for some types of violent crime by insisting that crime rates were declining.⁵⁶

Ministers were unmoved during a debate in the House of Commons by the point that while society ought to undertake the defense of its law-abiding members,

one has to remember that there are many places where society cannot get, or cannot get there in time. On those occasions a man has to defend himself and those whom he is escorting. It is not very much consolation that society will come forward a great deal later, pick up the bits, and punish the violent offender. . . . A Bill of this kind, which is for the prevention of crime, ought not to strike at people doing nothing but taking reasonable precautions for the defense of themselves and those whom it is their natural duty to protect.⁵⁷

During a similar debate in the House of Lords, it was noted that a purpose of a weapon was to assist weakness to cope with strength, and it was this ability that the bill was framed to destroy. It was further argued that any government should not have the right, though they may very well have the power, “to deprive people for whom they are responsible of the right to defend themselves,” and “unless there is not only a right but also a fundamental willingness amongst the people to defend themselves, no police force, however large, can do it.”⁵⁸ Again, as with the Firearms Act of 1920, Parliament was advised that the law was not intended to harass law-abiding individuals. Unfortunately, police and prosecutors used the Act to do just that.

⁵⁵ *Id.* at 173-74.

⁵⁶ *Id.*

⁵⁷ *Id.* at 177.

⁵⁸ *Id.* at 179.

The Criminal Justice Act of 1967 eroded public safety and the right to self-defense still further. In this statute, the British government changed the longstanding rules for the use of force in self-defense, making everything depend on what seemed a reasonable use of force, considered after the fact. In his textbook on criminal law, Glanville Williams argues that the requirement that an individual's efforts to defend himself be "reasonable" is "now stated in such mitigated terms as to cast doubt on whether it still forms part of the law."⁵⁹ In addition to altering the common law position on self-defense, the responsibility to assist someone in distress had been reversed. Now, if someone sees an individual being attacked, the government recommends to not go to the person's assistance, but to walk on by and let the professionals handle it. Apparently, a passive and dependent public seems a higher government priority than any one individual's safety.

In contrast to its harsh attitude toward law-abiding people eager to protect themselves and their families, the British government has taken a very solicitous attitude toward those who would prey upon them.⁶⁰ Most offenders are punished with community service rather than prison, even after repeated offenses. Those few who are incarcerated receive shorter terms than in the past, and they usually serve only half of these shorter terms. Community service and shortened prison terms are encouraged by the government because they save money.

A large police force is also expensive. Hence, surveillance cameras have been installed as a cheap substitute for officers on patrol. England now has more surveillance cameras than any other country. Police departments have been consolidated to save funds, leaving most rural communities with no police presence. Financial considerations seem to have trumped considerations about public safety. Finally, to discourage self-help on the part of victims, offenders who are harmed by their victims are able to sue them in the courts.⁶¹ In the recent case of Tony Martin—a Norfolk farmer who shot two burglars who broke into his home, killing one—the wounded burglar was

59 GLANVILLE WILLIAMS, TEXTBOOK OF CRIMINAL LAW 504, 507 (2nd ed. 1983) (1978).

60 *See* GUNS AND VIOLENCE, *supra* note 13, at 189-93.

61 *Id.* at 213-15.

awarded public funds to finance his lawsuit against the burglarized farmer.⁶²

IV. CONCLUSION

The British government has removed proven deterrents to crime, which are a public able to defend itself combined with a sure and certain punishment for violating the law. In the face of the recent wave of violence and gun crime, the current government response has been to tighten gun restrictions yet again, to consider outlawing replica or toy guns, and to remove age-old legal protections for defendants. Honest people have been disarmed, severely limited in their legal ability to defend themselves, and left at the mercy of thugs. History shows that when there were no gun controls, England had an astonishingly low level of armed crime. Eighty years of increasingly stringent gun regulations—the strictest gun regulations of any democracy—have failed to stop, or even slow, the rise in gun crime. Gun crime is part of a disastrous rise in violent crime generally.

Admittedly, it is more difficult to control illegal weapons than to impose controls on the peaceful public. Moreover, it is far more difficult to confront the real challenges to public safety than to impose on the law-abiding a measure designed to give government a tighter monopoly on the use of force. It is the honest citizens who are doubly losers: they are not permitted to protect themselves, and society has failed to protect them.

Sir William Blackstone, England's famous Eighteenth-Century jurist, reminds readers that the principal aim of society is to protect individuals in the enjoyment of those absolute rights, which were vested in them by "the immutable laws of nature."⁶³ He defined those absolute rights—those great and primary rights—as personal security, personal liberty and private property.⁶⁴ The very first of these is personal security. This wisdom in the common law approach to public safety and self-

⁶² See *Burglar Sues Farmer* (Dec. 23, 2002), at <http://news.bbc.co.uk/1/hi/england/2600303.stm>; Stephen Wright, *Burglar's Legal Aid to Sue Tony Martin*, DAILY MAIL, July 6, 2002.

⁶³ See generally Sir William Blackstone, COMMENTARIES ON THE LAWS OF ENGLAND, BOOK ONE: RIGHTS OF PERSONS (1765).

⁶⁴ *Id.*

defense has been ignored by modern governments to the peril of the people they represent.