

# Gun Control in England: The Tarnished Gold Standard

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*Tracing the history of gun control in the United Kingdom since the late 19th century, this article details how the government has arrogated to itself a monopoly on the right to use force. The consequence has been a tremendous increase in violent crime, and harsh punishment for crime victims who dare to fight back. The article is based on the author's most recent book, Guns and Violence: The English Experience (Harvard University Press, 2002). Joyce Malcom is professor of history at Bentley College, in Waltham, Massachusetts. She is also author of To Keep and Bear Arms: The Origins of an Anglo-American Right (Harvard University Press, 1994).*

Upon the passage of The Firearms Act (No. 2) in 1997, British Deputy Home Secretary Alun Michael boasted: "Britain now has some of the toughest gun laws in the world."<sup>i</sup> The Act was second handgun control measure passed that year, imposed a near-complete ban on private ownership of handguns, capping nearly eighty years of increasing firearms restrictions. Driven by an intense public campaign in the wake of the shooting of schoolchildren in Dunblane, Scotland, Parliament had been so zealous to outlaw all privately-owned handguns that it rejected proposals to exempt Britain's Olympic target-shooting team and handicapped target-shooters from the ban. While the government might concede that "changes to statutory law" could not "prevent criminals from gaining access to guns," the government insisted such legislation would make it more difficult for potential offenders to get guns and would "shift the balance substantially in the interest of public safety."<sup>ii</sup> Britain now had what was touted as "the gold standard" of gun control.

## I. RISING VIOLENT CRIME

The result of the ban has been costly. Thousands of weapons were confiscated at great financial cost to the public. Hundreds of thousands of police hours were devoted to the task. But in the six years since the 1997 handgun ban, crimes with the very weapons banned have more than doubled, and firearm crime has increased markedly.<sup>iii</sup> In 2002, for the fourth consecutive year, gun crime in England and Wales rose—by 35 percent for all firearms, and by a whopping 46 percent for the banned handguns. Nearly 10,000 firearms offences were committed.<sup>iv</sup> The shootings in a single week in the fall of 2003—of a Liverpool football player and two other men in a bar, of three men in a drive-by attack in Reading, of a 32-year-old builder leaving a health club in Hertfordshire, of a 64-year-old woman trying to protect her daughter during a Nottinghamshire burglary—provoked Oliver Letwin, shadow home secretary, to remark: "One might have thought that this was Baghdad. In fact it's Blair's Britain."<sup>v</sup>

At the annual conference in May, British police chiefs were warned that gun crime in the UK was growing "like a cancer."<sup>vi</sup> They already knew. For the first time in their history some police units are now routinely armed. American policemen have been hired to advise the British police. Clearly since the ban criminals have not found it difficult to get guns and the balance has not shifted in the interest of public safety.

Armed crime is only one part of an increasingly lawless English environment. According to Scotland Yard, in the four years from 1991 to 1995 crimes against the person in England's inner cities increased by 91 percent. In the four years from 1997 to 2001 the rate of violent crime more than doubled. The UK murder rate for 2002 was the highest for a century.

The startling crime rate increases are not the result of a low starting point. British crime rates are high compared to those of other developed nations. A recent study of all the countries of western Europe has found that in 2001 Britain had the worst record for killings, violence and burglary, and its citizens had one of the highest risks in the industrialized world of becoming victims of crime.<sup>vii</sup> Offences of violence in the UK were three times the level of the next worst country in western Europe, burglaries at nearly twice the next-worst level. The results are in line with the findings of a United Nations study of eighteen industrialized countries, including the United States, published in July 2002. The UN study found England and Wales at the

top of the Western world's crime league, with the worst record for "very serious" offences and nearly 55 crimes per 100 people.<sup>viii</sup> The government insists things are improving but, as Letwin pointed out, "One thing which no amount of statistical manipulation can disguise is that violent crime has doubled in the last six years and continues to rise alarmingly."<sup>ix</sup>

The comparison with the United States is especially interesting because people who support gun restrictions are fond of contrasting England's strict gun laws and low rate of violent crime with America's, where there are an estimated 200 million private firearms and where 37 states now have shall issue laws that allow law-abiding residents to carry a concealed weapon. But the old stereotype of England as the peaceable kingdom and America as the violent, cowboy republic no longer holds. By 1995, with the exception of murder and rape, England's rate for every type of violent crime had far surpassed America's.<sup>x</sup> The American murder rate has been substantially higher than the English rate for at least 200 years, during most of which neither country had stringent restrictions on firearms.<sup>xi</sup> But the English and American rates are now converging. While Americans have enjoyed over a decade of sharply declining homicide rates, rates described by the *Boston Globe* in 1999 as "in startling free-fall," English rates have risen dramatically. In 1981 the US rate was 8.7 times the English rate; in 1995 it was 5.7 times the English rate, and in 2002 3.5 times the English rate.<sup>xii</sup>

## II. CRACKING DOWN ON THE LAW-ABIDING

None of this was supposed to happen in Britain where for the better part of a century, British governments have pursued a strategy for domestic safety that a 1992 *Economist* article characterized as requiring "a restraint on personal liberty that seems, in most civilized countries, essential to the happiness of others," a policy the magazine found at odds with "America's Vigilante Values." The safety of the British people has been staked on the thesis that fewer private guns means less crime, that any weapons in the hands of men and women, however law-abiding, pose a danger to society, and that disarming them lessens the chance that criminals will get or use 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.

The fact is England's strict firearms laws were never responsible for a low level of violent crime. The level of violent and armed crime was extraordinarily low *before* gun controls were introduced in 1920. A centuries-long decline in interpersonal violence ended abruptly in 1953-1954 and violent crime has been generally increasing ever since despite increasingly strict gun regulations. 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."<sup>xiii</sup>

The decline occurred despite the introduction and increasing popularity of firearms from the sixteenth century onward, the 1689 English Bill of Rights guarantee that Protestants could have "arms for their defence," nineteenth-century judicial opinions affirming the right of every Englishman to be armed, the lack—until the 1830s—of a professional police force, and the complete absence of controls on the ownership of firearms.<sup>xiv</sup>

By the mid-nineteenth century armed crime was almost non-existent. Between 1878 and 1886 the average number of burglaries in London in which firearms were used was two per year; from 1887 to 1891 it rose to 3.6 cases a year.<sup>xv</sup> A government study of handgun homicides for the years 1890-1892 found an average of one a year in a population of 30 million.<sup>xvi</sup>

It was fear of revolution, not crime, that resulted in the first serious gun controls. In 1920 the government faced massive labor disruption, feared a Bolshevik revolution, and worried about the return of thousands of soldiers traumatized by an especially brutal war.<sup>xvii</sup> The Firearms Act required a would-be rifle or handgun owner to obtain a certificate from the local chief of police, who was charged with determining whether the applicant had a good reason for possessing a firearm and was fit to have one. Parliament was assured that the sole intention was to keep weapons out of the hands of criminals and other dangerous persons.

From the start, the law was applied far more broadly. Restrictive applications increased over time, thanks to Home Office instructions to police—classified until 1989—that periodically narrowed the definition of “good reason.” At the outset, police were instructed that however fit the person who requested a certificate for a handgun to be used for protection, 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”<sup>xxviii</sup> By 1937 police were advised to discourage applications to possess any firearm for house or personal protection.<sup>xix</sup> In 1964 they were informed “it should hardly ever be necessary to 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.”<sup>xx</sup> In 1969 police were told “it should never be necessary for anyone to possess a firearm for the protection of his house or person.”<sup>xxi</sup>

There was no public debate or consultation at any stage about this Home Office policy which thwarted the original intent of the Firearms Act and effectively denied the right of Englishmen to “have arms for their defence.” According to the Home Office, the only acceptable reason for having firearms was gun sports, and sports are not constitutionally protected.<sup>xxii</sup>

In addition to narrowing the criteria for a certificate over the years, a series of modifications were made to the basic 1920 Firearms Act. And so we have the Firearms Acts of 1934, of 1936, of 1937, of 1965, of 1968, of 1988, and the two acts of 1997 which banned handguns. Additional gun controls were incorporated within broad criminal justice acts. Some acts allowed government to ratchet down the number of firearms in private hands; other acts were an opportunistic response to shooting incidents, and these acts were often in lieu of meaningful action that would have enhanced public safety. Nearly all 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. The notion of bringing shotguns within the certificate system had been considered for some time. When Home Secretary Sir Frank Soskice studied the matter in 1965, he decided 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 the benefits which would result.”<sup>xxiii</sup> Roy Jenkins, who replaced him at the Home Office, came to the same conclusion. Then on August 12, 1966, three London policemen were shot dead and Britain’s greatest manhunt was on. The murder weapons were handguns, not shotguns. The public 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 the “criminal use of shotguns” was increasing rapidly, still more rapidly than that of other weapons.<sup>xxiv</sup> If Jenkins’ motive was to divert attention from reinstatement of capital punishment he succeeded, but as authors R.A.I. Munday and J.A. Stevenson reckon it was “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.”<sup>xxv</sup>

Shotguns were again the target in 1988 after former paratrooper Michael Ryan went on a shooting spree in the town of Hungerford. 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 Labour 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.<sup>xxvi</sup> Shotguns were to be registered and the police could demand costly security arrangements before granting a certificate. The result was massive non-compliance. Of the 300,000 pump-action and self-loading shotguns had been sold in the years prior to the 1988 act, at most only 50,000 were submitted to proof with restricted magazines, handed in to police, or obtained certificates. A quarter of a million shotguns simply disappeared.<sup>xxvii</sup>

The handgun ban of 1997, the response to the terrible shooting of children and teachers in Dunblane, Scotland, is another example of misdirected efforts. Thomas Hamilton, the perpetrator, had a certificate for his weapons, although the shooting community repeatedly warned the local police Hamilton was not a fit person to have them. The police carried out seven investigations on Hamilton, but failed to remove his firearm certificate. In urging a handgun ban, the Labour party insisted that the number of crimes involving

legal firearms was “unacceptably high” although at the time only 9 percent of English homicides were caused by firearms, of which just 14 percent of the weapons involved had ever been legally held.<sup>xxviii</sup>

Before Dunblane the number of licensed guns involved in crime in Scotland was even lower. Of the 669 homicides between 1990 and 1995 only 44 were committed with firearms, and of these only 3, or .4%, involved licensed firearms.<sup>xxix</sup> Nonetheless public pressure, spurred by a campaign led by parents of the Dunblane victims, called for and got a complete ban on handguns.<sup>xxx</sup>

### III. CREATING A MONOPOLY OF FORCE

Forbidding the use of firearms for self-defense has merely formed a part of government policy to reserve to 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 carrying any article in a public place “made, adapted, or intended” for an offensive purpose “without lawful authority or excuse.” Carrying anything to protect oneself was branded antisocial. Any item carried for possible defense was defined as an offensive weapon. Police were given extensive power to stop and search everyone and individuals found with offensive items were guilty until proven innocent. The government claimed the prohibition was necessary to combat rising crime, although just two weeks earlier that same government had defeated an effort to reinstate corporal punishment for some types of violent crimes by insisting that crime rates were declining.<sup>xxxi</sup> Ministers disregarded an MP’s plea that

while society ought to undertake the defence of its law-abiding members, nevertheless 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 defence of themselves and those whom it is their natural duty to protect.<sup>xxxii</sup>

In the House of Lords, Lord Saltoun noted that “The object of a weapon was to assist weakness to cope with strength and it was this ability that the bill was framed to destroy. I do not think,” he pointed out, “any government has the right—though they may very well have the power—to deprive people for whom they are responsible of the right to defend themselves.” Saltoun warned that “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.”<sup>xxxiii</sup>

Public safety and self-defense were eroded still further by the Criminal Justice Act of 1967. In this statute the British government changed the longstanding rules for the use of force in self-defense making everything depend on what seems reasonable use of force, considered after the fact. In *Textbook on Criminal Law*, Glanville Williams argues that the requirement that an individual’s efforts to defend himself be “reasonable” was “now stated in such mitigated terms as to cast doubt on whether it still forms part of the law.”<sup>xxxiv</sup> In addition to altering the common law position on self-defense, the customary responsibility to assist someone in distress was reversed: If you see an individual being attacked you are advised to “walk on by” and let the professionals handle it. A passive and dependent public seems a higher government priority than personal safety.

In contrast to the harsh attitude toward law-abiding people anxious to protect themselves and their families, the British government has taken a very solicitous attitude toward criminal predators.<sup>xxxv</sup> Most offenders are punished with community service rather than prison, even after repeated offences. The few who are incarcerated receive shorter terms than in the past, and usually serve only half of these. Community service and short prison terms save money.

To discourage self-help on the part of victims, offenders who are harmed by their victims have been able to sue them in the courts. 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 released after serving half of his three-year sentence. He then claimed that the injury to his leg prevented him from working and interfered with his

martial arts practice and his sex life. He was awarded public funds to finance his law suit against Martin.<sup>xxxvi</sup> At the same time Martin, his sentence of life imprisonment reduced to five years on appeal, was denied parole because he posed a danger to burglars.

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 70 percent of rural communities with no police presence and their residents practically unable to defend themselves. Financial considerations have trumped considerations about public safety.

The British government has removed proven deterrents to crime: a public able to defend itself, and sure punishment for violating the law. In the face of the recent wave of gun crime and violent crime, the current government's response has been to tighten gun restrictions yet again, to consider outlawing replica or toy guns, and to remove ancient legal protections for defendants such as the right of jury trials, the prohibition on double jeopardy, and restrictions on hearsay evidence.

Honest people have been disarmed, severely limited in their legal ability to defend themselves and left at the mercy of thugs. When there were no gun controls, England had an astonishingly low level of armed crime. Eighty years of increasingly stringent gun regulations, the strictest of any democracy, have failed to stop, or even to slow, the rise in gun crime. And gun crime is part of a disastrous rise in violent crime generally.

Admittedly, it is far more difficult to control illegal weapons than to impose controls on the peaceful public, far more difficult to confront the real challenges to public safety than to pass another measure designed to give government a tighter monopoly on the use of force, a monopoly it can only impose on the law-abiding. It is the honest citizens who are doubly losers: they are not permitted to protect themselves, and society has failed to protect them. William Blackstone, England's famous eighteenth-century jurist, reminded 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." He defined those absolute rights, those "great and primary" rights, as personal security, personal liberty and private property. The very first of these is personal security. There was wisdom in the common law approach to public safety and self-defense that modern governments have ignored to the peril of the people they represent.

## ENDNOTES

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i. Home Office press notice (November 3, 1997).

ii. This statement was in reference to the restrictions passed in 1987 in the wake of the so-called Hungerford massacre. Douglas Hurd, secretary of state for the Home Office, in Hansard, *Parliamentary Debates* (October 26, 1987), vol. 121: 59, 50, 55, 46.

iii. All crime statistics are for England and Wales, not for Great Britain. The U.K. has always separated England/Wales crime statistics from Scotland and Northern Ireland. *Handgun crime rises by 46 per cent* (January 9, 2003), [www.timesonline.co.uk](http://www.timesonline.co.uk).

iv. *Police 'winning London gun crime battle'*, BBC NEWS online (February 16, 2003); *Sunday Times* (January 5, 2003), at 12; *"Handgun crime rises by 46 per cent"* (January 9, 2003), <[www.timesonline.co.uk](http://www.timesonline.co.uk)>.

v. Helen Carter, "Liverpool football player shot in bar: Weekend attacks 'show gun crime out of control,'" *Guardian* (October 6, 2003).

vi. "Gun crime growing 'like cancer'", BBC newsonline, May 21, 2003.

vii. John Steele, "Britain the most violent country in western Europe," *The Telegraph* (October 23, 2003).

viii. Sophie Goodchild, *Britain is now the crime capital of the West*, Independent on Sunday (July 14, 2002), at 1.

ix. Helen Carter, "Liverpool football player shot in bar: Weekend attacks 'show gun crime out of control'", *Guardian* (October 6, 2003).

x. Patrick A. Langan & David P. Farrington, *Crime and Justice in the United States and in England and Wales, 1981-96* (Bureau of Justice Statistics, U.S. Department of Justice, 1998), at iii-iv.

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- xi. Eric H. Monkkonen, *Murder in New York City* (2001), at 178-79.
- xii. As measured by police statistics in 1981 the U.S. murder rate was 8.7 times England's. 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; Gary Mauser, National Experiences with Firearms Regulation: Evaluating the Implications for Public Safety, fig. 1, paper presented at Symposium on The Legal, Economic and Human Rights Implications of Civilian Firearms Ownership and Regulation (London: May 2, 2003).
- xiii. Lawrence Stone, *Interpersonal Violence in English Society, 1300-1980*, 29 *Past and Present* 101 (1983). Also see Joyce Lee Malcolm, *Guns and Violence: The English Experience* (2002), at 19-20.
- xiv. 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* (1994), at 130, 134, 167-168.
- xv. I am indebted to Colin Greenwood, author of *Firearms Control: A Study Of Armed Crime and Firearms Control in England and Wales* (1972) for these figures.
- xvi. Returns giving Particulars of Cases treated for Revolver or Pistol wounds in Hospitals during the Years 1890, 1891 and 1892 (August 14, 1893) 11 Home Office, 557 of 1893-94 session at 73.
- xvii. For a discussion of the passage of this act see Malcolm, *To Keep and Bear Arms*, *supra* note 13, at 170-176.
- xviii. Guidance from Home Office on Firearms Act, 1920 (October 5, 1920), at 3.
- xix. Memorandum for the Guidance of the Police (Home Office: 1937).
- xx. Memorandum for the Guidance of the Police (Home Office: 1964), at 7.
- xxi. Memorandum for the Guidance of the Police (Home Office: 1969), at 22.
- xxii. See Malcolm, *Guns and Violence*, *supra* note 13, at 172-173.
- xxiii. *Id.* at 197-199.
- xxiv. Jenkins, quoted in *Daily Telegraph* (September 13, 1966). While it was claimed that shotgun offences had trebled since 1961, the figures were collected on a different basis every year since that date, and, as they included all "indictable offences involving shotguns" 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 Greenwood, *Firearms Control*, *supra* note 15, at chap. 8.
- xxv. R.A.I. Munday & J.A. Stevenson, eds., *Guns & Violence: The Debate before Lord Cullen* (1996), at 166.
- xxvi. See Malcolm, *Guns and Violence*, *supra* note 9 at 201-202.
- xxvii. *Id.* at 206-207.
- xxviii. See Munday & Stevenson, *Guns & Violence*, *supra* note 25, at 33, 322-23, and table I.
- xxix. Lord Stoddard of Swindon, 582 Parl. Deb., House of Lords (October 27, 1997), at 944.
- xxx. See Malcolm, *Guns and Violence*, *supra* note 13, at 203-206.
- xxxi. *Id.*, at 173-74.
- xxxii. For further information on the 1953 Prevention of Crime Act see Malcolm, *Guns and Violence*, *supra* note 13, at 173-80.
- xxxiii. Cited by Malcolm, *Guns and Violence*, *supra* note 13, at 179.
- xxxiv. Glanville Williams, *Textbook of Criminal Law* (2nd ed. 1983), at 507.
- xxxv. See Malcolm, *Guns and Violence*, *supra* note 13, at 189-93.
- xxxvi. See *Burglar sues farmer* (December 23, 2003), news.bbc.co.uk; Stephen Wright, *Burglar's legal aid to sue Tony Martin*, *Daily Mail* (July 6, 2002); Malcolm, *Guns and Violence*, *supra* note 13, at 213-15.