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Colonial Firearm Regulation

Clayton E. Cramer

Recently published scholarship concerning the regulation of firearms in Colonial America claims that because Colonial governments distrusted the free population with guns, the laws required guns to be stored centrally, and were not generally allowed in private hands. According to this view, even those guns allowed in private hands were always considered the property of the government. This Article examines the laws of the American colonies and demonstrates that at least for the free population, gun control laws were neither laissez-faire nor restrictive. If Colonial governments evinced any distrust of the free population concerning guns, it was a fear that not enough freemen would own and carry guns. Thus, the governments imposed mandatory gun ownership and carriage laws.

Clayton E. Cramer is an independent scholar who took the leading role in exposing the Michael Bellesiles hoax. His website is www.claytoncramer.com.

I. THE LEGAL SIGNIFICANCE OF COLONIAL FIREARM REGULATION TODAY

In much the same way that an understanding of the limits of free speech in Colonial America may provide insights into the intent of Congress and the states when they adopted the First Amendment, so an understanding of colonial firearms regulation has the potential to illuminate our understanding of the limits of the right protected by the Second Amendment. What types of firearms laws were common, and might therefore have been considered within the legitimate scope of governmental regulation?

In the last several years, widely publicized scholarship by Michael Bellesiles has asserted that the English colonies strictly regulated the individual possession and use of firearms. While acknowledging that the English government ordered the colonists to own firearms for the public defense as a cost-cutting measure, he asserts:

At the same time, legislators feared that gun-toting

freemen might, under special circumstances, pose a threat to the very polity that they were supposed to defend. Colonial legislatures therefore strictly regulated the storage of firearms, with weapons kept in some central place, to be produced only in emergencies or on muster day, or loaned to individuals living in outlying areas. They were to remain the property of the government. The Duke of York's first laws for New York required that each town have a storehouse for arms and ammunition. Such legislation was on the books of colonies from New Hampshire to South Carolina.¹

This assertion—that the Colonial governments distrusted their free people with firearms, and closely controlled their possession in governmental hands—has begun to appear in court decisions concerning the meaning of the right to keep and bear arms provisions contained in the U.S. Constitution and 46 of the state constitutions.²

Then as now, laws were not always obeyed, and were sometimes indifferently or unequally enforced. The evidence from contemporary accounts, from probate records, or even from archaeological digs (which could suggest something about gun ownership levels by recovered artifacts), might provide us with evidence for evaluating how often those laws were followed. Under the best of conditions, however, analysis of this type is complex, and differing interpretative models may come to differing conclusions as to whether those laws were generally obeyed, generally ignored, or perhaps were somewhere in between. By comparison, evaluating the claim that Colonial governments passed laws that restricted firearms ownership and use (regardless of how those laws were actually enforced) is fairly easy.

An examination of the Colonial statutes reveals that, contrary to Bellesiles's claim of distrusted and disarmed freemen, almost all colonies *required* white adult men to possess firearms and ammunition. Some of these statutes were explicit that militiamen were to keep their guns at home; others imply the requirement, by specifying fines for failing to bring guns to musters or church. Colonies that did not explicitly require

firearms ownership passed laws requiring the carrying of guns under circumstances that implied nearly universal ownership.

None of the Colonial militia statutes even *suggest* a requirement for central storage of all guns. None of the Colonial laws in any way limited the possession of firearms by the white non-Catholic population; quite the opposite. Most colonies did, however, pass laws restricting possession of firearms by blacks and Indians. In a few cases, in a few colonies, whites suspected of disloyalty (including Catholics) were also disarmed.

As the statutes demonstrate, colonial governments did not hold that firearms in private hands, “were to remain the property of the government.”³ Indeed, the evidence is largely in the other direction—that colonial governments were often reluctant to seize weapons for public use. When driven by necessity to do so, they compensated owners of those guns.

Colonial regulations that limited the use of firearms were usually for reasons of public safety. These regulations were similar in nature, though generally less restrictive in details, than similar laws today.

II. FIREARMS AND CIVIC DUTY

The laws regulating firearms ownership adopted by the American colonies bear a strong resemblance to each other. This is not surprising, since by 1740, every colony bore allegiance to the English crown, and the laws reflected the shared heritage. The similarity in laws is especially noticeable with respect to the English duty of nearly all adult men to serve in the militia, and to bear arms in defense of the realm.

A. Connecticut

Among the Colonial militia statutes, Connecticut's 1650 code contains one of the clearest expressions of the duty to own a gun: “That all persons that are above the age of sixteene yeares, except magistrates and church officers, shall beare arms...; and every male person with this jurisdiction, above the said age, shall have in continuall readines, a good muskitt or other gunn, fitt for service, and allowed by the clark of the band....”⁴ A less elaborate form of the law appeared in 1636, with reiterations in 1637, 1665, 1673, 1696, and 1741.⁵ Fines varied between two

and ten shillings for lacking firearms or for failure to appear with firearms “compleat and well fixt upon the days of training...”⁶

B. Virginia

Virginia provides another example of a militia statute obligating all free men to own a gun. A 1684 statute required free Virginians to “provide and furnish themselves with a sword, musquet and other furniture fitt for a soldier... two pounds of powder, and eight pounds of shott...”⁷ A similar 1705 statute required every foot soldier to arm himself “with a firelock, muskett, or fusee well fixed” and gave him eighteen months to comply with the law before he would be subject to fine.⁸ There are minor modifications to the statute in 1738 that still required all members of the militia to appear at musters with the same list of gun choices, but reduced the ammunition requirement to one pound of powder and four pounds of lead balls.⁹ A 1748 revision is also clear that militiamen were obligated to provide themselves with “arms and ammunition.”¹⁰ The 1748 statute, however, did acknowledge that all freemen might not be wealthy enough to arm themselves, and provided for issuance of arms “out of his majesty’s magazine.”¹¹ By 1755, all cavalry officers were obligated to provide themselves with “holsters and pistols well fixed...”¹²

C. New York

Another typical colonial militia statute is the Duke of York’s law for New York (adopted shortly after the colony’s transfer from the Dutch), that provided, “Besides the Generall stock of each Town[,] Every Male within this government from Sixteen to Sixty years of age, or not freed by public Allowance, shall[,] if freeholders[,] at their own, if sons or Servants[,] at their Parents and Masters Charge and Cost, be furnished from time to time and so Continue well furnished with Arms and other Suitable Provision hereafter mentioned: under the penalty of five Shillings for the least default therein[:] Namely a good Serviceable Gun, allowed Sufficient by his Military Officer to be kept in Constant fitness for present Service” along with all the other equipment required in the field.¹³

D. Maryland

Similar to statutes appearing in other colonies, Maryland's "An Act for Military Discipline" enacted in February or March of 1638/9 (O.S.) required "that every house keeper or housekeepers within this Province shall have ready continually upon all occasions within his her or their house for him or themselves and for every person within his her or their house able to bear armes[,] one Serviceable fixed gunne of bastard muskett boare..." along with a pound of gunpowder, four pounds of pistol or musket shot, "match for matchlocks and of flints for firelocks..."¹⁴ A different form of this law, ordering every member of the militia to "appear and bring with him one good serviceable Gun, fixed, with Six Charges of Powder," appears in a 1715 Maryland statute book as well.¹⁵ Cavalrymen were obligated to "find themselves with Swords, Carbines, Pistols, Holsters and Ammunition" with a fine for failure to appear armed at militia muster.¹⁶

Of course, laws were sometimes passed but not enforced in colonial times, just as happens now. But the provisions for enforcement in Maryland would seem likely to encourage enforcement for purely selfish reasons. The officers of the militia were required to verify compliance with the law by "a Sight or view of the said armes and ammunition" every month. People who failed to possess arms and ammunition were to be fined thirty pounds of tobacco, payable to the militia officer responsible for the inspection. Anyone who lacked arms and ammunition was to be armed by their militia commander, who could force payment at "any price... not extending to above double the value of the said armes and ammunition according to the rate then usual in the Country."¹⁷

To make sure that householders moving to the new land were adequately armed, it appears that one of the conditions of receiving title to land in Maryland beginning in 1641 was bringing "Armes and Ammunition as are intended & required by the Conditions abovesaid to be provided & carried into the said Province of Maryland for every man betweene the ages of sixteene & fifty years w[h]ch shalbe transported thether." The arms required included "one musket or bastard musket with a snaphance lock," ten pounds of gunpowder, forty pounds of bullets, pistol, and goose shot.¹⁸

The Maryland militia law of 1638/9 was revised in 1642

requiring, “That all housekeepers provide fixed gunn and Sufficient powder and Shott for each person able to bear arms.”¹⁹ A 1658 revision of the law required “every householder provide himselfe speedily with Armes & Ammunition according to a former Act of Assembly viz 2 [pounds] of powder and 5 [pounds] of shott & one good Gun well fixed for every man able to bear Armes in his house.” A householder was subject to fines of 100, 200, or 300 pounds of tobacco, for the first, second, and third failures to keep every man in the house armed.²⁰

In 1756, Maryland again made it explicit that “all and every Person and Persons of the Militia of this Province are as aforesaid, not only liable to the Duties and Services required by this Act, but also if able to find, at their own proper Cost and Charge, Suitable Arms...” At the same time, concerned that those exempted from militia duty who were wealthy were getting an unfair advantage, it ordered that exempts were obligated to “each of them find one good and Sufficient Firelock, with a Bayonet, and deliver the Same to the Colonel or Commanding Officer of the County wherein he shall reside, or pay to the Said Colonel or Commanding Officer the Sum of Three Pounds Current Money in lieu thereof...”²¹

At the start of the Revolution, Maryland still assumed that the freemen of the colony were armed as required by law. The Maryland Convention in 1775 threatened that: “if any Minute or Militia-man shall not appear at the time and place of Muster with his Firelock and other accoutrements in good order, ... he shall forfeit and pay a sum not exceeding five shillings Common money...”²²

E. Massachusetts

Massachusetts adopted a measure March 22, 1630/1 that required all adult men to be armed.²³ Although this measure is not explicit that the arms were *firearms*, it is apparent that guns were not in short supply in Massachusetts, because within 15 years, the Colonial government had made the requirement for guns explicit, and had even become quite demanding as to what type of guns were acceptable for militia duty. An order of October 1, 1645 directed that in the future, the only arms that would be allowed “serviceable, in our trained bands... are ether

full musket boare, or basterd musket at the least, & that none should be under three foote 9 inches....”²⁴ Even those exempt from militia duty were not exempt from the requirement to have a gun in their home. A June 18, 1645 order required “all inhabitants” including those exempt from militia duty, “to have armes in their howses fitt for service, with powder, bullets, match, as other souldiers....”²⁵

Massachusetts Bay Colony, like many modern governments, expressed its concern about the nexus of guns and children. A May 14, 1645 order directed that “all youth within this jurisdiction, from ten yeares ould to the age of sixteen yeares, shalbe instructed, by some one of the officers of the band, or some other experienced souldier... upon the usuall training dayes, in the exercise of armes, as small guns, halfe pikes, bowes & arrows....”²⁶ The duty to be armed meant that even children were required to learn to use a gun.

F. New Haven and Plymouth

Other colonies also required their free adult males to own guns. New Haven Colony passed such laws in 1639, 1643, 1644, and 1646.²⁷ Plymouth Colony did the same in 1632, 1636, and 1671 (although the last statute is less clear than the earlier two as to requiring private ownership).²⁸

G. New Hampshire

A statute in New Hampshire’s 1716 compilation ordered “That all Male Persons from Sixteen Years of Age to Sixty, (other than such as are herein after excepted) shall bear Arms ... allowing Three Months time to every Son after his coming to Sixteen Years of Age, and every Servant so long, after his time is out, to provide themselves with Arms and Ammunition.... That every Listed Souldier and Housholder, (except Troopers) shall be always provided with a well fix’d, Firelock Musket, of Musket or Bastard-Musket bore,... or other good Fire-Arms, to the satisfaction of the Commission Officers of the Company... on penalty of *Six Shillings* for want of Such Arms, as is hereby required....” [emphasis in original] Similar requirements were imposed on cavalymen.²⁹

H. New Jersey

New Jersey’s 1703 militia statute was similar, requiring all

men “between the Age of Sixteen and Fifty years” with the exception of ministers, physicians, school masters, “Civil Officers of the Government,” members of the legislature, and slaves, to be members of the militia. “Every one of which is listed shall be sufficiently armed with one good sufficient Musquet or Fusee well fixed, a Sword or [Bayonet], a Cartouch box or Powder-horn, a pound of Powder, and twelve sizeable Bullets, who shall appear in the Field, so armed, twice every year....”³⁰

I. Delaware

In 1742, Delaware required, “That every Freeholder and taxable Person residing in this Government (except such as are hereafter excepted) shall, on or before the First Day of March next, provide himself with the following Arms and Ammunition, viz. One well fixed Musket or Firelock, one Cartouch-Box, with Twelve Charges of Gun-Powder and Ball therein, and Three good Flints, to be approved of by the Commanding Officer of the respective Company to which he belongs, and shall be obliged to keep such Arms and Ammunition by him, during the Continuance of this Act...” There was a fine of forty shillings for those who failed to do so.

While “every Freeholder and taxable Person” in Delaware was obligated to provide himself with a gun, not all were required to enlist in the militia, only “all Male Persons, above Seventeen and under Fifty Years of Age” with a few exceptions. The exemptions from militia duty are quite interesting. Quakers were exempted from the requirement to provide themselves with guns, from militia duty, and from nightly watch duty, in exchange for paying two shillings six pence for every day that “others are obliged to attend the said Muster, Exercise, or Watch...”

Others were exempted from militia musters, but not from the requirement to fight, or the requirement to own a gun. “[A]ll Justices of the Peace, Physicians, Lawyers, and Millers, and Persons incapable through Infirmities of Sickness or Lameness, shall be exempted and excused from appearing to muster, except in Case of an Alarm: They being nevertheless obliged, by this Act, to provide and keep by them Arms and Ammunition as aforesaid, as well as others. And if an Alarm happen, then all

those, who by this Act are obliged to keep Arms as aforesaid... shall join the General Militia....” Ministers appear to have been exempted from all of these requirements.³¹

J. Rhode Island

There seems to be no explicit Rhode Island law that required every man to own a gun. There is, however, a 1639 statute that ordered “noe man shall go two miles from the Towne unarmed, eyther with Gunn or Sword; and that none shall come to any public Meeting without his weapon.”³² While not an explicit order that every man was required to own a gun, widespread gun ownership was clearly assumed. The Rhode Island city of Portsmouth did impose a requirement to own a gun in 1643, and directed militia officers to personally inspect every inhabitant of the town to verify that they had both bullets and powder.³³

K. South Carolina

Much like Rhode Island, South Carolina’s obligation to own a gun is not explicit, but did require “all, and every person and persons now in this Colony” to “appeare in armes ready fitted in their severall Companies...”³⁴ “Armes,” of course, might include a sword or other non-firearm weapon, but South Carolina’s 1743 requirement to bring guns to church (to be discussed later), suggests that “armes” meant guns.

L. North Carolina

North Carolina passed militia laws in or before 1715 and in 1746 that were similar in form. The earlier statute required every member of the militia (every freeman between 16 and 60) to show up for muster “with a good Gun well-fixed Sword & at least Six Charges of Powder & Ball” or pay a fine.³⁵ The 1746 statute obligated “all the Freemen and Servants... between the Age of Sixteen Years, and Sixty” to enlist in the militia, and further, required all such persons “be well provided with a Gun, fit for Service,... and at least Twelve Charges of Powder and Ball, or Swan Shot, and Six spare Flints....” Failure to have those when called to militia muster would subject one to a fine of two shillings, eight pence, “for Want of any of the Arms, Accoutrements, or Ammunition....” Interestingly enough, unlike other colonies, the definition of militia member under both

statutes did not exclude free blacks.³⁶ According to John Hope Franklin, “free Negroes served in the militia of North Carolina with no apparent discrimination against them.”³⁷

M. Georgia

Georgia’s long and poorly written militia law of 1773 at first appears to provide for the government to arm the militia, since it declares that the governor or military commander may “assemble and call together all male Persons in this Province from the Age of Sixteen Years to Sixty Years... at such times, and arm and array them in such manner as is hereafter expressed...”³⁸ But later the statute directs that, “every Person liable to appear and bear arms at any Exercise Muster or Training... Shall constantly keep and bring with them... one Gun or Musket fit for Service[,] one Catridge [*sic*] Box with at least Nine Catridges filled with Good Gun Powder and Ball that shall fit his Piece[,] a horn or Flask containing at least a Quarter of a Pound of Gun Powder[,] a shot Pouch with half a pound of Bullets...” This is followed by a *very* complete list of tools required to use a gun in the field.³⁹

A member of the militia who was an indentured servant, or otherwise subject to “Government or Command” of another, was not obligated to arm himself, but like New York and other colonies, his master was. He “Shall constantly keep such arms amunition [*sic*] and Furniture for every such Indented Servant...”⁴⁰ The militia statute also provided for enlisting male slaves from 16 to 60 “as [their masters] can Recommend as Capable and faithful Slaves.” Masters were also supposed to arm such slaves when in actual militia service “with one Sufficient Gun... powder Horn and shot pouch...”⁴¹

Failure to appear “completely armed and furnished as aforesaid at any General Muster” could result in a fine of twenty shillings. Militia officers were allowed to appear at the residence of any person obligated to militia duty up to six times a year, “and to Demand a Sight of their arms amunition [*sic*] and accoutrements aforesaid...” Failure to possess the arms and ammunition could result in a five shilling fine.⁴² Similar provisions applied to those who were cavalry militiamen.⁴³

N. Pennsylvania

Pennsylvania is the only colony that does not appear to have imposed an obligation to own guns on its citizens.⁴⁴ It appears that Pennsylvania's exception was because of its Quaker origins and Quaker pacifism.

O. Indentured Servants

As part of requiring the arming of all freemen, several colonies imposed requirements that masters give guns to indentured servants who had completed their term of service. A 1699 Maryland statute (reiterated in 1715) directed what goods the master was to provide a servant completing his term. Along with clothes and a variety of tools, the master was also directed to give a newly freed male servant, "One Gun of Twenty Shillings Price, not above Four Foot by the barrel, nor less than Three and a Half; which said Gun shall, by the Master or Mistress, in the Presence of the next Justice of the Peace, be delivered to such Free-man, under the Penalty of Five Hundred Pounds of Tobacco on such Master or Mistress omitting so to do...." To encourage the newly freed servant to keep his gun, "And the like Penalty on the said Free-man selling or disposing thereof within the Space of Twelve Months...." Starting in 1705, Virginia imposed a similar requirement that freedom dues include a musket worth at least twenty shillings.⁴⁵ A 1715 North Carolina statute gave masters the choice of fulfilling freedom dues with either a suit or "a good well-fixed Gun...."⁴⁶

P. Gunpowder

Gunpowder import records also provide some clues about firearms ownership and use—and suggest that if guns were kept centrally stored, it was no impediment to colonists using those guns. The British Board of Trade recorded quantities of gunpowder imported through American ports for a brief period just before the Revolution. We have surviving records for the years 1769, 1770, and 1771 that show the American colonies imported a total of 1,030,694 pounds.⁴⁷ Of course, this shows only gunpowder imported with knowledge of the Crown; Americans smuggled goods quite regularly during those years, and there was some domestic production of gunpowder as well.⁴⁸

Gunpowder was used not only for civilian small arms, but also for cannon, blasting, and (in extremely small quantities), for

tattooing. It seems likely that at least some of this million pounds of gunpowder was sold to the British military, colonial governments, or the Indians. Nonetheless, the quantity is enormous. Even if only one-quarter of the million pounds of gunpowder was used in civilian small arms, that is enough for eleven to seventeen million shots over those three years—in a nation where, according to some, few Americans owned guns, most guns were stored in central storehouses because of mistrust of the population, and few Americans hunted with guns.⁴⁹

Q. Summary

Common to nearly every colony was the requirement that members of the militia (nearly all free white men) possess muskets and ammunition; the rest, such as Rhode Island and South Carolina, clearly assume it. Some of these statutes are explicit that militiamen are to keep their guns at home; others imply it, by specifying fines for failure to appear with guns at church or militia musters. If the militiaman's gun was stored in an armory, and was issued "only in emergencies or on muster day," it is strange that the governments fined militiaman for failing to appear with gun and ammunition. None of the Colonial militia statutes even *suggest* a requirement for central storage of all guns. None of these laws in any way regulated the possession of firearms by the white population, except for requiring nearly all white men to own guns.

III. THE OBLIGATION TO CARRY FIREARMS

Another part of the civic duty to be armed included the duty to bring guns to church and other public meetings, or while traveling.

A. Guns in Church

The statute that most clearly states the intent of "bring your guns to church" laws is a 1643 Connecticut order, "To prevent or withstand such sudden assaults as may be made by Indians upon the Sabbath or lecture dayes, It is Ordered, that one person in every several howse wherein is any souldear or souldears, shall bring a musket, pystoll or some peece, with powder and shott to e[a]ch meeting...." Connecticut found

within a month that, “Whereas it is observed that the late Order for on[e] in a Family to bring his Arms to the meeting house every Sabboth and lecture day, hath not bine attended by divers persons” there was now a fine for failing to do so.⁵⁰

Massachusetts Bay Colony also imposed a requirement to come to church armed, though it was repealed and reinstated several times as fear of Indian attack rose and fell. A March 9, 1636/7 ordinance required individuals to be armed. (Britain and its colonies changed from Julian to Gregorian calendar in 1752; as part of that change, the beginning of the new year changed from March 25 to January 1. What had been January 3, 1751 on the Julian calendar would be January 3, 1752 on the Gregorian calendar. Dates from before March 25, 1752 are typically recorded in a form that shows what year appears in the records—but also what year we would consider that date to have been.)

Because of the danger of Indian attack, and because much of the population neglected to carry their guns, every person above eighteen years of age (except magistrates and elders of the churches) was ordered to “come to the publike assemblies with their muskets, or other peeces fit for servise, furnished with match, powder, & bullets, upon paine of 12*d.* for every default...”⁵¹

The requirement to bring guns to church was repealed November 20, 1637⁵² (perhaps because of the Antinomian crisis to be discussed below). A May 10, 1643 order that directed the military officer in each town to “appoint what armes to bee brought to the meeting houses on the Lords dayes, & other times of meeting” suggests that this requirement was again back in force. The motivation for the 1643 law appears to have been preventing theft of arms while the inhabitants were attending church.⁵³

Rhode Island’s 1639 law ordered that, “none shall come to any public Meeting without his weapon.” There was a fine of five shillings for failing to be armed at public meetings.⁵⁴ Maryland did likewise in 1642: “Noe man able to bear arms to goe to church or Chappell... without fixed gunn and 1 Charge at least of powder and Shott.”⁵⁵ The Rhode Island town of Portsmouth passed a similar requirement in 1643,⁵⁶ as did New Haven Colony in 1644.⁵⁷

Plymouth’s 1641 law is oddly worded, and might at first be

read as referring to a communal obligation of the township: “It is enacted That every Towneship within this Government do carry a competent number of pieeces fixd and compleate with powder shott and swords every Lord's day to the meetings....” The rest of the sentence clarifies that at least one member of each household was obligated to bring weapons to church during that part of the year when Indian attack was most feared: “one of a house from the first of September to the middle of November, except their be some just & lawfull impedymnt.”⁵⁸ By 1658, Plymouth had reduced the requirement so that only one fourth of the militia was obligated to come to church armed on any particular Sunday.⁵⁹ In 1675, apparently in response to a current military crisis, all were again required to come to church armed “with att least six charges of powder and shott” during “the time of publicke danger....”⁶⁰

The earliest mandatory gun carrying law is a 1619 Virginia statute that required everyone to attend church on the Sabbath, “and all suche as beare armes shall bring their pieeces, swords, pouders and shotte.” Those failing to bring their guns were subject to a three shilling fine.⁶¹ This law was restated in 1632 as: “All men that are fittinge to beare arms, shall bring their pieeces to the church....”⁶²

While the original motivation in colonies both North and South for bringing guns to church was fear of Indian attack, by the eighteenth century, the Southern colonies’ concerns appear to have shifted to fear of slave rebellion. Virginia’s 1619 and 1632 statutes were somewhat vague as whether all white men were required to come armed to church or not, because of the qualification “fittinge to beare arms.” The requirement was more clearly restated in a November 1738 statute that required all militiamen to come to church armed, if requested by the county’s militia commander. Other language in the statute suggests that protection of the white inhabitants from possible slave uprising was now the principal concern.⁶³

South Carolina’s 1743 confusingly worded statute required “every white male inhabitant of this Province, (except travelers and such persons as shall be above sixty years of age,) who [are] liable to bear arms in the militia of this Province... shall, on any Sunday or Christmas day in the year, go and resort to any church or any other public place of divine worship within this Province,

and shall not carry with him a gun or a pair of horse-pistols... with at least six charges of gun-powder and ball, and shall not carry the same into the church or other place of divine worship as aforesaid” would be fined twenty shillings. Other provisions required church-wardens, deacons, or elders to check each man coming in, to make sure that he was armed. The purpose was “for the better security of this Province against the insurrections and other wicked attempts of Negroes and other Slaves....”⁶⁴ A very similar statute appears in Georgia in 1770.⁶⁵

B. Guns for Travelers

Along with the duty to be armed at church, several colonies required travelers to be armed. A 1623 Virginia law (reissued in similar form in 1632) required, “That no man go or send abroad without a sufficient parte will armed.... That go not to worke in the ground without their arms (and a centinell upon them.)... That the commander of every plantation take care that there be sufficient of powder and am[m]unition within the plantation under his command and their pieces fixt and their arms compleate....”⁶⁶

Massachusetts imposed a similar requirement in 1631, ordering that no person was to travel singly between Massachusetts Bay and Plymouth, “nor without some armes, though 2 or 3 togeathr.” While the law does not specify that “armes” meant firearms, it would seem likely, considering Massachusetts’s other laws requiring all militiamen to own a gun.⁶⁷ The measure was strengthened in 1636: “And no person shall travel above one mile from his dwelling house, except in places wheare other houses are neare together, without some armes, upon paine of 12*d.* for every default....”⁶⁸

Rhode Island imposed a similar requirement in 1639: “It is ordered, that noe man shall go two miles from the Towne unarmed, eyther with Gunn or Sword....” There was a fine of five shillings for failing to be armed.⁶⁹ Maryland’s 1642 law requiring everyone to come to church armed also dictated, “Noe man able to bear arms to goe... any considerable distance from home without fixed gunn and 1 Charge at least of powder and Shott.”⁷⁰

While the requirements varied from colony to colony, and the motivations changed in the South from fear of Indians to fear of slaves, common to many of the colonies was the duty to

come to church armed. Somewhat less commonly there was an obligation to be armed (sometimes explicitly with a gun) while traveling away from settled areas.

IV. RACE, SLAVERY, & REGULATION

Colonial governments imposed a duty to own guns, but otherwise seem to have imposed few restrictions on gun possession—for whites. For Indians and blacks (either free or slave), colonial laws were much more restrictive.

A. Indians

Colonial concern about Indians acquiring guns is not surprising. Firearms provided a significant advantage to whites because of the novelty of the weapon, because gunfire created fear and confusion, and because a gun could do damage under circumstances where an arrow could not.

William Bradford's account of the Pilgrims' first battle with Indians shows the advantage that guns provided the Europeans. A band of Pilgrims who were exploring the new land in December of 1620 found themselves under attack by Indians armed with bow and arrow. When the Pilgrims began firing muskets, most of the attacking Indians retreated. One brave member of the band, perhaps their leader, stood behind a tree, "within half a musket shot of us," and fired arrows repeatedly at the Pilgrims. He was far enough way, and making sufficiently good use of cover, that Myles Standish, the only professional soldier among the Pilgrim settlers, had little opportunity of hitting him. Finally, Standish, after taking "full aim at him... made the bark or splinters of the tree fly about his ears, after which he gave an extraordinary shriek, and away they went, all of them."⁷¹

When the Pilgrims arrived in 1620, the Indians of Massachusetts had no guns. Only three years later, John Pory's account reported that those Indians unfriendly to the Pilgrims had been "furnished (in exchange of skins) by some unworthy people of our nation with pieces, shot, [and] powder..."⁷² By 1627, the Indians of Massachusetts Bay were believed to have at least sixty guns, largely supplied by Thomas Morton, an Englishman whose trading post, Merrymount, was filled with the

sort of hedonists whom the Pilgrims had hoped to leave behind in England. Morton bartered guns for furs with the Indians, violating a royal proclamation against supplying firearms, powder, or shot to the Indians.⁷³

Even after Morton's banishment to England, there were problems with other Europeans selling guns to the Indians. Governor Bradford's history of Plymouth details the arrest of an Englishman named Ashley for illegal sales in 1631, and complained about French traders selling guns and ammunition to the Indians.⁷⁴

Attempts to regulate gun sales to the Indians appear in many colonies, and the severity of the punishments suggests that not all colonists shared their government's concerns. Much like the modern effort to disarm people who are not trusted, the colonial gun control efforts were a series of very strict bans that could not be enforced, and were sometimes replaced with more realistic laws that sought to control rather than prohibit sales.

The prohibitions vary in the severity of punishments and vigorous of enforcement. In 1640, Springfield, Massachusetts tried a woman accused of selling her late husband's gun to an Indian. Her defense was that she did not sell it, but lent it to the Indian, "for it lay [spoiling] in her [cellar]," and she expected to reclaim it shortly. The judge warned her that she should get it home again speedily, "for no commonwealth would allow of such a misdemeanor."⁷⁵ At the other extreme, a 1642 Maryland law prohibited providing gunpowder or shot to the Indians, and made execution one of the possible punishments.⁷⁶

Massachusetts Bay Colony, to supplement the royal proclamation against providing guns or ammunition to the Indians, passed its own ordinance on May 17, 1637 prohibiting sale of guns, gunpowder, shot, lead, or shot molds to the Indians, or repair of their guns.⁷⁷ In 1642, Massachusetts Bay complained that "some of the English in the eastern parts" who were under no government at all, were supplying gunpowder and ammunition to the Indians. Unsurprisingly, Massachusetts Bay passed laws punishing those sales.⁷⁸

Other evidence of a mistrust based on race can be seen in a pair of orders concerning militia duty. The first, on May 27, 1652, required all "Scotsmen, Negroes, & Indians inhabiting with or servants to the English" between 16 and 60 to train with the militia.⁷⁹ In May, 1656, perhaps after the military crisis of the

moment had passed, “no Negroes or Indians... shalbe armed or permitted to trayne...”⁸⁰

Connecticut struggled with unlawful sales of guns to Indians. The very first entry in *Public Records of the Colony of Connecticut* concerns a 1636 complaint that “Henry Stiles or some of the ser[vants] had traded a piece with the Indians for corn.”⁸¹ In 1640, Connecticut ordered George Abbott to pay a £5 fine for “selling a pistol & powder to the Indians...”⁸² A few years later, Robert Slye, George Hubberd, John West, and Peter Blatchford were each fined £10 for “exchanging a gun with an Indian...”⁸³

Connecticut found enforcement of its gun control law prohibiting sales to the Indians⁸⁴ frustrated by other colonies. Because merchants in the Dutch and French colonies were selling guns to the Indians, Connecticut next prohibited sale of guns outside the colony. Finally, Connecticut prohibited foreigners from doing business with Indians in Connecticut; the ban was retaliation for continued sales of guns to the Indians by Dutch and French traders elsewhere.⁸⁵ Connecticut also repeatedly fined colonists for selling ammunition to the Indians.⁸⁶

By the middle of the seventeenth century, either the original fear of the Indians having guns was receding throughout the New England colonies, or the futility of trying to keep them disarmed was becoming apparent. The laws appear to have changed by the 1660s to less restrictive forms. In 1662, a Springfield, Massachusetts court fined two Indians for drunkenness. Not having the money for the fine, one of them, “Left a gun with the County Treasurer till they make payment.”⁸⁷ On April 29, 1668, the Massachusetts General Court decided to license the sale of “powder, shot, lead, guns, i.e., hand guns [small arms]” to Indians “not in hostility with us or any of the English in New England...”⁸⁸ In 1668-69, an Indian sued Francis West in Plymouth for the theft of a hog and a gun. The court ordered West to pay for the stolen hog and return the gun to the Indian.⁸⁹

A similar progression is visible in Connecticut in this same period. In 1660, Connecticut ordered that “if any Indians shall bring in guns into any of the towns” that the colonists were to seize them. The Indians could redeem their seized guns for 10s.

each, with half paid to the Treasury, and the other half paid to the Englishman who seized the gun. Because the Indians could redeem their guns, it seems that the objection was not to the Indians having guns, but bringing them to town.

By the following year, this ban on Indians bringing guns to town was repealed for the Tunxis Indians that lived nearby, who “have free liberty to carry their guns, through the English towns, provided they are not above 10 men in company.”⁹⁰ The Tunxis Indians were apparently trusted enough to come to town (in small numbers) armed.

Virginia provides perhaps the best example of the shifting views of the colonists about the effectiveness of such laws. A March 1658 Virginia statute provided that “what person or persons so ever shall barter or sell with any Indian or Indians for piece, powder or shot, and being lawfully convicted, shall forfeit his whole estate....” Any Virginian who found an Indian with gun, powder, or shot, was legally entitled to confiscate it.⁹¹

By the following year, “it is manifest that the neighboring plantations both of English and [foreigners] do plentifully furnish the Indians with guns, powder & shot, and do thereby draw from us the trade of beaver to our great loss and their profit, and besides the Indians being furnished with as much of both guns and ammunition as they are able to purchase, *It is enacted*, That every man may freely trade for guns, powder and shot: It derogating nothing from our safety and adding much to our advantage....”⁹² [emphasis in original]

In October 1665, Virginia again prohibited the sale of guns and ammunition to the Indians. The statute admitted that New Amsterdam’s sales of guns to the Indians had made the March 1658 law unenforceable. The seizure of New Amsterdam by the Duke of York in 1664 had changed the situation. “[T]hose envious neighbors are now by his majesty’s justice and providence removed from us,” the ban was again in force.⁹³

The ban on gun sales was not obeyed, however. In March 1676, as tensions between whites and Indians escalated into Bacon’s Rebellion, Virginia enacted a new statute, complaining “the traders with Indians by their [avarice] have so armed the Indians with powder, shot and guns, that they have been thereby emboldened....” The new statute made it a capital offense to sell guns or ammunition to the Indians, and also declared that any colonist found “within any Indian town or three miles without

the English plantations” with more than one gun and “ten charges of powder and shot for his necessary use” would be considered guilty of selling to the Indians, and punished accordingly.⁹⁴

In times of tension, of course, colonies might again pass restrictions on sale of guns or ammunition to Indians, but Maryland seems to have followed the model of Virginia—severe restrictions followed by more realistic regulations. A 1638/9 Maryland law made it a felony “to sell give or deliver to any Indian or to any other declared or professed enemy of the Province any gunne pistol powder or shott without the knowledge or lycence of the Lieutenant Generall....”⁹⁵ A 1649 statute provided that “noe Inhabitant of this Province shall deliver any Gunne or Gunnes or Ammunicon or other kind of martiall Armes, to any Indian borne of Indian Parentage....”⁹⁶ A 1763 Maryland law prohibited “any Person or Persons within this Province to Sell or give to any Indian Woman or Child any Gun Powder Shot or lead Whatsoever[,] nor to any Indian Man within this Province more than the Quantitys of one Pound of Gun Powder and six Pounds of Shot or lead at any one Time[,] and not those or lesser Quantitys of Powder or Lead oftener than once in Six Months....”⁹⁷

B. Blacks

Laws disarming blacks were more common in the southern colonies. A 1680 Virginia statute prohibited “any negroe or other slave to carry or arme himselfe with any club, staffe, gunn, sword or any other weapon of defence or offence...”⁹⁸

By May, 1723, however, there seem to have been enough free blacks and Indians in the militia that the law was changed, “That every free negro, mulatto, or indian, being a house-keeper, or listed in the militia, may be permitted to keep one gun, powder, and shot....” Those blacks and Indians who were “not house-keepers, nor listed in the militia” were required to dispose of their weapons by the end of October, 1723. Blacks and Indians living on frontier plantations were required to obtain a license “to keep and use guns, powder, and shot....”⁹⁹ Even the small number of blacks and Indians who were members of the militia were apparently no longer trusted with guns in public by 1738. They were still required to muster, but “shall appear

without arms....”¹⁰⁰

Other southern colonies showed similar mistrust of blacks with guns. A Maryland statute passed in or before 1715 directed, “That no Negro or other slave, within this Province, shall be permitted to carry any Gun or any other offensive Weapon, from off their Master's Land, without Licence from their said Master....”¹⁰¹ While less clear, Delaware’s 1742 militia statute prohibited all indentured servants and slaves from bearing arms, or mustering in any company of the militia. It is unclear from the statute if this ban applied to free blacks as well.¹⁰²

A Georgia statute of 1768 “for the Establishing and Regulating Patrols” prohibited slaves possessing or carrying “Fire Arms or any Offensive Weapon whatsoever, unless such Slave shall have a Ticket or License in Writing from his Master Mistress or Overseer to Hunt and Kill Game Cattle or Mischievous Birds or Birds of Prey....” Other provisions allowed a slave to possess a gun while in the company of a white person 16 years or older, or while actually protecting crops from birds. Under no conditions was a slave allowed to carry “any Gun Cutlass Pistol or other Offensive Weapon” from Saturday sunset until sunrise Monday morning. The “Patrols” alluded to in the law’s title were for the purpose of “Searching and examining any Negroe house for Offensive Weapons Fire Arms and Ammunition.”¹⁰³

Unlike the white population, blacks and Indians were not generally trusted with guns, and the laws reflected this. While individual whites might be disarmed as punishment for a crime or suspected disloyalty (as will be discussed next), gun ownership was generally unrestricted, except for blacks or Indians.

V. DISARMING THE DISLOYAL

Individual whites were sometimes disarmed if they were perceived as disloyal to the polity.

A. Antinomians

In 1637 Massachusetts, Anne Hutchinson’s Antinomian heresy threatened the social order. Hutchinson’s beliefs had spread rapidly through Puritan society, and “some persons being

so hot headed for maintaining of these sinfull opinions, that they feared breach of peace, even among the Members of the superiour Court... those in place of government caused certain persons to be disarmed in the severall Townes, as in the Towne of Boston, to the number of 58, in the Towne of Salem 6, in the Towne of Newbery 3, in the Towne of Roxbury 5, in the Towne of Ipswitch 2, and Charles Towne 2.”¹⁰⁴

Today we can look with disfavor on this disarming order for a variety of violations of the Constitution: as a bill of attainder; as a violation of due process; for granting favor to one religious point of view. These concerns, of course, are ahistorical. What the disarming order tells us about Colonial Massachusetts strongly indicates that gun regulation was generally *not* restrictive.

While consistent with the claim that Colonial governments disarmed persons who were not trusted, that there was a need to cause “certain persons to be disarmed” suggests that firearms were *not* stored in central storehouses and were not usually under governmental control. Most freemen were armed, as the laws of all the colonies except Pennsylvania required. Only as punishment for a specific crime—heresy—did Massachusetts disarm Hutchinson’s partisans. The number disarmed—77 out of a population then in the thousands—is far less than the percentage legally disarmed in America today.

Virginia’s statutes provide a positive variant of this notion. A 1676/7 statute directed, “It is ordered that all persons have hereby liberty to sell armes and ammunition to any of his majesties loyall subjects inhabiting this colony....”¹⁰⁵ Any loyal subject of the crown was permitted to purchase and own guns.

B. Catholics

Maryland provides a somewhat different example. Catholics were exempted from militia duty because, like Hutchinson’s Antinomians, and blacks almost everywhere in the colonies, they were not completely trusted. In light of the role that Catholics played in the recurring attempts to restore the Stuarts to the throne of England, the distrust is unsurprising.

In exchange for exemption from militia duty, Catholics were doubly taxed on their lands.¹⁰⁶ As part of the same statute, members of the militia were required to swear an oath of

allegiance to King George II. Catholics who refused the oath—thus refusing their legal obligation as British subjects to defend the realm—were not allowed to possess arms or ammunition.¹⁰⁷

The law of Britain concerning Catholics and arms after the accession of William I to the throne is at first glance quite confusing. A 1689 law prohibited Catholics from possessing “any arms, Weapons, Gunpowder, or Ammunition (other than such necessary Weapons as shall be allowed to him by Order of the Justices of the Peace, at their general Quarter sessions, for the Defence of his House or Person).”¹⁰⁸ The law both prohibited Catholics from possessing arms, and yet allowed them, under some restrictions, to have at least defensive arms. Joyce Malcolm argues that, “This exception is especially significant, as it demonstrates that even when there were fears of religious war, Catholic Englishmen were permitted the means to defend themselves and their households; they were merely forbidden to stockpile arms.”¹⁰⁹

At least in times of crisis, the English law would appear to have been the justification for disarming Catholics both in Britain and America. In Britain, for example, the death of the queen in 1714 caused orders that, “The Lords Leiuents of the severall Countrys were directed to draw out the Militia to take from Papists & other suspected Persons their Arms & Horses & to be watchfull of the Publick Tranquillity.”¹¹⁰

Yet there seem to be relatively few incidents that appear in the *Archives of Maryland* that actually involve taking away arms from Catholics, and even these bear careful scrutiny. In 1744, “No Roman Catholick be for the future enrolled or mustered among the Militia of the said County and that if any of the *Publick Arms* be in the Possession of any Roman Catholick, the Colonel of the said County is hereby desired to oblige the Person in whose Custody such Arms are, to deliver the same to him.” [emphasis added]¹¹¹ The law apparently did not order confiscation of privately owned arms owned by Catholics.

By contrast, in 1756, “all Arms Gunpowder and Ammunition of what kind soever any Papist or reputed Papist within this Province hath or shall have in his House or Houses” were ordered seized.¹¹² That the order was adopted when it was, however, suggests that while the 1689 law *allowed* complete prohibition of Catholic gun ownership at the discretion of the government, in Maryland they were not *usually* prohibited from

possession.

Catholics settled mainly in Maryland. In other colonies, there is no evidence that Catholics in general were disarmed.

Georgia provides an example of selective Catholic disarmament. At the start of the French & Indian War, British forces demanded that the French population of Nova Scotia swear an oath of allegiance to the crown. Persons who refused were forcibly removed to other British colonies. Some of these Acadians (the ancestors of the Cajuns) were bound as indentured servants in Georgia. A 1756 law prohibited indentured Acadians “to have or use any fire Arms or other Offensive Weapons otherwise than in his Masters Plantation or immediately under his Inspection....”¹¹³ There seems to be no general prohibition on Catholic ownership of firearms in Georgia; the Acadians were disarmed because they had refused to be loyal subjects of the British government, and the suspicion of disloyalty followed them to Georgia.

VI. PRIVATE VS. GOVERNMENT OWNERSHIP

Regarding Bellesiles’s claim that guns “were to remain the property of the government,”¹¹⁴ the evidence suggests quite the opposite.

A. Guns for the Poor

On any number of occasions, the Colonial governments supplied guns to subjects too poor to purchase them. The laws usually specified that the recipient was to pay for the gun.

For example, a March 22, 1630/1 Massachusetts statute required the entire adult male population to be armed. Every person, including servants, was to own “good & sufficient armes” of a type “allowable by the captain or other officers, those that want & are of abilitie to buy them themselves, others that are unable to have them provided by the town....” Those who were armed by the town under the March 22 statute were to reimburse the town “when they shalbe able.”¹¹⁵ On March 6, 1632/3, the law was amended to require that any single person who had not provided himself with acceptable arms would be compelled to work for a master. The work earned him the cost of the arms provided to him by the government.¹¹⁶

Connecticut's Code of 1650 provided that a person who were required to arm themselves, or arm a dependent, but "cannot purchase them by such means as he hath, hee shall bring to the clark so much corne or other merchantable goods" as was necessary to pay for them. The value of the arms was to be appraised by the clerk "and two others of the company, (whereof one to bee chosen by the party, and the other by the clarke,) as shall be judged of a greater value by a fifth parte, then such armes or ammunition is of..."

Thus, the man who would not purchase a gun and ammunition would have one provided by the government, but at a price as much as twenty percent above the market price. The high price created an incentive to purchase a gun privately.

Another part of the law provided for hiring out any unarmed single men to earn the price of a gun and ammunition.¹¹⁷ Very similar laws appeared in New York¹¹⁸ and New Hampshire.¹¹⁹

A 1673 Virginia law, while less explicit about the process for determining the value of the arms, directed militia officers to purchase guns on the public account for distribution to those who could not afford them, "for them to dispose of the same as there shalbe occasion; and that those to whome distribution shalbe made doe pay for the same at a reasonable rate..."¹²⁰ The law does not directly disprove that guns were "to remain the property of the government." It does, however, seem a bit strange for the government to provide guns to individual militiamen, and then require them to pay for those guns, if the guns were to remain governmental property.

B. Public Arms

Not every Virginia militiaman apparently succeeded in arming himself; a 1748 statute provided "it may be necessary in time of danger, to arm part of the militia, not otherwise sufficiently provided, out of his majesty's magazine and other stores within this colony..." Contrary to the claim that all guns were considered the property of the government, the same statute criminalized embezzlement of "arms or ammunition" that were issued to those who were too poor to arm themselves, and thus drew a distinction between public arms issued from "his majesty's magazine" and other, presumably privately owned firearms.¹²¹

Similarly, a Maryland statute of 1733 passed “to prevent the Embezzlement of the Public Arms” directed “That all the Public Arms shall be Marked with such Marks... to denote such Arms to belong to the Public; after which Marks so made, no Person or Persons whatsoever, shall presume to Sell or Purchase such Arms so Marked...”¹²² If all guns automatically belonged to the government, it seems a bit odd that there was a need to mark them as “Public Arms.”

In 1756, Maryland’s militia officers were ordered to make a diligent search for arms and ammunition, demanding that everyone show what guns they had. The reason would appear to be, “Whereas on many Occasions Arms Ammunition and military Accoutrements of different Kinds have been delivered out of the public Magazines of this Province and are now dispersed among the Inhabitants and have been Sold or Sent from one to another and it is represented that the Locks have been taken of from many of the Said Arms and put to private Use...”¹²³ If all guns were “automatically government property,” the careful search for publicly owned arms, distinguishing them from private property, would make no sense.

Massachusetts at one point directed that, “The surveyar genrall of the armes of the country shall have power to sell any of the country armes for an equall price, either in corne or other country pay, & to p[ro]vide armes againe therew[i]th so soone as may bee, so hee sell them not out of this jurisdiction.”¹²⁴ Publicly owned arms were to be sold (not issued or loaned), as long as they were sold in Massachusetts.

A 1765 Virginia statute is also strong evidence that guns were not regarded as automatically government property. It provided for militia commanders in “each of the counties from which the militia has been sent into service in the pay of this colony shall, within the space of three months after the passing this act, sell, for the best price that be had for the same, all arms, ammunition, provisions, and necessaries purchased at the publick expense in the said counties...”¹²⁵ Surplus government guns were clearly sold, not loaned out to militiamen.

C. Private Arms

Other evidence establishes that Colonial governments at least sometimes recognized that guns could be private property,

and were *not* regarded as automatically the property of the government. Connecticut's records provide such evidence. In 1639, after the Pequot War, "a musket with 2 letters I W" was found, "conceaved to be Jno. Woods who was killed att the Rivers mouth. It was ordered for the present [that] the musket should be delivered to Jno. Woods friends until other appeare."¹²⁶ If the Connecticut government regarded a dead man's musket as "government property," it is odd that they delivered it to his friends.

We also have examples of colonists fined for selling guns to the Indians—and with no suggestion that these were publicly owned arms. A 1636 complaint in the Connecticut records shows that "Henry Stiles or some of the ser[vants] had traded a peece with the Indians for Corne."¹²⁷ In 1640, George Abbott is ordered to pay a £5 fine for "selling a pystoll & powder to the Indeans...."¹²⁸ Fines are also repeatedly assessed for selling guns to the Indians, with no hint or suggestion that these were government property.¹²⁹

Were guns privately owned or government property? We have evidence such as a Connecticut lawsuit in 1639 by a "Jno. Moody contra Blachford, for a fowling peece he bought and should have payd for it 40s."¹³⁰ In 1640, also in Connecticut, a William Hill was fined £4 "for buying a stolen peece of Mr. Plums man."¹³¹ There is nothing in the reports of these cases that suggests that these guns were considered government property.

Similarly, in New Haven Colony, a civil suit of 1645 concerns a gun purchased by Stephen Medcalfe from a Francis Linley. The gun was defective, and when it exploded, Medcalfe lost an eye. There is nothing in the description of the suit that suggests that the gun was "property of the government" and no surprise that one person sold a gun to another.¹³²

Bellesiles claims that "the government reserved to itself the right to impress arms on any occasion, either as a defensive measure against possible insurrection or for use by the state. No gun ever belonged unqualifiedly to an individual."¹³³

Yet there are a number of examples that directly contradict this claim. An October 13, 1675 statute of Massachusetts Bay provided for assessments on persons exempt from militia training of "so many fire armes, muskets, or carbines, with a proportionable stocke of [powder] & am[m]unition, as the said

committees respectively shall appoint...” It appears that this was an assessment in kind, not of money. Another part of the statute specified “all such persons as shall be assessed, and shall accordingly provide three fire armes, shall be freed from being sent abroad to the warrs, except in extreame & utmost necessity.”¹³⁴

Thus, the government believed that there were enough people who owned at least three guns that the government was prepared to exempt them from the onerous duty to fight overseas if they offered those guns to the government. As much as the government needed the guns, it did not believe that it had the authority to confiscate them. Instead, it needed to make a deal with the owners. Apparently the government did not believe that all guns were its property.

More evidence that militiamen possessed their *own* arms, and that the arms were not always issued from government magazines for militia service, is Massachusetts Governor William Shirley’s 1755 order to the militia to appear for service. “To such of them as shall be provided with sufficient Arms at their first Muster, they shall be allowed a *Dollar* over and above their Wages, and full Recompence for such of their Arms as shall be inevitably lost or spoiled.”¹³⁵

Clearly, Governor Shirley believed that there were some members of the militia who, contrary to law, did not have firearms appropriate to military service. Just as clearly, Governor Shirley believed that some members would show up appropriately armed, and he was prepared to pay them extra to do so. Most importantly from the standpoint of private vs. public ownership, “full Recompence” shows that militiamen would be compensated for the loss of their privately owned guns; the guns were not “property of the government.”

Maryland’s Governor Sharpe similarly directed calling up of the militia, offering to provide government arms in 1759, but also “That for Every One of such Arms as any of Your men shall bring with them, and that may be Spoiled or Lost in actual Service, I will pay at the rate of Twenty five Shillings a Firelock.”¹³⁶

At the start of the Revolution, a number of colonies made arrangements for additional pay for those soldiers who showed up with their own guns. Connecticut, for example, provided

“that each inlisted inhabitant that shall provide arms for himself, well fixed with a good bayonet and cartouch box, shall be paid a premium of ten shillings....”¹³⁷ Later measures also suggest that militia men showing up with their own guns, and being paid extra, were the rule, not the exception.¹³⁸ Like Governor Shirley’s “full Recompense,” the Connecticut laws provided for compensation for those whose guns were lost in the war. While Connecticut impressed guns from the population for militiamen who did not have their own, the owners were to be paid four shillings for the use of impressed guns, and “the just value of the such gun” if lost.¹³⁹

At the start of the Revolution, the Provincial Congress of Massachusetts purchased firearms from private parties,¹⁴⁰ and requested private citizens to sell their guns to the government: “[I]t is strongly recommended to such inhabitants..., that they supply the colony with same.”¹⁴¹ A request of June 15, 1775 for individuals to sell their arms is also phrased in terms that seem quite voluntary. “*Resolved*, that any person or persons, who may have such to sell, shall receive so much for them, as the selectmen of the town or district in which or they may dwell, shall appraise such arms at....”¹⁴²

Other colonies also purchased guns from private parties—a strange behavior if guns remained “the property of the government.”¹⁴³ Similarly, in November of 1775, with the war well under way, the Pennsylvania government issued a very odd statement, if guns were automatically “property of the government”:

The Committee of Safety are of opinion, that it is not improper for Mr. James Innes to purchase any second hand Arms which he may find in the hands of Individuals of this Province, and therefore have no objection to his buying them; But as they have employed, and are endeavouring to employ, all the Artificers that can be procured in making new arms for the public, they apprehend any application by Mr. Innes to such Artificers, will be attended with bad consequences to the general Cause by enhancing the Price of arms....¹⁴⁴

At the start of the Revolution, the Maryland government confiscated guns from Tories and others suspected of disloyalty

to the Patriot cause. Yet even then, the owners received compensation for the value of their guns.¹⁴⁵ Even disloyalty was not just cause for confiscation without compensation.

Another piece of evidence that guns were not “property of the government” is a 1776 order of the Continental Congress:

Whereas in the execution of the resolve of Congress of the 14th of March, respecting the disarming disaffected persons, many fire arms may be taken, which may not be fit for use to arm any of the troops mentioned therein: Therefore, Resolved, That all the fire arms so taken, being appraised according to said resolve, none of them shall be paid for, but those that are fit for the use of such troops, or that may conveniently be so made, and *the remainder shall be safely kept by the said assemblies, conventions, councils or committees of safety, for the owners, to be delivered to them when the Congress shall direct.*¹⁴⁶ [emphasis added]

The owners were to be paid for guns taken for military use. Government ownership of guns was not assumed. Quite the opposite, private ownership was assumed and respected, even for Tories.

In the days after Lexington and Concord, General Gage was understandably nervous about being attacked from the rear by armed rebels. General Gage consequently ordered the people of Boston to turn in their arms. Many Bostonians were also deeply interested in leaving town, both because of the increasing poverty caused by the Boston Port Act of 1774, and the likelihood that the revolutionary army would attack Boston.

As an incentive, General Gage offered passes to leave Boston to all who turned in their weapons. No weapons or ammunition were allowed to leave Boston. The arms were to be “marked with the names of the respective owners...that the arms aforesaid, at a suitable time, would be returned to the owners.” The marking of the arms demonstrates that at least of some these were personally owned, not public arms. On April 27th, “the people delivered to the selectman 1778 fire-arms, 634 pistols, 973 bayonets, and 38 blunderbusses....”¹⁴⁷

VII. RESTRICTIONS ON PRIVATE USE

There are restrictions on the use of firearms in the Colonial law, and most of these are unsurprising. They are safety and hunting regulations of the same general form, though less restrictive, than current laws.

A. Restrictions on Discharge

The need for such laws strongly suggests that the claim that guns were kept centrally stored is incorrect. A March 1655/6 Virginia statute, for example, prohibited shooting “any guns at drinkeing (marriages and funerals onely excepted)” because gunshots were the common alarm of Indian attack, “of which no certainty can be had in respect of the frequent shooting of gunns in drinking. . . .”¹⁴⁸ Similarly, a 1642 Maryland statute also ordered that, “No man to discharge 3 guns within the space of ¼ hour. . . except to give or answer alarm.”¹⁴⁹

There are some regulations that appear to have been temporary measures designed to deal with a particular crisis, and we may only speculate as to the motivations. An example is a 1675 Plymouth statute that prohibited shooting except at an Indian or a wolf. Since this measure immediately followed one requiring everyone to come to church armed “during the time of publicke danger,”¹⁵⁰ it seems likely that the law was an attempt to prevent unnecessary alarm, for the same reasons as the Virginia and Maryland laws.

Shooting was apparently a common enough pastime in 1638 Massachusetts that when an Emanuell Downing had “brought over, at his great charges, all things fitting for takeing wild foule by way of [decoy],” the General Court felt it necessary to order “that it shall not bee lawfull for any person to shoote in any gun within halfe a mile of the pond where such [decoy] shalbee placed. . . .”¹⁵¹ The need for such a law suggests that guns were not kept locked in a central storehouse.

The laws were passed not only for the economic benefit of the community as a whole, but also because negligent misuse of firearms was not unknown. An incident from a history of Plymouth Colony described how:

On 1 July 1684 Robert Traves of Scituate, described as a ‘negro,’ was indicted for firing a gun at the door of Richard Standlake, thereby wounding and shattering the leg of Daniel Standlake, which occasioned his death. The jury found the death of Daniel Standlake by ‘misadventure,’ and the defendant, now called ‘negro, John Traves,’ was cleared with admonition and fine of £5.¹⁵²

A statute adopted at the Massachusetts 1713-14 legislative session complained, “Whereas by the indiscreet firing of guns laden with shot and ball within the town and harbour of Boston, the lives and limbs of many persons have been lost, and others have been in great danger, as well as other damage has been sustained...” the legislature prohibited firing of any “gun or pistol” in Boston (“the islands thereto belonging excepted”).¹⁵³

Perhaps for a similar reason—or just to allow the inhabitants to get some sleep—in 1759, Georgia made it unlawful to fire “any great gun or [small] arm in the town or harbour of Savannah after Sun Set without leave or permission from the Governor...”¹⁵⁴

B. Restrictions on Hunting

Hunting with firearms was also sufficiently common for Colonial governments to adopt restrictions. A 1632 Virginia statute licensed hunting wild pigs, but “any man be permitted to kill deare or other wild beasts or fowle in the common woods, forests, or rivers.... That thereby the inhabitants may be trained in the use of their armes, the Indians kept from our plantations, and the wolves and other vermine destroyed.”¹⁵⁵ A March 1661/2 statute prohibited “hunting and shooting of diverse men” on land without the owner’s permission “whereby many injuries doe dayly happen to the owners of the said land...” The statute also provided that it was lawful to pursue game shot elsewhere onto private land without permission.¹⁵⁶ A 1699 statute, “prohibiting the unseasonable killing of Deer,” complained about how the deer population “is very much destroyed and diminished” by killing “Does bigg with young...”¹⁵⁷

Laws regulating hunting appear in at least two colonies by

mid-eighteenth century, and the language in both statutes suggests that hunting was common. A 1722 New Jersey “Act to prevent the Killing of Deer out of Season” prohibited deer hunting from January through June. That same law included a provision prohibiting “Persons carrying of Guns, and presuming to Hunt on other Peoples Land” explaining that it was required because “divers Abuses have been committed, and great Damages and Inconveniencies arisen....” The same act prohibited a slave from hunting or carrying a gun without permission of his master.¹⁵⁸

A 1738 North Carolina “Act, to Prevent killing Deer, at Unseasonable Times” made it unlawful “to kill or destroy any Deer... by Gun, or other Ways and Means whatsoever” from February 15 to July 15.”¹⁵⁹

Virginia temporarily banned deer hunting in 1772, complaining that “many idle people making a practice, in severe frozen weather, and deep snows, to destroy deer, in great numbers, with dogs, so that the whole breed is likely to be destroyed, in the inhabited parts of the colony....” The government’s concern was that, “numbers of disorderly persons... almost destroyed the breed, by which the inhabitants will... be deprived of that wholesome and agreeable food....” Therefore, deer hunting was completely prohibited until August 1, 1776.¹⁶⁰ It is not made explicit that the hunting was with guns, however.

Maryland had a few hunting restrictions as well. A 1648 law complained that because licenses previously issued for “killing of Wild Hoggs [e]mploying Indians to kill deere with Gunnes” both to residents and non-residents of Maryland “hath occasioned some inconvenience & hath given great offence to divers of the Inhabitants of this Province,” all existing licenses were repealed. Unfortunately, the statute failed to explain in what manner this hunting had inconvenienced or offended the “Inhabitants.”¹⁶¹

Two years later, another law prohibited foreigners “either English or Indian” from hunting “in any part of this Province or kill any Venison or other Game” without a license from the governor,¹⁶² again with no explanation of the problem this law was intended to solve.

A 1654 Maryland law sought to prohibit shooting on Sundays: “Noe work shall be done on the Sabbath day but that which is of Necessity and Charity to be done no Inordinate

Recreations as fowling, fishing, hunting or other, no shooting of Gunns be used on that day Except in Case of Necessity[.]” Following immediately upon prohibitions on drunkenness, swearing and gossiping, the statute seems intended to improve morals of the population, and was not specifically directed at guns.¹⁶³ In 1678, the law was expanded to prohibit a larger list of amusements, and still prohibited fishing and hunting.¹⁶⁴

C. Restrictions on Fire-hunting

One particularly destructive practice of Colonial America was “fire-hunting,” well described by a 1760 account explaining why white pines in New York, New England, and New Jersey were protected for the use of the Royal Navy:

This restriction is absolutely necessary, whether considered as securing a provision for the navy, or as a check upon that very destructive practice, taken from the Indians, of fire-hunting. It used to be the custom for large companies to go into the woods in the winter, and to set fire to the brush and underwood in a circle of several miles. This circle gradually contracting itself, the deer, and other wild animals inclosed, naturally retired from the flames, till at length they got herded together in a very small compass.

Then, blinded and suffocated by the smoke, and scorched by the fire, which every moment came nearer to them, they forced their way, under the greatest trepidation and dismay, through the flames. As soon as they got into the open daylight again, they were shot by the hunters, who stood without and were in readiness to fire upon them.¹⁶⁵

Fire-hunting was not confined to the Northeast colonies; there are a number of statutes of Colonial Virginia and Maryland that either directly prohibit fire-hunting with reference to guns,¹⁶⁶ or that license hunting on the frontier in an attempt to control fire-hunting.¹⁶⁷ Doubtless other restrictions on firearms use existed—but if so, those who argue that Colonial governments severely restricted firearms use have yet to produce

them.

CONCLUSION: COLONIAL FIREARMS REGULATIONS WERE
NEITHER *Laissez-faire* NOR RESTRICTIVE

As should be clear from the preceding walk through these laws, the Colonial statutes were not *laissez-faire*; there were many obligations concerning the ownership and carrying of guns adopted for the public good. Neither were they restrictive, at least for whites (with the exception of Catholics in Maryland). There were, it is true, some severe restrictions on firearms ownership in Colonial America, but they applied only to people who were not trusted to be loyal members of the community, particularly Indians and blacks. For the vast majority of people, who were considered loyal members of the community, gun ownership was not only allowed, it was an obligation.

ENDNOTES

1. Michael A. Bellesiles, *Arming America: The Origins of a National Gun Culture* (New York: Alfred A. Knopf, 2000), 73. Similar text, with a subset of the same footnotes, appears at Michael Bellesiles, "Gun Laws in Early America: The Regulation of Firearms Ownership, 1607-1794," *Law & History Review*. 16:575 (1998).

Bellesiles also asserts government ownership of all guns at *Arming America*, pp. 79-80. Because individuals failed to take adequate care of guns in private hands, "The eventual solution to the lack of care devoted to firearms was to make all guns into the property of the state, subject to storage in central storehouses where they could be cleaned and repaired by paid government gunsmiths." Similarly, Bellesiles asserts that while "the colonies supported and subsidized the private ownership of firearms, the government reserved to itself the right to impress arms on any occasion, either as a defensive measure against possible insurrection or for use by the state. No gun ever belonged unqualifiedly to an individual."

2. *State v. Hirsch*, 177 Or. App. 441, 34 P.3d 1209 (Or. App. 2001).

3. Bellesiles, *Arming America*, 73.

4. *Code of 1650, Being a Compilation of the Earliest Laws and Orders of the General Court of Connecticut* (Hartford, Conn.: Silas Andrus, 1822), 72-73; J. Hammond Trumbull (vol. 1-3), Charles J. Hoadly (vol. 4-15), *The*

Public Records of the Colony of Connecticut, Prior to the Union with New Haven Colony (Hartford, Conn.: Brown & Parsons, 1850) (hereinafter *Public Records of Connecticut*), 1:542-543.

5. *Public Records of Connecticut*, 1:3-4, 15-16, 2:19-20, 217-18, 4:177, 8:379-80.

6. *Id.*, 2:217-18, 4:177, 8:379-80.

7. William Waller Hening, *The Statutes at Large; Being a Collection of all the Laws of Virginia, from the First Session of the Legislature, in the Year 1619* (New York: R. & W. & G. Bartow, 1823), 3:13.

8. *Id.*, 3:338.

9. *Id.*, 5:17, 21.

10. *Id.*, 6:116.

11. *Id.*, 6:118.

12. *Id.*, 6:537.

13. *The Colonial Laws of New York from the Year 1664 to the Revolution...* (Albany, New York: James B. Lyon, 1894), 1:49-50.

14. William Hand Browne, ed., *Archives of Maryland* (Baltimore: Maryland Historical Society, 1885) (hereinafter *Archives of Maryland*), 1:77.

15. *Id.*, 75:258.

16. *Id.*, 75:259.

17. *Id.*, 1:77.

18. *Id.*, 3:100-1.

19. *Id.*, 3:103.

20. *Id.*, 3:345.

21. *Id.*, 52:469.

22. *Id.*, 11:21. But see *id.*, 11:90 for a complaint that many had failed to conform to the law, though the complaint alleges that that the problem was “would not,” not “could not.”

23. Nathaniel B. Shurtleff, *Records of the Governor and Company of the Massachusetts Bay in New England* (Boston: William White, 1853), 1:84. In 1752, England switched from the Julian calendar (in which the new year begins on March 25, the date of the Annunciation) to the Gregorian calendar (in which the new year begins on January 1). For some older documents which were published between January 1 and March 25, historians supply both “years” of publication, under the old

calendar which was in effect at the time, and under the new calendar which we use today.

24. *Id.*, 2:134. This requirement is reiterated on November 11, 1647. *Id.*, 2:222.

25. *Id.*, 3:84.

26. *Id.*, 2:99.

27. Charles J. Hoadly, ed., *Records Of The Colony And Plantation Of New Haven, From 1638 To 1649* (Hartford, Conn.: Case, Tiffany, 1857), 25-26, 96-97, 131, 202. Hoadly, 122-3, lists a number of men fined for failure to obey.

28. William Brigham, ed., *The Compact with the Charter and Laws of the Colony of New Plymouth...* (Boston: Dutton and Wentworth, 1836), 31, 44-45, 285-6.

29. *Acts and Laws, Passed by the General Court or Assembly of the Province of New-Hampshire in New-England...* (1716), 91-92, in Clifford K. Shipton, ed., *Early American Imprints, 1639-1800* (Worcester, Mass.: American Antiquarian Society, 1967), imprint 1985.

30. *The Laws and Acts of the General Assembly of Her Majesties Province of Nova Caesarea or New-Jersey* (W. Bradford, 1709), 12-13, in Clifford K. Shipton, ed., *Early American Imprints, 1639-1800* (Worcester, Mass.: American Antiquarian Society, 1967), imprint 1412.

31. *Laws of the Government of New-Castle, Kent and Sussex Upon Delaware* (Philadelphia: B. Franklin, 1741), 171-7. While the title page is clearly 1741, this must have been only for the first of annual series, since the law was passed in 1742. See also a 1740 statute, *Id.*, 151, imposing similar requirements on the town of Lewes, which was apparently considered especially exposed to naval attack.

32. John Russell Bartlett, ed., *Records of the Colony of Rhode Island and Providence Plantations, in New England* (Providence, R.I.: A. Crawford Greene and Brother, 1856), 1:94.

33. *Id.*, 1:79-80.

34. Alexander S. Salley, *Journal of the Grand Council of South Carolina* (Columbia, S.C.: Historical Commission of South Carolina, 1907), 1:10-11.

35. *Laws of North Carolina—1715*, ch. 25, in John D. Cushing, ed., *The Earliest Printed Laws of North Carolina, 1669-1751* (Wilmington, Del.: Michael Glazier, Inc., 1977), 2:29-31.

36. *A Collection of all the Public Acts of Assembly, of the Province of North-Carolina: Now in Force and Use...* (Newbern, N.C.: James Davis, 1751), 215-16.

37. John Hope Franklin, *The Free Negro in North Carolina, 1790-1860* (Chapel Hill, N.C.: University of North Carolina Press, 1995), 101-102.
38. Allen D. Candler, comp., *The Colonial Records of the State of Georgia* (Atlanta, Ga.: Chas. P. Byrd, 1911), 19(part 1):291. Nearly identical language appears in the 1755 militia statute. *Id.*, 18:7, 11-12.
39. *Id.*, 19(part 1):296.
40. *Id.*, 19(part 1):303. There are many pages of highly detailed fines and provisions to handle any imaginable contingency in this statute.
41. *Id.*, 19(part 1):324-25.
42. *Id.*, 19(part 1):297-8.
43. *Id.*, 19(part 1):299. See the similar obligation imposed in 1757 on members of the militia to keep and carry “one good Gun or Pistol in Order... and a Cartridge Box with at least Six Cartridges” when on patrol duty. *Id.*, 18:231.
44. A few scattered scraps that give some idea of the conflict between governor and legislature on passage of a mandatory militia law can be found at *Pennsylvania Archives*, 4th series, 1:706-8, 2:441, 548, 555.
45. *Archives of Maryland*, 75:264; Abbot Emerson Smith, *Colonists in Bondage: White Servitude and Convict Labor in America, 1607-1776* (Gloucester, Mass.: Peter Smith, 1965), 239.
46. *Laws of North Carolina—1715*, ch. 46, in John D. Cushing, ed., *The Earliest Printed Laws of North Carolina, 1669-1751* (Wilmington, Del.: Michael Glazier, Inc., 1977), 63; Farley Grubb, “The Statutory Regulation of Colonial Servitude: An Incomplete-Contract Approach,” *Explorations in Economic History* 37 (January, 2000):69.
47. Public Records Office, Customs 16:85, 109, 171. In 1769: 229,545 pounds; 1770: 410,591; 1771: 390,558 pounds.
48. William J. Novak, “*Salus Populi*: The Roots of Regulation in America, 1787-1873” (Ph.D. diss., Brandeis University, 1992), 188.
49. This calculation is necessarily imprecise, but is based on statutes of the time that assumed four pounds of lead for every pound of gunpowder, and a 0.75 caliber Brown Bess: *Archives of Maryland*, 1:77; Matthew Page Andrews, *Tercentenary History of Maryland* (Chicago and Baltimore: S.J. Clarke Publishing Co., 1925), 1:150; Hening, 5:17, 21. Many firearms in Colonial America were smaller caliber, and consequently used less powder, increasing the number of shots that could have been fired. Concerning the claim of gun ownership, storage requirements, and hunting, see generally Bellesiles, *Arming America*.
50. *Public Records of Connecticut*, 1:95, 96.

51. Shurtleff, 1:190.
52. *Id.*, 1:210.
53. *Id.*, 2:38.
54. Bartlett, 1:94.
55. *Archives of Maryland*, 3:103.
56. Bartlett, 1:79.
57. Hoadly, 131-32. See *id.*, 122-23, for men fined for failure to bring their guns to church, and Hoadly, 500, for William Paine's request that he be exempted from this requirement, "he lives [far off] and hath three small children, and his wife is lame and cannot help to bring the children."
58. Brigham, 70.
59. *Id.*, 115.
60. *Id.*, 176.
61. August 2, 1619, "Proceedings of the Virginia Assembly, 1619," in Lyon Gardiner Tyler, *Narratives of Early Virginia, 1606-1625* (New York: Charles Scribner's Sons, 1907; reprinted New York: Barnes & Noble, 1959), 273.
62. Hening, 1:198.
63. *Id.*, 5:19.
64. David J. McCord, *Statutes at Large of South Carolina* (Columbia, S.C.: A. S. Johnson, 1840), 7:417-19.
65. Candler, *The Colonial Records of the State of Georgia*, 19(part 1):137-40.
66. Hening, 1:127, 198.
67. Shurtleff, 1:85.
68. *Id.*, 1:190.
69. Bartlett, 1:94.
70. *Archives of Maryland*, 3:103.
71. William Bradford, Samuel Eliot Morison, ed., *Of Plymouth Plantation, 1620-1647* (New York: Alfred A. Knopf, 2001), 70.
72. Sydney V. James, Jr., *Three Visitors to Early Plymouth* (Bedford, Mass.: Applewood Books, 1997), 16.
73. Francis Adams, Jr., ed., *New English Canaan of Thomas Morton* (Boston: The Prince Society, 1883; reprinted New York: Burt Franklin, 1967), 21-28.
74. Bradford, 204, 206-8, 232-3.

75. Joseph H. Smith, ed., *Colonial Justice in Western Massachusetts (1639-1702): The Pyncheon Court Record, An Original Judges' Diary of the Administration of Justice in the Springfield Courts in the Massachusetts Bay Colony* (Cambridge: Harvard University Press, 1961), 208.
76. *Archives of Maryland*, 3:103.
77. Shurtleff, 1:196.
78. *Id.*, 2:24.
79. *Id.*, 3:268.
80. *Id.*, 3:397.
81. *Public Records of Connecticut*, 1:1, 2.
82. *Id.*, 1:49.
83. *Id.*, 1:182.
84. *Id.*, 1:79-80.
85. *Id.*, 1:113-14, 138, 145-6, 197-8.
86. *Id.*, 1:146-7, Richard Lord fined £7 and Thomas Stanton, £5. *Id.*, 1:167, Thomas Lord ordered to appear. *Id.*, 1:242, Captain Sebadoe fined £10.
87. Smith, 263.
88. Shurtleff, 4 (part 2):365.
89. John E. Soule, Milton E. Terry, and Robert S. Wakefield, comp., *George Soule of the Mayflower and His Descendants for Four Generations*, 3rd ed. (Plymouth, Mass.: General Society of Mayflower Descendants, 1999), 6.
90. *Public Records of Connecticut*, 1:351, 375.
91. Hening, 1:441.
92. *Id.*, 1:525.
93. *Id.*, 2:215.
94. *Id.*, 2:336-7.
95. *Archives of Maryland*, 1:71.
96. *Id.*, 1:250.
97. *Id.*, 58:420.
98. Hening, 2:481.
99. *Id.*, 4:131.
100. *Id.*, 5:17. Indians and blacks to appear unarmed for muster reiterated in 1757. *Id.*, 7:95.

101. *Archives of Maryland*, 75:268.
102. *Laws of the Government of New-Castle, Kent and Sussex Upon Delaware* (Philadelphia: B. Franklin, 1741), 178.
103. Candler, *The Colonial Records of the State of Georgia*, 19(part 1):76-78. Essentially identical language appears in the 1755 slave law, *Ibid.*, 18-117-18.
104. J. Franklin Jameson, ed., *Johnson's Wonder-Working Providence: 1628-1651* (New York: Barnes & Noble, Inc., 1959), 175. Shurtleff, 1:211-12, gives the disarming orders.
105. Hening, 2:403.
106. *Archives of Maryland*, 52:450-1 contains a 1756 militia law that exempts "Papists, the Persons commonly called Neutralls, Servants, and Slaves." See instructions at 52:598 ordering that no soldier be enlisted "Roman Catholic or Deserter, knowing them to be such..." Also discussed at 6:419-20, 9:315-6; 28:315
107. *Id.*, 52:451-2.
108. Joyce Lee Malcolm, *To Keep and Bear Arms: The Origins of an Anglo-American Right* (Cambridge, Mass.: Harvard University Press, 1994), 123. Britain and Ireland had different laws concerning the disarming of Catholics, with the Irish law somewhat more restrictive on the possession of arms for self-defense. Compare 1 W. & M., ch. 15 (1689) with the Irish law 7 Will III ch.5 (1695).
109. Joyce Lee Malcolm, "The Right of the People to Keep and Bear Arms: The Common Law Tradition," *Hastings Constitutional Law Quarterly* 10:310 (1983).
110. *Archives of Maryland*, 25:288-9.
111. *Id.*, 28:315.
112. *Id.*, 52:454.
113. Candler, *The Colonial Records of the State of Georgia*, 18:190-1.
114. Bellesiles, *Arming America*, 73.
115. Shurtleff, 1:84.
116. *Id.*, 1:93.
117. *Code of 1650, Being a Compilation of the Earliest Laws and Orders of the General Court of Connecticut* (Hartford, Conn.: Silas Andrus, 1822), 72-73.
118. *Colonial Laws of New York*, 1:52.
119. *Acts and Laws, Passed by the General Court or Assembly of the Province of New-Hampshire in New-England...* (1716), 91-92, in Clifford K. Shipton,

- ed., *Early American Imprints, 1639-1800* (Worcester, Mass.: American Antiquarian Society, 1967), imprint 1985, 94.
120. Hening, 2:304.
121. *Id.*, 6:118.
122. *Archives of Maryland*, 75:425.
123. *Id.*, 52:452.
124. Shurtleff, 2:31. Shurtleff, 3:187, includes a May 23, 1650 order that the public arms to be sold not include cannon. An October 14, 1651 order at Shurtleff, 3:248, provides for the gift of five publicly owned muskets to inhabitants of Salem and “our present honored Governor.”
125. Hening, 8:125-6.
126. *Public Records of Connecticut*, 1:29.
127. *Id.*, 1:1, 2.
128. *Id.*, 1:49.
129. *Id.*, 1:182, Robert Slye fined £10 for “exchanging a gunn with an Indian” with George Hubberd, John West, and Peter Blatchford “for the same” all fined the same amount.
130. *Id.*, 1:33.
131. *Id.*, 1:50.
132. Hoadly, *Records Of The Colony And Plantation Of New Haven*, 176-77.
133. Bellesiles, *Arming America*, 79.
134. Shurtleff, 5:48-49.
135. Library of Congress, Printed Ephemera Collection; Portfolio 35, Folder 15b.
136. *Archives of Maryland*, 9:565. Similar offers appear at 31:404, in 1760, and at 56:404 in 1761.
137. *Public Records of Connecticut*, 14:417-18. See *id.*, 15:188, for a similar measure in December 1775.
138. *Id.*, 15:97.
139. *Id.*, 14:418-19.
140. Massachusetts Provincial Congress, *The Journals of Each Provincial Congress of Massachusetts in 1774 and 1775* (Boston: Dutton and Wentworth, 1838), 536-37, 584-93. *Id.*, 584 (107 “small arms”); 585 (13 “guns”); 591 (28 “guns, for the use of the colony, collected by order of Congress”).
141. *Id.*, 210.

142. *Id.*, 336-37.
143. February 7, 1776, *Colonial Records of Pennsylvania* (Chicago: Library Resources, 1970), 10:478; February 9, 1776, 10:481; April 9, 1776, 10:537; April 10, 1776, 10:537; July 30, 1776, 10:471; July 24, 1776, 10:653; August 23, 1776, 10:698; November 29, 1775, *Minutes of the Supreme Executive Council of Pennsylvania* (Harrisburg, Penn.: Theo. Fenn & Co., 1852), 10:416-67, 10:550-51, 686-67, 700.
144. November 30, 1775, *Min.Sup.Penn.*, 418.
145. See March 8, 1776, *American Archives* 4th series, 5:1509 for Baltimore, Maryland's confiscation and compensation of guns.
146. Worthington C. Ford, *et al.*, ed., *Journals of the Continental Congress, 1774-1789* (Washington, D.C., 1904-37), 4:220-21.
147. Richard Frothingham, *History of the Siege of Boston, and of the Battles of Lexington, Concord, and Bunker Hill*, 6th ed. (Boston: 1903), 94-95.
148. Hening, 1:401-2.
149. *Archives of Maryland*, 3:103.
150. Brigham, 176.
151. September 6, 1638, Shurtleff, 1:236.
152. Eugene Aubrey Stratton, *Plymouth Colony: Its History & People, 1620-1691* (Salt Lake City: Ancestry Publishing, 1986), 188.
153. *Acts and Resolves, Public and Private, of the Province of the Massachusetts Bay...* (Boston: Albert J. Wright, 1878), 3:305-6.
154. Candler, *The State Records of the Colony of Georgia*, 18:294-5.
155. Hening, 1:199.
156. *Id.*, 2:96-97. *Id.*, 3:328, contains a minor revision of this law in 1705.
157. *Id.*, 3:180.
158. *Laws and Acts of the General Assembly Of His Majesties Province of Nova Caesarea or New-Jersey...* (William Bradford, 1722), 143-45.
159. *Laws of North Carolina—1738*, ch. 10, in John D. Cushing, ed., *The Earliest Printed Laws of North Carolina, 1669-1751* (Wilmington, Del.: Michael Glazier, Inc., 1977), 2:128.
160. Hening, 8:592-3.
161. *Archives of Maryland*, 3:255.
162. *Id.*, 1:295-96. Also reiterated in 1654 at 1:351.
163. *Id.*, 1:343-44.

164. *Id.*, 7:51-52.

165. Andrew Burnaby, “In the Woods” in Albert Bushnell Hart and Mabel Hill, *Camps and Firesides of the Revolution* (New York: Macmillan Co., 1937), 51. See also J. Franklin Jameson, ed., *Johnson’s Wonder-Working Providence: 1628-1651* (New York: Barnes & Noble, Inc., 1959), 85, for what *may* be a description of Indian fire-hunting of deer in seventeenth century New England.

166. Hening, 5:62 is a 1738 statute prohibiting fire-hunting by both colonists and Indians. “And if any Indian be found fire-hunting... it shall and may be lawful, for the owner of such land... to take away the gun of such Indian, and the same to keep to his own use.” *Id.*, 5:431 again punishes fire-hunting.

Archives of Maryland, 28:348-9 is a 1745 statute that prohibits fire-hunting, although it is not explicit that the “hunters” were using guns. *Id.*, 44:21, 36, 39, 173, 180-1, trace the legislative history from the request earlier that year from the backwoods farmers to prohibit fire-hunting and hunting by non-residents to final passage. For reasons not explained, a similar law is debated in 1753 at 50:211 and 251, where it was “referred to the Consideration of next Assembly.”

Connecticut’s 1733 statute regulating “Firing the Woods” at *Public Records of Connecticut*, 7:456-7, is not explicitly about hunting, nor does it ever mention firearms, but may have been motivated by the same concerns.

167. Hening, 3:69.

Conflicts Between State Firearms Statutes and Municipal Ordinances: A Digest of Cases and Attorney General Opinions

By Robert J. Woolley

This article summarizes state cases and attorney general opinions involving conflicts between state statutes and municipal ordinances regarding firearms. Robert Woolley is a family practice physician in St. Paul, Minnesota. Studying the legal and practical effects of firearms regulations, and engaging in several types of competitive shooting are foremost among his hobbies.

“It is a fundamental and universal rule that any ambiguity or doubt as to the extent of a power attempted to be exercised by a municipality out of the usual range, or which may affect the common-law right of a citizen or inhabitant, should be resolved against the municipality.” Anderson v. Shackelford, 76 So. 343, 345 (Fla. 1917), citing 1 Dillon on Municipal Corp. (4th Ed.) § 91, overturned in part on other grounds by Sunad, Inc. v. City of Sarasota, 122 So. 2d 611 (Fla. 1960).

INTRODUCTION

This digest of cases and Attorney General opinions was produced as part of research in preparation for possible litigation against Minnesota local governments that have, in the face of clear statutory prohibition, enacted resolutions and ordinances banning guns from public buildings under their jurisdiction, or have otherwise exceeded their legitimate authority.

I wanted to find cases in other states with fact patterns as similar as possible to Minnesota's. There are precious few. But along the way I noticed a fairly large number of interesting cases and Attorney General opinions dealing with firearms statutes and ordinances in alleged conflict. I thought it would be useful to have a précis of them readily available.

This digest is by no means complete, but I am confident it is a large percentage of what a comprehensive search would find,

and certainly has enough cases that a reader can see just about every possible approach to resolving the disputes.

Inclusion of cases, and the length of treatment they receive, is a result of purely subjective judgments on my part as to how interesting the cases were—in facts, legal reasoning, or outcome. The cases do not all come from shall-issue states, nor even all from states with strong preemption laws. These conflicts arise in all sorts of statutory environments.

I have not altered any text quoted, except where clearly marked, though I have often silently removed citations, footnotes, internal quotation marks, emphasis, etc. As always, check the original sources before quoting this material anywhere that a high degree of accuracy is required.

ALABAMA

Ex Parte Childers, 640 So. 2d 16 (Ala. 1994):

A state statute provided: “No incorporated municipality shall have the power to enact any ordinance, rule or regulation, which shall tax, restrict, prevent or in any way affect the possession or ownership of handguns by the citizens of this state. The entire subject matter of handguns is reserved to the state legislature.”

The city of Muscle Shoals passed an ordinance criminalizing the possession of a firearm “upon a premises of a business establishment maintaining a lounge retail liquor license.” The ordinance made no exception for holders of a state license to carry a pistol.

Childers was on trial for manslaughter for an incident he claimed was self-defense. The trial judge allowed into evidence, over defendant’s objection, the fact that Childers was in violation of this ordinance when the altercation took place. The Alabama Supreme Court held that (1) the ordinance was invalid for being in conflict with the preemptive state statute, and (2) Childers was entitled to a new trial because the jury could have been misled in its deliberations by the false information that he had no legal right to have the pistol on his person at the time of the shooting.

Alabama Attorney General Opinion #2001-267:

Your opinion request indicates that the City of Decatur wishes to adopt a policy in which city employees would be prevented from bringing weapons into city work areas while performing their duties as employees....

Section 11-45-1.1 of the Code of Alabama states that “[n]o incorporated municipality shall have the power to enact any ordinance, rule, or regulation which shall tax, restrict, prevent, or in any way affect the possession or ownership of handguns by the citizens of this state.” ALA. CODE § 11-45-1.1 (Supp. 2000). The section goes on to state that “[t]he entire subject matter of handguns is reserved to the State Legislature.” *Id.* (emphasis added). Based on section 11-45-1.1 of the Code of Alabama, the City of Decatur cannot adopt any kind of policy prohibiting the possession of handguns by city employees on the job in his or her work area.

ARIZONA

McMann v. City of Tucson, 47 P. 3d 672 (Ariz. App. Div. 2, 2002):

The city enacted an ordinance requiring that a condition of renting the Tucson Convention Center for gun shows would be that all sales of firearms must be subject to an instant background check. The state’s preemption statute prohibited local governments from enacting any ordinance “relating to the transportation, possession, carrying, sale or use of firearms.”

The court reasoned that the ordinance in question was not a regulation of the sale of firearms under the city’s general police powers. Arizona charter cities are deemed to be sovereign in all of their “municipal affairs.” The sovereignty has been construed to mean those matters of “solely local concern.” Included in the sovereignty is the sale and disposition of city property. The court held that the leasing of the convention center constituted a temporary “disposition” of city property, and was a matter of

solely local concern, and therefore in the sphere in which the city could enact regulations free from legislative interference.

As a result of this decision, the Arizona legislature in 2003 revised the preemption statute. The legislature added language specifically prohibiting municipalities from regulating, in a manner different from state law, the sale or transfer of firearms on property that it owns or operates; and forbids leases or use permits to be considered a “disposition” of city property.

I do not include here a discussion of *City of Tucson v. Rineer*, 971 P. 2d 207 (Ariz. App. Div. 2, 1998) because it dealt with an earlier and much less complete preemption statute—one that explicitly provided that local ordinances regulating various matters related to firearms would not be construed to be in conflict with state law.

CALIFORNIA

People v. Jenkins, 24 Cal. Rptr 410 (Cal. Super. 1962):

State statutes on firearms, though intricate, did not fully occupy the field, nor demonstrate any clear legislative intent to preclude more restrictive local legislation. A Los Angeles ordinance that prohibited conduct not prohibited by statute was, therefore, valid and enforceable.

Galvan v. Superior Court of City and County of San Francisco, 76 Cal. Rptr. 642 (Cal. 1969)

The state supreme court held that local ordinance requiring registration of almost all firearms was not preempted by state statutes, because the statutes precluded further local legislation with respect to licenses and permits for *people* but not registration of *guns*. The city could not impose additional requirements or restrictions on state-issued licenses or permits, but could compile a catalog of firearms owned by persons granted licenses or permits.

Two years later the legislature amended the firearms statutes so as to more completely occupy the entire field, thus preempting this type of local ordinance.

Doe v. City and County of San Francisco, 186 Cal. Rptr. 380 (Cal. App. 1982):

San Francisco enacted an ordinance prohibiting the possession of handguns within the city, excepting persons possessing a state-issued handgun carry permit (permits which were rarely issued by many jurisdictions).

Because the ordinance did not establish a licensing or permitting system, or have any effect on persons possessing state permits, the city argued that it did not conflict with the state statutes preempting local regulation on those matters. The court observed, however, that the effect of the ordinance was to require citizens to obtain a carry permit merely to continue possessing handguns in their homes, and required people who wished to purchase handguns to obtain such a state permit, where none was previously required. Therefore, the court held:

in substance [the ordinance] creates a licensing requirement where one had not previously existed. It violates the Legislature's statement of intention that the provisions of the Penal Code "shall be exclusive of all local regulations, *relating to* registration or licensing of commercially manufactured firearms ..." (Emphasis added.) If not a direct licensing requirement, the San Francisco Handgun Ordinance is at least a local regulation *relating to licensing*.

The court also held, in the alternative, that even if the ordinance did not enter an area preempted by the state, it conflicted with a specific provision of the state penal code. The statute provided that "no permit or license...shall be required" to keep a handgun at one's home or place of business. Because the ordinance had the effect of requiring a permit to keep a handgun in one's home, it conflicted with the statute and was therefore invalid:

A restriction on requiring permits and licenses necessarily implies that possession is lawful without a permit or license. It strains reason to suggest that the state Legislature would prohibit licenses and permits but allow a ban on possession.

Great Western Shows, Inc. v. County of Los Angeles, 44 P. 3d 120 (Cal. 2002):

State statutes regulating gun shows did not wholly occupy the field or preempt further local regulation of gun shows.

Nordyke v. King, 44 P. 3d 133 (Cal. 2002):

Alameda County enacted an ordinance banning all firearms from county property. It excluded from the scope of the ban the principal buildings in which county business is conducted, because those are covered in a state statute. (Basically, the statute prohibits bringing guns into the main business buildings of state and local governments; one of many exceptions is that people with carry permits are exempted from this prohibition.)

The effect of the ordinance was to make a gun show in a county building impossible or at least unfeasible. The state supreme court rejected the argument that the ordinance was invalid because it effectively disallowed gun shows, which the statutes expressly allowed. Because the state legislature had left room for counties to regulate or even ban gun shows on their property, the court said, the ordinance was not preempted. The court declined to comment on whether the ordinance conflicted with state law or was otherwise invalid for circumstances beyond the narrow ones presented by the facts of this case.

There are many more preemption cases in California. They generally do not merit much comment, because they all revolve around the fact that the California legislature has never occupied or preempted the field of firearms generally, but has occupied it a piece at a time. The courts therefore have to struggle with whether a local ordinance is or is not intruding into the specific sub-topic of some part of the complex state penal code related to firearms. In other words, the California cases are intensely fact-specific, and do not shed much light on the larger questions of preemption doctrine as it relates to firearms.

CONNECTICUT

Dwyer v. Farrell, 475 A. 2d 257 (Conn. 1984):

The City of New Haven enacted an ordinance limiting firearm sales to federally licensed dealers with storefront operations, properly zoned as businesses. State statutes already placed severe regulatory restrictions on private sales of firearms—including requiring a permit for each gun to be sold, the application for which had to specify even *where* it was to be offered for sale—but did allow non-FFL sales. The court ruled:

Although the statutory pattern evinces a legislative intent to regulate the flow of handgun sales and restrict the right to sell to those establishing the requisite qualifications, it is also clear that the General Assembly anticipated that persons meeting those qualifications, including those living in residential neighborhoods and nondealers, would be permitted to sell at retail a pistol or revolver. The legislature has struck the balance between totally unregulated sales and a complete ban on sales of handguns at retail.

In passing this handgun ordinance, the city has placed two important and substantial restrictions on the sale at retail of handguns which most residents of the city can never overcome: (1) that the seller be a dealer, and (2) that the sale occur on premises located in an area zoned as a business district. By placing these restrictions on the sale of handguns, the ordinance effectively prohibits what the state statutes clearly permit.

...

The fact that a local ordinance does not expressly conflict with a statute enacted by the General Assembly will not save it when the legislative purpose in enacting the statute is frustrated by the ordinance. Here the New Haven ordinance removes an entire class of persons as potential sellers of handguns at retail. The state

permit is rendered an illusory right because a casual seller residing in a nonbusiness zone can have no real hope of ever conforming to the local ordinance. In this respect the local ordinance conflicts with the legislative intent as expressed in the applicable statutes. The city has removed a right that the state permit bestows and thus has exceeded its powers.

GEORGIA

Sturm, Ruger & Co., Inc. v. City of Atlanta, 560 S.E.2d 525 (Ga. App. 2002):

The city of Atlanta sued several firearms manufacturers under a variety of causes of action. After discussing implied state preemption of the field, the appellate court addressed the more important matter of explicit preemption:

More importantly, the State has also expressly preempted the field of firearms regulation in OCGA § 16-11-184, which, even before its amendment in 1999, provided “that the regulation of firearms is properly an issue of general, state-wide concern.” And,

(b)(1) No county or municipal corporation, by zoning or by ordinance, resolution, or other enactment, shall regulate in any manner gun shows, the possession, ownership, transport, carrying, transfer, sale, purchase, licensing, or registration of firearms, components of firearms, firearms dealers, or dealers in firearms components.

The practical effect of the preemption doctrine is to preclude all other local or special laws on the same subject. That the City has filed a lawsuit rather than passing an ordinance does not make this any less a usurpation of State power. The City may not do indirectly that which it cannot do directly. As the State points out [in an *amicus* brief], power may be exercised as much by a jury’s application of law in a civil suit as by statute. “The test is not the form in

which state power has been applied but, whatever the form, whether such power has in fact been exercised.” (Punctuation omitted.) *BMW of North America v. Gore*, 517 U.S. 559, 572(II), n. 17, 116 S.Ct. 1589, 134 L.Ed.2d 809 (1996). “The obligation to pay compensation can be ... a potent method of governing conduct and controlling policy.” *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 247, 79 S.Ct. 773, 3 L.Ed.2d 775 (1959).

Through this lawsuit, the City seeks to punish conduct which the State, through its regulatory and statutory scheme, expressly allows and licenses. Because the State has reserved to itself the right to prescribe the manner in which firearms may be regulated, the City may not attempt to usurp that power, whether by litigation or regulation, and the trial court erred in not dismissing the City’s complaint and amended complaint against all defendants.

FLORIDA

Rinzler v. Carson, 262 So. 2d 661 (Fla. 1972):

A state statute prohibited the possession of machine guns, but exempted persons whose firearms had been registered in accordance with federal law. The City of Jacksonville enacted a prohibition ordinance, but granted no such exemption. The court held that the ordinance could not be enforced against a person who had complied with the state statute and federally registered his weapon:

It is clear that the provisions of the ordinance are contrary to the statute for the reason that the statute excepts from its operation firearms which are lawfully owned and possessed under provisions of federal law. Municipal ordinances are inferior in stature and subordinate to the laws of the state. Accordingly, an ordinance must not conflict with any controlling provision of a state statute, and if any

doubt exists as to the extent of a power attempted to be exercised which may affect the operation of a state statute, the doubt is to be resolved against the ordinance and in favor of the statute. A municipality cannot forbid what the legislature has expressly licensed, authorized or required, nor may it authorize what the legislature has expressly forbidden.... In order for a municipal ordinance to prohibit that which is allowed by the general laws of the state there must be an express legislative grant by the state to the municipality authorizing such prohibition. McQuillin, *Municipal Corporations*, Vol. 5, Section 15.20.

National Rifle Association v. City of South Miami, 812 So. 2d 504 (Fla. App. 3 Dist., 2002):

Florida had a comprehensive preemption statute:

(1) PREEMPTION.--Except as expressly provided by general law, the Legislature hereby declares that it is occupying the whole field of regulation of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, and transportation thereof, to the exclusion of all existing and future county, city, town, or municipal ordinances or regulations relating thereto. Any such existing ordinances are hereby declared null and void.

....

(3) POLICY AND INTENT.--

(a) It is the intent of this section to provide uniform firearms laws in the state; to declare all ordinances and regulations null and void which have been enacted by any jurisdictions other than state and federal, which regulate firearms, ammunition, or components thereof; to prohibit the enactment of any future ordinances or regulations relating to firearms, ammunition or components thereof unless specifically authorized by this section or general law;

and to require local jurisdictions to enforce state firearms laws.

The City of South Miami apparently had difficulty comprehending the statute, and enacted an ordinance requiring locks on firearms stored within the city. The court had no difficulty finding the ordinance void, and barely discussed it other than to declare it preempted. The appellate case is really about the timing of declaratory judgment actions; the trial court had erroneously decided that there was not yet a justiciable controversy.

Florida Attorney General Opinion #2000-42:

This opinion dealt with the South Miami ordinance, prior to the *NRA v. South Miami* decision. The Attorney General believed that the ordinance was valid. First, it did not conflict with the intention of the preemption statute, which was to prevent local intrusion on the right to keep and bear arms; because the ordinance did not restrict the right to acquire, own, or use firearms, it did not frustrate the legislature's purpose. Second, complying with the ordinance would not require a person to violate the state firearms statutes, and vice-versa. Third, the statute did not specifically mention *storage* as one of the things local governments were prohibited from regulating, and *possession* did not necessarily include *storage*.

ILLINOIS

Brown v. City of Chicago, 250 N.E.2d 129 (Ill. 1969)

This case involved the constitutional validity of two Chicago ordinances regulating the possession of firearms and requiring their registration.

In substance the principal contention [is] that the City lacks power to legislate with regard to gun control because the State has pre-empted the field....

With regard to the first contention it is suggested that whatever power the City had to regulate

firearms has been repealed by implication by an act effective July 1, 1968. (Ill.Rev.Stat.1967, ch. 38, par. 83--1 et seq.) The argument is without merit. The statute does not require the registration of weapons, as does the Chicago registration ordinance. Rather it deals with registration of the individual owner of firearms. Its declared purpose merely is 'to provide a system of identifying persons who are not qualified to acquire or possess firearms and firearm ammunition * * *.' (Ill.Rev.Stat.1967, ch. 38, par. 83--1.) Unlike the registration certificate for which the ordinance provides, the identification cards required by the Act do not even refer to or identify particular weapons. There is no inconsistency or repugnancy between the two, and the legislature has not preempted the field of gun control. As this court said in *Kizer v. City of Mattoon*, 164 N.E. 20, 22: "While municipal ordinances must be in harmony with the general laws of the state, and in case of a conflict the ordinance must give way, the mere fact that the state has legislated upon a subject does not necessarily deprive a city of power to deal with the subject by ordinance. Police regulations enacted by a city under a general grant of power may differ from those of the state upon the same subject, provided they are not inconsistent therewith."

Arrington v. City of Chicago, 259 N.E. 2d 22 (Ill. 1970):

Prison guards challenged a city ordinance prohibiting them from carrying guns while commuting to and from work, because a state statute specifically allowed such carrying. The court reached the obvious conclusion: "the ordinance is invalid to the extent that it prohibits what the statute expressly permits."

City of Chicago v. Haworth, 708 N.E.2d 425 (Ill. App. 1 Dist. 1999):

This case centered on the prosecution of a private detective for failure to register his pistol with the City of Chicago, in violation of city ordinance. The detective argued that the state

statute governing the licensing of private detectives preempted his prosecution under the ordinance. The court agreed:

Haworth argues that the [Private Detective] Act preempts the city from enforcing its firearm registration ordinance against licensed private detectives. In support, Haworth cites the provisions of the Act and the requirements which must be fulfilled to become a licensed private detective, in particular section 40 which provides as follows: “The power to regulate the private detective, private security, private alarm, or locksmith business shall be exercised *exclusively by the State* and may not be exercised by any unit of local government including home rule units.” 225 ILCS 446/40 (West 1994). (Emphasis supplied).

...

The City argues that section 40 of the Act does not limit or preclude the power of a home-rule unit to impose on private detectives a general law regarding firearm registration. The City further argues that the regulation is not reasonably considered regulation of the private detective business per se, but rather a general prohibition on possession of unregistered firearms. In fact, the City notes that while the Code provides a list of eight exceptions to the City’s registration requirement, private detectives are not among the excepted parties. Chicago Municipal Code § 8-20-050(c)(4) (1992).

...

Contrary to the City’s position, the Act, in fact, expressly provides for preemption of home rule units in regulating the business of private detectives in section 40. Section 40 states that private detectives are to be regulated “exclusively by the state.” Thus, by excluding private detectives from exemption to the Code, the City attempts to control the business of private detectives in contravention of State law.

IOWA

Iowa Attorney General Opinion #03-4-1:

You have requested an opinion of the Attorney General regarding the validity of an ordinance approved by the West Burlington City Council restricting possession of firearms by non-law enforcement or military personnel within municipal buildings. Specifically, you posed the following questions:

1) Can the City of West Burlington enforce this weapons ban without contravening Iowa Code section 724.28?

2) Can the City of West Burlington enforce this ordinance against a person licensed to carry a weapon under Iowa Code section 724.4 and who possesses that weapon in compliance with Iowa Code section 724.4(4)?

...

The state statute at issue here is Iowa Code chapter 724, governing weapons. This chapter, comprehensive in scope, defines offenses related to the possession and carrying of weapons, details the procedures for obtaining a permit to carry or to acquire weapons for both professionals - persons employed in law enforcement or security related occupations - and nonprofessionals, and establishes "weapons free zones."

...

Iowa Code section 724.28 sets forth the following express limitation upon regulation of firearms by political subdivisions.

A political subdivision of the state shall not enact an ordinance regulating the ownership, possession, legal transfer, lawful transportation, registration, or licensing of firearms when the ownership, possession, transfer, or transportation is otherwise lawful under the laws of this state. An

ordinance regulating firearms in violation of this section existing on or after April 5, 1990, is void.

...

Your specific inquiries relate to an ordinance passed by the West Burlington City Council on September 23, 2002. The ordinance establishes “firearm/weapons free zones” in any municipal building, defined as every “structure, dwelling, garage or shelter owned, leased or otherwise occupied by the City of West Burlington, Iowa and used for any municipal or public purposes by the City.” Ordinance No. ____, § 3(1). In Section 2, the ordinance prohibits non- professional persons from carrying or possessing firearms or weapons in any municipal building, even if the persons are duly licensed to carry and comply with Iowa Code section 724.4(4)....

In considering whether a particular ordinance violates the home rule provisions of the Constitution, the Supreme Court attempts to interpret state law to render it harmonious with the ordinance. *Sioux City Police Officers’ Ass’n v. City of Sioux City*, 495 N.W.2d 687, 694 (Iowa 1993). The Court appears especially likely to find harmony between the ordinance and the statutory scheme where the ordinance addresses the health and safety of citizens. See e.g. *Kent v. Polk County Board of Supervisors*, 391 N.W.2d 220, 223 (Iowa 1986).

...

Further, the apparent intention of the legislature in enacting Iowa Code chapter 724, and particularly section 724.28, was to ensure uniform state- wide regulation of weapons. The purpose in doing so was likely to ensure that an individual who was familiar with state weapons laws could freely travel with a weapon from one jurisdiction to another in the state without inquiring as to whether local ordinances place additional limitations upon the ownership, possession, transfer, or transportation of the weapon. A locally enacted restriction upon the possession of weapons within publically-owned [sic]

or controlled buildings does not itself directly interfere with this purpose.

...

Based upon these considerations, we conclude that Iowa courts would likely construe the preemption provision contained in Iowa Code section 724.28 narrowly and would recognize the authority of a city to exercise its home rule power to place restrictions upon the possession of weapons which apply only to buildings owned or directly controlled by the city. Therefore, we believe that the City of West Burlington could enforce its ordinance against a person who is authorized by Iowa Code section 724.4 to carry a firearm and may prohibit a nonprofessional person from possessing a firearm within a municipal building, even though the person has a valid permit to carry the firearm and carries it in compliance both with Iowa Code section 724.4(4)(i) and with any limitations specified in the permit.

This is a very strange opinion, for at least three reasons. First, it seems obvious that the kind of municipal ordinance discussed does, in fact, interfere with the presumed legislative purpose of ensuring uniform regulations in all of the state's jurisdictions—to the detriment of a citizen with a permit to conduct his business anywhere in the state without having to concern himself with special local laws.

Second, the reasoning directly contradicts the state supreme court's clear direction on how to assess whether an ordinance conflicts with a statute, quoted in the Attorney General's opinion (though not included in the excerpts above): "A local law is irreconcilable with state law when the local law prohibits an act permitted by statute, or permits an act prohibited by a statute." *Beerite Tire Disposal/Recycling, Inc. v. City of Rhodes*, 646 N.W.2d 857, 859 (Iowa 2002). Here, the statute plainly permits the act of carrying a pistol within public buildings (assuming the person has a permit and is in accordance with its terms), while the ordinance plainly prohibits precisely the same act.

Third, the statute preempts cities from regulating the “possession” and “lawful transportation” of firearms; it is difficult to see how a restriction on carrying is *not* a restriction on possession and transportation.

Overall, my view is that this Attorney General opinion strains to justify a less-than-obvious conclusion. The opinion could have simply quoted the sentence from the state supreme court, and pointed out that by that standard the ordinance conflicts with the statute and would therefore likely be void. That the opinion goes to such great lengths to avoid the obvious answer strongly suggests to me that a politically motivated conclusion preceded and drove the legal reasoning. This kind of legal sleight-of-hand is possible because the preemption statute invites the invention of loopholes by listing specific sub-topics about firearms that are preempted, rather than declaring the entire subject preempted and fully occupied by the state.

KANSAS

Junction City v. Lee, 532 P. 2d 1292 (Kan. 1975):

A city ordinance was more restrictive than state firearms statute, because it eliminated the *mens rea* requirement for the crime of carrying a pistol, and criminalized both open and concealed carry, whereas the statute forbade only concealed carry. The state supreme court decided that the ordinance did not conflict with the statute:

A test frequently used to determine whether conflict in terms exists is whether the ordinance permits or licenses that which the statute forbids or prohibits that which the statute authorizes; if so, there is conflict, but where both an ordinance and the statute are prohibitory and the only difference is that the ordinance goes further in its prohibition but not counter to the prohibition in the statute, and the city does not attempt to authorize by the ordinance that which the legislature has forbidden, or forbid that which the legislature has expressly authorized,

there is no conflict (see 56 Am.Jur.2d, Municipal Corporations, Etc., s 374, p. 408-409).

The court also rejected the argument that the legislature had completely occupied or preempted the entire subject of firearms regulation:

Legislative intent to preempt is not to be so simplistically found. Our state weapons control law is concerned with the protection of human life and well-being. Absent clear expression to that effect, we cannot conceive that the legislature intended by its enactment, comprehensive though it be, to exclude cities' traditional resources from that endeavor. The subject of weapons control is such that an exclusive state policy is not necessarily required; at any time the legislature deems otherwise it still retains optional control of cities' actions under the home rule amendment and can so declare by enacting "conflicting" law. It can undo that which a city has done.

KENTUCKY

Kentucky Attorney General Opinion #93-071:

Would an ordinance enacted by a city of the first class regulating the registration of firearms and requiring notification of the sale of firearms to the local governing body be valid given the prohibition against such regulation in KRS 65.870?

...

It is the opinion of this office that current law does not authorize a city of the first class to enact a local ordinance regulating the registration of firearms and requiring notification to the local governing body of all firearms sales. KRS 65.870 prohibits local governments from enacting firearms control ordinances. Specifically, KRS 65.870 provides as follows:

No city, county or urban-county government may occupy any part of the field of regulation of the transfer, ownership, possession, carrying or transportation of firearms, ammunition, or components of firearms or a combination thereof.

The language of KRS 65.870 is unambiguous. No exceptions to the positive terms of this statute are set forth in the statute. Where the Kentucky General Assembly makes no exceptions to the positive terms of a statute, it is presumed to have intended to make none. *Com. ex rel. Cowan v. Wilkinson*, Ky., 828 S.W.2d 610, 614 (1992); *Bailey v. Reeves*, Ky., 662 S.W.2d 832, 834 (1984). An unambiguous statute must be applied without resort to outside aids. *Coursey v. Westvaco Corp.*, Ky., 790 S.W.2d 229, 230 (1990).

Kentucky Attorney General Opinion #99-10:

This Office has been asked to opine on whether Louisville Ordinance 135.05 regulating concealable firearms (the “Ordinance”) conflicts with KRS 65.870....

The Ordinance is invalid under the Home Rule Statute because it broadly attempts to regulate the ownership, possession and carrying of firearms in private homes, which is expressly prohibited by KRS 65.870. To date, there are no cases interpreting KRS 65.870, but, as noted in OAG 93-71, its language is unambiguous. KRS 65.870 expressly prohibits any city from “occupy[ing] any part of the field of regulation of the transfer, ownership, possession, carrying or transportation of firearms, ammunition or components of firearms or combination thereof.” Although the Ordinance specifically regulates “concealable firearms,” there is no exception in KRS 65.870 that excepts concealable firearms from its general prohibition on municipal firearm legislation.

If the statute does not contain any exceptions, then no exceptions can be read into it, and its plain and unambiguous language must be given effect. *See Commonwealth v. Shivley*, Ky., 814 S.W.2d 572, 573-74 (1991).

Another reason for employing the plain meaning of the statute's terms is due to the lack of specific definitions in KRS 65.870. KRS 65.870 does not define the terms "ownership," "possession" or "carrying." Courts have noted that "[w]here there is no specific definition, we must construe the words of the statute within their common usage." *Alliant Health System v. Kentucky Unemployment Insurance Commission*, Ky.App., 912 S.W.2d 452, 454 (1995), citing *Kentucky Unemployment Insurance Commission v. Jones*, Ky.App., 809 S.W.2d 715 (1991). Additionally, KRS 446.080 mandates that words and phrases in a statute "shall be construed according to the common and approved usage of language." *See Withers v. University of Kentucky*, 939 S.W.2d 340 (1997).

The common and approved usage of the words in KRS 65.870 highlights the conflict between the statute and the Ordinance. KRS 65.870 prohibits a city from legislating regarding the "ownership" and "possession" of firearms. Webster's II New Riverside University Dictionary, 1984, defines "own" as "To have or possess." It defines "possess," as "1. To have as property: own...5. To control or maintain in a given condition." The Ordinance conflicts with the statute by mandating that firearms must be kept in a securely locked box, thus limiting citizens' full rights of ownership and possession of firearms....

In conclusion, because the General Assembly passed KRS 65.870 which expressly prohibits cities from legislating regarding the ownership, possession or carrying of firearms, the Ordinance is invalid under the Home Rule Statute.

LOUISIANA

Morial v. Smith & Wesson Corp., 785 So.2d 1 (La. 2001):

The City of New Orleans filed suit against several firearms manufacturers, seeking compensation for injuries allegedly suffered by the city and its citizens as a result of the manufacturers' conduct. The state supreme court dismissed the suit because it was expressly precluded by statute:

Clearly, state regulation of the lawful design, manufacture, marketing, or sale of firearms or ammunition is of vital interest to the citizens of Louisiana. Equally clear is the fact that consistent, exclusive statewide regulation of the firearms industry tends in a great degree to preserve the public safety and welfare. A scheme allowing several municipalities to file suits effectively attempting to regulate the firearms industry in different ways and in different degrees could conceivably threaten the public safety and welfare by resulting in haphazard and inconsistent rules governing firearms in Louisiana. Moreover, this court has consistently recognized that the legislature's authority to regulate different aspects of the firearms industry constitutes a legitimate exercise of the police power. Considering all the circumstances, we therefore conclude that Act 291 of 1999 constitutes a reasonable exercise of the state's police power.

The statute at issue is aimed at suits, such as the one filed by the City in the instant case, that attempt to indirectly regulate the firearms industry on the local level....

As evidenced by the language in the City's petition, this lawsuit constitutes an indirect attempt to regulate the lawful design, manufacture, marketing and sale of firearms. As such, it squarely conflicts with a reasonable exercise of the state's police power and must be dismissed on the grounds that the City lacks a right of action to pursue this suit.

MAINE

Schwanda v. Bonney, 418 A. 2d 163 (Me. 1980):

The statutory requirement for a municipality to issue a license to carry a concealed firearm was simply that the applicant be “of good moral character.” The Town of Freeport had by ordinance imposed an additional criterion: that the license be “required for the personal safety and protection of the licensee or required in connection with the employment of the licensee.” Plaintiff’s reason for requesting the permit did not fulfill this requirement, and he was denied the license. The state supreme court held that the Freeport ordinance was invalid, as it conflicted with the state statute. Furthermore, the ordinance was not within the scope of authority of municipalities to regulate:

Neither the [State] Constitution, nor the home rule statute, so-called, gives the Town of Freeport the power to regulate, in the manner the defendants claim, respecting the issuance of licenses to carry concealed weapons. The Constitution of the State of Maine, in Article VIII, Part Second, Section 1, provides:

The inhabitants of any municipality shall have the power to alter and amend their charters on all matters, not prohibited by Constitution or general law, which are local and municipal in character (Effective November 17, 1969).

The licensing act has statewide application; it does not involve “matters... which are local and municipal in character.”

Doe v. Portland Housing Authority, 656 A.2d 1200 (Me. 1995):

The housing authority, a municipal corporation, added to its standard lease agreement a provision to bar residents from possessing firearms on PHA property. The plaintiffs sought to

have that provision invalidated anonymously, lest they be evicted for violation of the lease while the case was proceeding. The state supreme court agreed with the Does that the resolution was void because of the state's general preemption statute. The case turned on whether the PHA was a "political subdivision" as used in the preemption statute.

MARYLAND

Montgomery County v. Atlantic Guns, Inc., 489 A. 2d 1114 (Md. 1985):

The Montgomery County Council, against the advice of the county attorney, enacted an ordinance requiring that any sale of ammunition take place in person, that the purchaser provide the retailer with a valid firearm certificate, and that the caliber of ammunition match that of the firearm described in the certificate. A retailer challenged the ordinance, arguing that it violated the state's preemption statute, which provided:

all restrictions imposed by the law, ordinances, or regulations of the political subdivisions on the wearing, carrying, or transporting of handguns are superseded by this Act, and the State of Maryland hereby preempts the right of the political subdivisions to regulate said matters.

The county argued that an ordinance restricting the sale of ammunition did not tread on preempted ground, because selling ammunition was not a regulation "on the wearing, carrying, or transporting of handguns." The state supreme court disagreed. The court reasoned that the state's complex firearms laws—particularly those on the carrying of handguns—could not plausibly be thought to refer only to unloaded guns, while leaving the carrying of loaded guns as a valid area of local regulation. Ammunition is therefore impliedly included whenever statutes describe and control the usage of firearms. Thus, a restriction on ammunition sales is, de facto, a restriction on people's ability to wear and carry (loaded) handguns, and the ordinance is preempted.

MASSACHUSETTS

Town of Amherst v. Attorney General, 502 N.E. 2d 128 (Mass. 1986):

The town enacted an ordinance (a “by-law”) severely restricting conditions under which a firearm could be discharged. The court had to determine whether the ordinance was valid, in light of the Attorney General’s declaration that the by-law irreconcilably conflicted with state hunting statutes. The by-law prohibited, in some circumstances, what the statute would allow.

The Attorney General also opined that such a by-law could be allowed in a densely populated city—in fact, he had approved of similar ordinances in other municipalities—but not in Amherst, which had some very sparsely populated areas suitable for hunting. The court rejected the Attorney General’s argument, saying that there was nothing in the hunting code to allow distinguishing between municipalities on the basis of population density. “The Attorney General is not free to make a distinction which the Legislature has not made.” The court said it was bound by the principal that “every presumption is to be made in favor of the validity of municipal by-laws.” The court then held that there was no clear legislative intention to preclude municipal legislation. Therefore, the ordinance was valid unless it conflicted with a statute:

A local enactment must prevent the achievement of a clearly identifiable purpose of State legislation in order to be struck down as inconsistent with that State legislation.... Merely [the] existence of legislation on a subject... is not necessarily a bar to the enactment of local ordinances and by-laws exercising powers or functions with respect to the same subject. If the State legislative purpose can be achieved in the face of a local ordinance or by-law on the same subject, the local ordinance or by-law is not inconsistent with the State legislation.

The court acknowledged that the hunting statutes were detailed and comprehensive. Nevertheless,

there is no indication in [them] that a municipality cannot prohibit the use of firearms.... [T]he Amherst by-law in no way frustrates [the purpose of] those sections. The mere existence of statutory provision for some matters within the purview of the by-law will not render [the by-law] invalid as repugnant to law.

MICHIGAN

Michigan Coalition for Responsible Gun Owners v. City of Ferndale, 662 N.W. 2d 864 (Mich. App. 2003):

Michigan's Home Rule Act allows a chartered city to provide for

the exercise of all municipal powers in the management and control of municipal property and in the administration of the municipal government, whether such powers be expressly enumerated or not; for any act to advance the interests of the city, the good government and prosperity of the municipality and its inhabitants and through its regularly constituted authority to pass all laws and ordinances relating to its municipal concerns subject to the constitution and general laws of this state.

Michigan case law uses standard language for determining the validity of an ordinance alleged to be impermissible under a general statute:

[A] municipal ordinance is preempted by state law if 1) the statute completely occupies the field that ordinance attempts to regulate, or 2) the ordinance directly conflicts with a state statute.

The plaintiffs in this case maintained that the ordinance was void on both grounds. Addressing the first, the court recited the four-part test previously established by the state supreme court:

First, where the state law expressly provides that the state's authority to regulate in a specified area of the law is to be exclusive, there is no doubt that municipal regulation is pre-empted.

Second, pre-emption of a field of regulation may be implied upon an examination of legislative history.

Third, the pervasiveness of the state regulatory scheme may support a finding of pre-emption. While the pervasiveness of the state regulatory scheme is not generally sufficient by itself to infer pre-emption, it is a factor which should be considered as evidence of pre-emption.

Fourth, the nature of the regulated subject matter may demand exclusive state regulation to achieve the uniformity necessary to serve the state's purpose or interest.

As to this last point, examination of relevant Michigan cases indicates that where the nature of the regulated subject matter calls for regulation adapted to local conditions, and the local regulation does not interfere with the state regulatory scheme, supplementary local regulation has generally been upheld.

However, where the Court has found that the nature of the subject matter regulated called for a uniform state regulatory scheme, supplementary local regulation has been pre-empted.

The state statute provided:

A local unit of government shall not impose special taxation on, enact or enforce any ordinance or regulation pertaining to, or regulate in any other manner the ownership, registration, purchase, sale, transfer, transportation, or possession of pistols or other firearms, ammunition for pistols or other firearms, or components of pistols or other firearms,

except as otherwise provided by federal law or a law of this state.

In 2000, Michigan adopted a shall-issue permit system. The statutory amendments included this provision:

Subject to section 50 and except as otherwise provided by law, a license to carry a concealed pistol issued by the county concealed weapon licensing board authorizes the licensee to carry a pistol concealed on or about his or her person anywhere in this state.

Section 50 listed places in which a permit holder was not allowed to carry a pistol. Municipal buildings were not on the list. Nevertheless, the City of Ferndale enacted an ordinance prohibiting firearms within its buildings, even those carried by state-licensed individuals. The court noted:

Indisputably, if not preempted by state law, this ordinance would be a lawful exercise of the city of Ferndale's power to enact an ordinance that regulates the use of property it owns or controls.

The court had no difficulty finding that the preemption language prevented municipalities from regulating the carrying of firearms:

With the pronouncement in § 1102, the Legislature stripped local units of government of all authority to regulate firearms by ordinance or otherwise with respect to the areas enumerated in the statute, [footnote 10] except as particularly provided in other provisions of the act and unless federal or state law provided otherwise....

Footnote 10: Although the areas enumerated in the statute do not specifically include the "carrying" of a firearm, defendants do not suggest that the language of § 1102 does not encompass that concept. Indeed, it would be disingenuous to argue

that the broad terms “transportation” and “possession” do not encompass “carrying.”

The court thus dispensed with the need to consider the other three factors used to determine when the legislature has preempted a subject. However, the court paused to address an additional preemption argument put forward by amicus curiae, the Michigan Municipal League (an organization representing the interests of city governments):

In the present case, it is readily apparent that the Ferndale ordinance regulates areas that § 1102 expressly prohibits. Section 1102 provides that a local unit of government shall not enact an ordinance pertaining to the transportation or possession of firearms, but the city of Ferndale does just that. Despite the clear language of the Legislature, amicus curiae contends in a conclusory fashion that § 1102 should not preempt ordinances like the Ferndale ordinance because the statute “is not clearly aimed at municipal control of activities within the confines of its own public buildings.” However, the language of § 1102 is broad and all-encompassing. A state statute that prohibits a local unit of government from enacting “any ordinance or regulation” or regulating “in any other manner” the transportation or possession of firearms cannot reasonably be interpreted to exclude local ordinances that address the carrying of firearms in municipal buildings.

Having concluded that the city was preempted from enacting the ordinance, the court did not reach the question of whether the specific provisions of the ordinance conflicted with any statute.

MINNESOTA

Application of Hoffman, 430 N.W.2d 210 (Minn. App. 1988):

Menard's stores contracted with American Security Company for its services. The plaintiff, a security guard for ASC, applied for a permit to carry a handgun. In Minnesota, such permits were processed either by city police chiefs (in this case, the city of Mankato) or county sheriffs.

The Mankato Department of Public Safety has developed four criteria for determining whether an applicant for a handgun permit has an occupation requiring such a permit. These criteria are requirements that must be met in addition to the requirements of section [Minn. Stat. §]624.714, subd. 5. Menard's contends these criteria impermissibly infringe on the statutory directive of Minn.Stat. § 624.717 (1986), which provides:

Sections 624.711 to 624.716 shall be construed to supersede municipal or county regulation of the carrying or possessing of pistols * * *.

We agree. Uniform, statewide criteria are necessary to avoid the situation presented in this case: two ASP security guards who live in Mankato have been denied permits to carry handguns by the Mankato Department of Public Safety while on the job at Menard's. Three ASP security guards who live outside of Mankato have been granted permits to carry handguns by the Blue Earth County Sheriff's Department while performing identical jobs.

The legislature conferred on law enforcement agencies the duty and obligation to examine handgun permit applications. See generally Minn.Stat. § 624.714, subds. 1-13. However, the legislature set out the applicable criteria in § 624.714, subd. 5, that law enforcement agencies must apply. Section 624.717 was specifically passed to remove the subjective town-to-town and county-to-county private criteria of the type employed by the City of Mankato.

NEW HAMPSHIRE

State v. Jenkins, 162 A.2d 613 (N.H. 1960):

The complaint and warrant charged that the defendant, on November 22, 1959, did enter certain woodlands, the property of Chester H. Tecce, located in Durham and did discharge a shotgun without written permission of the owner, contrary to the provisions of action taken under Item 14 of the Durham town warrant (March, 1959), which provided "Hunting and shooting are prohibited within the town of Durham, subject to a \$50 fine, except in cases where written permission of the property owner has been obtained."

The defendant pleaded not guilty and moved that the complaint be quashed "on the grounds that it was invalid as being repugnant to common law, to the New Hampshire case law, to the New Hampshire constitution, and to various New Hampshire statutes."

...

The State has undertaken to regulate hunting, fishing and the use of firearms throughout the state during certain periods of the year. Tit. XVIII, Fish and Game. Among other provisions, a hunter may enter upon improved land of another and discharge firearms during a certain period of the year unless such land is posted (572:15) and likewise a hunter may enter upon uncultivated land unless ordered to leave by the owner or unless said land is posted by orders of the Fish and Game Department. 572:50 (supp.).

The Durham by-law would prohibit hunting and the discharge of a firearm in the entire town unless written permission of the owner was obtained and is thus inconsistent with the statutory law of the state regulating hunting and the discharge of firearms. The by-law 'assumes authority which the legislature has

taken away' (*State v. Paille*, supra 90 N.H. at page 351, 9 A.2d at page 666) and hence is invalid.

NEW YORK

People v. Kearsse, 289 N.Y.S.2d 346 (N.Y. Cty. Ct. 1968):

The City of Syracuse declared a state of emergency, triggering several prohibitions, including one on possessing firearms. Defendants argued that this conflicted with the state firearms licensing scheme.

Let us now look to the question of pre-emption, for if this in fact is true, again the law may not stand. 39 N.Y. Jurisprudence Municipal Corporations Section 178, in discussing powers reserved to the state has this to say: no municipality can pass a valid local law which transcends the constitution of the state or a general statute. In short, ordinances must not be inconsistent with the laws of the state. A local ordinance attempting to impose any additional regulation in a field where the state has already acted will be regarded as conflicting with the state law and will be held invalid. The Defendants contend that Section 1903, subdivision (6) of the Penal Law of the State which was in effect on June 19th, 1967 (now Section 400.00 of the new Penal Law, effective September 1st, 1967), which has to do with the licensing of firearms, states:

'(6) License:

Validity

Any license issued pursuant to this section shall be valid Notwithstanding the provisions of any local law or ordinance * * *

Defendants contend the Council of the City of Syracuse was without power to prohibit the carrying or possessing of a firearm legally licensed by the state of New York and no such exception is made in the

ordinance. The court is in agreement with Defendants' contention in this regard. Whenever what would be permissible under the state law becomes a violation of local law, the latter is invalid.

Grimm v. City of New York, 289 N.Y.S.2d 358 (N.Y. Sup. 1968):

This was a declaratory and injunctive challenge to the city's then-new firearms permitting system.

The City claims its authority to adopt this law resides in its police power, the power of local governments to adopt laws for the preservation of the health, safety and welfare of their citizens as well as for their protection and the maintenance of order. ... This power is limited only by the requirements that such local laws not be in conflict with the State Constitution nor inconsistent with the general laws of the State. These limitations are recognized by the City Charter, section 27(a), which empowers the Council to adopt this legislation. Plaintiffs have not demonstrated that the Gun Control Law in any way encroaches upon these limitations.

It is true that where the State has evidenced any desire or design to occupy an entire field to the exclusion of local law, the City is powerless to act. However, the fact that a local law may deal with some of the same matters covered by State law does not render the local law invalid. Article 265 of the Penal Law, while it touches upon the possession of rifles or shotguns by persons under the age of sixteen years, aliens, convicted felons and adjudicated incompetents, does not treat so extensively with the subject of the control of such weapons as to evidence any design or intention by the State to preempt the entire field. The sole authority offered by plaintiffs in support of their contention of preemption (*People on Complaint of Main v. Klufus*, 1 Misc.2d 828, 149 N.Y.S.2d 821, *affd.* 2

A.D.2d 958, 157 N.Y.S.2d 903) does not support that proposition.

New York Attorney General Opinion #89-75:

You have requested an opinion as to whether the Village of Ellenville is preempted from enacting a local law which would prohibit persons from entering the village hall while possessing a firearm, gun or dangerous weapon of any description, including but not limited to handguns, pistols, target pistols, revolvers, rifles and shotguns.

A village is empowered to adopt local laws for the “government, protection, order, conduct, safety, health and well-being of persons or property therein” (Municipal Home Rule Law, § 10[1][ü][a][11]; see NY Const, Art IX, § 2 [c][10]; Village Law, § 4-412[1]). The power of a municipality to enact local laws which regulate the possession of firearms for the protection and safety of its inhabitants, however, must be considered in light of section 400.00(6) of the Penal Law.

...

Any license issued pursuant to this section shall be valid notwithstanding the provisions of any local law or ordinance. ... A license to carry or possess a pistol or revolver, not otherwise limited as to place or time of restriction, shall be effective throughout the state, except that the same shall not be valid within the city of New York [except in certain circumstances] unless a special permit granting validity is issued by the police commissioner of that city.

A license to carry a firearm, therefore, is valid anywhere in the State notwithstanding “the provisions of any local law or ordinance”. On its face, section 400.00(6) precludes a municipality from enacting a local law adding restrictions or limitations to licenses provided for in article 400.

...

Although section 400.00(6) of the Penal Law prohibits the village from regulating the licensing of firearms, there is support for the position that these provisions do not preclude the village from acting in its proprietary capacity for the safety of its property and persons present thereupon. In its proprietary capacity, like any private individual, the village can prohibit persons from entering its property while possessing a firearm, even if he or she has an unrestricted license to carry the firearm.

A municipal corporation possesses two kinds of power: (1) governmental and (2) proprietary. “In the exercise of the former the corporation is a municipal government, while as to the latter it is a corporate legal individual” (County of Herkimer v Village of Herkimer, 251 App Div 126, 128 [4th Dept, 1937]). Municipal corporations “in their private character as owners and occupiers of lands and houses, are regarded in the same light as individual owners and occupiers, and dealt with accordingly” (Bailey v Mayer, etc., of New York, 3 Hill 531, 541 [1842]).

...

In this light, section 400.00(6) of the Penal Law may be construed to preempt municipalities only to the extent that they act in their governmental capacities. So construed, the village in its proprietary capacity can prohibit in the village hall possession of firearms by persons who have unrestricted licenses, as well as all other weapons. Such a construction serves to protect the public interest. Section 400.00(6) should not be read to preclude the village from, for example, prohibiting possession of licensed firearms in the village court where violent felons may be arraigned. Should the village decide to prohibit possession of firearms in its village hall by those who have an unrestricted permit, it should do so in its proprietary, as opposed to its governmental, capacity. It may, for example, do so by resolution as an extension of its rules dealing with the use and maintenance of municipal buildings.

We conclude that a village may in its proprietary capacity prohibit a person who has an unrestricted license to carry a firearm from entering the village hall carrying or possessing a firearm covered by the license.

The Attorney General renders formal opinions only to officers and departments of the State government. This perforce is an informal and unofficial expression of views of this office.

As with the Iowa Attorney General opinion, the New York opinion strains to avoid what it admits to be the facial reading of the statute. The opinion cites no case law on point, and has apparently not been subsequently cited by any court, in New York or elsewhere.

Citizens for a Safer Community v. City of Rochester, N.Y., 627 N.Y.S.2d 193 (N.Y. Sup. 1994):

The city enacted an ordinance prohibiting the possession of certain semi-automatic firearms in combination with ammunition feeding devices capable of holding more than six rounds.

Plaintiffs contend that the ordinance is invalid and unenforceable because the City is without authority to enact legislation in the area of gun control. They contend the State regulatory system evinces an intent to occupy the entire area, and that the Ordinance conflicts with certain specific state statutes.

The principles which guide a determination of the existence of federal preemption find strong parallels in New York State Law. The power of the state legislature over municipal corporations is, of course, “supreme and transcendent” (*Brown v. Board of Trustees of Town of Hamptonburg School District No. 4*, 303 N.Y. 484, 488, 104 N.E.2d 866 [1952]). Local laws may be ruled invalid as inconsistent with state law not only where an express conflict exists but also where the state has clearly demonstrated a desire to

preempt the entire field, thereby precluding any further local legislation. However, if the State, by its legislative enactments, does not regulate the entire area of activities, a local law is not preempted merely because it prohibits conduct permitted by state law.

In the area of weapon regulation, the courts in this state have upheld local laws limiting possession and use. Clearly the State has not, either directly or indirectly, regulated all aspects of gun possession and use as to time, place and circumstance.

Furthermore, the Ordinance does not conflict with the purpose or language of General Municipal Law § 139-d. That statute has as its intent the regulation of commercial storage of firearms and explosives. It does not evince a legislative intent to prohibit regulation by a municipality of the individual possession of semi-automatic rifles or shotguns (see, Report and Recommendation of the United States Magistrate Judge A. Simon Chrein, dated February 23, 1994, in *Richmond Boro Gun Club v. City of New York*, supra).

OREGON

The leading relevant decision would be *City of Portland v. Lodi*, 782 P.2d 415 (Ore. App. 1989) (local ordinance prohibiting the carrying of any concealed knife found to be preempted by state statute which prohibited the carrying of only certain concealed knives). However, the decision was later overturned by the court sitting en banc in a sweeping revision and clarification of how it would analyze conflicts between statutes and ordinances. The reversal does not say that the opposite conclusion should have been reached—only that the underlying analytical approach was erroneous.

PENNSYLVANIA

Schneck v. City of Philadelphia, 383 A. 2d 227 (Pa. Cmwlth. 1978):

A Pennsylvania statute provided for the issuance of permits to carry concealed firearms. It also preempted local authority on the subject:

No county, municipality or township may in any manner regulate the lawful ownership, possession or transportation of firearms when carried or transported for purposes not prohibited by the laws of this commonwealth.

In spite of the prohibition, the City of Philadelphia enacted an ordinance establishing additional criteria for issuance of a permit. The court noted that the city's home rule charter limited its powers:

Notwithstanding the grant of powers contained in this act, no city shall exercise powers contrary to, or in limitation or enlargement of, powers granted by acts of the General Assembly which are ...

(b) Applicable in every part of the Commonwealth.

(c) Applicable to all the cities of the Commonwealth.

The court held that the ordinance clearly exceeded the city's legislative grant of authority, and the ordinance itself irreconcilably conflicted with controlling state law.

Ortiz v. Commonwealth, 681 A. 2d 152 (Pa. 1996):

The cities of Philadelphia and Pittsburgh enacted ordinances banning so-called "assault weapons." The legislature responded by amending the state Uniform Firearms Act as follows:

No county, municipality or township may in any manner regulate the lawful ownership, possession, transfer or transportation of firearms, ammunition or ammunition components when carried or transported for the purposes not prohibited by the laws of this Commonwealth.

The cities filed suit to have the amendment declared in violation of the state constitutional and statutory provisions for the authority of home-rule chartered cities. The state supreme court pointed out that the home-rule provisions of both the state constitution and statute explicitly made home-rule powers subject to preemption by the legislature, and easily reached the obvious conclusion:

The sum of the case is that the Constitution of Pennsylvania requires that home rule municipalities may not perform any power denied by the General Assembly; the General Assembly has denied all municipalities the power to regulate the ownership, possession, transfer or possession of firearms; and the municipalities seek to regulate that which the General Assembly has said they may not regulate. The inescapable conclusion, unless there is more, is that the municipalities' attempt to ban the possession of certain types of firearms is constitutionally infirm.

The cities insisted that there was indeed "more":

Next, appellants claim that various decisions of this court require that home rule municipalities may be restricted in their powers only when the General Assembly has enacted statutes on matters of statewide concern. Although we agree with appellants that the General Assembly may negate ordinances enacted by home rule municipalities only when the General Assembly's conflicting statute concerns substantive matters of statewide concern, this does not help the municipal appellants, for the matters at issue in this case are substantive matters of statewide concern.

The court disposed of this argument by citing the state constitution:

The right of the citizens to bear arms in defense of themselves and the State shall not be questioned.

Because the ownership of firearms is constitutionally protected, its regulation is a matter of statewide concern. The constitution does not provide that the right to bear arms shall not be questioned in any part of the commonwealth except Philadelphia and Pittsburgh, where it may be abridged at will, but that it shall not be questioned in any part of the commonwealth. Thus, regulation of firearms is a matter of concern in all of Pennsylvania, not merely in Philadelphia and Pittsburgh, and the General Assembly, not city councils, is the proper forum for the imposition of such regulation.

City of Philadelphia v. Beretta U.S.A., Corp., 126 F.Supp.2d 882 (E.D. Pa. 2000); affirmed on other grounds, 277 F. 3d 415 (3d Cir. 2002):

This is another suit by a city against gun manufacturers, found to be an invalid attempt at indirect regulation of firearms, by means of litigation rather than ordinance, prohibited by both the state's general preemption statute and a 1999 amendment to it, which specifically forbade such actions.

TEXAS

HC Gun & Knife Shows, Inc. v. City of Houston, 201 F. 3d 544 (5th Cir. 2000):

Houston enacted an ordinance requiring that all firearms on display at gun shows at city-owned facilities had to be disabled by either trigger locks or removal of the firing pin, and all persons bringing firearms into the facility had to declare (register) them. The state preemption statute provided that a municipality may not adopt regulations relating to the transfer, private ownership, keeping,

transportation, licensing, or registration of firearms, ammunition, or firearm supplies.

Cities were still permitted to regulate the discharge of firearms, and the city asserted that discharge regulation was the purpose of the ordinance, and it was therefore not preempted by the statute.

The district court rejected the city's contention, reasoning that, although the ordinance's disabling requirement (removal of firing pins or installation of trigger locks) prevents the discharge of firearms, the ordinance also seeks to regulate the transfer, private ownership, or keeping of firearms, and such regulation is prohibited by § 215.001(a). The court concluded that, through the ordinance, the city "attempts to occupy all but a hair's width of the entire field of the regulation of gun shows"; and that, if the city's interpretation of § 215.001(b)(2) (discharge-exception) were accepted, it would "swallow [] the general rule preempting municipal regulation of firearms."

The court also easily found that the declaration/registration requirement directly conflicted with the statute, which expressly prohibited cities from registering firearms.

VERMONT

State v. Rosenthal, 55 A. 610 (Vt. 1903)

This case created Vermont's practice of allowing the carrying of firearms in public, open or concealed, no governmental permission needed, provided only that one not have criminal intent. That is what the state statute provided.

The City of Rutland, acting under its city charter, had enacted a more restrictive ordinance, requiring a person to obtain permission from the mayor or chief of police to carry any

weapon concealed within the city. Thus, a person with criminal intent could carry a firearm in Rutland, if he obtained permit.

The court reasoned that the ordinance prohibited what the statute allowed, and allowed what the statute prohibited. The ordinance was thus in conflict with the statute, and void, because the charter limited the city's authority to enact ordinances to those "not repugnant to the Constitution or laws of this state."

WASHINGTON

Second Amendment Foundation v. City of Renton, 668 P. 2d 596 (Wash. App. 1983):

In 1961, Washington amended its 1935 Uniform Firearms Act (UFA) to include this provision: "All laws or parts of laws of the state of Washington, its subdivisions and municipalities inconsistent herewith are hereby preempted and repealed."

The Foundation challenged a city ordinance prohibiting the possession of a firearm in an establishment where liquor is sold by the drink, whether the gun was concealed or not, and whether or not the person had a state permit to carry a concealed pistol. The Foundation argued that the Renton ordinance was preempted by the 1961 amendment to the UFA.

The court rejected this argument:

This provision served only to repeal inconsistent municipal legislation in effect in 1961, and has no bearing on the present case.

Thus disposing of the preemption question, the court turned to the issue of conflict:

The other test of preemption is whether the ordinance permits or licenses that which the statute forbids, or the statute permits or licenses that which the ordinance forbids.

Although a state permit would not prohibit its holder from carrying a pistol into a bar, the court held that there was no conflict, and, apparently, that there would be a conflict only if an

ordinance prohibited all of the conduct allowed under the statutes:

While an absolute and unqualified local prohibition against possession of a pistol by the holder of a state permit would conflict with state law, an ordinance which is a limited prohibition reasonably related to particular places and necessary to protect the public safety, health, morals and general welfare is not preempted by state statute.

The court noted that, during the pendency of the case, the legislature had again amended the UFA to prohibit any local ordinance inconsistent with state gun laws. The court probably should have declared the case to be moot, in light of that statutory amendment.

Cherry v. Municipality of Metropolitan Seattle, 808 P.2d 746 (Wash. 1991):

A city bus driver was fired for, among other things, possessing a revolver while on duty, in violation of the city's employment policies. He challenged the authority of the city to enact and enforce such policies, in light of the state preemption statute.

Cherry urges this court to focus on that part of the statute which provides: "The state of Washington hereby fully occupies and preempts the entire field of firearms regulation within the boundaries of the state, including ... possession". Cherry contends that this language is clear evidence of the Legislature's intent to preempt the internal work rules of public employers; that Metro's no-weapons policy is preempted since it is "firearms regulation". Metro, however, argues that the phrase "preempts the entire field" is limited to "laws and ordinances" regulating firearms in the criminal statutory context, and that the Metro policy is not a law or ordinance.

...

The reasonable conclusion is that RCW 9.41.290 was enacted to reform that situation in which counties, cities, and towns could each enact conflicting local criminal codes regulating the general public's possession of firearms. Nowhere does the legislative history of the preemption amendment, RCW 9.41.290, deal with the authority of public employers to prohibit their employees from carrying firearms or any other weapons while on duty or at the workplace.

We hold that the Legislature, in amending RCW 9.41.290, sought to eliminate a multiplicity of local laws relating to firearms and to advance uniformity in criminal firearms regulation. The Legislature did not intend to interfere with public employers in establishing workplace rules. The "laws and ordinances" preempted are laws of application to the general public, not internal rules for employee conduct.

City of Seattle v. Ballsmider, 856 P. 2d 1113 (Wash. App. Div. 1, 1993):

This is not a good case for the study of preemption doctrine, because the central legal question was an apparent conflict between two statutes—or at least very poor drafting of them—one preempting local authority to regulate the discharge of firearms and one seeming to allow such regulation, in spite of the preemption statute.

Washington Attorney General Opinion #82-14:

On the question of whether a municipality may validly enact an ordinance prohibiting the sale or possession of a handgun, the Attorney General gave an answer similar to that of the *SAF v. Renton* court:

This perception of the statutes thus led us, in turn, to the recognition of a distinction between the validity of (a) an absolute, unqualified, local

prohibition against possession of a concealed handgun by the holder of a state concealed weapon permit—at any time or place—and (b) a limited prohibition related only to particular times or places. The former is invalid under state law but the latter is not.

The Attorney General opined that a local ordinance banning all firearms from school grounds would not conflict with state law, even though the statutes would allow a permit-holder to carry a pistol on school property.

Washington Attorney General Opinion #83-14

This basically repeated the conclusions of the previous opinion, now bolstered by the *SAF v. Renton* decision.

The Failed Experiment Gun Control and Public Safety in Canada, Australia, England and Wales

Gary A. Mauser

Gary A. Mauser is a Professor at the Faculty of Business Administration and the Institute for Urban Canadian Research Studies at Simon Fraser University in Burnaby, British Columbia. Professor Mauser earned his Ph.D. from the University of California at Irvine. He has dual American and Canadian citizenship.. All dollar amounts are in CN funds. Reprinted by permission of The Fraser Institute.

INTRODUCTION

Widely televised firearm murders in many countries during the 20th Century have spurred politicians to introduce restrictive gun laws. The politicians then promise that the new restrictions will reduce criminal violence and “create a safer society.” It is time to pause and ask if gun laws actually do reduce criminal violence.

Gun laws must be demonstrated to cut violent crime or gun control is no more than a hollow promise. What makes gun control so compelling for many is the belief that violent crime is driven by the availability of guns and, more importantly, that criminal violence in general may be reduced by limiting access to firearms.

In this study, I examine crime trends in Commonwealth countries that have recently introduced firearm regulations: i.e., Great Britain, Australia, and Canada. The widely ignored key to evaluating firearm regulations is to examine trends in total violent crime, not just firearms crime. Since firearms are only a small fraction of criminal violence, the public would not be safer if the new law could reduce firearm violence but had no effect on total criminal violence.

The United States provides a valuable point of comparison for assessing crime rates because the criminal justice system

there differs so drastically from those in Europe and the Commonwealth. Not only are criminal penalties typically more severe in the United States, often much more severe, but also conviction and incarceration rates are usually much higher. Perhaps the most striking difference is that qualified citizens in the United States can carry concealed handguns for self-defence. During the past few decades, more than 25 states in the United States passed laws allowing responsible citizens to carry concealed handguns. In 2003, there are 35 states where citizens can get such a permit.

The upshot is that violent crime rates, and homicide rates in particular, have been falling in the United States. The drop in the American crime rate is even more impressive when compared with the rest of the world. In 18 of the 25 countries surveyed by the British Home Office, violent crime increased during the 1990s. This contrast should provoke thinking people to wonder what happened in those countries where they introduced increasingly restrictive firearm laws.

BRITAIN

In the past 20 years, both Conservative and Labour governments have introduced restrictive firearm laws; even banning all handguns in 1997. Unfortunately, these Draconian firearm regulations have totally failed. The public is not any safer and may be less safe. Police statistics show that England and Wales are enduring a serious crime wave. In contrast to handgun-dense United States, where the homicide rate has been falling for over 20 years, the homicide rate in handgun-banning England and Wales has been growing. In the 1990s alone, the homicide rate jumped 50%, going from 10 per million in 1990 to 15 per million in 2000.

Police statistics show that violent crime in general has increased since the late 1980s and, in fact, since 1996 has been more serious than in the United States. The firearm laws may even have increased criminal violence by disarming the general public. Despite Britain's banning and confiscating all handguns, violent crime, and firearm crime, continue to grow.

AUSTRALIA

Following shocking killings in 1996, the Australian government made sweeping changes to the firearm legislation in 1997. Unfortunately, the recent firearm regulations have not made the streets of Australia any safer. The total homicide rate, after having remained basically flat from 1995 to 2001, has now begun climbing again. The decline in homicide rate in the gun-permissive United States stands out against the trend in Australia.

The divergence between Australia and the United States is even more apparent with violent crime. While violent crime is decreasing in the United States, it is increasing in Australia. Over the past six years, the overall rate of violent crime in Australia has continued to increase. Robbery and armed robbery rates continue to rise. Armed robbery has increased 166% nationwide. The confiscation and destruction of legally owned firearms cost Australian taxpayers at least \$500 million. The costs of the police services bureaucracy, including the hugely costly infrastructure of the gun registration system, has increased by \$200 million since 1997. And for what? There has been no visible impact on violent crime. It is impossible to justify such a massive amount of the taxpayers' money for no decrease in crime. For that kind of tax money, the police could have had more patrol cars, shorter shifts, or maybe even better equipment. Think of how many lives might have been saved.

CANADA

In the 1990s, sweeping changes were made to the firearms laws, first in 1991 and then again in 1995. Licensing and registration are still being phased in. The contrast between the criminal violence rates in the United States and in Canada is dramatic. Over the past decade, the rate of violent crime in Canada has increased while in the United States the violent crime rate has plummeted.

The Canadian experiment with firearm regulation is moving to farce. The effort to register all firearms, which was originally claimed to cost only \$2 million, has now been estimated by the Auditor General to top \$1 billion. The final costs are unknown

but, if the costs of enforcement are included, the total could easily reach \$3 billion. Taxpayers would do well to ask for independent cost-benefit studies on registration to see how much the gun registry is already costing.

Restrictive firearm legislation has failed to reduce violent crime in Australia, Canada, or Great Britain. The policy of confiscating guns has been an expensive failure. Criminal violence has not decreased. Instead, it continues to increase. Unfortunately, policy dictates that the current directions will continue and, more importantly, it will not be examined critically.

Only the United States has witnessed such a dramatic drop in criminal violence over the past decade. Perhaps it is time politicians in the Commonwealth reviewed their traditional antipathy to lawfully owned firearms.

It is an illusion that gun bans protect the public. No law, no matter how restrictive, can protect us from people who decide to commit violent crimes. Maybe we should crack down on criminals rather than hunters and target shooters?

Widely televised firearm murders in France, Germany, and Switzerland in the past few years have spurred politicians in Europe to introduce changes in their countries' already strict gun laws to make them even more restrictive. Most of us will remember the headlines about a depressed student in Germany who ran amok and killed several people in his school after he had been expelled. In both France and Switzerland, angry individuals have stormed into local councils and begun shooting legislators seemingly at random.

This is not a new story. We have seen this drama a before, on television, from Australia, Great Britain, Canada, and the United States, as well as other countries. First, there is a horrible event—say, a disturbed student shoots people in a school or a maniac goes on a rampage in a public place. Media coverage is intense for a few weeks. Then, the government feels it must be seen as doing something to protect the public, so the police are given sweeping new powers or new restrictions are introduced on owning firearms. Claims are made that the new firearm regulations will reduce criminal violence and create a safer society. Afterwards, the media rush off on a new story, and the

public forgets. Later, there is another widely televised incident somewhere else and the process starts over again. The introduction of virtually every gun law around the world in the past half-century has followed this pattern. It is time to pause and ask: If gun laws are expected to work to prevent criminal violence, have they actually done so?

Politicians promise that tightening up on gun regulations will reduce criminal violence and make society safer. Some even claim outright that gun regulations will reduce suicide rates. But do they? Do increased restrictions upon the ownership of firearms reduce homicide rates? Armed robbery rates? Criminal violence in general? Suicide rates? In short, do firearm regulations act to create a safer society as claimed by their supporters?

If laws restricting the ownership of guns are supposed to reduce violent crime, then this must be demonstrated to be true or gun control is no more than a hollow promise. However, criminologists admit (albeit reluctantly) that there is very little empirical support for the claim that laws designed to reduce general access to firearms reduce criminal violence.¹ Frequently, assertions that they do turn out to be wishful thinking.

It is not that governments were not warned. The Cullen Commission had been presented with submissions from a variety of sources (e.g. English researcher and former Superintendent of Police, Colin Greenwood) arguing that increasing restrictions would not be effective in reducing violent crime (Munday and Stevenson 1996; Greenwood 1972). In Canada, prior to the introduction of Bill C-68, which brought in licensing of owners and registration of firearms, the Auditor General of Canada warned the government that the Justice Minister had not presented any compelling justification for additional legislation nor had the effectiveness of previous legislation been evaluated (Auditor General of Canada 1993: 647–55). I had testified before Parliament that firearm registration was “unworkable, ineffective, and outrageously expensive” (Mauser 1995: 25). At that time, I estimated that it could cost taxpayers as much as one billion dollars (Mauser 1995: 28). The Auditor General of Canada confirmed my prediction in 2002 (Auditor General of Canada 1993: chap. 10). Unfortunately, both estimates are low because they do not include costs by other cooperating government agencies nor the

cost of enforcement. The best estimate to date of the cost to Canadian taxpayers for licensing owners and registering all guns is closer to 3 billion dollars (Breitkreuz 2003).

This study examines the claim that recently introduced firearm regulations, which restrict public access to firearms, create a safer society by reducing criminal violence. The question being addressed here is not whether gun laws cause a drop—or an increase—in firearms crime. That is a distinctly different issue. At the very least, gun laws should act to reduce gun crime.² The key question is: Do gun laws improve public safety? It is important to note that, even if firearm regulations were to cause a drop in firearms crime, other violent crimes may increase and so render society less safe. This follows, since firearms violence is only a fraction of criminal violence, often only a small fraction. To test the general claim that by restricting access to firearms for the general public, a society can reduce criminal violence, I will examine the trends in violent crime in a few countries that have recently introduced general firearm legislation. Where possible, these trends will be compared with corresponding trends in the United States.

In assessing the impact of legislative changes, it is necessary to examine changes over time. This study will examine crime trends in each country to see if there are any changes after the introduction of the gun regulations. The crime rates selected are those that are the most appropriate to evaluate public safety, the rates for homicides, violent crime, and property crime. In addition, I will also look at the suicide rate since anti-gun activists often claim that reduced access to firearms reduces the temptation for vulnerable people to commit suicide.

Obviously, cross-national averages are irrelevant to this endeavour. This paper does not address, for example, whether the Canadian average for a particular crime rate is higher (or lower) than the United States or England. Such patterns speak to historical and cultural differences, not the effectiveness of recent firearm legislation. Only changes are pertinent to the question of interest. If the homicide rate was low before the firearm law was passed and it continues to stay low, how can we credit the firearm law with causing the low homicide rate?³

That said, the United States provides a valuable point of comparison with Europe and the Commonwealth for assessing

crime rates because the criminal justice system in the United States is unique.³ Not only are criminal penalties typically more severe in the United States, often much more severe, but also conviction and incarceration rates are usually much higher.⁴ Perhaps the most striking difference is that the United States is one of the few countries to encourage qualified citizens to carry concealed handguns for self defence. During the past few decades, while Britain and the Commonwealth were making firearm ownership increasingly difficult, more than 25 states in the United States passed laws allowing responsible citizens to carry concealed handguns. There are now 35 states where citizens can get such a handgun permit. As a result, the number of armed Americans in malls, on the street, and in their cars has grown to almost 3 million men and women. As surprising as it may seem to casual observers, these new laws appear to have caused violent crime rates to drop, including homicide rates. Professor John Lott has shown how violent crime has fallen faster in those states that have introduced concealed carry laws than in the rest of the United States.⁵

The upshot is that violent crime rates, and homicide rates in particular, have been falling in the United States over the past decade.⁶ The drop in the American crime rate is even more impressive when compared with the rest of the world. In 18 of the 25 countries surveyed by the British Home Office, violent crime increased during the 1990s (Barclay et al. 1999). This contrast should provoke thinking people to wonder what happened in those countries where they believed that introducing more and more restrictive firearm laws would protect them from criminal violence.

What makes gun control so compelling for many is the belief that violent crime is driven by the availability of guns and, more importantly, that criminal violence in general may be reduced by limiting access to firearms. This is a testable empirical proposition.

To examine the claim that firearm legislation will improve public safety in general, the most appropriate yard-stick to use would be a broad measure such as total violent crime or homicide rate. Criminal violence involves any crime where an individual is injured and it includes crimes committed with any weapon, not just guns. Firearms are only involved in a fraction of violent crime, often only a small fraction. For example,

between 1% and 26% of violent crime incidents involve firearms in the countries examined here (table 1).

Even in serious crimes, such as homicide and robbery, where the misuse of firearms is more prevalent, firearms are still used only in a minority of cases. Between 4% and 14% of robbers use a firearm in Australia, Canada, or England, while in the United States, less than half of robbers (42%) use firearms.⁷ A lower percentage of gun misuse may not be a blessing. Research shows that robbery victims are less likely to be injured in crimes where the assailant uses a firearm.⁸

TABLE 1: An International Comparison of the Use of Guns in Violent Crime

	Violent Crime	Homicide	Robbery	Suicide	Accident
<i>United States (2001)</i>	26%	635	42%	56%	1%
<i>Canada (2001)</i>	35	31%	14%	20%	<1%
<i>Australia (2001)</i>	1% (est)	14%	6%	12%	NA
<i>England/Wales (00/01)</i>	1% (est)	9%	4%	2%	NA

Note: This table shows the percentage of each category that involved guns. For example, 26% of violent crime in the United States in 2001 was committed using a firearm.

Sources: Federal Bureau of Investigation 2003; NCIPC 2003. Canada: Kwing Hung, March 2003; Savoie 2002. Australia: Australia Institute of Criminology 2003; Mouzos 1999, 2003; Reuter and Mouszos 2002. England and Wales: Home Office 2001; Centre for Evidence Based Mental Health 2003.

Gun crimes may dominate the news but violence involving guns is not qualitatively worse than other violence: being bludgeoned to death is not less horrific than being shot to death. In this study, the United States stands out in that most murders (63%) are committed with firearms, while in Australia, Canada or England relatively few murderers use firearms (9%–31%).⁹ In the Commonwealth, knives are usually preferred to guns by murderers.¹⁰ For example, at least as many murders are committed with knives as guns in Canada and in Australia twice as many murders involve knives as guns (Dauvergne 2001: 8; Mouzos 2001).

Although suicide is not a violent crime, it is often included

in the discussion of violence involving guns. Relatively few people (between 4% and 20%) use guns to commit suicide in the Commonwealth countries examined here. As usual, the United States is unique, with slightly more than half of suicides involving a gun (56%). Despite the higher percentage of gun suicides, the United States has a lower total suicide rate than either Australia or Canada (Australian Bureau of Statistics 2002; Preville 2003; NCIPC 2003).

Despite claims to the contrary, firearms are not uniquely more lethal than alternative means to commit suicide. Hanging and carbon monoxide (e.g., by using vehicle exhaust) have approximately the same lethality as shooting (Kleck 1991: 258). It would appear obvious that the more determined a person is to commit suicide, the more likely he or she is to choose an effective method for doing so. As there is no shortage of lethal alternatives available to a person who wishes to end his or her life, restricting access to any one method—for example, firearms or subway trains—still leaves available many other methods for achieving the same end.

Accidents involving guns, despite the media coverage they seem to generate, are quite rare. Typically, guns account for less than 1% of accidental deaths in any developed country. Perhaps this rarity is why they receive such emotional media attention. Vehicle accidents are far more common and pose a far greater risk to the public than do gun accidents, yet car accidents receive little or no interest from the mainstream media. This is yet another example that media coverage does not indicate the seriousness of a threat.

“Gun death” is a red herring, as it conflates two very different phenomena, homicide and suicide, to produce a large and misleading number (Mauser and Stanbury 2003). It is inappropriate to use “gun deaths” to evaluate gun laws for several reasons. First, guns are not involved in the bulk of criminal violence, so “gun deaths” ignores much of importance for evaluating public safety. Second, even though few people use guns to commit suicide, suicides by gunshot constitute the lion’s share of “gun deaths” in developed countries. For example, 80% of gun deaths in Canada are suicides, while 76% of gun deaths in Australia are suicides. Third, there is little support for the claim that gun laws of any sort reduce the suicide rate (Kleck 1997: 288; Jacobs 2002: 6).

In summary, the most appropriate measures to evaluate public safety in general are global measures such as overall violent crime or homicide. Gun laws are certainly intended to reduce gun crime, but the more important question is whether gun laws can reduce overall criminal violence. Since gun crime is such a small fraction of criminal violence, it would be extremely misleading, particularly in Commonwealth countries, to use “gun crime” or “gun deaths” to evaluate the impact of any legislation on public safety. Clearly, gun crime could decline for a number of reasons while total criminal violence increases simultaneously. The main body of this paper will examine the claim that violent crime can be reduced by focusing on reducing gun crime.

DO GUNS PROVOKE MURDERS?

Supporters of gun control like to claim that the availability of firearms somehow can provoke normal people to become violent and even to commit murder. This is false. This claim is analyzed at length elsewhere but a few points should be made briefly to illustrate the groundlessness of this claim (Kleck 1991: 205–06, 1997: 222–24). While it may be true that we all have evil in our hearts, very few of us ever attempt to kill anyone. Murder is a rare event and the typical murderer is not normal and cannot legally own a firearm in any of the countries discussed here.

In the developed world, the vast bulk of gun owners are hunters or target shooters. In Canada, for example, as table 2 shows, over two-thirds of gun owners say that hunting is their principal reason for owning a firearm. Gun owners are normal citizens as can be seen in table 3. Compared to the Canadian average, gun owners tend to be male, somewhat older, slightly less well educated, but earning an income that is higher than average.

It is a myth that murderers are “ordinary” people. Murders are usually committed by deviant people with a history of violence. Of course, these are not the killings that make the news. According to Statistics Canada, the typical murderer in Canada has an extensive criminal record, cannot legally possess firearms, abuses drugs or alcohol, and is unemployed. Two-thirds of Canadian murderers are known to have an adult criminal record, as do over half of the victims (Dauvergne 2002).

These are not normal Canadians.

It is important to note that gun crimes are limited to a very small number of people. In Canada, for example, it is estimated that there are between 2.3 and 4.5 million legal gun owners.¹¹

Table 2: Reasons reported for owning firearms

Hunting	73%
Target shooting	13%
Pest Control	8%
Collection	5%
Protection	5%
Other	13%
Total	118%

Note: Total exceeds 100% because respondents could indicate more than one reason for owning a firearm. Source: GPC Research 2001: figure 11.

Table 3: Profile of firearm owners and the general population

Demographic Variables	Owners of Firearms	General Canadian Population
<i>Gender</i>		
Male	88%	49%
Female	12%	51%
<i>Age</i>		
18-34	15%	33%
35-54	49%	40%
Over 55	34%	27%
<i>Education</i>		
High School or less	51%	43%
College/Some Post Secondary Completed	28%	28%
University	19%	30%
No response	2%	1%
<i>Household Income</i>		
Under \$20,000	8%	15%
\$20,000-39,999	28%	28%
\$40,000-59,999	25%	19%
\$60,000 and over	33%	27%
No response	10%	15%

Source: GPC Research 2001: figure 5

Note: Totals may not equal 100% due to rounding.

There are around 10,000 violent crimes committed with guns annually.¹² Even if these crimes were committed by previously law-abiding gun owners (and they are not), this would still represent less than 1% of all gun owners. The same argument, *a fortiori*, holds for firearms; very few guns are misused. There are between 7.9 and 15 million firearms in Canada. The same 10,000 gun crimes represent about one-tenth of 1% of the total gun stock.

Supporters of gun control claim that every criminal gun starts out as a legal gun. This is used to suggest that legal gun owners (knowingly or unknowingly) are providing all, or almost all, of the firearms used by violent criminals. This is false. First, on an international level, a few countries illegally manufacture and distribute firearms presumably in order to promote terrorism. A number of these firearms fall into the hands of ordinary criminals. Second, theft is not the primary source of guns used in criminal violence. In Commonwealth countries, a very small percentage of guns used in violent crime have ever been in the registration system. For example, in England and Wales, between 13% and 16% of guns used in homicide had ever been registered (Home Office 2001: table 3D). In Canada, the number of registered handguns used in a homicide is estimated to be 8%.¹³ In Australia, the share is also quite small: only 10% of guns used in a homicide were ever in the system.¹⁴ Nor is theft the primary source of guns used in homicides in the United States (Kleck 1997: 94).

To the extent that stolen guns are involved in criminal violence, one needs to examine thefts from military or police armories as well as individuals. A sizeable proportion of the gun stock in Canada is in the hands of the authorities and these guns are stored in large armories that are not always as well guarded as they should be. It is extremely difficult to estimate how many thefts take place annually from official armories, as statistics are unavailable. Nevertheless, one can speculate that firearms stolen from the police or military probably account for an important percentage of guns used in crime. At the international level, one of the major sources of guns for criminal activities is smuggling from sources such as military

depots from decaying communist countries (Landesman 2003; Polsby and Kates 1997; Rummel 1994).

In summary, I have tried to show here that it is not reasonable to imagine firearms provoking normal people to commit homicide or any other violent crime. The typical murderer is not normal and cannot legally own a firearm in any of the countries discussed here. There are so few gun crimes compared with the number of firearms in any of the countries considered here that, if guns provoke people to kill, they are not doing a very good job of it.

ENGLAND AND WALES

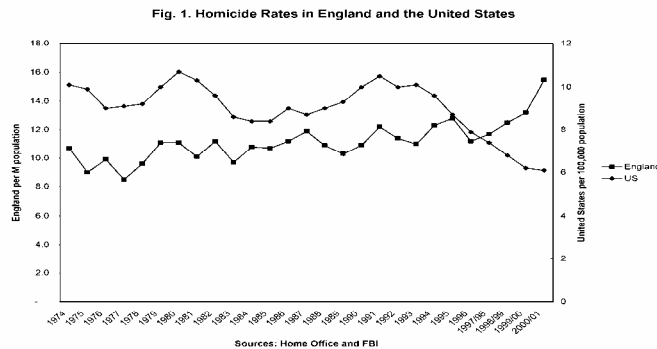
Firearm policy in the United Kingdom has been driven by sensationalized coverage of firearm murders for over 15 years. First, in August 1987, the small town of Hungerford, England, was stalked for eight hours by a deranged man, who shot people seemingly at whim. By the time the killing was over, Michael Ryan had killed 16 people and wounded another 14, before shooting himself (Malcolm 2002: 201). Media attention focused almost exclusively on how such a person had managed to obtain firearms legally, although in hindsight other matters are more amazing. The public was not shocked that the disarmed police could do nothing to stop him nor that no one in the town had the will or the means to resist.

Almost 10 years later, in 1996, in Dunblane, Scotland, Thomas Hamilton, who was known to the police as mentally unstable, walked into a primary school with his legally registered handguns and murdered 16 young children and their teacher. Before killing himself, he wounded another 10 students and three teachers (Malcolm 2002: 203). The media were outraged that citizens in Britain could own handguns, not that the police failed to follow the rules for granting the killer a firearm permit. According to information presented to the Cullen Commission, Hamilton had been refused membership in several gun clubs, which had requested the police to revoke his permit. The police had not acted on these complaints (Cullen 1996).

The Firearms (Amendment) Act of 1988 was brought in by the Conservative government following the Hungerford incident and the Firearms (Amendment) Act of 1997, which banned all handguns, was introduced by the Labour government following

the shooting in Dunblane in 1996 (Greenwood 2001; Munday and Stevenson 1996). Unfortunately, these Draconian firearm regulations have not curbed crime (see Malcolm 2002). Police statistics show that England and Wales are enduring a serious crime wave. In contrast to North America, where the homicide rate has been falling for over 20 years, the homicide rate in England and Wales has been growing over the same time period. In the 1990s alone, the homicide rate jumped 50%, going from 10 per million in 1990 to 15 per million in 2000 (Home Office 2001).¹⁵

Police statistics show that violent crime in general has increased since the late 1980s and, in fact, since 1996 has been more serious than in the United States (figure 2).¹⁶ The rate of violent crime has jumped from 400 per 100,000 in 1988 to almost 1,400 per 100,000 in 2000. (An unknown amount of the recent increase may be attributed to changes in the recording rules in 1998 and 1999.) In contrast, not only are violent crime rates lower in the United States, they are continuing to decline (Home Office 2001; Federal Bureau of Investigation 2003: table 1).



Property crime has also grown more serious since the early 1980s. Although property crime rates have fallen back somewhat in the 1990s, they are still higher in 1997, at over 8000 per 100,000 population, than they had been in 1982, at about 6,000 per 100,000 (figure 3). In contrast, property crime rates are falling in the United States (Home Office 2001; Federal Bureau of Investigation, 2003).

Suicide rates have eased somewhat in England and Wales (figure 4). In 1989, age standardized mortality rates for suicide of all types was 10 per 100,000 and, in 1999, it is now 9.5 per 100,000. Similarly, suicide rates in the United States have also declined—going from 12.4 to 10.7 per 100,000 population—even as firearm ownership has risen (McIntosh 2000).

Fig. 2. Violent Crime Rates in England and the US

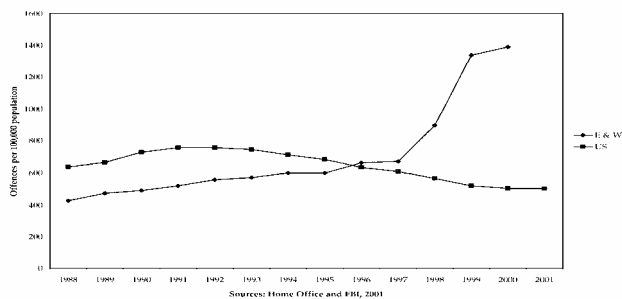
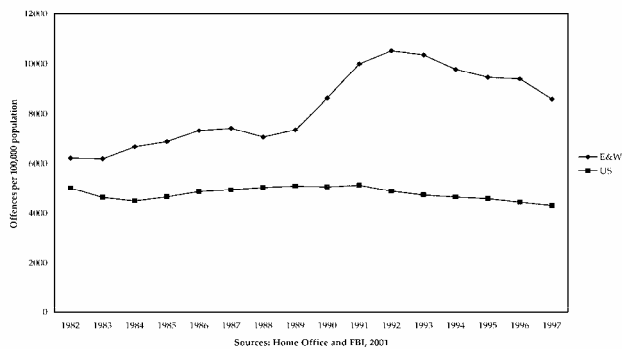


Fig. 3. Property Crime Rates in England and the US



The Home Office has also tightened up on enforcement of regulations to such an extent that the legitimate sport-shooting community has been virtually destroyed. For example, shotgun permits have fallen almost 30% since 1988 (Greenwood 2001) (figure 5). The British Home Office admits that only one firearm

in 10 used in homicide was legally held (Home Office 2001) (figure 6). But, there is little pressure from within bureaucratic and governmental circles to discontinue the policy of disarming responsible citizens.

Fig. 4. Suicide Rates in England and Wales vs. the US

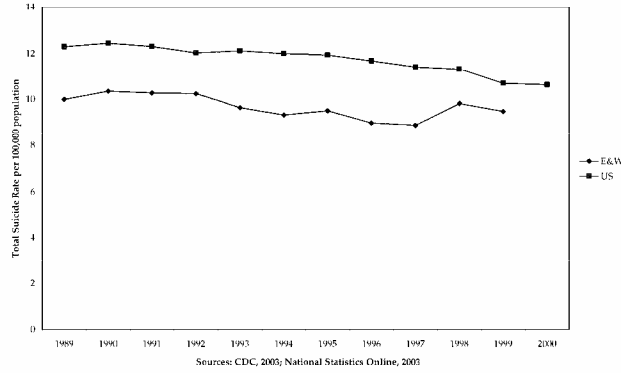
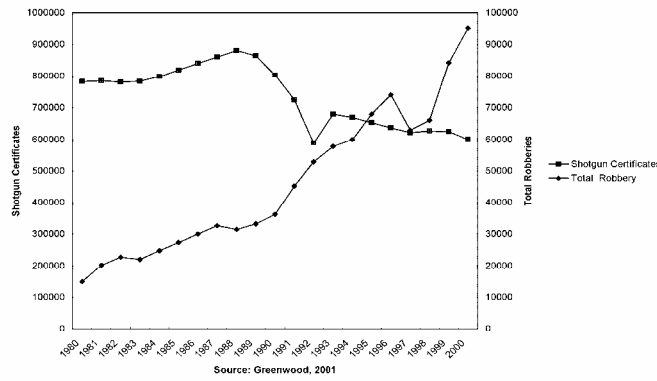


Fig. 5. Shotgun Certificates and Robberies, E & W



Clearly, there is no evidence that firearm laws have caused violent crime to fall. The firearm laws may even have increased

criminal violence by disarming the general public. Despite banning and confiscating all handguns, violent crime—and firearm crime—continue to grow. The number of violent crimes involving handguns has increased from 2,600 in 1997/1998 to 3,600 in 1999/2000. Firearm crime has increased 200% in the past decade.

AUSTRALIA

Publicity surrounding a multiple murder triggered recent changes in Australian firearm policy. In Port Arthur, Tasmania, on April 28, 1996, Martin Bryant, a mentally deranged man, went on a rampage murdering anyone he encountered. The media afterwards focused almost exclusively on the killer’s use of military-style semi-automatic firearms. The police arrived, surrounded the isolated building, and began negotiations. When he tried to escape, he was quickly captured (Bellamy 2003). In all, he killed 35 people and seriously injured another 18. He was tried and sentenced to life in prison (Guirguis 2003). Confusion remains over many of the details of this incident, including how Bryant came to have the firearms he used, and whether or not the police response was adequate. No Royal Commission has ever examined the incident. The media focus on the type of firearms used at Port Arthur has diverted public concern over police procedures.

Fig. 6. Legal Status of Firearm in Firearm Homicide, England and Wales, 1992-1998

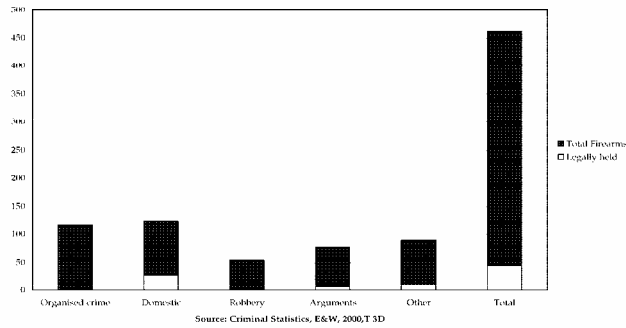


Fig. 7. Homicide Trends in Australia and US

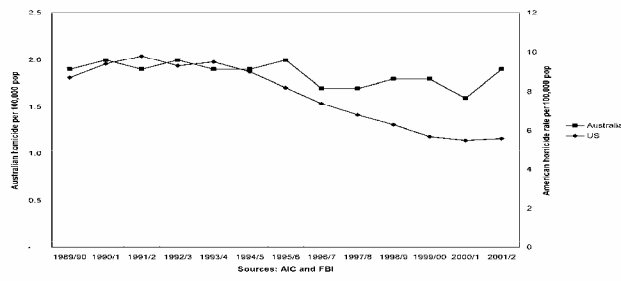


Fig. 8. Violent Crime in Australia

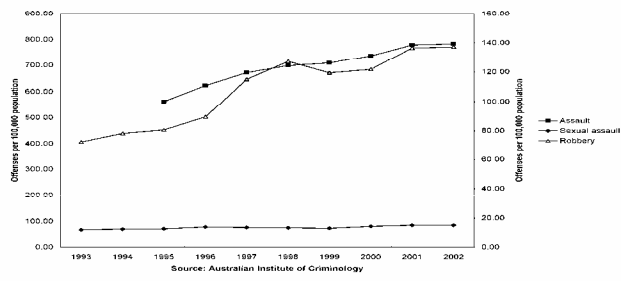
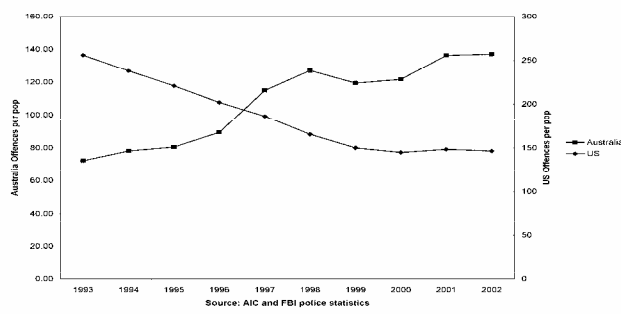
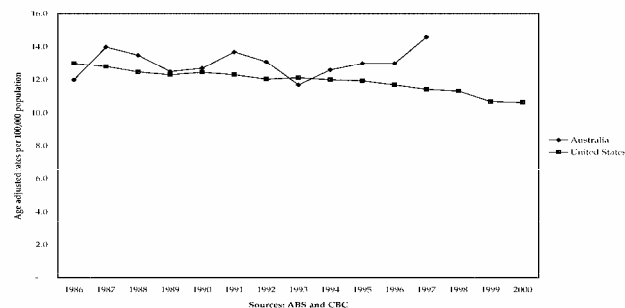


Fig. 9. Robbery Trend in Australia and the US



Following garish media coverage of the Tasmania killings, in 1997 the Australian government brought in sweeping changes to the firearm legislation. The new controls on firearms introduced included the prohibition and confiscation of almost 600,000 semi-automatic “military style” firearms from their licensed owners as well as new licensing and registration regulations (Lawson 1999; Reuter and Mouzos 2002).

Figure 10. Trends in Australian and American Suicide Rates



Unfortunately, these new firearm regulations do not appear to have made the streets of Australia safer. Consider homicide rates. Homicide involving firearms is declining but the total homicide rates have remained basically flat from 1995 through to 2001 (Mouzos 2001). However, early reports show that the national homicide rate may have begun climbing again. Mouzos (2003) reports that homicides in 2001/02 increased by 20% from 2000/01. She also reports that, despite the declining firearm homicides, there is an increase in multiple victim incidents. Homicide rates remain at a historic high. Shortly after World War II, the Australian homicide rate was around 1 per 100,000. Since then, it has climbed until it peaked at 2.4 per 100,000 in 1988 (Graycar 2001).

The decline in homicide rate in the United States stands out against the flat—or even rising—homicide rate in Australia (figure 7). The divergence between Australia and the United States is even more apparent when one considers violent crime (figure 8). While violent crime is decreasing in the United States, it continues to increase in Australia. Over the past 6 years, both

assault and robbery show no signs of decreasing (Australian Institute of Criminology 2003) (figure 9). It is too early to tell whether the gun ban has exacerbated the problem or simply not had any effect.

Recent changes in the firearm law appear to have had no impact upon the suicide rate (Australian Bureau of Statistics 2001) (figure 10). Despite the new prohibitions and firearm buybacks, the suicide rate in Australia continues to rise. This contrasts with the slight decline in suicide rates in the United States even while the availability of firearms continues to increase.

The destruction of the confiscated firearms cost Australian taxpayers an estimated \$AUS500 million and has had no visible impact on violent crime (Lawson 1999). The costs do not include the costs of bureaucracy, which, as has been shown in Canada, can be considerable. Robbery and armed robbery rates continue to rise. Armed robbery has increased 166% nationwide—jumping from 30 per 100,000 in 1996 to 50 per 100,000 in 1999 (Australian Institute of Criminology 2001; Mouzos and Carcach 2001). The homicide rate has not declined and the share of firearm homicide involving handguns has doubled in the past five years (Mouzos 2001). The proposed solution to the failure of gun regulations is banning handguns, even though, as in Great Britain and Canada, few firearms used in homicide are legally held; in 1999/2000 only 12 out of 65 (18%) were identified as being misused by their legal owner (Mouzos 2001).

CANADA

As in other countries, recent changes in firearm policy were precipitated by a media frenzy over a multiple murder. On December 6, 1989, Marc Lepine, born Gamil Gharbi, went to the University of Montreal campus, where he wandered around the halls of the engineering building shooting people he encountered while shouting hatred for feminists. In one classroom, after sending the men from the room, he shot the remaining women. In all, he killed 14 women and wounded another 13 students, including four men, before he finally shot himself (Jones 1998). Even though he encountered almost one

hundred students and at least three teachers, no one tried to stop the murderer. Most did what they were told.

Fig. 11. Homicide Rates in Canada and the United States

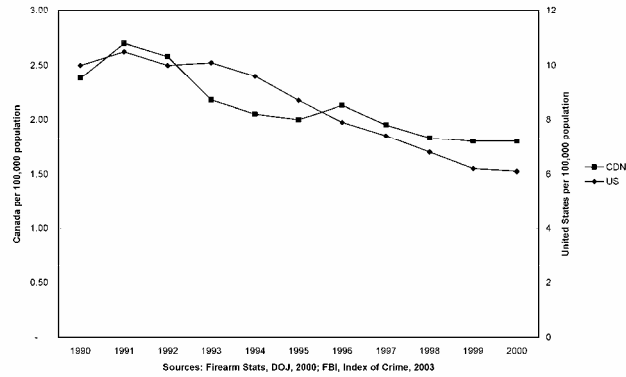
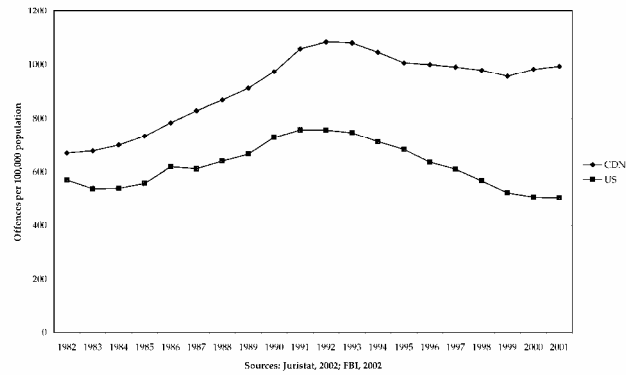


Fig. 12. Violent Crime Rates in Canada and the United States



An investigation by the Montreal coroner severely criticized the police for their inadequate response (MacDonald 1990). The police did not even arrive until after the killings were over. After taking 30 minutes to arrive at the university campus, the police

could not find the engineering building. The coroner's office stated that the type of weapon used was not a significant factor in the murders. Nevertheless, activists used this hideous crime to launch a campaign that promoted tighter firearm restrictions as the way to protect women from male violence and, as a result, Canada twice introduced sweeping changes to its firearms laws, first, in 1991, under the Conservative government and then again, in 1995, before the first changes had been fully implemented, under the Liberals. The 1995 Firearms Act is still being phased in.

Fig. 13. Evaluating the 1977 Canadian Firearms Law: Homicide

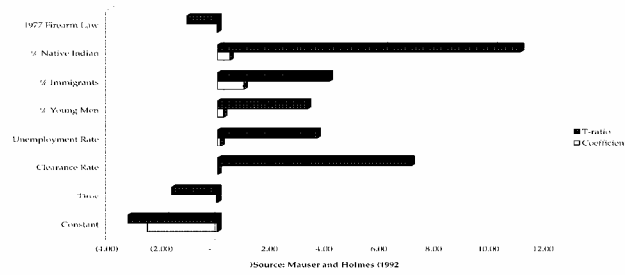
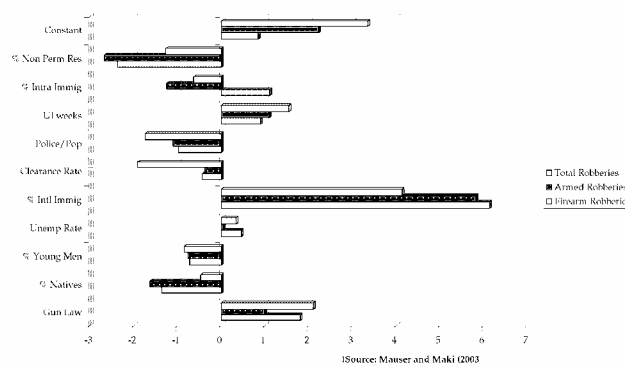


Fig. 14. Evaluating the 1977 Canadian Firearms Law: Robbery



The Canadian government uses the falling homicide rate and the falling rate of violent crime to support the claim that these firearm laws are working to reduce criminal violence. Unfortunately for this argument, the homicide rate has been falling as fast or faster in the United States (figure 11), where during the same time frame, more than 25 states have introduced less restrictive firearm laws. The homicide rate in the United States has fallen from 10.5 per 100,000 in 1991 to 6.1 per 100,000 while the Canadian rate has fallen from 2.7 per 100,000 to 1.8.

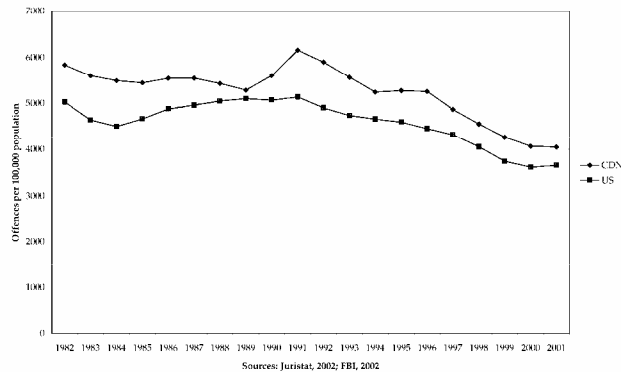
The contrast between the rate of criminal violence in the United States and that in Canada is much more dramatic (figure 12). Over the past decade, the Canadian rate of violent crime has increased while, in the United States during the same time period, the rate of violent crime has slid from 600 per 100,000 to 500 per 100,000 (Gannon 2001).¹⁷

Econometric studies undercut the claim that firearm legislation caused the homicide rate in Canada to decline. This is clearly seen in a study that Professor Richard Holmes and I did, where we found that firearm legislation had no significant impact on the homicide rate (Mauser and Holmes 1992) (figure 13). In this study, we analyzed the effect of six independent variables on the homicide rate for each province from 1968 through 1988. The length of the horizontal lines indicate the strength of the independent variables. Lines that extend to the right are positively associated with the homicide rate, while those that extend to the left are negatively associated. Any T-ratio over 1.65 is statistically significant. As hypothesized, the 1977 Firearm Law is negatively associated with the Canadian homicide rate, although not significantly. The other independent variables are all in the expected direction, and significant.

Nor does firearm legislation operate to reduce other violent crimes. Professor Dennis Maki and I have shown that Canadian gun laws may even have caused an increase in armed robbery (Mauser and Maki 2003). In this study, we looked at the impact of nine independent variables upon three related dependent variables: (a) armed robbery, (b) armed robberies involving firearms, and (c) total robberies for each province from 1974 through 1992. We analyzed each of the dependent variables separately (figure 14). As in figure 13, the length of the horizontal lines indicate the strength of the independent

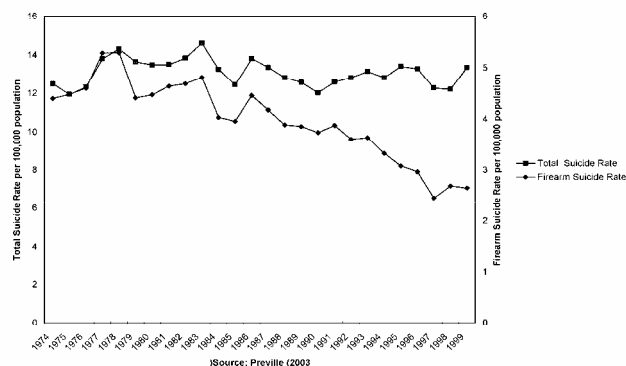
variables. Lines that extend to the right are positively associated with the dependent variable, while those that extend to the left are negatively associated. Any T-ratio over 1.65 is statistically significant. The results of all three analyses are quite similar. The power of econometric analysis is that the model accounts for the most important other factors as co-variates. Professor Maki and I found that once we factored out the effects of the other variables, the Canadian gun law still had a significant effect. Unfortunately, this effect was positive, that is to say, the gun law acted to increase criminal violence. Nearly identical trends are seen in property crime rates, which are declining both in Canada and in the United States (figure 15).

Fig. 15. Property Crime in Canada and the United States



Suicide rates have been stable in Canada at the same time they have been declining in the United States (figure 16). Despite a drop in suicide involving firearms, no impact can be seen in the total Canadian suicide rate, which recently has begun to increase again (Preville 2003). The lack of linkage is one of the points obscured by the misleading factoid of “gun death.” By creating this pseudo-scientific amalgam of suicide, homicide, and accidental deaths, anti-gun activists impede a serious understanding of the link between government policy and the misuse of firearms.

Fig. 16. Firearms and Suicide in Canada



The Canadian experiment with firearm regulation is moving towards farce. Although it was originally claimed that this experiment would cost only CDN\$2 million, the Auditor General reported that the effort to register all firearms has now topped CDN1\$ billion. The final costs are unknown but, if the costs of enforcement are included, estimates now reach CDN3\$ billion.

CONCLUSION

This brief review of gun laws shows that disarming the public has not reduced criminal violence in any country examined here: not in Great Britain, not in Canada, and not in Australia. In all cases, disarming the public has been ineffective, expensive, and often counter productive. In all cases, the means have involved setting up expensive bureaucracies that produce no noticeable improvement to public safety or have made the situation worse. The results of this study are consistent with other academic research, that most gun laws do not have any measurable effect on crime (Kleck 1997: 377; Jacobs 2002). As I have argued elsewhere (Mauser 2001a),

the history of gun control in both Canada and the Commonwealth demonstrates the slippery slope of

accepting even the most benign appearing gun control measures. At each stage, the government either restricted access to firearms or prohibited and confiscated arbitrary types of ordinary firearms. In Canada, registration has been shown to mean eventual confiscation. As well, police search powers have been increased. The expansion of the state's search and seizure powers should be taken very seriously by all civil libertarians concerned about the erosion of Canadians' individual rights. Canada's democratic institutions may also have been damaged by the transfer of what many would consider legislative powers to both the police and cabinet under firearm legislation.

Firearm registration also violates the basic rules of policing set forth in the 1820s by Sir Robert Peel, the founder of the first professional police force, the British Bobbies. In order for laws to be enforced effectively, the police must have the support of citizens being policed. However, experience in several countries shows that passive resistance to firearms registration is widespread. Instead of seeing gun control as a policy response to violent crime, it is more useful to view it as the product of conflict between urban and rural cultures (Kleck 1996). Much as the temperance movement was an attempt to impose rural values upon urban residents, firearm registration may be seen as an attempt by urbanites to impose their cultural values upon the rest of society.

The demonization of average people who happen to own a gun lays the foundation for a massive increase in governmental intrusiveness in the lives of ordinary citizens. Firearm registration and owner licensing threatens long-standing Canadian liberties and freedoms. The type of gun control Canada has enacted is not consistent with many democratic principles and the protection of civil liberties. Nevertheless, Canada is spearheading a move in the United Nations to impose a similar regime of draconian restrictions around the world.

Disarming the public greatly increases cynicism about government among much of the population and it diminishes their willingness to comply with other, future regulations that might even be more sensible. The sense of alienation grows with the severity of the restrictions and with the ineffectiveness of their result. Unfortunately, policy dictates that the current directions will continue and, more important, will not be examined critically. This last is a guarantee of the increase of that future alienation.

It will only worsen as the mass media become slowly aware that their bias towards the banning of guns has been misdirected and begin shifting their attention to the large quantities of money that have been wasted in pursuit of a dream of social engineering that was doomed from the start.

Only the United States has witnessed a dramatic drop in criminal violence over the past decade. The justice system in the United States differs in many ways from those in the Commonwealth but one of the important reasons for the drop in violent crime may be that responsible citizens are increasingly carrying concealed handguns (Lott 2000). In contrast, authorities in the Commonwealth insist upon a monopoly of force. If the goal is deterring criminal violence, perhaps it is time for Commonwealth countries to encourage more individual self-reliance.

Gun laws may not reduce violent crime but criminal violence causes gun laws—at least, well-publicized crimes do. The only winner in this drama is bureaucracy. The rest of us lose liberty as well as safety. It is an illusion that further tinkering with the law will protect the public since no law, no matter how restrictive, can protect us from people who decide to commit violent crimes. There have always been criminals, and there have always been deranged people. Murder has been illegal for thousands of years: we need only remember the saga of Cain and Abel. The mass media find gun crimes more newsworthy but multiple civilian murders by arson have historically claimed more lives than incidents involving firearms. The truth is we live in a dangerous world and the government cannot protect us, if for no other reason than the police cannot be everywhere. We must ultimately rely upon ourselves and it is only right we have the necessary tools to do so.

ENDNOTES

1. Perhaps the best known are Gary Kleck (1997: 377) and Colin Greenwood (1972: 240) but similar statements have been made by James B. Jacobs (2002) and Peter Reuter and Jenny Mouzos (2002) in their presentation to the American Society of Criminology.
2. There is little evidence that gun laws are effective. For example, Joyce Malcolm (2002) convincingly demonstrates that English gun laws have backfired and are actually causing both gun crime and violent crime to increase.
3. For a more thorough discussion of the differences among a wide variety of countries, including the United States, see Kopel 1992.
4. These points have been made most tellingly by Patrick Langan and David Farrington (1998), who compare the criminal justice systems of the United States with that of England and Wales. Marie Gannon (2001) also compares crime rates in the United States and Canada.
5. See John Lott 2000, 2003. Despite being subjected to severe empirical scrutiny by critics, his basic assertions still stand.
6. These trends are easily seen in the Uniform Crime Reports (UCR) data on the website of the federal Bureau of Investigation (<http://www.fbi.gov/ucr/ucr.htm>).
7. It is important to remember that the United States has long been a violent country. Some observers believe this is due to long standing problems of racism and poverty. As mentioned earlier, the question under study in this paper is the effectiveness of recent firearm legislation, not basic historic or cultural differences among countries.
8. Gary Kleck (1997: 238) speculates that one reason for this might be that the assailant armed with a firearm can command compliance from his victim without first injuring him.
9. The United States is not the most violent country in the developed world. That distinction belongs to Russia, which has a murder rate two to three times higher than that of the United States, despite having draconian gun laws that are very strictly enforced (Miron 2001: 624).
10. Jamaica is a glaring exception: despite draconian firearm laws, firearms are used in about two-thirds of all homicides and over half of all robberies (Edwards 1999: 30).
11. The Canadian Justice Centre officially claims there are 2.3 million gun owners in Canada; my best estimate (2001b) is that there are 4.5 million gun owners.

12. This estimate is based upon a recent report from Statistics Canada and an earlier special request to Statistics Canada. Josée Savoie (2002) reports there are almost 4,000 violent crimes that involved a firearm but this does not include any assaults that might have used a firearm.
13. Handguns are the most common type of firearm used in homicide in Canada, and up until recently, the only type of firearm that was registered (Dauvergne 2001: 10).
14. Only 11 of the 117 homicides committed with a firearm between 1997 and 1999 involved a firearm legally held by the perpetrator (Mouzos 2000: 4).
15. According to police statistics published by the Scottish Executive (2001), the homicide rate in Scotland has also increased during this same time period, going from 16 per million population to 21 per million population.
16. Recent survey data show a decline in violent crime but this is not reflected in police data (Simmons et al. 2002).
17. The comparison here shows the official statistics from both countries. Gannon (2001) constructs indices of violent crime that are more directly comparable. In her analysis, the trends in violent crime in the two countries resemble each other more closely, but her data also show that violent crime in Canada is increasing while it is decreasing in the United States.
18. This study is consistent with almost all other research on Canadian firearm legislation. The only studies that have found an impact have been funded by the Canadian Department of Justice.

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Gun Control in England: The Tarnished Gold Standard

By Joyce Lee Malcolm

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."¹ 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."² 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.³ 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.⁴ 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.”⁵

At the annual conference in May, British police chiefs were warned that gun crime in the UK was growing “like a cancer.”⁶ 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.⁷ 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.⁸ 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.”⁹

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.¹⁰ 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.¹¹ 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.¹²

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."¹³

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.¹⁴

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.¹⁵ A government study of handgun homicides for the years 1890-1892 found an average of one a year in a population of 30 million.¹⁶

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.¹⁷ 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”¹⁸ By 1937 police were advised to discourage applications to possess any firearm for house or personal protection.¹⁹ 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.”²⁰ In 1969 police were told “it should never be necessary for anyone to possess a firearm for the protection of his house or person.”²¹

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.²²

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.”²³ 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.”²⁴ 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.”²⁵

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.²⁶ 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.²⁷

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.²⁸

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.²⁹ Nonetheless public pressure, spurred by a campaign led by parents of the Dunblane victims, called for and got a complete ban on handguns.³⁰

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.³¹ 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.³²

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.”³³

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.”³⁴ 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.³⁵ 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.³⁶ 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

1. Home Office press notice (November 3, 1997).
2. 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.
3. 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.
4. *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>.
5. Helen Carter, "Liverpool football player shot in bar: Weekend attacks 'show gun crime out of control,'" *Guardian* (October 6, 2003).
6. "Gun crime growing 'like cancer'", BBC newsonline, May 21, 2003.
7. John Steele, "Britain the most violent country in western Europe," *The Telegraph* (October 23, 2003).
8. Sophie Goodchild, *Britain is now the crime capital of the West*, Independent on Sunday (July 14, 2002), at 1.
9. Helen Carter, "Liverpool football player shot in bar: Weekend attacks 'show gun crime out of control'", *Guardian* (October 6, 2003).
10. 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.
11. Eric H. Monkkenen, *Murder in New York City* (2001), at 178-79.

12. 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).
13. 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.
14. 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.
15. 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.
16. 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.
17. For a discussion of the passage of this act see Malcolm, *To Keep and Bear Arms*, *supra* note 13, at 170-176.
18. Guidance from Home Office on Firearms Act, 1920 (October 5, 1920), at 3.
19. Memorandum for the Guidance of the Police (Home Office: 1937).
20. Memorandum for the Guidance of the Police (Home Office: 1964), at 7.
21. Memorandum for the Guidance of the Police (Home Office: 1969), at 22.
22. See Malcolm, *Guns and Violence*, *supra* note 13, at 172-173.
23. *Id.* at 197-199.
24. 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.
25. R.A.I. Munday & J.A. Stevenson, eds., *Guns & Violence: The Debate before Lord Cullen* (1996), at 166.

26. *See* Malcolm, Guns and Violence, *supra* note 9 at 201-202.
27. *Id.* at 206-207.
28. *See* Munday & Stevenson, Guns & Violence, *supra* note 25, at 33, 322-23, and table I.
29. Lord Stoddard of Swindon, 582 Parl. Deb., House of Lords (October 27, 1997), at 944.
30. *See* Malcolm, Guns and Violence, *supra* note 13, at 203-206.
31. *Id.*, at 173-74.
32. For further information on the 1953 Prevention of Crime Act *see* Malcolm, Guns and Violence, *supra* note 13, at 173-80.
33. Cited by Malcolm, Guns and Violence, *supra* note 13, at 179.
34. Glanville Williams, Textbook of Criminal Law (2nd ed. 1983), at 507.
35. *See* Malcolm, Guns and Violence, *supra* note 13, at 189-93.
36. *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.

MAPPING THE U.S. GUN CULTURE: A CONTENT ANALYSIS OF GUN MAGAZINES

James B. Jacobs & Domingo Villaronga

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INTRODUCTION

Everyone knows that the civilian population in the U.S. is well armed; there is at least one gun in 35-45% of American households (Jacobs, 2002: 39); most gun-possessing households have several. All told, there are approximately 250 million firearms in private hands; almost 95 million are handguns (Jacobs, 2002: 38-39). There is a highly charged debate in the U.S. about whether this civilian gun stock is a social problem and, if it is, what could be done about it. The feasibility of various policy options, and of voluntary or involuntary disarmament depends, in no small measure, on the reasons that Americans possess firearms. For example, if people purchase guns on impulse, perhaps in reaction to a heinous crime publicized on the TV news, it might not be so difficult to persuade them to give them up when memory of the incident recedes. On the other hand, if gun ownership plays a significant role in the gun-owner's life, if he or she uses firearms for sport

or is a collector or a survivalist, the possibilities of voluntary or even involuntary disarmament are low.

What do firearms *mean* to their owners? What roles do they play in their owners' lives? What do gun owners use their guns for? What institutions revolve around gun possession and use? This article seeks to contribute to mapping the status of firearms in U.S. society by examining magazines devoted to firearms. These magazines tell us a great deal about Americans' interests in guns. To subscribe to or regularly purchase gun magazines demonstrates more than a weak interest in firearms. Beyond reflecting readers' interests in guns, the magazines promote and shape people's interests in owning and using firearms.

We define "gun magazine" as any commercial print publication published at least once a year that is substantially devoted to firearms as an end in itself, or that deals with firearms as an integral means to satisfying another interest. We do not include catalogs, field manuals, guidebooks, advertising materials, e-zines or printed matter that does not contain editorial content.¹

The first thing to note is gun magazines have a very large readership. The 84 U.S. gun magazines we have identified have a total paid circulation of over 8,400,000.² Almost as many Americans purchase gun magazines as automotive magazines (10,400,000), about two-thirds the number of purchasers of general "men's interest magazines," i.e. *GQ*, *Playboy*, *Popular Mechanics* etc., (13,000,000).³ Since a magazine's *readership* is usually double or triple its circulation (one magazine having several readers), we estimate that approximately 25 million Americans read gun magazines.

Gun magazines can be divided into six categories: hunting, sport-shooting, survivalist, military/law enforcement, trade, and general interest. Hunting, the largest category, includes magazines devoted to different types of game (deer, bear, birds), different types of hunting weapons (e.g. shotguns, rifles) and different geographical locations (e.g. state or region) or environments (e.g. terrain, climate, etc.).

Sport shooting covers a wide range of firearms competitions, including airgun shooting, biathlons, indoor and outdoor handgun shooting, handgun silhouette shooting, indoor and outdoor rifle shooting, rifle silhouette shooting, skeet

shooting, sporting clays shooting, trap shooting, and cowboy action shooting.

Magazines devoted to military and law enforcement matters provide information about weapons used by soldiers, police officers, and security personnel.

Trade magazines provide retailers, wholesalers and manufacturers information on sales, marketing, and new firearms models.

Finally, “general interest gun magazines” are aimed at a range of people from those who merely own a firearm to gun collectors and aficionados. They provide technical information on firearms mechanics as well as information about shooting techniques.

HUNTING MAGAZINES

Approximately six percent of the adult U.S. population hunts every year; over 13 million people went hunting in 2001 (National Survey of Fishing, Hunting and Wildlife, 2001: 22). We have identified 33 hunting magazines, with a combined 2002 circulation of more than five million. They range from large national circulation monthlies like *North American Hunter* (circulation 750,000) to small geographically-focused semi-annuals like *Open Season New Jersey*, a family-run magazine with a circulation of only 10,000. Some hunting magazines (i.e. *Fishing and Hunting News*, *Hunting Magazine*, *The American Hunter*), cover all kinds of hunting, while others (*Deer and Deer Hunting*, *Gun Dog*, *Whitetail Trophy Tactics*, *Wing and Shot*) specialize in a single type of game or a specific geographical area (*Vermont Outdoor Magazine*, *Texas Outdoor Journal*, *Wisconsin Outdoor Journal*, *Northeast Woods and Waters*). Some hunting magazines predominantly focus on ecology and animals and are only tangentially concerned with firearms (i.e. *Big Sky Journal*); others focus primarily on identifying the appropriate firearm to achieve success hunting different kinds of game (i.e. *Rifle and Shotgun*).

The hunting magazine with the largest circulation is *The American Hunter* (circulation 1,113,834), a NRA publication with over a million subscribers. One of six NRA magazines,⁴ *The American Hunter* deals with hunting techniques. The April 2001 issue of *The American Hunter* carried the following feature articles:

Drawing Deadlines—”There’s still time to plan your 2002 big-game adventure, but you’ve got to meet those application deadlines. Just remember, it ain’t over ‘til the Game Department sings!”

Conversations With Tom—”When your livelihood revolves around turkey hunting, your yelps and purrs better be spot-on. Three turkey pros share the calling secrets that make them tops in their field.”

Bass Plugs and Box Calls—“A houseboat vacation on a sprawling West Virginia lake offers new opportunity for a troop of imaginative gobbler hunters.”

A Blizzard of Deer—“A potent blast of winter’s fury puts deer on the move during the rut on the northern plains.”

Spirit of the Bear (Cover Story)—“Bristly bundles of teeth, fur and claws, these head honchos of the food chain are a combination of danger, smarts, and for some, the ultimate big-game trophy.”

The Outhouse Moose—“Three days of nothing then the bulls show when they’re least expected. Now *that’s* an Alaskan adventure!”

There’s No Place Like Home—“One thing we know: A day spent hunting one’s homeland is sweet relief for a battered psyche.”

Bad-Attitude Boars—“He’s permanently teed-off at the world, got a face only a mother could love, and a temper akin to a lit stick of dynamite. Think dangerous game only comes in a big package with horns or claws? Think again.”

Special Report: *The Enemy’s Bold Lies*—“Faced with a pro-gun president for the first time in eight years, sore loser Handgun Control Inc. is pushing the limits of political maneuvering with outrageous tales and outright lies.⁵

The smallest circulation national hunting magazine is *Wing & Shot* (circulation 16,559) according to Audit Bureau of Circulations, 2002), devoted entirely to “upland” bird hunting. The August-September 2001 issue of *Wing & Shot* contained these articles:

Dove Field Strategies—an article on dove shooting strategies and situations.

Upland Game Preview—a preview of the season's best game.

The New Ithaca Double—a review of the Ithaca 20 gauge shotgun.

The Long and Short of Choke—an analysis of the advantages and disadvantages of long and short barrel lengths.

Do Dove Decoys Work?—professional opinions on the effectiveness of decoys.

SPORT SHOOTING MAGAZINES

We define sport shooting as non-hunting competitive or recreational use of firearms, including formal competitive target shooting (i.e. trap or skeet shooting, paper targets etc.)⁶ and informal “plinking” (i.e. shooting tin cans, inanimate targets in the woods/back yard etc.). Over 18 million Americans engage in formal target shooting and plinking (Kleck, 1997: 86). Millions more engage in trap and skeet shooting (4,745,000) and sporting clay shooting (3,749,000). Of course, some people participate in multiple types of competitions (Ference 160-61).

Sport shooting is promoted by several national associations, including the National Shooting Sports Foundation, the National Skeet Shooting Association, the National Association of Shooting Sports Athletes, the National Muzzle Loading Rifle Association, the National Sporting Clays Association and the National Rifle Association. Together these organizations hold hundreds of competitions annually.⁷

Of the 16 shooting sports magazines, circulation rates range from 5,000 (*Black Powder Cartridge News*) to over 200,000 (*Shooting Times*). These magazines present shooting sports in the same way that magazines devoted to golf, ice skating, and auto racing present their elite events and competitors.

Sports shooting magazines tend to focus on technical aspects of shooting sports. Consider the following article from the February 2002 edition of the *Skeet Shooting Review*:

One of the enduring myths in reloading is that component swapping is an acceptable practice. Nothing could be further from the truth. While many shotgun shells look the same, ballistically they are not. The same is true for wads and primers. The swapping of any one of these components can raise pressures beyond SAAMI (Sporting Arms & Ammunition Manufacturers Institute) limits.

Shooting Sports magazines run stories on local, state, regional, national and international shooting competitions and on the top shooters. The March 2002 issue of *Sporting Clays* carries a story on “legendary” clay shooter Roger Silcox (Sporting Clays, 2002: 44), while the January 2002 issue of *Trap & Field* contains an article on the 2000 “Rookie of the Year.”

Other articles in shooting sports magazines deal with shooting sports’ contribution to good character, discipline and other values. For example, the “mission statement” of *GunGames* reads: “*GunGames*...strives to showcase the best and brightest sport and recreation shooters in the world. Our mission is to portray guns and sport shooting as a wholesome, viable sport enjoyed by athletes from all walks of life.”

Popular shooting sports such as trap and field and skeet shooting are expensive and time consuming. *Trap & Field*, *Sporting Clays*, *Skeet Shooting Review*, *Shooting Sports USA*, and *Insights*, are all published by national shooting associations and come free with membership.⁸ Not surprisingly, their readers of these magazines are older and wealthier than the average American. Consequently, magazines dedicated to these activities tend to have smaller circulation rates.⁹

The following articles appeared in the February 2002 *Skeet Shooting Magazine*:

A Look at New Shotgun Products from Remington— a review of Remington’s latest shotguns.

Component Swapping?—an examination of the problems associated with using different gun components in shooting competitions.

Practice Tools—techniques for improving one’s shooting game

What's Your Call?—a discussion of some of the vague rules in skeet shooting competitions.

Legislative News—a discussion of the threats to gun rights in an evenly split Senate.

MILITARY/LAW ENFORCEMENT MAGAZINES

Military/Law Enforcement magazines provide information about weapons used in combat and/or law enforcement. They evaluate all kinds of firearms, ranging from the common Smith & Wesson .38 Special (a small, popular pistol) to the esoteric GemTech Mini-Mossad Silencer (a silencer specially fitted for an Uzi machine-gun). They also carry articles on a variety of combat-related topics such as battle gear (tactical lights, batons, knives, security holsters, flak jackets, etc.) and combat tactics (surveillance, training, self-defense). Many weapons reviewed in magazines like *Special Weapons for Military and Police* are not legally available to civilians. Other magazines such as *Soldier of Fortune* and *CounterTerrorism and Security* spotlight weapons used in special military operations and commando units. Such magazines may appeal to military history and warfare buffs, veterans, armed forces personnel and others who are interested military strategies, and military hardware.

The law enforcement magazines often focus on the use of firearms for protection in confrontations with dangerous criminals. Consequently, articles often deal with worst case scenarios. Consider this “editor’s note” taken from the October 2001 issue of *Guns & Weapons for Law Enforcement*:

Can the barrel of a handgun be three inches wide? When it’s aimed at you it can look that way...It’s been said that you can see your grave down the barrel of a gun and the average individual would probably freeze in such a confrontation. But veteran law enforcement officers are not average individuals. Of course, going willingly in harm’s way is not the job of average individuals. What prepares the officer to face his worst nightmare and survive? Making the fight-or-flight decision? Denying instinctive tunnel vision? It’s training. So many, many times you’ve simulated showdown scenarios and you react as

you're trained. You do it without thinking. You must. Simple.

Military/Law Enforcement magazines usually feature a large-caliber weapon on the cover as well as photo spreads accompanying the weapon reviews inside. Tactical photographs and diagrams related to shooting stances, fast-draw techniques, and close-quarter combat are also typical.

Special Weapons for Military and Police is an annual publication that started in 1989. The magazine is largely devoted to the tactical advantages and disadvantages of various firearms. For example, the 2001 issue reviews the AR-10B .308WIN, STRIKER ALGL 40mm, New Sound Tech .22s Pocket Rifles, Aguila's Sniper, Intrac 7.62x39mm AK-USA. In addition, *Special Weapons* contains feature stories that examine .50 caliber rifles and tactical shotguns, as well as a survey of military scout vehicles. The following articles from the 2001 issue are typical:

Tac-Ord M4 5.56—a review of the latest Tac-Ord (“Tactical Ordinance”) precision rifle.

Shotguns Rule the Night—a look at the use of tactical shotguns in nighttime tactical operations.

H&K Mark 23 .45 ACP—a review of a military-issue special operations handgun.

TRADE MAGAZINES

Numerous “trade groups” operating in and around the firearms industry publish their own magazines. For example, *The American Firearms Industry* magazine is the official trade journal for The National Association of Federally Licensed Firearms Dealers and The Professional Gun Retailer's Association.¹⁰ *SHOT Business* is the official publication of the National Shooting Sports Foundation, the largest trade association for the recreational shooting sports industry.¹¹ *Shooting Industry* is a monthly magazine published by the Firearms Marketing Group (FMG), a consortium that also publishes *Guns* and *American Handgunner* magazines.

Trade publications are meant for firearms wholesalers and retailers; they are not generally sold at newsstands, however

several trade publications have the same publishers as widely circulated gun magazines. *SHOT Business*, for example, is published by the same company that publishes *Guns & Ammo*, one of the most widely-read gun magazines in the United States. FMG, publisher of *Guns* and *American Handgunner*, uses its magazines to market guns sold by its industry subscribers.¹²

The September 2003 edition of *Shooting Industry* contained the following articles:

Help Your Customers Select Their Next Must-Buy Gun—a cross-industry comparison of how marketing creates “must-buy” products.

Buck Stop Marks 50 Years of Sweet Smell of Success—a look at how a firm selling buck-scent has managed to survive for fifty years.

Increase Sales with Firearms for Lady Shotgunners—techniques for targeting women who participate in shooting sports.

A Call for a Ban on Full-Auto Hysteria—an attack on those attacking pending legislation that would make it more difficult to sue gun manufacturers.

Trade magazines provide information on industry trends. Consider this article from *American Firearms Industry Magazine*:

Ruger officials said the 1999 sales figures were influenced by heavy demand for the company’s 50th anniversary products. The lone bright spot for Ruger during the period was seen in single and double action revolver shipments, which increased 17 percent over last year thanks in part to a strong showing by the Super Redhawk .454 Casull hunting revolver.

The balance sheet at the end of the quarter showed total current assets of \$152.9 million, including \$73 million in cash and short-term investments. At the close of the second quarter, Ruger had \$76 million in short-term investments and \$8.5 million in cash on hand. The firm’s inventory totaled \$48.1 million, compared to \$44.5 million at the end of the second quarter. Third quarter trade receivables were up to

\$20.5 million from \$15.9 million at the end of the second.

Not surprisingly, gun magazines aimed at firearms retailers carry many stories and editorials on how to attract new customers. This excerpt from an editorial in *Shooting Industry's* October 2001 issue voices a frequently-raised concern:

Face it. The world is high-tech and high-tech impacts the outdoor industry. While many of your customers enjoy the look of real walnut and blued steel and the smell of Hoppe's #9, you have to do more to attract, and keep, today's techno-savvy customer. This is especially true of younger customers already comfortable with high-tech gadgets.

GENERAL INTEREST GUN MAGAZINES

"General interest" gun magazines, with a combined circulation of over three million (see fig. 2), are devoted to guns qua guns, not to an activity or sport carried out with guns. They have two principal foci: 1) technical weapons "reviews" and 2) the usefulness of a firearm for self defense, sports shooting, policing, etc.. Some magazines, such as *Gun Collector* and *The Complete Rifleman*, devote most of their content to the firearms specifications and mechanics (barrel length, trigger pressure, recoil, accuracy, bore, weight, ammunition, magazines, etc.); others, such as *Guns & Ammo* and *American Handgunner*, contain a mix of weapons reviews and articles related to hunting, shooting, and self defense.

Some of these magazines specialize in particular types of firearm. *American Handgunner*, for example, is devoted to handguns, while *The Complete Rifleman* deals exclusively with rifles. Some general interest gun magazines are geared to specific markets: e.g. gun collectors are the audience for *Guns of the Old West* and *Gun Collector*. By contrast, *Guns & Ammo* is targeted towards gun owners who are interested in a wide range of firearms activities.

General interest gun magazines are not likely to appeal to novice gun owners. Articles focus on technical topics like

magazine feeds, holster varieties (style, comfort, molding, size etc.), draw speeds, grips, sights (fixed, adjustable, fixed-adjustable), scopes, loading, ammunition, trigger action (single vs. double), caliber, barrel length, muzzle velocity, chamber maintenance, etc. Some articles exhaustively review the construction and mechanics of a particular weapon.

The front covers of general interest gun magazines almost always display a “feature gun” that is extensively reviewed in that issue. For example, the cover of the September/October 2001 issue of *American Handgunner* displays the “Dawson Night Fighter,” a .45 gauge custom combat pistol. *Guns*’ August 2001 cover features the “Ultra Tech 870,” a combat shotgun. The September 2001 issue of *Guns & Ammo* features the “Para-Ord DAO .45 Auto.”

The following passage taken from a review in *Rifle & Shotgun* is a typical passage from a feature gun review:

Let’s talk basics. Remington took a familiar platform—the Model 700—and built the Etron X rifle] system around it. And why not? The Model 700 has been around since the 1960—The bolt still operates on a twin-lug locking design. Other traditional Model 700 features, like a 4-round magazine and a bolt release with trigger assembly—Presently available cartridges include the .22-250 Remington, .220 Swift and the .243 Winchester. The former two come topped with the Hornady 50-grain V-Max bullet, the latter with a 90-grain Nosler Ballistic Tip.

Handguns are primarily used for self-defense and handgun magazines focus heavily upon the use of guns as a means to thwart lethal violence. Consider the following article from the July/August issue of *American Handgunner* entitled “Strategic Solutions: Three Mental Keys to Winning a Confrontation.”

1. Perception: Recognizing and prioritizing key indicators within your sphere.
2. Situational Awareness: The ability to collect, collate and store data in a fluid, dynamic and stressful environment, and to retrieve that data as

needed to accurately predict future events in a compressed time frame.

3. Being In The Moment: Totally tuned to the present, disassociating yourself from any thoughts of mistake found in the past, free from any fears of the future. This state of mind is the fertile ground for powerful and unique solutions. It really doesn't matter that you can consistently present your weapon from a position of carry and fire multiple well-aimed shots from your wonder gun into the A-zone in 1.25 seconds. If you never perceive the attack, you won't respond. To paraphrase the great philosopher Forrest Gump, "Dead is as dead does."

Or consider this article from the December 2001 issue of *Concealed Carry Handguns* (circulation 35,000):

Your mind must be ready for mortal combat. This is easy to say, but not so easy for the average individual to pull off. We spend the greatest part of our lives trying to accommodate and get along with other folks we deal with day to day. Trying to shift mental gears quickly to a "war footing" when faced with a serious threat is something that life in a "civilized society has not prepared us for. This is something all of us "ordinary" folks must work on.¹³

The photograph accompanying this article shows the author standing beside a cardboard silhouette with four tightly-grouped shots to the head and chest. The caption reads "[t]hese two 2-shot groups were delivered in 1-1/2 seconds. Once you can score hits in two seconds or less, it's time for the scenario format."

Handgun magazines also run articles on the laws regulating carrying and using firearms. In an article from *Combat Handguns* entitled "Self Defense and the Law: Know Thy Weapon—20 Case Reports," the author explains that his preferred firearm depends upon the leeway provided by the law of self defense "I was not going to end up like the pharmacist...who took a felony suspect at gunpoint and, when the man made a move as if going

for the gun, shot him with his “hair trigger” Hi-Standard Supermatic .22...By a miracle, the defense team got him off but it cost him big bucks and reinforced upon all of us a lesson: no hair-trigger guns!”(Ayoob, 2001: 81).

Guns & Ammo, with a circulation of over half a million readers, is one of the largest circulating gun magazines. Each issue is broken down into sections: rifles, handguns, shotguns, Second Amendment issues and reloading. In addition, there is often a “General Issues” section. The following articles appeared in the September 2003 issue:

Winchester M70 Super Shadow—a review of a new Winchester rifle.

Para CCW—a review of Para-Ordnance concealed carry handguns.

Inside the Upland Shot Shells—a review of the different types of ammunition used for upland bird hunting.

Ruger Gun Talk—a look at the “big five” rifle actions (bolt, pump, levers, automatic, and single shots).

REGIONAL DISTRIBUTION OF GUN MAGAZINES

Magazine researchers divide the United States into nine regions: New England (Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut) Mid-Atlantic (New York, New Jersey, Pennsylvania), South Atlantic (Delaware, Maryland, Virginia, West Virginia, North and South Carolina, Georgia, Florida), East South Central (Kentucky, Tennessee, Alabama, Mississippi), West South Central (Louisiana, Arkansas, Oklahoma, Texas), Mountain (Arizona, New Mexico, Colorado, Utah, Nevada, Montana, Idaho, Wyoming), Pacific (California, Oregon, Washington), West North Central (North Dakota, South Dakota, Nebraska, Kansas, Missouri, Iowa, Minnesota), and the East North Central (Illinois, Ohio, Michigan, Wisconsin, Indiana). Circulation varies by region.

The largest total circulation is in the East North Central region (19.6%). The smallest distribution is in New England (3.6%).

In addition, researchers have constructed an index that illuminates magazine prevalence by region. The index is equal to

the circulation percentage of a given region divided by that region's percentage of the total U.S. population. Thus, for all magazines, the East North Central region's index score is 116 (19.6% circulation ÷ 16.9% of the U.S. population). The West North Central region has the highest score (141); the Pacific region has the lowest (55).

ADVERTISING

Examining the advertisements in gun magazines illuminates the nature of the firearms industry and the businesses that view gun magazine readers as appealing to their customer base. Different types of magazines have different types of advertisers. (See table 3). Hunting magazines carry advertisements for hunting gear and accessories such as scopes, camouflage and animal calling devices. General interest gun magazines and military/law enforcement magazines carry more advertisements for pistols, holsters and tactical weapons gear. Military/law enforcement magazines also carry ads for weapons that may be illegal for most civilians (such as silencers) as well as accessories that would be useless for civilians who do not own military-grade firearms. Shooting sports magazines carry more advertising for such items as custom sights, gun timers and performance ammunition.

Nearly all gun magazines carry advertisements for gun-related literature. A typical ad for the Military Book Club, a book club for military enthusiasts, promotes books on Native American weapons, a history of artillery, sniper tactics, naval history, and Roman warfare. Ads range from full-page color photographs to small 1"x 1" text descriptions. The back pages, like many other magazines, carry classifieds seeking everything from private detectives to mail-order brides.

The most frequent advertisers are those for gun manufacturers (37% of ads), followed by gun accessories (30%), combat accessories (flak jackets, camouflage gear, combat boots, etc.) (24%), gun literature (8%) and alcohol (1%).¹⁴ Table 3 lists the major advertisers who purchased ads in the issues of the 84 magazines that we examined.

POLITICS

Whereas gun magazines differ in their content and target audiences, their politics converge in defense of the right to keep and bear arms. In virtually every issue of every magazine there is praise of the Second Amendment. An example from the November 2000 issue of *Guns & Ammo* reads:

It's always been my feeling that you buy the magazine to read about firearms and firearms-related issues, not to read the self-serving comments of someone who just might take himself a little bit too seriously...This time is different though. There is no doubt that the upcoming election is the most important one in history for firearms owners...A vote for the Gore-Lieberman ticket would ultimately sound the death-knell for private firearms ownership in the United States; a vote for the Bush-Cheney team would ensure our right to own firearms for the foreseeable future.

Other gun magazine editorials assume gun owners' political clout. Consider this article from the *American Handgunner*:

Sifting through the rubble of Al Gore's political collapse, it becomes increasingly apparent that the NRA delivered the most telling salvos in the last election. Post election data reveal that 48 percent of all presidential voters in 2000 came from gun-owning households, up dramatically from 37 percent in the 1996 presidential election—Five key “toss up” states—Tennessee, Arkansas, West Virginia, Missouri and New Hampshire—went for Bush because of the gun issue, according to political analysts. Former President Clinton publicly grouched that the NRA cost Gore the election.

There are shriller editorials:

Whether you like it or not the NRA is the only—I repeat only, effective representation you have in the cesspool of Washington politics. Even the NRA’s worst enemies—your worst enemies...—agree that it’s one of the most powerful lobbying forces on Capitol Hill. That means no one else fights your battles for you better, and if you don’t understand that simple fact, you’re too dumb to exist!¹⁵

Gun magazines usually endorse Republican candidates, but some gun magazines, on occasion, have criticized Republican politicians as too accomodationist. Indeed, some articles even accuse the NRA of being too moderate on gun control issues. “Has the NRA caved on gun rights,” asks David Codrea of *Guns & Ammo*, “or are its critics just too radical and naïve to understand real world hardball politics?” (James, 2001: 45).

The most politically-oriented magazines are the NRA publications. For example, the April 2001 issue of *America’s First Freedom* runs a cover story entitled “UN-Free: The Shocking Story Behind the World’s Closed Doors,” and alleges that the UN Small Arms Conference of 2001 threatened Americans’ Second Amendment Rights:

The upcoming UN small arms summit in New York...is just one of many assaults currently faced by all law-abiding American gun owners. [A]uthor James Bovard will shine his spotlight on the changing face of gun hatred in America.

The April 2001 issue of *The American Rifleman* runs three politically charged articles: NRA president Charlton Heston outlines the NRA’s position on the UN Small Arms Conference; Wayne LaPierre, NRA executive vice-president, outlines the failed effort to defeat John Ashcroft’s nomination to head the Justice Department; and the NRA-ILA staff “HCI [Handgun Control Inc.] Attacks John Ashcroft With Lies” presents HCI’s attempt to discredit John Ashcroft during his nomination hearings when the HCI president testified that Ashcroft’s interpretation of the Second Amendment was wrong. The article

asserts that after Gore lost the 2000 election, “HCI and others on the left lashed out in a frenzied attack on the first available victim,” namely John Ashcroft. The authors blast HCI’s interpretation of the Second Amendment and close by stating: “We now add our visceral opposition to HCI’s shamefully misleading and purposefully deceitful testimony before the U.S. Senate.”(*The American Rifleman*, April 2000: 80). The April issue of *The American Hunter* contains the same article, but under the title “*The Enemy’s Bold Lies.*”

CONCLUSION

Despite the apparent beliefs of some gun control proponents that gun ownership is a bad habit that gun owners can be talked out of, gun ownership for millions of people, is a positive and important activity promoted by an industry reinforced by associations, organizations and peer groups. Gun magazines provide a window on the status of guns and gun ownership in the U.S. These magazines illuminate gun owners’ diverse interests in firearms and firearm activities, while seeking to promote and expand interests.

ENDNOTES

1. Editorial content refers to gun reviews, “how-to” guides, policy editorials, marketing discussions, or any other articles that deal explicitly with firearms related issues. This stands in contrast to sales pamphlets, product guides, instruction manuals, etc. We have identified 84 different “gun magazines.” For each of these we have examined at least one issue that appeared from 2000-2002.
2. Circulation figures include only paid circulation.
3. Circulation averages for six months ending June, 2002, Audit Bureau of Circulations. Available at: [<abcas1.accessabc.com/cgi-shl/pbcgi60.exe/ECIRC/uo_ecirc/f_magform?>](http://abcas1.accessabc.com/cgi-shl/pbcgi60.exe/ECIRC/uo_ecirc/f_magform?>).

4. For a \$35 membership fee, NRA members are entitled to receive *The American Hunter* or one of two other magazines, *The American Rifleman* (1,525,370), and *America's First Freedom* (635,580).
5. Like all NRA publications, virtually every issue of *American Hunter* devotes a section to gun control politics.
6. Target shooting takes place on a shooting range and here comprises all shooting range activities for which a rifle or pistol is used.
7. In addition, there are numerous organizations that hold competitions to choose representatives to shooting competitions held at the Olympics.
8. *InSights* is an NRA publication specifically aimed at young shooters.
9. Interviews with Cindy Gomer, Assistant Editor, *Skeet Shooting Review*, Feb. 1, 2002; Frank Kolde, Publisher, *Shotgun Sports*, Feb. 14, 2002; Editorial Dept., *Sporting Clays Magazine*, Feb. 1, 2002.
10. Currently there is no information available with respect to the circulation rates of *AFIM*.
11. No circulation figures are available. There are 1,900 “member companies” of the NSSF, consisting of manufacturers, distributors, wholesalers and retailers of shooting sports equipment, related associations and publishing organizations. There are also individual members. (Source: NSSF Online, <<http://www.nssf.org/>>).
12. FMG advertises “gun giveaway” drawings through *Guns* and *American Handgunner* which require entrants to list their favorite dealers. Those dealers who top the list become the targets of marketing initiatives by FMG’s industry subscribers.
13. Rick Miller, *The Concealed Carry Mindset: Be Aware of Your Surroundings—Be Ready for Action!* Circulation figures

supplied by the magazine, not verified by an independent auditing agency.

14. Based on a survey of 38 magazines.

15. Peter Caroline, *Soldier of Fortune*, November 2000, Vol. 25, No. 11, p. 6.

Recent Legal Scholarship on the Second Amendment

Sarah Merrill Gottlieb

Sarah Merrill Gottlieb is a junior at University of Washington majoring in Technical Communication and Physics. Her first article discussing the Second Amendment appeared in Women & Guns Magazine in the April 1995 issue.

CATHOLIC UNIVERSITY LAW REVIEW

Margaret E. Sprunger, *Breeding Ground for the Next Second Amendment Test Case: The Conflict within the U.S. Attorney's Office*, 53 (2004): 577. Discusses the Supreme Court's reluctance to accept a clear test case for the Second Amendment, on the grounds that an interpretation of the Second Amendment will not affect the outcome of the specific case. Suggests that Washington D.C.'s particularly restrictive gun laws lend themselves to challenge in a way that warrants both constitutional interpretation and a determination of outcome.

DICKINSON LAW REVIEW

A. Nicole Hartley, *Business Owner Liability and Concealed Weapons Legislation: A Call for Legislative Guidance for Pennsylvania Business Owners*, 108 (Fall 2003): 637. Asserts a need for legislative backing for business owners who, seeking to reduce potential liability, prohibit firearms from their property.

DUQUESNE UNIVERSITY LAW REVIEW

Samuel J. Toney IV, *Rescuing the Commerce Clause: Why the Federal Government May Not Constitutionally Regulate the Possession of Firearms*, 42 (Summer 2004): 865. Argues that the Second Amendment guarantees an individual right and that the Commerce Clause has been improperly manipulated so as to allow the government to restrict access to firearms. Proposes

that courts re-evaluate the scope of the Commerce Clause, limiting it to its intended purpose-- regulating trade.

HAMLIN JOURNAL OF PUBLIC LAW & POLICY

Carrie Chew, *Domestic Violence, Guns, and Minnesota Women: Responding to New Law, Correcting Old Legislative Need, and Taking Cues from Other Jurisdictions*, 25 (Fall 2003): 115. Discusses Minnesota's problems with domestic violence which often results in the deaths of abused partners and suggests that the state of Minnesota adopt a law which mirrors federal legislation restricting firearm ownership from those under protective orders, while still protecting the rights of law-abiding citizens to possess firearms.

HOUSTON JOURNAL OF INTERNATIONAL LAW

Joseph Bruce Alonso, *International Law and the United States Constitution in Conflict: A Case Study on the Second Amendment*, 26 (Fall 2003): 1. Argues that since both the Collectivist and Individual interpretations of the Second Amendment hold that gun rights serve to balance the power between citizen, state, and federal government, international gun control laws are in critical conflict with the United States constitution. Explores how implementing international gun control laws could violate citizens' individual rights, as well as upset the fundamental balance of political power domestically.

IDAHO LAW REVIEW

Scott R. Erekson, *Is the Day of Reckoning Coming? - The Collectivist View of the Second Amendment is Going the Way of "Separate but Equal,"* 40 (2004): 757. Discusses the significance of a Supreme Court ruling on the scope of the Second Amendment and supports the individual right interpretation, while acknowledging that court validation of either interpretation will have a profound affect on United States constitutional law and culture.

IOWA LAW REVIEW

Katherine Hunt Federle, *The Second Amendment Rights of Children*, 89 (January 2004): 609. Argues that while Second Amendment's purpose is unknowable and requires interpretation, the guarantee of an individual right can be inferred. Proposes legislation restricting the rights of minors, as a means of testing the Court's ability and willingness to limit the Second Amendment.

KANSAS JOURNAL OF LAW & PUBLIC POLICY

Jesse Matthew Ruhl, *Gun Control: Targeting Rationality in a Loaded Debate*, 13 (Winter 2004): 13. Attempts to cut through the hyperbole and misinformation on both sides of the gun control debate; gives a thorough historical overview of landmark Second Amendment court cases and concludes that reasonable public policy cannot be based on emotion and propaganda.

KENTUCKY LAW JOURNAL

Haydn J. Richards, Jr., *Redefining the Second Amendment: The Antebellum Right to Keep and Bear Arms and Its Present Legacy*, 91 (Winter 2002/2003): 311. Examines both traditional and non-traditional sources in order to infer the true intentions of the framers of the Constitution in drafting the Second Amendment; concludes that the Second Amendment encompasses "dual aims" of guaranteeing both collective and individual rights.

MINNESOTA LAW REVIEW

Elizabeth T. Crouse, *Arming the Gun Industry: A Critique of Proposed Legislation Shielding the Gun Industry from Liability*, 88 (May 2004): 1346. Opposes legislation which attempts to shield gun manufacturers from liability lawsuits unrelated to defective merchandise; argues that such legislation will remove all incentive for the industry to self-regulate and will end public discourse regarding violence and firearms.

SOUTH TEXAS LAW REVIEW

Mark A. Corroero, *Get a Divorce - Become a Felon: United States v. Emerson*, 45 (Spring 2004): 419. Affirms the Fifth Circuit's interpretation that the Second Amendment protects the individual, rather than the collective right, but cautions against allowing the federal government to infringe upon the rights of the states in conducting matters pertaining to criminal justice.

STANFORD LAW REVIEW

Ian Ayres & John J. Donohue III, *Shooting Down the "More Guns, Less Crime" Hypothesis*, 55 (2003): 1193. Analyzes data and presents an opposing viewpoint to John Lott's "More Guns, Less Crime" assertion. Argues that evidence is often manipulated in order to derive an intended result that corresponded with the personal beliefs of the researchers, and believes that this was the case with the "More Guns, Less Crime" research, and that there is no correlation between the relaxing of gun laws and a reduction of specific types of crime.

ST. JOHN'S LAW REVIEW

Robert J. Spitzer, *The Second Amendment "Right to Bear Arms" and United States v. Emerson*, 77 (Winter 2003): 1. Disagrees with the court's ruling in the *Emerson* case, arguing instead that the previously accepted collectivist view on the Second Amendment should have been upheld. Concludes that the *Emerson* decision was an anomaly and was a result of legal lobbying, rather than true interpretation.

Michael Busch, *Is the Second Amendment and Individual or Collective Right: United States v. Emerson's Revolutionary Interpretation of the Right to Bear Arms*, 77 (Spring 2003): 345. Discusses the impacts that the *Emerson* ruling will have on federal gun-control legislation. Argues that despite the interpretation, some elements of gun regulations will still be constitutional, and would provide a desired consistency in legislation that states alone cannot provide.

THOMAS JEFFERSON LAW REVIEW

Roy Lucas, *From Patstone & Miller to Silveira v. Lockyer: to Keep and Bear Arms*, 26 (Spring 2004): 257. Discusses significant Second Amendment cases and ramifications thereof; argues that overturning the decisions in Miller, Silveira, and Presser and affirming gun rights will usher in an era of increased quality of life for many Americans as crime rates drop.

UNIVERSITY OF PENNSYLVANIA LAW REVIEW

Dan M. Kahan & Donald Braman, *More Statistics, Less Persuasion: A Cultural Theory of Gun-Risk Perceptions*, 151 (April 2003): 1291. Argues that one's cultural background and worldview profoundly affects one's stance on the gun control debate, and that as a result, statistical analysis alone is not enough to resolve the debate. Encourages scholars to construct a more "expressive" means of carrying out the gun-control debate than quantifications alone.

UNIVERSITY OF PITTSBURGH LAW REVIEW

Jennifer Ray, *The Department of Justice's Position on the Second Amendment: Advancing the Nation's Interest or Putting the Nation at Risk?* 65 (Fall 2003): 103. Argues that the collectivist interpretation of the Second Amendment should be applied regardless of constitutional merit as gun violence is a growing challenge to public safety; criticizes Attorney General John Ashcroft's decision to push an anti-gun control agenda despite support of restrictive measures by the general public.

WILLIAM & MARY BILL OF RIGHTS JOURNAL

(Symposium: The Militia and the Right to Bear Arms)

Mark A. Graber, *Ancients, Moderns and Guns*, 12 (February 2004): 307. Historical overview of gun rights; describes the differences between "liberty of the ancients" and "liberty of the moderns" as a framework for understanding the "individual" and "collective" rights theories.

Jonathan Simon, *Gun Rights and the Constitutional Significance of Violent Crime*, 12 (February 2004): 335. Suggests that in deciding whether the Second Amendment protects the individual or the collective right, it is important not only to assume the intentions of the framers, but also to the “constitutional moments” which have continued to shape and define our interpretations of the constitution. Argues that criminal gun violence since the 1960’s has provided a “constitutional moment” wherein a clear interpretation of the Second Amendment is still taking form.

WILLIAM & MARY LAW REVIEW

David G. Browne, *Treating the Pen and the Sword as Constitutional Equals: How and Why the Supreme Court Should Apply Its First Amendment Expertise to the Great Second Amendment Debate*, 44 (April 2003): 2287. Argues that the Second Amendment should be analyzed and interpreted through the framework that the First Amendment implies, and as such should be determined to be an individual right, guaranteed to the same “the people” that the First Amendment protects.

The Roman Legal Treatment of Self Defense and the Private Possession of Weapons in the *Codex Justinianus*

By Will Tysse

The Corpus Iuris Civilis—a collection of ancient Roman statutes and juristic writings since the age of Cicero—has had a profound effect on the development of modern law. This article examines how the Codex Justinianus, one fourth of the Corpus, regulated the private individual's ability to own weapons and engage in self defense. The Article finds that provisions in the Codex are generally very supportive of an individual's right to self defense. Though the Codex's treatment of the private possession of weapons is mixed, the Article draws on historical context (widespread slavery, constant threat of barbarian invasion) and identifies background assumptions behind many Codex provisions to argue that private ownership of weapons must in fact have been commonplace. The Article offers new English translations of many Roman laws for which no adequate English translation currently exists.

Will Tysse is a law student at the University of Virginia School of Law and holds degrees in Classics and Latin Literature from the University of Virginia and Oxford University. He would like to extend his warmest thanks to Professor Elizabeth Meyer of the University of Virginia for her suggestions regarding this piece and to Mr. David Kopel for allowing him the opportunity to write it.

By the time Justinian succeeded to power in Constantinople in A.D. 527, the Roman Empire was in serious decline. The Empire no longer stretched from the Firth of Forth in Scotland to the walls of ancient Jerusalem. Africa and the western provinces had been overrun by Goths and Vandals; Rome itself was no longer in the Emperor's hands. The eastern borders were besieged by a formidable alliance of Persians and Armenians, who managed to sack Antioch, the capital of the important eastern province of Syria, in A.D. 540.

Justinian took control of the Empire with two ambitious plans in mind. The first—the *renovatio* of Italy and the West—met with initial successes. Roman generals retook Africa, drove the Goths out of Italy, and regained a foothold in Spain. But the project to reclaim the West was abandoned by Justinian's

successors and ultimately failed. Justinian's second plan—the systematic codification of the vast, overlapping, contradictory archives of Roman law—was destined to have a more lasting impact.

In less than a decade, a committee of legal scholars selected by Justinian condensed six centuries of Roman law into a set of manageable treatises. The first, known as the *Codex Justinianus* (“Code”), was issued in A.D. 529 and contained a comprehensive systematization of thousands of scattered imperial enactments since the reign of Hadrian (A.D. 117-138).¹ The Code was soon joined by the *Digesta* (“Digest”)—or the *Pandectae*, in its Greek name—a codification in fifty books of extant juristic writings, some from authors so ancient that they would have been known to Cicero, the great lawyer and orator of the last days of the Roman republic.²

In A.D. 534, Justinian's committee produced an additional work, an introductory textbook for beginning Roman law students, named the *Institutiones* (“Institutes”).³ In the same year, the committee promulgated a second edition of the Code (*Codex repetitae praelectionis*), as the earlier version had been superseded in part by a plethora of fresh imperial enactments.⁴ It is this second edition which survives to us today, and which, along with the Digest, the Institutes, and a small group of imperial laws which post-date the revised Code, the *Novellae constitutiones* (“Novels”),⁵ comprises what is now known to us as the *Corpus Iuris Civilis* (“CJC”): the “Body of Civil Law.”

The CJC's influence on the development of modern law has been profound. In the East, Byzantine emperors after Justinian used the CJC to administer their famously complex bureaucracy for nearly a millennium. In the West, the CJC was incorporated by early church fathers into canon law, and though the CJC was eclipsed for several centuries by the codes of Rome's Germanic conquerors, it was revived in the 12th century by early Italian Renaissance scholars. It survives to this day (in extensively revised form) in the civil law systems of the various western European continental states, as well as in their former colonies worldwide—and in one U.S. state, Louisiana.

This article examines provisions in one of the CJC's four works, the Code, which regulate self-defense and the possession and use of weapons by private individuals. The most recent

English translation of the Code is by Samuel Parsons Scott, was last revised in 1932, and is notoriously unreliable.⁶ Therefore, all provisions from the Code which appear in this article have been retranslated from the original Latin. The Latin text used for this purpose is the Krueger/Mommsen edition of the *CJC*, published last in 1954.⁷

I. SELF DEFENSE

Roman law was very protective of the individual's right to defend himself and his property from violence, whether offered by a thief on a darkened highway or a soldier in search of plunder.⁸ A provision attributed to the late fourth century A.D. reads:

We grant to all persons the unrestricted power to defend themselves (*liberam resistendi cunctis tribuimus facultatem*), so that it is proper to subject anyone, whether a private person or a soldier, who trespasses upon fields at night in search of plunder, or lays by busy roads plotting to assault passers-by, to immediate punishment in accordance with the authority granted to all (*permissa cuicumque licentia dignus ilico supplicio subiugetur*). Let him suffer the death which he threatened and incur that which he intended (*Codex Justinianus* ("CJ") 3.27.1).

The legislator then explains the rationale for this provision, stating, "For it is better to meet the danger at the time, than to obtain legal redress (*vindicare*) after one's death." And he concludes:

We therefore permit you to seek your own revenge (*ultionem*) and we join to this decree those situations which a legal judgment would be too late to remedy (*quod seruum est punire iudicio*). Thus, let no one shrink from facing (*parvat*) a soldier, whom it is fitting to challenge with a weapon (*telo*), just as it is fitting to challenge a thief (A.D. 391).⁹

This provision recognizes not only an individual's right to self defense, but explicitly permits the private use of a weapon (*telum*) for the purpose of countering an assailant as well.¹⁰

Similar language can be found in Book Nine, in a series of provisions relating to protection against murderers (*sicarii*). The first states: "He who, when placed in peril (*discrimine constitutus*) and in doubt of his life, has killed his aggressor or anyone else, ought not to fear malicious prosecution (*calumniam*) on account of such an act" (*CJ.9.16.2*, A.D. 243). The second states: "If, as you say, you have killed a highway robber (*latrocinantem*), there is no doubt that he who first possessed the intention of committing murder (*inferendae caedis voluntate praecesserat*) is viewed as rightfully killed" (*CJ.9.16.3(4)*, A.D. 265). Unlike the first provision quoted above, there is no explicit mention of weapons in these provisions. It is unlikely, however, that the abstract right to defend oneself from a highwayman would have been worth much if the law did not also presume that private individuals had the ability to possess weapons of some kind.

In addition to recognizing the basic right to defend one's life from assassins and thieves, the Code contains various provisions specifically addressing a private individual's right to defend his property. For instance, there is a provision from the late third century A.D. which states: "A rightful owner may, for the purpose of defending his property which he was holding without defect of title, repel (using the moderation of a blameless guardian) any force which has been brought against him (*inculpatae tutelae moderatione...vim propulsare licet*)" (*CJ.8.4.1*, A.D. 290).¹¹ Again, this provision makes no explicit reference to weapons. It again seems clear, however, since creditors seeking to seize property sometimes utilized weapons for this purpose,¹² that lawful owners attempting to exercise the right to defend their property must have been entitled to use weapons as well; otherwise, the privilege this provision creates would also have turned out to be largely worthless.

Private persons were entitled to defend their property from overzealous creditors, or, as in the following provision, from government agents acting outside the color of law:

All whom this decree interests are permitted to lay hands on (*obicere manus*) those who have come for the

purpose of seizing the property of anyone who has submitted to the laws, so that, even if officials should dare to depart from the terms of this law (*a tenore datae legis desistere*), they may be prevented from causing injury by the resistance of private persons themselves (*ipsis privatis resistentibus a facienda iniuria arceantur*) (CJ.10.1.5, no date).¹³

The fact that permission is granted in this case only to *obicere manus*—“use one’s fists”—suggests that here, at least, the use of weapons as a means of private resistance was beyond the scope of this provision.

Related to the right to defend one’s life or property was the obligation, recognized in at least one location in the Code, to defend the life or property of another. Slaves, for instance, in addition to being rewarded with their freedom for helping to convict their former master’s killer,¹⁴ were required to defend their living masters from a sudden attack:

We, therefore, desiring to cut off every opportunity for slaves to avoid being punished for the neglect of their master’s health, decree that all slaves, wherever they are—in the house, on the highway, in the fields—if they should hear their master’s cries or perceive an attack, but do not bring assistance, are to be subjected to the punishment decreed by the Senate. They must, whenever they sense their master is in danger, rush to prevent him from being ambushed (CJ.6.35.12, A.D. 532).

A host of similar provisions obligated various persons—sons of murdered fathers,¹⁵ cousins,¹⁶ siblings,¹⁷ or any other heir who stood to benefit from a murdered person’s will¹⁸—to “avenge” (*ulciscor*), or “vindicate” (*vindicare*), or at least not leave unavenged (*inultus*), the deceased parties in question, before they could claim any property or testamentary gift owing to them. It is unclear, however, whether “vengeance” in this sense meant actual physical reprisal, or rather, as is perhaps more likely, merely the duty to pursue to fruition a criminal charge against the alleged murderer in a court of law.¹⁹

II. PRIVATE POSSESSION OF WEAPONS

The provisions examined in Part I entitled individuals to defend themselves and their property from attack, theft, or illegal seizure and, at least in one circumstance, to defend or “avenge” the life of someone else. In order for any of these provisions to be meaningful, the private ownership of weapons must have been commonplace. The abstract right to defend one’s life, for instance, as one traveled along a deserted highway or slept alone in one’s farmhouse at night and encountered an armed robber or soldier threatening violence, would have been of little value unless adequate means of self-defense happened to be present as well. A hoe or stick or stone or some other common household instrument not commonly termed a weapon would have been unsuitable for meeting a heavily armed soldier’s sudden onslaught.

The manner in which Roman law treated the private ownership of weapons was in fact contradictory, and not always permissive. Indeed, it seems the Code could hardly have been less permissive on the question of private weapon ownership than it was in the provision which reads: “Absolutely no one is granted the ability to wield arms (*nulli... armorum movendorum copia tribuatur*) of any description whatsoever without our knowledge and consent” (*CJ.11.47(46).1*, A.D. 364).²⁰

Or could it? The Latin phrasing in this provision is ambiguous: though *movendorum* can indeed be translated, as Scott translates it and as it has been translated here, as “bearing” or “wielding,”²¹ it can also be translated in its more literal sense: “moving,” “transporting.” Thus, the provision might be interpreted instead to forbid the unauthorized transportation of arms shipments, rather than the personal possession of arms. This alternative translation receives indirect support, at least, from a separate provision in the Code which regulates the transportation of arms for the military, indicating that this was perhaps one of the legislators’ special concerns.²²

The problem is that, because so many of the provisions which appear in the Code, this one in particular, are so heavily excerpted—that is, they appear in relative textual isolation, without any surrounding context at all to help determine their

precise meaning—it becomes difficult to say with complete certainty what sort of conduct they were intended to address.²³

Even if this provision could be read definitively to deny the individual right to carry weapons, it is dated only to the year A.D. 364, and imposes its ban prospectively. Thus, prior to 364—that is, for the great bulk of Roman history—it is possible, even likely, that the law would have adopted a more permissive attitude toward the presence of weapons in private hands. (The statute is, after all, most likely reacting *against* some state of affairs existing prior to its passage.) And even after this provision would have gone into effect, it was still possible, as the provision indicates, to obtain the government's consent to escape being covered by the prohibition.

Significantly, the restrictive law was repealed in A.D. 440, long before the *CJC* was composed. Although the repeal statute is not reprinted in the Code, the Code does appear to recognize a state of affairs in which armament was widespread. Valentinian's decree, a response to barbarian attacks in some coastal areas, urged private citizens to take up arms:

By this edict we urge one and all, with confidence in the strength of Rome and with the courage with which one's own ought to be defended (*propria defansar*), to use, if the occasion demands it, along with one's close relatives and friends (*cum suis*), whatever arms they can (*quibus potuerint utantur armis*) against the enemy, preserving public discipline and the dignity attending their station; and to protect, in faithful concert and with a united front, our provinces and their own fortunes. (*Nov. Val. IX*, A.D. 440).

A. Barbarians

When it came to individuals other than Roman citizens owning weapons, the Code tended to be much less ambiguous. For understandable reasons, the Romans imposed a heavy penalty on arms merchants or manufacturers foolish enough to peddle their wares to barbarian tribe-members:

Let no one dare to sell to foreign-born barbarians of any race whatsoever, who claim to have come to this

most holy city on an embassy, or on any other errand, or to any other city or place, leather cuirasses (*loricas*), shields (*scuta*), arrows for the bow (*arcus sagittas*), doubled-edged swords (*spathas*), ordinary swords (*gladios*), or arms (*arma*) of any other type. Not a single weapon (*tela*) and absolutely nothing made of iron, finished or still unfinished, is to be sold to these same persons in pieces (*distrabatur*) by any person. For it is destructive to the Roman Empire and next to treasonous to furnish such barbarians, who should be deprived of these things, with weapons (*telis*), with the result that they become more fearsome. If anyone, moreover, has sold in any place to foreign-born barbarians from any nation any kind of arms (*aliquid armorum genus*) contrary to the piety of our laws, we decree that his entire property immediately be confiscated and added to the public treasury, and that he also suffer the penalty of death (CJ.4.41.2, a.d. 455-57).²⁴

The severe penalty affixed to the sale of arms to barbarians reflected the Romans' abiding concern with the restless hordes constantly threatening their Asian, African, and European borders. Indeed, as Brunt suggests, it would seem to contravene common sense to suppose that the Emperor would ever have desired loyal inhabitants of the border provinces, who would have been useful for quelling insurrections or fending off barbarian invasions, especially in those vast areas where no Roman troops were stationed, to be disarmed.²⁵

B. Slaves

If the law was prejudiced toward barbarians, it evinced a similar suspicion toward slaves, a group which could threaten Roman society from within:

We desire that license to harbor cattle thieves (*bucellarios*), Isaurians, and armed slaves (*armatos servos*) be foreclosed to all persons, both in the towns and in the countryside. But if anyone, contrary to this law which we, in our clemency, have advantageously provided, has

attempted to entertain armed slaves (*armata mancipia*), Isaurians, or cattle thieves on his estates or near to himself, we order that he undergo a most severe punishment, after having been sentenced to pay a fine of a hundred pounds of gold (*CJ.9.12.10*, A.D. 468). (Isaurians were barbarians in Asia Minor.)

Similarly, armed slaves were not afforded the traditional right of immunity belonging to accused persons seeking refuge in a church or other sanctuary. The Code permitted, indeed obligated, their masters to roust them out:

If anyone's slave, while armed (*armatus*) and with no one observing it, unexpectedly takes refuge in a church or at an altar, let him be removed at once therefrom, or let the situation at least be indicated to his nearest master or to the person from whom so insane a terror drove him away, and let a present opportunity to remove the slave not be denied this person. But if, with madness urging him on, trust in his arms (*armorum fiducia*) has kindled the slave's spirit of resistance, his master is granted the power to remove and take him away, using the force with which it is possible to achieve this. But if it happens that in the midst of the dispute and the fight the slave is killed, the master will not be blamed for this (*nulla erit eius noxa*), nor will any ground for a criminal prosecution remain (*conflandae criminationis...ocasio*), if he who has leapt from the servile condition to that of an enemy and a murderer should lose his life (*CJ.1.12.4*, A.D. 432).

Like many of the provisions examined above, this provision also, by authorizing the use of force to overcome the resistance of an armed slave, appears necessarily to contemplate the private owner's reliance on some kind of weapon. The owner could hardly be expected to use his bare hands alone for this purpose.

Indeed, just as it is unlikely that the law would have disarmed loyal border inhabitants in an age of ever-present barbarian menace, it would also seem unlikely that, in a society as dependent on slave labor as Rome, the law would have forbidden private citizens, some of whom probably owned many

hundreds of slaves or more, from arming themselves as a protection against slave disobedience, escape, or revolt. Though there is no provision in the Code which deals neatly with this issue, other provisions do imply that private owners were entitled to use weapons as a means of keeping their slave populations in check. For instance:

If a master has struck his slave with stripes (*virgis*) or whips (*loris*), or, for the sake of keeping him in custody, has placed him in chains, after any distinction or explanation based on the time of his confinement has been rejected (*dierum distinctione sive interpretatione depulsa*), the master need endure no fear of criminal prosecution for having killed the slave. Let him not exercise this right immoderately, but let him be charged with homicide, if he should kill the slave through intentional blows with rods (*fustis*) or stones; or certainly if he should inflict a fatal wound with a weapon (*telo*); or order the slave to be suspended from a noose; or direct him with a disgraceful command to be hurled from a precipice (*praecipitandum esse*); or pour him a glass of poison; or mutilate his body publicly, either by applying iron hooks (*ferarum unguibus*) to his sides or by burning his limbs with the application of fire; or should force, exhibiting the savagery of wild barbarians, the slave's wasting limbs, flowing with black blood and gore almost onto the instruments of torture themselves (*atro sanguine permixta sanie defluentes prope in ipsis...cruciatibus*), to relinquish their hold on life (*CJ.9.14.1, A.D. 319*).

This provision graphically illustrates the brutal lengths to which some slaveowners might go in seeking to punish their slaves. More important for our purposes, however, it also illustrates that slaveowners were ordinarily permitted to punish their slaves with nonlethal weapons—whips and chains—as well as with lethal weapons (*tela*), provided the slave did not in fact die as a result of the punishment. Thus, the law again seems to presuppose the private individual's ability to own or possess weapons of some kind, in this case for the purpose of maintaining the obedience of slaves.

C. Hunting

This presupposition is also evident in the provisions dealing with hunting. Hunting, today pursued largely for recreational purposes, in ancient Rome would have played a far more practical role—feeding, clothing, and also protecting individuals from the threat posed by wild beasts: “We give the power (*potestatem*) to everyone to kill lions, and we do not allow anyone to fear any kind of malicious prosecution on this account” (*CJ.11.45(44).1*, A.D. 414). Without the ability to carry weapons, of course, the permission this provision grants—not just to soldiers, but to “everyone”—to kill lions certainly would not have amounted to much, as few lions, one imagines, would have submitted to the indignity of being slain by an unarmed human foe. Of course, hunters might have relied on traps as well, but probably not exclusively.

D. Criminals

Finally, weapons were not always used for strictly licit purposes, and the Code occasionally addresses weapons in the criminal context as well: “Let anyone who has traveled about with a weapon (*cum telo*) with the intention of killing a man (*hominis necandi causa*), just as he who has actually killed someone or on account of whose malicious deceit such an act has been committed, be punished in accordance with the *Lex Cornelia* relating to murderers” (*CJ.9.16.6(7)*, A.D. 374).²⁶ Note in particular how this law criminalizes the *intent* to commit murder while armed, but not the carriage of arms *per se*; if possessing arms on its own were illegal, we would not expect the presence or absence of intent to matter.²⁷

CONCLUSION

The *CJC* constitutes an enormous body of law, in which the Code occupies only a small and, as compared to the Digest, at least, rather unimportant place. It is still useful, however, to examine the Code, since it is manageable, gives a good overall impression of the content of Roman law, and has not been adequately revised in its English translation for several generations.

When an innocent man's life or property was faced with violence, Roman law demonstrated a pervasive respect for his right to self defense. It permitted threatened individuals to kill thieves, soldiers, and other violent attackers and to drive off or, if necessary, to kill creditors or government agents who had come to seize property illegally. In many instances it recognized, expressly or by implication, an individual's ability to own or possess weapons as a means of procuring his self defense.

Though the unauthorized carrying of arms was perhaps prohibited after the mid fourth-century, the Code indicates that prior to that time, at least, private weapon ownership was commonplace. Weapons allowed private individuals not only to defend themselves from violent assault and their property from illegal seizure, but also to hunt, to punish and recapture and maintain the obedience of slaves, and to protect the Roman *imperium* itself from barbarian invasion or internal revolt. Under these circumstances, Rome seemingly would have had little to gain by disarming her citizens, and potentially much to lose. Nor is it clear, in any case, that complete disarmament would even have been practicable.²⁸

Much of the law of the modern world can trace its source to these ancient precedents. The *CJC* grounds the legal systems of a dozen civilized nations—France, Germany, Japan, Italy, Spain, Brazil, to name a few. Even countries whose laws derive from a mostly independent source—such as our own U.S. Constitution—can find in these dusty statute-books, written for a vanished society in a long-dead foreign tongue, a kindred spirit. The right to self defense and its concomitant, the right to bear arms, have enjoyed significant support in the Roman law roots of the western legal tradition.

ENDNOTES

1. W.W. Buckland, *A TEXT-BOOK OF ROMAN LAW FROM AUGUSTUS TO JUSTINIAN* 38-40 (1921).
- 2 *Id.* at 41-46.
3. *Id.* at 46.
4. *Id.* at 47.
5. *Id.* at 48-49.

6. S.P. Scott, 6-7 THE CIVIL LAW (1932). For Scott's notorious unreliability, *see, e.g.*, O.F. Robinson, THE SOURCES OF ROMAN LAW 57 n.11 (1997).

7. 2 CORPUS IURIS CIVILIS (Paul Krueger and Thedorus Mommsen eds., 1954). The Latin text can also be found on the web at <<http://www.upmf-grenoble.fr/Haiti/Cours/Ak/codjust.htm>> (last visited March 22, 2004) or <<http://www.gmu.edu/departments/fld/CLASSICS/justinian.html>> (last visited March 22, 2004).

8. It is somewhat anachronistic and perhaps even misleading to speak of a "right to self defense" or a "right to bear arms" within the context of Roman law. The Romans, of course, did not have access to our thinkers or our political history; they would have thought about these things in a different way than we do. Nevertheless, this Article will sometimes employ the term "right" as shorthand for identifying a concept familiar to the modern reader. Although the Romans did not use the modern conceptual framework of rights, the Romans did intuit the existence of rights.

9. The provision immediately following reads:

We grant to the inhabitants of provinces the power by law to arrest deserters (*opprimendorum desertorum facultatem*). If they dare to resist, we order them to be punished swiftly, wherever they are. Let all persons know that, for the sake of the common peace, they are granted the authority to exercise public vengeance (*ius...exercendae publicae ultionis indultum*) against public thieves and deserters from the army (*CJ.3.27.2*, A.D. 403).

This provision also apparently recognizes that private individuals could possess their own weapons: how else would they have been able, as the legislator here encourages them, to arrest deserters, who presumably would have been heavily armed themselves?

10. What kinds of weapons would likely have been meant by the word *telum*? *Telum* is generic in a sense, and could apparently refer both to military arms (missiles, spears, javelins), as well as to *vilia arma*, or everyday weapons, such as daggers, shafts, axes, etc. In its broadest sense it was simply something sharp and metallic which could be used either for thrusting or for sending toward an enemy through the air and which was capable of inflicting a fatal wound. The word *arma*, on the other hand, though also generic in a sense, tended to be reserved mostly for military weapons—a soldier's accoutrement, such as heavy swords, shields, javelins, bows, etc.

11. The “moderation of a blameless guardian” is a strange phrasing. It appears to have been a term of art in Roman law, adopted by the framers of canon law as well, meaning something like: “the least amount of harm that one need cause to an aggressor in order to successfully defend his own life.”

12. For example, a provision in Book Four states:

People who deny that they are debtors *should not be threatened by armed force (armata vi)*, but should be discharged from liability if the plaintiff does not prove his case (*petitore...non implente suam intentionem*), or if the exception is withdrawn; but if they are convicted they should be condemned and compelled to make payment by means of legal remedies (*CJ.4.10.9*, A.D. 294 (emphasis added)).

In conjunction with *CJ.8.4.1* (noted above), this provision suggests that private persons, who were entitled to repulse creditors who came to seize their property unjustly, must have been allowed to use weapons for this purpose, if the creditors themselves were armed.

13. A somewhat related law vested in the hands of managers of public property and also private citizens the power to expel (*expellandi facultatem*), for the sake of the Emperor’s *serenitas*, from any of the Emperor’s estates any surveyor (*metator*) come for the purpose of fixing boundary-markers. *CJ.12.40(41).5*.

14. *See CJ.7.13.1*.

15. *CJ.2.40(41).1; CJ.6.35.6*.

16. *CJ.9.1.4*.

17. *CJ.6.35.9-10*.

18. *CJ.6.35.1*.

19. There was at least one set of circumstances, however, in which extra-judicial punishment was expressly authorized, as an undated provision from Book Nine informs us:

If Gracchus, whom Numerius killed after catching him at night in the act of adultery, was of the condition such that he could be killed with impunity under the *Lex Julia*, then that which was lawfully done merits no penalty. The same thing must be proved by his sons (*idem filiis...praestandum est*) who were obeying their father’s orders (*CJ.9.9.4*, no date).

The *Lex Julia de adulteriis coeuvendis* was passed in 17 B.C. by Emperor Augustus in an effort to deter a practice which was becoming

distressingly prevalent, at least from the Emperor's perspective. (His own daughter was a notorious sexual profligate). It is conceivable, and perhaps even likely, that Numerius (and other cuckolded husbands in similar situations) was able to do away with his wife's lover by means of his bare hands or with some ordinary household implement seized in the heat of the moment and put to an irregular use. It is also, however, at least plausible that Numerius accomplished his revenge by means of a weapon properly described, either carried on his person or stored somewhere in his home, before the unfortunate paramour could manage his escape.

20. *Cf. Dig.48.6.1* ("Whoever has collected arms (*arma tela . . . coegerit*) in his home or fields or in his villa, unless for the purpose (*usum*) of hunting or for making a journey by land or by sea, will be found liable under the *Lex Julia* concerning public violence."). Note the two exceptions, as well as the fact that this provision prohibits only the "collection" of arms (i.e., for seditious purposes), not the mere possession of arms *per se*. It seems difficult, to say the least, to reconcile this explicit license to carry weapons for hunting and traveling (which dates to the early third century A.D.) with the apparent flat prohibition on private weapon ownership found here in the Code. One should perhaps note at this point that the Digest is considered more authoritative than its companion volumes. For a discussion of the above-cited provision as well as a treatment in general of the ownership of arms by private individuals in ancient Rome, see P.A. Brunt, *Did Imperial Rome Disarm Her Subjects?*, 29 PHOENIX 260 (1975) (answering in the negative).

21. *Cf. Vergil, Aeneid XII.6, movet arma leo* ("the lion brandishes its arms").

22. The provision reads, in relevant part:

Whenever requisitions (*angariae*) are reasonably necessary for the transportation of arms (*translatione armorum*), your highness shall order a letter to be sent to the most eminent prefect which shall indicate to him the quantity of arms (*numerum . . . armorum*) and the place from which they are to be transferred (*transferenda*), in order that the prefect immediately gather together the most illustrious governors of the province regarding the requisitions that must be made in proportion to the number of arms that are transferred (*pro numero eorum quae transferuntur armorum*) in accordance with your instruction, so that, following the notice sent by your highness, ships or other requisitions are immediately offered at public expense (*CJ.11.10(9).7*, no date).

23. An additional problem is that we can not know for certain whether the legislator in this provision intended to mean something specific by using the word *arma* as opposed to the word *tela*. See note 10, *supra*. To the extent one can draw a sharp distinction between the meanings of these two words, it may be possible to read this provision as forbidding the possession by private individuals of *military* arms (*arma*)—swords, shields, javelins, bows—while leaving the possession of ordinary weapons (*tela*)—daggers, shafts, axes, small-swords—untouched. Again, given the lack of context, it may be impossible to tell for certain.
24. Note the apparently sharp distinction drawn in this provision between *arma* and *tela*. See *supra* notes 10 and 22. Sometime after A.D. 534 Justinian apparently forbade the private sale of arms to *all* persons, barbarians and Roman citizens alike, thus turning arms sales into a state monopoly. See *Nov.9.1*. The existence of state monopoly does not imply that the monopolized commodity was scarce. For example, some American states make gambling and alcohol sales a state monopoly. Later Byzantine emperors liked the idea of an armed populace so much that they urged every free man to possess his own arms. The Emperor Maurice (582-602 A.D.) proclaimed: “We wish that every young Roman of free condition should learn the use of the bow, and be constantly provided with that weapon and with two javelins.” Charles Oman, *A HISTORY OF THE ART OF WAR IN THE MIDDLE AGES* 178 (vol. 1, 1998)(1st pub. 1924).
25. See Brunt, *supra* note 20, at 264.
26. See also *Dig.48.8.1. pr.* The *Lex Cornelia* was the name given to a series of laws passed in 82 B.C. by the Roman general Sulla; the penalty described in the *Lex* for murderers was, as one might expect by this point, death.
27. See also Brunt, *supra* note 20, at 262-63.
28. *Id.* at 268-69.

The Wild West Down Under: Comparing American and Australian Expressions of Gun Enthusiasm

Abigail Kohn

This Article reports the results of a comparative ethnographic study of self-professed gun enthusiasts living in the San Francisco Bay area during 1997-1998, and in Sydney, Australia, during 2002-2003. Data consisted of participant observation at shooting ranges and shooting competitions, and semi-structured interviews with male and female sport shooters in both geographic areas. While shooters from both the U.S. and Australia professed a pleasure in guns and shooting, and engaged in similar types of shooting sports, the gun as a symbol of American freedom and individualism does not translate "Down Under." Whereas American shooters perceive gun ownership to be a firm part of their identities as Americans, symbolizing self-reliant individualism, Australian shooters perceive guns simply as sporting equipment. They do not overtly link guns to identity or Australian citizenship. While Australian shooters are skeptical of the efficacy of gun control measures, they are largely comfortable with the idea that guns should be tightly regulated by government. Implications for gun control in both nations are discussed.

Abigail Kohn has an A.B. in Folklore and Mythology from Harvard University, an M. Phil. in Criminology from Cambridge University, and a Ph.D. in Medical Anthropology from the University of California, Berkeley and San Francisco. For the last several years (2001-2004), she worked as a Postdoctoral Research Fellowship at the Institute of Criminology at the University of Sydney Law School, where she conducted qualitative research on Australian gun enthusiasm and police attitudes toward gun control. Her book Shooters: Myths and Realities of America's Gun Cultures was published by Oxford University Press in May 2004.

In recent decades, America's "gun culture" has become infamous not only in the U.S., but internationally as well. A journalist in *The Scotsman* asserts in a piece entitled "American Gun Culture is an Export Nobody Wants" that "guns are the basis of much of Europe's fascination and loathing with the United States, from the Wild West to the mean streets."¹

Australia's National Coalition for Gun Control argues that the sport of practical shooting (sports governed by the International Practical Shooting Confederation) is only a "so-called sport" that epitomizes America's gun culture because it "glamorizes violence" and encourages men to engage in "violent fantasies."² But as much attention as the notion of the gun culture has received in recent years, very few commentators have bothered to define what the term actually means. When Richard Hofstadter made use of the term in his seminal 1970 article in *American Heritage*, he traced the various historical and cultural uses for guns, arguing that the United States is a gun culture because of the ways that guns have become woven into the social, cultural, and political fabric of the United States. He concludes that because of the enduring strength and power of the gun (in symbol and in fact), enacting federal gun controls will continue to be exceedingly difficult (Hofstadter 1970).

Despite Hofstadter's relatively careful discussion of the concept of a gun culture, few commentators use the term with circumspection. Rather, a definition is presumed unnecessary; what defines the gun culture is seen as self-evident: It is the gun nuts, the National Rifle Association, the crazy person in some small Midwestern town who raves on about his gun rights and then shoots his wife, or the young, inner-city gang member who conducts urban warfare with military-style assault weapons.³ The term "gun culture" has been used predominantly by critics of the culture and by people for whom "guns in America" have become a huge source of international hostility.

Yet in the last several decades, the gun culture in America has come under enormous academic scrutiny. There have been huge leaps in knowledge and understanding about gun ownership in both a historic and a contemporary context. Specifically, academics have been investigating exactly who owns guns in the U.S. and why. Research in the last several years has refined this knowledge, examining gun ownership among more specific and concentrated social groups within American society. Examples include research on gun ownership among hunters (e.g., Dizard 1994, 2003; Stange 1997), women interested in shooting sports and self defense (e.g., McCaughey 1997; Stange and Oyster 2000), predominantly white, middle-class urbanites who own guns for sport and self-defense (e.g., Kohn 2004), and

young people living in highly urban settings (Fagan and Wilkinson 1996, 1998; Sheley and Wright 1995). Criminologists have demonstrated empirically that about 75 million Americans own guns, and that the civilian gun stock currently exceeds 250 million guns (Jacobs 2002). In a population of about 290 million people, a little over one quarter of the population owns a least one gun. And most gun owners own about four. Guns are found in a little under half of all American house-holds (Wright 1995).

The statistics suggest that what has typically been called America's gun culture, often characterized as unidimensional or monolithic, is actually a complex, multi-layered phenomenon made up of smaller, diverse gun subcultures. These smaller gun sub-cultures share what could be considered the defining essence of the gun culture—an *emphasis* on guns, both literal and symbolic, as an important and meaningful object. A gun culture places enormous social, historical, and political emphasis on guns not only in a positive sense, but also a negative one (as well as every shade of gray in-between). The culture has structural manifestations pertaining to gun ownership in a variety of geographic locales: gun clubs, shooting ranges, shooting competitions, and gun shows. So many people own guns and make use of these clubs, ranges, and shows that members of the gun culture are demographically indistinguishable from the wider population (except by virtue of their gun ownership). By this definition of the gun culture, it is easy to argue not only that America has a gun culture, but America *is* a gun culture.

I. RESEARCHING AMERICA'S GUN CULTURE

Despite the fact that social scientists now know a great deal about what kinds of people own guns in the United States, very little attention has been paid to *why* those people own their guns. So while researchers have a solid understanding of the demographics of gun ownership (Kleck 1997), they lack a broader understanding of what constitutes the basis of the American fascination with firearms.

This Article is part of an effort to correct that research gap. The author undertook an ethnographic study of gun enthusiasts living in the San Francisco Bay Area. The research was classically anthropological in the sense that the primary methodological

approach was participant observation: the author visited gun ranges, gun shops, and gun shows, and participated in shooting competitions. Extensive interviews were conducted with 37 gun enthusiasts—26 men and 11 women who were predominantly white and middle class, thereby conforming to the general demographic portrait of gun owners across the United States.⁴

However, as sociologists and criminologists have pointed out (Kleck 1997), regional differences in gun ownership are an important factors in relation to how guns are owned and perceived. Thus the fact that the study was restricted to gun owners in Northern California should be noted at the outset. Gun owners, and indeed gun enthusiasts, in Southern states such as Georgia and Alabama and Midwestern states such as Wisconsin and Michigan, may have different reasons for owning guns, and may articulate their pro-gun ideology differently than Northern Californian shooters.

The difference between gun ownership and gun enthusiasm should also be noted. Gun enthusiasts were defined as gun owners who met the following criteria:

- had an interest in owning and using guns of any type,
- legally owned at least one gun,
- took pleasure in talking about guns and shooting with other gun aficionados, and
- organized regular (weekly, or in some cases monthly) activities around gun interests.

By the time the study was completed in 2000, a number of unanswered questions had been generated by the data and analysis.⁵ Two of the primary questions that arose were the extent to which gun enthusiasm is an *American* phenomenon, and whether or not gun enthusiasm has any cross-cultural relevance. Interestingly, there are very few academic contributions within the criminological literature (or any literature, for that matter) that explore these issues in depth. One of the most important is Dave Kopel's *The Samurai, The Mountie, and the Cowboy: Should American Adopt the Gun Controls of Other Democracies*, which analyzes the political history and efficacy of different gun control policies in a number of democracies across the globe. Another is Peter Squires' *Gun Culture or Gun Control:*

Firearms, Violence and Society, which compares the United States to Great Britain in terms of beliefs and attitudes toward gun ownership and gun control.

While both works are important contributions to the gun debate, the questions and answers generated by a more anthropological approach were slightly different. For example, a brief glance at NRA publications, such as *America's First Freedom* and *The American Hunter*, will demonstrate that the primary arm of the gun lobby presents its beliefs and ideological assertions as universal truths, and asserts as truism the link between guns and freedom. But to what extent are these assertions culture-bound? That is, do gun owners from other cultures also subscribe to this formulation? Do peoples from other cultures accept or reject the notion that guns are valuable for self defense? These were the questions that the American data generated, and conducting a cross-cultural analysis was determined as the best way to pursue them.

II. WHY RESEARCH GUN ENTHUSIASM IN AUSTRALIA?

Australia lends itself well to a cross-cultural comparison with the United States regarding the meaning of guns. Like the U.S., Australia is a former colony of Great Britain, and both countries experienced colonization and frontier periods that were important to their national development. In both nascent countries, colonizers dealt with indigenous populations harshly and punitively, resulting in long-term structural inequalities that are well-documented and continue into the modern register.⁶ Both Americans and Australians have greatly mythologized historical and modern-day ideologies about freedom and independence, egalitarianism, classlessness, and the right and ability to live well in their respective "lucky countries." And both the U.S. and Australia have a long history of civilian gun ownership (Kennett and Anderson 1975 and Harding 1981, respectively).

But the differences between the two nations are pronounced as well. The United States underwent a Revolutionary War, which broke ties with Great Britain and forged a new set of laws governing, amongst a great number of other things, civilian gun ownership (see Malcolm 1994). Early Americans needed guns to

forge the frontier—constant confrontation with hostile Indian forces and dangerous wildlife necessitated firearms—and the Second Amendment to the U.S. Constitution provided Americans with the belief that they had and have an entirely legal basis to own these guns. Whether or not the Second Amendment does indeed provide an actual individual right to own guns (as opposed to collective, or militia, right) is still a matter of debate within legal and popular circles in the U.S. But the Second Amendment has functionally served to provide a legal basis to arm America.

Australia, despite its bloody history with indigenous peoples and its largely agrarian roots, has not witnessed as heavy civilian armament as the U.S. Australian firearms laws controlled the civilian gun stock far more tightly both historically and contemporarily. Handguns have been tightly regulated since the 1930s (Byrne 2004), and the lack of constitutional protection for gun owners generally has meant gun control measures can be passed quickly and easily given the requisite public and political attention and support.⁷

The research in Australia was structured similarly to the American research: the author attended shooting ranges, gun clubs, and shooting competitions in the outer Sydney suburbs. All Australian gun laws were carefully followed; gun clubs were joined, safety classes taken and passed, a shooter's license obtained and two guns purchased and registered (one handgun and one shotgun). Fieldnotes were taken to document observations, activities, and conversations.

Interviews with twenty-one shooters were completed. The number was less than what was originally planned, but several factors made the original number planned a practical impossibility. Although Australian shooters living in Sydney are a dedicated group, they are relatively small in terms of numbers, and their activities in relation to their gun enthusiasm more circumscribed than their American counterparts. The leading Australian firearms researcher at the Australian Institute of Criminology finds only about 4 percent of the total Australian population owns guns, which means just over 760,000 licensed gun owners throughout the whole of Australia (Mouzos 2002).⁸ Because more gun control laws were passed in 2002 and 2003, the number may shrink further. Australian shooters in urban

areas do not tend to “hang out” at shooting ranges or gun clubs; most shooters attend ranges to practice or compete, meaning their time there is organized and somewhat controlled. These factors made unplanned, relaxed conversation with shooters a rare event, and time spent at a competition was dedicated to competition.

Interviews were conducted at shooters’ homes or in public venues, usually in the evenings after the work day finished. Of the twenty-one adults interviewed, almost all were between 40 and 65, white, and of middle to lower-middle class socioeconomic background. All of these shooters own guns for sporting purposes; no “strict collectors” or hunters were interviewed. All interviewees were self-described “sport shooters.”

To balance the interviewees for the purposes of cross-cultural comparison, analysis of the American shooters was restricted to those who described themselves as sport shooters. Doing so meant that the number of American interviewees was also twenty one: men and women who are actively engaged in the same kinds of sporting events as Australian shooters. These sporting events include Sport Pistol or Olympic-style shooting matches, IPSC (International Practical Shooting Confederation), and “cowboy action shooting,” which is largely governed in the U.S. by the Single Action Shooting Society (SASS).

All of these shooting sports are international and have standardized rules and regulations, which further ensured that the American and Australian samples were participating in relatively similar activities related to their respective gun enthusiasm. As it happened, the sport most popular with both the American and Australian shooters interviewed for this research was “cowboy action shooting” (called “western action shooting” in Australia).

III. THE WILD WEST IN THE SUBURBS

Cowboy action shooting is a recreational shooting sport in which shooters don “Old West” cowboy costumes and engage in competitive target shooting using antique replica firearms, which shoot live ammunition. Cowboy action shooters use myths and narratives of “Wild West” America and images from

Hollywood westerns to self-consciously create identities modeled on fictionalized and “real” characters of the Wild West. This shooting sport is very popular not only in the U.S. (the home of the mythic cowboy) but also in Australia, where Australian “cowboys” are as eager to pretend they are re-living the Wild West as much as American shooters are.

Referring to the same sport as “western action shooting,” Australian cowboy shooters largely ignore Australia’s own western frontier history in favor of mimicking America’s mythologized western past. Thus, the Australian version of the sport is very similar to the American version. Australian shooters are able to easily compete in the largest and most difficult of America’s cowboy action shooting competitions, including End of Trail, the “Super Bowl” of cowboy action shoots. Australian shooters often do quite well at American events like End of Trail, to their great pride and pleasure. Again, because international rules and regulations govern the sport, shooters of all nationalities are required to maintain standard safety rules and behaviors regarding their gun usage.

But while the rules of shooting competitions may be standard, what guns and shooting *means* to shooters is not. What guns mean to their owners varies from culture to culture, and is linked to concepts and beliefs that have resonance in the wider culture in which gun ownership is situated and contextualized. Thus when researching gun enthusiasm in social and cultural context, the relevant questions to ask are, for example, “What do guns mean to Americans and Australians?”; “Do Americans and Australians like guns for the same reasons?”; and, “If guns mean different things in these two cultures and are used for different purposes, what are the implications for gun control in either culture?”

So while guns are in fact used for sporting purposes in both America and Australia, guns in symbol and fact have profoundly different meanings in these two different cultures. In both America and Australia, however, within wider cultural, social, and political arenas than those populated by gun enthusiasts, guns are powerfully linked symbolically and literally to chaos, violence, and killing.⁹

What the link means is that in both the U.S. and Australia, shooters are confronted by another culture that finds their

chosen interest in guns contentious, distasteful, even morally repugnant. Although gun enthusiasm is a relatively different phenomenon in America and Australia, and guns do mean different things in these two cultures, shooters in both the U.S. and Australia must rely on culturally-meaningful moral discourse to legitimate their interest of guns. The persuasiveness of this culturally-meaningful moral discourse differs in both cultures, and this point is one of the reasons for the differing impact of the “gun lobbies” in either culture.

A. The New American Cowboys

Most of the American shooters owned guns for both sport and defensive purposes. They described their pleasure in shooting sports and gun ownership by emphasizing the skills needed and the challenge shooting presents. However, it is immediately apparent when speaking to American shooters that they find it impossible to separate their gun ownership, even their interest in sport shooting, from a particular moral discourse around self, home, family, and national identity. Several specific points can be highlighted that best summarize how these shooters think and feel about their guns.

- *For shooters in Northern California, gun ownership is linked to individual and national identity. Guns signify core American values like freedom and individualism.*

Jonathan, a white university administrator in his mid 40s who emigrated to the US as a young child, is fairly typical of the American gun enthusiasts interviewed for the study. He describes his gun enthusiasm this way:

Jonathan: Why do I like guns? To me it's just like—because I can shoot really well with them, I just have this affinity for them. I love to read about them. I like the history that goes with guns, like all the history of just—when I go out and shoot it relaxes me, very meditative and such. Owning a gun, it kind of means that you are determining your own fate, like those stupid—I don't call 911. It really is true. You aren't dialing 911, you handle it yourself. And besides, if you're

gonna wait for those police to show up, they never show up in time anyway. So it's like, you don't have to rely on the police, you know what I mean? You have to know when to use them and what you're gonna use them for and such, and since so many people out there have them already, you kind of feel like—like when I do security work and stuff, it's like I feel better having one.

AK: [You] feel safer?

Jonathan: It just makes me feel like we don't have to have anyone get hurt or anything by people that are showing off and just taking it out and everything. It's just like, if someone comes in to hold up the place, it's one thing, you let them have what they want. But if they hold up and it looks like they're gonna kill everyone in the place, at least you can do something....

Note that even as Jonathan describes his pleasure in shooting and his enjoyment in learning about guns on an intellectual level, he also moves directly into describing how guns confer self-protection. He feels guns provide their owners with the ability to take care of themselves. American shooters spoke often of literal and symbolic independence.

American shooters also spoke of how they are drawn to guns because guns are powerful, exciting, dangerous, and deadly. But conversely, guns are also about safety, comfort, and the knowledge of how to keep safe by mastering something deadly. Recognizing that paradox is an important part of being a shooter; shooters are very conscious that context is what usually determines what guns can mean.

But one of the most important aspects of being an American shooter, particularly in an geographic area that frowns on such activity (San Francisco is notoriously anti-gun), is working to preserve a particular vision of American mythic history, a history that recognizes the extent to which guns helped colonial and frontier Americans forge a nation and maintain social and economic (and thus moral) order. Paula, a white shooting range manager and former police officer in her 40s, put it this way:

Why did Independence Day come about? What caused the Independence Day? I think it may have had something to do with guns. I just go back to—that's what made America. America stands for one thing, it's supposed to be freedom, but that's fallin' apart because people aren't going back into history and they're just being blinded. They figure, well, that's old stuff. It carries on all through, and they're not doin' that [respecting history].

Bob, a white shooting instructor in his late 40s, weaves into this vision the numerous pop culture icons that have helped solidify guns with mythic history and moral order in historic and contemporary American culture.

Why do...[I] like guns? I think we all choose an endeavor. We want to endeavor to do something, to be something, be...[great] in a field, whatever that field may be....Some people, when they grow up, they grow up watching Roy and Gene and Hoppy and all the cowboys, they want to emulate their heroes. Roy Rogers was our hero for many years. So was Hopalong Cassidy and Gene Autrey, and many others. And we watched these heroes do good deeds. But they're wearin' the gun. And many times, the bad guy's coming out, they pull the gun, they don't have to shoot it, they pull it, and the bad guy stops. Our heroes use the gun to defend themselves. Or to stop the bad guy....We wanted to be Roy and Gene and Hoppy and those guys. It's something that's come through our culture. The gun has been with us, well, forever. It's our culture.

Thus being a shooter is about subscribing to a particular vision of American history, and subscribing to a particular set of contemporary ideological positions revolving around citizenship, public safety, and moral order in American society. In short, gun ownership signifies being a "good American." Thus it is not surprising that these shooters feel so frustrated and distrustful about gun control legislation, which they feel attacks their sense of patriotism and civic pride as law-abiding Americans. This

concept leads to the second point about the American shooters interviewed:

- *American shooters are hostile to gun control because just as guns represent freedom, independence—the best of American core values—gun control represents trampling on those core values. Gun control presents political oppression and the disintegration of moral order in American society.*

American shooters spoke often about the extent to which gun control measures are often a way for the government to penalize or even criminalize certain populations, often the poor or already disenfranchised. Jonathan, who I mentioned earlier, believes that banning guns is a way for the government to deny rights to the poor, particularly the right to self-defense. He stated:

...Owning a gun means ... autonomy, self-determination It always worries me when the elitist power structure, all the rich people, don't like you to have guns, because they want their military to have them, and they want their police to have them. The people that buy and own the police, like in...[wealthy neighborhoods], ...I've seen what it's like to be on the side that doesn't have the guns, and what [the elite] can get away with....No. I think anyone...[should be able to own guns]....

Because shooters view guns to have been an integral part of securing a political and moral victory against political oppression historically, continuing this practice today is understood a constant reminder of how early Americans were willing to defend themselves and their country. Some shooters asserted that the anti-gun stance is part and parcel with a lack of patriotism, a lack of respect for America as a nation. Harold, a white gun store owner in his late 50s, touched on this point when he discusses his willingness to serve in the military.

...But it is, generation after generation we lose more and more freedoms. And nobody today knows what

America means. I mean, I'd go to war again today as old as I am if they asked me. For the country, I'd do it in a heartbeat. I'll bet you could take ten people out there and you'd only find maybe two or three that would be willing to go. And this is what's hurting the country.

At its most basic, gun enthusiasm is a way for these individuals to articulate what are more widely considered core American values—rugged individualism, self-reliance, freedom, and equality. Guns both embody and maintain these traditional American values. Shooters subscribed to a combination of beliefs that are sometimes characterized as “pro-gun ideology,” which along with gun enthusiasm can indicate a very particular vision of social and moral order in American society. Because shooters perceive of themselves as “the good guys” (that is, they care about maintaining law and order, and they believe in respecting the law, as well as, what they believe it means to be American), they believe in their right to arm themselves to maintain the sanctity of their lives and their homes. Thus by situating the currently stigmatized activity of recreational shooting in a mythologized and glorified American past, shooters work to legitimate their modern day interest in, and enthusiasm for, firearms.

B. The Wild West Down Under

Interestingly, historically Americans and Australians may have originally owned and used guns for fairly similar reasons, at least insofar as guns are useful tools for settling a vast and rough frontier, and eventually ensuring its agricultural richness. As Richard Harding (1981) has pointed out in his seminal work on Australian gun ownership, many Australians have owned guns because they were/are primary producers, and they have needed guns to cull wildlife and maintain control of their stock, as well as protect themselves from snakes and other dangerous vermin.

As the gun debate that raged in Australia subsequent to the Port Arthur shooting in 1996 demonstrates, Australian sport shooters can be a vocal and articulate minority (Chapman 1998). Australian shooters' argument that they should be allowed own the guns they want because they should not be held accountable for Australia's gun crime problem, those claims are met with skepticism and even disapproval by wider Australian society. For

many non-gun owning Australians, like non-gun owning Americans, the gun is a contentious object and symbol, denoting danger, violence, and the breakdown of community safety and communitarian values. How do Australian shooters counter that? What do they think about their own gun ownership?

- *For Australian gun owners living in Sydney, gun ownership means being invested in sport shooting. A gun enthusiast is a shooting sports enthusiast.*

All of the Australians interviewed, as well as those who were willing to participate in the ethnographic study (to speak with the author informally during matches and at shooting ranges), described their interest in guns as an interest in shooting sports. For these Australians, at the most basic level, guns are pieces of sporting equipment. When Australian sport shooters were asked if they were “gun enthusiasts,” a number of them said rather forcefully, “No.” They clarified that they were shooting enthusiasts, and would thus concede to an interview, but in terms of the guns themselves, they had little interest in that kind of hardware. For example, Ann, a white office administrator in her 40’s, opened the interview in the following way:

AK: Do you consider yourself a gun enthusiast?

Ann: No.

AK: No, ... but how about a shooting enthusiast?...

Ann: Yes, I like the challenge of shooting. ... [But] I’m not really interested in the guns, as such.

AK: OK, but would you consider yourself a shooting enthusiast?

Ann: Yes.

AK: OK, and so how would you define a shooting enthusiast?

Ann: Someone who enjoys shooting.

Jerry, an barrister in his early 60’s who enjoys western action shooting, was willing to concede that he was a gun enthusiast, one who had several handguns, rifles, and shotguns. He defined a gun enthusiast as “someone who uses guns for sporting

purposes, primarily.” When he was asked about the secondary purpose for his gun ownership, he answered:

I have some fascination in them as pieces of machinery and how they work. I also have some interest in them as artworks because ...because some guns are in fact art—particularly older ones and my interest probably today lies mostly with those that come from the 19th century.

Jerry went on to say that he learned about guns from his father, who was an antiques dealer. And when Jerry’s own son was about 12 and was showing an interest in guns, Jerry introduced him to guns by taking him down to the local gun club. He described the scenario this way:

So I said to [my son], ‘Well if you’re interested in guns we’ll get you taught to use guns properly,’ and then...it was necessary for both of us to join the pistol club. He was taught to use pistols and so was I and at the end of 12 months he had lost all interest in the things and I was more or less hooked.

Australian shooters talked extensively about why shooting sports are enjoyable. Gayle, a white office worker in her 40s whose whole family (her husband and two teenaged daughters) are involved in shooting sports, put it this way:

Ah I just like guns...as a pleasure, really. Get on a range, you’re totally focused on what you’re doing, block everything else out and hit a target, or attempt to hit a target...It challenges—it’s challenging yourself too.

It is initially tempting simply to take Australian shooters at face value. After all, many forms of shooting are sports; shooting is a recognized Olympic competition, and IPSC and even western action shooting have international rules and standards; and national and international matches in these shooting sports draw shooters from all around the world. Shooters from Australia are a particularly competitive group, many of them ranking as some of the top achievers in the world in their chosen

sporting sport. And basically, when Australians talk sport, *any* sport, they take themselves and that sport very seriously.

Indeed, as social commentators and academics have long pointed out, sport has an enormously important place in Australian society (see Adair and Vamplew 1997, and Cashman 1995 for but two examples). Australians watch sport, talk about it, participate in sport in amateur and professional capacities, and continually hold up sport and sporting heroes as glorious and heroic examples of the best that Australian society has to offer. Sport is an institution within Australian society that has been both historically and contemporarily an arena in which particular core cultural values in Australian society are articulated and celebrated, and Australian athletes are believed to embody social and cultural ideals of Australian society (Adair and Vamplew 1997).

Not surprisingly, Australian sport shooters are no different in this regard. They articulated during interviews that shooting sports promote skill and focus, and provide a healthy relaxation for gun club members. Shooters enjoy spending relaxation time with other like-minded athletes. Many Australian shooters spoke of how much they enjoying hanging out with their mates at the shooting ranges, asserting that shooting sports attract “good, like-minded people” who share their enthusiasm for these sports.

Therefore, if one understands Australian gun enthusiasm as shooting sports enthusiasm, and an Australian gun enthusiast as a sport shooting enthusiast, one could argue that Australian gun enthusiasts are in fact harking to a particular moral discourse that legitimizes their interest in guns. But unlike American gun enthusiasts, who directly link gun ownership to American mythic history, their identity as Americans, and a vision of freedom, individualism, and self defense, Australian gun enthusiasts draw linkages that are less direct and concrete. For example, Barry, a book-binder in his early 50s who in very involved in western action shooting, put this interest this way:

A gun enthusiast [is]...someone who's read about guns, someone who's ... participated in the—in the gun sport, has a respect for them, treats them with safety, goes through all the proper channels to have the guns

properly stored, ammunition so forth, and just upholds the...code of the gun law.

What Barry in effect suggests is that a gun enthusiast is the epitome of a good sportsman—interested in the sport, invested in the sporting community—and he excels at his sport while showing respect for the equipment. Ian, a local gun club official and high-ranking competitor in his 30's put it this way:

I like to use them [guns] and use them properly in the sport. I look after and maintain them, and pretty much that's about it. That's what I class as an enthusiast. Looks after them, keeps them running properly...to be an enthusiast it's not just a case of going out to the range and shooting, we're involved in the sport in a whole as far as junior development, teaching other shooters to shoot, teaching them the safety side of firearms. Enthusiasm's not just about shooting the gun; it's the whole sport, really. It's being involved; it's being involved in everything from the administration side of holding competitions to—to developing the mind of everybody who wants to be involved in it.

One of the most important differences between American and Australian shooters relates to the issue of defensive gun use. Whereas all but one of the American shooters said yes, they kept a gun for self or home protection, *none* of the Australian shooters said they kept a gun for self or home protection.¹⁰ While some of the Australians may in fact keep a gun for self defense (and were therefore being untruthful in the interview), all interviewees articulated an awareness that keeping a gun for self defense is illegal in New South Wales.¹¹ Most of these shooters, however, were apparently very comfortable with that fact.

In fact, several shooters mentioned that they would be concerned if they themselves felt the need to keep a gun for self defense, or if other people around them did. Far from thinking that the U.S. was a utopia of gun rights where the fact that gun control does little to prevent most law-abiding people from owning guns quickly and easily, the Australians interviewed thought the U.S. situation was dangerous and problematic. They were *not* interested in seeing Australia become more like America

in terms of widespread gun ownership for defensive purposes. Some also believed that widespread gun ownership (presumably by virtue of “lax” gun control laws) meant that controlling and/or reducing the gun stock at this point would be a practical impossibility. In response to the question about what he thought about the gun situation in the U.S., Ian answered:

What can you say? It’s pretty much [expletive]... There’s so many guns out there and there’s nothing they can do about it, and to try and regulate something like that now, well, is just...you know, stupid.

Ian also expressed attitudes that were very typical of the Australian shooters interviewed when the issue of gun control was discussed. He agreed that some gun control laws are ineffectual, even nonsensical, but in general, gun control is a legitimate (and, in fact, important) way to maintain control over the gun stock in Australia. This leads to the next point about Australian shooters. In general,

- *Australian shooters indicated that while some gun control policies are useless and stupid, gun control on the whole is a legitimate means by which the government can control the potential violence that guns can do.*

A typical response to the question about the status of current gun laws came from Andrew, a long-time shooter and gun dealer in his late 50’s who said initially that the gun laws are “pretty good.” He mentioned that anyone who joins a gun club gets checked out, and the restrictions and the paperwork are good in the sense they make sure shooters really want to go through the hassle to obtain a gun. He said, “I stick to the rules and the more you do it, the easier it becomes.” But upon further reflection, he actually corrected himself, saying,

But the gun laws and the ownership laws ... actually I’ll add to that, the laws are a crock...because people that commit violent crimes with firearms do not get the penalties that they warrant. That’s—that’s where the laws are wrong. And so many times they let murderers

out and they do the same thing again.

Other shooters echoed these sentiments in a milder way, stating that gun laws are for “honest people only.” But even while they were arguing that gun laws are for the law-abiding, and many of the current laws are simply silly, *none* of the shooters interviewed took the position that guns should not be controlled, or the government had no authority to restrict the Australian populace from owning guns.

They did not question the basic premise that gun control is a legitimate way for government to ensure that shooters are actively engaged in a legitimate, high-regulated, and well-structured sport. In fact, the gun controls that shooters are forced to contend with are ostensibly designed to do just that: for example, keeping guns registered and shooters licensed, being forced to join a gun club and complete a requisite amount of shoots each year, and waiting a certain length of time before purchasing a first gun after being granted a shooting license. None of the shooters interviewed seemed to believe that these laws were not legitimate means to curbing who owns guns and ensuring that the interest in guns was a sporting one.

So is this tactic of legitimating gun enthusiasm through a vision of good sportsmanship effective? In one sense, yes—Australian shooters are able to argue in public arenas that they should be allowed to engage in their chosen sport, and as long as they follow the law, their sporting interest should not be jeopardized. The argument does have sway with politicians and segments of the public.¹²

However, Prime Minister John Howard’s efforts to promote tougher federal gun control laws in the wake of a high-profile shooting at Monash University (near Melbourne) in 2002 has meant that Australian shooters are forced to contend with increasingly stringent laws governing what kinds of sporting guns are available, and increasing costs for maintaining their sport—such as increased licensing and registration fees, new kinds of registration fees.¹³ Australian shooters disparaged the new firearms laws as relatively useless and problematic,¹⁴ but the public seems increasingly unsympathetic.

What so many sport shooters in Australia find disturbing and disheartening is that their sporting interest (which they consider such a social, positive, and enriching aspect of their

lives) is constantly conflated with gun violence—as if gun violence and killing were “natural” extensions of being an exceptionally talented sport shooter. This is in part because some of Australia’s killers have been licensed sport shooters (as in the case with the Monash shooting). But it is also because making the direct link between sport shooters and gun enthusiasts and gun massacres has been a tactic used by gun control advocates in Australia to advocate stronger gun controls.¹⁵

Thus there are defensive and angry reactions by shooters. But it is important to emphasize that while shooters believe some laws stupid and do little to curb gun crime, most actually subscribe to the notion that gun control as a concept can be effective in preventing the proliferation of guns (and presumably, therefore, gun violence) throughout society.

However, Australian shooters’ inability to rely on a moral discourse around saving lives with guns (as so often employed by American shooters) has meant that Australian shooters are arguing that they are good sportsmen who find their sporting equipment used in dangerous crimes or violent killings. While shooting sports may signify core values for Australians—that is, egalitarianism, skill and professionalism, physical prowess, community cohesion and mateship—relying on the moral discourse of sport has not fully legitimated the status of guns, or shooting sports for that matter, in Australian society.

CONCLUSIONS

Clearly guns have different meanings in the U.S. and Australia. For the Americans interviewed, guns signify the American Creed: freedom, independence, and the American way. Guns are an integral part of American mythic history and popular culture, and thus American gun enthusiasts are preserving a particular vision of the American past, one in which good guys used their guns to defeat the British and forge a nation, protecting their families and communities against hostile forces and a harsh wilderness. American shooters believe that throughout America’s history, guns have been owned by American heroes and patriots, and thus gun ownership is integral to maintaining an identity as “good Americans.” Being a gun enthusiast signifies upholding the American Creed. Even when

these shooters are describing guns used for sport shooting, they link guns to protection and defense. Defensive gun ownership is an inherent part of pro-gun ideology for these American shooters.

In contrast, the Australians interviewed view guns as inseparable from shooting sports. Shooting is a sport that promotes the values that all healthy sport in Australian society promotes: relaxation, focus, skill and professionalism, community togetherness, and raising the profile of Australia for the good of all Australians. But perhaps most importantly, Australian shooters believe that attending to gun laws, *respecting* the concept of gun laws, is a crucial part of being a good shooter; this is the essence of civic duty that Australian shooters conflate with being a good Australian. A good shooter is one who gets involved in safety, in teaching, in making sure that people treat the sport with the respect it deserves.

In an article entitled “Conserving Our Sport” in *Australian Shooter* magazine, shooter Geoff Smith (2003) puts it well. He writes that a good shooter is one who contributes to the community of “like-minded” persons, and engages in friendly competition, emphasizing safety, plus “special skills and knowledge” (p. 16). But perhaps most importantly, good shooters “should appreciate that no private citizen in this country is permitted to own weapons, including firearms, specifically for personal protection...Whether we agree with this or not is irrelevant; it is the law” (p. 16).

Finally, while the gun lobby in the United States has worked tirelessly to promote the ideas that gun rights are human rights, and that the gun can be a universal symbol of freedom, national identity and national pride, in fact guns *do not* symbolize these things for everyone. Australian shooters make this point clear. In Australia, gun enthusiasm is a social practice is circumscribed by a discourse of good sportsmanship, a discourse that is highly socially scripted. Guns do not directly signify identity for Australian shooters, except insofar as shooting is their chosen sport and sport is important to them, as it is to many Australians. What that means for Australian shooters is that this discourse has in effect served to *bind* gun enthusiasm, both literally and figuratively, restricting its usefulness in the public, political arena. There is a limit to how far Australian shooters can push the discourse of shooting sports as indicative of good

Australian character, and how effectively it can really serve their lobbying effort to preserve their sport.

So while Australian shooters here may feel frustration and even anger over how they have to “take it on the chin” when the government bows to pressure groups and further restricts sporting endeavors under the guise of public safety and crime control, Australian shooters view the restrictions as a ridiculous, even foolish, burden they must endure in order to continue with their sport. And it means they will have to figure out how to pursue their sport under these new restrictions, or take on another sport. They will, however, follow the law.

They do not feel like they have lost their gun rights because they largely recognize that they never had any gun rights. Gun ownership in Australia is a privilege, not a right. Shooters do not feel like they can take on the government over the issue (though they may have felt that way before the Port Arthur shooting), not only because they know they will lose, but because largely think that working with the government, and asking the government to consider their thoughts and feelings on the issue, is the most effective political route for them to take. While this may be a thoughtful and considered stance arrived at after considered their politically disempowered status, the stance also reflects the largely polite and civic-minded Australian way. Whether or not the attitude will allow for the continuance of Australian sport shooting is a matter only time will tell.

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ENDNOTES

1. Tim Cornwell, "American Gun Culture is an Export Nobody Wants," *The Scotsman*, January 3, 2003, p. 12.
2. Penny Thow, "Call for ban on combat shooting," *Hobart-Mercury* (Australia), November 4, 2002, p. 15.
3. Editorials and opinion pieces employing hostile descriptions of gun owners and members of the gun culture are numerous. See, for examples, Denis Horgan, "Forget Gun Control: Ban Them Altogether," *Hartford Courant* (May 14, 1999): A2; Editorial, "NRA Shoots Itself in Both Feet," *New York Daily News* (May 1, 1999), 20; Robert Scheer, "Pete Wilson's Twisted Logic on Handguns," *Los Angeles Times* (September 30, 1997), B7; Editorial, "Mothers Know Best," *New York Daily News* (May 13, 2000), 16; Michael Kramer, "Pataki and Guns: The DNA Solution," *New York Daily News* (March 19, 2000), 49; Amy Pagnozzi, "Gun-Control Plan is an Empty Shell," *Hartford Courant* (April 28, 1999), A12.
4. To protect the confidentiality of the individuals I met and interviewed, I use pseudonyms for all of the people and places I describe.
5. This project began as a dissertation project. See Kohn 2000.
6. There is a vast literature documenting the histories of both the United States and Australia. Some of the best works on American history and culture are Daniel J. Boorstein, *The Americans: The Colonial Experience*, New York: Vintage Books, 1958; Patricia Nelson Limerick, *The Legacy of Conquest: The Unbroken Past of the American West*, New York: Norton, 1987; and Richard White, *It's Your Misfortune and None of My*

Omn: *A New History of the American West*, Norman: University of Oklahoma Press, 1991. Two well-regarded works on Australian history and culture include Robert Hughes, *The Fatal Shore: The epic of Australia's founding*, New York: Alfred A. Knopf, 1987; and Stuart Macintyre, *A Concise History of Australia*, Cambridge: Cambridge University Press, 2000. A book that explicitly compares these two nations in terms of experience of history and identity is Lynette P. Spillman, *Nation and Commemoration: Creating National Identities in the United States and Australia*, Cambridge: Cambridge University Press, 1997.

7. For a discussion (albeit a thoroughly ideological one) of the passing of the 1997 gun control legislation in Australia in the wake of the Port Arthur shooting in Tasmania, see Simon Chapman's *Over Our Dead Bodies*.

8. These are official statistics that are produced in conjunction with the Firearms Registry, the government body that oversees the licensing and registration of guns in each state. The total numbers of both guns and gun owners may be vastly underestimated, however, because it is highly likely that there are Australian gun owners who have not licensed themselves or registered their guns, particularly as the gun laws become more and more restrictive in Australia.

9. The Australian media has promoted the idea that gun ownership is a dangerous pastime, and Australians have much to fear from their own gun stock. See Mark Buttler, "Guns Rush," *Herald-Sun*, 8 January 2003, pp. 1, 4; and Peter Lalor and Vanessa McCausland, "High caliber society," *Daily Telegraph*, 11 January 2003, p. 21. For an example of the extent to which any form of gun ownership is equated with violence, see the newspaper opinion piece, "States deserve blast," *The Sun-Herald*, 1 December 2002, p. 20, and the website for Gun Control Australia at <<http://www.guncontrol.org.au/>>. Website viewed 14 April 2004.

10. However, while she answered "No," to the question as to whether she kept a gun for self or home defense, one female shooter did show me that she kept a shotgun near her bed, which she admitted off tape was for home protection. Her answer and the subsequent information she gave me that belied her answer does cast doubt over the veracity of other shooters' answers.

11. The New South Wales legislation as it currently stands (as of 2004) prohibits the keeping of a firearm solely for the purposes of self defense. According to state law, potential gun owners must be able to demonstrate a "genuine need" for owning a firearm, and while being a sport shooter does suffice, needing a firearm for self defense does not.

12. See Phillip Hudson, "Bracks, PM do gun deal," *The Age*, 7 December 2002, p. 1.

13. See Emma McDonald, "Handgun ban enforced with jail term," *Canberra Times*, 7 December 2002, p. 1; and Rick Wallace, "Guns plan fires up," *Herald-Sun*, 7 December 2002, p. 2. These articles do not address the increased fees for gun owners, but the author is familiar with them because she surrendered one of her firearms during the buyback and received literature describing the increased fees for maintaining the registration for certain types of firearms.

14. See Amanda Banks, "Lobby aims at gun curb," *The West Australian*, 3 February 2003; and Sebastian Ziccone, "Ban puts governments in our sights," *Herald-Sun*, 11 December 2002, p. 21.

15. See the website for Gun Control Australia at <<http://www.guncontrol.org.au/>>. Website viewed 14 April 2004.

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