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DO THE NEW ZEALAND FIREARM CONTROL LAWS IMPACT UPON FIREARM MISUSE, AND UPON FIREARM USE?

By C. Forsyth*

ABSTRACT

Firearm controls tend to be viewed as forming impediments to legitimate arms ownership, and to facilitate violent offending, although they are normally intended to control or even reduce the misuse of firearms.

In New Zealand, long-standing shoulder firearm registration was abolished and was replaced with shooter licensing in the early 1980s. Despite social upheavals later in that decade (in the form of massive unemployment, resulting from structural reforms to the New Zealand economy), violent offending with firearms remained largely static, in that the criminal misuse, as a proportion of overall criminal offending, was generally unchanged. This is perhaps not surprising in view of the fact that criminals, by definition, are beyond the law. Some research has been undertaken to enumerate the firearms held by criminals but these are inferential, not definite quantifications.

Changes in legislation have, however, led to significant reductions in unintentional shooting incidents, reducing these to approximately a third of rates previously experienced by New Zealand society. Rates for intentional self-harm (suicidal firearm misuse) have approximately halved during the same period, although the overall suicide rate for all methods rose sharply during the 1990s and then declined as other social measures took effect.

Law abiding firearm users, favouring shooter licensing, dwindled in number after amending legislation was enacted in 1992. This resulted from a spate of firearm-armed multiple homicides around the world. Arms licence applications have since regained their earlier levels as the 1990s progressed into the millennium. Although impediments to lawful ownership might be expected to curb interest in legitimate recreational shooting pursuits, only one organisation shows signs of growth, this being attributable to its internal management policies.

However, with approximately 10% of New Zealand recreational firearm users choosing to belong to clubs relevant to their interest, sales of related goods

offer the only means of inferring that legitimate recreational shooting activities continue to attract adherents to the shooting sports. It has not been possible to quantify the number of unlicensed arms users, nor to identify the number of firearms in their possession.

OUTLINE OF THIS PAPER

1. Introduction
2. About New Zealand
3. Law-abiding New Zealand firearm users
4. Unintentional shooting incidents ("accidents")
5. Firearm-armed violent offending
6. Intentional self-harm shootings in New Zealand
7. Discussions
8. Conclusions

INTRODUCTION

Many people have opined that revisions to firearm control laws will achieve whatever the nebulous, undefined entity "society" desires, usually a reduction in violence involving firearms. Their advocacy has ranged from considered calls for community-supported controls, to total bans on the private ownership of firearms.

New Zealand underwent a significant change in her firearm control laws in the early 1980s, when individual long-arm registration was abandoned, and individual shooter licensing was introduced.

The effect of these changes may be evaluated in terms of their impacts upon firearm misuse, and their implications upon law-abiding arms users.

This article will outline the misuse of firearms in the modes of unintentional (formerly referred to as "accidental"), will then discuss the involvement of firearms in violent (criminal) offending, before evaluating the incidence of firearms in intentional self-harm, (suicides and attempted suicides). It will examine the number of offences reported, as well as the rates per 100,000 of the overall mean population in any one year. The rates of firearm misuse in intentional shootings of self ("suicide by firearm") was expressed as the rate per 100,000 population over 15 years of age until 1986 and

from that year on, used the entire population, of all age-groups, for this derivation.

The impact of firearm controls from the epoch-making Act of 1983 will be briefly described,

About New Zealand

New Zealand has a population of 4.3 million people and over a million firearms. An average of 10,000 firearms are imported annually into New Zealand, and of these, approximately 5,000 are non-cartridge-firing, being powered by gas, air or spring.

No of police per population

Deaths from all causes in NZ annually approximate 27,000 (630 per 100,000 population) (Statistics New Zealand, 2009). Some 1,200 people annually (33.3 per 100,000) fall victim to death by accidents, or violence in New Zealand. This is approximately 4.4% of all fatalities (Forsyth, 2006).

Overall firearm casualties

Casualties (deaths and injury) arising from firearm misuse is not common in New Zealand. A question that is commonly asked is about "the number of deaths from guns". Quite apart from the looseness of the wording, it is not as easy to answer as at first might seem. Deaths from the misuses of firearms, result from unintentional shooting incidents, (formerly known as "accidents"), crime and suicides. These are well documented, and apart from the occasional mis-recording of a suicidal death as a mishap or accident, there is little error from the statistical data collected over the past three decades.

It is in the non-fatal portion of the casualties where greater doubts emerge. Accident Compensation Corporation (ACC) figures suggest a far larger number of shooting accident victims than those known to the Police, by a factor of five or so. This is in accord with earlier findings, when the present author compared figures from the ACC with those of the Police in the early 1980s. The results of a recent compilation are shown in Table 1A (Forsyth, 2011).

Table 1A: Total firearm casualties in New Zealand, 2000 - 2006

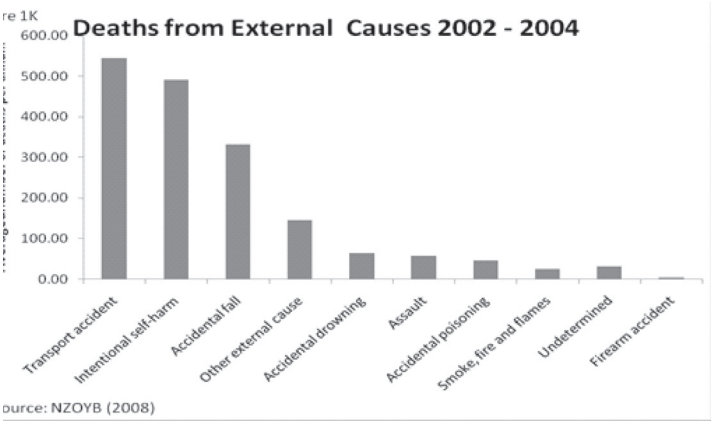
Casualty source	*Total injury*	*Total fatality*	*Total casualty*
From unintentional shooting (1)	Approx 60 p.a.	Approx 2.2 p.a.	Approx 62.2 p.a.
From crime	Approx 120 p.a.	Approx 15 p.a.	Approx 135 p.a.
From suicide (2)	Approx 25 p.a.	Approx 50 p.a.	Approx 75 p.a.
TOTAL	Approx 205 p.a.	Approx 68 p.a.	**Approx 273 p.a.**

Notes:

(1) Invoking ACC claim numbers which are approximately 4 to 6 times greater than those obtained from Police and Mountain Safety Council sources. ACC are unwilling to release the data at present but these figures parallel those found from earlier research (Forsyth, 1985) and similar dichotomies found in road traffic and in industrial accidents reported. Reported hospital admissions support these numbers too, although they also contain some imprecision.

(2) There are limitations on the data for non-fatal attempts at suicide. Those shown are inferred from earlier research (Department of Health, 1983; Ministry of Health, 2006a; 2008).

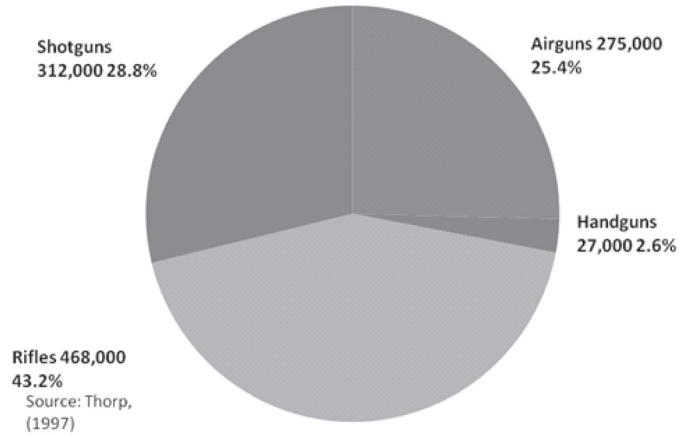
Trotter, Russell, Langley and Casey, (2005) show firearms in last position (of fourteen) on the "injury pyramid" for "Unintentional Injuries by Mechanism, 2000-2001". They note that for every fatality involving firearms, there are a further 19 involving moderate injuries from the same cause. This equates to some 114 casualties arising from firearm accidents in 2000- 2001. This differs considerably from the figures supplied in Table 1B because of under-reporting. The equivalent diagram for fatalities, figure 1K (below), for a three-year period, reinforces this impression, but for 10 causes of fatality.



Firearm pool in New Zealand

Shown graphically below in Figure 1E2, and derived from the findings of the enquiry headed by Sir Thomas Thorp, this is perhaps the best representation of the current proportion and population of firearms imported into New Zealand. The tabulated data are in Table 1E2, in Appendix 1C.

Figure 1E2 **Composition of New Zealand Firearm Pool**



Source: Thorp, (1997)

Thorp (1997) noted that New Zealand lies second only to Finland in numbers of firearms per 1,000 persons, with 308.90 per 1,000. (Canada had 241.48, Australia 195.90). He also noted that the observed homicide rate for New Zealand was 0.22 per 100,000 persons; for Australia, 0.56; and Canada, 0.60; while the accidental death rates were 0.29, 0.11 and 0.13 respectively (ibid)(p. 108). These will both be discussed later.

Changes in New Zealand firearm control legislation

Historically, firearm control legislation in New Zealand was directed at ensuring the sale of firearms and ammunition to the native Mäori population was restricted (Innes, 1998). The key legislation of the twentieth century was the Arms Act (1920) which remained until 1956. It provided for sporting shoulder arm registration which, with the implementation of the Arms Act (1983), substituted registration with lifetime owner-licensing. The owner had to satisfy "fit and proper" person criteria, identified by an

amalgam of personal interview, two referees, (one a family member), and meeting secure storage requirements.

Endorsed licences were required for those who wished to own handguns, and these, and "collectable" firearms continued to require individual firearm registration. Intending endorsed licence holders also had to provide two more referees, meet more stringent secure storage requirements, and satisfy other conditions (such as not firing "collectable" firearms like machine guns, held under the "C" category endorsement). Handgun owners were entitled to fire their handguns under the "B" endorsement which required regular, recorded attendance at approved handgun shooting club ranges (New Zealand Police, 2007).

Provision was made for dealers (D) licences, renewable annually, and for tourism where short-term (T) licences were issued upon meeting appropriate criteria including supplying evidence of lawful arms ownership in their home countries (ibid).

In 1992, after multiple homicides both within New Zealand and overseas involving some semi-automatic rifles, (both rimfire and centrefire), an amendment to the 1983 Act made further changes. The licence was replaced by one valid for ten years. Military style semi-automatic firearms were defined and became individually registerable, along with other changes. These included the requirement for Police approval of mail-order purchases of arms and ammunition, and the closer enforcement of storage requirements, (including the security of firearms in unattended motor vehicles). These were held under the "E" endorsement, again one requiring four referees, similar storage requirements to those needed for handguns and collectible (registerable) firearms (ibid).

No record is taken of the gender, nor of the ethnic background of firearm licence applicants, nor of firearm owners. Approximately 4% of licence holders are believed to be female. However, records are kept of offenders during specific surveys of those convicted of various offences.

Economic factors

Economic factors which impact upon firearm users reach far beyond mere disposal of the discretionary dollar as shooters strive to enjoy their sport. It is at present difficult to document the investment

made in equipment by individual firearm users, but Nugent (1988) found that approximately 91,500 small-game hunters, 54,000 game-bird hunters and 42,000 big-game hunters participated in hunting activities" (p. 6) and in later research (Nugent, 1992) noted a gross expenditure of $100 million per annum, made up of firearms, motor vehicles, dogs, equipment and travel and accommodations, by some 120,000 hunters over 4.4 million hunter-days.

In addition, the value of club assets, such as chattels and property owned by organisations connected with firearm ownership and use in New Zealand, conservatively approaches some $60 million in value, and non-affiliated clubs, and clubs not formed into bodies corporate, (not recognised under the Incorporated Societies Act (1908)) probably have similar asset holdings. The value of the investment made by the business community, including wages, and shop and warehouse stock of firearms and accoutrements, is conservatively estimated to exceed $150 million, and a further $50 million is attributable to staff wages and overheads. This does not include the value of equipment and of the other resources held by guiding and trophy hunting businesses.

So the annual value of spending in the recreational firearm-user sector exceeds NZ$170 million, which, when added the asset values held by clubs (NZ$60 million) and the investment made by businesses in stock, plant and wages ($200 million) totals more than NZ$400 million.

Law-abiding New Zealand firearm users

Introduction

Law abiding New Zealanders have many opportunities for lawfully enjoying their firearms. These activities range from the collecting of firearms for considering their historical development or the developments during a particular period, such as the late colonial period in New Zealand (1870s to 1907 approximately), recreational hunting, competitive target shooting, service rifle shooting, to recreational gunsmithing and the restoration of firearms and their accoutrements. Ammunition collecting, and handloading are other activities which fall within the ambit of shooting.

Wild animals, introduced in the nineteenth century, including seven species of deer, are generally able to be recreationally hunted all the year round. (These are identified by government agencies as "pests" although sporting groups recognize them as valued introduced species). Some deer herds are subject to closed seasons, during the fawn drop period and at times for minimizing possible conflict with other recreation and tourist users. Recreational freshwater fish, game birds and water fowl are subject to open seasons for only part of the year.

Many hunters hunt meat for their home consumption, relying upon this as a food source just as recreational fishers do. Numbers are not known but are estimated to be in the thousands, particularly in rural areas.

Thorp, in his review (1997), noted that some 468,000 people had lawful access to firearms because of their close association with 225,000 licensed owners. Arms license holders currently number approximately 230,000 (Green, 2010a).

Club membership

From such large numbers of people in proportion to the total population of New Zealand, it is surprising that fewer than 50,000 licensed arms owners in New Zealand choose to align themselves in any way with an established shooting organisation. Of these, approximately 30,000 take part in the operation of their club or association. The other (approximately 180,000) law abiding arms owners do not belong to shooting organisations. A complicating factor is that not all shooters hunt, and not all hunters shoot (Woods and Kerr, 2010).

Membership of a club confers certain benefits to its members. Although in some circles a degree of altruism might exist ("…ask now what your country can do for you, ask what you can do for your country..."(Kennedy, 1961)), it is the benefits of membership which in the first instance, usually attracts members. These include camaraderie, contact with people of similar interests, opportunities for knowledge exchange, organising events such as competitions, the coordination of policy, and even the devising of lobbying approaches all fall within the ambit of club membership.

For clubs related to firearms, club membership forms a most useful and visible linkage for compliance with the law, and comprises a workable "genuine reason" for having a firearm, should such justification be needed. It works in the other way too – the good reputation of a member enhances the standing of the club in terms of its fellow members. Perhaps more important though are the social linkages, part and parcel of any society.

The opportunity for clubs to construct and operate small arms ranges is of particular interest to many members because only clubs can command the resources needed to successfully locate and develop a range site. This is because of the extensive noise "footprint" which firearms on ranges generate and which can constitute a noise nuisance which extends far beyond the range safety zone. (The range safety zone, also referred to as the "range danger area", is that area into which ricochets may fall without endangering or inconveniencing anyone.) Again, only clubs formed of law-abiding shooters can obtain public liability insurance for the protection of the members. In this increasingly litigious time, this is a potent reason for club membership.

Activities with firearms may involve group activities, such as competitive shooting, or may be solitary, as in recreational hunting for large (deer) and small game (rabbits). The solitary nature of "still hunting" is widely accepted but even so, the vast majority of such recreational hunters are gregarious in the sense they live and work in a community, it is just their recreational endeavours that sometimes demand solitude.

So, given the solitary nature of recreational hunting, particularly for the larger wild animals in New Zealand, the wonder may be that some 8,000 of the 29,000 to 72,000 "…contemporary big game hunters…"(Woods and Kerr, 2010)(p. 30) choose to belong to or be affiliated with the New Zealand Deerstalkers' Association (NZDA), "The most prominent organisation representing big game hunters in New Zealand…"(ibid).

This explains the unwillingness with which the New Zealand Mountain Safety Council (NZMSC) and a kindred body in firearm safety, the NZDA, views the oft-recommended addition of, "…a practical training component." into the approved syllabus of a firearm safety instruction course (Thorp, 1997)(p. 243). Many arms

owners do not intend to use their firearms for hunting, having bought them for other activities, including competitive shooting.

Voluntary versus compulsory club membership

It might be argued that although compulsory club membership has parallels with compulsory trade union membership, the creation of an "instant" pressure group (or lobby) may give the more vigorous proponents of compulsory membership pause for thought.

Again, if a club can rely upon compulsion for its membership recruitment, its marketing reach, and its ability and willingness to provide attractive features which would induce people to consider its joining might become eroded. Similarly, and continuing this line of argument, it behoves all clubs to provide such attractions. For someone to eschew club membership in the face of such advantages would surely imply flawed reasoning in the mind of the prospective member?

Compulsory club membership

At present, all shooters who wish to take place in shooting competitions sanctioned at national and international levels are required to be affiliated to the national organisation, even if they do not participate in national championships. Thorp (1997) considered this in connection with a view to broadening the measure to other shooting disciplines, when he suggested that:

> "…consideration should be given to the practicability of enlisting other clubs' support. This would depend upon their acceptance of the appropriateness of rules imposing similar standards of discipline upon their members, and of reporting to the Police any fall from those standards."(p. 116).

This was when Thorp (1997) discussed the formal involvement of club structures into arms control measures, in his review of firearms control in New Zealand. Any marketing efforts from clubs would then arise from compulsion, not enthusiasm.

Places to lawfully use firearms

Although it is lawful to carry a firearm in a public place, it is not lawful to carry it so as to cause concern to members of the public,

and so over the past quarter-century, the wise firearm owner will transport their firearm concealed in a covering bag or even a protective case. Among other things, this helps to avoid causing public concern, and helps protect the firearm from impacts arising from poor handling.

Quite apart from on public lands, where permission to carry a firearm is normally required for hunting, places to discharge firearms without causing public alarm are rarer. Arms ranges are subject to controls for ensuring public safety, but even these areas may remain under threat as neighbouring developments encroach within the noise "footprint" area, and on occasion, have physically encroached upon the range danger area, also known as the "range safety zone".

Prescriptions for the design of small arms ranges have been formally promulgated for nearly ninety years, and their empirically-determined elements have been confirmed recently with further experimental firings using modern equipment. Small arms ranges are neither designed nor intended to capture stray projectiles unless they are so directed as to remain within a restricted zone of fire to ensure they (a) strike the intended target and (b) after doing so, lodge in the stop butt behind. Range officers (and safety conscious shooters) strive to ensure that this, and only this, takes place. An outline of the principles of range design is provided by New Zealand Police publications (2005; 2007), and more details are contained in Joint Service Publication (JSP) 403 (2004), and that of the Canadian Firearms Centre (1999).

The recovery of the fired projectiles for the purpose of recycling, is an essential process towards minimising the impact of humans upon the environment. Ranges are in the main, extraordinarily safe places because range officers undergo a basic formal training, often confirmed with a test, to ensure that ranges remain safe for their users and those in the neighbourhood. Another hazard arises when low-velocity projectiles are fired. These include bullets from handguns, and pellets from most gas-, air- and spring-powered air rifles. Unless a back-stop is carefully chosen, projectiles can ricochet (rebound) towards the firing point with sufficient force to cause injury to the shooter and to bystanders. This is why safety glasses are often compulsory or more usually, are required, on many ranges, (along with the use of hearing protection).

Recreational use by unlicensed individuals

The existence of a number of individuals who are not licensed for firearm possession and who do not otherwise come to the notice of the Police was mentioned by Thorp (1997). These people have firearms in technical breach of the arms legislation, without inflicting unintentional casualties from firearm misuse, displaying "generational safety awareness". Efforts were made to encourage arms licensing among these groups, which predominate in the Eastern North Island of New Zealand (Badland, pers. comm. 2005), but few positive results were obtained. Targeted specifically at Maori, and with minimal Police visibility, some progress in firearm owner licensing is now being made (Dyke, pers. comm. 2011).

In October 2007, raids were conducted in the Bay of Plenty area of the North Island in the belief that paramilitary training was being offered (ODT 17 October 2008). Subsequent court actions taken under the Terrorism Suppression Act (2002) were dismissed by the Solicitor-General, or were later withdrawn.

"Grey" and "illegal firearms

In Thorp's review (1997), mention was made of a stock of three categories of firearm: "legal", "grey" and "illegal" firearms (p. 24). Thorp's terminology invoked the term "grey" guns, meaning those which had been held lawfully, but which had, often because of lapsed arms licenses and apathy, were no longer held in compliance with the arms code. He held that "illegal" firearms were, "...held specifically for criminal purposes." (ibid)(p. 24). Thorp's review is noteworthy for its attempts to measure the pool of firearms available for misuse.

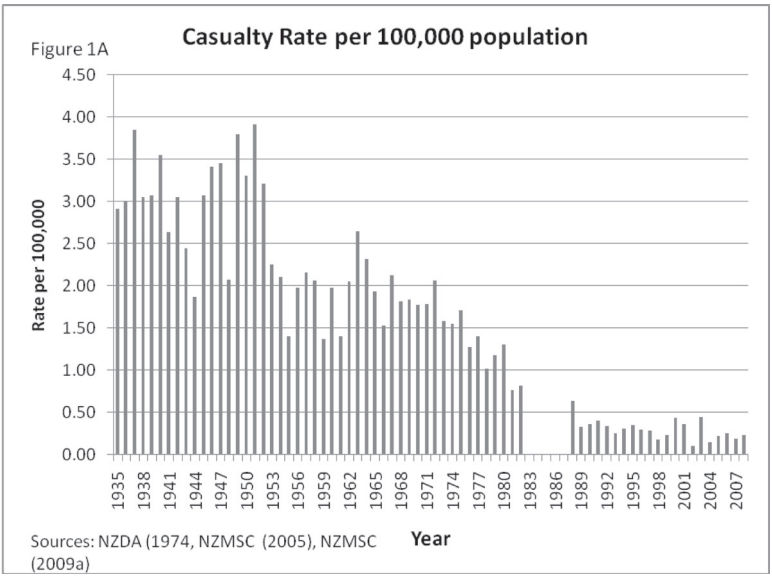
Thorp (1997) noted that "...the extent of [illegal firearm ownership] is very difficult to measure" (p. 258) and considered that, "...there is in this country a considerable store of illegal firearms..." (p. 96), suggesting approximately 3,000 "grey" and "illegal" (p. 28) handguns existed. He also suggested there could be as many as 100,000 "grey" shoulder arms, and in attempting to gauge the number of "illegal" arms, analysed a sample of prison inmates' responses to a structured interview, suggesting approximately 4,000 such firearms existed in New Zealand.

INTRODUCTION - UNINTENTIONAL SHOOTING INCIDENTS IN NEW ZEALAND

Casualties arising from unintentional firearm misuse have been declining in both raw number and in rate per 100,000 people for more than three decades (Statistics New Zealand, 2009; Thorp, 1997). (The term "accident" is not now recognised, with the term "unintentional shooting incident" replacing it.)

Casualty data from unintentional shooting incidents have been collected since 1935. It is likely that the data was less reliable then than now, and incident reports might well have included some suicide cases (NZDA, 1974). Overall casualty data is shown below in Figure 1A, shown as Tables 1A and 1B in Appendix 1C. Table 1B lists casualty data from 1978 onward, but between 1983 and 1987, only fatality figures were collected by the NZMSC and Police. These do not include injuries, only deaths, so Figure 1A shows no casualty rates for those years. The proportion of fatalities to overall casualties has changed since the data first segregated fatalities from non-fatalities in 1960.

Figure 1A



The average annual casualty rate from unintentional shootings was, for the five years 1935 - 1939, 3.2 per 100,000. For the decade beginning in 1960, the average annual casualty rate was 2.0 per

100,000. For the decade ended 2008, the average annual casualty rate was 0.05 per 100,000 population. This is a significant decline which is noticeable from the early 1960s (New Zealand Mountain Safety Council, 2009a). Table 1A gives the details. As the overall casualty rates have declined for unintentional shootings, so has the average annual fatality rate. For the period 1960 – 1969, the rate was 0.44 per 100,000, which declined to 0.05 per 100,000 between 1999 and 2008. The break in the data shown in Figure 1A between 1983 and 1987, and reflects a failure to record unintentional shooting injuries. They certainly occurred, but were simply not recorded. No fatalities were reported in 1997 and 2002.

Firearm safety training background

Parental training would have been common in NZ society where a rural lifestyle was much more predominant than is now the case. (Approximately 70% of the population was urbanized in the mid-1930s, compared to 85% now)(Statistics New Zealand, 2004). Various organisations and clubs also undertook basic safety training users of the back country and of firearms.

The training provided by the New Zealand Mountain Safety Council (NZMSC) formalised that which had been offered since the development of firearms. New Zealand secondary schools (years 9 to 13) provided some instruction as part of their cadet force training programmes, but these had almost entirely disappeared by the late 1960s with the cessation of the school cadet forces programmes.

Firearm safety training was boosted by the legal requirement, in 1969, for applicants to show a basic knowledge of firearm safety when obtaining their "permit to procure a firearm" before buying their first firearm. This was under the Arms Act (1956).

New Zealand Mountain Safety Council (Inc)

The formation of the New Zealand Mountain Safety Council (NZMSC) in 1965 arose from public concern about ignorance of the elemental hazards of outdoor pursuits, which led to casualties in the backcountry. A desire to reduce these casualties led to the development of programmes which offered training in basic bush craft, snow craft, river crossing, then firearm safety, and later, risk management and avalanche awareness. It implemented a system of

volunteer instructors for these activities, numbering approximately 800 in 1975 (Walsh, Murphy and Harris, undated) and exceeding 1300 in 2009 (NZMSC, 2009b).

This was reinforced five years later, when, in 1974, the formal training programme for first firearm buyers was promulgated by the New Zealand Mountain Safety Council. Current NZMSC doctrine incorporates an awareness and understanding of risk and its management. The Police also have a long-standing interest in firearm safety matters. Their widely-publicised support for this cause took the form, in their early 1980s, of "Project Foresight". This was part of the campaign to promote the lifetime arms licence introduced under the Arms Act 1983. The Act was expected to "…substantially reduce the amount of work that is currently undertaken administering arms records." (Thompson, 1984)(p. 8).

One of the promotional leaflets for Project Foresight is displayed in Appendix 1A.

Haddock (2003) writes,

> There is nothing that we do that is absolutely without risk, risk being built-in to everything that we do and possess. With this knowledge, we strive to identify the hazards, and after studying incidents, acquire the competence to, "…deal effectively with the demands…." (p. 7).

New Zealand Mountain Safety Council firearm instructors

The first New Zealand Mountain Safety Council (NZMSC) firearm safety instructors were appointed in 1969. These volunteers trained beginners in safety with firearms (Walsh et al, undated).

Passing the test required knowledge of the five basic rules of firearm safety. These had been developed from the three rules used by the former New Zealand Forest Service (NZFS). By 1974, firearm safety course content had been revised, based on observations made since their inception in the late 1960s (NZDA, 1974). There were now seven basic rules of firearm safety.

In 1979 a more intensive testing of firearm safety knowledge began, leading to the introduction of individual shooter licensing in 1984, the main result of the Arms Act 1983. This replaced individual

registration of rifles and handguns which had been the requirement up until then (NZMSC, 1984).

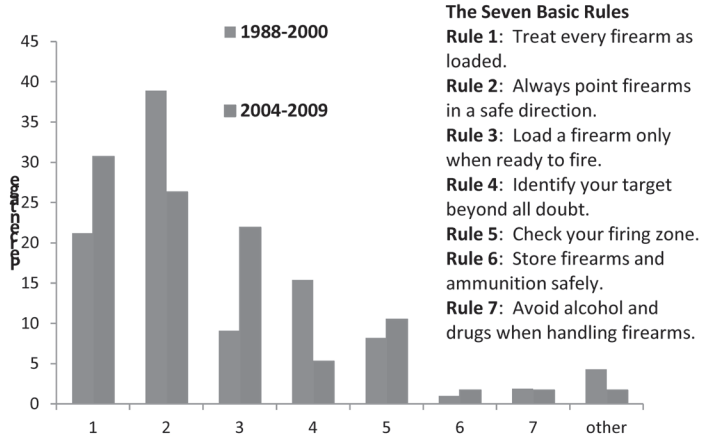
Current firearm safety instruction

Seven basic rules remain in use and are shown in Appendix 1B. Records of those successfully undergoing instruction have been kept from 1979, peaking at over 16,000 in 1985. Arms licence applications dropped to below 6,000 in the aftermath of the 1992 Arms Amendment Act, but the average number of successful candidates for the past decade is now more than 6,500 per annum. Applicants for the New Zealand arms licence currently number approximately 10,000 annually.

Accumulated totals of successful candidates for the arms test since records were first kept exceeds 225,000, suggesting that approximately 90% of all arms licence holders have an understanding of basic firearm safety principles, derived from formal training. All of course have been vetted by the Police (and at least two referees) for confirmation of their personal suitability to have firearms.

How unintentional shootings happened

Figure 1G **Failures to observe 7 basic rules**



The Seven Basic Rules
Rule 1: Treat every firearm as loaded.
Rule 2: Always point firearms in a safe direction.
Rule 3: Load a firearm only when ready to fire.
Rule 4: Identify your target beyond all doubt.
Rule 5: Check your firing zone.
Rule 6: Store firearms and ammunition safely.
Rule 7: Avoid alcohol and drugs when handling firearms.

Sources: NZMSC (2005); (2009a);(2010).

Figure 1G shows which of the seven basic rules of firearm safety were apparently breached in each reported incident. (The seven basic rules of firearm safety are listed in Appendix 1B). In many cases more than one of the rules was breached, so for 1988 – 2000, (13 years in duration), 157 incidents lead to 208 breaches of the basic safety rules being identified, and for 2004 – 2009, (a duration of six years), 56 incidents, 114 breaches of the seven rules were noted. The relevant data is tabulated in Table 1G and is shown in Appendix 1C.

"Other" means other factors were considered to have been involved, factors which were not covered by the basic rules of firearm safety. These include malfunction of the firearm, or of the ammunition. For this malpractice, a decline in the percentage of incidents was observed.

The incidence of failures to observe rule number one has increased and that for rule number two has reduced. In other words, failures to "Treat every firearm as loaded" are on the increase, and failures to "Always point firearms in a safe direction" have diminished.

A sharp increase is noticeable for failures to observe rule number three, "Load a firearm only when ready to fire." It is interesting to reflect that this is one of the questions which poses a significant problem for those attempting firearm safety tests as part of their preparation for obtaining an arms licence. The state of semi-readiness is sometimes confused by reference to the half-open bolt position, linked in the minds of some people with the "half-cock" position occupied by firearms of older design, such as the Lee Enfield rifles. (Some problems of terminology can be very confusing for firearms licence applicants, and strenuous efforts are made to avoid such confusion).

A major reduction in failures to observe rule number four, "Identify your target beyond all doubt" might reflect the success of instilling avoidance of this error as a result of Green (2003), where that author successfully analysed thirty-three incidents where one deer hunter has unintentionally shot another.

An increase in failures to follow rule number five, "Check your firing zone" is harder to ascertain. The failures to observe rules number six and seven might be attributable to the small number of

incidents observed where these rules were believed to have been breached. In each instance (two for rule six, one for rule seven); even one more incident would have sharply increased the percentage observed.

Perhaps it is reassuring to consider that failures to store firearms and ammunition safely, and failures to avoid alcohol or drugs when handling firearms have both declined, possibly because of the success of campaigns cautioning arms users of the hazards of such malpractices?

Firearm types involved in unintentional shootings

Basic firearm types featuring in unintentional shootings are shown in Table 1E1, in Appendix 1E. The data is from two periods – a short, three-year one (ACC, 1981), obtained shortly before the Arms Act 1983 took effect, and a twenty-year period, beginning in mid-1987 and ending at the end of 2008, (NZMSC, 2005, 2009a).

Despite changed methods for classifying the firearms involved, agreement between the two sets of data is generally close. Between 1981 and 1983, the "rifles" featuring in the data were not identified as rimfire, (of lower power), and centrefire, a common classification for rifles.

In the latter period (1987 – 2008), rimfire rifles are segregated from centrefire rifles but the number of incidents involving "rifle, unspecified" in the same period is 31, 13% of the total of 232 incidents. Combining those that were identified into the "rifle" category with the "unspecified" rifles enabled a comparison with the older data.

The decline in the proportion of cartridge-firing long arms featuring in unintentional shooting incidents merits comment. Users of such firearms are more likely to have undergone safe firearm handling training, than users of airguns, which have not shown such a decline in unintentional shootings.

Langley, Norton, Alsop and Marshall, (1996) suggested that the law is deficient in that recording the details of the handling errors which led to an unintentional shooting are not a requirement of current arms legislation. This is not the case, the legal requirements for reporting injury or death by firearm are simple: injuries from

shooting are required to be reported under section 58 of the Arms Act (1983).

Unintentional shootings with airguns

Airgun accidents are more likely to involve people who have not benefited from NZ Mountain Safety Council firearm safety instruction programmes. This is partly because airguns are for many, their first firearm, one for which learning the basics of shooting is easily affordable because of the minimal costs. Harris (2009) regards the airgun as a "training weapon…supreme" (p. 14).

Langley et al (1996) investigated casualties from airgun misuse for the years 1979 - 1992. In this fourteen-year period they found that the mean airgun injury rate was 1.56 per 100,000 people. Their data shows an annual average of 51.3 airgun shooting incidents. "Airgun injuries, while not as serious as powder firearm injuries, account for a significant personal and societal burden. The results suggest strategies aimed at controlling these injuries, especially those pertaining to children, are in need of review." (Langley et al, 1996)(p. 114). Unfortunately, Langley et al (1996) offer no details of which firearm safety rules were breached.

An overall trend in airgun incidents is they continue to decline, from a three-year average of 1.65 per 100,000 (1979 - 1981) to 1.27 per 100,000 (1990 – 1992). Langley et al (1996) suggest that closer parental control as a result of growing public concern about firearm safety is a possible reason for the decline in reported airgun accidents.

Unintentional shootings with handguns

Although only 2.5% of the overall firearm pool, handguns feature in 7.3% of the accidents for the twenty-year period 1987 - 2008. Despite very close controls, including individual handgun registration, firing permitted only on Police approved ranges, and the owners requiring endorsed arms licences to possess them, handguns are over-represented in arms accidents. A large component of the increase in reported handgun accidents is believed to arise from the re-equipment of Police with a new handgun, and the introduction of different training and handling procedures involving holsters (New Zealand Press Association, 2005).

Unintentional shootings with rifles

The appearance of rifles in arms accidents can hardly be a surprise when they comprise some 43% of the overall firearm pool. They feature in almost 47% of the accidents. Users of centrefire rifles tend to be more experienced than rimfire rifle users, in effect, having "graduated" to the higher-powered firearm after gaining initial experience with lower powered ones.

Unintentional shootings with shotguns

Shotguns, some 29% of the overall firearm pool, feature in 21% of the incidents. This is approximately in proportion with the firearm types found in NZ use but unlike rifles, there is a more pronounced seasonal aspect to their use in the game field.

All centrefire firearms all have enough power at close ranges to create devastating personal injury should an unintentional discharge take place. Many shotgun incidents take place within a field firing point positioned close to water, known as a "mai-mai". Consequently, incidents tend to be at close range. In any case, shotgun effective ranges are less than 50 metres, but a misplaced pellet of small shot can pose a real hazard to the unprotected eye, at even 91 metres, the minimum allowable distance between waterfowl shooting positions.

Involvement of others in unintentional shooting incidents

Analysis of the five-year period 2004 – 2009 shows that 17 of the victims shot themselves, 37 were shot by others, and for one incident it was unclear. So, from 54 incidents, 31% shot themselves, and approximately 69% were shot by someone else. A shooter is more than twice as likely to shoot someone else than he/she is likely to unintentionally shoot him or herself.

Unintentional versus intentional casualties from firearm misuse

The segregation of firearm casualties into those arising from unintentional misuse, as distinct from intentional misuse (as happens in suicides and in crime, for example) may seem artificial but is important when devising programmes to reduce casualties from accidents. Some sources (Langley et al, 1996; Norton and Langley, 1997; Public Health Association of New Zealand, 2002) publish

data on firearm casualties where intentional and unintentional incident results are combined. Scott and Scott (2006) found that neither the ACC nor the Ministry of Health data were able to differentiate between intentional and unintentional shooting incidents.
Only the NZMSC figures make the distinction between unintentional and intentional incidents. It is the prime function of the New Zealand Mountain Safety Council (NZMSC) to reduce casualties from unintentional incidents in all facets of outdoor recreation.

New Zealand fatality rates

The percentage of unintentional fatal shootings in New Zealand has declined considerably. For the earliest ten years in the study period, 1988 – 1997, there were 49 fatal shooting incidents and they make up 39.2% of the total. For the ten years 1999 to 2008, 22 fatalities are 20.8% of all incidents, almost half of that for the earlier decade. This equates to a rate per 100,000 population of 0.06 per 100,000 using the NZMSC and Police data.

Casualty numbers based on hospital admissions are somewhat higher, at 0.10 per 100,000.

Paradoxically, the unintentional shooting survival rate tends to be higher in countries where handgun use is more common, because handguns, which develop less power, have a reduced capacity for injury. This situation exists in New Zealand because of the preponderance of long arms, which, for ergonomic reasons normally require both hands for their operation, and tend to point away from the user (Scott and Scott, 2005).

From these data, for the early-mid-1990s, New Zealand has a rate of unintentional firearm deaths of 0.10 per 100,000, similar to that for Northern Ireland (0.11), France (0.12) and Norway (0.11). The USA has an unintentional firearm fatality rate of 0.62, (Krug, Powell and Dahlberg, 1998).

Firearm-armed violent offending

Introduction

The idea that legislative changes might affect patterns of criminal behaviour is at first glance, laughable. However, upon reflection, even though the "subject" of such legislation, not being noted for its

observance of the niceties of criminal law, might be unimpressed by the changes proposed, over a period of time, perhaps decades, such changes are possible. These would arise from changes in culture, or even within society as a whole, which may gradually discourage violent offenders from their activities. Unfortunately, the "working lifespan" of legislation rarely exceeds two decades, and it is usually replaced by more modern laws, precluding the onset of any social changes as those which might be desired.

Beltowski and Forsyth (1997) attempted to monitor violent offending reports, before and after the enactment of the Arms Act (1983), to see if the abolition of shoulder arm registration exerted any impact upon violent offending. They found some slight changes, but as the study time-frame coincided a period of extensive social and economic changes in New Zealand, the assignment of causality to any one particular measure remains problematic. Their study explored a five year period before the Arms Act (1983) took effect (1979 – 1983), as the "before" period, and considered two five-year time-periods afterwards (1986 – 1990; 1991 – 1995). (A five-year period is known as a "lustrum", and this term will be used). In the second lustrum (1991 – 1995) after the Arms Act (1983) was implanted, an economic downturn exacerbated unemployment figures and significant cuts to social welfare support caused further hardship (Dalziel and Lattimore, 2004). Offending increased across the spectrum of offences.

Beltowski and Forsyth (1997) found that for six violent offence headings considered in their paper, reductions in firearm-armed violence following the abolition of shoulder arm registration took place in four of them.

For one offence category where an increase in the percentage of reported firearm-armed offending was found, (homicide), the percentage changed from 17% "before", to 26% "afterward" in the first lustrum after the abolition, resuming its 17% level for the second lustrum. In the case of robbery, the other offence category where an increase was found in the percentage involving firearms, the percentage increased from 10% before abolition, remained at 10% following abolition, then climbed to 14% for the second lustrum following the abolition of shoulder arm registration.

The eight violent offence headings used by the New Zealand Police are:

- Homicide,
- Kidnapping and abduction
- Robbery
- Grievous assaults
- Serious assaults
- Minor assaults
- Intimidation and threats, and
- Group assemblies

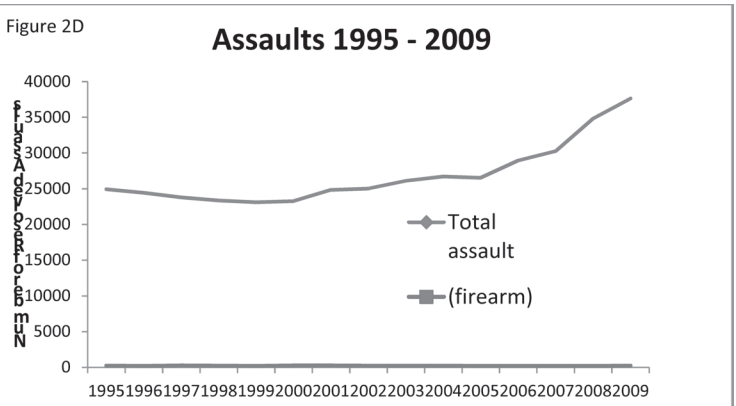
As some of these offences are of a threatening nature, and are not in the nature of a physical assault, the involvement of firearms, although documented, is of lesser importance than such weapons are in the case of physical assaults (such as homicides, kidnappings, and robberies.

Unpublished research by Forsyth (2011) examines trends in firearm-armed offending from resolved offences (where the offender has been identified) for all eight of the offence classes, and so is not comparable to that of Beltowski and Forsyth (1997), which relied upon reported offence figures.

Combined assaults

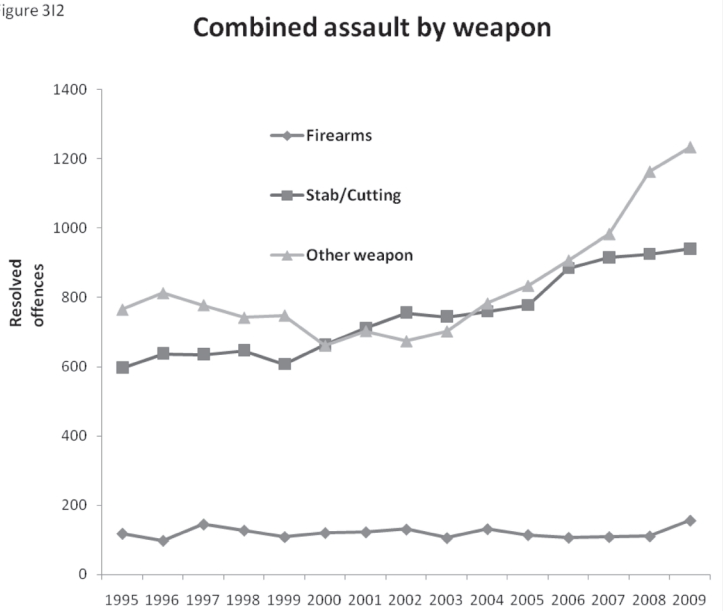
The figures quoted under this sub-heading are an amalgam of those from grievous, serious and minor assaults. They are an effort to place the scale of firearm involvement in context, and to combine assaults of widely varying degrees of seriousness under one heading. The numbers are shown in Table 2D, from Appendix 2C. Figure 2D shows firearm misuse, as a proportion of total assaults, forms a diminishing proportion in this predominately impulsive type of offending. From Table 2D, the average percentage of combined assaults involving firearms was, for the lustrum 1995 - 1999, 0.88%: for the most recent lustrum, 2005-2009, 0.58%.

Figure 2D



Sources: 1 AJs 1980 - 1999
2 Statistics New Zealand 2009a
3 Statistics New Zealand 2006
4 Statistics New Zealand 1996
5 New Zealand Police 2009
6 Statistics New Zealand 2010

Figure 3I2



Source: Statistics New Zealand (2010)

Table 3I1 gives a more detailed breakdown of the weapons being used in the "combined" assaults discussed above. Figure 3I2 presents the data more clearly, with the axes shown at different scales. (Source data for this is Table 3I1 in Appendix 3A.)

Homicide

Homicides are considered by the present author to be grievous assaults, but where the victim died. However, they have been segregated from other assault data in order to comply with conventional reporting methods. Unless a homicidal attack is immediately fatal, the victims undergo serious injury, which, although not necessarily fatal at the initial onset, had a fatal outcome because medical help was either not available or was not provided. Many homicides are not premeditated, being performed in the heat of the moment, irrespective of the penalties which have long applied to those convicted of these offences. This is recognised by the processes available to the judiciary, where convictions for manslaughter are entered when unintended homicide occurs (Newbold, 2000).

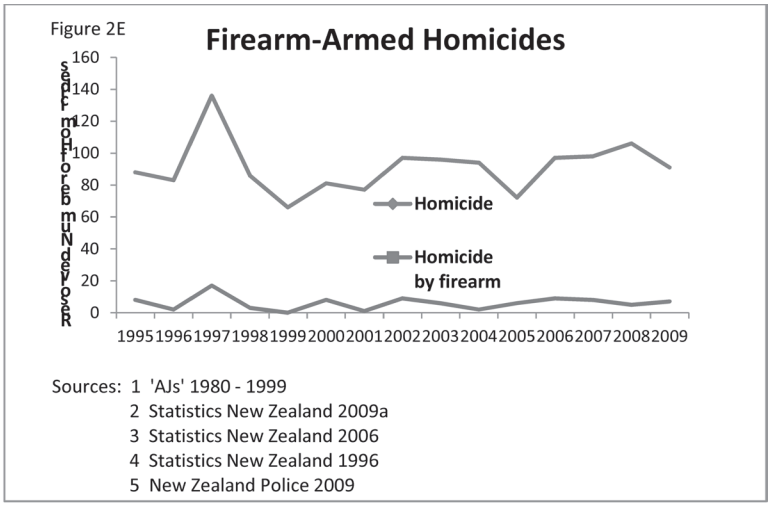


Table 2E in Appendix 2C provides numerical values for the years used in this investigation. Figure 2E, showing the graphical form of data for homicides and for homicides by firearm, indicates that the involvement of firearms in homicide has increased, from an annual average of 5.5% for the period 1995 – 1999, to 7.6% for

2005 – 2009. This emphasises perhaps that offenders have no concern for the rule of law, nor for the accoutrements they chose to use to further their offending?

Beltowski and Forsyth (1997), derived percentages from *reported* offences, obtaining firearm-armed homicides as part of a study to check the effects of the Arms Act (1983). They observed for 1979 – 1984, that firearms featured in 17% of homicides; for 1986 – 1990, firearms featured in 28% of homicides; and for the years 1991 – 1995, firearms featured in 17% of homicides. They considered the increase from 17% to 28% was, "…a transient rise in the percentage of homicides committed with firearms…(which) subsequently fell to below the level seen (earlier)…" (ibid)(p. 6). This coincided with a period of social upheaval in New Zealand, during which welfare measures were sharply reduced, and economic hardship (including unemployment) exceeded 10% (Dalziel and Lattimore, 2004).

The New Zealand Police (2009) found the homicide rate has remained at 0.2 per 10,000 for the past decade, closely comparable to that cited nearly two decades earlier by the Department of Justice (1986b).

Robbery and aggravated robbery

Robbery, a premeditated type of offence, does not necessarily involve actual violence or use of weapons. Under New Zealand law, robberies involving accomplices, weapons or actual physical violence applied to the victim(s) places the offence within the definition of "aggravated robbery". It is an offence of premeditated threatening, and occasional physically-applied violence.

Beltowski and Forsyth (1997) obtained averaged percentages for five-year periods starting in 1979, using firearm-armed robbery as a percentage of "total reported robbery". They found that 10% of robberies involved firearms in the period 1979 – 1984, 10% in the period 1986 -1990, and 14% for the years 1991 – 1995. These figures are not strictly comparable to those shown in Table 2I1. It is possible or even likely that other, so far unidentified, social factors are at work to produce the 'low' for the firearm-armed offending in 2003/2004, and the decline in the percentage of aggravated robberies since the late 1990s.

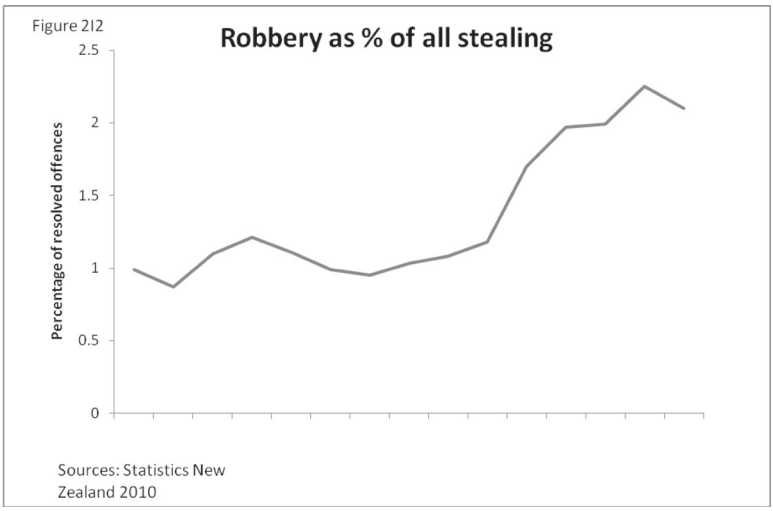


Figure 2I2 shows that a greater proportion of those involved in stealing are prepared to confront, and commit the offence with any or all of violence, accomplices or weapons. Figure 2I3 (below) was derived from a further analysis presented in Table 2I1 in Appendix 2C. It shows the percentage of "total robbery" that is "aggravated" (upper curve) and the percentage of "total robbery" (lower curve) involving firearms. The lower curve presents the percentage of total robbery involving firearms.

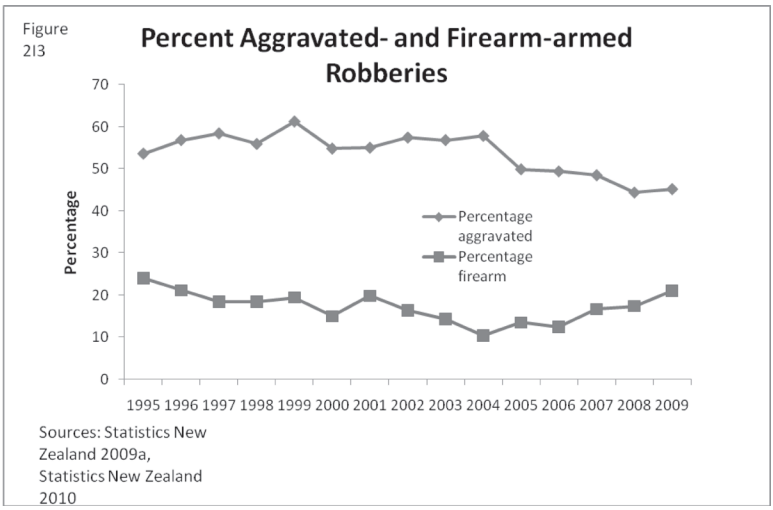
Figure 2I3 shows for the past decade, the percentage of aggravated robberies is declining slightly. (Aggravated robberies include *any* weapons, among its factors). It also shows a slight increase in the percentage of *firearm-armed* aggravated robberies since 2004, the percentage almost regaining the level found in 2001. We must ask if any other social factors have returned, or if any other factors have been introduced to bring about this slight increase?

The figures for robbery compare with that of 1.5 per 10,000, obtained from a review of violent offending for robbery a quarter of a century ago (Department of Justice (1986a)(p. 4). The most recent value of 2.6 per 10,000 shows an increase in the resolved offending rates.

Beltowski and Forsyth (1997) found that:

> "armed" robbery is increasingly an activity that is becoming

the preserve of organised criminal groups such as gangs, and that robbery is generally,"…committed in urban business areas - banks, petrol stations, shops, corner dairies…" where circumstances preclude or diminish the opportunity for, "… a victim to have ready access to any effective means of deterring or preventing a violent robbery…" (p. 9).

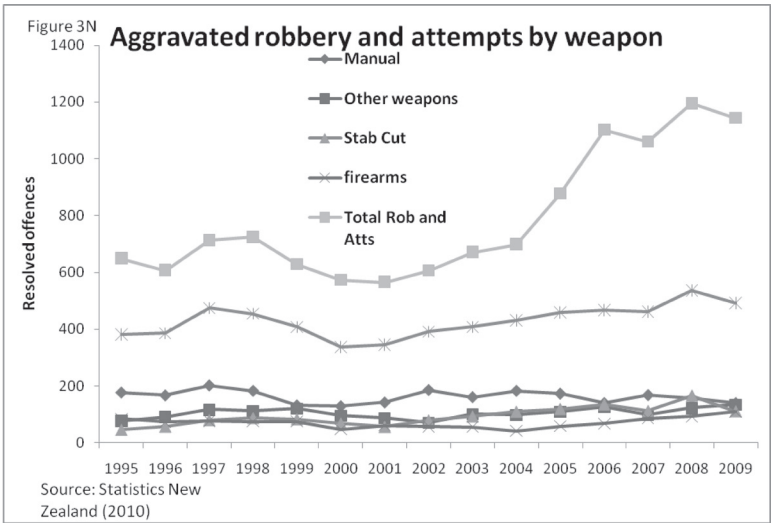


Unpublished research (Forsyth, 2011), has found that the percentage of firearm-armed aggravated robbery has undergone a slight decline from 1995, reducing from an average for 1995 – 1999 of 20.4%, to 16.2% for 2005 – 2009.

The overall number of resolved aggravated robberies and attempts has approximately doubled over the period 1995 - 2009, while those for which weapon use(as opposed to accomplices, or the imposition of actual physical violence) occurred, increased by approximately 30%, as Figure 3N, derived from Table 3N (Appendix 3A), shows.

Aggravated robberies represent the most planned, the most "premeditated" offences, so these results suggest a trend: a willingness to coerce more by the presence of co-offenders, and not so much by the use of weapons or by the inflicting of physical harm to victims. Arguably, robbery is a better indicator of that truly violent subset that lurks in every society, because of its element of premeditation and high visibility. This criminal subset is that which desires

the property of others and is prepared to not only confront, but to threaten the use of extreme force in order to achieve its ends.



INTENTIONAL SELF-HARM SHOOTINGS IN NEW ZEALAND

Introduction

Suicide statistics have been collected in New Zealand since the early 1900s, and the methods chosen by suicides have been noted in New Zealand since 1960. The data for suicides underwent a break in the early 1980s, possibly as a result of central government restructuring which took place in New Zealand during the late 1980s.

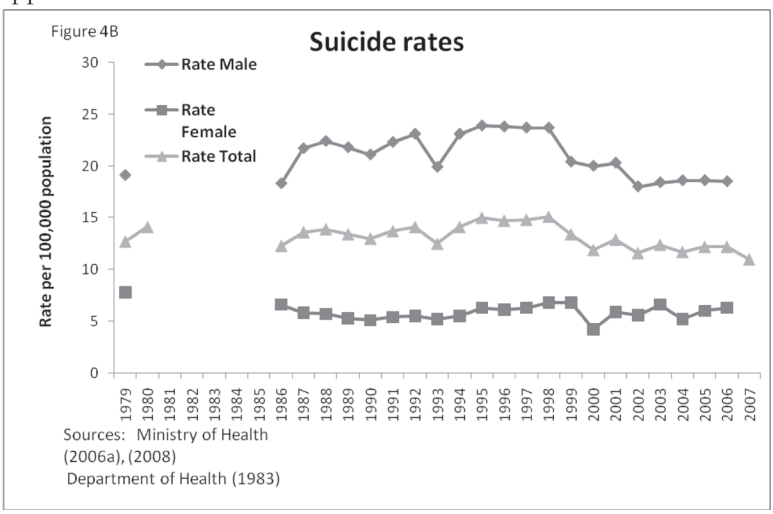
Incidence

The total number of suicides a year in New Zealand approximates 500, with a further 3,000 hospital admissions annually arising from intentional self-harm. Table 4A (Appendix 4A) contains the figures. The rate of suicide rose sharply in the late 1980s, coincident with extensive social and economic changes in New Zealand. The peak rate, of 16.7 per 100,000 (1996-1998) has since declined to 14.2 per 100,000 (Ministry of Health, 2006a)(p. 12), perhaps because official attention became more focussed upon suicide analysis and prevention.

Rates are shown in Figure 4B (below). The rate used for 1979 – 1980 was per 100,000 over 15 years of age, but from 1986 onwards, the rates shown are for the entire population. (No figures for rates per 100,000 are supplied by the official statistics for the 1981 – 1985.)

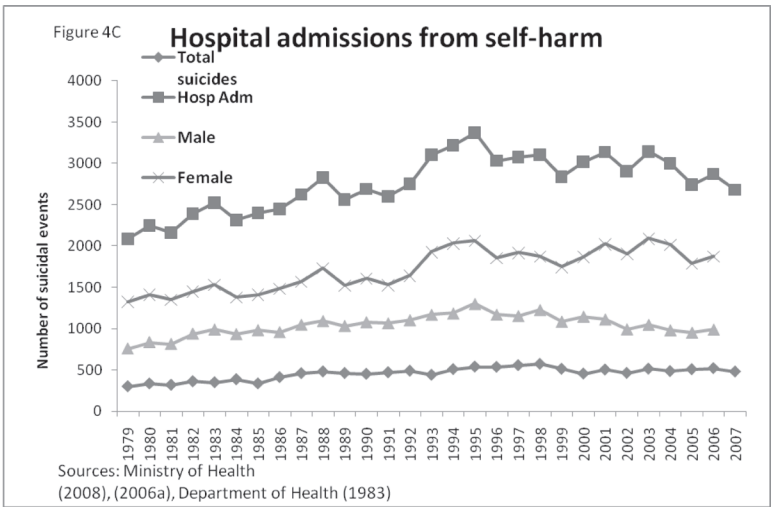
Attempts at suicide resulted in an average of 2,149 hospital admissions per year for the period 1978-1980, indicating a rate of 76.6 hospitalisations per 100,000. This increased to an average of 3,312 hospitalisations per year between 1994 and 1996, equating to 104.0 hospitalisations per 100,000 people (Ministry of Health, 2006a). Since then, changes in the classification methodology has increased the rate from an average of 3,703 hospital admissions per year (113.5 hospitalisations per 100,000), for 1998-2000, to an average of 4,932 hospital admissions (150.5 hospitalisations per 100,000), for 2002-2004 (ibid)(p. ix). Hospital admissions are regarded as useful proxies for attempts at suicide. Total hospital admissions from non-fatal attempts at suicide outnumber the deaths by suicide by an approximate factor of six.

Figure 4B



Key: Diamonds indicate total suicide numbers.
Squares indicates total hospitalisations for self-harm.
Crosses indicate female hospitalisations for self-harm.
Triangles indicate male hospitalisations for self-harm.

Figure 4C (above) displays the curves for hospital admissions arising from self-harm, along with that for total suicides. It is derived from Tables 4A and 4B.

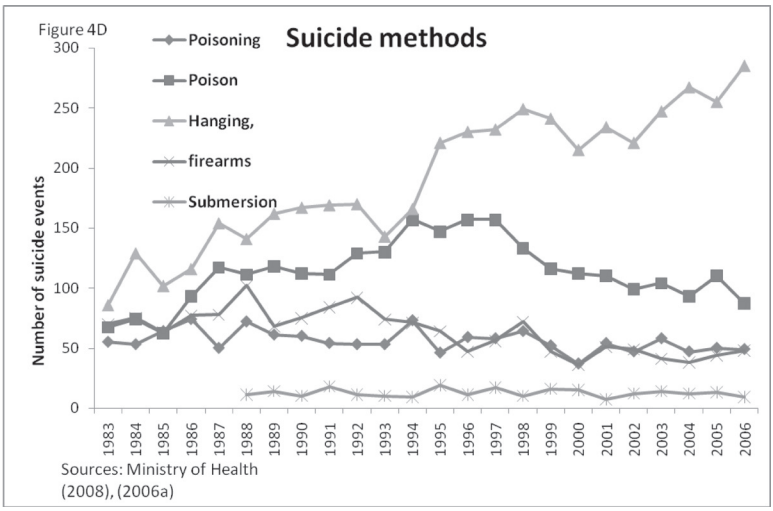


Methods used

Slower-acting methods, including the use of medical drug overdoses, allow more time for the victim to be discovered and, on many occasions, treated, leading to their survival. Faster-acting methods including hanging, poisoning by the use of motor vehicle exhausts, submersion (drowning), and shooting are more often used by males than by females. These methods tend to be quicker-acting and have a lower survival rate.

A pronounced reduction in the number of suicides involving firearms is discernable from Figure 4D, sourced from Table 4D. Professor Beautrais et al (2006) wrote:

> "…it appears that reductions in firearm-related suicides were not accompanied by parallel reductions in the overall suicide rate. These findings underscore the fact that restricting access to means of suicide should be viewed as an adjunct to suicide prevention approaches which focus on improving the identification, treatment and management of the psychiatric disorders which are the precursors to suicidal behaviour" (p. 14).



Reducing the use made of a particular means of suicide is hardly positive if it is accompanied by an increase in the use made of another method (or methods), or the overall suicide rate does not go down. Nonetheless, if the use of firearms in suicides has declined, it is tempting to suggest that the enforcement of security provisions have gone some way to averting the more impulsive suicide attempts. For most suicides, (70 to 98 percent), mental unwellness, usually depression, is at least an element, if not the prime cause (Neame, 1997; Beautrais et al, 2005, in Ministry of Health, 2005a).

DISCUSSION

A feature of private firearm ownership patterns in New Zealand is that a significant proportion of firearm users do not belong to a shooting club. Approximately five to ten percent of all arms owners choose to belong to a club associated with their interest in firearms and their use. These include competitive (target) shooters. The corollary is that between 80 and 95 percent of firearm owners do not belong to a club.

Thorp (1997) noted that his survey work found approximately 350,000 to 400,000 lawful arms users, and at present, some 219,000 people are licensed to have firearms in accord with the Arms Act (1983) and its amendments (Green, 2010a).

Tables 1A and B (Appendix 1C) show that the rates per 100,000 of casualties from unintentional arms incidents has declined from five-year averages of 3.18 (1935-1939), through 1.02 (1978-1982) to 0.21 (2004-2008). Such reductions, despite the 'spikes' of annual variations amid single-figure casualty numbers for half of the years since 1997, clearly shows a sharp decline in the trend in casualty rates from such events.

Forsyth and Weatherson (2006) found that casualty rates declined by approximately 40% following the introduction of user licensing in 1984, and by another 30% after the reviews which took effect in 1994, following the introduction of the Arms Amendment Act (1992). Forsyth and Weatherston (2006) conjectured that other factors contributed to the ongoing decline in arms accidents: "… spending on firearms safety programmes, number of firearms publications in circulation, changes in punishment for reckless use of a firearm, changes in the drinking age, number of hours in a working week etc" (p. 20). They also examined the matter of unintentional firearm casualty data, noting in the second part of their paper that the mathematical model was unable to cope with the negative correlation between casualty rates and the firearms stock per person. The study period for their paper extended from 1935 to 2004, during which time the ratio of firearms per capita in New Zealand increased from 0.236 to 0.311.

Both Forsyth and Weatherston, (2006), and Scott and Scott, (2006), found that steady improvements in firearm safety, in the form of reducing casualty numbers and declining accident rates, arose from a combination of several factors. These included more orchestrated arms owner training, arms owner licensing requirements dwelling more upon user suitability (since 1984), and on reviews of ownership suitability once every decade, as a result of the Arms Amendment Act (1992). Spending on firearm safety training is currently $265,000 with another $190,000 spent on advertising and $30,000 on printing the Arms Code (Green, 2010b). For the year-ended 30 June 2009 this was $263,000, the year before that it was $187,000, showing that spending in firearm safety programmes has increased sharply as perceptions of its value, in the sense of savings to society, have increased (NZMSC, 2009c).

It is concluded that a comprehensive education programme, buttressed by legislation which attracts widespread public support, and in particular, support from the firearm-owners, has, since the early 1980s contributed significantly to the decline in casualties arising from unintentional shooting incidents.

The origins of crime and of criminal behaviour have long been the subject of study and to date, have been found to be linked with socio-economic deprivation, youth, consumption of narcotics including alcohol, among many other factors. The existence or even presence of firearms as such seems to have little to do with crime and with criminal offending. The idea that the passing of laws actually deprives, "…criminals of firearms has long been questioned" (Malcolm, 2002)(p. 2).

It is known that approximately 25% of all resolved offending involves violence. The involvement of firearms in violent offending is on the decline. For the three most recent years in which the present research has been undertaken, the 1.03% of all violent offending which involves firearms invites the corollary, that 98.97% of all violent offending does not involve firearms. Such a low percentage, although numbering some 500 offences (of a total of approximately 50,000 per annum) covers the spectrum from homicide, through threats made in aggravated robbery, to the presence of a firearm in a room where a minor assault took place.

The generally declining involvement of firearms in violent offending may be a source of relief to some, but when other weapons are substituted, the victims, (and society in general), remains the loser. The problem is not a firearm control issue, it is larger than that – it reaches into the area of social attitudes, citizenship, health (including mental health), and social deprivation. Violence, reportedly an increasing component of offending in our society, reflects, quite apart from the obvious, an underlying social malaise (or series of social malaises). The amalgam of the "mad" and the "bad" then, is the driver of these statistics.

It is very probable that the enforcement of quality arms laws (defined as being those in which the general public has confidence), with an emphasis upon the 'fit and proper person' concept for the licensed arms owners, contributes to the relatively low incidence of firearm-armed violence in New Zealand society.

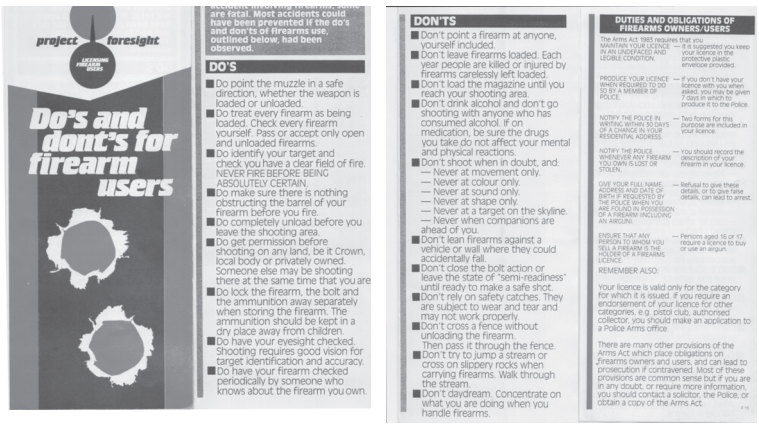
Placing controls upon the law abiding when these people are not part of the problem does not resolve issues of violent offending with firearms. Controlling people who, by definition live, at least part of their lives beyond the law, is the issue here. Some may argue that if a little law is good, more law might well be an effective option for making further reductions to the use made of a particular method, but this too is debatable: Further restricting firearms for example, may very well lead to counter-productive trends such as an increase in their unlawful possession, which might well enhance opportunities for accidents, crime and suicides.

The misuse of firearms in suicide and attempts at suicide has halved, from 22 percent to less than ten percent. This may be attributed to the widespread use of secure storage for firearms, which must go some way towards eliminating impulsive suicides, particularly by the young.

Nonetheless, the fact that various authorities have found that serious mental illness remains linked with almost all suicides requires our mental health services to strive to work effectively for the ongoing care of the mentally unwell in our community.

APPENDICES

Appendix 1A



project foresight

Do's and don'ts for firearm users

are fatal. Most accidents could have been prevented if the do's and don'ts of firearms use, outlined below, had been observed.

DO'S

- Do point the muzzle in a safe direction, whether the weapon is loaded or unloaded.
- Do treat every firearm as being loaded. Check every firearm yourself. Pass or accept only open and unloaded firearms.
- Do identify your target and check you have a clear field of fire. NEVER FIRE BEFORE BEING ABSOLUTELY CERTAIN.
- Do make sure there is nothing obstructing the barrel of your firearm before you fire.
- Do completely unload before you leave the shooting area.
- Do get permission before shooting on any land, be it Crown, local body or privately owned. Someone else may be shooting there at the same time that you are.
- Do lock the firearm, the bolt and the ammunition away separately when storing the firearm. The ammunition should be kept in a dry place away from children.
- Do have your eyesight checked. Shooting requires good vision for target identification and accuracy.
- Do have your firearm checked periodically by someone who knows about the firearm you own.

DON'TS

- Don't point a firearm at anyone, yourself included.
- Don't leave firearms loaded. Each year people are killed or injured by firearms carelessly left loaded.
- Don't load the magazine until you reach your shooting area.
- Don't drink alcohol and don't go shooting with anyone who has consumed alcohol. If on medication, be sure the drugs you take do not affect your mental and physical reactions.
- Don't shoot when in doubt, and:
  - Never at movement only.
  - Never at colour only.
  - Never at sound only.
  - Never at shape only.
  - Never at a target on the skyline.
  - Never when companions are ahead of you.
- Don't lean firearms against a vehicle or wall where they could accidentally fall.
- Don't close the bolt action or leave the state of "semi-readiness" until ready to make a safe shot.
- Don't rely on safety catches. They are subject to wear and tear and may not work properly.
- Don't cross a fence without unloading the firearm. Then pass it through the fence.
- Don't try to jump a stream or cross on slippery rocks when carrying firearms. Walk through the stream.
- Don't daydream. Concentrate on what you are doing when you handle firearms.

DUTIES AND OBLIGATIONS OF FIREARMS OWNERS/USERS

The Arms Act 1983 requires that you:

HOLD A FIREARMS LICENCE — It is suggested you keep your licence in the protective plastic envelope provided.

IN AN UNDAMAGED AND LEGIBLE CONDITION.

PRODUCE YOUR LICENCE WHEN REQUIRED TO DO SO BY A MEMBER OF POLICE. — If you don't have your licence with you when asked, you may be given 7 days in which to produce it to the Police.

NOTIFY THE POLICE IN WRITING WITHIN 30 DAYS OF A CHANGE IN YOUR RESIDENTIAL ADDRESS. — Two forms for this purpose are included in your licence.

NOTIFY THE POLICE WHENEVER ANY FIREARM YOU OWN IS LOST OR STOLEN. — You should record the description of your firearm in your licence.

GIVE YOUR FULL NAME, ADDRESS AND DATE OF BIRTH IF REQUESTED BY THE POLICE WHEN YOU ARE FOUND IN POSSESSION OF A FIREARM (INCLUDING AN AIRGUN). — Refusal to give these details, or to give false details, can lead to arrest.

ENSURE THAT ANY PERSON TO WHOM YOU SELL A FIREARM IS THE HOLDER OF A FIREARMS LICENCE. — Persons aged 16 or 17 require a licence to buy or use an airgun.

REMEMBER ALSO:

Your licence is valid only for the category for which it is issued. If you require an endorsement of your licence for other categories, e.g. pistol club, authorised collector, you should make an application to a Police Arms office.

There are many other provisions of the Arms Act which place obligations on firearms owners and users, and can lead to prosecution if contravened. Most of these provisions are common sense but if you are in any doubt, or require more information, you should contact a solicitor, the Police, or obtain a copy of the Arms Act.

APPENDIX 1B

Appendix 1C

Table 1A: Casualty and fatality rates 1935 – 1978 per 100,000

Year	Total Casualties	Deaths	Injuries	Mean Population	Casualty Rate/ 100,000
1935	45	..	..	1545480	2.91
1936	47	..	..	1565830	3.00
1937	61	..	..	1586430	3.85
1938	49	..	..	1607330	3.05
1939	50	..	..	1628500	3.07
1940	58	..	..	1637300	3.54
1941	43	..	..	1630900	2.64
1942	50	..	..	1639500	3.05
1943	40	..	..	1635600	2.45
1944	31	..	..	1655800	1.87
1945	52	..	..	1694700	3.07
1946	60	..	..	1759600	3.41
1947	62	..	..	1798300	3.45
1948	38	..	..	1834700	2.07
1949	71	..	..	1871700	3.79
1950	63	..	..	1909100	3.30
1951	76	..	..	1947600	3.90
1952	64	..	..	1996200	3.21
1953	46	..	..	2048800	2.25
1954	44	..	..	2094900	2.10
1955	30	..	..	2139000	1.40
1956	43	..	..	2182800	1.97
1957	48	..	..	2232500	2.15
1958	47	..	..	2285800	2.06
1959	32	..	..	2334600	1.37
1960	47	14	23	2377000	1.98
1961	34	9	23	2426700	1.40
1962	51	6	43	2484900	2.05
1963	67	14	52	2536900	2.64
1964	60	10	54	2589100	2.32

1965	51	11	37	2635300	1.94
1966	41	13	27	2682600	1.53
1967	58	18	40	2727700	2.13
1968	50	8	46	2753500	1.82
1969	51	12	39	2780100	1.83
1970	50	13	39	2819600	1.77
1971	51	10	41	2864200	1.78
1972	60	20	38	2915600	2.06
1973	47	10	29	2977100	1.58
1974	47	5	31	3041800	1.55
1975	53	12	43	3100100	1.71
1976	40	7	37	3131800	1.28
1977	44	7	29	3142600	1.40
1978	32	15	17	3143500	1.02

Table 1B: Casualty and Fatality Rates per 100,000 1979 - 2009

Year	Total Casualties	Deaths	Injuries	Mean Population	Casualty Rate/ 100,000
1979	37	21	16	3137800	1.18
1980	41	6	35	3144000	1.30
1981	24	6	18	3156700	0.76
1982	26	6	20	3180800	0.82
1983	..	5	..	3221700	..
1984	..	7	..	3252800	..
1985	..	8	..	3271500	..
1986	..	16	..	3277000	..
1987	..	7	..	3303600	..
1988	21	10	11	3317000	0.63
1989	11	5	6	3330200	0.33
1990	12	6	6	3362500	0.36
1991	14	6	8	3495800	0.40
1992	12	6	6	3533000	0.34
1993	9	4	5	3573600	0.25
1994	11	4	7	3621600	0.30

1995	13	4	9	3675800	0.35
1996	11	4	7	3733900	0.29
1997	11	0	11	3782600	0.29
1998	7	2	5	3815800	0.18
1999	9	1	8	3837300	0.23
2000	17	4	13	3860100	0.44
2001	14	4	10	3887000	0.36
2002	4	0	4	3951200	0.10
2003	18	6	12	4027700	0.45
2004	6	1	5	4088700	0.15
2005	9	1	8	4136000	0.22
2006	11	1	10	4186900	0.26
2007	8	1	7	4230700	0.19
2008	10	3	7	4271100	0.23
2009	12	3	9	4310000	0.26

Sources NZDA (1974), NZMSC (2005), NZMSC (2009a), Thorp (1997), Statistics New Zealand Mean Population for YE 31 December downloaded 09NOV2009/1525

Table 1E1:Firearm types identified in unintentional shootings

	1981-1983		1987-2009	
Firearm type	Number	Percentage	Number	Percentage
rifle unspecified	100	54.4	111	45.5
shotgun	76	41.3	60	24.6
firearm unspecified	0	0.0	29	11.9
handgun	8	4.3	17	7.0
airgun	0	0.0	19	7.8
other	0	0.0	8	3.3
Total	184	100.0	244	100.0

Sources: ACC (1981), NZMSC (2005), NZMSC (2009a), (2010)

Table 1E2 Composition of the New Zealand firearm pool

Firearm Type	Number	Percentage
Airgun	275,000	25.4
Handgun	27,000	2.6

Rifle	468,000	43.2
Shotgun	312,000	28.8
Total	1,082,000	100.0

Source Thorp (1997)

Table 1G: Failures to observe 7 basic rules

	1988-2000		2004-2009	
Basic Rule	Number	Percentage	Number	Percentage
1	44	21.2	35	30.7
2	81	38.9	30	26.3
3	19	9.1	25	21.9
4	32	15.4	6	5.3
5	17	8.2	12	10.5
6	2	1.0	2	1.7
7	4	1.9	2	1.7
other	9	4.3	2	1.7
Total breaches	208	100.0	114	99.8
Total incidents	157		56	

Sources: NZMSC (2005), (2009a), (2010).

APPENDIX 2C

Table 2D: Assaults

Year	Total assault	Total Assaults (firearm)	Firearm-armed assaults as % of total assaults
1995	24910	221	0.9
1996	24422	190	0.8
1997	23778	241	1.0
1998	23342	224	1.0
1999	23094	171	0.7
2000	23267	239	1.0
2001	24845	247	1.0
2002	25013	201	0.8
2003	26087	212	0.8
2004	26707	215	0.8
2005	26538	165	0.6

2006	28946	177	0.6
2007	30255	176	0.6
2008	34817	186	0.5
2009	37629	223	0.6

Sources:
Appendices to the Journals (AJs) 1980 - 1999, Statistics New Zealand 2009a, Statistics New Zealand 2006, Statistics New Zealand 1996, New Zealand Police 2009, New Zealand Police 2009, Statistics New Zealand 2010 downloaded 08JAN2010

Table 2E: Homicides resolved

Year	Homicide	Homicide by firearm	**Homicide by firearm %**
1995	88	8	9.1
1996	83	2	2.4
1997	136	17	12.5
1998	86	3	3.5
1999	66	0	0.0
2000	81	8	9.9
2001	77	1	1.3
2002	97	9	9.3
2003	96	6	6.2
2004	94	2	2.1
2005	72	6	8.3
2006	97	9	9.3
2007	98	8	8.2
2008	106	5	4.7
2009	91	7	7.7

Sources: Appendices to the Journals (AJs) 1980 - 1999, Statistics New Zealand 2009a, Statistics New Zealand 2006, Statistics New Zealand 1996, New Zealand Police 2009, New Zealand Police 2009, Statistics New Zealand 2010 downloaded 08JAN2010

Table 2I1: Robberies and attempts

Year	Total robbery	Aggravated robbery	Percentage	Firearm armed	Percentage firearm
1995	649	348	53.6	84	24.1
1996	607	345	56.8	73	21.2
1997	713	416	58.4	77	18.5

1998	724	405	55.9	75	18.5
1999	628	384	61.2	75	19.5
2000	573	314	54.8	47	15.0
2001	565	311	55.0	62	19.9
2002	606	348	57.4	57	16.4
2003	671	381	56.8	55	14.4
2004	699	404	57.8	42	10.4
2005	877	438	49.9	59	13.5
2006	1102	544	49.4	68	12.5
2007	1060	514	48.5	86	16.7
2008	1195	530	44.4	92	17.4
2009	1143	517	45.2	109	21.1

Sources: Statistics New Zealand 2009, Statistics New Zealand 2010

Table 2I2: Robbery as a percentage of stealing

Year	Total dishonesty	Total robbery	Robbery as % of all stealing
1995	65754	649	0.99
1996	69494	607	0.87
1997	64650	713	1.10
1998	59663	724	1.21
1999	56794	628	1.11
2000	57884	573	0.99
2001	59593	565	0.95
2002	58648	606	1.03
2003	62152	671	1.08
2004	59405	699	1.18
2005	51612	877	1.70
2006	56069	1102	1.97
2007	53301	1060	1.99
2008	53078	1195	2.25
2009	54361	1143	2.10

Sources: Statistics New Zealand 2009, Statistics New Zealand 2010

Table 2I3: Annual averages for dishonesty 2005 - 2009

Offence	Average resolved offences	Rate per 10,000
Total dishonesty	53,684	128.4
Total robbery	1,075	2.6
Aggravated robbery	509	1.2
Firearm-armed aggravated robbery	83	0.2

Source: Statistics New Zealand (2009c)

APPENDIX 3A TABLES

Table 3I1: Combined Assault, by weapon

Year	Firearms	Stab/ Cutting	Other weapon	Manual	Total
1995	118	596	765	14349	15828
1996	97	637	813	14462	16009
1997	145	635	778	14378	15936
1998	127	646	742	14280	15795
1999	108	607	748	14144	15607
2000	120	663	661	14269	15713
2001	122	711	703	15232	16768
2002	130	755	674	15383	16942
2003	105	744	702	16081	17632
2004	131	759	783	16031	17704
2005	114	777	834	15817	17542
2006	106	884	907	16851	18748
2007	108	914	983	17611	19616
2008	110	925	1163	20325	22523
2009	156	940	1234	22311	24641

Note: Column totals will not accumulate to equal overall total because of omitted data. Source: Statistics New Zealand (2010)

Table 3L: Homicide where weapons were identified

Year	Firearms	Manual	Other weapons	Stab Cut	subtotal	Total homicide
1995	13	21	18	20	72	88
1996	8	15	21	20	64	83
1997	29	25	36	34	114	136
1998	9	28	27	16	80	86
1999	5	11	19	21	56	66
2000	10	11	18	24	63	81
2001	4	23	20	23	70	77
2002	16	12	34	29	91	97
2003	14	19	23	31	87	96
2004	5	18	33	24	80	94
2005	14	11	22	21	68	72
2006	12	14	32	28	86	97
2007	14	13	31	30	88	98
2008	9	25	26	28	88	106
2009	12	23	18	25	78	91

Notes: 1) Column totals will not accumulate to equal overall total because of omitted data. 2) Other weapons includes "other means". Source: Statistics New Zealand (2010).

Table 3N: Aggravated robbery and weapons

Year	Manual	Other weapons	Stab Cut	Firearms	Subtotal	Total robbery and attempts
1995	176	77	45	84	382	649
1996	166	91	56	73	386	607
1997	201	117	79	77	474	713
1998	182	111	86	75	454	724
1999	131	120	82	75	408	628
2000	128	95	67	47	337	573
2001	141	87	55	62	345	565
2002	185	71	78	57	391	606

2003	160	101	92	55	408	671
2004	182	99	108	42	431	699
2005	172	110	118	59	459	877
2006	139	126	134	68	467	1102
2007	167	98	111	86	462	1060
2008	157	122	165	92	536	1195
2009	139	134	110	109	492	1143

Note: Column totals will not accumulate to equal overall total because of omitted data. Source: Statistics New Zealand (2010).

Appendix 4A

Table 4A: New Zealand suicide statistics

	Numbers			Suicide rates per 100,000		
Year	Total	Male	Female	Rate Male	Rate Female	Rate Total
1979	302	213	89	19.1	7.8	12.7
1980	337	225	106			14.1
1981	320	241	78			
1982	364	257	103			
1983	352	250	98			
1984	389	297	87			
1985	338	255	81			
1986	414	301	107	18.3	6.6	12.3
1987	463	363	97	21.7	5.8	13.6
1988	484	381	103	22.4	5.7	13.9
1989	465	372	93	21.8	5.3	13.4
1990	455	363	92	21.1	5.1	13.0
1991	474	380	94	22.3	5.4	13.7
1992	493	397	96	23.1	5.5	14.1
1993	443	349	94	19.9	5.2	12.5
1994	512	409	103	23.1	5.5	14.1
1995	543	427	116	23.9	6.3	15.0
1996	540	428	112	23.8	6.1	14.7

1997	561	440	121	23.7	6.3	14.8
1998	577	445	132	23.7	6.8	15.1
1999	516	385	131	20.4	6.8	13.4
2000	458	375	83	20.0	4.2	11.9
2001	507	388	119	20.3	5.9	12.9
2002	466	353	113	18.0	5.6	11.6
2003	517	352	113	18.4	6.6	12.4
2004	488	376	141	18.6	5.2	11.7
2005	511	379	109	18.6	6.0	12.2
2006	524	375	127	18.5	6.3	12.2
2007	483					11.0

Table 4B: Intentional self-harm hospitalisations

		Hosp Adm	Male	Female
Year	Total			
1979	302	2084	759	1325
1980	337	2250	838	1412
1981	320	2164	815	1349
1982	364	2390	940	1450
1983	352	2525	992	1533
1984	389	2314	935	1379
1985	338	2398	984	1414
1986	414	2444	959	1485
1987	463	2621	1050	1571
1988	484	2827	1095	1732
1989	465	2558	1035	1523
1990	455	2688	1080	1608
1991	474	2596	1067	1529
1992	493	2748	1105	1643
1993	443	3101	1171	1928
1994	512	3219	1187	2032
1995	543	3370	1303	2067
1996	540	3030	1289	2058
1997	561	3074	1291	2177
1998	577	3103	1393	2185

1999	516	2836	1281	2163
2000	458	3017	1492	2595
2001	507	3136	1545	3110
2002	466	2902	1521	3244
2003	517	3142	1533	3387
2004	488	3000	3587	1583
2005	511	2743	3395	1597
2006	524	2868	3691	1709
2007	483	2679		

Sources: Ministry of Health (2006a), 2008; Department of Health (1983).

Note: Criteria for hospital admission have changed particularly from the late 1980s.

Table 4D: Suicide methods

Year	Submersions (drowning)	Poisoning: solids or liquids	Firearms and explosives	Poison gases or vapours	Hanging, strangulation suffocation	Total
1979						302
1980						337
1981						320
1982						364
1983		55	70	67	86	352
1984		53	75	74	129	389
1985		64	63	62	102	338
1986		74	77	93	116	414
1987		50	78	117	154	463
1988	11	72	102	111	141	484
1989	14	61	68	118	162	465
1990	10	60	75	112	167	455
1991	18	54	84	111	169	474
1992	11	53	92	129	170	493
1993	10	53	74	130	143	443
1994	9	73	71	157	166	512

1995	19	46	64	147	221	543
1996	11	59	47	157	230	540
1997	17	58	56	157	232	561
1998	10	64	72	133	249	577
1999	16	52	47	116	241	516
2000	15	37	36	112	215	458
2001	7	54	51	110	234	507
2002	12	47	49	99	221	466
2003	14	58	41	104	247	517
2004	12	47	38	93	267	488
2005	13	50	44	110	255	511
2006	9	49	48	87	285	524
2007						483

Sources: Ministry of Health (2006a), 2008; Department of Health (1983).
Notes: Rates before 1986 are for 100,000 population over 15 years of age.

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*BRIEF BIOGRAPHICAL NOTES: CHAZ FORSYTH

Chaz Forsyth was born in Oamaru in 1948 and is married to his wife Jacquie. They have two adult children. Most of his working life has been spent in and around Dunedin, with sojourns to the Hutt Valley, Invercargill and Christchurch, where he underwent some of his employment training.

After a twenty year career as a civil engineering technician, where for much of that time he undertook traffic engineering studies, he retrained as a workshop skills teacher. His specialist teacher training saw him appointed to an intermediate

school in Dunedin where he taught year 7 and 8 pupils for the second half of his working life.

During this time, he resumed his studies, begun in the late 1960s, gaining another teaching diploma in 2006, and his BA degree in 2007, while teaching. Since his retirement he has completed another degree, endorsed in economics.

Chaz' interest in recreational hunting began while he was still at school and developed into ammunition reloading, club administration, firearm safety instruction and gunsmithing. He has had more than 60 articles published in New Zealand and overseas on aspects of firearms, cartridges and hunting. He was honoured by the award of Fellowship of the New Zealand Society of Gunsmiths in 2006.

His earlier book, "Firearms in New Zealand", was published in 1978 and 1985, the second edition being Manual No 19 of the New Zealand Mountain Safety Council (Inc). The present work takes full advantage of the data that is now available and is completely new, relying extensively upon his forthcoming "New Zealand Firearms".

SELF-DEFENCE IN ENGLAND: NOT QUITE DEAD

Joyce Lee Malcolm

Self-defence therefore, as it is justly called the primary law of nature, so it is not, neither can it be in fact, taken away by the law of society.

William Blackstone,
Commentaries on the Laws of England (1765)[1]

The Conservative position [to permit householders to use any force "not grossly disproportionate" against an intruder] is backward and barbaric.

Henry Porter, Afua Hirsch,
"A barbaric take on self-defence: The Tory argument that burglars `leave their human rights at the door' is a nod to the lynch mobs of medieval England."
The Guardian (2010).[2]

In sharp contrast to centuries of common law practice, modern England only grudgingly tolerates self-defence, even *in extremis*. Allowing householders to protect themselves and their families beyond what the authorities deem "reasonable" is denounced as vigilantism and lynch law, indeed a return to barbarism. The results of a policy which severely limits self-defence have been stark. English men and women have endured a doubling of gun crime in the last decade, a 25% increase in contact theft in the latest yearly report, and have a 23% risk of being crime victim. In 2009 an English home was burgled every two minutes.[3] On the other hand great leniency has been shown offenders. Only 54% of cases where prisoners are released meet the government's own standards for keeping the community safe.[4] Undeterred by the fact that forcing people to rely

solely on police protection has failed to keep the public safe, most members of the police and political establishment along with most of the media remain insistent that current constraints on defence by law-abiding people are just fine.[5] Professionals can, will, and should handle the situation. I have written at length on the vanishing right of self defence in England.[6] This brief essay is intended to bring that issue up to date, first pinpointing the statutes that have reduced the public's ability to defend themselves, then highlighting recent criminal cases, and finally discussing the present effort to change the law.

Three Statutes that Eviscerated the Right to Self-Defence

At least from the reign of Henry VIII the killing of would-be robbers, burglars, or other assailants by their intended victims to protect themselves and their families and their neighbors was not just excusable but justifiable. The act was a necessary recognition of the law of nature and a good deed, since it assisted the authorities in keeping the peace.[7] In fact there was a duty to intervene if you witnessed a crime in progress. Having arms for defence was an ancient duty and in 1689 was inscribed in the English Bill of Rights as a right of Protestants, some 90% of the population.[8] In practice Catholics were permitted guns for self-defence as well. And deterrence by armed individuals worked. For nearly 500 years the rate of violent crime had been in decline.[9]

The first real restriction on the right to be armed came in 1920. In the wake of World War I the British government feared a Bolshevik revolution and worried about the thousands of returning soldiers brutalized by a brutal war.[10] The Firearms Act required that all handguns be registered by the police. Police approval was to be based upon whether the applicant was deemed a "suitable person" and had a "good reason" to have the gun. The standards for both criteria were secret and were tightened by the Home Office over the years. They were spelled out in a series of classified directives sent to the police throughout the realm. Keeping a handgun for self-defence began to be restricted from the very first of these directives, that of 1920. Police were informed that "a good reason for having a revolver" would be, "if a person 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."[11] Presumably being exposed to threats for reasons other than the performance of a public duty was not to be regarded as a serious matter. By 1946 the Home Secretary told Parliament, "I would not regard the plea that a revolver is wanted for the protection of an applicant's person or property as necessarily justifying the issue of a firearm certificate."[12] By 1969 the Home Office instructed the police of England and Wales: "It should never be necessary for anyone to possess a firearm for the protection of his house or person." [13]

Still, invaluable as a handgun is for self-defence, other weapons can be useful. That is where the second statute came in. The 1953 Prevention of Crime Act forbid carrying anything that could serve as an offensive weapon in a public place.[14] The police could stop, search and arrest without a warrant anyone they believed was violating the law. Those stopped were guilty unless they could prove they had a "reasonable excuse" for carrying the so-called "offensive weapon." What items constituted offensive weapons? Almost anything that could be used for self-defence, if carried for that purpose, was automatically an offensive weapon. The justification for this government monopoly on the use of force was the argument that the police would protect individuals, they did not have to protect themselves. The protection of the people was seen as the particular responsibility of society, that is of the police. The fact that "society" was clearly unable to protect everyone, or indeed anyone, all the time did not dissuade the government from pressing for the prohibition on the carrying of any offensive item, the attorney general telling Parliament, "the argument of self-defence is one to which perhaps we should not attach too much weight."[15] Since its enactment pedestrians have been arrested for carrying a razor, a pickaxe handle, a stone and a drum of pepper.[16] A tourist who used her pen knife to protect herself when she was attacked was convicted of carrying an offensive weapon. [17] Beyond the law against carrying an article for defence there is a list of prohibited devices the possession of which results in dire punishment . Along with rocket launchers and machine guns it includes chemical sprays and any knife with a blade more than three inches long.[18] After a man attacked by two assailants in a subway car managed to fight them off and probably

saved his life by pulling the blade out of his ornamental walking stick, walking sticks with blades inside were banned.[19] The fact he would likely have been killed if he did not have the device was no matter. On the list it went, forbidden to the next person in distress.

The third of the trio of statutes gutting the right to self-defence was the Criminal Law Act of 1967.[20] This was a large, comprehensive act meant to overhaul English criminal law by abolishing the old distinction between felonies and misdemeanours. Slipped in without parliamentary debate, probably without MPs even noticing, was a change in the old rule that a threatened person must, in some circumstances, retreat before resorting to deadly force. In the new statute a threatened person no longer needed to retreat, but was authorized to use only such force as "is reasonable in the circumstances" to prevent a crime or assist in the arrest of offenders or suspected offenders. According to legal authorities the "technical rules about the duty to retreat" were superseded and were now "simply a factor to be taken into account in deciding whether it was necessary to use force and whether the force was reasonable."[21] The impact of this change has actually made a plea of self-defence more difficult, since everything turns on the notion of what constitutes "reasonable" force against an attempt to commit a crime. Since extreme force is not permissible to protect property, the only thing someone threatened with robbery can do by way of defence is "to give the robber blows and *threaten* him with a weapon."[22] Of course it is not permitted to carry a weapon in a public place. But even an attack on one's home, since it might only be an attack on property, leaves the householder liable to what might be regarded as excessive force. This statute has left the law of self-defence in disarray. A scholar who examined the impact of the statute wrote that it was "unthinkable" that in drafting the Criminal Law Act of 1967 "Parliament should inadvertently have swept aside the ancient privilege of self-defence. Had such a move been debated it is unlikely that members would have sanctioned it."[23] She was anxious that the Parliament "consider the wider problems posed by the use of force," adding, "In view of the inadequacy of existing law, there is some urgency here."[24] That was thirty-seven years ago. The situation has yet to be significantly altered.

THE EFFORT TO PERMIT FORCEFUL DEFENSE

By 2004, with violent crime rising dramatically and householders finding themselves victimized by a law that prosecuted them if they harmed an intruder while permitting the intruder to sue them for accidental injuries, the *Sunday Telegraph* launched a campaign to change the law. When thousands of Radio 4's Today Show listeners called for a law authorizing them to use force to protect their homes, the MP pledged to introduce the winning measure, denounced the proposal as a "ludicrous, brutal, unworkable, blood-stained piece of legislation." "The people have spoken," he added, "the bastards."[25] Of course that so-called "blood-stained piece of legislation" was the common law rule until recently. Unmoved by a poll showing seventy-two percent of respondents believed the law on home defence "inadequate and ill-defined," the Blair administration buried two bills introduced by the Tories to give householders more scope to protect themselves and their families. Instead, Prime Minister Tony Blair ordered an "internal investigation" after which, not surprisingly he and his Home Secretary, Charles Clarke, pronounced existing law "sound". All that was needed, Clarke suggested, was to explain to the public more clearly how far they could go to protect their homes.

It was a series of high profile prosecutions of the victims of assault or burglary that had galvanized the public to demand a more realistic right to protect themselves. The most notorious was the 2000 case of Tony Martin, a poor farmer, that ignited a firestorm. Martin's isolated farmhouse had been robbed six times. He had duly notified the police, but nothing was done to protect him. Than at 10:00 pm one night the seventh break-in took place. Martin crept downstairs in the dark and shot at the two burglars he heard rummaging through his silverware. At daybreak he discovered he had killed one. He had also wounded the second thief, a career burglar well-known to police. Down came the law. Martin was vigorously prosecuted on charges of murder and attempted murder, the prosecutor claiming he had lain in wait for the unsuspecting burglars and caught them like "rats in a trap."[26] Martin was found guilty and sentenced to life in prison. After an emotional public outcry, his conviction was reduced to five years, though on the grounds that he had been abused as a child.

Unlike the career burglar he had wounded, Martin was denied parole on the ground that he posed a danger to burglars.[27]

The government assuranced the public that such prosecutions were rare. Nothing really changed until 2007 when Gordon Brown's Home Secretary, Jack Straw, acknowledged that the law needed modification. It was Straw's own experiences with muggers that had convinced him. Straw was dubbed a "have-a-go hero" for personally chasing and restraining muggers in *four* separate incidents near his south London home. Although in loyal party fashion he insisted that the self-defence laws worked "much better than most people think," he conceded the policy did not work "as well as it could or should."[28] "The justice system must not only work on the side of the people who do the right thing as good citizens," he explained, but must also "be seen to work on their side."[29] Straw was even prepared to urge people to help the police apprehend criminals, a position sharply at odds with years of insistence that peacekeeping must be left to the professionals. Anyone else witnessing a crime in progress was instructed to walk on by.

After years of blocking reform, therefore, the Labour government suddenly announced it had ordered an "urgent review" to ensure those people protecting themselves or their homes in a "proportionate" way would not be prosecuted. The idea was to ensure that the law "better balances the system in favour of victims of crime."[30] Skeptics claimed that this move, along with announced reviews of gambling, of Tony Blair's 24-hour drinking law and drug laws were designed to appeal to Tory voters as speculation mounted that a snap election would be called. Whatever the motives, the resulting new standards were part of the Criminal Justice and Immigration Act of July, 2008. Section 76, subsection 7 of the act provided that a court dealing with the issue of self-defence should have regard to the following consideration:

> (a) that a person acting for a legitimate purpose may not be able to weigh to a nicety the exact measure of any necessary action; and
>
> (b) that evidence of a person's having only done what the person honestly and instinctively thought was necessary for a legitimate purpose constitutes strong evidence that only reasonable action was taken by that person for that purpose.

The legislation goes on to note that where there is evidence that the defendant was mistaken as to the degree of force required to defend himself or others, the jury can have regard to the reasonableness of his belief in determining whether he genuinely held that perception. [Parenthetically, it is difficult to see how a jury could decide what amount of force was actually necessary during a violent encounter.] To continue: "Once a jury determines that D did genuinely have a particular belief, he was to be judged on the facts as he believed them to be regardless of the fact that his belief was mistaken, and regardless of the fact that the mistake may not have been one made by a reasonable person."[31] This seemed, but was in fact, little if any different from the position at common law. Indeed, sub-section 6 provides that the degree of force used by D "is not to be regarded as having been reasonable in the circumstances as D believed them to be if it was disproportionate in those circumstances." Although a somewhat more generous standard, the continued assessment of the state of mind of the defendant/victim by police and a judge and jury hardly justified *The Daily Telegraph*'s triumphant report that home owners and other people acting in self-defence were now to have the legal right to fight back against burglars and muggers "free from fear of prosecution."[32] As the *Telegraph* article explained, under the new rules police, prosecutors and judges would have to assess a person's actions based, not on what *they* regarded as "reasonable," but on how the defender "saw it at the time" even if in hindsight it would be regarded as unreasonable. Homeowners would be able to shoot a burglar who threatened them and beat a mugger rather than running away. But attacking a fleeing criminal with a weapon would not be permitted nor would lying in wait to ambush him. The *Telegraph* failed to mention that the problem of proportionality remained.

In 2008, shortly before the new rules went into effect, an even more egregious case occurred with the familiar threat to prosecute the victim of a violent attack. A shopkeeper, Tony Singh, was getting into his car at the end of a workday when he was attacked by a robber armed with a knife. In the ensuing struggle the robber was fatally stabbed with his own knife. Despite these undisputed facts and the robber's long record of violent crime, the Crown prosecution was prepared to bring charges against Mr. Singh. It took public outrage to persuade the authorities not to prosecute. These new laws were

supposed to ensure that there would be no more prosecutions of this sort. Nick Herbert, the shadow justice secretary when Labour's new rules were introduced, was highly skeptical, claiming "it will give no great protection to householders confronted by burglars because it's nothing more than a re-statement of the existing case law." The standard of reasonableness remained and still must be judged by police and prosecutors. Mr. Straw, however, argued that the changes "will make clear – victims of crime, and those who intervene to prevent crime, should be treated with respect by the justice system. We do not want to encourage vigilantism, but there can be no justice in a system which makes the victim the criminal." *The Daily Telegraph* article announcing the new rules reported that a leaked draft of the Policing Green Paper revealed that homeowners might have to wait up to three days after reporting a crime before they saw a police officer.

The new scope for self-defence, while somewhat more permissive, has not been a great success. Laws remaining on the books deprive law-abiding citizens of the physical means of protecting themselves. And so we have cases like that of the young couple who used pepper spray in self-defence not realizing it was illegal. Under the Firearms Act using a can of pepper spray is ranked with possessing a rocket launcher or firing a machine and carries the same 10-year prison sentence.[33] Authorities still believe the public too irresponsible to be permitted to handle a firearm. In November, 2009 a former soldier who turned in to the police a shotgun he had discovered in his garden faced at least a five-year prison sentence.[34] Paul Clarke, 27, was found guilty at Guildford Crown Court of possessing the gun and personally handing it in to police. Clarke had spotted a black bag at the bottom of his garden. When he investigated he discovered it contained a sawed-off shotgun and two cartridges. He rang the Chief Superintendent and asked if he could come to see him. He then brought the gun putting it on a table carefully pointing toward the wall. Although he was turning in a weapon he had found, he was immediately arrested and taken to the cells for possession of a firearm. There was a law in Surrey, although the Surrey police confessed they had never bothered to let the public know about it, that forbade a member of the public who discovered a gun from actually touching it. The individual was to

report the discovery by telephone and the police would pick the gun up. Since the prosecutor pointed out to the jury that the possession of a firearm was a "strict liability" charge, the jury had no option but to convict. The judge commented, "This is an unusual case, but in law there is no dispute that Mr. Clarke has no defence to this charge. The intention of anybody possessing a firearm is irrelevant."

On one side of the self-defence law we have legislation that treats adults, even those with military training, as incompetent to protect themselves or even to touch a firearm, yet threatens law-abiding citizens with a ten-year prison term for defending themselves with a non-lethal propellant such as pepper spray. The theory behind this legal structure as noted above, is that individuals don't need to protect themselves, they might do themselves harm, the professionals will protect them. Or will they?

When it comes to punishing criminals the authorities are more sympathetic than they are to their victims. Britain has a criminal justice system worried about overcrowding in prisons, the failure of prisons to rehabilitate, and the cost of incarceration. Hence courts and police are under pressure to give offenders lenient sentences, "community" sentences doing some so-called public service, or no sentence at all. It is not surprising that people are reluctant to bring charges or appear as witnesses, since the offender may be back in the community immediately and in a position to threaten them. In 2009 seventy percent of those burglars actually apprehended avoided prison.[35] The same year some 20,000 young offenders were electronically tagged and sent home, a 40% increase over three years.[36] Worse, one pedophile in three who preys on young children was let off with a "caution" as were four in ten other serious offenders. A caution means no hearing or trial takes place. The offenders are released back into the community with, what is in effect, a warning. Cautions were intended for less serious offences and required the offender to admit guilt. In some areas of England, however, police let more than half of the offenders they actually catch and who normally would face a judge, off with a caution. In the five years to 2007 the number of such cautions given to violent criminals had risen by 82 per cent.[37] In eight police areas half or more of those guilty of serious offences were given cautions.

The combination of legal restrictions on any item that law-abiding people could use for self-defence, insistence upon a standard of "reasonable force" against intruders and assailants, and a policy that turns convicted criminals back into the community continues to make a mockery of a workable right to self-defence.

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The prevailing legal bias against self-defence may now be reversed. The new Conservative-Liberal Democrat coalition wants to expand the scope for justifiable self-defence. As Jack Straw sensibly argued in 2000, if you see a crime taking place "you have all of a millisecond to make the judgement about whether to intervene. You haven't got time in that situation to wonder where does the balance lie--what constitutes reasonable force."[38] This is to echo American justice Oliver Wendell Holmes's point some eighty years earlier, "detached reflection cannot be demanded in the presence of an uplifted knife."[39] Labour revised the standard to expand the scope for self-defence by permitting people to defend themselves, their families and property with reasonable force. The difficulty is that they still insist the level of force used should not be excessive or disproportionate, as the Crown prosecutors, rather than a Court, view them.[40] Notwithstanding the new emphasis on the mind of the defender, the subjective notions of "excessive" and "disproportionate" remain to be weighed, not only in the mind of the defender but in that of police commissioners and government prosecutors who must decide whether to bring charges. The Conservative government's proposed new standard would *only* prosecute householders who used "grossly disproportionate" force, a standard that favors the householder and restores more traditional values.[41]

When first advanced this standard was immediately condemned by Keir Starmer, the Director of Public Prosecutions. Like his predecessors, Starmer, a former human rights lawyer, insisted that the current law was working well and prosecutions of defenders are exceedingly rare.[42] According to Starmer,

> The law is that reasonable force can be used and if the householder makes a mistake they will be protected because they will be judged on the basis of the mistake that they made.

> What the law. . . doesn't allow is for individuals after the event, having pursued someone who may or may not have been an intruder, then to seek some sort of summary justice. . . we can't allow our system to be undermined by those exacting summary judgment.[43]

The particular case that had provoked the public and the Conservative party to insist that a new standard beyond the Labour revision was necessary and to which Starmer was alluding involved Munir Hussain, a successful businessman and chairman of the Asian Business Council.[44] Mr. Hussain, his wife and three teen-aged children returned from their mosque to find three masked intruders armed with knives in their home in High Wycombe, Buckinghamshire. The burglars beat Hussain and threatened to kill him. They tied the hands of his wife and children behind their backs and forced them to crawl from room to room. When his wife pleaded with the men to stop beating her husband they threatened to kill her. Hussain's son managed to escape and two of the burglars then fled. Hussain threw a table at the third burglar who fled at well. Hussain gave chase and with his younger brother, Tokeer, managed to catch Walid Salim and beating him with a cricket bat and, according to witnesses, a metal pole causing permanent brain injury. Salim would be the only one of the three intruders ever caught. Because of his injury Salim was judged unable to plead and, despite some 50 past convictions, was only charged with false imprisonment and released with a two-year supervision [parole]. Although supposedly beaten too badly to face a court for the vicious attack on the Munirs, Salim was soon afterward taken into custody for credit card fraud and awaits trial for that offence.

Munir and Tokeer Hussain did not fare as well in the judicial system as Salim. The Hussains, both prominent and respected in their community, were found guilty of causing grievous bodily harm with intent. Judge John Reddihough sentenced Munir to 30 months in jail and Tokeer to 39 months for what the prosecution argued was a "revenge attack." They were not supposed to chase the intruders and, in their anger and fury, beat the one they managed to catch. But the provocation and the emotional upset, of course, were extreme. The police never caught the other two. The prosecution's heavy punishment of the Hussains seemed unjust to the public. It seemed

unjust to the Court of Appeal as well. The Lord Chief Justice, Lord Judge, England's most senior judge, freed Munir Hussain suspending his sentence as an "act of mercy."[45] The Lord Chief Justice pointed out, however, that the violence inflicted on the intruder was a reaction to the threatening experience Hussain had just endured, fears for the lives of his family and "the honour of his wife an daughter." While the violence was not lawful in normal cases and would have resulted in very long prison terms, the judge noted the men were of exceptionally good character. "It is rare," he said, "to see men of the quality of the two appellants in court for offences of serious violence." He acknowledged the "call for mercy" on their behalf was intense and concluded it "must be answered" but that the trial "had nothing to do with the right of the householder to defend themselves or their families or their homes. The burglary was over and the burglars had gone. No one was in any further danger from them."[46] The judge does not tell us what he thought this had to do with, if not the emotion roused by being put in a life-and-death situation.

Tokeer Munir's sentence was reduced from 39 months to two years and he remained in prison. Despite the judge's insistence the case had nothing to do with self-defence, it sparked renewed outrage over limitations on that basic right. At Scotland Yard Sir Paul charged authorities for often being too quick to criticize people who tried to stop crimes: "We should be starting off by applauding them, thanking them. We ought to be saying these people are heroes, they make society worthwhile."[47] Patrick Mercer, the Tory MP who had introduced the bill five years earlier to give householders more scope for self-defence, a bill the Blair government had blocked, was among those urging permission for defenders to use any force not "grossly disproportionate."[48] David Davis, the former shadow home secretary, agreed: "It is long past time we had a return of common sense to our law courts." David Cameron, leader of the Conservative Party, defended that position insisting that "burglars leave their human rights outside the moment they invade someone else's property" and pledged that if elected a Tory government would change the law.[49] And now that a Tory government has been elected it has proposed the change.

Whether the Conservative government will insist upon the change in the standards for self-defence, despite the often hysterical rhetoric against it, is unclear. The new government has very serious economic problems and a host of other issues demanding attention. Among the more surprising supporters of permitting real scope for self-defence is none other than Brendan Fearon, the career burglar wounded by Tony Martin after breaking into Martin's farmhouse in 1999. Fearon admitted a change in the law "would have deterred him." David Davis put it simply: "People have a moral right to defend their family and property and the law should reflect that." There is reason to hope that former standards of respect for what Blackstone saw as the first great and primary right, the right of personal security will return to Great Britain.

ENDNOTES

1. William Blackstone, *Commentaries on the Laws of England,* 4 vols. (1765-1769), vol. 3, p. 4.

2. Henry Porter, Afua Hirsch, "A barbaric take on self-defence: The Tory argument that burglars `leave their human rights at the door' is a nod to the lynch mobs of medieval England," guardian.co.uk, Feb. 2, 2010.

3. Tom Whitehead, "Seven in ten burglars avoid prison, figures show," *The Telegraph* online, April 8, 2009.

4. This figure is from November 2009. See "Latest Crime Statistics," Crimestoppers, http://www.crimestoppers - uk.org.

5. Tom Whitehead, "Gun crime doubles in a decade," *The Telegraph*, October 27, 2009, *http://www.telegraph.co.uk/journalists/tom-whitehead/;* "Crime in England and Wales 2008/09: A Summary of the Main Findings, UK Home Office. This report lists the crime reported by police alongside the results of the British Crime Survey. The difference between the two is marked with the police recording lower crime figures in every category. The disparity is most likely due to police under-recording crime either to appear more effective and/or because much crime is not brought to their attention.

6. See Joyce Lee Malcolm, *Guns and Violence: The English Experience* (Cambridge, 2002).

7. 24 Henry VIII, c. 5, That a Man killing a Thief in his Defence, shall not forfeit his Goods. (1532)

8. English Bill of Rights, 1 William & Mary, sess. 2, c. 2.

9. Malcolm, *Guns and Violence*, pp. 133-134.

10. The Firearms Control Act, 10 & 11 Geo. V c. 43 (1920). And See Malcolm, *Guns and Violence*, pp. 141-149.

11. Malcolm, *Guns and Violence,* pp. 155-156. Also see pp. 149-150.

12. Quoted in Colin Greenwood, *Firearms Control: A Study of Armed Crime and Firearms Control in England and Wales* (London, 1972), p. 72.

13. Malcolm, *Guns and Violence, I p. 171.*

14. Prevention of Crime Act, 1 & 2 Elizabeth II, c. 14 (1953). Also see Malcolm, *Guns and Violence,* pp. 171-180.

15. Malcolm, *Guns and Violence,* p. 176.

16. Ibid., p. 185.

17. Ibid.

18. Firearms Act, 1968, Section 5, Weapons subject to general prohibition.

19. Malcolm, *Guns and Violence*, p. 184.

20. Criminal Law Act, Elizabeth II c. 58 (1967) especially sect. 3.

21. J. C. Smith, *Smith and Hogan Criminal Law*, 9th ed . (London, 1999), p. 257.

22. Glanville Williams, *Textbook of Criminal Law*, 2nd ed. (London, 1983), p. 507.

23. Carol Harlow, "Self-Defence: Public Right or Private Privilege," *Criminal Law Review*, 1974, pp. 537, 538.

24. Ibid.

25. See "Howard on New Call on Self-defence," *Guardian Unlimited,* Jan. 13, 1905.

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TEN MYTHS ABOUT FIREARMS AND VIOLENCE IN CANADA

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In 2011 Canadians elected a Conservative majority government for the first time since 1988. The end of Liberal hegemony offers an historic opportunity to redesign firearms legislation to reflect a more rational, fact-based analysis. The current firearms legislation (Bill C-68) became law in 1995 and is based upon widespread myths about firearms and violence that have distorted policing practices and compromised efforts to contain violent crime. The enduring power of these myths can be seen in the failure of the 2010 attempt to eliminate the long-gun registry. Candice Hoeppner's private-member's bill (Bill C-391) to scrap the registry was narrowly defeated in the House of Commons due to the relentless exploitation of these baseless myths by her opponents. In this paper, I provide a thorough analysis of these ten myths demonstrating that they do not reflect reality.

First, it is important to briefly review the current Canadian firearms control system:

* Handguns have been registered since 1934, and subject to police approval since 1892.

* Criminal record checks have been required for long-gun purchasers since 1979.

* Bill C-17 introduced further restrictions on guns, magazines and gun owners in 1992.

* Legislation setting up the long-gun registry and owner licensing (Bill C-68) was passed in 1995, but virtually none of the regulations were put into effect until 1998.

* Owner licensing began in 1998 and registration of long-guns began in 2001; all long guns were required to be registered by 2003.

Myth #1: Access to a gun increases the risk of murder.

Fact: Canadian gun owners are less likely than other Canadians to commit homicide.

Based upon statistics from the Homicide Survey and the Canadian Firearms Program, the probability of a law abiding Canadian firearms owner committing murder is less than one-half that of the typical Canadian.

Between 1998 and 2005, there were between 7 and 17 people accused of homicide who possessed either a valid firearms licence or an FAC (Canadian Centre for Justice Statistics, 2006).

1997	17	2002	14
1998	10	2003	14
1999	11	2004	16
2000	7	2005	11
2001	11		

According to the Canadian Firearms Program, the number of people with valid firearm licences is just under 2,000,000 (RCMP, various years).

December 2005 1,979,054

December 2002 1,912,939

Depending upon the year, the homicide rate for licensed Canadian firearms owners varied from 0.35 per 100,000 to 0.85 per 100,000 firearm owners. In other words, less than one licensed firearm owner per 100,000 gun owners is accused of murder in any given year.

Over the same time period, the Canadian national homicide rate ranged from 1.74 per 100,000 to 2.06 per 100,000 people in the general population (Beattie, 2009). In other words, approximately two people out of every 100,000 Canadian residents are accused of murder. Thus, the likelihood of a licensed Canadian firearms owner committing murder is less than one-half that of the typical Canadian. It follows that, on average, Canadians who do not own firearms are more likely to commit homicide than those who do.

This should not be surprising since prospective firearms owners have had to pass criminal record checks since 1979. Also since that

date, the conviction of a violent crime has been grounds to revoke a firearms licence (or FAC).

Myth #2: Rifles and shotguns are the weapons most likely to be used in domestic homicides.

Fact: The problem is the murder of family members, not the means of killing.

Focusing on murder weapons - whether long guns, hand guns, or knives - is a red herring. It is false to assume that if there had been no gun of a particular kind available in a particular incident there would have been no murder committed. There is copious research that shows that when laws are directed to restricting particular instruments such as firearms, the murder rate stays the same (See Kleck, 1991, 1997; Kates and Mauser, 2007; Mauser, 2008). Spousal murderers are opportunistic in that they use whatever implements are available to them to kill. Every home has a variety of objects, such as baseball bats, hockey sticks, kitchen knives and rifles which can be used for assault or murder.

Knives, not long guns (rifles or shotguns), are the weapons used more often to kill women than firearms. A recent study found that in the period 1995-2008 knives were used in 31% of the murders of female spouses (Casavant, 2009). Long guns are involved in only 18% in female spousal homicides. Firearms of any kind are used in 29% of homicides of female spouses. See Tables 1a and 1b.

In a typical year there are almost 600 homicides and 60 female spousal murders; long guns are involved in the deaths of 11 female spouses.

Table 1. Female spousal homicides (Annual average 1995 to 2008)
1a. Types of Firearms Used in Homicide

	Number	Percent
Handgun	5	11%
Long gun (rifle or shotgun)	11	18%
Other type of firearm or unknown	2	3%
Total homicides involving firearms	18	27%

Source: Canadian Centre for Justice Statistics, (Casavant, 2009).

1b. Types of Weapons Used in Homicides

	Number	Percent
Spousal homicides involving firearms	18	27%
Knife or other cutting/piercing tool	19	31%
Total (average annual number of female victims)	60	100%

Source: Canadian Centre for Justice Statistics, (Casavant, 2009).

Illegally possessed handguns pose a much greater problem. In 2008 handguns were involved in over 60% of homicides involving firearms. This follows from the discussion above: licensed firearms (including handgun) owners are a safer group than those who do not own firearms, and by a very considerably large margin. Those who illegally hold handguns are outside the law.

Myth #3: Spousal murders with guns have fallen threefold since the law passed, while spousal murders without guns have remained the same.

Fact: Spousal murders (with and without guns) have slowly been declining since the mid-1970s. (See the attached charts, Chart 1 and Juristat Chart 8).

This claim confuses the date the law passed with when the long-gun registry began. The law setting up the current firearms system was passed in 1995, but the long-gun registry did not begin until 2001 and all guns were required to be registered by 2003.

The female spousal murder rate fell by more than 50% from 1979 to 2000 (the year before the long-gun registry started); it has slid 15% since that time. It is unknown why spousal murders have become less frequent over the past few decades but what is certain is that this decline is a long-term trend. It is logically incorrect to link it to the legislation of the last few years.

The long-gun registry and licensing are rarely useful to police in solving spousal homicides; in almost all cases the accused is immediately identified.

The firearms used by abusive spouses to kill their wives are almost all possessed illegally. One study of long guns involved in homicide found that approximately 4% were registered and 24% of

homicide suspects who used a firearm had a valid FAC or licence (Canadian Centre for Justice Statistics, 2006).

It has been illegal since 1992 for people with a violent record to own firearms. Despite this, we do not currently have in place a system that would track prohibited offenders but choose instead to track legal, law abiding, licensed duck hunters, farmers and recreational sport shooters.

Police reports show that 63% of spousal victims come from a family known to have a history of violence (Dauvergne, 2005). Approximately two-thirds of those accused of homicide were known to have a Canadian criminal record; the majority of these were previously convicted of violent offences. Over one-half of the victims were also known to have a Canadian criminal record; most had been convicted of violent offences (Homicide in Canada, 2001, 2002, 2003, 2004, 2005).

Myth #4: Stronger gun laws have helped reduce gun violence.

Fact: There is no convincing evidence of the effectiveness of gun laws against crime. If changes in gun laws have reduced homicide or suicide rates, or reduced violence against women, that should be visible by comparing the statistical trends before and after the introduction of the long-gun registry in 2001.

The rate of homicides committed with a firearm generally declined from the mid-1970s to 2002. This steady, long-term decline has been driven by economic and demographic changes. Statistical studies have not found any impact on criminal violence from firearms legislation in Canada (Mauser and Maki, 2003; Mauser and Holmes, 1992).

Firearms use in homicide increased after the introduction of long-gun registration. In 2002, the percentage of homicides that involved firearms was 26% in 2002, but by in 2008 it had jumped to 33%. Firearm homicides increased despite the registering of long-guns between 2001 and 2003. See Table 2.

Table 2. Percentage of Homicides that Involve Firearms

	Percentage of homicides that involved firearms
1998	27%
1999	31%
2000	34%
2001	31% - Long-gun registry started
2002	26%
2003	29% - Long-guns required to be registered
2004	28%
2005	34%
2006	31%
2007	32%
2008	33%

Source: Table 4, (Beattie, 2008)

Over the past 30 years, the use of handguns to commit homicide has tended to increase, as a result of gang-related activities, while the use of rifles and shotguns has generally declined. The long-gun registry began in 2001 and all long-guns had to be registered by 2003. (See attached Chart 2). The long-gun registry had no effect on this long-term decline.

Gang-related homicides have been increasing since the early 1990s. In 2008 about one in four homicides were gang-related. (See attached Chart 3). Of the 200 homicides committed with a firearm in 2008, 61% or 121 were with handguns (almost all illegally possessed). There were also 34 homicides committed with rifles or shotguns.

Over the past 10 years, firearms were involved in approximately as many homicides as knives; long-guns (rifles and shotguns) are involved in 8% of all homicides. See Tables 3a and 3b. it is a myth to claim that guns are uniquely dangerous.

Table 3. Homicides involving firearms (percent total homicides)

3a. Types of Firearms Involved in Homicides

(Annual average 1998 to 2007)	Number	Percent
Handgun	106	18%
Rifle or shotgun	45	8%
Other type of firearm or unknown	25	4%
Total involving firearms	176	30%

Source: Table 5, (Beattie, 2008).

3b. Types of Weapons Involved in Homicides

(Annual average 1998 to 2007)	Number	Percent
Homicides involving firearms	176	30%
Homicides involving knives	198	31%
Average annual number of victims	584	100%

Source: Table 4, Beattie, Homicide in Canada, 2008.

The facts show that the long-gun registry has not reduced gun violence. The rate of homicides committed with a firearm generally declined from the mid-1970s to 2002. However, the use of firearms (overwhelmingly illegally possessed) in homicide has increased by 24% since 2002 despite the introduction of the long-gun registry.

MYTH #5: FIREARMS STOLEN FROM LEGAL OWNERS ARE A SIGNIFICANT SOURCE OF CRIME GUNS. REGISTRATION IS ESSENTIAL TO PREVENT DANGEROUS INDIVIDUALS FROM GETTING GUNS.

FACT: ALL STUDIES OF CRIME GUNS (OR GUNS USED IN MURDERS) AGREE THAT STOLEN REGISTERED FIREARMS ARE INFREQUENTLY INVOLVED.

It is the criminal record check, which is part of licensing, and certainly not registration, that stops criminals from getting guns legally. Registration refers to the firearm, not the owner.

The claim about stolen firearms is disingenuous. A recent research study reported that more than 66% of crime guns seized in Canada have their origin in the United States(Canadian Press, 2009). A study of homicides between 1997 and 2005 reported that 13% of all firearms involved in a homicide could be found in the

registry (Dauvergne, 2005). A variety of police studies have found that between 2% and 16% of crime guns were stolen from legal owners or were ever in the Canadian gun registry.

In the Commonwealth, stolen guns only infrequently end up being used by criminals to commit subsequent crimes. An Australian study of almost 1,500 firearms stolen over the two-year period, 2004-05, found that just 1% had later been identified as having been used in a serious crime (Borzycki and Mouzos, 2007).

The bulk (54% - 69%) of crime guns are smuggled into Canada by criminal gangs. (Source: Canadian Centre for Justice Statistics, 2006; Toronto Police Services, 2004, 2005; Toronto Police Annual Report, 2001; Project Gun Runner, 1993). It is abundantly clear that long-gun registration has no effect whatever on guns used in crime. The gun registry merely ties up police time and funds, and thereby contributes to blocking more effective means of prevention.

The key to preventing dangerous people from getting guns is police screening and criminal record checks. The gun registry has nothing to do with access to firearms. The myth that repealing the long-gun registry would make it easier for people to get a gun is disingenuous, given that it is the firearms licensing system, and not the registry, that determines who can or cannot have legal access to a firearm. In addition, the amount of time, effort and money directed towards preventing criminals from having easier illegal access to the guns of lawful owners is not as effective as increasing police staffing and directing it against criminal activity. One undetected container load of illegal firearms fuels criminal needs for decades.

Myth #6: Firearms pose more problems in smaller cities where there are more gun owners.

Fact: Homicide is a particularly acute problem in large cities where ironically there are fewer legal gun owners.

Canada's major metropolitan areas are increasingly plagued with gang-related homicides that predominantly involve handguns imported by criminal activity.

It is disingenuous to talk about "firearm problems" rather than homicide because this term, and its cousin, "gun deaths," mix suicide, homicide and accidents. Admittedly, suicide is a greater problem in small rural communities than in large cities, but this is

predominantly a problem in aboriginal communities. Unfortunately, aboriginal suicide rates cannot be reduced by general firearms laws. For many reasons, firearms laws in rural aboriginal communities differ from those applicable in the rest of the country. Firearms are involved in only 15% of suicides; hanging (or asphyxiation) is much more prevalent. What is needed is greater effort in suicide prevention programs in aboriginal communities.

Table 4. Homicide Rates in Rural and Urban Canada
Homicide rate per 100,000 population by census area (2008)

Census metropolitan areas (population 500,000 and over)	1.93
Census areas less than 500,000 population	1.73
Canada	1.85

Source: Table 3 (Beattie, 2008)

Table 5. Firearms ownership is lower in urban areas than in rural areas

Firearms-Owning Households		
	Urban	13%
	Rural	30%

Source: GPC Research (2000)

The term 'gun deaths' is a red herring.

One of the most important aspects of understanding the debate about guns is to be clear that observing so-called "gun deaths" is not an appropriate measure for evaluating firearms laws. If the point of gun laws is to improve public safety, then the proper goal for stricter gun laws is to reduce homicide or violent crime, the figures for which have been kept for many decades in all civilized countries. The primary goal of public safety is to protect the public from criminal violence, and secondarily to diminish suicide rates. The term "gun deaths" has been widely adopted by activists when closer scrutiny shows that it is a red herring which masks changes in more important indicators.

Table 6. "Gun deaths" consist primarily of suicides.
Gun deaths (Canada, 2005)

	Number	Percent
Suicide	593	71%
Homicide	223	27%
Accidents	17	2%
Total	833	100%

Note: 2005 is the most recent year suicides and accidental deaths are available nationwide.

Source: Statistics Canada: Causes of Death

Lives cannot have been saved if the number of "gun deaths" declines but there is no corresponding drop in total homicides or suicides. This is known as "the problem of method substitution." Yet those criticizing gun ownership assume that removing guns would automatically stop the crime (or the suicide). This is false as can be seen immediately in Table 7. This "substitution effect" is not limited to Canada, but can be seen in other countries, such as Australia, where suicide by asphyxiation immediately filled the gap left by a decline in firearm suicides (Baker and McPhedran 2007; Klieve et al, 2009; Lee and Surardi, 2008). In New Zealand, suicide rates continued to increase after the 1992 Firearms Act (Beautrais, 2006).

Table 7. Trends in Suicide Methods in Canada (selected years)

	Total suicides	Firearms	Hanging
1991	3,593	1,110	1,034
1995	3,968	916	1,382
2000	3,605	685	1,546
2003	3,764	618	1,662
2005	3,741	593	1,682

Source: Statistics Canada: Causes of Death

The long-gun registry has saved no lives. There were 3,605 suicides in 2000 before the registry started and 3,741 in 2005.

Clearly, this analysis suggests that the money wasted on registering guns would have been better spent on suicide prevention efforts.

Table 8. Number of Homicides in Canada, 1991 to 2008 (selected years)

Number of homicide victims	
1991	756
1995	588
1998	558
2000	546
2001	533 - long-gun registry started
2002	582
2003	549 - long guns required to be registered
2004	624
2005	663
2006	606
2007	594
2008	611

Source: Beattie, Sara (2009) Homicide in Canada, 2008

There were 546 homicide victims in 2000, before the long-gun registry began, and 611 in 2008.

The key question is whether stricter gun laws, e.g., long-gun registration, are effective in reducing criminal violence. No properly designed empirical study has found that gun laws have been responsible for reducing criminal violence rates (or suicide rates) in any country in the world. See Baker and McPhedran (2007), Hahn et al (2003), Kates and Mauser (2007), Kleck (1991, 1997), Mauser (2007, 2008), Thorp (1997), Wellford et al (2004).

MYTH #7: THE REGISTRY IS AN ESSENTIAL TOOL FOR POLICE WHEN TAKING PREVENTATIVE ACTION AND WHEN ENFORCING PROHIBITION ORDERS TO REMOVE FIREARMS FROM DANGEROUS INDIVIDUALS. "BEFORE A POLICE OFFICER KNOCKS ON A DOOR, THEY WANT AND NEED TO KNOW WHETHER THE PERSON BEHIND THAT DOOR OWNS A GUN," (ONTARIO ATTORNEY GENERAL, 2009).

Fact: The long-gun registry does not contain information on a gun's location. There is no requirement to store a long-gun where the owner resides. The registry only contains descriptive information about the registered guns.

The police need information they can trust. The most dangerous criminals have not registered their firearms. When police approach a dangerous person or situation, they must assume there could be an illegal weapon. Many serving police officers say the registry is not useful to them.

The Auditor General found that the RCMP could not rely upon the registry in court on account of the large number of errors and omissions (Office of the Auditor General, 2002). It is and has always been the nature of gun registries to have such errors and omissions, on a staggering scale. This is why New Zealand abandoned their long-gun registry (Thorp, 1997).

The RCMP has reported error rates between 43% and 90% in firearms applications and registry information. A manual search, prompted by an MP's ATI request, discovered that 4,438 stolen firearms had been successfully re-registered without alerting authorities. Apparently, the thieves had resold the firearms to new owners who (unsuspectingly) had subsequently registered them (Breitkreuz, 2003; Paraskevas, 2003).

The Auditor General reported that, "(T)he (Canadian Firearms Program) did not establish targets for data accuracy or methods of measuring the accuracy of data in the CFIS," and that only 27% of firearms had been verified (Office of the Auditor General, 2006). It should be understood that the irregularities in gun registration stem from multiple causes which will always be with us. Guns carry a lot of stampings, and officials who handle guns to register often them know little about firearms. Despite the best efforts of the Canadian Firearms Program, it is prohibitively expensive to address these problems adequately. Hence it follows that gun registries are always inaccurate.

In sum, these claims are wrong. The long-gun registry does not contain information on a gun's location. The Auditor General found that the RCMP could not rely upon the registry in court on account of the large number of errors and omissions. Less than one-half of all firearms in Canada are estimated to be listed in the registry, and

a large number of records in the registry have errors or are missing important information (Breitkreuz, 2001; Mauser, 2007). Police officers on the front lines do not find the registry helpful.

Myth #8: The gun registry is consulted by police 10,000 times a day and provides important information.

Fact: Almost all of the "inquiries" are routinely generated by traffic stops or firearm sales and are not specifically requested; nor do police often find them useful.

Almost all of these inquiries involve licensing, not the long-gun registry. Inquiries specific to the gun registry amount to only 2.4% of the approximately 3.5 million inquiries into the database in 2008, which has declined each year from 8.3% in 2003 as awareness has grown that actually looking for this data has limited usefulness.

Repealing the long-gun registry will not change the licensing system so 97.6% of these inquiries will continue as before. Note: the firearms registry only contains gun-specific data, e.g., the serial number and certificate number.

Despite its reported irrelevance, some police associations have endorsed it. These endorsements may reflect where they receive funding and are currently under scrutiny. The majority of MPs who voted for Bill C-391 were right to ignore the disingenuous claims of these police associations.

Here is what one serving RCMP corporal (who requested anonymity) had to say:

> "I certainly do not understand how the Canadian Association of Chiefs of Police can claim that the registry is a useful tool. I think their doing so is more a statement of how long it has been since any of them has been in touch with front line policing. I supervise 10 RCMP members on a daily basis and have done so for quite some time. I have never once in my career found the registry to be a useful tool in solving a single crime and can say without a doubt that I have never witnessed the long-gun registry prevent a crime."
>
> SOURCE: Email to Candice Hoeppner, M.P. - October 2009

The registry is a shopping list for criminals. The RCMP has admitted to more than 300 breaches so far. Early in 2009, the RCMP handed over sensitive information to the polling firm Ekos Research Associates for a customer-satisfaction survey. Gun owners believe this is a serious breach of privacy. No registry means no shopping list for computer-hacking criminals (Hoeppner, 2009).

In summary, almost all of the inquiries are routinely generated by traffic stops or firearm sales and are not specifically requested by police. More than 97% of these inquiries involve licensing, not the long-gun registry. Inquiries specific to the gun registry amount to only 2.4% of the approximately 3.5 million inquiries into the database in 2008.

Myth #9: Polls show Canadians believe the gun registry should not be dismantled.

Fact: Two recent polls show that the public does not support the long-gun registry. This is consistent with at least 11 earlier polls, all of which have clearly demonstrated that the Canadian public has no faith in the long-gun registry or its ability to increase public safety.

A recent survey by Angus Reid (Nov 2009) asked the following question:

> "The Canadian Firearms Registry, also known as the long-gun registry, requires the registration of all non-restricted firearms in Canada. From what you have seen, read or heard, do you think this registry has been successful or unsuccessful in preventing crime in Canada?"

Successful	11%
Unsuccessful	46%
It has had no effect on crime	32%
Not sure	11%

This was corroborated in an Ekos poll, also conducted in November, 2009, that found 38% supported abolishing the registry, while 31% wanted to keep it; 31% were undecided or did not respond.

Myth #10: Stronger gun laws have helped reduce gun-related death, injury, violence and suicide.

Fact. No properly designed study has been able to show that gun laws have been responsible for reducing criminal violence rates or suicide rates in any country in the world.

There is no evidence that Bill C-68 has reduced the homicide rate or the suicide rate in Canada. Gun deaths have been declining since the 1970s, long before Bill C-68 and the creation of the long-gun registry.

Gang-related homicides have increased dramatically since the mid 1990s. The long-gun registry has had no obvious effect on gang-related violence. (See attached Chart 3).

Homicide rates have fallen impressively in both the United States and in Canada since the early 1990s. Homicide rates have plummeted 45% in the US, compared to just 32% in Canada over the same time period (See attached Chart 4). The US did this without the benefit of Canadian gun laws. In fact, the trend in the US over the past twenty years has been to make gun ownership easier for licensed citizens, not harder.

No properly designed empirical study has found that gun laws have been responsible for reducing criminal violence rates (or suicide rates) in any country in the world. See Baker and McPhedran (2007), Hahn et al (2003), Kates and Mauser (2007), Kleck (1991, 1997), Mauser (2007, 2008), Thorp (1997), Wellford et al (2004).

Conclusions

To sum up, the facts do not support any of the ten myths about firearms and violent crime.

1. The problem is not access to guns. Canadian gun owners are less likely than other Canadians to commit homicide.

2. In domestic homicides, the problem is the murder of family members, not the means of killing. Rifles and shotguns are not the weapons most likely to be used in domestic homicides. Knives are.

3. There is no empirical support for the claim that the long-gun registry has reduced spousal murders. Spousal murders

(with and without guns) have slowly been declining since the mid-1970s.

4. There is no empirical support for the claim that stronger gun laws have helped reduce gun violence. In fact, the use of firearms in homicide has increased by 24% since the beginning of the long-gun registry.

5. Firearms stolen from legal owners are not a significant source of crime guns. All studies of crime guns, or guns used in murders, agree that stolen registered firearms are infrequently involved. It is licensing, not registration, that is essential to prevent dangerous people from getting guns.

6. Firearms do not pose more problems in smaller cities. Homicide is a particularly acute problem in large cities where ironically there are fewer legal gun owners.

7. Rank and file police members do not find the registry useful. In approaching dangerous situations, the police must assume there is a weapon. The long-gun registry does not contain information on a gun's location, but only descriptive information about the guns that have been registered. When enforcing prohibition orders to remove firearms from dangerous people, the police cannot rely upon the registry because of the large number of errors and omissions.

8. Almost all inquiries to the gun registry are routinely generated by traffic stops or firearm sales. Almost all of these inquiries involve licensing, not the long-gun registry. Rank and file police say that this information is not useful to them.

9. Polls show that the Canadian public does not support the long-gun registry.

10. No properly designed study has been able to show that gun laws have been responsible for reducing criminal violence rates or suicide rates in any country in the world.

The evidence demonstrates that making fundamental changes in the current Canadian firearms laws, including the repeal of the long-gun registry, will not reduce public safety and may even improve it. Licensing and the long-gun registry have failed to protect

Canadians from gun violence but instead have only diverted vital police resources away from more effective efforts. In her report to Parliament, the Auditor General of Canada found that the long-gun registry cost taxpayers at least one billion dollars; later research doubled this estimate. She also noted that the Department had been unable to substantiate whether the long-gun registry had increased public safety or saved lives, which is surely the standard by which any success of the program should be measured.

The frequency of multiple person shootings have not declined since licensing and registration were put in place suggest.

In sum, the test of any governmental program should be whether it meets its goals. In this case, the long-gun registry has failed. It has failed to save lives. It has failed to reduce murder, suicide or aggravated assault rates. The long-gun registry continues to cost Canadian taxpayers millions of dollars each year. This money could be better spent on other more useful law enforcement measures, or be directed towards a number of other key priorities for Canadians such as health care.

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ENDNOTES

1. In fact, the share of rejection decreased from FAC to licensing.

2. Stats Can defines spouses quite broadly to include legally married, common-law, as well as separated and divorced persons age 15 years or older.

3. The Ontario Attorney General has made the same mistake that is repeated by the Coalition and others. The licensing system, which is not affected by C-391, is only able to identify that someone in the residence may own a gun, not where it is stored

AN ECONOMETRIC EVALUATION OF THE IMPACT OF METHOD RESTRICTION ON SUICIDE RATES AMONG AUSTRALIANS AGED 45 AND OVER

Samara McPhedran and Jeanine Baker*

Abstract

Although method restriction has often been touted as a means of suicide prevention, it may incur significant financial costs to implement. Given the finite resources allocated to suicide prevention, it is necessary to direct resources into interventions that are most likely to have an impact. This paper tests for possible impacts of a cost-intensive Australian policy change (increased firearms restriction) on suicides among persons aged 45 years and over. Suicide rates by different age groups and methods were examined for structural breaks, using Zivot-Andrews and Quandt tests. There was little evidence to support the view that increased firearms restriction impacted on suicides among middle aged and older Australians. There were few structural breaks in general, suggesting that suicide among the older demographic may be resistant to prevention initiatives. This points the way to carefully tailored intervention strategies, and highlights the value of disaggregating suicide rates by age when evaluating prevention policies.

Introduction

Suicides in Australia rose consistently throughout the 1970's and 1980's, reaching a peak in 1997 with 2720 deaths in a total population of 18 517 564. In response to rising suicide rates, the mid to late 1990's saw the introduction of a range of co-ordinated national suicide prevention programmes. The fall in overall suicide rates in Australia since the late 1990's has been interpreted as evidence that increased attention to suicide prevention, coupled with related changes such as greater public awareness of mental health and

improved psychiatric treatments have, had a positive influence on the occurrence of suicide in Australia (e.g., Goldney, 2006)[1].

Suicide among young people has received particular attention within suicide prevention policy development, which in part reflects the importance attached to the loss of young lives by both the mental health field and the wider public. In addition, in terms of objective measures such as years of potential life lost, there is a clear imperative to address youth suicide. However, there is growing recognition in Australia (and elsewhere) of the need to adopt a 'life span' approach to suicide prevention, given that the specific factors and life events that may precipitate suicidal behaviours are likely to change considerably over the course of a life (consider, for instance, failing an exam or experiencing bullying during adolescence, versus illness or the death of a spouse in later life).

As part of building the evidence base in this field, the efficacy of different suicide prevention strategies employed to date should be critically evaluated using a life course perspective. Relative to the amount of research into youth suicide, however, evaluation of suicide prevention strategies among older age groups is comparatively under-studied. If it is accepted that different factors contribute to the development of suicidal behaviours across the life span, then it follows, too, that the efficacy of different suicide prevention strategies may vary across age groups.

One common approach to reducing suicide is method restriction (i.e., reducing access to specific means of enacting suicide). Although it far exceeds the scope of the current work to provide a comprehensive discussion of all study into method restriction, it is pertinent to note that international research has produced equivocal findings. Briefly, while some studies have demonstrated that method restriction leads to overall reductions in suicides, others have found no significant or sustained change in the use of a particular method, or, alternatively, have found evidence for method substitution (for a sample of these studies, the reader is referred to: Amos, Appleby, & Kiernan, 2001; Beautrais, 2001; Caron, 2004; Leenaars & Lester, 1996; Lester & Abe, 1989; Wilkinson & Gunnell, 2000). Similarly, age-related variations in the impact of method restriction have been noted. For instance, in Australia, method substitution has been

observed among young people (e.g., De Leo, Dwyer, Firman & Neulinger, 2003; Klieve, Barnes, & De Leo, 2009).

The question remains, therefore, as to whether method restriction delivers significant reductions in suicide, and, if so, whether its impact varies across different age groups. On one hand, it could be suggested that method restriction, even if unsuccessful in delivering its goals, is unlikely to be of harm and thus can still be included among other measures. On the other hand, however, implementing method restriction can in some instances require significant financial outlay. A prime example is method restriction via increased firearms legislation in Australia. In 1996, Australia adopted sweeping reforms to its firearms legislation, enacting laws that are considered among the most restrictive in the developed world. The total costs of implementing and maintaining this scheme are not publicly available, although it is known that at least $500 million Australian dollars (Au$) was used by government to compensate firearms owners for the confiscation of certain types of firearms (self-loading rifles and shotguns, and pump-action shotguns) that were prohibited under the 1996 legislative changes. The ongoing costs of monitoring and administering the scheme have recently been conservatively estimated at around Au$27 million per year (Vos et al., 2010). To place these figures in context, the total annual funding allocated to Australia's National Suicide Prevention Strategy (NSPS), over its current five-year term, is around Au$25 million per year.

A growing body of study has examined whether or not the 1996 firearms legislation in Australia impacted on the pre-existing downwards trend in firearm suicides. The findings have generally pointed to either no clear impact of the reforms, or to the likely presence of method substitution (specifically, to a rise in hangings; De Leo, Dwyer, Firman & Neulinger, 2003; Klieve, Barnes, & De Leo, 2009). Other studies have noted concurrent declines in firearm suicide and non-firearm suicides, with the former reflecting a longer term trend and the latter beginning around the same time as the gun law reforms were introduced. The authors of those studies point out that it is, therefore, extremely difficult to distinguish between the impacts of legislative reform and the impacts of broader suicide prevention strategies that were introduced during the same period

that the 1996 gun law changes were being implemented (see Baker & McPhedran, 2007; McPhedran & Baker, 2008).

The above studies, however, presuppose an impact of the policy change at a certain point in time. They use a 'before and after' analytical approach, setting 1996 as a break point. While this is a useful technique, an equally useful alternative approach is to search for evidence of an impact at an unknown time. Using econometric methods designed to detect change in a time series at an unknown point, Lee and Suardi (2010) assessed whether there was a structural change in the firearm suicide time series around the time of the 1996 legislative changes. Those authors did not find a breakpoint associated with the 1996 firearms legislation, and conclude that there is little evidence to support the view that the legislative changes had an impact on firearm related deaths. However, it is possible that the reforms may have impacted on some age groups but not others. While it has recently been found that the 1996 reforms were not associated with a significant structural change in firearm suicides among younger age groups (identifying reference removed), this may not be the case for older age groups.

Given that the financial resources available for allocation to suicide prevention are finite, it is vital that expenditure be directed to interventions that are most likely to deliver results. It is therefore appropriate to examine whether, when a method restriction approach to suicide prevention is accompanied by a substantial financial commitment, the expenditure is borne out by an impact on the occurrence of suicide. From the life course suicide prevention perspective, it is necessary to determine whether method restriction has different impacts across different age groups. Therefore, the current study examines whether there is evidence for an impact of a method restriction approach to Australian suicide prevention (in the form of stringent firearms legislation), among specific age groups, with particular emphasis on people aged 45 and over.

Data source and methods

Data were drawn from the Australian Institute of Health and Welfare (AIHW) General Record of Incidence of Mortality (GRIM) books, at the National level. In addition to raw numbers of deaths and standardised (rate per 100 000 population) data about suicide

mortality by method from the years 1907 to 2007 (the most recent year of data available), the books also contain population data and other summary statistics (such as lifetime risk of dying), as well as birth cohort information.

Three age groups were analysed – 45 to 54 years, 55 to 64 years, and 65 years and over. While these groups represent a spectrum ranging from early middle age through to the elderly, in the interests of simplicity they are referred to herein simply as 'older' people (a dichotomisation relative to previous work on persons aged under 45). For each year of data, the suicide rate was calculated for each age category (standardised against the total population for that age category), across the methods 'firearm', 'hanging', and 'other' (the majority of which consisted of poisoning by drugs or other toxic substances such as carbon monoxide). While a more detailed breakdown of the 'other' category could have been undertaken, a broad approach was adopted in this instance to maximise the sample size in each cell available for analysis.

Two different time periods were examined. The first period used the full data series (1907-2007), consistent with the approach chosen by Lee and Suardi (2010), which examined the period 1915-2004. The second period of interest was 1979-2007, which uses a start date employed by other studies in the field (e.g., Baker & McPhedran, 2007). Within each time period, a selection of statistical tests were undertaken for each age category and method. Augmented Dickey-Fuller (ADF) and Phillips-Perron (PP) tests were used to determine whether the time series for each age group and method contained a unit root. Both of these tests share the null hypothesis of a unit root process in the data. As these are commonly used tests, technical details are not provided in this paper. Briefly, though, the absence of a unit root indicates that the time series is stationary (it fluctuates around a constant, long-run mean), whereas a non-stationary series suggests the effect of a 'shock' (such as a stockmarket crash or, in this instance, a legislative change) on the time series.

A Zivot and Andrews (ZA) structural breakpoint test (Zivot & Andrews, 1992) was used to identify whether there was a break at an unknown point in the time series. In addition to identifying an endogenous structural break, the ZA test overcomes the difficulty identified by Perron (1989); namely, that in failing to account for

a structural break, conventional unit root tests (such as ADF) may lead to the incorrect conclusion that the data contain a unit root, when the series is, instead, stationary around a structural break in the intercept (or 'level' of a time series) and/or trend (or 'rate of growth' of a time series). After this, a formal structural break test (the Quandt test) was applied. The Quandt (1960) structural change test searches for the largest Chow (1960) statistic over all possible break dates.

Although the results presented below are based on tests of the untransformed rate data, ZA tests were also applied to ARIMA modelled data, and data using a log transformation of the rates (consistent with Lee & Suardi, 2010), to test the robustness of results based on untransformed rate data.

Results

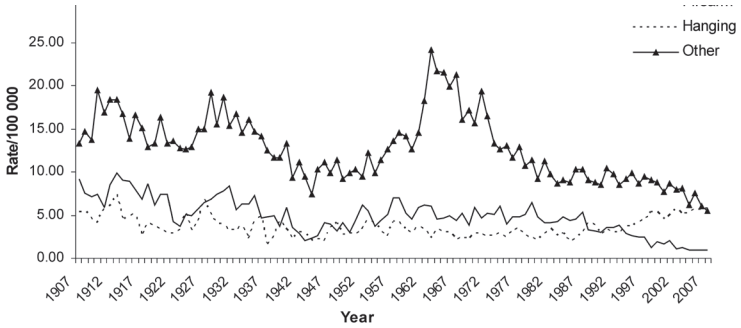
Figure 1 shows the long-term rates of suicide, by method and age group. Over the long term time series, for each age group (and acknowledging gaps in the early years of the over 65 group), the highest rate of suicide was attributable to methods other than hanging or firearms. Peaks can be seen around the early 1930s and 1960s, while troughs are apparent around the mid 1940s (coinciding with World War II). In the short term time series, downward trends can be seen in firearm suicides and suicides using other methods from the 1980s onwards, while rates of hanging increased from the late 1980s.

Table 1 shows test statistics for the ADF and PP unit root tests. The two tests provide a relatively consistent picture of the stationarity of the data over the long term time series. The majority of analyses reject the null hypothesis of a unit root for most age groups and methods, with the occasional exception of suicides using 'other' methods. Given visual observations (Figure 1) of substantial fluctuations over time, these are not surprising results.

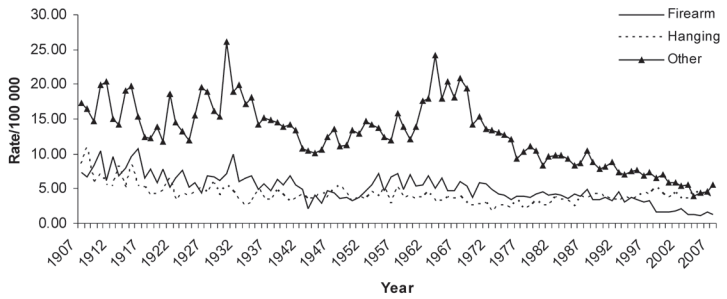
In the shorter time series, although both tests produced relatively consistent results, the outcomes varied depending on whether or not the test looked at intercept only (i.e., testing for a change in level), or intercept and trend. In the shorter time series, both the ADF and PP tests for intercept only suggest the presence of a unit root for all methods and age groups (i.e., non-stationary data), with the

FIGURE 1: LONG-TERM TRENDS IN SUICIDE RATE, BY METHOD AND AGE GROUP

a. 45 to 54 age group



b. 55 to 64 age group



c. 65 and over age group

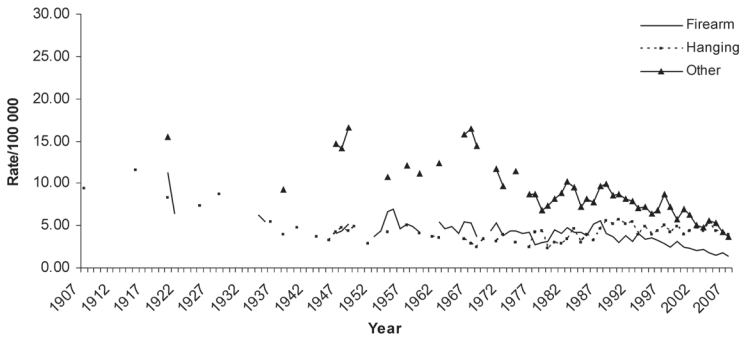


Table 1: ADF and PP test results

	Age group	Method	1907-2007: Test statistic (intercept)	1907-2007: Test statistic (intercept and trend)	1979-2007: Test statistic (intercept)	1979-2007: Test statistic (intercept and trend)
ADF test						
	45 to 54	Firearm	-2.996*	-4.515**	-2.018	-4.816**
		Hanging	-4.596**	-4.516**	-1.133	-3.478
		Other	-2.31	-3.13	-2.125	-3.956*
	55 to 64	Firearm	-3.709**	-7.062**	-1.335	-4.088*
		Hanging	-5.876**	-6.730**	-3.250*	-4.187*
		Other	-2.735	-4.192**	-1.644	-4.556*
	Over 65	Firearm	-5.294**	-7.016**	-1.204	-4.894**
		Hanging	-4.059**	-3.865*	-3.608*	-3.422
		Other	-0.666	-2.755	-0.960	-3.635*
PP test						
	45 to 54	Firearm	-2.647	-4.481**	-2.007	-4.816**
		Hanging	-4.493**	-4.401**	-0.838	-3.412
		Other	-2.055	-3.022	-1.933	-4.078*

exception of hanging in the 55 to 64 and 65 and over groups. In the other cases, the results suggest that the time series for suicide may be stationary around a structural break in the intercept and/or trend. To further assess the structural properties of the data, ZA tests were employed.

Table 2 shows the structural breakpoint within each time series, for each age group and method. Generally, these findings confirm and extend Lee and Suardi's (2010) assertion that the legislative changes in 1996/1997 were not associated with a significant impact on firearm suicides. In the long-term time series (1907-2007) structural breaks for firearm suicide cannot be seen to occur around the epoch of the 1996 legislative reform, for any of the age groups examined. Note that long-term trends for the over 65 age group could not be reliably calculated, due to substantial amounts of

missing data in the early years of that dataset (this may also reflect the historical trends for lifespan in men).

Table 2: Structural breakpoint by age group and method

Age group	Method	1907-2007: Z-A Breakpoint (intercept only)	1979-2007: Z-A Breakpoint (intercept only)	1907-2007: Z-A Breakpoint (intercept and trend)	1979-2007: Z-A Breakpoint (intercept and trend)
45 to 54	Firearm	1955**	N.S	1951**	N.S
	Hanging	N.S	N.S	N.S	N.S
	Other	N.S	2004**	N.S	1997**
55 to 64	Firearm	1953**	1998**	1953**	1998**
	Hanging	1986**	2000*	1969**	N.S
	Other	N.S	1987*	N.S	1987**
Over 65	Firearm	-	1986**	-	1988**
	Hanging	-	N.S	-	N.S
	Other	-	1987*	-	N.S

N.S Non significant

* Significant at the 1% level

** Significant at the 5% level

The results indicate that in the 1979-2007 time series, there were few structural breakpoints in firearm suicides. For the over 65 group, a break was found to occur a number of years before the 1996 legislative reforms. There was one exception: for 55 to 64 year olds, a structural break occurred in 1998. Interpreted in conjunction with the ADF and PP results, this result is suggestive of a break in level, rather than a permanent change in trend for that particular time series. To assess whether this result may have been a partial outcome of a greater likelihood among that group to use firearms to enact suicide (and therefore a greater likelihood that legislative change would specifically impact on that group), the mean rate of firearm suicides prior to 1996 was compared between the three age groups, using ANOVA. There was no significant difference between

the three age groups in the mean rate of firearm suicide prior to 1996 ($F = 0.09$, $p = 0.98$).

Quandt test results

Table 3: Quandt test statistics

Age group	Method	1979-2007: Break year (Max. F statistic; significance level)
45 to 54	Other	1997 (6.62; $p<0.05$)
55 to 64	Firearm	1998 (15.73; $p<0.01$)
	Hanging	*1996 (2.88, N.S)*
	Other	*1987 (2.76; N.S)*
65 and over	Firearm	1988 (14.80, $p<0.01$)
	Other	1987 (8.40; $p<0.01$)

N.S: No significant break

Quandt tests were applied to the short term time series, where ZA tests (for either a break in intercept only, or a break in intercept and trend) had indicated a significant breakpoint. The short term time series was examined because only in the short term series was there any evidence of a possible impact of the 1996 legislative changes on firearm suicides. Table 3 demonstrates that Quandt test results were generally consistent with the findings of ZA tests. The exceptions were for the 55 to 64 age group, where the Quandt test found a maximum but non significant statistic for hanging suicides at 1996 (rather than a significant break at the year 2000, which the ZA test for intercept only suggested), and a maximum but non significant statistic for other suicides at 1987 (rather than a significant break at that point, as indicated by the ZA test).

Consistency between rate, modelled, and log transformed data

1907-2007 series

In the long term time series, ZA tests found far fewer significant structural breaks in ARIMA modelling/log transformed data[2] than in raw rate data. The only significant breaks were found for modelled

data for firearm suicide, at 1954 for the 55 to 64 group (intercept only: $t = 5.225$, $p<0.05$; intercept and trend: $t = 5.228$, $p<0.05$).

1979-2007 series

Rate data, ARIMA modelled, and log transformed data all produced broadly consistent results in the short term time series. Using modelled data, a significant break in hanging suicides occurred at 1988 for the 55 to 64 age group ($t = 6.181$, $p<0.01$), and at 1988 for the over 65 group ($t = 4.932$, $p<0.05$). A break was found for firearm suicide at 1985 for the 45 to 54 age group ($t = 5.367$, $p<0.05$). Using modelled data, no significant structural break was found for firearm suicides among the 55 to 64 group, which suggests interpretive caution should be applied to that finding for the raw rate data. A significant break in hanging suicides was found for that group at 1993 ($t = 6.931$, $p<0.01$). Among the over 65 group, a significant break in hanging suicides was found at 1994 ($t = 5.560$, $p<0.05$). Applying ZA tests for a break in trend and intercept to log transformed data again produced broadly consistent results to those found using raw rate data.

DISCUSSION

Returning to the question of specific interest to this study, the current findings indicate that method restriction in the form of the 1996 firearms legislation did not appear to produce a widespread impact on suicides in Australia. Using a selection of econometric methods, the current work refines earlier observations of a general lack of structural breaks in firearm suicide around the time of the 1996 legislative reforms (Lee & Suardi, 2010). In conjunction with Lee and Suardi's (2010) results and a previous age-based study using the same methods that were employed in this paper (identifying reference removed), the present research suggests that, overall, the method restriction approach of limiting access to firearms had little apparent impact on firearm suicides across different age groups in Australia, irrespective of the length of the time series examined.

Using a variety of analytical techniques, the results suggest that for only one particular age group (55 to 64 year olds) was there any evidence of a structural break in firearm suicides. This was found two years after the 1996 policy change. It is unclear why only one group appears to have experienced structural change in the firearm suicide

time series around the time of the increased legislative restrictions. There is no available evidence to suggest that firearms represented a strongly 'preferred' method of suicide among that group relative to the other age groups (and no significant difference in the mean rate of firearm suicide among the three age groups prior to 1996, which would have been expected if firearms were a 'preferred' method among a particular age group). Similarly, there are no reliable data to suggest persons in that particular age group had greater access to firearms per head of population, relative to other age groups. In the absence of a clear explanation for the findings, and the fragility of the results for firearm suicides in the 55 to 64 age group when using log transformed or modelled data, the possibility that this result may simply be a chance finding or statistical artefact cannot be ruled out.

The current results – while meriting appropriate interpretive caution - indicate relatively few structural breaks in suicides (irrespective of method) for the over 45 age groups, despite significant enhancements to suicide prevention efforts since the mid 1990s. Relative to the extreme fluctuations seen in the long term time series – and noting recent suggestions that the actual number of suicides over the past years may, due to data misclassification issues, be higher than the official figures for those years indicate (Elnour & Harrison, 2009) - the shorter time series suggests that improved suicide prevention efforts over the past ten to fifteen years may have had relatively less impact among middle aged and older people than among younger people. This is not a new suggestion – the lability in suicide rates among younger people has been noted in Australia by others (for an example, the reader is referred to Morrell, Page, & Taylor, 2007).

It is also possible that there remain gaps in efforts to address suicide among older Australians, and/or that suicides among the older demographic are more resistant to prevention than other groups. Indeed, it has been found elsewhere that suicides among older people are often accompanied by significant planning and a strong intent to die (Demircin, Akkoyun, Yilmaz, & Gokdogan, 2011; Miret et al., 2010; Szanto, Prigerson, & Reynolds, 2001). This emphasises the importance of interventions designed to support older people prior to a point when the decision to die is made. The theory that suicide among older people may, relative to suicide

among younger people, be characterised by deliberate planning and a strong intent to die could shed light on the current findings; a method restriction approach to suicide prevention may represent too late an intervention for such groups. The potential independence of suicide fatalities and suicide methods among older people (Jansen, Buster, Zuur, & Das, 2009) highlights the value of disaggregating by age when evaluating suicide trends and suicide prevention strategies.

The possibility that the national suicide prevention strategies that commenced in the 1990s may not have had major impacts on suicide trends among Australians aged 45 and over flags the need to identify potential shortcomings in existing initiatives. For example, suicide rates among older rural men continue to be higher than for their urban counterparts. The higher rate of rural suicides has been largely attributed to a combination of factors such as limited awareness/use of, or poor access to, mental healthcare and related services, ongoing economic hardship and financial insecurity (arising from years of drought, for example), and social isolation/loneliness (Fragar et al., 2010; Griffiths, Christensen, & Jorm, 2009; Judd et al., 2006; Miller & Burns, 2008; Sartor et al., 2008).

Historically, access to lethal means (particularly firearms and poisons) has been touted as a factor driving the rate of rural suicide in Australia. However, in addition to the limited impact of firearm restriction on suicide rates, recent research has acknowledged an unintended consequence associated with firearms restriction as a suicide prevention method. Specifically, it has been recognised that the removal of essential farm tools (firearms and poisons) is impractical for rural residents, because it impedes their ability to perform their daily work (Hawgood, Milner, & De Leo, 2010), which may in turn heighten existing levels of distress or – in a worst case scenario – prevent help-seeking behaviour in order to avoid mandatory removal of these methods. Therefore, a whole-of-system approach that addresses locational disadvantage (for instance, barriers to service access) and social inclusion, and recognises the social as well as economic impacts of downturn in specific industries (such as agriculture) may prove far more beneficial in reducing suicides among older people in rural areas than forms of method restriction.

The current study, while useful in showing that method restriction has seemingly had little impact on firearm suicides among older Australians, it is not without limitations. Importantly, this work was not able to fully examine whether method substitution from firearms to other methods may have occurred. For instance, method substitution may have contributed to the rises in hanging that were visually apparent in Figure 1. Coupled with previous study suggesting that suicide among older people is often accompanied by a strong desire to die, the possibility of method substitution should be taken seriously. However, given the relatively low number of firearm suicides, relative to non-firearm suicides, displacement from firearms to methods such as hanging may not have caused a sufficient rise in numbers in those other methods to create a significant structural break. Because of this limitation, it cannot be said on the basis of this study that there have been lives saved through firearms legislation, which would otherwise have been lost to suicide. Further research is needed to address these limitations.

Recent research concerning survivors of near-lethal suicide attempts has explored specific cognitive factors (for instance, the perception of a particular method as 'clean') underlying the choice of different methods, and hints that the choice to use a specific method to enact a suicide attempt is far more complex than merely the accessibility of that method (Biddle et al., 2010). In addition, the heterogeneity of suicide is increasingly recognised – for instance, there is growing interest in the role that stressful life events can play in suicidal ideation and suicide completion. Unfortunately, the data that were available for the current study did not allow investigation of these important issues. It is recommended that in future, examination of the factors associated with suicide include (where possible) consideration of how those factors may relate to, and change with, age. In terms of policy development, such an approach could inform improved, specifically tailored suicide prevention interventions for middle aged and older persons.

The current results may be seen as disappointing. They imply that the financial expenditure associated with the 1996 method restriction measures does not appear to have translated to significant impacts on suicide trends among older Australians, confirming Vos and colleagues' (2010) assessment that the intervention was not cost

effective. Clearly, this is not what would be expected of a successful intervention. However, until now, Australian research into firearm suicide has typically examined general rather than age specific populations, and has not been able to identify which groups may or may not have been influenced by method restriction in the form of firearms legislation. By providing an evaluation of suicide trends by method and age group, and identifying a general lack of structural breaks in suicides among older Australians, the current findings add to the existing evidence base and suggest useful directions for future policy development.

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Endnotes

1. This view has, however, been disputed in recent years on technical grounds – see for instance Elnour, Harrison, and Pointer (2009).
2. Details are available upon request.

THE GUN AS SYMBOL OF EVIL: EXAGGERATED PERCEPTIONS OF FIREARMS VIOLENCE AS A MEDIA ARTIFACT

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ABSTRACT

Research on firearms violence, aggression caused by firearms, attitudes on firearms or gun control has often been conducted without taking into account experimental subjects or survey respondents' prior knowledge of firearms, firearms violence, and the source(s) of this knowledge. This paper reports results obtained from survey research of three groups of respondents selected for their distinct demographics, their varying levels of familiarity and experience with firearms, and their media use habits. Respondents were (1) undergraduate college students; (2) senior citizens; and (3) adult members of NRA-affiliated target shooting clubs. The study focuses primarily on the relationship between media-acquired knowledge and subjects' perceptions of firearm crime and violence. Findings suggest that respondents who rely predominantly on mass media accounts for knowledge—as opposed to formal training, in-family socialization or other non-mediated sources—consistently and grossly overestimated frequencies of types of violent gun crimes against police officers (using FBI statistics as a baseline). Media-reliant subjects also tended to hold highly inaccurate perceptions of the availability of illegal firearms, and of legal restrictions regarding use and purchase. These findings point toward the influence of mass media in conditioning subject perceptions: groups and subjects relying primarily on media representations were prone to exaggerated perceptual distortions. Finding suggest also that much extant public opinion data on firearms and gun control issues may be of very low quality because of the fantastic misperceptions of media-reliant respondents.

Public opinion polls on firearms-related matters are often reported unambiguously, as if the mass public had voiced some clear, well-considered preference. Advocates and researchers seem to spend more time offering explanations as to why "appropriate" public policy follows so slowly (if at all) in the wake of public opinion than in any actual examination of the nature, causes and measurement validity of such opinion (e.g., Goss, 2008). Such survey results of mass public attitudes on firearm regulation have often, over the last half-century, been routinely used to justify proposals for gun control laws. Since the 1960s a majority of survey respondents in the U.S. have been polled favoring relatively strong gun control proposals such as a requirement for a police permit to buy a gun. But as is often the case, measurement validity is more questionable than the designers of surveys would pretend. What are surveyors actually measuring?

Schuman and Presser (1977) stand as a notable exception. They attempted—and largely failed—to explain the opinion/policy paradox by investigating the quite reasonable hypotheses that: (1) pro-gun attitudes were perhaps held more intensely than anti-gun attitudes, thus having greater political effect; (2) pro-gun sentiment was perhaps concentrated in respondents with "greater political knowledge and influence" (p. 429); and (3) responses might vary with question wording such that opinion might be "less crystallized" than generally assumed. Then, their null findings having more or less confirmed, they claimed, the validity of extant survey results, Schuman and Presser offered their own explanation as to why policy does not follow opinion. They suggested that pressure tactics of a small portion of the population might seem more concrete to policy makers than the more abstract results of scientific survey research.

Much literature on special interest groups critiques the American system of pluralism with its inherent interest groups. Here the opinion/policy gap is blamed on special interest lobbies and political action committees, which are said to thwart public opinion—thus undermining democracy—by means of tactics that include legislative blocking and buying influence with key votes, favors and money (e.g., Wright, 1996; Berry 1997). These theorists too tend to accept gun control survey research at face value, using it as an example to help bolster claim of interest group bullying.

And as viewed on its surface, public opinion appears indeed to have remained strongly and unambiguously in favor of more gun control. Citing typical surveys over the years, a 1995 national EPIC/MRA poll shows that 55 percent of voters supported a ban on semi-automatic deer hunting rifles, while 83 percent favored a total ban on "assault weapons" (Associated Press, 1995). Neither ban occurred or seems likely, despite the 1994 Crime Bill, which prohibited certain assault weapons mainly on the basis of cosmetic appearances, and which has since lapsed and has not been renewed by Congress, to no one's apparent detriment. Colt Manufacturing Company, for example, marketed its AR-15 rifle during the ban, shorn of its original bayonet lug and flash guard, under the name of the Colt Sporter Rifle. After the ban lapsed, the original configuration returned. A host of other rifle makers currently market AR-15 clones. How can this be if the public opinion surveys are indeed valid measures?

The opinion-policy gap as thus conceptualized is perplexing. Schuman and Press rightly labeled it a paradox. But are special interest groups actually this effective at scuttling highly desired, straightforward social reform? And are legislators really so obtusely blind to their own self interests that they will allow pressuring communications from isolated constituents to override sound public opinion data derived from scientific survey research, data that make plain the views of the clear majority of voters in their districts? Such excuses seem unlikely. They seem rather too thin to stand up under the explanatory burden that has been placed upon them.

So this paper pursues explanations that point in the direction suggested by Schuman and Presser's disconfirmed hypothesis about a public opinion that might not be as "crystallized" as the poll numbers have suggested. We attempt to show that public opinion on guns and firearms related matters may not be crystallized in any sense implied by the word: i.e., it is by no means a calmly rational structure of well-tested knowledge arrayed in some orderly cognitive latticework. To the contrary, we suggest that much of the extant public opinion data on firearms and gun control issues may be of very low quality.

It is important to note that research in the areas of firearms violence, aggression caused by firearms, and attitudes about firearms and/or gun control has often been conducted without taking

into account experimental subjects' or survey respondents' prior knowledge or the sources of their knowledge. Researchers are quick to assume levels of understanding in their subjects/respondents that simply may not exist. Responses are credited with a validity that may far surpass the worth of the cognitive materials that constitute them. Also conveniently assumed (or perhaps projected unto the respondent by researchers) is some reasonable grasp of relevant social reality. All the foregoing, of course, is merely a restatement of oft-made objections to survey research in general.

Along this vein, sociologist Gary Kleck's (1991) monograph on guns and violence in America extensively reviewed public opinion polls on gun issues. He advised great caution in interpretation, further quoting a fundamental methodological rule as formulated by survey methodologist Don Dillman: "Do not ask questions that assume knowledge that Rs are not likely to possess" (Dillman, 1978, p. 112). Kleck, among other researchers, maintains that most respondents are reluctant to admit that they do not really understand what an interviewer is asking about, but they will generally provides responses to questions anyway, however meaningless these responses may be. Says Kleck:

Perhaps the most meaningless public opinion results in the entire gun control area are re-sponses to a question asked repeatedly by the Gallup poll (and similar questions asked by others): "In general do you feel that the laws covering the sale of handguns should be more strict, less strict or kept as they are now?" If Rs incorrectly believe there are fewer current controls over handguns than there really are, they may give answers that they favor controls that are stricter . . . . Such responses may indicate little more than that people want "something" to be done about gun violence (p. 362).

Respondents may also be providing responses based on media experience rather than "real world" experience, as many simply have little or nor experience with guns. We offer the observation that in the media of television drama, films and journalism, guns are frequently set equal to violence in a virtual sign/signified semiotic relationship. The television gun, for example, functions as a powerful, possibly indispensable, stereotypical symbol of violence for scriptwriters. This symbolic relationship may carry over as a measurable effect among those subjects whose experience with guns

is a predominantly mediated experience. Reliance on news media for gun knowledge might result in no less skewed a view: Gest (1992), himself a journalist, points out that national and local-level journalists routinely and frequently misreport on firearms-related matters.

We would expect, then, that respondents who are mass media-reliant for their gun knowledge would be more likely to perceive guns and gun violence in accordance with the exaggerated violence commonly seen in mass media. They would not only associate guns with violence, they would tend to exaggerate the frequency of violence. Relatedly, the media-reliant subject would also be likely to have exaggerated notions about legal availability and functional characteristics of weapons, tending to think that movie-type fully automatic weapons are readily available. This perceptual amplification effect is in many ways consistent with Gerbner's cultivation theory, which posits that persons who watch a great deal of television will tend to perceive the world as a scarier, more violent place than those who watch less (Gerbner et al., 1978).

Two main hypotheses derive from this discussion:

H1: Media reliance for firearms knowledge will be positively associated with exaggerated perceptions of violence.

H2: Media reliance for firearms knowledge will be positively associated with exaggerated perceptions of availability of firearms.

METHODOLOGY

Respondents

One hundred fifty-five respondents completed a survey instrument designed to explore these hypotheses. Respondents were members of three distinct social groups selected for their differing demographics, their varying levels of familiarity and experience with firearms, and their media use habits. Fifty-one percent of the subjects (n = 79) were undergraduate college juniors and seniors at a Big Ten university, 30 percent (n = 47) senior citizens residing in an independent living senior community, and 19 percent (n = 29) were adult members of target shooting clubs affiliated with the National Rifle Association. Subjects were asked for their voluntary participation in completing a short questionnaire that would be used

to determine beliefs and knowledge about firearms and firearms-related violence in the United States. Eighty-eight percent of the subjects were white and 51.7 percent were female.

Procedure

All respondents were presented with a questionnaire containing identical items. The senior citizens, however, received a large-type version. Following the main questionnaire items on firearms and firearms violence-related perceptions, respondents were asked a range of questions on demographics, personal experience with firearms experience and media use.

Measures

The body of the survey instrument contained 12 questions. An initial series of three questions was introduced with a factual statement, "In the ten years form 1984-1994, approximately 700 police officers were intentionally killed while on duty in the United States." Respondents were then asked to (Question 1) circle the approximate percentage of these police officers that they estimated were killed by guns, next (Question 2) of the officers killed by guns, to circle the percentage they estimated were killed by assault weapons, and (Question 3) the percentage of officers they estimated were killed with their own guns. Respondents were asked to circle the approximate percentage on a scale laid out in 10-percent increments that ranged from zero to 100 percent.

The fourth questions asked respondents to select form three possible response options the best definition of a "semiautomatic" weapon. Seven of the eight remaining questions in this section were true/false questions with a "don't know" option. These were designed to assess respondents' perceptions and knowledge of the legal reality and availability of firearms and assault weapons in American society. These questions, itemized in Table 1, included items such as, "Before the 1994 Crime Bill was passed it was legally possible for adults to buy automatic Uzi machine pistols from gun stores," and "Until Cop Killer bullets [defined earlier in the survey] were available, the average person could not legally purchase ammunition capable of going through police bullet proof vests." The last question in this section asked respondents to select their

best estimate of the number of police officers in the United States who had been killed by these Cop Killer bullets in the past ten years, with ten response options ranging from "5" to "300."

The final section began by asking about personal media use. Questions inquired about respondents' hours of average daily television viewing, favorite program types, newspaper reading habits, and average monthly number of in-theater movie and movie rentals. Next, questions dealt with personal use and exposure to firearms, as well as standard demographic data such as age, gender, race, size (population) of the community in which respondents had grown up, and also the size of the community in which they had mainly resided as adults. Concluding items asked respondents to estimate the approximate percentages of their current overall knowledge about firearms that had been obtained from each of the five following sources: (1) family, (2) friends and acquaintances, (3) newspapers and popular magazines, films, television, (4) formal training such as the military, police, safety training courses, and (5) other sources—with a request to specify the alternate source. Aided by the workbook-like format of this question, respondents were asked to make sure their percentage estimates added up to 100 per cent.

RESULTS

Descriptive statistics of knowledge/perception measures are presented in Table 1. The "correct" category for each variable in Table I lists the proportion of respondents who selected the most accurate response, technically or legally, from the options provided.

The proportions shown in Table 1 are startling for several reasons. First, is the low magnitude of general knowledge suggested by the "correct" response percentages on items dealing with firearms legal availability and functional characteristics. Overall, only about 26 percent knew that it was not legally possible to just walk in and buy U.S. military automatic rifles in the neighborhood gun store, meaning of course that 74 percent erroneously thought this was indeed the case. Only 37. 4 percent knew that Uzi automatic pistols were also not available. Seniors, who viewed the most television (5.1 v 3.8 average daily hours) provided, across the board, the highest proportion of incorrect responses on almost knowledge/availability items, scoring lower than even random chance on many items, e.g.,

recognizing a correct definition of semiautomatic. These results suggest a systematic level of misinformation that could only have been obtained via mass media. Seniors and students also held highly exaggerated perceptions of gun violence. A majority of students and seniors correctly recognized the Brady Bill, suggesting efficient promulgation of the bill by media and a concurrent dissemination of misinformation on what might be called "gun reality." As would be expected, the shooters, functioning as a sort of comparative group representing a presumably high level of knowledge, scored well on all knowledge items, never less than 75 percent correct, and usually 85 percent or higher. They also reported by far the lowest reliance upon mass media as the source of their knowledge, 22 percent v the 46 percent average for all groups (Table 2). Excepting the shooters, most professed incorrect beliefs, e.g., that vest-penetrating armor piercing bullets were an innovation in weaponry that now threatened police; that assault weapons generally fired cartridges that are much more powerful than deer hunting rifles; or that the Brady Bill would have prevented the armed attack on President Ronald Reagan and his Press Secretary.

A second reason that we found these results startling is the large difference between groups in their levels of knowledge.

A third reasons is low group scores for percentages of those able to correctly define a semiautomatic weapon. Overall, 47 percent of respondents selected the correct definition of semiautomatic weapon, but this average was pulled up by the high correct response rate of the shooters at 97 percent. Looking at the knowledge-trend across the groups, 44.3 percent of students and only 22.7 percent (less than chance) of seniors were correct. And this is when the Rs have only to select the correct definition from a short list. When these frequencies are compared to survey results such as the EPIC/MRA poll cited earlier, which reported that 55 percent of Rs thought that semiautomatic deer hunting rifles should be banned, one must wonder how many of those Rs even understood what semiautomatic" meant. In the case of seniors especially, based on the results of this study, it appears this number may be dramatically low. At best, however, in aggregate, less than half of the Rs could identify the correct definition.

Table 1. Proportions of R's Providing Correct Answers on Firearm Knowledge and Availability Items

Variable	All Rs	Students	Shooters	Seniors
Semiautomatic Definition	47.1	44.3	96.6	22.7
Buy M-16 military Assault rifles in store	25.8	19.0	75.9	6.4
Recognize Brady Bill	63.9	62.0	75.9	59.6
Brady Bill would have barred Hinckley purchase	37.4	36.7	89.7	6.7
Legal to buy fully automatic Uzi in store	35.5	34.2	82.8	8.9
Purchase handguns in gun store with no I.D.	33.5	30.4	86.2	6.8
Cop Killer bullets new way penetrate police vests	29.7	26.0	75.9	7.0
Assault weapons fire more powerful cartridges	29.7	25.3	89.3	2.4
	N=155	n=79	n=29	n=47

Note: Proportions denote Rs choosing correctly from three options, True, False and Don't Know, except for the semiautomatic definition, which provided three options without a "Don't Know" option.

Table 2 summarizes mean scores of Rs on those variables that measured the extent to which they estimated themselves dependent on mass media for their knowledge of guns and firearms issues; the percentage of police they estimated were killed by assault weapons; and the number of police they estimated were killed by armor piecing, so called cop killer bullets that are designed penetrate bullet proof vests. Also included are means for the age and media-use measures of the three groups.

Table 2. R's Mean Group Scores on Violence Exaggeration Media Reliance, Media Use and Age

Variable	All Rs	Students	Shooters	Seniors
Percent of police killed by assault weapons	57.2	62.4	8.0	43.18
Number of police killed by armor piercing Cop Killer bullets m(actual number = 0)	113.5	115.2	19.6	177.25
Media reliance For gun knowledge (%)	45.87	54.17	21.85	45.94
Videos rented monthly	3.75	4.27	2.79	4.49
Television hours daily	3.80	3.46	2.76	5.08
Age	42.56	20.21	53.32	75.85
	N=155	n=79	n= 29	n=47

Note: According to FBI Law Enforcement Officers Killed and Assaulted, the actual number of officers killed with assault weapons is somewhere between two and three percent. No police officers had been killed in the ten-year period preceding this study with vest piercing "Cop Killer" bullets.

Means in Table 2 reveal that shooters' estimations of gun violence against police were dramatically lower than either of the other groups. On average, shooters estimated that about eight percent of police were killed with assault weapons compared to the 62.4 percent estimated by students and the 43.2 percent by seniors. Shooters' estimations reasonably well approximated the actual 2 or 3 percent reported killed by the FBI out of 700 deaths. Seniors exaggerated this number by approximately 1,300 percent and students by more than two thousand percent. Shooters were also noticeably less mass media-reliant than the other groups, averaging 21.85 on a 100-point scale compared to 54.17 for the students and 45.94 percent for seniors.

Analysis of Variance

Multivariate and one-way analysis of variance procedures were employed to test differences in means between levels of exaggeration (for both availability and violence measures) and levels of media reliance between respondents regardless of whither they

were students, shooters or seniors. Exaggeration violence levels were recoded into a three-level variable corresponding to low, medium and high, Violence Exaggeration. Media Reliance was likewise recoded into a three-level categorical variable, as was the availability measure, Availability Exaggeration.

Table 3. Multivariate Analysis of Variance of Effect of Media Reliance on Violence Exaggeration and Availability Exaggeration

Variable	F Score	d/f	F Sig.
Violence Exaggeration	5.61	(2, 118)	.005
Availability Exaggeration	4.19	(2. 118)	.017

Results of multivariate analysis to test the effect of Media Reliance on the dependent variables of Violence Exaggeration and Availability *Exaggeration are highly significant (Table 3).*

One-way analysis of variance procedures on for Media Reliance on Violence Exaggeration and for Media Reliance on Availability Exaggeration are reported in Table 4 and Table 5 respectively.

Table 4. One-Way Analysis of Variance of Effect of Levels of Media Reliance on Violence Exaggeration with Bonferroni Significance Tests at 0.5

Variable	F Score	d/f	F Sig.
Violence Exaggeration	5.61	(2, 118)	.0047
Violence Exag. Mean	Media Reliance	Level 1,2,3	
	25.59	Level 1	
	40.79	Level 2	**
	44.00	Level 3	**

*Note: ** in a column/row intersection indicates significance in differences, e.g., the mean of 44.00 differs significantly from 25.59 but not from 40.79.*

Not all levels of Violence Exaggeration and Availability Exaggeration differ significantly, but several differences are significant at the 0.5 levels or better. Additionally, the means of the levels of both Violence Exaggeration and Availability Exaggeration as affected by Media Reliance clearly trend in the directions predicted by Hypothesis One and Hypothesis 2, thus supporting both.

Table 5. One-Way Analysis of Variance of Effect of Levels of Media Reliance on Availability Exaggeration with Bonferroni Significance Tests at 0.5

Variable	**F Score**	**d/f**	**F Sig.**	
Violence Exaggeration	3.98	(2, 130)	.021	
Availability Exag. Mean	Media Reliance	Level 1,2,3		
	2.19			Level 1
	2.69			Level 2
	3.17			Level 3**

Stepwise multiple regression of the various media measures upon Violence Exaggeration as a dependent variable also lends some support to Hypothesis One. Daily television hours were positively associated with Violence Exaggeration (R-square = .24, beta coefficient = .515, t-test significant at .0013).

Lending more support, stepwise multiple regression results of "formal training" for gun knowledge and on "other sources" were negatively associated with Violence Exaggeration (betas of -.38 and -.26 respectively, significant at <.01, adjusted R-square of .217). Such "other sources" specified by Rs included: personal use, the National Rifle Association, gun clubs, school and police officers. In any case, it would appear that those who bypass mass media for their gun information are accordingly much better grounded in their perceptions of reality.

DISCUSSION

Three points stand out: (1) media-reliant persons exaggerate the frequency of certain lurid types of firearms violence, overestimating the numbers of police officers killed by assault weapons and bullet-proof vest piercing ammunition by factors up to 60; (2) media-reliant persons exaggerate the legal availability of heavily regulated firearms that require federal tax stamps and background checks as stipulated by the National Firearms Act of 1934, apparently believing that like Arnold Schwarzenegger in the movies, one can just walk into local gun store and purchase machine guns and submachine guns; and

(3) reliance on alternate sources of information is associated with better, more statistically sound perceptions of reality.

The validity of extant many gun control polls becomes highly questionable if we accept these results. A large proportion of respondents seem to have wild ideas about the state of the world. On the whole they seem to perceive an undifferentiated place in regard to guns where semiautomatic machinegun-like things are mowing down police officers whose bullet proof vests can no longer shield them from armor piercing bullets. Rs mainly correctly recognized the Brady Bill—attesting to, perhaps, voluminous press coverage cheerleading the Bill. But in other matters pertaining to legal availability, media coverage seems to have systematically misinformed those who relied mostly upon it.

Poll results seem valid only if they are considered as a measurement of the echo of the sensationalized dramatic gun stereotypes common to both entertainment and news media. Based on the data presented here, we should carefully question the meaning of such poll results.

As to the questions raised earlier in this paper concerning policy makers—and why policy has not followed the lead of public opinion as many pollsters have interpreted it, perhaps we should credit policy makers with having more sense, better reality-testing abilities and more integrity than the critics of special interest pluralism have been willing to credit to them. Elisabeth Noelle-Neumann (1977) attributed a "quasi-statistical" sense organ to politicians, an organ that allows them to sniff out changes in the political winds. We suggest that politicians and policy makers might have very good nose for the validity and worth of public opinion research: just because poll results are packaged under the label "scientific" doesn't mean they are valid measures. While some respondents may have a better estimation of the reality of firearms laws and use than do others, in many cases what is being measured is likely an effect of exposure to innumerable mass-mediated depictions of firearms crimes. Such depictions may be the only way that many persons "know" firearms.

It is a probably good thing that policy has not followed public opinion in the matter of gun control, considering the nature of such opinion as suggested by this study. For one thing, elevating this low cognitive quality, apparently conditioned response to the level

of policy seems absurd. A probable result is dramatically symbolic legislation that does not, cannot, achieve its alleged or intended effect, although which may provide much in the way of sound, fury and employment opportunities for bureaucratic "experts" who make their careers by trafficking in solutions to fantastical problems. These experts warrant their existence by claiming to be advocates of public opinion.

To better explain policy we might look to alternative theories of the role of interest groups and citizen voluntary associations in informing policy makers. Wright (1996) suggests that one of the chief roles of interest groups in U.S. society is that of strategically providing information to policy makers. Special interest groups are probably effective because they provide policy makers with information of much higher quality than do polls, while connecting policy makers more directly to the discursive communities that actually know and understand something about the relevant phenomena. James Luther Adams (1986) sees such voluntary associations as secular covenants for achieving positive social action. Patrick (2010) sees in the "horizontal interpretive communities" of American gun culture a manifestation of a new informational sociology—an alternative to the old 20th Century "vertical" mass democratic informational system controlled by elites and elite media and that functioned in a top-down manner. The new informational sociology consists of horizontal interpretive communities of co-equal citizens who, via their own "anti-media" of communication (largely computer mediated), are more deeply and accurately informed than the relatively passive audience of the old mass political communication system. Horizontal informational systems are also more behavioral (as opposed to merely attitudinal) in their orientation to the world. They discuss, act and vote in concert. No wonder that they better affect policy, e.g., the American concealed weapon carry movement is a tangible reality that according to public opinion polls cannot possibly exist. Obviously the polls are wrong. Normatively, such horizontal interpretive communities probably should have more policy effect, for they are the truly informed rational voters that populate the ideal democracy.

Regarding the audience of potential voters that have relied upon mass media depictions, their perceptions would appear to

be an effect of exposure to unrealistic mass media depictions. For example, a recent episode, "Time Bomb," of the popular television show *The Closer,* staring Kyra Sedgwick, hinges upon a group of California teenagers who purchase fully automatic weapons from a mall sporting goods store and then try to use the mall for a mass killing site, also shooting a police officer (Robin, 2008). Apparently inspired by the Columbine High School incident, and perhaps representing a further distortion of mass media news distortions of that the incident, the episode depicts as normal outlandish and totally illegal events. Teenagers may not buy guns in sporting good stores either in California or federally, and sporting goods stores in malls and elsewhere do not sell full automatic weapons. The latter are heavily regulated and taxed. Approximately 7.8 million viewers watched this episode however, and to extrapolate from the results of this study, more than 50 percent of them did not know if they were watching full automatics or semiautomatics, or that actions depicted had long been banned by numerous federal and state laws. To employ such fantasy weaponry and actions to sharply disambiguate a cop show's otherwise dreary plot is fine, but elevating this type of fantasy distortion more or less directly into policy via by means of its reification by "scientific" polling is unwarrantable. Guns thus used become merely a symbol of evil.

In way of future research that may further confirm the relationships suggested by this limited study, it should be possible to do secondary analysis of mass survey data derived from annual General Social Survey (GSS) or similar sources. GSS has at various times included measures on gun ownership and attitudes, media use and crime victimization that may be adapted to this purpose. In any case, this study suggests that those who know guns mainly through mass media tend to hold exaggerated perceptions more or less in alignment with the content of television action drama than social reality.

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WHAT WE CAN LEARN FROM *BRITT V. STATE:* HOW OVERCRIMINALIZATION IS ERODING A FUNDAMENTAL RIGHT[1]

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Introduction

In *Britt v. State*,[2] the Supreme Court of North Carolina held that the 2004 version of North Carolina General Statute section 14-415.1 was unconstitutional as applied to Barney Britt, a convicted felon who regained his right to bear arms seventeen years before the statute's enactment. The statute, as it remains today, prevents all convicted felons—regardless of the date of conviction or the nature of the crime—from possessing *any* firearms *anywhere* at *any time*.[3] The Supreme Court of North Carolina held that the statute was unconstitutional *as applied* to Barney Britt, noting that Britt did not commit a violent felony and had become a fully productive member of society in the years following his conviction. It is significant that the court did not make a determination as to the constitutionality of the statute on its face, as this will likely lead (and in fact has already led) to a host of constitutional challenges from individual plaintiffs who wish to have their right to keep and bear arms restored.[4] Despite this certainty of numerous appeals, the Supreme Court of North Carolina showed discretion by not holding section 14-415.1 unconstitutional on its face, as this allowed the General Assembly time to correct the overbreadth of the statute through the legislative process.

On July 20, 2010, the General Assembly of North Carolina responded to the court's holding in *Britt* by enacting Session Law 2010-108, which provides for a small number of convicted felons to petition the court to have their right to keep and bear arms restored twenty years after their other citizenship rights have been restored.[5] This Note will argue that the General Assembly's

proposed solution to the issue presented in *Britt* does not adequately protect the fundamental right of convicted felons to keep and bear arms in accordance with the North Carolina Constitution and the United States Constitution.[6] Additionally, this Note will suggest several reasons why section 14-415.1 should be modified to allow some convicted felons (namely, non-violent offenders) to possess firearms, at least in their homes for the purpose of self-defense, without having to petition the courts and without waiting twenty years as the General Assembly's "fix" to this problem requires.

This Note will proceed in four parts. Part I surveys the legislative history of North Carolina General Statute section 14-415.1 and examines the reasoning of the Supreme Court of North Carolina's decision in *Britt v. State*. Part II outlines how the recent decisions of the United States Supreme Court in *District of Columbia v. Heller*[7] and *McDonald v. Chicago*[8] serve to reinforce the holding of *Britt*. Part III further draws out the implications of *Heller* and *McDonald* and sets forth several reasons why the General Assembly's blanket ban on the rights of convicted felons to keep and bear arms is unconstitutionally overbroad; more specifically, Part III will show how the General Assembly's determination that all convicted felons are presumptively dangerous is not only unjustified but utterly baseless in light of the vast overcriminalization wrought by state and federal laws. Indeed, there is not even a rational basis for restricting the rights of *all* convicted felons after they complete their sentences and their other civil rights have been restored. Part IV then addresses the General Assembly's attempt at ameliorating the statute's overbreadth but shows that it falls far short of preserving the fundamental rights of convicted felons; moreover, Part IV proposes a solution to the overbreadth of section 14-415.1 that will serve to vindicate the rights of convicted felons while at the same time imposing reasonable restrictions to protect the public from harm. Specifically, Part IV will argue that the rights of non-violent convicted felons should be restored following completion of their sentences and that even some violent offenders should have the opportunity to have their rights restored after they have completed their sentences, after a specified time elapses without further incident, and after a hearing before a judge who would ultimately determine if the convicted felon's rights should be restored.

I. The Road to *Britt*: From Reasonable Restriction to Outright Ban

A. The Legislative History of General Statute section 14-415.1

The General Assembly of North Carolina first passed the Felony Firearms Act ("Act") in 1971. Since that time, the Act has undergone several significant changes. In 1971, the Act provided:

> It shall be unlawful for any person who has been convicted in any court in this State, in any other state of the United States or in any federal court of the United States of a crime, punishable by imprisonment for a term exceeding two years, to purchase, own, possess or have in his custody, care or control, any handgun or pistol.[9]

Significantly, the Act's initial prohibition on the possession of handguns and pistols was subject to the exception that any convicted felon who completed her sentence and regained her other civil rights was not bound by the Act.[10] The General Assembly eliminated this exception in 1975 by repealing section 14-415.2;[11] moreover, the General Assembly made its first substantial revision to the text of section 14-415.1 during that same legislative session.[12] Specifically, after the 1975 amendment, convicted felons were subjected to a five-year waiting period after completing their sentences and regaining their other civil rights before they could regain their right to keep and bear arms.[13] Notably, however, the Act did not apply to all convicted felons (only those convicted of crimes enumerated in the Act), and it in no way limited the rights of felons (even those convicted of violent felonies) to possess any firearm not restricted by the Act, including rifles and shotguns. Furthermore, the General Assembly also enacted another provision in 1975 that allowed felons who were subject to the Act to own and possess handguns (and other restricted firearms) within their own homes and businesses.[14].

Following the 1975 amendment, the General Assembly did not adopt any substantial changes to section 14-415.1 for nearly twenty years; in 1995, however, the statute was once again amended. The 1995 version of section 14-415.1 replaced the enumerated felonies in the Act with the words "a felony," thereby bringing all felons within the ambit of the Act regardless of the nature of the crime

committed.[15] More specifically, the Act provided that "[p]rior convictions which cause disentitlement under [the Act] shall only include [f]elony convictions in North Carolina that occur before, on, or after December 1, 1995" [16] and "[v]iolations of criminal laws of other states or of the United States that occur before, on, or after December 1, 1995, and that are substantially similar to the crimes covered in subdivision (1) which are punishable where committed by imprisonment for a term exceeding one year."[17] The amended Act also removed the five-year waiting period, making the ban on handguns and other short firearms permanent for anyone who is ever convicted of a felony.[18] Significantly, however, the 1995 amendment still only restricted the possession of handguns and other short firearms, and it preserved the right of all convicted felons to possess any firearm (including handguns) within their homes or lawful places of business.[19]

In 2004, the General Assembly amended the statute once more, this time imposing a blanket ban on the possession of any and all firearms[20] by any person ever convicted of a felony. The 2004 amended statute states, in pertinent part:

> It shall be unlawful for any person who has been convicted of a felony to purchase, own, possess, or have in his custody, care, or control any firearm or any weapon of mass death and destruction as defined in G.S. 14-288.8(c). For the purposes of this section, a firearm is (i) any weapon, including a starter gun, which will or is designed to or may readily be converted to expel a projectile by the action of an explosive, or its frame or receiver, or (ii) any firearm muffler or firearm silencer.[21]

It is this version of the statute that completely divested Barney Britt of his right to keep and bear arms for the purpose of self-defense, and it is this version of the statute that the Supreme Court of North Carolina held unconstitutional "as applied" to Barney Britt.[22]

B. The Facts and History of Britt v. State

Barney Britt was convicted of felony possession with intent to sell and deliver a controlled substance in 1979, a crime for which he served four months of active imprisonment and underwent two years of supervised probation.[23] Britt completed his probation in

1982 and had his right to possess arms fully restored in 1987 pursuant to the 1975 version of section 14-415.1 that remained in force until 1995.[24] Britt's fully restored rights were again restricted in 1995 with another amendment to the statute; specifically, Britt was no longer permitted to possess handguns or other short firearms (except in his home or place of business), but he maintained his right to possess shotguns and rifles without restriction.[25] Finally, Britt was divested of his right to possess any type of firearm—even in his home or place of business—following the 2004 amendment to section 14-415.1.[26]

After the General Assembly passed the 2004 amendment, Barney Britt initiated a conversation with the Sheriff of Wake County (where Britt resided) to ask if the amendment applied to him.[27] The Sheriff informed Britt that the amended statute did apply to Britt and, as a result, Britt voluntarily divested himself of all of his firearms so that he would be in compliance with the statute.[28] Britt then brought a civil action against the State of North Carolina, claiming that section 14-415.1 unconstitutionally infringed his right to keep and bear arms.[29] The district court rejected his claim, and the court of appeals affirmed, reasoning that "[a] convicted felon is prohibited from possessing a firearm if the State shows a rational relation to a legitimate state interest, such as the safety and protection and preservation of the health and welfare of the citizens of this state."[30] Moreover, the court of appeals held that section 14-415.1 was not an unconstitutional ex post facto law or Bill of Attainder,[31] and it rejected Britt's contention that the restriction "violate[d] the Second Amendment to the United States Constitution and Article I, section 30 of the North Carolina State Constitution."[32] Judge Elmore dissented, stating that the 2004 amendment to section 14-415.1 was not a "reasonable regulation."[33] Furthermore, Judge Elmore contended that "[t]he exceptional broadness of the statute serves to undermine the legislature's stated intent of regulation and serves instead as an unconstitutional punishment."[34]

The Supreme Court of North Carolina overturned the holding of the court of appeals, stating that General Statute section 14-415.1 was "unconstitutional as applied" to Barney Britt.[35] In making this determination, the court made much of the fact that Britt had taken every reasonable step to abide by the law in the thirty years since

the commission of his one and only felony and that he responsibly possessed firearms for seventeen years before the 2004 amendment divested him of his right to keep and bear arms.[36] Moreover, the court extolled his "uncontested lifelong non-violence toward other citizens."[37] The court also pointed to the fact that the 2004 version of the statute "functioned as a total and permanent prohibition on possession of any type of firearm in any location," going far beyond the reasonable regulation of the 1995 version of section 14-415.1.[38] Finally, the court concluded that "it is unreasonable to assert that a nonviolent citizen who has responsibly, safely, and legally owned and used firearms for seventeen years is in reality so dangerous that any possession at all of a firearm would pose a significant threat to public safety."[39]

In a dissenting opinion, Justice Timmons-Goodson stated that "this Court has 'consistently pointed out that the right of individuals to bear arms is not absolute, but is subject to regulation.' "[40] The dissent argued further that the General Assembly may justifiably "regulate—to the point of absolute restriction—certain *classes* of persons reasonably deemed by the legislature to pose a threat to public peace and safety."[41] The dissent cited *District of Columbia v. Heller* for support of this assertion, noting that *Heller* did not cast doubt on the "longstanding prohibitions on the possession of firearms by felons and the mentally ill."[42] The dissent concluded by stating that the General Assembly has a "compelling interest" in protecting the public and that the legislature reached the reasonable conclusion that "those convicted of felonies pose an unacceptable risk with regard to firearm possession."[43]

II. Restricting a Fundamental Right: The Second Amendment after *Heller* and *McDonald*

While the dissent in *Britt* correctly observed that *Heller* did not foreclose the ability of the federal government to prohibit felons from possessing firearms,[44] this assertion must not be separated from the overarching theme of the Supreme Court's decision in *Heller*. *Heller* was preeminently concerned with establishing that the right of individuals to keep and bear arms was a fundamental right and that, as a result, the District of Columbia's outright ban on the possession of handguns was unconstitutional.[45] *McDonald* elaborated further

on the Court's rationale in *Heller* and incorporated the fundamental right to bear arms so that it is also protected from unconstitutional regulation by the states.[46] Consequently, a more complete analysis of both *Heller* and *McDonald* is essential to understanding the extent to which the right to bear arms may be constitutionally restricted.

A. The Nature of the Right in Heller

In *District of Columbia v. Heller*, the Supreme Court held that individuals have a fundamental right to possess operable handguns in their homes for the purpose of immediate self-defense.[47] The Court thus invalidated a District of Columbia statute that prohibited individuals from possessing unregistered firearms while simultaneously preventing registration of handguns within the District.[48] Writing for the Court, Justice Scalia began by meticulously explaining that the Second Amendment secures an individual right of all citizens to keep and bear arms and that this right is not limited by the "prefatory clause" of the Amendment.[49] Specifically, the Court concluded that "the most natural reading of 'keep Arms' in the Second Amendment is to 'have weapons' " and that "bear" most readily means "carry";[50] moreover, the Court stated that " 'bear[ing] arms' was not limited to the carrying of arms in a militia."[51]

Having established that the Second Amendment secures an individual right to bear arms, the Court went on to discuss the nature of this individual right. The Court noted that "[b]y the time of the founding, the right to have arms had become fundamental for English subjects."[52] To be sure, the English Bill of Rights stated "[t]hat the subjects which are Protestants may have arms for their defense suitable to their conditions and as allowed by law";[53] significantly, the Court explained that this right has long been viewed as the "predecessor to our Second Amendment."[54] Indeed, this was the view espoused by Justice Story in 1833 and reiterated in 1840.[55] The Court also discussed how the Second Amendment was viewed in the years before and after the Civil War. "Antislavery advocates," the Court explained, often "invoked the right to bear arms for self-defense."[56] Congress also decried the disarmament of blacks in many Southern States after the Civil War, stating that this disarmament "infringed" the right of the people to keep and bear arms.[57] Congress was even more explicit:

> [I]n some parts of [South Carolina], armed parties are, without proper authority, engaged in seizing all fire-arms found in the hands of the freemen. Such conduct is in clear and direct violation of their personal rights as guaranteed by the Constitution of the United States, which declares that "the right of the people to keep and bear arms shall not be infringed."[58]

Thus, the Court concluded that, like the other rights protected by the Bill of Rights, the Second Amendment right to keep and bear arms is fundamental because the "inherent right of self-defense [is] central to the Second Amendment right."[59]

B. The Scope of the Right in Heller

Heller established that the Second Amendment secures the fundamental right of individuals to bear arms for the purpose of self-defense; however, the Court in *Heller* also explained that, like other rights guaranteed by the Constitution, the right to bear arms is not absolute.[60] First, *Heller* recognized that the right extends "only to certain types of weapons" and does not protect weapons "not typically possessed by law-abiding citizens for lawful purposes, such as short-barreled shotguns."[61] Conversely, *Heller* also recognized that the Second Amendment protects the rights of citizens to possess not only rifles and other long guns but also handguns, noting that most Americans consider the handgun to be "the quintessential self-defense weapon."[62] Second, the *Heller* Court iterated several instances in which the government could lawfully restrict the right to bear arms:

> Although we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.[63]

Significantly, the Court stated that these "presumptively lawful" regulations are not an exhaustive list.[64] In contrast, however, the

Court concluded that restrictions on the right of individuals to possess handguns in the home for self-defense "would fail constitutional muster" under "any of the standards of scrutiny that [the Court] has applied to enumerated constitutional rights."[65] Thus, while the right to bear arms may be regulated in some circumstances, the "enshrinement of constitutional rights necessarily takes certain policy choices off the table."[66]

C. Applying the Right to the States: McDonald v. Chicago

Two years after *Heller*, the Supreme Court in *McDonald v. Chicago* reaffirmed its determination that the Second Amendment affords a fundamental right to keep and bear arms for the purpose of self-defense.[67] *McDonald* struck down a Chicago handgun ban similar to the ban the Court ruled unconstitutional in *Heller*, explaining that the right recognized in *Heller* was incorporated through the Due Process Clause of the Fourteenth Amendment and is thereby made applicable to the States.[68] As follows, the Second Amendment now limits the extent to which States may restrict the possession of firearms, notwithstanding any greater deference that State constitutions may afford their respective governments.

1. Reaffirming Heller*: The Nature of the Right.*

In addition to incorporating the Second Amendment, *McDonald* reaffirmed and expounded upon the rationale put forth in *Heller*. *McDonald* reasserted that the Second Amendment protects the "right to possess a handgun in the home for the purpose of self-defense,"[69] affirming that the Second Amendment protects a fundamental right. The Court stated: "Unless considerations of *stare decisis* counsel otherwise, a provision of the Bill of Rights that protects a right that is fundamental from an American perspective applies equally to the Federal Government and the States."[70] This assertion is woven throughout the Court's opinion in *McDonald*. For example, *McDonald* asserts that *Heller* was "unmistakably" clear that "[s]elf-defense is a basic right" and that "individual self-defense is 'the *central component*' of the Second Amendment."[71] *McDonald* also stated that the Second Amendment protects a right that is "deeply rooted in this Nation's history and traditions";[72] specifically, the American colonists viewed the right as fundamental, and the right was "considered no less

fundamental by those who drafted and ratified the Bill of Rights."[73] Furthermore, the Court noted that

> . [a] clear majority of the States in 1868 . . . recognized the right to keep and bear arms as being among the foundational rights necessary to our system of Government. . . . In sum, it is clear that the Framers and ratifiers of the Fourteenth Amendment counted the right to keep and bear arms among those fundamental rights necessary to our system of ordered liberty.[74]

Finally, the Court made much of the fact that fifty-eight U.S. Senators and 251 Members of the House of Representatives submitted an *amicus* brief urging that the right was fundamental, thereby indicating that a significant majority of our nation's elected representatives hold the right to keep and bear arms in very high regard.[75]

2. Reaffirming Heller*: The Scope of the Right*

. *McDonald* reiterated *Heller's* assertion that "such longstanding regulatory measures as 'prohibitions on the possession of firearms by felons and the mentally ill' " still pass constitutional muster.[76] As follows, *McDonald* does not purport to bestow an absolute right to keep and bear arms and thus does not foreclose the right of states to regulate the possession of firearms in a manner consistent with the recognition of the right as fundamental.

III. REGULATING THE RIGHT OUT OF EXISTENCE: THE EFFECTS OF OVERCRIMINALIZATION ON THE RIGHT TO KEEP AND BEAR ARMS

The Supreme Court's decisions in *Heller* and *McDonald* clearly establish that the right of individuals to keep and bear arms for the purpose of self-defense is fundamental. What is more, because *McDonald* incorporated this right against the states, any law enacted by the General Assembly of North Carolina must respect this fundamental right. Notwithstanding the Supreme Court's recognition in both *Heller* and *McDonald* that states may constitutionally restrict the possession of firearms by felons, the 2004 version of General Statute section 14-415.1 is nevertheless unconstitutionally overbroad. This Part will set forth several reasons in support of this conclusion.

. The dissent in *Britt* argued that there is a "heightened risk and public concern associated with convicted felons possessing firearms" and consequently approved of the General Assembly's determination that convicted felons "pose an unacceptable risk with regard to firearm possession."[77] Moreover, the dissent contended that section 14-415.1 was reasonably related to "preserving peace and public safety" because "[f]elonies constitute our most serious offenses"[78] and felons are "presumptively risky people."[79] To be sure, these assertions would certainly be valid if overcriminalization were not so rampant in the United States, but unfortunately that is not the case.

Before the advent of the regulatory state and the subsequent increase in *malum prohibitum*[80] offenses, criminal law was in many respects limited to *malum in se* offenses—acts that are wrong in and of themselves.[81] Under the *malum in se* conception of criminal law, only the most serious crimes[82]—for example, rape, robbery, and murder—were categorized as felonies.[83] During the past 100 years, however, legislatures have begun to classify many regulatory offenses, negligent acts, and various strict liability crimes as felonies.[84] Concurrent with the expansion of these *malum prohibitum* offenses has been the decreased emphasis in criminal law on the requirement of mens rea.[85] As follows, the relaxed requirement of criminal intent for many felony offenses necessarily leads to the conclusion that those who are convicted of felonies are not necessarily as "dangerous" or "bad" as the felony stigma indicates. This is especially true as our society moves "ever closer to a world in which the law on the books makes everyone a felon."[86] Thus, a more narrowly tailored classification is necessary in order to preserve the fundamental rights of those who do not pose a threat to society.

A. The Exponential Increase in Federal and State Crimes

Before one can fully apprehend the unreasonableness of banning all felons from possessing any type of firearm, even in their homes for the purpose of self-defense, an examination of the dramatic increase in felony offenses during the past 100 years is necessary. In 1873, the Federal Revised Statutes contained only 183 separate offenses.[87] Today, there are nearly 4500 separate federal crimes, and that number increases at a rate of approximately fifty-six

crimes per year.[88] Not surprisingly, the rate of incarceration in the United States has also grown exponentially. In 1970, the rate of imprisonment was 144 inmates per 100,000 residents; by 2005, the rate had soared to 737 per 100,000 residents—an increase of over 500%.[89] Significantly, the 2005 rate represents approximately 2.2 million people who are currently serving time in state and federal prisons; concurrently, about five million others were on probation or parole in 2005.[90]

The substantial growth of criminal law is not limited to the federal level; state criminal codes have also expanded over the past 100 to 150 years. For example, Virginia's criminal code contained 170 separate offenses in 1849; in 1996, there were 495 offenses on the books.[91] Similarly, Illinois criminalized 131 separate offenses in 1856, but that number had increased threefold by 2000 for a total of 421 separate offenses.[92] The number of crimes in Massachusetts also increased substantially over that same period: 214 in 1860 versus 535 in 1998.[93] It may seem trivial to note the numerical growth of statutes in the United States over the past 150 years, especially taking into account the many and varied technological advances that would seemingly necessitate an expanded criminal code. To be sure, technology and other societal changes have necessitated some growth, but many (if not most) new crimes are inserted into criminal codes because of political pressure and other factors.[94]

B. The Broadening of State and Federal Criminal Law

In addition to the overwhelming numerical growth of both state and federal criminal codes, the range and scope of the acts proscribed by these codes is staggering. Many statutes border on the absurd, and countless others are so abstract that many people will violate the law without ever knowing. Perhaps more importantly, a vast array of specialized and regulatory offenses now comprise not only a large percentage of total proscribable offenses but also account for a significant number of felonies. Thus, it is not inconceivable that many average citizens who have never committed anything more than minor traffic offenses will be caught in this ever-increasing web of felony offenses.[95]

To aid in understanding the increased breadth of criminal law (especially the scope of modern-day felonies), a brief sampling of

some of the more abstract felonies currently in force is in order. The story of George Norris is a good place to start. Norris was an elderly retiree who developed an interest in orchids, and this interest grew into a small business that brought in a few thousand dollars a year.[96] In 2004, he was sentenced to seventeen months in federal prison for violating several provisions of the Endangered Species Act (ESA)—provisions that were incorporated from a foreign trade organization.[97] Specifically, Norris failed to ensure that he had the proper documentation for the orchids he imported into the United States.[98] In short, Norris was stigmatized as a convicted felon for "what amounts to incorrect paperwork."[99]

A second example of the reach of overcriminalization involves a violation of the Computer Fraud and Abuse Act. Lori Drew violated a section of a "federal anti-hacking statute" by registering an account with MySpace.com under a fictitious name.[100] Drew (and presumably others) used this account to pose as a teenage boy (Josh Evans) in an attempt to find out why her neighbor's daughter had stopped associating with her own daughter.[101] Prosecutors wanted to press charges against Drew, but no statute adequately addressed her actions. Consequently, seeing no other way to get at Drew, prosecutors charged her under federal law for violating MySpace.com's Terms of Service.[102] The indictment alleged that the Terms of Service were "readily available" to the defendant, thus implying that Drew had fair notice of the crime with which she was charged.[103] In short, the myriad offenses on the books empowered prosecutors to make a case against Drew, even when the law did not proscribe what she purportedly "did wrong."

. As these two examples show, criminal offenses are now so numerous that almost anyone could be convicted of a crime—often without even knowing that the act committed was a crime. As one legal researcher has noted, "If criminal-law experts and the Justice Department itself cannot even count them, the average American has no chance of knowing what she must do to avoid violating federal criminal law."[104] What is more, some acts that most Americans know are deemed criminal are nevertheless committed everyday by countless individuals. For example, approximately ninety million living Americans have used an illegal drug, and about half of all Internet users between the ages of eighteen and twenty-nine illegally

download music every month.[105] These crimes are not just petty offenses; rather, possession of illegal drugs, even in small amounts, is a felony in many states, and "music piracy" is a serious federal offense. These two categories of offenses alone would subject nearly half of all Americans to criminal sanctions if and when they are caught. And, because "criminal codes expand and don't contract," more and more ordinary people may be subjected to criminal punishment for seemingly "innocuous behavior."[106]

As with the numerical increase of felonies over the past 150 years, it would be easy to dismiss these seemingly innocuous felonies as anomalous or, at the very least, to think that they go unenforced and that they therefore have no impact on the general population. This view is flawed in two ways. First, even if many absurd felonies will never affect the general public as a whole, this sentiment does nothing to abate the effect of a particular felony on the few who are convicted of that felony. Second, while nitpicky felonies may not, by themselves, affect society in more than a nominal sense, the sheer number of these often-laughable offenses has the potential to impact the whole of society on a far larger scale. It is this collective impact that must be taken into account when assessing the effect that North Carolina General Statute section 14-415.1 has and will have on a larger number of citizens than the General Assembly would like to admit.

C. A More Detailed Look at North Carolina's Criminal Statutes: Numerical Growth and Increased Breadth

Before returning to the constitutional analysis of section 14-415.1 and to the General Assembly's legislative response to *Britt*, this section will provide a brief survey of North Carolina law and its impact on North Carolina citizens. During fiscal year 2006/07, North Carolina imposed sentences for 30,905 felony convictions; for fiscal year 2008/09, that number was 32,266.[107] During 2006/07, non-trafficking drug offenses made up 36% of these felonies, and property offenses comprised another 34%.[108] Crimes against persons accounted for only 18% of these felonies; moreover, 68% of the felonies for which sentences were imposed were for Class H and I felonies—the least serious felony offenses in North Carolina.[109] The breakdown is similar for 2008/09: property offenses accounted

for 36% of all felony convictions and non-trafficking drug offenses comprised another 32%.[110] Crimes against persons made up 18% of the felony offenses for 2008/09, and 66% of all felonies for which sentences were imposed were Class H or I felonies.[111]

The foregoing breakdown of North Carolina felony offenses makes clear that a substantial majority of felonies are non-violent in nature. Consequently, these types of crimes do not provide an adequate basis for depriving an individual of her fundamental right to keep and bear arms. A few examples of these rather innocuous felonies prove that the presumption that all convicted felons are dangerous is invalid on its face. In North Carolina, it is a felony to remove shellfish from areas proscribed by law because of suspected pollution;[112] it is also a felony to forge a vehicle inspection sticker or to accept anything of value to pass a vehicle that failed inspection.[113] Various acts of voter fraud are also felonies in North Carolina,[114] and improper disposal of "hazardous waste" is a form of littering that is proscribed as a felony.[115] Furthermore, bribing a sports official,[116] intentionally losing an athletic contest,[117] and disturbing or defacing tombstones of grave markers[118] are all felonies under North Carolina law. Stealing pine needles,[119] pointing a laser pen at an aircraft,[120] and operating a pyramid scheme[121] are likewise felonies in North Carolina. Finally, it is highly significant that many Class H and I felonies were punishable as misdemeanors not that long ago.[122] While the General Assembly undoubtedly has a rational basis for proscribing these acts, and while it is within the purview of the legislature to determine the gravity of these offenses and the need to declare them felonies, it cannot reasonably be said that the General Assembly has any rational basis for concluding that those who commit these acts are any more dangerous than citizens who commit similar acts that are codified as misdemeanors. There is simply no empirical evidence to show that those who are guilty of these offenses are more likely than other citizens to commit violent crime; the case of Barney Britt is a prime example.[123] In contrast, it would certainly be more rational for the General Assembly to restrict the rights of violent misdemeanants (e.g., those guilty of misdemeanor domestic violence) than of those who are guilty of non-violent and regulatory felonies.

D. A Plea for Narrow Tailoring: Making Reasonable Distinctions

As the foregoing analysis shows, the General Assembly's progressive restriction of the rights of convicted felons—culminating in the 2004 amendment to General Statute section 14-415.1—must be viewed in light of the vast expansion of criminal offenses at both the state and federal level. The categorization of all felons as "dangerous" for the purpose of restricting their fundamental right to keep and bear firearms for the purpose of self-defense is grossly overbroad. As the Supreme Court stated in *Heller*, restrictions on convicted felons' rights to possess firearms are "presumptively lawful."[124] The fact that these are "presumptively" lawful, however, does not mean that they are definitely lawful under all circumstances. The context of *Heller* is significant here. The Court stated: "Although we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill . . . ."[125] The Seventh Circuit recently elaborated on the Court's statement:

> . [T]he government does not get a free pass simply because Congress has established a "categorical ban"; it still must prove that the ban is constitutional, a mandate that flows from *Heller* itself. *Heller* referred to felon disarmament bans only as "presumptively lawful," which, by implication, means that there must exist the possibility that the ban could be unconstitutional in the face of an as applied challenge. . . . And to determine whether the presumption of lawfulness gives way in this case . . . . [we] examine his claim using the intermediate scrutiny framework without determining that it would be the precise test applicable to all challenges to gun restrictions.[126]

Other courts have also indicated that restrictions on the right to keep and bear arms are afforded at least intermediate scrutiny.[127] Thus, restrictions on an individual's Second Amendment rights must be "substantially related" to an important government interest.[128] This Note argues, contrary to the dissent in *Britt*, that the conclusion that all felons are inherently dangerous is not rational.[129] Thus, while intermediate scrutiny does not require a "perfect fit,"[130] restricting the rights of *all* felons under the assumption that all felons

are dangerous is far from a perfect fit—it is unconstitutionally overbroad. "Although some felonies involve violence, countless felonies do not, and thus, a generic felony conviction would not necessarily predict future violence, with a firearm or otherwise."[131] Finally, the Supreme Court's holding in *Heller*—an individual's right to keep and bear arms is fundamental—is therefore inconsistent with the Court's dicta that "nothing in our opinion . . . cast[s] doubt on longstanding prohibitions on the possession of firearms by felons."[132] Justice Stevens pointed out the Court's inconsistency in his dissent:

> . The centerpiece of the Court's textual argument is its insistence that the words "the people" as used in the Second Amendment must have the same meaning, and protect the same class of individuals, as when they are used in the First and Fourth Amendments. . . . But the Court itself reads the Second Amendment to protect a "subset" significantly narrower than the class of persons protected by the First and Fourth Amendments; when it finally drills down on the substantive meaning of the Second Amendment, the Court limits the protected class to "law-abiding, responsible citizens" . . . . But the class of persons protected by the First and Fourth Amendments is not so limited; for even felons (and presumably irresponsible citizens as well) may invoke the protections of those constitutional provisions. The Court offers no way to harmonize its conflicting pronouncements.[133]

Justice Stevens is correct. There is no way to harmonize the Court's finding of a fundamental right to keep and bear arms with restrictions on the rights of convicted felons unless these restrictions are substantially related to an important government interest. Section 14-415.1 must therefore be recast so that it satisfies not only rational basis scrutiny but intermediate scrutiny as well.

IV. THE AFTERMATH OF *BRITT V. STATE*: WHERE DO WE GO FROM HERE?

A. Session Law 2010-108

. In response to the Supreme Court of North Carolina's holding in *Britt v. State*, the General Assembly passed Session Law 2010-108

(the "Act"), providing for the restoration of the firearm rights of some convicted felons under very limited circumstances. However, this attempt to correct the overbreadth of section 14-415.1 amounts to nothing but a political ploy and simply adds insult to injury. To be sure, it does little if anything to offer redress to many of the State's convicted felons who have been permanently divested of their fundamental rights. The Act is flawed in four distinct ways. First, the General Assembly's "fix" provides that after a period of twenty years, non-violent convicted felons (who have been convicted of only one non-violent felony and no violent misdemeanors) may petition the court in the district in which they reside to have their firearms rights restored.[134] To its credit, the General Assembly correctly distinguishes between violent and non-violent felons.[135] Nevertheless, twenty years is a very long time—so long, in fact, that the ability to petition to have one's rights restored is nothing more than a nominal gesture, the result of political pandering.[136]

. Second, section 14-415.4(k) requires that those who would petition to have their rights restored must pay a $200 fee to the clerk of court, in addition to any other expenses the Department of Justice may incur in conducting a criminal record check.[137] This fee will undoubtedly limit those who would be eligible to petition the courts, as $200 is more than a nominal fee. Indeed, this fee is the equivalent of a poll tax in that it serves to disenfranchise those whom the legislature has determined can have their fundamental right restored.[138]

. Third, and perhaps most importantly, section 14-415.4 becomes effective on February 1, 2011 and only "applies to offenses committed on or after that date. Prosecutions for offenses committed before the effective date of the Act are not abated or affected by the Act, and the statutes that would be applicable but for the Act remain applicable to those prosecutions."[139] Barney Britt can never petition to have his rights restored under this Act, nor can anyone else convicted of a felony in 1979, or anyone convicted of a felony on January 31, 2011. It is difficult to see how individuals convicted of felonies *after* February 1, 2011 are any less dangerous and therefore entitled to have their rights restored than someone who was convicted of a felony thirty years ago. Moreover, the fact that section 14-415.4 does not apply retroactively is highly significant because *no one* will even have the chance to petition to have her rights restored

until at least February 1, 2031. This is why the General Assembly's "fix" is nothing but a nominal gesture. The General Assembly has substantially altered section 14-415.1 several times during the past thirty-five years;[140] what is to keep the legislature from amending section 14-415.4 sometime during the next twenty years so that even these convicted felons can never regain their rights?

. Fourth, the General Assembly excepted individuals convicted of certain "white collar" crimes from losing their rights under section 14-415.1.[141] The disparate impact of this exception cannot be ignored. Much as the $200 fee adversely affects those with minimal financial resources, the exemption of white collar felonies serves to immunize one group of convicted felons (wealthy business people, many of whom are white) while doing nothing to abate the effect of section 14-415.1 on those convicted of "worse" felonies (who are frequently poor minorities).[142] This exception makes little sense in light of the General Assembly's presumption that all convicted felons have a propensity for violence;[143] indeed, by not exempting all non-violent felonies but only those committed by the wealthy, the General Assembly has made an unjust distinction that cannot survive rational basis scrutiny, much less intermediate scrutiny. Thus, for all the foregoing reasons, the Act does not sufficiently ameliorate the constitutional defects of section 14-415.1.

B. The Way Forward: A Reasoned Approach to Restricting Fundamental Rights

. The court in *Britt v. State* showed discretion in not holding section 14-415.1 unconstitutional on its face.[144] The court also gave deference to the legislature in its most recent decision in *State v. Whitaker*.[145] The court's deference in these cases afforded the General Assembly the opportunity to address the inequities inherent in the statute, which the legislature did with Session Law 2010-108.[146] As Part IV.A above has shown, however, the General Assembly has failed to remedy the constitutional defects of section 14-415.1. As a result, many in this State are still prohibited from exercising their fundamental right to keep and bear arms. This subpart sets forth a reasoned approach to amending section 14-415.1 that will preserve the fundamental rights of convicted felons while still enabling the General Assembly to protect the public from harm.

. In *State v. Whitaker*, the court held that section 14-415.1 was not an unconstitutional ex post facto law or Bill of Attainder and concluded that the General Assembly was justified in prohibiting the possession of firearms "by those who have shown a heightened disregard for our laws and who often have a propensity for violence."[147] Significantly, *Whitaker* emphasized the defendant's "multiple convictions over a lengthy period of time" in making its determination that section 14-415.1 was not unconstitutional as applied to Whitaker.[148] In contrast, the court in *Britt* held the statute unconstitutional as applied to Britt, making much of the fact that Britt was convicted of a single non-violent felony.[149] Building on these distinctions, this Note argues that individuals convicted of non-violent felonies should have their right to keep and bear arms restored immediately following the completion of their sentences; moreover, some violent offenders should also have the opportunity to petition the court to have their firearms rights restored (at least in their homes and businesses) after a specified time elapses following completion of their sentences, so long as no other violent crimes are committed.

The General Assembly has shown that it can differentiate between violent and non-violent felonies; it has done so under Session Law 2010-108.[150] Therefore, it cannot be argued that it is impossible to distinguish between violent and non-violent felons and continue to deprive all convicted felons of their fundamental right to keep and bear arms. As follows, the General Assembly should amend section 14-415.1 so that non-violent felons regain their right to keep and bear arms immediately following the completion of their sentences—the same time that the state restores their other civil rights—in accordance with the definition of non-violent felons set forth in Session Law 2010-108. In the alternative, the General Assembly could revert to the 1975 version of section 14-415.1, which proscribes firearm rights when certain enumerated felonies are committed.[151] This Note contends that restricting the firearm rights of all convicted felons is not a rational distinction;[152] indeed, it is entirely unreasonable to conclude that individuals convicted of regulatory felonies (e.g., failure to complete proper paperwork, as in the orchid case above)[153] are presumably more dangerous than someone who commits a non-violent misdemeanor (e.g., filing a false police report).[154]

While the State of North Carolina undeniably has a rational basis (indeed, a strong interest) for restricting the firearm rights of violent felons, the General Assembly should consider restoring the rights of some violent felons following a reasonable period of time if they commit no further acts of violence. More specifically, the General Assembly could return to the reasonable waiting period required by the 1975 version of section 14-415.1.[155] But, even if the General Assembly chooses a longer period—or no period at all—the legislature should allow violent felons, if they have completed their sentences and had their other rights restored, to possess a firearm in the home for self-defense. This was the fundamental right announced by the Supreme Court in *Heller* and *McDonald*, and, notwithstanding the Court's dicta that restrictions on the rights of convicted felons are presumptively valid, this does not mean that the right to restrict is absolute, just as the right itself is not absolute. The Court explicitly stated that "the Second Amendment, like the First and Fourth Amendments, codified a *pre-existing* right. The very text of the Second Amendment implicitly recognizes the pre-existence of the right and declares only that it 'shall not be infringed.' "[156] Justice Stevens elaborated in his dissent, pointing out that even felons still receive the protections of the First and Fourth Amendments and questioning how the Court could declare that convicted felons are not entitled to the protection of the Second Amendment.[157] It would certainly be easier (and presumably safer) for the government to restrict or ignore the fundamental rights of felons protected by the First and Fourth Amendments, but these rights, like those guaranteed by the Second Amendment, are "among those fundamental rights necessary to our system of ordered liberty" and thus may not be restricted absent (at the least) a substantial relation to an important government interest.[158]

These suggestions for the legislature may seem naïve; choosing to stand up for the rights of convicted felons will not be the most politically popular decision that a legislator can make. Nevertheless, when dealing with the fundamental rights of individual people, restrictions on these rights should *never* be taken lightly. Justice requires fairness. Fairness means not restricting the rights of others for the sake of political gain. In the alternative, if the motivation to do what is right—even at the cost of political capital—is not enough

to lead the General Assembly to reverse course and make reasoned distinctions concerning the right to keep and bear arms, then recognizing the ever-increasing reach of criminal law may at least give some pause. A growing number of good people are being caught in the web of overcriminalization, and public officials are not immune.

Conclusion

The General Assembly must make a rational judgment concerning those who pose a danger to society and should no longer rely on the social stigma of a felony conviction in determining when fundamental rights should be restricted. This Note shows the far-reaching effects of overcriminalization on the fundamental rights of many Americans.[159] Innocuous felonies are steadily eroding the rights of individuals, not the least of which is the right to keep and bear arms. The rights of more and more citizens will inevitably be restricted as the number of regulatory felonies continues to increase. The North Carolina General Assembly must be proactive in addressing this liberty-eroding trend and should distinguish between violent and non-violent offenders in determining when and to what extent firearms rights should be restricted. If we lived in a society that reserved felonies for the most severe offenses, then the classification of all felons as "dangerous" for the purpose of upholding North Carolina General Statute section 14-415.1 in its current form would be more than reasonable. However, we no longer live in a society that reserves felony classification for the most severe offenses; instead we classify many "crimes" as felonies that are nothing more than regulatory violations. It is undeniable that we are quickly moving toward a "world in which the law on the books makes everyone a felon."[160] Consequently, the General Assembly must act bravely to vindicate the rights of convicted felons and thereby preserve the liberty of us all.

Endnotes

1. * © Joshua J. Styles. This Note is dedicated to Charlotte and Cara Noelle—my work would not be possible with you. I am also indebted to Chris Badger for his help in editing this piece.

2. 363 N.C. 546, 681 S.E.2d 320 (2009).

3. *See infra* notes 20–22 and accompanying text.

4. *See, e.g.*, State v. Whitaker, No. 21A10, 2010 N.C. LEXIS 737, at *14 (N.C. Oct. 8, 2010) (holding that the plaintiff in that case was not entitled to have his right to possess firearms restored and stating that N.C. GEN. STAT. § 14-415.1 was not an unconstitutional ex post facto law or Bill of Attainder). *See infra* Part IV.B for a more thorough examination of *Whitaker*.

5. 2010 N.C. Sess. Law 108 (to be codified at N.C. GEN. STAT. § 14-415.4). See *infra* Part IV.A for a more detailed discussion of this enactment.

6. The United States Constitution provides that "the right of the people to keep and bear arms, shall not be infringed." U.S. CONST. amend. II, § 2. Similarly, the North Carolina Constitution asserts that "the right of the people to keep and bear arms shall not be infringed." N.C. CONST. art. I, § 30.

7. 554 U.S. 570 (2008).

8. ___U.S.___, 130 S. Ct. 3020 (2010).

9. N.C. GEN. STAT. § 14-415.1 (1971). The General Assembly further modified the Act in 1973 in order to clarify any ambiguity over what constituted a "pistol." Specifically, the legislature replaced the words "or pistol" with "any other firearms with a barrel length of less than 18 inches or an overall length of less than 26 inches." 1973 N.C. Sess. Law c. 1196, s. 1.

10. N.C. GEN. STAT. § 14-415.2 (1971).

11. 1975 N.C. Sess. Law c. 870, s. 3.

12. The amended statute read, in pertinent part:

> It shall be unlawful for any person who has been convicted in any court in this State, of any other state of the United States or of the United States of feloniously violating any provision of Articles 3, 4, 6, 7, 8, 10, 13, 14, 15, 17, 30, 33, 36, 36A, 52A or 53 of Chapter 14 of the General Statutes to purchase, own, possess, or have in his custody, care, or control any hand gun or other firearm with a barrel length of less than 18 inches or an overall length of less than 26 inches within five years from the date of such conviction, or unconditional discharge from a correctional institution, or termination of a suspended sentence, probation, or parole upon such conviction, whichever is later.

1975 N.C. Sess. Law c. 870, s. 1.

13. *See id.*

14. 1975 N.C. Sess. Law c. 870, s. 2. This exception for possession in one's home or business comports with the United States Supreme Court's rationale set forth in its recent decisions. *See infra* Part II.

15. 1995 N.C. Sess. Law c. 487, s. 3.

16. The Supreme Court of North Carolina has rejected arguments that § 14-415.1 is an unconstitutional ex post facto law or Bill of Attainder. *See* State v. Whitaker, No. 21A10, 2010 N.C. LEXIS 737, at *14–16 (N.C. Oct. 8, 2010). A more detailed discussion of these constitutional arguments is beyond the scope of this Note. For more information, see Plaintiff Appellant's New Brief at 17-74, *Britt v. State*, 363 N.C. 546, 681 S.E.2d 320 (2009) (No. 488A07).

17. N.C. GEN. STAT. § 14-415.1(b)(1), (3) (1995).

18. 1995 N.C. Sess. Law c. 487, s. 3.

19. *Id.*

20. An exception to the blanket ban was put forth by the General Assembly in 2006 in the form of an "antique firearm" exception. *See* 2006 N.C. Sess. Law c. 259, s. 7. In short, "antique firearms" can be described as "[a]ny muzzle loading rifle, muzzle loading shotgun, or muzzle loading pistol, which is designed to use black powder substitute, and which cannot use fixed ammunition." N.C. GEN. STAT. § 14-409.11(a)(3) (2010). To be sure, any firearm that cannot use fixed ammunition is almost entirely useless for the purpose of self-defense in today's society due to the time it takes to load and reload weapons that cannot fire fixed ammunition.

21. N.C. GEN. STAT. § 14-415.1(a) (2004).

22. Britt v. State, 363 N.C. 546, 547, 681 S.E.2d 320, 321 (2009).

23. *Id.* at 547, 681 S.E.2d at 321.

24. *See supra* Part I.A.

25. 1995 N.C. Sess. Law c. 487, s. 3.

26. N.C. GEN. STAT. § 14-415.1(a) (2004).

27. *Britt*, 363 N.C. at 548, 681 S.E.2d at 322.

28. *Id.*

29. *Id.* at 549, 681 S.E.2d at 322.

30. Britt v. State, 185 N.C. App. 610, 613, 649 S.E.2d 402, 405 (2007).

31. *Id.* at 614–17, 649 S.E.2d at 406–07.

32. *Id.* at 617–18, 649 S.E.2d at 407.

33. *Id.* at 621, 649 S.E.2d at 410 (Elmore, J., dissenting).

34. *Id.* at 621, 649 S.E.2d at 409.

35. Britt v. State, 363 N.C. 546, 547, 681 S.E.2d 320, 321 (2009).

36. *Id.* at 550, 681 S.E.2d at 323.

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.* at 551, 681 S.E.2d at 323–24 (Timmons-Goodson, J., dissenting) (quoting State v. Dawson, 272 N.C. 535, 546, 159 S.E.2d 1, 9 (1968)).

41. *Id.* at 552, 681 S.E.2d at 324 (citations omitted).

42. *Id.* (quoting District of Columbia v. Heller, 554 U.S. 570, 626 (2008)).

43. *Id.* at 553, 681 S.E.2d at 324–25.

44. *See supra* notes 39-40 and accompanying text.

45. *See* District of Columbia v. Heller, 554 U.S. 570, 594-95, 634–35 (2008).

46. McDonald v. Chicago, ___ U.S. ___, ___, 130 S. Ct. 3020, 3050 (2010).

47. *Heller*, 554 U.S. at 634–35.

48. *Id.* at 574-75.

49. *Id.* at 598-600. The prefatory clause states: "A well regulated Militia, being necessary to the security of a free State . . . ." *Id.* at 595. Justice Scalia's full analysis of the text of the Second Amendment is beyond the scope of this Note; for the complete discussion of the Second Amendment's text, see *id.* at 573-601.

50. *Id.* at 583-84.

51. *Id.* at 586.

52. *Id.* at 593 (citations omitted).

53. *Id.* (quoting 1 W. & M., c. 2, § 7, in 3 Eng. Stat. at Large 441 (1689)).

54. *Id.*

55. *Id.* at 608–09.

56. *Id.* at 609.

57. *Id.* at 614–15 (citing H. R. Exec. Doc. No. 70, 39th Cong., 1st Sess., 233, 236).

58. *Id.* at 615 (quoting Joint Comm. on Reconstruction, H. R. Rep. No. 30, 39th Cong., 1st Sess., pt. 2, p 229 (1866) (Proposed Circular of Brigadier General R. Saxton)).

59. *Id.* at 628. While the Court took great pains to avoid stating that the right was fundamental such that the Court will apply strict scrutiny in determining the constitutionality of restrictions placed on the right, the Court nevertheless held that restrictions on the right will require more than an "interest-balancing inquiry." *Id.* at 634–35. To be sure, the Court compared the First and Second Amendments, stating that they are both the "*product* of an interest balancing by the people" at the time of ratification. *Id.* at 635. Furthermore, the Second Amendment "elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home." *Id.*

60. *Id.* at 626–27.

61. *Id.* at 621–25 (citations omitted).

62. *Id.* at 629.

63. *Id.* at 626–27. It is this statement that the dissent in *Britt* relies upon in its assertion that Barney Britt's rights were not unconstitutionally restricted. For a counterargument to the dissent's contention, see *infra* Part IV.

64. *Id.* at 627 n.26.

65. *Id.* at 628–29.

66. *Id.* at 636.

67. McDonald v. Chicago, ___ U.S. ___, ___, 130 S. Ct. 3020, 3026 (2010).

68. *Id.* at ___, 130 S. Ct. at 3050.

69. *Id.* at ___, 130 S. Ct. at 3050.

70. *Id.* at ___, 130 S. Ct. at 3050.

71. *Id.* at ___, 130 S. Ct. at 3036 (quoting District of Columbia v. Heller, 554 U.S. 570, 599 (2008)).

72. *Id.* at ___, 130 S. Ct. at 3036 (citations omitted).

73. *Id.* at ___, 130 S. Ct. at 3036–37.

74. *Id.* at ___, 130 S. Ct. at 3042.

75. *Id.* at ___, 130 S. Ct. at 3049.

76. *Id.* at ___, 130 S. Ct. at 3047 (quoting *Heller*, 554 U.S. at 626–27).

77. Britt v. State, 363 N.C. 546, 552, 681 S.E.2d 320, 324 (2009) (Timmons-Goodson, J., dissenting) (quoting State v. Jackson, 353 N.C. 495, 501, 546 S.E.2d 570, 573-74 (2001)).

78. *Id.* at 552, 681 S.E.2d at 324.

79. *Id.* at 553, 681 S.E.2d at 324 (quoting Dickerson v. New Banner Inst., Inc., 460 U.S. 103, 112 n.6 (1983)).

80. *Malum prohibitum* refers to conduct that is "not wrongful prior to or independent of law." DOUGLAS HUSAK, OVERCRIMINALIZATION: THE LIMITS OF THE CRIMINAL LAW 104–05 (2008).

81. Paul Rosenzweig, *The Over-Criminalization of Social and Economic Conduct*, THE HERITAGE FOUNDATION, at i (Apr. 17, 2003), *available at* http://www.heritage.org/research/reports/2003/04/the-over-criminalization-of-social-and-economic-conduct.

82. "Serious crimes" in this context refer to those offenses that are viewed by society as a whole to be heinous, evil, and immoral. These offenses are vastly different from the dissent's conception of "serious offenses" (i.e., whatever the General Assembly classifies as a felony). *See supra* notes 76-78 and accompanying text.

83. Rosenzweig, *supra* note 80, at i.

84. *Id.* at 4.

85. *Id.* at 12.

86. William J. Stuntz, *The Pathological Politics of Criminal Law*, 100 MICH. L. REV. 505, 511 (2001).

87. *Id.* at 514.

88. *Over-Criminalization of Conduct/Over-Federalization of Criminal Law: Hearing before the Subcomm. on Crime, Terrorism, and Homeland Sec. of the H. Comm. on the Judiciary*, 111th Cong. 3 (July 22, 2009) [hereinafter *Over-Criminalization Hearing*] (statement of Rep. Louie Gohmert, Ranking Member, Subcomm. on Crime, Terrorism, and Homeland Sec.).

89. HUSAK, *supra* note 79, at 4-5.

90. *Id.* at 5.

91. Stuntz, *supra* note 85, at 513–14.

92. *Id.* at 514.

93. *Id.*

94. For example, technology has led to a host of computer-related offenses that were unforeseeable only a few decades ago. *See* Darryl K. Brown, *Democracy and Decriminalization*, 86 TEX. L. REV. 223, 233 (2007). Nevertheless, much of the increase in criminal statutes can be attributed to the political process. *See, e.g.*, Erik Luna, *The Overcriminalization Phenomenon*, 54 AM. U. L. REV. 703, 718 (2005) ("[L]awmakers have a strong incentive to add new offenses and enhanced penalties . . . . Conventional wisdom suggests that appearing tough on crime wins elections regardless of the underlying justification."); Sanford H. Kadish, Comment, *The Folly of Overfederalization*, 46 HASTINGS L.J. 1247, 1248–1249 (explaining that

because "legislators know well that no one can lose voter popularity for seeming to be tough on crime, the legislation sails through in a breeze").

95. *See* Luna, *supra* note 93, at 711 ("Every augmentation provides officials a new legal instrument to apply against members of the so-called 'criminal class' (many of whom look remarkably similar to the class of 'normal' folks.").

96. *See* Andrew M. Grossman, *The Unlikely Orchid Smuggler: A Case Study in Overcriminalization*, THE HERITAGE FOUNDATION 1 (July 27, 2009), *available at* http://www.heritage.org/research/reports/2009/07/the-unlikely-orchid-smuggler-a-case-study-in-overcriminalization.

97. *Id.* at 3. The Convention on International Trade in Endangered Species (CITES) is the primary regulator of the orchid trade. Notably, CITES was initially enacted to protect endangered animals, such as elephants, but trade in flora now falls within the ambit of the treaty's regulation. *See id.* at 3-5.

98. *See id.* at 1, 8-9.

99. *Over-Criminalization Hearing*, *supra* note 87, at 4 (statement of Rep. Louie Gohmert, Ranking Member, Subcomm. on Crime, Terrorism, and Homeland Sec.).

100. Andrew M. Grossman, *The MySpace Suicide: A Case Study in Overcriminalization*, THE HERITAGE FOUNDATION 4 (Sept. 17, 2008), *available at* http://www.heritage.org/research/reports/2008/09/the-myspace-suicide-a-case-study-in-overcriminalization#_ftnref13. The indictment charged Drew with violating 18 U.S.C. § 1030(a)(2)(C) (2008), which reads in pertinent part: "[whoever] intentionally accesses a computer without authorization or exceeds authorized access, and thereby obtains. . . . information from any protected computer." *Id.*

101. *Id.* at 2. Drew, acting as Evans, subsequently befriended her neighbor's daughter and "dumped" her a month later, which resulted in the neighbor's daughter committing suicide. *See* Indictment at 6-8, United States v. Drew, No. CR-08-0582-GW (C.D. Cal. May 15, 2008). While Drew's actions are by no means commendable and the death of a teenage girl is horribly tragic, stretching the reach of criminal laws to punish particular bad acts reduces the liberty of all Americans.

102. *Id.* at 4.

103. *Id.* at 9–10.

104. *Exploring the National Criminal Justice Act of 2009: Hearing before the Subcomm. on Crime and Drugs of the S. Comm. on the Judiciary*, 111th Cong. 14 (June 11, 2009) [hereinafter *Exploring Hearing*] (testimony of Brian W. Walsh, Senior Legal Research Fellow, The Heritage Institute),

available at http://judiciary.senate.gov/hearings/testimony cfm?id=3906&wit_id=8061.

105. HUSAK, *supra* note 79, at 25.

106. *See* Brown, *supra* note 93, at 223.

107. *See* THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION, A CITIZEN'S GUIDE TO STRUCTURED SENTENCING (2010) [hereinafter 2010 CITIZEN'S GUIDE]; THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION, A CITIZEN'S GUIDE TO STRUCTURED SENTENCING (2008) [hereinafter 2008 CITIZEN'S GUIDE].

108. 2008 CITIZEN'S GUIDE, *supra* note 106.

109. *Id.*

110. 2010 CITIZEN'S GUIDE, *supra* note 106.

111. *Id.*

112. *See* N.C. GEN. STAT. § 113-209 (2010).

113. N.C. GEN. STAT. § 20-183.8 (c)(1), (4) (2010).

114. N.C. GEN. STAT. § 163-275 (2010).

115. *See* N.C. GEN. STAT. § 14-399 (e) (2010). North Carolina defines hazardous waste as "solid waste, or combination of solid wastes, which because of its quantity, concentration or physical, chemical or infectious characteristics . . . may pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed." N.C. GEN. STAT. § **130A**-290 (a)(8)(b) (2010). Presumably, then, anyone who improperly disposes of batteries, tires, mercury thermometers, etc., could be held criminally liable under this section.

116. *See* N.C. GEN. STAT. § 14-373 (2010).

117. *See* N.C. GEN. STAT. § 14-377 (2010).

118. *See* N.C. GEN. STAT. § 14-149 (2010).

119. *See* N.C. GEN. STAT. § 14-79.1 (2010).

120. *See* N.C. GEN. STAT. § 14-280.2 (a) (2010).

121. N.C. GEN. STAT. § 14-291.2 (a) (2010).

122. *Compare* N.C. GEN. STAT. § 14-32.2(b)(4) (2007) (patient abuse and neglect a Class A1 misdemeanor), *with* N.C. GEN. STAT. § 14-32.2(b)(4) (2010) (patient abuse and neglect a Class H felony). Similarly, N.C. GEN. STAT. § 97-88.2(c) (2010), which forbids threatening an employee with criminal prosecution in an attempt to coerce an employee's decision concerning worker's compensation, was formerly a Class A1 misdemeanor

but was made a Class H felony as of 1997. *Cf.* N.C. GEN. STAT. § 97-88.2(c) (1997). Other examples include N.C. GEN. STAT. § 14-362 (2010) (cockfighting) and N.C. GEN. STAT. § 143-151 (2010) (willfully violating the Uniform Standards Code for Manufactured Homes). Cockfighting was formerly a Class 2 misdemeanor, *see* N.C. GEN. STAT. § 14-362 (2005), but was made a Class I felony in 2005. *See* § 14-362 (2010). Similarly, violating standards for manufactured homes was formerly a Class 1 misdemeanor, *see* N.C. GEN. STAT. § 143-151 (1999), but was made a Class I felony as of 1999. *See* § 143-151 (2010).

123. *See supra* Part I.B.

124. District of Columbia v. Heller, 554 U.S. 570, 627 n.26 (2008).

125. *Id.* at 626.

126. United States v. Williams, 616 F.3d 685, 692 (7th Cir. 2010). Though her vote on this case carries no greater weight than that of the other Seventh Circuit judges, it is significant that retired Justice O'Connor, sitting by designation, joined the majority opinion in this case. *Id.* at 686.

127. *See* United States v. Smith, No. 2:10-cr-00066, 2010 U.S. Dist. LEXIS 98511, at *34 (S.D. W. Va. Sept. 20, 2010).

128. Craig v. Boren, 429 U.S. 190, 197 (1976); *see also* United States v. Skoien, 614 F.3d 638, 641-42 (7th Cir. 2010) (applying intermediate scrutiny to Second Amendment rights and stating that "[i]f a rational basis were enough, the Second Amendment would not do anything"); United States v. Smith, No. 2:10-cr-00066, 2010 U.S. Dist. LEXIS 98511, at *19 (S.D. W. Va. Sept. 20, 2010) (holding that "intermediate scrutiny is the appropriate standard of review" for evaluating restrictions on Second Amendment rights).

129. *See supra* notes 39-42 and accompanying text.

130. *See* United States v. Tooley, No. 3:09-00194, 2010 U.S. Dist. LEXIS 58591, at *49 (S.D. W. Va., June 14, 2010).

131. *Id.* at 50-51 & n.11.

132. District of Columbia v. Heller, 554 U.S. 570, 625−27 (2008).

133. *Id.* at 644 (Stevens, J., dissenting).

134. N.C. GEN. STAT. § 14-415.4(b), (c) (2010).

135. N.C. GEN. STAT. § 14-415.4(a)(2). According to the Act, non-violent felonies include Class C through Class I felonies that meet the following criteria: (1) assault is not an essential element of the offense; (2) the offender was not in possession of a firearm during the commission of the offense, and possession or use of a firearm or other deadly weapons is not

an essential or non-essential element of the crime; (3) the offender did not use a firearm or other deadly weapon in the commission of the offense; and (4) the felony does not require that the offender register under Article 27A of Chapter 14 of the General Statutes. N.C. GEN. STAT. § 14-415.4(a)(2)(a) to (a)(2)(d).

136. *See infra* Part IV.B.

137. *See* N.C. GEN. STAT. § 114-19.28 (d) (2010).

138. *See generally* MAYA HARRIS, ACLU OF N. CAL., MAKING EVERY VOTE COUNT: REFORMING FELONY DISENFRANCHISEMENT POLICIES AND PRACTICES IN CALIFORNIA (2008) (explaining how criminal disenfranchisement is the functional equivalent of a poll tax and noting the disproportionate adverse effect on minority voters).

139. 2010 N.C. Sess. Laws 108 § 7.

140. *See supra* Part I.A.

141. 2010 N.C. Sess. Laws 108 § 3 (to be codified at § 14-415.1 (e)).

142. *See, e.g.*, HARRIS, *supra* note 137, at 9 ("[A] disproportionate number of people of color (particularly African Americans) are arrested, prosecuted and convicted for drug offenses.").

143. Britt v. State, 363 N.C. 546, 552-53, 681 S.E.2d 320, 324–25 (2009) (Timmons-Goodson, J., dissenting).

144. *See supra* INTRODUCTION.

145. No. 21A10, 2010 N.C. LEXIS 737 (N.C. Oct. 8, 2010).

146. *See supra* Part IV.A.

147. *Whitaker*, 2010 N.C. LEXIS 737, at *11.

148. *Id.* at *12.

149. *See Britt*, 363 N.C. at 547-48, 681 S.E.2d at 321–22.

150. *See supra* notes 133–34 and accompanying text.

151. 1975 N.C. Sess. Law c. 870, s. 1.

152. *See supra* Part III.D.

153. *See supra* notes 95-98 and accompanying text.

154. N.C. GEN. STAT. § 14-225 (2010).

155. 1975 N.C. Sess. Law c. 870, s. 1.

156. District of Columbia v. Heller, 554 U.S. 570, 592 (2008).

157. *Id.* at 642-46 (Stevens, J., dissenting).

158. McDonald v. Chicago, ___ U.S. ___, ___, 130 S. Ct. 3020, 3042 (2010).

159. *See supra* Part III.

160. *See* Stuntz, *supra* note 85, at 511.

THE AMERICAN REVOLUTIONARY ERA ORIGIN OF THE SECOND AMENDMENT'S CLAUSES

David E. Young

The 5/4 split decision in the Supreme Court's District of Columbia vs Heller case demonstrated a continuing dichotomy in Second Amendment history between relevant period sources, which were largely relied on in the Courts' decision, and the views of modern historians that backed up the dissent in that case. Justice Breyer's statement that most of the historians supported the Heller dissent was correct, but that is exactly the problem. The historians' brief contained numerous errors of fact and failed to present the essential bill of rights related developmental history of the Second Amendment's clauses. This article contains extensive and essential relevant information that directly conflicts with, or is entirely missing from, the historians' brief to the Supreme Court.

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I. THE SOURCE OF SECOND AMENDMENT CLAUSES

The Second Amendment to the U.S. Constitution states:

> A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed. [1]

On September 26, 1789, the First Congress under the U.S. Constitution provided a definitive link back to the immediate predecessors of the Second Amendment's 'well regulated militia' and 'right of the people to keep and bear arms' clauses. The introduction to the proposed amendments stated a general description of not only their nature and purpose but also their source:

> THE Conventions of a number of the states having at the time of their adopting the CONSTITUTION expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added: [2]

Congress proposed the Second Amendment and other Bill of Rights provisions to satisfy the desires of state ratifying conventions. Examination of those desires makes it evident that several conventions wanted a bill of rights added to the U.S. Constitution that included a two-clause Second Amendment predecessor. Section 17 in the Bill of Rights proposed by the 1788 Virginia Ratifying Convention consisted of four clauses, the leading two being the earliest two-clause predecessor adopted by a state convention. These are the very clauses that James Madison and Congress directly relied on for development of what became the Second Amendment's militia and arms related clauses. Virginia's stated desire, including the reason for proposal of a bill of rights, was:

> That there be a declaration or bill of rights asserting, and securing from encroachment, the essential and unalienable rights of the people, in some such manner as the following:-
>
> . . . .
>
> 17th. That the people have a right to keep and bear arms; that a well-regulated militia, composed of the body of the people trained to arms, is the proper, natural, and safe defence of a free state; that standing armies, in time of peace, are dangerous to liberty, and therefore ought to be avoided, as far as the circumstances and protection of the community will admit; and that, in all cases, the military should be under strict subordination to, and governed by, the civil power.[3]

North Carolina's 1788 convention refused to ratify the Constitution and adopted the above Virginia language verbatim along with all of Virginia's other amendments on August 1st.[4] The New York Convention's July 26th ratification included a declaration of rights with virtually the same two-clause Second Amendment predecessor language.[5] These three closely related two-clause bill of rights provisions from 1788 state ratifying conventions are the desires Congress perceived for proposal of the Second Amendment's clauses. Answers to the questions of who was responsible for this particular bill of rights language, how and where it originated in America, and why this particular terminology was used are of great significance, especially in any study of such a controversial provision. Such answers will help inform what the Second Amendment meant to the founding generation and dispel modern disagreement about it.

A. Virginia

1. A Well Regulated Militia, Composed of the Body of the People

Virginia's proposed 1788 "well regulated militia" language was an exact quote of the first clause of Section 13 from that state's own 1776 Declaration of Rights:

> SEC. 13. That a well-regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defence of a free state; that standing armies, in time of peace, should be avoided, as dangerous to liberty; and that in all cases the military should be under strict subordination to, and governed by, the civil power.[6]

The context of Virginia's 1776 well regulated militia clause was that of a state constitutional level declaration of rights provision intended to prevent legislative violation of the stated principle.[7] In an American state bill of rights, the appropriate historical context was an intent to limit government power.[8] This is the same context as the 1788 Virginia and North Carolina proposals directly quoting the 1776 "well regulated militia" language, the only difference being, the later proposals protect against "misconstruction and abuse" of

the new Federal Government's powers rather than those of a state government.

2. Virginia's Self-Embodying Armed Populace

Virginia's Section 13 language regarding a well regulated militia of the people originated with George Mason, author of Virginia's 1776 Declaration of Rights. Prior to its inclusion in America's first state bill of rights, he had used well regulated militia to describe a voluntary defensive association of men in Fairfax County, Virginia, that formed months before hostilities of the American Revolution began. A look at such armed self-embodying activities and Mason's writings regarding them is therefore essential for understanding Second Amendment related period usage and development.

George Mason, Patrick Henry, and other patriot leaders of Virginia met with George Washington at Mount Vernon in late August of 1774 long before any hostilities of the Revolution. They discussed defensive measures against threatened British actions implemented by military force. One result was encouragement of voluntary militia associations in the home counties of these leading Virginia patriots. Mason was involved from the very beginning in establishment of a voluntary defensive association in Fairfax County. A meeting of freeholders there on September 21, 1774, with Mason as chairman, formed an association that was based on the concept of the free men taking up their own arms and self-embodying for defense, as follows:

> we the Subscribers, . . .being sensible of the Expediency of putting the Militia of this Colony upon a more respectable Footing, & hoping to excite others by our Example, have voluntarily freely & cordially entered into the following Association; which we, each of us for ourselves respectively, solemnly promise, & pledge our Honours to each other, and to our Country to perform.
>
> That we will form ourselves into a Company, not exceeding one hundred Men, by the Name of The Fairfax independent Company of Voluntiers, making Choice of our own Officers; to whom, for the Sake of Good-order & Regularity, we will pay due submission. That we will meet at such Times & Places in this County as our said Officers (to be chosen by a Majority of

> the Members, so soon as fifty have subscribed) shall appoint & direct, for the Purpose of learning & practising the military Exercise & Discipline; dressed [in described uniform clothing – ed.]; and furnished with a good Fire-lock & Bayonet, Sling Cartouch-Box, and Tomahawk. And that we will, each of us, constantly keep by us a Stock of six pounds of Gunpowder, twenty pounds of Lead, and fifty Gun-flints, at the least. [9]

By early January of 1775, still well before hostilities, George Washington indicated that such defensive associations were being formed in a number of Virginia counties:

> In this County [Fairfax – ed.], Prince William, Loudoun, Faquier, Berkely, & many others round about them, a noble Ardour prevails. Men are forming themselves into independent Companies, chusing their officers, arming, Equipping, & training for the worst Event. The last Appeal! [10]

Mason, while chairman of the Fairfax Committee of Safety, used language regarding a well regulated militia and standing armies very similar to that he later included in Virginia's 1776 Declaration of Rights. From the Committee's January 17, 1775 resolution:

> that a well regulated Militia, composed of the gentlemen freeholders, and other freemen, is the natural strength and only stable security of a free Government, and that such Militia will relieve our mother country from any expense in our protection and defence, will obviate the pretence of a necessity for taxing us on that account, and render it unnecessary to keep Standing Armies among us – ever dangerous to liberty; and therefore it is recommended to such of the inhabitants of this County as are from sixteen to fifty years of age, to choose a Captain, two Lieutenants, an Ensign, four Sergeants, four Corporals, and one Drummer, for each Company; that they provide themselves with good Firelocks, and use their utmost endeavours to make themselves masters of the Military Exercise, published by order of his Majesty in 1765, and recommended by the Provincial Congress of the *Massachusetts Bay*, on the 29th of *October* last. [11]

This particular language was largely copied from a December resolution of Maryland's Provincial Committee recommending such voluntary associations in that colony.[12] Mason simply applied this well regulated militia language to the existing defensive association in Fairfax County. He again described the local defensive association as a well regulated militia in February of 1775. His Fairfax County Militia Plan clearly stated the purposes for such a self-embodying defensive force of the people. It warned about destruction of "our antient Laws & Liberty", and indicated an intention to transmit "those sacred Rights", later described as "the just Rights & Privileges of our fellow-Subjects, our Posterity, & ourselves" to "our Children & Posterity", as well as provide the "only safe & stable security of a free Government."[13] Once again, this language was extremely similar to that later used by Mason for Virginia's Declaration of Rights. That Maryland delegates used well regulated militia terminology to describe self-embodying defensive associations, and that it was also used by Mason in Virginia for the same purpose indicates the concept of an effective militia of the people for defense against government tyranny was substantially more widespread than a single county or colony at this period.

"Well regulated militia," as used in early revolutionary period writings of George Mason prior to hostilities indicated that the militia, the armed free able-bodied males, were effective for defense - not that they were government authorized, organized, or trained. This is evident since the purpose of these self-arming, self-embodying, and self-training defensive associations, or independent companies was protection against government raised military forces. Mason and the men who organized for mutual defense began preparing to resist the King's troops over six months prior to any hostilities and more than a year prior to the formation of Virginia's 1776 Declaration of Rights.[14]

On March 23, 1775, Virginia's revolutionary Convention of Delegates recommended that similar independent volunteer companies be formed in all counties of the colony. This recommendation was also expressed in language very similar to that of Mason and the Maryland Committee noted above.[15] The sole reason effective independent militia associations were possible at this period in Virginia was because the men of the colony possessed

their own arms and knew how to use them. Those officials and forces constituting the danger that Virginians needed to defend against, certainly were not about to make sure that Virginians possessed arms, ammunition, or training to resist unconstitutional and rights violating actions instituted by the government. On the contrary, British officials were actively engaged in disarming Americans to prevent any possible resistance. That was the reason gunpowder was seized or removed from public access under orders from the governors of both Massachusetts and Virginia prior to any hostilities of the Revolution.[16]

What well regulated militia language meant to the Virginians of this period was an effective self-embodying local defensive association of the free men capable of resisting government tyranny and protecting the rights of the people. Without an armed population, no such defensive activity would have been possible. As specifically included in the 1776 Virginia Declaration of Rights, a "well regulated militia" was defined as "composed of the body of the people, trained to arms". This was a reference to the preexisting armed population that organized and trained themselves for local defense. These were the very defensive actions that made it possible for Virginians to establish a new, free government that was actually under their control.

The purpose of such a well regulated militia was also clearly stated in Virginia's Section 13 – defense of a free state. That free state was founded on an armed civil population capable of self-embodying to prevent tyranny and assure continuation of the free state authorized in Virginia's constitution. Virginia's Declaration of Rights introduction specifically stated that the rights listed there were "the basis and foundation of government."[17] Without an armed population, no effective self-embodying, defensive associations could have assembled, and the creation of a free state based on such an armed population could not have been formed. There would have been no free state, only a military tyranny in control of the civil population. The free state reference appears in the Second Amendment related clause of Section 13. A defensively effective armed populace is described there in the common, Revolutionary Era terminology of an effective or well regulated militia of the people.[18]

In American state bills of rights, the "well regulated militia" language later employed in the Second Amendment's first clause originated in Virginia's 1776 Declaration of Rights. Where then did "the right of the people to keep and bear arms" style terminology first appear in a state bill of rights?

B. Pennsylvania

1. The People Have a Right to Bear Arms

America's second state declaration of rights was adopted in Pennsylvania on August 16, 1776, as patriots there began formally establishing a new state government to replace the faltering colonial edifice. Virginia's Section 13, above, was the direct model for protection of the same three related concepts in Section 13 of Pennsylvania's new Declaration of Rights:

> XIII. That the people have a right to bear arms for the defence of themselves and the state; and as standing armies in the time of peace are dangerous to liberty, they ought not to be kept up; and that the military should be kept under strict subordination to, and governed by, the civil power. [19]

2. Pennsylvania's Self-Embodying Armed Populace

It was Pennsylvania that first used "the people have a right to bear arms" style language in an American state bill of rights. As with the "well regulated militia, composed of the body of the people" language of Virginia's Section 13, Pennsylvania's "the people have a right to bear arms" language, located in the first clause of its bill of rights Section 13, was also closely related to prior actions in the latter colony early in the American Revolution. However, unlike Virginians, Pennsylvanians did not begin defensive preparations in earnest until after war actually broke out in Massachusetts.

Upon news of the battles at Lexington and Concord on April 19, 1775 reaching Pennsylvania, men all across the colony spontaneously associated for defense. The men took up their own arms, formed companies, elected officers, and trained themselves for mutual defense. These self-embodying defensive associations were exactly like the defensive associations and independent companies that had been formed well before hostilities in the counties of Virginia, and they were formed for exactly the same reasons as those in the

neighboring colony. British government officials clearly intended to compel obedience to their demands by employing military force. Since British decrees and use of military force were unconstitutional and violated their inherent rights, Americans decided they were not only under no obligation to obey, but were fully justified in resisting government military force with arms if necessary.[20]

Unlike each of the other American colonies regarding defensive preparations, Pennsylvania's colonial government did not rely on the militia because its Quaker population was able to prevent the colonial assembly from passing laws requiring military duties. The other colonies passed laws requiring virtually all of the free able-bodied males to obtain arms and train in peacetime to function as soldiers for defense during emergencies.[21] In stark contrast, all organized defensive activities in Quaker founded Pennsylvania were carried out either by the wartime hiring of troops, who volunteered to sign up for service as soldiers for a term of duty, or by individuals at their own discretion taking up their own arms, forming companies, electing officers, and training themselves for mutual defense. There were a number of earlier occasions during the colony's history when men formed defensive associations just as they did upon news of hostilities in Massachusetts.[22]

Pennsylvania's 1776 Declaration of Rights language "the people have a right to bear arms" was the essential foundation of self-embodying defensive associations. The right included the concept of men taking up their own arms to self-organize for mutual defense, something Pennsylvanians had previously done whenever necessary. The history of Pennsylvania associators helps inform why reference to "a well regulated militia" was not copied from Virginia and included in the Quaker state's bill of rights as a description of its defensively effective armed population. Instead, the fundamental right making such a defensively effective population possible, the people's right to bear arms, was stated in the same clear language as the people's rights to freedom of assembly, the press, and of writing and publishing their sentiments. Such defensive associating was fundamental to the concept of an armed populace as a check on tyranny from government forces. Like Virginia's declaration of rights provision, Pennsylvania's was also directed at preventing abuse

of power by those at the helm of the state government authorized by the 1776 constitution.

II. DEFENSIVE ASSOCIATIONS, PRIVATE ARMS, AND CIVIL CONTROL OF THE MILITARY

A. Similarities of Arms Related Bill of Rights Language

While the "well regulated militia, composed of the body of the people" clause of Virginia's bill of rights and "the people have a right to bear arms" clause of Pennsylvania's may at first glance seem to be entirely different concepts, a closer look at the extensive overlap of their terms, other features, period developmental history, and complete context indicate striking and overwhelmingly similarities. The histories of the two colonies, as shown above, indicate identical origins for the individual arms rights based defensive association concept protected by each form of Second Amendment predecessor. Also, both were bill of rights provisions intended as limits on state legislative authority, related to defense, specified defense of the state, and referred to the people and arms.[23]

Both forms also related to a population in which private arms possession and use were common. This was largely the result of widespread everyday activities related to destruction of pests and dangerous predators on the farm, hunting, target shooting, and self-defense/mutual defense, especially on the wild frontiers of which Virginia and Pennsylvania were amply provided. As a result, Americans also possessed the inherent capability of self-organizing for effective armed defense against tyranny. This was clearly demonstrated early in the American Revolution not only by Virginians and Pennsylvanians but also by the people of the other colonies.

In the first two American declarations of rights, armed populations capable of checking tyranny, establishing free government, and assuring continuation of a free state were declared to be the natural defense and the people's right, respectively. The essential element of these defensive concepts as a check upon tyranny from government employed force was private arms possession and use. Just as an effective militia of the people was "the basis and

foundation of government" in Virginia, according to the preamble of its Declaration of Rights, the people's right to bear arms was the essential foundation for the declaration that "all men . . . have certain natural, inherent and inalienable rights, amongst which are, the enjoying and defending life and liberty", as declared in the first clause of Pennsylvania's Declaration of Rights.[24]

B. George Mason's Triad

Another similarity in both Virginia's and Pennsylvania's Section 13 bill of rights provisions was that protection for an armed populace was the leading concept in a three part provision, a fact of considerable significance regarding the complete context of Second Amendment predecessors. As appears from Pennsylvania's extensive copying of Virginia's Section 13 language, copying and borrowing provisions from earlier states by those subsequently adopting a bill of rights during the Revolutionary Era was a very common practice. Three other states, Delaware, Maryland, and New Hampshire adopted extremely similar three-part protective structures with a leading "well regulated militia" provision derived from Mason's 1776 Virginia Section 13.

The remaining three states with declarations of rights, North Carolina, Vermont, and Massachusetts also adopted such three-part Section 13 related structures, but these based their leading clauses on "the people have a right to bear arms" language from Pennsylvania's 1776 original. Massachusetts was the sole state to inserted "to keep" into its right to arms language, partly as a result of General Gage's disarming of Boston's civil population.[25] Thus, all eight states that adopted a constitutional declaration of rights during the Revolutionary Era included a complete triad of protections originating from Virginia's Section 13. Half of the states used well regulated militia references, and the other half used people have a right to bear arms language in their first clauses. Such uniquely American three-part bill of rights protections have been dubbed Mason Triads in honor of George Mason, author of the 1776 Virginia original.[26]

C. A Closer Look at Mason Triads

The eight revolutionary era Mason Triads were remarkably alike indicating similarity of intent. They all began with a Second Amendment related clause. The middle clause or section always included a warning that standing armies were "dangerous to liberty" and placed some restriction on raising them. The final clause indicated that the military should be under strict subordination to, and governed by, the civil power, with four states specifying this was so "in all cases" and two of those states also adding "at all times" in case it was not already clear enough. All Mason Triads other than Vermont's, which copied Pennsylvania's verbatim, varied the language of each triad part somewhat. Examples of unique differences in the final part are Maryland's "control of" substituted for "governed by" and Massachusetts' "civil authority" substituted for "civil power" found in the other seven declarations.

The three distinct parts of Revolutionary Era Mason Triads were always presented in the order described. In five of the eight state declarations of rights, these parts existed as three separate clauses in the same section. In the other three states, each clause was located in a separate numbered section.

In addition to the state bill of rights context of Second Amendment related triad clauses, as examined above for Virginia and Pennsylvania, there is also their context in relation to the other parts and overall purpose of Mason Triads. Each part was intended as a limit on the government in some way, and the parts were interrelated. The first part secured a defensively effective armed population by declaring the people have a right to bear arms or that a well regulated militia is the "proper" and "natural" defense of a "free" state or government.[27]

In stark contrast to these assertions of the proper and natural defense or right of the people, the second triad part discouraged government reliance on standing armies. Half of the eight state declarations indicated a peacetime standing army ought not to be kept up, a prohibition, and the other four required "consent" of the legislative body for an army, a limitation. By prohibiting or discouraging a standing army, the preferred reliance upon the proper and natural defense of a free state, its armed civilian population, which could be called out for defense during emergencies as militia, was increased.

This would promote the liberty of the people in comparison with a constant standing army that was "ever dangerous to liberty".

These first two contrasting triad parts, as well as the last, were developed with a stark example of danger from a standing army directly at hand, the British troops enforcing military control over Boston's civil population. British authorities appointed a general, backed by a standing army, as governor in charge of civil society in Massachusetts. To Americans, officials employing force to rule over the people was understood as the very antithesis of free government. Americans had always largely controlled their own destiny by selecting all or most of their colonial officials under known and established constitutions (charters) and laws. Americans' new state constitutions clearly established civil control of the military, not only in the letter of the law but in fact, because they constitutionally protected the power of an armed civil population to back up that control.[28]

The more Mason Triad clauses are examined in relation to their historical origin and internal context, the more clear the intent of their language becomes. One of the earliest Revolutionary Era patriot texts to address the interrelated concepts that were later combined into Mason Triads was Josiah Quincy's *Observations on the Boston Port Bill With Thoughts on Civil Society and Standing Armies*. It was published in Boston in mid-May 1774 around the time General Gage, the new governor of Massachusetts, arrived with more troops to overawe and control the Americans. This was two years prior to the adoption of Mason's original triad in the Virginia Declaration of Rights.

Quincy's *Observations* went into extensive detail about the advantages of "a well regulated militia, composed of the freeholders, citizens, and husbandmen, who take up arms to preserve their property as individuals, and their rights as freemen." He placed this and the other two triad related parts in the context of the then current use of force by British authorities and their onerous governmental innovations. Quincy's view was that authorities can never make the military forces they employ superior to civil society because, as he so clearly stated, "[t]he people who compose the society . . . are the only competent judges of their own welfare, and therefore, are the only suitable authority to determine touching the great end of their subjection and their sacrifices." Quincy's text was an early example

of what became a widespread American patriot viewpoint and foundation of their equally widespread local defensive activities as the Revolution inexorably developed.[29]

III. RATIFICATION ERA SECOND AMENDMENT PREDECESSORS

A. The Ratification Era Bill of Rights Dispute

On September 17, 1787, six years after the Battle of Yorktown, which brought an end to major battles of the Revolution, the U.S. Constitution was published by the Federal Convention in Philadelphia. An intense public dispute over its ratification quickly developed. The most effective argument against ratification from Antifederalists, the Constitution's opponents, was the lack of a bill of rights like those of the states in the new form of government. Since each of the eight state bills of rights contained a Second Amendment related protection, general demands for a bill of rights constituted demands for adding Second Amendment protection along with protection for all of the other essential rights later included in the first eight amendments to the Constitution.

The lack of a bill of rights complaint originated within the Federal Convention itself. Late in the proceedings, it became evident to George Mason that the Constitution as proposed in the second draft from the Committee of Style would have little or no protection for the rights of the people as secured in the existing state declarations of rights. He initiated a request on September 12th for a committee to draw up a bill of rights. Even though Mason emphasized that "with the aid of the state declarations, a bill might be prepared in a few hours", a committee for the purpose was rejected by the delegates, most of whom were anxious to return home after months in Philadelphia.[30] This action incensed the elder Virginia delegate and author of America's first state declaration of rights, leading Mason not only to refuse signing the Constitution, but continue his later bill of rights advocating antifederalism.[31]

Mason wrote a number of objections to the Constitution on the back his Committee of Style Report during the final days of the Convention.[32] The complaints about lack of a bill of rights were prominently placed at the top of his list. That Mason opposed

ratification and supported a Federal bill of rights based on the state declarations of rights became common knowledge because of both his notorious refusal to sign the new form of government and his industrious sharing of his list of objections with everyone he wrote or personally contacted. He sent copies with letters to a number of correspondents, including Thomas Jefferson and George Washington. The copy sent to Washington and published early in the ratification struggle began:

> Objections to the Constitution of Government formed by the Convention.
>
> There is no Declaration of Rights, and the Laws of the general Government being paramount to the Laws & Constitutions of the several States, the Declarations of Rights in the separate States are no Security. Nor are the People secured even in the Enjoyment of the Benefits of the common-Law, which stands here upon no other Foundation than it's having been adopted by the respective Acts forming the Constitutions of the several States - [33]

Mason's objections make it clear that it was the security of the people and their rights against government actions that his bill of rights concerns were directed. Adding to Mason's Antifederalist notoriety, his objections were widely republished, resulting in his being a well known promoter of adding state bills of rights protections as foundation for a Federal bill of rights.

A significant example of George Mason's bill of rights promoting personal contacts occurred prior to leaving Philadelphia, where he was chastised by Federalists in newspapers for this activity. After the close of the Federal Convention, Mason met with John Smilie, William Findlay, and Robert Whitehill, the men who later became Antifederalist leaders of the Pennsylvania Ratifying Convention's minority. Mason's understanding of the need for a Federal bill of rights was a major point of discussion in such meetings since it was foremost among his objections to the Constitution.[34]

The Ratifying Period bill of rights debate that subsequently developed was not about which rights were important to include in a Federal bill of rights or what the meaning of the existing protections

was. Those points were well understood because the desired rights protections were all "essential and unalienable rights of the people"[35] that were found in the existing state declarations of rights. The main issue during ratification was whether these core rights, protected against state governments, needed to be protected against the proposed Federal Government as well. A related issue was whether the Constitution should be amended with a bill of rights prior to or after its ratification. The final fate of bill of rights proposals, including protection for the right to keep arms, was eventually voted on by seven state ratifying conventions.

B. Ratification Era Arms Related Mantras

Another topic of intense period dispute was the military powers given to the new government. Military force could be used to destroy liberty and impose tyranny, something Americans had experienced firsthand from the British in the very recent past. Americans were also well aware that one of the first things necessary for such tyranny to succeed would be the disarming of the population, something else experienced when the British gained military control.[36] Under the proposed Constitution, Congress could raise an army and provide for organizing, arming, and disciplining the militia. Antifederalists saw danger to liberty in these provisions because Congress could establish a peacetime standing army or a select militia, from either of which tyranny would ensue. In their view, a select militia, one not including all the able-bodied free men, was the equivalent of a part-time standing army.

Antifederalists developed a mantra usually related to proposed military powers that stated, in its simplest form, the people or militia would be disarmed and tyranny result. Some argued this would occur gradually and almost imperceptibly over time, while others asserted it was the plan of the Framers all along and would start as soon as an army was raised.

Quite to the contrary, Federalists were not in favor of tyranny and thought such concerns entirely groundless. Federalists developed their own mantra that tyranny under the Constitution was not possible because the people were armed. Both the Federalist and Antifederalist mantras were stated in a wide variety of ways.[37] Most of these arms mantras related to Mason Triad concepts in a

very general way because they dealt with an armed population as the counter to tyranny imposed by government raised military force. These mantras indicate that both Federalists and Antifederalists understood the people of America should possess arms in order to preserve liberty and protect themselves against tyranny.[38]

A definitive Ratification Era text that greatly clarifies common period usage of militia related terminology is Alexander Hamilton's *The Federalist #29*, which discussed the militia powers in the proposed Constitution. Hamilton equated the militia and the people in three separate instances within this text. He described the militia as "the great body . . . of the citizens", "the people at large", and as "the whole nation". When Hamilton described a militia not consisting of the body of the people, but rather of individuals selected by the government, he used the adjective "select" to indicate it would consist of a portion of the entire militia. Thus, his reference to "formation of a select corps" indicated that corps of militia would consist of only part of the militia.[39] Hamilton's text also indicated that "well regulated" in conjunction with "militia" meant effective or proficient, and that this was an inherent condition of the militia, not something that could be bestowed upon them by someone else. "Well regulated" simply meant "effective" when combined with "militia".[40] Hamilton's usage of "militia", "select militia", and "well regulated militia" was common and consistent with that generally used throughout the American Colonial, Revolutionary, and Ratification Periods.[41]

C. Proposed Bill of Rights Assurances for an Armed Population

The Federalist and Antifederalist Mantras were an ongoing background during the fierce public dispute over ratification for numerous bill of rights demands, which were the impetus for development of the U.S. Bill of Rights.[42] Ratifying convention Second Amendment predecessors were taken virtually verbatim from existing state declarations of rights protections. In fact, complete Mason Triads were the main vehicle used for proposals intended to protect an armed populace in five state conventions,[43] and standing army provisions were associated with those in the other two.[44] A bill of rights written by George Mason in 1788 and based on his 1776

Virginia Declaration of Rights became the model for the U.S. Bill of Rights. It is essential for a clear understanding of the Second Amendment that its predecessor development during ratification from the existing government limiting state bills of rights provisions and George Mason's central involvement be fully understood.

Pennsylvania's ratifying convention was the first to meet, assembling on November 20th, 1787, just over two months after the Constitution was published. There was extensive debate in the convention concerning the new government's military powers, the threat of tyranny, and the need for a bill of rights. The latter was vigorously argued by minority leaders, who not only prepared a list of bill of rights proposals based directly on provisions of the existing Pennsylvania Declaration of Rights, but also forced a vote by linking them with a motion to adjourn. The 15 minority proposals, introduced in the convention by Robert Whitehill on December 12, 1787, included Pennsylvania's complete 1776 Mason Triad.[45] This earlier right to bear arms provision was expanded with language relating the right to defense of the United States and to killing game, as well as a clause explicitly preventing laws "for disarming the people or any of them".[46] All of these minority proposed bill of rights protections and some other amendments, the latter including an unrelated militia powers amendment, were rejected by the overwhelming Federalist majority, which voted against any adjournment.[47] On December 18, the unsuccessful members of the Pennsylvania Minority published their arguments and bill of rights proposals in a long *Dissent* that became one of the Ratification Era's most extensively reprinted political tracts. The *Dissent* of the Pennsylvania Minority spurred much more widespread and thorough discussion of the need for a Federal bill of rights.[48]

The second attempt within a ratifying convention to add core bill of rights protections occurred in Massachusetts, where Samuel Adams offered a proposal relating to 1st, 2nd, and 4th Amendment rights at the end of the convention on February 6, 1788. This proposal included the first two parts of a Mason Triad denying federal authority "to prevent the people of the United States, who are peaceable citizens, from keeping their own arms" and preventing a standing army being raised unless necessary. Adams' proposal was defeated.[49]

Each of the five subsequent attempts to approve bill of rights provisions that included Second Amendment related protection in state ratifying conventions was successful.[50] On June 21, 1788, the New Hampshire Ratifying Convention became the first to adopt core bill of rights proposals, which included Second Amendment related protection. These proposals were appended to the list of nine Federalist prepared amendments that Massachusetts previously adopted. Added by New Hampshire were the first two parts of a Mason Triad, one declaring that "Congress shall never disarm any citizen, unless such as are or have been in actual rebellion", and the other preventing raising of a standing army in time of peace unless with the consent of ¾ majority vote in each house of Congress.[51]

D. George Mason's Virginia Model for the U.S. Bill of Rights

George Mason drew up the "bill or declaration of rights" adopted almost word for word by the 1788 Virginia Ratifying Convention. Mason was chairman of an ad-hoc committee of Antifederalists who agreed upon amendments supported by those opposed to ratification. Since all of Mason's bill of rights proposals were developed from existing state declaration of rights protections, they were quickly assembled and easily received widespread support from the Antifederalists in the convention. He completed a twenty section bill of rights within a few days of the delegates' convening and also began working on a list of "other" non-bill of rights amendments that eventually included twenty provisions by the end of the month long convention.

Mason's 1788 bill of rights proposal was based directly on the Virginia Declaration of Rights, an earlier Mason production from 1776. Added to its protections were a few provisions taken from other state declarations. Not found in Virginia's 1776 original, Mason added freedom of speech from the Pennsylvania Declaration of Rights to his 1788 version. He also strengthened provisions by duplicating them using alternate language protecting the same right taken from other states' bills of rights. One example of such duplication was expanding the 1776 Virginia "freedom of the press" language by adding Pennsylvania's that was more descriptive of the people's right of "writing, and publishing their sentiments".[52]

E. Origin of the Two-Clause Second Amendment Predecessor

The other major example of duplication was the Second Amendment related protection. This resulted from Mason's addition of Pennsylvania style language copied from the Massachusetts Declaration of Rights, "[t]he people have a right to keep & to bear arms", preceding a quote of Mason's original 1776 Section 13 well regulated militia language. Comparing Mason's Section 17 Mason Triad proposal, below, to the Virginia Ratifying Convention's adopted Section 17,[53] the sole differences in language are substitution of "and" for "&" and dropping "to" prior to "bear arms" in the convention's version. Mason's 1788 triad stated:

> 17. That the People have a Right to keep & to bear Arms; that a well regulated Militia, composed of the Body of the People, trained to Arms, is the proper natural and safe Defence of a free State; that standing Armys in time of Peace are dangerous to Liberty, and therefore ought to be avoided, as far as the Circumstance and Protection of the Community will admit; and that in all Cases, the Military shou'd be under strict Subordination to and govern'd by the Civil Power. [54]

Delegates of North Carolina's ratifying convention refused assent to the Constitution on August 1, 1788. They resolved that a declaration of rights and other amendments be laid before Congress and a new convention of the states prior to North Carolina ratifying the Constitution. The convention then adopted the Mason based Virginia Convention Bill of Rights and "other" amendments verbatim as well as added six new amendments of their own.[55]

Prior to North Carolina's action, New York's Antifederalist leaders relied directly on George Mason's Bill of Rights model for development of the declaration of rights included in that state's ratification document. John Lamb of the New York Federal Republican Committee sought cooperation on amendments from all three of the Virginia convention's Antifederalist leaders, George Mason, Patrick Henry, and George Grayson, via special courier delivered letters. As noted previously, Mason's bill of rights was prepared and completed early in the convention. Thus, on June 9th, seven days into the month long convention, when all three Virginians responded to

Lamb using the same courier, Mason was able to include a complete copy of his bill of rights model.

Immediately on receipt of Mason's proposal at New York City, Lamb transmitted it to Antifederalist leaders of the New York Ratifying Convention. Not having a constitutional level bill of rights in New York and wishing to cooperate on similar amendments, Antifederalists in that state's convention extensively relied upon Mason's model for their Federal bill of rights proposals. In fact, they were utilizing Mason's bill of rights proposals prior to their later introduction in the Virginia convention where they originated. This cooperation between Antifederalist leaders in Virginia and New York was a major reason for extensive similarity between the 1788 Virginia proposed Bill of Rights and the Declaration of Rights found in New York's Ratification.[56]

As a result of this Antifederalist cooperation, the last three ratifying conventions of 1788, Virginia, North Carolina, and New York, each adopted complete bills or declarations of rights including a duplicated or two-clause Second Amendment proposal as the lead part of a complete Mason Triad.[57] All three of these two-clause proposals started with the declaration "That the people have a right to keep and bear arms". In the Virginia and North Carolina version, that was followed by a verbatim quote of Virginia's 1776 well regulated militia clause. New York's convention used virtually the same well regulated militia language, changing only the definition of a well regulated militia, from Virginia's: "composed of the body of the people trained to arms", to New York's: "including the body of the people *capable of bearing arms*". [Changed language underlined. Italics original.]

IV. SECOND AMENDMENT DEVELOPMENT IN CONGRESS

In order to procure enough votes for ratification of the Constitution by Virginia, James Madison, Federalist leader in its 1788 ratifying convention, had promised to support most of the Antifederalists' bill of rights provisions and a few of their "other" proposed amendments.[58] He later complied with this promise by presenting a reorganized version of Virginia's proposed bill of rights and four of its less drastic "other" amendments to the House of Representatives on June 8, 1789.[59] While perfectly willing to protect

the people's right to possess and use their own arms, as well as the other individual rights protections sought by the Antifederalists, he was not willing to support their attempts to alter any Article 1, Section 8 powers of Congress. Madison's version of selections from the state ratifying conventions' amendments proposals, as well as the full state proposals themselves, were all assigned to a House committee for consideration on July 21, 1789.[60] His version consisted primarily of protections from Virginia's desired "declaration or bill of rights" along with only four proposals taken from Virginia's list of twenty "other" amendments.[61]

Madison had no reason to include the second and third Mason Triad parts along with his two-clause Second Amendment proposal to Congress. Federalists did not want to discourage the Federal Government, which would be responsible for defense of the entire country, from having an army whenever Congress determined one to be necessary. The Constitution already required approval of the legislative branches for raising an army and funding reauthorization every two years, in effect implementing the equivalent of the second Mason Triad section limitations found in four of the existing state declarations of rights.[62]

Similarly, Federalists understood the Constitution, authorized by the people, to already ensure civil control of the military by placing government raised forces directly under command of the President, who was a civil officer under a civil constitution authorized by the civil population. It did not establish a military government nor provide any authorization for government raised forces to take control, whether under direction of government officials or acting on their own. The Ratification Era debates make perfectly clear that Federalists based their polity on the existence of an armed civil population capable of preventing military tyranny. These arguments consistently indicated that the people would always possess force capable of assuring their ultimate control over any possible government raised forces.[63]

Most of Madison's private rights protections, including the Second Amendment's antecedent language, were grouped together for insertion into the Constitution at the only location where individual rights were protected against the new Federal Government.[64] His Second Amendment proposal closely followed Virginia's bill

of rights desire. He altered its declaration that "the people have a right to keep and bear arms" by simply adding restrictive language to read "the right of the people to keep and bear arms shall not be infringed." This language was not altered by Congress other than to later switch the order of the two clauses. Madison phrased his second, well regulated militia clause to be dependent on the keep and bear arms clause, as follows:

> The right of the people to keep and bear arms shall not be infringed; a well armed and well regulated militia being the best security of a free country; . . .[65]

Since the militia, to be effective, would be fundamentally dependent on arms possession and use, Madison's change of the well regulated militia clause from Virginia's simple declaration to a clause indicating dependence on the right of the people to keep and bear arms made perfect sense. Madison had been a member of the 1776 Virginia committee that drew up and approved the 1776 Virginia Section 13 "well regulated militia" language, which was the very language his Second Amendment proposal was developed from.[66] He well understood that private arms possession was fundamental to this self-embodying defensive concept, especially in a bill of rights context limiting government power.

The House select committee on amendments altered Madison's well regulated militia language to more closely match the Virginia original by re-inserting "composed of the body of the people" and replacing "free country" with "free state". A committee change was also made to the order of the clauses as proposed by both Virginia and Madison, placing the dependent militia clause before the restrictive keep and bear arms clause.[67] The Senate later added "necessary to the" in place of "the best" security language and dropped the definition of a well regulated militia being "composed of the body of the people".[68] Since the right to keep and bear arms was protected for the people, and the militia were understood to be the people, the reference to the people in the well regulated militia clause was an unnecessary duplication.

All twelve of the amendments proposed by Congress on September 26, 1789, were included with those Madison introduced on June 8th. The last ten of the congressional proposals were ratified

by ¾ of the state legislatures with action by Virginia's legislature on December 15, 1791. These ten amendments, the first eight protecting individual rights taken from state bills of rights, and the last two taken from Virginia's list of "other" amendments, became what Americans have always referred to as the U.S. Bill of Rights, even though that title was never included in any of the amendment proposals of Congress.[69]

V. CIVIL CONTROL OF THE MILITARY IS NOT OBSOLETE

It has been suggested that the Second Amendment's language is so confusing and ancient as to be completely obsolete and presumably fit to be ignored. Historical evidence directly contradicts this view. To the contrary, American history indicates that Americans of all post-colonial periods have viewed Second Amendment related protections against misconstruction and abuse of power by the state and Federal governments as essential underpinnings of the free governments they authorized and intended to maintain.

If protection for an armed populace and other Mason Triad related clauses had simply disappeared after the American Revolution, they would have had little significance beyond their study relative to the Revolutionary Period itself. However, that is far from the case. Mason Triads were the vehicle for proposal of the two-clause Second Amendment predecessor by state ratifying conventions. Also, the people of the states have rather consistently included Mason Triad provisions in the bills of rights of their constitutions right up to the latest revisions.[70] Declarations that the military should be subordinate to the civil power appear in the constitutions of forty-nine states, many based directly on terminology that originated with George Mason in 1776. Seven states have included complete Mason Triads in updated constitutions since 1971.[71]

Because the Second Amendment's clauses were developed directly from the early states' bills of rights, there is also a direct link between them and related modern state bill of rights provisions, which were either based on those of the early states or the Second Amendment itself. At least forty-five states have bills of rights containing Second Amendment related protections, many quoting its very terms.[72] The people of at least sixteen states have either added

or made updates to their existing Second Amendment related provisions since 1960. The vast majority of these changes employed language that could not be misinterpreted regarding the right of individuals to keep and bear their private arms. Most of these updates appear to be in response to modern dispute questioning the individual rights protecting nature of the Second Amendment's language.[73]

These historical facts indicate that the Second Amendment's protection has never been viewed as obsolete by the people of America. Quite to the contrary, they indicate that the overwhelming majority of Americans are as much concerned today about preserving their control over governments they authorize and the forces raised by them as were their ancestors when they bound the state and Federal governments with constitutional level bills of rights during the Founding Era. Considering the enhanced number, nature, and power of modern military forces available to the government, as well as the extent to which governments tend to employ an ever bigger and widening array of armed enforcement agencies, many often militarized in more recent times, the possibility of tyranny from government force employed against the people most assuredly has not decreased since our country's inception.

VI. CONCLUSION

The concept that governments should possess a monopoly of force was not the viewpoint of Americans during the Founding Era. Our states and nation came into being because Americans decided to end British attempts to place the military in control of the civil population of Massachusetts. Americans replaced British military tyranny with civil governments dependent upon and supported by the inherent power of the people themselves. They assured that nothing like a government of force, the opposite of a free government, could ever again be set up in the United States. This was accomplished by simply protecting the right of the people to keep and bear arms, thus assuring their ability to self-embody for effective organized defense.

All eight Revolutionary Era Second Amendment predecessors, as well as the three Ratification Era two-clause proposals copied from them, were leading parts of complete Mason Triads. This context indicates the intention of both Second Amendment clauses

was to assure the armed civil population's control over government raised military force for the purpose of preventing oppression and tyranny. The First Congress, by protecting the right of the people to keep and bear arms, assured the people of being in a position to self-embody as an effective militia. Indeed, this was the very foundation of the Federalists' polity as often expressed in their arms related mantra during the ratification struggle. A free state was ensured by such an armed populace because the people were inherently able to prevent the forceful implementation of acts that violated their rights and the Constitution. In the unlikely event such situations of force should ever arise, the people by merely defending themselves would be enforcing the supreme law of the land, and those attempting to use force against the people would be in direct violation of that supreme law, which the people had authorized.

Today, to the extent that the Second Amendment's language is considered confusing or unclear, one thing is certain. Those applying such descriptions are unfamiliar with or ignoring the Second Amendment's extensively documented American bill of rights history and period usage of its terms. Our history conclusively demonstrates both Second Amendment clauses are part and parcel of the individual rights protections that constitute the first eight amendments of the U.S. Bill of Rights. All of these provisions resulted from state ratifying convention desires that protections of the existing state bill of rights be added to the Constitution in a Federal Bill of Rights.[74] The Second Amendment's language, like that of its predecessors, is all about protecting individual rights against misconstruction and abuse of government powers.

APPENDIX I

REVOLUTIONARY ERA STATE DECLARATION OF RIGHTS MASON TRIADS

1. Virginia - June 12, 1776

"SEC.13. That a well-regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defence of a free state; that standing armies, in time of peace, should

be avoided, as dangerous to liberty; and that in all cases the military should be under strict subordination to, and governed by, the civil power." [David E. Young, *The Origin of the Second Amendment*, (hereafter ORIGIN), 2001, Golden Oak Books, Ontonagon, Michigan, pp. 748-749.]

2. Pennsylvania - August 16, 1776

"XIII. That the people have a right to bear arms for the defence of themselves and the state; and as standing armies in the time of peace are dangerous to liberty, they ought not to be kept up; and that the military should be kept under strict subordination to, and governed by, the civil power." [ORIGIN, p. 754.]

3. Delaware - September 11, 1776

"SECT. 18. That a well regulated militia is the proper, natural and safe defence of a free government.

SECT. 19. That standing armies are dangerous to liberty, and ought not to be raised or kept up without the consent of the Legislature.

SECT. 20. That in all cases and at all times the military ought to be under strict subordination to and governed by the civil power." [ORIGIN, p. 752.]

4. Maryland - November 11, 1776

"XXV. That a well-regulated militia is the proper and natural defence of a free government.

XXVI. That standing armies are dangerous to liberty, and ought not to be raised or kept up, without consent of the Legislature.

XXVII. That in all cases, and at all times, the military ought to be under strict subordination to and control of the civil power." [ORIGIN, p. 758.]

5. North Carolina - December 18, 1776

"XVII. That the people have a right to bear arms, for the defence of the State; and, as standing armies, in time of peace, are dangerous to liberty, they ought not to be kept up; and that the military should be kept under strict subordination to, and governed by, the civil power." [ORIGIN, p. 762.]

6. Vermont - July 8, 1777

"XV. That the people have a right to bear arms for the defence of themselves and the State; and, as standing armies, in time of peace, are dangerous to liberty, they ought not to be kept up; and that the military should be kept under strict subordination to, and governed by, the civil power." [ORIGIN, p. 767.]

7. Massachusetts - October 25, 1780

"XVII. The people have a right to keep and to bear arms for the common defence. And as, in time of peace, armies are dangerous to liberty, they ought not to be maintained without the consent of the legislature; and the military power shall always be held in an exact subordination to the civil authority, and be governed by it." [ORIGIN, p. 773.]

8. New Hampshire - June 2, 1784

"XXIV. A well regulated militia is the proper, natural, and sure defence of a state.
XXV. Standing armies are dangerous to liberty, and ought not to be raised or kept up without the consent of the legislature.
XXVI. In all cases, and at all times, the military ought to be under strict subordination to, and governed by the civil power." [ORIGIN, p. 778.]

APPENDIX II

RATIFICATION ERA MASON TRIAD RELATED PROPOSALS IN STATE RATIFYING CONVENTIONS

1. Pennsylvania Ratifying Convention

Minority Proposal - Rejected Dec. 12, 1787
"7. That the people have a right to bear arms for the defence of themselves and their own state, or the United States, or for the purpose of killing game; and no law shall be passed for disarming the people or any of them, unless for crimes committed, or real danger of public injury from individuals; and as standing armies in the time of peace are dangerous to liberty, they ought not to be kept

up; and that the military shall be kept under strict subordination to and be governed by the civil power." [ORIGIN, p.151. Note: One of 15 minority proposals rejected.]

2. Massachusetts Ratifying Convention

Samuel Adams Proposal - Rejected Feb. 6, 1788

"And that the said Constitution be never construed to authorize Congress . . . to prevent the people of the United States, who are peaceable citizens, from keeping their own arms; or to raise standing armies, unless when necessary for the defence of the United States, or of some one or more of them. . ." [ORIGIN, p.260. Note: Adams' other protections related to the 1st and 4th Amendments were also rejected.]

3. New Hampshire Convention

Adopted June 21, 1788

"X. That no standing army shall be kept up in time of peace, unless with the consent of three fourths of the members of each branch of Congress; . . .

. . . .

XII. Congress shall never disarm any citizen, unless such as are or have been in actual rebellion." [ORIGIN, p.446.]

4. Virginia Ratifying Convention

Bill of Rights Proposal Adopted June 27, 1788

"17th. That the people have a right to keep and bear arms; that a well-regulated militia, composed of the body of the people trained to arms, is the proper, natural, and safe defence of a free state; that standing armies, in time of peace, are dangerous to liberty, and therefore ought to be avoided, as far as the circumstances and protection of the community will admit; and that, in all cases, the military should be under strict subordination to, and governed by, the civil power."

[ORIGIN, p.459.]

5. New York Convention Ratification Document

Declaration of Rights Adopted July 26, 1788

"That the people have a right to keep and bear arms; that a well-regulated militia, including the body of the people *capable of bearing arms*, is the proper, natural, and safe defence of a free state.

That the militia should not be subject to martial law, except in time of war, rebellion, or insurrection.

That standing armies, in time of peace, are dangerous to liberty, and ought not to be kept up, except in cases of necessity; and that at all times the military should be under strict subordination to the civil power." [ORIGIN, p.481.]

6. North Carolina Ratifying Convention

Ratification Refused & Bill of Rights Proposal Adopted Aug. 1, 1788

"17. That the people have a right to keep and bear arms; that a well regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defence of a free state; that standing armies, in time of peace, are dangerous to liberty, and therefore ought to be avoided, as far as the circumstances and protection of the community will admit; and that, in all cases, the military should be under strict subordination to, and governed by, the civil power." [ORIGIN, p.505.]

7. Rhode Island Convention Ratification Document

Declaration of Rights Adopted May 29, 1790

"XVII. That the people have a right to keep and bear arms; that a well-regulated militia, including the body of the people capable of bearing arms, is the proper, natural, and safe defence of a free state; that the militia shall not be subject to martial law, except in time of war, rebellion, or insurrection; that standing armies, in time of peace, are dangerous to liberty, and ought not to be kept up, except in cases of necessity; and that, at all times, the military should be under strict subordination to the civil power; . . ." [ORIGIN, p.735.]

ENDNOTES

1. The ratified Second Amendment as printed in Secretary of State Thomas Jefferson's March 1, 1792, authenticated imprint of the amendments proposed by Congress on September 26, 1789. Copies of the imprint

accompanied notification that the last 10 of the 12 proposed amendments had been ratified by 3/4 of the state legislatures. David E. Young, *The Founders' View of the Right to Bear Arms* (cited hereafter as FOUNDERS' VIEW), 2007, Golden Oak Books, Ontonagon, Michigan, p. 222.

2. FOUNDERS' VIEW, p. 221.

3. David E. Young, *The Origin of the Second Amendment: A Documentary History of the Bill of Rights in Commentaries on Liberty, Free Government, and an Armed Populace, 1787-1792* (cited hereafter as ORIGIN), 2001, Golden Oak Books, Ontonagon, Michigan, pp. 457, 459. All four clauses of Section 17 are presented for internal context, which is examined below.

4. ORIGIN, pp. 503-509.

5. Appendix II, item 5.

6. ORIGIN, pp. 748-749. Adopted June 12, 1776. Not only are the well regulated militia clauses identical in Virginia's 1776 Section 13 and 1788 Section 17, the final "civil power" clauses are also identical, and the middle "standing armies" clauses are nearly the same with some added language in the newer version. The internal context is examined below.

7. See FOUNDERS' VIEW, p. 75, for Edmund Randolph's view that the legislature's acts should not violate any of the provisions Virginia's Declaration of Rights contained. See ORIGIN, p. 436, for George Mason's 1788 statement relating to Virginia's Declaration of Rights that "there were certain great and important rights, which the people, by their bill of rights, declared to be paramount to the power of the legislature." See ORIGIN, p. 657 for James Madison's statement in Congress that "[t]he people of many States have thought it necessary to raise barriers against power in all forms and departments of Government". Mason, Randolph, and Madison were well aware of the purpose of state bills of rights because all were members of the committee that drew up and approved Virginia's 1776 Declaration of Rights. See FOUNDERS' VIEW, p. 63.

8. The professional historians' 2008 amicus brief to the Supreme Court in the *District of Columbia vs Heller* case essentially argued that state laws would be paramount to provisions in the first eight state bill of rights. That view is in direct conflict with statements of Randolph, Mason, and Madison, who were involved in writing America's first state declaration of rights. See note 7, above. The historians' brief includes numerous errors of fact as well as omissions of essential information that have been identified and documented by the author in "Root Causes of Never-Ending Second Amendment Dispute" posted at *On Second Opinion Blog*. This 24 part series commenced January 25, 2009 at: http://onsecondopinion.blogspot.com/2009/01/root-causes-of-never-ending-second.html

The professional historians' Heller brief can be found at ScotusBlog: http://scotusblog.com/wp-content/uploads/2008/01/07-290_amicus_historians.pdf

9. Robert A. Rutland, ed., *The Papers of George Mason* (cited hereafter as MASON PAPERS), 1970, University of North Carolina Press, Chapel Hill, Vol. I, pp. 210-211.

10. Paul H. Smith, ed., *Letters of Delegates to Congress, 1774-1789*, 1976, Library of Congress, Washington DC, Vol. I, p.306. See also FOUNDERS' VIEW, p. 48 for related discussion.

11. MASON PAPERS, Vol. I, p. 212.

12. Peter Force, *American Archives*, 1972, (reprint of 1837 Washington DC edition), Johnson Reprint Corporation, New York, 4th Series, Vol. 1, p. 1032.

13. Extended excerpt from Mason's Fairfax County Militia Plan: "Threatened with the Destruction of our antient Laws & Liberty, and the Loss of all that is dear to British Subjects & Freemen, justly alarmed with the Prospect of impending Ruin, - firmly determined, at the hazard of our Lives, to transmit to our Children & Posterity those sacred Rights to which ourselves were born; and thoroughly convinced that a well regulated Militia, composed of the Gentlemen, Freeholders, and other Freemen, is the natural Strength and only safe & stable security of a free Government, & that such Militia will relieve our Mother Country from any Expense in our Protection and Defence, will obviate the Pretence of a necessity for taxing us on that account, and render it unnecessary to keep any standing Army (ever dangerous to liberty) in this Colony, WE the Subscribers, Inhabitants of Fairfax County, have freely & voluntarily agreed, & hereby do agree & solemnly promise, to enroll & embody ourselves into a Militia for this County, intended to consist of all the able-bodied Freemen from eighteen to fifty Years of Age, under Officers of their own Choice; [here follows description of organization and officers – ed.]. And such of us have, or can procure Riphel guns, & understand the use of them, will be ready to form a Company of Marksmen or Light-Infantry for the said Regiment, chusing our own Officers as aforesaid, [description of uniform clothing – ed.], - Which Regulation & Establishment is to be preserved & continued, until a regular and proper Militia Law for the Defence of the Country shall be enacted by the Legislature of this Colony. And we do Each of us, for ourselves respectively, promise and engage to keep a good Fire-lock in proper Order, & to furnish Ourselves as soon as possible with, & always keep by us, one Pound of Gunpowder, four Pounds of Lead, one Dozen Gun-Flints, & a pair of Bullet-Moulds, with a Cartouch Box, or powder-horn, and Bag for Balls. That we will use our best Endeavours to

perfect ourselves in the Military Exercise & Discipline, & therefore will pay due Obedience to our officers, & regularly attend such private and general Musters as they shall appoint. And that we will always hold ourselves in Readiness, in Case of Necessity, Hostile-Invasion, or real Danger, to defend & preserve to the utmost of our Power, our Religion, the Laws of our Country, & the just Rights & Privileges of our fellow-Subjects, our Posterity, & ourselves, upon the Principles of the English Constitution." MASON PAPERS, Vol. I, pp. 215-216.

14. Hostilities began on April 19, 1775 in Massachusetts, and Virginia's first state constitution was adopted June, 29, 1776, prior to the Declaration of Independence.

15. FOUNDERS' VIEW, p. 48.

16. See FOUNDERS' VIEW, pp. 36-38, 53. The earliest Virginia action involving an independent company was taken by the Hanover Volunteers led by Patrick Henry. Henry understood that Americans would "fly to Arms to defend themselves" to prevent from being disarmed. With approval of the county committee, the Volunteers marched to retrieve publicly owned gunpowder that had been removed clandestinely from the colony's magazine and transferred to a ship under the royal governor's military control. The powder seizure occurred prior to knowledge of hostilities in Massachusetts as did Henry's planning. However, the Hanover Volunteer's march occurred shortly after it was known that war had started in New England. Henry failed to obtain the seized powder, but he was able to obtain payment from the colony's receiver-general to replace it. See Robert Douthat Meade, *Patrick Henry:Practical Revolutionary*, 1969, Lippincott, Philadelphia, pp. 44-53.

17. The heading of Virginia's 1776 Declaration of Rights stated: "A declaration of rights made by the representatives of the good people of Virginia, assembled in full and fee Convention; which rights do pertain to them, and their posterity, as the basis and foundation of government." ORIGIN, p. 747.

18. An armed population was the clearly understood foundation of Virginia's 1776 constitution as Edmund Randolph's later comment regarding an argument presented by supporters of the Declaration of Rights in Virginia's 1776 convention reveals: "that with arms in our hands, asserting the general rights of man, we ought not to be too nice and too much restricted in the delineation of them;" from "Edmund Randolph's Essay on the Revolutionary History of Virginia," *Virginia Magazine of History and Biography*, Vol. XLIV, #1, Jan. 1936, p. 45.

19. ORIGIN, p. 754.

20. FOUNDERS' VIEW, pp. 54-55.

21. As the Revolutionary Era approached after the French and Indian War, Royal governors tended not to enforce such laws where still in effect. See FOUNDERS' VIEW, pp. 39-42 relative to the situation in Massachusetts.

22. See FOUNDERS' VIEW, pp. 15-25 for overview of defensive associating in colonial Pennsylvania. During its entire colonial history, there was only one Pennsylvania voluntary organized defense law, which was in effect for less than a year in 1755-1756. Men associating under the law were referred to as militia, but there were major differences between Pennsylvania's law authorizing entirely voluntary defensive associations and mandatory militia laws of other colonies.

23. FOUNDERS' VIEW, pp. 75-77.

24. ORIGIN, pp. 747, 752.

5. ORIGIN, p. 773. See FOUNDERS' VIEW, p. 71 for historical details related to this addition.

26. See Appendix I for a complete list of Revolutionary Era Mason Triads. See FOUNDERS' VIEW, pp. 63-74 for further discussion.

27. Only New Hampshire dropped the "free" reference before "state". See Appendix I, item 8.

28. David Kopel and Clayton Cramer provide this explanation of the three parts of Pennsylvania's 1776 Declaration of Rights Section XIII (Mason Triad): "Article XIII addresses the distribution of the power of force in a free society. Clause one ensures that the government will not have a monopoly of force, and further ensures that the lawful government can be forcefully defended and protected by the people as a whole. Clause two limits the government's ability to create a separate power of force. Clause three ensures that, to the limited extent that government can have its own power of force, that power will be controlled by the people, acting through their civil representatives." See their article, "The Keystone of the Second Amendment: Quakers, The Pennsylvania Constitution, and the Questionable Scholarship of Nathan Kozuskanich," *Widener Law Journal*, 2010, available on the web at: http://ssrn.com/abstract=1502925

29. Josiah Quincy, *Memoir of the Life of Josiah Quincy, Jun.,* 1971, (reprint of 1826 Boston edition), DaCapo Press, New York, pp. 413, 397. See FOUNDERS' VIEW, pp. 31-33 for discussion of Quincy's tract. A point that has caused confusion in modern discussions has been the tendency to view well regulated militia references in state bill of rights Mason Triads as part of the subordinated military mentioned in the final triad part. This was not the period understanding. The military consisted of armed forces

employed in the service of the government. Militia were always understood as civilians except when employed in government service during actual emergencies. Mason's original triad makes clear the well regulated militia reference was to "the body of the people" rather than to a government employed force. Quincy's *Observations* also make clear he was referring to the people in well regulated militia references, not to a government employed force. His remarks resulted from and were directed against government troops in Boston. The body of the people, including all the able-bodied free men, were not the military, they were the men composing the civil population. The militia, including all the free able-bodied men, were often equated with the people in America.

30. ORIGIN, p. 12. See FOUNDERS' VIEW, pp. 82-83 for discussion.

31. FOUNDERS' VIEW, pp. 88-89.

32. John P. Kaminski et al, eds., *The Documentary History of the Ratification of the Constitution* (cited hereafter as DHRC), 1988, State Historical Society of Wisconsin, Madison, Vol. VIII, p. 40.

33. ORIGIN, pp. 34-35.

34. See FOUNDERS' VIEW, pp. 91, 98 for details of Mason's contacts with and influence upon Pennsylvania's Antifederalist leaders.

35. The description in the preamble to the Virginia Ratifying Convention's proposed bill of rights, all provisions of which came from those of the states. See ORIGIN, p. 457.

36. See discussion of the Continental Congress' *Declaration of the Causes and Necessity of Taking Up Arms*, FOUNDERS' VIEW, p. 58.

37. For an overview of Ratification Era Federalist and Antifederalist Mantras with some of the more prominent examples, see FOUNDERS' VIEW, pp.92-111. For some specific Federalist Mantras, see ORIGIN, pp. 26, 40, 45, 57, 74, 100, 105, 190, 230, 234, 240, 275, 556, and 578. For specific Antifederalist Mantras, see ORIGIN, pp. 91, 131, 146, 151, 176, 178, 212, 260, 790, 331, 446, and 498.

38. Not every Federalist Mantra was directly linked to concerns about military powers. For example, see Zachariah Johnson's Virginia Ratifying Convention mantra, which appears in the midst of a speech denying the possibility of religious establishments, ORIGIN, p. 452. Some Antifederalist Mantras were specifically made in support of a particular military powers amendment. See George Mason's double disarming argument calling for an amendment that "in case the general government should neglect to arm and discipline the militia, there should be an express declaration that the state governments might arm and discipline them." ORIGIN, pp. 401-

402. The amendment later prepared for this purpose was proposal #11 in Virginia's list of "other" amendments. ORIGIN, p. 460. This militia powers amendment had nothing to do with existing bill of rights protections nor with Virginia's Second Amendment predecessor, which was #17 in its "bill of rights" list. The rights list consisted solely of protections taken virtually verbatim from existing state bill of rights restrictions on state governments. ORIGIN, pp. 457-459. Confusion and conflation of militia powers arguments and the Second Amendment predecessor of Virginia is evident in many modern discussions about Second Amendment history and intent, even those originating with professional historians. For such conflation in the historians' Heller brief, see David E. Young, "Root Causes of Never-Ending Second Amendment Dispute, Part 18": http://onsecondopinion.blogspot.com/2009/05/root-causes-of-never-ending-second_24.html

39. ORIGIN, pp. 197-198. Note that *The Federalist #29* was printed as *#35* in the early newspaper editions.

40. Hamilton wrote about "the degree of perfection [in military exercises] which would intitle them to the character of a well-regulated militia". ORIGIN, p. 197.

41. See FOUNDERS' VIEW, pp. 7-15, 21-22, 25-26, and 31-32 for discussion of the earlier usage.

42. See ORIGIN for extensive Ratification Era documentation.

43. See Appendix II for Mason Triads from items 1-Pennsylvania Minority, 4-Virginia, 5-New York, 6-North Carolina, and 7-Rhode Island.

44. See Appendix II for proposals of items 2 - Samuel Adams, and 3 - New Hampshire.

45. See Appendix I, item 2 for the 1776 Pennsylvania Mason Triad.

46. See Appendix II, item 1 for the complete 1787 Pennsylvania Minority proposed Mason Triad.

47. See ORIGIN, pp. 150-153 for all 15 proposals and the convention vote. The militia powers amendment returned all militia powers back to the state governments and had nothing to do with the Mason Triad based Second Amendment predecessor, which was developed from a state government limiting bill of rights provision.

48. For the *Dissent*, see ORIGIN, pp. 154-175. For its influence during the Ratification Era, see DHRC, Vol. XV, pp. 9-13.

49. Adams, unhappy with a Federalist brokered deal that did not include core bill of rights protections, proposed addition of his bill of rights proposals to a Federalist prepared 10th Amendment predecessor, which

Adams viewed as the summary of a bill of rights. The 9 Federalist proposed amendments, including 5th and 7th Amendment protections that were necessary to achieve ratification were adopted. See ORIGIN, p. 260. Also see FOUNDERS' VIEW, pp. 113-119 for a more detailed examination of Samuel Adams' failed bill of rights proposals.

50. The Maryland Convention never voted on final disposition of amendments that were discussed in a small committee after ratification because no report was made by the committee, which had agreed to 13 proposed amendments and rejected 15. Bill of rights amendments were addressed in the committee, but none were Second Amendment predecessors. See ORIGIN, pp. 356-361 for details.

51. ORIGIN, p. 446. The provisions were in reverse order from previous triads and were separated by intervening Third and First Amendment related protections.

52. See ORIGIN, pp. 388-390 for Mason's 1788 proposed Bill of Rights. See ORIGIN, pp. 457-459 for 1788 Virginia Ratifying Convention proposed Bill of Rights.

53. Appendix II, Item 4.

54. ORIGIN, p. 390.

55. ORIGIN, pp. 503-509. The resolution refusing ratification stated: "*Resolved*, That a declaration of rights, asserting and securing from encroachment the great principles of civil and religious liberty, and the unalienable rights of the people, together with amendments to the most ambiguous and exceptionable parts of the said Constitution of government, ought to be laid before Congress, and the convention of the states that shall or may be called for the purpose of amending the said Constitution, for their consideration, previous to the ratification of the Constitution aforesaid on the part of the state of North Carolina."

56. See FOUNDERS' VIEW, pp. 132-134. Within the New York Ratification document, the delegates declared "the rights aforesaid cannot be abridged or violated, and that the explanations aforesaid are consistent with the said Constitution". ORIGIN, p. 483.

57. See items 4, 5, and 6 in Appendix II. New York added protection against militia being subject to martial law other than during war, rebellion, or insurrection between the two-clause Second Amendment predecessor and the final two parts of its Mason Triad. This added provision later became part of the 5th Amendment.

58. ORIGIN, p. 694.

59. ORIGIN, pp. 654-656.

60. ORIGIN, p. 679.

61. Notably missing from Madison's proposal was a militia powers amendment, which was #11 in Virginia's "other" amendments list. Madison's writings make clear that he had no intention of altering Article I, Section 8 powers, which the militia powers amendment would have done. See FOUNDERS' VIEW, pp. 165-174 extensive information on Madison's support for bill of rights amendments and lack of support for major changes of the Constitution.

62. See Appendix I, items 3-Delaware, 4-Maryland, 7 - Massachusetts, and 8 – New Hampshire.

63. See ORIGIN, pp. 275-277 for Tench Coxe's Federalist Mantra, one of the most extensive and explicit written during the period. Coxe related the discussion in this text to that in *The Federalist #45,* a copy of which he had received directly from its author, James Madison. See also the list of Federalist Mantra's in note number 37, above.

64. Madison's proposed location of insertion was "[t]hat in Article 1st, section 9, between clauses 3 and 4, be inserted these clauses". See ORIGIN, p. 654.

65. ORIGIN, pp. 654-655.

66. FOUNDERS' VIEW, p. 63.

67. "A well regulated militia, composed of the body of the people, being the best security of a free state, the right of the people to keep and bear arms shall not be infringed, . . ." ORIGIN, p. 680.

68. "A well regulated militia being [necessary to] the security of a free State, the right of the people to keep and bear arms, shall not be infringed[.]" The Senate also removed a conscientious objector clause Madison added to his original two-clause Second Amendment predecessor that was retained throughout House consideration. ORIGIN, p. 712.

69. See FOUNDERS' VIEW, pp. 212-214 on lack of a Bill of Rights title.

70. Standing army provisions are not found in a number of state bills of rights formed after the early 1800's. Such forces were prohibited in time of peace by the U.S. Constitution.

71. Only NY has no civil control of the military provision. The seven states adopting full Mason Triads since 1971 were Virginia, North Carolina, New Hampshire, Nevada, West Virginia, Delaware, and Maine. Mason Triad parts, which were closely linked in triads of the Founding Era, appear in different order and in widely separated bill of rights sections in many more modern state bills of rights.

72. Only New York, New Jersey, Minnesota, Iowa, and California have no Second Amendment related protection. For an extensive 2006 listing of provisions, see Eugene Volokh, "State Constitutional Rights to Keep and Bear Arms," *Texas Review of Law & Politics*: http://www.trolp.org/main_pgs/issues/v11n1/Volokh.pdf

73. The sixteen states updating Second Amendment language included Michigan, Illinois, Virginia, North Carolina, New Mexico, Louisiana, Idaho, New Hampshire, Nevada, North Dakota, Utah, West Virginia, Delaware, Nebraska, Florida, and Wisconsin.

74. The historians' Heller brief fails to make any link between the Second Amendment and its state bill of rights related developmental history as documented above. For a greatly condensed op-ed criticism of the brief's many historical errors and omissions, see David Young, "Why Washington DC's Gun Control Law is Unconstitutional," *History News Network*: http://hnn.us/articles/47238.html