

Testimony of Joyce Lee Malcolm

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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*¹

While national attention has focused for more than thirty years on the debate over whether more guns in civilian hands meant more, or less, crime, the states were making their decision. One by one they passed legislation to permit citizens to carry concealed weapons in the firm belief that individuals have a right to protect themselves and that guns in the hands of law-abiding citizens would deter crime. This brief testimony compares two approaches to crime prevention and public safety, the American approach of permitting armed citizens to carry weapons for protection and the British approach of disarming subjects of guns and all other means of defense with the promise the state will protect them.

First the American approach, and with it the importance of H.R. 822. Forty-nine states now permit citizens to carry concealed firearms.² Illinois is the sole exception. Since 1991 when violent crime peaked in this country, twenty-five states have passed laws to permit law-abiding citizens who complete safety training the right to carry concealed weapons. While eight states have restrictive licensing systems, the great majority, some thirty-nine, have “shall issue” laws that allow

¹ William Blackstone, *Commentaries on the Laws of England* (London, 1765-1769: repr. Chicago, 1979). Vol. 3, p. 4.

² Iowa legalized concealed carrying of firearms in 2010. Wisconsin passed similar legislation this year to become the 49th state to legalize concealed carrying of firearms. Its law goes into effect in November, 2011.

firearms to be carried for self-defense.³ Despite great controversy as each of these laws was passed, they have worked as their sponsors intended. Since 1991 as civilians have purchased millions of additional firearms⁴ and a growing number of states have issued hundreds of thousands of permits to carry them, violent crime in America has fallen from 758.1 crimes per 100,000 population in 1991 to 429.4 per 100,000 in 2009.⁵ These “shall issue” states have trusted the good judgment of their citizens and have not been disappointed.⁶ For example Florida’s concealed-carry law took effect on October 1, 1987. From that date until the end of 1996 over 380,000 licenses were issued, only 72 of which were subsequently revoked because the holders had committed crimes, few of which involved the permitted guns. During Virginia’s first nine years of experience with the concealed-carry system not a single permit holder was involved in a violent crime. After the first year of Texas’ concealed carry law more than 114,000 licenses had been issued and only 17 revoked, while a year after Nevada’s law went into effect police could not document one case of a fatality that resulted from irresponsible gun use by someone who obtained a permit under the new law. In sum the citizens licensed to carry concealed weapons have done so safely and responsibly.

³ These “shall issue” states are Alaska, Arizona, Arkansas, Colorado, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

⁴ For example the FBI National Instant Background Checks for 2009 recorded 14,033,824 guns purchased, an increase of 10% from 2008.

⁵ United States Crime Index Rates per 100,000 Inhabitants, 1960-2009 prepared by the Disaster Center, www.disastercenter.com.

⁶ For information on the use of concealed carry certificates that follow see Joyce Lee Malcolm, *Guns and Violence: The English Experience* (Cambridge, 2002), p. 243.

If self-defense is to be effective people must be able to be armed. The police cannot protect everyone, or even anyone all of the time. Indeed, police have no legal obligation to protect any one individual. In the case of *Warren v. District of Columbia* three women sued the District of Columbia police after they repeatedly telephoned 911 for half an hour when men broke into their townhouse. No one ever came to their aid. They endured fourteen hours of terrible violence and abuse.⁷ On appeal the District of Columbia's highest court exonerated the District and its police affirming it a "fundamental principle of American law that a government and its agents are under no general duty to provide public services, such as police protection, to any individual citizen." In their moment of need individuals are simply left to rely upon themselves. As William Blackstone, the great English jurist explained:

The law respects the passions of the human mind, and . . . makes it lawful in him to do himself that immediate justice to which he is prompted by nature, and which no prudential motives are strong enough to restrain. It considers that the future process of law is by no means an adequate remedy for injuries accompanied with force.⁸

While concealed carry laws are not the sole reason for the reduction in violent crime in America, they have played a critical role in that result, affording protection to individuals and deterring criminals. The police do not keep track of defensive uses of a gun, but some fifteen national polls, including one by the *Los Angeles Times*, found between 700,000 and 3.6 million defensive uses of guns annually.⁹ Studies

⁷ *Warren v. District of Columbia*, 444 A.2d 1 (D.C. Ct. of Ap., 1981).

⁸ Blackstone, *Commentaries*, 3:3-4.

⁹ Even if defensive uses are reported to the police the police do not keep a record of them. The estimate given above is from a study by Gallup and Peter Hart Research Associations, Inc. For surveys on defensive uses of firearms see Gary Kleck, "The Frequency of Defensive Gun Use," in Don Kates

have shown that some 98% of the time an armed citizen merely has to brandish his or her gun to stop an attack.¹⁰ On the other hand the shoot-outs opponents of concealed carry predicted would take place as angry people reached for their firearms, or armed drivers collided, have not occurred. Violent crime has decreased.

This is a result the American Founders foresaw when they included the Second Amendment in the Bill of Rights. Any confusion over their intent to permit individuals to protect themselves has now been clarified by the United States Supreme Court in the landmark cases of *District of Columbia versus Heller* (2008) and *McDonald versus City of Chicago* (2010). The Court affirmed that the Second Amendment does, as the great majority of Americans have always believed, embody an individual right “to keep and bear arms” and in *MacDonald versus City of Chicago* they have incorporated this right through the Fourteenth Amendment.¹¹ House Bill 822 to provide national concealed carry reciprocity is the culmination of this decision by our nation’s highest court and the near universal practice of our states.

Although the British and American people share the common law understanding of the right to self-defense and both have Bills of Rights meant to guarantee that right, British practice has differed dramatically. For nearly a century British governments have been disarming law-abiding people in the belief this will enhance public safety.¹² The upshot was that during this past August’s widespread riots in

and Gary Kleck, *The Great American Gun Debate: Essays on Firearms and Violence*, (San Francisco, 1997), p. 1

¹⁰ See John Lott, *More Guns, Less Crime* (Chicago, 1998), p. 3.

¹¹ *District of Columbia v. Heller*, 554 US 570(2008); *MacDonald v. City of Chicago* 561 US 3025 (2010).

¹² The English Bill of Rights includes a guarantee that “That the Subjects which are Protestants may have Armes for their defence Suitable to their Condition and as allowed by Law.” In practice despite

England, Englishmen were reduced to the use of baseball bats to protect themselves sparking a 5000% increase in sales of bats from Amazon. The public's disarmament began after World War I with the 1920 Firearms Act, Britain's first serious firearms regulation. Since then British governments of both major parties have gradually disarmed the public insisting that individual protection must be left to the police.¹³ The 1920 Act required that a local police commissioner certify that an applicant had a good reason to have a gun and was a suitable person to own it. The inclusion of self-defense as a "good reason" was limited from the start. In 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."¹⁴ Presumably being exposed to threats for reasons other than the performance of a public duty was not to be regarded as a matter sufficiently serious to justify owning a handgun. Over the years through classified instructions from the Home Office to the police the definition of what constituted a "good reason" for having a handgun continued to narrow. In 1937 the Home Secretary decided " "As a general rule applications to possess firearms for house or personal protection should be discouraged on the grounds that firearms cannot be regarded as a suitable means of protection and may be a source of danger."¹⁵ By 1946 the Home

the clauses potentially limiting language the 90% of the English population, Protestants did in fact have that right. Catholics were permitted firearms for personal defense. However, since the English Bill of Rights is not entrenched as the American Bill of Rights is, Parliament has been able to chip away at the intent until it is virtually a dead letter. See Joyce Lee Malcolm, *The Keep and Bear Arms: The Origins of Anglo-American Right* (Cambridge, 1994), pp. 134, 167-8.

¹³ Firearms Act, 10 & 11 Geo. V, c.55 (1920) and see Malcolm, *To Keep and Bear Arms*, pp. 144-149.

¹⁴ See Malcolm, *Guns and Violence*, pp. 155-156.

¹⁵ "Memorandum for the Guidance of the Police," Home Office, Firearm Act, 1937.

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."¹⁶ By 1969 the Home Office instructed police: "It should never be necessary for anyone to possess a firearm for the protection of his house or person."¹⁷

Then in 1997 in response to a crazed man's shooting of school children in the village of Dunblane, the government passed legislation that made virtually all handguns illegal and confiscated those already registered.¹⁸ Britain's famed Olympic shooting team has had to keep their weapons overseas and practice in Switzerland. Britons are not to even handle a handgun or unregistered long gun as a former soldier found out in November, 2009. Paul Clarke, 27, discovered a shotgun in his garden and brought it to his local police station to turn in. He was immediately arrested on charges of possessing a gun and taken to the cells. He faced a five-year prison sentence.¹⁹ At his trial at Guildford Crown Court he was found guilty of possessing the gun and personally handing it in to the police. 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 supposed to report the discovery to the police and the police would pick the gun up. The judge commented,

¹⁶ Cited in Colin Greenwood, *Firearms Control: A Study of Armed Crime and Firearms Control in England and Wales* (London, 1972), p. 72.

¹⁷ See "Memorandum for the Guidance of the Police," Home Office, Firearms Act, 1937;" Royal Commission on Police Powers and Procedure," 1929, Parliamentary Papers, Cmd. 3297; "Memorandum for the Guidance of the Police," Home Office, 1964, p. 7; "Memorandum for the Guidance of the Police," Home Office, September, 1969, p. 22.

¹⁸ Firearms (Amendment) Act, 1997 c. 5, Firearms Act (No. 2), 1997.

¹⁹ "Ex-soldier faces jail for handing in gun," Free Republic, November 12, 2009.

“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.”

This effort to reduce gun crime by banning private possession of handguns since 1997 has failed dramatically. English men and women have suffered from a doubling of gun crime in the last decade while in London alone gun crime doubled in 2010 over the previous year.²⁰ Britons also have experienced a 25% increase in contact theft in the latest yearly report, and have a 23% risk of becoming a crime victim.²¹ A 2009 study found Britain the most violent country in Europe.²² None of these crime figures take account of the violence in August of this year.

Guns were not the only weapon prohibited by British disarmament. They were just the beginning. Insisting that people did not need to protect themselves, that it was the duty of society to protect them the government banned other means of defense. The 1953 Prevention of Crime Act prohibits carrying any item in a public place with the intention it might be used for defense.²³ The debate over this bill is instructive. During the debate Ronald Bell, a member of parliament, asked that carrying something for self-defense be exempted from the act:

... One has to remember that there are many places where society cannot get, or cannot get there in time. On those occasions a man has to defend himself and those whom he is escorting. It is not very much consolation that society will come forward a great deal later, pick up the bits, and punish the violent offender.

²⁰ Sandra Leville, “London gun crime rises as shootings nearly double,” March 3, 2010, <http://www.guardian.co.uk>;

²¹ British Home Office, “Crime in England and Wales 2008/2009: A summary of the main findings”

²² James Slack, “The most violent country in Europe. Britain is also worse than South Africa and U.S,” July 3, 2009, www.dailymail.co.uk.

²³ Prevention of Crime Act, 1&2 Elizabeth II, c. 14 (1953).

But the attorney general, arguing for the legislation on behalf of the government, assured Parliament, “The argument of self-defence is one to which perhaps we should not attach too much weight.”²⁴ Lord Saltoun objected that the object of a weapon was to assist weakness to cope with strength and it was this ability that the bill was “framed to destroy.” “I do not think any government have the right – though they may very well have the power—to deprive people for whom they are responsible of the right to defend themselves.”²⁵ Self-defense was not exempted. The rationale of British governments for disarming the public, knowing it would likely imperil individuals, was put this way: “the more the ordinary citizen arms himself, the more excuse is there for the person who intends to perpetrate something unlawful to arm himself so that he can achieve his end.”²⁶

Crime has increased while pedestrians have been arrested for carrying a razor, a pickaxe handle, a stone and a drum of pepper.²⁷ An American tourist, Dina Letarte of Arizona, who used her pen knife to protect herself when she and two friends were violently attacked by three men in the subway, was arrested when she reported the incident to the police.²⁸ She was convicted of carrying an offensive weapon.

As crime has continued to climb legislation was passed to ban other items that might be used for protection. Knives with points are now illegal as are toy or replica guns.²⁹ In addition there is a list of forbidden weapons, possession of which carries

²⁴ Malcolm, *Guns and Violence*, pp. 176-177.

²⁵ Malcolm, *Guns and Violence*, p. 179.

²⁶ Malcolm, *Guns and Violence*, p. 178.

²⁷ *Ibid.*, p. 185.

²⁸ Gail Tabor, “Woman Guilty Of Self Defense? – Bearing Arms Is No Right In London,” *Arizona Republic*, reprinted in “*The Seattle Times*”, November 11, 1991.

²⁹ The Violent Crime Reduction Act, 2006 bans imitation of guns unless they are at least 50% colored bright green, blue, red, pink, yellow, purple or transparent.

a ten-year prison sentence. Along with rocket launchers and machine guns, the list includes chemical sprays and any knife with a blade more than three inches long.³⁰ Even helping someone in distress is discouraged. The public has been advised not to intervene if they see a crime occurring. They are to walk on by and telephone the police.

As a result of this refusal to permit law-abiding people to have the means to defend themselves Great Britain, once a peaceful country, has become increasingly violent. There is little to deter offenders. And as governments, largely for financial reasons, have relied increasingly on surveillance cameras rather than police and the criminal justice system uses short sentences and community service to save money the public has been left unprotected by society.

During the recent riots some desperate Londoners took matters into their own hands. In a Turkish neighborhood shopkeepers and their families protected the homes and shops on their street standing guard day and night, chasing away crowds of thugs. "They come to our shops," one man told the London Daily Mail, "and we fight them with sticks."

In sum, the American system of trusting ordinary people to protect themselves and carry firearms responsibly has enhanced public safety. Individuals can protect themselves and others, criminals don't know who has a firearm and are cautious about attacking. The Founders' understanding of that most basic right of all, the right of self-defense, was in accord with common law, human nature and good

³⁰ Firearms Act, 1968, Section 5, Weapons subject to general prohibition.

sense. The United States Supreme Court has affirmed the right of individuals to keep and bear arms. The American states have overwhelmingly acted to respect that right and permit their residents to carry firearms for their protection. It is time for Congress to grant these states and their residents exercising their right to carry firearms for their protection the reciprocity they need.