

# The Gold Standard of Gun Control

## Book Review of Joyce Malcolm, *Guns and Violence:*

### *The English Experience*

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For the last several decades, the United States and Canada have enjoyed robust scholarly inquiry into the law and policy issues regarding gun control and gun rights. Yet in the United Kingdom, scholarly attention to firearms policy has been almost nil.<sup>4</sup> As a result, the definitive history of the right to arms guarantee in the 1689 English Bill of Rights was written by the American Joyce Lee Malcolm. Her book *To Keep and Bear Arms: The Origins of an Anglo-American Right* focused on the century of political developments leading up to the 1689 Bill of Rights, and on the effect of the 1689 arms rights guarantee during the eighteenth century in Great Britain and the United States.<sup>5</sup> In *Guns and Violence: The English Experience*<sup>6</sup> Malcolm broadens her scope to tell the story of the arms possession, arms control, and violent crime in England from the Middle Ages through the end of the twentieth century.

Malcolm describes the patterns of gun possession and violence, as well as changes in British culture due to war, food shortages, politics, and crime policy. She pays particular attention to changes in the culture of self-defense, both from the viewpoint of the Crown and of the subjects, and to how crime victims are treated by the government. Formerly, Britons happily contrasted their own permissive gun laws with the repressive laws on the Continent, and considered liberal British laws to exemplify the superior and

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The authors would like to dedicate this Article to the memory of Alan G. Eisen, a devoted husband who admired and supported Joanne's scholarship, and whose love of freedom and truth continues to inspire us.

<sup>4</sup> Among the very few scholarly contributions to the gun control debate by British authors are PETER SQUIRES, *GUN CULTURE OR GUN CONTROL?* (2000) and COLIN GREENWOOD, *FIREARMS CONTROL* (1972).

<sup>5</sup> JOYCE LEE MALCOLM, *TO KEEP AND BEAR ARMS: THE ORIGINS OF AN ANGLO-AMERICAN RIGHT* (1994); David B. Kopel, *It isn't about Duck Hunting: The British Origins of the Right to Arms* (book review) 96 MICH. L. REV. 1333 (1995); David B. Kopel, *Malcolm in the Middle*, NAT'L REV. ONLINE, Sept. 16, 2002, <http://www.nationalreview.com/kopel/kopel091602.asp>.

<sup>6</sup> JOYCE LEE MALCOLM, *GUNS AND VIOLENCE: THE ENGLISH EXPERIENCE* (2002). Following American usage, Malcolm uses "English" to connote the entire polity of Great Britain, although some historically-minded Englishmen would point out that Wales, Cornwall, and Scotland are not part of narrowly-defined "England."

free character of the British nation. But today, British gun controls are the most severe in the western world.<sup>7</sup>

Malcolm's story is significant for readers interested in comparative criminology or British history. But the story of what happened in Great Britain over the last century is also of worldwide importance, because the modern British government has been aggressively working to export its policies on firearms and self-defense. At the United Nations, the British delegation has been in the forefront of efforts to create a legally binding system of international gun control. The Foreign Office has been extremely active in many other world fora, in regional conferences, and in bilateral relationships, in promoting the broadest gun prohibition policies possible, wherever possible. The British government is also a major funder of international gun prohibition lobbies and organizations. Quite plainly, the British government believes that it has gotten gun control policy just right, and that the British model must be imposed worldwide.

Accordingly, *Guns and Violence: The English Experience* is relevant for every person trying to decide whether to welcome or to resist the imposition of British-model gun controls in his or her own country. In this Article, we present Malcolm's story of British arms policy in the second millennium, and we also extend that story a few more years forward, until the present.

Malcolm's story begins in firearms-free medieval England of the thirteenth and early fourteenth centuries, when the homicide rate was approximately 18-23 annually per 100,000 population.<sup>8</sup> Thereafter, the homicide rate began a six century decline. Even after firearms became generally available in the sixteenth century, homicides rates continued to fall. The right to arms was officially recognized in the 1689 Bill of Rights, and for the next two centuries, England had almost no gun control, except for anti-poaching laws, and a two-year period in 1819-1821 when stricter rules were imposed on a few counties due to concerns about working class unrest. Violent crimes continued to decline until the twentieth century.<sup>9</sup>

Various minor and ineffectual gun controls were enacted in the late nineteenth and early twentieth centuries; proposals for more extensive controls ran into strenuous opposition in Parliament from MPs who still believed in natural rights. The advocacy for gun control was almost always accompanied by a bodyguard of lies, such as when the government, fearful of a workers rebellion, pushed through the Firearms Act of 1920. The government falsely told the public that gun crimes were rapidly increasing, and hid the law's true motive (political control) from the public, presenting the law as a mere anti-crime measure.<sup>10</sup>

In practice, the law eliminated the right of British subjects to be armed, and turned it into a privilege. The Firearms Act also began a decades-long process of eliminating the public's duty to protect their society and right to protect themselves.

The Firearms Act set the scene for civilian acceptance of further restrictions—not only on gun possession—but on almost any act of self-defense.<sup>11</sup> Malcolm describes a

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<sup>7</sup> There is one micro-state with even more repressive laws; the Grand Duchy of Luxembourg bans citizen ownership of firearms.

<sup>8</sup> Malcolm, at 21.

<sup>9</sup> Malcolm, at 20.

<sup>10</sup> Malcolm, at 141-142.

<sup>11</sup> Malcolm, at 141-149; see also David B. Kopel & Joseph Olson, *All the Way Down the Slippery Slope: Gun Prohibition in England, and Some Lessons for America*, 22 *HAMLIN L. REV.* 399 (1999).

series of confidential memos, the first of which was written in 1937, from the Home Office to local police in charge of the issuance of licenses.<sup>12</sup> The memos were designed to reduce the number of lawfully possessed rifles and handguns as, coincidentally, crime rates began to increase. By 1969, the police were advised to deny all rifle and handgun licenses for self-defense purposes.<sup>13</sup>

Shotguns, which had historically been regulated less severely than rifles and handguns, were brought into the licensing web in the 1960s; then in the 1980s, the licensing system was changed to make sure that no one would possess a shotgun defensively. “Safe storage” requirements were invented by the police, and enforced with increasing severity so as ensure that a lawfully-stored gun of any type could never be available for defense in a sudden emergency. Parliament had never voted to outlaw defensive gun ownership; instead, the Home Office, operating through secret memos, had instructed the police how to use their control over the gun licensing process to eliminate the right of every Briton to arm against criminals.

In 1998, after a known pedophile used a handgun to murder kindergarten children in Dunblane, Scotland, the Parliament banned non-government possession of handguns. As a result the Gun Control Network (a prohibition advocacy group) enthused that “present British controls over firearms are regarded as ‘the gold standard’ in many countries.” According to GCN spokesperson Mrs. Gill Marshall-Andrews, “the fact that we have a gold standard is something to be proud of....”<sup>14</sup>

A July 2001 study from King’s College London’s Centre for Defence Studies found that handgun-related crime increased by nearly 40% in the two years following implementation of the handgun ban.<sup>15</sup> The study also found that there had been “no direct link” between lawful possession of guns by licensed citizens and misuse of guns by criminals.<sup>16</sup> According to the King’s College report, although the 1998 handgun ban resulted in over 160,000 licensed handguns being withdrawn from personal possession, “the UK appears not to have succeeded in creating the gun free society for which many have wished. Gun related violence continues to rise and the streets of Britain...seem no more safe.”<sup>17</sup>

A few weeks before the King’s College study was released, Home Office figures showed that violent crime in Great Britain was rising at the second fastest rate in the world, well above the U.S. rate, and on par with crime-ridden South Africa.<sup>18</sup> In February 2001, it was reported that 26 percent of persons living in England and Wales had been victims of crime in 1999.<sup>19</sup> Home Secretary Jack Straw admitted, “levels of victimisation are higher than in most comparable countries for most categories of crime.” On May 4,

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<sup>12</sup> Malcolm, at 155-156.

<sup>13</sup> Malcolm, at 171.

<sup>14</sup> House of Commons, Home Affairs – Second Report – Controls over Firearms, Session 1999-2000, Apr. 6, 2000, at ¶22, <http://www.publications.parliament.uk/pa/cm199900/cmselect/cmhaff/95/9502.htm> (visited June 5, 2006).

<sup>15</sup> *Illegal Firearms in the United Kingdom*, Centre for Defence Studies, Kings’s College London, Jul. 2, 2001, Working Paper 4, Table 1, at 12.

<sup>16</sup> *Illegal Firearms*, Working Paper 4, at 3.

<sup>17</sup> *Illegal Firearms*, Working Paper 3, at 9. Malcolm estimates a remainder of 4 million illegally possessed firearms of all types. See Malcolm, at 209.

<sup>18</sup> Nick Paton Walsh, *UK Matches Africa in Crime Surge*, THE GUARDIAN, Jun. 3, 2001.

<sup>19</sup> Sean O’Neill, *A Quarter of English are Victims of Crime*, THE TELEGRAPH, Feb. 23, 2001.

2001, the *Telegraph* disclosed that the risk of a citizen being assaulted was “higher in Britain than almost anywhere else in the industrialized world, including America.”<sup>20</sup> The latest U.N. data show that Scotland (which has always kept separate criminal justice statistics from England and Wales) has the highest violent crime rate of any developed nation, and that England and Wales are not much better.<sup>21</sup>

With passage of the Firearms Act of 1997, “it was confidently assumed that the new legislation effectively banning handguns would have the direct effect of reducing certain types of violent crime by reducing access to weapons.”<sup>22</sup> The news media promised that the “world’s toughest laws will help to keep weapons off the streets.”<sup>23</sup>

Yet faster than British gun-owners could surrender their handguns for destruction, guns began flooding into Great Britain from the international black market (especially from eastern Europe and from China), driven by the demands of the country’s rapidly developing criminal gun-culture.<sup>24</sup>

Malcolm does not hide her disdain for the creators of the last century of destructive policies in Great Britain, nor for the nineteenth century bureaucrats who began laying the foundation for the twentieth century failures. In less than a hundred years, British policymakers have undone six prior centuries of progress, and turned twenty-first century England, like thirteenth century England, into the most violent, crime-ridden nation in Western Europe.

While not claiming to supply a complete explanation for the catastrophic surge in British crime, Malcolm argues that the gun control laws, particularly the anti-self defense components of those laws, deserve part of the blame. Her conclusion is shared by Peter Hitchens, who also argues that extremely repressive gun laws are one of the major causes of Britain’s modern crime wave.<sup>25</sup>

Malcolm suggests that many criminals are capable of at least elementary logical thought, and thus can be deterred by the risk of confronting a victim who can fight back effectively; conversely, criminals can be emboldened by the prospect of attacking a defenseless victim.<sup>26</sup> For example, a major U.S. study of convicted felons in ten U.S. state prison systems found that 60% of prisoners said that they would not attack a victim known to possess a firearm, and 74% of their sample agreed that they would avoid occupied houses on the chance that the owner(s) might possess a firearm.<sup>27</sup>

However, British criminals have little expectation of confronting a victim who possesses a firearm. Even the small percentage of British homes which have a lawfully-owned gun would not be able to unlock the gun from one safe, and then unlock the ammunition from another safe, in time to use the gun against a home invader.<sup>28</sup> It should

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<sup>20</sup> Philip Johnston, *Britain Leads the World on Risk of Being Assaulted*, THE TELEGRAPH, May 4, 2001.

<sup>21</sup> See *Scotland Worst for Violence – UN*, BBC NEWS, Sept. 18, 2005 (“Scotland has been named the most violent country in the developed world by a United Nations Report.”).

<sup>22</sup> *Illegal Firearms*, Working Paper 1, at 7.

<sup>23</sup> Philip Johnston, *World’s Toughest Laws Will Help to Keep Weapons off the Streets*, THE TELEGRAPH, Nov. 2, 1996.

<sup>24</sup> *Illegal Firearms*, Working Paper 4, at 15.

<sup>25</sup> PETER HITCHENS, *A BRIEF HISTORY OF CRIME* (2003).

<sup>26</sup> See Patrick Mercer, *Even Burglars Admit It: My Bill Will Stop Them*, THE TELEGRAPH, Jan. 12, 2005.

<sup>27</sup> JAMES D. WRIGHT & PETER H. ROSSI, *ARMED AND CONSIDERED DANGEROUS* (1986), at 145.

<sup>28</sup> The current British implementation of the “safe storage” requirements invented by the police, as part of the gun licensing process, require that the guns and ammunition be kept in separate safes.

hardly be surprising, then, that Britain has a much higher rate of home invasion burglaries than does the United States.<sup>29</sup>

Technically, self-defense is still legal in Great Britain, but in practice, any act of self-defense is subject to a prosecutor's second-guessing of what is "reasonable." For example, Brett Osborn is now serving a 5-year sentence for manslaughter. In order to protect a friend, "He stabbed a blood-covered, drug-crazed intruder...." His prosecution stemmed from the fact that he failed to warn the criminal that he had access to a knife.<sup>30</sup>

In 2004, despite popular demand, the British government refused to reform the laws regarding victim self-defense. Home Office Minister Fiona Mactaggart claimed that self-defense reform would be a "licence to kill with impunity."<sup>31</sup>

Coming to the aid of crime victims is strongly discouraged. British subjects are taught that, if they are attacked by a criminal, they should not yell "Help! Help!" because such cries might encourage a bystander to use physical force against the criminal. Rather, victims are supposed to yell, "Call the police." Likewise, the government tells Britons that when they are attacked, they should not fight back, but should instead curl into a ball or take a similar defensive posture.<sup>32</sup>

If a properly-behaved British bystander does "call the police," the response may be lethally slow. Vicky Horgan and her sister Emma Walton were shot by Stuart Horgan on June 6, 2004.<sup>33</sup> A total of sixty calls to 999 (the US's equivalent to 9-1-1) were made, but help did not arrive for over an hour. *The Express* explained that a major cause of the delay was police reluctance to confront an armed criminal.<sup>34</sup>

Nor are criminals afraid of being jailed, as the authorities cannot afford to incarcerate them. In 2006, burglary was essentially decriminalized, by a new government policy to merely give a "caution" (an official warning) to first time burglars who have been apprehended; now, a burglary will literally not even result in an arrest for a burglar who is caught for the first time.<sup>35</sup>

## Britain's New Gun Culture

While tightening the screws on law-abiding gun owners, the British authorities

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<sup>29</sup> David B. Kopel, *Lawyers, Guns, and Burglars*, 43 ARIZ. L. REV. 345 (2001); David B. Kopel, Comment, in Jens Ludwig & Philip Cook, eds., *EVALUATING GUN POLICY* 109-18 (2003).

<sup>30</sup> Mercer, *supra*.

<sup>31</sup> *'Tony Martin Law' is Blocked*, BBC NEWS, Apr. 30, 2004.

<sup>32</sup> Dave Kopel, *From The Frontlines*, THE CORNER (Nat'l Rev. Online weblog) May 15, 2003, <http://www.davekopel.com/Corner/Corner-Archive-2003.htm> (quoting American exchange student's report of instructions which a British officer delivered to a newly-arrived cadre of American students in London).

<sup>33</sup> *Mother Angry at Shooting Response*, BBC NEWS, Feb. 21, 2006 ("But police did not enter the house until more than an hour after the first 999 call was made."). See also *Police Criticised over Gun Deaths*, BBC NEWS, Sept. 29, 2004. In the death of Julia Pemberton, the police received a call at 7:11 P.M., but did not arrive until nearly 2 A.M. the following day. The coroner stated "The only way Julia Pemberton's life could have been saved is if she had an armed escort throughout the 15 months before she died." The coroner's report did not consider the much cheaper, and potentially more effective, option of permitting Julia to arm herself.

<sup>34</sup> See Anna Pukas, *This Week's Scathing Report on How Police Dealt With a Killing Spree at a Family Party has Brought New Anguish and Anger for Roy and Georgie Gibson; Torment of Couple Haunted by the Barbeque Murders*, THE EXPRESS, Oct. 9, 2004.

<sup>35</sup> Jon Silverman, *How Police Cautions Work*, BBC NEWS, Jan. 13, 2006.

were declaring their determination to prevent the existence of an American-style “gun culture.” In that regard, the British government has been very successful.

In previous generations, Britain had a long-standing tradition of sporting gun use, and an unwritten agreement that both the police and the criminals would eschew the use of guns. Everything has now changed. The new criminal gun culture in Britain is one in which, according to the British government, there is “the perception of firearms as a means of resolving differences through violence.”<sup>36</sup>

British gun laws have transformed the way children are introduced to firearms. In the past, the many parents who participated in the shooting sports taught their children safe and responsible firearm handling practices. Now, the gun control laws are deliberately operated to impose bureaucratic barriers that encourage law-abiding shooters to give up their sport; many have done so.

Never introduced into a law-abiding, responsible gun culture of adults, Britain’s modern youth are creating their own “gun culture”, a sort of non-fiction version of *Lord of the Flies*. Children in gangs, some as young as nine, roam the streets uncontrolled, victimizing the aged and the infirm.<sup>37</sup> Today, one third of all British criminals under the age of 25 admit to owning or having access to a firearm.<sup>38</sup>

In contrast, firearm ownership in the United States continues, for the most part, to be kept in the family, handed down from parent to child. What happens when parents teach children about shooting? The most detailed empirical data come from the Rochester (N.Y.) Study on *Urban Delinquency and Substance Abuse*.<sup>39</sup>

Funded by the U.S. Department of Justice, the study tracked 7th- and 8th-graders for 4-1/2 years until 11<sup>th</sup> or 12<sup>th</sup> grade, providing “quite a thorough picture of adolescent development during the junior and senior high school years.” The researchers explain that “To maximize the number of serious, chronic offenders available for the study, the sample includes more youth from high-crime areas and fewer from low-crime areas.” For the same reason, the study focused exclusively on males.

One of the topics of the Rochester Study was adolescent behavior with firearms. Of the group of boys who owned guns legally by the time they were in 9<sup>th</sup> or 10<sup>th</sup> grade, not one of them committed any crime or delinquent act with a gun.

Of the boys who did not, by 9<sup>th</sup> or 10<sup>th</sup> grade, already own a legal gun, one percent would commit a firearms crime in the next few years. As for the boys who already *illegally* owned guns, twenty-four percent would eventually use a gun in a crime.

As for the overall rate of street crimes (remember, the study deliberately oversampled at-risk males), of the boys who lawfully owned guns, fourteen percent eventually committed at least one street crime. Of the non-gun owners, twenty-four percent committed a street crime. Of the illegal gun owners, seventy-four percent committed a street crime.

Thus, it appears that there is something about the culture of law-abiding gun

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<sup>36</sup> House of Commons, Home Affairs – Second Report – Controls over Firearms, Session 1999-2000, Apr. 6, 2000, at ¶50, <http://www.publications.parliament.uk/pa/cm199900/cmselect/cmhaff/95/9502.htm> (visited June 9, 2006).

<sup>37</sup> Gillian Harris, ‘Terrible ten’ Children Terrorising Edinburgh, THE TIMES, Jul. 18, 2001; Philip Nettleton, Curfew on ‘Reign of Terror’ Boy, THIS IS LONDON, Nov. 2, 2001.

<sup>38</sup> Tony Thompson, One in Three Young Criminals is Armed, THE GUARDIAN, Sep. 3, 2000.

<sup>39</sup> Urban Delinquency and Substance Abuse – Technical Report, U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Nov. 1993.

ownership which is associated with lower rates of gun crime, and of general crime. The researchers observed: “Parents who own legal guns socialize their children into the legitimate gun culture. Those parents who do not own guns are unlikely to socialize their children in that manner.” Simply put, the Rochester youths who were given lethal weapons by their parents, and who were instructed in how to use those weapons by their parents (usually, by the father), behaved more responsibly than did their peers.

Today, Great Britain is generally a more dangerous place than the United States.<sup>40</sup> Great Britain is also a place which has successfully crushed the spread of a large American-style gun-culture. While America’s gun culture is still composed, overwhelmingly, of law-abiding, hard-working, family-oriented people, Great Britain’s new gun culture consists of armed criminals, and armed police.<sup>41</sup> One fact is undeniable: the Firearms Act “did not stop the use of guns, it prevented their use by honest citizens – and created a monopoly, with the ownership and use of guns confined to two classes: professional criminals and the police.”<sup>42</sup>

*Guns and Violence* tells a remarkable story of a society’s self-destruction, of how a government in a few decades managed to reverse six hundred years of social progress in violence reduction. The book is also a testament to the amazing self-confidence of British governments; Labour and Conservative alike have proceeded with an extreme anti-self-defense agenda, although the agenda has never had much supporting evidence beyond the government’s own platitudes. Whether the rest of the world should follow that bipartisan British agenda is an essential question in the current United Nations debate over international gun control.

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<sup>40</sup> The one major criminal justice statistic in which Great Britain appears to be doing better than the U.S. is the homicide rate, with the U.S. rate at 4.3, and the England and Wales rate at 1.4. However, the U.S. rate is based on initial reports of homicides, and includes lawful self-defense killings (about 10-15% of the total); the England and Wales rate is based only on final dispositions, so that an unsolved murder, or a murder which is pleaded down to a lesser offense, is not counted as a homicide. In addition, multiple murders are counted as only a single homicide for Scottish statistics. See Malcolm, at 228-31; Patsy Richards, Homicide Statistics, Research Paper 99/56, House of Commons Library Social and General Statistics Section, May 27, 1999, at 9. See also Statistics Release, Homicides in Scotland in 2001 – Statistics Published: A Scottish Executive National Statistics Publication, Nov. 28, 2002, <http://www.scotland.gov.uk/stats/bulletins/00205-00.asp> (visited May 16, 2006), at Note 2 (“A single case of homicide is counted for each act of murder or culpable homicide irrespective of the number of perpetrators or victims.”)

<sup>41</sup> *Gun Law*, THE GUARDIAN, Dec. 4, 2000.

<sup>42</sup> Geoffrey Wheatcroft, *Cracked Shots*, THE GUARDIAN, Jul. 19, 2001.