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Clayton E. Cramer and Joseph Edward Olson

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GUN CONTROL: POLITICAL FEARS TRUMP CRIME CONTROL

Clayton E. Cramer* and Joseph Edward Olson**

I. INTRODUCTION

No matter how draconian, gun control laws are weakly enforced (at least in the United States) and seldom of any significant effect in reducing crime.¹ The kind of citizen who will comply with a gun law is the opposite of the person who will use a gun to facilitate his or her crimes. The problem of weak enforcement is highlighted by a candid interview with the author of the District of Columbia's 1968 gun registration scheme while the District's 1975-76 gun ban was under consideration:

The problem, [Hechinger] said, is the failure of the mayor and police department to enforce the [current] regulations. "Not only didn't they enforce them; the[y] didn't even publicize them," he said.

If the city's executives were lax on gun laws, its judiciary was hardly better. Of 184 persons prosecuted and convicted for first-time gun possession in the first six months of last year, only 14 received jail sentences.

One judge, according to a report to the House District Committee last week, awarded a jail sentence to only one of 73 gun offenders convicted in his court.²

This led a prominent newspaper commentator to remark that "[i]t might be a good idea to try enforcing the old gun law before rushing to enact new ones."³

Even as they were voting for the new gun ban, D.C. politicians were admitting that it was a mere placebo. City Councilman Marion Berry (later to become Mayor) admitted: "Massachusetts has stringent gun control and armed robbery has not decreased but increased. The TV creates far more violence than any gun lobbyist. I, too, am going to vote for this bill [sic] that I want it understood that I realize it's not adequate . . ."⁴ Councilman Jerry Moore made the same point saying that he had "no illusions about this law—it won't take guns off the streets."⁵

So the question becomes, "Why enact them?"

Is there a hidden political dynamic? But "hidden" means hard to find. So maybe we should look for the answer in a related jurisdiction that keeps more extensive records of its government's deliberations.

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1. Gary Kleck & E. Britt Patterson, *The Impact of Gun Control and Gun Ownership Levels on Violence Rates*, 9 J. QUANTITATIVE CRIMINOLOGY 249, 275-77 (1993).

2. William Raspberry, Editorial, *What About the Old Gun Law?*, WASH. POST, June 16, 1975, at A23.

3. *Id.*

4. Earl Byrd, *D.C. Gun Curb Bill Gains Despite Warning on Klan*, WASH. STAR, May 4, 1976, at B-4.

5. *Id.*

II. A LOOK AT BRITAIN

In 1870, there were no laws regulating the possession, purchase, and peaceful carrying of firearms in Britain.⁶ Anyone, child or adult, could buy a pistol, load it, and carry it under his coat with no legal consequences. As late as 1920, the law presented no obstacle to an adult without a criminal history purchasing a rifle, shotgun, or pistol, and carrying it concealed upon his person.⁷ Yet today, Britain has some of the most restrictive gun control laws in the world.⁸

The Firearms Act of 1920⁹ was a watershed of British firearms control. From its passage, the ownership of firearms ceased to be a right of Englishmen, and instead became a privilege—one increasingly restricted over the intervening 75 years.¹⁰ Under the direction of the Home Office, police discretion in licensing throughout Britain has made ownership of firearms an increasingly rare event.¹¹ Why was the Firearms Act of 1920 passed?

There are several possible causes for the Firearms Act of 1920, all of which are plausible explanations: concern about criminal misuse of firearms; gun running to Ireland; increased political violence in the pre-World War I period. Yet, examination of the Cabinet papers declassified in 1970,¹² and Cabinet Secretary Thomas Jones's diaries,¹³ shows that all of these other concerns were insignificant compared to the fear of Bolshevik revolution.

III. A BRITON'S TRADITIONAL *RIGHT* TO HAVE ARMS

First of all, it is necessary to clearly understand that the absence of firearms controls was not because low crime rates made them unnecessary, but because Britons considered the possession of arms to be a *right*. The English Bill of Rights (1689) asserted by its passage that the people were "vindicating and asserting their ancient rights and liberties," including the seventh article: "That the subjects which are protestants, may have arms for their defence suitable to their conditions, and as allowed by law."¹⁴

This guarantee reflected the widespread fear of absolutism and Jacobite royal tyranny. Some have defended this claim of "ancient rights and liberties" with great skill.¹⁵ The most scholarly examination, however, shows that in the aftermath of the

6. COLIN GREENWOOD, *FIREARMS CONTROL: A STUDY OF ARMED CRIME AND FIREARMS CONTROL IN ENGLAND AND WALES* 17 (1972). Greenwood was Chief Inspector of the West Yorkshire Constabulary at the time he wrote his ground-breaking work on British gun control law.

7. *See id.* at 7-26; ROBERT CARR & GORDON CAMPBELL, *THE CONTROL OF FIREARMS IN GREAT BRITAIN: A CONSULTATIVE DOCUMENT* 3 (1973) (very briefly confirming the lax regulation of firearms before 1920).

8. *See* Joseph E. Olson & David B. Kopel, *All the Way Down the Slippery Slope: Gun Prohibition in England and Some Lessons for Civil Liberties in America*, 22 *HAMLIN L. REV.* 399 (1999).

9. Firearms Act, 1920, 10 & 11 *Geo. 5*, ch. 43 (Eng).

10. Olson & Kopel, *supra* note 8, at 432-33.

11. *Id.* at 421-26.

12. The relevant Cabinet Papers are specifically referred to hereinafter.

13. 1 THOMAS JONES, *WHITEHALL DIARY: 1916-25* (Oxford University Press, 1969); 2 THOMAS JONES, *WHITEHALL DIARY: 1926-30* (Oxford University Press, 1969).

14. *THE HUMAN RIGHTS READER* 106 (Walter Laquer & Barry Rubin, eds., 1979).

15. *See* STEPHEN P. HALBROOK, *THAT EVERY MAN BE ARMED: THE EVOLUTION OF A CONSTITUTIONAL*

English Civil War, political theorists imagined what had formerly been a *duty* to bear arms in defense of the realm and public order into a “true, ancient, and indubitable” right.¹⁶

Blackstone’s *Commentaries on the Laws of England* (1765) (*Commentaries*) also asserted this right:

The fifth and last auxiliary right of the subject, that I shall at present mention, is that of having arms for their defense, suitable to their condition and degree, and such as are allowed by law. . . . [I]t is indeed a public allowance, under due restrictions, of the natural right of resistance and self-preservation, when the sanctions of society and laws are found insufficient to restrain the violence of oppression.¹⁷

Both the English Bill of Rights and Blackstone’s remarks show that significant restrictions (“suitable to their condition and degree”) hemmed in this right. Nonetheless, both still defined this as a *right* to arms.

Jacobite absolutism seemed an adequate reason in 1689 to enshrine the Protestant Englishman’s right to arms, especially since the English Bill of Rights limited only the power of the sovereign, not of Parliament. But, as Joyce Malcolm observes, “It is easy to defend popular liberties when ‘things remain in their legal and settled course,’ but far more difficult when anarchy, not absolutism, threatens.”¹⁸

London’s Gordon Riots of 1780 were one of those times when anarchy seemed to be a real risk.¹⁹ In the aftermath of those riots, Members of Parliament faulted the government for actions it took and actions it did not take.²⁰ In particular, the Duke of Richmond objected to

the conduct of the Commander in Chief of the army, for the letters he sent to Colonel Twisleton, who commanded the military force in the City, ordering him to disarm the citizens, who had taken up arms, and formed themselves into associations, for the defence of their lives and properties. These letters he considered as a violation of the constitutional right of Protestant subjects to *keep and bear arms* for their own defence.²¹

Lord Amherst agreed that the disarming order was intended only for the rioters, “but no passage in his letter could be construed to mean, that the arms should be taken away

RIGHT 43-49 (1984). *But see* CLAYTON E. CRAMER, FOR THE DEFENSE OF THEMSELVES AND THE STATE: THE ORIGINAL INTENT AND JUDICIAL INTERPRETATION OF THE RIGHT TO KEEP AND BEAR ARMS 19-25 (1994) (examining where Halbrook goes astray, as well as providing an overview of other scholarly examinations of the English roots of this right); *see also* J. B. HILL, WEAPONS LAW 117 (1989) (pointing to a decision, *The Case of Arms*, in the reign of Elizabeth I that held “that every subject may arm himself against[sic] evil-doers”). As *The Case of Arms* demonstrates, however, the absence of legal prohibition may sometimes be phrased in a way that suggests a guarantee when there is only the absence of a prohibition.

16. JOYCE LEE MALCOLM, TO KEEP AND BEAR ARMS: THE ORIGINS OF AN ANGLO-AMERICAN RIGHT 1, 115 (1994).

17. 1 WILLIAM BLACKSTONE, COMMENTARIES *143-44.

18. MALCOLM, *supra* note 16, at 166.

19. *Id.* at 130.

20. *Id.*

21. *Debates in the House of Lords*, 49 LONDON MAG. 467, 467 (1780) (emphasis added).

from the associated citizens, who had very properly armed themselves for the defence of their lives and property.”²²

The duality of the contemporary usage was shown by a contemporaneous pronouncement by the Recorder of London—the city’s chief legal officer—when asked if the right to *have arms* in the English Declaration of Rights protected armed defensive groups as well as armed individuals.

The right of his majesty's Protestant subjects, to *have arms* for their own defence, and to *use* them for lawful purposes, is most clear and undeniable. It seems, indeed, to be considered, by the ancient laws of this kingdom, not only as a right, but as a duty; for all the subjects of the realm, who are able to *bear arms*, are bound to be ready, at all times, to assist the sheriff, and other civil magistrates, in the execution of the laws and the preservation of the public peace. And *that right, which every Protestant most unquestionably possesses*, individually, may, and in many cases must, be exercised collectively, is likewise a point which I conceive to be most clearly established by the authority of judicial decisions and ancient acts of parliament, as well as by reason and common sense.²³

The common law was in agreement. In his edition of Blackstone’s *Commentaries* that appeared in the 1790s, Edward Christian described the rights of Englishmen (the rights which every American colonist had been promised) in these terms: “everyone is at liberty to keep or carry a gun, if he does not use it for the [unlawful] destruction of game.”²⁴ This right was separate from militia duties.²⁵

The agricultural slump after the Napoleonic Wars three decades later led to widespread unrest, riots, and assemblies calling for Parliamentary reform.²⁶ After the so-called Peterloo massacre, the conflict between the right to bear arms and fear of working class unrest led the English courts to distinguish between the differing reasons for bearing arms.²⁷ The courts concluded that there was an individual right to bear arms for self-defense, but there was no right to carry arms to a public meeting if the number of arms “so carried are calculated to produce terror and alarm.”²⁸

More ominously, the Seizure of Arms Act, one of the “Six Acts” passed in 1819 by Parliament in response to the unrest, provided for constables to search for and seize arms on the testimony of a single person that they were being kept for a purpose “dangerous to the public peace.”²⁹ The Seizure of Arms Act was limited to the industrial areas where riots took place, and with a two-year expiration period.³⁰

22. *Id.* at 467-68.

23. MALCOLM, *supra* note 16, at 134 (emphasis added) (quoting WILLIAM BLIZARD, *DESULTORY REFLECTIONS ON POLICE: WITH AN ESSAY ON THE MEANS OF PREVENTING CRIME AND AMENDING CRIMINALS* 59-60 (1785)).

24. WILLIAM BLACKSTONE, 2 *COMMENTARIES* 412 n.2 (Edward Christian ed. 1793-95).

25. MALCOLM, *supra* note 16, at 128-34.

26. *Id.* at 166.

27. *Id.* at 166-68.

28. *Id.* at 168. Sixty-seven years later, motivated by similar working class efforts to correct social ills, the United States Supreme Court would make approximately the same distinction. See CRAMER, *supra* note 15, at 128-34 (discussing *Presser v. Illinois*, 116 U.S. 252 (1886), and similar prohibitions on labor union militias).

29. MALCOLM, *supra* note 16, at 168.

30. *Id.*

Nonetheless, in the House of Lords, Earl Grey called it a violation of the rights of Englishmen “not only for defence against the assassin or the midnight robber, but to enforce his constitutional right of resistance to oppression, if deprived of the benefit of the laws.”³¹ In the Commons, M.P. Bennet argued the same point: “[T]he distinctive difference between a freeman and a slave was a right to possess arms, not so much . . . for the purpose of defending his property as his liberty. Neither could he do, if deprived of those arms, in the hour of danger.”³²

Even Lord Castlereagh, then foreign secretary, admitted that “it was an infringement upon the rights and duties of the people, and that it could only be defended upon the necessity of the case. But that necessity now existed . . .”³³ Similar measures had been applied to civil war in Scotland and Ireland in the past, Castlereagh observed. M.P. Brougham pointed out that in both cases; however, these civil wars had involved foreign assistance—unlike this case.³⁴

Yet, even the Seizure of Arms Act had made distinctions based on the function of different classes of arms that were to be seized. “Any pike, pike head or spear in the possession of any person or in any house or place” was subject to confiscation, but “any dirk, dagger, pistol or gun or other weapon” was to be seized only if they were possessed for “any purpose dangerous to the public peace.”³⁵ This distinguished between weapons perceived as offensive and defensive, for even the supporters of the Seizure of Arms Act generally accepted the right to possess arms for self-defense.³⁶

The Seizure of Arms Act expired after two years, and Parliament passed no similar restrictions between 1819 and the end of the nineteenth century, even during the turbulence of the Chartist movement³⁷ and repeated assassination attempts on Queen Victoria with pistols.³⁸ Greenwood suggests that by the time of the Chartists, the professionalization of the police forces meant that the government relied less upon paid informants as a source of information on subversives.³⁹ Paid informants were prone to exaggeration because they perceived that their value to the police was dependent on the seriousness of the information they provided.⁴⁰ In addition, information provided by firearms manufacturers persuaded the Home Secretary that the Chartists were not arming for revolution, despite alarming newspaper accounts to the contrary.⁴¹

So relaxed were British firearms controls throughout the remainder of the nineteenth century that Parliament passed only one measure regulating the carrying or possession of firearms: the Gun Licences Act of 1870.⁴² This measure required a license to carry a firearm (concealed or openly) outside one’s home. Greenwood

31. 41 T. C. HANSARD, THE PARLIAMENTARY DEBATES FROM THE YEAR 1803 TO THE PRESENT TIME 749 (December 6, 1819).

32. *Id.* at 1130 (December 14, 1819).

33. *Id.* at 1136 (December 14, 1819).

34. *Id.* at 1134-36 (December 14, 1819).

35. GREENWOOD, *supra* note 6, at 14.

36. HANSARD, *supra* note 31, at 695 (December 3, 1819).

37. GREENWOOD, *supra* note 6, at 16-17.

38. STANLEY WEINTRAUB, VICTORIA: AN INTIMATE BIOGRAPHY 145, 154-55, 386, 402, 450 (1987).

39. GREENWOOD, *supra* note 6, at 16.

40. *Id.*

41. *Id.* at 16-17.

42. *See id.* at 16-26.

asserts that “[i]t was merely an Excise Act and required, with certain exceptions, that any person carrying or using a gun elsewhere than in or within the curtilage of a dwelling-house should pay a revenue fee of ten shillings. The licence was available, without question, at any Post Office.”⁴³

Other sources suggest that some Members of Parliament had other motivations besides revenue. During debate concerning amendments to the Act in 1879, in which Sir Alexander Gordon argued that the measure had created great difficulties for farmers, who had previously been allowed to possess firearms for frightening away birds without needing to obtain a game license, Gordon asserted that the Secretary to the Treasury “said he did not believe the Bill would in any way promote the preservation of game, and he had supported it on the sole ground that it would be useful in securing the registering of arms in this country.”⁴⁴ Gordon further asserts that the then Chancellor of the Exchequer’s stated purpose was “to discourage the lower classes from habitually carrying deadly weapons.”⁴⁵ However, because the act applied only to the *carrying* of guns, it did not even serve the stated purpose of keeping guns out of the hands of the dangerous classes.⁴⁶

Other Members of Parliament during those debates acknowledged that the Gun Licences Act of 1870 had caused considerable upset among farmers, and did not even accomplish the questionable goal of registering guns primarily intended for use in Ireland, “where the Government were anxious to find out who were in possession of guns.” Therefore, if there was not sufficient support to repeal the law, it should be reformed.⁴⁷

Parliament considered several firearms control bills between the Gun Licences Act of 1870 and the end of the century. These bills either sought to enhance penalties for armed burglary, or to require a hunting or carrying license as a condition of purchasing a handgun.⁴⁸ The combination of substantial opposition to restrictions on arms and a perception that the bills were superfluous caused all to die on the first or second reading in the House of Commons.⁴⁹

Most of these proposals were aimed at criminal misuse.⁵⁰ Yet there were other motives present as well. When the Marquess of Carmarthen introduced the Second

43. *Id.* at 17. It is not clear where Greenwood obtained this information about the Gun Licences Act of 1870. While the Earl of Onslow made the same claim concerning it in the Second Reading of the Firearms Act of 1920 in the House of Lords on April 27, 1920, *see Parliamentary Debates*, House of Lords, new series, 39:1025, other sources seem to contradict these assertions. For example, a letter to *Punch*, April 23, 1870, 165, by a college student complains that the writer “and my three brothers, we go shooting in the holidays, that is we used to, but shan’t be able any more if we’ve got to pay a pound a-piece for gun-licences,” and a 1907 publication by the British firearms industry complained that the Gun Licences Act, and its sometimes absurd enforcement, had reduced use of rifles and shooting as a sport. ARTIFEX & OPIFEX, *THE CAUSES OF DECAY IN A BRITISH INDUSTRY* 140-41 (1907). Further, M.P. Kenworthy’s speech of June 10, 1920, at 130 *PARL. DEB.*, H.L. (5th Ser.) (1920) 659, suggests that magistrates issued the license.

44. 247 T. C. HANSARD, *THE PARLIAMENTARY DEBATES FROM THE YEAR 1803 TO THE PRESENT TIME* 120 (June 18, 1879).

45. *Id.*

46. *Id.* at 118-24.

47. *Id.* at 124-28.

48. GREENWOOD, *supra* note 6, at 18-26.

49. *Id.*

50. *Id.*

Reading of his 1895 Pistols Bill in the Commons, he “complained that he would have preferred a Bill which provided that no one but a soldier, sailor or policeman should have a pistol at all, because they were a source of danger to their possessors”⁵¹

The Pistols Act of 1903, in contrast to the similar, somewhat more restrictive measures introduced in 1893 and 1895, passed with little debate.⁵² Greenwood suggests that because proof of being a householder was one of the three methods by which a buyer qualified to buy a handgun, this measure was not regarded as an attack on the right to bear arms.⁵³ Since the stated goal was to prevent children from buying handguns from retailers, and it accomplished that and nothing else, the Pistols Act was uncontroversial.⁵⁴ The Pistols Act required buyers of pistols to either “produce[] a gun or game licence then in force” or provide the seller “reasonable proof that he is a person entitled to use or carry a gun without a gun or game licence.”⁵⁵ Even this requirement, however, did not apply if “being a householder, he proposes to use such pistol only in his own house” or that he provide a statement that “he is about to proceed abroad for a period of not less than six months” signed by a police officer or justice of the peace and himself.⁵⁶ Other provisions prohibited sale to any person under 18 years of age, or who was “intoxicated or is not of sound mind.”⁵⁷ And unsurprisingly, this law did not apply in Ireland.⁵⁸

The absence of laws regulating handgun ownership might be evidence that private ownership in Britain was rare as the nineteenth century waned. The literature of the period, however, shows that handguns as defensive weapons were considered an ordinary part of British life. H. G. Wells’s *The Invisible Man* portrays both American visitors and Britons using pistols for self-defense, with an awareness that British lawful use of deadly force was more restrictive than in America:

“Draw the bolts,” said the man with the black beard, “and if he comes—” He showed a revolver in his hand.

“That won’t do,” said the policeman; “that’s murder.”

“I know what country I’m in,” said the man with the beard. “I’m going to let off at his legs. Draw the bolts.”⁵⁹

In the climax of the novel, a police official asks a British civilian for a revolver with the expectation that there is one in the house.⁶⁰ Similarly, in *The War of the Worlds*,

51. *Id.* at 24.

52. *Id.* at 27-30.

53. *Id.*

54. *Id.*

55. Pistols Act, 1903, 3 Edw. 7, c. 18 (Eng.).

56. *Id.*

57. *Id.*

58. *Id.*

59. H.G. WELLS, *THE INVISIBLE MAN: A GROTESQUE ROMANCE* 131 (1897). This distinction, recognized in *The Invisible Man*, remains in effect today in Britain. One recent work on British weapons law asserts that under the Offences Against the Person Act 1861, a deadly weapon cannot be carried or used to injure other people. HILL, *supra* note 15, at 57. However, while a firearm used with the intent of *hitting* an intruder is a violation of the law, a firearm can lawfully be used with the intent of *frightening* an attacker, even if the warning shot *accidentally* hits the attacker. *Id.* at 60.

60. WELLS, *supra* note 59, at 252-53.

Wells describes a young lady defending herself from ruffians with a revolver she keeps under the seat of her carriage, with no indication that this was surprising or unusual.⁶¹

Bram Stoker's fiction also provides some idea of how late-Victorian society regarded handguns. *The Squaw*, published in the mid-1890s, depicts the relationship between an upper class British couple on their honeymoon in Nurnberg, and "Elias P. Hutcheson, hailing from Isthmian City, Bleeding Gulch, Maple Tree County, Nebraska," a figure who is portrayed as comical, but also decent, intelligent, well-intentioned—and armed:

"I say, ma'am, you needn't be skeered over that cat. I go heeled, I du!" Here he slapped his pistol pocket at the back of his lumbar region. "Why sooner'n have you worried, I'll shoot the critter, right here, an' risk the police interferin' with a citizen of the United States for carryin' arms contrairy to reg'lations!"⁶²

Hutcheson meets a tragic end, but Stoker treats his carrying of a pistol in violation of German law as colorful, with no more horror than we regard driving slightly over the speed limit on the highway.

Dracula, Stoker's most famous novel, is awash in handguns. Unlike Elias P. Hutcheson in *The Squaw*, the American Jonathan Harker in *Dracula* is not the only person armed with a handgun. Eventually, most of the vampire hunters carry them (not for use against Dracula, but for defense against his living employees).⁶³ Like Wells's novels, Stoker's fiction expresses neither horror nor amazement at ordinary people possessing and carrying handguns for self-defense.

Sir Arthur Conan Doyle's *Sherlock Holmes* stories also reflect a widespread acceptance of the possession of guns.⁶⁴ While some might regard the stories as a poor example because Holmes must occasionally deal with some rough characters due to the nature of his occupation, it is not only the eccentric Holmes who possesses a revolver, but also Dr. Watson.⁶⁵

IV. BOLSHEVISM AND THE FIREARMS ACT OF 1920

Despite an apparent *laissez-faire* attitude toward firearms in the period before World War I, the British government was discussing handgun restrictions. The Home Office apparently prepared a more restrictive revision of the Pistols Act in 1911.⁶⁶ The Sidney Street Siege involving Russian anarchists that year, and the events leading up to it, caused the Home Office to introduce a somewhat narrower measure, the Aliens (Prevention of Crime) Bill of 1911.⁶⁷ This bill sought to restrictively license carrying

61. H.G. WELLS, *THE WAR OF THE WORLDS* 84 (Airmont Books 1964) (1898).

62. BRAM STOKER, *The Squaw*, in *DRACULA'S GUEST* 43, 47 (Bibliobazaar 2006) (1914).

63. See BRAM STOKER, *DRACULA* 391 (1897).

64. See, e.g., A. CONAN DOYLE, *The Adventure Of The Dying Detective*, in *HIS LAST BOW* 119 (Doubleday, Doran & Company 1933) (1917); SIR ARTHUR CONAN DOYLE, *The Adventure Of The Empty House*, in *THE RETURN OF SHERLOCK HOLMES* 3 (1905) [hereinafter DOYLE, *Empty House*].

65. DOYLE, *Empty House*, *supra* note 64, at 15.

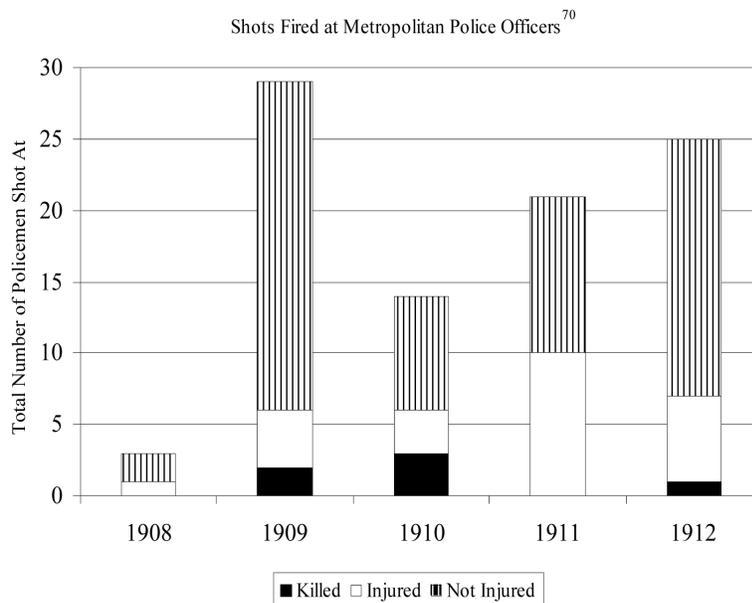
66. GREENWOOD, *supra* note 6, at 32-33.

67. *Id.* at 33.

or ownership of a handgun by aliens, but failed to get to Second Reading in the Commons.⁶⁸

The British government's continuous upheaval during this time, followed by World War I, seems to have stopped efforts to more tightly regulate firearms.⁶⁹ Home Secretary Edward Shortt in 1920 suggested that Parliamentary objections had also prevented licensing of handguns before World War I.

What motivated the Home Office's never-introduced 1911 Pistols Act, and their continuing interest in the subject after World War I? One possible reason was the dramatic increase in shots fired at London police officers. While the total number of



officers killed, injured, or fired upon remained small, the increase from 1908 to 1912 would have seemed staggering, especially since most officers were unable to return fire.⁷¹

Whether criminal misuse above and beyond assaults on police officers was a reason for restrictions remains a difficult question to answer. The accuracy of crime statistics for this period is not high, and the deficiencies of those statistics are probably clearer in hindsight than they were to contemporary politicians. The statistics used by

68. *Id.* at 33-34.

69. *Id.* at 31-36.

70. GREENWOOD, *supra* note 6, at 35 tbl.4.

71. From the beginning of the modern police department, British police officers have "relied upon the baton and the staff as the only weapons they require." HILL, *supra* note 15, at 91. Firearms have been issued to elite units, or for limited periods for very specialized purposes. *Id.* at 91-92.

various Parliamentary committees in this period are seldom part of a continuous series, or consistently gathered, which makes meaningful analysis difficult. Moreover, *perceptions* of criminal misuse are often more important for the making of laws than *actual* misuse.

Another factor that might explain the 1911 bill was the social chaos that developed around the suffragettes, labor struggles, and the problems of Ireland. The civility that characterized most of the Victorian and Edwardian period in Britain was unraveling.

The suffragettes were the militant faction of the movement that sought voting rights for women. The suffragettes did not *request* votes for women, but *demand*ed it with a campaign of vandalism and arson intended to bully the ruling Liberal Party into compliance. While suffragette violence was directed entirely at objects, not people, author George Dangerfield makes the interesting observation that in the midst of this campaign of burning vacant buildings and smashing shop windows, “otherwise nice old ladies began to apply for gun licenses, to the terror of their local magistracy.”⁷² As discussed above, the gun licenses allowed not only the *purchase* but also the *carrying* of guns, and there was no way to avoid issuing the license.⁷³ This explains the judges’ “terror.”

The trade disputes led to a more serious outbreak of violence. The 1910 coal miners’ strike in the Rhondda Valley in Wales caused the Home Office to send 802 police officers and several regiments of soldiers to restore order—though it is not clear how much real disorder was present when the police and army were first called.⁷⁴ The London Transport Workers’ Strike of 1911 led to more serious violence, with soldiers fatally shooting strikers who attempted to block trains operated by strikebreakers.⁷⁵

The most serious of the pre-war conflicts were related to Ireland. It is no surprise that Irish Nationalists engaged in armed violence in their attempts to secure independence from Britain. It would also be no surprise if Cabinet concerns about Irish Nationalist access to weapons in Britain played some part in bringing about the Firearms Act of 1920. Ireland had long been subject to more restrictive firearms law than Britain.⁷⁶ What is surprising is how little of the secret post-war Cabinet papers suggest a linkage between violence in Ireland and British firearms restrictions.

In addition to the problems of Irish Nationalist violence, the prospect of Home Rule for Ireland led to another serious problem: the twin threats of Ulster Protestant insurrection and mutiny in the army. Sir Edward Carson led Ulster Protestants who were determined to revolt and form their own government, rather than live under the rule of Ireland’s Catholic majority.⁷⁷

Sympathy for the Ulster Protestants ran high in the British Army. A number of high-ranking officers, including generals and regimental commanders, when ordered to prepare “active operations against Ulster” in 1913 or risk “dismissal with loss of pension” resigned their commissions.⁷⁸ Interestingly enough, Bonar Law, leader of the

72. GEORGE DANGERFIELD, *THE STRANGE DEATH OF LIBERAL ENGLAND* 194 (1935).

73. See *supra* notes 42-43 and accompanying text.

74. DANGERFIELD, *supra* note 72, at 242-47.

75. *Id.* at 268-70.

76. GREENWOOD, *supra* note 6, at 37.

77. DANGERFIELD, *supra* note 72, at 84-85.

78. *Id.* at 342-43.

opposition Conservatives, who appears to have encouraged this mutiny, was one of the fearful members of the post-war Cabinet responsible for the Firearms Act of 1920.⁷⁹

World War I quickly unified an otherwise fractured nation. Militant suffragettes became patriotic organizers.⁸⁰ Many Irish Nationalists suspended their crusade, at least for the first two years of the war.⁸¹ Most internal agitation ended in response to the perceived national need and the restrictive measures of the Defence of the Realm Act.⁸² But as with most wars, the initial patriotic feeling did not last, and the various sources of pre-war conflict began to reappear by 1917.

The 1916 Easter Uprising by Irish Nationalists in Dublin, and the British Government's execution of the leaders, created a broad-based Irish Nationalism.⁸³ From 1917 onward, reports to the Cabinet about Ireland give evidence of high-level concern about arms in the hands of the Irish Nationalists.⁸⁴

Secret Cabinet reports such as Field Marshall French's July 17, 1917, *The Military Situation in Ireland* acknowledged, "that the number of people openly professing Sinn Fein principles and sympathies [is] vastly greater now than it was a year ago" and "nor is there any satisfactory evidence that considerable quantities of Arms are not hidden away."⁸⁵ Yet, there was no expressed interest in adding restrictions to the existing arms laws in Britain, perhaps because the Defence of the Realm Act had given the Government extraordinary authority to regulate firearms and ammunition for the war effort.⁸⁶

Yet by 1920, the problem of disarming the Irish Nationalists had acquired an English connection. A Cabinet meeting on May 31, 1920, discussed how to disarm the Irish rebels.⁸⁷ Sir Hamar Greenwood, Chief Secretary of State for Ireland, explained that it was not practical to disarm the rebels because arms were readily available in England, and easy to smuggle into Ireland: "There is nothing to stop people bringing arms from England because they are easily concealed."⁸⁸

As tempting as it is to see the Irish problem as the proximate cause for the Firearms Act of 1920, there is a chronological problem with such an explanation. By May 31, when Greenwood drew the connection between lax gun laws in Britain and the Irish problem, the Firearms Act was already on its way from the House of Lords to the Commons.⁸⁹ If the hope of disarming Irish Nationalists played a part in the Firearms Act of 1920, there is no paper trail to show a connection. The Cabinet might have previously had this concern, but did not put it into writing, and there is no evidence that the Irish problems played a direct role in causing the Firearms Act of 1920.

79. *Id.* at 344-45.

80. DANGERFIELD, *supra* note 72, at 387-88.

81. LAWRENCE J. MCCAFFREY, *The Irish Question* (University Press of Kentucky, 1995), 132-35.

82. *Id.* at 132-34.

83. *Id.* at 138-40.

84. The relevant Cabinet Papers are specifically referred to hereinafter.

85. FIELD MARSHAL FRENCH, *THE MILITARY SITUATION IN IRELAND*, July 17, 1917, PRO. CAB. 24/20/316.

86. MALCOLM, *supra* note 16, at 172.

87. 3 THOMAS JONES, *WHITEHALL DIARY 16-23* (Keith Middlemas ed., 1971).

88. *Id.* at 21.

89. MALCOLM, *supra* note 16, at 172-73.

Another motivation for the Firearms Act of 1920 was protection of the Empire (and that of other colonial powers) from national independence movements, as well as fear of foreign anarchists in Britain. In late 1918, Sir Ernley Blackwell chaired a committee whose purpose was to

consider the question of the control which it is desirable to exercise over the possession, manufacture, sale, import and export of firearms and ammunition in the United Kingdom after the war, both from the point of internal policy and having regard to the Report of the Sub Committee on Arms Traffic of the Committee of Imperial Defence.⁹⁰

The Blackwell Committee's report expressed concern about surplus weapons ending up in the hands of "[s]avage or semi-civilised tribesmen in outlying parts of the British Empire" and "[t]he anarchist or 'intellectual' malcontent of the great cities, whose weapon is the bomb and the automatic pistol. There is some force in the view that the latter will in future prove the more dangerous of the two."⁹¹ It would appear that the Blackwell Committee was not concerned about non-political criminal misuse of firearms.

To reduce the supply of arms to the "tribesmen" and "anarchists," the committee suggested that licensing of firearms ownership should be discretionary on the part of the Chief Officer of Police for each district.⁹² Ireland, of course, was to be subject to much stricter controls. As a consequence of the concern about "savage or semi-civilized tribesmen," the British Government participated in the Paris Arms Convention of 1919. This was apparently a result of the Blackwell Committee's recommendations.⁹³

The Blackwell Committee's fear of native rebellion in the Empire is not surprising. The spectacle of Europeans reduced to the pointless savagery of the Great War certainly took the "advanced" Europeans down a few notches in the estimation of their colonial "children." Nationalist movements grew rapidly throughout many European empires as a result of World War I.⁹⁴

Greenwood makes much of the relationship between the Blackwell Committee's recommendations with respect to "tribesmen in outlying parts of the Empire" and the Firearms Act of 1920.⁹⁵ At first glance, this seems an obscure relationship. The Blackwell Committee hoped primarily to reduce the supply of surplus military arms. Reducing domestic sales in Britain would have been a very indirect way of disarming rebels in Kashmir or Burma. But the Firearms Act of 1920 included two quite separate sections: one that restricted firearms and ammunition ownership in Britain, and another that controlled export. From the standpoint of the rights of Englishmen, the export provisions are irrelevant, and will not be further addressed in this paper.

90. GREENWOOD, *supra* note 6, at 36 quoting COMMITTEE ON THE CONTROL OF FIREARMS, REPORT, 1918.

91. *Id.* at 38 (quoting COMMITTEE ON THE CONTROL OF FIREARMS, REPORT, 1918).

92. *Id.* at 39.

93. *Id.* at 38.

94. DAVID B. KOPEL, THE SAMURAI, THE MOUNTIE, AND THE COWBOY: SHOULD AMERICA ADOPT THE GUN CONTROLS OF OTHER DEMOCRACIES 72-73 (1992).

95. GREENWOOD, *supra* note 6, at 36-39.

As World War I came to a conclusion, the labor strife of the pre-war period again reared its head, with one additional ingredient in the caustic stew: Communism. An August 1917 *Memorandum by Professor E. V. Arnold of Bangor University* was circulated to the Cabinet at the request of Lord Milner.⁹⁶ Professor Arnold warned the Cabinet of what he termed “Labour in Revolt,” a movement of younger workers that did not follow the trade union leaders.⁹⁷ Professor Arnold described “Labour in Revolt” as a doctrinaire revolutionary Marxist movement.⁹⁸ While the words “Communist” and “Bolshevik” never appear in Arnold’s memorandum, his language leaves no doubt that he was describing this movement.⁹⁹ Arnold also carefully distinguished this movement from the Labour Party itself.¹⁰⁰

In addition to the Communist workers, an additional faction became a recurring concern of the Government: soldiers. In September 1917, Lord Curzon circulated to his fellow Cabinet ministers a letter from the Bishop of Oxford entitled *Alleged Disaffection Existing Among British Troops at Home*.¹⁰¹ The Bishop’s letter warned that hunger, low pay, and a refusal to allow leave caused British soldiers to secretly put up a placard “to say they were going to imitate the Russian soldiers” and that they engaged in “open sedition in speech.”¹⁰²

Late in 1917, the Bolshevik Revolution in Russia certainly added fuel to the fire of fear in the Cabinet. As World War I dragged to a close, conditions in Britain created increasingly serious strikes. The strike by the London police force on August 30, 1918 was one of the most frightening such industrial actions of the time. Out of a force of 19,000 policemen, 10,000 failed to show up for work.¹⁰³ Lloyd George later claimed Britain “was nearer to Bolshevism that day than at any other time since.”¹⁰⁴ Sir Basil Thomson, Scotland Yard’s Director of Intelligence, wrote in late 1918 that “England would be spared the full horrors of Bolshevism,” yet also believed that the nation could be severely damaged by “serious labour disturbances, carried on with the sympathy of the Police.”¹⁰⁵ Thomson also believed that “serious labour disturbances” were beyond the control of the police in big cities.¹⁰⁶

Immediately after the war, a wave of Communist revolutionary actions took place on the continent.¹⁰⁷ In North America, government leaders interpreted a series of disturbances and strikes as evidence of Communist subversion.¹⁰⁸ These events created increasing levels of fear within the Cabinet and the British intelligence service. One

96. Memorandum of Professor E.V. Arnold of Bangor University, Aug. 1917, PRO. CAB. 24/24/160.

97. *Id.* at 160.

98. *Id.* at 160-62.

99. *Id.*

100. *Id.*

101. WAR CABINET, ALLEGED DISSATISFACTION EXISTING AMONG BRITISH TROOPS AT HOME, Sept. 8, 1917, PRO. CAB. 24/25/355.

102. *Id.*

103. CHRISTOPHER ANDREW, *HER MAJESTY’S SECRET SERVICE: THE MAKING OF THE BRITISH INTELLIGENCE COMMUNITY* 228 (1986).

104. *Id.*

105. *Id.* at 229.

106. *Id.*

107. KOPEL, *supra* note 94, at 73.

108. *Id.* The infamous “Palmer Raids” of the era were a result of this popular fear as it reached the highest levels of government.

report passed up the chain of command in early 1919 with an approving cover note asserted:

I now find myself convinced that in England Bolschevism [sic] must be faced and grappled with, the efforts of the International Jews of Russia combated and their agents eliminated from the United Kingdom. Unless some serious consideration is given to the matter, I believe that there will be some sort of Revolution in this country and that before 12 months are past¹⁰⁹

The events of early 1919 seemed to confirm these fears of Communist revolution. A general strike in Glasgow led to the raising of the red flag over city hall.¹¹⁰ The *Glasgow Herald* called it a first step toward Bolshevism, and the Secretary of State for Scotland called it a Bolshevik rising.¹¹¹ The army was mobilized, but the police restored order without the military's assistance.¹¹² In retrospect, the general strike in Glasgow was *not* the first step of revolution, but it is certainly understandable that the intelligence service, the Cabinet, and the king, misread it as such.¹¹³

The concern about revolutionary violence appears to have motivated similar firearms control laws in the Dominions.¹¹⁴ In Canada, the Winnipeg General Strike in May 1919 led to violence.¹¹⁵ Thomson's January 22, 1920, *Report on Revolutionary Organizations in the United Kingdom* described it as "not an industrial dispute but really an attempt to overthrow the constitutional government and to replace it by a form of Soviet Government planned and fashioned by the Industrial Workers of the World."¹¹⁶

The "alien scum" were blamed for the labor strife.¹¹⁷ In response, the Canadian Parliament passed a law in 1920 requiring a permit for anyone to possess any gun.¹¹⁸ The Canadian Parliament repealed the permit requirement for Canadian citizens for rifles and shotguns (though not for handguns) in 1921.¹¹⁹

New Zealand adopted a mandatory firearm registration law in 1920 because returning servicemen had brought pistols and automatic weapons back to New Zealand.¹²⁰ "Revolution had occurred in Russia and there was a fear that large scale

109. Walter Long to Lloyd George, January 9, 1919, HLRO Lloyd George MSS F/33/2/3, *quoted in* ANDREW, *supra* note 103, at 232.

110. ANDREW, *supra* note 103, at 233-34.

111. Colin Nicholson, EDWIN MORGAN: INVENTIONS OF MODERNITY 74 (Manchester University Press 2002).

112. ANDREW, *supra* note 103, at 233-34.

113. *Id.*

114. *See* Olson & Kopel, *supra* note 8, at 411-12.

115. *Id.*

116. REPORT ON REVOLUTIONARY ORGANISATIONS IN THE UNITED KINGDOM, Jan. 22, 1920, PRO CAB 24/96/327.

117. KOPEL, *supra* note 94, at 141.

118. *Id.*

119. *Id.* Kopel suggests in an endnote that British and Dominion gun control efforts may also reflect the generalized revulsion at violence occasioned by the pointless bloodletting of World War I. *Id.* at 176 n.31. Joyce Lee Malcolm makes much the same suggestion. MALCOLM, *supra* note 16, at 172. In neither case do they provide a source for this idea, but see 130 PARL. DEB., H.C. (5th ser.) (1920) 657, for a Firearms Act opponent's impression of why such a measure might be especially needed after a war.

120. KOPEL, *supra* note 94, at 237.

industrial demonstrations or even riot could occur here.”¹²¹ At least one scholar claims that Australia’s gun control laws, adopted on a state-by-state basis during the period between 1921 and 1932, were adopted for similar reasons.¹²²

How should the British government respond to these fears? There were differing proposals within the Cabinet. On February 27, 1919, Cabinet Secretary Thomas Jones wrote to Sir Maurice Hankey about the increasing problem of labor strife, and told how several Cabinet ministers responded to proposals to defuse the concerns of the working classes with social policy changes.¹²³ These proposals drew “rather long faces” from several Cabinet ministers, who wanted to restrict spending.¹²⁴ Remarking on the amount the ministers were willing to spend, Jones wrote, “It was blank nonsense to talk of a bagatelle like £71,000,000—a cheap insurance against Bolshevism.”¹²⁵

Crisis after crisis increased the Cabinet’s fears of revolution. When the Triple Alliance of miners, railway workers, and transport workers demanded higher wages and shorter hours in February 1919, Prime Minister Lloyd George appealed to patriotism, asserting that the government would fall if they called a general strike: “I feel bound to tell you that in our opinion we are at your mercy. The Army is disaffected and cannot be relied upon In these circumstances, if you carry out your threat and strike, then you will defeat us.”¹²⁶

Throughout 1919, fear of revolution rose and fell, depending on the events of the moment, but the undercurrent of fear never went away.¹²⁷ The Cabinet’s Strike Committee responded to a railroad strike on September 26, 1919, with orders to the army to secure railroads and power stations against sabotage.¹²⁸ The Committee also concluded that a “Citizen Guard” was now necessary to deal with the danger of a general strike.¹²⁹ Though the Cabinet abandoned the Citizen Guard plans when the railroad strike was settled on October 5, 1919,¹³⁰ this proposal—and the fears it represented—reappeared in 1920.¹³¹ Perhaps indicative of the Cabinet’s belief in the power of armed civilians, the British government reacted with anger at a 1920 plan by the Soviet government to impose a “civic militia” of armed Polish workers on defeated Poland, for the apparent purpose of bringing about a Communist coup.¹³²

As 1920 opened, the Cabinet’s fear of Communist revolution was again on the rise. The January 7, 1920, report *The Labour Situation* from the Ministry of Labour warns of a leftist newspaper that “announces an attempt is to be made within the next

121. NEW ZEALAND POLICE DEPARTMENT, BACKGROUND TO THE INTRODUCTION OF FIREARMS USER LICENSING INSTEAD OF RIFLE AND SHOTGUN REGISTRATION UNDER THE ARMS ACT 1983, at 2 (1983), reprinted as AUSTRALIAN FIREARMS LAW INSTITUTE, PROJECT FORESIGHT 4 (1984). See also T. M. THORP, REVIEW OF FIREARMS CONTROL IN NEW ZEALAND 10-11 (1997) (containing a report of an Independent Inquiry Commissioned by the Minister of Police).

122. KOPEL, *supra* note 94, at 195, 220 n.18.

123. I JONES, *supra* note 13, at 79-80.

124. *Id.*

125. *Id.* at 80.

126. ANDREW, *supra* note 103, at 234.

127. *Id.* at 238.

128. *Id.*

129. *Id.*

130. *Id.*

131. ANDREW, *supra* note 103, at 238-239.

132. *Id.* at 266.

few months to overthrow democratic government and to set up some form of ‘Soviet’ rule, by means of a ‘general strike,’ and anticipates that this strike will be accompanied by an upheaval in Ireland.”¹³³

The workers were also described as increasingly unwilling to listen to labor union leaders,¹³⁴ with the more radical labor newspapers distinguishing between “reactionary Trade Union officials” and radical parts of “political Labour.”¹³⁵ Director of Intelligence Thomson’s January 9, 1920, *Report of Revolutionary Organisations in the United Kingdom* warned that while miners were losing faith in the strike as a tool for achieving their ends, “There is abundant evidence that the great mass of Labour is drifting steadily to the Left.”¹³⁶ Cabinet Secretary Sir Maurice Hankey’s letter of January 17, 1920, to Jones discusses a Cabinet meeting about the industrial situation:

C.I.G.S. [Chief of the Imperial General Staff] also is positively in a state of dreadful nerves on the subject. Churchill is the only one who is sane on this subject From a meeting yesterday evening I came away with my head fairly reeling. I felt I had been in Bedlam. Red revolution and blood and war at home and abroad!¹³⁷

While many of Thomson’s intelligence reports seem to fit into the concern about Communist revolution, others suggest that he did not consider this a likely occurrence—unlike the Cabinet ministers. Thomson’s January 22, 1920, *Report on Revolutionary Organisations in the United Kingdom* acknowledged that reports were circulating in London “that a revolution is to be expected within the next two months.”¹³⁸ But Thomson’s report also insisted “the minority that would like to see a sudden and violent revolution is ridiculously small.”¹³⁹ Instead, his concern was about “[t]he flow of Bolshevik propaganda, which is very ably written, will inevitably be greatly increased when trade is opened with Russia.”¹⁴⁰ Thomson proposed new legislation instead to deal with such propaganda; he worried more about the pen than the sword.¹⁴¹

A worrisome issue raised in Thompson’s January 9, 1920, *Report on Revolutionary Organisations in the United Kingdom* was unemployment among recently demobilized soldiers, “which is driving many of the more moderately-minded ex-Service men into the revolutionary camp.”¹⁴² The demobilization and reduction of war production produced a rapid increase in unemployment in 1919, only somewhat alleviated in 1920.¹⁴³

133. MINISTRY OF LABOUR, THE LABOUR SITUATION, Jan. 7, 1920, PRO. CAB. 24/96/52.

134. *Id.* at 53.

135. *Id.* at 52.

136. REPORT ON REVOLUTIONARY ORGANISATION IN THE UNITED KINGDOM, Jan. 9, 1920, PRO. CAB. 24/96/72.

137. 3 JONES, *supra* note 87, at 97.

138. REPORT ON REVOLUTIONARY ORGANISATIONS IN THE UNITED KINGDOM, Jan. 22, 1920, PRO. CAB. 24/96/315.

139. *Id.*

140. *Id.* at 316.

141. *Id.*

142. REPORT ON REVOLUTIONARY ORGANISATION IN THE UNITED KINGDOM, Jan. 9, 1920, PRO. CAB. 24/96/71-72.

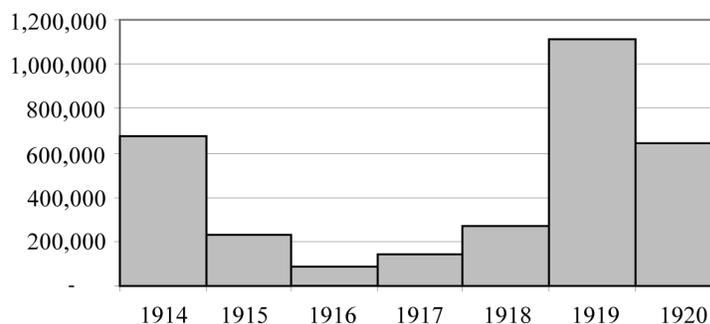
143. ALAN J. P. TAYLOR & JAMES MORRIS ROBERTS, PURNELL’S HISTORY OF THE 20TH CENTURY 4:929 (Purnell 1974) (1971). The statistics for 1914 and 1915 come from a different series than 1916-1920, and may not be strictly comparable.

Thomson's January 9, 1920, report also warns of the growth of the National Union of Ex-Service Men. The National Union was a radical faction of discontented veterans that was developing ties to more mainstream veterans' organizations, as well as to officials of the Police Union.¹⁴⁴ The goal of the National Union, in the words of its national secretary, was to form "Sailors', Soldiers' and Workers' Councils with a view to taking over the means of production, distribution and exchange and thereby freeing the workers from wage slavery and exploitation."¹⁴⁵ Thomson's January 22, 1920, *Report on Revolutionary Organisations in the United Kingdom* also warned of the close ties between the National Union, the Labour Party, and a supposed "Red Army" being organized in Reading by an "Ex-Lieutenant Nicholson."¹⁴⁶

Why was there such concern about veterans? We can deduce from Secret Cabinet reports that some of the concern stemmed from the weakness of the military. Sir Henry Wilson, Chief of the Imperial General Staff, issued a report titled *Capacity of the Army to Assist the Civil Power in Industrial Disturbances*.¹⁴⁷ The report warned in its somewhat ungrammatical cover memorandum, "[T]he whole question of the use to be made of the Army in any future internal trouble gives grave cause for anxiety. Not only will the Army be . . . far too weak to give the full measure of assistance to the police necessitated by disturbances on a large scale."¹⁴⁸

After warning that the Army lacked the capacity to guard its own facilities without assistance from the civil authorities, Wilson also cautioned, "If it is called upon at an early stage to assist the Civil Authorities, it will be dispersed, and thus the last reserve

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Id.

144. REPORT ON REVOLUTIONARY ORGANISATION IN THE UNITED KINGDOM, Jan. 9, 1920, PRO. CAB. 24/96/76.

145. *Id.*

146. REPORT ON REVOLUTIONARY ORGANISATIONS IN THE UNITED KINGDOM, Jan. 22, 1920, PRO. CAB. 24/96/321-22.

147. CAPACITY OF THE ARMY TO ASSIST THE CIVIL POWER IN INDUSTRIAL DISTURBANCES, Jan. 3, 1920, PRO. CAB. 24/96/248.

148. *Id.*

in the hands of the Government will be dissipated.”¹⁴⁹ Wilson believed that at least 40,000 troops would be needed to restore order in an emergency.¹⁵⁰ By March, the British Army in Great Britain would be reduced to 25,000, many of them “young soldiers with little training, insufficient military discipline, very short of good and reliable non-commissioned officers.”¹⁵¹ Most troubling of all to Wilson was that 40,000 troops assumed “an adequate police force is in existence,” an assumption that he specifically denied.¹⁵²

From the covering memorandum on Wilson’s report, it is clear that the problem of insufficient troops to restore order had been a concern of the Cabinet since at least November 18, 1919.¹⁵³ In early January 1920, Sir Eric Geddes, Chairman of the Cabinet’s Supply and Transport Committee, gave an even more frightened description of the inability of police and army to protect the Government:

The Minister of Labour has reported that there is a possibility of a revolutionary outbreak in Glasgow, Liverpool, or London in the early spring, when a definite attempt may be made to seize the reins of Government. In normal circumstances the chances of success of such an attempt would probably be small, but the danger would, in my opinion, be serious if the attempt were made when the country’s resources had already been taxed by the strain of a great industrial crisis, such as a strike of coal miners. It is not inconceivable that a dramatic and successful coup d’etat in some large centre of population might win the support of the unthinking mass of labour, exasperated as the latter is by the increasing cost and difficulty of living.¹⁵⁴

The Minister of Agriculture and Fisheries’ January 26, 1920, memorandum *Industrial Disturbances* echoed this concern: “[T]he revolutionaries in this country have been pushing their propaganda, unhindered and unanswered, and perfecting their arrangements for a trial of strength in March or April.”¹⁵⁵

The concerns about the disaffected veterans are now more understandable. A weak army of raw recruits might be successful against unarmed workers with no combat experience, but raw recruits might well break under fire from determined combat veterans.

To reinforce a weak and perhaps untrustworthy police force and army, Cabinet ministers had previously proposed a “citizen guard” of politically reliable men to fight against a Bolshevik revolution.¹⁵⁶ Thomas Jones’s notes from the February 2, 1920 conference tell us that “[d]uring the discussion Bonar Law so often referred to the stockbrokers as a loyal and fighting class until one felt that potential battalions of stockbrokers were to be found in every town.”¹⁵⁷

149. *Id.*

150. *Id.* at 249.

151. *Id.* at 249.

152. *Id.*

153. *Id.* at 248.

154. MEMORANDUM BY THE CHAIRMAN OF THE SUPPLY AND TRANSPORT COMMITTEE, PRO. CAB. 24/96/311.

155. INDUSTRIAL DISTURBANCES, MEMORANDUM BY THE MINISTER OF AGRICULTURE AND FISHERIES, Jan. 26, 1920, PRO. CAB. 24/96/349.

156. ANDREW, *supra* note 103, at 238-239.

157. I JONES, *supra* note 13, at 101.

Instead of the “Citizen Guard,” Permanent Home Secretary Sir Edward Troup proposed on January 17, 1920, to create a temporary volunteer force of demobilized soldiers to back up the police.¹⁵⁸ He hoped that it would be possible to filter out those who might fight on the side of the insurgents.¹⁵⁹

More evidence of the Cabinet’s fears can be found in Sir Maurice Hankey’s January 17, 1920, letter to Thomas Jones in which he describes the strategy he suggested to Prime Minister Lloyd George:

1. Make absolutely sure of your arms and munitions.
2. Prepare the cadres of your future organisation.
3. If and when trouble arises, you have only to hold up your little finger to get as many men as you require to ensure security. That is the moment to form your permanent organisation.¹⁶⁰

It appears that while Jones and Hankey believed that the risk of revolution was greatly exaggerated, many Cabinet ministers believed an attempt at armed revolution was imminent.¹⁶¹ Jones’s notes for the February 2, 1920, meeting about industrial unrest report that Lloyd George “played the rôle of taking the revolution very seriously.”¹⁶² Jones seemed to think that while George regarded the concern as overblown, he was reluctant to say so to his ministers.¹⁶³

At the same meeting, an exchange between Prime Minister Lloyd George and his Cabinet ministers shows the level of fear that drove the government. This fear of revolution was the *only* stated reason for restrictive firearms licensing in the classified documents or memoirs that predates introduction of the Bill in Parliament:

The P.M. ‘You won’t get sabotage at the beginning of the strike.’

Roberts. ‘You will have to take sabotage at the beginning of the strike into account. There are large groups preparing for Soviet government.’

Eric Geddes. ‘You have got to reckon on the electric power stations being put out of order.’

....

Macready. ‘On our information we do not run to the revolution yet. If there is an outbreak of strikes and if there is a sufficient force available, civil or military, to stop it *at once*, it will fizzle out. We were told today that 700 rifles were concealed in Liverpool. Supposing sabotage and violence get ahead it is very difficult to say how far they will go. We are taking private steps to secure the aid of a certain class of citizen.’

....

Long. ‘The peaceable manpower of the country is without arms. I have not a pistol less than 200 years old. A Bill is needed for licensing persons to bear arms. This has been useful in Ireland because the authorities know who were possessed of arms.’

Shortt. ‘The Home Office has a Bill ready but in the past there have always been objections.’

158. MEMORANDUM BY SIR E. TROUP, Jan. 17, 1920, PRO. CAB. 24/96/312-14.

159. *Id.* at 313.

160. 1 JONES, *supra* note 13, at 98.

161. *Id.* at 99.

162. *Id.*

163. *Id.* at 103.

Bonar Law. ‘All weapons ought to be available for distribution to the friends of the Government.’¹⁶⁴

There is no “smoking gun” to establish that this discussion on February 2, 1920, led to the introduction of the Firearms Act in the House of Lords less than two months later on March 31.¹⁶⁵ Nonetheless, Home Secretary Shortt’s assertion before the House of Commons on June 8 that the bill was to disarm “criminals or weak-minded persons and those who should not have firearms”¹⁶⁶ seems ingenuous, at best.

Significantly, the manner in which the bill was brought to a vote in the Commons suggests that the Government did not want the bill carefully examined:

After its first reading in the Commons on June 1, 1920, it was scheduled for a second reading and full debate the following day. This was cancelled. Then, at 10:40 on the evening of June 8, the bill was brought back without warning and with two other bills scheduled for consideration in the few minutes remaining before adjournment. Only a handful of those members present were given copies of the text.¹⁶⁷

M.P. Hogge complained, “I have only looked at the Bill within the last 10 minutes.”¹⁶⁸ This attempt to ram the bill through led to vigorous objection, not only to the bill on its own merits, but also to the attempt to sneak it past the Commons.¹⁶⁹

One opponent pointed to the long history of the right to keep and bear arms in Britain.¹⁷⁰ No one argued that firearms in private hands were needed for personal protection. M.P. Kiley complained that if the goal was to disarm burglars, the Firearms Act would not be effective, since burglars would “burgle a place where they are kept in stock, and he could then get them in a wholesale way.”¹⁷¹ Kiley went on to suggest that if Shortt’s claimed purpose for the law was to disarm criminals, the bill should be limited to that purpose.¹⁷² In Kiley’s view, “the Bill goes far beyond things of that kind.”¹⁷³

Hogge complained that such discretion in license issuance would be applied in a discriminatory manner based on class.¹⁷⁴ While acknowledging that the conditions of Ireland might justify such action, he and other members of the House of Commons expressed concern if such discretion were allowed in Britain.¹⁷⁵ Kiley went further. Based on his experience with Home Secretary Shortt, and his several predecessors during the war, he said:

I regret any further powers being left to the present Home Secretary, because my experience of him has been that he has always taken the strictly legal view, and

164. *Id.* at 100 (footnote omitted).

165. 39 PARLIAMENTARY DEBATES, NEW SERIES, HOUSE OF LORDS 815.

166. 130 PARL. DEB., H.C. (5th ser.) (1920) 361.

167. MALCOLM, *supra* note 16, at 173 (footnote omitted).

168. 130 PARL. DEB., H.C. (5th ser.) (1920) 363-64.

169. *Id.* at 656-57.

170. *Id.* at 658.

171. *Id.* at 368.

172. *Id.* at 368-69.

173. *Id.* at 369.

174. *Id.* at 365.

175. *Id.* at 364-65.

anything in the nature of a sympathetic view of his duties has been entirely absent. For that reason I am unwilling to leave anything more to the right hon. Gentleman's unfettered discretion.¹⁷⁶

One of the most interesting objections was from M.P. Lieutenant-Commander Kenworthy. His argument was based on the Whig view of history that arms in private hands acted as a restraint on abuses by the government:

In the past one of the most jealously guarded rights of the English was that of carrying arms. For long our people fought with great tenacity for the right of carrying the weapon of the day, the sword, and it was only in quite recent times that that was given up. It has been a well-known object of the Central Government in this country to deprive people of their weapons.¹⁷⁷

After discussing Henry VII's attempt at disarming the great nobles, Kenworthy pointedly warned that disarming the population would not be an effective way of breaking popular control:

I do not know whether this Bill is aimed at any such goal as that but, if so, I would point out to the right hon. Gentleman that if he deprives private citizens in this country of every sort of weapon they could possibly use, he will not have deprived them of their power, because the great weapon of democracy to-day is not the halberd or the sword or firearms, but the power of withholding their labour. I am sure that the power of withholding his labour is one of which certain Members of our Executive would very much like to deprive him.¹⁷⁸

The Earl of Winterton responded that Kenworthy

holds the most extraordinary theories of constitutional history and law. His idea is that the State is an aggressive body, which is endeavoring to deprive the private individual of the weapons which Heaven has given into his hands to fight against the State Holding those views, and believing that it is desirable or legitimate or justifiable for private individuals to arm themselves, with, as far as I understand his remarks, the ultimate intention of using their arms against the forces of the State, he objects to this Bill. There are other people who hold those views in this country, and it is because of the existence of people of that type that the Government has introduced this Bill¹⁷⁹

Winterton thus stated directly a reason for the bill's introduction that was in line with what Shortt had said in the secrecy of a cabinet meeting,¹⁸⁰ but which was contrary to Shortt's representations to Parliament.¹⁸¹

In the ensuing exchange, Kenworthy reiterated that "the very foundation of the liberty of the subject in this country is that he can, if driven to do so, resist You can only govern with the consent of the people."¹⁸² Winterton responded, "I say it is

176. *Id.* at 367-68.

177. *Id.* at 658.

178. *Id.* at 658-59.

179. *Id.* at 662-63.

180. 1 JONES, *supra* note 13, at 99.

181. *See supra* note 168 and accompanying text.

182. 130 PARL. DEB., H.C. (5th ser.) (1920) 663.

intolerable that, at this time, such a doctrine should be preached in this House”¹⁸³ When Kenworthy, a liberal, asked Winterton, a conservative, about the Ulster Volunteers, who had threatened rebellion before the war with the encouragement of the Conservative Cabinet minister Bonar Law who was now a part of the Cabinet that sought this law, Winterton refused to answer the question.¹⁸⁴

Winterton also insisted, “Before the War, the majority of the people in this country had almost forgotten that there were such things as firearms. . . .”¹⁸⁵ Our examination of the popular literature from the pre-war period suggests otherwise.¹⁸⁶

The bill passed by a vote of 254 to 6.¹⁸⁷ What significance is there in such a lopsided vote? First of all, Kenworthy was not simply a traditional English gentleman, preserving obsolete liberties for their own sake. Thomson’s January 22, 1920, “Report on Revolutionary Organisations in the United Kingdom” devoted an entire heading and paragraph to Kenworthy:

The member for Hull has been very active in his own district during the recess. He has addressed many meetings and has been busy amongst the seafaring population, to whom he has promised his support for an 8 hour day. Under his influence the Hull Junior Liberal meetings have become practically socialist. He is anxious to obtain a passport for Moscow.¹⁸⁸

This would suggest that Kenworthy’s interest in widespread arms ownership was not entirely academic. It might also explain why the vote was so lopsided in the House of Commons, where we would expect Kenworthy’s views to have been at least as well known as they were to the Director of Intelligence.

What other evidence is there that would tell us something of the purpose of the Firearms Act of 1920? The Firearms Act licensed handguns and rifles.¹⁸⁹ Concealable firearms have been the weapon of choice for criminals for a very long time, simply because they provide an element of surprise. The pre-war laws regulating the purchase and carrying of firearms applied only to handguns for that reason.

If the Firearms Act of 1920 had licensed only handguns, Shortt’s claims before the Commons would be at least superficially plausible. If the Firearms Act of 1920 had included *all* firearms, it might be argued that it had been drafted in an overly broad manner in an attempt to disarm criminals. However, the inclusion of rifles (but not shotguns) in this licensing measure suggests that the fear of Bolshevik revolution expressed throughout more than two years of Cabinet discussions and reports was what really drove this bill. In a revolutionary struggle against soldiers, a shotgun’s value is limited because its range is limited. Soldiers armed with rifles can engage an insurgent force armed with shotguns at a distance of 100 to 150 yards with no fear of serious injury, even if the insurgents outnumber the soldiers by a significant margin. Soldiers

183. *Id.*

184. *Id.* at 665.

185. *Id.* at 664.

186. *See supra* text accompanying notes 61-67.

187. 130 PARL. DEB., H.C. (5th ser.) (1920) 684.

188. REPORT ON REVOLUTIONARY ORGANISATIONS IN THE UNITED KINGDOM, Jan. 22, 1920, PRO. CAB. 24/96/323.

189. GREENWOOD, *supra* note 6, at 45.

confronting revolutionaries with *rifles*, however, would be at serious risk of injury or death, depending on the number or marksmanship of the revolutionaries.

Furthermore, the concern about radicalized veterans that play such a prominent part in secret reports throughout 1919 and 1920 is easy to understand as part of the fear of revolution. Contrary to the myth of the Minuteman in the American Revolution, armed civilians have seldom played a significant effective part in any war against an organized military. The major deficiency of armed civilians is partly a shortage of modern weapons of mass destruction, partly a matter of training, and partly the psychologically toughening experience of combat itself.¹⁹⁰

The Cabinet imagined that there were large numbers of radicalized veterans of World War I.¹⁹¹ Had this been the case, they would have had the training and combat experience to make them a serious fighting force, especially since, by the admission of General Wilson, much of the British Army in England at that time consisted largely of recent recruits without combat experience.

V. THE PROXIMATE CAUSE IDENTIFIED

The evidence is clear that the proximate cause of the Firearms Act of 1920 was a fear of revolution. The Cabinet believed a revolution might enjoy sufficient popular support to actually overthrow the lawful government. Home Secretary Shortt's statements to the Commons about disarming criminals, while a plausible explanation for the licensing of *handguns*, are not supported by Jones's diary or the secret Cabinet papers. There is no written evidence to substantiate Cabinet concerns about ordinary crime,¹⁹² but enormous evidence that the Cabinet believed a violent political revolution

190. Charles J. Dunlap, Jr., *Revolt of the Masses: Armed Civilians and the Insurrectionary Theory of the Second Amendment*, 62 TENN. L. REV. 642:3, 656-73 (1995). The Authors agree with Dunlap's analysis of the deficiencies of militias and other irregular untrained forces engaged in *direct* combat conflict with an organized military. The Authors, however, emphatically disagree with many of Dunlap's conclusions with respect to the ability *and willingness* of the U.S. military to suppress a broad-based armed civilian revolt in the United States.

191. The Firearms Act provided a special exemption for "retired and reserve officers" who had kept their service sidearms. GREENWOOD, *supra* note 6, at 49. They were allowed to keep them without a license—but only if they had no ammunition, and if the local chief officer of police did not object. *Id.* It would appear that the Government mistrusted not only the demobilized lower ranks, but also retired officers.

192. The British Home Office provides little, compared to the United States, in the way of gun crime statistics. But, even in the United States, with its some 20,000 gun control laws (a number settled upon and used by all participants in the United States debate) and battalions of social scientists, there is *no proof* that *any* gun control law or series of gun control laws has reduced violent crime. Even the federal government's National Academy of Science (NAS) agrees with this conclusion. In 2004, a NAS committee produced a report stating:

[D]espite a large body of research, the committee found *no credible evidence* that the passage of right-to-carry laws decreases or increases violent crime, and there is almost *no empirical evidence* that the more than 80 prevention programs focused on gun-related violence have had any effect on children's behavior, knowledge, attitudes, or beliefs about firearms. The committee found that the data available on these questions are *too weak* to support unambiguous conclusions or strong policy statements.

NATIONAL RESEARCH COUNCIL, FIREARMS AND VIOLENCE: A CRITICAL REVIEW 2 (Charles F. Wellford et al. eds., 2005), available at http://www.nap.edu/openbook.php?record_id=10881&page=2.

was imminent in which the police and military would be outnumbered by combat veterans. The functional analysis of the Firearms Act is consistent with this fear of revolution, rather than a fear of non-political crime.

Based on what the Cabinet believed might happen, the decision to restrictively license rifles in the interests of self-preservation made perfect sense. It is, however, hardly a proud moment, for it suggests the Cabinet believed the masses were so opposed to the Government that large numbers of them were ready to rise up—and the Government was prepared to deny even a “true, ancient and indubitable right”¹⁹³ of Englishmen in order to preserve a system of government that had lost much of its legitimacy in the pointless and brutal bloodshed of World War I.

In 2003, an earlier Task Force sponsored by the Centers for Disease Control and Prevention reached a similar conclusion, stating that “[i]n summary, the Task Force found insufficient evidence to determine the effectiveness of any of the firearms laws reviewed for preventing violence.” TASK FORCE ON COMMUNITY PREVENTATIVE SERVICES, FIRST REPORTS EVALUATING THE EFFECTIVENESS OF STRATEGIES FOR PREVENTING VIOLENCE: FIREARMS LAWS (Oct. 3, 2003), <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5214a2.htm>. See also Gary Kleck & E. Brett Patterson, *supra* note 1, at 275-77.

193. MALCOLM, *supra* note 16, at 115.