

in Great Britain



by Jan A. Stevenson

Most people of retirement age, though they may not realise it, were born at a time when there was no firearms legislation to speak of in this country. Nor had there ever been, for the first Firearms Act of any substance was that of 1920. The 1920 Act was a comprehensive one and gave Britain an extensive system of controls that have rarely been exceeded in a democratic society. Subsequent enactments have put more flesh on the bones, but the structure of controls that the government of the day devised, serves us still.

From the point of view of social history, as recent research has made clear, the 1920 Act is a particularly important document. It marks a profound shift—indeed a reversal—in the British state's attitude toward its citizens. In 1900 the Prime Minister said that he would "laud the day when there was a rifle in every cottage in England." The Lord Mayor hosted a meeting at Mansion House, attended by, among others, the Duke of Westminster, the Archbishop of York and the Lord Mayor of Liverpool, with the purpose of founding a,

Society of Working Men's Rifle Clubs, for facilitating rifle shooting, more especially in the evening, with small bore rifles and inexpensive ammunition, as an ordinary branch of recreation by working men's and working boys' clubs and institutions.

The Duke of Norfolk undertook to chair the new Association while Lord Roberts, then Commander-in-Chief, had agreed to accept the presidency on his retirement from the Army.

"A rifle in every cottage..." Lord Salisbury and his Committee of National Defence contemplate a map of South Africa, where a few thousand farmers had seen off Europe's proudest professional army. How would England have fared in their place? Standing (from left): G.J. Goschen, the Marquis of Lansdowne and the Duke of Devonshire. Seated, Lord Salisbury (Prime Minister for 13½ years) and his nephew, A.J. Balfour, who succeeded him in 1903.

According to *The Times*:

...the scheme would be a co-operative one, that is the gentlemen of the country would contribute to the funds, whilst the working men would be expected to join the clubs and make themselves efficient in the matter of rifle shooting.

This was very different from the purpose of the 1920 Act, which was precisely to ensure that working men would not be able to lay hands on a rifle

Sir Nevil Macready, Commissioner of Police, arranged for nationwide stockpiling so that Tory sympathisers could be issued with arms. Registration lists would facilitate confiscation of those in other hands.



or make themselves proficient in its use. It was not deemed politic, however, to say so, and the bill was put through as a crime prevention measure. Its progress through parliament had been carefully prepared, and it encountered very little opposition.

Police Superintendent Colin Greenwood who, as a Cropwood Fellow at the Institute of Criminology, University of Cambridge, during 1970-71, was the first to conduct serious, scholarly research in this field, recalled some years later how baffled he had been by the motivation of the 1920 Act.

The question troubled me for some time because I was naive enough to accept the assurances of Ministers of the day that their legislation was aimed at the armed criminal...During the period 1911 to 1913, firearms were involved in an average of 45 crimes of all types per year. During the period 1915 to 1917, the average had fallen to 15 cases per year. Would to God that we could have such figures today. Why, then, was legislation introduced?... It was not until I read the diaries of the then Cabinet Secretary that the truth emerged. [Speech; Rhodes House, Oxford, June 1983].

The truth, as Colin Greenwood belatedly discovered, and as recently released Cabinet papers have underlined, was that the Government was extremely concerned by the possibility of a Bolshevik style revolution in Britain. The police were insufficient to deal with the anticipated troubles; the Army, after demobilisation of conscripts, would be insufficient as well. According to the Chief of the Imperial General Staff, there would soon be only 38 Regular Army battalions in Britain.

On the assumption that an adequate police force is in existence, it is considered essential to maintain the infantry garrisons in Great Britain at not less than 40,000 men in order to give a minimum strength of 30,000 effective bayonets for employment in an emergency. [PRO CAB 24/96 XCH 62903]

The Chief of the I.G.S. was unable to guarantee this beyond March of 1920 and added that, "Further, an adequate police force does not apparently exist." He warned that if the Army were called upon at an early stage of civil disturbances, "it will be dispersed, and thus the last reserve in the hands of the Government will be dissipated."

Sir Eric Geddes, Minister of Transport, complained that there were only eight battalions in the north, and he feared,



...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...It is not inconceivable that a dramatic and successful coup d'état in some large centre of population might win the support of the unthinking mass of labour...[PRO CAB 25/20]

The Home Secretary reminded the Cabinet that the Bolsheviks had staged a revolution in Winnipeg, and now that the wartime blockade was dismantled, their emissaries could be expected in Britain, doubtless bearing vast quantities of forged £5 notes such as had been discovered in Odessa, when the White Russian Army had taken the city.

Geddes proposed:

...a meeting of Mayors of provincial cities [to] ascertain from them how far they are prepared to create skeleton organisations locally for dealing with civil disturbances when they occur, such skeleton organisations to be of a secret nature. [PRO CAB 25/20]

A committee chaired by Sir Nevil Macready, Commissioner of the Metropolitan Police, recommended that each regimental depot throughout the country should hold 1,000 stand of arms and appropriate quantities of ammunition as "the best method of making them available to loyalists in the event of an emergency." Bonar Law had urged the month before that, "weapons ought to be available for distribution to friends of the Government." The Prime Minister had been told in Cabinet that, "A bill is needed to licence persons to bear arms. This has been useful in Ireland because the Authorities know whom was possessed of arms." The bill was soon forthcoming. It was introduced into the House of Lords on the 19th of April and sent to the Commons on the 6th of May.

The Home Secretary Mr. Edward Shortt, gave no hint of the matters that were so tormenting the Cabinet. The bill, he assured the House, was,

...designed to maintain greater control so that, as far as possible, criminals or

weak minded persons and those who should not have firearms may be prevented from having these dangerous and lethal firearms. As far as possible, we have provided that legitimate sport should not be in any way hampered, and so that any person who has good reason for possessing firearms, or to whom there is no objection, may be entitled to have them; but we hope, by means of this bill, to prevent criminals and persons of that description from being able to have revolvers and to use them.

These words sound remarkably similar to those recently uttered by today's Home Secretary, Douglas Hurd. Mr. Shortt's reassuring tone, as he described to the House his concern to protect the public from armed crime whilst safeguarding the legitimate interests of shooting sportsmen, was no doubt in contrast to the atmosphere in the Cabinet Room in Downing Street where he and his colleagues anxiously discussed the possibility of strafing the working class from the air whilst fielding 30,000 bayonets against them on the ground.

What had happened to Lord Salisbury's hope, expressed only two decades earlier, of having a rifle in every cottage? What had happened to the absolute trust on the part of the ruling classes, as exemplified in the foundation of the Society of Working Men's Rifle Clubs, in the patriotism and decency of the working class? The view then was that if Britain should have need to raise a mass army of national defence, the working class would form the infantry, and that the defence of the realm would depend on their ability to use their individual weapons with the expertise born of years of practice. That view, as it turned out, was to be vindicated within fifteen years in the trenches of Northern France. And finally, what made the Government so determined to truncate one of the essential liberties of freeborn English-

5 January, 1911. Scots Guards at Sidney Street are careful not to get their trouser knees dirty. The "seige" inspired Blackwell's draft Pistols Bill, later expanded as the Firearms Act, 1920.

men that they would legislate that liberty to extinction?

Clearly, the Bolshevik Revolution in Russia and the formation of the "Third International" with the object of exporting insurrection, had provided the panic element. But it would be over-simplistic to suggest this as sufficient explanation, for there had been several bills during the pre-war period that had presaged the 1920 Act. During the second reading debate in the House, the Member for Hull, Lt. Commander Kenworthy, expressed great concern:

In the past, one of the most jealously guarded rights of the English was that of carrying arms...It has been a well known object of Central Government of this country to deprive people of their weapons.

The bill itself was based on the secret report of a "purely departmental" committee chaired by Sir Ernley Blackwell, KCB, who had been charged on the 6th December, 1917, to consider the "restrictions which should be imposed upon possession, manufacture, sale, import and export of firearms in the United Kingdom after the war." Blackwell was Assistant Under Secretary of State for the Home Department, and his committee recognised two main sources of postwar danger: the "savage or semi-civilised tribesmen in outlying parts of the British Empire" and,

...the 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.

We might tentatively suggest that the Bolshevik spectre served to focus the anxieties aroused by the pre-war anarchists. The anarchists, however, were regarded for the most part as foreign malcontents rather than as a direct threat to the domestic body politic: Communism, on the other hand,



risked infecting the lower classes across a broad spectrum.

One of the documents that Blackwell's committee considered was the draft pistols Bill of 1911, with which Blackwell himself had been closely involved, but that had never been put before the House. It had, for the first time, incorporated a system of certificates to be administered by the police, and had been intended to stiffen the Pistols Act, 1903, which had succeeded in its passage through Parliament only by virtue of being anodyne. There had been previous attempts to legislate in 1887 and 1893, but these had been soundly rejected on the grounds that they represented an unconstitutional infringement of basic rights.

Of that, there should be little doubt, Sir William Blackstone's *Commentaries* first published in 1765, had meticulously described the development, substance and significance of "...the rights, or as they are frequently termed, the liberties of Englishmen..."

And we have seen that these rights consist, primarily, in the free enjoyment of personal security, of personal liberty and of private property... And lastly, to vindicate these rights, when actually violated and attacked, the subjects of England are entitled, in the first place, to the regular administration and free course of justice in the courts of law; next to the right of petitioning the King and Parliament for the redress of grievances; and lastly, to the right of having and using arms for self preservation and defence.

The right to keep arms no doubt developed as a corollary of the natural



law right of self defence, and by Anglo-Saxon times a corresponding obligation was clearly defined. All able bodied freemen were expected to take part in the "hue and cry" to bring criminals to justice, and to serve in the army in time of war. For both of these purposes, they were expected to maintain arms according to their rank and station. A twice yearly inspection insured that the arms concerned were kept in good order and ready for use.

The Normans retained this system, and indeed refined it. Henry II's Assize of Arms of 1181 detailed the types of weapons which persons of various rank were expected to have on hand, a question that was updated in 1285 by the Statute of Westminster [13 Edw I c6]. The greater one's wealth, the greater one's contribution, but even the poor were under obligation: "...and all others that may shall have bows and arrows." Indeed, firearms were at first regarded by the Crown as noisome, inefficient things that might tempt people to neglect,

...the good and laudable exercise of the longbow which always heretofore hath been the surety, safeguard and continual defence of this Realm of England. [33 Hen VIII c6]

By the end of the 16th century, the musket had displaced the bow as the primary infantry weapon, and by Blackstone's time, the right to bear arms, and specifically firearms, was a well recognised element of the Constitution, existing quite separately from the obligational aspect.

Manchester, 16 August, 1819. The 15th Hussars charge a crowd of 80,000 after the Yeomanry had gone in to arrest a radical speaker, Henry Hunt. The incident at St. Peter's Fields, dubbed "Peterloo", was not soon forgotten.



This was clearly enunciated during the debate on the Seizure of Arms Bill of 1820, in response to a fear of insurrection in the industrializing North. The Luddite violence of 1811 and 1812 had required 12,000 troops to put down, and a resurgence had led to the "Peterloo Massacre" of 1819 in which eleven people were killed and hundreds injured as the Yeomanry dispersed a crowd estimated at some eighty thousand. There was much talk of revolution and reports, no doubt exaggerated, of secret stores of arms and men drilling or training with them.

The Seizure of Arms Act was to authorise justices of the peace to issue warrants for the seizure and detention of arms that might be used by revolutionaries. Parliament recognised that it was on delicate ground and clearly had no wish to abrogate a right. The Act applied only to the two cities and eleven counties in which there was a real fear of unrest, and would lapse after two years. Moreover, firearms (unlike pikes) could only be seized if it could be demonstrated that they were kept for a purpose dangerous to the peace.

Despite the carefully circumscribed terms of the bill, Mr. T.W. Anson contended, during the debate on the 14th December, 1819, that,

The principles on which it [the bill] is founded and the temper in which it is framed appear to me to be so much at variance with the free spirit of our venerated constitution and so contrary to the undoubted right which the subjects of this country have ever possessed—the right of retaining arms for the defence of themselves, their families and properties—that I cannot look upon it without loudly expressing my disapprobation and regret.

After a lengthy debate in which Mr. Anson found strong support, Mr. George Canning, later Prime Minister, summed up for the Government:

I am perfectly willing to admit the right of the subject to hold arms laid down by the Honorable and Learned Gentleman (Mr. Anson), having stated it on the authority of Mr. Justice Blackstone. The doctrine so laid down, I am willing to admit, is no other than the doctrine of the British Constitution. The Bill of Rights, correctly quoted and properly construed, brings me to the construction of the Bill which, in fact, recognises the right of the subject to have arms, but qualifies that right in such a manner as the necessity of the case requires.

It was generally accepted that Mr. Canning had made his case, and



that by tailoring the bill to meet a specific and tightly circumscribed problem, the extent to which he had infringed the rights of the subject was acceptable and met Blackstone's prescription of,

...restraints so gentle and moderate, as will appear on further enquiry, that no man of sense or probity would wish to see them slackened.

Subsequent legislative proposals were less clearly in accord with this principle, and it was to be nearly a century before a measure restricting firearms ownership or use was again enacted. The possible exception that one might cite was the Gun Licence Act of 1870, which required anyone who wished to carry or use a gun outside the curtilage of a dwelling house, to purchase a ten shilling licence at the post office. This, however, was strictly a revenue measure; it remained in force until 1967.

Section 4 of the Vagrancy Act, 1824, made it an offence to be in possession of an offensive weapon with intent to commit a felony. But providing he was free of felonious intent and paid his ten shillings to the post office, the Englishman's right to acquire, possess and carry firearms was uninhibited by law until the twentieth century.

There had been several measures proposed toward the end of the 19th century, but all fell, generally on grounds of unconstitutionality. The Pistols Bill, 1895, made it to a division, where it failed by 183 votes to 75. Mr. C. H. Hopwood, Member for South East Middleton, would appear to have reflected the feeling of the House when he suggested that,

To say that because there were some persons who would make violent use of pistols, therefore the right of purchase or possession by every Englishman should be taken away, is monstrous.

A much diluted bill, however, was to succeed eight years later. The Pistols Act, 1903, provided that before one could purchase a pistol or revolver at retail, one had either to produce a gun licence or game licence, available at the post office, or give reasonable

proof that one was a householder intending to use the pistol in or within the curtilage of his own house, or present a letter, a countersigned by a justice of the peace or a police officer of the rank of inspector or above, that one was departing abroad for a period of six months or more. There was also a bar on retail sales to persons under the age of 18; private sales were outside the scope of the Act. The only effect of the Act was to oblige retail customers who were not householders to pay a ten shilling tax at the post office. The burden of the law was minimal and therefore tolerable.

The purpose of the bill, according to Mr. Hulme, its sponsor, was not to prevent crime but hopefully to eliminate some of the accidents, particularly involving young people, that one heard of from time to time.

Mr. Hulme's intentions notwithstanding, the 1903 Act was soon criticised for not accomplishing what it had not been intended to accomplish, and a much stiffened version was ready for introduction in 1911. Soundings may have indicated that it would encounter the same sort of resistance that had scuttled the 1893 and 1895 bills, however, since it was never brought before Parliament.

This persistent legislative activity from 1893 onward, for all of its lack of success, suggests the emergence of a feeling, in administrative circles, that the Constitution was outmoded in this respect, and that some beneficial effect would accrue from restricting the legitimate private ownership of firearms.

The effect anticipated is not always easy to deduce for, as Greenwood belatedly discovered, legislative proposals sometimes sail under false colours. This could be said to have particularly been the case of the Firearms Act, 1920, the Criminal Justice Act, 1967 (which introduced shotgun controls) and perhaps the current bill as well.

The Firearms Act, 1920, established the framework of controls that has characterised the British system ever since. This was strictly an administrative confection: the Blackwell Committee, upon whose recommendations the Act was based, met in secret and their report was never published. The chairman, Sir Ernley Blackwell, was a senior Home Office official, while the secretary, who was also a member of the committee, was Mr. F.J. Dryhurst, recently Commissioner of the Prison Service. Other members represented the Metropolitan Police, the County and Borough Police Forces, the board of Customs, Board of Trade, the War Office and the Irish Office.

The committee proceeded on the assumptions that controls were desirable and that they would be effective. The Commissioner of Police for the Metropolis had reported that during the three years 1911-1913, there had been 123 cases in which firearms had either been used in crime or had been found in the possession of persons who had come into the hands of the police. For the corresponding period, 1915-1917, there had been 47 cases. Blackwell ascribed this decline, from an average of 41 cases per year to 15.6 cases per year, entirely to the beneficial effects of the wartime Defence of the Realm Regulations, which required a licence for the retail purchase of rifles, pistols and ammunition. Blackwell anticipated that when the Regulations expired, instances of armed crime "may be expected to rise to or above their former level." With hindsight, an armed crime rate in the Metropolis of 47 cases per year sounds Utopian. Blackwell's contention,

That the control of firearms should be made far more stringent than it is now is a proposition that hardly anyone could be found to question, [Blackwell, page 1]

might best be taken in the context of the secrecy with which the Committee undertook its deliberations and its exclusively civil service and police composition.

Blackwell submitted his report on the 16th of November, 1918. On the same day, he wrote to Sir Maurice Bonham Carter at the Ministry of Reconstruction, who had been responsible, along with Sir Edward Troup, for setting the committee up.

Of the report, Blackwell wrote in a covering letter,

It will be better not to publish it. There is a good deal in the Arms Traffic Report that could not be published and as regards our Report, any prolonged discussion with the "trade" is to be avoided. [PRO REC1/342/55946]

"You will see," he assured Bonham Carter, "that we have arrived at framing a fairly stringent system of control."

Stringent it was. Indeed, the certification procedure that Blackwell's committee designed has been recognised as about as stringent as can be effected short of an outright prohibition. The distinctive features are the wide-ranging discretion accorded to chief constables and the burden laid upon the applicant to "satisfy" the chief constable both as to his personal suitability and as to his legitimate requirement for the firearms or ammunition applied for.

Complaints of overzealousness



were almost immediately forthcoming. The first appeal against a chief constable's decision was heard at Middleton Police Court the 20th of December, 1920; the Act had come into effect the 1st of the month previous. The Rev. Henry Evans, vicar of Tonge, appealed against the refusal of the chief constable to issue him a certificate for a Winchester rifle which he had owned for many years for sporting purposes and for the control of vermin in his poultry yard, as he had repeatedly explained to police officers on the occasions of their recent visits.

When making out the application form, the Rev. Evans had indicated that his reason for requiring a certificate was so as to comply with the law. The chief constable refused to accept this, and the Rev. Evans refused to fill out another form, noting that there was no requirement in law for him to have made out the first one.

The court found in Rev. Evans' favour. The Home Office, in an internal note, complained that,

The police chose a case in which they were very likely to lose, and covered by H.O. instructions to issue certificates freely to reputable persons already in possession. [PRO HO45/11024/408571]

The instructions referred to had been promulgated the 24th of November and were supplementary to extensive notes for guidance issued to chief constables on the 5th of October. The fact that the Home Secretary found it necessary, within weeks of the Act's taking effect, to bring the constables' attention to,

...the following observations, which may assist Chief Constables in enforcing the Act without unnecessary interference with persons who were properly in possession of firearms at the time of the passing of the Act, and are not likely to abuse permission to retain them, [HO Circ. 406,571/76]

is probably indicative of a substantial volume of complaints.

The chief constables were less than appreciative of the Home Secretary's assistance in these matters. Their Districts 1, 2 & 3 Conference for-

warded a resolution to the Home Office expressing,

...regret that the Home Office has seen fit by their circular 408, 571/76 of the 24th November, 1920, to modify the previous instructions issued to Chief Constables in Home Office circular 408, 571/33 of 5th October, 1920, as such action had placed Chief Constables in a difficult position. [PRO HO45/11024-62971]

They asked that the avenue of appeal to the courts be abolished, and that complaints be referred to the Secretary of State for adjudication.

By 1934, the Act, and the system of controls over rifles and pistols which it incorporated, had "run in," and the Government felt that it was time for a review. The Home Secretary appointed a Departmental Committee under the chairmanship of Sir Archibald Bodkin, a recently retired Director of Public Prosecutions,

...to consider the various types of firearms and similar weapons...and to report whether, in the interests of public safety, any amendment of the law is necessary or desirable in respect of the definition or classification of such weapons and ammunition. [HMSO Cmd. 4758. 1934]

Bodkin's committee was somewhat more broadly based than Blackwell's (it included three Members of Parliament) and invited submissions. It heard oral evidence from 38 witnesses representing 21 organisations, and received written communications from ten departments and organisations. The report (Cmd. 4758) was published in December of 1934 and reprinted in 1968.

The Bodkin Report is interesting in many respects, not least in its use of statistical evidence. The Committee had requested an elaborate report from each chief officer of police in Great Britain concerning,

...cases known to the police in which certain types of weapons had, during the three years ended 28th February, 1934, been

(a) used by or found in the possession of persons engaged in crime (including cases of suicide) or avoiding arrests, (b) the cause of accidents involving personal injuries. [Bodkin, page 2]

The information thus gathered was tabulated and broken down so that details such as the age of the user, the calibre or gauge of the weapon, the type of cartridge, and the degree of injury were immediately accessible.

These tables cover seven pages and are extraordinarily well set out and useful. The survey covered: shotguns, sawn-off shotguns, smooth-bore pistols, toy or dummy pistols converted to fire, toy or dummy pistols not converted, air pistols, and air guns or rifles—in other words, those types of firearm that were not covered by the Firearms Act, 1920.

The committee's decision to seek no data regarding the types of firearm controlled by the 1920 Act meant both that the effectiveness of that Act could not be evaluated and that no case for deregulation could be supported by quantitative evidence. This was the more unfortunate in that they were quite clear that deregulation was within their terms of reference [Bodkin, page 3].

The Committee's use of evidence (or lack thereof) opens them to criticism on several points. They professed much sympathy for the gun trade, which had been decimated by the 1920 Act but whose remaining members had "borne their losses with resignation and have loyally co-operated with the authorities." [Bodkin, page 10]

Moreover, "It seems quite clear," they report, "that in 1920 Parliament intended to abstain, as far as possible, from discouraging the formation of rifle clubs and target practice generally." [Bodkin, page 15]. They were earnestly pressed by the trade to deregulate .22 rifles, but declined to do so on the perhaps significant grounds that,

...it would be a retrograde step after 14 years of restriction if all control over such weapons were abolished. [Bodkin, page 16]

According to the evidence collected, ordinary shotguns had been used in 94 crimes over the three years of the study. Shot pistols had been used in 25 and sawn-off shotguns in eight. Bodkin recommended placing the latter two types of weapon under firearm certificate control, but favoured leaving normal shotguns outside the Act. They may have been quite correct in suggesting that shotguns so outnumbered shot pistols that a roughly 4:1 ratio of use in crime was not disproportionate. But they made no attempt to quantify the number of either type in circulation, nor did they address their minds to the question of what was achieved by restricting sawn-off shotguns when both shotguns and hacksaws were unrestricted.

The Bodkin Committee collected a great deal of information and did an impressive amount of work, but their line of argument is not always persuasive. One often suspects that the



evidence is decorative and that the report actually reflects an administrative class view of what a well-ordered universe would be like. Their conclusion, that the system of controls established by the Firearms Act, 1920,

...lying as it does largely in the hands of responsible officers of police, has, in our opinion, been well administered and forms an efficient system of controlling the sale of firearms and ammunition, [Bodkin, page 9]

ignored the question of what the system accomplished. The members of the committee no doubt assumed that the controls were of some public benefit, but they did not pose the question and sought no evidence that would have permitted an answer.

The Bodkin Committee suggested a number of changes of detail in the 1920 Act, but none of structure. Perhaps their most notable proposals were that shotguns with barrels less than 20 inches in length be subject to firearm certificate control, and that machine guns be removed from firearm certificate control and be reclassified as prohibited weapons. The reclassification of machine guns was at the suggestion of the British Field Sports Society.

The Bodkin committee recommendations were incorporated in the Firearms Act, 1936, which turned out to be longer than the act it amended. The following year, the 1920 and 1936 Acts, along with the intervening Firearms and Imitation Firearms (Criminal Use) Act, 1933, and the Firearms Act, 1934 (regulating the sale to persons under seventeen of firearms and ammunition) were consolidated in the Firearms Act, 1937, which was to remain in effect, virtually unamended, for thirty-one years.

The Firearms Act, 1937, carried Britain through the trauma of the Second World War, across the flat and tranquil decade of the 1950's, and into an era of spiralling crime and quantum increases in criminal violence. The 1937 Act, perhaps, was no more responsible for the latter phenomenon than it was for the period of remarkable repose that had preceded it.

In the absence of directly comparable statistics, all that can be said with confidence is that the 1950's

marked the last time, and perhaps the only time, that armed crime had been as rare as it had during the Belle Epoque when there was no restrictive legislation at all.

However, few people retained a clear memory of the period prior to the First World War, and across the intervening decades, the feeling had taken root that the low level of armed crime must be due to the rigour of statutory restrictions. When violent crime began its vertiginous rise in the mid-1960's, the understandable feeling of many was that more restrictive legislation was needed. The police were less prone to such an instinctive reaction, for chief constables realised that the degree of control which they exercised over the legitimate ownership of rifles and pistols left little to be desired. Shotguns remained uncontrolled, but were comparatively rarely used in crime.

The question, nonetheless, was repeatedly posed as to whether any benefit would be derived from drawing them into the system. Invariably, the answer was that it would not. Sir Frank Soskice, as Home Secretary, gave the matter close consideration and told the House, on 11 February, 1965, while announcing the provisions of the forthcoming Firearms Act, 1965, that,

The Government have considered carefully the possibility of extending to shotguns the firearm certificate procedure, but have decided against it. There are probably at least 500,000 shotguns in legitimate use throughout the country and the burden which certification would put on the police would not be justified by the benefits which would result.

Sir Frank was replaced at the Home Office toward the end of the year, and on the 3rd of March, 1966, Roy Jenkins, the new Home Secretary, announced that he was reconsidering the matter. He was, he said, "actively considering new legislation in relation to shotguns." By the 23rd of June, the review had been completed, and Mr.

12 August, 1966. Officers cover the bodies of DS Head and DC Wombell in Baybrook Street, Hammersmith. Like Hungerford, the incident was to be used by opportunists, and was to have extended repercussions.

Jenkins reported that,

The type of shotgun which is freely available and which can be used without special exemption was considerably restricted under the Firearms Act. I must pay some regard to the burden of inspection which would be put on the police. The police do not consider that it would be right to make an extension at this time.

In other words, the matter had been looked into repeatedly, and the conclusion was that it was simply not worth doing. However, only seven weeks later, an incident occurred that was to lead Mr. Jenkins to reverse his position entirely.

At 3:15 PM the 12th of August, a Metropolitan Police "Q" car turned into Baybrook Street, Hammersmith. Foxtrot 11 pulled to the side, and two officers, DS Head and DC Wombell, left the vehicle to approach a parked Vanguard estate car containing three men. As they drew near, Harry Roberts shot both of them dead with a .38 Enfield revolver. John Duddy left out and ran to the Q car, where he killed the driver, PC Fox, with three shots from a .380 Colt pistol. Britain's greatest manhunt was on.

John Duddy and an accomplice, John Witney, the owner of the Estate car, who had been present at the time, were soon arrested. But it was three months before Roberts, a Malayan veteran, was finally tracked down and captured near Bishop's Stortford, Hertfordshire. He had gone to ground in Epping Forest and worked his way north on foot.

Meanwhile, the case dominated the news absolutely; the gratuitous brutality of the crime aroused widespread revulsion and on the 6th of September, a memorial service for the slain officers drew a thousand-strong crowd to Westminster Abbey, carrying banners calling for the restoration of capital punishment in such cases.

Hanging had only been finally abolished in November of 1965 and Mr.



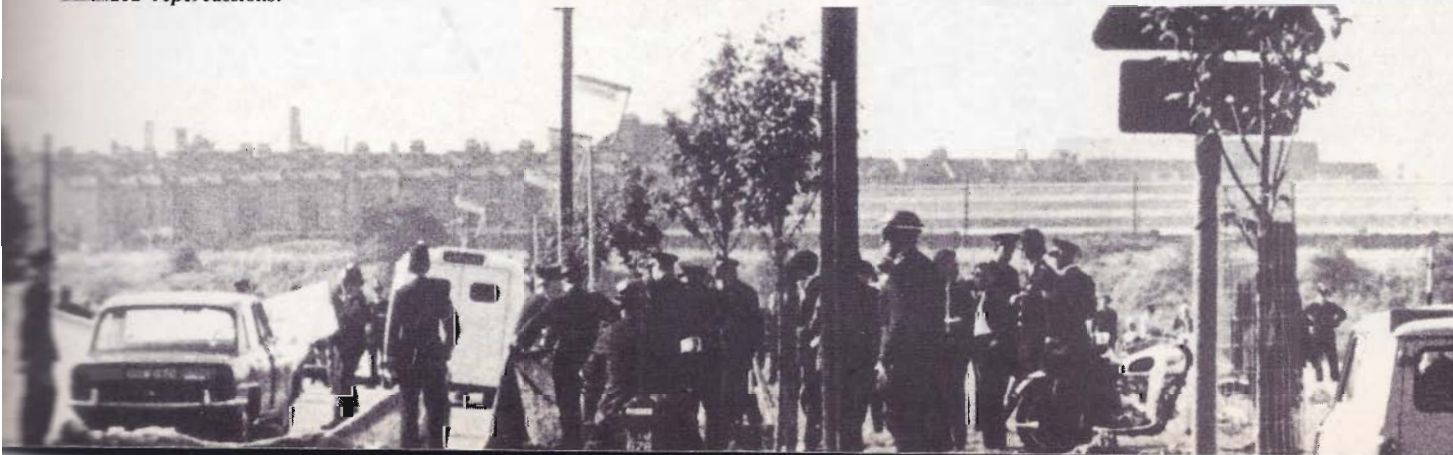
Jenkins, whose feelings on the matter were well known, was under heavy pressure from press and public alike, to reintroduce it. On the 12th of September, less than a week after the demonstration at Westminster Abbey, he announced that he was,

...endeavouring to draw up plans to end the unrestricted purchase of shotguns. They can be purchased far too easily, by mail order or other means, and there is evidence that the criminal use of shotguns is increasing rapidly, still more rapidly than that of other weapons. [Daily Telegraph 13.9.66]

The "evidence" Mr. Jenkins referred to was the records of "indictable offences involving firearms," a disparate category consisting mostly of damaged property, poaching, threats and assaults and so forth, rather than the sort of "armed crime" that most people would think of. However, this body of data, as well as more relevant statistics, had been available to Mr. Jenkins, as indeed it had been to Sir Frank Soskice, and no doubt had been carefully studied before each reached his conclusion that proposals to further restrict shotguns were not justified by the evidence.

If one discounts the possibility that Mr. Jenkins thought that restricting shotgun ownership was a relevant legislative response to an incident in which police officers were shot with pistols, then an explanation of why the Home Secretary completely reversed his policy is still needed.

The evidence suggests that Mr. Jenkins introduced legislation against shotguns in hope of deflecting the pressure for a reintroduction of capital punishment. If so, he was successful, albeit at the cost of approximately half a mil-



lion man hours of police time, per year, over the past twenty years.

Rather than introducing a Firearms (Amendment) Bill that might have attracted focussed opposition, Mr. Jenkins used the forthcoming Criminal Justice Bill, 1967, as the vehicle for his proposed measures. This was an immensely significant and controversial bill which, among other things, did away with the requirement for a full hearing of evidence at committal proceedings, instituted a parole system, abolished the requirement for a unanimous verdict in criminal trials, placed restrictions on newspaper reporting of committal hearings and introduced suspended prison sentences. Part V of the bill, which introduced licences for shotguns, was well camouflaged in a thicket of portentous and far reaching reforms to the criminal justice system. Opposition to Part V, therefore, was fragmented and diffuse.

The next year, the Firearms Act, 1968, consolidated the 1937 Act and Part V of the Criminal Justice Act, along with two intervening measures, the Air Guns and Shot Guns, etc., Act of 1962 and the Firearms Act, 1965. The former had originated as a private member's bill, introduced by Mr. Brian Harrison, and regulated the circumstances under which young people between the ages of 14 and 21 might lawfully purchase, use or have in their possession airguns, shotguns and firearms, as well as ammunition and pellets for them. The latter act was more interesting.

The Firearms Act, 1965, was designed to strengthen the hand of the police against criminals, or suspected criminals, and as such was supported by most of the shooting organisations, though some of its provisions, notably a clause enabling chief constables to attach conditions to the registration of firearms dealers, have led to problems not then anticipated.

Other clauses created the offence of armed trespass, regulated the carrying of firearms and ammunition in a public place, gave the police wider powers of search and arrest without

Roy Jenkins, Labour Home Secretary from 1965, was implacably opposed to capital punishment. The Firearms Act of that year was intended to pre-empt an anticipated rise in criminal violence following abolition.

warrant, penalized the carrying of a firearms with intent to commit an indictable offence, increased the minimum length of shotgun barrel from 20 inches to 24 inches and generally increased penalties overall.

The most notable feature of the 1965 Act, however, was the haste with which it was carried through Parliament. The Home Secretary did not intimate that he had it in mind to legislate until the 21st of January. Proposals were announced on the 11th February; the bill was introduced on the 28th of February and given a second reading only two days later, on the 2nd of March. Third Reading was on the 12th of May and Royal Assent was given the 5th of August.

Significantly, the Murder (Abolition of the Death Penalty) Bill was already at committee stage before the Firearms Bill was introduced, yet did not become law until three months later. The haste with which the Firearms Bill had been patched together was reflected in the great number of amendments required to eliminate anomalies and unintended effects.

The Government were clearly anxious that the abolition of hanging might herald a new willingness on the part of criminals to use violence of all forms and firearms in particular. Their anxiety was not misplaced. And midway through the Firearms Bill's passage, Roy Jenkins took office as Home Secretary. It is possible that this precedent conditioned his actions eight months later after the Shepherd's Bush murders, as the incident in Baybrook Street became known.

The Shepherd's Bush affair may also have contributed to a hardening of attitude on the part of chief constables. Certainly, in retrospect, 1967 seems to mark the beginning of an overt hostility toward the shooting sports on the part of chief officers that had not been manifest before. *Police Review* magazine described it this way:

There is an easily identifiable police attitude towards the possession of guns by members of the public. Every possible difficulty should be put in their way. No documentation can be too rigid, no security requirement too arbitrary, which prevents guns coming into the hands of criminals. [Police Review 8.10.82]

People who wished to comply with the law found themselves subject to bureaucratic harassment as chief constables pursued an often acknowledged policy of "reducing the number of firearms in the hands of the public to the absolute minimum." Over the next fifteen years, more than a quarter of rifle and pistol certificate holders had



been eliminated. In 1968, there were 216,281 firearm certificate holders in England and Wales; by 1983, that figure was down to 159,804, a reduction of 56,477, or 26%. The policies that achieved this substantial result involved a great deal of *ultra vires* activity and generated resentment and animosity among those affected.

In 1973, the Government decided to legislate again, and issued a Green Paper, *The Control of Firearms in Great Britain (Cmnd 5297)* which was to achieve some notoriety. The Green Paper was based on the report of a working party chaired by Sir John McKay, then H. M. Chief Inspector of Constabulary for England and Wales. The rest of the committee, which consisted exclusively of members of the police, the Home Office and the Scottish Office, have not been identified; the report has never been released. One can only judge it through the Green Paper.

The McKay Committee gathered some interesting statistics, but the Green Paper used them in a manner so casual and self-serving that the argument, rather than being bolstered by the evidence, was discredited. Professor Richard Harding, who studied the Green Paper with great care, described it as,

....statistically defective....scientifically quite useless; the data are presented in a way which precludes objective evaluation by anyone else. [1979 Crim LR 772]

Nor was the Green Paper well served by its tone, which was sanctimonious and authoritarian. Its premise was simply that armed crime was increasing, therefore more restrictions were needed. Bodkin was cited as an authority for his proposition:

A Departmental Committee set up in 1934 found that the 1920 Act had reduced the likelihood...of criminals obtaining possession of the more dangerous firearms (rifles and pistols). [Green Paper, page 3]

In fact, the Bodkin Committee had "found" no such thing, but had simply asserted it, having avoided, perhaps consciously, gathering any evidence that might have permitted testing the hypothesis.



The Green Paper met a hostile reception in Parliament and in the press, and was soon withdrawn by the Government. Some of its proposals, however, were adopted as "force policy" by chief constables, and were applied as if they were law.

Shortly after the Green Paper was withdrawn, the Home Office began increasing the fees for grant and renewal of firearm and shotgun certificates in a manner that many regarded as punitive, though this was denied by ministers. There had been inflation adjusting increases in 1969 and 1971; the increases begun in 1973 were therefore on top of an already inflation-adjusted figure. Over the ensuing five years, the fees for grant and renewal of a firearms certificate were raised by 714% and 800% respectively; the increases for grant and renewal of a shotgun certificate were 1,200% and 800%. The Home Office conducted several "costing exercises," each of which in turn was thoroughly discredited.

The twenty years following have been characterised by legislative stability, offset by an increased willingness to use extra-legal means for imposing a preferred policy line. The latter part of this period is also distinguished by more overt hostility toward private firearms ownership on the part of chief officers, and by a far more active participation in pressure politics by the police.

The Association of Chief Police Officers determined in December, 1982, to push resolutely to have shotguns placed under the same controls as rifles and pistols. With the assistance of the Superintendents' Conference and the Police Federation, they have since undertaken three "campaigns" characterised by a carrot and stick approach. An hysterical press campaign would be followed by an invitation to the Home Secretary to legislate in the manner desired. The most recent campaign has used the Hungerford incident as a platform and has proved imminently successful. As the Home Secretary has several times stated, Hungerford had provided the opportunity to "move forward," and the police were among the foremost "urgers forward" in the matter.

The Firearms (Amendment) Bill indeed represents a move forward in the sense that legislation in this field, in Great Britain, represents a linear progression from liberty to prohibition. As we have demonstrated, the position up to the outbreak of the First World War was that the right to keep arms was one of the elementary liberties of free-born Englishmen, a fundamental part of the Constitution. This right has been

progressively circumscribed, limited, eroded, discounted and finally repudiated. The effect of the present bill will be finally to eradicate it. It subsists, at present, in relation to shotguns, provided that one is of good character. The effect of the present bill is that no matter how good one's character, one will not be permitted to possess a shotgun unless one can demonstrate an administratively approved "good reason" for so doing.

But if Mr. Hurd meant to imply that "moving forward" meant enhancing the social good by addressing effective legislation to a defined problem, he needs to make his case. Perhaps his is the right policy to pursue, but that has yet to be demonstrated. Indeed, one of the remarkable things about firearms legislation in this country is that, not only have its benefits never been demonstrated, but that the government of the day, throughout, has been careful to avoid looking objectively at the question. There has been a series of committees, operating in various degrees of secrecy, assuring us and themselves that the policy being pursued was the correct one, while somehow neglecting to demonstrate it.

Blackwell, in 1918, baldly asserted that "hardly anyone could be found to question" the proposition that "the control of firearms should be made far more stringent than it is now." Bodkin, in 1934, said that the Firearms Act, 1920, "forms an efficient system of controlling the sale of firearms and ammunition," but did not question the assertion and avoided gathering any evidence that would have allowed it to be tested. The Green Paper of 1973 merely accepted Bodkin's assumption that controls work, and said that circumstances called for more of them.

With the 1987 White Paper, the Government appear to have moved beyond the feeling that an increase in restrictions requires justification. Controls seem to be regarded as an end in themselves. As one senior civil servant recently put it, "Controls are good."

The Firearms (Amendment) Bill now before Parliament consists simply of an enumeration of measures which the officials find congenial. Both they and the ministers are quite open in saying that no research was undertaken and that they could provide no evidence of probable benefit from any of the proposals in the Bill.

In fact, all but four of the proposals in the 1987 Bill were lifted from the 1973 Green Paper. Greenwood was perhaps uncharitable but not inaccurate when he described Mr. Hurd's proposals as "emptying Whitehall's rubbish bin into Parliament." Parliament rejected the Green Paper in 1973 for its "police state" approach and its



alleged irrelevance to the problems it purported to address.

If it is to be accepted into law fifteen years later, then prudence would dictate that each of its provisions be analysed objectively. If this is not done, the likelihood of Parliament's enacting sound and equitable law is remote. We shall indeed have moved a long way from Blackstone's prescription of, *...restraints in themselves so gentle and moderate...that no man of sense or probity would wish to see them slackened.*

There have been two further enactments since 1968 which must be mentioned for the sake of completeness. The Criminal Justice Act, 1972, increased the penalties for criminal misuse stipulated in the 1968 Act. The penalty for possessing a firearm with intent to endanger life or using a firearm to resist arrest was increased from fourteen years to life imprisonment, while that for carrying a firearm with intent to commit an indictable offence, or while committing certain specified offences, was increased from ten and seven years respectively, to fourteen years.

The Firearms Act, 1982, was a Home Office measure put forward as a private member's bill with bipartisan support. It was sponsored by Mr. Eldon Griffiths (later Sir Eldon), the Parliamentary representative of the Police Federation, with the objective of enacting the proposal in paragraph 121 of the 1973 Green Paper, banning realistic replica or toy firearms. The problems of definition, however, proved insuperable and the bill, when published, related instead to replica firearms which were capable of conversion to fire a shot. Mr. Griffiths contended that his bill would help to stem, "the rising tide of crime and terrorism." He was no doubt referring to the unpublished draft, for no one could recall a crime, much less an act of terrorism, committed with a converted replica.

The law would be better served, and would command greater respect, if it could be shown to address a problem. One of the most conspicuous features of firearms legislation in Britain has been a persistent refusal to undertake any objective analysis of its utility or consequences in terms of social benefit or effect on specified mischiefs, either prospectively or retrospectively.

The danger is twofold. In the first place, if a law cannot be demonstrably justified, those who have thus far voluntarily complied with it may cease to do so, and will moreover find their respect for the law in general dim-

inished. This is as a result that wise government should avoid. In the second place, if a law is irrelevant, resources committed to enforcing it are at best wasted and at worst counterproductive.



A Brief Chronology

Several dozen statutes govern the possession, use, transport and trade in firearms in the United Kingdom, often quite tangentially. The Cemetary Clauses Act, 1847, for example, made it an offence to discharge firearms in certain cemeteries and burial grounds, except in connection with a military funeral. The Town Police Clauses Act of the same year penalizes the wanton discharge of firearms in the street to the annoyance of residents or passers by, while the Wildlife and Countryside Act of 1982 distinguishes, for no readily apparent reason, among shotgun action types that may be used for game and vermin species. Then there are various Game Acts, Deer Acts, Night Poaching Acts and so forth on the one hand, and Police Acts, the International Headquarters and Defence Organisations Act, the Gun Barrel Proof Act and Diplomatic Privileges Act on the other. One could go on in this vein for many more pages, and a digest of firearms law, if complete, would be compendious; a case of firearms misuse often attracts charges from a number of statutes.

The purpose here is merely to give a concise chronology of the most important statutes relating to private firearms ownership. No mention will be made of failed bills, peripheral acts, war emergency regulations or acts relating to Scotland, Ireland or Northern Ireland. The Channel Isles and the Isle of Man of course have separate legislation. The 1973 Green Paper appears because of its topical significance.

*Those who wish to look more deeply into the matter may consult: **Gun Law** by Godfrey Sandys-Winsch (London: Shaw & Sons, 1979, 3rd ed.), **Firearms Control** by Colin Greenwood (London: Routledge & Kegan Paul, 1972) and **The Law Relating to Firearms** by P.J. Clarke and John W. Ellis (London: Butterworths, 1981).*

Gun Licences Act, 1870 Required anyone wishing to carry or use a gun elsewhere than in, or within the curtilage of, a dwelling house, to purchase a licence, for ten shillings, from the Post Office. Strictly a revenue measure. Repealed in 1967.

Pistols Act, 1903 Prohibited the retail sale of pistols to those under 18 years. Required other purchasers to produce either a Gun Licence or Game Licence (see above), or reasonable proof that the purchaser was a householder intending to use the pistol within the curtilage of his house, or a letter, countersigned by a justice of the peace or a police officer of the rank of inspector or above, that the purchaser was going overseas for a period of not less than six months. Defined a pistol as a firearm with a barrel less than nine inches in length. Required dealers to keep records. Did not

apply to private sales. Repealed in 1920. **Firearms Act, 1920** Established the framework of controls still in use. Enacted the recommendations of the secret Blackwell Committee report. Fear of revolutionary activity a principal motivation. Made possession of a rifle or pistol dependent on a certificate issued by chief constables, who were given wide powers of discretion. Dealers were subject to registration. There were exclusions for various professional categories. Shotguns, air weapons and antiques excluded. Appeal to Petty Sessions against chief constable's decision. Repealed 1937, except for ss. 16 and 19(1). Incorporated in Firearms Act, 1937.

Firearms and Imitation Firearms (Criminal Use) Act, 1933 Created offence (maximum sentence 14 years) of using or attempting to use a firearm or imitation firearm to prevent lawful arrest or detention. Created offence of being in possession of a firearm or imitation either while committing or when apprehended for committing specified offences. Maximum sentence seven years, to be served in addition to any sentence for the primary offence. Burden of proof on the defence. Repealed by and incorporated into the Firearms Act, 1937.

Firearms Act, 1934 Raised the minimum age for purchasing or hiring a firearm or ammunition from 14 to 17 years and created appropriate offences. Repealed by and incorporated into the Firearms Act, 1937.

Firearms (Amendment) Act, 1936 Enacted the recommendations of the Bodkin Committee report (Cmd 4758: HMSO, Dec., 1934, reprinted 1968). Shotguns and other smoothbore firearms with barrels less than 20 inches made subject to firearms certificate, as were shotgun cartridges with pellets greater than .36" diameter. Machine guns removed from firearm certificate control and made subject to Admiralty, Army Council or Air Council authority. Sound moderators subject to firearm certificate control. Extensive regulations concerning firearms dealers. Chief constables empowered to add conditions to firearm certificates. Appeals transferred from Petty Sessions to Quarter Sessions. Repealed by and incorporated into Firearms Act, 1937.

Firearms Act, 1937 Consolidated the four preceding Acts. Repealed by and incorporated into the Firearms Act, 1968.

Air Guns and Shot Guns, etc., Act, 1962 A private member's bill, introduced by Mr. Brian Harrison. Regulated the circumstances under which young people aged 14-21 may purchase, use or have in possession firearms, shotguns, airguns or

ammunition or pellets therefor. Repealed in 1968 and incorporated into the Firearms Act, 1968, as ss. 22-24.

Firearms Act, 1965 Intended as legislative prophylaxis against an anticipated upsurge in criminal violence following the forthcoming abolition of capital punishment. Substantially increased the penalties for Firearms Act offences. Created new offences of armed trespass, possession of firearms and ammunition in a public place, and carrying a firearm or imitation firearm with intent to commit a criminal offence. Extended the prohibition of firearms ownership by convicted persons. Created extensive new regulations for firearms dealers and authorised chief constables to attach conditions to dealers' registrations. Minimum length for shotgun barrels increased from 20" to 24". Absolute prohibition on shortening the barrels of a shotgun to a length less than 24" except by a registered dealer, and then only for purposes of resleeving. Repealed by and incorporated into the Firearms Act, 1968.

Criminal Justice Act, 1967, Part V Placed shotguns with barrels of 24 inches or more under certificate control. Introduced in response to an incident in which police officers were killed by criminals armed with illegal pistols. A shotgun certificate was based on the personal suitability of the applicant and was not restricted to designated guns. Repealed by and incorporated into the Firearms Act, 1968.

Firearms Act, 1968 Gave the Home Secretary power to alter fees charged by order. Consolidated the 1937 and subsequent Acts.

Criminal Justice Act, 1972 Increased the penalties for criminal misuse stipulated in the Firearms Act, 1968.

1973 Green Paper CMND 5297 entitled **The Control of Firearms in Great Britain: A Consultative Document**. Based on the secret report of Sir John McKay's working party of 1971-2, it proposed draconian restrictive measures unsupported by any verifiable evidence. Rejected by Parliament. All but four clauses of the current Firearms (Amendment) Bill are drawn from the Green Paper.

Firearms Act, 1982 Subjected to firearm certificate control replica or imitation firearms deemed "readily convertible" to discharge a projectile. Creates a defence of innocent ownership. A code of practice agreed with the trade governs new production.