

Self-Defense: An Endangered Right

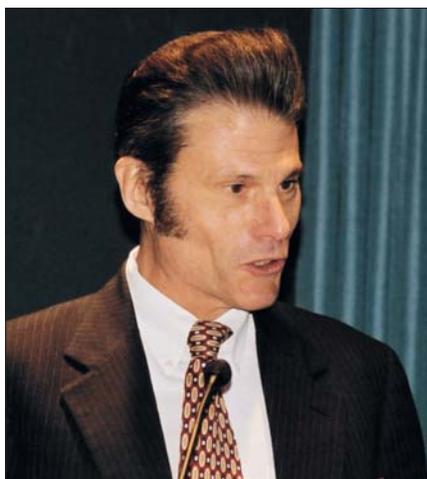
by Joyce Lee Malcolm

The withdrawal of a basic right of Englishmen is having dire consequences in Great Britain, and should serve as an object lesson for Americans. Today, in the name of public safety, the British government has practically eliminated the citizens' right to self-defense. That did not happen all at once. The people were weaned from their fundamental right to protect themselves through a series of policies implemented over some 80 years. Those include the strictest gun regulations of any democracy, legislation that makes it illegal for individuals to carry any article that could be used for personal protection, and restrictive limits on the use of force in self-defense. Britons have been taught, in the words of a 1992 *Economist* article, that such policies are "a restraint on personal liberty that seems, in most civilized countries, essential to the happiness of others." The author contrasted those policies with "America's vigilante values."

The result of that tradeoff of rights for security has been disastrous for both. Many Americans, either unaware of, or unconcerned with, the perverse impact of British policy, insist that our public safety demands a similar sacrifice. But an examination of the experience of the British people offers a cautionary tale. A few examples underscore the situation in Britain today.

A homeowner who discovered two robbers in his home held them with a toy gun while he telephoned the police. When the police arrived they arrested the two men, and also the homeowner, who was charged with putting someone in fear with a toy gun. An

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At Cato's December 12 conference, "Global Warming: The State of the Debate," Michael Schlesinger of the Climate Research Group at the University of Illinois and climatologist Pat Michaels of the University of Virginia and the Cato Institute debate the consequences of global warming in the coming century.

elderly woman who scared off a gang of youths by firing a cap pistol was charged with the same offense. The government is now planning to make toy guns illegal.

The BBC offers this advice for anyone in Britain who is attacked on the street: You are permitted to protect yourself with a briefcase, a handbag, or keys. You should shout "Call the Police" rather than "Help." Bystanders are not to help. They have been taught to leave such matters to the professionals. If you manage to knock your attacker down, you must not hit him again or you risk being charged with assault.

In 1999 Tony Martin, a 55-year-old farmer living alone in a dilapidated house, woke to the sound of shattering glass as two burglars broke in. Martin had been robbed six times before, but like 70 percent of rural English villages, his had no police presence. He crept downstairs in the dark and shot at the burglars, killing one and wounding the second. Both had numerous prior convictions. Martin was sentenced to life in prison

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for killing one burglar, 10 years for wounding the second, and 12 months for owning an unregistered shotgun. The prosecutor claimed Martin had lain in wait, then caught the burglars “like rats in a trap.”

The wounded burglar was released after serving 18 months of a three-year sentence. He then sued Martin for injury to his leg, claiming it prevented him from working and interfered with his martial arts training and sex life. He was awarded £5,000 of taxpayer money to prosecute the suit.

Martin’s sentence was reduced to five years on a finding that he had had an abusive childhood, but he was denied parole because he had expressed no remorse for killing “one so young” and posed a danger to other burglars. As the *Independent* newspaper reported, “Government lawyers say burglars ‘need protection.’” “It cannot possibly be suggested,” the attorneys argued, “that members of the public cease to be so whilst committing criminal offences, and whilst society naturally condemns, and punishes such persons judicially, it can not possibly condone their (unlawful) murder or injury.” The Law Commission advised the government: “Even a criminal who had committed a serious offence must be allowed to exercise his civil rights.”

The impact of such policies on public safety has been stark. An amazing trend of nearly 500 years of declining interpersonal violence in England reversed abruptly in 1954 as violence began to increase dramatically. In 2001 Britain had the highest level of homicides in Western Europe, and violent crimes were at three times the level of the next worst country. “One thing which no amount of statistical manipulation can disguise,” the shadow home secretary, Oliver Letwin, pointed out in October 2003, “is that violent crime has doubled in the last six years and continues to rise alarmingly.” Indeed, with the exception of murder, violent crime in England and Wales is far higher than in the United States. And while the American murder rate has been in decline for more than a decade, the English murder rate has been rising. You are six times more likely to be mugged in London than in New York City. More than half of English burglaries are “hot burglaries” (some-one is at home), while in America, where bur-

glars admit to fearing armed homeowners more than the police, only 13 percent are “hot burglaries.” As for the effectiveness of stringent gun control, since handguns were banned in 1998, handgun crime has more than doubled. Gun crime has recently been described as spreading “like a cancer.” Units of British police are, for the first time in their history, routinely armed, and American policemen are being hired to advise British departments.

Withdrawal of the Right to Self-Defense

The right to self-defense runs deep in the Anglo-American tradition. William Blackstone, whose *Commentaries on the Laws of England* was published 10 years before the American Revolution and was an immediate bestseller on both sides of the Atlantic, identified three “great and primary rights” of individuals: personal security, personal liberty, and private property. He put personal security first. For Blackstone and generations of common lawyers, the right to personal security was not the expectation that government would protect everyone—that was then, and remains today, impracticable. It was the right of the individual to protect himself, with force if necessary:

[I]f the party himself, or any of these his relations, be forcibly attacked in his person or property, it is lawful for him to repel force by force. . . . For the law, in this case, respects the passions of the human mind; and . . . makes it lawful in him to do himself that immediate justice, to which he is prompted by nature. . . . It considers that the future process of law is by no means an adequate remedy for injuries accompanied with force; since it is impossible to say to what wanton lengths of rapine or cruelty outrages of this sort might be carried, unless it were permitted a man immediately to oppose one violence with another.

Self-defense was universally regarded as the primary law of nature, so fundamental that England’s great jurist insisted, “It is not, neither can it be in fact, taken away by the law of society.” On that point Blackstone was wrong, as we have seen.

The practical elimination of the right to self-defense was not the work of a day. As we review

the steps by which this result was achieved, two basic questions spring to mind: why did the British people permit it to happen, and why did British governments insist upon it? Starting in 1920 British governments reversed centuries of common law with the first serious limits on privately owned firearms. The motive was not crime control but fear of revolution. The statute required anyone wanting to keep a firearm to get a certificate from his local police chief certifying that he was a suitable person to own a weapon and had a good reason to have it. This certificate had to be renewed every three years. Unfortunately, the definition of “good reason” was left to the police, and the Home Office, through guides to police classified until 1989, systematically narrowed it. First, police were instructed that it would be a good reason to have a revolver if a person lived in an isolated house “where protection against thieves and burglars is essential, or has been exposed to definite threats to life on account of his performance of some public duty.” (Note that the only threat to life that was deemed a sufficient reason to own a handgun was one related to “some public duty.”) By 1937 police were to discourage applications to possess any firearm for house or personal protection. In 1964 they were advised that “it should hardly ever be necessary to anyone to possess a firearm for the protection of his house or person” and that “this principle should hold good even in the case of banks and firms who desire to protect valuables or large quantities of money.” Finally, in 1969 the Home Office announced that “it should never be necessary for anyone to possess a firearm for the protection of his house or person.” Since those changes were secret, there was no opportunity for public debate.

Stage two came in 1953 when the government introduced the Prevention of Crime Act that made it illegal to carry in a public place any article “made, adapted, or intended” for an “offensive purpose” without lawful authority or “reasonable excuse.” An item carried for defense was, by definition, an “offensive” weapon. Police were given broad power to stop and search everyone. Individuals found with offensive weapons were guilty until proven innocent. In Parliament the government admitted the act was “drastic” but insisted the public should be discouraged “from going about with offensive weapons in their pockets; it is the duty of

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society to protect them.” Objections raised during the debate echoed Blackstone and traditional common law practice. One MP reminded government ministers that “there are many places where society cannot get, or cannot get there in time. On those occasions a man has to defend himself and those whom he is escorting. It is not very much consolation that society will come forward a great deal later, pick up the bits, and punish the violent offender.” Lord Saltoun pointed out: “The object of a weapon was to assist weakness to cope with strength and it is this ability that the bill was framed to destroy. I do not think any government has the right, though they may very well have the power, to deprive people for whom they are responsible of the right to defend themselves.” However, he added, “Unless there is not only a right but also a fundamental willingness amongst the people to defend themselves, no police force, however large, can do it.”

Under common law there was an obligation to help someone being attacked. In keeping with their reversal of common law practice, the government began to warn the public not to go to the aid of anyone in distress. It was best to “walk on by” and leave the problem to the professionals. The 1953 act, which the government claimed it needed to protect the public against juvenile delinquents, has been rigorously enforced against law-abiding people. And the scope of the law is so broad that a legal textbook explains, “Any article is capable of being an offensive weapon,” although the authors add, if the article is unlikely to cause an injury, the onus of proving intent to do so would be “very heavy.”

The third stage in the suppression of the right to self-defense came in 1967 when a broad revision of criminal law was passed. Tucked within the complex statute was a section that altered the traditional standards for self-defense. Everything was now to depend on what seemed “reasonable” force after the fact. If the victim of an attack harmed or killed his assailant, he could be charged with assault or murder. And it was never reasonable to defend property with force. According to the *Textbook of Criminal Law*, the requirement of reasonableness is “now stated in such mitigated terms as to cast doubt on whether it [self-defense] still forms part of the law.” The author adds, “For some reason that is not clear, the courts

occasionally seem to regard the scandal of the killing of a robber as of greater moment than the safety of the robber’s victim in respect of his person and property.”

Dismantling Traditional Public Protections

At the same time that it was insisting upon sole responsibility for protecting individuals, the government began to dismantle its traditional means of protecting the public. It adopted more lenient approaches toward offenders. For both ideological and practical reasons, sentences for crimes were sharply reduced and fewer offenders were incarcerated. It was argued that prisoners were not rehabilitated in prison, and, of course, it is expensive to keep them there. Those under 21 were almost never sent to prison. Cautions, payment of fines, and community service have become the preferred punishments for crimes. Judges have had to provide a written justification for any sentence involving incarceration. Those few offenders sent to prison were routinely released after serving only a third of their sentence. When the public became outraged by the rise in violent crime, the time served was increased to half the sentence. The reluctance to use prison persists. So although existing prisons are overcrowded, the commissioner for prisons announced that he won’t build more unless prisons can demonstrate a better rate of rehabilitation.

For the sake of cost cutting, the government also “rationalized” police stations. The consolidation of country stations has left most of rural Britain without a police presence. Police were also withdrawn from foot patrols and replaced by surveillance cameras. England and Wales now have far fewer police officers per head of population than America, France, Germany, and Italy. The upshot is not surprising: British police catch far fewer offenders than their American counterparts and bring fewer to justice, and those who are convicted serve less time. A government report of June 2002 pointed to the great gap between crimes reported—5.2 million in 2001–2002—and convictions, 326,000. In 2002 fewer than 1 in 10 of London street robberies were reported as “cleared up.”

The British public is finally becoming aroused by the soaring rate of violent crime and their mandated helplessness. The government is promising action, but that action does not include relinquishing its monopoly on force and restor-

ing any measure of the right to self-defense, a right government ministers and police like to refer to as “vigilantism.” Instead, the Blair government means to reduce crime by bringing about more convictions and to do this by eliminating other ancient rights. In July 2002 it announced that the venerable double-jeopardy rule that prevents anyone being tried twice for the same crime would be scrapped, retroactively. Hearsay evidence will be admitted in court, jurors will be informed of a suspect’s previous record, and the number of jury trials will be reduced. As the director of Liberty, a British civil liberties group, pointed out, however, “Eroding the rights of suspects won’t give victims the rights they have waited too long to receive.”

Millions of people in Britain live in fear. Elderly people are afraid to go out and afraid to stay in. The government has insisted upon a monopoly on the use of force—but it can only enforce that monopoly against the law abiding. By practically eliminating self-defense, it has removed the greatest deterrent to crime, people able and prepared to defend themselves. Peter Hitchens, a British columnist, recently pointed out, “In Britain now we have the worst of both worlds, police who can’t or won’t protect us, and no right to protect ourselves.” He blames the change on indulgent lawyers, judges, civil servants, and juries. They have certainly played an important part. But they were empowered by legal changes that permitted the government to remove the most basic of all rights. It is unclear why the British people tolerated this.

Perhaps it was because the 1953 act that removed the right to carry anything for protection, on the promise that society would protect everyone, came in the wake of new government programs for cradle-to-grave welfare, national health insurance, and government housing. To many people, and to the government itself, personal protection must have seemed like just one more area where the state could handle things for the individual. From the government’s point of view, there was no need to run the risk of people causing trouble by trying to defend themselves. The professionals would handle it. Of course there is no way “society” can protect everyone all of the time. And the government has always known that. The safety of individual citizens has taken a back seat to the political preference for order and power. The result would not have surprised Blackstone. And it should be a lesson to Americans. ■