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Gun Control's Twisted Outcome

Restricting firearms has helped make England more crime-ridden than the U.S.

Joyce Lee Malcolm | November 2002 Print Edition

On a June evening two years ago, Dan Rather made many stiff British upper lips quiver by reporting that England had a crime problem and that, apart from murder, "theirs is worse than ours." The response was swift and sharp. "Have a Nice Daydream," *The Mirror*, a London daily, shot back, reporting: "Britain reacted with fury and disbelief last night to claims by American newsmen that crime and violence are worse here than in the US." But sandwiched between the article's battery of official denials -- "totally misleading," "a huge over-simplification," "astounding and outrageous" -- and a compilation of lurid crimes from "the wild west culture on the other side of the Atlantic where every other car is carrying a gun," *The Mirror* conceded that the CBS anchorman was correct. Except for murder and rape, it admitted, "Britain has overtaken the US for all major crimes."

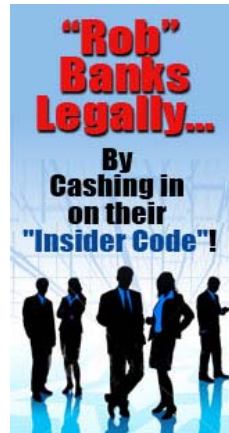
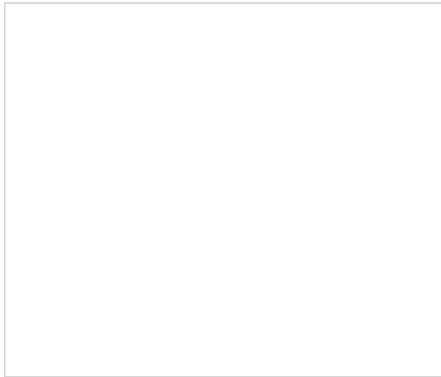
In the two years since Dan Rather was so roundly rebuked, violence in England has gotten markedly worse. Over the course of a few days in the summer of 2001, gun-toting men burst into an English court and freed two defendants; a shooting outside a London nightclub left five women and three men wounded; and two men were machine-gunned to death in a residential neighborhood of north London. And on New Year's Day this year a 19-year-old girl walking on a main street in east London was shot in the head by a thief who wanted her mobile phone. London police are now looking to New York City police for advice.

None of this was supposed to happen in the country whose stringent gun laws and 1997 ban on handguns have been hailed as the "gold standard" of gun control. For the better part of a century, British governments have pursued a strategy for domestic safety that a 1992 *Economist* article characterized as requiring "a restraint on personal liberty that seems, in most civilized countries, essential to the happiness of others," a policy the magazine found at odds with "America's Vigilant Values." The safety of English people has been staked on the thesis that fewer private guns means less crime. The government believes that any weapons in the hands of men and women, however law-abiding, pose a danger, and that disarming them lessens the chance that criminals will get or use weapons.

The results -- the toughest firearm restrictions of any democracy -- are credited by the world's gun control advocates with producing a low rate of violent crime. U.S. Supreme Court Justice Lewis Powell reflected this conventional wisdom when, in a 1988 speech to the American Bar Association, he attributed England's low rates of violent crime to the fact that "private ownership of guns is strictly controlled."

In reality, the English approach has not reduced violent crime. Instead it has left law-abiding citizens at the mercy of criminals who are confident that their victims have neither the means nor the legal right to resist them. Imitating this model would be a public safety disaster for the United States.

The illusion that the English government had protected its citizens by disarming them seemed



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handguns were banned. Proposed exemptions for handicapped shooters and the British Olympic team were rejected.

Even more sweeping was the 1953 Prevention of Crime Act, which made it illegal to carry in a public place any article "made, adapted, or intended" for an offensive purpose "without lawful authority or excuse." Carrying something to protect yourself was branded antisocial. Any item carried for possible defense automatically became an offensive weapon. Police were given extensive power to stop and search everyone. Individuals found with offensive items were guilty until proven innocent.

During the debate over the Prevention of Crime Act in the House of Commons, a member from Northern Ireland told his colleagues of a woman employed by Parliament who had to cross a lonely heath on her route home and had armed herself with a knitting needle. A month earlier, she had driven off a youth who tried to snatch her handbag by jabbing him "on a tender part of his body." Was it to be an offense to carry a knitting needle? The attorney general assured the M.P. that the woman might be found to have a reasonable excuse but added that the public should be discouraged "from going about with offensive weapons in their pockets; it is the duty of society to protect them."

Another M.P. pointed out that while "society ought to undertake the defense of its members, nevertheless one has to remember that there are many places where society cannot get, or cannot get there in time. On those occasions a man has to defend himself and those whom he is escorting. It is not very much consolation that society will come forward a great deal later, pick up the bits, and punish the violent offender."

In the House of Lords, Lord Saltoun argued: "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." But 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."

That willingness was further undermined by a broad revision of criminal law in 1967 that altered the legal standard for self-defense. Now everything turns on what seems to be "reasonable" force against an assailant, considered after the fact. As Glanville Williams notes in his *Textbook of Criminal Law*, that requirement is "now stated in such mitigated terms as to cast doubt on whether it [self-defense] still forms part of the law."

The original common law standard was similar to what still prevails in the U.S. Americans are free to carry articles for their protection, and in 33 states law-abiding citizens may carry concealed guns. Americans may defend themselves with deadly force if they believe that an attacker is about to kill or seriously injure them, or to prevent a violent crime. Our courts are mindful that, as Justice Oliver Wendell Holmes observed, "detached reflection cannot be demanded in the presence of an upraised knife."

But English courts have interpreted the 1953 act strictly and zealously. Among articles found illegally carried with offensive intentions are a sandbag, a pickaxe handle, a stone, and a drum of pepper. "Any article is capable of being an offensive weapon," concede the authors of *Smith and Hogan Criminal Law*, a popular legal text, although they add that if the article is unlikely to cause an injury the onus of proving intent to do so would be "very heavy."

The 1967 act has not been helpful to those obliged to defend themselves either. Granville Williams points out: "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."

A sampling of cases illustrates the impact of these measures:

In 1973 a young man running on a road at night was stopped by the police and found to be carrying a length of steel, a cycle chain, and a metal clock weight. He explained that a gang of youths had been after him. At his hearing it was found he had been threatened and had previously notified the police. The justices agreed he had a valid reason to carry the weapons. Indeed, 16 days later he was attacked and beaten so badly he was hospitalized. But the prosecutor appealed the

ruling, and the appellate judges insisted that carrying a weapon must be related to an imminent and immediate threat. They sent the case back to the lower court with directions to convict.

In 1987 two men assaulted Eric Butler, a 56-year-old British Petroleum executive, in a London subway car, trying to strangle him and smashing his head against the door. No one came to his aid. He later testified, "My air supply was being cut off, my eyes became blurred, and I feared for my life." In desperation he unsheathed an ornamental sword blade in his walking stick and slashed at one of his attackers, stabbing the man in the stomach. The assailants were charged with wounding. Butler was tried and convicted of carrying an offensive weapon.

In 1994 an English homeowner, armed with a toy gun, managed to detain two burglars who had broken into his house while he called the police. When the officers arrived, they arrested the homeowner for using an imitation gun to threaten or intimidate. In a similar incident the following year, when an elderly woman fired a toy cap pistol to drive off a group of youths who were threatening her, she was arrested for putting someone in fear. Now the police are pressing Parliament to make imitation guns illegal.

In 1999 Tony Martin, a 55-year-old Norfolk farmer living alone in a shabby farmhouse, awakened to the sound of breaking glass as two burglars, both with long criminal records, burst into his home. He had been robbed six times before, and his village, like 70 percent of rural English communities, had no police presence. He sneaked downstairs with a shotgun and shot at the intruders. Martin received life in prison for killing one burglar, 10 years for wounding the second, and a year for having an unregistered shotgun. The wounded burglar, having served 18 months of a three-year sentence, is now free and has been granted 5,000 of legal assistance to sue Martin.

The failure of English policy to produce a safer society is clear, but what of British jibes about "America's vigilante values" and our much higher murder rate?

Historically, America has had a high homicide rate and England a low one. In a comparison of New York and London over a 200-year period, during most of which both populations had unrestricted access to firearms, historian Eric Monkkonen found New York's homicide rate consistently about five times London's. Monkkonen pointed out that even without guns, "the United States would still be out of step, just as it has been for two hundred years."

Legal historian Richard Maxwell Brown has argued that Americans have more homicides because English law insists an individual should retreat when attacked, whereas Americans believe they have the right to stand their ground and kill in self-defense. Americans do have more latitude to protect themselves, in keeping with traditional common law standards, but that would have had less significance before England's more restrictive policy was established in 1967.

The murder rates of the U.S. and U.K. are also affected by differences in the way each counts homicides. The FBI asks police to list every homicide as murder, even if the case isn't subsequently prosecuted or proceeds on a lesser charge, making the U.S. numbers as high as possible. By contrast, the English police "massage down" the homicide statistics, tracking each case through the courts and removing it if it is reduced to a lesser charge or determined to be an accident or self-defense, making the English numbers as low as possible.

The London-based Office of Health Economics, after a careful international study, found that while "one reason often given for the high numbers of murders and manslaughters in the United States is the easy availability of firearms...the strong correlation with racial and socio-economic variables suggests that the underlying determinants of the homicide rate are related to particular cultural factors."

Cultural differences and more-permissive legal standards notwithstanding, the English rate of violent crime has been soaring since 1991. Over the same period, America's has been falling dramatically. In 1999 The Boston Globe reported that the American murder rate, which had fluctuated by about 20 percent between 1974 and 1991, was "in startling free-fall." We have had nine consecutive years of sharply declining violent crime. As a result the English and American murder rates are converging. In 1981 the American rate was 8.7 times the English rate, in 1995 it was 5.7 times the English rate, and the latest study puts it at 3.5 times.

Preliminary figures for the U.S. this year show an increase, although of less than 1 percent, in the

overall number of violent crimes, with homicide increases in certain cities, which criminologists attribute to gang violence, the poor economy, and the release from prison of many offenders. Yet Americans still enjoy a substantially lower rate of violent crime than England, without the "restraint on personal liberty" English governments have seen as necessary. Rather than permit individuals more scope to defend themselves, Prime Minister Tony Blair's government plans to combat crime by extending those "restraints on personal liberty": removing the prohibition against double jeopardy so people can be tried twice for the same crime, making hearsay evidence admissible in court, and letting jurors know of a suspect's previous crimes.

This is a cautionary tale. America's founders, like their English forebears, regarded personal security as first of the three primary rights of mankind. That was the main reason for including a right for individuals to be armed in the U.S. Constitution. Not everyone needs to avail himself or herself of that right. It is a dangerous right. But leaving personal protection to the police is also dangerous.

The English government has effectively abolished the right of Englishmen, confirmed in their 1689 Bill of Rights, to "have arms for their defence," insisting upon a monopoly of force it can succeed in imposing only on law-abiding citizens. It has come perilously close to depriving its people of the ability to protect themselves at all, and the result is a more, not less, dangerous society. Despite the English tendency to decry America's "vigilante values," English policy makers would do well to consider a return to these crucial common law values, which stood them so well in the past.

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