

# GUN CONTROL LEGISLATION: VALID AND NECESSARY

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*You're all chasing dollars, but there are other people who are chasing dollars to buy guns...We need lawyers today who have a law book in one hand and a gun in the other...so that if he goes to court and that ... doesn't come out right, he can pull out his gun and start shooting.*

*Eldridge Cleaver, Sept. 1968<sup>1</sup>*

*Don't overlook the potential of .22 long rifles, pistols or rifles, as guerrilla warfare or resistance weapons ... The .22 can be silenced completely with materials that are always available. Although the .22 lacks killing power, this can be readily increased by filling hollow point bullets with poison.*

*Robert DePugh, Jan. 1966<sup>2</sup>*

It is utterly incomprehensible that the sovereign people of these United States, through Congress, are impotent to act in the face of the dangers to internal peace and security *New York Times* inherent in possession of lethal weapons by the Cleavers and the DePughs, by black revolutionaries and white counter revolutionaries, or by any criminals, ex-convicts, narcotic addicts, alcoholics, minors, aliens, or mentally ill persons.

The need for meaningful gun control legislation is so evident that it seems to me, the burden shifts to the opponents to explain their intransigence. In meeting that burden, the negative adopts this position: the salutary effect of gun legislation on crime control and the possible reduction in violent deaths are outweighed by the inconvenience of registration imposed upon lawful possessors of guns. When their views are stripped of all obscurantism, opponents of controls see the conflict as between lives and inconvenience, and they insist avoiding the latter is more important than saving the former.

There are, said the *Los Angeles Times* in a recent editorial, 7,600 reasons for strong gun laws: the 7,600 murders in which guns were used in 1967, according FBI figures. Guns were also used in 73,000 robberies and 52,000 assaults the same year. J. Edgar Hoover reported that in the past three years the use of guns has gone up 47% in murders, 76% in aggravated assaults, and 58% in armed robberies. It would seem evident that easy accessibility has been, at the very least, a contributing factor.

But, shout bumper stickers in an emotional no sequitur: "When Guns Are Outlawed Only Outlaws Will Have Guns."<sup>3</sup>Frequently the automobiles with that slogan on the back will have another on the front: "Support Your Local Police."

Former Attorney General Ramsey Clark, who was editorially praised by the for "emerging as a bulwark in Washington against emotionalism,"<sup>4</sup> in a 23-page letter to the Senate last September 10, said,

[T]hose who stridently call for law and order yet oppose or ignore gun control fail to face the issues, fail to protect the public and raise questions as to their own purposes ... The real question...is not whether gun control legislation can reduce crime and save lives. We know it can ... If we are serious in our professions of concern about crime...then let us move directly against the favored weapon of the lawless - guns.<sup>5</sup>

Some officials saw the need for gun controls long before the recent series of assassinations. Senator Thomas J. Dodd of Connecticut began his valiant efforts to pass meaningful measures in the 88th Congress, and he often referred to "the almost hysterical attempts to kill the legislation."<sup>6</sup> As the then Attorney General of California, I testified before Senator Dodd's Senate Subcommittee on Juvenile Delinquency in favor of gun controls long before the death of President Kennedy. In recent sessions of Congress there has been a variety of measures other than the Dodd bills.

To say that no more gun laws are needed is to say that all our problems with firearms are singularly unchanging. This is patently untrue. There are many constantly changing aspects of the firearms problem which were never considered when existing laws were drafted. These are facets of the situation which are just now receiving some attention.

Undoubtedly a person who is determined to kill and who cannot readily acquire a firearm can achieve his purpose with a number of substitutes: an axe, a razor, a broken bottle, or various blunt instruments. But the fact remains, a gun embodies a potential for lethal damage that is swifter, more certain, more widespread, more adaptable.

The new problem begins with the availability of cheap foreign firearms which have been flooding the United States. These are primarily surplus from all wars of the last fifty years. They enable dealers to sell for a few dollars weapons which are totally useless for any legitimate hunting or shooting purpose.

Following the advent of this vast tide of cheap weapons, there grew the lucrative business of mail order gun sales - an enterprise which radically changed the entire firearms business in the United States. No longer do local police and local gun dealers know who are buying weapons.

Compounding these two new aspects of the firearms problem is the development of new weapons and their public availability. When most of our current gun laws were drafted, special controls were applied to machine guns, sawed-off shotguns, and tear-gas weapons which had proved particularly dangerous in the hands of Prohibition-era gangsters. Today we are faced with refined weapons: sawed-off rifles, anti-tank guns, mortars, rocket guns and dart guns, and there are certain to be constantly newer technological advances in the macabre art of weaponry. The rocket gun theory is based on the use of a tiny self-propelled rocket which can be fired from virtually any proper size tube. It is a

weapon so new that its full potential has yet to be explored.<sup>7</sup>

The dart gun can shoot tranquilizer darts, explosive charges, and even dye pellets. It is the sort of weapon which is not believed when seen on a TV spy thriller. Yet these weapons are now, today, available to the public.

Nevertheless, there are those who insist we need no new gun laws. Attorney General Thomas C. Lynch of California compares them to those who believe that the securities laws of 1925 are sufficient for today's economy.<sup>8</sup>

The gunfight at O.K. Corral may have been as acceptable a social phenomenon in its day as the St. Valentine's Day massacre was understandable in the Capone era. But this is the final third of the twentieth century. The vast majority of Americans now live in a complex urban society which has changed markedly in the past two decades since the close of World War II.

All the populous states of the nation now have urban complexes, at least one megalopolis, in which tens or hundreds of thousands of people are jammed into high rise buildings or into single-family residences within a confined geographic area. There is no open space, no "country" in the traditional sense, just mile upon mile of dwellings.

In such a structured urban society which requires new approaches and new laws in every field, the wanton misuse and abuse of firearms presents unique problems - vexing problems that remain unsolved today. We cannot indefinitely accept violence, or the means of inflicting acts of violence as a product of this society.

For reasons which escape the author, gun control legislation appears to be a subject that defies objectivity. Laws to regulate automobiles, hospitals, business enterprises, the stock market, cancer treatments, air and water pollution, are considered in a relatively rational manner. Yet, when firearms become the topic for legislative discussion, an observer gets the impression that a license on mothers or apple pie has been proposed. A state law enforcement official recently decried the well-meaning citizens who "seem bitterly determined to confuse patriotism with armed paranoia ... If they weren't armed, they might be funny. But they are armed and they must be regulated."<sup>9</sup> Another prominent prosecutor made this trenchant comment: "Show me a man who is unwilling to have his gun registered and I will show you a man who should not have a gun."<sup>10</sup>

Opponents of controls weep for the protector of the home. They retain visions of the romantic past, when men were men and survival depended upon ability to handle a gun. Yet few people of this generation are likely to come face to face with a coyote in their back yard; A gun for protection against predatory animals is as necessary today to nine-tenths of our population as whiskey is to the drunk for an antidote to snake bite.

The fact is, sportsmen and hunters are generally not the unyielding opponents of controls. They are good citizens amenable to reason. The unreasoning emotional opposition comes from the self-appointed guardians of internal security, the potential vigilantes, the boys down at the pool hall, those who distrust law enforcement agencies and who have a psychotic fear of an impending Communist takeover which they are girding to resist by guerrilla warfare. And, let's face it, city riots and racial violence have created new fears that impel a desire

among individuals to acquire guns, generally to maintain the neighborhood status quo.

While it cannot be a source of pride, unquestionably guns and violence have been an integral part of American life. Hunters make out a case for the need to kill deer for, they say, the natural enemies of deer have become so decimated that were it not for the annual slaughter - euphemistically called a "harvest" - the deer overpopulation could become a serious menace to farm products. To many rural poor, the killing of animals is an essential for protein diet and, indeed, for actual existence. Target shooting is an Olympic sport, the teams generally developed by the wealthy and the military establishments; significantly, the USA and the USSR usually dominate the winners' circle.

To some people rifles are considered a household item, as necessary as pots and pans, and a salutary source of achieving togetherness between father and son. Indeed, along with electric can openers, do-it-yourself outfits, gas ranges, washing detergents and deodorants, Consumers' Union has issued a report on the "twenty-two."

No one who watches television can be oblivious to the deplorable stream of violence consistently brought into the living room. A survey made by the staff of the Christian Science Monitor completed six weeks after the assassination of Senator Robert F. Kennedy showed 84 killings portrayed in 85 1/2 hours of programming over a seven-day period during prime evening and Saturday morning time. During that same period 372 acts or threats of violence were shown, including 162 on Saturday morning when children audiences are larger.<sup>11</sup>

Unquestionably generations of young Americans have been part of a milieu in which possession and use of guns have been considered acceptable and even desirable. Today we must determine whether society can continue to exist as we have known it if access to lethal weapons is uncontrolled. The question is the simple one I suggested in my opening paragraphs: may criminal, ex-convicts, narcotic addicts, alcoholics, minor, aliens and mentally ill persons have an unchecked and absolute right to possess firearms or may society protect itself by enacting reasonable controls?

Contrary to emotional opposition, the object of legislative proposals is not to outlaw guns. The goal of firearms legislation is not the elimination of all privately-held weapons. The lawful uses of firearms appear to make such a drastic step unwarranted, even assuming it were politically possible. Legislative proposals undertake to identify the types of weapons which have no proper use in private hands and the classes of persons who, because of immaturity, mental or emotional instability, or antisocial behavior, should be denied access to firearms. The difficult residual problem, left to the enforcement authorities, is to ascertain which individuals belong in these classes. But, because the consequences of the unlawful use of firearms are so severe, it is unwise to delay sanctions until after use; rather, this is a particularly appropriate area for preventive measures. Any restrictions on possession necessarily will inconvenience to some extent those who abide by them, but strict regulation will hopefully be of significant effect in limiting availability of weapons to those willing to accept the responsibilities of ownership.

The most frequently expressed rationale for opposition to gun controls is

the second amendment to the Constitution of the United States. I shall therefore turn to that subject.

## CONSTITUTIONAL CONSIDERATIONS

Federal control of firearms is limited by the second amendment, which provides that "[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms shall not be infringed."<sup>12</sup> However, this provision has been interpreted as protecting only the right of the states to maintain and equip a militia and not as guaranteeing to individuals the right to bear arms.<sup>13</sup> Thus, the Supreme Court has held that unless a defendant could show that his possession of a firearm in violation of federal statutes had "some reasonable relationship to the preservation or efficiency of a well regulated militia,"<sup>14</sup> he could not challenge the statute on second amendment grounds.<sup>15</sup> On this reasoning, both the Federal and the National Firearms Acts have been upheld against a series of constitutional challenges.<sup>16</sup> Since I am writing prior to adjournment of Congress, and the form and outcome of proposed federal legislation is as yet unknown, I cannot comment on the most recent specific enactments. However, it seems highly unlikely that reforms similar in principle to existing federal laws would fail to pass constitutional test.

While almost half the states guarantee specifically the right of citizens to bear arms in defense of self or home,<sup>17</sup> it seems unlikely that any new laws would operate to deprive states of their police power to regulate the sale of dangerous weapons.<sup>18</sup> Although a stringent regulation such as the Massachusetts law requiring a showing of need before an individual may purchase a handgun might be invalidated under some state constitutional provisions, laws denying deadly weapons to individuals who have demonstrated a propensity toward violence should not be held unconstitutional.

For at least three decades, the Attorney General of the United States has consistently taken the position that there is no constitutional objection to gun control legislation and no court has rejected his conclusion. In 1934, he advised the House Committee on Ways and Means that the second amendment was no bar to the then proposed National Firearms Act being enacted under the power of Congress to lay and collect taxes and to regulate interstate commerce.<sup>19</sup> That Congress had no doubts about the inapplicability of the second amendment is indicated by omission of any mention of the issue in connection with hearings on the Firearms Act of 1938,<sup>20</sup> and the committee reports in connection with the Act.<sup>21</sup>

In subsequent prosecutions under both the 1934 and 1938 acts, defendants raised the contention that the second amendment inhibits federal regulations of firearms, and in not one reported case was a constitutional bar found to exist.

The National Firearms Act of 1934<sup>22</sup> levied taxes on dealers, manufacturers and importers of defined firearms and on transfers of such firearms, and required that every person possessing any such firearm not acquired from a registered manufacturer or dealer or importer must register with the Treasury Department his and the weapon's identification. Each non-dealer transfer of such a firearm was

to be accompanied by a written order with an internal revenue stamp affixed.

In an early prosecution under this act, the court in *United States v. Adams*<sup>23</sup> held that the second amendment had no application to the Act, in that the Constitution "refers to the militia, a protective force of government' to the collective body and not individual rights." Next came a unanimous Supreme Court 1939 decision in *United States v. Miller*,<sup>24</sup> upholding the conviction of two men who transported in interstate commerce a shotgun which came within the definition of a "firearm" under the National Firearms Act and was not registered as required by the Act. The Court decided that the second amendment did not guarantee the right to keep and bear any weapon not having a "reasonable relationship to the preservation or efficiency of a well regulated militia." The court noted that the obvious purpose of the amendment was to assure the continuation and render possible the effectiveness of the militia subject to call and organization by Congress under Article I section 8, clauses 15 and 16 of the Constitution and that the amendment must be so interpreted.

At the time the Constitution was drafted, the Court indicated, the militia was considered to be a "body of citizens enrolled for military discipline" and that "ordinarily when called for service these men were expected to appear bearing arms supplied by themselves and of the kind in common use at the time."

If there were any implication in **Miller** that the more practicable a weapon might be for purposes of a well-regulated militia the less subject it might be to Congressional regulation, it was dissipated in the two 1942 Circuit Court holding which the Supreme Court did not disturb: **Cases v. United States**<sup>25</sup> and **United States v. Tot**.<sup>26</sup> Both cases upheld convictions under the since repealed Federal Firearms Act of 1938,<sup>27</sup> specifically section 902(f) making it unlawful for any person convicted of a crime of violence to receive firearms or ammunition transported in interstate or foreign commerce.

In the **Tot** decision the court held that it was abundantly clear from the discussions of the second amendment contemporaneous with its proposal and adoption that unlike the first amendment, it "was not adopted with individual rights in mind, but as a protection for the States in the maintenance of their militia organizations against possible encroachments by the federal power." It further reminded us that "weapon bearing was never treated as anything like an absolute right by the common law" but was regulated by statute as far back as the Statute of Northampton in 1328. Thus the court concluded that the federal statute providing a general regulation of interstate and foreign commerce in firearms was consistent with the history of the second amendment and of the common law proceeding it. The court affirmed the lower court decision,<sup>28</sup> which had cited with approval the **Adams** language that the amendment referred to a collective protective force and not to individual rights.

In the **Cases** decision the First Circuit also determined that the right to keep and bear arms "is not a right conferred upon the people by the federal constitution," and that the framers of the amendment did not intend to give private individuals a right to possess deadly weapons of any character, whether or not they were of the kind that would be useful to a well-regulated militia. Specifically, the court held possession of ammunition not to be constitutionally protected.

Because the second amendment refers to "the right of the people to keep and bear arms" it is sometimes argued that this concept impedes restrictive legislation despite the second amendment relation to the organized militia. This theory maintains that while the Constitution cannot be said to be the source of a right to keep and bear arms, its wording indicates that a preexisting right was recognized. Admittedly there are some court decisions, both state and federal, which assume without analysis that the right to bear arms exist in the people as individuals as a natural right or by virtue of common-law heritage.

In that connection it must be realized that "arms" is traditionally a military term and the statement of the right in the federal Constitution is connected with the necessity for a well-regulated militia. therefore, if such a right is personal in nature, it is at least restricted to members of a well-regulated or organized state militia. An early Texas case pointed out that "The word 'arms' in the connection we find it in the Constitution of the United States, refers to the arms of a militiaman or soldier, and the word is used in its military sense."<sup>29</sup>

While a few older state cases, one as far back as 1822,<sup>30</sup> indicate that all citizens had an inviolate right to bear arms for self as well as militia purposes and that a statute prohibiting the carrying of concealed weapons offended the second amendment, that point of view has long been virtually extinct. The Supreme Court stated as an axiom in 1897 that the second amendment "is not infringed by laws prohibiting the carrying of concealed weapons,"<sup>31</sup> and today the overwhelming majority of state cases follow the doctrine expressed by the Supreme Court of Massachusetts,<sup>32</sup> that "it has been almost universally held that the legislature may regulate and limit the mode of carrying arms."Therefore, a state statute regulating, and in certain instances prohibiting, the carrying of enumerated deadly weapons is not repugnant to the second amendment or its counterpart in the constitutions of the several states'.<sup>33</sup>And very early acts prohibiting the carrying of revolvers without a license were upheld, as were state laws forbidding possession of concealed weapons.<sup>34</sup> It is now clear that no body of citizens other than the organized state militia, or other military organization provided for by law, may be said to have a constitutional right to bear arms.<sup>35</sup>

The modern tendency among courts and legal writers is to regard the right to bear arms as existing in narrowly limited circumstances. The present state of the law concedes at the most that "the Second Amendment only forbids Congress so to disarm citizens as to prevent them from functioning as state militiamen."<sup>36</sup> It follows that any act which does not in fact prevent an eligible citizen from functioning as a state militiaman is not proscribed by the second amendment.

There is also abundant authority indicating that the reference to "the people" in the second amendment means, not individuals, but the body politic. In 1840, a Tennessee court declared, "The single individual...is not spoken of or thought of as 'bearing arms.'"<sup>37</sup> The leading case is **City of Salina v. Blaksley**,<sup>38</sup> decided in 1905, in which the Court appeared "expressly to decide that the word 'people' means only the collective body and the individual rights are not protected by the constitutional clause."<sup>39</sup>

The progenitor of the second amendment is generally conceded to be the provision in the English Declaration of Rights of 1688 that "the subjects which are Protestants may have arms for their defence suitable to their conditions and as allowed by law." As noted by Professor Ralph Rohner,<sup>40</sup> the declaration drafted by Parliament in 1688

[A]ddressed itself to all the grievances prevailing at the time, and so in that sense is similar to our own Declaration of Independence and Constitution. And those grievances were felt so fundamental that the remedies demanded were, even at the time, recognized as basic rights, and included the right to petition for redress and a prohibition against standing armies.<sup>41</sup>

Rohner finds it politically significant that the Bill of Rights gave to Protestants the right to bear arms, for historically Protestants had been deprived of weapons "at the same time when Papists were armed"; thus the new guarantee related to a political grievance. Rohner concluded that Parliament did not appear to be claiming for the people a right of individual self-defense or self-effacement, but rather the general right, as a populace, to remain armed in the face of possible military impositions.

Since a specific "right to bear arms" had not manifested itself in any other constitutional schemes,<sup>42</sup> it seems a peculiar Anglo-American phenomenon. Nowhere is there any respectable authority for the proposition that, as of 1791, a guarantee of the right to bear arms extended generally to personal self-defense as that concept was applied in either the common law or in any constitutional system.

If we try to pursue the common law prior to 1688, we find no evidence that the right to keep and bear arms had achieved any accepted status. To the contrary, there were weapons regulations in England as early as the seventh century. IN 1328, during the reign of Edward III, Parliament enacted the Statue of Northampton, which established the statutory misdemeanor of "going about armed."<sup>43</sup>

Blackstone, writing in the 1750's, cited the forest and game laws in the British Code as evidence that any observer "will readily perceive that the right of keeping arms is effectually taken away from the people of England."<sup>44</sup>

From a reading of English statutes and related history one must conclude that "a right to keep and bear arms was not regarded as a fundamental right of every Englishman."<sup>45</sup> Or if any such right existed, Joseph Story noted in 1833, the English right to bear arms was "more nominal than real."<sup>46</sup>

Regardless of the mandate of the English Bill of Rights, England today has stringent regulations on firearms. (see, e.g., Gun License Act of 1870, the Pistols Act of 1903, and the Firearms Act of 1937.)

Professor Rohner draws from this the conclusion that the earliest right to bear arms in Anglo-American jurisprudence:

[w]as penned in an age, and by men, a well-knowing that there were

inherent limitations on such a right - limitations properly derived from the essential police power of their government...The right to bear arms, therefore, was established as a 'fundamental principle' by nations well aware of the parallel principle of police power - i.e., the protection of the public health, safety, and welfare.<sup>47</sup>

#### ENGLISH FIREARM CONTROLS TODAY

The effectiveness of restrictive firearms legislation may be measured with reasonable accuracy in England, a country with a relatively small land area and uniform national law. The Firearms Act of 1937<sup>48</sup> requires that a permit, issued by the local police chief and effective for three years, be obtained before the purchase of handguns. The applicant must demonstrate a "good reason" to have the gun and that his ownership would create no "danger to the public safety or to the peace." "Good reason" is interpreted to mean only sporting uses; licenses are not issued for self-defense or property protection, even in the case of persons such as bankguards.<sup>49</sup> Although a 1965 amendment,<sup>50</sup> increasing penalties for carrying firearms, was prepared and passed as an emergency measure to stop a crime wave, Britain has had a remarkably minor firearms problem. The city of London reported 172 indictable offenses in which firearms were used during the year of 1964, while there were only 731 such firearms-connected offenses in all of England.<sup>51</sup> In the same year most major American cities numbered arrests for dangerous weapons violations in the thousands.<sup>52</sup> While many circumstances have undoubtedly contributed to the British success, the gun control laws are a significant factor.

Britain does, however, have some problems. There is some evidence that illegal ownership of firearms does exist, for during a recent two-month amnesty period 7,812 illegally owned weapons were surrendered.<sup>53</sup> However, the British experience seems clearly to indicate that restrictive firearms legislation can be effective<sup>54</sup> without denying sportsmen their weapons.<sup>55</sup>

#### AMERICAN ORIGINS OF THE SECOND AMENDMENT

The second amendment originated in the first session of the First Congress. As initially introduced by James Madison, it read:

The right of the people to keep and bear arms shall not be infringed; a well armed and well regulated militia being the best security of a free country; but no person religiously scrupulous of bearing arms shall be compelled to render military service in person.<sup>56</sup>

As reported out of committee, the text had been altered as follows:

A well regulated militia, composed of the body of the people, being the best security of a free state, the right of the people to keep and bear arms shall not be infringed; but no person religiously scrupulous shall be compelled to bear arms.<sup>57</sup>

It should be noted that when referring to conscientious objectors, the phrase used was "no person," thus indicating a clear intent to apply to individuals. But in referring to the right to bear arms, a collective term, "the people," was employed. The contrast in terminology supports the view adopted by historians that the right to bear arms was considered in terms of a collective right, while the protection of religious scruples was to be applied to individuals.

Unfortunately the original debates in the Senate of the First Congress were not reported. In the House, debates were confined to the question of the retention of the conscientious-objector provision, where Elbridge Gerry of Massachusetts did comment briefly on the history of the proposal. He noted that the Crown had quartered troops in Massachusetts and had forbidden the organization of a colonial militia. He said the purpose of organizing and maintaining a militia was to prevent the establishment of standing armies - "the bane of liberty."<sup>58</sup> He expressed the view that if states were not permitted to make their own choice with respect to conscientious objectors, they might be unable to raise a militia, and the consequence of this would be the development of a standing army. His concern was the weakening of state militias. There was no mention of any individual "right" to bear arms, by Gerry or anyone else, during the course of the debates.

The Annals do not reveal how the final language of the second amendment was resolved. While the entire religious scruple clause was omitted, the final version regarding militia and arms retains the use of the collective term "the people." Thus it seems clear that the second amendment was designed to protect and preserve the state militias. No mention was made of any individual "right" to possess, carry, or use arms, and there is no historical indication of any concern with such a right.

This conclusion is fortified when one analyzes the various provisions in state constitutions in effect in 1791, when the Bill of Rights was ratified. There were then fourteen states in the Union, most of which had adopted constitutions or declarations of rights following the signing of the Declaration of Independence. Rhode Island alone was still operating under its Charter of 1663. That charter authorized the colony to organize and maintain a militia, but it contained no mention of any "right" to bear arms.

Delaware and New Jersey had both adopted constitutions in 1776, but neither contained a bill of rights and there was no mention of a "right" to bear arms. Connecticut had declaration of rights adopted in 1776, but it was also silent with respect to bearing arms.

Five states had constitutions specifically providing for the organization and maintenance of a militia but making no reference to bearing arms. The Georgia Constitution of 1777 was concerned with the structure and regulation of the militia.<sup>59</sup> The South Carolina Constitution of 1778 merely provided that the militia should be subordinate to the civil authorities,<sup>60</sup> Maryland and New Hampshire had very similar provisions relating only to the necessity and purpose of the militia.<sup>61</sup> New York apparently did not contemplate a self-armed militia since the Constitution of 1777 required the state to maintain a militia in both war and peace and to maintain a proper magazine of warlike stores," at state expense, for the use

of the militia.<sup>62</sup>

Three states expressly recognized the "right of the people to bear arms" *for the defense of the state*. The Massachusetts Constitution of 1780 provided: "The people have a right to keep and to bear arms for the common defense."<sup>63</sup> The North Carolina Constitution of 1776 stated: "That the people have a right to bear arms, for the defence of the State..." and the remainder of the article forbade maintenance of a standing army and insured civilian control over the militia.<sup>64</sup> Both these constitutions consistently used the term "people" in referring to collective rights, such as the right of self-government. Where individual rights were guaranteed, the terms "men," "individuals," "persons," "citizens," or "subjects" were used. The Virginia Bill of Rights of 1776 provided: "That a well-regulated militia, composed of the body of the people, trained to arms, is the proper, natural and safe defence of a free State..."<sup>65</sup>

If an individual right to bear arms for private purposes was recognized in these states in 1789, it was not indicated or specifically guaranteed by the state constitutions or charters. On the other hand, the right to maintain a militia for the defense of the state was zealously guarded. It seems apparent that federal imposition upon the militia concerned these states when the First Congress assembled, rather than protection of any existing individual right to bear arms.

A contrary contention may be arguably justified from only two state constitutions. The Pennsylvania Constitution of 1776 provided: "That the people have a right to bear arms for the defence of themselves and the state..."<sup>66</sup> However, the remainder of that article was concerned with the prohibition against a standing army and the guarantee of civilian control of the militia. Moreover, "people" seems to have been employed in a collective sense throughout the Constitution and other expressions were used to indicate individual rights. I would conclude that the article was intended to refer only to the common defense, not to individual self-defense. And finally, the Vermont Constitution of 1777 provided: "The people have a right to bear arms for the defence of themselves and the State." Since the relevant sections of the article also prohibited a standing army and required civilian control of the militia, I find it reasonable to conclude that the phrase "defence of them" referred only to collective defense and did not encompass individual self-defense.<sup>67</sup>

The state constitutions were undoubtedly a mirror of the concerns of the people and their representatives when the First Congress met and considered the Bill of Rights. At that time the states indicated no manifest determination to protect any individual "right" to own, carry or use firearms for private purposes. If such a "right" existed, it was certainly not clearly expressed. Both the states and the Congress were preoccupied with the distrust of standing armies and the desirability of preserving state militias. It was in this context that the second amendment was written.

#### CONSTITUTIONS OF THE STATES TODAY

The American Bar Foundation study of firearms regulations (Nov. 6, 1967) found that the constitutions of 35 states guarantee the right to bear arms.<sup>68</sup> Three

states exactly reproduce the terms of the second amendment; two others repeat its words with additions. The second amendment protects a right to "keep and bear arms," which would appear to be a greater right than that of merely "bearing arms." Including those five states that closely or completely follow the federal provision, that are seventeen states that guarantee the right to "keep and bear arms."<sup>69</sup>

While the state constitutional provisions are broadly similar to that of the second amendment, there are significant variations. The right to bear arms is stated as adhering to "the people" or "the citizens" in 22 states and only in 13 instances to the individual, including Kentucky, which uses the phrase "all men." In no state is the right formulated as one attaching unqualifiedly to individuals; all the guarantee provisions refer in one way or another to the concept of defense of self and the state, or the maintenance of a militia. Rhode island has what is probably the broadest provision - "The right of the people to keep and bear arms shall not be infringed." Nevertheless, it appears that since the word "people" is used, the right accrues only to citizens acting in concert.

The right to bear arms is associated with concepts of a self-defense or defense of the state in 28 constitutions. Four of the states use the phrase "common defense," indicating that the right of individual self-defense is not contemplated. In 12 states the individual right to bear arms appears to be linked to the individual right of self-defense as well as to the right of defending the state. Two state constitutions expressly declare that the right to bear arms shall not justify the organization of bodies of armed men.

The American Bar found that the experience of Kentucky illustrates the reason why some state constitutions reserve the right of the legislature to regulate the carrying of weapons. The Supreme Court of that state struck down a law to prevent the carrying of concealed weapons as violating the constitutional provision that "the right of the citizens to bear arms in defense of themselves and the state shall not be questioned."<sup>70</sup> The Kentucky Constitution was subsequently amended by the addition of these words, "but the general assembly may pass laws to prevent persons from carrying concealed arms."<sup>71</sup>

At present, eight states reserve to their legislatures the right to prevent the carrying of concealed weapons, and seven reserve the broader right to regulate the manner of carrying or bearing arms. In the other states laws regulating the carrying of certain kinds of firearms or carrying them under certain circumstances have been held valid.<sup>72</sup> Some courts have held, even in the absence of a specific power reserved by the state constitution, that legislatures may subject the right to bear arms to reasonable regulation.<sup>73</sup> Others have held that "arms" does not include the type of weapon the questioned enactment seeks to regulate.<sup>74</sup>

## GUNS AND CRIME CONTROL

The American Bar Foundation in a report published in 1967 on "Firearms and Legislative Regulation" reached this conclusion:

It does not follow, however, that because firearms may not cause

crimes that their widespread availability does not aggravate criminal conduct when it occurs. If many or most assaultive crimes, including homicide, are committed with the "weapon at hand," then general ready accessibility of guns increases the likelihood that guns rather than other weapons will be used. And it seems hardly disputable that guns produce more effective injuries than other weapons - as the equipment of modern armies attest. If firearms regulation is seen as a device for crime *control* - reduction in the seriousness of crime - rather than simply a device for crime *prevention*, the case for regulation is clearly a strong one. In this perspective, it seems irrelevant that firearms control may not have the effect of reducing the number of crimes, if it contributes to reduction in their seriousness.

While law enforcement officers express the belief that gun control laws would reduce the number of criminal homicides, opponents of controls insist that the killer is crucial, the weapon only an incidental means. As Wolfgang put that point of view:

Few homicides due to shootings could be avoided merely if a firearm was not immediately present, [for] the offender would select some other weapon to achieve the same destructive goal.<sup>75</sup>

The most thorough analysis of this subject was published recently by Frank Zimring, professor of law, and a research associate in the Center for Studies in Criminal Justice at the University of Chicago Law School. Based upon a study of more than 1,400 homicides and 22,000 assaults during 1965, 1966, and 1967 in Chicago, Zimring concluded that gun controls would effectively prevent a considerable number of fatalities.

Reduced to a simple syllogism, the findings statistically demonstrate:

1. A substantial proportion of killings appears to result from attacks that were not made with the single-minded intent to kill.

2. The gun and the knife are interchangeable weapons for persons who make such attacks.

3. Whenever knives are used, the fatality rate from serious attacks is less than one-fifth as great as that from gun attacks.

Thus, if firearms were eliminated, knives would be the next most dangerous probable substitute - but knives are demonstrably less likely than guns to be lethal in attack results.

That the vast majority of homicides occur because of an ambiguous intention, rather than a single-minded intention to kill, is indicated by Zimring's study which established that 82% of the homicides occurred as a result of heated altercation.

In Zimring's study, 52% of the homicides were committed with firearms, 30% with knives, 8% with other weapons and 10% with no weapon. In general, the same kinds of altercations produced gun and knife killings.<sup>78</sup>

Other conclusions of the study were these:

Seventy percent of all gun homicides resulted from a single wound, although a "single-minded intention to kill" should prompt the attacker to insure his result by multiple wounding. Furthermore, there is evidence that, at least for those attackers who have no single-minded intention to kill, the knife and the gun are largely interchangeable weapons.

Assault figures show that just as many knife wounds are located in the vital areas of the body (head, neck, chest, back, abdomen) as are gun wounds.

Assault data also show that knife attacks result, if anything, in more multiple woundings than gun attacks.

Yet there are between five and six times as many fatalities per 100 gun attacks as there are per 100 knife attacks.<sup>79</sup>

Thus, although some opponents of control insist the number of homicides. According to the FBI Annual Uniform Crime Reports for 1967,<sup>81</sup> firearms were used in 63% of all 1967 murders. Seventy-six policemen were killed by criminals in 1967. This was 19 more than in 1966, and well above the annual average of 48. firearms were used in all but five of last year's police killings.

During the period 1962 through 1967, the FBI report showed, there were 59,015 murders. Fifty-eight percent were gun murders.

Four northeastern states with strict gun control laws had the lowest incidence of murder by firearms: Rhode Island, 34.1%; New York, 34.9; Massachusetts, 39.9; and New Jersey, 41.2.

Texas, without gun control laws, recorded the highest number of homicides - (5,104) - of which 70% were gun deaths. This compared with more populous New York State which, with the country's most stringent firearms controls, had 4,835 murders, of which 34.9% were the result of the use of guns.

Statistics for cities are comparable. Boston and New York City report 2.8 and 6.1 murders respectively per 1000,000 inhabitants, while Atlanta - in Georgia, a state with few gun controls - and Dallas have 11.5 and 10.3 gun murders per 100,000. While other factors may contribute to these results, the value of firearms regulations seems clear.<sup>82</sup>

## CONCLUSION

The public was aroused to the dangers inherent in mail-order sale of weapons after the Warren Commission established that Lee Harvey Oswald, using a fictitious name and post-office box, purchased by mail the Mannlicher-Carcano rifle that killed President Kennedy.<sup>83</sup> Time dimmed memories and diluted legislative enthusiasm. The murder of Dr. Martin Luther King, Nobel Peace Prize winner and the eloquent voice of nonviolence in our society, again stirred the conscience of America - but only momentarily. As if to prove the specter of violent death is still unchecked, Senator Robert F. Kennedy was slain this past June, in the midst of a presidential campaign. Public opinion polls indicated an overwhelming demand for legislative action.

Concerned Americans are entitled to ask how long they must suffer the kind of violence that snuffed out the lives of President Kennedy, Medgar Evers, Malcolm X, Dr. King, Senator Kennedy - and 7,600 others annually. The possibility

that many, or most of that number might die in some other manner if guns were unavailable is no rebuttal to the charge that we now make it unconsciously easy for those who are violence-prone. That criminals will find some way to get lethal weapons despite controls justifies inaction about as much as a suggestion that we maintain no drug controls because willful people will always find ways of obtaining illicit drugs. That law-abiding citizens who desire guns will be inconvenienced by controls is as unconvincing as the complaint of the careful motorist who is required by law to carry liability insurance.

In short, action in the field of gun controls is long overdue. We can hope no more assassinations occur before Congress and state legislatures respond, not perfunctorily, but effectively.

***Footnotes:***

1. Eldridge Cleaver, so-called "minister of Information" for the Black Panthers and presidential nominee of the Peace and Freedom Party, was invited to address the Barristers Club of San Francisco, a respected group of young lawyers. His remarks were reported in Newsweek Magazine, Sept. 16, 1968, at 30.

2. The quotation is from the Minutemen Bulletin of January 1966. Robert DePugh is the leader of the Minutemen, an organization with headquarters in Narbonne, Mo., and branches purportedly throughout the country. The Minutemen, who drill in private and secrete caches of weapons and ammunition to use against their fancied imminent communist takeover, have a political arm known as the Patriotic Party. Its number one project has been to oppose all gun control legislation.

3. A close approximation of that theme was sounded by George C. Wallace in Dallas on Sept. 16, 1968: "if guns are taken away on the national scene, every Texan would have his guns taken away and every thug here would have ten guns." (Los Angeles Times, Sept. 17, 1968.)

4. N.Y. Times, Sept. 20, 1968, at 46, col. 1.

5. N.Y. Times, Sept. 11, 1968, at 19, col. 1.

6. Address by Senator Thomas J. Dodd, Americana Hotel, New York, Aug. 12, 1964. He pointed out some of the evils of mail-order gun sales:

25 per cent of the 200 consignees investigated had records of arrest with the Metropolitan Police Department ranging in seriousness from misdemeanors to such felonies as assaults with dangerous weapons, assaults on police officers, narcotic violations and homicide.

At the time of our study, the five police precincts which had the highest incidences of "mail-order" gun deliveries also had the five highest crime rates in the metropolitan area.

Each month brings fresh evidence of the nature of the mail-order traffic. For example, just last month, the Chicago Police Department submitted a report to me covering the activities of Weapons, Inc., a mail-order firm in Culver City, California.

Briefly, this firm sold 2,630 weapons to 1,257 persons during the 3-year period 1960-63. Of this number, 322, or 25 per cent, had criminal records with the Chicago Police Department. While Chicago requires a permit to carry a gun, 2,528 of these weapons were not registered with the Chicago Police Department.

This is just another instance of how local law is circumvented by the mail-order gun business and a good illustration of the need for additional Federal regulations.

7. The testimony of Attorney General Lynch before a California legislative committee, November 5, 1965, is frightening:

The same means of propulsion that gives us the capacity to put men into space are now being used to create weapons...We are faced now with a revolution in weaponry. I can tell you that the potential for misuse by criminal elements is unlimited.

A new weapon using the rocket principle is being produced and marketed in California,...not [by] an established gun manufacturer, but rather [by] a firm which is principally engaged in space-age research. The men who conceived this rocket gun have been associated with such developments as the Manhattan Project...This weapon fires small rockets at high velocities. The basic scientific difference of this gun from conventional firearms is that the firing device itself is merely a launching tube ... it has been estimated that a basic launching device for these rockets could be constructed for as little as 87 cents.

This new weapon, and all weapons like it, depend on the projectile itself both for propelling power and accuracy.

It basically represents rocketry - miniature rocketry

[N]ow that we have entered the stage of hand rocketry, we must face the fact that "bigger and better" rockets for all types of firearms are likely to be developed. Continued experimentation and development seem inevitable. And from such research will come devices which will completely outclass the heavy-duty weapons presently used by law enforcement.

A gun expert, writing about the rocket gun, recently stated that the age of gun powder as we know it today will soon be a thing of the past. "Today's high velocity rifles and pistols will be as obsolete as the flintlock and will become collector items," he observed.

In my opinion, we should give careful consideration before making these new weapons readily accessible to any person. It is unthinkable that they be placed in the hands of the criminal, subversive or radical elements. We have been given warning of the weapons which are feasible. Forewarned, there can be no excuse for laxity in controls.

8. Address by Attorney General Thomas C. Lynch, Beverly Hills, California, Sept. 28, 1966.

9. Chief Deputy Attorney General Charles A. O'Brien of California, testifying before a California legislative committee in Sacramento, May 2, 1967.

A Cincinnati psychologist, Dr. Karl Heiser, expressed an opinion that there were "about 10,000 psycho gun addicts" in his community. He said many sexually inadequate men drive fast, powerful cars "to make them feel sexually potent while others use guns as sex symbols." (Los Angeles Times, Aug. 22, 1968).

10. Chief Assistant District Attorney Frederick J. Ludwig, Queens County, New York, testifying before the United States Senate Subcommittee on Juvenile Delinquency. Washington, July 11, 1967.

11. The Christian Science Monitor Survey was reported in the N.Y. Times, July 26, 1968, at 35, col. 1. The study found the most violent evening hours were between 7:30 and 9, when according to official network estimates, 26.7 million children between the ages of 2 and 17 are watching television:

In those early evening hours, violent incidents occurred on an average of once every 16.3 minutes. After 9 p.m., violence tapered off quickly, with incidents occurring once every 35 minutes.

In the early evening, there was a murder or killing once every 31 minutes. Later, once every two hours.

American Broadcasting Company evening programming was most violent, with 97 incidents and 47 killings, the National Broadcasting Company showed 63 incidents and 23 killings, and the Columbia Broadcasting System televised 41 incidents and 14 killings the survey reported.

But what credit C.B.S. won for its evening shows, it lost on Saturday morning. Two of the most violent cartoons for children were on C.B.S. In a half hour, the "Herculoids" raced through 18 violent incidents during which 20 monster people of various descriptions were shot, vaporized or mashed.

12. For a more complete treatment of the constitutional aspects of firearms legislation, see C. Bakal, *The Right to Bear Arms* (1966); California Legislative Assembly and Interim Committee on Criminal Procedure and Regulation and Control of Firearms, Sacramento, 1965; New York Legislative Joint Committee on Firearms and Ammunition Report, Albany, 1962; Brennan, *Some Aspects of Federalism*, 39 NYUL Rev. 780 (1964); Douglas, *Bill of Rights and the Free Society: An Individual View*, 13 Buffalo L. Rev. 1 (1963); Douglas, *Bill of Rights is Not Enough*, 38 N.Y.U.L. Rev. 207 (1963); Emery, *The Constitutional Right to Keep and Bear Arms*, 28 Harv. L. Rev. 473 (1915); Feller & Gotling, *Second Amendment: A Second Look*, 61 Nw. U.L. Rev. 46 (1966); Fletcher, *Corresponding Duty to the Right of Bearing Arms*, 39 Fla. B.J. 167 (1965); Frankfurter, *Memorandum on "Incorporation" of the Bill of Rights into the Due Process Clause of the 14th Amendment*, 78 Harv. L. Rev. 746 (1965); Kurland, *Supreme Court and the Attrition of State Power*, 10 Stan. L. Rev. 274 (1958); Rohner, *Right to Bear Arms: A Phenomenon of Constitutional History*, 16 Catholic U.L. Rev. 53 (1966); Rudman, *Incorporation Under the 14th Amendment - The Other Side of the Coin*, 3 Law in Trans. Q. 141 (1966); Law Year Symposium on the Bill of Rights, 48 Woman L.J. (1962); Note, *Firearms - A Comparative Analysis of Proposed Federal Controls*, 15 DePaul L. Rev. 164 (1965); Note, *Right to Bear Arms - A Study in Judicial Misinterpretation*, 2 Wm. & Mary L. Rev. 381 (1960); Note *Bill of Rights: A Limitation on the Several States or the Federal Government?*, 2 Wm. & Mary L. Rev. 437 (1960).

13. See *United States v. Cruikshank*, 92 U.S. 542 (1875); *United States v. Adams*, 11 F. Supp. 216 (S.D. Fla. 1935).

14. *United States v. Miller*, 307 U.S. 174, 178 (1939).

15. *Cases v. United States*, 131 F.2d 916 (1st Cir. 1942), cert. denied sub nom. *Velazquez v. United States*, 319 U.S. 770 (1943).

16. *United States v. Miller*, supra note 14; *Cases v. United States*, supra note 15; *United States v. Tot*, 131 F.2d 261 (3d Cir. 1942), rev'd on other grounds, 319 U.S.

463 (1943).

17. See the compilation of state constitutional provisions in McKenna, *The Right to Keep and Bear Arms*, 12 Marq. L. Rev. 138, 138-42 nn 5-19 (1928).

18. *Presser v. Illinois*, 116 U.S. 252 (1886): for a comprehensive survey of state decisions, see Comment, *The Philadelphia Firearms Ordinance - A Case of Comprehensive Oversight*, 114 U. Pa. L. Rev. 550, 553 n.27 (1966).

19. Hearings on H.R. 9066 Before House Comm. on Ways and Means, 73d Cong., 2d Sess. 18-19 (1934).

20. Hearings on S. 3 Before the Senate Comm. on Commerce, 74th Cong., 1st Sess. (1935).

21. S. Rep. 997, 74th Cong., 1st Sess. (1935). H. Rep. 2663, 75th Cong., 3d Sess (1938). S. Rep. 82, 75th Cong., 1st Sess. (1937).

22.26 U.S.C. sect.5801-62(1967). Briefly, this is a registration and tax statute designed to curtail certain "gangster type" weapons - weapons which generally have extremely limited value for sporting use but which may be of value to the gun collector. The act does not apply to firearms which are not capable of firing fixed ammunition, and thus some types of antique weapons are exempted.

The covered weapons must be registered with the Alcohol and Tobacco Tax Division of the Internal Revenue Service of the Treasury Department. If a person possess one of these firearms and has not acquired it pursuant to the act, obtaining an application for transfer, he must register the weapon, report his name, address, and place of business and the place where the firearms is usually kept. When application for transfer is made a form must be filled out for approval by the Treasury Department. The applicant must furnish his fingerprints and photograph in addition to all identifying marks of the firearm and his reason for desiring such a firearm.

Unserviceable weapons are not subject to the 200-dollar transfer tax; however, their exemption must be registered in the normal manner. This provision allows collectors to display machine guns and other firearms of this type for trophies. Brown, *Firearms Regulations*, 17 W. Res. L. Rev. 569, 571 (1965).

23. 11 F. Supp. 216 (S.D. Fla. 1935).

24. *Supra* note 14.

25. *Supra* note 15.

26. *Supra* note 16.

27.15 U.S.C. sect. 901-09(1968) (repealing Pub. Law 90-35 tit. 4, sect. 906, 82k Stat. 234). This act has two main parts - licensing provision for dealers and manufacturers and a section prohibiting the interstate shipment of firearms or ammunition to fugitives from justice, convicted felons, persons under indictment, and other persons not authorized to own such firearms under local law. Manufacturers of firearms or ammunition must pay a twenty-five dollar licensing fee while dealers must pay a fee of one dollar; both must keep records of each firearm received or shipped in interstate and foreign commerce. The shipper is required to receive evidence that the person to whom the firearms or ammunition is to be shipped is authorized under local law to receive such items. Generally, however, the only regulation which the dealer observes is to require the prospective purchaser to sign a statement that the does not fall within the

prohibited class. The firearm or ammunition is then shipped with no additional questions asked.

See discussion of postal regulations in *Brown, Firearms Regulations*, supra note 22 at 571.

On the ability of postal authorities to control transportation of guns, the following United Press dispatch (reported in the *Los Angeles Times*, July 26, 1968) is significant:

The Post Office Department said Thursday is 'absolutely powerless to prevent delivery of rifles and shotguns into areas of unrest such as Cleveland's battle-scarred east side. Timothy May, Post Office Department general counsel advised Rep. Charles Vanik (D-Ohio) that there was a department regulation requiring that law enforcement officers be notified of the name and address of persons who are receiving long guns through the mail. But the department may not withhold delivery of that firearm, even though requested by the police, May added. He said, 'The department is absolutely powerless under the present law to prevent the delivery of long guns, even into riot areas.'

28. *United States v. Tot*, 28 F. Supp. 900, 903 (D.N.J. 1939).

29. *English v. State*, 35 Tex. 473, 477 (1872); see also *City of Salina v. Blaksley*, 72 Kan. 230, 83, P. 619, (1905).

30. *Bliss v. Commonwealth*, 12 Ky (Litt.) 90, 13 Am. Dec. 251 (1822).

31. *Robertson v. Baldwin*, 165 U.S. 275, 282 (1897).

32. *Commonwealth v. Murphy*, 166 Mass. 171, 44 N.E. 138 (1896).

33. *English v. State*, supra note 29.

34. *Strickland v. State*, 137 Ga. 1, 72 S.E. 260 (1911); accord, *Haile v. State*, 38 Ark. 564 (1882).

35. *City of Salina v. Blaksley*, supra note 29; accord, *Presser v. Illinois*, supra note 18.

36. McKenna, *The Right to Keep and Bear Arms*, supra note 17, at 143.

37. *Aymette v. State*, 21 Tenn. 154, 158 (1840); see also *People ex. rel. Leo v. Hill*, 126 N.Y. 497, 27 N.E. 789 (1891).

38. *City of Salina v. Blaksley*, supra note 29.

39. McKenna, *The Right to Keep and Bear Arms*, supra note 117, at 145. McKenna suggested in his provocative law review article (at 149) that some future courts might say that "the states may have their well-regulated militia even though individuals possess no weapons of their own, provided the states supply the necessary armament upon mobilization."

40. Rohner, *Right to Bear Arms: A Phenomenon of Constitutional History*, supra note 12.

41. The Preamble to the Declaration of Rights of 1688 asserted that it contained the "true, ancient, and indubitable rights of the people of this realm."

42. The French Revolution's "Declaration of the Rights of Man and of the Citizen" of August 26, 1789, assumes a right of "resistance to oppression" but contains no reference to the bearing of arms. See *II Constitutions of Nations* 21 (Peaslee ed. 1956). The United Nations Charter does not acknowledge a right to bear arms.

43. Rohner, *Right to Bear Arms: A Phenomenon of Constitutional History*, supra note 12, at 61.

- 44.1 Blackstone, Commentaries 144 (12th ed. 1795). Indeed if we follow Blackstone back to ancient Greece, we find the law of Solon referring to every Athenian who walked about the city armed being subject to a fine. 5 Blackstone, Commentaries 149 (12th ed. 1795).
45. Emery, The Constitutional Right to Keep and Bear Arms, *supra* note 12.
- 46.2 Story, Commentaries on the Constitution 678 (3d ed. 1858).
47. Rohner, Right to Bear Arms: A Phenomenon of Constitutional History, *supra* note 12, at 61.
48. Firearms Act 1937, 1 Edw. 8 & 1 Geo. 6, ch. 12. The law is a consolidation of measures passed from 1920 to 1936.
49. Letter from the Commissioner of Police of the Metropolis [Scotland Yard] to Harvard Law Review, Nov. 9, 1966.
50. Firearms Act 1965, c. 44. Another amendment to the Act, in 1953, had a similar focus. Prevention of Crime Act 1953, 1 & 2 Eliz. 2, c.14.
- 51.707 Parl. Deb., H.C. (5th ser.) 1142 (1965).
52. 1965 Juvenile Delinquency Hearings 602 (exhibit no. 94). The hearings developed that firearms were used in 1062 homicides and aggravated assaults in Washington, D.C. in 1964; *id.* at 450, Philadelphia reports 1400 cases involving felonious use of firearms and 599 other firearms violations in 1964.
53. N.Y. Times, Oct. 1, 1961, at 9, col. 7.
54. Scotland Yard reports that it can be said "with some confidence" that the objectives of eliminating the "improper and careless custody and use of firearms...and making it difficult for criminals to obtain them...are effectively achieved." Letter, *supra* note 49.
55. Rifles and shotguns are not covered by the law; estimates of shotgun ownership vary between 5000,000 and 1 million. 707 Parl. Deb., H.C. (5th ser.) 1144 (1965).
56. 1 Annals of Cong. 434 (1789).
57. *Id.* at 749.
58. *Id.* at 749-50.
59. Ga. Const. of 1777, arts. XXXIV and XXXV.
60. S.C. Const. of 1778, art. XLII.
61. "That a well-regulated militia is the proper and natural defence of a free government" (Mdd. Const. of 1776, art. XXV)' "A well-regulated militia is the proper, natural, and sure defence of a state" (N.H. Const. of 1784, art. XXIV).
62. N.Y. Const. of 1777, art. XL.
63. Mass. Const. of 1780, art. XVII.
64. N.C. Const. of 1776, art. XVII.
65. Va. Bill of Rights of 1776 section 13.
66. Pa. Const. of 1776, art XIII.
67. Vt. Const. of 1777, art. XV.
68. The following states have no such constitutional provision: California, Delaware, Illinois, Iowa, Maryland, Minnesota, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Dakota, Virginia, West Virginia, and Wisconsin.
69. Most of these states have interpreted their constitutional provisions as permitting reasonable regulations for the general welfare and public safety.

Brown, Firearms Regulations, *supra* note 22, at 574.

70. Ky. Const. of 1799, art. 10, Section 23; *supra* note 30.

71. Ky. Const. Bill of Rights, Section 1.

72. States in which the right to prevent carrying concealed weapons is reserved to the legislature: Colorado: Colo. Const., art. 2, Section 13; Kentucky: Ky. Const. Bill of Rights, Section 1; Louisiana: La. Const., art 7 Section 8; Mississippi: Miss. Const., art. 3 Section 12; Missouri: Mo. Const., art. 1, Section 23; Montana: Mont. Const., art. 3, Section 13; New Mexico: N.M. Const., art. 2 Section 6; North Carolina: N.C. Const., art. 1, Section 24.

States which reserve the right to regulate the manner of carrying or bearing guns to the legislature: Florida: Fla. Const. Declaration of Rights, Section 20; Georgia: Ga. Const., art. 1, Section 2-122; Idaho Const., art 1, Section 11; Oklahoma: Okla. Const., art. 2, Section 26; Tennessee: Tenn. Const., art. 1, && 26; Texas : Texas Const., art. 1, Section 23; Utah: Utah Const. , art. 1, Section 677.

73. States in which reasonable regulation of right to bear arms held valid in absence of constitutional authority: Alabama: *Jackson v. State*, 37 Ala. App. 335, 68 So. 2d 850 (1953); Arkansas: *Wilson v. State*, 33 Ark. 557, 34 Am. R. 52 (1878); California: *People v. Ferguson*, 129 Cal. App. 300, 18 P.2d 741 (1933); Indiana: *Mathews v. State*, 237 Ind. 677, 148 N.E.2d 334 (1958); *MacIntyre v. State*, 170 Ind. 163, 83 N.E. 1005 (1908); *State v. Mitchell*, 3 Black. 229 (1833); Kansas: *City of Salina v. Blaksley*, *supra* note 29; Michigan: *People v. Brown*, 253 Mich. 537, 235 N.W. 245 (1931); *People v. Zerillo*, 219 Mich. 635, 189 N.W. 927 (1922); Ohio: *State v. Nieto*, 101 Ohio St. 409, 130 N.E. 663 (1920); *Akron v. Williams*, 113 Ohio App. 293, 177 N.E.2d 802 (1960); Oregon : *State v. Robinson*, 217 Ore. 612, 2343 P.2d 886 (1959); Pennsylvania: *Commonwealth v. Kreps*, 25 Dauph. 335 (1922); *Wright v. Commonwealth*, 77 Pa. 470 (1875); Washington: *State v. Krantz*, 24 Wash. 2d 350, 164 P. 2d 453 (1945); *State v. Tully*, 198 Wash. 605, 898 P.2d 517 (1939).

74. States in which "arms" held not to include certain regulated weapons: *Arkansas Fife v. State*, 31, Ark. 455, 25 Am. R. 556 (1876); Pennsylvania: *Commonwealth v. Krepos*, *supra* note 73.

75. M. Wolfgang, *Patterns in Criminal Homicide* 82-83 (1966).

76. Zimring, *Is Gun Control Likely to Reduce Violent Killings?*, Center for Studies in Criminal Justice at the University of Chicago Law School, Table 1. (General domestic, 17%; money, 9%; liquor [barroom brawls] 7%; sex, 2%; triangle, 6% racial, 1%; children, 2%; other types in the heat of passion, 38%; teen gang disputes, 3%; robbery, 12%; others, 3%.) A total of 551 cases were analyzed.

77. *Id.*, Table 2. (Friends and acquaintances, 41%; spouse or lower, 20%; other family relationship, 7%; neighbors, 3%; business associates, 3%; other 4%.)

78. *Id.*, Table 4.

79. *Id.*, Table 6.

80. This is not at all certain. See quotation from an official of the Los Angeles Police Department, 31 Chi. L. Rev. 780, 782 (1964): "Since Congress passed the National Firearms Act of 1934, the syndicated hoodlums who infest our major cities have given up the machine gun as a tool of the trade."

81. *Chicago Daily News*, Aug. 27, 1968.

82. Comment, 80 Harv. L. Rev. 1328, 1345-46 (1967).

83. Report of the President's Commission on the Assassination of President Kennedy 118 (1964).