

Five Reasons the Court Should Return my Firearm

“Armes for their Defense:”

A Right of All Canadians

Introduction:

On Friday, 10 October 2003, RCMP Corporal Warren seized and confiscated my shotgun while I was out hunting north of Davidson, Saskatchewan.

I am respectfully applying to the court for the return of my shotgun.

I believe that I can establish that I am lawfully entitled to possess this shotgun.

I believe that Section 117.03 of the Criminal Code under which RCMP Corporal Warren seized my shotgun violates the Constitution of Canada.

The only issue at dispute here is the federal government’s requirement for me to have a federal firearms licence to possess firearms.

I offer five points to support my position:

1. the English Declaration of Rights of 1689,
2. Canadian history, culture, and Common Law,
3. the common history of North America,
4. the necessity to have arms to oppose tyranny, and,
5. the moral imperative to have armes for self-defense.

Prologue

The ostensible reason former Justice Minister Allan Rock gave to Parliament for the Firearms Act was “public safety”, but the purpose stated within Section 4 of the Act is:

[T]o provide ... for the issuance of licences ... under which persons may possess firearms in circumstances that would otherwise constitute an offence

The Firearms Act, chapter 39, Statues of Canada -1995; p. 4

However, the real purpose of the Firearms Act is stated in Section 117:

The Governor in Council may make regulations

(a) regarding the issuance of licenses, authorization certificates and authorizations, including regulation respecting the purposes for which they may be issued ... and prescribing the circumstances in which persons are or are not eligible to hold licences; ...

(c) prescribing the circumstances in which an individual does or does not need firearms

(1) to protect the life of that individual,

The Firearms Act, chapter 39, Statues of Canada -1995; p. 54

Since a “licence” is:

“A Revocable permission to commit some act that would otherwise be unlawful,”

Black’s Law Dictionary, 7th ed, Bryan A. Garner editor, West Group, 1999

the Firearms Act attempts to negate over four hundred years of Canadian history, culture, and Common Law.

Sadly, the Firearms Act was unnecessary. In 1994 when Allan Rock introduced Bill C-68, Canada already had some of the best firearms safety measures in the world:

1977 Bill C-51: introduced the Firearm Acquisition Certificate (FAC) and made certain firearms “classes” “prohibited” and “restricted”.

David Kopel, The Failure of Canadian Gun Control , p.1

1991 Bill C-17: made the application procedure for an FAC far more restrictive and onerous.

Coalition for Gun Control, The Gun Control Story

Thus, in Canada, as contrasted to the United States, fully automatic firearms are classified prohibited and all handguns and some types of rifles are classified as “Restricted”. Ownership of these types of firearms require special registration certificates for possession, and since 1977 all firearm sales have been restricted to persons who have undergone police background checks.

R. v. Schwartz, [1988] 2 S.C.R. 443

R. v. Hasselwander, [1993] 2 S.C.R. 398

R. v. Zeolkowski, [1989] 1 S.C.R. 1378

The Firearms Act of 1995, while contributing nothing to public safety, violates our unique Canadian culture and heritage of responsible possession and use of firearms, specifically our Right of armed self-defense.

While the Supreme Court has previously examined the Firearms Act, they only examined the Act in relation to federalism.

2 The issue before this Court is not whether gun control is good or bad, whether the law is fair or unfair to gun owners, or whether it will be effective or ineffective in reducing the harm caused by the misuse of firearms. The only issue is whether or not Parliament has the constitutional authority to enact the law.

Reference re Firearms Act (Can) [2000] 1 S.C.R. p. 4

The Court did not address the issues that we will be discussing, that is, the violation of our basic civil Rights and Freedoms.

I. English Declaration of Rights 1689

A. A Constitution “Similar in Principle”

Our Right to possess firearms comes directly from the English Declaration of Rights of 1689 which provides that citizens may have “Armes for their Defense”.

English Declaration of Rights –1689

This Right was imported into Canada by the British North America Act, 1867.

The preamble to the BNA Act states that Canada shall have a Constitution “similar In Principle” to the United Kingdom.

The British North America Act - 1867. p.1

While the United Kingdom does not have an actual written constitution, the preambulatory phrase “with a Constitution similar in Principle” is of major significance. The Supreme Court of Canada has interpreted “similar In Principle” to include the hallmark Liberties enjoyed by the citizens of the United Kingdom.

The Laws of England, 3rd ed, Lord Simonds, ed Vol. 7, Butterworth, London 1954 p.187

The Canadian Supreme Court manifest the importance of the words “similar in Principle”, in Reference: re Remuneration of Judges:

Judicial independence is an unwritten norm, recognized and affirmed by the preamble to the Constitution Act, 1867 -- in particular reference to a Constitution similar in principle the that of the

United Kingdom ... The preamble ... invites the courts to turn those principles into the premise of a constitutional argument that culminates in the filling of gaps in the express terms of the constitutional text ...

Reference: re Remuneration Judges Prov Court P.E.I., [1997] 3 S.C.R. p. 5 Per C.J. Lamer

In Reference: Re Secession of Quebec, the Supreme Court noted:

Our Constitution is primarily a written one, the product of 131 years of evolution. Behind the written word is an historical lineage stretching back through the ages which aids in the consideration of the underlying constitutional principles ... they are vital unstated assumptions upon which the text is based {paragraph 49} ...

Canadians have long recognized the existence and importance of unwritten constitutional principles in our system of government {paragraph 52} ...

Underlying constitutional principles may in certain circumstances give rise to substantive legal obligations (have “full legal force and effect”, as we described in the Partition Reference ... {paragraph 54} ...

The evolution of our democratic principles can be traced back to the Magna Carta (1215) and... in the English Bill of Rights of 1689 ... and eventually, the achievement of the Constitution itself in 1867. {paragraph 63}

Reference: re Secession of Quebec, [1998] 2 S.C.R. ; pp.20 – 23

In one of the most important constitutional decisions of modern Canadian history, the Supreme Court in its 1981 decision Reference: Resolution to Amend the Constitution, noted:

It is unnecessary here to embark on any historical review of the “court” aspect of Parliament and the immunity of its procedures from judicial review. Courts come into the picture when legislation is enacted and not before (unless references are made to them ...). It would be incompatible with the self-regulating – “inherent” is as apt a word-- authority of Houses of Parliament to deny their capacity to pass any kind of resolution. Reference may appropriately be made to art. 9 of the [English] Bill of Rights of 1689, undoubtedly in force as part of the law of Canada

Reference: Resolution to Amend Constitution [1981] 1 S.C.R.; p. 785

Significantly, the English Declaration of Rights is also used by Canadian courts to protect citizens’ most basic freedoms, e.g.:

We in Canada adopted through the preamble of our constitution the legislative restraint set out in s. 10 of the English Bill of Rights Of 1688 (sic 1689), 1 Wm. & M. sess. 2, c. 2, which states:

10. That excessive bail ought not be required, nor excessive fines imposed; nor cruel and unusual Punishments inflicted.

R. v. Smith (Edward Dewey), [1987] 1 S.C.R. 1045; p. 15, para 24

The English Declaration of Rights Of 1689 also protects the presumption of innocence of Canadians as noted in R. v. Demers:

[I]n importing certain principles found in the United Kingdom, the Constitution Act, 1867 incorporated principles of civil liberties and human rights embedded in English constitutional history ... “residing in the theory of government these documents proclaim”. These documents ... were the Magna Carta and the [English] Bill of Rights of 1689

R. v. Demers, [2004] 2 S.C.R. 489, p. 21, para 82

While the English Declaration of Rights restricts the legislative range of the federal Parliament in Ottawa, the Supreme Court has also found benefits for our Canadian Parliament among its provisions:

Parliamentary privilege, therefore, is one of the ways in which the fundamental constitutional separations of power are respected. In Canada, the principle has its roots in the preamble to our constitution Act, 1867, which calls for “a Constitution similar in Principle to that of the United

Kingdom". ... Parliamentary privilege was partial codified in art. 9 of the U.K. Bill of Rights of 1689 {paragraph 21} ...

Historically, the legislative source of some privileges (e.g., art. 9 of the Bill of Rights of 1689) did not diminish the jurisdictional immunity they attracted. {paragraph 34}

Canada (House of Commons) v. Vaid, [2005] SCC 30; p. 8, para 21

Thus through the preamble of our Constitution we, the citizens of Canada, have inherited our priceless, historic Rights and Freedoms. Certainly among these basic civil liberties is the most basic Right of all: The Right of an individual to decide how to protect oneself free from a parliamentary mandate to obtain a federal firearm's licence.

B. "Subject to their condition and as allowed by law"

What does "Armes for their Defense" mean ?

In 1689 the meaning of the English Declaration of Rights was quite clear. The framers of the Declaration intended never again to be disarmed and subjugated by a tyrannical ruler. The words of the framers of the Declaration make that clear - see Appendix A. The citizens declared the Right to be armed for their defense as one of their "true, ancient, and indubitable" Rights. Significantly, they secured this Right in a Convention Parliament BEFORE they offered the crown to The Prince of Orange and Mary. Extremely import to note, the device of a Convention Parliament has only been used three times in all of English history; each time in a period of extreme national crisis - see Appendix B. As noted by the first acts of Parliament after the coronation of William and Mary, the new Parliament took pains to ensure that their previous actions as a Convention Parliament would be recognized as legitimate.

1 William & Mary, c.1, 1 William & Mary, c. 6

While the Declaration was decidedly biased in favor of Protestants, English Catholics were never denied firearms for personal protection. {see Malcolm} Two court quickly established the significance of the Declaration's protection of the private ownership of firearms. In 1739 in *Rex versus Gardner*:

The defense objected "that a gun is not mentioned is the statue of [the Game Act, 1706], and though there may be many things for the bare keeping of which a man may be convicted, yet they are only such as can used for the destruction of the game, whereas a guns necessary for defense of a house, or for a farmer to shoot crows."

The court agreed with the defense and concluded: "We are of the opinion, that a gun differs from nets and dogs, which can only be kept for an ill purpose, and therefore the conviction should be quashed."

Rex v. Gardner, Michaelmas Term, 12 Geo. 2

And in 1752: in *Wingfield versus Stratford and Osman*:

Plaintiff appealed his conviction and the confiscation of a gun and a dog, the dog being a "setting dog" and the gun "an engine" for killing game. The conviction was overturned. The court explained:

"It is not to be imagined, that it was the Intention of the Legislature, ... to disarm all the People of England. ... a gun may be kept for the Defense of a Man's House, and for divers other lawful Purposes,

Wingfield v. Stratford & Osman, Hilary Term, 25 Geo.II 1752

Thus the courts recognized the necessity of personal firearms for self-protection.

William Blackstone in his 1765 "Commentaries" underscored perhaps the most compelling reason for the Right of individual ownership of firearms, the protection of all of our civil liberties:

But in vain would these rights be declared, ascertained, and protected by the dead letter of the laws, if the constitution had provided no other method to secure their actual enjoyment ... "auxiliary rights meant to protect all others" is that of having arms for their defense ... It is, indeed, a publick allowance under due restrictions, of the natural right of resistance and self preservation,

when the sanctions of society and the laws are found insufficient to restrain the violence of oppression.

While Blackstone acknowledged that “restraints” on the possession of firearms may be necessary, he emphasized that the restraints would be:

in themselves so gentle and moderate, as will appear upon farther inquiry, that no man of sense or probity would wish to see them slackened.

William Blackstone, Commentaries on the Laws of England 4 vols.; 1st ed. (London, 1765-1769, repr Chicago, 1979), i:136 & 139

Even while the British fought the Revolutionary War in the American Colonies and the Gordon Riot in London killed over four hundred people in June 1780, the Right of individuals to own firearms in England was affirmed. The Recorder of London, the chief legal adviser to the mayor and council, in July 1780, attested:

The right of his majesty's Protestant subjects, to have arms for their own defence, and to use them for lawful purposes, is most clear and undeniable. It seems, indeed, to be considered, by the ancient laws of this kingdom, not only as a right, but as a duty; for all the subjects of the realm, who are able to bear arms, are bound to be ready, at all times, [for] the preservation of the public peace.

Malcolm, Joyce Lee, The Right of the People to Keep and Bear Arms: The Common Law Tradition, Hastings Constitutional Law Quarterly, Vol. 10: 285-314 (1983)

Significantly, in 1819 when the English working class began to demand better conditions and several people were killed and hundreds wounded in the Peterloo Massacre, the Right of the people to have arms for self-defense was acknowledged by the court:

A man has a clear right to arms to protect himself in his house. A man has a clear right to protect himself when he is going singly or in a small party upon the road where he is traveling or going for the ordinary purposes of business.

King against George Dewhurst & Others

Even though revolution, riot, and rebellion, English Common Law has recognized and validated the private ownership of firearms free from the restraint of a licence.

II. The Inherited “Rights, Privileges, and Immunities” of North Americans

A. British Charters, Proclamations, and Acts

“Let an Englishman go where he will, he carries as much of law and liberty with him, as the nature of things will bear.”

With the discoveries of Christopher Columbus, Europeans began to explore and colonize the New World grew. In an attempt to circumvent the Spanish and the French, English queens and kings began in 1585 to issue Royal Charters granting land for settlement in North America - see Appendix C.

The Royal Charter of Virginia of 1606 is typical:

Also we do ... DECLARE ... that all and every the Persons being our Subjects, which shall dwell and inhabit within every or any of the said several Colonies and Plantations, and every of their children, which shall happen to be born within any of the Limits and Precincts of the said several Colonies and Plantations, shall HAVE and enjoy all Liberties, Franchises, and Immunities, within any of our other Dominions, to all Intents and Purposes, as if they had been abiding and born, within this our Realm of England, or any other of our said Dominions.

First Virginia Charter – 1606

For two hundred years British men, women, and children left Great Britain upon crowded, wooden sailing ships and endured perilous ocean voyages seeking a better life in North America. They did so with the assurance that, while they were leaving family, friends, and homeland behind, these Royal Charters for

settlement in the New World would guarantee them all the “Rights, Privileges, and Liberties” of English citizens.

So firmly was this belief established that in 1720, Richard West, counsel to the English Board of Trade, gave this description of the state of law in the colonies:

The Common Law of England is the Common Law of the Plantations, and all statutes in affirmance of the Common Law, passed in England antecedent to the settlement of a colony, are in force in that colony, unless there is some private Act to the contrary; though no statutes, made since those settlements, are there in force unless the colonies are particularly mentioned. Let an Englishman go where he will, he carries as much of law and liberty with him, as the nature of things will bear.

Roy G. Weatherup, Standing Armies And Armed Citizens: An Historical Analysis of The Second Amendment, 1975 Hastings Constitutional Law Quarterly. Originally published as 2 Hastings Const. L.Q. 961-1001 (1975)

Notably, most of these royal charters granted the settlers the right to make war in defense of their settlements. The 1632 Charter of Maryland is typical:

But because, that in so remote a Region, placed among so many barbarous Nations, the Incursions as well of the Barbarians themselves, as of other Enemies, Pirates and Ravagers, probably will be feared. Therefore We have Given,... as full and unrestrained Power, as any Captain-General of an Army ever hath had, ... to summon to their Standards, and to array all men, of whatsoever Condition, or wheresoever born, ... to wage War, and to pursue, even beyond the Limits of their Province, the Enemies and Ravagers aforesaid, infesting those Parts by Land and by Sea, and (if God shall grant it) to vanquish and captivate them, and the Captives to put to Death,

Charter of Maryland - 1632

Along with Indian attack, the English settlers of North America had to contend with the warfare brought on by the complex European affairs of the mother country. By the late 17th century and for most of the 18th century war was almost continuous in North America with England fighting France and her Indian allies - see Appendix D. Thus the possession of personal arms for defense was not only necessary, but militia training was a requirement.

The Perpetual Acts of the General Assemblies of Nova Scotia, 1767

With Great Britain’s ultimate victory over France for supremacy in North America, King George III’s Royal Proclamation of 1763 now extended the guarantee to all North Americans:

[F]or the security of the Liberties and Properties of those who are and shall become Inhabitants thereof, ... by this Our Proclamation, ... under our Great Seal of Great Britain, ... those Colonies and Provinces in America which are under our immediate Government: ..., to make, constitute, and ordain Laws, Statutes, and Ordinances for the Public Peace, Welfare, and good Government of our said Colonies, and of the People and Inhabitants thereof, as near as may be agreeable to the Laws of England... .

Royal Proclamation - 1763

The Quebec Act of 1774, and especially the Constitution Act of 1791, issued by King George III after the conclusion of the Revolutionary War, reaffirmed Britain's commitment to the established Rights and Freedoms of loyal Canadians. Especially noteworthy is the Constitution Act’s requirement for all Canadians to personally “defend the King.”

The Quebec Act – 1774; The Constitution Act – 1791

Thus, during the years leading up to Great Britain granting Canada her own constitution, Canadians continued to have the Right to possess firearms.

The continuing importance of the Royal Proclamation is not lost to Canada’s Aboriginal people. The words and actions of the British Crown form the basis of the First Nation’s hunting Rights and their claim for self-government.

Simon v. The Queen, [1985] 2 S.C.R. 387; p. 14 R. v. George, (1963), 41 D.L.R. (2d) 31; p.4

Specifically concerning the importance of the Royal Proclamation of 1763 the court noted:

86 The Royal Proclamation must be interpreted liberally, and any matters of doubt resolved in favour of aboriginal peoples: ... Further, the Royal Proclamation must be interpreted in light of its status as the "Magna Carta" of Indian rights in North America and Indian 'Bill of Rights':

R. v. Marshall; R. v. Bernard, 2005 SCC 43; p.19

And

The Proclamation confers Rights on the Indians without necessarily thereby extinguishing any other right

R. v. Sioui, [1990] 1 S.C.R. 1025; p. 18

The Rights guaranteed to the citizens of Canada by the Royal Proclamation should be equally important to present-day Canadians whose forebears arrived by ship.

B. Canada's Unique Cultural Heritage: Responsible Firearms Ownership

Some Canadians, in a perverse desire "not to be like Americans", have attempted to create a myth that Canada does not have a significant history of firearms. Nothing could be further from the truth. Canada has a very long, and a very proud, tradition of the ownership and use of firearms. Beginning with Champlain's 1609 adventure in North America and continuing with today's Canadian soldiers in Afghanistan, Canadians have owned and used firearms, not always, but most often, in responsible ways - see Appendix D. As for the prevalence of the individual ownership of firearms, the Royal Canadian Legion website notes:

By 1665 virtually every parish in what was known as "the new world" could muster some form of militia for local protection.

http://www.legion.ca/asp/docs/about/MilHeritage_e.asp

Canadians have used their personal firearms to defend their homes and to defend their country, both from our neighbors to the south and from international aggressors. It is indeed unfortunate that the over sixty-eight thousand Canadian dead from World War I and the over forty-six thousand Canadian dead from World War II are not buried in Canada so that we would be more easily reminded of this sacrifice of arms.

With the European introduction of firearms into North America in the early seventeenth century as an item of trade, Canada's First Nations people very readily relinquished the bow and arrow for firearms for personal defense, warfare, and hunting. As the European demand for more furs from North America grew, so did the number of firearms in the fur trade. Our First Nations people continue this tradition of hunting with firearms by Right of treaty.

Simon v. The Queen, [1985] 2 S.C.R. 387; p.1

In this manner for over three hundred years Canadians, both Aboriginal and immigrant, by culture and heritage, have owned and used firearms responsibly without a licence.

III. The American Perspective

I am aware that in Hasselwander Justice Cory was dismissive of the American jurisprudence concerning the Right of individuals to possess firearms.

R. v. Hasselwander, [1993] 2 S.C.R. 398 ; p. 8 para 2

I sincerely hope this court will thoughtfully consider the history of the debate in the United States over the issue of the Right of individual ownership of firearms. As the enclosed six American articles and the 2004 opinion of the US Attorney General demonstrates, the jurisprudence of American law is based solidly on the English Declaration of Rights Of 1689 - see Appendix E. I do not think we should ignore the knowledge and insight these American authorities have to offer.

When one compares the United States where the Right to "keep and bear arms" has so recently been reaffirmed, to Great Britain where the citizens have so recently lost the Right of self-defense and where the crime rate is so suddenly rising, one cannot help but be puzzled by the push of the British to disarm the population.

As Dr Gary Mauser of Simon Fraser University makes clear in *The Failed Experiment, Gun Control in Canada, Australia, England and Wales*, the firearms licensing schemes are having a perverted effect on crime. Notably, crime in the United Kingdom is now worse than in the United States. While not nearly as severe as reported to Parliament when the debates on the licensing of firearms owners occurred, crime in Canada is also continuing to rise.

Murray, J.P.R. , RCMP Letter to Mr. George Thompson, Dep Minister of Justice

Mauser, Gary A., The Failed Experiment Gun Control and Public Safety in Canada, Australia, England, and Wales Public Policy Sources No. 71 November 2003

John Dixon, The gang that couldn't shoot straight, Globe & Mail, 28Jan2003

David Kopel, The Failure of Canadian Gun Control , p.1.

Breitkreuz, MP., Garry, But Did Our gun Laws Actually Save Any Lives ? Press Release 30 June 2005

Breitkreuz, MP., Garry, RCMP Say They Have No Information on Why 70-Years of Registering Handguns Hasn't Worked, Press Release 15 December 2004

Goodchild, Sophie, & Paul Lashmar, Up to 4m guns in UK and police are losing the battle, The Independent 04 September 2005

IV. Defense Against Tyranny and State Sponsored Genocide

A. The Lesson of History: Protection from Tyranny

Those who cannot remember the past are condemned to repeat it.

George Santayana, Life of Reason, Reason in Common Sense, Scribner's, 1905, p. 284

"I came to Ottawa in November with the firm belief that the only people in this country who should have guns are police officers and soldiers."

Allan Rock, Canada's Minister of Justice. Maclean's "Taking Aim on Guns", 1994 April 25, page 12.

Regrettably, history teaches that individuals more often need protection from their government than by their government. Abuse of government power, tyranny, is not a popular subject. As Lord Acton reminds us:

Power tends to corrupt, and absolute power corrupts absolutely.

This corruption of power is not limited to dictatorships, but occurs just as easily in democratic states as Swiss author J.L. DeLolme, (1740-1806) noted of the English government in 1755,

[It is] absolutely necessary, for securing the Constitution of a State, to restrain the Executive power ... it is still more necessary to restrain the legislative. What the former can do only by successive steps (I mean subvert the laws) and through a longer or shorter train of enterprises, the latter does in a moment. As its bare will can give being to the laws; so its bare will can also annihilate them: ... the Legislative power can change the Constitution as God created the light.

J.L. DeLolme, The Constitution of England; or an Account of the English Government, (New York, 1792), p. 164

The necessity of the private, individual ownership of firearms as protection against tyranny is not simply an "outdated" American idea. Through the ages philosophers and statesmen have warned of the dangers of government abuse of power. The warnings of the philosophers are recorded for our enlightenment

- see Appendix F.

In 1761 when James Otis wrote *Against Writs of Assistance* he did not consider it "a chimerical suggestion of a heated brain" to suggest that the Parliament of Great Britain was abusing the Liberties of her citizens. Does it take an over-stimulated brain or a wildly fanciful imagination to suggest that now in Canada we need a defense from our own government? Shall we learn nothing from history; from Solzhenitsyn; from Blackstone, from Raleigh? Who other than a criminal or a tyrant would seek to disarm responsible citizens?

B. State Sponsored Genocide

More people have been murdered by their government than by criminals.

That is a sobering statement, but as the list of genocides reveals, genocide is not a once-in-a-millennium aberration that died with the defeat of the German Nazi war machine in 1945. Genocide continues unabated - see Appendix G. As the authors on the articles about genocide demonstrate, too many Canadians have been bombarded with false propaganda and therefore believe that firearms are inherently dangerous. Governments, not firearms, are more often the problem.

Kates, Don B., Henry E. Schaffer, Ph.D., John K. Lattimer, M.D., George B. Murray, M.D., & Edwin H. Classem, M.D. Guns and Public Health: Epidemic+ of Violence or Pandemic of Propaganda ? 61 Tenn. L. Rev. 513-596 (1994)

Polsby, Daniel D., & Don B. Kates, Of Holocausts and Gun Control, 75 Wash. U. L.Q. 1237 (1997)

Olson, Joseph E. & David B. Kopel, All the Way Down the Slippery Slope: Gun Prohibition in England and Some Lessons for Civil Liberties in America, Hamline Law Review Vol. 22, April 1999

As retired Canadian General Romeo Dallaire makes brutally clear in *Shake Hands with the Devil*, genocide is something that the people of the world must face, or be forced to endure again and again.

In light of these international outrages against humanity should citizens be forced to ask the government for permission to own firearms? Is Canada somehow immune to what is happening in the rest of the world?

The fact that the Canadian Criminal Code has recently been amended to include "hate crimes" seems to argue that Canada is not really that much different.

As Hurricane Katrina has so graphically demonstrated, when the "thin veneer of civilization" is violently stripped away, self-protection becomes an individual responsibility.

Gery Klein, It could very well happen here, StarPhoenix 01 Sept 2005

The warning of Canadian historian, writer, and poet George Woodcock is apropos:

When the duty to obey without question is accepted, that is the moment of freedom's death.

George Woodcock (1912 - 1995), Civil Disobedience Seven Talks for CBC Radio, T.H. Best, Toronto 1966 CBC Publ, Box 500, Toronto

The Firearms Act demands obedience to rules and regulations that make the mere possession of a firearm illegal. Obedience to the Firearms Act would indeed be the moment of Freedom's death.

History teaches that citizens can not trust their government when the government begins to restrict the access to the necessary means to self-defense.

For the good of all humanity, I implore the court to declare this unjust, immoral federal licensing scheme unconstitutional.

V. Self-defense: A Moral Imperative

A. The Bible, The Torah, and The Talmud

The Torah and the Old Testament of the Bible are rife with examples of God's instructions for His people to defend themselves - see Appendix H.

Not only are we to defend ourselves during invasions and foreign domination, we are to defend our homes and lives from thieves. While the Sixth Commandment of the Old Testament, which is recognized as sacred Scripture by Jews, Christians, and Muslims, explicitly prohibits murder; ("Thou shall not murder", The Torah, Exodus 20.13), the scripture instructs persons to defend themselves with deadly force when their home is being robbed. The Torah, Exodus 22.1 declares:

"If a thief be found breaking in, and be smitten so that he dieth, there shall be no bloodguiltiness for him."

The Jewish Talmud expands upon this premise:

What is the reason for the law of breaking in? Because it is certain that no man is inactive where his property is concerned; therefore this one [the thief] must have reasoned, "If I

go there, he [the owner] will oppose me and prevent me; but if he does, I will kill him.”
Hence the Torah decreed “If he comes to slay thee, forestall by slaying him.”

Talmud, Tractate Sanhedrin. 1994, 2, 72a; The Babylonian Talmud: Tractate Berakoth 1990, 58a, 62b.

As David Kopel explains:

This ... is sometimes translated as “If someone comes to kill you, rise up and kill him first.”

This ... does not delegate discretion; it is a positive command. A Jew has a duty to use deadly force to defend ... against murderous attack.

David B. Kopel, The Torah and Self-Defense, Penn State Law Review, Vol. 109, No. 1, pp. 17-42, 2004 ; p. 29 Book Seven / item 3

The Current Catholic Catechism (1994) states the principle in this manner:

2321 The prohibition of murder does not abrogate the right to render an unjust aggressor unable to inflict harm.

2263 "The act of self-defense can have a double effect: the preservation of one's own life; and the killing of the aggressor ... The one is intended, the other is not." [St. Thomas Aquinas, STh II-II, 64, 7, corp. art.]

2264 Love toward oneself remains a fundamental principle of morality. Therefore it is legitimate to insist on respect for one's own right to life. Someone who defends his life is not guilty of murder even if he is forced to deal his aggressor a lethal blow:

http://landru.i-link-2.net/shnyves/wlegitimate_defense.htm

While some religious groups suggest nonviolence in the face of personal attack, Thomas Paine succinctly states the underlining problem of this approach:

Could the peaceable principle of the Quakers be universally established, arms and the art of war would be wholly extirpated: But we live not in a world of angels . . . [The] peaceable part of mankind will be continually overrun by the vile and abandoned, while they neglect the means of self defense. The supposed quietude of a good man allures the ruffian; while on the other hand, arms like the laws discourage and keep the invader and the plunderer in awe, and preserve order in the world, as well as property. ... Horrid mischief would ensue were one half the world deprived of the use of them; the weak will become prey to the strong.

Thomas Paine (1737 - 1809), Thoughts on Defensive War, 1775

Thus when asked about the utility of nonviolence as a means of self-defense, the leader of Tibetan Buddhism, The Dalai Lama, offered his belief:

[I]logically you have the responsibility to protect. Then if something attacks, a human being is going to attack on your child, then if you let that person attack not only does your child suffer, but then that person (also) committed a negative action. Then, I think, thinking both sides, the protection of your child ... û with that motivation stop, if necessary with some stick or even gun.

If someone has a gun and is trying to kill you, it would be reasonable to shoot back with your own gun.

The Dalai Lama, CBC Interview & The Seattle Times May 15, 2001

The English philosopher John Locke captures the essence of self-preservation as “not simply or primarily a right, but ... a duty to God.”

[I]t being reasonable and just I should have a Right to destroy that which threatens me with Destruction. For by the Fundamental Law of Nature ... one may destroy a Man who makes War upon him ... for the same Reason, that he may kill a Wolf, or a Lyon; because such Men are not under the ties of the Common Law of Reason ... so may be treated as Beast of Prey ...

“This makes it Lawful for a Man to kill a Thief, who has not in the least hurt him ... let his pretense be what it will ... therefore it is Lawful for me ... to kill him if I can; for to that hazard does he justly expose himself”

John Locke, Second Treatise on Government, (in Two Treatises on Government, ed Peter Laslett, 278- 281, 284 [1988] in Gun Control and Rights, ed Andrew J. McClung, David B. Kopel, and Brannon P. Denning New York University Press, New York 2002

Obviously one does not need to be a believer in the Judeo-Christian God to have a firm belief in self-protection, for as Cicero (106 - 43 B.C) observed, self-protection is a universal truth:

[T]herefore, is a law, O judges, not written, but born with us,--which we have not learnt or received by tradition, or read, but which we have taken and sucked in and imbibed from nature herself; a law which we were not taught but to which we were made,--which we were not trained in, but which is ingrained in us,--namely, that if our life be in danger from plots, or from open violence, or from the weapons of robbers or enemies, every means of securing our safety is honourable. For laws are silent when arms are raised, and do not expect themselves to be waited for

Cicero, “In Defense of Titus Annius Milo” (in Selected Political Speeches of Cicero, ed. and trans. Michael Grant, 222 1969)

Even Thomas Hobbes, the great apologist for the sovereignty of the monarchy recognized the inalienable right of self-preservation:

Of the First and Second Natural Laws and of Contracts: A covenant not to defend myself from force, by force, is always void. For ... no man can transfer or lay down his right to save himself from death ...

An individual can neither sell nor give away his right of self-defense. This is an inalienable right.

Thomas Hobbes, Leviathan pt II Chap 29, pp. 80/82 & p. 85

Or as Hugo Grotius, the “Father of International Law” said:

[W]hen our lives are threatened with immediate danger, it is lawful to kill the aggressor, if the danger cannot be otherwise avoided [T]his kind of defense derives its origin from the principle of self-preservation, which nature has given every living creature For I am not bound to submit to the danger or mischief intended, any more than to expose myself to the attack of a wild beast.

Hugo Grotius, The Rights of War and Peace, (ed. A.C. Campbell, 76 -77, [1901])

The practicality of having a firearm for self-defense was most vividly demonstrated by John Adams (1735 - 1826), defense attorney, in recalling the testimony at the trial of the British soldiers accused of murder in the so-called Boston Massacre of 1770, in which the unit commanding officer did not give the order to fire:

[P]eople crying “kill them! kill them! knock them over!” heaving snowballs, oyster shells, clubs, white birch sticks. ... consider yourselves, in this situation, and then judge whether a reasonable man . . . would not have concluded they were going to kill him.

He was knocked down at his station, ... Had he not reason to think his life in danger?

If an assault was made to endanger their lives, the law is clear, they had the right to kill in self-defense

From the trial of Pvt. Montgomery, accused of murder in the Boston Massacre, 1770. Constitutional Rights Foundation, Bill of Right in Action, Winter 1999 (16:1)

http://www.crf-usa.org/bria/bria16_1.html

We have a God-given, moral imperative to defend ourselves. To defend ourselves we must have effective means to do so. For the government to require a licence to those means is for the government to deny those means.

C. The “Supremacy of God and the Rule of Law”

Many of the cases which I have presented to the court dwell long and laboriously on “The Rule of Law.”

Reference: Manitoba Language Rights, [1985] 1 S.C. R. 721; p. 2

But the preamble to the Charter of Rights and Freedom recognizes two founding principles:

Canada is founded upon principles that recognize the supremacy of God and the rule of law

The Constitutions Act, Schedule B, 1982; p.1

In Halsbury’s The Laws of England helps to explain the significance of God in the British Constitution. The Holy Bible is mentioned as being:

presented [to the sovereign] as the most valuable thing on earth, and signifies wisdom, royal law, and the lively oracles of God;

And at the coronation the Sovereign is presented the orb which signifies:

that the whole world is subject to the empire of Christ.

The Constitution of the United Kingdom clearly recognizes the preeminence of God and the Holy Scripture.

The Laws of England, 3rd ed, Lord Simonds, ed Vol. 7, Butterworth , London 1954 p.204

Therefore, as a founding principle of the Constitution of Canada, “the supremacy of God”, which precedes the second principle, “the rule of law”, would seem to command a greater rank.

If the court should decide that the “rule of law” grants Parliament the authority to pass the Firearms Act, I suggest that “the supremacy of God” would nullify the requirement that we surrender our God-given, inalienable Right of self-defense.

Conclusions

The Supreme Court recognizes that:

The rights and freedoms guaranteed by the Charter are not, however, absolute. It may become necessary to limit rights and freedoms in circumstances where their exercise would be inimical to the realization of collective goals of fundamental importance.

R. v. Oakes 1 S.C.R. [1986] 103, p. 17

But the criminalization of the mere possession of a firearm goes far beyond the scope of the “so gentle and moderate” restraint recognized by William Blackstone.

As the Supreme Court has previously stated:

The Courts will not question the wisdom of enactments which, by the terms of the Canadian Constitution are within the competence of the Legislatures, but it is the high duty of this Court to insure that the legislatures do not transgress the limits of their constitutional mandate and engage in the illegal exercise of power.

Reference: Manitoba Language Rights, [1985] 1 S.C. R. 721; p. 12, pg 49

Therefore, since

- The English Declaration of Right of 1689 recognizes “Armes for their Defense” as a basic, fundamental, essential civil Right,
- Canadians inherited this Right from England, and have used firearms throughout our history,
- The American Right “To Keep and Bear Arms” is not a “foreign” concept to Canada, but is part and parcel of our shared North American history,
- The fact that citizens have more to fear from our their own government than from criminals should provide ample reason not to submit to a governmental licencing scheme, and
- Who would deprive men of the use of fire for fear of their being burnt?

To paraphrase former Chief Justice Lamer, I invite the court “to turn those principles into the premise” that frees my shotgun.

I respectfully ask the court to order the return of my firearm.

Sincerely,

Edward B. Hudson DVM, MS
402 Skeena Crt
Saskatoon, Saskatchewan S7K 4H2
1-306-242-2379

11 September 2005

Appendix A
English Declaration of Rights, 1689
The Words of the Framers

The significance of the Declaration of Rights is inherent in the words of the drafters of the document. Recorded over three hundred years ago, these are the words of the Parliamentary drafters of the Declaration of Rights:

Anthony Cary, Lord Falkland:

It concerns us to take such care, that, ... we may secure ourselves from Arbitrary Government. The Prince's Declaration is for a lasting Government. I would know what that foundation is.

Mr. Garroway:

We have had such Violation of our Liberties in the last reigns, that the prince of Orange cannot take it ill, if we make conditions, to secure ourselves for the future; and in it we shall but do justice to those who sent us hither, and not deliver them up without good reason.

Sir William Williams:

When we have considered the preservation of the Laws of England for the future, then it will be time to consider the persons to fill the Throne.

Sir Richard Temple, complained of the previous king's malicious intention:

to disarm all England [and] to provide for a standing army [in peacetime].

Said another:

Redeem us from Slavery; What you omit now is lost for ever.

To the concern that they could not cover everything necessary, Edward Seymore challenged:

Will you do nothing, because you cannot do it all? Will you establish the Crown, but not secure yourselves?

Sir John Maynard, at age eighty-six the "father of the House", was incensed that:

An Act of Parliament was made to disarm all Englishmen, whom the Lieutenant should suspect, by day or night, by force or otherwise ... an abominable thing to disarm a nation

Of the abuses of the militia, Mr. Boscawen complained:

[U]nder pretense of persons disturbing the government, disarmed and imprisoned men without any cause ... I myself was so dealt with.

Thomas Earl:

There is a law made against it soe that tis not the gun or musket that offends but the man that makes ill use of his Armes and he may be punished for it by the law.

Mr. Finch:

No safety but the consent of the nation - The constitution being limited, there is good foundation for defensive arms - It has given us right to demand full and ample security.

The House agreed to assert:

Rights and Liberties of the Nation, to bring in general Heads of such things as are absolutely necessary for securing the Laws and Liberties of the Nation.

As note by a contemporary commentator, Englishmen are "the freest subjects under heaven" because they have the right:

to be guarded and defended from all Violence and Force, by their own Arms, kept in their own hands, and used at their own charge

On 13 February 1689 the Convention Parliament presented to William and Mary the Declaration of Rights. That document of thirteen “true, ancient, and indubitable” Rights and Liberties forever proclaimed:

That the Subjects which are Protestants may have Armes for their defense Suitable to their condition and as allowed by Law.

As Bishop Gilbert Burnet stated in his history, the Convention Parliament had presented a document meant to be no less than “a new Magna Carta.”

Above quotes from:

Joyce Lee Malcolm, To Keep and Bear Arms, the Origins of an Anglo-American Right, Harvard University Press, 1994 pp. 113 - 121

Appendix B

The Significance of the Convention Parliament

In January 1689 (New Style date), the Lords and Commons assembled as a Convention Parliament to declare the throne vacant and to invite William and Mary to become King and Queen of England. Before they did so, they took two weeks to formulate a Declaration of Rights to ensure that their “true, ancient, and indubitable Rights” would never again be usurped.

The Declaration of Rights is not simply an act of Parliament. A Convention Parliament is not “summoned” or called in the normal manner. The Convention Parliament device has only been used three times throughout a thousand years of English history. In all three cases the Convention Parliament was used to resolve an highly unusual circumstance.

The Declaration of Rights is significantly more than mere “legislation”. The Declaration of Rights is an international treaty signed as an agreement between a sovereign people and a prince of a foreign nation.

Convention Parliament

The term Convention Parliament has been applied to three different English Parliaments, of 1399, 1660 and 1689.

The definition of the term convention parliament is generally taken to be:

"A parliament which does not derive its authority or legitimacy from an existing or previously enacted parliamentary action or process".

Features of the convention parliaments

The features which unite the three convention parliaments and which mandate their status as convention parliaments, are:

- The recognition by the convention of the preceding parliamentary process as having come to an end of its powers in terms of determining future parliamentary proceedings
- The implicit self-empowerment of the parliamentary convention to act in place of the preceding process, thereby establishing its own legitimacy in determining the future of parliamentary proceedings

Convention Parliament of 1399

The first example of a convention parliament (a parliament which is not often referred to as a 'convention parliament' but is always recognised as being one) in September 1399, came about as a result of the deposition of King Richard II of England and a parliament which accepted Henry Bolingbroke as King Henry IV of England.

Convention Parliament of 1660

The second example is the Convention Parliament also known as the English Convention which was elected in April 1660. It was elected after the Rump of the Long Parliament had finally voted for its own dissolution. It was predominantly Royalist in its constitution. It assembled for the first time on the April 25, 1660.

The Convention, after the Declaration of Breda had been received on the 8th of May, declared that King Charles II had been the lawful monarch since the death of Charles I in January 1649. The Convention Parliament then proceeded to conduct the necessary preparation for the Restoration Settlement. These preparations included the necessary provisions to deal with land and funding such that the new regime could operate.

Convention Parliament of 1689

This parliament, which met in 1689 after the departure of King James II of England, formally recognised Prince William of Orange as King William III of England.

A assembly of the Lords Spiritual and Temporal, and the Commons, the Convention convened on Jan. 22, 1689 to deal with the crisis created by the arrival of William, the flight of James II, the collapse of the government, and the disappearance of the Great Seal. On Feb. 12, 1689, the Convention approved the Declaration of Rights, which enumerated the crimes and illegalities of James II, declared the throne vacant, and resolved that William and Mary be made king and queen. On Feb. 20, 1689, one week after William and Mary became king and queen, the Convention enacted the Parliament Act of 1689, 1 W. & M., ch. 1, which transformed the convention into a Parliament, later known as the "Convention Parliament."

<http://www.answers.com/topic/convention-parliament>

<http://www.lawsch.uga.edu/~glorious/convention.html>

Appendix C

British Royal Charters of North American

- The Raleigh Charter granted by Elizabeth I in 1585
- The Charter of Virginia granted by James I in 1606
- Nova Scotia granted by James I in 1625
- The Charter of Massachusetts Bay granted by Charles I in 1629
- The Charter of Maryland granted by Charles I in 1632
- The Connecticut Colony Charter by Charles II in 1662
- The Charter of South Carolina by Charles II in 1663
- Royal Charter of the Hudson's Bay Company by Charles II in 1670
- Charter of Massachusetts Bay granted by William & Mary in 1691
- The Charter of Georgia by George II in 1732

Appendix D

Wars in Canada

1. Beaver Wars 1640-1670
2. European Wars also fought in North America
 - a. King William's War (1689-1697) (War of the Grand Alliance)
 - b. Queen Anne's War (1702-1713) (War of the Spanish Succession)
 - c. King George's War 1744 (War of the Austrian Succession)
 - d. The French and Indian War 1754 - 1763 (The Seven Years War)
3. Pontiac's Rebellion 1763
4. Revolutionary War 1775 - 1783
5. War of 1812
6. Battle of Seven Oaks 1816 (HBC v. NWC)
7. Patriots Rebellion in Lower Canada 1837
8. The Upper Canada Rebellion 1837
9. Caroline Affair 1837
10. Aroostook Border War 1839
11. The Pig War 1859 (San Juan Boundary Dispute)
12. Fenian Invasions 1865
13. Red River Rebellion 1869
14. Northwest Rebellion 1885

Canadians in Foreign Wars

- Boer War in South Africa 1899 - 1902
- World War I
- World War II
- Korean War

Canadian International Peace Keepers

Since 1947, the Canadian Forces have completed 72 international operations, e.g.,

- Suez 1956
- Cypress 1964
- Middle East 1974
- Rwanda 1994
- Bosnia-Herzegovin 1995
- Afghanistan 2004

Appendix E

American Jurisprudence:

The Right to Keep and Bear Arms

- Report of the Subcommittee of the United States Senate, The Right to Keep and Bear Arms February 1982
- Caplan, David I. The Right of the Individual to Bear Arms: A Recent Judicial Trend 4 Det. L.R. 789-823 (1982)
- Malcolm, Joyce Lee, The Right of the People to Keep and Bear Arms: The Common Law Tradition, Hastings Constitutional Law Quarterly, Vol. 10:285-314 (1983).
- Hardy, David T. Armed Citizens: Towards a Jurisprudence of the Second Amendment 9 Harv. J.L. Pub. Pol'y 559-638 (1986)
- Vandercoy, David E. The History of the Second Amendment 28 Val. L. Rev. 1007-1039 (1994)
- Cottrol, Robert J. & Raymond T. Diamond, The Fifth Auxiliary Right Yale Law Journal, Vol. 104: 995-1026 (1995)
- Malcolm, Joyce Lee, Gun control and the Constitution: Sources and Explorations on the Second Amendment Tennessee Law Review vol. 62, no. 3 (1995)
- Memorandum Opinion for the Attorney General Whether the Second Amendment Secures an Individual Right 24 August 2004

Appendix F

The Admonitions of the Philosophers

As noted by Sir Walter Raleigh (1552 - 1618), who was framed in a plot against James I, a basic principle of a tyrant is:

to unarm his people of weapons, money, and all means whereby they resist his power.

The Works of Sir Walter Raleigh, ed T. Birch, 8 vols (Oxford, 1829), 3:22 (pp 9)

James Harrington (1611-1677), English political philosopher and author of *Commonwealth of Oceana* (1656) who was imprisoned in the Tower of London and held without trial by Charles II, had this to say about a citizen's relation to government:

The election or suffrage of the people is most free, where it is made or given in such a manner that it can neither oblige nor disoblige another, nor through fear of an enemy, or bashfulness toward a friend, impair a man's liberty.

John Locke, (1632-1704), was less sanguine in his view of the trustworthiness of government:

Any single man must judge for himself whether circumstances warrant obedience or resistance to the commands of the civil magistrate; we are all qualified, entitled, and morally obliged to evaluate the conduct of our rulers. This political judgment, moreover, is not simply or primarily a right, but like self-preservation, a duty to God. As such it is a judgment that men cannot part with according to the God of Nature. It is the first and foremost of our inalienable rights without which we can preserve no other.

Locke continues:

For the legislative acts against the trust reposed in them when they endeavour to invade the property of the subject, and to make themselves, or any part of the community, masters or arbitrary disposers of the lives, liberties, or fortunes of the people.

° 222. Whensoever, therefore, the legislative shall transgress this fundamental rule of society, and either by ambition, fear, folly, or corruption, endeavour to grasp themselves, or put into the hands of any other, an absolute power over the lives, liberties, and estates of the people, by this breach of trust they forfeit the power the people had put into their hands for quite contrary ends, and it devolves to the people, who have a right to resume their original liberty, and by the establishment of a new legislative (such as they shall think fit), provide for their own safety and security, which is the end for which they are in society.

John Locke, Two Treatises of Government, (1680-1690)

Algernon Sydney (1623 - 1683), was more explicit:

That which is not just, is not Law; and that which is not Law, ought not to be obeyed.

[T]he principle of liberty in which God created us . . . includes the chief advantages of the life we enjoy, as well as the greatest helps towards felicity, that is the end of our hopes in the other. I:2:5

[T]hey could not . . . lay more approved foundations, than, that man is naturally free; that he cannot be justly deprived of that liberty without cause; and that he does not resign it, or any part of it, unless it be in consideration of a greater good, which he proposes to himself. I:2:5

The Liberty of a people is the gift of God and nature. III:33:406.

The legislative power is always arbitrary, and not to be trusted in the hands of any who are not bound to obey the laws they make. III:45:455.

It is ill, that men should kill one another in seditions, tumults, and wars; but it is worse, to bring nations to such misery, weakness, and baseness, as to have neither strength nor courage to contend for anything; to have nothing left worth defending, and to give the name of peace to desolation. II:26:206.

Algernon Sidney, Discourses Concerning Government, ed. Thomas West, Indianapolis, Ind.: Liberty Classics, 1990

Andrew Fletcher (1653 - 1716) member of the Scottish Parliament, understood the process of parliament very well. He had some observations which we need to heed:

The possession of arms is the distinction between a freeman and a slave. He who has nothing, and belongs to another, must be defended by him, and needs no arms: but he who thinks he is his own master, and has anything he may call his own, ought to have arms to defend himself and what he possesses, or else he lives precariously and at discretion. And though for a while those who have the sword in their power abstain from doing him injury; yet, by degrees, he will be awed into submission to every arbitrary command. Our ancestors, by being always armed, and frequently in action, defended themselves against the Romans, Danes and English; and maintained their liberty against encroachments of their own princes.

Andrew Fletcher, A Discourse of Government With Relation to Militias, (1698)

Swiss author J.L. DeLolme, (1740-1806) made this observation of the English government in 1755:

[It is] absolutely necessary, for securing the Constitution of a State, to restrain the Executive power ... it is still more necessary to restrain the legislative. What the former can do only by successive steps (I mean subvert the laws) and through a longer or shorter train of enterprises, the latter does in a moment. As its bare will can give being to the laws; so its bare will can also annihilate them: ... the Legislative power can change the Constitution as God created the light.

J.L. DeLolme, The Constitution of England; or an Account of the English Government, (New York, 1792), p. 164

Alexis de Tocqueville (1805 - 1859), a Frenchman observing America, has a relevant message for Canadians:

When I refuse to obey an unjust law, I do not contest the right of the majority to command, but I simply appeal from the sovereignty of the people to the sovereignty of mankind. Some have not feared to assert that a people can never outstep the boundaries of justice and reason in those affairs which are peculiarly its own; and that consequently full power may be given to the majority by which it is represented. But this is the language of a slave.

Alexis de Tocqueville, Democracy in America, Vol. I 1835 & Vol. II, 1840

Thomas Macaulay (1800 - 1859), British historian, understood the parliamentary system of government very well:

The Englishman's ultimate security depended not upon the Magna Carta or parliament but upon "the power of the sword" ... the legal check was secondary and auxiliary to that which the nation held in its own hands ... the security without which every other is insufficient.

Thomas Macaulay, Critical and Historical Essays, Contributed to Edinburgh Review, vol I (Leipzig, 1860) pp 154-162

Probably the most telling of all English commentary on the right of Englishmen to have arms is William Blackstone (1723 - 1780):

The fifth and last auxiliary right ... is that of having arms for their defense, ... of the natural right of resistance and self-preservation, when the sanctions of society and laws are found insufficient to restrain the violence of oppression. ... security, of personal liberty, and of private property. So long as these remain inviolate, the subject is perfectly free; for every species of compulsive tyranny and oppression must act in opposition to one or other of these rights, having no other object upon which it can possibly be employed. To preserve these from violation, ... to vindicate these rights, when actually violated or attacked, the subjects of England are entitled ... to the right of having and using arms for

self-preservation and defense. And all these rights and liberties it is our birthright to enjoy entire;

William Blackstone, Commentaries on the Laws of England, (1765 - 1769)

James Burgh (1714-1775), a Scottish writer who advocated parliamentary reform:

When we elect persons to represent us in parliament ... We make a lodgment, not a gift; we entrust, but part with nothing. And, were it possible, that they should attempt to destroy that constitution which we had appointed them to maintain, they can no more be held in the rank of representatives than a factor, turned pirate, can continue to be called the factor of those merchants whose goods he had plundered, and whose confidence he had betrayed.

That all history shows the necessity, in order to the preservation of liberty, of every subjects having a watchful eye on the conduct of Kings, Ministers, and Parliament, and of every subjects being not only secured, but encouraged in alarming his fellow subjects on occasion of every attempt upon public liberty.

James Burgh, Political Disquisitions: Or, an Enquiry into Public Errors, Defects, and Abuses, London, 1774-1775

James Otis (1725 - 1783), a British colonist living in Massachusetts, knew firsthand of the abuses of the legislative power of Parliament:

Now, one of the most essential branches of English liberty is the freedom of one's house. A man's house is his castle; and whilst he is quiet, he is as well guarded as a prince in his castle. This writ, if it should be declared legal, would totally annihilate this privilege. Custom-house officers may enter our houses when they please; we are commanded to permit their entry. Their menial servants may enter, may break locks, bars, and everything in their way; and whether they break through malice or revenge, no man, no court can inquire. Bare suspicion without oath is sufficient.

This wanton exercise of this power is not a chimerical suggestion of a heated brain.

James Otis, Against Writs of Assistance, February 1761.

Samuel Adams (1722 - 1803), another British colonist living in Massachusetts makes these points:

Among the natural rights of the Colonists are these: First, a right to life; Secondly, to liberty; Thirdly, to property; together with the right to support and defend them in the best manner they can. These are evident branches of, rather than deductions from, the duty of self-preservation, commonly called the first law of nature. ...

If men, through fear, fraud, or mistake, should in terms renounce or give up any essential natural right, the eternal law of reason and the grand end of society would absolutely vacate such renunciation. The right to freedom being the gift of God Almighty, it is not in the power of man to alienate this gift and voluntarily become a slave.

The absolute rights of Englishmen and all freemen, in or out of civil society, are principally personal security, personal liberty, and private property.

All persons born in the British American Colonies are, by the laws of God and nature and by the common law of England, exclusive of all charters from the Crown, well entitled, and by acts of the British Parliament are declared to be entitled, to all the natural, essential, inherent, and inseparable rights, liberties, and privileges of subjects born in Great Britain or within the realm. Among those rights are the following, ...

The Legislative has no right to absolute, arbitrary power over the lives and fortunes of the people; nor can mortals assume a prerogative not only too high for men, but for angels, and therefore reserved for the exercise of the Deity alone.

Samuel Adams, The Rights of the Colonists, November 20, 1772

William Pitt, "the Younger" (1759 - 1806), who advocated peace with the American colonies and parliamentary reform, reminds us:

Necessity is the plea for every infringement of human liberty; it is the arguments of tyrants; it is the creed of slaves.

John Stuart Mill (1806 - 1873) reminds us laws like the The Firearms Act degrade us, yet the law offers neither protection nor security:

War is an ugly thing, but not the ugliest of things: the decayed and degraded state of moral and patriotic feeling which thinks nothing worth a war, is worse. ... A war to protect other human beings against tyrannical injustice; a war to give victory to their own ideas of right and good, and which is their own war, carried on for an honest purpose by their free choice, is often the means of their regeneration. A man who has nothing which he is willing to fight for, nothing which he cares more about than he does about his personal safety, is a miserable creature who has no chance of being free, unless made and kept so by the exertions of better men than himself.

John Stuart Mill, "The Contest in America", Dissertations and Discussions, vol. 1, p. 26 (1868). First published in Fraser's Magazine, February 1862

Joseph Story (1779 - 1845), Associate Justice, U.S. Supreme Court, the American equivalent of William Blackstone, states:

The right of the citizens to keep and bear arms has justly been considered as the palladium of the liberties of a republic; since it offers a strong moral check against the usurpation and arbitrary power of rulers; and will generally, even if these are successful in the first instance, enable the people to resist and triumph over them.

Joseph Story, Commentaries on the Constitution of the United States, Hillard, Gray & Co., Boston, 1833

Mahatma Gandhi (1869 - 1948) noted how the British continued to usurp power:

Among the many misdeeds of the British rule in India, history will look upon the act of depriving a whole nation of arms, as the blackest.

Mahatma Gandhi, The Story of my Experiment with Truth p. 238

George Orwell (1903 - 1950), no stranger to firearms, nor their effects on the human body, reminds us of our duty:

That rifle hanging on the wall of the working-class flat or labourer's cottage is the symbol of democracy. It is our job to see that it stays there.

Michael Sheldon, Orwell: The Authorized Biography, New York: HarperCollins Publishers, 1991, p. 328

Cesare Beccaria (1738-1794), the Italian utilitarian reformer challenges us:

A principal source of errors and injustice are false ideas of utility. ... who would sacrifice a thousand real advantages to the fear of an imaginary or trifling inconvenience; who would deprive men of the use of fire for fear of their being burnt, and of water for fear of their being drowned; and who knows of no means of preventing evil but by destroying it.

The laws of this nature are those which forbid to wear arms, disarming those only who are not disposed to commit the crime which the laws mean to prevent. Can it be supposed, that those who have the courage to violate the most sacred laws of humanity, and the most important of the code, will respect the less considerable and arbitrary injunctions, the violation of which is so easy, and of so little comparative importance? Does not the execution of this law deprive the subject of that personal liberty, so dear to mankind and to the wise legislator? and does it not subject the innocent to all the disagreeable circumstances that should only fall on the guilty? It certainly makes the situation of the assaulted worse, and of the assailants better, and rather encourages than prevents murder, as it requires less courage to attack unarmed than armed persons.

*Cesare Beccaria, Of Crimes and Punishments, 1764
Translated by Edward D. Ingraham. 2nd American ed. Philadelphia, Philip H. Nicklin 1819*

Benjamin Franklin (1706 - 1790) still has a message for Canadians:

Those who would give up essential Liberty, to purchase a little temporary Safety, deserve neither Liberty nor Safety.

An Historical Review of the Constitution and Government of Pennsylvania, 1759.

Aleksandr Solzhenitsyn (1918 -), a survivor of the Soviet gulag, gives us ample warning of what we may become:

How we burned in the prison camps later thinking: What would things have been like if every police operative, when he went out at night to make an arrest, had been uncertain whether he would return alive? If during periods of mass arrests people had not simply sat there in their lairs, paling with terror at every bang of the downstairs door and at every step on the staircase, but had understood they had nothing to lose and had boldly set up in the downstairs hall an ambush of half a dozen people with axes, hammers, pokers, or whatever was at hand? The organs would very quickly have suffered a shortage of officers and, notwithstanding all of Stalin's thirst, the cursed machine would have ground to a halt.

Aleksandr Solzhenitsyn, The Gulag Archipelago, Vol. I, p.13 Note 5

Appendix G

Government Sponsored Genocide

Canada: 1755 Acadians

United States: 1830 Cherokee Indians

Turkey: 1866 Armenians

United States: 1890 American Indians

Turkey: 1911 Armenians

Soviet Union: 1929 - 1953 political opposition

Soviet Union: 1932 - 1933 Ukraine

Japan: 1937 Rape of Nanking

Germany: 1938 - 1945 Jews, Gypsies, & Homosexuals

Soviet Union: 1944 Chechnya

China: 1949 -1952

China: 1957 - 1960

Guatemala: 1960 - 1981 Maya Indians

China: 1966 - 1976 Cultural Revolution

Nigeria: 1967 - 1970 Biafra

United States: 1968 My Lai, South Viet Nam

Uganda: 1972 - 1979 Acholi & Lango

Cambodia: 1977 - 1979 Killings Fields

Iraq: 1988 Kurds

China: 1989 Tiananmen Square

Rwanda: 1994 Tutsi

Yugoslavia: 1995 Bosnians

Somalia: 1991 -1995 southern Somalians

Indonesia: 1999 East Timor

Sudan: 2003 - current Darfur

Appendix H The Torah and The Bible

Scriptural examples of Self-defense:

Abraham defending Lot (Genesis 14.13-20),

When Abram heard that his kinsman had been taken captive, he led forth his trained men, ... went in pursuit ... and routed them ...

After his return from the [victory], Melchizedek ... priest of the God Most High ... blessed him

Moses against Pharaoh (Exodus 13.18 - 15.3),

Torah v. 13.18b ôand the children of Israel went up armed out of the land of Egypt.ö

Joshua against the Amalekites (Exodus 17.8 - 14), Torah vv.9 & 13

And Moses said unto Joshua: ôChoose us out men, and go out, fight with Amalek; tomorrow I will stand on the top of the hill with the rod of God in my hand.ö

And Joshua discomfited Amelek and his people with the edge of the sword.

Joshua against the Amorites (Joshua 10.5 - 11), v. 7

So Joshua went up ... he, and all the people of war with him, ... And the Lord said, ôDo not fear them, for I have given them into your handsö

Deborah against the Canaanites (Judges 4.6 - 8),

Now Deborah, a prophetess, ... said to [Barak], The Lord God of Israel commands you, "Go, gather your men ... I will draw ... the general ... with his chariots and his troops; and I will give him into your hand."

Gideon against the Midianites (Judges 6.11 - 7.25), vv. 7.19

So Gideon and the hundred men with him came to the outskirts of the camp ... And the three companies blew the trumpets and broke the jars ... and cried, "A sword for the Lord and for Gideon!" ... the Lord set every man's sword against his fellow ... and the army fled

Samson against the Philistines (Judges 16.23 - 31), v. 23

Now the lords of the Philistines gathered ... So they called Samson out of prison, and he made sport before them ... Then Samson called to the Lord ... Then he bowed with all his might; and the house fell upon the lords and upon all the people that were within it

David against Goliath (I Samuel 17. 12 - 53), vv. 37 - 46

And David said, "The Lord who delivered me from the paw of the lion and from the paw of the bear, will deliver me from the hand of this Philistine ... then he chose five smooth stones from the brook ... with his sling ... Then David said to the Philistine", You come to me with a sword and a spear and with a javelin; but I come to you in the name of the Lord of hosts ... This day the Lord will deliver you into my hand, and I will strike you down, and cut off your head ... that all earth may know that there is a God in Israel

the Jews in Persia (Ester 8.11 - 14), v. 11

By these [writings] the king allowed the Jews who were in every city to gather and defend their lives, to destroy, to slay, and to annihilate any armed force of any people or province that might attack them.

Nehemiah in Jerusalem (Nehemiah 4.16 - 20). vv. 11 - 15

And our enemies said, "They ... kill [us] and stop the work." ... So ... I stationed the people ... with their swords, their spears, and their bows. ... and said ... "Do not be afraid of them. Remember the Lord, who is great and terrible, and fight for your brethren, your sons, your daughters, your wives, and your homes."

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