

# Canadian Gun Control: Should the United States Look North for a Solution to its Firearms Problem?

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Note: There have been significant changes in Canadian gun laws since this article was published in 1991. Do not rely on this article for legal advice about Canadian law. Also note: the endnotes contain links to Canadian firearms statutes; the on-line edition of the statute may not necessarily include the exact wording of the present statute, and the on-line edition may also be somewhat different from the section of the statute in effect in 1991.

## I. Introduction

Americans who support strict gun control laws often point to Japan and Great Britain as models. Gun control laws in those countries, however, border on prohibition, and it is not likely the heavily-armed United States will agree to adopt controls even closely resembling the British or Japanese models. Canada, on the other hand, has a uniform federal firearms control system that, while more strict than the controls in United States overall, is more lenient than some American jurisdictions. Indeed, Canada has one of the highest rates of gun ownership in the world. There are almost as many rifles per capita in Canada as in the United States.[\[1\]](#) Although there are important cultural differences, Canada and the United States "probably resemble each other more than any two nations on earth," observes sociologist Seymour Martin Lipset.[\[2\]](#) It is therefore somewhat surprising that American gun control advocates have not placed more emphasis on the Canadian model.

This article examines the Canadian gun control system to consider whether it might serve as a model for restructuring gun control laws in the United States. The article will first summarize the history of guns and gun control in Canada, and then more closely examine the structure of Canadian firearms laws. This examination will reveal that it is possible for a nation to strictly control hand guns without slipping into severe restrictions on most sporting long guns.[\[3\]](#) After briefly examining what collateral effect, if any, the advance of Canadian gun controls has had on other civil liberties in Canada, the article addresses the efficacy (p.2)of Canadian controls in light of recent evidence. Because Canada implemented a much tougher national system in 1977, having previously had almost no controls on long guns, the Canadian system further lends itself to an examination of the effects of particular changes in the law. Armed crime and firearms suicide are examined in detail,

and some well-known but superficial studies of the Canadian laws are considered. The social implications of firearms ownership are also studied, with particular emphasis on police and civilian attitudes and practices regarding armed self-defense. Finally, the article examines the cultural aspects which have influenced Canadian firearms control, and discusses whether those controls would be suited for the United States.

## II. History

Justice Holmes observed, "the rational study of law is still to a large extent the study of history."[\[4\]](#) Likewise, Canadian gun control laws must be understood in the context of Canadian history. From the start, the advance by pioneers on the frontier in Canada was much less violent than in the United States. Since French fur traders could cooperate with the Indians, the French inhabitants of Canada had little to fear from the indigenous tribes. The [Hudson Bay Company](#)'s motto for Indian relations was "never shoot your customers."[\[5\]](#) Unlike the English settlers to the south, the white inhabitants of New France had rarely crossed the Atlantic with the intent of staying forever. Their aim was to make some money through commerce and then return to Europe. Conversely, the British who sailed to America usually came to stay.[\[6\]](#) Unlike the French traders, they planned to farm and had to fight against the Indians for control of the land.[\[7\]](#) Thus, while America had sixty-nine Indian wars, Canada had none.[\[8\]](#)(p.3)

The most important trade in France's Canadian colony was firearms in exchange for beaver pelts. By the time the French were divested of Canada and the Louisiana Territory, almost all the tribes as far west as the Rockies were armed, thanks to French enterprise and Indian wholesalers. Based in Canada, the French penetrated deep into the interior of the continent and traded firearms as they went. The main trading partners of the French were the Ottawa,[\[9\]](#) who brought guns deeper into America. They shared in the French prosperity, much to the annoyance of their rivals, the Iroquois.[\[10\]](#) In the early 17th century, the [Iroquois nation allied with the Dutch settlers](#) in the [Hudson valley](#) and with the nearby British, purchasing guns from each. By mid-century, the Iroquois were heavily armed, and had commenced a sixty-year campaign called the "Beaver Wars" to destroy the trade of France and her Indian allies, especially the Ottawa.[\[11\]](#) The Iroquois' main objective was to replace the Ottawa as middle-men, trading western beaver pelts for European guns. The French and Ottawa prevailed, however, and their trade continued to expand.[\[12\]](#)

The victory in war with the Ottawa over the Iroquois confirmed to the Governor of New France, the [Comte de Frontenac](#), that friendship with Indian traders was the best policy.[\[13\]](#) Building an empire of commerce that stretched deep into what would become the Louisiana Territory, Frontenac did everything possible to supply the Indians with guns. Because guns made big game hunting more profitable, and because many Indian tribes were

involved in wars with each other, firearms were the most valuable commodity a European could offer.<sup>[14]</sup> The French explorer La Salle observed: "The savages take better care of us French than of their own children. From us only can they get guns and goods."<sup>[15]</sup>

Frontenac's policy was the right one for France. Unlike the English, and (p.4)later the Americans, the French were not settling the land with waves of immigrant farmers. The French merely wanted to trade, and doing so among the sparse population throughout the Louisiana Territory and Canada did not threaten the Indians. Thanks to successful commerce with the Indians, the French coming down from Canada reached western Pennsylvania and Ohio before English settlers from the Atlantic coast found their way through the gaps in the Appalachian mountains.

With the victory of Britain and its colonies in the [French and Indian War](#) of 1754-63, the French were expelled from North America. The French trading posts and the French gun trade with the Indians ceased. In a hundred years, France had sold the Indians 200,000 guns.<sup>[16]</sup> Thus, to the first white settlers of Canada, the gun was a symbol of friendly intercourse with Indians. To the white settlers of what would become the United States, the gun was the tool with which they would seize the continent by force. The dependence of the British colonists in the southern thirteen colonies on guns for individual self-defense only reinforced existing attitudes of individualism and self-reliance. In Canada, society developed without the need for such reliance.

One of the cultural features left behind in New France, (now Quebec), was a tradition of authoritarianism which historian Kenneth McNaught finds has not entirely disappeared from modern French Canada.<sup>[17]</sup> Under the firm and direct command of Paris, the French in Quebec developed few customs of self-government. There was less religious freedom than in France itself. After Britain wrested control of Canada from France, the British Governor, [Guy Carlton](#), decided not to exterminate French culture, for in "the authoritarian structure of Quebec society he thought that he discerned a sheet anchor for British power in North America."<sup>[18]</sup>

Two decades after Britain seized Canada, the United States of America wrenched itself from Britain in an eight-year war for total independence. One hundred and twenty thousand Americans, dismayed at the violent revolt against the King, fled to Ontario, New Brunswick, Nova Scotia and Quebec and called themselves [United Empire Loyalists](#).<sup>[19]</sup> Their disgust with American "mob" democracy would powerfully influence Canada.<sup>[20]</sup> In contrast to the American revolutionaries, the Loyalists were not afraid of what the government would do to them. Rather, they were afraid of what would happen if the government (p.5)collapsed.<sup>[21]</sup> The settlers who came to Canada in the next century were typically British subjects who had decided that they would like to continue living under the Crown. Conversely, immigrants to the United States were typically those who rejected European

governments. So while the Northern Irish Anglicans often migrated to Canada, Irish Catholics headed for the United States.[\[22\]](#)

In 1867, almost a century after the United States won total independence from Britain by war, the Dominion of Canada was peacefully granted autonomy for domestic affairs within the British Commonwealth by the [British North America Act.](#)[\[23\]](#) While there is a particular moment in time when the United States became an independent nation, namely ratification by the Continental Congress of the [Declaration of Independence](#), there is no such precise moment marking Canadian independence. As late as World War II, Canada was still legally a "dominion" rather than an independent nation and it was not clear how much authority Canada had to carry out a foreign policy separate from the British Commonwealth.

Thus, the American national character has been shaped by the violent, armed assertion of national independence, whereas Canada has been shaped by a reaction against the American tradition of armed violence. The contrasting attitudes--which have shaped America and Canada ever since--were especially visible in the [War of 1812](#) when the British again sought to regain control of its former colonies.[\[24\]](#)

One of the most important factors aggravating tensions between the United States and Britain prior to the American Revolution was Britain's use of its Canadian colony as a trading post with the American Indians. Specifically, the British gave the Indians weapons which were ostensibly intended for hunting. They were, however, also used for killing encroaching American frontiersmen. After the battle of Tippecanoe, in what is now the state of Indiana, General [William Henry Harrison](#) and his troops plundered the Shawnee village of Prophets Town. The American soldiers discovered weapons that Britain had supplied to its Indian allies. The definitive proof of the British trading arms to the Indians enraged the American people.[\[25\]](#)

America was ready for war, and expected its armed-citizenry to win a speedy victory. Sentimental and not always accurate memories of the War for Independence convinced the American public that the virtuous citizen militia could easily defeat any professional army. Representative [Henry Clay](#), leader of (p.6) the War Hawks in Congress, boasted: "I verily believe that the militia of Kentucky are alone competent to place Montreal and Upper Canada at your feet."[\[26\]](#)

In Canada, the settlers who awaited the American invasion were very different from their exuberantly bellicose southern neighbors. Writes historian [Pierre Berton](#):

This is a pioneer society, not a frontier society. No [Daniel Boone](#) stalks the Canadian forests, ready to knock off an Injun with a [Kentucky rifle](#) or do battle over an imagined slight. The Methodist circuit riders keep the people law abiding and temperate... [C]ard playing and horse racing are considered

sinful diversions; the demon rum has yet to become a problem. There is little theft, less violence.... The new settlers will not volunteer to fight. But most are prepared, if forced, to bear arms for their new country and to march when ordered.[\[27\]](#)

Kentuckians rushed to militia service, and marched north.[\[28\]](#) Mounted volunteers under the command of Samuel Hopkins, a Congressional War Hawk turned Major-General, charged off to claim Canada. Two weeks later, lost and hungry, the volunteers were attacked by Indians and retreated in shame. Kentucky Governor Shelby observed, "the flower of Kentucky are now returning home deeply mortified by the disappointment."[\[29\]](#) Some American troops did reach the British Colony, but they, too were disappointed. Experienced officers such as Sir George Prevost and Major-General Isaac Brock pulled off a difficult defense and ultimately defeated the Americans.

Berton summarizes:

[T]he key words in Upper Canada were "loyalty" and "patriotism"--loyalty to the British way of life as opposed to American "radical" democracy and republicanism. Brock, the man who wanted to establish martial law and abandon habeas corpus, represented these virtues ... [and] came to represent Canadian order as opposed to American anarchy.... Had not Canada been saved from the invader by appointed leaders who ruled autocratically? ... This attitude, that the British way of life is preferable to the American; that certain sensitive positions are better filled by appointment than by election; that order imposed from above has advantages over grassroots democracy (for which read "license" or "anarchy") flourished as a result of an invasion repelled. Out of it, shaped by an emerging nationalism and tempered by rebellion, grew that special form of state paternalism that makes the Canadian way of life significantly different from the more individualistic American way.[\[30\]](#)

Another key difference between the American and Canadian historical experience (p.7) was the taming of the western frontier. Settlers of the American West staked their claim years before a government was around to protect their lives and property. They enforced their own law and order, living in a Hobbesian, chaotic world where government was either not present or simply ineffective. Individuals had to protect themselves. Citizens were forced to adapt to a practice of local control. When the time came to form western state governments, the settlers drew on their existing experience of local control and enacted laws particular to their local conditions.[\[31\]](#)

By contrast, the law and established practices of governing came to the Canadian West even before the Canadian people. The [Laurentian Shield](#), a giant stretch of brushy, barren soil sitting on hard precambrian rock, originally blocked Canada's westward expansion. Only when railroads penetrated this barrier in the nineteenth century did settlers reach the rich

interior prairie.<sup>[32]</sup> These settlers came directly from the "civilized" eastern provinces and brought their established practices with them. [Prime Minister Alexander Mackenzie](#) had created the [North-West Mounted Police](#) (N.W.M.P.) specifically to avoid the American pattern of frontier development.<sup>[33]</sup> The N.W.M.P. managed to establish law and order before the arrival of many settlers, and the central government and the semi-feudal Hudson's Bay Company established standardized and national laws before Canadian citizens ever set foot on their western farms.<sup>[34]</sup> Thus unlike the United States, Canada did not go through a "recurring pioneering experience."<sup>[35]</sup> Canadian historian, Kenneth McNaught, explains:

Partly because of much slower growth, Canada did not suffer the long and bloody wars that marked the American occupation of the far west. The Mounted Police maintained much tighter control of western settlements and the six-shooter never became the symbol of Canadian freedom. Ottawa negotiated treaties with the plains Indians which secured relatively peaceful opening of the most fertile land ....<sup>[36]</sup>(p.8)

In the early days of the Canadian west, the N.W.M.P. discouraged settlers from carrying handguns.<sup>[37]</sup> By effectively providing for the security of the settlers, the N.W.M.P. obviated the need for defensive weaponry. Although many Americans urged the creation of an American "Mountie" force for the frontier, western communities resisted it as an encroachment by military rule on local autonomy.<sup>[38]</sup> The British North America Act of 1867, which granted Canada autonomous Dominion status within the British Commonwealth, mandated that all firearms legislation is within the national government's jurisdiction.<sup>[39]</sup> Canada's first significant firearms law, in 1892, required a carrier to obtain a permit to carry a pistol if the carrier lacked "reasonable cause to fear an assault" on his person or property.<sup>[40]</sup> A 1913 revision eliminated the fear of assault exception to the permit law, and required a permit to carry any handgun.<sup>[41]</sup>

The next important change came in 1919 following the end of World War I. Nineteen-nineteen had at first seemed a heady year for the Canadian labour movement in light of the growing strength of the British Labour Party and the apparent success of the Russian Revolution. Canadian labor went on an unprecedented wave of strikes.<sup>[42]</sup> The business community, terrified of lost profits and red revolution, convinced the government to continue the wartime censorship laws.<sup>[43]</sup>

In May of 1919, the Winnipeg Trades and Labour Council called a general strike.<sup>[44]</sup> Although the strike leaders were British born, and the strikers were non-violent in seeking improvements in their working conditions, the larger business community claimed that the strike was led by "alien scum" bent on Communist revolution. The Winnipeg government reacted by replacing the local police with the N.W.M.P., a militia comprised mainly of ex-soldiers, and ordered the arrest of strike leaders. Defying the Mayor's ban

on parades, the strikers held a protest march. The N.W.M.P. and the militia attacked the crowd; one marcher was killed and thirty were injured.[\[45\]](#)(p.9)

Shortly thereafter, the Canadian House of Commons, terrified by the Winnipeg strike, took up the issue of gun control. The House of Commons blamed the strike on alien, non-Commonwealth anarchists. One Member of Parliament commented, "are we to allow these aliens, to bring their bad habits, notions, and vicious practices into this country?"[\[46\]](#) Parliament enacted legislation requiring aliens to obtain a permit to possess any gun, and in 1920 the permit requirement was extended to all persons for all types of guns.[\[47\]](#) The 1920 bill was probably influenced by the 1920 pistol and rifle legislation in Britain, another nation frightened by "foreign-born" anarchists.[\[48\]](#) Aliens in Canada guilty of violating the law were deported, and loosely-defined "seditious" speech was prohibited.[\[49\]](#) By 1921, the situation had calmed, and Canada repealed the gun controls affecting non-aliens.[\[50\]](#)

As of the mid-1970s, gun control was not greatly more severe. Carrying or possessing a weapon, or imitation weapon, for a purpose "dangerous to the public peace" was punishable with up to five years in prison.[\[51\]](#) Simple, unlicensed gun possession, other than in the home or business, was punishable by up to two years in prison or by a summary conviction.[\[52\]](#) However, as of 1976 no permit was required to buy a long gun to keep in one's house or business. Indeed, long guns were subject to hardly any control at all.[\[53\]](#)

### **III. New Restrictions in 1977**

The push for the current version of gun control laws in Canada began in 1974 after two incidents in which boys with rifles ran amok in public schools. The public demanded executions but the government responded by offering stricter gun control to distract public attention away from the death penalty.[\[54\]](#) (p.10) Many ideas were discussed, and in 1977, [Prime Minister Pierre Trudeau](#)'s government introduced Bill C-58 which would have required a prospective gun purchaser to receive police approval to buy a weapon and to supply the police with two character references. Although public sentiment generally appeared to favor Bill C-58, it was met with over fifty amendments in the House of Commons and a firestorm of protest from gun owners. As a result, the Trudeau government withdrew C-58 and introduced a milder measure, Bill C-51, which became the Criminal Law Amendment Act.[\[55\]](#)

Bill C-51 pleased liberals because it tightened gun control and pleased conservatives because it eased restrictions on wire-tapping.[\[56\]](#) The liberal/conservative "anti-crime" coalition sailed through the House of Commons by a 95-40 vote, although 150 other members of parliament did not vote at all.[\[57\]](#)

In the 1979 election, thirty-three of the members of parliament who had voted for C-51 were defeated. The [National Firearms Association](#) gave itself

some of the credit. The new Conservative Prime Minister, Joe Clark, had won the election as part of a Western Canadian revolt against "big government" in the east, and he promised to modify the gun law. However, his government floundered, and the 1977 law was still intact when he was swept out of office in 1980.[\[58\]](#)

## **A. Firearms Acquisition Certificate**

In light of the gun control system established by Bill C-51 in 1977, Canadians who now wish to purchase any sort of gun must acquire a Firearms Acquisition Certificate (F.A.C.) from the police.[\[59\]](#) For purchasers of almost all long (p.11)guns (rifles and shotguns), the F.A.C. is the only legal step required. The F.A.C. entitles its holder to buy most long guns anywhere in Canada for a period of five years.[\[60\]](#) Police may reject an applicant if they believe "it is desirable in the interests of the safety of the applicant or of any other person that the applicant should not acquire a firearm."[\[61\]](#)

To obtain a Firearms Acquisition Certificate, an applicant must provide identification and background information, including addresses for the past five years.[\[62\]](#) Unlike some American states, applicants are not required to supply confidential medical information to the police.[\[63\]](#) Also dissimilar to American practice, mail order sales of both handguns and long guns are permitted.[\[64\]](#)

Although American opponents of gun control often claim that it is impossible to devise a licensing system which will constrain the police from abusing the authority entrusted to them, the Canadian system appears to prevent arbitrary rejections in most cases.[\[65\]](#) In case of denial, the police must produce a written (p.12)justification, and the applicant may appeal to a provincial court judge.[\[66\]](#) The judge is required to set a date for hearing the appeal.[\[67\]](#) At the hearing, hearsay evidence may be used against the applicant.[\[68\]](#) The burden of proof is on the firearms officer to justify the denial.[\[69\]](#) About half of all appeals are successful.[\[70\]](#)

Police must keep records of all gun transactions they approve or are informed about, except that police need not keep a list of F.A.C. holders on file.[\[71\]](#) The police are specifically barred from asking for the serial numbers or other identification of guns that are not restricted weapons.[\[72\]](#) Gun dealers must keep records of their sales, but need not report long gun transactions to the police. After five years, the dealer may discard his transaction records.[\[73\]](#)  
(p.13)

With respect to most long guns, Canada is less restrictive than many American jurisdictions. While California, for example, mandates police approval for every single firearms transaction,[\[74\]](#) Canada requires no police approval for most long guns, beyond the initial issuance of the Firearms Acquisition Certificate. As a result, retail dealers have less burdensome paperwork requirements. Of course Canada's F.A.C. system is also more



strict than that of other American states, such as Vermont or Idaho, which do not require purchasers of long guns or handguns to pass through any kind of police screening.[\[75\]](#)

## **B. Restricted Weapons**

While the F.A.C. system creates a relatively lenient legal climate for most long guns, guns which are considered dangerous are subjected to a more intense system of control under the "restricted weapons" classification. Restricted weapons include all handguns, as well as certain long guns.[\[76\]](#) That the legal system refers to these guns as "weapons" rather than as "firearms" may reflect (p.14)the legal judgment that the guns are also more likely to be misused by criminals. Still, the fact that the guns are merely restricted rather than prohibited shows recognition that the guns do have some legitimate sporting uses. Centerfire semi-automatic rifles with a short barrel or a folding stock are the most widely-used type of long guns classified as restricted weapons.[\[77\]](#)

Significantly, the Governor in Council of the Federal Cabinet may place any gun or gun accessory it chooses on the restricted or prohibited list.[\[78\]](#) The Governor in Council's decision to restrict a firearm is not subject to judicial review.[\[79\]](#) In 1983, the Council placed the [FN-FAL rifle](#), a large Korean war era semi-automatic from Belgium, on the restricted list even though it was used in only one recorded crime.[\[80\]](#) The placing of formerly unrestricted long guns on the restricted weapons list has aroused considerable resentment among some Canadian gun owners. Since restricted weapons must be individually registered, some gun owners fear that registration of the FN-FAL or other weapons may be a prelude to confiscation.[\[81\]](#)

Following a United States ban on the import of many semi-automatic firearms in March of 1989, the Canadian Association of Chiefs of Police sought a similar import ban.

While there is sometimes heated debate about which long guns should be (p.15)restricted weapons, there is no such debate about handguns. All handguns are restricted.[\[82\]](#)

To receive a Restricted Weapon Registration Certificate, an applicant has the burden of proving that the gun will be used for one of four purposes: (1) to protect life where other protection is inadequate;[\[83\]](#) (2) in connection with a lawful profession or occupation;[\[84\]](#) (3) for use in target practice under the auspices of a shooting club;[\[85\]](#) and (4) as part of a gun collection by a "bona fide gun collector."[\[86\]](#)

The first step for a prospective handgun purchaser will typically be to join a shooting club and to shoot with club members' guns at the range. Some clubs may observe the applicant for a while before writing a letter of recommendation to the police to attest that the applicant may be entrusted

with a handgun.[87] Other prospective handgun owners may simply state that they are buying their first handgun as the beginning of a collection.

After paying for a handgun or other restricted weapon at a gun dealer, the applicant must take the detailed bill of sale to the Registrar of Firearms at a local police station. The Registrar completes an Application to Register a Restricted Weapon for the applicant. At this time the applicant may show his shooting club recommendation. The police run a background check which varies considerably in intensity from region to region. Some police precincts conduct personal interviews in the applicant's home. The police may also visit the location where the applicant intends to store the handgun to ensure that the gun will be locked up. Interviews with neighbors and employers are not uncommon, but the most typical background check simply involves a review of computer records on the applicant.[88] In some areas, a handgun permit may be issued the afternoon after a purchase, subject only to a background check to ensure that the applicant does not have a criminal record.[89] Some jurisdictions allow the handgun purchaser to register his gun and take it home the day he buys it; other jurisdictions, mostly in larger cities, delay final approval until the [Royal Canadian Mounted Police](#) (R.C.M.P.) headquarters in Ottawa completes its paperwork for registering the gun.[90] (p.16)

Once the police are satisfied with the applicant's fitness to own a gun, the gun will be registered.[91] The police complete the registration form, issue two copies to the purchaser, and retain additional copies for their own files. The purchaser must return one copy to the gun vendor and then return directly to the police station with the gun. A Permit to Convey allows the citizen to pick up his gun from the gun dealer, bring it to the police station for verification of registration information, and then take the gun to his residence or place of business.[92] The police stamp the purchaser's copy of the registration form and send their copy of the form to the R.C.M.P. in Ottawa. After several months they will send the purchaser an official certification reflecting that he or she legally owns the gun.

A registration application contains space for the registration of two restricted weapons. Even after a person passes the screening process and is granted a registration certificate, he or she must begin the process anew for additional purchases of restricted weapons.[93] Even inoperable guns must be registered in some provinces.[94]

Restricted weapons must be stored only in one's home or place of business depending on the terms of the registration certificate.[95] Target shooters may not keep their guns at a range, even if the range has secure storage areas.[96]

In the United States, the federal government prohibits anyone with a felony conviction from legally obtaining any kind of gun for the rest of his life.[97] Conversely, the Canadian police will issue Weapon Certificates, even for

restricted firearms, to people whose last felony was more than ten years ago. [\[98\]](#)

A person may appeal the police refusal of a restricted weapons certificate to a provincial court judge. Unlike with the Firearms Acquisition Certificate for ordinary long guns, such applicants bear the burden of proving that the police erred in rejecting their application. [\[99\]](#)

In practical terms, handguns are still obtainable. To be eligible, an applicant (p.17) must either be a gun collector or belong to a target shooting club. Although firearms collecting is a statutorily valid reason for purchasing a handgun, applicants who wish to start, rather than add to, a handgun collection are sometimes denied. Occasionally, a Firearms Registrar may claim that a particular handgun is not suitable for collecting even though there is no legal authority for the police to make such a determination. [\[100\]](#)

Permits to transport restricted weapons to target ranges must be renewed at periodic intervals, usually once a year. [\[101\]](#) They must be carried with the gun whenever the gun is transported. Separate, one-time "carriage permits" are required to take a handgun or other restricted weapon to a gunsmith for repairs, to a gun show, or to a new home. [\[102\]](#)

As in many American cities, it is virtually impossible for an ordinary citizen to obtain a permit to carry a loaded handgun for self-defense. Handgun carry permits for self-protection are issued "only in exceptional cases" where the issuing officer is "satisfied" of the applicant's need. [\[103\]](#) A carry permit for self-defense will be denied in any area that has a police force no matter how remote the police force is. [\[104\]](#) Individuals who live in the far North are denied permits, unless they must carry all their equipment on their person, such as geologists or prospectors do. [\[105\]](#) In the rare case where a carry permit is granted for the protection of life, the permit may include conditions forbidding use of the gun unless an imminent life-threatening situation arises. Under the terms of such permits, a permit-holder would be forbidden to draw or fire the gun to prevent her own rape or someone else's murder. [\[106\]](#) Carrying a loaded handgun on a person's own property is not even permitted, although it is doubtful that prosecution would result. [\[107\]](#)

The Canadian laws for handguns and most long guns are more moderate than in some United States jurisdictions. Following an example first set in the Chicago suburb of Morton Grove, several other Chicago suburbs, Chicago itself, [\[108\]](#) and Washington, D.C. totally bar handgun purchases. New York City (p.18) police for several years simply refused to issue handgun applications, until ordered three times to do so by the state courts. [\[109\]](#) New Jersey allows handgun purchases, but (despite a requirement for 30-day application processing) the police often take half a year or more to issue a license. [\[110\]](#) In some Canadian jurisdictions the police run a background check and authorize a handgun purchase in an afternoon, [\[111\]](#) whereas

states such as California require fifteen-day waiting periods for every single handgun, rifle, or shotgun purchase.[\[112\]](#)

The majority of the United States, though, are more lenient than Canada, requiring only that a retail handgun purchaser fill out a federal form at the point of sale, or to obtain a one-time-only license.[\[113\]](#) Only a few states impose any restrictions on private handgun transfers among adults.

[\[114\]](#) Some Canadian firearm activists prefer the Canadian system to the American, since a uniform national system prevents local prohibitions.

### **C. Prohibited Weapons**

In Canada, short shotguns, sawed-off rifles, and silencers are completely illegal.[\[115\]](#) Fully automatic weapons are legal only if they were registered to their current owner before January 1, 1978, the effective date of the new law.

[\[116\]](#) To comply with the new law, many gun owners had their full automatics permanently converted to semi-automatics. As semi-automatics, the guns were subject to the same relaxed controls as other standard rifles. But in 1988, the government began confiscating many of the converted semi-automatics and charging the owners with felony possession of a prohibited weapon. The government reasoned that if the guns had been converted from full to semi-automatic, they (p.19) could be reconverted back to full automatic.

[\[117\]](#) Indeed, most semi-automatics can be converted to full automatic by a gunsmith who has the time and skill and who is willing to commit a serious felony. Full-automatic owners who had converted a decade ago in order to comply with the new law were incensed by the confiscations. Now a decade later, their efforts to comply were being twisted into a rationalization for gun confiscation.[\[118\]](#) As a result, many owners of automatics which have been irreversibly converted to semi-automatic have begun concealing their guns in fear of anticipated confiscation.[\[119\]](#)

The government periodically issues new "Prohibited Weapons Orders."[\[120\]](#) These orders prohibit the possession of particular classes of weapons, even if the weapon was legally owned and registered before the order was enacted. Some weapons retroactively prohibited by the orders are small tear gas canisters and Mace.[\[121\]](#) In contrast, it is legal to sell tear gas and Mace in almost all American states, with certain restrictions on their sale in a few.[\[122\]](#) The reasoning is that these self-defense items are less dangerous than firearms. Canadian legal authorities, however, reject the idea of armed self-defense in any form.[\[123\]](#)

### **IV. Civil Liberties**

American opponents of gun control claim that infringements on the constitutional right to bear arms inevitably lead to infringements on other rights. Canadian gun control involves police activity that would be severely criticized by those Americans strongly committed to civil liberties. But

overall, most of the civil liberties issues directly raised by the Canadian law are no more troublesome than those raised by existing American controls.

The Canadian practices that would most offend American sensibilities involve fourth amendment issues. The idea of allowing police who are processing (p.20) a gun license application to visit the applicant's home and to question his or her neighbors, for example, seems troublesome. While Britain and Canada allow home visits in this context, it is unlikely that American jurisdictions would.

Magistrates may issue warrants for home searches and gun confiscation whenever they believe that it is not in the interest of the person or not in the interest of the public that a person should have a firearm in his possession. [124] In such situations, the authorities may use restricted weapon registration lists to determine whether the resident of the home has a gun to confiscate. [125]

New controls imposed by the Parliament in 1991 require all "gun collectors" (that is, most of the persons who have been granted "restricted weapon" permits to possess handguns or selected long guns) to consent to warrantless government searches of their homes. [126] Government witnesses promised a legislative committee that the "inspections" would only be carried out during reasonable daylight hours. [127]

Even warrantless home searches of ordinary long-gun owners are allowed when the peace officer reasonably believes that possession of the firearm "is not desirable in the interests of the safety of that person, or of any other person ... and that it would not be practicable to obtain a warrant." [128] One rationale for warrantless searches is that a gun should be removed as soon as possible from a volatile domestic location. Another rationale is that, especially in the north, magistrates are scarce.

After a home search, the prosecutors must report the results to the magistrate so that the courts can monitor implementation of the gun law. [129] In practice, search results are only reported to magistrates when guns that the police want to have confiscated are found. [130]

Some gun owners have alleged that informants have tricked the police into confiscating neighbors' weapons by filing false reports of violent threats. [131] The Canadian police, like the United States Bureau of Alcohol, Tobacco and Firearms (B.A.T.F.) perform roughly one warrantless inspection of every gun dealer (p.21) every year, and dealers complain that the inspections are often used solely for purposes of harassment. [132] The R.C.M.P. does not seize dealer records of firearms sales, except to investigate particular crimes. In contrast, the B.A.T.F. has engaged in mass seizures of dealer firearms records with no link to any specific crime. [133] This occurs despite the fact that such seizures are specifically forbidden by federal law. [134]

Both Canadian and American gun laws have helped undermine the traditional principle of Anglo-American criminal law--that a person may only be convicted of a criminal offense if he has *mens rea* (guilty mind). That principle has been eroded as courts have upheld laws that find a person guilty of a criminal offense even if there is no proof that the person had a culpable mental state.<sup>[135]</sup> The Supreme Court's decision in *United States v. Freed* declared that criminal intent was not necessary for a conviction under the Gun Control Act of 1968.<sup>[136]</sup>

Possession of a firearm by persons under an order not to possess firearms is a strict liability offense.<sup>[137]</sup> This means that the individual's mental state is irrelevant. For example, a man was convicted of failing to obtain a registration certificate, despite his defense that he had relied on an official's statement that his particular rifle was not a restricted weapon.<sup>[138]</sup>

Though guilt by association is not an accepted legal precept in the Anglo-American tradition, it has been upheld in American gun-law cases. In *Ulster County v. Allen*,<sup>[139]</sup> the United States Supreme Court validated a New York law which stated that if one person in an automobile possessed an illegal gun, all other passengers in the car were presumed to be in unlawful possession unless they could prove they did not know about the gun.<sup>[140]</sup> In Canadian jurisdictions the burden shifts. The Crown must prove that others in the car with the illegal possessor knew about the presence of the gun. Convictions for unlawful possession (p.22)are upheld even if the occupants had no control over the gun.<sup>[141]</sup>

Under traditional common-law principles, ordinary carelessness did not rise to the level of a criminal mental state. To be prosecuted for an offense involving criminal negligence, such as killing someone with a car (negligent vehicular homicide), the defendant must have been in "gross disregard" of appropriate standards of care.<sup>[142]</sup> Simple carelessness might have invited liability in a civil lawsuit for money damages, but was not the basis for a criminal conviction. That traditional common law principle was changed in Canada by the 1977 gun law. Courts now uphold convictions based on ordinary negligence, rather than the "gross disregard" standard. For example, careless storage or use of a gun which results in injury to another constitutes a criminal offense.<sup>[143]</sup> American civil libertarians are justified in fearing that gun control laws can lead to infringements in other areas of civil liberties. Certainly the potential for infringement of civil liberties exists under both the American and Canadian models. In fact, the infringements under current United States controls are quite similar to infringements under the Canadian model. Accordingly, the fear that adoption of the Canadian model of federal gun control would lead to significantly greater infringements of other civil liberties in the United States may be exaggerated. On the other hand, as will be discussed below, the Canadian police enjoy a less adversarial relationship with the Canadian people than

the American police do with American citizens. As a result, some American police might be inclined to enforce a particular law more severely than would the Canadian police.

## V. Has Gun Control Reduced Gun Misuse?

While American newspapers and commentators have touted the 1977 Canadian law, it is not clear whether the law has had any measurable effect on reducing crime or suicide in Canada. Plenty of illegal guns are still available. In the mid-1970s, the Royal Canadian Mounted Police estimated there to be 50,000 unregistered restricted weapons, mostly handguns, in private hands.[\[144\]](#) Other government analysts found the 50,000 figure far too low.[\[145\]](#)

Today criminals have an easy time purchasing illegal handguns in Canada. Many of them are smuggled in from the United States. The head of Toronto's detective unit opined that he would not have to walk more than two kilometers "to pick up a hot piece."[\[146\]](#) Even without American imports, the Canadian pool of more than 45,000 stolen and missing weapons comprises an abundant source for persons with criminal purposes.[\[147\]](#)(p.23)

### A. Crime

A 1983 study commissioned by the Canadian government concluded that the 1977 Act had positive results.[\[148\]](#) The well-publicized results of this study forestalled considerations of modifying the Act. While the study's conclusions firmly supported gun control, the data used to formulate these conclusions were not so supportive.

For example, the study announced that the new gun law had cut the murder rate, essentially stating that the murder rate had declined immediately following the gun law's implementation. Actually, murder had increased from 1961 to 1975 and had declined from 1975 to 1981.[\[149\]](#) Since the gun control law only went into effect in 1978, it should not have been given credit for a trend begun in 1975.

In four major Canadian cities--but not the country as a whole--the percentage of firearms used in attempted murders dropped significantly after 1978. The most dramatic decrease was in Vancouver, where firearms had been used in 51% of attempted murders in 1975-77, but only 27% in 1978-81.[\[150\]](#) Knives displaced guns in homicides and attempted homicides.[\[151\]](#)

The use of firearms in "rape and indecent assault, assault, and woundings," was already low and showed no change.[\[152\]](#) Most rapists do not use any weapon, let alone a gun, since male strength is usually enough to overpower a female victim.[\[153\]](#) As the Canadian experience affirmed, rape is not likely to decline as a result of gun control.

According to the government study, guns were used in 38.5% of robberies in 1977, and 34.4% in 1981.[\[154\]](#) The relative decline in armed robbery, if

statistically significant, might be attributed to the mandatory sentencing provisions applicable (p.24) when a gun is used in a felony. [155] The Canadian government's study did find that the 1977 legislation led to longer jail terms for robbers armed with guns, and shorter terms for those who used other weapons. [156] To the small extent that robbery with firearms decreased, it was replaced by robbery with other weapons, particularly knives. [157] In this light, the study's confident declarations that the new gun laws markedly reduced the armed robbery rate were somewhat overstated.

To the extent that the government study found evidence for a general decline in the use of guns in crime, as in attempted murder, the decline was mostly in long gun crimes. Handgun misuse proved more resistant to legal controls. [158]

That the Canadian government study showed very little, if any, benefit from the new gun law should not be considered conclusive proof of the law's failure. The study had only limited data available, and only for years through 1981. A relatively moderate law, which did not take full legal effect until 1979, should not have been expected to produce immediate and dramatic results.

The more important question was how the Canadian law would perform over the long term. Through the first decade of the law, trends in firearms misuse generally followed the American pattern. Armed homicides became a smaller percentage of total homicides, and the overall homicide rate declined from 2.7 (per 100,000 people, per year) to 2.6. [159] In the United States the percentage of firearms used in homicides decreased, and the homicide rate fell from 9.2 to 8.9. [160] Domestic homicide fell in Canada, and dropped even more sharply in the United States. [161]

The most significant change in the years following the new Canadian controls was in armed robbery as a percentage of all robbery. In 1988 only 25% of the robberies in Canada involved a firearm, as compared to 38% in 1977. Knives generally displaced firearms as robbery weapons. In the United States, the armed robbery rate as a percentage of robbery declined by a third, an almost identical rate of decline. [162]

That the United States and Canada might have experienced similar crime trends, even though one country was tightening controls while the other relaxed them, seems intuitively unreasonable. Criminologist Paul Blackman has attempted to refine the comparative analysis of Canadian and American gun control by focusing on particular groups from each territory. For example, (p.25) Blackman observes that in the late 1970s and early 1980s, while Canada was enforcing its new strict controls, America added no new federal control and relaxed control at the state level. Nevertheless, northern-tier American states (arguably the most comparable to Canada) saw a much slower rise in the robbery rate than did Canada. [163]



Direct United States-Canada comparisons, such as Blackman's, must be reviewed carefully to account for the many cultural and social differences that might be more important than the differences in statutory firearms law. One of the most influential United States-Canada comparative studies is of rather limited utility because it failed to consider the social variables.

On the morning of a hotly-contested handgun control referendum in Maryland in November, 1988, the *Washington Post* broke an embargo against publication of a story comparing American and Canadian gun laws. [164] The *Post* summarized the findings of a forthcoming article in the *New England Journal of Medicine (N.E.J.M.)* which analyzed handgun homicide rates in Vancouver and Seattle. [165] The *N.E.J.M.* article contrasted Seattle's higher homicide rate with Vancouver's lower rate.

The *N.E.J.M.* article observed that Vancouver had stiffer handgun laws than Seattle and a lower handgun homicide rate. In Seattle, virtually all of the homicides involved handguns. The article ruled out economic factors as a cause for the disparity since the two cities had similar average incomes. However, while the two cities may have the same *average* income, the composition of the income groups *below average* are very different. The low-income groups in Seattle include a high proportion of racial minorities. The groups have experienced a long history of discrimination, and continue to face difficulties in preserving traditional family structures. If one limits the Seattle-Vancouver comparison to non-Hispanic whites, the homicide and gun victimization rates for these two cities are actually quite similar despite Canada's stricter laws. [166](p.26)

The *N.E.J.M.* article had other flaws. It attributed Vancouver's lower handgun homicide rate to the 1977 Canadian law, which in practice barred acquisition of a handgun for self-defense and outlawed the carrying of handguns for practically any defensive purpose. Yet Vancouver's handgun homicide rate (as well as the overall homicide rate) after the law went into effect remained the same as in years *before* the law. [167] Thus, to conclude that the strict handgun law was the key to lowering the homicide rate is specious.

Evidence indicates that the armed crime problem in Vancouver has actually increased since 1977. In 1982, the Vancouver Police Union demanded a shotgun in every patrol car, access to more powerful handguns, and increased weapons training to cope with a huge surge in armed robberies. [168] Yet even as the police were arming themselves, the Vancouver police chief said he would press for a complete ban on all handguns. "The only reason for a handgun is protection, but we don't have a community that needs that kind of protection." [169]

The *N.E.J.M.* article was so intent on proving a case against guns that other research was misrepresented. The article cited James Wright's *Under the Gun: Weapons and Crime and Violence in America* [170] for the proposition

that stricter gun control would reduce homicide. In fact, that book concludes that there is no persuasive evidence that any form of gun control has reduced or would reduce homicide.[\[171\]](#) While the Sloan study received widespread and favorable coverage in the media, it was sharply criticized in a number of letters directed to the *N.E.J.M.*[\[172\]](#) In defense, the authors asserted that they had not been evaluating the new gun law, but rather the general and long-standing Canadian policy of stricter control. The authors did not, however, respond to the charges that they had attributed conclusions to researchers, such as Wright, which had never been made and in some cases had been pointedly rejected.[\[173\]](#)

The Seattle-Vancouver study was paid for by United States government funding from the [Centers for Disease Control](#) (C.D.C.). The C.D.C. had allocated a budget of twenty-five million dollars for the purpose of proving that (p.27)United States suffers from the "disease" of an "epidemic" of firearms.[\[174\]](#) It does not seem likely, however, that understanding of the gun issue will be advanced by polemics from M.D.'s and M.P.H.'s who lack training in the rudiments of social science or law, and whose work is no closer to real criminology than astrology is to astronomy.

Some Canadian criminologists, like American physicians, are not always persuasive in their analysis of Canadian gun controls. A 1989 article in Canada's leading criminology journal, the *Canadian Journal of Criminology*, offered research data showing that the Canadian homicide rate had remained essentially stable in the decade following the enactment of the 1977 law. Any homicide decline resulting from the law was so small as to be virtually imperceptible. Nevertheless, the article's authors entitled their piece, *Killing with Guns in the U.S.A. and Canada 1977-1983: Further Evidence for the Effectiveness of Gun Control.*[\[175\]](#) Their argument regarding the effectiveness of the Canadian law was essentially as follows:

- (A) Canada has strict gun controls;
- (B) The United States has lenient gun controls;
- (C) The United States has more per capita handgun deaths than Canada;
- (D) Hence, the Canadian gun control law reduces handgun violence.

Such reasoning does not explain why the Canadian gun law should be given the credit for Canada's relatively lower handgun homicide rate. Indeed, the article conspicuously ignores the Canadian government study that showed handgun crime to be particularly unaffected by the gun law. The only academic studies the article cited which assert that the Canadian law has had any benefits are the Seattle-Vancouver study discussed above, and the author's own previous work.[\[176\]](#)

The evidence that Canadian gun policy is in some respects criminogenic is at least as convincing as arguments that the controls reduce crime. Even before the 1977 Bill, Canadian civilians were less armed than Americans. Perhaps

as a result, five times as many burglaries were committed against occupied residences in Canada than in the United States.<sup>[177]</sup> A Toronto study found that 48% of (p.28)burglaries were against occupied homes, and 21% involved a confrontation with the victim.<sup>[178]</sup> Only 13% of United States residential burglaries are attempted against occupied homes.<sup>[179]</sup> Most Canadian residential burglaries occur in the nighttime, while American burglars prefer daytime entry to reduce the risk of a confrontation. When an American burglar strikes at an occupied residence, his chance of being shot is at least equal to his chance of being sent to jail.<sup>[180]</sup> Since Bill C-51 took effect, the breaking and entering rate in Canada rose 25%, and has even surpassed the American rate.<sup>[181]</sup>

The post-1977 burglary increase was part of a general crime escalation. Hence, it might be that the 1977 gun restrictions had nothing to do with the increase. The pattern of burglary against occupied residences in Canada had been established long before the 1977 gun law went into effect. The high burglary rate (if it has any relation at all to gun issues) may be blamed less on the particulars of Canadian law than on Canadian gun culture, which has never emphasized the ownership of guns for armed home defense. Although no studies indicate what percentage of Canadians keep a loaded gun at home for self-defense, it seems reasonable to infer that the percentage is markedly lower than in the United States due to the Canadian legal culture's traditional hostility toward armed defense. This hostility is expressed in the near prohibition on gun acquisition for self-defense, and in the treatment of people who use a gun for self-defense.

Even gun owners who obtain a gun for sport, but use it in emergencies for defense of self or property may be prosecuted, though they are usually acquitted.<sup>[182]</sup> Likewise, the carrying of a lawful, unregulated weapon for self-defense, such as a knife, has resulted in criminal prosecutions for intent to possess a weapon for a dangerous purpose (although again, judges and juries have usually refused to convict such defendants).<sup>[183]</sup>

In the United States, the most common use of a firearm in a home for self-defense is not against a stranger perpetrating a burglary but against a relative perpetrating an assault. The American judicial system seems to tolerate such (p.29)results. In Detroit, for example, 75% of wives who shot and killed their husbands were not prosecuted, because the wives were determined to be defending themselves or their children against felonious attacks.<sup>[184]</sup> In Miami, the non-prosecution figure for acts of self-defense was 60%,<sup>[185]</sup> and in Houston it was 85.7%.<sup>[186]</sup> But in Canada the percentage of wives whose homicide was deemed not appropriate for prosecution was only 31.7%.<sup>[187]</sup>

## **B. Accidents and Suicide**

Criminals are not the only targets of gun control. Most gun laws embody the intuition that, in some circumstances, ordinary citizens should not be trusted with deadly weapons. In many instances, gun laws do not affect criminals as much as they affect law-abiding citizens, since criminals will usually access the black market. The Canadian experience appears to support the notion that gun controls' most profound effects are on non-criminal citizens who should not have guns.

Seventy-one percent of deaths involving a firearm in the years preceding Bill C-51 were suicides, and of all Canadian suicides, 35% involved a gun.[\[188\]](#) It is likely that the framers of the new Canadian gun law, by making the purchase of an individual's first gun more time-consuming, anticipated that impulsive gun suicides would decrease. After all, preventing a potential suicide victim from purchasing a *second* gun does little good. Reducing the overall gun density of a region also has no discernable effect on suicide. As detailed by Canadian government researchers Stenning and Moyer, no correlation exists between the number of guns in an area and the number of firearms suicides.[\[189\]](#) Delaying a suicidal individual from purchasing his first gun might, however, provide a potential victim with the time to reconsider. It made sense, therefore, that a Parliament concerned about suicide should choose to concentrate enforcement procedures at the point of initial gun purchase, and with the Firearms Acquisition Certificate. Acquisition of additional long guns by F.A.C. holders was left largely unregulated.

The Parliament's decision to concentrate on first-time purchasers appears to have worked. Suicides involving firearms dropped noticeably after 1978, reversing the previous trend.[\[190\]](#) Unfortunately, the overall Canadian suicide rate continued to increase slightly.[\[191\]](#) During the same period, the overall United State's suicide rate declined, but firearms suicides remained a much higher percentage (p.30) of total American suicides.[\[192\]](#)

One explanation may be that Canadians who merely wanted to make a suicidal gesture did not use a deadly weapon in the first place. People with the intent to kill themselves, and who sustained that intent, apparently found time to employ other methods. Apparently, the only individuals affected by the new law were those who had a serious but brief determination to kill themselves. The Canadian experience indicates that almost all of the "brief but determined" potential suicides, when deprived of easy access to guns, quickly found an alternative suicide method.

Even the physicians who had performed the Seattle-Vancouver handgun crime death study found that gun control in Vancouver was not associated with lower suicide rates.[\[193\]](#) Although Seattle's handgun suicide rate was five times higher than Vancouver's, Vancouver's overall suicide rate was greater.[\[194\]](#) The data showed that the suicide rate in Vancouver was higher than Seattle's for all age groups except one. That one group was age fifteen to

twenty-four. The Seattle-Vancouver study asserts that gun control might reduce suicide among this age group even though it did not have an effect on suicide overall. This assertion seems questionable in light of the fact that gun controls in Canada for teenagers are actually less formally restrictive than American laws.<sup>[195]</sup>

Another study compared Toronto with San Diego. The study found that (p.31)the Canadian gun laws had decreased firearms suicide among men.<sup>[196]</sup> The San Diego portion of the study looked only at mental patients, who are forbidden under California law to possess guns, and also found that the law reduces firearms suicide by men. (The firearms suicide rate for women was already low.) Unfortunately, while firearms suicide in Toronto and San Diego declined, overall suicide did not. "[T]he difference was apparently offset by an increase in suicide by leaping."<sup>[197]</sup>

A policy which saves even one life is worth considering. In weighing the costs and benefits of American gun control, however, one should expect that even stringent gun prohibitions would save very few, if any, of those determined to take their lives with firearms.

After 1977, Canada continued to enjoy a long-term decline in fatal firearm accidents that had begun in the 1950s.<sup>[198]</sup> The accident rate declined sharply for two years and then hit a plateau in 1976-77.<sup>[199]</sup> After enactment of the new law, the accident rate declined sharply again in 1978, plateauing again in 1979. Compared to firearms crime or suicide, accidents had always been a minor problem. Evaluating gun use in Canada in the early 1970s, before the new law was enacted, researchers Stenning and Moyer found that "[c]ontrary to popular belief, accidental firearms deaths are quite rare in Canada."<sup>[200]</sup> Teenage males aged fifteen to nineteen were the largest victim group.<sup>[201]</sup>

To the extent that analysis of the effects of the 1977 Canadian law demonstrates anything about the efficacy of gun control, it shows a lack of relation between gun control and crime control. The gun law appears to have had little or no effect on the overall rates of murder, suicide, gun accidents or robbery. Though the use of guns in murders and suicides has declined, the result merely reinforces the anti-gun-control lobby's argument that if guns are less available, other equally deadly weapons will be substituted.

One possible explanation for why the Canadian controls appear to have had such a minor impact is that gun control is simply not effective. Another explanation, consistent with the data, is that the Canadian controls were not severe enough. While the new laws regulated possession, they did not aggressively seek to reduce the number of guns in circulation. Because the controls were relatively lenient, the absolute number of firearms in Canada, and the number per capita, actually rose in the decade after control.<sup>[202]</sup> Arguably, stricter Canadian control would have succeeded where looser control failed.

Regardless of whether the 1977 gun reforms have had any effect, it is possible (p.32) that Canada's lower overall gun density has contributed to the lower Canadian homicide and robbery rates. Before reaching conclusions about the effect of Canada's gun density, it is necessary to consider other factors that may impact crime rates in the United States and Canada. The next section examines some social factors.

### **C. Sociological Variables**

The crime and violence rate in the United States is not uniformly high among all population groups. Looking only at American states which border Canada, the homicide rate in those states is generally no higher, and often lower, than in adjacent Canadian provinces.<sup>[203]</sup> Similarly, if one excludes Americans residing in southern states from overall American crime statistics, America's crime rate is comparable to Canada's.<sup>[204]</sup> Other studies have attributed the difference in Canadian and American crime rates to the contrasting sociological mix of the two nations. The death rate for non-hispanic white Americans from all types of shootings (murder, suicide, accident, etc.) is comparable to the Canadian rate.<sup>[205]</sup> One study compared twenty-five Canadian cities with twenty-five comparably-sized American cities. When the covariates of "percent black" and "city size" were considered, the difference between American and Canadian samples diminished to the point of insignificance.<sup>[206]</sup> In other words, the higher American homicide rate was attributable to the fact that America is much more densely urban than Canada, and that America has a much higher percentage of blacks in its population.

The fact that any number of sociological differences, including race, urbanization, and the presence of southerners, can statistically account for the difference in homicide rates between the two countries suggests that the new Canadian gun law is itself ineffective. In other words, if Americans and Canadians, statistically stripped of sociological differences, have the same homicide rate--even though the Americans have much looser gun laws--then certainly the Canadian gun laws are not a satisfactory explanation of Canada's lower (p.33) homicide rate. The data offer little reason to believe that the Canadian gun laws reduce homicide.

While the data undermine the claims of the Canadian gun control activists, they do not necessarily rule out the need for American gun control. Because America is more urbanized, suffers from more racial tension, and is perhaps influenced by a southern subculture of violence, the United States might be all the more in need of tighter gun control. Perhaps some areas of the United States are so mired in a culture of violence that they would benefit from tighter control or disarmament.

On the other hand, if statistics show that gun density does not correlate with crime levels, then reducing gun density is probably not the most effective way

to reduce crime. Since gun laws *per se* are not associated with crime reduction (as the Canadian experience and comparison with the United States seems to indicate), it is likely that other strategies would better address America's problem of urban and ethnic violence. Perhaps the effort should be to deal directly with the social conditions that make southerners, blacks, hispanics, and urbanites so much more likely to be victims and perpetrators of crime.

## **VI. Would Canadian-Style Laws Work in America?**

Even if the new Canadian gun law demonstrated enormous benefits for Canada, it does not necessarily follow that America should adopt a similar system of control. The Canadian system fits well with the Canadian people. Before concluding that a Canadian-style system would work in America, the characteristics of American gun owners and their guns, and the extent they differ from, and resemble their Canadian counterparts, should be examined.

### **A. Gun Density and Gun Owners**

The percentage of Canadian households with a rifle or other long-gun is nearly equal to the level in the United States.[\[207\]](#) The percentages diverge with regard to overall gun possession, though not greatly. About half of all American households contain a firearm, compared to about one third of all Canadian households.[\[208\]](#) However, since the United States population is much larger, the absolute number of long-guns is also much larger.[\[209\]](#)

With regard to handguns, however, the contrast between the two countries is profound. The R.C.M.P. estimated the pre-1978 pool of illegal handguns in Canada to be about 50,000.[\[210\]](#) Even if this figure is accurate, it is minuscule (p.34) compared with America's stock of illegal handguns. In New York City alone, conservative estimates put the number of illegal handguns at over 700,000.[\[211\]](#)

There are also many more legal handguns in the United States. About one third of all American firearms may be handguns;[\[212\]](#) only six percent of Canada's are handguns.[\[213\]](#) As of 1989, there were 847,072 registered "restricted weapons" in Canada, mostly handguns, compared to 40,000,000 to 60,000,000 handguns in the United States.[\[214\]](#) Only one to three percent of Canadian adults will admit to a pollster that they own a handgun.[\[215\]](#) Pollster Gary Mauser found that Americans and Canadians had similar attitudes about most gun control issues, except for handguns.[\[216\]](#) Many more Canadians supported an outright ban.[\[217\]](#)

The leading academic proponent of Canada's 1977 Bill, University of Toronto Law Professor [M.L. Friedland](#), argues that gun control is no longer possible in the United States because there are so many guns.[\[218\]](#) Contrasting Canada's lower gun density with America's, Friedland successfully recommended stiff controls in the mid-1970s to stop the further accumulation of weapons before the situation became as hopeless as in America.[\[219\]](#) The leading proponent of gun control in Australia, Professor Richard Harding,

agrees that America's gun problem is "self-perpetuating and intractable" because gun ownership is so wide-spread. [\[220\]](#)

The similarities between Canadian and American gun owners are more numerous than the differences. In Canada, gun ownership is three times as common among rural residents as it is for metropolitan residents; a ratio similar to (p.35)American figures. [\[221\]](#) Although guns are generally less common in urban areas, a relatively high percentage of legal urban guns are handguns, as in the United States. [\[222\]](#) Similarly, self-employed men and employers are more likely to own guns than are employees. [\[223\]](#) University graduates are more likely to own guns than are people with only a high school education. [\[224\]](#) The most important difference between American and Canadian gun owners, however, is that no more than one percent of Canadian women own guns, while female gun ownership in the United States is at least fifteen times that rate. [\[225\]](#)

## **B. The Police Model**

Most British police are unarmed, while police in Japan seldom draw their guns. Few people in either nation own guns. Conversely, Canadian police are well-armed, and much more likely to use their guns than are their British or Japanese counterparts. That Canadian police use their guns acts to legitimize gun use in general; this is one reason why Canada is so much more heavily armed than Japan or Great Britain.

While some of Canada's local peace officers are unarmed, the federal R.C.M.P., some of whom act as provincial or municipal police under contract from the Provincial Attorney General, all carry guns. [\[226\]](#) In general, the police are quite well-equipped. Most police cruisers carry a shotgun with buckshot loads in the trunk. The emergency response teams, like American SWAT (Special Weapons And Tactics) teams, may carry tear gas, rifles, shotguns, or submachine guns. [\[227\]](#)

The R.C.M.P. and the Municipal Police formerly used standard, round-nosed bullets, but have switched to hollow-point bullets. The R.C.M.P. force in British Columbia explained the reasons for the change to hollow-points:

Round-nosed bullets do not deform upon impact. The lack of deformation increases the chance that the bullet will exit the target's body and strike an innocent bystander. [\[228\]](#) Hollow-point bullets deform inside the target's body, expending all their energy there. A hit from a round-nosed bullet might kill the victim in a few hours, but is not likely to immediately incapacitate the victim. The hollow-point hit, by increasing the likelihood that the target assailant can be stopped with (p.36)one shot, reduces the need to continue shooting [at] the target. In the long term, this reduces the chance that the suspect will have to be killed. [\[229\]](#)

While the police have adopted hollow-points, such cartridges are still illegal for civilian use even though it is safer for both victims and innocent



bystanders.<sup>[230]</sup> The police seem to reason that since self-defense is not a sufficient justification for civilian gun ownership, then cartridges made especially for self-defense have no place in civilian hands.

Although the Canadian police are well-armed, they do not use their firearms as frequently as their southern neighbors. In the United States, a person a day is killed by the police, almost always with some legal justification.

<sup>[231]</sup> The Canadian rate is less than a third of this. <sup>[232]</sup> The high incidence of gun use by police in the United States may help to set an example which encourages the high rate of civilian gun ownership. Arguably, the example set by law enforcement personnel relating to gun use is more influential than any number of anti-gun pronouncements of individual police chiefs.

### **C. Self Defense**

In Canada, cultural restraints limit both the right of police to use firearms against criminals, and on the right of civilians to use weapons in self-defense. Citizens may only use deadly force to protect themselves "or any one under [their] protection," from "death or grievous bodily harm."<sup>[233]</sup> Yet while the Canadian police and legal system send strong messages against civilian self-defense, Canadians seem nearly as supportive of the concept of armed self-defense as Americans. About seventy percent of the citizens in both countries believe that retail store owners are, at least sometimes, justified in using a firearm for self-defense.<sup>[234]</sup> (p.37) Fifty-eight percent of Canadians would even allow store owners to have licensed handguns.<sup>[235]</sup> On the issue of self-defense in the home, however, only forty percent of the Canadians polled believed that home-owners should be allowed to possess handguns for defensive purposes, even with a police license.<sup>[236]</sup>

Whatever the theoretical support for self-defense in limited circumstances, Canadian citizens do not feel a personal need to own a gun simply for this purpose. A mere five percent of Canadians, mostly in prairies remote from any police station, list self-defense as their main reason for owning guns.<sup>[237]</sup> In contrast, about one fourth of Americans own guns primarily for self-defense, and most of them live in cities.<sup>[238]</sup>

In legal theory and in practice, American citizens, both police and civilians, need and use guns for self-defense much more often than Canadian citizens.<sup>[239]</sup> It is intuitively logical that people who own guns for self-defense will be inclined to use them for that purpose and disobey prohibitive gun control statutes. Thus, even though Canadian and American gun owners are similar in many respects, persons favoring implementation of a Canadian-type system in the United States must consider the particular classes of American citizens who would be most affected by such controls, that is, who would be especially likely to disobey such a restrictive gun law. Such citizens invariably include urban dwellers, often female, who believe that ownership of a firearm, usually a handgun, is essential for personal safety.

## D. Attitudes Towards Gun Control

Neither Canada's culture, nor its Constitution, has inculcated in Canadians a determination to own or carry handguns. For example, when the new gun law went into effect in Ontario, it allowed for an amnesty period in which citizens could freely relinquish their illegal guns. Thousands were surrendered, [240] a number far higher than in most American gun amnesties, which are usually lucky to break the three-digit barrier. [241] As one Canadian police officer has (p.38) explained:

We don't have the tradition here of people believing it's an inherent right to carry a gun. I've had people come in to a police station after a relative had died, and they'll bring in a box carrying his collection. I tell that to American policemen, and they think I'm lying. [242]

Actually, a majority of Canadians do believe they have a right to own a gun. [243] The important point is that they do not believe that the right extends to handguns, nor do they believe that the current system of controls violates their individual right to own a gun. [244]

Because the Canadian law matches the sentiments of the Canadian people, there is no need for draconian penalties. Judges usually give only suspended sentences or probation to defendants convicted of illegally possessing a gun, even a machine gun, unless the person was found to be carrying the gun expressly for use in a crime. [245] The typical penalty for possession of an unregistered handgun is a fifty dollar fine. [246] In the United States, such penalties sometimes carry mandatory minimum sentences. For example, New York and Massachusetts have mandatory one-year prison terms for carrying a loaded handgun without a license, and have imposed prison terms even though the defendant conceded to having carried the gun only for self-protection. [247]

The use of deterrence through severe mandatory sentences in the United States reflects the expectation that many citizens will resist gun controls, unless (p.39) coerced into compliance by fear of a rigid penalty. The Canadian willingness to abide by gun control laws reflects a wider acceptance of government power. [248] When Canadians were asked whether they would comply with a number of hypothetical laws such as a public ban on smoking, a prohibition on alcoholic beverages, firearms registration, or a handgun surrender law, they showed a much higher expectation of voluntary compliance than their southern neighbors. [249] In other polls, Canadians were also more tolerant than Americans on civil rights restrictions during a crisis, [250] and placed a relatively higher value on order over unrestricted free speech. [251]

This deference to authority has been reflected in the politics of gun control as well. Most Canadian firearms owners have never involved themselves in politics to become a dominant force in the gun control debate the way

American firearms owners so often have.<sup>[252]</sup> Essentially, Canadians "do not feel that they can have a real role in ironing [government policies] out."<sup>[253]</sup> Although the Canadian gun lobby of the [National Firearms Association](#) (N.F.A.), has succeeded in rousing more Canadians in recent years, the N.F.A. is not renowned and feared in Ottawa the way the [National Rifle Association](#) (N.R.A.) is in Washington, D.C. Canada's N.F.A. has only seven thousand members, with its strongest membership base in the western province of Alberta.<sup>[254]</sup> With membership in the millions, and a strong and substantial base in every state, the American N.R.A.'s power is rooted in the political activism of American citizens in general. Contrary to the practices of Canadians, Americans (and gun owners in particular) write to their elected officials, donate to political campaigns, and take a more active role in influencing government regulation.

In addition, Canadian gun-owners, unlike their more ideological American counterparts, do not believe in the right of revolution as the basis for civilian gun ownership. And even the most ardent political activists among Canadian gun owners are generally unwilling to articulate that self-defense against crime is a legitimate reason for gun ownership.<sup>[255]</sup> The comparative complacency of Canadian gun owners, however, is not without limits. There is one gun control issue for which Canadian gun owners *will* fight. That issue is the responsible use (p.40) of sporting arms. In the mid 1970s, when the Trudeau government announced its intent to implement what would become the 1978 gun control law, its stated effect was to make possession of all guns, including hunting rifles and shotguns, subject to strict controls and bureaucratic obstacles.<sup>[256]</sup> An unorganized but large counter-reaction from Canadian gun owners scuttled most of these controls. Those controls that did emerge in 1978 had virtually no adverse impact on traditional Canadian sporting uses of arms.<sup>[257]</sup>

The political clout of the Canadian gun owners on the single issue of the sporting use of long guns was manifested again after the Marc Lépine massacre of fourteen female students at the [École Polytechnique de Montréal](#) in December, 1989. Lépine, shouting anti-feminist epithets, carried out his massacre with a .223 caliber Sturm Ruger semi-automatic rifle, which he had acquired lawfully under the F.A.C. system.<sup>[258]</sup> Leaders of feminist organizations voiced support for the complete abolition of civilian gun ownership, which they saw as a manifestation of patriarchal values.<sup>[259]</sup> At the same time, the [Progressive-Conservative](#) ruling party found itself in political hot-water with urban females, due to the party's tightening of abortion laws. Whether motivated by political expediency or genuine concern for public safety, or both, the government proposed a broad range of strict new gun laws.

The ruling party's new Minister of Justice, Kim Campbell introduced Bill C-80, which was quickly endorsed by the other two major parties. The new gun

measure proposed to ban rifle magazines of more than five rounds; handgun magazines holding more than ten rounds; [260] required F.A.C. applicants to be endorsed by two persons engaged in professions which the government would designate; subjected the persons offering the endorsement to potential civil liability for any misuse of the gun; imposed a twenty-eight day waiting period on F.A.C. issuance; authorized the government to administratively ban as many semi-automatic rifles and handguns as it chose; and made a large number of technical modifications which expanded police authority to seize firearms and revoke gun licenses without prior or subsequent judicial review. [261](p.41)

Despite the support of all three major parties, Bill C-80 raised a blizzard of opposition from gun owners. Target shooters argued that the magazine ban would have a substantial and adverse impact on their sport; and gun owners of all types feared that the government was out to prohibit all gun ownership. [262] Although Canadian gun owners lacked the strong centralized leadership comparable to America's N.R.A., individual gun owners, gun clubs and wildlife federations amassed a broad base of opposition. The volume of mail received by Parliament in opposition to Bill C-80 rivaled that of the ongoing abortion issue.

Although the Progressive-Conservative Party alone had enough votes to pass Bill C-80, it did not do so. The Party apparently decided against alienating its prairie members of parliament and their western constituents. [263] Bill C-80 was sent to a special parliamentary committee, which recommended modifying its most severe features. [264] When Parliament was prorogued, the bill died.

Justice Minister Campbell successfully brought a new gun bill back for the 1991-92 legislative session. [265] The new bill retains most of the severe features of the original, though incorporating some of the Special Committee's compromised suggestions. [266]

As finally enacted by Parliament, Bill C-17 accomplished the following:

- \* Imposed a 28 day waiting period on F.A.C. issuance. [267]
- \* Reenacted government authority (which already existed under the 1977 law) to ban by administrative regulation any gun with the government does not consider to be commonly used for hunting or other sporting purposes. [268] The guns which are expected to be banned by regulation are centerfire semiautomatic rifles which have "military" accessories such as a pistol grip or folding stock. Based on a point system, guns with several accessories would become prohibited weapons, while guns with fewer accessories would become restricted weapons. Current owners of the newly-prohibited guns would be "grandfathered," being allowed to retain the guns, and to sell them to other persons who own prohibited semiautomatic weapons when the C-17 regulations go into effect. [269](p.42)

\* "Large capacity cartridge magazines" would be outlawed. [270] The government will likely specify by regulation that "large-capacity" means five cartridges for semiautomatic centerfire rifles and ten for centerfire handguns, and will impose no new limit for rimfire firearms and non-semiautomatic centerfire firearms. [271] Competition target shooters could receive permits to possess oversize magazines. [272] Current owners of large magazines could retain them by retrofitting the magazine to reduce permanently its cartridge capacity. [273]

\* The government would be given authority to ban by administrative decree any firearms accessory which is not "of a kind commonly used for hunting or sporting purposes in Canada." [274]

\* The requirement for a safety training class before obtaining a F.A.C.--which had been enacted in 1977 but never implemented--will begin to be enforced. [275]

\* Requiring F.A.C. applicants to obtain recommendations from "two persons who belong to a class of persons prescribed by regulation who have known the applicant for at least three years." [276] The persons giving the recommendation are immune from civil liability. [277]

\* Allowing officers considering a F.A.C. application to interview the applicant's neighbors, co-workers, and family [278] (as was already the practice for restricted weapon applicants).

Between the first gun control proposal and final approval of the new law by Parliament, pro-gun activists won numerous concessions on technical issues (such as immunizing persons signing a F.A.C. recommendation from civil lawsuit). Although final regulations have yet to be developed, the number of guns to be prohibited may be substantially less than was originally hoped by the anti-gun activists. At the same time, the F.A.C. application process will become significantly more cumbersome, and the many target shooters who use semiautomatic rifles with a military appearance face a much higher level of regulation.

But unless the police abuse their new powers from the 1991 gun controls, persons who wish to use long guns other than centerfire semiautomatics for hunting or target shooting will likely not find the Canadian controls unbearably onerous.

While the widespread sporting use of long guns in Canada remains reasonably intact, supporters of gun prohibition also express satisfaction with the new laws. The prohibitionists view Canadian gun control as a one-way street, and consider any movement down that street as progress towards the inevitable goal. (p.43)

## **E. Trust the State**

Though the Canadian right-to-bear arms movement may have strengthened in recent years, it is not nearly as strong as its American counterpart, either in terms of popular support or political success. The relative weakness of the right to bear arms in Canada comports with the relative weakness in Canada of most other liberties guaranteed by the American Bill of Rights.

The sweeping search and seizure laws that are used to enforce the gun controls<sup>[279]</sup> in Canada reflect a greater tolerance of government intrusion. Canadian courts still sometimes issue "writs of assistance," which allow the R.C.M.P. to conduct blanket searches, without specifying the target of their search. Until recently, the courts simply gave the R.C.M.P. fill-in-the-blank search warrants.

Other rules of criminal procedure in Canada similarly favor the state. For example, the Crown can appeal a "not guilty" verdict in a criminal trial,<sup>[280]</sup> whereas the American Constitution mandates "nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb."<sup>[281]</sup> There is also no Canadian requirement that the state provide a defense attorney when it prosecutes an indigent for a felony. Further, the right to a jury trial exists only in cases involving at least a five year prison term.<sup>[282]</sup> There is no guarantee against coerced self-incrimination, nor do the police have an obligation to inform a suspect of his right to silence. If a suspect asks to see his lawyer and the police refuse, voluntary statements made by the suspect may still be used against him at trial.<sup>[283]</sup>

Not until 1987 did the [Canadian Security and Intelligence Service](#), (CSIS) disband its "countersubversion branch," which kept files on certain popular labor and antiwar groups.<sup>[284]</sup> Overall, government internal security has files on approximately 600,000 people, or about one out of every forty Canadians.<sup>[285]</sup>

Another governmental power flows from the Official Secrets Act, which, as in Britain, allows the Canadian government to prohibit publication of government secrets, even if the "secret" has no effect upon national security.<sup>[286]</sup> Whereas the right of free speech in the United States is nearly absolute, Canada (p.44) bans the import of "hate literature";<sup>[287]</sup> and has even seized some offending items from a university library.<sup>[288]</sup> There have also been a number of convictions and prosecutions of racist and anti-Semitic hate-mongers.<sup>[289]</sup> The legal boundaries of free speech are narrower, and Canadians are less inclined to exercise the rights they do have. Even after adjusting for population differences, Canada has far fewer protest demonstrations than does the United States.<sup>[290]</sup>

Unlike the United States, Canada has no separation of powers between its executive and legislative branches of government, nor is the power of its national government limited merely to designated subjects. The majority party in Parliament enjoys nearly unlimited power for the duration of its five year term.<sup>[291]</sup> While the United States was created out of rebellion against

a strong central government, Canada was created by rebels against rebellion, for whom, in the words of former Canadian Minister of Justice Mark MacGuigan, "the state was perceived as a benign presence," to help in the struggle against a harsh climate and challenging terrain.[292]

Canada did not have a bill of rights until 1960, and when established it was in the form of a statute, subject to repeal at any time. In 1984, Canada implemented a [Charter of Rights and Freedoms](#), derived from its Commonwealth British heritage.[293] The Charter of Rights is much harder to change, and provides a solid foundation for rights such as free speech, religion and assembly, similar to those contained in the First Amendment to the United States Constitution.[294] But the Charter of Rights, in contrast to the earlier bill of rights, does not forbid takings of property without due process.[295] Accordingly, the government (p.45) may confiscate a person's firearms without due process of law.[296]

While the American Bill of Rights is framed in absolute terms,[297] the Charter of Rights and Freedoms is a self-constricting document; its guarantees of freedom being subject to "reasonable limits." [298] Moreover, many of the Charter's "guarantees" can be superseded by federal or provincial laws which contain language emphasizing their effectiveness "notwithstanding" the Charter.[299] It is no wonder that some Canadian nationalists believe American television is subversive because it makes youth believe they have certain constitutional rights which, in fact, they do not have.[300]

Unlike in the United States, Canadian government regulatory agencies face little judicial scrutiny and are trusted to exercise substantial discretion. [301] At the same time, while Canadian agencies enjoy fewer restrictions than American agencies, they rely less on harsh sanctions. The ability to do so rests primarily with the Canadian people's willingness to defer to government authority.[302]

Because of the Canadians' tendency to be more trusting of government, they may expect more from it. In terms of policy, each of the three major Canadian political parties is several steps to the left of American Democrats on economic issues.[303] As in Great Britain, the two dominant political ideologies are Tory and Socialist. Each encompasses a European-derived philosophy emphasizing (p.46)the community and the state over the individual.[304] Historian David Bell refers to the Canadian attitude as "cratophilia," meaning "love of government." [305]

The Canadian government fits with the Canadian people. Cross-national surveys find Canadians more tolerant of ruling elites and less oriented towards individual achievement than Americans.[306] For example, of the three largest religions in Canada--Roman Catholic, Anglican, and United Church (an amalgam of Protestant denominations)[307] --which together comprise eighty-seven percent of all Canadians,[308] each has a tradition of

state support.[309] Membership to a Canadian church has traditionally meant membership in a larger structure that is, in some fashion, allied with the forces of government.[310] In contrast, the majority of Americans have traditionally belonged to dissident Protestant sects, and, fearing political and religious oppression, have sought refuge (p.47)in America's separation of church and state.[311]

Canadian poet [Margaret Atwood](#) considers "The Frontier" the most fitting symbol of America, largely because the frontier "suggests a place for the *new*, where the old order can be discarded...."[312] She contrasts the treatment of the family in American and Canadian literature: "If in America it's a skin you shed, then in Canada it's a trap in which you're caught." [313]

Virtually all comparative analysts of Canadian and American literature find Canadian fiction to extol more passive and conservative values. For example, one critic notes that in father-son conflicts in literature, American sons succeed in their rebellion, while Canadian sons usually fail.[314] Other scholars describe Canada's literature as extolling the feminine and the accommodating, in contrast to the more domineering, masculine model of American fiction.[315] Female writers, it is suggested, occupy more central positions in Canadian literature because the personal female experience is much like the political Canadian experience.[316] Other scholars note that Canadian art rarely celebrates populism,[317] and has contributed little to the avant-garde.[318](p.48)

Canadian historians neglect to acknowledge violence in Canadian history. Witnesses to violence, such as the [1919 Winnipeg strike](#),[319] have a tendency to blame it on foreigners. Violence is condemned not merely as immoral in itself,[320] but as an affront to a nation whose very identity is based on a rejection of Americanism, and its tradition of violence.[321]

Canadian author Edgar Friedenbergr summarizes the different Canadian attitude towards liberty and authority as follows:

Canadians do not lack entrenched civil liberties because their form of government makes it difficult to provide them; they accept a governmental structure under which liberty cannot be guaranteed because they are highly ambivalent about personal freedom and because they genuinely believe that government is designed to be an instrument for advancing the general welfare, and is not, in principle, anything to fear .... Canada doesn't want the American political system, doesn't need it, and couldn't make it work. But life in Canada could be made much freer, and political institutions more stable, if Canadians could get the message that is already grasped at some level by most Americans: that authority is, in every sense, inherently questionable. [322]

## VII. Conclusion



A man on a saddle with rifle and revolver symbolized the west in both nations. America's character was the independent cowboy, and Canada's was the Royal North-West Mounted Policeman.<sup>[323]</sup> In fact, the [Lone Ranger](#) would have been an outlaw in Canada, since Canadian law forbade carrying a firearm while "masked or disguised."<sup>[324]</sup> An archetypical scene of American frontier fiction is the "hero" confronting the "bad guys" in a shoot-out. In the typical Canadian scene, the American desperado surrenders his revolver "at the quiet, (p.49)firm command of a Canadian Mountie."<sup>[325]</sup> Americans have made a national symbol out of their frontier west. Even contemporary notions of the American west conjure up images of rugged individualism and idealism.

Canadians pay much less historical attention to their own west, rarely honoring the 19th-century west with films or monuments.<sup>[326]</sup> While the heroes of American history have often been strong individualists, Canadians have admired the loyal organization man, or the organization itself: the loyal servant of New France, the Hudson's Bay Company fur trader or the Mounted Police. As Canadian poet Margaret Atwood observes, rebels and revolutionaries, to the extent that they appear at all in Canadian literature, are rarely heroes but rather, "victim[s] of idiot circumstance."<sup>[327]</sup> Writes [Gaile McGregor](#), "the culture hero is not the gunslinger, triumphing over opposition by a demonstration of natural powers and anarchistic individual will, but rather the Law itself: impersonal, all-embracing, pre-eminently social."<sup>[328]</sup> Toronto criminologist John Hagan contrasts the mounted policeman with another American symbol, the eagle, "a fiercely independent animal prone to outbursts of violence."<sup>[329]</sup>

America achieved full independence through revolution and its unilateral [Declaration of Independence](#). The American system of government is based on a constitution deriving its authority from "We the people."<sup>[330]</sup> Canada's attainment of dominion status within the Commonwealth, as well as its basic structure of government, were not won in revolution by the people, but granted by the [British North America Act of 1867](#).<sup>[331]</sup>

To American civil libertarians, the Canadian exaltation of the police, and of orderliness, may seem confining. But the policy has its benefits. As Hagan explains, "the police role has become preeminently symbolic, a reminder that social order precedes individual liberties."<sup>[332]</sup> The streets are cleaner, teenagers get along better with their parents, and teenage pregnancy is less frequent.<sup>[333]</sup>(p.50)

Canadian gun control works in Canada. True, the comprehensive system of controls enacted in 1977 has yielded little demonstrable evidence of success; and the studies purporting to show positive results from the 1977 law are generally of dubious competence.<sup>[334]</sup> But for most Canadians, that is simply

not the point. Gun control, the exaltation of the police, deference to authority, and rejection of violence, are all threads in the tapestry of Canadian culture.

The system of gun control in Canada works because it affirms, symbolically, the deeply held values of orderliness and non-violence. Thus, before attempting to transplant the Canadian system to America, it is important to consider whether the Canadian system can accommodate traditional American values as adequately as it accommodates Canadian ones. Since there is little empirical evidence to demonstrate that Canadian gun control laws actually reduce crime, the law's greatest benefit appears to be symbolic. It is difficult to determine whether, and to what extent, American values and culture can yield to embrace the characteristic benefits derived from Canadian-style gun control.

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[1] In the province of British Columbia, 29% of all households own a rifle. Gary Mauser, *Ownership of Firearms in British Columbia: Self-Defense or Sportsmanship?* 4 (1991) (manuscript in progress, on file with Simon Fraser University, Burnaby, British Columbia) [hereinafter Mauser, *Ownership of Firearms*].

[2] Seymour M. Lipset, *Canada and the United States: The Cultural Dimension, in Canada and the United States: Enduring Friendship, Persistent Stress* 109 (1985) [hereinafter *Canada and the United States*].

[3] The assumption that strict handgun controls will inevitably lead to strict long gun controls is the great fear of the American gun lobby, and the great hope of the anti-gun lobby.

[4] Oliver W. Holmes, *The Place of History in Understanding Law, in The Life of the Law* 3 (John Honnold ed., 1964).

[5] Holger Jensen, *Canada on Brink of War with Indians*, *Rocky Mtn. News*, Sept. 21, 1990, at 4.

[6] Robin W. Winks, *The Relevance of Canadian History: U.S. and Imperial Perspectives* 12 (1988); Paul Blackman, *The Canadian Gun Law, Bill C-51:*

*Its Effectiveness and Lessons for Research on the "Gun Control" Issue 1* (paper presented at American Society of Criminology, Cincinnati, Ohio, November 7-11, 1984).

As of 1642, the colony of New France included only 300 ethnic French, a group far too small to wrest large tracts of land from the Indians. *Francis Jennings, The Ambiguous Iroquois Empire: The Covenant Chain Confederation of Indian Tribes with English Colonies 91* (1984).

[7] See Winks, *supra* note 6, at 12-16.

[8] *Canada on Brink of War with Indians, Rocky Mtn. News, Sept. 21, 1990, at 4.*

Modern Canada has not been so pacific in its Indian relations. During the spring and summer of 1990, Mohawk Indians led by the Mohawk Warrior Society armed themselves with semiautomatic Kalashnikov rifles and other weapons, seized and held part of the town of Oka, near Montreal, to prevent the expansion of a golf course and housing project onto a pine forest which was Mohawk ancestral land and Pine Tree Cemetery. In addition to Kalashnikovs, the Mohawks had Fabrique Nationale semiautomatics, high-powered hunting rifles, shotguns, a variety of handguns, RPK machine guns, Molotov cocktails and other homemade explosives, and a large number of booby traps. After the Mohawks repulsed a raid by the Sûreté de Québec (the provincial police), Québec Premier Robert Bourassa requested the intervention of the federal army because his provincial force was outgunned by the warriors. The Mohawks considered themselves the legitimate armed forces of a sovereign nation defending their territory from attack. After some skirmishing, the federal government agreed to buy the golf course and give it to the Mohawks, and the Mohawks surrendered, ending the 77 day siege. A similar siege had taken place in upstate New York, where Mohawks seized and held an abandoned girls' camp near Moss Lake from 1974 to 1977, forcing the state government to lease them two tracts of land near Plattsburgh, New York. *See Rough Justice, Maclean's, Aug. 6, 1990, at 17; A Ravaged Town, Maclean's, Aug. 6, 1990, at 21; An Ancient Warrior Code, Maclean's, Aug. 6, 1990, at 22; Fury in the Ranks, Maclean's, Aug. 6, 1990, at 24; John Coleman, Canada's Civil War, Soldier of Fortune, Dec. 1990, at 38; Mohawk Refugees Pelted, N.Y. Daily News, Aug. 29, 1990, at 15; Canadian Troops Move on Mohawk Settlement, Wash. Post, Sept. 2, 1990, at A38; Canada on Brink of War with Indians, Rocky Mtn. News, Sept. 21, 1990, at 4; Mohawk Surrender Turns Into One Last Brawl, Toronto Globe and Mail, reprinted in Rocky Mtn. News, Sept. 27, 1990, at 33.*

[9] The word Ottawa is derived from the Indian "adaawe," and means "to trade," *see, e.g., The American College Dictionary 859* (1964).

[10] See Jennings, 6, at 84-112.

[11] *Id.*

[12] *Id.* at 91.

[13] See generally, Carl P. Russell, *Guns on the Early Frontiers* (1957).

[14] 19.

[15] Frederick J. Turner, *The Character and Influence of the Indian Trade in Wisconsin: A Study of the Trading Post as an Institution* (1891) (Ph.D. dissertation, Johns Hopkins University), reprinted by University of Oklahoma Press (Norman) 37 (1977); see also B. Gilbert, *God Gave Us This Country: Tekamthi and the First American Civil War* 40 (1989).

[16] Russell, [13](#), at 23. Although there were no more imports, French traders within formerly French territory (midwestern North America) continued trading their existing stock of guns to the Indians.

The French regained the Louisiana territory in 1800 through the Treaty of San Ildelfonso and sold it to the United States in 1803. M. Smelser, *The Democratic Republic* 85 (1968).

[17] See Kenneth McNaught, *The Pelican History of Canada* 27 (1976).

[18] 48.

[19] Nicholas N. Kittrie & Eldon D. Wedlock, Jr., *The Tree of Liberty: A Documentary History of Rebellion and Political Crime in America* 71 (1986); see also McNaught, [17](#), at 57.

[20] Seymour M. Lipset, *Continental Divide: The Values and Institutions of the United States and Canada* 14 (1990) [hereinafter *Continental Divide*].

[21] Judy M. Torrance, *Public Violence in Canada* 101 (1986).

[22] *Continental Divide*, [20](#), at 183.

[23] See McNaught, [17](#), at 126-130. Canada did revolt briefly in the 1830s. But when revolutionary leader William Lyon Mackenzie began to embrace radical American democracy, the country pulled back. 84-86.

While the American revolution was the product of a "sensitive" and "aggressive" nationalism, the demands of the Canadians who rebelled were simply for greater control of their local affairs. L.S. Amery, *Thoughts on the Constitution* 108 (1964).

[24] See Pierre Berton, *The Invasion of Canada 1812-1813 ii. (Ontario, Penguin Books Canada 1980).*

[25] 163-174.

[26] Address before the United States Senate (Feb. 22, 1810), quoted in McNaught, [17](#), at 70.

[27] Berton, [24](#), at 163.

[28] Some state militias, however, refused to move outside their borders. McNaught, [17](#), at 70.

[29] *Berton*, [24](#), at 374.

[30] 426.

[31] See generally Seymour M. Lipset, *The Newness of the New Nations*, in *The Comparative Approach to American History* (C. Vann Woodward ed., 1968).

[32] See *Continental Divide*, [20](#), at 51, citing Edgar W. McInnis, *The Unguarded Frontier 306-307* (Garden City New York, Doubleday 1942); Douglas Fetherling, *The Gold Crusades: A Social History of the Gold Rushes 1849-1869* (Toronto, MacMillan of Canada 1989).

[33] *McNaught*, [17](#), at 146.

A force of 300 men comprising the North-West Mounted Police was organized in 1873. Their primary mission was to shut down the trading of alcohol to the Indians in exchange for buffalo hides. The force was renamed the Royal North-West Mounted Police in 1904, and the Royal Canadian Mounted Police in 1920. *Royal Canadian Mounted Police, The RCMP: Its History, Its People, Its Function 2* (1987).

The term "Mountie" is a creation of Hollywood, and is not used by Canadians. R.C.M.P. or R.C.M. Police are preferred.

[34] See generally Lipset, *The Newness of the New Nations*, 31 (discussing that the major exceptions to the rule were British Columbia and Vancouver, where locals made their own government and laws until the 1870s). *Id.*

[35] See Ray Billington, *Frontiers*, in *The Comparative Approach to American History* 79 (New York, Basic Books, C. Vann Woodward ed., 1968).

[36] *McNaught*, [17](#), at 176.

[37] William Tonso, *Gun and Society: The Social and Existential Roots of American Attachment to Firearms* 263 (Lanham, Maryland, University Press of America 1982).

[38] 179.

[39] See generally Donna L. Hawley, *Canadian Firearms Law 2* (Toronto, Butterworths 1988).

[40] *Firearms Law of 1892*, ch.29, 1892 S.C. § 105 (Can.).

[41] *Act of 1913*, ch.13, S.C. § 4 (Can.); see Hawley, [39](#), at 2.

[42] See I. Abella, *On Strike: Six Key Labour Struggles in Canada 1919-1949 1-32* (1974) [hereinafter *Six Key Labour Struggles*].

[43] *Id.*

[44] *Id.*

[45] See Morton Desmond, *Aid to the Civil Power: The Canadian Militia in Support of Social Order 1867-1914*, in *Canadian Historical Review* 407 (1970).

The Canadian militia, primarily composed of the "best" citizens in an area, or of ex-soldiers, intervened numerous times to break strikes in the late 19th and early 20th century. The militia was also hostile to Irish Catholic immigrants and to Acadians. There were a number of instances, however, where the militia behaved impartially, protecting strikers and scabs from each other. *Id.*; see also David J. Bercuson, *The Winnipeg General Strike*, in *Six Key Labour Struggles*, 42.

The militia is largely forgotten in both Canada and the United States, but Canada still formally maintains one in the far north. Eskimos are armed and trained to act as guides for the regular army and to warn the regular military of unusual events in the low-populated region. Drawn from the Inuit and other indigenous peoples, the "Canadian Rangers" are issued .303 bolt action rifles. See Christopher S. Wren, *Far North Has Militia of Eskimos*, *N.Y. Times*, Apr. 1, 1986, at A14.

[46] See M. L. Friedland, *Gun Control: The Options*, 18 *Crim. L.Q.* 29, 42 n.50 (1975-76).

[47] 42.

[48] Perhaps another reason for the Canadian gun law was that it represented a reaction to the carnage of World War I and against all forms of violence in general. Total Canadian casualties in that war numbered 60,000--far higher on a per capita basis than the 48,000 American deaths. Conversely, America's disgust with World War I was primarily based on a feeling of having been manipulated by the British and French. There was no American reaction against violence in general. See generally McNaught, 17 (discussing these and other possible reasons for the Canadian gun law).

[49] 228.

[50] Friedland, 46, at 43. Whereas aliens were still required to obtain a permit for any type of gun, British subjects needed only to obtain permits for handguns carried outside of the home or place of business, or for any handguns subsequently purchased by them. *Id.*

[51] *Library of Congress, Gun Control Laws in Foreign Countries 41* (rev. ed. 1976) [hereinafter *Gun Control Laws in Foreign Countries*].

[52] 43.

[53] 44; see also Friedland, 46 at 56.

[54] See Friedland, 46, at 33; B. Bruce-Briggs, *The Great American Gun War*, 45 *The Pub. Interest* 37, 61 (1976).

[55] *Bill C-51: An Act to Amend the Criminal Code, the Customs Tariff, the Parole Act, the Penitentiary Act and the Prisons and Reformatories Act*, 30 *Parl. Deb., H.C. (2d sess., first reading Apr. 20, 1977, passed in the House of Commons Jul. 18, 1977)*; see generally *Gun Control Laws in Foreign Countries 19* (Library of Congress, 1981) [hereinafter Library of Congress (1981)].

[56] The bill extended the length of time allowed for a tap from 30 days to 60 days. Furthermore, the police may delay in notifying the subject about the tap for up to three years, instead of 90 days. *Library of Congress (1981)*, [55](#), at 20.

[57] See *Canada's Lower House Backs Gun Control Law*, *N.Y. Times*, Jul. 20, 1977, at A2.

[58] *Library of Congress (1981)*, [55](#), at 6.

[59] *R.S.C., ch. C-46 §§ 84(1), 106* (1985) (*Can.*). A "Firearms Acquisition Certificate" is a "certificate issued by a firearms officer under section 106 or a hunting license, certificate, permit or other document issued under the authority of a law of a province that, by virtue of an order issued under section 107, is deemed to be a firearms acquisition certificate." *Id.* § 84(1).

Section 106(1) provides:

Where a firearms officer who has received an application for a firearms acquisition certificate and the fee prescribed by regulation does not, after considering the information contained in the application, any further information that is submitted to the firearms officer pursuant to a requirement under subsection (9) and such other information as may reasonably be regarded as relevant to the application, have notice of any matter that may render it desirable in the interests of the safety of the applicant or of any other person that the applicant should not acquire a firearm, the firearms officer shall, subject to subsection (2), and after at least twenty-eight days have elapsed since the application was received, issue a firearms acquisition certificate to the applicant.

*Id.*

[60] *R.S.C., ch. C-46, §§ 106(11)*.

[61] *Id.* § 106(5). Section 106(5) provides:

Where a firearms officer who has received an application for a firearms acquisition certificate has notice of any matter that may render it desirable in the interests of the safety of the applicant or of any other person that the applicant should not acquire a firearm, the firearms officer shall notify the applicant in writing that, in the opinion of the firearms officer, it is not desirable in the interests of the safety of the applicant or of any other person that the applicant acquire a firearm and of the reasons therefore, and that, unless within thirty days after the day on which the notice is received by the

applicant or within such further time as is, before or after the expiration of that period, allowed by a provincial court judge, the applicant, in writing, requests the firearms officer to refer the opinion to a provincial court judge for confirmation or variation thereof, the application for the firearms acquisition certificate will be refused.

*Id.*

[62] *Royal Canadian Mounted Police, PIB No. CMP/P-PU-035, Application for Firearms Certificate (F.A.C.) (Mar. 1986).*

[63] *Royal Canadian Mounted Police, National Firearms Manual, ch.3, § K.2.a.4, note (Sept. 30, 1988)* [hereinafter National Firearms Manual]. New Jersey, for example, requires gun applicants to waive the confidentiality of all mental health records and to disclose any consultations with a psychiatrist or any other mental health treatment, however brief. *N.J. Stat. Ann. § 2C: 58-3 (West 1987).*

The social insurance number was formerly used to identify applicants, but civil libertarians' protests ended the practice. The social insurance number had been introduced in the 1960s with the explicit guarantee that it would only be used to track social welfare payments. *Jeff Carruthers, Canada's Identity Number Debate, Wash. Post, Apr. 15, 1979, at B4.* As in the United States, government agencies, banks, and other institutions have essentially adopted the social insurance number as a universal ID number, over the protests of civil libertarians. *Id.*

[64] The purchaser must send the vendor an original of his or her F.A.C. Gun collectors often apply several times for an F.A.C. in order to have several originals, so that there is always a spare copy for mail-order sales. If the gun is a restricted weapon, the purchaser must also obtain a permit to convey the gun from the gun store to the purchaser's home, and must send the permit to convey to the vendor. In some cases, the police will require the mail-order handgun to be sent directly to the local police station for registration before the individual takes possession. *National Firearms Manual, 63, at ch. 3, § O.*

[65] Less than one percent of F.A.C. applications are denied. *Royal Canadian Mounted Police, Annual Firearms Report to the Solicitor General of Canada by the Commissioner of the R.C.M.P. § 106.9 Criminal Code 6 (1986)* [hereinafter R.C.M.P. Annual Firearms Report]. In 1986, there were 171,609 Firearms Acquisition Certificates issued, and 1,364 rejections. The low refusal rate may stem from police pre-screening and discouraging of applicants who are likely to be refused. *Elisabeth Scarff, Evaluation of the Canadian Gun Control Legislation 34 (1983)* (prepared for the Solicitor General of Canada).

People with a felony conviction are only barred from gun possession for five years. *See R.S.C., ch. C-46, § 106(4).* In the United States, the prohibition is for a lifetime. [18 U.S.C. § 922.](#)



The police sometimes deny applications for illogical reasons. One man, who lawfully held an F.A.C., punched another man in the nose during an argument, and as a result paid a fifty-dollar fine. Three years later, the man was denied a renewal of the F.A.C., based on the single punch. *See David Tomlinson, Canadian Gun Control--As It Really Works! 3-4 (1990).*

[66] *See Hawley, 39, at 18.*

[67] *R.S.C., ch. C-46, § 100(5).*

[68] *See Unterreiner v. Regina, [1980] 51 C.C.C.(2d) 373, 377 (Ont. Co. Ct.)* (hearsay evidence admissible as long as judge is satisfied that such evidence is "credible and trustworthy").

Courts have split on whether they are limited to the administrative record, or may conduct a trial *de novo*. Compare *Unterreiner v. Regina, [1979] 4 W.C.B. 216 (Ont. Co. Ct.)* (court's review limited to the administrative record) with *Regina v. Dhillon, [1982] 7 W.C.B. 131 (B.C. Co. Ct.)* (*de novo* review granted).

[69] *See R.S.C., ch. C-46, § 100(7).* Section 100(7) provides:

At the hearing of a reference referred to in subsection (5), the provincial court judge shall hear all relevant evidence presented by or on behalf of the firearms officer and the applicant for a firearms acquisition certificate and where, at the conclusion of the hearing, *the fire arms officer has satisfied the provincial Court judge* that the opinion of the firearms officer that it is not desirable in the interests of the safety of the applicant for a firearms acquisition certificate or of any other person that the applicant acquire a firearm is justified, the provincial court judge shall, by order, confirm that opinion and the refusal to issue the firearms acquisition certificate may prohibit the applicant from possessing any firearm, ammunition or explosive substance for any period, not exceeding five years, specified in the order and computed from the day the order is made.

*Id.*(emphasis added).

[70] *Scarff, 65 at 35.*

[71] *See R.S.C., ch. C-46, §§ 106(1), (2).* The law neither forbids nor requires the police to maintain lists of F.A.C. holders.

[72] *National Firearms Manual, 63, at ch. 3, § K.3.d.* Restricted weapons, include all handguns and certain long-guns. *See infra note 76 and accompanying text.*

[73] *ch. 6, § F.1.h.* The United States requires that records be retained for at least twenty years and turned over to the Bureau of Alcohol, Tobacco and Firearms when the dealer goes out of business. *27 C.F.R. §§ 178.127, 178.129 (1991).*

While American ammunition dealers do not need a license, [18 U.S.C.A. § 923\(a\)\(3\)](#) (1990 pocket part), Canadian dealers must possess a permit, although they are not subject to inspection. *National Firearms Manual, id. at ch. 6, § F.1.g.* Neither Canada nor the United States requires records to be made of ammunition transactions.

[74] *Cal. Penal Code § 12076* (West 1982).

[75] *Vt. Stat. Ann. tit. 13, ch. 85* (1974); *Idaho Code §§ 18-3300 et seq.* (1987).

[76] *See R.S.C., ch. C-46, § 84(1)*. A "restricted weapon" is

(a) any firearm, not being a prohibited weapon, designed, altered or intended to be aimed and fired by the action of one hand,

(b) any firearm that

(i) is not a prohibited weapon, has a barrel that is less than 470 mm in length and is capable of discharging centre-fire ammunition in a semi-automatic manner, or

(ii) is designed or adapted to be fired when reduced to a length of less than 660 mm by folding, telescoping or otherwise, or

(c) any firearm that is designed, altered or intended to fire bullets in rapid succession during one pressure of the trigger and that, on January 1, 1978, was registered as a restricted weapon and formed part of a gun collection in Canada of a genuine gun collector, any firearm that is assembled or designed and manufactured with the capability of firing projectiles in rapid succession with one pressure of the trigger, to the extent that

(i) firearm is altered to fire only one projectile with one such pressure,

(ii) on October 1, 1992, the firearm was registered as a restricted weapon, or an application for a registration certificate was made to a local registrar of firearms in respect of the firearm, and the firearm formed part of a gun collection in Canada of a genuine gun collector, and

(iii) subsections 109(4.1) and (4.2) were complied with in respect of that firearm, or

(d) a weapon of any kind, not being a prohibited weapon or a shotgun or rifle of a kind that, in the opinion of the Governor in Council, is reasonable for use in Canada for hunting or sporting purposes, that is declared by order of the Governor in Council to be a restricted weapon.

*Id.*

A "prohibited weapon" is

(a) any device or contrivance designed or intended to muffle or stop the sound or report of a firearm,

- (b) any knife that has a blade that opens automatically by gravity or centrifugal force or by hand pressure applied to a button, spring or other device in or attached to the handle of the knife,
- (c) any firearm, not being a restricted weapon described in paragraph (c) or (c.1) of the definition of that expression in this subsection, that is capable of, or assembled or designed and manufactured with the capability of, firing projectiles in rapid succession during one pressure of the trigger, whether or not it has been altered to fire only one projectile with one such pressure,
- (d) any firearm adapted from a rifle or shotgun, whether by sawing, cutting or other alteration or modification, that, as so adapted, has a barrel that is less than 457 mm in length or that is less than 660 mm in overall length,
- (e) a weapon of any kind, not being an antique firearm or a firearm of a kind commonly used in Canada for hunting or sporting purposes, or a part, component or accessory of such a weapon, or any ammunition, that is declared by order of the Governor in Council to be a prohibited weapon, or
- (f) a large-capacity cartridge magazine prescribed by regulation.

*Id.*

[77] *Id.* See *infra* notes [80-81](#) and accompanying text (discussing new guns added to the restricted weapon list by Bill C-17).

[78] See *R.S.C., ch. C-46, § 84(1)*.

[79] See *Lawrence v. Regina*, [1978] 2 F.C. 782, 42 C.C.C.(2d) 230 (Fed. Ct.).

[80] *Restricted Weapons Order Amendment: S.O.R./83-550*(June 24, 1983), *C. Gaz. July 13, 1983, at 2674*, in *Hawley*, [39](#), at 10. The FN-FAL ban may have been motivated by the government's dislike of the particular firearms dealer who was the sole importer of the rifle. The official justification for the restriction of the FN-FAL was that since many nations were replacing their FN-FALs with more modern guns, Canada would be flooded with imports. The Canadian army adopted the fully automatic version of the FN-FAL (the FNC1 and FNC1A1) in the late 1950s, and has only recently started replacing it with the M16. *Letter from R. A. Watt, Alberta firearms dealer, to author 1-2* (Mar. 26, 1990) (original on file with author).

[81] *National Firearms Association, Point Blank 2* (Feb. 1989) Compliance with registration requirements for the M1 carbine, a short-barreled semi-automatic rifle, is estimated at only five to twenty percent; compliance for the FN-FAL at three percent; and compliance for the AR15-type semiautomatics, during the time when registration was required, at five percent. *Tomlinson*, [65](#) at 7-8.

Interestingly, the Governor in Council may also remove a gun from the restricted list. For example, semiautomatic versions of the Colt AR15 rifle were once listed, but gun-owner protests forced a rescission.

[82] The only exception is "antique" handguns. *R.S.C., ch. C-46, § 84(2)* (a gun is considered an "antique" if it was manufactured before 1898, there are no commercially available cartridges).

[83] *R.S.C., ch. C-46, § 109(3)(c)(i)*; see generally *National Firearms Manual, 63, at ch. 4, § E.4.c.*

[84] *R.S.C., ch. C-46, § 109(3)(c)(ii)*.

[85] *R.S.C., ch. C-46, § 109(3)(c)(iii)*.

[86] *R.S.C., ch. C-46, § 109(3)(c)(iv)*.

[87] In some provinces, an applicant need only present a club membership card as long as the police know the club and are familiar with its training procedures. *Letter from A.D. Olmstead, Professor of Sociology, University of Calgary, to author 1 (Mar. 19, 1990) (original on file with author)*.

[88] The law in London, Ontario, formerly required a 13-question psychological test. See *Tomlinson, 65, at 2*.

[89] *Letter from F.W. Noftall, National Firearms Association, to author (Feb. 24, 1988) (original on file with author)*.

[90] *Id.*

[91] *National Firearms Manual, 63, at ch. 4, § E.4.a.1 (Apr. 5, 1988)*. A Firearms Acquisition Certificate (required for all gun purchasers) will be issued by the police if the purchaser does not already have one.

[92] *R.S.C., ch. C-46, § 110(3)*; *Hawley, 39 at 23*; *National Firearms Manual, 63 at ch. 4, § F.3.*

[93] *National Firearms Manual, 63, at ch. 4, § E.4.b.*

[94] *ch. 4, § E.2.*

[95] See *R.S.C., ch. C-46, § 109(8)*.

[96] See *Regina v. Wilson, [1984] 17 C.C.C.(3d) 126, 60 A.R. 146 (Alta. Q.B.)*; *Hawley, 39, at 24*.

The rule that the restricted weapon may be stored only at the owner's home or place of business is interpreted strictly. A person leaving for several weeks of vacation must leave the guns at home, rather than storing them in a gunsmith's vault or a friend's home. *Tomlinson, 65, at 7*.

[97] [18 U.S.C. § 922](#).

[98] *National Firearms Manual, 63, at ch. 4, § H.2.a.4.6 (Apr. 5, 1988)*.

[99] *R.S.C., ch. C-46, § 112(12)*. Section 112(12) provides:

A provincial court judge shall dispose of an appeal under subsection (8) heard by him by dismissing it *unless the applicant establishes to the satisfaction of the provincial court judge that a disposition referred to in paragraph (11)(b) is warranted*.

*Id.*(emphasis added).

[100] *Watt Letter*, [80](#), at 1.

[101] See *Hawley*, [39](#), at 27. In some provinces, the permit to convey may be issued by the local registrar of firearms. *Olmstead Letter*, [87](#), at 1.

[102] See *R.S.C.*, ch. C-46, § [110\(3\)](#); *National Firearms Manual*, [63](#), at ch. 5, § L.1.a; *Hawley*, [39](#), at 31-32; *Tomlinson*, [65](#), at 6.

[103] *Scarff*, [65](#), at 4-5; *National Firearms Manual*, [63](#), at ch. 5, §§ E & F.

[104] See *Hawley*, [39](#), at 28.

[105] *In Re Purdy*, 20 D.L.R.2d 247 (N.W.T. Sup. Ct. 1974); see also *Hawley*, [39](#), at 29, 54.

[106] *National Firearms Manual*, [63](#), at ch. 5, § H.2.e.1. Chapter 5, Appendix 5-3 contains a model restriction: "At no time will the permit holder draw his restricted weapon except where he believes it is absolutely necessary to protect his life." *Id.*

[107] Permits may be issued for carrying a handgun to a part of one's own property for target shooting, if no commercial or public target range is nearby. ch. 5, app. 5-6.

[108] See *James D. Wright et al., National Institute of Justice, Weapons, Crime, and Violence in America: A Literature Review and Research Agenda (1981) cited in Firearms and Violence: Issues of Public Policy 208 (Don B. Kates ed. 1984)* [hereinafter *Firearms and Violence*]. *Id.*

[109] See *Shapiro v. Cawley*, 46 A.D.2d 633, 634, 360 N.Y.S.2d 7, 8 (1st Dept. 1974) (ordering N.Y.C. Police Department to abandon illegal policy of requiring applicants for on-premises pistol license to demonstrate unique "need"); *Turner v. Codd*, 85 Misc. 2d 483, 484, 378 N.Y.S.2d 888, 889 (Special Term Part 1, N.Y. County, 1975) (ordering N.Y.C. Police Department to obey *Shapiro* decision); *Echtman v. Codd*, no. 4062-76 (N.Y. County) (class action lawsuit that finally forced Police Department to obey *Shapiro* decision).

[110] *Statement of Robert F. Mackinnon, on behalf of the Coalition of New Jersey Sportsmen, before the House Committee on the Judiciary, on Legislation to Modify the 1968 Gun Control Act, part 2, serial no. 131, 99th Congress, 1st and 2d sess., Feb. 27, 1986 at 1418 (Washington: Government Printing Office, 1987).*

[111] See *supra* note [89](#) and accompanying text.

[112] *Cal. Penal Code* § 12076 (West 1982).

[113] *Bureau of Justice Statistics, Identifying Persons, Other Than Felons, Ineligible to Purchase Firearms: A Feasibility Study* 114 (1990).

[114] *Id.*

[115] See *R.S.C., ch. C-46, § 84(1)*.

[116] *National Firearms Manual, 63, at ch. 4, § E.4.f.; Gun Control in Canada: Working Together to Save Lives 3 (Ottawa, Solicitor General of Canada 1978)* [hereinafter, *Gun Control: Solicitor General*].

Owners of registered automatics may sell to each other, but no person who was not a collector of automatics before January 1, 1988 may ever acquire one. The aim is to eliminate ownership of automatics within a generation, even though there has never been a case of a crime or suicide committed with a registered automatic. See *Tomlinson, 65, at 3*.

[117] It is even against the law to invent an automatic gun in Canada, since building the prototype would be illegal. 9.

One firearms collector found registering a gun more than a little difficult. He owned a deactivated World War II machine gun, a war trophy. He thought that he might someday want to reactivate his trophy so he went to the Firearms Unit of the Toronto Police to register it before the January 1, 1978 deadline. The firearms clerk informed the collector that because the machine gun was not operable it could not be registered. The collector re-activated the machine gun and brought it to the police for registration before the deadline. They confiscated it, citing import restrictions promulgated by the province's Attorney General. *Dangerous Bureaucratic Red Tape, Canada GunSport 4 (Feb. 1978)*.

[118] *Kim Pemberton, Mayor, Police Target City Guns, Vancouver Sun, Mar. 23, 1989, at 1; The Doctrine of Utter Contempt for the Public, Pointblank, July 1989, (National Firearms Association), at 2; Gun Owners Declare Enough is Enough, Pointblank, Oct. 1989, (National Firearms Association), at 2*.

[119] See *Tomlinson, 65, at 2*.

[120] See *National Firearms Manual, 63, at app. 9-1*. ("Order Declaring Certain Devices to be Prohibited Weapons").

[121] See e.g. *C.R.C (Consolidated Regulations of Canada) ch. 433 (1978) (tear gas), cited in Hawley, 39, at 6-7*.

[122] See *Leonard Sloane, Limits on Mace: The Debate Flares Anew, N.Y. Times, May 20, 1989, at 54*.

[123] See e.g. *Re Repa and The Queen, [1982] 68 D.L.R.(2d) 231 (Man. Ct. Q.B.)*.

[124] *National Firearms Manual, 63, at ch. 1, § F; Gun Control: Solicitor General, 116, at 8; R.S.C. § 103(1)*.

[125] One practical impediment to using restricted weapon registration lists is that information is available only from the firearms records section of the

R.C.M.P. in Ottawa, which is only open during business hours. *Watt letter*, [80](#), at 4.

[\[126\]](#) *R.S.C. § 84(1)*, as amended by Canada House of Commons, Bill C-17: *An Act to Amend the Criminal Code and the Customs Tariff in Consequence Thereof*, 34th Parliament, 3d sess., 40 Eliz. II, passed by House of Commons Nov. 7, 1991, p. 4 [hereinafter Bill C-17].

Revised section [84\(1\)](#) states: "'genuine gun collector' means an individual who ... has consented to the periodic inspections, conducted in a reasonable manner and in accordance with the regulations, of the premises in which the restricted weapons are to be kept ...."

[\[127\]](#) *Canada, Senate Standing Committee on External Affairs, Proceedings*, Nov. 28, 1991, at 2:29 (Mr. Richard Mosley, Senior General Counsel, Department of Justice: "Reasonable inspection is limited to daylight hours, from nine to five or when convenient for the householder.")

[\[128\]](#) See *National Firearms Manual*, [63](#), at ch. 1, § F.2; *R.S.C. § 103(2)*.

[\[129\]](#) *National Firearms Manual*, [63](#), at ch. 1, § F.2.c.

[\[130\]](#) *Gun Control: Solicitor General*, [116](#), at 12.

[\[131\]](#) See *Paul Blackman, Civil Liberties and Gun-Law Enforcement, Presented at the American Society of Criminology (Nov. 7-11, 1984)*, at 6 [hereinafter Blackman, *Civil Liberties*].

[\[132\]](#) See *Tomlinson*, [65](#), at 2.

The author participated in a radio talk show in March, 1989 regarding semi-automatics. The radio program was broadcast live from Colorado's largest gun store, "Firing Line." The day after the show was broadcast, the United States Bureau of Alcohol, Tobacco and Firearms conducted an unannounced search of the store.

[\[133\]](#) Termed operation "Forward Trace."

[\[134\]](#) See *18 U.S.C. § 923(g)* (search and record keeping provisions).

[\[135\]](#) See e.g. *Armour Packing Co. v. United States*, [209 U.S. 56](#), 28 S.Ct. 428, 52 L.Ed. 681 (1908); *Morissette v. United States*, [342 U.S. 246](#), 72 S.Ct. 240, 96 L.Ed. 288 (1952).

[\[136\]](#) [401 U.S. 601](#), 91 S.Ct. 1112, 28 L.Ed. 2d 356 (1974).

[\[137\]](#) *R.S.C. § 103(10)*.

Canadian courts have split on the issue of strict liability. See e.g. *Regina v. Somers*, [1985] 2 W.W.R. 468, (Man. Ct. Q.B.) (burden of proof on defendant to disprove guilty intent which may be inferred from mere possession); *Regina v. Simonovic*, [1973] 3 W.W.R. 189 (Yukon T. Mag. Ct.).

[\[138\]](#) See *Regina v. Maginnis*, [1981] 64 C.C.C.2d 430, 440-41 (Ont. Co. Ct. 1981). See also *Robert Batey, Strict Construction of Firearms Offenses*, 49

*J.L. Contemp. Probs.* [184-85](#) (1986); *Thorpe v. State*, 377 So.2d 221 (Fla. Dist. Ct. App. 1979) (evidence supported conviction for possession of firearm by a convicted felon even though he had just wrestled a pistol away from a man who attacked him).

[139] [442 U.S. 140](#) (1979).

[140] 164.

[141] *Balfour Q.H. Der & Ian F. Kirkpatrick, The Law of Firearms and Weapons* 132-33 (1989).

[142] See *Hawley*, [39](#), at 45-46.

[143] See *Regina v. Wright*, [1980] 4 W.W.R. 92 (Sask. Prov. Ct.).

[144] *Philip C. Stenning & Sharon Moyer, Firearms Ownership and use in Canada: A Report of Survey Findings, Working Paper of the Centre for Criminology* 50 (1981) [hereinafter Stenning & Moyer].

[145] *Id.*

[146] *Kashmeri, Illegal Firearms Easily Bought, The Globe and Mail*, Sept. 26, 1984, at 1.

[147] *Royal Canadian Mounted Police, Annual Firearms Report to the Solicitor General of Canada by the Commission of the R.C.M.P. (1986)*, at 5 (reporting 45,585 firearms lost/stolen since 1974 and not yet recovered).

[148] See *Scarff*, [65](#).

[149] *Id.*

[150] *Id.* For completed homicides in Vancouver, firearms had accounted for 21.4% before the law, and 14.3% after. 2, 6.

[151] See *id.* at 4, 15. It might be argued that the substitution of knives for guns contributed to the decline in the national murder rate, since knife wounds are often less lethal than wounds from long guns or from large handguns.

Research commissioned by the Canadian government a few years before found no relationship between firearms availability and firearms homicides. See *Stenning & Moyer*, [144](#), at 168.

As in Britain, life imprisonment is mandatory upon conviction of murder. *Duncan Chappell & Linda P. Graham, Police Use of Deadly Force: A Canadian Perspective*, (1985) [hereinafter Chappell & Graham].

[152] See *Scarff*, [65](#), at 3.

[153] Only 7% of rapists use guns. A gun-armed rapist succeeds 67% of the time, a knife-armed rapist 51%. *Philip J. Cook, The Influence of Gun Availability on Violent Crime Patterns*, 4 *Crime & Justice: An Annual Review of Research* 49, 61 n.8 (Norval Morris & Michael Tonry eds., 1983) (analyzing



data in *M. Joan Mcdermott, U.S. Dep't of Justice, Rape Victimization in 26 American Cities 20-21 (1979)*.

[154] See Scarff, [65](#), at 3.

[155] *Gun Control: Solicitor General*, [116](#), at 10. On the other hand, the mandatory sentence is often plea-bargained away. *Watt letter*, [80](#) at 1-2.

[156] Scarff, [65](#), at 7-10.

[157] 72.

[158] 4.

[159] Robert J. Mundt, *Gun Control and Rates of Firearms Violence in Canada and the United States*, 32 *Can. J. Criminology* 137, 140 (1990) [hereinafter Robert J. Mundt, *Gun Control*]. The quoted homicide rates are the means for the periods 1974-78 and 1979-88.

[160] *Id.*

[161] See Paul Blackman, *The Canadian Gun Law, Bill C-51: Its Effectiveness and Lessons for Research on the Gun Control Issue, Presented at the American Society of Criminology (Nov. 7-11, 1984)* [hereinafter Blackman, *The Canadian Gun Law*] (citing data through 1982).

[162] Robert J. Mundt, *Gun Control*, [159](#), at 144-45.

[163] See Blackman, *The Canadian Gun Law*, [161](#). According to the gun control lobby's theory, one reason for the apparent inefficacy of American controls is that guns from states with weak laws are brought into states with strong laws. For example, Florida's "weak" laws work to undermine New York's strong-ones. Thus, relaxation of gun laws in any southern state might impact gun crime in the northern tier states. The most significant change in American gun laws during the 1970s was that many states, including several northern-tier states, enacted preemption laws to erase existing city and county gun controls, and to bar the enactment of such controls in the future. Thus, the changes in American law in the 1970s, even though they were enacted at the state and local level, had a national impact.

[164] The National Rifle Association (N.R.A.) spent nearly seven million dollars on the referendum and suffered one of its worst losses ever, by a 58-42% margin. Because the N.R.A. referendum failed, Maryland established a commission which must specifically approve the sale of all models of handguns. In practice, the panel has not been as anti-gun as had been feared and has approved the sale of almost every handgun it has examined. *Maryland Board Approving Sales of Most Handguns it Considers*, *N.Y. Times*, Oct. 23, 1989, at A12.

[165] John H. Sloan et al., *Handgun Regulations, Crime, Assaults, and Homicide: A Tale of Two Cities*, 319 *N. Eng. J. Med.* 1256 (1988).

[166] *Id.*(Seattle whites had a homicide rate of 6.2 per 100,000; Vancouver whites had a homicide rate of 6.4 per 100,000).

Brandon Centerwall, a professor of Epidemiology at the University of Washington, suggests that if the homicide data "were subjected to a Mantel-Haenszel summary odds ratio, stratifying by race, the difference in homicide rates would cease to be statistically significant." *Brandon S.*

*Centerwall, Homicide and the Prevalence of Handguns: Canada and the United States 1976-1980*, 134 *Am. J. Epidem.* 1245, 1246 (1991).

[167] *Id.*

[168] *See Chappell & Graham*, 151, at 193.

[169] *Pemberton*, 118, at 1.

[170] In the late 1970s, the National Institute of Justice offered a grant to the former president of the American Sociological Association to survey the field of research on gun control. Peter Rossi began his work convinced of the need for strict national gun control. After looking at the data, however, Rossi and his University of Massachusetts colleagues James Wright and Kathleen Daly concluded that there was no convincing proof that gun control curbs crime. *See James Wright et al., Under the Gun: Weapons, Crime and Violence in America (1983)*[hereinafter *Under the Gun*].

[171] *Id.*

[172] *James Wright et al., Correspondence*, 320 *New Eng. J. Med.* 1216 (1989).

[173] *Id.*

[174] *V. Houk, Address at the National Center for Environmental Health and Injury Control (April 23, 1991)*.

[175] *Catherine F. Sproule and Deborah J. Kennett, Killing with Guns in the U.S.A. and Canada 1977-1983: Further Evidence for the Effectiveness of Gun Control*, 31 *Can. J. Criminology* 245 (1989).

[176] *See Catherine F. Sproule & Deborah J. Kennett, The Use of Firearms in Canadian Homicides 1972-1982: The Need for Gun Control*, 30 *Can. J. Criminology* 31(1988).

[177] *Gary Kleck, Crime Control Through the Private Use of Armed Force*, 35 *Social Problems* 16 (Feb. 1988) [hereinafter *Gary Kleck, Crime Control*]; *Norman Okihiro, Burglary: The Victim and the Police* 31 (1978); *U.S. Bureau of Justice Statistics, Household Burglary* 4 (1985) [hereinafter *Household Burglary*].

A study of an unnamed "northern city" in Ontario for the years 1965-70 also appears to show a relatively high level of burglary against occupied residences. The study reported that 12.2% of burglaries were committed in the daytime, 69.5% were at night, and 18.3% were unknown. Arguably, no

person was home for the "unknown burglaries" since if someone had been home, the time of entry would be known. See Peter Chimbros, *A Study of Breaking and Entering Offenses in 'Northern City' Ontario, in Crime in Canadian Society* 325 (Robert A. Silverman & James J. Teevan Jr. eds. 1975).

[178] See Norman Okihiro, [177](#).

[179] See *Household Burglary*, [177](#).

[180] See *Under The Gun*, [170](#), at 139 (the risk of either outcome for a burglar is about one to two percent). Other criminologists similarly attribute the preference of American burglars for daytime over nighttime entry to burglars' fears of confronting an armed homeowner. See George Rengert and John Wasilchick, *Suburban Burglary: A Time and a Place for Everything* 30 (1985); J. Conklin, *Robbery and the Criminal Justice System* 85 (1972).

[181] See Blackman, *The Canadian Gun Law*, [161](#), at 19.

[182] See e.g. *Regina v. Haverstock*, [1979] 32 N.S.R.(2d) 595 (Co. Ct.) (homeowner pointed rifle at trespasser to make him leave); *Regina v. Anderson*, [1981] 13 Man. R.(2d) 441 (C.A.) (man pointed unloaded rifle at person who was chasing a girl); cf. *Regina v. Ernst*, [1982] 1 C.C.C.(3d) 454 (B.C.C.A.) (shooting into ground to frighten away trespassers in isolated area).

[183] See *Regina v. Thornton*, [1970] 2 C.C.C.(2d) 225 (Ont. C.A.); *Regina v. Calder*, [1984] 111 C.C.C.(3d) 546 (Alta C.A.); *Regina v. Proverbs*, [1983], 9 C.C.C.(3d) 249 (Ont. C.A.). Some police officials have begun lobbying to outlaw the carrying of knives. Mario Toneguzzi, *Feds Consider Limits on Knives*, *Calgary Herald*, Mar. 17, 1990, at B4.

[184] *Martine Daly And Margo Wilson, Homicide* 15 (1988).

[185] 200 (percentage represents data for the year 1980).

[186] *Id.* (percentage represents data for the year 1969).

[187] *Id.* The data are not sufficiently detailed to allow a determination of whether American women are more likely than Canadian women to encounter circumstances where self-defense may be justified.

[188] See *Stenning & Moyer*, [144](#) at 174-75.

[189] 177.

[190] See Scarff, [65](#) at 5, 29.

[191] total Canadian suicide rate rose from 12.8 in 1970-77 to 14.1 in 1978-85.

[192] Robert J. Mundt, *Gun Control*, [159](#), at 144; Paul Blackman, *The Canadian Gun Law*, [161](#), at 17.

[193] See John H. Sloan et al., *Firearms Regulations and the Rate of Suicide: A Comparison of Two Metropolitan Areas*, 322 *New Eng. J. Med.* 369 (1990).

[194] *Id.*

[195] Until 1991, Canadian law allowed long gun purchases at age 16, and handgun purchases at age 18. *R.S.C. §§ 106(2)(a), 109(3)(a)*. In late 1991, the age for long guns was raised to 18. *Bill C-17, 126 at 24*. In the United States, the corresponding legal ages are 18 and 21. *18 U.S.C. § 922(b)(1)*. Further, the authors never suggested a reason why Canada's generally more restrictive gun laws would produce a lower suicide rate in one age group, and a higher suicide rate for all other age groups. Nor did the authors compare the current Canadian suicide rates with the rate before the 1977 controls went into effect.

The authors of the study have responded to the above criticisms by stating that are not trying to prove anything specifically with regard to the 1977 law. They claimed to be merely looking at Canada's general overall gun density and the resulting reduced accessibility of guns to teenagers.

One critic who wrote to the *N.E.J.M.* to criticize the suicide study as biased and unprofessional was James D. Wright, a sociologist at Tulane University. The *N.E.J.M.* authors did not respond to his particular criticisms and dismissed them with the observation that "Wright's views on gun control are well known." *J. Sloan, et al., Firearms Regulations and Rates of Suicide, 323 N. Eng. J. of Med., July 12, 1990 (reply to letters to editor) at 136-37*. Of course Professor Wright's views are well-known in the sociology and criminology worlds. He authored the National Institute of Justice's studies of firearms under first the Carter administration, and then the Reagan administration. He began strongly in favor of gun control and changed his mind as a result of that research. The fact that Wright's views on guns are well-known among academic sociologists is not in itself proof that his views are invalid. In any case, since Wright's views are well-known, it is difficult to understand why the *N.E.J.M.* authors, in their first Seattle-Vancouver study, asserted that Wright's research had found that handgun control would reduce homicide, when Wright himself had stated just the opposite.

[196] *Charles L. Rich et al., Guns and Suicide: Possible Effects of Some Specific Legislation, 147 Am. J. Psychiatry 342 (1990)*.

[197] *Id.*

[198] *See Scarff, 65, at 5, 27.*

[199] *Id.*

[200] *Stenning & Moyer, 144, at 174.*

[201] *Id.*

[202] In 1977, there were about 44,500 firearms per 100,000 people in Canada. In 1988, there were about 46,000 firearms per 100,000 people. As for handguns, there were 2,970 per 100,000 people in 1976 and 3,560 in 1988. *Robert J. Mundt, Gun Control, 159, at 150-51.*

[203] See Centerwall, *Homicide and the Prevalence of Handguns*, 166, at 1247-51.

The homicide rates for New Brunswick (2.9 per 100,000 population per year) and Quebec (3.0) were higher than Maine (2.7), New Hampshire (2.6) and Vermont (2.8). Ontario (2.1) was much lower than New York (11.3) and Michigan (10.1).

Excluding the large metropolitan centers of New York City, Detroit, and Toronto, the rates were Ontario (2.0), New York State (3.4) and Michigan (5.0). The rate in Manitoba (3.7) was higher than in Minnesota (2.4) and North Dakota (1.2). Saskatchewan (3.8), Alberta (3.4), and British Columbia (3.6) were lower than Montana (4.7), Idaho (4.9), and Washington (4.7). Yukon (16.9) was higher than Alaska (11.6). *Id.*

[204] See Sheldon Hackney, *Southern Violence, in Violence in America: Historical and Comparative Perspectives* 387 (Gov't Print. Off., 1969) (report to Nat'l Committee on Causes & Prevention of Violence).

[205] See Paul Blackman, *NRA/ILA, Firearms and Violence: 1983/84* (July 1985).

[206] See Robert J. Mundt, *The Effect of National Differences in Political Structure and Culture on Urban Violent Crime in Canada and the United States, Presented at the annual meeting of the Urban Affairs Commission* (Apr. 20, 1990) (hereinafter Mundt, *National Differences*).

[207] See Gary Mauser, *Ownership of Firearms*, 1, and accompanying text.

[208] 4.

[209] As of 1976, Canada had about 10.5 million long guns, compared to about 140 million in the United States. Presumably the number has increased since then. M. Ray, *Law Enforcement Assistance Administration, Firearms Use in Violent Crime: A Selected Bibliography* 14 (1978), citing Solicitor General of Canada, *Statistics Relating to the Gun Control Question (Statistiques Relatif au Contrôle, des Armes à Feu)* (Ottawa, 1976); News Release PR-31, (Solicitor General of Canada), Dec. 6, 1978.

[210] *Statistics of Estimated Gun Ownership and Use, Statistics Canada Service Bulletin*, Nov. 1977.

[211] The number of illegal handguns in New York City may be as high as 2,000,000, based on police estimates in 1990, despite less than 50,000 permits being issued during the previous year. See *Guns Offer New York Teenagers A Commonplace, Deadly Allure, N.Y. Times*, Nov. 5, 1990, at A1, col.1.

[212] Gary Kleck, *Point Blank* 18 (1991).

[213] See Stenning & Moyer, 144, at 31 (estimate for 1976).

[214] R.C.M.P. Ann. *Firearms Rep.* (1989).

The disparity is similar for numbers of fully automatic weapons such as assault rifles. There were approximately 170,000 legally registered fully automatic rifles in the United States as of 1974, while in Canada, 2,500 Canadians owned 4,000 automatics. *Stenning & Moyer*, [144](#), at 29.

[\[215\]](#) Interestingly, in the 1970s, the Stenning and Moyer survey found that one percent of adults admitted owning a handgun. *See Stenning & Moyer*, [144](#), at 27. Another survey, taken in March 1989, found three percent so admitting. *See A North-South Dialogue: Maclean's-Decima Poll, Maclean's, July 3, 1989, at 48 [hereinafter MacLean's-Decima Poll], cited in Continental Divide*, [20](#), at 98. These results could indicate an important trend, either that Canadian ownership of handguns is increasing rapidly, or Canadian handgun owners are becoming more willing to admit their ownership.

[\[216\]](#) *See Gary A. Mauser, A Comparison of Canadian and American Attitudes Toward Firearms*, 32 *Can. J. Crim.* 573 (1990) (comparing surveys documenting American and Canadian attitudes towards a variety of gun control issues) [hereinafter Mauser, *A Comparison*].

[\[217\]](#) *Id.*

[\[218\]](#) *Friedland*, [46](#), at 31-35.

[\[219\]](#) *Id.*

[\[220\]](#) *R. Harding, Firearms and Violence in Australian Life* 158 (1981).

[\[221\]](#) Thirty-one percent of rural Canadian males over the age of 15 own guns, as do eleven percent of all Canadians in large urban areas. *Stenning & Moyer*, [144](#), at 67.

[\[222\]](#) 50.

[\[223\]](#) 23.

[\[224\]](#) 52-53.

[\[225\]](#) *See Stenning & Moyer*, [144](#), at 62. Self-employed Canadian females, even though part of a gun-owning economic group, owned guns at only a two percent rate. 73. Even that rate was above the rate for almost all other groups of women. *Id.*

[\[226\]](#) *Newfoundland Police Want to Carry Guns, Gun Week, Jan. 3, 1975.*

The Ontario Provincial Police and the Quebec Provincial Police (Surêté du Québec) function independently of the Royal Canadian Mounted Police.

[\[227\]](#) *R.J. McCaldon, Readers Write, Am. Rifleman, Nov. 1988, at 28.*

[\[228\]](#) *See Chappell & Graham*, [151](#), at 121, citing *Royal Canadian Mounted Police, .38 Calibre Service Revolver Ammunition (Discussion Paper, Fall 1981).*

[\[229\]](#) *See Chappell & Graham*, [151](#), at 176.

Not all local police forces have made the switch. The Calgary police adopted and then abandoned "Glaser Safety Slugs," a brand of self-defense ammunition with high stopping power which has the advantage of *not* penetrating walls and putting innocent bystanders at risk. Other local forces have adopted and abandoned .357 magnum ammunition, another powerful variety. Public relations concerns made it untenable for some police forces to employ ammunition considered highly lethal. *See Olmstead Letter*, [87](#).

[\[230\]](#) *See Massad Ayoob, Self Defense & The Law: Your Gun Can Be A Liability, Peterson's Handguns, Mar. 1989, at 33-34.* As a technical matter, it is hollow point *handgun* ammunition that has been outlawed; hollow point rifle ammunition is still legal. *See New Regulations, Can. Handgun, Winter 1990, at 12.* ("Bullet" refers to a lead projectile, whereas "cartridge" refers to the entire assembly of bullet, primer, powder, and casing.) Moreover, while hollow-point ammunition is illegal, hollow-point bullets are not. A Canadian handloader could legally purchase hollow point bullets, and load them into his own ammunition. *See Watt Letter*, [80](#).

[\[231\]](#) *See Chappell and Graham, 151, at 5-6, citing Sulton & Cooper, U.S. Dep't of Justice/Nat'l Inst. of Law Enforcement & Crim. Just., Summary of Research on the Police Use of Deadly Force, in A Community Concern: Police Use of Deadly Force 69 (1979). See also Fed. Bureau of Investigation & U.S. Dep't of Just. Uniform Crime Reports for the United States (1980).*

[\[232\]](#) *Statistics Canada, Crime and Traffic Enforcement Statistics 1974-76 (1981).*

[\[233\]](#) *Chappell & Graham, 151, at 35, citing R.S.C. ch. C-34, § 34(2) (1988) (defense against assault).*

[\[234\]](#) *Mauser, A Comparison, 216, at 578-79.* When a Calgary drugstore owner was unsuccessfully prosecuted for shooting two robbers, he received overwhelming public support. *See Arms Against Crime: A Citizen's Right?, Chatelaine, Dec. 1987, at 42-44.*

[\[235\]](#) *See Mauser, A Comparison, 216, at 582.*

[\[236\]](#) *582-83.* Mauser's results are summarized in *Gunplay, Vancouver Sun, Aug. 28, 1989.*

[\[237\]](#) *See Stenning & Moyer, 144, at 129-31.*

[\[238\]](#) *See Blackman, The Canadian Gun Law, 161, at 3.*

[\[239\]](#) Regarding civilians, one study indicates that the issue of self-defense arises in roughly 645,000 actions each year in actions involving the use of a handgun, a rate of approximately one every 48 seconds. *See Gary Kleck, Crime Control and the Private Use of Armed Force, 35 Soc. Probs. 1, 2 (1988).* Kleck was analyzing survey data collected by pollster Peter Hart for the Center for the Study and Prevention of Handgun Violence. Hart posed

the question of whether anyone in the household had used a handgun for self-defense at least once in the last five years. 2-3.

[240] *Charles L. Rich et al., Guns and Suicide: Possible Effects of Some Specific Legislation*, 147 *Am. J. Psychiatry* 342, 345 (1990).

[241] *See Massachusetts: The Shot Heard Round the States*, *St. Gov't News*, May 1975, at 2 (noting that amnesty programs in Boston and New York City resulted in the return of hundreds of guns in each city, whereas a similar program in Washington, D.C. had very little effect at all); *See also Curtis L. Taylor, 27 Weapons Turned In To Police: Gun Amnesty Plan is a Dud, Critics Say*, *N.Y. Newsday*, Aug. 27, 1990, at 7.

[242] *Gun Controls*, *San Fran. Exam. & Chron.*, Sept. 6, 1981, at A18.

[243] *See Mauser, A Comparison*, 216, at 579. Mauser found that 63% of British Columbia residents thought they had a right. *Id.*

[244] While the United States Constitution and forty-three state constitutions contain an explicit right to bear arms, in Canada the right is only a common law tradition, possibly a derivative of the 1689 British Bill of Rights.

[245] *See Richard M. Weintraub, Guns Abroad*, *Wash. Post*, Dec. 21, 1980, at A1. In some areas, a typical fine for a prohibited weapon, usually a fully automatic rifle, is only \$300. *See Watt Letter*, 80.

[246] *See Michael J. Martinoff, A Tale of Two Cities: A Vancouverite's Perspective*, *Pointblank*, Apr. 1989, at 2.

[247] One of the early test cases under Massachusetts' Bartley-Fox law involved the successful prosecution of a young man who had inadvertently allowed his gun license to expire. He was driving to a pawn shop to sell his gun in order to raise money to buy his high school class ring. A policeman noticed the gun when he stopped the young man for a traffic violation. The teenager spent the mandatory year in jail with no parole. *See James Beha, And Nobody Can Get You Out: The Impact of a Mandatory Prison Sentence for the Illegal Use of Firearms and on the Administration of Criminal Justice in Boston-Part I*, 57 *B.U.L. Rev.* 96, 110 n.55 (1977). Another Massachusetts case involved a man who began carrying a gun after a co-worker threatened to murder him. The Civil Liberties Union of Massachusetts had opposed the Bartley-Fox law in part because of this likelihood that innocent people would be sent to jail. *See David Hardy, Legal Restrictions on Firearms Ownership as an Answer to Violent Crime: What Was the Question?* 6 *Hamline L. Rev.* 391, 407 (1983).

The New York law includes an escape provision that may be invoked for first offenders. *New York Penal Law* § 70.15.

[248] A *Los Angeles Times*' Toronto correspondent described Canadians as "a conservative people who accept authority more readily than do most



Americans." *Meisler, Canada: Mired in a Nice Quiet Identity Crisis, L.A. Times, Dec. 4, 1983, at IV.2.*

[249] *Mauser, A Comparison, 216.*

[250] *See Lipset, Continental Divide, 20, at 94.*

[251] *Paul M. Sniderman et al., Liberty, Authority, and Community: Civil Liberties and the Canadian Political Culture (1988) (on file with the University of Toronto, and Survey Research Center, University of California, Berkeley), discussed in Lipset, Continental Divide, 20, at 111.*

[252] *See generally Meisler, 248.*

[253] *Id.*

[254] The N.F.A. considers itself strong nationally, and emphasizes that its membership surged in 1990 in response to government proposals for new controls. *See Tomlinson, 67, at 2.*

[255] Canadian complacency is well illustrated by the general public's fairly broad support of licensed handguns for use in self-defense, and simultaneous reluctance to initiate governmental deregulation of any kind.

[256] *See discussion, supra section III, and notes 56-70 and accompanying text.*

[257] What a large number of Canadians do care about is the opportunity to use long guns for sporting purposes, and animal control in rural areas. The 1978 controls placed almost no restrictions on these latter uses, requiring only that a person seeking to buy a rifle or shotgun apply for a Firearms Acquisition Certificate, which would allow unlimited long gun purchases for the next five years. *R.S.C., ch. C-46, § 106(4).*

[258] *See William Claiborne, Canadian House Passes Tough Gun-Control Bill, Wash. Post, Nov. 8, 1991, at sec.I, A28.*

[259] One expression of the campaign against gun ownership took place at the University of Toronto, where a committee of students and faculty has urged the closing of a target range. They assert that the use of firearms is "inappropriate" and that "[m]any people are revolted that there are individuals who take delight in firearms." *Taking Aim at University Marksmen, Toronto Globe and Mail, May 18, 1991, at 10.*

[260] Lépine used two 30-round magazines in his shooting spree. *Claiborne, 269, at A28.*

[261] *See Bill C-80: An Act to Amend the Criminal Code and the Customs Tariff in Consequence Thereof, 34th Parl. 2d Sess. 38-39, 1989-90 (Can.); Safer and Better Firearms Control: Proposals for Change, Dep't of Just., Canada (1990).*

[262] See R.A. Watt, *Bill C-80 -- A Layman's Critique (1990)* (on file with the author); See also *British Columbia Wildlife Federation, Response to Bill C-80 (Oct. 1990)* (on file with the B.C. Wildlife Federation, Langley, B.C.).

[263] The Progressive-Conservatives face some challenge in western Canada from the new [Reform Party](#), which has strong libertarian inclinations, and which is considered to have a chance to defeat the Progressive-Conservatives in western Canada.

[264] *Report of the Special Committee on The Subject-Matter of Bill C-80 (Firearms)*, H.C. 34th Parl., 2d Sess., Iss. No. 12, (Feb. 1991).

[265] Passed Nov. 1, 1991.

[266] Justice Minister Campbell said the bill reflects Canada's "own firearms culture," which, she said, is less violent than that of the United States and elsewhere. *Claiborne*, [258](#), at A28.

[267] R.S.C. § [106\(1\)](#), as modified by Bill C-17, at 24.

[268] R.S.C. § [84\(1\)](#), as modified by Bill C-17, at 2.

[269] Author's personal communication with Gary Mauser, Professor of Business, Simon Fraser University, Feb. 14, 1992.

[270] R.S.C. § [84\(1\)](#), as modified by Bill C-17, at 3-4.

[271] *Ministry of Justice, Review of Major Legislative and Regulatory Firearms Proposals*, Nov. 18, 1991, FA2-TBL.08E, at 5 [hereinafter *Review of Major Firearms Proposals*].

[272] R.S.C. § [90\(3.2\)](#), added by Bill C-17, at 5.

[273] *Review of Major Firearms Proposals*, [271](#) at 5.

[274] R.S.C. § [84\(1\)](#), as modified by Bill C-17, at 2.

[275] R.S.C. § [106\(2\)\(c\)](#), as modified by Bill C-17, at 25; Mauser communication, [269](#).

[276] R.S.C. § [106\(8\)](#), as modified by Bill C-17, at 27.

[277] R.S.C. § (8.1), as modified by Bill C-17, at 27.

[278] R.S.C. § [106](#) (9.1), as modified by Bill C-17, at 36.

[279] See *supra* notes [131-134](#) and accompanying [text](#).

[280] *Can. Const. (Constitution Act, 1982) pt. I (Canadian Charter of Rights and Freedoms)*, § 10(h) [hereinafter, Canadian Charter]. See also Lipset, *Continental Divide*, [20](#), at 102, citing, Edgar Z. Friedenberg, *Culture in Canadian Context*, in *An Introduction to Sociology 128* (Michael Rosenberg et al. eds., 1983).

[281] *U.S. Const. amend. V*; See generally Lipset, *Continental Divide*, [20](#), at 101-10 (comparing civil liberties in the United States and Canada).

[282] 102-03.

[283] See Hagan, *The Disreputable Pleasures* 179 (2d ed. 1984).

[284] See John F. Burns, *Canada to End Countersubversion Unit*, *N.Y. Times*, Dec. 2, 1987, at A1.

[285] *Id.* Intelligence operations were subsequently turned over to a civilian authority. Most operatives in CSIS (pronounced cee-sis) have military or R.C.M.P. backgrounds. See Dr. J. B. Delack (1990) (unpublished letter to the editor of *Am. Rifleman*, on file with author); Watt letter, [80](#), at 6.

[286] See e.g., Edgar Z. Friedenberg, *Deference to Authority: The Case of Canada* 33 (1980).

[287] See Bruce P. Elman, *The Promotion of Hatred and the Canadian Charter of Rights and Freedoms: A Review of Keegstra v. The Queen*, 15 *Can. Pub. Pol'y* 72, 74-75 (1989), discussed in Lipset, *Continental Divide*, [20](#), at 105-6. Cf. Jeffrey Miller, *Speak No Evil, Saturday Night*, May 1989, at 29 (reporting the unsuccessful criminal prosecution of Canadian lawyer Harry Kopyto for "scandalizing the court" following his statement that "[t]he courts and the R.C.M.P. are sticking so close together you'd think they were put together with Krazy Glue").

[288] See Lipset, *Continental Divide*, [20](#), at 105-06.

[289] See John F. Burns, *Canada Puts Neo-Nazi's Ideas on Trial, Again*, *N.Y. Times*, Mar. 30, 1988, at A12; David Bercuson and Douglas Wertheimer, *A Trust Betrayed: The Keegstra Affair* (1985) (criminal prosecution of high school teacher for teaching anti-semitic propaganda).

[290] Charles L. Taylor & Michael C. Hudson, *World Handbook Of Political And Social Indicators* 59-91 (2d ed. 1972), analyzed and partially reprinted in Lipset, *Continental Divide*, [20](#), at 88-91, 95-96.

[291] The British North America Act of 1867, creating Canada's basic structure of government, took account of American Civil War, which the British and Canadians believe resulted from the weakness of America's government, most notably America's emphasis on states' rights. Whereas the United States had separated the powers of each branch of its government, to prevent any faction or majority from oppressing any numerical minority, Canada took quite the opposite approach--hoping that a strong national government would be the best protector of minority rights.

[292] Michael T. Kaufman, *Canada: An American Discovers Its Difference*, *N.Y. Times*, May 15, 1983, at § 6, (Magazine), 60.

[293] See *Canadian Charter*, [280](#).

[294] § 2; *U.S. Const. amend. I*.

[295] See Morris C. Shumiatcher, *Property and the Canadian Charter of Rights and Freedoms*, 1 *Can. J. L. & Juris.* (1988).

[296] See Lipset, *Continental Divide*, 20, at 103.

[297] E.g., "Congress shall make no law..." *U.S. Const. amend. I*, "No person shall be held to answer..." *amend. V*.

[298] *Canadian Charter*, 280, at § 1. Canada's Charter of Rights and Freedoms "guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." *Id.*

[299] Parliament or the legislature of a province may declare a that a provision will operate for five years notwithstanding section 2 (free speech, religion, and assembly) or sections 7 through 15 (due process, equal protection of the law, and criminal procedure protection). § 33. See also Anne F. Bayefsky, *The Judicial Function Under the Canadian Charter of Rights and Freedoms*, 32 *McGill L. J.* 817, 818 (1987).

[300] See Friedenber, 286, at 12-13. Interestingly, the Charter of Rights entitles citizens to "the right to... security of the person," *Canadian Charter*, 280, at § 7, (a provision which might be used as a legal basis for protecting a Canadian right to bear arms).

[301] See Lipset, *Continental Divide*, 20, at 132, citing Peter N. Nemetz et al., *Social Regulation in Canada: An Overview and Comparison with the American Model*, 14 *Pol'y Stud. J.* 580, 594 (1986).

[302] *Id.*

[303] See *Bleeding Heart Conservatives*, *Economist*, Oct. 8, 1988, at 4. See also Lipset, *Continental Divide*, 20, at 139-42, citing Vicki L. Templin, *Predicting Policy Choices of Individual Legislators: A Comparative Study of Canada and the United States*, 6 *Population Res. & Pol'y Rev.* 254-56 (1987).

It should be noted that there is a new party, the Reform Party, which espouses conservative economic ideology and which does not embrace gun control. In 1990, the Reform Party rapidly gained strength in Western Canada, and may achieve significant electoral success there, especially in Alberta.

Moreover, the general failure of civil government, exemplified by the inability to create a plan to accommodate Quebec's francophone status that would be accepted by all other provinces, coupled with a populist revolt against Prime Minister Mulroney's tax increases, may be the catalyst for a significant shift in Canadian attitudes--away from such trust in governmental authority.

[304] See Gad Horowitz, *Red Tory, in Canada: A Guide to the Peaceable Kingdom* 254, 254-56 (William Kilbourn ed., 1970) (describing the genesis of the major political ideologies of modern Canada, their features, and arguing that their distinctions from American political ideologies should be preserved).

Socialism, in the form of social democracy, has fared better in Canada than in America, due in part to the differences in the two nations' histories. Socialism came to Canada from immigrant Britons, fellow subjects of a common monarch, and from repatriated students who had studied at British universities. Accordingly, socialism did not seem an alien idea. Canada's greater emphasis on community duties over individual rights made Canadians receptive to the socialist message. But the United States, through revolution, had rejected Europe and many European values as well. United States socialists could never overcome the presumption that socialism was "un-American." See *McNaught*, [17](#), at 399.

Canada's less individualist, more collectivist mentality is also illustrated by the greater success of Canadian trade unions. Forty percent of Canadian workers belong to unions, nearly twice the American rate. *David Brody, Barriers of Individualism in the Path of American Unions, Dissent, Winter 1989, at 71, 76* (arguing that the relative lack of popular support for the American labor movement, as compared to those of Canada and Australia, is at least in part an effect of America's greater support for individual rather than collective values).

Seymour Martin Lipset explains the continued durability of Canadian unionism as follows: "As compared to her more populous neighbor, Canada is a more elitist, communitarian, statist and particularist (group-oriented) society." *Seymour M. Lipset, North American Labor Movements: A Comparative Perspective, in Unions in Transition: Entering the Second Century 421, 442 (1986)*.

[\[305\]](#) *David V. J. Bell, The Loyalist Tradition in Canada, 5 J. Can. Stud. 22, 28 (1970)*.

[\[306\]](#) *Michael A. Goldberg & John Mercer, The Myth of the North American City: Continentalism Challenged 247 (1986)*. See also *Craig Crawford and James Curtis, English-Canadian Differences in Value Orientations: Survey Comparisons Bearing on Lipset's Thesis, Stud. Comp. Int'l Dev., Fall-Winter, 1979, at 23, 40* (using additional data to support Lipset's conclusions regarding Canadians' general acquiescence to elite decision-making), *discussed in Lipset, Continental Divide, 20, at 153*. Cf. *Peter C. Pineo and John Porter, Occupational Prestige in Canada, in Social Stratification: Canada 55, 59 (James E. Curtis and William G. Scott eds., 1973)* (noting that federal politicians enjoy a high level of prestige in Canada); *L. Neil Guppy, Dissensus or Consensus: A Cross-National Comparison of International Prestige Scales, 9 Can. J. Soc., Winter 1983-1984 at 134*.

[\[307\]](#) *Lipset, Continental Divide, 20, at 79*.

[\[308\]](#) 88.

[\[309\]](#) 80.

[310] 80-84.

[311] 74-79.

[312] See *id.* at 60, citing, Margaret Atwood, *Survival: A Thematic Guide to Canadian Literature* 31 (1972).

[313] Atwood, [312](#), at 131.

[314] Lipset, *Continental Divide*, [20](#), at 62, 63, citing Russell M. Brown, *Telemachus and Oedipus: Images and Authority in Canadian and American Fiction* (1979) (unpublished dissertation, on file with the University of Toronto).

[315] See generally, Hugh MacLennan, *The Psychology of Canadian Nationalism*, 27 *Foreign Aff.* 413, 414-15 (1949) (suggesting that Canada's feminine characteristics have arisen partly because of its close proximity to the larger and more dominant United States).

[316] See Lipset, *Continental Divide*, [20](#), at 64-65, citing Mary Jean Green, *Writing in a Motherland* (1984) (unpublished manuscript, on file with the French Department, Dartmouth College).

The "typical Canadian Protagonist," it is asserted, "is capable only of tiny transformations, slight swervings from the path of his personal history, changes not of kind, but only of degree." Gaile Mcgregor, *The Wacousta Syndrome: Explorations in the Canadian Landscape* 111(1985).

Compare Robert Fothergill, *Coward, Bully, or Clown: The Dream Life of a Younger Brother*, in *Canadian Film Reader* 234 (Seth Feldman & Joyce Nelson eds., 1977) (in which the author discusses common themes in Canadian films regarding male protagonists; most notably, their inadequacies in their relationships with women. "One film after another is like a recurring dream which takes its shape from the dreamer's guilty consciousness of his own essential impotence." 235-36); See also Susan Swan, *The Biggest Modern Woman of the World* 273-74 (1983) (excerpt of fictional diary set in 1874 -- "I feel I am acting out America's relationship to the Canadas. Martin is the imperial ogre while I play the role of genteel mate who believes that if everyone is well mannered, we can inhabit a peaceable kingdom. That is the national dream of the Canadas, isn't it?") *Id.*

[317] See Lipset, *Continental Divide*, [20](#), at 65. See also Claude T. Bissell, *The Place of Learning and the Arts in Canadian Life*, in *Perspectives on Revolution and Evolution* 180, 205-06 (Richard A. Preston ed., 1979). Bissell discusses the emergence of Canadian literature from its European and classical foundations, in contrast to American literature's break from the same historical underpinnings. He suggests that this divergence in the American and Canadian traditions has mirrored their larger political and cultural differences.

[318] See R. Bruce Elder, *Image and Identity: Reflections on Canadian Film and Culture*, 34-35, 109-11 (1989) (discussing modern approaches to painting and film, respectively); Ross Skoggard, *Old Master, Saturday Night, May 1988*, at 68; George Bowering, *Modernism Could Not Last Forever*, *Can. Fiction Mag.*, nos. 32-33, 1979-80; Stanley Fogel, *A Tale of Two Countries: Contemporary Fiction in English Canada and the United States* (1984). For a complete discussion of works cited, see Lipset, *Continental Divide*, 20, at 65-66.

[319] See *supra* notes 44-48 and accompanying [text](#).

[320] See Torrance, 21, at 106.

[321] 100-01.

[322] Friedenbergs, 286, at 130.

[323] For an informative discussion of the events giving rise to the myths associated with Canada's North West Mounted Police, see Robert Thacker, *Canada's Mounted: The Evolution of a Legend*, 14 *J. Popular Culture* 298 (1980).

Referring to the mountaineers of the American west, Washington Irving wrote "[w]ith his horse and his rifle, he is independent of the world, and spurns at all its restraints." *Washington Irving, The Adventures of Captain Bonneville* 12 (Robert A. Rees & Allan Sandy eds., Twayne Publishers 1977) (1837). Or, as one Canadian artist positing a bleaker view of the United States frontier noted, "The U.S. frontier is the west and its hero is an outlaw; the Canadian frontier is in the north, and its hero is a policeman." *Robertson Davies, Signing Away Canada's Soul*, *Harper's*, Jan. 1989, at 43 (quoting an unidentified source).

[324] Friedland, 46, at 41; Blackman, *The Canadian Gun Law*, 161, at 2. The present law only forbids being masked while possessing a firearm and intending to commit a felony. *R.S.C., ch. C-46, § 351(2)*.

[325] See Lipset, *Continental Divide*, 20, at 90, citing Susan Wood, *Ralph Connor and the Tamed West*, in *The Western Experience in American Literature: Bicentennial Essays* 199 (L.L. Lee et al. eds., 1977). Lipset himself has noted, "Efforts to distinguish Canada and the United States almost invariably point to the greater respect for law and those who uphold it north of the border." *Lipset, supra* at 90. See also McGregor, 316, at 61.

[326] For a history of the American west and frontier experience, see Robert Athearn, *The Mythic West in Twentieth-Century America* (1986). See also Dick Harrison, *The Insignificance of the Frontier in Western Canadian Fiction*, in 19 *Kanada Geschichte: Politic Kultur*, 1987 (German-English Yearbook) 49-57.

[327] Atwood, 312, at 171.

[328] McGregor, 316, at 61.

[329] *Bellows, Attitude: Canada's Key to a Lower Crime Rate, Niagara Gazette, Aug. 4, 1985, at 5A, quoting Hagan, 283.*

The National Rifle Association symbol is an eagle with crossed rifles in its talons, and the symbol of Canada's National Firearm Association is a Royal Crown with a heraldic shield underneath.

[330] *U.S. Const. pmbi.*

[331] *See 291 and accompanying text.*

[332] *See Hagan, 283, at 233.*

[333] *See Lipset, Continental Divide, 20, at 115, citing Elise F. Jones et al., Teenage Pregnancy in Industrialized Countries 89, 92 (1986).*

[334] *Studies discussed supra, at Sections IV(A) and IV(B).*