

Mr. Gingrich's Bequest: Globalising the Second Amendment ?

Peter Squires

Professor of Criminology & Public Policy, University of Brighton

www.petersquires.net

'The Second Amendment is for all mankind'

Former Speaker of the US House of Representatives and one-time Republican presidential candidate, Newt Gingrich made an unusual claim in 2012. Speaking at the National Rifle Association (NRA) Annual Convention in St. Louis, he argued that *'the Second Amendment is for all mankind'*. Hitherto, the debate about the Second Amendment had largely been concerned with the interpretation of this supposedly 'embarrassing' clause *within* the USA (Levinson, 1989), adding a global dimension to the debate might be seen as an entirely new departure in the gun debate. In fact, however, Gingrich's remarks represented a relatively late tactical foray into a debate that the NRA had been contesting for around a decade. Trying to raise the stakes with a bullish and opportunist gesture, Gingrich claimed that the NRA leadership had been 'too timid' - few people had ever suggested that before - and he went on to conclude his speech by noting that, should he ever successfully bid to enter the White House, he would work towards pushing the United Nations to extend the right to bear arms to the rest of the world, so that 'violent crimes like rape and child murder' might be prevented by armed citizens.

The nature of Gingrich's remark plays into a number of the NRA's core concerns: in the first place taking the fight to the United Nations which, since 2001, had been working towards a global policy to restrict the availability of small arms and light weapons (SALW); in the second place to encourage more women to take up firearms for personal and family protection; and, in the third place, to reinforce the citizen protector model of gun ownership (Carlson, 2015) that, later in the year, following the Sandy Hook school shooting, was succinctly voiced by Wayne la Pierre, Executive VP of the NRA: 'A good guy with a gun is the only way to stop a bad guy with a gun'.

The movement for gun rights had been successful on a number of domestic fronts, culminating in the Heller and MacDonald Supreme Court judgements which, in 2008 and 2010 respectively, struck down wide ranging firearms prohibitions in Washington DC and Chicago. A growing majority of states had passed mandatory, shall-issue, concealed firearm carry permit laws to citizens wanting a firearm for personal protection. Many had also passed versions of the 'no duty to retreat' or 'Castle Doctrine' law which had lately become notorious following the fatal shooting of young African American, Trayvon Martin, by neighborhood watch co-ordinator George Zimmerman in 2011. In other states legislation was under consideration to disallow 'gun free zones' on, for instance, university college campuses and, in other places, Michigan and Texas included, groups of citizens were actively taking their open carry firearm protests to the streets, demanding the right to openly carry their firearms while out shopping, eating in restaurants, collecting children from school or visiting national parks.

In the international political arena, however, it was a rather different story. Following mass shooting incidents in a number of countries (Lankford, 2016), where tighter firearms controls were becoming associated with reducing rates of gun violence, perhaps most obviously the UK, Australia, Canada, South Africa and Brazil, a global gun control movement had begun to take shape connecting with the pioneering work of peacemaking NGOs in war-torn parts of the 'global south' - especially in Africa and Latin America. Gun control, human rights and economic development organisations in societies suffering the consequences of small arms proliferation came increasingly to recognise that national solutions for gun crime would need to be matched by concerted international action (Squires, 2014:

chapter 8). Likewise, disarmament and development workers in some of the dangerous locations where most of the killing occurred, appreciated the need for more effective regulation of the supply side to stem the flows of firearms which undermined their efforts and threatened their lives. Disarmament, demobilisation and reintegration (DDR) could no longer be simply about fire-fighting and peace-keeping, important as these issues were, it needed to look forwards to more globally relevant security and development strategies (Bourne and Greene, 2012). In similar fashion, the arms control and international relations research communities increasingly came to acknowledge the rather porous character of much existing arms control and enforcement practice, including fraudulent end-user certification practices (Bromley and Griffiths, 2010). As Greene and Marsh (2012d) have noted of the research base, policy making and enforcement in the fields of small arms and light weapon governance (including DDR, post-conflict management, security sector and arms trade reform, the removal of weapon surpluses and regulation of stockpiles, criminal trafficking and domestic law enforcement) needed to be substantially more 'joined-up'.

United Nations: action on Small Arms

Accordingly, from the late 1990s, the international arms control community - national gun control groups, NGOs working in the field of peace, security and development, weapons trade researchers (such as IANSA, the Small Arms Survey, Amnesty International, Oxfam and War on Want) had been working through the United Nations to build an international framework for global arms control. In 2001 this was accepted as a 'Programme of Action' for the UN in much the same way as the UN had earlier sought to restrict the distribution of nuclear and biological weapons, cluster munitions and landmines. The critical issue in respect of 'small arms and light weapons' is that these munitions were actually responsible for far greater rates of death and injury than the others put together. After much debate, periodic review conferences and diplomatic wrangling, the UN finally agreed, by an overwhelming majority vote, an Arms Trade Treaty in 2013 which was designed to bring visibility and accountability to the international trade in SALW while preventing the distribution of weapons to 'non-state actors' (Parker, 2014). By late 2013 the Treaty had been signed by 114 UN member states, although incorporated into the national legislation of only a few of these.

Throughout the early UN deliberations on the planned UN Programme of Action on SALW, and until 2008 and the election of Barack Obama as US President, US negotiators at the UN conferences had vehemently sought to block the arms control proposals which they had wilfully misconceived as a threat to civilian ownership of firearms in the USA. A delegation of US negotiators, led by US Under-Secretary of State John Bolton and supported by a number of prominent members of the NRA were firmly opposed to any conception of 'small arms and light weapons' that went beyond a narrow band of military specification weapons (Atwood and Greene, 2002: 219), they also opposed the proposed restrictions on the transfer of arms to so-called 'non-state groups', arguing that this amounted to a challenge to the idea of civilian gun ownership cherished by the Second Amendment. In fact, nothing could have been further from the truth, the aim of the Arms Trade Treaty was to render visible, accountable and subject to law, *large scale* arms transfers rather than individual weapon sales; the treaty aimed to prevent the clandestine and criminal distribution of firearms to terrorists, insurgents and organised criminal groups. The NRA's position on the arms trade treaty was one of the clearest indicators that the organisation looked primarily to the fortunes of the gun industry rather than US gun owners, it was chiefly concerned with proposals to restrict the free market in guns, nothing in the UN Programme of Action sought to restrict private citizens owning, buying or selling individual firearms.

Ironically, the NRA's stance appeared to tolerate the distribution of firearms to terrorist and insurgent groups, thereby linking it ideologically with the far right libertarian and insurrectionist militias which had periodically sought to disaffect, by force of arms, from the US Federal

Government such as at Waco, Texas, in 1993 (Horwitz and Anderson, 2009). Furthermore, the disingenuous suggestion that only 'military specification' weapons - fully automatic machine guns - were appropriate to be covered by the trade ban ignored the fact that for years US gun manufacturers had been responsible for the substantial '*militarization*' of the stock of weapons owned by US citizens. As Diaz (1999; 2013) has explained, this is precisely the way that gun industry marketing works. Firearms manufacturers produce weapons attempting to win government, military and law enforcement, contracts. They often sell these weapons at reduced, almost 'loss-leader', prices, confident that, in the much bigger civilian market, the advertising tag 'as used by the FBI' will garner many more sales. The more that 'elite' military units procure specialist weapons, the more that the general public appears to want them. From the manufacturer's point of view, in an already highly saturated weapons market, with every potential gun owner accounted for and each of them averaging up to eight guns (Ingraham, 2015),¹ the only way to expand the market, aside from niche marketing firearms to women (which began in earnest after the 1980s: Quigley, 1989) and special interest groups (for example, collectors, 'cowboy-action' shooters and hunters), has been to promise more and greater firepower, presumably to face a more substantially imagined criminal or terrorist threat.

At the first UN conference on the Programme of Action on Small Arms in 2001, Bolton accompanied by a number of senior members of the NRA (Atwood and Greene, 2002: 219), laid out the US/NRA position. In a tough-talking, no-nonsense, speech in which he specifically referred to the US 2nd Amendment, he argued that the proposed programme was flawed, in that it confused issues which should properly be dealt with by sovereign governments with those more appropriate to the UN. The USA, he argued, defined SALW, strictly, as *military grade* weapons and would never support: proposals to restrict the legal manufacture of SALW or their legal trade; proposals restricting civilian firearm ownership; or any measures to prevent the trade in SALW to non-state actors. He opposed the idea of a mandatory Review Conference and urged the UN to restrict the arms control advocacy role of NGOs (Bolton, 2001). As we have noted, however, when Bolton spoke, the entry of military grade assault rifles into the US civilian market had already begun, and by 2001, the USA was over halfway through a ten year federal ban on the civilian sale of new assault rifles (only new sales were banned, ownership of *existing* assault rifles was permitted and there was no buy-back, such as in Australia). The assault weapon ban which was initially passed by the Clinton Administration lapsed in 2004 under G.W. Bush (Koper, 2013). Since 2004, assault weapons have featured in some of the USA's most murderous recurring mass shootings - in Aurora, Colorado (2011), Newtown, Connecticut (2012); San Bernadino, California (2015) and, most recently, Orlando, Florida, (2016).

The arguments put forwards by Bolton were no surprise to seasoned firearms control advocates, he drew upon the positions previously adopted by the World Forum on Shooting Activities (WFSA) established as a gun industry lobby organisation which had obtained NGO status for its UN negotiations. At a meeting in London, 2001, the WFSA had devoted itself to considering how to distinguish 'civilian appropriate' firearms from what they termed 'weapons of war'. Encouraged by the NRA members present, they eventually settled upon the idea of 'fully automatic firing' as the solitary relevant distinguishing feature of a 'weapon of war'. Ignoring legal norms, practice and precedent and endorsing perhaps the most restrictive definition of military weapons possible, they advocated semi-automatic rifles for civilian ownership despite the fact that these were already prohibited in many jurisdictions - including the USA (at the time), the UK and Australia. Perhaps it goes without saying, but this definition of 'civilian appropriate' firearms was highly favourable to the

¹ US General Social Survey data reveals that whilst, in the mid 1990s, the typical US gun owner owned between four to five firearms, by 2015 this figure had risen to an average of eight per gun-owning household. This conforms to a national trend in which the overall number of gun owners is falling, but those owning guns have more of them (Ingraham, 2015; Hepburn et al., 2007).

US gun industry seeking new sales in a crowded domestic market, especially after 2004 when the Federal assault weapon sales ban lapsed.

The guns rights movement: culture, identity and politics

Responding to what they represented as a global United Nations inspired global threat to civilian gun ownership and a challenge to the 2nd Amendment and Constitution, US firearms lobbyists began to mobilise with a global discourse of their own. This argument sought to transform a national - Common Law inspired - right to self defence into a universal right to possess the weapons by which that right might most effectively be pursued. Implicitly, thereby, they centred the Second Amendment on self-defence gun ownership (rather than hunting and sports shooting). Over time, various NRA-aligned writers have attempted to develop this argument and it is possible to detect, in many parts of the world, how this idea has achieved a degree of 'cultural purchase' where private citizens have responded to perceived vulnerabilities and insecurities by self-arming. At the same time, this globalised advocacy for the 2nd Amendment combines with more subtle cultural influences, such as forms of cultural imperialism disseminating sovereign individualist Second Amendment values facilitating the weaponisation of diverse communities around the globe by reference to a US-led universal neo-liberalism of the gun. As O'Neill has argued (2007), although separated by culture, continents and oceans, 'white male identity politics' exercises a tenacious global grip. It is, he claims, a politics that the NRA itself has done a great deal to sustain. Cukier and Sheptycki (2012) have similarly argued that what they term the 'global carriers of gun culture', by which they refer to 'technology, media and ideology' especially Hollywood movies, television cop shows, violent video games and popular music culture (Bascunan and Pearce, 2008), have served to '(re)produce the links between masculinity, affluence and firearms' across many diverse cultures. For a particular illustration of this, anthropologist Paul Richards discovered how repeated viewings of *Rambo* videos, seemed a particular, if perverse, source of inspiration to the young guerrilla fighters involved in the Sierra Leone civil war (Richards, 1996).

At times, the cultural imperialism script has been specifically projected *outwards* to influence gun control debates in other societies. The NRA have been known to weigh in to support Canadian gun rights and help overturn gun regulations in Canada. In the wake of the Port Arthur Massacre in Australia the organisation donated money to support Australian firearms enthusiasts campaign against the proposed new Australian gun laws (Chapman, 2013). Most significantly of all, the late shifts in voting intentions which changed the outcome of the 2005 Brazilian referendum on firearms controls have been attributed both to NRA money and campaign and advertising know-how. The fearful middle classes were apparently convinced by NRA propaganda that they had a lot to lose if they gave up their guns (Goldstein, 2007; Cavalcanti, 2016).

The NRA's wider cultural and political script, as Melzer (2009) argues, has also exercised a powerful influence back in the USA too. Melzer approaches the NRA through a social movement perspective and, like Carlson (2012; 2014), characterizes the organisation by virtue of its membership demographics. In this sense, the NRA most completely represents a white, male, middle-aged, middle-class, suburban and, often, ex-military, population. Carlson (2012) draws upon research which shows that white Detroit males, especially those who articulate racist views 'are more likely to own firearms for self-protection against crime' (Carlson, 2012: 1115,). She goes further, arguing that 'guns are socially deployed to express anxieties among white, male, conservative gun owners... [providing] a means for white, conservative heterosexual men to reclaim masculine privilege as part of a broader conservative 'backlash' against New Deal politics (2012). Like Street's analysis of the 'Conservative backlash' which settled upon the movie cop figure of 'Dirty' Harry Callahan (played by Clint Eastwood) as the putative, maverick, big gun toting, 'solution' to both crime in the streets and the cultural crisis of contemporary American white masculinity (Street, 2016),

Melzer makes the point that the NRA has successfully managed to represent the threat to gun ownership - via gun control - as a threat to American manhood and the freedom-loving US way of life (Melzer, 2009). In this sense every United Nations' arms control initiative, rather like every gun control proposal, can be represented by the organisation as an attack on freedom and masculinity; as Melzer argues this assists the NRA leadership in both its recruitment campaigns and its fundraising. It helps enormously, as we shall see, if the UN can be represented as alien, socialist, bureaucratic and fundamentally un-American. Inadvertently the UN has become an effective recruiting sergeant for the NRA, it also is this which has enabled the NRA, firearms industry-backed, four million members strong, powerful lobbyist and firmly positioned within the Conservative mainstream, to successfully represent itself as part of a 'beleaguered and misunderstood minority'. This manner of representation, sometimes referred to as the NRA's '*Alamo mindset*', comprises a subtle brand of historical amnesia and creative myth-making. Taken together, each of these elements featured significantly when the NRA turned towards a global politics to contest the UN's emerging arms control agenda.

Aside from political forays into other country's firearms control debates, as referred to earlier, the NRA's global politics has taken broadly three principal forms. In the first place there has been a concerted attempt to prove that gun control does not and cannot work - anywhere. This forms an important part of the academic war of position vis a vis international efforts at firearm violence reduction. If NRA scholars can show that firearms controls have been ineffective in other societies (typically societies where firearms are less prevalent and the laws already less permissive), often in the face of evidence pointing clearly in the opposing direction, it follows that the case for gun control in the USA itself might appear rather less compelling.

Academic self-defense wars

One of the first commentators deploying this line of argument was US historian Joyce Lee Malcolm, author of an erudite analysis of the way in which the 1688 English Bill of Rights served as a foundation for what became the US 2nd Amendment (Malcolm, 1994). However, fresh from advocating, on BBC Radio 4's *Woman's Hour*, that women should carry firearms in their own homes to protect themselves against the risk of domestic violence, in the weeks after the 2003 New Year's Eve 'drive-by' murders in Birmingham she contributed an 'opinion' piece to a BBC news website. The article was provocatively entitled 'Why Britain Needs More Guns' (Malcolm, 2003).

The article began with the old NRA bumper sticker assertion 'if guns are outlawed only outlaws will have guns' and proceeded to relate 'leaping' rates of gun crime with the British government's seemingly perverse desire to seek to tighten already strict gun laws. Apparently, 'for 80 years the safety of the British People has been staked on the premise that fewer private guns means less crime, indeed that any weapons in the hands of men and women, however law abiding, pose a danger' (Malcolm, 2003). In fact, she continued, the British had been deluding themselves, it was mere wishful thinking to assume that society could ensure the protection of private citizens, for general disarmament had not just failed to stem a rising tide of criminal violence but, far worse, it had rendered British citizens fatally vulnerable.

Malcolm's BBC opinion piece drew upon her book, published the year before, *Guns and Violence: The English Experience* (Malcolm, 2002). At first, the historical discussion is wide-ranging and informative, exploring the gradual curtailment of private rights of redress and, from the early nineteenth century the rise of a collective police power, accruing unto itself, in a typically British *collective paternalist* fashion, a monopoly of legitimate force in civil society: the Queen's Peace rather than the citizen's right. Unfortunately, Malcolm's analysis collapses headlong into a crude single-factor explanation of twentieth century rates of violence. Apparently, Malcolm argues, beyond all else, interpersonal violence was kept in check by widespread civilian firearms ownership

before the First World War. Thus, 'the nineteenth century ended with firearms plentifully available while rates of armed crime had been declining and were to reach a record low' (Malcolm, 2002: 130).

Malcolm presents widespread civilian firearms ownership as the crucial guarantee of responsible and democratic civilisation, a legacy that successive British Governments have criminally squandered. The 1953 Prevention of Crime Act is singled out for particular attention as the key piece of 20th century legislation effectively ratifying the new paternalistic relationship which had gradually and almost imperceptibly replaced English Common Law rights of self-defence. Rather than a response to popular concerns about rising post-war violence and the use of weapons by criminal gangs, Malcolm presents the primary purpose of the legislation, which created a new offence of carrying offensive or 'potentially offensive' weapons, as establishing a new relationship between people, police and Government, criminalising the carriage of weapons and thereby transferring to the police 'sole responsibility for the protection of individuals' (Malcolm, 2002: 173). And in so doing, she claims, effectively outlawing an older common law right to self-defence.

There are undoubtedly a number of important issues in critical historical criminology to be developed here, unfortunately Malcolm, being so keen to relate the whole of Britain's post war, late modern, crime increases to successive governments' obsession with outlawing private firearms ownership, that she misses them. Rather tellingly, when discussing the rising crime rates and tightening gun controls of post war Britain, she comments on Radzinowicz's important international analysis of the growth of crime, published in the late 1970s (Radzinowicz and King, 1977). 'Neither Radzinowicz nor other criminologists cited the availability of guns or other weapons as a factor in either the cause of crime or its deterrence' (Malcolm, 2002, p.168). No doubt, one may be inclined to think, this was for good reason. In fact it is only Malcolm's desire to exonerate firearms as crime facilitators and herald them as guarantors of peace and freedom instead (an American ideology, after all) that leads her, quite wrongly, to install them at all as major factors in any account of 20th century British crime problems. Therefore her claim that 'guns seldom contributed to violent crime [but] they may have helped keep it in check by deterring would-be burglars and muggers' (ibid. p.166) is quite unrecognisable as a commentary on post-war Britain.

This is not the place to refute all of Malcolm's claims, suffice to say, her attempt to stretch a single-factor explanation for crime trend variations over several centuries gave a prominence to firearms as both facilitators of crime and as benefactors of peace and civilisation that they never have had in the British experience. Of central importance in her argument is a core ideological commitment to civilian ownership of firearms for self-defence. All would be well, according to Malcolm, if Britain took a lesson from the USA and reinstated a right to private firearms ownership for self-defence: 'in England, fewer guns have meant more crime. In America, more guns have meant less crime' (p.252), and she draws approvingly on the, now rather discredited, work of John Lott (Lott, 1998). Malcolm, therefore goes further than many British firearms lobbyists ever dared during the post-Dunblane debates about handgun prohibition.² Then, most British shooters were very careful to develop a case almost entirely around the preservation of *sports* shooting (Squires, 2000). Now, however, having decisively lost that argument, the stakes are being raised by American advocates engaging in a more global debate about arms control and the self-defence and self-determination arguments are surfacing too.

² Lord Cullen, in his report on the Dunblane shooting incident (1996) briefly explored the 'net benefit' or utilitarian crime reduction argument in favour of civilian gun ownership, that widespread gun ownership prevented more crime and violence than it facilitated. This argument was summarily dismissed by Cullen. 'In this country the possession of firearms for self-defence has not been regarded for many years as a 'good reason' for their possession and there never has been a policy of facilitating, let alone encouraging, the acquisition of firearms to discourage crime or limit its effects.' And, he concluded, accordingly. 'I do not see anything in the 'net benefit' argument that is relevant to this country.' (Cullen, 1996, p.112, para. 9.29)

Malcolm's arguments are not about sports shooting at all, nor was she simply arguing a right to armed self-defence, her claim is that attempts to prohibit firearms ownership actually provoke greater violence and illegality and are, in effect, inevitably counter-productive. On this, she added her voice to a growing chorus of commentators arguing, in effect, for the 'human right' to bear arms. Unfortunately for Malcolm, timing also worked against her analysis. Although there was a short, sharp, upwards spike in gun-enabled crime in the four or five years following the British handgun bans, attributable, primarily, to an increase in street gang activity in the later 1990s and an unprecedented influx of 'junk guns' (imitations, conversions, recycled and modified air weapons and BB guns),³ the publication of her book coincided with the beginning of a decade-long decline in the rates of gun crime in England and Wales, during which time firearm enabled offences fell by close to 50% (Squires, 2014). Furthermore, Malcolm's more general arguments about the crime suppressing character of civilian gun ownership failed to acknowledge that by 2002 overall crime in England and Wales had *already* been falling for some six years. There is certainly more than a little truth in the argument, most recently developed by Jock Young (2011) that criminologists generally failed to anticipate and explain the post-war crime explosion until it was actually happening, and that they likewise failed to predict or, subsequently, satisfactorily account for, the more recent global crime drop (Blumstein and Wallman, 2000; Karmen, 2000; Van Dijk et al., 2012). However, not unlike Malcolm's rather misplaced critique of Radzinowicz and King (1977), no credible social scientist, even in the USA where firearms clearly matter far more, has attempted to explain the evolution of complex crime trends entirely by the prevalence of firearms in a given population. On the contrary, beyond the need to demonstrate the failure of gun control in Britain, although rather in the face of the evidence to the contrary, Malcolm's book was little more than a further assertion of the NRA belief that the Britain, and beyond that the world at large, would be a safer place with more firearms.

Hard on the heels of Joyce Malcolm's ill-advised foray into British gun control politics, in 2005 a group of US legal and criminological scholars, many of them broadly sympathetic to firearm rights, gathered at the George Mason University School of Law, in Arlington, Virginia, to debate self-defence, human rights and the right to bear arms.⁴ The subject matter of the symposium concerned the claimed human right to bear arms in pursuit of personal self-defence and collective self-determination. The issues entailed were often complex, multi-layered, intricate, and contested with scholars, often versed in different domestic, constitutional and international law traditions or academic specialities often arguing past one another. Nevertheless the broad thrust of the developing arguments were broadly continuous with a growing current of American legal and firearm advocacy scholarship that, over the past three decades, had sought to effect a fundamental reinterpretation of the 2nd Amendment to the US Constitution (Bogus, 2000). These issues involved core questions about how the 2nd Amendment might be interpreted; the proper scope for 'interpretative activism' in historical constitutional studies; what the original framers *might* have

³ For a fuller account of the growth and significance of this developing 'junk gun' market in the UK, refer to Squires, 2014.

⁴ The symposium was named in honour of Mrs Bessie Jones, a 92 year old wheelchair bound black woman who, in 1993, shot and killed a youthful intruder who refused to leave her Chicago home. The youth was killed with an unregistered .38 calibre revolver she kept hidden behind a sofa cushion and which Mrs Jones had been given by her husband, shortly before he died in 1945. A number of participants at the conference unhelpfully compared the case with that of Norfolk, UK, farmer Tony Martin who, during 1999, had shot two burglars. In contrast to Mrs Jones, Martin was convicted of murder, later amended to manslaughter, and served a three year prison sentence. There are significant factual differences between the cases, Martin effectively ambushed the burglars with an illegal pump action shotgun and shot them while they were attempting to escape. The case also raised issues about the police response and their 'failure to protect' which have arisen subsequently in both the UK and USA.

intended; and how, 200 years on, the 2nd Amendment might seem something of an anachronism (Tushnet, 2007).

In any event, by the end of the 20th century, a substantial body of legal and historical scholarship, including Malcolm's 1994 book, had conspired to develop an argument which had been successful to the extent that the so-called 'individual rights' view of the 2nd Amendment had now become the 'standard' interpretation (Reynolds, 1995). Prominent amongst many similar historical and legal revisionist writings were contributions by Kates, (1983), Levinson (1989), Cramer (1994), all of whom argued for an individualist interpretation of the right to bear arms.⁵ As Winkler (2011) has argued, this growing body of legal scholarship reinforced and emboldened NRA gun rights advocacy, contributing to the 1986 Handgun Owners Protection Act and eventually paving the way towards the *Heller* and *McDonald* Supreme Court judgements that overturned generic handgun prohibitions first in Washington DC (2008) and later in Chicago (2010).⁶ For the benefit of the firearm advocacy scholars gathered in George Mason University law school in 2004, Nicholas Johnson reiterated the essential connectedness of this growing body of '2nd Amendment history and theory' with the fundamental human right of self defence. 'The ancient right of self defense' he argued, 'is in the first echelon of fundamental constitutional rights to "liberty" ... [it lies] at the core of a proper understanding of the Second Amendment.' (Johnson, 2006: 188).

Johnson proceeds to develop a closely developed case, following Blackstone (1793), and arguing that while the US Constitution may not be the *original* source of the right to self-defence, taking together the Second, Ninth and Fourteenth Amendments, it is abundantly clear that the Constitution implicitly endorses this pre-existing and inalienable right, the most fundamental of all rights. However, recognising that the Constitution does not dwell upon the kinds of low level and 'private altercations' in which self defense issues may sometimes arise (2006: 193), or, indeed, many other of the private tastes of individuals, he proceeds to distinguish those areas that a state might legitimately interfere with and those it should not. Thus the state might punish people for crimes committed, it might confiscate their (illegally obtained) property, or even attempt to make it more difficult or expensive for people to 'obtain or use particular defensive technologies'. But what it cannot do, according to Johnson, is prohibit a right to self defence. 'Self defense is like breathing', he continues, 'it is like the multitude of rights that ... were part of the innumerable rights retained by the people' (2006: 194).⁷ When we set aside questions of technology (in this case firearms), Johnson claims, few people - including even the United Nations - have difficulty with this idea of self defence and where the USA permits citizens (those not disqualified) to own firearms, it must follow that those weapons be available to citizens to effectively exercise this right of self defence. He concludes by setting this rights claim in a global context by quoting from the 1948 UN Charter itself. 'Nothing in the Charter shall impair the inherent right of individual or collective self-defense' (UN Charter, 1948, Article 51). In this fashion a direct link was drawn between NRA advocacy for the Second Amendment and international human rights and, in turn, by appearing to restrict firearm ownership, sales and transfers, amongst citizens, the UN is construed to be impeding their right to self-defence.⁸

⁵ Drawing upon research by Carl Bogus, Lepore (2012) has argued that, 'at least sixteen of the twenty-seven law-review articles published between 1970 and 1989 that were favorable to the N.R.A.'s interpretation of the Second Amendment were "written by lawyers who had been directly employed by or represented the N.R.A. or other gun-rights organizations".' (Lepore, 2012; Winkler, 2011: 96-7).

⁶ For a fuller contextual discussion of these themes and issues refer to Squires, 2014: 146-156.

⁷ And as guaranteed by the Ninth Amendment.

⁸ These arguments were taken up by other contributors to the symposium, Cerone (2006), for example, disputed Johnson's claim and argued instead 'there is no norm of international law providing a human right to self defense' adding that Article 51 refers only to self-defense actions by states (Cerone, 2006: 319-20). The only exception to this principle, he suggested, was the norm of international criminal law 'requiring state or international criminal courts to recognize self-defense as a basis for excluding criminal responsibility.'

In light of this, it fell to Lance Stell (2006) to attempt to develop the self-defence rights argument specifically in respect of the ownership and possession of handguns, the self-defence 'weapon of choice'. Unfortunately, however, for the same reasons that it features as the self-defence weapon of choice (size, weight, ease of concealment and of use) the handgun is also the offender's weapon of choice, the weapon most likely to be employed in both violent and fatal assaults: statistically, America's most lethal weapon. Much is made in gun control debates of the gun rights advocacy claim, a so-called 'truth', that if firearms were prohibited, offenders - people who readily break laws - would be the last to give them up (*if guns were outlawed, only outlaws would have guns*). Leaving aside the reasonable objection that the groups 'criminal' and 'law-abiding' are far from being watertight categories, similar weight is seldom given to another claim, no less verifiable, that if the population at large were readily armed, potential offenders would find it so much easier to acquire weapons.

Notwithstanding such objections, Stell's central argument made the point that it would be an affront to justice for states to so tightly restrict the carrying of handguns that they were not effectively available for personal defense against attack. This, he argued, is especially the case where police protection entails no-one a 'right to protection' and correspondingly entails no particular duty to protect anyone at all (the police are not responsible for crime). In fact, recent developments in British law, heralded by the 2012 White Paper *Putting Victims First* (Home Office, 2012), and carried into law by the *Anti-Social Behaviour, Crime and Policing Act 2014*, extend the police duty of care where victims are known to be particularly vulnerable or subject to hate based victimisation. Such a principle, stands in significant contrast to US law where, Stell argued, 'even when a court-ordered restraining order against a violent spouse declares that the police "shall" enforce its provisions by arresting and jailing him, the order's beneficiary has no reliance right to its enforcement' (Stell, 2006: 266). The gap between the duties assumed by the police in the different jurisdictions is for Stell, 'compensated for' (2006: 307) by permitting law-abiding private citizens in the USA access to self-defense handguns. A failure to allow citizens to own firearms, he suggested, is tantamount to the state engaging in a policy of de facto 'scarcity gun control' (making firearms excessively difficult to acquire) which, by disempowering potential victims, effectively allows criminal aggression to lie where it falls.

The final stages of Stell's arguments wove together a critique of Zimring and Hawkins' comparative and international analysis of firearms and violent crime: *Crime is not the problem* (Zimring and Hawkins, 1997), an assessment of police protective capacity, and broad acceptance of Lott's since discredited *More Guns: Less Crime* thesis (Lott, 1997) referred to already. And the conclusion he arrived at, that states must respect and protect equally 'the fundamental right to bodily integrity, which includes a fundamental, serious right to self defense' (307). And where they cannot afford such a guarantee, which is to say, in most jurisdictions around the world, they should, at the very least, not interfere with a citizen's capacity to protect him- or herself. In other words, 'prohibitory gun laws directly implicate the state's duty to respect equally each person's interest in bodily integrity. If the state bans civilian possession of "equalizers" ... it forbids those who are resultingly made vulnerable to offset the criminological effects of natural inequalities (of being frailer, smaller and weaker) (Stell, 2006: 307). In international ideological perspective, Stell's analysis complements that of Malcolm's 2002 commentary, in the way that both construe gun regulation as a constraint on citizen freedom, especially so in an era (the second half of the 20th century) of rising crime and seemingly diminishing police effectiveness.

However, as he continued, 'such a norm could not reasonably be construed to imply a right of access to means of physically defending oneself (2006: 329).

These two issues, rising crime and perceptions of police effectiveness, have long been understood as two of the critical drivers of self-defence firearm purchase.⁹ And, developing this series of themes, the symposium concluded with an international analysis purporting to demonstrate, around the world, vulnerable citizens, would-be beneficiaries of Mr Gingrich's bequest, crying out for the right to protect themselves with firearms against a rising tide of criminal perpetrators. Renee Lerner's paper went by the strange title, 'The worldwide popular revolt against proportionality in self-defence law' (Lerner, 2006).¹⁰ Her analysis, drawing chiefly upon examples from Florida, Britain and Belgium, is premised upon an idea of paternalistic political elites failing Stell's test, failing to keep forces of crime and disorder in check and thereby rendering citizens vulnerable to violence and victimisation. Only in Florida, she argued, has the state, through its 'Castle Doctrine' law and 'stand-your ground' principle (Brown, 1991), openly sanctioned the private use of lethal force in protection of life and property.¹¹ In European societies, she argued, even as citizens demanded more robust criminal sentencing and more permissive self-defence powers, professional political elites have blocked proposals to allow more violent leeway to those claiming self-defence. She cited the Martin case (referred to in note 4) in support of her argument, failing to recognise it was not a genuine case of self-defence. In fact, in England and Wales there have been relatively few prosecutions for acts of genuine self-defence in face of imminent threat¹² but this did not stop former Conservative Party Leader David Cameron muddying the water with an ill-advised remark while campaigning in 2010. 'The moment a burglar steps over your threshold ... I think they leave their human rights outside' (*Daily Telegraph*, 1.2.2010), he said. Although when the Home Office and Crown Prosecution released a leaflet explaining the right to self-defence, it carefully elaborated the original common law principles, making no changes.

Under close scrutiny, Lerner's 'worldwide popular revolt' rather evaporates around a few misunderstood cases and some opportunist lobbying. Her supposed 'discovery' of a defense law revolt, reads more like an attempt to orchestrate one. The Florida story she was so keen to celebrate in 2006 led directly to a shabby unprovoked 2011 shooting of a fifteen year-old African American, Trayvon Martin, by volunteer neighbourhood watch coordinator, George Zimmerman. Zimmerman had allegedly racially profiled the black teenager as 'trouble' and contrary to police dispatcher guidance, confronted Martin and then shot him. The Martin/Zimmerman case made explicit what firearm rights advocates often overlook, firearm self-defence rights are often enacted in shooting: self defence is activated by shooting to kill. An all white Florida jury subsequently acquitted Zimmerman (for fuller discussion see Squires, 2014: 176-180). The Martin case resonated with the politics of race and crime in the USA, with self-defense becoming a race issue (McClellan

⁹ According to McDowall and Loftin, 'the demand for legal handguns is positively related to riots and crime rates and negatively related to a measure of resources devoted to collective security, the number of police per capita. We interpret this as evidence that legal handgun demand is responsive to evaluations of the strength of collective security.' (1983, p.1147; see also Kleck, 1991: 27-33)

¹⁰ The paper's peculiar title, 'against disproportionality in self defense' begs a question about what 'disproportionate' self defense might look like in practice. Perhaps 'gratuitous' or 'excessive' self-defense is aspired to. In this light, we have further evidence with which to equate the *demand* for firearms, and disproportionately violent retaliation with them, with the wider punitive turn of late twentieth century criminal justice, hyper-incarceration and the so-called 'rebalancing' of criminal justice much discussed in the UK.

¹¹ The self defense law changes in Florida are acknowledged to be 'one of the latest in a series of state statutes around the USA, allowing defense of dwellings or vehicles' (Lerner, 2006: 336).

¹² The same is manifestly not true of prosecutions of women, who having suffered years of domestic violence finally kill their abusers as an opportunity arises, even though a violent threat to them may not be imminent. The issue is discussed at length in Young, 1996.

and Tekin, 2012; Cheng and Hoekstra, 2013) and firearm self-defense liberalization ultimately contributing little to overall public safety.

Gun grabbers and global advocacy

The symposium contributors whose work has been critiqued in the foregoing pages share with Malcolm, discussed earlier, an *a priori* committed view that citizens are entitled to enact violent self defence. They are also committed to the preservation of the individual rights interpretation of the US Second Amendment, and it is all but self-evident to them, most clearly articulated in Stell's contribution, that the human right to self-defence also entails a right to the most efficacious means of ensuring one's self defence - ownership of handguns. This is a view they have projected globally, even, in Lerner's case, perceiving the beginnings of a global movement demanding US self-defence rights. In this sense, they are all, Newt Gingrich's academic advance guard, proclaiming the Second Amendment as a putative human right. Probably no-one has argued this case so long and so forcefully as Wayne La Pierre, executive vice president of the National Rifle Association, America's foremost firearm advocacy lobby.

As we have already seen, the NRA was never shy of foreign interventions, but it was the emerging UN Programme of Action on SALW which the NRA construed as a threat to the Second Amendment and civilian gun ownership that galvanized the organization internationally. With the Republican George W. Bush in the White House and the USA UN negotiating delegation headed by John Bolton and senior members of the NRA it appeared highly unlikely that the USA would sign up to the small arms programme of action. However there were to be presidential elections in 2004 and a Democrat president might be more inclined to support the UN initiative, accordingly, while using the threat of the UN gun ban in its core fundraising and recruiting appeals, La Pierre took the NRA case 'on the road' in a series of filmed 'global gun debates'¹³ to expose the claimed UN threat to US values, guns, and the Bill of Rights.

In his public debates and in a book written subsequently, *The Global War on your Guns: Inside the UN plan to destroy the Bill of Rights* (2006), La Pierre outlined his assessment of the issues. From the outset, it is clear that La Pierre viewed the UN Programme of Action through an exclusively American lens. For, having failed to win the gun control debate in the USA, he argued, the 'global gun grabbers' were trying it again via the back door, through the UN. In his speeches and writings La Pierre invariably referred to the UN and the global gun control movement as 'socialists ... and elitists', and people who 'think they know better than us how to live our lives, spend our money, educate our children and protect our homes' (La Pierre, 2006: xxii).¹⁴ He insisted that 'Americans simply won't fall for it ... we are the freest nation in the world' and that the right to bear arms was an inseparable part of that freedom, its fundamental guarantee.

A large part of La Pierre's account comprises a particularly one-sided reporting of the UN disarmament deliberations. Uppermost in the NRA-led US delegation's concerns were: any limitations upon civilian ownership of firearms, any restrictions on firearm manufacture, any prohibition of sales to 'non-state actors' and any attempt to commit the USA to a regime of firearms registration to enable tracing and tracking of firearms sales. Transparency in firearm sales was

¹³ The debates were filmed in front of invited audiences and distributed as DVDs or on subscription TV channels or NRA podcasts. I attended a debate between La Pierre and Rebecca Peters (of the International Action Network against Small Arms - IANSA) in London, in 2004. La Pierre's report of the event in his book (2006) bears little relation to the event as it happened. Eight years later I took part in just such a debate myself : <http://about.brighton.ac.uk/staff/profiles/pas1-wayne.pdf>

¹⁴ Elsewhere, p. 223, he describes the United Nations as a 'global thugocracy'.

presented as a prelude to wholesale registration, and registration part of a slippery slope to confiscation by a governing class that did not trust the people - he fulminated at length against the so-called 'demonization' of legitimate gun owners. It all pointed to a global conspiracy to undermine the US Bill of Rights and Constitution (an argument frequently levelled at gun control initiatives). However, what was lacking in La Pierre's account, despite the rhetorical flourishes and his persistent denouncing of the 'alien and elitist' UN, was any real understanding of UN governance. With G.W. Bush still in office, La Pierre could be confident there would be little support for the UN programme in the White House, but following the election of Barack Obama in 2008, the NRA leadership were less convinced their hard line would be supported. Despite the fact that a *Congressional Research Service Report* for the Library of Congress (Browne, 2005) had been prepared as early as April 2005, stating clearly that UN arms control mandates would not be binding upon a country's domestic laws unless that country were to pass its own legislation to that effect, NRA lobbyists remained unconvinced. However, this has remained the position of the US State Department, and when Secretary of State, John Kerry, signed the Arms Trade Treaty on behalf of the US on 25th September 2013, that position was reiterated: 'There will be no restrictions on civilian possession or trade of firearms otherwise permitted by law or protected by the U.S. Constitution. There will be no dilution or diminishing of sovereign control over issues involving the private acquisition, ownership, or possession of firearms, which must remain matters of domestic law' (US Department of State, Press Release, 25.9.13).

Despite such repeated assurances that national governments would continue to decide domestic legislation regarding the firearm rights of citizens, La Pierre and fellow NRA advocates were unconvinced. La Pierre dedicated substantial sections of his book to a tale of alleged UN corruption and policy failures, gun confiscations followed by genocide and, incorporating a strong version of republican individualism - sovereignty residing in the people, not the state - suggests that self-defence as self determination is the only thing standing in the way of global barbarism. And it is at this point that a steadfast advocacy of the US Second Amendment slips neatly into step with Gingrich's global right to bear arms and Stell's specific assertion of handgun ownership rights. For, according to La Pierre, the right to self defence (and implicitly the right to arms to assert it) 'is as old as civilisation itself' and even a gift from God: part of the natural law that God inscribes on every human heart' (2006: 185) for firearms 'are the birthright of all humankind' (226). Such a spiritual and essentialist reading of the Second Amendment perhaps helps explain much of La Pierre's fundamentalism. Any beach of these sacred principles leaves innocent people 'helpless against criminals' terrorists and tyrannical states (59), in turn the gun becomes a global 'equalizer'.

We have come full circle to Newt Gingrich's opening claim, for however resolutely US firearm advocates assert the foundations of their defence of the Second Amendment, in an equivalent sense they insist upon a similar global entitlement which they regard the United Nations as endangering. Unfortunately, unlike the UN, the abstract and anachronistic logic of the NRA's chief theorists invariably fails to take on board the well evidenced consequences of firearm proliferation. Greene and Marsh have done much to show how the proliferation of SALW has become a 'significant independent variable in processes of armed violence, conflict, security or development' (2012: 250)' And, while guns may not directly *cause* violence, 'they do tend make it more likely, more lethal, more widespread, more harmful, more protracted, more entrenched, and more likely to recur' (Squires, 2014: 4). As US criminologist Elliot Currie likewise notes, it is 'hard to avoid the conclusion that, in conditions that are otherwise conducive to breeding violent crime, the wide prevalence of guns compounds and "lethalizes" those problems (2005: 108). A world awash with firearms is a potentially dangerous place, the proliferation of weapons in the world's poorest and most conflicted regions rather reiterates the point. Despite claiming to want to offer protection, Gingrich and his colleagues have only two things to bequeath to us - more guns and the right to shoot them.

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