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INTERNATIONAL PERSPECTIVES ON GUN CONTROL

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I. INTRODUCTION

Gun control legislation cannot be examined in isolation of the society and legal system in which it operates. New Zealand is a country of just over three million people. One-third of the population lives in one city at the top of the North Island, Auckland. The indigenous inhabitants are Maori who, together with Pacific Islanders, constitute approximately fifteen percent of the population. The rest of the population, called Pakeha, are mainly of British and Dutch ancestry, with a significant rise in Asian immigration in recent years. It is estimated that the 400,000 trained firearm owners in New Zealand own as many as one million firearms.¹ There are approximately 15,000 semiautomatic firearms in the country.² The vast majority possess their firearms for the express purpose of sporting and farm use rather than self defence. The New Zealand Police are unarmed.

For an unknown reason, there is some indication that young New Zealanders take more risks than young people in other countries. For example, New Zealand has the highest road death rate of persons between the ages of fifteen and twenty-four in the Western world, fifty-three deaths per 100,000 people in 1992.³ Similarly, New Zealand fifteen to nineteen-year-olds lead the industrialized world in suicide rates, with 15.7 deaths per 100,000 people in 1991.⁴ Only the United States has more teenage pregnancies than New Zealand: 58.4 compared with New Zealand's 35.5, per 1,000 women.⁵ This indicates to some extent a background of risk-

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** Speaking Notes for Professor Hastings on the nature of New Zealand society.

1. N.Z. PARL. DEB. 11087 (1992) (statement of Hon. John Barnes MP).
2. N.Z. PARL. DEB. 11113 (1992) (statement of Graham Kelly MP).
3. Brian Rudman, *Probe on Risky Lifestyles of Kiwi Youths*, SUNDAY STAR, Sept. 18, 1994, at 2 (statistics compiled by road safety researcher Alan Woodside).
4. *Id.*
5. *Id.*

taking among young persons against which statistics indicating the efficacy of gun control legislation must be measured.

Constitutionally, New Zealand is a unitary state. It has a unicameral Parliament, with a maximum term of three years. New Zealand, like the United Kingdom, has an unwritten constitution, or at least a constitution not written down all in one place. A New Zealand Bill of Rights Act has existed since 1990, but it is not entrenched⁶ and does not contain anything equivalent to the American Second Amendment. In theory, the absence of a New Zealand Bill of Rights before 1990 did not mean that people did not have rights. The common law presumption is that a right exists until Parliament takes it away. It is only a presumption however, and if a right is claimed, it must be proved.⁷

The only "right" relevant to gun control is that set out in the English Bill of Rights (1688)⁸, which continues to exist as law in New Zealand, and was last successfully applied in 1976 to declare a statement made by the then Prime Minister illegal.⁹ It states that: "The subjects which are protestant may have arms for their defence suitable to their conditions and as allowed by law."¹⁰ Obviously the opening words would survive scrutiny under the Human Rights Act 1993, and in true restrained English style, this "right" to bear arms would barely be recognized as a right in the United States. It has three limitations. The first is that the arms must be "for their defence." The second is that the arms must be "suitable to their conditions" and the third is that the law must "allow" either the arms, or persons to have arms, or both. There is little doubt that even the most restrictive gun control legislation would comply with these requirements. Indeed, there has never been a challenge to New Zealand gun control legislation based on the 1688 Bill of Rights or the New

6. The New Zealand Bill of Rights, for example, is simply an act of Parliament that can be amended or repealed by the Parliament. Since its enactment in 1990, it has been amended once, by the Human Rights Act 1993, to expand the grounds upon which persons have the right to be free of discrimination.

7. As an example of how most New Zealanders do not conceive of a "right" to possess arms, Police Commissioner John Jamieson was quoted as saying "We have people absolutely *obsessed* with right." DAVID B. KOPEL, *THE SAMURAI, THE MOUNTIE AND THE COWBOY* 248 (1992) (emphasis in original). This statement was made at a time when the police were attempting to ban semiautomatic weapons. The police were found to have acted without legislative authority. *Practical Shooting Inst., Inc. v. Comm'r of Police*, 1 N.Z.L.R. 709 (1992).

8. The Bill of Rights (1688) (Eng.) 1 Will & Mar. sess. c.2 sec. 1., *reprinted in* 10 HALSBURY'S STATUTES OF ENGLAND AND WALES 44 (4th ed. 1985).

9. *Fitzgerald v. Muldoon*, 2 N.Z.L.R. 615 (1976).

10. The Bill of Rights (1688), *supra* note 8, at 46.

Zealand Bill of Rights Act of 1990. The first requirement, of self-defence, is severely restricted by the common law in New Zealand; the second is arguably satisfied by the requirement that holders of firearms licenses must be "fit and proper" persons, and the third restriction, on either interpretation, has existed in New Zealand since 1845.

The forum for any challenge to existing gun control legislation is increasingly unlikely to be limited to the courts or to submissions to Select Committees. The next general election in New Zealand will take place under a mixed-member proportional representation (MMP) electoral system. The Sporting Shooters' Association of New Zealand, initially called the Shooters' Rights Association and formed for expressly political, as opposed to sporting, purposes, announced that it will form a political party to contest the next general election,¹¹ presumably as a "list" party. Any party that gets more than five percent of the list vote, that is approximately 100,000 votes, has a chance of actually securing a seat in the House of Representatives. Possibly for the first time anywhere, a gun lobby may assume a legislative role.

II. A BRIEF HISTORY OF GUN CONTROL IN NEW ZEALAND

At its most basic, there are potentially three conceptual models on which to base gun control legislation. They depend on two premises. If people kill, not guns, then legislation should regulate the persons who are allowed to possess guns. Obviously, this operates at an "official" level; no legislation has the effect of prohibiting absolutely practical misuse of firearms. On the other hand, if guns kill, then legislation should address the registration of guns themselves rather than who ought to own them. The third model is a combination of the first two. If people *and* guns kill, then legislation should address both to achieve the logic of the premise. If, for example, a semiautomatic weapon in the hands of a mentally disturbed person is more dangerous than the same in the hands of a sane person, then legislation should address the regulation of the weapon itself. On the other hand, a weapon not as capable of causing such injury in the same period of time has a less destructive quality about it than a semiautomatic or automatic weapon, and for that reason, legislation is better addressed at reducing misuse of the weapon by regulating who may possess it.¹² Legislation based on this third model may create classes of

11. *Morning Report* (Radio New Zealand broadcast, Sept. 19, 1993).

12. N.Z. PARL. DEB. 11100 (1992) ("[T]he truth is that a demented person is far more

persons entitled to possess firearms, classes of firearms which may be possessed, and regulation of transactions. New Zealand has experimented with each of these models.

The first New Zealand legislation relevant to gun control was the Arms Importation Ordinance of 1845 which gave the Governor power to regulate the import and sale of firearms and ammunition. The Ordinance focused on transactions rather than possession and was mainly aimed at limiting the number of arms Maori obtained from Pakeha settlers. In 1860, legislation was enacted to license all firearms owners; it was suspended in 1880 when the Maori land wars drew to a close. The law was enforced discriminatorily from this point on, requiring only Maori applicants to apply for permits to purchase ammunition and to write out receipts in English, in which few Maori were literate. Other measures modified this regime, until the passage of the Arms Act 1920, which required that every gun had to be registered with the police. By 1980, it became increasingly apparent that the police were unable to cope with a registry of firearms that approached one million items. The Arms Act 1983 was enacted partly in response to this administrative burden.¹³ It was also argued that there was no evidence that keeping records of firearms were of any use in solving crimes.¹⁴

The Arms Act 1983 abandoned the firearms registration model and adopted a mainly user registration model based on the classification of firearms into two categories. It licensed users, but imposed different requirements depending on which category of firearm they wished to possess. The two categories were "firearms" and "pistols and restricted weapons," which are a subcategory of firearms. With respect to firearms, any person over the age of sixteen years could apply for a firearms license provided she satisfied the police that she was a "fit and proper person to be in possession of a firearm."¹⁵ The regulations also required every applicant, unless the police deemed it unnecessary, to undergo a course of training and pass theoretical safety tests.¹⁶ Firearms licenses were issued for life,¹⁷ on the assumption that they were only issued to responsible, law-

of a threat to humanity when he is in charge of a semi-automatic weapon than when he is in charge of a .22 rifle.") (statement of Rt. Hon. David Lange MP).

13. N.Z. PARL. DEB. 11107 (1992) (statement of Jim Anderton MP).

14. *Id.*

15. Arms Act 1983, R.S. 1983/44, § 24(b).

16. Arms Regulations 1992, R.S. 1992/346, § 14. There are also strict storage requirements for arms and ammunition. *Id.* § 19.

17. Arms Act 1983, R.S. 1983/44, § 25.

abiding citizens who would stay that way. There were no limits on the number of firearms that could be owned by any license holder. The use and misuse of firearms was consequently heavily regulated. The Act made it an offence to:

1. sell or supply a firearm to an unlicensed person;¹⁸
2. carry or possess a firearm except for a lawful, proper and sufficient purpose;¹⁹
3. be in charge of a firearm while under the influence of drink or drug;²⁰
4. discharge a firearm in or near a dwelling house or public place so as to endanger property or to endanger, annoy or frighten any person;²¹
5. carry or possess a firearm in a public place, except for some lawful purpose;²²
6. present a firearm at another person;²³

as well as the usual offenses relating to careless use,²⁴ use to prevent arrest or to commit an offence,²⁵ and carrying with criminal intent.²⁶ A characteristic of all of these offenses is reversal of the burden of proof. The defence must prove at least one element of every offence, such as the existence of lawful purpose, or the existence of authorization to possess. "Lawful purpose" in New Zealand does not extend to keeping a loaded rifle under the bed for the purpose of protection, even after receiving death threats from a gang. Such a purpose only becomes lawful when the threatened danger is reasonably and genuinely anticipated, reasonably imminent, and is of a nature which could not reasonably be met by more pacific means.²⁷

18. *Id.* § 43.

19. *Id.* § 45.

20. *Id.* § 47.

21. *Id.* § 48.

22. *Id.* § 51.

23. *Id.* § 52.

24. *Id.* § 53.

25. *Id.* § 54.

26. *Id.* § 55.

27. *Arnesen v. Police* (July 20, 1988) (unpublished, on file with the N.Y.L. SCH. J. INT'L COMP. L.) (following Attorney-General's Reference (No. 2 of 1983) 1 Q.B. 456 (1984) (Eng.)).

The Act regulated even more strictly the possession and use of pistols and "restricted weapons."²⁸ The Act requires the owner of a firearms license to apply to have it endorsed should she want to possess pistols and restricted weapons. Endorsements require the applicant to meet strict conditions. Such an endorsement could be granted if the applicant satisfied the police that she was a fit and proper person to be in possession of the pistol or restricted weapon, and was also a member of a pistol shooting club, a bona fide collector of firearms, a person to whom the pistol or restricted weapon had special significance as an heirloom or memento, or a licensed dealer. This endorsement was made subject to conditions imposing strict storage requirements and imposing a duty to ensure the restricted weapon is maintained in inoperable condition. Permits to procure restricted weapons require reporting to the police a description of the restricted weapon, its owner, location and identification number. The Act also created dealers' licenses, renewable yearly, and import permits for all firearms.

III. THE 1992 REFORMS

The 1992 Arms Amendment Act was introduced by the Minister of Police with the question "can law prevent such tragedies (as Aramoana)? Sadly, the answer is no."²⁹ Nonetheless, the Minister pushed on with the Bill which he claimed was a response to a public demand to control the import and possession of semiautomatic firearms. The opposition agreed with the government on only two matters. The first was that legislation will not stop arms being used for violent offenses,³⁰ and the second was with respect to the domestic violence provisions. The first, section 27A, prevents persons against whom a non-violence³¹ or non-molestation order

28. Restricted weapons were include Larc International Model 19A and 19A-AMP airguns, anti-tank projectors, grenade launchers, incendiary grenades, machine carbines or guns, submachine carbines or guns and machine pistols, mines of an explosive nature, mortars, rocket launchers, and any device designed to discharge any lachrymatory, deleterious or toxic gas, smoke or other stupefying or overpowering thing. Arms (Restricted Weapons and Specially Dangerous Airguns) Order 1984, R.S. 1984/122.

29. N.Z. PARL. DEB. 11087 (1992)(statement of Hon. John Banks MP).

30. *Id.* at 11092 (statement of Hon. David Caygill MP).

31. Section 6 of the Domestic Protection Act of 1982 permits a Family Court Judge to make a non-violence order if she "is satisfied that the respondent has used violence against, or caused bodily harm to, the applicant or a child of the family, and is likely to do so again." Domestic Protection Act 1982, § 6, 28 R.S.N.Z. 175 (1992). Section 15

is in force, or persons against whom such orders could be made, from obtaining a firearms permit.³² The second, section 60A, allows the police to search for and seize without warrant any firearm, pistol or restricted weapon on the same grounds.

As well as introducing the new domestic violence provision, the legislation specifically subjected "military style semi-automatic firearms"³³ to substantially the same regime as pistols and restricted weapons. Owners of military style semiautomatic firearms are required to obtain a special endorsement on their firearms license. Possession of a military style semiautomatic firearm without the special endorsement make the possessor liable to a fine of \$4,000, three years imprisonment, and in practice, forfeiture of the firearm.³⁴

The new legislation also revoked the lifetime licenses put in place by the 1983 Act. All licenses in force on November 1, 1992 are now to expire on October 31, 2002 unless sooner cancelled, revoked or surrendered. The Commissioner of Police now has the power to call in holders of firearms licenses. On receiving such a notice, a person must surrender her existing license and apply for a new license. Before the applicant can receive a new ten year license, the applicant must be photographed and a member of the police must be satisfied that the applicant is a fit and proper person to possess a firearm. To date, the Commissioner has called in license holders whose surnames begin with A or B. Only half have complied.³⁵ The licenses of those who do not comply within six months of the call-in notice are deemed revoked, and

permits the Judge to make a non-molestation order if she "is satisfied that the making of the order is necessary for the protection of the applicant or of any child of the applicant's family." *Id.* § 15.

32. N.Z. PARL. DEB. 11103 (1992) (statement of Lianne Dalziel MP).

33. Military style semi-automatic firearms are defined in § 2 of the Arms Amendment Act as:

- (a) A firearm which, after being loaded, fires, ejects, and chambers a cartridge with each pull of trigger; but
- (b) Does not include-
 - (i) A pistol; or
 - (ii) A semi-automatic firearm that, with its magazine (if any), is maintained at all times in sporting configuration.

Arms Amendment Act 1992, R.S. 1992/95, § 2.

34. Arms Act 1983, R.S. 1983/44, § 50(1)(c), as amended by Arms Amendment Act 1992, R.S. 1992/95, § 27.

35. Edward Rooney, *Police Pay 50,000 Penalty Over Failed Licenses*, SUNDAY STAR, Sept. 18, 1994, at 18.

those persons are subject to the normal penalties for unlawful possession. All such offenses have a reverse onus. It is for the defendant to prove that she was authorized or permitted to possess the weapon.

IV. LEGISLATION AND THE STATISTICS

In assessing the efficacy of the 1982 Act and its 1992 amendment, statistics on crime involving firearms may be examined. Caution should be exercised in examining New Zealand statistics for two reasons. First, only one year for which statistics are available has passed since the coming into force of the Arms Amendment Act 1992, making it difficult to assess the existence of any trends. Second, the quality of the statistics on crime involving firearms may be difficult to assess given the relatively small amount of such crime. With those caveats in mind, general violent crime statistics will be examined, then those involving murder, followed by statistics on youth and domestic violence.

Over the past two years, firearms have been used in about two percent (approximately 700 a year) of total reported crime, about four percent (approximately 235 a year) of total reported threats and intimidation, and twenty one percent of actual, not reported, murders. From 1988 to 1992, there have been an average of sixty-seven murders a year in New Zealand.³⁶ Of a total of 335 murders in this five year period, 114 were "domestic" which includes parent/child, sibling and other "family" relationships as the main reason for the murder. Thirty-one (27%) of those involved the use of firearms.³⁷ There was a noticeable decline in murders in 1993: only forty-seven. Of the seventy-two murders committed in 1992, twelve were committed by married, de facto and ex-spouses and partners (17%). Again, of the forty-seven murders in 1993, twelve were committed by married, de facto and ex-spouses and partners (26%). Of the 119 murders committed over the two year period from January 1, 1992, to December 31, 1993, firearms were used in twenty-five (21%). Firearms were used in 27% of murders in 1992 (nineteen out of seventy-two murders), and in only 13% in 1993 (six out of forty-seven murders). In 1992, firearms were used in only three cases where women were victims, and in only one case in 1993. Indeed, the ratio of murders committed with guns compared with murders committed with knives in

36. JOHN COOTE, FIREARMS MISUSE: REPORTED DEFENSES 1989-93, 2-3 (1994).

37. Police statistics cited by the Minister of Police John Banks in introducing the Arms Amendment Bill 1992 into the House for second reading. N.Z. PARL. DEB. 11089 (1992) (statement of Hon. John Banks MP).

these two years is interesting. In 1992, the ratio was 27% guns to 21% knives (nineteen and fifteen murders respectively), whereas in 1993, the ratio was 13% guns to 49% knives (six and twenty-three murders respectively). If a trend can be drawn from these statistics, it is that firearms are involved in fewer murders, and in fewer murders of women, since the passage of the Arms Amendment Act 1992. There is not necessarily any causal link however.

Youth crime statistics over the last two years are perhaps more worrying. Of the seventy-nine people convicted of the seventy-two murders in 1992, nine or 11% were under the age of twenty. Of the sixty people convicted of the forty-seven murders in 1993, sixteen or 27% were under the age of twenty. There is greater cause for concern however. Of those offenders, fifteen of the sixteen were Maori or Pacific Islanders.³⁸ Against the background pattern of youth risk-taking mentioned above, there is cause for concern. Whether or not legislation can address this problem is difficult to say. I would suggest that the penalties for misuse of firearms and murder now have as much of a deterrent effect as they ever will, and that the answer probably lies in cultural, social, educational and economic policies. With respect to the murders committed with firearms in urban areas, it is more difficult to justify the possession of firearms in terms of their traditional New Zealand purposes of sport and farm use.

IV. CONCLUSION

New Zealand can be seen as a country that has experimented with every model of gun control over the last 150 years. In the absence of any constitutional "right" to possess guns, it is hard to say whether each form of legislation has contributed to the relatively restrained level of firearm offenses, or whether the reasons are more social and cultural. Certainly the general incidence of firearms offenses over the last five years has not changed much. The overall balancing of competing objectives, the need to prevent firearms falling into the "wrong hands" while at the same time protecting people's "legitimate" access (not right) to them, seems to have been managed fairly well. It is only the more recent specific statistics relating to youth crime that indicates cause for concern. This, combined with the potential influence of American pop culture, the unwillingness of many firearms license-holders to present themselves for re-licensing, and

38. COOTE, *supra* note 36, *passim*.

a gun lobby that has announced that it is to become a political party, creates a recipe for a potentially less stable future of firearms regulation in New Zealand.