

IN THE
Supreme Court of the United States

DISTRICT OF COLUMBIA AND ADRIAN M. FENTY,
MAYOR OF THE DISTRICT OF COLUMBIA,
PETITIONERS

v.

DICK ANTHONY HELLER

*ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT*

**BRIEF OF INTERNATIONAL SCHOLARS
AS *AMICI CURIAE* IN SUPPORT
OF RESPONDENT**

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INTEREST OF AMICI CURIAE

Amici Curiae are International Scholars with a special interest in the fundamental right of self-defense, the availability of arms to protect that right and how the laws of foreign countries observe and protect those principles. Amici have a strong interest in the Court having an informed understanding of the international aspects of those issues and how those principles are observed within the laws of other nations. The individual Amici appearing herein are identified by country, name and academic affiliation in Appendix “A” hereof.¹

SUMMARY OF ARGUMENT

Petitioners partially justify their draconian gun laws based upon an assertion that they are no more onerous than similar laws in foreign countries. This assertion is unwarranted. The simple fact is that most Western democracies do not restrict the availability of the means of self-defense to the degree that Petitioners do. To the contrary, Petitioners’ gun laws represent a sharp departure from the international norm, which generally provide for some level of civilian handgun ownership and also provide for the use of firearms in self-defense.

¹ This brief is filed with the written consent of all parties. Pursuant to Rule 37.6, no counsel for either party authored this brief in whole or in part, nor did any party make a monetary contribution to the preparation or submission of this brief. On January 25, 2008, written notice of the intent to file this brief was given to the parties. No person other than the individual Amici named herein or their counsel have made a monetary contribution to the preparation or submission of this brief.

The fundamental right of self-defense provide the context upon which the laws of nations and the law of international relations are premised. The common law tradition that we inherited is echoed in the very birth of our nation. “We hold these truths to be self evident...” is not merely inspiring rhetoric. It represents what “We the People” believe and what “We the People” have endeavored to preserve, protect and cherish as our birthright.

International comparisons should be viewed objectively and without the use of manufactured criteria designed to obscure the rationales for laws. When those comparisons are made objectively, the overwhelming evidence demonstrates that, if anything, there is a correlation between high firearm ownership rates, lower crime, lower homicide and suicide rates and a higher level of individual freedoms and economic prosperity.

A closer examination of just a few Western democracies demonstrates the extreme and draconian nature of Petitioners’ gun laws. Austria, Canada, France, Germany and Italy all provide for the civilian ownership of handguns. Each of these countries provides for the use of firearms in conjunction with the exercise of the right of self-defense.

ARGUMENT

In the Petition for Writ of Certiorari, Petitioners represent that other nations have reached the same conclusion concerning handguns as they have. “[M]ost industrialized countries strictly control civilian access to handguns and allow the carrying of handguns for personal protection only under very restrictive

conditions . . .”². Petitioners repeat this assertion in their merits brief where they state: “Many cities, states, and nations regulate or ban handguns based on the unique dangers of those deadly weapons.”³

Contrary to this assertion, most foreign gun laws in democratic nations are not nearly as restrictive as those found in Washington D.C., where private individuals are burdened by an outright ban of all functional firearms in their homes.⁴ Indeed, the full quotation of the citation used by Petitioners reads as follows:

While fifty of the sixty-nine countries [surveyed] do allow handgun ownership for the purpose of protection of person or property, most industrialized countries strictly control civilian access to handguns and allow the carrying of handguns for personal protection only under very restrictive conditions.⁵

I. A Fundamental Right To Self-Defense

Self-defense is a universally accepted concept upon which the laws of nations necessarily rely. Indeed, our own Declaration of Independence, in perhaps its most inspirational phrase, declares: “We

² Pet. for Cert., at 23 (citations omitted).

³ Petitioners’ Brief, at 50.

⁴ “[T]he District of Columbia [gun laws] are stricter than almost any European state.” James B. Jacobs, *Can Gun Control Work?*, at 35 (Oxford University Press, 2003).

⁵ Wendy Cukier & Victor W. Sidel, *The Global Gun Epidemic: From Saturday Night Specials to AK-47*, p. 144 (2006). (*emphasis added*). It should also be noted that the limitation on the “carrying” of handguns is not an issue in this case.

hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.”⁶

The idea that the preservation of one’s life is a right of such magnitude so as to deserve mention above all others was not something that originated with Thomas Jefferson. The importance of such a right has long been recognized.

Thomas Hobbes is the founding father of modern political philosophy and his work *Leviathan* established the foundation for current Western political philosophy.⁷ Hobbes’ “First Law of Nature” states:

[T]hat every man ought to endeavour peace, as far as he has hope of obtaining it; and when he cannot obtain it, that he may seek and use all helps and advantages of war.⁸

Hobbes believed that the primary purpose for which societies are formed was to enhance the ability to protect oneself, and as such, the first law of nature could never be compromised, altered or diminished by any contract establishing that society. This right was so fundamental that it was deemed unalienable: “A covenant not to defend myself from force, by force, is always void.”⁹

This concept is deeply imbedded not only in the laws of our own country, and of the laws of those

⁶ The Declaration of Independence para. 1 (U.S. 1776).

⁷ See Aloysius Martinich, *Introduction in*, Thomas Hobbes, *LEVIATHAN*, at pg. vii, (Aloysius Martinich ed., 2002) (1651).

⁸ *Id.*, at pg. 99, (*emphasis supplied*).

⁹ *Id.*, at 106

countries which share our Common Law heritage, but in the laws of all countries. The right of personal self-defense is recognized as part of the law of every legal system in the world today.¹⁰

A. The Common Law Tradition

The fundamental right of self-defense is deeply entrenched in Common Law jurisdictions.¹¹ Reflecting the tradition of Thomas Hobbes, *supra*, the Common Law treated self-defense as an unalienable natural right. Thus, Blackstone wrote:

Those rights then which God and nature have established, and are therefore called natural rights, such as are life and liberty, need not the aid of human laws to be more effectually invested in every man than they are; neither do they receive any additional strength when declared by the municipal laws to be inviolable.¹²

Blackstone explains this common law tradition, stating “[t]he right of personal security consists in a person’s legal and uninterrupted enjoyment of his life, his limbs, his body, his health, and his reputation.”¹³ To buttress this fundamental right, the Common Law provided what Blackstone calls “The Fifth Auxiliary

¹⁰ See Schlotz Wallerstein, *Justifying the Right to Self-Defense: A Theory of Forced Consequences*, 91 VA. L. REV. 999, 999 (2005) (“the right to self-defense is recognized in all jurisdictions”).

¹¹ See, e.g. Criminal Code, R.S.C., ch. C-46, Part I, §§ 27, 34-42 (1985) (Can.).

¹² William Blackstone, *Commentaries on the Laws of England*, Introduction, §2, at 54 (1765).

¹³ 1 Blackstone 125.

Right”:

THE fifth and last auxiliary right of the subject, that I shall at present mention, is that of having arms for their defence, suitable to their condition and degree, and such as are allowed by law. Which is also declared by the same statute 1 W. & M. st. 2. c. 2. and is indeed a public allowance, under due restrictions, of the natural right of resistance and self-preservation, when the sanctions of society and laws are found insufficient to restrain the violence of oppression.¹⁴

Interestingly, it is claimed by some that Blackstone’s Fifth Auxiliary Right does not pertain to self-defense but refers to some nebulous civic obligation owed by the citizen to the sovereign, such as the militia, posse comitatus and/or hue and cry.¹⁵ The justification (if any) for this claim seems to be that Blackstone discusses the right of self-defense elsewhere in his *Commentaries*, so it must follow that he can not possibly be referring to self-defense in the First Chapter of Book 1.¹⁶ This claim is totally unfounded. Firstly, the chapter of Blackstone’s work in which the Fifth Auxiliary Right is articulated is entitled “**Of the Absolute Rights of Individuals.**”¹⁷ Secondly, the issues of the militia, posse comitatus and hue and cry

¹⁴ *Id.*, at 139.

¹⁵ See e.g., Brief of Amici Curiae American Jewish Committee (AJC Brief), at 12, fn. 3; Saul Cornell, *A Well-Regulated Militia: The Founding Fathers and the Origins of Gun Control in America* 73-76. (2006).

¹⁶ *Id.*

¹⁷ 1 Blackstone, *supra*, at 117 (*emphasis supplied*).

are also treated in more detail elsewhere in *Commentaries* and are not even mentioned by name in the first chapter.¹⁸ Thirdly, Blackstone uses the exact terminology, “self-preservation”, to describe the rationale for both self-defense and his Fifth Auxiliary Right.¹⁹ Lastly, Blackstone refers to the individual right of self-defense in the same First Chapter of Book 1 where he states:

BOTH the life and limbs of a man are of such high value, in the estimation of the law of England, that it pardons even homicide if committed se defendendo, or in order to preserve them. For whatever is done by a man, to save either life or member, is looked upon as done upon the highest necessity and compulsion.²⁰

The statutory citation contained in Blackstone’s articulation of the Fifth Auxiliary Right is to the English Bill of Rights, which states in pertinent part: “That the subjects which are Protestants may have arms for their defence suitable to their conditions and as allowed by law.”²¹

The historical context giving rise to the English Bill of Rights helps explain the nature of the protection

¹⁸ The militia is referred to in numerous portions of *Commentaries* with the primary treatment being given in Chapter 13 of Book 1 entitled “*Of the Military and Maritime States*”. The posse comitatus and hue and cry also are mentioned in numerous chapters and appear prominently in Chapter 9 of Book 4 and in Chapter 9 of Book 1.

¹⁹ Compare 1 Blackstone 139 with 4 Blackstone 182.

²⁰ 1 Blackstone 126.

²¹ 1 W. & M., Sess. 2, ch. 2 (1689).

intended by its provisions. In 1671 Parliament passed a Game Act which provided that “person and persons, not having Lands and Tenements of the clear yearly value of One hundred pounds ... are ... not allowed to have or keep... any Guns.”²² The avowed purpose of the Game Act was to prevent illegal hunting, but the effect of the Act was to make the owning of firearms illegal for the vast majority of the population.²³ King James II then used the Game Act as a ruse to systematically disarm the population, while at the same time creating a select militia, manned by his supporters, in order to insure the security of his throne.²⁴ This directly led to the “Glorious Revolution” and the accession of William and Mary to the throne. However, their accession was made conditional to their ratification of the English Bill of Rights, so as to guard against future similar abuses.²⁵

Following the adoption of the English Bill of Rights, a series of English cases helped define the right to arms enjoyed by English subjects. These cases held that the Game Acts did “not extend to prohibit a man from keeping a gun for his necessary defence”²⁶; “the mere having a gun was no offense . . . for a man may keep a gun for the defense of his house and family . . .”²⁷;

²² 22 & 23 Car. 2, ch. 25 (1671).

²³ Joyce Lee Malcolm, *To Keep and Bear Arms: The Origins of an Anglo-American Right* 69-76 (1994)

²⁴ *Id.*, at 31, 105. It is important to note that the object of the disarmament campaign was the private arms of individuals which would be employed in hunting during a more peaceful era, as the supposed purpose of the Act was to curtail illegal hunting.

²⁵ David B. Kopel, *It Isn't About Duck Hunting: The British Origins of The Right to Arms*, 93 Mich. L. Rev. 1333, 1342 (1995).

²⁶ *Rex v. Gardner*, 87 Eng. Rep. 1240, 1241 (K.B. 1739).

²⁷ *Mallock v. Eastley*, 87 Eng. Rep. 1370, 1374 (K.B. 1744).

and “a gun may be kept for the defense of a man’s house.”²⁸ The individual nature of the right to arms protected by the English Bill of Rights was affirmed by the Recorder of London²⁹ in a legal opinion which specifically provided that one of the rights protected thereby was individual self-defense.³⁰ Finally, a common contemporary jury instruction on the meaning of the right to arms in the English Bill of Rights stated in part: “A man has a clear right to arms to protect himself in his house. A man has a clear right to protect himself when he is going singly or in a small party upon the road where he is traveling or going for the ordinary purposes of business.”³¹

From the foregoing it is clear that the Common Law tradition and the English Bill of Rights protected the individual right to firearms as an “auxiliary right” to the fundamental and individual right of self-defense. Indeed, other noted historians have reached the same conclusion, dismissing any civic duty to arms and affirming that the “wording suggested only that it was

²⁸ *Wingfield v. Stratford*, 96 Eng. Rep. 787 (K.B. 1752); accord, *The King v. Thompson*, 100 Eng. Rep. 10, 12 (K.B. 1787) (it is “not an offence to keep or use a gun”), and *Rex v. Hartley*, II Chitty 1178, 1183 (1782) (“a gun may be used for other purposes, as the protection of a man's house.”).

²⁹ A position roughly equivalent to the chief justice and general counsel of the City. See JOWITT'S DICTIONARY OF ENGLISH LAW 1510 (2d ed. 1977).

³⁰ “Legality of the London Military Foot-Association” (July 24, 1780), reprinted in William Blizard, *Desultory Reflections on Police: With an Essay on the Means of Preventing Crimes and Amending Criminals* 59-63 (London 1785). “The lawful purposes, for which arms may be used, (besides immediate self-defence,) ...”

³¹ I REPORTS OF STATE TRIALS (New Series) 601-02(1970).

lawful to keep a blunderbuss to repel Burglars.”³²

It has been argued however, that this can not be the case due to the restrictions now found in other nations sharing our Common Law heritage.³³ The answer to this argument is that our Constitution is the Supreme Law of the land. Our Bill of Rights may not be overturned by a mere statute as in the case of both Canada and the UK. The UK employs what is known as “parliamentary supremacy” which allows Parliament to override any right otherwise established by law or custom. Indeed, even the Magna Carta and the English Bill of Rights are subject to the express intervention of Parliament.³⁴ Similarly, Canada has the Canadian Charter of Rights and Freedoms. However, and unlike our Constitution, Section One contains the “reasonable limits” clause, which allows the government to limit an individual’s Charter rights. Additionally, the Charter contains what is known as the “notwithstanding clause” which allows the Canadian Parliament or any provincial parliament to override fundamental individual rights.³⁵

We could, of course, entertain the novel argument that our rights should be measured by their present day treatment in other common law countries. If that were the case, we would have to concede that the bar of double jeopardy does not apply in “serious”

³² J. R. Western, *Monarchy and Revolution: the English State in the 1680's* at 339 (1972).

³³ See, e.g., AJC Brief, at 27.

³⁴ *Thoburn v Sunderland City Council*, [2003] QB 151 (Div Ct).

³⁵ There are “limitations” on this power, including a provision that such legislation only be effective for 5 years, but the legislation may be continuously renewed. Canadian Charter of Rights and Freedoms, §33.

cases”³⁶ We would also find it quite simple to avoid a jury trial for an accused if a case is too “complex” or if the jury may be “tampered” with.³⁷ Once we have completed the dismantling our criminal justice system, we can then proceed to reining in our free press and free speech rights, as England does.³⁸

B. International Law

Some of the earliest works on the subject of International Law were by fourteenth century Milanese scholar Giovanni da Legnano (hereinafter Legnano), whose work, *De Bello, De Represealiis et de Duello* was one of the first attempts to establish international rules for warfare.³⁹ Legnano’s treatise closely examined the individual right of self-defense as the basis of establishing a derivative right of a nation to engage in war.⁴⁰

Legnano believed that, “self-defense proceeds from natural law, and not from positive law, civil or canon.”⁴¹ Self-defense was not an artificial construct of

³⁶ Criminal Justice Act 2003 (2003, c.44) §75 (UK).

³⁷ *Id.*, at §43, §44.

³⁸ See generally, Joseph E. Olson and David B. Kopel, *All the Way down the Slippery Slope: Gun Prohibition in England and Some Lessons for Civil Liberties in America*, 22 Hamline L. Rev. 399-465, 439-441 (1999).

³⁹ David B. Kopel, Paul Gallant & Joanne D. Eisen, *The Human Right of Self-Defense* 22 BYU Journal of Public Law 43, 60(forthcoming, 2008), available at:

<http://davekopel.org/2A/LawRev/The-Human-Right-of-Self-Defense.pdf>.

⁴⁰ *Id.*

⁴¹ Thomas Erskine Holland, *Introduction, in GIOVANNI DA LEGNANO, DE BELLO, DE REPRESEALIIS ET DE*

positive law, but instead was an inherent instinct.⁴² Legnano did not confine the natural right to merely protecting one’s life. He explained that self-defense was proper not only in defense of life, but also in defense of one’s property,⁴³ and that deadly force to protect that property was justified if necessary.⁴⁴ Further, the principle of self-defense allows a person to come to the aid of a relative or friend whose person or property is being attacked.⁴⁵ Finally, Legnano noted that a victim is not required to use only the exact level of force that his assailant uses by posing the rhetorical affirmation: “suppose a strong and vigorous man strikes me with his fist, and I am a poor fellow who cannot stand up to him with the fist. May I defend myself with a sword?”⁴⁶

Following in the footsteps of Legnano was the sixteenth century Spanish scholar, Francisco de Victoria. (hereinafter Victoria). Victoria wrote several works on the subject of the “just war” and his classroom at the University of Salamanca became known as “the cradle of international law.”⁴⁷

Like Legnano, Victoria believed that the justification for war was necessarily predicated upon adopting the individual right of self-defense as its derivative source. Thus, Victoria’s first proposition articulated the individual right of self-defense:

DUELLO a2 (Thomas Erskine Holland ed., James Leslie Brierly trans., William S. Hein 1995)(1360), at 278.

⁴² *Id.*

⁴³ Kopel, *supra* at 61.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Legnano, *supra* at 303 (ch. 112).

⁴⁷ Kopel, *supra* at 63.

Any one, even a private person, can accept and wage a defensive war. This is shown by the fact that force may be repelled by force.⁴⁸ Hence, any one can make this kind of war, without authority from any one else, for the defense not only of his person, but also of his property and goods.⁴⁹

The foundation established by Legnano and Victoria created the platform for the father of International Law, Dutch scholar, Hugo Grotius. His work, *The Rights of War and Peace*, is considered the cornerstone of modern International Law and Grotius is hailed as “the founder of modern civilized interstate relations.”⁵⁰

The essential elements of Grotius’ works were founded upon the precepts of self-defense and self-preservation. Grotius wrote that even human babies, like animals, have an instinct to defend themselves.⁵¹ Further, this instinct extended to the protection of property rights and was one of the fundamental elements of the social fabric of modern society, because if people were barred from using force to protect their property from those who would take it by force, then “human Society and Commerce would necessarily be dissolved.”⁵²

⁴⁸ FRANCISCI DE VICTORIA, DE INDIS ET DE IURE BELLI RELECTIONES 63 (Ernest Nys ed., John Pawley Bates trans., William S. Hein 1995)(1532) .

⁴⁹ Kopel, *supra*, points out that Victoria was quoting from Justinian’s *Corpus Juris*, the compilation of Roman Law which was still enormously influential in Europe.

⁵⁰ Kopel, *supra* at 75-76.

⁵¹ 1 Grotius, *The Rights of War and Peace* 183-84 (book 1, ch. 2, § 1.3).

⁵² *Id.*, at 184-85 (book 1, ch. 2, § 1.3).

Grotius based his rules for war between nations predicated on the underlying individual natural right of self-defense and observed that the rationale for both were based upon the same moral principle: “[I]t is allowed to Repel Force by Force.”⁵³ It is upon the foundation of the fundamental individual right of self-defense that the structure of International Law is built.

Second only to Hugo Grotius was 17th century scholar Samuel Pufendorf, whose eight volume masterpiece, *Of the Law of Nature and Nations*,⁵⁴ incorporated theories of Grotius, and the philosophies Thomas Hobbes and John Locke.⁵⁵ Pufendorf, like Grotius, used natural law theory to construct the law of nations.⁵⁶ The primary natural law employed by Pufendorf was that of self-defense: “Defence is a thing of more ancient date than any Civil Command . . .” and that no state can therefore forbid self-defense.⁵⁷

The natural right to self-defense which forms the very core of the principles of International Law, has one final component which protects the means by which the right can be exercised. Thomas Hobbes explained “it is in vain for a man to have a right to the End, if the right to the necessary means be denied him, it follows, that since every Man hath a right to preserve himself, he must also be allowed a right to *use all the means, and do all the actions, without which he cannot*

⁵³ *Id.*, at 185–89 (bk. 1, ch. 2, §§ 2–4) (quoting Titus Livius, *History of Rome (Ab Urbe Condita)*, bk. 42, ch. 41).

⁵⁴ Samuel Pufendorf, *of the Law of Nature and Nations* (The Lawbook Exchange 2005) (reprint of 1726 London edition of the 1706–07 Barbeyrac French translation and annotation, with English translation by Mr. Carew) (1672).

⁵⁵ See, Kopel, *supra* at 81.

⁵⁶ *Id.*

⁵⁷ Pufendorf, *supra* at 198 (bk. 2, ch. 5, § 16).

*preserve himself.*⁵⁸

II. International Comparisons

Caution must be exercised when making international comparisons, especially regarding the topic of firearms. The oft repeated saying, attributed to Mark Twain, that there are “three types of lies: lies, damn lies and statistics”,⁵⁹ has special significance here due to the divergence in the manner in which data is presented. Sometimes the information reports the full number of suicides, at other times, it merely reports the number of “firearm” deaths, or the number “handgun” homicides. An example of this type of analysis is found in this statement: “Japan represents another powerful example of gun control effectiveness. Japan has one of the most stringent gun laws in the democratic world . . . Japan had a total of 19 **firearms-related** homicides . . .”⁶⁰ What this information fails to disclose is that the suicide rate in “gun free” Japan is greater than the **combined** suicide-homicide rate in the United States.⁶¹

⁵⁸ Thomas Hobbes, *Man and Citizen (De Homine and De Cive)*, 275 (Berand Gert ed., Charles T. Wood, T.S.K. Scott-Craig & Bergnard Gert trans., Hackett 1991)(De Cive 1647)(*emphasis in original*).

⁵⁹ Twain attributes the statement to Disraeli: “Figures often beguile me . . . in which case the remark attributed to Disraeli would often apply with justice and force: “There are three kinds of lies: lies, damned lies, and statistics.” Mark Twain, *Chapters from My Autobiography*, 186.

⁶⁰ Brief of the American Academy of Pediatrics, at 28 (*emphasis supplied*).

⁶¹ The Japanese suicide rate was 24/100,000 in 2004. World Health Organization, *Suicide Rates by Gender – Japan – 1950-2004*, available at: http://www.who.int/mental_health/media/japa.pdf. The US suicide rate for 2004 was 11.05/100,000 in 2004. Centers for

The problem with presentations that limit the scope of the examination to a single tool employed is that they obscure what is commonly known as “substitution”, where one tool is used to complete a task after another has become unavailable. Attention should properly be given to lowering overall levels of crime, homicide and suicide, not merely shifting the manner in which those activities are accomplished.

International comparisons are also difficult because of the many variables involved including, cultures, customs and relative wealth of the countries being compared. However, as a recent study of all European nations for which data was available demonstrates, countries with lower levels of murder also tend to have higher levels of gun ownership.⁶² This study merely strengthens what study after study has previously shown; there is no significant correlation between high gun ownership rates and high rates of crime, homicide and/or suicide.⁶³ In fact, the raw data

Disease Control, *Suicide Facts at a Glance* (Summer 2007); available at

<http://www.cdc.gov/ncipc/dvp/suicide/SuicideDataSheet.pdf> The US homicide rate in 2004 was 5.9/100,000. Centers for Disease Control, *Fastats – Assault/Homicide*; available at: <http://www.cdc.gov/nchs/fastats/homicide.htm>. Thus, the combined suicide-homicide rate for the US was 16.95/100,000.

⁶² Don B. Kates & Gary Mauser, *Would Banning Firearms Reduce Murder and Suicide: A Review of International Evidence*, 30 HARVARD JOURNAL OF LAW & PUBLIC POLICY 651 (2007).

⁶³ “[N]o statistically significant relationship between guns and murder rates.” Jeffrey Miron, *Violence, Guns, and Drugs: A Cross-Country Analysis*, 44 JOURNAL OF LAW AND ECONOMICS, 615. “[N]o significant correlations (of gunstock levels) with total suicide or homicide rates were found.” Abstract to Martin Killias, et al., “*Guns, Violent Crime, and Suicide in 21 Countries*,” 43 CANADIAN J. OF CRIMINOLOGY 429 (2001). “[R]emoving an easy and favored method of suicide was not likely to affect substantially

trends toward the reverse. Norway has one of Western Europe's highest household gun ownership rates, and also one of its lowest murder rates. Holland has the lowest gun ownership rate but its murder rate is 50% greater than Norway's. Finland has a gun ownership rate 14 times greater than its neighbor Estonia, yet Estonia's murder rate is about seven times higher than Finland's and it has higher suicide rates as well.⁶⁴

The final question to be addressed with international comparisons is the effect upon the overall health of a society. A recent study of the 59 countries shows that countries with the highest gun ownership rates also tend to have the lowest corruption rates and the most personal and economic freedom.⁶⁵ Conversely, autocratic or authoritarian countries tend to have lower gun ownership rates and have substantially fewer personal and economic freedoms.⁶⁶ These facts epitomize the wisdom of the author of the 2nd Amendment, James Madison:

Besides the advantage of being armed, which the Americans possess over the people of almost every other nation, the existence of subordinate governments, to which the people are attached, and by which the militia officers are appointed, forms a barrier against the enterprises of ambition, more insurmountable than any which a

the overall suicide rate because other methods would be chosen." World Health Organization, *Changing Patterns in Suicide Behavior* (1982).

⁶⁴ Kates, *supra* (Table 4).

⁶⁵ Howard Nemerov & David B. Kopel, *Is there a Relationship between Guns and Freedom? Comparative Results from 59 Nations*; available at: <http://ssrn.com/abstract=1090441>.

⁶⁶ *Id.*

simple government of any form can admit of. Notwithstanding the military establishments in the several kingdoms of Europe, which are carried as far as the public resources will bear, the governments are afraid to trust the people with arms.⁶⁷

III. Foreign Gun Laws

The following is a short survey of foreign gun laws involving the countries of Austria, Canada, France, Germany and Italy to address the impression that Petitioners' firearms bans represent the "mainstream" of Western nations' gun laws. As noted previously, fifty of the sixty-nine countries, or over 72% of the countries surveyed in the study cited by Petitioners, allow civilian handgun ownership for the purpose of protection of person or property.⁶⁸ It should also be noted that there is a recent trend to broaden the scope of deadly force self-defense in Europe.⁶⁹ Several European nations have either passed, or are considering laws which expand the legitimate use of firearms for self-defense.⁷⁰

This Brief covers non-U.S. firearms laws in general but with a focus on their application to handguns. A glossary of common terms relating to firearms is found in Appendix B and includes the technical terminology and distinctions made commonly within firearms laws.

⁶⁷ *The Federalist*, No. 46 (James Madison).

⁶⁸ Cukier, *supra*.

⁶⁹ Renee Lerner, *The Worldwide Popular Revolt Against Proportionality in Self-Defense Law*, 2 J.L., ECON. & POL'Y 331 (2006)

⁷⁰ *Id.*

A. Austrian Laws

1. Possession.

Austrian gun law does not distinguish between handguns and other firearms. Self-defense is something that is expressly provided as a reason for obtaining a firearm. Firearms are segregated into four distinct classes. Class A firearms are illegal,⁷¹ Class B firearm, require an ownership license (Waffenbesitzkarte), and Class C and Class D firearms which require no license but individual firearms must be registered.⁷²

Handguns are classified as either Class B firearms or Class C firearms. A semi-automatic handgun is a Class B firearm unless it also qualifies as an illegal Class A firearm.⁷³ Revolver style handguns are classified as Class C firearms.⁷⁴

To possess any firearm under Austrian law, one must be 18 years of age but exceptions can be granted for minors at least 16 years of age for purposes of hunting or sport.⁷⁵ For ownership of Class B firearms, the applicant must be 21 years of age and establish a

⁷¹ There are five types of Class A weapons which are illegal in Austria. These are described as weapons that mimic other objects, weapons that are more collapsible than average or designed to be quickly disassembled, shotguns smaller than 90cm overall or with a barrel length of less than 45cm, "Pump action guns," with detachable magazines and weapons with silencers and lighting devices. Waffengesetz Bundesgesetzblatt [RGB1 I] No. 12/1997., §17 no. (1).

⁷² Waffengesetz [Weapons Act] Bundesgesetzblatt [RGB1 I] No. 12/1997.

⁷³ *Id.*, at §19.

⁷⁴ *Id.*, at §30.

⁷⁵ *Id.*, at §11.

justification to own the firearm.⁷⁶ One of the specific justifications provided for by law is self-defense in the home and this justification must be assumed by the licensing authority if the applicant alleges a need for home defense.⁷⁷ The number of these Class B firearms a person may acquire is limited to two unless the applicant can show special justification.⁷⁸

Revolvers and other firearms that are not illegal and do not require a permit to own, fall under the category of firearms that require registration only (Class C and D firearms). Registration of the firearm must be completed within four weeks of purchase.⁷⁹ If you buy one of these firearms without a carrying permit, an ownership permit, or a hunting license, then a three day waiting period is imposed.⁸⁰

To carry these firearms outside the home requires a Waffenpass (carrying permit) which is obtained the same way as the ownership license and by showing a need to carry the firearm.⁸¹ The Weapons Act states that a person must be issued a carrying permit if the applicant is reliable and a justification exists to carry the firearm.⁸² The need to carry one of these firearms must be assumed by the jurisdiction if the applicant can show that he is especially endangered outside the home.⁸³

⁷⁶ *Id.*, at §21.

⁷⁷ *Id.*, at §22 no. (1).

⁷⁸ *Id.*, at §23.

⁷⁹ *Id.*, at §30.

⁸⁰ *Id.*, at §34.

⁸¹ *Id.*, at §21.

⁸² *Id.*, at §35.

⁸³ *Id.*, at §22 no. (2).

2. Storage.

The only provision to storage of firearms in Austrian law is that if a person owns over twenty firearms, he must then inform the local authority regarding measures used to keep them safe and the authority makes a determination if the measures are satisfactory.⁸⁴

2. Self-Defense.

As noted previously, self-defense is established as an explicit justification under Austrian law to both own and to carry a handgun.⁸⁵ In addition, the Austrian Penal Code explicitly recognizes the right to self-defense.⁸⁶ This provision is quite similar to the German model, creating justified and excusable degrees of self-defense based upon the quantum employed versus the quantum of force confronted. However, justified self-defense extends specifically to the defense of another and to the property of another.⁸⁷ Further, it becomes excusable rather than justified, only if it is “obvious” that the force employed is not proportionate to the threat.⁸⁸ On its face, this approach seems to go beyond Anglo-American law since it allows even excessive uses of deadly force to be excused on the ground that the judgment of the victim of a crime was affected by fear, panic, outrage or other strong emotion.

⁸⁴ *Id.*, at §41.

⁸⁵ *Id.*, at §23, §22 no. (2).

⁸⁶ Strafgesetzbuch [StGB] [Penal Code] Bundesgesetz [BG] No. 15/2004, §3 (Austria).

⁸⁷ *Id.*

⁸⁸ *Id.*

B. Canadian Laws

1. Possession.

Canada divides firearms into three different categories for regulatory purposes: non-restricted, restricted and prohibited. Depending on the category a firearm belongs to, different levels of regulation apply.

Prohibited firearms include handguns with a barrel of less than 105mm (4.13 inches) or those adapted to use .25 or .32 caliber cartridges.⁸⁹ There are exceptions to these prohibitions for these special handguns when used in certain international shooting competitions.⁹⁰ Other prohibited firearms include rifles or shotguns with a barrel of less than 457mm (18”) or less than 660mm (26”) overall length; an automatic firearm (even if altered to function only in semi-automatic mode), and any firearm proscribed by the legislature as a prohibited firearm.⁹¹ Firearms proscribed by the legislature are listed by name in regulations and typically include semi-automatic firearms capable of accepting large capacity magazines, though certain rifles such as variants of the M16 used by the Canadian military are specifically exempted from the prohibited list.⁹² Prohibited firearms are

⁸⁹ Criminal Code, R.S.C., ch. C-46, Part III, §84 (1) (1985) (Can.), available at : <http://laws.justice.gc.ca/en/C-46/> (last visited January 12, 2008)

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² Regulations Prescribing Certain Firearms and Other Weapons, Components and Parts of Weapons, Accessories, Cartridge Magazines, Ammunition and Projectiles as Prohibited or Restricted, SOR/98-462 (Can.), available at: <http://laws.justice.gc.ca/en/ShowFullDoc/cr/SOR-98-462//en> (last visited January 17, 2008).

generally not available to the public although exceptions are made for those who possessed the firearm prior to the legislature adding those firearms to the prohibited list and had either registered it or attempted to register it.⁹³ Handguns with barrels less than 105mm or adapted to use .25 or .32 caliber cartridges were added to the prohibited list on December 1, 1998.⁹⁴ Persons who owned those firearms prior to the effective date of the legislation are allowed to keep these firearms under a grandfather clause and their next of kin may also possess these grandfathered firearms and obtain a license to possess them.⁹⁵

Restricted firearms are defined as: any handgun that is not a prohibited firearm, any long gun that has a barrel less than 470mm (18.5") and is a semi-automatic centerfire firearm and is not a prohibited firearm, a firearm that can be fired when less than 660mm (26") in length due to folding, telescoping, etc., and any firearm prescribed by the legislature.⁹⁶

In order to possess restricted firearms, which includes most handguns, the individual must possess a valid Possession and Acquisition License (PAL) or an earlier valid firearms license that has not expired and a valid registration.⁹⁷ Individuals must pass both a non-restricted firearms safety course and a restricted firearms safety course.⁹⁸

A permit to carry may be issued allowing

⁹³ Firearms Act, R.S.C. ch. F-11.6, c. 39, §12 (1-6) (1995) (Can.), available at <http://laws.justice.gc.ca/en/F-11.6/> (last visited January 12, 2008)

⁹⁴ *Id.*, at §12 (6).

⁹⁵ *Id.*, at §12 (7).

⁹⁶ Criminal Code, R.S.C., ch. C-46, Part III, §84 (1) (1985) (Can.).

⁹⁷ Criminal Code, R.S.C., ch. C-46, Part III, §92 (1985) (Can.).

⁹⁸ Firearms Act, R.S.C. ch. F-11.6, c. 39, §7 (1995) (Can.).

restricted firearms to be used carried of the home in self-defense.⁹⁹ Also notably, self-defense is specifically listed as a reason to authorize the transfer of a restricted firearm to a new owner.¹⁰⁰

All remaining firearms that are neither prohibited nor restricted are classed as non-restricted. In practice, this means most rifles and shotguns. To obtain a PAL covering a non-restricted firearm, the individual must pass the non-restricted firearms safety course, be at least 18years of age,¹⁰¹ not be convicted for any crime punishable by more than one year imprisonment within the last ten years, not be under court order or prohibition order, and have no history of threatened or attempted violence.¹⁰²

3. Storage.

Canadian storage requirements generally require both restricted firearms and non-restricted firearms to be properly stored by keeping them unloaded and either secured with a locking device or stored in a locked container, receptacle or room with the ammunition stored separately.¹⁰³ Restricted firearms include the additional requirement of both being secured by a locking device and locked again in a secure compartment or container.¹⁰⁴

⁹⁹ *Id.*, at §20.

¹⁰⁰ Firearms Act, R.S.C. ch. F-11.6, c. 39, §28 (1995) (Can.).

¹⁰¹ Exceptions may allow children aged 12 years and older to possess a non-restricted PAL for hunting and some competition, see Firearms Act, R.S.C. ch. F-11.6, c. 39, §8 (1995) (Can.).

¹⁰² Firearms Act, R.S.C. ch. F-11.6, c. 39, §5-§7 (1995) (Can.).

¹⁰³ Storage, Display, Transportation and Handling of Firearms by Individuals Regulations SOR/98-209 §1, §5.

¹⁰⁴ *Id.*, at §6 and §11.

However, the Canadian storage requirements have specific exceptions for certain self-defense situations.¹⁰⁵ Canadian storage requirements are not nearly as onerous as the provisions of Petitioners.¹⁰⁶ Under the D.C. Code, the firearm must always be stored in an inoperable condition “. . . unless such firearm is kept at his place of business, or while being used for lawful recreational purposes . . .”¹⁰⁷ Under Canadian law, a firearm may be properly in use and used for self-defense purposes.¹⁰⁸

4. Self-Defense.

In addition to the specific provisions delineated by the firearms laws covering self-defense, discussed *supra*, The Canadian Criminal Code makes specific reference to the right of self-defense.¹⁰⁹ The situations in which this right may be exercised include the use of force to prevent the commission of a crime, defense of person and defense of property. Canada considers the exercise of the right to be justifiable rather than either justified or excusable, as is the case in some jurisdictions. Justifiable self-defense includes situations where an unlawful and unprovoked attack threatens “death or grievous bodily harm” and the

¹⁰⁵ *Id.*, at (2)-(3). These exceptions apply to those who reasonably require it for predators or hunting in remote wilderness areas.

¹⁰⁶ D.C. Code § 7-2507.02.

¹⁰⁷ *Id.*

¹⁰⁸ Criminal Code, R.S.C., ch. C-46, Part I, §86(1) (1985) (Can.): “Every person commits an offence who, **without lawful excuse**, uses, ... transports or stores a firearm ... or any ammunition ... in a careless manner or without reasonable precautions for the safety of other persons.” (*emphasis supplied*). See also, *discussion, infra*.

¹⁰⁹ *Id.*, at §27, §§34-42.

response is based upon a reasonable belief “that he cannot otherwise preserve himself.”¹¹⁰ Justifiable self-defense also extends to situations where the actor was the initial aggressor but where he has declined further aggression and has retreated as far as “feasible.”¹¹¹ Defense of one’s home is provided enhanced protection under Canadian law:

Every one who is in peaceable possession of a dwelling-house, and every one lawfully assisting him or acting under his authority, is justified in using as much force as is necessary to prevent any person from forcibly breaking into or forcibly entering the dwelling-house without lawful authority.¹¹²

C. French Law

1. Possession.

French gun laws generally assume that a firearm’s purpose is for self-defense. Arms are categorized into eight classes or categories. French law treats each category separately in terms of right of ownership, transportation, use, and registration.¹¹³ For

¹¹⁰ *Id.*, at §34.

¹¹¹ *Id.*, at §35.

¹¹² *Id.*, at §40.

¹¹³ Law No. 95-589, *Decree of May 6, 1995 (n° 95-589)*, Journal Officiel de la Republique Francaise [J.O][Official Gazette of France], November 17, 2007, available at:

<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEX T000000736335&dateTexte=19971117> (last visited January 31, 2008). Fully automatic weapons and certain semi-automatic weapons having military characteristics are included in Class 1 but are generally unavailable to civilians.

civilians, the most significant categories are the first, which include larger caliber semi-automatic firearms, and the fourth which includes all revolvers as well as semiautomatic handguns that are .32 caliber or smaller.¹¹⁴

The primary requirements for ownership of Class 1 and Class 4 firearms include being 21 years of age or older, having no criminal history and not being found to be “mentally deficient”.¹¹⁵ Additional requirements provide that hunters pass a test on firearms and on wildlife; sporting enthusiasts must be members in an official gun club, and all other persons must demonstrate that they engage in a dangerous profession.¹¹⁶ Permits to own these firearms are issued following a police check of the applicant and must be renewed every five years.¹¹⁷ In addition to a permit, all Class 1 and Class 4 firearms must be registered with the police.¹¹⁸ An individual may own up to twelve of these firearms of which no more than seven may be Class 1 firearms.

Notable exceptions to the to the registration process are those firearms in the seventh and eighth categories. Class 7 includes “Percussion annular” guns (.22LR) and Class 8 covers antique guns and functional reproductions of guns originally manufactured prior to 1870.¹¹⁹ Thus, fully functional reproductions of black powder revolvers are not subject to the restrictions

¹¹⁴ *Id.*, at Article 2.

¹¹⁵ *Id.*

¹¹⁶ *Id.*, at Article 31.

¹¹⁷ *Decree of May 6, 1995, supra* at Article 2.

¹¹⁸ *Id.*

¹¹⁹ Arrêté du 7 Septembre 1995 fixant le régime des armes et des munitions historiques et de collection [*Article 2 of Decree of May 6, 1995 (n° 95-589), implemented by Ordinance of September 7, 1995*].

applicable to Class 1 and Class 4 firearms.

2. Storage.

When not in use Class 1 and Class 4 firearms must be stored in a safe or reinforced cabinet in the owner’s home in a manner which protects the firearm from theft.¹²⁰ There is no requirement that the firearm be disassembled or unloaded.¹²¹ When applying for a permit to purchase a gun from these categories, applicants must establish that they have a compartment for this purpose.¹²²

3. Self-Defense.

In addition to the underlying premise of self-defense found in its gun laws, the French Penal Code provides explicit protection for self-defense.¹²³ One is presumed to act in self-defense when confronting a nighttime burglary of a dwelling or in defending against a robbery.¹²⁴ This right extends to protecting other persons.¹²⁵

D. German Laws

1. Possession.

German law does not distinguish between handguns, shotguns, and rifles. The Weapons Act refers

¹²⁰ *Decree of May 6, 1995, supra*.

¹²¹ *Decree of Dec 16, 1998 modifying Decree of May 6, 1995*.

¹²² *Id.*

¹²³ Code Pénal (CP) [Penal Code], 122-5 through 122-7(Fr).

¹²⁴ *Id.*, at 122-6.

¹²⁵ *Id.*, at 122-5.

to the entire group as firearms and then it defines certain banned firearms.¹²⁶ For all non-banned firearms a permit is required.

There are six elements for obtaining a weapons permit (Waffenbesitzkarte). These are age, trustworthiness, aptitude, an examination, demonstrating a need, and proof of a 1 million Euro liability insurance policy.¹²⁷

One must be 18 years of age to use firearms or ammunition.¹²⁸ There are exceptions for minors if possession of the firearm relates to their vocational training or work requirements, but then only if they are under the supervision of a permitted adult.¹²⁹ The particular jurisdiction can also make exceptions if not violating public policy.¹³⁰

The permit to use firearms or ammunition requires the permittee to have “trustworthiness.”¹³¹ The act does not affirmatively define this, it only defines those who do not possess it. People convicted of

¹²⁶ The following weapons are illegal for civilians to own (with rare exceptions): fully automatic weapons, a pump action shotgun with a pistol grip and which is missing the rear stock, firearms that look like other objects (e.g. flashlights, umbrellas, etc), weapons that can be abnormally quickly disassembled or collapsed, firearms with laser scopes, and firearms with night vision scopes. Waffengesetz, Oct. 16, 2002 BGBl. I, at 3999. Weapons classified as “War Weapons” are also illegal. Included in this classification are machine guns, automatic rifles/shotguns, and certain semi-automatic weapons. Gesetz über die Kontrolle von Kriegswaffen [Regulation over control of War Weapons], April 20, 1961, BGBl. I S. at 444, §5 (F.R.G.).

¹²⁷ Waffengesetz [Weapons Act], Oct. 16, 2002 BGBl. I at 3972,(F.R.G)

¹²⁸ *Id.*, at §2 no. 1.

¹²⁹ *Id.*, at §3 no. 1.

¹³⁰ *Id.*, at §3 no. 3.

¹³¹ *Id.*, at §4 no. (1)2.

a crime for which imprisonment was over one year and less than 10 years have passed since that conviction, do not meet this standard.¹³² If other facts about the applicant justify an assumption that he will misuse the firearm, that the firearm will not be used carefully, or that it will be given to someone without a permit, then he lacks the trustworthiness.¹³³ Anybody who committed a crime resulting in personal injury with a firearm and anybody who was sentenced to 60 days or more in jail for violating the Weapons Act is also not trustworthy.¹³⁴

The permit to use firearms requires that the applicant possess personal aptitude for the use of firearms. Similar to the trustworthiness requirement, there are no guidelines as to who has the requisite aptitude, but rather an explanation of who does not have it. If the facts indicate a justified assumption that the applicant is incompetent to use a firearm, then the applicant lacks the required aptitude.¹³⁵ The applicant lacks aptitude if he is an alcoholic, dependent on other substances, or is psychologically impaired.¹³⁶ If there is a concrete fear that the person will use the firearm to harm himself he lacks the requisite aptitude.¹³⁷ Applicants who are under 25 and are applying for their original permit must furnish a certification from a doctor or government agency as to the mental fitness or suitability of the applicant.¹³⁸

The permit requires the applicant to take an

¹³² *Id.*, at §5 no. 1.

¹³³ *Id.*, at §5 no. (1).

¹³⁴ *Id.*, at §5 no. (2) (b,c).

¹³⁵ *Id.*, at §6 no. (1)1.

¹³⁶ *Id.*, at §6 no. (1)2.

¹³⁷ *Id.*, at §6 no. 1(3).

¹³⁸ *Id.*, at §6 no. (3).

appropriate state-regulated examination regarding firearms which encompasses the general education of firearms.¹³⁹

The permit requires that the applicant demonstrate a need for the weapons permit.¹⁴⁰ The basic requirement is that the personal need must outweigh the risk to public safety.¹⁴¹ However, the criteria employed to determine need are not onerous. The act gives a list of exceptionally noteworthy needs for firearms as examples where the personal need predominates. Those noteworthy needs include hunters, gun club members, gun collectors, endangered or threatened persons, firearm manufacturers or dealers, and security guards.¹⁴²

Once a person obtains the weapons permit, she has one year in which to purchase the firearm and then two weeks to report the purchase to the appropriate agency. The firearm can then be kept indefinitely.¹⁴³ The ammunition for this same type of firearm must be acquired within six years but also can be kept indefinitely.¹⁴⁴

2. Storage.

When a firearm is not being carried or in use, it is subject to storage requirements. Firearms and ammunition must be stored separately, unless they are in a safe.¹⁴⁵ If not stored in a safe, the firearm and the

¹³⁹ *Id.* at §7.

¹⁴⁰ *Id.* at §4 no. 4.

¹⁴¹ *Id.* at §8 no (1).

¹⁴² *Id.* at §8 no. (1)2.

¹⁴³ *Id.* at §10 no. (1).

¹⁴⁴ *Id.* at §10 no. (3).

¹⁴⁵ *Id.* at §36 no. (1).

ammunition must be stored in a manner calculated to prevent loss or theft.¹⁴⁶ However, this restriction is not nearly as onerous as the provisions of the Petitioners¹⁴⁷ Under the D.C. Code, the firearm must always be disabled by a trigger lock or disassembled “. . .unless such firearm is kept at his place of business, or while being used for lawful recreational purposes . . .”¹⁴⁸ Under German law a firearm may be used for self-defense purposes in the home.¹⁴⁹

3. Self-Defense.

The right of self-defense is specifically covered in four separate sections of the German Penal Code.¹⁵⁰ German Law provides for two different categories of self-defense, either justified or excusable. Justified self-defense consists of situations involving “. . .an imminent danger to life, limb, freedom, honor, property . . .” and where “. . . the act is a proportionate means to avert the danger.”¹⁵¹ Excusable self-defense is provided for in situations where the force employed is not proportionate or when excess force is employed due to “. . .confusion, fear or fright.”¹⁵²

¹⁴⁶ *Id.*

¹⁴⁷ D.C. Code § 7-2507.02.

¹⁴⁸ *Id.*

¹⁴⁹ *See discussion, infra.*

¹⁵⁰ Strafgesetzbuch [StGB] [Penal Code] Nov. 13, 1998, BGBI. I at 945, §§32-35 (F.R.G.).

¹⁵¹ *Id.*, §34.

¹⁵² *Id.*, §33, §35.

E. Italian Law

1. Possession.

Under Italian common law, every citizen with a record clear of questions regarding sanity or general reputation has the right to acquire a gun.¹⁵³ Italians may own up to three handguns at one time, or have a collection license.¹⁵⁴ To acquire a gun an Italian adult must either have already obtained a license, or must go to the police headquarters of the locality in which he wants to acquire the gun and obtain a “no impediment” certification. Depending on the jurisdiction and the reason for the request (hunting vs. sporting vs. personal defense), the police may require a certificate of sanity that can come from the family doctor or the local health agency (Azienda Sanitaria Locale). It is not necessary to present any evidence of physical fitness with regards to gun usage.¹⁵⁵ But some jurisdictions will require those who have never served in the military to obtain a certificate of fitness for managing guns. Citizens can obtain these through the Tiro a Segno Nazionale [National Shooting Gallery], which has locations throughout the country.¹⁵⁶

Italian gun law treats handguns differently from “white arms” (swords, knives, etc.), hunting guns, antique guns, and other “instruments of offense”¹⁵⁷ Handguns fall under the classification of “arms to

¹⁵³ Regio Decreto [R.D.] 18.6.1931, N.773 (Italy).

¹⁵⁴ Edoardo Mori, *Sintesi del Diritto delle Armi* [Synthesis of Right to Arms], at 13 (2006).

¹⁵⁵ *Id.*, at 11.

¹⁵⁶ Art. 8 L. 110/75 (Italy).

¹⁵⁷ Codice Penale [C.P.] Art. 585 1931 (Italy).

shoot.”¹⁵⁸ Typical handguns are considered “common arms” as opposed to war/military arms. Without a permit from the Ministry of the Interior, a citizen may not own arms of military caliber, which include automatic weapons, semi-automatic rifles that have both a military appearance and elevated firing capacity, and 9mm parabellum pistols.¹⁵⁹ Common arms also include compressed air or compressed gas guns whose bullets deliver a level of kinetic energy that does not exceed 7.5 Joules and replicas of antique guns that are single-shot muzzle-loading muskets made before 1890.¹⁶⁰ Sporting guns are classified with hunting guns and governed by the same rules.¹⁶¹

2. Storage.

The only Italian requirement regarding the specific manner of storage is that it be “adequate.”¹⁶² Guns may be loaded and ready to use at all times.¹⁶³ However, the law recommends that they be kept in a place in which they will not be easily stolen and out of reach of children and minors.¹⁶⁴

3. Self-Defense.

Recently, the Italian Parliament passed a new

¹⁵⁸ Art. 7 18.4.1975, N.110 (Italy).

¹⁵⁹ Art. 28, Testo Unico Leggi di Pubblica Sicurezza [T.U.L.P.S.] 1926.

¹⁶⁰ Decreto 9 agosto 2001, n.362, Ministero dell'Interno (Decree 362, August 9, 2001, Ministry of the Interior)

¹⁶¹ Mori, *supra* at 5.

¹⁶² Art. 46-7 D.P.R. 28/12/2000, N. 445

¹⁶³ Mori, *supra* at 12.

¹⁶⁴ *Id.*

law enhancing self-defense rights in Italy. On February 13, 2006, a modification to Article 52 of the Italian penal code was codified. Under the revision, a citizen will not be punished if he uses a gun or other appropriate means to defend his or another's safety; his or another's property when there is no sign the criminal will desist, or when the person is in danger of aggression from the criminal. An Italian may also use a gun in the same situation if it occurs in a place in which commercial, entrepreneurial or professional activities take place.¹⁶⁵ Prior to the modification, the law required that the act of defense be proportional to the offense taking place. This requirement allowed criminals to prosecute shopkeepers and homeowners for protecting themselves and defending their property with arms and directly led to the modification of the self-defense provisions of Italian law.¹⁶⁶

CONCLUSION

Petitioners' firearm laws are an extreme departure from international norms, are not justified by any legitimate interest of Petitioners and infringe upon the fundamental right of self-defense. For the foregoing reasons, the decision below should be affirmed.

James R. Schaller*
Counsel of Record

¹⁶⁵ Art. 52 C.P.

¹⁶⁶ Edoardo Mori, *Legge sulla legittima difesa* [Law on the legitimate defense].
<http://www.earmi.it/diritto/leggi/legittima%20difesa.htm> (last visited Jan. 18, 2008).

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APPENDIX "A"

The individual Amici consist of distinguished foreign scholars from around the globe. Their individual names, country of residence and academic affiliation are as follows:

AUSTRALIA: John Furedy, an emeritus professor at the University of Toronto who is currently living and teaching in Australia (Bond University).

BELGIUM: Prof. Boudewijn R.A. Bouckaert of the University of Ghent Law School; Prof. Frank van Dun, Faculty of Law University of Ghent.

CANADA: Prof. Germain Belzile, University of Montreal; Gabrielle A. Brenner, University of Montreal; Barry Cooper, a professor at the University of Calgary; Ron Hamowy, professor emeritus at the University of Alberta; Pierre Lemieux, a professor at the University of Quebec; Jan Narveson, a professor at Waterloo University; David Romano, Canadian teaching International Studies at Rhodes College in KY; Judith Ross, a now-retired Special Lecturer at the University of Toronto.

ENGLAND: J. C. Davies, Professor Emeritus at the University of Reading; Professor Frank Furedi, at the University of Kent; Dr. Sean Gabb, a lecturer at London Metropolitan University; Heinrich Harke, Visiting and Honorary Research Fellow, University of Reading; Prof. Richard Horrocks, University of Bolton; Dr Mark Pennington, Senior Lecturer in Political Economy, Queen Mary College, University of London;

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Roger Scruton, currently visiting professor at Princeton University in the U.S.; Prof. Kevin Yuill of Sunderland U. in England.

FRANCE: Prof. Pierre Garello, Université Paul Cezanne Aix-Marseille; Prof. Bertrand Lemennicier, University of Paris; Professor Joseph Pini (Law Professor at the Université Paul- Cezanne Aix-Marseille).

GERMANY: Prof. Michael Zoeller of the University of Bayreuth; Hardy Bouillon, a German philosopher teaching at the University of Trier who is Head of Academic Affairs for a think tank, the Centre for the New Europe in Brussels.

ITALY: Prof. Enrico Colombatto of the University of Turin; Prof. Carlo Lottieri. Law School of Siena (Italy).

DENMARK: Peter Kurrild-Klitgaard, a professor at the University of Copenhagen;

PORTUGAL: Professor Jose Manuel Moreira is a Full Professor at the University of Aveiro.

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APPENDIX “B”

ACTION¹

The combined parts of a firearm that enable it to be loaded, discharged and unloaded.

ACTION, AUTOMATIC

A firearm that loads, fires and ejects cartridges continually as long as the trigger is depressed and there are cartridges available in the feeding system (i.e., magazines or other such mechanism). Automatic action firearms are machine guns. Somewhat confusingly, semi-automatic handguns are sometimes called “auto pistols” in gun magazine.

ACTION, BOLT

A firearm, typically a rifle, that is manually loaded, cocked and unloaded by pulling a bolt mechanism to eject a spent cartridge and load.

ACTION, BREAK

A firearm that loads and unloads by means of opening the action by pivoting the barrel(s) away from the breech while activating a release lever. Most commonly used in singleshoot and double-barreled shotguns and rifles Used in some revolvers in the 19th and 20th centuries.

¹ Most definitions were derived from: National Shooting Sports Foundation, *Writer’s Guide to Firearms and Ammunition, Glossary* (2006), available at: http://www.nssf.org/share/PDF/Writers_Guide.pdf (last visited January 26, 2008). Some definitions include additional explanations.

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ACTION, LEVER

A firearm, typically a rifle, that is loaded, cocked and unloaded by an external lever usually located below the receiver.

ACTION, PUMP

A firearm that features a movable forearm that is manually actuated to chamber a round, eject the casing and chamber a subsequent round.

ACTION, SEMI-AUTOMATIC

A firearm in which each pull of the trigger results in a complete firing cycle, from discharge through reloading of the chamber. It is necessary that the trigger be released and pulled for each cycle. These firearms are also called “auto-loaders” or “self-loaders.” Note: An automatic-action firearm loads, discharges and reloads as long as ammunition is available and the trigger is depressed. A semi-automatic firearm only discharges one cartridge with each squeeze of the trigger.

AIR GUN²

A gun that uses compressed air or gas (carbon dioxide) to propel a projectile. Projectiles in U.S. are normally .17 to .22 caliber and are either round or cup-shaped lead “pellets.” True air guns should not be confused with the common BB gun, exemplified by the Daisy Red Ryder, that use spring force to propel projectiles instead compressed air or gas. Common usage will oftentimes refer to spring force guns as “air guns” and

² Sporting Arms and Ammunition Manufacturers Institute, *Glossary* (2008), available at: <http://www.saami.org/Glossary/display.cfm?letter=G> (last visited January 27, 2008).

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some of the high end “air guns” employ a spring force mechanism. Air guns are also called Air Rifles, Pellet Rifles, Pellet Guns. Invented in the 17th century,³ and used by Lewis & Clark’s expedition.

AMMUNITION

A loaded cartridge, consisting of a primed case, propellant and a projectile. Among the many types of ammunition are centerfire, rimfire and shotshells. Until the development of metallic cartridges, this often referred to lead balls or shot and gunpowder, whether formed into a paper cartridge or not.

BALL

In the 17th through early 19th century, this term is often used to describe the spherical bullets used in muskets, rifles, and handguns.

BARREL

That part of a firearm through which a projectile travels. The barrel may be rifled (i.e., with spiral grooves on the interior) or smooth bore (i.e., a smooth interior barrel with no grooves, usually a shotgun).

BORE

The interior of the barrel forward of the chamber.

BULLET

A spherical (before about 1850) or cylindrical projectile for use in a firearm or air gun. Rifles and handguns use bullets. Shotguns instead use round pellets called shot

³ M. OZANAM, M. MONTUCLA, CHARLES HUTTON, RECREATIONS IN MATHEMATICS AND NATURAL PHILOSOPHY, 137 (London: G. Kearsley, 1803).

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(or, occasionally, a single projectile called a “slug”).

CALIBER

A term used to designate the specific cartridges for which a firearm is chambered. It is the approximate diameter of the circle formed by the tops of the lands of a rifled barrel. It is the numerical term included in the cartridge name to indicate a rough approximation of the bullet diameter. (Because the bullet is slightly narrower than the barrel, the bullet and barrel do not have exactly the same diameter). It is expressed in either fractions of an inch (.30 cal.) or millimeters (7mm).

CARRY⁴

To carry a firearm on or about one’s person in a loaded condition ready for defensive use. Typically, carry in public places requires additional licensing and training.

CARTRIDGE

A single round of ammunition consisting of the case,

⁴ See, e.g., Tex. Government Code Ann. §411 (2007); Fla. Stat. §790.06 (2007). Forty eight states have laws for the issuance of licenses allowing concealed carry of handguns on one’s person according to different regulatory criteria, and also specify circumstances in which a license is not needed. Wisconsin and Illinois have no licensing provisions, but allow unlicensed open or concealed carry in specified statutory circumstances, or pursuant to the state constitutional right to arms. Vermont and Alaska require no permits for carrying either openly or concealed. See, 720 Ill. Comp. Stat. Ann. § 5/24-1&2; *State v. Hamdan*, 264 Wis.2d 433, 665 N.W.2d 785 (2003). See also, David B. Kopel, *The Licensing of Concealed Handguns for Lawful Protection: Support from Five State Supreme Courts*, 68 Albany Law Review 305 (2005).

primer, powder and one or more projectiles. Before the development of metallic cartridges in the 1850s, these components were wrapped in a paper case, simplifying reloading.

CARTRIDGE, CENTERFIRE

Any cartridge intended for use in rifles, pistols, and revolvers that has its primer central to the axis at the head of the case.

CARTRIDGE, RIMFIRE

A cartridge containing the priming mixture in the rim of the base.

CHAMBER

In a rifle, pistol or shotgun, it is the part of the barrel that accepts the ammunition. In a revolver, it refers to the holes in the cylinder where the cartridges are loaded.

CYLINDER

The round, rotatable part of a revolver that contains the cartridge chambers.

FIREARM

An assembly of a barrel and action from which a projectile is propelled as a result of combustion. In standard American usage, a “firearm” is approximately equivalent to a “gun.” (Except that air guns are not firearms, nor are specialized tools such as nail guns.) However, the National Firearms Act of 1934 (a tax and registration law) has a unique definition of “firearm” that encompasses machine guns, short-barreled shotguns, and short-barreled rifles, but not ordinary

handguns, rifles, and shotguns. In the United Kingdom, “firearm” laws have applied to rifles and handguns, but not to shotguns (which are regulated separately). However, the term had a more restricted meaning during the Revolutionary and early Republic period. As early as 1775, and as late as 1806, the term “firearm” included muskets, but not pistols, or blunderbusses. On April 27, 1775, “the people delivered to the selectman 1778 fire-arms, 634 pistols, 973 bayonets, and 38 blunderbusses . . .”⁵ An 1806 Congressional committee report used the phrase “fire arms and rifles,” suggesting that “fire arm” may have been used the sense of “military musket,” rather than the broader definition in use today.⁶

GAUGE

A term used to identify most shotgun bores, with the exception of the .410 shotgun. It relates to the number of bore diameter lead balls weighing one pound. Common gauges are 12 gauge, 16 gauge, 20 gauge, and 28 gauge. The lower the number, the greater the diameter of the shotgun shell.

GUN

This term today is commonly used to refer to all firearms. In the 18th and early 19th centuries, it referred only to cannon and long guns. A number of statutes specify both “gun” and “pistol” on a list of arms. Colonial statutes requiring churchgoers to be armed in

⁵ RICHARD FROTHINGHAM, HISTORY OF THE SIEGE OF BOSTON, AND OF THE BATTLES OF LEXINGTON, CONCORD, AND BUNKER HILL 94-95 (Little, Brown, and Co., 6th ed. 1903) (emphasis added).

⁶ 1 *American State Papers: Military Affairs* 198, available at <http://memory.loc.gov/ll/lsp/016/0200/02040198.tif> (emphasis added).

South Carolina (1743)⁷ and Georgia (1770)⁸ both distinguish between “a gun” and a pair of pistols. Perkin & Coutty of Philadelphia advertised in 1781 that they made firearms “in all its branches, where Gentlemen may be supplied with Guns and Pistols of the neatest and best quality, on the shortest notice”⁹ As late as 1828 this distinction appeared in a proclamation from Washington, D.C. Mayor Joseph Gales,

“WHEREAS it has been too much the habit of idle and inconsiderate persons, on Christmas and New Year's Day and Eve to indulge in firing off guns, pistols, squibs, and crackers, and burning of gun-powder in divers other ways, to the great annoyance of the peaceable inhabitants of this city, and to the manifest danger of their persons and property”¹⁰

⁷ 7 DAVID J. MCCORD, STATUTES AT LARGE OF SOUTH CAROLINA 417-19 (A. S. Johnson 1840), *available at* <http://www.claytoncramer.com/primary/militia/SCStatAtLarge7-417.jpg>, <http://www.claytoncramer.com/primary/militia/SCStatAtLarge7-418.jpg>, and <http://www.claytoncramer.com/primary/militia/SCStatAtLarge7-419.jpg>.

⁸ 19 ALLEN D. CANDLER, THE COLONIAL RECORDS OF THE STATE OF GEORGIA 137-40, pt. 2 (Chas. P. Byrd 1911), *available at* <http://www.claytoncramer.com/primary/militia/GA1770BringGunsToChurch.pdf>.

⁹ PENNSYLVANIA GAZETTE, May 2, 1781 (emphasis added).

¹⁰ Jo. Gales, Jr., A Proclamation (1828) *reprinted in* AN AMERICAN TIME CAPSULE: THREE CENTURIES OF BROADSIDES AND OTHER PRINTED EPHEMERA (Library of Congress, Rare Book and Special Collections Division 1999), *available at* <http://hdl.loc.gov/loc.rbc/rbpe.19301000> (emphasis added).

HANDGUN¹¹

A short barreled firearm designed to be held and fired with one hand.

LOAD

The combination of components used to assemble a cartridge or shotshell. The term also refers to the act of putting ammunition into a firearm.

MAGAZINE

A receptacle on a firearm that holds cartridges or shells for feeding into the chamber. Magazines take many forms, such as box, drum, rotary or tubular, and may be fixed or removable. The magazines most commonly used for pistols have the shape of a rectangle or parallelogram.

MUZZLE

The front end of a firearm barrel from which the bullet or shot emerges. Breech-loading firearms (in which the user does not have to use a ramrod to push the bullet down the barrel, into the action) entered widespread commercial production in the early 19th century, and the vast majority of firearms produced today are breech loaders. Breech loaders are much less accident-prone than muzzle-loaders.

MUZZLE LOADER

Any firearm loaded through the muzzle. Also called

¹¹ Sporting Arms and Ammunition Manufacturers Institute, Glossary (2008), *available at*: <http://www.saami.org/Glossary/display.cfm?letter=G> (last visited January 27, 2008).

“black powder” firearms. They may be antique, replica or of modern (in-line) design.

PISTOL

Often used as a synonym for “handgun”, both today, and in early America. In more precise modern usage, “pistol” is a term for a hand-held firearm with a single chamber. A revolver has at least five chambers, so a revolver would be distinct from a pistol. Thus the name of the Winnipeg Revolver & Pistol Association. Single-shot pistols can hold only a single round. More common are semi-automatic pistols (a/k/a self-loading pistols), which hold several rounds in a magazine.

POWDER

Commonly used term for the propellant in a cartridge or shotshell.

RECEIVER

The basic unit of a firearm which houses the firing mechanism and to which the barrel and stock are assembled. In revolvers, pistols and break-open firearms, it is called the frame. This is the part serial numbered by the manufacturer in accordance with federal law.

REVOLVER

A firearm with a cylinder having multiple chambers so arranged as to rotate around an axis and be discharged successively by the same firing mechanism. (A semi-automatic pistol is not a revolver because it does not have a revolving cylinder.)

RIFLE

A long-barreled firearm having spiral grooves in the bore, which provide aerodynamic stability for the bullet. Handguns usually have rifled barrels as well, but because they have short barrels, and can be used with a single hand, they are not rifles.

RIFLING

Spiral grooves formed in the bore of a firearm barrel to impart rotary motion to a projectile, to enhance accuracy.

ROUND

One complete cartridge.

SAFETY

A device on a firearm designed to provide protection against accidental or unintentional discharge when the safety is properly engaged. Unlike trigger locks, a safety is integral to the firearm, and not an accessory.

SEMI-AUTOMATIC

A firearm that fires, extracts, ejects and reloads once for each pull and release of the trigger. “Self-loading” is an equivalent term, which is sometimes used in the United States, and frequently used in Commonwealth nations.

SHOTGUN

A smooth-bore shoulder firearm designed to fire shells containing numerous pellets or a single slug.

SHOTSHELL

A round of ammunition containing multiple pellets for

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use in a shotgun.

STOCK

The wood, fiberglass, wood laminate or plastic component to which the barrel and receiver of a rifle or shotgun are attached.

TRANSPORT¹²

Moving a firearm from one location to another in the manner prescribed by law for transport of firearms by those without additional licensing or training.

TRIGGER LOCK

An accessory for blocking a firearm's trigger from unauthorized use.

TRIGGER PULL

The average force which must be applied to the trigger to cause the firearm to fire. Some competitive target shooters use special guns with a very light trigger pull, of about one pound. Much more commonly, firearms have a minimum trigger pull of three pounds. Double action revolvers may have a long, heavy trigger pull of around 10 pounds.

UNLOAD

To remove all unfired ammunition from a firearm.

VELOCITY

The speed of a projectile at any point along its trajectory, usually designated in feet per second.

¹² See 18 U.S.C. §926A

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Velocity depends greatly on barrel length, so handguns have much slower velocity than rifles.