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### From My Cold Dead Hands

Who can forget the iconic image of Charlton Heston in such films as *Ben Hur*, *El Cid* and *The Ten Commandments*? Later in life he was remembered for his more controversial role as president of the National Rifle Association. At the NRA annual convention in 2000, Heston's response to calls for further firearm control laws was that his firearms would only be taken 'from my cold dead hands' (Berkvist, 2008). This quotation became the rallying cry for firearms enthusiasts against any form of firearm confiscation. The shooting incidents in 2011 and 2007 in Tucson and Virginia Technical College have brought the issue of firearm control back to the forefront of US politics. The National Rifle Association and Brady Campaign to Prevent Gun Violence are on opposing sides of the spectrum with little hope for a compromise on common sense firearm control policy. Currently the main topic of debate between the two is the need for a national registry of firearms. A national registry of firearms will not prevent gun violence. Such a registry would be costly to implement and maintain, would be ineffective in preventing crime, and would be open to abuse by government.

Several countries have created a national firearms registry as part of a broader firearm control program. The Canadian government implemented a firearm registry in 1993 under Bill C-68 (Royal Canadian Mounted Police, 2010). This required the registration of all long-guns and implemented a new licensing system to help support the cost of the program. This registry has created a relational database of over two million individuals who own firearms. This database

includes name, address, references and spouses, along with details of actual firearms (Royal Canadian Mounted Police, 2010).

While the program has improved public safety and awareness of firearms, the cost to implement and maintain it has escalated. In 1995 the Department of Justice estimated that the program would cost \$119 million to implement but would recoup \$117 million in fees. In 2002 it had spent \$688 million and had collected \$59 million. By 2006 the costs for the program had exceeded \$2 billion (Public Safety Canada, 2008). The effectiveness of the program has been called into question. Since the introduction of the firearm registry in 2003 only 2% of the long gun crimes were committed with firearms that were in the registry. Gang-related firearm smuggling accounted for 97% of firearms confiscated in Vancouver in 2003 (Public Safety Canada, 2008). The complete program has been called into question. A bill introduced in the House of Commons in May 2009 to repeal the long-gun registry (Hoepfner, 2010) was defeated.

It is important to note that Canada has had a firearm registry for handguns since 1934 (Royal Canadian Mounted Police, 2010) which recorded the individual name, address and firearm details. Professor Gary Mauser, Simon Fraser University, questions the effectiveness of the handgun registration in Canada (Milke, 14 July 1977). In his analysis he says the homicide rate should have decreased based on the registration program but it has not because criminals do not register firearms because to do so would lead to prosecution. There is little or no evidence to show that legislation has any effect on reducing the number of firearms held illegally.

Various attempts to increase the rate of compliance have had limited success. It is noteworthy that the Minister for Public Safety extended an amnesty (Canada Public Safety, 2011) till May 16, 2013 to allow for further compliance. Currently the compliance rate is estimated to be around

76% (Government of Canada, 2011) and the government estimates there are 225,000 people with firearms who did not renew their licenses. Of course the estimates of the number of firearms in Canada is open to debate, Garry Breitkreuz MP did some research, and he estimates that there are closer to nine million firearms in Canada and over three million firearms owners (Breitkreuz, 2001). Additional research by Professor Buckner, Concordia University Montreal, came to a similar conclusion regarding compliance with the bill (Buckner, 1995). He believes the number of firearms in Canada was underestimated by 25% and the actual compliance rate will be closer to 71%, although this varies widely by Canadian territory. His report highlights the fact that criminals will not register their firearms. A detailed analysis was conducted by Professor Centerwall into the homicide rates of the Canadian provinces and U.S. states that adjoin one another. While handgun ownership in the U.S. states was ten times higher than in the Canadian provinces the U.S. the homicide rates between the two was very similar (Centerwall, 1991). Based on this research it is clear the current form of firearm registration in Canada has done little to reduce firearm related violence.

Canada isn't the only country in the Americas to implement a firearms registry. Brazil implemented some of the strictest firearm controls in 2003 when it introduced Law 10826, also known as the Disarmament Law (Law Library of Congress, 2005). This makes it illegal for most people outside the military to own or carry a firearm. Records of registration for all firearm and ammunition are maintained. A voluntary buyback program was successful in 2005 to reduce the number of illegal firearms in Brazil. Despite this success the Ministry of Justice reported in 2010 that almost 7.5 million firearms in Brazil are illegal and that over 34,000 people are killed by firearms each year in the country. It is important to note that 80% of the firearms seized by

authorities were manufactured in Brazil (Ministry of Justice, 2010). Firearm registration has had little effect on the number of illegal firearms in Brazil.

The recent transition from dictatorship to democracy has been a challenge for Brazil. There are continuing issues with gang violence fuelled by drug wars, a corrupt police force and a judicial system that is not trusted by the general populous (Richardson, 2005). The Human Rights Watch found credible evidence of extrajudicial executions by the police force in both Sao Paulo and Rio de Janeiro (Human Rights Watch, 2009). The illegal activity from criminal enterprise will not be solved by the Disarmament Law alone as there are serious social and economic issues which result in young males joining drug gangs to break out of the circle of poverty. They are unlikely to be deterred from their efforts to improve their economic circumstances through fear of legislation.

On the other side of the world, Australia implemented a full firearm registration program in 1996. This required all states and territories to implement a uniform firearm register (Parliament of Australia, 2007). Several types of firearms were prohibited as part of this program, along with stricter controls on sales of firearms and license classification to determine suitability to own firearms. The federal government provided funds for a buyback program for those firearms that were banned by the program. This program was successful in collecting over 600,000 firearms. An additional buyback program was implemented in 2003 which resulted in 70,000 handguns turned in. Despite the success of both of these programs, it is estimated that there are 20,000 illegal handguns in Australia. One reported finding regarding homicide in Australia was that over 80% of all firearms used in homicides were not registered and the offenders were not licensed to own firearms (Parliament of Australia, 2007). Regardless of the buyback programs

the registration program has done little to reduce the number of illegal firearms in the country or curtail those that are smuggled in each year.

Australia's neighbor, New Zealand, had a firearm registry that was in place from 1920 to 1983. The Arms Act of 1983 (New Zealand Parliament, 2010) changed the focus from firearm registration to licensed firearm owners, using training procedures and education to identify persons unsuitable to own firearms. Registration continues for automatic, semi-automatic military-style firearms and handguns. Prior to 1983, the firearm register existed in paper format in 16 different regions and was difficult to use in a reliable and efficient manner. It was decided to exclude this registry from the new bill because of the cost, time and effort it would take to update it to a useable format. A review of Firearm Controls in New Zealand in 1997 (Thorp, 1997) had some interesting comments. Thorp highlighted the issue of the previous registry requiring additional man power to maintain, stated that firearms used for criminal purposes are generally stolen, with between 10,000 and 25,000 illegal firearms in the country. In spite of the inherent problems with the previous program, Thorp called, unsuccessfully, for the registration of all firearms.

Firearm registration currently exists in the United States for certain type of firearms. The National Firearms Act of 1934 (United States Congress, 2009) implemented a firearm register for automatic machine guns, silencers and short barreled rifles. The act was classified as an enhancement to the excise tax laws but its main purpose was to control the transfer of NFA type firearms. Currently the tax stamp associated with NFA type firearms is \$200, which today is a substantial source of revenue. The act called for the possessor of the firearm to register it with the BATF. The *Haynes V United States* case in 1967 in 1968 identified a serious flaw in the 1934 act (*Haynes V United States*, 1968). Persons could not be prosecuted for failing to register

an illegal firearm as the 5<sup>th</sup> Amendment protected them from self-incrimination. This made the NFA law unenforceable for its intended purpose, and displayed yet another example of the futility of attempting gun control through legislation.

The Gun Control Act of 1968 (U.S. Department of Justice, 2005) addresses the loophole of the 5<sup>th</sup> Amendment by requiring that NFA firearms could only be transferred to an individual who had completed a back ground check and was eligible to hold the firearm. It made no provision for registering a firearm that was currently in one's possession and had not previously been registered. While the law was successful in ensuring that criminals could not acquire NFA firearms legally it made no impact on the numbers of illegal NFA firearms in the U.S.

The biggest fear for firearm owners is that any form of firearm registration would be used to confiscate firearms. American firearm owners look to events in history, the Stalinist purges in Eastern Europe, civilian deaths in Armenia by the Ottoman army, and the mass killings of Tutsis in Rwanda to validate their lack of trust in the government to protect them. One event in history stands out over all others when it comes to firearm confiscation: the disarmament of the Jewish people in Germany by the Nazi government.

Firearm laws put in place by the German Weimar Republic in 1928 (Halbrook, 2000) required the holding of a license to own or carry a firearm. This license was issued at the discretion of the police force. These laws were enacted to curtail the communist and right wing political groups that were prevalent in Germany at a time of widespread resentment over the Treaty of Versailles (The Versailles Treaty June 28, 1919 , 2008), and in particular the economic hardship due to compensation claims forced on the German people. These same laws were later used by Hitler to identify and disarm the Jewish people in Germany. Once the Jewish people were disarmed,

Hitler began his program of extermination. “The Nazis sought to disarm and kill Jews” (Harcourt, 2004). While Harcourt and Halbrook have different opinions of the firearm control policies of the Nazi regime, both agree that the registration program in place aided Hitler in his quest to disarm and exterminate the Jewish people in Germany.

Even in democratic countries, government attempts to control firearms have been problematic. In Ireland firearms are regulated under the Firearms Act 1964. A section of this act allows for the temporary custody of firearms by the police force in the interests of public safety. In response to the escalating crisis in the North of Ireland, the Irish Minister for Justice signed the Firearms Order 1972 (Office of the Attorney General, 1972). This required all ammunition, handguns and rifles over a certain caliber to be surrendered to the police force for a period of one month. This temporary order stayed in place for over thirty two years (Brophy, 2004). During that time Irish shooters could not compete in the shooting events like the Olympic Games while at the same time terrorist organizations on the island managed to amass considerable arsenals (Creegen, 2005). A report by Colin Greenwood to the UK Parliament concluded that there was no evidence to show that stricter firearm controls or the removal of legally owned firearms have controlled criminal access to firearms (Greenwood, 2002).

Similarly in the US, authorities have attempted to use legislation during crises to enact control firearms. Sometimes these attempts have exceeded the powers of the legislation. In the aftermath of hurricane Katrina in New Orleans, Mayor Nagin issued an order to confiscate firearms within the city. As Police Superintendent P. Eddie Compass put it “No one will be able to be armed. We will take all weapons. Only law enforcement will be allowed to have guns.” (Quote from Police Superintendent P. Eddie Compass, 2005). A lawsuit filed by the National Rifle Association and Second Amendment Foundation against the Mayor’s office was settled in 2008 which resulted in

an injunction against the confiscation program and set forth plans to return those legally owned confiscated firearms (Consent order granting permanent injunction and dismissal or remaining claims against defendants. C. Ray Nagin and Warren Riley, 2008). The actions of the New Orleans police department resulted in Congress passing H.R.5441 (109th Congress, 2006). This bill prohibits the confiscation or registration of legally owned firearms in a state of emergency.

Concerns about the credibility of government are not limited to the state level but also to the various departments of the federal government. The Bureau of Alcohol, Tobacco, Firearms and Explosives does not have a great reputation for data security. An audit of the BATF by the Justice Department in 2008 (Office of the Inspector General, 2008) showed that the agency could not account for 76 weapons and 418 laptops. Furthermore the procedures for tracking and reporting lost and stolen items were not enforced or acted upon. The BATF currently maintains a registry of everyone who owns a suppressor, machinegun or short barreled rifle. This registry information would be invaluable to street gangs or anyone associated with criminal enterprise. Street gangs operate in almost every community in the USA, account for 80% of crime in our communities (Federal Bureau of Investigation, 2011), and pose a real threat to domestic security in this country.

Data released by the BATF concerning the issue of American-made firearms fueling the drug wars in Mexico provides another rallying call for firearm registration in the U.S. Claims that 90% of all illegal firearms seized in Mexico have appeared in several news papers and web sites (Levi, 2009). Some of these figures were used by members of Congress in calls for tighter firearm control. The Department of Homeland Security questioned the validity of these figures in a letter to the U.S. Government Accountability Office in June 2009 (U.S. Government Accountabilty Office, 2009). The DHS maintains that the figures reported are misleading as

over 30,000 firearms were seized in Mexico, only 4000 of those could be traced and the figure reported to the media is the percentage of the 4000 that originated in the U.S. The BATF has testified in court cases concerning NFA issues while claiming the information they present is completely accurate. An internal presentation by Thomas Busey, the chief of the NFA branch, instructed all agents to testify that the BATF data is 100% accurate while admitting that the error rate was almost 50% (Bovard, 2000). It is hard to trust the BATF when perjury is the normal business practice. Their use of statistics to advance the case of additional firearm legislation is questionable at best, and at worst is misleading. They have not established that increasing legislative controls has any impact on the prevalence of illegally held firearms.

The current firearm registry programs in Australia, Canada and Ireland are a source of revenue and the effectiveness of these programs will not be questioned as long as that revenue stream exists. There is no evidence to show that these programs help to reduce firearm violence. It is more likely that the registration fee payable, under these programs, is a disincentive for people to register their firearms. No evidence was found that buyback programs, like the one implemented in the United Kingdom in 1998, helped reduce the violence associated with firearms (Ludwig, 2003). It is highly unlikely that someone who cannot possess a firearm legally, yet has one, will step forward and register it knowing that doing so will lead to prosecution. Fear of firearm confiscation will result in more firearms not being registered and thus will increase the pool of illegal firearms. Firearm owners do not trust the BATF because the political opinions of management seem to have a greater influence over day-to-day practice than statute and the constitution. The national firearm registry program in Brazil has disarmed law abiding citizens and has had no effect on the number of illegal firearms. Introducing an ineffective firearm

registry program, such as this, will be seen as political posturing. After all, criminals by their nature do not follow the law and do not register firearms.

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