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# POLICE SCIENCE



CALVIN GODDARD [Ed.]

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## PISTOL REGULATION: ITS PRINCIPLES AND HISTORY PART III.

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By Karl T. Frederick

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### "Let's Have a New Law"

Let us continue our study of the argument made by the anti-pistol reformer. He says that criminals ought not to be allowed to obtain or possess pistols and that honest people have no good reason for having them. His conclusion is: "Let us pass a new law which will make it impossible for the criminal to get a pistol. This will deprive him of his most important tool and will prevent such crimes of violence as are now perpetrated with the use of pistols."

The childlike confidence which many people possess in the efficacy of a new law would be amusing if it were not so serious in its harmful effects. One is reminded of the story of the negro who was elected in reconstruction days to a Southern legislature. Someone asked him what the legislature was going to do that winter. His reply was to the effect that it was going to be a very busy session—"we have got to pass a lot of new laws because the old ones are all broke." If all statutes operated with complete effectiveness in the manner in which their framers intended the problems of society would perhaps be greatly simplified. At least those problems would be very different from what they are now; but we cannot overlook the facts

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of human experience. Very few laws are wholly effective. If criminal laws were completely effective, there would be no occasion for jails and there would be no criminals, because everyone would obey the law. The simple and fundamental law against murder has never made murder obsolete. It has continued in every generation and in every part of the world since the time of Adam. The same is true of practically all other criminal statutes. It is certainly true of the old and well-established and well-understood laws against assault, rape, or robbery. Law does not prevent the act which is characterized as unlawful. It provides a penalty for those who commit the act, and, as we saw in an earlier part of this study, the imposition of this penalty is extremely uncertain.

In connection with organized crime, we saw that crimes of violence as a class were unpunished 85 times out of every 100. These are the facts from which there is no escape. It does not help us to say that we wish the facts were otherwise or that the situation generally is susceptible of improvement. That is quite a different problem from that which we are considering. We admit that we wish they were otherwise, but unless the pistol reformer is prepared to extend his program to the point of making all criminal laws completely effective, then in asking us to rely upon a new law, he asks us merely to lean upon a broken reed. So long as crimes of violence are known, so long as human passion and greed exist, so long will there be need of defense, and so long as the need for defense exists honest people will need pistols. This statement taken literally is perhaps exaggerated because it is possible that more effective means of defense can be devised; nevertheless, until that is done, the pistol will continue to be what it now is—one of the most effective weapons of defense which is known to man.

As to the statement that criminals ought not to have pistols, we can freely and heartily agree, as an academic proposition. but the problem of turning what "ought to be" into an accomplished fact is frequently a problem which seems to be insoluble. Men ought not, perhaps, to die of cancer, but the problem of eliminating cancer from the list of human ills has so far proved insuperable. Men, women, and little babies ought not to be murdered, but the electric chair has not stopped the rising tide of homicides. Criminals ought not to use knives or poison—indeed, they ought not to be criminals at all. The problem of accomplishing the desirable end is a very difficult one. It has never been solved. Therefore, the conclusion which is handed us in such convenient tablet form, "Let's pass a new law," might be

dismissed as idle chatter were it not that the notion that the remedy for every social ill is to be found in "a new law" is so widespread and so firmly established in the mind of the average "reformer."

We have already said that almost no law is completely effective. That fact in itself is, therefore, not a sufficient reason for refusing to pass a pistol law. The question of the desirability of a law depends in part upon its probable degree of effectiveness. That in turn depends largely upon the extent to which it will receive the voluntary and general acquiescence and obedience of the public. No law can be enforced which is not voluntarily obeyed by the overwhelming mass of the people. Compulsion is only practical when the need for its application is limited to a comparatively small remnant of society. Laws which are incapable of enforcement with any considerable degree of success are undesirable because they are not only failures in themselves but because their failure tends to bring disrespect upon and to break down law and organized society in general. Merely to forbid a criminal to possess or use a gun will not work. If a man will not hesitate at murder or robbery because of the serious penalties which he may incur, he will generally not refrain from using pistols in the accomplishment of those serious or deadly crimes. The problem of separating the criminal from his gun is, as a practical matter, almost impossible of solution. The "reformer" recognizes this fact. He knows that he cannot prevent crooks from having or using as many guns as they desire, but he proposes nevertheless to solve the problem, in general, by forbidding everybody to have a pistol. He admits that he does not know how to disarm the crook, and he, consequently, proposes to disarm the honest man. He is either ignorant of or closes his eyes to the facts which we have recounted at considerable length regarding the desirable uses of the pistol. He ignores the fact that something like 98 per cent of the users of pistols are entirely honest and law-abiding people who are using them in entirely legitimate and desirable ways. He finds two crooks in an assembly of one hundred people, and he, therefore, turns the fire of his guns upon the entire group of one hundred, ninety-eight of whom are innocent, honest, and law-abiding citizens, and he attempts to justify this procedure because of the presence of the two dishonest men whom he knows he cannot reach even by this wholesale method. Because the building harbors rats which he is unable to reach, he proposes to cure the situation by burning down the structure in spite of the fact that the rats will probably escape anyway.

Laws are obeyed in general by law-abiding citizens. Pistol laws are no exception to this rule. Laws forbidding the manufacture, purchase, possession, or use of pistols would undoubtedly be obeyed by many people, but they would be obeyed by honest people and not by crooks. They would be effective in that class or part of the population where there is no need for them and where obedience to them would be distinctly harmful because it would stop the 98 per cent use of pistols which is legitimate, proper, and desirable. The law would fail in respect to that single class which alone furnished the excuse for its adoption.

#### "BOOTLEG" GUNS AND AMMUNITION

It is not our intention at the present moment to go into the details of the various concrete proposals with respect to pistols which have been made. These will be considered later. At this point we wish merely to consider some of the general aspects of the case.

Pistols have been manufactured for many years. Millions of them exist not only in the United States but in all other parts of the world. They are not, like liquor or drugs, consumed in a single using. They are effective for thousands of occasions, and, with reasonable care, they continue to be usable for many years. To stop the manufacture of pistols, therefore, would not solve the problem because there are plenty of pistols in existence to last the criminal fraternity for hundreds of years to come.

In the second place, such prohibitory laws as might be adopted in the United States could not solve the problem because a continuous supply of foreign pistols would be available to the very class of users which ought not to have them—namely, the crooks. Pistols are easily concealed, and consequently can readily be smuggled. A continuous supply, quite adequate for the needs of the criminal class, would filter across our borders and be put to use for the purpose of plundering a disarmed and defenseless population.

In the third place, even if the impossible were accomplished—even if every pistol in the United States were destroyed and an effective fence a thousand feet high were erected at the border to keep out every gun of foreign manufacture—the problem would still be unsolved.

There is nothing of a practical nature to prevent the crook from making his own pistol out of common materials which can be readily procured by anyone. What we may call the "home-brew" pistol would be as common and as easily obtained by the crook as the

manufactured article, frequently of cheap and inferior foreign make, now is. There is no special trick or mystery in the manufacture of pistols. Any person whose mechanical ability would entitle him to be classed as a third-rate automobile mechanic can make a practical and effective pistol in a few hours, which would amply meet the general requirements of the so-called gunman. This statement will not, of course, come as a surprise to anyone who has any considerable knowledge of firearms, but it may be news to those who wish to abolish them, inasmuch as these persons are obviously, in many cases, utterly ignorant of the weapons they wish to destroy. The illustration and accompanying description here reprinted is taken from an article entitled "America is a Lawless Country," which was printed in the *RIFLEMAN* of August 15, 1925. It is obvious that this little two-barreled weapon would be quite sufficient for the purposes of any ordinary holdup artist. Two of them could be readily made by an ordinary mechanic of little experience between sunrise and sunset. More elaborate and finished pieces can, of course, be turned out with the expenditure of additional time and labor and a somewhat more adequate but readily procurable supply of materials and tools. In this connection we take the liberty of reprinting an editorial which appeared in the Bridgeport, Connecticut, *Post* of May 16, 1930:

"A man walked into the office of the editor of the *Post* the other day and presented a pistol at the editor's head. Fortunately for the editor, the pistol wasn't loaded, and the person behind it was neither a holdup man nor an indignant subscriber. He was Paul Naramore, Bridgeport manufacturer and small-arms expert, whose letters on the subject of pistol legislation have appeared frequently on this page.

"The pistol which Mr. Naramore carried was a peculiar looking affair, but examination of it showed that it was perfectly capable of firing a bullet with destructive effect. It was, in fact, a 'home-brewed' pistol which Mr. Naramore had constructed in the cellar of his home with materials available in the rubbish pile or work bench of the average house. He made it with the expenditure of not more than a few hours' time and demonstrated to the editor's satisfaction that what he had done others could do if they had a mind to.

"The editor in an unguarded moment had written that prohibitive laws governing pistols could be more readily enforced than other prohibitive laws because the manufacture of pistols was an elaborate process, which could not be duplicated in everybody's cellar. Mr.

Naramore disproved this statement, and the editor hereby retracts it. Pistols can be made at home.

"The incident taught the editor a lesson: that a man is on the safest ground when he is sticking to his principles. The *Post* editor for his part has generally maintained the principle that in seeking to remedy an abuse, the law should confine itself to that abuse and not, by the issuance of a general prohibition, forbid the exercise of rights and privileges which could not be construed as constituting an abuse.

"The editor departed from this principle when he advocated the prohibition of pistols instead of advocating a more stringent policy of punishing their misuse without interfering with their proper ownership.

"Mr. Naramore demonstrated that pistol prohibition would only disarm the honest citizens while leaving the crooks free either to obtain pistols by surreptitious methods or by manufacturing them in their own cellars. Like other prohibitions, this one would defeat its own purpose."

This frank statement is not only interesting as affording an illustration of the truth of the statement which we have made; it is, perhaps, equally interesting because of its frank and forceful statement of certain principles which are frequently ignored by those who want pistols abolished by legislative fiat.

#### A BIT OF HISTORY

We remarked that the anti-pistol crowd is generally ignorant of the subject of guns. The statements which are made by them from time to time are both amazing and amusing. For their benefit, it is perhaps worth while to review very briefly the history of pistols.

The earliest form of pistol was what is known as the matchlock, the type in which the powder was ignited by a match or burning wick. It is thought that the first matchlocks were made by the Chinese. It is certain that matchlock guns are still in use in some parts of the world, particularly in the interior of China, Mongolia, etc. Pistols came into common use in Europe toward the end of the fourteenth century and by 1550 were used by the French cavalry. Early in the sixteenth century the unsatisfactory matchlock was succeeded by the wheel lock, which was invented about 1515. In this form of weapon powder was ignited by a spark caused by a wheel which revolved against a flint. About 1630 flintlocks were introduced. In this form a spark was produced by a flint striking against steel. It remained the common form of weapon for more than two hundred years.

Indeed, the percussion system, which was invented in 1807, made slow progress against the flintlock, which was said to have been satisfactory for generations. It was not until about 1840 that the percussion system became popular through the use of the copper cap. Metallic cartridges were first known about 1850, but cap-and-ball pistols continued to be extensively used—indeed, they were used in the United States Navy as late as 1872, and are still frequently found in the backwoods. The first automatic pistol was invented in 1893. Until seventy-five years or so ago pistol factories in any modern sense were unknown. Pistols, like firearms generally, were made by individual workmen in small shops. Hundreds of such makers have been identified.

The suggestion, therefore, that the manufacture of pistols should be forbidden would have no practical effect in that direction other than by closing such factories as Colt, Smith & Wesson, and others. The continuance of such factories is regarded by the War Department as vital to American military plans of defense. To discontinue these factories, however, would not prevent any criminal from providing himself with a workable pistol for use in his trade.

Those who have advocated the abolition of pistols have in numerous instances realized that they were also faced by the problem of ammunition, and we have, consequently, been treated to a variety of collateral suggestions, such as to tax out of existence cartridges which can be used in pistols, or proposals to forbid the manufacture of cartridges for pistols. Here, again, one is astonished at the profound ignorance of those who suggest such remedies. In the first place, cartridges for pistols do not comprise a distinct variety. A great many cartridges can be and are used both in pistols and in rifles. Some of these are the .22 short, long and long rifle, the .32 short and long, the .32-20, the .38 short, long and special, the .38-40, the .44-40, and several others. In the second place, "cartridges," or what is known as "fixed ammunition," are not and never have been essential for firearms. Unless the "reformers" are prepared to change the laws of chemistry and to make it impossible for any chemical compounds to explode, they will find it impossible to abolish pistol ammunition. Pistol-users are not under the stern necessity of purchasing their cartridges ready-made. It is an easy and simple process to load one's own cartridges with either smokeless or black powder. Such powder can readily be obtained, or, if there were any difficulty obtaining it in bulk, it could readily be secured from shotgun or rifle cartridges. Indeed, if powder in the ordinary understanding of the word were

entirely unavailable, a substitute could readily be found. A 25-cent celluloid collar will provide sufficient ammunition for a season's shooting of any ordinary gang of gunmen. The shavings of scrapings from a celluloid collar furnish a very effective, if not entirely reliable, explosive with which a bullet may be started on its murderous course.

Gunpowder is one of the simplest of things to make. It can be and has been manufactured for hundreds of years in the home. It requires no more knowledge or skill than is possessed by a schoolboy. When the "reformer" talks of forbidding the manufacture of pistol cartridges, he does little beyond displaying his own ignorance.

Gunpowder has been so long known to the world that its origin is lost in the mists of antiquity. Like early pistols, it has been attributed to the Chinese. It is quite certain that the peculiar qualities of saltpeter when mixed with other substances, such as charcoal, were known to the early alchemists. Roger Bacon in 1249 wrote an account of it. In the early days gunpowder consisted of a simple mechanical mixture of approximately equal parts of saltpeter, sulphur, and charcoal, substances which are easily procurable at the present day. It was later improved by what is known as the "corning" process, which was invented about the middle of the fifteenth century. By this process the mechanical mixture was dampened, worked into grains, crushed to the requisite size, sieved for uniformity, and glazed by adding graphite in the corning mill to prevent deterioration from damp.

For hundreds of years powder was commonly made by the individual for his own use. Those who made it frequently employed an interesting device known as an "éprouvette," in which a small charge of powder was set off with a flintlock. This revolved a wheel against a spring and registered the strength of the powder. These "éprouvettes" are frequently to be found in the hands of collectors.

Smokeless powder, of course, is a more difficult chemical compound. As has been suggested, it can readily be procured from rifle or shotgun cartridges, but its use is by no means necessary to the criminal. Ordinary black powder served the world very well for hundreds of years and will easily supply the needs of any crook who experiences difficulty in providing himself with the more modern powders.

This portion of our study and discussion may for the time being be summed up substantially as follows: Laws which attempt to disarm criminals by making it impossible for them to procure pistols or ammunition are inevitably bound to fail. Instead of accomplishing

the desirable object of disarming the crook, they can accomplish little in that direction. Such laws, however, will disarm the law-abiding citizen and tend to make him helpless against the raids of the criminal. The legitimate uses of the pistol vastly outnumber its illegitimate uses in the approximate proportion of 98 to 2. Laws which seek to abolish pistols, consequently, are not only impractical, unworkable, and unenforcible, but are, in addition, harmful to society because they place the honest man at a distinct disadvantage in the face of crime. They inflict injury upon the honest part of society without interfering to any appreciable extent with the dishonest and criminal element of society. Their result is exactly the opposite of that which is intended.

#### THE CONSTITUTION

Before we take up the consideration of various particular statutory regulations or restrictions which have at one time or another been proposed or adopted, it will be well to refer to a constitutional provision which is believed by many laymen to afford general protection against laws which are intended to abolish or restrict the possession and use of pistols. The provision referred to comprises the Second Amendment to the Constitution of the United States and reads as follows:

"A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed."

The first ten amendments to the Federal Constitution constitute what is generally termed "A Bill of Rights," and were adopted shortly after the adoption of the Constitution to relieve the minds of many who feared that in creating a Federal Government a new creature was being brought into existence which might disregard principles of English liberty which had been established after long and bitter struggles. This part of the Federal Constitution, however (referring to the right of the people to keep and bear arms), does not afford protection against State laws with respect to pistols or other firearms. The reader will recall that the original States thought of themselves as separate, complete, and independent sovereignties who voluntarily joined in a Federal Union. To this Federal Union or Government they each gave up under the Constitution certain rights and powers, but anything which was not definitely surrendered to the Federal Government was reserved to the States. This was explicitly recognized and stated in the Tenth Amendment, which declares:

"The powers not delegated to the United States by the Constitution nor prohibited by it to the States are reserved to the States respectively or to the people."

Consequently, the Federal Government cannot pass laws applicable outside of Federal territory respecting ordinary matters, such as marriage and divorce, laws against robbery or murder, or laws regulating intrastate commerce. The provision regarding the bearing of arms contained in the Second Amendment applies only to the Federal Government. It has nothing to do with laws which may be passed by the respective States for the regulation or abolition of pistols.

To carry the matter still further, we find that a number of State constitutions contain provisions similar to that found in the Second Amendment. In New York State such a provision, while not contained in the Constitution, is found in a general statute known as the "Civil Rights Law." The question of the constitutionality of laws regulating pistols may frequently, therefore, be raised in the State courts. Indeed, it has been raised on a number of occasions. The decisions of the courts have generally been to the effect that the particular laws under consideration regulating the possession or use of pistols were not unconstitutional by reason of the provision referred to, but that in the particular cases presented they constituted an exercise of what is known as the "police power" of the State and were valid. The courts have been extremely reluctant to declare such statutes to be unreasonable. They have sometimes expressed grave doubts as to the wisdom of the legislation but have taken the position that the matter of wisdom was one for the legislature to determine.

An interesting decision to this effect which passed upon the constitutionality of the so-called Sullivan law is *People ex rel. Darling v. Warden of City Prison*, 154 New York App. Div., 413, decided in 1913. In that case the court by a decision of three to two upheld the Sullivan law as a valid exercise of the police power. The dissenting opinion of Justice Scott, however, was singularly prophetic and clear. He said:

"The practical result of the construction now sought to be given to the act will be that the professional criminal will generally violate the act and take his chances of discovery and punishment while the law-abiding citizen will be obliged to disarm himself of his only effective protection against the predatory classes. The best police force in the world cannot always or even usually anticipate and prevent crimes of violence. They can and usually do preserve peace and order and sometimes discover the perpetrators of crimes, but they

can seldom prevent. A law-abiding citizen in his walks abroad can usually avoid dangerous localities, and if he is compelled to traverse them can obtain a license to carry a defensive weapon, but in his own house, wherever it may be situated, he can never be entirely secure against the midnight marauder. For protection there, he is compelled to rely upon himself and upon such means of defense as he may have at hand. The construction now sought to be given to the act would deprive him of such protection."

Much as we regret the bearing and effect of the law as enunciated by the courts upon this point, we must recognize the fact that constitutional provisions which set forth the right of citizens to keep and to bear arms will not protect us against vicious and undesirable statutes affecting pistols. Protection lies in an enlightened public sentiment and in intelligent legislative action. It is not to be found in the Constitution.

#### THE PRESENT TREND

Signs are not entirely lacking that public sentiment is becoming more enlightened, and this fact is certain to have its effect upon legislative action. We all know that novel nostrums are frequently foisted upon an unsuspecting or unformed public. Time and experience, however, usually bring enlightenment, although education is a tedious and often bitter experience. Much harm can be done while the lesson is being learned. So many times have "reformers" proved to be false guides that the very name of "reformer" has fallen into disrepute. "Reformers" are frequently fanatics who are constitutionally incapable of sound judgment, unable to see any but their own points of view, and intolerant of the opinions and rights of others. Unwilling to expend the time and effort necessary to convince by an appeal to reason, or unable to sustain their theses in a fair and open forum, they resort to the short cut of "a new law" and strive to silence by abuse those whose logic cannot be answered. Such, unfortunately, has been the course of many pistol "reformers," and our statute books bear all too many traces of their misguided efforts, while crime and criminals—their ostensible and professed enemies—flourish and grow fat. This result, which they profess to abhor, is due in part at least to the activities of these self-appointed saviors of society.

Signs, as we said, are not entirely lacking, however, of the reassertion of public intelligence. Public opinion appears at times to be awakening to the folly of disarming the law-abiding in the hope