

Guns and Prohibition, in Al Capone's Day and Now

by **Stephen P. Halbrook**

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On his first day as drug czar, William Bennett decided to declare war on America's 70 million gun owners. The war will not be one on "assault weapons," however, but one on law-abiding citizens who, under a bill introduced by Sen. Howard Metzenbaum (D., Ohio), could get 50 years for possession, transportation and failure to register many semi-automatic rifles with magazines.

This is not the first time American legislators have prohibited popular substances and then blamed gun owners for the resulting violence. They reacted with chilling similarity to the gang fighting generated by the Volstead Act's prohibition of alcohol during the 1920s. The philosophy behind both the New Prohibition of drugs and the Old Prohibition of alcohol is that if the "noble experiment" fails, infringe on the Second and Fourth Amendments.

In 1924, Congress held hearings on "Firearms and Intoxicants in the District of Columbia" in response to an incident in which Sen. Frank Greene of Vermont had been wounded by a stray shot when police opened fire on bootleggers. Contrary to the hopes of the crusaders, the police rather than the bootleggers turned out to have fired the stray bullet. Nevertheless, a permit requirement for carrying handguns was imposed in Washington.

Similarly, a petition to the Illinois state constitutional convention of 1922 called for the "suppression of the manufacture, transportation and sale of" concealable weapons "so far as private individuals are concerned." The petition also proposed amending the state constitution to allow denial of bail to people accused of any crime, even misdemeanors. (Neither proposal became law.)

Other proposals made in the 1920s to ban firearms were linked with demands for the infringement of other civil liberties. A committee of the American Bar Association concluded that "the revolver serves no useful purpose in the community today. We recommend that the manufacture and sale of pistols . . . shall be absolutely prohibited." The committee also recommended weakening the rights against self-incrimination, to appeal convictions, and to trial by jury.

In 1926, a book entitled "Outlawing the Pistol" was added to the Debater's Handbook Series. The canned brief for the pro side noted that pistol ownership, like "the traffic in narcotic drugs, . . . is a great national shame and abuse, {and} only complete prohibition is an efficient remedy."

"Within the last decade two new schools of crime have developed in the United States," observed one contributor. "Violations of the National Prohibition Act . . . comprise the first group. Gun crimes comprise the second." Another contributor argued that a federal prohibition on firearms traffic was necessary, just as earlier "it was realized that if the saloon was ever to be outlawed it must be by national, rather than local or community, action."

Prohibition violence eventually persuaded Congress to suppress pistol traffic. Rep. Loring Black of New York argued for a constitutional amendment against concealed weapons modeled on the Prohibition Amendment, and Rep. Heartsill Ragon of Arkansas likened opponents' arguments to "the old anti-prohibition cry." These efforts resulted in a 1927 ban on mail-order handguns, the first federal legislation regulating firearms.

As Congress debated the postal ban, the Chicago gangs that had arisen after passage of the Volstead Act discovered the machine gun. Al Capone's first use of the Tommy gun in 1926 left a likely trio dead: a bootlegger, a politician, and William McSwiggin, assistant state's attorney. Congress again jumped into the fray. Rep. Hamilton Fish of New York, proposing in 1930 a machine-gun ban "copied word for word from the prohibition law," conceded that you have "to stretch the constitutional provisions to a considerable degree."

The repeal of Prohibition in 1933 ended most of the gang violence. But without waiting to evaluate the effects of the repeal of the alcohol ban, Congress passed the National Firearms Act of 1934.

As introduced, the National Firearms Act requirement would have strictly regulated not only machine guns and sawed-off shotguns, but also pistols and revolvers. Attorney General Homer Cummings conceded that the Second Amendment precluded an outright ban on possession and instead sought registration of these firearms under the guise of a tax measure, in a ploy similar to the Harrison Anti-Narcotic Act, which mandated doctors' prescriptions and justified that by saying it was the only way the government could keep track of narcotics sales for tax purposes.

Pistols and revolvers were ultimately removed from the bill. This deletion avoided perhaps as much civil disobedience as alcohol prohibition had caused.

Just weeks after the bill passed, federal agents searching for an unregistered machine gun shot and killed an innocent mother of four children. The National Rifle Association magazine commented: "This is probably just an unfortunate accident similar to many unfortunate accidents of the same type which occurred during the efforts of federal agents to enforce the Prohibition Law. Fortunately, there are relatively few machine guns in use around the country, so that relatively few innocent citizens may be expected to be killed by federal agents looking for machine guns. Had . . . pistols and revolvers been included in this new Federal Firearms Law, {this} incident perhaps gives a hint as to what might have happened."

These words are prophetic for what will happen if severe restrictions on semi-automatic rifles and pistols pass Congress or the states today. Millions of citizens will not forfeit or register their firearms, squads of federal and state agents will snoop, massive no-knock warrants will be issued, and both citizens and police will die in raids. While previously law-abiding citizens and the police battle each other, the drug lords will continue their nefarious trafficking. Adding firearms prohibition to drug prohibition means war on the innocent and, by diverting police resources, will give armed pushers even more free rein.