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## Home Defence: The Tony Martin Bill - II

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### The House of Commons Debate

Mr Roger Gale's Bill, titled the Criminal Justice (Justifiable Conduct) Bill, was debated in the House of Commons on Friday 30 April 2004. This was a second reading debate. The Bill is a private Member's Bill, that is one promoted by back-benchers not holding Government office. On certain Fridays, of which this was one, Standing Order 14 provides for private Members' Bills to have precedence over Government business.

Mr Gale's Bill was subject to a timetable. If a vote on whether to give it a second reading was not taken within the time allotted, it would be treated as "talked out". Effectively, that would be the end of it.

### Mr Gale's Speech

Moving that the Bill be now read a Second time, Mr Gale started by dealing with its pedigree. He quoted from *The Times* of 2 January 2004:

"It began as a quirky idea to pad out the Today programme over the quiet Christmas holiday period: ask listeners to nominate a change in the law and then vote for it. Stephen Pound, a pliant Labour MP with an appetite for publicity, stood by ready to introduce a Bill in the Commons. By yesterday morning, however, the Radio 4 programme had a potential disaster on its hands. The winning Bill, it announced, would allow homeowners to use any means to defend their property. Any means? Not reasonable force, as the law currently allows? Using deadly force? Shooting people? Apparently so."

The "Today" programme, Mr Gale continued, had auditioned its listeners to come forward with ideas for legislation. The "Today" editorial team of which he was a minor member some years ago would probably have listened to the suggestion of a no doubt bright, able and creative researcher, congratulated the author of the concept on a most valuable contribution to broadcasting, then put the matter quietly on the spike. The current team appeared to be rather different. The wheels were set in motion and there was an awful predictability about the outcome. Having taken the "Pop Idol" approach to politics, Radio Four trailed the fact with the words, "Our friendly MP is going to introduce your Bill." In *The Times* on 2 January, said Mr Gale, Simon Jenkins wrote:

"Where would we be without the BBC? Not content with usurping the scrutiny function of the House of Commons, it now purports to legislate. Yesterday, it presented Parliament with a Bill to allow homeowners to shoot all burglars on sight. This was justified by something called a 'listeners' poll' which a tame Labour MP . . . had agreed to present to the House of Commons, sight unseen."

Mr Gale took the matter of this process up with the editor of the "Today" programme, Kevin Marsh. Mr Marsh

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took exception to his criticism and wrote to him to say that the BBC were working on drafting a piece of legislation. Mr Gale said it was not the business of the public service broadcaster of this country to engage in the drafting of a piece of legislation.

Tens of thousands of listeners apparently voted for this subject. Mr Gale said that the reaction of the BBC's production team was predictable - sheer horror. The friendly MP regarded the subject as too reactionary, and the listeners' law hit the buffers. The BBC, went on Mr Gale, made a profound mistake. He and his colleagues presenting the Bill decided that they "would have a go at wiping a little of the egg off Auntie's face". But, said Mr Gale, this was not, as it had been described in shorthand terms by the popular press, the Tony Martin Bill, any more than it was the listeners' law.

"What my friends and I have done is to seek to construct an amendment to the criminal justice legislation that reflects the concerns of the people. Our approach is not a knee-jerk reaction to one hard case out of which we are seeking to extrapolate bad law, because hard cases do make bad law. We are seeking to address the underlying perception that the criminal justice system has moved towards the criminal as the victim and away from the interests of the real victim of the crime - in this case, the householder, be that person tenant or house owner."

Mr Gale said he defied any Member of the House who was in touch with their constituents to say, hand on heart, that people do not feel that these days the criminal gets a much better deal than the real victim of the crime. There was a perception that one's home is no longer one's castle. He went on:

"In fact, in some circumstances even the law is not ready to say that one's home is one's castle. I was interested to hear the honourable Member for Corby (Phil Hope) recall at the tail-end of the previous debate how he and his wife had been burgled. Their home was ransacked and violated, and those of us to whom that has happened - again, sadly, that is probably most of us - know how dirty and genuinely violated that makes one feel. The police told him that in some way he was culpable because he had not locked his house up securely enough. He felt compelled to visit the hardware shop to buy new locks and new catches for his windows; and he fitted them to make his home more secure. I am not for one moment suggesting that it is not the duty of householders to seek to ensure the security of their property. The days when people living in a village could leave the back door and the front door open all day and probably all night are long gone. However, the suggestion that it is the fault of the householder when someone breaks in tells me that the world has largely gone mad."

Mr Gale said that this was not, as the press had sought to describe it, a Bill to allow anyone to shoot a burglar.

"Let me put before the House the case not of Tony Martin, but of Robin Baker-White, a former high sheriff of Kent. He has had intruders on his property a number of times, and he and his wife have felt violated by having their possessions stolen. On one occasion - he has a licensed shotgun - he fired over the heads of the people retreating from his home with his goods, but the police confiscated his gun. This Bill is not about blasting to eternity with the family blunderbuss the 12-year-old who kicks a football into a garden and climbs over the fence to retrieve it. It is about sending a message to the courts, to the judicial system and to the criminal fraternity that now goes out armed

- as an aside, since the abolition of capital punishment for murder - as a matter of course. Nowadays if there is any redress, it tends to be on the side of the criminal rather than the householder.”

I hope I may be forgiven for quoting Mr Gale’s next words:

“If the Bill’s pedigree could be described as part thoroughbred and part mongrel, its provenance is sound. It was drafted by an expert parliamentary draftsman. Members on both sides of the House may quarrel with some of the content, but I defy them to say that the Bill is technically unsound. Sadly, that cannot be said of some private Members’ Bills. For that we owe a great debt of gratitude to the draftsman, Francis Bennion.”

In his speech Mr Gale went on to describe the provisions of the Bill in detail, and here I need not repeat what was said in Part I of this article. Mr Gale concluded his speech with these words:

“I should like to think that this House will allow the Bill to receive its Second Reading unopposed and that it will let us do our job in Committee to address the concerns of honourable Members on both sides of the House. If we fail to satisfy their legitimate demands, there will be future opportunities on Third Reading or Report to kill the Bill. But to do so now would be a slap in the face of a very concerned British public.”

### **Mr Stephen Pound’s “Rant”**

In what was described by a later speaker, Mr Eric Forth MP, as a “rant” the MP who had originally agreed to present the BBC’s “listener’s Bill”, Mr Stephen Pound MP (Labour) attacked Mr Gale’s Bill. He said it was tainted by its inevitable association with Tony Martin, who had killed Fred Barras by shooting him in the back. Said Mr Pound:

“We have talked about Tony Martin and the law. We have not talked about Fred Barras. He was 16 when he was shot in the back with an illegally held pump-action shotgun. He died without the last rites, with his back to his murderer. He will always be 16 because he will never see another birthday. Do we think, for all the sins of Fred Barras, for all the crimes that he committed, that that boy was so beyond redemption, was so incapable of being saved, of ever turning over a new leaf and

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becoming a responsible member of society, that he deserved the fate that he met in that lonely farm house in Norfolk in the middle of the night, as he turned to flee and a second blast of the shotgun caught him in the back and ended his life there and then, where he died lonely, without benefit of the clergy? Do we honestly believe that any 16-year-old cannot be redeemed? Do we believe that the whole criminal justice system of this country is so mired in failure that no person can ever, ever take another path in life? Do we believe that at the age of 16, one has cast one’s life so much in stone that one will never, ever see another way of living? In the case of Fred Barras that, sadly, will never be known. Fred Barras is dead. Fred Barras was killed by a man who served a few years in prison and became a national hero for it. Fred Barras was killed by a man who influences debate and discussion not just in the House, but throughout the country to this day and will continue to do so. Those people who wish to prop up a political career with the bones of a 16-year-old boy are nothing but despicable. I mean nobody in the House today when I say that. We may talk about such marvellous concepts as an English person’s home being his or her castle - yes, theoretically, let us do so - but let us never forget that behind the theory, behind the parliamentary

draftsmanship, behind the fine words, we can still see the dead body of a 16-year-old boy. As far as I am concerned, nothing can ever justify that.”

Here Mr Edward Leigh MP (Conservative) protested:

“The honourable Gentleman . . . is wrong to try to defeat the arguments by constantly referring to Mr Martin. If he reads the Bill carefully, he will see, as I do as a lawyer, that it would not have protected Mr Martin, because it makes it clear that one has to be acting in self-defence or in defence of one’s property, and the intruder was running away at the time.”

### **Other Speakers**

One of the sponsors of the Gale Bill, Mr Eric Forth MP (Conservative), dealt with a suggestion that, if we had a sufficient number of police officers, little old ladies would feel secure in their houses. Sadly, he did not think that that could ever be so. The Conservative Party has a policy of employing 40,000 more police officers. Even were they to implement that policy, he said, it would not necessarily give householders the security that we want to give them. It might go some way in that direction, but he did not see that any number of police officers would necessarily give people a sense of security in their homes. Something else must therefore be done.

“We must make a distinction between the unease that people may feel on the street and the phenomenon of social misbehaviour and related issues, which the Government, in fairness, are trying to tackle . . . and what we are talking about now. We are talking about people in a dwelling in which they should feel secure, and someone entering that dwelling, either in pursuit of burglary or something worse, such as assault on a person . . . What we are saying is that the presumption should be that the person in the dwelling is entitled to security, protection and, if necessary, self-protection, and that the person who enters the dwelling is doing something that is illegal and wicked.”

Dr Nick Palmer (Labour) mentioned the case of a pub landlord, physically a very powerful man, who felt unable to prevent a group of youths from taking away a case of champagne because they said to him, “If you lay a finger on us, we’ll have you for assault.” The landlord felt unsure about whether it would be proportionate if he prevented them from taking away his property and did not know what he could or could not do. While he was thinking about it, they disappeared up the road. Dr Palmer added that many people feel that such examples are all too common. “People are not sure where they stand, so they feel that they have to err on the side of caution in case they are prosecuted”.

However Dr Palmer opposed the Bill. Construing it, it is submitted mistakenly, he said:

“I am reminded of the doomed presidential candidacy of Michael Dukakis. He was against the death penalty, and when he was asked whether he would want to shoot someone who attacked his wife, he replied, ‘Yeah, I would, but I don’t think my instinctive reaction should be the basis for law.’ That was an honourable reply; it might not have done him much good politically, but it was correct none the less. As [Mr Gale] said, we should base the law neither on hard cases nor on extreme emotions. However, the Bill would legalise unreasonable conduct on the part of constituents who unreasonably believe themselves to be threatened. It is a licence for madmen, and we should not pass it.”

Another sponsor of the Bill, Mr Richard Bacon (Conservative) said that in Dickleburgh in his rural constituency a store was ram raided in the middle of the night. The person who rented the flat above it alerted the police, because he could hear what was going on, but he was told

by the police not to go downstairs and intervene in case he came under threat. However, one reason that caused that person not to intervene was fear that if he were to do so, he would be the one to be had up. Mr Bacon added: “We need a shift in the presumption away from the burglar or law-breaker and towards the householder. There should be a strong presumption against prosecuting any occupant who injures an assailant in some way while resisting the intrusion into his or her home.” He ended that he had no doubt that the Bill could be improved, adding: “The place to do that is in Committee, and I very much hope that the House will give the Bill a chance to be considered there in more detail”.

### **Government Reply**

The Government reply to the debate was given by the Parliamentary Under-Secretary of State for the Home Department Ms Fiona Mactaggart MP. She said that the Government had issued a booklet entitled “*Be Safe, Be*

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*Secure*”, which is a practical guide to crime prevention. It was updated last year and covers all aspects of personal safety at home, including how to deal with intruders. It covers the law of self-defence, including the underlying principles, and it is available from crime reduction officers and neighbourhood watch schemes and on the internet.

The Minister said that clause 3 (civil liability) of the bill was unnecessary because Parliament had made amendments to the Criminal Justice Act 2003, which came into force on 20 January 2004, to ensure that householders and other victims of crime are not subjected to unjustified claims for damages where they have acted reasonably and proportionately in self-defence against a perceived or actual threat. That means that any claim can proceed only in strictly defined circumstances with the express permission of the court, and would not succeed unless the court was satisfied that the householder’s actions had been grossly disproportionate. In addition, the Lord Chancellor has directed the Legal Services Commission to consult on tightening up the rules to ensure that offenders would not be entitled to legal aid to pursue their victims in such circumstances.

The Minister said the Bill would give complete impunity to unreasonable householders who mistreated harmless trespassers or even a child who entered a garden to recover a ball. She said:

“It goes too far. The law already enables people to act reasonably in self-defence, or in defence of their property. However, such a provision . . .”

Hansard then records: *It being half-past Two o’clock, the debate stood adjourned.*

The Minister had talked out Roger Gale’s Bill.

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