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## **The Doomsday Weapon** **by Jacob G. Hornberger**

Gun-rights advocates sometimes defend the Second Amendment in terms of the right to defend themselves from criminals and the right to hunt. Those things are, of course, important but they miss the real purpose of the right to keep and bear arms, which is to protect against tyranny imposed by federal officials. As Ninth Circuit Judge Alex Kozinski pointedly observed in the case of *Silveira v. Lockyer*,

The prospect of tyranny may not grab the headlines the way vivid stories of gun crime routinely do. But few saw the Third Reich coming until it was too late. The Second Amendment is a doomsday provision, one designed for those exceptionally rare circumstances where all other rights have failed — where the government refuses to stand for reelection and silences those who protest; where courts have lost the courage to oppose, or can find no one to enforce their decrees. However improbable these contingencies may seem today, facing them unprepared is a mistake a free people get to make only once.

In other words, the Second Amendment is an insurance policy — it ensures that if all peaceful means to end tyranny fail, the American people still have one last option to regain their freedom — through armed resistance against their tyrants. Most people hope that, like any other insurance policy, it will never have to be called upon, but at least it's there in case it's ever needed.

No one can be absolutely certain that, given the right circumstances, U.S. officials, especially those in the Pentagon, would not go the way of other tyrannical regimes in history. They would undoubtedly consider what they were doing to be in the “national interest” or for “national security,” but isn't that the mindset that has guided all tyrants?

Keep in mind the primary purpose of the Constitution: to protect us — the American people — from federal officials.

Ask yourself: If federal officials inevitably exercised power in a nice and benign way, thereby never posing a serious threat to the freedom and well-being of the American people, why would we need constitutional barriers to protect us from their exercise of power?

The answer is: The Framers clearly understood that people could never be safe from political power exercised by anyone. That's why they provided for the express enumeration of powers and express restrictions on power in the Constitution and in the Bill of Rights.

I repeat: The primary purpose of the Constitution is to protect us from federal officials.

### **Omnipotent power in Iraq**

How would U.S. government officials behave in the absence of any constitutional restraint? We have an almost perfect model in answer to that question: Iraq, where U.S. officials have omnipotent power to do whatever they want. No Constitution or constitutional barriers. No elected officials. No congress, parliament, or legislature. Just a top-down, command-and-control system in which the ruling authorities have more power than any Soviet dictator ever had.

The result? Curfews, warrantless searches of homes, arbitrary seizures of people, indefinite detaining of suspects without charging them, concentration camps, shooting of criminal suspects, suppression of free speech, ban on elections, destruction of personal and real property, and many other things that reasonable people would consider to be tyrannical in nature.

Rule in Iraq is by order and decree, rather than by legislative action, and the orders and edicts are enforced by U.S. military forces.

Perhaps most important, with their free hand in Iraq, U.S. officials have imposed strict gun controls on the Iraqi people. Why? One simple reason: to ensure that violent resistance to orders is eliminated as an option.

"But all this is entirely justifiable," U.S. officials would argue. "How else can we establish freedom in Iraq if we don't first prevent the people from disobeying us by taking away their means of resistance? If people don't like occupational rule, they can work within the system to get appointed to the Iraqi ruling council."

But that both hits the point and misses it. The point is that the Iraq model shows that U.S. officials are fully capable of doing the things that the Constitution was designed to prevent them from doing.

In the past, U.S. officials could argue that they would never do such things, but no longer. If federal officials honestly believe that tyranny is necessary for the survival or well-being of a country, they are as fully capable of imposing such tyranny as other tyrannical regimes throughout history.

And like all other dictatorial regimes in history, they call their tyranny "freedom."

### **Crises and tyranny**

“But while we would do these things to Iraqis, we would never do them to the American people,” U.S. officials would cry.

But of course they would, if they believed that they were necessary for the safety and well-being of the nation (“national security”) — and if they thought they could get away with it.

It all would depend on the nature and extent of a crisis or emergency. The bigger the crisis or emergency was, the bigger the grasp for power would be.

Didn't we see that after the September 11 attacks? Don't forget that terrorists were attacking U.S. targets because of U.S. foreign policy long before September 11. What made September 11 different was the large number of people killed and the large amount of property destroyed.

That difference enabled federal officials to do what they've wanted to do for years, especially as part of their war on drugs — impose much more severe infringements on the civil liberties of the people.

The September 11 “crisis” or “emergency” and the “war on terrorism” (which has been going on since the Reagan administration) are now being used to justify indefinite detentions, secret searches, military tribunals, spying on Americans, and ever-increasing requests for more assaults on our freedoms.

If another major terrorist attack takes place on American soil, you can rest assured that the administration will seize on the opportunity to immediately cram through Congress another massive USA PATRIOT or VICTORY act that removes even more of our freedoms.

In many other countries that operate under a constitution, the president has the power to suspend restrictions on his power in an emergency, but only as long as the emergency lasts. The problem, of course, is that the emergency inevitably lasts indefinitely, along with the president's suspension of the restrictions on his powers.

That's pretty much what happened in Germany leading up to the dictatorial regime of Adolf Hitler. When Hitler assumed office in 1933, he was actually facing a much bigger crisis than Franklin Roosevelt faced in the United States at the same time. Both of them, of course, faced the economic emergency of the Great Depression, which they confronted in much the same way: with massive economic regulation, government spending and taxation, and public works.

But Hitler also faced the threat of communism from the Soviet Union, the same threat that U.S. officials would later use to create a permanent air of crisis and emergency for several decades after the defeat of Hitler and the Nazis.

Moreover, Hitler faced the threat of terrorism, which was exemplified by the firebombing of the Reichstag. Immediately after that terrorist attack, the German parliament granted Hitler's request for temporary emergency powers to wage war against terrorism.

The problem is that the crises became deeper and deeper, which meant that the “temporary” powers being exercised became more entrenched, until the possibility of restoring the rights of the German people became almost impossible.

The German citizenry discovered too late the difficulty of regaining freedoms that had been temporarily surrendered to someone who then wields the power to prevent his temporary powers from being relinquished, especially someone who truly believes that such powers are needed to preserve the nation in the midst of crisis.

The Framers chose not to provide an “emergencies exception” in the U.S. Constitution precisely because they understood that it is during “crises” or “emergencies” that the danger of tyranny and the loss of freedom are the greatest.

They knew that throughout history, government officials had used “crises” or “emergencies” to take away the rights and freedoms of the people. That’s why under our system of government, the constitutional restrictions on power remain in full force and effect during “crises” and “emergencies.”

Imagine that terrorists fly a bomb-filled plane into the Capitol, that there is a 6,000-point drop in the stock market followed by widespread runs on the banks, and that the Chinese communists are threatening South Korea and Japan.

Can anyone honestly suggest that U.S. officials would not seize upon these three big “crises” or “emergencies” to seize “temporary emergency” powers? How many Americans would stand up and say, “No”?

“But there would be elections. There have always been elections in America.” But what if the elections produce candidates who favor the same policies?

What if the crisis or emergency is extremely big — like car bombs exploding in various Americans cities, killing thousands of people?

Can we be sure that the Pentagon would permit elections to be called in that event, especially if it suspects that the results might not be favorable to the interests of the ruling regime? Are U.S. military officials permitting elections in Iraq, knowing that such elections would possibly result in a regime antagonistic to the U.S. government?

And let’s not forget that U.S. officials prevented elections in Vietnam in 1954, precisely because they knew that Ho Chi Minh would win.

Now, it’s true that all this is unlikely. But that’s why Justice Kozinski calls the Second Amendment a doomsday device. While it’s unlikely to ever be employed, at least it’s there if the day ever comes when federal tyranny has become intolerably oppressive.

In other words, in the absence of gun ownership there is one — and only one — realistic response to tyranny: obedience and subservience to the rulers. That’s why U.S. officials are disarming the people of Iraq. With gun ownership, there is one final “doomsday” option — violent resistance to tyranny, even revolution.

That’s, in fact, one of the major points that Jefferson made in the Declaration of Independence — that history had shown that people will tolerate a lot of tyranny before they finally revolt, but that when their own government becomes destructive of their rights they do

have the right to revolt and to overthrow it. Without weapons, that becomes an extremely difficult thing to do.

Moreover, the fact that tyrants and would-be tyrants know that the people are armed operates as a check or deterrence to tyranny. If tyrants know that people lack the means to resist orders and decrees, it would be reasonable to assume that they're going to operate more boldly against the people and their rights and freedoms. If they know that people might ultimately say, "No more, and if you do we will meet force with force," they might just think twice.

Thus, what gun-control advocates and even many gun-rights advocates fail to recognize is that the right to keep and bear arms has less to do with self-defense from criminals and the right to hunt and more to do with the protection of our rights and freedoms. The cartridge box is ultimately a much more potent protection against tyranny than the ballot box, soap box, or jury box.

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