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The Bill of Rights: The Right to Keep and Bear Arms

by Jacob G. Hornberger

Arguably, the Second Amendment to the U.S. Constitution should have been made first in the Bill of Rights because without the right to keep and bear arms, such rights as freedom of speech and freedom of the press would be treated as nothing more than meaningless “privileges” bestowed and taken away by government officials at will. The Second Amendment is the American people’s ultimate insurance policy against tyranny because government officials know that guns in the hands of the people provide the only practical means by which to resist tyranny. They know that a disarmed society almost always becomes an obedient society in the face of omnipotent, tyrannical government.

Gun-control advocates suggest that gun control will result in a safer, more secure environment for people. Their arguments are false, fallacious, and dangerous. Let’s examine why.

One underlying assumption of gun-control laws is that people will obey them. The problem with that assumption, however, is that while it might be valid with respect to people who generally believe in obeying the laws of society, it is invalid with respect to people who hold society’s laws in disrespect.

Therefore, gun-control laws would be effective in disarming peaceful and law-abiding people but would be ineffective in disarming people who have no reservations about breaking laws against murder, burglary, rape, and robbery. In other words, if a person intends to murder or rape another person, what are the chances that he’s going to say to himself, “I can’t commit this murder or rape with a gun because that would be against the law”? No chance! To belabor the obvious, if a person has no respect for a law against murder or rape, he’s not going to have any respect for a law prohibiting him from possessing a gun.

The problem, then, is obvious: By disarming peaceful and law-abiding people, a gun-control law effectively precludes the intended victim of murder and rape from possessing an excellent means by which to defend himself or herself from the murderer

and the rapist. As the popular saying goes, “God didn’t make men equal; Sam Colt did.” Guns enable weaker people to protect themselves from the bigger, stronger bullies in life who have no reservations about murdering or raping other human beings.

There’s a corollary principle involved here: Even though everyone in society might not choose to arm himself, the right to keep and bear arms makes everyone in society, including those who choose not to possess weapons, safer from the likes of murderers and rapists. Why is this so? Because the murderer and rapist do not know in advance who is armed and who isn’t, which means that they have to be cautious about trying to commit their crimes. In fact, isn’t that the most likely reason that gun-control advocates never advertise too loudly that they live in a gun-free home?

In other words, if everyone is disarmed then the violent people in society can feel safe about murdering and raping people. But if everyone has the right to be armed, the murderer and rapist know that there is a good chance that they could guess wrong — that the person whom they’ve chosen to murder or rape might fire first with the weapon in his possession.

A black-market in guns

A second underlying assumption of gun control is that guns will no longer be available to anyone, including the violent people who wish to procure them. This assumption is based on the hope that gun control will simply wipe guns totally out of existence, perhaps through some type of government buy-back scheme by which people are encouraged to turn in their weapons to the officials who promise to destroy or store them. Again, the assumption is false, fallacious, and dangerous.

One problem with this assumption is that it fails to take into consideration the free market or, more precisely, the black market that inevitably springs up in response to laws that attempt to restrict the supply of some product or service. Consider, for example, the war on drugs, a war in which the federal government has attempted to eliminate the supply of drugs for at least 30 years. Despite an increasing array of ever-harsher laws, those who desire drugs are still able to obtain them from those who are willing to take the risks to supply them.

Why wouldn’t we expect the same result with a war on guns? Wouldn’t a black market in guns immediately spring up, just as a black market in drugs sprang up when drugs were made illegal? And wouldn’t violent, anti-social people such as murderers and rapists be much more able and willing to acquire guns in such a market than peaceful and law-abiding people?

We would also be remiss if we failed to point out all the disastrous side effects of the federal attempt to stamp out drugs — gang wars, convenience-store killings, police

corruption, and robberies, muggings, burglaries, and thefts, not to mention the ever-increasing governmental assaults on the civil liberties of the citizenry.

Why wouldn't we expect the same results — if not worse — with a war on guns?

“But if we just gave the government full powers to stamp out guns, then all guns could be stamped out once and for all, which would mean they couldn't even be acquired illegally,” gun-control advocates implicitly suggest. That's problematic, but let's concede the point. Let's assume that private ownership of guns is wiped out of existence in the United States and that somehow the government is able to prevent murderers and rapists from acquiring them in a black market.

The biggest threat to liberty

Would that make the American people safer? No, because a government that wielded the power to wipe out all guns in that society would be an omnipotent, tyrannical government, such as the one that exists in Cuba or North Korea. To paraphrase an old saying, when guns are outlawed only the government will have guns.

This brings us back to the primary argument against gun control — that it serves as a check on tyranny because those in political power know that people possess the means to resist tyranny violently, perhaps even through revolution or rebellion, as Thomas Jefferson wrote in the Declaration of Independence.

Keep in mind the entire philosophy that underlies both the Constitution and Bill of Rights — that the biggest threat to the freedom and well-being of the American people lies with their own federal officials. Now, some people find that notion embarrassing — that is, the notion that our own federal officials would ever impose tyranny on their own people. But the Founders and the Framers didn't find that notion embarrassing at all, which is precisely why federal powers are expressly limited and restricted, both in the original Constitution and in the 10 amendments that followed soon after it was enacted.

Are federal officials capable of imposing tyranny on the American people? Well, tyranny might be a subjective concept but let's define it by the violation of rights guaranteed by the Constitution and the Bill of Rights. Are federal officials actually capable of violating those rights? Don't they have such a principled devotion to those rights that they would never even conceive of violating them?

The Iraq model

The answer is “No.” Our ancestors were right — the federal government, by its very nature, attracts people who have absolutely no respect for such rights or the principles that underlie them. How do we know this? One good way is by examining how these

people behave in the absence of constitutional restraints. A good model for such an experiment exists in Iraq, a country that federal officials have run for more than a year.

“But the Constitution doesn’t apply to how the federal government runs Iraq,” someone might argue. He would be missing my point. The point is whether federal officials honor the rights in the Constitution because they have to or because they believe in those principles.

How have federal officials, including the military, conducted themselves as rulers in Iraq, with no pesky federal judges, legislature, criminal-defense lawyers, or constitutional “technicalities” to get in their way?

They’ve shot demonstrators; closed down newspapers critical of the military; searched people’s homes and businesses without warrants; killed suspected criminals as well as innocent bystanders; arrested people without warrants; detained criminal suspects indefinitely; denied detainees due process of law, the right to counsel, the right to bail, the right to jury trials, and the right to habeas corpus; imposed cruel and unusual punishments on people consisting of torture, rape, sex abuse, and murder by beatings; appointed unelected “interim” sub-rulers with dictatorial powers to carry out their directives; and ensured that an elected legislature would not be part of the “interim” regime.

And, of course, they have imposed gun control and gun confiscation and enforced their measures with deadly force.

In other words, they’ve done in Iraq all the things for which Americans rebelled against King George III — and more.

“But that doesn’t mean that they would do all this to Americans.” Of course it does, especially if they believe it would be necessary for “national security,” which they inevitably would. After all, don’t forget that they arrested an American, Jose Padilla, on American soil; charged him with conspiracy to commit terrorism; turned him over to the Pentagon; and denied him habeas corpus, due process, right to counsel, a jury trial, and all the other rights guaranteed by the Constitution and the Bill of Rights, including even freedom of speech.

“But that’s just one person,” one might say. But one person leads to another person who leads to another person, as the people of Chile and Argentina discovered when the military regimes in those countries were “disappearing” an ever-growing number of people during their “wars on terrorism.” As people who have lost their liberties at the hands of their own government throughout history have discovered, once the sacrifice and surrender of rights has begun, the march toward tyranny becomes inexorable.

Founding principles

Perhaps a good way to conclude an article on the vital importance of the right to keep and bear arms would be to restate the wisdom of the Founding Fathers and the Framers:

“Notwithstanding the military establishments in the several kingdoms of Europe, which are carried as far as the public resources will bear, the governments are afraid to trust the people with arms.” — James Madison

“Little more can reasonably be aimed at, with respect to the people at large, than to have them properly armed and equipped.” — Alexander Hamilton

“As civil rulers, not having their duty to the people duly before them, may attempt to tyrannize, and as the military forces which might be occasionally raised to defend our country, might pervert their power to the injury of their fellow-citizens, the people are confirmed by the next article in their right to keep and bear their private arms.” — Trench Coxe

“Before a standing army can rule, the people must be disarmed; as they are in almost every kingdom in Europe. The supreme power in America cannot enforce unjust laws by the sword; because the whole body of people are armed, and constitute a force superior to any band of regular troops that can be, on any pretense, raised in the United States.” — Noah Webster

“No free men shall be debarred the use of arms.” — Thomas Jefferson

“To preserve liberty, it is essential that the whole body of the people always possess arms, and be taught alike, especially when young, how to use them.” — Richard Henry Lee

“The great object is that every man be armed. . . . Everyone who is able may have a gun. . . . Are we at last brought to such a humiliating and debasing degradation that we cannot be trusted with arms for our own defense?” — Patrick Henry

“Besides the advantage of being armed, which the Americans possess over the people of almost every other nation, the existence of subordinate governments . . . forms a barrier against the enterprises of ambition. . . . [The] several kingdoms of Europe . . . are afraid to trust the people with arms.” — James Madison

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