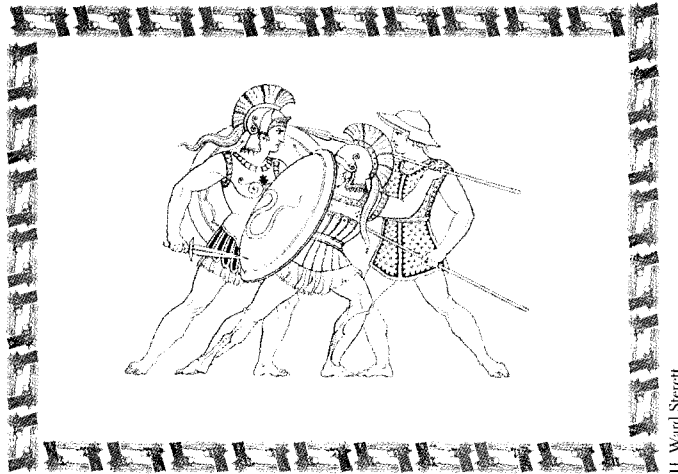


A God-Given Natural Right

“Shall Not Be Infringed”

by Roger D. McGrath



I do not believe in unilateral disarmament: not for the nation; not for our citizens. Neither did the Founding Fathers. They were students of history, especially of classical antiquity. They knew the history of the Greek city-states and Rome as well as they knew the history of the American colonies. This led them to conclude that an armed citizenry is essential to the preservation of freedom and democracy. Once disarmed, populations either submit meekly to tyrants or fight in vain.

The ancient Greeks knew this. The Greek city-state of Laconia had a population that was five percent Spartan (the warrior aristocracy), one percent *perioeci* (small merchants and craftsmen), and 94 percent *helots* (serfs bound to the soil). It is no mystery how five percent of the population kept 94 percent of the people enslaved. The *helots* were kept disarmed and, if found in possession of a weapon, were put to death.

Meanwhile, most of the Greek city-states were bastions of democracy because they had developed strong middle classes of armed citizens known as *hoplites*. Supplying their own weapons and equipment, the *hoplites* went into battle not out of fear of punishment or in hopes of plunder and booty, as did subject peoples of the Oriental empires, but to defend their liberties and to protect hearth and home. They fought side by side with neighbors, brothers, fathers, sons, uncles, and cousins. They did their utmost to demonstrate courage, side by side with their comrades in arms. If they lost a battle to the armies of an Oriental despot, they stood to lose everything—property, freedom, democracy. A defeat for subject peoples usually meant nothing more than a change of rulers.

The ancient Romans also knew this. When Tarquin, the Etruscan king of Rome, issued an order—for the public good, for safety and security—that the Romans be disarmed, they rose

in rebellion. Tarquin was driven from the city, and the early Roman Republic was established. For several hundred years, Rome was defended not by a professional army of mercenaries or subject peoples but by armed citizen-soldiers who left the farm from time to time to serve the republic. Once the system broke down, the Roman Republic was transformed into an empire similar to the despotic regimes of the East.

Death and destruction commonly followed disarmament. England did it to the Gaels—the Irish and Scots—and the consequences beggar description. England had been fighting in Ireland for hundreds of years by the time the English got Irish leader Patrick Sarsfield to sign the Treaty of Limerick in 1691. The treaty guaranteed all Irish full civil, religious, and property rights. In return, it required that Sarsfield and more than 20,000 of his soldiers leave Ireland for the Continent.

With the armed defenders of Ireland overseas, England began to abrogate the rights supposedly guaranteed by the treaty. Beginning in 1709, England passed the statutes that collectively became known as the Penal Laws. One of the first of these laws declared that, for public safety, no Irish Catholic could keep and bear arms. Then the Irish Catholic was denied the right to an education, to enter a profession, to hold public office, to engage in trade or commerce, to own a horse of greater value than five pounds, to purchase or lease land, to vote, to attend the worship of his choice, to send his children abroad to receive an education. By the time the last of the Penal Laws was enacted, the Irish, although they were not chattel property, in many ways had fewer rights than black slaves in America. The Irish were kept on a near starvation diet, and their life expectancy was the lowest in the Western world.

Things were not much better in the Highlands of Scotland. England had subdued the Lowlands by the 14th century, but the Highlands, the truly Gaelic portion of Scotland, continued to be troublesome well into the 18th century. A major rebellion

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erupted in 1715; another, in 1745. The end for the Highlanders came at the Battle of Culloden in 1746. Following the battle, the English built a series of forts across the Highlands and passed laws for the Highlanders—who were originally Irish, of course—similar to the Penal Laws. England made it a crime for the Highlanders to wear kilts, play bagpipes, and keep and bear arms. A Highlander found with a claymore or any other kind of sword or arm was put to death. The English army, understanding that it is easier to starve a fierce enemy into submission than to fight him, eagerly slaughtered the cattle herds of the Highlands, precipitating a great starvation. Thousands of Highlanders died or fled. The English later engaged in the infamous “clearances” in which thousands more were driven from the land. Without arms, the Highlanders were helpless.

The Founding Fathers did not want every man armed in order to shoot Bambi or Thumper, although they had nothing against doing so. The Founding Fathers wanted every man armed in order to shoot soldiers or police of tyrannical regimes who suppress the rights of free men.

What the English did to the Irish and Scots was not lost on our Founding Fathers or on the colonists in general. More than a quarter of the colonists were Irish or Scottish or Scotch-Irish. When England tried to disarm the American colonists, all under the guise of preserving public order and peace, the colonists reacted violently. While it is rarely taught in schools today, the reason the British army marched to Lexington and Concord was to confiscate the arms caches of the local citizenry.

It is not by accident, then, that the Framers of the Constitution ensured that the government could not infringe on “the right of the people to keep and bear arms.” It is important to understand that the Second Amendment grants no right to the people to keep and bear arms. This is a point misunderstood by most Americans today, even by most of those who are interested in keeping their guns.

The Second Amendment, like the First, recognizes a God-given, natural right of the people and guarantees that the government not interfere with the exercise of that right. Note the wording of the amendment. Nowhere does it say, “This Constitution grants the people the right to . . .” Instead, it says “the right of the people . . . shall not be infringed.” The right to keep and bear arms, like that of freedom of speech, is known, constitutionally, as an inherent right. By contrast, the Sixth Amendment right to be represented by an attorney in a criminal case is a derivative right—a right that comes from the Constitution.

To understand this is critical to all arguments about guns, or about freedom of speech, or religion, or the press. These

freedoms were not given to us by the Founding Fathers. They were recognized by the Founding Fathers as God-given, natural rights that existed long before the establishment of our republic. These rights are not granted to men by a benevolent government but given to man by God. They are not to be destroyed, suppressed, or even compromised. When they are, it is the duty of the citizens to rise in revolt, overthrow the government, and establish a government that will protect these unalienable rights. Sound familiar? It should. This was the philosophy of our Founding Fathers.

The most basic of the natural rights of man is the right to self-preservation, the right to self-defense. No one would deny that we have such a right. In debates at universities and at other public forums, in debates on radio, in debates on television, I have never seen anyone deny that man has a natural right to self-defense. It follows that, if man has a natural right to self-defense, then he has a right to the arms necessary for that self-defense. The right to be armed is a logical and inescapable corollary of the right to self-defense. We cannot have one without the other.

If we do not have the right to the arms necessary for self-defense, then the right of self-defense is purely theoretical—something like having freedom of the press but not being allowed access to a printing press. Can you imagine the National Rifle Association telling the *New York Times* that it has freedom of the press but it may not have printing presses, or that the *Times* can purchase only one printing press per month, or that its writers must undergo background checks by the government, or that it cannot buy ink for the presses in New York City, or that its presses have limits on their speed and capacity, or that its presses must meet certain design requirements? If any of this were suggested, the *Times* would squeal like a stuck pig, and well it should.

Some people, presumably well intentioned, argue that the right to arms (and, thus, the right to self-defense) should be compromised—compromised further than it already has been—in an effort to make society safer. Such a position is ironic on two counts.

First, many of the same people who make gun-restriction arguments, such as the ACLU, would be apoplectic if it were suggested that freedom of speech be curtailed to ensure greater public safety. For example, we could have a two-week waiting period on expressing an opinion after the opinion was duly registered with a government agency. That way, the government could screen the opinion to ensure that it was politically correct.

The compromise-your-rights-for-safety argument is also ironic because the thousands of gun laws on the books—municipal, county, state, and federal—have done nothing to stop crime. In fact, they have done the opposite. The laws, for the most part, have disarmed, or made access to guns more difficult for, the law-abiding, peaceable citizen. Criminals do not turn in their guns. Murderers, rapists, and robbers do not obey gun laws. However, they do calculate the risks involved in committing crime. If they can assume that potential victims are unarmed, they are emboldened and are more likely to attack.

John Lott, in *More Guns Less Crime*, an exhaustive county-by-county study of rates of gun ownership and crime, concludes that the counties with the highest rates of gun ownership have the least crime and that those with the lowest rates of gun ownership have the most crime. For years, this has been obvious

when looking at cities. Washington, D.C., and New York City, for example, with the most restrictive gun laws in the nation, have, for a generation, been cesspools of crime. Criminals there know that they can count on their victims being unarmed.

I suspect that even deeply disturbed killers, such as the teenage boys in Littleton, Colorado, understood that they could kill with impunity in the disarmed environment of the high school. The presence of a highly trained, armed security guard, with a reputation as an expert marksman, may have deterred them. If not, then the guard might have granted them their suicidal wish before they were able to commit mass murder. One or two key teachers, trained and armed, might also have made a difference. Certainly, gun laws did nothing to stop the killers. The two boys violated more than a dozen different gun laws, including one of the oldest on the books—possession of a sawed-off shotgun. Gun laws promise much and deliver little, because they affect only the law abiding, something like sheep passing resolutions requiring vegetarianism while wolves circle the flock.

I grew up in Los Angeles when gun laws were few and crime was low. Nearly everyone I knew had a 30.06, a couple of .22's, a shotgun, and a revolver or two sitting around their house. We could buy guns mail-order and pick up our ammunition at the local grocery store. A gun was a common companion to the road maps in the glove compartment of the car. Did this cause crime? In 1952, there were 81 murders in Los Angeles. In 1992, 40 years and many gun laws later, there were 1,092 murders. If the increase in murder had kept pace with the increase in population, there would have been 142 murders, a 75 percent increase. Instead, murder increased 1,350 percent. Other crimes had similar increases: robbery, 1,540 percent; auto theft, 1,100 percent.

The Los Angeles Police Department used to solve more than 90 percent of the murders committed in the city. Today, the figure is 60 percent. Detectives complain that the caseload is too great to conduct the kind of thorough investigations that were common in the 40's and 50's. It is far worse for lesser crimes. Merchants complain that customers brazenly walk out of their stores without paying for merchandise because they know that the police will not respond (at least in a timely fashion) to a call reporting shoplifting. Cars are stolen so often, some 200 per day, that the LAPD does nothing more than list the vehicle on a "hot sheet" and wish the victim good luck.

In the 50's, if your bicycle were stolen, the police would come out to your house and take a report. Try calling the LAPD today and telling them that your bike has been stolen! The police are simply overwhelmed by the sheer volume of crime and are kept fully occupied by murder, armed robbery, and rape—occupied, that is, by the aftermath of murder, armed robbery, and rape. When police arrive at the scene of a crime, the crime has already taken place—the victim has already been murdered, robbed, or raped.

"Carjacking" has become quite common in Los Angeles, because the carjackers know that California drivers cannot legally carry loaded firearms and will nearly always be unarmed. Occasionally, carjackers make poor choices. Three such carjackers followed my friend's son, Justin, as he drove home in his new car late one night. Little did they know that Justin was a reserve police officer. They did not know that he was well armed and an expert marksman.

When Justin pulled into the family driveway and got out of his car, one of the carjackers jumped out of his own vehicle and

yelled at Justin, whose back was turned, "Freeze, motherf---er!" It was exactly what Justin had expected. Justin spun about and emptied the contents of his .45 into the carjacker. The carjacker's partners sped away as fast as their car would take them, leaving their good buddy very dead on my friend's front lawn.

Not long after Justin had sent the carjacker to the great salvage yard in the sky, I read of an off-duty police officer who had a similar encounter. On his way home and wearing plainclothes, he stopped to make a phone call. While he stood talking to his wife on an outdoor public phone, two muggers rushed up to him. One of them brandished a gun and said: "Your wallet!" Instead of pulling out his wallet, the cop drew a gun and sent the mugger to the morgue.

The *Los Angeles Times* noted that the mugger certainly picked on the wrong person. This is the same *Los Angeles Times* that regularly editorializes against an armed citizenry and has never seen a gun law that it did not like. Somehow, the newspaper thinks that disarming peaceable, law-abiding citizens will affect criminal behavior for the better. Disarming peaceable, law-abiding citizens *will* affect criminal behavior—but for the worse. Criminals will be emboldened because their chances of picking on the wrong person will be dramatically reduced. Shouldn't the opposite be the case? Shouldn't every person be the wrong person or, at least, potentially the wrong person?

Nowhere does the Second Amendment say, "This Constitution grants the people the right to . . ."

Grandstanding politicians love to rail against the gun. Inanimate objects are good targets to beat up on. That way, politicians do not have to address the real problems in our society. We pay a price for this craven misdirection, though, in thousands of murders, muggings, rapes, robberies, and burglaries.

Yet that is not the greatest danger we face. The Founding Fathers knew that *governments* could turn criminal. That is the principal reason they wanted every man armed: An armed citizenry militates against the development of tyranny. The Founding Fathers did not want every man armed in order to shoot a burglar, although they had nothing against doing so. The Founding Fathers did not want every man armed in order to shoot Bambi or Thumper, although they had nothing against doing so. The Founding Fathers wanted every man armed in order to shoot soldiers or police of tyrannical regimes who suppress the rights of free men.

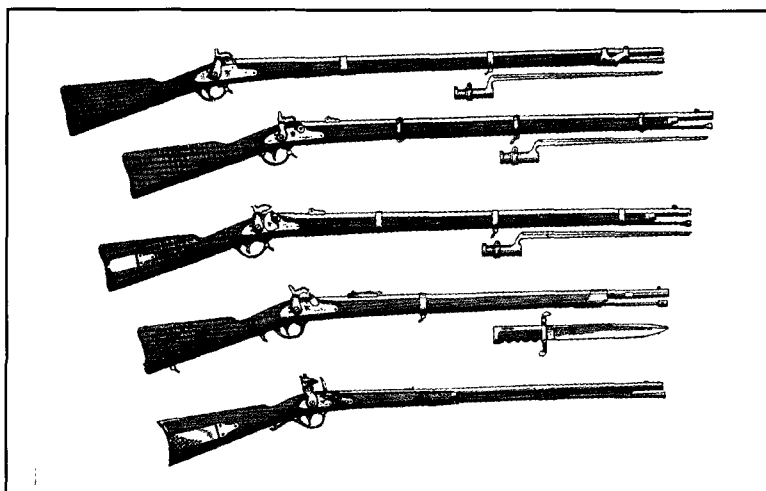
When governments become criminal, they disarm the populace. Then the numbers of deaths reach the tens of thousands, the hundreds of thousands, the millions. Can't happen? Ask the Irish and the Scots, or the Armenians, the Ukrainians, the Jews, the Chinese, the Cambodians.

In the Marine Corps, I was trained never to surrender my weapon. It was good advice then, and it is good advice now. I shall put my faith not in the good will of governments but in an armed citizenry—a band of brothers—steeped in the ideology of the Founding Fathers and the spirit of Patrick Henry, who said: "Is life so dear or peace so sweet as to be purchased at the price of slavery and chains. I know not what course others may take, but as for me, give me liberty or give me death." ☪

Americans' Right to Own Firearms

The Citizen *Versus* the State

by Don B. Kates



H. Ward Sterett

While it allows many controls, the Second Amendment to the Constitution guarantees to every responsible, law-abiding adult the right to own firearms.

To the political philosophers who influenced our Founding Fathers, arms possession by good people was crucial to a healthy society. Thomas Paine foreshadowed current gun-lobby slogans (e.g., “When guns are outlawed, only outlaws will have guns”; “Nobody ever raped a .38”) when he wrote:

I am thus far a Quaker, that I would gladly argue with all the world to lay aside the use of arms, and settle matters by negotiation, but unless the whole will, the matter ends, and I take up my musket and thank Heaven He has put it in my power.

Our classically educated founders looked back to the Greek and Roman republics where good citizens were armed and prepared to man the walls when the tocsin signaled approaching danger. They honored Aristotle’s teaching that free states depend on an armed citizenry, while tyrants “mistrust the people and therefore deprive them of their arms,” and that the confiscation of the Athenians’ personal arms had been instrumental to the tyrannies of the Pisistratids and the Thirty.

From Machiavelli, Harrington, Richardson, Sydney, Locke, Tench, and Coxe, the Founding Fathers took four points: First, the most fundamental right of man is self-defense, which includes the right to arms for defense of self, home, family, and liberty; second, murder, rape, robbery and other “common crimes” are to be feared not only from apolitical criminals but from political ones (as Sydney described them, “a wicked Magistrate” and his “crew of Lewd Villains”); third, in extreme cases the individual right of self-defense includes a right of citizens to resist

tyrants, which the founders called “revolution,” meaning the returning of government to its original and proper course; and fourth, the existence of an armed populace will usually avert any need for revolution by deterring government and rulers from their inherent tendency to oppress.

Later events demonstrated that political crime is, indeed, far more dangerous than apolitical. In the 20th century, the world saw no more than five million murders. Not counting casualties in wars, however, over 170 million civilians died in genocides—often sponsored by their own government, as R.J. Rummel points out in *Death by Government*.

Second Amendment scholarship is dominated by the view that the amendment guarantees a right of individuals to arms. Even its opponents accept this as the “standard model.” The “collective right” view, one of the opposing positions, is (as pithily described by one exponent) that the guarantee applies not to individuals but “to the whole people as body politic,” in the sense that individuals cannot enforce this nonexistent right either for themselves or for the whole people. To call this a “right” is oxymoronic and violates Chief Justice Marshall’s basic interpretive canon that “It cannot be presumed that any clause in the Constitution is intended to be without effect.”

Of course, there are real constitutional rights that may be conceived of as collective—e.g., freedom of assembly, equal protection of the law. Unlike the “collective right” concept of the Second Amendment, however, these are real rights, enforceable through suits filed by individuals on their own behalf and to vindicate the rights of the entire group.

Another attack on the standard model is the claim that the Second Amendment cannot have been meant to guarantee an individual right to arms because, during the Revolution, Tories were sometimes disarmed by the patriots. In itself, this does not refute the standard model. In the philosophical tradition, the right to arms had always been understood as inapplicable to traitors,

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