

# ATF vs the Constitution



By Michael LeMieux

In the United States, under a republican form of government, power is divided between the states and the central government. Within the central government, as is within the states, that power is further sub-divided between branches of the government. All of these government organizations have charters or documents that govern what power they have and the boundaries each organization must adhere to. The fundamental document outlining these powers and duties are the constitutions for their respective governments. Any action by these organizations that does not have a basis within their founding constitutions is unconstitutional and therefore constitutionally illegal.

In this article we will be dealing primarily with gun laws and the primary organization of the central government that enforces national gun laws the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). The main areas I wish to present are the historical evolution of the ATF, their constitutional footing, and whether national gun laws are truly constitutional.

Evolution of the ATF:

The enactment of “firearms laws” is a relatively recent occurrence for the federal government. The Federal Firearms Act in 1938 was the first act by congress to regulate firearms. This act was based upon the **perceived** need to

regulate the firearms industry and license the dealers, manufacturers, and gunsmiths within the firearms trade. It was based upon the Interstate Commerce Clause of the Constitution. Appropriately it was codified under Title 15 of the US Code – “Commerce and Trade”. The new “laws” under the Act included the creation of a Federal Firearms License (FFL), for anyone doing business in the firearm trade. One of the primary goals was to prohibit FFL holders from selling firearms to convicted felons. Requiring FFL holders to keep records of all firearms sales, and for the first time it made any alteration of firearm serial numbers a crime. Many people felt this was an infringement on state jurisdiction by enacting a law that reached past the state boundary, in violation of the Constitution.

From 1938 to 1968 everything went along fairly well until the government decided to play a little shell game, and they switched the Firearms Act from Title 15 to Title 18. Title 18 is entitled “Crimes and Criminal Procedures.” Why would the government switch the code section from Title 15 to Title 18 after having been codified under Title 15 for thirty years? The only rational reason is jurisdictional obfuscation, or hiding what would otherwise be apparent as to the limits the government could act upon us, the citizens. You see, under Title 15, the government was within its rightful jurisdiction of “Commerce and Trade”. However, if you are bound by “Commerce and Trade”, you cannot enact laws on normal citizens who are not acting in the “trade.” Therefore, the government changed, with the stroke of a pen, their Constitutional powers from commerce to crime.

In 1968 the “Gun Control Act” was passed. It was an attempt by the government to justify broad-sweeping firearms control. The finesse with which the government’s lawyers crafted and pushed this bill through can be seen right from the opening lines. The bill is entitled: “An Act to amend title 18, United States Code, to provide for better control of **the**

**interstate traffic in firearms.”** (Emphasis added) Doesn't that title sound allot like Chapter 15 Commerce and Trade? In fact even today the firearms laws deal, for the most part, in taxing control. Machine guns falling under the firearms control act are still legal to own if you do the background check and pay a \$200.00 “tax stamp” fee.

However, the purpose of the act, as written, states:

*“Title I – State Firearms Control Assistance*

*Purpose*

*“Sec. 101. The Congress hereby declares that the purpose of this title is to **provide support to Federal, State, and local law enforcement officials in their fight against crime and violence**, and it is not the purpose of this title to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms appropriate to the purpose of hunting, trapshooting, target shooting, personal protection, or any other lawful activity, and that this title is not intended to discourage or eliminate the private ownership or use of firearms by law-abiding citizens for lawful purposes, or provide for the imposition by Federal regulations of any procedures or requirements other than those reasonably necessary to implement and effectuate the provisions of this title.”*

To support State, and local law enforcement! Where does the Constitution say anything about the federal government assisting state law enforcement? Remember, the federal government cannot legally do anything that is not specifically enumerated by the Constitution. So where is its justification? It has none; any federal law that falls outside the enumerated powers of the Constitution is repugnant and void. And as a friend of mine, Dave Champion, said “Congress is free to make any asinine statement it wants about

*its "intentions" or its "goals", but the text of the laws it enacts must still adhere to the limits of federal power imposed by US Constitution."*

So, in 1934 we have a "revenue" tax scheme that charges \$200.00 for the sale or transfer of a machinegun, a short barreled rifle/shotgun, or a silencer. What was the net effect of this "revenue" tax scheme? It all but completely eviscerated these businesses, put people out of work, and resulted in a drop in tax revenue on the legitimate sales of these items. In 1934 a silencer could be purchased for between 5 and 20 dollars at your local hardware store. But who would pay a \$200.00 tax on a 5 dollar item. Many towns had shooting ranges within the city limits and required silencers to be used to keep noise down for local residents. Most shooters could not afford the \$200 tax stamp so these businesses closed as well. So as a "revenue" scheme the Firearms Act was a complete bust unless you look at the evolutionary progress of the ATF in its expansion to control not only the firearms industry but also to become national crime fighters as well.

The ATF evolved from an arm of the IRS under title 15 "Commerce" to now being a part of the Department of Justice under title 18 "Crimes and Punishment." I ask once again – under what constitutional authority? At least under title 15 the central government had a nexus to commerce as they originally only involved those individuals and businesses that were in the firearms trade. Today, however, someone who only possesses an item can be put in jail for not asking permission and paying tribute, even when they are not "in the business" of manufacturing or selling firearms.



There is no constitutional authority for the ATF as they are

currently organized and only very limited constitutional authority as originally organized. As congress can only legally legislate those areas to which the states have seceded, as outlined in Article 1, section 8, all other laws are, by their very definition, unconstitutional. But because the government has the power of creating laws, they can enforce even unconstitutional laws – it does not make them right it only makes them wrong with a gun. (Pun intended.)

The concept of natural inherent rights within the body of the people is unique to the United States. All other countries today endow their citizens with varying degrees of “rights” and privilege. Our founding precepts are espoused in our Declaration of Independence stating that we, the people, are endowed by our creator with certain unalienable rights and that governments were instituted among men to secure these rights. So even if the Second Amendment was not listed in the “Bill of Rights” it would still exist.

Let me say very clearly – your rights do not come from government. You have these rights solely on the basis of your existence. The Constitution grants no rights to the citizens of this country and are listed as Amendments to the Constitution to PROHIBIT the central government from acting against these specific, enumerated, rights that were endowed in the citizenry before the government was created.

*“...The right of the people to keep and bear arms shall not be infringed.”* We already know that the Bill of Rights was written to place limitations on the federal government in its dealings with the people. What does it mean to be infringed? From the Merriam-Webster New Collegiate Dictionary, 1977 edition it reads: *“1. obsolete: defeat, frustrate. 2. To encroach upon in a way that violates law or the rights of another. Synonymous with trespass.”* Based on this definition any action which attempts to make guns obsolete, or to defeat the ability of ownership, or frustrates the keeping and bearing of arms is infringing on the rights of the citizens

and is an affront to the Constitution.

United States Representative Ron Paul, from the 14th District in Texas, stated in a November 6th, 2006 article entitled "Gun Control on the Back Burner":

*"The Second amendment is not about hunting deer or keeping a pistol in your nightstand. It is not about protecting oneself against common criminals. **It is about preventing tyranny.** The Founders knew that unarmed citizens would never be able to overthrow a tyrannical government as they did. They envisioned government as a servant, not a master, of the American people. The muskets they used against the British Army were the assault rifles of that time. It is practical, rather than alarmist, to understand that unarmed citizens cannot be secure in their freedoms."* (Bold added) You can read this entire article and more on his official web site at [www.house.gov/paul/tst/tst2006/tst110606.htm](http://www.house.gov/paul/tst/tst2006/tst110606.htm).

I may be cast a heretic; but the fact of the matter is, laws are not meant to stop crime. In many cases laws create crime where none existed. An example would be what I call the stupidity laws, such as mandatory helmet wearing on motorcycles or seat belts in cars etc. These "laws" tell us that the government knows what is best for you, and they will enforce their will upon you by writing laws to protect you from yourself. This is EXACTLY the mentality of a communist society and brute force is EXACTLY the methodology a communist government would use to make you do what they know is best for you.

What crime is committed by possessing an object? Who or what is damaged? If I own an icepick to break up blocks of ice and fill my ice chest – is that a crime? Yet I can use that icepick to rob, damage, or kill another person. Would that person be more dead if I used a gun? There are more people killed each year in cars than with guns – should we limit the speed a car can travel to reduce its killing capability? In

fact more people are killed with hands and feet than with guns – should we have to register our limbs as well? I have known people who have never been in a car collision their entire lives. They are safe and effective drivers. I have likewise known many people who have owned guns and have never shot anyone.

Now the central government is attempting to unconstitutionally expand their power even more by trying to infringe further upon our Second Amendment rights by banning common weapons, invading the Fourth Amendment by forcing us into “trade” by mandating how we dispose of our private property at an added cost burden. And the very weapons they are trying to ban are very much a protected type of weapon as stated by the Supreme Court in [US V Miller](#).

*“In the absence of any evidence tending to show that possession or use of a ‘shotgun having a barrel of less than eighteen inches in length’ at this time has some reasonable relationship to the preservation or efficiency of a well regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument. Certainly it is not within judicial notice that this weapon is any part of the ordinary military equipment or that its use could contribute to the common defense. Aymette v. State of Tennessee, 2 Humph., Tenn., 154, 158.”*

The court reasoned that based on the information they had at the time a saw-off shotgun did not have “*some reasonable relationship... of a well regulated militia*” and that it was not “*any part of the ordinary military equipment.*” Well we have testimony from the Commander in Chief, Diane Feinstein, and a host of liberals in Congress that they are trying to ban the very same “military style weapon” that the Supreme Court said was explicitly protected by the Second Amendment. But they want it both ways and the only conclusion we can make is that they do not care about the Constitution or for what it stands

and especially ANY limitation on their agenda.

Article 1 of the Constitution tells us how we can solve our crime problem within a year. Article 1, Section 8, states that Congress has the power to call forth "the Militia to execute the laws of the Union." Every mass murder, every gun attack, drive by shooting, home invasion, carjacking, or any other such crime is already a crime and the tool the criminal uses really does not change the crime. But if every second or third law abiding citizen was armed, crime would very quickly dry up.

You, the "We the People" of our great nation are responsible for your own safety. The Sheriff the Policeman, even the entire judicial system, is only there to deal with the bad guy. Yes they drive around with a motto painted across the car saying "to Protect and Serve" but did you know that, by law, they have no responsibility to protect anyone? In the case of *DeShaney v. Winnebago County Department of Social Services* the court ruled, and many others as well, that the only individuals that the police have a responsibility to protect are those that are incarcerated or restrained against their will such as prisoners or mental patients stating: *"The affirmative duty to protect arises not from the State's knowledge of the individual's predicament or from its expressions of intent to help him, but from the limitation which it has imposed on his freedom to act on his own behalf."*

The gradual expansion of government to control the firearms industry, to keep criminals out of the trade, then expanded to tax ordinary citizens from owning certain pieces of equipment, then expanded to everyone buying from a dealer, and now expanding once again to encompass every law abiding citizen who has a gun even if they are not in firearm commerce.

A prime example of the expansion; did you know there is NO gun show loophole? If you go to a gun show and purchase a gun, you have to fill out the same background check forms as you



would in their store and the FFL will run the check and if approved you will get the firearm. Where the confusion comes in is that occasionally a private citizen, who may have guns he wants to sell, may offer their gun to an attendee at the show. This is called a private sale. It is not different than someone putting an add in the paper for a gun for sale and someone going to his house to buy it. That is perfectly legal to do. Why, because neither individual is in the "firearm business". Which is what the law covers, not private individuals. That is why it is perfectly legal to make your own gun for personal use but illegal if made to make money. That is called manufacturing and that requires a license.

We now have the President and politicians, from both sides of the aisle, that want universal background checks. Meaning any transfer of a firearm would have to be done through a licensed dealer to perform a background check. Secondly, they want national "red flag" laws that will allow government to confiscate your firearms and ammunition solely on someone else's feelings or knowledge. "I just feel he is going to do something." Should we be cautious and follow up on such claims? Absolutely! But before any "raid" to take property happens a judge needs to evaluate the evidence/claims and order a warrant before any property is seized. By the way that is what the 4<sup>th</sup> Amendment is about.

But will this solve the problem? Well, as I have said before, if laws stopped crime then the jails would be empty. So laws will not stop the type of crimes that have happened in the past nor will they stop them from happening in the future. Some may say that by banning these weapons (law) then they will not have them to use. If that were true prohibition would have been a success, the drug war would be over by now and our streets would be drug free. All the central government is managing to do is to increase the victim pool by disarming the law abiding citizen because as we all know the criminal will not obey the law and if he does not have one now

the black market will provide it to him just as it always has.

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