Now Is the Time for Texas to Seek a Writ of Prohibition

Whatever the Supreme Court might or might not do, it would behoove Texas to follow this course of action in order to bring to the public’s attention, in the sharpest focus possible, exactly how extremely serious constitutionally (as well as politically, economically, and socially) the invasion of this country by illegal aliens actually is.

Trump, Insurrection, and Disqualification

One is easily overwhelmed by the fatuity and even imbecility of the politically motivated drivel which has inundated, and continues to flood, the Internet concerning Mr. Trump’s supposed disqualification for the office of President of the United States under the Fourteenth Amendment to the Constitution of the United States because of his alleged participation in the so-called “January Sixth Insurrection”.

The Absolute Right of Informed Consent

The evident problem right now is that all too few Americans

seem ready and willing to call a spade a spade—bluntly put, to recognize that, with respect to "Covid-19", this country is not dealing with "science" at all, unless it be the science of criminology. Indeed, if Dostoevsky were writing a novel about the present "pandemic", he would be compelled to entitle it, not Crime and Punishment, but Crime without Punishment…

How the States Can Suppress Illegal Immigration

"The good People" need to stop waiting for some rapturous event (whether of heavenly or human origin) the timing of which even the Scriptures deny that any man can predict. They must come to grips with the admonition that "God helps those who help themselves". And, with that as their guide, they need to shoulder their responsibility, to organize themselves, and to plan, prepare, and act to save this country. No one else will do it for them.

Why Are Not Some People Quaking in Their Boots?

Unfortunately, one must conclude (at least for now) that, although possible domestic malefactors in the development of "Covid 19" should be quaking in their boots, in actuality they are laughing up their sleeves at ordinary Americans—with good reason, and with a good prospect of never having to stop.

The President’s Authority To Suppress Insurrections

IN SUM, those people who vociferously contend that the President has no authority to suppress the kinds of riots, looting, arson, and killings going on within the States these days know not whereof they speak. And if plain ignorance is not the explanation for their behavior, what is?

When Will “Enough Is Enough” Become “This Is Too Much”?

The “covid-19” panic has emphasized in an unique manner the necessity for Americans to ask themselves the perennially relevant question: “Quis custodiet ipsos custodes?”—“Who is to watch the watchmen?”—or, more colloquially descriptive of this country’s present dilemma, “Who is to govern the governors?”

Is The President An “Essential” Worker?

During the course of the “covid-19” panic, masses of hot air, typescript, and electrons have been expended on what workers

are, or are not, “essential”. On the one hand, in society’s estimation each and every worker in the free-market economy is “essential” in his particular job—otherwise, he would not be employed.

“Covid 19” and Three Discontinuities of Government

If sanity ever returns to this rats’ nest of hysteria, it will surely be discovered that many people have died, wide swaths of the economy have been deranged or even destroyed, the Constitution has been assaulted, and the intelligence of ordinary Americans has been insulted

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The Offensiveness of Taking Political Offense

Nevertheless, in charity one should not conclusively presume that any Members of Virginia’s present General Assembly who propose or support “gun control” are being subjectively “treasonous”, in the sense that they are fully aware of the true nature of “gun control” and intend to impose it on their constituents nonetheless.

“Gun Control” Is A “Badge And Incident Of Slavery”

As most politically observant readers of this commentary are all too well aware, in the elections of 2019 the Democratic Party gained an ascendancy in both Houses of the General Assembly of the Commonwealth of Virginia. Inasmuch as the Democrats also control the Governorship of Virginia, beginning in 2020 they will be able—if they maintain their party discipline or enlist enough turncoat Republicans as allies—to advance the sort of “gun-control” agenda

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The 9-11 Event, The President, And The Militia

Getting to the bottom of the 9-11 Event will require extensive, exhaustive, and relentless execution of those “Laws”. The Constitution imposes on the President the duty to “take Care that the Laws be faithfully executed”.

What “Right To Keep And Bear Arms” Is That?

It should be obvious, too, that the absolute “right of the people to keep and bear Arms” in order to facilitate their

service in the Militia is perfectly compatible with—indeed, is the very best way to effectuate—"the individual right" "to keep and bear Arms" for personal self-defense.

Three Questions About The Second Amendment

Recently, some friends of the Second Amendment posed three questions to me, the answers to which I consider of great importance—

I. Why is the recent ban on "bump stocks" so important?

First, in "the bump-stock ban" the Bureau of Alcohol, Tobacco, Firearms, and Explosives ("BATFE") has jury rigged a precedent for its "redefinition" of whatever statutory terms, originally defined by Congress, the unelected bureaucrats haunting the agency's offices want to expand, contract, or otherwise twist out of shape by linguistic tricks. It would be effrontery enough for *any* mere "administrative agency" to arrogate unto itself in any degree—worse yet, to usurp outright—the exclusive constitutional authority of Congress to rewrite the laws of the United States. But in the case of the BATFE in particular it is intolerable. For the BATFE has proven itself to be a rogue establishment with a strong, persistent, and often irrational bias against ordinary Americans' exercise of their rights under the Second Amendment. (The recent scandal of so-called "gun walking" under the agency's code-name "Fast and Furious" is merely the most notorious of these outrages.) So the BATFE can be expected to spew out more "redefinitions" of this ilk as time goes by—especially if (or perhaps when) the Democratic Party gains control of the White House in the

2020 elections.

Second, the "bump-stock ban" can easily be extended far beyond "bump stocks" themselves. In pertinent part, the BATFE's new regulation reads as follows:

> The term "machine gun" includes a bump-stock-type device, i.e., a device that allows a semiautomatic firearm to shoot more than one shot with a single pull of the trigger by harnessing the recoil energy of the semiautomatic firearm to which it is affixed so that the trigger resets and continues firing without additional physical manipulation of the trigger by the shooter. [*See* 27 C.F.R. ¶¶ 447.11, 478.11, and 479.11, *as modified perforce of* 83 Federal Register at 66553 to 66554.]

On the face of it, the BATFE has "redefined" the statutory term "machine gun" simply in order to prevent certain semiautomatic firearms—such as AR-15 type rifles—from being "bump fired". Plainly enough, however, the agency's ultimate goal is not just to ban "bump-stock-type device[s]"—and not just to outlaw "bump fire" effectuated through the employment of such "device[s]"—but instead *to ban all firearms capable of "bump fire" by any means, on the grounds that all such firearms, so usable, are effectively "machine guns"*.

After all, the ostensible reason for the present attack on "bump-stock-type device[s]" is that "bump fire" itself is deemed to be somehow equivalent to (fully) automatic fire. So, because the BATFE has set out to prohibit a general *effect*, it does not matter that the actual mechanisms of "bump fire" with a semiautomatic firearm on the one hand, and of automatic fire with an actual "machine gun" on the other hand, are distinctly different, and have hitherto always been recognized as such by Congress and the BATFE itself, as well as by every firearms expert worthy of that designation. To the BATFE, to a benighted President Trump, and to "gun-control" fanatics in Congress, State legislatures, the courts, and the big

"mainstream media"—as well as to all too many credulous Americans—simplistic appearances are of greater consequence than the complex technical realities of how disparate types of firearms actually function.

To accomplish that end, following up on the ban of "bump-stock-type device[s]" the BATFE could simply declare "bump fire" to be an inherent capability of certain semiautomatic firearms—because, self-evidently, no "bump-stock-type device" could cause any firearm to "bump fire" unless that firearm were already capable of being "bump fired". *So every semiautomatic firearm capable of "bump fire" by any means could be mischaracterized as inherently a "machine gun"*. To employ the BATFE's terminology, "bump fire" simply "harness[es] the recoil energy of the semiautomatic firearm" (an inherent characteristic), in conjunction with the firearm's existing mechanism (also an inherent characteristic), so as to allow "the trigger [to] reset[ ] and continue[ ] firing without additional physical manipulation of the trigger by the shooter". A semiautomatic firearm which can be demonstrated to be capable of "bump fire" by any means is, perforce of that capability, "designed to shoot * * * automatically more than one shot, without manual reloading, by a single function of the trigger". Inherent in the design of such a firearm is "a self-acting or self-regulating mechanism that allows the firing of multiple rounds through a single function of the trigger", where a "'single function of the trigger' means a single pull of the trigger and analogous motions", those "motions" being caused in whatever effective manner. The "single function of the trigger" is the first pull by the conscious action of the shooter, after which "harnessing the recoil energy" of the firearm "automatically", through "analogous motions", results in firing "more than one shot, without manual reloading" and without a further conscious "pull of the trigger" by the shooter (thus being practically akin to a "machine gun"). *Q.E.D.*

On the basis of that reasoning, *the BATFE could ban the private possession of* ***every*** *semiautomatic rifle—and probably* ***every*** *semiautomatic handgun and shotgun as well—which the agency's technical staff could demonstrate to be capable of "bump fire" by any means whatsoever*.

In the minds of politicians, legislators, judges, the big "mainstream media", goofy "celebrities", and a not inconsiderable percentage of the general public unfavorably disposed to the Second Amendment, this could be a very potent argument for banning just about all semiautomatic firearms.

II. What were the Founders trying to achieve when they adopted the Second Amendment?

The Founders certainly did not have in mind the contemporary misinterpretation of the last fourteen words of the Second Amendment which focuses on a so-called "*individual* right" to "keep and bear Arms" for the purpose of personal self-defense alone. They knew perfectly well that the right of self-defense did not need a constitutional Amendment for its recognition, protection, or exercise. For, in the words of Sir William Blackstone, the preëminent commentator on the laws of England at that time, "[s]elf defense * * * is justly called the primary law of nature, so it is not, neither can it be in fact, taken away by the law of society." *Commentaries on the Laws of England* (American Edition, 1772), Volume 3, at 4.

Furthermore, the Founders would have interpreted the Second Amendment in just the way they wrote it: namely, treating all of its twenty-seven words as inextricable parts of a single coherent sentence. Read in that way (as every sentence in the English language must be read), the Amendment's meaning is self-evident. Its goal is "a free State". To achieve this end, "security" is indispensable. The "necessary" means to provide "security" is "[a] well regulated Militia". "[T]he right of the people to keep and bear Arms" is of central instrumentality in the operation of "[a] well regulated

Militia", and through the Militia is "necessary to the security of a free State". For which reason that "right * * * shall not be infringed"—and without any exception, too, inasmuch as what the Constitution declares to be "necessary" can never be deemed to be "unnecessary". Thus, the Second Amendment guarantees not only "the right of the people to keep and bear Arms", but also, through the people's permanent possession of suitable "Arms", their right at all times to serve in "well regulated Militia" as the defenders of "a free State".

The Founders' primary concern was that Congress might default on its duty in Article I, Section 8, Clause 16 of the Constitution "[t]o provide for * * * arming * * * the Militia". But the Second Amendment also covered the possibility that the States themselves might be no less remiss. As is all too evident today, the Founders' fears have been proven prescient as to both Congress and the States.

The contemporary "individual right" "to keep and bear Arms" concerns itself entirely with the needs and actions of *individuals* as such, not with "well regulated Militia". Ordinary Americans' exercise of the."individual right" does not establish "[a] well regulated Militia", or secure its existence, or aid in its operations. Indeed, proponents of "the individual right" turn logical and linguistic somersaults in their bootless attempts to prove that, notwithstanding the actual wording of the Second Amendment, "the individual right" has nothing whatsoever to do with the Militia.

Moreover, Americans who exercise merely "the individual right" cannot fulfill any of the responsibilities assigned to the Militia. Article I, Section 8, Clause 15 of the Constitution empowers Congress "[t]o provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions". But—

- People exercising "the individual right" in isolation or

ad hoc groups can neither "repel Invasions" by foreign nations capable of invading the United States, nor "suppress Insurrections" on any scale worthy of that name. For such people can draw on no collective organization, training, discipline, governance, or extensive logistical support equal to those tasks.

- Being burdened with similar deficiencies which prevent them from functioning as competent law-enforcement officers, people exercising merely "the individual right" are incapable in fact of "execut[ing] the Laws of the Union" (or of their own States, either). Of even more consequence, mere individuals have *no governmental authority* to execute *any* laws other than those few encompassed within the law of personal self-defense.

To be sure, the National Rifle Association and its co-thinkers claim that "the individual right" protects ordinary Americans against tyranny. This is wishful thinking. Even if armed, mere individuals or *ad hoc* groups cannot be expected to fend off by themselves the well organized and equipped forces of an ensconced tyrannical régime, any more than they can be expected to "repel Invasions" or "suppress Insurrections" on their own.

Although "the individual-right" misinterpretation of the Second Amendment does not support the Militia—and therefore does next to nothing for "the security of a free State"—the Militia interpretation of the Amendment guarantees "the individual right" as part of "the security of a free State". An individual's exercise of the right of personal self-defense always executes *some* law—whether against murder, manslaughter, mayhem, rape, battery, assault, armed robbery, and so on—under circumstances in which no other means of law enforcement is available. In that situation, the individual performs a function constitutionally assigned to the Militia: namely, executing the laws applicable in such circumstances. Thus, when the Second Amendment is properly interpreted so as to

guarantee the existence of “well regulated Militia”, “the individual right” to personal self-defense receives the maximum amount of protection, too.

Similarly as to “Arms”. By its own terms, the “individual-right” theory embraces only “Arms” suitable for personal self-defense. This limitation enables proponents of “gun control” to deny that so-called “weapons of war”, “assault firearms”, and firearms capable of “bump fire” are entitled to any protection at all from the Second Amendment. One need peruse only the infamous decision in the recent case *Kolbe* v. *Hogan*, 849 F.3d 114 (4th Cir. 2017), to see how convincing this denial can be for contemporary judges intent upon to reducing the Second Amendment to a vestigial organ in the constitutional *corpus juris*.

Were the suitability of “Arms” for service in the Militia the legal standard, however, *all* conceivable “Arms” would be protected, including “weapons of war”, “assault firearms”, and firearms capable of being “bump fired” (not to mention true “machine guns”). Within that extensive array would surely be found “Arms” useful in any imaginable situation involving personal self-defense.

III. Why is the fixation on “it’s our right” insufficient to achieve the true purpose of the Second Amendment?

“[T]he right of the people to keep and bear Arms” may be “our right” in principle. But what good is that naked assertion when some “gun-control” statute is enacted or some judicial decision is handed down which purports to deny “our right” in practice?

Any competent lawyer will advise his client that “a right without a remedy is nonexistent”. So what is the *sure, certain, and final* remedy for modern-day “gun control”?

Beyond doubt, it is *not* “the individual right”. Reliance on “the individual right” *exposes* ordinary Americans to “gun

control” *to the maximum degree possible*, because the legal contest is between mere private citizens, on the one side, and public officials, on the other. Under what passes for constitutional law today, “the individual right” can *always* be overridden by a so-called “compelling governmental interest”—which is whatever judges hostile to the Second Amendment say it is. Thus, “our right” is held hostage to their prejudices.

If, however, people exercising “the right * * * to keep and bear Arms” were active members of “well regulated Militia”—as all able-bodied Americans from sixteen years of age upwards should be—then contemporary “gun control” would necessarily pit one part of the government—a legislature or a court—against another part of the government—the Militia. This, of course, would create a logically as well as a legally untenable situation. For no conceivable “governmental interest” could exist for one part of the government to prevent another part of the government from performing its constitutional tasks. For example, Congress obviously cannot fulfill its constitutional duty “[t]o provide for * * * arming * * * the Militia” by “[*dis*]arming * * * the Militia”. Neither can the States nullify that duty of Congress by themselves disarming their Militia. Thus, were the Militia in full constitutional operation, “gun control” of the contemporary sort would be *impossible* in both principle and practice. If that is not a compelling reason to pay close attention to *all* twenty-seven words of the Second Amendment (as well as the Militia Clauses of the original Constitution), one cannot imagine what could be.

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Censorship By Internet Corporations Is Still Censorship

The present brouhaha convulsing the Internet over the "banning", "shadow banning", "demonetizing", and "censoring" of various so-called "conservative" or "right-wing" personalities, web sites, and blogs by Facebook, Twitter, YouTube, Google, and so forth has generated far more uninformed talk than systematic analysis. For the prime example, many observers put forward the simplistic apology that, although "free speech" in a general sense *is* being curtailed, and particular political, ideological, religious, and other points of view *are* being discriminated against and penalized, by these "social media" and "search engines", nevertheless Facebook and the rest are not *governmental* entities but only *private* companies which as such have no constitutional or other legal duty to respect any but their own idiosyncratic conceptions of "free speech" (as embodied in the exceedingly vague and plastic "terms of service" and "community standards" in accord with which they police the speech allowed on their "platforms"). "Censorship" by such private corporations, so the argument goes, is not really "censorship" at all. This contention, however, is about as porous as a sieve.

First, as ostensibly private corporations, Facebook and the like surely expect that, were their "terms of service" and "community standards" to be challenged by the persons against whom they are discriminating, the courts of the several States, and perhaps of the United States as well, would uphold and see to the enforcement of those "terms" and "standards" as

parts of private contracts. In fact, however, these "terms of service" and "community standards" are quintessential examples of "contracts of adhesion" which, because they evidently allow for (and arguably are intended to facilitate) invidiously discriminatory practices plainly subversive of the First Amendment and the Equal Protection Clause of the Fourteenth Amendment, the courts should think more than twice before approving. *See Shelley* v. *Kramer,* 334 U.S. 1 (1948).

Second, although perhaps "private corporations" in form (a question to be addressed below), these Internet "platforms" in fact were designed to serve, and now actually function, as "public fora" of the widest scope imaginable—certainly to a far greater degree than even the "company town" involved in the Supreme Court's decision in *Marsh* v. *Alabama,* 326 U.S. 501 (1946), was intended to and did serve as an effective "municipality" for its residents. In *Marsh*, the Court held that

[w]hether a corporation or a municipality owns or possesses the town the public in either case has an identical interest in the functioning of the community in such manner that the channels of communication remain free. * * * [T]he [company] town * * * does not function differently from any other town. The "business block" serves as the community shopping center and is freely accessible and open to the people in the area and those passing through. The managers appointed by the corporation cannot curtail the liberty of press and religion of these people consistently with the purposes of the Constitutional guarantees [in the First and Fourteenth Amendments] * * * .

Many people in the United States live in company-owned towns. These people, just as residents of municipalities, are free citizens of their State and country. Just as all other free citizens they must make decisions which affect the welfare of community and nation. To act as good citizens they must be informed. In order to enable them to be properly informed

their information must be uncensored. There is no more reason for depriving these people of the liberties guaranteed by the First and Fourteenth Amendments than there is for curtailing these freedoms with respect to any other citizen.

* * * [T]he circumstance that the property rights to the premises where the deprivation of liberty * * * took place[ ] were held by others than the public, is not sufficient to justify the State's permitting a corporation to govern a community of citizens so as to restrict their fundamental liberties and the enforcement of such restraint by the application of a state statute. [326 U.S. at 507-509 (footnotes omitted).]

In principle, the "public fora" established by Facebook *et alia* are no different from other "public fora", including those in "company towns". (It could even be said that the denizens of Facebook and Twitter, for instance, live in electronic "company towns" distinguishable from old-fashioned "company towns" only with respect to their absence of geographic borders.) In practice, though, "public fora" on the Internet are much more extensive in scope and intensive in use by the general public than any "public fora" in existence heretofore. Indeed, far more people use, and even rely for personal and other purposes on, Facebook and other Internet "platforms" than now live, or have ever lived, in "company towns" in this country. And in attempting to enforce their "terms of service" and "community standards" in aid of invidious discrimination, Facebook and the like will doubtlessly invoke on their behalf State laws, or even the laws of the United States, which apply to "corporations" and "contracts". So it would seem that the principles invoked in *Marsh* squarely apply to them.

Third, the excuse put forward by Facebook *et alia* for their discriminatory practices is that their "terms of service" and "community standards" are aimed only at so-called "hate speech", "offensive speech", "fake news", and "conspiracy

theories". Perhaps it is enough to point out that neither Mr. Zuckerberg of Facebook nor any other *guru* in the "tech community" has a plausible, let alone a legitimate, claim to set himself up as the arbiter of what constitutes "goodspeaking" or "goodthinking" (in the Orwellian sense). After all, Mr. Zuckerberg's "expertise" (such as it may be) relates to the arcana of computer codes, not to the code of laws which define "free speech".

More specifically, terminology such as "hate speech" and "offensive speech" has no basis anywhere within the corpus of constitutional law, least of all with respect to the First and Fourteenth Amendments. *See, e.g., Terminiello* v. *Chicago*, 337 U.S. 1 (1949), and *Cohen* v. *California,* 403 U.S. 15 (1971). Simply put, the enjoyment of one's constitutional rights—of *any* sort—cannot be made to turn on the invocation of tendentious labels. *See, e.g., Craig* v. *Missouri*, 29 U.S. (4 Peters) 410, 433 (1830); *NAACP* v. *Button*, 371 U.S. 415, 429 (1963); *New York Times Company* v. *Sullivan*, 376 U.S. 254, 268-269 & notes 7 to 12 (1964); *Bigelow* v. *Virginia*, 421 U.S. 809, 826 (1975); *City of Madison, Joint School District No. 8* v. *Wisconsin Employment Relations Commission*, 429 U.S. 167, 173-174 & note 5 (1976).

Fourth, Facebook and other Internet "platforms" have grown into abusive corporate monopolies, which should be curtailed with respect to *all* of their excesses for that reason alone, under the antitrust laws. After all, much of what flows through the Internet under the auspices of these "platforms" is "interstate commerce" or undoubtedly "affects interstate commerce", some of which "commerce" the "platforms" are openly attempting to suppress. And as the Supreme Court explained by way of analogy in *Marsh*,

[s]ince these facilities are built and operated primarily to the benefit of the public and since their operation is essentially a public function, it is subject to state regulation. And * * * such regulation may not result in an

operation of these facilities, even by privately owned companies, which unconstitutionally interferes with and discriminates against interstate commerce. [326 U.S. at 506 (footnote omitted).]

Fifth, the question arises: *Why* is the government of the United States not applying the antitrust laws to break up these obnoxious Internet monopolies? Besides tried and true explanations bottomed on the insouciance, incompetence, or venality of public officials, two plausible answers come to mind—

(1) Certain dark forces within the General Government want to present to the public the monopolistic character of Facebook and other Internet "platforms" as a "problem" for which the "solution" will be artfully crafted "regulation". Not "regulation" in honest aid of untrammeled free speech, to be sure; but "regulation" which will enable those forces to employ those "platforms" to suppress indirectly, through ostensibly "private" action, speech which certain public officials disfavor but dare not suppress directly. Presumably, the "platforms" will actually welcome such "regulation", because (as their present misconduct evidences) they are equally desirous of and intent upon suppressing such speech. "Regulation" will simply protect and perpetuate their *anti*-constitutional activities under the deceptive color of law—with credulous Americans lulled into acquiescence by the fairy tale that "regulation" has magically transformed vicious monopolies once controlled by self-serving corporate executives into virtuous "public/private partnerships" newly controlled by no less self-serving bureaucrats acting in league with no less self-serving corporate executives.

(2) The even more disturbing explanation for public officials' reluctance to enforce the antitrust laws against the big Internet "platforms" is that those "platforms" never were, and are not now, really "private" endeavors at all. Rather, as many informed people believe with more than probable cause,

they were originally inspired, invented, initiated, infused with capital, or otherwise encouraged and aided by the CIA, DARPA, or other entities lurking within the shadows of the Deep State. The goal (which evidently has succeeded) was to set up ostensibly "private" companies as surreptitious agents or allies of the Deep State for the dissemination of propaganda, for political and cultural subversion, for thoroughgoing surveillance of the population—and ultimately for the regimentation of common Americans' minds at such a depressed level of triviality, infantilism, and even stupefaction that it would become virtually impossible for them to function as informed, competent citizens within the "Republican Form of Government" which Article IV, Section 4 of the Constitution guarantees. One may recall that, when asked what sort of government the Federal Convention of 1787 proposed, Benjamin Franklin responded: "A republic, if you can keep it." No one can expect to "keep" a "republic" in existence for very long, though, if such as Facebook and Twitter significantly affect, let alone determine, the quality of public discourse.

In sum, there can be no question that "censorship"—in the constitutional sense of that term—*is* at work on the Internet. And the Internet giants cannot shelter behind the flimsy façades

of their "corporate" charters. Honest and competent public officials, intent on serving the public interest, could bring this situation under control. Whether such officials exist in sufficient numbers to do the job remains to be seen.

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How To End The Assault On Assault Firearms

In recent years, “gun-control” fanatics have been anything but idle. In all too many States, they have succeeded in promoting draconian legislation directed at what they call “*assault* firearms” or “*military-style* firearms”. Typically, these statutes ban or impose onerous restrictions on private possession of “assault firearms” (i) specified by the manufacturers’ model names, as well as (ii) identifiable by one or more general “features” (such as the capability of semiautomatic fire, a detachable box magazine, a muzzle brake or flash suppressor, a folding or otherwise adjustable stock, a pistol grip, a barrel shroud, and so on). In addition, these statutes promiscuously outlaw so-called “high-capacity magazines” (usually defined as those capable of holding more than ten cartridges), whether or not used in conjunction with some “assault firearm”.

One need not be a psychologist well versed in the twisted workings of the politically psychopathic mind to realize that “gun-control” fanatics’ long-range goal is to ban private individuals’ possession of *all* firearms of *every* type, so as to render Americans defenseless against oppression by a totalitarian police state. Although at the present time these fanatics cannot convince more than a tiny minority of Americans of the desirability of their ultimate aim, they have hit upon a strategy to achieve it step-by-step through plays on words. Their approach is based upon the old adage that “to kill a dog you must first call it mad”. To be sure, even they recognize that *any* firearm can be used to commit an “assault”, just as any firearm can be used for the purpose of “defense”; and that the capacity of *any* magazine designed to hold more even than two cartridges can be deemed “high” in comparison to a magazine holding only that many. The point of the rhetorical

exercise is not to talk sense, however, but through the use of seemingly plausible propaganda to make sequential progress in banning from private possession as many firearms as possible, in as much of this country as possible, as soon as possible.

So one need not be a certified fortune-teller to predict that "gun-control" fanatics will steadily expand the definition of "military-style" and "assault" rifles to include *all* semiautomatic rifles, on the grounds that semiautomatic rifles of any sort are not meaningfully distinct in operation in the field from the fully automatic or burst-fire arms employed by the regular Armed Forces. (Indeed, even the Army—long addicted to the wasteful "spray-and-pray" theory of marksmanship—now increasingly trains its personnel in controlled semiautomatic fire.) Then the demand will arise to ban or severely regulate private possession of all pump-action firearms, on the theory that these are routinely employed by police and other law-enforcement personnel who are organized, equipped, and trained on a *para*-military basis. Next will come bolt-action rifles which can use "high-capacity magazines" (with the definition of "*high* capacity" constantly being lowered). For "gun-control" fanatics will surely contend that the mere ability of any rifle (or any pistol or shotgun, for that matter) to use a "high-capacity magazine" by itself renders that firearm an "assault firearm".

This scheme has already received initial judicial support in the notorious case *Kolbe* v. *Hogan*, 849 F.3d 114 (4th Cir. 2017) (*en banc*), which held that:

> (i) because of their general "military style" and operation, "assault firearms" are "weapons of war", or at least are sufficiently akin to "weapons of war" to be treated as such;
>
> (ii) being effectively "weapons of war", "assault firearms" are excessively dangerous in private hands, as evidenced by their employment in various recent mass shootings;

(iii) as a class, "weapons of war" (or their functional equivalents) are not needed for individuals' self-defense; and therefore

(iv) "assault weapons" are not protected by the Second Amendment to any degree, because, according to "the individual-right theory" adopted in the Supreme Court's decision in *District of Columbia* v. *Heller*, 554 U.S. 570 (2008), the Second Amendment is primarily (if not exclusively) concerned with firearms judicially distinguishable from "weapons of war".

Unfortunately, as *Kolbe* demonstrates, "the individual-right theory" of the Second Amendment promoted by the National Rifle Association and its co-thinkers—which focuses exclusively on the last fourteen words of the Amendment—cannot even address, let alone defeat, this "weapons-of-war" theory. The NRA's approach has been, first, to lobby State legislatures in attempts to prevent statutory bans on or stringent regulations of private individuals' possession of "assault firearms" and "high-capacity magazines" from being enacted into law. Then, when these efforts have failed, to mount equally bootless judicial challenges to such laws, based on "the individual-right theory". And thereafter to repeat this feckless process in robotic fashion, always hoping in the face of contrary evidence for a different result. *See* *Worman* v. *Healey,* Civil Action No. 1:17-10107-WGY (D. Mass. 2018), particularly at pages 26-34 and 46-47 (relying on *Kolbe*). This approach has proven to be ineffective in, for example, California, Connecticut, Maryland, Massachusetts, New Jersey, and New York. And it surely will garner no greater success in other States in which "gun-control" fanatics contrive to gain the upper hand in State legislatures and the courts, with the big "mainstream" media's massive propaganda apparatus cheering them on.

If the NRA can learn from its own sorry experience, it should redirect its efforts to Congress and the President, urging

them to take action pursuant to Article VI, Clauses 2 and 3 of the Constitution, which (in pertinent part) provide that "[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof * * * , shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding", and that "the Members of the several State Legislatures, and all executive and judicial Officers * * * of the several States, shall be bound by Oath or Affirmation, to support this Constitution".

A. There can be no doubt that Congress is empowered under Article I, Section 8, Clause 3 (the Commerce Power) to enact a "Law[ ] of the United States" to protect common Americans' possession of "assault firearms" and "high-capacity magazines" against State prohibitions or regulations. In pertinent part, the Commerce Power authorizes Congress "[t]o regulate Commerce * * * among the several States". As construed in numerous decisions of the Supreme Court, this power reaches all items which move or have ever moved in, or which otherwise arguably "affect", "Commerce * * * among the several States".

With respect to firarms in particular, perforce of this understanding of the Commerce Power Congress has asserted its right *inter alia:* to define which firearms are subject to regulation by the General Government (*see* 18 U.S.C. § 921); to grant or withhold permission to manufacture or deal commercially in firearms *(see* 18 U.S.C. § 922(a)); to set age-limits for the sale, purchase, and possession of firearms (*see* 18 U.S.C. § 922(b) and (x)); to control the sale, transfer, or other disposition of firearms to persons it prohibits from possessing them (*see* 18 U.S.C. § 922(d)); to restrict classes of persons from possessing, receiving, or transporting firearms at all (*see* 18 U.S.C. § 922(g), (m), and (n)); to regulate the assembly of firearms from parts (*see* 18 U.S.C. § 922(r)); and to require"background checks" of persons seeking to purchase firearms (*see* 18 U.S.C. § 922(s) and (t)).

Congress has also made it clear that it can leave operable and abide by, or overrule and exclude entirely (in legal terminology "preëmpt"), State laws relating to the purchase or possession of firearms which "affect" "Commerce * * * among the several States"(*see* 18 U.S.C. §§ 922(b)(2) and 927).

Moreover, at one point in time, Congress took it upon itself to control traffic in and possession of what it then deemed to be "assault firearms" (*see* the former 18 U.S.C. § 922(v) and (w), which expired on 13 September 2004). This statute was negative in one sense, because it prohibited possession of some "assault firearms" in certain circumstances; *but it was positive in another sense, because it allowed such possession in different circumstances*. And it was clear at the time that no State law could have interfered with the operation of this statute.

Thus, pursuant to the broad authority it has heretofore exercised perforce of the Commerce Power, Congress could now enact a statute which protects against contrary State laws the manufacture, transportation, receipt, sale, purchase, transfer, ownership, and possession of "assault firearms" and "high-capacity magazines"—defined as various obnoxious State laws define them , or as Congress may more broadly define them—for all individuals (i) who are citizens of the United States or legally resident aliens who have made a declaration of intention to become such citizens, (ii) who are at least of some minimum age, and (iii) who are not prohibited by some law of the General Government from so dealing with firearms.

Through the effect of "preëmption", such a statute would disable every elected or appointed official, department, or agency, and every county, municipality, or other political subdivision, of any State from enacting, enforcing, or affording legal recognition or effect for any purpose to any statute, ordinance, executive order, administrative regulation, or judicial decision operative in such State which purported to ban, to require licensing for or registration of,

or otherwise to regulate the manufacture, transportation, receipt, sale, purchase, transfer, ownership, or possession of "assault firearms" or "high-capacity magazines" contrary, in addition, or supplementary to any law of the General Government applicable to such firearms or magazines.

Even without specific penalties stipulated in such a statute for State actors who dared to violate it, it would automatically override all contrary State and Local laws, and subject those malefactors to criminal prosecutions (under, say, 18 U.S.C. §§ 241 and 242) and civil actions (under, say, 42 U.S.C. § 1983) in the General Government's courts.

Moreover, because Congress's authority to "regulate Commerce [in firearms] * * * among the several States" reaches firearms of *any and every* sort or description, the Congressional statute posited here would essentially overrule aberrant judicial decisions such as *Kolbe*. Although *Kolbe* sustained Maryland's statutory ban on "assault firearms" by means of the judicial sophistry that the Second Amendment's guarantee does not embrace such firearms, the proposed statute would render Maryland's law undeniably unconstitutional under Article I, Section 8, Clause 3 and Article VI, Clauses 2 and 3 of the Constitution, simply because the Commerce Power undoubtedly applies to *all* firearms which "affect" "Commerce * * * among the several States" *whether or not they are protected by that Amendment*, and the said statute would undoubtedly be a "Law[ ] of the United States * * * made in Pursuance" of the Commerce Power.

B. Some champions of "the right of the people to keep and bear Arms" guaranteed by the Second Amendment might object that a *general* invocation of the Commerce Power—even though specifically on behalf of protecting Americans' possession of "assault firearms" and "high-capacity magazines"—might be taken to concede *sub silentio* the presumptive validity of many highly questionable restrictions on Americans' acquisition and possession of firearms which Congress has previously enacted

under color of that power. The short answer to this is: “one thing at a time”. Although the General Government’s entire regulatory scheme relating to firearms surely needs comprehensive reëvaluation and overhaul, attempting a thoroughgoing reform at this juncture would only throw up unnecessary and perhaps insurmountable political roadblocks to any reform. Although limited in scope, the statute posited here would certainly be an improvement on the present situation. And something is better than nothing.

Nonetheless, it would not be amiss to consider for purposes of argument a statute with a greater degree of constitutional particularity. Section 1 of the Fourteenth Amendment provides (in pertinent part) that “[n]o State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States”. And Section 5 of that Amendment provides that “[t]he Congress shall have power to enforce, by appropriate legislation, the provisions of this article.” Notwithstanding *Kolbe*, common Americans’ access to and possession of “assault firearms” and “high-capacity magazines” *are* protected by the Second Amendment—particularly in consideration of the first thirteen words thereof—and as such are among “the privileges and immunities of citizens of the United States”. *See Scott* v. *Sandford,* 60 U.S. (19 Howard) 393, 403, 416-417 (1857), *particularly in light of the analysis in* William W. Crosskey, *Politics and the Constitution in the History of the United States* (Chicago, Illinois: The University of Chicago Press, 1953), Volume II, Chapter XXXI. So it would undoubtedly be constitutional for Congress to determine as much, and on that basis to enact the statute posited here, in order “to enforce” those “privileges and immunities” against any “State [which] shall make or enforce any law which shall abridge th[os]e privileges and immunities”. And a statute predicated upon the Second and Fourteenth Amendments could not be faulted for tacitly accepting the possibility that Congress itself might have “abridge[d] th[os]e privileges and immunities” through

legislation enacted under color of the Commerce Power in years past.

The evident problem with this approach, however, is that rogue judges might—nay, surely would—attempt to void such a statute on the specious basis that Congress's assertions that "assault firearms" are protected under the Second Amendment, or that "the right of the people to keep and bear Arms" is within "the privileges and immunities of citizens of the United States", or both are wrong, and in any event are not bonding upon the Judiciary. After all, the errant judges who decided *Kolbe* held, as a matter of their absurdly twisted misconception of the Second Amendment, that "assault firearms" are not within the ambit of "the right of the people to keep and bear Arms". *See* 849 F.3d at 121, *relying on* dicta *in District of Columbia* v. *Heller*, 554 U.S. 570, 627-628 (2008). And if that reasoning were constitutionally cogent, on what basis could Americans' acquisition and possession of such firearms be found among those "privileges and immunities"? Therefore, in light of the proclivity of such jurists to declare that their (mis)interpretations of the Constitution *are* the Constitution, to which everyone else in the entire world must give credence and obedience, reliance on only the Second and Fourteenth Amendments to solve the problem posed by State laws which ban "assault firearms" would simply create another problem: namely, how are Congress and the President to enforce the remedial statute in the face of obstruction from courts staffed by partisans of "gun control" intoxicated by the pernicious doctrine of "judicial supremacy"?

The obvious answer is that, because no one can doubt that "the privileges and immunities of citizens of the United States" include statutory rights created by Congress, the posited statute enacted pursuant to the Commerce Power which recognized the rights of common Americans to acquire and possess "assault firearms" notwithstanding any contrary State law could be enforced through the Fourteenth Amendment, no

matter what idiotic notions about the inapplicability of the Second Amendment rogue judges might entertain. This solution, however, raises once again the question of whether the Commerce Power is the most suitable constitutional vehicle for the purpose at hand.

In addition, by the Fourteenth Amendment's very terms, "the privileges and immunities *of citizens of the United States*" do not apply to aliens legally resident in this country who have made declarations of their intentions to become citizens—and on that basis should have some equitable claim to acquire and possess "assault firearms".

C. All of these difficulties and inconveniences could be obviated if the statute posited here were premissed on Article I, Section 8, Clause 16 of the Constitution, which (in pertinent part) delegates to Congress the power "[t]o provide for * * * arming * * * the Militia". This power is not dependent upon the Commerce Power, the Second Amendment, the Fourteenth Amendment, or any other provision of the Constitution. It is purely a *Congressional* power, in the exercise of which the Judiciary plays no rôle whatsoever save acquiescence. For Article I, Section 8, Clause 18 of the Constitution authorizes Congress "[t]o make all Laws which shall be necessary and proper for carrying into Execution the * * * Powers [in Clauses 1 through 17]". And "the sound construction of the constitution must allow to the national legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional." *McCulloch* v. *Maryland,* 17 U.S. (4 Wheaton) 316, 420 (1819). Thus, *Congress alone* is entitled to decide

what may be "necessary and proper" in the exercise of its power "[t]o provide for * * * arming the Militia"—including whom it will arm, with what firearms they will be provided, and what disabilities Congress may impose upon the States to ensure that its decisions in those particulars are effectuated.

A tremendous amount of legal-historical material is available to answer the question of what "arming the Militia" in Article I, Section 18, Clause 16 means in terms of the types of "arm[s]" which may be involved, as well as how that phrase relates to the phrases "[a] well regulated Militia" and "the right of the people to keep and bear Arms" in the Second Amendment. *See, e.g.,* Edwin Vieira, Jr., *The Sword and Sovereignty: The Constitutional Principles of "the Militia of the Several States"* (Front Royal, Virginia: CD-ROM Edition, 2012). For the purposes of this commentary, though, a detailed review of the documentary record is not required. For in *United States* v. *Miller,* the Supreme Court made it clear that the Second Amendment protects *every* firearm which "has some reasonable relationship to the preservation or efficiency of a well regulated militia", which is "any part of * * * ordinary military equipment", and the "use [of which] could contribute to the common defense". 307 U.S. 174, 178 (1939). In light of the holding in *Kolbe* that contemporary "assault firearms" (together with "high-capacity magazines") *are* equivalent or akin to "weapons of war"—which, of course, *do* "ha[ve] some reasonable relationship to the preservation or efficiency of a well regulated militia", which *are* "part of * * * ordinary military equipment", and the "use [of which] *could* contribute to the common defense"—it follows that Congress may "provide for * * * arming the Militia" with such firearms (along with all other firearms which might satisfy the broad standards set out in *Miller*).

Who, though, are the members of "the Militia" whom Congress may arm? In pertinent part, the relevant statute now provides

that:

> (a) The militia of the United States consists of all able-bodied males at least 17 years of age and, except as provided in section 313 of title 32 [of the United States Code], under 45 years of age who are, or who have made a declaration of intention to become, citizens of the United States, and of female citizens of the United States who are members of the National Guard.
> (b) The classes of the militia are—
>
> > (1) the organized militia, which consists of the National Guard and the Naval Militia; and
> > (2) the unorganized militia, which consists of the members of the militia who are not members of the National Guard or the Naval Militia.

10 U.S.C. § 246. Therefore, in the exercise of its power "[t]o provide for * * * arming the Militia" Congress may enact a statute which stipulates that all members of "the unorganized militia"—at this time, "all able-bodied males at least 17 years of age and * * * under 45 years of age who are, or who have made a declaration of intention to become, citizens of the United States" and "who are not members of the National Guard or the Naval Militia"—shall have the right to acquire and possess "assault firearms" and "high-capacity magazines", *notwithstanding any State statute, ordinance, or other law, or any decree or decision of any court, to the contrary*.

Inasmuch as the present statutory age-limits for "[t]he militia of the United States" do not adequately protect many Americans for whom the possession of "assault weapons" should be guaranteed by law, as part of the reform proposed here the statute quoted above should be amended to provide as follows:

> (a) The militia of the United States consists of all able-bodied male and female individuals who are, or who have made a declaration of intention to become, citizens of the United

States.
(b) The classes of the militia are—

(1) the organized militia, which consists of the National Guard and the Naval Militia; and
(2) the unorganized militia, which consists of the members of the militia who are not members of the National Guard or the Naval Militia, with (i) those at least 17 years of age and under 45 years of age to be included in the active unorganized militia, and (ii) those at least 45 years of age and older to be included in the reserve unorganized militia.

Repelling the contemporary assault on "assault firearms" in this manner would have two benefits. First, it would immediately frustrate the "gun-control" fanatics' plans to disarm Americans by "the death of a thousand cuts". Second, it would at least begin the necessarily lengthy process of constitutionally revitalizing "the Militia" throughout the United States. Eventually, of course, Congress would have to exercise to the full its power "[t]o provide for organizing, arming, and disciplining, the Militia" to that end. For this, systematic governmental direction, oversight, and assistance by both the General Government and the States would be required. At the present time, though, it would suffice for Congress to enable members of "the unorganized militia" to arm themselves through the free market with the type of firearms arguably most suitable for "contribut[ing] to the common defense"—that is, modern "assault firearms"—free from interference by rogue public officials in the States, and rogue judges in the courts of the United States.

Readers of this commentary should not expect the NRA to promote this proposal on its own initiative, though. Rather, in light of that organization's stubborn adherence to "the individual-right theory" of the Second Amendment, as well as its studied indifference if not hostility to anything to do with the Militia, they should anticipate not only reluctance

but even resistance on its part. To put the matter in the most charitable light, the NRA will need to be *prompted* to take an active and constructive part in this endeavor. A good start might be for readers of this commentary—especially those who are NRA members—to write to the NRA's new President, Oliver North, urging him to encourage the organization's staff to look into this matter with an open mind.

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Who Is In Charge Here?

The on-going circus of the "Russian collusion" investigation is often described by its detractors as a modern-day "witch hunt" in comparison with which the proceedings in colonial Salem appear as models of social decorum, rational thinking, and due process of law. This, however, is an unjustifiable slur on America's colonial ancestors. For if one takes seriously the claims of contemporary "Wiccans" and the like, there may very well have been actual "witches" in Salem. In contrast, the various contentions put forward in support of the "Russian collusion" matter in principle, as well as the manner in which the investigation is being conducted in practice, lack even this minimal level of credibility.

Take, for a prime example, the argument asserted by propagandists for "Russian collusion" to the effect that the Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI) are "independent" agencies which can refuse to coöperate with Congress with respect to its requests for production of unredacted public records and other information vital to the performance of its undoubted

constitutional power of oversight. These “agencies”, such apologists brazenly contend, are *so* “independent” that they can even refuse to comply with directives from their immediate constitutional superior, the President of the United States himself. As a constitutional matter, such contentions amount to the acme of legalistic “black magic”, which even the three “Weird Sisters” in the first act of *Macbeth* would have been proud to conjure. For incantations of “independence” by the DOJ and the FBI invert and subvert the very rule of law which those “agencies” are supposed to uphold *within themselves* as well as to enforce against malefactors in the general population. After all, as the general law of “agency” provides, “agency” constitutes a fiduciary relationship established by law under which “the principal” (in this case, the President) enjoys a right to control the conduct of his “agents”, and each “agent” labors under a duty to obey the directives of “the principal”. *See, e.g,* Warren A. Seavey, *Handbook of the Law of Agency* (St. Paul, Minnesota: West Publishing Co., 1964), § 3. Moreover, the rule of law surely demands responsibility, accountability, and even transparency *first and foremost* from “*law-enforcement* agencies”. In that regard, such “agencies” must always be “purer than Caesar’s wife”.

True enough, the three constitutional Branches of the General Government—Congress (Article I), the President (Article II), and the Judiciary (Article III)—are, to a large extent, independent of one another. In particular, this principle applies to the Executive Branch:

The theory of the constitution undoubtedly is, that the great powers of the government are divided into separate departments; and so far as these powers are derived from the constitution, the departments may be regarded as independent of each other. * * *

The executive power is vested in a president; and so far as his powers are derived from the constitution, he is beyond the

reach of any other department, except in the mode prescribed by the constitution through the impeaching power.

Kendall v. *United States*, 37 U.S. (12 Peters) 524, 610 (1838).

The Constitution nowhere provides, however, for any "agencies" (under whatever labels) which are, or can rationally claim to be, "independent" of Congress, the President, and the Judiciary. Plainly enough on the face of the Constitution, Congress enjoys no explicit power to create any such "agency". Neither does the Constitution invest Congress with any power to render "independent" any of the "agencies" actually enumerated in Article I. Quite the contrary: The "Armies" which the Constitution empowers Congress "[t]o raise and support" and the "Navy" which the Constitution authorizes it "[t]o provide and maintain" are subject to the supreme power of Congress "[t]o make Rules for the Government and Regulation of the land and naval Forces", typically to be enforced in the final analysis by the President in his capacity as "Commander in Chief of the Army and Navy of the United States". U.S. Const. art. I, § 8, cls. 12 through 14; and art. II, § 2, cl. 1. Subjection to "Rules" is the very antithesis of "independence". As to "the Treasury", the Constitution unequivocally commands that "[n]o Money shall be drawn from [it], but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time." U.S. Const. art. I, § 9, cl. 7. Thus no "independence" is to be found here, either. The Constitution also empowers Congress "[t]o establish Post Offices", albeit without any mention of regulation thereof. U.S. Const. art. I, § 8, cl. 7. Yet no one in his right mind has ever contended, or would be suffered to contend today, that after Congress had once "establish[ed] Post Offices", those "Offices" and their officials and employees could thereafter do whatsoever they desired in the exercise of some imaginary "independence". And the Constitution further delegates to Congress the power "[t]o

constitute Tribunals inferior to the supreme Court". U.S. Const. art. I, § 8, cl. 9. But in the creation of these "Tribunals"—which Article III, Section 1 describes as "such inferior Courts as the Congress may from time to time ordain and establish"—Congress is constrained by the specific terms of that Article, which allows for its delegation to those "Tribunals", and therefore their enjoyment, of only such "independence" as may be appropriate for their limited exercise of what the Constitution calls "[t]he judicial power of the United States".

The Constitution does delegate to Congress the implied power to create various other unnamed "agencies", but only such as "shall be necessary and proper for carrying into Execution the [other enumerated] Powers [of Congress], and all other Powers vested by th[e] Constitution in the Government of the United States, or in any Department of Officer thereof". U.S. Const. art. I, § 8, cl. 18. So, in the particular case of the Executive Branch, Congress may create "agencies" in order to aid the President in the performance of his own constitutional "Powers". This, of course, is a matter of practical necessity. For the President cannot be required to become the actual day-to-day administrator of every "Department" which Congress creates. "The President's duty in general requires his superintendence of the administration; yet this duty cannot require of him to become the administrative officer of every department and bureau, and to perform in person the numerous details incident to services which, nevertheless, he is, in a correct sense, by the Constitution and laws required and expected to perform." *Williams* v. *United States*, 42 U.S. (1 Howard) 290, 297 (1843).

On the other hand, Congress cannot misemploy any of its powers to create in the Executive Branch any "agency" through which it so transfers, divides, or qualifies "[t]he executive Power * * * vested in [the] President" pursuant to Article II, Section 1, Clause 1 that no effective "executive Power"

remains for the President himself to exercise in those instances, the real power having been ostensibly assigned to others. For, as just noted, "[t]he President's duty in general requires his *superintendence* of the administration" at all times—of or from which responsibility neither Congress nor the Judiciary can either deprive or excuse him.

Of all of "[t]he executive Power[s] * * * vested in [the] President" arguably the most important is his power—and absolute duty—to "take Care that the Laws be faithfully executed", the Constitution itself foremost amongst those "Laws". U.S. Const. art. II, § 3 and § 1, cl. 7; and art. VI, cl. 2. This power being of *constitutional*, not merely statutory, provenance, no authority which Congress may purport to assign either (i) to those "Officers of the United States [whom the President himself may appoint], whose Appointments are not otherwise provided for [in the Constitution], and which shall be established by Law", or (ii) to those "inferior Officers" the "Appointment" of which "Congress may by Law vest * * * in the Heads of Departments", can detract from the President's plenary supervisory authority. For, self-evidently, Article II, Section 2, Clause 2 of the Constitution does not contradict Article II, Section 3. Therefore, any "Officers" of whatever rank created by Congress to assist the President in his performance of his duty and power to "take Care that the Laws be faithfully executed" cannot be "independent" of, but must be directly responsible to, him; and that responsibility can neither be negated in the first instance, nor later removed, by Congress. *See Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137, 165-166 (1803).

To be sure, the President enjoys the constitutional prerogative to remove any "Officer" whom he appoints, and ("with the Advice and Consent of the Senate") to appoint a replacement. U.S. Const. art. II, § 2, cl. 2, *as construed in Myers* v. *United States*, 272 U.S. 52, 106-107, 109, 122, 126-127, 134-135, 162-163 (1926). That, however, can be a

cumbersome, time-consuming process subject to the vicissitudes of political controversy. And the President's power of removal may not apply, or may be restricted with respect, to certain "inferior Officers" who exercise "quasi-legislative or quasi-judicial powers, or [who act] as an agency of the legislative or judicial departments of the government." *Humphrey's Executor* v. *United States*, 295 U.S. 602 (1935). "Officers" in the DOJ and the FBI, however, do not exercise "quasi-legislative or quasi-judicial powers, or [act] as an agency of the legislative or judicial departments of the government."

Now, the power to "take Care that the Laws be faithfully executed" obviously does not license the President himself to forbid, circumvent, or simply disregard the execution of any valid "Law[ ]". *Kendall* v. *United States*, 37 U.S. (12 Peters) 524, 613 (1838) (*dictum*). That being so, the power to "take Care" undoubtedly authorizes him, not only to remove "inferior Officers" within the Executive Branch who fail in their duties to execute any such "Laws" pursuant to his directions, but also peremptorily to order such "Officers" to execute those "Laws" *sine die*, and if necessary to compel their obedience to his commands by any and all means available to him, *even—and particularly—when the execution of those "Laws" applies to themselves*. The Oval Office is where not only President Truman's proverbial "buck", but also the insubordination of "Officers" in the Executive Branch, stops.

Thus, with respect to the present "Russian collusion" inquisition, the real issue is not whether President Trump can remove from office Attorney General Sessions (who in any event ought to resign *sua sponte* on account of his own fecklessness), or Mr. Sessions' underling Mr. Rosenstein, or Special Counsel Mueller, or any of their collaborators, partisans, and hangers-on. Of the President's authority in that regard there can be no doubt. The real issue is two-fold: First, *why* has the President so far seen fit—or been woefully ill advised—not to "take Care that the Laws be faithfully

executed" by putting the screws to certain "Officers" who remain ensconced in the DOJ and the FBI even while they refuse to coöperate with Congress as well as the President under color of the specious claim that they are somehow "independent" of both of them? Second, *what* should he do at this juncture in order to correct this situation?

The nonfeasance and misfeasance of some of these people may be matters of merely the incompetence, sloth, and hubris which are all too typical of entrenched careerist bureaucrats. But the prepensed malfeasance of others manifests their specific intent, not only to assail Mr. Trump personally, but also—especially—to attack the Presidency of the United States as an institution. By attempting to prevent President Trump from "tak[ing] Care that the Laws be faithfully executed" against wayward "Officials" in the DOJ and the FBI (among other swampy backwaters of the Deep State, such as various "intelligence agencies"), these subversives are mounting a cold *coup d'état* against the Constitution. Mr. Trump himself is merely the ostensible, America's "Republican Form of Government" the real, target of this political aggression. *See* U.S. Const. art. IV, § 4.True enough, overt violence has yet to be employed in furtherance of this seditious conspiracy. *Contrast, e.g.,* 18 U.S.C. §§ 2382 and 2385. Yet, for that very reason, most Americans—perhaps including the President himself—remain unaware of the true malignancy of the situation. *See generally, e.g.,* [Link 1], [Link 2], [Link 3] and [Link 4].

So, confronted by this guerrilla insurrection within the primary "law-enforcement agencies" of the Executive Branch, what is President Trump to do?

- First, he must recognize that Congress did not create, *and could not have created*, the DOJ and the FBI in order to prevent or otherwise hinder him, or any President, from *himself* "tak[ing] Care that the Laws be *faithfully* executed". For that is an institutional duty imposed *by*

> *the Constitution on the President himself*. Those "agencies" (and all others within the Executive Branch) exist solely to assist the President in the fulfillment of this duty to "take Care"—not to prevent, frustrate, delay, or compromise "the execution of the Laws" through their "Officers'" and employees' incompetence, insouciance, or inadvertence—and surely not to recruit, harbor, and excuse subversive "Officers" and employees intent upon violating "the Laws" under color of "the Laws".

For those reasons, President Trump cannot be required by any statute or judicial decision to rely blindly and mechanically upon personnel within these "agencies" if, for whatever reason, he believes that they are actively or passively obstructing his compliance with the duty to "take Care". Because the Constitution itself imposes that duty upon him personally, Congress cannot divest, relieve, or absolve him of it. Neither can Congress tell him how to perform it. For President Trump has taken the constitutional "'Oath or Affirmation * * * that [*he*, not Congress,] will faithfully execute the Office of President of the United States, and will to the best of [*his*, not anyone else's,] Ability, preserve, protect and defend the Constitution of the United States.'" U.S. Const. art. II, § 1, cl. 7. Nor can the Judiciary cabin, crib, or confine him in the day-to-day fulfillment of his duty to "take Care". For the performance of that duty in various situations obviously entails a wide swath of discretion. And "[t]he province of the [Supreme C]ourt is * * * not to enquire how the executive, or executive officers, perform duties in which they have a discretion. Questions in their nature political, or which are, by the constitution and laws, submitted to the executive can never be made in th[e Supreme C]ourt" (or in any other court for that matter). *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137, 170 (1803).

- Second, President Trump must realize that, under present

> conditions, he is dangerously ignorant of “who is who” and “what is what” with respect to the internal machinations of the DOJ and the FBI. He does not know whom to trust—or, perhaps of greater consequence, whom to distrust (other than the hapless Mr. Sessions and a few notorious ringleaders in the *anti*-Trump camp). Indeed, he does not know whether *anyone* in those “agencies” can be employed with confidence on his behalf, even circumspectly at arms’ length. For it is apparent that all too many of these “agencies’” personnel operate according to the *mafiosi* code of *omertà*, while the few potential “whistleblowers” fear to come forward, apparently because they believe that neither Congress, nor the courts, nor even the President himself can protect them from retaliation by the Deep State.

In this regard, as disturbing as they are illuminating are the recent reports by Kerry Picket, entitled “Sources: FBI Agents Want Congress To Issue Them Subpoenas So They Can Reveal The Bureau’s Dirt” and “Sources: FBI Agents Afraid To Testify, Say Congress Likely Won’t Protect Them” at <dailycaller.com> (22 and 28 May 2018). Apparently, a few honest and patriotic FBI agents want to expose how widespread is the corruption among that “agency’s” middle- and top-level leadership cadres, how that errant leadership is intentionally impeding Congressional investigations, and how that leadership’s systematic politicization of the FBI is obstructing law enforcement and even endangering national security. These agents are reluctant to expose themselves as “whistleblowers”, however, because they fear becoming the targets of political retaliation, personal reprisals, and professional ruination at the hands of their vindictive superiors. Some of these agents say that a subpoena from Congress could possibly fend off attacks against themselves, their families, and their friends by the corrupt higher-ups within the FBI and the DOJ. Others deny even that a Congressional subpoena would afford them sufficient

protection. In addition, they all seem to agree that any attempts to enforce in some judicial forum the laws designed to protect "whistleblowers" would offer scant, if any, recourse. But if the situation within the FBI and the DOJ has so deteriorated that both Congress and the Judiciary are effectively powerless to protect these agents, then to whom can they turn for succor? Their only hope is that the one man *constitutionally* in charge of those "agencies"—the President of the United States—will *himself* root out the miscreants against whom these agents are willing to testify.

- Third, inasmuch as he cannot depend upon the vast majority of the personnel within the DOJ and the FBI, President Trump must take matters into his own hands, if the non-, mis-, and malfeasance endemic within those "agencies"—and the parties responsible for such wrongdoing—are ever to be exposed and excised.

President Trump's first step must be to enforce thoroughgoing *transparency* on the DOJ and the FBI. Both he and the American people whom he represents must be apprised of exactly what is actually going on in the bowels of those bureaucracies.

Recent events have established that, being largely corrupt or willing to countenance corruption, most if not all of the high-level leadership in the DOJ and the FBI will never come clean either of their own volition or at the request of Congress, and surely will never investigate and prosecute themselves or their co-workers through the ordinary course of judicial proceedings. So President Trump must peremptorily command those "agencies" to deliver to him personally *sine die* all of the documents: (i) which Congress wants to review, as well as (ii) all of the documents to which the latter documents relate in any way, together with (iii) all other documents which he desires to scrutinize for whatever reasons sufficient unto himself—***with no redactions whatsoever in any of them.*** He is empowered to issue such an order on at least three constitutional grounds:

1. “The President * * * may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices[.]” U.S. Const. art. II, § 2, cl. 1. The Constitution imposes no exception, limitation, or qualification as to any such “require[ment]”. So, with regard to “principal Officer[s]”, Presidential “require[ments]” in this case would reach both the feckless Mr. Sessions and whoever might be filling his empty suit from time to time in the DOJ, as well as whoever the Director of the FBI might be. And with regard to “Subject[s]”, those “require[ments]” would encompass everything relating, not only to “the old grey mare” of “Russian collusion”, but also to actual violations of the laws (as outlined below), as well as to intimidation of and retaliation against honest personnel in the DOJ and the FBI (as described above). Obviously, too, Mr. Trump could—and should—append to each such “require[ment]” an order for the production of all underlying documents related in any manner to the substance and preparation of each such “Opinion”.
2. The President “shall from time to time * * * recommend to the[ ] Consideration [of Congress] such Measures as he shall judge necessary and expedient[.]” U.S. Const. art. II, § 3. Self-evidently, Mr. Trump cannot make any such “recommend[ation]” with respect to cleaning up the present rats’ nest in the DOJ and the FBI without full knowledge of what has been and is now going on within those “agencies”—which, of course, requires complete disclosure to him of the entire pertinent documentary record.
3. The President “shall take Care that the Laws be faithfully executed[.]” U.S. Const. art. II, § 3. The “Laws” potentially involved include (but surely are not limited to): (i) violations of their oaths of office by “Officials” and employees of the United States, under

Article VI, Clause 3 of the Constitution and 5 U.S.C. § 3331; (ii) such "Officials'" and employees' participation in improper actions designed to influence the election of the President of the United States (that is, Mr. Trump), under 18 U.S.C. § 595; (iii) "interfering with or affecting the result of [that] election" on the part of such "Officials" and employees, under 5 U.S.C. §§ 7323(a)(1) and 7326; (iv) denial by such "Officials" and employees of the full benefit of Mr. Trump's constitutional and other civil rights to win election as President of the United States and thereafter to execute that office to its full constitutional degree, under 18 U.S.C. §§ 241 and 242; (v) attempts on the part of such "Officials" and employees to defraud the United States out of the American people's and the States' choice of the President of the United States by popular and electoral vote, both before and after the election, under 18 U.S.C. § 371; (vi) attempts by such "Officials" and employees to overturn the duly-elected Government of the United States in the persons of Mr. Trump as the President of the United States and of those whom he has chosen to work in his Administration, through the perpetrators' creation and operation of an *ad hoc* "organization" set up as an "insurance policy" for that criminal purpose, under 5 U.S.C. § 7311 and 18 U.S.C. § 1918; (vii) numerous false statements made by such "Officials" and employees to other "Officials" of the United States, under 18 U.S.C. § 1001; (vii) obstruction of proceedings in Congress or any Department or "agency" of the Government of the United States by such "Officials" or employees, under 18 U.S.C. § 1505; (viii) retaliation by such "Officials" or employees against individuals willing to provide truthful information to law-enforcement officers, under 18 U.S.C. §§ 1512(b) and (d), and 1513(e) and (f); and possibly even (ix) such "Officials'" and employees' complicity in the demise of

one or more individuals who may have possessed intimate knowledge of what has been going on, under 18 U.S.C. § 1512(a)(1)(C) and (3)(A).

Once these documents have been produced, *President Trump himself* will determine what shall be disclosed to Congress and the American people directly, and then to the Judiciary through the normal processes of criminal investigation, indictment, and prosecution. Presumably, this disclosure will encompass most if not all of the documents.

President Trump can anticipate, of course, that the "Officials" and employees whose wrongdoing these documents will expose will attempt (as they have already attempted) to interpose bogus claims of "national security" in order to stifle disclosure. Such a "national-security" dodge would be unavailing, for at least three reasons:

1. "The privilege [to withhold information on the grounds of 'national security'] belongs to the Government and must be asserted by it; it can n[ot] be claimed * * * by a private party." *United States* v. *Reynolds,* 345 U.S. 1, 7 (1953) (footnotes omitted). Because in the course of their illicit activities wrongdoers within the Government are not acting in the capacity of "the Government", they cannot assert that "privilege" on its (let alone on their own) behalf. Indeed, any attempt on their part to do so should constitute further proof of their wrongdoing, and be treated as such by the President, as well as by Congress and the Judiciary.
2. In any event, the privilege of "national security" "is not to be lightly invoked. There must be a formal claim of privilege, lodged by the head of the department which has control over the matter, after actual personal consideration by that officer." *United States* v. *Reynolds,* 345 U.S. 1, 7-8 (1953) (footnote omitted). Constitutionally speaking, with respect to the DOJ *the President himself* is "the head of the department which

has control over the matter"; and therefore *he himself* can and should determine whether "national security" is truly involved "after [his own] actual personal consideration" of the information the documents contain. Self-evidently, "national security" can never be a plausible ground for suppression of disclosure of systematic wrongdoing within the DOJ and the FBI. Quite the opposite. *Complete exposure and ultimate eradication* of the cold *coup d'état* now festering behind the scenes in those "agencies" is a matter of "national security" in the very highest degree.

3. To be sure, some of the documentary record which the President will obtain may contain material which some bureaucratic underlings have labeled "classified". The President, however, is empowered to declassify whatever theretofore "classified" documents he deems should be disclosed to Congress, to the Judiciary, and especially to the American people. The President, after all, is the "'Commander in Chief of the Army and Navy of the United States.' U.S. Const., Art. II, § 2. His authority to classify and control access to information bearing on national security * * * flows primarily from this constitutional investment of power in the President and exists quite apart from any explicit congressional grant." *Department of the Navy* v. *Egan,* 484 U.S. 518, 527 (1988). And, being of *constitutional* provenance, the President's power to classify and control access to information bearing on "national security"—including the power to declassify and provide the general public with "access to [such] information"—is beyond Congressional or Judicial control, let alone interdiction by the very persons whose actions endanger "national security".

Nonetheless, the practical problem remains: *How* can President Trump ensure that *all* of the documentary record will be produced, when he can trust next to no one in the upper reaches of the DOJ and the FBI to whom he will direct his

initial demands for disclosure? If he commands the malefactors to produce documents which incriminate them, some may brazenly refuse, resign their positions in the Government of the United States, and then shelter behind the Fifth Amendment (as is their constitutional right to do). That will be all to the good—for it will expose those malefactors, remove them *sua sponte* from the Government they are betraying, and (one hopes) bring them before a Grand Jury where they belong. Yet other unconfessed wrongdoers will remain in public office to persist in their clandestine program of opposition and subversion. And the very fact that the situation within the DOJ and the FBI has devolved into the present sordid mess indicates that the extent of incompetence and insouciance among even ostensibly honest "Officials" and employees of those "agencies" is so great that little can be expected of them, either.

To defeat continued intentional or inadvertent obstruction of justice by these people will not require the appointment of some "special counsel" who might himself turn out to be unequal to the task or (worse yet) a secret partisan of or apologist for the criminal cabal. The present regulations provide that:

The Attorney General, or in cases in which the Attorney General is recused, the Acting Attorney General, will appoint a Special Counsel when he or she determines that criminal investigation of a person or matter is warranted and—

(a) That investigation or prosecution of that person or matter by a United States Attorney's Office or litigating Division of the Department of Justice would present a conflict of interest for the Department or other extraordinary circumstances; and

(b) That under the circumstances, it would be in the public interest to appoint an outside Special Counsel to assume responsibility for the matter.

28 C.F.R. 600.1. As on-going events in the "Russian collusion"

inquisition have demonstrated, though, employment of a "special counsel" under the auspices of the DOJ to oversee disclosure of documents which would potentially incriminate the upper-level leadership of that "agency" and of the FBI would itself raise numerous, more than likely insuperable, "conflicts of interest".

Whether predicated on the particulars of some statute or on the generalities of "legal ethics", no claim of some supposed "conflict of interest" can impose any limitation on the President's constitutional duty and power to "take Care that the Laws be faithfully executed". *See* U.S. Const. art. II, § 3. Moreover, it must be presumed that, in the execution of his "Oath or Affirmation * * * 'faithfully [to] execute the Office of President of the United States, and * * * to the best of [his] Ability, preserve, protect and defend the Constitution of the United States'", Mr. Trump would not be diverted from the constitutionally proper course by any supposed "conflict of interest" in that (or any other) regard. *See* U.S. Const. art. II, § 1, cl. 7. Plainly enough, no conceivable "conflict of interest" could exist in principle between the President's duty to "take Care" and his discovery and disclosure of documents which would incriminate wrongdoers within the Executive Branch of the Government of the United States. Indeed, in practical fulfillment of his "Oath or Affirmation" in his capacity as President, absent a claim of privilege under the Fifth Amendment he would have to disclose even whatever in those documents tended to incriminate himself in his personal capacity! And if some arguably serious "conflict of interest" involving Mr. Trump could be made out, it would behoove Congress to consider exercising its exclusive authority to "remove[him] from Office on Impeachment for, and Conviction of, * * * high Crimes and Misdemeanors". U.S. Const. art. II, § 4.

Yet the effort required to get to the bottom of the sump of corruption within the DOJ and the FBI will be too great for

any one man to expend. President Trump will need all the help he can muster. Sufficient help is at hand, though. As long as the cold *coup d'état* in the District of Columbia continues unabated, the President will find it increasingly difficult to enforce the laws of the United States, not only in that benighted enclave, but also in every State throughout this country. Fortunately, Congress long ago provided a means, perhaps not directed in so many words at such a *coup d'état*, but surely capable of thwarting its effects:

Whenever the President considers that unlawful obstructions, combinations, or assemblages * * * make it impractical to enforce the laws of the United States in any State by the ordinary course of judicial proceedings, he may call into Federal service such of the militia of any State * * * as he considers necessary to enforce those laws * * * .

10 U.S.C. § 252. The complaints of potential "whistleblowers" in the FBI that "the ordinary course of judicial proceedings" even in the courts of the United States will not protect them against retaliation from "combinations[ ] or assemblages" of miscreants at the highest levels of the FBI and the DOJ (described above) establish a sufficient predicate for the President to invoke this authority in order to deal with the cold *coup d'état*.

Because this statute does not limit the President with respect to "such of the militia" as he may employ for these purposes, "he may call into Federal service" whatever personnel he "considers necessary" from "the unorganized militia, which consists of the members of the militia who are not members of the National Guard or the Naval Militia". 10 U.S.C. § 246(b)(2). These individuals include "all [such] able-bodied males at least 17 years of age and [with certain exceptions not relevant here] under 45 years of age who are, or who have made a declaration of intention to become, citizens of the United States". 10 U.S.C. § 246(a). This "class[ ] of the militia" undoubtedly contains sufficient attorneys and other

personnel with “law-enforcement” training and experience who could ably assist the President in conducting pervasive discovery of documents against the DOJ and the FBI, in analyzing the documents so obtained, in determining which of those documents should be released to Congress, the courts, and the general public, and thereby in finally making it “[ ]practical to enforce the laws of the United States in [every] State” within this country.

Obviously, the wrongdoers in those “agencies” would have no legal or moral standing to object. Congress should welcome the President’s action, inasmuch as it has invested him with this authority pursuant to its constitutional power “[t]o provide for calling forth the Militia to execute the Laws of the Union”, and surely desires violations of “th[os]e Laws” in the DOJ and the FBI to be thoroughly exposed and punished as soon as possible. *See* U.S. Const. art. I, § 8, cl. 15. And (perhaps of greatest consequence) rogue members of the Judiciary would be powerless to interfere.

Beyond doubt, no “judicial power to assume continuing regulatory jurisdiction over the activities of the * * * National Guard” exists; for “[i]t would be difficult to think of a clearer example of the type of governmental action that was intended by the Constitution to be left to the political branches directly responsible—as the Judicial Branch is not—to the electoral process.” *Gilligan* v. *Morgan*, 413 U.S. 1, 5, 10 (1973). *Accord, Orloff* v. *Willoughby,* 345 U.S. 83, 94 (1953) (no judicial authority “to revise duty orders as to one lawfully in the [regular Army]”). Under *Gilligan,* this rule applies explicitly to the National Guard. But both “the organized militia” (the National Guard and the Naval Militia) and “the unorganized militia” (everyone else eligible for “the militia”) are components of what the relevant statute calls “the militia of the United States”. 10 U.S.C. § 246(a). This statute makes no differentiation between “the organized militia” and “the unorganized militia” as to that status. And

the statute which empowers the President to "call into Federal service such of the militia of any State * * * as he considers necessary to enforce th[e] laws [of the United States]" makes no differentiation between "the organized militia" and "the unorganized militia" either. *See* 10 U.S.C. § 252. (Typically, too, the States' statutes which define within their jurisdictions what the Constitution calls "the Militia of the several States" follow the Congressional pattern of providing for both "the organized militia" and "the unorganized militia", and for "calling forth the Militia" in whatever "Part of them" and to whatever degree Congress or the States may deem necessary. *Compare* U.S. Const. art. II, § 2, cl. 1 *and* art. I, § 8, cls. 15 and 16 *with, e.g.,* Code of Virginia §§ 44-1, 44-2, 44-3, 44-4, 44-80. 44-81, 44-86, 44-87, 44-89, and 44-90.)

In numerous previous commentaries, I have addressed this subject in detail. *See* "How the President Can Secure the Borders" (18 August 2015), "Donald Trump and the Militia" (20 February 2016), "9-11 and the Militia" (14 September 2016), "Why the Militia" (18 November 2016), "Trump on Law Enforcement" (23 February 2017), "The Boyars" (20 March 2017), and "Militia and Gun-Free Schools" (19 March 2018). So no more need be added here. All that remains, then, is for President Trump to take this counsel to heart and marshal a group of advisors who will put it into operation.

Unfortunately, what appears to be President Trump's present strategy of playing for time while "tweeting" for effect is running out of time with no discernible effect. And it is childish for him to assume that what has proven less than useful in the past will somehow become useful in the future. Further delay in adopting the strategy outlined here can only play into the hands of the President's—and this country's—implacable enemies. To deal effectively with extraordinary situations requires extraordinary measures to be taken—and extraordinary men to take them. Whether Mr. Trump

will measure up remains to be seen.

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How To Bank On The Second Amendment

It seems that, almost every day, new evidence emerges to validate as prescient the warnings I put forth most recently in my NewsWithViews commentaries "The Irrelevant Second Amendment" and "Another Oracular Pronouncement"—namely, that: (i) in the "weapons-of-war" theory applied in the *Kolbe* v. *Hogan* and *Worman* v. *Healey* decisions "gun-control" fanatics have hit upon a rhetorically powerful rationalization for *actually banning* (not simply "regulating") the very types of firearms which the Second Amendment should most emphatically protect; and (ii) as those decisions prove, the "individual-right" theory of the Amendment provides only an impotent (indeed, an irrelevant) counter-argument.

The latest manifestation of this unsettling development appears in a recent report that Bank of America has announced that it will no longer make loans to, underwrite securities for, and (presumably) otherwise conduct normal banking business with manufacturers which produce and sell so-called "military-style" firearms for civilians' use. *See, e.g.*, [Link]

To be sure, it is conceivable that Bank of America might determine that a *particular* manufacturer of firearms under *particular* circumstances fell so far short of meeting

generally recognized standards of (say) solvency, profitability, and sound corporate management as to justify the Bank's denial of various banking services *in that case* pursuant to normal banking policy applicable to everyone else. It is self-evidently absurd to assume, however, that Bank of America (or anyone else) could possibly make such a negative determination in the present as to *all* manufacturers of "military-style" firearms *as a class and with respect to every imaginable set of circumstances which might arise in the future*. Therefore, Bank of America must be predicating its action, not on a contingently *commercial*, but on a fixedly *ideological*, decision. Bank of America has apparently concluded, not that "military-style" firearms for civilian sale can never be manufactured so as to earn profits sufficient to justify the Bank's conducting normal business with such manufacturers—*but (i) that such firearms should not be manufactured and sold at all for civilians' use, notwithstanding that a significant part of the general public is ready, willing, and able, both legally and economically, to purchase these firearms in the free market; and (ii) that Bank of America should and will do whatever it can to discourage, hinder, and even eliminate such manufacture and sale*.

Plainly enough, Bank of America has set out to interfere with, curtail, and even stifle entirely a particular form of legitimate and profitable commerce. If Bank of America can take such economically arbitrary action with respect to the manufacture and sale of certain types of firearms desired by many ordinary Americans, then *all* banks can do so, with respect not only to those firearms, but also to any and all others. And if banks as a class can take such action with respect to the manufacture and sale of firearms, they can do so with respect to the products and services of any and every legitimate business. Thus, relying on the old adage that "money talks", Bank of America is declaring no less than that banks are entitled to behave as the veritable arbiters of American domestic commerce—today, with respect to certain

firearms which bankers particularly disfavor; tomorrow, with respect to anything and everything that may fall afoul of their peculiar ideological notions.

So what is to be done about this situation?

I. The naïve patriotic response of Americans concerned with preserving "the right of the people to keep and bear Arms" would be to appeal to Bank of America's concern for the Constitution—in general, for "the Blessings of Liberty" which the Preamble identifies as one of the Constitution's permanent goals; and, in particular, for "the right of the people to keep and bear [*specifically 'military-style'*] Arms" for defense of their "Libert[ies]" which the Second Amendment guarantees against "infringe[ment]". This approach would surely prove to be futile, though. For it is an observation as accurate as it is hoary that merchants—and especially bankers—have no country. And having no country they have no fixed concern for any country's constitution or laws. Merchants—and especially bankers—respect a nation's constitution and laws only to the extent that the legal principles they embody can be bent to serve the merchants' special interests. Indeed, if America's bankers gave a tinker's dam about this country's Constitution, they would refuse to operate as member-banks in the Federal Reserve System—arguably as gross an affront to the Constitution as can be imagined. *See* my book *Pieces of Eight: The Monetary Powers and Disabilities of the United States Constitution* (GoldMoney Foundation Special Edition [2011] of the Second Revised Edition, 2002).

II. The naïve economic response of Americans concerned with preserving "the right of the people to keep and bear Arms" against economic sabotage would be to employ the supposed restraining and retributive powers of "the free market" by organizing a sustained nationwide boycott of Bank of America (and every other bank which followed its lead). Such a boycott would, of course, be constitutionally protected. *See NAACP* v.

Claiborne Hardware Co., 458 U.S. 886 (1982). But it, too, would likely turn out to be no more than an exercise in wishful thinking. After all, as far as banks in general are concerned, Americans are not blessed with a "free market". Unfortunately, under contemporary conditions banks are necessary evils which most Americans are not really "free" to refrain from using. Banks are necessary, because ordinary Americans have no practical choice but to employ *some* bank for business or personal purposes. And with respect to "the right of the people to keep and bear Arms" all too many banks are evils, because all too many bankers (at least in the uppermost tiers of that business) are generally anything but friends of that "right". In aid of attacks on the Second Amendment banks are free to exercise the immense financial power that derives from their oligopolistic position. Ordinary Americans, on the other hand, are "free" only to like it or lump it, but in any event to learn to live with it.

In particular, buoyed by its immense resources Bank of America is probably willing to forego doing nickle-and-dime business with those "deplorable" American "gun nuts" who might opt to boycott it. No doubt the Bank already has evaluated the possible economic downside from a boycott, and discounted it.

Moreover, whatever the possibility of organizing a suitably punishing boycott of Bank of America *alone*, a boycott would be exceedingly difficult, if not impossible, to sustain should other banks in large numbers align themselves with Bank of America. By acting more or less in unison, the bankers would predictably be able to apply far more financial pressure against owners of firearms among the general public than those Americans could apply to the banks.

III. Obviously, a *legislative* response to Bank of America's actions would offer a better chance of success than either a quixotic appeal to bankers' patriotism or a problematic boycott. Bank of America has set out to dam the stream of legitimate commerce in certain firearms on a nationwide scale.

Such is not its, or any bank's, prerogative, however. In Article I, Section 8, Clause 3 (the Commerce Clause) the Constitution empowers *Congress*, not Bank of America (or any bank), "[t]o regulate Commerce * * * among the several States". So how might a Congress concerned with protecting "the right of the people to keep and bear Arms" employ the Commerce Clause to thwart Bank of America's obnoxious new policy?

A. The first inquiry must be "What has Congress *already* done which might now be thought to be potentially useful?" For one thing, Congress has enacted *antitrust laws*. If, as might be expected, banks *agreed in unison* to deny their services to manufacturers of "military-style" firearms supplied to the civilian market, then the Sherman Act's prohibition of "contracts, combinations, or conspiracies in restraint of trade" could come into play, at least in principle.

In practice, however, proving *actual collusion* among those banks would likely pose a daunting problem. For, tutored in subterranean machinations by skulks of vulpine lawyers adept at secreting the evidence of their clients' questionable activities, bankers driven more by ideology than by profits could successfully contrive to act in an ostensibly "independent" manner. Perhaps a sufficiently aggressive investigation would shine enough light into the banks' dark corners to expose the truth. But, even were actual collusion made evident, would typical prosecutors in today's Department of Justice and judges in the General Government's courts—all too many of whom are as antagonistic to "the right of the people to keep and bear Arms" as they are well disposed towards the banks—be expected to do anything about it? Hardly.

B. The next inquiry is "What *new* legislation might Congress enact under the Commerce Clause in order to bring errant banks to heel? History provides an answer.

Although they were then (as they are now) private businesses,

places of so-called “public accommodation” (such as hotels, motels, restaurants, and so on) were considered so vital to unimpeded “Commerce * * * among the several States” that in the Civil Rights Act of 1964 Congress employed the Commerce Clause to prohibit them from engaging in racial discrimination. This was perhaps not a wholly surprising development even at that time, inasmuch as Americans’ right to be protected against racial discrimination had long been and was then (as it is now) guaranteed by the Constitution in other areas. But “the right of the people to keep and bear Arms”—including especially “military-style” firearms, according to the Supreme Court’s decision in *United States* v. *Miller*, 307 U.S. 174 (1939)—is no less constitutionally secured. And although they too are private businesses, banks are self-evidently enterprises of “public accommodation” which are so much more vital to unimpeded “Commerce * * * among the several States” than run-of-the-mill hotels, motels, and restaurants that Congress could fairly prohibit them from engaging in discrimination driven by the bankers’ ideological disapproval of manufacturers of “military-style” firearms for ultimate sale to ordinary civilians under the aegis of “the right of the people to keep and bear Arms”.

Interestingly enough, Congress’s employment of the Commerce Clause for that purpose would *not* need to be explicitly linked to that “right” at all. For, as lawyers know, in most instances a statute enacted under the Commerce Clause is constitutionally valid if *any* so-called “rational basis” for the legislation can be adduced. And, even leaving “the right of the people to keep and bear Arms” aside, surely a “rational basis” exists for concluding that “Commerce * * * among the several States” would be seriously impaired were banks allowed to refuse to provide their services to *any* manufacturers of *any* legitimate products, not on the grounds of some generally accepted commercial or other economic standard applicable to *all* of the banks’ customers without distinction, but solely on the basis of a peculiar ideological hobbyhorse (no matter what

it may be) which the bankers were riding at the time to the detriment of *some* disfavored class of customers.

Whatever Congress's rationale for employment of the Commerce Clause, the banks should not be suffered to complain about such a statutory restriction on their invidiously discriminatory misbehavior. For they are already highly regulated under the Commerce Clause, mainly for the perverse purpose of supplying them with abusive special privileges more than merely arguably against the public interest—including the entire Federal Reserve System, "deposit insurance" designed to prop up their use of the inherently unsound scheme of "fractional reserves", and periodic "bail outs" with taxpayers' money when their imprudent business practices give rise to nationwide financial crises. If the Commerce Clause licenses Congress to lavish such unmerited and highly questionable favors on banks, it undoubtedly authorizes Congress to deprive the bankers of the ability to withhold their services from legitimate businesses which happen to arouse their ideological displeasure.

IV. Although legislation enacted pursuant to the Constitution's *general* grant of power in the Commerce Clause could suffice to bring arrogant "virtue-signaling" bankers to heel, the better, because more *constitutionally specific*, remedy would be for Congress to protect "the right of the people to keep and bear Arms" against economic subversion by focusing on the first thirteen words of the Second Amendment—namely, "[a] well regulated Militia, being necessary to the security of a free State"—implemented through Congress's power in Article I, Section 8, Clause 16 of the Constitution "[t]o provide for * * * arming * * * the Militia".

At the present time, a Congressional statute asserts that everyone eligible for "the militia of the United States" who is not a member of the National Guard is automatically enrolled in "the unorganized militia". 10 U.S.C. § 246. For

"[a] well regulated Militia" to function as the Constitution requires, Congress must guarantee *at least* that all citizens eligible for the Militia have ready access to "Arms" suitable for Militia service—amongst which class of "Arms" "military-style" firearms are self-evidently of the greatest potential importance, in light of the responsibility of the Militia "to * * * repel Invasions" set out in Article I, Section 8, Clause 15 of the Constitution.

The Constitution does not specify exactly how Congress is "[t]o provide for * * * arming * * * the Militia". In keeping with the *pre*-constitutional practices which defined the concepts of "arming" and "Arms" at the times of ratification of the Constitution (1788) and the Second Amendment (1791), today Congress could direct some agency in the General Government to disburse suitable "Arms" to "the people" eligible for the Militia. Or it could direct the States to provide such "Arms". Or it could direct those individuals to supply themselves with particular "Arms" through the free market. Or it could simply allow all such Americans to purchase from domestic manufacturers whatever "Arms" they themselves deemed sufficient—in practical effect, the situation which obtains today (albeit only imperfectly so). *See* my book *Constitutional "Homeland Security", Volume Two, The Sword and Sovereignty: The Constitutional Principles of "the Militia of the Several States"* (Front Royal, Virginia: CD-ROM Edition, 2012).

Obviously, however, Congress could *not* "provide for * * * *arming* * * * the Militia" by inhibiting citizens eligible for the Militia from procuring—if in no way other than through their own efforts—"Arms" which would enable them to perform one or another form of Militia service to which Congress has made them liable by statutorily enrolling them in "the unorganized militia". Neither may it sit idly by while private special-interest groups such as banks attempt to frustrate the constitutional mandate that the Militia be "arm[ed]". The

Constitution, after all, is not a schizophrenic screed. By no conceivable *rational* reading does it allow Congress to apply the Commerce Clause to underwrite the economic power of banks, so that bankers through their misuse of that power can intentionally set about to defeat the Militia Clauses, and thereby undermine "the security of a free State". Therefore, Congress can, should, and *must* regulate banks so as to ensure that they do not interfere in the operation of the free market for firearms, and are suitably punished if they attempt to do so.

A statute sufficient for that purpose would prohibit banks from denying their services to any present or potential customer solely because that customer were a manufacturer, distributor, retailer, or purchaser of "military-style" firearms offered for sale to civilians. The statute would create a civil cause of action for any such customer against whom a bank so discriminated. And the statute would establish a presumption that a bank's denial of any of its services in such a case were for the purpose of illicit discrimination, would provide for significant statutory damages in every case in which discrimination were established (in addition to whatever compensatory damages might be proven in each particular case), and would mandate the assessment of attorneys' fees and costs in favor of the complainant.

The advantage of a statute bottomed explicitly on protection of "the right of the people to keep and bear Arms" *suitable for Militia service* would be its disapprobation of the obnoxious theory put forward in *Kolbe* v. *Hogan* and *Worman* v. *Healey* that ordinary Americans enjoy no constitutional right to possess firearms which rogue judges denounce as "weapons of war". The constitutional authority of Congress in Article I, Section 8, Clause 15 "[t]o provide for calling forth the Militia to * * * repel Invasions" self-evidently foresees the necessity for citizens statutorily enrolled in the Militia to be armed precisely with "weapons of war". And the necessity

for citizens statutorily enrolled in the Militia to be armed with “weapons of war” self-evidently defines the most important class of “Arms” which the Second Amendment—read in its entirety—protects against “infringe[ment]”. The sooner the American people, through the efforts of their *loyal* representatives in Congress, ram *that* reality down rogue judges’ throats the better.

In sum, this would be a relatively straightforward, and undeniably constitutional, means to thwart what will prove to be—if nothing is done to prevent it—a deadly serious inroad by banks on “the right of the people to keep and bear Arms”. Moreover, in light of the orchestrated hysteria in favor of “gun control” now sweeping this country in the wake of the school shooting in Parkland, Florida, one can anticipate that, if banks are suffered to misuse their privileged positions to attack that “right”—first against manufacturers of “military-style” firearms, then against distributors, retailers, and even private citizens desirous of purchasing such “Arms” with bank-issued credit cards—other centers of private economic power will soon follow suit. Insurers will deny, or radically increase the cost of, coverage to homeowners who possess such “Arms”. Health-care plans will claim that the possession of such “Arms” by their subscribers so imperils the subscribers’ physical or psychological well-being that onerous additional charges must be levied for the plans’ services, if they are made available at all. Prestigious private schools at every level in this country’s educational system will exclude from enrollment present or prospective students who live in homes in which such “Arms” are kept. And so on—with no discernible limit, until private citizens’ possession of “military-style” firearms becomes a thing of the past, and with it “the security of a free State”, too.

These possibilities present a clear and present danger to “the right of the people to keep and bear Arms” which cannot be met by rote invocation of the “individual right” to possess

"military-style" firearms, which *Kolbe* v. *Hogan* and *Worman* v. *Healey* held not to be protected by the Second Amendment at all. Only by asserting Americans' "*Militia* right" to possess such "Arms" can such possession be adequately secured against "gun control" fanatics and the rogue jurists who dance to their discordant tune. Time for bringing this assertion to the forefront of the countrywide shouting-match over "gun control" is rapidly running out, however.

I should hate to have to say "I told you so" when it was too late for effective action to be taken. But I *have* told you so, more than once—and it may soon be too late for anything else to be said.

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Another Oracular Pronouncement

It is said that "no man is taken for a prophet in his own country". Yet sometimes evidence overcomes this negative presumption. In my recent NewsWithViews commentary entitled "The Irrelevant Second Amendment", I predicted that the decision in *Kolbe* v. *Hogan*—that so-called "assault firearms" such as the AR-15 are not protected by the Second Amendment in any way, shape, or form—would become "gun-control" fanatics' legalistic weapon of choice for banning possession of those firearms, and much more besides, by average Americans. So was it written; and so has it come to pass.

On 5 April 2018, William G. Young, a United States District

Judge in Massachusetts, upheld that State's "assault-firearms" statute on precisely that ground. *Worman v. Healey, Civil Action No. 1:17-10107-WGY, opinion reproduced*, particularly at pages 26-34 and 46-47.

No doubt this decision will be appealed. But I anticipate that any appeal will be unsuccessful, just as was the ultimate appeal in *Kolbe,* and for the selfsame reason. One cannot hope to win a Second -Amendment case against *Kolbe's* and *Worman's* "weapons-of-war" theory without relying on: (i) the *whole* Second Amendment (not just its last fourteen words), (ii) the Militia Clauses of the original Constitution (and the Fifth Amendment, too), (iii) Militia statutes of the General Government such as 10 U.S.C. §§ 252 and 253, (iv) the Militia clauses of the constitution and statutes of the particular State involved in the controversy (in *Kolbe,* Maryland; in *Worman*, Massachusetts), and (v) the Supreme Court's oft-neglected but nonetheless controlling decision in *United States* v. *Miller,* 307 U.S. 174 (1939). Judge Young's opinion in *Worman* deals with none of these matters, which evidences that the plaintiffs did not raise them. And if they were not raised in the District Court, it will be devilishly difficult for the plaintiffs-appellants to assert them for the first time on appeal. Of course, being inured to taking up what seem to be lost causes, I might not be averse to being asked to provide whatever assistance I could offer in prosecuting an appeal, just as I did on my own initiative in a brief *amici curiae* when the litigants in *Kolbe* unsuccessfully petitioned the Supreme Court for a writ of certiorari in their case. But I should hardly anticipate being requested to consult on the future course of litigation in *Worman*, any more than the Prophets in the Old Testament were heeded with respect to the even-more-weighty subjects on which they discoursed.

This, however, does not dissuade me from prophesying once more. Ever since former Justice of the Supreme Court John Paul Stevens dipped his oar into the murky waters of contemporary

Second-Amendment jurisprudence, plumping for repeal of the Amendment, a veritable cottage industry on that score has emerged among “gun-control” fanatics.

Having successfully litigated in the Supreme Court a seminal constitutional case in which Justice Stevens himself wrote the majority opinion—*Chicago Teachers Union* v. *Hudson*, 475 U.S. 292 (1986)—and having some little self-taught expertise with respect to “the right of the people to keep and bear Arms”, I am probably more qualified than most other NewsWithViews commentators to opine that Justice Stevens’ understanding of the Constitution in general and the Second Amendment in particular leaves a great deal to be desired. For example, as I pointed out in “The Irrelevant Second Amendment”, that Amendment is intimately related to the Militia Clauses of the original Constitution. So, if the Second Amendment were to be repealed with the effect which Justice Stevens apparently envisions—such that average Americans would be dispossessed of “assault firearms”, or perhaps of most or even all firearms, whether at one fell swoop or by “the death of a thousand cuts” through a parade of ever-more-onerous statutory “regulations”—the Militia Clauses would have to be repealed or significantly amended, too (along with the reference to the Militia in the Fifth Amendment). As of now, proponents of repeal of the Second Amendment have not thought this complexity through (or, from what I have read in their rants, even considered it). So I suspect (perhaps “hope” is the more accurate verb) that the propaganda and agitation for the Amendment’s repeal will ultimately fizzle out as a result of their own incoherence. While this controversy continues to sizzle in its own hot grease like an overdone sausage cooking in the mass media’s frying pan, though, self-styled champions of “the right of the people to keep and bear Arms” will find themselves constantly on the strategic defensive—a disadvantageous position which will compel them to make one self-defeating compromise after another with “gun-control” fanatics over “common-sense regulations” (that is, actual

“infringe[ments]”) of that “right”.

A particularly ominous straw in the wind is that some defenders of “the right of the people to keep and bear Arms” are already conceding defeat as to the Second Amendment by arguing that, as a “natural right”, “the right of the people to keep and bear Arms” can be secured under the aegis of the Ninth Amendment, even were the Second Amendment repealed. This makes little sense, both as a matter of constitutional law and as a matter of political realism.

First, the Ninth Amendment provides that “[t]he enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people”. Now, “the right of the people to keep and bear Arms” is one of the “certain rights” explicitly “enumerat[ed] in the Constitution”—in the Second Amendment. So, by the very terms of the Ninth Amendment, that “right” is *not now* one of the “*other*[rights] retained by the people” perforce of the latter Amendment. Therefore, if the Second Amendment were repealed, “the right of the people to keep and bear Arms” could not be shoe-horned into the Ninth Amendment in keeping with the original understanding of that Amendment. Perhaps invocation of “the living Constitution” could suffice to square this circle—which I doubt, inasmuch as “the living Constitution” has always been “gun-control” fanatics’ primary device for circumventing and undermining the Second Amendment. Certainly no judge antagonistic to “the right of the people to keep and bear Arms” will ever employ “the living Constitution” to breathe new life through the Ninth Amendment into the principles of the Second Amendment after that Amendment’s demise by way of repeal.

Second, the obvious political conclusion to which every half-educated American would come were the Second Amendment repealed would be that “the right of the people to keep and bear Arms” had thus been entirely excised from the Constitution. For if, as most self-deluded champions of the

Second Amendment contend, the Amendment's last fourteen words *by themselves alone* guarantee that "right", then the Amendment's repeal would be fatal for *whatever* "right" those words might be taken to cover. After all, for such as Justice Stevens, that would be the point of repealing the Second Amendment—which, I am confident, judges such as those who decided *Kolbe* and *Worman* would be quick to hold.

By now, I am sick unto death of reminding readers of my NewsWithViews commentaries and various books (and, I fear, my readers may be becoming tired of being reminded) that "the right of the people to keep and bear Arms" cannot be properly construed outside of the total constitutional context in which it resides. That context emphasizes the inextricable connection of that "right" with the Militia, not with some largely imaginary anarchic "individual right" located in the last fourteen words of the Second Amendment, let alone in so-called "penumbras and emanations" of the Constitution wholly unrelated to the Militia. Had that not always been apparent, at this juncture it surely has been made crystal clear by *Kolbe* and *Worman.*

If this lesson is not heeded, and soon, one will not need the special benefit of the gift of prophecy to foresee to what disastrous climax these developments will inexorably lead.

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The Irrelevant Second

Amendment

To the question “What provision of the Constitution guarantees average Americans the right to posses a firearm?” almost everyone, whether in favor of or opposed to that “right”, would reflexively answer “the Second Amendment”. In point of constitutional fact, however, this is the *wrong* answer. In reality: (i) Three provisions of the original Constitution guarantee the right—and, of greater consequence, recognize the *duty*—of average Americans to possess firearms. (ii) The Second Amendment merely echoes and emphasizes this guarantee, which would be just as effective if that Amendment did not exist at all. And (iii) the most influential contemporary misinterpretation of the Second Amendment, which myopically focuses solely on the so-called ”individual right” to posses firearms for the particular purpose of personal self-defense, actually threatens “the right of the people to keep and bear Arms”.

I. To ensure that public officials would always adhere to the correct construction of the original Constitution, the Bill of Rights, consisting of “further declaratory and restrictive clauses”, was grafted onto the Constitution “in order to prevent misconstruction or abuse of its powers”. RESOLUTION OF THE FIRST CONGRESS SUBMITTING TWELVE AMENDMENTS TO THE CONSTITUTION (4 March 1789), *in Documents Illustrative of the Formation of the Union of the American States*, House Document No. 398, 69th Congress, 1st Session (Washington, D.C.: Government Printing Office, 1927), at 1063. Now, obviously, a “*misconstruction* * * * of [the] powers” which the original Constitution delegated to the General Government would involve a misreading, misinterpretation, or mistaken application of those “powers”—stemming, presumably, from an *inadvertent and honest misunderstanding* of some sort. Conversely, an “*abuse* of [the original Constitution’s] powers” would involve an *intentional and dishonest extension* (or perhaps an *intentional*

and dishonest contraction) of those "powers" in derogation of their legitimate purpose and scope. In either case, the Bill of Rights was adopted, not on the premiss that the various actions which its Articles discountenanced were actually permitted by the original Constitution, but rather to ensure that the *correct* construction of the Constitution—which *disallowed* those actions—would be pellucid. Indeed, that the Bill of Rights added "*further* declaratory and restrictive clauses" plainly indicated that the original Constitution *already contained some* "declaratory and restrictive clauses" (whether express or implied) with respect to the subjects the Bill of Rights addressed.

Thus, the purpose of the Second Amendment's guarantee that "the right of the people to keep and bear Arms, shall not be infringed" is not to negate some imaginary provision in the original Constitution which if it existed would license the General Government to "infringe[ ]" that "right" *ad libitum*, but instead is to reiterate and reinforce the absence of any such provision. Any claim which rogue public officials might assert—whether by dint of some deficiency in either their competence or their integrity—in favor of such a license is a "*misconstruction or abuse* of [the General Government's] powers [in the original Constitution]", not an even arguably valid exercise of those "powers".

II. Of course, if the original Constitution contained no provision which dealt in any manner with "the right of the people to keep and bear Arms", the Second Amendment would be highly relevant. For it is obvious that certain powers the original Constitution delegates to Congress—such as the powers "[t]o lay and collect Taxes" and "[t]o regulate Commerce * * * among the several States" in Article I, Section 8, Clauses 1 and 3, respectively—*could conceivably* be subjected to "misconstruction or abuse" by invincibly ignorant or rogue public officials in derogation of "the right of the people to keep and bear Arms". Indeed, since the 1930s those Clauses

have repeatedly been misconstrued and abused in favor of unconstitutional "gun control". *See, e.g.,* AN ACT To provide for the taxation of manufacturers, importers, and dealers in certain firearms and machine guns, to tax the sale or other disposal of such weapons, and to restrict importation and regulate interstate transportation thereof ("National Firearms Act"), Act of 26 June 1934, chapter 757, 48 Stat. 1236; AN ACT To regulate commerce in firearms ("Federal Firearms Act"), Act of 30 June 1938, chapter 850, 52 Stat. 1250; AN ACT To amend title 18, United States Code, to provide for better control of the interstate traffic in firearms ("Gun Control Act of 1968"), Act of 22 October 1968, Pub. L. 90-618, 82 Stat. 1213; An Act To control crime ("Crime Control Act of 1990"), Act of 29 November 1990, Pub. L. 101-647, 104 Stat. 4789; An Act To control and prevent crime ("Violent Crime Control and Law Enforcement Act of 1994"), Act of 13 September 1994, Pub. L. 103-322, 108 Stat. 1796.

In fact, though, the original Constitution contains provisions which, applied by honest and competent public officials, plainly secure and effectuate the "right of the people to keep and bear Arms"—either positively, by asserting the existence of that "right" for We the People in general; or negatively, by denying the General Government (and the States as well) any authority to "infringe[ ]" it. These provisions include:

> Article I, Section 8, Clause 15—The power of Congress "[t]o provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions[.]"
>
> Article I, Section 8, Clause 16—The power of Congress "[t]o provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress[.]"

> Article II, Section 2, Clause 1—"The President shall be Commander in Chief * * * of the Militia of the several States, when called into the actual Service of the United States[.]"

And it should be self-evident that, for example, the general powers of Congress "[t]o lay and collect Taxes" and "[t]o regulate Commerce * * * among the several States" cannot be misemployed to negate the specific power of Congress "[t]o provide for * * * arming * * * the Militia", or to disable the States from arming their own Militia—"the Militia *of the several States"*—should Congress default on its own responsibility. The Constitution, after all, is not internally self-contradictory or otherwise incoherent.

Although the principles, standards, and required outcomes that govern the exercise of these powers of Congress and the President (and the cognate powers of the States) with respect to "the right of he people to keep and bear Arms" are nowhere explicitly set out in the original Constitution, they are obviously implicit in its incorporation of "the Militia of the several States" into the federal system. These are the *only* "Militia" the Constitution recognizes. These are uniquely "*the* Militia" to which the powers of Congress, the position of the President as "Commander in Chief", and the "powers * * * reserved to the States respectively, or to the people" under the Tenth Amendment to the Constitution pertain. Even more to the point, these were not merely theoretical "militia" when the Constitution was ratified in 1788. Rather, they were actual institutions—indeed, the *only* institutions of their kind—which had existed for generations theretofore throughout America, settled and regulated pursuant to ordinances, acts, and statutes of the thirteen Colonies and then the independent States. So, from the very beginning, Congress's power was limited to "organizing, arming, and disciplining, *the*[*se and only these*] Militia", and in such wise as to guarantee the continued existence of *such* "Militia" under the style of "the

Militia of the several States". Congress labored under a complete disability (an absence of power) as to any other conceivable "militia". So, too, for the States. And, in the absence of a constitutional Amendment on this subject, this situation still obtains.

To be sure, because of invincible ignorance or for maleficent political purposes, some people might attempt to deny or obscure the obvious, in order to float the notion that the original Constitution licenses Members of Congress to define the phrase "organizing, arming, and disciplining, the Militia"—and even the noun "Militia" itself—in any manner that suits their fancy. *Contrast District of Columbia* v. *Heller*, 554 U.S. 570, 599-600 (2008) (Scalia, J., for the Court) (where that sort of nonsense finds voice, albeit only in irresponsible *dicta*), *with Eisner* v. *Macomber,* 252 U.S. 189, 206 (1920) (stating the correct rule). Certainly this would be the perverse tack taken by rogue public officials intent on disregarding, hamstringing, or even destroying the Militia entirely. So, to ensure that both the General Government and the governments of the States would always adhere to the correct interpretation and application of the original Constitution with respect specifically to the Militia, the Second Amendment, consisting of "further declaratory and restrictive clauses", was added to the original Constitution "in order to prevent misconstruction or abuse of its powers".

The Second Amendment provides that "[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." The term "well regulated Militia" obviously takes as implicit examples "the Militia of the several States" which existed at the time of the Amendment's ratification (1791)—for these "Militia" would never have been incorporated into the original Constitution only a few years earlier (1788) had they been considered to be other than "well regulated". The power of Congress "[t]o provide for organizing, arming, and

disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States"—that is, for "execut[ing] the Laws of the Union, suppress[ing] Insurrections and repel[ling] Invasions"—outlines in what particulars and for what purposes the Militia are to be "well regulated" by Congress. So too for the States, when they "regulate[ ]" their own Militia for their own purposes (or for the purposes the Constitution entrusts to Congress, should Congress default on that duty). And these powers of "regulat[ion]" are to be construed and exercised in accordance with the principles of "well regulated Militia" understood at the time the original Constitution and then the Second Amendment were ratified—which principles must be derived from the *pre*-constitutional Militia laws of the Colonies and independent States, there having been no other principles of "well regulated Militia" generally known, accepted, *and enacted into law* within America during that era. After all, to understand it, the Constitution must be perused "in the light of the law as it existed at the time it was adopted". *Mattox* v. *United States*, 156 U.S. 237, 243 (1895). *See generally* the present author's book *Constitutional "Homeland Security", Volume Two, The Sword and Sovereignty: The Constitutional Principles of "the Militia of the Several States"* (Front Royal, Virginia: CD-ROM Edition, 2012). Thus, contrary to the general misconception, the Second Amendment restates a constitutional rule which applies to *both* the General Government *and* the States, because in its Militia Clauses the original Constitution sets out powers and disabilities which pertain to *both* levels of government.

As the principles of the *pre*-constitutional American Militia laws make clear, "the Militia of the several States" today are to consist of every able-bodied citizen from sixteen years of age upwards. Indeed, with only limited exemptions, every such citizen has a legally enforceable *duty* to serve unless and until some physical or mental disability occasioned by advanced age, disease, or accident precludes his further

useful participation. Under Article I, Section 8, Clauses 15 and 16 of the original Constitution, Congress may "provide for calling forth" "such Part of the[Militia] as may be employed in the Service of the United States", and may "provide for organizing, arming, and disciplining[such Part of] the Militia" as Congress may deem necessary for "execut[ing the Laws of the Union, suppress[ing] Insurrections, and repel[ling] Invasions". But neither Congress nor the States may confine membership and active participation in the Militia as a whole to some set of Americans less inclusive than the *pre*-constitutional Militia laws required.

As the *pre*-constitutional American "Militia" laws also teach, every member of the Militia (other than conscientious objectors) is to be provided with "Arms" suitable for Militia service. Thus, not surprisingly, the Constitution delegates to Congress the power "[t]o provide for * * * *arming* * * * the Militia", not for "*dis*arming" them. The three purposes for which Congress may "provide for calling forth the Militia" indicates what types of "Arms" should be provided. "[T]o execute the Laws of the Union" naturally implies "Arms" suitable for the work of typical law-enforcement agencies. "[T]o * * * repel Invasions" naturally implies "Arms" identical or equivalent to those the regular Armed Forces employ. And "to * * * suppress Insurrections" naturally implies "Arms" which can be employed for one or the other of the latter purposes, depending on the type, extent, and severity of the particular "Insurrection[ ]" at hand.

Inasmuch as the Militia are "the Militia *of the several States*", and inasmuch as every member of any constitutional "Militia" (other than conscientious objectors) must be suitably armed for that service, each of the several States, no less than Congress, must provide for arming her Militia, not for disarming them. For their own part, the States may require their Militia to execute their own laws, to suppress insurrections within their own territories, to repel invasions

of those territories, and to perform whatever other functions they may choose to assign to their "Militia" for which the use of "Arms" may be indicated. Thus the types of "Arms" which the States may require (or simply expect) the members of their Militia to keep and bear for the States' own purposes could conceivably be more—but never less—extensive than the types of "Arms" required (or simply expected) by Congress for "the Militia of the several States" when they are "employed in the Service of the United States".

The original Constitution does not specify how Congress is "[t]o provide for * * * arming * * * the Militia". In keeping with the *pre*-constitutional practices which define the concept of "arming", Congress could direct some agency in the General Government to disburse suitable "Arms". Or it could direct the States to provide such "Arms". Or it could direct the members of the Militia to supply themselves with particular "Arms" through the free market. Or it could simply allow all Americans eligible for the Militia to purchase such "Arms" as they saw fit (which, in effect, is the situation today to a certain, albeit not sufficient, extent). Or it could employ some combination of these means (for example, crew-served weapons would be supplied by the government, individual "Arms" provided by members of the Militia themselves). Similarly for the States. But, obviously, neither Congress nor the States can "provide for * * * arming * * * the Militia" by prohibiting citizens eligible for the Militia from in some manner procuring whatever types of "Arms" would enable them to perform one or another Militia service. Thus, for a prime example, if the particular task is to "repel Invasions", neither Congress nor the States may prohibit citizens eligible for the Militia from possessing at least *semi*-automatic so-called "assault rifles" of military calibers, closely akin to the fully automatic rifles the regular Armed Forces employ to "repel Invasions" by foreign aggressors also equipped with such rifles.

Both Congress and the States have the constitutional power to arm the Militia. And, as a general proposition, "[w]hatever functions Congress [and the States] are by the Constitution authorized to perform they are, when the public good requires it, bound to perform". *United States* v. *Marigold*, 50 U.S. (9 Howard) 560, 567 (1850). One of the Constitution's purposes is to "provide for the common defence", which self-evidently "the public good [*always*] requires". *See* U.S. Const. preamble; art. I, § 8, cl. 1. A critical responsibility of the Militia is to "provide for the common defence", first and foremost by "repel[ling] Invasions" and to a lesser degree by "suppress[ing large-scale] Insurrections". U.S. Const. art. I, § 8, cl. 15. *See also* U.S. Const. art. IV, § 4, and art. I, § 10, cl. 3. So the power of Congress and the States to arm the Militia for that purpose (as well as others) implies a corresponding *duty*, too. And because Congress and the States have a governmental *duty* to arm the Militia, and every American eligible for Militia service (other than conscientious objectors) has a personal *duty* to be armed, every such American enjoys a corresponding *absolute right as against both the General Government and the States* "to keep and bear Arms" suitable for such service—such as *semi*-automatic "assault rifles" with which to "repel Invasions" and "suppress [large-scale] Insurrections", or various types of *semi*-automatic pistols, revolvers, rifles, shotguns, and so on with which to "execute the Laws" and "suppress [small-scale] Insurrections".

Observe, too, that this absolute right derived from Americans' eligibility for service in the Militia is perfectly compatible with—indeed, is the very best way to effectuate—the so-called "individual right" "to keep and bear Arms" for personal self-defense on which advocates of "gun rights" such as the National Rifle Association dote. After all, as a practical matter, everyone who is required to possess firearms suitable for Militia service can also employ those firearms for self-protection should the need arise. And inasmuch as self-defense

entails the enforcement of the law by the victim of an attack when no other aid is available, such use of a firearm fulfills the Militia purpose of "execut[ing] the Laws of the Union" and the laws of the States. Viewed in the proper constitutional context, the "individual right" of personal self-defense is simply inseparable from all Americans' rights and duties pertaining to the Militia. Moreover, as an aspect of "execut[ing] the Laws" self-defense implies an absolute right derived from service in the Militia "to keep and bear Arms" useful for that purpose—which "Arms" will inevitably include numerous types of firearms perfectly adequate for self-defense even if they are not usually deemed suitable or recommended for "execut[ing other] Laws", "suppress[ing] Insurrections", or "repel[ling] Invasions".

Now, inasmuch as the foregoing analysis has derived "the right of the people to keep and bear Arms" solely from the Militia Clauses of the original Constitution, with no reliance upon the Second Amendment except as an emphatic reinforcement by reassertion of the "right" those Clauses guarantee on their own, it follows that the Second Amendment is really irrelevant to the fundamental issue of Americans' "gun rights". "[T]he right of the people to keep and bear Arms"—including the "individual right" "to keep and bear Arms" for personal self-defense—would exist even if the Second Amendment did not.

Indeed, read *in its entirety* (as every coherent sentence in the English language must be read if its true sense is to be understood), the Second Amendment itself confirms this conclusion. The Amendment provides that "[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." The Amendment's self-evident goal is "the security of a free State". It declares that "[a] well regulated Militia" is "necessary" for that purpose. And it protects "the right of the people to keep and bears Arms" against "infringe[ment]" so that "the people" will always be properly

equipped to provide "security" to their "free State" through their service in "[a] well regulated Militia". For the Second Amendment, then, "a free State" is one endowed with "[a] well regulated Militia" in which suitably armed citizens participate collectively in an organized manner for their common defense, not an anarchy in which each happenstance inhabitant of the territory exercises on his own behalf an atomistic "individual right" "to keep and bear Arms" for the purpose of self-defense alone.

In all of this, the Second Amendment and the original Constitution are perfectly congruent. "[T]he security of a free State" to which the Amendment refers is the selfsame end to which the original Constitution aspires in its Preamble: namely, "to provide for the common defence * * * and secure the Blessings of Liberty to ourselves and our Posterity". The "well regulated Militia" which the Amendment declares to be "necessary" for that purpose are "the Militia of the several States" which the original Constitution permanently incorporated into its federal system. And the "right of the people to keep and bear Arms" which the Amendment protects against "infringe[ment]" is no less guaranteed by the explicit power and duty of Congress "[t]o provide for * * * arming * * * the Militia", along with the implicit disability of the States to disarm their Militia and thereby negate the powers of Congress and the President to "call[ ] forth the Militia" "to be employed in the Service of the United States". Thus, by its own terms, the Second Amendment supplies nothing that the original Constitution lacks—because, as far as "the right of the people to keep and bear Arms" is concerned, the original Constitution lacks nothing.

III. Incautious reliance by self-styled champions of the Second Amendment on the "individual right" "to keep and bear Arms"—which some of them convinced the Supreme Court in *District of Columbia* v. *Heller*, 554 U.S. 570 (2008), to derive from the Amendment's last fourteen words (to the effective

exclusion of the first thirteen)—has rendered the Second Amendment extremely relevant nowadays, *but to We the People's disarmanent*.

At issue in *Kolbe* v. *Hogan*, 849 F.3d 114 (4th Cir. 2017) (*en banc*), was the unconstitutionality of a Maryland statute which prohibits average citizens of that State from possessing every one of a long list of "assault firearms" and related "large-capacity magazines". Anyone who gives even passing consideration to the first thirteen words of the Second Amendment, let alone the Militia Clauses of the original Constitution (and of the Constitution of Maryland, too), must conclude that these particular "Arms", being quintessential "Militia" firearms in this day and age, are entitled to the very highest level of protection available under the Second Amendment. *See United States* v. *Miller,* 307 U.S. 174 (1939). But, expecting to capitalize on *Heller,* the plaintiffs in *Kolbe* premissed their case exclusively on the "individual-right" theory that "assault firearms" are useful for personal self-defense.

Truth and justice being commodities of little value today, that these litigants' assertions were correct availed them nothing. For, in a remarkably disingenuous display of legalistic *jiu-jitsu*, the Court of Appeals upheld the Maryland law on the supposed authority of *Heller:*

> We conclude * * * that the banned assault weapons and large-capacity magazines are *not* protected by the Second Amendment. * * * [They] are among those arms that are "like" "M-16 rifles"—"weapons that are most useful in military service"—which the *Heller* Court singled out as being beyond the Second Amendment's reach. * * * [W]e have no power to extend Second Amendment protection to the weapons of war that the *Heller* decision explicitly excluded from such coverage. [849 F.3d at 121.]

To be sure, this was a grotesque perversion of the actual

holding in *Heller*—but a studied "misconstruction or abuse" which the loose reasoning and even looser rhetoric of *Heller* encouraged and facilitated.

Seeking to overturn the Court of Appeals' decision, Mr. Kolbe *et alia* then petitioned the Supreme Court for a writ of certiorari, once again in reliance on the "individual-right" theory alone.

Although the Militia Clauses of the original Constitution (and of the Constitution of Maryland as well) were "not specifically noticed * * * in the [parties'] records or briefs", the Supreme Court could have taken them under consideration on its own initiative, "that the Constitution may not be violated from the carelessness or oversight of counsel in any particular." *See Pollock* v. *Farmers' Loan & Trust Co.,* 157 U.S. 429, 604 (1895) (separate opinion of Field, J.). And, on that basis, it could have disposed of the case in summary fashion with an order reading simply: "The petition for a writ of certiorari is granted. The decision of the Court of Appeals is reversed on the authority of *United States* v. *Miller,* 307 U.S. 174 (1939)." Instead, the Supreme Court denied the petition without commenting on the merits of the case. Although as a matter of law the mere denial of the petition imports nothing as to the merits, the practical result is that—at least in the Fourth Circuit and in any other court which finds the Court of Appeals' sophistry congenial for the purpose of imposing radical "gun control"—*any* "Arms" which can plausibly be labeled "weapons of war" are entitled to *no protection whatsoever* under the Second Amendment. As to such "Arms" the Second Amendment is simply irrelevant.

Now, *semi*-automatic "assault *rifles*" of (say) the AR-15 and AK-47 patterns available in the free market undoubtedly *are* akin in their basic designs and most of their operations and features to the fully automatic versions of such firearms employed by regular armed forces throughout the world. But so are most modern *semi*-automatic *pistols* of military calibers.

Indeed, many *semi*-automatic pistols now being sold in the free market to civilians in the United States are also issued to regular armed forces both here and abroad with no significant differences in their basic designs, operations, and features. And just about all modern *semi*-automatic pistols are supplied by the factories with "large-capacity magazines" as original equipment, and can accommodate even-larger-capacity aftermarket magazines. (Such aftermarket magazines are available for even the venerable Colt Model 1911 pistol and its contemporary clones.) So nothing prevents these pistols from being denounced by "gun-control" fanatics in legislatures and courts as "weapons of war" *unprotected by the Second Amendment* and therefore subject to sweeping prohibitions, *notwithstanding that they are eminently suitable for personal self-defense by civilians in their own homes and in the streets of their cities and towns*.

To be sure, *Heller* upheld the right of an average American to possess a *semi*-automatic handgun for the purpose of personal protection in his home. But, inasmuch as *Heller* was decided on the basis of the "individual-right" theory with no consideration of the "weapons-of-war" theory, in a future *Heller*-type case the Supreme Court could adopt the latter theory merely by "distinguishing" *Heller* on that basis, without having to "overrule" it formally. And, by denying the petition for a writ of certiorari in *Kolbe*, the Supreme Court has left the "weapons-of-war" theory fully loaded in the argumentative arsenal of every crackpot legislator and judge throughout the United States. Thus, one can expect "gun-control" fanatics to push that theory for all it is worth—first against private possession of *semi*-automatic "assault rifles" (those fanatics' *bête noire du jour*), then against private possession of *semi*-automatic pistols and other "Arms" with "military" applications (such as highly accurate bolt-action rifles equipped with telescopic sights, which can be denounced as "sniper rifles"), wherever such possession is still legal. That, in the aftermath of the recent school

shooting in Parkland, Florida, pundits in the mass media and assorted "useful idiots" in both of this country's "two" major political parties are stridently demanding prohibition of the private possession of *all semi*-automatic firearms *of whatever type* indicates that no discernable limit to such *anti*-constitutional nullification of "the right of the people to keep and bear Arms" exists.

For decades past, "gun-control" fanatics have employed numerous strategies in their incessant war of legalistic aggression against "the right of the people to keep and bear Arms", especially with respect to *semi*-automatic "assault rifles". Yet during that time even those "Arms" were entitled to a measure of *ersatz* protection under a judicial "balancing test" which (in its strongest form) purported to "enforce" the Second Amendment by requiring the government to demonstrate that an "infringe[ment]" on "the right of the people to keep and bear Arms" served a "compelling interest" through "the least-restrictive means" available. Unfortunately for litigants trying to shield themselves behind the "individual-right" theory, what constituted a "*compelling* interest" and a "*least-restrictive* means" was, like "beauty", in the eyes of the beholders—that is, the typically hostile judges who decided such cases. And, like "pornography", such judges knew a "compelling interest" and a "least-restrictive means" when they saw them, which they almost always professed to do. Nonetheless, even a kangaroo court's employment of an *anti*-constitutional and politically biased "balancing test" was preferable to an out-and-out ruling that the Second Amendment did not apply at all. Now, however, once the label "weapons of war" is affixed to some class of firearms under the *Kolbe* doctrine, a court can ignore the Second Amendment entirely. Not even a "balancing test" need be applied to what otherwise would be recognized as an "infringe[ment]" on "the right of the people to keep and bear [such] Arms", because no constitutional "right" exists with respect to them.

Even the NRA and other proponents of the "individual-right" theory seem to realize the extremely perilous nature of this situation. It is surely no accident, after all, that they have taken to calling *semi*-automatic rifles of the AR-15 pattern "modern *sporting* rifles". Apparently they imagine that applying mere verbal lipstick to what "gun-control" fanatics among legislators, judges, and the mass media consider a pig will reprieve the poor animal from consignment to a slaughterhouse. Besides being unrealistic, this tactic is more than merely ironic, inasmuch as the NRA has consistently (and correctly) criticized the BATFE for using as a basis for its regulations a firearm's supposed unsuitability for what that agency deems to be "sporting" purposes.

Although the proponents of the "individual-right" theory of the Second Amendment did not intend to create this rats' nest, *they* are largely responsible for it. For if Richard Weaver was correct in his observation that all ideas have consequences, surely even *they* should have known that bad ideas inevitably beget catastrophes. Over the years, in support of "the right of the people to keep and bear Arms" *they* could have promoted the entirety of the Second Amendment, rather than just its last fourteen words. *They* could have promoted the Militia Clauses of the original Constitution. *They* could have promoted the entirety of the Second Amendment in tandem with the Militia Clauses, as the Constitution obviously intends. *They* could have litigated *Heller* on the latter basis, and might well have obtained from Justice Scalia a constitutionally coherent opinion which would have precluded—rather than provided grist for—the egregious decision in *Kolbe*. *They* could even have bravely bitten the bullet by denoting *semi*-automatic "assault rifles" as the "modern *Militia* rifles" those firearms undoubtedly are—or, better yet, by describing *all* firearms suitable for *any* type of Militia service (including personal self-defense) as "modern *Militia* arms". But *they* wanted nothing to do with either the first thirteen words of the Second Amendment or the Militia Clauses of the original

Constitution. As a result—perhaps innocently, perhaps inadvertently, but in any event inattentively to the inescapable consequences of their actions—*they* have provided "gun-control" fanatics with invaluable aid and comfort in those miscreants' quest to make the Second Amendment irrelevant.

Now, having sown the wind, they must steel themselves to reap the whirlwind. Unfortunately, so must we all.

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The President Can Suppress School Shootings

INTRODUCTION

Whatever the facts may turn out to be, the recent school shooting in Parkland, Florida—and others which have preceded it throughout this country—are traumatic, tragic, and deplorable events. Effective action needs to be taken to prevent altogether, or at least to minimize the effects of, future happenings of this kind, whether in schools or other venues. All of this is self-evident. As always, though, the question remains: "What is to be done?"

Unfortunately, so far, the publicized reactions from the White House to the school shooting in Florida evidence confusion as to what should be done. Inasmuch as this school shooting is not the first such horrific event America has suffered (and probably will not be the last), the lack of a plausible plan

of action, or even a coherent statement of general policy, forthcoming from that source is disturbing.

As an old Italian folk-saying has it, *"basta d'un pazzo per casa"*—"one fool in the house is enough". In the case of the White House, even one fool is too many, a plethora of fools intolerable.

Yet the White House's failure to address the problem of school shootings in a courageous, a comprehensive—and especially a *constitutional*—manner amounts to foolishness in the extreme. Fortunately, as to other subjects, President Trump has shown himself to be a leader who does not suffer fools gladly (if at all), and who, when presented with a viable solution to a vexing problem, will act quickly and decisively on his own initiative.

Unfortunately, many people contend that it is not the President's place to interject himself and the General Government into the essentially State and Local issue of school shootings. For example, Mr. Jake MacAulay recently published a commentary on NewsWithViews entitled "The Vitriolic Dialogue Of Federal Gun Restrictions Continues" (14 March 2018). In this piece Mr. MacAulay argues that

> [c]urrently, the Trump administration, along with his unconstitutional Department of Education, are coming up with a plan unauthorized by the Constitution that will provide funding to states for improved background checks of gun buyers and fire arms training for teachers in government schools. In order to further his pandering of the gun lobby, Newsmax.com reported the President "has refused to increase the age restriction for so-called assault weapons. Instead, a new federal commission [on] school safety will examine the age issue, as well as a long list of other topics, as part of a longer term look at school safety and violence."
>
> So just where does the president, or Congress for that

> matter, get the authority to provide funding to state education infrastructures? The answer? Nowhere. The Constitution grants no such authority and there is a specific reason for this.
>
> Ask yourself the question, when has the federal government ever stopped or prevented a school shooting? How can the DC bureaucrats effectively keep nearly 100,000 schools safe?
>
> Because they are the best equipped, our Founders intended the state and local government agencies to handle these types of circumstances. Your State and sheriffs' departments are the only agencies that are constitutionally authorized to deal with prevention of tragedies inside of the respective states.
>
> How do I know this? Because I have read the Constitution, and nowhere in Article 2 (which defines the powers of the president) is there any executive authority to administrate a Department of Education, or to appropriate funding to any agencies of the government or schools. Furthermore, Article 2 does not grant the president any authority to provide firearms training for teachers. He is to be the Commander in Chief of the U.S. Armed Forces alone.
>
> To put a finer point on it, you will find nowhere in Article I, Section 8, authority delegated to Congress to tax and spend for education or school firearms training.
>
> The solution is to keep federal government entanglement out of state school systems and state law enforcement. Allowing the states to handle those critical areas will bring swifter, cost effective, and safer solutions because they are more equipped to deal with their own backyard.

Now, the present author is not aware of, and certainly would not uncritically defend or defer to, whatever President Trump may have in mind for what Mr. MacAulay calls "a plan unauthorized by the Constitution that will provide funding to

states for improved background checks of gun buyers and fire arms training for teachers in government schools.” On the other hand, although in the past Mr. MacAulay has posted many valuable commentaries on NewsWithViews, in this instance “Homer has nodded”. For, as what follows herein demonstrates, it *is* possible to present a proposal for a *constitutional* direction in which President Trump could and should proceed if he wants to apply the full powers of his office to a solution of the problem of school shootings.

ABSTRACT

1. Article II, Section 3 of the Constitution imposes upon the President the duty to “take Care that the Laws be faithfully executed”.

2. Article I, Section 8, Clause 15 of the Constitution delegates to Congress the power “[t]o provide for calling forth the Militia to execute the Laws of the Union”.

3. Article I, Section 8, Clause 16 of the Constitution delegates to Congress the power “[t]o provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress”.

4. Article I, Section 8, Clause 1 of the Constitution delegates to Congress the “Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence * * * of the United States”.

5. Article I, Section 9, Clause 7 of the Constitution provides that “[n]o Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law”.

6. School shootings are an egregious form of “domestic violence” which violates not only “the Laws of the Union” but

also the laws of the several States, and imperils "the common Defence * * * of the United States".

7. In its exercise of its authority under Article I, Section 8, Clauses 15 and 16, Congress has enacted 10 U.S.C. § 253, which provides that the President, "by using the militia * * * shall take such measures as he considers necessary to suppress, in a State, any * * * domestic violence" under conditions relevant to present-day school shootings.

8. "[T]he militia" which 10 U.S.C. § 253 empowers the President to "us[e]" includes all or any part of "the unorganized militia", the composition of which Congress has defined in 10 U.S.C. §§ 246 and 247.

9. In every State, as so defined "the unorganized militia" includes large numbers of teachers, administrators, parents, and even some students.

10. Therefore, "by using the militia" to "take such measures as he considers necessary to suppress, in a State, any * * * domestic violence" in the particular form of school shootings, President Trump may call forth from "the unorganized militia" sufficient numbers of eligible teachers, administrators, parents, and even students—suitably organized, armed, disciplined, trained, *and invested with specific governmental authority* perforce of Presidential directives—to provide security for their schools.

11. In the course of "using the militia" to "take such measures as he considers necessary to suppress, in a State, any * * * domestic violence" in the particular form of school shootings, President Trump may "draw[ ] from the Treasury * * * in Consequence of Appropriations made by Law" whatever "Money" Congress may have made available for the purposes authorized by 10 U.S.C. § 253 out of the "Taxes" which Article I, Section 8, Clause 1 authorizes it "To lay and collect * * * to provide for the common Defence * * * of the United States".

12. Such "us[e of] the militia" would enforce the General Government's "gun-free schools" law in 18 U.S.C. § 922q in the one manner it which it undoubtedly needs to be enforced—that is, to prevent school shootings—under the President's authority as "Commander in Chief * * * of the Militia of the several States, when called into the actual Service of the United States", pursuant to Article II, Section 2, Clause 1 and Article I, Section 8, Clauses 15 and 16 of the Constitution.

13. Such "us[e of] the militia" would also enforce the Second Amendment, rather than derogating from it, as do proposals for radical "gun control" now being promoted in the mass media as panaceas for the problem of school shootings.

ANALYSIS

I. Self-evidently, school shootings deny their victims various rights, privileges, immunities, or protections guaranteed by the Constitution of the United States and secured by the laws of both the General Government and the States. These rights include the "unalienable Right[ ]" to "Life" itself mentioned in the Declaration of Independence, secured against deprivation without due process of law by the Fifth and Fourteenth Amendments to the Constitution, and protected in every State by criminal and civil laws against murder, attempted murder, assault with a dangerous weapon, aggravated battery, wrongful death, and so on.

Indeed, the General Government's own "gun-free schools" law itself is obviously intended—albeit on the basis of faulty reasoning—to protect students', teachers', and administrators' rights to life (among other cognate rights). *See* Act of 29 November 1990, Pub. L. 101-647, title xvii-general provisions, § 1702 ("Gun-Free School Zones Act of 1990"), 104 Stat. 4789, 4844; *declared unconstitutional but then reënacted as amended in* An Act Making omnibus consolidated appropriations for the fiscal year ending September 30, 1997, and for other purposes,

Act of 30 September 1996, title vi—general provisions, § 657, 110 Stat. 3009, 3009-369; *now codified at* 18 U.S.C. § 922q. In addition, many of the States have enacted their own "gun-free schools" or equivalent statutes for the same purpose. *See, e.g.,* Code of Virginia § 18.2-308.1. Plainly, these laws are violated every time a school shooting occurs, even if no one is actually killed or injured.

Now, with some *very limited* exceptions, no careful student of the subject can be a proponent of "gun-free zones" of any kind. Yet one must also recognize that in an imperfect world it sometimes takes a crooked stick to beat a mad dog; that, as the Supreme Court observed in *Anderson* v. *Dunn*, 19 U.S. (6 Wheaton) 204, 226 (1821), "[t]he science of government * * * is the science of experiment"; that "politics is the art of the possible"; and that "gun-free schools" laws *are* on the books throughout this country (no matter how poorly thought out and otherwise inadvisable they may be). So, with appropriate circumspection, advantage should be taken of such laws until something better comes along.

On the other hand, the plain fact of the matter is that, so far, even armed with "gun-free schools" laws both the General Government and the States have proven themselves incapable of effectively suppressing school shootings, as such horrors continue to take place. So something more is needed to ensure that *these laws* are effectively executed for *that purpose*.

After all, a realistic appraisal of the present situation must take into account that far too many average Americans (as well as public officials) are untutored in the basic constitutional principles and practices of what the Second Amendment calls "a free State", are incessantly bombarded with slick propaganda from "gun-control" fanatics eager to ban so-called "assault rifles" (and, if the truth be told, all other types of firearms), and are more likely than not to be driven by raw emotion rather than swayed by logical reasoning. Such people will tend to sympathize with the apparently "commonsensical"

(but actually nonsensical) notion that the availability of the inanimate instruments employed in some school shootings is to blame for the carnage, rather than the homicidal intentions or impulses of the perpetrators, along with the contrived circumstances of the "gun-free zones" which facilitate, and even ensure the success of, such attacks.

This being the case, it is probably counterproductive for champions of the Second Amendment to stress the principle that the Amendment protects "the right of the people to keep and bear [*semi*-automatic] Arms [of *quasi*-military pattern]", notwithstanding that in practice such "Arms" are all too often employed in school shootings. True enough, both the Second Amendment and the Militia Clauses of the original Constitution *absolutely* protect that right, as a matter of "the supreme Law of the Land". *See, e.g.,* the present author's brief *amici curiae* in *Kolbe v. Hogan,* No. 17-127 (U.S. Sup. Ct., 23 August 2017), *to be found at* <www.scotusblog.com/case-files/cases/kolbe-v-hogan/>. And, of even greater consequence, if ordinary Americans were prohibited from possessing *semi*-automatic rifles and other "Arms" suitable for service in "well regulated Militia", then *no one*—including students in this country's schools—could hope to live for very much longer in even the semblance of "a free State", in light of the strongly *neo*-Bolshevist political tendencies at work almost everywhere throughout this country. Nonetheless, for citizens unfamiliar with these particulars of constitutional law, and therefore unaware of the fatal consequences to "a free State" that will inevitably ensue if these principles are disregarded, the more convincing—because eminently pragmatic—argument must be that security against school shootings can best be guaranteed by transforming *totally "gun-free* schools" into *internally "gun-protected* schools". That is, "gun-free schools" laws must be supplemented by executive actions and perhaps new statutes that as much as possible render schools effectively "gun free" *for potential school shooters*, by suitably arming and training

teachers, administrators, parents, and even some students *so that in the gravest extreme they can protect themselves immediately with guns, there being no equally effective alternative*. For, with respect to school shootings, one sorry experience after another has confirmed in innocent blood the wry observation that "when seconds count the police are just minutes away".

II. The Constitution and at least one statute of the General Government (in addition to its own "gun-free schools" law) provide a ready means for President Trump to deal with this situation *on his own initiative, without further assistance from Congress or the States than is already available to him*.

A. Pursuant to Article II, Section 1, Clause 7 of the Constitution, the President-elect "solemnly swear[s] (or affirm[s]) that [he] will faithfully execute the Office of President of the United States, and will to the best of [his] Ability, preserve, protect and defend the Constitution of the United States." Article II, Section 3 imposes on the President the duty to "take Care that the Laws be faithfully executed". Article II, Section 2, Clause 1 designates him as the "Commander in Chief * * * of the Militia of the several States, when called into the actual Service of the United States". Article I, Section 8, Clause 15 empowers Congress "[t]o provide for calling forth the Militia to execute the Laws of the Union". The Second Amendment declares that "[a] well regulated Militia" is "necessary to the security of a free State". And it should be self-evident that "the Laws [are not being] faithfully executed", and "the security of a free State" is being imperiled, when schools—which should the agents for instilling in students the principles, and instructing them in the practices, of "a free State"—are suffered to remain "free-fire zones" for religious or ideological fanatics, drugged-up zombies, madmen, and *agents provocateurs* who obey no law other than the law of the jungle.

B. In pertinent part, 10 U.S.C. § 253 provides that

> [t]he President, by using the militia * * * shall take such measures as he considers necessary to suppress, in a State, any insurrection, domestic violence, unlawful combination, or conspiracy, if it—
>
> > (1) so hinders the execution of the laws of that State, and of the United States within the State, that any part or class of its people is deprived of a right, privilege, immunity, or protection named in the Constitution and secured by law, and the constituted authorities of that State are unable, fail, or refuse to protect that right, privilege, or immunity, or to give that protection; or
> > (2) opposes or obstructs the execution of the laws of the United States or impedes the course of justice under those laws.

In any situation covered by clause (1), the State shall be considered to have denied the equal protection of the laws secured by the Constitution.

This is no novel piece of legislation, but derives from *An Act to enforce the Provisions of the Fourteenth Amendment to the Constitution of the United States, and for other Purposes,* Act of 20 April 1871, chap. XXII, § 3, 17 Stat. 13, 14.

The application of this statute to school shootings in particular is straightforward:

(i) The statute imposes no limit on the definition of "domestic violence". And school shootings constitute, by commonplace understanding, an extremely serious form of "domestic violence" in every instance. (In some cases they may involve "unlawful combination[s], or conspirac[ies]" as well.)

(ii) The statute imposes no limit, either, on what "militia" (or part thereof) the President may "us[e]", so long as that "militia" is recognized as such by some law of Congress. Pursuant to Article I, Section 8, Clauses 15 and 16 of the Constitution, for "employ[ment] in the Service of the United

States" in aid of "execut[ing] the Laws of the Union" (among other responsibilities) Congress has assigned most Americans to "the unorganized militia". *See* 10 U.S.C. §§ 246 and 247. For their own purposes, the States, too, have consigned most of their citizens to "the unorganized militia". *See, e.g.,* Code of Virginia §§ 44-1, 44-4, and 44-5. Although an "*unorganized* militia" cannot qualify as "[a] *well regulated* Militia" for all possible constitutional ends, nonetheless it is a "militia" by statutory definition, is capable of performing some basic functions "necessary to the security of a free State", and therefore comes within the compass of the President's statutory authority to "us[e] the militia" * * * to suppress * * * domestic violence".

(iii) The statute imposes no limits on "the measures" the President may "consider[ ] necessary to suppress, in a State, any * * * domestic violence"—and clearly must include "using the militia" (which the statute allows) in order "to execute [*whatever*] Laws of the Union" may apply to the situation (which authority and responsibility the Constitution explicitly assigns to the Militia in Article I, Section 8, Clause 15).

(iv) History even as recent as what just happened in Parkland, Florida, should conclusively establish to the satisfaction of President Trump (or any other sentient and unbiased observer) that "the constituted authorities of th[e] State[s]" have time and again proven themselves "unable", have "fail[ed]", or have "refuse[d] to protect" students, teachers, and administrators (directly), as well as parents (indirectly), from school shootings, thus leaving that "part or class of [the States'] people * * * deprived of a right, privilege, immunity, or protection named in the Constitution, and secured by law"—the most obvious such "protection * * * secured by law" being the "protection" promised by "gun-free schools" laws against violent attacks with firearms in school. Apparently, too, "the constituted authorities" of the General Government with

jurisdiction over the matter have done no better, or even worse, as the FBI's shocking non-, mis-, or malfeasance prior to the Florida school shooting evidences. And, to make matters worse (if that be possible), the courts deny the victims of violent attacks any right to bring civil actions for monetary damages against such officials on account of their derelictions, because the judges' misconceptions of "due process of law" supposedly do not "require the State to protect the life, liberty, and property of its citizens against invasion by private actors". *See DeShaney* v. *Winnebago County DSS,* 489 U.S. 189, 195-197 (1989).

(v) In particular, inadequately enforced "gun-free schools" laws deny equal protection of the law to teachers, administrators, students, and parents. In States not under the heels of "gun-control" fanatics in public office, when teachers, administrators, parents, and even some students who qualify for concealed-carry permits are outside of school they can protect themselves with firearms to the selfsame degree as all other citizens. *See, e.g.,* Code of Virginia § 18.2-308.01. Yet, even in such States, when those very same teachers, administrators, parents, and students are inside "gun-free schools" the relevant laws deny them the right of self-defense with firearms, and all other students the right to be protected by those teachers, administrators, parents, and fellow students who but for those laws could be armed. *See, e.g.,* Code of Virginia § 18.2-308.1.

The right of personal self-defense, however, is neither just a statutory nor simply a constitutional right, but instead is a *natural* right that precedes and is independent of and superior to all statutes and constitutions. As the Founding Fathers' most influential legal mentor, Sir William Blackstone, explained, "[s]elf-defence, * * * as it is justly called the primary law of nature, so it is not, neither can it be in fact, taken away by the law of society." *Commentaries on the Laws of England* (Philadelphia, Pennsylvania: Robert Bell,

American Edition, 4 Volumes & Appendix, 1771-1773), Volume 3, at 4. Therefore, inasmuch as the right of self-defense in aid of one's life cannot be "taken away by the law of society" at all, and inasmuch as when confronted by an armed assailant a victim's best (if not only) defense is his own firearm, it is impossible to imagine on what legitimate grounds public officials, on the one hand, can enable all eligible citizens to effectuate that right through the concealed carry of firearms outside the schools, but, on the other hand, can deny that very same right to some of those very same citizens within "gun-free schools", where experience teaches that the dangers from attempted mass shootings are almost always far greater than anywhere else.

The only minimally arguable justification for this discrimination would have to be that, in contrast to its lackadaisical performance elsewhere, within "gun-free schools" the government provides such sure and certain protection for students, teachers, administrators, and parents as to render totally unnecessary their self-defense or their defense of others *with firearms*. Common experience, however, proves that this is *never* the case, because administrators invariably instruct teachers and students in the face of actual or even threatened school shootings to take various self-protective actions (other than the use of firearms) *in addition to their reliance on whatever "security" measures the government has put into place*. And everyone knows that such "security" as the authorities do deign to arrange or recommend *can* fail—and in too many instances *has* failed, with catastrophic consequences. Of course, it might also turn out that allowing teachers, administrators, some students, and parents to "keep and bear Arms" under appropriately controlled conditions while in school would not suffice to forefend school shootings in enough cases to establish the utility of that measure. But inasmuch as "[t]he science of government * * * is the science of experiment", and inasmuch as other experiments for securing schools against mass shootings have not succeeded, the

experimental method would recommend that such an allowance at least be tried.

C. All of the legal preconditions for an experiment of that sort have already been satisfied. As explained above, the Constitution imposes on President Trump the duty to "take Care that the [General Government's 'gun-free schools' law] be faithfully executed". The Constitution invests the President with personal authority and endows him with sufficient means to do so, he being the "Commander in Chief * * * of the Militia of the several States, when [they are] called into the actual Service of the United States", and the Militia being empowered "to execute the Laws of the Union" under his command with neither exception nor limitation. And in 10 U.S.C. § 253 Congress has provided the President and the Militia with a sweeping statutory mandate eminently suitable for that purpose, and the constitutionality of which cannot be questioned.

III. In light of the foregoing, President Trump not only is undoubtedly constitutionally able, *but also is arguably constitutionally required*, to promulgate an Executive Order or other appropriate directive to execute 10 U.S.C. § 253 by calling forth selected individuals from "the unorganized militia"—appropriately organized, armed, disciplined, trained, and invested with specific governmental authority—to provide security against "domestic violence" in America's schools. Initially, this would not encompass *all* teachers, administrators, students, parents, relevant experts, and other useful personnel eligible for such service in "the unorganized militia", because in the exercise of prudence any necessarily experimental program should be put into operation only gradually, with careful evaluation of the success or need for amendment of each step in the process. Little beginnings, though, often—and in this case surely would—lead to big things.

At the outset, however, President Trump must realize that the

degree of coöperation he can expect from the States (and even from personnel in his own Administration) will vary widely. The political establishments in some, probably too many, so-called “blue States” will intransigently oppose him—either because rogue public officials in those States are fanatically committed to one or another form of radical “gun control” that aims at complete disarmament of the populace, no matter its fatal effects on “the security of a free State” in schools and elsewhere; or because they simply hate the thought that, in contrast with their own serial failures, Mr. Trump might actually “Make America Great Again” *pro tanto* by significantly reducing the incidence of, or even altogether eliminating, school shootings in a thoroughly constitutional manner. And, of course, the hostile mass media will vehemently inveigh against him on the ridiculous grounds that anyone who seeks to revitalize the Militia for any purpose must be a dangerous “fascist”, even though both the Constitution and Congressional statutes explicitly provide for the President’s employment of the Militia “to execute the Laws of the Union” in aid of suppressing “domestic violence”, whether in schools or elsewhere.

President Trump must turn a deaf ear to these discordant voices, treating them with the dismissal and even disdain they deserve. For, rather than the subjects of a political “popularity contest”, school shootings are matters of life and death for “the children”—on whose behalf Mr. Trump’s antagonists have always shown themselves more inclined to affect hypocritically lachrymose concern than willing to swallow their pride, shut their mouths, roll up their sleeves, and set to work to alleviate the problem in a constitutional manner. If he grasps the nettle firmly, “the Deplorables” will support him. And that should prove to be enough.

Unfortunately, President Trump should also expect some misguided opposition from those among his supporters who honestly question the legality of the General Government’s

"gun-free schools" law. By supposedly compromising the Second Amendment, such people will contend, his invocation of that law for *any* purpose will betray his erstwhile promises to "Make America Great Again". This line of argument, however, is an error easily exposed. For, no matter how many unconstitutional applications of the General Government's "gun-free schools" law can be imagined, it is certainly constitutional as a basis for the President to "take Care that [that law] be faithfully executed" *for the specific purpose of rendering schools "gun free" in terms of illegal "domestic violence" with firearms*, by suitably arming teachers, administrators, parents, and some students called forth from "the unorganized militia". After all, if a statute can fairly be read to further *any* undoubtedly constitutional purpose, it must be deemed constitutional *for that purpose*, no matter how many plainly unconstitutional purposes some tendentious misreadings of its bare language might supposedly license. "The cardinal principle of statutory construction is to save and not to destroy", "'to ascertain whether a construction of the statute is fairly possible by which the [constitutional] question may be avoided.'" *NLRB* v. *Jones & Laughlin Steel Corporation,* 301 U.S. 1, 30 (1937); *and United States* v. *Thirty-seven Photographs*, 402 U.S. 363, 369 (1971), *quoting Crowell* v. *Benson,* 285 U.S. 22, 62 (1932). *Accord, e.g., Lynch* v. *Overholser,* 369 U.S. 705, 710-711 (1962).

A. As any competent experimental scientist will recommend, as his first step President Trump should call forth from "the unorganized militia" individuals qualified to survey the relevant historical and legal literature, conducting comprehensive re-investigations of what *actually* happened in previous school shootings, not just what some public officials have declared to be their "findings", or the mass media have reported as "facts", in those cases. Just as there remain good reasons to continue to question the official "findings" and journalistic "facts" in the public record of (say) the assassinations of President Kennedy and Dr. Martin Luther

King, so too do good reasons exist to doubt the completeness, accuracy, and even honesty of the "findings" and "facts" in the public records of school shootings. In this regard, three basic questions must be answered: Why was "security" nonexistent or inadequate in those instances? If adequate in principle, why did such "security" fail in practice? And would not arming and training teachers, administrators, parents, and even some students under the auspices of the Militia have done better?

B. Because of credible reports of many school shooters' apparent involvement with physician-prescribed or -administered psychotropic drugs, President Trump should call forth from "the unorganized militia" individuals with the specialized expertise required to perform a thoroughgoing critical review of the FDA's allowance and supervision of the general use (or, more likely, misuse and even abuse) of such medications. The primary issue would be whether these dangerous substances have been permitted to enter the stream of commerce without adequate administrative investigation and controls, without sufficient warnings to physicians and their patients (and in many cases their patients' parents and school officials, too), and without notice to other authorities—particularly the FBI, the BATFE, and State agencies tasked with overseeing the purchase and possession of firearms—that the individuals taking these drugs potentially posed serious risks to themselves and others. The BATFE's and various State agencies' forms which collect information for "background checks" on commercial sales of firearms already require disclosure of prospective purchasers' use of *illegal* drugs. Perhaps a *very carefully crafted* new line-item should be included to apprise regulators of a buyer's use of "legitimate" psychotropic substances, too—thus allowing adequate time for investigation of the actual adverse effects of such use before the buyer's personal possession (as opposed to ownership) of certain types of (or even any) firearms were approved—with, of course, adequate guarantees that buyers who

used such drugs would not thereby find themselves listed on some sort of medical "Bill of Attainder", and otherwise would receive every possible protection afforded by due process of law. *See* U.S. Const. art. I, § 9, cl. 3; art. I, § 10, cl. 1; *and* amends. V and XIV, § 1.

Even more thorny is the problem of under what procedures a firearm already legally possessed by an individual who uses legitimate psychotropic drugs could constitutionally be seized by the government if that individual credibly indicated to others that he might misuse his firearm to perpetrate a mass shooting or some other homicidal act. For—distinguishably from all other forms of "property" entitled only to the general guarantees against "unreasonable * * * seizures" in the Fourth Amendment and deprivation "without due process of law" in the Fifth Amendment and Section 1 of the Fourteenth Amendment to the Constitution—"Arms" are "property" explicitly protected by the Second Amendment against all "infringe[ments]" on "the right of the people to keep and bear" them, because they have an unique relationship to "the security of a free State". *Compare and contrast, e.g., Sniadach* v. *Family Finance Corporation,* 395 U.S. 337 (1969) (seizure of wages without prior notice and hearing); *Fuentes* v. *Shevin,* 407 U.S. 67 (1972) (seizure of ordinary household appliances without prior notice and hearing).

C. Inasmuch as membership in "the unorganized militia" nowhere in the United States today requires individuals to undergo training which would specifically qualify them to provide any type of armed security in schools, President Trump should enlist experts from both the public and the private sectors to devise appropriate model training protocols for and programs of instruction.

From the public sector he should seek the assistance of outstanding personnel from well-accredited State police academies or like establishments. This would be especially appropriate, because preparing teachers, administrators, and

some students in “the unorganized militia” to provide armed security in their schools would necessarily involve certain types of training already standardized for State and Local police forces—such as the legal principles and practices relating to the use of deadly force, to the detention of suspects, to identification and preservation of evidence at a crime scene, and so on.

Due to the unrestricted reach of 10 U.S.C. §§ 246 and 253 (as well as the limited exemptions allowed by 10 U.S.C. § 247), it could well be argued that, perforce of Article VI, Clause 2 (the so-called “Supremacy Clause”) of the Constitution, State law could not exempt personnel employed in police academies from service in “the unorganized militia”, and that therefore, just as any other citizens, such individuals could be called forth by the President for Militia duty “in[ ] the actual Service of the United States”. In any event, as a matter of coöperative federalism, the Governors in most “red States” certainly should be expected to direct such police personnel over whom they exercise jurisdiction to participate in the President’s program in the capacity of advisors, inasmuch as effective enforcement of the General Government’s “gun-free schools” law would redound to the States’ advantage, too, by indirectly enforcing the States’ own “gun-free schools” statutes.

From the private sector, President Trump should select top-flight instructors from the best firearms-training organizations (such as Academi, Gunsite Academy, Front Sight Firearms Training, the Massad Ayoob Group, the National Rifle Association, and Thunder Ranch). Besides enlisting individuals with varieties of expertise, experience, enlightenment, and infectious enthusiasm not generally expected to be found amongst personnel in police academies, this would give the lie to the disgraceful defamation now being broadcast in the mass media that the NRA, in particular, has “blood on its hands” because, supposedly motivated by the lowest of mercenary

considerations, it puts a fictitious "individual right" of irresponsible Americans to possess dangerous *semi*-automatic rifles ahead of the safety of innocent students, teachers, administrators, and parents in this country's schools.

In light of President Trump's apparently warm relationship with the government of Israel, he might seek the assistance of *anti*-terrorism experts from that country, too. Their experience and insights should surely prove profitable. Their participation might also convince large numbers of persons within America's Jewish community that, at least with respect to school shootings which indiscriminately target Jews as well as others, their traditionally disproportionate support for "gun control" is counterproductive.

These model training protocols and programs would supply the necessary predicates for the execution of the President's Executive Orders, as well as for such new State and Congressional legislation as might be needed.

D. To facilitate passage of such legislation in the States, President Trump should call forth from "the unorganized militia" experienced legislative draftsmen to write model Militia laws tailored to each State's particular statutory code. Admittedly, preparing the documents needed for comprehensive nationwide reform of this sort would be a tedious task, inasmuch as fifty separate model laws (along with supporting legal memoranda and other explanatory materials) would be required. And no guarantee could be had that all, or a majority, or even more than a few of the States would follow the President's lead at first. In light of the seriousness of the situation, though, something would be better than nothing—especially if that "something" proved effective. For the success some States would achieve would assuredly generate uncompromising demands by citizens in other States for their recalcitrant political leaders either "to get on board" with Mr. Trump's program or "to get out of Dodge". It is hard to imagine how, even with knee-jerk support in the

mass media, rogue public officials obsessed with “gun control” and obdurate in their opposition to employment of “the unorganized militia” could persist in obstruction of the President’s initiative when the hot breath of the voters scorched their necks.

Moreover, those States which adopted and faithfully implemented such model laws could be assured that no further intervention in their affairs on that score would be forthcoming from the General Government.

E. If rogue public officials in some States or Localities should attempt to thwart President Trump’s program—along the lines of the arrant “sanctuary-State” and “sanctuary-cities” obstructionism now being interposed against the General Government’s enforcement of its laws relating to illegal immigration—rather than coddling or negotiating with such miscreants he should peremptorily execute the General Government’s “gun-free schools” law by ordering the direct “federalization” of teachers, administrators, students, parents, and others in “the unorganized militia” in those areas, under the plenary authority vouchsafed to him by 10 U.S.C. § 253.

(a) To this, no disgruntled State or Local official could offer any legal objection, whether under the Tenth Amendment to the Constitution or otherwise. For, as 10 U.S.C. § 253 provides, should President Trump determine that “domestic violence * * * so hinders the execution of the laws of [a] State, and of the United States within th[at] State, that any part or class of its people is deprived of a right, privilege, immunity, or protection named in the Constitution and secured by law, and the constituted authorities of that State are unable, fail, or refuse to protect that right, privilege, or immunity, or to give that protection”, he may “consider” that “the State * * * ha[s] denied the equal protection of the laws secured by the Constitution.” Thus, 10 U.S.C. § 253 is “appropriate legislation” through which Congress has

explicitly empowered the President to "enforce" in the first instance the requirement that no State shall "deny to any person within its jurisdiction the equal protection of the laws", perforce of Sections 1 and 5 of the Fourteenth Amendment to the Constitution. *See* the origin of 10 U.S.C. § 253 in *An Act to enforce the Provisions of the Fourteenth Amendment to the Constitution of the United States, and for other Purposes,* Act of 20 April 1871, chap. XXII, § 3, 17 Stat. 13, 14.

Section 5 of the Fourteenth Amendment delegates to Congress a plenary supervisory power which it may wield in aid of Section 1 of that Amendment against the States perforce of Article VI, Clause 2 ("the Supremacy Clause"). Under that Clause, Sections 1 and 5 of the Fourteenth Amendment, 10 U.S.C. § 253, and the General Government's "gun-free schools" law are "the supreme Law of the Land" by which "the Judges in every State shall be bound * * * , any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." And, as required by Article VI, Clause 3, "the Members of the several State Legislatures, and all executive and judicial Officers * * * of the several States, shall be bound by Oath or Affirmation, to support th[e] Constitution" in the foregoing regard, not to disregard let alone defy it.

(b) Of course, were all State and Local public officials constitutionally literate and politically responsible, no objection would ever be broached by any of them, because President Trump's enforcement of the General Government's "gun-free schools" law through application of 10 U.S.C. § 253 would entail as clear-cut a case of true federalism in action as could be imagined.

(i) Plainly enough, that statute is an exercise of Congress's constitutional authority under Article I, Section 8, Clauses 15 and 18 "[t]o provide for calling forth the Militia to execute the Laws of the Union", and "[t]o make all Laws which shall be necessary and proper for carrying into Execution the

* * * Power[of Congress to call forth the Militia], and all other Powers vested by th[e] Constitution in the Government of the United States, or in any Department or Officer thereof"—including the power and duty of the President, in his capacity as "Commander in Chief * * * of the Militia of the several States", to "take Care that the Laws be faithfully executed" under Article II, Section 2, Clause 1 and Article II, Section 3.

And although Article II, Section 2, Clause 1 of the Constitution makes clear that "the unorganized militia" are components of "the Militia *of the several States*" (not of some nonexistent "Militia *of the United States*"), the States can claim no right to exclusive control over them. For under Article I, Section 8, Clauses 15 and 16; Article II, Section 2, Clause 1; and Article VI, Clause 2, the States are constitutionally bound at all times to make their Militia (in whole or in part) available to "be employed in the Service of the United States" "to execute the Laws of the Union" under the President's personal command. No exception to this requirement exists.

Moreover, for obvious reasons Article I, Section 8, Clause 16 empowers Congress alone, not the States willy-nilly, "[t]o provide * * * for governing such Part of the[Militia of the several States] as may be employed in the Service of the United States". At the present time, Congress has "provide[d]" no specific statute, code, or other set of rules "for governing" "the unorganized militia", in whole or in "Part". In 10 U.S.C. § 253, however, Congress has generally empowered "[t]he President, by using the militia * * * [to] take such measures as he considers necessary . . ." and so on, without limitation. In the absence of more specific Congressional directives, in order to "us[e] the militia" at all effectively in the execution of that statute the President himself would have to promulgate such "measures as he consider[ed] necessary" "for governing such Part of the[Militia]" as he

might call forth to "be employed in the Service of the United States", and then would have to see to the enforcement of those "measures" in his capacity as "Commander in Chief * * * of the Militia of the several States, when called into th[at] actual Service", under Article II, Section 2, Clause 1. Indeed, because 10 U.S.C. § 253 could not at this time reasonably be enforced "by using the militia" without the President's provision of rules adequate "for governing such Part of the[Militia]" when "employed in th[at] Service of the United States", for the President not to promulgate such rules would be to shirk his duty under Article II, Section 3, to "take Care that the Laws be faithfully executed". The States, of course, would have no say as to either the substance of the "measures" the President "consider[ed] necessary" for governing "the unorganized militia", or his applications of them.

(ii) Nonetheless, even when the Militia are called forth to "be employed in the Service of the United States", Article I, Section 8, Clause 16 of the Constitution "reserv[es] to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress". This, however, should pose no insurmountable obstacles to President Trump's invocation of 10 U.S.C. § 253 to "us[e] the militia * * * to suppress, in a State, any * * * domestic violence" associated with school shootings.

First, in light of the peculiar nature of the security required "to suppress, in a State, any * * * [such] domestic violence", it would likely be possible for President Trump to promulgate "measures" which did not require the formal "Appointment of Officers" for governing "such Part" of "the unorganized militia" as he called forth to execute 10 U.S.C. § 253. Although as a practical matter the President's "measures" would certainly have to assign different rights and duties to different persons performing different *tasks*, they would not

necessarily need to vest the powers and privileges of *rank* in anyone. On the other hand, neither the Constitution nor that statute imposes any prohibition of or limitation on "measures" promulgated by the President which would authorize the members of "the unorganized militia" to select "Officers" from amongst themselves in order to perform "the Service of the United States" for which they were called forth. After all, even "the unorganized militia" are *official State institutions, recognized as such not only by the Constitution in general but also by State statutes in particular*. *See, e.g.,* Code of Virginia §§ §§ 44-1 and 44-4. Otherwise, they could not be called forth by Congress to perform any "militia" function whatsoever, as Congress's power in that regard extends only to "the Militia *of the several States"*. That being so, the statutorily authorized actions of "the unorganized militia" (or any "Part" thereof) in any State—whether called forth either by the State herself for her own purposes or by Congress "to be employed in the Service of the United States"—constitute "State action" in the constitutional sense. For whenever anyone who, "by virtue of public position under a State government * * * acts in the name and for the State, and is clothed with the State's power, his act is that of the State." Ex parte *Virginia,* 100 U.S. 339, 347 (1880). Therefore, "the Appointment of [their] Officers" by those members of "the unorganized militia" President Trump called forth "to execute the Laws of the Union" perforce of the authority delegated to him by Congress under 10 U.S.C. § 253 would be sanctioned by the power reserved to the States in Article I, Section 8, Clause 16.

Second, although Congress itself has not "prescribed" a general code of "discipline" for "training" "the unorganized militia", it has necessarily delegated that authority to the President under 10 U.S.C. § 253—for otherwise the President would be unable effectively to "us[e] [that part of]the militia * * * to suppress, in a State, any * * * domestic violence", in the form of school shootings or anything else.

And no statute may be so misconstrued in principle as to render it nugatory in practice. With respect to “training”, the plan proposed in the instant paper depends entirely on personnel called forth from “the unorganized militia” or seconded to it by some other State agencies (such as police academies), under the supervisory authority of the President as “Commander in Chief * * * of the Militia of the several States, when called into the actual Service of the United States”. Therefore, in compliance with Article I, Section 8, Clause 16, this plan would retain for the States “the Authority of training the Militia according to the discipline prescribed by Congress” through its delegation of that power of prescription to the President under 10 U.S.C. § 253.

F. Pursuant to that statute, President Trump may “us[e] the militia * * * [to] take such measures as he considers necessary to suppress, in a State, any * * * domestic violence”, without limitation as to either the sort of “domestic violence” which needs to be “suppress[ed]”, or the nature or extent of the “measures” necessary for that purpose. Presumably, such a sweeping mandate should suffice to enable him to call forth from “the unorganized militia” in any State whichever personnel he might require, on whatever terms and during whatever periods of time he might deem expedient, and to impose on those personnel whatever rights, powers, privileges, immunities, and duties he chose to stipulate, in order to deal with the “domestic violence” of school shootings in that State.

Nonetheless, because President Trump could rightly be concerned that the “measures” he promulgated in an Executive Order could be subject to outright repeal, vitiating amendments, or simple disregard in a subsequent Administration, he could also request Congress to enact new legislation which incorporated, expanded upon, and made permanent those “measures” with regard not only to school shootings but also to other widespread forms of “domestic

violence” to which 10 U.S.C. § 253 should be applied. This could have two important additional effects: First, it could enable the President to call forth “the unorganized militia” in aid of State and Local police forces, Sheriffs’ departments, and other law-enforcement agencies now so handicapped by insufficiencies of personnel that they cannot effectively come to grips, not only with school shootings, but also with violent criminal enterprises organized in and funded through nationwide and even international networks. Second, such legislation could enable the President to call forth “the unorganized militia” to put paid to *officially sanctioned* “domestic violence” manifested most obnoxiously today in widespread “police brutality” (often of a maniacally homicidal character) which all too many incompetent and even corrupt State and Local law-enforcement agencies, prosecutors, and judges tolerate. Once called forth in “the unorganized militia” and vested with legal authority under the General Government’s laws, Local citizens theretofore long exposed to such depredations would surely show no mercy in eradicating them.

G. To be sure, most if not all of the “measures” President Trump promulgated in an Executive Order would presumably require adequate funding to be implemented. It is difficult to imagine, though, that *somewhere* within the General Government’s voluminous *Statutes at Large* Congress has not provided *some* “Appropriations made by Law” for *some* “Money” which the President could “draw[ ] from the Treasury” pursuant to Article I, Section 9, Clause 7 of the Constitution for the purpose of putting 10 U.S.C. § 253 into effect.Notwithstanding all of the foregoing, President Trump should expect that, through its minions, partisans, and useful idiots in the visible governments in the District of Columbia and the States’ capitals, the invisible government of “the Deep State” would bend its every malevolent effort to prevent his employment of “the unorganized militia” to suppress the “domestic violence” of school shootings. As has already

befallen some of Mr. Trump's attempts to "repel Invasions" by illegal aliens (for which purpose he should long ago have called forth "the unorganized militia" throughout this country), "the Deep State's" seditious opposition to his calling f

H. orth "the unorganized militia" to deal with school shootings would most likely disguise itself initially in the garb of "judicial supremacy"—in particular, the purported power of a *single* rogue judge in a *single* trial court to issue a "*nationwide* injunction" which ties the President's hands in every relevant instance, while the case slowly wends its tortuous way through a maze of writs, appeals, petitions, and so on, generating sheaves of orders, findings of fact and law, opinions, and other legalistic screeds as confusing to many lawyers as they are unintelligible to most laymen. For President Trump to acquiesce in such judicial imperialism would be inexcusable as a matter of law.

(i) As a general proposition (which need not be extensively elaborated here), "judicial supremacy" is (to borrow Bentham's apt phrase) "nonsense on stilts". *See, e.g.,* my books *How To Dethrone the Imperial Judiciary* (San Antonio, Texas: Vision Forum Ministries, 2004), and *By Tyranny Out of Necessity: The Bastardy of "Martial Law"* (Ashland, Ohio: Bookmasters, Inc., 2014, 2016), at 481-491. Indeed, by candid admission of its own repeated blunders with respect to constitutional questions, the Supreme Court has exposed "judicial supremacy" as incoherent. *See, e.g., Payne* v. *Tennessee,* 501 U.S. 808, 828-830 & note 1 (1991) (collecting cases). For, self-evidently, "no amount of repetition of * * * errors in judicial opinions can make the errors true". *Wallace* v. *Jaffree,* 472 U.S. 38, 107 (1985) (Rehnquist, C.J., dissenting).

(ii) Decisively, the breadth of President Trump's authority to call forth "the unorganized militia" "to execute the Laws of the Union" pursuant to statutes enacted for that purpose has

long been settled in his favor by the Constitution, the specific statute under consideration here (10 U.S.C. § 253), and even relevant precedent from the highest judicial authority.

First, the Constitution establishes three *coördinate, co-equal* branches in the General Government—the Legislative Branch (Congress), in Article I; the Executive Branch (the President), in Article II; and the Judicial Branch (the Supreme Court and other inferior courts which Congress may ordain and establish), in Article III, Section 1. Even the Supreme Court concedes that, by definition, a "coördinate" branch of government is "one [which] has no power to enforce its decisions upon the other [coördinate branch]". *Town of South Ottawa* v. *Perkins*, 94 U.S. 260, 268 (1877).

Second, Article II, Section 1, Clause 7 of the Constitution requires the President-elect to "take the * * * Oath or Affirmation" that he "'do[es] solemnly swear (or affirm) that [he] will faithfully execute the Office of President of the United States, and will to the best of [his] Ability, preserve, protect and defend the Constitution of the United States.'' Plainly, this commitment requires him to "'execute [his] Office to the best of [*his own*] Ability'", not in intellectually slavish obedience to the opinion of some judge, whose "Ability" may be far inferior to his own. Moreover, together with Article II, Section 3 of the Constitution, his "Oath or Affirmation" requires the President to "'preserve, protect and defend the Constitution of the United States", and to "take Care that the Laws be faithfully executed", against *everyone*, including *rogue* members of the Judiciary who misapply their "Abilit[ies]" in patent derogation of the Constitution and other "Laws".

Third, Article II, Section 3 imposes upon the President the duty to "take Care that *the Laws* be faithfully executed". Judicial opinions, however, are not "Laws"—because in Article I, Section 1 the Constitution provides that "[a]ll legislative

Powers * * * granted [in the Constitution] shall be vested in a Congress of the United States", not to any degree in the Judiciary. The "Laws" are what they themselves say they are; whereas judicial opinions are just that—the mere *opinions* of fallible judges about the "Laws", which may be correct *or incorrect*. And, contrary to the illogical notions that "the judiciary is supreme in the exposition of the * * * Constitution", and that therefore an "interpretation of the [Constitution] enunciated by th[e Supreme] Court * * * is the supreme law of the land", an *incorrect* "exposition of the * * * Constitution" is doubtlessly entitled to no greater legal standing than any other falsehood. *Pace Cooper* v. *Aaron,* 358 U.S. 1, 18 (1958).

Fourth, Article I, Section 8, Clause 15 of the Constitution empowers Congress (not the Judiciary) "to provide for calling forth the Militia to execute the Laws of the Union". And through 10 U.S.C. § 253 Congress has delegated to *the President* (not the Judiciary) the power to "us[e] the militia" to "take such measures *as he considers necessary* to suppress, in a State, * * * domestic violence". That statute further authorizes *the President* (not the Judiciary) to determine whether "domestic violence"

> (1) so hinders the execution of the laws of that State, and of the United States within the State, that any part or class of its people is deprived of a right, privilege, immunity, or protection named in the Constitution and secured by law, and the constituted authorities of that State are unable, fail, or refuse to protect that right, privilege, or immunity, or to give that protection; or
>
> (2) opposes or obstructs the execution of the laws of the United States or impedes the course of justice under those laws.

And, as the statute evidences, in the exercise of its power under Sections 1 and 5 of the Fourteenth Amendment to the

Constitution, Congress has determined that, "[i]n any situation covered by clause (1), the State shall be considered [*by everyone, including the Judiciary,*] to have denied the equal protection of the laws secured by the Constitution." *See* the origin of 10 U.S.C. § 253 in *An Act to enforce the Provisions of the Fourteenth Amendment to the Constitution of the United States, and for other Purposes,* Act of 20 April 1871, chap. XXII, § 3, 17 Stat. 13, 14. This obviates the otherwise relevant requirement set out in Article IV, Section 4 of the Constitution that "[t]he United States * * * shall protect each of the[States] * * * on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic violence."

Fifth, were the Constitution and 10 U.S.C. § 253 by themselves not enough to drive the point home, the Supreme Court has in principle already opined (correctly in this instance) that *the President's* determinations under that statute must be accepted as conclusive *by everyone else, including the Judiciary*.

Pursuant to its constitutional power "[t]o provide for calling forth the Militia * * * to repel Invasions", in 1795 Congress enacted legislation which provided in pertinent part

> [t]hat whenever the United States shall be invaded, or be in imminent danger of invasion from any foreign nation or Indian tribe, it shall be lawful for the President of the United States to call forth such number of the militia of the state, or states, most convenient the place of danger, or scene of action, as he may judge necessary to repel such invasion, and to issue his orders for that purpose, to such officer or officers of the militia, as he shall think proper.

An Act to provide for calling forth the Militia to execute the laws of the Union, suppress insurrections, and repel invasions; and to repeal the act in force for those purposes, Act of 28 February 1795, Chap. XXXVI, § 1, 1 Stat. 424, 424.

Referring to the power so delegated by Congress to the President, the Supreme Court described it as

> not a power which can be executed without a corresponding responsibility. It is, in its terms, a limited power, confined to cases of actual invasion, or of imminent danger of invasion. If it be a limited power, * * * by whom is the exigency to be judged of and decided? Is the president the sole and exclusive judge whether the exigency has arisen, or is it to be considered as an open question * * * ? We are all of opinion, that the authority to decide whether the exigency has arisen, belongs exclusively to the president, and that his decision is conclusive upon all other persons.
>
> If we look at the language of the act of 1795, * * * [t]he power itself is confided to the executive of the Union, to him who is, by the constitution, "the commander in chief of the militia, when called into the actual service of the United States," whose duty it is to "take care that the laws be faithfully executed," and whose responsibility for an honest discharge of his official obligations is secured by the highest sanctions. He is necessarily constituted the judge of the existence of the exigency in the first instance, and is bound to act according to his belief of the facts. If he does so act, and decides to call forth the militia, his orders for this purpose are in strict conformity with the provisions of the law; and it would seem to follow as a necessary consequence, that every act done by a subordinate officer, in obedience to such orders, is equally justifiable. The law contemplates that, under such circumstances, orders shall be given to carry the power into effect; and it cannot, therefore, be a correct inference, that any other person has a just right to disobey them. The law does not provide for any appeal from the judgment of the president, or for any right in subordinate officers to review his decision, and in effect defeat it. Whenever a statute gives a discretionary power to any person, to be

> exercised by him, upon his own opinion of certain facts, it is a sound rule of construction, that the statute constitutes him the sole and exclusive judge of the existence of those facts.

Martin v. *Mott*, 25 U.S. (12 Wheaton) 19, 29-32 (1827) (Story, J., for the Court).

This legal analysis applies directly, and with decisive effect, to 10 U.S.C. § 253—

- Congress enacted the Act of 1795 pursuant to its power in Article I, Section 8, Clause 15 "[to] provide for calling forth the Militia to * * * repel Invasions". That very same Clause also authorizes Congress "[t]o provide for calling forth the Militia to execute the Laws of the Union". The principles *Martin* v. *Mott* invoked are equally applicable to both of those purposes for which the Militia may be called forth.
- The Act of 1795 empowered the President "to call forth such number of the militia * * * *as he may judge necessary*", and "to issue his orders for that purpose, to such officer or officers of the militia, *as he shall think proper*". In like wise, 10 U.S.C. § 253 delegates to the President the broad authority "by using the militia * * * [to] take such measures *as he considers necessary*". Thus, the latter statute is entitled to the same construction *Martin* v. *Mott* applied to the former one—namely, that "the authority to decide whether the exigency has arisen, belongs exclusively to the president, and * * * his decision is conclusive upon all other persons"; and "that, under such circumstances, orders shall be given to carry the power into effect", and no "other person has a just right to disobey them." Indeed, as applied to 10 U.S.C. § 253, the principles of *Martin* v. *Mott* should extend far beyond the facts of that case. For there the President's power could be directed only at actual members of the Militia; whereas,

under 10 U.S.C. § 253, “such measures as [the President] considers necessary” are not confined to members of the Militia alone, but instead may reach essentially anyone and everyone whose behavior is in any way implicated, for good or for bad, in the “domestic violence” those “measures” are designed “to suppress”.

- *Martin* v. *Mott* held that the Act of 1795 “d[id] not provide for any appeal from the judgment of the president, or for any right in subordinate officers to review his decision, and in effect defeat it”—whether through their own unaided efforts or by importuning the Judiciary to interject itself into the matter on their behalf (which the Supreme Court refused to do in that case). Neither does 10 U.S.C. § 253 “provide for any [such] appeal” or “right * * * to review” for a member of “the unorganized militia”. Even the modern-day Supreme Court has recognized that the Judiciary may not interfere with the President’s enforcement of discipline within the Militia. *See Gilligan* v. *Morgan*, 413 U.S. 1, 5-12 (1973). And other persons affected by the President’s “measures” are no better off. For whereas under the Act of 1795 the President’s power extended only to actual members of the Militia, under 10 U.S.C. § 253 “such measures as [the President] considers necessary” are not confined to members of the Militia alone, but instead may reach essentially anyone and everyone whose behavior is in any way involved in the perpetration or suppression of “domestic violence”.
- In reference to the Act of 1795, *Martin* v. *Mott* observed that “[w]henever a statute gives a discretionary power to any person, to be exercised by him, upon his own opinion of certain facts, * * * the statute constitutes him the sole and exclusive judge of the existence of those facts.” No less than that Act, 10 U.S.C. § 253 delegates an equally “discretionary power” to the President to “take such measures as he considers necessary”. That being so, the President’s exercise of

that power cannot be second-guessed by the Judiciary for any reason whatsoever. For "[t]he province of the court is, solely, to decide on the rights of individuals, not to enquire how the executive, or executive officers, perform duties in which they have a discretion. Questions in their nature political, or which are, by the constitution and laws, submitted to the executive, can never be made in this court." *Marbury* v. *Madison,* 5 U.S. (1 Cranch) 137, 170 (1803) (Marshall, C.J., for the Court). To be sure, because in the situation under consideration here the statutory purpose and permission for "such measures" do not extend beyond "suppress[ing] * * * domestic violence" in a constitutional manner, some judicially enforceable limits to the President's actions might conceivably exist. For example, his "measures" may not contravene any applicable provisions of the Bill of Rights. Otherwise, though, the scope, substance, and application of those "measures" are "political questions" left to his judgment alone.

- Finally, no matter how deeply "the Deep State's" friends on the Bench despise President Trump and how desperately they desire to thwart him at every turn, unless and until the Supreme Court overrules *Martin* v. *Mott* the lower courts are required to adhere to its reasoning "no matter how misguided the judges of those courts may think it to be". *Hutto* v. *Davis*, 454 U.S. 370, 375 (1982). And should any one of those judges refuse to do so, and should attempt to curtail the President's use of 10 U.S.C. § 253 by means of a purported "injunction" or other specious order, the President should simply refuse to comply.

CONCLUSION

The present author is not an attorney working for the Department of Justice. He is not a $1,000-*per*-hour lawyer of the genre with which President Trump is undoubtedly familiar

from his former private life. He does not speak or write on behalf of any "gun-rights" group currently trying to solve the problem of school shootings without violating the Second Amendment or other provisions of the Constitution. Rather, he is simply a *semi*-retired attorney living in the placid obscurity of the "Canoe Capital of Virginia". But if he can parse the legal literature and propose a viable solution to that problem in the instant paper, why is the matter so difficult for the bright lights of the Bar now roaming the White House to understand?

President Trump cannot shelter behind his legal advisors' inattentiveness, insouciance, inactivity, or incompetence in this regard. For, even if no one in his entourage assists him, he remains *personally* obligated to figure out what to do. After all, how can he honestly claim to be "tak[ing] Care that the Laws be faithfully executed" with respect to the present-day crisis of school shootings if he neglects, fails, or refuses to investigate what the relevant "Laws" actually are and how they ought best to be applied?

This paper provides *its author's* idea of a satisfactory answer to the question "What is to be done about school shootings?" The further query necessarily left unanswered, though, is "What will *the President* do?" Unfortunately, some of the approaches President Trump has suggested so far will surely prove counterproductive. For they fly in the face of the Fifth and Fourteenth Amendments; the Second Amendment; Article I, § 8, Clauses 15 and 16; Article II, Section 2, Clause 1; and Article II, Section 3 of the Constitution. *See, e.g.*, [Link-1] and [Link-2]. And they certainly take no advantage of his statutory authority under 10 U.S.C. § 253. Of course, perhaps Mr. Trump has just been incautiously "shooting from the hip" about school shootings and "gun control", and on reflection will align his thinking with the Constitution and common sense—rather than with the last "*pro*-gun" (or "*anti*-gun") lobbyists who happen to get his attention. *See, e.g.,* [Link].

If, however, President Trump's future actions demonstrate that he cannot make up his mind on these subjects *in a fully constitutional fashion,* then America will have very serious cause to lament "*basta d'un pazzo per casa*".

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The Disservice Of Mandatory "National Service"

Normally, I refrain from commenting on articles by other contributors to NewsWithViews. But Frosty Wooldridge's recent column—"Call for Mandatory National Service for All American Youth"—provides a valuable "teaching moment" which cannot be allowed to slip away. (To be fair to Mr. Wooldridge, many others—on both the "right" and the "left" of this country's political spectrum—also are calling for some sort of "mandatory national service". But, being published at NewsWithViews, his article provides the most accessible example.)

> In his column, Mr. Wooldridge proposes the following:
>
> In order to give America's youth a head start on their lives and help them to figure out what line of work interests them, we need to incorporate a two-year mandatory service in either the military's five branches of Marine Corps, Navy, Army, Air Force and Coast Guard, or civilian work in Ameri-Corps. Every red-blooded American at the age of 18 must enlist in the miliary or civilian work corps. If they opt for college, they must enter the military or civilian work

> corp immediately after college for two years.
>
> They could fulfill their national commitment in a combat arms if they feel like a warrior. Or, if they lack the tenacity of combat arms, it takes 10 support personnel in supply, food, hospital, mechanics, etc. to facilitate that combat troop, but could still employ the discipline of serving in the military.
>
> In the military, they learn job skills, duty, honor, country. They learn to respect our flag and our country. They learn how to conduct themselves in a free country.

Now, I agree with everything in Mr. Wooldridge's column which appears both before and after this quotation—but with little in it. Rather, I submit that what he calls a "national commitment" not only is unnecessary—if the Constitution were properly enforced—but also would prove to be a dangerous departure from the principles and practices of "a free country" which every patriotic American (Mr. Wooldridge included) wants to uphold.

Basically, Mr. Wooldridge advocates a compulsory "draft" of all of America's youth into one or another branch of what this country's Founders would have denoted "the standing army": namely, the Marine Corps, Navy, Army, and Air Force. (He includes the Coast Guard in his list, which in light of the Coast Guard's origins and its present location in the Department of Homeland Security is technically incorrect, but which for purposes of argument can be accepted. Peculiarly, though, he does not include the National Guard, which plainly is more closely aligned with the Army and Air Force than is the Coast Guard with the Navy.)

In any event, I could point out simply that the Second Amendment does not maintain that "a standing army supported by an universal draft" is "necessary to the security of a free State", but instead declares that "[a] well regulated Militia"

composed of “the people” exercising their “right * * * to keep and bear Arms” is “necessary” to that end.. Inasmuch as the Army, Navy, Air Force, Marine Corps, and Coast Guard are not “militia” in any way, shape, or form—but in fact and law are the very antitheses of (or at least unrelated to) “well regulated Militia”—the Second Amendment alone should tell anyone all he needs to know about the disconnection between a compulsory “draft” for the regular Armed Forces and “a free country”.

Apparently, however, the Second Amendment—along with Article I, Section 8, Clauses 15 and 16, and Article II, Section 2, Clause 1 of the original Constitution—are not in and of themselves convincing enough, for either Mr. Wooldridge or other Americans now touting an universal “draft” for the regular Armed Forces or some civilian establishment such as Ameri-Corps. So an exposition more detailed than the Constitution provides on its face is needed.

I. A compulsory “national commitment” by this country’s youth in favor of the Armed Forces would in due course make almost every adult a member of one or another branch of “the standing army”—and not only *pro tempore* for just two years or so (as Mr. Wooldridge supposes). For it should be obvious that the necessary statute, drafted by the type of politicians now in office who dance to the discordant tune of the military-industrial complex, would commit “draftees” to possible (indeed, almost certain) future involuntary service in “the standing army” as at least “ready reserves” after that initial period. This would pour a self-reinforcing concrete foundation for the ultimate total “garrison state”. After a while, as more and more Americans were subjected to this open-ended commitment, the adult population and “the standing army” would become coextensive, the one with the other. To describe this as a classical—and wholly undesirable—“Prussian” outcome would hardly be an exaggeration.

Mr. Wooldridge and others who share his opinion apparently do

not discern the danger in such an eventuality. “In the military,” he writes rather hopefully, “draftees” will “learn to respect our flag and our country. They [will] learn how to conduct themselves in a free country.” There are, of course, many ways other than involuntary induction into a “standing army” for Americans to “learn to respect our flag and our country”. Even the public schools could be made to instill such attitudes in their students, if organizations such as the National Education Association were stripped of the abusive powers they exercise under State compulsory public-sector collective bargaining statues. That would be a much simpler and more effective solution than imposing an universal “draft” on young Americans whose minds have already been warped out of shape by the cultural Marxism which infects what passes for secondary and higher “education” in this country.

Moreover, within their own limited spheres of authority, the Armed Forces are—and, in light of their purposes, have to be—the very antitheses of “a free country”. Their structures are based on hierarchical ranks and their operations on strict obedience by inferiors to orders from superiors. In “a free country”, however, “the chain of command” runs “from the bottom up” as much as possible; whereas, in the Armed Forces it runs “from the top down”, exclusively and inexorably.

Compulsory service in the Armed Forces will naturally tend (or at least be used) to inculcate in ignorant and impressionable youth a loyalty to (or at the minimum a disposition to sympathize with) the structures, operations, values, and traditions that make just about every “standing army” what it is. Some of these may be worthy of emulation in civil society. But others are at best necessary evils, which should be strictly confined to the barracks, the parade-ground, or the field of battle.

Most dangerous of all is the invariable practice of a “standing army” relentlessly to drill into its inductees a mind-set which tolerates, accepts, even advocates—and in any

event obeys—"martial law". My book *By Tyranny Out of Necessity: The Bastardy of "Martial Law"* goes into great detail on the utter incompatibility between "martial law" and the "Republican Form of Government" which Article IV, Section 4 of the Constitution requires the United States to "guarantee to every State in th[e] Union". This country already suffers from too many ill-educated, ill-advised, or ill-disposed people touting "martial law" and kindred *para*-miliary police-state arrangements centered in the Departments of Defense and of Homeland Security to want to consign tens of millions of dumbed-down, emotionally immature, and easily manipulable youth to "boot camps" in which they will be indoctrinated in *anti*-Republican principles, and thus become inured to the imposition of *anti*-Republican practices on both themselves and their fellow citizens.

II. A "national commitment" to involuntary participation in Ameri-Corps or some equivalent institution would be even more undesirable than an universal "draft" into the regular Armed Forces. For whereas such a "draft" would be tied directly to the limited and generally acceptable purpose of "national defense", compulsory participation in some ostensibly civilian establishment could be twisted to serve *any* scheme contemporary politicians might disingenuously promote in aid of their fantastical misconceptions of "the general welfare". One need not be a priest of the Oracle of Delphi to predict that, in the present political climate, these schemes could—indeed, most likely would—aim at carving ever-expanding fissures into society with the jackhammers of cultural Marxism. At every level, from this country's elementary and secondary public schools through its colleges and universities, America's "educational" establishment is already serving that perverse purpose all too well. It would be folly to exacerbate this situation by dragooning America's youth into two or more years' worth of involuntary service in some civilian labor-camp, so as to perfect with work what has been so effectively begun with brainwashing.

III. The whole idea of what Mr. Wooldridge styles a "national commitment" is legally unsound. As I explain in Chapter 49 of my book *The Sword and Sovereignty*, an universal "draft" for "the standing army" is plainly unconstitutional. Such a "draft" for Ameri-Corp (or some equivalent institution) would be even worse. For in Article I, Section 8, Clauses 12 through 14, the Constitution does provide for "Armies" and "a Navy". But nowhere does it authorize a national scheme of compulsory civilian labor in some "democratic" *gulag* or *laogai*. Quite the contrary: The Thirteenth Amendment declares that "no[ ] involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

IV. Moreover, at least on paper, in "the Militia of the several States" the Constitution already provides for compulsory service far less dangerous, far more comprehensive, and far more promotive of true American values than what the advocates of some new "national commitment" propose.

"The Militia of the several States" are obviously less dangerous than a "standing army", because they are no part of a "standing army", but instead the constitutional counterweights to it or any other mechanism of oppression aspiring usurpers and tyrants might attempt to employ. *See, e.g., The Federalist* No. 46 (James Madison).

"The Militia of the several States" are obviously more useful—as well as more lawful—than some jury-rigged "national commitment".

First, "the Militia of the several States" are based upon the complete, permanent, and competent organization of the entire community, starting with enrollment at sixteen years of age and continuing for the full active life of every eligible citizen. *See, e.g.,* Chapters 35 and 36 in *The Sword and Sovereignty*.

Second, “the Militia of the several States” are capable of serving myriad purposes—from military, *para*-military, police, and emergency-response functions, to the suppression of political corruption and incompetence, the supervision of honest elections, the establishment and maintenance of a sound monetary system, and on and on, the limits of their application being only one’s imagination as to what may be needed for community self-defense and other forms of preparedness which fall within the broad parameters of “the security of a free State”. *See, e.g.,* Chapters 41 and 42 in *The Sword and Sovereignty*.

Third, participation in “the Militia of the several States” would begin with mandatory *pre*-militia training in middle schools for students from about thirteen years of age, in order to prepare them to enter the Militia at sixteen. They would be taught not only about the Militia’s origins, organization, and operations, but also (and of greater consequence) about the “necessary” rôle of “well regulated Militia” in providing “the security of a free State”. Exposed to in-depth expositions of the Declaration of Independence, the Constitution, and a great deal more from America’s legal and historical heritage, students would be infused with, and become enthusiastic supporters of, the principles and practices of patriotism, social unity, and civic duty necessary to maintain “a Republican Form of Government” against all enemies, foreign *and especially domestic*. This education in Americanism would continue with ever-more-comprehensive courses in secondary schools and colleges, as part of the students’ on-going Militia duty. How such training would innoculate American youth against the socially destructive virus of cultural Marxism should be self-evident.

Fourth, preparation for and actual service in “the Militia of the several States” would take place primarily at the Local and State levels—with, of course, proper consideration being given to the authority and responsibility of the Militia to be

called forth for employment in the service of the United States, as the Constitution provides in Article I, Section 8, Clause 15 and 16, and Article II, Section 2, Clause 1. This would put into practice *true* federalism "from the bottom up" through Local communities organized in the Militia, not rigid centralization "from the top down" effected through the Armed Forces or some civilian bureaucracy lodged in the District of Columbia.

Fifth, although (as pointed out above) some species of compulsory "national commitment" in Ameri-Crops (or its equivalent) would constitute "involuntary servitude", service in "the Militia of the several States" would not, because it rests on a civic duty recognized in American law throughout *pre*-constitutional times, under the Articles of Confederation, and by the Constitution and laws of the several States both before and after ratification of the Thirteenth Amendment. Certainly, the Thirteenth Amendment did not repeal the Second Amendment or Article I, Section 8, Clauses 15 and 16, and Article II, Section 2, Clause 1 of the Constitution. And because "well regulated Militia" are "necessary to the security of a *free* State", service in such Militia cannot rationally be impugned as "involuntary servitude", even though such service is compulsory. Otherwise, the no less compulsory service in the petit juries for which the Constitution provides in Article III, Section 2, Clause 3 and the Sixth Amendment would also fall afoul of the Thirteenth Amendment, which is a preposterous contention. The apparent reasons some deluded souls today condemn the Militia, but not petit juries, as examples of "involuntary servitude" are that these people: (i) are familiar with juries, but unfamiliar with the Militia, and (ii) fail to take into account that, although the Constitution nowhere even intimates that juries are "necessary to the security of a free State", it does so declare with respect to the Militia.

V. That "the Militia of the several States" do not exist in

their constitutionally proper form, and therefore do not exercise their constitutional mandated authority and responsibility, is the lacuna in contemporary social organization which lends a veneer of plausibility to calls for an universal "draft" in favor of the Armed Forces or a civilian establishment such as Ameri-Corps.

In the so-called Dick Act of 1903, expanded upon by the National Defense Act of 1916, Congress created out of whole cloth the modern dichotomy between what it termed "the organized militia" ("the National Guard" and "the Naval Militia") and "the unorganized militia" (everyone else). *See* 10 U.S.C. § 246. The National Guard and the Naval Militia, however, are not "militia". Rather, they are the "Troops, or Ships of War" which the Constitution permits the States to "keep * * * in time of Peace" "with[ ] the Consent of Congress", perforce of Article I, Section 10, Clause 3. *See* Chapter 30 in *The Sword and Sovereignty.* So, in principle and for all practical purposes, no constitutional Militia exist within any of the several States today, because an "*unorganized* militia" is no "militia" at all. Indeed, in American experience the term "unorganized militia" is a self-contradiction. For during *pre*-constitutional times, which provide the legal-historical definitions of the constitutional terms "Militia of the several States" and "well regulated Militia", *every* Colonial and State Militia was *totally* organized, enrolling *every* eligible member of the community. *See, e.g.,* Chapters 34 through 36 in *The Sword and Sovereignty*.

The politicians (and their controllers behind the scenes) who foisted the duplicitous dichotomy of "organized" and "unorganized militia" on America in the early 1900s were proponents and practitioners of "the administrative state" at home and imperialism abroad. Their goal was two-fold:

First, they wanted to exclude the great mass of ordinary Americans, both politically and practically, from direct,

self-conscious participation in self-governance “from the bottom up” through the Militia. Eliminating the Militia as the latter should be organized strikes the Power of the Sword from ordinary Americans’ hands. Obviously, if “well regulated Militia” are “necessary to the security of a free State”, then *“unregulated”* (because “unorganized”) *pseudo*-militia can provide no aid to that “security”, but instead positively endanger it. With the Militia “unorganized”, effective community vigilance and resistance against usurpation and tyranny become at best problematic, at worst impossible.

In addition, Americans consigned to “the unorganized militia” cannot provide their own communities with timely and adequate self-defense, self-preparedness, and self-reliance against such recurrent dangers as natural disasters, pandemics, economic crises, massive influxes of illegal aliens, the depredations of large-scale criminal syndicates and gangs, sedition and other orchestrated social upheavals, and so on. Rather, they must fall back on assistance “from the top down” which, as this country’s woeful experiences with FEMA and other agencies of the General Government prove, is either too late or too little, or even counterproductive. For the most recent example, if the well-substantiated “tips” as to the homicidal intentions of the alleged perpetrator of the mass school-shooting in Florida had been delivered, not to the FBI, but instead to a properly organized Militia unit composed of Local citizens concerned for the safety of their own and their neighbors’ children, appropriate action would undoubtedly have been taken in time to forefend the crime.

Second, the authors of the fictional “organized militia” wanted to create a large reserve component for the regular Armed Forces which could be deployed overseas. It did not matter to them that in Article I, Section 8, Clause 15 the Constitution delegates to Congress the power “[t]o provide for calling forth the Militia” for three purposes only—none of which allows for deployment of the Militia to fight in foreign

wars; or, since World War II, in foreign military adventures which even Congress has realized could not be deemed “War[s]” in the constitutional sense, but had to be rationalized under such non- and even *anti*-constitutional rubrics as “police action”, “peacekeeping”, “responsibility to protect”, “nation building”, and so on.

Not surprisingly, *karma* being what it is, immediately before and during World War II the lack of an adequately prepared “home front” became a critical issue. So volunteer civil defense was pulled from the dustbin of history and hastily promoted, initially under the auspices of such great minds as Fiorello La Guardia and Eleanor Roosevelt. These and other bright bulbs of the Franklin Roosevelt era never thought, however, to shine any of their peculiar illumination on the obvious question of why nationwide civilian self-defense and preparedness organizations which could have assumed responsibility for securing “the home front” were not already in existence in the late 1930s, but had to be created from scratch in the confusion, and even outright hysteria, attendant upon the United States’ entry into the war.

Although they recognized that civilian self-defense and preparedness were of vital importance, none of these luminaries bothered to ask where in the Constitution one should look for the solution to the problem. Instead, everyone irresponsibly assumed that the Constitution provided no specific directives, but instead left it up to such dilletantes as La Guardia and Mrs. Roosevelt to figure out what to do (a task which, unfortunately if predictably, they proved largely incapable of performing). Neither, apparently, has anyone else who has subsequently investigated the matter adequately grappled with this strange state of affairs. For example, although Matthew Dallek, in *Defenseless Under the Night: The Roosevelt Years and the Origins of Homeland Security* (New York, New York: Oxford University Press, 2016), provides excruciating detailed information about this

historical episode, his otherwise useful book's index contains no entry whatsoever for "militia".

After World War II, the Selective Service System prepared a multi-volume set to support its call for a permanent peacetime "draft" for the Armed Forces. *Backgrounds of Selective Service, Military Obligation: The American Tradition, A Compilation of the Enactments of Compulsion From the Earliest Settlements of the Original Thirteen Colonies in 1607 Through the Articles of Confederation in 1789* (Washington, D.C.: Government Printing Office, 1947). Intent upon proving that compulsory military service had a long *pre*-constitutional tradition, the Selective Service reprinted a large number of statutes from the Colonies and independent States which mandated such service. Its rather glaring error, though, was that these statutes dealt with *the Militia*, not with the regular armed forces of Britain or her American Colonies prior to 1776, not with the "Troops, or Ships of War" of the States thereafter—and certainly not with the powers of Congress, which did not even exist until the Constitution was ratified. If the Selective Service documented anything, it was that: (i) a comprehensive "draft" for America's Armed Forces had no historical justification; and (ii) the relevant Congressional and State statutes dealing with the Militia in 1947 were plainly unconstitutional, a state of affairs which has not improved by one iota since then.

VI. So today, as the wag said, it is "*déjà vue* all over again". This country is no less unprepared with respect to true "homeland security" now than it was immediately prior to World War II. America continues to groan under the misrule of a bloated "administrative state", to which have been added the even more pernicious machinations of "the Deep State" and "the Shadow Government" behind the scenes. The contemporary political class and its controllers are just as desirous of keeping the people out of direct participation in self-government as were their predecessors in 1903. To that end,

ordinary Americans—"the Deplorables"—remain consigned to "the unorganized militia". The social degeneration which Mr. Wooldridge describes so well in his article is accelerating. And once again pundits on both "the right" and "the left" of the political divide propose the *obviously wrong* solution: namely, an universal "draft" for the benefit of the regular Armed Forces or (worse yet) some civilian agency with no constitutional provenance whatsoever.

"Drafting" Americans willy-nilly into the Armed Forces would not alleviate Local and State unpreparedness, but instead would simply contribute to increased centralization of power in the military-industrial complex. Does America need to be reminded of President Eisenhower's warning on that score? "Draftees" would serve with strangers wherever the Armed Forces assigned them, not in Local units made up of Local citizens from their own communities. Would this promote the social solidarity at the Local level where these people actually live and work which would be desperately needed in a real crisis? Undoubtedly, "draftees" would receive training that would fit them for deployment in foreign military adventures. In general, though, would such training be useful for dealing with the day-to-day exigencies Local communities face? And, specifically, is it plausible to expect that someone trained (say) as a machine gunner in the Marine Corps would (in Mr. Wooldridge's words) "figure out what line of work [in civilian life] interests [him]" through such an experience? Finally, and perhaps of greatest importance in the long run, Article I, Section 8, Clause 15 identifies as the first constitutional responsibility of "the Militia of the several States" "to execute the Laws of the Union". Would "draftees" be likely to learn anything about this in the Armed Forces? Or would they be indoctrinated in the supposed benefits of "martial law"?

To predict the usefulness of Ameri-Corps (or some similar establishment), one need recall only how well FEMA, the

Department of Homeland Security, and other top-heavy civilian agencies have performed in responding to Local and State emergencies even with the fully panoply of the General Government's resources behind them, let alone in preparing ordinary Americans to deal with such emergencies on their own. Why should yet another bureaucracy, operating from just as far away and on the same faulty principle of control "from the top down", be expected to do any better?

Had "the Militia of the several States" been in proper constitutional form and operation from 1903 until today, these questions would be moot.

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Supreme Court, The 2nd Amendment And The NRA

As the readers of my columns on News With Views are aware, for more than the past decade I have attempted to awaken Americans who consider themselves "constitutionalists", "patriots", "friends of the Second Amendment", and like-minded people to the importance of revitalizing "the Militia of the several States". But my efforts have met with scant success. Whether the fault lies with the author of these missives or the audience to which they were directed may be debatable. The facts remain that, not only have vanishingly few Americans evinced any interest in this matter, but also all too many who have taken note of my work have reacted to it in a singularly negative, if not overtly hostile, fashion.

The latest manifestation of this dog-in-the-manger attitude is the refusal of the Petitioners in the pending case *Kolbe* v. *Hogan*, No. 17-127 (U.S. Supreme Court) to consent to my filing of a brief *amici curiae* on their behalf. The decision which is the subject of this petition—*Kolbe* v. *Hogan*, 849 F.3d 114 (4th Cir. 2017)—is, in my estimation, the most egregious affront to the Second Amendment which has ever been handed down by any court in the United States. So my attempt to intervene in this case is not simply a quixotic, let alone an uninformed, effort on my part.

For those who are unfamiliar with procedure in the Supreme Court, a potential *amicus curiae* ("friend of the Court") first seeks permission from the parties to file a brief, usually on behalf of one of the parties. If either party refuses consent, the *amicus* may file a motion for leave to file, requesting the Supreme Court to accept his brief notwithstanding that refusal.

Now, usually, parties who desire the Supreme Court to review their case through a petition for a writ or certiorari want to marshal as many *amici* briefs on their behalf as possible, in order to convince the Court that their petition not only has theoretical merit but also raises issues of general rather than merely passing concern. Indeed, in yesteryear, the all-too-close coördination of various *amici* with the parties they supported became something of an abusive "cottage industry", which resulted in the Supreme Court's issuance of its Rule 37.6, under which an *amicus* must certify that no counsel for any party has authored the *amicus* brief in whole or in part, and that no such counsel or any party has made a monetary contribution intended to fund the preparation or submission of such a brief. So, today, an *amicus* must be completely independent of the party whose position it supports, except to the extent under Rule 37.1 that the *amicus* brief brings to the Court's attention matters which not only support that party but also apprise the Court of matters that the favored party

will not emphasize in its petition but which nonetheless will be useful for the Court to consider.

In my brief *amici curiae*, as something of an expert on the Second Amendment I seek to inform the Court of critical matters related to the first thirteen words of the Amendment—to wit, "[a] well regulated Militia, being necessary to the security of a free State"—that (as my brief explained)

> will "not * * * [be] brought to [the Court's] attention by the parties", but nevertheless "may be of considerable help to the Court." Because these matters have "not [been] specifically noticed in the objections taken in the records or briefs of counsel" for the parties in a satisfactory manner to date, and are unlikely to be raised hereafter, th[e Supreme] Court should take them under consideration by way of the *Amici's* brief, "that the Constitution may not be violated from the carelessness or oversight of counsel in any particular." *See Pollock* v. *Farmer's Loan & Trust Co.*, 157 U.S. 429, 604 (1895) (separate opinion of Field, J.).

Of course, one would expect that the Respondents (here, Hogan *et alia*) would balk at having such information brought to the Court's attention—but that, on the other hand, the Petitioners (here, Kolbe *et alia*) would be grateful for whatever assistance they could obtain from an *amici* brief prepared by someone who knows his business. After all, at the petition stage, the strategy must be for the Petitioners to amass whatever support is available that could convince the Court to hear the case on the merits.

If the reader goes to the SCOTUSBLOG on the Internet, and searches for *Kolbe* v. *Hogan* in the compilation under "Petitions", he will find, not only Kolbe's Petition for a Writ of Certiorari, but also the *amici* briefs filed on the Petitioners' behalf. These include briefs from such *amici* as the NRA and the Cato Institute. *Of these briefs, mine is the only one as to which the Petitioners have denied their consent*

to file.

When the reader peruses these briefs, he will see that mine is the only one which focuses on the first thirteen words of the Second Amendment. The rest rely on what I should describe as the erroneous "law-school solution" to the problem raised in *Kolbe*—focusing on such really irrelevant matters as whether so-called "assault rifles" are in "common use" by average Americans for individual self-defense in the home, and such ultimately self-defeating arguments as whether "the right of the people to keep and bear [such] Arms" is subject to one or another *anti*-constitutional judicial "balancing test" (so-called "strict scrutiny" or "intermediate scrutiny") under the Supreme Court's decision in *District of Columbia* v. *Heller*, 554 U.S. 570 (2008). None of these briefs, other than my own, points out that the actually controlling precedent is *United States* v. *Miller,* 307 U.S. 174 (1939); and that, applied in tandem, both *Miller* and *Heller* demand reversal of the Court of Appeals' decision in a manner which absolutely guarantees—indeed, if the Second Amendment is properly construed, requires—average Americans' possession of "assault rifles".

Under these circumstances, one would expect that my *amici* brief would at least be welcomed *sotto voce* by the Petitioners, because they have nothing to lose, and everything to gain, from having the Supreme Court made aware of the arguments which that brief, and no one else, presents. But no—the Petitioners do not want my *amici curiae* brief even to be considered by the Court. Having kicked around in Supreme Court practice over the years—and not without some notable successes—I find Petitioners' reluctance to further their own interests rather perplexing. This is a conclusion in which I expect those of my readers who study the various *amici* briefs to concur.

So the question I raise for my readers' consideration is: "What is going on here?" Why do the Petitioners (and, for that

matter, the other *amici* ostensibly on their side) treat the first thirteen words of the Second Amendment, not simply as irrelevant to their case, but also as so dangerous to mention that they refuse both to address them in their own briefs and to consent for my *amici* brief to bring them to the Supreme Court's attention?

Do these people really believe that the first thirteen words of the Second Amendment are actually irrelevant to the last fourteen words, even though they all are included in the very same sentence? If this the way English grammar works? Is this the way constitutional interpretation works (or ought to work)?

At this point, the matter is in the hands of the Supreme Court. But, in the long run, the problem goes beyond what happens to my *amici curiae* brief or even to the petition for a writ of certiorari in *Kolbe* itself. *Kolbe*, after all, will not represent the final battle over radical "gun control" in this country. The struggle to secure "the right of the people to keep and bear Arms" will continue, unabated, until all of the twenty seven words of the Second Amendment are either upheld in their entirety or so disregarded, discounted, or diluted by ridiculous decisions of the Judiciary that the Amendment is reduced to the palest shadow of what the Founders intended it to be.

To be sure, readers of this commentary who are not members of the Supreme Court Bar are not in a position to influence the Court. But many of them are capable of bringing this matter to the attention of leaders of the NRA—who, more than anyone else, are responsible for floating the mistaken notion that the Second Amendment's overriding concern is to enable average Americans to possess "Arms" for the purpose of individual self-defense. Not simply the words of the Amendment, but especially the *pre*-constitutional history which informs them, teach that c*ommunity* self-defense is that concern. *See* my book *The Sword and Sovereignty: The Constitutional Principles of*

"the Militia of the Several States" (CD-Rom Edition, 2012).

So I urge my readers—in particular, those who are members of the NRA—to contact that organization and encourage its leadership to reevaluate its position. At no time in this country's history could such reconsideration be more vital.

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Legal Audacity Is The Answer To Political Aggression

Since his inauguration, President Trump has assumed an all-too-reactive and -defensive posture *vis-à-vis* his political enemies. He seems quite unable to foresee, let alone to forestall, forfend, or even fashion an adequate response to his opponents' next moves, no matter how pellucidly predictable they may be. Rather, he suffers his antagonists to strike at will, whenever and wherever an opportunity to make mischief presents itself. For example—

- They float knowingly false "leaks", defamatory stories, and innuendoes in the big "mainstream media", not simply to ridicule and embarrass him personally (along with members of his Administration and even his immediate family), but also (and of greater consequence) to undermine his prestige and standing as President amongst the American people.
- They file frivolous lawsuits aimed at providing rogue judges with legalistic rationalizations to deny, defeat, frustrate, and impede the exercise of his undoubted

statutory (and as the agent of Congress, constitutional) Presidential powers, while he meekly acquiesces in the courts' assertion of "judicial supremacy".

- They impugn both him and his Administration with spurious scandals, tying up the Office of President in interminable "investigations", in comparison with which the Salem witch-trials appear as models of rational deportment and due process.
- They charge him personally, as well as leading members of his Administration, with specious violations of plainly inapplicable criminal laws.
- They agitate for his removal from the Office of President through "Impeachment for, and Conviction of, * * * high Crimes and Misdemeanors"under Article II, Section 4 of the Constitution, or on the grounds that he is otherwise "unable to discharge the powers and duties of his office" under Section 4 of the Twenty-fifth Amendment.
- In various public fora they openly threaten him with assassination, and contend that his homicidal elimination—and that of other officeholders who take his part—would be justified. And
- They unleash fanatical "*anti*-fascists" and other maniacal thugs from the *neo*-Bolshevist *Rotenfrontkämpferbund* verbally to harass and even physically to assault his supporters in the streets and on college campuses.

All of this is obviously intended to instill in Mr. Trump confusion, uncertainty, indecision, self-doubt, and pessimism sufficient to dissuade and disable him from effectively exercising the authority of the Office of President with which the Constitution and other laws of the United States invest him.

These goings-on have been so concatenated, coördinated, and concerted in character as to indicate the operation of a

common plan. And this plan is plain enough. Mr. Trump's enemies are not engaged simply in an extreme version of "monkey business as usual" in the District of Columbia's political zoo. Neither are they primarily concerned with figuratively handing Mr. Trump his Presidential head on a platter, as a warning to other potential interlopers who might presume to trespass on the territory the "good old boy" hierarchs of the Democratic and Republican parties have long reserved unto themselves. Nor is their chief purpose to destroy Mr. Trump as an individual (although they apparently do detest him). Rather, their target is *the Office of President itself insofar as anyone elected to that position might dare to exercise its powers in the interest of the Deplorables and other patriotic Americans*. By intimidating Mr. Trump into reneging upon the plans for reform which he has promised Americans, and into becoming its compliant puppet or political eunuch (if he cannot be eliminated in some other way), the Deep State is perfecting "the small solution" for serial "régime change" in this country—the specific operation of "Presidential emasculation", as opposed to a seditious overthrow of the General Government as a whole—which can be applied to each and every future President who sides with the Deplorables against the Deep State. The point is to demonstrate to the Deplorables that, even if somehow against all odds they can succeed in putting their own man into the Office of President, they still cannot prevail. Ever.

In response to this political aggression, to date Mr. Trump seems strangely satisfied with publishing "tweets", as if he were merely the victim of some college fraternity's juvenile hazing, to which he imagined that what he considered to be snappy verbal comebacks in the most juvenile of the Internet's juvenile fora could provide sufficient answers. Although this may be a method for him to "go over the head" of "the mainstream media" by addressing the American people directly, it will hardly prove to be effective, even if Mr. Trump pillories the Deep State in no uncertain terms, because mere

harsh phrases bounce off the Deep State's case-hardened carapace as readily as cold water flows off a duck's oily back. No, indeed—if he intends to break the Deep State's bones before it breaks his own neck, Mr. Trump must employ sticks and stones, not just words. So, as always, the question becomes, "Now what?"

A set of acts so concatenated, coördinated, and concerted in character as to indicate the operation of a common plan aimed at an illegal goal through the use of illegal (and, in some cases, even legal) means is properly termed a *conspiracy*, and the perpetrators are properly denoted *conspirators*. This is not "conspiracy theory", but *conspiracy law* (or the law of conspiracy). The political aggression against President Trump has been so notorious that the various "law-enforcement" and "intelligence" agencies of the General Government—with their vaunted methods of surveillance, infiltration, computerized analysis of data, and so on—should be able to identify not only the illegal means being employed but also the primary malefactors employing them, including both the miscreants brazenly operating in the open and (of far greater consequence) the instigators, financiers, and other string-pullers manipulating events from behind the scenes. (If not, Mr. Trump can invoke for that purpose the sweeping powers statutorily delegated to him under 10 U.S.C. §§ 252 and 253.) Moreover, one need not hire a $1,000-an-hour big-city attorney to find at least one statute which applies in this situation.

Title 18 of the United States Code, Section 241 provides in pertinent part that

[i]f two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States * * *

[t]hey shall be fined * * * or imprisoned not more than ten

years, or both; and if death results from the acts committed in violation of this section * * * , they shall be fined * * * or imprisoned * * * for any term of years or for life, or both, or may be sentenced to death.

Observe that this statute protects "*any* person * * * in the free exercise or enjoyment of *any* right or privilege secured to him by the Constitution or laws of the United States" *in any respect*. Moreover, for it to come into play, no actual deprivation of "any [such] right or privilege secured" need have occurred. A conspiracy aimed at any such deprivation, together with the commission of some overt act in furtherance thereof, suffices. As well it should: "For two or more to confederate and combine together to commit or cause to be committed a breach of the criminal laws, is an offense of the gravest character, sometimes quite outweighing, in injury to the public, the mere commission of the contemplated crime. It involves deliberate plotting to subvert the laws, educating and preparing the conspirators for further and habitual criminal practices. And it is characterized by secrecy, rendering it difficult of detection, requiring more time for its discovery, and adding to the importance of punishing it when discovered." *United States* v. *Rabinowich,* 238 U.S. 78, 88 (1915).

As to deprivations of certain rights or privileges, private parties can be charged even without the involvement of rogue public officials in their wrongdoing, *See United States* v. *Guest*, 383 U.S. 745, 757-760 (opinion of the Court), 775-784 (opinion of Brennan, J.) (1966). But private individuals are certainly liable as to deprivations of any and all such rights or privileges when they collude with such officials. *United States* v. *Price*, 383 U.S. 787, 794, 795, 798 (1966). And in this case rightly so: For various puppet masters and their mouthpieces in private station are doubtlessly as much instigators, initiators, promoters, and planners of, and otherwise accessories to, the attacks against President Trump

as are their co-conspirators among rogue officials and employees in the Deep State's governmental apparatus. So, inasmuch as rogue public officials "participate[ ] in every phase of the * * * venture", and "[i]t [i]s a joint activity, from start to finish", "[t]hose [private parties] who t[ake] advantage of the foul purpose must suffer the consequences of that participation", even to the extent of being punished as principals. *Compare id.* at 795 *with* 18 U.S.C. § 2.

Now apply 18 U.S.C. § 241 specifically to the President:

If two or more persons conspire to injure, oppress, threaten, or intimidate [*Mr. Trump*] in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States [*specifically in his capacity as the President of the United States*] * * *

[t]hey shall be fined * * * or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section * * * , they shall be fined * * * or imprisoned * * * for any term of years or for life, or both, or may be sentenced to death.

(Inclusion of the part of this statute referring to the death penalty is not an exercise in hyperbole, either. For example, was Mr. Seth Rich's murder one of the "results from the acts committed in violation of this section"? Only a *thoroughgoing and uncompromising* criminal investigation—not a Vince Fosteresque whitewashing of the case—can determine what the facts, and who the culprits, really are.)

As President, Mr. Trump is entitled to numerous "right[s] or privilege[s] secured to him by the Constitution or laws of the United States" in relation to that office. And "two or more persons" are now engaged in a complex of acts incontestably intended "to injure, oppress, threaten, or intimidate [him] in any State, Territory, Commonwealth, Possession, or District in

[his] free exercise or enjoyment of [those very] right[s] or privilege[s]". Indeed, those "persons" are bending their every evil effort in *every* "State, Territory, Commonwealth, Possession, or District", not only to nullify or frustrate Mr. Trump's exercise of "the executive Power" vested in him by the Constitution, but even to deprive him altogether of the right to "hold his Office during the Term of four Years" to which he has been elected pursuant to the Constitution. *See* U.S. Const. art. II, § 1, cl. 1. Therefore, Mr. Trump could enforce 18 U.S.C. § 241 against those individuals right now—*and, besides having a personal interest in the matter, is bound in legal duty to do so. See* U.S. Const. art. II, § 3 and, *e.g.,* 18 U.S.C. §§ 3 and 4.

One must wonder, then, why Mr. Trump has refrained from invoking that statute. If the present author—a simple resident of "the Canoe Capital of Virginia"—can figure it out, why have Mr. Trump's high-profile lawyers not so advised him? Or, if they have, for what is he waiting? Why does he foolishly persist in fighting this battle on his enemies' terms, on the ground they have chosen, with the worst of them sheltered from legal retaliation in some sort of political sanctuary, when the indictment of a few—or, better yet, a few dozen—of the conspirators would transform the situation radically in his, and the Deplorables', favor?

The answer is not to be found in some quirk of legal procedure. No "independent counsel" need be installed to enforce 18 U.S.C. § 241. The Department of Justice already employs numerous ordinary prosecutors presumably fit for that purpose. And if none can be found there after all, Mr. Trump can invoke 10 U.S.C. §§ 252 and 253 in order to enlist the experienced and reliable people he needs.

So what is wanting? Apparently, only *l'audace, encore l'audace, toujours l'audace.*

What Trump’s Nominee Should Have Said

During the hearings on the confirmation of President Trump’s nominee to the Supreme Court, Circuit Judge Neil Gorsuch, Senator Dianne Feinstein asked two questions of great interest to me, because they dealt with the Second Amendment in its relation to so-called “assault rifles” (that is, rifles available for use by civilians which are similar in most of their features to the rifles carried by the regular Armed Forces, except for being only semi-automatic, rather than fully automatic, in their mechanisms of fire). Unfortunately, these questions and their answers proved once again that hearings of this kind tend to be pointless charades, because the nominees inevitably craft their answers in such artful fashion as to say as little as possible that would pin down their true positions on the matters under investigation. I should think that such a lack of candor towards the very institution—the Senate of the United States—in which the Constitution vests the authority to give “Advice and Consent” with respect to nominations of “Judges of the supreme Court” suggests that a nominee is deficient in the sort of “good Behaviour” which a “Judge[ ] * * * of the supreme * * * Court[ ]” must demonstrate during his tenure on the Court, and therefore that such a nominee is arguably of questionable fitness for that position. *See* U.S. Const. art. II, § 2, cl. 2; art. III, § 1. For if a nominee conducts himself in a manner as slippery as transmission-fluid when under oath in his testimony to the Senate—and, by extension, to the American people—one might justifiably expect him to be no less slippery in the opinions he will enunciate once safely ensconced on the Bench.

So in this commentary I shall provide some "alternative history", in the form of the answers to these questions which *should* have been given by a completely candid and thoroughly knowledgeable nominee who was actually intent on enforcing the Constitution in general and the Second Amendment in particular, and who was sufficiently forthright to make that intent known, the consequences to his ambition be damned. (As to the actual colloquies between Senator Feinstein and Judge Gorsuch, I shall rely on the text reported by Kelsey Harkness, "Gorsuch Faces Questions About Supreme Court and Guns" (21 March 2017), at <dailysignal.com>.)

QUESTION AND ANSWER I, AS GIVEN.

Senator Feinstein: In *D*[*istrict of*] C[*olumbia*] v. *Heller*, [554 U.S. 570 (2008)], the majority opinion written by Justice Scalia recognized that * * * "Of course the Second Amendment was not unlimited" * * * . Justice Scalia also wrote that, "Weapons that are more useful in military service, M-16 rifles and the like, may be banned without infringing on the Second Amendment." Do you agree with that statement that under the Second Amendment weapons that are most useful in military service * * * may be banned?

Judge Gorsuch: *Heller* makes clear the standard that we judges are supposed to apply. The question is whether it is a gun in common use for self-defense, and that may be subject to reasonable regulation. That's the test as I understand it.

ANSWER I, AS IT SHOULD HAVE BEEN GIVEN.

Judge Candorfull: I disagree, for the following reasons:

- First, the assumption in the question that *Heller* actually *held* that "[w]eapons that are most useful in military service, M-16 rifles and the like, may be banned" without infringing on the Second Amendment is incorrect. *No* "[w]eapons that are most useful in military service, M-16 rifles and the like" were

involved in *Heller.* And the use to which the firearm actually involved in *Heller*—a handgun—was to be put was personal protection in the home, *not* "military service" of any sort. So what Justice Scalia incautiously wrote concerning "M-16 rifles and the like" was mere *dicta*, with *no* legal force as any sort of "precedent" which could set any "standard" the Judiciary needs to apply.

- Second, the Second Amendment's stated goal is not an individual's personal protection in the home with a handgun, but instead "the security of a free State". The Amendment declares "[a] well regulated Militia" to be "necessary" for that purpose. And to guarantee that such a Militia always exists in every one of the several States, it commands that "the right of the people to keep and bear Arms, shall not be infringed." Howsoever that "right" embraces "Arms" convenient for an individual's *self*-defense in his home, it unquestionably protects all "Arms" useful for "the people['s]" *collective* defense of "a free State" through the efforts of "well regulated Militia". *That* is the Amendment's central concern—quite explicit and perfectly understandable.

As to what particular types of "Arms" it protects, the Second Amendment must be construed "in the light of the law as it existed at the time it was adopted". *See Mattox* v. *United States*, 156 U.S. 237, 243 (1895). Throughout the 1700s, all Americans knew that "a well regulated militia[is] composed of the body of the people, trained to arms". Virginia Declaration of Rights (1776) art. 13. Every "well regulated Militia" was a military or *para*-military establishment, in which the "arms" at issue were equivalent to (and sometimes even better than) the "arms" carried by members of the regular Armed Forces who performed similar duties. *See, e.g.,*The Selective Service System, *Military Obligation: The American Tradition,* Special Monograph No. 1 (1947). Today, the "arms" most suitable for

that purpose in the hands of ordinary civilians would be *at least* semi-automatic "assault rifles". Thus it follows, not only that such rifles cannot be "banned", but in addition that they deserve *a very high, if not the highest* level of protection available under the Second Amendment.

- Third, as to the question of "common use for self-defense", it must be recalled that during the *pre*-constitutional era, when the principles of "[a] well regulated Militia" embodied in the Constitution were established, *all* of the "arms" militiamen (that is, common citizens) possessed were of the kind in common use, because just about all firearms then available were suitable for Militia service, as well as for individual self-defense. In various localities, surplus British army muskets were common, and captured French army muskets not common (or *vice versa*); or smooth-bored muskets were more common than rifled muskets (or *vice versa*); or the only common firearms were whatever militiamen happened to have at hand. But these differences the Militia statutes accepted as consistent with "*well regulated* Militia". So *all* of those firearms were, as a matter of law, in common use because they all were being used for a common purpose. Therefore, because "assault rifles" in the hands of individuals eligible for Militia service (which includes the vast majority of able-bodied adult citizens) would arguably be the most suitable firearms for contemporary "well regulated Militia", they would be in common use for *that* purpose, no matter how many Americans happened to possess them. And *that* purpose being the central concern of the Second Amendment, possession of such rifles would be protected to the highest degree possible.

- Fourth and last, as to "reasonable regulation", some people put forward all sorts of reasons why possession of "[w]eapons that are most useful in military service,

M-16 rifles and the like"—or even possession of *all* firearms—should be restricted to members of the Armed Forces and professional *para*-militarized police forces. If one accepted those reasons as being to some degree rational (as opposed to being obvious manifestations of mental illness), then *someone's* "reasonable regulation" could always be found sufficient to reduce "the right of the people to keep and bear Arms" to a nullity. The constitutional standard, however, is not just *anyone's* theory of "reasonable regulation". Instead, the Second Amendment uniquely defines the one and only "*reasonable* regulation" in this field: namely, that "the right of the people to keep and bear Arms"—of *whatever* kinds serve *the Amendment's* central purpose—"shall not be infringed". The central purpose of the Amendment is to ensure "the security of a free State". In "a free State" *the people* are sovereign. The sovereign is the supreme political power. In the final analysis, then, political power in "a free State" reduces to the collective ability of the citizenry to wield overwhelming force against any threats to the security of their community—which under modern conditions can be summed up in the aphorism "political power grows out of the barrel of a gun" *suitable for community self-defense in each citizen's own hands*. Any proposed regulation which would prohibit a law-abiding citizen from possession of any firearm useful in his hands for provision of "the security of a free State" would be *un*reasonable, by constitutional definition.

QUESTION AND ANSWER II, AS GIVEN.

Senator Feinstein: Do you agree with [Chief] Judge Wilkinson [in his concurring opinion in *Kolbe* v. *Hogan,* No. 14-1945 (4th Cir., 21 February 2017)] that the Second Amendment is ambiguous? Should the ambiguity be decided by the court or legislatures?

Judge Gorsuch: I would begin by saying, I hold Judge Wilkinson in high regard. He's a very fine man and a very fine judge.

* * * * *

The Supreme Court of the United States isn't final because it is infallible * * * , it is infallible because it is final. And Judge Wilkinson had his view, and the Supreme Court has spoken. And *Heller* is the law of the land * * * .

ANSWER II, AS IT SHOULD HAVE BEEN GIVEN.

Judge Candorfull: Judge Wilkinson actually wrote that he was "unable to draw from the profound ambiguities of the Second Amendment an invitation to courts to preempt this most volatile of political subjects and arrogate to themselves decisions that have historically been assigned to other, more democratic, actors"—that is, legislators and executive officials. I cannot condone that observation, for the following reasons:

- First, if the Second Amendment did suffer from such "profound ambiguities" that the Judiciary were incapable of construing it in such a manner as to clarify and thus obviate those "ambiguities", it would not be a "law" at all, because all actual "laws" must be understandable. Moreover, if the Amendment did harbor a debilitating set of "profound ambiguities", how would "other, more democratic, actors" be any better qualified than judges to ferret out some unknowable meaning from such a supposed pastiche of confusion and uncertainty?

In this regard it should be noted that the Maryland statute which banned "assault rifles", and which the Court of Appeals sustained in *Kolbe,* specifically excluded from its coverage "the M1 Garand". *See* Code of Maryland, Criminal Law § 4-301(b), and Public Safety, § 5-101(r)(2)(xxxvii). This, of course, is the very rifle which no less an authority than General George S. Patton praised as "the greatest battle

implement ever devised". *See* Julian S. Hatcher, *The Book of the Garand* (Buford, Georgia: Canton Street Press, Reprint Edition of the 1948 Edition, 2012), at 153. That Maryland's legislators could be this myopic about such an iconic rifle refutes Chief Judge Wilkinson's view that "other, more democratic, actors" are competent to draw respectable conclusions about the scope of the Second Amendment.

- Second, inasmuch as the Second Amendment limits the powers of both the General Government and the States, *if* it contained any "ambiguities" at all then those "ambiguities" should be resolved in favor of "the right of the people to keep and bear Arms", not in aid of obvious infringements on that "right". If legislators or executive officials were authorized to determine the extent of "the right of the people to keep and bear Arms", then by constitutional hypothesis that "right" would be no "right" at all, but only a defeasible license to be limited or even set aside entirely at the legislators' or officials' discretion. Legislative or executive inroads on the supposed "right" would be nothing more than "political questions" which are not for the Judiciary even to entertain, let alone to decide. *See Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137, 170 (1803).

We know, however, that where the Second Amendment—or *any* provision of the Bill of Rights—is concerned, Judge Wilkinson's appeal to "other, more democratic, actors" is quite out of place. For even what he calls "this most volatile of political subjects" cannot escape constitutional constraints on legislative and executive action. As the Supreme Court held in *West Virginia State Board of Education* v. *Barnette*, 319 U.S. 624, 638 (1943), "[t]he very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as

legal principles to be applied by the courts. One's * * * fundamental rights may not be submitted to vote; they depend on the outcome of no elections." I could go further and assert that "[o]ne's * * * fundamental rights may not be submitted to vote" even at the level of the Supreme Court. For, as Justice Frankfurter pointed out in his concurring opinion in *Graves* v. *New York* ex rel. *O'Keefe*, 306 U.S. 466, 491-492 (1939), "the ultimate touchstone of constitutionality is the Constitution itself and not what we [Justices of the Supreme Court] have said about it."

- Third, as I explained in my answer to the first question, no one who reads the Second Amendment in its entirety, and who has studied the history which informs it, can believe that it is ambiguous to any degree, let alone that it suffers from "profound ambiguities" with respect to "the right of the people to keep and bear [those] Arms" within the particular category "assault rifles". Indeed, a criticism of that kind should call into question either the competence or the bias of whoever offered it.

- Fourth, the reason some people profess to find "ambiguities" in the Second Amendment is not because of the Amendment itself, but instead because of *Heller*. All three of the opinions in that case (one by the majority, two by the dissenters) are ambiguous, because not one of them construes the Amendment, or its relationship with the original Constitution, properly. Indeed, by its disregard of the controlling nature of the Amendment's first thirteen words, even the majority opinion violates the very first rule of constitutional adjudication, that "[i]t cannot be presumed that any clause of the constitution is intended to be without effect", and that "effect must be given to each word of the Constitution". *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137, 174 (1803) and *Knowlton* v. *Moore*, 178 U.S. 41, 87 (1900). *Accord,*

e.g., Williams v. *United States,* 289 U.S. 553, 572-573 (1933); *Blake* v. *McClung*, 172 U.S. 239, 261 (1898). Moreover, the majority opinion did not take into sufficient account the Court's earlier—and entirely unambiguous, even pellucid—opinion in *United States* v. *Miller*, 307 U.S. 174 (1939).

Heller certainly proves that the Supreme Court is far from infallible when it comes to deciding questions arising under the Second Amendment—something well known to students of jurisprudence with respect to all sorts of other constitutional questions with which the Court has unsuccessfully struggled in the past. *See Payne* v. *Tennessee*, 501 U.S. 808, 828-830 & note 1 (1991). And if *Heller* is "the law of the case" as to the parties and the issue actually before the Court there, it is not "the law of the land" in the sense of being the final word on the Second Amendment for all other parties and issues. Or even as to the issue it did decide: For it is subject to being overruled, disavowed, qualified, questioned, critically explained, or otherwise distinguished at any time by the Court. That Judge Wilkinson relied upon a seriously skewed interpretation of *Heller* in *Kolbe* v. *Hogan* does not render the Circuit Court's decision in that case immune from criticism. One cannot arrive at a correct construction of the Second Amendment by misreading an opinion of the Supreme Court which is itself incomplete and misleading.

- Fifth and last, if one wants to avoid "the profound ambiguities" which Judge Wilkinson imagines lurk in the Second Amendment, he should consult: (i) Article I, § 8, cls. 12 through 16 and Article II, § 2, cl. 1 of the original Constitution; (ii) Article VI, [¶ 4] of the Articles of Confederation; and (iii) the *pre*-constitutional Militia statutes of the Colonies and independent States which establish what "[a] well regulated Militia" is. When *all* of these materials are

treated as parts of a single coherent constitutional structure, the meaning of the Second Amendment becomes obvious.

President Trump On "Law Enforcement"

One of the major concerns I have had with Donald Trump as a candidate, and continue to have with President Trump in the White House, is the all-too-often ambiguous, even amorphous, character of his pronouncements on important policies. To be sure, this defect might be only apparent—the unfortunate result of combining Mr. Trump's penchant for truncated statements with my own inability to extrapolate from the few words he does provide a deeper meaning which he may intend for them to convey. (I readily admit that I must be counted among the ever-diminishing set of Americans who consider twitterite and fakebookish discourse truly deplorable means for attempting to communicate ideas with depth any greater than that of a cookie sheet.) On the other hand, perhaps Mr. Trump and his advisors are at fault for not offering more specificity in what they cause to be published below the White House's by-line.

For a prime example of the latter demerit, most recently my attention was piqued when I came across the White House's internet post entitled "Standing Up For Our Law Enforcement Community". See [Link]. Unfortunately, this is an essay without a compelling theme reflective of Mr. Trump's promise to "make America great again". Rather than locating itself in a recognizably American historical and legal context,

providing a critical overview of contemporary problems, and proposing a long-term political strategy consistent with fundamental constitutional principles, it offers little more than slogans—the main one being that "[t]he Trump Administration will be a law and order administration". Inasmuch as the first and foremost duty of every President under Article II, Section 3 of the Constitution is to "take Care that the Laws be faithfully executed", this glittering generality imparts to the reader precious little of actual substance. For the question remains: "What body of 'law' and what kind of 'order' will the Trump Administration enforce?" Oh, I realize (perhaps "hope" is the more accurate verb) that somewhere over the political rainbow there must be more in the minds of the author(s) of this post than the few paragraphs it contains. My concern, though, is: "What more?"

1. Although its title refers to "our law enforcement community", the White House's post nowhere even suggests that the latter "community" includes in any way, shape, or form "the Militia of the several States", the one and only "community" to which the Constitution explicitly assigns the authority and responsibility "to execute the Laws of the Union" (and of their own States as well). See U.S. Const. art. II, § 2, cl. 1; art. I, § 8, cl. 15; and amends. II and X. One must wonder, therefore, what extra-constitutional, non-constitutional, or even (Heaven forefend) anti-constitutional notion of "standing up for our law enforcement community" the White House has in mind, when it leaves out of consideration any rôle for the Militia.

This oversight is especially ominous in light of the neo-Bolshevist "color revolution" which "leftists" have launched throughout this country in order not simply to demoralize, demonize, and delegitimize, but ultimately to destroy entirely the Trump Administration—in service, not of "the working class", but of predatory globalist multi-billionaires for whom

“the working class” no longer counts for anything, any more than does any other conglomeration of “useful idiots” and “transmission belts” who and which can be aggregated and energized under the divisive banners of contemporary “identity politics”. Mr. Trump and his advisors will prove to be extraordinarily naïve, amateurish, and even feckless if they fail to realize that, absent timely revitalization of the Militia, not just the present Administration but also America as a whole will all too soon be submerged in very hot and deep political waters from which their extrication will be exceedingly difficult. And no, I am not referring to the National Guard—which is no “militia” at all (in the constitutional sense), but instead consists of the “Troops, or Ships of War” which the States may “keep * * * in time of Peace” “with[ ] the Consent of Congress” under Article I, Section 10, Clause 3 of the Constitution (that is, a component of “the standing army”). Rather, “the Militia of the several States” consist of all of WE THE PEOPLE—or at least that part of them which the Declaration of Independence styled “the good People”—who today constitute “the Whites” versus “the Reds” (in line with the dichotomy in the original Bolshevist “color revolution”). In keeping with the Declaration of Independence’s excoriation of King George III for “ha[ving] affected to render the Military independent of and superior to the Civil power”, “the good People” of the present time must impress upon the Trump Administration the imprudence of deploying the National Guard or any other component of the regular Armed Forces to deal with this matter under some variety of “martial law” (in the sense most Americans give to that term). Rather, reliance must be had on the Militia, as the true constitutional recourse against the domestic lawlessness of any contemporary “color revolution”. See Parts 6 and 7, below.

2. The White House’s post asserts that “[o]ne of the fundamental rights of every American is to live in a safe community * * * free of crime and violence”. It

does not, however, answer (or even ask) the question: "'Safe' at what cost?" The Constitution does. One of the goals it sets out in its Preamble is to "ensure domestic Tranquility", which obviously describes the situation which obtains in "a safe community * * * free of crime and violence". Another goal identified in that same place is to "secure the Blessings of Liberty to ourselves and our Posterity". And the Preamble links these two goals with the unqualified conjunction "and", thereby demanding that both of them are to be achieved simultaneously, not one to be sacrificed for the supposed benefit of the other. For self-evident to the Founders (just as it should be to contemporary Americans) is that this country can never secure the full measure of "domestic Tranquility" without maximizing "the Blessings of Liberty", and vice versa.

3. So it is troubling that the White House's post takes the one-sided position that "[t]he dangerous anti-police atmosphere in America is wrong. The Trump Administration will end it." For this fails to recognize that two quite different types of "anti-police" activism exist in this country today. One of them intends to undermine "domestic Tranquility" by sabotaging the legitimate work of law-enforcement agencies in every way possible, and therefore should be exposed and eradicated; whereas the other desires to protect "the Blessings of Liberty" against threats emanating from rogue law-enforcement personnel, and therefore should be praised and promoted.

The "anti-police atmosphere" antagonistic to "domestic Tranquility" is being propagated by groups intent upon engendering divisions and mutual antagonisms within society, and especially turning as many Americans as possible against their own governments at every level of the federal system, so as to create the chaotic conditions propitious for waging a successful neo-Bolshevist "color revolution". The strategy at work is quite simple: Because, of all governmental agencies,

police forces interact with the citizenry on the closest day-to-day basis, most common Americans tend to treat them, rightly or wrongly, as particularly representative of "the government" as a whole. If ordinary people can be inveigled to turn against the police in particular, they will naturally turn as well against the government in general. If they do so in large enough numbers, society will become effectively ungovernable, and thus ripe for all sorts of political upheavals. So the White House's post is correct to emphasize that "[o]ur job is not to make life more comfortable for the rioter, the looter, or the violent disrupter"—because, although most of these street criminals are little more than "useful idiots", they (along with the other "disrupters" who know precisely what they are about) constitute the first wave of cannon fodder in the initial offensive in the neo-Bolsheviks' "color revolution". If they cannot be checked at the outset, their aggression will only increase in its scope and intensify in its destructive effects.

On the other hand, the contemporary "anti-police atmosphere" favorable to "the Blessings of Liberty" is the result of many Americans' fully justifiable complaints about intolerable levels of patently lawless, yet all-too-often unpunished, behavior by rogue law-enforcement personnel occurring across the length and breadth of this country. Of course, in a free society operating under "the rule of law" (and especially the constraints of "the rule of constitutional law"), any misconduct by law-enforcement agencies should be denounced as excessive, and every malefactor in their ranks should be held maximally accountable for his misconduct. After all, when an officer of the law breaks some law, he violates not only that particular law which he has a general duty to obey in his capacity as an ordinary citizen, but also the very principle of law-enforcement itself which he (unlike an ordinary citizen) is specially sworn to uphold. So, when a representative of the law breaks the law and gets away with his misbehavior under color of the law, his actions inevitably

generate disrespect for all law among everyone else. Today, though, the level of police misconduct throughout America is, not simply excessive, but even extremely so, primarily because of the manner in which it tends to be mishandled. All too typically, such misconduct as comes to public attention is explained away by spokesmen for "police unions", then excused by departmental "internal affairs" investigators and accommodating prosecutors who "find" that the perpetrators' actions were in accord with various "policies" and "guidelines" (as if those magic words could set at naught constitutional commands). And later on, civil lawsuits brought by the victims are dismissed or otherwise frustrated on the grounds that the perpetrators are privileged to avoid personal liability perforce of fantastic "immunity" defenses of one sort or another concocted by the kangaroo courts under color of "judicial supremacy".

In light of these circumstances, how can the Trump Administration fulfill the promise that it "will end [the anti-police atmosphere in America]"—but as to both aspects of that "atmosphere"? The White House's post is not wrong to point out that "[o]ur country needs more law enforcement, more community engagement, and more effective policing". The proper manner in which to meet these needs, though, remains the question. Not surprisingly, the Constitution supplies the answer.

The Constitution of the United States provides no explicit mandate or permission for the professional police or like law-enforcement agencies found throughout this country today. The only institutions within the federal system to which the Constitution assigns the authority and responsibility "to execute the Laws of the Union" are "the Militia of the several States"; and the only individual officeholder to which the Constitution assigns the authority and responsibility to "take Care that the Law be faithfully executed" is the President, to whom it also entrusts the status of "Commander in Chief * * *

of the Militia of the several States, when called into the actual Service of the United States". See U.S. Const. art. I, § 8, cls. 15 and 16; art. II, § 3; and art. II, § 2, cl. 1. Self-evidently, "execut[ing] the Laws of the Union" and "tak[ing] Care that the Laws be faithfully executed" involve quintessential "law-enforcement" and "police" functions. Similarly, because "the Militia of the several States" are the States' own governmental institutions, with permanent place in the federal system, and because the Constitution, through the Second Amendment, declares that only "[a] well regulated Militia" is "necessary to the security of a free State", "law-enforcement" or "police" functions which relate to the provision of "security" under State and Local law must devolve upon "the Militia of the several States" in each of the States, and upon each of the Governors of "the several States" in their capacities as commanders in chief of their own States' Militia. Moreover, inasmuch as each of "the Militia of the several States" must be "[a] well regulated Militia" and "[a] well regulated Militia" must be composed of the body of the people, in the final analysis the American people themselves, properly organized in "well regulated Militia", should assume primary responsibility for the performance of all "law-enforcement" and "police" functions. This, of course, is no constitutional accident. For in a constitutional republic in which the people themselves exercise sovereignty (as described below), who but the people themselves can be entrusted with the task of policing the people themselves?

So if, as the White House's post opines, "[o]ur country needs more law enforcement", the true constitutional source of the additional manpower should be the Militia. Being composed of every able-bodied adult from sixteen years of age upwards (until justly exempted on the basis of superannuation), the Militia could supply far more individuals already qualified, or capable of being trained, to perform any and every "law-enforcement" and "police" function which both the Union and the several States might require. (Actually, if the job were

to be done with scrupulous attention to the Constitution, all present-day police forces and other law-enforcement agencies at the State and Local levels should be integrated within the Militia largely in their present forms, augmented by such other specially trained units and reserve formations as the circumstances in various States and Localities might warrant.) If "[o]ur country needs * * * more community engagement [in 'law enforcement']", in what more efficacious and safe manner could this goal be met than by enlisting the whole community in each community in the effort? No "anti-police atmosphere" could ever arise were the people themselves the police and the police the people. And if "[o]ur country needs * * * more effective policing", how could this be better guaranteed than by drawing participants in "police" functions from the most extensive pool of talent extant in any community: namely, essentially the entire adult community itself? Not only that: When in the form and with the authority of "well regulated Militia" the people in Local communities will police themselves, law enforcement will necessarily become more effective than it is or ever could be now, because then the people with the greatest personal incentives to maintain proper "law and order" will be directly in charge. No longer will the people in any Locality be subject to a police force of élitist professionals who (as is all too often the case today) envision themselves as aloof from, superior to, and even the antagonists of the very community which they are supposed to protect and serve.

4. The White House's post assures its readers that "[s]upporting law enforcement means supporting our citizens' ability to protect themselves". On the one hand, this statement is a mere truism—because, as America's Founders well knew, "[s]elf-defence * * * , as it is justly called the primary law of nature, so it is not, neither can it be in fact, taken away by the law of society". William Blackstone, Commentaries on the Laws of England (Philadelphia, Pennsylvania: Robert Bell,

> American Edition, 4 Volumes & Appendix, 1771-1773), Volume 3, at 4. Whether performed by the individual or by the community, self-defense is the most important, being in the final analysis the indispensable, form of "law enforcement". On the other hand, unfortunately, the post's statement sets legal and political priorities in reverse, even perverse, order—because actually enabling citizens to protect themselves individually and collectively must always come before "[s]upporting law enforcement" in the form of modern-day professional police forces. After all, self-defense presupposes the absence of timely and effective assistance from even honest and competent law-enforcement agencies; whereas, in all too many instances today, through their execution of constitutionally questionable "gun-control" laws rogue law-enforcement personnel across this country hinder or entirely frustrate ordinary citizens' ability to execute "the primary law of nature" for their own individual and societal protection.

Self-evidently, "the security of a free State" depends upon the ability of its constituent citizens to defend both themselves as individuals and their "free State" as a collective—and the Second Amendment declares that, for these purposes, "[a] well regulated Militia" is "necessary", not subordinate to various law-enforcement establishments not only less inclusive than such a Militia but also lacking a Militia's constitutional credentials. Thus, the only way in which the statement "[s]upporting law enforcement means supporting our citizens' ability to protect themselves" can be read in a fully constitutional manner is for the Militia to become the primary institutions of "law enforcement" at every level of the federal system. This is plainly possible even at the level of the General Government, because the Constitution empowers Congress "[t]o provide for calling forth the Militia to execute the Laws of the Union", without exception. U.S. Const. art. I, § 8, cl. 15. And because "the Militia of the

several States" are the States' own governmental institutions, the States can assign to them whatever "law-enforcement" responsibilities may be "necessary to the security of a free State" in those jurisdictions, when the Militia are not "called into the actual Service of the United States". Compare U.S. Const. art. II, § 2, cl. 1 and art. I, § 8, cl. 16 with amends. II and X.

To be sure, the White House's post goes on to promise that "[w]e [i.e., the Trump Administration] will uphold Americans' Second Amendment rights at every level of our judicial system".The apparent exclusive concern with "our judicial system" is perplexing, however. Does President Trump believe that "our judicial system" wields exclusive authority under the false doctrine of "judicial supremacy" to determine with finality what "Americans' Second Amendment rights" are? Or is that the province of the Constitution, which the Legislative and Executive Branches of the General Government, the States, and ultimately WE THE PEOPLE must interpret and apply for themselves when "our judicial system" neglects, fails, or refuses to protect those rights?

Even those Americans who are satisfied with the decisions of the Supreme Court in the Heller and McDonald cases, and who assume that President Trump will succeed in appointing to the Court new Justices who will scrupulously adhere to those precedents, must realize that, because of the practical vicissitudes of litigation, many if not most rulings of consequence to be rendered by the inferior courts of the United States and the States' courts with respect to the Second Amendment will never be reviewed by the Supreme Court. Inasmuch as these lower courts are now overpopulated with opponents of the Second Amendment, reliance on "our judicial system" will result in numerous judicial screeds as much at odds with "the right of the people to keep and bear Arms" as Circuit Judge James A. Wynn, Jr.'s grotesquely unconstitutional concurring opinion in United States v.

Robinson, No. 14-4902 (4th Cir., 23 January 2017). Under these circumstances, can President Trump—or the American people—trust "our judicial system" to guarantee "the security of a free State" as the Second Amendment understands it? Or should President Trump work to empower Americans to exercise "the right of the people to keep and bear Arms" in "well regulated Militia", impervious to modern-day "gun control"? These questions answer themselves, the first in the negative, the second in the affirmative.

5. The White House's post describes President Trump as "dedicated to enforcing our border laws, ending sanctuary cities, and stemming the tide of lawlessness associated with illegal immigration". These ends are admirable; but the means by which the President and his advisors believe that he can actually accomplish them remain as opaque as they are conjectural. I need not repeat here what I have written about these matters in my NewsWithViews commentaries "How the President Can Secure the Borders" (18 August 2015), "A Trumped-up Controversy" (20 February 2016), and "No Sanctuaries in 'Sanctuary Cities'" (3 December 2016). What does deserve renewed emphasis, though, is the indispensable constitutional rôle which the Militia can and must play in the fulfillment of these tasks, under President Trump's assertion of leadership as "Commander in Chief * * * of the Militia of the several States, when called into the actual Service of the United States", in order to fulfill his duty to "take Care that the Laws [pertaining to immigration] be faithfully executed". See U.S. Const. art. II, § 2, cl. 1 and art. II, § 3.

Not just the present tidal wave of patently illegal immigration, but also since the late 1960s the excessive extent of ostensibly legal immigration by aliens unwilling or unable to assimilate themselves within an uniquely American culture, amount to actual hostile invasions of this country. I

do not employ the term “invasions” in a loosely metaphorical sense, either. For these incursions are not simply historical accidents, akin to the serial “barbarian invasions” that first splintered, then helped to shatter entirely, the Roman Empire. Rather, they are part and parcel of modern neo-Bolshevism’s long-operative strategy to deny Americans the right vouchsafed to them by the Declaration of Independence to retain “among the powers of the earth, the separate and equal status to which the Laws of Nature and of Nature’s God entitle them”; to demolish the United States as a functioning polity; and to drag “the good People” of this country into a “new world order” administered by supra-national mega-banks and -corporations serving the selfish interests of a globalist kleptocracy composed of multi-billionaires. This amounts to a new twist on Leninism/Trotskyism—because “the revolution’s” contemporary financiers are so sure of themselves that they no longer feel the need to operate largely behind the scenes (in the manner of, say, Alexander Helphand), but instead brazenly flaunt their rôles as “the revolution’s” mentors and even directors out in the open, in the person of such as George Soros.

The neo-Bolsheviks’ tactics emphasize enlarging the fissures already in existence throughout American society, and engendering as many new ones as possible, so as to be able to employ “identify politics” in service of a divide-and-conquer approach of multifaceted “class warfare”. The old Leninist/Trotskyist dichotomy of “classes” has been expanded from the original purely economic Marxist categories of “the proletariat” and “the bourgeoisie” to embrace divisions delineated by race, religion, sex (or even worse, “gender”), economic status, political allegiances to such deceptive conceptions as “left” and “right”, rural versus urban attitudes and lifestyles, and so on—until American society now finds itself on the verge of being permanently Balkanized into a chaotic jumble of squabbling sects unified only by their joint participation in an orgy of mutual antagonisms and

recriminations. Already, “mainstream” political discourse accepts without demur this country’s bifurcation into “blue States” and “red States” (although, to conform to the relevant historical antecedent, the colors should be reversed; and, better yet, “white” substituted for “blue”). Plainly enough, this situation by itself is incompatible—indeed, at war—with attainment of the Preamble’s goals “to form a more perfect Union” and “insure domestic Tranquility”.

The contemporary agitation from various quarters for “open borders” attempts to hornswoggle gullible Americans into condemning as “xenophobic”, “racist”, or otherwise contemptibly “discriminatory” the laws of the Union which control immigration, so as to make it politically impossible for this country to repel the invasions of aliens now assaulting it. “Hornswoggle” is the properly descriptive verb, too, because no such thing as “open borders” can exist under the Declaration of Independence. For if other nations can systematically dump their unwanted populations into the United States, or if individual foreigners in unlimited numbers can impose themselves on this country, then Americans will no longer “assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature’s God entitle them”. Neither can “open borders” exist under the Constitution. For, as the Preamble attests, WE THE PEOPLE “ordain[ed] and establish[ed] th[e] Constitution” in order to “secure the Blessings of Liberty to ourselves and our Posterity”—not to aliens whom THE PEOPLE refuse to accept into their community in the first place, or to some future posterity of those undesired aliens who succeed in insinuating themselves into the United States.

More than a century ago, the Supreme Court rejected the argument for “open borders” pressed upon it by radical attorney Clarence Darrow, that “[n]o power is delegated by the Constitution to the general government over alien friends with reference to their admission into the United States”, with the

rejoinder that "[r]epeated decisions of this court have determined that Congress has the power to exclude aliens from the United States; to prescribe the terms and conditions on which they may come in; to establish regulations for sending out of the country such aliens as have entered in violation of law, and to commit the enforcement of such conditions and regulations to executive officers; that the deportation of an alien who is found to be here in violation of law is not a deprivation of liberty without due process of law, and that the provisions of the Constitution securing the right of trial by jury have no application." United States ex rel. Turner v. Williams, 194 U.S. 279, 287 (argument of counsel), 289-290 (opinion of the Court) (1904). And inasmuch as the Constitution recognizes no alleged "right" of "alien friends" to immigrate into the United States, it surely denies any such "right" to "alien enemies", whether openly declared as such, or clandestine in their purposes, or merely potentially dangerous because of their beliefs or associations.

The Bill of Rights provides no exceptions to this rule. At issue in Kleindienst v. Mandel, 408 U.S. 753 (1972), was a statute which declared ineligible to obtain admission into the United States aliens who advocated the "doctrines of world communism or the establishment in the United States of a totalitarian dictatorship". Mandel, a self-described "revolutionary Marxist" who openly espoused "the economic, governmental, and international doctrines of world communism", was denied a visa to participate in lectures and conferences sponsored by various American universities and think-tanks. Joined by several American "university professors * * * who [had] invited [him] to speak", Mandel brought suit on the grounds that denial of his visa violated the complainants' rights under the First Amendment, denied them the equal protection of the laws, and deprived them of procedural due process. Id. at 754-760. The Supreme Court overruled these contentions:

It is clear that Mandel personally, as an unadmitted and nonresident alien, had no constitutional right of entry to this country as a nonimmigrant or otherwise. United States ex rel. Turner v. Williams, 194 U.S. 279, 292 (1904). * * *

* * * * *

This case, therefore, comes down to the narrow issue whether the First Amendment confers upon the * * * professors, because they wish to hear, speak, and debate with Mandel in person, the ability to determine that Mandel should be permitted to enter the country, or, in other words, to compel * * * Mandel's admission.

* * * * *

Recognition that First Amendment rights are implicated, however, is not dispositive of our inquiry here. * * * The Court without exception has sustained Congress' "plenary power to make rules for the admission of aliens and to exclude those who possess those characteristics which Congress has forbidden." * * * "[O]ver no conceivable subject is the legislative power of Congress more complete than it is over" the admission of aliens.

* * * * *

We are not inclined in the present context to reconsider this line of cases. Indeed, the [complainants] * * * recognize the force of these many precedents. * * * [T]hey concede that Congress could enact a blanket prohibition against all aliens falling into the class defined by [the statute], and that First Amendment rights could not override that decision. * * * But they contend that by providing a waiver procedure, Congress clearly intended that persons ineligible under the broad provision of the [statute] would be temporarily admitted * * * . They argue that the Executive's implementation of this congressional mandate * * * must be limited by the First Amendment rights of persons like [the complainants]. * * *

[The complainants'] First Amendment argument would prove too much. In almost every instance of an alien excludable under [the statute], there are probably those who would wish to meet and speak with him. * * * Were we to endorse the proposition that governmental power to withhold a waiver must yield whenever a bona fide claim is made that American citizens wish to meet and talk with an alien excludable under [the statute], one of two unsatisfactory results would necessarily ensue. Either every claim would prevail, in which case the plenary discretionary authority Congress granted to the Executive becomes a nullity, or courts in each case would be required to weigh the strength of the audience's interest against that of the Government in refusing a waiver * * * , according to some as yet undetermined standard. * * * Indeed, it is precisely for this reason that the waiver decision has, properly, been placed in the hands of the Executive.

* * * * *

In summary, plenary congressional power to make policies and rules for exclusion of aliens has long been firmly established. In the case of an alien excludable under [the statute], Congress has delegated conditional exercise of this power to the Executive. We hold that when the Executive exercises this power negatively on the basis of a facially legitimate and bona fide reason, the courts will neither look behind the exercise of that discretion, nor test it by balancing its justification against the First Amendment interests of those who seek personal communication with the applicant.

Id. at 762, 765-766, and 767-770.

It should be obvious that, if this reasoning is valid with respect to "the freedom of speech" guaranteed by the First Amendment, then it applies with equal force to all of the other rights that Amendment covers—such that exclusion of aliens on the basis of their religion, or of the predominant

religion of their countries of origin, or of the observation that many of them misbehave under color of their religion in countries which incautiously admit them as immigrants, is no less valid. As the Court observed in United States ex rel. Turner v. Williams, 194 U.S. 279, 292 (1904),

[i]t is, of course, true that if an alien is not permitted to enter this country, or, having entered contrary to law, is expelled, he is in fact cut off from worshiping or speaking or publishing or petitioning in the country, but that is merely because of his exclusion therefrom. He does not become one of the people to whom these things are secured by our Constitution by an attempt to enter forbidden by law. To appeal to the Constitution is to concede that this is a land governed by that supreme law, and as under it the power to exclude has been determined to exist, those who are excluded cannot assert the rights in general obtaining in a land to which they do not belong as citizens or otherwise.

Therefore, "[t]he Bill of Rights is a futile authority for the alien seeking admission for the first time to these shores". Kwong Hai Chew v. Colding, 344 U.S. 590, 596 note 5 (1953). As the Court explained in United States v. Verdugo-Urquidez, 494 U.S. 259, 265 (1990),

[t]he Preamble [to the Constitution] declares that the Constitution is ordained and established by "the people of the United States." The Second Amendment protects "the right of the people to keep and bear Arms," and the Ninth and Tenth Amendments provide that certain rights and powers are retained and reserved to "the people." * * * While this textual exegesis is by no means conclusive, it suggests that "the people" * * * refers to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of the community.

Pace the Court, however, "this textual exegesis" is certainly

far more than merely “suggest[ive]”. For no one could possibly believe that aliens may demand entry into this country while exercising a purported “right” under color of the Second Amendment “to keep and bear Arms” in their hands, or (more specifically) that armed Moslem jihadists intent upon imposing Sharia by means of the “‘[p]olitical power [which] grows out of the barrel of a gun’” may demand entry under color of the Second and Tenth Amendments combined. Compare Mao Tse-tung, Quotations from Chairman Mao Tse-tung (Peking, China: Foreign Languages Press, 1966) at 61, with Arthur L. Corbin, “Legal Analysis and Terminology”, 29 Yale Law Journal 163 (1919), at 168-169 (definition of a legal “power”).

Going further, the Court in Verdugo-Urquidez pointed out that previous cases which have applied principles of equal protection and due process to aliens “establish only that aliens receive constitutional protections when they have come within the territory of the United States and developed substantial connections with this country.” 494 U.S. at 271. “‘In the exercise of its broad power over naturalization and immigration, Congress regularly makes rules which would be unacceptable if applied to citizens’”. Id. at 273, quoting Mathews v. Diaz, 426 U.S. 67, 79-80 (1976).

In the light of these precedents, the recent decision in Washington v. Trump, No. 17-35105 (9th Cir., 9 February 2017), purporting to uphold a temporary stay of President Trump’s recent Executive Order on immigration, is (to borrow Bentham’s deprecatory phrase) “nonsense on stilts”. Yet in the latter decision this country witnesses what the White House’s post calls “our judicial system” being intentionally misused by “useful idiots” within the political hierarchies of the States of Washington and Minnesota in order to frustrate the constitutional authority of Congress and the Executive! How should President Trump respond? Recently, the noted journalist and author Seth Lipsky asked me whether Article IV, Section 4 of the Constitution applies to this problem; so I shall take

that provision as an example of what President Trump and his legal advisors should consider—

The Constitution commands that "[t]he United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion". Art. IV, § 4. Which implies, of course, that no State can claim a license either (i) to set aside her own "Republican Form of Government" or expose her own citizens to an "Invasion", or (ii) to obstruct the United States in their execution of their constitutional power and duty to "guarantee * * * a Republican Form of Government" within that State's territory and "protect" that State's citizens "against Invasion" by whatever means may be available to the General Government. And without any necessity for any State subject to an "Invasion" to agree to the United States' exercise of their constitutional duty to deal with that affliction—for, unlike the second clause of Article IV, Section 4, which requires an "Application of the Legislature [of a State], or of the Executive (when the Legislature cannot be convened)", before the United States may "protect" a State "against domestic Violence", the first clause imposes no such restriction.

Now, even were contemporary neo-Bolsheviks, other subversives of various persuasions, and assorted "useful idiots" not working tirelessly to promote irreconcilable social divisions through "Invasion[s]" of aliens indisposed to assimilate (or, worse yet, predisposed not to assimilate) to traditional American culture, such immigration would inevitably destroy "a Republican Form of Government" in each of the several States. What the Constitution describes as "a Republican Form of Government" is "one constructed on th[e] principle, that the Supreme Power resides in the body of the people". Compare U.S. Const. art. IV, § 4 with Chisholm v. Georgia, 2 U.S. (2 Dallas) 419, 457 (1793) (opinion of Wilson, J.). If, however, the United States no longer consist of one "people", substantially united in political understanding and purpose,

maintenance of “a Republican Form of Government” in any of the several States is impossible. Inasmuch as, whether by conscious design or merely by its unintended consequence, unlimited immigration precludes such unity, it fatally threatens “a Republican Form of Government” in every State. Which (among other reasons) is why the Constitution provides that “[t]he Migration or Importation of such Persons as any of the States now existing [i.e., as of 1788] shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight”—thereby recognizing the plenary power of Congress to “prohibit[ ]” any and all such “Migration or Importation” in those States after that date, and in all other States at any time. U.S. Const. art. I, § 9, cl. 1. And that is why (among other reasons) the Constitution delegates to Congress the allied powers “[t]o establish an uniform Rule of Naturalization” (as to “Migration”), “[t]o regulate Commerce with foreign Nations * * * and with the Indian Tribes” (as to “Importation”), “[t]o provide for calling forth the Militia to execute the Laws of the Union[and] repel Invasions”, and “[t]o make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers”. U.S. Const. art. I, § 8, cls. 4, 3, 15, and 18. For through the exercise of these powers by Congress and the execution by the President of the statutes Congress enacts pursuant to them, “[t]he United States” can “guarantee to every State in this Union a Republican Form of Government” by “protect[ing] each of them against Invasion” by aliens.

Moreover, the Second Amendment refers to “the security of a free State”, as to which it declares that “[a] well regulated Militia” is “necessary”. The term “a free State” is a general conception, to which (in the estimation of the Founders) all of “the several States” conformed at the time (1791) and were expected always to conform thereafter (along with such other States as later entered the Union). The term “free State” is perhaps best understood by consideration of the German noun

“Freistaat” (literally, “free state”), the primary meaning of which is “republic”, with the adjectival form, “freistaatlich”, meaning “republican”. Thus, the term “a free State” in the Second Amendment should be equated with the term “a Republican Form of Government” in the original Constitution, such that “a free State” denotes a polity “constructed on th[e] principle, that the Supreme Power resides in the body of the people”. And, plainly enough, no “free State”can enjoy “security” when it is exposed to incessant “Invasion[s]” by aliens. So, just as “[a] well regulated Militia” is “necessary to the security of a free State”, such a Militia is necessary to the security of a “Republican Form of Government” free from the fear, let alone the actuality, of “Invasion”. This should be obvious, because the essence of both “a free State” and “a Republican Form of Government” is that “the Supreme Power resides in the body of the people”, and “a well regulated militia[is] composed of the body of the people”. See Virginia Declaration of Rights (1776) art. 13 (emphases supplied). In particular, then, by executing “the Laws of the Union” so as to “repel Invasions” of illegal aliens when other components of the Constitution’s federal system prove themselves inadequate or even inimical to that task, the Militia can guarantee (as can no other institutions) that “the Supreme Power [always] resides in the body of the [American] people” who themselves make up the Militia, rather than being gradually usurped by foreign interlopers with no conceivable claim to any portion of that “Power”. See U.S. Const. art. I, § 8, cl. 15.

Inasmuch as issues arising under Article IV, Section 4 typically involve “political questions” as to which the Judiciary is constitutionally incompetent to afford relief to parties challenging the actions of Congress and the Executive, President Trump can—and should—simply disregard aberrant decisions such as Washington v. Trump (while, of course, providing the public with a complete explanation for his actions). See, e.g., Luther v. Borden, 48 U.S. (7 Howard) 1

(1849). And both he and Congress enjoy other, even more potent means to deal with rogue judges. See, e.g., my book How To Dethrone the Imperial Judiciary (San Antonio, Texas: Vision Forum Ministries, 2004). Whether the President's legal advisors will properly instruct him—and steady his nerves—on these matters remains uncertain, though.

6. The White House's post concludes with the truism that "[i]t is the first duty of government to keep the innocent safe", and emphasizes the application of this duty to "especially those Americans who have not known safe neighborhoods for a very long time". This is all well and good, as far as it goes. Yet it does not go nearly far enough. For the most serious threat to the safety of "the good People" throughout this country is not simply everyday "street crime" (as bad as that may be), but instead the crescent neo-Bolshevist "color revolution" for which the streets constitute merely one theater of operations.

The architects of America's emergent "color revolution" have honed their theory of "régime change" to a razor's edge, and tested it in various places around the world with some notable success. Throughout this country its practitioners in the Rotenfrontkämpferbund are numerous, well organized, adequately funded, and fanatic (if not lunatic) in their willingness to apply whatever measures of rhetorical and even physical violence they deem expedient to smash all opposition to their demands. The big "mainstream media", choruses of puffed-up political pundits, and gaggles of goofy "celebrities" apologize for, encourage, and even glamorize these tactics. And rogue public officials at every level of the federal system openly lend their support to the revolutionaries. The goal of this "color revolution" is to render America effectively ungovernable during President Trump's tenure, by impugning the legitimacy of any and every law, governmental policy, and action of his Administration that contradicts a

single jot or tittle of the neo-Bolsheviks' agenda—enforcing these incessant complaints with massive orchestrated disruptions of the political, legal, and social order, thereby creating a new order based upon chaos, on the strength of which the neo-Bolsheviks hope to usurp the power of "a state within the state", with President Trump reduced to an impotent, ridiculous "bubblehead".

At first glance, "the color revolution's" reliance on strong-arm tactics appears to impale this country on the horns of a dilemma (which, no doubt, is the neo-Bolsheviks' intention). On the one hand, "the good People" cannot be left to the mercy of neo-Bolshevist thugs, unable to protect themselves unless they turn to the kind of ad hoc self-help that smacks of vigilantism—for that will reduce this country to an ungovernable condition, inasmuch as "order" imposed without "law" (other than "the law of the jungle") is not "government" at all. Yet, on the other hand, true constitutionalists must stand firm against the all-too-natural inclination of ordinary citizens assaulted by massive social unrest to "tighten the screws" by employing police-state tactics up to and including "martial law"—for that will render this country ungovernable, too, inasmuch as "martial law" is not a form of government permissible under the Declaration of Independence and the Constitution. The only sure and certain way to avoid both of these mutually undesirable alternatives is to revitalize the Militia, thereby returning to "the good People" the ability, together with the absolute legal authority, to protect themselves. See my book By Tyranny Out of Necessity: The Bastardy of "Martial Law" (Ashland, Ohio: Bookmasters, Inc., Revised & Expanded Second Edition, 2014, 2016), especially at 531-676.

After all, as America's sovereigns WE THE PEOPLE are "the government"—both as its source and as its ultimate executors, as well as its beneficiaries. Public officials can do nothing—at least legitimately—without THE PEOPLE'S approval

and coöperation, both passive and active. So if (as the White House's post opines) "keep[ing] the innocent safe" is "the first duty of government", then it is the first duty of THE PEOPLE themselves—who, having the greatest incentive to remain safe, will surely be most assiduous in fulfilling it. And because "keep[ing] the innocent safe" is obviously a defining characteristic of what the Second Amendment calls "the security of a free State", then the revitalization of "well regulated Militia"—composed of THE PEOPLE themselves—is "necessary" to that end.

7. President Trump must also take into account that the open neo-Bolshevist "color revolution" is not the only, or even the most dangerous, subversive force deployed against his Administration, as well as against himself personally. He must also reckon with what students of these matters denote as "the Deep State"—namely, the clandestine rogue apparatus lodged within the bowels of the "military-industrial" and especially the "national-security" complexes, which considers itself the real "state within the state", ruling over this country as a law unto itself alone. See, e.g., Paul Craig Roberts, "The Trump Presidency: RIP", Paul Craig Roberts Institute for Political Economy (16 February 2017); and my commentary "An Ominous Start" (1 January 2017) at <edwinvieira.com>, pages 6-7.

In the long run, it does not much matter whether the Deep State is proceeding independently along the same lines as the neo-Bolsheviks, or whether it is loosely allied with them, or whether it is a full partner in their operations, or even whether it is actually in control of the whole shebang—for the immediate goal of both the Deep State and the neo-Bolsheviks is the same: to wit, the utter destruction both of the Trump Administration and of Mr. Trump himself, with their ultimate purpose being the defeat of WE THE PEOPLE'S reassertion of constitutional authority over this country. (Although, as Mark

Twain quipped, history does not repeat itself, it often rhymes, the closest historical couplet in this case being, of course, the tacit alliance between the "left-fascist" Stalin and the "right-fascist" Hitler, through which the German Communist Rotenfrontkämpferbund effectively colluded with its supposed opponent, the Nazi Sturmabteilung, to overthrow the social-democratic Weimar Republic and set the stage for the Second World War. See, e.g., Viktor Suvorov, The Chief Culprit: Stalin's Grand Design to Start World War II [Annapolis, Maryland: Naval Institute Press, 2013]).

Whatever the relationship between the fascistic "right" of the Deep State and the equally fascistic "left" of American neo-Bolshevism may be, the Deep State has already revealed its own hand, in spades, in the recent "Flynn-flammery" it has apparently imposed on President Trump. See, e.g., Richard Pollock, "EXCLUSIVE: How The Nation's Spooks Played The Game 'Kill Mike Flynn'", The Daily Caller (15 February 2017); Jay Syrmopoulos, "Open Warfare Declared In DC As Deep State 'Goes Nuclear'—Trump 'Will Die In Jail'", The Freethoughtproject (15 February 2017); Pepe Escobar, "The Swamp Strikes Back", Offguardian (16 February 2017); and Joachim Hagopian, "Reasons Why Michael Flynn Was Fatality #1 in the Trump Presidency", LewRockwell.com (17 February 2017).1 The only adequate response to this dire threat is for President Trump to bring to bear against the Deep State the full power of constitutional "law enforcement", and sweep all of the renegades out of the "military-industrial" and "national-security" complexes with an iron broom. Compare 18 U.S.C. §§ 2383 through 2385 (the emergent problem) with 10 U.S.C. §§ 332 and 333 (a necessary part of the solution).

8. In the final analysis, if the Trump Administration intends to "stand[ ] up for our law enforcement community" in the fullest constitutional sense of that promise, it must first recognize of whom "our law enforcement community" actually consists—namely, WE THE

PEOPLE themselves—and then realize that "standing up" for that "community" demands the revitalization of those constitutional institutions in which WE THE PEOPLE personally participate, to the point of exercising actual day-to-day decision and direction. If President Trump does nothing else during his tenure in office, he must leave America with the permanent legacy of "well regulated Militia" in every one of the several States, able to "execute the Laws of the Union" in "the actual Service of the United States" against all enemies, whether foreign interlopers or (especially) domestic subversives. And he must begin to do so immediately. For his—and America's—enemies will not afford him the luxury of being able to "play for time". Today is his time. Tomorrow will be too late. Procrastination was apparently President Kennedy's undoing. See, e.g., JFK and the Unspeakable. Why He Died and Why It Matters (Maryknoll, New York: Orbis Books, 2008; reprinted, New York, New York: Touchstone, 2010). President Trump would be well advised to take that lesson to heart.

[1]. Some supporters of President Trump have floated the alternative explanation that Flynn's resignation was actually part of the normal course of events within the Administration. *See* "Dr. Steve Pieczenik Says Michael Flynn Was Purposefully Removed, The Left Are Intellectual Frustrated Children", *iBankCoin* (16 February 2017). This thesis is exceedingly difficult to credit, however. For it would have been both unnecessary and highly counterproductive for the Administration to subscribe to a narrative based on Flynn's telephonic indiscretion and later dishonesty in describing his behavior, together with allegations of "leaks" by person or persons unknown inside but hostile to the Administration, when a simple press-release stating that Flynn had resigned to make way for a better-qualified replacement would have sufficed—without providing the big "mainstream media" with additional ammunition for their on-going barrage that

President Trump is a crony, a stooge, a dupe, or otherwise an “asset” of Russian President Vladimir Putin.

An ominous start? Pt. 2 of 2

Even though an incorrect decision may be the so-called “law of the case” as to the parties actually before the Supreme Court in a particular instance (and unchallengeable by them because no means of appeal is available), it can never constitute infallible legal dogma as to everyone else in all future instances. After all, Article VI, Clause 2 of the Constitution provides that “[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land”—with no mention of decisions of the Supreme Court (or any other judicial tribunal) as being included within “the supreme Law”. Obviously, no such decision can ever qualify as “[t]his Constitution”, one of “the Laws of the United States”, or a “Treat[y] made * * * under the Authority of the United States”. For the Supreme Court itself is a mere creature of and subordinate to “[t]his Constitution”, not its creator or its superior. See U.S. Const. art. III, § 1. The Court’s decisions are not “Laws of the United States”, because “[a]ll legislative Powers * * * granted [by the Constitution] shall be vested in a Congress of the United States”, not in any judicial tribunal. See U.S. Const. art, I, § 1. And all “Treaties” derive exclusively from the President’s “Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur”, not from any part of the “[t]he Judicial Power of the United States * * * vested in [the] supreme Court”. Contrast U.S. Const. art. II, § 2, cl. 2 with art. III, § 1.

So far, this commentary has focused on Mrs. Clinton's catalogue of alleged misbehavior, because her shady affairs have received an overwhelming amount of perfervid attention in the domestic and even international media. Yet, in the long run, Mr. Trump must deal with several even more pressing concerns if America is to accept his "Oath or Affirmation" as genuine:

First, on various occasions he has demonstrated a willingness to question what actually happened on 9/11. This indicates his suspicion—which every thinking American shares—that the real culprits have not yet been identified, or if identified not yet brought to justice. See, e.g., Kevin Robert Ryan, Another Nineteen: Investigating Legitimate 9/11 Suspects (Microbloom, 2013). In light of the horrendous harms to persons and property perpetrated on 9/11—and especially the consequences of those crimes with respect to the elaboration of a national para-military police-state apparatus in this country, the systematic curtailment of Americans' basic civil liberties, and the launching of highly questionable military adventures overseas during the Bush Administration and Mr. Obama's residence in the White House, all in patent defiance of the Constitution—a refusal by Mr. Trump to "take Care that the Laws be faithfully executed" through an honest and thoroughgoing investigation of the 9/11 Event would provide compelling evidence that he never intended to "take the * * * Oath or Affirmation" of the President truthfully as to that matter, either.

Second, prior to his inauguration Mr. Trump put himself on record as promising that, in his Administration, "[w]e [namely, the government of the United States] will stop looking to topple regimes and overthrow governments". See [Link] (01 December 2016). This evidenced his belief—again, in which every thinking American along with the rest of the civilized world concurs—that rogue officials within the Bush Administration and among Mr. Obama's entourage have engaged in

such willful, wanton, and reckless aggression on more than one occasion. Again, in patent defiance of the Constitution, as everyone knows or ought to know that "the genius and character of our institutions are peaceful, and the power to declare war was not conferred upon Congress"—or anyone else—"for purposes of aggression or aggrandizement". Fleming v. Page, 50 U.S. (9 Howard) 603, 614 (1850). In addition, everyone conversant with these matters knows that the CIA and the Pentagon should be the first rocks Mr. Trump ought to turn over in a search for the chief culprits. So if Mr. Trump now refuses to "take Care that the Laws be faithfully executed" by allowing the miscreants who have been involved in "toppl[ing] regimes and overthrow[ing] governments" to escape justice, it would hardly be amiss to conclude that he never intended to "take the * * * Oath or Affirmation" of the President truthfully as to that matter, as well.

Moreover, Mr. Trump's failure to take appropriate action as to this particular would demonstrate such imprudence as to draw into question, not only his personal capability (as opposed to his legal eligibility) to serve, but also his likelihood to survive, as President. For, rather than risk the frustration of their complots, the rogue officials who have engaged in "toppl[ing foreign] regimes and overthrow[ing foreign] governments" in the past and who undoubtedly intend to persevere in like endeavors in the future would hardly shrink from "toppl[ing]" and "overthrow[ing]" the Trump Administration—if not in the dramatic fashion their predecessors cut short President Kennedy's tenure then in some other, but no less effective, manner—if Mr. Trump refused to give them the criminal leeway they desired. See, e.g., JFK and the Unspeakable. Why He Died and Why It Matters (Maryknoll, New York: Orbis Books, 2008; reprinted, New York, New York: Touchstone, 2010).

Indeed, they have already set out on this nefarious course, by floating in the media the fantastic assertions that "Russian

hacking” exerted a decisive improper influence in favor of Mr. Trump’s election, that Mr. Trump himself is subject to blackmail by Russia, and that he is even a “dupe” or “useful idiot” working (albeit perhaps unconsciously) in Russia’s interests—by means of those canards casting a pall over the legitimacy of his Administration at its very inception. Although some observers fear that these and like tar brushes may have painted Mr. Trump into a corner, in reality they have provided him with an uniquely propitious opportunity to sweep out the responsible agencies with an iron broom. For if such charges are actually nothing more than “old grey mares”—that is, false narratives concocted by rogue operatives in “the intelligence community”—then the officials responsible for propagating them are arguably engaged in an attempt to overthrow the legitimate government of the United States through a coup d’état to be waged by Mr. Trump’s enemies in Congress and the bureaucracy, in the ever-hostile “mainstream media”, and in a gaggle of subversive NGOs intent upon applying within the United States their extensive experience in rigging “régime change” in various foreign countries. Inasmuch as the plotters of this coup must be aware that it could never be brought to completion absent the application of force at some stage (for instance, through the fomentation of violent civil disturbances on a massive scale), and therefore must already have included such operations in their plans, they have exposed themselves to serious charges. See 18 U.S.C. § 2384. Mr. Trump certainly enjoys both the authority and the ability to turn the tables on these conspirators. See 10 U.S.C. §§ 332 and 333. But whether he can muster the gumption to do so remains to be seen.

Third, prior to his election, Mr. Trump expressed skepticism—also embraced by millions of Americans whose heads are not buried in the sand—as to whether Barack Obama was ever actually “eligible to the Office of President” as “a natural born Citizen”. See U.S. Const. art. II, § 1, cl. 4. Mr. Trump knew or should have known then, and knows or should know now,

that inter alia:

(i) No report of an official, full-scale inquiry into Mr. Obama's purported eligibility has ever been made public (or perhaps even conducted behind closed doors)—whether by Congress when it had the opportunities to do so, as I first explained in my NewsWithViews commentary "In the Shadow of Nemesis" (8 December 2008); or by law-enforcement agencies such as the FBI; or by the courts of either the United States or any State.

(ii) Mr. Obama's parentage and the place of his birth, and their effects on his citizenship, continue to be the subjects of controversy.

(iii) The provenance and authenticity of Mr. Obama's "birth certificate" (or whatever name should be attached to the document his minions caused to be publicized with his apparent approval) have been impugned through the research commissioned by former Arizona Sheriff Joe Arpaio, without adequate rebuttal from Mr. Obama's camp.

(iv) Mr. Obama's status as a citizen of Indonesia, resulting from his mother's reported second marriage to an Indonesian and his subsequent translation to and sojourn in that land as a child, is still opaque.

(v) Whether, upon his return to the United States from Indonesia, Mr. Obama took the steps required at the time to reassert or to secure American citizenship has yet to be established in any public forum.

(vi) Whether, during Mr. Obama's years in colleges and law school in this country, he claimed benefits or otherwise identified himself as a "foreign" student remains undetermined, because he has refused to release the relevant records.

(vii) Challenges have been leveled against the authenticity of

both Mr. Obama's purported registration with the Selective Service and his supposed Social Security card. And

(viii) Widely publicized statements emanating from Mr. Obama himself, from Michelle Obama, and from certain of Mr. Obama's relatives over the years have cast doubts upon his citizenship.

The necessity for Mr. Trump to pry open this can of worms cannot be overstated—

(a) Although America has finally awakened from the long national nightmare of Mr. Obama's residence in the White House, his "legacy" will continue to fester. If unmasked as ineligible for the office he pretended to hold, however, every measure he inflicted on this country while impersonating "the President" could and should be set aside as void ab initio. This would not unavoidably result in an hopelessly chaotic situation, if (for example) in good time and in a systematic fashion certain of the "Bills which shall have passed the House of Representatives and the Senate" during the period of Mr. Obama's imposture Congress saw fit to "be presented [anew] to [Mr. Trump as] the [real] President of the United States" for him to "sign" or to "return * * * with his Objections". See U.S. Const. art. I, § 7, cl. 2. Also, equivalent corrective steps could be taken to deal with those of Mr. Obama's purported "executive" actions which Mr. Trump did not desire to adopt anew under his own authority; as well as with many judicial decisions predicated upon Mr. Obama's unconstitutional handiwork, through (say) the Trump Administration's invocation of the doctrine of Hazel-Atlas Glass Company v. Hartford-Empire Company, 322 U.S. 238 (1944). And if these measures did raise problems both complex and costly to resolve, the blame would not lie on Mr. Trump, but instead on the parties in official positions who refused to address the question of Mr. Obama's ineligibility when it first arose.

(b) Exposure of Mr. Obama's imposture (if such it was) would strike a crippling blow at the neo-Bolshevik "color revolution" now being organized by the Marxist intelligentsia in the suites of NGOs funded by renegade billionaires for the purpose of defaming, frustrating, sabotaging, and finally demolishing the Trump Administration. Deprived of Mr. Obama as its figurehead, neo-Bolshevism in this country would collapse in the confusion of internal struggles for power which would render it an impotent political force for years to come, if not destroy it altogether. Most important,

(c) Proof of Mr. Obama's ineligibility would preserve the United States from the "precedent" of once having acquiesced in an usurper's seizure of the White House. To be sure, purported "precedents" which violate the Constitution de facto do not change the Constitution de jure. For the Constitution of the United States is not cut from the same ill-woven cloth as the "constitution" of England, which throughout history has been altered by one successful "precedent" after another (even though many of them were patent usurpations). Nonetheless, it is one thing to suffer a thoroughly corrupt political figure (such as Mrs. Clinton is alleged to be) to escape prosecution—for that does not set a "precedent" which can immunize all such individuals in the future. It is one thing to cover up a "false flag" operation in which rogue officials in some "intelligence agencies" have participated (such as many Americans believe the 9/11 Event to have been)—for that, too, does not set a "precedent" which can exonerate all such miscreants in years to come. And it is even only one thing to countenance wars of aggression fomented by renegades within America's "military-industrial complex" and "national-security" apparatus (such as this country's on-going military adventures in the Middle East)—for that does not set a "precedent" capable of overruling the fundamental principle of the Nuremberg Tribunal. See Office of United States Chief of Counsel for Prosecution of Axis Criminality, Nazi Conspiracy and Aggression (Washington, D.C.: United States Government

Printing Office, 1946), Volume 1, Article 6, at 5. But usurpation of “the Office of President” for eight years by someone not eligible for that office in the first place, while almost everyone else in public life looked the other way and worked hand-in-glove with the usurper, is another thing altogether.

For if that is taken as an effectively binding “precedent” because it remains uncorrected when the evidence cries out for its correction, then Article II, Section 1, Clause 4 of the Constitution becomes a dead letter. And with it the Constitution as a whole—because, his tenure in the White House being utterly lawless in its inception, a faux “President” labors under no duty to, and surely will not, “take Care that the Laws be faithfully executed”, the Constitution first and foremost among them.

In sum, as President Mr. Trump is not free simply to ignore these matters, if “the Deplorables” (and all other sensible Americans, for that matter) are to take his “Oath or Affirmation” seriously. Should he fail in this regard, then rather than becoming “great again” this country will soon find that its condition warrants the lugubrious prognosis put forward as a general rule of civilizational devolution by Oswald Spengler in his study Der Untergang des Abendlandes. Although this title is usually translated as The Decline of the West, the German noun Untergang can also be rendered, more ominously, as “downfall”, “ruin”, or “destruction”—which in this country’s case will be a fitting epitaph.

An ominous start? Pt. 1 of 2

According to seemingly reliable reports in the media, President Trump may have determined that his Administration will not conduct a criminal investigation of Hillary Clinton (and presumably of the Clinton Foundation and those associated with it as well).

The reasons that were bruted for this decision prior to Mr. Trump's inauguration should give one pause. First, various pundits contended that investigation of Mrs. Clinton would run afoul of some supposed "political tradition" in this country which discountenances prosecution of the loser of an election by the winner—when in fact Mrs. Clinton would be investigated, not because she lost the Presidential election, or even because of her dangerously aberrant political views, but instead because she has allegedly engaged in serious misbehavior, quite unconnected to the election, for which any other such perpetrator would surely be prosecuted sine die. Second, one of Mr. Trump's aides mouthed the psychobabble that foregoing prosecution of Mrs. Clinton could "help her heal"—when "escape" would be the more accurate verb. Third, Mr. Trump himself announced: (i) that "I don't think we have to delve back in the past"—notwithstanding that every criminal investigation does so; (ii) that prosecution of Mrs. Clinton "would be very, very divisive for the country"—as if affording her immunity from prosecution would not be; and (iii) that "I don't want to hurt them [i.e., the Clintons]…they're good people"—leaving to worrisome conjecture what Mr. Trump's definition of "good people" might be. And most recently, when asked by a reporter whether no further investigations of Mrs. Clinton would be conducted, President Trump responded, "I certainly hope so".

The most obviously justified criticism of Mr. Trump's apparent willingness to allow Mrs. Clinton and others associated with her "to skate", unscathed by honest and competent inquiries into their shadowy dealings, is that it proves once again how in the contemporary United States one body of law (or absence of law) specially privileges and protects the super-rich, the politically well-connected, and other big wheels, top noises, and string-pullers, while a quite different body of law bears down on everyone else. Any constitutionalist should be concerned, though, that something far more serious is involved here.

Article II, Section 1, Clause 7 of the Constitution provides that "[b]efore he [i.e., the President-elect] enter on the Execution of his Office, he shall take the following Oath or Affirmation:—'I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States.'" The text of this "Oath or Affirmation"sets out, not a possibly inaccurate prediction cast in terms of the simple futurity of temporal sequence ("I shall"), but instead a strict promise of fidelity cast in terms of the emphatic futurity of a solemn assurance ("I will"). Moreover, "taking the * * * Oath or Affirmation" is the condition precedent sine qua non to "enter[ing] on the Execution of [the] Office [of President]". Self-evidently, if it is not "take[n]" at all, a President-elect cannot "enter on the Execution of [that] Office". No less plain is that a President-elect cannot "enter on the Execution of [that] Office" if he "take[s] the * * * Oath or Affirmation" falsely. For a false "Oath or Affirmation" is, by definition, fraudulent. And fraud vitiates and renders inoperative any and every act which it has facilitated. To be sure, the falsity of a representation as to the "Oath or Affirmation" might not be evident when it was uttered, because a rogue President-elect would be careful to engage in fraudulent concealment of his true state of mind when he

deceitfully “t[ook] the * * * Oath or Affirmation”. That, however, is not the situation here.

Article II, Section 3 of the Constitution sets forth the chief duty of the President, that “he shall take Care that the Laws be faithfully executed”. Observe that the phrase “faithfully executed” in this provision echoes the phrase “faithfully execute” in the “Oath or Affirmation”. Thus, his “Oath or Affirmation” requires the President, “to the best of [his] Ability, to preserve, protect and defend the Constitution” by fulfilling the duty to “take Care that the Laws be faithfully executed”, without any exception (because the Constitution allows for none).

It requires no extended argument to establish that, now installed in “the Office of President”, Mr. Trump disposes of every right and power necessary, sufficient, and convenient to ensure that “the Laws [shall] be faithfully executed” with respect to Mrs. Clinton and her associates. And no airy notion that she were in some sense and to some degree a “good person” could relieve Mr. Trump of the duty “faithfully [to] execute[ ]” “the Laws” as to her. (Indeed, as a “good person”, Mrs. Clinton herself should welcome the opportunity in an official forum to be absolved of the malodorous charges her record of “public service” seems to substantiate in many Americans’ estimation.)

To be sure, as is every American, Mrs. Clinton and her associates are entitled to the presumption of innocence. But, based upon what is already known about their behavior, this country is entitled to see them properly investigated, indicted, and prosecuted, in order to test that presumption in the crucible of a public trial, before a jury of their peers, pursuant to Article II, Section 2, Clause 3 and Amendments Five and Six of the Constitution surely, and Article III, Clause 1 possibly. Mr. Trump has, however, left the world with the distinct impression that he does not intend to press for investigations into Mrs. Clinton’s questionable affairs. As a

matter of constitutional law (as well as common sense), the reasons he has advanced for this disinclination are unconvincing, if not patently specious. Therefore, if before his inauguration he actually did not, and following his inauguration still does not, intend under color of "the Office of President" to "take Care that the [applicable] Laws be faithfully executed" as to her, then he did not "take the * * * Oath or Affirmation" truthfully—and as a result did not "enter on the Execution of [the] Office [of President]" at all. If so, America finds herself confronted with yet another Presidency constitutionally questionable from its supposed inception.

Admittedly, this concern rests upon something of a fine legal point—although not one so fine as to be indiscernible on the face of the Constitution. In any event, the Constitution is festooned with fine points intended to impede and even impale rogue public officials in their malicious course. These points can serve their purposes, however, only if they are forcefully driven home, without any compunction, whenever suitable occasions arise. Few crimes are worse than the systematic prostitution, perversion, and betrayal of public office for private political and financial gain. But surely one of them is for someone to attempt to "enter on the Execution of [the] Office [of President]" knowingly and willfully intent upon allowing anyone who has notoriously engaged in such misbehavior to escape punishment.

Unfortunately, the running of various statutes of limitations might preclude prosecution of Mrs. Clinton and her associates with respect to some of their alleged misbehavior—although statutes of limitations can be removed or extended by legislation. See, e.g., Chase Securities Corporation v. Donaldson, 325 U.S. 304 (1945); Campbell v. Holt, 115 U.S. 620 (1885). Where statutes of limitations would impose a bar, though, it would still behoove the Trump Administration to investigate these matters thoroughly and report its findings

completely to the public. See Lee Duigon's recent NewsWithViews commentary "A Speech Mr. Trump Ought To Make" (17 November 2016).

As a complicating factor, it is not inconceivable that Mr. Trump might seek to finesse this apparently distasteful political situation in a legalistic fashion by purporting to extend some sort of blanket "pardon" to Mrs. Clinton and her associates. Any such "pardon" which issued before indictments had specified the crimes the members of the Clinton cabal had allegedly committed would be constitutionally problematic, however.

The nature and extent of the "Power" of the President under Article II, Section 2, Clause 1 of the Constitution "to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment" is not defined in the Constitution—and therefore the specifics as to those matters must be derived from the similar power of the King in pre-constitutional Anglo-American law. "As this power has been exercised, from time immemorial, by the executive of that nation whose language is our language, and to whose judicial institutions ours bear a close relationship; we adopt their principles respecting the operation and effect of a pardon". United States v. Wilson, 32 U.S. (7 Peters) 150, 160 (1833). Under the laws of England applicable to the Colonies prior to the Declaration of Independence—

* * * What is required to make a good Pardon of Felony in general: It seems to be laid down as a general Rule in many Books, that where-ever it may be reasonably intended that the King, when he granted such Pardon, was not fully apprised both of the Heinousness of the Crime, and also how far the Party stands convicted thereof upon Record, the Pardon is void, as being gained by Imposition upon the King. * * *
* * * It hath been holden, That anciently a Pardon of all Felonies, included all Treasons, as well as Felonies whatsoever, and might be pleaded to an Indictment for them:

And it seems to be taken for granted, in many Books, that a Pardon of all Felonies in general, without describing any one particular Felony, may even at this Day, if the Party be neither attainted nor indicted, be pleaded in Bar of any Felony whatsoever, coming within the general Limitations of the Pardon, except Murder or Rape, and that the only Reason why it cannot also be pleaded to Murder of Rape, is because [a] Statute * * * requires an express Mention of them. But I find this point no where solemnly debated; neither doth it seem easy to reconcile it with the general Rules concerning Pardons, agreed to be good in other Cases; for if a Felony cannot be well pardoned where it may be reasonably intended that the King, when he granted the Pardon was not fully apprised of the State of the Case, much less doth it seem reasonable that it should be pardoned where it may well be intended that he was not apprised of it at all. And if a Felony whereof a Person be attainted cannot be well pardoned, even tho' it appear that the King was informed of all the Circumstances of the Fact, unless it also appear that he was informed of the Attainder, mu ch less doth it seem reasonable that a Felony should be well pardoned where it doth not appear that he knew any Thing of it: For by this Means, where the King in Truth intends only to pardon one Felony, which may be very proper for his Mercy, he may by Consequence pardon the greatest Number of the most heinous Crimes, the least of which, had he been apprised of it, he would not have pardoned. And for these Reasons, as I suppose, general Pardons are commonly made by Act of Parliament; and have been of late Years very rarely granted by the Crown, without a particular Description of the Offence intended to be pardoned. * * * And therefore where the Books speak of Pardons of all Felonies in general as good, perhaps it may be reasonable for the most part to intend that they either speak of a Pardon by Parliament, or that they suppose that the particular Crime is mentioned in the Pardon, tho' they do not express it.

William Hawkins, A Treatise of The Pleas of the Crown (London,

England: E. and R. Nutt, and R. Gosling, Third Edition, 1739), Book II, Chapter 37, §§ 8 and 9, at 382-384 (marginal notes omitted). It should be kept in mind that, in contradistinction to Parliament, Congress has no power to issue "general Pardons" (or even any "Pardon" whatsoever), or to delegate such a nonexistent power to the President.

So, inasmuch as the details of much of Mrs. Clinton's own alleged wrongdoing, let alone the suspected wrongdoing of numerous others associated with her, will remain shrouded in mystery until proper investigations have been conducted, it passes understanding how Mr. Trump could, with constitutional propriety, issue "general Pardons" to any members of the Clinton cabal.

To be sure, some decisions of the Supreme Court have seemingly expanded the Presidential "Power to grant Reprieves and Pardons" beyond the boundaries outlined above. The mere existence of such decisions, though, poses no insurmountable bar to the analysis presented here. For a decision of the Supreme Court on a point of constitutional law is not necessarily valid simply because the Court has handed it down. First, as was self-evident in principle well before the Constitution was even first imagined, "the law, and the opinion of the judge are not always convertible terms, or one and the same thing; since it sometimes may happen that the judge will mistake the law". William Blackstone, Commentaries on the Laws of England (Philadelphia, Pennsylvania: American Edition, Robert Bell, 1771), Volume 1, at 71. Second, in practice under the Constitution the Supreme Court itself has admitted that it has often erred in its constructions of that document. See Payne v. Tennessee, 501 U.S. 808, 828-830 & note 1 (1991).

Therefore, no decision of the Supreme Court can be taken at face value as an infallible authority as to what the Constitution means.

Rather, the Constitution determines whether a decision of the Supreme Court is correct or incorrect. And in the final analysis only WE THE PEOPLE can render the Constitution's meaning certain, because WE THE PEOPLE "ordain[ed] and establish[ed] th[e] Constitution" in the first place; and (as the Supreme Court itself has admitted) "[t]he power to enact carries with it final authority to declare the meaning of the legislation". Compare the Preamble to the Constitution with Propper v. Clark, 337 U.S. 472, 484 (1949). For part two click below.

A monetary litmus test for Mr. Trump Pt. 2

Second, if the Board of Governors and the Federal Reserve regional banks are to be "abolish[ed]", so too must Federal Reserve Notes disappear. For "Federal reserve notes, to be issued at the discretion of the Board of Governors of the Federal Reserve System for the purpose of making advances to Federal reserve banks * * * and for no other purpose, are authorized"; and only "[t]he Board of Governors * * * shall have the right * * * to grant in whole or in part, or to reject entirely the application of any Federal Reserve bank for Federal Reserve notes". 12 U.S.C. §§ 411 and 414. (Conversely, if Federal Reserve Notes are to be retained, the Board and the Federal Reserve regional banks must continue in operation as the mutually complementary sources of those Notes.) Federal Reserve Notes, however, make up the great bulk of the circulating currency of the United States. The questions then arise: If Federal Reserve Notes were

“abolish[ed]” as the necessary consequence of “abolish[ing]” those components of the Federal Reserve System which could be “abolish[ed]” (that is, the Board of Governors and the Federal Reserve regional banks), then what currency would most Americans use in their day-to-day commercial and other private transactions? And in what currency would taxes and other public dues, and various governmental expenditures, be paid at every level of the federal system?

D. Some individuals argue that, in order to reinstate sound money in this country’s economy, it would not be necessary to “abolish the Fed”, as long as Congress repealed the statute which provides that “United States coins and currencies (including Federal reserve notes and circulating notes of Federal reserve banks and national banks) are legal tender for all debts, public charges, taxes, and dues”. 31 U.S.C. § 5103. Were this provision stricken from the United States Code, these people contend, anyone could use any currency for the payment of debts; and everyone (in the exercise of rationality) would sooner or later take advantage of that freedom to choose currencies more stable than Federal Reserve Notes. The ensuing competition among currencies would work a reversal of Gresham’s Law, in the long run driving Federal Reserve Notes out of general circulation. This notion, unfortunately, is ill informed.

In law and fact, today no one is required to employ only Federal Reserve Notes as “legal tender” in any private contract. Anyone can contract for payment in any legitimate currency, including gold and silver, to the absolute exclusion of Federal Reserve Notes. Confusion arises on this score because many Americans seem to be possessed by the notion that Congress has outlawed so-called “gold-clause contracts”. Indeed, Congress did so in 1933. But that prohibition has been set aside with respect to private obligations issued after 27 October 1977. See 31 U.S.C. § 5118(a) and (d). And the States cannot disable themselves from entering into enforceable

"gold-clause contracts". See U.S. Const. art. I, § 10, cl. 1. (But the government of the United States has statutorily crippled itself in that regard. See 31 U.S.C. 5118(b) and (c).)

The problem with competition among currencies for private parties and the States is that, in order to take advantage of economically sound and constitutional currencies as alternatives to Federal Reserve Notes, Americans must have at hand mechanisms which will enable them to employ those currencies efficiently in their day-to-day transactions within the free market and with the States' governments. Such mechanisms do not now exist to any worthwhile extent. The "member banks" in the Federal Reserve System, for example, do not provide their customers with the option of opening "gold accounts" or "silver accounts" through which ownership of aliquots of precious metals can be transferred from one account-holder to another by checks, electronic transfers, and so on, in the same manner as Federal Reserve Note balances. Until the "member banks" do provide that option, or States in significant numbers establish gold and silver depository-banks of their own (as Texas is doing), no real competition between gold and silver, on the one hand, and Federal Reserve Notes, on the other hand, can take place.

E. In the absence of gold and silver currencies circulating side-by-side with Federal Reserve Notes in open and fair competition, Americans are compelled by circumstances to depend upon those Notes (and bank-deposits payable therein) as their only practical currency. So, if the Federal Reserve System should collapse, and Federal Reserve Notes should become next to worthless through hyperinflation, America's economy would tumble into the black pit of chaos. The Globalist International is, of course, preparing for that eventuality—and may even be plotting to bring it about during the first years of the Trump Administration. However such chaos may arise, when it does the Globalist International,

through the International Monetary Fund or some other monetary machinery of “the new world order”, will impose upon this country a new fiat currency—controlled, of course, by the Globalist International. This will shackle Americans more tightly to “the new world order” than ever they have or could have been chained through the Federal Reserve System.

In order to avoid this dire fate, the Trump Administration must set competition among currencies in motion well before the present economic crisis degenerates into a full-blown monetary and banking catastrophe which prevents such competition from even starting. With the benefit of contemporary computer technology, it would be easy enough, through a gradual process mediated by the free market, to establish economically sound and constitutional alternative currencies of gold and silver as viable competitors against Federal Reserve Notes. In the short term, the introduction of such alternative currencies would to a large degree obviate, or at least mitigate, the immediate danger that a collapse of the banking system could (almost surely would) leave Americans with no functioning currency at all, until the Globalist International proffered one at the cost of this country’s sovereignty. In the long run, the introduction of such alternative currencies would bring the full force of the free market to bear against the Federal Reserve System, leading to its gradual self-abolition, as the “member banks” found themselves compelled by economic pressures beyond the Globalist International’s ability to resist to replace Federal Reserve Notes with the alternative currencies as their customers’ preferred media of exchange. And requiring the “member banks” to establish gold and silver accounts for their private customers and perhaps the States as well would not run afoul of the statutory prohibition in 31 U.S.C. § 5118(b) that “[t]he United States Government may not pay out any gold coin”, for the self-evident reason that neither the private “member banks”, nor the States, nor even the private Federal Reserve regional banks are “[t]he United States Government”.

F. My NewsWithViews commentary “Presidential Questions” describes how a patriotic President could use 12 U.S.C. § 95(a) to compel the banks in the Federal Reserve System to make sound and constitutional alternative currencies available to their customers. (The same statute could also be employed, for example, to require the banks to abide by the principles of the Glass-Steagall Act; to punish financial gambling by compelling the banks to write off many of the fantastic “derivatives” on their books as the unenforceable wagers they really are; to impose accountability on the extremely dangerous profession of central banking by passing through from the banks as institutions to their officials as individuals the responsibility to make up the losses their customers may suffer from the banks’ negligence or intentional wrongdoing; and even to prohibit the banks from advancing the agenda of “gun controllers” through discrimination against businesses that deal in the firearms necessary to secure “the right of the people to keep and bear Arms” which the Second Amendment declares “shall not be infringed”.)

That, in the present economic and political circumstances confronting this country, 12 U.S.C. § 95(a) should be bent to those and other worthwhile purposes needs no elaborate explanation. It suffices to remind the readers of this commentary that, at the height of the monetary and banking crisis of the 1930s, Congress extended to President Franklin D. Roosevelt the authority now to be found in that statute, which mandates that,

[i]n order to provide for the safer and more effective operation of the National Banking System and the Federal Reserve System, to preserve for the people the full benefits of the currency provided for by the Congress through the National Banking System and the Federal Reserve System, and to relieve interstate commerce of the burdens and obstructions resulting from the receipt on an unsound or unsafe basis of deposits subject to withdrawal by check, during such emergency

period as the President of the United States by proclamation may prescribe, no member bank of the Federal Reserve System shall transact any banking business except to such extent and subject to such regulations, limitations and restrictions as may be prescribed by the Secretary of the Treasury, with the approval of the President. Any individual, partnership, corporation, or association, or any director, officer or employee thereof, violating any of the provisions of this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $10,000 or, if a natural person, may, in addition to such fine, be imprisoned for a term not exceeding ten years. Each day that any such violation continues shall be deemed a separate offense.

What deserves emphasis is that, if President Trump hopes to defend his Administration successfully against dirty dealings, defiance, domination, and even destruction by the Globalist International, he must rein in the Federal Reserve System by employing in a determined, definitive, and decisive manner the very tools Congress provided to President Roosevelt. For no better tools are available. And he must act right now, not later on. The Globalist International will afford him no other option. He must, as it were, bite the bullet today, or else bite the dust tomorrow. All that is needed is for President Trump “by proclamation [to] prescribe” an “emergency period”, and to extend his “approval” to the necessary and sufficient “regulations, limitations and restrictions as may be prescribed by [his] Secretary of the Treasury”. Neither Congress nor the Judiciary need be called upon to take any action.

First, President Trump must seize the initiative—acting, rather than reacting. He cannot wait for the present economic crisis to burst forth in a cataclysm for which the “mainstream media” will unfairly but unrelentingly hold him personally accountable. Rather, he must unstintingly and unsparingly

assign the blame for the hard times ahead to the individuals and institutions actually responsible for these troubles. The American people are entitled to know the malefactors' names, to see their faces, and to review the rap-sheets that record their wrongdoing.

Second, President Trump must announce, in no uncertain terms, that his Administration will no longer tolerate privileged sanctuaries from which bankers and their cronies on Wall Street can launch future campaigns of financial aggression and looting against the American people, and then within which they can shelter from their impoverished victims' legal and political retaliation, retribution, and justifiable demands for restitution. Under the Trump Administration, no banks, bankers, or Wall Street financial casinos and speculators can be deemed "too big to fail" or (especially) "too big to jail". Or "too big to be subjected to constant and close surveillance" in order to deter failures born of negligence and to punish criminal offenses—for if average Americans who pose no conceivable threat to this country's economy can be exposed to the NSA's interminable probing into every last one of their innocuous e-mails, surely the operations of the bankers and speculators who have already gutted this nation's economy through their incompetence and crooked deals, and absent strict supervision can be expected to continue to blunder and cheat, deserve no less microscopic examination.

Third, through the contemporary equivalent of President Franklin D. Roosevelt's "fireside chats", President Trump must go over the heads of the "mainstream media" to explain in detail to the American people what he is doing, why he is doing it, and especially the source of his authority for those actions.

Fourth, one may expect the bankers to whine that President Trump's employment of legislation as draconian as 12 U.S.C. § 95(a) will disregard—indeed, will put paid to—the vaunted "independence" of the Federal Reserve System. That

“independence”, however, is purely mythical. Under the Constitution, Congress could have licensed the Federal Reserve System to devise and put into effect “monetary policy” only if Congress enjoyed the power to set the terms of “monetary policy” itself. And Congress could not have delegated this power, in whole or in part, to the Federal Reserve System in such a manner that it could never rescind that delegation, in whole or in part, whenever and to whatever degree it saw fit. So the Federal Reserve System could never claim “independence” from Congress—or from the President, exercising the authority Congress extended to him in 12 U.S.C. § 95(a). Moreover, even if under color of some aberrant legal theory Congress could have purported to delegate its authority over “monetary policy” completely and irrevocably to the private banks in the cartel—a notion at war with the principles enunciated in the Supreme Court’s decision in A.L.A. Schechter Poultry Corporation v. United States, 295 U.S. 495, 529-537 (1935) (“[s]uch a delegation of legislative power [to private cartels] is unknown to our law and * * * utterly inconsistent with the constitutional prerogatives and duties of Congress”)—in fact it has never done so. Quite the contrary: Section 30 of the original Federal Reserve Act wisely provided that “[t]he right [of Congress] to amend, alter, or repeal this Act is hereby expressly reserved”. An Act To provide for the establishment of Federal reserve banks, to furnish an elastic currency, to afford means of rediscounting commercial paper, to establish a more effective supervision of banking in the United States, and for other purposes, Act of 23 December 1913, CHAP. 6, 38 Stat. 251, 275. And the terms of 12 U.S.C. § 95(a) make it pellucid that the latter statute is an amazingly foresightful exercise of the authority Congress so reserved.

Fifth and last, President Trump must premonish the bankers that, if they refuse to coöperate to their utmost in implementing “such regulations, limitations and restrictions as may be prescribed by the Secretary of the Treasury, with the approval of the President”, then one and all they will be

held personally accountable under the statutory directive that "[e]ach day that any such violation continues shall be deemed a separate offense". The bankers might rightly consider this the very zenith of bad news; but neither they nor their megaphones in the "mainstream media" would be able to dismiss it as "fake news".

If President Trump passes this litmus test, then in the fashion of the Big Bad Wolf the Globalist International can huff and puff and threaten to blow America's economic house down to its heart's content. But, with 12 U.S.C. § 95(a) as a Sword of Damocles hanging over the bankers' heads, Mr. Trump and "the Deplorables" whose welfare he has promised to champion can weather that storm of bluff and bluster, and lay the indispensable monetary groundwork to "make America great again"

Click here for part ——> 1, 2,

A monetary litmus test for Mr. Trump Pt. 1

Recently, various analysts and commentators in the alternative media have darkly speculated that, rather than presenting a real opportunity to "make America great again", Donald Trump's ascendency to the Oval Office actually provides the Globalist International with the perfect opportunity to take a giant stride in the direction of a "new world order" in which America will be reduced to a mere satrapy in a grandiose scheme of totalitarian "global governance".

The wisdom of the electoral college

Since the recent Presidential election, the media have overflowed with rather rancorous debates about the legitimacy of the Electoral College, in contrast to a simple count of the overall national votes for the two major candidates, Donald Trump (who, it seems, has won a majority of the Electoral College) and Hillary Clinton (who, it appears, has won a majority of the popular vote). These debates have usually assumed the simplistic form of one side's contending that, as a supposed "democracy", America should elect the President by majority vote; while the other side counters that the United States is a "republic" in which majoritarianism is not always desirable, let alone controlling. Both of these arguments miss a crucial point which derives from the federal system in general, and the duties of the States and the powers of the President within that system in particular.

In The Federalist No. 39, James Madison explained that

[t]he executive power will be derived from a very compound source. The immediate election of the President is to be made by the States in their political characters. The votes allotted to them are in a compound ratio, which considers them partly as distinct and coequal societies, partly as unequal members of the same society.

Here, Madison recognized the importance of the States' continuing positions as semi-sovereignties within the Constitution's federal system. As such, although they do not retain all of the rights, powers, privileges, and immunities of full and independent sovereignties, they continue to enjoy

many of those legal attributes as component parts of that system. See, e.g., U.S. Const. amend. X.

Arguably the most important of these rights, powers, privileges, and immunities—and under the Constitution a duty as well—is for each of the States to maintain an armed force suitable to the "Republican Form of Government" which the Constitution requires each of them to preserve, and all of them, acting in the capacity of the United States, to "guarantee" to one another. See U.S. Const. art. IV, § 4. For sovereignty is the quintessence of political power; and all "'[p]olitical power grows out of the barrel of a gun'". Quotations From Chairman Mao Tse-tung (Peking, China: Foreign Languages Press, 1966), at 61. This armed force is what the Second Amendment identifies as "[a] well regulated Militia", which it declares to be "necessary to the security of a free State". Each of the States must maintain "[a] well regulated Militia" in order to remain "a free State", and thus to preserve for herself (as well as for her sister States) "a Republican Form of Government". Moreover, each of the States must maintain "[a] well regulated Militia" in order to secure for Congress the forces the Constitution empowers it "[t]o provide for calling forth * * * to execute the Laws of the Union, suppress Insurrections and repel Invasions". U.S. Const. art. I, § 8, cl. 15.

Now, the Constitution invests the President with the status of "Commander in Chief * * * of the Militia of the several States, when called into the actual Service of the United States". U.S. Const. art. II, § 2, cl. 1. Furthermore, except to "engage in War" when "actually invaded, or in such imminent Danger as will not admit of delay", the States have at their own disposal no permanent armed forces other than their Militia; for they may not "keep Troops, or Ships of War in time of Peace" "without the Consent of Congress".
U.S. Const. art. I, § 10, cl. 3. And today, through the mutual "Consent of Congress" and the States, those "Troops, or Ships

of War” are organized in the National Guard and the so-called Naval Militia, which in certain circumstances can be brought under the President’s authority as “Commander in Chief of the Army and Navy of the United States”. Compare U.S. Const. art. II, § 2, cl. 1 with, e.g., 32 U.S.C. § 101(3) through (7). Thus it is entirely fitting—indeed, one would think compulsory—for the President to be elected by a process which to the greatest practical degree maximizes the influence of “the States in their political characters”, as opposed to a simple majority vote within the nation as a whole which more or less disregards or even negates that influence.

For the Constitution plainly contemplates situations in which the States’ “‘[p]olitical power [which] grows out of the barrel of a gun” will be exercised by the President directly. One may question whether the Electoral College is, in abstract theory, the very best means to this end imaginable; but, in practice, it is undoubtedly one efficacious means, and the means the Constitution specifies.

Thus, the arguments put forward by those in Mrs. Clinton’s camp against the political wisdom of the Electoral College and in favor of raw majoritarianism as the best way to select the President are basically at odds with federalism in theory and constitutionalism in practice—and should be rejected on that ground alone.

No sanctuaries in “sanctuary

cities”

In his recent NewsWithViews commentary, “Sanctuary Cities and the PATCO Strike Analogy” (21 November 2016), Jonathan Emord recommends that

[u]pon assuming office, President Trump should announce that Sanctuary Cities violate federal law and that any state official who impedes federal law enforcement officials endeavoring to enforce the nation’s immigration law will be arrested and prosecuted. * * * While it is beyond federal law to permit the arrest of state and local officials who enact sanctuary city laws and policies, it is not beyond federal law (indeed, it is entirely consistent with federal law and the Supremacy Clause of the Constitution) to arrest and prosecute any such official who actually physically obstructs ICE agents from investigating, arresting, and prosecuting illegal aliens.

One wonders, though, whether “actual[ ] physical[ ] obstruct[ion]” is the only basis on which rogue State and Local officials who devise and promote “sanctuary city laws and policies” can be prosecuted.

For example, Title 8, United States Code, Section 1324(a)(1) provides (in pertinent part) that

(A) Any person who—

* * * * *

(iii) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, such alien in any place, including any building or means of transportation;
(iv) encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or

will be in violation of law; or (v) (I) engages in any conspiracy to commit any of the preceding acts; or (II) aids or abets the commission of any of the preceding acts,
shall be punished as provided in subparagraph (B).

(B) A person who violates subparagraph (A) shall, for each alien in respect to whom such a violation occurs—

* * * * *

(ii) in the case of a violation of subparagraph * * * [(A)](iii), (iv), or (v)(II), be fined under title 18, imprisoned not more than 5 years, or both;
(iii) in the case of a violation of subparagraph * * * [(A)](iii), (iv), or (v) during and in relation to which the person causes serious bodily injury * * * to, or places in jeopardy the life of, any person, be fined under title 18, imprisoned not more than 20 years, or both; and
(iv) in the case of a violation of subparagraph * * * [(A)](iii), (iv), or (v) resulting in the death of any person, be punished by death or imprisoned for any term of years or for life, fined under title 18, or both.
Now, it seems beyond question that—

I. This statute applies to "[a]ny person", without exception, including State and Local public officials.

II. This statute applies even to a situation in which no more than a single illegal alien ("an alien" and "each alien") is involved.

III. By hypothesis, the purported State and Local laws, regulations, and policies under which "sanctuary cities" operate are designed and put into practice specifically to "conceal[ ], harbor[ ], or shield[ ] from detection" "alien[s who] ha[ve] come to, entered, or remain[ed] in the United States in violation of law".

IV. Self-evidently, the very existence of "sanctuary cities"

"encourages or induces * * * alien[s] to come to, enter, or reside in the United States * * * in violation of law". And therefore,

V. Those rogue public officials who set up and administer their jurisdictions as "sanctuary cities", along with everyone who aids and abets them in doing so, are in each instance "engage[d] in a[ ] conspiracy" to violate § 1324(a)(1)(A)—and "for each alien in respect to whom such a violation occurs" should suffer the punishments § 1324(a)(1)(B) prescribes.

Nothing in § 1324(a)(1)(A) requires, as a condition of a prosecution, that "[a]ny person" (in Mr. Emord's words) must "actually physically obstruct[ ] ICE agents from investigating, arresting, and prosecuting illegal aliens".

Rather, inasmuch as purported laws, regulations, and policies are the indispensable legalistic camouflage by means of which rogue State and Local officials create and administer "sanctuary cities" for the very purposes of "conceal[ing], harbor[ing], or shield[ing] from detection" "alien[s who] ha[ve] come to, entered, or remain[ed] in the United States in violation of law", those officials' creation and application of such laws, regulations, and policies for such purposes—coupled with the discovery in each jurisdiction of just a single illegal alien who has taken advantage of the "sanctuary" those provisions purport to provide—should constitute evidence sufficient for such officials' convictions. And nothing in the criminal laws of the United States provides a specific immunity from prosecution for rogue State and Local officials who violate statutes which on their faces apply to "[a]ny person" without exception.

If Mr. Trump is serious about enforcing the laws pertaining to illegal immigration against the worst (or at least the most notorious and insufferable) scoff laws of all, perhaps proving that there are no sanctuaries in "sanctuary cities" is the way to start.

Mr. Trump's second amendment

Notwithstanding the rioters in the streets of major American cities who are attempting to create the chaotic conditions for a neo-Bolshevik take-over of the United States through a "purple color revolution" of the George Soros/Gene Sharp pattern, tens of millions of Americans are provisionally pleased with the election of Donald Trump to the Presidency. Only "provisionally pleased", though, because even among his most ardent supporters no one can be certain of what he actually intends to do, or will in fact do, once he has been inaugurated.

The most important duty of any and every President is to fulfill the "Oath or Affirmation" that he "do[es] solemnly swear (or affirm) that [he] will faithfully execute the Office of President of the United States, and will to the best of [his] Ability, preserve, protect and defend the Constitution of the United States". U.S. Const. art. II, § 1, cl. 7. To this end, he must rigorously perform his constitutional duty to "take Care that the Laws be faithfully executed", the Constitution being first and foremost among those "Laws". U.S. Const. art. II, § 3. On his official website, Mr. Trump assures us that he will champion what he describes as "Second Amendment Rights". Unfortunately, a careful reading of this declaration demonstrates deficiencies in his understanding of those "Rights" and their proper applications.

At this early stage, Mr. Trump can be excused for his somewhat naïve views on the Second Amendment, which he has apparently drawn from simplistic talking-points put out by the National

Rifle Association. In the long run, though, he will need to develop a better comprehension of the Second Amendment (as well as other provisions of the Constitution related thereto) than he has exhibited to date, if he really intends as to fulfill his Presidential duty to "take Care that [the Second Amendment] be faithfully executed".

1. Mr. Trump states that "[t]he Second Amendment is clear. The right of the people to keep and bear Arms shall not be infringed upon. Period." It would have been preferable for him, in invoking the clarity of the Second Amendment, not to have added a word which does not appear there ("upon"). It would have been even more preferable for him to have quoted, not just the Amendment's last fourteen words, but also the thirteen words which precede them: namely, "[a] well regulated Militia, being necessary to the security of a free State". For those words encapsulate the true purpose of the Amendment, enabling anyone who cares to study American pre-constitutional law and history to comprehend the full meaning of the Amendment's last fourteen words.

As I have written a little book on that subject—appropriately entitled Thirteen Words—I shall not burden the readers of this commentary with a repetition of what appears there. Neither shall I inundate my readers here with the huge amount of relevant pre-constitutional law and history which appears in my much more extensive work, The Sword and Sovereignty. At this juncture it is enough to point out that, although Mr. Trump is quite correct in asserting that "[t]he Second Amendment guarantees a fundamental right that belongs to all law-abiding Americans" and that "[t]he Constitution doesn't create that right—it ensures that the government can't take it away", he slips into dangerous error when he posits that "the Second Amendment's purpose is to guarantee our right to defend ourselves and our families. This is about self-defense, plain and simple." The defense of individuals and their families—solely as individuals and families—is but a very

small part of the constitutional picture. The Second Amendment's true purpose is to guarantee Americans the right—and to insure for them the ability to perform the duty—to defend their communities, to the end of securing "a free State" at every level of the federal system throughout this country. Ultimately, the Second Amendment provides for the perpetuation of those "well regulated Militia" which it declares to be "necessary to the security of a free State". Mere individuals and families—as isolated individuals and families—cannot possibly succeed through individual self-defense in thwarting the kinds of threats most likely to endanger "the security of a free State".

Mr. Trump reminds his supporters that "[i]t's been said that the Second Amendment is America's first freedom". (Actually, this is a slogan of the NRA, which even publishes a magazine under the title "The First Freedom".) "That's because", Mr. Trump explains, "the Right to Keep and Bear Arms protects all our other rights." Now, if Mr. Trump means that the Second Amendment "protects all our other rights"—from the Declaration of Independence through the Constitution and laws of the United States and the several States—because it secures "well regulated Militia" as integral and permanent parts of the federal system, with governmental authority in the hands of We the People themselves, he stands on solid constitutional ground.

I have written another little book on that very subject, entitled Three Rights, which those who are interested in the matter can consult at their leisure. But if Mr. Trump means that individual self-defense, exercised by isolated individuals, can "protect[ ] all our other rights", he totters on quicksand. Exactly how can mere individuals and their families, armed for the sole purpose of self-defense as individuals and families—but without the necessary organization, training, discipline, and specifically governmental authority—possibly "protect[ ] all our other

rights” (or any of them, for that matter) against usurpers and aspiring tyrants who can deploy well organized and highly armed bands of myrmidons to suppress those rights under the deceptive color of law? To be sure, usurpers and aspiring tyrants would much rather work their evil wills against unarmed Americans; but in the long run the suppression of recalcitrant but isolated individuals here and there would amount to a mere inconvenience, compared to what would be necessary, were it possible at all, to suppress “well regulated Militia” throughout the length and breadth of this country.

2. Mr. Trump correctly emphasizes that “[w]e need to get serious about prosecuting violent criminals”, particularly because “law-abiding gun owners” are “the ones who anti-gun politicians and the media blame when criminals misuse guns”. This, of course, is self-evident. If there were very few “criminals [who] misuse[d] guns”, because the certainty of harsh punishments deterred them from doing so, there would be little grist for the mills of “gun controllers” on that score.

Of more concern is Mr. Trump’s suggestion of

another important way to fight crime—empower law-abiding gun owners to defend themselves. Law enforcement is great, they do a tremendous job, but they can’t be everywhere all of the time. Our personal protection is ultimately up to us. That’s why I am a gun owner, that’s why I have a concealed carry permit, and that’s why tens of millions of Americans have concealed carry permits as well. It’s just common sense.

Unfortunately, Mr. Trump fails to employ some basic constitutional sense in his analysis of this situation.

Pace Mr. Trump, present-day “law enforcement” suffers from many serious deficiencies which demand correction. Even were that less of a problem than it is, unless Americans desired to live in a veritable police state they should not want

professional police forces—composed as they generally are of individuals who envision themselves as separate and distinct from, and even superior to, the mere "civilians" whom they are supposed, but often neglect or fail, to "protect and serve"—to be "everywhere all of the time". This country already suffers from too much of a burgeoning police state, since the 9-11 Event rationalized seemingly endless inroads on the Bill of Rights.

Yet Mr. Trump is correct to observe that, because the inadequate "law enforcement" from which America suffers today cannot "be everywhere at once", "[o]ur personal protection is ultimately up to us", particularly (I should add) if Americans really want to maintain "the security of a free State" rather than groan under the oppression of a police state. The Founding Fathers knew this perfectly well. They were also aware that "personal protection", let alone protection of the community, could not be achieved by individuals acting alone, without the benefit of specific governmental authority beyond the natural law of self-defense (and various old common-law doctrines of citizens' arrest which expose to all sorts of nasty legal tangles modern-day individuals who attempt to act in reliance upon them). That is why the Founders explicitly enumerated, as the very first constitutional authority and responsibility of the Militia, the power "to execute the Laws of the Union" (and of their own States as well, the Militia being "the Militia of the several States"). U.S. Const. art. I, § 8, cl. 15 and art. II, § 2, cl. 1.

Revitalization of the Militia would make tens (and even hundreds) of thousands of additional personnel available to perform various law-enforcement functions—personnel drawn directly from the body of the people themselves in their own Local communities, whose sympathies were fully aligned with those communities' best interests, rather than the contrary interests of aloof politicians and bureaucrats in distant State capitals or (worse yet) the District of Columbia. Even

in such hothouses of violent street crime as America's major cities—all too many of which impose strict "gun controls" on ordinary Americans while proving thoroughly incapable of cracking down on lawbreakers even with professional police forces at their disposal—the very presence of the Militia on the streets would impose a wide-ranging deterrent effect on criminal elements. (I cannot expand here upon how service in the Militia would also re-educate and discipline youth now entangled in street gangs and other anti-social activities because the present-day system of faux "public education" has utterly failed to civilize and socialize them. But that beneficial effect should be obvious to anyone who considered the matter.)

Even more important, revitalization of the Militia would enable a truly patriotic and constitutionalist President to fulfill his duty to "take Care that the Laws be faithfully executed" against political criminals throughout the federal system, especially in the District of Columbia. As an example, I commend to my readers' close attention my commentary "The 9-11 Event, the President, and the Militia", to be found at www.edwinvieira.com.

3. Mr. Trump correctly points out that many of "the tragic mass murders that occurred in the past several years" can be traced to the fact that "[o]ur mental health system is broken", and that "this matter[s] to law-abiding gun owners * * * because they get blamed by anti-gun politicians, gun control groups and the media for the acts of deranged madmen". Although this is true as a generality, it misses two specific points:

First, the genesis of many of these "tragic mass murders" can be traced to mind-altering drugs produced by the pharmaceutical industry and prescribed by mental-health professionals which and who are seemingly oblivious to the dangers involved in pushing these substances as panaceas for patients with real mental-health problems, when all too often

these drugs may exacerbate those problems by rendering many of those people (as Mr. Trump rightly worries) "violent, a danger to themselves or others". Much needs to be done to investigate the effects of these drugs and to control their use (if such use is allowed at all)—work that the FDA has refused to undertake in anything like a satisfactory manner.

Second, in the wrong hands the mantra of "mental health" can provide fertile rationalizations for the kinds of "gun control" which Mr. Trump doubtlessly opposes. If the present-day clique of "mental-health professionals" who support "gun control" were allowed to define "mental illness" for the purpose of disarming Americans who supposedly suffered from what these practitioners might claim were forms of "mental illness", few (if any) common Americans would be allowed to remain armed. Americans cannot afford to relinquish "the security of a free State" to those "mental-health professionals" who are intent on camouflaging their "politically correct" ideologies in the garb and jargon of medical science.

4. Mr. Trump also correctly points out that "[g]un and magazine bans are a total failure. * * * Law-abiding people should be allowed to own the firearms of their choice. The government has no business dictating what types of firearms good, honest people are allowed to own." Actually, to ensure "the security of a free State" governments should require "good, honest people [other than conscientious objectors] * * * to own" at least the types of firearms—including, in particular, what Mr. Trump describes as "'assault weapons', 'military-style weapons', and 'high capacity magazines'"—which are peculiarly suited for service in the Militia. Indeed, this is within both the explicit power of Congress "to provide for * * * arming * * * the Militia" when they are "employed in the Service of the United States", and the reserved power of the States when the Militia are employed in specifically State service. See U.S. Const. art. I, § 8, cls. 15 and 16; and

amends. II and X. Obviously, if Congress and the States provided for arming the Militia in the manner in which the Militia should be armed, every law-abiding and able-bodied American from sixteen years of age upwards who was not a conscientious objector would be armed and properly trained with the very firearms that "gun controllers" were most intent on outlawing, as well as many of those Americans potentially being in possession of every other type of firearm which could possibly be useful for the performance of any conceivable type of Militia duty.

5. Mr. Trump correctly observes that "we don't need to * * * expand a broken system [of background checks]"—particularly, I presume, in the manner in which rogue public officials in States such as Washington are now employing wildly excessive "background checks" as a means of harassing law-abiding American gun owners. What he apparently does not understand is that, were the Militia revitalized, this country would benefit from a far more comprehensive and rigorous arrangement of "background checks" than could possibly be obtained through the present-day system derived from the flawed "Brady Bill" or anything akin to it. Inasmuch as every able-bodied adult living in each Locality would be required to serve in some capacity in the Militia, the Militia would be able to identify everyone who should be disallowed from possessing firearms—including criminals, illegal aliens, those with real mental-health problems, and so on. We the People themselves would conduct essentially permanent, on-going "background checks" on themselves in order to ensure "the security of a free State" for themselves, in aid of the Constitution's purpose to "secure the Blessings of Liberty to ourselves and our Posterity". U.S. Const. preamble. If We the People cannot be entrusted with this responsibility, no one can.

6. Mr. Trump supports a "national right to carry" law, because (as he quite correctly states) "[t]he right of self-defense doesn't stop at the end of your driveway". One may doubt that

such a law could be enacted pursuant to Congress's power "[t]o regulate Commerce * * * among the several States" in Article I, Section 8, Clause 3; or under Article IV, Section 1 or 2 of the Constitution. But it surely could be enacted under Congress's power "to provide for * * * arming * * * the Militia" in Article I, Section 8, Clause 15 and the Supremacy Clause in Article VI, Clause 2. And as this right (and duty) would be a matter of internal discipline within the Militia, "gun controllers" within the Judiciary would be powerless to interfere with its enforcement. See Gilligan v. Morgan, 413 U.S. 1, 5-12 (1973).

7. Finally, Mr. Trump rightly excoriates as "ridiculous" the present regulations "[b]anning our military from carrying firearms on bases and at recruiting stations". As the "Commander in Chief of the Army and Navy of the United States", he could put paid to such regulations immediately upon his inauguration. See U.S. Const. art. II, § 2, cl. 1. In addition, he would do well to discipline those misguided officers of the Armed Forces responsible for this utterly absurd state of affairs.

In sum, it seems that with respect to the Second Amendment Mr. Trump's heart is in the right place, and his intuition is basically sound. Now he simply needs to think through these matters in a more rigorously constitutional fashion, and then to act upon the insights that such a study will surely impart to him.

“Gender” rules and despotic power

An outcry has arisen from numbers of Americans in opposition to the recent spate of “guidelines” emanating from the District of Columbia to the effect that it has now become impermissible to discriminate against men who believe (or at least profess) that they are women, or women who believe (or at least profess) that they are men, in the use of various facilities heretofore segregated according to individuals’ biologically determined sexes. Some Americans denounce these “guidelines” as serious affronts to basic rights of personal privacy, while others hoot them down as mere bureaucratic pandering to the LGBT lobby. Unfortunately, none of these criticisms, valid as they may be, come to grips with the fundamental problem. Bad enough is that the actual enforcement of these “guidelines” will turn society upside-down simply to advance trendy notions about the supposed plasticity of “gender” which bureaucrats deem to be “politically correct” (that is, “correct” in the sense of advancing the corrosive agenda of cultural Marxism). Beyond that particular perverse end, though, these “guidelines” embody a generality far worse in its capability to inflict harm upon society: namely, a claim to omnipotent governmental power which transcends anything ever before witnessed throughout American history. To see why this is so, some of that history must be consulted.

In July of 1775, the Continental Congress issued “[a] declaration by the Representatives of the United Colonies of North America, * * * setting forth the causes and necessity of their taking up arms.” Therein, Congress observed that

government was instituted to promote the welfare of mankind, and ought to be administered for the attainment of that end. The legislature of Great Britain, however, stimulated by an inordinate passion for a power, not only unjustifiable, but

which they know to be peculiarly reprobated by the very constitution of that kingdom, and desperate of success in any mode of contest, where regard should be had to truth, law, or right, have at length, deserting these, attempted to effect their cruel and impolitic purpose of enslaving these Colonies by violence, and have thereby rendered it necessary for us to close with their last appeal from Reason to Arms.—Yet, however blinded that assembly may be, by their intemperate rage for unlimited domination, so to slight justice and the opinion of mankind, we esteem ourselves bound, by obligations of respect to the rest of the world, to make known the justice of our cause. * * * * *

But why should we enumerate our injuries in detail? By one statute it is declared, that parliament can "of right make laws to bind us IN ALL CASES WHATSOEVER." What is to defend us against so enormous, so unlimited a power? [Journals of the Continental Congress, Volume 2, at 140-141, 146.]

Taken literally, this was something of an exaggeration. For Parliament had never claimed a "right [to] make laws to bind [Americans] IN ALL CASES WHATSOEVER"—with emphasis on the word "all". To be sure, assertions by Parliament to almost limitless power were really nothing new at that time. As Sir William Blackstone explained,

[T]HE power and jurisdiction of parliament * * * is so transcendent and absolute, that it cannot be confined, either for causes or persons, within any bounds. * * * It hath sovereign and uncontrollable authority in making, confirming, enlarging, restraining, abrogating, repealing, revising, and expounding of laws, concerning matters of all possible denominations, ecclesiastical, or temporal, civil, military, maritime, or criminal: this being the place where that absolute despotic power, which must in all governments reside somewhere, is entrusted by the constitution of these kingdoms . All mischiefs and grievances, operations and remedies, that transcend the ordinary course of the laws, are within the

reach of this extraordinary tribunal. It can regulate or new model the succession to the crown * * * . It can alter the established religion of the land * * * . It can change and create afresh even the constitution of the kingdom and of parliaments themselves * * * . It can, in short, do every thing that is not naturally impossible; and therefore some have not scrupled to call it's power, by a figure rather too bold, the omnipotence of parliament. True it is, that what the parliament doth, no authority upon earth can undo. [Commentaries on the Laws of England (Philadelphia, Pennsylvania: Robert Bell, American Edition, 1771), Volume 1,at 160-161.]

Yet even in this panegyric passage, Blackstone recognized that Parliament could not do everything without exception, but only "every thing that is not naturally impossible". So it was that the Swiss political theorist of that era, Jean-Louis de Lolme, could write in his analysis of England's government (perhaps somewhat tongue in cheek, but to the point nonetheless) that "parliament can do everything but make a woman a man and a man a woman". "Everything but …". That is to say, even the vaunted "omnipotence" of Parliament was constrained absolutely by the natural order of things.

The Declaration of Independence enumerated an host of grievances against King George III and his Ministers in Parliament. But amongst these were not to be found the charges that those villains had attempted to "make a woman a man and a man a woman", or to impose upon Americans some other equally "naturally impossible" decree.

But how times change! Today, bureaucrats in the District of Columbia assert an "absolute despotic power" far beyond even what the King and his Parliament claimed in the Founding Era—namely, a power to do precisely what is "naturally impossible", by purporting in effect to "make a woman a man and a man a woman" simply by saying that a woman must sometimes be treated as a man and a man sometimes treated as a

woman. Now Americans are told that they must behave as if they lived, not even in a parallel universe, in which the natural, scientifically irrefutable, reality of the two biologically determined sexes were faithfully reflected in its equivalent reality, but instead in an orthogonal universe, the utter unreality of which is displaced a full ninety degrees from the natural reality in which Americans (and everyone else on planet Earth) have lived heretofore. Worse yet, these aberrant directives have been promulgated, not by a legislature with some law-making authority in principle, but instead by bureaucrats possessed of no claim to law-making power whatsoever.

If the political class in contemporary America is capable of this, of what is it incapable, now and in the future? Apparently nothing. For reality resides within definite boundaries; but unreality knows no limits, extending as far as imagination or insanity will carry it. And that, of course, is the point of the exercise of purporting to "make a woman a man and a man a woman" by bureaucratic dictate, is it not? To impress upon Americans that, if the political class gets away with this enormity—if WE THE PEOPLE swallow this idiocy, and roll over and play dead for this outrage—then literally anything in the realm even of "naturally impossible" usurpation and tyranny is not only possible, but even probable, if not certain. As the old expression has it, "If they do this in the green wood, what will they do in the dry?"

A cynic might find it comforting to disparage this development simply as a relatively minor, albeit exasperating, example of the proverbial lunatics' gaining temporary control over their asylum. And perhaps one should not be overly concerned if a few lunatics do run amok from time to time, provided that they remain confined within their own asylum's walls. Until help from the outside arrives, the asylum's staff may be at some risk, but not the rest of society.

In stark contrast, though, the threat which confronts America

today is that veritable mobs of certifiable lunatics have seized control over the most important economic, social, and especially governmental institutions outside of the asylums to which they should be committed—and plainly intend to exercise that control to the detriment, degradation, and even destruction of the rest of society.

So what is to be done? The first step in the right direction is to recognize what is at stake. Political lunacy does not wax and wain with the cycle of the moon. Once entrenched in governmental institutions, it tends to expand and intensify its influence at every opportunity—unless and until it is finally confronted and rooted out by political sanity. Whether political sanity sufficient to perform that task still exists in this country, though, remains the question.

No second American revolution is necessary

Only in rare instances have I prepared a commentary for NewsWithViews in response to something which someone else has been published elsewhere. But a recent column by John W. Whitehead, entitled “There Will Be No Second American Revolution: The Futility of an Armed Revolt” (18 July 2016), has received such generally favorable attention on the Internet that it seemed meet for me to fashion a few dissenting remarks for the record. As Mr. Whitehead’s article is fairly long, I cannot address all of the points he makes. Therefore I encourage my readers to review his article for themselves. After they do so, they can judge whether the

following critique is just.

Mr. Whitehead's article begins by rehashing in great detail (for he is a keen student of these matters) the rapid development and deployment of a national para-militarized police-state apparatus in this country during the recent past. His description of events contains little that most perceptive observers have not already noticed. But Mr. Whitehead draws from these dismal facts the distressing conclusion that "[t]he powers-that-be want us to feel vulnerable. * * * Most of all, the powers-that-be want us to feel powerless to protect ourselves and reliant on and grateful for the dubious protection provided by the American police state. Their strategy is working."

Of course, I cannot say whom Mr. Whitehead includes among "us". But I do know that countless Americans do not believe that any "protection [can or will be] provided by the American police state". So, with respect to those Americans, the "strategy [of the powers-that-be] is [not] working", and will never work. Ironically, though, Mr. Whitehead's article itself provides rather striking evidence that the "strategy [of the powers-that-be] is working" at least as to him and those whom he influences. For no perceptive analyst can plod through that piece without concluding that Mr. Whitehead believes—and wants to convince his readers—that Americans not only are "vulnerable" but even are utterly defenseless against the overwhelming power of "the American police state".

On that point, Mr. Whitehead waxes emphatic: "There will be no second American Revolution. There is no place in our nation for the kind of armed revolution our forefathers mounted against a tyrannical Great Britain." Of course, that is precisely what many people at the time said about the first "American Revolution", only to be proven wrong by its outcome. So, as a lawyer by trade, Mr. Whitehead should not feel too secure in the face of the adverse precedent which he himself cites. In any event, Mr. Whitehead presents a rather

disquieting argument:

The message being sent to the citizenry [by the powers-that-be] is clear: there will be no revolution, armed or otherwise.

Anyone who believes that they can wage—and win—an armed revolt against the American police state has not been paying attention. Those who wage violence against the government and their fellow citizens are playing right into the government's hands. Violence cannot and will not be the answer to what ails America.

Whether instigated by the government or the citizenry, violence will only lead to more violence. It does not matter how much firepower you have. The government has more firepower.
* * * * *
* * * [B]y generally making peaceful revolution all but impossible, the government has engineered an environment in which domestic violence has become inevitable.
What we are now experiencing is a civil war, devised and instigated in part by the U.S. government.
The outcome for this particular conflict is already foregone: the police state wins.
The objective: compliance and control.
The strategy: * * * when all hell breaks loose, clamp down on the nation for the good of the people and the security of the nation.

An underlying difficulty with these pronouncements is that "the government" to which Mr. Whitehead loosely refers is not, in fact and law, "the government" at all. (As a lawyer, he should know as much, and try to craft his language accordingly.) From the constitutional perspective, "the government" is that set of actions by individuals in public office which is consistent with their lawful powers and disabilities. No "government" in this country is empowered to set up a police state, to "devise[ ] and instigate[ ]" a

“civil war” amongst its own people, to enforce “compliance and control”, or to “clamp down on the nation” for any reason. To be sure, rogue public officials may attempt to engage in such usurpation and tyranny—but in the perpetration of such misbehavior they are acting not in the capacity of “the government”, but in the capacity of lawbreakers.

Even leaving aside Mr. Whitehead’s imprecision as to what constitutes “the government” in this country, what must one conclude is “the bottom line” of his argument? That the powers-that-be intend to foment widespread violence as their excuse for the “final solution” of thoroughly subjugating the American people, and then oppressing them without limit! So, according to Mr. Whitehead himself, there will be a “second American Revolution” after all—instigated, interestingly enough, by the police state’s provocations, just as the first “American Revolution” was to a great degree instigated by provocations emanating from “a tyrannical Great Britain”. Indeed, America is already in the midst of this “civil war”. But, this time, the patriots are fated to lose the “American Revolution”, no matter what. All of us have already been defeated before the battle has even been joined, and therefore should sheepishly accept our fate, no matter how dire it may be.

Rather than acquiesce in Mr. Whitehead’s unpleasant fantasy, I must point out that “no matter what” is the critical factor in any analysis of this kind. And I suspect that he (in his own words) “has not been paying attention” to recent developments. As a lawyer, he should consider the evidence for the defense, as well as for the prosecution, before he makes his plea to the jury.

The fact is that Americans—indeed, people throughout the civilized world—are waking up to what the powers-that-be are planning for and doing to them. Here at home, what I might label “the Trump Phenomenon”, even with all of its obvious faults, demonstrates a widespread, profound, and intransigeant

disgust among ordinary Americans with careerist politicians, bureaucrats, police-state operatives, propagandists in “the mainstream media”, and the shadowy “powers-that-be”(especially in the big banks and Wall Street’s financial casinos) who pull the strings from behind the screen. So if the powers-that-be imagine that they can easily impose a full-blown police state on a population of millions of people increasingly aware of and fed up with their corruption and criminality, they are playing with fire.

Once the powers-that-be have lifted the lid of Pandora’s Box through what Mr. Whitehead describes as “a civil war, devised and instigated in part by the U.S. government”, how could they know, let alone how could they be sure of their ability to control, what might leap out? For example, can anyone unerringly predict how individual Americans, in thousands of different situations across this country, will react when agents of the police state start seizing firearms, persecuting dissenters for “sedition” and “anti-government hate speech”, and rounding up leaders of opposition movements for incarceration in secret prisons and camps? Easily foreseeable, though, is that many of these and other targets of police-state repression will know perfectly well that they have nothing to lose by resisting, and will act on that understanding of their plight. So, even were Mr. Whitehead correct in his assertion that “[v]iolence cannot and will not be the answer to what ails America” in general, the victims of police-state oppression will doubtlessly believe that violence is their only recourse in particular. After all, would not armed resistance, no matter how desperate, be preferable to consignment to slow death in a forced-labor camp, let alone to simply being murdered out of hand by the police state’s psychopathic storm troopers? Can the powers-that-be really expect to prevail against millions of people, spread across an entire continent, who not only despise them but also have nothing to lose by resisting their aggression? Would even Mr. Whitehead himself simply “go along quietly” when they came for

him?

Mr. Whitehead is, of course, correct to observe that the burgeoning “American police state” disposes of many “boots on the ground”, possessed of a great deal of raw “firepower”. Nonetheless, in a nationwide crisis in which (as he predicts) widespread “domestic violence has become inevitable”, could the powers-that-be depend upon these forces? Might not a significant part of them change sides and support the people, or set itself up as some sort of third force looking out solely for its own interests? Moreover, even in the absence of defections, could the powers-that-be really expect that their armed forces could subjugate the entirety of the United States, when the parts of those forces wielding the most “firepower” have been unable to defeat gaggles of rag-tag troglodytes in Afghanistan, or pick-up teams of hired terrorists such as “Al-Qaeda” or “ISIS” running loose in the sand boxes of the Middle East?

To be fair to Mr. Whitehead, he does not recommend that we all should simply start unreservedly to “love Big Brother”. Rather, he proposes a kind of subterranean revolution:

If there is any hope of reclaiming our government and restoring our freedoms, it will require a different kind of coup: nonviolent, strategic and grassroots, starting locally and trickling upwards. Such revolutions are slow and painstaking. They are political, in part, but not through any established parties or politicians.
Most of all, * * * for any chance of success, such a revolution will require more than a change of politics: it will require a change of heart among the American people, a reawakening of the American spirit, and a citizenry that cares about their freedoms more than their fantasy games.
To this, a skeptic might object that such a program would likely entail efforts spread out over ten, twenty, or fifty years at least—when the real issue is what Americans should do right now that might pay dividends right now, or at least in

the reasonably foreseeable future.

Furthermore, to be effective for "reclaiming our government and restoring our freedoms", such "change" and "reawakening" will presumably need to manifest themselves at some definite point in time in some sort of open collective action with manifest political goals. And just what will the supremely powerful, irresistible "American police state" be doing while the denizens of this country are changing their hearts and reawakening their spirit for the very purpose of overthrowing the powers-that-be? Well, Mr. Whitehead himself informs his readers that "[t]he message being sent to the citizenry [by the powers-that-be] is clear: there will be no revolution, armed or otherwise." So, according to his very own analysis, his own proposal of "a different kind of coup"—the course of action which he describes as the only one with "any chance of success"—is a hopeless pipedream. Nothing can be done—not now, not ever.

Well, not really. The fundamental fault in Mr. Whitehead's proposal is not just that it is utterly unrealistic in terms of the time necessary to put it into practice, or that it offers no strategy for dealing with the predictable reactions of the powers-that-be. In addition to those demerits, it contains no suggestion as to what institutions Americans should employ for "reclaiming our government and restoring our freedoms" once the requisite "change of heart" and "reawakening of the American spirit" have occurred. Had Mr. Whitehead given thought to those institutions, he might have realized that the most important steps for "reclaiming our government and restoring our freedoms" need not be put off until the distant future, but might be taken in the present.

Now, I do not predict, let alone advocate, and for various prudential reasons would not welcome a "second American Revolution". I believe—and, as my readers are well aware, have consistently emphasized over the years (and shall point out once again here)—that America's present malaise can be cured

without recourse to “revolution” or any sort of widespread violence or other political or social upheaval. The Constitution already provides the necessary and sufficient means for dealing peacefully yet decisively and permanently with the problem which so discomforts Mr. Whitehead.

The critical danger confronting America is a burgeoning domestic police state. No one doubts that. One may debate how close to complete domination of the populace this apparatus has come to date. I submit that it is still far from achieving such control—or commentaries such as this would already be prohibited from publication, on the Internet or anywhere else. The opposite—indeed, the antagonist—of “a police state” is “a free State”. Therefore, if “a police state” is to be suppressed while there is still time, “a free State” must be supported immediately if not sooner. What institution does the Constitution declare to be “necessary to the security of a free State”? Do I really need to recite all of the first thirteen words of the Second Amendment?

The question to which I should appreciate a straight answer from someone is: “Why do people such as Mr. Whitehead persist in disregarding the Constitution on this point, when it is as vital as it is obvious?” Why, through their studied silence, do the members of what Joseph Schumpeter aptly described as “the chattering class” deny or cast doubt upon the truth and the urgency of those thirteen words when “a free State” in America is under open, incessant attack from the architects and practitioners of “a police state”? What betokens such silence from people whose inclination (if not actual business) it is to talk, and that volubly, about every other issue? Is their implicit message that Americans are to disbelieve whatever the Constitution says? Or that the first thirteen words of the Second Amendment were wrong in 1791? Or that they are wrong now? Or that they are simply out of date, and needful of being reinterpreted into irrelevance or oblivion according to the perverse precepts of “the living

Constitution”?

Most perplexing to me is why “the chattering class” seems incapable of comprehending that under the Declaration of Independence and the Constitution no dichotomy can possibly exist between the American people, on the one side, and “the government”, on the other. WE THE PEOPLE are not outside of “the government” and subject to its unfettered control. Rather, WE THE PEOPLE are the very source of “the government”, and are (or should be) direct participants in “the government”, day in and day out, through the most puissant force of “government” imaginable: the entire community exercising the Power of the Sword through the Militia. So, were the Militia functioning as they should, no one would be worried about “the government’s” setting up a national para-militarized police state, because—pursuant to the constitutional authority and responsibility of the Militia “to execute the Laws of the Union” (and of their own States as well)—the Militia would perform or supervise all “police” functions at every level of the federal system. WE THE PEOPLE would no longer distrust, let alone fear, the police, because WE THE PEOPLE would be the police.

If revitalization of the Militia might figuratively be characterized as a “second American Revolution”, it would be a “revolution” without any necessity for what Mr. Whitehead decries as “an armed revolt”. For it would hardly amount to any sort of “revolt” for Americans to revitalize the very institutions of government which, from the foundation of this country, the Constitution has declared to be “necessary to the security of a free State”. The “revolt”, if any there were, would be on the part of rogue public officials who attempted to prevent WE THE PEOPLE from asserting their supreme governmental authority through the Militia.

In the title of his article, Mr. Whitehead applies the word “futility” to “an armed revolt”. He would have done better to recognize the “futility” of disregarding how the first

thirteen words of the Second Amendment unerringly point the way towards dealing once and for all with “the American police state”. For if by definition “a police state” cannot exist within “a free State”; and if “[a] well regulated Militia” is “necessary to the security of a free State”; then “a police state” cannot exist in the presence of “[a] well regulated Militia”. Where “[a] well regulated Militia” exists, the only individuals confronted with “futility” are those who attempt to set up “a police state”.

All that remains to be considered, then, is the practical question of whether an attempt to revitalize the Militia would inevitably prove futile under present political, social, and cultural conditions. Nay-sayers will assert that it would be difficult, probably impossible, to revitalize the Militia today. But I suspect that, to perform this task, there are enough Americans left who still subscribe to the old saying: “The difficult we do immediately; the impossible takes a little longer.” In any event, why not try? Is the alternative acceptable? In fact, there are many ways to go about revitalizing the Militia, step by step from the bottom up in one State after another—as well as from the top down, if the right individual were the President of the United States.

On the other hand, is the program Mr. Whitehead proposes devoid of difficulty? And even if, after who knows how long, his program were to succeed in bringing about “a change of heart among the American people, a reawakening of the American spirit, and a citizenry that cares more about their freedoms than their fantasy games”, the Militia would still have to be revitalized if “the security of a free State” were to be guaranteed from that point on.

Finally, Mr. Whitehead and those who follow his lead should ponder whether the process of promoting, and then implementing, revitalization of the Militia could itself be the catalyst for “a change of heart among the American people, a reawakening of the American spirit, and a citizenry that

cares more about their freedoms than their fantasy games". For it would be impossible for anyone who participated in revitalization of the Militia not to realize that the Militia embody the original "American spirit" of "a citizenry that cares more about their freedoms than [anything else]"—and not to absorb that spirit in its full strength through that participation. So, if Mr. Whitehead desires to "reclaim[ ] our government and restor[e] our freedoms" through "a different kind of coup: nonviolent, strategic and grassroots, starting locally and trickling upwards"—then he needs to begin thinking seriously about revitalization of the Militia.

Which "gun culture" should Americans defend?

As a long-time member of the National Rifle Association who tries to take the organization seriously, I find myself increasingly nonplussed by its naïveté. The source of my most recent encounter with this defect is the "President's Column" by Allan D. Cors, in the July 2016 edition of the NRA's American Rifleman magazine. The column is entitled, accurately enough, "Clinton, Pelosi and Schumer Form a Triumvirate Against Liberty". The basic flaw appears in the body of the piece, wherein the NRA, in the person of Mr. Cors, once again makes the elementary blunder of electing to fight, on its enemies' own chosen ground, what seems to be shaping up as a (if not the) decisive battle against "gun control".

1. Mr. Cors first predicts that, once elected President, Mrs. Clinton will "drastically alter the makeup of the Supreme

Court to render meaningless the right to keep and bear arms", presumably by reversals of the Court's decisions in the recent Heller and McDonald cases. His foresight is doubtlessly accurate. His hindsight, however, lacks insight. For he fails to recognize that the majority opinions in Heller and McDonald, if not entirely "meaningless" with respect to "the right of the people to keep and bear Arms", surely confused the matter in a very significant manner, by vivisecting the Second Amendment—amputating its last fourteen words from the first thirteen. Indeed, the only Justice who participated in those cases and exhibited even a tenuous grasp of the constitutional principle that the Second Amendment, just as any other coherent sentence in the English language, must be read and understood in its entirety, not verbally sliced into mutually independent parts, was Justice Stevens, who dissented in both cases. To be sure, Justice Stevens proved that he had no idea what the Second Amendment, taken as a whole, actually means. But at least he had a better initial chance of figuring out that meaning than did the Justices who predicated their opinions on the self-evident fallacy that the last fourteen words of the Amendment could be construed and applied, not only in disregard of, but even in opposition to, its first thirteen words.

Mr. Cors' more dangerous nearsightedness is his failure to see that, whoever the President may be, the composition of the Supreme Court inevitably changes from time to time; and with those changes are likely to come unanticipated revisions of its opinions on various subjects. (One has only to recall how President Reagan's appointee, Justice Souter, proved to be anything but a true "Reaganite" after his confirmation; or how President Bush's appointee, Chief Justice Roberts, has turned out to be something of a weak reed, too.) If the history of the Judiciary teaches Americans anything, it is that the edifice of the Court's "precedents" (what the Justices call "our cases") stands upon the unpredictable, ever-shifting, and therefore unstable sand of the then-sitting Justices'

personalities, ideologies, and recondite agenda. And when a little cabal of men and women can claim, without refutation and rebuke, that their mere opinions about the laws—especially "the supreme Law of the Land", the Constitution itself—are the laws, the meanings of which no one other than they themselves can declare, and everyone else is bound to accept as constitutional gospel of near-Papal infallibility, Americans live under a veritable "government of men (and women)", not a "government of laws" which stand above the mere opinions of a handful of individuals who have managed through the wiles of political favoritism and intrigue to be appointed to the Bench.

Of course, if the NRA (or anyone else) acquiesces in the crackpot theory of "judicial supremacy", then "the right of the people to keep and bear Arms" is "meaningless" in an objective sense, because that "meaning" can and will fluctuate from one of "our cases" to another, as ever-changing majorities of the Justices impose their subjective notions on the Constitution. Heller and McDonald being considered good "case law" today, the opposite tomorrow. If, however, the NRA (and everyone else committed to the true purpose of the Second Amendment) paid due attention to the Amendment's first thirteen words, no one would ever have to worry about the composition of the Supreme Court (or of any other court, for that matter), because no decision of any court could change the relation of "the Militia of the several States" to "the people", and therefore could deny the absolute right and constitutional duty of "the people to keep and bear Arms" in "well regulated Militia"—including especially the particular "Arms" against which the Clintons, Pelosis, and Schumers of this world incessantly rail. In "well regulated Militia", "the people" would have untrammeled access to every conceivable "Arm[ ]" which could serve any purpose in the Militia. And if any court attempted to interfere with that access, the Militia, in the defense and exercise of their own constitutional authority in both the original Constitution and

the Second Amendment, could say (in Andrew Jackson's words), "Justice So-and-so has rendered his opinion; now let him enforce it."

2. Mr. Cors then expresses his quite justifiable concern that Mrs. Clinton considers the NRA as "the enemy" which she intends to "dismantl[e]" as soon as she moves into the White House. In light of his position in the NRA, Mr. Cors may be excused for perhaps hyperbolically praising the organization as being "one force in our still-free nation that stands in her way"—although the NRA (as I have pointed out in other of my NewsWithViews commentaries) could be such a decisive force, if it were to champion the Second Amendment as a whole. But he certainly stands on solid ground when he observes that he (and the rest of us as well) "have never seen such a measure of hatred for the freedom of individual Americans" as from the likes of Mrs. Clinton, Representative Pelosi, Senator Schumer, and "a large segment of [the Democratic P]arty's apparatus". "[T]hese people", Mr. Cors correctly charges, "not only hate guns, but they hate us for being free to possess and use them." One might go even further, and indict "these people" for their hatred of almost everything about "a free State" which patriotic Americans cherish and deserve to enjoy, secure against constant attacks from the apparatus of both of the "two" major political parties. What, though, one is entitled to ask Mr. Cors, does the Constitution declare to be "necessary to the security of a free State" against the aggression and depredations of "these people"? The so-called "individual right to keep and bear arms" on which the NRA dotes, or "[a] well regulated Militia" in each of the several States for which "the supreme Law of the Land" explicitly provides, and which would marshal the power of the entire community behind each individual's right—and constitutional duty (except for conscientious objectors)—to possess "Arms" of all kinds?

3. Mr. Cors is certainly on target when he attacks Mrs.

Clinton's intent to prosecute an "all-out war on what she calls 'the gun culture'". But he misses even the backstop when he defines "the gun culture" as "includ[ing] everything we do: recreational shooting, hunting, self-defense, defense of homes, and collecting, studying, designing and trading in firearms". What about what "we do [not] do" today, but should do? What about Americans' participation in the "well regulated Militia" which the Constitution declares to be "necessary to the security of a free State"—that is, "the gun culture" which the Constitution itself prescribes? Why in Mr. Cors' list is this, and this alone, conspicuous by its absence as part of "the right of the people to keep and bear Arms", when it is the aspect of that right which would encompass and guarantee everything else that stirs Mr. Cors' concern?

For example, what should be Americans' priority, "hunting" or "a free State"? Could not the people in "a free State" decide, for sound ecological reasons, that hunting should be closely controlled? Indeed, is not hunting of all sorts already regulated throughout this country for such reasons, usually with the NRA's approval? I put forward this example because all too often I come across hunters who are perfectly willing to abide "gun control" aimed at those nasty "black rifles", so long as they can continue to possess their .375 H&H Magnum bolt-action rifles with which to hunt elk, big-horned sheep, and other large or dangerous game.

At stake here is not "the gun culture" as the NRA narrowly defines it, but the continued survival of this country as "a free State" through "the gun culture" as the Constitution defines it. After "gun controllers" succeed in banning "the black rifles", the .375 H&H Magnums with their telescopic sights will soon follow (being denounced as "long-range sniper rifles"), along with collections of most if not all other firearms (being seized and destroyed in order to enable everyone to feel "safe" from "gun violence"). For Mrs. Clinton and her co-thinkers have repeatedly expressed their intent to

follow the example of pervasive “gun control” already imposed in Great Britain and Australia. In the long run, nothing of Mr. Cors’ “gun culture” can be preserved against that threat, unless the Constitution’s “gun culture” is defended.

4. Finally, Mr. Cors points out the encouraging statistic that “[t]here are 100 million firearm owners in th[is] nation”, and emphasizes that “[e]ach of us must reach out to friends, family, colleagues—all voters—with our honest message about saving the rights that guarantee our liberty”. To be sure. Yet the question remains: “What is that message to be?” Everyone possessed of more than two milligrams of functional cerebral cortex already knows that “these people” whom Mr. Cors rightly excoriates pose a threat to Americans’ liberties several orders of magnitude more serious than the Founders of this country faced from King George III. So the essential message cannot be the NRA’s merely political exhortation, which focuses on defeating a particularly unworthy candidate for the Presidency in the next election.

For the danger which “these people” and their ilk represent will persist, election after election, until effective institutional barriers are finally erected against it. The essential message must be the Constitution’s message, which focuses, not on political personalities, but on governmental institutions: namely, that “well regulated Militia”, and nothing less than “well regulated Militia”, are “necessary to the security of a free State”, everywhere throughout the United States. It is over the revitalization of these institutions that the final battle of “gun control” must be fought and won. Or else.

The NRA could still prove, or disprove, that (in Mr. Cors’ words) it really is the “one force in our still-free nation that stands in [Mrs. Clinton’s] way” in the short term, and (of more consequence) against her perverse vision of “gun control” in the long run. I both entertain the hope—and suffer from the fear—that he is correct.

Is Obama going to create crisis to suspend the November election?

No Perpetual "Emergency" Presidency

Constitutionalists, patriots, and other friends of freedom in ever-increasing numbers are expressing their fears that the present resident of the White House, Barack Obama, intends, under color of some real or contrived "emergency", to suspend the National elections this November, declare "martial law", and expand the ambit of his usurpatory rule from that of an arguably faux yet only temporary President to that of an authentic and permanent dictator, in service of some absurdity such as a supposed necessity to maintain "the continuity of government". In light of the possibility of a nationwide calamity in the near future (especially likely in the economic realm), and of Mr. Obama's own personality and past pattern of misbehavior under color of public office, these concerns cannot be easily dismissed as mere delusions springing from paranoiac imaginations. Nonetheless, from the constitutional perspective, they are entirely devoid of foundation.

No need exists to repeat here the extensive analysis in my book By Tyranny Out of Necessity: The Bastardy of "Martial Law", which explains that so-called "emergency powers" are bunkum, and "martial law" (as most Americans understand it) bunkum to the second power. The only "martial" institutions to which the Constitution delegates the responsibility and authority "to execute the Laws of the Union", whether in an

“emergency” or otherwise, are “the Militia of the several States”. But “the Militia of the several States” consist of the body of WE THE PEOPLE of the United States. And the very last thing Mr. Obama would ever want to admit in a public forum is that WE THE PEOPLE enjoy the unique constitutional power, in “martial” institutions especially, to “execute the Laws of the Union” against anyone and everyone who might dare to transgress those “Laws”—himself included. So, putting to one side “emergency powers” and “martial law” as the irrelevant anti-constitutional fantasies they are, the only question which needs to be answered is: “Does the Constitution provide any means by which Mr. Obama can perpetuate his residency in the White House in the guise of ‘President of the United States’ on any excuse whatsoever?” The answer is “No”.

1. Even if Mr. Obama were “a natural born Citizen * * * eligible to the Office of President” under Article II, Section 1, Clause 4 (which in the absence of sufficient evidence remains an open question), Section 1 of the Twenty-second Amendment precludes him from being “elected to the office of the President more than twice”. Of course, the premiss of the instant analysis is that no Presidential election at all would occur in November of 2016; and therefore he could not possibly become even a faux “President elect” under color of the Twelfth Amendment. That being so, perforce of Section 1 of the Twentieth Amendment his present, possibly faux “term[as] the President * * * [would] end at noon on the 20th day of January”, 2017. By dint of that same Section, the present, but also arguably faux term of Mr. Joseph Biden as “Vice President [would] end” at the very same time.

2. In the normal course of events, someone other than Mr. Obama would be chosen as President elect in the 2016 elections, and would take the “Oath or Affirmation” of “the Office of President” on 20 January 2017, pursuant to Article II, Section 1, Clause 7. But, were no National elections conducted in November, no one would be chosen President elect

or Vice President elect. Under those circumstances, Section 3 of the Twentieth Amendment would take effect:

If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

Plainly enough, however, under this Section and Section 1 of the Twenty-second Amendment, Congress could not arrange matters such that Mr. Obama could continue to "act as President", because the general terms of the latter provision—namely, that "[n]o person shall be elected to the office of the President more than twice"—must encompass "elect[ion]" by any means. For the purpose of the Amendment is absolutely to preclude repetition by anyone else of Franklin D. Roosevelt's effective "life tenure" in the "the office of the President", even were America's electorate to desire that result. So, significantly, unlike many other Amendments the Twenty-second does not empower Congress "to enforce this article by appropriate legislation" at all, let alone in a manner which contradicts its obvious purpose. Contrast Amendment XIII, Section 2; Amendment XIV, Section 5; Amendment XV, Section 2; Amendment XIX; Amendment XXIII, Section 2; Amendment XXIV, Section 2; and Amendment XXVI, Section 2. And inasmuch as the Twenty-second Amendment follows the Twentieth, it must limit the power of Congress granted in the latter Amendment in such wise as to fulfill the purpose of the former Amendment.

3. An apparent problem would be that, were no National elections held in November of 2016, there would be no Members

elect to the House of Representatives at all, and no Members elect to one third of the Senate. Under Section 1 of the Twentieth Amendment, "the terms of Senators and Representatives" already in office in 2016 "shall end" "at noon on the 3d day of January, [2017,] of the years in which such terms would have ended if this [Amendment] had not been ratified; and the terms of their successors shall then begin". Were no National elections held, no such "successors" whose "terms shall then begin" would be available to fill those positions in Congress. Indeed, with no House of Representatives at all from 3 January forward, no Congress would exist, inasmuch as (by definition in Article I, Section 1) "a Congress of the United States * * * shall consist of a Senate and House of Representatives", in which (pursuant to Article I, Section 5, Clause 1) "a Majority of each shall constitute a Quorum to do Business". With two thirds of the Senate still in office, "a Majority" of that body would exist; but with no Representatives having been elected, "a Majority" (or any other part) of the House would not.

This problem would be only apparent and not a permanent debility, however. For, if the States' governments continued in existence (as presumably they would), "[w]hen vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies" (Article I, Section 2, Clause 4); and "[w]hen vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies" (Seventeenth Amendment). So, even were no National elections held in November of 2016, the States' "Executive Authorit[ies]" could take the necessary and sufficient steps to ensure that the constitutionally required Representatives and Senators were appointed in time to take office on 3 January 2017. Thus, Congress could be reconstructed before the possibly faux terms of Mr. Obama and Mr. Biden as President and Vice President ended on 20 January.

4. Were Congress so reconstructed, the House of Representatives could select its Speaker, and the Senate could select its President pro tempore, before 20 January. That having been done, Title 3, United States Code, Section 19, would come into play:

(a)(1) If, by reason of * * * failure to qualify, there is neither a President nor Vice President to discharge the powers and duties of the office of President, then the Speaker of the House of Representatives shall, upon his resignation as Speaker and as Representative in Congress, act as President. * * *
(b) If, at the time when under subsection (a) of this section a Speaker is to begin the discharge of the powers and duties of the office of President, there is no Speaker, or the Speaker fails to qualify as Acting President, then the President pro tempore of the Senate shall, upon his resignation as President pro tempore and as Senator, act as President.
(c) An individual acting as President under subsection (a) or subsection (b) of this section shall continue to act until the expiration of the then current Presidential term [with certain exceptions not relevant here].

This commentary need not recite the further possibilities for other officials to be installed as the "Acting President" if neither the Speaker of the House nor the President pro tempore could perform that function. See 3 U.S.C. § 19(d) and (e).

The final, indisputable point is that even if Barack Obama is actually the President of the United States (rather than an imposter) at this juncture in the course of human events, perforce of the Constitution and the relevant statute he cannot continue in that status past 20 January 2017, no matter what supposed "emergency", real or contrived, might arise and be put forward to rationalize cancellation of the National elections in November of this year. As far as he is concerned, America's National nightmare of the last eight years' duration

will end on that day. Americans must hope and pray that Providence will then preserve them from something even worse.

A serious question for the NRA Pt. 1

As regular readers of my commentaries know, from time to time I have written about the National Rifle Association's curious misreading of the Second Amendment—to wit, that the Amendment's first thirteen words ("[a] well regulated Militia, being necessary to the security of a free State") have no significance with respect to the interpretation and application of the Amendment's last fourteen words ("the right of the people to keep and bear Arms, shall not be infringed"). According to the NRA, the Second Amendment secures "the individual right to keep and bear arms", to which "[a] well regulated Militia" is irrelevant.

I must describe the NRA's fixation as a most curious misreading of the Second Amendment because, if "the individual right to keep and bear arms" is irrelevant to "[a] well regulated Militia", then by dint of the NRA's own linguistic logic "the individual right to keep and bear arms" must be equally irrelevant to "the security of a free State" to which the Amendment declares that such a Militia is "necessary". If so, then the NRA's reading of the Amendment is at odds with its contention that "the individual right to keep and bear arms" guarantees Americans the wherewithal to preserve "the Blessings of Liberty" promised by the Constitution in its Preamble. For, if "the individual right to keep and bear arms"

is as irrelevant to “the security of a free State” as it supposedly is to “[a] well regulated Militia”, it passes understanding that it could guarantee any aspect of “a free State”, including especially the “Liberty” of that State’s citizens.

This apparent conundrum is, of course, not the product of the Constitution. For, according to the most basic rules of constitutional interpretation, the NRA’s construction of the Second Amendment is impossible. In general, “[i]t cannot be presumed, that any clause in the constitution is intended to be without effect”. Marbury v. Madison, 5 U.S. (1 Cranch) 137, 174 (1803). And “[i]n expounding the Constitution * * * , every word must have its due force, and appropriate meaning; for it is evident from the whole instrument, that no word was unnecessarily used, or needlessly added”. Holmes v. Jennison, 39 U.S. (14 Peters) 550, 570-571 (1840). Moreover, with respect in particular to the clause “[a] well regulated Militia, being necessary to the security of a free State”, “[i]t cannot be supposed that the framers of the Constitution did not use this expression with deliberation or failed to appreciate its plain significance”. Wright v. United States, 302 U.S. 583, 587-588 (1938). See also, e.g., Myers v. United States, 272 U.S. 52, 151-152 (1926); Knowlton v. Moore, 178 U.S. 41, 87 (1900); Blake v. McClung, 172 U.S. 239, 260-261 (1898); Reid v. Covert, 354 U.S. 1, 44 (1957) (opinion of Frankfurter, J.).

My emphasis on this peculiar situation is not simply a matter of constitutional pedantry devoid of practical consequences. For, by widely disseminating its misreading of the Second Amendment among the general public, the NRA lends credibility to a most dangerous misconception—to wit, that Americans can secure for themselves “the Blessings of Liberty” by purely individual actions alone, when every page in the book of American political and legal theory and history teaches that popular sovereignty, popular self-government, and the

“Blessings of Liberty” that go with them necessarily entail, and can be achieved and maintained only through, collective endeavors by WE THE PEOPLE as a whole. No one who studies America’s Colonial Charters, the Declaration of Independence, the constitutions of the independent States, the Articles of Confederation, the original Constitution, and even the Second Amendment can come to any other conclusion.

I have tried, on more than one occasion, to call this matter to the attention of the NRA, for the purpose of encouraging the organization to reassess its position and become a proponent of revitalization of “the Militia of the several States”, as the only sure and certain means to provide for “the security of a free State” throughout this country. To date, however, these efforts have proven unsuccessful.

Perhaps my failures are exclusively my fault. But, then again, perhaps not. Inasmuch as my own estimation of cause and effect might be considered biased, I shall put it to my readers to judge for themselves. Below, I reproduce (with some minor redactions) a letter which I wrote several months ago to certain members of the NRA’s Board of Directors, explaining why the NRA should promote revitalization of the Militia, and soliciting their support to that end. To date, I have received not a single response. The question which perplexes me is, “Why not?” Is revitalization of the Militia a matter which is not to be taken seriously? Or am I, personally, not to be taken seriously? Or is the NRA’s championship of the Second Amendment not to be taken seriously?

It may be that some of the readers of this commentary will conclude that what I have recommended in the letter reproduced below makes sense, and that the NRA should pay some little attention to it. If so, they might consider contacting the NRA, and asking “Why not?” At some point, an answer needs to be had.

[LETTER TO NRA DIRECTORS]

25 January 2016

National Rifle Association Directors * * *
c/o NRA Office of the Secretary
11250 Waples Mill Road
Fairfax, Virginia 22030

Re: The NRA's necessary rôle in revitalization of "the Militia of the several States"

Dear NRA Directors * * * :

As a long-time member of the National Rifle Association * * * , I write in order to urge each of you, as members of the NRA's Board of Directors, to bring to the Board's attention the necessity for the NRA to recognize the urgency of the declaration in the Second Amendment that "[a] well regulated Militia" is "necessary to the security of a free State" at this critical juncture in the course of human events, and for that reason to become the leading participant in a nationwide movement to revitalize what the Constitution denotes as "the Militia of the several States". I believe that it is particularly fitting for, as well as incumbent upon, me to make this request, as I have written several books on this subject—including Constitutional "Homeland Security", Volume One, The Nation in Arms (2007); Constitutional "Homeland Security", Volume Two, The Sword and Sovereignty (2012); Constitutional "Homeland Security", Volume Three, By Tyranny Out of Necessity: The Bastardy of "Martial Law" (2014 and 2016); Three Rights (2013); and Thirteen Words (2013)—as well as numerous commentaries originally published at the website since 2005 and now widely dispersed across the internet.

I have undertaken these efforts neither for my own entertainment nor with any realistic hope of financial gain from a lucrative publishing enterprise. Instead, my goal has been simply to elucidate the truth of the matter, to educate my fellow countrymen about it, to encourage them to become

personally involved in the revitalization of "the Militia of the several States", and to effect as much political and legislative movement in that direction within the States as possible as soon as possible—or, as I like to put it, immediately, if not sooner. I realize, however, that I cannot accomplish this goal simply by disseminating my work in "the free marketplace of ideas" without a significant measure of assistance from others better situated than I am to reach large numbers of Americans with this message. Therefore, this letter.

A. The revitalization of "the Militia of the several States" is critical for our country's survival.

The first thirteen words of the Second Amendment—"[a] well regulated Militia, being necessary to the security of a free State"—constitute more than a merely hortatory pronouncement, hoary with the dust of a bygone era, that today has no practical relevance to the Amendment's last fourteen words. Rather, those words constitute: (i) a finding of historical fact—to wit, that Americans secured "a free State" for themselves by virtue of their organization in "well regulated Militia"; (ii) a conclusion of constitutional law—to wit, that such Militia must always exist within every State in the Union, just as Article I, Section 8, Clause 15 and 16 and Article II, Section 2, Clause 1 of the Constitution presume that they will; and (iii) an admonition which the Founders of this country drew from both political theory and their own experiences—to wit, that "a free State" cannot long exist anywhere within this country without "well regulated Militia" everywhere throughout this country.

In the "well regulated" form which the Constitution requires, however, "the Militia of the several States" are nowhere to be found in America today:

• The National Guard and the Naval Militia in which some Americans are enrolled are not "militia" of any sort. Rather,

they are the “Troops, or Ships of War” which the States may “keep * * * in time of Peace” “with[ ] the Consent of Congress”, pursuant to Article I, Section 10, Clause 3 of the Constitution. This (among other things) explains why they are not based upon near-universal compulsory membership, and why they can be called upon to perform services for the United States beyond the three specified in Article I, Section 8, Clause 15 for which alone Congress may “provide for calling forth the Militia”.

• The so-called “unorganized militia” to which most Americans are consigned by statute—in 10 U.S.C. § 311(b)(2) and, for example, Code of Virginia §§ 44-1 and 44-4—is no constitutional Militia, either. For no part of any constitutional Militia can be “unorganized”. Indeed, Article I, Section 8, Clause 16 of the Constitution of the United States empowers Congress “[t]o provide for organizing, arming, and disciplining, the Militia”—not for leaving the Militia “unorganiz[ed]”. And Article I, Section 13 of the Constitution of Virginia defines “a well regulated militia” as being “composed of the body of the people, trained to arms”—which, plainly enough, an “unorganized” Militia can never be, unless “the people” can somehow be “trained to arms” without being organized to that end.

• Finally, the various “private militia” which have sprung up across this country (including * * * in Virginia) in recent years are not constitutional Militia, because they are not “regulated” at all pursuant to statute, and therefore cannot claim (let alone assert) any specifically governmental authority. Under the First Amendment, they may adopt the title “militia” with as much freedom as they may style themselves “the Palace Guard of the Grand Duchess of Gerolstein”. But in either case the self-description is fanciful; and as far as the description “militia” is concerned, it is feckless for the purpose for which they put it forth.

This is a truly impossible situation for a country which, in

its fundamental law, holds up “[a] well regulated Militia” as “being necessary to the security of a free State”. The notion that “private militia” could provide “the security of a free State” is delusive, because “private militia” can exist only in, and themselves require protection by, “a free State”. The notion that the States’ “Troops, or Ships of War” could provide “the security of a free State” is dangerous, because “a free State” must always closely control a “standing army”, which it can hardly expect to do if “the standing army” is the sole source of its “security”. And the notion that an “unorganized militia” could provide “the security of a free State” is disastrous, because an “unorganized militia” is effectively not in existence at all, and therefore cannot possibly supply what is “necessary” for anyone’s “security”. So, confronted by numerous dire threats, from international “terrorism” to domestic economic collapse, our country risks not simply a nationwide crisis, but even a national débâcle, should this situation fail to be corrected immediately, if not sooner.

B. For this country to survive in its traditional form, Americans must revitalize their Militia, because “well regulated Militia” are the “necessary”—indeed, the natural, the inevitable, and the indispensable—institutions through which the Power of the Sword is organized and employed for “the security of a free State”.

In any truly “free State”—that is, in any polity in which the people have absorbed the political principles of popular sovereignty, and therefore desire and strive to govern themselves—the people will instinctually, intuitively, and eventually intellectually recognize the importance of the Militia to that end. If incompetent or disloyal political leaders fail, neglect, or refuse to provide a program for establishment of the Militia according to law, patriots will undertake to make up for that deficiency on their own.

Unfortunately, just because the Militia are inevitable in

principle does not guarantee that their advent will be timely in practice. Patriotic Americans may finally attempt to revitalize the Militia only when their efforts prove to be too little and too late. After all (as I can testify from personal experience), in the contemporary United States the few private individuals who and ad hoc groups which openly favor revitalization of the Militia along constitutional lines lack the numbers, the influence among the general public, and especially the financial wherewithal to hope to be successful in the very near term in even a single State. For part two click below.

A serious question for the NRA Pt. 2

Nevertheless, reasons to be optimistic exist. One of them is that, just as this country is being confronted by ever-increasing dangers to its "security" as "a free State", certain NRA programs are beginning to take on the character of proper training for the Militia. In general, I could list all of the basic courses in which I participate as a certified NRA firearms instructor. More specifically, I could refer to such newer courses as the "Survival Class", the "Tactical Carbine Class", and the "Long Range School". [See "NRA Outdoors Offers Various Classes for 2016", American Rifleman (January 2016), at 102.] As more and more of such courses are offered, a rough program of basic Militia training will take shape "by accretion", as it were, of one small piece of the requisite structure at a time. The NRA's development of these courses may not be—most likely is not—intentionally motivated by a

concern for revitalizing the Militia. But that result will not be inadvertent, accidental, or merely coincidental, either. For any organization which seriously defends “the right of the people to keep and bear Arms” will more or less automatically promote some of the training which can prepare “the people” for participation in “well regulated Militia”.

The problem is that the NRA is advancing only by fits and starts, and only for a relatively small number of Americans, the true and full agenda of the Second Amendment (as well as of the Militia Clauses of the original Constitution)—namely, the exercise of “the right of the people to keep and bear Arms” for the ultimate purpose of their service, both as their right and as their duty, in “well regulated Militia”. There appears to be no conscious appreciation among either the organization’s leaders or its members of “the big constitutional picture”, in terms of either what the NRA is actually accomplishing (albeit perhaps unconsciously), or what more needs to be done, with respect to the prospect of revitalizing the Militia. Indeed, as far as I have been able to determine, nothing in the NRA’s current literature links any of its programs in any manner and in the least degree to “well regulated Militia”, even in principle let alone in practice. If the public perception naturally to be drawn from this observation is correct, as far as the NRA is concerned the Second Amendment contains only fourteen words, not twenty-seven.

This is doubly unfortunate. First, as every student of the subject knows, “‘[i]n expounding the Constitution of the United States, every word must have its due force, and appropriate meaning; for it is evident from the whole instrument, that no word was unnecessarily used, or needlessly added. * * * Every word appears to have been weighed with the utmost deliberation, and its force and effect to have been fully understood’”. Williams v. United States, 289 U.S. 553, 572-573 (1933). So, as a result of its truncated emphasis on

the last fourteen words of the Second Amendment, the NRA forfeits credibility in the all-important "marketplace of ideas". As Richard Weaver once famously observed, "ideas have consequences". And, as should be obvious to all, incorrect ideas about critical matters all too often beget catastrophes. Second, because of its unwarrantable bisection of the Amendment, the NRA's programs are advancing too slowly, in comparison to the acceleration of the dangers now impinging upon this country, to be expected to thwart or even significantly militate against those dangers. The NRA should be aiming at the election of public officials who are dedicated to promotion of "the security of a free State" through revitalization of the Militia, and through such officials at the passage of legislation for that purpose in the several States. Absent such action, the NRA will remain far less effective than it otherwise could and should be, not only to its own detriment but also (and more importantly) to the detriment of this country as a whole.

C. What, then, should be done? Simply put, the NRA must assume the constitutionally proper leadership rôle with respect to the Second Amendment.

1. To accomplish this, the organization's hierarchy—primarily its Board of Directors—must initially recognize that the NRA is in an anomalous, but also a peculiarly advantageous, position.

The NRA's position is anomalous, because: First, it is merely a private group. Second, there would be no need for the NRA at all, had "the Militia of the several States" been in existence to their full constitutional extent since (say) the end of World War II. Third, and of most consequence, the NRA's interpretation of the Second Amendment is of limited accuracy, relevance, and practicality. The so-called "individual right" theory of the Amendment is only marginally correct. "[T]he security of a free State" as a whole (as opposed to the security of individuals as such) cannot be had without a

thoroughgoing organization of the populace in institutions which exercise governmental authority. “[T]he right of the people to keep and bear Arms” narrowly defined for the purpose of enabling isolated individuals to defend themselves against common criminals will prove of little use against any large-scale tyranny worthy of the name, let alone against natural disasters, epidemics or pandemics, catastrophic industrial accidents, failures of the systems necessary to maintain the operations of a technologically advanced society (such as a breakdown of the national electrical grid), an economic collapse engendered through a failure of the Federal Reserve System, or any other catastrophic eventualities in response to which properly organized, armed, disciplined, and trained Militia could and should be deployed in every State and Locality throughout this country.

The NRA’s position is advantageous, though, because: First, no constitutionally adequate Militia exists anywhere within the United States today—so the ground is clear for up-to-date and comprehensive revitalization everywhere. Second, Article II of the NRA’s own Bylaws states (in pertinent part) that

[t]he purposes and objective of the National Rifle Association * * * are: 1. To protect and defend the Constitution of the United States, especially with respect to the inalienable right of the individual American citizen guaranteed by such Constitution to acquire, possess, collect, exhibit, transport, carry, transfer ownership of, and enjoy the right to use arms, in order that the people may always be in a position to exercise their legitimate individual rights of self defense and defense of family, person, and property, as well as to serve in the appropriate militia for the common defense of the Republic and the individual liberty of its citizens; 2. To promote public safety, law and order, and the national defense; 3. To train members of law enforcement agencies, the armed forces, the militia, and people of good repute in marksmanship and in the safe handling and efficient use of

small arms[.]
Observe that points 1 and 3 specifically refer to the Militia. And point 2 refers to "public safety, law and order, and the national defense", which are the explicit constitutional responsibilities of the Militia (and only the Militia) under Article I, Section 8, Clause 15 of the Constitution, which empowers Congress "[t]o provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions". Thus, according to this bylaw, the NRA should be an ardent advocate, assistant, and even architect of "the Militia of the several States", so as fully (in the bylaw's own words) "[t]o protect and defend the Constitution of the United States", in keeping specifically with the declaration of the Second Amendment that "[a] well regulated Militia" is "necessary to the security of a free State". Third, starting with the National Board for the Promotion of Rifle Practice (1901) and the Civilian Marksmanship Program (1903), the NRA has had a long and successful relationship with the General Government—proving that the NRA has served, and can continue to serve, some important governmental purposes notwithstanding that it is a private group. Compare McCulloch v. Maryland, 17 U.S. (4 Wheaton) 316, 407-423 (1819). Moreover, relationships of this kind can be extended to the States as well—and should be, inasmuch as the Militia are "the Militia of the several States" (not "of the United States"). Fourth, throughout the process of revitalizing the Militia the NRA will be ready and able to provide public officials and the nascent Militia with expert guidance and assistance available from no other private organization (and, from what I have been able to glean from the relevant literature, from no governmental organization anywhere within the federal system, either).

2. In addition to the foregoing, the Board should recognize that, if the NRA marshals the moral integrity, historical hindsight, practical political foresight, and legal insight of its officers, members, and many friends amongst the general

public, it can assume the leadership of a national political campaign to revitalize the Militia, and by doing so can contribute decisively to the salvation of this country as “a free State”. Indeed, the NRA is probably the only organization even arguably capable of doing so at the present time.

None of us is unaware that the NRA has been criticized as being too soft, too pliable, too apt to play politics, and generally too willing to compromise with respect to “gun control”. Even if such detractions are to some extent justifiable, America does not enjoy the luxury of unlimited time during which “to reinvent the wheel” where revitalization of the Militia is concerned. In my book Constitutional “Homeland Security”, Volume One, The Nation in Arms (2007), I proposed that patriotic citizens should form numerous local associations, not affiliated with or dependent upon any national organization, for that purpose. Yet, almost a decade later, vanishingly few people have responded to my recommendations; and the growing-season still left to this country may not prove long enough to plant and harvest such a crop from seed. Anticipating that this may prove to be the case, we need to utilize whatever resources are already at hand, and the performance of which may be capable of improvement. For better or worse, arguably that boils down to a single organization: the NRA.

The NRA disposes of the appropriate historical pedigree, the structure, the staff, the programs, and the experience to undertake the task. Based upon its successes in electoral politics, its network of effective lobbyists, its ability to access and influence even the generally antagonistic mass media, its large number of members, its highly qualified instructors, its financial resources, and its good repute among most sensible Americans, the NRA can form the center of a mass movement aimed at a goal much more important than securing the so-called “individual right to keep and bear arms” on which it focuses its attention today. For no merely

“individual right to keep and bear arms”, exercised by individuals as individuals in mutual isolation, can defend Americans from tyranny, let alone protect it from many other dangers far more likely than full-blown tyranny to strike this country in the short term. Only revitalized Militia—composed, to be sure, of individuals, but of individuals acting in unison, and imbued with governmental authority of the highest order—can provide that protection across the board.

That the NRA has survived, and even grown significantly in strength and stature over the past several years, in the face of relentless and strident attacks from “gun-control” fanatics, their political allies, their transmission belts in the mass media, and hordes of useful idiots among the intelligentsia, proves that the organization cannot easily be swayed from its chosen course, let alone silenced. Such attacks, of course, would become ever more desperate and savage if the NRA should begin to promote revitalization the Militia. For the “gun-control” fanatics understand perfectly well that what is ultimately at stake is not a merely “individual right to keep and bear arms”—the existence of which even today only marginally inconveniences the political dominance of the factions, special interests, and other dark forces on behalf of which those fanatics bluster—but instead the amalgamation of all individuals capable of exercising such basically anarchic “individual rights” into fully organized “well regulated Militia” authorized to execute the laws of the Union and of their own States, the appearance of which would change the balance of political power in this country drastically, decisively, and permanently in favor of We the People. But the more extreme the opposition which “gun-control” fanatics mounted, the more conclusive would be the proof of the value of revitalizing the Militia.

D. Finally, is all of this too much to ask of the NRA?

Indeed, can it be asked? Does the organization have the sense and the courage to undertake such a daunting task? I believe

so. I believe that the NRA is capable of understanding why, in the final analysis, “the right of the people to keep and bear Arms” can be guaranteed only if “the people” are organized in “well regulated Militia”. I believe that the NRA can commit itself to the defense of “a free State” in the one and only manner in which the Constitution tells us “a free State” must be defended. And if cold ratiocination will not serve as the decisive motivating factor, then fear will. It is said that nothing focuses a man’s mind more than his impending hanging. Surely the same must be true for a country faced with its own imminent destruction.

Yet, for anything worthwhile to happen, someone capable of exerting influence within the NRA needs to convince the organizational hierarchy; then the hierarchy needs to convince the organization’s own members; then the organization and its members and other adherents need to convince the sensible portion of the remaining population. The NRA’s Directors—such as yourselves—are in the best position, and bear the greatest responsibility, to begin this process:

• You can raise the question of why, when the Second Amendment contains twenty-seven words, the NRA focuses on only the last fourteen of them.

• You can raise the question of how the NRA can claim to be a true defender of “a free State” when it neglects what the Second Amendment itself declares in its first thirteen words to be “necessary to the security of a free State”. And

• You can demand answers to these questions in the most important of organizational fora—from your own fellow Directors and the rest of the NRA’s hierarchy in its headquarters.

If not you, then who? If not now, then when? When it is too late?

I enclose for your perusal a copy of my book The Sword and

Sovereignty. This, I admit, is something of a formidable work which no one could reasonably be expected to read, let alone to digest, at a single sitting. Having it readily at hand will, however, provide you with some little evidence of the seriousness of the historical and constitutional arguments in favor of revitalization of the Militia. In addition, I should be willing to discuss this matter with you, either individually or in a group, at your convenience—whether to make a fully structured presentation on the subject or just to answer your questions informally.

Thanking you for your attention to this matter, I remain

Your servant,

Dr. Edwin Vieira, Jr.

Trump—triumph or tragedy? Pt. 1

Contrary to the contentions of those misguided (or deviously Machiavellian) Americans now agitating for a "Convention of the States" in order to amend the Constitution in some unpredictable fashion, the ridiculous and intolerable situation which confronts this country today is not the product of "the supreme Law of the Land". No, indeed. It is the result of decades of disregard and even disdain for, and thoroughgoing disobedience to, the Constitution in both the District of Columbia and the States, by a totally dysfunctional, if not outright disloyal, professional "political class" and the vicious, predatory factions in the

Establishment for which the "political class" works. But, obviously, in keeping with traditional methods of political reform, the stranglehold which the greasy fingers of this cabal press into Americans' throats can be broken only upon the emergence of viable candidates for high public office whom the Establishment does not control. Increasing numbers of patriotic Americans, disgusted with the present noxious state of affairs, and desperate for change which is worth believing in and struggling for, are asking whether Donald Trump is such a candidate. Will his emergence on the political scene usher in a time of triumph, or the final act of an American tragedy?

To be sure, because there are no probabilities of unique events, the past never provides perfect parallels for the future. (As the expression coined by advertisers in the automotive trade has it, "your mileage may differ".) Yet, just as the enjoyment of a deceptive prosperity in 1928 predictably collapsed into the anguish of a real depression in 1932, today's data indicate to every perceptive observer that an economic, social, and political crisis of substantial magnitude cannot be averted in this country (and the rest of the world as well) during the foreseeable future. Indeed, in light of the unbearable burden of America's public and private debt (most of which is not only entirely unfunded now, but also quite incapable of ever being funded); the incompetence, corruption, and criminality of the Federal Reserve's banking-cartel and Wall Street's financial casinos; the disappearance of high value-added jobs (as in manufacturing) through off-shoring and globalist "trade deals"; the impoverishment of the middle class and destitution of the poor; the utter unsoundness of this nation's currency; and especially the Establishment's perverse principle that the very worst criminals in the Axis of Financial Fraud which runs from New York City to the District of Columbia are both "too big to fail" and "too big to jail"—due to all of this, in comparison to the approaching national calamity the Great Depression of the 1930s will appear to have been a period of economic

rationality, social tranquillity, and political stability. And, most ominously for Mr. Trump, in this benighted era in which the President is viewed by all too many as "the Decider" whose actions determine the course of events for better or worse in every sphere of human endeavor, whoever happens to be the President from 2017 through 2020 will be held economically, politically, and ideologically accountable for whatever transpires, be it good or especially be it ill. (One might discount these concerns by pointing out that, were Hillary Clinton elected President, she would face the same Hooverite danger of incumbency in the midst of an economic collapse. Unlike Mr. Trump, however, Mrs. Clinton would benefit from the inestimable advantage of having the big "mainstream media" as ardent propagandists indoctrinating Americans with the party line that only the fascistic, socialistic, or other policies of political racketeering which her Administration promoted could eventually restore prosperity.)

So, if Mr. Trump is not fully prepared—well before the fact—to tell Americans exactly how he plans to deal, expeditiously and effectively, with the hard times that are surely on their way, if he is elected his Administration will be blamed for the collapse, even more than Herbert Hoover was pilloried for the Great Depression. Not only that: Having run on a fundamentally anti-Establishment platform, Mr. Trump and all of his political and ideological supporters—be they constitutionalists, advocates of federalism and limited government, Tea Party-ites, or simply average Americans who hope that by electing an "outsider" they can finally escape from domination by the "two" major political parties and the string-pullers in the Establishment who control them from behind the screen—will find themselves decisively defeated, defamed, discouraged, and dumped into the dustbin of history. The Establishment will emerge triumphant, more puissant, irresponsible, rapacious, and vindictive than ever before.

So, what is to be done—by Mr. Trump certainly, and indeed by any candidate for "the Office of President" who aspires to be a true political "outsider" both in words and especially in deeds? For one thing, he must not make Herbert Hoover's mistake of attempting to deal with an economic cataclysm by employing the very same discourse, analyses, tactics, policies, and types of persons as advisors which and who were responsible for the crisis. First and foremost, as the essence of his electoral campaign he must stop talking about evanescent "issues" concocted largely by his opponents and disseminated through "the mainstream media" as part of their incessant dissemination of disinformation, but instead must apprise Americans as to what the real score is at the opening of this, the fourth quarter; then set out his unique plan for the rest of the game.

A. First on Mr. Trump's agenda must be to lay before this country a candid and accurate assessment, in detail, of the present situation—what it entails, how it came about, and why it will inexorably play out to this country's destruction if the right steps are not taken in due course. He must be as unsparingly honest and coldly clinical as a physician who warns his patient that the patient suffers from a disease which will have fatal consequences unless radical treatments are employed as soon as possible. And, just as such a physician would do, he must explain that the necessity for these treatments derives from the source, nature, and inevitable effects of the disease. Of course, Mr. Trump would not be the first to describe the hard times now bearing down upon us, or to explain the origins of the danger. I, for one, have been writing about this subject since even long before my earliest commentaries for NewsWithViews, such as "'Homeland Security'—For What and For Whom?" (8 March 2005) and "Are Monetary and Banking Crises Inevitable in the Near Future?" (17 March 2005). Other noteworthy prophets of the obvious include Paul Craig Roberts and Michael Hudson on economics, John Whitehead on this country's burgeoning para-military

police state, and Frosty Wooldridge on the disastrous effects of unlimited immigration. Mr. Trump, though, enjoys the decided advantage that, as a candidate for the office of President with the savvy and financial wherewithal to generate his own mass publicity, he cannot be dismissed as a nonperson by “the mainstream media”. Although the big media may go all out for character assassination, they can neither impose anonymity on him nor consign what he says to the oblivion of Orwell’s “memory hole”.

From his self-made “bully pulpit”, Mr. Trump needs to emphasize that the present situation is not the product of disembodied “trends” or “historical forces” for which no one in particular, or for which everyone in general, is responsible. The situation confronting America today has resulted from specifically human actions. And (as everyone conversant with Austrian economics knows) all human actions are the products of some identifiable individuals’ purposeful behavior, or misbehavior. Therefore, Mr. Trump needs to expose and excoriate the actual culprits in the Establishment out of whose witches’ cauldron the contemporary septic mess has overflowed. Consequences must be connected with actions—actions must be associated with names—and to names must be assigned moral and political responsibility, if not outright criminal culpability, for past, present, and future events. I, for one, am not responsible for America’s plight; and I presume that vanishing few of my readers are, either. But some identifiable individuals are at fault here. And this country is entitled to know their names, what they have done, and why—and, most to the point in a political campaign for the highest office in the land, what the leading candidate intends to do about it all. Obviously, the rogues’ gallery must include at least the dominant figures and operatives of the “two” major political parties, as well as all of the factions and other special interests, both domestic and foreign, for which those “two” parties are partisans, fronts, transmission belts, stooges, and gaggles of useful idiots (if not outright

co-conspirators). These individuals, after all, have exercised actual control over America's political, economic, social, and cultural institutions for decades upon decades. If those institutions have gone to blazes, it is not illogical or unfair to conclude that the men and women in charge of them lit the matches.

Of course, exposure of this dirty linen will confront Americans with the hard reality that their country's body politic, and the economic, social, and cultural institutions over which it presides, are riven with irreconcilable conflicts. Yet for America to come to grips with such divisions is not without historical precedent—although in the past that problem was usually recognized for what it was, not swept under the rug as it tends to be today. For the prime instance, when "the REPRESENTATIVES of the UNITED STATES" promulgated the Declaration of Independence, they did so "in the Name, and by the Authority of the good People of the[ ] Colonies". Not all of the people, but only "the good People"—because the Founders were well aware that Americans in their day were far from being united. Some were "good People" who favored independence; some were attentistes who sat on the political fence, abiding events; and some were Tories who supported King George III. From the Patriots' point of view, whatever the Tories' personal merits as individuals, as a group they were to be accounted "bad people", with whom no political reconciliation or compromise was possible.

In the late 1700s, much more in the economic, social, and cultural realms united Patriots and Tories than divided them. The decisive fracture appeared along a political fault-line: namely, whether "the good People" were entitled to enjoy the plenitude of "the rights of Englishmen", or were to be consigned to a second-class status at the mercy of the British Imperial Government. "[W]hy should we enumerate our injuries in detail?" asked the Continental Congress in 1775. "By one statute it is declared, that parliament can 'of right make

laws to bind us IN ALL CASES WHATSOEVER.' What is to defend us against so enormous, so unlimited a power? * * * We saw the misery to which such despotism would reduce us." A declaration by the Representatives of the United Colonies of North America, now met in General Congress at Philadelphia, setting forth the causes and necessity of their taking up arms (Thursday, 6 July 1775), Journals of the Continental Congress, Volume 2, at 146-147.

Today, an arguably worse situation exists. For, with the advent of "multiculturalism" as the Establishment's strategy of social control through engineered social dissolution, almost everything has become a source of divisions which the Establishment exploits for the purpose of accreting to itself powers even more "enormous" and "unlimited" than any to which the British Parliament aspired in Colonial times. Yet, in confirmation of the old axiom that le plus ça change le plus c'est la même chose, in contemporary America the primary division between "the good People" on the one hand, and "the bad people" among or allied with the Establishment on the other hand, appears in the same stark political terms. Just as in the late 1700s, "the good People" of the contemporary United States demand only that to which they are entitled: namely, "the rights of Americans", which "the bad people" are bending every effort to strip from them.

In reliance upon the Declaration of Independence, "the good People" want to maintain "among the powers of the earth, the[ir] separate and equal station to which the Laws of Nature and of Nature's God entitle them"—not to be swept up into some supra-national "new world order". They want the public officials who administer the "Governments" this country's Founders "instituted among Men, deriving their just powers from the consent of the governed," to exercise only "just powers"; at every turn of the political wheel to seek out and conform to, not to disregard and dispense with, "the consent of the governed"; to acknowledge "[t]hat whenever any Form of

Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it"; and always to remember, in fear and trembling, that "when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce the[People] under absolute Despotism, it is their right, it is their duty, to throw off such Government". In short, "the good People" want to remain sovereigns in their own land, not subjects, serfs, or slaves of a global imperium run by and for the benefit of gigantic corporations devoid of souls, hearts, or consciences, that scorn "the Laws of Nature and of Nature's God" and violate them with impunity.

As this country's sovereigns, "the good People" want, deserve, and have an absolute legal right to enjoy the benefits of the Constitution their forefathers "ordain[ed] and establish[ed]" "in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity". In contrast—

• The Establishment intends to dissolve "a more perfect Union" in this country in order to absorb Americans within a global "new world order" in which their national identity disappears.
• The Establishment intends to "[dis]establish Justice" by creating a dichotomy of legal status between its members and minions, on the one hand, and average Americans, on the other. For the Establishment, one sort of "justice" will prevail, and quite another one for everyone else. Private special interests will be the beneficiaries, not only of "bail outs", "bail ins", and other subsidies under color of the excuse that they are "too big to fail", but also of abusive "trade deals" that enable supra-national corporations to usurp the constitutional authority of Congress "[t]o regulate Commerce", thereby permanently alienating Americans' ability to control their own economic destiny. And those corporate interests, along with the rogue public officials who do their bidding, will be "too

big to jail”—the worse their offenses, the more complete their immunities.

• The Establishment intends to undermine “domestic Tranquility” by sowing the dragons’ teeth of disharmony, dissension, discord, and division throughout society, in pursuit of its strategy of divide et impera. Nowhere is this more obvious than in the aid and comfort the Establishment extends to invasions of America by illegal aliens who refuse to assimilate but instead assert a right to impose divisive “multiculturalism” on everyone else, with the inevitable result that every thread of traditional Americanism will be ripped from this country’s social fabric.

• The Establishment intends to pervert “the Army and Navy of the United States”—after the Militia, the primary national instruments for “the common defence”—into hordes of witless myrmidons deployed for aggressive military adventures overseas, in violation of the constitutional principle that “the genius and character of our institutions are peaceful, and the power to declare war was not conferred upon Congress for the purposes of aggression or aggrandizement”. Fleming v. Page, 50 U.S. (9 Howard) 603, 614 (1850).

• The Establishment intends to supplant “the general Welfare” with “corporate welfare”, so that special interests among 1% of the population can amass unlimited wealth at the expense of the remaining 99%. And, worst of all,

• The Establishment intends to render utterly “[in]secure the Blessings of Liberty”, by empowering a para-militarized police state to oppress average Americans at every turn, in a manner far more egregious than anything King George III and his Ministers could ever have contemplated, let alone attempted.

Indeed, the Establishment is well on its way to accomplishing each and every one of these goals. For Part two click below.

Trump—triumph or tragedy? Pt. 2

Under these circumstances, no common ground can be found, no dialogue conducted, no compromise reached between “the good People” and their candidate for “the Office of President”, on the one side, and the Establishment and its candidate, on the other—any more than common ground, dialogue, and compromise are possible between justice and injustice, “the general Welfare” and the avarice of special interests, or what the Second Amendment calls “the security of a free State” as opposed to the oppression of a police state. One side or the other must prevail. In this struggle, as General MacArthur said: “There is no substitute for victory.”

B. Mr. Trump (or any authentic political “outsider”) can depend only on “the good People”; and “the good People” can depend only on him. But to gain their confidence, Mr. Trump must take “the good People” into his confidence, with confidence that, knowing what he intends to do and why and how he intends to do it, they will rally to him through every vicissitude which awaits them.

1. He must convince “the good People” that he is committed to fighting the battle, both before and especially after his election, on their, not their enemies’, terms. At the minimum, that requires bringing into his campaign, and eventually into his Administration, a set of advisors not drawn from the ranks of the professional political courtiers who have carried water for prior Administrations. The sorry records of those Administrations provide conclusive evidence that these individuals’ misguided conceptions of “public service” have been the primary causes of, and therefore will never provide

the solutions for, America's woes.

2. Mr. Trump must emphasize that no one can "make America great again" unless and until "the good People" steel themselves to yank this country by its bootstraps out of the very deep hole into which past generations of incompetent and disloyal politicians have cast it. In line with the old adage that "a pessimist in an optimist who knows the facts", he must warn "the good People" that a great deal of economic pain and social unrest will be unavoidable in the short term—and that stern measures must be implemented, prodigious efforts expended and costs incurred, and agonizing sacrifices endured in the near term—if the necessary reforms are to be achieved in the long run. That he is the one Presidential candidate ready and willing to take charge and shoulder responsibility is not enough. For he can succeed only if "the good People" are prepared to do their part to the utmost of their abilities. He can be no more than the obstetrician for America's renaissance; "the good People" must give birth to it.

3. Glittering generalities, "sound bites", and slogans will not suffice. Rather, Mr. Trump must set out with specificity the nonnegotiable reforms his Administration will implement. Here, I can touch on only a few of these, and only in a limited fashion:

(a) In furtherance of the President's oath of office—that he "will to the best of [his] Ability, preserve, protect and defend the Constitution of the United States"—Mr. Trump must promise to "take Care that the Laws be faithfully executed". Without that as the guiding principle and constant practice of his Administration, nothing of permanent value will be achieved.

(b) In fulfillment of the Declaration of Independence, he must assure "the good People" that he will bend his every effort to preserve this country's national sovereignty, integrity, and

identity—not only by securing its borders against invasions of illegal aliens, but also by rooting out those internal subversives who are employing "multiculturalism" as a battering-ram to break down America's political and social cohesion, preliminary to the submergence of "the good People" in a supra-national "new world order" which will eradicate "the separate and equal station" "among the powers of the earth * * * to which the Laws of Nature and of Nature's God entitle them".

That "the political class" and its mouthpieces in "the mainstream media" have attacked Mr. Trump with the ferocity of mad dogs because of his rather mild pronouncements to date on the issue of illegal immigration demonstrates how critical the elimination of America's national independence and integrity is to the Establishment's achievement of its long-range goals—and therefore how vital the preservation of that independence and integrity is to "the good People's" permanent interests. I characterize Mr. Trump's pronouncements as "rather mild", because he has yet to point out that, perforce of both general constitutional principles and specific statutes, a patriotic President is entitled to, and can, stop alien invasions in their tracks. See my NewsWithViews commentaries "How the President Can Secure the Borders" (18 August 2015) and "A Trumped-Up Controversy" (20 February 2016).

(c) Because "representative government" cannot function if Americans do not know what their ostensible "representatives" are actually doing, and why they are doing it, Mr. Trump must promise "the good People" that he will put paid to the present-day fetish of governmental secrecy and lies (which depend upon secrecy for their efficacy). His Administration must open the public records to public inspection to the fullest extent consistent with the constitutional definition of "national security"—that is, the security of the nation, not the security of "the political class" and its string-

pullers in the Establishment.

For a prime example, Americans must be afforded access to all of the public (and, to the extent possible, private) records concerning the 9/11 event; and those records must be subjected to the most wide-ranging critical analyses, letting the chips fall where they may. In addition to that, novel methods for elucidation of the truth must be employed. Being something of a scientist myself, I favor actual experiments. Every theory which can be disproved through experiment must be discarded. So, as a scientific first step in testing prior Administrations' theories of what happened on 9/11, Mr. Trump should promise that his Administration will build an exact replica of World Trade Center Building 7 as it existed on that fateful day—set it on fire—and see whether or not it collapses into its own footprint at near free-fall speed, as did the original. If it does not, certain conclusions can be drawn, on the basis of which further actions can be taken. In light of the serious consequences which this country has already suffered, and will continue to endure, because of the Establishment's theories of 9/11, whatever such an experiment may cost will hardly be excessive.

(d) Mr. Trump should explain to "the good People" that, by setting aside all constitutionally unwarranted governmental secrecy, his Administration will be able to enforce the Bill of Rights and other constitutional and statutory guarantees of Americans' freedoms in a rigorous fashion against rogue public officials and their co-conspirators in the private sector. The Constitution's goal to "establish Justice" can never be fulfilled except perforce of the principle that no one is "too big to jail". For far too long "the political class" has been able to sweep its serial malfeasances under the rug, either through the wrongdoers' suppression of the evidence of their wrongdoing, or by grants of "immunity" to one set of wrongdoers by another set of wrongdoers when wrongdoing slips into the light of day. The time has come to employ a firmer

broom in more trustworthy hands. For, as the old saying has it, “a new broom sweeps clean”—and an iron broom sweeps cleaner yet. Such a thoroughgoing housecleaning is especially needed with respect to those rogue officials whose “long train of abuses and usurpations, pursuing invariably the same Object” has “evince[d] a design to reduce [Americans] under absolute Despotism”. As the apt slogan of the Navy’s “Silent Service” had it in World War II, “find them, chase them, sink them”.

(e) Of all possible wrongdoing by rogue public officials, nothing could be worse than fomenting international warfare. Not only because modern warfare is hideously homicidal and egregiously expensive, but especially because the prosecution of wars abroad inevitably encourages the imposition of despotism at home. “[T]he common defence” is the constitutional standard. Therefore, Mr. Trump must assure Americans that he will end America’s involvement in aggressive military adventures overseas. Moreover, he must guarantee that he will see all of those rogue public officials who and the private special interests which have fomented or otherwise been responsible for or otherwise complicitous in such adventures brought to justice, through execution of those “Laws of the Union” which enforce the principles of the Nuremberg tribunal. See Office of the United States Chief of Counsel for Prosecution of Axis Criminality, Nazi Conspiracy and Aggression (Washington, D.C.: United States Government Printing Office, 1946), Volume I, arts. 6(a), 7, 8, and 9, at 5-6. See also my NewsWithViews commentary “A New Nuremberg Moment” (6 September 2013). After all, these crimes—steeped in conspiracy and aggression—have resulted in hundreds of thousands, if not millions, of needless deaths and injuries; destruction of the political integrity, social stability, and economic viability of whole countries; and huge wastage of resources by “military-industrial complexes” in both the United States and the other nations which have foolishly participated in these operations. And they continue even

today, unabated in their savagery. See, e.g., Felicity Arbuthnot, “US Apocalypse in Mosul in the Guise of Bombing ISIS”. For such wrongdoing there can be neither excuse, nor exoneration, nor expunction from the pages of history.

Mr. Trump recently announced his “foreign policy” with a rousing speech. Yet it lacked the clarity and wisdom of George Washington’s Farewell Address with respect to foreign affairs, alliances, and the like. (Indeed, Mr. Trump could not go wrong by adopting as his guiding principles all of the tenets of that document.) Much of his speech was, as the wag once said, “déjà vue all over again”. To be sure, Mr. Trump’s reliance on the principle of, shall we say, “strength at home, businesslike diplomacy abroad” is a workmanlike approach, along the lines of Theodore Roosevelt’s precept, “speak softly and carry a big stick”. Nonetheless, I wonder how anyone can imagine, on the one hand, that this country cannot control its own borders to the extent of repelling an invasion of illegal aliens from a nation as militarily impotent as Mexico, but, on the other hand, that it can deploy to the very frontiers of Russia and China sufficient forces to awe those powerful nations into sheepish compliance with policies dictated from the District of Columbia at odds with their own compelling national interests. Indeed, one need look only to the débâcles in Iraq, Afghanistan, and Libya to understand the limits the real world imposes on the hubris and fantasies of American military interventionists. (The only saving grace here is that Mr. Trump evidently desires to avoid a major war, whereas Hillary Clinton would likely prove a worse warmonger, and more feckless a war-fighter, than even George W. Bush.)

Finally, Mr. Trump’s promise to crush ISIS militarily rests on the naïve premiss that ISIS is some truly “foreign” force. He would do better first to investigate whether ISIS is in large measure the product of the devious intentions or simple-minded incompetence of the CIA and the Pentagon—and that therefore the initial step in the process of eradicating ISIS must be a

thoroughgoing housecleaning of those agencies. (A parallel investigation should be conducted to determine the extent to which certain of America's ostensible "allies" are at fault in this matter, too.) Mr. Trump might also want to inquire, for example, why the NSA, the DIA, the CIA, the FBI, FINCEN, the IRS-CID, and other intelligence and law-enforcement agencies at home and abroad have not been able (or willing) to employ their extensive networks of surveillance to ferret out the sources of and routes for ISIS's funding. After all, although logistics is not everything, everything depends on logistics. How does ISIS raise its revenue and pay its bills? Who are ISIS's bankers, money-launderers, and so on? And why have they not been exposed, and steps taken to eradicate their operations? Inquiring minds surely want to know.

(f) As far as "domestic policy" is concerned , it will be essential for a Trump Administration to restore the two great powers of government—the Power of the Sword and the Power of the Purse—to "the good People's" own hands. For no one else is sufficiently trustworthy to exercise them.

(i) Restoration of the Power of the Sword will require revitalization of the Militia, about which I have written extensively elsewhere. Only by "call[ing] forth the Militia to execute the Laws of the Union" will "the good People" finally be able to deal with those combinations too powerful to be suppressed by ordinary means, the continued toleration of which threatens to destroy this country within the lifetimes of most of the readers of this commentary. In particular, see my NewsWithViews commentary "Donald Trump and the Militia" (20 February 2016).

Revitalization of the Militia will also be necessary to enable "the good People" to deal in a constitutional fashion with the social unrest which will arise out of the economic dislocations and hard times this country will have to endure as part of the price of rebuilding the national economy. See, e.g., my book By Tyranny Out of Necessity: The Bastardy of

“Martial Law”.

(ii) Restoration of the Power of the Purse will require bridling the banks—first and foremost, by compelling them to provide Americans with a constitutional and economically sound monetary unit to compete with, and eventually supplant, the Federal Reserve Note as this nation’s primary currency. See, e.g., my NewsWithViews commentaries “A Cross of Gold” (10 May 2011) and “Presidential Questions” (9 May 2015). It will also necessitate coming to grips with the problem of the unpayable national debt—not by imposing “austerity” on “the good People”, but by recognizing that much of this debt has been incurred unconstitutionally (in terms of international law, is so-called “odious debt”), and is therefore unenforceable. See, e.g., my NewsWithViews commentary “A Cross of Debt” (10 February 2012). As a successful entrepreneur, Mr. Trump surely understands that long-term business-relations, whether of a corporation or an entire country, cannot be conducted on the basis of the uncertain value of an unstable “rubber” currency, and that sometimes a declaration of bankruptcy and concomitant cancellation of some and restructuring of other debts is unavoidable.

(g) In even the short run, little will be accomplished unless and until a Trump Administration breaks the electoral stranglehold of the “two” major political parties and the string-pullers behind them. This will require radically diminishing, if not eliminating altogether, the ability of organized wealth to maintain the oligopoly of those parties, to suppress or capture legitimate political movements, and thereby perpetually to misdirect the course of elections. That a handful of multi-billionaires, primarily through the mega-corporations they own and the myriad special-interest groups they spawn and finance, are suffered to dominate political affairs in this country, setting “the good People” at defiance in election after election, directly contradicts any rational conception of “representative government” and “the general

Welfare". Not only is that state of affairs unsound in principle, but also it has turned out disastrously in practice. For all too long, these individuals and institutions have controlled the composition of Congress, the Presidency, and the Judiciary, as well as much of State and Local government—the consequence being the mess in which this country now finds itself at every level of the federal system. The simplistic theory that "corporate money" can be equated with "free speech" in the political realm has been tested by experiment, and found woefully wanting. (To be sure, it might be argued that the corruption and degeneration of American politics have been the products, not of the injection of wealth per se into politics, but only of the faulty ideas that such injection has promoted, and that if the wealthy were to marshal their resources on behalf of good ideas this country would benefit. Yet there is no denying that, only as a consequence of the massive amounts of irresponsible wealth behind them could the bad ideas prevalent today have become dominant in the political arena. And in politics one must be extremely risk-averse, because the risks of error are too great to be accepted.)

The exclusion of "corporate money" from politics may appear to be a problematic goal, because of the false notion promulgated by the Supreme Court that corporations are "persons" with constitutional rights equivalent to those of real flesh-and-blood individuals. The "personhood" of corporations, however, is merely a sorry legal fiction. Actually, it is a piece of pseudo-legalistic balderdash, coming as it does from a Court with the effrontery to claim that actual human beings who happen to be unborn are not constitutional "persons". In any event, no need exists for a constitutional amendment to recognize the self-evident truth that corporations have no inherent rights, but rather are merely the creatures of statutes, with only such legal relations (rights, powers, privileges, immunities, and so on) as those statutes grant, and which other statutes can deny, to them. Whatever it may

have opined on this subject in the past, the Supreme Court has a long history of changing its mind on constitutional questions. See, e.g., Payne v. Tennessee, 501 U.S. 808, 828-830 & note 1 (1991). So it is not too much to expect that the Court can be persuaded to reverse itself on this issue, too. And if the Justices refuse to come to their constitutional senses, they can be shown the door; for their tenure is solely "during good Behaviour", which subversion of the political process in favor of faux "persons" can never be.

Admittedly, the foregoing may constitute no more than a "wish list" for a true Presidential "outsider" who has yet to appear. For only the future will tell whether Mr. Trump is such a man. Yet one must always live in hope. If an obscure commentator such as this author, living in the remote "Canoe Capital of Virginia", can figure out some of what needs to be done, then so can an eminent real-estate shark from the Big Apple.

Ultimately, though, the critical question is not "Can Trump do it?" or even "Will Trump do it?", but instead "If Trump tries to do it, will 'the good People' do their part?" Will they demand his nomination, secure his election, and then stand behind his Administration?

As it always does, time will tell. Some Americans may yet imagine that this country can still play for time. But, as the old saying has it, time brings all things, bad as well as good. And anyone who can tell time knows that "the good People" are running out of time. It really may be "now or never". If "the good People" do not triumph by electing a true "outsider" to "the Office of President" this November, America's fate may be sealed, once and for all, in the worst tragedy of modern times.

Standing guard or standing down?

I always approach each edition of the National Rifle Association's magazine, American Rifleman, with some little trepidation, because of the disturbing content that all too often crops up in its editorials. The latest edition (May 2016) has once again proven that I am not merely a victim of intellectual paranoia.

In his regular column, "Standing Guard", the NRA's Executive Vice President, Wayne LaPierre, advises his readers that "When it Comes to Gun Rights, 2016 Election Is About the Court, Too". The thrust of the column is Mr. LaPierre's reiteration of the necessity for the NRA's supporters to "elect a president who believes and will fight for the Second Amendment", as well as to "elect a [Charles] Schumer-proof United States Senate and maintain the current Second Amendment majority". As I have explained in an earlier NewsWithViews commentary entitled "NRA, Second Amendment, and 'We the People'", reliance on elections alone (even if they are conducted honestly) is an inadequate means to "fight for the Second Amendment". For instance, no candidate for "the Office of President" who fails to champion revitalization of the Militia is actually "fight[ing] for the second Amendment" to the full extent the Constitution requires. After all, how can a candidate for that office expect to fulfill his constitutional authority and responsibility as "Commander in Chief * * * of the Militia of the several States, when called into the actual Service of the United States", when for all practical purposes "the Militia of the several States" are moribund throughout this country? Is not such a candidate's "Job One" to correct that situation? The answer being obvious,

I shall not rehash that matter here.

More disquieting in Mr. LaPierre's column is his critique of certain statements made by the Justices who dissented from the Supreme Court's decisions in District of Columbia v. Heller and McDonald v. City of Chicago—namely, Justices Stevens, Breyer, Sotomayor, and Ginsburg. To be sure, their pronouncements certainly warrant scathing criticism, if not raucous ridicule. Unfortunately, Mr. LaPierre's rejoinders are not much less faulty—perhaps, are even more indefensible, coming as they do from an ostensible proponent of the Second Amendment. He is not so much "standing guard" over the Amendment, as standing down from that purpose.

A. Mr. Lapierre quotes Justice Stevens in Heller as contending that:

The Second Amendment was adopted to protect the right of the people of each of the several States to maintain a well regulated militia … there is no indication that the Framers of the Amendment intended to enshrine the common-law right of self-defense in the Constitution.

Now, no one who reads all twenty-seven words of the Second Amendment—not just the last fourteen, which the NRA emphasizes to the virtual exclusion of the first thirteen (a mistake, curiously enough, which Justice Stevens did not make)—can doubt that Justice Stevens was perfectly correct (albeit, I suspect, only accidentally so) to assert that "[t]he Second Amendment was adopted to protect the right of the people of each of the several States to maintain a well regulated militia". Nonetheless, he missed the essential point: that, if the people have a right "to maintain a well regulated militia" in each State, then there must actually be, in each State, "[a] well regulated Militia", organized according to constitutional principles drawn from pre-constitutional American history, in which Militia "the people" as a whole actually participate. The "right of the people" thus imposes a

corresponding duty, not only on each of “the several States”, but also on the General Government (primarily, through Congress), to ensure that such Militia are fully enrolled, organized, armed, disciplined, and governed at all times. That “right of the people” is also a duty of “the people” to serve in such Militia, because constitutional Militia are establishments with near-universal compulsory membership. They are the only organizations the Constitution recognizes which are based upon a general “draft”. Full support for these assertions can be found in my book Constitutional “Homeland Security”, Volume Two, The Sword and Sovereignty (Front Royal, Virginia: CD-ROM Edition, 2012), and therefore need not be repeated here.

What Justice Stevens did not understand (or refused to acknowledge) is that, as Article 13 of Virginia’s Declaration of Rights (1776) made clear, “a well regulated militia” is “composed of the body of the people, trained to arms”. That means that every able-bodied adult American (other than conscientious objectors) not only must be suitably armed as an individual, but also must be trained to use his arms effectively in a collective effort in aid of the community’s self-defense. Of course, the guarantee that each and every eligible individual always possesses arms suitable for some kind of Militia service will also ensure that such arms are available at all times for every such individual’s personal self-defense. So, pace Justice Stevens, by “protect[ing] the right of the people * * * to maintain * * * well regulated militia”, “the Framers” did indeed “enshrine the common-law right of self-defense in the Constitution”, for individuals acting as individuals in their own personal defense as well as for individuals acting collectively in defense of the community.

We know this with apodictic certainty because the very first constitutional authority and responsibility of the Militia is “to execute the Laws of the Union”, as well as the laws of

their own States. And self-defense—whether exercised on behalf of the community as a whole or of a single individual—is the execution of the very highest of all human laws. As Sir William Blackstone (no mean student of the common law) explained with respect to the "defence of one's self":

the law * * * makes it lawful in [an individual] to do himself that immediate justice, to which he is prompted by nature, and which no prudential motives are strong enough to restrain. It considers that the future process of law is by no means an adequate remedy for injuries accompanied with force; since it is impossible to say, to what wanton lengths of rapine or cruelty outrages of this sort might be carried, unless it were permitted a man immediately to oppose one violence with another. Self-defense, therefore, as it is justly called the primary law of nature, so it is not, neither can it be in fact, taken away by the law of society.
Commentaries on the Laws of England (Philadelphia, Pennsylvania: Robert Bell, 1772), Volume 3, at 3-4.

Self-evidently, then, individual self-defense is, in fact and law, a microcosmic example of the macrocosmic right and duty of the Militia to execute "the primary law of nature" (and vice versa). This should be obvious, too, from the Second Amendment. For "the security of a free State" could hardly exist if individuals were unable to protect themselves, as individuals, from lone aggressors to the selfsame extent that they were able to protect themselves, as a community, from concerted attacks by large numbers of domestic or foreign aggressors (and vice versa). "A well regulated Militia" defends the community. The community, however, is composed of individuals. So, in defending the community, the members of the Militia are defending themselves as individuals, too. And even when an individual is simply defending himself against a single attacker in an isolated confrontation, he is also defending the community, because he is executing the very highest law of the community against the aggressor under

circumstances in which no one else can come to his aid.

It is understandable that someone such as Justice Stevens could be hopelessly confused on this score. What, though, is to be said of Mr. LaPierre, who attacks Justice Stevens' statement as "that arrogant defamation of liberty—utterly denigrating the individual right to keep and bear arms". Is it conceivable that for Justice Stevens to link "the right of the people to keep and bear Arms" with the Militia is an "arrogant defamation of liberty", when the Second Amendment itself identifies "[a] well regulated Militia" as "necessary to the security of a free State"? Do individuals in "a free State" not enjoy "liberty"? And, if they do (as is incontestably the case), is not "[a] well regulated Militia * * * necessary to the security" of their "liberty"? Or is the Constitution wrong on that point? One wonders whether Mr. LaPierre has ever pondered such questions.

B. Mr. LaPierre then quotes Justice Breyer's dissent in McDonald:

"[T]he Framers did not write the Second Amendment in order to protect a private right of armed self-defense." And "By its terms, the Second Amendment does not apply to the States; read properly, it does not even apply to individuals outside of the militia context."
Justice Breyer fumed. "After all, the Amendment's militia-related purpose is primarily to protect the States from federal regulation, not to protect individuals."

Of course, Mr. LaPierre is fully justified in treating these statements as rank gibberish—

First, as explained above, the Second Amendment certainly does "protect a private right of armed self-defense". Can even Justice Breyer believe that a member of the Militia, required by law to possess a firearm in his own home at all times, does not enjoy a "private right" to employ that firearm for

personal self-defense, in addition to his right and duty as a member of the Militia to execute the law against whoever attacks him?

Second, to what vanishingly small set of citizens does the Second Amendment not apply, because the constituent individuals are "outside of the Militia context"? "A well regulated Militia" includes all able-bodied adults from, typically, 16 years of age on up. Only individuals convicted of the most serious crimes, and those who (although otherwise able-bodied) suffer from some disabling mental disease or defect, are excluded. (Conscientious objectors are not required to possess firearms, but must perform some other Militia service.)

Third, the right—and duty—of "the people to keep and bear Arms" so as to be able to serve in "well regulated Militia" must apply first and foremost to and in their own States, because the Militia are "the Militia of the several States", not "the Militia of the United States". Do not the States themselves enjoy a right and labor under a duty to provide in their own territories what the Constitution declares to be "necessary to the security of a free State" everywhere without exception throughout the Union? Is their "security" as "free State[s]" to be left to the mercies of errant public officials in the General Government? What if insouciant, incompetent, or disloyal officials of that government fail, neglect, or refuse to provide the requisite measures of "security"? Must "free State[s]" then collapse throughout the United States, with no recourse in self-help?

To be sure, Congress labors under the constitutional duty "[t]o provide for organizing, arming, and disciplining, the Militia" for the purposes of "execut[ing] the Laws of the Union, suppress[ing] Insurrections and repel[ling] Invasions". But what has it done to date (actually, since 1903)? It has consigned almost all Americans to the constitutionally oxymoronic "unorganized militia", leaving them unprepared to

perform any Militia service in defense of either their communities or themselves as individuals. Were the right and duty of “the people” to serve in “well regulated Militia” fully enforced by the States, though, Congress’s default would not matter to a critical degree, because Militia properly “well regulated” by their own States would be prepared to fulfill all of the responsibilities “necessary to the security of a free State”, including the three the Constitution specifies.

Fourth, the General Government’s only regulatory authority in the premises is to organize, arm, discipline, and train the Militia, and to govern such part of them as may be employed in the service of the United States, for one or more of the three explicit constitutional purposes quoted above, and for nothing else. The Constitution authorizes no other regulation—and most emphatically no regulation which directly violates “the supreme Law of the Land” by purporting to “unorganize” or “disarm” the Militia. Furthermore, an unconstitutional regulation of the Militia which harms the States necessarily harms “the body of the people” who make up the Militia, and therefore harms the vast majority of the able-bodied adult individuals who make up society. So, pace Justice Breyer, if the Second Amendment provides any protection at all, it assuredly “protect[s] individuals”.

But if Justice Breyer is all wet, does Mr. Lapierre stand on drier ground? Does Mr. LaPierre imagine that “the people” have no right to require their own States to maintain the very—indeed, the only—institutions which the Constitution declares to be “necessary to the security of a free State”? Are the States to be suffered to behave as other than “free State[s]” by simply dispensing with their Militia? One would hope not. Yet is this not the terminus to which acceptance of “the individual right to keep and bear arms”, so precious to Mr. LaPierre, now leads this country?

C. Mr. LaPierre then scoffs at what he calls Justice Stevens’

“off-the-wall dissent” in McDonald:

Stevens wrote, “[T]he experience of other advanced democracies, including those that share our British heritage, undercuts the notion that an expansive right to keep and bear arms is intrinsic to ordered liberty. …
“[I]t is silly—indeed, arrogant—to think we have nothing to learn from the billions of people beyond our borders.”
Mr. LaPierre rightly derides this claptrap.

The laws of foreign nations are both irrelevant and impertinent with respect to how America’s Constitution should be construed and applied. As to foreign nations in general, I have written a book to that effect. How To Dethrone the Imperial Judiciary (San Antonio, Texas: Vision Forum Ministries, 2004). As to Great Britain in particular, immediately pre-constitutional American history provides a veritable library, culminating in the record of General Gage’s attempt to impose “gun control” on the Colonists in Lexington and Concord in 1775—the event memorialized, for example, as part of “A Declaration by the Representatives of the United Colonies of North America, now met in General Congress at Philadelphia, setting forth the causes and necessity of their taking up arms” (Thursday, 6 July 1775), Journals of the Continental Congress, Volume 2, at 150-151. (In this regard, Mr. LaPierre would do well to recall that Americans resisted British tyranny on 19 April 1775, not by anarchic exercises of some imaginary “individual right to keep and bear arms”, but by turning out in a collective fashion as Local units of the Militia of Massachusetts.)

Pace Justice Stevens, Americans’ first task must be to learn, not from foreign sources but from their own Constitution, what “liberty” means—and especially what institutions and practices are required to preserve it. The most important precept (because the Constitution singles it out) is that “[a] well regulated Militia”—not an imaginary “individual right to keep and bear arms”—is “necessary to the security of a free State”.

Having learned that much, Americans can compare the state of "liberty" in their own country (in which a large proportion of the citizenry remains armed), with the general nonexistence of "liberty" in foreign nations (in which disarmament of the populace is the usual state of affairs). What America's Founding Fathers understood as "liberty" under "the Laws of Nature and of Nature's God" may be slipping into an increasingly perilous condition in this country; but it is largely defunct almost everywhere else. What (in Justice Stevens' words) "we have * * * to learn about liberty from the billions of people beyond our borders" is that the deterioration of "liberty" here and its elimination there are not mere accidents of history. They derive from disregard of the first thirteen words of the Second Amendment in this country, and from the absence of the entire text of that Amendment in the organic laws of other countries.

D. Finally, Mr. LaPierre rightly chides Justice Ginsburg for once saying that she "would not look to the U.S. Constitution if [she] were drafting a constitution * * * . [She] might look to the Constitution of South Africa[.]" "You might ask," writes Mr. LaPierre, "why would a U.S. Supreme Court justice prefer another constitution to that which was forged in Philadelphia more than 200 years ago?" The explanation as to Justice Ginsburg, no doubt, is that she subscribes to a legal and political ideology incompatible with—indeed, diametrically opposed to—the principles of America's Constitution, and therefore "prefer[s] another constitution" of her own imagining. What, though, is the explanation as to Mr. LaPierre?

Exactly what constitution, informed by what legal and political ideology, does he prefer? Apparently, it is a constitution with no firm grounding in pre-constitutional American legal history, a constitution to be construed on the basis of an ideology which licenses its exponents to dissect the Second Amendment, to disregard if not discard the

Amendment's first thirteen words, to disrespect the judgment of the Founders that "[a] well regulated Militia" is "necessary to the security of a free State", and to discourage the members of the NRA, as well as those sympathetic to it throughout this country, from associating themselves with the Militia in thought, word, and deed, except when they deny that the Militia have any significant relationship to "the right of the people to keep and bear Arms".

Misinterpretations of the Constitution with such an undercurrent of animosity towards the Militia could be expected to be broadcast by a certain "poverty" law center, notorious for its rabid opposition to the Second Amendment. Why they keep emanating from the NRA, however, passes understanding. Perhaps it really is true that whom the gods would destroy they first make mad. Unfortunately, if allowed to fester much longer this particular madness will destroy, not only the NRA, but the rest of us as well.

Donald Trump and the Militia

Please understand that I am not a "tub-thumper", an enthusiast, or an apologist for Donald Trump. But his electrifying emergence on the scene represents a sea-change in American politics far more consequential than his own pyrotechnic personality, bold campaign-style, and receipt of popular enthusiasm suggest. He is, as it were, the surfer who—perhaps by accident, perhaps by insight, but in any event in a timely fashion—has caught the first of the really big waves rolling towards shore. The significant aspect of the present situation is not the surfer, however, but the wave:

namely, the upsurge of popular disgust for the “two”-party political vessel in which this country is sailing on a collision-course into the rocks of despair. This first big wave threatens all of the ships riding at anchor in the Establishment’s harbor. So the Establishment needs to throw up a breakwater, in a manner both fast and furious.

As anyone with 20-20 political vision can see, America’s domestic enemies have taken off their velvet gloves to reveal the iron fists underneath, by employing against Trump directly, and America ultimately, the modern Bolshevistic strategy of socio-political destabilization through so-called “non-violent direct action”, “weathermen” tactics, and “color revolutions”—all in line with the old Leninist/Stalinist slogan, “there are no fortresses which Bolsheviks cannot storm”. Please refrain from chiding me that the contemporary Establishment is not, to one degree or another, made up largely of Bolsheviks. The opposite is obviously true. Some are retreaded Trotskyites (who call themselves “neoconservatives”). Others are watered-down Mensheviks (who call themselves “social democrats” or “moderate socialists”). Others are the equivalent of NEP-men (better known here as “corporate socialists”, because they rely on governmental intervention in the economy to guarantee profits for themselves, while offloading losses onto the backs of the general public). And all of them are doctrinaire Leninists, inasmuch as they subscribe to his notion that “[t]he scientific term ‘dictatorship’ means nothing more nor less than authority untrammeled by any laws, absolutely unrestricted by any rules whatever, and based directly on force”. Vladimir I. Lenin, “A Contribution to the History of the Question of the Dictatorship, A Note” [1920], in Collected Works (Moscow, Union of Soviet Socialist Republics: Progress Publishers, 4th English Edition, 1966), Volume 31, at 353. None of these people gives a tinker’s dam for the Declaration of Independence or the Constitution—indeed, they believe themselves to be “untrammeled by any laws”. And all of them

enthusiastically promote the present-day global “war on terrorism”, under color of which a para-militarized police-state apparatus, “absolutely unrestricted by any rules whatever, and based directly on force”, is being built up within this country in order to wage a domestic “war of terrorism” against the American people. See my book By Tyranny Out of Necessity: The Bastardy of “Martial Law” for the particulars on this.

If I may base my appreciation of the present situation upon an historical parallel drawn from Germany’s dolorous experience under the Weimar government in the 1920s and 1930s (which is probably familiar to most readers of this commentary), the advent of these bare-knuckled mass assaults on this country amounts to our own home-grown Bolsheviks’ declaration of ein Kampf um die Macht auf Leben und Tod (a struggle for power to the death). They will employ their Rotfrontkämpferbund (Red Front fighters’ league) to try to derail Trump’s nomination, through die Herrschaft des Pöbels auf der Straße (mobocracy in the street). If he is nominated, they will use der Bund to try to deny him election. If he is elected notwithstanding all of their efforts before November, they will then turn der Bund loose to stifle any major reforms which he attempts to put through after his inauguration, whether with or especially without Congress, the Judiciary, and the bureaucracy behind him. And please spare me the innuendo that, by drawing upon this parallel, I am somehow suggesting that Trump is a modern American “Hitler” figure. Rather, my intuition tells me that Trump is the sort of individual, perhaps rough-hewn but basically honest, who might have saved Germany from Hitlerism, as well as from Bolshevism, had the good Germans who came forward in der Wiederstand (the resistance-movement) after 1933 been more prescient and better organized before then.

One may ask why America’s Bolsheviks have decided to come out of the closet to exhibit their true coloration by unleashing mobocracy in the street, when they can (and surely will)

employ every kind of old-fashioned fraud familiar in American politics to steal the election. The answer is that they anticipate their inability to put into practice Stalin's apperçu that who votes is less important than who counts the votes, and are prudently preparing for the worst possible eventuality—namely, that in these unsettled times even widespread electoral fraud may not deprive Trump of victory if the polling-places are inundated by a true "revolt of the masses". Moreover, even the most effective techniques of electoral fraud will be useless after the election. No further elections of consequence will be held during the first two years in which Trump holds "the Office of President". If he cannot be stifled during that period, perhaps "the Trump phenomenon" will prove its worth in successful Presidential actions, and then will demonstrate its longevity and strength in the next elections—with the Bolsheviks suffering defeat after defeat. Between elections, the Bolsheviks will not be able to rely exclusively upon their co-conspirators, fellow travelers, dupes, useful idiots, and assorted fools in Congress, the Judiciary, and the bureaucracy to stand up to Trump. For the righteous anger of legions of patriotic Americans lined up behind him will give all of them pause. To put iron in their cronies' backbones, the Bolsheviks will need to provide them with muscle in the streets: namely, hordes of well-funded, well-drilled "protesters" and "dissenters" deployed to shout down, or violently shut down, every popular manifestation of support for Trump.

So, as President, Trump—and all of the patriotic Americans in his camp—will desperately need the Militia:

(i) to awaken, energize, authorize, mobilize, organize, equip, train, and deploy on his behalf those whom the Declaration of Independence styles "the good People";

(ii) to protect Trump himself—because no part of the present governmental apparatus at any level of the federal system can be trusted to do so;

(iii) to put through fundamental reforms that can be accomplished by the President alone ("to execute the Laws of the Union", including both the Declaration of Independence and the Constitution, perforce of Article I, § 8, cl. 15 and such statutes as 8 U.S.C. § 1182(f); 10 U.S.C. §§ 332 and 333; and 18 U.S.C. §§ 241 and 242), in particular against entrenched, recalcitrant, hostile, and disloyal bureaucrats and subversive private factions and other NGOs and special-interest groups; and especially
(iv) to leave puissant governmental institutions for "the good People" to use on their own at the State and Local levels in the event of an unavoidable and utterly destabilizing national crisis, probably centered in banking and haute finance, which breaks out during his Presidency.
With respect to points (ii) and (iii) in particular, one might recall the wisdom of General William Tecumseh Sherman who, when importuned to make himself a candidate for the White House, replied that "I would account myself a fool, a madman, an ass, to embark anew, at sixty-five years of age, in a career that may, at any moment, become tempest-tossed by the perfidy, the defalcation, the dishonesty or neglect of any of a hundred thousand subordinates utterly unknown to the President of the United States." Quoted in Burke Davis, Sherman's March (New York, New York: Vantage Books, 1988), at 298.

Inasmuch as der Rotfrontkämpferbund is now being deployed, a counterrevolutionary "white" force must be mobilized to oppose and defeat it. If loyal Americans want to avoid witnessing the rise of some extreme "right-wing" (actually, "right-socialistic") "brown" force such as die Sturmabteilung (by default the main counterweight to the Communist street-gangs in Weimar Germany during her time of troubles)—which many desperate Americans will demand, and not a few will surely join, if they are offered no other powerful alternative—something else must be provided for them. This force must be raised from among "the good People", there being

no other source with the necessary loyalty, legal authority, self-interest, and sheer numbers requisite for the task at hand. Especially, it must be a force with explicit and unequivocal authority under the Constitution and the Declaration of Independence, an establishment within the government, not a force the provenance of which can be traced only to some private political party, movement, or group.

Therefore, if Trump actually intends to be a constitutional "Commander in Chief" in the fullest sense in both law and fact—and, Heaven knows, if he does not intend as much then he should emulate General Sherman by not seeking "the Office of President" at all—he needs to promote the exercise of that high authority against America's domestic enemies, through exhortation for and mobilization of what the Constitution itself declares to be uniquely "necessary to the security of a free State", and to which it explicitly assigns the authority and responsibility "to execute the Laws of the Union"—and he must do this, in both words and deeds, immediately if not sooner. This is no time to play for time; for, as the old saying has it, time brings all things, bad as well as good. During his campaign, he must advocate revitalization of the Militia; and, after his election, he must take every action necessary and proper to that end. I suspect that, if he does grasp that nettle, he will be able to say of the contemporary Establishment what General Sherman said of the old Confederacy: "pierce the shell, and it's all hollow inside".

On the other hand, if—Heaven forfend!—Hillary Clinton should seize "the Office of President", either by her own devices or (more likely) with the aid of anti-Trump back-stabbers in the Republican Party or some third-party "spoiler" candidate (from such as the Libertarian Party, which disastrously split the conservative vote in favor of a dyed-in-the-wool Clintonite in the last gubernatorial election in Virginia), she and the Bolsheviks behind her will not sit on their hands. Instead, emboldened by their triumph in scotching Trump, they will turn

out der Rotfrontkämpferbund to advance their revolutionary agenda by deploying das Faustrecht (mob rule by the fist) against all of the "constitutionalist", "patriotic", "conservative", "traditionalist", and other politically, economically, and culturally "right-wing" groups in the country: First, to intimidate them and anyone who even tangentially supports them. Second, to turn the undecided citizenry against them when they try to defend themselves (denouncing even their verbal self-defense as "incitement to violence"). And third, to unleash para-militarized police-state oppression, some species of "martial law" jury-rigged under color of "emergency powers", Vyshinsky-type prosecutors, and the kangaroo courts to suppress whichever Americans try to stand up for their natural and constitutional rights. This, the Bolsheviks expect, will bring about die Endlösung (the final solution) of the problems of popular sovereignty and popular self-government which so vex all totalitarians.

Be forewarned. One need not be a dabbler in the occult to foretell the future in this respect. Neither need one be much of a student of modern history to fear the accuracy in these times of the old adages that "no one learns anything from history other than that no one ever learns anything from history", and that "we grow too soon old and too late smart". (Personally, too, I appreciate the wisdom of the observation that "no man is ever taken for a prophet in his own country". For I have long been struggling to educate Americans about the Militia—and, most recently, about the utter illegality of "martial law"—with about as much success as if I had been trying to sell a twelve-step program in humility and reticence to the Kardashians.)

Nonetheless, I believe that Mao Tse-tung was correct (albeit perhaps only accidentally or hypocritically so) when he wrote that "[t]he people, and the people alone, are the motive force in the making of world history", that "[t]he masses have boundless creative power", and that

[a]ll reactionaries are paper tigers. In appearance, the reactionaries are terrifying, but in reality they are not so powerful. From a long-term point of view, it is not the reactionaries but the people who are really powerful.
Quotations from Chairman Mao Tse-tung (Peking, China: Foreign Languages Press, 1966), at 118, 118, and 72. Thus, to turn the Bolsheviks' own slogan to the purpose of America's salvation: "There are no fortresses which 'the good People' cannot storm."

In the final analysis, it is critically important that Trump should turn to "the good People", trust "the good People", empower "the good People", and rely upon "the good People". Not only for his own sake (which in the great scheme of things amounts to little), but also for their sake first and foremost (which amounts to everything). As modern Presidential campaigns illustrate, this country is steeped in its own bastard version of das Führerprinzip (the leader principle). As early as 1933, America had her "Chief" (Roosevelt), just as Germany had her Führer (Hitler), Italy her Duce (Mussolini), and Russia her Vozhd' (Stalin), to be followed not long afterwards by Red China with her "Great Helmsman" (Mao). Today, all too many Americans view a President as someone whose purpose is to advance the agenda of their political party or special-interest group, not someone who should act unselfishly with and through WE THE PEOPLE so that THE PEOPLE themselves can become permanently the masters of their own destiny. Such approval of, or at least acquiescence in, rule from "the top down" must in short order prove fatal to popular self-government.

In principle, it denies the precept of the Declaration that "Governments * * * instituted among Men[ ] deriv[e] their just powers from the consent of the governed"—not from acceptance by "the governed" of "the leader's" mere assertions of authority. In practice, it generates increasingly uncritical support for "the leader's" program, then increasingly blind

obedience to his dictates. Until society arrives at the terminal stage of suicidal political regimentation: Führer befehl, wir folgen (leader command, we follow).

Just as the strength of any pyramid resides at its base, not at its apex, so, too, with popular sovereignty—and with the Power of the Sword in WE THE PEOPLE'S hands for the purpose of "execut[ing] the Laws of the Union" through the Militia. In a constitutional republic, true authority and legitimate power never descend from "the top down", but always arise—indeed, can be generated and exercised only—from "the bottom up". Trump's greatest achievement (were he capable of any truly great achievement) would be to put this truth into action. By one segment of the population he will be damned if he does; and, by another segment, damned if he does not; so he may as well be taken for a goat rather than a sheep. That goes for the rest of us, too.

A Trumped-up controversy

Not so long ago, Donald Trump drew unto himself a great deal of ire from certain circles for suggesting that, in light of the international dangers posed by Islamic terrorists, this country should consider prohibiting further immigration by Muslims. Much of this abuse seemed to assume that some sort of "right" to migrate to the United States exists for foreigners in general, or Muslims in particular—or at least for those foreigners or Muslims against whom some specific criminal or other serious charges cannot be levied as the bases for their disqualifications for entry.

At this moment, I am merely an observer, rather than an avowed

supporter, of Mr. Trump. For what sort of a card in the deck of Presidential candidates he may be has yet to become clear. Some astute, if cynical, political commentators suggest that he may be being put up as the Establishment's Manchurian Candidate—that is, a one-eyed Jack which shows only the deceptive side of its face to the general public's view. Other commentators warn that he may be being set up by subterranean forces as a sure loser in the general election to Hillary Clinton, Bernie Sanders, or some equally deplorable donkey from the Establishment's political stable—that is, as a Joker. Still others hope that a benevolent Providence has raised up Mr. Trump as America's Ace in the Hole for the decisive hand which History has dealt at this critical juncture in the course of human events. My personal concern is whether, even if Mr. Trump himself is "for real" and goes on to win nomination and the general election, he is likely as President to prove to be America's trump card—or merely a card which will be trumped by some other card the Establishment plans to deal from the bottom of the political deck. That is, specifically, whether Mr. Trump is perhaps being put up, or more likely being put up with, by the crafty Forces of Darkness in order to be set up in the White House as the new Herbert Hoover when the national economy crashes in 2017 or 2018.

Whatever sort of card Mr. Trump may turn out to be, one thing is certain: He was quite correct as to the power, the right, and in some circumstances the duty of the United States to exclude aliens—any and all aliens—from entering this country. That point is so clearly and firmly established that one must wonder whether the only commodity the supply of which never runs out amongst all too many Americans today is double-rectified, industrial-strength ignorance where basic questions of constitutional law are concerned.

Consider the internet report by Paul Bedard, in the Washington Examiner, "THE MAP: 'Sanctuary Cities' cross the 300 mark with

Dallas, Philly" (2 February 2016), which informs its readers that these "sanctuary cities" are refusing to assist in, or perhaps even to allow, enforcement of America's immigration and naturalization laws against illegal aliens welcomed within their territories. Now, it should be obvious that the very concept of any such "sanctuary" is unconstitutional, root and branch. The Tenth Amendment does provide that "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." But powers over immigration are explicitly and exclusively "delegated to the United States by the Constitution". Specifically, Article I, Section 8, Clause 4 extends to Congress the power "[t]o establish an uniform Rule of Naturalization"—which plainly excludes variegated rules on that subject generated by the States or their political subdivisions on some ad hoc bases. See Hines v. Davidowitz, 312 U.S. 52 (1941). Furthermore, Article I, Section 9, Clause 1 states that "[t]he Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight"—which plainly permits Congress to "prohibi[t]" such "Migration or Importation" after 1808 in "the States now existing" (that is, as of ratification of the Constitution in 1788) and at all times in all other States, and that absolutely and unconditionally (because the Constitution sets out no limitation with respect to this matter). "Migration" plainly refers back to Congress's power with respect to "Naturalization", under Article I, Section 8, Clause 4; whereas "Importation" refers back to Congress's power "[t]o regulate Commerce with foreign Nations", under Article I, Section 8, Clause 3. Taken together, all of these provisions authorize Congress to exclude from entry into this country any and all aliens, at any time, for any reason.

As the Supreme Court emphasized in Chae Chan Ping v. United States, 130 U.S. 581, 603-604, 606, 609 (1889):

That the government of the United States, through the action of the legislative department, can exclude aliens from its territory is a proposition which we do not think is open to controversy. Jurisdiction over its own territory to that extent is an incident of every independent nation. It is part of its independence. If it could not exclude aliens, it would be to that extent subject to the control of another power. * * *

While under our Constitution and form of government the great mass of local matters is controlled by local authorities, the United States, in their relation to foreign countries and their subjects or citizens are one nation, invested with powers which belong to independent nations, the exercise of which can be invoked for the maintenance of its absolute independence and security throughout its entire territory.

To preserve its independence, and give security against foreign aggression and encroachment, is the highest duty of every nation, and to attain these ends nearly all other considerations are to be subordinated. It matters not in what form such aggression and encroachment come, whether from the foreign nation acting through its national character or from vast hordes of its people crowding in upon us. The government, possessing the powers which are to be exercised for protection and security, is clothed with authority to determine the occasion on which the powers shall be called forth; and its determination, so far as the subjects affected are concerned, are necessarily conclusion upon all its departments and officers. If, therefore, the government of the United States, through its legislative department, considers the presence of foreigners * * * who will not assimilate with us, to be dangerous to its peace and security, their exclusion is not to be stayed because at the time there are no actual hostilities with the nation of which the foreigners are subjects. The existence of war would render the necessity of the proceeding only more obvious and pressing. The same necessity, in a less

pressing degree, may arise when war does not exist, and the same authority which adjudges the necessity in one case must also determine it in another. In both cases its determination is conclusive * * * .

The power of exclusion of foreigners being an incident of sovereignty belonging to the government of the United States, as part of those sovereign powers delegated by the Constitution, the right to its exercise at any time when, in the judgment of the government, the interests of the country require it, cannot be granted away or restrained on behalf of any one. The powers of government are delegated in trust to the United States, and are incapable of transfer to any other parties. They cannot be abandoned or surrendered. Nor can their exercise be hampered, when need for the public good, by any consideration of private interest.
Accord, Yamataya v. Fisher, 189 U.S. 86, 97 (1903); United States ex rel. Turner v. Williams, 194 U.S. 279, 289-290 (1904); Bagajewitz v. Adams, 228 U.S. 585, 591 (1913).

Simply put, "the formulation of these policies is entrusted exclusively to Congress[.]" Galvan v. Press, 347 U.S. 522, 530-531 (1954). Period. See also Chirac v. Chirac, 15 U.S. (2 Wheaton) 259, 269 (1817); United States v. Wong Kim Ark, 169 U.S. 649, 701 (1898). No room exists for the States or their Localities to adopt rules as to aliens either more, or less, stringent than those which Congress has enacted. See Hines v. Davidowitz, 312 U.S. 52 (1941). Exclamation point.

As of today, Congress has enacted numerous laws on this subject—none of them as severe as they could be, but which nonetheless render certain aliens subject to exclusion, illegal if they enter this country in defiance of those laws, and liable to deportation and other punishments when apprehended. Furthermore, Congress has specifically authorized the President to deal in a draconian fashion with illegal (or any other form of) entry by aliens into this country:

Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate. * * *
8 U.S.C. § 1182(f). And, in fulfillment of his constitutional duty under Article II, Section 3, to "take Care that the Laws be faithfully executed", the President could, and should, rigorously enforce this statute now that it has become crystal-clear that "the interests of the United States" require the statute's enforcement—indeed, that the very salvation of this country so demands. See also my NewsWithViews commentary "How The President Can Secure The Borders" (18 August 2015).

Thus, the factions which are trying to deny to Americans the ability, originally secured by the Declaration of Independence, to maintain "among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them" as a sovereign nation capable of preserving its own identity and integrity by controlling its own borders—and which are trying to effect the same result against the nations of Europe, too—have not a legal leg, foot, or even toe upon which to stand when they purport to provide "sanctuary" or other aid to illegal aliens. Neither have they any credible basis for criticizing Mr. Trump when he says that he, as President, would deal with immigration, legal as well as illegal, in a particularly uncompromising manner.

Moreover, because the States are at the present time being invaded in fact by "vast hordes of [illegal aliens] crowding in upon us", they could exercise their own explicitly reserved constitutional power and duty under Article I, Section 10, Clause 3 to protect their independence and integrity by, if necessary, "engag[ing] in War, [when] actually invaded, or in

such imminent Danger as will not admit of delay"—at the very least by militantly prohibiting their own political subdivisions from aiding and abetting such an invasion through the provision of "sanctuaries" for or other assistance to the invaders. But what sort of legally and politically inane, if not insane, behavior does America witness today? On the one side, half-witted State and Local officials are purporting to exercise powers absolutely denied to them, in the interest of facilitating alien invasions of their own territories (and, by extension, of the United States as a whole), such as by establishing "sanctuary cities". While, on the other side, the very same nitwits refuse to exercise their undoubtedly reserved constitutional authority: (i) to "make * * * gold and silver Coin a Tender in Payment of Debts" perforce of Article I, Section Clause, Clause 1, so as to begin the process of restoring to this country an economically sound and constitutional monetary system; and (ii) to revitalize "the Militia of the several States", which the Second Amendment declares to be "necessary to the security of a free State" in every respect! Will sheltering illegal aliens prevent or mitigate the coming collapse of this country's monetary and banking systems—or will the financial drain those aliens will impose on overburdened social services and underfunded "safety nets" accelerate and exacerbate it? Will the illegal aliens being sheltered today contribute to the stabilization and then to the reconstruction of society in the wake of that collapse tomorrow, as only revitalized Militia will be capable of doing—or will they increase and intensify the widespread lawlessness which will surely accompany a major economic crisis? These questions answer themselves.

The present rage for "sanctuary cities" may have as one source the giddy altruism and agonizing self-flagellation, coupled with the constitutional illiteracy, of naive "liberals" eager to eradicate so-called "white privilege" (or to pay court to some other half-baked but "politically correct" notion fashionable at the moment). That, however, is only a very

small—and the least consequential—part of the explanation for what is going on.

The Establishment—the ultimate purposes of which are far from being either "liberal" or even benign—employs excessive immigration of all sorts as a battering ram against traditional America. By importing or infiltrating huge numbers of aliens who are either incapable of assimilating in principle or unwilling to assimilate in practice, and thus salting mutually incompatible and even overtly antagonistic enclaves of such people throughout this country, the Establishment divides the total population into hostile competing factions and selfish special interests each of which it hopes it can separately manipulate—politically, economically, ideologically, and socially—so as in the end to rule them all. (This, of course will ultimately disadvantage most "liberals" as well as everyone else, which is why those "liberals" who parrot the Establishment's line and follow its lead as to immigration are rightly derided as "useful idiots"—"useful" with respect to the Establishment, but "idiots" with respect to their own interests.)

One needs vision far less acute than 20-20 to see that, as the result of the Establishment's actions, political, economic, ideological, and social divisions, confusions, misunderstandings, and conflicts persist just about everywhere in this country, and even prevail to the exclusion of social cohesion in many places. The most pernicious manifestation of this orchestrated disunity even has a name: "multiculturalism". Whether this is the product of calculation—engineered and propagated by the exponents of "cultural Marxism" or other subversive schools of thought—or is the unintended consequence of monumental hubris and stupidity on the part of Establishment and its hangers-on, the destructive result is the same.

No nation has ever been created or long held together through the imposition of anarchic "diversity" from the top down

through a calculated policy hatched by its ruling class (or for that matter from the bottom up, as the result of a series of adventitious “barbarian invasions”). Just as the very concept of a “nation” presupposes defined and enforceable geographical borders, so too does it presume the existence of unity with respect to certain fundamental legal principles, economic practices, political procedures, and social conventions which define that nation and its constituent people. In America, “multiculturalism” might be acceptable with respect to social relations which more or less were matters of indifference—but only if citizenship were strictly conditioned upon “uniculturalism” in vital particulars, by requiring each legal immigrant (and native citizen, for that matter) to demonstrate his understanding of and loyalty to the traditional, theoretically sound, and time-tested tenets of Americanism: namely, national independence (the Declaration of Independence); limited government (the Constitution); nonintervention in foreign conflicts (“the common defence”); free markets beneficial to all (“the general Welfare”); personal freedom (“the Blessings of Liberty” in general and the Bill of Rights in particular); the centripetal force of a single national language (English, in which those fundamental laws, as well as all of America’s statutes and judicial decisions, are written); and, perhaps most important of all, each individual’s duty to the community to be ever-ready to retain and protect good government, and to throw off bad government in the persons of rogue public officials, if necessary through being called forth to serve in the Militia.

But no—the Establishment has promoted the subversion, even the open denigration, of Americanism at every turn, particularly these days with respect to “the right of the people to keep and bear Arms”, the unfettered exercise of which is essential to the maintenance of what the Second Amendment calls “well regulated Militia”. The one and only culture the vaunted “inclusiveness” of contemporary “multiculturalism” scrupulously excludes is Americanism. The Establishment treats

only Americanism as an unacceptable component of the "diversity" on which it dotes.

No doubt some people will dismiss the foregoing as a xenophobic analysis. Having never perused Frosty Wooldridge's columns at NewsWithViews, they will wax eloquent about how, according to one theory or another, an ever-swelling influx of aliens, even those unquestionably illegal, will actually benefit the national economy, and even enrich ordinary Americans' lives with all sorts of exotic and wonderful foreign colors, sounds, smells, and flavors, as it were. One assaulted by such rosy descriptions and predictions would do well, though, to recall the warning voiced by the Trojan priest Laocoon, urging his imprudent countrymen not to haul the Wooden Horse within the walls of Troy: "Quidquid id est, timeo Danaos et dona ferentes"—"whatever it is, I fear the Greeks, even bearing gifts". I, for one, sense that Mr. Trump understands this, even if perhaps he has never read Virgil's Aeneid.

Gun control and the no-fly list Pt. 1

GUN CONTROL AND THE NO-FLY LIST
In the political realm, as elsewhere, evil never sleeps. And apparently there is no enormity which the present rogue régime in the Disgrace of Columbia, and equally rogue régimes in certain States, are not capable of, and not intent upon, committing with the expectation that sheepish Americans will remain somnolent and submissive until it is too late for them

to recognize the danger and set about resisting it. The latest piece of "in-your-face" effrontery is an extension of these régimes' never-ending push for systematic "gun control" aimed at the thoroughgoing disarmament of Americans—the goal so pithily and provocatively expressed in Senator Dianne Feinstein's words: "Mr. and Mrs. America, turn them all in." In his recent televised address following the mass shooting in San Bernardino, California, the present resident in the White House, Barack Obama, asked "What could possibly be the argument for allowing a terrorist suspect to buy a semiautomatic weapon?" and urged that "Congress should act to make sure no one on a no-fly list is able to buy a gun." Shortly thereafter, Governor Dannel Malloy of Connecticut announced that he would sign an "executive order" directing the Connecticut State Police, not only to prevent individuals on "the no-fly list" from buying firearms or ammunition in the future, but also to revoke those individuals' permits for firearms they already possess. These actions are open to the obvious questions: "What is Mr. Obama's definition of a 'terrorist'?", "Under what theory of constitutional due process can a mere 'suspect' be denied a right explicitly guaranteed by the Constitution?", and "How can a mere 'executive order' override the Second Amendment?" But, assuming for the purposes of argument that in some conceivable circumstances an individual suspected of "terrorism" could be denied "the right * * * to keep and bear Arms" (as, for example, because he were under arrest preliminary to being arraigned under a constitutionally valid criminal charge), what could possibly be the justification for employing a "bill of attainder" to deny that right to all "suspects" whom some nameless, faceless bureaucrats had included in some "list", based on perhaps utterly fanciful definitions of "terrorism" known only to them? For the undeniable constitutional fact is that "the no-fly list" (and any other "list" of that genre) is an unconstitutional "Bill of Attainder".

In general, an "attainder" is an act which extinguishes some

or all of an individual's civil rights. A "bill of attainder" is a legislative act which imposes a sentence of death upon an individual without any conviction in the ordinary course of judicial proceedings. And a "bill of pains of penalties" is a legislative act which imposes a sentence less severe than death upon an individual without any conviction in the ordinary course of judicial proceedings. In Article III, Section 3, Clause 2, the Constitution allows for an "Attainder" in only one instance: "The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted." But in Article III, Section 3, Clause 1, the Constitution requires that "[n]o person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court." So an "Attainder of Treason" cannot come about through a "bill of attainder", because it requires a prior conviction based upon extraordinary evidence in the course of ordinary judicial proceedings. Otherwise, the Constitution absolutely outlaws all "Bill[s] of Attainder", whether issued by Congress or the States. As to Congress, Article I, Section 9, Clause 3 provides that "[n]o Bill of Attainder * * * shall be passed." As to the States, Article I, Section 10, Clause 1 provides that "[n]o State shall * * * pass any Bill of Attainder[.]" These prohibitions apply to both "bills of attainder" and "bills of pains and penalties". See Ex parte Garland, 74 U.S. (4 Wallace) 333 (1867); Cummings v. Missouri, 71 U.S. (4 Wallace) 277 (1867); United States v. Lovett, 328 U.S. 303 (1946); United States v. Brown, 381 U.S. 437 (1965).

As I have explained in detail in previous articles for NewsWithViews—to wit, "Death Squads" and "Where Is the Outrage?", which dealt with "official assassinations" of individuals on the Obama régime's supremely secretive "hit list"—no public official in any branch of the General Government may enact, enforce, or otherwise give effect to any

“Bill of Attainder” (or “bill of pains and penalties”). To complete the analysis, it is easy enough to prove that no public official in any State may enact or enforce a “Bill of Attainder”, whether that “Bill” purports to derive from the State herself or from the General Government. As already noted, Article I, Section 10, Clause 1 of the Constitution prohibits all “Bill[s] of Attainder” emanating from a State: “No State shall * * * pass any Bill of Attainder[.]”. To be sure, a State is not the political jurisdiction which has “pass[ed]” “the no-fly list”. But (as in Connecticut) a State might attempt to enforce that “list” against individuals who sought to acquire, or who already possessed, firearms. Section 1 of the Fourteenth Amendment provides, however, that “[n]o State shall * * * enforce any law which shall abridge the privileges or immunities of citizens of the United States”. “[A]ny law”, not just a purported “law” of the State. According to rogue officials in the General Government, “the no-fly list” is an actual “law” or an official action “with the force of law”. The prohibition against “Bill[s] of Attainder” is one of the constitutional “immunities of citizens of the United States”. Therefore, no State may “enforce” “the no-fly list” for any purpose.

Of course, “the no-fly list” does not explicitly describe itself as a “Bill of Attainder”. In constitutional analysis, though, mere labels mean nothing. See, e.g., Riley v. National Federation of the Blind of North Carolina, Inc., 487 U.S. 781, 795-796 (1988); Bigelow v. Virginia, 421 U.S. 809, 826 (1975); New York Times Company v. Sullivan, 376 U.S. 254, 268-269 (1964); NAACP v. Button, 371 U.S. 415, 429 (1963). Substance, not form, controls. “The no-fly list” is plainly an unconstitutional “Bill of Attainder”, because inclusion of an individual automatically denies him the ability to travel by airplane, without any judicial determination that such a disability is justified by some plainly constitutional law. Oh, I know that some apologists argue that flying on commercial airlines is supposedly not a “right”, but instead

is a “privilege” which somehow can be extinguished at public officials’ discretion. This is a specious contention. The right to travel, even by air, has both constitutional and statutory foundations. Compare, e.g., Crandall v. Nevada, 73 U.S. 35 (1868), with 49 U.S.C. § 40103. The airlines are common carriers, highly regulated by law, to the services of which all Americans have a claim in common law and various statutes. And the freedom of average Americans to contract with the airlines for passage is part of both parties’ constitutional “liberty” and “property” protected by the Due Process Clauses of the Fifth and Fourteenth Amendments. To be sure, “freedom of contract” can in some instances be subjected to constitutional regulations, as (for example) by exertion of Congress’s power under Article I, Section 8, Clause 3 of the Constitution “[t]o regulate Commerce with foreign nations, and among the several States”. But no power of Congress may be exercised through a “Bill of Attainder”. In any event, the hypothetical “right/privilege distinction” has no bearing whatsoever on the matter at issue here, which is the invocation of “the no-fly list” for the purpose of denying individuals an explicit constitutional right: namely, “the right of the people to keep and bear Arms”, whether that be to purchase “Arms” in the first instance or simply to retain possession of “Arms” previously acquired by whatever lawful means.

Use of “the no-fly list” as a basis for disqualifying an individual from the purchase or possession of a firearm is quite different from the use, say, of criminal records in a typical “background check” performed by a firearms dealer as the precondition for a sale. Individuals on lists of criminal convictions maintained by the FBI and various State law-enforcement agencies have been indicted, tried, and convicted of serious infractions of the law in the normal course of judicial process. One may debate whether or not the commission of a particular crime by a particular individual is a constitutionally sound basis for denial to him of “the right *

* * to keep and bear Arms" (or denials of the right to vote or to hold public office, which often are disabilities that stem from a criminal conviction). But the principle is valid in at least some cases. In contrast, an individual on "the no-fly list" has not been indicted, tried, or convicted of anything. He may be suspected of something—but, even then, the degree of suspicion is not sufficient to warrant his arrest. So the principle involved in "the no-fly list" is invalid in all cases. Criminal records are not "Bill[s] of Attainder", because a particular legal disability (say, denial of the right to purchase or possess a firearm) arises from the prior presumably justifiable criminal conviction, not from the later listing of the individual as having been convicted . Whereas "the no-fly list" is a "Bill of Attainder", because whatever legal disabilities it rationalizes arise merely from an individual's inclusion in that "list", coupled with a vague implicit prediction that he might misbehave in the future, but with no need for any prior, or subsequent, conviction in a court of law for actual criminal misbehavior.

One need not be the victim of paranoia, only the possessor of a modicum of political insight and foresight, to conclude that the proposal by Mr. Obama that Congress should enact a new species of "gun control" based upon "the no-fly list", together with the nearly simultaneous announcement by the Governor of Connecticut that he will impose "gun control" in that State perforce of "the no-fly list" through the fiat of an "executive order", are parts of an integrated complot to test the waters of public opinion in order to determine if Americans will sit silent and still for such a scheme. This is a variant of the well known Leninist tactic of "salami slicing": here, by installing the most obvious, pervasive, and obnoxious form of "gun control"—actual prohibition of purchase and possession of "Arms"—slowly and steadily, individual by individual, State by State, and then nationwide only after most Americans have been sufficiently "softened up". And one can rest assured that, if the Governor of Connecticut succeeds

in using an “executive order” to apply “the no-fly list” to purchases and possession of firearms in that State, then all too soon Mr. Obama will announce that he, too, can employ an “executive order” for that purpose throughout the United States, without the need for any new statute from Congress.

Perhaps it is merely accidental, albeit ironic, that “gun-control” fanatics have selected Connecticut—which calls herself “the Constitution State”—as their “test bed” for this operation, simply because the upper echelons of that State’s governmental apparatus happen to be infested with home-grown Stalinists and other totalitarians. Or, more ominously, perhaps their choice of “the Constitution State” is intended to demonstrate their belief that they can get away with anything, no matter how plainly contradictory of the Constitution it may be, because common Americans (especially in Connecticut) are just too stupid and cowardly to do anything about it.

Now, in my NewsWithViews commentaries cited above, I have written about “official assassinations” and “Bill[s] of Attainder”—without, I have noticed, any significant result. This may be because vanishingly few Americans imagine that they may become the victims of such an atrocity. As far as they are concerned, such a fate is likely to be visited only upon little brown people in far-away lands, who probably deserve it anyway, because they have the audacity to object to interference by rogue American officials in the internal affairs of what they foolishly imagine are their very own countries, when everyone knows that American officials have an overarching license to interfere in the internal affairs of any country, even to the extent of overthrowing its government, massacring its citizens, destroying its infrastructure, and poisoning its lands with depleted uranium.

But I suggest that a program aimed at the total domestic disarmament of America tomorrow would be arguably worse than the one which allows “official assassinations” today, because

no one can imagine that such assassinations might ever be conducted against the general populace throughout the United States, or even that the present resident of the White House would dare openly to claim a prerogative to kill just anyone and everyone whom his minions had inscribed on some “list” of proscribed individuals.

The total domestic disarmament of America, in contrast, aims at no less than the assassination of “a free State” for everyone within the United States—because just about everyone could be, and in the predictable course of events no doubt would become, a target. Once the “gun-control” fanatics finally succeeded in disarming all, or even most, Americans, the number of political murders and other enormities could, and would, be raised to whatever level the tyrants wanted, without fear of effective (or perhaps any) resistance on the victims’ part—just as has occurred during the last century in country after country in which systematic “gun control” has been imposed. For part two click below.

Gun control and the no-fly list Pt. 2

Moreover, the salami-slicing tactic of gradually insinuating “gun control” throughout America by the attainder of individuals is not limited to the use of the present “no-fly list”. That is merely the first slice, and certainly one too thin for achieving the ultimate purpose of the exercise. In the nature of things, once the principle has been established, “gun control” by attainder can and will employ any and every

“list”, based upon any and every imaginable theory of ineligibility—whether the listed individuals are denounced as “terrorists”, or extremists”, or “subversives, or “dissidents”, or by some other opprobrious epithet (including, no doubt, anyone who dares to deny the supposed power of “the government” to employ the tactic of “listing” itself). Everyone with access to the Internet knows that today’s “homeland-security” bureaucrats at every level of the federal system, and the subversive private organizations with which they regularly interact, entertain all sorts of truly crackpot notions as to who qualifies as an “extremist”, or a potential “domestic terrorist”, or a “home-grown terrorist”—including those Americans who identify themselves as “patriots” (because they love their country), as “constitutionalists” (because they believe in the rule of law), or as opponents of a “new world order” (because they defend the Declaration of Independence). Everyone is entitled, as well, to suspect that the “homeland-security” establishment is even now compiling extensive “lists” of Americans whom some bureaucrats and private organizations want to shoe-horn into such categories. Rogue politicians and bureaucrats may deny that these “lists” exist. But no sensible individual believes any such imposture, in light of the long-standing false denials by the FBI and the TSA that “the no-fly list” existed. See Laura K. Donohue, The Cost of Counterterrorism: Power, Politics, and Liberty (Cambridge, United Kingdom: Cambridge University Press, 2008), at 254.

In addition, one can expect that “gun-control” fanatics will run to the red lines their engines of deceitful propaganda and hysterical agitation, not simply (as they always have done in the past) to demonize as a run-of-the-mill “extremist” anyone who supports “the right * * * to keep and bear Arms”, but also to denounce as an extraordinarily clear and present danger to society everyone who holds “fundamentalist” views about the Second Amendment, who manifests “intolerance” of “gun control”, or who expresses “hatred” for “gun controllers”—and

to demand that such people be denied that right precisely because of their zealous promotion of it and their uncompromising opposition to its detractors. In a stupendous display of ideological jiu jitsu, the big “mainstream media” and their allies across the Internet will transform an individual’s support for “the right of the people to keep and bear Arms” into an excuse for denying that very individual that very right for that very reason. And this tsunami of “politically correct” invective will rationalize the creation of what amounts to “no-gun lists” for suspected “domestic terrorists”, to be enforced through “executive orders” according to the precedents soon to be set by Connecticut’s Governor Malloy and others of his ilk. All of which is already beginning to move forward in high gear (just as if it had been planned well ahead of time).

Interestingly enough, the ACLU has, with some success, been attacking “the no-fly list” in the General Government’s courts. Unfortunately, its approach to the problem has been faulty. In an Internet article from the ACLU entitled “Until the No Fly List Is Fixed, It Shouldn’t Be Used to Restrict People’s Freedoms” (7 December 2015), Hina Shamsi, the Director of the ACLU’s National Security Project, reports that the organization is litigating a case in which it demands that the General Government provide individuals with notice of their inclusion in “the no-fly list”, a statement of the reasons for that inclusion, and an opportunity for a hearing on the matter before a neutral decision-maker. The self-evident confusion here, however, is that the courts enjoy no power to “fix” a “Bill of Attainder” by applying ex post some remedial processes in order to mitigate its rigors while still allowing its existence and operation to continue. Rather, the duty of the courts is to strike down in law and render ineffective in fact each and every “Bill of Attainder” in its entirety right then and there. The Constitution’s prohibitions of “Bill[s] of Attainder” do not say that a “Bill” is permissible if it (or some court reviewing it) provides

notice, reasons, and a hearing for a listed individual. The Constitution absolutely prohibits all "Bill[s] of Attainder", no matter what purported procedural "safeguards" they may originally contain or may have grafted onto them in the course of litigation. The reason for this is obvious: The harms which a "Bill of Attainder" causes—namely, the supposed legal disabilities it imposes on the individuals it lists—occur as soon as the "Bill" comes into existence. The rights of listed individuals are lost or otherwise compromised at that moment, according to the very definition of a "Bill of Attainder". True enough, procedural "safeguards" might allow for those rights to be regained at a later date, but always at substantial costs in time, effort, and expense imposed on the targets of the "Bill". Moreover, as the ACLU's own litigation demonstrates, the burden of seeking to set up procedural "safeguards", so that the effect of a "Bill of Attainder" is not as bad as it might otherwise be, always rests squarely on the victims' shoulders. This is an intolerable imposition, inasmuch as, being absolutely unconstitutional, a "Bill of Attainder" is utterly void ab initio. A "Bill of Attainder" can no more be transformed into a constitutional creation by a court's application of ex post procedural "safeguards" than Frankenstein's Monster can be transformed into Miss America by a make-up artist's generous application of lipstick, rouge, and eye-liner.

Reliance on the ACLU's strategy would have especially perverse effects in a situation in which "the no-fly list" were employed, as Governor Malloy threatens to employ it, for the purpose of stripping individuals of the possession of firearms they already own. Consider the following scenario: Having discovered that Jones is included in "the no-fly list", the Connecticut State Police descend on his home, armed with some jury-rigged administrative process based upon Malloy's "executive order", which purports to empower them to seize Jones' firearms and ammunition sine die. If he is not shot to death by a gun-crazy SWAT team executing the raid, Jones must

then initiate some sort of judicial proceeding in order to recover his property. While he is doing so (if his financial situation enables him to hire a competent attorney), the police destroy or otherwise dispose of his firearms and ammunition as supposed "contraband" or "forfeited" property (perhaps by turning those items over to some rogue agency of the General Government, which then black-markets the material to Mexican drug cartels or to "moderate" jihadi terrorists in the Middle East). So, even if Jones eventually does prevail in court, the most he can obtain from the official malefactors of the State of Connecticut is monetary damages, not his firearms. In overall effect, he will be completely disarmed until he can purchase new arms—which, in the case of so-called "assault rifles", Connecticut's new law (recently upheld on typically specious grounds by the United States Court of Appeals for the Second Circuit) makes difficult. So, at least for a while—and perhaps for quite a while at that—Jones' "right * * * to keep and bear Arms" will be palpably "infringed". That this scenario could be extended throughout the State of Connecticut (and any other State, for that matter), limited only by how extensive were the various "lists" rogue agencies of the General Government had compiled, shows how dangerous to "the security of a free State" the situation could become.

Of course, patriots need not worry about the involvement of the ACLU in such a situation, because that organization is unlikely to challenge rogue public officials' use of "the no-fly list" (or any other "list" of that genre) to disarm common Americans. As Hina Shamsi reports in the article cited above, according to the ACLU "[t]here is no constitutional bar to reasonable regulation of guns, and the No Fly List could serve as one tool for it, but only with major reform." In this, she seems to be following sotto voce Justice Breyer's anti-constitutional dissenting opinion in District of Columbia v. Heller. Contrary to both her and Justice Breyer, though, there most assuredly is a "constitutional bar to reasonable

regulation of guns", as the two of them understand "reasonable regulation"—that is, any "regulation of guns" which rogue public officials deem "reasonable" (including, one supposes, outright confiscation). The Second Amendment declares what constitutes the only "reasonable regulation of guns": namely, that "the right of the people to keep and bear Arms, shall not be infringed", where the term "Arms" includes any and every type of "Arms" and related accoutrements which could serve any conceivable purpose in "[a] well regulated Militia". And "the No Fly List could [not] serve as [any] tool for [the reasonable regulation of guns]", because "the no-fly list" is a "Bill of Attainder", which is absolutely unconstitutional and void, no matter what sort of "major reform" might arguably be applied to it.

But what about the National Rifle Association in this brouhaha? Disappointingly, although not unpredictably, the NRA approaches this problem from the same wrong direction as the ACLU. In an Internet article from POLITICO entitled "Administration keeps up media barrage on terror fight" (8 December 2015), Josh Gerstein quotes an NRA spokeswoman as saying that "[t]he NRA's only objective is to ensure that law-abiding American citizens who are wrongly on the list are afforded their constitutional right to due process." If this reference to "due process" means that "the no-fly list" should be declared an unconstitutional "Bill of Attainder", root and branch and at one fell swoop, well and good. But it probably means "due process" only in the sense the ACLU understands "due process" in this situation: namely, as requiring notice, reasons, and a hearing which might serve to remove individuals from the "list" in the course of litigation, on a tedious and uncertain case-by-case basis.

So, what should be done? If litigation simply had to be pursued, the logical parties to initiate it would be firearms dealers in Connecticut, who would file suit as soon as Governor Malloy issued his threatened "executive order". The

theory of their case would be straightforward: The dealers are licensed by the General Government (specifically, by the BATFE). Although the products of governmental regulations (the constitutionality of which need not be explored here), their licenses constitute valuable "property", entitled to constitutional protection. These licenses grant statutory rights to the dealers to enter into contracts with citizens for the purchase and sale of firearms and ammunition. The dealers and their customers also have constitutional "liberty" and "property" rights of contract recognized by the Constitution. All of these rights, whatever their sources, are "civil rights" under 42 U.S.C. §§ 1983, 1985(3), and 1988(b) and (c). The employment by public officials in Connecticut of "the no-fly list" (or any other such "list") in order to preclude the dealers from selling arms to an entire class of individuals, none of whom has ever been judicially determined to be lawfully disabled from purchasing firearms or ammunition, is unconstitutional on its face, under both Article I, Section 9, Clause 3 of the Constitution and Section 1 of the Fourteenth Amendment thereto, and for that reason deprives the dealers of their "civil rights", along with the economic benefits which would accrue to them from their unrestricted exercise and enjoyment of those rights. Those deprivations entitle them (in judicial jargon, afford them "standing") to sue Malloy, the Connecticut State Police, and any other public officials involved in the use of "the no-fly list", seeking a declaratory judgement, injunctive relief, monetary damages, and attorneys' fees.

To be sure, a suit of this sort would inevitably encounter practical difficulties—not the least of which would be the various claims of "official immunity" the defendants would interpose. Nonetheless, perhaps such a strategy will appeal to the NRA, which, in the manner of a compulsive gambler, apparently cannot restrain itself from betting the Second Amendment's farm, time and again, on yet another spin of the roulette wheel of litigation.

Yet the NRA would be wise to recall that in roulette the odds always strongly favor the house, even if the croupier does not apply a greasy finger to the wheel. But when it comes to "the right of the people to keep and bear Arms", are contemporary judges as honest as the croupiers in the average casino? After all, on the basis of its past performances, who can trust the General Government's Judiciary in general—especially within the Second Circuit? Or, for that matter, who can trust the Supreme Court in particular, which is but a single Justice's vote away from endorsing Justice Breyer's "reasonable regulation" theory of the Second Amendment?

Of course, there is another route by which to secure the benefits of the Second Amendment with respect, not just to individuals' rights to self-defense (upon which the NRA is fixated), but also to "the security of a free State" for this country as a whole (which is the Amendment's true goal). Having written more than enough about that elsewhere, I shall refrain from repeating myself here.

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