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.