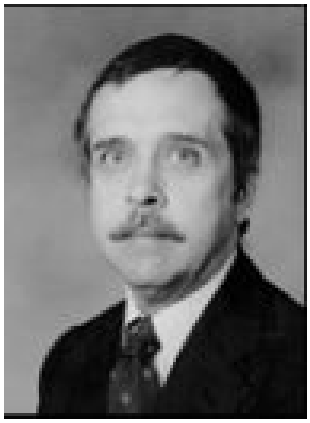
“Gun Control” Is A “Badge And Incident Of Slavery”



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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 long and loudly promoted by such zealots as Dianne Feinstein, Charles Schumer, and Michael Bloomberg. The Democrats’ goal in this regard will not be to enact what men of good will and legal insight might consider “reasonable” or “common-sense” legislation. No, indeed. One can expect that Virginia’s Democratic lawmakers will propose bills that any normal American will recognize as radical, extremist, fanatical, hysterical, even lunatic in character.

PART I. An early example of such “gun-control” proposals is Virginia Senate Bill No. 16 (pre-filed on 18 November 2019, and to be offered on 8 January 2020). In pertinent part, this Bill defines an “assault firearm” as *inter alia* “[a] semi-automatic center-fire rifle * * * that has the ability to accept a detachable magazine and has one of the following characteristics: (i) a folding or telescoping stock; (ii) a

pistol grip that protrudes conspicuously beneath the action of the rifle; (iii) a thumbhole stock; (iv) a second handgrip or a protruding grip that can be held by the non-trigger hand; (v) a bayonet mount; (vi) a grenade launcher; (vii) a flare launcher; (viii) a silencer; (ix) a flash suppressor; (x) a muzzle brake; (xi) a muzzle compensator; (xii) a threaded barrel capable of accepting (a) a silencer; (b) a flash suppressor; (c) a muzzle brake; or (d) a muzzle compensator; or (xiii) any characteristic of like kind as enumerated in clauses (i) through (xii)."

The Bill also provides that "'[a]ssault firearm' includes any part or combination of parts designed or intended to convert, modify, or otherwise alter a firearm into an assault firearm, or any combination of parts that may be readily assembled into an assault firearm."

And the Bill makes it "unlawful for any person to import, sell, transfer, manufacture, purchase, possess, or transport an assault firearm. A violation of this section is punishable as a Class 6 felony."

So, with but a few imaginable exceptions, Senate Bill No. 16 seeks to outlaw the possession by Virginians of most common semi-automatic rifles with detachable magazines—and essentially *all* such rifles of the AR and AK patterns—along with an host of parts typically associated with rifles of these types. Upon enactment of this Bill into "law", *all* of these rifles and parts will become contraband, as well as evidence of the commission of "a Class 6 felony" by whoever possesses them.

One could justifiably challenge the sponsor and proponents of this Bill to provide proof that any one of the enumerated evil "characteristics" has caused a single "semi-automatic center-fire rifle * * * that has the ability to accept a detachable magazine", and that has been used in the commission of some crime, to have brought about greater harm to "public safety"

than that rifle would have been capable of doing had it lacked those "characteristics". Exactly when, where, and how, for instance, has "a bayonet mount", "a grenade launcher", "a flare launcher", "a silencer", "a flash suppressor", "a muzzle brake", or "a muzzle compensator" ever been the key, a salient, or even an incidental factor in the perpetration of a crime committed with a "semi-automatic center-fire rifle * * * that has the ability to accept a detachable magazine"? Predictably, no answer will be forthcoming.

An even more vexing conundrum is how a Virginian's mere possession of any one of the mere parts which the Bill labels an "assault firearm" in and of itself—even without that individual's possession of a semi-automatic rifle to which such a part could be attached—could be so dangerous to "public safety" as to justify rendering all of those items contraband, and to make the possession of any one of them evidence of the commission of a crime. An reply to this question is even less to be expected than is a response to the previous query.

PART II. It should be obvious to everyone that, on its face, Senate Bill No. 16 is an unconstitutional infringement upon "the right of the people to keep and bear arms" under the supreme laws of both the United States and the Commonwealth of Virginia.

FIRST. The Second Amendment to the Constitution of the United States 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." And Article I, Section 13 of the Constitution of Virginia provides "[t]hat a well regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defense of a free state, therefore, the right of the people to keep and bear arms shall not be infringed". In the Second Amendment "the right of the people to keep and bear Arms" refers to that right with respect to Americans in general; whereas in Article I, Section 13 "the right of the people to

keep and bear arms" refers to the selfsame right with respect to Virginians in particular. (Hypothetically, it is possible, albeit implausible, to contend that the "right" in Article I, Section 13 is *more* extensive than the "right" in the Second Amendment. But under no legal logic could it be *less* so.)

The Supreme Court of the United States ruled in *United States* v. *Miller* that a firearm is protected by the Second Amendment if there is "any evidence that possession or use" of such firearm "at this time has some reasonable relationship to the preservation or efficiency of a well regulated militia, * * * that this weapon is any part of the ordinary military equipment or that its use could contribute to the common defense." 307 U.S. 174, 178 (1939).

Tested by *Miller's* reasoning, the substance of "the right of the people to keep and bear Arms" is exactly the same in both the Second Amendment and Article I, Section 13. For in *Miller* the Court correctly defined that right "in the light of the law as it existed at the time [the Second Amendment] was adopted". *See Mattox* v. *United States*, 156 U.S. 237, 243 (1895) (stating the rule of constitutional construction). The *Miller* Court explicitly relied upon Virginia's *pre*-constitutional Militia law of 1785. 307 U.S. at 181-182. And the words "the right of the people to keep and bear arms" now present in Article I, Section 13 of the Constitution of Virginia derive from the selfsame verbiage in Article 13 of Virginia's *pre*-constitutional Declaration of Rights of 1776.

Everyone who understands the capabilities of "semi-automatic center-fire rifle[s] * * * that ha[ve] the ability to accept a detachable magazine and ha[ve] one [or more] of the * * * characteristics" listed in Senate Bill No. 16 knows that such rifles (to apply *Miller's* test) *could* "ha[ve] some reasonable relationship to the preservation or efficiency of a well regulated militia," *could* easily be "part of the ordinary military equipment" of such a "militia", and "*could* contribute to the common defense". As to this, no doubt is possible.

Indeed, the preceding statement would be even more accurate than it is if it read: "such rifles *do* 'ha[ve] some reasonable relationship to the preservation or efficiency of a well regulated militia,' *are easily capable of being* 'part of the ordinary military equipment' of such a 'militia', and '*therefore do* contribute to the common defense'". For such rifles have already been held by the United States Court of Appeals for the Fourth Circuit—the jurisdiction of which includes Virginia—to be "'firearms designed for the battlefield'" and "weapons * * * most useful in military service". *Kolbe* v. *Hogan*, 849 F.3d 114, 121, 124-125, 144 (4th Cir. 2017). Whatever the defects and demerits of *Kolbe* may be on matters of law (and many there are), that finding of fact places those firearms squarely within the set of arms protected under *Miller*.

SECOND. *United States* v. *Miller* held that "[t]he signification attributed to the term Militia" in the Constitution of the United States is "that the Militia comprised all males physically capable of acting in concert for the common defense" and "that ordinarily when called for service these men were expected to appear bearing arms supplied by themselves and of the kind in common use at the time." 307 U.S. 174, 179 (1939). Here, once again, the Court relied on Virginia's Militia law of 1785. *Id.* at 181-182. Moreover, to the very same effect it could have drawn from the far more extensive historical record of Militia laws in the Commonwealth extending from the 1600s throughout the 1700s. *See* the present author's *The Sword and Sovereignty: The Constitutional Principles of "the Militia of the Several States"* (Front Royal, Virginia: CD-ROM Edition, 2013).

The contemporary laws of the United States and of Virginia follow this pattern, unchanged since the late 1700s. Through the exercise of its power in Article I, Section 8, Clause 16 of the Constitution of the United States "[t]o provide for organizing * * * the Militia", in Section 246 of Title 10 of

the United States Code Congress has defined “the unorganized militia” within “[t]he militia of the United States” as consisting of “all able-bodied males at least 17 years of age and * * * under 45 years of age who are, or who have made a declaration to become, citizens of the United States”, and “who are not members of the National Guard or the Naval Militia”. And pursuant to Sections 44-1, 44-4, and 44-5 of the Code of Virginia, “the unorganized militia” of “[t]he Militia of the Commonwealth of Virginia” consists “of all able-bodied residents of the Commonwealth who are citizens of the United States and all other able-bodied persons resident in the Commonwealth who have declared their intention to become citizens of the United States, who are at least 16 years of age and * * *. not more than 55 years of age”, who are not members of the National Guard, the Naval Militia, or the Virginia Defense Force, and who are not statutorily exempted from militia duty.

So, under *United States* v. *Miller*, 307 U.S. 174, 178 (1939), beyond a shadow of a constitutional doubt all individuals who are members of “the unorganized militia” within “[t]he militia of the United States” (including all those who reside within the Commonwealth of Virginia), and all individuals who are members of “the unorganized militia” within “[t]he Militia of the Commonwealth of Virginia” enjoy a right under the Second Amendment to possess any and every firearm with respect to which there is “any evidence that possession or use” of such firearm “at this time has some reasonable relationship to the preservation or efficiency of a well regulated militia, * * * that this weapon is any part of the ordinary military equipment or that its use could contribute to the common defense.” And all members of “the unorganized militia” of Virginia enjoy a cognate right under Article I, Section 13. As a practical matter, these rights embrace all of the modern-day

“assault firearms” which Senate Bill No. 16 aims to prohibit Virginians from possessing.

Inasmuch as 10 U.S.C. § 246 declares the National Guard and the Naval Militia to be the “the organized militia” within “[t]he militia of the United States”—and inasmuch as Code of Virginia § 44-1 declares the National Guard, the Naval Militia, and the Virginia Defense Force to be “classes” within “[t]he Militia of the Commonwealth of Virginia”—the members of those establishments, too, presumably enjoy the same rights with respect to firearms as do all members of “the unorganized militia” within both “[t]he militia of the United States” and “[t]he Militia of the Commonwealth of Virginia”. Nonetheless, as a matter of constitutional exactitude it should be noted that the National Guard, the Naval Militia, and various State Defense Forces, including Virginia’s, are not true *constitutional* “Militia” at all—in the sense in which that term is used in Article I, Section 8, Clauses 15 and 16, and Article II, Section 2, Clause 1 of the Constitution of the United States. Instead, 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, however, can have no adverse effect on the types of firearms which the members of these establishments may of right possess. For, surely, individuals who make up constitutionally authorized State “Troops, or [Sailors on] Ships of War” need “weapon[s]” in their possession which are “part of the ordinary military equipment or * * * [the] use [of which] could contribute to the common defense” no less than do members of the actual constitutional “Militia of the several States”. So, for the purposes of rough analysis here, the National Guard, the Naval Militia, and Virginia’s Defense Force can be assimilated to “Militia”, on the grounds that this simplification is “good enough for government work”.

THIRD. Under the Second Amendment, every State in the Union,

including the Commonwealth of Virginia, is “a free State”. Under Article I, Section 13 Virginia is “a free state”. And for the Constitution of Virginia to be consistent with the Constitution of the United States, the meanings of those terms must be exactly the same.

The “security of a free State” (in the Second Amendment) and the “defense of a free state” (in Article I, Section 13) aim ultimately at the security and defense of each individual residing within the State—obviously because, although individuals in isolation or in groups can exist without a “State” (“free” or otherwise), no “State” can exist without one or more individuals.

In the final analysis, just as “the security of a free State” and the “defense of a free state” depend upon the ability of individuals to participate in the protection of their community through the collective efforts of a Militia, so do the security and defense of each individual as an individual depend upon his own ability to provide his own security and engage in his own defense through his own efforts.

And for that reason each individual residing within the Commonwealth of Virginia, whether or not a member of either “[t]he militia of the United States” or “[t]he Militia of the Commonwealth of Virginia” enjoys a right under both the Second Amendment and Article I, Section 13 to possess for purposes of self-defense whatever firearms members of a Militia may possess under the holding in *United States* v. *Miller*, 307 U.S. 174, 178 (1939), in addition to the types of firearms at issue in *District of Columbia* v. *Heller*, 554 U.S. 570 (2008), and *McDonald* v. *City of Chicago*, 561 U.S. 742 (2010). The only qualification to this rule is that the individual must be an adult (that is, at least of the age at which he or she would be eligible for enrollment in the Militia), of sound mind, and not under a legal disability imposed as the consequence of a conviction for the commission of a serious crime. (The right of a child temporarily to possess a firearm in order to engage

in self-defense is a special case beyond the scope of this commentary.)

FOURTH. Under Article I, Section 8, Clause 15 of the Constitution of the United States one of the responsibilities of "the Militia" is "to execute the Laws of the Union."

Inasmuch as one of "the Laws of the Union" is the law of personal self-defense, even those individuals who are not members of "[t]he militia of the United States" perform a "militia" function with respect to those "Laws" when they engage in self-defense. Moreover, inasmuch as the law of personal self-defense is also one of the laws of the Commonwealth of Virginia, even those individuals who are not members of "[t]he Militia of the Commonwealth of Virginia" perform a "militia" function with respect to the Commonwealth's laws when they engage in self-defense. Indeed, it could hardly be otherwise anywhere within the United States. For individual self-defense is a "natural right" of all men which allows for immediate and direct execution of the laws by a victim of aggression against its perpetrator—indeed, "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* (American Edition, 1771-1773), Volume 3, at 3-4. Thus, by defending himself, an individual also defends his community *pro tanto* under the aegis of the highest of all laws. In executing "the primary law of nature", such an individual is acting, as it were, as "a Militia of one"—exercising a right which cannot be "taken away by the law of society".

For that reason, all individuals enjoy a right to possess whatever firearms, capable of being employed for personal self-defense, members of "[t]he militia of the United States" or members of "[t]he Militia of the Commonwealth of Virginia" may possess under the holding in *United States* v. *Miller*, 307 U.S. 174, 178 (1939), in addition to the types of firearms at issue in *District of Columbia* v. *Heller*, 554 U.S. 570 (2008),

and *McDonald* v. *City of Chicago*, 561 U.S. 742 (2010). Again, the only qualification to this rule is that the individual must be an adult (that is, at least of the age at which he or she would be eligible for enrollment in the Militia), of sound mind, and not under a legal disability imposed as the consequence of a conviction for the commission of a serious crime.

IN SUM. Any statute, ordinance, executive order, judicial decision, or other directive or action with the purported force of law promulgated within the Commonwealth of Virginia which would infringe upon, deny, abridge, or otherwise restrict the rights of individuals within "[t]he militia of the United States and "[t]he Militia of the Commonwealth of Virginia"—or even outside of those establishments—to acquire and possess any of the types of firearms described in *United States* v. *Miller* is invalid and of no effect perforce of the Second Amendment and of Article I, Clause 13. Virginia Senate Bill No. 16 is such a proposed statute. So, even if enacted, it would be a nullity. For the Supreme Court of the United States has ruled: (i) in Ex parte *Siebold*, 100 U.S. 371, 376 (1880), that "[a]n unconstitutional act is void, and is as no law. An offence committed by it is not a crime"—(ii) in *Norton* v. *Shelby County,* 118 U.S. 425, 442 (1886), that "[a]n unconstitutional act is not a law; it confers no rights; it imposes no duties * * * ; it is, in legal contemplation, as inoperative as though it had never been passed"—and (iii) in *Huntington* v. *Worthen,* 120 U.S. 97, 101-102 (1887), that "[a]n unconstitutional act is not a law; it binds no one and protects no one."

PART III. The foregoing is what the present author considers to be a trivial solution to the question of whether Virginia Senate Bill No. 16 violates "the right of the people to keep and bear Arms". Certainly less obvious, and arguably more important, is the repugnance of that Bill to the Thirteenth Amendment to the Constitution of the United States.

If rogue public officials in Virginia should succeed in prohibiting the possession by people eligible for service in the Militia of firearms suitable for use in the Militia, they would render "the security of a free State" (Second Amendment) and "the proper, natural, and safe defense of a free state" (Article I, Section 13) impossible of achievement. Then in what sort of "State" would Virginians live? Various adjectives could be employed to describe that situation—"a *police* State", "a *totalitarian* State", and so on. In American history, however, the arguably most obvious opposite of "free" is "slave". So, were the Militia effectively suppressed because their members were disarmed, Virginiana would subsist in "a slave State", a State in the grip of slavery.

The Constitution of the United States deals with this possibility in the Thirteenth Amendment, which provides that "[n]either slavery nor 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." The purpose of this Amendment is not simply to outlaw slavery as an institution, but also to suppress all of "the badges and incidents of slavery" whatever they might be and wherever they might still be found within the United States. *See Jones* v. *Alfred H. Mayer Company,* 392 U.S. 409, 438-441 (1968).

During slavery times, the primary "badges and incidents" of the Peculiar Institution—many of which vexed minimally "free" persons of color as well as actual slaves—were well known. Such people were debarred from holding public office; from voting; from serving as jurors; from testifying against White people in judicial proceedings—and from possessing firearms except under the most rigorous restrictions. Prohibitions against the slaves' possession of firearms was from the slave owners' vantage point the most crucial, and from the slaves' perspective the very worst, disability of all the "badges and incidents", because only with firearms in their own hands, or

in the hands of others fighting on their behalf, could the bondsmen have hoped ever to escape their servitude. The history of this point in *pre*-constitutional Virginia is clear enough:

[1680] "[I]t shall not be lawfull for any negroe or other slave to carry or arme himselfe with any club, staffe, gunn, sword or any other weapon of defence or offence[.]"ACT X, *An act for preventing Negroes Insurrections*, AT A GENERALL ASSEMBLIE, BEGUNNE AT JAMES CITTIE THE EIGHTH DAY OF JUNE, 1680, in William Waller Hening, *The Statutes at Large; Being a Collection of all the Laws of Virginia from the First Session of the Legislature, in the Year 1619* (hereinafter cited as "*Laws of Virginia*"), Volume 2, at 481.

[1705 and 1709] "That no slave go armed with gun, sword, club, staff, or other weapon * * * : And if any slave shall be found offending herein, it shall be lawful for any person or persons to apprehend and deliver such slave to the next constable or head-borough, who is hereby * * * required, without further order or warrant, to give such slave twenty lashes on his or her bare back, well laid on, and so send him or her home[.]" CHAP. XLIX, *An act concerning Servants and Slaves*, § XXXV, AT A GENERAL ASSEMBLY, BEGUN AT THE CAPITOL, IN THE CITY OF WILLIAMSBURG, THE TWENTY-THIRD DAY OF OCTOBER, 1705, *in Laws of Virginia*, Volume 3, at 459.

Violations of this statute were to be "prosecuted according to the Strictest Severity & Rigor of the Common Law as such Disobedience requires". A Proclamation (21 March 1709 [1709/10]), *in* EXECUTIVE JOURNALS OF THE Council *of* Colonial Virginia, Volume III (May 1, 1705–October 23, 1721), H.R. McIlwaine, Editor (Richmond, Virginia: The Virginia State Library, 1928), at 574.

[1723] "[N]o negro, mulatto, or Indian whatsoever; (except as hereafter excepted,) shall * * * presume to keep, or carry any gun, powder, shot, or any club, or other weapon whatsoever,

offensive or defensive; but that every gun, and all powder and shot, and every such club or weapon * * * found or taken in the hands, custody, or possession of any such negro, mulatto, or Indian, shall be taken away; and * * * be forfeited to the seisor and informer, and moreover, every such negro, mulatto, or Indian, in whose hands, custody, or possession, the same shall be found, shall * * * receive any number of lashes, not exceeding thirty-nine, well laid on, on his or her bare back, for every such offence.

" * * * *Provided nevertheless*, That every free negro, mullatto, or indian, being a house-keeper, or listed in the militia, may be permitted to keep one gun, powder, and shot; and that those who are not house-keepers, nor listed in the militia * * * , who are now possessed of any gun, powder, shot, or any weapon, offensive or defensive, may sell and dispose thereof, at any time before the last day of October next ensuing. And that all negros, mullattos, or indians, bond or free, living at any frontier plantation, be permitted to keep and use guns, powder, and shot, or other weapons, offensive or defensive; having first obtained a license for the same, from some justice of the peace of the county wherein such plantations lie * * * upon the application of such free negros, mullattos, or indians, or of the owner or owners of such as are slaves[.]" CHAP. IV, *An act directing the trial of Slaves*, *committing capital crimes*; *and for the more effectual punishing conspiracies and insurrections of them*; *and for the better government of Negros*, *Mulattos*, *and* Indians, *bond or free*, §§ XIV and XV, AT A GENERAL ASSEMBLY, SUMMONED TO BE HELD AT *Williamsburg*, *the fifth day of December*, 1722, *and by writ of prorogation*, *begun and holden on the ninth day of May*, 1723, *in Laws of Virginia*, Volume 4, at 131.

[1748] "[N]o negroe, mulattoe, or Indian whatsoever, shall keep, or carry any gun, powder, shot, club, or other weapon, whatsoever, offensive, or defensive, but all and every gun, weapon, and ammunition, found in the custody or possession of

any negroe, mulattoe, or Indian, may be seized by any person, and * * * be forfeited to the seizor, for his own use; and moreover, every such offender shall * * * receive * * * any number of lashes, not exceeding thirty nine, on his, or her bare back, well laid on, for every such offence.

" * * * *Provided nevertheless*, That every free negroe, mulattoe, or Indian, being a house keeper, may be permitted to keep one gun, powder, and shot: And all negroes, mulattoes, and Indians, bond or free, living at any frontier plantation, may be permitted to keep and use guns, powder, shot, and weapons, offensive, or defensive, by license, from a justice of peace, of the county wherein such plantations lie, to be obtained upon the application of free negroes, mulattoes, or Indians, or of the owners of such as are slaves[.]" CHAP. XXXVIII, *An Act directing the trial of Slaves committing capital crimes; and for the more effectual punishing conspiracies and insurrections of them; and for the better government of negroes*, *mulattoes*, *and Indians*, *bond or free*, §§ XVIII and XIX, AT A GENERAL ASSEMBLY, BEGUN AND HELD AT *The College in Williamsburg*, *the twenty-seventh day of October*, 1748, *in Laws of Virginia*, Volume 6, at 109-110.

[1785] "No slave shall keep any arms whatever, nor pass unless with written orders from his master or employer, or in his company with arms, from one place to another. Arms in possession of a slave contrary to this prohibition, shall be forfeited to him who will seize them." CHAP. LXXVII, *An act concerning slaves*, § IV, AT A GENERAL ASSEMBLY, BEGUN AND HELD *At the Public Buildings in the City of Richmond*, *on Monday the seventeenth day of October*[,] *one thousand seven hundred and eighty-five*, *in Laws of Virginia*, Volume 12, at 182.

As tyrannical as these *pre*-constitutional statutes were, in the *post*-constitutional *antebellum* period such abuses became even worse. For example:

[1832] "No free negro or mulatto shall be suffered to keep or

carry any firelock of any kind, any military weapon, or any powder or lead; and any free negro or mulatto who shall so offend, shall * * * forfeit all such arms and ammunition to the use of the informer; and shall moreover be punished with stripes * * * , not exceeding thirty lashes. And [an earlier Act] * * * authorizing justices of the peace, in certain cases, to permit slaves to keep and use guns or other weapons, powder and shot; and so much of th[at] * * * act as authorizes the county and corporation courts to grant licenses to free negroes and mulattoes to keep or carry any firelock of any kind, any military weapon, or any powder or lead, * * * are hereby repealed." CHAP. XXII, An act to amend an act entitled, "an act reducing into one the several acts concerning slaves, free negroes and mulattoes, and for other purposes" [Passed March 15th, 1832], § 4, ACTS PASSED AT A GENERAL ASSEMBLY OF THE COMMONWEALTH OF VIRGINIA, BEGUN AND HELD AT THE CAPITOL, IN THE CITY OF RICHMOND, ON MONDAY, THE FIFTH DAY OF DECEMBER, ONE THOUSAND EIGHT HUNDRED AND THIRTY-ONE (Richmond, Virginia: Thomas Ritchie, 1832), at 21.

Today, Senate Bill No. 16 aims to set up a system of "gun control" more extensive and draconian than what existed in slavery times. Its iron broom of prohibitions will sweep up far more victims than did the corresponding "badge and incident of slavery" in *antebellum* Virginia. For now *all* Virginians—whether Black, White, or of any other race; and supposedly completely "free" men and women to boot—are to be precluded from possessing the very "assault firearms" which are particularly suitable for use in the Militia, even if those people are house-keepers, are listed in the Militia, or can wrangle a license from some justice of the peace. And whatever one's opinion of the severity of a penalty of twenty, thirty, or thirty-nine lashes "well laid on" for violations of Virginia's *pre*-constitutional "gun-control" laws, the punishment for commission of a contemporary "Class 6 felony" is worse: namely, "a term of imprisonment of not less than one year nor more than five years, or in the discretion of the

jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not more than $2,500, either or both." Code of Virginia § 18.2-10(f).

In sum, Virginia Senate Bill No. 16 would be repugnant to the Thirteenth Amendment even if the Second Amendment to the Constitution of the United States and Article I, Section 13 of the Constitution of Virginia had never been enacted. For, under the Thirteenth Amendment, slavery shall not exist within the United States. Slavery exists *pro tanto* whenever and wherever any of its "badges and incidents" exist. So no "badge and incident" of slavery shall exist anywhere within the United States, even in Virginia. The scheme of "gun control" embodied in Senate Bill No. 16 seeks to impose on all Virginians "the badge and incident of slavery" most obnoxious to slaves because most necessary to the maintenance of slavery—and does so in a manner more egregious than did "gun control" on people of color during slavery times. Therefore, Bill No. 16 shall not exist—or at least should not exist. What will become of it, however, only time will tell.

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