

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.

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