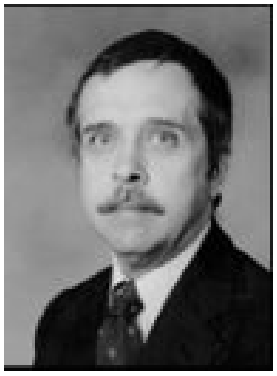
The Offensiveness of Taking Political Offense



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Not long ago, in the course of an acrimonious debate over one radical "gun-control" bill under consideration in the 2020 session of the General Assembly of the Commonwealth of Virginia, a Republican Senator charged that "[e]very legislator that votes in favor of this bill is, in my opinion, a traitor to Virginia, a traitor to the Second Amendment, and traitor to our constitutional freedoms". In response, a Democratic Senator intoned that "I would like her to know that I am deeply offended that she has accused anyone on this floor of treason". *See* <https://wtvr.com/2020/01/22/virginia-senate-passes-red-flag-gun-law-over-fierce-opposition/>, at 5.

Unfortunately, the Democratic Senator's rejoinder was typical of a dismissive attitude towards political opposition which has become all too common these days: namely, that if the target of some criticism simply denounces it as *subjectively* "offensive" to her (or him), there is no need for her (or him) actually to refute it *objectively* by reference to matters of fact, by citations of rules of law, or even by appeals to the principles of logic. "Because I feel personally offended at what you say, you are wrong simply for saying it!" is supposed to suffice. The Democratic Senator would have done better, however, to have swallowed her "offense" until she had perused

the relevant law.

Article IV, Section 9 of the Constitution of the Commonwealth of Virginia provides that "Members of the General Assembly shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest during the sessions of their respective houses; and for any speech or debate in either house shall not be questioned in any other place. They shall not be subject to arrest under any civil process during the sessions of the General Assembly, or during the fifteen days before the beginning or after the ending of any session." (This is similar to the provision which applies to Members of Congress. U.S. Const. art. I, § 6, cl. 1.)

As Virginia's Constitution thus plainly recognizes, it certainly is possible for a "Member[ ] of the General Assembly" to commit "treason", and to be arrested under criminal process for "treason", "during the sessions of the General Assembly", even for some act which he (or she) has committed or is committing under color of his (or her) capacity as a legislator. Moreover, it is the duty of *anyone and everyone* who may know of a supposed act of "treason" committed by such Member to report it: "If any person knowing of * * * treason shall not, as soon as may be, give information thereof to the Governor, or some conservator of the peace, he shall be guilty of a Class 6 Felony." Code of Virginia § 18.2-482.

Of course, "any speech or debate in either house" of Virginia's General Assembly is absolutely privileged, because politicians' mere words, even when they propose or endorse "treason", are unlikely to harm anyone. And free and open debate—even, perhaps especially, when the speakers are half-witted legislators—is the best means to expose bad ideas for what they really are. But a legislator's act of *voting* for a bill which, when enacted, imposes the baneful effects of "treason" on its subjects must itself be "treasonous".

True enough, rogue legislators will always avoid enforcing such an *ersatz* "law" in the field with their own hands. Instead, they will despatch armed myrmidons to do their dirty work. Nonetheless, "if a body of men be actually assembled for the purpose of effecting by force a treasonable purpose, *all those who perform any part, however minute, or however remote from the scene of action, and who are actually leagued in the general conspiracy*, are to be considered as traitors". *Ex parte* Bollman, 8 U.S. (4 Cranch) 75, 126 (1807) (emphasis supplied). As the Founding Fathers in Virginia (and elsewhere throughout America) well knew from their studies of English law, "a bare Conspiracy * * * cannot amount to Treason, unless it is actually levied; yet * * * in all Cases, if the Treason be actually compleated, the Conspirators * * * are Traitors as much as the Actors"; and "there can be no Doubt but that he, who by Command or Persuasion induces another to commit Treason, is himself a Traitor * * * and yet he does no Act but by Words". William Hawkins, *A Treatise of The Pleas of the Crown* (London, England: E. and R. Nutt, and R. Gosling, Third Edition, 1739), Book I, Chapter 17, § 27, at 38; and § 39, at 39.

Under Virginia's present law, "treason" is defined as: "(1) Levying war against the Commonwealth; (2) Adhering to its enemies, giving them aid and comfort; (3) Establishing, without authority of the legislature, any government within its limits separate from the existing government; (4) Holding or executing, in such usurped government, any office, or professing allegiance or fidelity to it; or (5) Resisting the execution of the law under color of its authority." Code of Virginia § 18.2-481.

The most obnoxious "gun-control" bills introduced in the 2020 session of the Commonwealth's General Assembly have all aimed, by one means or another, directly or indirectly, at disarming ordinary Virginians of various types of firearms and accessories (in particular, so-called "assault firearms"), and

at making it difficult for such Virginians to train with whatever firearms may be left to them. So, on their faces, these bills are obviously repugnant to Article I, Section 13 of the Constitution of Virginia, which provides (in pertinent part) "[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". (This, in addition to the bills' violations of Article VI, Clauses 2 and 3 of, and the Second and Fourteenth Amendments to, the Constitution of the United States.)

Under Virginia's law, "a well regulated militia, composed of the body of the people" is not some private group outside and inddependent of and potentially antagonistic to the government, but instead is an integral part of the Commonwealth's government, defined by statute: "The militia of the Commonwealth of Virginia shall consist 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, [with a few statutory exceptions], not more than 55 years of age. The militia shall be divided into three classes: the National Guard, which includes the Army National Guard and the Air National Guard; the Virginia Defense Force; and the unorganized militia." Code of Virginia § 44-1. For purposes of simplicity, analysis here can focus solely on members of "the unorganized militia"—for these constitute "the body of the people" who make up the bulk of the Militia.

Notice that, although Virginia's statute defines a class of "unorganized militia", it does *not* describe this class as being "unarmed", "disarmed", or in any other manner prohibited, prevented, or otherwise precluded—or capable of being prohibited, prevented, or otherwise precluded—from "keep[ing] and bear[ing] arms" suitable for service in the

Militia. As the Constitution of the United States plainly shows in the power of Congress "[t]o provide for organizing, arming, and disciplining, the Militia" (Article I, Section 8, Clause 16), "organizing", "arming", and "disciplining" are distinct categories of authority and action. Therefore, a statute which declares some class of the Militia to be "unorganized" does not thereby imply that the members of that class are to remain "unarmed", let alone that they are to be disarmed of whatever arms, whether of all types or only of certain types, they already possess, or to be prohibited from acquiring such arms in the free market. This, of course, makes perfect logistical sense, because it would self-evidently be far easier to organize into various units citizens who were already armed than to provide actual arms to citizens who happened merely to be already assigned on paper to such units.

As to the "arms" which members of the Militia may—indeed, *must*—keep and bear, the constitutional standard is clear enough. The "possession or use" of a firearm comes within "the right of the people to keep and bear arms" if that firearm "at this time has some reasonable relationship to the preservation or efficiency of a well regulated militia", if that "weapon is any part of the ordinary military equipment", or if "its use could contribute to the common defense". *United States* v. *Miller,* 307 U.S. 174, 178 (1939). If the most egregious "gun-control" bills proposed in the 2020 session of Virginia's General Assembly did not have the purpose of defying and nullifying this rule, had they been enacted into "law" they surely would have had that effect.

Now, if rogue Members of Virginia's General Assembly (i) should enact some *ersatz* "law" which purported to confiscate firearms from members of "the unorganized militia", or to prevent them from acquiring firearms in the free market, or to prohibit them from training with firearms—overall, to render them incapable of performing their governmental function as members of the Militia; and if (ii) those Members of the

General Assembly should purport in that or some other "law" to authorize armed thugs to arrest, imprison, or perhaps even kill or wound members of "the body of the people" (*i.e.*, ordinary Virginians) who resisted such confiscation, prevention, or prohibition; then (iii) as soon as those hirelings were despatched to oppress the populace through armed force (presumably, on and after the day the "law" became effective), those Members of the General Assembly as well as their hirelings could justifiably be described as "[l]evying war against the Commonwealth". For inasmuch as "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"; and inasmuch as the Commonwealth of Virginia is "a free state"; then any armed attack against "the body of the people" which aimed at depriving them of the ability to function as "a well regulated militia" would necessarily amount to "[l]evying war against the Commonwealth", and thus to "treason".

To be sure, "treason" does require at some point "the actual employment of force". "To complete the crime of levying war * * * , there must be an actual assemblage of men for the purpose of executing a treasonable design." Nevertheless, "if a body of men be actually assembled, for the purpose of effecting by force a treasonable purpose, all those who perform any part, however minute, or however remote from the scene of action, and who are actually leagued in the general conspiracy, are to be considered as traitors". So, although "'some actual force or violence must be used, in pursuance of * * * [a] design to levy war'", "'it is altogether immaterial, whether the force used is sufficient to effectuate the object; any force connected with the intention will constitute the crime of levying war'". *Ex parte* Bollman, 8 U.S. (4 Cranch) 75, 128, 127, 126, and 128 (1807).

In short, no matter what *subjective* "offense" they might profess to take when criticized for their actions, those

Members of Virginia's General Assembly who voted for radical forms of "gun control" would thereby have *objectively* lain the groundwork for "[l]evying war against the Commonwealth". Not only that. They would also *objectively* have lain the groundwork for "[a]dhering to [the Commonwealth's] enemies"—both foreign and domestic—"giving them aid and comfort". For what "enemies" would not find "aid and comfort" in policies which systematically deprived the Commonwealth of "the proper, natural, and safe defense of a free state"?

In addition, inasmuch as "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", such a Militia is in principle the most important (if perhaps today is in practice the most overlooked) component of the government of the Commonwealth of Virginia. Without the Militia in being, the *constitutional* government of Virginia would in principle fall into disarray, if not even cease *pro tanto* to exist, because, bereft of her "proper, natural, and safe defense", Virginia would no longer qualify as "a free state". What remained would be nothing less than an "usurped government". For "usurpation" is the exercise of a power which the law denies to the person purporting to exercise it. Under Virginia's Constitution, no Member of the General Assembly may wield a power to vote for any bill which "infringe[s]" "the right of the people to keep and bear arms" suitable for their service in the Militia. For if a bill is unconstitutional, a legislator's vote for it to become an unconstitutional "law" can be no less unconstitutional. So, if majorities in the General Assembly should knowingly and intentionally defy this prohibition, to that extent they would act as an "usurped government"—which also constitutes "treason" under Virginia's law. It should further be noted that any persons who maneuvered behind the scenes to instigate renegade Members of the General Assembly so to misbehave—such as carpet-bagging *multi*-billionaires from out of State who promoted "gun control" through monetary contributions to candidates'

campaigns and grants to various special-interest groups which plumped for forcible disarmament of "the body of the people"—would also be guilty. For "[i]f any person attempt to establish any * * * usurped government and commit any overt act therefor or by writing or speaking endeavor to instigate others to establish such government, he shall be guilty of a Class 1 misdemeanor." Code of Virginia § 18.2-483.

Contemporary "gun control" being touted by legislators in Virginia (and elsewhere throughout the United States) must be recognized as *objectively* a multifaceted manifestation of "treason" (and other crimes allied thereto), because it inevitably and inexorably paves the way for every other sort of oppression that psychopathic domestic "rulers", no less than foreign conquerors, are capable of perpetrating. No one can deny that "gun control" intentionally aims at depriving the people of precisely those arms most suitable today for military, *para*-military, and police service in "a well regulated militia" (such as the *semi*-automatic rifles of otherwise standard military patterns which "gun controllers" mislabel as "assault firearms")—and, ultimately, of *all* arms of whatever types that could be employed for *any* service in the Militia. Worse yet, because "a well regulated militia" is always "the proper, natural, and safe defense of a free state"—most especially (as the Declaration of Independence points out) "when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce the [People] under absolute Despotism", so that it becomes "their right" and "their duty, to throw off such Government, and to provide new guards for their future security"—the inevitable result of "gun control" enforced to the extreme degree which "gun-control" fanatics desire must be to render "the safe defense of a free state" impossible, to deprive the people of the means to "throw off [an abusive] Government", and thereby to expose them to all of the ravages of "absolute Despotism" bereft of the wherewithal to protect themselves.

But what is so new about all that? In the hands of its knowing practitioners, “gun control” is not now, just as it has never been, an end in and of itself. Just as it has always been, it remains today an effective means to the most pernicious of all political ends: namely, stripping ordinary people of the ability collectively to assert and defend their *sovereignty*—that is, their ultimate *governmental authority*—so that they can be exposed to unlimited oppression by a *faux* “government” composed of usurpers and tyrants.

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. The simplest explanation for their behavior is that their minds are devoid of any conception of what the consequences of “gun control” have always been in the past and must inevitably be in the future. They are, in short, what Lenin derisively described as “useful idiots”—dupes, dullards, and dopes who advance the revolutionary agenda of others without understanding that they are doing as much, or even that a revolution is going on, because their minds have become saturated with the trendy political nostrums and ideological nitwitticisms of “gun control” popularized on Twitter, Facebook, and Big Tech’s other brainwashing “platforms”.

If an explanation, however, that is no excuse, let alone a reason for those legislators’ exoneration. Indeed, “useful idiocy” becomes a wholly implausible diagnosis when it is apparent that a legislator is willfully blind or recklessly indifferent towards the facts. So, such legislators need to stop defending themselves through their knee-jerk assertions of “offense” at criticisms of their aberrant positions, and instead start investigating whether those criticisms are cogent, and (if so) what corrective actions they should take

to conform their own behavior to constitutional norms. Public officials' feigning personal "offense" as a tactic for short-circuiting necessary political debate about their misbehavior has become too offensive to be endured any longer, whether by Virginians or any other Americans.

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