Guns and the Constitution February 22, 2013 February 27, 2013
650

During a recent discussion with Editor Josh Walzak, Mr. Walzak pointed out that before any national decision on gun control is made, "we need to learn the differences (between guns); educate our populace." Mr. Walzak has been in this business a while, so Rules tends to consider what he says. We've decided to select excerpts from Justice Antonin Scalia's Court opinion in D.C. vs Heller to explore the place of guns under our Constitution.

These are all Justice Scalia's words (except for ours in brackets), but re-arranged at our whim in an effort to provide a serviceable narrative. You would do well to read his entire opinion for context and accuracy.

"The Second Amendment provides: "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 . . . it codifies a "right of the people. . . —to the substance of the right: "to keep and bear Arms." . . . Putting all of these textual elements together, we find that they guarantee the individual right to possess and carry weapons in case of confrontation. The very text of the Second Amendment implicitly recognizes the pre-existence of the right and declares only that it "shall not be infringed."

(Justice Scalia also discusses the Second Amendment's historic development and purpose.) "(T)he Stuart Kings Charles II and James II succeeded in using select militias loyal to them to suppress political dissidents, in part by disarming their opponents . . . we explained that "the Militia comprised all males physically capable of acting in concert for the common defense." (Justice Scalia is pointing out that "Militia" means all citizens, who must first be disarmed before a "select militia" - the government's supporters and favorites - can impose tyranny.) "These experiences caused Englishmen to be extremely wary of concentrated military forces run by the state and to be jealous of their arms . . . By the time of the founding, the right to have arms had become fundamental for English subjects . . . Thus, the right secured in 1689 as a result of the Stuarts' abuses was by the time of the founding understood to be an individual right protecting against both public and private violence.

And, of course, what the Stuarts had tried to do to their political enemies, George III had tried to do to the colonists (lefties, that means Americans) . . . the Crown began to disarm the inhabitants of the most rebellious areas. That provoked polemical reactions by Americans . . . (who noted) "[i]t is a natural right which the people have reserved to themselves, confirmed by the Bill of Rights, to keep arms for their own defence . . . (Joseph) Story wrote: "One of the ordinary modes, by which tyrants accomplish their purposes without resistance, is, by disarming the people, and making it an offence to keep arms, and by substituting a regular army in the stead of a resort to the militia.

There are many reasons why the militia was thought to be "necessary to the security of a free state" . . . it may be true that no amount of small arms could be useful against modern-day bombers and tanks. But . . . The very enumeration of the right takes out of the hands of

government—even the Third Branch of Government—the power to decide on a case-by-case basis whether the right is really worth insisting upon."

(Since we're actually a member of the bar of The Supreme Court of the United States, we're taking our life in our hands here: Justice Scalia's wrong. Small arms in the hands of citizens would be useful against modern weaponry. We'll explore that next column, but consider this:)

"A constitutional guarantee subject to future judges' assessments of its usefulness is no constitutional guarantee at all."

This is a column of opinion and satire. The author knows of no undisclosed facts. Contact Lewis, the author of The Diaries of Pontius Pilate, at www.josephmaxlewis.com and click on Rimersburg Rules. 

Guns and Tyranny 650 March 8, 2013

In our last column we employed the writing of Justice Antonin Scalia to outline the Founders' rationale behind our right to keep and bear arms under the Second Amendment and he noted:

"A constitutional guarantee subject to future judges' assessments of its usefulness is no constitutional guarantee at all."

The Bill of Rights protects every right listed therein from being infringed upon by a popular vote in Congress, by the President's Executive Order and/or by a Judge's "Living Constitution" opinion. It says to the government, in effect, "Keep your hands off these ones, boys. If you don't like them, amend the Constitution." Remember, like a free press and assembly, some rights the Constitution protects are not always popular. Especially with the government.

PLEASE, do not assume the majority will always desire to protect the same rights you value and discard the rights you don't. Like pulling on a loose sweater thread, once you start pulling on the Bill of Rights, it can all come apart - while you're wearing it.

So, should we amend the Second Amendment?

Remember that the Founders and the Constitution created a system of checks and balances with many separate power bases: the press, religion, assembly, federal, state and county government, legislative, executive and judicial branches of each and finally, an armed populace as one of the power bases "being necessary to the security of a free State." Some argue this aspect of the Second Amendment has been rendered obsolete because an armed populace could never stand against a modern army with tanks, jets, drones, etc. That may be true, but the argument misses the point.

First, note we are nowhere near tyranny - we just have a big government President, a corrupt press and an inept opposition party. To understand what real "government tyranny" would look like, consider our own and other modern civil wars. The President would suspend elections and outlaw the Republican party. Media outlets hostile to the government would be shut down and monitors sent to the ones that remain. Groups the government finds inconvenient, such as the NRA, the Catholic Church and others would be outlawed. Leaders and perhaps even members of those groups would be placed under arrest. Habeas corpus would be suspended. Blue gangs would roam the streets at will and attack Red supporters' homes - or vice versa.

Does that resemble contemporary America in any way? Of course not, so let's knock off the "south shall rise again" succession nonsense, okay? Tyranny would be a horror barely imaginable. Alternatively, PLEASE, don't say it could never happen here. Civilizations end with that kind of arrogance. In the context of human history, freedom has existed for less than the blink of an eye.

In the face of such "government tyranny," the military would not be unified. Many state governments would likely be in open defiance of the federal government, as would much of the press, police departments, faith organizations, non-profit organizations, and others. With so much uncertainty, so many opposing centers of power, many sympathetic to the government would vacillate. The stark fact that 50 or 60 million Americans possess small arms in such a scenario would be no small deterrent.

When you talk about bombers and drones and tanks, place them in the context of what would actually be happening on the ground. It's one thing to round people up and put them in prison. It's an entirely different matter to order soldiers or police to open fire on their fellow citizens, many of whom would be likely to shoot back. I don't think most military commanders and soldiers would do it. I'd bet politicians wouldn't be sure either.

Now you know why an armed citizenry and the Second Amendment is still relevant. Just writing this was uncomfortable, but that's the whole point, to make tyranny so messy, so bloody, so difficult, that no one would ever risk trying it.

This is a column of opinion and satire. The author knows of no undisclosed facts. Contact Lewis, the author of The Diaries of Pontius Pilate, at www.josephmaxlewis.com and click on Rimersburg Rules. 

Guns and Prior Restraint March 22, 2013 March 27, 2013

In "D.C. vs Heller" Justice Scalia proved our right to bear arms under the Second Amendment is "an individual right protecting against both public and private violence." In other words, it protects citizens not only against criminals, but also against government tyranny. Justice Scalia recognized "the right was not unlimited, just as the First Amendment 's right of free speech was not," but didn't attempt to delineate how far restrictions on the Second Amendment could go before violating the Constitution.

First, a tip of the hat to my witty colleague Ron Wilshire for lampooning silly arguments (If the Second Amendment doesn't cover bullets, does the First Amendment cover ink for presses and Bibles?) and reminding me of my Uncle Bruce Williams, late of Rimersburg, who proudly cast his ballot for Pat Paulsen in 1968.

Of course, we already have laws restricting the Second Amendment. That's not at issue. In the same way one can't shout "fire" in a crowded theater under the First Amendment, so one can't "bear arms" in a crowded theater and open "fire" under the Second - that's murder. The question is, can we and should we go further.

The real conflict is over technology and "prior restraint." Can high speed printing presses and laser printers be banned under the First Amendment? Can modern firearms be banned under the Second Amendment? Can we impose "prior restraint" - gaging theater patrons and disarming citizens because they might enter a theater and shout or open "fire"?

Regarding technology, let's define our terms and discuss weapons. Bazookas shoot rockets and machine guns feed long strings of bullets called "belts" into an automatic gun that shoots them as fast as they go in. If you didn't know, it's already illegal to own bazookas and machine guns. We suspect many of you don't know it's also already illegal to own an assault rifle. That's correct. An assault rifle has a switch on the side that lets you choose to fire one bullet at a time or, by turning the switch, fire all or bursts of bullets each time the trigger's pulled. The rifles anti-Constitution zealots want to outlaw are NOT assault rifles, they are semi-automatic - one pull, one bullet - just like most hunting rifles. Remember these bits of dishonesty the next time lefties quote you some "fact" about guns.

In other areas of The Bill of Rights, imposing "prior restraint" has always been frowned upon by Courts and tolerated in only the most extreme of circumstances. Are the circumstances that extreme? The Washington Examiner reported the Congressional Research Service studied gun convicts and determined "fewer than 1 in 50, or less than 2 percent, used, carried, or possessed" a semiautomatic "assault" rifle. The CRS report showed "gun deaths are plummeting as gun sales are surging, including those of semiautomatic pistols and rifles." "Per capita," said CRS, "the civilian gun stock has roughly doubled since 1968" but gun-related murders from 1993 to 2011 have been cut in half. Please note this is the same period when incarceration rates for violent criminals increased. In fact, over the past decade, "suicides by guns have far outnumbered murders," something to remember when lefties talk about gun violence. More people were bludgeoned to death than "assault rifled."

If, as the left argues, the Second Amendment is no longer valid because semi-automatic guns are no match against a modern army's weaponry, wouldn't that imply we should lift the ban on machine guns and bazookas? It would if they were being honest.

The left won't be honest, but we can and must. When we balance our fundamental right of self-defense against criminals and tyranny versus the decline in gun violence, the oppression of prior restraint and the obvious alternatives - enforce existing laws - it's not even a close call.

We already outlaw bazookas, machine guns, assault rifles and other military weapons. Going any further is Un-Constitutional.

This is a column of opinion and satire. The author knows of no undisclosed facts. Contact Lewis, the author of The Diaries of Pontius Pilate, at www.josephmaxlewis.com and click on Rimersburg Rules. 