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David Barnhizer
Daniel D. Barnhizer

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Abstract

The call to ban guns does not make sense from an effective regulatory perspective. Nor do gun control proposals representing an irrational fear of weapons satisfy Constitutional analysis whether that analysis proceeds under either a strict interpretation or “evolving document” analysis. The irony is that the “living and evolving document” approach to Constitutional interpretation, under current real-world threats and conditions, actually requires affirmative protections of Second Amendment rights. A key determinant of how rights and duties should be adapted to the “new normal” of serious and escalating risks of decentralized and distributed violence pursuant to the “living” US Constitution is that it must now be adjusted to the higher and “threat levels” we are experiencing. This means that the fundamental right to bear arms for defense of self and family must be given greater weight and deference under either a strict interpretation or evolving document approach.

In terms of effective regulation, every gun control measure proposed or enacted since the Clinton administration has either failed or must fail when tested against the real world. Regulatory flops such as the Clinton “assault weapons” ban target firearms only rarely used in crime. Proposals or actual programs for firearms registries tug at the heartstrings of those who believe in the ability of the state to properly manage and control social interactions, but in practice fail to solve crimes, do not deter criminal conduct, nor make law-abiding citizens safer in any meaningful respect. Over and over, proposed firearm-restrictive “solutions” are only words on paper, inevitable and expensive regulatory “flops” with no hope of working and typical expressions of cynical politicians’ public relations strategies aimed at garnering votes from the uninformed. Anti-gun advocates—at least those acting in good faith and not from purely cynical political motives—are convinced that any views contrary to their own are products of “barbarism”, ignorance or some form of malicious social “psychosis”. Whether a gun owner possesses weapons for reasons of self-defense, from a desire to defend local and national community if needed, or simply because the individual enjoys target shooting, hunting or being part of a “gun culture” such motivations are entirely incompatible with the belief systems of anti-gun activists who exist in secure “cocoons”.

Moreover, and remarkably, such regulations fail to conform to good faith Constitutional analysis under either an “originalist” or a “living constitution” type of analysis. While the Court itself has resolved the question of individual rights to firearm ownership in Heller and MacDonald, an honestly-applied “living constitution” analysis also requires the state to recognize and promote individual rights to firearm ownership and defense of self and others. Specifically, “living constitutionalists” claim that the text of the Constitution adopts different meanings depending upon perceived needs, morals, or other socio-political-contextual factors.

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1 David Barnhizer is Professor of Law Emeritus at the Cleveland State University College of Law and Daniel Barnhizer is Professor of Law and the Bradford Stone Faculty Scholar at Michigan State University.
In analyzing the perceived needs, morals, or other socio-political-contextual factors that define modern culture, an inescapably dominant reality is that the “threat climate” of the US has escalated significantly. This includes increasing sectarian strife, inadequate “after the fact” law enforcement, and the burgeoning rise in terroristic threats. Repeated ominous warnings from governmental actors charged with defending us indicate the risks we face are significant and becoming worse. We are being inundated with warnings from our officials that terrorist organizations are guaranteed to launch attacks in the United States. Some of the attackers will be long-time residents or newly radicalized citizens who seem to spring out of nowhere—as in the San Bernardino murders. We will be living with “lone wolf” attacks for several decades and must be prepared to deal with them. Unlike Supreme Court justices and presidents, the vast majority of Americans do not have personal guards or the resources needed to live in a secure suburban environment or gated community. Those who live in America’s cities and in scattered rural areas with little police presence legitimately feel a greater need to be able to defend self, family and property from human predators. In such a context no one should disagree that the first obligation of a political community—local and national—is to provide security against crime and military assaults.

Recognition that local and national communities are at a steadily increasing risk of violent attacks — whether from criminals or terrorists — has led a number of law enforcement officials to urge those who are legally eligible to do so to carry weapons and be prepared to react to violent assaults, ironically an urging to prepare to be able to act as a sort of “militia”. The fact that experienced law enforcement officials see the need for defense of self, others and community against terrorist threats or to counter emotionally disturbed people intent on killing helpless people in “soft target” situations indicates strongly that our culture has changed in a fundamental way. The “new normal” of American culture involves the increased risk of violent attacks from foreign and homegrown sources—virtually none of which is comprised of actors who are legal owners of guns.

John Locke’s “Natural Right” of Self Defense

Natural rights—in particular the natural right to defense of self—pre-date and transcend the creation of the US Constitution. The point we are developing in this analysis is that the “threat climate” of a culture is an important consideration in applying and defining the right of citizens to keep and bear arms, and that this interpretational lens holds true not only when the Constitution was created but today. We mention John Locke because in the “originalist” sense when we seek to understand what was in the minds of the Founding Fathers of America we need to take Locke’s perspective into account because he was the single most important philosophical “Father” underlying the views of many of the Founding Fathers of the United States—those who drafted and approved the US Constitution. Even though today’s typical American is unlikely to have any awareness of who he was, Locke’s writings had a profound impact on the design and aims of the American political experiment.
Locke explained that people have an inherent “natural” right to self-defense, one that he even described as the first natural right of humans. His analysis of the natural right of self-defense precedes the Second Amendment’s right to bear arms and it is reasonable to feel that his view was incorporated directly or by implication in what the Founders considered as a natural right held and retained by American citizens. The natural right of self-defense limits the power of the State in a nation where certain fundamental rights are said to be reserved to the people. For our purposes that is all that needs to be said about Locke’s analysis of an individual’s right to defend self because the remainder of our discourse is focused on the conditions of modern society.

“My Cold Dead Hand”

Gun control in the United States is a “hot button” issue that shows both the dishonesty and differences underlying people’s positions on the volatile topic. At one extreme of this “non-debate” some want to ban all guns other than those in the hands of police and governmental actors. At the other extreme are individuals who want absolutely no restrictions on gun ownership. Somewhere in between are the rest of us. But even in that vast middle ground there is a range of positions about guns to the point that it is unlikely that a common agreement can be reached about guns in America.

Given the intensity of views on the issue of gun ownership our aim is to raise several points that we think make sense about how gun control might be approached. Our conclusion is that the call to severely over-regulate or ban guns does not make sense from an effective regulatory perspective, a “natural rights” point of view or Constitutional analysis taking an honest look at the issues of self-defense, defense of others and community, and the importance of having a citizenry capable of quickly forming into a “militia” in defense of the liberty and integrity of a free nation.

One of the problems with gun control is that many of the proposed “solutions” are only words on paper, expensive regulatory “flops” with no hope of working and very often expressions of cynical politicians’ public relations strategies aimed at garnering votes. Much of the world neither understands nor appreciates what is often referred to as America’s “gun culture”. For example, a comment to an article in London’s Guardian newspaper, titled “The 'Ferguson effect' is just a ploy to reduce scrutiny of the police,” observed:

2 Trevor Timm, “The 'Ferguson effect' is just a ploy to reduce scrutiny of the police”. The specific comment is that of ID9036415 Bonnemort, http://www.theguardian.com/commentisfree/2015/nov/05/ferguson-effect-ploy-reduce-scrutiny-police
The US gun culture is an unfathomable blind barbarism. Even the so-called enlightened US politicians seek to ‘talk about legitimate responsible gun ownership’ - surely an oxymoron in a civilised, democratic society. Until the US recognises the absurdity of the 2nd amendment in the 21st century as not much more than a anachronistic mythology they will never come to grips with their own psychosis on this issue. I can see absolutely no necessity to own a gun outside the very small handful of justified circumstances of needing to hunt to sustain life and in special circumstances the police and evidently the armed forces. Even then any attempted rationale in respect of hunting for an automatic or semi automatic weapon is simply ridiculous. There is much to admire in the US but this aberration in their national culture is impenetrable.

These comments are typical of the belief system driving many people demanding the elimination of guns from American society or voicing contempt for our system’s liberal rules relating to gun ownership. Along with the calls for eliminating or stringently restricting legal ownership of guns goes an overly abundant faith in the ability of local, state and national law enforcement actors to provide security at levels sufficient to protect people from predators—foreign and domestic. The remarks demonstrate how insulated, parochial and out of touch with reality many people are about guns. They also show the extent to which anti-gun advocates are committed to suppressing the rights of other citizens while advancing their own preferences, fears, biases and interests. The anti-gun advocates feel strongly that their view of the world is the only legitimate perspective any rational person could hold. They are convinced that contradictory views are products of “barbarism”, ignorance or some form of malicious social “psychosis”.

Although law professors and lawyers, we are not going to spend a great deal of time in this essay dwelling on the issue of the interpretation that should govern the US Constitution’s Second Amendment rule 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." But a quick overview of where we stand can be useful. The Supreme Court’s 2008 decision in District of Columbia v. Heller ruled that the Second Amendment creates an individual right to have a firearm for purposes such as self-defense and that several District laws including banning handguns and requiring guns kept in the home to be disassembled or secured with a trigger lock violated the Constitutional right. This analysis was applied to the states in McDonald v. City of Chicago, 561 U.S. 742 (2010).

In the majority opinion in Heller the Court first analyzed the Amendment’s language that, “the right of the people to keep and bear Arms, shall not be infringed.” Writing for the majority, Justice Scalia concluded this recognizes an individual’s right to possess and carry weapons. The Court then considered the Second Amendment’s introductory clause that, "[a] well regulated Militia, being necessary to the security of a free State." A critical part of the decision was that while this “militia” and “free state” clause announces a purpose for recognizing an individual’s right to keep and bear arms, it does not limit the underlying right to self-defense and keeping and bearing arms. The Court did, however, recognize that the right was not entirely outside the state’s regulatory power and that limits affecting the
ability of felons and the mentally ill, to carry concealed weapons at all or in restrictive locations could be regulated.

**Not Everyone Lives in a Safe and “Comfy” Environment:**

The “New Cultural Normal” of Significantly Heightened Risks Alters the Constitutional “Equation”

Underlying much of the anti-gun movement is an arrogance and naivete as to the nature of American society and the risks that many people in that society face—with more to come in the evolving context of externally driven or domestic terrorism and violent crime. Many people do not have the good fortune or luxury of living in a secure suburban environment. And unlike members of the judiciary and the politicians responsible for gun control legislation, “regular” people do not have the comfort of the U.S. Marshal’s service, the Secret Service or other armed security. Those who live in America’s cities and in scattered rural areas with little police presence feel a greater and more direct need to be able to defend self, family and property from human predators. Whether a gun owner possesses weapons for reasons of self-defense, from a desire to defend local and national community if needed, or simply because the individual enjoys target shooting, hunting or being part of a “gun culture” such motivations are entirely incompatible with the belief systems of anti-gun activists who tend to exist in secure “cocoons”.

No one knows for certain the actual scale of gun ownership in America. The supposedly best data about civilian gun ownership in the United States is contained in a survey done several years ago by the University of Chicago reported at length in a *New York Times* analysis. Several other surveys put the total gun ownership somewhere between 270 and 310 million. One analyst admits: “There are lots of holes in actually having any data on the number of guns in our communities,” said Fred Rivara, head of pediatrics at the Harborview Injury Prevention and Research Center and Seattle Children’s Hospital and a firearms researcher for almost three decades.” He adds: “The fact of the matter is we know how many people own cars, we know the identity of every car in the United States ... Yet we don’t know who owns guns, and we don’t know how many guns there are in the United States.”

The actual figures on families and total gun ownership are probably higher than the surveys indicate, perhaps substantially so. Many people own guns but aren’t about to tell anyone about it—particularly a survey questioner or government official. Distrust and concern about government efforts to control weapons is far more probable to cause many people to ignore such surveys or simply lie about not owning weapons. The fact that some newspapers in the US have felt it is their civic responsibility to release the identities of those with concealed carry permits adds to the apprehension about the intentions of governmental actors. When we add to this the fact that criminals are likely to be uninterested in advertising their own illegal possession of firearms it is easy to understand

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that the very large total of gun owners is almost certainly substantially higher. Since the number of people engaging in hunting has declined and that category of firearms is likely less in size, this supports the conclusion that, since known gun ownership has increased, more people are seeing guns as an essential defense against being victimized. This strategy of self-defense, defense of others and defense of community rests at the heart of a case such as District of Columbia v. Heller and the defensive concerns of tens of millions of America’s citizens.

Although we [Daniel and David] have shot weapons in various situations, including tactical weapons instruction, we do it primarily for proficiency and self-defense training. In our experience this characterizes many US gun owners. Defense of self, family, community and nation are integral elements of why people choose to own weapons. No one should disagree that the first obligation of a political community—local and national—is to provide security against crime and military assaults. Of late, repeated warnings from our governmental actors charged with defending us indicate the risks we face are significant and becoming worse. We are regularly warned that terrorist organizations are certain to launch attacks in the United States at any time and that some of the attackers will be long-time residents or even radicalized citizens of the US who seem to spring out of nowhere—as in the San Bernardino murders. We will be living with “lone wolf” attacks for several decades and must be prepared to deal with them.

Recognition that they and their local and national communities are at an increasing risk of violent attacks has led a number of law enforcement officials to urge those who are legally eligible to do so to carry their weapons, be vigilant and be prepared to react to violent assaults. Even a tiny sampling of this perspective includes a significant number of sheriffs around the US urging citizens to bear arms. The fact that experienced law enforcement officials see the imminent need for defense of self and others against terrorist threats, against criminals and against emotionally disturbed people intent on killing innocent and helpless people in “soft target” situations that are typically in so-called “gun free” zones indicates strongly that our culture has changed in a fundamental way. The “new normal” of American culture involves the increased risk of violent attacks from foreign and homegrown sources—virtually none of which are legal owners of guns.

The concept of the Constitution as a “living” and “evolving” document is a two-edged sword defined by the realities of the culture. The irony is that if, as stated by many people who see the actual conditions of our culture at any point in time as a key determinant of how rights and duties should be adapted to the “new normal” rather than seek to maintain its grounding in historical contexts, US Constitutional rights must be adjusted to the higher “threat levels” we are now experiencing. This means that the right to bear arms for defense of self and family must be given greater weight and deference rather than be impugned as

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indicia of uncivilized barbarism. Not only does the increasing cultural threat climate necessitate greater weight for reasons of self-defense it also brings to the forefront the reality of citizens organizing and preparing to operate as a militia.

The Progressive Fragmentation of American Society

At the center of our analysis is that the nature of American culture and community is changing in fundamental and troubling ways. While politicians lament the fact that we have become an increasingly polarized society the fact is considerably worse. We have not only “strained” but torn the fabric of community and are at each other’s throats. This condition is not likely to improve. Rather than increasing the quality and solidarity of the overall community as we were told it would, the social transformation America is undergoing has produced a stunning rise in aggressive identity groups and separatist subcultures with members who are insistent on defending and advancing their own agendas and social entitlements while having limited responsibilities owed to the overall community.

This progressively fragmenting social condition is increasing our sense of pervasive insecurity and danger while intensifying cultural distrust. One problem with the cult of glorifying extreme diversity, incorporating rigid multiculturalism and expanding the number of the single-issue identity groups that now characterize our culture is that taken together they have produced an accelerating extinction of our sense of common community. The resulting hostility and resentment leads to violence, threats of violence and even the misperception of threat where none exists. This creates further misperceptions and resentment—producing a sort of cultural “death spiral” that suffocates our sense of collaborative community. A result of the heightened climate of fear and suspicion centered on real and imagined threats is that many citizens are looking for ways to protect themselves and their families. Some are also preparing to defend the local and national community with which they most closely identify from external attack.

The Second Amendment, Heller, “Militia” and the Right to Self-Defense

"I ask, sir, what is the militia? It is the whole people, except for a few public officials." George Mason, in Debates in Virginia Convention on Ratification of the Constitution, Elliot, Vol. 3, June 16, 1788.

"Who are the militia? Are they not ourselves? Is it feared, then, that we shall turn our arms each man against his own bosom? Congress shall have no power to disarm the militia. Their swords, and every other terrible implement of the soldier, are the birth-right of an American ... The unlimited power of the sword is not in the hands of either the federal or state governments, but where I trust in God it will ever remain, in the hands of the People." Tench Coxe, 1788.

As with Locke’s first natural right of self defense, we don’t want to spend much time parsing the Second Amendment nor the several Supreme Court decisions analyzing that
Constitutional provision. It is worth noting, however, that in referring several hundred years ago to the importance of a “well-regulated militia” and the right to bear arms, it is not irrational to interpret the meaning of that term in relation to the right to protect and defend oneself, one’s home and family, and one’s community and nation from threats whether internal or external. In the largely agrarian rural society in existence at the time the Constitution was adopted, citizens mainly had themselves along with a few friends and neighbors to rely on against human predators willing to do them harm. There may have been legal authority located somewhere in a broad territorial jurisdiction but the likelihood of it being in sufficiently close proximity to prevent illegal action against an individual victim or family was slim to none. Defense of one’s property, life, family and community was therefore the immediate responsibility of the citizen operating in a position of threat.

The concept that the State’s first responsibility to its citizens is to provide security against threats and violence is a fundamental element of democracy. In drafting the Declaration of Independence Thomas Jefferson argued that when government cannot or will not fulfill its responsibility to its citizens that this represents a fundamental breach of the social contract even to the point that it justified rebellion. The concept of the “tyranny of the majority” is not an inconsequential consideration in a democracy supposedly committed to “Life and Liberty” of not only the mass but of individuals. The idea that a truly free society requires citizens ready and able to counter the undeniable tendency of central governments to continually extend and abuse power is a fundamental element of the American ethos.

John Stuart Mill, in On Liberty, put the dilemma thusly:

Like other tyrannies, the tyranny of the majority was at first, and is still vulgarly, held in dread, chiefly as operating through the acts of the public authorities. But reflecting persons perceived that when society is itself the tyrant — society collectively over the separate individuals who compose it — its means of tyrannizing are not restricted to the acts which it may do by the hands of its political functionaries. Society can and does execute its own mandates; and if it issues wrong mandates instead of right, or any mandates at all in things with which it ought not to meddle, it practices a social tyranny more formidable than many kinds of political oppression, since, though not usually upheld by such extreme penalties, it leaves fewer means of escape, penetrating much more deeply into the details of life, and enslaving the soul itself. Protection, therefore, against the tyranny of the magistrate is not enough; there needs protection also against the tyranny of the prevailing opinion and feeling, against the tendency of society to impose, by other means than civil penalties, its own ideas and practices as rules of conduct on those who dissent from them; to fetter the development and, if possible, prevent the formation of any individuality not in harmony with its ways, and compel all characters to fashion themselves upon the model of its own. There is a limit to the legitimate interference of collective opinion with individual independence; and to find that limit, and maintain it against encroachment, is
as indispensable to a good condition of human affairs as protection against political despotism. 5

Although this concept of being willing and able to defend against political overreaching to preserve a free society horrifies some today because they do not believe there are real limits on governmental power, the principle of defense against a tyrannical majoritarianism that has gone beyond legitimate boundaries can be usefully seen as a psychological check on governmental authority. It achieves this by generating the perception and possibility of a strong “push back” against actions that are viewed as extreme overreaches of the inherent authority of our government and this potential must always be taken into account by governmental actors. This includes countering extreme abuses of majoritarian power; dealing with the unfortunate dynamic of all imperfect democratic political systems in which the majority increasingly seeks to secure more and more social goods for itself while taking away other’s individual rights, liberty and property.

The ability of citizens to resist unjust or overbroad governmental exercises of power, even forcefully in extreme situations, serves as a reminder that government can go too far and intrude on areas of inherent and fundamental civil rights. The fact that resistance is likely to carry unpleasant consequences to the actors is a matter of individual prudence rather than a statement that resistance has no legitimate place in a democratic society supposedly committed to liberty and individual rights as a core element of its principles. The powerful tension between individual liberty and the ever-expanding majoritarian acquisition of social goods and power helps create among citizens and government a clearer sense of the limits of governmental power and the primary duties of governmental actors. It also generates an awareness of the conditions that can lead to the right and need of citizens’ to defend themselves in contexts where the government either will not or cannot fulfill its responsibility to effectively protect and defend.

Law Enforcement Is Reactive Rather than Preventative

What does all this mean? After all, who are we to question our governmental “experts”? The mantra of the day is “Eternal vigilance” in the midst of what are just the early stages of a long running guerrilla war. According to our own government America is at high risk for acts of terror by Islamic groups, “lone wolf” actors, and Right Wing perpetrators. Those people can strike anywhere and we are told to be extremely vigilant. Al Qaeda, ISIS, Al Shabaab, Boko Haram, AQAP (Al Qaeda in the Arabian Peninsula) and others have America “in their sights” and citizens must be prepared to respond. To this we are being told to add various internal non-Islamic threats that supposedly pose an even greater risk.

The US Constitution is often described as an evolving document that must take into account the realities of our society as a constantly changing culture. With all the talk today about the need for gun control laws there seems to be a failure to understand the reality in which

many people live and the need for them to be able to protect themselves against external threats. When it comes to far too many violent crimes the understaffed, undertrained and underfinanced police forces are reactive rather than preventative. How many women and other vulnerable people have sought to obtain police protection only to hear the response “I’m sorry. We can’t do anything until something actually happens”.

In such a situation where urban dwellers and vulnerable visitors to cities often find themselves caught up in that unfortunate dilemma, people have the right to possess the tools needed to protect themselves and those for whom they care. When the violent predators are nearly always armed with guns they have generally obtained illegally through theft or an underground “black market”, and where the police are mostly a record keeping “after the harm has already been done” investigative system that intervenes with mixed results only after the attack occurs, it takes no “leap of faith” to conclude that potential victims have natural rights to possess the means to counter that threat.

It is difficult to argue the idea that that citizens lack the right to defend themselves and family and to prepare to come to the aid of their community if the nation is in a condition of war, whether declared or undeclared, formal or guerrilla or terroristic. One response to this might be, “But we are not in a war” and therefore that it is not necessary or appropriate that citizens arm themselves for self defense or defense of the community. We in no way think that the citizens’ right to own guns is fully and solely dependent on the existence of a formal state of war but in that vein, consider the following.

- “The National Terrorism Advisory System, or NTAS, replaced the color-coded Homeland Security Advisory System (HSAS) in April, 2011. The NTAS system effectively communicates information about terrorist threats by providing timely, detailed information to the public, government agencies, first responders, airports and other transportation hubs, and the private sector. *It recognizes that Americans all share responsibility for the nation’s security, and should always be aware of the heightened risk of terrorist attack in the United States and what they should do.*”

- “Each alert provides information to the public about the threat, including, if available, the geographic region, mode of transportation, or critical infrastructure potentially affected by the threat; protective actions being taken by authorities, and steps that individuals and communities can take to protect themselves and their families, and help prevent, mitigate or respond to the threat.”

- “Citizens should report suspicious activity to their local law enforcement authorities. The “*If You See Something, Say Something*” campaign across the United States encourages all citizens to be vigilant for indicators of potential terrorist activity, and to follow NTAS Alerts for information about threats in specific places or for individuals exhibiting certain types of suspicious activity.”

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• “The terror threat level in the United States is high as it's ever been with more jihadist terror cases this year than in any full year since 9/11, according to the latest monthly terror threat snapshot from the House Homeland Security Committee. The committee’s report (pdf), released Aug. 4, said that since 2001, there have been 122 homegrown violent jihadist terrorist cases. The number increased three-fold in five years, from 38 in July 2010 to a total of 122 today. "Over 80 percent of these cases – which include plotted attacks and attempts to join foreign terrorist organizations – have occurred or been disrupted since 2009," it added.”

• A CNN report adds that: "Security conditions at U.S. military bases have been increased over growing concerns about terror threats, officials said Friday. A U.S. official confirmed to CNN that U.S. military bases are now at [Force Protection Bravo] which is defined by the Pentagon as an "increased and predictable threat of terrorism." It is the third-highest threat level on a five-tier scale used by the Department of Defense.”

• According to the CNN report, “ISIS’s ongoing global campaign of attacking Western targets has skyrocketed with the terror group’s orchestration of 61 terror plots. There were 41 ISIS-linked terror attack plots against Western targets so far in 2015 – more than doubling the total for all of 2014 (20 plots). Officials are also concerned that ISIS may be taking advantage of the recent refugee crisis by helping would-be terrorists to enter the West undetected.”

• Other observations from the CNN Report indicate: “The homegrown Islamist extremist threat in the United States has escalated dramatically this year. There have been more U.S.-based jihadist terror cases in 2015 than in any full year since 9/11. The number of U.S. terrorist cases involving homegrown Islamist extremists has gone from 38 in July 2010 to 127 today—more than a three-fold increase in just five years.”

• “The main terrorist threat in the United States is not from violent Muslim extremists, but from right-wing extremists. Just ask the police. In a survey we conducted with the Police Executive Research Forum last year of 382 law enforcement agencies, 74 percent reported anti-government extremism as one of the top three terrorist threats in their jurisdiction; 39 percent listed extremism connected with Al Qaeda or like-minded terrorist organizations. And only 3 percent identified the threat from

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Muslim extremists as severe, compared with 7 percent for anti-government and other forms of extremism."

- “An officer from a large metropolitan area said that “militias, neo-Nazis and sovereign citizens” are the biggest threat we face in regard to extremism. One officer explained that he ranked the right-wing threat higher because “it is an emerging threat that we don’t have as good of a grip on, even with our intelligence unit, as we do with the Al Shabab/Al Qaeda issue, which we have been dealing with for some time.” An officer on the West Coast explained that the “sovereign citizen” anti-government threat has “really taken off,” whereas terrorism by American Muslim is something “we just haven’t experienced yet.”

- “A new intelligence assessment, circulated by the Department of Homeland Security this month and reviewed by CNN, focuses on the domestic terror threat from right-wing sovereign citizen extremists and comes as the Obama administration holds a White House conference to focus efforts to fight violent extremism.”

- “Some federal and local law enforcement groups view the domestic terror threat from sovereign citizen groups as equal to -- and in some cases greater than -- the threat from foreign Islamic terror groups, such as ISIS, that garner more public attention. The Homeland Security report, produced in coordination with the FBI, counts 24 violent sovereign citizen-related attacks across the U.S. since 2010.

The New “Thirty Years War”

At a minimum we are locked into a modern version of the Thirty Years War and we will be fortunate if we bring it to a more-or-less successful end even within that time frame. Many analysts have written about the Middle East devolving into a new Thirty Years War but as we have seen with attacks in the West, including the US, we are part of that war through direct attacks by one of the primary terrorist and Jihadist organizations, by their radicalized agents or by the actions of hard-to-detect “lone wolves” whose twisted minds cause them to decide that killing innocent people somehow represents a sacred or noble mission.

In this vein, consider that ISIS has stated on numerous occasions that they are radicalizing Muslims in America and are intent on creating “lone wolf” attacks. Radicalization and

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extremism abound. Our prisons are ripe breeding grounds for recruiting and radicalizing individuals under the guise of being converts to Islam. The Internet is rife with recruiting to the point our officials indicate they cannot keep up with it or track it adequately. The admission of large numbers of refugees from Iraq, Syria, Libya, Somalia, the Sudan and other areas of the Middle East and North and East Africa represents a pool of entrants in which a very small but still dangerous number will be intent on harming the country even as they arrive while others will be radicalized after arrival due to the Internet, peer pressure, and messages received from radical imams.

The top NATO military official in Europe has just indicated that ISIS is sending members into European nations along with the flow of refugees that are currently invading Europe. The report indicates: “In testimony Tuesday before the Senate Armed Services Committee, U.S. Air Force Gen. Philip Breedlove said the Islamic State is "spreading like a cancer" within this mix, "taking advantage of paths of least resistance, threatening European nations" and the United States.” Breedlove added: “This criminality, the terrorists, and the returning foreign fighters are clearly a daily part of the refugee flow in Europe,” Breedlove said. He added that reports suggest that about 6,000 foreign fighters have left to join the fight in Syria and Iraq, and that about 1,500 of them have returned to Europe.”

Pretending that organizations and states hostile to the U.S. have not been inserting enemy fighters, murderers and saboteurs into Western nations, including the US would be an incredible act of self-delusion. If only one percent of the 1.3 million refugees who have flooded into Germany in the past year are violently radicalized when they enter that still leaves a hard core of 13,000 fanatics who are capable of inflicting significant damage, death and disruption. But let’s be extremely conservative. Even if the entry figure on radical Jihadis is only one-tenth of one percent then Germany will have admitted 1300 intensely violent guerrillas just in a single year. France, Italy, Sweden, Denmark, Spain, the UK and America obviously must take these considerations into account—including the undeniable fact that they already have migrants and homegrown radicals among their populations. One may well think that Donald Trump is mainly a loud mouth buffoon, but that in no way means that America should ignore his warnings that we must develop intelligent screening and background checks in the most sophisticated effort we can implement to determine an individual’s intentions prior to admitting someone into our nation. This does not even begin to touch on the fact that a significant number of residents and citizens of both the E.U. and the U.S. have gone off to fight with one of the terrorist groups and are returning to Europe and America with skills, values and motivations aimed at harming those nations and attracting new recruits.


15 Lardner, id.
16 Lardner, id.
In the context of a long running “War on Terror” in which the terrorists fully intend to make war on us and have expressed the intent to do it within our borders through an ongoing series of attacks and sabotage aimed at “soft” and defenseless targets, American citizens—male and female—who are willing to train in the proper use of weapons in order to defend themselves, their families, friends and communities represent a body of individuals who are entitled to exercise their natural right to self-defense. They are in the best tradition of a committed and capable citizenry that can be called upon to defend themselves and their community from those who would attack it. This is “the militia”.

Taking this position may be provocative but is not irrational. The fact is that a significant and influential segment of our population has become incredibly naïve while being captured by the delusion that our world is filled with “peace and light” or would be if only we “talked things out” and loved one another in a surge of “common humanity” accompanied by uplifting music of the kind found in all the movies with happy endings. It is becoming less and less likely that we will be experiencing a happy ending to what promises to be a long running war of attrition. We cannot “fix” the situation, but can only defend ourselves against the worst of its consequences.

Our cultural system has become a hotbed of tribalism that been steadily devolving into identity sects committed to advancing specific agendas that benefit their members while taking from others or subordinating them. It has been suggested that it is racist or bigoted to even ask new migrants to accept a duty of assimilation into American culture. Diversity and multiculturalism sound good in theory but when they become mantras for separateness, significant and disputatious interest groups are created in which the members have limited loyalty to the nation as a whole. This is America’s (and Europe’s) moral, political and philosophical dilemma. When parts of the aggressive identity groups believe that their primary (or only) duty is to a particular worldview that celebrates violent assimilationism, and that all other beliefs are anathema, the antagonism and violence will continue to grow. Violence driven by fanaticism will expand.

If We Are Primarily Concerned with “Reducing Body Count” and “Saving Victims”
What Are the Main Causes of Premature Death in America?

Even though opposition to firearms is a cause celebre being “flogged” by the media and gun control advocates, the uncomfortable truth is that guns are far from being the most frequent or common cause of death in America. The hysteria that singles out guns for elimination is bad enough but it is compounded by the fact that most of the proposals would accomplish nothing positive and also alienate a significant proportion of Americans.

But lets practice good faith and assume that the demand for gun control, even to the extreme of banning them completely, is not primarily motivated by a deep-rooted visceral fear of guns or political hatred of a particular political interest group, but rather by concern for the victims of gun violence. After all, we should be able to agree that the critical element in a responsible social policy is that we all desire to hold down the “body count” resulting from reckless, unthinking or violent human behavior. If our aim is that of preventing deaths and protecting the greatest number of people from death and
destruction, it is reasonable to go beyond guns in considering the range of areas in which legislation is needed to reduce the human costs of deficient and deadly human behavior.

**The “Darwin” Awards**

Assessing the behaviors that produce the greatest “body count” in American society produces intriguing results. The following data are mostly from the Center for Disease Control and represent statistics for several years since roughly 2005 with most information from 2008 and 2010. Many of them (some heart disease, drug abuse, car accidents, alcohol, cigarette smoking and diseases resulting from smoking, lack of exercise, poor diet and alcohol abuse) show that the so-called “Darwin Awards” describing incredibly stupid human behavior ought to be expanded to include a “Life-Time Achievement” level.

This “Darwin Life-Time” award would “reward” longer-term behavior where people know about the harmful effects of specific activity but go ahead and do “it” anyway. Cigarette smoking, as we now know, is a form of “slow suicide” as are the horrible health habits that are often causes of heart disease, many cancers and the debilitating effects of excessive alcohol abuse. The combined annual death toll of these activities or habits is something like 1.5 million people or approximately 75 times more deceased victims than guns. The systemic and personal costs from the debilitating illnesses associated with stupid behavior run into the tens of billions of dollars annually. The destruction of human life through death and serious injury caused by drunken, reckless or grossly negligent driving is an ongoing tragedy yet we look the other way at strategies for reducing the toll.

The leading “Darwinian” behaviors that far more critical than guns in terms of their death toll include the following. Smoking causes 443,000 deaths per year and heart disease another 600,000 deaths. Many of those heart-related deaths are the result of poor life-style habits. An estimated 195,000 deaths per year are associated with in-hospital medical errors, a situation where negligent caregivers to whom we trust our lives are the ones who should receive the Darwin award. There were 38,000 deaths from drug overdoses, 36,000 deaths from septicemia, 41,592 deaths from accidental poisoning, 37,000 deaths from alcohol abuse, and 36,000 deaths from car accidents. In areas less related to stupidity and more to serendipity or genetic predisposition, 567,000 deaths were from cancer, 54,000 deaths from flu and pneumonia, diabetes deaths were 69,000, Alzheimer’s 83,000, accidents (unintentional injuries) 121,000, and lung disease 138,000. Some of these conditions relate to genes, others to risk factors and “rolling the dice”, and some to exposures about which little can be done. But many are directly related to personal life style choices.

Of the 38,000 US suicides, something like 57% involves guns, and a combined 40% of the deaths result from hanging (usually men) or poison (usually women). There were (in 2008) 16,259 homicides with 11,078 involving guns. Homicides were only the 15th most common cause of death while suicides ranked higher at 10th. As to violent crimes resulting in death, a 2010 report by the California Attorney General indicated that in situations where a gun was used that: “Of the 175 firearms reported, there were 158 (90.3 percent) handguns, 12 (6.9 percent) rifles, 4 (2.3 percent) shotguns, and 1 (0.6 percent) full-auto
firearm.” Contrary to what seems to be thought by those proposing bans on military style weapons, assault weapons are not an out-of-control phenomenon but a very minor part of the total number of deaths caused by firearms.

Nor should the US be thought of as the “Murder Capital” of the world. Murder rates per 100,000 population in 2008 ranked the US at 5.22, Mexico at 11.59, Honduras at 60.87, South Africa at 36.54, Indonesia at 9.29 and Russia at 14.18. Western Europe and Japan are considerably better, as are Australia and Canada. The seeming paradox in the case of US gun paranoia is that, as the Annenberg Public Policy Center has found, even though gun ownership in the US is growing, gun murders are actually down. In fact as measured by the rate per 100,000 population murders by guns fell by fifty percent since 1991. Washington, DC, on the other hand, with its stringent laws against gun ownership, is a deadly city with a “Third World” murder rate of 12.46 per 100,000. If you have ever lived in DC you aren’t surprised by this information.

As reflected in both suicide and murder, the handgun has been the tool of choice. Suicide offers an intriguing context with nearly 10,000 suicides from hanging and 6500 from poison. Using the same logic as gun control advocates, this leads to the conclusion that we should ban ropes and poison substances in an effort to save almost 17,000 people per year. 19,392 suicides involved the use of guns. Even though we frequently hear of the need to ban assault weapons, not one of those 19,392 deaths involved using assault rifles to end one’s life.

The above data do not even begin to include statistics for abortions in the US, with the Alan Guttmacher Institute estimating that between 1973 and 2008 there were nearly 50 million abortions, with 1.21 million in 2008 alone. Regardless of one’s moral position on the issue of abortion, with a birth survival rate of close to 100 percent that means that something like 45 million new individuals would have come into existence if the natural course of gestation had been allowed to unfold. We mention this mainly to suggest that we frequently engage in rationalizations about what is desirable or permissible in any particular area based on our self-interest, biases and fears. Part of this process “frames” debates in ways that demonize positions we don’t support and elevates those we do by defining them by language that alters how the situation is perceived to make our position sound the most enlightened and moral. In the abortion context the mantra is “Pro Choice” rather than “Killing Babies”.

It seems clear from this that if we were actually concerned with saving the greatest number of lives we would take strong steps to ensure improved dietary health. We would ban cigarettes because they impose incredible costs on society in terms of health care and lost work efficiency in addition to their death toll. We would take steps to dramatically reduce the use of alcoholic beverages. We would ban the use of cell phones while driving and ban all texting in a moving vehicle. We would take significant steps to deal with the almost 200,000 deaths each year caused when patients receive substandard and negligent care in hospitals. We would also do much better with advocating effective birth control aimed at preventing unwanted pregnancies rather than having to use abortion as a casual means of
birth control that, no matter how you want to “spin” it, involves the termination of a living “thing” that if left to develop grows into “something like us”.

Suicide

As mentioned above, if we really cared about suicides we might do something to prevent people from having access to ropes and poisons as well as guns since 40 percent of people who successfully kill themselves opt for hanging or poisoning. Suicide oddly enough is a choice and people who are intent on taking their own lives have rarely had difficulty obtaining the means to do so. If a person believes in “Pro Choice” he or she should be a supporter of suicide. It is not necessarily the best or wisest choice for a person but as an individual the person has the right to take that action, as selfish and devastating as it is to families and other loved ones.

Nor is the US even close to being the world’s leader in suicides per 100,000. World Health Organization data rank South Korea as the country with the highest suicide rate per 100,000 people at 31.7. China is 7th at 22.23, Japan 8th at 21.9 and Russia 11th at 21.4 suicides per 100,000. Even France is ahead of the US and ranks 24th globally at 15.0 while the US trails in 34th place at 12.0 suicides per 100,000. This is closely followed by Sweden, Norway, Ireland, the UK and Canada between 11.9 and 11.5 suicides per 100,000. The fact is that as tragic as suicide is for those left behind (and I have known at least five people who committed suicide) the US with a population exceeding 315,000,000 people is not filled with mobs of people rushing to end their lives by guns, ropes or poison.

The particular method used in suicide is a factor of culture and opportunity. Asia and Latin America tend toward pesticide poisoning. Drugs predominate in the Nordic countries and the UK, while leaping from high places is favored in Hong Kong and urban Chinese locations. For the US over 50 percent of suicides involve firearms. But if someone is seriously committed to killing themselves they will find a way to do it. Using access to firearms as a reason to ban guns is both disingenuous and ineffective. It also removes a reasonably humane tool from people who feel a compelling need to end their life for reasons that are their business. If, in the context of abortion, the key value is the power of a woman to make choices about what to do with her body then why (other than the obvious pain for those left behind who cared for the individual) do people resist the idea that someone who kills himself or herself is simply exercising the right and moral power to do what they want with their body?

Guns are not even close to being the most important cause of death in this society. Of course there are steps that can and should be taken to inhibit the use of guns by malicious or crazy people. The gun show loophole where there are no effective limits or checks on the sale of guns to almost anyone, and the “straw” purchaser who buys guns for someone not legally allowed to own a gun are legitimate strategies for control. Stopping the federal government from transferring automatic weapons to Mexican drug cartels under asinine programs such as Eric Holder’s and Barack Obama’s “Fast and Furious” might well be another avenue to be pursued.
How Do We Determine Which Emotionally Disturbed People Are Dangerous?

There is no easy solution to the issue of access to guns by individuals who are violently mentally ill. To the extent someone has been adjudicated mentally ill with demonstrated violent behavior then, “sure”, we can and should prohibit that person from owning a gun legally. The problem lies in the state of someone’s mental health before the tendency toward violence becomes fully visible. Issues of mental health and illness have for some undetermined reason become so pervasive in American society that it seems that there is a mental or emotional health label for nearly everything we do. How far do we want the State to get into the question of its citizens’ mental health or predicting a person’s tendency toward violence?

The risks involved in aggressive political intervention into anticipating violent potential in the mental health domain are profound. We know numerous people who are on medications for various emotional disorders. A number of them are law professors. Some of those disorders are of the kind that could lead to suicides or violence against others if the person decides to “get off his meds”. The way to increase the probability that such people will remain “normal” is to require them to have regular visits to a “Medication Maintenance” official who will ensure they take the proper doses with regularity. Some people are just “mean drunks” even though they are decent when they haven’t over-indulged. Maybe the best thing to do with them is to ban them from drinking. Obviously, however, we would never agree to such stringent and intrusive “1984-type” controls.

The bottom line is that many people are reacting on a deep emotional level whenever guns are discussed. There is such a deep-seated fear of guns among an extended, well-connected and vocal sector of American society that they are incapable of understanding that many other people do not share their visceral abhorrence. Their fear is so fundamental that they nevertheless feel entitled to impose their views on millions of law abiding people and somehow fail to understand that they are proposing to create ineffectual laws that will be ignored by the violent, insane and evil elements of society who engage in the vast proportion of the violence. As indicated in the quote from The Guardian with which we began this analysis, the fact that many members of the society hold values different from their own is scorned as bigotry, ignorance, or the lack of education or sophistication.

Don’t Go Out at Night: Who Are the Killers and Where [and when] Are The Killings Happening?

Who is using guns against other people and when is this occurring? There are some who are legally in possession of a handgun who shoot and kill another person, and very few of those people have concealed carry permits. The heart of the problem is the behavior of people who are illegally in possession of a gun. They are already breaking the law. Passing another law that requires them to not carry a gun, or to turn in the weapon they are already carrying illegally, is not going to be an effective law. I once lived in the District of Columbia with its Draconian laws against gun possession. Almost nightly I could hear guns being discharged. Daily the news carried stories of people being shot. After dark the Nation’s Capital is a Third World state. The “bad guys” have the guns while the “good guys”
stay home at night behind locked doors or are careful to venture only to areas known to be safe. What new gun control law is going to deter people who are already breaking the law, or who are at serious risk of harm or death at the hands of people with guns who are already violating the existing gun control laws but are using the illegal weapons to engage in interactions with other criminals or rob, murder or rape innocent victims?

The 1974 movie *Death Wish* starring Charles Bronson as vigilante Paul Kersey captured a harsh reality. It is an act of taking your life in your own hands to go out at night in many areas of America's cities. The premise of *Death Wish* is that ordinary people can and must resist the predators who lurk in the shadows and prey on innocent people. The police viewed Kersey as irrational for going out at night where “the wild things” are and for fighting back with deadly force when attacked. The result is that his character was both hero and villain. The idea that we are somehow obligated to prudently cower in the face of threats is viscerally unacceptable to some people. Nonetheless, the numbers make clear that the darkness of night creates a cover for violence and murder to the extent that if we really want to reduce violent crime we could first look to strategies that take that fact into account.

*USA Today* published a story intended to bring forward the realities of gun homicides in America. The *USA Today* story reports that more than 31,000 people die from gunshot wounds annually at an average of 87 per day. Oddly, thirty of those 87 deaths are murders, and more than 50 are suicides. The *USA Today* report, “1 deadly day provides overview of gun fatalities across country”, describes selected gun fatalities from Jan 19, 2013. It relates the following facts: At 3:50 AM an armed robber was shot by police at a White Castle restaurant. At 1:45 AM two men were shot and killed outside a bar in Hampton, Virginia. At 2 AM, a man was shot and killed at an intersection in Allentown, PA. At 2:30 AM, a man was shot and killed in Washington, DC. In Winnsboro, TX, an estranged husband was shot and killed by wife’s male friend at her house in an alleged “stand-your-ground” situation. No charges were filed. At 3:28 AM, a man was shot and killed in Greensboro, NC and the shooting ruled justifiable homicide. At 12:20 PM in San Leandro, CA a man was killed in cross fire from a gang fight. In Humboldt County, CA, a man killed himself. A six-year-old shot herself with her father’s gun, one that he was not legally allowed to have due to a prior felony conviction. Late night in Memphis, TN, a man was shot and killed in a robbery attempt in a convenience store parking lot.

These tragedies could lead to an argument that all guns should be banned, confiscated and destroyed. But consider other interpretations. First of all is the fact that a number of the killings happened in urban areas in what we often refer to as “the wee hours of the morning” in the proximity of bars or convenience stores. At least one involved the shooting of an armed robber by police in a convenience store. Two others were ruled justifiable homicides (Texas and North Carolina). One was a suicide. Another, with the six-year-old girl, was a terrible accident and a result of a careless father who was a convicted felon and was breaking the law by having a gun. In far too many instances gun murders involve otherwise law-abiding family members who “lose it” and kill people they love due to divorce, infidelity, paranoia or insanity. The unfortunate fact is that you can’t stop everything or protect everyone.
The deaths described above tend to have something in common. They generally happened very late at night and are associated with bars or convenience stores. People who have been drinking are easy victims or, if armed, potentially dangerous people. Convenience stores and their customers have cash. These locations are convenient targets that draw street criminals looking for a quick and easy “score” from their personal “ATMs”. One option to prevent such attacks is to shut down bars much earlier, to impose curfews so “honest people” aren’t on the streets past ten PM or so, and require late night or 24/7 convenience stores to close up earlier. But of course we won’t take that kind of action.

Massive Expansions in Homeland Security, Local Police Forces and Agencies such as the ATF Would Occur and Still be Ineffective, Intrusive and Super-Authoritarian

For years I [David] taught a variety of courses in Environmental Law and Toxic Torts. In those fields there were continual issues involving regulation on paper but a lack of actual monitoring, investigation and enforcement. The same thing exists in regard to gun control legislation and that is, what would it take to make the regulations effective? What level of resources in staff and other elements of effectiveness would be required? Equally important, will people willingly follow the law or will they resist and if so what kinds of official actions would be needed to enforce the laws against gun ownership?

Another matter related to the rise of the diverse and separatist multicultural society that now exists in the US is that the distinct and numerous social and political “sects” do not trust each other. America more than any other society of large scale is increasingly incoherent due to the extreme and increasing diversity of its population,—a “melting pot” that no longer “melts”. Even at its best it was an ideal that excluded too many from sharing in its benefits but some greater cultural coherence did exist for most that has been lost and cannot be recreated. In fact, even raising the prospect of a shared belief system has the speaker labeled as a bigot or “on the wrong side of history”.

Our situation is worsening. Many Americans believe in an increasing likelihood of economic collapse. Some go so far as to anticipate an eventual race war among the balkanizing multicultural groups that make up the American body politic. In that context proposals that individuals surrender an effective—possibly the most effective in many situations—means of protecting themselves, families and friends against those who would harm them is something that is not going to work. It is particularly problematic given that the vast majority of people in that situation are not those who go out and attack others. They are occupying a defensive position rather than seeking to engage with others to advance criminal purposes.

David Clarke, the Sheriff of Milwaukee County, recently urged residents of inner cities to arm themselves against the criminals and thugs who prey on them, saying that residents of Milwaukee’s inner city needed to take responsibility for their lives and take up arms to defend themselves against criminals. Clarke stated: “The heavy lifting has to be done by
the individual and not government," Clarke said. "Government does not put enough pressure on people." 17

You can "shout" all you want about gun control but you cannot create effective laws to prevent the problems unless you create a totalitarian state with a massive and invasive militaristic police force. Part of the process of gun control would require a highly intrusive surveillance network to detect and monitor citizens. It would not be a one-time event but a continuous process. Existing records would be scoured to determine who bought ammunition. Places where guns and ammo had been sold would have records seized to create a database of people who owned guns at some time. We could expect governmental regulators and enforcement agents to demand an accounting of where the weapons were transferred and to whom if a person could not produce the gun they owned.

In the worst-case scenario we have to ask how it is possible to convince a gun owner who feels that he or she has a natural or constitutional right to own a weapon to turn in those firearms. How do you get criminals to turn in guns when they use them for defense and to commit crimes? How do you convince urban residents—many of them black and many in illegal possession of a gun they consider as essential to protect themselves—to turn in their guns? There should be little wonder that the NRA has fought gun registration lists and similar requirements.

We are not anti-government but against the abuse of governmental power of the kind we have seen in the area of electronic surveillance and record keeping that violates constitutional and statutory rules. We can, in fact, trust governments to abuse power and overstep boundaries. As to taking guns away from ordinary citizens who have obtained guns through legal channels, the fact that those people obey the law means that they can be easily identified and targeted for removing guns if governmental authorities decide to do so. The “bad guys” aren’t on any gun ownership lists. They will still possess the weapons for their use because they have made no public record of what they have and they are already breaking the laws regarding gun possession. "Bad people" always find ways to obtain weapons. The recent case of murders at a commercial facility in Kansas offers a striking example. The killer had several felony convictions and was legally barred from owning or possessing guns. So he had his girlfriend obtain several guns and ammunition and give them to him. 18 The two San Bernardino murderers obtained their weapons from a friend.

Who Decides When There Is a Need for Self-Defense?

17 Brendan O’Brien, “Black Milwaukee sheriff takes on Black Lives Matter movement”, February 27, 2016, http://news.yahoo.com/black-milwaukee-sheriff-takes-black-lives-matter-movement-120700515.html;_ylt=AwrC0CNNo1FWIEcA5jQtDMD;_ylu=X3oDMTBydWNmY2MwBGNvbG8DYmYxBHBvcwM0BHZ0aWQDBHNIywNzcg--.

The power to determine when a threat exists is not solely in the hands of a central national government, a state government or even local government. The “right to self defense” is based on an individual’s reasonable beliefs that threats exist. This reasonable belief justifies the “trumping” of ordinary laws against gun ownership when it can be shown there is a need and that the legal institutions charged with the duty to provide security fail to do so effectively. This governmental deficiency is often the situation where the government has increasingly become an after-the-fact respondent to completed violence against its citizens rather than a preventer of violent and deadly acts.

Take the inherent right of self-defense and stir into it the fact that the members of a free society stand ready to defend not only themselves and their families but their society by any means necessary including firearms. If citizens have the duty and the honor to step to the fore when their society is at risk then it is reasonable to expect those citizens to be properly prepared to carry out that responsibility effectively and with a degree of immediacy due to the breakdown, insufficiency or ineffectiveness of the more formal instrumentalities charged with protecting us, maintaining our social order, resisting oppression or invasion. In that context it is reasonable to expect the citizens to possess not only the means but the ability to perform that responsibility effectively.

The “new normal” of American culture involves the increased risk of violent attacks from foreign and homegrown sources—virtually none of which is comprised of actors who are legal owners of guns. The irony is that if we apply the “living and evolving document” approach to Constitutional interpretation, then as stated by many authoritative people who understand the actual conditions of our culture at this point in time, a key determinant of how rights and duties should be adapted to the “new normal” of serious risks of violence pursuant to the “living” US Constitution is that it must now be adjusted to the higher and increasing “threat levels” we are experiencing. This means that the right to bear arms for defense of self and family must be given greater weight and deference under either a strict interpretation or evolving document approach.

**Key Words:** gun control, anti-gun, regulation, gun regulation, self-defense, Second Amendment, District of Columbia v. Heller, McDonald v. City of Chicago, militia, defense of community, ISIS, al-Qaeda, threat risk, original intent, “living” Constitution, right to bear arms, Liberty, tyranny of the majority, “new normal” and guns, terror and guns, threat climate, US gun culture, 310 million guns in US, concealed carry laws (CCW), New Thirty Years War, “lone wolf” terror attacks, multicultural fragmentation, factionalism, criminals and gun access