

# BEARING ARMS IN SELF DEFENSE: A NATURAL LAW PERSPECTIVE

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*I argue that we possess a natural right to life which entails a corresponding natural right to keep and bear arms. Although I take “arms” to refer simply to defensive weaponry in general, this justifies a strong presumption in favor of a civil right to keep and bear firearms. This is because firearms – in particular, handguns – are the most effective means of exercising one’s right to self-defense in contemporary society. The argument I will defend is primarily non-utilitarian and makes no appeal to considerations of crime prevention or deterrence. Though my argument is intended as a defense of small arms ownership, I gesture briefly toward a possible extrapolation of this reasoning into a prima facie case for ownership of assault firearms.*

Proper respect for the dignity of human life requires a strong commitment to an individual’s right to keep and bear arms. This idea will immediately strike many as paradoxical, if not contradictory, for how is the value of life affirmed by recognizing a right to take it? But this is in fact a misrepresentation of the position I am defending. The right to keep and bear arms (Hereafter, RKBA) should not be equated with the right to take human life willy-nilly. Instead, RKBA should be thought of as an extension of the right to self-defense, which is itself an extension of one’s basic right to life. My argument for this goes as follows:

1. The possession of a right entails the ability to secure its object. (Premise)
2. We have a right to life. (Premise)
3. Therefore, we have a right of self-defense. (from 1, 2)
4. Therefore, we have a right to keep and bear arms. (from 1, 3)

I draw a distinction between arms and firearms. This is because my argument is not one for gun ownership per se, but simply for

the general right to use defensive weaponry in protection of one's life. Of course, this is a very modest conclusion; one that might seem uninteresting insofar as public policy is concerned. But, as I will do later, we can move from these general points about defensive weaponry to an argument for gun ownership based on the premise that guns – particularly, handguns – are the ideal and most effective means for an individual in contemporary society to defend his life. I make no reference here to principles of constitutional interpretation or existing law, since my approach here is concerned with justice and the rights that societies ought to recognize.

## **WHAT ARE RIGHTS?**

The goal of the moral life is to live excellently – to flourish according to the kind of being we are. Morality as a system exists to regulate and prescribe our conduct in pursuit of this ultimate end. However, we cannot flourish as we should without access to the basic goods necessary for our flourishing. This is where rights come in. Rights can be understood as claims to the basic goods necessary for our flourishing. They exist as a form of protection in our pursuit of the good and impose corresponding obligations on others to respect them, whether that be through non-interference or by requiring them to provide us with a good or service.

There are various types of rights. One distinction that can be drawn is between natural rights and positive rights. Natural rights are rights in the fullest sense of the term. They are rooted directly in one's human nature – hence why they are sometimes referred to as human rights – and are claims to goods necessary for the fulfillment of its various intrinsic capacities. Positive rights, also referred to as civil rights, are those rights that owe their existence to an act of the state. They enhance human rights by expanding the scope of acceptable activities and goods that are available to us. They also protect human rights within the political sphere by ensuring the proper dispensation of justice in the legal system. The central difference between the two is that human rights enable flourishing, while civil rights enhance flourishing. Another way to state this is that human rights are directly related to flourishing, while civil rights are only indirectly related.

## THE RIGHT TO LIFE

Arguably the most paradigmatic example of a human right is the right to life. No other rights make sense except when seen through it. The Universal Declaration of Human Rights and the American Declaration of Independence both affirm it and list as first among other rights. And for good reason too: It is the most fundamental human right, one which serves as the foundation for the having of other rights. Hence, liberty, happiness, property, and all other human goods are always attained within the context of life, for what good are these things to a dead man? It is a fundamental human good toward which all other human goods are aimed at perfecting. The foods we eat, relationships we pursue, and activities we engage in are judged good or bad depending on how well they conform to proper living. As one philosopher puts it, “[t]he good of life is part of the very moral framework within which the evaluation of action can take place, because every action is evaluated in terms of its contribution to a good life.”<sup>1</sup> Everything we do is in some way tied to the good of life, whether it is for better or for worse.

Though I suspect that few would challenge the truth of (2), my argument might very well work without it. Suppose that there is no right to life, in which case nobody is able to legitimately lay claim to their own existence. This consideration, far from undermining my argument at its roots, actually simplifies it. The typical argument against a strong civil right to keep and bear firearms seems to be that it poses a danger to the lives of others; therefore, civil governments should either prohibit or place heavy restrictions on their ownership. However, if there is no such thing as a right to life or if life isn't valuable, then in what sense can firearms be dangerous? Nothing of worth would be threatened by their presence. If that is the case, then why not allow people to own any type of weapon they please? One might still attempt a consequentialist argument, though the success of such an approach will depend on constantly changing statistics, and presumably the critic of a strong construal of RKBA will want to base his argument on a more rigid foundation. Moreover, it is hard to see how even this approach would work if life has no intrinsic value. It seems therefore that a critic should not focus his attack on

(2), since a version of my argument will go through no matter what truth value we assign to it.

## THE RIGHT OF SELF-DEFENSE

Rights are claims. They enable us to legitimately demand or take possession of goods that are necessary for our well-being. The possession of a right therefore entails the ability to secure its object, since that is just part of what it means to have a right. Their very purpose is to provide us with protection in our pursuit of the good. It would be incoherent for a right to empower you with the ability to demand some good while simultaneously denying you the ability to acquire it. Premise (1) of my initial argument is therefore true according to the very the definition of a right. Rights become mere ornaments with no real value unless one is permitted to exercise them.

A person who finds his rights threatened by another may therefore act in defense of his rights; for defending the object of a right against unjustified acquisition or destruction is simply another way of asserting one's legitimate claim to it. This is no different when it comes to the right to life. Should I come under attack, my right to life allows me to exercise defensive force in order to secure a good that is essential to my flourishing. What good is my life if it is not worth fighting for?

There are various ways of specifying how this right of self-defense is to be cashed out.<sup>2</sup> Without getting into the specifics of each model, I will simply outline two general criteria for legitimate self-defense that are common to most of them. First, defensive force must be used only as a last resort. All other options must have already been exhausted. If an attacker can be stopped by verbal persuasion, then one ought to resort to that method instead dealing a blow against him. Second, if deemed necessary, the level of defensive force must be proportional to the crime being repelled. This sets an upper limit to what a defender may do against his attacker. You are not, for example, allowed to defend yourself against a knife-wielding attacker by dropping a bomb on him. Nor are you not justified in killing him if you manage to knock him unconscious. In

both cases, defensive force must match the level of the threat. If the threat has been removed or is mitigated, then the acceptable level of force must be adjusted accordingly. Moreover, even in cases where lethal force is authorized because of the lethal nature of the crime, there should still be a presumption toward using minimal force. If a charging attacker can be stopped by a blow the leg, then one ought to aim at incapacitating his leg instead of his head.

What about the right to life of the attacker? Again there are various ways of cashing this out. Some say that the aggressor “forfeits” or “waives” his right to life when unjustly attacking another. Others say that it remains, but is “trumped” or “outweighed” by the victim’s right to life. Whatever solution one decides upon, most will agree that the attacker’s right to life no longer applies when he steps beyond its proper boundaries. Rights exist to protect one in his pursuit of the good. They are not blanket claims which guarantee protection regardless of what one does.

## **THE RIGHT TO KEEP AND BEAR ARMS**

The same reasoning used to derive the right of self-defense can be used to derive the right to keep and bear arms. One cannot defend his life without having access to the necessary means to do so. At the most general level, this simply extends to the use of his own person. (Literally bearing arms!) But this also applies equally to defensive weaponry that might be necessary to supplement one’s own physical strength in light of attack by a more powerful aggressor. A rights-bearer who is unable to exercise the force required to defend himself due to physical weakness, disability, or the presence of an aggressor’s weapon, is entitled to use his own weapons to aid in his defense. In that regard, persons ought to be allowed to own weapons so that they may bring them to bear when the situation demands. Note once again that I am speaking of “arms” here in a loose sense. I refer only to defensive weaponry in general, not to any particular weapon.

Imagine a society in which the rights to life and self-defense are affirmed, but RKBA is not. Someone who finds himself under attack would thus be forbidden to make use of anything other than his own physical self in defense against his attacker. Although he is

allowed to exercise his right of self-defense, he is severely limited in doing so. He would have no meaningful means of defense against an aggressor who is stronger than him. Such a society, though appearing to recognize the value of human life, actually cheapens it by disallowing the citizenry the ability to mount a reasonable defense of their own lives. It is not enough to simply recognize an individual's natural rights; the state must also empower him with the means to meaningfully exercise them. This is accomplished by the creation of civil rights to enhance their exercise. A well-ordered society will thus not only recognize the natural rights of the citizenry, but also provide provisions for these rights to flourish. Due respect for the dignity of human life therefore requires a strong commitment to the right to keep and bear arms. This principle has historically been affirmed within the system of English common law from which modern jurisprudence emerged.<sup>3</sup>

One may grant all of this and try to still resist the conclusion on the grounds that the protection of life is the responsibility of the police and military.<sup>4</sup> Yet it is hard to see how the police and military can have this responsibility unless it is first possessed by the citizenry. If individuals are forbidden from defending their own lives, then how can another person have the right to do so? The obligation of the police and military to protect the citizenry, it seems, derives from the citizens' inherent worth as individuals with the right to life. Each individual citizen possesses an individual right to life, and it is from this individual right to life that the individual rights to self-defense and bearing arms flow. The police and military only possess these rights because it has been delegated to them by the citizenry. Given this, it would be incoherent to affirm that each individual has their own right to life but at the same time deny that they have the ability to protect it. The ability to secure a right is part of what it means to have it. If the former does not exist, then neither does the latter.

It is important to remember that RKBA is justified on the grounds of self-defense, where defense refers to the act of repelling or stopping an attack under way by means of force. A weapon is defensive insofar as it dispenses force. Considerations of deterrence or prevention are secondary to this purpose. Brandishing a weapon may very well prevent or deter attacks that might have otherwise occurred, but only because of the threat of force implied in

deterrence. Thus, a weapon only has its preventative or deterrent effect insofar as it is intended to be used for the primary purpose of imparting force.<sup>5</sup> Although these other purposes enhance the effectiveness of weapons, they are not what justify RKBA. Without the threat of force, a weapon cannot properly be called a weapon. Hence, the fact that a weapon's preventative or deterrent effect may be negligible or even non-existent does not in the slightest count as a reason for its prohibition. Prevention and deterrence can only add to a weapon's effectiveness. It may be desirable that a weapon has these functions, but their lack has absolutely nothing to do with weapon's purpose.

Even if allowing weapons ownership had the consequence of increasing crime, this would still not count as a decisive reason for their prohibition. RKBA is, to reiterate, not justified on grounds of crime prevention, but on defense by means of force. It may be that the former typically accompanies the latter, but there is no logical connection between the two, meaning that it is at least conceivable that they may come apart. Additionally, a certain level of risk may be acceptably assumed if it is done so non-intentionally and judged commensurate to other goods. This is an attitude that society tends to adopt in regards to a host of other activities. So what makes weapons and crime so different? It may be that allowing people to own wall-sized flat screen TV's would increase crime, but surely this isn't a reason to prohibit their ownership. Weighing consequences against each other is a useful method in public policy formation, it never be decisive when rights factor into the equation. Nevertheless, while RKBA itself can never be outweighed by consequences due to its status as a natural right, the RKBA justification of a particular weapon can, within certain limits, be influenced by certain extrinsic considerations. To this we now turn.

## **WEAPON, ANY WEAPON?**

Possessing the right to free speech does not entitle us to say just anything. In the same way, possessing the right to keep and bear arms does not entitle us to the unrestricted use of weapons or the ownership of whatever weapon we please. No RKBA advocate

would endorse the personal ownership of nuclear weapons, but neither would any person who is not a total pacifist deny citizens ownership of some weapon to protect themselves. Weapons exist on a continuum, and the conditions which specify legitimate applications of RKBA need to be enumerated.

Because weapons exist on a continuum, it is hard to delineate an exact cutoff point – if one even exists – for acceptable weapon ownership and use. But broadly speaking, the primary criterion for a legitimate application of RKBA is proportionality in relation to one's own life; which can be analyzed in terms of other factors such as force-giving capacity, level of control, ease of use, and risk to the user. A good defensive weapon ought to be capable of dealing a wide (but limited) spectrum of force so as to be applicable in many circumstances. This requires that the user be able to control the amount of damage dealt so as to fit the type of threat he is defending himself against. Combined with ease of use, this helps in minimizing damage to third parties that might occur. Finally, it is important to note that proportionality is defined in relation to those means necessary to defend one's own life. The right of self-defense is the right to the means necessary for self-defense, not the means necessary for the defense of a city against an invading army. One does not have a right to ballistic missiles or poison gas. These criteria are by no means exhaustive, but provide a good reference point for an evaluation of legitimate weapon use.

Many weapons satisfy these criteria to varying degrees of effectiveness, but one class of weapons best exemplifies them: firearms; specifically, handguns. As Jeffrey Snyder aptly summarizes:

[T]here is a weapon for preserving life and liberty that can be wielded effectively by almost anyone — the handgun. Small and light enough to be carried habitually, lethal, but unlike the knife or sword, not demanding great skill or strength, it truly is the “great equalizer.” Requiring only hand-eye coordination and a modicum of ability to remain cool under pressure, it can be used effectively by the old and the weak against the young and the strong, by the one against the many.

The handgun is the only weapon that would give a lone female jogger a chance of prevailing against a gang of thugs intent on rape, a teacher a chance of protecting children at recess from a madman intent on massacring them, a family of tourists waiting at a mid-town subway station the means to protect themselves from a gang of teens armed with razors and knives.<sup>6</sup>

Unlike virtually any other weapon currently available, the handgun provides the best balance of force, control, ease of use, risk, and overall general effectiveness in relation to the proportionality standard. Armed with a handgun, one is able to repel a wide range of threats directed toward him. The amount of force dealt can be controlled within a reasonable degree, be it by aiming at a limb instead of a vital organ, using different kinds of ammunition, or simply firing warning shots. Although knives, batons, OC spray, and other weapons are also capable of fending off an assailant, handguns provide a level of protection that is unparalleled by any other weapon. One does not have to put himself at risk by physically engaging his assailant in close proximity in order to stop him, as a handgun allows one to decisively repel an attacker at a distance with minimal physical exertion on his part. A trained handgun owner is able to quickly dispatch an assailant while minimizing harm and collateral damage to him and others. This cannot be said of grenades, tanks, missiles, and other heavy armaments. And although a handgun owner may have his weapon turned against him in a fight, this is true of nearly any other weapon (And arguably it is more difficult with a handgun, given that an assailant must endanger himself by closing a physical distance). Handguns, therefore, seem to be the most effective means of exercising one's right to bear arms in self-defense.

Some might wonder whether this line of reasoning can be used to justify all sorts of weaponry. But as I have already alluded to, this is mistaken. First, as we saw with free speech, the possession of a right does not mean that its scope is unlimited. There is no reason to think that a right to own weapons entails the right to own any weapon. Second, explosives, biological weapons, and other "heavy weapons" do not adequately meet the criteria which I have outlined. It is practically impossible to maintain a meaningful sense of control over the power of a grenade, which works by spreading shrapnel in

every direction. Indeed, its very purpose is to deal indiscriminate damage. It is even more difficult to control the immense power of a tank shell, missile, or gas cloud. Such weapons pose a threat to every person within their immediate vicinity. They do not fall within the proportionality requirement. Third, parallels of this type are really just an argument against the very idea of weapon ownership itself, not just handguns. Firearms, baseball bats, tactical knives, batons, OC spray, and tasers differ only in the degree of damage they can inflict, not in the kind of thing they are. Weapons can of course be divided into different categories (e.g. bladed, non-bladed) depending on their characteristics, but they all share the common characteristic of being a weapon. It would be special pleading to deploy this parallel to handguns but exempt other weapons. What makes handguns – but not other weapons – so heinous so as to ground a parallel to tanks and nuclear missiles? So far as I have seen, no reason has been given.

## **BEARING ARMS AND CIVIL GOVERNMENT**

RKBA is a natural right possessed by each and every person for their self-defense. The government, as an institution directed toward the protection of natural rights, is therefore obliged to recognize and protect this right. Together with the fact that handguns provide the most effective level of protection within the proportionality standard, this entails a strong presumption in favor of a civil right to keep and bear firearms. One does not have a natural right to own a gun, but he does have a natural right to keep and bear arms that is best expressed by firearm ownership. At the same time, governments may impose limitations and restrictions on certain applications of this civil right, as RKBA is a general right that does not refer to any specific weapon. These limitations may include age-restrictions, background checks, and licensing requirements. The extent to which these restrictions are justified is beyond the scope of this paper. It will suffice to say that no rational person should be denied access to guns.

What is unacceptable is a total or near total ban on gun ownership. Such a prohibition would deprive citizens of the ability

to engage in meaningful self-defense. Indeed, it would have the opposite effect of empowering criminals (who by definition do not obey the law) by weakening the defensive capabilities of law-abiding citizens. Although alternative means of self-defense will be available, none offer the level of security and success that a handgun provides. Many who previously would have stood a chance when armed with a handgun would be rendered helpless before their attacker. Criminals may even be encouraged to attack those who they know will not be able to put up a good fight.

## CONCLUSION

Every person has a right to life. In order to protect this right, they also possess the right of self-defense. But one cannot defend himself without the means to do so; hence possession of the right of self-defense entails possession of the right to keep and bear arms. Although many weapons fulfill this role, the most effective weapon for self-defense in contemporary society is a firearm – particularly, a handgun. Governments, therefore, ought to maintain favorable policies toward firearm ownership and use.

## APPENDIX: ASSAULT WEAPONS

My goal in this paper has been relatively modest: to show that ownership and use of small arms is justified on the grounds of self-defense. But one might rightly wonder if the same reasoning I used for this end can also be extrapolated into a case for assault weapons. I think that such an application is eminently reasonable, and in what follows I shall briefly outline some desiderata which may be used in a *prima facie* case for ownership of assault firearms.

- *Most “assault weapons” are not significantly different from handguns.*

As noted earlier, all weapons exist on a continuum. They differ only in degree, not in kind. There is little in terms of significant differences between assault weapons and handguns. The whole process of classifying so-called assault weapons, it turns out, is

plagued with a high degree of arbitrariness. Criteria such as magazine size, barrel length, ergonomics, and attachments have little to do with conditions of proportionality outlined earlier. What could be the difference between an AR-15 with a 25-round magazine and a handgun with three 10-round magazines in reserve that justifies banning the former but not the latter? Perhaps the difference is that the former is an automatic weapon capable of dealing a much larger amount of damage. There might be some merit to this claim, but as it turns out, most assault weapons – like handguns – are semiautomatic. With this in mind, there does not seem to be a significant difference between handguns and assault weapons.

- *“Assault weapons,” like handguns, are very useful for defending against attack.*

It is thought by many that the use of assault weapons in cases of individual self-defense would be grossly disproportionate. But two things may be said in response. First, assault weapons would prove very useful in defending against cases of mob violence. The situation that groups of Korean shopkeepers found themselves in during the Los Angeles Riots of 1992 is usually cited as an instance where assault weapons proved invaluable for self-defense. It is irrelevant to respond by arguing that situations of mob violence are rare, for the point is not one of frequency, but of safeguarding rights. One ought to have the ability to safeguard his life, even if threats against it prove to be rare. Second, there is no reason to think that it would be disproportionate to use assault weapons even in cases where mob violence is not involved. As was pointed out, there is no significant difference between assault weapons and handguns. If it would be acceptable to shoot an aggressor with a handgun, then it would also be acceptable to shoot him with an assault weapon. The only differences between the two are largely irrelevant to the proportionality condition.

- *The burden of proof is on the critic of assault weapons.*

It is not up to the proponent of assault weapons to give a justification as to why their ownership should be allowed. On the contrary, it is the critic who owes an explanation. The critic’s charge is sometimes put rhetorically: “Why do you need to own an assault

weapon?” To which we may simply respond: “What reason do you have to restrict my liberty?”

## ENDNOTES

1. David S. Oderberg, *Moral Theory: A Non-Consequentialist Approach* (Malden, MA: Blackwell, 2000): 143.2. The classic model sees self-defense as grounded in the principle of double effect. See Aquinas, *Summa Theologica* II-II q.64 a.7. A key component of Aquinas’ model is that killing must be non-intentional. For more recent models which endorse intentional killing, see Judith Jarvis Thomson, “Self-Defense” *Philosophy and Public Affairs* 20:4 (1991): 283-310; and Suzanne Uniacke, *Permissible Killing: The Self-Defence Justification of Homicide* (New York, NY: Cambridge, 1996).

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3. cf. William Blackstone, *Commentaries on the Laws of England*, bk.1 ch.1. “[I]n vain would these rights be declared, ascertained, and protected... if the constitution had provided no other method to secure their actual enjoyment. It has therefore established certain other auxiliary subordinate rights of the subject, which serve principally as outworks or barriers to protect and maintain inviolate the three great and primary rights. [...] The fifth and last auxiliary right of the subject, that I shall at present mention, is that of having arms for their defence, suitable to their condition and degree, and such as are allowed by law.”

4. S Even this may be questioned on both legal and philosophical grounds. cf. *Warren v. District of Columbia* (444 A.2d. 1, D.C. Ct. of Ap. 1981). Unlike special duties to family members which arise out of human nature, it is hard to see how there could exist special duties between the police/military and the citizenry, especially considering that the former are artificially created entities that do not pre-exist the state, whereas family duties are pre-political and grounded in biological relationships.

5. An object that is mistakenly perceived to be a weapon, such as a plastic gun seen under a dark streetlight, does not become a weapon simply because it is perceived as such. Rather, there must be an intention on behalf of the wielder to use it to impart force in order for it to count as a weapon.
6. Jeffrey R. Snyder, "A Nation of Cowards", *The Public Interest* 113 (Fall 1993).