

USING SPECULATION TO MEET EVIDENCE: Reply to Alba and Messner

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In 1995, the Journal of Quantitative Criminology published a sharply critical analysis of Gary Kleck's book Point Blank. Professor Kleck wrote a lengthy response, of which the Journal of Quantitative Criminology published only a small part. The following article is Kleck's full reply, which has not appeared in print elsewhere. Professor Kleck revised the article in February 1997, for publication in the Journal on Firearms and Public Policy.

INTRODUCTION

For the first time in the history of the *Journal of Quantitative Criminology (JQC)*, editors John Laub and James Fox decided to publish an article delivering a consistently one-sided attack on a single book (Alba and Messner 1995a). This extraordinary treatment was reserved for my book, *Point Blank* (Kleck 1991; hereafter *PB*). As the man in front of the firing squad remarked, "If it weren't for the honor of the thing, I'd decline." Apparently the fact that 7% of the pages in *PB* (pp. 191-201, 216-22, 394-408, 419-425, for 36 of 512 total pages) were partially based on an analysis reported in *JQC* provided the editorial rationale for this unprecedented decision (telephone conversation with John Laub).

The category into which the Alba and Messner (hereafter A-M) article falls is an odd one, in that it was neither a report of new empirical evidence contradicting my conclusions nor a (very belated) book review. This meant that A-M were neither obliged to affirmatively present new evidence, as would the authors of an empirically based critique, nor to provide a balanced and minimally representative overview of the contents of the book, as would the authors of a book review. Since there

are no minimal standards or rules A-M were bound to respect, they were effectively given license to write anything they liked. Their rather indiscriminate attack followed the strategy “throw up enough mud and some of it is bound to stick.” (Or perhaps the expectation that readers would assume that “where there’s smoke, there must be fire” is the relevant cliché). If enough pages are devoted to the attack, maybe no one will notice how little affirmative support there is for the charges.

The novelty of the article’s format liberated A-M from any customary rules about what they were obliged to do, or forbidden from doing. To every criticism, they have a convenient reply: “We were under no obligation to do that (or to refrain from doing that).” If I point out the unbalanced, unremittingly negative, often *ad hominem* character of their article, they can reply “Why should we be even-handed? This is not a book review.” Likewise, if I note that their critique relies largely on one-sided speculation unsupported by empirical evidence based on technically better research, they can reply “So what? We did not claim to be writing an empirically based critique.” Heads they win, tails I lose.

Before disposing of the individual A-M charges, it is worth taking this opportunity to point out what seems to have escaped the notice of both A-M and other critics of *PB*. If there is bias in *PB*, it is in exactly the opposite direction from that which pro-control critics profess to have identified. The evidence in favor of the pro-control position was consistently so weak that I felt obliged to bend over backwards to give that position every benefit of the doubt. This sort of thing apparently did no good with A-M, who characterize me as “too one-sided” (in an anti-control direction). Their own ideologically crippled vision rendered them incapable of recognizing just how often I held open pro-control possibilities in the face of overwhelmingly anti-control empirical evidence.

Consider just a few of the more noteworthy instances. (1) I repeatedly stressed the possibility that more finely-tuned measures that definitively isolated gun availability among criminals might show a net positive effect on crime rates, despite

the absence of any affirmative evidence of such an association, and despite the fact that the best available evidence, using less specific measures, showed no net effect (*PB*, p. 203). (2) I gave comprehensive consideration to even minimally plausible links between gun possession and suicidal behavior, despite an almost complete lack of empirical support for most of them (pp. 239-46). (3) I drew conclusions in favor of the hypothesis that some gun laws reduce violence rates, even though supportive hypothesis tests were no more frequent than could have been produced by chance alone (pp. 398-405; more on this later). (4) And in the concluding chapter, I made a long series of pro-control policy recommendations based on a rather optimistic reading of very thin evidence (pp. 431-44). The only critic who seems to have noticed these indications of pro-control bias is, not surprisingly, the Research Coordinator of the National Rifle Association (Blackman 1993).

To be charitable, perhaps this is not attributable just to the critics' ideological blind spots. Perhaps A-M, not having reviewed the entire body of empirical evidence themselves, simply do not understand how one-sided, in an anti-control direction, the technically sound evidence on this issue really is. There is such a huge volume of truly dreadful research in this area, that it is easy enough to be honestly misled by the sheer volume of research supposedly supporting pro-control conclusions. Perhaps because of their unwillingness to seriously consider the possibility that the results of competent research really are this one-sided, A-M assume that my reading of the evidence must be attributable to my supposedly one-sided, anti-control biases.

Students of mass media information manipulation techniques will recognize some of the propaganda techniques used by A-M. They began by marginalizing my conclusions, by describing them as "controversial." If this word connoted nothing more than the obvious fact that some gun control supporters, such as Handgun Control member Alba (and presumably Messner, who does not, however, share his gun control views with readers) disagree with my conclusions, there

would be reason neither for me to object nor for A-M to bother making the statement. However, use of such a word also serves the illegitimate function of marginalizing my conclusions by insinuating that they are somehow less than respectable, and hinting that they are the views of a deviant minority. For what it's worth, among scholars who specialize in studying guns and violence, my conclusions are squarely in the mainstream. Consistent with my findings, most scholars have found no impact of gun laws on crime rates (*PB*, p. 417), and half of the admittedly not very good previous studies of the subject have found no net impact of gun levels on crime rates (*PB*, pp. 214-5).

Because readers are not likely to divine the actual content of *PB* from A-M's distorted and selective presentation, it is necessary for me to briefly summarize some of my key conclusions, so that readers can anticipate in which direction I would bend interpretation of evidence, were I inclined to do so. Some of my key conclusions are the following. (1) Guns in the hands of noncriminal prospective crime victims *may* deter some criminals from committing some crimes, and actual defensive gun use by crime victims reduces the likelihood of injury or property loss to the victim (*PB*, Ch. 4). (2) Guns in the hands of criminals may facilitate some types of crimes, and increase the lethality of wounds inflicted, but also reduce the likelihood that the criminal will attack and injure his victim (Ch. 5). (3) On the other hand, aggregate measures of gun ownership, which seem on their face to reflect gun availability among criminals, do not indicate any net positive effect of gun ownership levels on crime rates, including homicide (Ch. 5). (4) Nevertheless, since there is no net social benefit to criminals having guns, a generously pro-control reading of the evidence implies that policies that are aimed at reducing gun availability among criminals, but that do not reduce gun possession among noncriminals, seem advisable. (5) Most gun laws have no net impact on most violence rates, but some laws apparently do affect some violence rates and might be worth implementing, where they are not already in place. Potentially effective measures would include background checks on prospective gun buyers (like the Brady Act, but

extended to cover all gun types and both private and commercial transactions) and well-enforced laws banning unlicensed carrying of guns in public places (Ch. 11).

My policy recommendations could probably be regarded more as banal than controversial, since they amount to supporting the gun control status quo. They correspond closely to the general themes of existing American gun control: do what can be done to keep guns from criminals, but without denying them to noncriminals (Ch. 8). Public opinion polls likewise indicate that solid majorities of Americans support moderate regulatory controls but oppose prohibitionist measures that would deny them access to guns (Ch. 9). What is so remarkable about A-M's remarks is that they appear to believe that my views are off the mainstream. Unless one defines the mainstream as being the opinions of the 1/10th of 1% of the population that belongs, as does Richard Alba, to Handgun Control, Inc. (or to the American professorate), my conclusions could scarcely be more boringly middle-of-the-road.

Given the banal nature of my policy recommendations, and A-M's coyness about their own policy preferences, I can only speculate that what A-M were really perturbed by was that (1) I have not recklessly endorsed prohibitionist controls, as some scholars such as Franklin Zimring have publicly done (Newton and Zimring 1969, pp. 143-44), and (2) I made the unforgivable mistake of pointing out that many Americans effectively use guns for self-protection, and concluded that this fact should be given significant weight in policy deliberations on gun control.

1. AN OUNCE OF EVIDENCE OUTWEIGHS A TON OF SPECULATION

The A-M exercise does serve one useful purpose: illustrating the illegitimate but altogether too common practice of treating speculation as if it can rebut or outweigh empirical evidence. Speculation has a useful role as a motivator of efforts to gather more and better evidence. Used by itself, however, it lends itself to one-sided confirmation of the user's own biases. For A-M, no pro-control speculation is too feeble, far-fetched, or unsupported

to merit mention, and no pro-control evidence too technically flawed to be cited.

A-M speculated that my models of violence rates are not adequately specified (pp. 395-96), speculated that the models are underidentified (A-M forthrightly tell readers that this is “a definite possibility” [p. 396]), speculated that the instruments used to identify the models are inadequate to achieve the rank condition for identification (p. 396), speculated that there may be biases in National Crime Victimization Survey (NCVS) data that distort my findings regarding effects of guns in the hands of aggressors (p. 398), speculated that differences in fatality rates between gun woundings and nongun woundings would not disappear if offender motivation were controlled (p. 401), speculated about the “potentially serious” limitations of surveys indicating large numbers of defensive gun uses (p. 403), speculated that criminals are not deterred from committing crimes by the possibility of confronting an armed victim, but rather are “merely displaced to more vulnerable targets” (p. 404), speculated that availability of guns “can be a key factor underlying the emergence of criminal motivations” (p. 405), and so on, ad nauseam, for 20 evidence-free pages.

All of these speculations were made without a shred of empirical support, often in the face of directly contradictory empirical evidence. Indeed, that is the beauty of this sort of attack: since the critics provide no evidence of their own, there is no way for it to be shown that their evidence is less technically sound than the evidence on which their target’s conclusions were based. Thousands of imaginable possibilities *might* be true, but this is not the same as saying they *are* true. Distinguishing the two is what doing research is for.

A-M’s speculations were invariably, without a single exception, directed at undercutting evidence with anti-control implications. Had the speculations been a bit less one-sided and less myopically ideology- and policy-driven, they might have helped promote a search for the truth. However, when speculations about flaws in research are invariably made only in a direction which challenges views contrary to the critic’s

preconceptions, the only possible result of such a fruitless exercise is confirmation of the biases with which the critic began. Until it is linked with research which improves on the targeted work, this sort of unproductive one-sided speculation is better confined to cocktail party chat than to the pages of scholarly journals.

A-M have not, to my knowledge, bestirred themselves to apply such a searching critique and such high technical standards to the voluminous and far less technically sound research that has been used to support pro-control conclusions. For example, while speculating that my violence rate models were underidentified, they did not mention that of 12 pre-1991 studies findings a significant positive association between gun ownership levels and violence rates, 10 did not even make an effort to model a possible two-way relationship, and thus all of these studies relied on models which were indisputably underidentified, assuming there actually is such a reciprocal relationship (*PB*, pp. 214-15). If there is not, of course, A-M's concerns about identification are simply irrelevant.

Rather than comparatively assessing which of a large number of studies offer the technically strongest evidence on a given point (as I did in *PB*), A-M selectively applied stringent methodological standards only to research yielding findings that cast doubt on pro-control positions. If everyone were to apply this sort of literature review practice, it could lead to only one outcome: ratification of the reviewer's preconceptions and, on a collective level, reinforcement of whatever political positions on a given issue are most popular with scholars in the field.

The rest of my remarks will be devoted to point-by-point refutations of A-M's claims. To help orient readers, I will use the same section headings used by A-M.

2. GENERAL LEVELS OF GUN OWNERSHIP AND RATES OF CRIMINAL VIOLENCE

A-M questioned my city-level findings that gun prevalence levels show no net impact on rates of criminal violence, based on two alleged problems: (1) supposed inadequacies in

measurement of gun availability, and (2) supposed underidentification of the statistical models of violence rates that I employed.

A-M claimed that there was some inconsistency in how I interpreted my aggregate measures of gun prevalence, supposedly waffling between whether they reflect criminal or noncriminal possession of guns (pp. 394-95). This is false. In both *PB* and in the related *JQC* article (Kleck and Patterson 1993), I consistently maintained the exact same, very unambiguous stance: criminal and noncriminal gun ownership can be distinguished, both theoretically and empirically, at the individual level, but currently available data do not permit us to distinguish them at the aggregate level. I further maintained the view that, at the aggregate level, since the two gun prevalence rates seem to be so highly correlated, it may not even matter much whether we make this distinction empirically. Even if one only could separately measure gun prevalence in the general, largely noncriminal, public, it would serve well as a surrogate for relative gun prevalence levels among criminals, and vice versa.

A-M claim that “at various points” in *PB* I implied that there was no strong correspondence between gun possession by law-abiding citizens and that by criminals (p. 394). This is false. A-M do not cite any pages where I implied any such thing, for the simple reason that there are no such pages. My comments on the strong aggregate-level correspondence between criminal and noncriminal gun prevalence levels could not have been any clearer. For example, I aggregated individual-level survey data from a large number of surveys, for nine regions, and reported in *PB* that “survey-measured ownership among self-reported arrestees and among nonarrestees are highly correlated with each other, indicating that *criminal and noncriminal ownership are highly correlated*” (*PB*, p. 195, emphasis added). Likewise, in the *JQC* article, Britt Patterson and I wrote that “we interpret the gun index as an indirect measure of gun prevalence among criminals,” and then went on to say that “at the city level it is doubtful whether the two can be distinguished, as we suspect

they are highly correlated” and that “our indicators probably necessarily serve as indicators of noncriminal gun prevalence, as well as gun prevalence among criminals” (Kleck and Patterson 1993, p. 263). In short, the statements in both sources were internally and mutually consistent in interpreting the macro-level gun prevalence indices as reflecting both criminal gun prevalence and noncriminal gun prevalence, which are probably so highly correlated at aggregate levels that they cannot be distinguished. A-M assert that “Kleck seems initially unsure whether these gun-supply indicators better reflect criminal or non-criminal possession of guns” (p. 395). This is a red herring. It does not matter which of these concepts the indicators “better reflect” if they are so highly correlated that a measure of one could serve as a measure of the other. As noted in both *PB* (p. 195) and the *JQC* (p. 264) article, the aggregate indicators were positively and significantly correlated with survey-based gun ownership levels among both self-reported arrestees and among nonarrestees, indicating that they serve as indicators of both criminal *and* noncriminal ownership.

It was only by wrongly assuming that the indicators must reflect only one or the other that A-M managed to conclude that there are problems here. They claimed that if the indicators “reflect primarily criminal gun possession, then they are inadequate for assessing the causal effect of crime on the level of gun ownership” (p. 395). This is wrong. Contrary to A-M’s simplistic assertion that “this effect presumably involved the purchases of gun for defensive purposes by the general non-criminal population” (p. 395), criminal gun ownership is at least as likely to be responsive to crime rates as noncriminal ownership. This alone would justify the modeling of possible reciprocal causation between gun ownership and violence levels: if there is a two-way relationship to be modeled, it is *especially* likely to exist among criminals.

A-M then asserted (p. 395) that “If ... the linkage between the use of guns in crime and the supply of guns in the general population is so tight that criminal gun use can be used to measure the total gun supply ... , then a central tenet of the case

in favor of gun control is established: where guns are widely available, they are more frequently used for criminal purposes.” Depending on how one interprets the meaning of these words, this statement is either a *non sequitur* or is irrelevant to the pro-control case.

It is correct that where noncriminal gun ownership is higher, criminal gun ownership is also higher, and that where criminal gun ownership is higher, the *percent* of crimes which are committed with guns is often higher. If, however, A-M were saying that higher gun prevalence in the general population causes higher total rates of violence (e.g., higher total homicide rates), my research directly tested this claim, and did not support it (*PB*, Ch. 5).

On the other hand, if all A-M meant was that a higher *percentage* of crimes are committed with guns where guns are more widely available, the assertion is sometimes true but is not “a central tenet of the case in favor of gun control.” People killed with knives are no less dead than those killed with guns. Thus using gun control to, for example, reduce the gun homicide rate without reducing the total homicide rate would be worthless.

A-M complained (p. 395) that the specifications of exogenous variables “shift inexplicably” from one model to another, but then in the next sentence admit that “it is appropriate for the predictors ... to differ in each model.” This does not prevent A-M from pointing out, as if it were a flaw, differences in the sets of exogenous variables included in various models, nor did it deter them from labeling appropriate differences across models “troubling inconsistencies.” A-M may well have been troubled, but the explanation of why a given variable (e.g. Southernness) that was strongly related to one violence rate was omitted from other models is hardly mysterious. If such a variable were not significantly related to some other dependent variable, it would be dropped from that variable’s model because there was no empirical justification for retaining it. Instances where insignificant variables were retained in models were due to either strong *a priori* theoretical

justification for considering them causally relevant, or to the need to maintain comparable models across total, gun and nongun versions of a given violence rate model.

A-M did their best to make much of a handful of minor differences in specification between the models in *PB*, estimated with LISREL structural equation procedures, and the models in the *JQC* article, estimated with two-stage least-squares. They raised a red herring by asserting that differences in estimation method “should not affect the substantive logic underpinning the models.” Of course it should not. Such differences can, however, alter the estimates of coefficients, and thus the empirical basis for retaining or omitting variables. There would be no point to using a different estimation procedure if it always yielded the same results as other procedures. Consequently it was perfectly reasonable for LISREL and 2SLS estimates to sometimes differ, and for these differences in estimates to motivate differences in specification.

In any case, we had explicitly informed readers that these specification differences were unlikely to influence estimates of gun control law effects, since the exogenous control variables were so weakly correlated with the gun law variables (Kleck and Patterson, pp. 260-61), and thus A-M knew of this. Despite this knowledge, and without any new information to contradict our reports of low correlations, A-M proceeded as if the specification of control variables *were* a crucial matter.

It is far-fetched to hint, as A-M implicitly do, that criminological theory is adequate to completely specify aggregate crime rate models. Therefore, empirical estimates are obviously crucial to specification decisions. It is worth asking at this point whether A-M have ever applied such bizarre standards to any other research. Are there any extant examples in the criminological literature where it could seriously be argued that crime rates were successfully modeled entirely on the basis of criminological theory, without any reference to empirical estimates?

A-M speculate that some of my models were underidentified (p. 396). Their assertion that I used significance tests rather than

theory to “eliminate” (by which I assume they meant “exclude”) exogenous variables from models is either irrelevant or false. It is irrelevant to identification whether *some* of the exclusions were based on statistical tests. Rather, what is crucial is whether *enough* exclusion decisions were based solely on *a priori* theoretical considerations. On the other hand, if A-M meant that *all* of my exclusion decisions were based on statistical tests, the claim is false. There were enough exclusions made solely on *a priori* grounds to achieve identification. Specifically, it was argued, *a priori*, that the subscription rate to gun-related magazines and the hunting license rate could have no direct effect on violence rates, independent of their effects on gun ownership, but that they did have a direct causal effect on gun prevalence.

One can quibble with the assumptions underlying these exclusion restrictions, but there is no doubt that the rank condition for identification was met if those assumptions are accepted. (Motivated readers may apply Maddala’s identification procedures [1992, pp. 363-66] to determine this for themselves.) If A-M care to provide new evidence that interest in recreational applications of guns *does* have a direct causal effect on violence rates, or does *not* have a direct causal effect on gun ownership, I would be happy to hear about it. In the meanwhile, they have no empirical basis for questioning identification, so here again their criticisms amount to unsupported speculation.

A-M tried out some red herrings here as well. They noted that gun magazine subscriptions and hunting license rates are “*more attuned*” to gun ownership in small cities or rural areas than in big cities (p. 396, emphasis added). Undoubtedly they are. This is, however, irrelevant to the identification issue. It is sufficient that these variables exert a direct effect on gun ownership in big cities, whether or not they may have even more effect on gun ownership elsewhere.

A-M report that they found it “hard to imagine that these instruments have the posited casual connection to gun ownership in cities like New York” (p. 396). The fact that hunting is not

done *in* large cities does not mean that the residents of such cities do not hunt elsewhere and do not own guns, kept in their big-city homes, for such purposes. Nor does the fact that crime-related motives for gun ownership dominate in cities imply anything about whether recreational motivations for gun ownership do not also operate. The 1987 General Social Survey indicated that, among residents of cities of 100,000 population or larger (i.e. in cities of the size covered in the *PB* analysis), 30% of the gun owners hunt (Davis and Smith 1987). Thus, a very large share of urban gun owners hunt. Since there is no basis whatsoever (other than one-sided speculation) for doubting that these individual-level connections also operate at the city level, the case for believing that higher levels of interest in recreational shooting would motivate higher city levels of gun ownership remains unchallenged.

By the end of their Section 2, A-M had promoted their musings about hypothetically possible problems in my models from the status of idle speculation to that of actual flaws. Indeed, they had even determined, by methods which they did not share with their readers, that my analysis was afflicted by “*severe* model specification” (p. 397, emphasis added). In fact, they failed to show *any* misspecification, never mind “*severe*” misspecification. It would surely be misleading to describe as “*severe*” flaws whose correction would not even alter a single substantive conclusion. A-M provided no evidence that correcting any of the “*flaws*” that they imagine afflicted my analyses would necessitate any substantive changes in my conclusions.

If all A-M were saying is that specification errors and underidentification are hypothetical possibilities with these models, they need hardly have bothered, since such problems are *always* a possibility with complex structural equation models. On the other hand, if they believed that they had demonstrated actual flaws of this type, they were mistaken.

Here, as they do throughout their article, A-M treated speculation as equivalent, and sometimes even superior to, empirical evidence. How else can one interpret their willingness

to dismiss a large body of sophisticated empirical findings on the basis of nothing more than the *possibility* that the findings might have been influenced, to an unknown degree, by flaws whose very existence they could not document?

What was most extraordinary here was that A-M were oblivious to how my findings were most likely to be distorted if my models really were underidentified. I know of no scholars in this field who disagree that violence rates have a positive effect on gun ownership levels. The key unresolved issue was whether there is also a net positive causal effect running in the other direction, from guns to violence. If one failed to properly model this possible two-way relationship (or ignored it altogether), the result would be that one would confuse a supposed positive effect of gun levels on violence rates with the positive effect of violence rates on gun levels. That is, other things being equal, underidentification would tend to *favor* the guns-cause-violence argument. Thus, if A-M's speculations that my models were underidentified are correct, it means I have erroneously given too much support to the argument in which they so fervently believe, that higher gun ownership levels cause higher violence rates.

3. OFFENDER GUN USE AND THE LETHALITY OF INCIDENTS

A-M expend a good deal of space repeating (pp. 398-99) a caveat I had already stated in *PB* (p. 176), without adding anything to what was only a speculation even when I stated it. While the flaw I warned about may exist, there is no evidence that it would be sufficient to completely account for the observed association between offender gun possession and lower injury rates. Whether the flaw actually exists and distorts these findings enough to alter my conclusions remains to be seen.

A-M did, however, create the impression, by exclusion of relevant information, that the basis for my conclusions is far thinner than it really is. Throughout *PB*, I drew conclusions based not only on my own research, but also on the accumulated body of knowledge produced by other scholars. The reader of

A-M's article would get no hint of this. For example, I concluded that aggressors armed with guns are less likely to attack and injure their victims than otherwise similar aggressors without guns (*PB*, Ch. 5). A-M discussed this conclusion only in connection with my own analysis of NCVS data (p. 398). This is misleading because my conclusion was based on a long series of prior studies as well as my own data analysis. All of the studies, regardless of data source, analytic methods, crime type studied, or nation where the study was conducted, yielded the same conclusion: aggressors armed with guns are less likely to attack and injure their victims than aggressors not armed with guns (see the nine studies cited on pp. 161-62 of *PB* or a more complete list of 16 such studies in Kleck 1995a, p. 22).

In their Part 3, A-M did identify a single genuine mistake on my part. I misinterpreted the meaning of a linear probability coefficient as indicating a 1% *relative* change in the risk of death associated with the offender's possession of a gun, rather than as an absolute one percentage point change in the risk, thereby understating the actual association. Correcting this misinterpretation strengthens my policy recommendations favoring background checks and other measures intended to disarm criminals, while having no bearing on whether disarming noncriminals would be harmful. I appreciate Alba and Messner pointing this out, and will revise the relevant conclusions in future publications.

After making this accurate point about the guns-death association, A-M immediately jumped to a *non sequitur* conclusion, that "the presence of guns, in short *makes* incidents much more lethal *than they otherwise would be*" (p. 11, emphasis added). Thus, A-M draw an unambiguously causal conclusion from this statistical association. Despite having read a long detailed explanation (*PB*, pp. 163-70) on why this inference is illegitimate, A-M nevertheless drew the *non sequitur* conclusion, without one whit of justification or rebuttal to my arguments and evidence.

Neither A-M's rudimentary computation of the bivariate association between gun use and death rates, nor my somewhat

more sophisticated multivariate probit analysis, can tell us whether the presence of guns “makes” fatal outcomes more likely, i.e. contributes causally to victim death, independent of the effects of the greater lethality of the aggressors who choose to use guns rather than other weapons. Even strongly pro-control authors such as Zimring and Cook have conceded that aggressors who use guns are likely to be, on average, more lethal in their intentions than persons who attack others with their fists or a knife (e.g. Zimring 1972, p. 107; Cook 1982, p. 248). Thus, until we can explicitly measure and control for aggressor strength of motivation, we cannot isolate how much of the guns-death association is attributable to the attributes of the weapon itself. It should be stressed that this is not an *ex post facto* argument developed to respond to A-M, but a point that was made in *PB* (p. 166).

A-M simply sidestepped this entire issue by once again resorting to their favorite strategy, the unsupported speculation. They wrote that they doubted that controlling for motivation could make an association so large disappear, because this would fly “in the face of [their] experience with multivariate analysis” (p. 12). While I cannot speak to the representativeness of A-M’s experiences, there is no formal reason whatsoever why introduction of a single control cannot make even very large bivariate associations disappear—it merely requires a control variable sufficiently strongly associated with the original correlates. Neither A-M nor I know how strong the association is between aggressor motivation and either weapon choice or the likelihood of victim death.

Interestingly, *PB* includes at least two empirical examples of large bivariate guns-violence associations that *do* largely or entirely disappear with the introduction of a single control. First, I noted that both homicide rates and gun ownership rates are far higher in the U.S. than in Japan, a two-case “association” that is often cited as evidence that higher gun availability partly causes the higher U.S. homicide rate. However, I demonstrated that this entire “association” not only disappears, but actually reverses itself when one simply “controls” for Japanese descent:

Americans of Japanese descent, who live in a nation awash with guns, actually have a *lower* homicide rate than residents of Japan, who live in a country with virtually no guns (*PB*, p. 189). Even more pertinently, a medical study indicated that almost all of the association between weapon and victim death disappeared once one controls for the body location and type of the wound. Wilson and Sherman (1961) controlled for these factors through the simple device of studying only “penetrating wounds of the abdomen” (p. 643). They found that the mortality rates within this relatively homogenous set of woundings were 16.8% for pistol wounds and an only slightly lower 13.3% for ice pick wounds. Notwithstanding A-M’s vast “experience with multivariate analysis” (none of it, to my knowledge, done on the topic at hand), there is no logical or empirical reason to consider it implausible that the guns-death association could disappear once aggressor motivation was controlled.

A-M concluded Section 3 of their article with an argument which attempted to derive, through a very indirect chain of weakly coupled premises, a conclusion that has already been rejected using far more direct empirical tests. They began by asserting that where general public gun ownership is higher, gun use in crime is higher. If “gun use in crime” merely refers to the share of crimes that are committed with guns, this statement is true; if “gun use in crime” refers to the per capita rate of gun crimes, it may or may not be true (evidence is mixed—*PB*, Ch. 5). A-M then appeared to derive from this assertion the claim that where general population gun ownership is high, “guns frequently substitute for other weapons in the commission of crime.” Either A-M meant the second assertion as nothing more than a rephrasing of the first one, or the second statement is a distinct statement with no clear logical link with the first assertion. They then proceeded to the logically unconnected conclusion that “where guns are frequently used in crime, the homicide rate is higher.” Assuming that they intended this as some sort of causal assertion, it is still unclear how this implies that a higher gun supply leads to a higher homicide rate. The per capita rate of gun crime (“where guns are frequently used in

crime”) is not itself a measure of the gun supply, and also has a tautological link with the homicide rate, since gun homicides constitute a share of both the gun crime rate and the homicide rate.

To be charitable, perhaps A-M were simply clumsy in their phrasing, and intended the following syllogism:

(1) Higher rates of gun ownership in the general public cause higher rates of gun use by aggressors in crime incidents.

(2) Higher rates of gun use by aggressors in crime incidents cause a higher fatality rate in crime incidents.

(3) Therefore, higher rates of gun ownership in the general public cause higher homicide rates.

As previously noted, we do not in fact know if gun use has a net positive causal effect on the fatality rates of assaults, since we cannot separate weapons effects from the effects of aggressor motivation. Thus, we do not know whether premise (2) is true. Premise (1) is reasonable, and probably true in some circumstances, though we cannot be sure because no one has been able to separately measure criminal and noncriminal gun ownership at the aggregate level. This syllogism, however, would be invalid even if both of its premises were true. The reasoning does not lead to A-M’s conclusion unless one makes an additional unstated premise: that the supposedly fatality-increasing effects of gun use by offenders in crime is the *only* impact that gun availability has on homicide rates. Not only are such effects *not* the only impact of general gun availability on homicide, they are not even necessarily the most important ones. Higher gun availability also implies higher victim defensive use of guns, which reduces the probability of victims being injured, and thereby contributes to reducing the homicide rate (*PB*, Ch. 4).

As to what the net balance of these opposite-sign effects on the homicide rate is, my research directly assessed this. Gun prevalence levels showed no net positive effect on the homicide rate (*PB*, p. 221, Table 5.15, top panel, left column; Kleck and Patterson 1993, p. 267, left column). Indeed, the associations are negative. A-M’s very indirect and incomplete chain of

reasoning, built up out of dubious premises, is a poor substitute for a direct empirical test of their conclusion. Given their failure to identify any actual flaws in the analysis behind my direct test, the test remains the best information we have on the issue.

4. DEFENSIVE GUN USE AND THE DETERRENT EFFECTS OF GUN OWNERSHIP

In Section 4, A-M tried to resuscitate the now rapidly fading notion that defensive use of guns is rare. In this instance, A-M's critique is second-hand, as well as purely speculative. They repeat Philip Cook's highly selective and speculative critique of the surveys that indicated large numbers of Americans use guns defensively (hereafter, the "gun use surveys"). Cook speculated that these surveys were afflicted by "telescoping," an assertion which is very likely true but of little consequence for estimates (Kleck and Gertz 1995). Neither Cook nor A-M provide any evidence or even reasoning why the estimate-elevating effects of telescoping would exceed the estimate-lowering effects of respondent underreporting. Elsewhere (Kleck and Gertz 1995), I have cited actual empirical estimates of the relative sizes of these countervailing errors in victim reporting of crime experiences, and noted that telescoping effects are roughly cancelled out by recall failure.

Further, my own recent (1993) national survey, conducted with Marc Gertz, was designed specifically to estimate the prevalence and incidence of DGU, and has strongly confirmed the *PB* conclusion that such events are very common. Indeed, the findings indicate that DGUs are two to three times *more* common than criminal uses (Kleck and Gertz 1995). A-M also failed to inform readers that *PB* (p. 146) lists *eight* previous surveys that all indicated very large numbers of defensive gun uses; instead A-M only vaguely refer to "surveys" (p. 14). Including post-*PB* studies, there are now a total of at least fourteen surveys indicating huge numbers of defensive uses, all of them yielding estimates at least eight times larger than those derived from the NCVS. One might be tempted, in the light of such near unanimity, to describe the evidence in favor of the

claim of large numbers of defensive uses as overwhelming, but A-M resist the temptation.

A-M cite a book review to the effect that “methodological concerns have been raised” about my estimates of civilian justifiable homicides. In fact, the reviewer in question (Sherman 1993) did no more than speculate that maybe national data might indicate something different from what local studies have indicated. He did not demonstrate this to be so, nor did he identify any flaws in my methods, other than to note that I did indeed use studies of local samples, in the absence of any similarly detailed data at the national level. Thus, A-M are so anxious to cite anything that sounds like a rebuttal to my evidence that they resort to citing the personal opinions and speculations of other people, by way of buttressing their own personal opinions and speculations.

Then they cite the conclusions of McDowall and his colleagues (1991) to the effect that their analyses “do not support the idea that publicity about gun ownership measurably deters criminal behavior.” In fact, these authors’ tests *did*, without exception, support just such a conclusion. As I have explained elsewhere (Kleck 1995b), the *non sequitur* conclusions of McDowall et al. were based on their inappropriate use of low-power significance tests, sometimes in circumstances where it was impossible for even the strongest deterrent effects to pass the tests. Leaving aside the irrelevant significance test results, both the direction and magnitude of associations uniformly supported my hypotheses. Nevertheless, conclusions about deterrent effects will always be less firm than those pertaining to either disruptive effects or the frequency of defensive uses.

A-M misstated my conclusions regarding defensive gun use, claiming that I concluded that, under gun control measures applied to the general public (by which I assume A-M meant prohibitionist controls), “the positive deterrent effect of routine gun ownership would be decreased more than would the crime-causing effect of criminal gun ownership” (p. 403, citing pp. 144-45 of *PB*). I did not draw such a conclusion, either on pp.

144-45 or elsewhere. I remain fairly agnostic about the existence of *deterrent* effects of gun ownership, or any net reduction in crime attributable to criminals refraining from attempting to commit some crimes, due to fear of gun-armed victims.

The evidence is much stronger concerning the *disruptive* effects of actual defensive use of guns by victims once a criminal has made an attempt to commit a crime. The distinction between deterrent and disruptive effects was made very clear on p. 122 of *PB*. A-M could scarcely have misunderstood this distinction since they explain it in their footnote 8. The unwary reader might be misled into thinking that this footnote identifies a conceptual error on my part, since it leaves the impression that I failed to make this distinction in *PB*, an idea that is encouraged by A-M's citation of someone else to make this differentiation. In fact, A-M are simply repeating here a distinction that I had already made in both *PB* (p. 122) as well as in earlier work (Kleck and Bordua 1983; Kleck 1988, p. 9).

The conclusion that I actually drew about the relative balance of benefits and costs was that prohibitionist controls, because they would almost certainly reduce noncriminal gun ownership more than criminal gun ownership (a premise A-M concede—p. 405), would produce a relatively larger reduction in the beneficial effects (of *any* kind—deterrent, disruptive, or otherwise) of defensive gun use by noncriminals than in the harmful effects of criminal uses. This is an important distinction because A-M go on to misconstrue the issue of weighing benefits and costs as if the “deterrent effect” of guns in the hands of victims had to outweigh the “crime-inducing effect of gun in the hands of criminals” (p. 405), when the issue really concerns weighing any beneficial effects of victims having guns against the harmful effects of criminals having them.

A-M also misconstrue the issue in assuming that the effects of guns in the hands of victims would have to be weighed against the effects of guns in the hands of criminals. No such tradeoff is involved if one is considering policies that are aimed at disarming only criminals, since there is then no cost linked to efforts to disarm prospective (noncriminal) victims. It may be

diagnostic of A-M's own unstated policy preferences that they automatically assumed that consideration of such a tradeoff was inherent in the gun control debate—the tradeoff is relevant only if one thinks of “gun control” as meaning gun bans.

A-M's confusion on this point continued when they stated that the material in Chapter 4 (concerning defensive gun use) cannot resolve the issue of the “balance sheet” of positive and negative effects of guns and their net contribution to criminal violence. Indeed, the evidence in Chapter 4 obviously could not resolve the matter by itself, since it addresses only one side of the “balance sheet”: defensive gun use. Nor did I claim it could. Rather, it is the material in Chapter 5, concerning my city-level analysis, which is pertinent to this question (a point that A-M concede, but marginalize by burying it in a footnote [footnote 9, p. 405]). It is there that I report findings indicating that the net effect of general gun availability on violent crime rates is not significantly different from zero. Given A-M's failure to identify any actual flaws in that analysis, or to establish that correcting any speculated “flaws” would require amending any of my conclusions, I can only conclude that this analysis remains the best available evidence on the question of the net effect of gun prevalence on violent crime rates.

A-M also describe as “popular” certain gun control policies that my analyses indicate would have “harmful consequences.” This is misleading for two reasons. First, the popularity of the policies is irrelevant to the issue of whether they would have harmful consequences, so no legitimate purpose could be served by raising the issue of popularity. An illegitimate *ad hominem* purpose, of course, would be to portray me as opposing the “will of the people.” Second, the assertion is factually wrong. The policies to which A-M refer are *prohibitionist* controls, i.e. gun bans, and as I noted at length in *PB* (Ch. 9), such controls are not popular with the American population (regardless of how popular they may be in the Alba and Messner households). Banning all guns is supported by less than 17% of Americans, while banning just handguns is supported by 36% (*PB*, p. 379).

Is it not just a bit misleading to describe as “popular” policies which do not enjoy even simple majority support?

A-M’s challenge to my skepticism about prohibitionist controls entailed two points. First, they conceded that I am probably correct that noncriminals would be disarmed at a higher rate than criminals under such laws (p. 405). Second, they disagreed with my evidence-based conclusion (which they inaccurately described as an “assumption”) that the “crime-reducing consequences of a lower supply of guns in general will be insufficient to counteract the crime-inducing effect of the shift in gun distribution in favor of aggressors” (p. 405). Their support for their challenge to this conclusion consisted entirely of citing the opinions of unnamed “gun-control advocates.” In short, they rebutted evidence with opinion.

The opinion in question is the view that “guns can be a key factor underlying the emergence of criminal motivations in the first place” (p. 405). While it is quite possible that, once motivations to do a crime have emerged, guns can facilitate acting on those motives, the empirical record does not support the view that the availability of guns plays *any* role in the original emergence of criminal motivations, never mind a “key” role. In fact, A-M’s claims notwithstanding, even gun control advocates rarely make such an extreme claim.

The closest that previous scholars have come to asserting that guns can actually call forth a “criminal motivation” is the weakly related assertion made by some social psychologists that, among already angered persons, the sight of a gun can “trigger” aggressive behavior. The research literature on this hypothesis was assessed in *PB*, and the review of 21 experimental studies indicated that half of the studies supported the existence of this effect, while the other half did not. It further indicated that the more realistic the studies were, the less likely they were to support the “weapons effect” hypothesis (pp. 158-61, 205-6; see also the review of this literature by Toch and Lizotte [1991], which reached similar conclusions). Thus, as far as we can tell from empirical evidence so far, guns do not play any role at all in the genesis of “criminal motivation.”

Diagnostic of how A-M arrived at their conclusions, A-M apparently believed that the opinions of (unnamed) gun control advocates could legitimately be given as much weight as the findings of 21 empirical studies. How else could they reach the conclusion that the evidence in *PB* does not provide a secure empirical foundation for my conclusions? If A-M, and many others like them, are willing to dismiss the results of all research whose conclusions they dislike on the basis of nothing more than one-sided speculation and the opinions of people like themselves, what is the point of even considering evidence? It is just going through the motions, in a way which can only result in confirmation of whatever preconceptions the critics began with.

A-M's most misleading distortion of *PB* appeared on pp. 404-5, where they falsely asserted that my conclusions about the implications of defensive gun use for crime-control policy were based on evidence concerning "deterrent effects," evidence that I myself described as weak. I did indeed note that conclusions about deterrent effects were weak, and probably always would be, due to the inherent difficulties of evaluating effects which could neither be directly observed nor experimentally assessed. My conclusions concerning the policy implications of defensive gun use, however, did *not* rely to the slightest degree on any conclusions concerning deterrent effects. Rather, they depended on evidence that I considered then, and even more strongly consider now, to be quite sound, i.e. the evidence indicating that defensive gun use is both quite frequent (at least as frequent as criminal uses), and that it is effective in reducing the risks of injury and crime completion once a crime has occurred (i.e. it has "crime disruptive" effects). The possible deterrent effects of gun availability might well turn out to be important in their own right, but my conclusions did not in any way rely on conclusions about their existence or magnitude.

It is hard to believe that A-M honestly misunderstood these points, since they themselves concede that I drew only weak conclusions concerning deterrent effects, since they understood the distinction between deterrent and disruptive effects of DGU (see their footnote 10), and since there is not a single passage in

PB where I state or imply that any of my policy conclusions rely on the existence of deterrent effects (see the concluding chapter of *PB*, where implications for crime-control policy are discussed). A-M's accusations were thus nothing more than a clumsy attempt to set up a straw man to knock down by fabricating their own strategically distorted version of my arguments.

5. EFFECT OF GUN-CONTROL LAWS

In their section 5, A-M began by repeating their erroneous claims that they had identified "deficiencies" and "methodological defects" in the models that I used in my city-level analysis of the impact of gun levels on violence rates. They thus treated as real "flaws" that were actually nothing more than unsupported speculations.

They then reviewed the findings of Ch. 10 in *PB* and Kleck and Patterson (1993) concerning the impact of gun control laws on violence rates. They complained that I did not interpret the findings in a sufficiently pro-control light (pp. 406-7). Their erroneous conclusions on this point derived from their mistakes in interpreting how many statistical hypothesis tests I performed. They quoted p. 402 of *PB* to the effect that there were 121 "tests" of the direct effects of gun laws on violence rates. The citation is correct, but A-M's interpretation is wrong. This count refers to the number of different law-violence rate links (i.e. links between a given gun law and a given violence rate) which were evaluated ("tested"), not the number of statistical hypothesis tests or the number of "chances" gun laws were given to show some impact. Each of the possible law-violence rate links were given multiple (up to three) chances to show an impact. Laws were evaluated in models (1) with the full set of gun law dummies included, (2) with a reduced set of especially strong laws, and (3) with the full set of laws, plus multiplicative interaction terms reflecting the possible interaction of gun law effects with police enforcement effort (*PB* pp. 398-402). In yet another instance of my bending over backwards to give the pro-control position every benefit of the doubt (again, ignored by A-

M), I drew an overall positive (pro-control) conclusion if even just one of the tests yielded a supportive result. Consequently, the proportion of the overall evaluations that were positive is necessarily larger than the proportion of the separate hypothesis tests that were positive.

As a result, A-M's claim that I obtained more pro-control results than could be expected based on chance was based on a misunderstanding of how many chances gun laws were given to show an impact. In *PB* (the numbers are slightly different in the Kleck and Patterson [1993] article), 121 law-violence rate links were assessed, 28 (involving the four laws listed on p. 401) were each given three chances (in the three types of models listed above) to show any impact, and the remaining 93 were given two chances each, for a total of 270 tests of the hypothesis that a particular gun law reduced the rate of a given type of violence. The ten supportive results that I obtained would be 3.7% of 270. Thus, as I indicated in *PB* (p. 402), one could easily get this many supportive results just by chance alone, given the very large number of hypothesis tests.

I nevertheless drew some pro-control conclusions because the findings concerning a few of the law-violence links accorded with prior research (*PB*, pp. 404-5). Thus, I drew pro-control conclusions *despite* the fact that I obtained no more supportive hypothesis test results than one might obtain by analyzing a set of nonsensical randomly generated numbers. To describe this as one-sided is accurate only if what one means is that I was unduly generous to the pro-control side. Somehow, I doubt that A-M intended such a meaning.

A-M also apparently misunderstood the nature of my assessments of the impact of gun laws on gun prevalence levels, claiming that somehow I should have drawn pro-control conclusions because "21 of 102 tests wholly or partly support the hypothesis that such laws do reduce gun prevalence" (p. 407). In this case, the tests of the effects of gun laws on gun prevalence levels in different violence rate models cannot be assessed as if they were multiple independent tests, and the "21 of 102" number is irrelevant. The gun prevalence measures used

in different violence rate models (e.g. the homicide rate model, the robbery rate model, and so on) differ only slightly from each other, because some of the components of the gun prevalence factors had to be removed to avoid artifactual associations (*PB*, p. 195). The gun prevalence measures, however, differ by just one component (out of five indicators used) from one violence rate model to the next. Therefore, the coefficients indicating the impact of gun laws on gun prevalence were estimated multiple times, in multiple violence rate models, but the tests are highly overlapping. Consequently, it is not meaningful to count up their results as if they were independent tests. Instead, they can only be assessed as a group, separately for each law.

For example, waiting period laws showed a significant negative effect on gun prevalence rates in the aggravated assault and burglary rate models, but not in the other five models. The differences are attributable to slight differences in which set of gun indicators were used in the gun prevalence factor in a given model (as was explained in *PB*, pp. 397-98). Evidence of the impact of gun laws on gun prevalence levels therefore can only be meaningfully assessed as a *set* of overlapping results, taking the results one gun law at a time. Thus, for waiting periods, the evidence taken as a whole indicates that this law does not reduce gun prevalence levels, since five of seven overlapping tests indicated no impact. Applying the same procedure to the other 18 gun laws, the same conclusion is reached. *None* of the 19 laws showed a significant negative coefficient in the gun prevalence equation in even a simple majority of the seven violence rate models. Thus, there were really 19 tests of the effects of gun laws on gun prevalence levels, and all 19 supported the same no-effect conclusion. It is far-fetched to describe it as one-sided for me to conclude that existing gun laws do not reduce gun prevalence given that 19 of 19 tests supported this conclusion. It would have been dishonest to describe the evidence as anything but one-sidedly contrary to the hypothesis that gun laws reduce gun prevalence. Apparently the only course I could have taken that would have satisfied A-M would have been to deceive readers in precisely this way.

A-M criticized me for not discussing in *PB* findings reported in Kleck and Patterson (1993) concerning a “gun law index” (GLI). This was a factor combining all 19 gun laws together, and the GLI findings supposedly show, at least in a few models, that gun laws really do reduce gun prevalence (p. 19). The explanation for this omission is simple. First of all, it was impossible for these results, published only in the 1993 article, to have been discussed in *PB* since they had not even been produced until after I completed *PB* in 1990. Second, even had these results been available, I would not have reported them in *PB* since I consider them worthless. Use of the GLI was forced on Britt Patterson and me by the editors of *JQC* and a referee as a condition for their agreeing to publish the article. There is no policy value whatsoever to information on the relationship between violence rates and this heterogeneous mishmash of gun laws. Legislatures pass specific guns laws; they do not increment “gun control severity.” Further, neither Patterson nor I could figure out what exactly this index measures. Factor analysis of the 19 laws yields a single factor only if the analyst artificially constrains it to a one-factor solution. Thus, “gun control” is not a unidimensional concept, but one with multiple dimensions, perhaps of different kinds of gun control with different effects. The GLI may even simply reflect differing kinds of support for “doing something” about crime.

6. A FINAL NOTE OF SKEPTICISM

In A-M’s concluding Section 6, they largely abandoned any effort to mobilize evidence or logic and simply descended to mudslinging, alluding to my alleged “blind spots” and to my supposedly unduly restrictive “paradigm” that prevented me from seeing the alternative interpretations of evidence that A-M could see so clearly (p. 407). The *ad hominem* themes of this section are:

(1) I am biased, and my research findings and conclusions were somehow distorted by my biases, and

(2) I arrived at the conclusions in *Point Blank* only because I was incapable of seeing other interpretations, rather than

because they were the interpretations most consistent with the full body of evidence.

A-M provide no direct evidence of my personal biases or political views, inferring them instead from alleged flaws in my research which supposedly somehow illegitimately favor anti-control conclusions. Having failed to identify any flaws in *PB* which might have been a product of my supposedly anti-control biases, this indirect inference of bias also fails. More dishonestly, they withhold from their readers almost all of the only direct information they did have on my political biases. In an “Author’s Voluntary Disclosure Notice,” placed prominently at the very beginning of the book, I reported that I was (and am) a member of, and contributor to, the American Civil Liberties Union, Amnesty International USA, Common Cause, and other organizations widely regarded as liberal (some are even pro-control); that I was a lifelong registered Democrat; and that I have never been a member of, nor had my research funded by, either the National Rifle Association or any other gun owner or anticontrol organization. (A-M mention only that I am not a member of an advocacy group on this issue—p. 408.) In short, every scrap of independent evidence available to A-M on my personal biography argued against their personal bias thesis, unlike the facts pertaining to Richard Alba, who admits to membership in a pro-control organization whose publications on the topic can only be described as blatantly dishonest and crudely propagandistic.

A-M nevertheless concluded that I was biased, solely on the indirect basis of their own one-sided misreading of *PB*. Note the circular nature of A-M’s covert reasoning (see also Sherman [1993] for an example of the same tactics): “One cannot accept Kleck’s research conclusions because they are distorted by his personal biases against gun control. How do we know Kleck is personally biased against gun control? Because he has drawn anti-control conclusions based on flawed research. Why are his research conclusions flawed? Because he is biased against gun control.” It cannot be stressed too strongly that, in the final analysis, A-M’s conclusions about supposed flaws in my

research rely most heavily on their speculations about my personal biases, since their assessment of my research failed to identify any flaws that could have wrongly buttressed the policy conclusions at which I eventually arrived, and that therefore could have been the product of personal bias. Even if one accepted A-M's evidence-free speculations as fact, nowhere did they provide even a speculative basis for concluding that the alleged flaws were sufficiently consequential that correcting them would overturn any of my policy conclusions.

A-M seemed to be so blinded by their own ideological and cultural biases that they could not even conceive of the possibility that they might simply be wrong on these issues. They did not bring any new evidence to bear on these questions, nor any new theoretical or conceptual insights, and did not identify any actual technical flaws which could overturn any of my policy conclusions. Yet they concluded that it is I who was biased.

A-M speculated that criminals would have less reason to arm themselves if gun ownership were less widespread in the general population (p. 408), an imaginative idea that appears to have originated with Gary Green (1987, p. 71). In a rare use of empirical evidence, A-M cite, as their sole bit of support, the responses of felons to a single question in a 1983 prison survey (Wright and Rossi 1986).

I am happy to see that A-M concede that criminals do think about, and take seriously, the possibility that victims might be armed. As to whether noncriminal gun ownership increases criminal gun carrying, the single survey result that A-M cite does not support their speculation. The issue is not whether concern about victims with guns might be part of the motivation influencing criminals' decisions to carry guns, but whether there are any criminals who carry guns but who would *not* carry them were it not for their concerns about armed victims. Rather than leave this matter, as A-M did, totally at the speculative level, I examined the Wright-Rossi dataset (easily available on a CD-ROM from the National Institute of Justice [NIJ 1994]), to discover how many gun-using felons in this survey cited the

armed victim reason for carrying, but no other reasons. There were 377 felons who had reported committing more than one crime with a gun in their lifetimes (a generous definition of “gun criminal”), and who rated victim gun possession as a “somewhat important” or “very important” reason “why a person might decide to carry a gun while doing a crime.” Of these 377, only *one* felon gave this as the only reason for gun carrying that he rated as somewhat or very important.

Indeed, gun criminals who considered victim gun possession to be a somewhat or very important reason for carrying also endorsed a median of seven other reasons (of 14 possible) that they considered to be somewhat or very important reasons to carry guns. In sum, the notion that there are criminals who would not carry guns were it not for victim gun possession received close to zero support from this survey. The A-M/Green hypothesis did not go “unnoticed” because of “blind spots” in my vision or my supposed “one-sidedness,” but rather because it is devoid of empirical support.

A-M’s rhetorical excesses reach their crescendo in their last paragraph, where they register their dismay that, because of widespread gun ownership, people will be afraid to “assert their rights ... to honk their horn when their car is cut off” (pp. 408-9). It is tough to satirize arguments this silly. I will just leave it to readers to infer what they may from the fact that the only specific cost of this type that A-M can describe is foregone opportunities for the childish venting of anger.

On a more serious level, A-M’s concluding paragraph is foolish because it attacks the messenger for the message. A-M describe an armed America as “the kind of society that Kleck envisions,” i.e. as a vision that I have somehow conjured up or a state of affairs I advocate. I have neither advocated bringing about or maintaining such a state of affairs, nor expressed my personal approval of it. Instead, I have simply described America as it currently is, for good or ill. Perhaps A-M wish that I had editorialized against it more. I make no apologies for not having done so.

A-M conclude their article with a final unsupported speculation. They claim that, while selfish gun owners feel better for having guns, the rest of America is frightened by “the knowledge that many guns are in its homes, on its streets, and even in its schools” (p. 409). They further assert that, rather than this merely being an empirically unsupported speculation, there is “a great deal of persuasive testimony” supporting the idea.

It is crucial to note that this argument pertains to “guns in ... homes,” i.e. gun ownership itself, *not* just violent acts committed with guns. Though the two are obviously conceptually distinct, many people, evidently including A-M, have difficulty avoiding slipping imperceptibly from assertions about gun violence to assertions about guns themselves. Obviously, every rational person is frightened of violent acts committed with (or without) guns. A-M, however, are making a very different argument that, above and beyond these fears of criminals having and using guns, people are also afraid of gun ownership itself, and thus fear ownership by *non*criminals.

Diagnostic of what A-M consider “persuasive” evidence, their support for this thesis consisted entirely of two newspaper articles. Readers interested in assessing A-M’s reliability are encouraged to read these articles themselves and to search for information pertinent to the effects of gun ownership, as distinct from gun violence, on fear. Neither contains a word on the subject. The first (Ayres 1994) reported on hearings called by congressional gun control advocates, and quoted four teenagers from high crime neighborhoods who expressed their fears of gun *violence*. None said anything about their fears of gun ownership in general or among *non*criminals in particular. The second article (Dugger 1994) was equally unresponsive and even less relevant. It profiled New York City teenagers accused of murder, and did not address the issue of fear (of gun ownership *or* gun violence) at all. In short, A-M’s claim to have evidence of “a great deal of persuasive personal testimony” that widespread gun ownership, as distinct from gun violence, is increasing fear is false, based entirely on two newspaper articles that the authors had to have known contained no supportive evidence.

In sum, A-M have provided neither logic nor evidence to support their attack on *PB*. Rather, they have produced a “critique” based on:

(1) the repeated use of speculation as the sole basis for rebutting empirical evidence,

(2) libelous innuendo (hinting that I have slanted interpretation of the evidence to support my personal prejudices),

(3) misleading use of citations to support claims for which they had no evidence (citation of two newspaper articles which contained no support for their claims),

(4) deliberate distortions of my positions which enabled the authors to knock down straw man versions of those positions,

(5) the use of red herrings which misstated critical issues,

(6) careless misreading of material in *PB* that they claimed to understand,

(7) rhetorical excesses and propagandist appeals to emotions in an already overheated arena, and

(8) a pervasive tendency to try to win by illegitimate means what they could not earn with evidence or logic.

At a political level, of course, none of this will matter. The A-M article, and others of its ilk, serve their political purposes regardless of how thoroughly their unprincipled and baseless attacks are rebutted. Authors of pro-control propaganda will use the A-M article to write something like the following: “Kleck’s work has been discredited (rebutted/called into question/challenged) (Alba and Messner 1995).” Such authors will not, however, mention that A-M’s attack was thoroughly rebutted.

The rules established by *Journal of Quantitative Criminology* editors John Laub and James Fox for the exchange between A-M and me granted to A-M the opportunity to get in both the first and last word, by writing both a critique and a rejoinder to my reply. Once I had seen the nature of A-M’s attack, I strongly objected to this format, since it meant that A-M would thereby be given license in the second round to simply dish out more of the same, knowing that I would have no further

opportunity to rebut any of it. Professor Laub assured me he would not allow A-M to do this (telephone conversation with John Laub). In their rejoinder (Alba and Messner 1995b), this is precisely what A-M did. Their response consisted of a repetition of claims I had already disposed of (e.g., concerning their erroneous counts of hypothesis tests—p. 428), repetition of patently false technical claims (e.g. that negative significance tests provide indications of the magnitude of associations—p. 426), false characterizations of my statements (e.g. distorting my remarks about facilitating effects of guns as if they supported A-M's claims that gun availability causes "motivations" for aggressive acts to develop [p. 427]), and so on.

Their rejoinder was most revealing at its start, when A-M announced that "not every counterargument raised by Kleck is mentioned here; in particular, we refuse to be drawn into a tit-for-tat reply to some of the more contentious charges." I never heard of a scholar who could resist expressing a decisive reply to an intellectual adversary. Consequently, my personal interpretation of A-M's remarks is that they are a tacit confession that my counterarguments were correct, and that their criticisms of *Point Blank* were baseless. Until they do decide to engage these issues honestly, and present an intellectually serious rebuttal to my counterarguments, I will stick with this interpretation.

Finally, to put the A-M attack in perspective, it may be worth noting how eccentric their response to *Point Blank* was. More typical of responses were those of the book's reviewers, who provided the following assessments: Joseph Sheley (*Political Psychology* 17(2):375, 1996)—"clearly the single most authoritative source of information about firearm-related issues." Robert Cottrell (*Criminal Justice Review*, 1994)—"fresh, methodologically rigorous ... prodigious research." Lawrence Sherman (*The Criminologist*, 1993, p. 15)—"As a comprehensive reference, there is nothing like it ... essential reading." Paul Blackman (*The Criminologist*, 1993, p. 16)—"the definitive criminological study of the role of firearms in American life." Philip J. Cook (*New England Journal of*

Medicine, 1994, p. 344)—“Comprehensive ... encyclopedic.” H. Laurence Ross (*American Journal of Sociology* 98(3), 1992)—“a necessary acquisition for all social science library collections and for any serious scholar working in the area.” Alan Lizotte (*Contemporary Sociology*, May 1993, pp. 339-340)—“easily the most comprehensive work on firearms, violence, and firearms control ever published ... a virtual treasure trove of information ... required reading for those interested in both sides of a serious debate about gun control ... Kleck’s research will change the direction and raise the level of discussion.” Fred Hawley (*Social Forces*, December, 1992, p. 548)—“This ... magnum opus is essential reading and resource material for those interested or engaged in research on issues involving gun-related violence ... Magisterial.” *Choice* (May 1992, p. 662)—“Comprehensive. Recommended.” Raymond Kessler (*Journal of Criminal Law and Criminology* 82(4) Winter 1992, p. 1187)—“In recent years there have been a number of books on firearms, violence, and gun control. This book ... is the best so far ... comprehensive and valuable critique and synthesis of the existing literature [and] some of the best ... original empirical research ... This book will be the new starting point for everyone interested in the topic.” Don Kates (*The Public Interest*, 1991, p. 106)—“in any [effort to devise workable gun controls], *Point Blank* will be the primary information source.” Gary Mauser (*Criminal Law Forum*, August 1991, p. 149)—“encyclopedic study ... comprehensive coverage ... an enlightening discussion of an important public policy issue by a scholar who is refreshingly objective.” William Wilbanks (letter to Gary Kleck)—“one of the most important books ever published in criminology.”

My challenge to A-M, and others with similarly one-sided views, is this: Do the research *better*, using technically stronger methods applied to policy-relevant questions, and if you obtain results contradicting my own, I will revise my views. However, using crude univariate methods to assess the efficacy of gun laws (e.g. Loftin et al. 1991), public health analyses of samples of two (!) cases (Sloan et al. 1988), or the use of manifestly inappropriate data sources to assess the frequency of defensive

gun use (McDowall and Wiersema 1994) clearly do *not* constitute doing the research better. And worse still, one-sided, evidence-free speculation promises only to clog up the channels of scholarly communication.

REFERENCES

- Alba, R., and Messner, S. 1995a. *Point Blank* against itself. *Journal of Quantitative Criminology* 11:391-410.
- . 1995b. *Point Blank* and the evidence: a rejoinder. *Journal of Quantitative Criminology* 11:425-428.
- Ayres, B. D., Jr. (1994). Children frightened by gunfire plead with Congress for an end to violence. *New York Times*. February 4, 1994, p. A12.
- Blackman, P. (1993). Review of *Point Blank*. *The Criminologist* 18:16.
- Cook, P. J. (1982). The role of firearms in violent crime. In Wolfgang, Marvin E. and Neil Alan Weiner (ed.), *Criminal Violence*, Sage, Beverly Hills, pp. 236-291.
- Davis, J. A., and Smith, T.W. (1987). *General Social Surveys 1972-1987*. [machine readable data file]. Chicago: National Opinion Research Center.
- Dugger, C. W. (1994). Youthful, impressionable and accused of murder. *New York Times* May 17, 1994, pp. A1, B6.
- Green, G. S. (1987). Citizen gun ownership and criminal deterrence: theory, research, and policy. *Criminology* 25: 63-81.
- Kleck, G. (1988). Crime control through the private use of armed force. *Social Problems* 35: 1-21.
- Kleck, G. (1991). *Point Blank: Guns and Violence in America*. Aldine, New York.
- Kleck, G. (1995a). "Guns and violence: an interpretive review of the field." *Social Pathology* 1: 12-47.
- Kleck, G. (1995b). "Guns and Self-Defense." Unpublished manuscript. Florida State University, Tallahassee, Florida.
- Kleck, G., and Bordua, D. 1983. "The factual foundation for certain key assumptions of gun control." *Law & Policy Quarterly* 5:271-298.
- Kleck, G., and Gertz, M. (1995). Armed resistance to crime: the prevalence and nature of self-defense with a gun. *J. Crim. Law & Criminology* 86:(forthcoming).
- Kleck, G., and Patterson, E. B. (1993). The impact of gun control and gun ownership levels on violence rates. *J. Quant. Crim.* 9: 249-287.
- Loftin, C., McDowall, D., Wiersema, B. and Cottey, T.J. (1991). Effects of restrictive licensing of handguns on homicide and suicide in the District of Columbia. *N. Engl. J. Med.* 325: 1615-1620.
- Maddala, G. S. (1992). *Introduction to Econometrics, Second Edition*. Macmillan, New York.
- McDowall, D., Lizotte, A., and Wiersema, B. (1991). General deterrence through civilian gun ownership. *Criminology* 29: 541-559.

- National Institute of Justice. (1994). Violence Research Data. CD-ROM (NCJ-151523) available from Inter-university Consortium for Political and Social Research. ICPSR, Ann Arbor, Michigan.
- Newton, G. D., and Zimring, F. E. (1969). Firearms and Violence in America Life. A Staff Report to the National Commission on the Causes and Prevention of Violence. U.S. Government Printing Office, Washington, D.C.
- Sherman, L. W. (1993). Review of *Point Blank*. *The Criminologist* 18: 15-16.
- Sloan, J. H., Kellermann, A., Reay, D. T., Ferris, J. A., Koepsell, T., Rivara, F. P., Rice, C., Gray, L., and LoGerfo, J. (1988). Handgun regulations, crime, assaults and homicide. *N. Engl. J. Med.* 319: 1256-1262.
- Toch, H., and Lizotte, A. J. 1991. "Research and policy: the case of gun control." Pp. 223-240 in *Psychology and Social Policy*, edited by P. Suedfeld and P. E. Tetlock. N.Y.: Hemisphere Publishing Co.
- Wilson, H., and Sherman, R. 1961. Civilian penetrating wounds of the abdomen. *Annals of Surgery* 153: 639-649.
- Wright, J. D., and Rossi, P.H. 1985. *The Armed Criminal in America: A Survey of Incarcerated Felons*. National Institute of Justice, Washington, D.C.
- Wright, J. D., and Rossi, P.H. 1986. *Armed and Considered Dangerous: A Survey of Felons and their Firearms*. Aldine, New York.
- Zimring, F. E. (1972). The medium is the message: firearm caliber as a determinant of death from assault. *J. Legal Studies* 1: 97-123.

THE WHEEL-LOCK GUN

Thomas F. Arnold

Government efforts to suppress the spread of advances in firearms technology are not unique to the twentieth century. In this article, Yale history professor Thomas F. Arnold details the social and military impact of the invention of the wheel-lock pistol. This article was originally published in the Autumn 1995 issue of MHQ (formerly known as Military History Quarterly), and is reprinted by permission.

The assassin, waiting on horseback in a wooded grove, marked his approaching target: François, duc de Guise, nicknamed “Scarface,” who was the leader of the ultra-Catholic faction in the Wars of Religion just starting to tear France apart. The year was 1563. The lurking killer’s weapon, a wheel-lock pistol, had been a novelty in France just twenty years before. As Guise and three companions, all mounted, passed between two large walnut trees, the assassin, a French Calvinist, rode up close behind, swiftly presented his pistol, and fired into the duke’s back at point-blank range, fatally wounding him.

It was the first notable assassination by pistol in history and the most outrageous manifestation yet of a threat to law and order recognized since the pistol’s invention early in the century. Standard military firearms—the long-barreled matchlock harquebus and musket—were heavy and bulky, requiring two hands at all times to carry, load, and fire them. They were poor weapons for criminals. But the short-barreled wheel-lock pistol could be loaded in advance, easily hidden under a cloak or in a deep pocket, and then aimed and fired with one hand.

These characteristics inspired some of the first attempts at gun control. In 1517 the Holy Roman Emperor Maximilian I prohibited the manufacture or possession of “self-striking hand-guns that ignite themselves”—language that could only be describing devices with wheel locks. King Henry VIII of

England, an enthusiastic collector of pistols himself, attempted in 1537 to severely restrict the ownership of guns less than two and a half feet in length, stock included. His heirs repeated the effort. Queen Elizabeth issued four proclamations against overly handy firearms between 1575 and 1600, each progressively stronger in wording. Elsewhere in Europe, other rulers and regimes similarly tried, but failed, to control the pistol. Crime had entered the gunpowder age.

But the same qualities (compact size, one-handed use) that made the pistol the perfect weapon for cutpurses and highwaymen—not to mention assassins—also made it ideal for the mounted soldier, and in the course of the sixteenth century the wheel-lock pistol revolutionized cavalry warfare. As early as 1496, enterprising captains had raised special units of mounted harquebusiers (analogous to existing companies on horseback armed with crossbows), and these units became more numerous from the mid-sixteenth century. Troopers could even fire the cumbersome weapons from horseback, and one illustration shows an expert rider giving a Parthian shot with a long-barreled gun, shooting to his rear on a swiftly moving horse. But this equestrian demonstration must have required the horsemanship of a Turk—if not a centaur—and such skills were never in wide supply. In general, harquebus-armed horsemen and their descendants, eventually known as dragoons, were really mounted infantry, habitually dismounting to shoot it out with the enemy. As such they were valuable troops, especially for cavalcades and ambushes, but in most battlefield situations they could hardly be counted as cavalry.

What the mounted man needed was a firearm operable with only one hand, leaving his other free to maintain control of his mount. The technical breakthrough came with the marriage of the wheel-lock firing mechanism to an exceptionally short barrel and stock, resulting in the pistol (a contemporary coinage, probably Czech in origin). The exact time and place of the wheel lock's invention are unknown, but the best evidence points to sometime around 1510 in the workshops of southern Germany, famous for their expertise in manufacture of arms and armor and

in clock making—this last a critical skill, because the wheel lock was essentially a clockwork mechanism. (At least one noted wheel-lock gunsmith was also a clockmaker.) Many of the earliest wheel locks, rare and curious pieces in their time, were artfully incorporated into traditional weapons, fitted inside the shaft of an armor-cracking poleax or the stock of a crossbow—or even hidden within the handle of a dagger. Such applications, besides hinting at unreliability, reveal the extraordinary nature of the first wheel-lock devices: these were exotic weapons for bodyguards and the best-accounted men-at-arms. But soon the wheel-lock pistol was a developed weapon in itself, with a griplike stock clearly designed for one-handed use.

How did the wheel lock work? The key element was a palm-sized, serrated wheel that was attached, via a short chain of three links, to a powerful leaf spring made of steel. Using a wrenchlike tool called a spanner, the wielder cranked this wheel counterclockwise, bending the spring until the wheel engaged a catch linked to the trigger. Pulling the trigger then released this catch and allowed the spring to spin the wheel, which protruded through the bottom of a priming pan filled with fine gunpowder. The mechanism also automatically retracted a lid covering this pan, allowing the spinning wheel to scratch against a lump of the mineral iron pyrites, producing a shower of sparks and setting the piece off. The loading of a wheel lock remained unimproved over other firearms of the day: powder, ball (or balls—three were used in Guise's assassination), and wadding were pushed down the weapon's bore with a short ramrod; then the loader filled the priming pan and depressed the cock. But unlike other firearms, once loaded the wheel-lock pistol could be tucked away and held until drawn and fired. Until its widespread replacement by the flintlock (which required no wheel, relying instead on a flint to spark the charge) after the mid-seventeenth century, the wheel lock remained the only practical pistol mechanism.

However, the ingenious wheel lock was not without disadvantages. If left spanned too long, the mainspring could conform to its bent position and refuse to drive the wheel. In

1645, during the English Civil War, the Parliamentarian general Edmund Ludlow left a wound-up pair of pistols overnight, and found them unusable in helping him fend off a dawn attack. In addition, early gunpowder was an inefficient, dirty explosive, and a wheel lock soon clogged with corrosive, gritty residue. Besides necessitating constant maintenance, this could be very dangerous—a stray spark might explode a dirty lock packed with incompletely burned powder. And period gunpowder, often of uncertain potency, was hazardous in other ways. Determining a given pistol's correct charge with a given powder could be tricky, encouraging undercharging for safety's sake. In 1582 an overcharged pistol used in an assassination attempt on William I, prince of Orange, burst in its Catholic wielder's hand, maiming the firer (it blew his thumb clean off, so that the assassin was unable to use a dagger, his second weapon) and doubtless affecting the force of the bullet—which was fired at such close range that the discharge set William's beard and hair on fire, ironically cauterizing a head wound that his doctors believed would otherwise have killed him. (Two years later, a better or luckier assassin gunned William down with a triple-shotted pistol fired to the belly.) Finally, the clockwork wheel lock was much more expensive, both to purchase and to repair, than the far more common and mechanically simple matchlock, and for that reason the wheel lock's military application remained largely limited to cavalry pistols.

Despite its deficiencies, the wheel-lock pistol became the mounted man's standard weapon in the second half of the sixteenth century. Cavalry progressively abandoned the lance, and even the sword became secondary. The new-style trooper—the pistoleer or cuirassier (armored from head to knee)—relied on a brace of massive pistols carried in saddle holsters on either side of his mount's shoulders, with a third gun often tucked in the top of his right boot (some riders managed to pack four or even five pistols). Though still one-handed weapons, these guns were not for weaklings: a typical cavalry-style wheel-lock pistol, made in Dresden in 1584, weighed just under five pounds, and it fired a .65-inch lead ball. Besides being murderous at close

range, such pistols were easier to aim than a lance, and were certainly far handier in a close-pressed action.

For defensive purposes, the better-equipped pistoleer retained a nearly full set of armor, including a visored helmet, only exchanging the lower leg pieces for stout boots. This change in equipment accompanied a social change as well. In the late seventeenth century, a grumpy Englishman—echoing the sentiments of Don Quixote, tilter at windmills—noted that “the ancient distinction between the Cavalry and Infantry, as to their birth and breeding, is wholly taken away,” leaving horsemen, like foot soldiers, nothing more than “the Scum of the Commons.”

The abandonment of the knightly lance for the newfangled pistol naturally entailed a transformation in tactics. The first uniformly armed and armored units of pistoleers appeared in Germany around 1545. Known, as “black riders” for their fashionably blackened armor, these horsemen were as famous for their indiscipline off the field—plunder, mutiny, rapine—as for their discipline in battle. They and their imitators popularized a new style of cavalry warfare that depended on regular formations, a practiced cohesion in movement, and the particular attack drill known as the caracole. On the battlefield, pistoleers marshaled themselves in deep formations, typically fifteen or sixteen ranks. To execute the caracole, the entire formation halted, and then each rank in turn trotted forward to within pistol range of the enemy, whereupon each trooper fired his piece and immediately wheeled left (the pistol being held and fired with the right hand), the rank as a whole swiftly returning to the rear of the unit to re-form and reload. When properly conducted, the caracole must have been terrible to behold, as much a piece of clockwork as the pistols each rider carried. It could also be directed against pike-armed infantry—ending a long-standing near-invulnerability to cavalry.

Such maneuvers, however, required long practice and practically perfect discipline. Contemporaries considered the many things that could go wrong: riders naturally tended to fire and wheel prematurely; many pistols failed to fire at all; and

most troopers—as many as 80 or 90 in a company of 100, according to one expert—neglected to load their pistols with a full charge, since a fully charged pistol was both potentially dangerous and difficult to control when fired (there were said to be cases of troopers blowing the ears off their mounts).

Seizing upon such criticism, historians have gone so far as to characterize the pistoleers as “degenerate cavalry.” But that goes too far: there were real advantages to the new troopers and their tactics. For example, pistoleers did not depend on the speed of their horses to give impetus to their attack, as did lancers. Therefore, pistoleers—mounted on much cheaper horses, not an inconsiderable benefit—could be packed more closely together (giving an advantage in manpower against an equal frontage of a dispersed opponent), and they could maneuver and fight at the trot or even at a standstill. It also meant that their formations did not naturally fly apart in the attack, as galloping cavalry almost always did. Though their trademark tactics were undoubtedly exacting, by introducing disciplined drills and maneuvers the pistoleers ensured cavalry’s place on the gunpowder battlefield.

GUN CONTROL: WILL IT WORK?

H. Taylor Buckner

The following article is an address given by Dr. H. Taylor Buckner, Associate Professor of Sociology at Concordia University, to the 98th Session of the St. James Literary Society, on October 17, 1995. In the speech, Dr. Buckner summarizes the results of recent research regarding Canadian attitudes towards firearms and firearms control. The research suggests that much of the motivation for gun control may be hostility to the ownership of firearms, rather than a rational expectation that gun misuse will decrease. Much of Dr. Buckner's research about gun policy, including the book on which this speech is based, is available at <http://teapot.usask.ca/cdn-firearms/buckner/>.

When people ask if gun control will work, the answer depends on what is meant by gun control and what is meant by working. There is much confusion and dissent over the meaning of "Gun Control," and considerable disagreement over what might be taken as evidence of it "working," or "not working." It appears to me that much of this confusion arises from the fact that the discussion simultaneously involves questions of fundamental values and questions of practicality, with the two not being clearly distinguished. Indeed, sometimes fundamental value assumptions are not acknowledged, sometimes even denied, and the debate over practicalities becomes chaotic, and full of accusations of bad faith.

My interest in "Gun Control" started thirty years ago when I was a police officer. It has continued throughout my academic career. Though I did a bit of shooting as a young man, as a soldier, and as a police officer, during the twenty years I lived in downtown Montreal I was not involved in the shooting sports. Since moving to a rural area seven years ago I have taken up target shooting, and have started a small collection of old and unusual firearms. All of my firearms, both those that must be

registered and those that under current law are not subject to registration, are listed with the police. My wife and I shoot together, and we are instructors for the federally-mandated Canadian Firearms Safety Course. I tell you this because occasionally people object to a speaker who owns a gun speaking about firearms control. Curiously, people rarely object when a speaker proudly unfamiliar with guns speaks about firearms controls.

In January, Professor Gary Mauser of Simon Fraser University and I, developed, and carried out, the most comprehensive survey on attitudes towards gun control ever undertaken in Canada. The questionnaire was administered by phone by professional interviewers from the firm Canadian Facts, to a sample of 1,505 Canadian adults. We are currently preparing a book based on the results of this survey. I would like to share with you tonight some of our findings.

In the course of analyzing our survey data a number of things became clear. First, only seven percent of our sample overall, and only 18 percent of gun owners, had even a minimal level of knowledge of the current gun control laws. Second, some people, because of their basic values, support universal registration and the confiscation of handguns even when they do not think stricter gun control will be effective. Third, many people have impossibly high expectations about the effectiveness of stricter gun control.

KNOWLEDGE

The lack of knowledge is not surprising, many other surveys have found low levels of knowledge about justice matters (Roberts 1994). One effect of not knowing that there is already an extremely comprehensive and strict law on the books is that people continually think there must be a need for more laws. Even when a new law is passed most will not learn of it, and as long as murders continue to take place there will always be a demand for more laws.

The lack of knowledge among gun owners is worrisome, as they are presumed, in law, to know the law. I suspect most gun

owners in Canada are not certain whether or not they are obeying the current law completely. The present law is so complex (it has more than 17,000 words), and has changed so often, that only a few dedicated professionals can claim to really know it.

Did you know, for example, that to buy a handgun for target shooting in Québec that, amongst other things, you have to take two safety courses, be investigated by the police on three separate occasions, and produce 12 letters of reference? It takes about a year to complete the process.

BASIC VALUES

We asked two questions that go to basic values, first: Do you agree or disagree that Canadian Citizens should have the right to own a firearm? Note that our question is not the American “Right to Keep and Bear Arms,” but just whether a citizen should or should not have the right to own a firearm. Overall, 56 percent agreed that Canadians should have the right, 40 percent disagreed, and 4 percent were undecided.

Second, we asked: Do you generally favour or oppose hunting? Overall, 51 percent favoured hunting, 43 percent opposed, and 6 percent were undecided.

Attitudes on these two basic values drive the gun control debate, but are rarely mentioned. One of the rules of discourse in our rational society is that our proposals have to be justified on utilitarian grounds. If someone was to say, “I am for gun control because I don’t like guns and no one should have them,” or, “I am against gun control because I like guns and want to keep mine,” no further discussion would be fruitful.

Public proponents of additional gun controls are frequently heard to say, “We don’t want to confiscate your hunting guns, or stop legitimate gun use.” But is this really true? Could it be they are denying their basic values?

An indication that they may be concealing their basic values comes when it is suggested that controls will be costly and ineffective. Proponents of new controls then say, “it is about the kind of society we want twenty years from now,” without always

specifying that this is a society in which no one but government agents will have guns. A society in which the gun culture, wherein parents teach their children how to shoot and hunt, is apparently to be extinguished.

Probably a majority of Canadians are now second or third generation urbanites. Many urbanites think hunting is barbaric. Their conception of hunting and hunters is sometimes quite fantastic. Among people I have questioned in other surveys a frequently mentioned image is of a drunken hunter killing animals for the joy of killing, and leaving the bodies to rot in the field. Few think of the lower income family man purchasing a permit, hunting under strict regulations designed for wildlife management, in the hope of feeding his family better for the winter.

While the two values, right and hunting, both influence opinions on gun control, the two combined make for a better delineation of the value conflict in the gun control debate. We grouped responses in three categories: those who think Canadians should have the right to own a firearm and who favour hunting (35 percent), those whose responses were mixed (41 percent), and those who oppose the right to own a firearm and oppose hunting (24 percent). These basic values are strongly influenced by three background characteristics. Those from large cities, Québec, and females, tend to be in the “No Right No Hunt” category. Those from rural areas, the Prairie provinces, and males, tend to be in the “Right and Hunt” category.

EFFECTIVENESS OF GUN CONTROL

Expectations about the effectiveness of stricter gun control were measured by six questions: If there were stricter regulations for authorized firearms owners, would you say that the violent crime rate would increase, decrease or stay the same? Do you agree or disagree that gun control laws affect only law-abiding citizens as criminals will always be able to get firearms? Do you agree or disagree that stricter gun control would greatly reduce the level of violence against women in Canada? How

effective do you think stricter regulations would be in reducing suicides? Reducing homicides? Reducing accidents?

While a slight majority felt that stricter regulations for gun owners would not affect the violent crime rate, and three-quarters felt that criminals would still be able to get guns, opinion was about evenly divided on whether violence against women would be reduced.

On the other hand, 44 percent thought stricter regulations would be effective in reducing suicides, 68 percent in reducing homicides, 74 percent in reducing accidents. These answers have to be characterized as wishful thinking. Very few of our respondents know what the current regulations are, probably fewer still know much about the dynamics of firearms homicide, suicide and accidents.

I often find people are astonished when they discover that there are only about 60 fatal firearms accidents a year in Canada, that firearms are used in only about a third of suicides and homicides, that over 90 percent of those who die from a gunshot are males, and that last year in all of Canada there was a total of 21 women killed by a domestic partner using a firearm. If all firearms were to magically disappear, including those held by the police, the army, and the criminal population, people determined to kill themselves would mostly find other means, violent husbands would mostly use knives or blunt objects, and, obviously, there would be no gun accidents.

Realistically, if there were no firearms at all, probably far fewer than 100 lives a year would be saved. A great portion of these would be in the police and army where the accident and firearms suicide rates are high. No amount of regulation and enforcement acceptable in a democratic society will produce anything like this reduction. Though the accuracy of our respondents' perceptions may be in doubt, the answers to these questions give us a guide to what people hope will be the outcome of stricter gun control.

We combined the answers to all six questions into an index of perceived effectiveness. In this index 27 percent thought gun

control ineffective, 42 percent had mixed responses, and 31 percent thought gun control effective.

In general, those who think gun control effective are more likely than those who think it ineffective to support universal registration and confiscation of handguns. There are, however, some people who favour registration and confiscation whether or not they think gun control is effective. These people provide the clue to the values/practicality confusion in the debate over the effectiveness of gun control.

UNIVERSAL REGISTRATION

We asked six different questions on universal registration, first: "Do you agree or disagree that all firearms should be registered?" If the respondent agreed with registration they were then asked if they would still agree under five different sets of assumptions: If it would cost \$100 million; If it would cost \$500 million; If you knew it would increase your taxes; If you knew the police were opposed to registration; If registration would force the police to pull constables off the streets in order to deal with the paperwork involved. Support for registration fell considerably when people considered the costs. Fourteen percent were simply opposed to registration ("none"), 61 percent favoured it in general but found at least one of the scenarios too costly ("soft"), and 25 percent of the population favoured it regardless of the cost ("hard").

There is a strong and statistically significant relationship between thinking that gun control is effective, and wanting registration, for those with "Right and Hunt" values, and for those with "Mixed" values. For those who have "No Right No Hunt" values the relationship between effectiveness and "hard" support for registration is not statistically significant. In other words they support registration at any cost whether or not they think gun control will be effective. Perhaps they see registration as a step towards eliminating all guns.

CONFISCATION OF HANDGUNS

We also asked whether the handguns belonging to collectors, target shooters, and those who kept a handgun for self-defense, should be confiscated. Only 20 percent favoured confiscating collectors' guns, 24 percent target guns, and 47 percent self-defense guns. Interestingly, a majority of those who favoured confiscating self-defense handguns said they would personally use a gun to defend themselves.

Overall, 13 percent of the sample said that the handguns of all three types of users should be confiscated. This response was highly concentrated among the people in the "No Right No Hunt" value category.

There is a strong and statistically significant relation, among those who have the "Right and Hunt" values or the "Mixed" values, between feeling that gun control is effective and wanting to confiscate handguns. Among the "No Right No Hunt" respondents, support for confiscation is very high and not significantly related to their views on the effectiveness of gun control. As with registration, this group supports confiscation even when they do not think that gun control produces utilitarian benefits.

Returning to the title of the talk, "Gun Control: Will It Work?" I think that there are two definitions of working, a value definition and a utilitarian definition. Were it not for the confusion caused by the mixing of these two levels of discourse no one would have to ask if gun control will work, the answer would be obvious.

UTILITARIAN CONCERNS

From a utilitarian point of view the goal of gun control is to reduce the misuse of firearms resulting in a reduction of homicides, suicides and accidents.

Research in Canada and other countries has shown that stricter gun control has two effects: it reduces firearms robberies and it increases the burglary rate. We have already had both of these take place in Canada following the 1978 law. From 1975 to 1989 there was a 36 percent decrease in firearms robberies

rates, from 39 per 100,000 to 25 per 100,000 (Wolff 1991). Robberies with other offensive weapons increased (DuWors 1992). Canada's burglary rate, always before lower than that of the United States, passed the U.S. rate in 1982 and still remains above it (Fedorowycz 1992). Stricter gun control laws will probably not offer much further reduction in the firearms robbery rate, but have a great potential, as British experience has shown, for increasing the burglary rate of occupied premises (Mayhew 1987).

There are countries that, for a variety of cultural reasons, have high or low rates of homicide and suicide, but changes in gun control do not appear to have any marked effect. In Canada the homicide rate was high when the baby-boomers were in the "killer years" of 15 to 30, in 1975. It has declined as this group aged, and a smaller portion of the population was in the 15 to 30 age group. A slightly larger decline took place in the United States, which did not have any new firearms legislation during this period.

In the United States, where guns are more easily accessible, about two-thirds of suicides are carried out with firearms, compared to about one-third in Canada. But the United States' suicide rate is lower than Canada's. In Japan, where essentially no one has guns, the suicide rate is higher than Canada's. Suicide rates are determined by cultural factors, not by the availability of a specific means.

While it is certainly true that if there were no guns there would be no gun suicides, registration will not produce this effect. The argument that because an owner is forced to register his gun he will be more likely to store it safely so that in a moment of depression he will not use it to kill himself applies to an incredibly small portion of suicides. Most suicides follow months or years of depression or illness, unlocking a gun takes at most a couple of minutes, and the vast majority of people who use guns for suicide are certain they want to die. Using a gun is not like taking a dozen pills and calling 9-1-1. Taking away guns from those people doctors and family members think are

depressed, already possible in the current law, might help in a few cases.

Still using a utilitarian point of view, it is hard to see how the involvement of thousands of police officers keeping track of the millions of households that have informed the police that they have guns, is an effective deployment of police resources. Of the eight million guns in Canada, only 1/20th of 1 percent will be misused in homicide, suicide, accidents or by being stolen in any given year. That is to say that 99.95 percent of the police effort will be wasted.

When I was a police officer I was told “you don’t find many criminals in church,” the point being, you look for criminals where they are, not where they are not. Registration will put the police, already declining in numbers, in the position of tracking church congregations and looking for minor sins, arresting people for not tithing, while diverting attention from crack houses and violent families.

An additional problem that our survey revealed is that about a quarter of gun owners do not intend to register all their guns. This resistance will produce around three-quarters of a million new criminals, some of whom will be prosecuted at great cost, and little social benefit.

VALUE CONCERNS

From the “No Right No Hunt” point of view the goal of gun control is to reduce the number of firearms in the country, to reduce firearms use, and to reduce hunting. If firearms and hunting could be eliminated from Canada, even better.

From this value point of view, gun control has already been extremely effective in reducing the participation of Canadians in the shooting sports and hunting. I asked 27 experts, representatives of wildlife and shooting federations from across Canada, to evaluate the effect on their sports of the last gun control law passed in 1991, with major provisions coming into effect in 1993.

These experts indicated that membership in the shooting clubs they knew about had declined by 14 percent. The turnout

for competitions involving pistol shooting declined by 23 percent, rifle competitions 14 percent, shotgun competitions (trap and skeet) by 25 percent. The number of hunting licenses issued declined by nearly 13 percent. The number of gun dealers declined by 21 percent. The political involvement of gun owners in the gun control debate increased by 50 percent during the same period. These figures are hardly definitive; they represent only the averaged educated guesses of people deeply involved in recreational firearms use. While the accuracy of the percentage declines may be questioned, the overall trend is clear.

The decline in hunting licenses has both direct and indirect costs for wildlife management. Much of wildlife management is paid for by hunting licenses, and if hunters can not be counted on to control excess populations many more animals will starve and crop damage will increase. There are also economic costs associated with the decline in other shooting sports. It appears that it is easy to discourage the law abiding Canadian from participating in a sport by simply increasing the regulations every year. For those with "No Right No Hunt" values these arguments are irrelevant, and a decline in hunting is a victory.

The R.C.M.P. reports a stunning drop in the issuance of new Firearms Acquisition Certificates, another success from the "No Right No Hunt" value point of view. If we take the rate of FACs issued from 1984 to 1990, about 600 per 100,000 as the normal rate there will probably be a rebound from the 1994 rate of 169 per 100,000, but with all the new regulations many will be discouraged from applying for the Firearms Possession Permit with acquisition rights.

Additionally, a number of firms have been forced out of business (at one meeting I attended in control advocates cheered when a sporting goods store owner said he was going bankrupt).

Bill C-68, presently before the Senate [and now law, ed.], will have little or no effect on homicides, suicides or accidents. Its proponents have not offered a single piece of evidence or research that it will reduce homicides, suicides or accidents, because there is no such evidence or research. It may well allow for an increase in violent crime as police efforts and funds are

diverted into bureaucracy. It will certainly increase the overall crime rate as almost every gun owner in Canada will inadvertently be in violation of one or another of its confusing provisions.

Bill C-68 will work extremely well at promoting the values of those who are in the "No Right No Hunt" camp. With its 39,000 words and mind-boggling complexity it will insure that almost no gun owner or police officer will be able to say for certain whether an act is criminal. It will allow the government to ban any firearm it wishes, regardless of whether it is commonly used in hunting or target shooting. It will add layer after layer of regulations for shooting clubs, create five kinds of Firearms Possession Permits and five categories of Prohibited weapons, some grandfathered, some not. It will discourage even more people from recreational firearms use through increasing costs and red tape.

So, will gun control work? Clearly it has not and will not from a utilitarian point of view, clearly it has and will from the "No Right No Hunt" value point of view. It depends entirely on what you mean by work; it depends entirely on your values.

REFERENCES

- DuWors, Richard. 1992. "Robbery in Canada." *Juristat: Service Bulletin*. Canadian Centre for Justice Statistics. 12:10. May.
- Fedorowycz, Orest. 1992. "Break and Enter in Canada." *Juristat: Service Bulletin*. Canadian Centre for Justice Statistics. 12:1. January.
- Mayhew, Pat. 1987. *Residential Burglary: A comparison of the United States, Canada and England and Wales*. National Institute of Justice. Washington, D.C.: Government Printing Office.
- Roberts, Julian V. 1994. *Public Knowledge of Crime and Justice: An Inventory of Canadian Findings*. Technical Report, Department of Justice Canada. TR1994-15e.
- Wolff, Lee, Shelley Trevethan and Tracy Hoskins. 1991. "Weapons and Violent Crime." *Juristat: Service Bulletin*, Canadian Centre for Justice Statistics, 11:12. August.

CHARACTERISTICS OF AUTOMATIC OR SEMIAUTOMATIC FIREARM OWNERSHIP IN THE UNITED STATES

David Hemenway, Ph.d., and Elizabeth Richardson, M.S.

Are people who own semiautomatic or automatic firearms different from the rest of the population in some ways? This article first appeared in the American Journal of Public Health, in the February 1997 issue. The website for the American Journal and its parent organization is <http://www.apha.org>.

ABSTRACT

Objective. This study examined ownership patterns of automatic/semiautomatic firearms in the United States.

Methods. Data were derived from a national random-digit-dialing telephone survey of 800 gun owners.

Results. Sixty percent of gun owners reported owning an automatic or semiautomatic firearm. In comparison with other gun owners, owners of automatics or semiautomatics were more likely to be male, live in the South, own a gun for protection, and have a gun for work. They were also more likely to report binge drinking.

Conclusion. Owners of automatic or semiautomatic firearms differ from other gun owners in several respects, including frequency of binge drinking. (Am J Public Health. 1997; 87:286-288)

INTRODUCTION

The United States has more firearms per capita in civilian hands than any other country in the world. Approximately two thirds of these firearms are long guns, generally fired from the shoulder (rifles and shotguns), and about one third are handguns, designed to be fired with one hand (revolvers and pistols).¹ There are guns that are not firearms (such as pellet guns); in this paper, however, we use the word “gun” to mean “firearm.”

Both long guns and handguns can be semiautomatic; there are semiautomatic rifles and semiautomatic pistols. Automatic and semiautomatic refer to the operation mechanism of a firearm. What distinguishes automatic and semiautomatic firearms is that they can be spray fired. Holding down the trigger of an automatic firearm results in a continuous stream of bullets until the ammunition magazine is emptied. For a semiautomatic firearm, each trigger pull releases a single bullet, loads the next bullet, and permits rapid, sustained firing until the magazine is emptied.^{2,3}

Various studies have examined the ownership of guns and handguns in the United States. To our knowledge, no study has examined patterns of ownership of automatics or semiautomatics. We used data from a national gun survey to determine the extent to which gun owners own automatic or semiautomatic firearms and to examine the characteristics of people who own these weapons.

METHODS

In May and June 1994, under a contract with the Harvard Injury Control Center, Fact Finders Inc conducted a national random-digit-dialing telephone survey of 1200 adults 18 years of age and older. The survey was constructed to ensure that exactly 800 individuals who personally own a gun would be interviewed. Proportional sampling based on state population was performed to ensure a nationally representative sample. As a result of this stratification, gun owners in states with relatively few gun owners were over represented in the sample relative to

gun owners in states where a high percentage of people own firearms. The refusal rate was 27.1%.

The dependent variable was ownership of an automatic or semiautomatic weapon. To investigate the issue of who owns these weapons, we specifically included a question on the survey instrument that asked, "How many of the guns that you own are automatic or semiautomatic firearms?" A priori, we divided respondents into those who owned one or more automatic or semiautomatic weapons and those who owned none. One hundred twenty respondents (15%) answered the preceding question by indicating that they did not know or were not sure. These respondents were excluded from the analysis but were compared with other gun owners in terms of the independent variables.

No established theory suggests the form of the independent variables associated with ownership of automatic or semiautomatic weapons. Alternative forms were tested to determine whether the principal results were sensitive to the way these variables were specified. They were not.

We present the results for our initial, a priori categorization of the independent variables. Virtually all of the variables were dichotomized: gender (male vs female), age (less than 30 old vs 30 years old or older), race (White vs other), education (college degree vs no college degree), whether any children under 18 years were currently in the household, current region of residence (South vs other regions), urbanization (self-reported by respondent as urban, suburban, or rural), urbanization of respondent's residence at 12 years of age (urban vs suburban or rural), whether there was a gun in the household when the respondent was growing up, whether protection was one of the reasons for gun ownership, and whether the respondent owned a gun for work or had carried a gun for work in the past month. The South was defined as Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Texas, Virginia, and West Virginia.

There is no strong consensus within the alcohol research community on the definition of binge drinking. However, public

health researchers commonly use the Centers for Disease Control and Prevention definition of binge drinking as having five or more drinks on a single occasion. Our binge drinking variable was determined by the response to the question "In the last two months, how times have you had five or more alcoholic drinks on one occasion?" We divided responses into three categories: none, once, more than once.

Multivariate logistic regression was used to estimate the odds ratio of ownership of an automatic or semiautomatic firearm for individuals with a given characteristic (e.g., urban community residence) relative to individuals without that characteristic while simultaneously controlling for the other variables in the model.

RESULTS

Approximately 60% of the gun owners possessed at least 1 automatic or semiautomatic firearm (Table 1). On average, these individuals owned 2.0 automatics or semiautomatics and 5.3 total guns. Gun owners who did not own automatics or semiautomatics possessed, on average, 3.0 guns ($P < .001$).

In the multiple regression, gun owners who were more likely than other gun owners to own an automatic or semiautomatic firearm were men, lived in the South, had lived in an urban community at 12 years of age, owned a gun for protection, and owned or carried a gun for work (Table 1).

More than 27% of gun owners reported binge drinking at least once in the previous 60 days, and 19% reported binge drinking more than once. After other factors had been held constant, gun owners who reported multiple episodes of binge drinking in the previous 60 days were more likely than other gun owners to own an automatic or semiautomatic (Table 1).

DISCUSSION

Owners of automatic or semiautomatic firearms are different from other gun owners in many respects. They own more guns and are more likely to be male, to be from the South, and to own or carry a gun for work. Perhaps the most interesting finding of

the present study is that owners of automatic or semiautomatic firearms are more likely than other gun owners (even after consideration of age, gender, and nine additional variables) to binge drink frequently.

The association between automatic or semiautomatic firearm ownership and binge drinking is disturbing. As a society, we would prefer that people who own a rapid-fire firearm do not also engage in binge drinking, which reduces inhibitions, impairs judgment, and increases aggressive behavior. While alcohol can increase positive feelings and may, in some situations, reduce the likelihood of violence,⁴ empirical evidence indicates a strong link between alcohol consumption and violent behavior.⁵

Alcohol consumption by younger men increases the likelihood that these individuals will perceive the behavior of others as insulting or challenging.⁶ Alcohol consumption by a stressed individual predisposes that person to violent behavior.⁷ In a self-report study of young male offenders in England, many claimed that alcohol influenced their behavior, leading them to do things they would not do when sober.⁸

Alcohol is a risk factor for domestic violence.⁹ It is also a risk factor for violent crime and for murder. Violent crime rates by geographic area have been directly linked to the area's per capita alcohol consumption.¹⁰

Binge drinking among high school students is a risk factor for fighting and for carrying weapons.¹¹ Binge drinking by college students is associated with other risky behavior.¹²

We do not know why there is a positive relationship between binge drinking and automatic or semiautomatic ownership. We assume that some third variable explains the association, because it is doubtful that binge drinking causes an individual to purchase a certain type of firearm or that owning a particular type of firearm causes one to drink heavily. Perhaps the root cause is an attitude toward risk¹³⁻¹⁵ that, in this instance, leads individuals to take the chance of losing control over their behavior by drinking large quantities of alcohol and also leads them to purchase a more dangerous type of firearm.

Our study has various limitations. The data were all self-reported. The validity of the binge drinking information may be of particular concern. However, reviews of the literature have found that self-reported alcohol consumption measures are reasonably valid (e.g., as compared with blood or breath tests in emergency room populations).¹⁶ Our study was an anonymous telephone survey about guns, with one question near the end on alcohol. Respondents had little reason to believe that a truthful answer would be personally detrimental.

Another potential problem is that 15% of respondents did not know for sure whether they owned an automatic or semiautomatic weapon. Nonresponders may have been unclear about what constitutes an automatic or semiautomatic weapon, may not have had full knowledge of their own firearm collection, or may not have wanted the interviewer to know this one piece of information. We do know that individuals who reported that they did not know the answer to this question were similar in most respects to gun owners who did not own automatics or semiautomatics, except that they were more likely to be female.

Certain data were not collected. We asked respondents only whether they owned an automatic or semiautomatic firearm. We did not ask why they owned such firearms, how often the guns were used, whether the firearms were long guns or handguns, or whether they believed any of their firearms should be classified as assault weapons. We did not ask about automatic and semiautomatics separately. However, since fully automatic weapons in private hands are rare, and owners of fully automatic firearms probably also own semiautomatics, we presumed that most of the respondents were answering in reference to semiautomatics.

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TABLE 1—Factors Associated with Automatic or Semiautomatic Gun Ownership in a National Random-Dial Survey of Gun Owners

	No. Gun Owners	Own Automatic or Semiautomatic Gun, %	Logistic Regression Odds Ratio (95% Confidence Interval) (n = 621)
Overall	680	60	...
Gender			
<i>Male</i>	462	56	1.97 (1.36, 2.86)***
<i>Female</i>	218	47***	
Age, y			
<i>Under 30</i>	124	72	1.45 (0.89, 2.37)
<i>Over 30</i>	555	57**	
Race			
<i>Minority</i>	64	73	1.46 (0.78, 2.75)
<i>White</i>	611	59*	
Education			
<i>College degree</i>	171	62	0.93 (0.63, 1.38)
<i>Less</i>	506	59	
Children under 18 years of age in household			
<i>Yes</i>	256	61	1.04 (0.73, 1.48)
<i>No</i>	408	60	
Lives in southern US			
<i>Yes</i>	194	68	1.75 (1.18, 2.58)**
<i>No</i>	486	57**	
Lives in urban community			
<i>Yes</i>	184	61	0.92 (0.61, 1.39)
<i>No</i>	487	59	
Lived in urban community at 12 years of age			
<i>Yes</i>	213	65	1.53 (1.02, 2.31)*
<i>No</i>	454	58	
Gun in household when growing up			
<i>Yes</i>	546	61	1.31 (0.83, 2.07)
<i>No</i>	131	56	
Owns gun for protection			
<i>Yes</i>	264	66	1.53 (1.07, 2.20)*
<i>No</i>	414	56**	
Owns or carries gun for work			
<i>Yes</i>	48	81	3.80 (1.53, 9.46)**
<i>No</i>	627	58**	
Had more than 5 drinks in one sitting in past 60 days			
<i>No</i>	464	56	
<i>One time</i>	61	61	1.01 (0.56, 1.82)
<i>Two or more times</i>	136	74***	1.89 (1.18, 3.02)**

Note. Significance levels refer to chi-square test. Pearson $\chi^2 = 67.34$ ($P < .001$).

* $P < .05$; ** $P < .01$; *** $P < .001$.

REFERENCES

1. Kleck G. *Point Blank: Guns and Violence in America*. Hawthorne, NY: Aldine de Gruyter; 1991.
2. Council on Scientific Affairs, American Medical Association. Assault weapons as a public health hazard in the United States. *JAMA*. 1992;267:3067-3070.
3. Peterson HL, ed. *Encyclopedia of Firearms*. New York, NY: EP Dutton; 1972.
4. PERNANEN K. *Alcohol in Human Violence*. New York, NY: Guilford Press; 1991.
5. Milgram GG. Adolescents, alcohol and aggression. *J Stud Alcohol*. 1993;11(suppl):53-61. Review.
6. Phil RO. Alcohol and aggression: a psychological perspective. In: Gotthell E, Druley KA, Skoloda TE, Waxman HM, eds. *Alcohol, Drug Abuse and Aggression*. Springfield, Ill: Charles C Thomas Publisher; 1983.
7. Siann G. *Accounting for Aggression: Perspectives on Aggression and Violence*. Boston, Mass: Allen & Unwin; 1985.
8. McMURRAN M, HOLLIN CR. Drinking and delinquency: another look at young offenders and alcohol. *Br J Criminology*. 1989;29:386-394.
9. MURPHY CM. Treating perpetrators of adult domestic violence. *Md Med J*. 1994;43:877-883. Review.
10. Cook PJ, Moore MJ. Violence reduction through restriction on alcohol availability. *Alcohol Health Res World*. 1993;17:151-157.
11. Valois RF, Vincent ML, McKeown RE, Garrison CZ, Kirby SD. Adolescent risk behaviors and the potential for violence: a look at what's coming to campus. *J Am Coll Health*. 1993;41:141-147.
12. Wechslor H, Dowdall GW, Davenport A, Castillo S. Correlates of college student binge drinking. *Am J Public Health*. 1995;85:921-926.
13. Jessor R, Donovan J, Costa FM. *Beyond Adolescence: Problem Behavior and Young Adult Development*. New York, NY: Cambridge University Press; 1991.
14. Elliott DS, Huizinga D, Menard S. *Multiple Problem Youth: Delinquency, Substance Abuse and Mental Health Problems*. New York, NY: Springer-Verlag; 1991.
15. Hemenway D. Propitious selection in insurance. *J Risk Uncertainty*. 1992;5:247-251.
16. Midauik L. Validity of self-reported alcohol use: a literature review and assessment. *Br J Addict*. 1988;83:1019-1030.

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TOWARD AN ANNOTATED BIBLIOGRAPHY OF THE SECOND AMENDMENT

Don B. Kates

This article summarizes the treatment of the Second Amendment in law journals in the last decade, and offers the author's analysis of the merits of some of the more important articles. Don B. Kates and Gary Kleck are the authors of "The Great American Gun Debate" (Pacific Research Institute, 1997), from which this article is partly adapted. Links to full-text version of many of the articles discussed below can be found at the following site <http://www.primenet.com/~mfuller/legal/>

1. SUMMARY OF THE LITERATURE

Of the more than sixty law review articles treating the Second Amendment that have appeared since 1980, only a handful argue that the Amendment is a right pertaining to state militias rather than to individuals. The few articles taking this position generally appear in minor law journals and are authored by officers or lobbyists for anti-gun groups. (See section 3 below.)

The individual right literature so completely dominates the scholarship in this field that even vehemently anti-gun academics now recognize the individual right view as the "standard model" among scholars writing on the Amendment. [The term "standard model" was first used by a proponent of the individual right view, Glenn H. Reynolds professor of constitutional law at the University of Tennessee, surveying the scholarly literature in "A Critical Guide to the Second Amendment," 62 *Tenn. L. Rev.* 461 (1995). For its acceptance by vehement opponents, see Herz (below) and Garry Wills, "To Keep and Bear Arms," *New York Review Of Books*, September 21, 1995.]

Unlike articles promoting the states' right view, articles endorsing the standard model are authored by preeminent constitutional scholars, *regardless of their attitude toward firearms*, and appear in top journals. Authors include luminaries of liberal constitutionalism such as former ACLU national board member Duke University Law School professor of constitutional law William Van Alstyne. Equally liberal and prestigious are Akhil Amar (professor of constitutional law at Yale) and Sanford Levinson (professor of constitutional law at the University of Texas)—men who have never owned a gun or even fired one.

Levinson's study of the Amendment forced him to admit that it precludes his desire to ban firearms ["The Embarrassing Second Amendment", 99 *Yale L. J.* 637 (1989)]. It even caused him to begin questioning the wisdom of that desire. He also speculates that the reason comparatively few constitutional law professors study the Second Amendment is that they fear such study will have the same effects on them.

Prof. Amar's article discussing collective aspects of the Bill of Rights ["The Bill of Rights as a Constitution", 100 *Yale L. J.* 1131 (1990)], recognizes that the Second Amendment has both individual and collective aspects. But in finding that the Amendment has collective aspects he emphatically does not suggest that the text of the Amendment precludes individuals from enforcing it on behalf of the whole populace collectively. The Second Amendment is no less enforceable by individuals than such other collective rights as the First Amendment's right to assemble (also phrased as a "right of the people"), the Sixth Amendment right to jury trial and the Fifteenth and Nineteenth Amendment rights to vote without discrimination on the basis of race or sex.

In a later work, Amar asserts that as the Second Amendment operates to preclude federal gun bans, state bans are precluded by Fourteenth Amendment. In this respect Amar stresses the changing motive for guaranteeing the right to arms: The Second Amendment's original immediate purpose in 1791 was to deter tyranny by the federal government; but the Fourteenth

Amendment was enacted after the Civil War. The authors of that Amendment were focussed on assuring that blacks and Southern Unionists could not be disarmed and made helpless against the KKK. Akhil Amar, “The Bill of Rights and the Fourteenth Amendment”, 101 *Yale L. J.* 1193 (1992).

Prof. Van Alstyne’s “The Second Amendment and the Personal Right to Arms”, 43 *Duke L. J.* 1236 (1994) closely parses the Amendment’s text, and shows that the language necessarily supports the standard model interpretation. A former member of the ACLU national board, he compares the NRA with the ACLU (both groups being dedicated to taking constitutional rights seriously and opposed by those who refuse to honor rights they dislike).

Harvard law professor Alan Dershowitz (a colleague of Van Alstyne on the ACLU national board) personally loathes guns, and urges that the Second Amendment be repealed. But he chides:

Foolish liberals who are trying to read the Second Amendment out of the Constitution by claiming it’s not an individual right or that it’s too much of a safety hazard They’re courting disaster by encouraging others to use the same means to eliminate portions of the Constitution they don’t like.

2. PURPOSE OF THE SECOND AMENDMENT

Opponents of the individual right view tend to see the Amendment’s purpose as allowing the armed people to overthrow a tyrannical government. While that is not wholly wrong, it makes the tail wag the dog. As documented in my article “The Second Amendment and the Ideology of Self-Protection” 9 *Constitutional Commentary* 87 (1992), the Amendment can only be understood in light of the Founders’ attitude toward self-defense. Following Locke, Montesquieu and Blackstone, the Founders deemed self-defense the cardinal natural right and saw it as encompassing the concomitantly

inalienable right of possessing personal arms for defense of self, home and family.

The Founders were entirely unconscious of the distinction we tend to make between crime in general and the crimes committed by governments. The Founders' reading of history, and their own experience with the searches carried out by British soldiers in the colonies before the Revolution, had acquainted them with the whole spectrum of political crime. That spectrum runs from assassination, rape, and robbery perpetrated against political dissenters all the way up to genocide. The Amendment was intended to allow individuals to defend against the "wicked Magistrate" and his "crew of Lewd Villains" (quoting Algernon Sidney), and the Amendment assures that the whole citizenry may defend itself collectively against whole armies of villains.

In the ultimate extreme, self-defense includes overthrowing tyrants. But the Founders believed that the existence of an armed populace will generally avert the necessity of actual resistance or revolution, by deterring government and rulers from their inherent tendency to tyrannize and oppress.

Finally, the Founders believed (as Professor Shalhope puts it) "that the perpetuation of a republican spirit and character in [a free] society depended upon the freeman's possession of arms as well as his ability and willingness to defend both himself and his society."

3. ANTI-SECOND AMENDMENT LAW REVIEW ARTICLES

Standing head and shoulders above all other challenges to the standard model are two articles by Indiana University law professor David Williams, "Civic Republicanism and the Citizen Militia: The Terrifying Second Amendment", 101 *Yale L.J.* 551 (1991) and "The Militia Movement and Second Amendment Revolution: Conjuring with the People," 81 *Cornell L. Rev.* 879 (1996). Insofar as the standard model relies on the ideology of civic republicanism (see Shalhope, below), Williams seeks to turn the republicanism upside down; he argues that the Amendment only guaranteed an armed citizenry in earlier eras

when Americans were universally armed: Thus, while the Amendment is an individual right it is inapplicable to present-day America in which only one half of households are armed.

According to Williams, the Amendment's purpose was to insure that all segments of the populace would be equal in power to each other. Cryptically asserting that John Locke's influence on the Founders has been exaggerated, Williams summarily dismisses the additional and alternative ideology (set out in section 2 above) that the Founders deemed the right to arms integral to the cardinal right of self-defense. Williams fails to address the fact that the inalienable natural right to possess arms for self-defense was championed by Montesquieu and Blackstone—the two theorists most widely read in 18th Century America.

More typical of attacks on the standard model view are Dennis Henigan, "Arms, Anarchy and the Second Amendment", 26 *Valparaiso U. L. Rev.* 107 (1991) and Keith Ehrman & Dennis Henigan, "The Second Amendment in the 20th Century: Have You Seen Your Militia Lately", 15 *U. Dayton L. Rev.* 5 (1989). Dennis Henigan is Director of the Legal Action Project at the Center to Prevent Handgun Violence in Washington, D.C. (The research arm of Handgun Control, Inc.) Henigan sees the standard model (individual right) theory of the Amendment as based on assuring that citizens will have arms in order to overthrow the federal government. From this limited and distorted vision (see section 2 above) of what the standard model position entails, Henigan argues that it is absurd to suggest the U.S., or any government would actually write such a right into its Bill of Rights.

Yet Henigan's own theory of the Amendment is just as insurrectionary. He argues that the Amendment's purpose was to assure that the states would always have the power to resist an oppressive federal government.

Other attacks on the individual right position are similar, and often derivative of Henigan's. They include: Richard M. Aborn, "The Battle Over the Brady Bill and the Future of Gun Control Advocacy" 22 *Fordham Urban L. J.* (1995) (by then-president

of Handgun Control, Inc.); Student Comment: "Ending the Other Arms Race: An Argument for a Ban on Assault Weapons", 10 *Yale L. & Policy Rev.* 488 (1992); Sam Fields, "Guns, Crime and the Negligent Gun Owner", 10 *N. Ky. L. Rev.* 141 (1982) (by non-lawyer lobbyist for the National Coalition to Ban Handguns); Warren Spannaus, State Firearms Regulation and the Second Amendment, 6 *Hamline L. Rev.* 383 (1983) (by anti-gun politician).

Four other articles are worthy of special note: Carl Bogus, "Race, Riots and Guns", 66 *U.S.C.L. Rev.* 1365 (1993). The author was at the time a member of the board of the Center to Prevent Handgun Violence. It is not clear that this article really qualifies as a treatment of the Second Amendment. It consists merely in a multiplicity of conclusory denials that the Amendment protects individual gun ownership, intermixed with an argument that the Amendment's real purpose was to guarantee the ability of white slaveholders to keep control over their slaves. Even the slave-control motive is true, Bogus does not explain why and how that purpose contradicts the fact that the Amendment is a right of individuals.

In Donald Beschle's "Reconsidering the Second Amendment: Constitutional Protection for a Right of Security", 9 *Hamline L. Rev.* 69 (1986), the author, a law professor, concedes the Amendment does guarantee a right of personal security, but argues that that can constitutionally be implemented by banning and confiscating all guns.

A student Note, "The Second Amendment: A Study of Recent Judicial Trends", 25 *Richm. L. Rev.* 501 (1991), suggests that, whatever the actual intent of the Amendment, the lower federal courts have refused to enforce it to invalidate gun control laws.

One of the most vitriolic articles ever published on the Second Amendment is Andrew D. Herz's "Gun Crazy: Constitutional False Consciousness and Dereliction of Dialogic Responsibilities, 75 *Boston U. L. Rev.* 57 (1995). This article by a lawyer who has founded his own anti-gun group focuses on lower federal court decisions; on this and many other points, the

article is heavily derivative of Henigan. The article's only significant addition to the debate are its scurrilous attacks on the character and motives of Professors Amar, Levinson and Van Alstyne, etc., claiming they are minions of the gun lobby. (For the falsity of this, see section 1 above.) Herz offers crucial assertions without footnotes or with misleading ones. For an exhaustive refutation see "Under Fire: The New Consensus on the Second Amendment," by Boston University law professor Randy E. Barnett and me in *Emory L. J.*, 1997.

4. HISTORICAL ARTICLES

The literature is broadly divisible into historical versus philosophical versus legal treatments (though many articles reach all three categories).

Regarding pre-nineteenth century history, the definitive treatment is *To Keep And Bear Arms: The Origins Of An Anglo-American Right* (Harvard U. Press, 1994) by Prof. Joyce Lee Malcolm, an historian whose specialty is 17th-18th Century English and American history. The research for this work was supported not by the gun lobby, but by the American Bar Foundation, the National Endowment for the Humanities and Harvard Law School.

Malcolm's research "demolishes the notion that the framers envisioned the right to keep arms only in the context of organized militia bodies," observed a review by Vanderbilt University legal historian James E. Ely, Jr., *52 William. & Mary Q.* (3rd Series) 212 (1995). Ely, by the way, has never owned a firearm and has no association with the gun lobby

English scholars agree with Ely's assessment. See, for example, political scientist David Wootton's review, "Disarming the English" in the *London Times Review of Books*, July 21, 1994; and historian F. Paul Smoler's review in the August 7, 1994 *London Observer*.

Enthusiastic American reviews of Malcolm's book include: Robert J. Cottrol and Raymond T. Diamond, "'The Fifth Auxiliary Right'", 104 *Yale L. J.* 995 (1994); David B. Kopel,

“It Isn’t About Duck Hunting: The British Origins of the Right to Arms”, 93 *Mich. L. Rev.* 1333 (1995); Jeremy Rabkin [Cornell U. professor of political science], “Constitutional Firepower: New Light on the Meaning of the Second Amendment,” 86 *J. Crim. L. & Criminol.* 231 (1995); and T. Markus Funk, “Is the True Meaning of the Second Amendment Really Such A Riddle?” 39 *Howard L. J.* 411 (1995). See also the review in the *Washington Times*, May 8, 1994 by American historian Richard Maxwell Brown, whose disdain for guns and the gun culture is strongly expressed in his book *No Duty To Retreat: Violence And Values In American History And Society* (Oxford, Oxford U. Press, 1991).

5. PHILOSOPHICAL ARTICLES

Malcolm focuses on pre-nineteenth century English and American history and common law with only cursory references to the philosophical background or to developments after the eighteenth century. For the philosophical background see two works by the intellectual historian Robert Shalhope, “The Armed Citizen in the Early Republic”, 49 *Law & Contemp. Probs.* 125 (1986) and “The Ideological Origins of the Second Amendment”, 69 *J. Am. Hist.* 599 (1981). His concern is primarily with the philosophy of “civic republicanism” and the Florentine-Atlantic schools of thought.

A broader treatment that includes ancient Roman and Greek philosophy, and emphasizes the ideology of self-defense no less than “civic republicanism”, is “*That Every Man Be Armed*”: *The Evolution of a Constitutional Right* (U. N.M. Press, 1984, reprinted by Independent Institute, Oakland, Calif.) by the philosophy professor turned lawyer Stephen Halbrook. A further virtue of this book, and his subsequent book, *A Right To Bear Arms: State And Federal Bill Of Rights And Constitutional Guarantees* (Greenwood, 1989) is extensive coverage of relevant legal and historical events since the eighteenth century.

Other treatments of philosophical aspects are Elaine Scarry [Harvard U. professor of English], “War and the Social

Contract: The Right to Bear Arms”, 139 *U. Pa. L. Rev.* 1257 (1991) and James Gray Pope [Rutgers U. professor of law], “Republican Moments: The Role of Direct Popular Power in the American Constitutional Order,” 139 *U. Pa. L. Rev.* 287 (1991).

The most comprehensive law review treatment is my “Handgun Prohibition and the Original Meaning of the Second Amendment”, 82 *Mich. L. Rev.* 203 (1983). It should be supplemented by reading my “The Second Amendment and the Ideology of Self-Protection” 9 *Constitutional Commentary* 87 (1992) (discussed in section 2 above) and my debate with Prof. Halbrook over what kinds of gun controls the Amendment protects: Halbrook, “What the Framers Intended: A Linguistic Interpretation of the Second Amendment”, 49 *Law & Contemp. Probs.* 153 (1986) versus Kates, “The Second Amendment: A Dialogue”, 49 *Law & Contemp. Probs.* 143 (1986). Halbrook and I agree that the Amendment guarantees an individual right to keep ordinary small arms, and that the right does not extend to serious criminals; but we disagree as to registration and licensing of firearms and as to the extent to which the carrying of arms can be regulated (though not totally prohibited).

Professor Nelson Lund dismisses the concepts championed by both of us as being too narrowly historical. Nelson Lund, “The Past and Future of the Individual’s Right to Arms,” 31 *Georgia Law Review* 1 (1997).

Lund’s is one of several very recent articles which analyze the relevant evidence, and Van Alstyne’s, Amar’s etc., commentary on the Amendment more from the perspective of current modalities of constitutional interpretation than in purely historical terms. All these very recent analyses reach the same general standard model conclusions. As University of Texas Law Professor Scot Powe puts it, “Like all other constitutional law scholars who have taken the time to analyze the Second Amendment, I join them in reluctantly singing the Monkees’ refrain: ‘I’m a believer’” L.A. Scot Powe, Jr., “Guns, Words and Interpretation,” 38 *Wm. & M. L. Rev.* (1997). A First Amendment scholar, Powe rigorously applies standards from the First Amendment area to the Second.

Two articles to the same effect from the liberal, African American constitutional scholar Nicholas J. Johnson [Fordham U. professor of law], are "Plenary Power and Constitutional Outcasts: Federal Power, Critical Race Theory and the Second, Ninth and Tenth Amendments," 57 *Ohio St. L. J.* 1556 (1996) and "Shots Across No Man's Land: A Response to Handgun Control, Inc.'s Richard Aborn," 22 *Fordham Urban L. J.* 441 (1995). See also Thomas McAfee & Michael J. Quinlan "Bringing Forward The Right to Keep and Bear Arms: Do Text, History or Precedent Stand in the Way?", 75 *U. N.C. L. Rev.* (forthcoming, 1997); David Vandercoy [Valpariso U. professor of law], "The History of the Second Amendment", 28 *Valparaiso L. Rev.* 1006 (1994).

6. SPECIAL TOPICS

Several specialized works deserve discussion:

Inge Anna Larish, "Why Annie Can't Get a Gun: A Feminist Appraisal of the Second Amendment", 1996 *U. Ill. Law F.* 467 concludes that it is desirable for women to have the option to choose to own a firearm for protection, a choice which is guaranteed them by the Second Amendment.

Brannon Denning, "Can the Simple Cite Be Trusted: Lower Court Interpretations of *United States v. Miller* and the Second Amendment," 26 *Cumberland L. Rev.* 961 (1996). Denning argues that, though many lower federal court opinions approve the states' right position, those opinions are based on a misunderstanding of the Supreme Court's ruling in *United States v. Miller*.

Stephen P. Halbrook, "Congress Interprets the Second Amendment: Declarations by A Co-Equal Branch on the Individual Right to Keep and Bear Arms," 62 *Tenn. U. L. Rev.* 597 (1995) cites three instances of Congress officially recognizing the Second Amendment as an individual constitutional right. As a co-equal branch of government, Congress' pronouncements on the subject are entitled to great weight.

Glenn H. Reynolds & Don B. Kates, "The Second Amendment and States' Rights: A Thought Experiment", 36 *Wm. & Mary L. Rev.* 1737 (1995) takes the states' right theory of the Amendment seriously—something the theory's proponents have never done. Based on the proponents' claim that the Amendment was intended to give the state militias military parity with the U.S. military, it follows that the Amendment: repeals the provisions of the original Constitution barring the states from having warships, raising troops in time of peace or issuing letters or marque and reprisal; entitles the state to manufacture atomic weapons, notwithstanding any contrary federal law; and empowers state to authorize their citizens (i.e., its "unorganized militia") to possess fully automatic weapons or any other kind of weapon, notwithstanding any contrary federal law. (Note that the individual right position does not entail a citizen right to possess anything beyond small arms, for the individual right position sees the Amendment's central purpose as allowing for individual self-defense and not as expressing hostility toward the military-militia provisions of the original Constitution).

For another examination of the states' rights view, see Gregory Lee Shelton, "In Search of the Lost Amendment: Challenging Federal Firearms Regulation Through Utilization of the State's Right Interpretation of the Second Amendment," 1995 *Florida State U. L. Rev.*

T. Markus Funk, "Gun Control and Economic Discrimination: The Melting-Point Case-in-Point", 85 *J. Crim. & Criminol.* 764 (1995) addresses "Saturday Night Special" laws, and concludes that they are criminologically useless (criminals do not desire cheap guns and have the money to buy better; only the law abiding poor will be disarmed by the SNS approach) and that such statutes violate the Fourteenth Amendment guarantee of equal protection of the law as well as the Second Amendment.

One of Funk's points is that, historically, SNS laws have covertly aimed at disarming blacks, a point which two black legal historians have addressed about gun control in general.

Robert J. Cottrol and Raymond T. Diamond, "The Second Amendment: Toward an Afro-Americanist Reconsideration", 80 *Georgetown L.J.* 309 (1990) and "'Never Intended to be Applied to the White Population': Firearms Regulation and Racial Disparity, The Redeemed South's Legacy to a National Jurisprudence?", 70 *Chicago-Kent L. Rev.* 1307 (1995).

Prof. Cottrol has also written the entry on the Second Amendment in the *Oxford Companion To The United States Supreme Court* (Oxford U. Press, 1992) and edited a three volume documentary history of the Amendment: Robert J. Cottrol, *Gun Control And The Constitution* (Garland, 1993).

7. OTHER ARTICLES

Besides the articles and books discussed above, analysis of the Second Amendment may be found, among other places, in:

McAfee and Quinlan, "Bringing Forward the Right to Keep and Bear Arms: Do Text, History or Precedent Stand in the Way?" 75 *N.C.L. Rev.* (1997); David B. Kopel and Christopher C. Little, "Communitarians, Neorepublicans, and Guns: Assessing the Case for Firearms Prohibition," 56 *Maryland L. Rev.* 101(1997); Scott Bursor, "Toward a Functional Framework for Interpreting the Second Amendment," 74 *Texas Law Review* 1125 (1996); Kevin D. Szepanski, "Searching for the Plain Meaning of the Second Amendment," 44 *Buff. L. Rev.* 197 (1996); Anthony Dennis, "Clearing the Smoke from the Right to Bear Arms and the Second Amendment", 29 *Akron Law Review* 57 (1995); Quinlan, "Is There a Neutral Justification for Refusing to Implement the Second Amendment or Is the Supreme Court Just 'Gun Shy'?" 22 *Capital U. L. Rev.* 641 (1993); Martire, "In Defense of the Second Amendment: Constitutional and Historical Perspectives," 21 *Lincoln L. Rev.* 23 (1993); Stephen P. Halbrook, "The Right of the People or the Power of the State: Bearing Arms, Arming Militaries, and the Second Amendment," 26 *Val. U. L. Rev.* 131 (1991); Stephen Halbrook, "Encroachments of the Crown on the Liberty of the

Subject: Pre-Revolutionary Origins of the Second Amendment,” 15 *Dayton L. Rev.* 91 (1989); Leonard Levy, *Original Intent and the Framers' Constitution* (1988); David Hardy, “The Second Amendment and the Historiography of the Bill of Rights,” 4 *J.L. & Pol’y* 1 (1987); Nelson Lund, “The Second Amendment, Political Liberty and the Right to Self-Preservation,” 39 *Ala. L. Rev.* 103 (1987); *Encyclopedia of the American Constitution*, vol. 4 (Karst & Levi eds., 1986); David Hardy, “Armed Citizens, Citizen Armies: Toward a Jurisprudence of the Second Amendment,” 9 *Harv. J.L. & Pub. Pol’y* 559 (1986).

The above articles all argue for the individual rights position. The following articles argue to the contrary: Michael A. Bellesîles, “The Origins of Gun Culture in the United States,” 83 *Journal of American History* 425 (1996); Anastaplo, “Amendments to the Constitution of the United States: A Commentary,” 23 *Loyola-Chicago L.J.* 631 (1992).

THE RODNEY KING SYNDROME

Vance McLaughlin, Ph.D. & Steve Smith, M.S.

When police officers are unable to control suspects by normal means, the officers may become frustrated, and are at risk of using inappropriately severe levels of force, argue the authors of this article. Vance McLaughlin is Director of Training with the Savannah Police Department. Steve Smith is Commander of the Savannah Counter Narcotics Team.

INTRODUCTION

A delicate balance exists between the rights of citizens and the needs of the state in a modern democracy. The United States has a number of federal, state, and local law enforcement agencies which all have the dual role of protecting the rights of citizens and maintaining order. Law enforcement officers of these agencies are the only ones who have a right to use coercive force in other than self-defense, defense of others, and citizen's arrest situations. Officers may "move forward" toward physical resistance, which is an awesome and unique power.

Police officers, at the local level, deal with a variety of situations, most of which are service calls. Yet the threat of danger to police officers is always present. The specific situation may be "non-violent", but the individuals involved may be potentially violent based on their abuse of alcohol/drugs, their lack of respect for the law, or their enmity towards police officers. In addition, class values often come into play. Often the precipitating incident between the police officer and subject involves a clash between class values. Miller (1958) has identified lower class values as emphasizing toughness, trouble, fate, excitement, and smartness. Other lower class behavior includes being confrontational, and being verbally loud. Lower class behavior has spawned a society where might makes right. Middle class values stress manners; talking in moderate tones;

and avoiding confrontation. Values that function well in the lower class milieu may cause problems when the two classes clash. If race becomes an additional element in a scenario, the situation may become more volatile. The individual police officer brings his own predispositions, respect for the law, and the departmental policies under which he operates to every situation he encounters. During his usually short training period in recruit school, an emphasis is placed on those routine tasks he will face most often and on marksmanship with the handgun. The officer's "world-view" will have a great impact on how he actually handles incidents.

There is a distinct category of police use of force which is purposeful but does not produce the results expected. We have named this category the Rodney King Syndrome. Three different scenarios will be presented, each using two actual incidents for illustration. First, a traffic stop will be examined using the Rodney King and the Joseph Williams incidents. Second, a scenario with the police being summoned by others to help with a hostile subject, using the Eleanor Bumpurs and Eulia Love incidents. Third, incidents which include the taking of hostages, using two California situations, the Henry's Pub/Durant Hotel and the Sacramento "Good Guys" incidents. After the six incidents are presented, the Rodney King Syndrome will be discussed.

Each of the six incidents have similar patterns of development, in which a police officer became frustrated with the way the incident was "not being resolved." The purpose of this initial presentation of events, relying at times on direct quotes from other authors, is to provide the facts of the six incidents.

TRAFFIC STOPS

American police perform a large number of traffic stops every year. The initial reason for the stop is to charge the driver with a traffic violation. In some cases, the police-citizen contact becomes violent.

Rodney King

According to McLaughlin (1992):

On March 3, 1991, Rodney King, a black male, was driving his car in Los Angeles. Los Angeles police officers pulled the car over, had a confrontation with Mr. King, and arrested him on a number of charges. Mr. King was severely lacerated and bruised during the confrontation. This incident may have been reported as a routine traffic arrest except for one added variable. It was being filmed by an uninvolved citizen who had just purchased a videocamera.

The citizen did not start filming until some minutes had passed, so there is no photographic record of what preceded the physical altercation. On the portion of the videotape, that was shown by the national media, the arrest incident showed King being surrounded by a group of white police officers, who struck him fifty-six times with hands, feet, side handle batons, and a Taser electrical weapon. King was not physically threatening the officers during the time that the film was taken.

According to Chief of Police Daryl Gates, this incident was an aberration and did not reflect the conduct of the 8,300 officers who work for him. Even accepting this response, the images of this videotape, being shown every night on national television, shocked most Americans.

President Bush said, “It was sickening to see the beating that was rendered, and there’s no way—there’s no way, in my view—to explain that away.” [Citations omitted]

The Rodney King Incident was much more complicated than was presented to the American people. The facts of the incident were filtered through the national media’s “political correctness” lens and presented a scenario which put the police in the worst

light possible. Rodney King was driving a car at a high rate of speed through residential districts. The police pursuit consisted of a number of vehicles with their lights flashing and sirens blaring. Rodney King refused to pull his car over for a period of time and when he did, he became belligerent. There were two other black males in the car, who surrendered to the police, and were arrested without incident. Rodney King was large and strong and threw an officer off of him and was unaffected by the use of a Taser, a device designed to bring unruly persons under control by delivering an electric shock. He never complied with police orders to stop moving and put his hands behind him to be handcuffed. The police did what they were taught in training, but it did not work. They continued to strike Rodney King until he could be handcuffed.

The Rodney King Incident became widely known primarily because of the showing of part of the videotape on nationally broadcast news programs. Other incidents have occurred that have many of the same elements as the King Incident.

Joseph Williams Incident

Joseph Williams was a black motorist who was shot by Savannah Police on September 9, 1992. An officer in a marked patrol unit saw a vehicle with a bogus license plate; the license plate said "Buckle Up For Jesus." The officer tried to get the driver to pull the car over, finally using lights and siren to try to make the stop. The car sped away at high speeds and a pursuit began. Another marked vehicle joined the pursuit for a number of miles.

The suspect car pulled over and the two marked units tried to block the vehicle. An officer got out of his car with a shotgun, and the suspect spun his car toward that officer, hitting the patrol car and knocking the officer down. The suspect then sped forward to the other car.

The fallen officer got up and thought the suspect was backing towards him. The officer fired one shotgun blast through the rear window. The suspect then drove off.

The officer who had stayed in his car, pursued Williams. The suspect finally pulled into the driveway of a residence. He got out of his car with a knife in one hand and an unknown object in the other. The pursuing officer got out of his car and retreated to the back of the vehicle as the subject ran by, throwing the unknown object at the officer.

More officers arrived and they found Joseph Williams by a fence in the backyard of the residence. Joseph Williams, who was six feet tall and weighed 210 pounds, brandished the knife, and lunged at the officer closest to him.

As he was coming at the officer, he yelled, "Kill me, kill me." The officer fired once with his .38 caliber revolver, hitting Williams, but with no apparent effect.

The officer fired again, and Mr. Williams turned to run in another direction. Another officer tackled him and he was handcuffed. The Williams incident is an example of "suicide-by-cop", in which a subject actually wants a police officer to take his life (Geberth 1993).

In both of these traffic stops, the subjects were violating the motor vehicle code and officers tried to get them to pull over. The officers pursued the subjects and neither of them would submit to a lawful arrest.

DEALING WITH HOSTILE SUBJECTS

The police frequently deal with people who are hostile. In the following two incidents involving Eleanor Bumpurs and Eulia Love, police were summoned by others who were fearful of the situation.

Eleanor Bumpurs Incident

The Eleanor Bumpurs (some authors spelled the last name Bumphurs) incident caused an uproar among some citizens because the media reported that an elderly black woman, who was immensely overweight, was shotgunned to death by police in her own apartment because she refused to be evicted.

After the media fanfare, an in-depth investigation of the incident took place and the following explanation was printed in Volume 1 of *Report to the Governor* presented by the New York State Commission on Criminal Justice and the Use of Force in May 1987.

A sixty-seven year old woman living in public housing in New York City failed to pay her July 1984 rent and utility bill of \$96.85. Following customary procedures, Housing Authority representatives demanded payment, served requisite notices preliminary to eviction proceedings, and, in phone calls and a visit to the apartment, learned that Eleanor Bumpurs had not paid the rent because her stove, the hallway light, and a pipe in her bathroom needed repair. Between July and October efforts to resolve the matter were unsuccessful.

Denying Housing representatives entry on each occasion they visited, Mrs. Bumpurs told them that “people had come through the windows, the walls, and the floor,...ripped her off... cleaned her out,” that her apartment needed repair, that Reagan was at fault, that she was paying rent to a court, that the bathroom tub was loaded with feces, and, at one point greeted the Housing representatives with a large kitchen knife, which she pointed at one man and said “I’m going to get him.” Her two daughters were unresponsive to efforts by the Housing Authority to enlist their aid to avert Mrs. Bumpurs’ eviction, as was, the Department of Social Services.

On October 25, 1984, a Department of Social Services psychiatrist went to the apartment to examine Mrs. Bumpurs, who greeted him with a knife in her hand and told him that she was harassed by people who wanted to “use the apartment as a warehouse”, that her “children had been killed by Castro and Reagan, who also lived in the building” that someone “messed in her bathtub” and that she “had not used [the knife]

recently.” Concluding that Mrs. Bumpurs was psychotic, hallucinatory, delusional, and could not manage her own affairs or distinguish reality from nonreality, the psychiatrist nonetheless concluded that he could not require her involuntary commitment. Thus, Housing Authority decided to evict Mrs. Bumpurs and have Social Services present to hospitalize her.

At 9:00 A.M., on October 29, 1984, Housing and Social Services personnel, Housing police, and a City marshal met at the project. Learning then that Mrs. Bumpurs was emotionally disturbed, extremely large, “always carried a knife” and had a “history of lye throwing”, the Housing police called for backup and an ambulance. As they reached the front door of Mrs. Bumpurs’ apartment they smelled what they thought was lye and identified and heard Mrs. Bumpurs say “Come on in motherfuckers, I have some shit for your ass.”

Unable to persuade Mrs. Bumpurs to let them into the apartment, the Housing police sought help from New York City Police Department’s Emergency Service Unit (ESU), specially trained and equipped to deal with emotionally disturbed persons. The two ESU officers who responded also failed to gain entry and told Mrs. Bumpurs to remain calm while they removed the lock. Through the hole in the door they saw a hazy cloud and smelled a strong odor they thought was lye or another caustic liquid, and realized that Mrs. Bumpurs was standing behind the door with a long knife. Four more ESU officers and a supervisor with additional equipment who responded to a call for back-up told Mrs. Bumpurs that they wanted to make sure that nobody got hurt, evoking her response that “if somebody comes through the door we’ll see who gets hurt.” The ESU supervisor decided that they would have to take Mrs. Bumpurs into custody to prevent her from harming herself or others and, when she moved from the front door to a stool at

the rear of the living room still armed with the knife, the ESU supervisor decided to go in.

Each officer who entered the apartment had a specific and predetermined assignment. The first officer had a Y bar, an instrument used to immobilize an emotionally disturbed person safely and without harm by pinning the person between prongs. However, as that officer proceeded across the living room Mrs. Bumpurs rose from the stool, knife in hand, and approached the officer slashing at him with the knife. Unable to pin Mrs. Bumpurs to the wall with the Y bar, a second officer, armed with a plastic shield, sought unsuccessfully to use the plastic shield to knock the knife from Mrs. Bumpurs' hand. She turned the knife on the officer with the plastic shield, slashing at him as he fell to his knees. The first officer tried to save the fallen officer from being slashed by pinning Mrs. Bumpurs to the wall with the Y bar but he slipped and started to fall forward, Mrs. Bumpurs slashing at him.

A third officer armed with a shotgun, whose predetermined primary responsibility was to protect the other officers, shouted "drop the knife" three or four times. When Mrs. Bumpurs continued slashing at the other officers, the officer discharged the shotgun twice, killing Mrs. Bumpurs. (page 47-50)

Eulia Love

A second incident, that had striking similarities to the Eleanor Bumpurs case, involved Eulia Love. According to Gates (1992):

Eulia Mae Love was a thirty-nine-year-old widow with three daughters, two of whom, aged twelve and fifteen, lived with her in a three-bedroom house on South Orchard Avenue, well-tended street in south central L.A. Her husband had died of sickle-cell anemia

six months before and she was paying the bills and the mortgage with a monthly Social Security check of \$680.

On the morning of January 3, John Ramirez from the Southern California Gas Company showed up at Mrs. Love's door. She was six months and \$69 overdue on her bill. Ramirez told her he would have to receive payment of at least \$22, or he would disconnect the service. Immediately, Mrs. Love began yelling profanities at him, Ramirez said. He turned and walked to the gas meter, which was located around to the side of the house, stooped down, and reached for the valve.

Mrs. Love came up behind him with a large, long-handled shovel. When he looked up, she was standing above him with the metal part of the shovel raised above her head. Telling him she wasn't going to allow him to shut off her gas, she screamed several expletives and brought the shovel down. It struck Ramirez on his left forearm, causing a contusion.

Mrs. Love raised the shovel, "frothing at the mouth," according to Ramirez, as she prepared to hit him again.

He fled. When he got back to his office, he reported to his boss. The LAPD was called and Ramirez filed an assault-with-a-deadly-weapon report. Meanwhile, Mrs. Love took her Social Security check around to Boy's Market and used it to buy a money order for \$22.09.

That afternoon, the gas company dispatched two more men. They arrived at South Orchard Avenue a little after 4:00 P.M. in two separate vehicles. One, a gas company truck, was driven by Robert Aubry, who stopped to call the police dispatcher from a pay phone and asked for an officer to accompany them. Parked several doors down the street, he waited. Mrs. Love, spotting the truck, came out and said to Aubry: "Gas man, are you here to turn my gas off?" Before he could reply, she said, "Those motherfuckers said that I owe

them eighty dollars. I'm not paying them any motherfucking eighty dollars."

"I don't know anything about your gas bill," Aubry replied.

"I'm just here taking a break."

Mrs. Love started to walk away, then turned. "You guys can suck on my ass. I'll give them twenty dollars, but I'm not going to give them no motherfucking eighty dollars—they can suck my ass." At which point she disappeared into her house. Three minutes later out she came, clutching an eleven-inch serrated boning knife. Without a word, Mrs. Love began violently slashing branches of a tree in her front lawn. Several fell to the ground.

While this was going on, a call went out from police communications: "Any unit in the vicinity, 415 business dispute, meet the gas man, 11926 South Orchard Avenue, Code 2." Driving west on 120th Street, Officer O'Callaghan reached for his radio transmitter and acknowledged the call. It was 4:15 when the patrol car rolled up beside the Chevy driven by the second gas company man, W.L. Jones.

Pointing across the street to Eulia Love's house, Jones said, "We want the lady to either pay her gas bill or we will cut it off." The officers turned and saw Mrs. Love pacing back and forth with the knife.

"One of our men was out here earlier and she hit him with a shovel when he tried to shut off the gas." Jones added, "A police report was made. Here it is."

While the officers read the report, Mrs. Love yelled, "You're not going to come down to my house and shut off my gas, motherfucking son of a bitch."

Hopson said, "What will you need from us?"

We would like you [to] stand by while we either collect the money or shut off the gas," Jones replied.

"Wait here."

Officer Hopson drove the car up to the house. Fifteen feet away stood Mrs. Love, five feet four, 175 pounds, flailing a knife. They observed froth coming out of her mouth. As they got out, Hopson, who is black, and O'Callaghan, who is white, both drew their service revolvers.

"You're not coming up on my lawn motherfuckers," Mrs. Love screamed. "You're not going to shut off my gas."

As she continued to yell obscenities, the officers repeatedly shouted, "Police officers. Drop the knife, lady. We're not here to harm you."

Hopson and O'Callaghan pleaded with her for five minutes, but Mrs. Love wouldn't drop the knife. She began walking toward her house which was set back along a walk. The officers followed, both with their guns pointing at the ground. They kept repeating, "We won't harm you. Drop the knife."

She turned and began walking backward yelling, "Fuck you! Ain't no motherfucker going to shut off my gas."

Then she stood still. Hopson stopped ten feet from her and raised his gun in both hands, arms outstretched, in a semi-crouched position. O'Callaghan, nearer, stopped too, baton in his left hand, gun in his right hand, pointed at Love. For several seconds they formed this tableau. Then O'Callaghan, using his baton, struck Mrs. Love on her right hand, forcing her to drop the knife. Before he could scramble for it, Mrs. Love swooped down and grabbed it. Holding the blade in her fingers now, she raised her arm and faced O'Callaghan. He was about six feet from her. Hopson, roughly eight. She reared back to throw the knife.

"Don't do it, lady, don't do it!" Hopson shouted.

Eulia Love threw the knife. And that's when they shot her.

I don't know how close the knife came to hitting O'Callaghan, but it sailed sixty-eight feet. I do know it took less than three seconds for the two officers to empty their weapons.

Eight bullets struck her. When the ambulance arrived moments later, she was pronounced dead.

"It was not a medal of valor shooting," Chuck Higbie concluded.

And all I could say was "Oh, shit." (pp. 192-94)

The five deputy chiefs on the Shooting Review Board voted 4 to 1 that the shooting was in compliance with department policy and the officers had fired in self-defense. The two officers had emptied their guns, a result of "rapid fire syndrome," which is, in fact, the way they had been trained for life threatening encounters occurring at short distances. The district attorney, after doing his own investigation, did not file criminal charges against the officers (Gates, 1992). The Los Angeles Police Commission disputed the police version of the shooting. The police department said that the incident lasted seven minutes, while the findings of the Police Commission estimated the time at two-and-a-half minutes. This incident prompted an investigation by the Police Commission of past shootings by Los Angeles police officers (Hill 1979).

Both the Eleanor Bumpurs and Eulia Love incident were reported initially by the media much like the Rodney King incident. Because of the outcome of these events, the media reports emphasized the tragic outcome, and provided only a selective version of the facts.

HOSTAGE SITUATIONS

Henry's Pub

The first hostage incident we will examine took place in Berkeley, California and began before midnight on September 26, 1990. A heavily-armed Iranian male, Mehrdad Dashti, entered Henry's Pub, located within the Durant Hotel. Dashti

was armed with a Smith & Wesson .44 magnum revolver, a Ruger 9mm handgun, and a Cobray .380 caliber weapon that had been illegally converted to a machine gun. He opened fire on patrons in the bar, hitting some while others escaped. In the first five minutes, seven people had been shot and thirty-seven had been taken hostage.

A patrol officer saw people running from the hotel and recognized the sound of gunfire. He radioed for assistance. Patrol officers arrived and the Berkeley Police Department Barricaded Subject Hostage Negotiation Team (BSHNT) was put in place to contain the situation. Patrol officers aided victims and questioned those that had escaped.

Ten minutes after the incident began, a male and female hostage came out. Initially, BSHNT members thought it was the hostage taker and a female hostage. A sergeant rushed to save the woman when Dashti fired from a window, creasing the sergeant's forehead. Other officers gave covering fire and the two hostages and sergeant were taken to safety.

The situation stabilized until just after 3:00 A.M. The police used suppressed fire weapons to put out some street lights. Dashti heard this and fired some fully automatic bursts from his Cobray. Around 3:30 A.M. a female hostage escaped and said that Dashti was watching this event on television and became upset when a news reporter stated that one of the shooting victims had died.

Negotiators tried to get Dashti to come to the phone, but he would not budge from his position. He used an intermediary to talk for him. Dashti demanded a number of things, one of which was \$16 trillion dollars for "mental telepathy" services. At 4:30 A.M., the BSHNT had made their preparations; at 5:15 A.M. a scout team was deployed; and at 6:15 the negotiators advised there was no expectation of a settlement. At 7:23 A.M. the team was given a go signal.

As the police entered, they saw the hostages up against the windows and doorways. Dashti had put himself behind furniture and when the flash-bang grenades went off, fired two shots. Police came in at top speed shouting at the hostages to get down.

Dashti then turned, moving toward a group of hostages with his gun leveled at them. Two members of the BSHNT identified Dashti and put him down with fire from their MP-5 submachine guns (Holland & Cortin 1991).

Good Guys Incident

This incident occurred on April 4, 1991, in Sacramento, California. When the call came in at 13:35, the Sacramento County Sheriff's Department Special Enforcement Detail (SED) was already geared up in anticipation of going on a drug raid. They immediately rushed to the scene. The area had been secured and initial reports were that four armed Asian males had botched a robbery and had taken hostages in a Good Guys electronics store. As the SED team interviewed employees about the floor plan of the store, it was determined that around fifty hostages had been taken.

The SED team felt there was only one entrance to the store that did not have alarms on it. They would have to come in through a fabrics store on the north side of the building. The subjects heard movement by the police and barricaded that entrance from the other side. A pinhole camera was installed by the police, but was of limited use because of the design of the store.

Negotiations went on for over two hours with the department's Critical Incident Negotiating Team. Demands varied from four million dollars, to forty 1,000-year-old ginseng plants, to a military helicopter, to transporting everyone to Asia. A demand that was continuous was for bullet resistant vests. Hostages had been exchanged for bullet resistant vests, and some felt that the exchanges might lead to a negotiated settlement. Another cause for optimism was the generally high rate of success in negotiating with armed robbers.

Hostages had been tied up and been arranged in front of the glass doors in standing and kneeling positions. Eight hours into the incident, the subjects shot a male hostage in the leg and let him drag himself out.

The police attempted to have all the subjects move to the television area of the store by putting the hostage on the news. This did not work.

When an elderly hostage was shot in the leg, a decision was made to move. A tethered female hostage was sent out to receive another vest and a hostage told the police by phone that the subjects were going to start executing hostages.

A police precision marksman was able to line up a head shot as the door swung open to let the female retrieve the vest. In a fraction of a second the door was pulled shut and the bullet hit the doorframe. The SED team hit the door immediately and in the next few seconds flashbangs were thrown and the assault began. The subjects fired at police and at the bound hostages. All four subjects were neutralized.

Eleven hostages were wounded by the subjects, three hostages were killed by the subjects, and three hostages were injured by broken glass. Three of the subjects were killed and one of the subjects was wounded. None of the police officers was shot.

THE RODNEY KING SYNDROME

Rodney King has become what we have termed a “condensed symbol.” Just as “Willie Horton” was emblematic of the indefensible parole of violent offenders that wrought terror on unsuspecting and vulnerable citizens, “Rodney King” has become the symbol for police brutality as an element of order maintenance.

Each of the six incidents discussed involved high levels of police use of force, but the phases through which the incidents evolved can occur in other police–citizen contacts. A key element is frustration of the officers at their inability to resolve these situations. It has been postulated (Dollard, Miller, Doob, Mower & Sears, 1939) that aggression is always the result of frustration. Certainly, as officers are frustrated in their attempts to bring a situation to closure, their efforts will escalate to the use of force. We hope this use of force will be legitimate and

necessary to the situation. There is always the concern that the frustration will produce more force than required.

While empirical evidence is lacking on how stress affects decision-making in real situations, laboratory studies have measured individual decision making under stress. Keinan (1987) found that a key element in decision making—evaluating all alternatives—was impaired when subjects were exposed to uncontrollable stress. Some studies show that stress affects decision making *after* exposure to the stressor, rather than during exposure to the stressor. Two of Schaeffer's (1989) findings were that subjects exposed to stress use shortcutting strategies in decision making and have increased confidence in the decisions that are made.

Groups are affected by decision making under stress differently than individuals. According to Driskell and Salas (1991):

Some researchers have observed an increased tendency for subordinate group members to acquiesce to authority when under stress. For example, Foushee and Helmreich (1988) note that subordinate flight-crew members are more hesitant to question the captain under emergency conditions, sometimes deferring to the extent of not offering valuable task information. One explanation for this phenomena is derived from the organizational literature and holds that organizations respond to stress by a centralization of authority so that control and authority for decision making is concentrated at higher levels of the organizational hierarchy (Hermann 1963; Staw, Sandelands & Dutton 1981).

However, this hypothesis has not been directly tested at the small-group level of analysis. Furthermore, some research suggests a competing explanation: Group member under stress (both high and low status) become more receptive to task information from others (Lanzetta 1955; Torrance 1967). The purpose of this study was to examine the effects of stress on group status and

decision making and to provide a test of those alternative hypotheses. (p.473)

Driskell and Salas found that group leaders and group members became more receptive to information provided by others. In the discussion of the findings, these researchers recognized the limitations of projecting their findings on specific groups.

Law enforcement officers have been called “solitary actors” because they operate alone and with little direct supervision (Skolnick 1966). Officers are rarely taught to operate in groups, except as members of teams serving warrants to potentially violent individuals, a drug strike force, or special weapons and tactics.

The following are seven common elements of the Rodney King Syndrome. All the elements mentioned do not have to exist for this syndrome to be present; there must simply be enough elements to produce high levels of frustration.

1. Spontaneous, precipitating incident. There was no warning that this specific incident was going to happen.

2. Affront to the authority of the police. A chance was given to the perpetrator(s) to surrender to police authority and the offer was rejected.

3. Elongated time phase. At least twenty minutes passed between the time of police involvement and resolution of incident. This stands in contrast to a situation where an officer is physically attacked, immediately responds, and the incident is concluded.

4. Subject is not under control. The subject is still perceived by the officer as a threat.

5. Continued affront to authority, coupled with the frustration of the reasonable expectations of the police (failure

of conventional police tactics and equipment to bring about the expected result of control).

6. Changing and dynamic nature of situation frustrates formulating an effective plan of action (each police action neutralized by subject reaction)

7. Incident resolution includes:

- a. Elements of frustration, excitement, and fear develop in officers
- b. Officers now acting as independent functionaries
- c. Officers refuse to yield until resolution is achieved

Each of the six incidents is included in the chart titled *Police Use of Force-Examples of the "Rodney King Syndrome."* (See pages 70-71.)

This chart illustrates which elements of the Rodney King Syndrome are found in each incident.

DISCUSSION

The chart indicates that while incidents varied in time (from 7 minutes to 7 hours and 30 minutes) and varied in content of incident (stopping an inebriated motorist to quasi-military action against armed terrorists), certain elements existed that lead to increased frustration on the part of the police.

Three specific areas will be discussed in relation to their specific impact on some of these incidents. First, the failure of agencies other than the police lead to some of these situations. Second, frustration on the part of the police is examined. Finally, improved response by the police is suggested.

Failure of Other Agencies

The social service/criminal justice system had interacted with Rodney King, Mehrdad Dashti, and Eleanor Bumphurs in varying degrees before the incidents occurred. Rodney King was a convicted burglar who was out on parole. He had an alcohol

problem, which exacerbated his problems with law enforcement. Eleanor Bumpurs had been contacted by a number of social service agencies that were supposed to work with her. The agencies' failure to aid Mrs. Bumphurs is evident by the demotion of two city employees as a result of her death as stated in the following magazine article. According to *Jet* (1984):

[T]wo supervisors in New York City's welfare agency were demoted recently for not providing the proper social service counseling for the elderly woman.

The supervisors demoted were Marie Franco, the Bronx Borough manager of the General Social Services Division, and Eleanor Walton, the director of the agency's division where Mrs. Bumphurs' case was reviewed. Mrs. Franco failed to obtain emergency rent payment and more psychiatric counseling for Mrs. Bumphurs, according to Human Resources Administrator George Gross.

Ms. Walton did not properly review the case, he said.

N.Y. Mayor Ed Koch said at a news conference that Mrs. Bumphurs died, "not it appears because of brutality but because of something more complex—a chain of mistakes and circumstances that came together in the worst possible way with the worst possible circumstances." (p. 30-31)

Police confronted Eleanor Bumpurs because no other social service agency had been effective in helping her.

Mehrdad Dashti had heard voices that said he owned the state of California. He was known to authorities in Albany, San Francisco, and Berkeley. Motamedi, Taylor, & Wallace (1990) stated:

According to investigators, Dashti used a variety of fake identities, occasionally masqueraded as a police officer and had several run-ins with the law before

yesterday's violent outburst. Alameda County social service officials classified Dashti as a paranoid schizophrenic in April 1988, according to a document found in his apartment. (p. 1)

That the police is the agency of last resort cannot be overstressed. The military can only be used when it is obvious that the duly elected government has a situation beyond its control. Thus, except in rare cases, the police are called in to handle situations that the "experts" cannot handle. If a psychiatrist has a patient that is violent, a social worker has an assaultive client, or a teacher has a homicidal student, the police can be summoned by a phone call. The police have nobody to call, except other law enforcement people, when they are frustrated by a bizarre set of circumstances.

In the incidents discussed involving hostage situations, specially trained SWAT teams still encumbered by civilian rules attempted to deal with highly dangerous situations using military tactics and military weapons.

Frustration

Frustration is the prime cause of Rodney King Syndrome; the police fail in their initial attempts to bring a subject under control using tactics which are usually successful. The officer finds that his physical skills, with or without weapons, and tactical knowledge are not equal to these unusual incidents. The mind-set that develops within a police officer is formed by the police subculture, training, and commercial video representations (television and movies) about the police. A central belief in this mind-set is that the police must take control of all situations.

If we hypothesize three facts, the dilemma becomes clear. First, in all six of these incidents, it would be improper for the police to ignore the situation and not to become involved. Second, the officers all gave a good faith effort to bring the situation to a close without using force. Third, despite these efforts, the subject(s) were either killed or severely injured.

Perhaps, in all of these incidents, the subject's resistance was the main cause of his or her injuries. On the other hand, could the police have done better?

Improving Police Response

The response of any organization to a problem within its purview can always be improved. In the case of the police, they have a monopoly on most legal use of force for other than self-defense reasons. The rest of society is dependent on police to use force prudently, at the lowest reasonable level, to accomplish the legitimate goals of law enforcement.

The first improvement may be simply the realization by the police officer that he may not be able to resolve all situations cleanly and quickly for a number of reasons. First, his training may be inadequate for a specific situation. Second, in some situations, there may be no "proper" response, just a "best" response. Third, he must control himself before he can control others. One officer commented, after reading a rough draft of this article, that the term frustration was synonymous to anger in the six incidents. This is probably true.

The second improvement is, during police training, to present incidents like the ones discussed here. These incidents could also be presented in special training for supervisors.

The third improvement is to make sure that the police have the best training and meet measurable standards based on this training. Equipment that would help bring these situations to a satisfactory conclusion must be readily available to the officer.

CONCLUSION

Each of these incidents mentioned have some common elements. At the moment before the police used the final force that brought the subject under control, many of officers would have been happy—if in the same situation—to have been as successful. But, in retrospect, at the start of the incident, a different type of response may have allowed avoidance of a final, sometimes fatal, confrontation. The heavy use of force

might still have been necessary in some of the above situations, but if even a small percentage of violent confrontations can be handled more humanely, it is a goal for the police to strive for. It is primarily because of the role of police in a democracy and the trust that *must* exist between them and the citizenry, that the citizens need to believe that police have used the best judgement and tactics available.

BIBLIOGRAPHY

- Dollard, J., Dobb, L., Miller, N., Mower, O.H., and Sears, R. *Frustration and Aggression*. New Haven: Yale University, 1939.
- Driskell, J.E. and Salas, E. "Group Decision Making Under Stress". *Journal of Applied Psychology*, 1991, 76(3): 473-78.
- Gates, D.F. *Chief: My Life in the LAPD*. New York: Bantam Books, 1992.
- Geberth, V. "Suicide-By-Cop". *Law and Order*, 1993, 41(7): 105-109.
- Gorney, C. "Berkeley Gunman Slain; Hostages Freed". *Washington Post*, September 28, 1990, A3.
- Gross, J. "6 Are Killed as 8-Hour Siege by Gang Ends in California". *New York Times*, April 6, 1991, A6.
- Hill, G. "Citizens to Review Police Shootings in Los Angeles". *New York Times*, October 22, 1979, A15.
- Hill, G. "Los Angeles Police Criticized in Killing". *New York Times*, October 7, 1979, A24.
- Holland, M. & Curtin, T. "The Henry's Pub/Durant Hotel Hostage Incident". Paper presented at IALEFI, 1991, Mesa, Arizona.
- JET. "FBI Investigates Killing of Lady by N.Y. Police During Eviction Attempt", December 17, 1984, 30-31.
- Keinan, G. "Decision Making Under Stress: Scanning of Alternatives Under Controllable and Uncontrollable Threats", *Journal of Personality and Social Psychology*, 1987, 52(3): 639-644.
- Marlow, J.R. "Case Study: Sacramento 'Good Guys' Incident". *The Tactical Edge*, Fall 1992, 20-25.
- McLaughlin, V. *Police Use of Force: The Savannah Study*. New York: Praeger Press, 1992.
- Miller, W.B. "Lower Class Cultures as a Generating Milieu of Gang Delinquency". *Journal of Social Issues*, 1958 (14): 5-19.
- Motamedia, B., Taylor, M., & Wallace, B. "Gunman Said He Heard Voice of Demons". *San Francisco Chronicle*, September 28, 1990, A1, A16.
- New York State Commission on Criminal Justice and the Use of Force. *Report to the Governor*, Volume 1, May, 1987.
- Paddock, R.C. & Frammolino, R. "Hostages Recall Terror of Siege in Sacramento". *Los Angeles Times*, April 6, 1991, A1, A26.

- Richardson, V. "Gunman Sexually Torments Captives, is Killed". *Washington Times*, September 28, 1990, A1, A11.
- Schaeffer, M.H. "Environmental Stress and Individual Decision-Making: Implications for the Patient". *Patient Education and Counseling*, (13), 1989: 221-235.
- Skolnick, J.H. *Justice Without Trial*. New York: John Wiley & Sons, Inc., 1966.
- Zonana, V.F. "Bizarre Profile Emerges of Slain Gunman". *Los Angeles Times*, September 28, 1990, A3, A30.

**POLICE USE
EXAMPLES OF THE**

	SPONTANEOUS EVENT	AFFRONT TO AUTHORITY	ELONGATED TIME PHASE
RODNEY KING	Driver driving erratically, high speed pursuit through residential neighborhood	Subject did not pull over to lights and siren, instead tried to elude police at high speed	From the time the pursuit began until handcuffed (over twenty minutes)
JOSEPH WILLIAMS	Officer observed a vehicle without a valid license plate; plate was "buckle up for Jesus"; traffic stop became a pursuit	Subject did not pull over to lights and siren, instead tried to elude police at high speed.	From the time pursuit began until handcuffed (approximately seven minutes)
ELEANOR BUMPURS	Housing Police could not complete eviction. ESU was requested.	Subject would not let ESU into her apartment. She would not submit to being taken into custody.	From the time ESU arrived until her death (approximately one hour)
EULIA LOVE	Subject struck gas company man with shovel. Police returned later employee.	Subject yelled profanities at officers. Police pleaded with her for five minutes to drop the knife.	From the time officers arrived until her death (approximately twenty minutes)
HENRY'S PUB	Subject walks into bar and starts shooting.	Negotiated between intermediaries, but subject would not give up.	From police arrival until his death (approximately seven hours and thirty minutes)
GOOD GUYS	Subjects attempt to rob electronics store, but police arrive.	Police negotiators continued to try to resolve situation non-violently.	From police arrival until police assault (approximately eight hours)

**OF FORCE
“RODNEY KING SYNDROME”**

NOT CONTROLLED	CONTINUED AFFRONT	CHANGING NATURE	RESOLUTION OF INCIDENT
Subject was not affected by electrical shock and was physically able to throw off officers who tried to restrain him.	Two other passengers surrender. Subject does not respond to verbal commands, Taser, or batons.	Blue light and siren, pulled over and arrested, grabbed by officers, hit with electricity, struck with batons.	Subject receives a continued physical beating until all resistance was stopped.
Subject vehicle stopped, one officer got out, suspect rammed one police car and then tried to run officer over, the sped off.	Suspect pulled into driveway, walked toward officer, threw something at him, went behind house, brandished knife, advanced yelling, "Kill me, kill me!"	Traffic stop becomes traffic pursuit, tries to run over officer, throws object, and then asks three uniformed officers to take his life.	Subject shot twice by one officer and then tackled by another.
Officers tried a variety of methods of control, including pinning with a Y bar. Subject kept throwing lye on the officers.	Officer presence, hook device, verbal commands attempted.	Specially trained subject control experts confronting an elderly woman; police try to use minimum force, they must avoid lye and get footing.	Subject shot with a shotgun at close range.
Officer struck her hand, forcing her to drop knife.	She picked up knife from the ground and started to throw it at an officer as he shouted "Don't do it!"	Two officers tell her to drop knife, one is able to hit it out of her hand. She picks it up and throws it at them.	Eight shots fired by police at close range, subject dead.
Police could not get a clear shot. Subject terrorizes a number of hostages.	Subject would not give up and forced hostages to sexually assault each other.	Glass too thick to shoot through, too many hostages around subject, and escalating actions and threats.	One dead hostage, a number wounded, subject dead.
Police could not get clear shots. Subjects make demands and build up defensive positions.	Subjects shot hostage in the leg during negotiations.	Negotiations fail, hostages used as screen, and police try alternate entry route but are blocked.	11 hostages wounded by subjects, 3 hostages killed, 3 hostages wounded by glass, 3 subjects dead, one subject wounded.

WHAT THE DOCTOR ORDERS

Jacob Sullum

Jacob Sullum, Senior Editor of Reason magazine, argues that by treating risky behavior like a communicable disease, the public health establishment invites government to meddle in our private lives. While persons familiar with firearms policy issues are familiar with “public health” as a rationale for gun prohibition, the prohibitionist arguments on guns are merely one aspect of a comprehensive “public health” vision of an America in desperate need to be regulated, whether it wants regulation or not. This article is reprinted, with permission, from the January 1996 issue of Reason magazine. Copyright 1995 by the Reason Foundation, 3415 S. Sepulveda Blvd., Suite 400, Los Angeles, CA 90034. Reason magazine’s website is <http://www.reason.org>.

In the introduction to the first major American book on public health, U.S. Army surgeon John S. Billings explained the field’s concerns: “Whatever can cause, or help to cause, discomfort, pain, sickness, death, vice, or crime and whatever has a -tendency to avert, destroy, or diminish such causes are matters of interest to the sanitarian; and the powers of science and the arts, great as they are, are taxed to the uttermost to afford even an approximate solution to the problems with which he is concerned.”

Despite his ambitious mandate and the book’s impressive length (nearly 1,500 pages in two volumes)—*A Treatise on Hygiene and Public Health* had little to say about the issues that occupy today’s public health professionals. There were no sections on smoking, alcoholism, drug abuse, obesity, vehicular accidents, mental illness, suicide, homicide, domestic violence, or unwanted pregnancy. Published in 1879, the book was instead concerned with such things as compiling vital statistics, preventing the spread of disease, abating public nuisances, and

assuring wholesome food, clean drinking water, and sanitary living conditions.

A century later, public health textbooks discuss the control of communicable diseases mainly as history. The field's present and future lie elsewhere. "The entire spectrum of 'social ailments,' such as drug abuse, venereal disease, mental illness, suicide, and accidents, includes problems appropriate to public health activity," explains Jack Smolensky in *Principles of Community Health* (1977). "The greatest potential for improving the health of the American people is to be found in what they do and don't do to and for themselves." Similarly, *Introduction to Public Health* (1978), by Daniel M. Wilner, Rosabelle Price Walkley, and Edward J. O'Neill, notes that the field, which once "had much narrower interests," now "includes the *social and behavioral aspects of life* endangered by contemporary stresses, addictive diseases, and emotional instability."

The extent of the shift can be sensed by perusing a few issues of the American Public Health Association's journal. In 1911, when the journal was first published, typical articles included "Modern Methods of Controlling the Spread of Asiatic Cholera," "Sanitation of Bakeries and Restaurant Kitchens," and "The Need of Exact Accounting for Still-Births." Issues published in 1995 offered "Menthol vs. Nonmenthol Cigarettes: Effects on Smoking Behavior," "Correlates of College Student Binge Drinking," and "Violence by Male Partners Against Women During the Childbearing Year: A Contextual Analysis." The journal also covers strictly medical issues, of course, and even runs articles on traditional public health topics such as vaccination, nutrition, and infant mortality. But the amount of space taken up by studies of social problems and behavioral issues is striking.

In a sense, the change in focus is understandable. After all, Americans are not dying the way they once did. The chapter on infant mortality in *A Treatise on Hygiene and Public Health* reports that during the late 1860s and early 1870s, two-fifths to one-half of children in major American cities died before reaching the age of 5. The major killers included measles, scarlet

fever, smallpox, diphtheria, whooping cough, bronchitis, pneumonia, tuberculosis, and “diarrheal diseases.” Largely because of such afflictions, life expectancy at birth was only 49 in 1900, compared to roughly 75 today, while the annual death rate was 17 per 1,000, compared to about half that today.

Beginning in the 1870s, the discovery that infectious diseases were caused by specific microorganisms made it possible to control them through vaccination, antibiotics, better sanitation, water purification, and elimination of carriers such as rats and mosquitoes. At the same time, improvements in nutrition and living conditions increased resistance to infection. Although it is difficult to separate the effects of public health programs from the effects of rising affluence and changing patterns of work, there’s no question that disease-control efforts have had an important impact on the length and quality of life.

Americans no longer live in terror of smallpox or cholera. Despite occasional outbreaks of infectious diseases such as rabies and tuberculosis, the fear of epidemics that was once an accepted part of life is virtually unknown. The one major exception is AIDS, which is not readily transmitted and remains largely confined to a few high-risk groups. For the most part, Americans die of things you can’t catch: cancer, heart disease, trauma. Accordingly, the public health establishment is focusing on those causes and the factors underlying them. Having vanquished most true epidemics, it has turned its attention to metaphorical “epidemics” such as smoking, obesity, and suicide. Along the way, the public health establishment has become the most influential lobby for ever-increasing government control over Americans’ personal choices.

By the late 1930s, with the importance of infectious diseases declining, public health specialists started taking an interest in chronic conditions. “The public health establishment requires an issue that has salience in the public press, outside of the scientific community, in order to maintain support,” says Barbara Rosenkrantz, professor emeritus of the history of science at Harvard. “Public health only becomes interesting when there are real problems.”

The interest in chronic diseases led to lifestyle-oriented medical research that began in earnest after World War II. The Framingham heart study, a large-scale, long-term project that has helped identify risk factors for heart disease, began in 1948 and produced its first report in the early 1950s. The first influential studies linking cigarette smoking to lung cancer appeared about the same time. Philip Cole, a professor of epidemiology at the University of Alabama, Birmingham, argues that concern about smoking and other causes of non-infectious disease is “very much within the classical tradition of public health, even though it does not speak to the issue of contagion.” He distinguishes this interest, manifested in the work of researchers and the recommendations of physicians, from “a continued effort on the part of government to usurp control of individuals’ lives,” a trend that worries him.

But the concerns of public health practitioners have a way of influencing public policy. Surgeons general of the U.S. Public Health Service have become official nags, urging us to shape up so we can reach the health goals they have set for the nation. The wide domain of public health allows them to champion whatever causes interest them. C. Everett Koop said we should achieve “a smoke-free society” by the year 2000. Antonia Novello condemned liquor and beer advertising that she found distasteful. Joycelyn Elders pontificated about gun control and masturbation. The circumstances of Elders’s departure and the battle over her successor show that both liberals and conservatives take the top public health job quite seriously.

The key event that elevated the surgeon general’s prestige and visibility occurred in 1964, when Luther M. Terry released the report of his Advisory Committee on Smoking and Health. The document, which declared that “cigarette smoking is a health hazard of sufficient importance in the United States to warrant appropriate remedial action,” heralded the decline of the U.S. tobacco industry and the beginning of the contemporary anti-smoking movement. It helped put risky behavior at the top of the public health agenda.

The involvement of physicians in the auto-safety movement of the late 1960s and early '70s also helped legitimize the expansion of public health. "The automobile is the etiological agent in an epidemic accounting for some 50,000 deaths and 4 million injuries each year," wrote Seymour Charles of Physicians for Automotive Safety and John States of the American Association of Automotive Medicine in the July 4, 1966, issue of the *Journal of the American Medical Association*. They cited drunk-driving laws, seat-belt requirements, and other mandated design changes as examples of "preventive medicine." Today, advocates of a public health approach to violence cite the medicalization of traffic accidents as a precedent.

The establishment of Medicare and Medicaid in 1965 reinforced the argument that government should take an interest in the personal habits of its citizens because risky behavior might affect the public treasury. In a 1976 essay commissioned by *Time*, Dr. John H. Knowles, president of the Rockefeller Foundation, reviewed the rise of taxpayer-funded health insurance and declared that "the cost of sloth, gluttony, alcoholic overuse, reckless driving, sexual intemperance, and smoking is now a national, not an individual responsibility." Writing in *Daedalus* the following year, he said, "I believe that the idea of a 'right' to health should be replaced by the idea of an individual moral obligation to preserve one's own health a public duty if you will."

In 1979, the surgeon general released *Healthy People*, a report that broke new ground by setting specific goals for reductions in mortality. "We are killing ourselves by our own careless habits," wrote Joseph Califano, then secretary of health, education, and welfare, calling for "a second public health revolution" (the first being the triumph over infectious diseases). *Healthy People*, which estimated that "perhaps as much as half of U.S. mortality in 1976 was due to unhealthy behavior or lifestyle," advised Americans to quit smoking, drink less, exercise more, fasten their seat belts, stop driving so fast, and cut down on fat, salt, and sugar. It also recommended

motorcycle-helmet laws and gun control to improve public health.

Healthy People drew on a “national prevention strategy” developed by the U.S. Center for Disease Control (now the Centers for Disease Control and Prevention), an agency whose evolution reflects the expanding interests of public health. Established during World War II as a unit of the U.S. Public Health Service charged with malaria control in war areas, it became the Communicable Disease Center in 1946. By the end of the 1950s the CDC had acquired exclusive federal authority over communicable diseases. In the 1960s it took on a wide range of projects, including family planning and overseas smallpox control. In the early to mid-1970s it absorbed the Public Health Service’s nutrition program, the National Institute of Occupational Safety and Health, and the National Clearinghouse on Smoking and Health. It also took over federal programs dealing with lead poisoning, urban rat control, and water fluoridation. In the late 1970s the CDC drew up a list of its main priorities, the most serious health problems facing the country. The list included smoking, alcohol abuse, unwanted pregnancies, car accidents, workplace injuries, environmental hazards, social disorders, suicide, homicide, mental illness, and stress. Today only one of the CDC’s seven “centers” deals with the agency’s original task, control of infectious diseases.

A cynic would view the CDC’s growth as a classic example of bureaucratic survival: If the problem you were charged with solving starts to get better, find new problems that will continue to justify your budget. More generally, it is easy to dismiss public health’s ever-expanding agenda as a bid for funding, power, and status. Yet the field’s practitioners argue, with evident sincerity, that they are simply adapting to changing patterns of morbidity and mortality. Without speculating about motivation, we can ask whether it makes sense to apply the methods of disease control to problems that are not caused by germs. If it doesn’t, much of what is done in the name of public health today is seriously misguided.

The question is especially important because public health generally implies government action. That used to mean keeping statistics, imposing quarantines, requiring vaccination of children, providing purified water, building sewer systems, inspecting restaurants, regulating emissions from factories, and reviewing drugs for safety. Nowadays it means, among other things, raising alcohol taxes, restricting cigarette ads, banning guns, arresting marijuana growers, and forcing people to buckle their seat belts. These measures are attempts to control illness and injury by controlling behavior thought to be associated with them. The idea is straightforward: Less drinking means less cirrhosis of the liver, less smoking means less lung cancer, less gun ownership means less suicide.

Whether or not these expectations are justified, treating behavior as if it were a communicable disease is problematic. First of all, behavior cannot be transmitted to other people against their will. Second, people do not choose to be sick, but they do choose to engage in risky behavior. The choice implies that the behavior, unlike a viral or bacterial infection, has value. It also implies that attempts to control the behavior will be resisted.

Resistance to public health measures is not new. Such interventions were often criticized, sometimes justifiably, as inappropriate exercises of government power. But in the past, public health officials could argue that they were protecting people from external threats: carriers of contagious diseases, fumes from the local glue factory, contaminated water, food poisoning, dangerous quack remedies. By contrast, the new enemies of public health come from within; the aim is to protect people from themselves rather than each other. The implications of this distinction can be better understood by considering a few of the “epidemics” that have taken the place of smallpox and cholera.

SMOKING

In the public health literature, smoking is not an activity or even a habit. It is “the greatest community health hazard,” “the

single most important preventable cause of death,” “the plague of our time,” “the global tobacco epidemic.” The disease metaphor has been used so much that it is now taken literally. The foreword to the 1988 surgeon general’s report on nicotine addiction informs us, “Tobacco use is a disorder which can be remedied through medical attention.” This definition was not always so casually accepted. In the 1977 monograph, *Tobacco Use as a Mental Disorder*, published by the National Institute on Drug Abuse, Jerome H. Jaffe noted that “a behavior that merely predisposes to other medical illnesses is not necessarily, in and of itself, a disease or disorder....We certainly would not want to consider skiing as a mental disorder, although it clearly raises the likelihood of developing several well-defined orthopedic disorders. Risk taking, *per se*, is not a mental disorder.”

Yet today public health professionals consider smoking itself a disease, something inherently undesirable that happens to unwilling victims. “Free will is not within the power of most smokers,” writes former CDC Director William Foege in “The Growing Brown Plague,” a 1990 editorial in the *Journal of the American Medical Association*. If it were, they certainly would choose not to smoke. As Scott Ballin, chairman of the Coalition on Smoking or Health, explains, “The product has no potential benefits....It’s addictive, so people don’t have the choice to smoke or not to smoke.”

These statements are part of a catechism intended to explain why so many people continue to smoke, when clearly they shouldn’t. That catechism does not admit the possibility that smoking might offer some people benefits that in their minds outweigh its hazards. This blindness is inherent in the public health perspective, which seeks collective prescriptions that do not take account of individual tastes and preferences. It recognizes one supreme value, health, that cannot be trumped by other considerations.

Having promoted smoking from risk factor to disease, the public health establishment now targets alleged risk factors for smoking, most notably cigarette advertising. “If exposure to cigarette advertising is a risk factor for disease,” writes Rep. Henry

Waxman (D-Calif.) in a 1991 *JAMA* editorial, “it is incumbent on the public and elected officials to deal with it as we would the vector of any other pathogen.” In other words, banning cigarette ads is like draining the swamps where the mosquitoes that carry malaria breed. That seems to be the assumption underlying the Clinton administration’s proposed restrictions on tobacco advertising.

The alarm about the danger posed by cigarette advertising is based largely on well-publicized studies in medical journals that prove less than the researchers’ conclusions and accompanying editorials imply. A typical example is the 1991 *JAMA* study cited by the Clinton administration. The researchers reported that 6-year-olds were as likely to match Joe Camel with a pack of cigarettes as they were to match the Disney Channel logo with Mickey Mouse. “Given the serious consequences of smoking,” they wrote, “the exposure of children to environmental tobacco advertising may represent an important health risk....” But recognizing Joe Camel is not tantamount to smoking, any more than recognizing the logos for Ford and Chevrolet (which most of the kids in the study did) is tantamount to driving.

The same issue of *JAMA* carried an article reporting that Camel’s market share among smokers under the age of 18 increased from 0.5 percent in 1988 to nearly 33 percent in 1991. The authors attributed the change to the Joe Camel campaign and concluded that “a total ban of tobacco advertising and promotions...can be based on sound scientific reasoning.” Yet during the period covered by the study, smoking among minors actually *fell*. So while Joe Camel may have had something to do with the shift in brand preferences (a shift that also occurred in other age groups, though less dramatically), he cannot be blamed for convincing more kids to smoke.

Jean J. Boddewyn, a marketing professor at Baruch College who is skeptical of the alleged link between tobacco advertising and consumption levels, has argued that medical journals are not an appropriate venue for such research. Writing in the December 1993 issue of the *Journal of Advertising*, he suggests that medical editors and reviewers lack expertise in the area and are too

quick to publish articles that reflect badly on the tobacco industry. "How would the [*Journal of Advertising's*] reputation fare," he wonders, "if it published an article on the *health consequences of smoking*, after asking only advertising specialists to review it?" Boddewyn also complains that articles on tobacco advertising in medical journals rarely refer to relevant sources outside the public health literature.

ALCOHOL ABUSE

Like smoking, alcohol abuse is considered a disease within the public health field. *Community Health* (1978), by C.L. Anderson, Richard F. Morton, and Lawrence W. Green, calls alcoholism "an inborn defect of metabolism," while *Introduction to Public Health* defines it as "the progressive chronic illness characterized by habitual heavy drinking that interferes with numerous...aspects of an individual's life." This view of alcoholism remains controversial, but it has a long pedigree, dating back to Benjamin Rush in the 18th century. As *Introduction to Public Health* concedes, however, "alcohol in moderation appears to do the body no permanent harm."

Nevertheless, heavy taxation of alcoholic beverages is a standard public health prescription for alcohol abuse. Restrictions on sales and advertising are also popular. Advocates of such measures hope to reduce overall consumption of alcohol and thereby reduce alcohol abuse. "The cost of alcohol should be greatly increased by taxation," *Community Health* recommends. "There is an excellent correlation between a low relative price, high consumption, and high cirrhotic mortality in international comparisons." In fact, it is not clear that reducing overall consumption would have much of an impact on alcohol abuse. It is precisely the people who have the biggest problems with alcohol who would be most resistant to changes in price or availability. Further more, societies or ethnic groups with relatively low drinking rates may have relatively high rates of abuse, and vice versa.

Assuming a tax hike did reduce alcohol problems, it would not necessarily be justified even on utilitarian grounds. Since

moderate drinkers far outnumber alcoholics, their foregone pleasure might well outweigh the benefits of less alcohol abuse. As in the case of smoking, the public health paradigm simply ignores this issue.

DRUG ABUSE

In the early 1970s a debate raged in academic journals about the merits of studying illegal drug use as if it were an epidemic. Critics of this approach noted that illegal drug use is not caught like a virus; it is volitional behavior. Proponents of the disease model said this didn't matter.

Community Health explains: "If drug abuse is seen as a practice that is transmitted from one person to another, it may be considered for operational purposes as a contagious illness. This approach makes it possible to apply to its study the methods and terminology used in the epidemiology of infectious diseases. In the epidemiological model the infectious agent is heroin, the host and reservoir are both man, and the vector is the drug-using peer....The disease presents all the well-known characteristics of epidemics, including rapid spread, clear geographic bounds, and certain age groups and strata of the population being more affected than others."

But these criteria apply to many phenomena that we do not treat as epidemics, including clothing fashions, recreational trends, rumors, jokes, and political ideas. Clearly, not everything that spreads from person to person is an epidemic.

Presumably, an epidemic has to be something *bad*. Oddly, however, bad is defined not by the individuals involved but by the epidemiologist. A happy, productive, well-adjusted user of illegal drugs is still sick, still part of an epidemic, even though he doesn't realize it. Alternatively, as former drug czar William Bennett has argued, the moderate drug user is an asymptomatic carrier, a Typhoid Mary spreading misery to others by setting a bad example, even though he feels fine. (Indeed, by doing well while doing drugs, he is a more serious threat in this regard than the addict in the gutter.) Either way, the user has to be isolated and cured, whether he likes it or not.

To be fair, it should be noted that many public health specialists do not tow the official government line, which defines any use of illegal drugs as abuse. They often acknowledge that prohibition has side effects and that the distinctions made by the law do not necessarily correspond with the objective hazards of various drugs. Defining drug use as a public health problem, rather than a crime, they tend to support “harm reduction” measures such as legal availability of syringes and needles, the use of medical marijuana, and “treatment” as an alternative to prison.

Still, the medical model has coercive implications, especially if “denial” is understood as one component of the “disease.” Smolensky says law enforcement agencies should “ignore the user, since his is a medical problem which requires prevention, therapy, or rehabilitation, and is not a criminal act.” This begs the question of what happens when the user resists “prevention, therapy, or rehabilitation.”

OBESITY

If smoking, alcohol abuse, and illegal drug use can be diseases, surely obesity can. It carries substantial health risks, and people who are fat generally don’t want to be. They find it difficult to lose weight, and when they do succeed they often relapse. When deprived of food, they suffer strong cravings and other withdrawal symptoms.

Recently, the “epidemic of obesity” has been trumpeted repeatedly on the front page of the *New York Times*. The first story, which appeared in July 1994, was prompted by a study from the National Center for Health Statistics that found the share of American adults who are overweight increased from a quarter to a third between 1980 and 1991. “The government is not doing enough,” complained Assistant Secretary of Health Philip R. Lee. “We don’t have a coherent, across-the-board policy.” The second story, published last September, reported on a *New England Journal of Medicine* study that found gaining as little as 11 to 18 pounds was associated with a higher risk of heart disease or, as the headline on the jump page put it, “Even

Moderate Weight Gains Can Be Deadly.” The study attributed 300,000 deaths a year to obesity, including a third of cancer deaths and most deaths from cardiovascular disease. The lead researcher, JoAnn E. Manson, said, “It won’t be long before obesity surpasses cigarette smoking as a cause of death in this country.”

If, as Assistant Secretary Lee recommends, the government decides to do more about obesity—the second most important preventable cause of death in this country (soon to be the first)—what would “a coherent, across-the-board policy” look like? As early as June 1975, in its *Forward Plan for Health*, the U.S. Public Health Service was suggesting “strong regulations to control the advertisement of food products, especially those of high sugar content or little nutritional value.” But surely we can do better than that. A tax on high-fat foods would help cover the cost of obesity-related illness and disability, while deterring overconsumption of ice cream and steak. Of course, such a tax would be paid by the lean as well as the overweight. It might be more fair and efficient to tax people for every pound over their ideal weight. Such a market-based system would make the obese realize the costs they impose on society and give them an incentive to slim down. Last year I suggested this plan in *National Review*, and the magazine received a couple of letters from readers who took it seriously. Fortunately, they were outraged; but I can’t shake the thought that somewhere in Washington a public health bureaucrat read the item and said, “Hmmm....”

VIOLENCE

In *Sentinel for Health: A History of the Centers for Disease Control*, Elizabeth Etheridge notes that CDC Director William Foege encountered resistance when he pushed the boundaries of public health in the late 1970s. “Of all the areas,” she writes, “violence was the most controversial and the one the public health community found hardest to accept.” The opposition to this idea is not surprising. Even people who are willing to redefine risky habits as diseases may be troubled by the denial of

individual responsibility implicit in treating assault and murder like an outbreak of influenza.

Focusing on guns is one way of obscuring the moral issues raised by the public health approach to violence. As Chicago pediatrician Katherine Cristoffel, founder of the HELP (Handgun Epidemic Lowering Plan) Network, explained in a 1994 *American Medical News* article: "Gun violence should be treated like polio and tuberculosis and every other epidemic. Guns are a virus that must be eradicated." She drew a parallel with the campaign against smoking: "It is possible to ban guns. There's a precedent in cigarette smoking. Before the surgeon general's report, it was a moral issue, a personal rights issue. But once it was declared a public health issue, there was a dramatic change....Get rid of cigarettes, get rid of secondhand smoke, and you get rid of lung disease. It's the same with guns. Get rid of the guns, get rid of the bullets, and you get rid of the deaths."

This is not merely the opinion of a few wild-eyed activists. The public health establishment has consistently endorsed stricter gun control, treating firearms as a "risk factor," a "pathogen," a "social ill" to be minimized or eliminated. According to *Healthy People*, the 1979 surgeon general's report, "Measures that could reduce risk of firearm deaths and injuries range from encouraging safer storage and use to a ban on private ownership. Evidence from England suggests that prohibiting possession of handguns would reduce the number of deaths and injuries, particularly those unrelated to criminal assaults." In 1979 the CDC endorsed the goal of reducing the number of privately owned handguns, with an initial target of a 25 percent decrease by 2000. In 1992 C. Everett Koop declared violence "a public health emergency" and, in response, endorsed a national licensing system for gun owners.

Public health research on firearms, much of it funded by the CDC, has attracted a great deal of publicity, generating many of the factoids that supporters of gun control are fond of citing. Consider the claim that "a gun in the home is 43 times as likely to kill a family member as to be used in self-defense." This is based on a 1986 study by Arthur L. Kellermann and Donald T.

Reay published in the *New England Journal of Medicine*. Examining gunshot deaths in King County, Washington, from 1978 to 1983, Kellermann and Reay found that, of 398 people killed in the home where the gun was kept, only two were intruders shot while trying to get in. "We noted 43 suicides, criminal homicides, or accidental gunshot deaths involving a gun kept in the home for every case of homicide for self-protection," they wrote. It's not a good idea, they suggested, to keep a gun at home.

But since Kellermann and Reay considered only cases resulting in death, which surveys indicate are a tiny percentage of defensive gun uses, this conclusion does not follow at all. "Mortality studies such as ours do not include cases in which burglars or intruders are wounded or frightened away by the use or display of a firearm," they conceded. "Cases in which would-be intruders may have purposely avoided a house known to be armed are also not identified." By leaving out such cases, Kellermann and Reay excluded almost all of the lives saved, injuries avoided, and property protected by keeping a gun in the home.

In contrast with the criminological literature, where scholars on both sides of the issue carry on a lively debate, studies published in the *New England Journal of Medicine*, *JAMA*, and other medical or public health journals almost invariably condemn gun ownership and advocate stricter gun control. As with the studies of tobacco advertising, the public health researchers rarely cite scholars from other disciplines, preferring to stay within a field where almost every one agrees that guns are bad.

The public health research on gun ownership, like the research on other kinds of "unhealthy" behavior, is driven by the expectation that people will change their ways once they realize the risks they are taking. *Healthy People* notes that "formidable obstacles" stand in the way of improved public health. "Prominent among them are individual attitudes toward the changes necessary for better health," it says. "Though opinion polls note greater interest in healthier lifestyles, many people remain apathetic and unmotivated....Some consider activities to promote health moralistic rather than scientific; still others are wary of measures which they feel may infringe on personal liberties.

However, *the scientific basis for suggested measures has grown so compelling, it is likely that such biases will begin to shift.*" (Emphasis added.) In other words, only those ignorant of the scientific evidence could possibly oppose the public health agenda.

This assumption is central to the public health mentality. Back in 1879, John S. Billings stated it quite candidly: "By some writers, as Wilhelm von Humboldt and John Stuart Mill, it is denied that the State should directly attempt to improve the physical welfare of its citizens, on the ground that such interference will probably do more harm than good. But all admit that the State should extend special protection to those who are incapable of judging their own best interests, or of taking care of themselves, such as the insane, persons of feeble intellect, or children; and we have seen that in sanitary matters the public at large are thus incompetent."

Billings was defending traditional public health measures aimed at preventing the spread of infectious diseases and controlling health hazards such as rotting animal carcasses. It is reasonable to expect that such measures will be welcomed by the intended beneficiaries, once they understand the aim. The same cannot be said of public health's new targets. Even when they know about the relevant hazards (and assuming the information is accurate), many people will continue to smoke, drink, take illegal drugs, eat fatty foods, buy guns, speed, eschew seat belts and motorcycle helmets, and otherwise behave in ways frowned upon by the public health establishment. This is not because they misunderstand; it's because, for the sake of pleasure, utility, or convenience, they are prepared to accept the risks. When public health experts assume that these decisions are wrong, they do indeed treat adults like incompetent children.

One such expert, writing in the *New England Journal of Medicine* 20 years ago, declared, "It is a crime to commit suicide quickly. However, to kill oneself slowly by means of an unhealthy life style is readily condoned and even encouraged." The article prompted a response from Robert F. Meenan, a professor at the University of California School of Medicine in San Fran-

cisco, who observed: “Health professionals are trained to supply the individual with medical facts and opinions. However, they have no personal attributes, knowledge, or training that qualifies them to dictate the preferences of others. Nevertheless, doctors generally assume that the high priority that they place on health should be shared by others. They find it hard to accept that some people may opt for a brief, intense existence full of unhealthy practices. Such individuals are pejoratively labeled ‘noncompliant’ and pressures are applied on them to reorder their priorities.”

More than 75 years ago, H.L. Mencken complained about this tendency to impose a moral value—the paramount importance of health—in the guise of medical science. “Hygiene is the corruption of medicine by morality,” he wrote in 1919. “It is impossible to find a hygienist who does not debase his theory of the healthful with a theory of the virtuous.” The public health establishment seeks government power to impose its vision of virtue on the rest of America.

And public health doctrine admits no limits. *Principles of Community Health* tells us that “the most widely accepted definition of individual health is that of the World Health Organization: ‘Health is a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity.’” A government empowered to maximize “health” is a totalitarian government.

In response to such concerns, the public health establishment argues that government intervention is justified because individual decisions about risk affect other people. “Motorcyclists often contend that helmet laws infringe on personal liberties,” notes *Healthy People*, “and opponents of mandatory laws argue that since other people usually are not endangered, the individual motorcyclist should be allowed personal responsibility for risk. But the high cost of disabling and fatal injuries, the burden on families, and the demands on medical care resources are borne by society as a whole.” This familiar line of reasoning implies that all resources—including not just taxpayer-funded welfare and health care but private savings, insurance

coverage, and charity—are part of a common pool owned by “society as a whole” and guarded by the government. Similarly, “social cost” calculations for tobacco and alcohol count medical expenses, regardless of who pays them or under what circumstances, and “lost productivity,” as if every individual owes a full lifetime of income (at the highest possible wage?) to “society as a whole.”

As Faith T. Fitzgerald, a professor at the University of California, Davis, Medical Center, writes in the *New England Journal of Medicine*: “Both health care providers and the commonweal now have a vested interest in certain forms of behavior, previously considered a person’s private business, if the behavior impairs a person’s ‘health.’ Certain failures of self-care have become, in a sense, crimes against society, because society has to pay for their consequences....In effect, we have said that people owe it to society to stop misbehaving, and we use illness as evidence of misbehavior.”

Most public health practitioners would presumably recoil at the full implications of the argument that government should override individual decisions affecting health because such decisions have an impact on “society as a whole.” They are no doubt surprised and offended to be called “health fascists,” when their goal is to extend and improve people’s lives. But some defenders of the public health movement recognize that its aims are fundamentally collectivist and cannot be reconciled with the American tradition of limited government. In 1975 Dan E. Beauchamp, then an assistant professor of public health at the University of North Carolina and currently a professor in the School of Public Health at the State University of New York at Albany, presented a paper at the annual meeting of the American Public Health Association in which he argued that “the radical individualism inherent in the market model” is the biggest obstacle to improving public health.

“The historic dream of public health that preventable death and disability ought to be minimized is a dream of social justice,” Beauchamp said. “We are far from recognizing the principle that death and disability are collective problems and

that all persons are entitled to health protection.” He rejected “the ultimately arbitrary distinction between voluntary and involuntary hazards” and complained that “the primary duty to avert disease and injury still rests with the individual.” He called upon public health practitioners to challenge “the powerful sway market-justice holds over our imagination, granting fundamental freedom to all individuals to be left alone.” Of all the risk factors for disease and injury, freedom may be the most important.

THE MILITIA MOVEMENT AND SECOND AMENDMENT REVOLUTION: CONJURING WITH THE PEOPLE

David C. Williams*

Among the critics of the individual rights view of the Second Amendment, no one has more thoughtfully engaged the Second Amendment's historical basis than David C. Williams, a professor of law at the University of Indiana. In this article, Williams looks at the modern militia movement to discuss how the concept of "The People" has changed from the late 18th century to the late 20th century. The article originally appeared in May 1996 in volume 81 of the Cornell Law Review, beginning on page 879. Copyright © 1996 Cornell University, David C. Williams. All rights reserved.

INTRODUCTION

On April 19, 1995, someone blew up the Murrah Federal Building in Oklahoma City, causing the largest loss of life from a terrorist attack on American soil in history. Authorities believe that one of the perpetrators of the attack is Timothy McVeigh, an ex-soldier who allegedly holds extreme right-wing views and a passionate hatred of the Federal Government.¹ Many commentators have speculated that McVeigh destroyed the building as revenge against the federal government, particularly the Bureau of Alcohol, Tobacco, and Firearms, for the assault on the Branch Davidian compound at Waco, Texas, on April 19, 1993.² If these allegations are true, McVeigh's anger, while extreme, is not the ire of an isolated lunatic. A nationwide social protest movement—the so-called militia or "patriot" movement—has developed to combat what its members believe is a conspiracy by the federal government to disarm the American citizenry.³ The goal of this alleged conspiracy is to allow Jews, Blacks, the United Nations, Russia, international

bankers, or socialists (there is disagreement over exactly who is behind the conspiracy) to assume control of the country.⁴ The disaster at Waco, the Brady Bill, and the ban on assault weapons are thus all part of a single plot, the tip of the conspiratorial iceberg.

McVeigh's affinity for militia ideas has thrust the militia movement into the national spotlight for the first time, and the audience has reacted with horror at the paranoia, racism, and violence that is characteristic of some of the movement's members.⁵ Yet the most articulate militia leaders deny being deranged hatemongers; rather, they claim to be the modern defenders of the U.S. Constitution in general and the Second Amendment in particular. In their minds, they are merely protecting and exercising the right of the people to make a revolution against a tyrannical government. Although the claims have met scorn and derision, militia detractors have usually rejected these ideas before examining them with any care.

This Article will seriously examine the militia movement's interpretation of the Second Amendment. It will evaluate where this interpretation is on solid ground and where it crosses into treacherous terrain. It will also consider the lessons that the Oklahoma City bombing can teach about the viability of a constitutional right to revolution in a diverse twentieth-century democracy.

Some commentators might argue that the ideas of a fringe group do not warrant serious analysis. I disagree for several reasons. First, as evidenced by the Oklahoma City tragedy, militia groups have the capacity for violence, and so for practical reasons it is important to understand their animating ideology. Second, their constitutional claims are not as far-fetched as they might first appear. Indeed, militia ideologists share some of their beliefs with more mainstream theorists, not only the National Rifle Association but also one school of thought on the Second Amendment within the legal academy. Third, the militia's historical interpretation of the Second Amendment, while plainly wrong on some points, is correct on others. Accordingly, careful attention to militia doctrine may cast light on mainstream

Second Amendment theory, the modern significance of the historical background of the Amendment, and most importantly the continuing relevance *vel non* of a right to revolution.

Part I of this Article analyzes the ways in which the militias' interpretation of the Second Amendment faithfully reflects the thinking of the Framers. In particular, the Framers would endorse several themes that form the core of today's militia thinking. First, the people should always fear the federal government; despite its electoral accountability, it could always become corrupt, pursuing its own interests rather than those of the people. Second, to counteract the threat of a corrupt and tyrannical central government, the people should be armed to overawe the government or, *in extremis*, to stage a revolution. Third, for the people to be able to make a revolution, they must be organized into militias. Finally, when government wishes to oppress the people, it begins by disarming them, so they cannot resist. Militia groups would add that the federal government has already become corrupt and tyrannical and the time for revolution is fast approaching. Hopefully they are wrong, but if so, they have simply made a factual mistake. Their Second Amendment theory is not for that reason, in and of itself, wrong.

To examine how it is in error, Part II will look more closely at the conceptual universe of the framers of the amendment, particularly the meaning of "the Body of the People." Steeped in the tradition of civic republicanism, the proponents of the Second Amendment believed that the government and the citizenry should dedicate themselves to the Common Good: a good common to all, shared by all. Of necessity, for a Common Good to exist, however, the citizenry must be sufficiently homogeneous to share common interests. In that sense, the citizenry is not a collection of independent individuals but an organic and unified entity. The constitutional right to arms belongs to this body of the people, organized into a universal militia, so that it can resist a corrupt federal government. Violence used by the government for its own selfish ends is tyranny. Violence used by a faction of the people for its own selfish ends is illegitimate rebellion. Violence used by the Body

of the People for the Common Good, however, is legitimate revolution.

Many modern Americans fear the idea of a right of revolution because it embodies the potential for anarchy and civil war. These fears become irrelevant if, but only if, one presupposes the existence of a Common Good and a Body of the People: if the people really are homogeneous and unified, they will rise up as a single, organic collective and quickly restore legitimate government. This people must exist as an entity independent of government, because it must be able to revolt against government and, for however briefly, to take the place of government. Therefore, to make their interpretation of the Second Amendment plausible, the militia groups must answer the following questions: Is there in the late twentieth century a body of the people? If so, who is in it?

The principal militia response to those questions is to conjure with the People: militia writers assume that a people exists, that it is angry with the government, and that it will soon take up arms to assert its rights. While many scholars envision an America of interest groups and fractious individuals, militia groups magically conjure an image of an organic America with a citizenry so united that even in time of revolution, it will act as one entity. Militia writers, however, are not alone in this tendency. Many legal scholars, who argue that the Amendment guarantees an individual right to revolt, write as if the public were presently a unified entity called "the people." For these scholars, the People seem to be an element of cosmology taken on faith, a necessary piece of their analytical structure. This Article argues, by contrast, that the American people are not so united. Accordingly, a Second Amendment revolution may not be possible for today, and so we may need a reinterpretation of the Amendment. This suggestion may be wrong; it may be that as a citizenry we have unities that I do not see. But any modern Second Amendment theory must demonstrate those unities in order to demonstrate the modern viability of the historical amendment. It is insufficient just to conjure with the People.

Some militia ideologists seem to be aware that Americans as a group are too diverse to launch a revolution today. As a result, these writers offer more precise definitions of the People. These definitions differ across various groups, but all share two features. First, they all suffer from severe analytical and empirical problems. Taken together, those problems suggest that a body of the people does not exist anymore; and if it does not exist, neither can a right of revolution. Second, all of the definitions exist against the backdrop of a grand conspiracy that has captured the federal government, against whom the People are defined. In other words, the People have their unity in opposition to the hypothesized “Other” (Jews, Blacks, bankers, etc.) that seeks to oppress the People. In this sense, the militia’s paranoia is necessary, not incidental, to its Second Amendment theory: a revolution is possible only if a People exists, but for the militia, a people exists only in being united to resist the federal conspiracy.

For heuristic purposes, this Article divides militia thinking about conspiracies into four general themes, even though most militia groups and members hold a combination of these beliefs. First, there are the overt racists.⁶ These groups maintain that all constitutional amendments after the Bill of Rights are invalid, so that the true American people is limited to white Christians who share a particular conservative heritage. These militia groups are prepared to stage a revolution to defend that heritage against what they see as the assault of outsiders in the federal government. These groups also have a fair claim to be the direct ideological heirs of some of the American revolutionaries, who also generally excluded non-whites⁷ and sometimes non-Christians.⁸ The problem with this definition is that it is both malignantly exclusionary and implausible as a matter of contemporary constitutional law. And yet, if no one is excluded from the citizenry, the central problem with a right of revolution emerges: can all of these diverse persons with their diverse values and views share a common good? Can they constitute a people? This Article calls this difficulty the Demographic Problem in constituting a people.

Second, there are the anti-internationalists.⁹ These writers believe that a foreign cabal led by the United Nations but including Russia, Israel, the Trilateral Commission, and third world countries, has taken over the federal government to subjugate the American people. Anti-internationalists offer elaborate outlines of the alleged conspiracy and see signs of it all around them. They believe that Americans who do not share their belief in a conspiracy are deluded. As a result, they claim to be acting in the interests of all Americans except the traitorous few in league with the foreign enemy. The problem with this view is that it seems out of touch with empirical reality. In a sense, however, the anti-internationalists are acting consistently with the spirit of the Second Amendment: the People are supposed to be ever suspicious of the federal government; the People alone may judge when the government has become corrupt, and sometimes only a small vanguard remains awake to the danger, while the masses fall asleep. Cast thus, the militias' argument causes the central problem to emerge again: is it plausible that the American citizenry, in all its magnificent diversity, deplorable ignorance, and distance from the seat of power, will ever perceive empirical reality in the same way? Will they ever agree if or when the federal government has become so corrupt that revolution is the only answer? This Article calls this difficulty the Epistemological Problem in constituting a people.

Third, there are the anti-socialists.¹⁰ This group believes that a cadre of socialists, led by President Clinton and Sarah Brady, has captured the federal government and intends to destroy the liberties of American citizens. In particular, these writers believe that the income tax, land use regulation, and, above all, gun control violate the Constitution. The Brady Bill and the ban on assault weapons are only the first stages in a plot by the "Clintonistas" to disarm the public so that they can then dig up the Constitution root and branch. This group believes that the American people are committed to the Constitution (as the militia interprets it), or at least only those who are committed to the Constitution (as the militia interprets it) are part of the

American people, because loyalty to the Constitution is the principal component of American peoplehood. Therefore, the argument goes, President Clinton and the other socialists in Washington are enemies of the American citizenry.

The views of this group suffer from two serious difficulties. The first is the Interpretive Problem: even if the Constitution constitutes us as a people, there has been no consensus on the meaning of that document for a long time, if ever. If this criticism is sound, how can there be a revolution made by and for the people as a body when there is no agreement on the text that creates the People as a body? The second difficulty is the Political Problem: anti-socialists are extreme individualists; they resent any intrusion on their absolute freedom of action. But how can citizens become a people if they are independent individuals with nothing in common but abstract freedom? To put the point another way: these groups feel contempt for politics, but only by coming together in political space may citizens constitute themselves a people. The anti-socialists' view of politics therefore virtually precludes the possibility of Second Amendment revolution. Such a revolution would be possible only if, by happenstance, millions of different people living under different circumstances with different values, beliefs, and perceptions, were suddenly seized by the same spirit of resistance at the same moment. This political problem is not a difficulty only for militias: millions of Americans share their contempt for politics and thus would have difficulty finding political space for a people.

Finally, there are the anti-secular humanists.¹¹ These groups believe that the government's conspiracy has targeted conservative Christianity, which is the inspiration and fundament of the Constitution. This group summarizes most of the problems detailed above. Constituting a people around conservative Christianity poses demographic problems (not all American citizens are conservative Christians), epistemological problems (in the minds of many, there is no conscious conspiracy to de-Christianize America), and interpretive

problems (by most official accounts, the Constitution does not privilege conservative Christianity).

Any theory of Second Amendment revolution, therefore, must squarely face the demographic, epistemological, interpretive, and political problems outlined above. In the conclusion, this Article suggests that these problems render “peoplehood” impossible in modern America and, as a consequence, revolution may no longer be a viable option for us. In a sense, the Second Amendment is a fragment of a language that we no longer speak: it depends on the notion of a civic republican people, but we have become too liberal and individualistic to support such a concept. As American beliefs, demographics, and epistemology change, certain forms of sociopolitical organization close as options. A Second Amendment revolution is one that has closed; it is a part of the American heritage that can have no more lived meaning. Armed resistance today would be a civil war, not a revolution. In my view, it is time to accept that fact; it is time to stop conjuring with the idea of an organic American people, because that idea leads us in the direction of the militias’ thinking—to the creation of an alien Other against whom we could all be united.

As some options close, however, others open. The revolutionaries of 1776 went to war partly because they were not represented in Parliament. As soon as the American Revolution was complete, however, the idea of revolution became less savory, because the people had representation. If modern citizens sensibly fear an oppressive government and if there cannot be a true revolution, there are only two options. Citizens may seek to foment factional rebellion, as do the militias, or they may pour the same energies into politics and civil society. Even if citizens cannot thereby create a People, they may build a public life that is healthy, sane, and rational so that no one feels the need to invent treasonous Others who deserve to die.

I. WHAT THE MILITIA HAS RIGHT—ARMED REVOLUTION

The Militia of Montana (MOM) markets a T-shirt bearing an image of an eighteenth-century militia member and the legend: “The Second Amendment isn’t about hunting or target shooting . . . It’s about FREEDOM!”¹² Although simplistic, the slogan captures the essence of the historical Second Amendment; it guaranteed that armed citizens could stage a revolution against a corrupt government.¹³ Indeed, the militia’s theory of the Amendment is better supported by the historical record than the more popular view that characterizes the Amendment primarily as a right of self-defense.

The militias themselves insist that they alone have faithfully reflected the Framers’ views, as the nation around them has fallen away. This self-conceptualization is pervasive and manifest in their writings. Militia materials, for example, rely extensively on quotes from early patriots about the meaning of the Second Amendment.¹⁴ M. Samuel Sherwood, an influential militia organizer, dedicates his book, *The Guarantee of the Second Amendment*, to Samuel Adams, John Hancock, George Washington, George Mason, and Nathanael Greene because they created colonial militias to resist British tyranny.¹⁵ The Militia of Montana and Linda Thompson, self-appointed Acting-Adjutant General of the Unorganized Militia of the USA, both issued declarations of independence from the Federal Government, modelled on Jefferson’s declaration.¹⁶ MOM’s version makes the analogy to the Framers’ actions explicit: “Just as our Founding Fathers of this Country shook off their shackles of bondage, so must we.”¹⁷

Because of the militias’ paranoia, racism, and violence, many Americans are instinctively inclined to repudiate their theory of the Second Amendment. This Part, by contrast, will attempt to consider the extent to which militia thinking mirrors the Framers’ view of the Amendment.¹⁸ In particular, the militias and the Framers would agree on four central ideas: fear of government, the right to revolution, the importance of militias,

and the danger of disarmament. Together, these ideas comprise a theory not only of the right to bear arms, but also of the general relationship between the government and the governed. Later Parts of this Article argue that the militias also disagree with the Framers on important points. That disagreement, however, should not obscure the broad areas of consensus.

A. Fear of the Government

Both the Framers and the militias would assert that citizens should fear the government in general, and the federal government in particular, because the interests of office-holders may diverge from the interests of the citizenry. Belief in the political importance of a citizen militia emerged in Anglo-American political thought of the seventeenth century as part of a collection of ideas now loosely labeled “civic republicanism.”¹⁹ Civic republicans thought that both citizens and governments should promote the common good of the people, rather than their own selfish interests; in the jargon of the day, they should act virtuously. Both citizens and governments, however, tended to pursue their private interests at the expense of the common good; in the jargon of the day, they tended to become corrupt. The central task for politics, therefore, was to find a way to cause political actors to behave with virtue.²⁰

Because the Crown plotted to expand its own power at the expense of the citizenry, government virtue was a scarce commodity in eighteenth century England. The monarch’s chief strategy was to bribe citizens, causing them to sell their virtue for preference. Thus, the king subverted Parliament by giving places and pensions in the royal service to compliant Members of Parliament.²¹ He taxed and borrowed, so that men of finance would have an interest in the economic well-being of the monarchy.²² Finally, he promoted a standing army that depended on him for its livelihood and therefore would enforce his will through armed might.²³ The common danger in all of these devices was that the king created a class of citizens whose personal interests departed from the common good.

Although republican fears of royal conspiracy were born under the Stuart monarchs,²⁴ the American revolutionaries believed that the House of Hanover bred tyrants as well. In the actions of George III, they saw a reprise of the plotting of James II,²⁵ just as the militias today believe the actions of the Clinton Administration are a reprise of the government of George III. After the revolution, many of the Framers believed that citizens should fear even a popularly elected government, because the interests of governors could always stray from the interests of the governed, just as the interests of the king's dependents had strayed from the interests of the British people.²⁶ In addition, some of the Framers feared the new central government above all, because of its distance from the people. These men became the chief sponsors of a federal bill of rights to control the monster.²⁷

Indeed, modern theorists of the Second Amendment would probably agree on only one point: fear of the central government largely inspired the Amendment. For the last several decades, opinion about the meaning of the Amendment has fallen into two general camps. The first camp, the "collective rights" view, reads the provision narrowly by focusing on its first clause: "A well regulated Militia, being necessary to the security of a free State"²⁸ According to proponents of this view, the amendment protects arms-bearing only within a state militia in order to counter the great power of the Federal Government.²⁹ The second camp, the "individual rights" view, reads the provision more broadly by focusing on its second clause: "the right of the people to keep and bear Arms, shall not be infringed."³⁰ According to proponents of this view, the Amendment guarantees an individual right to own arms to "the people," meaning all of the people, not just militia members, in order to resist federal tyranny among other reasons.³¹ While these two views differ over who possesses the right, militia members or all citizens, they nonetheless agree that the impetus behind the right was a concern about federal corruption.³²

In their fear of the federal government, the rhetoric of the modern private militias closely tracks the rhetoric of the

Framers. Like early civic republicans, the militia groups fear that the interests of government officials have dangerously diverged from the interests of the citizenry, and that office-holders are conspiring to empower themselves at the expense of the American people. Thus, Linda Thompson declaims: “The federal judicial offices and congress have set themselves wholly apart from and above the people, immune even from suit for their transgressions, answerable to none, and responsive to none except those who further their private interests.”³³ MOM urges citizens not to “leave our fate in the hands of corrupted, self serving, foreign mercenaries [in the federal government]” or to “trust our fate to their decisions, which are fostered by agencies of our government and private corporations in it’s [sic] employ.”³⁴ Warning of martial law to come, *Federal Lands Update* explains: “Most of the citizens keep saying; ‘Aren’t those people we sent back to Washington representing our interests?’ Frankly no, they are not! Most have literally isolated themselves from their constituents”³⁵ In a similar manner, the Free Militia predicts: “The fact that officials are infringing gun rights on every front is simply a manifestation of their inner tendency to empower themselves. Left unchecked, this tendency will lead to genuine tyranny.”³⁶

Echoing the rhetoric of civic republicanism, the militia groups also fear that the federal government will use a standing army to enforce its will against an unsuspecting citizenry. Thus, Linda Thompson lists as one of the “Train of Abuses”: “The federal government has kept among us, in Times of Peace, Standing Armies, without the consent of our [state] Legislatures, or through the seduction or coercion of the state legislatures through the mechanism of ‘federal tax monies’. . . .”³⁷ Militia writers worry particularly that members of the military might participate in federal schemes to disarm the American public.³⁸

The militia’s fear of government’s armed might focuses not only on the U.S. military, but also on federal law enforcement agencies, particularly the Bureau of Alcohol, Tobacco, and Firearms (ATF). In the militia’s view, the paramilitary equipment and training of federal agencies make them resemble

more a standing army than conventional police: “Jack-booted, helmeted, armor-vested ‘law enforcement’ S.W.A.T. teams now conduct KGB-type raids by kicking down doors in the middle of the night.”³⁹ Observers believe that two recent ATF actions, the assault on the Branch Davidian Compound and the siege of white-supremacist Randy Weaver at Ruby Ridge, contributed significantly to the recent dramatic rise in militia membership.⁴⁰ Indeed, McVeigh’s principal target in the Murrah Building might have been the ATF office. The bombing occurred on April 19, 1995, two years to the day after the Waco assault, and militia members were very aware of the importance of that date.⁴¹ MOM, for example, announced in its newsletter:

1. April 19, 1775: Lexington burned; 2. April 19, 1943: Warsaw burned; 3. April 19, 1992: The feds attempted to raid Randy Weaver, but had their plans thwarted when concerned citizens arrived on the scene with supplies for the Weaver family totally unaware of what was to take place; 4. April 19, 1993: The Branch Davidians burned; 5. April 19, 1995: Richard Snell will be executed—UNLESS WE ACT NOW!!!⁴²

Like the Framers of the Second Amendment, militia writers focus on corruption primarily in the federal government, rather than in local legislatures. To be sure, the militias do not trust any government. For example, Samuel Sherwood reportedly instructed militia members to “look [state] legislators in the face because some day you may be forced to blow it off.”⁴³ Linda Thompson attributes corruption in the state legislature to federal bribes.⁴⁴ One element of the militia movement, the *Posse Comitatus*, active primarily during the 1980s maintains that government above the county level is illegitimate.⁴⁵ The overwhelming bulk of militia attention, however, focuses on the federal government. As Part III explains, the militias believe that the central government is the locus of a conspiracy to destroy America. Accordingly, the revolution will involve a battle

between federal forces and the citizenry. In this Manichean formulation, states are not a principal actor—for good or ill.⁴⁶

Although they share a fear of federal conspiracy, modern militias and the Framers of the Second Amendment would not share a common view of the villains behind the conspiracy. Eighteenth-century revolutionaries did not fear that socialists, the United Nations, secular humanists,⁴⁷ or Jews were likely to dominate the governments in Whitehall or Washington.⁴⁸ However, those differences⁴⁹ should not obscure the common ground. The Framers of the Second Amendment warned citizens to be alert to the danger of corruption in the federal government, and the militias believe that they, alone among Americans, have heeded that warning.

B. The Revolutionary Second Amendment

The Framers and the modern militias would also agree that a purpose of the Second Amendment was to allow the people, organized into militias, to make a revolution against a corrupt federal government, not to allow private individuals to defend themselves against other private individuals.⁵⁰ Concern about revolution permeated the discussion over the proposed right-to-arms provision. By contrast, none of the central actors even mentioned a right of self-defense. After all, the Framers had just successfully revolted against one imperial government, and they were concerned that they might need to make a repeat performance.⁵¹

The right of the people to bear arms prevented oppression by a new imperial government in three ways. First, an armed popular militia made it less likely that the government would adopt a standing army. Second, it would give the government pause before oppressing the people. Most importantly, the Second Amendment gave the people the power to overthrow a corrupt government.⁵² Consider the Virginia legislature's draft proposal for the amendment, which was penned by George Mason and provided the foundation for Madison's draft of the Second Amendment.⁵³ It reads:

That the people have a right to keep and bear arms; that a well-regulated militia, composed of the body of the people trained to arms, is the proper, natural, and safe defence of a free state; that standing armies, in time of peace, are dangerous to liberty, and therefore ought to be avoided⁵⁴

Similarly, Elbridge Gerry offered the only explanation of the meaning of the amendment during the Congressional debates:

This declaration of rights, I take it, is intended to secure the people against the mal-administration of the Government; if we could suppose that, in all cases, the rights of the people would be attended to, the occasion for guards of this kind would be removed. . . . What, sir, is the use of the militia? It is to prevent the establishment of a standing army, the bane of liberty.⁵⁵

Virtually all modern Second Amendment theorists agree that one purpose of the provision was to make resistance to the federal government possible.⁵⁶ Again, the two camps disagree over who possesses the right, state militias or the mass of individuals.⁵⁷ The individual rights view accepts that revolution was the main reason for the amendment but argues that self-defense was a secondary aim. Proponents sometimes admit that the historical materials contain few references to such a purpose,⁵⁸ but nonetheless argue that such a goal was implicit.⁵⁹ Again, such disagreements should not obscure the underlying consensus: the Second Amendment ensures the possibility of revolution against the central government by someone under some circumstances.

The militias are thus correct that the right of revolution has a more secure home in the Second Amendment than does a right of self-defense. The MOM T-shirt that announces, “The Second Amendment isn’t about hunting or target-shooting . . . It’s about FREEDOM!”⁶⁰, captures militia sentiment. Similarly, Linda Thompson announced: “The militia is what the Second

Amendment is about, because it isn't about hunting ducks; it's about hunting politicians."⁶¹ MOM further explains:

The majority of American's [sic] today, believe the reason that our forefathers [sic] wanted the people to have the right to keep and bear arms was for the purpose of self defense against criminals, hunting, etc. This is NOT the primary reason for the enactment of the 2nd Amendment. Let's let Thomas Jefferson explain it for us: "The strongest reason for the people to retain the right to keep and bear arms is, as a last resort, to protect themselves against tyranny in government."⁶²

Like the Framers, then, the militia believe in a general right to revolution. Militia writers also extol all three specific benefits of the right to arms espoused by the Framers. First, as the last section illustrates, they fear a standing army,⁶³ and as the next section explains, they trust a popular militia.⁶⁴ Second, they believe that an armed populace can check an oppressive central government from becoming oppressive. Often, militia writers make this point by examining the dynamics of fear between a government and its citizens: it is inevitable that one will fear the other, and it is important that fear flow from the government toward the citizens, rather than the other way. Thus, MOM attributes to Thomas Jefferson the statement: "When governments fear the people there is liberty. When the people fear the government there is tyranny."⁶⁵ At another point, MOM explains: "If the militia is independent and viable, then only laws which are right and just will come forth from the government"⁶⁶ Similarly, in issuing its "CALL TO ARMS!," the Free Militia exhorted that "[y]our right and duty is to arm and organize yourself" because "[t]he more citizens that own guns, the less willing the government will be to threaten us."⁶⁷

Finally, if the government does become oppressive, an armed population can make a revolution and take control. *Federal Lands Update* makes the point directly: "IF THE

GOVERNMENT USES ITS FORCE AGAINST THE CITIZENS, THE PEOPLE CAN RESPOND WITH A SUPERIOR AMOUNT OF ARMS, AND APPROPRIATELY DEFEND THEIR RIGHTS!”⁶⁸ Many militia writers rely directly (and more or less accurately) on the writing of the Framers for this proposition. Thomas Jefferson and Patrick Henry are favorites. The Free Militia instructs its members to “MEMORIZE: ‘That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or abolish it, and to institute a new Government.’”⁶⁹ The Second Amendment Militia also quotes Jefferson in urging prospective members to join: “The Spirit of Resistance to Government is so valuable on certain occasions that I wish it to be always kept alive.”⁷⁰ Henry’s famous “liberty or death” speech makes regular appearances in the militia literature:

We are not weak if we make a proper use of those means which the God of nature has placed in our power. Millions of people armed in the holy cause of liberty, and in such a country as that which we possess, are invincible. . . . Is life so dear, or peace so sweet, as to be purchased at the price of chains and slavery? forbid [sic] it, Almighty God! I know not what course others may take; but as for me, give me liberty or give me death!⁷¹

C. The Importance of the Militia

Like the Framers, modern militia writers believe that the right to bear arms belongs in the hands of an organized militia, not just private individuals who happen to own guns. That claim lands them in the middle of the pivotal controversy in Second Amendment scholarship, so a description of the parameters of that debate is in order. In some sense, every participant in the Second Amendment debate agrees that the Framers gave the right to arms to a militia, but we disagree over the exact makeup of that militia. In my view, the Framers believed that the militia must be organized so as to be universal and virtuous. In the militias’ view, the militia should be organized, so that it will be

effective; it may be universal, but it need not. The militia writers are thus correct that the militia must be organized, but are wrong about the reasons for that organization—effectiveness rather than universality and virtue.

This error leads to a more fundamental mistake: I believe that militia writers are wrong in believing that a Second Amendment militia may legitimately be less than universal. On this point the militias agree with both the states' right and individual rights positions. The individual rights view holds that the Amendment gives every private individual the right to own arms necessary to stage a revolution. In the language of the Amendment, the right belongs to "the people," and in the eighteenth century the militia included all citizens capable of bearing arms.⁷² In this view, therefore, the militia need be neither organized, universal, nor virtuous, because the militia is only another name for all private gun-owners. The states' rights view holds that the Second Amendment gives a right to bear arms only to state militias, because the purpose of the Second Amendment was to safeguard a "well-regulated militia." Because the modern incarnation of the militia is the National Guard, the Amendment is nothing more than a protection of a state's right to maintain a National Guard.⁷³ Thus, in the states' rights view, the militia must be organized as part of the National Guard, but the National Guard need not be universal.

As Part II will elaborate,⁷⁴ neither of these views are correct. Contrary to the states' rights view, the militia of the eighteenth century included every citizen; it had to include every citizen because with the right to bear arms came the right to revolution. Any lesser body was, in the language of the Framers, a "select militia"—a mere slice or segment of society, and a revolution by such a faction would benefit the faction, not the People as a whole. The modern National Guard is not a universal militia. Thus, protection for the Guard will not satisfy the demands of the Second Amendment.⁷⁵

The individual rights view suffers similar problems. Contrary to that view, the militia of the eighteenth century was not just a random collection of private individuals who owned

arms and who spontaneously turned out on the same day to resist the government. The state raised the militia (although the militia might later resist the state) to ensure its universality and virtue, because only the state is a universal body. Like the National Guard, private gun-owners are not a universal body; they are less than the whole and demographically skewed.⁷⁶

A universal militia, then, is a very particular and, for the Framers, a very important concept. It is the same as neither the National Guard nor the totality of private gun-owners. For the Framers, only a universal militia could reliably protect the common good by force of arms, because only a universal militia encompasses the People as a body. Neither the states' rights, nor the individual rights view takes this requirement of universality seriously enough: *force must reside in the hands of the whole*. Without a universal militia, the Second Amendment is hollow. A modern militia must include all of the citizenry; any smaller group will not qualify.

As Part III will explain, modern militia writers also fail to appreciate the importance of universality. They believe that their private and highly partial militia groups constitute Second Amendment militias. They tend to confuse their own interests with the common good and their own organizations with the American people. Despite that confusion, they do understand two important features of a Second Amendment militia. Unlike the states' rights theorists, militia writers acknowledge that the eighteenth-century militia included the whole citizenry; and unlike the individual rights theorists, they believe that the militia must be organized. Their only error is their failure to grasp that the reason for organization was to ensure universality.

To demonstrate that the revolutionary militia included the whole citizenry, militia writers again rely on the Framers. *The Militia News* quotes George Mason stating, "I ask sir, what is the militia? It is the whole people, except for a few public officials."⁷⁷ Samuel Sherwood roughly quotes Richard Henry Lee:

“A militia, when properly formed, are in fact the people themselves. . . . [T]he constitution ought to secure a genuine force and guard against a select [i.e. less than universal] militia, by providing that the militia shall always be kept well organized, armed, and disciplined, and include . . . all men capable of bearing arms.”⁷⁸

More succinctly, *Federal Lands Update* claims: “Our Founding Fathers defined WE THE PEOPLE as the militia”⁷⁹ Similarly, MOM maintains that “[i]t was not the army, or the bureaucratic officials, members of parliament or Governors who made up the Revolutionary militia It was John Q. Public—the common man.”⁸⁰ Militia writers further explain that under current law, U.S. armed forces are divided into the National Guard and the organized militia on the one hand, and the unorganized militia on the other. According to these writers, the latter consists of the bulk of the citizenry and constitutes the militia contemplated by the Second Amendment.⁸¹

Like the individual rights theorists, militia writers maintain that the militia must be comprised of the people as a whole unorganized by the government. Unlike the individual rights theorists, however, they emphasize that the Second Amendment contemplates that the people should organize themselves into militias, in order effectively to combat government. Indeed, this aspect of militia thinking is really what sets these movements apart, what most attracts members,⁸² and what most alarms fellow citizens. Many Americans believe that the Second Amendment protects their private right to own guns, but militia members go further. The militias are organizing and arming themselves as intentional political activity. Thus, MOM argues:

Many feel that it is too much to have a militia, that we need to just settle for the possession of arms. . . . [But] [t]he militia, under the second amendment, is to be able to bare [sic] arms, meaning to use them in a military confrontation. Not just pack them around the house, yard or forest. To stand on the second

amendment means that you are willing, able, and have desires of belonging to a militia, to whom the right of keeping and bearing arms is guaranteed.⁸³

Similarly, *Federal Lands Update* maintains: “The security of a free state is not found in the citizens having guns in the closet. It is found in the citizenry being trained, organized, equipped and led properly”⁸⁴ *The Free Militia* exhorts: “You need to be organized, equipped, trained, and coordinated with other like-minded men to effectively stand up to the growing arrogance of the federal government. It was said during the American Revolution that ‘United we stand, divided we fall.’ This is still true today.”⁸⁵ The Second Amendment Committee explains the meaning of the provision: “By putting the militia at the forefront of the sentence which composes the Second Amendment of the Bill of Rights, [the Framers] stressed the importance of the collective use of the right to arms.”⁸⁶

As the last quotation illustrates, there is a certain irony in the militias’ focus on the collective rights aspect of the Second Amendment. Militia groups, who are more pro-gun and anti-government than the National Rifle Association, agree with the states’ rights theorists—who are generally anti-gun—that the militia clause is crucial to the provision’s meaning. By contrast, some proponents of the individual rights view who share the militia’s enthusiasm for guns have sought to de-emphasize the importance of the introductory clause of the Amendment, because they believe that the right belongs to the “people,” not to a formal militia.⁸⁷

The irony, however, is more apparent than real, because the states’ rights theorists and the militia groups mean very different things when they refer to the militia. The former group views the militia as the National Guard, a public body firmly under governmental control. Militia writers, by contrast, believe that the right to arms belongs to private, voluntary militias recruited and organized independent of the government. As one writer explains, “[a]t no time in our history since the colonies declared their independence from the long train of abuses of King

George, has our country needed a network of active militias across America to protect us from the monster we have allowed our federal government to become.”⁸⁸ To the militia writer, the right to bear arms is essentially individual: private citizens with private arms should individually agree to band together, pooling their resources to make them more effective.

In other words, although the militia writers are right that the revolutionary militia included the whole citizenry and that the militia must be organized, they fail to reach the logical conclusion: a modern Second Amendment militia must be organized by the state to be universal; it may not rest on the private decisions of individuals to enlist.⁸⁹ For militia writers, militia membership is the highest form of Second Amendment patriotism for purely practical reasons. A gun in the closet or the woods does the resistance movement no good at all; only if individuals unite can they hope to resist the behemoth in Washington. Significantly absent from this analysis, however, are the political and moral concerns held by the Framers: for civic republicans, only if the militia literally encompasses the whole will it safeguard the interests of the whole, the Common Good. In other words, the Framers were suspicious of everyone who held power, militias as well as the government. As Part III will argue, the private militias presently organizing in this country are select, not universal, and the Framers would fear them as much as they would fear the Bureau of Alcohol, Tobacco, and Firearms. The militias do not worry that they might be partial; instead, they blithely assume that, however few their numbers, they are the People.⁹⁰ For them, the reason to have more members is not to guard against partiality. The reason to have more members is simply to have more guns.

D. The Danger of Disarmament

To summarize, the Framers and the militia writers would agree that the federal government is continually at risk of becoming corrupt and using a standing army against the people, that the People have a right to resist tyranny by force of arms, but that the only effective safeguard against oppression is

universal, armed militia membership. The final proposition inevitably follows: before the government attempts to impose an oppressive regime, it always seeks first to disarm the citizenry so as to make it helpless. The populace should therefore always fear gun control as a sign of despotic designs afoot.

The immediate (though perhaps not the only) concern prompting the Second Amendment was a fear that the federal government might use its Article I powers to disarm the militia and pave the way for tyranny. Antifederalist John DeWitt, for example, warned: “[Members of Congress] at their pleasure may arm or disarm all or any part of the freemen of the United States, so that when their army is sufficiently numerous, they may put it out of the power of the freemen militia of America to assert and defend their liberties”⁹¹ Elbridge Gerry, in the floor debate of the amendment also cautioned: “Whenever Governments mean to invade the rights and liberties of the people, they always attempt to destroy the militia, in order to raise an army upon their ruins.”⁹²

Militia writers agree; indeed, they think that the conspiracy has already begun. *Federal Lands Update* explains:

Why is the federal government in such a hurry to take away the guns of honest, law abiding citizens? Because once we are disarmed, we become as sheep! And, the federal government, which has never been a friend of those who insist upon enforcing their Second Amendment rights, will come down hard upon it's [sic] people.⁹³

The Militia News warns: “The state must first try to break our will to resist, and then it must confiscate private firearms so that even with the desire and the will we will be unable to resist what is planned for us. This is what gun control is all about.”⁹⁴ Another commentator apocalyptically predicts:

In the coming confrontation between the public and the government to disarm the citizenry, they may kill, arrest,

imprison, and seize assets from tens or even hundreds of thousands of Americans; but they are unlikely to ever completely disarm the millions of Americans who understand the Second Amendment to the Constitution and the warnings of our founding fathers to never let the government disarm them.⁹⁵

The Militia Of Montana attributes such a view to Jefferson, claiming that: “Thomas Jefferson also understood that those who would attempt to take away the liberty of the citizen’s [sic] of this nation must first disarm them.”⁹⁶

According to militia writers, recent gun control statutes are part of a general conspiracy to oppress the American people. Many militia groups avow that Sarah Brady testified in support of the Brady Bill: “Our task of creating a socialist America can only succeed when those who will resist us have been **TOTALLY DISARMED!**”⁹⁷ They argue that the same plot is behind the ban on assault weapons: “[A]ssault rifles are the teeth of the Second Amendment. Without their bite, there is nothing to prevent a draconian state from devouring all of our precious liberties.”⁹⁸ Indeed, “[t]he really subversive thing about these two bills is that they are aimed at limiting militias more than at limiting crime.”⁹⁹ MOM agrees: “Our government by passing these Crime Bills and the Brady Bill have shown us that they are attempting to disarm the militias of the several states.”¹⁰⁰ Militia writers fear even more dangerous federal action: “There are **SEVEN (7) SEIZURE EXECUTIVE ORDERS** which can be enacted with the stroke of a bureaucratic pen and the nation will be plunged into an absolute dictatorial, martial law mode of repression.”¹⁰¹

In the militias’ view, this moment in history is critical for the American people. As militias see it, if the country proceeds much further down the road of disarmament, citizens will lose the ability to resist, and freedom will have flown from this land forever. Militia groups view recent gun control legislation as a warning: an oppressive government gains power by disarming the populace. The comparison to Hitler’s Germany is common.

Federal Lands Update for example, lists a series of analogies which begins: “1. In 1935, Adolph Hitler licensed all handguns. 2. In 1993, Bill Clinton licensed all handguns.”¹⁰² Similarly, *The Free Militia* asserts: “The U.S. 1968 Gun Control Act is a word-for-word translation of Adolf Hitler’s German gun control laws of 1938 Nazi Germany.”¹⁰³ Furthermore, a flyer distributed at militia meetings bears an image of Hitler in stiff-armed salute with the caption: “All in favor of ‘gun control’ raise your right hand.”¹⁰⁴ More broadly, MOM argues that disarmament and suppression of the militia were responsible for oppression in East Timor, Poland, Czechoslovakia, Hungary, Romania, Yugoslavia, Italy, and Germany.¹⁰⁵

Many observers agree that along with the Waco and Ruby Ridge incidents, gun control statutes are responsible for the dramatic increase in militia membership.¹⁰⁶ For militia groups, such statutes are not mere technical violations of the Second Amendment; they directly attack the relationship between citizens and their government. In this sense, militia groups maintain that the Second Amendment is the very heart of the Constitution, because when Second Amendment rights disappear, our other rights will quickly follow as there will be no armed citizenry to defend them.¹⁰⁷ The groups believe that modern America is in the times that the Framers predicted: We can become like Russia or Nazi Germany, or we can hold fast to the American way of life, but only if we hold fast to our guns.

II. WHAT THE MILITIA HAS WRONG—THE BODY OF THE PEOPLE

The militia movement, in short, offers a surprisingly sophisticated and elaborate theory of the Second Amendment that tracks much of the thinking of the Framers. Yet modern Americans, horrified by the activity and rhetoric of many militia groups have reacted to this theory with dismissal. The reason for these emotions is not hard to guess: many Americans fear that a broad-based right to revolution will result in anarchy and civil war. They doubt that citizens will all rise up together in a unified

movement, sharing values and perceptions, against a universally reviled government. Instead, if citizens each have an individual right to own arms so as to be ready for revolution, outrages like Oklahoma City seem inevitable.¹⁰⁸ In his own mind, Timothy McVeigh was probably only exercising his Second Amendment rights; the fear is that there may be many more like him.

The Framers of the Second Amendment, however, also feared rebellion and civil war. In their view, the Second Amendment gave the right only to make a unified, organic revolution, and it gave the right only to a unified, organic people. For the amendment to apply in its own terms, in other words, citizens must be a People capable of united revolutionary action. In their formal, substantive analysis, modern theorists of the amendment ignore this requirement: they simply assert that the right belongs to the National Guard, individuals, or private militia groups without examining whether those bodies constitute a People. In their rhetoric, however, both individual rights theorists and modern militia groups implicitly claim that Americans are a People: they assert that in time of revolution, the People will strike down the current government and make a new one, in a spontaneous, decentralized but unified and organic revolutionary movement. In this sense, these writers conjure with the concept of a People, by causing us to imagine that such an entity exists without ever demonstrating or even arguing that one does.

A. The Framers' View of the People

The Framers probably would have shared the modern fear of factional rebellion and the revulsion at the Oklahoma City bombing. Indeed, no sooner had they completed a revolution against Great Britain than they proceeded to repress rebellions at home, such as the Whiskey Rebellion and Shays' Rebellion.¹⁰⁹ The new rebels themselves claimed the mantle of 1776; in their own minds, they were holding to the faith of Washington and Jefferson by making a popular revolution against a distant and tyrannical government. Throughout the Republic's later history, similar groups, usually disempowered, rural and traditional, have

continued to resist modernizing and centralizing forces through violence. In defense of these rebellions, many such groups have relied on the traditional republican belief in a right of popular revolution.¹¹⁰ Nonetheless, all of these resistance campaigns met defeat, and the federal government has denied that the groups ever had such a right to revolt. Timothy McVeigh's rebellion thus reflects a long tradition, as does the manhunt by the FBI and the BATF. This American dynamic suggests a certain hypocrisy: how did a government born in revolution so quickly become intolerant of armed resistance? How did a people born in revolution so quickly become suspicious of revolutionary change?

Civic republicanism answers this charge of hypocrisy. Civic republicans see a profound difference between a revolution, which is protected by the Second Amendment, and a rebellion, which is not. To them, a revolution is resistance to government made by the Body of the People for the good of the whole. A rebellion, on the other hand, is resistance by a faction for its own interests. In this sense, a rebellion and a tyrannical government are similar; each represents an act of aggression against the People on behalf of partial groups.¹¹¹

The difference between a revolution, a rebellion, and a tyranny, thus lies in who initiates each. The People make a revolution for the common good; a faction makes a rebellion for its own ends; and officeholders make a tyranny for their own ends. The Second Amendment protects only the first—the right of the People to make a revolution. The People, correspondingly, have the right to keep and bear arms. The People in this formulation, however, are not merely a collection of factions, each with different interests. If the People were that fragmented, popular uprising could only be multiple rebellions—civil war, in other words. Instead, the People must have sufficient homogeneity to share a common good, so that when the government becomes tyrannical, citizens will rise up and make a new government together. Therefore, a Second Amendment People is not a set of random individuals who happen to reside in the same territorial jurisdiction. Rather, it is an organic entity,

with enough commonality and self-awareness to engage in united revolutionary action.

In the colonial and revolutionary periods, the militia was the organized manifestation of the People Armed. Eighteenth century militias were universal, and the states took pains to train members to virtue, so that they would place the common good ahead of their own. These two qualities—universality and virtue—were absolutely central to the definition of the militia, and for good reason: only such a body could be trusted with the means of violence to defend the common good. Therefore, only the universal militia, the People itself, had the right to stage a revolution against government.¹¹² As Tench Coxe explained: “THE POWERS OF THE SWORD ARE IN THE HANDS OF THE YEOMANRY OF AMERICA FROM SIXTEEN TO SIXTY Who are the militia? Are they not ourselves. Is it feared, then, that we shall turn our arms each man against his own bosom.”¹¹³ Similarly, Samuel Adams propounded: “The militia is composed of free citizens. There is therefore no danger of their making use of their Power to the destruction of their own Rights, or suffering other to invade them.”¹¹⁴ Finally, Richard Henry Lee urged: “[T]o preserve liberty, it is essential that the whole body of the people always possess arms”¹¹⁵ Thus, without universality or virtue, the militia would become a “select” militia or a standing army—a body that would pursue its own aims, rather than the good of the whole.¹¹⁶

In the rhetoric of the Framers, then, “the People” is a political actor, i.e., it can act as a unit and with a will. It has a common good, and it can recognize threats to that good. It has rights, and all of its members have the same rights and value them in the same way. When threatened, it will respond, and it is unwise to awaken such a giant. Thus, in justifying the American Revolution, Jefferson described it as an affair between peoples, not loose collections of individuals:

When in the course of human events it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume

among the powers of the earth the separate & equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.¹¹⁷

Similarly, many of the states' recommendations for a Bill of Rights reveal this organic conception of the people by asserting that the right to arms belongs to "the Body of the People." The New York convention, for example, delivered the following language to Congress: "That the people have a right to keep and bear arms; that a well regulated militia, including the body of the people capable of bearing arms, is the proper, natural, and safe defence of a free state."¹¹⁸ Virginia's proposal was almost identical: "That the people have a right to keep and bear arms; that a well-regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defence of a free state."¹¹⁹ North Carolina's version followed Virginia's word-for-word.¹²⁰ In addition, the original House version of the Second Amendment identified the militia as "the body of the people."¹²¹ Neither the Senate version nor the amendment itself includes that language, but in context, that omission seems stylistic, not substantive: "The Senate [version] more succinctly avoided repetition by deleting the well-recognized definition of the militia as 'the body of the people.'"¹²²

In late eighteenth-century America, "the Body of the People" was a phrase full of meaning and significance. The leading scholar of colonial resistance explains:

Under the terms of England's revolutionary tradition resistance, like revolution, had to emerge from the "Body of the People," the whole of political society, involving all of its social or economic subdivisions This means that more modern conceptions of revolution as class movements are inadequate for understanding the colonists' particular political concerns [S]ince the people as a whole had to contract into government,

similarly the dissolution of established authority—even in a limited sphere, such as pertained to the Stamp Act—had to be based upon a broad popular agreement.¹²³

Another historian explains:

The close tie between the nascent idea of popular sovereignty and revolutionary events appears in Boston. G.B. Warden has written that “the growing unity” in revolutionary Boston “among ... various groups” was connected to an “entity called the ‘Body of the People.’” Patriots and their opponents all came to use the term “Body of the People” as a synonym for “a majority of the people” or the “greater part of the people.” Soon the “Body of the People” referred to “the united will of the people” in symbolic substitution for “the Crown,” and both legal and extralegal gatherings alike were characterized as the “Body of the People.” In 1773 it was a meeting of the “Body”—justified as “representing all the people in the province”—that led to the Boston Tea Party.¹²⁴

Jonathan Mayhew expressed the idea most vividly: the citizenry may make a revolution only when “the whole Body of the People . . . unite and determine as one Man.”¹²⁵

Thus, when the Framers discussed revolution, they imagined the People acting as a body, an organic entity with a single will. One searches in vain through their writings for any recognition that American citizens might: 1) have systematically different perceptions of empirical reality; 2) have systematically different values or interests; and 3) have systematically different conceptions of justice and the social contract, so that a unified future revolution might be problematic. Indeed, the Framers’ theory of revolution ostensibly had only one way to deal with difference among citizens: treat it as a deviation from the norm of peoplehood by ostracizing the dissenters. That tendency is

most evident in the military response to Shays' Rebellion and the Whiskey Rebellion, but it actually began with the exile and suppression of loyalists during the Revolutionary War.¹²⁶ Rebels, loyalists, and tyrants were all aberrant groups, outsiders acting against the interests of the People, not Americans with different views of the world.¹²⁷

The Second Amendment, in other words, conjures with the idea of a People: it simply presumes that a People exists, because that presumption is necessary for the provision to make sense in its own terms. It does not, however, seriously examine whether a People actually does exist in America. Given the ideological conflicts at the time of the founding, that silence is not entirely surprising. Some political thinkers of that time recognized that the American people were dividing into what we would today call interest groups. These thinkers insisted that any political order must acknowledge the existence of factionalism and seek to control its effects, rather than to eliminate the phenomenon.¹²⁸ Civic republicanism, by contrast, nostalgically maintained that a just government was possible only if the people were sufficiently homogeneous to possess a common good. As a result, republicanism feared specialization, because specialized citizens would have separate and rival interests; the conflict of those interests would transform politics from the disinterested search for the public good into a selfish pursuit of individual appetite. One form of specialization was a standing army, but the greatest threat came from the developing market economy: if citizens have different economic concerns, then the regulation of the economy can be nothing more than a struggle for individual advantage.¹²⁹ The possibility of a republic, in other words, depended on the existence of a People, which civic republicans were resolved to create or preserve.¹³⁰ For that reason, civic republicans had to conjure with the concept of a People, because it occupied a critical place in their political analysis and program. If there were no People, there could be no common good, only interest-group politics. If there were no People, there could also be no revolution, only rebellions and civil war.

B. Conjuring with the People

At the level of formal analysis, few modern theorists of the Second Amendment have acknowledged that the Second Amendment right to revolution depends on the existence of a People. States' rights theorists argue that the right to bear arms belongs only to the National Guard as the modern successors of the state militias. The National Guard, however, is not a revolutionary People, because it is not universal and exhibits some of the characteristics of a distinct interest group.¹³¹ Individual rights theorists, by contrast, argue that the people possess a right to own arms so as to make a revolution or at least to mount resistance to an oppressive government.¹³² Indeed, a central part of their case rests on the fact that the text of the amendment refers to the "right of the people to keep and bear arms."¹³³ In referring to the right of the people, however, these theorists mean that individual American citizens who happen to own guns may make a revolution. They emphatically do not mean that only as a collectivity do the American People possess a right to make a revolution; indeed, they are quick to deny that the amendment protects collective rights.¹³⁴ As a result, they never examine whether Americans constitute a unified people, because that question is irrelevant to their interpretation of the provision. Consequently, these theorists are not concerned that, like the National Guard, individual gun-owners do not make a people because they are not universal, have not been trained to virtue, and are demographically skewed.

The militia movement also fails to recognize the necessity of a revolutionary People for a right to revolution. Like individual rights theorists, militia writers stress that the Amendment protects the right of "the people" and that the militia of the 1780s included all American citizens—"John Q. Public."¹³⁵ Militia writers conclude that the right to revolution belongs to private militias composed of random volunteers. A collection of private militias, however, does not comprise a universal militia any more than a collection of private gun-owners do, because they are not universal, have not been trained to virtue, and are

demographically skewed.¹³⁶ As many observers have suggested, the militia draws its membership from groups of people who feel unjustly disempowered by recent events, including angry white males, conservative Christians, and rural residents.¹³⁷ Militias prepare for revolution when they feel neglected by the electoral process, and they dream of a time when people like them will again have power and receive their rightful due. That story, however, is a fantasy of rebellion rooted in the interests of a social faction, not of revolution by the People as a whole.

This failure to recognize the dependence of a right to revolution on the existence of a People creates analytical and practical problems for modern theorists of the Second Amendment. States' rights theorists ignore the problems: because in their view the right to arms belongs only to the Guard, the constitution of a revolutionary people is irrelevant. For individual rights theorists and militia writers, however, the problem is more pressing, because they believe that the mass of private individuals has the right to make a revolution against government. That analysis raises troubling questions: How will this revolution, made by large numbers of private individuals or groups, work? When is a revolution warranted? Who should lead it? And how will there be agreement on those issues? In short, how shall we act as a People? Can we act as a People?

As explained above, at the level of explicit analysis, theorists in the militia movement and individual rights school largely ignore these questions. However, they seem troubled by the questions, because close inspection of their writing reveals an implicit, very different attitude toward the existence of a People: at the level of rhetoric, like the Framers before them, such writers respond by conjuring with the People. They argue that as the People have the right to arms, the People will decide when and how to act. That argument, however, presupposes (and implicitly asserts by presupposing) that American citizens constitute a People. It assumes that, revolting spontaneously and independently, all of the individuals and groups in America will act as a body. Virtually no militia writers or individual rights theorists confront the alternative scenario that a unified

revolution is virtually impossible today and that civil war is a more likely result.¹³⁸

1. Individual Rights Theorists

This Part will illustrate the claim that individual rights theorists conjure with the People by analyzing three significant articles in that school of thought.¹³⁹ In his very thoughtful and influential *The Embarrassing Second Amendment*,¹⁴⁰ Sanford Levinson rejects the view that “the substantive right [to arms] is one pertaining to a collective body—‘the people’—rather than to individuals.”¹⁴¹ In republican thought, according to Levinson, individuals have the right to engage in armed resistance against the government: “Consider the possibility, though, that the ultimate ‘checking value’ in a republican polity is the ability of an armed populace, presumptively motivated by a shared commitment to the common good, to resist governmental tyranny.”¹⁴² At this point, however, Levinson has already begun to conjure with the people, or, rather, to repeat the Framers’ conjuring: he assumes that the armed populace is “presumptively motivated by a shared commitment to the common good.”

Is the populace actually so motivated, so that it constitutes a People? Levinson apparently believes so, because he argues that the revolutionary Second Amendment has important contemporary relevance:

[I]t seems foolhardy to assume that the armed state will necessarily be benevolent. . . . The development of widespread suffrage and greater majoritarianism in our polity is itself no sure protection, at least within republican theory. The republican theory is predicated on the stark contrast between mere democracy, where people are motivated by selfish personal interest, and a republic, where civic virtue, both in citizens and leadership, tames selfishness on behalf of the common good.¹⁴³

In short, the people have a right to bear arms because they share a commitment to the common good and will presumptively act only on that commitment. It would be unwise, however, to blithely accept that scenario as a description of modern reality. The Framers hoped to achieve commitment to a common good through membership in a universal militia and the preservation of homogeneity. Because those conditions no longer exist, one must wonder what the common good could be under conditions of radical diversity and whether citizens are committed to that common good.

Nelson Lund, too, conjures with the People.¹⁴⁴ Like Levinson, he believes that the right to bear arms is individual: “The language of the Second Amendment protects an individual’s right to keep and bear arms.”¹⁴⁵ But then he continues: “The language also indicates, however, that this private right is protected for the sake of a public good. . . . The primary purpose of the people’s right to keep and bear arms . . . is to allow them to act as a credible counterweight to the government’s military forces.”¹⁴⁶ Lund here conjures with the People to explain how the right to revolution will work: in the first sentence, he describes the right as “an individual’s,” but by the second sentence those individuals have somehow unified into a “people” (he calls them “the people”) to counterweight the armed services. The conjured image contains two simple elements: the government as a mass on one side, and the People as a bloc on the other.

Lund is, however, aware that Americans do not constitute a single bloc and that civil war seems more likely than revolution. Perhaps for that reason, his analysis at this point becomes somewhat ambivalent, as he both welcomes and fears a right of revolution. On the one hand, he argues that government oppression remains a possibility in this country so that citizens must retain the right to resistance.¹⁴⁷ On the other hand, Lund would not allow private citizens to maintain “a stock of armaments and expertise sufficient to defeat either the armed forces of the United States, or even a state’s National Guard, in battle.”¹⁴⁸ Any attempt to arm the citizenry in this manner would

be “impossible” and “foolhardy,” but, more importantly, the Constitution gives the federal government the power to “suppress Insurrections.”¹⁴⁹ In the end, the only point in the revolutionary Second Amendment for Lund is its psychological impact on the government: our governors will hesitate long before assaulting a (lightly) armed citizenry because “[a]ny use of military force . . . depends upon a calculation of both the benefits and the costs of its use. . . . [A]ny factor increasing the anticipated cost of a military operation makes the conduct of that operation incrementally more unlikely.”¹⁵⁰ In other words, the likelihood of government oppression is reduced to the extent that the population is armed. Thus, having praised a popular right to revolution, Lund then drastically curtails it: the People may resist but not win, and the government may oppress but must pay the cost.

Lund might be driven to this equivocation because of his ambivalent attitudes toward the American citizenry. He is tempted to conjure with the People, but he also feels a sensible discomfort with that temptation. On the one hand, in defending the right to bear arms, he assumes that Americans are a united people that must have arms in order to resist the government. No sooner has he made that case, however, than he realizes that some private individuals might use the right to resist for selfish ends. As a result, he quickly affirms the government’s right to put down rebellions and dramatically limits the citizenry’s right to arms. By the end, without the image of a united revolutionary people before him, Lund has virtually dismantled the right to revolution.

In contrast, Don Kates acknowledges the likelihood of civil war in the event of armed resistance, but fails to understand the constitutional significance of that probability. In his pathbreaking work *Handgun Prohibition and the Original Meaning of the Second Amendment*,¹⁵¹ Kates maintains: “The second amendment’s language and historical and philosophical background demonstrate that it was designed to guarantee individuals the possession of certain kinds of arms for three purposes: (1) crime prevention . . . (2) national defense . . . (3)

preservation of individual liberty and popular institutions against domestic despotism.”¹⁵² He advocates the continued importance of this third purpose, even in the face of new arms technology. Kates rejects the argument that “an armed citizenry cannot hope to overthrow a modern military machine” because it is wrong to assume “that a handgun-armed citizenry will eschew [effective] guerrilla tactics in favor of [ineffectively] throwing themselves headlong under the tracks of advancing tanks.”¹⁵³ At this point, Kates has begun to conjure with the People: he speaks of the citizenry as a united body choosing whether and how to resist.

Kates continues his analysis with an uncommonly realistic description:

[T]he issue is not really overthrowing a tyranny but deterring its institution in the first place. To persuade his officers and men to support a coup, a potential military despot must convince them that his rule will succeed where our current civilian leadership and policies are failing. In a country whose widely divergent citizenry possesses upwards of 160 million firearms, however, the most likely outcome of usurpation (no matter how initially successful) is not benevolent dictatorship, but prolonged, internecine civil war.¹⁵⁴

One might read this passage in one of two ways. First, Kates’s projected scenario might be that the “widely divergent people” unite together with their “160 million firearms” to resist a usurper. In that situation and only in that situation, the people have the right to resist. No usurper in his right mind, however, would risk such resistance. Therefore, deterrence by a united people will always be successful. In this reading, Kates is still conjuring with the People: if the population really is so “widely divergent,” it seems unlikely that American citizens would ever agree that a given President is in fact a tyrant—or at least, so Oklahoma City would suggest.

Alternatively, Kates may believe that the people will not unite, and armed resistance will result not in revolution but in

vicious domestic infighting. Despite that prediction, however, he still believes that the Second Amendment guarantees a right to arms, apparently on the grounds that the amendment protects a right to conduct “prolonged, internecine civil war.” As argued above, I believe that the Framers would disagree: the Second Amendment guarantees the right of the Body of the People to make a united revolution for the common good, not the right of factions to make a rebellion.

2. *Militia Writers*

Similarly, militia writers conjure with the People in describing how armed resistance by private groups will result in unified revolution: like the individual rights theorists, they just assume that such a People exists and owns arms. Militia writers also make a second and perhaps more important claim: they insist that the militia movement represents the People and that the federal government stands in opposition to the People. *The Militia News* summarizes this view: “THE U.S. GOVERNMENT HAS DECLARED OPEN WARFARE ON THE AMERICAN PEOPLE.”¹⁵⁵ *Federal Lands Update* asks, “Who are the individuals and organizations that continually demand and insist that you do certain things which run contrary to; [sic] not only your beliefs and convictions, but to the convictions of the vast majority of the citizens. Our old friends; [sic] the federal government, of course.”¹⁵⁶ In time of crisis, “the militias will be the main defense against tyranny. At this present time, the people are warning federal government; [sic] let us alone or face the consequences.”¹⁵⁷ Samuel Sherwood demands: “We must look at the reality of the situation and say, who is master, and who is the slave. Who is the servant, and who is the sovereign. In America, the people are the sovereign, then why are we subject to slave laws [i.e. gun control laws] with which we do not agree.”¹⁵⁸ The Militia of Montana adds to the refrain:

[W]hen the codes and statutes are unjust for the majority of the people, the people will rightly revolt, and the government will have to acquiesce without a shot being

fired, because the militia stands vigilant in carrying out the will of the people in defense of rights, liberty and freedom.¹⁵⁹

These passages contain the elements of a powerful myth. In the place of a nation of contentious and disunified individuals, most of whom disagree with the militia's substantive views, the militias envision the People, or at least the "vast majority of the people," arrayed in militant unity against a tyrannical government. Most importantly, "the people" allegedly agree with the militia writer's substantive views, whatever they happen to be, so that the government must "let us alone or face the consequences." The apotheosis of this style of analysis is the common militia condemnation of officeholders as traitors. For example, the North American Volunteer Militia sent out letters that warn:

Each of you have [sic] taken an Oath to uphold the Constitution for the United States. The Oath is your contract with the people. When you violate your Oath of office you become renegade to the Constitution and guilty of treason. I am sure you know what the penalty is for treason.¹⁶⁰

Linda Thompson issued an "Ultimatum" to each member of Congress demanding the repeal of the Brady Bill and the Fourteenth, Sixteenth, and Seventeenth Amendments, as well as a declaration that Congress has no criminal jurisdiction on the "soil of any sovereign state."¹⁶¹ The document concludes: "If you do not personally and publicly attend to these demands, you will be identified as a Traitor, and you will be brought up on charges for Treason before a Court of the Citizens of this Country."¹⁶²

The allegations of treason in these passages depend on the rhetorical supposition of a united people. On this view, America is not a place of rival, discordant factions, each of which sends leaders to Congress, where the squabbling—unseemly but

legitimate—continues. Instead, there is a single American People that embraces, and is defined by, the political views of the militia groups. Politicians who disagree with those views are therefore not loyal Americans, representing other loyal American citizens; they are instead traitors to the People, scheming Others in a land of consensus.

3. Commonality Between Militia Writers and Individual Rights Theorists

The foregoing analysis argues that militia writers and individual rights theorists agree on certain propositions. Following the Oklahoma City tragedy, there has been so much finger-pointing¹⁶³ that it is important to be clear about where this commonality exists between the two groups and where it does not. Most importantly, in my view, individual rights theorists are in no sense responsible for the militia movement, nor do I believe that they are sympathetic to it. Every individual rights theorist that I know is a responsible, serious scholar. They do not believe that the federal government is tyrannical, nor do they share the militia's extreme political values, nor do they believe that violence is an appropriate response to political disagreement. They have not given aid and comfort, aided and abetted, or encouraged the movement.

Nonetheless, they share two important ideas with the militia writers. First, individuals have a right to own arms to make a revolution. Second, the people, meaning the totality of private citizens, will decide when and where a revolution is warranted. As a result, given the structure of the argument, individual rights theorists may reject Timothy McVeigh's particular actions, but they cannot categorically reject the class of such actions. The militia movement is wrong, in other words, not because it believes that private individuals have a right to mount a revolution, but because it believes that present circumstances justify such a revolution. In the end, however, the people—meaning the mass of private individuals like Timothy McVeigh, Samuel Sherwood, Linda Thompson, Pat Buchanan, Bill Clinton, Jesse Jackson, David Williams, and each reader of this

Article—must decide when the time is right. In this sense, individual rights theorists might disagree with the militia writers on their application of the private right to revolution, but not on the existence of the right itself.

Or so it would seem. As suggested above, individual rights theorists have been quite vague about the actual mechanics of any projected revolution; they simply assert that when the time comes, the People will act. That assertion hides all of the important questions by conjuring with the People, but the bombing in Oklahoma City forces those questions into the open. As a result, in the months to come, individual rights theorists may clarify their earlier writing by qualifying the right to own arms to make a revolution. It remains to be seen, after all of the qualification gets done, how much remains of that right.

Glenn Harlan Reynolds's recent work offers an illustration. That work is important for two reasons: he is the earliest individual rights theorist to discuss the militia movement; and among those theorists, his writing is particularly thoughtful, probing, and balanced. For all of those considerable virtues, however, his work also illustrates the difficulties facing the individual rights position after the Oklahoma City bombing.

Reynolds is solidly in the individual rights camp. He endorses what he calls the "Standard Model" of Second Amendment interpretation,"¹⁶⁴ the view that the Amendment guarantees "an individual right to keep and bear arms."¹⁶⁵ The purpose of that right is to place "a check on government tyranny and on the power of a standing army."¹⁶⁶ Like other individual rights theorists, he argues that the "well-regulated militia" refers to the entire citizenry, and he pointedly rejects the idea that the purpose of the Amendment was to guarantee the states' right to maintain militias, rather than the people's right to own arms.¹⁶⁷

Reynolds argues that the Second Amendment not only guaranteed an individual right to arms in 1792, but continues to guarantee such a right today, despite the absence of a universal militia. In his sensitive discussion of my own earlier work, Reynolds concedes that the Second Amendment might have presupposed a universal militia, but he responds that "there is a

solution to that problem, too: If gun ownership is essential to give the Second Amendment meaning, then simply require everyone to own a gun (and to go through the necessary training to use it responsibly).¹⁶⁸ He adds that he does not actually recommend the creation of such a body; he merely believes that it would answer my argument.¹⁶⁹ That response, however, does not actually clear up the problem. First, arming the populace is not the same as recreating a universal militia. The universal militia was raised and trained by the state to virtue, and it rested on the commonality of peoplehood; general private arms-possession will not recreate those conditions. Second, as Reynolds recognizes,¹⁷⁰ the universal militia is a “condition precedent” for the Amendment. If a universal militia exists, the Amendment might have its original meaning. If it does not, it cannot. As a result, if Reynolds believes in a modern constitutional right to bear arms, he must also believe in a modern universal militia; he cannot be indifferent to the idea, as he claims to be.

Nonetheless, Reynolds concludes that the Amendment presently protects an individual right to arms. Even at the time of his writing this article (before the bombing), however, Reynolds was concerned about the militia movement: “[T] here are news reports that large numbers of Americans . . . have organized themselves into militia companies whose stated purpose is to resist a tyrannical government.”¹⁷¹ At this point in his analysis, Reynolds apparently believes that the militia movement is incorrect, not for believing that private individuals have a right to band together to make a revolution, but for believing that the time for revolution is now. He perceptively points out that the individual rights theory is distressingly vague about the grounds for revolution:

Standard Model scholars have paid almost no attention to the question of when such a revolt would be justified. . . . If we have the right to keep and bear arms in no small part so that, in the last resort, we can rise up and overthrow a tyrannical government, then one important aspect of the right would seem

to be some basis for agreeing on whether the government is tyrannical or not.¹⁷²

According to Reynolds, individual rights theorists must remedy that deficiency in order to counter the militia movement's analysis:

Many of these individuals are very familiar with the Second Amendment, and with Standard Model scholarship, but most are sadly lacking in understanding about what the Framers would have considered a tyrannical government. . . . But without a proper grounding in this subject, there are twin risks. One is that some citizens will think it time to revolt when it is not . . . The other (perhaps less likely in light of that streak of anarchy that seems part of our American culture) is that many citizens will not think that it is time to revolt when it is.¹⁷³

To this stage in his article, Reynolds has analyzed the militia theory of the amendment as this Article has suggested an individual rights theorist would before the bombing: the militias are right in thinking that “we”—i.e. private American citizens outside of a universal militia—have a right to revolt against a tyrannical government, but wrong in thinking that present conditions justify such a revolt. So “we” need to talk about what would justify a revolution; otherwise, some citizens will revolt too early and some too late.¹⁷⁴ Hence, the dynamic of Reynolds's proposed revolution follows the decentralized model of the individual rights theorist: we individuals have a right to revolt, but we need to consult each other to ensure that the revolution occurs at the right time. There is no mention of the necessity of a universal militia, a People, or a common good.

The Oklahoma City bombing occurred after Reynolds completed his original article but before it went to press. To consider the significance of that event, Reynolds wrote an Addendum with a different focus.¹⁷⁵ Although he still rejects the demands of the militia movement for an imminent revolution, he

does so on a different and more fundamental basis. The problem is not just that the militia movement thinks that the present government is tyrannical when it is not; the problem is that only the Body of the People may stage a revolution. Quoting my earlier work, he explains: "Republicans did not intend to leave the universality of the militia to the chance decision of every citizen to arm herself. The state was supposed to erect the necessary scaffolding on which the militia could build itself, to muster the militia, and oblige every citizen to own a gun."¹⁷⁶ Later, relying on the same article, he distinguishes between a revolution and a rebellion: a revolution "must be a product of the 'body' of the people, i.e., the great majority acting by consensus; it must be a course of last resort; its inspiration must be a commitment to the common good; and its object must be a true tyrant, committed to large-scale abuse."¹⁷⁷

After reflecting on the significance of Oklahoma City, Professor Reynolds seems to have further restricted the conditions under which a Second Amendment revolution may occur: only a body (such as the universal militia) committed to the common good and comprising a People may make such a revolution. If, however, Professor Reynolds accepts that analysis, then he must also agree that if there is no such body, then there is no right to revolution. And if there is no right to revolution, then there can be no right to bear arms to stage a revolution. The historical, revolutionary Second Amendment cannot have any contemporary meaning if it presupposes historical conditions that have disappeared.¹⁷⁸

In short, Professor Reynolds's work illustrates the challenge that the militia movement offers the individual rights position.¹⁷⁹ He begins his analysis with a strong assertion of the private right to arms to check the government, but by the end he has tied the fulfillment of the right to a body (the universal militia, the Body of the People) that arguably no longer exists. Even before the bombing, Reynolds was presciently concerned about the militia. Among individual rights theorists, he alone recognized the need for standards to measure the legitimacy of particular revolutions.¹⁸⁰ Following the bombing, perhaps other scholars

will attempt to explain why the individual rights theory does not really sanction an individual right to take up arms against the government. After that writing, it remains to be seen how much will remain of the individual right to own arms as a checking function on government.¹⁸¹ Under this Article's thesis, in the absence of a universal militia or some other basis for Peoplehood, virtually nothing can remain of the right.

C. A Twentieth Century American People?

The Framers identified the universal militia with the People, not with the National Guard, individual gun-owners, or private groups. No one can win the debate among individual rights theorists, states' rights theorists, and militia writers, because all sides in that debate are trying to draw precise historical parallels where none exists. The only modern analogue for a universal militia would be some other manifestation of revolutionary Peoplehood. To determine whether such an analogue exists, one must look seriously at modern America. It is no longer wise to assume that Americans constitute a united People with a right to revolution; the Oklahoma City bombing is sufficient evidence, if any were needed, of the foolishness of that proposition. Any revolutionary theory of the Second Amendment must therefore answer the question: who comprise the Body of the People that could make a revolution? The eighteenth century offered an institutional answer: the People are the universal militia, raised by the state and trained to be virtuous. Whether that answer was satisfactory at the time, it will no longer serve, because America no longer has a universal militia or even a dim prospect of one. So to preserve a revolutionary Second Amendment, it is necessary to find a People somewhere else.

That task is daunting in light of the changes in American society over the last two hundred years. Even in 1776, the People might not have been unified; Americans disagreed viciously over the wisdom of the War for Independence itself, that great icon of American unity.¹⁸² If Americans were ever a People, however, there is reason to doubt that they remain one today. This country has expanded the voting citizenry to include

women,¹⁸³ persons of color,¹⁸⁴ and propertyless men. Massive immigration has brought values, cultures, languages, and religions that have enriched the country but also made it less homogenous.¹⁸⁵ The social world, especially the economy, has become more complex, bringing with it great specialization, just as the republicans feared.¹⁸⁶ In the popular imagination¹⁸⁷ and some schools of political science,¹⁸⁸ politics has become simply the pursuit of advantage by interest groups. Finally, to an extent unimagined in the 1780s, Americans have embraced the central tenet of mainstream liberalism: the individual has the right to chart his own life-course, free of community pressure to conform to a communal identity that might form the basis for peoplehood.¹⁸⁹

These difficulties might not definitely prove that no American People exists, but they certainly demonstrate that it is a serious question whether any such People can possibly exist. Accordingly, any complete theory of Second Amendment revolution must offer a careful explanation of how, despite the diversity of the United States, the citizenry can constitute itself as a People in the moment of revolution.¹⁹⁰ Unfortunately, neither the individual rights theory nor the states' right theory offers such an explanation. Instead, the latter denies that the amendment gives a right of revolution to the people; the former recognizes such a right but merely conjures with the concept of the People.

III. THEME AND VARIATIONS—MILITIA VISIONS OF THE PEOPLE

The militia movement, on the other hand, does not just conjure with the People; it also offers some more specific explanations of the basis of peoplehood. All of these explanations concur on some basic propositions, a central theme. First, there is an American People, unified in all important ways and represented by the militia movement. Second, federal officeholders that disagree with the movement are therefore traitors to the people. Third, electoral politics will no longer

serve to tame this beast, because the traitors are not loyal Americans with different views; rather, they are people plotting to harm the American citizenry and subvert the American scheme of government. Accordingly, resistance to these officeholders is not rebellion or civil war; it is legitimate revolution. In this sense, the militia's theory of revolution depends on the creation of an "Other." This creation of an Other through conspiracy theories is thus necessary, not contingent, to the militia theory of the Second Amendment: citizens may revolt against "Them" precisely because "They" are not "Us." Indeed, any revolutionary theory of the Second Amendment seems to depend on the existence of such an Other. As long as citizens are a part of the same political enterprise, they interact politically; only when the system breaks down, when "it becomes necessary for one people to dissolve the political bands which have connected them with another," must they interact militarily.

While all militia groups construct an Other, however, they disagree on the precise identity of the Other. Correlatively, while all militia groups assert that there is an American People, they disagree on its exact character as well. This Part will describe and analyze four such visions of the American people and the Other that defines each. It will suggest that all four visions fail on moral or empirical grounds. Each one of these visions illustrates a major difficulty in defining or constituting an American people under modern circumstances. Any theory that posits the existence of such a People must address these difficulties; in toto, they pose an enormous obstacle for a revolutionary theory of the Second Amendment.

To facilitate that analysis the following Parts divide militia thinking into four themes: overt racism, anti-internationalism, anti-socialism, and anti-secular humanism. These clusters of ideas are analytically distinguishable in the militia materials, and each cluster presents different problems. Most militia groups, however, espouse more than one of these themes, and some espouse all, believing that an international conspiracy of socialistic secular humanists, dominated by Jews and third world peoples in the United Nations, is trying to disarm, secularize,

and socialize the United States. Accordingly, although this Article distinguishes the four visions for heuristic purposes, this division should not obscure their overlap in the real world.

A. The Overt Racists

Probably the best publicized and most malign militia theme is overt racism. In recent years, Christian Identity theology has provided a shared set of core beliefs for many, from the Aryan Nations groups in Idaho,¹⁹¹ to the Covenant, the Sword, and the Arm of the Lord in Arkansas,¹⁹² to the *Posse Comitatus* in the plains states.¹⁹³ The most famous Christian Identity group is probably the Order, led by Robert Matthews, whose career of violence made headlines in the 1980s.¹⁹⁴ The Order is not the only such group, however, with a criminal history.¹⁹⁵ Indeed, some evidence suggests that McVeigh himself had ties to Christian Identity groups.¹⁹⁶

Christian Identity is a bizarre, Byzantine, and elaborate thought system. The interested reader may find detailed expositions elsewhere;¹⁹⁷ this Article offers only the broad outlines. Some Christian Identity groups are not made up of overt racists, but many are.¹⁹⁸ Those in the latter category offer a lengthy re-telling of Biblical history. According to these groups, the union of Adam and Eve produced Abel, and Abel's progeny gave rise to the nations of Israel, who were not, it turns out, Jews. Eve, however, also coupled with Satan to produce Cain. After fleeing Eden, Cain mated with animals to produce the "mud people," i.e., nonwhites. In 721 B.C., Sennacherib took the northern tribes of Israel (who were not Jews) prisoner to Assyria, where they became lost to history. According to Christian Identity proponents, these lost tribes of Israel crossed the Caucasus into Europe and became the ancestors of modern Europeans. One tribe, Manasseh, eventually migrated to America to produce the Founding Fathers and to enter into a new covenant with God, the Declaration of Independence and the United States Constitution.

Meanwhile, in 586 B.C., Nebuchadnezzar took the southern tribe of Judah into captivity to Babylonia. There, the tribe

deteriorated by converting to Satanism and breeding with the children of Cain. The progeny of that union eventually became the people today known as Jews. The true Jews, however—the Chosen People, the Davidic line to whom God made the promises of both the Old and New Testaments—are Europeans and the descendants of Europeans in America. For centuries, the people called Jews have been trying to subvert Christianity in general and the American way of life in particular. Lately, they have succeeded in taking over the United States Government, known to believers as “ZOG,” an acronym for “Zionist Occupational Government.”¹⁹⁹

To date, Christian Identity and other white supremacist groups are fairly small, but they have been attempting to co-opt the recent explosive membership growth in the militia movement.²⁰⁰ Some non-racist (or less racist) militia leaders are aware of this danger and have tried to combat it.²⁰¹ Yet, although only a few militia members may espouse Christian Identity in its extreme form, anti-semitic conspiracy theories are fairly common. In particular, a significant number of militia groups²⁰² believe that Jewish bankers have been controlling the American government for a long time in order to line their own pockets.²⁰³ Anti-semitic elements often combine with anti-internationalist and anti-socialist convictions to conclude that Jewish agents in the United Nations have taken over the federal government.²⁰⁴

For example, the *Militia News* explains that in the early years of the republic, “with their rights and liberties insured [sic], and their opportunities almost unlimited, and with their Christian heritage, devotion to God, and splendid work ethic, the nation grew and prospered.”²⁰⁵ Soon, however, the worm emerged in the apple: “Most honest historians now know that the Civil War was created in order to split and destroy the nation.”²⁰⁶ This plot continues today:

[F]ollowing the turn of the 20th century, Communism (the Judeo-Bolsheviks of Russia) and other diabolical movements and philosophies—Fabian socialism, materialism, atheism, and secular humanism—would,

like malignant parasites, establish themselves in America. . . . The majority of the American people still have not awakened to the fact that every war in this century has been contrived and created, and the people have been deceived into providing the resources and children to fight these wars for the benefit of the international conspiracy which planned them.²⁰⁷

Gordon Kahl of the *Posse Comitatus* and Robert Mathews of the Order are martyrs for the racist militia. They were both killed in confrontations with federal law enforcement, and both penned final letters as death approached them. In wide circulation, these letters offer a valuable insight into their view of the People. Kahl explained that his troubles began:

[A]fter I discovered that our nation had fallen into the hands of alien people, who are referred to as a nation within the other nations. As one of our founding fathers stated, "They are vampires, and vampires cannot live on vampires, they must live on Christians." He tried to get a provision written into the U.S. Constitution that would have prevented Jews from living inside the U.S. He warned his brethren that if this was not done their children would curse them in their graves, and that within 200 years their people (the Jews) would be sitting in their counting houses rubbing their hands, while our people would be slaving in the fields to support them. This has happened exactly as was predicted. . . . We are a conquered and occupied nation, conquered and occupied by the Jews and their hundreds or maybe thousands of front organizations doing their ungodly work.²⁰⁸

Combining equal measures of white supremacy and anti-semitism, Robert Matthews recounts the same kind of awakening as Kahl:

The stronger my love for my people grew, the deeper became my hatred for those who would destroy my race, my heritage and darken the future of my children. . . . By the time my son had arrived I realized that white America, indeed my entire race, was headed for oblivion unless white men rose and turned the tide. . . . I came to learn that this was not by accident, that there is a small, cohesive alien group within this nation working day and night to make this happen. I learned that these culture disorders have an iron grip on both major political parties, on Congress, on the media, on the publishing houses, and on most of the major Christian denominations in this nation, even though these aliens subscribe to a religion which is diametrically opposed to Christianity. . . . [T]o be an FBI agent is to be nothing more than a mercenary for the ADL and Tel Aviv.²⁰⁹

An article in the Aryan Nations's publication *Calling Our People* encapsulates these themes of white supremacy, anti-semitism, and militia resistance.²¹⁰ The unidentified author warns that the federal government has become oppressive, as evidenced by Waco and Ruby Ridge, among other atrocities.²¹¹ The guiding strategy for this oppression is the destruction of race-identity: "Since the 1930s, govt. psychologists have attempted to alienate us from our [own] kind, to make us hate ourselves and to foster the defeatist idea of Every Man for Himself."²¹² To complete the enslavement, "[o]ur enemy has announced, via draconian new laws, that the [Second] Amendment and therefore the entire Bill of Rights is dead."²¹³ These nefarious schemes will not, however, succeed because "We are the militia and we are on the move," and "We will not be disarmed."²¹⁴ Relying on the definition of the militia in the 1792 Militia Act, the author explains that the militia includes "'all [w]hite men between the ages of 18 and 45.' Since we live longer today, this must be modified to include all [w]hite men who do not work for the government."²¹⁵ This militia can handle any Zionist treachery that the government can dish out: "We

therefore are prepared for government to unleash its dogs of war against us for no lawful purpose—for no reason at all other than as an act of [J]ewish terrorism designed to cow our fellow countrymen into submission.”²¹⁶

The vision of the American People for these militia groups is clear: it includes white conservative Christians. In line with this vision, militia writers have developed a constitutional theory that limits full citizenship to such persons. This theory distinguishes between those groups made citizens by the Fourteenth Amendment and those made citizens by the original Constitution and the Bill of Rights. The former, so-called “Fourteenth Amendment citizens,” have a status inferior to the latter, so-called “sovereign” or “organic citizens.” The exact legal details of this inferiority vary among the theorists. Some believe that all amendments after the Bill of Rights are currently void, because they are the illegal products of a Jewish conspiracy;²¹⁷ accordingly, Fourteenth Amendment citizens are not really citizens at all. Others believe that the Constitution and the Bill of Rights are God’s law and as such may not be changed, but later amendments reflect only the will of men and as such may be repealed. Accordingly, Fourteenth Amendment citizens could lose their citizenship and rights through constitutional amendment.²¹⁸ Finally, still others believe that Fourteenth Amendment citizens “do not have unalienable rights, only limited statutory ‘civil rights’ that Congress has seen fit to grant them.”²¹⁹ As a result, Congress could strip these citizens of all their rights at any time.

To remove any doubt about the status of these inferior citizens, James Pace has proposed an amendment to the Constitution. The Pace Amendment has gathered many adherents, especially among Christian Identity believers.²²⁰ The amendment would first repeal the Fourteenth and Fifteenth Amendments.²²¹ In their place, the new provision would stipulate:

No person shall be a citizen of United States unless he is a non-Hispanic white of the European race, in whom

there is no ascertainable trace of Negro blood, nor more than one-eighth Mongolian, Asian, Asia Minor, Middle Eastern, Semitic, Near Eastern, American Indian, Malay or other non-European or nonwhite blood, provided that Hispanic whites, defined as anyone with an Hispanic ancestor, may be citizens if, in addition to meeting the aforesaid ascertainable trace and percentage tests, they are in appearance indistinguishable from Americans whose ancestral home is in the British Isles or Northwestern Europe. Only citizens shall have the right and privilege to reside permanently in the United States.²²²

The overt racists thus have adopted an incisive strategy for constituting a people in late twentieth-century America: the militia writers solve the problem of diversity among the citizens by defining the citizenry to include only those like them. That strategy has a certain historical resonance: eighteenth century civic republicanism could posit the existence of a common good because it restrictively defined the citizenry.²²³ And if it were normatively defensible, that strategy might still work; white conservative Christians, even today, might have enough commonality to constitute a people and to possess a common good.

The strategy, however, is not normatively defensible. The overt racists among the militia groups are, ultimately, recommending a species of fascism or at least ethnonationalism. According to the overt racists, Americans are a people because they share ethnic roots, and these ethnic roots produce a spirit that brings sublime unity.²²⁴ Recent history chronicles in horrifying detail the moral bankruptcy of aggressive ethnonationalism. Indeed, the central proposition of modern democratic political philosophy is that individuals have equal moral worth regardless of race or religious affiliation.²²⁵ Twentieth-century America portrays itself as the nation that values all races and cultures, and rejects ethnicity as a basis for nationhood.²²⁶ Over the decades, many white separatists have

fought the growing pluralization of the American citizenry, but they have lost the demographic and moral race. To deal with growing diversity, Americans have celebrated the importance of individual rights, to allow us each to go his own way, even at the cost of unity.²²⁷

The overt racists among the militia groups thus demonstrate the first great problem in constituting a people: the demographic problem. Like the overt racists, other revolutionary movements have commonly found their unity in a shared sense of racial, religious, ethnic, or class identity. Modern Americans, however, share no such identity, and any defensible definition of the American people must include all citizens, regardless of race, religion, ethnicity, gender, or class. The demographic problem of creating peoplehood among highly diverse persons is therefore a formidable task for any twentieth-century theory of a revolutionary Second Amendment because the racist route to peoplehood is closed to modern Americans.

B. The Anti-Internationalists

A second group believes that the New World Order, variously identified as the United Nations, Jewish bankers, the Trilateral Commission, and others, is subverting the American government. The details of the alleged conspiracy are endless, variable, and notoriously subject to ridicule. Bill Clinton²²⁸ and George Bush²²⁹ are both members of this New World Order, as are many other government leaders.²³⁰ The conspiracy began when the United States entered the United Nations in 1945 and thereby forfeited its sovereignty.²³¹ Since then, the United Nations has been attempting to disarm the armed forces and citizens of its member countries to pave the way for global domination.²³² Recently, the United States armed services have begun to train foreign troops on United States soil in preparation for the subjugation of the U.S. population.²³³ The signs of invasion are everywhere:²³⁴ black helicopters have begun to appear;²³⁵ money and even human beings have been implanted with computer chips to keep track of them;²³⁶ the government is constructing holding camps for resisters;²³⁷ road signs have been

marked to guide the invading forces.²³⁸ On an appointed day, the government will attack and disarm all of the militias.²³⁹ Afterwards, the real purpose of FEMA will be revealed: to impose and administer martial law after the suppression.²⁴⁰ The government perpetrated the bombing in Oklahoma City in order to discredit the militia movement.²⁴¹ The evidence of conspiracy is available on endless videotapes from militia catalogues.²⁴²

In these theories, militia writers have created a foreign, powerful Other in the New World Order, and they have correlatively constituted an embattled People. Indeed, if the theories were empirically accurate, the projected conspiracy might, in fact, call forth an American People. The object of the plot is nothing less than the violent destruction of the United States as a nation-state, and the American leaders of the plot are literally traitors, in league with foreign bodies. One publication explains:

No person can be loyal to the Constitution for the United States and uphold the Charter of the United Nations. They are as opposite as light and dark, good and evil, freedom and slavery, God and Satan. No man can serve two masters. Support of the United Nations by government officials and employees is a violation of their oath. Wittingly or unwittingly, it is treasonous.²⁴³

Another writer asserts: “The time is at hand when men and women must decide whether they are on the side of freedom and justice, the American republic, and Almighty God; or if they are on the side of tyranny and oppression, the New World Order, and Satan.”²⁴⁴

The problem with this vision of the People is that most Americans believe that the conspiracy is a fantasy, a fabrication of the over-heated imaginations of right-wing paranoiacs.²⁴⁵ Militia writers have an answer to that charge: the New World Order has already taken over the establishment media and made it a propaganda machine.²⁴⁶ Most American citizens naively trust the media, but they have been made dupes.²⁴⁷ Since the militias

trust only information obtained through the militia network, they alone know the truth. These informed agents are a revolutionary vanguard, a twentieth-century Paul Revere calling the people to awaken before time runs out.²⁴⁸

That confident self-image is consistent with the historical Second Amendment. The Anglo-American revolutionary tradition is saturated with suspicion, even paranoia: the citizenry should always watch for signs of a governmental plot to subvert liberty.²⁴⁹ The future leaders of the revolution will see the signs of governmental plotting first, and they have an obligation to alert the rest of the citizenry. Indeed, the leaders of the American Revolution embraced exactly that self-image: they perceived themselves as awakening first to imperial corruption and then seeking to open the eyes of others.²⁵⁰ In Second Amendment theory, then, widespread disbelief in a conspiracy is irrelevant to its reality. For the Second Amendment, there is no authoritative exponent of the truth: neither the king, Congress, the Supreme Court, nor the media can dictate to us. The People alone can decide the truth, but because the truth is often hidden, shadowy, and twisting, the people need guidance from a small band of enlightened patriots.²⁵¹

Again, however, the militias ignore a critical constraint in Second Amendment thinking: because only a People can make a revolution, the whole People must be convinced of the plot before the revolution can occur. Indeed, while the leaders of the American Revolution wished to convince the People, they also believed that they could not act until the People became convinced.²⁵² It is important to understand that this limit is not merely prudential (it takes a lot of people to make a revolution) but moral (only a revolution made by the whole for the whole is legitimate).²⁵³ The militias, then, must persuade the rest of the citizenry of the existence of the need for revolution before they commence resistance.

That obligation of universal persuasion highlights the next problem in constituting a People, the epistemological difficulty. For a revolutionary People to exist, all citizens must see reality in the same way; all citizens must perceive that the government

has become so corrupt that only armed resistance will suffice. For that state of affairs to exist, two conditions must obtain. First, there must be an objective reality independent of the observer. Recent epistemological work casts doubt on that condition, perhaps in the sciences but certainly in human affairs.²⁵⁴ Second, we must all—despite our radical differences in situation, values, life-history, cognitive frameworks—perceive that objective reality in the same way.²⁵⁵ A diverse, late twentieth-century citizenry is much less likely to share such a unifying perspective than the eighteenth-century citizenry who had far more similar life circumstances, cultural inheritance, and mental landscape.

The epistemology of militia groups illustrates this difficulty. They reject the mainstream media; others accept the mainstream media. Whom are we to believe and why? According to the militia, we should believe them because they help make sense of recent history: the country has fallen into such a terrible state that there must be a conspiracy afoot. Thus, one group explains: “The obvious deterioration of the United States since the end of World War Two is really not a mystery, it is the result of a hidden agenda initiated by the world socialists starting in the early part of this century.”²⁵⁶ As previously noted, both Gordon Kahl and Robert Matthews describe their recognition of the conspiracy as an epiphanous experience, a clarification of conditions that they had seen but not understood.²⁵⁷ According to one close observer, the *Posse Comitatus* followed a similar line of reasoning: Farmers in the plain states were committed individualists, believing that individuals prospered or failed by their own work. By the mid-1980s, however, many farmers—good men, responsible citizens—were failing. How to explain this deplorable state? It must be the product of a conspiracy by international Jewish bankers to enslave true Americans.²⁵⁸ In short, according to the militia, we can know that they are right because they can explain why the country has declined. There is, however, a problem with that epistemological argument: only those who already believe that the country has declined will find it convincing. Those whose condition has improved over the last

several decades—racial and religious minorities, autonomous women, gays and lesbians—will disagree. American citizens do not all perceive recent trends in the same way.

Outside explanations of militia epistemology reflect the same phenomenon. These observers offer varying explanations of the appeal of the militia's conspiracy theories. Some commentators maintain that right-wing movements like the militia reflect a human proclivity to political paranoia, only barely contained in liberal democracies;²⁵⁹ in particular, militia groups have appealed to groups that feel unjustly disempowered.²⁶⁰ Others contend that militias gain members much the same way as other associations: people make friends with current members in church, at gun shops, in community gatherings. They start to attend meetings and become drawn into the social world of the militia. They soon stop listening to the mainstream media and believe only things heard through their new friends. Before long, they are epistemologically isolated.²⁶¹ Whatever the real explanation, all of these accounts of militia epistemology agree on one point: conspiracy theories make sense to people with a particular background and a particular perspective, who feel powerless and come into contact with militias by frequenting places where militia members gather. For these people, epistemology depends on ideology and biography.

This dependence does not mean that militia members are psychotic. Indeed, observers agree that the militia movement is a genuine grass-roots phenomenon.²⁶² On the whole, militia members are ordinary people who believe in a conspiracy because that belief helps them make sense of their world, given their values and personal histories.²⁶³ In that sense, the militia's epistemology is like much of the rest of America's political culture. Liberals believe in right-wing conspiracies; conservatives believe in left-wing conspiracies; blacks believe in white conspiracies; whites believe in black conspiracies; women believe in patriarchal conspiracies; and men believe in feminist conspiracies. This fracturing of American politics stems in part from the disappearance of a shared epistemology. As the country reaches a crisis of armed resistance, different groups will see

different enemies everywhere, and America will enter not revolution but civil war.

A revolution, then, depends on a People; a People depends on a consensual epistemology; and there is reason to believe that Americans lack such a shared epistemology. Presumably, citizens might be able to construct a shared perception of reality through intense interaction, shared institutions, and common life circumstances. Paradoxically, however, militia epistemology reduces the likelihood of such an achievement, because of its inclination to paranoia. To construct a shared point of view, citizens must accept the legitimacy of each other's perceptions and find a way to bridge them. Militias reject this course. If Paul Revere and Thomas Gage did not see the world in the same way, the reason was deception, not good faith disagreement, and the answer was revolution, not reconciliation. In a world of plots and suspicions, citizens are driven ever more apart, relying on personal sources for information and seeing other groups as potential enemies. In short, this mentality discourages the epistemological creation of a People where one does not already exist. It thereby discourages the creation of conditions necessary for the Second Amendment's relevance.

C. The Anti-Socialists

Another segment of militia thinking asserts that socialists control the conspiracy in Washington. A "socialist" for these thinkers is anyone who wishes to subvert American constitutional liberties. A revolution against a socialist plot is therefore a revolution to protect the Constitution, or at least the Constitution as the revolutionaries understand it. In making war on the Constitution, federal officeholders have declared war on the American people, because it is the Constitution that makes us a people.

This theme is common to many militia groups. For example, the Texas Constitutional Militia describes as its "MISSION": "To defend the constitutions of the REPUBLIC OF TEXAS and of the UNITED STATES OF AMERICA. To uphold and to defend the Bill of Rights, seen as unalienable, given by God to

free men that they may remain free.”²⁶⁴ The Bill of Rights is under assault, and the people must respond: “[I]t is to us, the inheritors of the task begun more than two centuries ago, to seek and to secure these same ideals in the face of the same threats expressed by Patrick Henry.”²⁶⁵ Similarly, the North American Militia warns treasonous officials: “We are prepared . . . to defend, with our life, our Rights to Life, Liberty, and the Pursuit of Happiness. We number in the thousands in your area and everywhere else. How many of your agents will be sent home in body bags before you hear the pleas of the people?”²⁶⁶ *Federal Lands Update* offered a similar warning:

They (the feds) are going to continue to chip away at our Constitutionally protected rights, until they wear us down, and we say, “they’ve taken everything. I don’t have anything left.” Which is what they are hoping for. Or, we (you) can say “HOLD! Enough! You have no Constitutional authority to do these things and if you insist, you will face armed and angry citizens.” Why do you think the militia are growing at such a substantial rate? Because the people are mad²⁶⁷

As a final example, MOM offers the people a clear choice:

The purpose of government is in the protection of the rights of the people, when it does not accomplish this, the militia is the crusader who steps forward, and upon it rests the mantle of defense of the rights of the people We can leave our fate in the hands of corrupted, self serving, foreign mercenaries . . . or we can return to the original intent of our founding fathers (who bled and died for this country), in the defense of our God given unalienable rights²⁶⁸

Militia writers describe “us” or “the people” in opposition to the governmental tyrants: “we” will make a revolution to defend “our” constitutional rights unless “they” stop their oppression.

What makes an American people, then, is the possession of constitutional rights, the shared resolution to defend them, and the anger at their perceived violation.

This vision of the People, however, becomes more difficult to maintain when examined in light of the militia writers' vision of particular constitutional rights. First, as Part I has already explained, the Second Amendment is the cornerstone of the militia's interpretation of the Bill of Rights. Militias condemn the Brady Bill and the assault rifle ban as not only unconstitutional, but also as part of a conspiracy to subvert the Second Amendment, without which other amendments and American liberty cannot stand. Similarly, the incidents at Waco and Ruby Ridge were not merely bungled attempts to serve arrest warrants; they were part of a conspiracy to disarm the public and eliminate citizens who stand in the government's way.

Second, many militia thinkers argue that the mandatory income tax is unconstitutional; indeed the tax resistance movement, at times, substantially overlaps the militia movement. Many tax resisters couch their positions in elaborate legal arguments; such arguments, rather than violence, may be their most characteristic activity.²⁶⁹ Tax resisters make a variety of arguments, but courts have adopted none of them. For example, many tax resisters believe that the Sixteenth Amendment was never properly ratified: "The 16th Amendment, which permits federal income taxes, WAS NOT ratified in the same language by three fourths of United States as required by Article V of the Constitution and is therefore invalid."²⁷⁰ Others maintain that a citizen need not complete tax returns because the Fifth Amendment protects him from giving the government incriminating information against himself.²⁷¹ Still others believe that the progressive income tax violates the Just Compensation Clause because "[h]igh wage earners are taxed to fund welfare and other entitlements."²⁷²

Third, anti-socialists claim that much federal regulation of private and federal land is unconstitutional. The so-called "Wise Use" movement also overlaps with the militia movement and has

its own detailed ideology.²⁷³ Wise Use supporters advance two main contentions. First, the Fifth Amendment prohibits the government from telling a citizen what to do with his own property. This restriction would bar virtually all regulation. For example, the *Free Militia* denounces property restrictions as Fifth Amendment violations:

The use of your property can and is restricted by municipal zoning codes, state and federal environmental laws, and other governmental regulations for the “public good”, even if the use of the property that is forbidden does not harm the lives or property of others. All of these regulations somehow limit the personal use of the property and many limit or reduce the property’s commercial productivity or value on the real estate market.²⁷⁴

Second, the Constitution bars the government from limiting the access of private citizens to public lands and resources. According to some, the “Equal Footing” doctrine grants to every state all federal lands located within that state, so that the state, but not the federal government, may limit access.²⁷⁵ According to others, however, even states cannot limit access because public resources belong to the people.²⁷⁶

In short, according to the militia writers, the Constitution mandates an extreme libertarian scheme. Anything more centrist (in the present political spectrum) is “socialism,” a term militia writers use as an epithet to ostracize those who disagree with them. The prophecy attributed to Sarah Brady sums up this attitude: “Our task of creating a socialist America can only succeed when those who would resist us have been totally disarmed.” One publication calls supporters of the Clinton administration “Clintonistas,” ostensibly to associate them with South American communist movements.²⁷⁷ *Federal Lands Update* warns:

[T]he belief that private property makes us unequal still has millions of adherents here in America. These true believers normally do not use the S word (socialist) to describe themselves. They know well that most Americans are too politically illiterate to recognize socialism even as it bites them in the paycheck every Friday in the form of income taxes, FICA, et cetera.²⁷⁸

Finally, in answer to the question “Does the USMA have any political agenda?”, the group answers: “No. We are not Democrats, Republicans, Independents, etc. Except that we are also not Socialists and Communists and allow none such to belong.”²⁷⁹ Socialists, in short, are beyond the pale, not a legitimate part of the militia or the American People.

There are two difficulties with constituting an American People in this way. First is the interpretive difficulty: the meaning of the Constitution is itself the subject of enormous controversy—witness the furor over bussing, abortion, affirmative action, gay rights, women’s rights, prayer in public schools, flag burning. For the Constitution to make us a People, there must be something approaching consensus on the meaning of that document. In recent years, however, the Constitution has generated as much dissension as agreement. An insurrection begun in the name of the Constitution would therefore in fact be a rebellion made for a particular interpretation of the Constitution, not for the People as a whole. The militia’s own interpretation of the Constitution illustrates this danger. The militias claim to be speaking for the people, but they speak in fact only for a minority. Large majorities supported the Brady Bill and the assault weapons ban, and very few believe the income tax or federal land regulation are unconstitutional.²⁸⁰

The militias answer this difficulty by declaring everyone else wrong. They argue that if only everyone were to use the correct interpretive technique, there would be agreement. Not surprisingly, militia writers’ version of the technique, preferred by many right-wing theorists, is that citizens should passively heed the text of the Constitution and the Framers’ original

intent. *The Militia News*, for example, asserts that the text is self-interpreting:

[T]he vast majority of U.S. citizens are reasonably intelligent and can read, and the Constitution and Bill of Rights are written in plain language (the same English we read and write today) and are not difficult to understand. . . . The Second Amendment . . . consists of 27 plainly written words. . . . This declaration of the absolute, unequivocal, inalienable right of the people to be armed, needs no interpretation.²⁸¹

MOM also emphasizes the importance of the Framers' intent, attributing to Madison the imprecation: "[D]o not separate text from historical background. If you do, you will have perverted and subverted the constitution, which can only end in a distorted, bastardized form of illegitimate government."²⁸²

These simple recommendations, however, underestimate the difficulty in reaching consensus on the meaning of the text. From the moment of its adoption, the Constitution has generated multiple schools of interpretation.²⁸³ Constitutional scholars generally agree that the broad phrases of the Constitution, including "due process," "equal protection," and "privileges and immunities," are too open-ended to generate determinate, consensual interpretations.²⁸⁴ Indeed, much constitutional theory argues that language can have meaning only within an interpretive community that shares a framework of usage and analysis.²⁸⁵ As the militias demonstrate, America is not one, unified interpretive community with reference to the Constitution. Even the justices of the Supreme Court, despite sharing a legal culture, often cannot agree. Consequently, many important cases result in split decisions, hindering the coherent development of the law. The frequency of such cases might be accelerating.²⁸⁶

In the face of such interpretive disagreement, militia writers reach for their inevitable trump card: those who disagree with

them on the meaning of the Constitution must be parties to or dupes of the conspiracy. Thus, *The Militia News* describes those who differ with the militia's reading of the Constitution: "[T]he authors of those documents [the Bill of Rights and the Constitution] anticipated this very problem with those who would usurp the people's rights, and those weak and unprincipled souls who would foolishly compromise or surrender their rights."²⁸⁷ To disagree with the militia, in other words, is ipso facto to be cast outside of the volk. In fact, however, it is not traitorous to the American people to believe that the income tax and environmental protection are constitutional; it is merely to differ in good faith. Again, the mentality of suspicion actually subverts the possibility of a true revolution. If each group believes that disagreement can only be the product of treason and deceit, then a people sufficiently unified to make a revolution will never come into being.

The second difficulty with the anti-socialist position is the political problem: to become a people, individuals must find ways to interact. That process usually involves institutions that bring together people from different backgrounds and allow/teach them to form a common venture. In ancient politics, the Athenian Assembly is a classic example. In American history, the universal militia was supposed to serve that function.²⁸⁸ Because of their extreme libertarianism, however, anti-socialist militias leave little space for such interactive, universal institutions.

Militia writers are very suspicious of the authority of any government, even democratic ones. In their view, individuals do not have rights only within a political system. Instead, individuals have the right to declare themselves entirely outside any political system, possessing all the powers normally associated with government. Thus, Linda Thompson concludes her Declaration of Independence:

We, therefore the sovereign citizens of the several states of the united states . . . Declare, that each of the sovereign citizens undersigned are, and of Right ought

to be, Free and Independent Sovereign Citizens . . . each has the full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which an Independent Sovereign may of right do.²⁸⁹

By contrast, Jefferson's Declaration of Independence spoke not of individuals, but of a people severing its bonds with another.

The militias make no claim to bind the individual. The choice to join is entirely voluntary, the product of spontaneous individual volition rather than of universal institutions. As the Texas Volunteer Militia puts it: "START YOUR MILITIA AND PATRIOTS WILL COME."²⁹⁰ The militia internet sites are full of advice on how to attract members. Significantly, the militias intentionally recruit from a relatively restricted pool of citizens. One posting advises: "Try to find like-minded persons in your area. Ask around. Try patriotic organizations, such as the VFW and the American Legion. Sound out people at gun shows and gun stores."²⁹¹

Within the militia, majority votes have no authority for the dissenting minority because withdrawal is always an option. Thus, MOM provides that it may "not be called into service without the sustaining vote of the Unit."²⁹² A "sustaining vote" requires unanimity: "At the time of the 'call to arms,' each man shall verbally sustain such call, to his immediate Officer, and in the roll call, 'all voices present' shall be presented to the Unit Commander as unanimous for the impending action and service."²⁹³ At the revolution, militia members may depart at any time: "No member of the Unit shall be compelled to serve in a conflict which he can not morally support in his heart with all of his might and strength."²⁹⁴ Similarly, "The Unit Commander shall be chosen by unanimous voice," but if unanimity is not possible, "dissatisfied members . . . may resign . . . for the purpose of forming a separate and independent Unit."²⁹⁵

The militia vision of the relationship between individuals and government is thus almost a parody of classical liberalism. Individuals exist before governments, complete and whole in

themselves. Each individual makes the choice to enter or leave a polity at any time for his own reasons. Accordingly, everywhere and always, supra-individual organizations exist and take action only by the actual consent of each and every member. This theory of the social contract, moreover, is not just a metaphorical explanation for the origin of governmental authority; it is a prescription for the day-to-day conduct of historical governments and citizens. If citizens come together and find that they agree, all is well and good. If not, then individuals should simply go their separate ways.²⁹⁶

This propensity to endless schism, when applied to revolutionary militias, virtually ensures that any armed resistance to government will result in civil war rather than a universal revolution. Entirely absent from the anti-socialist vision of human interaction are the political commitments that might make the construction of a People possible: devotion to the citizenry as a whole and the nation as a structure; resolution to discuss differences, compromise, re-conceptualize one's own interests, enter into the perspective of others; recognition of the bonds that connect those in an ongoing political enterprise. In short, the anti-socialist mentality will lead the citizenry closer to fragmentation, not closer to Peoplehood. And that mentality is not just a problem for the militia. Significantly, the bulk of the American public shares the militia's contempt for politics, although perhaps in a less extreme form; indeed, the most noticeable trend of the 1990s is widespread alienation from the whole political system.²⁹⁷

D. The Anti-Secular Humanists

Finally, many militia members believe that the alleged conspiracy is attempting to replace God with secular humanist dogma in the hearts and minds of Americans. *The Militia News* recites a familiar litany:

We observe the systematic de-Christianization of the nation as the courts display an animosity towards every Christian symbol and every manifestation of Christian

practice, teaching and belief. Bible distribution and even Bible reading is prohibited in government schools. Crosses, crucifixes and nativity scenes are banished from public property. Cross shaped gravestones are being removed from military cemeteries. Public prayer is prohibited at school sponsored events. Even the Pledge of Allegiance is now forbidden in many schools because of the phrase "one nation under God."²⁹⁸

Similarly, part of the "Hidden Agenda" of the New World Order is to "[d]estroy religious faith and moral standards. The government has taken God and his morality from us and in it's [sic] stead supports abortion, gay rights, schools dispensing contraceptives, and activities void of ethics . . ."²⁹⁹

According to militia writers, this de-Christianization is especially shameful because Christianity forms the basis of American peoplehood. In this view America has been a great nation because it was founded on Christianity.³⁰⁰ Indeed, the basis of the American legal system and the Constitution itself is Christian law.³⁰¹ Therefore, to de-Christianize America is to violate the Constitution and to traduce America's way of life as a people. Officials who seek to do so are traitors and oath-breakers.³⁰² At this point, anti-secular humanism often merges with anti-socialism in a belief that the government has begun a systematic assault on the liberties of American gunowners, property-holders, and Christians.³⁰³

In this strain of militia thinking, the American People contains all and only those committed to God's law, as the militia understands it; the Other consists of those committed to taking God out of our Godly republic. This vision well illustrates most of the foregoing difficulties in constituting a unified people in late twentieth century America. First, it faces the demographic difficulty: it facially excludes liberal Christians, Jews, Moslems, Buddhists, nonbelievers, and others.³⁰⁴ According to the militia, these citizens at best deserve toleration because this country was not made for them. Second, this vision of the people faces the interpretive difficulty: many, perhaps most, Americans

(including the Supreme Court) do not believe that the Constitution prohibits abortion,³⁰⁵ allows prayer in public schools,³⁰⁶ or more generally codifies the Christian Bible.³⁰⁷ Indeed, many Christians do not interpret the Bible to prohibit abortion or homosexuality or to encourage the commingling of church and state.³⁰⁸ Finally, this vision faces the epistemological difficulty: the militia believes that the de-Christianization of America is the product of a deliberate, unified conspiracy to subvert America by eliminating its fidelity to and reliance on the Almighty. Other Americans have a different view of reality: the Supreme Court banned prayer in public schools and restrictions on abortion because the justices were concerned about the rights of children and women; states have liberalized laws against homosexuality because many Americans no longer regard gays as monsters; in general, America has demoted Christianity from its privileged legal position out of a conviction that the Constitution mandates equal treatment for all religions.

Armed resistance for God's People, in short, would not be a revolution for the whole of the citizenry; it would be the start of a civil war along cultural battle lines that are all too familiar.³⁰⁹ With the exception of some killings at abortion clinics, synagogue bombings, and militia assassinations, America has waged this cultural war primarily through political and judicial channels. The militias hope to transform that metaphorical war into a real war, and they intend to be better armed and trained than their enemies. Like the other militia visions of the People, in other words, this one does not include all Americans in its revolutionary movement. Instead, the vision's real function is to categorize some citizens as True Americans and to exclude others as traitors, based on differences in values and identities. The practical meaning of the vision is plain: if the militia cannot defeat these enemies through political or judicial means, its members have the right to shoot them.

CONCLUSION: A MODERN CONSTITUTIONAL RIGHT OF REVOLUTION

In a large sense, the United States Constitution and the general Anglo-American political tradition contemplate two ways for the people to take collective action. Today, we are very familiar with one way: the ordinary method of government through politics and law. This system contains specific limits on the government's abuse of power: electoral accountability, separation of powers, federalism, and individual rights. If the people disagree among themselves or if the government disagrees with some of the people, authoritative methods exist for resolving those differences, including election results and court decrees. If the form of government is well-designed, these resolutions may be presumptively just.

For the Framers, however, no form of government could guarantee that powerholders would not become corrupt. The Framers therefore foresaw that the people might have to re-take power into their own hands through the second form of collective action: resistance and revolution. The primary textual basis for this form of action is the Second Amendment. While Articles I, II, and III give power to the people "in-doors," tamed in formal channels of government,³¹⁰ the Second Amendment, by contrast, contemplates the People "out-of-doors,"³¹¹ regnant, militant, and creating the channels for its expression.³¹² This civic republican *armato popolato* is the final limit on governmental power.

Who, however, will limit the people? Scholars who endorse an individual rights theory of the Second Amendment might suggest that this question is illegitimate because the people, as the fountainhead of all legitimate authority, are entirely and always trustworthy. Indeed, some of these theorists accuse gun control advocates of an elitist distrust of the masses.³¹³ In the end, the people must therefore stand as their own limit; they are at the end of the regression, and there is nowhere else to turn.

That conclusion, however, is overly simple. Democracies must of course trust the people's judgment, but that claim is merely a platitude, because it leaves unspecified the meaning of "the people" and "judgment." It is one thing to trust the people's will as expressed through the institutions of a deliberative

democracy; it is quite another thing to trust an enraged mob. Indeed, the Constitution itself is full of limits on simple democracy.³¹⁴ One of the most familiar roles for the Supreme Court is as a restraint on hysterical majorities, a sober second thought.³¹⁵ Furthermore, the Senate was originally intended to be a semi-aristocratic limit on the popular House of Representatives;³¹⁶ to this day, it is not strictly majoritarian.³¹⁷ James Madison himself believed that direct democracy would imperil justice. He hoped that representatives would refine popular opinion, engaging in rational discourse about the aggregate interests of the community.³¹⁸ More recently, a wave of neo-republican constitutional scholarship has espoused the ideal of deliberative democracy, in which the people actively discuss their common identity. Such a system would differ profoundly from a simple majoritarian democracy, in which individuals passively vote their perceived self-interest.³¹⁹

In short, for the people to act, they must assume some particular political or cultural form such as the electorate, a jury, the universal militia, or consumers. There is no such thing as the People simpliciter or in the abstract. Importantly, some of these forms promote justice better than others: a deliberative democracy is a better ideal for popular action than the war of all against all. Particular resistance movements might fall anywhere on this continuum, depending on their historical details. Americans might therefore welcome some revolutions but not others, and, correlatively, they might espouse a right of revolution in certain times and places but not in others. Like almost everything else, it all depends. It is rational and not undemocratic to fear civil war, anarchy, and rebellion.

The Framers of the Second Amendment would agree with that conclusion. They were not indiscriminate proponents of revolution; indeed, they were always fearful that the revolutionary people would become nothing more than a mob.³²⁰ They felt, however, that they had two protections against such degeneration. First, the people were formed into a universal militia, raised and disciplined by the state. Second, American citizens were a republican People—homogeneous, virtuous, and

committed to the common good. These qualities made it possible to trust the people in 1776, but one should not always and everywhere trust the people out-of-doors. Resistance made by an unvirtuous population—such as the laboring classes of European cities—could not be a revolution for the common good.³²¹ In short, unlike some modern proponents of a revolutionary Second Amendment, the Framers worried not only about limiting government by an armed populace but also about limiting the armed populace itself.

Even in the late eighteenth century, the Framers may have been wrong in supposing that Americans were a unified People; they may have been conjuring with the concept of a People, because otherwise their republican structure of thought would crumble. Militia writers might argue that if conjuring with the People was good enough for Patrick Henry, then it should be good enough for modern Americans—or, more precisely, then it is a constitutionally sanctioned form of rhetoric. In fact, however, even if conjuring with the People was once constitutionally sanctioned, the situation has changed. First, the Framers of the Second Amendment gave the People an institutional form—the universal militia—celebrated in the Second Amendment. The United States no longer maintains such a militia; the citizenry, apart from conventional politics, is merely a collection of individuals. Second, the Constitution itself has changed. The original Constitution allowed, even promoted, corporate unities of the sort that might ground peoplehood. States could and did maintain religious establishments; the citizenry was limited to white males; the Bill of Rights had little substantive reach.³²² Today, the Constitution has become a great protector of liberal individualism. American society is no longer a Christian, white, male citizenry, and citizens have individual rights to make personal life choices. In short, Americans no longer exhibit commonality in part because the Constitution protects the right not to be part of a commonality. In such a legal regime, conjuring with the People is no longer a constitutionally sanctioned form of rhetoric.

The most important change, however, is that over the last 200 years, diversity has become a permanent and accepted part of the American political landscape. In the 1790s, the Framers of the Second Amendment could still conjure with a People because even if the American citizenry did not meet that ideal, the Framers hoped to make it do so. Today, that hope is dramatically less viable; for many, it is no longer even attractive. This Article has detailed the demographic, epistemological, interpretive, and political difficulties in constituting a people today. Those difficulties strongly counsel that it is time to stop conjuring with the people. It is possible that a People does exist; if not, it is possible that a People may be created. Unless and until such conditions are demonstrated, however, the revolutionary Second Amendment by its own terms does not apply to late twentieth-century America.

That conclusion would have filled the Framers with foreboding. It certainly fills the militia movement with dread, and it probably fills many adherents of the individual rights view of the Amendment with concern. If Americans lose the constitutional right to revolution, then they have no choice but to trust ordinary politics and law to protect them from oppression. If the government ever falls into the hands of a committed tyrant, those structures may not provide sufficient protection. That threat is real, and in my view it is right to worry about it. The great strength of the individual rights theory is its realism on this point: citizens may live under a basically just system now, but there is no guarantee that it will always be so.

But the right to bear arms cannot guarantee that the American system will remain just either. Votes may not secure a just society, but neither could an armed populace. The individual rights theory is realistic about the threat of government tyranny, but it is profoundly unrealistic about the threat of revolutionary tyranny. Today, armed resistance is no less likely to bring oppression in its wake than is government. In other words, the citizenry forfeited its effective right to armed revolution some time ago, not through the decision of a court, but through historical changes. Even if the Supreme Court guaranteed each

individual the right to arms tomorrow, even if Congress supplied each home with an assault weapon, citizens still could not exercise a right to revolution, because they are not a revolutionary people. All they could do is kill each other. It is terrifying to have to trust ordinary politics, to have to give up the ultimate sanction of armed revolt, but America has already reached that point.

In the end, individuals may always maintain a moral right to defend themselves against unjust government, regardless of circumstances. If the conspiracy theories were true, citizens might all need to beg, borrow, or steal a gun and take to the hills, fighting a guerrilla war for their liberties—and they would be right to do so. In America, it is easy to forget what people in the former Yugoslavia cannot forget: only force wins. And therefore, if the revolution comes, and if the nation collapses in virulent internecine warfare, perhaps everyone would have a right to take up arms in defense of the family, the home, or themselves. That right of self-defense could not be a constitutional right, however, because it would occur outside of all constituted authority, in the war of all against all. In such a time, it is difficult even to speak of justice and injustice; one simply does what one has to do. The Second Amendment does not contemplate arming citizens in preparation for such a time; it contemplates arming the populace in preparation for revolution made by an orderly and unified people according to commonly shared norms and understandings. And that sort of arming is no longer available.

As a result, America must hope that it never comes to the pass of revolution. To forestall that pass, Americans can rely only on ordinary politics. Citizens must struggle to create together a healthy and viable democracy, unified enough to prevent fatal fissures in the body politic but pluralist enough to celebrate different cultures and individuals. Unfortunately, the theoretical world of the revolutionary Second Amendment actively frustrates the creation of such a politics. In that world, citizens must always be suspicious, seeing disagreement as the product, not of good faith, but of deceit. In that world, citizens

must always be ready to take up arms and abandon political means of reconciliation. And as a result, in that world, citizens must see the political landscape as populated by the People and potential Others, not by multiple, co-equal parties with different views but equal rights and legitimacy.

For that reason, paradoxically, the militia's conception of the Second Amendment poisons not only ordinary politics but revolutionary politics as well. For a revolution to occur, the people must be even more united than in a healthy democracy. Completely outside of the normal political structures, they must rise as one to smite the tyrant. If the American citizenry were already a People, the Amendment might protect the right to revolution. But when a people, as now, does not exist, the suspicion, hostility, and violence implicit in the militia movement's theory of the amendment would make it almost impossible to create one. Ironically, then, the movement's particular rendition of the revolutionary Second Amendment would actually ensure that a legitimate, constitutionally sanctioned Second Amendment revolution could never occur.

In short, the Second Amendment right to revolution presupposes a particular factual scenario. The People are profoundly unified with a particular and consensual notion of their own good. A small band of evildoers captures the government, departs from the general will, and uses its power for its own nefarious purposes. The People then make a revolution. Under these circumstances, the right to revolution makes sense. The right does not make sense when the people themselves are profoundly divided about the common good, when the problem is not a straying government but fissures within the citizenry itself. Under today's circumstances, the right to revolution loses its grounding, and citizens must look elsewhere for safety. Different historical circumstances call for different forms of collective action.

With the loss of the right to revolution, however, come compensating gains. Unlike the patriots of 1776, America now has a representative government and a written constitution.³²³ Throughout America's history, groups of citizens have resisted

the government in the name of an abstraction called the People. On inspection, however, that abstraction always turns out to be a subset of the citizenry, united by class, language, or political viewpoint; America is now a nation of groups, not one unified people.³²⁴ The compensation is that we no longer enjoy peoplehood precisely because we now have the right to be different from each other. Because we will not suffer the cultural orthodoxy necessary for unity, we have lost one great guarantor of freedom, the right to revolution, but we have gained the day-to-day freedom of a pluralist society. It remains to be seen whether such a society can survive, but it has no hope so long as we are prepared to kill each other in the name of a constitutional anachronism: the People.

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1. See Evan Thomas et al., *The Manhunt: Cleverness and Luck*, *Newsweek*, May 1, 1995, at 30.

2. See, e.g., Elizabeth Gleick, *Something Big is Going to Happen*, *Time*, May 8, 1995, at 50, 53; Russell Watson et al., *Three Strange Friends*, *Newsweek*, May 1, 1995, at 32; Gordon Witkin, *Attacking the Firearm Police*, *U.S. News & World Report*, May 8, 1995, at 40.

3. See, e.g., Joseph P. Shapiro et al., *An Epidemic of Fear and Loathing*, *U.S. News & World Report*, May 8, 1995, at 37; Jill Smolowe, *Enemies of the State*, *Time*, May 8, 1995, at 58.

4. See, e.g., Shapiro et al., *supra* note 3, at 38; Smolowe, *supra* note 3, at 62-63.

5. For example, 80% of Americans would describe militia members as "dangerous," 63% as "a threat to our way of life," and 55% as "crazy." Smolowe, *supra* note 3, at 60.

6. See *infra* part III.A.

7. See Sylvia R. Frey, *Liberty, Equality, and Slavery: The Paradox of the American Revolution*, in *The American Revolution: Its Character and Limits* 230, 230-32 (Jack P. Greene ed., 1987).

8. See Gordon S. Wood, *The Creation of the American Republic 1776-1787*, at 427-28 (1969).

9. See *infra* part III.B.

10. See *infra* part III.C.

11. See *infra* part III.D.

12. Militia of Montana, Militia of Montana Catalogue, Nov. 21, 1994, at 11 (Noxon, Montana) (on file with the author).

13. In arguing that the amendment guarantees the right to make a revolution, I mean more precisely that the amendment guarantees to citizens the right to own arms, so as to be ready to make a revolution. The amendment therefore overtly protects only the right to own arms, but it implicitly acknowledges the legitimacy of such a revolution: the point in the amendment, after all, is to make revolution possible. The right actually to conduct a revolution, however, might arise from natural law, rather than the constitution, simply because during many revolutions, the constitution by definition may have been suspended. I will consider the complexities of this problem in a forthcoming paper. See David C. Williams, The Constitutional Right to "Conservative" Revolution (Sept. 1, 1996) (unpublished manuscript, on file with the author). For present purposes, however, I wish only to be clear about my meaning: when I refer to the constitutional right to revolution, I mean more particularly (1) the constitutional right to own arms to make a revolution and (2) the implicit constitutional acknowledgment of the legitimacy of revolution against a tyrannical government.

14. See *infra* text accompanying notes 55, 62-70; see also John Grady, The Right to Bear Arms, Militia News, Collector's Edition 1994, at 5 (quoting Thomas Jefferson and Patrick Henry), reprinted in Kenneth Stern, The American Jewish Committee, Militias: A Growing Danger, Vol. 5, Pub. No. 1, app. 104 (1995); Bernadine Smith, Interpreting the Meaning and Purpose of the Second Amendment (Second Amendment Committee, Hanford, CA.) (widely distributed at militia meetings) (on file with the author); Second Amendment Militia Application (Second Amendment Committee, Hanford, CA.) [hereinafter Application] (on file with the author).

15. See M. Samuel Sherwood, The Guarantee of the Second Amendment, at dedication page (1994) (self-published photocopied book, on file with the author).

16. See Militia of Montana Declaration (flyer) (on file with the author); Linda Thompson, American Justice Foundation, Declaration of Independence of 1994 1-3 (on file with the author), reprinted in Stern, *supra* note 14, app. 102.

17. See Militia of Montana Declaration, *supra* note 16, at 5.

18. In the following parts, I summarize my analysis of the Framers' intent from David C. Williams, Civic Republicanism and the Citizen Militia: The Terrifying Second Amendment, 101 Yale L.J. 551, 563-86 (1991).

19. See *id.* at 572-84.

20. See J.G.A. Pocock, The Machiavellian Moment 66-75, 204-05 (1975); Wood, *supra* note 8, at 53-57, 118-19; Williams, *supra* note 18, at 563-67.

21. See Lance Banning, The Jeffersonian Persuasion: Evolution of a Party Ideology 42-43, 49-51 (1978); Pocock, *supra* note 20, at 406-08; Wood, *supra* note 8, at 32-34.

22. See Banning, *supra* note 21, at 65-66.

23. See Lawrence D. Cress, Citizens in Arms: The Army and Militia in American Society to the War of 1812, at 23-25 (1982); Pocock, *supra* note 20, at 413; W.A. Speck, Reluctant Revolutionaries 155 (1988); Williams, *supra* note 18, at 572.

24. See Andrew Fletcher, A Discourse of Government with Relation to Militias, in Selected Political Writings and Speeches 1, 10 (David Daiches ed.,

1979); John Trenchard & Thomas Gordon, *Cato's Letters* No. 94, reprinted in *The English Libertarian Heritage* 222-23 (David L. Jacobson ed., 1965); Speck, *supra* note 23, at 145-46, 154-56 (documenting the suspicion caused by the support of a standing army and royal influence on judges).

25. See Banning, *supra* note 21, at 78-80 (discussing the impact on colonists of the decaying control of the monarchy); Wood, *supra* note 8, at 32-34 (discussing the King's power to destroy the constitutional balance in England).

26. According to Akhil R. Amar, this divergence is an example of "agency costs": the interests of the agent (government) departing from the interests of the principal (the people). Amar argues that these costs formed the core concern of the Framers. Their desire, in his view, was less to create private individual liberties and more to empower the citizenry to control a dangerous government. See Akhil R. Amar, *The Bill of Rights as a Constitution*, 100 *Yale L.J.* 1131, 1133 (1991).

27. See Williams, *supra* note 18, at 575-77.

28. U.S. Const. amend. II.

29. See, e.g., Carl T. Bogus, *Race, Riots, and Guns*, 66 *S. Cal. L. Rev.* 1365, 1372-74 (1993); Keith A. Ehrman & Dennis A. Henigan, *The Second Amendment in the Twentieth Century: Have You Seen Your Militia Lately?*, 15 *U. Dayton L. Rev.* 5, 31-34 (1989); Dennis A. Henigan, *Arms, Anarchy and the Second Amendment*, 26 *Val. U. L. Rev.* 107, 108 (1991).

30. U.S. Const. amend. II.

31. See Stephen P. Halbrook, *The Right of the People or the Power of the State: Bearing Arms, Arming Militias, and the Second Amendment*, 26 *Val. U. L. Rev.* 131 (1991); Don B. Kates, Jr., *Handgun Prohibition and the Original Meaning of the Second Amendment*, 82 *Mich. L. Rev.* 204 (1983); Sanford Levinson, *The Embarrassing Second Amendment*, 99 *Yale L.J.* 637 (1989); Nelson Lund, *The Second Amendment, Political Liberty, and the Right of Self-Preservation*, 39 *Ala. L. Rev.* 103 (1987); William Van Alstyne, *The Second Amendment and the Personal Right to Arms*, 43 *Duke L.J.* 1236 (1994).

32. See Bogus, *supra* note 29, at 1373-74; Ehrman & Henigan, *supra* note 29, at 33-34; Henigan, *supra* note 29, at 116-19; Kates, *supra* note 31, at 221-25; Levinson, *supra* note 31, at 646-50; Lund, *supra* note 31, at 107-08; Van Alstyne, *supra* note 31, at 1244-46.

33. *Declaration of Independence of 1994*, reprinted in Stern, *supra* note 14, app. 102.

34. *Militia of Montana, The Militia 8* (pamphlet from MOM in Noxon, Montana) (on file with the author).

35. Jim Faulkner, *Martial Law and Emergency Powers, Federal Lands Update*, Nov. 1994, at 5. As its title suggests, *Federal Lands Update* sees the threat of tyranny particularly evident in federal land policy and environmental regulation.

36. *The Free Militia, Field Manual Section § 1* at 47 (1994) (on file with the author). A particularly malignant expression of this idea comes from the neo-Nazi National Alliance. A flyer explains that "FREE MONEY CAN BE YOURS—if you are an 80-IQ welfare mother," an illegal alien, a "member of Jewish organized crime gangs" or a "homosexual 'performance artist.'" On the other hand, "all this free money is not available to you if you are an ordinary straight White American, a descendant of the men and women of Europe who discovered, pioneered, and built America." Instead, "your job is to work hard

to provide all the free money and free goodies that the criminals—uh, I mean the politicians—like to give away to buy the votes of the minority and the special interest voting blocs.” Free Money (National Alliance) (on file with the author).

37. Thompson, *supra* note 16, app. 102. Note the implicit analogy to the actions of the British crown in the seventeenth century. See *supra* notes 21-26 and accompanying text.

38. For example:

U.S. Marines were asked if they would be willing to KILL American civilians who resisted confiscation of privately owned firearms. The sad commentary on that question was that the U.S. Marine Corp [sic]; in which we all have a son, daughter, grandchild, relative, or an acquaintance just down the street, in that tightly regimented organization; the overwhelming answer was YES! Sad, but true.

Faulkner, *supra* note 35, at 6.

39. John Grady, U.S. Government Initiates Open Warfare Against American People, *Militia News*, Collector’s Edition 1994, at 2, reprinted in Stern, *supra* note 14, app. 104.

40. See, e.g., Beth Hawkins, Patriot Games, *Detroit Metro Times*, Oct. 12-18, 1994, at 14; Hate Movement Shifts Tactics in 1994, *Klanwatch Intelligence Report* (Southern Poverty Law Center, Montgomery, Alabama), Mar. 1995, at 9, 11; Philip Weiss, Off the Grid, *N.Y. Times*, Jan. 8, 1995, s 6, at 24, 29-30, 44-52.

41. See, e.g., Thomas, *supra* note 1, at 32-34.

42. Richard Snell Update, Taking Aim (MOM, Noxon, MT), Mar. 1995, at 7. Snell was a convicted murderer with ties to the militia movement. See *id.* at 8; Jo Thomas & Ronald Smothers, Oklahoma City Bombing Was Target of Plot as Early as ‘83, *Official Says*, *N.Y. Times*, May 20, 1995, at A6. References to Waco and Ruby Ridge abound in the militia materials. *The Militia News*, for example, opines:

The recent 51 day siege and massacre of nearly one hundred men, women and children in Waco, Texas, was a crime of the greatest magnitude. It was a cruel, sadistic, brutal crime. It was a crime which violated nearly every article of the Bill of Rights....It resembled the burning and obliteration of Christian cities and the annihilation of their inhabitants by Mogul hordes in earlier centuries.

Grady, *supra* note 39, at 2-3. About Ruby Ridge, *The Free Militia* recounts: “The BATF attempted to entrap Randy Weaver in Idaho. When he refused to become one of their henchmen, his cabin was put under 24-hour BATF surveillance, leading to a surprise confrontation that left Weaver’s son and wife dead and Weaver acquitted of any wrongdoing.” *The Free Militia*, *supra* note 36, at 43.

43. Chris Bouneff, Leader: Militia Misunderstood, *Idaho Press-Trib.*, Apr. 9, 1995, at 4A. Sherwood has denied the statement. *Id.*

44. Thompson, *supra* note 16, app. 102.

45. See James Corcoran, *Bitter Harvest* 27 (1990) (noting that the Posse Comitatus takes its name from the Latin for “power of the country”).

46. See Bouneff, *supra* note 43, at 4A. Samuel Sherwood, for example, issued his threat against state legislators because he believes that they might side with the central government in the coming civil war.

47. Some Framers believed that religious establishment was necessary to maintain a virtuous state, but others were rationalist Deists who believed that traditional religion could only benight the government. See David C. Williams & Susan H. Williams, *Volitionalism and Religious Liberty*, 76 *Cornell L. Rev.*

769, 853-58 (1991) (considering the views of James Madison and Thomas Jefferson). In any event, modern secular humanism did not even exist in the eighteenth century for the Framers to worry about. The drafters of the Bill of Rights worried that some particular religious denomination, not humanists, might take over the federal government. The *Federalist No. 10*, at 124-26 (James Madison) (I. Kramnick ed., 1986). As a result, they adopted the Establishment and Free Exercise clauses along with the Second Amendment.

48. On the other hand, shorn of its anti-semitism, the militia writers' worry about a conspiracy by international financiers has some resonance in the civic republican concern about banking, taxes, and credit as instruments of governmental corruption of the citizenry. See *supra* text accompanying notes 21-22.

49. Indeed, those differences explain why the militias mistake themselves for the Body of the People: Militia writers construct a traitorous Other composed of whoever disagrees with them. See *infrapart II.B.2*.

50. See Williams, *supra* note 18, at 586-88.

51. U.S. Const. art. I, § 8, cl. 16. Proponents of the amendment were especially worried that Congress might abuse its new powers of "organizing, arming, and disciplining, the Militia" by disarming popular militias and thus removing the main potential source of resistance to a federal army. See Ehrman & Henigan, *supra* note 29, at 29.

52. See Williams, *supra* note 18, at 572-86.

53. See Stephen Halbrook, *That Every Man Be Armed* 75 (1984).

54. *Id.*; 2 Bernard Schwartz, *The Bill of Rights: A Documentary History* 842 (1971).

55. 1 *Annals of Congress* 749-50 (Joseph Gales ed., 1789). These two examples are illustrative of many similar statements. For interested readers, most Second Amendment scholarship bristles with similar quotations.

56. See sources cited *supra* note 31.

57. Compare Bogus, *supra* note 29, at 1372-73 (arguing that the notion of a constitutionally guaranteed individual right to bear arms is a myth) and Ehrman & Henigan, *supra* note 29, at 21-34 (arguing that the Second Amendment is aimed at a military-related right to bear arms) and Henigan, *supra* note 29, at 114-15 (arguing that the Framers viewed the militia as an instrument of governmental authority) with Kates, *supra* note 31, at 214-20 (arguing that the Second Amendment guarantees the people's right to possess arms) and Lund, *supra* note 31, at 111-12 (arguing that the Second Amendment protects an individual's right to keep and bear arms) and Van Alstyne, *supra* note 31, at 1241-44 (noting that the right belongs to the common citizen rather than a standing army).

58. See, e.g., Lund, *supra* note 31, at 111-12, 118.

Nicholas Johnson has argued that the Ninth Amendment offers a firmer basis for a constitutional right of self-defense than the Second Amendment. Nicholas Johnson, *Beyond the Second Amendment: An Individual Right to Arms Viewed Through the Ninth Amendment*, 24 Rutgers L.J. 1, 1-16 (1992). Robert Shalhope argues that there is direct historical support for the idea that the Second Amendment protects a right of self-defense. Robert Shalhope, *The Ideological Origins of the Second Amendment*, 69 J. Am. Hist. 599, 604-12 (1982). His sources, however, do not support this claim. See Williams, *supra* note 18, at 587 n.198.

59. Nelson Lund, for example, has argued that general liberal theory guarantees a right to self-defense, and the Second Amendment should be interpreted broadly in light of liberal theory. Lund, *supra* note 31, at 117- 23.

Don Kates has argued that the Framers believed that the right of revolution originates from a more basic Lockean right of self-defense, so that in protecting the specific right of revolution, they really meant to protect the more general right of self-defense. Kates, *supra* note 31, at 244. As Part Two of this Article will explain, the individualism inherent in these arguments is not consistent with the civic republicanism that produced the Second Amendment. Accordingly, a personal right of self-defense is a poor candidate for inclusion in the range of implicit Second Amendment rights, whatever they may be.

60. See *supra* text accompanying notes 12-49.

61. Six O'Clock Newscast (Indianapolis Eyewitness News, May 1, 1995).

62. *The Militia*, *supra* note 34, at 3.

63. See *supra* text accompanying notes 37-42.

64. See *infra* part II.B.

65. *Militia of Montana Declaration*, *supra* note 16, at 5.

66. *The Militia*, *supra* note 34, at 8.

67. *The Free Militia*, *supra* note 36, at 47.

68. Jim Faulkner, *Why There is a Need For the Militia in America*, *Federal Lands Update*, Oct. 1994, at 6.

69. *The Free Militia*, *supra* note 36, at 39 (quoting from the Declaration of Independence).

70. *Application*, *supra* note 14.

71. Grady, *supra* note 39, at 4. Other militia writers rely on another familiar imprecation by Henry: "Guard with jealous attention the public liberty. Suspect every one who approaches that jewel. Unfortunately, nothing will preserve it but downright force. Whenever you give up that force, you are ruined." Sherwood, *supra* note 15, at 60.

72. See, e.g., Halbrook, *supra* note 53, at 84-87; Kates, *supra* note 31, at 211-20; Levinson, *supra* note 31, at 646-47.

73. See, e.g., John H. Ely, *Democracy and Distrust* 95, 227 n.76 (1980); Laurence H. Tribe, *American Constitutional Law* 299 n.6 (2d ed. 1988); John Levin, *The Right to Bear Arms: The Development of the American Experience*, 48 Chi.-Kent L. Rev. 148, 158-59 (1971); Roy G. Weatherup, *Standing Armies and Armed Citizens: An Historical Analysis of the Second Amendment*, 2 Hastings Const. L.Q. 961, 999 (1975).

74. For more detailed exposition of this argument, see Williams, *supra* note 18, at 588-94.

75. See *id.* at 589.

76. See *id.* at 590-93.

77. Grady, *supra* note 14, at 5.

78. Sherwood, *supra* note 15, at 58.

Lee actually wrote: “[T]he constitution ought to secure a genuine and guard against a select militia” Richard H. Lee, *An Additional Number of Letters from the Federal Farmer to the Republican* 169 (1788). By this assertion, he meant that the Constitution should secure a genuine (i.e., universal) militia and forbid a select (i.e., less than universal) militia. See Williams, *supra* note 18, at 594.

79. Faulkner, *supra* note 68, at 6.

80. *The Militia*, *supra* note 34, at 7. The Second Amendment Committee purports to derive this conclusion from a linguistic analysis of the Amendment itself. According to A.C. Brocki, teacher of Advanced English, a foremost expert in grammar, former Senior Editor for Houghton Mifflin, the sentence means that the people are the militia. Smith, *supra* note 14.

81. Definitions of the unorganized militia vary. Federal Lands Update asserts that the unorganized militia consists of every “able bodied male between 18 and 65.” This definition is “a true vestige of the intent of the Founding Fathers and a heritage of the Guarantee of the Second Amendment.” See Faulkner, *supra* note 68, at 6. MOM explains that the unorganized militia includes “all able-bodied citizen’s [sic] of this state” and “therefor [sic], the unorganized militia conforms with ‘Militia’ as provided for in the second amendment.” *The Militia*, *supra* note 34, at 6.

In fact, current law defines the unorganized militia as all males between the ages of 17 and 45 and all female officers of the national guard. 10 U.S.C. § 311 (1994). At present, that definition has no functional significance. The Code does not provide for the arming, equipping, organizing, training, or funding of the unorganized militia. In fact, § 311 seems to do only one thing: it allows those citizens who fit the statutory definition to proclaim that they are members of the militia, as militia writers are eager to do. For example, Linda Thompson, who does not appear to fit the definition, has proclaimed herself “Acting Adjutant General” of the Unorganized Militia of the United States “[p]ursuant to 10 U.S.C. § 311 and Articles I and II of the Bill of Rights.” Linda Thompson, *Ultimatum to Each Member of the United States House of Representatives and United States Senate* (Apr. 19, 1994) (on file with author).

82. Ray Southwell, co-founder of the Michigan Militia, explained the appeal: “What I’ve found is that people are so angry they’re loose cannons.... They come into the militia and their anger level drops. Now we have a common goal, a common good. He’s realized he’s not alone.” Beth Hawkins, *Conspiratorial Views*, *Detroit Metro-Times*, Oct. 12-18, 1994, at 13.

83. *The Militia*, *supra* note 34, at 7.

84. Faulkner, *supra* note 68, at 6.

85. *The Free Militia*, *supra* note 36, at 47.

86. Smith, *supra* note 14.

87. Notoriously, that clause does not appear in most of the NRA's promotional material. See Osha Gray Davidson, *Under Fire* 134-35 (1993).
88. Faulkner, *supra* note 68, at 6.
89. In this sense, it is not enough that American citizens have a universal right to own arms or to join a militia; the militia must in fact be universal. Otherwise, whenever there is a revolution, it will be made in the interests of the faction that actually holds the arms. See Williams, *supra*note 18, at 593- 94.
90. See *infra* part II.B.2.
91. *The Antifederalist Papers* 75 (Morton Borden ed., 1965).
92. 1 *Annals of Congress*, *supra* note 55, at 750.
93. Faulkner, *supra* note 35, at 3.
94. Grady, *supra* note 14, at 3.
95. *McAlvany Intelligence Advisor*, March 1994, at 20.
96. *The Militia*, *supra* note 34, at 3.
97. See Faulkner, *supra* note 35, at 1; Faulkner, *supra* note 68, at 2; *The Militia*, *supra* note 34, at 7. A single-page flyer distributed at militia meetings also bears the quoted language and an attribution to Sarah Brady ("in HER OWN WORDS"), all in very large letters so as to fill the whole page. *Brady Flyer* (on file with the author).
98. *The Free Militia*, *supra* note 36, at 47. According to the *Detroit Metro Times*, Michigan Militia Leaders agree, saying that "semi-automatic weapons are militia-style arms. Therefore, the only reason to ban them is to lay the groundwork for enslaving the populace." Beth Hawkins, *Guns and Glory*, *Detroit Metro Times*, Oct. 12-18, 1994, at 12.
99. *The Free Militia*, *supra* note 36, at 42a. The description of these bills as "subversive" seems ironic, coming from a group committed to subversion and regarding bills that enjoyed popular support. As Part Three explains, however, this usage is consistent with militia ideology: they see themselves as the true American people and individuals who oppose them are traitors or foreigners. Accordingly, the bills are subversive of the real America.
100. *The Militia*, *supra* note 34, at 7-8.
101. Faulkner, *supra* note 68, at 2.
102. Faulkner, *supra* note 35, at 5.
103. *The Free Militia*, *supra* note 36, at 42 (footnote omitted).
104. *Hitler Flyer* (on file with the author). To reinforce the message, the document goes on: "Political prisoners and Death Camps can't exist without 'Gun Control'. [sic] Some Americans still feel 'Gun Control' is a good idea. To save America from these Nazi-lovers, we must destroy 'Gun Control'!! [sic]" Id.
105. *The Militia*, *supra* note 34, at 6-7.
106. See, e.g., Beth Hawkins, *Patriot Games*, *Detroit Metro Times*, Oct. 12-18, 1994, at 13.
107. See Grady, *supra* note 14, at 6; *Application*, *supra* note 14; *The Free Militia*, *supra* note 36, at 47; *Sherwood*, *supra* note 15, at xv.
108. One interviewer expressed this worry to Norman Olson, co-founder of the Michigan Militia, before the bombing: "But if you establish 83 militias in every county in the state, who's to say that they'll all agree on what the government does? What's to prevent another Bosnia here?" Robert Downes, *On the Front*

Lines with Northern Michigan's Militia, *Northern Express*, Aug. 22, 1994, at 4. Olson's response is discussed *infra* note 296.

109. See E. Wayne Carp, *The Problem of National Defense in the Early American Republic*, in *The American Revolution: Its Character and Limits* 14, 32 (Jack P. Greene ed., 1987); Thomas P. Slaughter, *The Whiskey Rebellion* 44-45, 48 (1986).

110. See, e.g., Richard M. Brown, *Strain of Violence* 4-7, 63-66 (1975) (describing the ideological impetus for rural rebellion); Slaughter, *supra* note 109, at 31-34, 39, 47-48, 54, 127-30.

111. See Williams, *supra* note 18, at 582-83.

112. See *id.* at 577-82, 585-86.

113. A Pennsylvanian, *Pennsylvania Gazette*, Feb. 20, 1788, reprinted in *2 Documentary History of the Ratification of the Constitution* (Microfilm Supp.) 1778-1780 (John P. Kaminski & Gaspara J. Saladino eds., 1981).

114. 3 Samuel Adams, *Writings* 251 (Henry A. Cushing ed., 1906).

115. Lee, *supra* note 78, at 170.

116. See Joel Barlow, *Advice to the Privileged Orders in the Several States of Europe* 46 (1956); Lee, *supra* note 78, at 169; Lawrence D. Cress, *An Armed Community: the Origins and Meaning of the Right to Bear Arms*, 71 *J. Am. Hist.* 22, 31-32 (1984); Williams, *supra* note 18, at 578.

117. Thomas Jefferson, *A Declaration by the Representatives of the United States of America, in General Congress Assembled*, in *Thomas Jefferson: Writings* 19 (Merrill D. Peterson ed., 1984).

118. 1 Jonathan Elliot, *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* 327-28 (2d ed. 1836).

119. 9 *Documentary History of the Ratification of the Constitution* 440 (John P. Kaminski & Gaspara J. Saladino eds., 1990).

120. See 1 Elliot, *supra* note 118, at 244.

121. See Halbrook, *supra* note 31, at 179.

122. *Id.* at 187.

123. Pauline Maier, *From Resistance to Revolution* 87-88 (1972).

124. Brown, *supra* note 110, at 61-62 (citations omitted).

125. Maier, *supra* note 123, at 64 (citation omitted).

126. See, e.g., Robert M. Calhoun, *The Reintegration of the Loyalists and the Disaffected*, in *The American Revolution: Its Character and Limits*, *supra* note 109, at 51; Edward Countryman, *A People in Revolution* 170-75, 186, 214-15, 235-36, 284-85 (1981).

127. In this sense, the theory of the existence of a body of the people never presupposed absolute unanimity among the citizenry. Rather, it assumed that the bulk of the people formed a core group that could act on shared values and customs, outside of the normal channels of political authority. Dissenters from this core could not be part of the revolutionary movement. As this Article will argue, there is good reason to wonder whether the bulk of the modern American citizenry still form such a revolutionary core.

128. See, e.g., Banning, *supra* note 21, at 97-102; Pocock, *supra* note 20, at 517-21; Wood, *supra* note 8, at 544-47; Williams, *supra* note 18, at 569-71. See generally Isaac Kramnick, *Republicanism and Bourgeois Radicalism*

(1990). Madison's Federalist 10 is the locus classicus of this approach. The Federalist No. 10 (James Madison).

129. See supra text accompanying note 108; Williams, supra note 18, at 568-69.

130. See Williams, supra note 18, at 564-65.

131. See supra text accompanying note 89.

132. See, e.g., Kates, supra note 31, at 267-68; Levinson, supra note 31, at 646-51; Lund, supra note 31, at 111-16.

133. See, e.g., Halbrook, supra note 53, at 84-87; Kates, supra note 31, at 218; Van Alstyne, supra note 31, at 1236-37.

134. See, e.g., Kates, supra note 31, at 223-25.

135. See supra text accompanying notes 113-22.

136. See infra text accompanying notes 155-62.

137. See infra text accompanying notes 259-61.

138. See infra text accompanying notes 182-90. As this Article notes below, see infra text accompanying notes 151-54, Don Kates recognizes the possibility of civil war, but he fails to recognize the significance of that fact.

139. The selection of these articles was based on their scholarly excellence, even though this author disagrees with parts of their analysis. These pieces, in other words, represent the individual rights view at its best, yet they still conjure with the People. One could amass similar conjurings in many other articles, but that task would be more tedious than useful.

Only Akhil R. Amar has seriously addressed how historical changes in the relationship of the individual to the People might affect the meaning of the Second Amendment. In his view, most of the original Bill of Rights were political (popular), not individual (civil), rights; they were designed to allow the people to express its will. By contrast, the Framers of the Fourteenth Amendment, through which the right to arms may be incorporated against the states, were primarily concerned about individual rights. Akhil R. Amar, *The Bill of Rights and the Fourteenth Amendment*, 101 *Yale L.J.* 1193, 1262-66 (1992). Although he does not offer a precise explanation of the modern meaning of the right to arms under the Fourteenth Amendment, Amar plainly believes that it differs from the original right to arms under the Second Amendment:

[T]he core applications and central meanings of the right to keep and bear arms and other key rights were very different in 1866 than in 1789.... [W]hen we 'apply' the Bill of Rights against the states today, we must first and foremost reflect on the meaning and the spirit of the Amendment of 1866, not the Bill of 1789.

Id. at 1266. Because the popular right to revolution does not translate very well into an individual right, Amar presumably believes that it does not apply to the states through the Fourteenth Amendment at all. Regrettably, however, Amar does not address the modern meaning of the Second Amendment itself, so it is unclear whether he believes that the American citizenry still has a right of revolution against the federal government.

140. See Levinson, supra note 31. This Article is probably responsible for much of the recent scholarly interest in the Second Amendment, the so-called "Second Amendment Renaissance." It has influenced political commentators, see, e.g., George F. Will, *America's Crisis of Gunfire*, *Wash. Post*, Mar. 21, 1991, at A21, politicians, and even popular novelists; see Stephen Hunter,

Point of Impact 9 (1993). It is, in short, a central document in modern individual rights theory.

141. Levinson, *supra* note 31, at 645.

142. *Id.* at 648 (citing Lund, *supra* note 31, at 111-16).

143. *Id.* at 656.

144. See Lund, *supra* note 31. Like Levinson's and Kates's articles, this article has attracted widespread, respectful attention from other individual rights theorists, perhaps because it is uncommonly intellectually sophisticated and careful. Unfortunately, most writers have ignored what may be the most interesting and original part of the piece: a proposal to control gun ownership through mandatory insurance requirements. *Id.* at 127-30.

145. *Id.* at 111.

146. *Id.* at 111, 113-14.

147. *Id.* at 116.

148. *Id.* at 115.

149. *Id.*

150. *Id.*

151. See Kates, *supra* note 31, at 268. Like Levinson's, Kates's article is a seminal piece in the development of the individual rights theory. For many years, it was the only article on the Second Amendment published in a "top-ten" law review; its documentation is prodigious; and it has been very widely cited.

152. *Id.* at 267-68.

153. *Id.* at 270.

154. *Id.* at 270-71.

155. Grady, *supra* note 39, at 3.

156. Faulkner, *supra* note 68, at 4 (emphasis added).

157. *Id.*

158. United States Militia Assoc., Official Policy and Announcement, Member Behavior Toward Law Enforcement Personnel 7 (1995) [USMA pamphlet].

159. The Militia, *supra* note 34, at 8.

160. See, e.g., Letter from North American Volunteer Militia to Judge Jeff Langton (Dec. 30, 1994) (copy on file with the author).

161. Ultimatum by Linda Thompson (April 19, 1994) (on file with the author).

162. *Id.*

163. Rush Limbaugh felt so vulnerable to criticism that he wrote an editorial for a major magazine arguing that he is not to blame for the bombing. Rush Limbaugh, Blame the Bombers—Only, *Newsweek*, May 8, 1995, at 39.

164. Glenn H. Reynolds, A Critical Guide to the Second Amendment, 62 *Tenn. L. Rev.* 461, 464 (1995).

165. *Id.* at 466.

166. *Id.* at 467.

167. See *id.* at 472-74.

168. *Id.* at 487.

169. See *id.* at 488.

170. Id. at 485-86.

171. Id. at 506.

172. Id. at 505-06.

173. Id. at 506.

174. Professor Reynolds offers one principal limit: resistance to an electoral government is definitionally illegitimate because recourse in a democracy must be to the ballot box, not the bullet box. Cf. Reynolds, *supra* note 164, at 507; Glenn H. Reynolds, *Up in Arms About a Revolting Movement*, *Chi. Tri.*, Jan. 30, 1995, at N11. (To protect Professor Reynolds's good name, it is important to add that the atrocious "revolting movement" pun was his editors' idea, not his. See Reynolds, *supra* note 164, at 506 n.212.) One wonders whether he intends this limit to be absolute. If so, other individual rights theorists would disagree with him. Sanford Levinson, for example, argues that even elected governments can engage in such tyrannous acts as to justify revolution. See Levinson, *supra* note 31, at 657.

175. Reynolds, *supra* note 164, at 508-12.

176. Id. at 509 (quoting Williams, *supra* note 18, at 593).

177. Id. at 510 (quoting Williams, *supra* note 18, at 582).

178. See Williams, *supra* note 18, at 588-96.

179. Unfortunately, Reynolds argues that the states' rights theory is to blame for the militia movement:

[S]ome gun-control proponents have promulgated the notion that the Second Amendment protects only a militia; many pro-gun activists have responded by forming militias in the hopes that doing so would somehow expand their constitutional rights.... Be careful what you advocate in terms of constitutional principles, because people may listen to you.

Reynolds, *supra* note 164, at 511.

That claim, however, is plainly mistaken. The militia movement has not "responded" to any Second Amendment scholarship, properly interpreted, and scholars cannot be responsible for the willful distortion of their scholarship by political movements. In addition, militia members share at least as much philosophical ground with the individual rights theory as with the states' rights theory. Like states' rights theorists, militia members believe that it is important to organize into militias, and that organization may make them more dangerous. They would not be dangerous at all, however, if they did not believe in a private right to own arms to make a revolution, a position that they share with the individual rights theorists.

180. Id. at 504-07.

181. There is one argument available to individual rights theory. On the one hand, only a formal state militia may make a revolution, but on the other hand, there exists a universal right to own private arms so that the states will have an armed populace from which to summon their militia. Indeed, in seeking to reconcile the introductory clause of the Amendment (about the importance of a militia) with the main clause (about the right of the people), some scholars have already suggested that one purpose of the provision is to ensure an armed citizenry as a foundation for state militias:

[O]ne purpose of the Founders having been to guarantee the arms of the militia, they accomplished that purpose by guaranteeing the arms

of the individuals who made up the militia.... [B]elieving that a militia (composed of the entire people possessed of their individually owned arms) was necessary for the protection of a free state, they guaranteed the people's right to possess those arms.

Kates, *supra* note 31, at 217-18; see also Reynolds, *supra* note 164, at 472-73; Van Alstyne, *supra* note 31, at 1243-44.

From an individual rights perspective, however, this path is treacherous. First, most individual rights theorists might accept the idea that one purpose of the Amendment was to ensure an armed citizenry to make up the militia. They would emphatically deny, however, that only a formally organized militia has the right to revolution. See Kates, *supra* note 31, at 217-18. Even in the passage above, Kates identifies the militia with "the entire people possessed of their individually owned arms." *Id.* From the point of view of these theorists, there is good reason for this denial. If the state declines to raise a militia, the people (private American citizens) have no right to revolution. If the state systematically abjures reliance on a militia, there would appear to be no need for an armed populace to supply the militia, thus eliminating the private right to arms. Finally, if the Amendment is to provide a population base for state militias, it would appear to be a protection for the states, not individuals. States could choose to disband the militia and disarm the citizenry if they so chose; or they could choose to keep the militia, arm them at public expense, and disarm everyone else. Only the federal government would be barred from disarming the general population, because that would interfere with the states' right to raise its militia from an armed populace, if they should see fit. Such a position seems to have more in common with the states' rights theory than the individual rights theory.

182. See Calhoon, *supra* note 126, at 59-62.

183. U.S. Const. amend. XIX.

184. U.S. Const. amend. XIV.

185. See, e.g., John Higham, *Strangers in the Land: Patterns of American Nativism, 1860-1925* (1988); Kenneth L. Karst, *Belonging to America* (1989).

186. See, e.g., *The Countryside in the Age of Capitalist Transformation: Essays in the Social History of Rural America* (Steven Hahn & Jonathan Prude eds., 1985).

187. See E.J. Dionne, Jr., *Why Americans Hate Politics* (1991).

188. See James M. Buchanan & Gordon Tullock, *The Calculus of Consent: Logical Foundations of Constitutional Democracy* (1962); George J. Stigler, *The Theory of Economic Regulation*, 2 *Bell J. Econ. & Mgmt. Sci.* 3 (1971).

189. See Williams & Williams, *supra* note 47, at 776-89, 880-81.

190. Perhaps the most plausible explanation might run along the following lines: there does not exist a people now, and under normal circumstances they never may become one. Nonetheless, in the event of true, severe, and large-scale oppression, a people might emerge, rallying together to drive off the tyrant. This argument has the advantage of at least being an explanation of how a people might arise; it does not, in other words, merely conjure with the concept of a people. It suffers, however, from at least two important problems. First, without more analysis, it is entirely speculative; the people might come together under provocation, but they might not. As the next Part will suggest, under present circumstances, there is reason to believe that citizens will not all perceive, evaluate, or respond to a crisis of oppression in the same way. See *infra*

part III. Second, this explanation of self-constitution is at least somewhat inconsistent with the Framers' theory of self-constitution. The Framers believed that the American people already were a people, committed to the common good, unified, and organized in the militia. See Williams, *supra* note 18, at 569, 577-85. As a result, they could reliably predict that a right of revolution would actually result in revolution, rather than endemic civil war. That prediction was part of their larger belief that republican measures, like a right of revolution, were appropriate for a republican citizenry, but might be inappropriate for an alienated, atomistic, and self-interested citizenry. See *id.* at 564-65, 605.

191. See James A. Aho, *The Politics of Righteousness* 93 (1990).

192. See Corcoran, *supra* note 45, at 238.

193. See *id.* at 29.

194. See James W. Gibson, *Warrior Dreams* 220-30 (1994).

195. As just one example, members of the Covenant, the Sword, and the Arm of the Lord firebombed a Jewish community center here in Bloomington, Indiana. See *United States v. Ellison*, 793 F.2d 942 (8th Cir.), cert. denied, 479 U.S. 937 (1986); Laura Lane, *Neo-Nazis Admit Setting '83 Fire at Jewish Center*, *Bloomington Herald-Telephone*, July 18, 1985, at 1.

196. Shortly before the bombing, McVeigh telephoned Elohim City, a Christian Identity compound. Furthermore, the timing of the bombing may also be significant. Aside from occurring on the anniversary of the assault on Waco, it also coincided with the scheduled execution date for Richard Snell, a white supremacist who holds Christian Identity beliefs and who plotted a similar bombing against the same building in 1983. See Jo Thomas & Ronald Smothers, *Oklahoma City Building Was Target of Plot as Early as '83*, *Official Says*, *N.Y. Times*, May 20, 1995, at A6.

197. See, e.g., Aho, *supra* note 191, at 83-113; James Coates, *Armed and Dangerous* 77-103 (1987).

198. See Aho, *supra* note 191, at 93-94.

199. This summary is drawn from, *inter alia*, Aho, *supra* note 191, at 92-104 and Gibson, *supra* note 194, at 216-17.

200. See Chip Berlet, *Political Research Associates, Armed Militias, Right Wing Populism, and Scapegoating* 4 (Apr. 27, 1995) (copy on file with the author); *Hate Movement Shifts Tactics in 1994*, *Klanwatch Intelligence Rep. #77*, Mar. 1995, at 9, 10-11; *Montana Human Rights Network, A Season of Discontent: Militias, Constitutionalists, and The Far Right in Montana* 2, 8 (May 1994); Hawkins, *supra* note 40, at 13.

201. See, e.g., Hawkins, *supra* note 40, at 13. For example, the Texas Militia urges: "Open your militia to all races, creeds, religions. This is what America is really all about. This is why they came" Johnny Johnson, *Texas Militia--Statement 3* (Feb. 11, 1995), reprinted in Stern, *supra* note 14, app. 15. Similarly, the USMA does not "participate, sanction, or support" racist groups such as "the Nazis, Skin-heads, fascists, KKK," and it "allow[s] all men the full freedom and exercise of their conscience to worship." USMA pamphlet, *supra* note 158, at 3.

202. This conspiracy theory has also been a staple of other right-wing extremists. See Berlet, *supra* note 200, at 5.

203. For example, some militia members believe that eight Jewish families control the Federal Reserve System. See, e.g., Beth Hawkins, *Conspiratorial Views*, *Detroit Metro Times*, Oct. 12-18, 1994, at 13; Roger Tatarian, *Ra-*

tionale for Citizen Militias is Frightening, *The Fresno Bee*, Nov. 20, 1994, at B7.

204. See *infra* part III.B.

205. Grady, *supra* note 39, at 1.

206. *Id.*

207. *Id.*

208. Aho, *supra* note 191, at 246.

209. *Id.* at 247-49.

210. *The Militia, Calling our Nation*, No. 73, at 30.

211. *Id.*

212. *Id.* at 31.

213. *Id.* at 30.

214. *Id.*

215. *Id.*

216. *Id.*

217. See Corcoran, *supra* note 45, at 28.

218. See *Gun Rights Were Meant to Be Beyond the Reach of Government Officials* (distribution of the Second Amendment Committee) (on file with the author); *Season of Discontent*, *supra* note 200, at 11.

219. *Which Constitution?*, *The Patriot*, Jan. 1990, at 1.

220. See Aho, *supra* note 191, at 261.

221. *Pace Amendment*, Art. of Amend. XXVII s 1 (on file with author).

222. *Article of Amendment XXVII* (on file with the author).

223. See Williams, *supra* note 18, at 602-03.

224. See Jost Delbruck, *Global Migration—Immigration—Multiethnicity: Challenges to the Concept of the Nation-State*, 2 *Ind. J. Glob. L. Stud.* 45, 48-51, 57-58 (1994); David Williams, *European and U.S. Perspectives on Civic Republicanism*, 2 *Ind. J. Glob. L. Stud.* 71, 74-75 (1994).

225. See, e.g., John Rawls, *Political Liberalism* 18-19 (1993).

226. See Kenneth Karst, *Belonging to America* (1989); Delbruck, *supra* note 224, at 51-53.

227. See, e.g., Herbert J. Gans, *Middle American Individualism: The Future of Liberal Democracy* (1988).

228. See *infra* note 277 and accompanying text.

229. See *Police/Military Alert: United Nations Treachery Exposed*, *Aid & Abet Police Newsletter* at 1, 1 (Special Edition No. 12).

230. One uncommonly complete list includes not only the predictable members of the Clinton administration—Bruce Babbitt, Henry Cisneros, and Donna Shalala—but some less likely candidates as well: Newt Gingrich, Larry Pressler, Sandra Day O'Connor, and Laurence Silberman. See *Fund to Restore an Educated Electorate*, *The CFR/Trilateral/New World Order Connection* (paid advertisement), *Prescott Sun*, Dec. 1, 1993, at 11.

231. "Though not realized at the time, the UN Charter, ratified as a treaty by the Senate and signed by the President, was an instrument of surrender." Louis

Stradling, *The Constitution vs. The UN Charter*, *Aid & Abet Police Newsletter* at 5 (Special Issue Number 12). By the 1950s, “the plans for the dissolution of the nation, the surrender of our sovereignty, and the merger of the U.S. into a one world government under the United Nations was well underway.” Grady, *supra* note 39, at 1.

232. The plot seeks “the emasculation of our national security and the transfer of all our military forces to a United Nations command in preparation for the New World government.” Grady, *supra* note 39, at 2. The conspirators will “[e]stablish an [i]nternational [a]rmy under the United Nations to control the people of the world.... All independent national military forces will be dissolved.” *The Central Yavapai Center for Action, The Hidden Agenda* (paid advertisement), *Prescott Sun*, Dec. 1, 1993, at 11. They will “[d]isarm citizens; transfer US military to the UN.” Stradling, *supra* note 231, at 2.

233. “There are presently over one million (1,000,000) foreign troops in these United States.” Faulkner, *supra* note 35, at 6. “The federal government, at this Time, is transporting large Armies of foreign Mercenaries to complete the work of Death, Desolation, and Tyranny, already begun, often under the color of the law of the United Nations.” Thompson, *supra* note 16, at 3.

234. For those with the interest, MOM’s publication *Taking Aim* offers the most detailed and complete conspiracy theories. See, e.g., *Militia of Montana, Taking Aim* (February 1995); *Militia of Montana, Taking Aim* (Special Edition 1994).

235. “[M]ysterious military operations with ‘black helicopters’ [are] being conducted all across the United States.” Faulkner, *supra* note 35, at 6.

236. “All people will be required to maintain a federal identity card, ultimately a computer chip under the skin of your hand will be the technique used to identify you and all pertinent information about you.” *The Hidden Agenda*, *supra* note 232, at 11.

237. “Why have tons of barbed wire and over 5,000 mattresses been off-loaded at Ft. Chaffee, Arkansas?” Faulkner, *supra* note 35, at 6.

238. “Troop movement markers (bright colored reflective stickers on the backs of road signs) and U.N. Troops are already in place in this country” Thompson, *supra* note 16, at 5.

239. See Charles Zeps, *ALERT! Militias Targeted 24/03/95*, *Talk. Politics. Guns*, Mar. 24, 1995.

240. “When the federal government decides to enact martial law; and they will; the [d]irector of FEMA becomes a virtual DICTATOR.” Faulkner, *supra* note 35, at 5.

241. See Alex Heard, *The Road to Oklahoma City*, *The New Republic*, May 15, 1995, at 15.

242. The *Militia of Montana Catalogue*, for example, lists the following videotapes, among others: “America in Peril,” “Equipping for the New World Order,” “New World Order Land and Farm Confiscation,” *New World Order Seminar*,” “New World Order--Take Over of America,” “Enroute to Global Occupation.” *Militia of Montana Catalogue*, *supra* note 12, at 2-5.

243. Stradling, *supra* note 231, at 2.

244. Grady, *supra* note 39, at 3.

245. See *supra* note 5 and accompanying text.

246. Step Three in the “Hidden Agenda” is to “[e]stablish a national propaganda machine....All national T.V. networks, national newspapers, and radio networks are currently controlled by those that would destroy us.” The Hidden Agenda, supra note 232, at 11. “Our national media has become nothing but the official mouthpiece of the government, putting forth false ‘polls’ and outright propaganda to sway the public opinion” Thompson, supra note 16, at 5.

247. “The majority of the 240 million residents of the U.S. are non-thinking sheep, easily led and programmed.” Grady, supra note 39, at 3. “To trusting Americans, it is unbelievable, but veteran readers know that the NEW WORLD ORDER is to be a socialist dictatorship. That popular media and high officials ignore or deny and ridicule it, confuses people and thwarts organized opposition.” Stradling, supra note 231, at 2. “The trust people put in the media is beyond reason. As babes at the breast of Mother Media, they suck their daily sustenance of managed ‘news.’” Id. at 9.

248. “[T]here are millions who have not fallen for the propaganda and conditioning, and of these millions, hundreds of thousands will physically resist.... These are our hope.” Grady, supra note 39, at 3.

249. See Richard Ashcraft, *Revolutionary Politics and Locke’s Two Treatises of Government* 22-28 (1986); Maier, supra note 123, at 42, 183-97; Williams, supra note 18, at 565, 581-86.

250. See Maier, supra note 123, at 224-27.

251. *The Militia News* relies on Patrick Henry for its inspiration:

It is natural to man to indulge in the illusions of hope. We are apt to shut our eyes against a painful truth. Is this the part of wise men, engaged in a great and arduous struggle for liberty?...For my part, whatever anguish of spirit it may cost, I am willing to know the whole truth; to know the worst and to provide for it.

Grady, supra note 39, at 3. “What is needed is millions of Paul Reveres, shouting the message, ‘The enemy is here.’” Stradling, supra note 231, at 9.

252. See Maier, supra note 123, at 224-27.

253. Id.

254. See Susan Williams, *Feminist Legal Epistemology*, 8 *Berkeley Women’s L.J.* 63, 68-72 (1993). See generally Richard Rorty, *Philosophy and the Mirror of Nature* (1979) (describing traditional epistemology as holding that human knowledge reflects such an objective reality and criticizing that approach).

255. For criticisms of the possibility of such a “universal” perspective, see Sandra Harding, *Whose Science? Whose Knowledge?* (1991); Naomi Scheman, *Individualism and the Objects of Psychology*, in *Discovering Reality: Feminist Perspectives on Epistemology and Metaphysics* 255 (Sandra Harding & Merrill B. Hintikka eds., 1983).

256. The Hidden Agenda, supra note 232, at 11.

257. See supra notes 208-09 and accompanying text.

258. See Corcoran, supra note 45, at 24-29.

259. See Richard Hofstadter, *The Paranoid Style in American Politics*, in *The Paranoid Style in American Politics and Other Essays* 23-40 (1965); Eli Sagan, *The Honey and the Hemlock: Democracy and Paranoia in Ancient Athens and Modern America* 13-34 (1991).

260. See Berlet, supra note 200, at 6.

261. See Aho, *supra* note 191, at 162-63, 185-211.
262. See, e.g., Hawkins, *supra* note 40, at 13-14.
263. See Aho, *supra* note 191, at 135-63, 185-211.
264. Texas Militia—Statement, *supra* note 201, at 6.
265. *Id.*
266. Letter from North American Volunteer Militia to Judge Jeff Langton, *supra* note 160.
267. Faulkner, *supra* note 35, at 2.
268. The Militia, *supra* note 34, at 8.
269. See, e.g., Aho, *supra* note 191, at 37-42.
270. The Free Militia, *supra* note 36, at 44. See Corcoran, *supra* note 45, at 51. For example, Linda Thompson explains: “The Federal Government, under the Constitution, never had the legal authority to pass a national tax on income and the 16th Amendment (the law that enacted the income tax) was never ratified, as required by law.” Thompson, *supra* note 16, at 5.
271. See Aho, *supra* note 191, at 39.
272. The Free Militia, *supra* note 36, at 45.
273. See, e.g., Elizabeth Larson, *Secessionism in the West*, *The Defender*, Nov. 1994, at 1, 9.
274. The Free Militia, *supra* note 36, at 44.
275. See Larson, *supra* note 273, at 1.
276. For example, the North American Militia warns state officeholders: “You have state agents who are threatening to take wildlife from an individual. The individual is not a corporation and has certain unalienable rights. The state of Montana does not own the wildlife. The regulations do not pertain to the human being inhabitants of Montana.” Letter from North American Volunteer Militia to Judge Jeff Langton, *supra* note 160.
277. For example: “The bad news is that the Clintonistas want your property and are serious about stealing it.” McAlvany Intelligence Advisor, *supra* note 95, at 18.
278. James Catron, *Watch Out!*, *Federal Lands Update*, Oct. 1994, at 3.
279. USMA pamphlet, *supra* note 158, at 3.
280. According to one poll, only 33% of white males and 22% of all others believe that “citizens have the right to arms themselves in order to oppose the power of the Federal Government.” Smolowe, *supra* note 3, at 68.
281. Grady, *supra* note 14, at 5-6.
282. The Militia, *supra* note 34, at 3-4.
283. See Tribe, *supra* note 73, at 301.
284. See, e.g., Ely, *supra* note 73, at 13-41; Laurence H. Tribe, *God Save This Honorable Court* 42-43 (1985); Geoffrey R. Stone et al., *Constitutional Law* 38-39 (2d ed. 1991). Some deny that language can ever produce determinate meaning, even under the best circumstances, but I need not go that far for present purposes.
285. See Ronald Dworkin, *Law’s Empire* (1986); Stanley Fish, *Is There a Text in This Class?* (1980); Owen M. Fiss, *Objectivity and Interpretation*, 34 *Stan. L. Rev.* 739 (1982); William M. Eskridge, Jr., *Gadamer/Statutory Interpreta-*

tion, 90 Column. L. Rev. 609 (1990); William D. Popkin, *The Collaborative Model of Statutory Interpretation*, 61 S. Cal. L. Rev. 541 (1988).

286. See, e.g., *United States v. Lopez*, 115 S. Ct. 1624 (1995) (six opinions); *Board of Educ. of Kiryas Joel Village Sch. Dist. v. Grumet*, 114 S. Ct. 2481 (1994) (six opinions); *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992) (five opinions).

287. Grady, *supra* note 14 at 5-6. Sadly, such accusations of bad faith are also common in the scholarly debate over the Second Amendment. See Andrew Jay McClurg, *The Rhetoric of Gun Control*, 42 Am. U. L. Rev. 53 (1992).

288. See Williams, *supra* note 18, at 603-04, 607-09.

289. Thompson, *supra* note 16, at 3. Similarly, Calvin Greenup and others published an open letter in a local newspaper declaring: "I ... solemnly Publish and Declare my American National Status and Rights to emancipate absolute my 'res' in trust from the foreign jurisdiction known as the municipal corporation of the District of Columbia.... By this emancipation I return to an estate of primary sovereignty and freedom that pre-exists all government(s)." Letter to the Editor, *Ravalli Republic*, Sept. 28, 1993, reprinted in Stern, *supra* note 14, app. 7.

290. *Texas Militia—Statement*, *supra* note 201, at 3.

291. *How to Activate the Constitutional Militia in Your Area*, posted Talk.Politics.Guns, March 24, 1995. Similarly, another posting urges: "The [recruiting] team should visit likely places and persons who might refer them to prospective recruits. Gun shops, American Legion and VFW halls, civic organizations, sheriff and fire departments." Jon Roland, *Militia Organizing--Advance Teams*, posted Talk. Politics. Guns, March 24, 1995.

292. *The Militia of Montana, Sanders County, Unit Alpha, Rules and Regulations 2* (copy on file with the author).

293. *Id.* at 3.

294. *Id.*

295. *Id.* at 1.

296. An interview with Norman Olson, a cofounder of the Michigan Militia, nicely brings the interpretive and political problems together. The interviewer asked Olson, "[I]f you establish 83 militias in every county in the state, who's to say that they'll all agree?" Olson responded, "You have to listen to our mission: defend the Constitution and see that all men remain free." The interviewer then pointed out the interpretive problem: "But hundreds of courts interpret the Constitution differently.... Who would decide if there were dozens of militias?" Olson's answer to that difficulty raised the political difficulty instead: "What happens if a person doesn't like the philosophy of the brigade? He just walks away—that's it." Downes, *supra* note 108, at 4. This ultimate solution—the exit option—may allay worries about the rights of the individual, but it practically guarantees the disintegration of a revolutionary people.

297. See Stanley B. Greenberg, *Middle Class Dreams* (1995).

298. Grady, *supra* note 14, at 2.

299. *The Hidden Agenda*, *supra* note 232, at 11.

300. *The Texas Constitutional Militia* urges its chapters to

[e]ducate its members in ... the Bible, which has been the greatest single guiding influence for all great nations desiring to be free....

[and to] [s]eek the protection, wisdom, and leadership of Almighty God as we submit to Him to do His will in protecting the liberty and freedom He has given to all Americans.

Texas Constitutional Militia—Statement, *supra* note 201, at 7.

301. Gordon Kahl raged in his last letter: “These enemies of Christ have ... thrown our Constitution and our Christian Common Law (which is nothing other than the Laws of God as set forth in the Scriptures) into the garbage can.” Aho, *supra* note 191, at 246. One publication explains that our constitutional rights are “the divine endowment of the Creator to each person.... Note that there is no mention of HUMAN or CIVIL rights.” Stradling, *supra* note 231, at 3. Under the Constitution, “our system of justice is founded in the wisdom of God based on Bible laws preserved through centuries by Anglo-Saxons.” *Id.* at 4.

302.

God intends the government to do you good by maintaining law, order, and justice. When the government systematically punishes the upright citizen and commends wrongdoing, it is no longer serving God’s purpose If we are submitted to Jesus Christ and committed to Constitutional liberties, then our conscience demands the resistance of unconstitutional authority, which is no authority at all.

The Free Militia, *supra* note 36, at 11. In short, “WHEN ELECTED OFFICIALS BREAK THEIR OATH TO UPHOLD THE CONSTITUTION, IT IS NOT THE PATRIOTIC CITIZEN WHO IS IN REBELLION, BUT THE GOVERNING OFFICIAL.” *Id.*

303. For example, the Free Militia lists as examples of “violated civil rights”:

For a generation we have had legalized abortion which denies the right of the unborn child to live.... Attempts have recently been made to require state certification of private school teachers and homeschoolers.... The America 2000 education program is designed to standardize the curriculum in and centralize control of all public schools by imposing ‘outcome based’ education”

The Free Militia, *supra* note 36, at 40-41.

304. One distribution is overt (and slightly more inclusive than most) about the denominational battle lines: in the New World Order,

[a]ll congregations affiliated with the National Council of Churches and liberal Jewish councils, may continue to function. These groups are not incompatible with the aims and designs of the Alliance. However, all other fundamental, independent, Bible-centered congregations; all conservative Greek and Russian Orthodox churches; Orthodox Hebrew synagogues and Roman Catholic parishes with large Eastern European ethnic constituencies, will cease operation at once.

John Grady, *When Will It Happen?* (one-page handout on file with the author).

305. See *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992).

306. See *Wallace v. Jaffree*, 472 U.S. 38 (1985).

307. See *Stone v. Graham*, 449 U.S. 39 (1980).

308. See Barry A. Kosmin & Seymour P. Lachman, *One Nation Under God* 10-11, 230-31 (1993).

309. See *id.* at 157-251.

310. See U.S. Const. art. I, § 2, cl. 1 (election of representatives); U.S. Const. amend. XVII (direct election of senators); U.S. Const. art. II, § 1 (election of president); *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803) (describing the Supreme Court as the agent and protector of the people in exercising judicial review).

311. Gordon Wood put the phrase, “the people out-of-doors,” into wide circulation to describe the people acting on their own initiative, outside the ordinary channels of government. See Wood, *supra* note 8, at 319-28.

312. The “Yale School” of constitutional interpretation might appear to propose a third form of popular constitutional action, between the people tamed and the people militant. Professor Akhil Amar, for example, argues that the American citizenry has a right to amend the Constitution by a simple majority vote. Article V of the Constitution, with its requirement of a supermajority, prescribes only those procedures that the government must follow in initiating change. Akhil R. Amar, *The Consent of the Governed: Constitutional Amendment Outside Article V*, 94 Column. L. Rev. 457, 457-58 (1994). Bruce Ackerman argues that, under special conditions, the people may engage in a process of self-conscious deliberation leading to “higher lawmaking.” When this deliberation results in widespread consensus on matters of principle through the populace and the branches of government, it effectively becomes a new constitutional regime. Bruce Ackerman, *We the People: Foundations* 266-69 (1991). For the purposes of this Article, however, Amar and Ackerman are describing actions of the people tamed, for they both assert that the people must act through formal, constrained, and peaceful channels. By contrast, in a

revolution, the body of people must act as an organic unit outside of normal governmental channels because, by definition, the people are revolting against government. Thus, as Amar points out, a revolution “required no vote of the People themselves.” Amar, *supra*, at 500. Similarly, in Ackerman’s scheme, a proposed amendment must secure support through the normal channels of popular deliberation and all three branches of government, not through violent popular action. Ackerman, *supra*, at 266-69.

313. See Nicholas J. Johnson, *Beyond the Second Amendment: An Individual Right to Arms Viewed Through the Ninth Amendment*, 24 Rutgers L.J. 1, 37, 71-73; Kates, *supra* note 31, at 226-27; Levinson, *supra* note 31, at 658-659; Reynolds, *supra* note 164, at 466-68, 495.

314. See U.S. Const. amends. I-VII, XIII-XV, XIX (forbidding legislatures from limiting individual rights).

315. See *Poe v. Ullman*, 367 U.S. 497, 542 (1961) (Harlan, J., dissenting) (describing the Court’s work as representing “the balance [between order and liberty] struck by this country, having regard to what history teaches are the traditions from which it developed as well as the traditions from which it broke”).

316. See Wood, *supra* note 8, at 553-62.

317. See U.S. Const. art. I, § 3, cl.1 (senators represent states, not population).

318. See *The Federalist* No. 10, *supra* note 47, at 126-27.

319. See, e.g., Frank Michelman, *Law’s Republic*, 97 Yale L.J. 1493 (1988); Suzanna Sherry, *Civic Virtue and the Feminine Voice in Constitutional Adjudication*, 72 Va. L. Rev. 543 (1986); Cass R. Sunstein, *Beyond the Republican Revival*, 97 Yale L.J. 1539 (1988).

320. See Maier, *supra*note 123, at 41-48, 68-69.

321. See Drew R. McCoy, *The Elusive Republic* 15-16, 23-38 (1980).

322. See 2 Schwartz, *supra* note 54.

323. See Reynolds, *supra* note 164, at 464-71.

324. For example, Paul Gilje has carefully examined popular disorder in New York City from 1763 to 1834. He argues that such disorder came to be seen as less legitimate for two reasons. First, after the American Revolution, New York had a representative government. Second, New Yorkers came to see popular disorder less as a protest of the People and more as the opportunistic action of particular ethnic, religious, and class groups. Paul A. Gilje, *The Road to Mobocracy: Popular Disorder in New York City, 1763-1834* (1987).