GUNS, DEMOCRACY, AND THE INSURRECTIONIST IDEA


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On April 19, 1995, a truck bomb parked in front of a federal office building in Oklahoma City, Oklahoma was detonated, obliterating much of the building, and killing 168 people. The man convicted as the chief architect of the attack, Timothy McVeigh, had decided in the months before the attack that he was going to commit “a major act of violence against the government” (Michel and Herbeck 2001, 161), settling on the attack against the Murrah Federal Office Building because it housed regional offices of federal agencies including the ATF, DEA, and the Secret Service. In his own words, those who “betray or subvert the Constitution . . . should and will be punished accordingly” (Ibid., 153). The final straw for him was the looming enactment of new gun laws. The American government was edging toward tyranny, McVeigh felt, and it was up to him to strike back.

McVeigh was, to most, a dangerous criminal. But to some, he was a patriot, committing an act of insurrection against a tyrannical American government. What is most astonishing about the McVeigh case is not that he believed the government’s actions justified his violence against it, but that the theory he was invoking – insurrectionism – has met with increasing approval and legitimacy in otherwise serious circles. That this claim is no exaggeration is the basis for Joshua Horwitz’ and Casey Anderson’s disturbing and important book on this subject. As the authors note, insurrectionist theory has won legitimacy not only in public debate and in the pages of law reviews, but from the highest court in the land. In the 2008 Supreme Court case of D.C. v. HELLER, Justice Antonin Scalia wrote with apparent approval (and certainly not with disapproval) that the Second Amendment’s right to bear arms is an important right in part because men with guns and training “are better able to resist tyranny” (at 2801) and as a “safeguard against tyranny” (at 2802). More about that later.

Horwitz and Anderson note that the insurrectionist perspective argues not only that the government is to be viewed with the greatest suspicion, but that citizens should be “prepared to resist it with force” (p.4). As groups like the National Rifle Association insist, guns mean freedom; more guns mean more freedom; any government-enacted restriction of guns is, ipso
facto, an infringement on freedom; and the threat of armed force by citizens against their
government is beneficial, not corrosive; healthy, not harmful to freedom. The book begins by
defining insurrectionism, noting that the insurrectionist sloganeering is largely detached from
societal reality. They note one of many ironies of insurrectionism: it asserts that [*391] the
“government is too weak to protect its citizens yet too strong to be trusted” (p.26). More than any
other individual or group, the NRA bears primary responsibility for promoting and legitimizing
the idea that the threat of political violence (and what is the point of the threat if it is not backed
by the prospect of action?) is not only a good thing, but protected under the Second Amendment.
The tipping point came in 1977 when hard-liners within the NRA took control of the
organization at its annual convention. Since then, the organization’s direction has been ever more
political, strident, and radical.

The meat of Horwitz and Anderson’s analysis focuses on three historical cases that they argue
have been badly distorted to prop up insurrectionism: the founding period, the Civil War and
post-war Reconstruction period, and the rise of Nazism in Germany. To the insurrectionists,
Revolutionary War fighters were opposing British tyranny (as indeed they were), and their
actions were “an individual right of self-defense against government tyranny” (p.87). This
unfettered right, they say, was codified in the Declaration of Independence. What the
insurrectionists fail to note – and which is easily gleaned by reading the Declaration – is that
Revolutionary fighters were not only fighting against British oppression, but also for their own,
indigenous government; it was a collective struggle with like-minded Americans, not one of lone
individuals. The essence of the revolutionary struggle was support for the substitution of one
government with another. And even before the struggle was concluded, the founders labored to
institute a new government that would replace political violence and turmoil with the ballot box,
the jury box, and other peaceful means of political expression. Indeed, the central reason for the
replacement of the Articles of Confederation with the modern Constitution was because the
government was too weak and ineffectual, especially regarding the two central powers of any
government: the power over money, and over the use of force. As the Constitution itself said,
militias (the same militias referenced in the Second Amendment) were to be used to “suppress
insurrections,” not cause them.

The Civil War case offers a second instance of the manipulation of history to serve the
contemporary political agenda of the insurrectionists. Leaving aside the inconvenient fact that
the Civil War was fought to defeat the notion that states, or individuals within them, are
somehow entitled to commit armed rebellion against the American government (for that, by
definition, is what insurrection means), insurrectionists insist that Reconstruction’s failure to
extend rights to African Americans could have been averted if only former slaves had been given
access to firearms to avert white violence. Some southern blacks did have guns, and indeed were
armed by the federal government and organized into black militias. But the inadequacy of these
efforts lay at the feet of the North for failing to sustain governmental protection for southern
blacks, and the embrace of insurrectionism by whites, who visited violence not only on those
blacks who resisted, but also upon pro-North governments. The insurrectionists in the
Reconstruction-era South were the white terrorists like the Ku Klux Klan. [*392]

Horwitz and Anderson’s third case, the rise of the Nazis to power in Germany, also disassembles
insurrectionists’ fortune cookie history which insists that strict gun control laws during the
Weimar Republic paved the way for the Nazi rise to power by keeping guns out of the hands of Jews and others who would have resisted the Nazis’ brutal tactics. It turns out that gun laws in post-World War I Germany were relaxed during the inter-war period, not tightened. The weakness and eventual breakdown of the Weimar regime opened the door to exploitation by the brutal Nazis, who out-muscled the political left, yet maintained a veneer of respectability by tying their movement to German traditions. Jews were demonized by Nazis in a nation already acquainted with antisemitism, but they were only a small minority of the German population, and only became the focus of systematic Nazi extermination long after they captured the power of the state.

The book concludes with several brief chapters that address the troubling theoretical and practical problems with the unbridled mistrust of government and threats of private citizen violence against the government that define insurrectionism. At bottom, insurrectionism can only occur at the expense of other vital freedoms, from free speech to public safety. And while last year’s Heller case did not expressly rule that the Second Amendment protected an insurrectionist right of rebellion, the ruling, in Horwitz and Anderson’s words, “waded into dangerous waters” (p.173).

Take the Supreme Court’s controversial ruling in a case like Bush v. Gore in 2000. Many considered the ruling a case of judicial overreach, a kind of de facto political coup that denied a full and fair recount and instead handed the election to the candidate with fewer votes. Judicial tyranny? Many thought so. How, exactly, would Justice Scalia deny, in light of Heller, the “right” of armed citizens to halt government oppression by, say, storming the Supreme Court building, taking the justices hostage, or killing them outright, in the name of halting government oppression? That is what insurrection means: politically motivated violence against the government. If Scalia, the NRA, and the rest, mean what they say, then citizens are really entitled to make that determination, on their own, under the terms of the Second Amendment. Yet legal scholar Roscoe Pound’s (1957, 90-91) verdict on this theory from decades ago offers a definitive reply when he wrote that a “legal right of the citizen to wage war on the government is something that cannot be admitted. . . . a general right to bear efficient arms so as to be enabled to resist oppression by the government would mean that gangs could exercise an extra-legal rule which would defeat the whole Bill of Rights.”

REFERENCES:

Pound, Roscoe. 1957. THE DEVELOPMENT OF CONSTITUTIONAL GUARANTEES OF LIBERTY. New Haven: Yale University Press. [*393]

CASE REFERENCES:


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