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ARMS AS INSURANCE

Samuel C. Wheeler III

“One of the chief guarantees of freedom under any government, no matter how popular and respected, is the right of citizens to keep and bear arms.”¹

—Hubert Humphrey

On September 11, 1997, Charlton Heston addressed the National Press Club.² His speech argued that the right to bear arms is the fundamental right. His speech made it clear that what he meant was that gun-ownership rights are a condition of the practical existence of other rights. Because he was speaking as new president of the National Rifle Association, and because his conclusion differed from journalistic fashion, the arguments and considerations he suggested for this view were dismissed by news accounts. Those accounts focused on finding it ridiculous that someone who had played Moses in the Ten Commandments might have something intelligent to say.³

In this essay, I argue that there are very good arguments for Heston’s position that deserve the attention of philosophers, politicians, and people who care about the welfare of their great-grandchildren and other future human beings.⁴

I. META-RIGHTS AND RIGHTS

I take it as obvious that having a right that *x* entails having a right to take steps to make it more likely that *x*. Making it more likely that *x* essentially means taking steps to prevent unjust coercions which would prevent *x*. So, if a person has a right to the use of his garden produce, he has a right to lower the probability that that produce will be stolen by animals or people, for instance. Such rights, of course, have to be weighed against other rights. If my garden-protection scheme involves powerful searchlights and high-decibel recordings of rock music, my right to protect my garden runs afoul of the rights of my neighbors not to have their environment polluted by excessive light and sound.

Government is legitimated, at a minimum, by its protection of rights to life and liberty. Its institutions are at least designed to coerce citizens into respecting others' rights. If government were absolutely reliable and effective in ensuring rights not to be assaulted or despoiled of one's goods, then any measures one took independently to ensure that one's rights were not violated would be redundant. A person could still lock his valuables in a safe in his house even though the risk of theft had been reduced to zero by effective police. Even a perfect government should permit citizens to dispose of their resources foolishly. It would entail, though, that no such steps could violate another's rights, even in the slightest.

Conflicts of Rights, Risks, and their Rational Resolution

Consider the most obvious truisms about conflict of rights: Some steps that I might take to protect my garden would impose costs on others, as in the example above. Since my neighbors have a right not to have costs imposed on them, the assessment of the right to protect my garden depends on the gravity of the costs and the gravity of the loss to me if my garden is despoiled by raccoons or by vandals.⁵

Other steps I may take to protect my garden do not impose costs on others except probabilistically. If I protect my garden by building a double fence within which fierce but silent dogs circle the garden, then my neighbors are exposed to a risk that some of these dogs will escape and dig up their flower beds or savage people and pets. The source of risk could be unreliable fencing, my human forgetfulness about closing and locking the gate, or the miscellaneous possibilities of vandalism of the fence, hurricanes felling a tree on the fence, thereby letting the dogs out, and so forth. My neighbors have much to be worried about, depending on the ferocity of my dogs, the quality of my fence, my reliability, and so forth.

Ideally, rights to engage in activities that impose risks on others are evaluated by weighing the expected losses on both sides. That is, we assess the losses on both sides, multiply by the probabilities, and decide. If the ruination of my garden is a small cost, then, even though there is very little chance of one of my dogs escaping into the neighborhood, the enormous cost of having a child savaged can outweigh my right to protect my garden by this means. A tiny probability of a terrible loss can outweigh a relatively large probability of a relatively small loss. Few of us want to live near even the most carefully monitored nuclear reactor. Actually as opposed to ideally, objective risks are hard to quantify,⁶ and the society adopts something like minimax strategies to protect our children and selves from attacks by savage dogs and leaking neutrons.

Insuring Rights

What steps do we have a right to take to insure that our rights are respected? This will depend on assessing the risks of various sources of unjust coercion and the costs to others of various steps we can take to reduce our risks of those coercions.

The difficulty in insuring the protection of one's rights is that rights are protected only as long as they are recognized and observed by others. Documents such as law codes and constitutions are insurance to the degree that they are enforced, and to the degree that they stay in place. They stay in place to the extent that citizens and authorities make them stay in place. There is nothing besides peoples' continuing observance and respect to keep a right in place. Nothing intrinsic to a document or enactment or practice can make it permanent.

Constitutions and laws are essentially imperatives. Just as there is no "sincerity marker" that can be added to an assertion to mark that it is sincere, so there is no "authority marker" that can be added to an imperative to mark that it must be obeyed. If there were a sincerity marker, it could be added to any assertion whatsoever. If there were an "authority marker" it could be added to any imperative whatsoever. So nothing intrinsic to a constitution or a bill of rights has any standing beyond peoples' and governments' dispositions to observe them and obey them. The authority of a document is nothing over and above its being treated as authoritative.⁷

Insuring Against Criminal Coercions

We can be coerced by criminals, given the imperfections of government policing. Protection from this kind of coercion, of course, takes the form of various kinds of precautions, preventions, and preparations for meeting threats. In another paper,⁸ I have discussed the limits there might be to active preparation for self-defense in the face of threatened assaults. Among the clearest rights is the right to prevent serious harms to oneself and others⁹ by disabling a would-be assailant, at whatever cost to the assailant. A practically useful right to resist criminal assaults entails a right to be prepared for reasonably expected assaults. The limitations of rights to such preparations derive from the risks such preparations impose on others.

When a criminal assault takes place, you have recognized rights, which your government happens to be unable to enforce. Whatever rights you are granted to prepare for such assaults by means that impose some risks on others are predicated on the government's occasional inability to effectively prevent assaults.¹⁰ If there were the technology available to instantly get police assistance when an assault was imminent, there would

be no rights to prepare for possible assaults by other, more dangerous means. For instance, if there were instantaneous transport such as the crew of the *Enterprise* used,¹¹ and police could be instantly fetched to any location by such devices upon a citizen pushing the button of a beeper-like device, then risks would be very different. There probably would be no right to prepare oneself for assaults by criminals by the more dangerous device of carrying a concealed handgun to balance threats against you by threats against the assailant. In our actual pre-*Star Trek* state, there are good reasons to think that, if risks are properly managed, there is a right to be prepared to use deadly force to prevent deadly harms to oneself and others, as I have argued in the previously noted paper.

If we imagine a government with such ideal protection abilities, it might seem that no risk-producing means of self-protection would be permissible whatsoever. All assailants would be as effectively deterred by the institutions of the government as by any strategies an individual could come up with. So, one might conclude that the more perfect police protection is, the less right there is to, for instance, possess firearms. The implicit assumption of this argument that better police protection or more effective devices for reducing crime (education, elimination of poverty, pre-crime detention of those disposed to assault) would remove any right to privately equip oneself to resist coercion. This assumption overlooks a major player in unjust coercion, government itself.

Insuring Against Unjust Government Coercions

Given that one is a human being who has been subjected to unjust deadly assault since 1900, the conditional probability that the assailants were agents of one's own government is higher than the conditional probability that the assailant is a criminal by local standards of legitimacy. If we leave out cases of questionable injustice, and just include clearly unjust homicides, the totals from the Belgian, Turkish, Russian, German, Chinese, Ugandan, Indonesian, Cambodian, Rwandan, etc. government-sanctioned slaughters exceed the totals from the private sector by a substantial factor.¹² So, relative to just the information that a person is a human, she is more likely to suffer deadly harms from her own government than from criminals.

As a group, governments are dangerous agents of law and order, more deadly than domestic threats under a government.¹³ Among recent governments, many have relatively clean records, at least as far as overt citizen-slaughter goes. The Western democracies, for instance, have been pretty rights-respecting, at least of the right not to be unjustly killed, since the forties. A variety of governments over the past century have very good percentile rankings on the murder-abstention score. An argument could be made that, given a relatively good government, there is

no right to preserve real possibilities of resisting unjust government coercion because there is little objective risk that such governments will behave unjustly.

The rest of this essay will explore the possibility that it is always reasonable to worry about government injustice, that no institutions will remove the reasonableness of that worry, and that therefore, every just government institutionalizes the possibility of resistance to it.

II. THE RIGHT TO RESIST GOVERNMENT ASSAULT

I assume that the right to resist unjust assaults by legitimate governments is obvious in some cases. It is obvious that the residents of the Warsaw Ghetto had a right to defend themselves and that each member of a Cambodian village had a right to resist "relocation" by the Khmer Rouge, even though the governments assaulting them were "legitimate" in the sense that they had been recognized by other governments.

It seems paradoxical that a government can recognize a right one of whose main functions is to enable citizens to effectively resist it, if need be. In this section, I argue that this paradoxical right is defensible, and that rights such as the right to bear arms are instances of that meta-right. I further argue that a reasonable social contractor ought to hold out for that right, and that the paradoxical aspects of the right are necessary costs of security; insurance premiums, as it were, rather than reasons to deny the right.

There are *prima facie* difficulties both with a government recognizing a right to resist unjust government coercion and with a government failing to recognize such a right.

The *prima facie* difficulty with a government recognition of a right to resist its unjust coercions is that a monopoly on coercion and the authority to determine when coercion is just is essential to government. For a government to recognize a right to resist its coercion would seem to undermine the government function of rendering judgment about what is just and unjust, since the citizenry could make their own judgments about the rights and wrongs of a case and resist when the citizen felt wronged. For a government to acknowledge that it can make deadly mistakes in its coercions and that, in the event of such mistakes, citizens can resist its coercions removes its authority to decide when it is just to coerce. It would be contradictory for institutions to have provisions for their non-implementation, given that such decisions are, by those very institutions, its prerogative. So, it would see that it is impossible to formally build into the institutions of government provisions for citizens' responses to that government going seriously bad.¹⁴ A government

would have to acknowledge that it could become homicidal, and declare that, in such situations, citizens need not obey. But if the government indeed went bad, then given its prerogative of determining right and wrong application of coercion, the "social contracter" could not have recourse.

The *prima facie* difficulty of not having some kind of provision for citizen resistance to government is that, if a government does go bad, the citizenry has no recourse. Once a government has exclusive control of coercion, and is able to prevent possibilities of resisting coercion effectively, then, if it goes bad, the citizens are at its mercy. Handing over final authority to a government along with the means to prohibit effective resistance to that authority is irreversible. Once authority has been given to a government, and that government has authority over interpretation of the laws, the enactment of laws, and the use of force to coerce, the citizen is permanently subject to whatever that government or its successors choose. If a relatively good government becomes a very bad one, then if the relatively good government has removed the possibility of effective resistance, that removal is still in place for its replacements.¹⁵

This would be a good place to comment on the widespread metaphor of government as a "Social Contract." While this metaphor illuminates much, it ignores the fact that governments are interest groups within societies. That is, governments are not just agents of the society, but quickly become entities with a special constituency and special interests. This is perhaps most transparent in regimes such as Kim Il Sung's or Louis XIV's, where the head of the government came to view the citizenry as a tool of his person. But to deny that the governing classes, even in America, are distinct from the citizenry is to ignore the obvious. Therefore, the social contract should be reconstrued as a contract with a government, not a contract with the society.

Another interpretation of the social contract that deserves some mention is Gary Wills's idea that the contract expresses one's trust in one's fellows and one's government, so that one is being disloyal if one takes any provision for the government or one's fellows behaving badly.¹⁶ The image, apparently, is that of a person keeping the addresses of old lovers when entering a marriage. It may well be that Wills's banker was willing to give Wills a loan to buy a house without requiring collateral. But that banker would be even more remarkably trusting if he were willing to make the same loan, realizing that Wills's heirs would inherit the debt, and that the heirs of those heirs and so on would likewise be responsible for keeping up Wills's end of the bargain. A social contract that does not make provision for future governments and fellow citizens going bad is trusting to the point of foolishness.

Any reasonable contract, including the “social contract” one can be construed as making with one’s government, has enforceable clauses to cover the possibility that the parties to the contract fail to keep up their ends of the bargain. From the government’s side, there are of course enforceable clauses for non-performance on my part. The difficulty is to find some way of having an enforceable non-performance clause on the government’s part. My thesis is that the right to retain the ability to resist government coercion is essential to such a clause.

A right to bear arms, practically speaking, enables a government and its citizens to make a deal whereby the government does not explicitly limit its powers of enforcement and interpretation, but where in fact there is a real possibility of effective resistance to government coercion. A right to bear arms is a right to be prepared to resist government coercion, if need be, even though there is no right to resist government coercion as such. When a government is going bad, and a community comes to realize this, they are in a position to collectively take up arms, an option that was not available to Ugandans, German Jews, or Cambodians.¹⁷

A right to bear arms, of course, gives only a probabilistic insurance against tyranny. If a government limits its injustices to a minority, for instance, the effect of that minority being armed is primarily to increase the costs of obvious injustice. It is much easier and cheaper to burn down a ghetto populated by unarmed people than by resisters. Untrained enthusiasts rather than trained soldiers can do the work, whereas it is generally quite difficult to convince amateurs to do the dangerous work that house-to-house fighting entails. A very few incompetent Ugandan soldiers can depopulate a village that has no guns, but armed villagers acting in concert would have made depopulation very expensive, if not prohibitively so. An armed population reduces the options for a government with some tendency to go bad, by raising costs, and even by raising doubts about the possibility of certain *prima facie* desired steps.¹⁸ The point about an armed population has appeared obvious enough to every genocidal government of this century, at least.¹⁹

A right to bear arms is thus an insurance of other rights, but in the way that seat belts are an insurance against being injured in automobile accidents. The right to bear arms reduces the probability and the probable severity of a catastrophe, but by no means guarantees that catastrophe will not occur. Nothing short of having reliable and absolute power oneself can be a perfect protector of one’s rights. So the probabilistic protection that a right to bear arms provides is to be expected.

A right to bear arms is likewise only a special, technology-dependent case of the more general right to be able to resist unjust coercion by

whatever means available. If there is a right not to have one's rights violated, and governments are among the more serious threats to one's rights, as seems to be the case, then there is at least a *prima facie* right to whatever means are necessary to deflect threats to rights.

Some reflections on firearms as a defensive technology are in order, to make this point. A main effect of the invention of cheap, portable firearms was the democratization of effective deadly force. Governments before firearms relied on relatively expensive, highly trained, and expensively equipped elites. Using a broadsword or wielding a lance from a horse was a tremendous advantage over a peasant on foot equipped with a farm implement, as witness the failure of peasant uprisings ever to devolve into effective guerrilla wars. Since firearms require little training, and are deadly even against well-armed professionals, governments found themselves fighting wars with citizen armies rather than warrior elites; and found themselves faced with a serious threat to their control of coercion.

Firearms as a defensive technology have the serious defect that they defend primarily by killing and by threats to kill. We could imagine a technology of impenetrable force-fields or devices which transported one instantly out of harm's way when assaulted, but such technologies are not available. If they were, then given the drawbacks of firearms, there would be no right to bear arms. That is, there is no right to bear arms as such, there is only the right to resist violation of one's rights, and, given the state of technology and economic realities, that right entails a right to bear arms.

Unlike seat belts, the right to bear arms involves some serious costs. It is obvious that there are inconveniences and inefficiencies in a system where citizens can decide to defend themselves against government coercions. Policing will be more expensive and dangerous, since an armed citizenry is more dangerous to coerce than a helpless one. In order to apprehend a law-breaker convinced of the justice of his cause, it will be necessary to send many policemen rather than the one who would be needed if the law-breaker is unarmed. There will be cases where some citizens wrongly feel that they are being unjustly coerced, and feel justified to resist government coercion when in fact the coercion is justified. If such groups are armed, apprehension of criminals can become massive operations, as in Ruby Ridge and Waco.

For these reasons, perhaps along with a feeling, widespread among governors, that governments know best, governments have a strong interest in maintaining technological superiority to the citizenry. Governments justify limiting the right of people to arm themselves by appeal to "legitimate purposes," which are limited to hunting, target shooting, and so forth.²⁰

The right to bear arms still produces a protection against governments, given current technologies, because firearms, even of very disparate power, tend to level the odds in a confrontation. The difference between not having a firearm at all and having some kind of firearm is so huge that, even with the superiority of police and military equipment, the danger and uncertainty of coercion is increased by several orders of magnitude when there is an armed citizenry.²¹

Given that every government is quite certain that it is a good government, the idea that effective coercion should be the monopoly of the police and army is very strong among governors. Any weapons that increase the costs and dangers of coercion are unjustifiable, if all such coercion is just. The "logic" of government, as it were, compels disarming the population.²²

Other strategies besides arming oneself are of course possible and desirable. One can work hard to insure stable institutions and respect for rights around the world. One can work at improving mankind in general, so that people will be nicer and less inclined to unjust coercion. I am in favor of all of these strategies. But none of them is incompatible with maintaining the insurance that independently armed communities provide. Just as I can care for my family by healthy eating, safe driving, and other habits which increase the probability that I will be around to aid them, while still paying the premiums on my life insurance; so I can work for world peace while taking precautions against my government's going seriously bad.

III. ASSEMBLY AND ARMS

An important difference between defense from isolated criminals and defense from governments has been implicit in the above discussion. No individual, operating alone, is in a position to effectively resist a determined government. In the genocides of this century, isolated individuals defending their individual houses and dependents might have done little beyond increasing the costs of eradicating the targeted group. The right that must operate along with the right to bear arms, in order for the right to bear arms to have political effect, is the right of assembly. Free speech and other political rights must also operate along with the right to bear arms for the right to bear arms to be politically effective. I focus on the right of assembly in order to bring out the collective and communal aspects of the political application of the right to resist one's government.

The right of assembly²³ is the recognition by a government of people's right to meet and act in concert outside the government's sanctioned

institutions. Governments have tended to restrict assembly for many of the same reasons that governments have restricted arms. Successful resistance to government power requires that people be able to act in concert and organize themselves in communities independently of the government. Totalitarian governments attempt to control collection and association. Every institution that could be independent of government is therefore suspect. We find Hitler Youth, government monopoly of organizations, etc., along with a widespread suspicion of the family as an extra-governmental institution. The idea that people can assemble without government permission, or can form groups without government approval, is one that serious totalitarian regimes, as well as governments beginning to go bad, find threatening.²⁴ If the purpose of an assembly is legitimate, the thought would go, then government approval would be routine. So, for instance, for Wills and others who identify our relationship with the government and our relationship with the fellows, there is no reason to assemble without government permission.

The right of assembly thus recognizes that people have collective interests independent of the government and that they have a right to get together which is independent of the government's interests. Like the right to bear arms, the right to assembly does not explicitly amount to a right to organize against the government. However, in conjunction with the right to bear arms, one of its applications can be the implementation of a right to effectively resist government coercion.

The relationship between the right to bear arms and the right of assembly is complex. Only given a right to assemble is the right to bear arms of much political importance. On the other hand, unless a government utterly suppressed and monitored social existence, enough ad hoc assembly to have the effect of a de facto right to assemble would exist in a society whose members were largely armed. If worst came to worst, an armed population could defend its natural right to assemble by means of its right to bear arms. However, the right to assemble independently of the government's explicit permission certainly facilitates armed collective resistance to government, since such assembly would lead to collective awareness and planning for a government going bad. The de facto right of assembly without the right to bear arms is certainly ineffective. A synagogue or a Cambodian village can meet to collectively express despair, perhaps, but that is a poor substitute for effective resistance.

IV. GOVERNMENT PROTECTION AGAINST GOVERNMENT

In this penultimate section, I argue that citizens of apparently safe governments have reasons to retain the possibility of effectively resisting their governments.

Bad governments

The United Nations initiative to reduce the prevalence of firearms in the world population is predicated on the existence of good governments and the hope that unarmed populations will reduce the level of violence. The vision is that a peaceful world consists of nations with armed police forces and military, and a disarmed population. It is hard to see how anything other than a utopian dreamer could claim that disarmament of citizens would benefit most of the populations in Africa, Asia, and South America who have been subject to genocides or the random terror of this or that government's soldiers and police. The picture that any careful reading of reputable news sources gives is that of nations already largely disarmed being terrorized and decimated by a small number of men armed by governments with a few weapons.²⁵ It is hard to see how a United Nations interested in the safety of persons rather than nations could hold that disarming the citizenry is a good idea.

In none of the deadly sequence of genocides and citizen-slaughters that have characterized the Third World in the eighties and nineties have ordinary citizens been better off for having been helpless before the assaults of government agents. The dream seems to be that somehow Rwanda and Cambodia can become like England, enlightened, disarmed, law-abiding and safe.

Given that new governments tend to be unstable governments without traditions of respect for institutions and documents, and that successors of governments tend to be worse governments, to suggest that the peoples of the Third World are better off because they do not have private means of resistance seems bizarre. Uganda, Cambodia, Soviet Russia in the thirties, the Warsaw Ghetto, and Rwanda would indeed have been more difficult to govern if the citizens had almost all had weapons of self- and house-defense, but that difficulty pales beside the actual consequences of their helplessness. It is hard to avoid the conclusion that the United Nations initiative is concerned with the interests of nation-states rather than the interests of people.

It would be unkind to speculate about the post-colonial attitudes that block consideration of the possibility of directly arming the citizens of the turbulent regions of Africa and Asia that have been the locus of recent genocides. The idea that Ugandans, Congolese, and Rwandans are less apt than Swiss to responsibly possess firearms has little to recommend it.

The strongest case for disarmament of citizens would seem to be in regions governed by good governments legitimated by the respect of their citizens for their institutions. We turn to the strategies appropriate there.

Good governments

What has kept England, Switzerland, and America, for example, so relatively free of mass citizen-slaughter? Why are there no coups d'état in American or (recent) English history? The answer seems to be a combination of patterns of practices, tolerances, prejudices, and beliefs, along with luck. Nothing really bad has happened to these countries, and traditions of not putting up with radically new behavior by government is very strong. Even if Gary Wills were right that one should completely trust one's government and one's fellow citizens, the idea that one should trust their descendants and heirs for the indefinite future is absurd. No one should agree to a deal that removes one's ability to renegotiate contracts, social or otherwise, with unknown future persons.

The dynamics of legal disarmament mean that, once the populations are disarmed in well-governed countries, the disarmament is permanent. The advantages of disarmament are apparent, at least to some. If we acknowledge that violence is higher in Montana and Switzerland than in England and Sweden,²⁶ there can be an argument that, given the placid nature of the citizenry and the stability of their governments and the long tradition of expectations among government and citizens, the situation is one in which the risks of disarmament are low enough to make it reasonable.²⁷ This last section argues that such arguments are based on unjustified optimism, short-sightedness, and unwarranted smugness about one's own race.

To be willingly disarmed, by the above arguments, is to gamble that helplessness in the face of unjust government coercion, times its probability given disarmament, is less than the benefit of the resistance being armed implies, times the probability of a bad government, minus the cost of retaining an armed citizenry. This calculation is complicated by several factors. First, we have only the flimsiest idea of the real possibilities for the future of America or Britain. Second, the costs of retaining an armed citizenry depend a lot on details, some of which I will go into below. Third, a lot depends on the time frame of the calculation. Fourth, if the argument of the previous sections is correct, an armed citizenry is a deterrent to a government going seriously bad.

Let me say a few things about the first three of these complications, since the fourth consideration has been the focus of the rest of the essay:

First, I think there is a tendency to overrate the likelihood that things will go as swimmingly as they have been. There is a strong feeling among Americans and Britons, at least, that serious consideration of the possibility that their governments could go bad is ridiculous. But that strong feeling has little objective basis, although it has considerable subjective cause.²⁸

We need only think about German culture in 1910, with a stable, solid economy, largely just government (by government standards), and an artistic tradition and production such that, if great music is elevating, would have made Germany the pinnacle of Western civilization. Within thirty years, that country and government had been transformed into a stock example of horror. It is sometimes difficult to remember that the gap from 1910 to 1940 is precisely the gap from 1968 to 1998. One could hold that Germans are different, that nothing like that could happen with Americans, because we are especially nice and decent. There seems to me to be little basis for this view.

Second, the sort of right to bear arms that I would advocate, where people who are not felons and who are properly trained in firearms use and safety are entitled to carry guns, in fact has few costs. John Lott's important work, for instance, demonstrates that the states that have thus liberalized concealed-carry permits have no more violent crime than states with more restrictive laws. In addition, as many people have noted, strict gun laws tend to disarm only the law-abiding. Without the kind of police procedures that only the worst tyrannies have used in this century,²⁹ house-to-house searches, the non-law-abiding would retain guns while the rest of the population was disarmed. A "War on Guns" could be expected to have the same results as the War on Drugs, in terms of eradicating the phenomenon.

Third, I can be fairly confident that my government will not go seriously bad during my lifetime without being so confident that the government will not go seriously bad during the lifetimes of my grandchildren or great-grandchildren. Given that disarmament is so hard to unilaterally reverse, it is difficult to imagine sufficient assurance that one's government for the next two hundred years will keep its relatively clean record of government observance of rights. After all, the really effective control of the Klan turned out to be chapters of the Deacons, not local police.³⁰ America has a spotty enough history of respect for the rights of minorities that confidence that no turn of events could turn the country into a site for genocide seems over-optimistic. Examples from the nineteenth century are obvious; one can speculate about the fate of the Japanese internees in World War Two if the Japanese had won at Midway and threatened the California coast.³¹

V. CONCLUSION

A right to resist government coercion, while paradoxical as an explicit institutionalized right, is essential to reasonable consent to be governed. The right is in effect insured by rights to effectively arm oneself

and the other political rights that a population able to resist direct coercion can retain. Conceptions of the “social contract” that treat this right as uncivilized or failing in trust are committed to irrational and, in the long run, destructive policies. It is never inappropriate to protect oneself and humanity in general against the possibility that governments will go bad. The record of government is too mixed to have the confidence required not to have an enforceable way to revoke a “social contract” when the government side fails to live up to its end of the bargain. Given that government is (sometimes legitimate) coercion, this means that the right to effectively resist coercion should not be given up lightly. It should not be lightly withheld from those in desperate need of it either.³²

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NOTES

1. Hubert Humphrey, “Know Your Lawmakers,” *Guns*, February 1960, p. 4. The full quotation is as follows: “Certainly, one of the chief guarantees of freedom under any government, no matter how popular and respected, is the right of citizens to keep and bear arms. This is not to say that firearms should not be very carefully used and that definite safety rules of precaution should not be taught and enforced. But the right of citizens to bear arms is just one more guarantee against arbitrary government, and one more safeguard against a tyranny which now appears remote in America, but which historically has proved to be always possible.”

2. The text of this speech appeared in *American Rifleman* 145, no. 11 (November/December 1997): 8–9.

3. See the *New York Times*, September 12, 1997, for a typical derisory non-reporting of Heston’s views and arguments.

4. I would like to thank Joel Kupperman and C. B. Kates for their assistance in bringing to my attention some of the noted material.

The considerations, references, and arguments of this essay owe much to the series of articles on related topics by Don Kates and Daniel Polsby, especially “Of Holocausts and Gun Control,” *Washington University Law Quarterly* 75, no. 3 (1997): 1237–1275; their review of *Lethal Laws* in *The Journal of Criminal Law and Criminology* 86, no. 1 (Fall 1995): 247–256; and their “American Homicide Exceptionalism,” *University of Colorado Law Review* 69, no. 4 (Fall 1998): 969–1007. Kates’s writings and their bibliographies have been an invaluable resource for me not only for jogging my thinking, but for locating literature on all sides of gun-ownership related issues.

The data on genocides are largely derived from *Lethal Laws*, by Jay Simkin, Aaron Zelman, and Alan M. Rice, Jews for the Preservation of Firearms Ownership,

Inc., 2874 South Wentworth Avenue, Milwaukee, WI 53207, 414-769-0760. (Their copyright notice requires this citation.) *Lethal Laws* consists of meticulous translations of the relevant statutes, and argues that disarmament is essential to genocide. I also consulted Barbara Harff and Ted Gurr, "Victims of the State," *PIOOM Newsletter* 7, no. 1 (Winter 1995): 24–38; and Barbara Harff, "Rescuing Endangered People: Missed Opportunities," *Social Research* 62, no. 1 (Spring 1995): 23–39.

Lethal Laws estimates that the deaths from ten famous genocides in this century total 55.9 million people. The supplement on Rwanda, published after *Lethal Laws*, raises that figure.

The most authoritative and comprehensive estimate of the number of deaths unjustly inflicted by governments on their own citizens in the past hundred years is 169 million human beings, by Rupert J. Rummel, *Death By Government* (New Brunswick, N.J.: Transactions Press, 1994). Rummel includes mass murders by colonial powers and other slaughters that might not technically be termed "genocides," since completeness may not have been the aim.

5. In zoning issues, the situation is complicated by the distinction between knowingly incurring costs and having new costs imposed on one. If my farm has always produced the stench of cow manure, and a suburb expands into my neighborhood, the newcomers should have known that farms stink. On the other hand, if I choose to make my living by truck farming on my suburban plot in an area that can only be protected from marauders by imposing costs on my neighbors, then I should have known better.

6. Part of the strategic difficulty is that we are uncertain not only about future events, such as hurricanes that might collapse the fence, but also about risks that we do not know about. Our experience, that is, tells us not only that various things could happen, but also that there is some probability that there are kinds of risks of which we are unaware.

A person could be reasonably concerned about having a high-tension line run near their house before there was any evidence that such lines increase the probability of cancers, just because the effects of proximity to such lines was unknown, and it is physically epistemically possible that something bad happens. On the other hand a person who is worried about having yellow-colored power poles because yellow might be an unlucky color is not reasonably worried. A standard of reason in a society is always an issue, though, and if enough people believe in magic and firmly feel that yellow is threatening, their votes must count, even though we know they are wrong.

This is probably not the place to discuss the role of an ideological elite. It sometimes is cost-effective to make adjustments for those who have false beliefs, just as we allow conscientious objectors to abstain from just wars that they are objectively obliged to participate in.

7. Interpretation is also important here. Nothing can be done to keep the meaning of a document the same over a period of years, because any instructions about how the document is to be understood are themselves subject to interpretation. An examination of the history of the Bible will illustrate how a text can be revered

throughout its history and change radically in what it enjoins. Recent constitutional history gives another relevant example.

8. See my "Self-Defense and Coerced Risk-Acceptance," *Public Affairs Quarterly* 11, no. 4 (October 1997): 431–443 for a discussion of some of these issues.

9. One has a right to intervene on behalf of oneself, but also rights to intervene on behalf of other threatened innocents. A person can use "self-defense" as a ground for defending innocent family members, colleagues, and, one would hope, strangers. There is nothing special to the self, essentially, in "self-defense." "Self-defense" is just a very plausible case of the right to intervene against assaults on innocents.

10. It is worth noting that government, at least in America, is not obligated to protect citizens from criminals, in the sense that government bodies are not liable for failure to respond to emergency calls. See Donald Kates, "The Value of Civilian Arms Possession as Deterrent to Crime or Defense against Crime," *American Journal of Criminal Law* 18 (1991): 113–167.

11. I refer of course to the television series *Star Trek*.

12. The numbers are so large that accuracy is of little relevance. Even if the figure of 169 million arrived at by Professor Rummel (cited above) were twice the actual numbers, there would still be ample numbers for the conclusion that governments are by far the most successful killers of their own populations.

13. This is not to say that being governed is more dangerous than not, since being governed is probably not as dangerous as not being governed at all. The experiences with periods of anarchy seem to show that having no government is, statistically, harder on human rights than governments. Such periods of anarchy have been too short-lived to produce the numbers that governments have, but the long-held platitude that (almost) any government is better than no government may well be true.

14. In "Of Holocausts and Gun Control," Polsby and Kates derive principles of "lawful revolution" from Locke's writings to govern the natural right to resist government coercion. Basically, a person who reasonably believes that his government is proceeding fairly and justly should tolerate occasional mistakes, even at a cost to him. The concern of the present essay is not so much with the natural right, which I take for granted in obvious cases, but with the practical requirements for exercising it.

15. Examples which spring to mind are the Weimar Republic's transformation (by election) into Nazi Germany and the sequence of steps which turned Cambodia's status as a French colony into the domain of the Khmer Rouge. Both the Weimar Republic and the French colonial powers had created a disarmed population, for the reasons that motivate governments pretty generally. As the government was transformed the disarmament remained. Uganda was heir to the British anti-gun fetish with similar results.

16. See Gary Wills's "John Lennon's War," *Chicago Sun Times*, December 12, 1980. He is not alone. Ramsey Clark, in *Crime in America: Observations on its Nature, Causes, Prevention, and Control*, characterizes preparations for self-defense as an "insult to government" (p. 107). Such utopian views of government abound in "liberal" writing on gun control.

17. One of the great contributions of *Lethal Laws* is the detailed presentation of what the laws on ownership of firearms were in these countries, and well as some details about their execution.

18. As many authors have noted, many American gun control laws were explicitly or implicitly directed at slaves and freedmen. See Robert J. Cottrell and Raymond T. Diamond, "The Second Amendment: Toward an Afro-Americanist Reconsideration," *Georgetown Law Journal* 80; and Stefan Tahmassebi, "Gun Control and Racism," *George Mason University Civil Rights Journal*, 1991.

Because a minority's guns are so difficult to eradicate in a society in which they are widespread, armed resistance by African-Americans seems to have reduced violence against black communities in spite of Jim Crow laws.

19. See *Lethal Laws*, passim. Before active killing, every genocidal government has disarmed the target population. Even the Khmer Rouge, facing a population with almost no arms, still conducted house to house searches before enforcing "relocations."

20. So, for instance, the U.S. government now restricts citizens from owning short-barreled shotguns, submachine guns, and other weapons inappropriate for hunting.

21. In fact, in normal situations, and when a government has not gone bad, the vast majority of police operations are against those who would not be entitled to legally own guns, under current laws. Current laws allow non-felons to own rifles, shotguns, and in many states, to carry concealed handguns. Very few police actions involve previously law-abiding citizens.

22. When there are special reasons to keep the citizens armed, as when citizens are all or mostly in the army, the situation is different, of course. Something like that idea was part of the idea of the Second Amendment to the American constitution. But not the whole of the idea.

The consensus of recent scholarly writing on Constitutional law recognizes that a purpose of the Second Amendment was the guarantee of a personal right to bear arms. A random selection of such writing follows: Cottrell and Diamond, review of Malcolm's *The Right to Keep and Bear Arms*, *Yale Law Review* 105 (1995); Reynolds and Kates, "The Second Amendment and States Rights: A Thought Experiment," *William and Mary Law Review*, 1995; Van Alstyne, "The Second Amendment and the Personal Right to Arms," *Duke Law Journal* 43 (1994): 1236.

Kates's unpublished bibliography on the Second Amendment notes that "In the roughly fifty published law review articles discussing the Second Amendment since 1980, the claim that it does not apply to individual gun owners, but rather guarantees only the states' right to arm their militias has been championed only in a small and very unimpressive minority of articles."

It is worth observing that the majority interpretation of the Second Amendment is conceded even by those who think it should be deleted from the Bill of Rights.

23. One would expect those who make the Second Amendment a right of states to have militias to interpret the right of assembly into a right for states to have legislatures. I would reject that interpretation.

24. Totalitarian governments attempt to control collection and association. Every institution that could be independent of government is therefore suspect. We find Hitler Youth, government monopoly of organizations, etc., along with a widespread suspicion of the family as an extra-governmental institution.

25. One obvious fact that those who wish to “fight genocide” by reducing small arms tend to ignore is that genocides require very few actual guns, as long as those guns are under the exclusive control of the government. In Rwanda, for example, a killing-gang would be armed primarily with machetes and bludgeons. Approaching a church or other place of refuge, a few shots would take care of any resisters. The rest of the people would be dispatched by manual tools. So the problem is not to be addressed by reducing the number of firearms, but rather by insuring that distribution of arms avoids monopoly, i.e., that private ownership of firearms remains legal. The excellent appendix to *Lethal Laws* on Rwanda goes into excruciating detail about the actual tactics in that most efficient of genocides, whose daily totals exceeded those of the Third Reich. What this supplement makes abundantly clear is that monopoly of firepower, not firepower itself, was the facilitating factor.

The day before the exceeding tragic death of Princess Diana, some hundreds of Algerian women and children were destroyed by having their throats slit. Such assaults depend on predominance of physical force, the factor that firearms tend to equalize.

26. Criminological writing gives little support to the idea that American high murder rates have much to do with the prevalence of gun ownership. Besides Lott’s and Kleck’s work, which shows clearly that gun ownership by law-abiding citizen does not increase crime, there is the fact that the U.S. has extraordinarily high rates of crimes that involve guns only rarely. Rates for rape, for instance, are 30 times the rate for Japan. See “American Homicide Exceptionalism,” cited above.

27. Of course, given the alleged peaceful nature of the citizens, the costs of their having arms would be minimal, unless having weapons is a naturally corrupting influence, as some seem to believe.

28. It is worth noting in this connection that people tend to be optimistic, if they are mentally healthy. It is well known that the group of people most likely to have accurate assessments of their prospects and talents are the clinically depressed. “Depressed subjects show ‘realism’ in their self-evaluations, whereas normal subjects tend to amplify such evaluations ”(Nico H. Frijda, “Moods, Emotion Episodes, and Emotions,” in *Handbook of Emotions*, ed. Michael Lewis and Jeannette M. Haviland [New York: Guilford Press, 1993], pp. 381–403, quoted at p. 396a). See also L. Y. Abramson, “Judgment of contingency in depressed and non-depressed subjects. Sadder but wiser?” *Journal of Experimental Psychology: General* 108 (1979): 441–485.

29. The recent American exception is laws that permitted searches of housing projects, with obvious targets.

30. See Charles R. Sims, “Armed Defense,” in Joanne Grant, ed., *Black Protest* (New York: Ballantine Books, 1996), pp. 336–339.

31. This example is borrowed from Daniel Polsby and Don Kates, “On Holocausts and Gun Control,” pp. 1263–1264.

32. An outstanding recent example of a fixation on the idea that “guns are not the answer” was the arms embargo enacted against the Bosnian Muslims in the early years of the war. The fact that the Yugoslav army was controlled by Serbs, so that Serbs had arms, did not dissuade Britain, the United States, and other pro-gun-control countries from a “fair-minded” embargo that resulted in the deaths of somewhere between 150,000 and 300,000 defenseless Bosnians. This kind of assistance to a genocide would be a parody of the “disarmed citizen” line of thought about justice and peace if tragedy and criminal interference were not inconsistent with the light-hearted notion that “parody” conveys. Those who participated in this embargo are arguably accomplices of the Serbs in this slaughter.