



PROJECT MUSE®

---

## Guns, Democracy, and the Insurrectionist Idea

Horwitz, Joshua, Anderson, Casey

Published by University of Michigan Press

Horwitz, Joshua & Anderson, Casey.

Guns, Democracy, and the Insurrectionist Idea.

Ann Arbor: University of Michigan Press, 2009.

Project MUSE., <https://muse.jhu.edu/>.



➔ For additional information about this book

<https://muse.jhu.edu/book/6285>

## CHAPTER ELEVEN

---

# EFFECTIVE DEMOCRATIC INSTITUTIONS

Both political and civil rights are integral to a well-functioning democracy. Some of these rights protect individuals from state action. The First Amendment, for example, protects people's ability to post partisan political slogans on their balconies, while other rights protect individuals by requiring state action, such as the Thirteenth Amendment, which abolished slavery. In either case, a state cannot survive long in democratic form if it lacks the internal strength to provide avenues of redress in the former case or law enforcement support in the latter. The First Amendment is little more than a platitude unless the government provides courts where people can have their grievances adjudicated and, most important, turned into judgments that can be upheld by law enforcement and a competent bureaucracy of marshals and clerks. The Thirteenth Amendment is nothing more than words on paper unless the federal government is willing to commit its resources, including the Justice Department and the Federal Bureau of Investigation (FBI), to give the amendment force.

For democracy to thrive, it is not enough to incorporate political and civil rights into laws. Democracy requires a state that is willing and able to enforce these laws. We can return to the example of African Americans after Reconstruction and before the civil rights movement. On paper, African Americans had political rights, but the government

refused to enforce them. Only when the political, judicial, and administrative institutions of the federal government were strengthened were the rights of African Americans vindicated.

It is no accident that the states that have the most consolidated democracies and that provide the most freedom are also the states that have strong institutions and efficient bureaucracies. These institutions must include fair, frequent, and open elections; courts that are willing to apply the voting laws and act impartially in the resolution of disputes; and administrative organs, including an effective bureaucracy, that can carry out the laws passed by political decision makers and enforce the judgments of the courts.<sup>1</sup> "If and when many citizens fail to understand that democracy requires certain fundamental rights" Robert A. Dahl writes, "or fail to support the political, administrative, and judicial institutions that protect those rights, then their democracy is in danger."<sup>2</sup>

In light of the important role that public support for government institutions plays in the strength of our democratic system, it is unfortunate that both major political parties have made attacks on government standard elements of political campaigns. When he was president, Ronald Reagan went so far as to claim that government is not part of the solution but is in fact "the problem."<sup>3</sup> Even former president Bill Clinton gained political points by declaring that "the era of big Government is over."<sup>4</sup> However, as we will discuss, when a bevy of antitax activists, right-wing intellectuals, and the gun lobby, among others, echo that theme, they are not trying to score political points but rather are attempting to weaken the bureaucratic institutions that give the state its effectiveness. This is a dangerous prescription for democratic health.

As Ezra Suleiman argues in *Dismantling Democratic States*, "Democratic societies are based on legitimacy, which is largely based on effectiveness." He continues, "At the very least a consolidated democracy requires a state capable of carrying out its main functions (protection of citizens, collection of taxes, delivery of services) in an orderly, predictable, and legal manner."<sup>5</sup> We like to think of the United States as the strongest and most advanced democracy in the world, but even though we enjoy enormous economic and political freedom, many of our most important institutions are dangerously weak.

Nowhere has American democratic legitimacy been more challenged than in its ability to protect its citizens. Insurrectionists have made it difficult for law enforcement to carry out its most basic responsibilities. Law enforcement now faces serious legal and political hurdles in the investigation and prosecution of firearms-related crimes. At the Insurrectionists' urging, Congress has rejected the basic safeguard that would make it harder for criminals to get guns. As a result, violent criminals like the D.C. snipers and neo-Nazi Buford Furrow have had little difficulty in obtaining military-grade armaments without detection. These killers robbed entire communities of their freedom during highly publicized armed rampages.

To some people, the observation that gun violence denies its victims their freedom may sound like a rhetorical trick employed by political progressives in the service of values that may be legitimate but are simply not in the same category as civil liberties such as freedom of speech. The freedom to walk the streets without fear of violence, however, is more than just a precondition to the enjoyment of other freedoms in the sense that no person can exercise the other rights we recognize as fundamental in the absence of physical security. The community's ability to agree on effective means to protect itself and its members is fundamental to its functioning as a democracy. When government cannot provide security, it is failing at its most basic function. As Robert Spitzer points out, "The first purpose of government is to establish and maintain order, a task that cannot be divorced from the use, or threatened use, of state-sanctioned force."<sup>6</sup>

The members of America's founding generation well understood the link between a government's ability to safeguard its citizens and the freedom of these citizens as individuals. As Oliver Ellsworth, one of the drafters of the Constitution, an outspoken Federalist, and the third chief justice of the U.S. Supreme Court, explicitly stated, "A people cannot long retain their freedom, whose government is incapable of protecting them."<sup>7</sup> The Antifederalist "Brutus" maintained during the ratification debates that "the preservation of internal peace and good order, and the due administration of law and justice, ought to be the first care of every government."<sup>8</sup>

Government has a responsibility to protect its citizens from vio-

lence, and the Insurrectionists have spent a great deal of political capital making sure that when it comes to guns, the government will not have the tools it needs to live up to this responsibility. In fact, it is no exaggeration to say that the distribution of firearms in America is free from any meaningful regulation. No government agency has the power to remove a gun from the marketplace even if it shoots backward, and the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) faces legal, political, and budgetary constraints that leave it virtually powerless to crack down on corrupt firearms dealers, hold manufacturers accountable for using distribution and marketing tactics that feed illegal trafficking channels, and prosecute individuals who exploit loopholes to sell guns to criminals. The outcome is a free-for-all that leaves felons, drug addicts, and domestic abusers many ways to get guns.

If Congress had simply acquiesced in the Insurrectionist campaign to shield gun makers, dealers, and buyers from criminal and civil penalties for their misconduct, the public might eventually be expected to catch on and demand stronger laws, more aggressive enforcement, and a political commitment to curbing illegal gun sales. The Insurrectionists, though, have gone a step farther, covering their tracks by persuading legislators to shut down almost every avenue of information about the sources of guns used to commit crimes. ATF is now limited by statute from sharing certain trace data with local law enforcement, creating hurdles that impede efforts to identify and investigate corrupt gun dealers and illegal traffickers, and most trace data cannot be released to Congress or the general public.<sup>9</sup> Without access to this type of information, the public can no longer learn which dealers are among the 1.2 percent of federal firearms licensees who sell 57 percent of the guns traced in criminal investigations.<sup>10</sup>

ATF has long been a convenient whipping boy for the major gun rights groups, which have accused it of excessive zeal in enforcing the law and demonized it as a haven for “jack-booted Government thugs.”<sup>11</sup> ATF is not, however, the only agency crippled by the Insurrectionists. The FBI, which is responsible for administering the National Criminal Instant Check system, which serves as the clearinghouse for information that is searched before a licensed dealer sells a gun, is barred from keeping gun-purchase records for longer than twenty-four hours,<sup>12</sup> and

former attorney general John Ashcroft's policy, backed by the National Rifle Association (NRA), of prohibiting the FBI from comparing gun-sale data to terrorist watch lists was reversed only when the September 11, 2001, attacks made the practice politically untenable.

Gun rights enthusiasts often claim that private citizens need to arm themselves because the police are unable or unwilling to come to their aid when criminals attack, yet these same gun supporters work tirelessly to make sure that law enforcement will lack the tools it needs to reduce gun violence. Public safety in a free society requires security measures that are democratically accountable, but these institutions also must have the power necessary to protect us, or the antigovernment rhetoric about the ineffectiveness of the police will become a self-fulfilling prophecy.

The unregulated distribution and use of guns is not an accident but the result of a carefully conceived and executed plan. The firearms industry is a major beneficiary of this effort, but the political and legislative strategy that made it a reality was driven by the Insurrectionist aversion to any policy that might help hold individuals or companies accountable for making, selling, or using firearms in ways they know are likely to result in criminal activity. Indeed, when Smith & Wesson negotiated an agreement with the Clinton administration that would have led to the adoption of basic safeguards designed to keep guns away from criminals and detect diversion of firearms to illegal markets, the NRA retaliated by leading a boycott that bankrupted the company. When new owners brought Smith & Wesson out of its Chapter 11 reorganization, they renounced any intention to accept regulation—voluntary or otherwise—and the rest of the industry got the message.<sup>13</sup>

The resulting policies have shaped the industry in profoundly unhealthy ways. For example, major gun makers have knowingly exploited marketing channels expressly designed to reach customers who are supposed to be legally ineligible to own firearms.<sup>14</sup> When violent criminals—many with lengthy records of felony convictions, open arrest warrants, or histories of abuse or mental illness—take advantage of these channels to obtain guns, freedoms we once took for granted, like an evening stroll or leaving our windows open, become a thing of the past. The Insurrectionist response—that every adult citizen should

carry a gun for self-protection—is no way to reclaim our freedom. A society where everyone needs to carry a gun is not merely dangerous but is no longer free. True freedom exists not in the power to shoot anyone who wrongs us but in the opportunity to go about our daily lives without the need to maintain constant vigilance in the event of an armed confrontation.

The vast amount of private armaments that seep into the civilian population occasionally results in a mass killing. But probably more devastating to our country is the illegal trafficking of firearms that robs whole communities of their safety. The Insurrectionists' answer is to privatize responsibility for security with policies such as liberal concealed-carry laws. In this view, each person is responsible for his or her own protection. In many ways, this is a return to the state of nature, where might makes right and your neighbor's concerns are not your problem. As Suleiman points out, "When citizens assume that all that matters is 'personal' responsibility, the result may be private militias, gated communities, private security forces, and so on. Developing a sense of responsibility for oneself is one thing; developing it to the exclusion of all else is a danger to the society in which we live."<sup>15</sup> The Insurrectionists want us to devolve into a premodern, anarchic state where the individual is the only thing that matters. That vision is inconsistent with our history and with democracy itself.

Much debate has examined the public health consequences of gun violence in America, and the evidence is clear that the untrammelled access to guns that has been the hallmark of American firearms policy—and to which the Insurrectionists cling so fanatically—poses a serious threat to public health.<sup>16</sup> But readers should by now sense a profound risk that the authors believe ought to trouble us even more: that the misbegotten tangle of Insurrectionist fears, resentments, crudities, and misapprehensions could endanger America's civic health.