THE IRRELEVANT SECOND AMENDMENT

To the question "What provision of the Constitution guarantees average Americans the right to posses a firearm?" almost everyone, whether in favor of or opposed to that "right", would reflexively answer "the Second Amendment". In point of constitutional fact, however, this is the *wrong* answer. In reality: (i) Three provisions of the original Constitution guarantee the right—and, of greater consequence, recognize the *duty*—of average Americans to possess firearms. (ii) The Second Amendment merely echoes and emphasizes this guarantee, which would be just as effective if that Amendment did not exist at all. And (iii) the most influential contemporary misinterpretation of the Second Amendment, which myopically focuses solely on the so-called "individual right" to posses firearms for the particular purpose of personal self-defense, actually threatens "the right of the people to keep and bear Arms".

I. To ensure that public officials would always adhere to the correct construction of the original Constitution, the Bill of Rights, consisting of "further declaratory and restrictive clauses", was grafted onto the Constitution "in order to prevent misconstruction or abuse of its powers". RESOLUTION OF THE FIRST CONGRESS SUBMITTING TWELVE AMENDMENTS TO THE CONSTITUTION (4 March 1789), *in Documents Illustrative of the Formation of the Union of the American States*, House Document No. 398, 69th Congress, 1st Session (Washington, D.C.: Government Printing Office, 1927), at 1063. Now, obviously, a "*misconstruction* * * * of [the] powers" which the original Constitution delegated to the General Government would involve a misreading, misinterpretation, or mistaken application of those "powers"—stemming, presumably, from an *inadvertent and honest misunderstanding* of some sort. Conversely, an "*abuse* of [the original Constitution's] powers" would involve an *intentional and dishonest extension* (or perhaps an *intentional and dishonest contraction*) of those "powers" in derogation of their legitimate purpose and scope. In either case, the Bill of Rights was adopted, not on the premiss that the various actions which its Articles discountenanced were actually permitted by the original Constitution, but rather to ensure that the *correct* construction of the Constitution—which *disallowed* those actions—would be pellucid. Indeed, that the Bill of Rights added "*further* declaratory and restrictive clauses" plainly indicated that the original Constitution *already contained some* "declaratory and restrictive clauses" (whether express or implied) with respect to the subjects the Bill of Rights addressed.

Thus, the purpose of the Second Amendment's guarantee that "the right of the people to keep and bear Arms, shall not be infringed" is not to negate some imaginary provision in the original Constitution which if it existed would license the General Government to "infringe[ ]" that "right" *ad libitum*, but instead is to reiterate and reinforce the absence of any such provision. Any claim which rogue public officials might assert—whether by dint of some deficiency in either their competence or their integrity—in favor of such a license is a "*misconstruction or abuse* of [the General Government's] powers [in the original Constitution]", not an even arguably valid exercise of those "powers".

II. Of course, if the original Constitution contained no provision which dealt in any manner

with "the right of the people to keep and bear Arms", the Second Amendment would be highly relevant. For it is obvious that certain powers the original Constitution delegates to Congress—such as the powers "[t]o lay and collect Taxes" and "[t]o regulate Commerce * * * among the several States" in Article I, Section 8, Clauses 1 and 3, respectively—*could conceivably* be subjected to "misconstruction or abuse" by invincibly ignorant or rogue public officials in derogation of "the right of the people to keep and bear Arms". Indeed, since the 1930s those Clauses *have repeatedly been* misconstrued and abused in favor of unconstitutional "gun control". *See, e.g.,* AN ACT To provide for the taxation of manufacturers, importers, and dealers in certain firearms and machine guns, to tax the sale or other disposal of such weapons, and to restrict importation and regulate interstate transportation thereof ("National Firearms Act"), Act of 26 June 1934, CHAPTER 757, 48 Stat. 1236; AN ACT To regulate commerce in firearms ("Federal Firearms Act"), Act of 30 June 1938, CHAPTER 850, 52 Stat. 1250; AN ACT To amend title 18, United States Code, to provide for better control of the interstate traffic in firearms ("Gun Control Act of 1968"), Act of 22 October 1968, Pub. L. 90-618, 82 Stat. 1213; An Act To control crime ("Crime Control Act of 1990"), Act of 29 November 1990, Pub. L. 101-647, 104 Stat. 4789; An Act To control and prevent crime ("Violent Crime Control and Law Enforcement Act of 1994"), Act of 13 September 1994, Pub. L. 103-322, 108 Stat. 1796.

In fact, though, the original Constitution contains provisions which, applied by honest and competent public officials, plainly secure and effectuate the "right of the people to keep and bear Arms"—either positively, by asserting the existence of that "right" for WE THE PEOPLE in general; or negatively, by denying the General Government (and the States as well) any authority to "infringe[ ]" it. These provisions include:

> Article I, Section 8, Clause 15—The power of Congress "[t]o provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions[.]"
>
> Article I, Section 8, Clause 16—The power of Congress "[t]o provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress[.]"
>
> Article II, Section 2, Clause 1—"The President shall be Commander in Chief * * * of the Militia of the several States, when called into the actual Service of the United States[.]"

And it should be self-evident that, for example, the general powers of Congress "[t]o lay and collect Taxes" and "[t]o regulate Commerce * * * among the several States" cannot be misemployed to negate the specific power of Congress "[t]o provide for * * * arming * * * the Militia", or to disable the States from arming their own Militia—"the Militia *of the several States*"—should Congress default on its own responsibility. The Constitution, after all, is not internally self-contradictory or otherwise incoherent.

Although the principles, standards, and required outcomes that govern the exercise of these powers of Congress and the President (and the cognate powers of the States) with respect to "the right of he people to keep and bear Arms" are nowhere explicitly set out in the original Constitution, they are obviously implicit in its incorporation of "the Militia of the several States" into the federal system. These are the *only* "Militia" the Constitution recognizes. These are uniquely "*the* Militia" to which the powers of Congress, the position of the President as "Commander in Chief", and the "powers * * * reserved to the States respectively, or to the people" under the Tenth Amendment to the Constitution pertain. Even more to the point, these were not merely theoretical "militia" when the Constitution was ratified in 1788. Rather, they were actual institutions—indeed, the *only* institutions of their kind—which had existed for generations theretofore throughout America, settled and regulated pursuant to ordinances, acts, and statutes of the thirteen Colonies and then the independent States. So, from the very beginning, Congress's power was limited to "organizing, arming, and disciplining, *the*[*se and only these*] Militia", and in such wise as to guarantee the continued existence of *such* "Militia" under the style of "the Militia of the several States". Congress labored under a complete disability (an absence of power) as to any other conceivable "militia". So, too, for the States. And, in the absence of a constitutional Amendment on this subject, this situation still obtains.

To be sure, because of invincible ignorance or for maleficent political purposes, some people might attempt to deny or obscure the obvious, in order to float the notion that the original Constitution licenses Members of Congress to define the phrase "organizing, arming, and disciplining, the Militia"—and even the noun "Militia" itself—in any manner that suits their fancy. *Contrast District of Columbia* v. *Heller*, 554 U.S. 570, 599-600 (2008) (Scalia, J., for the Court) (where that sort of nonsense finds voice, albeit only in irresponsible *dicta*), *with Eisner* v. *Macomber,* 252 U.S. 189, 206 (1920) (stating the correct rule). Certainly this would be the perverse tack taken by rogue public officials intent on disregarding, hamstringing, or even destroying the Militia entirely. So, to ensure that both the General Government and the governments of the States would always adhere to the correct interpretation and application of the original Constitution with respect specifically to the Militia, the Second Amendment, consisting of "further declaratory and restrictive clauses", was added to the original Constitution "in order to prevent misconstruction or abuse of its powers".

The Second Amendment provides that "[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." The term "well regulated Militia" obviously takes as implicit examples "the Militia of the several States" which existed at the time of the Amendment's ratification (1791)—for these "Militia" would never have been incorporated into the original Constitution only a few years earlier (1788) had they been considered to be other than "well regulated". The power of Congress "[t]o provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States"—that is, for "execut[ing] the Laws of the Union, suppress[ing] Insurrections and repel[ling] Invasions"—outlines in what particulars and for what purposes the Militia are to be "well regulated" by Congress. So too for the States, when they "regulate[ ]" their own Militia for their own purposes (or for the purposes the Constitution entrusts to Congress, should Congress default on that duty). And these powers of "regulat[ion]" are to be construed and exercised

in accordance with the principles of "well regulated Militia" understood at the time the original Constitution and then the Second Amendment were ratified—which principles must be derived from the *pre-*constitutional Militia laws of the Colonies and independent States, there having been no other principles of "well regulated Militia" generally known, accepted, *and enacted into law* within America during that era. After all, to understand it, the Constitution must be perused "in the light of the law as it existed at the time it was adopted". *Mattox* v. *United States*, 156 U.S. 237, 243 (1895). *See generally* the present author's book *Constitutional "Homeland Security", Volume Two, The Sword and Sovereignty: The Constitutional Principles of "the Militia of the Several States"* (Front Royal, Virginia: CD-ROM Edition, 2012). Thus, contrary to the general misconception, the Second Amendment restates a constitutional rule which applies to *both* the General Government *and* the States, because in its Militia Clauses the original Constitution sets out powers and disabilities which pertain to *both* levels of government.

As the principles of the *pre-*constitutional American Militia laws make clear, "the Militia of the several States" today are to consist of every able-bodied citizen from sixteen years of age upwards. Indeed, with only limited exemptions, every such citizen has a legally enforceable *duty* to serve unless and until some physical or mental disability occasioned by advanced age, disease, or accident precludes his further useful participation. Under Article I, Section 8, Clauses 15 and 16 of the original Constitution, Congress may "provide for calling forth" "such Part of the[Militia] as may be employed in the Service of the United States", and may "provide for organizing, arming, and disciplining[such Part of] the Militia" as Congress may deem necessary for "execut[ing the Laws of the Union, suppress[ing] Insurrections, and repel[ling] Invasions". But neither Congress nor the States may confine membership and active participation in the Militia as a whole to some set of Americans less inclusive than the *pre-*constitutional Militia laws required.

As the *pre-*constitutional American "Militia" laws also teach, every member of the Militia (other than conscientious objectors) is to be provided with "Arms" suitable for Militia service. Thus, not surprisingly, the Constitution delegates to Congress the power "[t]o provide for * * * *arming* * * * the Militia", not for "*dis*arming" them. The three purposes for which Congress may "provide for calling forth the Militia" indicates what types of "Arms" should be provided. "[T]o execute the Laws of the Union" naturally implies "Arms" suitable for the work of typical law-enforcement agencies. "[T]o * * * repel Invasions" naturally implies "Arms" identical or equivalent to those the regular Armed Forces employ. And "to * * * suppress Insurrections" naturally implies "Arms" which can be employed for one or the other of the latter purposes, depending on the type, extent, and severity of the particular "Insurrection[ ]" at hand.

Inasmuch as the Militia are "the Militia *of the several States*", and inasmuch as every member of any constitutional "Militia" (other than conscientious objectors) must be suitably armed for that service, each of the several States, no less than Congress, must provide for arming her Militia, not for disarming them. For their own part, the States may require their Militia to execute their own laws, to suppress insurrections within their own territories, to repel invasions of those territories, and to perform whatever other functions they may choose to assign to their "Militia" for which the use of "Arms" may be indicated. Thus the types of "Arms" which the States may require (or simply

expect) the members of their Militia to keep and bear for the States' own purposes could conceivably be more—but never less—extensive than the types of "Arms" required (or simply expected) by Congress for "the Militia of the several States" when they are "employed in the Service of the United States".

The original Constitution does not specify how Congress is "[t]o provide for * * * arming * * * the Militia". In keeping with the *pre*-constitutional practices which define the concept of "arming", Congress could direct some agency in the General Government to disburse suitable "Arms". Or it could direct the States to provide such "Arms". Or it could direct the members of the Militia to supply themselves with particular "Arms" through the free market. Or it could simply allow all Americans eligible for the Militia to purchase such "Arms" as they saw fit (which, in effect, is the situation today to a certain, albeit not sufficient, extent). Or it could employ some combination of these means (for example, crew-served weapons would be supplied by the government, individual "Arms" provided by members of the Militia themselves). Similarly for the States. But, obviously, neither Congress nor the States can "provide for * * * arming * * * the Militia" by prohibiting citizens eligible for the Militia from in some manner procuring whatever types of "Arms" would enable them to perform one or another Militia service. Thus, for a prime example, if the particular task is to "repel Invasions", neither Congress nor the States may prohibit citizens eligible for the Militia from possessing at least *semi*-automatic so-called "assault rifles" of military calibers, closely akin to the fully automatic rifles the regular Armed Forces employ to "repel Invasions" by foreign aggressors also equipped with such rifles.

Both Congress and the States have the constitutional power to arm the Militia. And, as a general proposition, "[w]hatever functions Congress [and the States] are by the Constitution authorized to perform they are, when the public good requires it, bound to perform". *United States* v. *Marigold*, 50 U.S. (9 Howard) 560, 567 (1850). One of the Constitution's purposes is to "provide for the common defence", which self-evidently "the public good [*always*] requires". *See* U.S. Const. preamble; art. I, § 8, cl. 1. A critical responsibility of the Militia is to "provide for the common defence", first and foremost by "repel[ling] Invasions" and to a lesser degree by "suppress[ing large-scale] Insurrections". U.S. Const. art. I, § 8, cl. 15. *See also* U.S. Const. art. IV, § 4, and art. I, § 10, cl. 3. So the power of Congress and the States to arm the Militia for that purpose (as well as others) implies a corresponding *duty*, too. And because Congress and the States have a governmental *duty* to arm the Militia, and every American eligible for Militia service (other than conscientious objectors) has a personal *duty* to be armed, every such American enjoys a corresponding *absolute right as against both the General Government and the States* "to keep and bear Arms" suitable for such service—such as *semi*-automatic "assault rifles" with which to "repel Invasions" and "suppress [large-scale] Insurrections", or various types of *semi*-automatic pistols, revolvers, rifles, shotguns, and so on with which to "execute the Laws" and "suppress [small-scale] Insurrections".

Observe, too, that this absolute right derived from Americans' eligibility for service in the Militia is perfectly compatible with—indeed, is the very best way to effectuate—the so-called "individual right" "to keep and bear Arms" for personal self-defense on which advocates of "gun rights" such as the National Rifle Association dote. After all, as a practical matter, everyone who is

required to possess firearms suitable for Militia service can also employ those firearms for self-protection should the need arise. And inasmuch as self-defense entails the enforcement of the law by the victim of an attack when no other aid is available, such use of a firearm fulfills the Militia purpose of "execut[ing] the Laws of the Union" and the laws of the States. Viewed in the proper constitutional context, the "individual right" of personal self-defense is simply inseparable from all Americans' rights and duties pertaining to the Militia. Moreover, as an aspect of "execut[ing] the Laws" self-defense implies an absolute right derived from service in the Militia "to keep and bear Arms" useful for that purpose—which "Arms" will inevitably include numerous types of firearms perfectly adequate for self-defense even if they are not usually deemed suitable or recommended for "execut[ing other] Laws", "suppress[ing] Insurrections", or "repel[ling] Invasions".

Now, inasmuch as the foregoing analysis has derived "the right of the people to keep and bear Arms" solely from the Militia Clauses of the original Constitution, with no reliance upon the Second Amendment except as an emphatic reinforcement by reassertion of the "right" those Clauses guarantee on their own, it follows that the Second Amendment is really irrelevant to the fundamental issue of Americans' "gun rights". "[T]he right of the people to keep and bear Arms"—including the "individual right" "to keep and bear Arms" for personal self-defense—would exist even if the Second Amendment did not.

Indeed, read *in its entirety* (as every coherent sentence in the English language must be read if its true sense is to be understood), the Second Amendment itself confirms this conclusion. The Amendment provides that "[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." The Amendment's self-evident goal is "the security of a free State". It declares that "[a] well regulated Militia" is "necessary" for that purpose. And it protects "the right of the people to keep and bears Arms" against "infringe[ment]" so that "the people" will always be properly equipped to provide "security" to their "free State" through their service in "[a] well regulated Militia". For the Second Amendment, then, "a free State" is one endowed with "[a] well regulated Militia" in which suitably armed citizens participate collectively in an organized manner for their common defense, not an anarchy in which each happenstance inhabitant of the territory exercises on his own behalf an atomistic "individual right" "to keep and bear Arms" for the purpose of self-defense alone.

In all of this, the Second Amendment and the original Constitution are perfectly congruent. "[T]he security of a free State" to which the Amendment refers is the selfsame end to which the original Constitution aspires in its Preamble: namely, "to provide for the common defence * * * and secure the Blessings of Liberty to ourselves and our Posterity". The "well regulated Militia" which the Amendment declares to be "necessary" for that purpose are "the Militia of the several States" which the original Constitution permanently incorporated into its federal system. And the "right of the people to keep and bear Arms" which the Amendment protects against "infringe[ment]" is no less guaranteed by the explicit power and duty of Congress "[t]o provide for * * * arming * * * the Militia", along with the implicit disability of the States to disarm their Militia and thereby negate the powers of Congress and the President to "call[ ] forth the Militia" "to be employed in the Service of the United States". Thus, by its own terms, the Second Amendment supplies nothing that the

original Constitution lacks—because, as far as "the right of the people to keep and bear Arms" is concerned, the original Constitution lacks nothing.

III. Incautious reliance by self-styled champions of the Second Amendment on the "individual right" "to keep and bear Arms"—which some of them convinced the Supreme Court in *District of Columbia* v. *Heller*, 554 U.S. 570 (2008), to derive from the Amendment's last fourteen words (to the effective exclusion of the first thirteen)—has rendered the Second Amendment extremely relevant nowadays, *but to WE THE PEOPLE'S disarmanent*.

At issue in *Kolbe* v. *Hogan*, 849 F.3d 114 (4th Cir. 2017) (*en banc*), was the unconstitutionality of a Maryland statute which prohibits average citizens of that State from possessing every one of a long list of "assault firearms" and related "large-capacity magazines". Anyone who gives even passing consideration to the first thirteen words of the Second Amendment, let alone the Militia Clauses of the original Constitution (and of the Constitution of Maryland, too), must conclude that these particular "Arms", being quintessential "Militia" firearms in this day and age, are entitled to the very highest level of protection available under the Second Amendment. *See United States* v. *Miller,* 307 U.S. 174 (1939). But, expecting to capitalize on *Heller,* the plaintiffs in *Kolbe* premissed their case exclusively on the "individual-right" theory that "assault firearms" are useful for personal self-defense.

Truth and justice being commodities of little value today, that these litigants' assertions were correct availed them nothing. For, in a remarkably disingenuous display of legalistic *jiu-jitsu*, the Court of Appeals upheld the Maryland law on the supposed authority of *Heller:*

> We conclude * * * that the banned assault weapons and large-capacity magazines are *not* protected by the Second Amendment. * * * [They] are among those arms that are "like" "M-16 rifles"—"weapons that are most useful in military service"—which the *Heller* Court singled out as being beyond the Second Amendment's reach. * * * [W]e have no power to extend Second Amendment protection to the weapons of war that the *Heller* decision explicitly excluded from such coverage. [849 F.3d at 121.]

To be sure, this was a grotesque perversion of the actual holding in *Heller*—but a studied "misconstruction or abuse" which the loose reasoning and even looser rhetoric of *Heller* encouraged and facilitated.

Seeking to overturn the Court of Appeals' decision, Mr. Kolbe *et alia* then petitioned the Supreme Court for a writ of certiorari, once again in reliance on the "individual-right" theory alone. Although the Militia Clauses of the original Constitution (and of the Constitution of Maryland as well) were "not specifically noticed * * * in the [parties'] records or briefs", the Supreme Court could have taken them under consideration on its own initiative, "that the Constitution may not be violated from the carelessness or oversight of counsel in any particular." *See Pollock* v. *Farmers' Loan & Trust Co.,* 157 U.S. 429, 604 (1895) (separate opinion of Field, J.). And, on that basis, it could have disposed of the case in summary fashion with an order reading simply: "The petition for a writ

of certiorari is granted. The decision of the Court of Appeals is reversed on the authority of *United States* v. *Miller,* 307 U.S. 174 (1939)." Instead, the Supreme Court denied the petition without commenting on the merits of the case. Although as a matter of law the mere denial of the petition imports nothing as to the merits, the practical result is that—at least in the Fourth Circuit and in any other court which finds the Court of Appeals' sophistry congenial for the purpose of imposing radical "gun control"—*any* "Arms" which can plausibly be labeled "weapons of war" are entitled to *no protection whatsoever* under the Second Amendment. As to such "Arms" the Second Amendment is simply irrelevant.

Now, *semi*-automatic "assault *rifles*" of (say) the AR-15 and AK-47 patterns available in the free market undoubtedly *are* akin in their basic designs and most of their operations and features to the fully automatic versions of such firearms employed by regular armed forces throughout the world. But so are most modern *semi*-automatic *pistols* of military calibers. Indeed, many *semi*-automatic pistols now being sold in the free market to civilians in the United States are also issued to regular armed forces both here and abroad with no significant differences in their basic designs, operations, and features. And just about all modern *semi*-automatic pistols are supplied by the factories with "large-capacity magazines" as original equipment, and can accommodate even-larger-capacity aftermarket magazines. (Such aftermarket magazines are available for even the venerable Colt Model 1911 pistol and its contemporary clones.) So nothing prevents these pistols from being denounced by "gun-control" fanatics in legislatures and courts as "weapons of war" *unprotected by the Second Amendment* and therefore subject to sweeping prohibitions, *notwithstanding that they are eminently suitable for personal self-defense by civilians in their own homes and in the streets of their cities and towns*.

To be sure, *Heller* upheld the right of an average American to possess a *semi*-automatic handgun for the purpose of personal protection in his home. But, inasmuch as *Heller* was decided on the basis of the "individual-right" theory with no consideration of the "weapons-of-war" theory, in a future *Heller*-type case the Supreme Court could adopt the latter theory merely by "distinguishing" *Heller* on that basis, without having to "overrule" it formally. And, by denying the petition for a writ of certiorari in *Kolbe*, the Supreme Court has left the "weapons-of-war" theory fully loaded in the argumentative arsenal of every crackpot legislator and judge throughout the United States. Thus, one can expect "gun-control" fanatics to push that theory for all it is worth—first against private possession of *semi*-automatic "assault rifles" (those fanatics' *bête noire du jour*), then against private possession of *semi*-automatic pistols and other "Arms" with "military" applications (such as highly accurate bolt-action rifles equipped with telescopic sights, which can be denounced as "sniper rifles"), wherever such possession is still legal. That, in the aftermath of the recent school shooting in Parkland, Florida, pundits in the mass media and assorted "useful idiots" in both of this country's "two" major political parties are stridently demanding prohibition of the private possession of *all semi*-automatic firearms *of whatever type* indicates that no discernable limit to such *anti*-constitutional nullification of "the right of the people to keep and bear Arms" exists.

For decades past, "gun-control" fanatics have employed numerous strategies in their incessant war of legalistic aggression against "the right of the people to keep and bear Arms", especially with respect to *semi*-automatic "assault rifles". Yet during that time even those "Arms" were entitled to

a measure of *ersatz* protection under a judicial "balancing test" which (in its strongest form) purported to "enforce" the Second Amendment by requiring the government to demonstrate that an "infringe[ment]" on "the right of the people to keep and bear Arms" served a "compelling interest" through "the least-restrictive means" available. Unfortunately for litigants trying to shield themselves behind the "individual-right" theory, what constituted a "*compelling* interest" and a "*least-restrictive* means" was, like "beauty", in the eyes of the beholders—that is, the typically hostile judges who decided such cases. And, like "pornography", such judges knew a "compelling interest" and a "least-restrictive means" when they saw them, which they almost always professed to do. Nonetheless, even a kangaroo court's employment of an *anti*-constitutional and politically biased "balancing test" was preferable to an out-and-out ruling that the Second Amendment did not apply at all. Now, however, once the label "weapons of war" is affixed to some class of firearms under the *Kolbe* doctrine, a court can ignore the Second Amendment entirely. Not even a "balancing test" need be applied to what otherwise would be recognized as an "infringe[ment]" on "the right of the people to keep and bear [such] Arms", because no constitutional "right" exists with respect to them.

Even the NRA and other proponents of the "individual-right" theory seem to realize the extremely perilous nature of this situation. It is surely no accident, after all, that they have taken to calling *semi*-automatic rifles of the AR-15 pattern "modern *sporting* rifles". Apparently they imagine that applying mere verbal lipstick to what "gun-control" fanatics among legislators, judges, and the mass media consider a pig will reprieve the poor animal from consignment to a slaughterhouse. Besides being unrealistic, this tactic is more than merely ironic, inasmuch as the NRA has consistently (and correctly) criticized the BATFE for using as a basis for its regulations a firearm's supposed unsuitability for what that agency deems to be "sporting" purposes.

Although the proponents of the "individual-right" theory of the Second Amendment did not intend to create this rats' nest, *they* are largely responsible for it. For if Richard Weaver was correct in his observation that all ideas have consequences, surely even *they* should have known that bad ideas inevitably beget catastrophes. Over the years, in support of "the right of the people to keep and bear Arms" *they* could have promoted the entirety of the Second Amendment, rather than just its last fourteen words. *They* could have promoted the Militia Clauses of the original Constitution. *They* could have promoted the entirety of the Second Amendment in tandem with the Militia Clauses, as the Constitution obviously intends. *They* could have litigated *Heller* on the latter basis, and might well have obtained from Justice Scalia a constitutionally coherent opinion which would have precluded—rather than provided grist for—the egregious decision in *Kolbe*. *They* could even have bravely bitten the bullet by denoting *semi*-automatic "assault rifles" as the "modern *Militia* rifles" those firearms undoubtedly are—or, better yet, by describing *all* firearms suitable for *any* type of Militia service (including personal self-defense) as "modern *Militia* arms". But *they* wanted nothing to do with either the first thirteen words of the Second Amendment or the Militia Clauses of the original Constitution. As a result—perhaps innocently, perhaps inadvertently, but in any event inattentively to the inescapable consequences of their actions—*they* have provided "gun-control" fanatics with invaluable aid and comfort in those miscreants' quest to make the Second Amendment irrelevant.

Now, having sown the wind, they must steel themselves to reap the whirlwind. Unfortunately, so must we all.