

## Corporations and the Second Amendment



- I. Intro.
  - a. I began thinking of a reductio:
    - i. of course corporations should have guns.
    - ii. Already affiliation with the right firm is more important than the right passport – it gives you not only residence but income, services, protections, health care.
    - iii. Already entering the headquarters of any major firm is like entering an armed state.
    - iv. Already firm managers have the unlimited power to exile dissenters and troublemakers, to hand out goodies to their supporters, to extract ever-larger portions of the surplus for personal use.
    - v. Why wouldn't we want Chase to also build castles and gulags and its own collection of drone-killers?
  - b. Unfortunately, constitutional law is an irony-free zone. NYU L Rev already has published an advocacy piece in favor of corporate armies.
- II. The New Second Amendment.

- a. The traditional second amendment is a mess.
    - i. The first clause is manifestly false: plenty of free societies are secure without well-organized militia. And in any event, our own well-organized militia, as a matter of historical reality, had more to do with preserving slavery than freedom. That, of course, is the point of “well-organized” – it wouldn’t do to have the mob running around with guns.
    - ii. The connection between the two clauses appears to be something like “therefore” – suggesting that the People’s right is in connection with militia service – but we no longer have militia service.
    - iii. The “right”, which is not to be violated, is entirely unspecified – and unknown to history and political theory. For most of us, disarming the aristocracy was one of the great achievements of the modern era. Few of us really aspire to Hobbes’ war of all against all or the armed camps of Beirut during the civil war.
    - iv. The operational clause is in the passive voice. Who exactly is it that is not to violate this undefined right? Does this make gun markets illegal, because the prices interfere with the right of the poor to bear arms?
  - b. Proponents therefore ignore the language and focus on the right. Two quite different rights usually postulated:
    - i. Revolution. From the Declaration of Independence with the US as George III. Not entirely clear what the long chain of abuses is that would justify revolution. More to the point, the politics of this revolution are unclear – seems to assume a group that can’t win an election but – presumably without public support – can win a war against the US military. If this is the foundation of our freedom and security, we are in trouble.
    - ii. Self-defense. Instead of an over-reaching government, assumes a weak and helpless one. Individual armed homeowners defending themselves against the UN, the urban masses or Willy Horton. Essentially – a return to Hobbes’ war of all against all.
- III. The History of Corporations and Constitution
- a. Very simply, the Court starts with a strong presumption that corporations have the rights of citizens, not the obligations of government. In almost every case, it has treated corporations like citizens. In open defiance of the actual language, structure and history.
  - b. If Corporate precedent is any guide, corporations will soon have the right to bear arms. After all, they have rights to privacy and freedom of association even though they have no living rooms or friends; they have rights to speak even though they can only speak by spending money and coercing servants to say things the actual speaker may disagree with; they have rights to secrecy even though we know that sunshine is the best way to ensure that officers do not betray their trust; they have rights to property that we spent several centuries taking from subordinate government officers and agencies; they have rights to due process and equal protection that the court still has trouble extending to

African Americans; and they have rights to appear in Federal court that the Constitution specifically grants only to citizens.

- c. This is backwards.
  - d. Liberal political theory presumes – like our founding documents – that the People come first. We are Creations of God, in His image or Endowed by Him with fundamental rights – and, in Locke’s version, with no right to our life, since that belongs to Him. Secularists use Occum’s razor to shave off the God part but reach the same conclusion.
  - e. The state is our creation and has no rights but those we give it.
  - f. Corporations fairly obviously belong on the state side of this equation – vast, powerful, important agglomerations of power that we depend on, and ought to be somewhat suspicious of.
- IV. Theory of Corporate Rights
- a. Even if they have no natural rights, perhaps they should have entrenched legal rights.
  - b. One early theory – in Deveaux -- was that they are made of rights bearing people and should have the rights of the people who are their members – as if the organization didn’t exist or didn’t matter. Shows up in Bellotti as well, and seems to be partly behind CU, although not articulated clearly.
    - i. This, of course, rejects the basic insight behind liberal political theory: groups are not the same as the people who make them up. Committees. Michels, Iron Law of Oligarchy.
    - ii. Also, it ignores the actual law and functioning of corporations, which do not have members and are designed to PREVENT, not cause, pass through from their various constituencies. No one in a business corporation has the legal right to say “morality and decency trump interests” – business corporations are DESIGNED to be Gradgrind.
- V. Corporate Violence
- a. Corporate history begins with the Knights Templar, formed to conquer Jerusalem and after several hundred years of bloody control of Jerusalem, reformed into the Knights of Malta, a quasi-sovereign mercenary force. For early Americans and their British contemporaries, the word, first and foremost must have evoked the East India Company -- John Corporation -- which owned the tea dumped in Boston Harbor and, more importantly, conquered and robbed India in order to addict China to opium, thus solving the key problem of early globalization: what to sell to China to pay for its tea and porcelain.



b.

The US is equally familiar with corporate violence. The Pinkertons – “detectives” for hire – got their start shortly after the Civil War, guarding President Lincoln and hunting former Confederates turned bandits like Jesse James. Then they privatized their market, become union-busters for hire.

Most famously, they were hired by Frick to suppress the union at Carnegie’s Homestead Steel plant in 1892, where the men sought recognition of their union and objected to a proposed 15% pay cuts from already unliveable wages in the midst of the 1890 recession.<sup>2</sup> Frick stockpiled product, closed and fortified the plant – building a wall with sniper holes -- announced the company would no longer negotiate with the union and then brought in an army of Pinkertons. The workers, only a minority of whom had been members of the union, voted overwhelming to strike, organized and fought back. When several hundred Pinkertons arrived on barges, armed with Winchester rifles, they were met by thousands of workers. A battle broke out. The Pinkertons murdered seven workers and took many injuries themselves before eventually surrendering. After debating whether to execute them all, the strikers forced the Pinkertons to run a gauntlet, beating them (in several cases, to death) and then allowed the survivors allowed to retreat. No legal action was taken against the surviving invaders or their bosses. On the contrary, at Frick’s request the Governor called in the state Militia armed, this time, with Gatling guns. Strikebreakers were shipped in from out of state, often unaware where they were going or that they were scabbing, to get the plant working again. 160 strikers were tried for murder or other crimes and Hugh O’Donnell, a union leader, was prosecuted sequentially for treason (!), murder and assault (every jury acquitted). The overwhelming violence broke the union after four months, and the town remained dominated by the corporation for decades.

<sup>1</sup> Image from <http://www.battleofhomesteadfoundation.org/battle.php>

<sup>2</sup>Zinn, A People’s History of the United States 276-77;

<http://www.pbs.org/wgbh/amex/carnegie/peopleevents/pande04.html>; <http://libcom.org/history/1892-the-homestead-strike>. Add and correct account from

This was not the only strike broken by Gatling guns: in the infamous Ludlow massacre (1914),<sup>3</sup> the Rockefellers hired the Baldwin-Felts Detective Agency to break a Mother Jones/UMW strike at a Colorado mine (and company town) they controlled. The detectives used rifles and Gatling guns but were unable to break the strike until the National Guard – paid by the Rockefellers—were called in to attack the strikers’ tent colony with machine guns and arson. After executing a strike leader in cold blood, they set fire to the tents; two dozen strikers were killed, including eleven children and two women burned to death hiding in one of the tents.

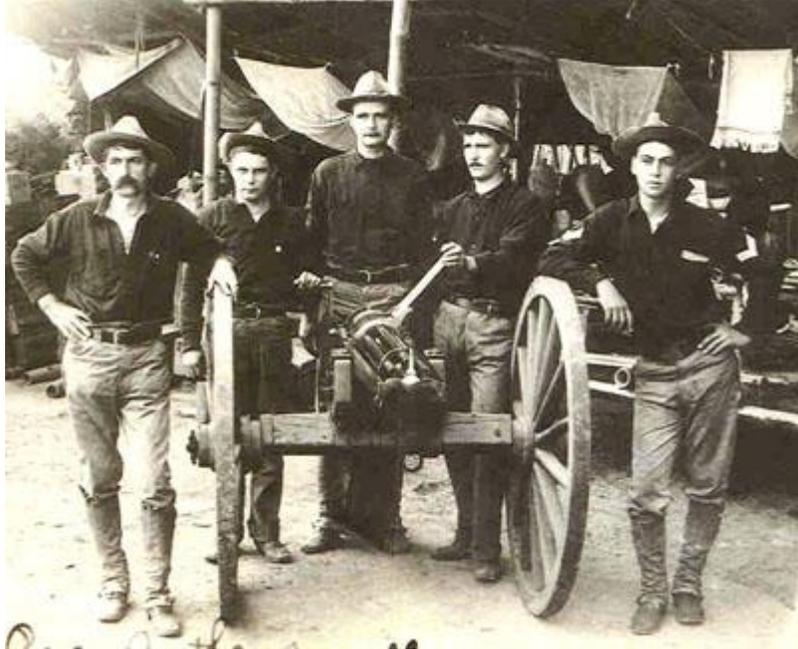


Homestead, and the other violent attacks on strikers at the end of the nineteenth century, had little to do with the voluntary contracts of our first year course or the free markets of our imagination. Only Robert Nozick believes that agreements made at the mouth of a Gatling gun are voluntary, and even he has a bit of trouble reaching this conclusion.

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<sup>3</sup> Zinn, 354-5

<sup>4</sup> Image from <http://libcom.org/history/1892-the-homestead-strike>



They did, however, lead to national, if not universal, revulsion at the concept of hired killers battling American workers. Several states passed “Pinkerton Laws” or amended their constitutions to bar companies from importing armed forces into the state. The Federal version, incidentally, is currently back under discussion as some believe it may apply to bar our current outsourcing of war in Iraq and Afghanistan to Blackwater and other contractors.

- c. Today we have tamed our great corporations, but only partly.
  - i. More private security guards that public policemen – even not including police for hire as we saw in Occupy.
  - ii. Privatization of the Army to Blackwater et al.
  - iii. Enormous power of corporate money we see everyday in lobbying, and increasingly in the electioneering.
    - 1. Absurdity of Obamacare, carefully constructed to rationalize our failed system as much as possible without restricting the profits of any of the incumbent abusers.
    - 2. Gun regulation dominated by gun manufacturers.
    - 3. Wall St regulation and bailouts in interest of profiteers, not economy
    - 4. Patent monopolies and the eternal copyright.
    - 5. So-called tort reform designed mainly to allow businesses to externalize costs.
    - 6. Failure to address global climate change for fear of limiting short term carbon profits.
  - iv. Do we really want to add guns to the power of these institutions?

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<sup>5</sup> Image from <http://www.spanamwar.com/Gatling.htm>