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Commentary

Gun Rights for Felons?

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The Supreme Court last month voided Washington, DC's extreme gun ban as a violation of the Second Amendment. Now, across America, public defenders and other lawyers for rapists, robbers and murderers are filing motions contending that their vicious clients have a Second Amendment right to have guns.

If this were correct, the Second Amendment would be a very bad thing. Happily, it's not so.

The high-court opinion vindicated the constitutional right of ordinary, responsible law-abiding adults to have a handgun to protect their families, homes and themselves. It also flatly stated that this right does not apply to criminals.

Federal and state laws against convicted felons having guns are still valid: The Second Amendment protects a right of self-defense for "good" people only.

The fact is, virtually all violent criminals have long criminal records—which disqualify them from owning guns under our laws against felons having guns.

For instance, 90 percent of US adult murderers have adult records (exclusive of their often extensive juvenile records), with an average adult crime career of six or more years, including four major felonies.

As criminologist Delbert Elliott said, in summarizing studies of murderers, robbers and rapists: "The vast majority of persons involved in life-threatening violence have a long criminal record with many prior contacts with the justice system." (Most of the few murderers who lack criminal records are disqualified from gun ownership by our laws banning firearms possession by lunatics.)

If such people obeyed gun bans, there would be virtually no gun crime in America. But, of course, criminals won't obey gun laws any more than they obey other laws.

Is there any chance the Supreme Court would eventually buy the arguments of the criminals' lawyers? Not if it pays any attention to the clear record of the Second Amendment's history.

The amendment guarantees a "right of the people to keep and bear arms"—and the Founding Fathers did not think "the people" included criminals. Under the law as they knew it, felons were "civilly dead": They had no legal rights whatever. All their property (including guns) was forfeit.

(Moreover, they were subject to execution—which made their rights irrelevant.)

In all societies recognizing a right to arms, that right was limited to “the virtuous citizenry.” In this, as in much else, our Founders looked back to the ancient Greek and Roman republics. There, every free man was armed so as to be prepared both to defend his family against criminals and to man the city walls in immediate response to the tocsin’s warning of approaching enemies. Thus did each good citizen commit himself to the fulfillment of both his private and his public responsibilities.

In sum, the constitutional right to arms simply does not extend to people convicted of serious criminal offenses. By “serious,” I refer to the early common law—under which felonies were real wrongs like rape, robbery and murder.

Unfortunately, modern legislatures have added a host of trivial felonies. For instance, in California an 18-year-old girl who has oral sex with her 17-year-old boyfriend has committed a felony. The courts should rule that conviction of such a trivial felony can’t deprive such a “felon” of her right to arms.

But the fact remains that people who have been convicted of serious criminal offenses have thereby lost their rights under the Second Amendment. They are subject to our laws against felons possessing firearms.

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