1-27-2011

Newsroom: CNN: Bogus on Second Amendment

Roger Williams University School of Law

Newsroom

CNN: Bogus on Second Amendment

Professor Carl Bogus talks to CNN about interpreting the Founders' intentions in drafting the Second Amendment's 'right to bear arms.'

CNN: "There's no right of revolution in a democracy" by **RWU Law Professor Carl T. Bogus**

Story Highlights:

Carl T. Bogus asks:

- *Was right to bear arms about resisting government tyranny?*
- *He says Founders of U.S. opposed armed resistance in early days of the nation*
- *Right to bear arms was aimed at empowering militia to serve government, he says*
- *In a democracy, the government belongs to the people and there's no right to revolt*

Editor's note: Carl T. Bogus is professor of law, Roger William University School of Law *and visiting professor, Earl Mack School of Law at Drexel University. Bogus is author of "Buckley: William F. Buckley Jr. and the Rise of American Conservatism," to be published in November by Bloomsbury Press.*

(CNN) January 27, 2010 -- *"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."* ***-- Second Amendment to U.S. Constitution***

Did the Founders give us a right to bear arms so we could resist government tyranny?

Is that why James Madison drafted the Second Amendment, the First Congress proposed it, and the states ratified it in 1791? And regardless of what Madison and his contemporaries had in mind, what are the ramifications of this idea -- often called the "insurrectionist model" because it means Americans may possess arms to potentially go to war with their own government -- for the Republic today?

There is a powerful image in our collective consciousness: the Minutemen, armed with their own muskets, rushing to Concord Green and the North Bridge in Lexington to prevent British troops from seizing a militia arsenal at Concord. We assume the Founders enshrined this tradition -- a right of armed citizens to resist governmental oppression -- in our Constitution with the Second Amendment.

That assumption is wrong.

First, it overlooks a critical distinction. The Minutemen were not going to war with their own government. They were going to war with British forces. Yes, of course, the American colonies were part of the British Empire. But Americans increasingly had come to see British forces as a foreign army of occupation.

At the center of their thinking was the fact that the American colonies were unrepresented in Parliament. Whig ideology of the day -- widely accepted on both sides of the Atlantic -- was that no democratic government could become tyrannical over the people it represented. Americans believed that it was because they were unrepresented that Parliament had few qualms about imposing oppressive taxation on them. Their cry was, "No taxation without representation."

Second, the assumption overlooks history.

How did the Founders react when Americans took up arms -- not against the Redcoats -- but against their own government? That happened twice. In Shays' Rebellion in 1786, small farmers and shop owners in western Massachusetts, armed with muskets and angry that the courts were foreclosing on their property to satisfy their debts, forcibly closed the courts and threatened to march on Boston.

In the Whiskey Rebellion of 1794, farmers in Pennsylvania and Kentucky took up muskets and threatened government officials who were charged with collecting taxes on whiskey.

Madison called Shays' Rebellion treason. The governor of Massachusetts raised an army to crush the rebellion -- an action endorsed by George Washington, Samuel Adams, John Jay, Benjamin Franklin and John Marshall.

Eight years later, during the Whiskey Rebellion, George Washington said that permitting citizens to take up arms against the government would bring an "end to our Constitution and laws," and he personally led troops to extinguish the rebellion.

The Founders understood that if our Republic is to survive, the people had to understand that the government was now their government.

The militia the Founders envisioned was not an adversary of government but an instrument of government, organized by Congress and subject to governmental authority. It was not a tool for insurrection but, as the Constitution itself states, a tool to "suppress Insurrections and repel Invasions."

What does the insurrectionist idea mean for us today?

Ideas have consequences. But the insurrectionist idea extends beyond debates about guns and the Second Amendment. It reinforces the image of the government and the people being at odds.

In a democracy, however, the government is the people's government. Of course, we did not all vote for whomever now sits in the White House and Congress. We are a large and vital democracy -- not a village of Stepford wives -- and there is much about which we disagree. The majority, moreover, can be wrong. Sometimes we are boiling mad, and with good reason.

And yet, if we are to preserve the Republic, we cannot see our own government as an enemy. That does not mean we should be a placid people.

We must be eternally vigilant about government errors and abuse. But we must recognize that differences of opinion are the normal order of things. In a constitutional democracy, we correct errors through constitutional means.

It will not do to say that we must be armed and ready to go to war with our government in the event that it becomes tyrannical. There are always those who believe that government tyranny is not a future contingency but a present reality. That may not have been the case with Jared Loughner, but it was the case with John Wilkes Booth and Timothy McVeigh.

We should tremble for the nation when we hear talk about resorting to "Second Amendment remedies" -- not because insurrectionist rhetoric is invoked by those who oppose such gun control measures as banning the kind of high-capacity ammunition holders that were used in Tucson -- but because it undermines faith in constitutional democracy.

In America, we change our government -- our government -- by changing minds.

The opinions expressed in this commentary are solely those of Carl T. Bogus.

****

For full story, click here. [http://www.cnn.com/2011/OPINION/01/27/bogus.right.rebel/index.html]