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Government Regulated Pharmaceuticals: The Real Drug Cartel

By Barby Frie

With the recent president election still reverberating in U.S. citizen's minds, people may have had their fill with talk of Medicare and Medicaid, flu shots, and allowing the reimportation of prescription drugs from Canada. But has the issue been resolved? Will George W. Bush settle these matters? Do cheaper drugs from Canada really help those patients who can't afford prescription drugs? The answer to all these questions is a resounding "No."

The price of prescription drugs is a volatile subject, perhaps because it deals with people's health and well-being. People who lobby for restrictions on drugs that enter the market, stronger national health care, and cheaper drugs for all believe that everyone should have the right to good health care. However, programs like Medicare and Medicaid, and agencies like the Food and Drug Administration (FDA) do not help the average American consumer. Rather, they place regulations and restrictions on the free market, leading to inefficiencies such as artificially high prices, longer waits at the doctor's office, and fewer prescription drugs on the market.

Perhaps the best way to approach this problem is to imagine a free market for prescription drugs, and then look at the inefficiencies that have arisen due to the lack of freedom in the current U.S. system. In a perfectly free market, there would be no FDA to approve or deny prescription drugs for the open market. Patients could be diagnosed by their doctors, and then they could go to the grocery store and buy the necessary drugs without a prescription. There would be no difference between buying Advil and buying Penicillin.

In a perfect system, these drugs could also be sold to stores in other countries, and resold in the U.S. without a problem. If there were no barriers to trade between two countries, then they would be sold at the same price, and resale to the U.S. would mean more transactions costs. People would only pay those higher prices if it were necessary, for example, if there was a shortage in the U.S.

Unfortunately, due to government regulation, our current system is not nearly this efficient. Pharmaceutical companies start with a drug in research and development. It may take them years to develop a drug that they believe will make it to the market. It then takes even longer to have the drug

approved by the FDA, if it is approved at all. The costs associated with this process are also very high, causing the prices of prescription drugs to skyrocket. Throw in the pharmacist's cut as well, and it is no wonder that so many patients cannot afford the drugs they need.

In addition to the inefficiencies of the U.S. system, trading with other countries has caused even more problems. Of course, the prime example that has been in the forefront of recent political discussions is Canada. Canada has a socialized medical system. The American pharmaceutical companies have been selling prescription drugs to Canada at a lower price than the market price here in America, mainly because they see Canada as a secondary market. The current trend however, is for Canadian pharmacists to sell these drugs, primarily over the Internet, to American patients. The American patients are happy because they get the drugs they need at a lower price, and the Canadian pharmacists can charge a little more and make some money on the deal. It seemed like a win-win situation.

However, problems have begun to arise. The American pharmaceutical companies are unhappy because they are losing money. The prescription drugs that they sold to Canada are now undercutting the profits from their primary market here in the U.S. They are losing money in the U.S. due to reimportation of these pharmaceuticals, and now Canada is asking for more prescription drugs. Because there is more profit to be had by reselling the drugs to Americans, there are not enough drugs to go around in Canada. If the pharmaceutical companies sell more prescription drugs to Canada at the discounted price, will the drugs really go to those Canadians who need them, or will they come back into the U.S. at the benefit of the Canadian pharmacists, and at the cost of the American Pharmaceutical companies?

The dilemma that has arisen from this situation is indeed puzzling. Americans want to take advantage of those cheaper prices, but at what cost? A similar situation may give some insight as to what can be expected if reimportation of prescription drugs continues. Another hot topic in the news right now is the shortage of flu shots in the U.S. Many say that this is due to poor planning on President Bush's part. While one might say that the government really

shouldn't have anything to do with the planning of flu shots, the question still remains. Why are there no flu shots? Well, many American companies have stopped making them. While Bill Clinton was president, there were flu shots available in the U.S., but for the same reasons as stated above, they were cheaper in Canada. Clinton promised that the American government would provide cheaper flu shots from the Canadian government for American citizens. After only a few days, the American pharmaceutical companies had suffered such heavy losses that they refused to continue making the flu shots. Since then, shortages have started occur, and have gotten worse every year.

The precedent remains. Companies will eventually refuse to sell their products to Canada, or refuse to make them at all, if their profits will be stolen away. They will refuse to make drugs that people are in need of, and instead make only those drugs that will not be indirectly taxed so heavily. Instead of flu shots and AIDS treatments, we will end up with Viagra and acne treatments.

This problem of ending up with only certain drugs on the market starts much sooner, however. Pharmaceutical companies know that any potential life-saving drugs they create will be subsidized by the government to make them more affordable for the patients. These drugs are not necessarily profitable. Because the process for bringing a drug to the market is so costly, a pharmaceutical company has to be sure that the new drug will generate profits. So what drugs

end up on the market? Viagra, acne medications, and allergy medicines. Because the process for bringing a drug to the market is so costly and time consuming (i.e. inefficient), and because of government intervention after the drug enters the market, the creativity and efficiency of the pharmaceutical industry is being stifled, at the cost of the consumer.

There is much disagreement about what measures should be taken to resolve the problems and inefficiencies within the U.S. health care industry. Even many libertarians disagree about what the best course of action is. The reason for this is that the current system is so muddled, it is impossible to tell where to begin reforming. Both candidates of the recent presidential election made promises to change health care to make it more affordable and beneficial to American citizens. However, the promises they made included making more regulations and adding new laws. Would that solve anything? Of course not. More regulation would only worsen the problem, as is the case with almost every economic question. In reality, the entire system is problematic. In the real world, every system will have its problems. However, that does not mean that we have to accept the status quo. If there is a more efficient system, we must work toward its implementation. Until there is a free market for pharmaceuticals in the U.S., all American patients will continue to suffer.

The Implications of John Locke's Premises of Individualism

By Jamie Ianelli

The 2nd *Treatise of Government*, written by John Locke, is a pioneering work in the classical liberal tradition. Locke supplies an unprecedented insight on the absolute rights of the individual, in which God imbues each man with the faculty of natural reason and entitlement to private property, and the social contract, the means by which man enters civil society from the state of nature. From such astute premises of individual rights, however, the author unintentionally provides strong claims for the justification for laissez faire economics while he intentionally and unsuccessfully attempts to provide a justification for the rule of government over market transactions. Thus, by following Locke's fundamental premises on the universal rights of individuals to their logical conclusion, we find a formidable argument against the coercive authority of government as an

economic planner. Moreover, Locke's methodological implications create a framework for a jurisprudence in which only voluntary mediating structures constitute the most appropriate and effective guarantors of the inalienable liberty of mankind.

Locke argues that God instills within all humans the ability to reason and an absolute right of self-proprietorship. Stemming from the creation of humanity from Adam's rib, God gives men individual rights over the body and mind and common rights over the earth. He comments that, "men, being once born, have a right to their preservation... which gives us an account of those grants God made of the world Adam."¹ The human metaphysics of purposeful action produces a moral synergy between the teleological rationality and right to property of the

individual as the *just* means to appropriate earth resources between men.

Locke contends self-ownership constitutes the fundamental property right. He writes that, “though the earth and all inferior creatures be common to all men, yet every man has a property in his own person.”² Strictly speaking, the hands of another can never usurp a man’s body and soul.³

Locke believes private property is not limited to the self, however. God intends people to take what is common and labor to remove it from the state of nature. The growth in development attunes directly to a growth in man’s rightful domain over the fruits of his efforts. This is the essence of the Lockean theory of homesteading. Through a mixture of individual labor and the common state of nature, man extends his ownership entitlements. Thus, from Locke’s premises of individual rights, the earth is privatized and developed so as to suit the preservation and comforts of humankind.

Locke qualifies his theory of ownership by stating that although each is entitled to basic rights of property, a common law exists to govern the accumulation and usage of private property. He writes that, “The same law of nature that does by this means give us property does also bound that property, too.”⁴ Locke offers the legal proviso that an individual can acquire as much of a property as they desire so long as the property doesn’t spoil, that the individual must leave the property as large and as good for others, and that the individual cannot acquire property without the consent of others.

Such qualifications reflect Locke’s views on the state of nature and the human capacity to reason. Locke believes that according to the fundamental rights that inhere in individuals by reason of their very humanity, no man possesses the right to infringe upon the property of others. By acquiring so much of a good to the point where some of it spoils and is not left as plentiful and as good for others, the individual wastes the resources of the common state of nature, and thus, unduly enjoins the rights of other people to use and develop the earth. Locke argues that, “(if a man uses the common resources recklessly), he offended against the common law of nature...he invaded his neighbor’s share, for he had no right further than his use called for any of them and they might serve to afford him conveniences of life.”⁵

Further, if each person inalienably owns himself, it is wrong for anyone to initiate force against someone else. To do so violates the victim’s right of self-ownership. By wasting or enclosing the resources

of earth through coercion not consent, man is forcefully breaching the tenure of other people over their properties, labor, and self. Consequently, the common law of nature regarding property includes a corollary that we cannot coerce and aggress upon others’ property rights. From such principles and conclusions, we may proceed through a sound process of deduction to ascertain to proper role of government in a civil society.

If each person owns himself and his adjoining property, and no one may aggress against another where no legitimate claim, then involuntary governing institutions necessarily lose their legitimate scope. By necessity, government abrogates the property rights of individuals with coercive acts or threats. The state collectively forsakes such rights of individuals on the grounds of the “public good.”⁶ Although Locke claims that God gave the earth to men in common, it appears that government has enclosed such lands without the consent of all commoners. Locke’s universal and absolute individualist premises are inconsistent with the coercion of government.

John Locke argues that men enter civil society and government through a social contract in order to protect property rights and establish a 3rd party arbitrator for cases of property rights. People enter into a voluntary social contract in order to escape the state of nature, where the ubiquitous freedom leads to chaos, oppression, and insecurity as individuals ignore natural law in favor of self-assertion. The social contract offers an escape from the reckless freedom by creating a consensually agreed upon organism that protects private property from the fancies and covetousness of the quarrelsome and contentious.⁷ Locke correctly asserts that individuals must engage in a social contract to ensure that our property remains justified and protected within the common laws. However, he fails to recognize that government remains an inherently inappropriate organism for such a task.

Government innately abuses the social contract imagined by Locke because governments are not bound by natural law or categorical consent. The coercive nature of the state implies that individuals are mere precipitates from antecedently existing social wholes. Government legitimizes acts of coercion on the grounds that the union of “I’s” stems from the “We”, thereby neglecting the betterment of the individual as the very source of government itself and the social contract.⁸ Whether policies are derived directly from the masses, representatives of the masses, or the divinely ordained, involuntary

governing bodies consistently breaks Locke's rules of individual sovereignty and common property.

The state has an ugly history of acting without the consent of its citizenry and violating private property rights. Included among the many breaches of the social contract and infringements upon self-ownership include slavery in the early United States, acts of genocide in Nazi Germany, the cultural revolution in Communist China, genocide and oppression in Iraq under Hussein.⁹

Government institutions also contradict Locke's property qualifications. When a government restricts entry into a certain industry they essentially acquire so much of a resource that it spoils and is not left as plentiful and as good for others. By restricting entry, the state shields the industry from competition from other firms. The lack of accountability within the industry allows the insulated firm to utilize their resources in production of a good or service in a relatively inefficient way, where the value of the product is created at an artificially high expense.¹⁰ Failure to efficiently utilize resources creates a relative spoilage, thus, infringing upon the property rights of others.

For example, if a government restricts entry into the ice cream industry, where only one firm is permitted to produce ice cream, that firm possesses little incentive to minimize its costs and maximize efficient usage of natural resources. Prospective competitors cannot as easily gain larger market shares by further maximizing efficiency, thereby giving the state-privileged firm a cushion *from* competition, *for* profits, and *against* optimal resource allocation. If, for example, elasticity of demand for ice cream is low enough, the protected firm can fill thousands of swimming pools in Arizona with ice cream if they fancy and still profit because they hold government-granted monopoly power. Such power lets them dictate to a relative degree what price to charge for the ice cream that doesn't spoil in pools to compensate the firm for their eccentricity. In this scenario, competitors won't be able to eat into the wasteful firm's profits by putting all of their ice cream in freezers. Considering that quantity demand changes marginally in relation to changes in prices, the more inelastic the good, which often are the most needed goods like water, the less incentive an insulated firm will have to prevent the good from spoiling.

In addition, governments frequently do not leave as plentiful and as much of a resource for others. In the case of restricted entry into the ice cream industry, other businesses cannot use the common

resources to meet the demands of individuals because the government enjoins such production. John Locke wrote that, "Nobody could think himself injured by drinking of another man, though he took a good draught, who had a whole river of the same water left him to quench his thirst."¹¹ Government seizes the entire flood of ice cream and gives it to one firm, while if left to Locke's natural laws, each firm would be able to have a good draught of the earth God left to man and the industries man created from earth.

As government proves to be incapable of abiding to the rights of the individual and intentions of the social contract, an alternative solution arises to preserve individualism and private property while bringing man from his state of nature into a civil society. Such an alternative to government constitutes the free market. Here, the law of land resides within Adam Smith's invisible hand. The invisible hand acts as the 3rd party adjudicator John Locke believes is compulsory to preserve property.¹² Self-interested people rationally coordinate their activities in accordance with the invisible hand and the interest of the whole of society. Consenting individuals engage in voluntary transactions as the invisible hand determines the allocation of resources in order to maximize efficiency by extracting the greatest possible value from the common resources.

A free market also remains voluntary. Mediating institutions need not make forceful impositions on the choices of others to supply the goods and services demanded by individuals. If I decided I felt that the market for t-shirts was charging prices that were too high or producing poorly made t-shirts, I possess the power to leave the t-shirt market and spend all that money in the tank top market. Such voluntary entries and exits from markets characterize every element of the free market. The individual and individual rights triumph over arbitrariness and inefficiency that exist within governments.

John Locke's premises of individualism and the social contract serve as substantial building blocks for the conclusion of the establishment of civil society. Locke provides keen insight into our state of nature and relation to private property and common resources. Locke, however, strays from his premises and arrives at a flawed conclusion. Government struggles to hold legitimate authority over individuals considering that such institutions struggle to remain voluntary and, thus, in accordance with the natural law and natural hierarchy. A purely laissez-faire economic system realizes the end of civil society by avoiding the inconveniences of the state of nature,

where assertive individuals infringe upon property rights, and government, where assertive institutions infringe upon property rights. In the free-market, the “We” certainly stems from the union of “I’s,” not the other way around.

¹ Locke, John. 2nd Treatise of Government. New York: Charles Scribner’s Sons, 1958. pg. 16

² Locke, John. 2nd Treatise of Government. New York: Charles Scribner’s Sons, 1958. pg. 17

³ *ibid*

⁴ Locke, John. 2nd Treatise of Government. New York: Charles Scribner’s Sons, 1958. pg. 19

⁵ Locke, John. 2nd Treatise of Government. New York: Charles Scribner’s Sons, 1958. pg. 23

⁶ The “public good” has many variations, but essentially refer to the same collectivist content of statism. See F.A. Hayek’s *Road to Serfdom*, (Illinois: University of Chicago Press, 1944) 168-182. Hayek provides an exquisite explanation of how governmentals employ such intentionally vague terms so as to be easily manipulated to provide ephemeral political justifications.

⁷ Locke, John. 2nd Treatise of Government. New York: Charles Scribner’s Sons, 1958. pg. 20

⁸ http://www.mises.org/misesreview_detail.asp?control=126&sortorder=issue

⁹ Among the many unjust acts of coercion on behalf of the US government, a particularly excessive form includes the taxes taken out of Americans’ paycheck to pay for television advertisements for new coloring schemes for \$20 bills. Why should money be involuntarily taken away from United States citizens to advertise a product with virtually zero domestic substitutes or competition and an almost fanatical demand?

¹⁰ Block, Walter. A Response to the Framework for Amending the Combines Investigation Act. Vancouver: The Fraser Institute, 1982

¹¹ Locke, John. 2nd Treatise of Government. New York: Charles Scribner’s Sons, 1958. pg. 20

¹² Smith, Adam. The Wealth of Nations. New York: Bantam Classic, 1904. pg. 572

Outsourcing: An Economic Good or Bad?

By Rachele Washington

Outsourcing is on the minds of consumers and business owners alike. While many fear that moving domestic labor to another country will create an economic crisis, the chaos is really initiated by self-interested politicians who play off their constituents’ fears and uncertainties.

Ironically, “because the economy---and especially job growth---is sluggish at the moment, commentators are attempting to draw a connection between offshore outsourcing and high unemployment (Drezner, 1).” As a result, politicians are making personal political accomplishments at the expense of American economic freedom by fabricating panic and uncertainty, which irrationally distorts consumer behavior and contributes to business cycles or minor economic fluctuations. I do not consider outsourcing to be a problem “for American workers and the American economy,” rather it functions as a means to get us further down our wish list towards the end of no jobs or work (Drezner, 1). If there is work, then there is scarcity. We are working to eliminate scarcity because it is an unhealthy economic condition.

As outsourcing moves us closer to no scarcity, domestic and international countries will reap its

economic and noneconomic benefits. For example, outsourcing facilitates international trade and builds cooperative relationships among countries. As countries take advantage of comparative advantage and specialization, “productivity increases across all countries... [and]... this specialization translates into cheaper goods, and a greater variety of them, for all consumers (Drezner, 4).” Contrary to popular misconception and widespread apprehension that outsourcing will lead to lower wage levels, “the creation of new jobs overseas will eventually lead to more jobs and higher incomes in the United States (Drezner 1).”

There is also fear that sending jobs abroad will occur more often across more industries. However, economic agents should realize that outsourcing is not an option for many industries, like service and retail. Although this synchronized action isn’t very likely to occur, outsourcing should be carefully evaluated. Instigating economical fear by exaggerating conditions or calling for heavy government regulation is not the proper way to assess outsourcing. Furthermore, government intervention is a continuum problem that could stagnate economic freedom and

lead to regulation of trivial matters. It is important to remember that economic prosperity and development can only occur with economic freedom, so the government should be careful not to hurt its economy by trying to protect it. Otherwise, “if critics [of outsourcing] succeed in provoking a new wave of American protectionism, the consequences will be disastrous: less growth, lower incomes---and fewer jobs for American workers (Drezner, 7).”

Although businesses should consider how their decisions might affect economic conditions, it is unfeasible for a corporation to try to heal unemployment. “Thanks to outsourcing, U.S. firms save money and become more profitable, benefiting shareholders and increasing returns on investment (Drezner, 5).” Maximizing shareholder’s wealth is the firm’s primary goal and obligation in conducting business. However, domestic workers feel betrayed because politicians and the media grossly exaggerate unemployment rates (versus net figures including newly created jobs). For this reason, it is crucial for American workers and firms to consider the role government policies play because both fiscal and monetary policies affect jobs and employment directly or indirectly on the micro and macro levels. Otherwise, “when forced to choose between statistical evidence showing that trade is good for the economy

and anecdotal evidence of job losses due to import competition, Americans go with the anecdotes (Drezner, 5).”

The underlying point is that the market reflects individuals’ behavior. So a loss in jobs reflect a change in consumer preferences and/or technology for the goods and services that a firm or industry produces. Thus, we cannot blame job losses on outsourcing. In addition, trade is not a zero-sum game, rather both domestic and foreign countries benefit mutually. In the domestic country, outsourcing frees domestic labor force to do other jobs; consumers benefit with lower prices and reap the benefits from outsourcing; the firm is able to reduce costs, increase productivity and profits, which strengthens the economy. Abroad, workers gain employment; experience wage increases and higher living standards. However, none of this will be possible if the government intervenes and restricts economic freedom.

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[<http://www.foreignaffairs.org/20040501faessay83301/daniel-w-drezner/the-outsourcing-bogeyman.html>].

The Right of Gun Ownership: An American Foundational Value

By Patrick McDermott

Several issues in this country seem to be perpetually stuck in the public’s consciousness and on the lips of politicians. Such raging debates include abortion, Social Security and guns control. Arguably, the most interesting of the three is gun control and the ongoing war between advocates and opponents. The battle is colorful, replete with great sound bites like Charlton Heston’s “cold, dead hand” imagery and Michael Moore’s one man documentary crusade “Bowling for Columbine.” But such propaganda is preaching to the choir, and no real direction or solutions have been discussed or proposed. As proof of how convoluted the issue has become, notice the recent Presidential elections where George W. Bush came across as the pro-gun guy, but even John Kerry stopped for several photo ops with rifle in hand to show he was the real sportsman’s choice. However, cutting through the rhetoric and double-speak, the answer to gun ownership is clear and practical, and

moreover, gun ownership is a right independent of government sanction.

The Constitutional Amendment known as Article II, originally submitted as the Fourth Amendment, states “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.”¹³

The phrase “well regulated militia” has become the nexus of the argument on gun control. Open to interpretation, the phrase is seen in several ways. Historian Lawrence Delbert Cress argues that the “well regulated militia” can be interpreted the way it was written, and does not guarantee the individual’s right to bear arms. Cress writes, “The Second Amendment gave constitutional sanction to the idea that the militia was the institutional expression of the citizenry’s collective obligation to bear arms.”¹⁴ The

key word in this explanation is, of course, collective. Further, “Unlike provisions of the Bill of Rights that

guaranteed such individual rights as freedom of speech, due process, and religious choice, the Second Amendment to the United States Constitution was not written to assure private citizens the prerogative of carrying weapons.”¹⁵

Other historians such as Robert E. Shalhope see the framing of the Second Amendment as an affirmation of individual rights as well. He writes, “While late eighteenth-century Americans distinguished between the individual’s right to *possess* arms and the need for a militia in which to *bear* them, more often than not they considered these rights inseparable.”¹⁶ Or, “[The Founders] intended to balance as best they could individual rights with communal responsibilities.”¹⁷

The definition of militia finds itself more consistent with Shalhope’s individualist interpretation, as well. The militia when the Bill of Rights was written was all male citizens between 16 and 60. Now United States Code identifies the militia as all able-bodied males between 17 and 45.¹⁸ During the revolution, the militia was a collection of citizens called upon when the enemy was advancing. These “minute-men” were civilians, not members of the official standing army. Indeed militias should be viewed in the same way today, people who come together to fight attackers. As an illustration, consider the movie from the eighties, “Red Dawn” where a group of high school kids band together to fight off the Communist Russians invading America. In the book “Guns, Crime and Freedom”, author Wayne LaPierre points to the real life illustration during the Los Angeles riots when the law-abiding citizens came together to protect their lives and property.

But the right to bear arms is not merely legitimate because it is guaranteed in the Constitution. Any libertarian or anarchist worth his weight would point to Lysander Spooner’s argument against the Constitution. As he pointed out, everyone who signed the Constitution is dead. It exists now as a forced social contract for future generations.

The right to bear arms is an intrinsic and natural right that every person, regardless of nationality, should be afforded. Guns are a means to protect property, and the recognition of private property rights is essential for any society. Obviously when guns are used to hurt others, that is a violation of someone else’s rights, but to possess guns in itself is no different from owning anything else. If the right

to own guns was prohibited because they could be used for bad purposes, that would throw into question all kinds of property possession. For instance, one can run someone over with their car, should cars be illegal? One can hit someone with a wrench, should those be illegal as well?

Guns are essential for self defense of property, including life. “The necessary consequence of man’s right to life is his right to self defense. In a civilized society, force may be used in retaliation and only against those who initiate its use. All the reasons which make the initiation of physical force an evil, make the retaliatory use of physical force a moral imperative.”¹⁹

Aside from the moral or philosophical justification for guns, real world evidence is constantly showing the practicality of gun ownership. John R. Lott, Jr. has studied the issue of gun control and found that, according to fifteen national polls, there are between 760,000 to 3.6 million defensive uses of guns each year.²⁰ Even if the actual number was at the low end of that range, it still would mean an incredible amount of gun successes.

This is a fact that Lott extensively delved into in his book “More Guns, Less Crime.” After extensively studying the states with concealed carry laws versus other states he found that exactly what the title suggests, more guns equals less crime. Moreover, in the incidences where guns were used defensively, Lott estimates that 98% of the time people merely had to brandish the weapon, without firing shots at all.

However, most of these prevented attacks are ignored or glossed over. The focus of the gun opponent’s argument usually rests on examples like Columbine or other school shootings. Indeed, Michael Moore sighted up his argument with the tragedy in Littleton, Colorado. But what is usually omitted in any reporting of a school shooting is the role of guns in stopping or alleviating the danger. In the Pearl High School rampage in 1998, assistant principal Joel Myrick used his .45 to stop shooter Luke Woodham from escaping and proceeding to the junior high.²¹ Even at Columbine, on-site officer Neal Gardner exchanged fire with Eric Harris while students were able to flee to safety.²²

If gun control laws hurt anyone it’s the honest, law abiding citizens who need protection. Gun control laws have no effect on the criminal’s demand for weapons. It’s analogous to saying making drugs illegal has an effect on the addiction. If criminals can’t buy one legally, they will turn towards the black market to theft. Gun control laws affect the supply of

firearms to upstanding citizens who wish to ensure safety or protect their property.

Greg Pierce quoted this from Mafia informant Sammy “the Bull” Gravano in his “Professional Viewpoint” section in the Washington Times. “Gun control? It’s the best thing you can do for crooks and gangsters,” Gravano said. “I want you to have nothing. If I’m a bad guy, I’m always gonna have a gun. Safety locks? You will pull the trigger with a lock on, and I’ll pull the trigger. We’ll see who wins.”²³

In short, criminals will always have guns. Where there is a will there is a way. The answer to crime prevention is not limiting the amount of guns everyday upstanding citizens can obtain, but rather making sure they have the proper tools for their self protection. In a society that places the utmost emphasis on private property rights, this is essential to ensuring freedom and security. The alternative is that we are truly victims to the rule of criminals. Theoretically and practically, guns are important to every citizen’s self-defense.

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¹³ Constitutional Amendment, Article II

¹⁴ Lawrence Delbert Cress, *Whose Right to Bear Arms Did the Second Amendment Protect?*, ed. Saul Cornell (Boston: Bedford/St. Martin’s, 2000), p. 60

¹⁵ Ibid 52

¹⁶ Robert E. Shalhope, *Right to Bear Arms Did the Second Amendment Protect?*, ed. Saul Cornell (Boston: Bedford/St. Martin’s, 2000), p. 40

¹⁷ Ibid 44

¹⁸ William Weir, *A Well Regulated Militia: The Battle Over Gun Control*, (North Haven, Connecticut: Archon Books, 1997) p. 33

¹⁹ Ayn Rand, *Virtue of Selfishness* (New York: Penguin, 1964) p.146

²⁰ John R. Lott, Jr., “Will More Guns Mean Less Crime?”, *Consumers’ Research Magazine*, Dec. 1998, Vol. 81, Issue 12

²¹ Bartholomew Sullivan “Students Recall ‘Unreal’ Rampage” *Commercial Appeal*, June 11 1998 p. A1

²² Peggy Lowe “Deputy at School Acted Early, Gardner Traded Shots with Harris, Aided Kids” *Rocky Mountain News* May 16 2000 p. A21

²³ Greg Pierce, “Professional Viewpoint,” *Washington Times*, Sept. 3 1999 p. A5

A CRITICAL COMPARISON OF THE CONSTITUTIONS OF THE UNITED STATES AND CONFEDERATE STATES OF AMERICA

By Joe Morrel

The Constitution of the United States of America was a much-deliberated document by which the centralized federal government of the new country derived its power and justification for existence. In less than a decade, serious linguistic flaws allowed gross misinterpretations of the original aims of said document. The uncertainty of result in interpreting the supreme law of the land was the source of much

debate since the document’s implementation, culminating in the secession of half of the country in the mid-19th Century. These separatists knew first hand the extent to which various phrases in the United States Constitution had been abused and formed a document that corrected the mistakes the original constitutional authors could not have imagined. The major alterations and their significance shall be

discussed in order to gain a greater understanding of this superior document, the Constitution of the Confederate States of America.²⁴

A major issue of the time that is misunderstood in conventional explanations of the causes of the war is that of states' rights, or sovereignty. First, it must be mentioned that according to the U.S. Constitution both the states and the federal government do not possess rights, but rather powers.²⁵ These same state powers had been under constant threat as the federal government crept more and more into the lives of the country's citizens. An example of this is the establishment and rationale of a national bank. In Alexander Hamilton's report on the constitutionality of incorporating a national bank, he attacked the arguments of Thomas Jefferson's against such action. One major part of this debate centered around the infamous "necessary and proper" phrase²⁶ and its application to the collection of taxes and borrowing money on the credit of the United States. Where Jefferson argued "necessary" was a restricting adjective, limiting any act by the federal government to those that without the enumerated power could not be carried out, Hamilton said the word was used figuratively, or in a flowery sense, and any such synonym as "expedient to" or "incidental" would mean the same thing. The government adopted the latter interpretation became an organization where decisions were made based on the Honorable John Marshall's opinion in *M'Culloch v. Maryland*:

Let the end be legitimate, let it be within the scope of the constitution,²⁷ and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional.

As the usurpation of states rights was a catalyst for secession among the southern states, they were determined to explicitly protect these powers within the Confederate Constitution. First, in Article I, Section 1 of both documents, the powers *granted* to Congress become powers *delegated* to Congress. The change in language dispels false notions of the "sovereignty" of the federal government, expressing that this establishment has no powers in itself, but rather is delegated such powers by its components. These same delegated powers can be revoked, and do not create sovereignty or become powers of the government that cannot be removed. Additionally,

state legislatures were given a check over federal officers in their respective states in Article I, Section 2 of the Confederate Constitution. These officers may be impeached by a vote of two-thirds in both houses of the state, eliminating the permanent positions enjoyed by federal appeals judges and reducing the threat of inadequate federal employees in the state. In these changes the Confederate States reclaim the powers usurped by the federal government of the United States.

Inadequacies of Congressional privileges were addressed in the new government's central document. First, in Article I, Section 7 of the Confederate States Constitution gives the president the line-item veto ability. Second, Section 8 of the same Article disposes of the nebulous "general welfare" clause, and instead specifically limits the powers by stating:

No bounties shall be granted from the Treasury; nor shall any duties or taxes on importations for foreign land be laid to promote or foster any branch of industry. No clause shall ever be construed to delegate the power to appropriate for any internal improvement intended to facilitate commerce.

Indeed, these Confederate States made protectionist economic policies, or mercantilism, unconstitutional. Additionally, these writers saw the flaw of government promoting the "general welfare" by helping specific groups of farmers or laborers, because they realized this aid was *always* at the expense of all other citizens of the country.²⁸ Finally, Article I, Section 9 of the Confederate Constitution stated, "Every law... shall relate to but one subject, and that shall be expressed in the title." While the original framers of the U.S. Constitution may not have imagined congressmen using misleading titles or attaching additional bills of no relation to the subject of the original bill, these same practices are observed and a problem in today's legislature. The Confederate authors knew of these deceptive practices and explicitly forbade what had already become a common practice on Capital Hill.

The forbiddance of "internal improvements" and protectionism within the Confederate Constitution would have eliminated the source of all but one monopoly.²⁹ The final monopoly to topple was the post office, and here the new country's constitution wasted no time. Article I Section 8 delegated the

power of establishing a post office to Congress, but after the passage of two years the postal service would have to operate on its *own* revenue. Here, the institution that enjoyed a government-protected monopoly on first class mail would be thrown to the wolves of the competitive market. Where the current federal government seems to be an ever-spreading web of bureaucracy, the Confederate government was cutting at the roots of such inefficiency to allow free enterprise to prosper.

The esteemed position of the presidency was not left unaffected by the Confederate framers in their zeal to create an efficient mechanism of government. First on the chopping block was the common practice of “recess appointments.” Article II, Section 2 expressed that “No person rejected by the Senate shall be reappointed to the same office during their ensuing recess.” Now the president could not sneak in his already rejected cronies while the Senate was not in session, creating another aversion to bureaucratic expansion. The term of the president was also change to six years, and the president could not run from reelection. To supplement the powers of the president, the office was granted the power of removing any executive officers “at any time... when their services are unnecessary, or for dishonesty, incapacity, inefficiency, misconduct or neglect of duty.”³⁰

In sum the Confederate Constitution authors were able to apply nearly eighty years of experience and observation to construct a constitution more conducive to the establishment of a commercial republic and preservation of the rule of law. Protectionism and cronyism were expressly unconstitutional, pork barreling and “Christmas-tree” bills were congressional inefficiencies that had been eliminated, and various other abuses of powers came to be written out of the law of the South. Additionally, the false notion of sovereignty applied to the federal government was dispelled and replaced with the original understanding of the central government held by the framers of the original Constitution; that the government shall be a consortium of independent states and the central government shall be delegated such powers as to most effectively provide for the defense of said states. The federal government was not a separate entity created by giving it powers that could not be revoked. Had the Confederate States survived the aggression of the North and its champion of statism, the decay of

individuals’ rights would not be as pronounced as it is today.

²⁴ The basis of this comparison shall omit the extent to which both of these documents allowed the African slave trade to exist. While the Confederate Constitution does express the right to own slaves and protect them as property, the United States Constitution does so inconspicuously (see Art. IV, Sec 3 of the U.S.C.). It is this author’s belief and the subject of a possible future article that slavery would be more likely to have been abolished in the commercial republic established by the Confederate Constitution than by that of the United States.

²⁵ Strictly speaking, Amendments IX and X of the U.S.C. explain that the rights of the people are not limited to those expressed in the Constitution, and that those *powers* not delegated to the United States (states), nor prohibited by it to the States, are *reserved* to the States, or to the people. Here we see an attempt by the framers of the original Constitution to illustrate their intentions in establishing a central government. The federal government’s powers are meant to be those listed in the document, and any and all powers not listed and not expressly prohibited remain that of the states and the people. Rights are only mentioned in regards to the citizens, so the argument must be that of states *powers* not rights.

²⁶ Article I, Section 8: “The Congress shall have Power... To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers.”

²⁷ A scope that, by utilizing the interpretations espoused by Marshall and Hamilton, would seem limitless.

²⁸ This makes one question where and to what extent the “social good” debate would be today. Namely, could eminent domain ever be abused under such a system as to claim that additional revenues and jobs of a Wal-Mart should justify such exercise?

²⁹ Monopoly in the sense of a special and exclusive privilege bestowed by the ruling body to sell or do business in a specific area, geographically or industrially.

³⁰ Article II, Section 2 of the Constitution of the Confederate States.

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