SOMETHING PARTICULARLY AMERICAN ABOUT GUNS IN THE HANDS OF FREE MEN

By Don Feder
July 3, 2008

Of all the inanities uttered in the wake of the Supreme Court's magnificent affirmation of the Second Amendment in *District of Columbia v. Heller*, my favorite was on *The Huffington Post*, where someone named Cenk Uygur (sounds like a Guantanamo guest) disclosed: "I believe in gun control. I believe that guns do kill people. In fact, they are designed to kill things. It is indisputable that they make killing a lot easier. That's what they're made for." Do tell.

Having discovered that guns in fact do not build habitats for humanity, mentor inner-city children or serve as medical missionaries, Uygur is remorselessly driven to the inescapable conclusion that "guns do kill people." And they say the left is clueless.

At the same time, the slogan "guns kill people," is a window on the left's tortured psyche.

Guns are used to kill people. Guns do not possess consciousness and hence are incapable of making moral choices. (See: inanimate objects) Rather the sentient being who pulls the trigger kills. The killing can be a noble act – defending innocent life, hearth and home – or a barbarity. The left is incapable of differentiating between the two.

Others with a liberal disability were equally insightful. "I am profoundly disappointed in Justice Roberts and Justice Alito *(Bush's two appointees who were part of the 5-4 majority in Heller),* both of whom assured us of their respect for precedent,"

whined Senator Dianne Feinstein (D, California). In other words, they promised they'd defer to the fantasies of past liberal courts, and yet here they are adhering to the Constitution's plain language and obvious meaning. The nerve!

""More handguns will lead to more handgun violence," chanted DC Mayor Adrian Fenty, repeating a favorite gun-grabber mantra. Since the District's virtual ban on private possession of handguns went into effect, its murder rate has tripled.

Writing for the court's non compos mentis minority in *Heller*, Justice John Paul Stevens lamented that the majority "would have us believe that over 200 years ago, the Framers made a choice to limit the tools available to elected officials wishing to regulate civilian use of weapons."

You bet, just like 200 years ago the Framers made a choice to limit the tools available to elected officials wishing to regulate the exercise of free speech. (See: First Amendment.) Stevens apparently doesn't realize that the DC law was a ban – I think that's why it was called a ban – and not a tool used to "regulate civilian use of weapons."

The left is once again caught in a classic bind of its own making. For years it's been telling us that the voice of the High Court is the voice of God -- that the Constitution is whatever five of nine justices say it is, regardless of plain language, logic or the historical record.

Now, liberals are saying that the Court has made a horrendous mistake – that it has misinterpreted a key provision of the Constitution, which would suggest that the Supremes in fact are fallible – which implies that the Constitution exists above and beyond shifting majorities on the Supreme Court.

So, maybe *Lawrence v. Texas* (which concocted a constitutional right to sodomy) was wrong. Maybe *Kelso v. New London*, which permitted the public taking of private property for commercial development, was wrong. Maybe – and here we approach the ultimate heresy from liberal orthodoxy – Roe v. Wade was wrong.

In the case at hand, the Court is manifestly correct. While the words abortion and sodomy appear nowhere in the Constitution, the right to keep and bear arms is there for all to see.

The Second Amendment provides, "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."

For years, the left has been telling us that "militia" is the National Guard and that the Founding Fathers were simply guaranteeing that the federal government would never disarm state militias.

However, as Associate Justice Antonin Scalia -- writing for the majority in *Heller* -- noted, wherever the first ten amendments to the Constitution attribute a right to the "people" (as in the "right of the people to peaceably assemble" or "the right of the people to be secure in their persons, houses, papers and effects") they refer to an individual right. So why, in the Second Amendment, does the "people" suddenly become a collective?

In fact, the Founding Fathers believed fervently in individual gun ownership. Were they around today, the left would call them "gun nuts."

As James Madison stated in The Federalist Papers (No. 46), "The ultimate authority…resides in the people alone… The advantage of being armed, which the American people possess

over the people of almost every other nation… forms a barrier against the enterprise of ambition."

"No free man shall be debarred the use of arms," wrote Jefferson. "The great object is that every man be armed," said Patrick Henry.

In his 1833 "Commentaries on The Constitution of the United States," Justice Joseph Story observed, "The right of the citizens *(not the militia, but the people)* to keep and bear arms has justly been considered as the palladium of the liberties of the republic, since it offers a strong moral check against usurpation and arbitrary power of the rulers; and will generally, even if these are successful in the first instance, enable the people to resist and triumph over them."

FYI, when the Second Amendment was written, "militia" was understood to mean every male citizen capable of bearing arms. Richard Henry Lee identified the militia as "the people themselves." Militia refers to "the whole people," added George Mason.

Besides serving as a restraint to tyranny, private gun ownership is also the most effective crime-control measure yet devised – with the possible exception of capital punishment, which the left also opposes.

There are 70 to 80 million gun owners in the United States, and 250 million firearms. In the 1990s, the number of guns in private hands increased by 40 million – while, nationally, the murder rate fell by 40%. More guns equal less crime.

Generally, states and municipalities with the most restrictive gun laws have the highest crime rates. Since 1975, California has instituted a 15-day waiting period for handgun purchases, banned

so-called “assault weapons” and required a waiting period for the purchase of rifles and shotguns. At the same time, its annual murder rate was, on average, 32% higher than the country as a whole.

But here, as in so many other places, the left is impervious to facts.

It loathes private gun ownership principally for two reasons.

It doesn’t trust “the people.” It thinks “the people” -- i.e. those who live in red states, eat red meat, listen to Rush instead of NPR, and think “vegans” come from Mr. Spock’s home planet – are a collection of hicks, racists, morons and Jesus-intoxicated homicidal maniacs. It is absolutely convinced that guns in the hands of such people inevitably lead to accidental homicides, crimes of passion and right-wing plots to overthrow the government.

While it hates guns, the left also needs guns -- to take the heat off criminals and maintain the fiction that it’s doing something to combat crime. Since criminals (who are, after all, the misunderstood products of their environment) aren’t responsible for their actions, who is? Guns, of course!

Thus, the average gun control/confiscation advocate also opposes capital punishment and mandatory-minimum sentences and favors rehabilitation. He believes (with a faith that would be rather touching if it weren’t so pathetic and destructive) that crime is caused by socio-economic factors, not by free will and the inclinations of the human heart.

Hence the left’s 40-year crusade against private gun ownership – waiting-periods, background-checks, licensing,

mandatory safety courses, restrictions on ammunition, trigger-locks, efforts to demonize certain types of firearms ("Saturday Night Specials," "assault rifles," etc.) leading ultimately to prohibitions on the private ownership of handguns, like the DC ban just overturned by the Supreme Court and the Chicago ban still in effect.

While we celebrate the Court upholding the Second Amendment, we must acknowledge a truly bizarre situation: That judicial interpretation of the Constitution now comes down to how Anthony Kennedy (who was part of the majority in *Heller)* feels about any particular issue – not what the Constitution says, but what Kennedy thinks it should say – at any particular point in time.

Some days he wakes up feeling like Ruth Bader-Ginsburg. The result is 5-4 decisions like *Kennedy v. Louisiana*, which held that imposition of the death penalty for poor, misunderstood child-rapists constitutes cruel and unusual punishment.

It also leads to efforts to undermine national security like the 5-4 decision, also last week, granting habeas corpus rights to foreign terrorism suspects held on foreign soil. Kennedy, who usually swings with the Court's deconstructionists, was the author of both abominations.

Occasionally, Kennedy feels like Clarence Thomas. At such (increasingly rare) times, he hangs with the Court's constitutionalists, as he did in *Heller*.

Either way, what's called Constitutional law is based on the whims of one man – one over-inflated ego.

In every election the predictions come like clockwork – the next president could appoint X justices.

Democrats seem to be more serious about these things than Republicans. John Paul Stevens, the doyen of the Court's left-wing -- who can't imagine the Founding Fathers wanting to limit the ability of elected officials to limit the exercise of constitutional rights -- is a legacy of pseudo-Republican Gerald R. Ford.

Ronald Reagan gave us two bad appointments -- Sandra Day O'Connor and Kennedy -- as well as an exceptional nomination, Scalia.

Bush Sr. inflicted Souter on the republic, but replaced the half-baked Thurgood Marshall with constitutionalist Clarence Thomas. Despite his other mistakes, George W. Bush batted 1,000, appointing two strict constructionists in Roberts and Alito.

Clinton gave us two doctrinaire leftists, including former ACLU lawyer Ginsburg. Carter didn't get to fill a Supreme Court vacancy (God be praised), which is why none of the justices is formally affiliated with Hamas or Hezbollah.

What's next? It's generally acknowledged that the next president could get three appointments – or a third of the Supreme Court -- in his first term alone.

Father time, it would seem, is on the side of original intent. Of the constitutionalist bloc, all but Scalia (72) are 60 or younger. Of the activists, all but Breyer are over 70, and he's 69. The oldest, Stevens (88) and Ginsburg (75), are among the worst, and the most likely to retire in the next four years.

At 68, Souter isn't far behind. It's rumored the justice, who has had non-consensual relations with the Constitution for 18 years, is eager to return to his New Hampshire home. I have a warmer clime in mind.

The left is far more exposed than the right. If Stevens, Ginsburg or Souter retires and a president who respects the Constitution appoints his or her successor, 4-4-1 becomes 5-4, in favor of judicial restraint, original intent and the obvious meaning of plain English.

That's what makes this election so crucially important.

District of Columbia v. Heller acknowledged reality. But the day before the *Heller* decision was announced, the Second Amendment still guaranteed an individual right to gun ownership.

Had the case gone the other way, the Second Amendment would have continued to protect the right of the people to keep and bear arms. The Supreme Court can acknowledge or deny a constitutional right – or try to create a right out of thin air – it can't change the inherent meaning of the Constitution.

But the Constitution itself isn't dispositive here. If the Founding Fathers had never inserted the Second Amendment in The Bill of Right, we would still have a fundamental right to use lethal force to protect ourselves, our loved ones and our homes.

Self-defense is one of those fundamental rights which the Declaration of Independence observed was endowed by the Creator, and hence is "unalienable."

Tomorrow, we will celebrate the 232nd. anniversary of our independence.

Without private gun ownership, the American Revolution would never have happened. Imagine those embattled farmers at Concord's North Bridge shooting judicial decisions at the Redcoats, instead of firing their muskets. If the guillotine

represents the French Revolution, the Minuteman's musket symbolizes America's revolution.

There's something particularly American about guns in the hands of free men – and women – defending their liberty, their families and their native land. How fitting that the United States Supreme Court should acknowledge that reality during this season of our freedom.

An earlier version of this commentary appeared on GrassTopsUSA.com