

“Live And Let Live” Applied To Guns

By Marc J. Victor

Congratulations! If you are fortunate enough to be reading this article, you won the lottery of birth. You were born at the best time, so far, to be alive. You are also likely to have been born in one of the best places on the planet. Like me, you are spectacularly lucky. Considering our circumstances, most of which we had very little or nothing to do with, we are indeed hugely fortunate. I urge you to pause, take a deep breath, and reflect on this observation for a moment before you read on.

Let's Not Fight the Facts

There are many things I wish were different about the world. I'd love to live in a world where all adults were competent and peaceful. I don't worship guns, nor do I demonize them. I'd be happy to live in a utopian world where nobody owned guns for self-defense reasons because it was unnecessary. As we know, such a world is pure fantasy.

When I served in the United States Marine Corps, I had the opportunity to fire many different weapons; several were high powered automatic ones. I respect them as tools. I also respect that some people enjoy spending their time safely and responsibly practicing their marksmanship with weapons. While I prefer to spend my time doing other things, I respect the rights of competent adults to peacefully do what they prefer.

While we may wish the facts of reality were otherwise, reasonable people who are committed to truth ought to generally agree with the following statements:

1. There are more than 350 million civilian owned guns currently in the United States. As such, guns will continue to exist in the United States forever;
2. Guns by themselves don't hurt or assault anyone. They are simply tools. Guns are often used by people for good and peaceful purposes like self-defense, deterrence or sporting events. Guns have saved and protected countless lives. Guns are also often used by people for bad purposes like initiating violence against others;
3. Like all other dangerous tools, horrible accidents with guns will occur due to both negligence and recklessness. Although we should endeavor to reduce such accidents, there is no way to prevent all accidents with guns;
4. Most people who want a gun either currently have one, can easily obtain one or will soon be able to print or otherwise manufacture one. As such, although some policies could

make it more difficult for “bad guys” to get a gun, such people will always be able to obtain guns regardless of whatever policy or law applies;

5. Some people are willing to initiate violence against others. Further, they cannot be reasoned out of their position. As such, we will always have a need to repel aggressors armed with guns;
6. No policy on guns will eliminate all gun violence;
7. Police officers cannot protect everyone at all times;
8. Peaceful people have a fundamental legal and moral right to self-defense;
9. A properly used gun is generally effective protection against bad guys with knives, fists and other weapons; and
10. Although other theoretical ways are possible, the only reliable way to stop a “bad guy” with a gun is a “good guy” with a gun.

A Principled Approach

Although we live in the best of times, we don’t live in perfect times. This is one of the most polarized times in recent history. At the time of this writing, Donald Trump is the President of the United States. Most likely, you either love him or hate him. You are either “with us” or “against us.” There are generally two positions on almost all issues today, you are either “pro” or you are “con.” The more nuanced and sophisticated positions are generally drowned out by the reckless fervor and loud clamoring of the hostile masses on either side of any particular issue. The gun issue is certainly no exception.

Indeed, I can think of no issue more polarized than the question of gun policy. It has become like a religious cult on both sides. One side worships guns while the other side demonizes them. Both sides are mostly wrong because neither emanates from the correct principle. There is a way to analyze and solve this issue on a principled basis that is entirely compatible with a reasonably safe and free society. As always, the key is recognizing the important basic principle from which all laws ought to be based in order to have a civilized, reasonably safe, and free society.

Civilized people ought to agree with the principle that competent adults are entitled to both define and pursue their happiness. Said another way, competent adults should to be in charge of their own lives and property. They have the right to be left alone or to peacefully and fairly contract with other competent adults regarding their property. A free society requires the proper balance between the rights of one person to do whatever they want with their property with the equally important rights of others not to be disturbed in their affairs by the activities of other people. This is the essence of a free society.

As such, people desiring a peaceful and free society ought to agree that the initiation of either force, fraud, or coercion is wrong in all cases. Further, it remains wrong even if the use of force, fraud, or coercion is employed to accomplish desirable results. As an illustration of this point, imagine a thief stealing money from a person then donating the stolen money to a truly worthy charity. The donation to charity doesn't justify the theft.

Moreover, it isn't only the *actual* initiation of either force, fraud, or coercion that violates the rights of others. It is also the *substantial threat* of such an initiation that violates another's rights. It is for this same reason that we recognize a justified act of self-defense *even before an actual use* of unjustified force. That we don't always agree on exactly which particular circumstances allow a justified act of self-defense doesn't mean we fail to recognize the principle that one need not wait until another's fist hits their face before such person can legally and properly act to prevent the trespass.

As with self-defense, reasonable people sometimes disagree on what particular circumstances constitute a substantial threat of force, fraud, or coercion such that preventative action is legally allowed. Nonetheless, the principle remains valid. Arriving at the proper principle is the first step towards moving in the direction of a free and virtuous society.

We need to recognize that a virtuous society can't effectively be mandated or legislated. We must persuade our fellow brothers and sisters to be virtuous. Indeed, parents, and not the government, must be on the front lines of this effort. We urgently need to help each other to be better and more effective parents. I can think of no more important task to move us closer to a virtuous society.

The fundamental principle that I have been describing, and is at the base of the legal analysis we ought to employ, can be referred to as "The Live and Let Live Principle" (hereinafter the "3LP"). Because the 3LP is a principle, no particular set of words can fully capture its entire meaning for all circumstances. As such, it must be reasonably interpreted and applied to the various and countless unique factual situations that life presents. Additionally, like any principle, reasonable minds can and do disagree with the proper implementation of the 3LP. This fact does not negate the importance of the basic idea underlying the 3LP.

Many people already subscribe to a "live and let live" attitude. It requires respect for the rights and sovereignty of others to both define and pursue their happiness. This is especially important in cases where we strongly disagree with how people choose to define or peacefully pursue their happiness. To the extent societies have adopted the 3LP, freedom and prosperity

have thrived. I have heard the 3LP often expressed, but less often implemented, throughout different cultures and groups.

People who espouse the 3LP come from all walks of life, racial backgrounds, socio-economic groups, and live in different places around the world. They are a varied group. Many are members of different political parties or are entirely non-political.

The 3LP recognizes and respects the sovereignty of our fellow human beings. We should recognize we don't all agree on moral issues. However, the 3LP is the least common denominator of moral issues upon which civilized people generally agree. If you think about it, most people don't argue for the morality of initiating force against non-aggressors.

As such, moral issues that don't violate the 3LP ought to remain in the domain of persuasion and not imported into the law where they are forced upon all people. Therefore, the law generally shouldn't intervene unless and until someone is alleged to have violated the 3LP.

Most political questions can be resolved by simply analyzing the 3LP. The gun issue is no exception. Although reasonable minds disagree on the proper implementation of the 3LP, using this principle yields a framework from which we can resolve difficult issues.

The 2nd Amendment

As with all fundamental rights contained in the Constitution, they exist independent of either the government or the Constitution. As such, these rights are simply enumerated by the Constitution. Fundamental rights are not granted by government. To be sure, I suspect we both agree that if the 2nd Amendment were constitutionally repealed as it could be, we would nonetheless argue a right to keep and bear arms continues to exist. The same analysis remains true for each of the Amendments and individual rights contained in the Constitution.

The 2nd Amendment to the United States Constitution clearly states, "... the right of the people to keep and bear Arms, shall not be infringed." While recognizing that the right shall not be infringed, the Clause offers no guidance about how to interpret the nature and scope of that right. It certainly does not say the right is absolute under all circumstances. Some people argue this language recognizes an absolute right to have guns under all circumstances. As with almost all constitutional rights, the United States Supreme Court disagrees.

The 1st Amendment to the United States Constitution also uses what appears to be similarly absolute language. It states, "Congress shall make no law... abridging the freedom of speech..." However, the United States Supreme Court has long recognized many varieties of

speech that can legally be abridged and indeed totally prohibited such as fraud, obscenity, defamation, fighting words, child pornography, perjury, blackmail, and solicitations to commit criminal offenses.

As previously stated with the 3LP, all principles require interpretation. No written rule or law fits perfectly in all possible factual situations. Moreover, if you think carefully about it, you don't believe people ought to have an absolute right to have guns under all circumstances. Said another way, you agree that the right of the people to keep and bear arms isn't an absolute right.

To be sure, think about the absolute interpretation of the 2nd Amendment right as applied to a person properly convicted of 1st degree murder and sentenced to natural life in prison. Imagine he wants to take his guns to prison as he makes clear his intention to shoot the guards and other inmates. No reasonable person thinks such a properly convicted prison inmate ought to be able to exercise an absolute 2nd Amendment right to bring his guns to prison.

As such, if you are among the reasonable, you acknowledge the right to keep and bear arms isn't absolute, but rather is properly limited under certain specific circumstances. Given that reasonable people agree that the right described in the 2nd Amendment isn't absolute, we must determine the proper scope of that right. After we have determined the proper scope of that right, it will become clear why it is indeed accurate and appropriate to say such right shall not be infringed.

Determining the Proper Scope of the Right

As with all issues, people have preferences and opinions about how the world ought to be. We are all free to attempt to persuade and convince our fellow humans into and out of any particular belief. This is part of the nature of a free society. However, to impose our opinions and beliefs on another competent adult is another matter entirely. In order to have a free and civilized society, compliance with the 3LP is not optional. Said another way, nobody has a right to violate the 3LP.

We all have opinions about who ought to have a gun. Some people believe everyone ought to have any gun they choose under all circumstances. Others believe only law enforcement officers ought to have guns. Some people hold opinions that depend on the characteristics of the gun at issue. We have no shortage of opinions about gun ownership and possession.

However, as with many other issues, when it comes to guns, the only opinion one can properly insist upon is the mandate to comply with the 3LP. As such, although one is free to hold any opinion regarding gun ownership and possession, compliance with the 3LP is the only

opinion society should properly legally impose on others. Said another way, unless someone is violating the 3LP, there is no other proper basis upon which to deny gun possession.

As an example, if someone is unjustifiably and substantially threatening another person with a gun, the person holding the gun is violating the 3LP. Under these circumstances, it is justifiable to immediately and forcibly take the gun away from that person. We call this example either self-defense or defense of others. Said another way, presenting a substantial threat of initiating force violates the 3LP. There are other ways a person can present a substantial threat of initiating force, thereby violating the 3LP, merely by possessing a gun. I propose a total of three such categories:

Category One – History of Violating the 3LP

Some people have a well-documented history of violating the 3LP in such a way that their mere possession of a gun creates a substantial threat of the initiation of force. We generally call these people “violent felons.” Additionally, there could also be a point at which a substantial enough history of misdemeanor assaults leads to the same conclusion.

Not all convicted felons are violent felons. Indeed, a person could be properly convicted of a felony theft, or any other non-violent felony crime, such that continued possession of a gun does not automatically pose a substantial risk of violating the 3LP. As such, there is no basis for banning the non-violent felon from possessing guns.

Therefore, at some point, when a person is a well-documented violator of the 3LP with violence, the community can reasonably conclude such person poses a substantial risk merely by possessing a gun. Exactly where that point occurs is one of those many areas where reasonable minds can disagree. Additionally, under what circumstances such a person could be rehabilitated such that mere gun possession no longer poses a substantial risk of violating the 3LP is also an area where reasonable minds can disagree.

Thinking along the same lines, we should acknowledge that some people tell us in advance of their intentions to violate the 3LP with a gun. Assuming such threats are provable, credible, imminent, and substantial, we should take such people at their word. Therefore, when people credibly announce their violent intentions, they create a substantial risk which violates the 3LP. For example, if a gun owner reveals an actual intent on social media to commit a mass murder with a firearm the next day, few would complain if that person were immediately rendered unable to commit such an act.

To be clear, I do not propose an easy way to declare responsible gun owners as threats. However, we should concede certain appropriate circumstances exist for immediate action. Due process requires that when such an accusation arises, it must be proven in court by the accuser with substantial evidence. As with all accusations, the accused must have a prompt, full and fair opportunity to defend while the burden of proof remains firmly on the accuser. If the accusation is not proven, the accused should immediately be returned to their original status without cost to the accused. Admittedly, this is not an area for bright line rules, and we must tread carefully with such fundamental rights.

That reasonable minds can disagree on exactly what point these issues turn is not a reason to abandon the principle. The underlying principles remain intact. Indeed, different communities can come to different reasonable conclusions about these issues. That said, the point remains that the scope of the right to keep and bear arms doesn't permit gun possession for the properly convicted violent felon or for those who intend to achieve such a status.

Category Two – Mental Incompetence

Similar to the category including violent felons, there is another group of people who don't have a right to keep and bear arms because their mere possession of a gun poses a substantial threat of violating the 3LP. Gun ownership and possession is a right that requires certain serious legal responsibilities. In a free society, competent adults are entitled to do as they wish with their property, but only so long as they don't infringe on the rights of others to be left alone. Posing a substantial risk of violating the 3LP infringes on that right.

Responsible and safe gun possession requires a certain level of mental competency. Because a four-year old child doesn't possess the required mental competency to possess a firearm, such a child can justifiably be prohibited from keeping and bearing arms. Likewise, certain adults who suffer from specific types of mental illness or injury also lack the required mental competency for responsible and safe gun possession.

In addition to age and certain types of mental illness or injury, there may be temporary conditions such as drunkenness that also deprive an otherwise competent person of the minimum level of competency to safely possess a firearm. As with the violent felon category, reasonable minds can disagree on specifics and different communities will come to different reasonable conclusions. Moreover, there ought to be a reasonable process for determining if and when such deficiencies in mental competency are sufficiently restored. Nonetheless, the right to keep and bear arms doesn't encompass the person who lacks sufficient mental competency to safely possess a firearm.

Category Three – Technical Incompetence

As with the other two categories, the issue is whether the mere possession of a gun poses a substantial threat of violating the 3LP. Considering the universe of guns and complex weapons that exist, it is obvious that some guns and weapons require a higher degree of technical competence to store or to use so other people are not subjected to a substantial risk of being disturbed in their private affairs. Said another way, if a person has no idea how the gun operates or of its capabilities, it is reasonable to conclude such person poses a substantial threat of violating the 3LP by simply possessing the gun.

As an example, the technical competence required to safely operate and store a simple revolver differs from that required for a fully automatic belt-fed .50 caliber machine gun or a shoulder-fired grenade launcher. As the weapons get more complex, and therefore, more capable of greater harm to more people at greater distances, a higher level of technical competency is required.

As with the other two categories, reasonable people can disagree on exactly what level of technical competence is required for the complexity of the weapon such that there exists no substantial threat of violating the 3LP. Nevertheless, the fact remains that some degree of technical competence with guns is necessary to avoid posing a substantial risk of violating the 3LP. As such, the right to keep and bear arms doesn't encompass the person who lacks the sufficient technical competency to safely possess, store or operate a firearm.

Trusting the Government

While you may agree in principle with what I've proposed thus far, I certainly acknowledge your very reasonable and obvious objection: You don't trust "the government." You are reasonably concerned that whatever governing body exists will twist and contort these proper categories to deprive responsible and peaceful people of their right to keep and bear arms. You are already thinking about the slippery slope argument. I absolutely share your concern.

Indeed, governments in general have a long history of undermining a particular fundamental principle to accomplish different, and often contrary, results. For example, the Interstate Commerce Clause found in Article 1, Section 8 of the United States Constitution was intended to ensure free trade among the several states. The Clause was intended to confer upon congress only very limited powers. Over the years, however, the Clause has been entirely bastardized into a virtually unlimited source of power for congress to do whatever it wants. Like most governments, the United States government has a long history of construing individual rights strictly while construing governmental powers in a hugely expansive way.

Whether the 2nd Amendment even protected an individual right to keep and bear arms at all was the subject of endless debate until 2008. *See, District of Columbia v. Heller*, 554 U.S. 570 (2008). After decades of debate about whether the 2nd Amendment protects some nonsensical “collective right” of the government to form a national guard, *Heller* finally determined the 2nd Amendment protects the fundamental right of an individual to keep and bear arms.

That today’s government can’t be trusted does not mean we cannot develop a principled, proper and reasonable position on guns. We should think about each issue separately. We ought not to let the fact that the current government cannot be trusted to reasonably and fairly administer these categories cause us to abandon a principled approach to this issue. Instead, I propose you maintain the principled approach to the issue while dealing directly, and separately, with the problem of untrustworthy government.

The “government” is a fictitious entity. It is people who control all the mechanisms of government. Because the vast majority of people in today’s government do not likely espouse the 3LP, they therefore apply other principles. By definition, those other principles permit the initiation of force, fraud or coercion as well as the substantial threats of such action.

Moreover, the vast majority of people working in the government likely fail to distinguish between their personal preferences that properly belong in the moral realm, and the proper scope of the legal realm as I have described it in this article. As a result, the vast majority of people working in the government seem perfectly content to impose their personal preferences upon others by using the legal mechanisms at their disposal. This is exactly why we can’t trust them. It doesn’t have to be this way. Imagine if people who espoused the 3LP were responsible for fairly and reasonably administering the laws.

It is important to note that this current reasonable distrust of government is not limited to the gun issue. Given the number of people working in the government who do not adhere to the 3LP, the government cannot be trusted to administer any issue. This is the same reason we have suffered through the ridiculous drug war for the past several decades. It is also why we suffer with the cradle to grave welfare state, endless wars, the healthcare crisis, and a mountain of regulation. These issues are indeed all related. Unprincipled people working in government are each fighting with each other to impose their personal preferences on us all. This is the real root of our problems.

The good news is that these issues are easily solved by convincing more people to adopt the 3LP. That ought to be the most important task of all people who value a free and peaceful

society. Unless and until we succeed at convincing many more of our fellow brothers and sisters to adopt the 3LP, we will neither be able to implement a principled policy on guns nor would we be able to sustain it in any event. Our task is therefore before us.

Legal Policies Related to Guns

Imagine for a moment we could convince more of our fellow brothers and sisters to truly adopt the 3LP. Further, imagine a political philosophy centered around the 3LP becomes the prevailing political position in our country. If this occurred, it would be easy to envision that people who care about the 3LP would then control the mechanisms of government. Under these circumstances, we could implement reasonable policies to fairly implement this principled pro-freedom position on guns; as well as a principled pro-freedom position on every other issue. That would be exciting for all freedom and peace-loving people!

It's important to point out that different communities would likely come up with different policies on these issues for a variety of reasons. In applying the 3LP, we would have a free market of sorts on these legal policies which would allow the most effective ones to prevail and spread throughout our country. Indeed, this is the best way to find the most effective freedom and peace promoting policies in all areas.

No policy will create a utopia, but the impossibility of utopia should not undermine our dedication to creating a 3LP-based society. As an example, while it is true that laws against murder do not, and will never, eliminate murders, this reality does not mean we ought to abandon laws against murder.

Likewise, laws restricting gun ownership in appropriate cases will not prevent all gun uses that violate the 3LP. Nonetheless, we ought to make an effort to keep guns out of the hands of such people. As a criminal defense attorney for over twenty-five years, I've personally witnessed prohibited possessor laws indeed keep guns out of the hands of some such people. That fact alone makes the effort worthwhile.

If we are serious about attempting to keep guns away from people whose mere ownership violates the 3LP, failure to attempt to determine such a person's status completely undermines that effort. As such, background checks make sense at the time of purchase. I can envision ways of doing this that do not involve the government and/or that involve a mere exclusionary list rather than a check of each potential purchaser's background. However particular communities decide to accomplish it, failure to attempt to ascertain whether a potential purchaser is appropriately prohibited from gun possession undermines the entire effort. Such a check could help prohibit or deter people in either Category One or Category Two from possessing a gun.

Regarding Category Three, because different levels of technical competence are required depending on the weapon, communities will need to create standards to demonstrate such competence. There may be some types of weapons, like simple revolvers, where some communities may determine technical competency could be assumed when there is no reason to suggest otherwise. However, reasonable people could also argue a gun safety class ought to be required to ensure minimum competence with any weapon. I don't reach that issue here.

I expect that before a person could safely possess certain automatic weapons, a higher level of technical competence would be necessary. I wouldn't object to a requirement that such a person present a valid certificate of appropriate training from either the National Rifle Association, The Jews For the Preservation of Firearms Ownership, The Gun Owners of America, or some other reputable training organization before we can reasonably conclude mere possession of such a weapon doesn't violate the 3LP.

Although this article has focused mainly on guns, I expect the same analysis equally applies to all weapons generally. Indeed, there are weapons of such magnitude and complexity that only the most trusted of stable and reputable organizations could safely possess them because of the stringent requirements for intensive and long-term ongoing training as well as the requirements for safe storage, monitoring, maintenance, and protection from theft or misuse.

There may be other weapons that, because of their mere existence, pose such a substantial risk of violating the 3LP, like certain viral or biological weapons, that banning them entirely is consistent with the 3LP. As I have said throughout this article, reasonable minds can disagree about applying the 3LP. These are the principled debates we ought to be having on this issue.

It is important to point out that, in a free society, property owners remain free to ban whatever guns, weapons, language or conduct they see fit to ban without consulting anyone else or even attempting to justify their reasons for doing so. As homeowners and business owners are free to ban what they want, other people remain free to refuse to do business with them, or to peacefully picket, or even loudly voice their disagreement with such policies. These are the consequences of a free society.

Moreover, people remain free to contract with each other to voluntarily and mutually prohibit any or all guns and weapons as they see fit. Indeed, homeowners' associations can and do currently have such policies on guns, weapons and many other things; much to the frustration of many people including me. Although the ability of homeowners' associations to ban guns generally varies by state, so long as it is voluntary, a free society tolerates any voluntary agreement between competent adults.

Thoughts About School Shootings

As with most issues, simply applying the 3LP, which necessarily leads to a free society, reveals a simple solution. If we imagine truly free market private schools for children, we can go a long way to removing our disagreements about how best to deal with school shootings as well as many other school related issues.

I don't want my three children to be especially vulnerable to some lunatic with a firearm. As such, I wouldn't want them sitting all day in a place where everyone knew guns were banned. I see this situation as a very inviting soft target for some deranged person with a gun. Rather, I'd prefer my kids to be in a school where most, if not all, teachers had the proper training, experience, and access to properly stored guns to defend my kids if necessary. There are many parents who come to the same conclusion.

That said, I recognize that other reasonable parents conclude differently on this issue. They reason in good faith that their kids are safer in an environment where all guns are banned. I disagree. However, more importantly, I respect their right to determine what's best for their kids and to enroll them in a school where guns are prohibited. I further recognize there are many reasonable and responsible parents who also come to this same conclusion. I have no interest in substituting my judgment for theirs on this or any issue.

A one size fits all government mandated approach is a recipe for endless debates, frustration, division, and anger on this, and many other issues. Thinking differently about a free society, and the resulting tolerance and understanding of the rights of others, necessarily leads us closer to a peaceful and more unified society. We must think differently.

Conclusion

I recognize that, while you may have accepted my humble suggestion at the beginning and carefully read this entire article, you may yet still disagree with me about some or all of it. I certainly respect your right to disagree with me, and I thank you for carefully considering my thoughts. As you may have gleaned, what I'm truly most interested in is the 3LP.

If you at least truly accept the 3LP, I've accomplished my mission. We are on the same team. That we disagree on exactly how to define or how to apply the 3LP is not a big issue to me. I'd love a world where we all at least agreed that either the substantial threat of or the actual initiation of either force, fraud, or coercion is wrong in all cases. Stated more generally, I'd love

a world where we each respected the equal rights of our fellow humans to both define and peacefully pursue their happiness using their bodies, property, money and time.

If you still haven't been convinced about the wisdom of crafting our laws to be consistent with the 3LP, you are therefore taking the position that our laws ought to permit either the substantial threat of or the actual initiation of force, fraud or coercion at least in some cases. Said another way, you support aggression against your fellow peaceful brothers and sisters to accomplish things you find important. I sincerely hope you reconsider your position.

We can never achieve a civilized, reasonably safe, free, and peaceful society so long as the law permits some humans to substantially threaten or to initiate aggression against others who are peaceful. In the final analysis, the 3LP is the real issue upon which good people need to focus their best efforts. We each entered existence, and we will each exit at some point. We have indeed been spectacularly lucky. What you do with your time here is what matters. I urge you to aim high and use your time to advocate for freedom and peace.