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Bakal: The Right To Bear Arms

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THE RIGHT TO BEAR ARMS. By *Carl Bakal*. New York: McGraw-Hill. 1966. Pp. 392. \$6.95.

"The Right To Bear Arms" sets forth the results of exhaustive research on the important American problem of guns and their control. This book is a rich source of factual material: in appendices, the author has included digests of federal and state firearms laws, compilations of deaths due to firearms in the United States from 1900 to 1964 compared with those in sixteen other countries of the world, and finally, a statement of policy of the National Rifle Association.

In the United States today, there are more than 50 million privately-owned firearms. In California alone, over 2.5 million handguns are registered with the state department of justice. In one study, it was found that forty-two per cent of male senior high school students owned a shotgun or a rifle while only twenty-seven per cent owned a typewriter. During the 1965 race riot in the Watts section of Los Angeles there was a frantic run on the stock of gun shops. A United States Senate sub-committee learned that over 4,000 guns were sold in a single day and pistol sales increased 250 per cent during the first weekend of the violence.

In a single typical year, 1963, guns played a part in 5,126 recorded homicides, 2,263 accidents and 9,595 suicides—a total of 16,984 deaths. Of 168 police officers killed in the United States from 1960 through 1963, ninety-six per cent were shot to death by firearms of all kinds, and handguns accounted for seventy-eight per cent. Every year, over 2,200 persons are accidentally killed by guns in the United States. During the past decade, the death rate in this country from firearms accidents has been about 1.3 per 100,000 population—eight times that recorded in England and Wales and the German Republic, fourteen times the rate of Japan, and over forty times the rate of the Netherlands. Of 20,588 suicides in the United States in 1963, guns accounted for 9,595. National Safety Council statistics reveal that, in 1961, hunting accidents accounted for 700 persons killed and 9,000 wounded. Deaths from hunting accidents in 1961 were three times greater than the combined total of passenger deaths in commercial air line crashes, train wrecks, and bus accidents.

Anyone who is able to write—a child, ex-convict, drug addict, or lunatic—can order a gun by mail and get it. Mail-order catalogs carry uninhibited advertisements for guns. A catalog of a Los Angeles firearms importer and distributor devoted most of its pages to "that deceptively cute little gun known as the derringer." This weapon, said the literature, was potent enough to polish off "two of our country's Presidents, Abraham Lincoln and William McKinley."

Millions of foreign weapons have been imported into this country. On April 28, 1958, Senator John F. Kennedy introduced in

Congress a bill designed to "prohibit the importation or reimportation into the United States of arms or ammunition originally manufactured for military purposes." The special target of the bill was the 6.5 mm. Mannlicher-Carcano carbine. The bill was defeated. A few years later, Lee Harvey Oswald purchased by mail order a Carcano rifle from a Chicago firm and assassinated President John F. Kennedy in Dallas, Texas, on November 22, 1963. On the weapon was a telescopic sight which originated from another mail-order house in Los Angeles. Less than an hour after the murder of President Kennedy, Oswald had also shot and killed Dallas police officer J. D. Tippit with a .38 caliber revolver purchased from still another Los Angeles mail-order house.

Thirty years earlier, on February 15, 1933, a demented Miami bricklayer, Giuseppe Zangara, attempted the assassination of President Franklin D. Roosevelt. Although President Roosevelt was unscathed, five bullets which had been fired at the President's car hit bystanders, including Chicago's Mayor Anton Cermak who was killed. At Zangara's trial, the Florida judge pointed out that three Presidents of the United States already had been assassinated and another ex-President shot while making a public appearance. The judge declared that Congress should pass an act providing for the confiscation of all firearms that may be carried or concealed about the person.

Prohibitions on owning and carrying dangerous weapons date back to the Middle Ages. The Statute of Northampton enacted in England in 1328, and still in force today, forbade any man to "go . . . [or] ride armed, by night or by day in fairs, markets . . . [or] in the presence of the justices or other ministers, . . . [or] in . . . [any] part elsewhere" This statute was the basis for early colonial laws in America. In 1692, the Province of Massachusetts enacted a similar prohibition on carrying "offensive" weapons in public and the law was re-enacted in 1795 after Massachusetts became a state. Subsequently, almost all of the states passed laws directed at carrying concealed weapons.¹

In Britain, in order to buy or own a rifle, pistol, or revolver, a person must obtain a certificate from the local police. In the Netherlands and Italy, no firearms can be lawfully purchased or owned without a permit. Japan prohibits the private ownership of handguns altogether, and a person is required to take three hours of instruction and pass a written examination before he can obtain a hunting license. Canada requires that all pistols and revolvers be registered and, as in other countries, dealers must be licensed.

In the United States, while the carrying of a concealed pistol is

1. The first law of this nature was passed in Kentucky in 1813, followed by similar statutes in Indiana in 1820, and Arkansas and Georgia in 1837.

either prohibited or permitted only with a license in all but six states, only one state, South Carolina, prohibits the sale of handguns; only one state, New York—through its well-known Sullivan law passed in 1911—requires a license both to purchase and possess a handgun; only seven states—Hawaii, Massachusetts, Michigan, Missouri, New Jersey, New York and North Carolina—require a license or permit for the purchase of a handgun;² and only twenty-three states and the District of Columbia even bother to license the handgun dealer.

At the federal level, gun-control legislation is embodied in two statutes: the National Firearms Act enacted by Congress in 1934, and the Federal Firearms Act enacted in 1938. The National Firearms Act prohibits the possession of all machine guns and other automatic weapons (those firing more than one shot with a single pull of the trigger) except those registered with the United States Treasury Department. A tax of \$200 must be paid every time each such gun is sold or transferred. Similar restrictions are placed on the sale or transfer of sawed-off rifles and shotguns as well as mufflers and silencers. The act does not, however, touch pistols or revolvers, nor are shotguns or rifles, except the sawed-off variety, included within its coverage. The Federal Firearms Act prohibits the interstate shipment of any firearm or ammunition to any person who is known or reasonably believed to be a convicted felon, under indictment, or a fugitive from justice. The act also requires that firearms manufacturers, dealers, importers, and others doing business across state lines have a federal license. However, the fact that it is virtually impossible to prove that a dealer *knowingly* shipped guns to persons in the prohibited class has rendered the act totally ineffective.

At the time President Kennedy was assassinated, there was slumbering in the Senate of the 88th Congress a bill designed to curb the unrestricted traffic in mail-order firearms. Sponsored by Senator Thomas J. Dodd of Connecticut, the bill was the fruit of investigations by Senator Dodd's Senate Juvenile Delinquency Subcommittee. Testimony before this committee revealed that mail order was a major source of firearms to juveniles and young adults, as well as to adult felons, narcotic addicts, and mental defectives. President Kennedy's assassination created tremendous public support for effective gun-control legislation. But the usual propaganda mills against any and all gun-control laws began to grind and, by the end of 1964, not a single federal, state, or local law of any consequence had been enacted to require the registration or to control strictly the sale of firearms.

On March 8, 1965, President Lyndon B. Johnson, in a message to Congress on crime, asked for a complete ban on the mail-order sale

2. Some counties in Virginia also require such a permit before purchase.

of guns to individuals and urged increased federal control over the interstate shipment of firearms as a means of making effective local regulation of firearms. Congress failed to act. And although 350 firearms bills were introduced in the various state legislatures in 1965, not a single restrictive state law was enacted. A nationwide Gallup poll taken in January, 1964, revealed that seventy-eight per cent of the American people favored a law requiring a police permit for the purchase of a gun and the need for such legislation is overwhelmingly supported by responsible law enforcement officials. Yet all proposed effective gun control laws, state or federal, are invariably killed through the intensive and imaginative lobbying activities of the National Rifle Association (NRA).

The NRA was originally formed in 1871 by a small group of New York National Guard officers "to promote and encourage rifle shooting on a scientific basis." In 1903, the federal government, in cooperation with the NRA, established the National Board for the Promotion of Rifle Practice. This Board is now an arm of the Defense Department and, for the five-year period ending in 1964, its program cost the taxpayers \$12,000,000 of which \$7,200,000 was spent for 247 million rounds of free ammunition for NRA affiliated clubs and \$2,300,000 for guns and other equipment on loan to such clubs.

Until the 1920's, the NRA paid little attention to pistols. In 1925, however, it established a Police Division to assume leadership in pistol marksmanship. By the 1930's, there were about 50,000 members of the NRA. Following World War II, NRA membership climbed to 250,000, in 1962 its membership reached 500,000 and, at the present time, it stands at 700,000. Maintaining a staff of 250 persons in an imposing structure in Washington, D.C., NRA officials boast that within a few hours they can flood Congress with 500,000 pieces of mail in opposition to any proposed gun legislation. However, claiming that its function is not to influence legislation but merely to inform or educate the public, the NRA does not register as a lobby. It maintains a tax-exempt status under subsection 501(c)(4) of the Internal Revenue Code as an organization not organized for profit but rather operated exclusively for the promotion of social welfare, the net earnings of which are devoted "exclusively to charitable, educational or recreational purposes." The NRA, a non-profit, private organization, had an income in 1964 of nearly \$4,500,000. Although the NRA asserts that it is supported by membership dues and contributions, advertising space bought in *The American Rifleman* in 1964 by makers and vendors of arms, ammunition, and related products provided the NRA with \$1,121,574—a quarter of its entire income.

The guiding principle of the NRA is that the only justifiable

laws are those that are punitive rather than preventive in character; that the solution to today's crime problems lies in legislation that provides stiffer penalties for persons who commit crimes with a gun. Ignored by the NRA is the fact that in practically every state there are existing statutes providing for additional penalties for offenses committed with firearms. And also ignored is the general experience that such laws are totally ineffective in keeping guns out of the wrong hands.

The NRA stands squarely on the premise that ownership of firearms must not be denied American citizens of good repute so long as they use them for lawful purposes. They piously quote that portion of the second amendment to the Constitution which states that "the right of the people to keep and bear arms, shall not be infringed." But this quotation is taken out of context; article II of the Bill of Rights states that "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." In *United States v. Miller*,³ the United States Supreme Court upheld the constitutionality of the National Firearms Act. That case involved the interstate transportation of an unregistered sawed-off shotgun. The Court held that since there was nothing to show that a sawed-off shotgun "at this time has some reasonable relationship to the preservation or efficiency of a well-regulated Militia," the second amendment was not violated by the provisions of the National Firearms Act.⁴ The obvious purpose of the amendment, declared the Court, was to render effective the provisions in the Constitution that provide for "calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions" and therefore the second amendment "must be interpreted and applied with that end in view."⁵

Carl Bakal is obviously a vigorous proponent of effective gun-control legislation. At times he approaches the subject with crusading zeal, but the facts he presents are solid and worthy of careful consideration by everyone—citizen and legislator alike. Few will disagree with Senator Robert Kennedy's assertion that "It is past time that we wipe this stain of violence from our land."

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3. 307 U.S. 174 (1939).

4. *Id.* at 178.

5. *Ibid.*