

Camp Lone Star - Massey & The Clash of Laws



Gary Hunt
Outpost of Freedom
October 27, 2014

K. C. Massey was in the area when a shooting occurred that brought numbers of Border Protection Service (BPS) agents, and Cameron County Sheriff Investigator Sergio Padilla, to the scene. The BPS agents asked that the weapons of all three individuals be turned over to BPS for reasons of safety (Explained in [Massey's account of incident](#)). They were then turned over to Padilla, though at no time was Massey read Miranda rights, nor was the transfer of the weapons voluntary. It was simply done because they were agents, with guns, and in the principle of "discretion being the better part of valor", they relinquished the weapons.

Those weapons then became the object of a [Criminal Complaint](#), charging Massey and John Foerster (See [Camp Lone Star - Update #1 on K. C. Massey](#)) with felony possession of a firearm, based on [18 U. S. Code § 922](#) (g)(1).

Federal Authority and limitations

The theory behind laws, and the application of law, including ambiguity of the word, intent of the law, and misapplication of those laws is addressed in ["No bended knee for me" - the Charge against Robert Beecher](#) (for those interested in that aspect of persecution), however, the purpose of this article is to discuss what might be termed "the clash of laws" between the United States and Texas, under a Republican Form of Government (Art. IV, § 4 of the Constitution, as a member state of the Union of **these** United States (yes, the plural is intended).

To understand this clash, we must first look at the powers granted to, and the limitations imposed upon, on the federal government, by the Constitution.

First, there is the inevitable, and truly sacred, Second Amendment.

"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."

Now, that reference to "free State" applies only to the states, not to the federal government, since the existence of a federal militia was never addressed in the Constitution, only the authority to call forth the militia. The first reference to what might be considered a federal militia occurred in 1916 with the enactment of law embodied in 10 U.S.C. § 311 (See [A United States Militia](#)). So, the Constitutional references to militia and bearing arms are contained in that Second Amendment and the following provisions in the Constitution"

Article I, § 8, clause 15: To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

Article I, § 8, clause 16: To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

So, Congress can call forth the Militia, which they could not "call" if they were already under federal authority, and next, they recognize that "Part of them as may be employed in the Service of the United States". Leaving, of course, officers and training, to the "parent" of the militia, the States.

The only other provision is found in Article II, § 2, which reads,

"The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States..."

This makes clear that the Militia belong to the States, not to the federal government, except when called into service. Now, the only mention of "arms" is associated with that militia in the Second Amendment, which links any firearms laws only to the authority to the states (we will go further on this subject, later). The only applicability to federal authority, or should we say, prohibition, is that "the right of the people to keep and bear Arms, shall not be infringed." It appears that it wasn't until the 1930s when the government first crossed that line drawn by the Constitution, and has continued to expand overarching authority into those Constitutionally prohibited realms, since that time (See [The Three Constitutions - Which One do You Defend](#)).

There is one more concern regarding federal authority that must be addressed, before we get to the heart of the matter. That is the authority granted regarding Commerce, Article I, § 8, clause 3, says,

"The Congress shall have Power... To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."

It does not grant any power within the states, only "among the several States". That is interstate, not intrastate, commerce.

Then, we have the only other "commerce" provision in Article I, § 9, clause 6:

"No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another; nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another."

Now, you need to keep these points in mind as we continue down a path of discovery -- to determine what We, not the government, see as the powers granted and limitations imposed.

Possession of a Firearm by a Convicted Felon (Federal)

The only charge against Massey, according to the [Criminal Complaint](#), is a violation of 18 USC §922(g)(1) (the full text of §922(g) at [18 USC 922](#)). The pertinent part is as follows:

(g) It shall be unlawful for any person -

(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

So, let's look at the obvious intent of the law. First, "*It shall be unlawful*", well, no problem with that.

Next, if that person "*has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year.*" Let's assume for the sake of discussion, that that criterion has been met -- that Massey has such a criminal record. So, now we move on to the third portion of the Statute.

It is unlawful "*to ship or transport in interstate... commerce*". Now, this next phrase is rather interesting. "Possess" means "*To occupy in person; to have in one's actual and physical control*". So this must mean that you have in your control the firearm when you affect the commerce. The possession must be done while participating in or affecting that commerce. Finally, "*to receive any firearm or ammunition which has been shipped or transported in interstate commerce.*" Well, that last one surely must be the direct recipient, the addressee - to "receive", as opposed to "possess". For if that were the case, it would

read, "to possess any firearm or ammunition which has been shipped or transported in interstate commerce."

So, let's revisit what we said about Commerce. "No Preference shall be given by any Regulation of Commerce or Revenue... one State over those of another." However, if we consider the implications of the law, if you live in a state that manufactures a firearm, then you can possess it, as it has not been involved in interstate commerce. However, if you have ammunition that was manufactured in another state, then you are guilty because of the ammunition. If you live in a state that manufactures both weapons and ammunition, you can possess those "firearms" and ammunition. However, if you live in a state that manufactures one, the other, or neither, then you may have but one, or none. That seems to give Preference to one state over another.

Further, this absolutely defies the concept of equal justice; it would defy the concept of Article IV, § 2, which states, "*The Citizens of each State shall be entitled to all of the Privileges and Immunities of the Citizens of the several States.*" And, it would mean that if one moved to another state, with what was legal, from the federal standpoint, in the state from which he began, he would be criminal in the other state.

Texas Possession Laws

So, let's see what Texas has to say about a convicted felon possessing a firearm. The applicable law is found in [Texas Penal Code, Section 46.04](#). The pertinent part is as follows:

- (a) A person who has been convicted of a felony commits an offense if he possesses a firearm:
 - (1) after conviction and before the fifth anniversary of the person's release from confinement following conviction of the felony or the person's release from supervision under community supervision, parole, or mandatory supervision, whichever date is later; or
 - (2) after the period described by Subdivision (1), at any location other than.
- (f) For the purposes of this section, an offense under the laws of this state, another state, or the United States...

So, if one is convicted of a qualifying felony, after he has served his time gone through post conviction service, the clock starts. After five years, he cannot possess weapons, except at "the premises at which the person lives." Now, premises, in legal terminology, is the house,

outbuildings and land. This is to afford protection -- once the five years has expired. It does not say house, it includes his whole dominion. He can protect his property.

Now, a question arises as to if he relocates, and lives elsewhere. In Massey's case, he has lived at Camp Lone Star for four months. The land is owned by "Rusty" Monsees, and the camp is located on his property, with his consent. That is where he lives, so the premises, though not owned by him, is the premises that are applicable in the statute. He encountered the BPS on those premises, so he had every legal right to possess the weapons, under state law.

When he was arrested, he was in a motel room, where he lived the night before he was arrested. This may be a gray area, though it seems that since he lived in that motel room, that night, and that the obvious purpose of the law is for personal protection, that he would still be legal, under state law. The alternative would have been to either secure his firearms in his truck, or to leave them unattended at Camp Lone Star. Though this may be debatable, if we look at intent, it is probable. If not, the only violation, under state law, might be him having his weapons in the motel room. However, he was not charged with that. The initial charge came when he surrendered his weapons, without Miranda, while still fully in compliance with Texas law. The Complaint was based upon his lawful (state law) possession. The Complaint led to the arrest, which might be the only exception to state law. However, the Complaint, itself, admits to "forbidden fruit".

So, where do we go, next?

Collision of Laws

Recently, Washington state and Colorado enact laws legalizing marijuana. Shortly thereafter, the Department of Justice announced that they were going to suspend prosecution of federal marijuana laws in those two states. Shall we ponder their reasoning for making such a decision?

Let's suppose that state law says you can possess marijuana, and federal law says that you cannot. To begin to understand this, and the subsequent discussion, perhaps we need to interrupt, for a minute, and understand what James Madison told us in Federalist Papers #62:

It poisons the blessing of liberty itself. It will be of little avail to the people, that the laws are made by men of their own choice, if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood; if they be repealed or revised before they are promulgated, or undergo such incessant changes that no man, who knows what the law is today, can guess what it will be tomorrow. Law is defined to be a rule of action; but how can that be a rule, which is little known, and less fixed?

So, law is "a rule of action", or, perhaps, a prohibition. But, it is there to guide us in remaining within the boundaries of law, or suffering the consequences of deviation from the law.

So, if marijuana is legal in Colorado, and criminal by federal law, which "rule of action" are we bound by? Well, the government did not want to face the consequences of a legal challenge to their presumed superiority of their laws over the state's laws. Let's look at Article IV, § 4, of the Constitution:

"The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence."

So, we have the only "guarantee" in the Constitution, and that is that we have a "Republican Form of Government". That guarantee is that so long as the state does not enact a law in violation of the Constitution, they have every right to enact any other law -- such as the marijuana law. Gee, it also provides that the government "shall protect... them against Invasion". Golly, gee, isn't that what K. C. Massey and Camp Lone Star were doing, since the government was having so much trouble fulfilling this obligation?

However, the marijuana laws are the "Conflict of Laws", and, perhaps, the felony possession laws are also a Conflict of Laws. After all, the same dilemma arises. Can K. C. Massey possess firearms, so long as he does so in compliance with Texas Law, under their Republican Form of Government? Or, is he bound by federal law that depends so much on the Commerce provisions of the Constitution?

Let's look at what the United States Supreme Court said about the extent of authority granted by the commerce clause. The case is [United States v Lopez 514 US 549](#) (1995).

The federal government had enacted the "Gun-Free School Zones Act of 1990", which forbids "any individual knowingly to possess a firearm at a place that [he] knows . . . is a school zone." The District Court denied Lopez, as they claimed that the law was "a constitutional exercise of Congress' power to regulate activities in and affecting commerce."

That decision was appealed to the Appellate Court, who then reversed the lower court decisions, when Chief Justice Rehnquist said,

Held:

The Act exceeds Congress' Commerce Clause authority. First, although this Court has upheld a wide variety of congressional Acts regulating intrastate economic activity that substantially affected interstate commerce, the possession of a gun in a

local school zone is in no sense an economic activity that might, through repetition elsewhere, have such a substantial effect on interstate commerce. Section 922(q) is a criminal statute [as is the charge against Massey] that by its terms has nothing to do with "commerce" or any sort of economic enterprise, however broadly those terms are defined... Second, 922(q) contains no jurisdictional element which would ensure, through case-by-case inquiry, that the firearms possession in question has the requisite... nexus with interstate commerce. Respondent was a local student at a local school; there is no indication that he had recently moved in interstate commerce, and there is no requirement that his possession of the firearm have any concrete tie to interstate commerce. **To uphold the Government's contention that 922(q) is justified because firearms possession in a local school zone does indeed substantially affect interstate commerce would require this Court to pile inference upon inference in a manner that would bid fair to convert congressional Commerce Clause authority to a general police power of the sort held only by the States.**

In a Certiorari to the Supreme Court, the case was heard. Chief Justice Rehnquist delivered the opinion of the Court. After a lengthy discussion, affirming most of what the Appellate Court had said in their decision, and extending even further into limitations of federal authority, the Decision concludes, "For the foregoing reasons the judgment of the Court of Appeals is Affirmed."

So, the Supreme Court, back in 1995, imposed a limitation of authority on the federal government, regarding the utilization of the Commerce Clause beyond its Constitutional intent. And, the law that was overturned, 18 U. S. Code Section 922(q), a part of the same statute that is being used against Massey, requires that there be an economic nexus to commerce for a law to be valid.

The first portion of this article explains the wording of the law, (922 (g)(1), and how it is clearly tied to commerce. Whether it was rewritten after the Lopez decision, or not, it must have the nexus to commerce. If the ownership of the gun by Lopez does not have that nexus, how, possibly, can the ownership by Massey have what the other did not?

Commerce begins when somebody "ships" something in interstate commerce. It continues when someone "transports" something interstate commerce. It finally ends when someone "receives" something that has been sent and transported. At that point, the nexus to commerce ceases, and we are back to "Equal Protection under the Law", where the state that you live in is the authority as to whether you can possess guns or ammunition.

The final point to be made on this subject is the fact that the state of Texas has three branches of government. They have, like every other state, a Legislative, and Executive, and a Judicial branch. The Judicial, of course, is to render justice. The Legislative, to

enact laws, under its "Republican Form of Government", and the Executive to sign such enactments into law, and enforce them.

If what the federal government implies to be true by their persecution of K. C. Massey is true, then there is no need for the three branches of the government of Texas to exist. On the other hand, the government of Texas should take a more aggressive role, as the Supreme Court did, in limiting the overbearing and abused authority of the federal law enforcement agencies.

Let me repeat two quotations from the above. First is by Chief Justice Rehnquist in the Lopez decision, the second, my observation, from over twenty years of reporting to the Patriot community, on the ramifications and consequences of the current round of persecutions by the federal government, contrary to the state's constitutions and laws:

To uphold the Government's contention that 922(q) is justified because firearms possession in a local school zone does indeed substantially affect interstate commerce would require this Court to pile inference upon inference in a manner that would bid fair to convert congressional Commerce Clause authority to a general police power of the sort held only by the States.

If what the federal government implies to be true by their persecution of K. C. Massey is true, then there is no need for the three branches of the government of Texas to exist.

Therefore, We must ask ourselves whether the people are here to serve the government, or, is the government here to serve the people? If the former, then we acquiesce to a condition of servitude. If the latter, then we must, in the Court of Public Opinion, rise above the government, and force them back to the limitations imposed on them by the Constitution, by whatever means necessary.

This article can be found on line at [Camp Lone Star - Massey & The Clash of Laws](#)