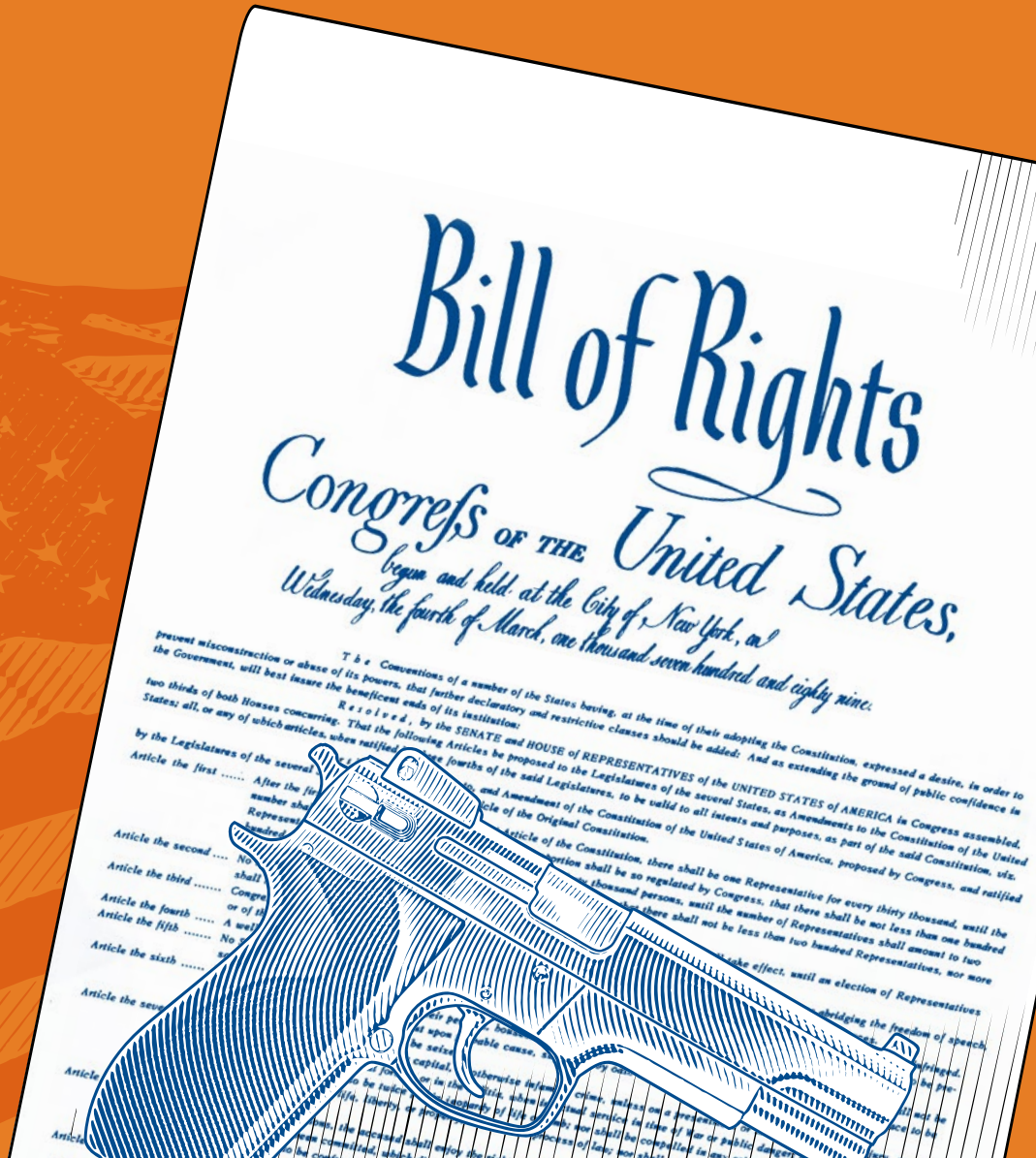


THE ESSENTIAL Second Amendment



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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.**”

—BILL OF RIGHTS

The Origins of the Second Amendment

A foundation of American democracy is the natural law principle that every human possesses certain inalienable rights. Inherent in this is a right to self-defense—that is, to forcibly resist infringements on inalienable rights. The right of the people to keep and bear arms, enshrined in the Constitution’s Second Amendment, is centered not on hunting or sport shooting but on this natural right of self-defense. It gives “teeth” to the promises of liberty, ensuring that attempts to reduce our natural rights to mere dead letters may be met with meaningful resistance.

The Framers and ratifiers of the Second Amendment did not operate in a philosophical or historical vacuum. In ratifying the Second Amendment, they built upon a strong foundation of inherited rights they had long possessed as Englishmen. A century before American independence, the Declaration of Rights of 1689 codified the right of English subjects to possess arms for their defense. Nearly contemporaneous to the American Revolution, famed English jurist William Blackstone listed the right of English subjects to possess arms for their defense as one of the principal barriers against violations of life, liberty, and property. This cherished right flowed from “the natural right of resistance and self-preservation, where sanctions of society and laws are found insufficient to restrain the violence of oppression.”²

The right to keep and bear arms for self-preservation may vest in the individual, but it also secures a collective resistance against large-scale threats to liberty. The founding generation well understood that people who lack the means to defend and enforce their rights are not, in any meaningful sense, free. For centuries, ruling monarchs had often disarmed the general population and then employed professional armies or loyal “select” militias to impose their tyrannical rule on a defenseless people.

In a very real sense, the war for independence from Great Britain started over King George III’s attempts to do the same. As colonial frustrations over repeated injuries to their rights and liberties reached a breaking point, the royal response grew progressively hostile and heavy-handed. Increasingly larger numbers of royal soldiers were sent to occupy Boston, not to protect the civilians from foreign threats, but to enforce controversial laws at bayonet-point and intimidate the colonists into submission. Ultimately, under orders from the King, General Thomas Gage led hundreds of well-armed professional troops to forcibly seize supplies of arms and gunpowder stored in some of the most disaffected areas of colonial America—the Massachusetts towns of Lexington and Concord. The ensuing skirmishes between British regulars and colonial militiamen were a final “spark” that set the Revolution ablaze. Had the colonists allowed themselves to be widely disarmed—or had they not already been one of the most widely armed civilian populations in history—the Revolution would certainly have been doomed.

It is little wonder, then, that the Founders immediately sought to safeguard the “right of the people to keep and bear arms” in their new nation. Their foresight to guarantee a well-armed citizenry continues, even today, to ensure the “security of a free state.”

“

In America we may reasonably hope that the people will never cease to regard the right of keeping and bearing arms as the **surest pledge of their liberty.**¹

—ST. GEORGE TUCKER



The Right of the People

“The meaning of the provision undoubtedly is, that the people, from whom the militia must be taken, **shall have the right to keep and bear arms; and they need no permission or regulation of law for the purpose.**”³

—THOMAS COOLEY,
General Principles of Constitutional Law

To whom does the right to keep and bear arms belong? The text, history, and tradition of the Second Amendment make clear that it protects an individual right of private citizens to keep and bear personal arms for self-defense.

The language itself is unambiguous: The right to keep and bear arms belongs to “the people.” The phrase “the right of the people” appears several other times in the Bill of Rights, including in the First and Fourth Amendments, and at no other point does it refer to anything other than an individual right

of private citizens. Finally, if the drafters of the Second Amendment had meant merely to clarify that the “power” of maintaining well-regulated militias belonged to the state governments, they certainly knew how to better distinguish between “the people” as individuals and the state governments as elected representatives of their people. Consider, for example, the Tenth Amendment: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

This textual understanding is cemented by a century of uninterrupted post-ratification legal scholarship showing a common consensus that the Second Amendment protects an individual right, as opposed to some collective right of states to maintain militias. From St. George Tucker’s “American Blackstone” to Jonathan Elliot’s record of debates from state ratification conventions, from James Bayard to William Rawle and Joseph Story, the right to keep and bear arms was unquestionably viewed as a right of the individual citizen, and not a prerogative of state governments or a collective right to be exercised only in the context of official militia service.

The Second Amendment today cannot be properly understood apart from its relationship to the Fourteenth Amendment, which was ratified in 1868. Prior to the Fourteenth Amendment, the Bill of Rights—including the Second Amendment—protected only against infringements by the federal government. The Founders presumed that state constitutions would sufficiently protect the natural rights of citizens against infringements by state governments. With respect to state protections of the right to keep and bear arms, this proved to be largely true. Overwhelmingly, state constitutions and state governments

respected a broad and—especially compared to modern gun control measures—virtually unrestricted right of individual citizens to possess and carry firearms.

A major motivation behind the Fourteenth Amendment was the stark reality that, in the aftermath of the Civil War, southern states simply refused to protect the fundamental rights and liberties of the newly freed slaves, including, specifically, their right to keep and bear arms. Many states in the former Confederacy passed overtly racist laws designed to keep former slaves disarmed and defenseless against private, state-sanctioned attempts to instill fear through violence, as well as to continue their submission. As Congress debated the Fourteenth Amendment and the various Reconstruction bills that preceded it, Senators and House Members routinely decried the widespread disarmament of freedmen in the South. The historical record could not be clearer that, at the time of the Fourteenth Amendment’s ratification, the public widely understood the right to keep and bear arms as individual in nature, centered on self-defense, and encompassed within the Fourteenth Amendment’s scope as a fundamental right of citizenship upon which states could no longer infringe.

“**Any person, white or black, may be disarmed, if convicted of making an improper and dangerous use of weapons; but no military or civil officer has the right or authority to disarm any class of people,** thereby placing them at the mercy of others. All men, without the distinction of color, have the right to keep arms to defend their homes, families or themselves.”⁴

—CIRCULAR OF BRIGADIER GENERAL DAVIS TILLSON,
Assistant Commissioner for Georgia during Reconstruction

History's Forgotten Well-Armed Women

“I do like to have guns around....[I]f somebody is going to come into my house and I have not put out the welcome mat, I want to stop them.”⁷

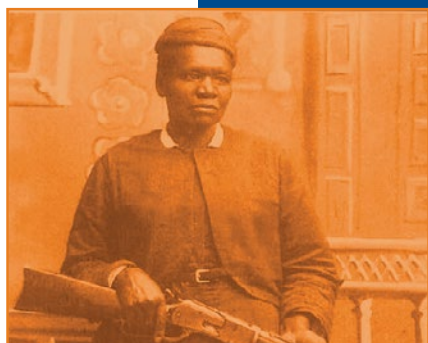
—MAYA ANGELOU



HARRIET TUBMAN, the famed leader of the Underground Railroad, is frequently depicted in drawings and photographs with a rifle in her hands. This is not without good reason—she was known to travel armed, particularly during her “conductor” days. Tubman’s guns were primarily for protection against slave catchers and their dogs, but she would also flash them to “passengers” who lost their nerve and wanted to turn around, potentially endangering the entire mission. Later, as a scout for the Union Army during the Civil War, Tubman became the first American woman to lead an armed military assault. Her expedition of 150 African-American soldiers successfully freed more than 750 slaves in the South Carolina Lowcountry.



ANNIE OAKLEY is perhaps the most renowned professional sharpshooter—man or woman—in American history, dazzling audiences around the world with her marksmanship. She was also passionate about teaching women how to shoot, and in between shows would hold free lessons for women and girls on how to use rifles, pistols, and shotguns for self-defense. Even after she retired from professional sharpshooting, she continued her free lessons, training as many as 15,000 women in the use of firearms before her death in 1926. She once explained her passion as based in a very simple desire—that women “be capable of protecting their homes” and “know how to handle guns as naturally as they know how to handle babies.”⁸



In 1895, **MARY FIELDS** became the first African-American woman hired by the United States Postal Service as a stagecoach mail carrier. Known as “Stagecoach Mary,” the 60-year-old quickly gained a reputation for her fearless dealings with the would-be mail bandits and wild animals of the Montana wilderness. She was known to carry multiple firearms with her on routes—including a .38 Smith & Wesson revolver tucked up under her apron.

The Racist Roots of Gun Control

“A Winchester rifle should have a place of honor in every black home, and it should be used for that protection which the law refuses to give.”⁵

—IDA B. WELLS

It is universally true that would-be criminals, oppressors, and tyrants prefer their targets to be disarmed, a principle underscored by the sordid and overtly racist history of gun control in the United States. Prior to the Fourteenth Amendment, most meaningful restrictions on the private possession or use of weapons were limited to slaves and other disfavored “non-citizens,” such as Native Americans.

Even after the Fourteenth Amendment’s ratification, many states implemented facially neutral gun control laws with a clear intent that they be stringently enforced in a discriminatory manner against disfavored populations like immigrants and African-Americans. Consider the words of a Florida Supreme Court Justice in a 1941 concurring opinion that analyzed a Reconstruction Era handgun licensing law:

The same condition existed when the Act was amended in 1901 and the Act was passed for the purpose of disarming the negro laborers....The statute was never intended to be applied to the white population and in practice has never been so applied. We have no statistics available, but it is a safe guess to assume that more than 80% of the white men living in rural sections of Florida have violated this statute...[but there has] never been, within my knowledge, any effort to enforce the provisions of this statute as to white people.⁶

While it may be the case that most modern gun control advocates harbor no racial animosity, the result of their policies is to disarm many minority Americans. The right to keep and bear arms for self-defense is uniquely important for non-white Americans, who have historically been targets of violent oppression, and even today are disproportionately victims of violent crime. For this reason, the practical protections of the Second Amendment are even more important.

The Well-Regulated Militia

“No free government was ever founded, or preserved its liberty, without uniting the characters of the citizen and the soldier in those destined for the defense of a free state...

such are a well-regulated militia, composed of the freeholders, citizens and husbandmen, who take up arms to preserve their property, as individuals, and their rights as freedmen.”⁹

—JOSIAH QUINCY II,
prominent spokesman for the Boston Sons of Liberty

If the Second Amendment protects an individual right of the people that shall not be infringed, who or what is the militia and how is it to be well-regulated?

The Founding generation understood that large standing armies were dangerous threats to liberty, especially when controlled by authoritarian governments who sought to disarm the general population. The militia system, with deep roots in English history, was one way of ensuring that the nation could defend itself against all threats, foreign and domestic. Instead of a large full-time professional army, the government could, when

needed, call upon the greater body of armed citizens to employ their personal firearms in the collective defense of the state or nation. A “well-regulated” militia simply meant that the processes for activating, training, and deploying the militia in official service should be efficient and orderly, and that the militia itself should be capable of competently executing battlefield operations.

While every individual who compromises the “people” of the United States has a right to keep and bear arms, as a practical and legal matter, not every member of the “people” is necessarily eligible for militia service. Nevertheless, the

broader right to keep and bear arms enables the maintenance of a well-regulated militia by ensuring that the body of citizens from whom the militia must be drawn is armed and experienced in the use of those arms. Moreover, the larger body of a people who are both numerous and armed stand as a check against any attempt by the government to form “select militias” or neglect the training or activating of the militia altogether.

Where is the militia today? Despite a common suggestion that the militia exists today only in the form of the National Guard, the modern militia exists today in the same place it did in 1791—in the body of the people trained to use firearms. Under federal law, the citizenry is divided into two subsets: the “organized militia,” composed of the National Guard, and the “unorganized militia,” composed of all able-bodied males between the ages of 17 and 45. Every state has statutes that, in a similar manner, either explicitly or implicitly divide its militia into an “organized” and “unorganized” component, with the unorganized militia being drawn far more broadly from the greater body of the people.

This is consistent with Federalist No. 29 (one of the 85 essays collectively known as The Federalist Papers that were published by Alexander Hamilton, James Madison, and John Jay advocating ratification of the Constitution),

in which Alexander Hamilton recognized the practical importance of forming a “select corps” of professionalized militia because “the project of disciplining all the militia of the United States is as futile as it would be injurious, if it were capable of being carried into execution.”¹⁰ The existence of this “select corps” would be the “best possible security against (a large standing army), should it exist,” because there would be “a large body of citizens, little, if at all, inferior (to the standing army) in discipline and the use of arms, who stand ready to defend their own rights and those of their fellow-citizens.”¹¹

And yet, Hamilton simultaneously recognized the importance of ensuring that the “people at large” are “properly armed and equipped,” in tandem with any professionalized corps of citizen-soldiers.¹² Indeed, Hamilton’s contemporary Richard Henry Lee repeatedly warned against the dangers of over-reliance on what we today call the organized militia, which “will ever produce an inattention to the general [unorganized] militia.”¹³ He aptly reminds us centuries later of the proper relationship between an armed people and the militia: “A militia, when properly formed, are in fact the people themselves....[T]o preserve liberty, it is essential that the whole body of the people always possess arms, and be taught alike, especially when young, how to use them.”¹⁴

What Types of Arms Are Protected?

At the time of ratification of the Second and Fourteenth Amendments, civilians routinely kept firearms in their own homes that could be used for a variety of lawful purposes at the same time, including hunting, personal defense, and community defense. In *District of Columbia v. Heller (2008)*, the Supreme Court stated that **types of arms protected by the Second Amendment are not limited to those in existence at the time the Amendment was ratified, but rather the Amendment protects all arms that are “typically possessed by law-**

abiding citizens for lawful purposes,” including (but not limited to) stunguns, handguns, and other semi-automatic firearms.¹⁵ Indeed, the history and tradition of the Second Amendment show that at the core of the Second Amendment’s protections lie versatile small arms that are useful for and commonly employed in both a civilian and a militia context. On the other hand, the Supreme Court has declared that certain types of “dangerous and unusual” firearms, such as short-barreled shotguns or machine guns, may be subject to more stringent regulation.

How Does an Armed People Secure a Free State?

The right to keep and bear arms is premised on self-defense. A well-armed citizenry secures a free state by protecting the nation and its individuals from three distinct threats: tyranny, foreign invasion, and domestic dangers such as crime and civil unrest.

“The right of the citizens to keep and bear arms has justly been considered, as the palladium of the liberties of a republic; since **it offers a strong moral check against the usurpation and arbitrary power of rulers;** and will generally, even if these are successful in the first instance, enable the people to resist and triumph over them.”¹⁶

—JOSEPH STORY,

Supreme Court Justice and acclaimed author of Commentaries on the Constitution of the United States

SECURING A FREE STATE AGAINST TYRANNY

A well-armed citizenry acts as a major check on the ability of would-be tyrants, enabling the people to forcibly resist oppression. In the United States, our constitutional system is premised on the theory that, in a truly free society, ultimate power lies with the people and not with the government. But should the government forget this basic principle, the people maintain the practical power that comes with being armed for their own defense. The threat of tyranny and oppression is very real, even today. In the 20th century alone, it is estimated that governments with a monopoly on the instruments of force slaughtered over 200 million largely unarmed and defenseless people.¹⁷

Of course, an armed citizenry is not the only defense against tyranny. Other aspects of our constitutional framework—like the separation of powers horizontally among three branches of

government and vertically between the federal and state governments—provide important safeguards against the consolidation of power by would-be autocrats. When the right to keep and bear arms is not protected, however, the people lack any meaningful failsafe against a government that simply chooses to ignore the rights they have on paper. Consider modern authoritarian governments like those in Venezuela or China, where the people have a plethora of rights “guaranteed” in their constitutions, but not in reality. Indeed, as one 19th century textbook aptly explained about the right to keep and bear arms: “This right is not allowed by governments that are afraid of the people.”¹⁸

What about the fact that the United States currently maintains a large, professional army equipped with tanks, artillery, and fighter jets? Does this not negate the usefulness of an armed civilian population or of the militia system, more broadly? Not at all! The Founders knew that the

answer to a large standing army is not to disarm the people, but to continue maintaining the entire militia as security against it. As Hamilton explained: “[I]f circumstances should at any time oblige the government to form an army of any magnitude, that army can never be formidable to the liberties of the people while there is a large body of citizens, little, if at all, inferior to them in discipline and the use of arms, who stand ready to defend their own rights and those of their fellow-citizens. This appears to me to be the only substitute that can be devised for a standing army, and the best possible security against it, if it should exist.”¹⁹ Moreover, even powerful modern standing armies are not always able to subdue determined opponents who possess little more than small arms.

SECURING A FREE STATE AGAINST FOREIGN INVASION

While the framers reasonably feared the internal threats posed by large, standing armies, a truly free and sovereign state must also be capable of defending itself and its people from external threats, including the threat of foreign invasion. Recent generations of Americans are blessed to live in a country where the “threat” of full-scale foreign invasion often seems limited to video games and Hollywood movies. But in the history of the world, longstanding periods of domestic peace are fragile anomalies. Many countries today face external threats. Although seemingly unlikely, it could happen to the U.S.

A well-armed citizenry is not only hard to oppress, but also difficult to conquer. Even with our nation’s modern and well-equipped professional military, the broader body of armed people (and the militia

system through which they may be called to the nation’s collective defense) is vital to both deterring and repelling any sudden foreign invasion.

Consider this analysis by several historians of the militia’s usefulness during the Revolution:

British naval dominance meant the British army could always move faster than the Continental Army and could attack anywhere near the coast. But the militia, comprised of most able-bodied adult males, could rise wherever the British deployed....The Americans could better afford losses in battle because a large fraction of the adult population was available to fight. Redcoats or German mercenaries imported from across the Atlantic were more difficult to replace. The British could capture cities on or near the coast...yet control of the vast interior proved impossible.²¹

While the militia likely could not have successfully defeated the British on its own without the existence of the professional Continental Army, it is equally true that the Continental Army, without the support of the militia, likely would not have been successful.

Nearly 250 years later, the continued importance of maintaining a “well-regulated militia” can be seen in the recent experience of the Ukrainian people in resisting a sudden invasion by Russia, which has one of the world’s largest armies. There is ample evidence that the widespread arming of Ukrainian citizens with small arms—forming them into a type of ad hoc militia operating in much the same way as the American militia during the Revolution—has been crucial to Ukraine’s continued resistance of the Russian

“A well-regulated militia, composed of the body of the people, trained to arms, is the **best and most natural defense of a free country.**”²⁰

—JAMES MADISON

invasion. Imagine if, instead of having to suddenly distribute tens of thousands of firearms to untrained civilians during an emergency situation, a significant percentage of the adult population already possessed small arms useful for militia service, knew how to use them, and had their own stockpiles of ammunition?

SECURING A FREE STATE AGAINST THREATS TO LAW AND ORDER

In a civil democratic society, citizens expect the government to maintain law and order and protect them from criminal threats. In a modern context, this usually means that governments employ large, professional police forces. However, under the natural law—and, as a matter of legal reality in the United States and most Western countries—citizens do not completely cede their right to

self-defense to the government. The Second Amendment ensures that, when the government cannot or will not be there in time to protect individual rights from criminal threats, private citizens have meaningful ways of fighting back and protecting themselves and their loved ones.

According to a 2013 report by the Centers for Disease Control and Prevention, almost every major study on the issue has found that Americans use their firearms defensively between 500,000 and 3 million times per year. More recently, data collected by the 2021 National Firearms Survey indicates an annual average of 1.6 million defensive gun uses.²³ The best, most comprehensive studies on crime victimization in the United States have also found that victims who forcefully resist

“Laws that forbid the carrying of arms...make things worse for the assaulted and better for the assailants; they serve rather to encourage than to prevent homicides, for **an unarmed man may be attacked with greater confidence than an armed man.**”²²

—THOMAS JEFFERSON,
quoting criminologist Cesare Beccaria

crimes are less likely to suffer serious injury or property loss than those who do not offer resistance.²⁴ This is true even when individuals face disadvantageous circumstances, such as being outnumbered or confronted by armed assailants.²⁵

Additionally, while state governments rarely call upon the unorganized militia to quell riots or enforce law and order during times of widespread civil unrest, armed citizens routinely band together during such times to collectively defend their communities.

Armed Revolution

Armed revolution can be **a political community's use of lethal force to collectively defend its members from an oppressive government.** Like acts of individual self-defense against criminals, acts of collective defense against tyranny must be guided by certain universally applicable principles, including necessity and proportionality. **Armed revolution is a last resort** warranted only under dire circumstances, **where a government's egregious and widespread abuses threaten to inflict serious harm on the natural rights of its citizens** and the normal democratic processes for addressing

these threats reasonably appear to be foreclosed. It is just as unwise and reckless to view armed revolution as a solution to every perceived injustice as it is to take a “shoot first, ask questions later” approach to individual self-defense. And, just as those who use lethal force against criminals must be capable of justifying their actions in criminal or civil court, those who would use guns against their government should remember that **their actions will be judged by both their contemporaries and by posterity—if not also in a court of law.**



The Second Amendment at the Supreme Court

The Supreme Court has been slow to build out a legal framework for analyzing the Second Amendment and did not undertake an in-depth review of a Second Amendment case until 2008. This is, in part, because the federal government (and most state governments) did not begin imposing widely applicable and restrictive gun control measures until the mid-1960s. However, while Supreme Court Second Amendment precedent is limited compared to other constitutional rights, it so far has been founded in a proper understanding of the Amendment's original meaning and purpose.

STAPLES V. UNITED STATES

Staples did not directly involve a Second Amendment question, but rather dealt with whether the government must prove that a defendant accused of illegally possessing an unlicensed machine gun knew that the weapon in his possession had characteristics that required it to be registered under the National Firearms Act. However, in its analysis, the Court affirmed that “there is a long tradition of widespread lawful gun ownership by private individuals in this country,” and that “despite their potential for harm, guns generally can be owned in perfect innocence.” Moreover, the Court stated that, unlike machine guns or the sawed-off shotguns at issue in *Miller*, semi-automatic rifles—like the AR-15 owned by *Staples*—“traditionally have been widely accepted as lawful possessions.”



UNITED STATES V. MILLER

The Court declined to hold that the Second Amendment protects a right to possess a short-barreled shotgun, finding insufficient evidence to show that such a firearm “has some reasonable relationship to the preservation or efficiency of a well regulated militia.” The Court determined that “it is not within judicial notice that this weapon is any part of the ordinary military equipment, or that its use could contribute to the common defense.” Notably, *Miller*’s attorney neither participated in oral argument nor filed a brief with the Court before it issued the opinion.

DISTRICT OF COLUMBIA V. HELLER

In this landmark decision, the Supreme Court for the first time addressed in depth the most important question about the Second Amendment’s nature: Does it protect an individual right of ordinary citizens to keep and bear their personal arms, or a collective right that exists only in connection to official service in a state militia? The Court determined that the Amendment’s text, history, and tradition clearly establish that the right to keep and bear arms is an individual right centered on self-defense, irrespective of militia service. As a result, the Court held that the District of Columbia could not prohibit ordinary residents from keeping handguns inside of their homes, because handguns were “typically possessed by law-abiding citizens for lawful purposes.”

MCDONALD V. CITY OF CHICAGO

In *McDonald*, the Court reaffirmed that the Second Amendment protects an individual right. It took this ruling one step further by holding that the right to keep and bear arms is “fundamental to our scheme of ordered liberty,” and, because of the Fourteenth Amendment, protects against infringements by state governments as well as by the federal government.

NEW YORK STATE RIFLE & PISTOL ASSOCIATION V. BRUEN

In *Bruen*, the Supreme Court held that the Second Amendment protects an individual right of ordinary citizens to carry handguns outside the home for self-defense, and struck down a New York law requiring concealed carry permit applicants to prove they had “proper cause” to defend themselves in public with firearms. The Court emphasized that, in Second Amendment cases, the government bears the burden of proving its challenged law is consistent with the nation’s historical tradition of firearm regulation.



Koreatown

The 1992 Los Angeles Riots engulfed the city in a days-long wave of uncontrolled looting and destruction. The city’s Koreatown neighborhood, home to many immigrant-owned small businesses, was among the communities hardest hit by the riots. Largely abandoned by local law enforcement, many Koreatown residents looked to their Second Amendment rights for protection, banding together in small armed groups to defend their livelihoods from further injury. Despite being wildly outnumbered, the armed residents of Koreatown proved themselves to be consistently capable of driving off looters. The “Rooftop Koreans” are perhaps the most widely recognized example of a community defending itself during civil unrest, but they are far from the only such example.

“Disarm a community and you rob them of the means of defending life. Take away their weapons of defense and you take away the inalienable right of defending liberty.”²⁶

—REPRESENTATIVE THADDEUS STEVENS,
primary author of the 14th Amendment

Did you know that in many cities, the average police response time to the highest priority emergency calls is still over 10 minutes?²⁷

HYUNGWON KANG/LOS ANGELES TIMES/GETTY IMAGES

Major Threats to the Second Amendment

“There is certainly no small danger that **indifference may lead to disgust, and disgust to contempt**; and thus gradually undermine all the protection intended by this clause of our national bill of rights.”²⁸

—JOSEPH STORY

The Second Amendment in some ways may be on safer footing today than it has been for several decades. Recent Supreme Court rulings have affirmed core aspects of the right’s nature and fundamental place in American society, and the majority of states are increasingly moving toward less restrictive policies on carrying firearms in public for self-defense. At the same time, however, the right to keep and bear arms is under constant attack by gun control advocates, with calls for its wholesale repeal becoming part of the mainstream national conversation on gun policy.

But calls for repeal of the Second Amendment and for more restrictive gun control legislation are not the only ways in which the Second Amendment is under attack today. Even as the Supreme Court appears more willing to take on Second Amendment cases and strike down patently unconstitutional restrictions on gun control, many lower state and federal courts have proven equally willing to undermine these rulings.

Equally concerning are more indirect methods of gun control, such as legislation that greatly hinders the practical ability of Americans to exercise their rights without directly restricting gun ownership. For example, excessive regulations can make it so difficult and expensive for gun

manufacturers and sellers to operate that many are simply forced out of business. Similarly, so-called “sin taxes” seek to artificially raise the prices of guns and ammunition in the hopes of “pricing out” ordinary Americans who would no longer be able to afford them.

While political attacks and a judiciary unwilling to treat the Second Amendment with respect are significant threats, perhaps the biggest threat comes from a lack of will amongst the people to understand and defend their own rights. As Joseph Story warned almost two centuries ago, “The friends of a free government cannot be too watchful, to overcome the dangerous tendency of the public mind to sacrifice, for the sake of mere private convenience, this powerful check upon the designs of ambitious men.”²⁹

Every new generation of Americans must decide for themselves that the right to keep and bear arms is a right worth preserving, both in theory and in practice. But when the people themselves undermine this right—whether by voluntarily surrendering their arms or by merely neglecting to widely train themselves in arms in the first place—they are, in effect, choosing to sacrifice the surest safeguard of their inalienable rights, leaving them vulnerable to attack.

Second Amendment Myths and Misinformation



FALSE CLAIM #1: THE RIGHT TO KEEP AND BEAR ARMS HAS ALWAYS BEEN HEAVILY REGULATED.

FACT: Restrictive gun control laws are a distinctly modern phenomenon in the United States. For the first century of American history, serious state-level regulation of individual gun ownership or usage was almost non-existent for law-abiding citizens. For example, despite oft-repeated claims to the contrary, nothing prohibited private citizens from owning cannons. In fact, private cannon ownership was apparently so common that one of the first types of arms restrictions imposed by some towns were ordinances restricting the times and locations where people could fire off those cannons inside town limits.³⁰ Similarly, because gunpowder at the time was very unstable and prone to easy ignition, a number of states and cities limited the amount of gunpowder that could be stored in private residences, hoping to reduce the risk of accidental explosions or fires in urban areas.³¹ But beyond these sorts of “time, place, and manner” regulations, the right to keep and bear arms was virtually unrestricted in most states until the end of the 19th century.

Restrictive gun control measures are an even more recent phenomenon at the federal level. The first major federal law regulating firearms was the National Firearms Act of 1934, which was relatively tame by today’s standards.³² It merely required that machine guns and certain types of “short-barreled” long guns be subjected to a special tax and be registered with the Secretary of the Treasury. The federal government did not even prohibit certain categories of individuals (such as felons) from possessing firearms until the Gun Control Act of 1968, and did not require licensed gun sellers to conduct background checks until the 1993 Brady Handgun Violence Prevention Act.³³



FALSE CLAIM #2: ARMED CIVILIANS STAND NO CHANCE AGAINST MODERN MILITARIES EQUIPPED WITH FIGHTER JETS AND TANKS, SO THE SECOND AMENDMENT NO LONGER SERVES A PURPOSE.

FACT: This claim misunderstands the importance of the protective role of federalism, in which each state already has well-trained and well-equipped organized militias of their own that can be mobilized and used in tandem with armed civilians. These National and State Guards are better equipped than the entire national militaries of many countries, with their own fighter jets, tanks, heavy artillery batteries, and special forces units. A handful of states even have their own naval militias. It is highly

likely that, should a tyrannical federal government attempt to impose its will with the might of the American military, these state-level military entities—acting under the direction of liberty-loving state governments—could be deployed as a meaningful countermeasure, just like the colonial governments mobilized existing militias against the British army during the American Revolution.

Likewise, in the case of sudden foreign invasion, armed civilians would not be expected to act on their own in some ad hoc or unorganized fashion. Just like the colonial militias worked together with the professional soldiers of the Continental Army, armed civilians and their private weapons would, during any modern invasion, be integrated into the nation’s existing military structure and mobilized according to a coherent national or state defense strategy.

Beyond this, the right to keep and bear arms continues, of course, to protect countless Americans in their everyday lives against far more common threats to life and liberty.



FALSE CLAIM #3: THE FOUNDERS HAD LITTLE UNDERSTANDING OF HOW FIREARM TECHNOLOGY WOULD DEVELOP AND WOULD BE HORRIFIED TO SEE MODERN “ASSAULT WEAPONS” IN CIVILIAN HANDS.

FACT: This common assertion assumes that modern guns have a fundamentally different nature than weapons that were available in 1791 when the Second Amendment was ratified and 1868 when the Fourteenth Amendment was ratified. In reality, small arms have changed very little, especially when compared to other advances in technology. The Founders would likely be far more dumbfounded by the internet or smart phones—and their implications for the First and Fourth Amendments—than they would by guns that merely fire projectiles at a faster rate without having to reload them as often. Indeed, by 1791, the idea of rapidly firing dozens of bullets in quick succession or even at the same time was already well developed. By the time the Second Amendment was ratified, repeating rifles capable of firing more than 10 rounds in rapid succession had been around for centuries. By the time of the Fourteenth Amendment, their possession and use by ordinary Americans was very common.³⁴ If anything, modern firearms are much “safer” than 18th and 19th century firearms because they are far less prone to accidental discharges or misfires that injure the shooter.

But, most importantly, this is simply not how we understand constitutional rights. Just like the Constitution protects the broad concept of “speech” instead of particular modes of speech, it protects “arms” as a general concept of weaponry. The idea was not to protect a specific type of weapon, like a musket, any more than the idea of the First Amendment was to protect a specific mode of speech, like a quill pen or printing press. That is in large part because the Framers of our Constitution and the people who ratified it knew that while technology and circumstances would undoubtedly change in unanticipated ways, these broader concepts of self-defense and free speech would remain vital to a free society.

Resources to Learn More

Guns Kill People, and Tyrants with Gun Monopolies Kill the Most

Independence Institute; Denver University
By: David B. Kopel

The American Tradition of Self-Made Arms

The Heartland Institute; Firearms Policy Coalition; Millennial Policy Center
By: Joseph Greenlee

Negroes with Guns

Marzani & Munsell | 1962
By: Robert F. Williams

Defensive Gun Use Database

www.heritage.org/DGU

HERITAGE PUBLICATIONS

Part I: Mental Illness, Firearms, and Violence

Legal Memorandum # 239 | January 31, 2019
By: John Malcolm & Amy Swearer

Part II: The Consequences of Deinstitutionalizing the Seriously Mentally Ill

Legal Memo # 240 | February 5, 2019
By: John G. Malcolm & Amy Swearer

Part III: The Current State of Laws Regarding Mental Illness and Guns

Legal Memo # 241 | February 13, 2019
By: John G. Malcolm & Amy Swearer

What Economists Can't Tell You About the Cost of Gun Violence

Testimony | August 8, 2022
By: Amy Swearer



TO READ THESE AND LEARN MORE,
SCAN HERE.

Endnotes

- 1 William Blackstone, Commentaries (St. George Tucker Ed., Lawbook Exchange, Ltd. 1996) (1803).
- 2 William Blackstone, Commentaries, 139 (1765)
- 3 Thomas Cooley, General Principles Of Constitutional Law 281-82 (2d Ed. 1891)
- 4 Circular No. 5 Of Brig. Gen. Davis Tillson, Acting Ass't Comm'r Georgia Bureau Of Refugees, Freeman, And Abandoned Lands (Dec. 22, 1865), Reprinted In U.S. Government Printing Office, 1256 United States Congressional Serial Set Ex. Doc. No. 70, At 65 (1866).
- 5 Ida B. Wells, Southern Horrors: Lynch Laws In All Its Phases (1892)
- 6 *Watson V. Stone*, 148 Fla. 516 (Fla. 1941) (Buford, J., Concurring).
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- 8 Laura Crowder, Her Best Shot: Women And Guns In America (2009).
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- 10 The Federalist No. 29 (Hamilton), https://avalon.law.yale.edu/18th_century/Fed29.Asp.
- 11 Id.
- 12 Id.
- 13 Federal Farmer No. 23 (Lee), <https://teachingamericanhistory.org/document/federal-farmer-xviii/>
- 14 Federal Farmer No. 23 (Lee), <https://teachingamericanhistory.org/document/federal-farmer-xviii/>
- 15 554 U.S. 570 (2008). See also *Caetano v. Massachusetts*, 577 U.S. 411 (2016)
- 16 Joseph Story, A Familiar Exposition Of The Constitution Of The United States 264-65 (1842)
- 17 David B. Kopel, Guns Kill People, And Tyrants With Gun Monopolies Kill The Most, 24 Gonzaga J. Of Int'l L. (Forthcoming 2022), https://papers.ssrn.com/Sol3/Papers.cfm?Abstract_id=3942071.
- 18 George A. Mocsary, Nicholas James Johnson & Clayton E. Cramer, 'This Right Is Not Allowed By Governments That Are Afraid Of The People': The Public Meaning Of The Second Amendment When The Fourteenth Amendment Was Ratified, U. Wy. College Of L. Faculty Article 16 (Oct. 21, 2009), https://scholarship.law.uwyo.edu/Cgi/Viewcontent.cgi?Article=1015&Context=Faculty_articles.
- 19 The Federalist No. 29 (Hamilton).
- 20 James Madison, I Annals Of Congress 434 (June 8, 1789)
- 21 Nicholas J. Johnson Et Al., Firearms Law And The Second Amendment: Regulation, Rights, And Policy 282 (2nd Ed. 2018).
- 22 Thomas Jefferson, The Commonplace Book Of Thomas Jefferson, A Repository Of His Ideas On Government 314 (Ed. Gilbert Chinard 1926).
- 23 William English, 2021 National Firearms Survey, GEORGETOWN MCDONOUGH SCHOOL OF BUSINESS RESEARCH PAPER No. 3887145 (Last Updated July 13, 2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3887145#.
- 24 See, e.g., Gary Kleck & Jongyeon Tark, Resisting Crime: The Effects Of Victim Action On The Outcomes Of Crimes, 42 Criminology 861 (2004); Stephen M. Schnebly, An Examination Of The Impact Of Victim, Offender, And Situational Attributes On The Deterrent Effect Of Defensive Gun Use: A Research Note, 19 Justice Quarterly 377 (2002); Lawrence Southwick Jr., Self-Defense With Guns: The Consequences, 28 J. Crim. Justice 351 (2000). Studies With Contrary Findings Universally Rely On Irrelevant Tests And Fail To Control For Key Confounders That Consistently Bias Results Against The Effectiveness Of Armed Resistance. See Gary Kleck, How Hemenway And Solnick Distorted The Effectiveness Of Defensive Gun Use (Aug. 29, 2020), https://papers.ssrn.com/Sol3/Papers.cfm?Abstract_id=3659333.
- 25 Gary Kleck & Jongyeon Tark, Resisting Crime: The Effects Of Victim Action On The Outcomes Of Crimes, 42 Criminology 861, 897 (2004).
- 26 Representative Thaddeus Stevens, Speech Before Congress: State Governments Republic In Form

(March 18, 1686) Reprinted In The Selected Papers Of Thaddeus Stevens, Vol. 2: April 1865–August 1868 (Beverly Wilson Palmer & Holly Byers Ochoa Eds., 1998).[Needs Cite.]

27 See, e.g., SLCPD Released Response Time Data for January 2022, Salt Lake City Police Department (Feb. 1, 2022), <http://www.slcpd.com/2022/02/01/slcpd-releases-response-time-data-for-january-2022/>; Colton Stone, ABQ 4WARD: Examining APD’s Response Times (Updated Aug. 11, 2021 10:22 PM), <https://www.kob.com/albuquerque-news/abq-4ward-examining-apds-response-times/6204745/>; See, e.g., Tami Abdollah & Aleszu Bajak, Detroit’s Black Residents Seek More Police Presence Yet Often See Slower 911 Response, USA Today (Updated 2:08 p.m. ET July 26, 2021), <https://www.usatoday.com/story/news/2021/07/26/black-detroit-residents-want-more-police-slower-911-response/8058968002/>; Andrew Rogers, Colorado Springs Police Response Times Up Nearly A Minute In 2021, KRDO News (Aug. 17, 2021), <https://krdo.com/news/2021/08/17/colorado-springs-police-response-times-up-nearly-a-minute-in-2021/>

28 Joseph Story, Commentaries On The Constitution Of The United States 747 (Fred B. Rothman & Co. 1991).

29 Joseph Story, A Familiar Exposition Of The Constitution Of The United States 264 (1842)

30 See, e.g., 1832 N.h. Laws 73–74, An Act To Establish A System Of Police In The Town Of Portsmouth, And For Other Purposes, Ch. 34, § 4; Act Incorporating The City Of Cincinnati, And The Ordinances Of Said City Now In Force (1832) (Prohibiting Any Person On A Boat In The Ohio River From Firing A Cannon Toward Cincinnati While Passing The City); The Revised Charter And Ordinances Of The City Of Detroit § 9 (1848).

31 See, e.g., “An Act for the better securing the city of Philadelphia and liberties from danger of gunpowder,” Act of Dec. 6, 1783, chap. 1059, 11 Pa. Stat. 209 (Sections I & II); “An Act to Prevent the Danger Arising from the Pernicious Practice of Lodging Gun Powder in Dwelling Houses, Stores, or Other Places Within Certain Parts of the City of New York, 1784 N.Y. Laws 627; “An Act to Prevent the Keeping of Large Quantities of Gun-Powder in Private Houses in Portsmouth,” 1793 N.H. Laws 464-65.

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Endorsements



The American Constitutional Rights Union (ACRU) is dedicated to defending the constitutional rights of all Americans.



The DC Project-Women for Gun Rights is a nationwide, non-partisan organization of women dedicated to safeguarding the 2nd Amendment.



A Girl & A Gun is a membership organization that provides training in self-defense and pistol, rifle, and shotgun shooting sports for thousands of women nationwide.



Applying independent thinking to issues that matter, the Independent Institute’s in-depth research creates transformational ideas to advance peaceful, prosperous and free societies grounded in a commitment to human dignity.



The mission of the Independence Institute is to empower individuals and to educate citizens, legislators and opinion makers about public policies that enhance personal and economic freedom.



Independent Women’s Forum is an educational 501(c)(3) dedicated to developing and advancing policies that aren’t just well intended, but actually enhance freedom, opportunities, and well-being.



Independent Women’s Law Center advocates for equal opportunity, individual liberty, and respect for the American constitutional order.



JPFO seeks to destroy so-called “gun control” (code words for disarming innocent people), exposing misguided notions that lead people to seek so-called “gun control,” and we encourage Americans to understand and defend all the Bill of Rights for all citizens.



The John Locke Foundation employs research, journalism, and outreach programs to transform government in North Carolina through competition, innovation, personal freedom, and personal responsibility.



The John K. Maclver Institute for Public Policy is a Wisconsin-based think tank that promotes free markets, individual freedom, personal responsibility and limited government.



Operation Blazing Sword is a grassroots charity dedicated to helping everyone become responsible firearm owners by matching people who are considering a firearm for armed self-defense, but don't feel comfortable going to a shooting range or a gun store by themselves, with volunteer educators who will teach them the basics of firearm safety, operation and ownership for no cost and without judging them on their race, gender, sexual orientation, biology, or manner of dress.



The Pink Pistols is an international organization dedicated to the self defense of the sexual-minority community by advocating the legal, safe, and responsible use of firearms as our primary self-defense tool, by championing diligent and continuing education on the legality of defensive force, and by constantly augmenting our skills through practice and study, because armed queer people don't get bashed.



The Rio Grande Foundation works to increase liberty and prosperity for all of New Mexico by informing citizens of the importance of individual freedom, limited government, and economic opportunity.



The Texas Public Policy Foundation works tirelessly to make Texas and America the freest places on Earth.