

The Right of the People to Keep and Bear Arms

By DQ

It's safe to say that I have been shooting firearms for most of my life. My introduction to "the right to keep and bear arms" came when I was eight-years-old and accidentally shot my grandfather in the arm with my BB-gun. I narrowly avoided death by strangulation as my grandmother stepped in to quell the old man's rage. Nevertheless, it was apparent to everyone, including myself, that if I were to be allowed to continue to keep and use any firearms, I would need to become well versed in their safe handling.

When I was 13 my father signed me up for the NRA's Hunter Safety Course. It was during that time that I learned to respect the deadly potential of firearm misuse. I was taught how to operate my rifle and was drilled incessantly in the safe handling and care for my weapon. At that young age I learned to be responsible and accountable for my actions in regards to the use of firearms. Those lessons have stayed with me to this day.

For a few years, I competed in rifle competitions with my trusty twenty-two-caliber Remington, but after high school I didn't have the opportunity to shoot again for many years. Today, I visit my local range almost weekly. I enjoy being outdoors and focusing my mind and energy. I also enjoy refining my technique and improving my accuracy.

“ I intend to show that the Second Amendment provides all citizens the right to own and use firearms for the purpose of protecting oneself, one's family and one's property.”

In this essay, I intend to show that the Second Amendment provides all citizens the right to own and use firearms for the purpose of protecting oneself, one's family and one's property. Further, that the Second Amendment provides for a "well regulated militia"¹ to serve as a check to government tyranny and for other lawful purposes.

The Second Amendment

Everyone has their own idea of whether or not guns should be allowed into the hands of us common folk. Of course, the discussion can be traced to the history of our America and in the historic documents drafted by the founding fathers. The Second Amendment states: *“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.”*

The interpretation of this amendment has been debated, contested and legally challenged for over two and a quarter centuries and yet it remains intact—testimony, I think, to the sanctity and integrity of the original document. Supreme Court Justices have weighed in on the Second Amendment and my opinions are certainly not comparable to theirs. After all, the thoughts and words of the Supreme Court ultimately explain or expand our understanding of laws and, at times, create new laws. My words have no such import. But I do have my own views of how one must interpret the Second Amendment, which are rooted in the context of the original historical milieu as well as in the phraseology of the amendment itself. This statement of belief will take the reader on a brief journey through the past to look at the historical and social context and the interpretation of the Second Amendment as regards the right of the people to keep and bear arms.

“*I consider the ownership and use of firearms as a personal right, guaranteed by the Constitution of the United States.”*

I consider the ownership and use of firearms as a personal right, guaranteed by the Constitution of the United States. I do understand that this is a complex and controversial issue and with that in mind, I have done my due

diligence—as would any good student—to study the historical, legal, semantic and cultural issues.

The fact that people own firearms is not relevant to “the right of the people to keep and bear arms.” What is relevant is a correct understanding of what our forefathers intended when they penned the phrase into the Bill of Rights, specifically the Second Amendment. In other words, any belief on this issue must be based on the proper interpretation of the Second Amendment to the United

States Constitution.

Problems in Interpreting the Constitution

I am one of those people who believe that each statement written in history has only one meaning and therefore only one correct interpretation. There may be many misinterpretations, but only one interpretation as to the clear intent of the author. There may be many lessons or applications drawn from the text, but only one meaning. I think it's safe to say that the words of the Constitution and Bill of Rights were written in such a way as to be understood by citizen-voters. Thus, it is likely the meaning of the text was intended to be unambiguous.

As with interpreting any piece of ancient literature, one must endeavor to look into the historical and social context to understand the background of the author. One must also look to the text itself, for the plain, clear meaning of the words (unless there is some reason to suspect a figurative or idiomatic meaning). And, one must examine other documents of the time to look for similar uses of words and phrases and their meanings.

The enormity of the occasion of crafting our nation's Constitution and amendments required *numerous* individuals to participate in the writing and editing process. Because the specific wording of the Second Amendment (as with all of the amendments) was considered controversial, the original text was debated, redacted, and processed through several drafts before ratification. As a result, modern readers of the Bill of Rights have had greater difficulty ferreting out the intent of the document. By the time it was ratified, it was unclear how much of the text was a compromise to competing interests or was worded in such a way to assuage dissenters of the first drafts. Nevertheless, the final (ratified) version would have been understandable to those in the founding era.

The Constitution

The United States Constitution is, arguably, the most powerful vision of freedom ever expressed in a document of governing principles. In the preamble its purpose is clearly stated:

“*The United States Constitution is, arguably, the most powerful vision of freedom ever expressed in a document of governing principles.*”

“We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.”

What was revolutionary then, and continues to be to this day, is that the process for developing the Constitution provided citizens the opportunity to form their own system of government, effectively putting governance in the hands of the people. And, while the final document provided for a strong, cohesive central government, there were ample checks and balances written into the Bill of Rights to insure individual, as well as state-level, rights and freedoms.

Shedding the Crown

The Constitution emerged from the ashes of the Revolutionary War and the ideals that led patriots to fight it. The typical colonist living in America in the 1700s was an English citizen and had therefore previously only lived under a system of monarchy. For generations, their sojourn in America had provided colonists a newfound *freedom* and a sense of boundless *opportunity*: *Freedom* because they were ruled by a government that was 3,000 miles away and *opportunity* because no matter what their station in life, they could own their own land, which was almost unheard of for a citizen of England at the time.

The series of events that led to revolt began shortly after the ending of the French and Indian War (i.e., Seven Years' War) in 1763. At that time, the British government tried to reduce the enormous debt incurred during the war by collecting additional taxes from English citizens and gaining more control over

the American Colonies. For generations the colonists in America had not known taxes, but with the subsequent Stamp Act (1765) and the Tea Tax (1773), and with further settlement of America being denied by the British government, there existed plenty of fuel for revolt against the Crown.

King George III sent troops into the most rebellious colonies (e.g., Massachusetts) to disarm the colonists. This provoked uproar from the Americans who invoked their *pre-existing rights as Englishmen to keep and bear arms*. These American Colonists referred to a passage well known to English citizens: “That the Subjects which are Protestants may have Arms for their Defence suitable to their Conditions and as allowed by Law” (English Bill of Rights, 1689).² This not only was the precedent for English citizens to claim a right to keep arms, but also to use them in their own defense. Note that there was no linking of the right to keep arms with their use in the service of a militia. This clearly shows that the English right to keep and bear arms was an individual right that was separate from a requirement to keep and bear arms for required service in a militia. This precedent set in England became an important part of the context for the eventual framers of the Second Amendment.

“*A corrupt government doesn’t need to ban militias since it’s more effective to simply disarm the people.*”

The first shots of the Revolution were fired in Lexington on April 19, 1775 as the British army sought to bring order to the wayward Colony by attempting to confiscate their arms. Obviously, the King knew that the easiest way

to control the colonies was to remove their ability to defend themselves. Commandeering arms has for centuries served as an efficient method for governments to exert control over the people. A corrupt government doesn’t need to ban militias since it’s more effective to simply disarm the people.

A Bill of Goods

While the Constitution (ratification completed on May 29, 1790 when the final colony representatives signed) served the need of creating a centralized form of government, many felt the Constitution gave the government too much power. The Bill of Rights (ratified December 15, 1791) was meant to insure individual freedoms while also preventing the over-reach of the government. The Bill of

Rights is composed of the first 10 amendments to the Constitution of the United States and was crafted to address objections to the Constitution raised by Anti-Federalists, who held a traditional belief in the importance of restraining government power (Cornell, 2006).

The eight-year-long Revolutionary War left an indelible impression in the hearts and minds of those who would draft and sign the Constitution, as well as all those who would ratify and enact it. The newly independent nation—as passionately pointed out by Anti-Federalists—had reason to fear any type of government that had the same level of control and potential for tyranny as a monarchy. What was especially disturbing to them was that the president’s vast new powers granted by the Constitution included being able to overturn decisions by the people’s representatives in the legislature. The Congress, too, was granted great power, including the ability to command the militias, which underscored the need—said Anti-Federalists—to establish and confirm individual rights. Therefore, the First Amendment to the Constitution articulated the concepts of individual freedoms and rights, as well as placed limitations on the power of the government. The First Amendment declares: *“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”*

Freedom of religion, speech and the press, and the rights of people to peaceably assemble and petition the Government for a redress of grievances, applied to *all* people. Each *right* represented entitlements that were to be established and/or enforced by the government on behalf of all the people. Each *freedom* represented the right of *all the people* to engage in certain pursuits without undue restrictions by the government.

Interpreting the Second Amendment

As with the First Amendment, the Second Amendment was intended to assure individual rights while limiting the potential for government abuse. When examining the plain text of the Second Amendment, the specific phraseology helps to interpret its meaning. The Second Amendment has been divided into two parts: its *prefatory clause* and its *operative clause* (as noted and implemented in the Opinion of the Court, D.O.C. et al. v. Heller, 2008).

The prefatory clause serves as an introduction and announces the purpose of the Amendment: "Because a well regulated Militia is necessary to the security of a free State..." The prefatory clause announced the purpose for which the operative clause was codified: A militia is a natural adjunct to liberty; therefore, a free nation would require a militia.

The operative clause pronounces a judgment, solution, or command: "...the right of the people to keep and bear arms shall not be infringed." The operative clause of the Second Amendment was the key to insuring that a militia was always in existence, because it would insure that the right of the people to keep and bear arms was never infringed. The operative clause clearly indicates that keeping and bearing arms is a right that is guaranteed to all people, both corporately and individually.

As a parallel, the "right of the people peaceably to assemble" cannot be understood as a collective right, without also accepting it as an individual right. The freedom of the press delimits to journalistic disciplines, and yet the result was intended to benefit all people. And, even though the phrase "the people" was not used to reference freedom of religion, one cannot view this as a collective freedom without understanding that, by necessity, freedom of religion must also apply to all individuals.

In the same manner, the Second Amendment references "the people," without delimiting the right solely to "the militia." The right to keep and bear arms belonged to all the people. This interpretation makes the most sense in the light of the history and experience of our founders. They had suffered, both in England and in America, the consequences of a monarchy that attempted to control its population by disarming them. [It should be noted that the Supreme Court confirmed this interpretation in 2008 (*D.O.C. et al. v. Heller*), in its "first in-depth examination of the Second Amendment."]

There is a difference between the phrases, "to keep," and "to bear." The common meaning of the verb "to keep" would be to possess, own, or care for. The phrase, "to bear" would mean to carry and to use. Thus, to "keep arms" was simply a common way of referring to possessing, owning, or otherwise keeping custody of arms. The term "to bear arms" plainly referred to the use of weapons for offensive or defensive actions and any other lawful pursuits (e.g., target shooting, hunting).

“*While it is tempting to assert that the Second Amendment protects only those arms available in the 18th century, it would clearly be a mistaken notion.*”

The term “arms” was intended then, as it is today, to refer to “weapons of offense or armor of defense” (Johnson, 1790). These “arms” could include firearms, knives or bows and arrows, among others, but were most often lawful weapons that citizens possessed at home, which would normally be

brought into militia duty.

While it is tempting to assert that the Second Amendment protects only those arms available in the 18th century, it would clearly be a mistaken notion. For example, the First Amendment currently protects freedom of speech within the context of the *Internet* (*Reno v. American Civil Liberties Union*, 1997) and the Fourth Amendment protects against unreasonable search and seizure, including from such modern technologies as *thermal imaging* (*Kyllo v. United States*, 2001). The fact that neither of these technologies existed at the time the Constitution was written, clearly demonstrates that our judicial system understands the need to expand the context of the amendments to facilitate a modern implementation. In like manner, the Second Amendment extends to modern bearable arms, even those that were not available at the time of the founding of our nation. This does not mean that there should be no limitations on the types of arms that can be possessed by civilians (as indicated in *D.O.C., et al. v. Heller*), but as of yet the Supreme Court has not addressed the specifics of this issue.

When one considers the Second Amendment in light of the times in which it was written, it seems self-evident that the Second Amendment was meant to codify a pre-existing right, not to create a new one. Proponents on both sides of this debate will agree that the right to keep and bear arms should be understood as a “natural right” that preceded the founding era. Whether in England, Spain, France or elsewhere, the right to keep and bear arms was nearly universal. Thus, the Second Amendment was insuring nothing less than the pre-existing right to keep and bear arms “shall not be infringed.”

A Well Regulated Militia

The biggest point of contention with the interpretation of the Second Amendment is whether or not the phrase “to keep and bear arms” should be interpreted as referring *solely* to the use of arms in the capacity of militia service. In America, the militia served a broad function and was an integral part of the overall operations and peacekeeping in the colonies (Cornell, 2006). The militia had many purposes: to preserve public order (i.e., as a police force), to protect Americans from internal and external threats (e.g., attacks by Indians), to suppress rebellions (e.g., slave rebellions), and to quell unruly mobs and riots. Citizens were obligated to arm themselves with a musket and be ready to muster at regular intervals and subsequently defend their community and state. Failure to appear at muster with properly maintained weapon could result in stiff penalties (Ibid).

The militia was not made up of professional soldiers. They were individual citizens who owned their own weapons. Most colonists understood the value of being armed and, as noted previously, there was a precedent in British law that gave them the right to keep and bear arms for self-protection and distinguished that right from the civic responsibility to bear arms for the common good. In other words, just because they used arms for the common good, did not negate the right of the citizen to bear arms for individual protection and recreational use.

By far the most crucial purpose for militias in the eyes of the colonists was to prevent despotism, which is a characteristic of any corrupt government. Excess governmental control, which in the past had threatened both state and individual liberties, was part of the rationale for colonies to insist on fielding a militia. Any standing armies garrisoned among the people were considered inconsistent with liberty. Though dubious as a peacekeeper, a militia was always preferable to a standing army. Ironically, one of the first legislative actions by Congress after ratification of the Declaration of Independence was to institute a standing army. The Continental Army was established by resolution of the Congress on June 14, 1775. No doubt, the budding Republic, facing one of the largest world powers in an all out war, felt it could no longer rely on a largely untrained, civilian force (militia) as the nation’s primary means of defense. To maintain liberty in the face of a cruel and oppressive government, they would need to enlist and pay soldiers to become a well-trained and well-equipped standing army.

Nevertheless, even after establishing the Continental Army, militias were still

considered important. During the Revolution, militias sprung up throughout the colonies as supplemental military forces, culled from the non-military civil population. Although the Continental Army was disbanded on November 3, 1783 after the Treaty of Paris ended the war, the United States Army was established on June 3, 1784 to succeed it. The Constitution confirmed the need for *both* a standing army and a militia and made lasting provisions for each (United States Constitution Article I, Section 8 and Article II, Section 2).

The Militia Act of 1903 (n.d.) split the militia into two branches: the *organized militia*, which was composed of the National Guard of the states and Naval Militia, and the *unorganized militia*, which was composed of the Reserve Militia (i.e., every able-bodied man between 17 and 45 years of age, not already a member of the National Guard or Naval Militia). The unorganized militia has never been thoroughly administered, though there are a number of private organizations in the United States claiming to be “unorganized militias” or “constitutional militias” (e.g., Arizona Border Recon, 3 Percenters, Texas Lightfoot Militia, etc.).

Today, each state has two mandatory forces: the *Army National Guard* and the *Air National Guard*. Many states also have a *Naval Militia*, which assists, supports, and augments National Guard forces.

The National Guard of a state should be under control of the state governor in time of peace, but often you will see the National Guard as a “federalized” entity, which means the President or Congress calls up the Guard for federal duty. Guard members may be paid by the state, but when federalized are paid by the federal government. This is the reason you will often see state governors ask for a declaration of a State of Emergency. In this case, the federal government will pick up the considerable price tag of fielding a militia in the event of natural or human-made disaster, during a period of civil unrest, or following a declaration of war, or a situation of international/internal armed conflict.

The *National Guard of the United States* is different from the National Guard of the states and is made up of the reserve components of all the United States Armed Forces. That includes Army, Navy, Marine, Coast Guard, and Air Force Reserve components, which are not under state control, but are solely funded and controlled by the federal government. Unlike the state Guard, the reserve forces, with the exception of the Coast Guard, are restricted from civilian law

enforcement operations.

In my opinion, today's "unorganized militia," is largely a non-entity, either because the states don't want to pay for oversight and operations, or because the Executive or Legislative branches of the government have largely usurped

“Unfortunately, relinquishing control of militias to the Executive Branch is also ceding the very power that the Bill of Rights attempted to prevent.”

control. Unfortunately, relinquishing control of militias to the Executive Branch is also ceding the very power that the Bill of Rights attempted to prevent.

One could easily make the argument that an unorganized militia is unnecessary. After all, the standing army of the United States is currently the most powerful in the world, which should be sufficient to prevent external and internal aggression. Further, if the government were to conscript (federalize) the National Guard of the states and add the National Guard of the United States to the mix, it would possess an overwhelming strength of force. For that reason, no state or unorganized militia could hope to successfully face and defeat such a power. Thus, it is doubtful that sufficient military strength could be brought to bear by a “home grown” militia.

Nevertheless, we should bear in mind that, though America has been the sole world power for quite some time, there is no guarantee it will always remain so. At some time in the future, should the government fail to enforce the rights and protect the freedoms of the people, whether by intent, by default, or by collapse, the states should still retain the ability to enforce law and protect citizens through a well regulated militia. This would require the states to maintain control of their militias and would also require the right of the people to keep and bear arms. One need only look at the former Soviet Union, Lebanon, Iraq, or Somalia to understand the dangerous potential of corrupt and/or poverty-stricken governments.

“If you think the people should relinquish all control to the central government because they are benevolent and represent the “good guys,” then you haven’t paid much attention to history.”

If the concept of individual freedom was integral to the First Amendment, the Second Amendment surely rated second in importance because it gave the citizens the wherewithal to insure the keeping of the First Amendment. I think it would be unwise to relinquish the state’s

right to a militia. Our forefathers made sure that the Constitution established both a standing army and a militia. The framers of the Constitution insured the viability of the militia only after much experience with the consequences of government corruption and tyranny. Though the current generations living in the United States have never lived under a monarchy as did our forebears, we would do well to remember the lessons of government corruption. If you think the people should relinquish all control to the central government because they are benevolent and represent the “good guys,” then you haven’t paid much attention to history.

Conclusion

The right to keep and bear arms is necessary to insure and equip a “well-regulated militia” and for the purpose of defending one’s self, family and property. Our right to defend ourselves, especially in light of increased lawlessness in various parts of the country, should be readily understood. As the saying goes: “When seconds count, police are just minutes away.”

By the same token, a casual glance across the world will show that militias are at work in many nations. Some militias are formed to fight against corrupt governments and/or other forms of tyranny. Others, like certain militant militia groups (e.g., Al-Queda, ISIS, Al-Shabaab, etc.) are causing havoc as they try to establish their own brand of law. This points out the potential for anarchy if a militia is not well regulated. This is one of the reasons each state in the U.S. should become more involved in the planning and implementation of state militias. Militias should be available to implement, retain, or reestablish liberty as set forth by our forebears.

The Constitution and Bill of Rights, as codified by our political ancestors, has set

forth our right to keep and bear arms and has provided for a militia to serve and protect our communities and states when necessary. These are rights and responsibilities that should not be forfeit.

References Cited

Cornell, S. (2006). *A well-regulated militia: the Founding Fathers and the origins of gun control in America*. Oxford: Oxford University Press.

English Bill of Rights (1689). Avalon Project. Retrieved May 7, 2017. http://avalon.law.yale.edu/17th_century/england.asp

District of Columbia v. Heller, No. 554 U.S. 570 (2008). Retrieved May 7, 2017, <https://supreme.justia.com/cases/federal/us/554/07-290/index.pdf>

Johnson, S. (1790). *A dictionary of the English language; in which the words are deduced from their originals, explained in their different meanings, and authorized by the names of the writers in whose works they are found* (6th ed., Vol. 1). London: Printed for J.F. and C. Rivington, etc. <https://archive.org/details/dictionaryofengl01johnuoft>

Kyllo v. United States, No. 533 US 27, 121 (2001). Retrieved Online: https://scholar.google.com/scholar_case?case=15840045591115721227&q=Kyllo+v.+United+States&hl=en&as_sdt=2006&as_vis=1

Militia Act of 1903. (n.d.). In *Wikipedia*. Retrieved May 7, 2017 from https://en.wikipedia.org/wiki/Militia_Act_of_1903

Reno, No. 521 US 844, 117 (1997). Retrieved Online: https://scholar.google.com/scholar_case?case=1557224836887427725&q=Reno+v.+American+Civil+Liberties+Union&hl=en&as_sdt=2006&as_vis=1

About the Author

David P. Diaz, Ed.D. is an author, retired college professor, and the publisher and owner of Things I Believe Project. His writings have spanned the gamut from peer-reviewed technical articles to his memoir, which won the 2006 American Book Award. Dr. Diaz holds Bachelor and Master of Science degrees from California Polytechnic State University and a doctoral degree in education from Nova Southeastern University.

Footnotes