

The Right to Keep and Bear Arms: The History and Meaning of the 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” (US Const. amend. II). With these words, the Second Amendment conveys an important right. By researching the history and meaning of the Second Amendment of the U.S. Constitution, I discovered that the Founding Fathers grasped the importance of the right to keep and bear arms to the preservation of this republic and that the Second Amendment allows the people to bear arms at the individual level.

After the Revolutionary War, the Founding Fathers crafted an important document known as the Constitution of the United States. Although many understood that this document forged a path for an effective government, they also knew that the people’s rights needed protection. One writer under the pseudonym “Brutus” wrote, “Ought not a government, vested with such extensive and indefinite authority, to have been restricted by a declaration of rights? It certainly ought” (Brutus “Letter 2”). Knowing the people’s rights could be protected by such a declaration, James Madison crafted the Bill of Rights (Carson 85). Listed among one of these fundamental rights is the right to keep and bear arms. Now recognized as the Second Amendment, the Founding Fathers included this right to protect our country from despotic rulers. David Williams, a scholar who has researched this amendment extensively, notes the Founding Fathers realized that a government takes the weapons of the people when first restricting rights (582). They experienced this prior to and during the Revolutionary War when the British government tried to confiscate the people’s arms. In fact, attempted confiscations led to the battles of Lexington and Concord which started the War for Independence. Coming out of this war, the Founding Fathers realized a government

controlling the sword could attempt to take over the lives of the citizens. To prevent this, they theorized the government would need something that would keep it in check. Militias form such a restraint. This safeguard was facilitated by allowing people to have arms. Through the vehicle of a militia, the people have the right to revolt against an oppressive government. However, as Douglas Walker, a researcher from the University of Wisconsin's Department of Political Science, notes, the right to revolt is not without limitations. He conveys the Founders "believed the natural right of revolution to be exercisable collectively only in dire circumstances, at which point the body politic is essentially dissolved" (Walker 384). The Founding Fathers sought to prevent the confiscation of weapons by forbidding it through this amendment.

Although the amendment gives militias as one of the reasons to bear arms, this is not the only permissible way to bear arms because the right to bear arms at the domestic level is also allowed by the Second Amendment. In the Supreme Court's decision of *District of Columbia versus Heller*, Supreme Court Justice Antonin Scalia noted "All three of these instances unambiguously refer to individual rights, not 'collective' rights, or rights that may be exercised only through participation in some corporate body" (5). The three instances he spoke of are the other times the people's rights were mentioned in the Bill of Rights. He argued that because those three instances protected individual rights, the Second Amendment also protected an individual right, the right to keep and bear arms (*District of Columbia versus Heller* 6). He further remarks "Nowhere else in the Constitution does a 'right' attributed to 'the people' refer to anything other than an individual right" (qtd. in *District of Columbia versus Heller* 6). These words have shaped the application of the Second Amendment since 2008 when they were first envisioned. As Jonathan Metzler, a law clerk, noted, since the *Heller* case, lower courts have affirmed, "that the right to keep and bear arms protects the right to carry weapons openly ... in self-defense" (1490). If these

courts have decided correctly, by Second Amendment standards, there is an individual right to bear arms. In fact, Mr. Metzler asserts that the line of reasoning using the Second Amendment to support the right to bear arms as an individual right is uncomplicated (1519). This interpretation of the amendment is not exclusive to the 21st century. Adam Winkler, Professor of Law at UCLA School of Law, records one example of the judicial legacy behind this interpretation. He notes “Chief Justice Roger Taney's statement in *Dred Scott v. Sandford* that citizenship for African Americans would extend to them the right ‘to keep and carry arms wherever they went’” (Winkler 262). Although *Dred Scott* was flawed in that it failed to recognize the personhood of all people, the justices recognized the Second Amendment extends the right to keep and bear to all citizens. Heeding the interpretation of both those in the past and in the present supports the belief that the Second Amendment protects an individual right to keep and bear arms. Through the Second Amendment, the Founding Fathers protected the right of a person to bear arms for uses such as hunting, target practice, forming militias, and personal defense.

In opposition to the individual rights view, some scholars hold that the right does not extend to the individual. The collective rights interpretation is common among those who disagree with the individual rights view. David Williams writes “the right to arms belonged to all, but as a collective right, a right of the universal militia and not of separate private individuals” (614). Researchers interpreting the amendment this way maintain that the phrase “A well-regulated militia” defines the purpose of the Amendment. Essentially, they assert that the right should only be exercised within and under the guidance of “a well-regulated militia”. In fact, one of these scholars stated that having a militia is outdated and therefore the right is extinct (Williams 597). However, the collective rights view can be proven wrong. As Justice Antonin Scalia found in the decision *District of Columbia versus Heller*, “the Second Amendment right is exercised

individually and belongs to all Americans” (7). By looking at previous cases and defining the terms of this amendment, Justice Scalia concluded that the right to keep and bear arms was not just for militia purposes, but also allows for individual utilization. As shown earlier, he compared the wording of similar amendments and their rights to the Second Amendment. Each time Justice Scalia shows the other amendments protected individual rights. Holding true to his findings allows the conclusion that the Second Amendment gives an individual right. Since the line of thought followed by Scalia is logical and supported by evidence, the collective rights view is contradicted.

The Founding Fathers created a government that they wished to be preserved for a long time. Vital to the preservation of any republic is the protection of its citizens. Realizing this, they crafted a sentence that affirmed a right of the people. Thoughtfully, they penned “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” (US Const. amend. II). First, they acknowledged that a militia would help preserve the United States. Subsequently, they protected the right to bear arms. By researching the historical background and meaning of this amendment, it is revealed that the Second Amendment protects an individual right to bear arms.

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