

from

Was Grandpa Really a Moron?
Critical Inquiries for a New American Century

by

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A Few Words About The Second Amendment



"A nation of sheep will beget a government of wolves."

-Edward R. Murrow

"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."

-United States Constitution

Let's begin with the plain and straightforward intent of those who wrote and adopted the amendment, and then some observations by a few other specialists:

"The strongest reason for the people to retain the right to keep and bear arms is, as a last resort, to protect themselves against tyranny in Government."

-Thomas Jefferson

"The Constitution shall never be construed... to prevent the people of the United States who are peaceable citizens from keeping their own arms."

-Samuel Adams

"Americans have the right and advantage of being armed—unlike the citizens of other countries whose governments are afraid to trust the people with arms."

-James Madison

"God grants liberty only to those who love it, and are always ready to guard and defend it."

-Daniel Webster

"[The right to keep and bear arms] may be considered as the true palladium of liberty The right of self defence is the first law of nature: in most governments it has been the study of rulers to confine this right within the narrowest limits possible. Wherever standing armies are kept up, and the right of the people to keep and bear arms is, under any colour or pretext whatsoever, prohibited, liberty, if not already annihilated, is on the brink of destruction. In England, the people have been disarmed, generally, under the specious pretext of preserving the game: a never failing lure to bring over the landed aristocracy to support any measure, under that mask, though calculated for very different purposes. True it is, their bill of rights seems at first view to counteract this policy: but the right of bearing arms is confined to protestants, and the words suitable to their condition and degree, have been interpreted to authorize the prohibition of keeping a gun or other engine for the destruction of game, to any farmer, or inferior tradesman, or other person not qualified to kill game. So that not one man in five hundred can keep a gun in his house without being subject to a penalty.

"The congress of the United States possesses no power to regulate, or interfere with the domestic concerns, or police of any state: it belongs not to them to establish any rules respecting the rights of property; nor will the constitution permit any prohibition of arms to the people;..."

-Saint George Tucker, close friend of Thomas Jefferson and Justice of the Virginia Supreme Court, in his edition of Blackstone's Commentaries On The Law' (1803)

"The next amendment is: '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 importance of this article will scarcely be doubted by any persons, who have duly reflected upon the subject. The militia is the natural defence of a free country against sudden foreign invasions, domestic insurrections, and domestic usurpations of power by rulers. It is against sound policy for a free people to keep up large military establishments and standing armies in time of peace, both from the enormous expenses, with which they are attended, and the facile means, which they afford to ambitious and unprincipled rulers, to subvert the government, or trample upon the rights of the people. 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 [meaning that they are on notice that bad behavior will be punished -PH]; and will generally, even if these are successful in the first instance, enable the people to resist and triumph over them."

-United States Supreme Court Justice Joseph Story, in 'Commentaries On The Constitution Of The United States' (1833)

"The [second] amendment, like most other provisions in the Constitution, has a history. It was adopted with some modification and enlargement from the English Bill of Rights of 1688, where it stood as a protest against arbitrary action of the overturned dynasty in disarming the people, and as a pledge of the new rulers that this tyrannical action should cease. The right declared was meant to be a strong moral check against the usurpation and arbitrary power of rulers, and as a necessary and efficient means of regaining rights when temporarily overturned by usurpation."

"The Right is General. -- It may be supposed from the phraseology of this provision that the right to keep and

bear arms was only guaranteed to the militia; but this would be an interpretation not warranted by the intent. The militia, as has been elsewhere explained, consists of those persons who, under the law, are liable to the performance of military duty, and are officered and enrolled for service when called upon. But the law may make provision for the enrollment of all who are fit to perform military duty, or of a small number only, or it may wholly omit to make any provision at all; and if the right were limited to those enrolled, the purpose of this guaranty might be defeated altogether by the action or neglect to act of the government it was meant to hold in check. 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, but this enables the government to have a well regulated militia; for to bear arms implies something more than the mere keeping; it implies the learning to handle and use them in a way that makes those who keep them ready for their efficient use; in other words, it implies the right to meet for voluntary discipline in arms, observing in doing so the laws of public order."

-Thomas Cooley, Justice of The Michigan Supreme Court, in 'Principles Of Constitutional Law' (1880)

The prospect of tyranny may not grab the headlines the way vivid stories of gun crime routinely do. But few saw the Third Reich coming until it was too late. The Second Amendment is a doomsday provision, one designed for those exceptionally rare circumstances where all other rights have failed — where the government refuses to stand for reelection and silences those who protest; where courts have lost the courage to oppose, or can find no one to enforce their decrees. However improbable these contingencies may seem today, facing them unprepared is a mistake a free people get to make only once.

-Federal appellate Judge Alex Kozinski in the 2003 case of *Silveira vs. Lockyer*.

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Now let's analyze the amendment (and arguments intended to eviscerate it) logically:

As plain and straightforward as the Second Amendment is, and despite the helpful expressions of the incontrovertible authorities quoted above, strenuous efforts are made by its enemies to evade the Amendment's purposes and provisions. These efforts focus, in practice, on distorting the meaning of two elements of the wording of the Amendment: the terms "militia" and "well regulated". A few observations about these terms are therefore appropriate here, and should suffice to deal with these corrupt efforts.

The more overtly targeted of the two terms is "militia". The efforts against it involve attempting to morph the general understanding of the word "militia" into meaning nothing more than "National Guard" (or its functional equivalent), as though a military organization of, and subordinate to, a state government provides against the need to put down a federal government gone awry-- a purpose of the Second Amendment which its enemies realize is still vaguely understood by the American people as a whole.

At the very same time, of course, those who argue the "militia means National Guard" notion also contend that the state governments are generally subordinate to the federal government, and particularly maintain that any state government that deployed military power against the federal government would be acting unconstitutionally (or improperly under some other label); and indeed, what other position could the federal government itself take, rightly or wrongly, under such circumstances? Thus, the "militia means National Guard" notion is plainly a deliberate intellectual ploy intended to bleed energy from general comprehension of the true meaning of the Second Amendment. (The recent federal acts claiming presidential authority to commandeer the National Guard, such

as in the 'John Warner Defense Authorization Act of 2007', dramatically emphasize this point.)

This ploy also seeks to exploit general ignorance of the legal nature of the several states themselves-- a subject rarely addressed in the American dialogue. Doing real justice to the subject is beyond the needs of this discussion; it will suffice to observe that the state governments themselves are no more than constructs erected at, and for, the convenience of the individual sovereign people residing within the borders of each, and against which the people's authority to act militarily is self-evidently incapable of lawful compromise. That is, we the people have an absolute right to alter, abolish, or put down by force if necessary any and all government.

Thus, while the Second Amendment may be properly viewed as providing-- in part-- for the exercise of state military power against the federal government, it invokes, and partakes of, the same sovereign authority of the people to act in like manner against their state governments. As such, the militia cannot be an organ of the state government or, if the term "militia" were held to mean such an organ, an unnamed and still more fundamental and inherently superior military liberty--incapable of lawful compromise or oversight by any governmental authority, and obviously including the right of the people to keep and bear arms-- is necessarily implied.

In fact, the term "militia", properly understood, has two Constitutional meanings, depending on context. One of those meanings is the body of Americans not part of the federal armed forces, but of "military age" and capacity, and available for deployment by the federal government in times of need as an auxiliary force. Specific federal Constitutional provisions are made in regard to this form of militia.

For example, in Article 1, Section 8, Congress is given authority to provide for organizing, arming and disciplining the Militia. Plainly, if "militia" in the Second Amendment meant nothing more than is comprehended by this first definition, the

Amendment itself would be entirely superfluous. (See 'Gun Control And The Federal Government' in Upholding the Law And Other Observations for an in-depth discussion of this point, and of the relevant body of judicial doctrine-- including the uniquely aberrant Miller decision.)

The other meaning of the term, and the one obviously used in the Second Amendment, is simply, "the whole people"-- by which is necessarily meant "the people" as discrete individuals, of course. Groups don't have rights, so the right recognized by the amendment must be an individual right.

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In addition to attempting to foster and exploit general confusion about the term "militia", those who fear and seek to evade the Second Amendment rely upon a broad and deeply-entrenched misunderstanding of the term "regulate". A very brief discussion will serve to correct this misunderstanding and clarify the use of the phrase "well regulated" in the amendment:

We in our heavily bureaucratized modern America tend to think of the word "regulate" as meaning "to issue and enforce governmental rules about something". However, this is neither the general definition nor the historic usage of this term.

REGU'LATE, *v.t.*

1. *To adjust by rule, method or established mode; as, to regulate weights and measures; to regulate the assize of bread; to regulate our moral conduct by the laws of God and of society; to regulate our manners by the customary forms.*
2. *To put in good order; as, to regulate the disordered state of a nation or its finances.*
3. *To subject to rules or restrictions; as, to regulate trade; to regulate diet.*

Webster's Dictionary Of The English Language, 1828 Edition

reg-u-late, *v.t.*

1. *to control or direct by a rule, principle, method, etc.*

2. *to adjust to some standard or requirement, as for amount, degree, etc.*
3. *to adjust so as to ensure accuracy of operation.*
4. *to put in good order.*

Random House College Dictionary, Revised Edition (1975)

As can be readily seen by the definitions given above-- one from close to the time of the adoption of the Second Amendment, and one from our own time, the general meaning of "regulate" is "to put or maintain in good working order", in accordance with a rule, principle or established mode. The synonym of "regulate"-- "regularize"-- illuminates this meaning: *"To bring into conformity with rules or principles or usage."*

This is precisely the meaning of "a well regulated militia" in the Second Amendment: *"the whole people, equipped and in good order for the exercise and enforcement of their sovereignty, by right and in conformity with the principles under which their servant governments have been created"* To put it another way, the means by which the militia referred to in the Second Amendment is "well regulated" is by prohibiting the government from infringing upon the right of the people to keep and bear arms.

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P. S. We still have the ballot (it would appear), and that's the proper place to rest our faith, for now. But the prudent man looks around and looks ahead, with open eyes and a jealous regard for his liberties. In fact, it is just that jealous regard, and the preparation it inspires, that generally spares a free people the turmoil for which the Second Amendment is provided. Call it an expressions of the "peace through strength" principle.

"Political power grows out of the barrel of a gun."

-Mao Zedong

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NOTE: To learn how the United States Supreme Court has, with near perfect consistency, upheld every word and sentiment expressed above, and the simple legal sleight-of-hand by which Congress has beguiled the ignorant into believing otherwise in regard to all federal gun laws, see '*Gun Control And The Federal Government*' in my book '[Upholding the Law and Other Observations](#)'.

By the way, authority over the power of direct (involuntary) taxation is also denied the federal government, in an acknowledgement of individual sovereignty from the same vein as that from which the Second Amendment springs. Just as the government created by the Constitution is expressly prohibited from any effort or initiative to disarm the people, or, implicitly, to compel them to use their arms in its service, it is prohibited from seizing their property, or compelling them to relinquish property against their will.

And no surprise, of course. Is it conceivable that the same Framers who pointedly ensured that the citizenry retained the means to shoot their rogue governors would have stuck at ensuring the power of the citizenry to simply withhold money from those same governors? Or is it conceivable that the same Framers who provided the Second Amendment would simultaneously allow, to the very government against which that Amendment stands, the power to forcibly take from the people the means by which they put food in their stomachs, or bullets in their guns? The questions answer themselves.

"Those who hammer their guns into plows will plow for those who do not."

(These words are often attributed to Thomas Jefferson. That attribution may or may not be accurate, but there is no doubt that Jefferson would agree with the observation.)