

FINISHED WORKING DRAFT

©Joel Goodman

Guns

-

Guardian of Liberty

"What, Sir, is the use of a militia? It is to prevent the establishment of a standing army, the bane of liberty.... Whenever Governments mean to invade the rights and liberties of the people, they always attempt to destroy the militia, in order to raise an army upon their ruins."

*Elbridge Gerry - floor debate over the Second Amendment,
Annals of Congress at 778, August 17, 1789*

Much harm has been done in protecting the value of the Second Amendment by people defending and explaining it. The harm done is not so much because of those things in particular they have done, but more because of what they have not done. These supporters of the Second Amendment are extremely familiar with the minutia of the court cases regarding the Second Amendment and with anecdotes from the men who were leaders during the era when the Second Amendment was authored. They have become the elite interpreters of the history of the Second Amendment, and surprisingly, being the experts they are, with everything they know relating to the Second Amendment, they have in a very particular way ignored the amendment itself. I am neither discrediting their research nor their work; as the body of their literature is both exceedingly well researched and informative of the Revolutionary times; and tracing antecedent court cases in such an important issue is extremely educational. And, especially, by documenting so many aspects of the Second Amendment they successfully paved the way for the Supreme Court in *Heller v. District of Columbia* to uphold the individual right to keep and bear arms, and subsequently in *McDonald v. City of Chicago*, to recognize that what *Heller* protects is applicable to all local and state governments as well as the federal government. With these landmark legal decisions upholding the individual right to gun ownership - the judges have

come down like Supermen defending "Truth, Justice, and the American Way." [1]

But in so doing the Second Amendment has been infringed upon, even more than the Fourth Amendment's protection against unwarranted search and seizure, and it has been bifurcated, to a greater degree, than the First Amendment's prohibition of the establishment of religion versus the protection of its free exercise. These attacks on the Bill of Rights, if looked at individually, might appear to be ephemeral and in some instances merely of limited political importance with no lasting foundational effect on society; but when looked at in the aggregate, they must be taken seriously as an attack on the whole cloth of the Bill of Rights. For example, as a result of the court's decision on religion, we now have an administration with a skewed agenda that has removed pork products from Federal prisons so as not to offend Muslim convicts, and yet Christian business people whose religious principles are offended by the concept of marriage between same sex couples are forced to participate in the celebration of same sex weddings or be subject to punishment. Here we see the division of an amendment into two parts, wherein the inability to practice a religion very much limits the scope of that religion. And, just like the rift created in the First Amendment between the establishment of religion and the practice of religion, we now have a two part Second Amendment, divided between a prefatory clause and an actionable clause, with the actionable clause currently being considered the more important. While this surgery has enabled the Court majority to comfortably arrive at its decision, that the right to arms is an individual right, it does not portend well for the Second Amendment in the future - when quite reasonably, the poorly educated and overwhelmed populace's dream of some fantastical safety from armed criminals overwhelms the small number of people still adamant about American liberty.

Concern for the future stability of these recent pro-gun decisions, is best evidenced by the writing of Karen LeCraft Henderson, Circuit Judge, concurring in part and dissenting in part on the *Heller* case when it appeared before the United States Court of Appeals For The District of Columbia Circuit. In her

commentary she intones an "interest-balancing" approach to judging an inherent pre-governmental right:

"At the center of the debate is the fundamental question of whether firearms, specifically those owned and wielded by private citizens, do more harm than good in deterring violent crime." [2]

She clearly states the argument used in anti-gun rhetoric. Albeit that Justice Scalia and the prevailing Supremes stated that they look at the Second Amendment as a pre-Constitutional right, there is a current trend by the corporate media, radical leftist internationalists and their cadre of lost in the political woods bleeding heart liberal followers to embrace the perspective described by Henderson, basing the right to arms as a contest between the individual right to keep and bear arms and the pseudo "right" of public safety and freedom from gun violence. The President of the United States in January 2016 went on national television, and in a staged presentation used skewed figures to distort the extent of gun violence. He counted as part of gun violence, inter-party shootings, which included lawful shootings in self defense, justifiable shootings by policemen in the line of duty, and accidental shootings. He also put into his bundle the largest number of gun shootings, the use of a firearm in suicides. Being the side show carnie extraordinaire that he is, he didn't mention that Japan, which has a strict no gun policy throughout the country, has a per capita suicide rate three times higher than the US. But, he wanted higher numbers to support his false premise. His remarks, which I will not detail, demonstrate the direction and progression of this continuing straw-man argument in the gun ownership debate. The President once again skewed the argument in Orlando on June 16, 2016, when he completely sidestepped the issue of Muslim Extremism as being responsible for the shootings at Club Pulse, and instead blamed the 49 deaths on Americans' ease of access to firearms; completely ignoring the fact that the terrorist killer had been twice questioned by the FBI, worked for a Homeland Security Agency contractor as a security guard, been reported as suspicious by acquaintances and a possible terrorist by a gun

shop owner - and still passed all the required background checks. In the Left's demand for using the 'No-Fly' list as a determinant of one's suitability to purchase a firearm, besides being in conflict with, at a minimum, our guarantee of due process of law, the fact is that the Muslim terrorists in San Bernardino bought their AR-15's through an illegal straw purchase and were also in possession of homemade bombs, and that France, where another deadly Muslim attack occurred, is basically a gun free zone. If inhibitions to gun purchases are put in place, then any avenues that allow one to circumvent those inhibitions would also need to be blocked, which would inevitably lead to restrictions on personal face to face sales of privately owned firearms, and with it some sort of registration to inventory existing guns. At the end of this line of reasoning is a consideration of the fact that stolen firearms account for a goodly number of firearms in circulation, and to prevent the initial theft of those guns, all guns would have to be removed from the hands of citizens. Those opposed to gun ownership are focused on making any inroads they can on the availability and ownership of guns any way they can - all strictly in contradiction to the spirit of the Second Amendment. To suit their agenda, the anti-gun big government supporters have chosen to ignore the one single characteristic that all the recent terrorists worldwide have in common, Muslim fanaticism; and they, the Leftist politicians and the Leftist media, have focused instead on the availability of guns, demonstrating the intention and tactics of those who want to remove guns from the hands of Americans.

Contrarily, Justice Antonin Scalia wrote in his summation in the Heller decision:

"Justice Breyer moves on to make a broad jurisprudential point: He criticizes us for declining to establish a level of scrutiny for evaluating Second Amendment restrictions. He proposes, explicitly at least, none of the traditionally expressed levels (strict scrutiny, intermediate scrutiny, rational basis), but rather a judge-empowering "interest-balancing inquiry" that "asks whether the statute burdens a protected interest in a way or to an extent that is out of proportion to

the statute's salutary effects upon other important governmental interests." Post, at 10. After an exhaustive discussion of the arguments for and against gun control, Justice Breyer arrives at his interest-balanced answer: because handgun violence is a problem, because the law is limited to an urban area, and because there were somewhat similar restrictions in the founding period (a false proposition that we have already discussed), the interest-balancing inquiry results in the constitutionality of the handgun ban. QED.

*" We know of no other enumerated constitutional right whose core protection has been subjected to a freestanding "interest-balancing" approach. The very enumeration of the right takes out of the hands of government—even the Third Branch of Government—the power to decide on a case-by-case basis whether the right is really worth insisting upon. **A constitutional guarantee subject to future judges' assessments of its usefulness is no constitutional guarantee at all.**" _ (Emphasis added)*

Scalia continues and addresses the point made by Henderson in the lower Court:

"We are aware of the problem of handgun violence in this country, and we take seriously the concerns raised by the many amici who believe that prohibition of handgun ownership is a solution. The Constitution leaves the District of Columbia a variety of tools for combating that problem, including some measures regulating handguns, see supra, at 54–55, and n. 26. But the enshrinement of constitutional rights necessarily takes certain policy choices off the table. These include the absolute prohibition of handguns held and used for self-defense in the home. Undoubtedly some think that the Second Amendment is outmoded in a society where our standing army is the pride of our Nation, where well-trained police forces provide personal security, and where gun violence is a serious problem. That is perhaps debatable,

but what is not debatable is that it is not the role of this Court to pronounce the Second Amendment extinct." [3]

And, therein lies the problem, framed as clearly as it can be; an attempt to remove from the hands of the American citizen the ultimate responsibility of self protection against government tyranny. And, for some, the elimination of citizen responsibility for many aspects of their security - up to and including the defense of liberty - justifies rewriting the Bill of Rights, or at least killing it with a thousand cuts. As of now, a hew and cry in the halls of Congress or a legal battle in the courts demanding an enervation of the Second Amendment's prescription for the defense of liberty, a vibrant Militia, has not yet been championed. Ironically, the only screaming in Congress is from those in favor of abolishing the Bill of Rights. The guns lobby's continuing attempt to paint such weapons as the AR-15 as nothing more than a black sporting rifle is disingenuous and will ultimately come back to bite Americans' grip on Liberty. The semi-automatic AR-15, Mini-14 and 'AK-47' are examples of civilianized versions of military assault rifles, and high capacity handguns are, like all weapons, but more so, potentially lethal weapons; which is nothing less than what the American citizen is obligated and guaranteed to possess.

In spite of Justice Scalia's demonstrated understanding of the Second Amendment, the decision in *Heller*, was ephemeral in dealing with the core of the Amendment, and just as easily could have been decided the other way, considering the make-up of the Court and the current social environment of the country - and the Court may yet reverse itself if there is a change in the Court in the not too distant future and a unique situation is folded into a law suit and brought before the bench with arguments different from those that have been recently heard.

Realistically speaking, the Constitution, as succinctly referenced by Justice Scalia's writing, is not the Dead Sea scrolls. It has no missing sections or difficult to interpret arcane language from dozens of centuries

past. There are a sufficient number of scholars who are intimately knowledgeable of the history of pre-Revolutionary, Revolutionary and post Revolutionary America, and of the politics and philosophy of those personages who were influential during those times. There are newspaper articles from the day. There are letters from one person to another. There are minutes of the many debates in the various conventions and in the several Congresses. Introduced into the Court record are gun related events in mother England that gave rise to the Revolutionaries' attachment to what is protected from government intrusion by the Second Amendment. So, it can be said with some justification that the meaning, intention and importance of the Second Amendment to the continuance of a free United States should be clear.

If a lack of clarity is not an issue, it must then be asked, 'why is the Second Amendment's importance to American liberty subverted to the cause of the individual's right to gun ownership for hunting, sport and self protection against crime?' Obviously, gleaning any discussion of the Revolutionary and post-Revolutionary period it was accepted that the individual's right to gun ownership allows for the existence of an effective militia, and without that individual right an effective militia cannot exist. Again, reading from the Heller decision:

".....judge and professor Thomas Cooley, who wrote a massively popular 1868 Treatise on Constitutional Limitations. Concerning the Second Amendment it said:

"Among the other defences to personal liberty should be mentioned the right of the people to keep and bear arms... The alternative to a standing army is 'a well-regulated militia,' but this cannot exist unless the people are trained to bearing arms."

Scalia continues:

"That Cooley understood the right not as connected to militia service, but as securing the militia by ensuring a populace familiar with arms, is made even clearer in his 1880 work, General Principles of Constitutional Law. The Second Amendment , he said,... in a section entitled "The Right in General,"

"It might 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 enrolment 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 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." Id., at 271. " [4]

The argument enunciated by Cooley just as well could have been discerned from debates in the Federal Convention, or in the various state ratification conventions or in the debate on the first Militia Bill. That debate lasted through two sessions of Congress because of a general disagreement on

the scope and composition of the militia. There were opinions offered on the size of the militia, the uniformity of the various state militias, responsibility for arming the militia, the well from which authority to organize the militia should spring - and even as to whether or not the President should have access to the militia. During the debate in 1792, Representative Murray spoke about how he understood the basic purpose of the militia, sidestepping for the sake of discussion the disagreements that had been so prevalent in the many sessions.

"Mr. Murray did not conceive that the excellency of the militia of the United States consisted in their being armed all with muskets of the same bore. He did not consider the bill in the light that some gentlemen appeared to do. It was, in his opinion, merely a provision to keep alive a military germ that when occasion calls, spring up and diffuse its influence among the people in such manner to furnish the most competent means of defense." [5] Feb. 1792 / Debate on the Militia Bill H or R , 421

Mr. Murray was not opposed to having an organized militia. He was reiterating the essential element of the right protected by the Second Amendment, that the people not be hindered from being armed. His well made point was that the uniformity of the militia as regards to the similarity of weapons that a citizen brought to the militia ultimately was of less importance than the goal of having a citizenry practiced in the use of arms. In a very real sense, as Americans' rights are being loudly and unabashedly threatened by their current government, there has been a rush to purchase military style weapons. Not all of the weapons are identical, not all of the same caliber, but nonetheless, the citizens are obtaining guns in spite of severe hindrances imposed upon them by several state governments. Americans are purchasing weapons and taking them to the local shooting range in larger numbers than ever before. The distasteful irony is that while a majority of Americans satisfy their basic American instinct for a competent

means of defense, and fulfill one aspect of the American political culture, the President and his comrades in the statist Democratic Party have railed against the free exercise of this guaranteed right.

So, when the core of the argument by a learned man like Professor Sanford Levinson is that the protected individual rights of the Second Amendment should be seen no differently from the protected individual rights in the First, Fourth, Ninth and Tenth Amendments [GG], his focus is on the individual right and not the importance of the militia to American freedom. If one accepts that all the Amendments of the Bill of Rights protect individual rights, and it is the exercise of those rights that produces the "salutary" effect of a free state, one needs to look at how the Second Amendment is treated compared to the other amendments; for example the right of free speech protected by the First Amendment -

"Congress shall make no law... abridging the freedom of speech..." [6]

Aside from holding as a litmus test "Thou shall not yell fire in a movie theater" [7], the Supreme Court has held as sacrosanct the individual citizen's right to abuse the right of free speech to the point of nausea. They have without reservation approved of an artist's right to immerse Jesus Christ in urine as artistic liberty. They have approved of the right to burn the American Flag or show tits and ass and genitalia galore in magazines and to tell filthy jokes in public - none of which has any particularly socially enhancing value. Many would say that much speech goes beyond vulgarity and abuse and should fall outside of First Amendment protection.

Even more vulgar speech has been the shouts from an umbrella organization calling itself "Blacks Lives Matter", when during one of their protests some of the marchers chanted on the streets of New York City, *"What do we want? Dead cops! When do we want it? Now!"* [8] Or even

more egregious is speech from a participant in the Ferguson riots yelling, "*Burn the bitch down.*" [9] Considering the arson in Ferguson and the recent assassinations of police in Dallas, it would appear that these types of speech have immediate and direct results and should be considered as "incitement to violence", or even possibly insurrection, and should fall within Justice Holmes' limitation on speech that presents "a clear and present danger." But there has been no outcry from either the press or the President. Now, because I agree that freedom of speech is a hallmark of American liberty, I begrudgingly appreciate as being commendable the tolerance that the public and the Court has displayed in supporting certain speech that has a potential for harm, considering that a conscious act must be made by someone other than the person making the utterance in order to put words into action. As we like to say in America, "*I may disagree with what you say, but I will defend to the death your right to say it.*" [10]

Most Americans would agree that the right to free speech has been abused, but most would stand to protect the abuse, understanding that someday what they say might be labeled as offensive by someone else. So, if the Civil Libertarians have looked at the other Amendments so "holistically", why then has there been such reluctance to deal with the full meaning of the Second Amendment and ask 'what happened to the militia?' And furthermore, one may ask, why, if the rights protected in the Bill of Rights have been declared ubiquitous, and apply to each and every individual in each and every state and in each and every city in the United States, once the Supreme Court declared in *McDonald v. City of Chicago* that the "right to keep and bear arms" is ubiquitous throughout the country, why then wasn't this right immediately expanded to each and every citizen in each and every state and city in the United States? Instead of a great expansion of the right to firearms, more limitations have been placed upon the potential effectiveness of modern weapons, and recently another attempt to infringe upon and reduce that right was

attempted by the President through a unilateral exercise of Executive Action, and then soon after by Leftists in Congress to restrict semi-auto rifles in any way they can. So, if one can carry in his heart disdain for the President and the Congress and call them creeps in any city in the U.S. and have the right to do so protected, why can't one own a weapon and carry it in any city in the U.S. and have that right protected?

Sadly, the reality is that the abuse given to the Second Amendment is only some measure more abuse than that given to most of the Constitution, considering that the Supreme Court is allowed to decide on Constitutional structure and on basic pre-governmental inherent rights; effectively legislating from the bench, and essentially changing the United States from a representative democratic republic into an oligarchic centralized state - not an oligarchy in the usual sense, but an oligarchy none the less - an oligarchy of nine judges with unassailable power.

Ironically, the Second Amendment was intended to be a strong element in preventing the establishment of an all powerful central authority with potentially punishing control over the lives of the individual citizen. And, however you portray it, once you remove the pomp and circumstance of the judges in black robes handing down decrees from a columned neo-classic building, you have a country where the will of the people has been subordinated to the will of those who control the politicians who select the judges in black. The way that the Supreme Court functions in circumventing the Congress has no resemblance to what was envisioned for the country that was founded on the belief that power would reside in the governed and move up to the central government through their directly elected officials and through each state's elected government; and legislation would therefore reflect the will of the people as much as is possible in an imperfect world. Currently this is not the process we have. There is, instead, a continually morphing politically driven social agenda determining how the country functions without any formal change to the

actual structure of the government - the written Constitution. This being the case, what meaning can it have when an elected official swears to uphold the Constitution, when the Constitution is reinterpreted for the sake of convenience with respect to the current political climate of the United States, or even worse - subservient to the wants of some powerful forces?

The Constitution has written into it methods for amending. What we now have is a document akin to silly putty, wherein the law of the land is what the nine justices, acting as a legislative branch of government, say it is, or what a corrupt Congress allows an errant president to get away with. I for one would prefer to have changes made by the amendment process rather than by a committee of nine or the action of one. If it is felt that a change is needed, use of the Constitutionally mandated process is the most secure guarantee of liberty. To the contrary, liberty doled out in contemporarily acceptable court decisions is not liberty. This consensus of elite decision making is a prescription for tyranny, as today's great sociologically astute idea may be tomorrow's dreadful social nightmare. Depending upon who's running the show, what is considered liberty today may not be liberty tomorrow. That is not the type of country that was either intended by the founders, or one with which I am comfortable. Lately, I have begun to ask myself, "If I love my country and despise my government - and all that I see around me is an extension of that government - can I really still love my country?" How many times a day can I run around yelling, "*The central government be damned*" and still feel proud to be an American?

Chapter

The Bill of Rights was created to protect America's inherited individual liberty by restating in clear terms limitations on the powers ceded to the newly created more powerful central government. The failure of the

inclusion of a Bill of Rights in the Constitution was the reason George Mason and Elbridge Gerry declined to sign the document at the Federal Convention. There is nothing unclear about the Bill of Rights. The Founders had just finished a war with their former colonial masters and threw off the bonds of a supreme royal governance.

At the Federal Convention, the Federalists took control of the narrative, and the debate as to whether it was necessary to have an entirely new Constitution, or modify the existing Articles of Confederation, quickly morphed into a debate as to how much power the new central government would have, and how it would be doled out among the states. Influential men like the President of the Convention, George Washington, had early on expressed his views about having a stronger government with access to an army to suppress rebellions and defend against invasion. While Washington may have been joined by Patrick Henry, Thomas Jefferson and Richard Henry Lee in calling for and organizing militias in Virginia to stand against British usurpations soon after the fighting started in Massachusetts in 1775, Henry and Jefferson were not at the convention in 1787 and the Anti-Federalists were outnumbered. The Federalist majority stood upon their premise that the paper that left the Convention yielded a country that was safe from a standing army - that entity, which, only a few years earlier, was the primary instrument of repression the British Crown unleashed against the colonists.

Regardless of the stated confidence by those who framed the Constitution, that there was sufficient protection of essential liberties within the body of the Constitution because of the limited power of the central government, the Anti-Federalists wanted a strong un-malleable Bill of Rights to counter the potential for abuse, which they rightly believed the central government had. Foremost on their minds was to preclude the need for a large standing army by maintaining an effective militia. In fact during the debate on the Militia Bill of 1792, though hotly argued, it was

decided to allow the President to have recourse to the militia when needed. Those who supported the central authority having access to the militia argued that if the President did not have access to the militia when a military force was needed, the President would have need of a larger army. Ultimately, allowing the central government access to the militia was a way to lessen the recourse to a large standing army.

In spite of Madison's and Hamilton's and Jay's furtive imaginings in the Federalist Papers on how liberty would be safe under the new government, there were enough level headed less politically ambitious men who stated the case for written specific protections from the potential threat to liberty posed by the new government. As a result of their disquietude and persistence, a Bill of Rights was forced upon the new Congress in exchange for unanimous ratification. Everything in the Bill of Rights is a protection of liberty. The ten amendments are a shield between the central authority and the States and the people - reserving to the states and the people respectively, powers not specifically given to the new government, and ostensibly protecting other rights not enumerated. The Bill of Rights created no new rights. And the right to keep and bear arms is as clear as the right of assembly, freedom of the press, preventing Congress from making a law establishing a religion or prohibiting the free exercise thereof, freedom against unreasonable searches and seizures, and so on through the amendments.

In the Bill of Rights there are a few demands of specific performance on the part of the government when and if government agents feel they have cause to abridge the rights of an individual; for example, in criminal cases, there is a requirement for a presentment to a grand jury; or in the case of property confiscation, private property shall not be taken for public use without just compensation; and in the event of searches and seizures in an individual's home or of his papers and effects, no warrants shall be issued but upon probable cause, supported by oath or affirmation. While

there is protection of the press, there is no demand that there be a press. While there is protection of religion, there is no demand that religions exist. In one instance only is there an assumed specific performance required of the central government, one which does not require a prior instigating action by the central authority to bring it into play, and that is the maintenance of a well regulated militia as a means of preventing the creation of a large standing army. So, if the goal of the Bill of Rights is the protection of liberty by limiting the overreach of the newly created more powerful central government with access to an army, and the stated means of limiting this overreach is a well regulated militia, why then is there no militia? Why then has the Second Amendment been eviscerated and those who have been the most vocal about defending the Second Amendment chosen to ignore the heart of the 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."

Second Amendment to the Constitution, Adopted 1791

The right of private ownership of firearms is not dependent upon militia participation, but the existence of an effective militia, is dependent upon individuals owning and being familiar with firearms and being trained in their use. It is the expectation that "the right of the people to keep and bear arms" would not be infringed is that which allowed the founders to believe in the viability of the militia to protect American individual liberty.

The Second Amendment as presented to the House by James Madison uses much of the language of George Mason's provision in the Virginia Declaration of Rights, which appears in the Virginia Constitution as Article I, Section 13: (pg.21)

"That a well regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defense of a free

state, therefore, the right of the people to keep and bear arms shall not be infringed; that standing armies, in time of peace, should be avoided as dangerous to liberty;...." [11]

As there is as of this writing a continuing government attack on the Second Amendment, even calls from establishment newspapers to abandon the Second Amendment, if we are to move forward as a free republic I must ask if we are here and now at the same existential place that Patrick Henry feared we were in June of 1788 and reflect upon his words when faced with a new and powerful central authority:

"There are many instances of the people losing their liberty by their own carelessness and the ambition of a few..... Let my beloved Americans guard against that fatal lethargy that has pervaded the universe." [12]

It is the avoidance of the militia in any contemporary debate over the Second Amendment, which leads me to say that reliance on the microscopic examination of historical tidbits for the purpose of defending a protected enumerated inherent right is an egregious failure by the defenders of the Amendment.

While I understand the importance of the National Rifle Association's Institute for Legal Action, and other pro-gun advocacy groups to focus their approach on establishing a contemporary legal case for the individual right to keep arms, as I have said, it is the lack of attention to the militia in any of their arguments that is the problem and the great failure. As regards the NRA, their failure to pursue support for the militia is the most worrisome, as the organization was founded to promote shooting skills with basic infantry weapons. It is much the same in the literature, with such authors as respected academic Richard Halbrook in his book - *"That Every Man be Armed"* [13] The work is a legal and anecdotal look at the Second Amendment. To his credit Halbrook, in his book *"Encroachments of the*

Crown on the Liberty of the Subject: Pre-Revolutionary origins of the Second Amendment" [14] has assembled a wealth of court decisions and anecdotal evidence to support the individual's right to keep and bear arms. There is, though, David T. Hardy's in depth study of militias and the individual's right to bear arms, *The Second Amendment and the Historiography of the Bill of Rights*. [15] In his work Hardy goes to great lengths to separate the militia and the right to bear arms in an attempt to later join them as serving two similar but distinct functions.

In spite of the Heller decision in the Supreme Court, apologists for the construction of the Second Amendment still fret that the introductory phrase to the Amendment does not mean exactly what it means, and they spend their energy and thought disproving their unspoken fear that the protection of firearms does not extend beyond the militia. Their fear is fueled by their own disingenuous claim that semi-auto military style weapons are merely sporting weapons; and their unspoken concern is that some day the ludicrousness of that deceitful position will be seen for what it is, subterfuge, and it will come back to undercut their position on military style weapons. In many states, the military effectiveness of these weapons is already being addressed; and while many of these attempts have been inane, there is a movement to limit the potential of these weapons' suitability for military type practice. In denying the militia as an integral part of the equation of the right to bear arms, it is quite possible that someday, if and when the militia and the individual are seen as separate entities, the right to effective military style weapons will be lost.

In defining membership in the Militia, inevitably one is led to the statements of George Mason in the debates in the 1788 Virginia convention. Mason had long recognized that the "Militia... is the natural Strength and only safe & stable security of a free Government." [16] During the debates he examined the issue of protection of the militia under the new proposed government and regarding membership he posed the question directly:

"I ask, Who are the militia? They consist now of the whole people, except a few public officers. But I cannot say who will be the militia of the future day. If that paper on the table gets no alteration, the militia of the future day may not consist of all classes, high and low, and rich and poor; but they may be confined to the lower and middle classes of people, granting exclusion to the higher classes of people.... Under the present government, all ranks of people are subject to militia duty." [16]

By June 9th, Mason had already transmitted a copy of his "Master Draft" of proposals for amendments to the new plan of Government to the Republican Committee in New York, who were very sympathetic to his proposals. By June 27th, Virginia had a full set of proposed Amendments that were to be transmitted to Congress with its first Representatives. The proposals that were agreed upon by the Anti-Federal Committee of Richmond and dispatched to New York [17] contained the elements that Madison took with him to Congress, and eventually considered by Madison when collating the proposed amendments presented to the First Congress; and were almost a verbatim copy of Mason's "Master Draft." Within this proposal we once again see the intent of maintaining the militia as protecting the people from tyranny:

The Draft was entitled and began thusly:

"Amendments to the New Constitution of Government

"That there shall be a Declaration of Rights, asserting and securing from Encroachment the essential and unalienable Rights of the People, in some such Manner as the following -"

Included within the proposed Declaration of Rights was the following, that ultimately became the Second Amendment:

"That the People have a Right to keep & to bear Arms; that a well regulated Militia, composed of the Body of the People, trained to Arms, is the proper natural and safe Defence of a free State; that standing Armys in time of Peace are dangerous to Liberty, and therefore ought to be avoided, as far as the Circumstances and Protection of the Community will admit; and that in all Cases, the Military shou'd be under strict Subordination to and govern'd by the Civil Power." [18]

We get from this proposal a very specific sense of the purpose of arms and the Militia and their place in the new country. Contemporary opponents of the Second Amendment, on the other hand, go beyond doubting that the militia and the individual are one entity. They unabashedly treat the Second Amendment as if it is two distinct parts. It is the avoidance of looking at the militia as the guardian of liberty that leaves so many pro-gun rights defenders unable to see that it is the introductory phrase that yields strength to the power of the armed individual, while anti-gun zealots are quick to claim that the guns of the Second Amendment are intended only for the militia, and since there is no militia, these guns are no longer protected. The absurdity of all this is that the introductory phrase makes the Second Amendment the most clear of all the Amendments. But, the most staunch supporters of the Second Amendment defend the Amendment by discarding the essentially important introductory phrase.

One could deconstruct the Second Amendment, dissect it, describe it in terms of hunting, deride it in terms of a concern for public safety from gun violence. It could be analyzed as Philip Bobbitt analyzes the Constitution in his book *Constitutional Fate* [19], in terms of a *textual* argument, an *historical* argument, a *structural* argument, a *doctrinal* argument, a *prudential* argument, or finally as an *ethical* argument - reliance on the overall "ethos" of limited government as centrally constituting American political culture.

And, along these lines of historical analysis as developed by Bobbitt is a most telling obfuscation of the Second Amendment in an article for the Yale Law review in which Sanford Levinson says that he wants:

".. to frame my consideration of the Second Amendment within the first five of Bobbitt's categories; they are all richly present in consideration of what the Amendment might mean. The sixth, which emphasizes the ethos of limited government, does not play a significant role in the debate of the Second Amendment. " [11]

But, "*the ethos of limited government*" is, in fact, the singularly most important way to look at the Second Amendment - and to a great degree all of the Amendments. Levinson's selective focus is almost beyond comprehension. In fact, the entirety of the Constitution must be looked at in terms of the intended limitations imposed upon the structure of the central government of the United States. What we now seem to have in these more genteel days, where citizenship is more filled with privileges and less filled with obligations of service, is an intellectually effete approach to the Second Amendment, disregarding with disdain its function in protecting liberty. It would appear that many look at the Bill of Rights and are puzzled how an amendment that concerns "repelling invasions" found its way into a document whose other amendments protect essential rights and liberties. Sadly, at this point in time, more than deciding whether to accept the Second Amendment as a protector against incursions into our liberty by the central government, we are deciding whether to continue to accept the United State as a democratic republic or to redefine it as an oligarchic consolidated state ruled by the very central government from which the Second Amendment was designed to protect us.

One can go on about historical relevancies about gun ownership in the United States, quoting everyone from George Washington to Thomas Jefferson, espousing the value of a firearm and its importance to the citizen. Interestingly no historical notation is ever required to justify the right to assemble or the right to freedom of the press or the freedom from government intrusion in your religion

or its practice. There is never a call to explain why Fourth, Fifth and Sixth Amendment protections should exist. We understand that they are all part of what makes us free, and the free practice and exercise of these rights keeps us free. Yet, the only Amendment that enunciates a firm responsibility for the protection of a free state is looked at as if it fell from the kitchen shelf like a spice jar and somehow landed in the cake mix.

So what is it that requires an explanation for the historical justification of gun ownership - and in so doing explicitly ignores the meaning of the Second Amendment? Obviously, at least obvious to me, is the fact that the meaning of the Second Amendment is intentionally being twisted for political reasons. The question of gun ownership was never questioned by the authors of the Constitution nor by the authors of the Bill of Rights. In fact as early as 1804, The sitting Vice President of the United States and the former first Secretary of the Treasury, each carried pistols over the state line from New York to New Jersey and dueled it out. The subsequent hue and cry that followed the former Secretary's death was not about the availability of handguns, but merely that a revered scoundrel had been shot by a rival political leader, a sitting Vice President. Ironically, the nation's first restrictive gun law, New York State's Sullivan Law, was passed because of the rivalry of between Tammany Hall and its opponents. New York's corrupt political bosses probably feared their new political opponents might treat them to the same vintage New York justice that Burr extended to Hamilton a century earlier.

"To the Americans of the Revolution and the Founding Era, the theory of some late-20th Century courts that the Second Amendment is a "collective right" and not an "individual right" might have seemed incomprehensible. The Americans owned guns individually, in their homes. They owned guns collectively, in their town armories and powder houses. They would not allow the British to confiscate their individual arms, nor their collective arms; and when the British tried to do both, the Revolution began. The

Americans used their individual arms and their collective arms to fight against the confiscation of any arms. Americans fought to provide themselves a government that would never perpetrate the abuses that had provoked the Revolution.

What are modern versions of such abuses? The reaction against the 1774 import ban for firearms and gunpowder (via a discretionary licensing law) indicates that import restrictions are unconstitutional if their purpose is to make it more difficult for Americans to possess guns. The federal Gun Control Act of 1968 prohibits the import of any firearm that is not deemed "sporting" by federal regulators. That import ban seems difficult to justify based on the historical record of 1774-76." [21] [F] 12

Of all the literature, *The American Revolution against British Gun Control* By David B. Kopel is the most incisive in that it does not seek justification for the Second Amendment, but deals with it in practical terms. In his work we are presented a chronological look at the progression of colonial dissatisfaction with British Colonial rule that led to open rebellion, annotating the events relating to firearms, the limitation of their importation, the call to all citizens to obtain one and to practice with them in a local militia, and the attempts at confiscation by the British. It is here that one clearly sees the connection between a militia and the citizens' firearms.

From a contemporary point of view, as I write this piece, there is a continuing rise in the purchase of firearms; being purchased are both carry guns and military style rifles. As a gun store manager and NRA Instructor, I hear why people are buying guns. Many are new to firearm's ownership, and want an "easy" gun when they get their carry permit. Many already have a collection, but want what they don't have, in case the government limits gun purchases. But, almost to the person, they don't like either the current Democrat President, or the Democrats in general, nor do they trust the Republican Congress. Basically they have no

trust in government to protect them or look out for their best interests; and many feel the government is their enemy - either already their enemy or will be in the near future. Also, they understand that no government agent will be with them at the moment of an attack on their person, whether it be in their house or on the street. Many fear the growing number of dangerous criminals and many more mention that they fear more attacks by Radical Muslims or some other group, those who have expressed a burning hatred for American society - and who may be at the center of the next terror attack - or opportunists taking part in insurrections like those in Missouri and Maryland, which the local officials allowed to develop and consume in flames parts of two cities.

These gun buyers don't want to be helpless. They understand that the possession of a gun doesn't guarantee them absolute safety, but they also understand that without a gun they are helpless. Most Americans don't like feeling helpless. Many of these people are people who would constitute an organized militia, albeit there is no militia ready for their membership. I don't believe that Americans felt much different back in 1774 when the British began their crackdown on gun ownership and attempted to disband the militias, and then began to bombard towns along the New England coastline. It may just be that the desire to protect oneself from crooks, rioters and politicians - and have the ability to do so - is in great part what defines one as an American.

While some may read what I have written as fanciful and oversimplified, I will stand by what I have said, that what is missing in the debate over the Second Amendment is a discussion on why we have been denied a proper militia. If I read what many of the men that attended the Federal Convention or the state ratifying conventions or served in the first Congress had to say, I have no problem in understanding the Second Amendment. So why is it that so many scholars, even more steeped in American history than I, shy away from looking at the Second Amendment in its entirety and its full purpose - as the prime defender of freedom? We can, or should, accept one fact, that the Bill of Rights was created to protect our freedom, the rights that we as Americans inherited

from our creator, however we see that entity, spiritually, metaphysically or biologically. The statement that the Second Amendment gave us nothing we didn't already have is a very important declaration that somehow seems to get lost in the mix. The Bill of Rights was enacted to protect those rights that were ours pre-governmentally. As a militia is necessary, and a militia needs armed citizens - the citizens' right to be armed cannot be infringed upon without weakening the single most important protection of freedom. Infringed is a very important word. It is a very strong word - having a greater meaning than 'denied' or 'interfered with'. If the Bill of Rights gave us no new rights, but merely protects that which we already have - then we must assume that regardless of the situation, militia or no militia, Americans have the right to arms. Sadly we no longer have a militia. We do not even have a citizen army - that is certainly not cause to disallow guns - but is certainly a reason to re-establish a militia.

Chapter

Of all the amendments that constitute the Bill of Rights, it is in the Second Amendment where, so to speak, the rubber meets the road in the perpetual contest between government and citizen. It is in the Second Amendment, where the compact between the people and the central government is most tested, where the prescribed force of government is confronted by the inherent force of the individual citizen. It is the Second Amendment that is the first and last protection of Americans' enumerated and reserved rights. Regardless of the degree of polite beneficence one chooses to ascribe to the actions of government, government by its very nature is a coercive force. Because of its mandate to maintain a stable society, government is given certain power, and with that power it has the potential to repress individual rights and liberty.

If we are alert individuals we live our lives as if we inhabit a jungle through which we must proceed with caution, constantly vigilant of those individuals who, through the use of guile, rather than by honest labor,

would take from us what is not theirs. [22] Government is not an abstract entity, it consists of people, and what faults exist within people therefore exist within government. And because government has the ability to act as a force multiplier, the evil committed behind the color of government often times is much greater than the evil committed by any single individual or group of individuals.

That we have put on paper limits to what government may and may not do is meaningless to any of the dishonest people who populate positions of power in government. On a daily basis government requires us to curb our will, obey its edicts, hand over our wallets to strangers who can dispose of our money at their discretion and impose their demands upon us with threats from confiscatory bureaucracies, police agencies, courts of law, prisons and ultimately, as has been seen throughout history - a strong military. It is the use of the military as an oppressor, which today may appear to the uninitiated eye to be a distant possibility, but was after the Revolution the greatest concern when creating an energetic central government. If we are candid in our observation of our federal government, we will not only see a mercenary military, but we will see several heavily armed and equipped Federal agencies with heavily armed para-military units. These constitute a standing army as much as the military itself, and in many ways are more dangerous to individual liberty than an army - as the Army swears its allegiance to the Constitution and bureaucrats owe their allegiance to whoever appointed them. If you doubt this as a fact, consider that Lois Lerner, an official in the Internal Revenue Service, invoked her Fifth Amendment protection against self incrimination when testifying before the Congress. One would think that the Director of the Internal Revenue Service's Exempt Organizations Unit worked for the people and that she would share whatever she knew about her agency's activities with the people's representatives. This was not the case.

The more we ask of government the more it in turn it may demand of us.

The coercive nature of government and the unfair balance between the granting of favors to some and the implementation of demands and punishments upon others has long ago been understood by political conservatives; those who at the beginning of this nation were considered 'liberals'; liberal because they wanted a limit on government authority over their lives and a shift of power away from the centralized authority to the people. Curbing the reach of government has been at the heart of American political dogma since the inception of the American government. Finding a balance between creating an energetic and effective central government and curbing its reach has been the struggle since day one after the Revolution. Former U.S. Senator Barry Goldwater reminded us that a "Government powerful enough to give us what we want is powerful enough to take it away." [23]

Because the founders understood first hand the coercive force of government, during the debate on the Militia Act of 1792, when the suggestion was made to have the government supply the most modern of military guns to the many poor individuals in the country, that suggestion was countered by the argument that at some time in the future the officials of an evil government that feared the populace might lay claim to those guns as theirs, to dispose of as they saw fit, and confiscate them. Therefore it was agreed to that it would be safer for all men to bring to the militia whatever guns they possessed. [24]

Contrary to those magnanimous gentlemen on today's progressive left who would leave us our hunting guns, and the ever crying bleeding hearts who just don't "like" guns, the Second Amendment to the Constitution is not about duck hunting. The guns the Second Amendment protects are the type of guns capable of preventing the establishment of the forces of tyranny, and if necessary to destroy those forces. These guns, if necessary, would also be able to kill in the name of personal self protection. When the collectivist Left asks why anyone needs a military style weapon, the answer is because the military has similar

weapons. Individuals by and large do not possess true military assault rifles, large caliber military weapons, bombs, or military assault vehicles like tanks. And so, what the current debate has come down to is banning the most basic of all military rifles, the auto loading rifle and the multi-shot pistol. While the Second Amendment is about protection, it is not the protection which we have been taught to believe it is. The well trained citizenry which the Second Amendment references, may serve the goal of protecting the country from external attack, but the Amendment is much more about protecting the country from an attack from within, from the establishment of a tyrannical government, or at least a tyrannical government with an army and armed agents at its disposal. A properly sized army is capable of repelling an invasion from without, but the reliance upon that army, which serves at the discretion of the central government, is that from which the Second Amendment was intended to protect us. The Second Amendment is about deterring the ever present threat of tyranny. If one looks at the history of the world, tyranny exists as the norm among most governments, whether it be an anointed European king, a Russian strongman, a Middle Eastern Prince or religious master, the chancellor of the NAZI Reich, the Party chairman of a Communist country, or the petty dictator in Africa or South America or Asia. A free democratic republic is the exception to the rule of ubiquitous tyranny. To deny the possibility of tyranny is to deny all of history itself, but rather than deny history, the Founders studied it and accepted certain realities that we seem prone to ignore.

Chapter

While I am not a great fan of the fanciful ramblings of the "Federalist Papers", the collected writings give us insight into how the centrists at the Federal Convention assumed the government they constructed would work, how the disparate pieces would afford sufficient protection of the nation's freedom. And, in spite of the fact that the Federalists were wrong in their assumptions of the durability of republican values under their plan, if we are to return to some sort of sensibility in our government, it behooves us to look at both the Federalists and their

"dreams" as well as the Anti-Federalists who had those same dreams, but understood more clearly how to guard the liberty of the citizens from a powerful central government.

In this regard, as much as I dislike Alexander Hamilton and feel that he should be removed from the Ten Dollar Bill and replaced with Aaron Burr, if one can ignore the fact that he was the archetypical centrist, a supporter of the Central Bank and generally a nasty person, Alexander Hamilton was a former Revolutionary War General and served alongside Washington for much of the War, and as such he well understood both the weakness of the militia and its necessity during the Revolution. Although he opposed the Bill of Rights being included in the body of the Constitution, he very much supported the concept of the armed citizen as a bulwark against tyranny. In Federalist 29 he addresses the armed citizen and the militia. On the one hand he speaks of a more limited militia for the sake of frugality and practicality, but he also clearly states the assumption that all the citizenry would be armed and practiced in the use of arms as a precursor to the formation of an adequate militia, and a preventative of tyranny.

"Of the different grounds which have been taken in opposition to the plan of the convention, there is none that was so little to have been expected, or is so untenable in itself, as the one from which this particular provision has been attacked. If a well-regulated militia be the most natural defense of a free country, it ought certainly to be under the regulation and at the disposal of that body which is constituted the guardian of the national security. If standing armies are dangerous to liberty, an efficacious power over the militia, in the body to whose care the protection of the State is committed, ought, as far as possible, to take away the inducement and the pretext to such unfriendly institutions. If the federal government can command the aid of the militia in those emergencies which call for the military arm in support of the civil magistrate, it can the better dispense with

the employment of a different kind of force. If it cannot avail itself of the former, it will be obliged to recur to the latter. To render an army unnecessary, will be a more certain method of preventing its existence than a thousand prohibitions upon paper...

"...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. A tolerable expertness in military movements is a business that requires time and practice. It is not a day, or even a week, that will suffice for the attainment of it. To oblige the great body of the yeomanry, and of the other classes of the citizens, to be under arms for the purpose of going through military exercises and evolutions, as often as might be necessary to acquire the degree of perfection which would entitle them to the character of a well-regulated militia, would be a real grievance to the people, and a serious public inconvenience and loss. It would form an annual deduction from the productive labor of the country, to an amount which, calculating upon the present numbers of the people, would not fall far short of the whole expense of the civil establishments of all the States. To attempt a thing which would abridge the mass of labor and industry to so considerable an extent, would be unwise: and the experiment, if made, could not succeed, because it would not long be endured. Little more can reasonably be aimed at, with respect to the people at large, than to have them properly armed and equipped; and in order to see that this be not neglected, it will be necessary to assemble them once or twice in the course of a year.

"But though the scheme of disciplining the whole nation must be abandoned as mischievous or impracticable; yet it is a matter of the utmost importance that a well-digested plan should, as soon as possible, be adopted for the proper establishment of the militia. The attention of the government ought particularly to be directed to the

formation of a select corps of moderate extent, upon such principles as will really fit them for service in case of need. By thus circumscribing the plan, it will be possible to have an excellent body of well-trained militia, ready to take the field whenever the defense of the State shall require it. This will not only lessen the call for military establishments, but if 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 the only substitute that can be devised for a standing army, and the best possible security against it, if it should exist." [25]

Madison, another Federalist 'Johnny come lately' to the idea of a Bill of Rights, in Federalist No. 46 defends the viability of the states and the preponderance of power and influence that they and the people will always hold over the federal government. While Madison has been proven wrong in his estimation of the assumed republican character of those who ultimately would serve in our government, and the constancy of the citizen being vigilant to any form of tyranny, he clearly references the importance of the Militia in opposing any martial array that could be employed by the central government. In looking back at the orations of those who spoke only of the restraint of centralized power in the Constitution, one clearly sees that so many of the touted guarantees that would protect American Liberty have either been modified or changed or ignored or violated; and, as reflected by the ever growing number of gun purchases, Americans now seem to sense that it is only the collective force of the armed citizen that will be the ultimate protector and salvation of the nation - if it is to be saved. The following is one of the most intentionally overly 'Pollyanna' presentations made by Madison in building support for passage of the Constitution. Of everything that he described as protecting our liberty, it would be fair to say that all we are left with is the armed citizen

"The only refuge left for those who prophesy the downfall of the

State governments is the visionary supposition that the federal government may previously accumulate a military force for the projects of ambition. The reasonings contained in these papers must have been employed to little purpose indeed, if it could be necessary now to disprove the reality of this danger. That the people and the States should, for a sufficient period of time, elect an uninterrupted succession of men ready to betray both; that the traitors should, throughout this period, uniformly and systematically pursue some fixed plan for the extension of the military establishment; that the governments and the people of the States should silently and patiently behold the gathering storm, and continue to supply the materials, until it should be prepared to burst on their own heads, must appear to every one more like the incoherent dreams of a delirious jealousy, or the misjudged exaggerations of a counterfeit zeal, than like the sober apprehensions of genuine patriotism.

"Extravagant as the supposition is, let it however be made. Let a regular army, fully equal to the resources of the country, be formed; and let it be entirely at the devotion of the federal government; still it would not be going too far to say, that the State governments, with the people on their side, would be able to repel the danger. The highest number to which, according to the best computation, a standing army can be carried in any country, does not exceed one hundredth part of the whole number of souls; or one twenty-fifth part of the number able to bear arms. This proportion would not yield, in the United States, an army of more than twenty-five or thirty thousand men. To these would be opposed a militia amounting to near half a million of citizens with arms in their hands, officered by men chosen from among themselves, fighting for their common liberties, and united and conducted by governments possessing their affections and confidence. It may well be doubted, whether a militia thus circumstanced could ever be conquered by such a proportion of

regular troops. Those who are best acquainted with the last successful resistance of this country against the British arms, will be most inclined to deny the possibility of it. Besides the advantage of being armed, which the Americans possess over the people of almost every other nation, the existence of subordinate governments, to which the people are attached, and by which the militia officers are appointed, forms a barrier against the enterprises of ambition, more insurmountable than any which a simple government of any form can admit of. Notwithstanding the military establishments in the several kingdoms of Europe, which are carried as far as the public resources will bear, the governments are afraid to trust the people with arms. And it is not certain, that with this aid alone they would not be able to shake off their yokes. But were the people to possess the additional advantages of local governments chosen by themselves, who could collect the national will and direct the national force, and of officers appointed out of the militia, by these governments, and attached both to them and to the militia, it may be affirmed with the greatest assurance, that the throne of every tyranny in Europe would be speedily overturned in spite of the legions which surround it. Let us not insult the free and gallant citizens of America with the suspicion, that they would be less able to defend the rights of which they would be in actual possession, than the debased subjects of arbitrary power would be to rescue theirs from the hands of their oppressors. Let us rather no longer insult them with the supposition that they can ever reduce themselves to the necessity of making the experiment, by a blind and tame submission to the long train of insidious measures which must precede and produce it." [26]

Madison observes "the advantage of being armed, which Americans possess over the people of almost every other nation." His description of the militia demonstrates that he shares the same republican principle as the anti-federalists

- armed citizens, officered by men chosen by their state governments, fighting for their common liberties. [27] Today, as we look at the thus far peaceful withdrawal of England from the European Union, we must also look back to the violent fight that occurred in our nation when the Southern Confederacy withdrew from the larger union. Revisionist based morality arguments aside, the southern states did not want to be dictated to by a central government. Fifty years after the end of the Civil War, we saw the result of the central power having established dominance over the states. At this period, just prior to American entry into World War One, state government control over their representatives in the Senate was taken away, a Federal income tax was imposed upon the people, and a central bank was again established in the United States. Today's Federal Government has militarized forces in so many of its departments it is difficult to estimate correctly the actual number of armed people who serve at the discretion of the executive branch.

While many Americans with questionable motives have now chosen to assign the Civil War and the Confederacy to the garbage can of racism, many, unvested in racial politics based on a never ending manipulation of American society because of slavery, look at the removal of memorials to the Civil War as a later day aggression on the part of the Central government and its quislings in state power. We are witnessing the rewriting of history, as truth is being heaped into the Orwellian Memory Hole by the shovelfuls. For many, what occurred in broad daylight at Ruby Ridge and Waco remain stark reminders of what Federal agencies are capable. That gun sales are rocketing may in part be due to the fact that the wife of the President who oversaw the operations at Ruby Ridge and Waco is now running for President. Many have not forgotten that no government agent was ever held culpable for the killings at either of those locations. In fact, some were promoted while the victims were put on trial. It is little wonder that Americans are armed to the teeth, which, according to even the most centrist of Founding Fathers, is a good thing. What is lacking is state sponsored organization and training. So, while many look at the armed citizen as a threat to liberty, those who treasure the founding principles of this country understand that

the armed citizen is the defender of liberty.

Many early leaders of the United States, like Hamilton in his Federalist Papers and later General Knox in his plan for organizing the Militia presented to Congress, intoned the spirit of the militia as being both a reflection of and a wellspring of participatory government. And, unlike contemporary politicians who want to disarm Americans, these early Americans understood that the government they were creating, in spite of those who claimed it would present no danger to American Liberty, still needed to be countered by visceral residual power in the hands of the citizens. While the founders speak of a balance of power between the branches in the structure of the government, it is the armed citizenry that was to hold the central authority in check, and more so recreate in each generation the spirit that lived at the time of the Revolution. Here again is Hamilton in Federalist 29 confidently stating, albeit in his typical disparaging style, that American liberty will be guaranteed by the Militia.

"There is something so far-fetched and so extravagant in the idea of danger to liberty from the militia, that one is at a loss whether to treat it with gravity or with raillery; whether to consider it as a mere trial of skill, like the paradoxes of rhetoricians; as a disingenuous artifice to instil prejudices at any price; or as the serious offspring of political fanaticism. Where in the name of common-sense, are our fears to end if we may not trust our sons, our brothers, our neighbors, our fellow-citizens? What shadow of danger can there be from men who are daily mingling with the rest of their countrymen and who participate with them in the same feelings, sentiments, habits and interests? What reasonable cause of apprehension can be inferred from a power in the Union to prescribe regulations for the militia, and to command its services when necessary, while the particular States are to have the SOLE AND EXCLUSIVE APPOINTMENT OF THE OFFICERS? If it were possible seriously to indulge a jealousy of the militia upon any conceivable establishment under the federal government, the circumstance of the officers being in the appointment of the States

ought at once to extinguish it. There can be no doubt that this circumstance will always secure to them a preponderating influence over the militia." [28]

It is interesting to note while we are discussing the importance of the Militia as both a preventative and a counter to a standing army, there are those among us who, in spite of everything to the contrary, choose to think of the Militia's prime function as being the defense of the state, acting solely in the capacity of a substitute army. While Madison in Federalist 46 points out the ultimate supremacy of the Militia over any force that could be assembled by the central government, in Federalist 25 Hamilton, who in other papers extols the virtues and importance of having a well regulated militia, clearly differentiates between the capability of the Militia and the army. We are left with no confusion that while the Militia was considered to be an insurmountable obstacle to a central authority bent on evil against the citizenry, it would only be of relative importance in its actual tactical value against invasion. This perspective leaves little room for a lack of understanding that while there is some tactical advantage to the envisioned Militia, the true purpose of the militia, in its role as a preventative of a large standing army, has ever been considered a barrier against tyranny. In realistic terms we must understand that with the advent of a sophisticated Army, and especially a modern Navy and Air Force, there is a need for highly trained people to serve on a continuing basis in those positions demanded by modern technology. This is not to say that the reserve forces of the various branches of our military should be eliminated. It also does not say that skill should not be attained in basic marksmanship and coordinated military ground action, both for the purpose of suppressing domestic insurrection and as an additive force against foreign invasion, or as a threat to any leader attempting to use force to subjugate the citizenry,

"Here I expect we shall be told that the militia of the country is its natural bulwark, and would be at all times equal to the national defense. This doctrine, in substance, had like to have lost us our independence. It cost millions to the United States that might have been saved. The facts

which, from our own experience, forbid a reliance of this kind, are too recent to permit us to be the dupes of such a suggestion. The steady operations of war against a regular and disciplined army can only be successfully conducted by a force of the same kind. Considerations of economy, not less than of stability and vigor, confirm this position. The American militia, in the course of the late war, have, by their valor on numerous occasions, erected eternal monuments to their fame; but the bravest of them feel and know that the liberty of their country could not have been established by their efforts alone, however great and valuable they were. War, like most other things, is a science to be acquired and perfected by diligence, by perseverance, by time, and by practice." [29]

Chapter

Words by any other name

As stated quite clearly, the armed Militia, which the Second Amendment was created to protect, was not intended to protect only the physical state. It was intended to protect liberty, to protect freedom - to keep the state free. It was the existence of the well regulated citizen militia that was to do this - in order to prevent the need for a standing army.

"... necessary to the security of a free State..."

Second Amendment to the Constitution (Article xx)

Those who deride the Second Amendment, and even many of those who champion the Second Amendment, fail to take heed of the specific wording of the Amendment. The primary intent of a well armed militia is neither intended to protect the geographical integrity of the American republic nor its inhabitants. It's intent is to protect the liberty of the state; in a larger sense to protect a 'state of being' rather than merely a physical geographical state. If the amendment read

that "a militia is necessary to the security of a state", and one put aside the fact that the Amendment is situated within the Bill of Rights, which was created singularly to limit the power of the central government and protect freedom, one could conjecture that the militia is intended to protect harm from coming to the nation in the form of some physical attack. But, the founders intention was to rely upon the militia to secure, to maintain, the freedom of the state - to prevent the citizenry from losing their liberty.

There are several important words in the Second Amendment that are unfortunately misunderstood, whether by intention or through ignorance. The Amendment does not merely use the word 'militia'. It uses the descriptive phrase, "well regulated militia". In today's parlance most Americans might think of a 'regulated' militia as one that is controlled by a government agency, subject to laws and regulations. That interpretation of the word is very different from its eighteenth century military usage, and even its usage today when relating it to the military. A 'regular' in military terms is someone who is part of a formal army, as opposed to 'irregulars', those who fight outside of the formal army, or those who are quickly organized in a conflict to fight alongside an army. Irregulars would be those who fought in the resistance in World War Two, partizans of one type or another. They were part of the same war effort as the major armies of the allied nations, but they were differently armed, used different tactics, wore no particular uniform, and were under a different chain of command. Even today we speak of the regular Army as opposed to the reserve Army, or the National Guard. When reservists and members of the guard are brought into service with the Regular Army, in spite of their earlier training, they are reorganized, and often have to retrain on different equipment and with different systems and be re-armed so as to be brought into conformity with its lines of supply, the regular chain of command and its doctrines. A regular soldier is one who is part of an organized unit, trained and well armed. So when the language of the Second Amendment refers to a 'well regulated' militia, it is referring to an organized, armed and trained body of citizens. In this case the militia, not the Army. But, the Amendment does not stop at regulated. It states "*A 'well' regulated militia.*" The

Founders did not want some loosely organized, poorly armed and trained militia. They wanted a militia of the first order, "*A well regulated militia.*" So when a deceptive President asks what use does a citizen have for a military style weapon, the answer is simply that it is not only their right to own such a weapon, but it is their responsibility as an American citizen.

But other words in the Amendment are also overlooked by those who defend the Second Amendment by avoiding its meaning and intent: "... *necessary to the security of a free State...*" In this instance the word 'security', is not being used solely in terms of defending against a physical attack. Again, to infer that the Bill of Rights suddenly included a matter of national defense against foreign invasion is to turn off one's intelligence as one reads the Bill of Rights. The Second Amendment might have been stated as:

"Since the best way to protect the country's freedom and keep it free is with an organized, well trained and well armed militia, rather than an army of great magnitude, which might prove dangerous to liberty; therefore the people must for all time have an unfettered access to own and use firearms so that these armed and well practiced citizens are available for participation in the militia when called to service." [30]

And, in fact, using more concise language than mine, that is exactly what is written. That is what was said many dozens of times in debate after debate and in a multitude of writings. The Founders were concerned with maintaining liberty for generations to come, "Ourselves and our posterity." The word "security' here has two implications. Obviously it refers to the defense of the nation by a militia rather than a standing army. But its larger meaning is "... to the security of a 'free' state..." To secure, to hold, to maintain for 'posterity' the freedom for which the Revolutionaries fought. If the Amendment read "security of the state" and appeared under the powers of the Executive branch, it might well only mean to protect the country from invasion or insurrection. It was a rebellion in 1787 that

influenced the Federal Convention to strengthen the central government, because many were concerned that the Congress under the Articles of Confederation did not have the capability to respond quickly enough to the rebellion, albeit that Thomas Jefferson, who had very real concerns about the public as a "mob", still seemed to "accept" the rebellion as the proper functioning of a democracy. It was this rebellion that gave great backing to those who wanted a stronger central government. One can imagine that the rebellion in 1787 was unfairly used to enlarge the power of the central government in much the same way that Muslim Terrorist attacks today are unfairly used by Centrists who want increased central authority and restrictions on firearms.

The security referenced in the Second Amendment is not just of the state but a particular type of state, a "free state". In plain old English, "...the security of a free state..." says exactly what it means, "To keep a state free, to maintain a free state". The proposition being posed here is not whether or not the state may be defended, but at what cost to freedom can a standing army be permitted to exist. The founders chose to guarantee both the security of the physical state and the security of freedom. One cannot claim to be an American and ignore the obligations of citizenship imposed upon us in a participatory democratic republic. The Second Amendment in the Bill of Rights is not primarily about defending the United States from foreign attack, but how to reconcile the need for an energetic government with the maintenance of freedom. In Elbridge Gerry's words when referring to the militia, "*...it is to prevent the establishment of a standing army, the bane of liberty...*" It is the defense of the 'state' of being free and not the defense of the physical environs of the state that is primary in the Second Amendment. To discount the amendment's implied distrust of a central government and the army it could muster is to deny all of the American Revolution and the hopes of the founders for a continuing democratic-republican America.

The protection of liberty is most obvious to those who understand the purpose of the Bill of Rights, and its essential *raison d'être*. The amendments are tasked with defending liberty; especially those liberties which many feared would be at

most risk were there a strong central government and no Bill of Rights. Press and assembly serve to protect essential liberty; as does the militia serve to protect essential liberty. The Second Amendment is a shield against the usurpation of a basic right, exactly like the protection given the other enumerated and non-enumerated rights in the first ten amendments. It is insulting that we must search for justification for our basic rights, when the Ninth Amendment paints with a broad stroke an extension of protection to unenumerated rights:

"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." [31]

The Madison Federalists opposed a bill of rights, because they truly believed, or for the sake of getting the Constitution passed said they believed, that enumerating certain rights would disparage other rights not enumerated. The underlying fear for them was that if they were to admit that there was a need for written protections of liberty in the Constitution, they would be admitting that the Constitution was not the perfect document they claimed it was, and that there was room for improvement in the structure of the new government, and that changes needed to be made. Of course, all of this leaves one to wonder how bad things might be today without a Bill of Rights if the Federalist's fanciful views of utopian altruistic republicanism as defined by the Constitution had prevailed over the more realistic views of Henry, Gerry, Mason, Lee and the other Anti-Federalists,.

We are, or were intended to be, a democratic - republic, a union of many states, each having an organized force to handle local emergencies, and in times of large scale insurrection or external war or natural disaster, a central authority having recourse to the service of the individual state militias.

While inconceivable to those whites and blacks who don't trust each other, who have of late been thrown against each other by antagonistic political rhetoric, one must ask how much different would the situations in Ferguson and Baltimore

have been handled had it been the local militia, consisting of fellow citizens, who responded to the organized insurrection of bused-in instigators, activist community organizers with a political agenda and errant youth caught up in the excitement of the moment? How much different would it have been if local militia men and women, black, white, yellow, brown and red, of any and all religions in the community, who had for years practiced with each other, each individual having a stake in the community, been the front line against looters and arsonists. Would the local militia, consisting of hardworking local residents suffered politely when Michael Brown's stepfather incited an orchestrated paid mob to "burn the bitch down"? "The bitch" in this instance would include several businesses owned by local businessmen serving in the militia and present on the front lines that evening.

We have delegated to paid men and women almost all responsibility for the task of protecting us, and in so doing we citizens have been sidelined in the activities of our government. It was to be the local militia that was to bridge the differences among the citizenry.

I am including here a document that prior to the web was a somewhat esoteric document, known mostly to historians of the Post Revolutionary period, and then mostly overlooked because it dealt with the militia, a pretty much out of date concept among Liberal academia in the Twentieth Century. The man, Henry Knox, who developed the plan contained in the document, was a general in the Revolution and the nation's first Secretary of War. You will note that the name of the cabinet position he occupied has been changed to a less "aggressive" term - Secretary of Defense, another way to make the endeavor of war more palatable when it must occur. It also has the greater effect of justifying actions that might otherwise be somewhat difficult to justify by having the actions labeled as defense. In fact since World War Two we have not had a Congress willing to declare war on anybody. The public and the newspapers might have called Korea, Vietnam, Iraq and Afghanistan wars, but not the Congress. They are all peacemakers. Before the Iraq War there were millions of actual peacemakers in

the streets around the world. Yet, one of the candidates for President, who voted in Congress to support what was a war in every way but in name, is now calling the invasion of Iraq a terrible decision and blaming it on the then President. It would appear that now that we have a mercenary force as our Army, Navy and Air Force, we can call war whatever we want. The citizens at large aren't fighting. We have volunteers and even foreigners fighting our wars. It was King George who hired mercenaries to do some of the fighting during the Revolution. Because of the use of mercenaries against us during the Revolution, it became important to the founders that a chief executive never have the ability to raise an army of any magnitude without the consent of the House of Representatives and have that army consist, to the greatest degree possible, of citizens drawn from the various militias. Back in 1790 war was spoken of as it is - a sometimes necessary messy destructive death delivering endeavor. And the decision to go to war was a shared decision. Today there are people killing Americans in the name of a foreign entity and we consider them criminals not military enemies. And rather than asking Americans to defend themselves, the Leftists in the media, in the Congress and in the White House are trying to disarm Americans. Not only are we not being asked to fight, we are being told that we must not fight. The message is: someone, somewhere will be on the way to protect us, even after it's too late, as it was for so many in Orlando, Florida. And, instead of wiping off the face of the earth the group that is responsible for the killings of Americans, as we would do were we at war, we are slowly degrading their capabilities and taking insignificant casualties at home and abroad, and offering our enemies our love. [32]

It is interesting to note that General Knox's plan was never accepted. It was rejected because of its cost. A much less comprehensive plan was created in 1792. The spirit of a participatory democratic republic, still alive in so many of those that fought the War, was already weakened by 1787 and by 1792 it was weakened even further. But, the spirit that brought America into existence is very much alive in what Knox laid out, and reflects the true republican values to which the Founders aspired.

"A PLAN for the GENERAL ARRANGEMENT
of the MILITIA of the UNITED STATES
THE INTRODUCTION

Henry Knox
Secretary of War
1786

Plan submitted to Congress, January 1790.

That a well constituted Republic is more favorable to the liberties of society, and that its principles give an higher elevation to the human mind than any other form of Government, has generally been acknowledged by the unprejudiced and enlightened part of mankind.

But it is at the same time acknowledged, that unless a Republic prepares itself by proper arrangements to meet those exigencies to which all States are in a degree liable, that its peace and existence are more precarious than the forms of Government in which the will of one directs the conduct of the whole for the defence of the nation.

A Government whose measures must be the result of multiplied deliberations, is seldom in a situation to produce instantly those exertions which the occasion may demand; therefore it ought to possess such energetic establishments as should enable it by the vigor of its own citizens, to controul events as they arise instead of being convulsed or subverted by them.

It is the misfortune of modern ages that Governments have been formed by chance and events instead of system— that without fixed principles they are braced or relaxed from time to time according to the predominating power of the rulers, or the ruled— The rulers possessing separate interests from the people excepting in some of the high toned Monarchies, in which all opposition to the will of the princes seems annihilated.

Hence we look round Europe in vain for an extensive Government

rising on the power inherent in the people, and performing its operations entirely for their benefit— But we find artificial force governing every where, and the people generally made subservient to the elevation and caprice of the few— Almost every nation appearing to be busily employed in conducting some external War— grappling with internal commotion— or endeavoring to extricate itself from impending debts which threaten to overwhelm it with ruin— Princes and Ministers seem neither to have leisure nor inclination to bring forward institutions for diffusing general strength, knowledge, and happiness— But they seem to understand well the Machivalian maxim of politics, divide and govern.

May the United States avoid the errors and crimes of other Governments, and possess the wisdom to embrace the present invaluable opportunity of establishing such institutions as shall invigorate, exalt, and perpetuate, the great principles of freedom— an opportunity pregnant with the fate of millions, but rapidly borne on the wings of time, and may never again return.

The public mind unbiased by superstition or prejudice seems happily prepared to receive the impressions of wisdom— The latent springs of human action ascertained by the standard of experience, may be regulated and made subservient to the noble purpose of forming a dignified national character.

The causes by which nations, have ascended and declined through the various ages of the world, may be calmly and accurately determined; and the United States may be placed in the singularly fortunate condition of commencing their career of Empire with the accumulated knowledge of all the known societies and Governments of the Globe.

The strength of the Government like the strength of any other vast and complicated machine will depend on a due adjustment of its

several parts— Its agriculture, its commerce, its laws, its finance, its system of defence, and its manners and habits all require consideration, and the highest exercise of political wisdom. It is the intention of the present attempt to suggest the most efficient system of defence which may be compatible with the interests of a free people; a system which shall not only produce the expected effect, but in its operations shall also produce those habits and manners which will impart strength and durability to the whole Government.

The modern practice of Europe with respect to the employment of standing Armies has created such a mass of opinion in their favor that even Philosophers, and the advocates for liberty have frequently confessed their use and necessity in certain cases. But whoever seriously and candidly estimates the power of discipline and the tendency of military habits will be constrained to confess, that whatever may be the efficacy of a standing Army in War, it cannot in peace be considered as friendly to the rights of human nature— The recent instance in France cannot with propriety be brought to overturn the general principle built upon the uniform experience of mankind— It may be found on examining the causes that appear to have influenced the Military of France, that while the springs of power were wound up in the nation to the highest pitch, that the discipline of the army was proportionably relaxed— But any argument on this head may be considered as unnecessary to the enlightened citizens of the United States. A small Corps of well disciplined and well informed Artillerists and Engineers— and a Legion for the protection of the frontiers, and the Magazines and Arsenals are all the Military establishment which may be required for the present use of the United States— The privates of the Corps to be enlisted for a certain period and after the expiration of which to return to the mass of the Citizens.

An energetic National Militia is to be regarded as the capital security of a free republic, and not a standing Army forming a distinct class in the community. (Emphasis added)

It is the introduction and diffusion of vice and corruption of manners into the mass of the people that render a standing army necessary— It is when public spirit is despised, and avarice, indolence, and effeminacy of manners, predominate and prevent the establishment of institutions, which would elevate the minds of the youth in the paths of virtue and honor, that a standing Army is formed and rivetted forever.

While the human character remains unchanged, and societies and Governments of considerable extent are formed— a principle ever ready to execute the laws and defend the State must constantly exist— Without this vital principle, the Government would be invaded or overturned and trampled upon by the bold and ambitious— no community can be long held together unless its arrangements are adequate to its probable exigencies.

If it should be decided to reject a standing Army for the military branch of the Government of the United States as possessing too feirce an aspect, and being hostile to the principles of liberty it will follow that a well constituted Militia ought to be established. A consideration of the subject will show the impracticability of disciplining at once the mass of the people. All discussions on the subject of a powerful Militia will result in one or the other of the following principles.

First:

Either efficient institutions must be established for the military education of the youth, and that the knowledge acquired therein shall be diffused throughout the community by the mean of rotation.

Or Secondly:

That the Militia must be formed of substitutes, after the manner of

the Militia of Great Britain.

If the United States possess the vigor of mind to establish the first institution, it may reasonably be expected to produce the most unequivocal advantages— A glorious national spirit will be introduced with its extensive train of political consequences— the youth will imbibe a love of their country— reverence and obedience to its laws— courage and elevation of mind— openness and liberality of character— accompanied by a just spirit of honor. In addition to which their bodies will acquire a robustness— greatly conducive to their personal happiness as well as the defence of their country— While habit with its silent but efficacious operations will durably cement the system.

Habit, that powerful and universal law, incessantly acting on the human race, well deserves the attention of legislatures— Formed at first in individuals by separate and almost imperceptible impulses until at length it acquires a force which controuls with irresistible sway— The effects of salutary or pernicious habits operating on a whole nation are immense and decides its rank and character in the world.

Hence the science of legislation teaches to scrutinize every national institution, as it may introduce proper or improper habits— To adopt with religious zeal the former and reject with horror the latter.

A Republic constructed on the principles herein stated would be uninjured by events, sufficient to overturn a Government supported solely by the uncertain power of a standing Army.

The well informed members of the community, actuated by the highest motives of self love, would form the real defence of the country— Rebellions would be prevented or suppressed with ease Invasions of such a Government would be undertaken only by madmen and the virtues and knowledge of the people would

effectually oppose the introduction of Tyranny.

But the second principle— a Militia of substitutes— is pregnant in a degree with the mischief's of a standing Army— As it is highly probable the substitutes from time to time will be nearly the same men, and the most idle and worthless part of the community— Wealthy families proud of distinctions, which riches may confer, will prevent their sons from serving in the Militia of substitutes— the plan will degenerate into habitual contempt— a standing Army will be introduced, and the liberties of the people subjected to all the contingencies of events.

The expence attending an energetic establishment of militia may be strongly urged as an objection to the institution, but it is to be remembered that this objection is levelled at both systems, whether by, rotation, or by substitutes— For if the numbers are equal the expence will also be equal— The estimate of the expence will show its unimportance when compared with the magnitude, and beneficial effects of the institution.

But the people of the United States will cheerfully consent to the expences of a measure calculated to serve as a perpetual barrier to their liberties— especially as they well know that the disbursements will be made among the members of the same community, and therefore cannot be injurious.

Every intelligent mind would rejoice in the establishment of an institution, under whose auspices, the youth and vigor of the Constitution, would be renewed with each successive generation, and which would appear to secure the great principles of freedom and happiness, against the injuries of time and events.

The following plan is formed on these general principles.

1st.

That it is the indispensable duty of every nation to establish all necessary institutions for its own perfection and defence.

2'ndly,

That it is a capital security to a free State for the great body of the people to possess a competent knowledge of the military art.

3'dly,

That this knowledge cannot be attained in the present state of society but by establishing adequate institutions for the military education of youth— And that the knowledge acquired therein should be diffused throughout the community by the principles of rotation.

4'thly

That every man of the proper age, and ability of body is firmly bound by the social compact to perform personally his proportion of military duty for the defence of the State.

5'thly;

That all men of the legal military age should be armed, enrolled and held responsible for different degrees of military service.

And 6thly,

That agreeably to the Constitution the United States are to provide for organizing, arming and disciplining the Militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the Militia according to the discipline prescribed by Congress. " [33]

Militia participation would not cure all the ills of our society, but it would be a glue that would better join the citizens to each other. No one individual, nor any one device or artifice can create an invincible bond between people who are inherently different; but common militia practice, a sharing of responsibility creates a loyalty to something greater than the loyalty to the learned and unquestioned antagonisms towards others within the citizenry. After Shay's Rebellion and the inability of the government to put it down quickly, George Washington, in a letter to his old friend and comrade General Light Horse Harry

Lee, expressed the need for a secure government under Democratic principles,

"You talk, my good sir, of employing influence to appease the present tumults in Massachusetts. I know not where that influence is to be found, or, if attainable, that it would be a proper remedy for the disorders. Influence is not government. Let us have a government by which our lives, liberties, and properties will be secured, or let us know the worst at once." [34]

That the underlying causes of Shay's Rebellion should have been addressed much earlier, and ultimately were, is just as much an indictment of the political system as the men who marched with former Revolutionary War Lieutenant xxx Shay or of the inability of the government to bring it to an end quickly. Just as interesting was Thomas Jefferson's response.

"Wonderful is the effect of impudent & persevering lying. The British ministry have so long hired their gazetteers to repeat and model into every form lies about our being in anarchy, that the world has at length believed them, the English nation has believed them, the ministers themselves have come to believe them, & what is more wonderful, we have believed them ourselves. Yet where does this anarchy exist? Where did it ever exist, except in the single instance of Massachusetts? And can history produce an instance of rebellion so honourably conducted? I say nothing of it's motives. They were founded in ignorance, not wickedness. God forbid we should ever be 20 years without such a rebellion. The people cannot be all, & always, well informed. The part which is wrong will be discontented in proportion to the importance of the facts they misconceive. If they remain quiet under such misconceptions it is a lethargy, the forerunner of death to the public liberty. We have had 13. states independent 11. years. There has been one rebellion. That comes to one rebellion in a century & a half for each state. What country before ever existed a century & half without a

rebellion? & what country can preserve it's liberties if their rulers are not warned from time to time that their people preserve the spirit of resistance? Let them take arms. The remedy is to set them right as to facts, pardon & pacify them. What signify a few lives lost in a century or two? The tree of liberty must be refreshed from time to time with the blood of patriots & tyrants. It is it's natural manure. Our Convention has been too much impressed by the insurrection of Massachusetts: and in the spur of the moment they are setting up a kite to keep the hen-yard in order. I hope in God this article will be rectified before the new constitution is accepted." [35]

The phrase "The *tree of liberty must be refreshed from time to time with the blood of patriots & tyrants*" is usually incorrectly attributed to the revolutionary period and has become a mantra for Americans wanting their liberty front and center in the course of Congressional business. I believe Jefferson was asking that we not rush to bone crushing force to put down a rebellion that may have at its roots some just cause. And, therein lies the conundrum between a powerful government and the requisite power it may employ to keep order. It is with Shay's Rebellion that we see the opening of the great divide in American political thought. On the one hand you have Washington lamenting that the government is not strong enough, and on the other we see Jefferson empathizing with the dissenters in their cause for justice. Jefferson was not a timid character and was at the forefront of the movement to arm the citizenry after the pre-Revolutionary events in Massachusetts, and as President went after the Barbary Pirates with a newly built fleet of frigates manned with Marines. But, it is the understanding that what exists to protect us abroad has the potential to harm us at home that creates the divide in political thought; and it is the Second Amendment that addresses this perpetual conflict between security and safety. That the amendment is no longer being seen for what it is presents the greater danger.

If one were to look at the enmity being stirred-up by the progressive left and the lackluster response by the Republican Congress and several Governors, one

must wonder if the breach between the political elite and the majority of honest, hard-working citizens is not the reason that the government is taking aim to disarm the citizenry. Were I a lying cheating politician, I wouldn't want to have a well armed angry citizenry waiting for me after having sold them out to some special interests - and in so doing tied chains around their hopes and dreams for a better future.

The founding fathers had a great distrust of standing armies because they saw first hand its use to suppress them. Up until recently the American Army was a citizen army consisting of conscripts. The current American military is a fully mercenary force. The very wording of the Second Amendment, with its introductory clause, which very clearly states the case for the Second Amendment, is what most detractors of the Second Amendment look at as being confusing. There is nothing confusing about the language of the Second Amendment - unless you want it to be confusing and you intentionally ignore its very clear wording and meaning. The Second Amendment gives up its meaning when understood in terms of preventing the rise of a standing army by having initial recourse to the militia. Those who irrationally oppose the private ownership of effective military style weapons turn the meaning of the Amendment around. They claim that military weapons are only useful in a militia, and because the militia is in disuse citizens have no use for military style weapons. Of course it is not the militia that brings utility to the private ownership of arms, but the private ownership of arms that brings utility to the militia and makes the militia both practical and viable. Those who oppose guns also ignore who is the militia.

An understanding and of the Second Amendment makes clear the reason for the private ownership of military style rifles, as those are the very weapons citizens are expected to own. The founding fathers were very specific in their use of terms in constructing the Second Amendment, as it was the most highly debated Amendment. Of course the Founding Fathers did not anticipate the M-16, but they did expect that the militia would face a highly armed force of its day. In other words they wanted an equal match. As seen in Knox's plan, they did anticipate a

core American military who would be the professionals, the experts, who would train and teach the citizenry. It was in militia practice that the citizenry would learn to shoot the basic military weapons, and learn military discipline.

What we have today is the worst of all situations. We have a mercenary force, an all volunteer force, a standing army, much like some of the forces that the British used during the revolution, the Hessians being an example.

Compare the recent situation in Egypt, where almost the entirety of the population has served in the army. There the army is a standing army, but it is reflective of the army that we had through the Viet Nam period. The composition of the Army during the Vietnam War is the reason why the anti-war protests during that period were much longer in duration than the protests over Iraq and Afghanistan. The soldiers then were conscripts, average citizens called to duty. Today, we have an army that is professional and mercenary. I cannot imagine an American tank commander allowing an American citizen to sleep between the treads of his tank as happened in Egypt when the army, rightly or wrongly, stepped in after the Muslim Brotherhood under Mohamed Morsi began to usurp all authority after its election. We no longer have a traditional connection between the citizens and the current American Army, regardless of how their ties to the community are portrayed. The American Armed Forces have a fresh doctrine on population control and Close Quarter combat as a result of the recent war in Iraq, and American soldiers today are knowledgeable in establishing traffic check points, which in an uprising here would be their initial primary role.

So, if all the all guns that the current puppet President has described as Military style assault weapons, and most recently called "Weapons of War", were to be removed from the hands of American citizens, we would then be a disarmed society very much like France, which suffered a Radical Muslim Terrorist attack that killed more than ten times the number of people that were recently killed in a suburban California town by two resident radical America hating, Western

Culture hating, Christian hating Muslims. These two Christmas Party killers in California were no less Christian hating than the mentally ill pro-Muslim killer at Oregon's Umpqua Community College, just several weeks earlier, or the Muslim killer in Orlando Florida who shot 103 people. The killer at the attack in Oregon questioned each person about their faith, and then shot all those who responded by saying they were Christians. The attack by the Muslim in Orlando, Florida, rather than bringing forth a proper military response in Syria and Iraq, and a crackdown in the US against resident radical Muslims, brought another call for the banning of "Weapons of War," even for the repeal of the Second Amendment. The common thread here is not the ease with which an American can obtain a weapon, but the fact that the recent killings including the killing of 14 soldiers at Fort Hood Texas, the thwarted attempt to kill dozens at a free speech event in Irving, Texas, the two Army recruiters killed in Chattanooga, two NYPD officers attacked by a man wielding a hatchet, two officers shot in their patrol car in New York City, a female office worker beheaded in Moore, Oklahoma by a former co-worker who had an Arabic phrase "As-salaamu alaikum" ("Peace be with you") tattooed on his abdomen [35], ten killed in the school in Oregon - were all perpetrated by Muslims, some new converts to Islam and some with documented mental issues, but all, either anti-White or Muslim or both.

But neither the President nor anyone from the Democratic Party addressed Muslim terrorism as Muslim terrorism. In fact Attorney General Lynch said immediately after the killings in San Bernardino that the *"incredibly disturbing rise of anti-Muslim rhetoric ... that fear is my greatest fear."* [36] - and the President in his Sunday night lie filled address to America after the San Bernardino attack defended good Muslims rather than targeting Radical Muslim extremists. But even deeper is the fact that the FBI and other federal agencies have been hamstrung by the President because of his mandated policy not to refer to killings by Radical Muslim Terrorists as killings by Radical Muslim Terrorists. [37]

The point of highlighting the common element in all of the recent killings is not to

attack Muslims, but to point out that rather than doing something positive and proactive about the common element of the shootings, Leftists in and out of government are using the events as an excuse to call for more gun control and further disarm Americans. And, if, as a result of recent killings committed by Muslim extremists, we were disarmed like the French, the two Muslim terrorists in San Bernardino, instead of using auto-loading AR-15 rifles and two handguns, would have relied on their bombs like the killers at the Boston Marathon; or they might have received weapons from their foreign supporters. The fact is that all of the victims were unarmed, and in gun-free zones. In France where guns are basically prohibited, the terrorists were able to obtain actual military grade weapons. Obviously, if you believe your premise is correct and you keep getting the wrong answer, then there is something wrong with your premise. That is what is wrong with gun control; the more gun control, the more deaths by guns.

The attempt that is currently underway by the Democratic Party to limit access to firearms to fewer and fewer people using various guises and pretexts, is a foot in the door for greater and greater gun control, aimed at total gun elimination by a central government at some point in the future. Those who want to eliminate the private ownership of firearms have a long term agenda and much patience. Their plan is the ultimate confiscation of all guns in the hands of private citizens.

The acceptance of the President's illegal actions by a large section of the American public would not have the traction it does were the Second Amendment fully in force. Were there a fully organized Militia in each of the states, more people would be familiar with guns, and their allegiance to their Militia and their state and their community would stand as an impediment to a President who hypocritically says with impunity that he respects the Second Amendment,

"I believe in the Second Amendment. It's there written on the paper. It guarantees a right to bear arms. No matter how many times people try to twist my words around -- I taught constitutional

law, I know a little about this because it's right there on paper. "

[38]

And that is exactly what the Second Amendment is to those opposed to individual gun ownership - a paper tiger. The President can create this false premise by quoting the Constitution, "Our *unalienable right to life, and liberty, and the pursuit of happiness*" and implying that by removing guns more Americans would have more of a right to their lives. The President then went on to say:

"I mean, think about it. We all believe in the First Amendment, the guarantee of free speech, but we accept that you can't yell "fire" in a theater. We understand there are some constraints on our freedom in order to protect innocent people." [39]

What the President didn't quote is the fuller context of what Oliver Wendell Holmes said:

*"The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. [...] The question in every case is whether the words used are used in **such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils** that Congress has a right to prevent."* [40] (Emphasis added)

I can still yell fire in my house. I can still yell fire in an open field. I can still yell fire in an empty theater. No government has yet cut out the tongues of people whom they don't trust in order to let them into a movie theater, fearing that one in several million who might scream fire.

Still the President, who speaks for many who just plain outright don't like guns, and would ban all of them if they could, went on, in direct opposition to the spirit

of Justice Holmes's very quote:

"We know we can't stop every act of violence, every act of evil in the world. But maybe we could try to stop one act of evil, one act of violence. " [41]

We are asked to have our rights further infringed because a future act may be committed by someone totally outside the scope and reach of the President's executive decree.

The emotional approach to gun violence occurs as if it is in a vacuum, completely avoiding the core of the Second Amendment, relegating the issue to a public safety issue. This completely side steps the foundation of our Democratic Republic, civic participation, wherein everyone having guns would be more in harmony with the main function of the Second Amendment, the protection of liberty. Without a Militia, a deceptive President is able to bifurcate the Second Amendment, building to a certain degree upon what the intellectual defenders of the Second Amendment have done - separating the Second Amendment protection of the Militia from the individual right to keep and bear arms. Although the pro-gun defenders rightly argue that guns are not dependant on Militia participation, they fall short in defending what the Second Amendment is all about, that firearms are the foundation of the Militia, the essential protector of American freedom. An active vibrant Militia, acting as the guardian of freedom, as it was intended to be, would serve as a buffer between those who own guns and a gun confiscating government. As it is now, by discounting the Militia, and using the public safety issue, gun grabbers have one less major hurdle to overcome in their hyperbolic and histrionic pleas to eliminate guns for the purpose of protecting society from gun violence.

Anti-gun people set aside the fact that the largest single mass killing in the US took place at a social club in New York City. Ninety two people were killed with a gallon of gasoline and a match. The point being that those who intend to kill will find a way to do it. It is not, never was, never will be the tool that is at blame.

Murder is committed by the murderer not the weapon. When the President intoned the San Bernardino shooting he distinctly did not reference the explosive devices the Muslim Terrorists were carrying or their motive – to kill unarmed Christmas celebrating Americans.

The current discussion on the Second Amendment poses individual protection against the false premise that the President presents: the safety of some individuals by the removal of guns from the hands of the many. Leaving aside that it would be relatively few lives that would be saved by removing guns from the hands of the many - what is not in the equation is the heart of the Second Amendment, the Militia, which would demand armed participation by all the citizenry.

There are those who hypercritically use sympathy for the victims of any of the mentioned killings to further their anti-gun agenda. If the premise the President presents had to be made against a visible comparison of the protection of Liberty by a well regulated Militia, his rhetoric would fall flat. The United States was founded on the principle of inherent rights to be guaranteed by citizen responsibilities. We have come to a point in time when we are balancing an inherent right against a manufactured pseudo right to safety in an unsafe world, with the loss of liberty no where in the measure.

There are two types of politicians, those that trust the American population and those who feel the American population can't be trusted; that only they should be trusted to know what is best for us and from whom we shall be protected and by whom we shall be protected.

The intent of my writing is not to give justification to having a Second Amendment. We already have a Second Amendment. I will, though, stand by my claim that the meaning and purpose of the Second Amendment is clear from the various debates and the fact of its inclusion in the Bill of Rights. It is time that we defend the Second Amendment on its own terms, and stop trying to

disguise the fact that modern weapons like the semi-automatic AR-15 and the semi-automatic version of the AK-47 are exactly what they are intended to be, lethal, less militarized versions of similar fully automatic weapons used on the battlefield. Again - because we don't have a militia is no reason to ban guns that would be of service in the militia, it is a reason to once again have a militia – or at least to recognize who is the militia.

Citations

1 – Superman - the TV series 1952 - "*Who disguised as Clark Kent, mild-mannered reporter for a great metropolitan newspaper, fights a never-ending battle for truth, justice, and the American way!*."

2 - Karen LeCraft Henderson, Circuit Judge, United States Court of Appeals For The District of Columbia Circuit *Heller v. District of Columbia*

3 - Antonin Scalia US Supreme Court *Heller v. District of Columbia*

4 -Thomas Cooley, *General Principles of Constitutional Law. The Second Amendment* 1880

5 - Rep. Murray, Debate on the Militia Bill H or R , 421 Feb. 1792

6 - First Amendment to the US Constitution, 1791,

7 - Interpretive essence of Justice Holmes' doctrine on free speech.

8 - Black Lives Matter protest NYC, 2016

9 - Michael Brown's stepfather, Ferguson Missouri street riots, 2015

10 - "I may disagree with what you say, but I will defend to the death your right to say it." Evelyn Beatrice Hall, *Friends of Voltaire*,1906. A paraphrase of "Think for yourselves and let others enjoy the privilege to do so too." - from Voltaire's *Treatise on Tolerance*, 1763.

11 - Virginia Constitution - Article I, Section 13: (pg.21)

12 - Patrick Henry Virginia Convention, Monday, June 9, 1788

13 - THAT EVERY MAN BE ARMED: THE EVOLUTION OF A CONSTITUTIONAL RIGHT Dr. Halbrook is the author of "*Pre-Revolutionary Origins of the Second Amendment*"

University of Dayton Law Review. Originally published as 15 DAYTON L.R. 91-124

(1989). The printed edition remains canonical. For citational use please obtain a back issue from William S. Hein & Co., 1285 Main Street, Buffalo, New York 14209; 716-882-2600 or 800-828-7571.

14 - "*Encroachments of the Crown on the Liberty of the Subject: Pre-Revolutionary origins of the Second Amendment*" Richard Halbrook

15 - *The Second Amendment and the Historiography of the Bill of Rights*. David T. Hardy

16 - George Mason, Virginia Convention, June xx 1788

17 - The proposals that were agreed upon by the Anti-Federal Committee of Richmond and

dispatched to New York

18 - Mason's draft of the proposed Declaration of Rights, June 1788

19 - Philip Bobbitt *Constitutional Fate*

20 - Sanford Levinson, *The Embarrassing Second Amendment*, 1989 Yale Law Journal.

Originally published as 99 Yale L.J. 637-659 (1989), citing Philip Bobbitt in his book *Constitutional Fate*.

21- David B. Kopel, *The American Revolution against British Gun Control*

22 - Funakoshi - interpretation of his remarks in his book - *Karate Do*

23 - Barry Goldwater –

24 - Wadsworth, Debates on The Militia Bill, House, December 16, 1790, Pg 1855

25 - Alexander Hamilton, Federalist 29

26 - James Madison - Federalist 46

27 - James Madison - Federalist 46

28 - Alexander Hamilton, Federalist 29

29 - Alexander Hamilton, Federalist 25

30 - Suggested wording of the Second Amendment by the author

31 - Bill of Rights - Ninth Amendment to the Constitution

32 - Loretta Lynch, San Bernardino comments - (<http://www.breitbart.com/big-government/2015/12/04/loretta-lynch-vows-prosecute-anti-muslim-speech-calls-san-bernardino-wonderful-opportunity/>)

33 - Secretary of War Henry Knox, Plan for organizing the Militia - submitted to Congress, January 1790

34 - Letters of George Washington, To Richard Henry Lee 178735 - To William S. Smith Paris, Nov. 13, 1787

35 - <http://www.nytimes.com/2014/10/01/us/oklahoma-man-charged-with-murder-in-beheading-of-co-worker.html>

36 - lynch post san Bernardino - greatest fear

37 - President's order not to refer to killings by Radical Muslim Terrorists as killings by Radical Muslim Terrorists

38 - January 05, 2016 East Room of the White House, President Barack Obama

39 - January 05, 2016 East Room of the White House, President Barack Obama

40 - Holmes, Oliver Wendell, Opinion of the Court, "*Schenck v. United States* 249 U.S. 47". Argued: January 9, 10, 1919, Decided: March 3, 1919

" We admit that, in many places and in ordinary times, the defendants, in saying all that was said in the circular, would have been within their constitutional rights. But the character of every act depends upon the circumstances in which it is done. Aikens v. Wisconsin, 195 U.S. 194, 205, 206. The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. It does not even protect a man from an injunction against

*uttering words that may have all the effect of force. Gompers v. Bucks Stove & Range Co., 221 U.S. 418, 439. **The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree..***" (Emphasis added)

41 - January 05, 2016 East Room of the White House, President Barack Obama