

First Place Winner

The Second Amendment: To Bear Arms or Not to Bear Arms

by

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In order to understand the Second Amendment, one must know the background from which the amendment was written. For example, *Right to Keep and Bear Arms .com* notes that "The principle that armed free men could and should legally rise against a government that violated the social contract was at least 561 years old when Jefferson penned the Constitution."¹ In addition, it must not be forgotten that the United States was formed from 13 colonies -- British colonies -- and that many laws and rights pertaining to the United States and its citizens were, and to a certain extent still are, based on British law and tradition. As stated in the book, *The Constitution of the United States*, "The model for defining liberty as written law was the Magna Carta. Although the barons who were responsible for the signing of the Magna Carta acted only for themselves, the nobility, the document became a part of English law, and over time its freedoms were given to all English citizens."²

Historically, the right to bear arms stems from the fact that British residents had to be ready and able to defend themselves from both foreign and domestic threats. In fact, the book, *History of the Second Amendment*, indicates that "The right to bear arms was recognized by English courts before the invasion of William the Conqueror in 1066."³ It should be remembered that English citizens had as much reason to fear the British Army as France did. Tyranny was a constant problem in England, and it is probably safe to say that the English Civil War, which finally dissolved the supreme authority of the King,

would not have been possible had the revolutionaries not owned and known how to use, weapons. It should also be observed that during the medieval and early Renaissance periods Englishmen were required to maintain their archery skills. As stated in *Arms and Uniforms*, "Every citizen had to do target practice with the bow and arrow at the local exercise ground."⁴ In fact, it was common for the archer corps of the time to be filled out by the best bowmen the local towns could offer. Although archery had long since ceased being used for combative purposes by the time the Constitution was written, the tradition of citizens owning weapons and knowing how to use them in times of national crises carried over into the age of gunpowder. More importantly, it carried over to the thirteen British colonies in North America, where "Bearing arms to defend the community was considered a duty of property owing men"⁵ This was further enforced by the fact that "Colonial laws required that all free adult males possess arms and ammunition -- or else be fined or disciplined by the community."⁶ Furthermore, *Right to Keep and Bear Arms.com* adds, "Every able-bodied freeman, between the ages of 16 and 50, was enrolled in the militia...the law requires every militia man to provide himself with the arms usual in the regular service."⁷ So it can be stated that when the drafters of the Constitution penned the Second Amendment they based it on literally hundreds of years of law and tradition.

There is another side to the Second Amendment that has given rise to considerable debate, and that is whether or not the right to own and bear arms is a state right or an individual right. The argument that it is a state right is a curious one as it is inherently flawed. As pointed out in *Gun Control: Opposing Viewpoints*, "Under Article 1 of the US Constitution and the 10th Amendment, 'powers' are reserved to the states.

By contrast American citizens have 'rights.'"⁸ The book, *The Constitution and What it Means Today* , states in reference to the Second Amendment that, "This right, being a right of citizenship rather than of person, may be denied to aliens, at least on reasonable grounds."⁹ As such, it is clearly established that when the Second Amendment refers to "the right to keep and bear arms," it is referring to an individual right. There is another historical fact which suggests that the right to bear arms is an individual one: At the time the Constitution was written there were no state controlled armories or weapons depots. The only place to store weapons and munitions was in private citizens' homes. The states could not, even if they wanted to, house any significant number of arms. Moreover, since a state is not a physical entity, it literally cannot bear anything! As such, the right to keep and bear arms can, and should only, be interpreted as an individual right.

Besides being a historical right, and an individual right, the right to keep and bear arms is a regulated right. This was recognized long before the Constitution was ever conceived. Even in Britain, where the ownership of weapons was a long established tradition, the ownership of guns was, and still is, strictly controlled. According to the *History of the Second Amendment*, "The right to bear arms in England was limited. Laws restricting the use and ownership of private arms dated to the fourteenth century. Guns could not be carried in public, and in the sixteenth century Parliament limited gun ownership to the wealthy."¹⁰ Furthermore, the *History of the Second Amendment* adds that "Under Charles II, gunsmiths were required to keep strict records of the number of guns made and to whom they were sold, and people needed licenses to carry guns."¹¹

Britain is not the only country to have guns laws, to be sure. As stated in the book *Gun Control: Opposing Viewpoints* in reference to the United States, "This country

has plenty of gun laws, more than twenty thousand in fact, but neither the police nor the courts are enforcing them."¹²

There is evidence that such laws are required and need to be enforced to ensure that guns are not used for unlawful purposes. For example, *Gun Control* reported that "In 1995 guns killed 35,957 people on American streets, in American homes, businesses, and schools. In comparison, 33,651 Americans were killed in the Korean War."¹³ In contrast, the *International Journal of Epidemiology* reported that "For every 100,000 people in England, which has strict gun-control laws and few privately owned firearms, there were only .55 murders, only .07 of which were caused by guns."¹⁴

It should be pointed out that such laws are within the bounds of the Constitution. *Gun Control* gives two such examples: "In 1986 Congress passed a law forbidding the manufacture of new machine guns. A gun manufacturer sued. The 11th Circuit Court of Appeals ruled that the law was not unconstitutional."¹⁵ In another instance, "The village of Morton Grove became the first community in the nation to outlaw the possession of handguns. A gun-store owner sued on Second Amendment grounds. The 7th Circuit Court ruled that possession of handguns by individuals is not part of the right to keep and bear arms."¹⁶ These two examples, along with the twenty something thousand other gun laws, should serve as ample proof that gun laws are not only constitutional, but are themselves necessary to protect the other constitutional aspects of gun ownership.

The Second Amendment to the Constitution of the United States of America is a truly unique and historical amendment. It is one of few that were based on hundreds of years of tradition. Yet, at the same time, it has provided one of the most vigorously debated questions in recent American history. Perhaps the time has come for the question

to be answered. Americans do have the right to own and bear weapons, while at the same time the government does have the right to regulate the ownership of those weapons. It is those two principles that have emerged from the debate, and it is those principles that must never be forgotten.

Endnotes

1. *Right to Keep and Bear Arms.com* (<http://pages.prodigy.net/krtq73aa/arms.htm>)
2. Judson, Karen *The Constitution of the United States*, Copyright 1996 Enslow Publishers Inc, Springfield NJ
3. History of the Second Amendment Copyright 1994 Close Up Foundation
Linda R. Monk, "The Bill of Rights, a Users Guide"
4. *Arms and Uniforms: The Age of Chivalry* , Part One Liliane and Fred Funcken
Copyright 1977 Prentice-Hall, Inc., Englewood Cliffs, New Jersey
5. *History of The Second Amendment* , Copyright 1994 Close Up Foundation
Linda R Monk, "The Bill of Rights, a User Guide"
6. *History of the Second Amendment* , Copyright 1994 Close Up Foundation
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7. Right to Keep and Bear Arms.com
(<http://pages.prodigy.net/krtq73aa/arms.htm>)
8. "Does the Constitution Protect Private Gun Ownership?"
Copyright 1997, Steven Silver, *Gun Control, Opposing Viewpoints*
Terry O'Neill, Copyright 2000, Greenhaven Press, Inc
9. *The Constitution and What it Means Today* , Edward S. Corwir, Copyright 1998
Princeton University Press, Princeton, New Jersey
10. *History of the Second Amendment*, Copyright 1994 Close Up Foundation
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11. *History of the Second Amendment* , Copyright 1994 Close up Foundation
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12. *Gun Control: Opposing Viewpoints*, Terry O'Neill, Copyright 2000, Greenhaven Press, Inc.

13. *Gun Control: Opposing Viewpoints*, Terry O'Neill, Copyright 2000, Greenhaven Press, Inc

14. *International Journal of Epidemiology*, Gun Control: Opposing Viewpoints Terry O'Neill, Copyright 2000, Greenhaven Press, Inc.

15. *Gun Control: Opposing Viewpoints* , Terry O'Neill, Copyright 2000 Greenhaven Press, Inc

16. *Gun Control: Opposing Viewpoints*, Terry O'Neill, Copyright 2000 Greenhaven Press, Inc

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