

The Politics of Gun Control in the United States: A Historical Perspective on the Second Amendment

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Introduction

“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” (National Constitution Center, n.d.). This is how the Second Amendment to the United States’ Constitution is written. The amendment was added to the Constitution in 1791, and along with the other 9 first amendments it forms the Bill of Rights (O’Neil 2018). However, American society has changed immensely since 1791, and the right to “keep and bear arms” is one of contemporary American society’s most controversial topics. The issue of gun control has raged across the American landscape for decades, with a sustained intensity found among few other issues, and is therefore highly relevant. Furthermore, gun violence has grown over the past few decades to be one of the worst national disasters ever seen. It seems that there is a new case every few months, and the discussion of gun control has divided the country. Guns, or at least the right to own and carry them, thus constitutes an unavoidable discussion. At its heart, the gun debate is about the citizen’s inalienable rights, the state’s power to regulate them, and the maintenance of public order.

In this article, I examine the origin of the right to keep and bear arms and whether this right is still relevant in contemporary American society. I argue that the Founding Fathers included the Second Amendment in the Bill of Rights for reasons that no longer apply to modern society, and that the original purpose of the Amendment thus has become outdated. The historical examination of the topic is especially relevant to the modern gun debate because it is basically framed as a fierce black-and-white struggle between supporters of stricter gun control and supporters of gun rights (who, it seems, largely oppose more laws on the topic) (Spitzer 2017, 56). The essence of the struggle poses that a victory for one side is a loss for the other, and vice versa. However, in this article I argue that history tells a very different story – that gun *laws* and gun *rights* historically have gone hand in hand. Only in

more recent decades has the debate over gun control become more politicized and ideological, which has turned the discussion black-and-white.

While exploring the historical origins of the right to bear arms, I place particular emphasis on why it was necessary to include in the Bill of Rights. By engaging in a historical analysis hereof, I aim to identify an objectively “correct” interpretation of the Second Amendment. However, I work to disregard the political question of whether the current gun laws are right or wrong and instead focus on the historical relevance of them. In extension of this, I examine the famous case of *District of Columbia v. Heller* from 2008 and use it as a departure point for analysis rather than a target for a debate about right and wrong. Furthermore, the terms “guns” and “firearms” are treated synonymously throughout the assignment.

Sources

In the assignment, I have used a variety of primary and secondary sources. Where relevant, I include quotes from the U.S. Constitution and Bill of Rights. I analyze these with the time they were written in mind to assure an interpretation as historically correct as possible. The secondary sources, which include books, articles, and websites, have been found through the Royal Library and its affiliates, among others the *Encyclopedia of American Studies*. Since gun control is such a sensitive topic, it has proved important to be very critical of my sources’ political standpoint – I have therefore sought to avoid subjective material on both sides of the issue of guns. In this way, I am able to analyze my sources objectively instead of engaging in a political discussion. I have also made use of several polls made by the Gallup institute to analyze numbers in regard to guns in the American society, which enables me to analyze the opinions of the general American population.

Historical context

The right of the individual citizen to bear arms goes as far back as Ancient Greece where it proved to be the best defense against tyranny. Likewise, the English also held the right in high regard, as it was included in the English Bill of Rights of 1689 that the king was allowed to “[raise] and [keep] a standing army within this kingdom in time of peace, without consent of parliament” (Constitution Society, n.d.). Thus, Englishmen had not only a right, but a duty in this time to keep and bear arms against England’s foreign as well as domestic enemies (Check 2015, 288). When the Englishmen began colonizing the American continent, they brought their firearms. American colonists quickly learned how important

the right to bear arms was to their newly founded and still fragile society. The American revolution of 1765-1783 began in defense of the right to own and use weapons, as the British soldiers had been ordered to seize them (Malcolm 1994, 136-139). During the revolution, trained militias of citizens were the colonies' first defense against Britain, and they fought before Congress had managed to gather, train, and prepare a Continental Army. As a consequence of the Revolutionary War and the British army practically invading their American colony, the American side relied mostly on citizen militias that, according to historian Merrill Jensen, were really "fourteen armies: the thirteen state militias and the Continental Army" (Spitzer 2015, 23). Therefore, after the war was over, the American citizens' experience reminded them of the importance of their right to bear arms. At this time, many people owned some form of firearms. However, not *everyone* had the right to keep them – among the groups who were not allowed were slaves, free black men, all women, and Roman Catholics (Bill of Rights Institute, n.d.).

The individual states did not want a Federal standing army, as they wanted to keep control for themselves. Thus, the Second Amendment became part of the Bill of Rights as a way to protect the states as well as individuals from a central government with too much power. Because of the amendment, private citizens of the United States have legally owned firearms throughout American history. But despite inclusion of this right in the Constitution, the right to bear arms remains controversial. As a result, the discourse regarding firearms has become stark and black-or-white over the past decades. The discourse is split between two major interpretative camps. Not only do the two sides disagree on the meaning of the wording in the amendment, but also – and especially – on how that meaning should affect modern gun legislation (Check 2015, 285). Meanings attached to guns and the Second Amendment are largely culturally dependent. America's more or less politically conservative gun culture interprets reality and empirical data in one way, while its more or less politically liberal mass democratic culture interprets it quite differently. Preferences and perceptions on gun rights and the Second Amendment are, down to the core, about how Americans understand themselves.

Any consideration of the gun control debate inevitably turns to questions of the Constitution and the law itself. As the constitutional scholar Lucilius Emery has said: "The greater deadliness of small firearms easily carried upon the person, the alarming frequency of homicides and felonious assaults with such arms, the evolution of a distinct class of criminals known as "gunmen" ... are now pressing home the question of the reason, scope, and limitation on the constitutional guaranty of a right to keep and bear arms" (Spitzer 2015, 19). So why has gun control been such a difficult and

controversial issue in American politics? First and foremost, because of the nature of regulation. Whenever the government seeks to apply Federal limitations, the prospect of controversy is great in a nation with such a long tradition of individualism as America. When the behavior of individual citizens is directly affected, as in the case of regulation of firearms, the prospect of controversy is even higher (Spitzer 2015, 3).

The frontier ethos

As stated above, early Americans had to be incorporated in militias to help protect their new and fragile country. But soon after they won their independence, a completely different issue appeared: the move westwards. Many Americans as well as new immigrants moved towards the frontier in the west, and on this journey, they had to rely on their wits and skill to protect themselves and their families from hostilities they met on their way. Necessity dictated that anyone capable of carrying and using a gun (which, at this time, typically meant white, adult males) participated in local defense. There was no full-time army, so the armed citizens were responsible for serving their community; hence the phrasing “a well regulated Militia, being necessary to the security of a free State” (National Constitution Center, n.d.). Aside from an actual army, the government did not even have the resources to arm its citizens, which meant that able-bodied men were pressed to not only serve, but also to provide their own arms and ammunition, as the survival of the new frontier states depended on these citizen militias (Spitzer 2015, 10). Therefore, firearms possession was a part of frontier life, and settlers found it necessary to band together to provide for mutual defense from foreign armies as well as hostile Native Americans.

This reliance on part-time militias was based on two facts: first and foremost, as previously stated, the emerging American nation did not possess manpower or resources to raise, finance or maintain a professional army. Secondly, Americans shared a profound mistrust of standing armies, originating in their knowledge of and experiences with standing armies in European history, where they had regularly subverted or overthrown civilian governments and deprived people of basic rights – both of which were new and fragile elements of the emerging American nation (Spitzer 2015, 21). The very first President of the United States, George Washington, stated that “mercenary armies ... have at one time or another subverted the liberties of almost all the Countries they have been raised to defend” (Spitzer 2015, 23). It becomes clear from the various Declarations of Rights written around the birth of the nation that the general belief was that standing armies should be avoided in times of peace, as they were considered dangerous to liberty (Spitzer 2015, 23) – a cornerstone of the birth of the American nation.

The militia ethos

The first draft of the Constitution reflected a general suspicion not only of standing armies but also of a strong national government. Thus, the primary burden of defense was laid on the states. However, in the modern Constitution, effective by 1789, Congress was given the power to “raise and support Armies”, “provide and maintain a Navy”, as well as finance and regulate both (National Constitution Center, n.d.). This also gave Congress the main authority over the state militias, leaving the states with little control. In writing the Constitution, the Founding Fathers acknowledged the long-standing mistrust of standing armies, but also accepted that the militias were no substitute for a trained, professional army controlled by the Federal government. The necessity for an effective and ready fighting force was especially clear during the years after liberation, as the country was threatened not only by hostile European and indigenous peoples, but also threats of internal rebellion (Bill of Rights Institute, n.d.).

The adoption of the Constitution put both militias and the standing army into place, but it made many Anti-Federalists very unhappy, as it took power away from the states and gave it to the national government. Anti-Federalists were concerned that this power could be used not only to undercut the independence of state militias, but also to cut state power in general (Malcolm 1994, 156). To secure the states’ rights and limit Federal authority, a list of rights was proposed to be added to the Constitution shortly after its adoption. Thus, the Bill of Rights was ratified in 1791, adding the first 10 amendments to the Constitution. The amendments individually, as well as the Bill of Rights as a whole, had the purpose of placing limits on the Federal government and striking a balance between national and state power (O’Neil 2018). Southerners in particular were concerned about maintaining strong state militias to suppress slave rebellions, as they were doubtful that a Federal government dominated by Northern (and thereby anti-slavery) interests would commit Federal troops and supplies to uphold the institution of slavery to their satisfaction (Malcolm 1994, 149-150).

Keeping with the militia tradition, the militiamen were legally obligated to provide their own weapons, ammunition, etc. However, according to Spitzer, it was obvious already at the close of the 18th century that the militias were “impractical, if not obsolete” (Spitzer 2015, 30). The states failed to keep up their end of the Uniform Militia Act, and attempted fine-systems did not have the wanted effect to solve this problem. Spitzer quotes the system of the state militias in the first half of the 19th century as “one of total abandonment, disorganization, and degeneration” (Spitzer 2015, 30). Instead, the government relied on its professional, standing army, and an elite corps of volunteers called the

“organized” militias. The citizen militias suffered a final blow as a result of a terrible performance in the War of 1812, where the last illusion that they were militarily effective and reliable was shattered (Roosevelt, 308). After this, the citizen militia ceased to play an active role in national defense. In spite of this, no significant legal changes occurred until the start of the 20th century. In 1901, President Theodore Roosevelt called for a legal reform, stating that “our militia law is obsolete and worthless” (Roosevelt, 2268). From this point up until US entry into the First World War, the militias therefore became separated from the (trained) National Guard, the main reason being that fighting could no longer be given over to untrained amateurs. However, Congress retained for itself the theoretical option of calling up the reserve militia, which consisted of all able-bodied men from seventeen to forty-five (Spitzer 2015, 31).

Wording

This militia-based understanding of the Second Amendment is what historically seems to be closest to what the Founding Fathers intended. However, as the contemporary debate shows, not everyone agrees on this reading of the amendment. Some view the Second Amendment more individualistically – stating that it first and foremost protects individual rights. According to this view, the Second Amendment was meant to secure every American citizen the right to have firearms for personal self-defense, aside from the militia-purpose. However, this idea suffers from multiple problems. Gun enthusiasts tend to hold the Second Amendment up against the other amendments in the Bill of Rights – but unlike these, which include freedom of speech and religion, the Second Amendment protects the right of citizen militias, which historically includes men between the age of seventeen and forty-five, whereas the others include *all* adult citizens (Spitzer 2015, 31). This poses a problem in terms of inclusion; if we strictly look at the wording of the amendment, are only young, able-bodied men allowed to carry guns?

Another highly relevant issue of the wording of the Second Amendment is the phrase to “bear arms”. This arguably refers to military service – etymologically, the word means “equipment”, stems from the root *ar-* as the Latin *arma ferre* and refers to all the “equipage” of war (Wills 199, 257). Thus, to “bear arms” is used of warfare, naval as well as artillery, since the profession of arms refers to military callings. According to the Pulitzer Prize-winning historian Garry Wills, this unmistakably military use of “arms” goes as far back as Shakespeare, who uses the term for military metaphors. Everyday uses of the term also point to the overwhelming body of military understandings of it – e.g. the expressions to be under arms, to call to arms, to take up arms, to lay down one’s arms etc. On the

other hand, one does not “bear arms” against e.g. a rabbit, which reinforces that the term brings military connotations. The wording of the Second Amendment thus clearly points toward the militia-based understanding of it – and, as Wills says, “History, philology, and logic furnish no solid basis for thinking the Second Amendment has anything to do with the private ownership of guns” (Wills 1999, 258).

District of Columbia v. Heller

This specific understanding and interpretation of the amendment was shared by Federal law up until 2008, when the Supreme Court made an important and controversial decision on the meaning of the Second Amendment. The Court ruled that the amendment gave the average citizen a constitutional right to possess handguns for personal self-protection in their home. Yet, in establishing this right, they also pointed out some clear limitations, including: “prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings” (JUSTIA US Supreme Court, 2008). Furthermore, the Court stated that there *might* come a regulation of certain types of especially powerful weapons and how to safely store firearms. During this legal case, named *District of Columbia v. Heller*, the Court repeatedly referred to gun laws that had existed earlier on in American history as a means of justifying similar contemporary laws – even though they simultaneously said that they did not undertake their own “exhaustive historical analysis” of past laws (Spitzer 2017, 55). That, however, is deeply necessary.

In *DC v. Heller*, the Supreme Court held (with a narrow majority of 5-4) that the Second Amendment guarantees an individual (i.e. non-militia-related) right to keep and bear arms not only for militia purposes, but also for private purposes of self-defense. In doing so, the Court rejected the historical understanding of the amendment’s wording, finding that the public understanding gives individuals the right to keep and bear arms disconnected from any military service. Thus, it “elevates above all other interests the right if law-abiding, responsible citizens to use arms in defense of hearth and home”, as it was stated in the Heller case (Blocher 2012, 2).

The case of *DC v. Heller* is a primary example of tradition being used to identify the values the Second Amendment protects as well as the regulations it permits despite those protections. It protects the individual right to possess firearms for “traditionally lawful purposes, such as self-defense within the home” (Miller 2016, 224). However, it has yet to be specified which other “traditionally lawful purposes” it protects – does it include hunting, target shooting, etc.? Furthermore, the Court’s imprecise appeal to tradition poses a series of interpretive problems: What is tradition? And whose is

it – British, American, rural, urban, Southern, Northern? What frame of reference is used – does the historical evidence relevant to this “tradition” end in 1791, 1868, 1930, or 2016 – if ever? (Miller 2016, 224-225). However many interpretative problems there are to be found in *DC v. Heller*, the case shows an immense change in how contemporary society views gun rights as opposed to the historical understanding thereof.

A shifting society

In contemporary society, those who compose and support the active gun culture are overwhelmingly, as it was the case in 1791, white males. As few as 15 percent of gun owners are women (Gallup – Jones 2013). Most gun owners live in rural areas, especially in the Southern states, are likely to be white, married, Protestant males, and are “old” Americans (that is, their ancestors immigrated longer ago than the most recent immigration waves). On the other hand, those least likely to own guns are females from larger metropolitan areas, from the Northeast, and of more recent immigrant descent.¹ Despite common impressions, levels of education and income seem to bear little relation to gun ownership. Tradition also has a lot to say of gun attachment; those most likely to own and carry guns have been socialized towards it early in life by their family/community (Spitzer 2015, 13). An important feature of gun laws in America is that there are relatively few on the national level – and at state level, they vary widely. Thus, some states allow for easy acquisition of weapons, whereas other states have stricter laws on how to buy weapons. However, as there are no kinds of state borders, practically anyone can get their hands on a gun relatively fast anywhere in the US (Spitzer 2015, xiv).

Generally, there has been an enormous shift in society since the Second Amendment was written. As previously stated, the biggest reason for its necessity was the fact that a large part of the population simply *had* to have the right to keep and bear arms, as they were legally obliged to do so. However, as mentioned, the “militia” part of the amendment has been made redundant as early as 1812, i.e. more than two centuries ago. Nowadays, even though some argue the opposite, the American population should have no need to carry firearms as a means of self-defense; firstly because of the extensive modern police force keeping the population safe from day to day, secondly because of the

¹ According to Gallup polls dating from 2007-2012, 61% of Southern, white men owned guns. Out of *all* American men, the percentage was down to 45%. As opposed to this, 27% of Western residents (men and women combined) owned guns, while only 21% of Eastern residents did so. As mentioned, only 15% of all American women owned guns – however, the number was higher for Southern, white women, of whom 25% owned guns. Furthermore, the numbers are higher for married people (37%) than for non-married (22%), as well as for Protestants/other Christians (36%) than for people with no religious preference (29%).

modern standing army defending the country from any external – and internal – dangers. However, a Gallup poll of 2018 showed that only about 39% of the population have a positive view of the American police force², which supports the idea of a need for self-protection. It looks differently with the military, of which 69% of the American people have a positive view. As a comparison, a net positive -7% has faith in the U.S. presidency (Gallup – Saad, 2018).

Obviously, the protection of the country is not the only thing that has changed since 1791. With the abolition of slavery in 1865, another reason for bearing arms was superseded – at least in theory. The southern states, which up until this point had allowed slavery, were forced to abolish it after the Civil War. This meant that the former slave owners no longer had any reason to fear an uprising from their servants, meaning that they had no use for weapons to keep them down. However, reality is not as straightforward as that; segregation, Ku Klux Klan, and racism in general made for many clashes between races after the abolition of slavery, meaning that many (especially white) Southerners still argued strongly for the right to keep and bear arms. As the map in Appendix 1 shows, there are now two major clusters of gun-owning states; one in the Southern, former slaveholding states, which reinforces the claim that being pro-firearms is hereditary through socialization, and the other in the North-Western states, which were the last (and, as it is, “least”) to be colonized (Kiersz et.al., 2015). This leads to another factor in regard to the Second Amendment being outdated, i.e. the shift American society has made from being predominantly rural to being urban to a much larger degree. This shift lies in extension of the militia being discontinued, as the move westward meant smaller population groups being more exposed, hence the need for militias. As the frontier movement came to an end, people clustered together in the larger cities all over the country. This gives a natural protection against the “lawlessness” that was the primary issue and therefore pro-gun argument in the move westward. Thus, although criminal records are high in many larger cities, an urban society should not have the same need for self-protection as rural communities did in colonial times.

As these points show, American society has changed dramatically since the Second Amendment was ratified in 1791. Many of these changes have gradually made the amendment obsolete, as the arguments in favor of the people keeping arms have fallen away over the past centuries.

² Net positive – meaning the negative responses (15%) have been subtracted from the positive responses (54%).

Conclusion

In conclusion, the Second Amendment in its original purpose embodied a “civic right”, meaning that citizens were obligated by and to the government to participate in a well-regulated militia. By extension of this obligation was the citizens’ right (or, more specifically, duty) to keep and bear arms. In sum, the possession of firearms referred to in the Second Amendment comes into play only when the unorganized militia is activated by a state or the Federal government – however, as previously mentioned, this practice was effectively abandoned centuries ago. Thus, the Second Amendment in a historical perspective has basically been irrelevant to modern American life since then. Its irrelevancy in law, however, was reversed when the Supreme Court infused the Amendment with a new, gun rights-based interpretation in 2008. Most contemporary Americans adhere to this individualistic interpretation of the Second Amendment, although the historical evidence points to such an interpretation as being simply anachronistic.

If the intent of the Founding Fathers was considered in the contemporary debate over gun control, the regulatory solution would be to allow ownership of military weapons in order to enable members of a militia to be able to resist the (albeit advanced) armies of the current age – but it should then restrict the use of handguns outside the scope of militia service. However, statistics show that most contemporary Americans would find such a regulatory shift an attack on their conceptions of the right to bear arms.³ To the modern American, gun-owning and non-gun-owning alike, the ability to defend oneself ranks higher than the (highly improbable) scenario where militia service would become necessary. Thus, I conclude that American beliefs about the Second Amendment do not reflect the original intent of the Founding Fathers. While 75% of Americans oppose banning handguns, a much greater number support banning assault weapons (Check 2015, 300). Not only is this misguided, as the vast majority of gun related crimes result from using handguns, it also proves a common misconception of how the Second Amendment protects firearms rights. While handguns are most commonly used for self-protection, assault rifles would be the go-to weapon in a military (militia) situation. According to these statistics, citizens must therefore widely assume that the Second Amendment protects the right to individual self-defense instead of a right to armed insurrection against tyranny.

³ When asked if they believed the Second Amendment guarantees the right of *all* Americans to own guns, or only members of state militias, 73% of American adults answered all Americans. 20% answered members of state militias, while 7% had no opinion (Gallup poll, 2008).

Thus, the conclusion must be that the Founding Fathers' Second Amendment, which was tailored to the specific political situation of their time, is no longer relevant to the modern American society. The Second Amendment's historical lineage denotes that the original intent of the Founding Fathers, and the original purpose of the Amendment, is no longer what modern Americans expect from their Constitution, and thus has become outdated.

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Appendix 1

