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The Roots of the Second Amendment

by Rick Lynch

With the Supreme Court's recent decision to take a look at the constitutionality of Washington, D.C.'s gun ban, we see once again, in every medium imaginable, hundreds if not thousands of commentaries, articles, speeches, and essays on the meaning of the Second Amendment. Words by the millions are being cranked out on the precise definition of "militia" in 16th-century English common law; untold hours of careful, scholarly research are being spent to divine what was meant by "well" and "regulated;" and some of America's most highly paid political thinkers have set out to explain how sending a man to a federal penitentiary for possessing a handgun is compatible with a right that "shall not be infringed."

But the best, surest, and undoubtedly easiest way to understand our firearms rights is to treat the Second Amendment as utterly irrelevant to the debate. There are two good reasons to treat the Amendment as such: One, it *is* irrelevant to the debate (its passage had no effect whatsoever on our gun rights), and, two, bringing it into the conversation only invites confusion, as the truly honest and thoughtful man, with no ideological ax to grind, could easily fall into the trap of believing that the Second Amendment merely gives the state of New Mexico the right to organize a militia and nothing more.

But fear not, dear reader, for I do not say the Second Amendment is irrelevant because I fear those words (*well regulated militia*) upon which the gun grabbers shower their love, pin their hopes, and hang their one and only argument in favor of federal gun restrictions. I will, in fact, show that there is really nothing to fear in those words, and that furthermore, even if God were to grant the liberals' fondest fantasy and the Amendment were reworded to say "militias are acceptable," and nothing else, our gun rights would be as secure as ever.

It is easy to see how the wording of the Amendment introduces confusion to the debate, but why, exactly, is it irrelevant? How could that be so? Well, simply put, the Framers wrote a constitution designed to protect individual liberties (including the right to keep and bear arms) and curtail the power of the federal government two years before the Bill of Rights was even drafted and four years before it went into effect. James Wilson, James Madison, Alexander

Hamilton and others all explained at length why a bill of rights was unnecessary, and how the Constitution protected our rights even in the absence of such a bill:

For why declare that things shall not be done [as in a bill of rights] which there is no power to do? Why for instance, should it be said, that the liberty of the press shall not be restrained, *when no power is given by which restrictions may be imposed?* (Alexander Hamilton, Federalist No. 84, emphasis added.)

In other words, the Constitution contains no provisions ceding to the federal government a person's right to keep and bear arms; thus the federal government has no authority to infringe in this area. Additionally, again from Hamilton in Federalist No. 84,

There remains but one other view of this matter to conclude the point. The truth is, after all the declamation we have heard, that the constitution is itself in every rational sense, and to every useful purpose, A BILL OF RIGHTS [capital letters in original].

While Americans at large haven't the vaguest concept of enumerated powers, and how it was instrumental in safeguarding our liberties, readers of this publication will be well familiar with the concept and know that the listing of a few federal powers was preferable to trying to list the virtually endless rights enjoyed by 18th-century Americans.

What we had then, in 1790, was a nation existing under a newly ratified constitution that contained no bill of rights, but through the enumeration of powers still protected free speech, gun rights, freedom of the press, freedom to assemble, and freedom of conscience without even mentioning those rights.

So how and why the Bill of Rights? Whose idea was it? What prompted the writing of these amendments that Hamilton called "unnecessary" and even "dangerous," and what is the best way to understand their meaning?

Satisfying the Anti-Federalists

The best way to understand the Second Amendment and the rest of the Bill of Rights is simply to know *at whose urging the amendment was written*. For example, if 200 years from now constitutional scholars are wondering whether the Smith Taxation Act of 2008 raised or lowered taxes on Social Security income, knowing that the amendment came into being as the result of pressure from AARP would pretty much end the debate. This, then, is a vital question when seeking to understand the Second Amendment. For if you know the context in which the Amendment was written, if you know for whom it was written, if you know who was clamoring

for it and what were their concerns, that can help settle the individual-rights-versus-collective-rights argument.

The Bill of Rights was written to satisfy the nation's Anti-Federalist factions in general and Virginia's Anti-Federalists in particular. James Madison ran for a Virginia Senate seat in the first Congress and lost, largely because of his unpopular stand against tacking a bill of rights onto the end of the Constitution of which he has come to be called the "father." This stand of his was unpopular largely because of the efforts of Patrick Henry and other influential Anti-Federalists in Virginia.

After failing to win the Senate seat, Madison ran for and won a House seat on the promise of pushing for a bill of rights once in office. The Bill of Rights, then, came into being to satisfy the most suspicious, vociferous, and relentless foes of the new federal government.

At the time of the Constitutional Convention, the people and their states enjoyed immense freedom. They were, in essence, 13 separate countries, which paid absolutely no taxes to the central government except on a voluntary basis, printed their own money, raised their own armies, and established their own tariffs. The government proposed in Philadelphia was openly and admittedly far more powerful than was the one it would replace. This naturally gave rise, among the people and the states, to fears of tyranny from this new federal authority. They feared it would be too powerful, too distant, and too remote, and that it would mark a return to the very situation they had overthrown in the Revolution. Naturally, then, the question of the proposed jurisdiction of the federal government was *the* issue during the ratification process; almost every debate, every concern, every contested clause of the Constitution came back to this one, overriding issue.

Following the Convention, the Framers spent months assuring the people that the new government would not be too powerful, would respect its limits, and would govern over only those matters where the Constitution clearly gave it authority. Three of the Founders wrote 500 pages of promises known as the *Federalist Papers*, promises that the federal government would have only so much power and no more; promises that the states and the people would remain largely sovereign; 500 pages of promises, virtually each one of which was a rebuttal to the charges that the federal government would not respect its bounds, and that, even if it did respect them, its proposed powers were too broad.

It is safe, then, to say that the people were highly untrusting of the new government, and the Anti-Federalists the most untrusting of all. *That* is the context in which the federal government and the Bill of Rights were created. The Anti-Federalists, men filled to varying degrees with fear, mistrust, and loathing of the new federal government, insisted on a bill of rights as additional shackles imposed on that new government. Knowing this one, tiny fact, knowing that the famous Bill exists primarily to please the people most mistrustful of the new government, definitively ends any confusion or debate surrounding the meaning of the Second Amendment.

There is simply no way on earth the Anti-Federalists would have surrendered to the new and mistrusted government the right to own any gun they wanted at any time they wanted in any number they wanted.

To believe differently, to believe that the Second Amendment actually *gives* the federal government the authority to regulate firearms, one must believe the absolutely unbelievable. One must believe that the Anti-Federalists, fearing and loathing federal power, compelled Madison to compose this laundry list of rights, this list of things over which the government *was to have no authority*, and almost at the very top of the list, these people in fear of the federal government inserted a clause that reads, in effect, “Oh, by the way, you federal-government people forgot to take from us a right to own firearms when you wrote the Constitution. We wanted you to have the authority then, and we want you to have it now; so even though you forgot to seize such authority on the first go-round, please let us now correct that mistake and surrender to you a right which we previously held, but wish now to give away.”

The importance of firearms

We must further believe that James Madison was such a monumentally incompetent and abysmal writer that, when trying to give the federal government this new authority to regulate the private ownership of firearms, the last 14 words of the Amendment read, “the right of the people to keep and bear Arms shall not be infringed.”

We must also believe that revolutionary American history conceals some hitherto unknown and utterly undocumented groundswell of public desire for the federal government to regulate firearms.

Picture in your mind for a moment the rough-and-tumble individualist who gave birth to this nation, a man who had tamed a wilderness, fought Indian wars on and off for 180 years, and successfully faced down the world’s mightiest empire. Hold a picture of that man in your head for a moment and then try to imagine him when he is told that this new federal government would have the authority to regulate his ownership of firearms in any manner it saw fit, including imprisoning him for possession of any firearm for any reason at any time.

No honest person could ever profess for even a second that the men who founded this nation would *ever* have submitted to such a thing, especially as, lacking any significant gun crime at the time, the *only* conceivable reason for such a federal power grab would be to lay the groundwork for enslaving the populace.

The militia argument

We now come back to those words so loved by the gun grabbers, “well regulated militia.” Knocking down this silly little argument is vitally important because the gun grabbers’ notion that

says the Second Amendment reads, in essence, “militias are acceptable” is simply and undeniably the *only* arrow in their quiver. Take that from them, and they are finished.

Liberals do *not* maintain that the Second Amendment says “We can take your guns.” They believe (or pretend to believe) that the Second Amendment reads, “Militias are acceptable.” Being wholly ignorant of the doctrine of enumerated powers, liberals think this is enough to deny us our gun rights; for if the federal government, unrestrained by an enumeration, was empowered to legislate on all matters not put off limits by the Bill of Rights, and if the Second Amendment actually did read “militias are acceptable,” then the federal government would indeed have the authority to regulate our ownership of firearms.

But readers of this magazine know better. A constitutional amendment that reads “militias are acceptable,” no more gives the federal government the authority to legislate against guns than it does the authority to tell me what color I may dye my hair, or what size carburetor I may put under my hood. If I had a right to buy guns before the “militias are acceptable” amendment was enacted, then I have a right to buy guns afterward.

It would be hard to overstate the importance of the natural right of self-defense, and the very fact that (to paraphrase Peter L. Berger) nine lawyers swishing around the marble temple in their black robes could, with a stroke of the pen and the convoluted logic that brought us emanating penumbras, snatch that liberty from us is a modern American travesty with which we must live for now. All we can do is hope that enough justices can see through the “militias are acceptable” nonsense and allow us to keep what God has already bestowed. And that is a very sad state of affairs.

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