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The 2nd amendment

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We talk about the second amendment a lot, in the recent years it has a negative connotation because almost always it is after a massive shooting. There are people asking for gun control, is this a violation of the 2nd amendment?

 **3**  · [flag](#)[Lauren Biksacky](#) STAFF · 2 months ago 

Juan,

Great questions. It is great to hear what students are interested in learning about, as we can tailor our interactive sessions to your interests.

Professor Amar's lectures roughly follow the chapters in his two books, which are supplemental reading for the course. In Chapter 9 of America's Constitution: A Biography, Professor Amar discusses constitutional amendments. You should see those lectures in a few weeks!

Lauren (Your TA)

 **4**  · [flag](#)[+ Comment](#)[Katie Sue Haire Norrell](#) · 2 months ago 

I felt like the staff reply did not address the question. I hope the future holds more direct responses to questions and issues.

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Joel Kovarsky · 2 months ago

I would point out that there is already a very active thread discussing these contentious issues: https://class.coursera.org/conlaw-001/forum/thread?thread_id=642 . Asking for gun control is not a clear violation. Getting it politically has been, for now, a near impossibility, at least on a national scale. One can also pose the question as to whether this is a legal/constitutional issue, or a public health issue? Those considerations are not mutually exclusive. Here is a recent SCOTUS blog on trying to monitor gun buyers: <http://www.scotusblog.com/2014/01/argument-preview-checking-up-on-gun-buyers/> .

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Matt Warner Signature Track · a month ago

As with most things, there is a political and legal aspect to the Second Amendment. From the legal aspect, the SCOTUS has affirmed that it is an individual right (as opposed to a collective one), though not without limitations. That leaves me and many others wondering about what exactly it means when the Amendment says, "...the right of the People to keep and bear arms *shall not be infringed*." Many argue that a number of laws not only infringe but strike at the heart of this Amendment. For me, this raises the question of what are the limits of ordinary legislation and when does something require another amendment (such as repealing prohibition)?

A partial answer I've seen regarding the limits of legislation is the concept of something having a "compelling interest" to the People coupled, inseparably, with the law being the "least intrusive" manner to accomplish a task, and that does not fundamentally change the freedom protected under the Constitution (I think this gets into Strict Scrutiny, etc.). I don't claim to fully understand it, and I'm likely misstating it (I'm just a student like everyone else), but at least it's a principle around which we can have further discussions. The example I recall is that freedom of religion does **not** allow a group to become Aztecs and perform human sacrifices (the People have a compelling in limiting the "freedom" of "religion" in that case because it infringes on others' rights, and the People are only restricting that one aspect of that group's claimed religious beliefs, as opposed to forcing them to discard all their practices).

Another partial answer is that Congress and the Courts have power over life and death (life imprisonment, death penalty, etc.) and can deprive someone of their life when found guilty of a capital offense. That also means they can prevent felons from enjoying the privileges of the Second Amendment—if they can deprive you of your freedom and/or life, they can deprive you of your right to vote, own guns, etc.

Short version: the arguments I've seen indicate that asking for regulations on guns is probably not a violation of the Constitution as long as they are 1) compelling to the People, 2) are the least intrusive means to accomplish the end, and 3) does not fundamentally change the Amendment.

But I'd love to hear more reasoning around the legal aspect of this.

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Anonymous · a month ago 🔒

A minor aside: there is no such thing as a "collective right."

Also, the mentioning of Aztec human sacrifice serves to illuminate the fact that the "Bill of Rights" is improperly enumerated, improperly defined with improper cardinality (rights are in the negative space; never in the positive, are inherently noncontradictory and have no exceptions), and an overly complex protocol that addresses abstract issues at the improper level although they addressed pressing practical issues in The Founders' time.

"I'd love to hear more reasoning around the legal aspect of this."

My opinion on the matter is fairly simple; I reject all notions of positive law and believe that the issue is clearly handled within *lex naturalis* and natural rights. It is perfectly acceptable, proper, *and lawful* for me to own any firearm I wish of any classification I wish with no permission from anyone other than the person I am purchasing it from. No one else has any real interest in my possession of a firearm because they are not a party to the contract and that is the end of it.

What is unlawful is for me to apply my newly gained property to nefarious ends vis-à-vis the violation of another's rights and without the violation of another's rights, there is no violation of Law....only violations of politicians' scribbles and they don't count.

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Victor Abbott Signature Track · a month ago 🔒

As far with the Amendments and so forth (following on the 2nd amendment thread) lets not forget the reason why our constitution was formed. As most of us know who have studied briefly our constitution in high school, we know that our constitution is our Supreme law of the land. That means if it is the "Supreme Law of the land" that means not state or states, not even congress has the power to abolish it (meaning infringed it the right of the people) it clear states " the right of the people to bear arms shall not be infringed.. which by the way the Second and Fourth goes in hand in hand. Let's remember those of the past for what we have. Let us remember those who died for freedom, and security to ourselves-- We the People have untouchable rights the right to be free individuals, free from persecution whether domestic or international, our rights have been inherited even before we are born; we are born INDEPENDENT and Free that these rights come from GOD not from the Government. And if you don't believe in God, then think what would you do if your house-- meaning your family has been seized, persecuted, molested, and any malice intent whether intentional or unintentional you can think of as human being seeing your family pain knowing that you are your own person, your own house and that any paper or effect has been breached without your consent? would you die for your family? would you die for your freedom? would you die for those who has the same principles, morale to defend what is

rightfully yours?

Prof. and I have a similar observation in regards to the "common defense" although he is talking about intrusion of international enemies but I say that the common defense applies as well between us. Hence "how can we establish justice and common defense to ourselves and our people? that is the reason why the Second Amendment exist. Simply because you don't know when you, me, your neighbor will be under attack. Let's keep in mind that we do not know when evil mind will strike you (heck) as I write this, probably somebody is getting mug out there. That is the reason why we have the 2nd Amendment to protect us from the government and ourselves. Our founder fathers knew and saw this coming. In all there is much to discuss and so little time but let's keep fighting North America not for now , but future generations to come why because we are the Guardians think of it as if Madison was your great grand father and said this to you " I am leaving this Will and I am entrusting you to protected from those who will try to put hole in it and destroy what I have left you and your family so promise me you will do what it ever it takes to honor and respect my wishes" hence that's what has been transfer to us a Living Will for all kind of people here, now, and for many unborn to come.

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Mahathir Chang · 24 days ago

Now that 'arms' have changed, this poses an interesting question. By logic, people have the right to own nuclear or biological weapons to counteract against the US military might. What is there to prevent the US government from oppressing some of its own states and citizens? To prepare for these the people should be able to organize their own defenses, including possessing unconventional weapons, against such possibilities.

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