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## Second Amendment Gun Ownership as an Absolute Right

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[Miriam Kerzner](#) · 2 months ago 🔗

Albert,

There are a couple of ways to address your question.

- Historically, the Bill of Rights was applied solely to the federal government. It did not restrict the actions of states; that interpretation came only after the Reconstruction amendments.
- In terms of the unwritten Constitution, there is an assumption that, even where not so stated, all rights can be limited. There are, for instance, restrictions on First Amendment rights as well, e.g., shouting fire in a crowded theater.
- Finally, to go back to theory, there are conservatives who argue that the Second Amendment is merely acknowledging a natural right -- one essentially granted by God prior to entering into the social contract of civil society. The state therefore doesn't have the capacity to remove that right. However, all natural rights theorists recognize that entering into civil society means giving up some of those natural rights. The Declaration makes the point that three of them (life, liberty and property/pursuit of happiness) must continue to be acknowledged, but Locke's point about the social contract was that it permitted the rise of objective judges when honest disputes among men arose. In the case of felons, if they are deemed to put the life, liberty, and/or property of their fellow citizens at risk especially when they have guns, then the state is free to remove that right from that class of people.

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[Joel Kovarsky](#) · 2 months ago 🔗

Albert,

Given the number of lawyers that have argued all sides of this question (many presuming to know what the Founders thought), the idea of any singular "legal answer" may be wishful thinking. One gets to the old saying that the SCOTUS is right because they are final (until they are not), not final because they

are right. My remarks are not those of a lawyer. I have a few favorite places where I like the discussion, but the topic seems Homeric:

Jill Lepore's 2012 *New Yorker* essay on the second amendment: <http://www.newyorker.com/online/blogs/newsdesk/2012/04/the-second-amendment.html>

Cornell's Legal Institute short discussion: [http://www.law.cornell.edu/wex/second\\_amendment](http://www.law.cornell.edu/wex/second_amendment)

Levinson's 1989 *Yale Law Journal* article, "The Embarrassing Second Amendment": <http://www.constitution.org/mil/embar2nd.htm>

Lyle Denniston's recent (July 2013) SCOTUS blog entry: <http://www.scotusblog.com/2013/07/new-plea-for-gun-rights/>.

Any number of possibilities via a *NY Times* search: [http://topics.nytimes.com/top/reference/timestopics/subjects/u/us\\_constitution/second\\_amendment/inde...](http://topics.nytimes.com/top/reference/timestopics/subjects/u/us_constitution/second_amendment/inde...) (and maybe even a few from the WSJ)

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