**The Second Amendment: How to Reconcile Gun Control and Strict Constitutionalism**

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School shootings, intercity violence, and terrorist attacks across the United States have brought into question an issue of public policy not commonly discussed throughout most of the 20th century, Gun Control. One of the major issues of the Democratic Party primary in 2016 has been the candidates’ stances on how they plan to curtail the usage of guns across the country. The view of many of the communalist philosophy, which identifies more with the Democratic Party than the Republican Party despite its existence in both, is that guns are inherently tools of violence, and that to limit deaths from mass shootings the government should take a variety of actions including banning certain guns and gun accessories and strengthening background checks.

On the other hand, those of the more libertarian philosophy, and coincidentally often of the Republican Party, believe guns can be part of the solution to mass shootings. The right to bear arms gives people the power to defend themselves from attack and deter people from using guns to commit violence in the first place. The argument is also commonly made that targeting guns is a way to divert attention away from an issue which many do not wish to discuss openly in public, mental health, because guns do not actively kill people; rather, people do. Finally, the right of the people to bear arms is enshrined in the Second Amendment to the United States Constitution.

“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.”

Or is it?

If one is not a Constitutional scholar, or for any other reason used to reading the Bill of Rights, then one would be lying if one said that they did not need to read that sentence a few times until they realized that it made no sense. Is a well-regulated militia meant to not be infringed? Is it that the militia is necessary both to the security of a free state and the right of the people to bear arms? Is it the right to bear arms that shall not be infringed? It is easily shown by counter example that the Second Amendment has no answers to our modern problems in its text alone.

“A well-regulated militia, being necessary to the security of a free state, and the right of the people to keep and bear arms shall not be infringed.”

“A well-regulated militia, being necessary to the security of a free state, shall be maintained; the right of the people to keep and bear arms shall not be infringed.”

These two sentences clearly provide the states with the power to control their own militias to protect their autonomy and retain the individual right of the people to bear arms. Why did the founding fathers not choose to clarify these two issues separately? Why is it so intrinsic to the fundamental right to bear arms, if it does exist, that state governments be given the right to a militia? Now, the converse of this is also easy to create.

“A well-regulated militia, being necessary to the security of a free state and the right of the people to keep and bear arms, shall not be infringed.”

Here we see that it is the militia that shall not be hindered by the federal government in order to protect to rights of the people to security of the states and the freedom of the people of those states to bear arms without the approval of the federal government.

The only real way to try and renegotiate this confusion is to consider the original intent of the Second Amendment by the founding fathers. This may seem simple, but when considering an issue of government power during the ratification of the Constitution, both at the federal level and at the state conventions, it is impossible to find a full consensus. The federalist group, those more inclined to central authority than others, and anti-federalist group, those more inclined to the rights of the people, both agreed that the national government is likely a threat to the people should there fail to be checks placed to hinder its authority. Where issue was taken was on the question of how best to prevent authoritarianism.

The federalist argument stated that the Second Amendment was meant to allow the states to protect themselves from the encroachment of the federal government, as the colonies had been by the imperial power of Great Britain, with a militia controlled by the governor made up of the people of the state. They based their opinion on the fact that the militias of the American Revolution had been mostly made up of volunteers that served the deliberative bodies of each state.⁠1 This allowed the government to devolve a certain amount of power to the people while also protecting the states from danger. Another much less savory argument made by the federalists was that the militias were preferable to the power of the individual people of the states as they were less likely to allow guns to enter an unregulated system where they could be used for violence. The most historically forgotten part about this argument is that it was meant to stop not all violence, but specifically to prevent Native American tribes and black slaves from gaining weapons which they could use to bring harm to the states.⁠2 While this argument is historically unfortunate to the modern reader, it has many modern parallels which give it merit without the baggage of slavery and genocide which its original making did, such as hate crimes and terror attacks committed with guns.

The anti-federalist argument initially was that the people should preserve the right to bear arms themselves. They argued that they not only feared federal authorities, but state authorities as well. They often cited brawls such as the famous Boston Massacre to show that any official soldiers with weapons can commit unbridled acts of violence against civilians. Without preserving the right to keep and bear arms, how would average citizens protect themselves from this type of violence?

In the end, the anti-federalists could not gain enough support for their position, and thus relented and a middle ground was tentatively agreed upon. This new position agreed with the thesis that the states should be allowed to keep a militia for their own protection against the federal government, but that militia must be as open as possible to all people of the states so that the state governments cannot simply take control of the militias and send them to take the liberties of the people of the states. Multiple other interpretations were also agreed upon as checks against the power of the militias, such as the fact that the militias should be separate from state and local troopers, who should be allowed no arms which are not also made available to the people of the state, and should only be deployed in the case of an impending danger or threat.⁠3 Additionally, the Fifth Amendment protected citizens from the quartering of soldiers in peacetime and the Fourth Amendment mandated probable cause to search property, thus preventing the takeover of citizens’ property and liberty by state officials.

Considering this middle ground, we can now bring back our attention to the modern issues of gun control in America. From an originalism perspective, it is not that the Constitution gives citizens the right to bear arms; rather, the people preserve the right to not be outgunned, so to speak, by the common authorities of the states. This might problematize some bans placed on certain weapons and ammunition because they might not preserve the right for equal fire power, but the need and strength of not only a background check, but also a test for the firearm abilities of the user, could be implemented to make certain that the people keeping their rights will not commit violence using them, either purposefully or accidentally.

But how are these requirements constitutional? Why can the state not simply now determine who is eligible for their Second Amendment right? Well the answer can be found in the way the right to bear arms was articulated by the founding fathers. James Madison described the Second Amendment militia as “A well regulated Militia, composed of the body of the people…,” implying that every citizen had a right to bear arms because of their inherent right to join the militia. Does this mean that the right to bear arms is given exclusively to those in the National Guard and other state authorities? Not necessarily. The modifier of the militia in the Second Amendment is “well-regulated”, thus implying that the states may provide some regulation of their militia, which is open to the entire citizenry. This regulation can be performed through the background check and skill test of the citizens.

Gun control writ large is not unconstitutional, but it will need to be rethought in order to preserve to the rights enshrined by the Second Amendment. So finally, what gun control is legitimate? The only legitimate form of gun control is that which regulates who may have arms, and there can be no arms available to the police which are not available to the people. Who may make these regulations? That is less clear. It might seem to be implied that gun control may only occur at the state level due to its relevance to the state militias. But if this power to be reserved to the states why not place it in the Tenth Amendment or omit it entirely, as the Tenth Amendment says would pass it to the states? That is a question for another day.

1 VANDERCOY, David E. "THE HISTORY OF THE SECOND AMENDMENT." Constitution.org. 1994. http://www.constitution.org/2ll/2ndschol/89vand.pdf.

2 "The Unspeakable Original Intent of the Second Amendment." OpEdNews. Accessed February 28, 2016. http://www.opednews.com/articles/The-Unspeakable-Original-I-by-Laurie-Endicott-Th-121216-899.html.

3 "Second Amendment." LII / Legal Information Institute. Accessed February 28, 2016. https://www.law.cornell.edu/constitution/second\_amendment.