

Interpreting the 2nd Amendment to the U.S. Constitution

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What is the first best interpretation of the 2nd Amendment? How should one go about interpreting it. What does it mean to us as citizens of this country?

The Second Amendment of the United States Constitution reads: "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."

Let us first break the Amendment apart into its various components.

- A. A well regulated Militia,
- B. being necessary to
- C. the security of a free State,
- D. the right of the people
- E. to keep and bear Arms,
- F. shall not be
- G. infringed.

This will make referencing the elements within the Amendment clearer. I see at least these 7 elements. Item C could also be split but that's unnecessary for this discussion.

Obviously, this has been one of the most controversial components of the U.S. Constitution. There are so many approaches to interpreting the meaning and intent of this, it seems difficult if not impossible to resolve to one clear meaning. Justice Stephen Breyer, Associate Justice of the Supreme Court of the United States, has been recorded as saying the he interprets the Amendment to support arms for a state militia and not at all for individuals when he said that it was never intended to allow anyone "to keep a gun by their bed." President Obama, along with many if not most democrats and candidates for that office, regularly express all sorts of justification for infringing individual ownership and possession. Indeed, Chief Judge Merrick Garland, of the D.C. Circuit Court, nominated by President Obama to follow Justice Scalia, has voted (D.C. vs. Heller) specifically to undermine individual gun ownership and possession.

First, the 2nd Amendment exists. It affords rights of some sort to someone. The question is what rights and for whom? There are perspectives, points of view, in play here that govern how these questions get answered. This will become more clear below.

Regarding E, to keep and bear Arms, seems pretty clear. Arms are weapons. To keep and bear means to own and to possess. I.e., it is not a matter of owning a weapon that exists elsewhere but to actually possess that which is owned. One cannot keep something not owned. Ownership is simply a means of keeping the Arms. While this all seems clear enough, there are still questions about the Arms themselves.

As the Amendment does not specify, some have suggested that the intent of the founders could not extend beyond flintlock rifles, spears and bows and arrows because that was all that was known by the writers of the 2nd Amendment as if they had no concept of future technological development. In the latter half of the 1700's, rockets used in battle became commonplace along with explosive shells containing shrapnel by 1803. 1775 saw the first submarine used in battle so, certainly, advancements in military technology was understood by most leaders of that period.

This is where a philosophical perspective about the role or purpose of the Constitution comes into play. The purpose of the Constitution is to protect the individual and, in numbers, the whole of the citizenry of the country. In fact, laws in general exist to protect the individual, the minority. *Majority Rules* is a common tenet that sounds intrinsically justified. But, the majority rarely needs the protection of law and can, without a system of law and protections, easily oppress and take advantage of the minority.

The Constitution - A Perspective

The Constitution breaks down the roles of two distinct groups that make up this country: the government (or the state) and the people. Among other things, it delineates the rights and protections for citizens, the people. The Constitution, in this way, protects the people. But, it is often misunderstood from whom or against whom this protection is put in place. From whom do the people need this protection?

In the Articles of the Constitution, the government is assigned the responsibility of national defense. It is the only mandatory function of the government where everything else is basically permissive in nature. That mandate addresses the protection of the country against foreign governments which is exclusively in the purview of the national government. In fact, the states of this country are specifically prohibited from keeping troops, or ships of war or to engage in war (Article One, Section 10).

But, the Bill of Rights are about the protection and rights of the people themselves... against whom? This is actually obvious and easy to see throughout the Bill of Rights that it is intended to protect the people from the government itself. It is clearly the people versus the government and the Bill of Rights is protection against the government. It is clearly a balancing document of unbridled liberty versus governmental control, the free pursuit of happiness versus government tyranny. It is the Bill of Rights that provides for the people and restrains the government and, through the process of Amendments, to continue to address that need. The Bill of Rights is not there to delineate and provide for the role and responsibility of the state.

While this digression started in considering for exactly what arms the 2nd Amendment provides, the debate about flintlock rifles versus owning your own Sherman Tank will be addressed below. Nevertheless, outlining the role, purpose or intent of the Constitution is critical in achieving any valid interpretation of the Constitution. It exists to protect the people FROM the government and to ensure that the government exists and governs with the consent of the people, thus Lincoln's famous phrase "government of the people, by the people, for the people."

The Militia

It is a common claim among 2nd Amendment challengers that it is limited to a state militia and not intended to provide gun rights to individuals. The presence of the first line "A well regulated Militia,..." can easily make it seem like it establishes the purpose of the Amendment. But, this phrase does not nor was it intended to establish the intent of the Amendment. In fact, it seems to me to be entirely incidental rather than fundamental to the intent of the language. A militia is not the point.

"A well regulated Militia, being necessary to the security of a free State,..." suggests in one sense that a free state depends on the presence of a militia. Clearly this is not true as there may be other effective means to securing a free state. While a militia is one possible approach, it is not the only means. For example, consider that there might be no militia at all - ever. Would the right to bear arms also disappear? Would the security of a free state no longer be an issue? The point of the language is to secure a free state and a militia is merely one means toward that end. Again, the point of the language is not the militia, which is merely incidental, but instead securing freedom.

The notion that the militia is fundamental to interpreting the 2nd Amendment also misunderstands the role of the Bill of Rights. A militia supplements and answers to a regular army. That is, a militia, while constituted from civilian personnel rather than regular military, is still an arm of and under the control of a regular army. A militia is a tool of the government - not a tool of the people. This interpretation suggests that the 2nd Amendment is there to delineate powers of the government, that arms are necessary so the government can execute its militia option. This misinterprets both the role of the Bill of Rights as well as what is meant by phrase C, "the security of a free State."

The state, our government, is not an entity to be free or not free. Freedom is not an attribute of the state. It is a characteristic of the people. Consider: a state cannot be free if the people in it are not. Freedom only matters for people. The phrase "the security of a free State" means freedom for the people. And, most importantly, as discussed above, that freedom includes, perhaps at its most fundamental level, freedom from government tyranny.

One might reword the first part of the Amendment - while still completely upholding the intent of the language: *A militia is one means of securing freedom for the people against the government.* This the goal of the Amendment. And what right or entitlement does this provision afford the citizens to achieve this goal? The right to own and possess arms. It is the right to own and possess arms to protect the citizenry from the government itself aside from the obvious need for self-defense against animals and random evil-doers. It is specifically a means of preventing tyranny. It's about checks and balances. The government has arms and so do the people. It helps to ensure that the government answers to the people.

Arms

The Amendment specifically does not mention what arms are included or excluded... just "arms." It seems appropriate to interpret the phrase as meaning arms, weaponry, in general. Understanding that the Bill of Rights ensures rights for the people against the government, the checks and

balances notion, the definition of armaments evolves as technology advances for both government and the people. Note that the founders did not limit the people to possession of only sharp rocks and pointy sticks while their military got the more advanced flintlock rifles. That is, arms for the people can keep pace with that which is available to the government. The army gets repeating rifles or revolving pistols - so do the people. The army gets fully automatic machine guns - so do the people.

Limitations on the armaments for the people is not inherent in the 2nd Amendment but may be similar to limiting the freedom of speech for the public good. For example, you cannot yell "Fire!" in a crowded theater and you can be forced to testify against yourself if immune from prosecution. There are limits to the Bill of Rights in the interest of avoiding public danger so one may not own their own nuclear bomb or a cache of hand grenades. This is an interest in the public good, not an intrinsic interpretation or limitation of the 2nd Amendment.

Parity in the Amendments

The other Amendments of the Constitution are equally important. That is, all Amendments are important and there is nothing in the Constitution to suggest that some are more important than others. Yet, this Amendment in particular, its sanctity and validity, are disrespected, undermined and attacked almost more than any other.

Interpreting the Bill of Rights as protecting the people from the government is consistent throughout the other Amendments and we find them all important, in spite of the constant attacks on no. 2. Consider such attacks being waged against the first Amendment. How would people react if prohibited from demonstrating or even getting together to discuss demonstrating? Imagine how the press would react if prohibited from publishing (1st).

Or, imagine how people would react if having their homes subject to search with no warrant (4th). Consider having soldiers taking over your upstairs bedrooms as their own without your permission (3rd). What about being forced to testify against yourself and confess to crimes against your will (5th)? Or being locked up for years with no attorney and no opportunity to confront those against you (6th). Or being locked in the dungeon for J-walking (8th). How would we feel if these elements of our fundamental rights - these things which protect us against government tyranny - were under attack like the 2nd Amendment?

Consider the last two phrases, F and G, "shall not be infringed." It is interesting what it does not say. It does not say shouldn't be infringed or will hopefully not be infringed or shouldn't be infringed often. It also does not say that this right shall not be erased or cancelled or revoked. Nothing so grand or drastic. It says that the right shall not even be infringed. That means it cannot even be limited or undermined - period.

So-called Military Assault Rifles

First, there is no such thing. Secondly, the only thing which might be considered military assault would be fully automatic machine guns which are already prohibited to the public. However, these

unicorns of the weapons world are frequently the star lineup in the attack on how the 2nd Amendment inherently endangers the public.

Other than grenade and missile launchers, bombs, armored weapon vehicles like tanks and fully automatic machine guns - all of which are already prohibited to the public - the phrase military assault is meaningless. For example, the shape and design of an AR-15 or an AK-47 does not make it an assault rifle and, short of fully automatic, it is no different than a child's 22 cal. squirrel rifle. More to the point, no challenger has ever even bothered to define what constitutes a military assault rifle versus those weapons suitable to the general public. Revealing in this dishonesty is how the language often refers to military assault "style" weapons which directly illustrates the lack of technical definition and unabashedly appeals only to impression and emotion.

Summary

The notion that the Amendment outlines the availability of weapons for a state-run militia is absurd. The interpretation that the Amendment guarantees that individuals can own and possess weaponry is absolute and clear. That weaponry, I submit, is comparable to that possessed by the government - limited only by overwhelming needs for public safety requiring clearly defined parameters. The 2nd Amendment is as fundamental to our liberty and preventing tyranny as any of the others in the Bill of Rights.

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