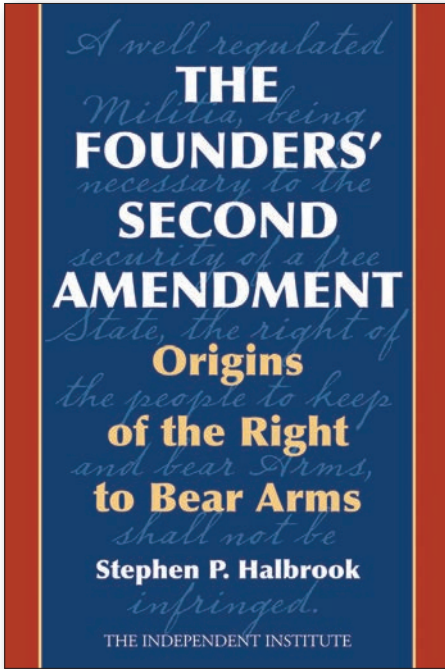


The Founders' Second Amendment

Origins of the Right to Bear Arms



BY STEPHEN P. HALBROOK

Book Highlights

- The Second Amendment “right of the people to keep and bear arms” has had an ambiguous status for much of its history. In *Washington, D.C. v. Heller* (2008), a majority of the Supreme Court helped clarify its meaning and applicability by affirming that it protects the right of an individual, not the “collective right” of a militia. Why exactly did the authors and ratifiers of the U.S. Constitution enshrine this protection in the Bill of Rights? *The Founders' Second Amendment* provides a comprehensive historical look at what America's founders thought and wrote about the issue.
- With Redcoats sailing to occupy Boston in 1768, a pundit spread the alarm that “the Inhabitants of this Province are to be disarmed,” they would be “governed by Martial Law,” and patriots “are to be seized and sent to Great-Britain.” This set the tone for a series of ever-escalating conflicts over the next seven years that would explode when General Thomas Gage sent British troops to seize the colonists' arms at Lexington and Concord. Defeated there, Gage then confiscated the firearms of the people of Boston, a grievance highlighted by the Continental Congress in justifying what became the Revolutionary War.
- Independence being declared in 1776, the states began adopting bills of rights, several of which recognized “the right of the people” to have arms for various purposes, such as self defense and the common defense. While some states saw no need for declarations of rights, the liberty of bearing arms was universally recognized. At the same time, militias composed of all male citizens were seen as necessary counter-weights to the threat of a standing army.
- A firestorm was sparked when the Constitution was proposed in 1787 without a bill of rights. Federalists and Antifederalists fiercely battled over the issue as the States began ratifying the Constitution. In the first conventions, the Federalists defeated demands for recognition of the rights to free speech, assembly, and bearing arms. But the tide turned in Virginia, where Patrick Henry and George Mason prevailed in persuading the convention to demand a bill of rights.
- A great compromise was reached when the Federalists and Antifederalists concurred that the Constitution would be ratified subject to the agreement that the first Congress would consider amendments. James Madison did just that by proposing what became the Bill of Rights in 1787. Federalists explained that what became the Second Amendment would protect the right of the people to keep and bear their private arms, which would guard against tyranny and the evils of a standing army. However, proposals to increase state militia powers were rejected.
- Thomas Jefferson, a life-long hunter and gun collector, wrote just before his death in 1826 that “all power is inherent in the people; . . . it is their right and duty to be at all times armed.” The understanding by his generation of the Second Amendment was clear and unmistakable—as its text states, it recognizes “the right of the people” to possess and carry arms. The Constitution defines the respective powers of the federal and state governments, but the Bill of Rights speaks largely of individual rights. If the Second Amendment is no exception, what it protects—and what restrictions government may impose—will continue to be hotly debated.

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Book Synopsis

The Founders of the American republic sought to guarantee “the right of the people to keep and bear arms” as a fundamental liberty. They also declared a “well regulated militia” to be necessary to secure “a free state.” Passionately discussed today in the context of the gun control controversy, the Second Amendment to the Constitution has become a controversial enigma. But what experiences led the Founders to adopt it, and what did it mean to them?

In his latest book, *The Founders' Second Amendment: Origins of the Right to Bear Arms*, Stephen P. Halbrook provides

perhaps the most important piece of the puzzle regarding that often-misunderstood amendment—the first truly comprehensive account of how the generation of the Founders of the American Republic viewed “the right of the people to keep and bear arms,” from the pre-Revolutionary days through the passing of that generation.

“This work seeks to present the views of the Founders who actually created the Second Amendment,” Halbrook writes in the introduction. “It is based on their own words as found in newspapers, correspondence, debates and resolutions. Generous quotations from the Founders are used to allow them to speak for themselves, thereby avoiding the appearance of re-characterization of their views.”

Although *The Founders' Second Amendment* answers such questions as whether the Constitution's creators sought to guarantee an individual right or a collective right, it also shows that the Amendment's history is interesting for reasons that go far beyond its usefulness for resolving modern legal controversies. At last, readers have a lively resource that will enable them to fully comprehend the Founders' understanding of what is necessary to guarantee, as the Amendment itself states, “the security of a free State.”

Disarming the Colonists

Increasingly serious clashes between the colonists and the British authorities, examined in Chapters 1 to 4, led the Founders to adopt the Second Amendment. In 1768, the Redcoats began to occupy Boston and the patriots spread the alarm that, among other deprivations, the inhabitants were to be disarmed. The presence of a standing army quartered within the population led the colonists vigorously to assert their rights as Englishmen. The tragedy of the Boston Massacre only solidified the patriots' commitment to protect themselves, by arms if need be.

From the Boston Tea Party to the Powder Alarm, repressive measures against the increasingly troublesome Americans sharply escalated. The Royalist-imposed government in Boston debated a prohibition on all private arms. General Thomas Gage's troops seized the gunpowder in the powder houses, cutting off the supply

of that essential commodity. Searches and seizures, including alleged entrapment, were instituted against those attempting to obtain and distribute arms.

Well aware that the colonists were making every effort to arm themselves, George III sought to cut off all arms and ammunition by prohibiting the export of these articles from Britain, Holland, and elsewhere and blocking their import into the colonies. This arms embargo was combined with stepped-up search-and-seizure operations in Boston.

The “shot heard 'round the world” at Lexington and Concord in 1775 involved the Redcoats' attempted seizure of arms hoarded by militiamen and the repulse of these troops by local citizens armed with their own muskets and sporting arms. This led General Gage to impose the confiscation of all firearms from Boston's civilians, under the promise that those in compliance could depart the besieged city. After seizing the arms “the perfidious Gage” held the townfolk as hostages. News spread throughout the colonies.

Of Revolution and Rights

The Revolution had now been sparked. Its philosophy, as expressed in the Declaration of Independence, was that the people must endure some amount of injustice, but they may wage armed resistance when injustice becomes tyranny. The ramifications of this republican doctrine are presented in Chapter 5.

Beginning in 1776 and continuing during the War for Independence, the states took measures to provide for their own governance, as Chapters 6 and 7 detail. Virginia was the first state to adopt a declaration of rights, which included the admonition for “a well regulated Militia, composed of the Body of the People”; Pennsylvania was the first to declare that “the people have a right to bear arms for the defense of themselves, and the state.” These principles were held dear in all of the states without regard to whether they adopted a bill of rights. Skeptics deemed it unnecessary to list the many rights of mankind in a formal instrument.

The Constitution and Compromise

With independence won and rights vindicated, the next phase of the Second Amendment's saga begins with the drafting of the Constitution at the Philadelphia convention in 1787. Its lack of a bill of rights was defended

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in *The Federalist Papers* and attacked by the Antifederalists. But both sides agreed, as explained in Chapter 8, with the ideal of an armed populace.

The proposed constitution was then considered by the state conventions, largely in 1788, as Chapter 9 explains. In the initial phase, those demanding a bill of rights protecting free speech or any other right could not muster a majority in any convention. However, the Pennsylvania Minority proposed that “the people have a right to bear arms” to defend themselves, the state, and the United States, as well as for hunting. In the Massachusetts convention, Samuel Adams proposed that “peaceable citizens” have a right to keep “their own arms.” Finally, the New Hampshire convention became the first to propose a bill of rights, including that “Congress shall never disarm any citizen” unless in rebellion.

In Virginia’s convention, Patrick Henry argued “that every man be armed,” and George Mason drafted a declaration of rights, including a guarantee of “the right of the people to keep and bear arms.” James Madison and his Federalist colleagues reached the great compromise with the Antifederalists: Virginia would ratify the Constitution without a bill of rights, but would propose one and urge its prompt adoption. How Virginia tipped the scale in favor of a declaration of rights is described in Chapter 10.

In the remaining state conventions, the majority in favor of a bill of rights had become irresistible. New York demanded

one, and North Carolina refused to ratify the Constitution until a bill of rights had been introduced in Congress. Chapter 11 explains these developments, which included significant mention of the right to bear arms.

“To Keep and Bear Their Private Arms”

James Madison lived up to his promise and introduced what became the Bill of Rights in the first session of Congress in 1789. The Second Amendment was interpreted, as Federalist Tench Coxe expressed it, to guarantee the right of the people to keep and bear “their private arms.” The Senate rejected restricting the right to bear arms to “the common defense” and also rejected a proposed state power to maintain a militia. These developments are described in Chapter 12.

The proposed Bill of Rights was then considered for adoption by the states. No record exists of any criticism of “the right of the people to keep and bear arms,” although the militia clause was taken to task for not actually doing anything. The Bill of Rights, as explained in Chapter 13, was finally adopted in 1791.

Meanwhile, the nature of a well-regulated militia was debated in Congress. The Militia Act of 1792 would require that all able-bodied white males enroll in the militia and provide their own arms. Both the power of the states to maintain militias and the right of individuals to have arms for self-defense, as Chapter 14 shows, were considered basic.

The first commentary on the Constitu-

tion, by St. George Tucker, posited that the Second Amendment protects individual rights and that legislative infringement was subject to judicial review. George Washington, John Adams, and Thomas Jefferson explicated and exercised the right to bear arms. James Madison, writing in his final years, reaffirmed his association of republican government with an armed populace.

What Does the Second Amendment Say?

The book concludes with a linguistic analysis of the Founders’ usage of terms. The terms “right of the people” as used in the First, Second, and Fourth Amendments are contrasted with such phrases as “the militia, when in actual service” in the Fifth Amendment and with the powers “reserved to the states respectively” in the Tenth Amendment.

The *Heller* decision has put the collective-rights interpretation of the Second Amendment on the defensive. Under the “collective rights” view, the Amendment protects state powers to maintain militias, not an individual to keep and bear arms. A hybrid version argues that it protects a “civic right” to bear arms in the militia. The historical evidence set forth here, however, suggests that the Founders had a predilection for both a well-regulated militia and an individual right to have arms, and that they envisioned that the two clauses of the Amendment would complement rather than be in tension with each other.

What others are saying about **The Founders’ Second Amendment...**

“*The Founders’ Second Amendment* should be welcomed as a timely introduction to this most contentious of debates.”

—**Publishers Weekly**

“*The Founders’ Second Amendment* is an impressive achievement. In this meticulously researched and exhaustive study, Halbrook has produced what promises to be the standard work for years to come on the original intent of the Second Amendment. It will be an invaluable resource for scholars of the Constitution.”

—**Donald W. Livingston**, Professor of Philosophy
Emory University

“I enthusiastically recommend Stephen Halbrook’s book, *The Founders’ Second Amendment*. This is an original and valuable

approach, focusing on the place of individual ownership of firearms during the time of the American Revolution and the drafting and ratification of the Constitution and Bill of Rights. It will add appreciably to the scholarship on the origins and meaning of the Second Amendment.”

—**Joyce L. Malcolm**, Professor of Legal History
George Mason University School of Law

“Stephen Halbrook’s *The Founders’ Second Amendment* is crisply written, rich with history, and sure to be valuable to anyone interested in understanding the original meaning of the Second Amendment’s right to bear arms.”

—**Glenn Harlan Reynolds**, Beauchamp Brogan
Distinguished Professor of Law, University of Tennessee

What others are saying about **The Founders' Second Amendment...**

“Like much of Halbrook’s other excellent work, *The Founders’ Second Amendment* is both well-written and full of fascinating details. It will serve as an important resource for professional scholars and interested laypersons. One especially useful aspect of Halbrook’s work is that the author so consistently lets a huge variety of original sources speak for themselves.”

—**Nelson Lund**, Patrick Henry Professor of Constitutional Law, George Mason University

“Stephen Halbrook’s *The Founders’ Second Amendment* is first-rate work, utterly convincing. This is a solid and important work.”

—**Forrest McDonald**, Distinguished Research Professor Emeritus of History, University of Alabama

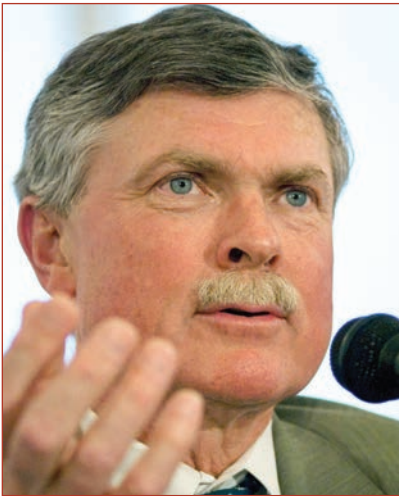
“Historian and philosopher Stephen Halbrook is the single most prolific researcher on the Second Amendment, having contributed literally dozens of scholarly articles on various aspects of

the subject. *The Founders’ Second Amendment* masterfully both extends and summarizes his (and others’) research. It is the last word—the single most comprehensive work on the thinking of the Founding Fathers’ era about the constitutional right of citizens to be armed.”

—**Don B. Kates, Jr.**, author, *Armed: New Perspectives on Gun Control* and *The Great American Gun Debate* (with Gary Kleck)

“Halbrook . . . is a well-published scholar who has written a timely, well-informed, lucid book on the ‘origins of the right to bear arms.’ He covers the Second Amendment’s underpinnings from 1768-1826, and so offers readers a rich interpretive framework from which to grasp the US Supreme Court’s (conservative) decision in June 2008, which was handed down after the book’s publication.”

—**CHOICE**



ABOUT THE AUTHOR

Stephen P. Halbrook, is Research Fellow at the Independent Institute and the author of *The Founders’ Second Amendment: Origins of the Right to Bear Arms*. Halbrook received his Ph.D. in Philosophy from Florida State University and J.D. from Georgetown University Law Center. An attorney in Fairfax, Virginia, he has argued constitutional law cases in the Supreme Court. His books include *That Every Man Be Armed: The Evolution of a Constitutional Right*; *Freedmen, the Fourteenth Amendment, and the Right to Bear Arms, 1866-1876*; *A Right to Bear Arms: State and Federal Bills of Rights and Constitutional Guarantees*; *Firearms Law Deskbook: Federal and State Criminal Practice*; *The Swiss and the Nazis: How the Alpine Republic Survived in the Shadow of the Third Reich*; and *Target Switzerland: Swiss Armed Neutrality in World War II* (also in German, French, Italian, and Polish). See also www.stephenhalbrook.com.



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