

Made by History • Perspective

# What the Second Amendment really meant to the Founders

Their arguments had far less to do with today's debates than partisans think.



By Noah Shusterman February 22 at 6:00 AM

Noah Shusterman is an assistant professor of history at the Chinese University of Hong Kong and the author of "The French Revolution: Faith, Desire, and Politics."

Love it or hate it, the Second Amendment provides the constitutional framework for American gun laws. As with all things constitutional, Americans are adapting 18th-century laws to fit 21st-century lives. But in reality, the concerns of the Founding Fathers had little to do with either side's position in the modern gun-control debate. None of the issues animating that debate — from "stand your ground" laws to assault weapons bans — entered into the Founders' thinking.

Yet because both sides in debates about the Second Amendment invoke what the Founders would have thought, it's important to look at what they actually intended.

## 1. The Founding Fathers were devoted to the militia.

Read the debates about the Constitution and the Bill of Rights, and the militia's importance leaps off the page. Alexander Hamilton, writing in the Federalist Papers, called a well-regulated militia "the most natural defense of a free country." His anti-Federalist critics agreed with the need for a citizens' militia, writing that "a well regulated militia, composed of the Yeomanry of the country, have ever been considered as the bulwark of a free people."

Their disagreement was over how best to ensure that the militia was maintained, as well as how to divide up the roles of the national government versus state governments. But both sides were devoted to the idea that all citizens should be part-time soldiers, because both sides believed a standing army was an existential threat to the ideas of the revolution.

## 2. The Amendment's primary justification was to prevent the United States from needing a standing army.

Preventing the United States from starting a professional army, in fact, was the single most important goal of the Second Amendment. It is hard to recapture this fear today, but during the 18th century few boogymen were as scary as the Standing Army — an army made up of professional, full-time soldiers.

By the logic of the 18th century, any society with a professional army could never be truly free. The men in charge of that army could order it to attack the citizens themselves, who, unarmed and unorganized, would be unable to fight back. This was why a well-regulated militia was necessary to the security of a free state: To be secure, a society needed to be able to defend itself; to be free, it could not exist merely at the whim of a standing army and its generals.

The only way to be both free and secure was for citizens to be armed, organized and ready to defend their society. The choice was a stark one: a standing army or a free nation.

### **3. The authors of the Bill of Rights were not concerned with an “individual” or “personal” right to bear arms.**

Before the landmark 2008 Supreme Court case *District of Columbia v. Heller*, courts had ruled that the right of individual citizens to bear arms existed only within the context of participation in the militia. In *Heller*, the Supreme Court overturned that precedent, delivering gun rights advocates their biggest legal victory.

This was not, however, a return to an “original understanding” of the Second Amendment, as Justice Antonin Scalia claimed for the majority. It’s not that the Founding Fathers were against the idea of an individual right to bear arms. It just was not an issue that concerned them.

Again, the militia was all important: The men writing the Bill of Rights wanted every citizen to be in the militia, and they wanted everyone in the militia to be armed. If someone was prohibited from participating in the militia, the leaders of the Founders’ generation would *not* have wanted them to have access to weapons. In fact, the 18th-century regulations that required citizens to participate in the militia also prohibited blacks and Indians from participating as arms-bearing members.

### **4. The Founding Fathers were very concerned about who should, or should not, be armed.**

These restrictions on militia membership are critically important to understand. Because despite the words of the Second Amendment, 18th-century laws did infringe on Americans’ right to bear arms.

Laws rarely allowed free blacks to have weapons. It was even rarer for African Americans living in slavery to be allowed them. In slave states, militias inspected slave quarters and confiscated weapons they found. (There were also laws against selling firearms to Native Americans, although these were more ambiguous.)

These restrictions were no mere footnote to the gun politics of 18th-century America. White Americans were armed so that they could maintain control over nonwhites. Nonwhites were disarmed so that they would not pose a threat to white control of American society.

The restrictions underscore a key point about militias: They were more effective as domestic police forces than they were on the battlefield against enemy nations; and they were most effective when they were policing the African American population.

### **5. Eighteenth-century Americans tolerated a certain amount of violence and instability, as long as it came from other white Americans.**

During the 18th century, insurrectionary groups like the Carolina Regulators and vigilante groups like Pennsylvania's Paxton Boys showed that Colonial governments could not simply issue laws and count on the people to obey them. (As did, one might add, the American Revolution.) Shay's Rebellion in 1787 and the Whiskey Rebellion in 1791 showed that those problems would not go away with the arrival of the new republic. Including all citizens in the militia and relying on that militia to enforce the laws, meant that issues which divided the citizenry also divided the militia. When disagreements over political issues turned violent, the government would not necessarily enjoy the balance of power over citizens who, as militia members, were trained and armed.

Those events also showed a pattern that emerged during the 18th century: Americans were willing to tolerate a significant degree of instability and violence on the part of white Americans. The Paxton Boys, for instance, murdered 20 Conestoga Indians who had been living peacefully with their Pennsylvanian neighbors for some time. Though the governor issued warrants for their arrest, and Benjamin Franklin called the killers a "disgrace of their country and their colour," no Paxton Boys were ever prosecuted.

The Whiskey Rebellion was an armed uprising against the national government. In its aftermath, only two rebels were convicted of treason, and President George Washington pardoned them both. Indians who attacked whites, and enslaved peoples who resisted, however, received no such indulgence.

### **Today's Second Amendment**

Anyone wishing for a return to an original meaning of the Second Amendment — where no one was a professional soldier, but everyone would be required to participate in the militia — would find themselves far from the political mainstream.

America's standing army is now the most powerful fighting force in world history. The National Guard still exists as a citizens' militia, but participation is a far cry from the Founders' vision of participation by all citizens. Meanwhile, the Army and the militia have diversified in ways which no one in the 18th century could have imagined.

What remains, though, is the pattern of what Americans will and will not tolerate. In the centuries since the Bill of Rights became law, the strictest gun-control laws have been aimed — sometimes explicitly, sometimes not — at keeping African Americans from arming themselves. Americans have been eager to disarm blacks, but hesitant to disarm whites.

California's gun-control laws, for instance, began as a reaction to the Black Panthers' armed patrols and open carry. Yet, when self-proclaimed militiamen engaged in armed resistance to law enforcement at the Bundy Ranch in 2014, there was no similar call for new gun laws, and a significant portion of the American political establishment initially expressed support for their actions.

Meanwhile, the nation continues to tolerate a level of gun violence from its citizens unparalleled in other wealthy nations. Eighteenth-century militias were unstable and unpredictable; American gun violence in the 21st century has been every bit as unstable and unpredictable and, given the improvements in weaponry, far more fatal. In three of the most recent mass shootings — Parkland High School, the First Baptist Church and Las Vegas — three men killed a total of 101 people and injured hundreds more, a level of carnage that would have been impossible with the weapons available during the 18th century.

Despite these body counts, and despite the seeming inevitability of future tragedies like these, there have been no new national laws to limit citizens' access to high-powered weapons. Some states have enacted such restrictions on their own, but other states have moved in the opposite direction, loosening limits on citizens' access to firearms.

The United States still seems willing to tolerate a significant degree of instability and violence on the part of white American men, the demographic group responsible for the majority of mass shootings. The United States also seems willing to tolerate daily rates of gun violence that surpass all but the worst mass shootings, in large part because most homicide victims are people of color.

Again, this level of carnage could not have been foreseen by the men who wrote the Constitution and the Bill of Rights. As Americans, though, we still live our lives and write our laws within the framework that those men left us, including the Second Amendment. At its best, the Second Amendment was a commitment to citizen participation in public life and a way to keep military power under civil control. At its worst, it was a way for whites to maintain their social domination.

In today's America, the echoes of 18th-century racial politics still weigh down our society, while the new republic's commitment to citizen participation is nowhere to be found.

 **3 Comments**

Noah Shusterman is an assistant professor of history at the Chinese University of Hong Kong and the author of "The French Revolution: Faith, Desire, and Politics."  Follow @ncshusterman