THE ENLIGHTENMENT OF BUBBA: REFLECTIONS ON THE SECOND AMENDMENT

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Douglas Jensen
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As an informal student of World War II history, I recently started to read a book, The Germans, by renowned professor of European history, the late Gordon Craig.[1] He addressed the perennial question of how that country could have followed Hitler to its defeat, destruction and shame. The recent movie, "Downfallen," about the last days of Hitler in his Berlin bunker might have raised that question anew in your own mind.

Professor Craig observed that Germans had acquired "habits of deference toward authority,"[2] which he said was due to"…the relative failure in Germany of that great intellectual movement of the eighteenth century known as the Enlightenment."[3] He highlighted his conclusion by quoting a German publisher, Karl Friedrich Moser, who said in 1758: "Every nation has its principal motive. In Germany, it is obedience; in England, freedom; in Holland, trade; in France honor of the King."[4]

So what was the Enlightenment and how does it affect us now? Examining English history in the seventeenth century gives us some context as well as an appreciation of why the British played such a pivotal role in embracing the Enlightenment in the following century.

The major theme of relations between the King and his subjects after the Protestant Reformation was competition between the minority Catholics and the Protestants (who reportedly made up a lob-sided majority of the population).[5] Charles II was faced with various attempts to overthrow his authority such as the Popish Plot in 1678. During that event he "disarmed Catholics who would not take an oath of 'allegiance and supremacy.'"[6] A few years later during the Rye House Plot in 1683, he "disarmed Protestant leaders."[7] Obviously, Charles II is remembered after his death in 1685, for both taking away rights of the people that became legitimate after the Magna Carta, and for leaving a large standing army.[8] King James II followed suit by "call(ing) for the disarmament of the Protestant militia of Northern Ireland" in 1687 and two years later called for general disarmament under the Game Act of 1671.[9] His unhappy subjects sought to bring in a successor: William of Orange. The so-called "Glorious Revolution" caused James II to flee to France and for the House of Commons to consider naming William of Orange and his wife, Mary, to be King and Queen of England. But still smarting from the impositions of Charles II and James II, the House of Commons convened to prepare a Declaration of Rights to which the proposed sovereigns must accede before ascending to their thrones.

That English Bill of Rights of 1689 listed thirteen rights of Englishmen that were beyond control by the Crown. The most relevant such right for our purposes was that "the subjects which are Protestants, may have arms for their defence suitable to their conditions and as allowed by law."[10] Of course, there is controversy now about the interpretations of this trenchant provision. One scholar has said:

> The most significant aspect of the English Bill of Rights is that regardless of the scope of the right…for the first time the English Citizenry reserved a right against the Crown. Simply put, the citizens of England demanded that, in order for William of Orange to take power, he must acknowledge that the right to bear arms was essential to a balance of power between the Crown and the population at large.[11]

Incidentally, Catholics were allowed to keep arms "for the Defence of …[their] House[s] or Person[s]."[12]

This issue of governmental control of an individual's right to choose whether or not to be armed will be our vehicle to examine the tenets of the Enlightenment and their application to ordinary, individual American citizens.[13]

The idea of individuals having paramount rights originates in classical periods.[14] But, more recently, it is the driving notion behind the Enlightenment. The paths of England, Scotland, Ireland and especially Colonial America, as opposed to Germany, owe their compass headings to

the philosophers and statesmen who believed that natural law is, or should be, the basis of individual behavior, society in general and government in particular. These visionaries posited that human beings had certain natural rights quite apart from rights established by legislators or monarchs. The Enlightenment exalted the human experience of individuals and their ability to reason and learn and act on their own behalf. Enlightenment thinkers promoted the well being and happiness of individuals as well as the improvement of society and the secularization of government. The goals were human happiness and satisfaction free of oppression from either church or state power.

Those thinkers in Scotland and England included David Hume, John Locke, Adam Smith and Isaac Newton. (No wonder, then, the Scots Irish in America have resisted gun control.[15]) In France, Voltaire, Diderot, Montesquieu and Rousseau are the most celebrated. The Enlightenment in Germany was ably represented by Kant, who stated: "have courage to use your own reason—that is the motto of the Enlightenment."[16] Would that his fellow citizens had long heeded his admonition.

In Colonial America, the ideas of the Enlightenment were expressed by such familiar leaders as Benjamin Franklin, Thomas Jefferson, Thomas Paine and James Madison. Mr. Locke's goals of "life, liberty and property"

were imported but altered by Mr. Jefferson. As we all know, the Declaration of Independence honors "life, liberty and the pursuit of happiness."[17] To these, all of us as equals, have an "inalienable right." Some saw in the defiant Colonies' defeat of England in our Revolutionary War the words of the Enlightenment being transformed into action.

The fundamental basis of the United States of America does, indeed, reflect free individuals, not rulers, establishing a government and "rationally consent(ing) to limit their own freedom and to obey civil authority in order to have public protection of their natural rights."[18] Isaac Kramnick summarized that political goal:

> Government's purpose was to serve self-interest, to enable individuals to enjoy peacefully their rights to life, liberty, and property, not to serve the glory of God or dynasties, and certainly not to dictate moral or religious truth.

He also stressed that the Enlightenment ideals included "equal opportunity and social mobility for self-made individuals."[19] He points out how deToqueville observed, like Descartes, that America "instinctively doubted tradition and subjected the truth of all opinions to individual reason and judgment.[20] Our own Mr. Jefferson put it succinctly in 1788: "there is not a crowned head in Europe whose talents or merits would entitle him to be elected a vestryman by the people of any parish in America."[21]

Obviously, many leaders of the new United States of America were advocates of Enlightenment ideals especially after being ruled by King George. Our Constitution reflected those ideals, but not to the entire satisfaction of all. Many feared a central government, even an elected one. Though the required minimum number of states ratified the Constitution, there was still a residual clamor for an enumeration of popular rights that could not be withdrawn even by the re-ordered legislative, executive or judicial powers. The States of Virginia and Massachusetts had added this list of rights to their own state constitutions. Those states, along with New York and Pennsylvania demanded that the national Constitution be amended by adding a similar statement of rights. The Federalists, such as Madison, had opposed including such a statement in the original Constitution because they believed that it contained only the rights given by the people to the federal government and no other rights. He said, "…a bill of rights in the federal constitution would serve no useful purpose as Congress was given no powers to violate the individual rights of citizens."[22] Eventually, those first ten amendments were ratified and are known as our Bill of Rights.

Our subject, the Second Amendment states:

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.

To put it in modern English:

Because a well-regulated militia is necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.[23]

Most of the attention of scholars and jurists in the twentieth century has concentrated on the First Amendment's freedoms of speech, press and religion and the guarantees against unreasonable searches and seizures, self-incrimination and uncompensated taking of private property in the Fourth and Fifth Amendments. The Second Amendment has received relatively little notice and scholarship during the eighteenth, nineteenth and twentieth centuries.

So how does the Second Amendment restrict federal firearm rules or statutes? Clearly, the Second Amendment gives "the people" of these United States at least some rights. The classic conflict is between those who adopt the so-called "Standard" interpretation that those rights are held by individuals who have the right to own and keep firearms for the protection of themselves and others and of the government. To those thinkers, the militia

is simply all people (The present Militia Act derived from the Militia Act of 1792 specifies able-bodied male citizens from 17 to 45 as the general (reserved) militia, as opposed to the select militia in regular military service).[24] The right and keep and bear arms was to ensure that a suitable number of well-trained riflemen could were available. The militia was to be "well-regulated"; that is, subject to the regulations of a superior authority; to wit, civilian authority.[25]

Their opponents, who follow the "collectivist" reading, say that only someone serving in the state militia or federal military service has a constitutional right to possess a firearm. In other words, these theorists see the justification clause about the militia as being a limit on, not an explanation or example of, the operative clause protecting the right to bear and keep arms.

There is yet another interpretation; namely, that the Second Amendment provides two rules: (a) there is not to be a standing federal army and (b) individuals do have the right to own and keep firearms.

All three of these interpretations are attempting to discern the intent of the Framers of the Constitution by examining the text in light of previous and contemporary documents such as the English Bill of Rights and other

state constitutions. The scholars also examine the texts of contemporary statutes to give modern meaning to seventeenth and eighteenth century words. They also cite the Federalist Papers and other commentaries on the debates among the Framers and in the legislatures and newspapers of the states during the process of ratification of the new Constitution.

This process is known as the originalist approach.[26] In other words what was the original meaning as revealed by an analysis of the preliminary and final texts and the historical background of the provision?

The two main theories in this approach are exemplified by two decisions of intermediate federal appellate courts in the twenty-first century.

In 2001, the Fifth Circuit court in United States v. Emerson[27] held that the Second Amendment guarantees that individuals may possess weapons for personal use, even if that individual or weapon is not related to military service. The court, in analyzing the text, decided that the operative clause clearly stated that the rights belonged to "the people," which has been interpreted by the Supreme Court in cases involving the other provisions of the Bill of Rights in which that phrase is used; namely, the First, Fourth and Ninth to mean individuals. Specifically, the court stated:

There is no evidence in the text of the Second Amendment, or any other part of the Constitution, that the words "the people" have a different connotation within the Second Amendment than when employed elsewhere in the Constitution.

We hold…that it protects the rights of individuals, including those not…actually a member of any militia or engaged in active military service or training, to privately possess and bear their own firearms…that are suitable as personal, individual weapons.[28]

The opinion cited numerous documents, reports of the proceedings to write and ratify the Bill of Rights, all in the context of the English and Colonial American statutes and jurisprudence. It also cited constitutional scholars writing in the nineteenth century as well as pronouncements of present-day Supreme Court Justices.

The Fifth Circuit specifically rejected both the collectivist theory that only the states are protected and what the court called the sophisticated collectivist theory that individual rights are protected but only in so far as that individual is engaged in military service.

In 2002, the Ninth Circuit in Silviera v. Lockyer followed the Tenth Circuit and came to the opposite conclusion.[29] That case involved the California law requiring that certain guns described vaguely as "assault weapons" must be registered with the state or forfeited. For our purposes, the main issue was whether or not individual owners of those guns had a right under the Second Amendment to challenge that state law. The Ninth Circuit found that the Second Amendment did not provide any right to any individual so those plaintiffs did not have any basis to have a federal court consider their case. In legal terms, they had no "standing" so were thrown out of court. The court came to that conclusion immediately and then engaged in a lengthy analysis of what it perceived to be the intent of the Framers, which it said was to strengthen state militias as they existed at the time of the adoption of the Bill of Rights. The court concluded that only a state could bring a lawsuit claiming protection under the Second Amendment. The Ninth Circuit Justices did address, but summarily dismissed, the 2001 opinion of the Fifth Circuit Court of Appeals.

The Supreme Court was urged to review both the Fifth Circuit decision and then the Ninth Circuit decision. As is its prerogative, the Supremes declined both invitations. Even though the Supreme Court has the power to resolve differences between the Circuits, it need no do so.

In the meantime, the U. S. Attorney General officially opined, perhaps for the first time in such a clear way, that the Second Amendment provides an individual right.[29]

In a discussion of constitutional gun ownership rights we should examine the Fourteenth Amendment, which has been a beacon of civil rights protection. It was adopted to enforce the abolition of slavery after our Civil War and the Thirteenth Amendment. The Reconstruction Period after the Civil War spawned Black Codes in the Southern states, which inspired the revered Fourteenth Amendment. It applied constraints on the state governments and bound them, as the federal government is bound by the Bill of Rights. The Fourteenth Amendment provides that states may not "make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." A logical question is whether the protection of the Second Amendment is a privilege or immunity of a citizen, and if so, what exactly does the Second Amendment protect? In legal jargon, the first issue is whether or not the Second Amendment is "incorporated" into the Fourteenth. If so, no state may violate its terms and thereby deny a person "due process of law."

The historical context before and after the Civil War is key to understanding the import of the Fourteenth Amendment. In 1857, prior to the Civil War and the adoption of the Fourteenth Amendment, the U. S. Supreme Court in the infamous *Dred Scott* case held that the black plaintiff was not protected by the Bill of Rights. The Court's opinion warned that otherwise, "It would give to persons of the negro race…the right to enter every other State whenever they please, the full liberty of speech in public and in private upon all subjects up which its own citizens might speak; to hold public meetings upon political affairs, and to keep and carry arms wherever they went."[30] No surprise then that during the process of adopting the Fourteenth Amendment **after** the Civil War, supporters noted that blacks were being assaulted and intimidated and should have the right to keep and use personal firearms. Even thereafter, President Grant, in an address to Congress in 1872 noted that one of the goals of the Ku Klux Klan was "to deprive colored citizens of the right to bear arms."[31] Incidentally, he would later serve as the president of the National Rifle Association, which was founded by two Union Army officers to improve marksmanship.

A respected constitutional scholar, Akhil Reed Amar notes:

In 1866, the prevalence in the South of marauding bands of white thugs, terrorizing black families whom state governments were failing to safeguard via genuinely "equal protection" of criminal laws, made an individual right to keep a gun in his—or her—home a core civil right deserving federal affirmation. This transformation of a Founding-era political right into a Reconstruction-era civil right was exemplified by a key congressional enactment in 1866, which declared that "laws…concerning *personal* liberty [and] *personal* security,…*including the constitutional right to bear arms*, shall be secured to and enjoyed by all the citizens."[32]

He then questions why
"…the [Supreme] Court has never satisfactorily explained why it has (thus far) declined to incorporate three provisions of the federal Bill [of Rights]—the right to keep arms, the right to be indicted by a grand jury, and the right to demand a civil jury in common-law cases."[33]

In a more modern context but similar geography, the statements of Secretary of State Condolezza Rice give present-day relevance to our discussion. According to journalist Barry Schweid, Ms. Rice appeared on CNN's "Larry King Live" and said that "her father, a black minister, and his friends armed themselves to defend the black community in Birmingham, Ala., against the White Knight Riders in 1962 and 1963. She said if local authorities had had lists of registered weapons, she did not think her father and other blacks would have been able to defend themselves." According to the reporter: "Rice said the Founding Fathers understood 'there might be circumstances that people like my father experienced in Birmingham, Ala., when, in fact, the police weren't going to protect you.'" "'I also don't think

we get to pick and choose from the Constitution.'" "'The Second Amendment is as important as the First Amendment.'"[34]

Ironically, some legal historians suggest that some state militias were formed specifically to protect against revolts by black slaves or freemen.[35] Would the Justices of the Ninth Circuit be at least chagrined to consider that conclusion?

The rhetoric of gun control measures often smack of implied racism or elitism. For example, in the latter part of the twentieth century, the term "Saturday Night Special" was applied to inexpensive, small handguns that were often purchased by poor people for their protection. Historians have stated that this term was derived from a racist expression and was meant to be a short-hand phrase to justify legal restrictions on minority ownership of firearms, rather than a means to control criminal behavior since criminals prefer larger, more powerful weapons.[36]

Perhaps the issues of the Enlightenment (individual rights) and Reconstruction (equality) are still in play. Is there an intended or unintended consequence of modern gun control legislation that puts minority citizens at a disadvantage? One might so conclude upon realizing that the Supreme

Court seemingly rejects the notion that the Fourteenth Amendment intended to protect former slaves does not apply to **state** laws regulating **firearms**. Litigants making such claims must look not to the Constitution of the United States, but instead to the constitution of the state in question. In fact, some forty-four state constitutions provide protection for firearms use.

Gun control may also be a gender equality issue. It is worth noting that the current president of the NRA, Sandra Froman, is an honor graduate of Stanford with a Harvard law degree. She became an advocate of a woman's right to arm herself after someone attempted one night to break into her Los Angeles apartment. An article in the Harvard Class Notes pointed out that she hardly fit the "popular media image of a National Rifle Association member [to wit] a male, beer-bellied, redneck-type wearing coveralls."[37] In short, the "Bubba" of our title. Perhaps Ms. Froman's position will highlight the question of whether or not a woman has the right to choose to arm and train herself for self-defense. One might argue that women generally are, first, more likely to be assaulted and less likely to be able to fight off an assault and therefore more in need of that right than men and, second, benefit most from the independence and self-reliance it provides.[38] Remember the term "Equalizer."

The diversity of litigants seeking Second Amendment protection is a major factor in a case argued just a few weeks ago to the District of Columbia Circuit Court.[39] Six residents of the District of Columbia, which has long banned possession and ownership of handguns and other firearms in homes, claimed that the ban denied their Second Amendment rights. Those residents include a black women who was threatened by drug dealers she was trying to oust from her housing project, a gay man who had been taunted and threatened in California with violence (which he avoided by displaying his pistol), a man who lives in a high-crime area but cannot possess a firearm at home as he does while on duty as a guard at the federal courthouse, and a woman who owns a shotgun but will be prosecuted if she assembles or uses it for self-defense in her home.

The trial court decided that these plaintiffs did not have a constitutional right to own firearms. A reporter at the Washington Post observed: "At issue in the case before the federal appellate court is whether the Second Amendment right to 'keep and bear arms' applies to all people or only to a 'well regulated militia.' The article notes that the Supreme Court has never settled the issue. "If the dispute makes it to the high court, it would be the first case in 70 years to address the amendment's scope."[40]

Thus is the battle joined: Congress, not any state, governs the District of Columbia so the Fourteenth Amendment incorporation argument is moot. Only the meaning of the Second Amendment itself is at issue.

The Supreme Court often waits until any issue is thoroughly briefed and addressed at the Circuit Court level before resolving any such jurisprudential conflicts. Now the various theories about the intent of the Framers and the meaning of the text have been extensively researched. So the Supreme Court could adopt either one or offer its own theory, perhaps explaining the extent to which an individual right could be restricted, much as there are permitted restraints and limits on the other constitutional rights of Americans.[41]

One author suggests that the Supreme Court might be forced to define the Second Amendment if, as and when the United States becomes subject to global firearm regulations being considered by the United Nations.[42]

But assuming that the Supreme Court does accept an invitation to review a Second Amendment case to resolve the conflict among the Circuits, what method of interpretation could it use? Will it examine the text and the original intent of the Framers, which has led to opposing results? Or will it use a different approach such as an evolutionist one?

The evolutionist theory is that regardless of the original intent of the Framers, constitutional rights evolve as the society changes. As one writer put it: "…evolutionists…regard the Constitution as a living charter that can be understood only in light of how the Supreme Court has interpreted it over time."[43]

Of course, other federal Circuit Courts or the Supreme Court itself might follow yet a different tack and interpret the Second Amendment in light of modern-day sociological and criminological theories. That approach would focus on what decision is prudent or ethical.[44] The Justices might ignore historical analysis of the Framers' intent or meaning. The Court might, instead, seek academic guidance taking into account that we live in the midst of everyday violence with or without firearms, that nearly a majority of homes in America contain a firearm, that political debate rages about the best course to insure personal security and that the United States most certainly has a standing army and various state select, rather than reserve, militias. Personally, I would be surprised if the present Supreme Court would engage in such social engineering.

Doubtless, even if the Supreme Court accepts and decides a case that clearly defines the effect of the Second Amendment on the federal

government or on states, the public policy debate will continue. There are those who advocate taking all firearms away from everybody in the United States.[45] Others contend that over one or two million crimes per year are prevented by armed civilians thereby greatly reducing crime.[46] Others maintain that the decreasing crime rate is due more to the increase in voluntary abortions and stricter punishment of criminals than other factors such as gun control laws.[47]

As an aside, we should note Proposition H passed by the voters in San Francisco. That measure would prohibit within the city limits both the possession of any handgun by any resident of San Francisco and the sale of any firearm or ammunition. In 2006, a judge of the San Francisco Superior Court ruled that the Proposition was invalid in light of state laws that trumped the city proposition. California statutes provide that people may have handguns in their homes and places of business. State law also contained many statutes and regulations governing the sale or transfer of firearms and ammunition. No Second Amendment issues were decided.

However, that proposition may illustrate the political issues in their most modern form. Witness an article in the San Francisco Chronicle under

the headline: “Some citizens fear for safety if courts uphold S. F.’s voter-approved ban on handguns.” A front-page photo featured a woman practicing with her handgun at an indoor range outside city limits. The article, written by Cecelia M. Vega, stated:

For a long time, Margaret Hurst lived in fear.

Gangs control turf a few blocks from her Mission District apartment in San Francisco, and she’s sure a neighbor across the street deals drugs. Her building was broken into four times in one year. She saw teenagers on her street display a gun. And while she was stopped at a red light one day, a man tried to punch in her car window in a case of road rage.

So she bought a handgun, Now Hurst is no longer scared.

“I’ll tell you one thing. If I’m going down, I’m taking them with me,” said 49-year-old Margaret Hurst, who is about as un-Charleton Heston as any woman with a British accent, braided bun and long flowing skirt could be.

…”We’re exactly the kind of people that should have weapons. We’re vulnerable” Hurst said during a recent conversation in her cozy apartment, where she lives with her partner and their two cats. “The guns are not going away unless they absolutely have to.”[48]

A new “Bubba?” Enlightened? To me: Indeed! And you?

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[1] The Germans, Professor Gordon Craig, Meridian Books, 1982. Professor Craig listed the accomplishments of the Germans since the tenth century and commentated on the amalgamation of various tribes providing stability in that part of Europe between the tenth and twelfth centuries. Touching on the relationship between rulers and the Church, to which we will turn presently, he pointed out that there were mutually convenient alliances of Germanic rulers with the Papacy, but eventually, the balance tipped in favor of the Church "resulting," he noted, "in the Imperial capitulation at Canossa." He opined that because the German royalty had sought only their own advantage prior to Martin Luther's bout with the Catholic Church and the resulting Protestant Reformation, "it [the Reformation] destroyed the one shadowy semblance of unity in Germany and inaugurated a long period of religious conflict that culminated in the terrible war that erupted in 1618 and raged across central Europe for thirty years."
Professor Craig explained that the Thirty Year's War "greatly strengthened the privileged position of the aristocracy at the expense of the educated and prosperous burger class and the peasantry." The result was "habits of deference toward authority…."

[2] Craig, p. 32

[3] Craig, p. 33

[4] Craig, p. 23

[5] See The Glorious Revolution and the English Bill of Rights, www. international.ucla.edu/cms /files/Revolution_English Bill of Rights.pdf.; re present firearms regulations in England, see Joyce Lee Malcolm, Gun Control in England: The Tarnished Gold Standard, Journal on Firearms & Public Policy, Fall 2004.

[6] Joseph Bruce Alonso, International Law and the United States Constitution in Conflict: A Case Study on the Second Amendment, Houston Journal of International Law, Fall, 2003, p. 9

[7] Ibid.

[8] Ibid.

[9] Ibid.

[10] Alonso, p. 10

[11] Ibid.

[12] Les Adams, The Second Amendment Primer, Palladium Press, 1996 p. 49

[13] See statement in U. S. v. Verdugo-Urquidez , 494 U.S. 259 (1990) that "the people" "refers to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community."

[14] Will Tysee, The Roman Legal Treatment of Self Defense and the Private Possession of Weapons in the *Codex Justinianus*, Journals on Firearms & Public Policy, Second Amendment Foundation, Fall 2004; See Mark A. Graber, Introduction: Ancients, Moderns and Guns, William and Mary Bill of Rights Journal, February 2004.

[15] Wall Street Journal, October 19, 2004

[16] Isaac Kramnick, The Portable Enlightenment Reader, The Viking Portable Library; Penguin Books, 1995, p. xi

[17] Op cit., p. xv

[18] Op cit., p. xvi

[19] Op cit., p. xvii

[20] Ibid.

[21] Ibid.

[22] Adams, p. 82 Ironically, those who argue that the Second Amendment grants rights to individuals might have better off if Madison's opinion had prevailed.

[23] Dave Kopel in National Review, May 16, 2001 referring to Eugene Volokh, The Commonplace Second Amendment, New York University Law Review, 1998 and quoting Mr. A. C. Brocki of the Los Angeles Unified School District being interviewed by Neil Schulman.

[24] Eugene Volokh, A Right of the People, California Political Review, November/December, 1998, p. 23

[25] Professor Roy Copperud, author of American Usage and Style: The Consensus, being interviewed by Neil Shulman per Kopel, op cit., and p.4.

[26] Sanford Levinson, The Embarrassing Second Amendment, 99 Yale Law Journal 637-659 (1989)

[27] United States v. Emerson, 270 F.3d 203 (5th Cir. 2001)
[28] Silviera v. Lockyer, 312 F.3d, 1052 (9th Cir. 2002)

[29]The opinion includes a long and detailed analysis of the "Original Understanding of the Right to Keep and Bear Arms." It concludes that individuals, not just the States and not just "persons serving in state-organized militia units like the National Guard," are protected by the Second Amendment.

[30]Dred Scott v. Sanford, 60 U. S. (19 How.) 393 (1857)
[31] Wikipedia, Second Amendment to the United States Constitution, p. 13.
[32] Akhil Reed Amar, America's Constitution: A Biography, Random House 2005, p. 391
[33] Amar, op cit, p. 389
[34] AP Diplomatic Writer, May 11, 2005
[35] Haydn J. Richards, Redefining the Second Amendment: The Antebellum Right to Keep and Bear Arms and its Present Legacy, Kentucky Law Journal 2002-2003, p. 335; see also Robert J. Cottrol and Raymond T. Diamond, The Second Amendment: Toward an Afro-Americanist Reconsideration, Journal on firearms and Public Policy, Fall 1995, p. 75; see also David T. Beito and Linda Royster Beito, Blacks, Gun Cultures, and Gun Control: T. R. M. Howard, Armed Self-Defense, and the Sturggle for Civil Rights in Mississippi, Journal on Firearms & Public Policy, Fall 2005.
[36] Ibid.
[37] Harvard Class Notes, Fall 1998
[38] See Dan M. Kahan and Donald Braman, More Statistics, Less Persuasion: A Cultural Theory of Gun-Risk Perceptions, University of Pennsylvania Law Review, April, 2003, p. 1309; see also Wendy McElroy, Girls, Get Your Guns, FOXNews. Com November 15, 2005.
[39] Shelly Parker v. District of Columbia, Circuit Court of Appeals for the District of Columbia Circuit, Case. No. 04-7041.
[40] Fresno Bee, December 8, 2006, p. A7
[41] David G. Browne, Treating the Pen and the Sword as Constitutional Equals: How and Why the Supreme Court Should Apply its First Amendment Expertise to the Great Second Amendment Debate, William and Mary Law Review, April 2003.
[42] Alonso, op cit.
[43] Kaplan, Legal Affairs, p. 1 This evolutionist approach is often used to prevent appointment of judges who favor overturning the right to abortion declared by the Supreme Court in Roe v. Wade. The theory is that the Supreme Court should follow the precedents set forth by earlier decisions of that same court rather than overturn them simply because a majority of the latest set of Justices would have decided an issue differently.
[44] Levinson, op cit.; Browne, op cit.; see generally Jesse Matthew Ruhl, Arthur L. Rizer III, Mikel J. Wier, Gun Control: Targeting Rationality in a Loaded Debate, Kansas Journal of Law and Public Policy, Spring 2004, and see Scott R. Ereckson, Is the Day of Reckoning Coming?—The Collectivist View of the Second Amendment is Going the Way of "Separate but Equal, Idaho Law Review 2004.
[45] PBS debate
[46] Wikipedia quoting Dr. Gary Kleck and referring to John Lott, More Guns, Less Crime.
[47] The Gun Supply Myth, Guncite.com quoting Steven Levitt, a University of Chicago economist and John Donohue II, a Stanford University law professor in an article of the Los Angeles Daily News, August 8, 2999, p. 1, 18.
[48] San Francisco Chronicle, December 5, 2005