



Gun ownership and individual self-preservation in United States

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Abstract

This paper will deal with the individualistic view of the Second Amendment for securing the right to keep and bear arms for self-defence and the John Locke's Theory of Self-preservation. The issue of gun rights and gun control have existed in American history since the birth of the nation. American citizens have always been privileged the right to possess firearms as a constituent of the state constitutional law. According to Locke, the right to self-defence is the first and foremost law of nature. He contended that every individual is the owner of his or her own life. Therefore, no other human being has the right to take this life. Subsequently, an individual may repel such aggressive attacks.

Keywords: gun ownership, America, Locke, self-preservation, natural rights, arms

1. Introduction

1.1 Gun Ownership and the Issue of Self Preservation

The issue of gun rights and gun control have existed in American history since the birth of the nation. American citizens have always been privileged the right to possess firearms as a constituent of the state constitutional law. At present, 43 out of 50 state constitutions distinctly safeguard the individual right to bear guns, apart from military service [1].

Two principle justifications are available for legal gun ownership in the American society: recreational and defensive purposes. Research suggests that maximum ownership of firearms is for recreational purposes such as hunting and sporting. Bordua *et al.* (1981) claim that individuals who possess guns for recreational purposes should be distinguished from the other owners of guns, since they comprise a distinct "sporting gun culture." This "recreational subculture" is positively associated with both a Southern residence as well as defensive gun ownership. Such kind of gun ownership is closely associated with "frontier heritage" as well as the values of utilitarian individualism: self-reliance and self-determination.

The second largest category of individuals who possess guns and firearms are those who keep it for defensive purposes. Two theoretical explanations offered for defensive gun ownership are: lack of faith in collective security and experience of victimization and a serious fear of crime. The first explanation finds a broader support base compared to the second. However, the two above-mentioned explanations are mutually reinforcing.

It is interesting to note that if challenging gun control measures are founded in the American tradition of individualism, then the endorsement of gun control measures is deeply entrenched in the collectivistic idea of American

culture. E. Smith argues that although a support base for gun control measures, especially that of banning assault weapons and giving gun permits has always existed in the American society, yet a vocal and stable minority has always expressed their opinion in opposition to gun control. It is the liberals, females and most importantly the residents of the North-east who been the key proponent of gun control measures. The strongest indicator of an individual's attitude towards gun control measures is dependent on the factor of ownership of guns. In this context, it may be mentioned that a typical challenger of gun control measures, or in other words a White Protestant male is most commonly the ideal gun owner who resides in rural areas outside the Northwest.

Loftin and McDowall argue that several individuals arm themselves due to their belief that the government is incapable of offering them with adequate protection. Loftin and McDowall view gun ownership as an "individual security measure with the expected benefits accruing for the most part to the gun owners and their household." Modelling their argument on the Durkheimian-Mertonian framework, they contend that people who have in a way abandoned the institutionalised collective means of providing protection, buy guns to attain their individualistic goals of protecting their family themselves- even at the cost of collective security suffering a downfall. Further to offer moral legitimacy to such individualistic motives, owners of guns and firearms often evoke the rhetoric of individual rights and self-defence, citing the Second Amendment in the American Constitution [2].

A key supporter of the individual gun rights perspective was James Madison. Madison stated that in contrast to several European nations where "the governments are afraid to trust the people with arms", the United States preferred to rely on an armed citizenry that could protect themselves, their families as well as their nations. In the Federalist No. 46, he

¹ Adam Winkler, "The Secret History of Guns", *The Atlantic*, September 2011, <http://www.theatlantic.com/magazine/archive/2011/09/the-secret-history-of-guns/308608/>

² Katarzyna Celinska, "Individualism and Collectivism in America: The Case of Gun Ownership and Attitudes Towards Gun Control", *Sociological Perspectives*, Volume 50, No. 2, Summer 2007, pp. 229-247.

had expressed that since Americans were characteristically armed citizens, therefore by all means the federal government would be incapable of exerting powers beyond those enumerated in the Constitution^[3].

Further, amongst the two major political parties in the country i.e. the Republicans and the Democrats, the former are adherents to the individual gun rights perspective. They were of the view that the founders anticipated the Second Amendment to be a citizen check on government tyranny i.e. to restrain the government from taking away the civil rights that are guaranteed by the constitution. The Republicans hold that in defence of the principles laid down in the country's founding charter, they would not support to 'unconstitutional' gun restriction laws advocated by the Democrats.

1.2 The individual rights perspective

The Second Amendment was to some extent based on the right to bear arms enshrined in British common law and was greatly under the influence of the English Bill of Rights of 1689. To add to it, Sir William Blackstone viewed such right a right as an auxiliary right, that endorsed the the natural right to self-defense. The British Bill of Rights is often referred to as an antecedent of the Second Amendment in the U.S. Bill of Rights, although there is no direct evidence that the founders treated it as the source of what became the Second Amendment^[4].

Partisans of the gun-rights perspective champion the Second Amendment as a guarantee of the individual right to bear firearms and censure gun control. To most hard-line gun-rights supporters even modest gun laws appear to be an infringement on such rights. Consequently, they oppose to any such popular suggestion- such as the necessity to carry out background checks for every gun purchaser- on the argument that all such gun-control measures rest the American citizens on a slippery gradient towards total civilian disarmament.

A chief exponent of this school of thought is the National Rifle Association (NRA). The NRA headquarters champion the part of the Second Amendment that states: The right of the people to keep and bear arms shall not be infringed. In fact, the first clause of the Amendment that refers to "a well-regulated Militia" is expediently overlooked. Thus to the advocates of the gun lobby, the essence of the Amendment rests in rights, not regulation.

Although electoral defeats over a period of time, have moderated the objectives of the gun control movement yet adherents to this group continue to deny the constitutional right to individual ownership of arms. According to advocates of this perspective, the Second Amendment upholds the existence of state militias. The gun control hardliners maybe politically weak in order to bring about the enforcement of disarmament in the nation, yet they offer patronage to any new law that stands a chance to be enacted, irrespective of the meagre influence it may have on curbing the issue of gun violence. To the gun control lobby, the Second Amendment is about regulation, not rights.

³ Paul Gosar, "Second Amendment and Gun Rights", http://gosar.house.gov/issue/Second_Amendment_and_Gun_Rights

⁴ Sergey Tokarev, "Right to Bear Arms (II)", <http://uscivilliberties.org/historical-overview/4390-right-to-bear-arms-ii.html>

At a time when the thirteen colonies disaffiliated themselves from the tyrannical Great Britain to establish the United States of America, there was much apprehension that the new government may turn out to be corrupt. The Framers of the Constitution upheld that the fundamental check on an oppressive government would be an armed population. The Second Amendment declares that "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." Proponents of gun rights argue that since militias are constituted of armed citizens, therefore with the natural effect the right to bear arms extends to every citizen as a means of self-defence.

The 1980s witnessed a group of scholars questioning the rationality of the existing judicial consensus. Eventually, their writings drew the attention of legal practitioners, resulting in the manifestation a sizeable body of literature that criticizes the postulation of the courts.

However, before delving into the language of the Second Amendment, one must note that the expression of the operative clause in the Second Amendment bears the resemblance to that of the First and the Fourth Amendments. The First Amendment mentions "Congress shall make no law...abridging...the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." The Fourth Amendment puts forth that "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated..."^[5] At this juncture, it must be mentioned that the First, Second and the Fourth Amendment were framed together. Since the First and the Fourth Amendment rights are referred as the basis of individual rights, the state's rights interpretation often rests on the Second Amendment. Therefore, it seems odd to refer to the phrase "the right of the people" as a right belonging to the states, especially because the Tenth Amendment clearly distinguishes the people from the states.

In 1934, the former President of the National Rifles Association (NRA) Karl Frederick put forth that "I think it (guns) should be sharply restricted and only under licences." However in view of the increasing crime rates, a federal law in 1968 forbid the interstate transfer of firearms amongst licensed manufacturers, dealers and importers. At this stage, the NRA became apprehensive that further restrictions would ensue into the government seizure of all personal firearms. Founded on this anxiety, the group launched an anti-gun control movement in 1977.

The individual rights perspective to gun ownership for the first time gained support in 2008 in the *District of Columbia v. Heller* case. Although the British have maintained their tradition of stringent gun control, yet the trend in the United States is one of resisting the gun control. In a landmark event on March 2007, the US Circuit Court of Appeals for the District of Columbia championed the individual rights model and declared that Washington D.C's ban on the usage of handguns that had been in effect since 1976, infringed the Second Amendment's pledge to keep and bear arms (*Parker v.*

⁵ Nelson Lund, "Federalism and the Constitutional Right to Keep and Bear Arms", *Publius*, Volume 33, No. 3, Summer 2003, p. 67.

District of Columbia)^[6].

In the *Heller* case, the Supreme Court mentioned that the phrase “the right of the people” explicitly referred to “individual right, not ‘collective rights, or rights that may be exercised only through reference to other uses of “the people” in some corporate body.”^[7] Such an interpretation had the significant impact on the rest of the Amendment especially the Militia Clause. Since the militia is constituted by “a subset of ‘the people’ those who were male, able bodied, and within a certain age range”, participation in the militia was an intrinsic characteristic. This entails that the scope of the Amendment extends beyond the militia context to “all members of the political community”.

As the meaning of the term “Arms” was not limited to the weapons that may be used for military service, similarly the right to “keep Arms” is in a way independent of the organized fighting force. Instead, “‘keep arms’ was simply a common way of referring to possessing arms, for militiamen and *everyone else*.” Such an interpretation is in line with the Court’s consideration that the “right of the people” preserves an individual right^[8].

Over the last twenty years, the individual rights paradigm has been utilised to impede the passage of gun control laws. A case in point is the 1994 assault weapons ban that was made to expire ten years later due to pressures from the gun rights lobby.

Proponents of gun rights claim that gun control laws transgress upon the individual right to self-defence. Nelson Lund, Professor at the George Mason University School of Law had said, “the right to self-defence and to the means of defending oneself is a basic natural right that grows out of the right to life” and “many [gun control laws] interference with the law-abiding citizens to defend themselves against violent criminals^[9]. Further, anti-gun control activists put forth that gun control laws, especially those that ban “assault weapons” transgress the individual right to own guns for the purpose of hunting and sports. According to a February 2013 report by the Pew Research Centre, 7 percent possessed guns for the purpose of sports shooting and 32 percent people owned guns for hunting^[10].

Further partisans of the individual rights view on gun ownership argue that gun control laws furnish excessive power in the hands of the government which in turn may lead to a situation of government tyranny. Wayne LaPierre of National Rifles Association had put forth that, “if you look at why our Founding Fathers put it (Second Amendment) there, they had lived under the tyranny of King George and they wanted to make sure that these free people in this new country would never be subjugated again and have to live under

tyranny.”^[11]

A key point put forth by the individual rights proponents is that instead of proposing gun control laws that curb the individual right to own guns, education on the usage of guns and gun safety is necessary in order to avert accidental gun deaths. Mental illness screening and gun education according to supporters of this perspective are the urgent requisites in today’s society. Managing Editor of *Guns and Ammo*, Kyle Wintersteen stated that “children taught about firearms and their legitimate uses by family members have much lower rates of delinquency than children in households without guns” and “children introduced to guns associate them with freedom, security and recreation- not violence.”^[12]

1.3 John Locke on Natural Right to Self-Preservation

Eminent scholar John Locke believed that state was constructed by a social contract amongst the people. It was by natural law that ensured certain inalienable rights to the individuals. He maintained that every human being is free and equal to safeguard “life, health, liberty and possessions.” He laid down the strategy of checks and balances that were pursued in the U.S Constitution. Much of the liberal economic, ethical and the social theory of the eighteenth century is founded on John Locke’s social contract theory.

According to Locke, the right to self-defence is the first and foremost law of nature. He contended that every individual is the owner of his or her own life. Therefore, no other human being has the right to take this life. Subsequently, an individual may repel such aggressive attacks. Locke offered a philosophical foundation for the American Revolution and the rights of individuals asserted by the revolution.

In *An Essay Concerning the True Original Extent and End of Civil Government* 1690, John Locke stated, “And thus it is that every man in the state of Nature has the power to kill a murderer, both to deter others from doing the like injury (which no reparation can compensate) by the example of the punishment that attends it from everybody, and also to secure men from the attempts of a criminal who, having renounced reason, the common rule and measure God hath given to mankind, hath, by the unjust violence and slaughter he hath committed upon one, declared war against all mankind, and therefore may be destroyed as a lion or a tiger, one of those wild savage beasts with whom men can have no society nor security. And upon this is grounded that great law of nature, “Whoso sheddeth man’s blood, by man shall his blood be shed.” And Cain was so fully convinced that everyone had a right to destroy such a criminal, that, after the murder of his brother, he cries out, “Every one that findeth me shall slay me,” so plain was it writ in the hearts of all mankind. (Para 11)

He mentioned that every time the legislators would make an attempt to destroy or take away the property of individuals, or seek to bring them under their arbitrary power, they were inviting a situation of a state of war with those individuals.

Locke further mentioned in *An Essay Concerning the True*

⁶ Dennis Baron, “Guns and Grammar: The Linguistics of Second Amendment”.

⁷ *Heller*, 554 US at 579.

⁸ Owen McGovern, “The Responsible Gun Ownership Ordinance an Novel Textual Questions About the Second Amendment”, *The Journal of Criminal Law and Criminology*, Vol 102, No. 2, Spring 2012, pp. 471-496.

⁹ Nelson Lund, “The Second Amendment and the Inalienable Right to Self-Defence”, April 17, 2014, www.heritage.org

¹⁰ Pew Research Centre, “Why Own a Gun? Protection is Now Top Reason”, May 9, 2013, www.pewresearch.org

¹¹ David Welna, “Some Gun Control Opponents Cite Fear of Government Tyranny”, April 8, 2013, www.npr.org

¹² “Should More Gun Control Laws Be Enacted”, *ProCon.Org*, <http://gun-control.procon.org/>

Original Extent and End of Civil Government that, "...despotical power is an absolute, arbitrary power one man has over another, to take away his life whenever he pleases; and this is a power which neither Nature gives, for it has made no such distinction between one man and another, nor compact can convey. For the man, not having such an arbitrary power over his own life, cannot give another man such a power over it, but it is the effect only of forfeiture which the aggressor makes of his own life when he puts himself into the state of war with another. For having quitted reason, which God hath given to be the rule betwixt man and man, and the peaceable ways which that teaches, and made use of force to compass his unjust ends upon another where he has no right, he renders himself liable to be destroyed by his adversary whenever he can, as any other noxious and brutish creature that is destructive to his being." (Para 172)^[13]

Therefore, Locke acknowledges a broad natural right that permits the usage of force to ensure protection for oneself and for others. Thus, if one presumes that weapons are functional for this purpose, then clearly John Locke's theory offers a justification for the individual right to possess the same. If the objective of the government is to safeguard the individuals' natural rights, then it appears that the law would acknowledge and follow this right.

However, Locke upheld that unrestrained utilization of force would construct the state of nature into an intolerable entity. He claimed that when the every individual becomes the judge of his own case, then it is probable that they would act according to his own self-interest, trailing his personal advantage at the expense of the others. Further, the lack of an established law to govern such interactions between people is likely to worsen the situation further. It is for this reason that Locke perceived that the existence of human beings in the state of nature is precarious and that it remained in the constant danger of degenerating into a state of war of all against all. Locke viewed the social contract as a solution to such evils and perceived it as a measure to ensure preservation of life, liberty and property of every individual. According to Locke, when individuals entered into the civil society they gave up certain rights and in turn obtained every benefit of the society. To safeguard such rights, individuals "engage [their] natural force" to enable the enforcement of law as well as to safeguard the society from external danger^[14]. It is this school of thought that the advocates of the individual rights perspective on gun ownership draw their inspiration.

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