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Bearing (Up Under) Arms (Part 2)

“The Miller Court understood the Second Amendment to protect only the possession or use of weapons that is reasonably related to a militia actively maintained and trained by the states... and used for the common defense... Moreover, after examining the text and history of the Second Amendment, we conclude that this reading of Miller is consistent with the motivating purposes of the drafters of the Second Amendment... The Second Amendment was inserted into the Bill of Rights to protect the role of the states in maintaining and arming the militia. It was designed to protect the state militias from federal legislation enacted to undermine the role of state militias.”

— *United States v. Wright*, US Court of Appeals, 11th Circuit, 1997.

The 2nd Amendment didn't arise in a vacuum. Adding a bill of rights to the new Constitution, as urged by Thomas Jefferson, George Mason, and other anti-Federalists, was questioned mightily by Federalists such as Hamilton and Madison, who considered it unnecessary, or even dangerous! Only when Madison narrowly won his seat in Congress after pledging to make a BoR a first order of business, did he determine to honor that pledge with a bill of rights that wouldn't weaken his strong-central-government Constitution. As the Feds won big in the first Congressional election, placating the anti-Feds wasn't even a priority of the first Congress, more concerned with massive debt and foreign alliances. Still, Madison pushed “the nauseous project” (as he termed it) through the House and, with Senate passage, *twelve* amendments went to the states for ratification. When #3 through #12 passed in 1791, *those ten* became what we call the *Bill of Rights*, though they didn't officially carry any such name at the time.

To understand the meaning and purposes behind the amendments, one must study the concerns and fears that led to them, and the precedents they were built upon. Back in 1776, thirteen colonies declared themselves to be thirteen independent, sovereign nations – NOT one nation! (We know this because treaties signed with France, and later with Britain, listed ALL 13 states, rather than one, single American nation.) “The united states of America” were a *them*, not an *it... an alliance*, or loose confederation at most, whose creations were primarily a weak Congress, a Continental Army, a flag, and near-worthless currency. Their constitution, proposed in 1777 but not put into effect until 1781 (as unanimous ratification was required), was the *Articles of Confederation and Perpetual Union*, which made sure that Congress stayed weak, as any state could veto just about any joint measure (e.g., little Rhode Island, alone, kept customs tariffs from being instituted).

But soon, the flaws of this arrangement became too obvious: trade disputes between states, inability to raise taxes or conscript troops, lack of common standards, small states having the same *one* vote as large states, amendments needing unanimous approval, Congress with no power to enforce decisions, and no Executive authority (ten men served as “*President of the United States in Congress Assembled*” under the Articles, but it was really more like being Speaker of the House today). Congress couldn't even force its representatives' attendance, so even the 1783 peace treaty languished for months awaiting approval, due to lack of a quorum!

The states, zealous of their superior status to the confederation, had insisted that “Each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right” not expressly delegated to Congress. Each state had its own “army,” being the

long-existing conscript citizen-soldier militias; 11 states had their own navies! Having just defeated one large, far-off, centralized tyrannical government, the last thing many wanted was a strong, centralized, *national* government taking its place, telling *them* what to do! With the Continental Army disbanded (a few troops were maintained for frontier forts and to prevent Indian attacks), what most feared would be the national creation of a large standing army, “the bane of liberty.”

Nearly every state constitution already had provisions decrying standing armies and supporting universal conscript civilian militias. Virginia's 1776 constitution said: “That a well regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defense of a free State; that standing armies, in time of peace, should be avoided, as dangerous to liberty; and that in all cases, the military should be under strict subordination to, and governed by, the civil power.” This provision of the *Virginia Bill of Rights* (and a precursor of Virginia's proposal for a US BoR) was solely concerned with the distribution of military power and the proper role of the military in a free society. (It wasn't even considered necessary to mention a specific “right to bear arms,” or any “right” at all, yet *that* is precisely what they were talking about!)

Besides the high cost, standing armies were usually made up of the “dregs” of society, hence easily swayed by a charismatic (or wealthy) would-be tyrant. This one fear was so strong, it was enough to eventually unite most Feds and anti-Feds into the unique, subtle power-sharing compromises of the Constitution and BoR.

Push came to shove during *Shays' Rebellion* of 1786-7. Semi-armed mobs seeking debt-relief threatened the legislature and courts at Springfield, Mass. Lacking Congressional approval, Secretary of War Henry Knox denied a request to let the Mass. Militia have access to the Springfield armory... and Congress was out of session! Eventually, the rebellion was put down, but the helplessness of Congress, as the rebels nearly seized one of the few federal arsenals (which also suggested that the confederation government was too weak to deal with outside invasions), renewed demands for a stronger central government. At the *Annapolis Convention* of 1786, arranged by Madison (ostensibly to deal with commerce disputes), Hamilton called for a new convention to “render the constitution of the Federal Government adequate to the exigencies of the Union.”

Although the states' representatives to the 1787 *Constitutional Convention* in Philadelphia were only authorized to *amend* the Articles (and most certainly NOT to create a single nation!), the reps held secret, closed-door sessions and wrote a *new* constitution... which was tantamount to treason or rebellion. Had Madison not convinced George Washington, “the most trusted man in America,” to front the proceedings as President of the Convention, and be the living model for the new office of Chief Executive (originally cool to a strong central government, *Shays' Rebellion* scared him out of retirement), it all would have likely collapsed, if even gotten off the ground, so audacious was its scope.

Convention sessions were fractious, contentious, and nearly sank on multiple occasions, over issues like slavery, proportional representation, and what rights and powers the states would retain; but the question of a standing army loomed over so much of the debates, that even provisions in the Constitution letting the states retain, train, and officer their militias didn't satisfy many, and the fight carried through into the state ratifying conventions, the first national elections, and beyond, for years to come.

Next: Jefferson reads Madison the riot act; Madison ladles the soft soap; and Patrick Henry smells a rat!