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Bearing (Up Under) Arms (Part 4)

“The second amendment provides 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.’ Construing this language according to its plain meaning, it seems clear that the right to bear arms is inextricably connected to the preservation of a militia. This is precisely the manner in which the Supreme Court interpreted the second amendment in United States v. Miller... There the Court held that the right to keep and bear arms extends only to those arms which are necessary to maintain a well regulated militia.” – Quilici v. Village of Morton Grove, US Court of Appeals, 7th Circuit, 1982.

As shown previously, the 2nd Amendment (and the rest of the so-called “Bill of Rights”) was ultimately a clever ploy by James Madison to weaken anti-Federalist opposition to his new Constitution (and the stronger central government it established) by assuaging their fears that various rights and powers would be taken from the states, including their right to protect and maintain their state militias against federal encroachment or neglect.

Still, it is the law, and thus must be enforced. So, what exactly is being protected? Former Solicitor General Robert Bork, one of the most conservative legal scholars, said, “When lawmakers use words, the law that results is what those words ordinarily mean.” And, logically, it’s what the words would “ordinarily mean” to those who wrote them. Unless one understands how terms used in the 2nd Amendment (or Bill of Rights, or entire Constitution, for that matter) were understood and used by the men who wrote these documents, in the legal language common to educated, elite lawyers of the 18th century, they might as well be written in Chinese, so far as modern readers are concerned. To read these words as if they were written in 21st century vernacular, as the NRA flacks and their followers choose to do, is to *misread* the words and the purposes to which they were applied.

[There is so much evidence to support my argument, and so little room here, that I have posted extended essays at <http://kryo.com/2ndAmen/> for further reading. Specifically, <http://kryo.com/2ndAmen/Terms.htm> addresses this aspect of what the authors meant.]

The authoritative *Oxford English Dictionary* defines “to bear arms” as meaning “to serve as a soldier, do military service, fight.” It defines “to bear arms against” as meaning “to be engaged in hostilities with.” According to historian Gary Wills, “To bear arms is, in itself, a military term. One does not bear arms against a rabbit. The phrase simply translates the Latin *arma ferre*. The infinitive *ferre*, to bear, comes from the verb *fero*. The plural noun *arma* explains the plural usage in English (“arms”). One does not “bear arm.” Latin *arma* is, etymologically, war equipment, and it has no singular forms.”

The best evidence for the 2nd Amendment meaning of *bear arms* is in the original draft of the Amendment proposed by Madison: “*The right of the people to keep and bear arms shall not be infringed; a well armed, and well regulated militia being the best security of a free country: but no person religiously scrupulous of bearing arms, shall be compelled to render military service in person.*”

In the last clause of this version (the conscientious objector provision), Madison clearly used the phrase “bearing arms” to refer solely to using weapons as part of military service. It is implausible to contend that virtually the same phrase (bear arms) should have a different, much broader meaning elsewhere in the very same sentence.

Madison’s use of the phrase “bear arms” to refer to military activities is echoed in other contemporary usage, standard at the time the Second Amendment was adopted:

“He has constrained our fellow Citizens taken Captive on the high Seas to bear Arms against their Country, to become the executioners of their friends and Brethren, or

to fall themselves by their Hands.” (*Declaration of Independence, 1776*) What did TJ mean by “bear Arms”? Did the King make Americans merely “carry guns”? No, it meant forcing them “to render military service in person,” JUST AS Madison used the term.

New Hampshire Constitution of 1784: “No person who is conscientiously scrupulous about the lawfulness of bearing arms, shall be compelled thereto, provided he will pay an equivalent.”

Rhode Island: “That the people have a right to keep and bear arms;... That any person religiously scrupulous of bearing arms ought to be exempted upon payment of an equivalent to employ another to bear arms in his stead.”

(Can anyone believe that this last one means that a wealthy Quaker could pay to have his butler march by his side to tote his rifle around for him on the battlefield or parade grounds? Did Quakers have “religious scruples” about “carrying guns” out to the woods to hunt turkeys?)

This is further confirmed by the 1789 debates in Congress over the amendment, where *no other subject but the militia is addressed*. Rep. Boudinot said, “What dependence can be placed in men who are conscientious in this respect? Or what justice can there be in compelling them to bear arms, when, if they are honest men they would rather die than use them.” *Compelling them to bear arms!* There is no other way to read that phrase EXCEPT as “compelling them to possibly use weapons to kill while serving in the militia.” Not “compelling them to ‘carry a gun’ on their person.” Why would Congress compel ANYONE to carry a gun at all times?

“The words ‘in person’ were added after the word ‘arms,’ (No person religiously scrupulous shall be compelled to bear arms *in person*), and the amendment was adopted.” *Bear arms in person!* THAT means, as Madison originally wrote it, “to render military service in person.” It *can’t* just mean to “carry a gun in person” as that makes no sense. IN PERSON can only refer to NOT paying an equivalent to serve in the militia in one’s stead.

Rep. Sherman: “It is well known that those who are religiously scrupulous of bearing arms, are equally scrupulous of getting substitutes or paying an equivalent; many of them would rather die than do either one or the other.” Does anyone think Quakers or Moravians would “rather die” than “carry” a hunting gun to get a turkey, or that they’d “rather die” than to “pay an equivalent” to “carry” that hunting gun around for them and use it in their stead to kill turkeys for them because THEY have religious scruples about “carrying guns” or shooting game?

Does anyone still think that all this talk here about “bearing arms” has anything to do with merely “carrying guns,” or hunting, or personal self-defense? No, Congress *only* debated about the article’s effect on militia service!

In the mid-19th century the original usage of “bear arms” was still understood: “The 28th section of our bill of rights provides ‘that no citizen of this state shall be compelled to bear arms provided he will pay an equivalent, to be ascertained by law.’ Here we know that the phrase has a military sense, and no other; and we must infer that it is used in the same sense in the 26th section, which secures to the citizen the right to bear arms. A man in the pursuit of deer, elk, and buffaloes might carry his rifle every day for forty years, and yet it would never be said of him that he had borne arms; much less could it be said that a private citizen bears arms because he has a dirk or pistol concealed under his clothes, or a spear in a cane.” *Aymette v. State, 2 Humphreys 154 (Tenn. 1840)*

Even into the 20th century, this was the understanding among educated jurists. In 1915, Maine Supreme Judicial Court Chief Justice Lucilius A. Emery wrote, “The single individual or the unorganized crowd, in carrying weapons, is not spoken of or thought of as ‘bearing arms.’”

Alas, some judges and legal “scholars” are ignorant of all this today, or have been duped by NRA propaganda.

Next: Who are “the People”? Hint: It’s NOT each and every individual person, and never has been.