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Bearing (Up Under) Arms (Part 5)

"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.' The link that the amendment draws between the ability 'to keep and bear Arms' and 'A well regulated Militia' suggests that the right protected is limited, one that inures not to the individual but to the people collectively, its reach extending so far as is necessary to protect their common interest in protection by a militia... As such, the United States reasons, the right protected by the Second Amendment is indeed a collective rather than an individual one..." – Gillespie v City of Indianapolis, US Court of Appeals, 7th Circuit, 1999.

We come, at last, to the heart of the 2nd Amendment, both literally and in spirit. Whatever the "right" in question ultimately refers to, and what purpose it serves, central to the amendment is that it is a right of THE PEOPLE.

Not simply "people," but THE PEOPLE! And in that distinction lies the nub of this entire controversy. Those who would suggest that *people* = *all individual persons*, and, therefore, Constitutional references to "the people" simply means each and every individual person, taken as individuals, are ignorant of how the term was consistently used by educated, elite, 18th-century lawyers. "THE PEOPLE" is a legal term-of-art that has a specific meaning in law and language: *the enfranchised body politic in its collective and political capacity, treated as a single entity.*

We have conclusive support for this understanding from the authoritative *Bouvier Law Dictionary* of 1839, as revised through 1914 ("The Bouvier Law Dictionary remains the basis for the interpretation of Law since the founding of the American nation. In questions of law regarding legal definitions from that period it remains the final arbiter of any disputed interpretation of that law.") –

PEOPLE: A state; as, the people of the state of New York; a nation in its collective and political capacity.

STATE: This word is used in various senses. In its most enlarged sense, it signifies a self-sufficient body of persons united together in one community for the defence of their rights, and to do right and justice to foreigners. In this sense, the state means the whole people united into one body politic; and the state, and the people of the state, are equivalent expressions.

BODY POLITIC: When applied to the government this phrase signifies the state. As to the persons who compose the body politic, they take collectively the name, of people, or nation.

Black's Law Dictionary, the current definitive law dictionary for the law of the United States, confirms this –

PEOPLE: A state; as the people of the state of New York. A nation in its collective and political capacity. The aggregate or mass of the individuals who constitute the state. In a more restricted sense, and as generally used in constitutional law, the entire body of those citizens of a state or nation who are invested with political power for political purposes.

SOVEREIGN PEOPLE: The political body, consisting of the entire number of citizens and qualified electors, who, in their collective capacity, possess the powers of sovereignty and exercise them through their chosen representatives.

Here's a cite from *The Great Books: The Great Ideas, A Syntopicon, Vol. 1* published by *Encyclopedia Britannica*, in the subject *Citizen* (Chapter 11, page 219):

"When he discusses the size and character of the population for an ideal state, Aristotle says, 'we ought not to include everybody, for there must always be in cities a multitude of slaves and sojourners and foreigners; but we should include only those who are members of the state, and who form an essential part of it.' The exclusion of

slaves and resident aliens from membership in the political community has a profound bearing on the meaning of the political concept expressed by the words "the people." The *PEOPLE* is not the same as the *POPULATION* – all those human beings who live within the state's borders. Even in societies which have abolished chattel slavery and in which suffrage tends to be unrestricted, infants and aliens remain outside the pale of political life. The *PEOPLE* is always a part – the active political part – of the population."

The only *persons* with "political capacity" in 1789 were *freemen*, that is, free, white, males of legal age. Often this was called *freeholder* when referring to *property-owning*, free, white, adult males. The term *elector* was often used in local or state documents, which may have restricted political capacity even further, by, say, requiring residence in a location for a certain period of time.

In 1789, women, black slaves, children, non-citizens (foreigners, Indians, prisoners, rebels/Tories, etc.) had NO political capacity. They could not vote, and were not required to serve on juries or in the militia. In that sense, they were NOT a constituent part of THE PEOPLE! Thus, they had, or *may* have had, the rights of all *individuals*, such as freedom of religion or habeas corpus, but NOT the rights of *freemen* or of the *collective freeman class* known as "the people." Those rights were simply not protected or guaranteed to non-freemen by the Constitution.

Look at the Constitution's Preamble, and at Article I about "the people" choosing the members of the House. IF "the people" simply meant "all individuals" and individuals included women, blacks, etc., any claim that all those were involved in the political establishment of the Constitution, or were to be allowed to vote for Congresscritters in 1788, is ludicrous on its face.

(Of course, since then, blacks, then women, then 18-year-olds, have been *incorporated into* "the people" class. Their participation in the collective rights of "the people" – and the *distributive* rights to members of "the people" class, such as in the Fourth Amendment – is now secured.)

In 1789, the MILITIA and THE PEOPLE were *practically the same class!* The militia was essentially composed of free, white, adult males, drawn from "the body of the people" (that is, the exact same *freeman* class). Hence, when the Founders spoke of *either* entity, they were, in effect, speaking of both.

The protected RIGHT is the "*jus militiae* right" of THE PEOPLE, collectively, as the enfranchised body politic, as the "*populus armatus*," as "*the whole people*," to participate in their state's or nation's military function, by establishing, arming, controlling, and maintaining the "upkeep and readiness" of their militia ("keep arms"), and serving ("bear arms," if qualified) as citizen-soldiers (as opposed to "regular" professional soldiers in a standing army) drawn from "the body of the people," and "trained to arms" and "enrolled" into an organized, "well-regulated" state militia, as opposed to leaving it only to professional soldiers to serve as hired retainers of the sovereign in a military run solely BY that sovereign.

Any enfranchised citizen (even today), even those who can't or don't serve *in* the militia, can, by voting for their legislators who control the militia, participate in "the people's" right to "keep and bear arms," as that is a collective function (there are *no* one-man militias), hence it's a collective right that is protected. That is *your* 2nd Amendment right... *if* you are part of "the people" class!

For more details, explanations of the remaining terms, and further reading, go to <http://kryo.com/2ndAmen>, particularly the essay on Terms.

Our nation stands upon the Constitution's words, so we ignore what they *mean* at our peril. YOU are now better educated than 99.9% of the public on this; if you see the Supreme Court ignore all this and rule the 2nd Amendment secures "an individual right to own and carry guns," YOU will know they are either woefully ignorant, or further cynically trashing the Constitution, hoping nobody notices. If so, then you can stick a fork in it... America's done.