Democracy and the Second Amendment

If, as has been suggested by some, the first ten U.S. Constitutional Amendments were listed in order of importance, then the Second Amendment must have been heavy on the minds of those Founding Fathers. But it would have been nice if they had clarified their reasoning by adding a few more words or phrases, rather than leaving it to 21st Century originalists like Supreme Court Justice Anton Scalia to interpret. The Second Amendment is, as author Paul Auster wrote, an "ambiguously worded, bizarrely punctuated sentence that sat quietly on the first page of the Bill [of Rights] and was largely ignored for most of our history until it stopped being ignored…" Here is the Second Amendment, all twenty-six words: *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.*

When the Second Amendment was proposed, in 1787, individual States were concerned about a Federal government running roughshod over them, and insisted on what amounts to the right to defend themselves from a tyrannical government. States and their local governments also maintained militias to protect themselves from incursions by indigenous peoples with whom they were regularly having disputes, and also to manage those whom they had enslaved, which sometimes outnumbered the white population. And that should have been it. Right? Well, it was, for a long while.

The indigenous populations were mostly wiped out and the rest herded into ghettos and, for quite a while, after the Black populations were released into society through President Lincoln's efforts, guns were not an issue, even though the new citizens had been eager to bear arms during the Civil War, and then the World Wars. As they slowly inched their way towards obtaining their full civil rights, some Blacks got antsy amidst all the abuse, (the lynchings and all) and decided to protect themselves.

Eventually, when in 1967 the Black Panthers of Oakland, California armed themselves (legally under the laws) and entered the State Capital in Sacramento, it got the attention of the nation. Thus began the defense of individuals keeping guns (not "bearing arms," which, at least back in the day referred only to military actions). The late 1960's were not a peaceful time. Around the time when Bobby Seale and his Panthers were seeking to protect themselves, there was war starting up in the Middle East, and Viet Nam was polarizing the nation. Violence broke

out in a number of cities throughout the country, and Martin Luther King and Robert Kennedy were shot and killed.

Over the following years, the National Rifle Association (NRA), which had been apolitical, evolved into a powerful lobbying group in Washington, D.C. As Mr. Auster points out in his book, "The irony is that a movement which is predominately white, rural, and conservative should have come into being because it embraced the gun philosophy of a group which was Black, urban and radical: the foundational belief that guns are primarily and instrument of self-defense… The Black Panthers'…ideas stuck—and are now accepted as one of the fundamental dogmas of American life for a large segment of the population."

The Supreme Court has bolstered this idea of individual rights. Anton Scalia, writing for the majority in a 2008 decision (District of Columbia v. Heller) upheld a broader interpretation of the Second Amendment. He wrote that the right to keep and bear arms applies to individuals as well. But the majority had the good sense to point out that "the right secured by the Second Amendment is not unlimited." This seems in conflict with the Amendment language that states that the right "shall not be infringed," but perhaps the majority were making a distinction, and that the untrammeled right belongs to Militias but not to individuals. The Court also stated, "… nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons or the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial side of arms." So, all who are mentally ill, please raise your hands. And were they not suggesting that laws concerning gun sales and manufacture were still allowed? Ah, yes, laws.

First you must remember that even though we refer to America as a democracy, it is not a pure democracy (for more on this, refer to essays on democracy in Commentary). We are a Republic. We elect representatives to pass laws to help or protect us. But even though about seventy-five per-cent of the citizens of this country (which is a super-majority) would like to see sensible gun control legislation passed, Congress has found it impossible to do so, influenced by an aggressive NRA membership as well as well-funded representatives of gun manufacturers, who have managed to prevent effective laws from being passed.

Reconciling America's relationship to gun ownership is complicated. We are given a short, sacred, ancient twenty-six word document to work with and a fear of violence associated

with a history of the repression and subjugation of our own citizenry. As Paul Auster writes, we have a citizenry, "…divided between those who believe that democracy is a form of government that grants individuals the freedom to do whatever they please and those who believe that we live in a society and are responsible for one another, that the freedom given to us by democracy also comes with an obligation to help those who are too weak or too sick or too poor to help themselves—a centuries-long conflict between the need to protect individual rights and freedoms and the interests of the common good."

This mix of history, tradition, economic philosophies and governance, with more than a soupçon of racial and religious prejudices, now stoked by fear, leaves us with a Gordian knot of a problem. Certainly fear, and the ever increasing threat of violence serves to exacerbate the problem. "Stand your ground" laws protect gun owners from liability for their actions but they also encourage vigilantism. And while mass-shootings by mentally ill individuals capture the headlines, suicides contribute to over half of the death-by-gun statistics. Gun defenders blame mental illness, stating that guns don't kill people. Motor vehicles don't kill people either, but it has not stopped government from encouraging manufacturers—sometimes under threat of legislation—to make safety improvements (Hat tip to consumer advocate Ralph Nader). And yet, as Mr. Auster writes in his book, "Congress has denied the Centers for Disease Control and Prevention [CDC] from using federal funds to conduct research 'that may be used to advocate or promote gun control.'" One has to wonder if perhaps the CDC should examine Congress. We should be able to make this country safer through a combination of initiatives, but we will need everyone to help if we are to make any progress.

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For further reading on the Second Amendment, I recommend Paul Auster's, *Bloodbath Nation*
Also, The *Second Amendment: A Biography,* by Michael Waldman