

Part one is Original Intent and Purpose of the Second Amendment.

Here is part two of the education on the 2nd amendment of the constitution. Read this and understand why we have the rights and freedoms we now enjoy.

"Any people that would give up liberty for a little temporary safety deserves neither liberty nor safety."
Benjamin Franklin

What are the Federalist Papers?

Preface

"The opinion of the Federalist has always been considered as of great authority. It is a complete commentary on our Constitution, and is appealed to by all parties in the questions to which that instrument has given birth. . . ."
--- The U.S. Supreme Court in *Cohens v. Virginia* (1821)

The following words are from historian Clinton Rossiter in, *The Federalist Papers*, Hamilton, Madison, Jay, Penguin Books USA Inc.

Message to Mankind

The authors and supporters of the Constitution of 1787 foresaw that a clear-cut vote against it in the State ratifying conventions would destroy at birth the young nation's most important experiment in popular government... Alexander Hamilton, in an energetic effort to win over his home State, began a series of essays explaining and defending the Constitution. These were published in New York City newspapers under the pseudonym Publius. Hamilton was aided by contributions from two other advocates of a new and energetic national government, James Madison and John Jay. The efforts of these three men resulted in *The Federalist Papers*--an authoritative analysis of the Constitution of the United States and an enduring classic of political philosophy that takes its place in history beside the Constitution itself.

Introduction

The Federalist is the most important work in political science that has ever been written, or is likely ever to be written, in the United States. It is, indeed, the one product of the American mind that is rightly counted among the classics of political theory.

This work has always commanded widespread respect as the first and still most authoritative commentary on the Constitution of the United States. It has been searched minutely by lawyers for its analysis of the powers of Congress, quoted confidently by historians for its revelations of the hopes and fears of the framers of the Constitution, and cited magisterially by the Supreme Court for its arguments in behalf of judicial review, executive independence, and national supremacy. It would not be stretching the truth more than a few inches to say that *The Federalist* stands third only to the Declaration of Independence and the Constitution itself among all the sacred writings of American political history. It has a quality of legitimacy, of authority and authenticity, that gives it the high status of a public document, one to which, as Thomas Jefferson put it, "appeal is habitually made by all, and rarely declined or denied by any" as to the "genuine meaning" of the Constitution.

In recent years respect for *The Federalist* has blossomed into admiration. It is now valued not merely as a clever defense of a particular charter, but as an exposition of certain timeless truths about constitutional government. It has caught the fancy of political scientists throughout the world, has been translated into a dozen languages, and--surely the most convincing evidence of its lofty status--has become one of the three or four staples of American college curriculum in political science. General Washington, who was trying merely to be friendly, wrote some prophetic words to Alexander Hamilton in the summer of 1788: "When the transient circumstances and fugitive performances which attended this crisis shall have disappeared, that work will merit the notice of posterity, because in it are candidly and ably discussed the principles of freedom and the topics of government--which will be always interesting to mankind so long as they shall be connected in civil society." The "notice of posterity" for the stern yet hopeful message of *The Federalist* has never been more attentive than in these drawn-out years of peril for constitutional democracy.

The Federalist Papers

Alexander Hamilton in Federalist, No. 29, did not view the right to keep arms as being confined to active militia members:

What plan for the regulation of the militia may be pursued by the national government is impossible to be foreseen... The project of disciplining all the militia of the United States is as futile as it would be injurious if it were capable of being carried into execution... Little more can reasonably be aimed at with the respect to the people at large than to have them properly armed and equipped; and in order to see that this be not neglected, it will be necessary to assemble them once or twice in the course of a year.

James Madison in Federalist No. 46 wrote:

Besides the advantage of being armed, which the Americans possess over the people of almost every other nation, the existence of subordinate governments, to which the people are attached, forms a barrier against the enterprises of ambition, more insurmountable than any which a simple government of any form can admit of. Notwithstanding the military establishments in the several kingdoms of Europe, which are carried as far as the public resources will bear, the governments are afraid to trust the people with arms. And it is not certain, that with this aid alone they would not be able to shake off their yokes. But were the people to possess the additional advantages of local governments chosen by themselves, who could collect the national will and direct the national force, and of officers appointed out of the militia, by these governments, and attached both to them and to the militia, it may be affirmed with the greatest assurance, that the throne of every tyranny in Europe would be speedily overturned in spite of the legions which surround it.

Here, like Story, Madison is expressing the idea that additional advantages accrue to the people when the citizens' right to arms is enhanced by having an organized and properly directed militia.

The Federalist Papers Continued – "The Original Right of Self-Defense"

The Founders realized insurrections may occur from time to time and it is the militia's duty to suppress them. They also realized that however remote the possibility of usurpation was, the people with their arms, had the right to restore their republican form of government by force, if necessary, as an extreme last resort.

"The original right of self-defense" is not a modern-day concoction. We now examine Hamilton's Federalist No. 28. Hamilton begins:

That there may happen cases in which the national government may be necessitated to resort to force cannot be denied. Our own experience has corroborated the lessons taught by the examples of other nations; that emergencies of this sort will sometimes exist in all societies, however constituted; that seditions and insurrections are, unhappily, maladies as inseparable from the body politic as tumors and eruptions from the natural body; that the idea of governing at all times by the simple force of law (which we have been told is the only admissible principle of republican government) has no place but in the reveries of these political doctors whose sagacity disdains the admonitions of experimental instruction.

Hamilton explains that the national government may occasionally need to quell insurrections and it is certainly justified in doing so.

Hamilton continues:

If the representatives of the people betray their constituents, there is then no recourse left but in the exertion of that original right of self-defense which is paramount to all positive forms of government, and which against the usurpations of the national rulers may be exerted with infinitely better prospect of success than against those of the rulers of an individual State. In a single State, if the persons intrusted with supreme power become usurpers, the different parcels, subdivisions, or districts of which it consists, having no distinct government in each, can take no regular measures for defense. The citizens must rush tumultuously to arms, without concert, without system, without resource; except in their courage and despair.

Hamilton clearly states there exists a right of self-defense against a tyrannical government, and it includes the people with their own arms and adds:

[T]he people, without exaggeration, may be said to be entirely the masters of their own fate. Power being almost always the rival of power, the general government will at all times stand ready to check the usurpations of the state governments, and these will have the same disposition towards the general government. The people by throwing themselves into either scale, will infallibly make it preponderate. If their rights are invaded by either, they can make use of the other as the instrument of redress. How wise will it be in them by cherishing the union to preserve to themselves an advantage which can never be too highly prized!

Thus the militia is the ultimate check against a state or the national government. That is why the founders guaranteed the right to the people as opposed to only active militia members or a state's militia. But of course, via the militia clause, the Second Amendment acknowledges, as well, the right of a state to maintain a militia. (For more on militia see: <http://guncite.com/gc2ndmea.html>.)

Hamilton concludes, telling us the above scenario is extremely unlikely to occur:

When will the time arrive that the federal government can raise and maintain an army capable of erecting a despotism over the great body of the people of an immense empire, who are in a situation, through the medium of their State governments, to take measures for their own defense, with all the celerity, regularity, and system of independent nations? The apprehension may be considered as a disease, for which there can be found no cure in the resources of argument and reasoning.

Again, it is the recurring theme of the people's right to keep and bear arms as individuals, enhanced by a militia system that (in part) provides for the "security of a free state."

Connecting the Dots...

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Although the Federalist Papers were written prior to the drafting of the Bill of Rights (but after the Constitution was sent to the states for ratification), the passages quoted, above, help explain the relationships that were understood between a well-regulated militia, the people, their governments, and the right to keep and bear arms. The Second Amendment did not declare or establish any new rights or novel principles.

The Purpose of the Militia Clause

"Collective rights theorists argue that addition of the subordinate clause qualifies the rest of the amendment by placing a limitation on the people's right to bear arms. However, if the amendment truly meant what collective rights advocates propose, then the text would read "[a] well regulated Militia, being necessary to the security of a free State, the right of the States to keep and bear Arms, shall not be infringed." However, that is not what the framers of the amendment drafted. The plain language of the amendment, without attenuate inferences therefore, shows that the function of the subordinate clause was not to qualify the right, but instead to show why it must be protected. The right exists independent of the existence of the militia. If this right were not protected, the existence of the militia, and consequently the security of the state, would be jeopardized." (U.S. v. Emerson, 46 F.Supp.2d 598 (N.D.Tex. 1999))

For more information about justification clauses see: Volokh, Eugene, *The Commonplace Second Amendment*, (73 NYU L. Rev. 793 (1998)). (See also, Kopel, David, *Words of Freedom*, National Review Online, May 16, 2001.)
Parting Shots

There are 3 ways the Second Amendment is usually interpreted to deny it was intended to protect an individual right to keep and bear arms:

It protects a state's right to keep and bear arms.

The right is individual, but limited to active militia members because the militia clause narrows the right's scope. The term "people" refers to the people collectively, rather than the people as individuals.

Yet, three jurists, who were contemporaries of the Founders, and wrote constitutional commentaries, read the Second Amendment as protecting a private, individual right to keep arms. There is no contrary evidence from that period (see Guncite's *Is there contrary evidence?* and *Second Amendment challenge*).

Instead of the "right of the people," the Amendment's drafters could have referred to the militia or active militia members, as they did in the Fifth Amendment, had they meant to restrict the right. (Additionally, see GunCite's page here showing evidence that the term, "people," as used in the Bill of Rights, referred to people as individuals.)

It strains credulity to believe the aforementioned three jurists misconstrued the meaning of the Second Amendment. The only model that comports with all of the evidence from the Founding period is the one interpreting the Second Amendment as protecting an individual right for a collective purpose. The militia clause and the right to keep and bear arms were intended to be complementary.

Perversely, gun rights defenders are accused of creating a Second Amendment myth, when it is some present-day jurists and historians who have failed to give a full account of the historical record.