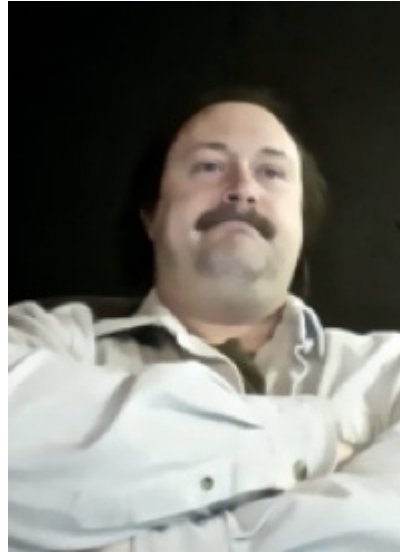




The Meaning of the Second Amendment

Commenting on their trip to a local grocery store while so armed, Mardell writes:

"There's a revolver amid the ravioli, an automatic among the avocados. Like cowboys out of Westerns, the couple carry handguns on holsters on their hips. She has a Smith and Wesson .38 special with a cute pink grip that makes it look almost like a toy. He has a rather more chunky Glock."



The story, though, is not so much to be found in the BBC's coverage of open carry, but in the reader reactions to the story. The comments posted by readers almost uniformly demonstrate a lack of understanding of the Second Amendment.

For instance, the first commentator writes: "America would be a much nicer place if their constitution insisted on the right to arm bears instead." Another says the problem in America is that the right to bear arms is written "in their constitution" and suggests that gun ownership in America is frightening. There are many other similar comments, but even some of those defending gun ownership seem to miss the point, referring to hunting or the danger presented by wild animals as justification for gun ownership.

So, really, why was the Second Amendment drafted, and what might it mean?

America's Founding Fathers operated from an understanding of the [Natural Law](#). They argued, and believed, as Jefferson summarized in the [Declaration of Independence](#), in the natural rights of mankind, i.e., the rights to [life, liberty, and property](#). If one has a right to life that can not be abridged by another, then it follows that one has a right to defend one's life from attempted abridgment. Ergo, a person may choose to trade the product of some of his labor, in other words his property, for a weapon, be that a knife, sword, ax or firearm. Thus the Second Amendment guarantees, but does not grant, a right to keep and bear arms. The right is a corollary of the natural right to life and therefore preexists the drafting of the Constitution and the adoption of the Bill of Rights.

As to the idea that only members of the militia have their right to bear arms guaranteed under the Second Amendment, that is a misreading of the text's intent. The Founding Fathers understood that America's independence might be threatened on occasion and viewed the militia as a bulwark against aggression. They thus referenced the fact that it will be easier to staff the militia in times of need if the people were able to provide their own arms, as well as knowledge of their proper use. To that end, we have the wording of the Second Amendment: "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 operative question then becomes who are "the people?" The answer is obvious, that the term refers to the citizens of the several states. Despite being obvious, this has been disputed nonetheless, but proof is easily found in an analysis of the Preamble to the Constitution. On this, Joseph Story in his [commentary](#) on the Constitution, notes that that document "is an act of the people, and not of the states



Written by [Dennis Behreandt](#) on March 19, 2010

in their political capacities. It is an ordinance or establishment of government and not a compact ... and it binds as a fundamental law promulgated by the sovereign authority, and not as a compact or treaty entered into and *in fieri*, between each and all the citizens of the United States, as distinct parties. The language is 'We the people of the United States,' not We, the states, 'do ordain and establish;' not do contract and enter into a treaty with each other; 'this constitution for the United States of America,' not this treaty between the several states." [emphasis added]

The framers of the Constitution, being one and the same as the framers of the Second Amendment, can not be said to have had in mind a different definition of the term "the people" in the Preamble, as opposed to the same term when utilized in the Bill of Rights. The right of the people, as identified as the individual citizens, to keep and bear arms is therefore established.

As to why the Founding Fathers may have insisted on reference to a militia in the Second Amendment, further clarification also comes from Joseph Story:

It is against sound policy for a free people to keep up large military establishments and standing armies in time of peace, both from the enormous expenses, with which they are attended, and the facile means, which they afford to ambitious and unprincipled rulers, to subvert the government, or trample upon the rights of the people. The right of the citizens to keep and bear arms has justly been considered, as the palladium of the liberties of a republic; since it offers a strong moral check against the usurpation and arbitrary power of rulers; and will generally, even if these are successful in the first instance, enable the people to resist and triumph over them.

While this may sound like [Story](#) is a modern anti-government extremist, the truth is he served on the Supreme Court of the United States from 1811 to 1845. In fact, he was nominated for that post by then-President James Madison. It is unlikely that Madison, credited as the "Father of the Constitution" for his signal contribution to its creation, would have nominated a man for the Supreme Court who did not properly understand that Constitution.

As for the final authority on the matter, perhaps its worth considering Madison himself, since he was the author of the Second Amendment. As he brought it to the floor of the House on June 8, 1789, his [proposed amendment](#) read: "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."

That's a fairly clear construction, and should, I think, be considered the last word on the subject.

Dennis Behreandt is a contributor to *The New American* magazine. Visit his blog and archives [here](#).



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