

Second Thoughts on the Second Amendment



by Theodore Dalrymple

As a non-American, I hesitate to wade in on an American constitutional matter, let alone with a former U.S. attorney such as Thomas Ascik who wrote recently on the [recent Supreme Court decision](#) on gun rights. Nevertheless, it seems to me that the notion that the Constitution protects Americans' rights to carry guns in public in any circumstances of their choosing is of the same kind of intellectual legerdemain as that which gave rise to the *Roe v Wade* decision in 1973.

Where I agree with Mr. Ascik is in his disagreement with Justice Breyer's dissent. It may well be true—in fact it *is* true—that guns are used annually in thousands of suicides, and also for violent criminal purposes, but this is totally irrelevant to the matter at issue, and it is alarming even to see it raised. It is no more relevant to the question of the right to bear arms than is the fact that coat hangers will be used to procure abortions relevant to the *constitutional* issue of whether there is a right to

abortion. Justice Breyer's dissent seems to be typical of those who think the Supreme Court should make rather than interpret the law. First comes the desired result, then comes the argument to reach it, using all kinds of evidence, much of it no doubt of dubious meaning or significance. It is procrustean jurisprudence.

But I suspect that something similar, at a less egregious level no doubt, is being done to reach the conclusion that Americans have the constitutional right to go down to the supermarket with a gun (of what caliber or power of arms is another question, seldom addressed).

The Second Amendment, which I daresay most readers know by heart, says:

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.

This amendment was passed in relation to a document, the American Constitution as unamended, which says (in Section VIII, paragraphs 15 and 16) that Congress shall have the power:

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress...

Now it seems to me that on any natural reading of the above, the right to keep and bear arms that is not to be infringed is in the context of a well-ordered militia, not in the context

of going shopping. If it were simply a matter of allowing people to carry guns whenever and wherever they felt like it, the amendment would surely have read "The right of the people to keep and bear arms..." *simpliciter*. There would have been no need to mention the militia at all. In fact, there would have been a need, or at least a good reason, *not* to mention it.

I am in sympathy with Originalists who believe that the Constitution should be interpreted as literally as possible, but they should not abandon the position once it yields a result different from the one that they would like.

Moreover, to bear arms is not the same as to carry arms. To bear arms has the connotation, if not quite the denotation, of possessing and using arms in an organized and disciplined fashion—as, for example, in a well-regulated militia. And the purpose of this disciplined bearing of arms is to protect the country, either externally or internally. It is not an invitation to privatized and egotistical Rambo-ism on a small or domestic scale, even if it is alleged that such Rambo-ism conduced to personal safety. We are talking here about what words mean, not the desirable result if they were taken to mean something else.

If this is correct, the right to keep arms is the right to keep them ready for the purposes of the militia (as, for example, in Switzerland), and under the discipline of the militia. Any citizen may join the militia as a matter of right, but it beggars belief that a militia would be *obliged* to accept a person who was, for example, a known drunkard or violent criminal. True, the onus for refusal would be on the refusing officer, the presumption would be of fitness to serve just as a criminal court makes the presumption of sanity in an accused. But the fact is that the Constitution clearly saw a need for officers rather than an armed mob or lone wolf gun enthusiast.

Again, the term *the people* is different from *people*, that is to say anyone or everyone. *The people* surely means here the population as organized in a free State, not every last Tom, Dick, and Harry considered as mere individuals. If *the people* meant *people*, that is to say, everyone, and if the right to possess and carry arms could not be infringed, it would mean that there could be no limitation whatever on the right, no matter the record, the conduct, or even express intentions of a person, to possess and carry arms. I find it difficult to believe that this is what the Framers meant or could have meant.

I am in sympathy with Originalists who believe that the Constitution should be interpreted as literally as possible. Still, they should not abandon the position once it yields a result different from the one that they would like. This is dishonest. Let me add that the struggle in the United States over gun control, both for and against, strikes me in some sense as mere shadow-boxing. You might get some of the law-abiding to give up their guns, but you would probably turn many otherwise law-abiding persons into outlaws, so attached are they to their guns. Of the criminals and *their* guns, I need hardly speak.

Those who think that abortion should be open to women in practically any circumstance should either campaign to have the Constitution changed, or change the law in those states in which abortion will be restricted, rather than try to foment civil war by claiming that the Supreme Court is illegitimate. Likewise, those who believe that everyone should be allowed to carry a gun in any and all circumstances should either campaign to have the Constitution changed to make it quite clear, or campaign to change the law in those states that do not allow what they think should be the case.

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