

Default So indoctrinated that we forget our "natural" rights predate amendments

by John Silveira

Dave Duffy, O.E. MacDougal, and I went shooting. Duffy, of course, is the fellow who publishes this magazine.

Mac is Dave's poker-playing friend from the old days.

After shooting, we got back to the office and discovered Dave's buddy, Bill, had stopped by. Dave and Bill began talking, but the phone rang and took Dave out of the conversation.

I had disassembled my rifle and there were pieces in my lap. Mac was off in the corner reading a copy of the last issue of BHM.

"What are you doing with that?" Bill asked.

I looked up. He was talking to me.

I looked down in my lap at the gun parts I had there. "I'm cleaning it," I said.

"What do you need it for?" he asked.

"I don't usually clean them but..."

"No, not why do you need to clean it, why do you need a gun?"

"Why do I need it?"

"Yes."

"I want it," I said.

"But why do you need one?" he persisted.

"Need one?" I asked again, not understanding his question. "I don't follow you."

"How many guns do you have?"

"You mean 'own' or how many did I bring up with me?"

My question seemed to put him off.

"How many do you own?" he asked in a voice that was tinged with exasperation. "How many guns do you have period?"

I thought a minute. “About a dozen.”

He screwed up his face. “What do you need 12 guns for? If you need a gun, one should be enough.”

“Enough for what?”

“What do you need a gun for?”

The meaning of the 2nd Amendment

He was back to that. “I don’t know where this is going. I don’t even understand your question,” I said. “I don’t have to need a gun to own one any more than I need a CD player or a couch to own one of those. The 2nd Amendment says I can have them. It doesn’t say I have to show a need and it doesn’t limit the number I can own.”

Bill shook his head. “So, you’re one of those.”

Dave finished his call and turned to us as he hung up and said, “Bill, what do you mean by needing a gun?”

“The 2nd Amendment isn’t about you guys owning guns,” Bill said. “It’s about the state having guns. It says you’re only allowed guns if you’re part of the militia and I don’t see any of you guys with uniforms. The 2nd Amendment is about the National Guard.”

“I don’t think that’s what it means,” Dave said.

“It says it right in the amendment. It’s for the militia. You can even ask Mac,” he said and pumped his thumb back to the corner where Mac was quietly reading. “I’ll bet even he agrees with me.”

I think Bill was baiting Mac. He and Mac had had a lively discussion about our rights the last time Bill was here about two years ago (Issue No. 44 March/April 1997). But Mac didn’t look up. He just kept reading.

Dave got out of his seat and pulled down the almanac from the bookcase and flipped through it.

He began to read, “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.”

“See,” Bill said. “It’s about having a well regulated militia. Militia—that’s military. It’s not about you.”

“Well, a whole bunch of people think it’s about individual gun ownership,” Dave said.

“But it’s not. Read the amendment again. It’s about the militia. It’s only you gun nuts who think

it's about you."

I shrugged. The wording of the 2nd Amendment has always bothered me.

Dave looked off into the corner to where Mac was still reading. "What do you think?" he asked.

Mac just looked at us and smiled, then went back to his magazine.

"See," Bill said. "Even he knows it's about the National Guard, not you guys."

"The National Guard didn't exist when the 2nd Amendment was written. It came into existence over a century later," Mac said without looking up and he continued to read.

"What?" Dave asked.

"I said the 2nd Amendment isn't about the National Guard. The Bill of Rights was adopted in 1791. The act that created the National Guard wasn't enacted until 1903."

"Well, you know what I mean," Bill said. "It's to allow the states to have state police and things like that."

Mac continued to read.

"Is that true?" I asked.

Mac looked up when he realized I was talking to him.

"You mean was it for the state police and such?" he asked me.

"Yes," I replied.

"No."

Bill smiled. "Mac, it says right there in black and white—Dave just read it to us—that it's to ensure we have a well regulated militia."

I looked expectantly to Mac who seemed to be getting impatient because he really was trying to read. "Could you give us a little input into this?" I asked him.

"I can tell you that when the Founding Fathers used the word militia, it meant something different to them than what it means to us now," and he continued reading.

"Is that all you've got to say?" I asked.

He looked at me, then back at his magazine. He knew we weren't going to let him stay out of this and he reluctantly closed it.

What is the militia?

Now that I had him I asked, "What's this about how the guys who founded this country used the word militia?"

"You've got to understand what the militia is," he said. "In May of 1792, five months after the adoption of the 2nd Amendment the Militia Act was passed. That act distinguished between the enrolled militia and the organized militia. Before the passing of that act, there was only the enrolled militia, which was the body of all able-bodied men between the ages of 17 and 44, inclusively, and it is that militia to which the 2nd Amendment refers. It couldn't refer to the organized militia because it didn't exist yet. The 2nd Amendment was to ensure that this body of citizens is armed and that's why the Founding Fathers thought to place it in the Bill of Rights. Legally, both militias still exist."

"Are you saying I'm in some militia?" Bill asked.

"By law, you were. I would guess that, by now, you're over that age."

"So, you're also saying only people between 17 and 44 are allowed guns, right?"

"No," Mac replied. "That's just the ages of the body of men constituting the militia. The amendment says the people can both keep and bear arms. It's usually been construed to mean all the people."

"I don't believe you."

Mac shrugged, and resumed reading.

"What don't you believe?" I asked.

"Anything. First, I don't believe that I'm part of any militia or ever was. Second, I don't believe that the 2nd Amendment refers to the people at large and not the army or some other state or federal organization."

"I still don't get this thing about the organized and the enrolled militia?" Dave said.

Mac put the magazine down. He shook his head and muttered something about fishing in Alaska from now on. He got up out of his chair and walked out the door. Through the window we could see him in the parking lot fishing around in the trunk of his car until he finally pulled something out. It was a tattered black briefcase. He carried it back into the office and put it on the desk next to his magazine. He opened the briefcase and took out a sheaf of papers.

"I was looking up some stuff on the 2nd Amendment for a lawyer friend I play poker with down south," he said, meaning southern California, "and I still have some of the papers."

“Here are copies of the Militia Act,” he said and held them out to Bill. “They explain what the militia meant to the Founding Fathers. They also show that the 2nd Amendment came before Federal law created the organized militia and provide evidence that what they referred to as the enrolled militia—the body of citizens—were allowed to arm themselves.”

Bill waved them away. “All that happened 200 years ago,” Bill said. “Militia means something else today. It means the military.”

“No, the law hasn’t changed,” Mac said. “But even if we decide the word means something new to us, you can’t use the new definition to change the intent of the Amendment.”

“That’s your opinion and you’re entitled to it. But times have changed and we need new interpretations of the words and of the Constitution.”

“It’s not just my opinion,” Mac said. “The Supreme Court has ruled that the words in the Constitution mean what the Founding Fathers said they meant, and we can’t go changing or amending the Constitution by giving new meanings or new shades of meaning to the words. And, if you think about it, it makes sense; otherwise, our rights really mean nothing. Congress or any other governing body can deny you the right to free speech, freedom of religion, a trial by jury, or whatever else it wanted just by claiming the words now have a new meaning. An oppressive government could change the Constitution without ever having to go through the bothersome ritual of submitting it to us, the people, for our approval. And, in the end, the Constitution and, in particular, the Bill of Rights are there for our protection, not for the benefit of the government or those who run it.”

“Well, I don’t buy into these definitions you have of militia and such,” Bill said. “I don’t believe the 2nd Amendment gives anyone the right to privately own guns. I think your interpretation is just an opinion and that the 2nd Amendment really refers to the powers given to the states.”

Mac shrugged. “That’s okay. Even if you’re right and the 2nd Amendment refers only to the National Guard, the state police, or some other uniformed military or police organization we’d still have the right to keep and bear arms. We don’t need the 2nd Amendment.”

“What?” Bill yipped. “If the 2nd Amendment is about the states, and not the individual, you don’t have the right to own guns.”

“Yes we do,” Mac said.

“Wait a minute,” Dave said, “How do you figure we’d have the right to have guns? Without the 2nd Amendment we’re lost.”

Bill was laughing, “Yeah, how do you come up with that?”

“Because the Founding Fathers believed we had that right. They spoke about it and wrote about it. And that’s enough.”

Bill laughed harder. "That'll look good in court: 'I can carry a gun because some guy who's been dead for 200 years said I can.'"

Dave laughed at what Bill said, but Mac didn't seem in the least perturbed.

"I think Dave and Bill are right," I said. "The whole question of gun rights hinges on what the 2nd Amendment means. If it means the right to bear arms belongs to the states, then it means you and I don't have any right to individual gun ownership."

"Well, let's start with this," Mac said. "Can you find anything in the 2nd Amendment, or any other part of the Constitution, that says the individual can't have arms?"

"What's that got to do with it?" Bill asked.

"That's not an answer. Just keep in mind my question is not whether you think the Constitution allows individuals to carry guns but whether or not there's anything in it that says they can't?"

"Anyone can answer it, but the question is really directed at Bill."

We all thought about that. I don't know where Mac was taking this, but it smelled suspiciously like a trap and I'm sure Bill felt that way, too.

Mac waited patiently.

"I don't think so," Dave finally said.

I agreed, too, but Bill didn't say anything.

"And do you also understand that the Bill of Rights is not the source of our rights. It's not even a complete list of our rights."

"What are you talking about?" I asked.

"Mac's losing it," Bill said and threw his arms up.

"I'm asking you if you understand that we do not get our rights from the Bill of Rights."

"Of course we do," Bill said. "That's why they wrote the Bill of Rights."

"I've got to agree with Bill," I said.

Dave said nothing. He seemed to be thinking.

"I'm saying this because the Founding Fathers did not believe we got our rights from the Bill of

Rights. Nor did they believe they came about as a result of being American, Christian, of European decent, or white. They believed everyone had these rights even if they lived in Europe, China, or the moon. They called them Natural Rights. Where these rights were not allowed, they believed they still existed but were denied.”

“You should be writing fiction,” Bill said.

“Well, it’s a question as to whether or not our rights exist apart from government,” Mac said. “Let me ask you this,” he said to Bill. “In a country where children have no civil rights, do they still have a right not to be molested? Do women in countries where they have a second-citizen status have the right not to be abused by their husbands, even if the government won’t protect them?”

Bill didn’t answer.

“Then is it too much of a stretch for you to understand that the Founding Fathers believed everyone has the right to free speech, freedom of religion, the right to fair trials...?” His voice trailed off.

Bill still wouldn’t answer.

“In other words,” Dave said, “it’s a question as to whether the rights of the citizens in China are at the pleasure of the government or if they have them but are being denied, or if the Jews had basic human rights in Germany even if Hitler didn’t let them exercise them?”

“Yes. All I want to know is if that’s hard for you to see.” He looked at Bill who was still silent.

“Then I see what you’re saying,” Dave said, “But I’m not sure how it relates to the 2nd Amendment.”

Bill still said nothing—but neither did I.

“If the government passed a law tomorrow that said we didn’t have the right to free speech, or the right to free worship, or freedom of the press, would those rights no longer exist, or would they be simply denied? If the Constitution is amended depriving us of our rights, do those rights cease to exist?”

“What’s the answer?” Dave asked Mac.

“The answer, according to the guys who set up this country, is yes, we would still have those rights. We’re just being denied them. Because of that, it’s the way we have to look at the Constitution.”

Bill rubbed his nose.

Dave said, “Okay, I never thought of it that way, but I’ll buy into it for a moment.”

“It may be,” Mac said, “that in reality, rights are a figment of our imagination. But the Founding Fathers believed they existed and that’s how this country was set up. Rights are something that come with being human. The Founders never believed we got them from the government. If and when the United States goes away, the rights will still be there.”

“Then why have a Bill of Rights?” Bill asked. The question was posed as a challenge.

“Men like Alexander Hamilton asked that too. He and many others thought having a Bill of rights was dangerous.”

“Dangerous,” Bill laughed. “How could it be dangerous?”

“They were afraid that the existence of a Bill of Rights as a part of our Constitution implied that the government not only had the right to change them, but that any rights not listed there were fair game for the government to deny. And, as a matter of fact, that’s exactly what has happened. The government seems to have set itself up to be an interpreter of our rights; it acts as if it is also the source of our rights, and whatever rights weren’t mentioned in the Bill of Rights, the government has seen fit to declare exist only at its discretion.”

“Then how do we know what our rights are in court?” Bill asked.

“Have you ever read the Bill of Rights?” Mac asked. I think he was tired; there was no humor in his voice.

“Specifically, have you ever read the 9th and 10th Amendments?”

Bill smiled and shook his head. “I never thought it was important to memorize them.”

“It’s important to understand what they say and know why they are written the way they are because they tie in with how the Founding Fathers viewed our rights and how they expected us to view them.

“They were put there to quell the fears of men like Hamilton who were afraid that any rights not mentioned in the Bill of Rights would be usurped by the government. The 9th says:

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

“This means that any rights not mentioned in the Bill of Rights are not to be denied to the people.

“The 10th says: The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

“So any powers not specifically given to the Federal government are not powers it can usurp.

“So it’s enough to show the Founding Fathers thought we had a right for it to fall under the protection of the 9th or 10th Amendment. This means that the Founders didn’t even have to specify we have the right to free speech, religion, jury trials, or anything else. To understand what they felt our rights were, all you had to do was show what they said our rights are. Any rights in the first eight Amendments are just redundant with what the Founding Fathers considered Natural Rights.

Bill rolled his eyes.

“Then why do we have a Bill of Rights?” I asked.

“Because even though Hamilton and others feared having one, most of the Founding Fathers were sure that without one the government would eventually take all of our rights.”

“Just getting off the gun issue for the moment,” Dave quickly asked, “are there actually rights not mentioned in the Constitution that you’d say we’ve been denied?”

“Sure. The Founding Fathers felt we had a right to unrestricted travel. So, now we have driver’s licenses, automobile registrations, and passports. They also felt we had property rights, so Civil Forfeiture or Civil Seizure laws, now exercised by the Feds and the states, are actually illegal under both the 9th and 10th Amendment.

“And,” he continued, “if the Congress or even the Supreme Court decides the 2nd Amendment only refers to formal military organizations, we still have the right to keep and bear arms, because the Founding Fathers considered it a natural right. And if you don’t believe it, read what the Founding Fathers said in their papers, their letters, and their debates in both Congress and the state legislatures.”

He pulled more papers from his briefcase.

“Weapons have always been important. In Greece, Rome, and even under Anglo-Saxon law, when slaves were freed, part of the ceremony included placing a weapon in the man’s hand. It was symbolic of the man’s new rank.”

What the Founders said

He paused as he looked through the papers. “Here’s one, and I quote:

Arms in the hands of individual citizens may be used at individual discretion...in private self-defense.

“That was said by John Adams in A Defense Of The Constitution.

“Here’s another one:

The Constitution shall never be construed to prevent the people of the United States who are

peaceable citizens from keeping their own arms.

“That was said by Samuel Adams, John Adams’ second or third cousin, during Massachusetts’ U.S. Constitution ratification convention in 1788.”

“This is all bull,” Bill said.

Mac looked up, then he started to put the papers back in the briefcase.

“No, I want to hear more of this,” Dave said. “What else have you got there?” Dave asked, and Mac began going through the papers again.

“If you really want to hear what they had to say, here are a few by Jefferson:

The strongest reason for the people to retain the right to keep and bear arms is, as a last resort, to protect themselves against tyranny in Government.

“And here’s another by him: No free man shall ever be debarred the use of arms.

“He wrote this as part of the proposed Virginia Constitution, in 1776.

Personal protection

“And here’s one more. It’s Jefferson quoting Cesare Beccaria—a Milanese criminologist whom he admired who was also his contemporary—in *On Crimes and Punishment*:

Laws that forbid the carrying of arms...disarm only those who are neither inclined nor determined to commit crimes...Such laws make things worse for the assaulted and better for the assailants; they serve rather to encourage than to prevent homicides, for an unarmed man may be attacked with greater confidence than an armed man.

“I think it’s pretty clear that Jefferson felt we had the right to keep and bear arms for both personal protection and as a safeguard against tyranny.”

Bill went and poured himself some coffee and acted, for all the world, as if he wasn’t listening anymore.

Mac shuffled through a few more papers. “Here’s one by Thomas Paine that comes from his *Thoughts On Defensive War* written in 1775:

Arms discourage and keep the invader and plunderer in awe, and preserve order in the world as well as property. Horrid mischief would ensue were the law-abiding deprived of the use of them.

“And here’s one from Georgy Boy:

Firearms stand next in importance to the Constitution itself. They are the American people’s liberty teeth and keystone under independence. From the hour the Pilgrims landed, to the present

day, events, occurrences, and tendencies prove that to ensure peace, security and happiness, the rifle and pistol are equally indispensable. The very atmosphere of firearms everywhere restrains evil interference—they deserve a place of honor with all that's good.

“Who’s Georgy Boy?” I asked.

“George Washington. That was from a speech he made to Congress on...” He looked at the paper again. “...January 7, 1790.

“But that’s not the only quote from him. In response to a proposal for gun registration he said:

Absolutely not. If the people are armed and the federalists do not know where the arms are, there can never be an oppressive government.

“I think that’s pretty clear.” He lowered the pages and looked at Dave. “More?”

“Do you have more?”

He went through more of his papers. “Here’s one of my favorites:

To disarm the people; that it was the best and most effectual way to enslave them.

“That was by George Mason when the Constitution was being debated.”

“And who, may I ask, was George Mason?” Bill asked. “It sounds like you’re bringing in the second string now.”

“He’s the most underrated and unsung of all the Founding Fathers. Jefferson drew on him when composing the Declaration of Independence; his doctrine of inalienable rights was not only the basis for the Virginia Bill of Rights in 1776, but other states used them as the models for their own Bill of Rights, and James Madison drew upon them freely while composing the Bill of Rights for the United States.

“Even though a Southerner, Mason recognized the evils of slavery and the fact that slaves were entitled to the same rights as the rest of humanity. He also feared the Constitution because it didn’t do a better job of limiting the powers of the Federal government. He believed local government should be strong and the Federal government kept weak. He firmly believed in the power, the rights, and the integrity of the individual.”

“Never heard of him,” Bill said.

“I’m not surprised. But you’re not alone because most people haven’t.”

“Why’s that?” Dave asked.

“He suffered bad health and had all kinds of family problems, so he never attained any office

outside of Virginia—other than his membership to the Constitutional Convention in Philadelphia. But he was the most vocal of the Founders on individual rights, and the other Founding Fathers recognized him as a force to be reckoned with. Without him, I can guarantee you that the United States would not be as free as it is now.

“You guys should do an article on him,” he said to Dave.

Dave quickly wrote something on his notepad, then glanced at me.

Defense against tyranny

Mac continued to go through his papers. “Here’s a quote by Elbridge Gerry, a representative to Congress from Massachusetts during the debates over the Bill of Rights. He’s also the man for whom gerrymandering is named because, as governor of Massachusetts, he tried to rig districts to favor his party. In this quote he was specifically referring to what we now call the 2nd Amendment:

What, Sir, is the use of a militia? It is to prevent the establishment of a standing army, the bane of liberty...Whenever Governments mean to invade the rights and liberties of the people, they always attempt to destroy the militia, in order to raise an army upon their ruins.

“That should also give you insight as to how the Founders defined the militia and why they thought it was important.”

“Okay, I’ve heard enough,” Bill said.

“Me too,” Dave added.

“There’s one more,” Mac said. “It’s kind of a long one, but it’s by James Madison, the guy who wrote the Constitution and actually put together the Bill of Rights. ”

“Okay, go ahead,” Dave said.

The highest number to which a standing army can be carried in any country does not exceed one hundredth part of the souls, or one twenty-fifth part of the number able to bear arms. This portion would not yield, in the United States, an army of more than twenty-five or thirty thousand men. To these would be opposed a militia amounting to near half a million citizens with arms in their hands, officered by men chosen from among themselves, fighting for their common liberties and united and conducted by governments possessing their affections and confidence. It may well be doubted whether a militia thus circumstanced could ever be conquered by such a proportion of regular troops. Besides the advantage of being armed, it forms a barrier against the enterprises of ambition, more insurmountable than any which a simple government of any form can admit of. The governments of Europe are afraid to trust the people with arms. If they did, the people would surely shake off the yoke of tyranny, as America did. Let us not insult the free and gallant citizens of America with the suspicion that they would be less able to defend the rights of which they would be in actual possession than the debased subjects of arbitrary power would be to rescue theirs from the hands of their oppressors.

“I kind of like that one,” Dave said.

“So do I,” Mac said.

“I’ve got more, but I think that’s enough. But I think you can see how the Founding Fathers felt about the right of individuals to have weapons. In fact, this whole debate over the right to arms is a recent one. In the last century, Americans would have been as amazed to find their right to have weapons a subject of debate as they would to have found their right to free speech or religion debated. There was no question to them, or to the Founders, that the right to keep and bear arms was one of the most fundamental—perhaps the most fundamental—of all civil rights.”

“Are any of the Founders on record saying they don’t believe individuals should have guns?” Dave asked.

“None I know of—and I’ve actually looked for some.

“Do you know of any, Bill?” he asked.

Bill didn’t reply. Again, I thought he was acting as if he wasn’t listening.

The phone rang again and someone called across the office to tell Dave it was an advertiser, so he took the call.

Mac put his papers back into the briefcase and picked up his magazine and started to look for his place. Bill had even lost interest in the conversation.

But I turned back to Mac for a moment and asked, “The lawyer friend you found this info for...were you giving him legal advice, doing research for him, or what?”

“I was winning a bet,” he said.

“What were the stakes?”

“A six-pack of beer.”

“That seems like a paltry sum to have done all this research for.”

“We’re going to drink it in Florida,” he said.

“Oh,” I replied and continued to reassemble the gun.