



Why the anti-tyranny case for the 2nd Amendment shouldn't be dismissed so quickly

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Do people have a right to defend themselves against a tyrannical government? And does the Second Amendment reinforce that right? Donald Trump appeared to be referring to such a right recently, in his muddled comments about "Second Amendment people." But trying to discern the thinking behind Trump's thoughtless blather is pointless. Instead, it's better to consider the guidance of the Constitution and the founders.

According to the Declaration of Independence, the only legitimate governments are those with the consent of the governed. When a government becomes the enemy and not the defender of human rights, the people can withdraw their consent and set up a new government.

"Prudence dictates" against changing long-established governments, or withdrawing consent for "light and transient causes," said the declaration. But by 1776, "the long train of usurpations and abuses" by King George's government had demonstrated "a design to reduce" the colonists "under absolute Despotism." The declaration pointed out that the Americans had repeatedly asked their "British brethren" to redress the problems, but the British "have been deaf to the voice of Justice." Therefore, "necessity" required the Americans to separate from Great Britain, as a last resort.

Jefferson later explained that among the sources of the declaration were "the elementary books of public right," such as the works of Cicero, Locke, and Sidney. Those theorists had agreed that government without consent is the same as robbery; in both cases, forcible self-defense was legitimate.

But once the Americans had won their independence, how could the declaration's legal principles be applied if an *American* government became as abusive and obstinate as King George had been?

From the beginning, concerns about tyranny

When the proposed Constitution was before the people for ratification, many anti-Federalists worried that the new government would be too powerful, and could become tyrannical.

In Federalist No. 46, James Madison reassured the public that the many checks and balances in the Constitution — the separation of powers between the executive, legislative, and judicial branches, for example — made it very unlikely that a tyrant could seize power. If a tyrant did, he would speedily be deposed by the state governments, who would lead the armed people in the militias.

"Besides the advantage of being armed, which the Americans possess over the people of almost every other nation," Madison wrote, "the existence of subordinate governments, to which the people are attached, and by which the militia officers are appointed, forms a barrier against the enterprises of ambition, more insurmountable than any which a simple government of any form can admit of." By "simple," Madison meant a unitary government, such as France, as opposed to the US Constitution's system of dividing sovereignty between the federal government and the states.

Madison was following a long tradition in Western Christian thought that the best leaders of resistance to tyranny were "intermediate magistrates" — such as local governments and their officials.

The founders rejected the notion that individuals or some group could use armed force just because they did not like a particular law. In fact, they believed quite the opposite: The Constitution specifically empowers Congress "[t]o provide for calling forth the Militia to execute the Laws of the Union, suppress insurrections and repel invasions." The power was first exercised during the presidencies of George Washington and John Adams, when the federal government called forth state militias to suppress insurrections known as the Whiskey Rebellion (in western Pennsylvania) and Fries's Rebellion (in eastern Pennsylvania). Both insurrections had grown out of anti-tax protests, in which mobs crossed the line by using armed force.

In contrast, the American Revolution perfectly fit with the principle of intermediate magistrates: Independence was declared by delegates representing the state governments.

The right to fight tyranny is universal

The Second Amendment does not create a right of revolution against tyranny. That inherent right is universal. As stated in the Universal Declaration of Human Rights, adopted by the United Nations in 1948, "[I]t is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law." The Universal Declaration was influenced by the Declaration of Independence, thanks in part to the US delegation led by Ambassador Eleanor Roosevelt (who carried her own handgun for protection).

The Second Amendment does, however, reinforce the rule of law and anti-tyranny structure of the US Constitution, by ensuring the government cannot disarm the people. In the 2008 case *District of Columbia v. Heller*, all nine Justices agreed that the amendment protects an individual right to keep and bear arms for service in the militia. (The justices disagreed about whether the right includes other purposes, such as personal self-defense or hunting.) Why did the founding generation believe that a well-regulated militia was necessary? One reason, observed Justice Antonin Scalia: "when the able-bodied men of a nation are trained in arms and organized, they are better able to resist tyranny."

Explaining the proposed Second Amendment, Madison's ally Tench Coxe, a delegate to the Continental Congress for Pennsylvania, wrote: "As civil rulers, not having their duty to the people duly before them, may attempt to tyrannize, and as the military forces which must be occasionally raised to defend our country, might pervert their power to the injury of their fellow-citizens, the people are confirmed by the next article in their right to keep and bear their private arms." Madison thanked Coxe for the newspaper essay.

Democratic Vice President and Minnesota Sen. Hubert Humphrey, the congressional leader of the civil rights movement, expressed a similar sentiment nearly two centuries later. For three decades after World War II, he was the embodiment of a liberal Democrat. In 1960, Humphrey wrote: "Certainly one of the chief guarantees of freedom under any government, no matter how popular and respected, is the right of citizens to keep and bear arms. This is not to say that firearms should not be very carefully used and that definite safety rules of precaution should not be taught and enforced. But the right of citizens to bear arms is just one more guarantee against arbitrary government, one more safeguard against a tyranny which now appears remote in America, but which historically has proved to be always possible."

As Humphrey recognized, there was local tyranny in the Jim Crow system of the South. In the mid-1960s, the Ku Klux Klan was so powerful in southwestern Mississippi and southeastern Louisiana that they called the region "Klan nation." The Klan's organized terrorism had the tacit acquiescence of local law enforcement.

Who should be judged a defender of basic rights, and who is just an "armed hothead"?

In the summer of 1965 about 20 black army veterans in Jonesboro, Louisiana, founded an armed community defense patrol, "Deacons for Defense and Justice." Inspired by visible public presence of boldly armed men, black attitudes in Jonesboro began to change. Black housekeepers stopped accepting racial taunts, and quit if the taunts continued. "Armed Negroes Make Jonesboro Unusual Town," was the headline of a New York Times article on Jonesboro, on February 21, 1965. The Deacons model spread to other Klan heartlands, and was able to overturn Klan power with scarcely a shot fired.

In June 1966, after the attempted murder of civil rights leader James Meredith, major civil rights organizations banded together to continue the "Meredith March against Fear," from Memphis,

Tennessee, to Jackson, Mississippi. With Martin Luther King's consent, armed security was provided the entire way by the Deacons for Defense. As the Deacons example demonstrates, resistance to tyranny does not have to rise to the level of state militias attempting to oust a national dictator. Sometimes, the simple, lawful of carrying firearms for defense of self and others may be all that is needed to safeguard the exercise of other rights, such as free speech.

But hotheads who try to make political statements by armed displays often do not help their cause. Such was the case of the American Indian Movement's takeover of the Wounded Knee, South Dakota, reservation in 1973, or the 2016 takeover of an unoccupied building at a federal wildlife reserve in eastern Oregon. Arms should be a last resort, not a publicity tactic.

Today's world is different from 1791. The genocides of the last century show that a criminal government is even more dangerous than the founders thought. The US military — along with the federal government — has grown more powerful than the founders could have imagined. Yet global military history since 1791 repeatedly demonstrates that mighty armies can be defeated by citizens fighting for the consent of the governed. One thing hasn't changed since the days of the Roman lawyer Cicero: Free republics are sometimes taken over by tyrannical demagogues.

During American history, some members of the party out of power have worried about impending tyranny. Happily, this has never come to pass.

Today, some people worry that Donald Trump resembles Hugo Chavez and other fascists. Other people, such as National Review's Jonah Goldberg in his book *Liberal Fascism*, describe the similarity of Woodrow Wilson's nationalist and quasi-socialist programs to those of Mussolini. Goldberg argues that Hillary Clinton would amplify a century-long slide of the American left towards a mild, Americanized version of fascism. The rhetoric and records of Trump and Clinton are not exactly scrupulous about respect for the Constitution, or any other law.

Perhaps, as Madison predicted, all the other checks and balances will always prevent tyranny. But should tyranny ever triumph, the US Constitution provides a mechanism to restore constitutional order. In the vision of Madison, it would be states leading their militias, the militias consisting of the able-bodied male population.

In a modern sense, the organized portion of the state militia is the State National Guard, and the unorganized portion of the militia is able-bodied males. So we might think of today's mechanism as governors, hopefully with legislative backing, calling forth whatever parts of their state militias were considered appropriate under the circumstances. As in Madison's day, militiamen by themselves can rarely defeat a professional army in direct battle. But in modern times as in Madison's day, neither can a professional army always succeed in imposing a dictator's will throughout a vast and well-armed country.

Like the one in Federalist No. 46, this is an "in extremis," largely theoretical, argument. The American system has thus far proved strong enough to check the worst characters, such as

Richard Nixon. The threat of impeachment, and not revolution, sufficed to end his assault on the rule of law — and that threat, along with the other checks and balances, has always sufficed to prevent dictatorship.

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