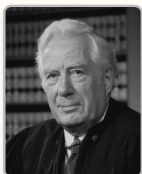


SAF FACTSHEET · OCTOBER 2026

The Second Amendment Was Always Understood to be an Individual Right

From the founding era to 1900, treatises, Congress, and schoolbooks treated the Second Amendment as an individual right.

THE CLAIM



Warren E. Burger ·
Chief Justice

“[The Second Amendment] has been the subject of one of the greatest pieces of fraud, I repeat the word fraud, on the American public by special interest groups that I have ever seen in my lifetime.”

Warren E. Burger, retired Chief Justice of the United States · PBS, *The MacNeil/Lehrer NewsHour*, Dec. 16, 1991 [1][2]

“From 1888, when law review articles first were indexed, through 1959, every single one on the Second Amendment concluded it did not guarantee an individual right to a gun. ... This fusillade of scholarship and pseudo-scholarship insisted that the traditional view—shared by courts and historians—was wrong. There had been a colossal constitutional mistake.”

Michael Waldman, President, Brennan Center for Justice · “How the NRA Rewrote the Second Amendment,” *Politico Magazine*, May 2014 [3][4]

PARAPHRASE In 2023, Global Action on Gun Violence and three law professors repeated Burger’s “fraud” line in a Supreme Court amicus brief and urged the Court to overrule *Heller* and with it the individual right to keep and bear arms.

Brief of Global Action on Gun Violence et al., *United States v. Rahimi*, No. 22-915 (Aug. 21, 2023) [5]

THE RECORD

The trouble is, Burger and the activist academics who cite him are just plain wrong. An overwhelming number of sources from before 1900 confirm that the Second Amendment was always understood to recognize an **individual** right to keep and bear arms. It was not a controversial view. Writers sometimes disagreed on how much regulation was acceptable, but they all began with the premise that the Second Amendment recognized an individual right. Often they said so matter-of-factly.

77

SOURCES INCLUDED IN THIS SHEET

25

are from
LEGAL TREATISES &
COMMENTARIES

18

are from
SCHOOLBOOKS & CIVICS TEXTS

13

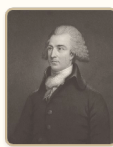
are from
ELECTED OFFICIALS & MILITARY
LEADERS



St. George
Tucker · 1803

“This may be considered as the true palladium of liberty. ... The right of self defence is the first law of nature”

St. George Tucker 1803
Federal judge; editor of the first American Blackstone
1 *Tucker’s Blackstone*, App. 300 [6]



Tench Coxe ·
1813

“The rights to own and bear arms ... belong to all.” (p. 652)
“Independently to own and to use their arms, is another of the rights of *all* Americans” (p. 662)

Tench Coxe 1813
Annapolis Convention delegate; Asst. Treasury Secretary, 1789–92
New Edinburgh Encyclopaedia (2d Am. ed.), vol. 1, pt. 2, at 652, 662 [7][8]



William Rawle ·
1825

“No clause in the constitution could by any rule of construction be conceived to give to congress a power to disarm the people.”

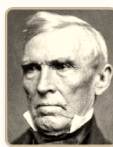
William Rawle 1825
Washington-appointed U.S. Attorney for Pennsylvania
A View of the Constitution, ch. 10, pp. 121–22 [9]



Gen. Davis
Tillson · 1866

“All men, without distinction of color, have the right to keep arms to defend their homes, families, or themselves.”

Gen. Davis Tillson 1866
Freedmen’s Bureau, Georgia (circular)
H.R. Exec. Doc. No. 70, 39th Cong., 1st Sess. 65 [10]



John J.
Crittenden ·
1871

“The Constitution guarantees to every man the right to bear arms. No law takes it away, and none ever can.”

John J. Crittenden 1871
U.S. Senator, Attorney General, and Governor of Kentucky
Coleman, Life of John J. Crittenden, vol. 2, p. 73 (1871; linked 1873 printing) [11]



Ulysses S.
Grant · 1872

“[complaining that the Ku Klux Klan sought] to deprive colored citizens of the right to bear arms and of the right to a free ballot”

President Ulysses S. Grant 1872
Special message to Congress on the Ku Klux Klan
H. Journal, 42d Cong., 2d Sess. 716 (Apr. 19, 1872) [12]

I The Founding Generation

1803–1833

Written while Jefferson, Adams and Madison were still alive — and just after. Tucker (1803), Coxe (1813), and Rawle (1825) appear on page 1.

JOHN MURRAY

President, N.Y. Chamber of Commerce, memorial to the Senate

“every citizen, whether at home or upon the ocean, has believed that he might lawfully carry arms, in self defence.”

American State Papers, vol. 1 (1789–1814), p. 583 [13]

1804

REP. ADAM SEYBERT

U.S. Representative (Pa.), M.D.

“our constitution guarantees to every citizen the right ‘to keep and bear arms,’ whilst in other countries this very important trust is controlled by the caprice and tyranny of an individual.”

Statistical Annals of the United States, p. 633 [14]

1818

WILLIAM ALEXANDER DUER

President of Columbia College; N.Y. circuit judge

“The right of every individual to keep arms for his defence, suitable to his condition and degree”

Outlines of the Constitutional Jurisprudence of the United States, p. 31 [15]

1833

1815 **Moses Hall, Jr.** · Revolutionary War veteran

“Let the right to bear arms be esteemed sacred, never to be surrendered.”

An Oration Pronounced at Saugus, July Fourth, 1815, p. 23 [16]

1821 **Timothy Dwight** · President of Yale

“every man is permitted, and in some, if not all the States, is required to possess fire arms.”

Travels in New-England and New-York, vol. 1, p. 17 [17]

1833 **James Bayard** · Constitutional schoolbook author

“The second article of the amendments, secures the right of the people to provide for their own defence”

A Brief Exposition of the Constitution of the United States, p. 147 [18]

II The Antebellum Republic

1831–1860

Treatises, orations, novelists, schoolbooks for children, and abolitionists all said the same thing.

JUSTICE JOSEPH STORY

Associate Justice of the United States

“The right of the citizens to keep and bear arms has justly been considered, as the palladium of the liberties of a republic ...”

A Familiar Exposition of the Constitution § 450–51 (1840; linked 1847 ed.), pp. 264–65 [19]

1840

LYSANDER SPOONER

Abolitionist legal theorist

“These provisions obviously recognize the natural right of all men ‘to keep and bear arms’ for their personal defence”

The Unconstitutionality of Slavery, p. 98 (1860 enl. ed.) [20]

1856

SEN. CHARLES SUMNER

U.S. Senator (Mass.), “The Crime Against Kansas”

“Never was this efficient weapon more needed in just self defence, than now in Kansas, and at least one article in our National Constitution must be blotted out, before the complete right to it can in any way be impeached.”

The Kansas Question, p. 22 [21]

1856

1833 **Edward Livingston** · Later U.S. Secretary of State

“all those laws are abrogated which would interfere with any right secured by the constitution ... such as the liberty of the press, the right to bear arms, the right of having counsel, of trial by jury”

A System of Penal Law for the State of Louisiana, p. 62 [22]

1834 **John Howard Hinton** · British author

“the right to have arms is not taken away from individuals”

History and Topography of the United States, vol. 1, p. 247 [23]

1838 **James Fenimore Cooper** · Novelist

“In the one case, the constitution guaranties a right to publish; in the other, a right to keep a musket”

The American Democrat, p. 128 [24]

1838 **Edward Everett** · Governor of Massachusetts; later Secretary of State

“The constitution makes it the right, the laws make it the duty, of all citizens, within certain ages, to bear arms.”

“Education in a Republic,” repr. in *Sargent’s Standard Fifth Reader*, p. 328 (1871) [25]

II The Antebellum Republic (continued)

1831-1860

1839 Edward D. Mansfield · Civics text

“It is scarcely necessary to say, that the right of the people thus to bear arms is the foundation of their liberties”

The Political Grammar of the United States § 436 (1839; linked 1861 ed., p. 205) [26]

1839 Solomon Southwick · July Fourth oration, Albany

“never yield the right to possess arms and to bear them, if necessary, in defence of your altars and your fire-sides”

An Oration ... July Fourth, 1839, p. 9 [27]

1840 Gen. Lewis Cass · Secretary of War, 1831–36

“The constitution guarantees equally to the people of the United States the right of trial by jury and the right to keep and bear arms”

Niles' National Register, July 11, 1840, p. 297 [28]

1840 Elisha P. Hurlbut · Later a justice of the N.Y. Supreme Court

“The citizen is thus ever armed against foreign aggression, and prepared to encounter civil war, and becomes the sleepless sentinel of his liberties”

Civil Office and Political Ethics, p. 43 [29]

1843 Samuel G. Goodrich · Schoolbook author

“In some despotic countries, the people have been denied the privilege of having guns and other weapons in their possession, because the government feared the people”

The Young American, or Book of Government and Law, p. 206 [30]

1848 Daniel Parker · Schoolbook author

“This provision is so plainly proper that its propriety need not be argued.”

The Constitutional Instructor, for the Use of Schools, p. 155 [31]

1849 Joseph Bartlett Burleigh · Schoolbook author

“In all countries where despots rule with standing armies, the people are not allowed to keep guns and other warlike weapons.”

The American Manual § 9 [32]

1849 Joel Tiffany · Abolitionist

“The colored citizen, under our constitution, has now as full and perfect a right to keep and bear arms as any other”

A Treatise on the Unconstitutionality of American Slavery, ch. XVI, pp. 117–18 [33]

1853 Francis Lieber · Columbia professor; civil-liberty treatise

“Akin to the last-mentioned guarantee, is that which secures to every citizen the right of possessing and bearing arms.”

On Civil Liberty and Self-Government (1853; linked 1874 ed.), p. 120 [34]

1853 William H. Seward · N.Y. Senate speech

“The right of the people, at all times, to keep and bear arms”

The Works of William H. Seward, vol. 1 (Baker ed. 1853) [35]

1855 Furman Sheppard · Schoolbook author

“If citizens are allowed to keep and bear arms, it will be likely to operate as a check upon their rulers, and restrain them from acts of tyranny and usurpation.”

The Constitutional Text-Book § 622, pp. 247–48 [36]

1856 Rep. Edward Wade · U.S. Representative (Ohio), House speech

“The right to ‘keep and bear arms,’ is thus guaranteed, in order that if the liberties of the people should be assailed, the means for their defence should be in their own hands.”

The Slavery Question (Aug. 2, 1856), p. 7 [37]

1860 Timothy Walker · Founder, Cincinnati Law School

“that the people have a right to bear arms for their defence and security”

Introduction to American Law § 87, p. 218 [38]

1860 Gov. John B. Weller · Governor of California (annual message)

“As, under the Constitution, the people have a right to bear arms, this evil is beyond the reach of legislation.”

Journal of the House of Assembly of California, p. 59 (Jan. 1860 message) [39]

III Civil War & Reconstruction

1861-1877

The Congress that wrote the Fourteenth Amendment, the Army, and the President treated arms-bearing as a right of every citizen, Black and white. Tillson, Crittenden, and Grant appear on page 1.

39TH CONGRESS

Freedmen's Bureau Act § 14 — the Congress that framed the 14th Amendment

1866

“including the constitutional right to bear arms, shall be secured to and enjoyed by all the citizens”

Act of July 16, 1866, § 14, 14 Stat. 176 [40]

- 1862 **Sidney George Fisher** · Constitutional writer
“the second, ‘the right to keep and bear arms’ ... All these rights are held by the ‘citizens,’ the ‘people’”
The Trial of the Constitution (1862); same passage in *North American Review*, vol. 97, p. 350 (1863) [42]
- 1862 **John S. Hart** · Schoolbook author (Q&A on how usurpers overthrow liberties)
“By disarming the people, and maintaining an armed soldiery.”
A Brief Exposition of the Constitution of the United States, p. 98 [43]
- 1866 **Maj. Gen. Daniel E. Sickles** · General Order No. 1, Dept. of South Carolina
“The constitutional rights of all loyal and well-disposed inhabitants to bear arms will not be infringed”
repr. in E. McPherson, *Political History of the U.S. During Reconstruction*, p. 37 [44]
- 1866 **Maj. Gen. George H. Thomas** · Commanding in Tennessee
“the State law prohibiting them from bearing arms was unjust and unconstitutional”
The Abridgment ... Annual Message of the President, p. 516 [45]
- 1868 **Joel Prentiss Bishop** · Criminal-law treatise writer
“this one seems to be of a nature to bind both the State and National legislatures; and doubtless it does.”
Commentaries on the Criminal Law, vol. 1, §§ 124–25, p. 75 [46]

HORACE GREELEY

Editor, New-York Tribune; Richmond speech

1867

“Our Federal Constitution gives the right to the people everywhere to keep and bear arms”

Speech in Richmond (May 1867), in Reavis, *Life of Horace Greeley*, pp. 535–36 [41]

- 1868 **George W. Paschal** · Annotator of the Constitution
“based on the idea, that the people cannot be oppressed or enslaved, who are not first disarmed.”
The Constitution of the United States Defined and Carefully Annotated, p. 256 [47]
- 1874 **Sen. Thomas M. Norwood** · U.S. Senator (Ga.), Senate speech
“the privileges and immunities of a citizen of the United States: ... to keep and bear arms”
Cong. Record / collected Senate speech (1874) [48]
- 1875 **William C. Robinson** · Law-text author
“The Constitution of the United States secures the right to keep and bear arms, such as are used for purposes of war, in defence of the citizens or the state.”
Notes on Elementary Law [49]
- 1876 **Joseph Alden** · Schoolbook author
“The right to keep and bear arms gives the people power to resist effectually”
The Science of Government in Connection with American Institutions, p. 201 [50]
- 1876 **The Centennial Northwest** · Illustrated regional history
“every citizen upon this continent, being entitled to bear arms, is, in himself, a portion of the only armament that can suffice to defend this soil”
The Centennial Northwest, p. 647 [51]

IV The Late Nineteenth Century

1878-1900

Even the writers who favored more regulation began from the individual right. Cooley is featured here.

THOMAS M. COOLEY

Chief Justice of Michigan

1880

“The meaning of the provision undoubtedly is, that the people, from whom the militia must be taken, shall have the right to keep and bear arms, and they need no permission or regulation of law for the purpose.”

General Principles of Constitutional Law (1880), p. 298 (3d ed. 1898) [52]

CHRISTOPHER G. TIEDEMAN

Police-power treatise

1886

“The American constitutions guarantee to every citizen the right to possess and bear arms, in time of peace as well as in war”

A Treatise on the Limitations of Police Power § 140c, p. 503 [53]

HERMANN VON HOLST

Constitutional-law treatise

1887

“it must not be inferred from this that the right is restricted to those citizens who belong to the militia.”

The Constitutional Law of the United States of America § 77, p. 230 [54]

IV The Late Nineteenth Century (continued)

1878-1900

- 1880 Benjamin Vaughan Abbott** · Legal writer
“a citizen who keeps a gun or pistol under judicious precautions, practises in safe places the use of it, and in due time teaches his sons to do the same, exercises his individual right.”
Judge and Jury [55]
- 1880 James Schouler** · Historian
“the private right to bear arms”
History of the United States under the Constitution, vol. 1, p. 103 [56]
- 1880 Andrew W. Young & Salter S. Clark** · Schoolbook authors
“the right of every one to own and use, in a peaceful manner, warlike weapons”
The Government Class Book, p. 185 [57]
- 1881 Robert Desty** · Annotator of the Constitution
“This clause is based upon the idea that the people cannot be oppressed or enslaved who are not first disarmed.”
The Constitution of the United States, with Notes, p. 255 [58]
- 1888 John Norton Pomeroy** · Constitutional-law treatise
“a militia would be useless unless the citizens were enabled to exercise themselves in the use of warlike weapons.”
An Introduction to the Constitutional Law of the United States, p. 152 (10th ed.) [59]
- 1889 Francis Newton Thorpe** · Civics schoolbook author
“Congress cannot pass laws forbidding the people to keep and bear arms. ... it cannot take the right to self-protection away from the people.”
The Government of the People of the United States § 304, p. 167 [60]
- 1891 John Ordronaux** · Constitutional treatise
“The right to bear arms has always been the distinctive privilege of freemen. Aside from any necessity of self-protection to the person, it represents among all nations power coupled with the exercise of a certain jurisdiction.”
Constitutional Legislation in the United States, pp. 241–42 [61]
- 1895 Henry Campbell Black** · Author of Black’s Law Dictionary
“This is a natural right, not created or granted by the constitutions.”
Handbook of American Constitutional Law § 144, pp. 403–04 [62]
- 1898 Horace Kephart** · Letter, “The Right to Bear Arms”
“Every such citizen of the United States has an inalienable right to carry openly any weapon suitable for military purposes.”
Forest and Stream, Feb. 19, 1898, p. 149 [63]

And many more *Additional verified, linked commentary from the same compilations:*

- | | | |
|---|---|--|
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| 1836 Thomas G. Polk, essay in N.J. Votes and Proceedings [65] | 1880 A. O. Wright, <i>Exposition of the Constitution</i> [73] | 1895 D. L. Grayson, <i>Annotated Constitution and Code of Tennessee</i> [79] |
| 1849 California Constitutional Convention debates [66] | 1884 Charles Nordhoff, <i>Politics for Young Americans</i> [74] | 1896 Spencer Haven, <i>Wisconsin and the Nation</i> [80] |
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| 1860 <i>The Principia</i> (anti-slavery weekly) [69] | 1892 John W. Overall, <i>Catechism of the Constitution</i> [77] | 1899 Humphrey’s <i>Review Diagrams</i> [83] |
| 1863 Rep. Clement L. Vallandigham, speech [70] | | |
| 1871 Ransom H. Gillet, <i>The Federal Government</i> [71] | | |

ACKNOWLEDGEMENTS

David B. Kopel’s early scholarly work on historical understandings of the Second Amendment—especially “The Second Amendment in the Nineteenth Century,” *1998 BYU L. Rev.* 1359—helped inspire this factsheet.

The X account [@2aHistory](#) has done tireless work compiling historical commentary as well. That work likewise helped shape this compilation.

The individual-rights view was not invented by the NRA in the 1970s. Before 1900 **it was the prevailing view of Americans**, stated in treatises, statutes, speeches and schoolbooks.

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