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# Sam Burke: The gun control debate: A brief history



Sam Burke, Commentary



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"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."

For more than 200 years after its approval as an amendment to the United States Constitution, few sentences in the Bill of Rights caused less controversy. Few courts and fewer legal scholars paid any attention to the Second Amendment to the Constitution. How that changed is a fascinating and uniquely American story that brings together the Black Panthers, Ronald Reagan, a civil war within the National Rifle Association and gun regulations in Washington, D.C.

One of the few



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decisions addressing the Second Amendment during its first 200 years was decided in 1939. The case, *United States v. Miller*, involved the right of the U.S. Congress to regulate the interstate sale of sawed-off shotguns.

In *Miller*, the United States Supreme Court adopted what has since been described as the "collective rights approach" to the interpretation of the Second Amendment. In *Miller*, the Supreme Court emphasized the first two phrases of the Second Amendment, "[a] well regulated Militia, being necessary to the security of a free State" in deciding that Congress could regulate the interstate sale of sawed-off shotguns because the regulation did not unreasonably interfere with "the preservation or efficiency of a well regulated militia."

In reaching its decision, the Supreme Court emphasized that the framers of the Constitution included the Second Amendment to ensure the effectiveness of the military. It would be several decades after this decision before the right of the individual to keep and bear arms would be significantly debated again.

In Oakland, California, in the 1960s, the Black Panther Party was created in response to tension between the police and the black community. Huey Newton, one of the founders of the Black Panthers, was a law student at the time. Newton pushed the idea in the new organization that the Second Amendment gave private citizens a right to bear arms.

Encouraged by Newton, the Black Panthers took the position that the Second Amendment gave

private citizens the right to own and possess fire arms on public property. Based on this individual rights reading of the Second Amendment, a group of the Black Panthers, carrying loaded shot guns, began observing the police while the police were performing traffic stops on black men.

The California police objected to a group of armed citizens observing their work, and the political response was a move by the California Legislature to make it a crime to have loaded weapons in public places. To protest the proposed legislation, the Black Panthers decided to protest the proposed bill by attending the State Legislative debate, while armed.

When the Black Panthers arrived at the California state Capitol, shotguns in hand, then Gov. Ronald Reagan happened to be on

the grounds with a group of children on an educational trip to the state Capitol. The children, curious about the group of armed black men and women on the capital grounds, went to see what was going on.

In an odd series of events, the state Capitol guards removed Reagan from the scene but took no action to protect the children. The event created a media sensation and likely sped the passage of the so-called Mumford Act that made it illegal to possess a loaded gun inside any city limits near public property. The legislation passed with Reagan's full support.

Across the country, a wave of laws were considered and passed that restricted the right to possess a gun. At a time of high crime, a minority of Americans began to become concerned that their right

to possess guns might be effected. This backlash ultimately led to a revolution in the leadership of the NRA.



Before Charlton Heston made, "from my cold dead hands" its calling card, the NRA for most of its existence was a group concerned mostly with hunting and encouraging gun ownership to prepare young men for military service by making them better shots.

And, when the wave of gun regulation began sweeping the country, the then leadership of

the NRA decided to move their headquarters out of Washington, D.C. to Colorado Springs, essentially shut down their fledging lobbying efforts, and even considered a name change. But, a small group within the NRA did not want the organization to go quietly into the shadows.

So in 1977, at one of the most important annual member meetings of any nonprofit in American political history, that small group of NRA members orchestrated a coup to pass sweeping changes to the organization that ousted the leadership of the NRA, cancelled the move to Colorado Springs and made championing the Second Amendment to prevent gun control the focus of the organization.

The NRA we know today was born at that annual meeting. Ironically,

the first presidential candidate supported by the new guard at the NRA was Ronald Reagan, who by the time he ran for president had come full circle on the gun control issue.

Three decades later, in 2008, the issue of gun control had finally made its way back to the U.S. Supreme Court. The case was *District of Columbia v. Heller*, and the justice who authored the opinion in the case, Justice Antonin Scalia, was a Reagan appointee.

The plaintiff in *Heller* challenged the constitutionality of a 32-year-old Washington, D.C., handgun ban. In a 5-4 decision, the court for the first time proclaimed that the Second Amendment established an individual right for U.S. citizens to possess firearms and struck down the D.C. handgun ban as a violation of that right.

The majority carved out an exception for the 1939 decision in *Miller* saying that law-abiding citizens cannot use sawed-off shotguns for any law-abiding purpose. Similarly, the court said regulations of similar weaponry that cannot be used for law-abiding purposes would not implicate the Second Amendment. The court also said that the United States Constitution would not disallow regulations prohibiting criminals and the mentally ill from firearm possession.

The Supreme Court's decision in *Heller* represents the present legal interpretation of the Second Amendment. An interpretation more focused on the individual and the individual's right to self-defense than the state's need to form a militia. As with all of the rights created by the Bill of Rights, there is always a tension

between the unrestricted exercise of individual rights and the desire of the community to prevent harm to others when those freedoms are exercised irresponsibly.

Our laws shape our nation, but what happens in our nation also shapes the law. As the history of the Second Amendment shows, how the mass shootings and particularly the school shootings in recent years will change our interpretation of the Second Amendment and effect the tension between the individual freedom to bear arms, and the desire of the community for safety from the abuse of that right, may not be known for decades.

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## COMMENTS

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**Mintas Lanxor**

Excellent. A SCOTUS decision of ten years ago with the imprimatur of wingnut judges is considered by gun nuts to be an equivalent of god's law ordained by the framers of the Constitution.

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