

'To own or not to own', the question. (Part I)

In the shadows of several recent mass shootings tragedies, the controversy over the 2d Amendment and gun control has reached corrosive and virulent levels.

Regardless of how amicable the discourse starts out, it seems to rarely end up that way. The discussion seldom draws any mutually agreed upon decisions other than to agree to disagree. How is it that our friends, who we admire and respect for many of their views and opinions may differ so much from our own on this one topic? It causes the rational observer to reflect on their own views and examine the merits behind them. This 'thought piece' is the results of my efforts at doing just that. For my own edification, I'll look at my views on the gun control controversy and see if a genuine effort to connect the dots between logic, fact and critical reasoning brings me to the same conclusions I currently hold.

Editorial note & Disclaimer

- These writings are purely my own, though I will liberally appropriate thoughts, views, and expressions I've read or heard in the past. Where I can, I'll cite them.

- To be clear, my starting position is that I strongly support the right to bear arms and oppose, what I believe to be, the anemically reasoned and emotionally based efforts to curtail the right. I expect I'll find reinforcing logic and reasoning that brings me to the same conclusion; but, I'm hopeful that throughout the effort, if I find information to the contrary, I'll have sufficient intellectual rigor to amend my view. We'll see.

The Right to own firearms.

With all such explorations, it's best to begin at the root, to go back to basics of the issue. These usually start with the First Principle(s) governing the problem set.¹ I believe the premise for the right to bear arms derives from the first principle (or 'natures first law' as some would call it) that man is sovereign and possesses the inalienable right to his own self-determination and to his own self-preservation. And to the extent that his preservation is dependent upon others, then that right extends to his immediate family, his community and his State.

I think this 'right' deserves further exploration to more closely connect the 'right' to 'self-preservation' with the 'right to bear arms,' or an 'assault rifle' in the modern lexicon.

¹ A *first principle* is a basic, foundational, self-evident proposition or assumption that cannot be deduced from any other proposition or assumption'. (Wikipedia – yeah, I cited Wikipedia, as it seems to offer the best definition for my purposes).

Constitutionally recognized inherent rights - Immediately following serious shooting incidents we've all heard (or read) of people disparaging the Second Amendment and suggesting that it is the root of our shooting problems. To me, it's not clear how one would construe that the right to possess the means of self-defense is commensurate with, or promotes murder. The first ten amendments, the Bill of Rights, is a list of rights that were commonly recognized to have pre-existed the drafting of the Constitution. After adopting the Constitution, the states wished to limit the powers of the Federal government with respect to those rights.² Neither the Constitution nor its Bill of Rights gives us the right to bear arms, it only recognizes that this right exists and places limits on the Federal government's powers to restrict this, and other rights. So by this logic, to blame the Second Amendment for setting the stage for acts of murder is to hold accountable the Founder's acknowledgment that a higher power endowed man with the unalienable right to protect his life, property, and interests with the ownership of arms. I find this absurd; acknowledging divine rights is not commensurate with advocating murder.

So what is this divinely endowed right that enables Americans to arm themselves? What is the linkage between self-preservation (a commonly recognized First Principle) and owning an AR-15 (the means to self-preservation, arguably)? Why is it that many supporters of the Second Amendment say that the Federal government is restricted from abridging away those rights?

The root source of authority for our government comes from the consent of the governed- the People. This is why the US Constitution starts off with 'We the People', not 'The Government of the United States.' This fundamental political theory holds that Americans are **sovereign** entities and each possesses exclusive control and self-determination over their body and their life. It further holds that 'sovereignty of the people of the States, was in its nature divisible.'³ As sovereign, people are empowered to enter into pacts with other sovereign peoples to establish collective bodies to represent their common interests. Through this delegation of power/ authority, they form governments to serve specific delegated interests. When they do so, they surrender some of their divisible sovereignty to the collective body so it may act, with authority, on their behalf.

This differs significantly from the divine right of kings' theory, which postulates that a monarch is sovereign. As sovereign over his kingdom, and it's people, the sovereign delegate's authorities down to a government to assist him with the execution of his responsibilities over his subjects. In a monarchy, the monarch is the

² "expressed a desire, in order to prevent misconstruction or abuse of its (federal) powers, that further declaratory and restrictive clauses should be added;" (The preamble to the bill of rights).

³ James Madison: Essay on Sovereignty Dec. 1835

final authority. In the US form of democracy, the People are the final authority. It is perhaps this distinction and difference in our evolution towards our democratic forms of governments that will cause Americans and Europeans to rarely ever agree on this issue of gun ownership. We come at it from entirely different dispositions.

However, that note aside, in America's path towards forming a Republic, the original governing bodies were the 13 separate colonial governments, which upon independence became recognized as State governments. As representative bodies, with delegated sovereign powers, the individual states of the United States surrendered some of its sovereignty (powers) to form a Federal government to execute the State's collective interests (after the Confederation failed). The authority of the Federal government emanates from the individual powers of the people, which they surrendered, to their states. Individual sovereigns (the people) surrendered a part and retained the other part, of their powers to act independently and collectively with others to represent their common interests. I find this statement to be critical and emphasize its import. The states, in a measure, did the same by forming a Federal government. The people were first, the States second and the Federal government last. The first two entities retained a part of their original powers (sovereignty) and delegated a piece down to another body to serve its common interests. But the key to these pacts is that the people did not surrender all their sovereign powers.

Why is any of this relevant to gun ownership? When the States formed the Federal government, they ensured that the powers retained by the people through these series of pacts were acknowledged and recognized as authoritative. They did this in the founding document, the Bill of Rights within the US Constitution. It is commonly misunderstood that the Constitution gives the people the right to bear arms. This is not correct. This document recognizes that these rights preexisted the Federal government and the sovereign people of the United States did not surrender those rights when they formed the Federal government. The second amendment intends to prohibit the Federal government from restricting that right. The federal government cannot give, nor limit what it does not rightfully own.

Our Declaration of Independence speaks to these rights in its preamble. "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." I envisage that the enumerated right to bear arms is directly derived from, or closely aligned to, the right to 'life.' Perhaps this connection deserves further exploration.

Rights balanced with responsibility - Whether they are 'unalienable rights,' 'inherent rights' or 'self-evident truths' derived from the 'laws of nature,' what is apparent is that rights do not exist in a vacuum. They must be counterbalanced with responsibility. Responsibility takes many forms; in this exploration, I think there are three worth considering.

First, in practical application, one cannot enjoy any right unless others assume the responsibility, or duty, of enabling the enjoyment of those rights by other sovereign entities (citizens). As an example, if every time I attempt to speak my mind (exercising the right to free speech) somebody knocks me down to prevent me from talking. If within that society their actions are considered acceptable, then, in reality, I cannot enjoy that right to speech as it is acceptably superseded by another's right (or privilege) to prevent me. To enjoy my rights, others must allow me to exercise that right. Society must be framed to accept that though it may be inconvenient or painful at times for others to exercise their rights, they are obliged to do so. Hobbs aptly argued that a 'right without the means to exercise that right is effectively no right at all.'⁴ (I can't find the original source of this quote but do recall it came from the Philosopher's Blog Magazine). Therefore all others have the responsibility to accept some level of discomfort or risk in their lives so all are able to exercise their individual, divinely endowed rights.

The Second responsibility is to ensure that the enjoyment or practice of your individual right does not infringe upon the rights of others unless they act to invalidate such protection. The right to speak freely does not ethically empower one to do so at the harmful expense of others. The definition of 'harm' in this instance is wide open to interpretation, but suffice it to say that not shouting fire in a theater is a good balance of the right with the responsible exercise of that right.

Thirdly, if one has the right to life, to self-preservation, then it is also evident one has the obligation (duty) for self-preservation. This gets into a much broader philosophical discussion than I really want to wander through now. But, it is relevant to establishing the foundation of the right. Rather than unfolding this line of thought, I'll take this as a truism by citing Hobbes from his book the Leviathan, "a precept or general rule, found by reason, that *forbids a man to do what is destructive of his life* or takes away the means of preserving it and to omit that by which he thinks it may be best preserved." If Hobbes is correct, then people would seem to have both a right and an obligation to self-defense. This being the case then three additional thoughts come to mind:

- If we have this corporal body as a gift (atheist may see this differently), then we are obliged to preserve this body to assist it in accomplishing its life's intent, or *raison d'etra* (reason for existence).

- In that we are obliged to preserve our own lives than I don't find it too much of a leap of logic that we should also be duty-bound to preserve others' lives, particularly those with whom we are entrusted with their welfare - family and those

⁴ The Philosophers' Magazine Blog, Is there an Obligation of Self-Defense, Posted by [Mike LaBossiere](#) on February 4, 2013, <http://blog.talkingphilosophy.com/?p=6729>

of our immediate community. Their preservation is entrusted to our care as is ours to theirs.

- It also follows that if we rely on others for our own protection, then we commit them to our risks. If there is an imperative to preserve life, then there is an equal imperative not to risk other's lives by failing to act to preserve our own, collective security arrangements notwithstanding.

These thoughts draw me to the conclusion that if we have the right, obligation and duty to preserve life, then justifiably we have the right to access the means to do so. Furthermore, that if governments are instituted among men to secure the rights of the people, then they should not serve as an impediment to the very rights they were established to protect. Perhaps this is the strain of thought born out by our forefathers, which compelled them to include the Second Amendment in the list of rights that the Federal government could not abridge.

We have the right to life, then we have an obligation to preserve ourselves, then we have the right to access the means to secure such preservation within the environment that we live. So does that mean we should be armed with automatic weapons and tanks?

Proportionality - One of the basic tenants I learned while in the military on the use of force is the rule of proportionality. This rule basically says that it is legal, ethical or proper to use just enough force to mitigate the threat, and perhaps no more. Using this as a guidepost, it stands to reason to me that if a means of harm is available to the general populace, or at least to that segment of the population that would seek, and is capable, of doing me (or my family) harm, then I should have access to proportionally lethal means to mitigate their immediate threat. If in 1500 BC an assailant had access to a bronze edged weapon, then the right of self-defense and the rule of proportionality suggest that I too should have legal access to a capability to mitigate an active threat with a bronze edged weapon. Three thousand years later the basic tenants have not changed. If I lived in the era when muskets were the leading edge of weaponry, then it would be a contravention to their obligations to protect my rights of self-defense and the rule of proportionality if a government restricted me to ownership of nothing more than a 3-inch pocket knife to defend myself. In the current era of easily accessible semi-automatic, high capacity weapons the underlying principles do not change. Whether its a home invasion by 'meth-heads,' a carjacking by gang members or 'authority-like' forces committing lethal crimes with these weapons, then each of us should have access to the means to mitigate those threats when confronted with them immediately.

Clearly, by the standard I derive, 'means to mitigate the immediate threat' to preserve life, calls for further exploration. The obvious retort is 'what if someone illegally pulls up in front of your house with a tank, should you be able to own a tank'? Or should one be able to legally own hand grenades because a criminal may

seek to burn you out of your house? If the standard applies that each of us should possess access to the means available to mitigate an immediate threat to our lives or that of our family then if the only possible recourse to address a threat of tank invasion was to own a tank, then yes, I suspect that should be acceptable. However, I think that the question and solution lack any form of creativity, imagination or practicality. What is key is the preservation of exercising the basic right to achieve the right's intent, not the specific means to do so; although that means may be vital to the enjoyment.

Means of self-defense (Collective Defense/Security)

Again, the US form of government was a fairly unique experiment in the history of the governed. The power of the people resides with the people; each of us is sovereign. No other authority wrests control of that power (legally) unless the people surrender it. The right to self-preservation is an individual one. Technically, the US government cannot act to preserve the liberties of the governed unless the governed cede a part of their power, their sovereignty, over to the government to act on their behalf. With this theory in mind, how do we, in accordance with the laws of nature, protect ourselves? We do it individually. Where we believe the threat to our safety exceeds our individual ability, we cede a bit of our sovereignty to others to do it collectively. This is what forms justly derived authorities of the local, state and Federal constabulary or police forces. Our Constitution codifies in writing the cessation of some of our power through the states to the Federal government to exercise collective security with regards to foreign threats, with the establishment of a Navy and Army. We give up a bit of our sovereignty to secure a greater gain, collective security. It is a superb method of addressing threats greater than one's own capacity to mitigate, whether that be a guy at your door with a tank, an invading army or criminal gangs communicating a threat to you and your family. However, collective security does not relieve us of the right, nor responsibility, to secure our own self-preservation, may that be by eating regular and healthy meals or preparing for possible scenarios such being visited late at night by the local drug addicts looking to finance their next fix with your hard earned property.

It is impractical for the police forces to protect everybody from everything. Usually, such forces protect the individual through general deterrence. In many cases, those who would seek to do others harm would find that the actions taken through collective security counterbalance the gains achieved through their intentional acts of violence (in reasonable people). The threat and likelihood to them of incarceration (or counter deadly force) is not worth it, so they are deterred from acting. However, for those that act spuriously, or reactively, and do commit violent acts, the agents of the collective security arrangement might, fortuitously, be at the right place at the right time to mitigate the violence. The most likely scenario is; however that these agents will arrive after the commission of the violent act. Therefore individuals need to be prepared to protect themselves. In my case, it takes about 45 minutes for police to respond to a call for help at my residence. Their area

of responsibility is too big, and they are too few. Well prepared and illegally armed criminals could easily harm my family and destroy or take my property and be gone long before the police forces arrive to protect our safety. In my case, and my neighbors, where the crimes of rampant drug use have been on the rise, we would be negligent for failing to prepare adequately to defend those for whom we are responsible. Collective security forces generally arrive after the incident to investigate and then provide a deterrent influence to the next incident by incarcerating the guilty party and demonstrating that crime/violence does not pay. This is why it would be imprudent to cede all of one's sovereign powers of the right of self-protection. The liberties one must likely give up to ensure the collective security arrangement is capable of providing the immediate response to protect everybody satisfactorily would render the state more sovereign than the individual. This would be a complete inversion of the intent of our founders and the resulting liberties we currently enjoy.

Another aspect to evaluate when balancing individual security with collective security is recognizing that US law does not require that police forces defend citizens during acts of violence or credible threats of violence. This may be hard to believe, but there are numerous cases where the courts would not hold the police accountable for failing to act to preserve life, even when the threat to life was active, imminent or credible. Again, many would find this very hard to believe so I would draw their attention to simple Google searches⁵ on the topic and the internet will reveal just how much of an illusion is our unassailable faith that we'll be protected by those whom we believe we can rely upon. So, if the local, state or federal government really does not have the remit, or the legal obligation to risk the life of their employees to preserve ours from an immediate threat, then in my mind that only reinforces my duty to be prepared to do so.

An argument in favor of infringing the right to bear arms often cites a parallel construct that everybody has the right to free speech, but one would overstep that right when they shout 'fire' in a crowded theater. Such an exercise of one's individual right causes harm to others by the resulting stampede to the doors. Therefore to persuade people to not overstep their right to free speech, legislatures make laws to make the act illegal. The argument proposes that this is a reasonable restriction on the first amendment, and that similar restrictions should apply to the second amendment. This is faulty logic (false analogy). No one reasonably argues that we should take away people's ability to speak or shout (the means to shout fire) to preclude the abuse of the right, just criminally prosecute the one who does. Yet

⁵<https://www.nytimes.com/2005/06/28/politics/justices-rule-police-do-not-have-a-constitutional-duty-to-protect.html>
<https://www.quora.com/Is-it-true-The-Supreme-Court-ruled-law-enforcement-agencies-dont-have-a-constitutional-duty-to-protect-citizens>
https://en.wikipedia.org/wiki/Warren_v._District_of_Columbia

some advocate in favor of taking away the means to effectively secure individual self-defense, the right to own weapons. They would hold accountable the individual who dangerously exercised his right in one case (shouting fire), yet hold the entire citizenry accountable for the criminal use of a gun by restricting their right to own one. This, in my mind, does not pass for critical reasoning.

It is sometimes argued that no right is infinite, that all rights must have 'reasonable' limits applied against them. I would argue that all rights are inviolable, but the means we exercise the right may have restrictions placed on them as long as they do not negate the principal to which the right is intended to underpin.

Self Protection

In order to protect oneself, one needs legal access to the means to mitigate immediate threats. So to answer the question on should people have access to tanks, grenades or crew served weapons, it depends. It depends if that is a realistic, immediate threat and if the collective security arrangements are capable of mitigating the immediacy of that threat. In most places in this country, I suspect the local police departments are well prepared to address the most serious and likely scenarios, and therefore individuals do not need access to those means of self-defense. Where the collective security arrangements fail and the requirement to mitigate an immediate threat does exist, the solutions may differ. The principle remains that citizens have not sacrificed their right to self-defense, they only defer the exercise of their defense to a collective body when that body is capable of effectively executing it. When they are not, the individual still retains his rights.

One could argue that by legislating away the right to own firearms and ruthlessly enforcing non-ownership, no weapons will be easily accessible to the general and criminal populace to cause harm. I find two compelling counterarguments that impoverish this theory. First is that we currently have more restrictions and controls than ever before on the ownership of weapons, and yet crime with guns is more pervasive. Secondly, the advances in technology and 'flattening' of the world renders effective control less likely. One need only surf the internet to realize that 3D printers and new composite materials can easily produce serviceable guns. This technology can be likened to one of the evils that escaped from Pandora's Box - it can't be put back in again! ⁶ Whether we like it or not, or acknowledge it or not, technological advances equal the proliferation of weapons, not the reduction of them. The legislature could pass laws making the possession of guns to be illegal. But, they would also have to heavily regulate simple devices like 3D printers and carbon materials. When we reach the point that our government prohibits ownership of weapons, and 3D printer and carbon materials (without their explicit consent) then arguably, we've reached the tipping point where people are no longer

⁶ https://en.wikipedia.org/wiki/3D_printed_firearms

sovereign because we've relinquished the balance of our divinely given powers. We'll have reached the point where the government is sovereign, and the people are no longer accorded the 'right to pursue life....' . To legislate possession of guns to be illegal only promotes those willing to break the law (lawbreakers by definition) to a disproportionate advantage over those who abide by the law. Again, the people cede a bit of their sovereignty to form bodies to protect their interest and rights, not take them away.

Closure to Part I

The focus of this exploration into gun ownership really deals with individual security. With the review of collective security arrangements I have, perhaps, framed the upper levels of what could be a 'reasonable' level of ownership for individual self-defense. I introduce the word reasonable fully cognizant that the divisiveness and rancor in the argument of gun control often center on people's definition of reasonable. In my mind, what defines reasonable is up to the point where the restrictions begin to infringe upon the very intent the right conveys.

With this exploration, as expected, my position on the right to bear arms remain the same and are perhaps further reinforced. I think where I may have given ground is on the lethality of the arms....to a degree. There is a tipping point where individual rights conflict with society's right to safety and security. This tipping point is not clear as one's ability to use weapons in a safe and protective manner differ from person to person. Placing restrictions on everybody for the fear that some may misuse the right is a slippery slope argument, though I can see a legitimate concern for societal safety and security. Where one's means of self-defense infringes upon other's rights, then they deserve further scrutiny. But the default position is that individuals have the right to possess them unless they have individually demonstrated a propensity to use them in ways that infringe upon other's rights or safety. Clearly, this standard of 'propensity' is an entirely more advanced exploration; perhaps for another time. We all have the responsibility to enable other's enjoyments of their rights by not encroaching on them as we exercise ours.

So this begs the question, what are the acceptable characteristics of personally owned firearms? Again, I lean towards the standard that whatever means are necessary to preserve one's life and their family's. I'm currently satisfied with the ability, without regulation, to possess semi-automatic, high capacity (large magazine) rifles and pistols. I'm uncomfortably satisfied that automatic weapons and 'crew served' weapons could require additional scrutiny to ensure that the propensity of the owner to use them in nefarious ways is not clear nor present. I suspect the ownership of shrapnel producing explosives falls even in a more restrictive category (but the regulated ownership of pressure cookers, a possible component to shrapnel producing explosives, is not for debate). I'm not sure where I fall on the personal ownership of functioning tanks, but hope a future exploration into the topic would offer a reasoned and logical perspective.

A second serious avenue for future consideration (Part II?) is the relationship between gun ownership and the right to liberty. This exploration centered on the relationship between guns and the 'right to life' and did not address the second enumerated right. The founders clearly acknowledged a relationship to the means of self and collective defense through individual gun ownership with the juxtaposition of the term 'militia' within the Second Amendment. The founders, after all, were recent antagonists to what they considered a tyrannical government that restricted their liberties. A key component of the success of the revolution was the reliance on individual and collective use of personally owned arms. Clearly, a complete review of the right to bear arms and the degree to our government's authority to restrict it must consider the people's duty in preserving liberty. Much like self-preservation, do they have the right and duty to play a role in the preservation of their liberties? If so, should citizens have equal access to equally lethal weapons as those forces that might infringe upon the people's liberties?

Thirdly, the relationship with the third right enumerated in the constitution, the right to pursue one's happiness. Contemporaneous thought may see little valid connection between gun ownership and one's pursuit of happiness (other than the happiness of avid shooters). But this position belies a true understanding of the founder's original meaning of 'the pursuit of happiness.' "US Supreme Court Justice Anthony Kennedy offered the following explanation in a 2005 lecture at the National Conference on Citizenship. Kennedy notes that while in modern times there is a 'hedonistic component' to the definition of happiness, for the framers of the Declaration of Independence 'happiness meant that feeling of self-worth and dignity you acquire by contributing to your community and to its civic life.' In the context of the Declaration of Independence, happiness was about an individual's contribution to society rather than pursuits of self-gratification. While this sense has largely fallen out of use today, it's important to keep these connotations of happiness in mind when studying political documents from the 18th century."⁷ With an understanding that happiness, or self-worth and dignity, is directly connected to one's contribution to their community and civic life, there exists a legitimate relationship between one's ability to defend the community. If within a community the only legal entity in possession of weapons was a limited police staff, then when that staff was neutralized, the community would be subjected to the deprivations of those who illegally possessed guns. This is undoubtedly a relationship worth evaluating.

So, this concludes Part I, my 'thought piece' on gun ownership in the US. What is clearly to me is that a valid opinion on 'gun control' or 'gun rights' requires an in-depth consideration of many relevant factors. It's not as easy as saying "guns hurt, we don't like hurt; therefore guns should be illegal." Nor is it as easy as falling back

⁷ <https://www.dictionary.com/e/happiness>

to saying that “the Second Amendment prohibits the abridgment of the right, Period!” It really requires a detailed exploration into the base principles from which the right emanates, after all, the right to bear arms is a resultant of a first principle. One must determine if we still value those principles, even when they cause us to assume some risk and discomfort.

I wrote, and published this not with the expectation that anyone will actually read it, but rather as a forcing function to ensure I use some discipline in my thoughts and communication. No one wants to put out a piece of crap paper that’s poorly thought out. But, in the event you did read this (clearly your reading this sentence) then I’d really appreciate your views and comments regarding the clarity of the piece, the rational logic (or lack of) in my thought process or the accuracy of my understanding of the concepts. Thanks.