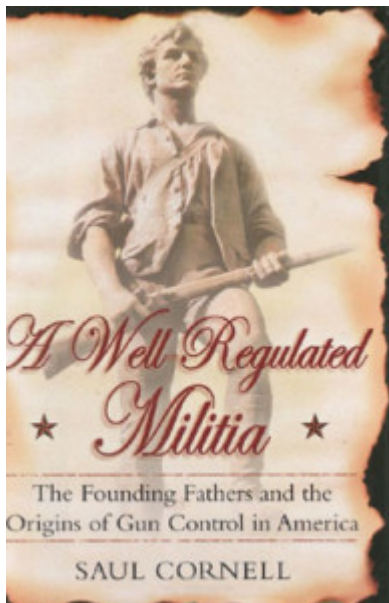
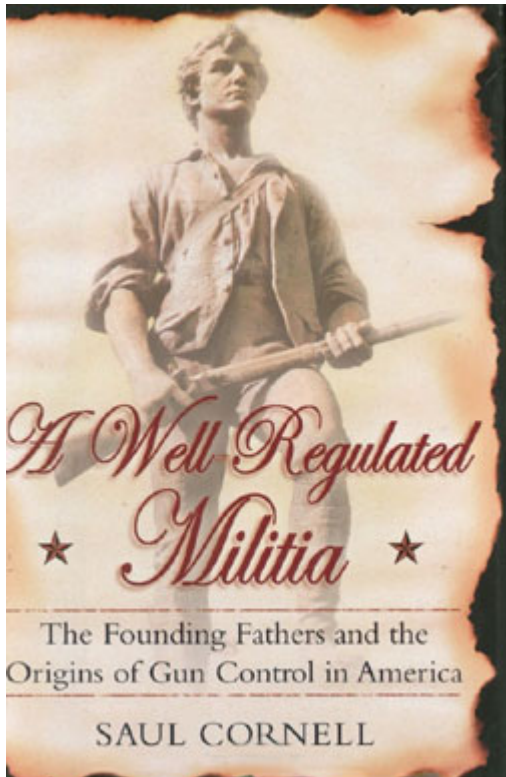


## Finally, a New Paradigm



Saul Cornell, *A Well-Regulated Militia: The Founding Fathers and the Origins of Gun Control in America*. New York: Oxford University Press, 2006. 270 pp., cloth, \$30.00.

Few policies evoke a more visceral response than gun control, so public discourse concerning firearm ownership generally ranges from anemic to inane. Do guns *or* people kill people? Obviously, replacing *or* with the conjunction *and* or the phrase *in conjunction with* would settle the question

quickly. Even serious scholarly discussion of the meaning of the Second Amendment is rare because partisan feelings run high. Agreement extends to only two issues. First, Michael Bellesiles went too far when he fabricated data to support a radical gun control agenda in his now discredited book *Arming America* (2000). Second, the Constitution grants an individual right to bear arms *or* a collective right to maintain a militia. Unfortunately, that second area of agreement turns out to be a Marxian (Groucho, not Karl) false dichotomy that keeps us as flummoxed as the poor sap enjoined to respond yes or no when asked if he had stopped beating his wife yet.

In *A Well-Regulated Militia*, Ohio State University history professor Saul Cornell frees us from the fallacy of the loaded question (excuse the pun) "Is the Second Amendment an individual or a collective right?" by showing beyond a reasonable doubt that it was sort of both but ultimately neither. Originally, keeping and bearing arms was as much a tax or civic obligation as a right. In most colonies, every able-bodied adult man was enjoined by law to own and maintain a military-quality musket or rifle and to drill on muster days. Those who failed to comply were fined because the militia protected Americans from external threats and, in an era before powerful police forces, from domestic unrest. After passage of the U.S. Constitution, some Americans feared that the new federal government might strip them of their military arms as King George had attempted to do during the pre-Revolution imperial crisis. With this view of the matter, the controversial amendment's seemingly odd construction makes sense: "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" (1). In other words, *individuals* must be able to own firearms so they can help protect the *community* from a wide assortment of possible external and internal threats.

The right of individuals to own and carry arms for other purposes, including hunting and self-defense, was already well protected under the common law, Cornell shows. There was no more need to secure that right via constitutional amendment than there was to guarantee individuals the right to eat, defecate, or procreate. In short, free American males *could* have owned firearms to further their personal happiness and *should* have owned firearms to help protect the community. The latter was so important that it was enshrined in the U.S. Constitution and most state constitutions. The former was important, too, but only a few states, like Pennsylvania, saw the need to protect that uncontroversial personal option via their constitutions.

Cornell also explores the origins of the individual- and collective-rights views of the Second Amendment. In the 1830s, a wave of armed violence spurred state legislatures to pass laws regulating pistols, dirks, Bowie knives, and other ostensibly non-military weapons. "These early efforts at gun control," Cornell shows using a variety of historical sources, including court cases, "spawned the first legal challenges to these types of laws premised on the idea of a constitutional right to bear arms for individual self-defense" (4). History rhymed with itself in the twentieth century when the National Rifle

Association (NRA) also responded to gun control laws with arguments based on an individual-rights interpretation of the Second Amendment.

Cornell also details the emergence of the collective-rights view of the Second Amendment, which found root in the rank partisanship of Reconstruction. Eager to help freedmen protect themselves from the KKK, Republicans argued that the Fourteenth Amendment aimed to give the national government the power to guarantee Americans the rights spelled out in the Bill of Rights, including an individual right to bear arms. Democrats countered that the Second Amendment was a collective right granted to the states, not to individuals, and that its sole purpose was to prevent the national government from disarming state militias. The Democrats won the argument during Reconstruction and then again in the twentieth century, when legal scholars and the Supreme Court sanctified the collective-rights view in law journal articles and *U.S. v. Miller* (1939).

Although Cornell has freed us from the tyranny of two erroneous, ahistorical interpretations of the Second Amendment, his account is not flawless. His research was partly funded by the Joyce Foundation, which advocates stricter gun control laws, and it shows. Ultimately, Cornell hopes to bolster the view that governments can successfully and legitimately regulate gun ownership. "Registration, safe storage laws, and limited bans on certain weapons," he concludes, are all consistent with the original, civic-duty view of the Second Amendment (216). He also argues that "wholesale gun prohibition or domestic disarmament is not" consistent with the Founders' intent (216), but he knows that nothing close to that is possible anyway, at least not without prying weapons from millions of "cold, dead hands" (1). While there appear to be no Bellesiles-sized falsehoods proffered, Cornell's portrait of a long history of Anglo-American gun control is distorted. For example, he claims that "under British law one could not travel armed," a sweeping, undocumented claim directly contradicted by Joyce Malcolm in *To Keep and Bear Arms: The Origins of an Anglo-American Right* (Cambridge, Mass., 1994).

Despite those shortcomings, Cornell should be applauded for presenting a powerful "new paradigm for the second amendment" (211).

This article originally appeared in issue 7.4 (July, 2007).

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