

Bearing arms in America

## **The individual right to gun ownership is the law of the land. Until it isn't.**

By [Steve Woolley](#)

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A well-meaning friend reposted a piece on Facebook that used the Wounded Knee Massacre as an object lesson for why the Second Amendment right to bear arms is so important. The point being that a well-armed citizenry is needed and could withstand the assault of a tyrannical government's army.

I doubt he had any idea how offensive that was in the context of American Indian history. It was toward the end of the so-called Indian Wars. Their lands seized, their buffalo gone, and their treaties violated with impunity, the slaughter on December 29, 1890, was orchestrated against a forced encampment of a small group of Lakota Indians who didn't want to stay on the reservation. Fifty-eight rifles were said to have been recovered from among the 150 or so killed: old men, women, children, a few warriors. It was an act of terror fully endorsed by the white residents of the region, many of whom believed it was either kill-or-be-killed.

If there is an object lesson in that, it is that white men cannot be trusted by those who are neither white nor citizens. And that brings us to the Second Amendment. Using 18th-century reasoning to dictate answers to 21st-century questions doesn't work. It can inform, but not dictate. As it is, the founders, working from various, sometimes conflicting points of view, desired to assure the constitutional legitimacy of well-regulated citizen militias. An individual's right to own a gun was not something that crossed their minds. Why would it? A musket was an everyday tool to hunt for food and for frontier protection. The right to own one was never a question anyone asked.

Our founding fathers were interested in well-regulated state militias to take the place of a standing army. Standing armies were expensive, and the British army of

recent occupation led them to suspect they could not be trusted to back the nascent republic. As it turned out, some of the not-so-well regulated militias couldn't be trusted either. You may remember Shay's rebellion during the Articles of Confederation era, and the Whiskey rebellion in the early 1790s.

The founders had different expectations for what well-regulated militias could do. Some expected them to protect slave owners, putting down any slave uprising. The Haitian slave rebellion of 1791 had not yet begun, but they were not unaware of the rising tensions and the possibility of it happening in the United States. There had been colonial slave uprisings, and their fears were justified by several others in the 1800s. Others expected militias to forcefully pacify Indians displaced by westward white settlement. *Pacify* would not have been a word back then, but it fits. Still others intended them to protect the interests of land and business owners. They didn't want another Shay to organize another rebellion. For good or ill, it was all about well-regulated militias.

Is that still true?

A friend who is an attorney and advocate of unrestricted gun rights noted that the question was settled by the Supreme Court's ruling in the *Heller* decision of 2008. It doesn't matter what the founders thought or wanted, the *Heller* decision established the right of individuals to be armed for "traditional lawful purposes," including self-defense. Justice Scalia wrote for the majority, while Justice Stevens wrote for the dissent. Dissent or no, the right for individuals to bear arms is now the law of the land. Who am I to argue? I'm no lawyer.

But I do know it's the law of the land until it isn't. Most students of history have heard of the 1896 *Plessy v. Ferguson* case. In it the Supreme Court held that segregation was legal as long as accommodations were "separate but equal." *Plessy* was never overturned by the court. It just died an ignominious death as other decisions, and the civil rights laws of the 1960s, remanded it to the court of lousy decisions for reconsideration by high school history classes.

My hope and expectation is that the *Heller* decision will meet the same fate, but in less time than the 70 years it took *Plessy* to die.

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