

Corpus Evidence Illuminates the Meaning of *Bear Arms*

by DENNIS BARON*

The Second Amendment says:

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.

The amendment was traditionally understood to protect a right to gun ownership connected to military service. This was triggered by the initial militia clause and a general understanding that the phrase *bear arms* refers to military service. The amendment’s legislative history supports the military reading as well. During the debate over the amendment, Congress considered, but ultimately dropped, a conscientious objector clause exempting Quakers and anyone else “scrupulous of bearing arms” from service in the militia.

But in 2008, in *District of Columbia v. Heller*, the Supreme Court found that the Second Amendment had nothing to do with military service. Instead, the amendment guarantees the right to own a gun for any lawful purpose.¹ In his opinion in *Heller*, the late Justice Antonin Scalia dismissed the framers’ congressional debate on the amendment as irrelevant and discounted the militia clause because prefaces do not limit the scope of statutes. He insisted as well that the phrase *bear arms* did not refer to military contexts in the founding era.

According to Scalia, the natural meaning of *bear arms* is simply, “carry a weapon”—it’s got nothing at all to do with soldiering:

* Dennis Baron is Professor of English, emeritus, at the University of Illinois at Urbana-Champaign and was lead author of the “Linguists Brief” in *District of Columbia v. Heller*. An earlier summary of the data presented here appeared in “Antonin Scalia Was Wrong about the Meaning of ‘Bear Arms,’” *Washington Post*, May 21, 2018, https://www.washingtonpost.com/opinions/antonin-scalia-was-wrong-about-the-meaning-of-bear-arms/2018/05/21/9243ac66-5d11-11e8-b2b8-08a538d9dbd6_story.html?utm_term=.9f23ab8854a09.

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1. *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008).

Although [bear arms] implies that the carrying of the weapon is for the purpose of “offensive or defensive action,” it in no way connotes participation in a structured military organization.

From our review of founding-era sources, we conclude that this natural meaning was also the meaning that “bear arms” had in the 18th century. In numerous instances, “bear arms” was unambiguously used to refer to the carrying of weapons outside of an organized militia.²

But Justice Scalia was wrong: Founding-era sources almost always use *bear arms* in an unambiguously military sense. My examination of two corpora of seventeenth- and eighteenth-century English and American texts that only recently came online shows that the plain, ordinary, natural, and original meaning of *bear arms* in the eighteenth century was ‘carrying weapons in war,’ or in other forms of group offense, defense, or rebellion. Non-military uses of *bear arms* in reference to hunting or personal self-defense are not just rare, they are almost nonexistent. In addition, *keep arms*, though a much rarer phrase than *bear arms*, occurs almost exclusively in a military context. This new corpus data should surely condition our understanding of the Second Amendment when we reflect on what many feel is a flawed decision in *Heller*, and an accurate understanding of the meaning of *bear arms* becomes critical to the interpretation of post-*Heller* gun regulation.

The Corpora

Brigham Young University’s (“BYU”) Corpus of Founding Era American English (“COFEA”), with over 120,000 texts and 154 million words, yields about 310 instances of the phrase *bear arms*.³ BYU’s even-larger Corpus of Early Modern English (“COEME”), with 40,000 texts and close to 1.3 billion words, contains 1,578 instances of the phrase.⁴ I was able to examine about 1,300 of these instances in context. Correcting for estimated duplicates, roughly 900 separate occurrences of *bear arms* before and during the founding era refer to war, soldiering, or other forms of armed action by a group rather than an individual. Seven were either ambiguous or

2. *Heller*, 554 U.S. at 584.

3. *Corpus of Founding Era American English*, BYU LAW & CORPUS LINGUISTICS (last visited Jan. 9, 2019), <https://lawncf.byu.edu/cofea/> [hereinafter *Corpus, Founding*].

4. *Corpus of Early Modern English*, BYU LAW & CORPUS LINGUISTICS (last visited Jan. 9, 2019), <https://lawncf.byu.edu/coeme/> [hereinafter *Corpus, Early Modern*].

carried no military connotation. This should constitute proof that the natural meaning of *bear arms* in the framers' day was military or quasi-military.⁵

Typical Citations for *Bear Arms*

Here are some typical examples from the corpora showing the military association of *bear arms*:

1. Let us consider those that *bear ARMS* under our PRINCES, with how much Order and Submission they execute their Command. [1748]
2. The number of the Enemies that *bear Arms*, according to the truth, was about forty thousand more or less. [1700]
3. He himself likewise did the same, then first appearing clad in Armour, when he did not yet so much as expect what he so earnestly desir'd, that he shou'd *bear Arms*.
4. I may say with truth all Weymouth, Braintree, Hingham, who were able to *bear Arms*, and hundreds from other Towns within 20, 30, and 40 miles of Weymouth. [1775]
5. that Numbers of the Inhabitants murmur at being Obliged to *bear Arms*; and the dread of a French War is very General. [1777]
6. for the defence of their country: of 80,000 men able to *bear arms* among then it is believed scarcely any will refuse to sign this demand. [Thomas Jefferson; 1783]
7. putting to the sword such as were able to *bear arms*. [*i.e.*, executing potential soldiers/rebels; 1794]
8. all male persons, from sixteen years of age to fifty, shall *bear arms*, and duly attend all musters, and military exercise of the respective troops and companies. [1760]
9. Those who conscientiously scruple to *bear arms*, shall not be compelled to do so; but shall pay an equivalent for personal service. [1792]
10. Those who *bear Arms*, or make, or joyn in War with . . . the Puritans, or other Hereticks . . . We do declare and pronounce Excommunicated. [1680]⁶

5. Since COEME only returns a maximum of 1,000 hits for a collocation search, I was not able to examine 578 of the 1,578 citations with *bear arms*. In addition, new texts are being added to the corpora, so both the size of the database and the final citation count will continue to grow. I hope to be able retrieve and analyze the missing citations in the near future, but I expect that they will confirm my preliminary findings.

6. *Corpus, Founding*, *supra* note 3; *Corpus, Early Modern*, *supra* note 4.

Some Exceptions

Here are seven examples from the corpora where the phrase *bear arms* may be independent of military context. Six of these are at best ambiguous, as they appear in contexts suggesting a military or quasi-military sense of bearing arms. Only example (5), a translation of the French *porter armes*, is not a military reference.⁷

1. That no person shall use or *bear any Arms* within London, and the Suburbs, or in any place between the said City and Pallace of Westminster, nor in no other part of the Pallace by Land or by Water, except such of the Kings people, as he shall appoint to keep the Kings peace. [1657; the reference is to a statute enacted by Edward III in the fourteenth century to thwart organized rebellion against the king.]
2. [The 1689 Bill of Rights] asserted the freedom of election to parliament, the freedom of speech in parliament, and the right of the subject to *bear arms*, and to petition his sovereign. [1771; at various times from the fourteenth century to the seventeenth, English kings disarmed groups of citizens in order to protect themselves from organized rebellion. This section of the Bill of Rights reverses the most recent case, the disarmament of Protestants by the Catholic monarch, James II.]
3. A Peasant in this Country (unless in time of great Danger or Invasion) is not suffered to *bear Arms*. [1689; Polish peasants were permitted weapons only in extraordinary circumstances for the defense of the realm.]
4. That every Person who will go for Ireland on these Conditions, shall out of his first share of Money, buy for himself and every Relation and Servant that he carries with him (who are able to *bear Arms*,) a good Musket, or Case of Pistols for the defence of his Family. [1690; a proposal to arm English families in Ireland to protect against Irish revolt.]
5. [A]n ape who knows how to *bear arms*, to attack his enemies with stones, and to defend himself with clubs. [1780; English translation from a French description of the orangutan.]
6. That the People have a Right to bear Arms for the Defence of themselves and the State, and as standing Armies in the Time of Peace are dangerous to Liberty, they ought not to be kept up: And that the Military should be kept under strict Subordination

7. See the Appendix for a detailed discussion of these exceptions.

to, and governed by, the Civil Power. [1776; here the reference to “the Defence of themselves” is at best ambiguous.]

7. To protect the people against the violence of those who *bear arms*, and to punish them severely, if they shall dare to insult them, might still be, as it is at present, the business of the magistrate. [1787; “those who bear arms” refers to officers and gentlemen who carry their swords in peacetime.]

Keeping Arms

The Second Amendment protects a right “to keep and bear arms.” Corpus evidence shows that *bear arms* is indisputably a military term. The same corpora suggest that the phrase *keep and bear arms* is unique to the Second Amendment, and any subsequent appearances of this sequence of words echo that original use. What *keep and bear arms* means in the amendment is not clear, though Scalia suggested in *Heller* that, since *keep arms* is not an idiom, *keep and bear arms* destroys any idiomatic connotation of *bear arms* as a military term.

But corpus evidence suggests that *keep arms* almost always appears in a military context. *Keep arms* occurs twenty-eight times in the COEME corpus and ten times in COFEA. Subtracting duplicates and an irrelevant use where *keep* means “prevent”—as in “to keep arms from somebody”—twenty-five of the remaining occurrences refer to weapons for use in the military or the militia, and one is ambiguous. Although the phrase *keep arms* is rare compared with *bear arms*, its use in military contexts would seem to reinforce the military connotation of *bear arms* in the Second Amendment.

We Don’t Need No Corpus

The corpus evidence seems compelling, but we shouldn’t need big data to tell us that *bear arms* has always had a military connotation, and it retains that connotation today.

The origin of *bear arms* is military—it is a direct translation of the Latin *arma fero*—though of course the origin of a phrase does not prevent it from developing other senses. *Bear arms* typically refers in both Latin and English to the act of soldiering and the use of weapons in war. *Bear arms* has never fit comfortably with the language of personal self-defense, hunting, or target practice. Writing about the Second Amendment in 1995, the historian Garry Wills put it succinctly: “One does not bear arms against

a rabbit.”⁸ And in 1840, in an early right-to-bear-arms case, Tennessee Supreme Court Judge Nathan Green wrote:

A man in the pursuit of deer, elk and buffaloes, might carry his rifle every day for forty years, and yet it would never be said of him, that he had *borne arms*; much less could it be said that a private citizen *bears arms* because he has a dirk or pistol concealed under his clothes, or a spear in a cane.⁹

An exchange during oral arguments in *Heller* comes to the same conclusion about the idiom. Solicitor General Paul Clement claimed that *bear arms* means “to carry them outside the home.” Justice David Souter asked him, “But wait a minute. You’re not saying that if somebody goes hunting deer he is bearing arms, or are you?” Clement replied, “I would say that and so would Madison and so would Jefferson . . .” But Souter wasn’t convinced: “. . . In the eighteenth century, someone going out to hunt a deer would have thought of themselves as bearing arms? I mean, is that the way they talk?” Clement finally conceded that no, that was not the way they talked: “Well, I will grant you this, that ‘bear arms’ in its unmodified form is most naturally understood to have a military context.”¹⁰ Souter did not need to point out the obvious: *bear arms* appears in its unmodified form in the Second Amendment.

The BYU corpora were not available when *Heller* was being decided. But the more-limited surveys of contemporary writing that did exist in 2008 showed *bear arms* to be almost exclusively military. Searching *Early American Imprints*, Saul Cornell found over 100 examples of the phrase, with ninety-six percent referring to a military context.¹¹ In our amicus brief in *Heller*, Jeff Kaplan, Dick Bailey, and I found that even Cornell’s few exceptions “bent” the military idiom *bear arms* by narrowing it for a specific purpose, for example hunting (a very rare example of *bear arms*), while preserving the martial echo of the phrase’s ordinary meaning.¹²

8. Garry Wills, *To Keep and Bear Arms*, NY REV. OF BOOKS (Sept. 21, 1995), <https://www.nybooks.com/articles/1995/09/21/to-keep-and-bear-arms/>.

9. *Aymette v. State*, 21 Tenn. (2 Humphreys) 154, 161 (1840).

10. Transcript of Oral Argument at 36–7, *District of Columbia v. Heller*, 554 U.S. 570 (2008) (No. 07-290), https://www.supremecourt.gov/oral_arguments/argument_transcripts/2007/07-290.pdf.

11. Saul Cornell, The Original Meaning of Original Understanding: A Neo-blackstonian Critique, 67 MD. L. REV. 150, 163–64 (2007).

12. Brief for Professors of Linguistics and English in Support of Petitioners at 23–24, *District of Columbia v. Heller*, 554 U.S. 570 (2008) (No. 07-290).

Nineteenth- and twentieth-century dictionaries also confirm that *bear arms* retains its connection to military service or to the sorts of communal self defense for which a militia is organized. *Webster's New International Dictionary* (1919) defines *bear arms* as “to serve as a soldier,” a definition that is repeated in *Webster's Second New International Dictionary* (1934).¹³ And Funk and Wagnalls' *New Standard Dictionary* (1929) defines *bear arms* as, “to do military service” (*s.v.*, *bear*, *vb.*).¹⁴ But definitions broadened in the second half of the twentieth century after gun rights advocates flooded the language with prose in which *bear arms* became a synonym for carrying guns. *Webster's Third* (1961, *s.v.* *bear*) abandoned that traditional military connotation and changed the primary definition of the phrase to the more general, “to carry or possess arms,” citing the Second Amendment to illustrate the definition.¹⁵ Merriam-Webster's *Unabridged Dictionary* retains “To serve as a soldier” as a secondary definition.¹⁶ And the most recent *Oxford English Dictionary* includes this: “*fig. to bear arms*: to serve as a soldier, do military service, fight,” with supporting citations as recent as 2011 (*s.v.* *arms*).¹⁷

In rejecting the data supporting the military reference of *bear arms*, Scalia cited state constitutions: “Nine state constitutional provisions written in the 18th century or the first two decades of the 19th, which enshrined a right of citizens to ‘bear arms in defense of themselves and the state’ or ‘bear arms in defense of himself and the state.’”¹⁸ Scalia further insisted that *bear arms* meant “serve as a soldier” only when followed by *against*. In addition, he wrongly claimed to take his definition of *bear arms* from that of Justice Ruth Bader Ginsberg, in her dissent in *Muscarello v. United States*. But *Muscarello* turned on the meaning of *carrying firearms*, not *bearing arms*, and in her dissent Ginsburg wrote:

I do not think dictionaries . . . tell us, dispositively, what “carries” means Surely a most familiar meaning is, as the Constitution’s Second Amendment . . . indicate[s]: “wear, bear, or carry . . . upon the person or in the clothing or in a pocket, for the

13. *Bear arms*, Webster's New International Dictionary (1919); *Bear arms*, Webster's New International Dictionary (2d ed. 1934).

14. *Bear arms*, Funk & Wagnalls' Standard Dictionary of the English Language (1929).

15. *Bear, bear arms*, Webster's Third New International Dictionary (1961).

16. *Bear arms*, Merriam-Webster's Unabridged Dictionary (2016).

17. *To bear arms*, Oxford English Dictionary (3d ed. 2010).

18. *District of Columbia v. Heller*, 554 U.S. 570, 584–85 (2008).

purpose . . . of being armed and ready for offensive or defensive action in a case of conflict with another person.”¹⁹

Although Ginsburg mentioned the Second Amendment, she was actually quoting the definition of *carry arms* in *Black’s Law Dictionary*.²⁰ In contrast, Black’s definition of *bear arms* (not *bear arms against*, but just plain, unmodified *bear arms*) stresses the military associations of the phrase: “to carry arms as weapons and with reference to their military use.” Interestingly, responding to the redefinition of *bear arms* by the pro-gun lobby, the military aspect of *bear arms* was eliminated in the fifth edition of *Black’s* (1981), and Black’s tenth edition defines the *right to bear arms* as, “The constitutional right of persons to own firearms”—even though the Second Amendment doesn’t mention guns.²¹ But the dictionary’s entry for *Second Amendment* stresses the connection between the militia and the right to bear arms as if *Heller* had never happened: “The constitutional amendment ratified with the Bill of Rights in 1791, guaranteeing the right to keep and bear arms as necessary for securing freedom through a well-regulated militia.”²²

To round off his interpretation of *bear arms*, Scalia insisted that even if the unmodified phrase *bear arms* was primarily a military term, “. . . the fact that the phrase was commonly used in a particular context does not show that it is limited to that context . . .”²³ In other words, even if *bear arms* usually means ‘go for a soldier,’ it can also refer to the nonmilitary right to carry a weapon. So far as Scalia was concerned, this less-common meaning of *bear arms* is its natural legal meaning in the Second Amendment. Four years later, in *Taniguchi v. Kan Pacific Saipan*,²⁴ the court argued the opposite, that a word’s most-common meaning is its natural meaning in a statute. In that decision, the Court denied the winning side compensation for the translation of written documents from Japanese to English on the grounds that the word *interpreter*, used in the relevant statute, most often refers to a translator of speech, and much less commonly to someone who translates writing. According to the opinion by Justice Samuel Alito, the most common meaning must be the one intended by the law.²⁵

19. *Muscarello v. United States*, 542 U.S. 125, 142–43 (1998).

20. *Carry Arms*, BLACK’S LAW DICTIONARY (4th ed. 1951).

21. *Right to bear arms*, BLACK’S LAW DICTIONARY (10th ed. 2014).

22. *Second Amendment*, BLACK’S LAW DICTIONARY (10th ed. 2014).

23. *Heller*, 554 U.S. at 588.

24. *Taniguchi v. Kan Pacific Saipan*, 566 U.S. 560 (2012).

25. *Id.* at 568.

The Supreme Court being the Supreme Court, the justices can have it both ways: A word's typical meaning can be its plain, legal meaning, and a word's rarer meaning may control as well, if that's what's necessary to reach the decision the majority wants to reach. But any claim that these contradictory methods allow the Court to reach the original meaning of *bear arms* in the Second Amendment is a sham.

In the end, the Supreme Court based its interpretation of the Second Amendment on more than an incorrect definition of *bear arms*. The majority concluded that today Americans need guns to keep their homes safe and their families fed. According to Scalia, the framers "undoubtedly thought" the amendment protected the universal right of self defense, even though nowhere does the Constitution mention self defense. It doesn't mention hunting or target practice either, not even in its emanations and penumbras.

Indeed, weapons regulation has always been essential to the notion of bearing arms. Example (7), cited above, is drawn from a section on weapons regulation that appears in an anonymous English translation of Vattel's *Law of Nations*, an influential treatise that was read by Benjamin Franklin and George Washington and would have been familiar to the framers. Warning that the custom of allowing "persons of rank and gentlemen of the army to bear arms in times of peace" has led to unnecessary violence, Vattel argued that only soldiers and nobles be allowed to bear arms. Furthermore, "those [officers] who bear arms" and assault ordinary citizens should be tried in civil rather than military courts.²⁶ Here Vattel essentially anticipated and countered the National Rifle Association's ("NRA") "guns don't kill people" argument by insisting that ready access to weapons led "officers and gentlemen" to fight duels among themselves and to attack civilians instead of walking away from everyday confrontations.²⁷ Vattel recommended that tribunals should be in charge of distributing swords to (male) persons of rank when they came of age, reminding them in doing so that swords are to be used only to defend the nation, and instructing them in honorable behavior toward others.²⁸ Officers who violate these rules would lose their swords and could be subject to further punishment, including death, according to the nature of their infraction.

Corpus evidence shows that *keep arms* and *bear arms* were primarily military terms in the framers' day, and they were used regularly in the

26. EMER DE VATTEL, *THE LAW OF NATIONS, PRINCIPLES OF THE LAW OF NATURE, OR, APPLIED TO THE CONDUCT AND AFFAIRS OF NATIONS AND SOVEREIGNS, WITH THREE EARLY ESSAYS ON THE ORIGIN AND NATURE OF NATURAL LAW AND ON LUXURY* 144–45, 288 (Bela Kapossy & Richard Whitmore, Liberty Fund 2008) (1797) (emphasis added).

27. *Id.*

28. *Id.*

context of weapons regulation. Even after the *Heller* decision, which was based in part on a flawed interpretation of *bear arms*, we should bear in mind that corpus evidence suggests that any public carry right is limited, not broadly applicable to everyone who desires to defend themselves in public.

Heller decided that the Second Amendment protects individuals' right to keep arms in the home unconnected to militia service. Although *Heller* attempted to fix the legal definition of *bear arms*, no court can dictate the natural, idiomatic meaning of the phrase. We should remember, too, that even in a post-*Heller* world, we still can't bear arms against a rabbit, or a mugger, or a tin can on a tree stump in the yard. Neither could Madison and neither could Jefferson. That is just not how we talk.

Appendix

I present here a more-detailed discussion of the exceptions in order to show their ambiguity, their relation to the normal, military sense of *bear arms*, and their appearance in the context of weapons regulation.

1. That no person shall use or *bear any Arms* within London, and the Suburbs, or in any place between the said City and Pallace of Westminster, nor in no other part of the Pallace by Land or by Water, except such of the Kings people, as he shall appoint to keep the Kings peace.²⁹

English monarchs regularly disarmed groups they considered potential enemies—including at one time or another the Scots, the Welsh, and the Irish—in order to keep themselves safe. They also created weapons-free zones, as Edward III did in this fourteenth-century statute forbidding weapons anywhere near a palace, and in areas of dense population where the Black Plague had dramatically increased the potential for civil unrest. In order to defend the realm from internal strife, only military personnel, authorized knights, soldiers, peacekeepers, and guards, were permitted to *bear arms* in these sensitive venues.

29. Robert Cotton, *An Exact Abridgement Of The Records In The Tower Of London: From the Reign of King Edward the Second, Unto King Richard the Third*. 51 (1657), <https://quod.lib.umich.edu/e/eebo/A34712.0001.001/>.

2. “[The 1689 Bill of Rights] asserted the freedom of election to parliament, the freedom of speech in parliament, and the right of the subject to *bear arms*, and to petition his sovereign.”³⁰

The English Bill of Rights was passed by Parliament after James II was deposed in the Glorious Revolution of 1688. One of its provisions protects an individual’s right to *have* arms: “That the Subjects which are Protestants may have Armes for their Defence suitable to their Conditions and *as allowed by Law*.”³¹ The right is sometimes paraphrased, as it is in this English history by Oliver Goldsmith, as a right to *bear arms*, where *bear arms* does not appear to be limited to the military use of weapons. James, a Catholic, had disarmed Protestants in an attempt to quash their resistance, as a group, to his monarchy. The historical context of armed conflict between English factions that culminated in the Revolution and the Bill of Rights, which limited the power of the monarchy, may have influenced Goldsmith’s wording.

3. “A Peasant in this Country (unless in time of great Danger or Invasion) is not suffered to *bear Arms*.”³²

This 1689 description of Poland, though it focuses on individuals possessing weapons, permits one stratum of Polish society—its peasants—to bear arms only during crises when they must participate in the national defense.

4. That every Person who will go for Ireland on these Conditions, shall out of his first share of Money, buy for himself and every Relation and Servant that he carries with him (who are able to *bear Arms*,) a good Musket, or Case of Pistols for the defence of his Family.³³

30. IV OLIVER GOLDSMITH, HISTORY OF ENGLAND: FROM THE EARLIEST TIMES TO THE DEATH OF GEORGE II 51 (1771), <https://archive.org/details/historyofengland001gold/page/n5>

31. English Bill of Rights 1689: An Act Declaring the Rights and Liberties of the Subject and Settling the Succession of the Crown, THE AVALON PROJECT 5 (1689), http://avalon.law.yale.edu/17th_century/england.asp. (emphasis added).

32. Samuel Clarke, A New Description Of The World 77 (1689).

33. RICHARD BUCKLEY, THE PROPOSAL FOR SENDING BACK THE NOBILITY AND GENTRY OF IRELAND 6 (1690), <https://quod.lib.umich.edu/e/eebo/A30010.0001.001/1:3?rgn=div1;view=fulltext>.

A 1690 pamphlet encouraging English landowners to return to their estates in Ireland includes this provision for arming individuals. But a major theme of the pamphlet is the importance of military preparedness for English landowners in Ireland at both the local and national levels in the face of Irish insurrection, and so these individuals require weapons to participate in the equivalent of a local militia.

5. “. . . [A]n ape who knows how to *bear arms*, to attack his enemies with stones, and to defend himself with clubs.”³⁴

In this description of an orangutan in a 1780 English translation of Buffon’s *Natural History*, *bear arms* has no military implications. The passage closely translates the French original, “un singe qui sait *porter des armes*, qui se sert de pierres pour attaquer, & de bâtons pour se défendre.”³⁵ According to the Dictionary of the French Academy, *porter armes* typically refers to military contexts, though it may also mean more generally, ‘carry a weapon,’ as it does here.³⁶ It’s likely that the English translation is simply a faithful rendering of the French, rather than an attempt to broaden the English idiom *bear arms* beyond its normal military context. In any case, despite Buffon’s attempt to humanize the orangutan, often called by eighteenth-century naturalists “the man of the woods,” this is probably not a generalized use of *bear arms* on which to pin a constitutional argument about original meaning.

6. That the People have a Right to bear Arms for the Defence of themselves and the State, and as standing Armies in the Time of Peace are dangerous to Liberty, they ought not to be kept up: And that the Military should be kept under strict Subordination to, and governed by, the Civil Power.³⁷ [1776]

34. Georges Louis Le Clerc De Buffon, *Natural History, General And Particular* 40 (2d ed. 1780). <https://archive.org/details/naturalhistoryge02buffuoft/page/40>

35. XIV Georges Louis Le Clerc De Buffon, *Histoire Naturelle, Generale Et Particuliere* 3 (1766) (emphasis added), <https://gallica.bnf.fr/ark:/12148/bpt6k97490d/f1.image>

36. *Porter armes*, *Dictionnaire De L’academie Française* (1835).

37. *Revisions of the Pennsylvania Declaration of Rights, [between 29 July 1776 and 15 August 1776]*, FOUNDERS ONLINE (last visited Jan. 9, 2019), <https://founders.archives.gov/documents/Franklin/01-22-02-0314>.

This passage is often cited to support a non-military right to bear arms—and Scalia excerpts it in *Heller*— but “bear Arms for the Defence of themselves” is at best ambiguous in section 13 of the Pennsylvania Declaration of Rights, which presents an argument for occasional militias rather than a standing army. Some constitutions substitute the phrase “for the common defence” or words to that effect, suggesting that “the defence of themselves” does not refer to individual self-defense, a right long recognized in natural law and not typically reasserted in statutes or constitutions. Instead, it refers to the right, sometimes phrased in these constitutions as an obligation, to defend the community from all enemies foreign and domestic by serving in the militia. In *Heller*, Scalia also cites this phrase: “Every citizen has a right to bear arms, in defence of *himself* and the State.”³⁸ The wording appears in the early nineteenth-century constitutions of three states, Mississippi (1817), Connecticut (1818), and Alabama (1819). Here, *bear arms* and *himself* seem more clearly related to personal rather than community self-defense.³⁹ Even so, these constitutions were enacted after the Second Amendment, and so their wording may not reflect what the framers had in mind. And given the clear propensity for legislative language to be copied in chunks, it’s possible that drafters of these state constitutions simply took *bear arms* and other boilerplate from earlier constitutions without considering whether or not it fit idiomatically with the nonmilitary contexts they were addressing.

7. To protect the people against the violence of those who *bear arms*, and to punish them severely, if they shall dare to insult them, might still be, as it is at present, the business of the magistrate.⁴⁰

As I observed above, the phrase “those who bear arms” refers to “officers and gentlemen”—the only two classes of French men

38. See The Constitutions of the Several Independent States of America; The Declaration of Independence; The Articles Of Confederation Between The Said States; The Treaties Between His Most Christian Majesty and the United States of America: Published By Order of Congress 89 (Text Creation P’ship 2009) (1781), <https://quod-lib-umich-edu.uchastings.idm.oclc.org/cgi/t/text/text-idx?c=evans;cc=evans;rgn=main;view=text;idno=N13761.0001.001>.

39. *District of Columbia v. Heller*, 554 U.S. 570, 585 (2008).

40. VATTEL, *supra* note 19, at 145–46. A New York edition of this popular work appeared in 1796, with slightly different pagination.

(not women) permitted to carry their swords in peacetime. Unlike Buffon (example 5), Vattel does not use the French *porter armes*, but instead refers to *gens d'épée*, "people of the sword," and speaks of them simply as *armés*, "armed."⁴¹ But the anonymous translator opts for the English *bear arms*, no doubt influenced by the fact that Vattel is talking about the obligation of soldiers not to draw their swords when off the battlefield.

41. Emerich De Vattel, *Le Droit Des Gens, Ou Principes De La Loi Naturelle, Appliqués À La Conduite & Aux Affaires Des Nations & Des Souverains* 167–68 (James Brown Scott, Carnegie Inst. Of Wash. 1916) (1758).