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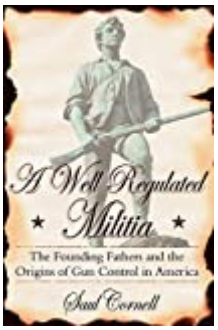

Saul Cornell. *A Well-Regulated Militia: The Founding Fathers and the Origins of Gun Control in America.* New York: Oxford University Press, 2006. xvi + 270 pp. $30.00 (cloth), ISBN 978-0-19-514786-5.

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Shooting Alone?: The Decline of the Civic Vision of the Second Amendment

The Second Amendment occupies a uniquely contentious place in American constitutional historiography, in the realms of both law review scholarship and in general historical works. As most readers will know, the amendment is quite succinct: "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." Despite–or perhaps because of–its brevity, the amendment has lent itself to multiple competing interpretations, each of which appears to offer important insights into present-day controversies concerning gun rights and gun control. Participants on all sides of the current public debates often advert to history in the form of original understandings, the intent of the founders, or broad cultural arguments, but oftentimes these accounts tend to slight both the messiness and the dynamism that characterize deeply historical investigations. As a result, approaches to the Second Amendment have tended to cluster around one of two poles: either an individualist reading that emphasizes the rights-focused language of the latter clauses of the amendment, or a collectivist reading that centers on the amendment's invocation of communal interests, be they militia- or state-based.[1]

In *A Well-Regulated Militia*, Saul Cornell challenges these accounts of the Second Amendment's meaning first by historicizing them, and then by introducing an alternative theory that he contends more accurately captures eighteenth-century conceptions of the right to bear arms. Cornell's previous book, *The Other Founders: Anti-Federalism and the Dissenting Tradition in America, 1788-1828* (1999), elegantly wielded the tools of intellectual, social, and economic history to recast the Anti-Federalists as not simply a heterogeneous pack of Constitution foes but rather a group of thinkers who deployed print culture to present an alternative, robust republican vision. Similarly, Cornell notes in the preface to *A Well-Regulated Militia* that his work on the Second Amendment seeks to "unite the top-down perspective of traditional constitutional history with the bottom-up perspective of social and cultural history" (p. xi). As a result, the book canvasses Supreme Court cases, legal treatises, congressional debates, newspaper articles, reports of duels, and records of popular uprisings such as Rhode Island's Dorr Rebellion of 1842 and the Baltimore Riot, which pitted opponents of the War of 1812 against its Republican supporters.

Cornell argues that neither the individual- nor the collective-rights model offers a complete account of the meaning of the Second Amendment. Both these conceptions, he maintains, arose in the nineteenth century, in the context of later debates concerning the role of gun use and ownership in the United States. In the place of what he regards as these anachronistic interpretations, Cornell offers a "civic" model of the Second Amendment. According to this civic conception, the "original understanding â¦ guaranteed that citizens would be able to keep and bear those arms needed to meet their legal obligation to participate in a well-regulated militia" (p. 2). The civic model thus linked arms-bearing with citizenship by creating a particular constitutional right distinct from common-law rights of self-defense and dependent on the individual's right and duty to participate in the militia. Viewed in light of this civic theory, the aim of the Second Amendment was "protecting the militia against the danger of being disarmed by the government" rather than "protecting individual citizens' right of personal self-defense" (p. 4). Because Cornell's argument depends in part on the distinction between the civic and collective-rights theories, a more precise delineation of the differences between these two views, both of which center on the "well-regulated militia" clause of the amendment, might have clarified the analysis.

Having identified the eighteenth-century conception of the amendment, Cornell then presents a declension narrative that traces the gradual eclipse of the original civic conception of the right to bear arms by competing individualist and collectivist ideas. In addition to this trio of views on the right to bear arms, Cornell identifies a fourth, states'-rights-based theory of the Second Amendment. He locates the origin of the states'-rights model, which emphasized the power of state militias "to resist federal authority by force of arms," in the Anti-Federalists' desire for a check on federal power (p. 5). This states'-rights theory, Cornell contends, gained new strength during the Reconstruction era, when Democrats seized on it as a weapon against the dual Republican assertions that the right to bear arms attached not to states but to citizens (most significantly, freedpeople), and that the Fourteenth Amendment incorporated this right against the states. In combination with the individual-rights theory, which Cornell views as emerging in the Jacksonian era, and the collective-rights theory, which he dates to the early twentieth century, this states'-rights vision effectively quashed the original, eighteenth-century civic conception of the right. The emergence of gun control legislation–beginning with Kentucky's 1813 law regulating concealed weapons–further hastened the demise of the civic vision.

Cornell's analysis is compelling insofar as it gives the lie to easy modern arguments that attempt to draw a line backward in time–and thus ahistorically–from current debates regarding the right to bear arms to the worldview of the eighteenth century. Indeed, Cornell notes that "[t]he most important consequence of recovering the original understanding is that it demonstrates that both of the modern interpretations of the Second Amendment do great violence to the text, effectively erasing half of its meaning" (p. 212). Thus, he argues, "[b]oth sides have the history wrong" (p. 2).

Many legal historians will greet with delight Cornell's conclusion that the argumentative edifices battling in a modern-day constitutional debate are founded on the swamp of bad history. After all, the task of the historian–as Cornell suggests in the above-quoted passages–is precisely to excavate alternative stories. These hidden contingencies complicate easy equations of past with present controversies, of ostensibly familiar phrases used by observers in 1787 or 1813 (such as "bear arms") with their modern-day cognates.

Given this admirable desire to add texture to today's understanding of eighteenth-century thought on the subject of gun rights, one might wonder why Cornell has chosen to position his analysis in an originalist mode. The book suggests that uncovering the original understanding of the Second Amendment is–and, more important, ought to be–the goal of studying the history of the right to bear arms. At one point, for example, Cornell states, "The collective and individual rights theories that have long dominated public debate over this contentious topic were not bequeathed to us by the Founding generation, but were the products of a struggle at the end of the nineteenth century" (p. 211). These later models, Cornell suggests, ought properly to be jettisoned in favor of the "original civic interpretation" of the Second Amendment (p. 7).

Is Cornell adopting an originalist perspective in order to defeat what he appears to regard as the anachronistic approaches of both the gun rights and gun control camps of today? In other words, when Cornell searches for the original meaning of the Second Amendment, is the investigation part of his own analytical framework, or does it represent only the desire to understand his contemporary subjects' framework? The latter scenario is possible, although Cornell's repeated references to the civic model as the "original" understanding appear to indicate

a stance more normative than critical. And this stance, in turn, raises many questions. Even if modern commentators make claims regarding the original understanding of the Second Amendment, why is this the best lens through which a historian should view the twists and turns of the centuries-long debate about the place of guns in the American constitutional system? A long footnote to the introduction demonstrates Cornell's obvious awareness (and, in some cases, critique) of originalist historiography in both the legal-academic and in the historical arenas, but the book might have benefited from a more self-conscious meditation in the text on the choice to adopt this perspective.

Overall, *A Well-Regulated Militia* offers a much-needed examination of the varied notions of the right to bear arms that have prevailed at different moments in the history of the United States. Perhaps even more important, Cornell's study challenges the static conception that often dominates public discussion of this particular constitutional provision. By tracing the competing influences of the civic, states'-rights, individual-rights, and collective-rights theories of the role of arms in American society, Cornell reveals the often overlooked republican pairing of rights and duties that defined late-eighteenth-century gun ownership. In the end, then, the significance of arms-bearing in American history may most usefully be viewed not under the latter three rubrics of rights, but as one activity in a broader sphere of civic participation.

Note

[1]. For a recent overview of scholarship on the Second Amendment, see Stuart Banner, "The Second Amendment, So Far," *Harvard Law Review* 117 (2004): 898-917.

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