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Robert E. Shalhope

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TO KEEP AND BEAR ARMS IN THE EARLY REPUBLIC

*Robert E. Shalhope**

When "The Ideological Origins of the Second Amendment" appeared seventeen years ago, my primary intent was to shed new light on the intellectual life of the early republic—to employ an analysis of the amendment as a window into the political culture of eighteenth-century America.¹ Previous research had convinced me of the powerful shaping influence of republicanism during this time;² consequently, I initiated this new investigation by subjecting the republican literature so central to Revolutionary thought to a fresh reading. It soon became apparent to me that four principles relevant to the formation of the Second Amendment coursed throughout this literature: the right of individual citizens to possess arms; the fear of professional standing armies; the reliance on militias composed of armed citizens; and the subordination of the military to civilian control. When the Second Amendment assumed its final form the emphasis on the armed citizen and organized militias assumed precedence. In my mind James Madison and his colleagues joined these two distinct yet vitally interrelated rights in an effort to balance as best they could individual rights with communal responsibilities.³

At the time "Ideological Origins" appeared, the Second Amendment had remained in relative obscurity since its ratification two hundred years earlier. This is most assuredly not the case today. In the last decade alone analysis of the Second Amendment has become a virtual cottage industry among law professors; law reviews from the most prestigious to the most

* George Lynn Cross Professor of History, University of Oklahoma.

1. Robert E. Shalhope, *The Ideological Origins of the Second Amendment*, 69 *J. of Am. Hist.* 599 (1982).

2. Robert E. Shalhope, *Toward a Republican Synthesis: The Emergence of an Understanding of Republicanism in American Historiography*, 29 *Wm. & Mary Q.* 49-80 (1972), and Robert E. Shalhope, *Republicanism and Early American Historiography*, 39 *Wm. & Mary Q.* 334-56 (1982).

3. *The Second Amendment and the Right to Bear Arms: An Exchange*, 71 *J. of Am. Hist.* 587-92 (1984).

obscure have published essay after essay dealing with various aspects of the Amendment.⁴ Many of these authors borrowed liberally from “Ideological Origins” or cited it to support their arguments. Most displayed little if any interest in the political culture that spawned the Second Amendment; those that did displayed an appalling ignorance of this intellectual climate. The result was, of course, an incredibly anachronistic presentation of the Second Amendment. Quotations taken entirely out of context were strung together as if language conveyed the same meaning at all times and in all circumstances. Consequently, as these scholars subjected the words and phrases of the Amendment itself (as well as a wide range of late eighteenth- and early nineteenth-century literature) to the most tortured linguistic analysis, a flat, static vocabulary emerged that bore no relation to the dynamic culture of the early republic. The end result has been the “Standard Model”⁵ of interpreting the Second Amendment and an equally strained and intemperate opposition to this mode of analysis.⁶

More than anything else, then, history has been the greatest casualty of this surge of publication. In their urgency to propound a particular view of the Amendment that fits their current ideological demands, jurists have either ignored the political culture of the early republic or framed it in such a way as to suit their needs. The dynamic relationship between text and context has been lost. Fortunately, several historians—Saul Cornell, Michael Bellesiles, and Gary Wills—have recently turned their attention to the historical circumstances within which the Second Amendment appeared. Their work promises to provide much greater depth and sophistication to our understanding of the early republic—an understanding that not only furthers our knowledge of that era, but sheds essential new light on the meaning of the Second Amendment within that culture.

In the essay written for this forum Professor Cornell, drawing upon an extensive knowledge of Antifederalism,⁷ provides

4. Randy E. Barnett and Don B. Kates incorporate the vast bulk of this literature in their essay *Under Fire: The New Consensus on the Second Amendment*, 45 *Emory L.J.* 1139-259 (1996).

5. Glenn Harlan Reynolds employs this term to describe the scholarship espousing both an individual and a collective right of the people to bear arms to protect themselves and to act as a check upon governmental tyranny in *A Critical Guide to the Second Amendment*, 62 *Tenn. L. Rev.* 461-512 (1995).

6. See Andrew D. Herz, *Gun Crazy: Constitutional False Consciousness and Dereliction of Dialogic Responsibility*, 75 *B.U. L. Rev.* 57-153 (1995).

7. See the following essays by Professor Cornell: *Aristocracy Assailed: The Ideology of Backcountry Anti-Federalism*, 76 *J. of Am. Hist.* 1148-72 (1990); *Moving Beyond*

fresh insights into the intellectual and social context of the Second Amendment. He not only reveals the failure of Standard Modelers to place the language of the Founders and others within the context of the time, but exposes the weaknesses inherent in their insistence upon a consensus among eighteenth-century Americans regarding the true meaning of the Amendment.⁸ Through a focus on events in Pennsylvania during the founding era, Cornell provides us with a fascinating picture of the multiplicity of perspectives held by Pennsylvanians on the issues of arms, the state, and insurrection against established authority.

In his discussion of the Test Acts, first enacted in 1777, Cornell reveals the commitment of Pennsylvania's Constitutionalists to a republican ethos based on a traditional communal perception of rights rather than the modern liberal one to which we adhere today.⁹ These Acts, based on a republican notion of the common good, emanated from a belief that it was perfectly in keeping with that good for the state to define who could and who could not enjoy the full benefits of citizenship. This extended to the right of citizens to possess arms for their own defense as well as that of the state. Thus, the state had not only the power, but the responsibility, to disarm those disloyal to its authority. Consequently the state government did disarm large numbers of Pennsylvanians.

Cornell's discussion of "The Dissent of the Majority" writ-

the Canon of Traditional Constitutional History: Anti-Federalists, the Bill of Rights, and the Promise of Post-Modern Historiography, 12 L. & Hist. Rev. 1-28 (1994); *Mere Parchment Barriers? Antifederalists, the Bill of Rights, and the Question of Rights Consciousness*, in Ronald Hoffman and Peter Albert, eds., *The Bill of Rights: Government Proscribed* 175-208 (U. Press of Virginia, 1997).

8. Here Cornell is responding to statements such as that made by Randy Barnett and Don Kates to the effect that there is "virtual unanimity [among legal scholars and historians] that there is no tenable textual or historical argument against a broad individual right view of the Second Amendment." Barnett and Kates, 45 Emory L.J. at 1141 (cited in note 4). For a more sophisticated treatment of the creation of the Constitution and the Bill of Rights, see Jack N. Rakove, *Original Meanings: Politics and Ideas in the Making of the Constitution* (Alfred A. Knopf, 1996). As the title indicates, Rakove deals with the multiple perceptions or *meanings* that various Founders brought to their discussion of both the Constitution and the Bill of Rights.

9. While Cornell believes that Daniel T. Rodgers delivered a "post-mortem" on the idea of a republican synthesis in his essay *Republicanism: The Career of a Concept*, 76 J. of Am. Hist. 11-38 (1992), it is clear that he, like so many other historians, recognizes republicanism as one of the powerful ideologies so influential in shaping the thoughts and actions of individuals and groups during the founding era. For insights into the manner in which those various idioms were melded during this era, see James T. Kloppenberg, *The Virtues of Liberalism: Christianity, Republicanism, and Ethics in Early American Discourse*, 74 J. of Am. Hist. 9-33 (1987), and Isaac Kramnick, *The "Great National Discussion": The Discourse of Politics in 1787*, 45 Wm. & Mary Q. 3-33 (1988).

ten in opposition to the federal Constitution by Pennsylvania Antifederalists reveals this same republican ethos. While the "Dissent" clearly does state that "the people have a right to bear arms for the defense of themselves and their own state, or the United States, or for the purpose of killing game," Cornell points out the significance of the following clause, which read "and no law should be passed for disarming the people or any of them, unless for crimes committed, or real danger of public injury from individuals." In his mind the phrase disallowing the legislature of the United States from restraining the citizens of Pennsylvania from hunting and fishing on their own lands or common lands within the state is equally important. All these provisions drew their meaning from the republican ethos within which they were so deeply embedded. Like the authors of the Test Acts, the Pennsylvania Antifederalists who supported the minority dissent believed that their state government had a responsibility to care for the common good. While skeptical of the augmented power of the federal government, these people were perfectly willing to allow their own state government to disarm those posing "a real danger of public injury" or to place restrictions on the citizen's rights of hunting or fishing. In their minds the "people" was not all inclusive; it represented only the loyal citizens of the state, those committed to the common good of their society. Clearly, this was another time, another place—a world we have lost. The Antifederalists of Pennsylvania understood liberty within the context of eighteenth-century republicanism, not in terms of modern liberal rights-based constitutional theories.

Cornell's discussion of the Carlisle Riot and the Whiskey Rebellion speaks to quite a different issue: the insurrectionary right of citizens to take up arms against established authority—to act as a check upon tyrannical government. When radical Antifederalists—"plebeian democrats" in Cornell's terminology—armed themselves against state authorities they clearly believed the militia to be literally the entire body of the people in arms and that these people might spontaneously organize to resist what they perceived to be governmental tyranny. But those who had been involved in writing both the Constitution and the Bill of Rights—Antifederalists as well as Federalists—united in opposition to such uprisings. These people distinguished between the orderly use of extra-legal action during the Revolution—when the people had no legal recourse to challenge the unjust acts of Parliament—and the insurrections in western Pennsylvania. All agreed that individuals could not spontaneously constitute themselves as militia units outside the

selves as militia units outside the control of the state or assert an individual right to bear arms to check government tyranny. While Pennsylvania Antifederalists were intent upon protecting their state militia against incursions of federal authority, they meant at the same time for their own militias to support the authority of the state. Spontaneous actions to organize a militia outside that authority represented threats to the common good and must be put down by their own regularly established state militia, or the federal government if that help was necessary. The good order of the state remained uppermost in their minds.

For his part, Michael Bellesiles addresses many of these same issues. At work on a book dealing with the gun culture in America, Bellesiles offers some intriguing preliminary findings. First, in an essay dealing with gun laws in early America, he contends that both the content and intent of the laws he discusses matched contemporary social values and that these same laws intended gun ownership to be precisely constrained by law.¹⁰ Through a focus on Virginia and Connecticut Bellesiles provides ample substantiation for his thesis. In Virginia the colonial legislature encouraged the ownership of guns by white male property owners, while at the same time prohibiting slaves and indentured servants from owning such weapons. Since the militia in Virginia served primarily as a means of protecting the colony from internal subversion, only trustworthy inhabitants could be allowed to carry weapons. In Connecticut the assembly attempted to arm all able-bodied males, except Indians. The legislature specifically prohibited the arming of Indians and eventually passed legislation to seize firearms held by Indians. During the Revolution the state government did all in its power to impress whatever firearms it could to be used by its militia and had no qualms at all about confiscating firearms held by loyalists. In both Virginia and Connecticut, state legislatures, much like the Pennsylvania example discussed by Cornell, based gun regulation upon the concept of public safety. Only loyal citizens should have the right to keep and bear arms.

Bellesiles reasons that a legitimate interpretation of the intent of the Founders in framing the Second Amendment may be deduced from the pattern of legislation that emerged initially within the various colonial assemblies and then among the separate state legislatures. The pattern that appears represented a

10. Michael Bellesiles, *Gun Laws in Early America: The Regulation of Firearms Ownership, 1607-1794*, 16 *L. & Hist. Rev.* 567-89 (1998).

distinct concern for the common good. The idea of an unrestrained citizenry was anathema to the Founders; it was only through “well regulated” militias that public safety could be ensured. States had every right to deny gun ownership to those perceived as threats to public safety. Over time this had included large groups of people: indentured servants, slaves, Indians, and loyalists. In his mind, then, the Founders intended to create “a theoretical structure of freedoms that they never intended for universal application.”¹¹ By this he means that they meant to restrict the suffrage to white male property owners and had no intention that slaves should enjoy freedom of speech and assembly. Legislation passed by the states indicated that gun ownership was also among these limited rights. At the time of the writing of the Second Amendment every state in the union sought to limit the extent of that privilege to loyal citizens and experienced no hesitation whatsoever in disarming large numbers of inhabitants within its jurisdiction.

In another essay Bellesiles explodes the myth of near universal gun ownership and the skilled usage of firearms in the late eighteenth and early nineteenth centuries, a myth so important to Standard Modelers in their efforts to protect a “traditional” right.¹² In fact, during an investigation of late eighteenth-century probate records and militia archives extending into the early nineteenth century, Bellesiles discovered that only fourteen percent of probate inventories exhibited any type of gun within frontier households of northern New England and western Pennsylvania. Beyond that, militia records indicated that weapons of any sort were far from universally owned; in fact, state governments had a difficult time mustering armed militiamen even as late as the Civil War. It was that conflict that set America on the road to becoming a gun culture. With the emergence of mass produced weapons and immense numbers of men under arms, familiarity with weapons and their easy accessibility helped—with the determined assistance of the newly formed National Rifle Association—to transform America into a gun culture.

While Bellesiles provides excellent new insights into the social and intellectual context within which the Second Amendment emerged, he also falls prey to what may well be an anachronistic interpretation of the Second Amendment. In both essays

11. *Id.* at 589.

12. Michael Bellesiles, *The Origins of Gun Culture in the United States, 1760-1865*, 83 *J. of Am. Hist.* 425-55 (1996).

he stoutly maintains that the Second Amendment "is the only amendment with a preamble establishing its purpose, clearly stated to be a 'well regulated Militia.'"¹³ The very idea that this was the *only* amendment with such a preamble should by itself give pause to any scholar familiar with the origins of the Constitution and the Bill of Rights. Actually, the origin of the thesis that the initial phrase in the Amendment serves as a context-establishing clause for what follows is relatively recent and stems from quite contemporary ideological needs.¹⁴

Bellesiles cites an essay by Gary Wills as his primary source for the belief that the Second Amendment included a purposeful preamble establishing a well regulated militia as *the* definitive purpose of the Amendment.¹⁵ In many ways this is a particularly puzzling essay. While clearly intent upon discrediting Standard Modelers, Wills claims that he does not deny the right of private individuals to own and use firearms. This right he believes can be defended on the grounds of natural law, common law, or statute. He also concedes that most Americans "assumed such a right in the 1780s—so naturally, in fact, that the question was not 'up' and calling for specific guarantees" when the Second Amendment was framed.¹⁶ For cultural historians, such a perception is a commonplace. As Louis Wirth so cogently observed, "the most elemental and important facts about a society are those that are seldom debated and generally regarded as settled."¹⁷ John Stuart Mill also understood that "the obvious and universal facts, which every one sees and no one is astonished at, it seldom occurs to any one to place upon record."¹⁸ Such an understanding is crucial to those who would attempt to contextualize the Second Amendment. To distinguish between natural rights and constitu-

13. *Id.* at 454. The same assertion appears in Bellesiles, 16 *L. & Hist. Rev.* at 588 (cited in note 10).

14. The most authoritative statement of the idea that the Second Amendment contains a "purposive preamble" appears in Laurence Tribe, *American Constitutional Law* 299 n.6 (Foundation Press, 2d ed. 1988). A much shorter version of this precise footnote, which appeared ten years earlier in the first edition of Tribe's book, did not include such a statement. Tribe incorporated this thought in the much longer note that appears in his second edition in direct response to an article by Don Kates, *Handgun Prohibition and the Original Meaning of the Second Amendment*, 82 *Mich. L. Rev.* 204-73 (1983). Apparently Tribe felt the necessity of thwarting the ideas of this leading Standard Modeler and so added this statement, which emanated from his own ideological predilections rather than from any additional research into the subject.

15. Gary Wills, *To Keep and Bear Arms*, XLII *N.Y. Rev. of Books* 62-73 (Sept. 21, 1995).

16. *Id.* at 72.

17. Louis Wirth, *Preface* in Karl Mannheim, *Ideology and Utopia: An Introduction to the Sociology of Knowledge* xxiv (Harcourt, Brace and Co., 1946).

18. John Stuart Mill, *The Spirit of the Age* 5 (U. of Chicago Press, 1942).

tional rights is certainly valid when analyzing the constitutionality of an issue, but obfuscates any attempt to get at the intellectual context within which any text existed.¹⁹ And yet this is exactly what Gary Wills attempts to do. He claims that James Madison did not address the issue of private rights when writing the Second Amendment; instead, Wills claims that Madison meant only to finesse Antifederalist opposition to the Constitution by responding to their concern to protect and perpetuate their own state militias. Consequently, Madison's "sentence structure set as totally military a context for this amendment as for the Third. Every term in the Second Amendment, taken singly, has as its first and most obvious meaning a military meaning. Taken together, each strengthens the significance of all the others as part of a military rhetoric."²⁰

It is this thesis that dominates the essay. And the essay is vintage Wills. In his characteristic slash and burn style, he mocks, ridicules, and patronizes the Standard Modelers. Their citations "turn out to be truncated, removed from context, twisted, or applied to a debate different from that over the Second Amendment"²¹ and their construction of the Amendment "entirely fanciful."²² Wills reaches such conclusions by means of an extremely narrow treatment of the Amendment. He is concerned only with arguments bearing on the writing of the Amendment itself. His is a constitutional analysis of the Amendment entirely shorn of the larger intellectual environment—natural rights, common law, statute—that enveloped it.

Even within such a constricted framework, Wills must be at his disingenuous best to carry off such a line of reasoning. He begins by asserting that when James Madison presented his first draft of the Amendment to Congress ("The right of the people to keep and bear arms shall not be infringed; a well armed and well regulated militia being the best security of a free country; but no person religiously scrupulous of bearing arms shall be compelled to render military service in person.") the second

19. Cornell draws this same distinction between natural and constitutional rights. Saul Cornell, *Commonplace or Anachronism: The Standard Model, The Second Amendment, and the Problem of History in Contemporary Constitutional Theory*, 16 *Const. Comm.* 221 (1999). This is surprising in an essay that attempts to contextualize the Second Amendment. If we are to reconstruct the intellectual and social environment within which the Amendment appeared, we must do it in *total*, considering natural as well as constitutional rights.

20. Wills, *To Keep and Bear Arms* at 72 (cited in note 15).

21. *Id.* at 62.

22. *Id.* at 67.

clause—the well regulated militia—provided the reason for the right's existence. Then, when the final version of the Amendment appeared (“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”) he insists that it is now the first clause that forms “the preamble, the ‘whereas,’ the context-establishing clause”²³ that established the framework for what followed! Even for Gary Wills this is no meant feat. First becomes last and last becomes first only if the reader accepts Wills at his word that the whole sentence—no matter the ordering of its separate phrases—“has as its first and most obvious meaning a military meaning.” It seems never to enter his mind that Madison's original sentence structure mirrored perfectly that of the First Amendment, which listed distinct yet vitally interrelated rights in precisely the same manner that Madison did in his initial wording of the Second Amendment.

Wills then restricts his discussion strictly to narrow constitutional grounds—the precise language of the Amendment shed of all the “debris” dealing with natural rights or common law that Standard Modelers persist in mentioning. This enables him to exclude, for example, responses made by various towns to the Massachusetts Declaration of Rights, which claimed that the people of that state had a “right of enjoying and defending their lives and liberties” (Article I) and “to keep and to bear arms for the common defense” (Article XVII). This wording caused a number of towns to demand more precise language in order to spell out the individual's right to possess arms in his own defense. The citizens of Northampton, for instance, resolved:

We also judge that the people's right to keep and bear arms, declared in the seventeenth article of the same declaration is not expressed with that ample and manly openness and latitude which the importance of the right merits; and therefore propose that it should run in this or some such like manner, to wit, The people have a right to keep and bear arms as well for their own as the common defence. Which mode of expression we are of opinion would harmonize much better with the first article than the form of expression used in the said seventeenth article.²⁴

For their part, inhabitants of Williamsburgh stated:

23. *Id.* at 63.

24. Oscar and Mary Handlin, eds., *The Popular Sources of Political Authority: Documents on the Massachusetts Constitution of 1780* at 574 (Harvard U. Press, 1966).

Upon reading the 17th Article in the Bill of Rights. Voted that these words their Own be inserted which makes it read thus: that the people have a right to keep and to bear Arms for their Own and the Common defence.

Voted Nemine Contradic.-----

Our reasons gentlemen for making this Addition Are these. 1st that we esteem it an essential priviledge to keep Arms in Our houses for Our Own Defence and while we Continue honest and Lawful Subjects of Government we Ought Never to be deprived of them."²⁵

Even if one allows Wills to ignore such clear statements of the private nature of the right of gun ownership, what are we to do with Madison's own observations made in direct relation to the writing of the Second Amendment? When Madison first offered the amendments comprising the Bill of Rights, he suggested that they be inserted directly into the body of the Constitution in article I, section 9, between clauses 3 and 4.²⁶ He did not separate the right to bear arms from other rights designed to protect the individual; nor did he suggest placing it in section 8, clauses 15 and 16, which dealt specifically with arming and organizing the militia.²⁷ When preparing notes for an address supporting the amendments, Madison reminded himself: "They relate 1st to private rights."²⁸ When he consulted Edmund Pendleton on the matter, Madison emphasized that "amendments may be employed to quiet the fears of many by supplying those further guards for private rights."²⁹

Wills devotes the great bulk of his essay to the "historic context" of the Second Amendment. By "historic context" he does not mean the social, intellectual, or ideological environment within which the Amendment was written; instead he simply means the eighteenth-century definitions for the terms *bear arms*, *to keep*, *well-regulated*, and *the people* found in the *Oxford English Dictionary*. His analysis of *to bear*, *well-regulated*, and *the people* is astute and helps rescue these terms from the distorted meanings ascribed to them by so many Standard Modelers. In addition, his treatment of these terms lends support to the

25. Id. at 624.

26. Charles F. Hobson, et al., eds., 12 *The Papers of James Madison* 201 (U. Press of Virginia, 1979).

27. Id. at 193, 201.

28. Id. at 193.

29. Hobson, 2 *The Papers of James Madison* at 307 (cited in note 26).

analyses of the concepts of a well regulated militia and the people offered by Bellesiles and Cornell. Loyal citizens were to bear arms in their various established (well-regulated) state militias in order to protect those state governments from internal subversion and external attack. Above all, the people existed in the corporate sense envisioned by late-eighteenth-century republicanism.

In his examination of the term *to keep*, however, Wills resorts to the same “linguistic tricks” he repeatedly ascribes to Standard Modelers. It is his single-minded belief that “every term in the Second Amendment, taken singly, has as its first and most obvious meaning a military meaning” and that “taken together, each strengthens the significance of all the others as part of a military rhetoric” that creates problems for him. In his mind “to keep and bear” refer entirely to the militia. To view these verbs disjunctively, to consider them as separate activities—keeping arms in the home as a private right and bearing them in the militia as a communal responsibility—is ridiculous in his mind. Wills declares that to view “keep” to mean “possess personally at home” is “a lot to load into one word.”³⁰ He then proceeds to pile a load upon the term that exceeds even his powers of linguistic prestidigitation. Wills carefully chooses citations from English libertarians and the Articles of Confederation (“debris” when employed by Standard Modelers) that mention the ability or right of established governments to “keep up” a standing army, a militia, or an armory and then assumes this to be the meaning intended by the Founders. While the *O.E.D.* offers an incredibly complex etymology for the word “keep,” the twenty-ninth definition of the word is “actively to hold in possession; to retain in one’s power or control; to continue to have, hold, or possess.” “Keep up” in the manner that Wills employs it does not appear until the fifty-seventh usage. It must be remembered that Madison and his colleagues employed the term *to keep and bear*, not *to keep up and bear*, or *to bear and keep up*. The later two phrases clearly would have born a strictly military meaning. The former does not, and the Founders purposely chose this usage. It would appear, then, that Wills, in his effort to propound *his* ideological position, attempts the same “alchemical change of substance” that he discovers in so much work of the Standard Modelers. If one Standard Modeler was guilty of bringing “two words . . . near to, but not

30. Wills, *To Keep and Bear Arms* at 66 (cited in note 15).

into, the amendment,"³¹ Wills is guilty of claiming that Madison and his colleagues left out a word they really meant to include.

Parsing the words and phrases of the Second Amendment contributes precious little to our understanding of the early republic. While there is little doubt that the *O.E.D.* can be useful in helping historians determine the contemporary meanings of particular words, it is not definitive when standing alone. Scholars must also familiarize themselves as best they can with the larger social and intellectual context of an era. My own research over the last decade has led me to the conclusion that two cultural impulses—republicanism (emphasis on community) and liberalism (emphasis upon individualism) coursed through the lives of late-eighteenth century Americans. At times the two seemed to run parallel to one another, at other times they melded into a nearly indistinguishable whole. In many ways, republicanism—a familiar ideology permeating all walks of life—shaped Americans' thoughts; it provided them with meaning and identity in their lives. Liberalism—still an unarticulated behavioral pattern more than a sharply delineated mode of thought—unconsciously shaped their day-to-day activity. Most Americans clung to a harmonious, corporate view of themselves and their society even while behaving in a materialistic, utilitarian manner in their daily lives. Thus while rapidly transforming their society in an open, competitive, modern direction, Americans continued to idealize communal harmony and a virtuous social order.³² Their corporate and individualistic natures existed in an equilibrium unique to the late eighteenth- and early nineteenth-centuries. It is this balance between the organic whole and the atomized part that disappeared as America became a modern, liberal society.

Given this perspective, I continue to maintain that the Second Amendment represented an attempt to meld two distinct but dynamically interrelated rights—the individual right to keep firearms in the home for personal use and the communal right to maintain state militias composed of these armed individuals to protect established authority. The research of Cornell, Bellesiles, and to some extent Wills, however, convinces me that I must qualify my original thesis. I was much too modern in my understanding of the armed individual and consequently created far

31. *Id.* at 64.

32. Robert E. Shalhope, *The Roots of Democracy: American Thought and Culture, 1760-1800* (Twayne, 1990); *Bennington and the Green Mountain Boys: The Emergence of Liberal Democracy in Vermont, 1760-1850* (Johns Hopkins U. Press, 1996).

too inclusive an individual right to bear arms. I failed to acknowledge the continued influence of the corporate or communal side of republicanism and thus applied a modern, liberal rights-based perspective to this aspect of the Amendment that wrenched it from its contemporary context. The “people” of the separate states did indeed have a right to keep firearms in their homes for their own personal use, but the “people” in the early republic was a much less expansive term than it is today; it included only the those deemed “honest and Lawful Subjects” by their separate state governments. And these governments had not only the power but the responsibility to restrict the rights and privileges of citizenship—including the right to possess private arms—in order to promote the public good—the preeminent goal of republican government. This is, of course, not the same as claiming that citizens of these states held their arms “in trust for the state.”³³ They most decidedly did not.

Whether the findings of Cornell, Bellesiles, or Wills will have any effect upon Standard Modelers is doubtful. The goal of the Standard Modelers is not to understand early American culture; it is to affect the manner in which the Supreme Court interprets the Second Amendment in some “landmark” case they hope will arise in the near future. In any event, the recent work of Cornell and Bellesiles has raised the level of discourse about the Second Amendment by restoring it to its historical context. Whether armed citizens or militias have any relevance in our society as we enter the twenty-first century is a matter for our courts and legislatures to determine. If, however, Standard Modelers hope to draw upon the original context of the Second Amendment, they need to be aware of the corporate nature of American society in the late eighteenth century. Regulation of the rights and privileges of their citizens was an expected responsibility of the separate state governments. And this certainly included the right to regulate the keeping and bearing of private firearms.

33. Bellesiles, *Gun Laws* at 581, 585 (cited in note 10). In making such a claim, Bellesiles exaggerates the corporate nature of late eighteenth-century republicanism. For insight into the manner in which corporate and individualistic thought melded during this era, see Kloppenborg, *The Virtues of Liberalism* (cited in note 9).