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## **2nd: The founders meant what they wrote about arms**

[JS Online](#) ^ | 7/1/06 | TOM MONCURE

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Sanford Levinson, a distinguished constitutional law professor, wrote in the Yale Law Journal that the Second Amendment suffers from a lack of serious scholarship.

Few law students envision the Second Amendment as an area of lucrative practice upon graduation. His article, "The Embarrassing Second Amendment," sent a shock wave through academia by suggesting that the amendment might actually mean what it says.

Issues involving guns have taken center stage in the cultural divide that separates red and blue America.

Gun control advocates point to the militia clause of the Second Amendment, arguing that it warrants a collective, rather than an individual, right to keep and bear arms.

However, history - buttressed by the founders' clear understanding - dictates that the amendment guarantees this right to individuals.

The U.S. Supreme Court has not dealt directly with the Second Amendment since 1939.

Then, *United States vs. Miller* held that a sawed-off shotgun was subject to registration because there was no evidence before the court that it had a military use. This opinion suggests that any demonstrably military weapon should enjoy the protection of the Second Amendment.

The Supreme Court has conjured rights from the Constitution that do not exist in the text - while disparaging those rights contained in the document itself - leaving both sides of the gun debate cause for concern in any future rulings.

Oblique references in subsequent cases lend credibility to an individual rights interpretation.

The late Chief Justice William Rehnquist noted in a 1990 case, *United States vs. Verdugo-Urquidez*, that the use of "the people" in the Bill of Rights was used not to avoid an "awkward rhetorical redundancy," but rather was chosen as a "term of art employed in select parts of the

Constitution."

He noted that the use of "the people" in the First, Second, Fourth, Ninth and 10th Amendments was within the context of protecting that class of persons who are part of the nation.

When adopted by the states, the Second Amendment generated no controversy. State and federal militia laws required citizens to keep arms and ammunition in their homes.

The greater concern, as articulated by the great orator Patrick Henry, was how to provide guns to those who could not afford them.

The bearing of arms was both a right and responsibility of citizenship, with arms being legally denied to those who were not citizens.

The very idea that citizens might be barred from militia membership was itself an indication of tyranny.

The original purpose of the entire Bill of Rights was to prevent federal intrusion into the fundamental liberties of the people. The collective-rights interpretation contends that the militia clause limits the scope of the right to keep and bear arms, guaranteeing only that states can maintain a National Guard.

The flaw of this interpretation is clear in the language of the Second Amendment, which secures the rights of the "people," and not the "states," to keep and bear arms.

The right to be armed for personal protection is well recognized by common law and preserved under the Ninth Amendment.

The U.S. Supreme Court reiterated, in the 2005 case of *Castle Rock vs. Gonzales*, that government cannot be held liable for failure to protect the lives of its citizens. Personal self-defense remains an individual responsibility.

The Second Amendment serves two higher callings. On a practical level, armed citizens provided the ultimate security against enemies and tyrants.

On a philosophical level, the founders knew that our ultimate success depended on the character of the people.

George Mason wrote in the Virginia Declaration of Rights that "no free government, nor the blessings of liberty, can be preserved to any people, but by a firm adherence to justice, moderation, temperance, frugality and virtue."

Much is assured us by the Bill of Rights - but much is also expected of us.

Indeed, the American paragon is the Minuteman, typically represented as a yeoman farmer,

who goes back to the plow when his martial duty is done.

The Second Amendment guarantees our sacred rights, but also reminds us of our solemn responsibilities.

Benjamin Franklin observed that "those who would give up essential Liberty, to purchase a little temporary Safety, deserve neither Liberty nor Safety."

The founders meant what they wrote - even if, as professor Levinson indicated, some today may find it "embarrassing."

*Tom Moncure is a former assistant counsel to the National Rifle Association.*

