

BOOK REVIEW

THE RIGHT TO BEAR ARMS

STEPHEN P. HALBROOK

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Halbrook has offered another outstanding and enjoyable history lesson related to gun control and the right to bear arms. Following his books, *Gun Control in the Third Reich* (2013) and *Gun Control in Nazi-Occupied France* (2018), Halbrook presents an historical, Constitution-based defense of the right to bear arms. He states that a main reason for the book is to refute assertions, particularly in contemporary times, that American individuals have no constitutional right to bear arms. In today's America, only eight states limit individual rights to carry a handgun (as what is called "may-issue" states), while all remaining states allow the right to carry, although some require a license. Recent surges in gun sales in 2020 and 2021 have led to the highest level of (legal) personal gun sales in twenty years in the United States. Personal safety has become an increasing concern following the coronavirus pandemic as well as societal unrest, and the right to bear arms remains or

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has become newly dear to many Americans. The recent Russian invasion of Ukraine might be among the most compelling contemporary examples of the importance of the right to bear arms. Arms had been restricted and permits for personal ownership were very limited in Ukraine, so most citizens were not experienced in using firearms. People worldwide have watched as the Ukrainian people have tried to defend their country, initially done by the handing out of weapons to anyone who needed one and was willing to take up arms. Yet, these are some of the same weapons that some Americans have lobbied to have banned in the United States.

Following an introduction and prologue, Halbrook opens the book with a history lesson which traces gun rights in England in medieval times, and the attempts to control crime and power through gun prohibition. There were class divisions as well, with the wealthy being afforded gun rights while others were prohibited from private gun ownership. Henry VIII was clear in stating the exception to gun prohibition for those with “yearly value of one hundred pounds,” as well as granting other exceptions to the rule. A series of revocations followed, mostly depending on whether or not England was engaged in war (pp. 29–32). Additionally, there were statutes that specifically addressed the right to armed self-defense in the early 1600s, which were subsequently reversed by a broad decree which allowed search and seizure of guns, couched in reducing threats to the rulers as well as reducing threats from their political enemies (pp. 35–38). Analysis of the legal case of Sir John Knight, who was prosecuted in 1686 for illegally carrying a gun in the streets and into a church, found that the primary test of whether or not carrying a gun was a crime was if it was done to incite terror in others. Knight was acquitted because the peaceful carrying of firearms was legal (pp. 38–52). This sets the stage for the right to own and carry firearms by ordinary citizens (the people) under the Second Amendment, rooted in the history of Common Law.

Chapters 2 and 3 examine the various pieces of legislation that restricted the right to bear arms, particularly in Ireland. England continued to allow the right to bear arms, reinforced by the Declaration of Rights of 1689, which for a time assured the right to carry peacefully. The efforts to disarm Protestants, making gun ownership for self-defense illegal for Protestants, was ultimately struck down with the Declaration. Halbrook traces language back to the late

1100s to support the right to bear arms, and notes that other than a few cases, the Declaration of Rights stood until it was repealed by William IV. Subsequently, the English Bill of Rights restored the right to own and carry arms (pp. 59–65). Catholics, both in England and Ireland, however, were excluded unless professing their loyalty to the King (pp. 67–68). But in 1695, this right was stripped for the majority of Catholics, when Ireland passed legislation requiring the majority of Catholics to relinquish their arms and ammunition. A few exceptions remained, including the allowance of a license at the pure discretion of local officials (pp. 69–72). In Ireland, owning arms was restricted to the wealthy until after America's Second Amendment came into existence. Licensing in England became broadly required by 1870, when Parliament imposed the licensing requirement, but it was as simple as going to the post office to get a license (p. 90–91). Restrictions for those under 18 relating to carrying pistols came with the Pistols Act of 1903, and in 1920, a major change came with the Firearms Act of 1920, which required justification of the need for a license (pp. 90–94).

In Part Two of the book, Halbrook traces gun rights from colonial times to the rise of independent states in America to the Second Amendment. Upon arriving in America, the right to bear arms through open or concealed carry, as long as done in a peaceful manner, was generally the norm. Four states did have particular regulations related to carrying arms outside the home, often related to peaceful carry. Halbrook examines the early approach in Virginia and New Jersey in greater detail. In fact, it was a requirement at times to carry to defend against various forms of attacks (pp. 109–20). Carrying of arms became a greater need for the settlers after passage of the Stamp Act and Quartering Act as tensions rose between the colonists and the British. Ultimately the Stamp Act was repealed, but British Parliament then passed the Declaratory Act, which gave it broad authority over the colonies. Subsequent regulations and taxation followed, and word spread in the Boston area that they were about to be disarmed, subjected to Martial Law, and some deported to Great Britain (pp. 121–27). This ultimately led to the Boston Massacre, where the subsequent trial reinforced the right to bear arms in situations of self-defense (pp. 129–32). The Boston Tea Party followed, and tensions continued to escalate. Gunpowder distribution was the next target of British regulation

in Boston along with confiscation of arms. Ultimately, the right to bear arms was essential to the success of the militias in the Revolutionary War (pp. 133–47). What followed was a patchwork of states adopting a bill or declaration of rights.

Federal rights were the next step, and Halbrook points out in Chapter 5 that bearing arms was widely viewed at the time as an inalienable right, underscoring its inclusion in the Bill of Rights. Moreover, an armed citizenry was recognized as an important vehicle to keep the powers of government in check (pp. 155–61). Halbrook portrays the unanimous support for the right to bear arms state by state, ultimately leading to the adoption of the Second Amendment. Part Two of the book closes with an important quote from James Madison, who noted that an aristocracy could not replace the republic “without a standing Army, an enslaved press, and a disarmed populace,” (p. 178).

Part Three turns to the 1800s to continue to trace the regulations surrounding the right to bear arms. Halbrook takes the reader through discussion of the states that regulated concealed carry, some brought back (from England) the emphasis on not inciting terror by carrying arms, and the prohibition on carrying arms by slaves, which was upheld by the U.S. Supreme Court. While some free blacks in the South were able to secure licenses, it was up to local governments to issue the license.

Following the Civil War, gun rights were widely debated. A patchwork of legal cases addressing the rights of all (freed) men to bear arms, including blacks, followed. Although the right to bear arms was asserted through the Civil Rights Act of 1871, in reality, the rights of African Americans remained restricted, often by the Ku Klux Klan, (pp. 233–41). With the *United States v. Cruikshank*, a case heard in 1876, the rights of African Americans to bear arms was confirmed. While individuals clearly had the right to bear arms, states were allowed to regulate the convening of armed individuals for marches, viewing them as a private militia. Even so, this regulation did not extend to the individual right.

The final section of Halbrook’s book turns to more contemporary history. More legal cases are presented from states in the West, where bans on carrying were proposed but ultimately found to be unconstitutional. The Jim Crow era effectively reinstated the prohibitions

on the ability of African Americans to bear arms. Fees for licenses were high, and laws were selectively enforced in some states (pp. 255–67). But discrimination in the application of the right to bear arms was not only targeted at African Americans. New York put into place Sullivan’s Law, which targeted immigrants, particularly Italians, in restricting their right to carry a gun. This ultimately became a practice of local decision-making regarding who had the right to carry a gun in New York. Overall, the right to bear arms continued to be viewed widely as an inalienable right of the people.

Halbrook provides a more contemporary review of legal challenges to the right to bear arms in Chapter 9. The majority of contemporary challenges are in the “may issue” states, where the government determines an individual’s need to carry a gun. These cases challenge the Second Amendment’s assurance of the right to bear arms. The most pressing case before the U.S. Supreme Court at the moment is the case *New York State Rifle and Pistol Association v. Bruen*, with a ruling anticipated sometime this year. The determination by the court will be either to uphold the universal right to bear arms in accord with the Second Amendment, or a different outcome will diminish the individual right to carry. The turbulence of the past few years globally, and the stark reminder at the time of my writing of the war in Ukraine, are reminders of the importance of upholding the Second Amendment and the assurance of the individual right to bear arms. Halbrook serves up a number of well-known cases from the 1900s and 2000s related to gun rights.

While federal courts have more recently disagreed on the meaning of the right to bear arms in the context of the Second Amendment, particularly in “may issue” states, Halbrook’s excellent presentation of the history of the right to bear arms reinforces the clarity of the Second Amendment within its historical context to more contemporary times. Supporters of the Second Amendment and the individual’s right to bear arms can only hope that the Supreme Court sees the clarity of Halbrook’s presentation of history and facts surrounding the meaning of the Second Amendment, which states “the right of the people to keep and bear arms shall not be infringed” and has historically been equated with the individual right to bear arms.