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## Taking Aim at an American Myth

Paul Finkelman

*University of Tulsa College of Law*

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# TAKING AIM AT AN AMERICAN MYTH

*Paul Finkelman\**

ARMING AMERICA: THE ORIGINS OF A NATIONAL GUN CULTURE. By *Michael A. Bellesiles*. New York: Alfred A. Knopf. 2000. Pp. 16, 603. Cloth, \$30; paper, \$16.

Every American had a musket hanging over his fireplace at night, and by his side during the day. Like Cincinnatus, time and again Americans dropped their plows to shoulder their arms, to fight the Indians, the French, the Indians, the British, the Indians, the Mexicans, the Indians yet again, and then, from 1861 to 1865, each other. American men were comfortable with guns; they needed them and wanted them. They felt at home in woods, in search of food, or in defense of their homesteads.

It is a story as old as our first pulp novels and earliest movies. It is larger than John Wayne and as real to us as Ronald Reagan narrating *Death Valley Days*. And, as Michael Bellesiles<sup>1</sup> persuasively demonstrates, it is largely untrue.

In *Arming America*, Michael Bellesiles challenges — indeed, demolishes — the pervasive notion that America was always a nation of gun owners, gun users, and most importantly, gun lovers. While vulnerable to some criticism,<sup>2</sup> this is one of the most important books in American history of the last decade. It has gathered great praise and at least one major award, the Bancroft Prize for the best book in American history. Bellesiles offers a full scale, and for the most part successful, attack on one of the most persistent myths of American culture: that throughout our early history Americans were a gun-toting people, skilled at shooting and hunting, often violent, using their guns to defend their honor or just to settle an argument, and

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\* Chapman Distinguished Professor of Law, University of Tulsa College of Law. B.A. 1971, Syracuse University; M.A., 1972, University of Chicago; Ph.D. 1976, University of Chicago; Fellow in Law and Humanities, 1982-83, Harvard Law School. — Ed.

1. Professor of History, Emory University; Director, Emory Center for the Study of Violence.

2. Most importantly, Professor James Lindgren of Northwestern University has challenged Bellesiles's use and analysis of probate records. See James Lindgren & Justin Lee Heather, *Counting Guns in Early America* (2001) (unpublished manuscript on file with author). It is also quite likely that some of Bellesiles's other counts may not hold up. For example, he notes studies of newspapers for states or cities in which no gunsmiths advertised. Pp. 228-29. It is possible that a study of other papers from the same city or state will find a gunsmith here or there, but such minor details will not alter the general picture Bellesiles has painted.

ready at a moment's notice to grab musket and powder horn to defend their homes and homeland.

The story Bellesiles tells is different, persuasive, and, most of all, logical. Bellesiles makes many contributions to our understanding of guns in early America, many of which run counter to our myths but logically dovetail with what else we know about society. For example, Bellesiles demonstrates that:

1) Guns, at least until the mid-nineteenth century, were expensive, costing the equivalent of two months' wages (p. 106). Before the 1750s, few outside of the upper class could afford them. From the first settlement until the eve of the Civil War, guns were scarce and largely unavailable. Indeed, there was a persistent shortage of guns, even for military purposes, from the earliest English settlements until the middle of the Civil War.

2) Hunting was a time consuming, inefficient way of finding food or making a living. While some men on the frontier hunted for a living, they were rare and relatively unsuccessful. Most Americans on the frontier were farmers, raising corn, hogs, and cattle. As scholars of the European invasion of the Americas have long known, domesticated animals and the ability to grow crops, especially wheat, were keys to the success of Europeans on the frontier.<sup>3</sup> Thus, as Bellesiles notes:

If a settler wanted meat, he did not pull his trusty and rusty musket, inaccurate beyond twenty yards, off the hook above the door and spend the day cleaning and preparing it. . . . To head off into the woods for two days in order to drag the carcass of a deer back to his family — assuming he was lucky enough to find one, not to mention to kill it — would have struck any American of the Colonial period as supreme lunacy. Far easier to sharpen the ax and chop off the head of a chicken or, as they all did in regular communal get-togethers, slaughter one of their enormous hogs, salting down the meat to last months. [p. 103]

Even on the overland trail, hunting was time consuming and potentially dangerous. People who spent time hunting might not make it across the great plains in time to miss winter (pp. 341-42).

3) Americans had notoriously poor skills with weapons, and most did not know how to handle guns. Guns were complicated and difficult to maintain. Many fell into disrepair, became rusty, and were mostly useless. Almost every account of military recruiting and militia musters — from the earliest colonial records through the beginning of the Civil War — describes vast numbers of American men who never held a gun, had no idea how to shoot one, and most importantly, had no interest in learning.

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3. See, e.g., AL CROSBY, *GERMS, SEEDS AND ANIMALS: STUDIES IN ECOLOGICAL HISTORY* (1994); AL CROSBY, *THE COLUMBIAN EXCHANGE: BIOLOGICAL AND CULTURAL CONSEQUENCES OF 1492* (1977).

4) The American militia was almost universally incompetent, and with a few notable exceptions, in all of America's wars the militia was rarely successful in battle. During the colonial wars, the Revolution, and the Civil War, Americans had to be trained not only to march and dig fortifications, but also to load and fire guns. Contrary to our popular myths, the American Revolution was not won by the militias, although clearly in a few important battles the militias were heroic, competent, and successful. Rather, the war was won by the national army, trained for the most part by professional soldiers from Europe, like Baron von Steuben, Tadeusz Kosciuszko, and the Marquis de Lafayette.<sup>4</sup>

5) Before the Civil War, guns were extremely complicated tools, requiring practice and skill to load and fire. A small miscalculation in the amount of powder placed in a gun could turn it into a harmless noisemaker or, just as easily, into a dangerous exploding device more likely to injure the one holding the gun than anyone else.

6) Bellesiles demonstrates that gun ownership did not become common until after the Civil War. The reason is largely economic and technological. During the war the United States rapidly and successfully expanded its production of weapons, developing new manufacturing technologies and new kinds of weapons. The end of the war left the nation with a surplus of guns and, just as significantly, a number of companies that faced bankruptcy if they did not find a new market for their product. Thus, advertising, entrepreneurship, and economies of scale led to the arming of America after the Civil War (p. 431). Tied to this development was the existence of millions of veterans now skilled in the use of guns, and thus able safely to handle them (pp. 428-29).

These are just some of the basics Bellesiles teaches as he forces us to unlearn our myth and to relearn American history.

For legal scholars, Bellesiles teaches a vital story that helps explain both our modern gun culture and the origin of the Second Amendment. The story shows that the personal ownership of weapons was not a central aspect of early American society and that, for the most part, guns were regulated. In addition, Bellesiles shows that while the militias of early America were for the most part underarmed, undertrained, and relatively incompetent, the image of the militia was a central myth in the development of the nation. At the end of the Revolution, Americans knew that "Republican ideology had not won the Revolution. The militia, Jefferson's repository of courage and virtue had not come through in times of ultimate crisis; the Continental army, the professional soldiers, had" (p. 207). But Americans desper-

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4. Thus, at Valley Forge, Washington worked with von Steuben to train the American soldiers to be more like European professionals, and to drill them so they would look less and less like militiamen. JOHN SHY, *A PEOPLE NUMEROUS AND ARMED: REFLECTIONS ON THE MILITARY STRUGGLE FOR AMERICAN INDEPENDENCE* 155 (1976).

ately wanted to believe in the myth of the citizen-soldier. Thus, they enshrined the myth of the militia into their ideology. As historian Charles Royster notes, “Americans reclaimed the war from the army to whom they had tried to entrust it” and thus “[t]he future security of American independence would rest not on a military establishment but on public virtue. To believe that public virtue had the strength to sustain independence, Americans wanted to believe that public virtue had won it.”<sup>5</sup>

Thus, after the Revolution, America wanted to assign the national defense to the militia. This was necessary because Americans had invested so much of their ideological energy in attacking the very idea of a standing army or a professional army that it was antithetical to the Revolution now to admit that Independence had been won by professional soldiers. But of course, many Americans who lived through the war, including such delegates to the Constitutional Convention as George Washington, James Madison, Alexander Hamilton, and General Charles Cotesworth, Pinckney knew better. They knew that a well-armed standing army, not an incompetent and underarmed militia, was necessary to the security of a free state. In framing the Constitution they provided for the development of such an army. The military provisions of Article I of the U.S. Constitution bear this out.<sup>6</sup> To satisfy the mythmakers and the need for the myth, however, the First Congress agreed to enshrine the militia, promising not to disarm it, as long as it was “well regulated” and under the authority of national government, as set out in Article I, Section 8 of the Constitution. In fact, as Bellesiles shows, the Second Amendment’s promise not to disarm the well-regulated militias was meaningless, because for the most part the militias had no arms to begin with. As Bellesiles demonstrates, the people, both collectively and as individuals, were basically unarmed at the time the Bill of Rights was written.

## I. HOW BELLESILES CLARIFIES WHAT WE ALREADY KNEW

One of the central contributions of this book is that it helps make sense of American history and, by extension, American constitutional law. Since almost all scholars have labored under the myths about guns and the militia, there has always been a disconnect between what we knew about history and what we “knew” about guns and the militia.<sup>7</sup> A few examples of what almost all educated Americans “know”

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5. P. 207 (quoting CHARLES ROYSTER, *A REVOLUTIONARY PEOPLE AT WAR: THE CONTINENTAL ARMY AND AMERICAN CHARACTER, 1775-1783*, at 351 (1979)).

6. See generally Paul Finkelman, “A Well Regulated Militia”: *The Second Amendment in Historical Perspective*, 76 CHI.-KENT L. REV. 195 (2000).

7. Pp. 10-12 (citing WESLEY FRANK CRAVEN, *THE COLONIES IN TRANSITION, 1660-1713*, at 30-31 (1968); WILLIAM C. DAVIS, *A WAY THROUGH THE WILDERNESS: THE NATCHEZ TRACE AND THE CIVILIZATION OF THE SOUTHERN FRONTIER* (1995); JOHN M.

about our history underscore how Bellesiles's findings help us make sense of things. Essentially, by demythologizing our understanding of arms, gun ownership, and the militia, Bellesiles allows for a more coherent understanding of our past.

A. *Myth and Reality: Gun-Toting Americans and the Revolution*

We “know” that all Americans had guns at the beginning of the Revolution. They are over the fireplace in every colonial house that we have seen in the movies and on television.<sup>8</sup> But we also know from historical research that at the beginning of the war Americans were desperate for guns.

Consider one of the early victories of the war, which demonstrated both the scarcity of guns among the revolutionaries and the importance to the Continental Army commanders of obtaining guns. On May 10, 1775, less than a month after the war began, Ethan Allen and his Green Mountain Boys seized Fort Ticonderoga and its arsenal. This was a rare victory for civilians acting as soldiers during the Revolution. These were not even trained militia men, but rather, a collection of local frontiersmen who swarmed into the Fort. Significantly, this victory was not won by guns, in part because only twenty of the eighty-five men with Allen even owned a musket. Allen and his men seized the fort by surprise, not firepower. His men rushed the fort, “seized the neatly stacked muskets of the [British] regulars, and demanded the surrender of the shocked and confused commander,” who if fact did not even know that “there was a war on” (p. 184). The Green Mountain Boys were now armed. As Bellesiles notes, others in the colonies soon followed “Allen’s example, seizing whatever British arms and ammunition they could” (p. 185).

Similarly, when we think about Lexington and Concord, we imagine the Massachusetts farmers (who were probably the best armed in America) (pp. 150, 181) rushing out of their homes with muskets in hand. But the very reason the British were marching to Concord in the first place was to seize the militia’s guns, powder, and shot stored in the local armory. In other words, the main cache of weapons was not

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DEDERER, *WAR IN AMERICA TO 1775: BEFORE YANKEE DOODLE* 116, 251 (1990); LEE KENNETT & JAMES LAVERNE ANDERSON, *THE GUN IN AMERICA: THE ORIGINS OF A NATIONAL DILEMMA* 108 (1995); WARREN MOORE, *WEAPONS OF THE AMERICAN REVOLUTION*, at vi (1967); JAMES B. WHISKER, *THE AMERICAN COLONIAL MILITIA* 87, 171 (1997); JAMES B. WHISKER, *THE GUNSMITH’S TRADE* 71, 91 (1992); HAROLD F. WILLIAMSON, *WINCHESTER, THE GUN THAT WON THE WEST* 5 (1952); Jenkins, *Old Reliable*, *AM. RIFLEMAN*, Dec. 1931; Harold R. Peterson, *The Military Equipment of the Plymouth and Bay Colonies, 1620-1697*, *NEW ENG. Q.*, 1947, at 197).

8. It is hard to fathom why these guns are invariably over the fireplace, unless they were always unloaded and the powder horns hanging with them were empty. It certainly makes no sense to store a weapon or powder near a fire, which might heat the powder to the point of combustion, or send a spark that would cause the gun to fire or the powder horn to explode.

in the farmhouses, but in the central storage house of the local militia. Many of the farmers that day were armed with edged weapons, particularly axes and hatchets (p. 174).

Similarly, throughout the Revolution the Americans faced constant shortages of guns, powder, and bullets. Captured British weapons kept the Revolution going until an infusion of French and Dutch weapons, first sold and then given to the Americans, armed the Continental line.

### B. *Myth and Reality: The Militia and the American Revolution*

The myth of the militia was that the armed citizens rushed to the defense of their lands and families to fight for the patriot cause in the Revolution. The hardy farmers and frontiersmen were crack shots, ready to shoot the eyes out of the British. We “know” this was true because we read it over and over again. Thus, as one historian writing about Lexington and Concord noted, “[e]very narrative of the fighting speaks of the superior shooting of the provincials, with the easy assumption that as a body they were marksmen” (p. 174). Moreover, as Bellesiles shows, before the American Revolution many patriot leaders bragged about the martial skills of Americans. Richard Henry Lee claimed that the farmers of western Virginia “could hit an orange at two hundred yards” and that “[e]very shot is Fatal” (p. 178). Even James Madison bought into this propaganda effort, asserting that “[t]he strength of this Colony” was “chiefly in the rifle-men of the Upland Counties” who could hit “a man’s face at the distance of 100 Yards” (p. 178). In fact, neither Madison nor Lee had spent much time with these western marksmen. Had either man visited the frontier he would have learned that such men did not exist, and that many of the western men were actually unarmed. A more accurate appraisal of the situation is made clear by the petition Madison and other members of Virginia’s council received from westerners pleading for aid for their “raw Militia,” which was “ill armed, half Clad, ignorant of Discipline, & of every thing requisite” to the military tasks assigned to them (pp. 178-79).

Bellesiles argues that before, during, and after the Revolution, Americans had a need to believe in the strength of the militia. It dovetailed with Republican ideology and with the common hostility to a standing army. Illustrative of this ideology was the argument of the anti-Federalist John DeWitt, that “a militia and a standing body of troops never yet flourished in the same soil,” and that “Tyrants have uniformly depended upon the latter, at the expence of the former.”<sup>9</sup> Similar statements can be found from most of the Founders, although

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9. John DeWitt, *V: To the Free Citizens of the Commonwealth of Massachusetts* (1787), in *4 THE COMPLETE ANTI-FEDERALIST* 37 (Herbert Storing ed., 1981).

significantly not from those, like Washington, who had actually seen the militia in action and realized how ineffective it was in either winning independence or defending the nation. Americans *wanted* to believe that the militia had won the Revolution and could win other wars. The history we know, and the history Bellesiles now clarifies, shows how wrong this was.

Consider what we know about the battle of Bunker Hill, which is usually remembered as an American victory (even though it was not). In that battle the British suffered about a thousand casualties<sup>10</sup> before the Americans fled from the field because their ammunition ran out. We “know” that the Americans were so successful at Bunker Hill because they were such great shots. But we also remember the command of the day: “Don’t shoot until you see the whites of their eyes.”

Why did they hold their fire until the British were about to overrun them? In part because they were lousy shots! Americans could hit neither an orange at 200 yards nor the face of an enemy at 100 yards. In fact, they could only hit the enemy if he was so close they could see his “the whites of his eyes.” Only at point-blank range could these militiamen hit a Redcoat, despite the brilliant target his uniform made.

Even if they had been better shots, however, it would have mattered little, because the Americans were so short of ammunition. This shortage of ammunition and guns helps explain why Americans were such terrible shots. Marksmanship requires practice and more practice. “In shooting, as in other sports and most other activities, practice wins out over an imagined innate genius every time. Contrary to one of the most cherished fictions of American culture, simply living on the frontier did not make one an excellent shot” (p. 260). Such practice required an abundance of guns, powder, and shot, which Americans did not have during the colonial period. Because the Americans had a shortage of shot and powder, they could not afford to fire volley after volley as the British charged up the hill (p. 180).

The battle at Lexington and Concord also illustrates the deficiencies of American martial skill and the paucity of American gun ownership. It is true that at the Lexington Green the militia turned out, and while chased from the field of battle, these farmers and tradesmen harassed the British from behind trees and stone walls, sending the Redcoats fleeing back to Boston. The myth tells us that these American marksmen, skilled at shooting deer, now did the same to the hated British lobsterbacks.

If that was so, though, why were so few British troops actually killed or wounded at Lexington and Concord? At least 3,763 Americans “are known to have participated in this long day of battle” (p. 174). At most the British had about 900 men in the field. Hopelessly

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10. SHY, *supra* note 4, at 103.

outnumbered, the British ultimately ran back to Boston, suffering seventy-three dead, 174 wounded, and twenty-six missing.<sup>11</sup> This means that the more than 3,700 American militiamen managed to hit their targets — British soldiers — no more than 273 times.<sup>12</sup> But even this figure is too high, because we know that some of the British soldiers were killed or wounded by axes, hatchets, knives, and swords — weapons that were more common than guns, and tools that Americans *did* know how to wield.

So how could it be that so many Americans failed to do more damage to the fleeing British troops? How could these American marksmen, skilled at killing deer and Indians, at home in the woods, almost born with musket in their hands, miss so often?

The answer, as Bellesiles demonstrates, is twofold. First, many of these militiamen showed up at Lexington with axes, knives, and swords because they did not own guns. And those who did own guns brought for the most part rusty muskets, not more accurate rifles. And even if they had access to state-of-the-art weapons, they had little skill in using them. They were not hunters, Indian fighters, or marksmen. They were farmers, tradesmen, blacksmiths, teachers, and ministers roused to action by a silversmith. As one of the first historians to chip away at the myth of the American militia noted: “Every narrative of the fighting . . . speaks of the superior shooting of the provincials, with the easy assumption that as a body they were marksmen,” but in reality, “marksmen they were not.”<sup>13</sup>

Nor, as the war continued, was it clear that they were “superior” to the British as soldiers. In the second year of the war the great pamphleteer Tom Paine complained that these were “the times that try men’s souls,” because the “summer patriots” had all gone home.<sup>14</sup> Indeed, throughout the War, the militia had a terribly annoying habit of simply disappearing, often before a battle or in the middle of the battle. As John Shy, who is sympathetic to the militia, noted some years ago, “militiamen would not automatically spring to arms in time of danger. They were afraid. They lacked the confidence that comes with training and experience.”<sup>15</sup> Bellesiles now shows us that they also lacked arms and ammunition. Indeed, throughout the war, the militia was unreliable and often useless. More than a few patriot soldiers needlessly lost their lives because the militia abandoned the battlefield and left the Continental line unprotected and undermanned. General

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11. ROBERT A. GROSS, *THE MINUTEMEN AND THEIR WORLD* 130 (1976).

12. This assumes the “missing” were wounded or killed by gunfire.

13. ALLEN FRENCH, *THE DAY OF CONCORD AND LEXINGTON: THE NINETEENTH OF APRIL, 1775*, at 27 (1925).

14. TOM PAINE, *THE AMERICAN CRISIS* 1 (1776), reprinted in *COMMON SENSE AND RELATED WRITINGS* 126 (Thomas P. Slaughter ed., 2001).

15. SHY, *supra* note 4, at 151.

Nathaniel Greene complained that the militia “have refused to turn out when there has been the greatest want of their Assistance” (p. 195). At the battle of Camden the militia fled in terror, leading to the death of General DeKalb and a major American defeat.<sup>16</sup> Thus, Richard Henry Lee’s assurances to his brother that western Virginia would send 6000 “Rifle Men that for their number make [the] most formidable light Infantry in the World” were unfounded (p. 178). As Bellesiles wryly notes, “[f]or some reason these six thousand marksmen did not materialize during the war” (p. 178).

Propaganda is always important in war, and at times both the Americans and British believed the patriot bravado. For most of the war, however, the cognoscente knew perfectly well that the militia was often useless. Washington’s disdain for the militia is notorious. As early as 1757 he complained that in the Virginia militia, “[m]any of them [were] unarmed, and *all* [were] without ammunition or provision.”<sup>17</sup> He considered the militia “incapacitated to defend themselves, must less to annoy the enemy.”<sup>18</sup> In 1776 he “damned the militia and called on Congress for a professional army of long-service volunteers.”<sup>19</sup> In that year he privately complained “that no Dependence can be put on the Militia for a continuance in Camp, or Regularity and Discipline during the short time they may stay.”<sup>20</sup> By 1780 he had abandoned all hope of “carrying on a War with Militia.”<sup>21</sup> He condemned those who “extolled” the militia as “visionary Men whose credulity easily swallowed every vague story in support of a favorite Hypothesis,” and declared he had never seen an example of the Militia “being fit for the real business of fighting” (p. 194). In one Maryland brigade, twenty-six percent of the men lacked weapons, while in a New York unit sixty-three percent were unarmed (p. 200). As a general and as President, he wanted a standing Army to defend the young nation (p. 218).

Much of this history is well known to military historians. But, with the addition of Bellesiles’s work, we can now better understand why the received story of an armed people has never fit well with the real-

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16. P. 196. ROBERT MIDDLEKAUFF, *THE GLORIOUS CAUSE: THE AMERICAN REVOLUTION, 1763-1789*, at 456-57 (1982).

17. P. 159 (quoting Letter from George Washington to Robert Dinwiddie (June 27, 1757), in 2 *THE WRITINGS OF GEORGE WASHINGTON* 77, 78-79 (C. Fitzpatrick ed., 1931)).

18. P. 159 (quoting Letter from George Washington to Robert Dinwiddie (June 27, 1757), in 2 *THE WRITINGS OF GEORGE WASHINGTON* 77, 79 (C. Fitzpatrick ed., 1931)).

19. SHY, *supra* note 4, at 151.

20. P. 194 (quoting Letter from George Washington to John Hancock (July 10, 1775), in 2 *THE PAPERS OF GEORGE WASHINGTON* 327 (W.W. Abbot ed., 1983)).

21. *Id.*; p. 194 (quoting George Washington, *Circular to the States* (October 18, 1780), reprinted in 2 *THE WRITINGS OF GEORGE WASHINGTON* 77, 78-79 (C. Fitzpatrick ed., 1931)).

ity of an incompetent and unarmed militia. The people simply were never armed or skilled with firearms.

### C. *Myth and Reality: Guns in the Early Republic*

After the Revolution, Americans were no more skilled with firearms than before, and they were just as unlikely to own any. Gunmakers were rarer than gunsmiths. Bellesiles' studies of newspapers show no gunmakers or gunsmiths advertising in the newspapers in Maryland, South Carolina, or Philadelphia between 1786 and 1800 (p. 229). Between 1777 and 1799 only nine gunsmiths advertised in New York City's newspapers (p. 228). It may be that the studies on which Bellesiles relies are off by a gunsmith here and there. But the conclusion seems overwhelming: guns were simply not very important to most Americans. Expensive, complicated, and difficult to maintain, they were the playthings of the rich and well born, just as hunting was usually the sport of the elite, who had the time to waste tramping through the forest looking for game.

A quick look at the various early federal statutes on militias, most of which Bellesiles discusses, reveals again how his insights are confirmed by other forms of evidence. What we "know" about the federal militia acts now makes sense, because Bellesiles has filled in the information on the shortage of guns in America.

Under the Militia Act of 1792<sup>22</sup> the federal government expected militia men to arm themselves. As Bellesiles notes, however, "nothing of this sort happened" (p. 262). Thus, a few years later, Congress responded with the Militia Acts of 1794<sup>23</sup> and 1797,<sup>24</sup> which required the state governors to "arm and equip according to law" the state militias. It is not clear if the "according to law" referred back to the 1792 statute, or if this now meant that the states were to arm the militias. Any confusion was cleared in 1798, when Congress passed "An Act providing Arms for the Militia throughout the United States."<sup>25</sup> As the title suggests, Congress had given up on the people providing their own arms. Thus, Congress declared that the United States would provide "thirty thousand stand of arms" to "be sold to the governments of the respective States, or the militia thereof."<sup>26</sup>

With a possible war against France looming on the horizon, the United States could no longer live with the mythology of an armed

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22. "An Act more effectually to provide for the National Defence . . ." Act of May 8, 1792, 1 Stat. 271.

23. Act of May 9, 1794, 1 Stat. 367.

24. Act of June 24, 1797, 1 Stat. 522.

25. Act of July 6, 1798, 1 Stat. 576.

26. *Id.*

populace. The reality was that the people owned few guns, and many of them were old, rusted, and in disrepair. No war with France took place, but when the Jeffersonians came to power they discovered the nation's defenses were weak. In 1803, Secretary of War Henry Dearborn authorized a national census of arms and weapons. "Dearborn discovered that [only] 45 percent of the militia bore arms," and that less than a quarter of the nation's white male population (less than five percent of the total population) owned a gun (pp. 262-63). Such figures illustrated the need for the Militia Act of 1803, which declared that "every citizen duly enrolled in the militia shall be constantly provided with arms, accoutrements, and ammunition."<sup>27</sup>

This Act, as well as the earlier Act of 1798, was consistent with the obligations of Congress to "provide for organizing, arming, and disciplining the Militia."<sup>28</sup> But, until this time Congress had failed to fulfill the Constitution's command. There seem to be three complementary explanations for the failure of Congress to act up until this time. First, there may have been an economic concern — lack of funds to supply the militias. This was tied to the second reason — lack of guns in the country. Guns were scarce, and therefore expensive. Congress could not supply the militia, because there were few guns to distribute. Indeed, during this period Congress was buying guns, as well as gun locks and steel for the domestic production of weapons, from England (p. 232). Finally, in 1792, the leaders of Congress may have been suffering from the effects of the revolutionary-era propaganda that the American people were well armed. In any event, by 1798 Congress realized that if the militia was to be armed, the national government would have to supply the arms.

The question, of course, was where the government would find these arms. Imports supplied some of the requirements, but a domestic arms industry was the real answer. In his famous *Report on the*

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27. "An Act in addition to an act entitled, 'An act more effectually to provide for the National defence . . .'" Act of Mar. 2, 1803, 2 Stat. 207. At page 230 Bellesiles mistakenly asserts that this provision of the 1803 act was part of the 1792 act. My guess is that his confusion resulted from either looking at a compilation of statutes which combined the two, or by looking at various reenactments of the militia law in 1813 and 1814, *see* p. 521 n.85. He may have also carelessly used an early compilation, *THE MILITIA LAWS OF THE UNITED STATES AND MASSACHUSETTS* (1836), which was anonymously published in Boston, rather than looking at the *United States Statutes at Large*. This suggests the complexity of doing legal research from this period — or simply some sloppy note-taking — but does not indicate any attempt by Bellesiles to misrepresent the facts to support his thesis. In fact, as I argue in this section of the Review, the correct story provides even greater support for Bellesiles's overall argument: that the Congress bought the myth of an armed populace in 1792, and starting in 1798 began to abandon that idea. By 1803, only eleven years after the first Militia Act, Congress had completely rejected the foolish notion of relying on the members of the militia to bring their own arms with them. They had no arms to bring, and Congress finally admitted this.

28. U.S. CONST. art. I, § 8, cl. 15.

*Subject of Manufactures*<sup>29</sup> Alexander Hamilton had urged support for gun manufacturing and gunpowder as a national necessity.<sup>30</sup> Despite his support for private enterprise, Hamilton suggested that “necessary weapons of war” might be manufactured by the government itself.<sup>31</sup> He similarly urged the stimulation of lead manufacturing,<sup>32</sup> and he was ready to exempt both saltpeter and sulfur from import duties because they were necessary for the creation of a domestic gunpowder industry, and the United States had no domestic supply.<sup>33</sup>

Beginning in 1795, the national government followed Hamilton’s advice and tried to stimulate gun production in America. But this attempted stimulation failed. For instance, after the Revolution, Congress armed soldiers by purchasing seven thousand muskets from England (p. 232). This practice of buying guns and, more importantly, gunlocks from Great Britain continued until the War of 1812 interrupted the flow. Attempts by American entrepreneurs did nothing to stimulate a domestic supply of weapons. In 1795, Eli Whitney won a contract to produce weapons for the country. Despite the myth of Whitney inventing interchangeable parts, Bellesiles demonstrates that the inventor of the cotton gin produced almost no usable weapons for his country (pp. 233-35). The United States government did manage to develop a few factories of its own that produced weapons at national armories in Springfield, Massachusetts, and Harpers Ferry, Virginia (now West Virginia), but the numbers were small. Between 1795 and 1799, Springfield produced only 7,750 muskets — about a third of what was needed (p. 238). In the Civil War this armory would be essential to the national defense, but in the War of 1812 it was only marginally valuable.

The conclusion from statutes, production records, various gun censuses, government reports, and newspaper records is overwhelming: After the Revolution, Americans had few guns and could produce few guns. The people, with some exceptions, were relatively unarmed.

#### D. *Myth and Reality: The Militia and the War of 1812, or Who Really Saved New Orleans?*

During the War of 1812, the militias were for the most part useless, and often unarmed. Fewer than 4,500 British soldiers captured and burned Washington, D.C., despite the presence of “some fifty thou-

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29. ALEXANDER HAMILTON, *Report on the Subject of Manufactures* (Dec. 5, 1791), in 10 THE PAPERS OF ALEXANDER HAMILTON 230 (Harold C. Syrett et al. eds., 1966).

30. *Id.* at 317, 334.

31. *Id.* at 317.

32. *Id.* at 319.

33. *Id.* at 334.

sand militia within a day's march of the capital" (p. 254). Those few that did show up to defend the nation's capital lacked guns, flints, and leadership. One militia regiment came to Washington "wholly unarmed," and thus was of little use in defending the city (p. 255). This shortage was not unique to the region around the national capital. Counting all guns in private hands and in public armories, regardless of their age or condition, New York had only enough weapons for half of its militiamen, and Virginia could only arm twenty-three percent of its militia (p. 255). The same situation arose in the West. Over 2,300 Kentucky militiamen showed up at New Orleans to serve under Andrew Jackson, but only 700 of them had guns, and Jackson complained that "the arms they have are not fit for use" (p. 259).

After the Battle of New Orleans, Americans created myths and songs about the "Hunters of Kentucky" who won the battle with their marksmanship. In reality, however, these mostly unarmed frontiersmen were farmers who had few skills with a musket. Cannon "manned by members of the U.S. Navy and Army," as well as by Jean Lafite's pirates, won the battle, along with some regular soldiers armed by the national government (p. 259). But as Bellesiles notes, "the myth of the Kentucky riflemen picking which eye of British officers to shoot out fulfilled some deep national yearning. An imagined American equality seemed to demand that every man could be the equal of the best trained troops in the world — at least in popular songs and tall tales" (p. 259).

E. *Myth and Reality: Bleeding Kansas and Guns in Antebellum America*

Bellesiles argues, correctly I believe, that the "arming of America" began to take shape after the Mexican-American War (1846-47) and that it continued to accelerate until the Civil War. This appears to be true, but the evidence from Kansas shows that this process of arming America was incomplete, and rather slow, as late as the 1850s. Bellesiles only briefly mentions the events in Kansas — the scene of America's warm up for the Civil War — in the mid-1850s. He notes, for example, that members of the Connecticut Kansas Colony, setting out for what was already "Bleeding Kansas" in 1856, were given fifty rifles by their supporters and friends in state (p. 370). Bellesiles uses this information to illustrate the acceleration of the arming of America immediately before the Civil War. The fact that these settlers had to be given weapons en route to a hostile environment, however, suggests that many people in America as late as the 1850s did not own guns. Moreover, Kansas was not as well armed as even Bellesiles assumes. Furthermore, if the settlers did have any guns, few in Kansas actually knew how to use them. Bellesiles notes that two free-state men were captured by proslavery forces because, while they had four

guns with them, they had no firing caps, and thus the guns were useless (p. 370). The free-state military leader James Montgomery urged that volunteers be trained in the use and care of weapons before they arrived in the territory (p. 370).

What little Bellesiles says about Kansas dovetails with the larger story in the territory. Moreover, Bellesiles's overall thesis helps explain the nature of the early struggle in Kansas.

After the passage of the Kansas-Nebraska Act in 1854, free-state settlers swarmed into the territory and quickly became involved in a mini-Civil War, fighting settlers from the slave states. Many — perhaps most — of the settlers came not for politics, but for fresh, inexpensive land. Even the most famous family to move to Kansas, the Browns of Ohio, came for land and a fresh start in life. Like so many other Northerners, the Browns thought keeping Kansas a free state could be done with the ballot box, or with moral suasion. They did not come to fight. But, very quickly, they found themselves in an armed conflict.<sup>34</sup>

The patriarch of the family, John Brown, remained in Ohio while his sons went to the new territory. In May 1855, a fearful Salmon Brown wrote his father: "There is a great lack of arms here . . ." <sup>35</sup> Similarly, John Brown, Jr., wrote his father that the antislavery men were "desperately short of guns."<sup>36</sup> John Jr. begged his father to find some wealthy supporters of the cause to buy guns. "Give us the arms, and we are ready for the contest."<sup>37</sup> At the moment they had only a few Sharps rifles sent by some eastern abolitionists. Thus it was that in the summer of 1855 John Brown toured the East and Midwest, raising money to buy Colt revolvers, Sharps rifles, powder, caps, and swords.<sup>38</sup> In October 1855, John Brown arrived in Kansas with "revolvers, rifles, dirk knives, and those menacing broadswords."<sup>39</sup> Meanwhile other boxes of rifles, sometimes known as a "Beecher's Bibles,"<sup>40</sup> arrived in the free-state settlements of Kansas. The industrialist Amos Lawrence helped pay for about 325 Sharps rifles that were sent to free-state settlers in Kansas.<sup>41</sup>

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34. STEPHEN B. OATES, *TO PURGE THIS LAND WITH BLOOD: A BIOGRAPHY OF JOHN BROWN 90-93* (2d ed. 1984).

35. *Id.* at 88.

36. *Id.* at 90.

37. *Id.* at 92.

38. *Id.* at 92-93.

39. *Id.* at 98.

40. Named after the fervent abolitionist the Rev. Henry Ward Beecher.

41. DAVID M. POTTER, *THE IMPENDING CRISIS, 1848-1861*, at 206-07 (Don E. Fehrenbacher ed., 1976).

Why did John Brown have to bring guns to his sons in Kansas? Why didn't they bring their own? Why were the Connecticut Kansas settlers Bellesiles writes about have to be given guns when they left (pp. 370-71)? Although I have long taught and even written about Brown,<sup>42</sup> only after reading Bellesiles do I understand the answers to these questions. As Bellesiles repeatedly demonstrates, most American men in the mid-nineteenth century did not own a gun and could not afford the luxury of buying one. Thus, the settlers who went to Kansas to make it a free state did so without guns, or, if they took guns, like the Connecticut Kansas Colony settlers, they took them because "without any agency of our own, we were presented with fifty Rifles, which we gladly accepted" (p. 370).

F. *Myth and Reality: Where Were All Those Guns When the Civil War Began?*

A final example of how Bellesiles's book helps explain American history concerns the American Civil War. The myth of America is that all white men, especially in the South, were heavily armed. We all "know" this. But we also well know that, with just under 160,000 guns, the Confederacy was desperately short of arms when the war began. The Confederacy did everything it could to import them from Europe, but Lincoln's blockade effectually stopped these imports by 1863. The would-be nation failed to produce many guns of its own, and throughout the war the Confederacy survived with weapons captured from the enemy, taken from dead United States soldiers, or sneaked past the blockade (p. 419). A few European guns made it to the Confederacy through Mexico.

If the myth of a gun-owning America had been true, these shortages would not have been so great. Moreover, with over four million slaves in 1860, the region was a tinderbox waiting to explode, and only the vigilance of the master class prevented this. The South should have been well armed because of the apparent need of the master class for arms, the presumption that rural men were all gun owners, and the cultural presupposition that the South was more gun happy than the North. But the South was not well armed because, as Bellesiles teaches us, guns were expensive, complicated, and, until the Civil War, manufactured in small numbers in the nation.

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42. HIS SOUL GOES MARCHING ON: RESPONSES TO JOHN BROWN AND THE HARPERS FERRY RAID (Paul Finkelman ed., 1976).

## II. THE MILITIA, THE MYTH OF AN ARMED POPULACE, AND THE SECOND AMENDMENT

Throughout much of our history, the militia has been held in contempt, despite the fact that we have simultaneously created a myth about the success of the militia in battle and its role in both creating the nation in 1776-83 and defending it afterwards. The contradiction was of course a function of the ideology of the Revolution which condemned the professional, or "standing" Army, which became a proxy for everything that was wrong with the British Empire, and thus forced the revolutionaries to praise the militia. Thus, on the eve of the Revolution John Hancock noted that "[f]rom a well regulated militia we have nothing to fear," but he asked rhetorically, from a standing army "what has not a state to fear?"<sup>43</sup> Of course, during the Revolution Americans learned just how ineffective the militia was, but the ideological commitment *against* a standing army forced Americans to enshrine the militia in popular myth.

This cultural admiration for the militia also led to the adoption of what became the Second Amendment. Anti-Federalists, fearful of a strong national government, were particularly concerned about the reality of a professional army, which Congress was clearly empowered to create under Article I, Section 8 of the Constitution. In writing the Bill of Rights, Madison did nothing to undermine national power,<sup>44</sup> but he was willing to offer up a promise that each state would be able to maintain a "well regulated militia," subject, of course to federal call up, as set out in Article I, Section 8.

While the myth of the militia seemed important to Americans after the Revolution, the reality of the militia, both during and after the Revolution was another matter. And so, from the end of the Revolution to the Civil War the militia was generally held in contempt. We know (or at least we have long thought we knew)<sup>45</sup> that the militia would parade annually or even twice a year, have its musters, and that usually the most important aspect of the muster was the keg of hard cider, or some other strong beverage. The militia was something of a joke from the colonial period to the Revolution to the Civil War. In

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43. JOHN PHILLIP REID, IN *DEFIANCE OF LAW: THE STANDING-ARMY CONTROVERSY, THE TWO CONSTITUTIONS, AND THE COMING OF THE AMERICAN REVOLUTION* 104 (1981).

44. Paul Finkelman, *James Madison and the Adoption of the Bill of Rights: A Reluctant Paternity*, 1990 SUP. CT. REV. 301-47 (1991).

45. One of the many things this book teaches us is that some states actually abolished their militias in the early and mid-nineteenth centuries, and that no states actually required people to serve. In 1811, for example, Delaware "essentially eliminated its militia." P. 387. When Lincoln asked the loyal state governors to call out their militias, "Governor William Burton of Delaware, informed Lincoln that their militia did not actually exist." P. 410. Similarly, in Lincoln's home county of Sangamon, Illinois, people "were rudely reminded that they did not have a militia, and had not for the previous fifteen years." Pp. 409-10.

the eighteenth century, most militias “bec[a]me more social than military organizations.”<sup>46</sup> The growth of private militias in the nineteenth century continued this process. The more social they became, the less likely the militias were to be serious military organizations. In the nineteenth century, the private militias were better dressed, often in snappy, brightly colored uniforms. They were social clubs, often, but not always, for the elite. When the Civil War began, the militias on both sides were barely competent and not much good in battle. Slowly, painfully, and at great expense of human life, American boys on both sides of the Mason-Dixon line learned to be soldiers.

Indeed, the whole notion of the citizen-soldier from the colonial period to the Revolution appears largely to have been a myth. In colonial New York, commercial connections, not the militia, kept the peace with the Iroquois. And as the University of Michigan’s great military historian John Shy noted, “in time of trouble,” New York “had to call for help.”<sup>47</sup> In Virginia, the militia “virtually ceased to exist” in the half century after Bacon’s Rebellion of 1676,<sup>48</sup> and the colony relied for defense on Rangers — “a few dozen paid, mounted soldiers who ‘ranged’ ” along the frontier from fort to fort.<sup>49</sup> In 1713, “[w]hen the Tuscarora momentarily menaced Virginia,”<sup>50</sup> the governor tried to call out the militia, but no one turned out. Thus, the governor, “convinced that he could not make war, made peace.”<sup>51</sup> The same story could be told, as Bellesiles does, for most of the colonial militias. As we have seen, during the Revolution General Washington and others had nothing but contempt for the militia. Washington felt the same way when he was a colonel during the Seven Years War. In the War of 1812, the militias were almost nowhere to be seen and not terribly useful when they were around.<sup>52</sup>

As Bellesiles notes, the militia was critical to the nation’s psyche as a symbol of republican virtue. Americans at the time of the Revolution believed a standing army was dangerous, even though it was the professional army that, battling for eight years, fought the British to a standstill and forced the strongest nation in the world to the peace table.

The Constitution of 1787 reflected the reality of the recent past. Article I provided for the establishment of a military by the national government. The militia would exist but would be always subject to

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46. SHY, *supra* note 4, at 29.

47. *Id.* at 27.

48. *Id.*

49. *Id.* at 25.

50. *Id.*

51. *Id.* at 27.

52. Pp. 159-60, 254-55; *supra* text accompanying note 5.

federal regulation and control. This frightened some Americans, who feared a professional standing army and believed that the strength of the nation was in the militia.<sup>53</sup>

Men like Washington, Charles Cotesworth Pinckney, Henry Knox, and even James Madison understood how absurd this was. They knew that the professional army, trained by Washington and a host of European officers, had won the war. Furthermore, former generals like Washington, Pinckney, and Knox also understood that the nation had nothing to fear from the military. Good republicans all, they trusted the officers and men under their command to support the Constitution.

When he introduced what became the Bill of Rights, Madison did not accept the fears of the Anti-Federalists or others who asked for amendments. He thought a bill of rights was utterly unnecessary,<sup>54</sup> but Madison was willing to concede “that in a certain form and to a certain extent,” a bill of rights “was neither improper nor altogether useless.”<sup>55</sup> While proposing amendments that were neither “improper” nor “useless,” Madison was careful, as he noted in a private letter to Edmund Randolph, to make sure that “[t]he structure & stamina of the Govt. are as little touched as possible.”<sup>56</sup> It is this goal of Madison — to protect the “structure & stamina” of the new government — that most illuminates the meaning of the Second Amendment. Bellesiles’s important book, however, adds significant social, economic, and military history background to how we understand the Founding in general, and the Second Amendment in particular.

Madison generally saw the Bill of Rights as clarifying the meaning of the Constitution, not fundamentally changing it. He had no problem expressly protecting freedom of religion, for example, because he did not think that the purpose of the Constitution was to allow Congress to regulate religion, even where Congress had plenary jurisdiction. Similarly, he was willing explicitly to protect the right of a jury trial in federal prosecutions, since he believed the Constitution already protected that right. He probably had not thought much about the right to counsel, but he saw no impediment to protecting it.

He was not, however, ready to undermine the “structure & stamina” of the new government. Thus, he did not dismantle the provision allowing Congress to create an army or to regulate the state militias.

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53. Letter of Edmund Randolph, in 2 *THE COMPLETE ANTI-FEDERALIST* 88 (Herbert Storing ed., 1981); Essays of Brutus, in 2 *THE COMPLETE ANTI-FEDERALIST* 375 (Herbert Storing ed., 1981).

54. Paul Finkelman, *supra* note 44, at 302-03.

55. 1 *ANNALS OF CONG.* 453 (1st Cong., 1st Sess.) (Joseph Gales & William Seaton eds., 1789).

56. Letter from James Madison to Edmund Randolph (June 15, 1789), in 12 *THE PAPERS OF JAMES MADISON* 219 (Charles F. Hobson et. al. eds., 1979).

He certainly had no interest in protecting a personal right to own guns, because, as Bellesiles demonstrates, few people had guns anyway, and those who did included malcontents, such as the farmers who gathered in Shay's Rebellion. Madison probably did not believe in the myth of the militia, either. He knew better. But he was happy to promise that the new national government would not dismantle or disarm the state militias, as long as they remained "well regulated," which meant under federal supervision as Article I required. Since some people feared the new national government might dismantle the state militias,<sup>57</sup> Madison was willing to put a provision in the Bill of Rights explicitly stating that Congress would not disarm the state militias. At the same time, he had no interest in preventing Congress from regulating weapons in the places where Congress had clear legislative power.<sup>58</sup> Madison had worked for a strong government — with a national army and the power to federalize state militias — at the Philadelphia Convention. He had no interest in undermining this in the Bill of Rights by prohibiting a standing army, removing the power of the national government to control the state militias, or permitting citizens to have unfettered access to weapons.

*Arming America* gives us a context for understanding what the First Congress did when it wrote what became the Second Amendment. Bellesiles demonstrates, over and over again, decade by decade, that until the Civil War era most Americans had little interest in guns or gun ownership. Even in the debates over the Constitution, the fears of the Anti-Federalists were not about losing their guns — because they mostly did not have any — but about creating a standing army. The Anti-Federalists<sup>59</sup> worried that the standing army would take over. Madison answered that the best defense against this was a well-regulated state militia, armed by the national government. That was the plan set out in Article I, Section 8 of the Constitution. The Second Amendment merely reaffirmed this plan, and at the same time guaranteed that if the national government did not arm the militias (as the Constitution obligated it to do), the states could do so themselves.

*Arming America* is clearly controversial. Supporters of an individual rights interpretation of the Second Amendment — what some

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57. Washington was willing to do this, as was Secretary of War Henry Knox. Senator Rufus King of Massachusetts opposed arming the militia on the frontier, "least they should Use them against the United States." *THE DIARY OF WILLIAM MACLAY AND OTHER NOTES ON SENATE DEBATES* 246 (Kenneth R. Bowling & Helen E. Veit eds., 1988).

58. For a greater discussion of this, see Finkelman, *supra* note 6.

59. See generally Paul Finkelman, *Turning Losers into Winners: What Can We Learn, If Anything, from the Antifederalists?*, 79 *TEX. L. REV.* 849 (2001) (reviewing SAUL CORNELL, *THE OTHER FOUNDERS: ANTI-FEDERALISM AND THE DISSENTING TRADITION IN AMERICA 1788-1828* (1999)).

proponents arrogantly call “the standard model” interpretation<sup>60</sup> — are clearly threatened by this book. If it is true that gun ownership was irrelevant to most Americans, then it is hard to believe they would have fought to amend the Constitution to protect the right to own something they could not own and did not want to own. And as Don Higginbotham, a leading military historian, has noted, “[i]n all the discussions and debates from the Revolution to the eve of the Civil War, there is precious little evidence that advocates of local control of the militia showed an equal or even secondary concern for gun ownership as a personal right.”<sup>61</sup>

Some activists have taken it upon themselves to check every footnote and source in the book. They flood various listservs with errors they have found. Doubtless they will find some in a book of over 600 pages, almost 150 of which are densely packed footnotes. Serious scholars have questioned some of Bellesiles’s use of probate records and his statistical analysis of them in determining gun ownership. It is likely that those numbers will change as other scholars examine the evidence.

On the other hand, the simple statistics on weapons production and importation, and the various gun censuses taken by state and federal officials, support the conclusion that gun ownership was not all that common in this period. Moreover, the thesis presented here seems overwhelmingly solid. The nonstatistical evidence from letters, diaries, official reports, and statutes all point in the same direction: from the colonial period to the Civil War guns were expensive, complicated, and not widely owned, and most Americans were not particularly skilled at using them: When we fought Britain, and when we wrote the Constitution and the Bill of Rights — including the Second Amendment — we were not a gun culture. These conclusions must inform us today as we debate public policy and constitutional law surrounding an America that is now fully armed.

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60. For a discussion of this “model,” see Saul Cornell, *Commonplace of Anachronism: The Standard Model, the Second Amendment, and the Problem of History in Contemporary Constitutional Theory*, 16 CONST. COMMENT. 221 (1999), and *Symposium on the Second Amendment: Fresh Looks*, 76 CHI.-KENT L. REV. 1 (2000).

61. P. 215 (quoting Don Higginbotham, *The Federalized Militia Debate: A Neglected Aspect of Second Amendment Scholarship*, 55 WM. & MARY Q. (3rd ser.) 39, 40 (1998)).