

## *The Embarrassing Second Amendment*

“Showdown” by Chris Mooney, in *Lingua Franca* (Feb. 2000), 22 W. 38th St., New York, N.Y. 10018.

Against their own liberal political inclinations, some legal scholars have reluctantly concluded that in its claim that the Second Amendment protects individual Americans’ right to bear arms, the National Rifle Association is not far off target.

“A well-regulated Militia, being necessary to the security of a free State,” the amendment famously states, “the right of the people to keep and bear Arms, shall not be infringed.” To University of Texas law professor Sanford Levinson, a liberal Democrat who backs many gun control measures, the “embarrassing” Second Amendment (as the title of his seminal 1989 *Yale Law Journal* article put it) empowers individual citizens to own guns to defend themselves and, if necessary, counter government tyranny. This individual right to bear arms, adds Joyce Lee Malcolm, a historian at Bentley College in Massachusetts, traces back to the 1689 English Bill of Rights.

In recent years, legal scholars—including Laurence Tribe, the prominent liberal Harvard University professor of constitutional law—“have turned en masse” to this “individual rights” reading, making it the so-called Standard Model interpretation of the

amendment, reports Mooney, a freelance writer based in New Orleans. Alluding to this scholarship, a federal district court judge in Texas last year “delivered an unprecedented ruling in defense of the individual’s right to bear arms,” says Mooney. If the ruling survives an appeals court’s decision this spring, the case may well go to the Supreme Court.

But some American historians now contend that the Standard Model interpretation—which regards “militia” as standing, not for a select group like the modern National Guard, but rather for “the whole people”—is at odds with history. Saul Cornell, of Ohio State University, questions whether any consensus existed in postrevolutionary America on the right to bear arms. In Pennsylvania, he notes, a stringent loyalty oath effectively disarmed up to 40 percent of the citizenry. Michael Bellesiles, of Emory University, maintains that only a small percentage of Americans then even owned firearms—only about 14 percent of white, Protestant men in New England and Pennsylvania, according to 11,000 probate records filed between 1765 and 1850.

## *The Truly Progressive*

Melanie Phillips, a columnist for the London *Sunday Times*, is a staunch liberal who keeps getting attacked as a right-wing apologist. She defends herself in the *New Statesman* (Feb. 14, 2000).

*The idea that all pre-existing traditions or values are, by definition, unprogressive baggage is as philistine as it is risible. Values dismissed as conservative are actually universal: attachment, commitment to individuals and institutions, ties of duty, trust and fidelity, the distinction between constructive and destructive behavior. Without these things, freedom cannot flourish nor society exist. The paradox is that only by conserving such values can progress occur. Small, incremental steps are the best way of bringing about beneficial change. Radicalism or revolution are likely to implode and leave us worse off than before.*

*In other words, we have to rescue progress from the progressives. We need a liberal, not a libertarian, social order with deeper values than contract, and with other criteria for progress than material advances. Moral restraint is the glue that provides social cohesion. Liberty is not achieved but threatened by the relativistic pursuit of autonomy and rights.*

The Second Amendment, like the others, must be read in conjunction with the body of the Constitution, argues historian Garry Wills, of Northwestern University—and Article III “defines taking up arms against the United States as treason.” He and Cornell endorse a thesis advanced by T. Carl Bogus, a professor at Roger Williams University School of Law in Rhode Island: that the Second Amendment was largely intended to give the slave-owning southern states tacit assurance that the new government would never try to disarm the South’s militias.

“Legal scholars who support the individual-rights view are not exactly quaking in their boots” at the challenge from Wills, Cornell, and the rest, observes Mooney. But if the Standard Model should prevail in the courts, does that mean gun control is doomed? Not necessarily, say Tribe and Yale University law professor Akhil Reed Amar, who favor both. “Almost no right known to the Constitution is absolute and unlimited. . . . The right to bear arms is certainly subject to reasonable regulation in the interest of public safety.”

## FOREIGN POLICY & DEFENSE

### *Wading into Colombia’s War*

*A Survey of Recent Articles*

While President Bill Clinton and other Americans focused on the savagery in the Balkans last year, a more immediate threat—the guerrilla war in Colombia—went largely unnoticed. Yet that war, notes *National Journal* (Jan. 15, 2000) correspondent James Kitfield, “has led to nearly as many internally displaced civilians (roughly 800,000) as Slobodan Milosevic’s ethnic cleansing,” and is endangering the stability of the Andes region, including oil-rich Venezuela.

“Colombia’s unrest is spreading to neighboring countries, which are grappling with their own serious crises,” reports Linda Robinson, Latin America bureau chief for *U.S. News & World Report*, writing in *World Policy Journal* (Winter 1999–2000). “The northern zone of South America is starting to look like a tier of turmoil that could rival the Central American mess of the 1980s, and . . . significant U.S. interests are at stake—not just drugs but trade, investment, oil, and the Panama Canal. The much-vaunted hemispheric community of democracies may well begin to unravel here, to be replaced in a few short years by failed states where anarchy or rogue groups rule.”

As U.S. involvement in Colombia deepens,

with Clinton seeking some \$1.6 billion in military and other aid to President Andrés Pastrana Arango’s government, the administration maintains that it is still merely fighting drug trafficking. But that is a politically convenient fiction, observes Michael Shifter, a Senior Fellow at the Inter-American Dialogue in Washington, writing in *Current History* (Feb. 2000). Since the



*A cocaine lab burns in the background as members of a Colombian anti-drug unit fly over jungle about 250 miles north of Bogotá.*

main leftist guerrilla force, the 15,000-strong Revolutionary Armed Forces of Colombia, or FARC, derives several hundred million dollars a year from the drug trade (getting it through extortion or in return for protection), “counternarcotics” cannot be neatly separated from “counterinsurgency.” Colombia produces