NOTES

Introduction

3. Lake Research Partners, Missouri statewide survey conducted for the American Hunters and Shooters Association, August 2006. In possession of the authors.
4. Lund, “Past and Future.”
5. See Cottrol and Diamond, “Second Amendment.”
7. Viereck, Conservatism Revisited, 144.
8. Viereck, Conservatism Revisited, 155.

Chapter 1

2. Lake Research Partners, Missouri statewide survey conducted for the American Hunters and Shooters Association, August 2006. In possession of the authors.
3. Kopel, “Trust the People” [emphasis added].
9. For an overview of the patriot movement and its intersection with gun
rights groups, see *Shooting for Respectability*, 10; Dees with Corcoran, *Gathering Storm.*


13. See video of Huckabee speaking at a house party in New Hampshire at http://www.youtube.com/watch?v=53BE93_0gJc.

14. Of course, some gun rights enthusiasts assert that handguns alone are insufficient for home defense. We know of at least one firearms instructor who says he and his wife keep loaded handguns on the nightstands next to their bed “so we can fight our way to the combat shotgun we keep in the closet” in the event an intruder breaks in and attacks during the night. We have not, however, ever met anyone who claims that a semiautomatic assault rifle is necessary to adequately protect their homes.

15. See Miller, Hemenway, and Azrael, “State-Level Homicide Rates.”

16. Lund, “Past and Future.”

17. See Cottrol and Diamond, “Second Amendment.”


25. Report of the Executive Vice President, Minutes of the Annual Meeting of Members, National Rifle Association of America, April 14, 2007. In possession of the authors.


33. Freedom in Peril, 3.
37. Michel and Herbeck, American Terrorist, 339.
38. See http://www.mercgroup.com/services.html.

Chapter 2

2. Kopel, “Are They Schools?”
4. Zelman and Wolfe, “Can The Second Amendment And Social Security Coexist?”
5. See LaPierre, Global War.
6. Video no longer available, but also quoted at http://www.washingtonspectator.com/articles/20060715unitednations_2.cfm.
10. According to Sampson, Morenoff, and Raudenbush, “Social Anatomy,” 229, evidence shows that first-generation immigrants are among the least violent of criminal groups.
13. In his new study on Jefferson’s view of the militia, historian David Konig makes it clear that Jefferson was no Insurrectionist and fully understood that the right to revolt was not enshrined in the Constitution. See Konig, “Thomas Jefferson’s Armed Citizenry.”

Chapter 3

1. NRA, IRS Form 990 (2004); NRA Foundation, IRS Form 990 (2004).
2. Feldman, Ricochet, 45-47.
7. See http://www.nrapvf.org/ [see 2006 Texas 14 and Florida 21; subscription required]. In possession of the authors.
31. Pratt, “South African Gun Owners,” 6–7. For a refutation of Pratt’s claim about the mountains of data showing the protective values of guns, see Miller, Hemenway, and Azrael, “State-Level Homicide Rates.”
32. Zeskind, “Armed and Dangerous.”
33. Zeskind, “Armed and Dangerous.” For a detailed discussion of the relationship between the gun rights movement and the militia movement, see Shooting for Respectability, 10; Dees with Corcoran, Gathering Storm, 49–52.
35. Zeskind, “Armed and Dangerous.”
36. U.S. Department of the Treasury, Following the Gun, xi.
37. Bouchard, Testimony, 34.
38. Carl J. Truscott, director of ATF, to F. James Sensenbrenner Jr., chair, House Committee on the Judiciary, November 11, 2005. In possession of the authors.
40. Michel and Herbeck, American Terrorist, 150, 269.
41. Jefferson’s views about Insurrection are complicated, but “never did he describe it as a right.” His famous statement regarding Shays’s Rebellion—“a little rebellion now and then is a good thing”—was not an effort to justify the rebels’ actions but rather to caution against a harsh repression of a political phenomenon that was natural and necessary [Konig, “Thomas Jefferson’s Armed Citizenry,” 263–64].
43. See www.stormfront.org, with the motto, “White Pride, World Wide,” where LastReb2 [with a picture of a Confederate flag] wrote on November 9, 2006, the day after the election, “Yeap, the Democrats worry more about destroying the 2nd amendment than destroying Bin Laden and his band of terrorists. I predict that America will look like Bagdad by next year” [http://www.stormfront.org/forum/showthread.php?postid=340261&highlight=gun].
Officers, Shatters the Peace of an Old South Town and Raises Questions about
telreport/article.jsp?pid=668.

47. See Humphrey Taylor, “Two in Five Americans Live in Gun-Owning
harris_poll/index.asp?PID=234.

48. Lake, Snell, Perry Nationwide Survey of 1,000 registered voters for the Edu-
cational Fund to Stop Gun Violence, May 15–21, 2001. See archived press re-

49. Testimony at Virginia Senate Courts of Justice Committee, January 16,
2006. Personal observation.

50. Shaun Kranish, founder of the Web site ICarry.org, question to David
Kopel and Joyce Lee Malcolm, Firearms Law and the Second Amendment Sym-
posium, George Mason University School of Law, Arlington, Virginia, October
7, 2006.


52. Scott Brooks, “As trial goes on, he hunkers down,” New Hampshire
Union Leader, January 18, 2007.

53. Russell Goldman, “New Hampshire Couple Vows to Fight Feds to the
3290003.

D2rVCl9-tSI.


56. Carol DeMare, “Radical Politics Tied to Charges,” Albany (New York)
Times-Union, September 14, 2007.


58. Margot Sanger-Katz, “2 Judges out of Brown cases,” Concord (New Hamp-

59. Shaun Kranish, Ed Brown under Siege, October 18, 2007. No longer avail-
able on the internet.

60. “Militia Leader Put Government on Notice Years Ago: Fincher Arrested
in November on Charges of Illegal Weapons Charges,” Northwest Arkansas
Morning News, January 6, 2007; reader comments at http://www.nwaonline
.net/articles/2007/01/07/news/010707fzfincher.txt.

61. Comment has been removed but a copy is in possession of the authors.

12, 2007; reader comments at http://www.nwaonline.net/articles/2007/01/13/
news/011307fzfincher.txt.
64. Form submission to csgv@csgv.org, December 8, 2006, in possession of the authors.
65. Packing.org is now defunct, but copies of these comments are in possession of the authors.
66. Copies of these comments are in possession of the authors.
68. Tribe, _American Constitutional Law_, 902.
70. As we describe in chapter 4, based on the great change that occurred in the country between the revolution in 1776 and the drafting of the Constitution in 1787, we find the insurrectionary Second Amendment not plausible.
72. Van Alstye, “Essay,” 1243, 1244 [emphasis in the original].
75. McIntosh, “Revolutionary Second Amendment,” 674–75.
82. Sanford Levinson, “D.C. v. Heller: A Dismaying Performance by the Supreme Court,” Huffington Post, June 26, 2008, http://www.huffingtonpost.com/sanford-levinson/dc-v-heller-a-dismaying-p_b_109472.html. Levinson did make it clear that no matter the poor quality of the opinion, “as a partisan Democrat, I confess to being relieved that the dissenters did not prevail, for the upholding of the D.C. ordinance would, in effect, have served as a massive in-kind campaign contribution to John McCain.”
83. Zumbo, “Assault Rifles for Hunters?”
84. _Outdoor Life_ message board, February 20, 2007. Forum is no longer active, but copies of comments are in possession of the authors.


92. Academics have offered a number of compelling academic responses to the insurrectionist view of the Second Amendment (e.g., Cornell, Well-Regulated Militia) but few responses have come from political leaders or in the popular press.

Chapter 4

1. At the NRA’s 2000 Annual Meeting, association president Charlton Heston said in his opening remarks, “The smoke in the air of our Concord Bridges and Pearl Harbors is always smelled first by the farmers, who come from their simple homes to find the fire, and fight” (http://www.nra.org/Speech.aspx?id=6044&fid=5).

2. Galvin, Minute Men, xiii, 2.

3. Much of the later Antifederalist rhetoric in opposing the Constitution and supporting the call for a universal militia during the debate over the first militia act was a fear of a “select” militia, a rich irony considering the most effective militia in the colonies, that of Massachusetts, was based on a select militia concept.

4. Galvin, Minute Men, 11.

5. Galvin, Minute Men, 36, 65–66.

6. Shy, People Numerous, 103, 126. See also Galvin, Minute Men, 55.

7. Galvin, Minute Men, 133.

8. Galvin, Minute Men, 245.


42. Wood, *Creation*, 319, 322, 324.
55. Madison, Notes, 514–15; Cornell, Well-Regulated Militia, 42.
57. Proceedings of the Virginia Convention, as compiled in 3 Elliot 423, June 14, 1788.
58. Proceedings of the Virginia Convention, as compiled in 3 Elliot 424, June 14, 1788.
59. See Justice John Paul Stevens’s dissent in Heller at 128 S. Ct. at 2822. But see also how often staunch gun rights advocates such as Mike Huckabee use the phrase “The Second Amendment is not about duck hunting”: “And a freedom conservative is a person who understands that the purpose of the Second Amendment is not about duck hunting and deer hunting, though I love both of them and am a lifetime member of Ducks Unlimited and I’m not a latecomer to the NRA. I was the first governor in America to have a concealed carry permit, so don’t mess with me. But I’m always amused, if not amazed, when some political candidate tries to tell me that the purpose of the Second Amendment is largely about hunting. My friend, the purpose of the Second Amendment is to preserve our very freedom. And our founding fathers understood it clearly” (Mike Huckabee, Conservative Political Action Conference, Washington, D.C., March 2, 2007, http://www.conservative.org/pressroom/2007/speech_huckabee.asp).
60. Cornell, Well-Regulated Militia, 50–51.
61. Cornell, Other Founders, 31.
66. Wills, Necessary Evil, 121.
68. Cornell, “Originalism Right.”
69. Cornell, Well-Regulated Militia, 75.
70. Cornell, Other Founders, 54, 60–61.
72. Cornell, Other Founders, 92–93.
73. Cornell, Other Founders, 110–13.
74. Cornell, Other Founders, 115.
75. Cornell, Other Founders, 117.
81. Wills, Necessary Evil, 215–16.
82. Cornell, Well-Regulated Militia, 76.
84. Hamilton, Jay, and Madison, Federalist Papers, No. 46, p. 298 [Madison].
85. Hamilton, Jay, and Madison, Federalist Papers, No. 28, p. 182 [Hamilton].
86. Rossiter in Hamilton, Jay, and Madison, Federalist Papers, xvi.
87. Wood, Creation, 614.
88. Elkins and McKittrick, Age of Federalism, 471.
89. Elkins and McKittrick, Age of Federalism, 463, 482, Cornell, Other Founders, 202, 209.
90. Elkins and McKittrick, Age of Federalism, 481–82.
94. Findley, History, 300, 177.
95. Philip S. Foner, Democratic-Republican Societies, 147.
96. Cornell, Well-Regulated Militia, 85.
100. Edling, Revolution, 137; Ellis, American Sphinx, 283; Cornell, Well-Regulated Militia, 20.

Chapter 5

1. Schwartz, From Confederation to Nation, 132.
3. Lincoln originally used the word treasonable but deleted it in favor of revolutionary, perhaps offering some insight into how he viewed the “nobility” of a revolution while a constitution still functions.


11. Kauffman, *American Brutus*, 46. Booth was well acquainted with firearms. He had learned to shoot as a youth at a military academy and later, during his acting career, shot himself while cleaning a gun. After learning of Lee’s surrender at Appomattox, Booth “took out his frustrations at a pistol gallery on Pennsylvania Avenue” (Kauffman, *American Brutus*, 91, 110, 207).


16. Although conspiracy theorists have tried to link Johnson with the plot to kill Lincoln, it has never been proven, and any evidence to that effect may have been an attempt by Booth to implicate the vice president. See Kauffman, *American Brutus*, 396.


36. Hahn, *Nation under Our Feet*, 266.


Chapter 6

1. See http://www.jpfo.org/about.htm.
4. LaPierre, Global War, 125, 158.
5. Feldman, Ricochet, 44.
15. Kershaw, Hitler, 76, 75.
18. Kershaw, Hitler, 111.
20. Kershaw, Hitler, 111.
23. Adolf Hitler, Mein Kampf, quoted in Kershaw, Hitler, 97.
26. See James, “Economic Reasons.”
42. Bessel, *Political Violence*, 75 (emphasis in the original), 76.
55. Information provided by University of Hawaii political science professor Rudy Rummel.
57. LaPierre, *Global War*, 125, 158.

**Chapter 7**

2. Eric Foner, *Story*, 16.
7. Wood, *Creation*, xv; Barlow, *Advice*, 39, 33. (Barlow also shared with most Federalists a strong civic republican understanding of the role of the armed citizen [see chapter 4].)

**Chapter 8**

3. Schwartz, *From Confederation to Nation*, 188.
8. The struggle for equal political rights is far from over, and as citizens we must constantly defend the entire basket of these rights. In the United States, we talk a lot about democracy and freedom in the rest of the world, but we still have unfinished business here at home. Butterfly ballots and hanging chads catch our attention every four years, but democracy can be equally threatened by secret earmarks, bribery, corruption, and nepotism.

**Chapter 9**

1. See http://my.barackobama.com/page/community/post/stateupdates/gG5NxL.
8. Proceedings of the Virginia Convention, as compiled in 3 Elliot 414, June 14, 1788.
19. Spitzer, review, 286. See also Spitzer, “Don’t Know Much.”

Chapter 10


5. The debate over the Second Amendment is about how far the protection extends. We argue that the Second Amendment protects state sovereignty by safeguarding the militia from federal inattention or usurpation, while the Insurrectionists give it a much more expansive reading.


9. See Holbrook Mohr, “Lawsuit: Lockheed Should Have Prevented Rampage,” *Jackson (Mississippi) Clarion-Ledger*, March 21, 2005: “It is the employer’s responsibility to provide a safe and healthful workplace for all its employees,” quoting an Occupational Safety and Health Administration official who was describing the agency’s view.


18. In at least one state, however, gun rights advocates have argued that laws preventing holders of permits to carry concealed weapons from bringing their firearms into restaurants, bars, or other areas designated as “gun-free” will force gun owners to leave their guns in their cars, where they will be targets for thieves. See Virginia Citizens Defense League, “VCDL Update 8/14/05,” http://www2.vcdl.org/cgi-bin/wspd.cgi.sh/vcdl/vadetail.html?RE CID=841121&FILTER=. It states, “We have warned the General Assembly re-
peatedly about the dangers of forcing a permit holder to leave his gun in an unattended car.”


20. Case No. 04-cv-820-TCK-PJC.

21. Whirlpool complaint, 8 [Doc. No. 1].

22. Whirlpool complaint, 4–5 [Doc. No. 1].

23. Whirlpool complaint, 5 [Doc. No. 1].


25. Whirlpool complaint, 10 [Doc. No. 1].


28. Amicus curiae brief, National Rifle Association of America, in support of defendants and in opposition to plaintiffs’ motion for permanent injunctive and declaratory relief, 3 [Doc. No. 109].

29. Amicus curiae brief, National Rifle Association of America, in support of defendants and in opposition to plaintiffs’ motion for permanent injunctive and declaratory relief, 12 [Doc. No. 109].

30. Amicus curiae brief, National Rifle Association of America, in support of defendants and in opposition to plaintiffs’ motion for permanent injunctive and declaratory relief, 12–14 [Doc. No. 109].


32. ConocoPhillips v. Henry, 520 F. Supp 2d. 1282, 1295 [2007] (appeal pending as of August 2008). While the court ultimately did not find an actionable invasion of ConocoPhillips’s property rights and granted the injunctions based on the Oklahoma statutes’ conflict with federal regulations, the court stated that “there can be no doubt that the Amendments burden Plaintiffs’ right to exclude because the Amendments prohibit exclusion of what Plaintiffs perceive to be a dangerous activity on their business properties and impede Plaintiffs’ ability to ‘provid[e] a safe workplace’” (ConocoPhillips at 1310).


38. Sullum, “NRA vs. the Constitution.”

39. Richman, “NRA Gets It Wrong.” For additional conservative commentary, see Lora, “NRA vs. the Parking Lot,” which says that “to undermine property rights is to aid the state in its inexorable criminal quest.” The author also suggests that gun owners may want to consider joining Jews for the Preservation of Firearm Ownership rather than the NRA because of the Jewish group’s “principled stand on rights in general.”

40. American Bar Association, “Special Committee,” 4–5; Merrill, “Property.”


46. Paul Gerwitz and Chad Golder, “So Who Are the Activists?” New York Times, July 6, 2005. The authors debunk not the notion of judicial activism but the conservative definition that only liberal-leaning judges are activist: Anthony Kennedy ranked second, right behind Clarence Thomas, but third was Antonin Scalia, with a 56 percent overturn rate.

47. LaPierre, Guns, Freedom, and Terrorism, 119.


55. *Ileto v. Glock*, 349 F.3d 1191, 1196 [9th Cir. 2003], *cert. denied*, 543 S. Ct. 4 [2005].

56. *Ileto v. Glock*, 349 F.3d 1191, 1205 [9th Cir. 2003], *cert. denied*, 543 S. Ct. 4 [2005].


59. Civil minutes order, *Ileto v. Glock*, no. 2:01 CV 01-9762 ABC [RNB] [C.D. Cal. 9/19/2006].


72. See, e.g., Foster, “Good Guns”; Larkin, “Protection of Lawful Commerce Act.”


76. Exod. 22:2; Num. 35; Deut. 19.


81. Florida Stat., Title XLVI, § 776.08.

82. Florida Stat., Title XLVI, § 776.032.


86. See Fulton, Right to Carry.


88. “Victims’ Families Want Law Changes,” Miami Herald, September 27, 2006. For an account of another event and further analysis, see Perlstein, “View to a Kill.”


Chapter 11

1. Suleiman, Dismantling Democratic States, 7.


5. Suleiman, Dismantling Democratic States, 2, 32.


11. NRA fund-raising letter to supporters, April 13, 1995. See discussion of


**Conclusion**

1. Proceedings of the Virginia Convention, as compiled in 3 Elliot 414, June 14, 1788.

2. Kopel, “Trust the People.”