

DEFENDING THEMSELVES: THE ORIGINAL UNDERSTANDING OF THE RIGHT TO BEAR ARMS

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Chalk up a victory for the Standard Model and a defeat for history. On March 9, 2007 the United States Court of Appeals for the District of Columbia issued its decision in *Parker v. District of Columbia*, reversing the district court's decision that D.C. gun control laws were Constitutional since the Second Amendment "does not bestow any rights on individuals."¹ Gun rights groups had a part to play in this decision, with the Second Amendment Foundation, the American Civil Rights Union and the NRA Civil Rights Defense Fund all filing amicus briefs.² To be sure, the historical and original meaning of the Second Amendment is at the very heart of this case and decision.³ The appellees offered Saul Cornell's *A Well-Regulated Militia* as an historical authority on the Second Amendment.⁴ In response, Alan Gura, attorney for the appellants, was quick to argue that the book "contains nothing new"⁵ and that Cornell "dismisses substantial historical evidence that

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1. *Parker v. District of Columbia*, 478 F.3d 370, 373 (D.C. Cir. 2007).

2. *Id.* at 372-73.

3. *Id.* at 380-94.

4. Letter from Lutz Alexander Prager, Office of the Solicitor General, Gov't of the D.C., to Mark J. Langer, Clerk, U.S. Court of Appeals for the D.C. Circuit (Nov. 7, 2006) (on file with author) (stating that Cornell's book traces the relationship between the militia and the Second Amendment before and after 1789 (citing SAUL CORNELL, *A WELL REGULATED MILITIA: THE FOUNDING FATHERS AND THE ORIGINS OF GUN CONTROL IN AMERICA* (2006)), available at <http://www.gurapossessky.com/news/parker/documents/prager110706.pdf>.

5. Letter from Alan Gura, Attorney for Appellants, to Mark J. Langer, Clerk, U.S. Court of Appeals for the D.C. Circuit (Nov. 8, 2006) (on file with author), available at <http://www.gurapossessky.com/news/parker/documents/langer110806.pdf>.

contradicts his theories.”⁶ The court agreed, accepting instead the flawed and distorted version of history that Gura and his partisan amicus briefs offered.⁷ At the center of the court’s historical interpretation of the Second Amendment sits the language of Pennsylvania’s Declaration of Rights of 1776, which guaranteed that the people had a right to bear arms “for the defense of themselves.”⁸ These words, later repeated in the *Dissent of the Minority* during Pennsylvania’s ratification debates, have long been a favorite of individual rights scholars; despite the fact that they completely misunderstand or ignore the history behind these words, they have been using them to influence modern court opinions on the Second Amendment.⁹

The importance of the Pennsylvania Constitution of 1776 to the modern gun debate would be difficult to overstate. In November 2001, Attorney General John Ashcroft issued a letter to all federal prosecutors stating the Justice Department’s new official position that the Second Amendment

6. Letter from Alan Gura, Attorney for Appellants, to Mark J. Langer, Clerk, U.S. Court of Appeals for the D.C. Circuit (Nov. 28, 2006) (on file with author), available at <http://www.gurapossessky.com/news/parker/documents/langer112806.pdf>.

7. *Parker*, 478 F.3d at 400.

8. *Id.* at 385 (citing *The Address and Reasons of Dissent of the Minority of the Convention of Pennsylvania to Their Constituents*, reprinted in 3 THE COMPLETE ANTI-FEDERALIST 151 (Herbert J. Storing ed., 1981)).

9. Individual rights scholars have taken their cue from Stephen A. Halbrook’s interpretation that “defense of themselves” is synonymous with “self defense.” See Stephen A. Halbrook, *The Right to Bear Arms in the First State Bills of Rights: Pennsylvania, North Carolina, Vermont, and Massachusetts*, 10 VT. L. REV. 255, 314 (1985) (concluding that the right to bear arms under the Second Amendment was originally intended for self-defense). Halbrook’s interpretation has gone unchallenged until now. Saul Cornell argues that “the Pennsylvania Declaration of Rights . . . had little to do with public concern over an individual right to keep arms for self-protection.” CORNELL, *supra* note 4, at 22; see also Nathan Ross Kozuskanich, “For the Security and Protection of the Community”: The Frontier and the Makings of Pennsylvania Constitutionalism (2005) (unpublished Ph.D. dissertation, Ohio State University) (on file with author), available at www.ohiolink.edu/edt/send-pdf.cgi?osu1133196585 (foundation for Cornell’s assertions). David T. Hardy, in his review of the book, which is cited as an authority by Alan Gura to discredit Cornell, completely ignores my scholarship. See generally David T. Hardy, Book Review, 15 WM. & MARY BILL RTS. J. 1237 (2007) (reviewing CORNELL, *supra* note 4). Hardy, who has no academic affiliation or historical training, accuses Cornell of forcing his evidence to fit his preconceived conclusions. *Id.* at 1242, 1284. In his opening critique of Cornell, Hardy writes:

[T]he reader is informed that “Pennsylvania in its Declaration of Rights . . . affirmed that ‘the people have a right to bear arms for the defense of themselves and the state,’” and on the next page assured that “[n]one of the early state constitutions adopted language protecting an individual right to keep or carry arms for personal self-defense.”

Id. at 1242 (alterations in original) (citation omitted).

protected the individual ownership of firearms.¹⁰ He called particular attention to the recent U.S. Court of Appeals of the Fifth Circuit decision, *United States v. Emerson*, which stated that “the history of the Second Amendment reinforces the plain meaning of its text, namely that it protects individual Americans in their right to keep and bear arms.”¹¹ In arriving at this decision, the court drew on individual-rights legal scholarship, which it claimed “has enjoyed considerable academic endorsement, especially in the last two decades.”¹² “*United States v. Emerson*,” Ashcroft confidently wrote, “reflect[s] the *correct* understanding of the Second Amendment.”¹³ As with *Parker*, Pennsylvania’s Declaration of Rights¹⁴ was key to the court’s historical interpretation of the words “bear arms.”¹⁵

10. See Linda Greenhouse, *U.S., in a Shift, Tells Justices Citizens Have a Right to Guns*, N.Y. TIMES, May 8, 2002, at A1.

11. 270 F.3d 203, 260 (5th Cir. 2001).

12. *Id.* at 220. The decision specifically cites generally to the following scholarship endorsing the individual rights view: Scott Bursor, *Toward a Functional Framework for Interpreting the Second Amendment*, 74 TEX. L. REV. 1125 (1996); Robert Dowlut, *The Right to Arms: Does the Constitution or the Predilection of Judges Reign?*, 36 OKLA. L. REV. 65 (1983); Stephen P. Halbrook, *The Right of the People or the Power of the State: Bearing Arms, Arming Militias, and the Second Amendment*, 26 VAL. U. L. REV. 131 (1991); Stephen P. Halbrook, *What the Framers Intended: A Linguistic Analysis of the Right to “Bear Arms,”* 49 LAW & CONTEMP. PROBS. (ISSUE NO. 1) 151 (1986); Don B. Kates, Jr., *Handgun Prohibition and the Original Meaning of the Second Amendment*, 82 MICH. L. REV. 204 (1983); Don B. Kates, Jr., *The Second Amendment and the Ideology of Self-Protection*, 9 CONST. COMMENT. 87 (1992); Sanford Levinson, *The Embarrassing Second Amendment*, 99 YALE L.J. 637 (1989); Nelson Lund, *The Ends of Second Amendment Jurisprudence: Firearms Disabilities and Domestic Violence Restraining Orders*, 4 TEX. REV. L. & POL. 157 (1999); Nelson Lund, *The Past and Future of the Individual’s Right to Arms*, 31 GA. L. REV. 1 (1996); Glenn H. Reynolds, *A Critical Guide to the Second Amendment*, 62 TENN. L. REV. 461 (1995); Robert E. Shalhope, *The Ideological Origins of the Second Amendment*, 69 J. AM. HIST. 599 (1982); William Van Alstyne, *The Second Amendment and the Personal Right to Arms*, 43 DUKE L.J. 1236 (1994); Eugene Volokh, *The Commonplace Second Amendment*, 73 N.Y.U. L. REV. 793 (1998); Robert J. Cottrol & Raymond T. Diamond, *The Fifth Auxiliary Right*, 104 YALE L.J. 995 (1995) (reviewing JOYCE LEE MALCOLM, *TO KEEP AND BEAR ARMS: THE ORIGINS OF AN ANGLO-AMERICAN RIGHT* (1994)). See *United States v. Emerson*, 270 F.3d at 220 n.12.

13. Greenhouse, *supra* note 10, at A1 (emphasis added) (internal quotations omitted).

14. See PA. CONST. of 1776, ch. 1 (known as “A Declaration of the Rights of the Inhabitants of the Commonwealth or State of Pennsylvania”), reprinted in IX THE STATUTES AT LARGE OF PENNSYLVANIA FROM 1682 TO 1801, at 586, 588 (1903) [hereinafter STATUTES AT LARGE].

15. *Emerson*, 270 F.3d at 229-32. The Pennsylvania Declaration of Rights also features prominently in the scholarship the court cited. See sources cited *supra* note 12. Ten of the fourteen articles cited the text, or the Pennsylvania Dissent of the Minority, which uses identical wording. It should be noted that while Cottrol and Diamond’s *The Fifth Auxiliary*

Individual rights scholars have consistently claimed the Pennsylvania Declaration of Rights as their own, insisting that it provides evidence that Americans understood the right to bear arms as one of personal self-defense.¹⁶ Collective rights scholars have regularly conceded this point, assuming that “self-defense” and “defense of themselves” are synonymous.¹⁷ Neither side of the debate, however, has bothered to examine the history of the Pennsylvania Constitution or the people who were the first to enshrine the right to bear arms in a state constitution. Manipulating their sources into the confines of the individual or collective rights paradigms, scholars have sanitized select quotations from the contexts in which they were written. As such, the complex history leading up to the drafting of Pennsylvania’s Declaration of Rights and the tradition of community self defense that defined the province since the 1750s has been effectively ignored.

Viewed in the proper perspective, the Pennsylvania Declaration fits better into the emerging “civic rights” model, which sees the right to bear arms as having been an essential requirement for all citizens.¹⁸ Bearing arms

Right does not mention the Declaration, their piece is a review of Joyce Lee Malcolm’s *To Keep and Bear Arms*. See generally Cottrol & Diamond, *supra* note 12.

16. See, e.g., Stephen P. Halbrook, *What the Framers Intended: A Linguistic Analysis of the Right to “Bear Arms,”* 49 LAW & CONTEMP. PROBS. 152 (1986).

17. Of the approximately five hundred law review articles on LexisNexis written in the past ten years on the Second Amendment and the right to bear arms, forty-five have appealed to the text of Pennsylvania’s Declaration of Rights. This is more than the other eighteenth-century state constitutions written before the Federal Bill of Rights, even Vermont, which uses the same language, but is only cited thirty-eight times. The Massachusetts Constitution of 1780 guaranteed that “the people have a right to keep and to bear arms for the common defence,” MASS. CONST. of 1780 art. XVII, and is cited twenty-four times. North Carolina’s Constitution of 1776 specified that “the People have a Right to bear Arms, for the Defence of the State,” N.C. CONST. of 1776 art. XVII, and is cited fourteen times. The Virginia Constitution of 1776 provided for a “well regulated militia, composed of the body of the people, trained to arms,” VA. CONST. of 1776 § 13, and is cited thirty-three times.

18. For differing interpretations of the republican origins of the Second Amendment, see Robert E. Shalhope, *The Armed Citizen in the Early Republic*, in WHOSE RIGHT TO BEAR ARMS DID THE SECOND AMENDMENT PROTECT? 29-49 (Saul Cornell ed., 2000), and Lawrence Delbert Cress, *A Well-Regulated Militia: The Origins and Meaning of the Second Amendment*, in WHOSE RIGHT TO BEAR ARMS DID THE SECOND AMENDMENT PROTECT?, *supra*, at 52-62. For a summary of the modern individual rights model, see Reynolds, *supra* note 12, at 507-08. For more recent Second Amendment articles that employ the Declaration of Rights, see Scott R. Erekson, *Is the Day of Reckoning Coming?--The Collectivist View of the Second Amendment is Going the Way of “Separate But Equal,”* 40 IDAHO L. REV. 757, 764 (2004); Steven J. Heyman, *Natural Rights and the Second Amendment*, 76 CHI.-KENT L. REV. 237, 266-70 (2000); L.A. Powe, Jr., *Guns, Words, and Constitutional Interpretation*, 38 WM. & MARY L. REV. 1311, 1351, 1397 (1997). For the more recent emphasis on the civic nature of the right to bear arms, see Saul Cornell, *Beyond the Myth of Consensus: The Struggle to Define the Right*

was not solely the right of the state as a legal entity, which was then conferred onto citizens acting collectively, it was the duty of all citizens so that they could participate in a militia.¹⁹ The new constitution demanded militia service from every citizen; with every member of society contributing his share to the defense of Pennsylvania as a whole, as well as the smaller communities within its borders, the framers of the Pennsylvania Constitution of 1776 felt they could realize the true goal of responsible government stated in the preamble:²⁰ the “security and protection of the community.”²¹

Second Amendment scholars have been too eager to define the right to bear arms as either an individual or a collective right. As such, militia service and collective responsibility has been downplayed by those who adhere to the Standard Model, while individual gun ownership and ideas about personal protection are hard to find in essays about the militia. The history of Pennsylvania shows that we need not be so dichotomous in our thinking about guns during the Revolution. The right to bear arms was not exercised solely by the state or by individuals, but rather by citizens to ensure public safety. Indeed, the individual right to bear arms was essential if men were to perform their duty of militia service.²² While the concept of civic obligation may seem foreign to the modern reader, it made perfect sense to the radical Pennsylvanians of the late eighteenth century. Pennsylvania in the 1770s was experiencing a dual revolution; one against British imperial authority and another against provincial Quaker power that had controlled the Assembly

to Bear Arms in the Early Republic, in *BEYOND THE FOUNDERS: NEW APPROACHES TO THE POLITICAL HISTORY OF THE EARLY AMERICAN REPUBLIC* 253-57 (Jeffery L. Pasley et al. eds., 2004) [hereinafter *BEYOND THE FOUNDERS*]. For the validity of using preambles to establish a context for reading constitutions, see David König, *The Second Amendment: A Missing Transatlantic Context for the Historical Meaning of “the Right of the People to Keep and Bear Arms,”* 22 *LAW & HIST. REV.* 119, 151-54 (2004).

19. König, *supra* note 18, at 143.

20. *Id.*

21. PA. CONST. of 1776 pmb1.

22. This is not to say that men could only own guns for militia service, for even a cursory glance at the historical record shows that people owned and used guns outside of their duty to the militia. However, that same glance at the historical record shows that “bearing arms” was understood to pertain to military service. For example, in 1773, the Georgia Assembly levied a fine against “any person liable to appear and bear arms at muster” who failed to arrive “completely armed and furnished.” See *ACTS PASSED BY THE GENERAL ASSEMBLY OF GEORGIA* 24 (James Johnston ed., 1773). It is obvious here that personal firearms were subject to regulation, and that bearing arms was a term reserved for militia action. While Georgians owned arms, and were expected to use them in their militia service, they could not be said to be bearing those arms until they appeared at muster.

for decades.²³ Radical Whigs revolted to establish a new model of civil society that had emerged during the conflicts of the French and Indian War. This new vision placed a premium on community safety and defense, and rejected the Quaker model of order based on pacifism and negotiation with Natives. Thus, under the new constitution every male citizen was mandated to muster or to pay money in cases of religious objection. Those unwilling to contribute to the community's defense could not fully enjoy its civil and legal protections and would suffer penalties such as the confiscation of property. Indeed, the safety of the whole depended on the contributions and diligence of every individual, and participation in civil society came with certain responsibilities.²⁴ Bearing arms was the paramount obligation in the new state and became a defining attribute of citizenship for Pennsylvanians. Such a definition of civil society with its martial emphasis would pose a serious challenge to a traditional Quaker ideal of civil society which eschewed state-sanctioned violence.²⁵ This was the vision the drafters of the Declaration of Rights had for their state, a vision that was neither defined solely by a liberal ideology nor a states' rights conception of the right to bear arms.

23. *See generally* CHARLES LINCOLN, *THE REVOLUTIONARY MOVEMENT IN PENNSYLVANIA, 1760-1776* (1901) (offering the novel idea of a dual revolution). For a progressive study, building upon Lincoln's ideas by focusing on social and economic discord, *see generally* ROBERT LEVERIE BRUNHOUSE, *THE COUNTER-REVOLUTION IN PENNSYLVANIA, 1776-1790* (1942); J. PAUL SELSAM, *THE PENNSYLVANIA CONSTITUTION OF 1776: A STUDY IN REVOLUTIONARY DEMOCRACY* (Da Capo Press 1971) (1936). John D. Barnhart places Pennsylvania at the forefront of the movement to destroy "the aristocracy inherited from colonial days," and the creation of an American democracy in which "yeoman or farmers sought to make their states representative and responsive to their needs and aspirations." *See* JOHN D. BARNHART, *VALLEY OF DEMOCRACY: THE FRONTIER VERSUS THE PLANTATION IN THE OHIO VALLEY, 1775-1818*, at 4 (1953). Andrew Cayton argues that the tensions between aristocracy and democracy carried into the Federalist Era, and that Federalists "feared the frontier" because it was "open, dynamic, democratic, egalitarian . . . [and] belonged both politically and intellectually to the Jeffersonian Republicans." ANDREW R.L. CAYTON, *THE FRONTIER REPUBLIC: IDEOLOGY AND POLITICS IN THE OHIO COUNTRY, 1780-1825*, at 12 (1986).

24. For a more detailed analysis of civil society in the early Republic, *see* John L. Brooke, *Consent, Civil Society, and the Public Sphere in the Age of Revolution and the Early American Republic*, in *BEYOND THE FOUNDERS*, *supra* note 18, at 207-50; *see also* JAMES KETTNER, *THE DEVELOPMENT OF AMERICAN CITIZENSHIP, 1608-1870*, at 131-72 (1978) (arguing that, as the Revolution approached, Americans sought to define principles of membership in civil society that included concepts of individual liberty and community security).

25. *See infra* note 58 and accompanying text.

I. THE FRONTIER EXPERIENCE

An exhaustive survey of all surviving colonial newspapers, pamphlets, and legislative debates reveals that Pennsylvanians were less concerned with an individual right to bear arms than they were with the responsibility of the provincial government to enable them to protect themselves on the frontier. Nor were they simply interested in protecting the state. The impulse driving Pennsylvanians was strongly tied to a community-based understanding of self-defense galvanized by the lack of a state militia. As British subjects, frontiersmen insisted that the Assembly meet its basic constitutional obligation to safety.²⁶ The failure of the Assembly to prevent Indian incursions on the frontier from 1754 to 1758 provoked many to question the legitimacy of their provincial government.²⁷ The disparity among imperial wishes, provincial actions, and frontier realities caused political tensions within the provincial government and incited frontier settlers to challenge their leaders. Although ethno-cultural divisions played into the resentment of western Pennsylvania against the east, the roots of the province's political tension lay in the inability of the government to protect its frontier citizens from Indian violence.

The failure of the provincial Assembly to ensure the safety of its own citizens shaped a reactionary constitutional ideology that valued physical protection and community safety.²⁸ A 1754 petition drafted by inhabitants of Lancaster County, in which residents pled with the governor to provide them with ample protection from the French and their Indian allies, succinctly captured this conception of public defense. Sensible to the dangers of being on the frontier, the petitioners asked the government to "put Us in a Condition that We may be able to defend Ourselves," guaranteeing in return that they would do their part to "join with all that We can do for the Safety of

26. For more on Scotch-Irish appeals to the right to life and property as British subjects, see PATRICK GRIFFIN, *THE PEOPLE WITH NO NAME: IRELAND'S ULSTER SCOTS, AMERICA'S SCOTS IRISH, AND THE CREATION OF A BRITISH ATLANTIC WORLD, 1689-1764*, at 157-73 (2001).

27. According to John Phillip Reid, colonists believed that they were protected under "the second original contract," which guaranteed that if they remained loyal to the King they would receive protection and enjoy all the rights and privileges of freeborn Englishmen. See JOHN PHILLIP REID, *CONSTITUTIONAL HISTORY OF THE AMERICAN REVOLUTION 16-20* (1986). Reid also offers a persuasive argument that the Revolution was primarily a crisis in constitutionalism. See *id.* at 6-7.

28. By "reactionary" I don't mean to imply that it was new, rather that it was a reaction to Quaker policies. The constitutional guarantee of safety and protection was well established in English law by the time of the Revolution.

the Province.”²⁹ Indeed, many of the people of the frontier saw the solution to their problems in the passage of a coherent and effective militia law that would compel men to serve. With a lack of an organized militia, Pennsylvania residents, like those in Lancaster, banded together for protection. As the *New York Mercury* reported, “the people on the west side of the Susquehanna . . . are gathering together to defend themselves.”³⁰

The question of adequate defense dominated public debate throughout the French and Indian War. “Our accounts, in general, from the Frontiers, are most dismal,” lamented *The Pennsylvania Gazette*, “all agreeing that some of the Inhabitants . . . are [not] able to defend themselves. . . .”³¹ One anonymous writer railed against the Assembly for not protecting the frontier settlers, claiming that the French were “daily plundering our back inhabitants, and spoiling and laying waste to our borders.” Indeed, the author argued, it was “high Time to look Around us, and unite as with one Voice to elect such Men as are able and willing to defend themselves and Country from so violent an Enemy.”³² A like-minded essayist, with the pen name “A Lover of His Country,” joined the critique of the Assembly’s inadequacy to arm the frontier: “I may venture to say, without the Gift of Prophecy,” he argued, “that those among us, who are desirous to choose such Members, as would be willing to pay a proper Regard to the Orders of His Majesty in this critical Conjunction, would be willing to vote Money to supply the Back inhabitants with Arms”³³

To address the problems of community safety, the citizens of Carlisle entered into an association on July 12, 1755 for their “mutual Defense,” promising to keep “Night Watch or Guard, within the limits of Carlisle” and to “[c]ontinue so long as it seemeth necessary to the majority of us.”³⁴ A precedent for such voluntary military associations had been set as early as

29. Petition of the Inhabitants of Donegal, in Lancaster County, to the Governor (July 26, 1754), in 6 PENNSYLVANIA COLONIAL RECORDS 131 (Lancaster, Pa., Samuel Hazard ed., 1852).

30. *Extract of a Letter from Berks County, Dated July 27*, N.Y. MERCURY, Aug. 4, 1755.

31. *Philadelphia, September 8*, PA. GAZETTE, Sept. 8, 1757.

32. *To the Printers of the Pennsylvania Gazette*, PA. GAZETTE, Sept. 19, 1754 (illustrating one of the first examples of the use of a formulation of collective self defense in terms similar to those eventually incorporated into the Pennsylvania Declaration of Rights).

33. A Lover of His Country, *To the Freemen of the City and County of Philadelphia*, PA. GAZETTE, Sept. 26, 1754.

34. Jas. Pollock et al., *For Our Mutual Defense (1755)*, in TWO HUNDRED YEARS IN CUMBERLAND COUNTY: A COLLECTION OF DOCUMENTS AND PICTURES ILLUSTRATING TWO CENTURIES OF LIFE IN PENNSYLVANIA 24, 24-25 (D.W. Thompson et al. eds., 1951).

1747 during King George's War when Benjamin Franklin drafted a charter for a militia association so that Pennsylvanians could "undertake their own defense," and many counties followed Lancaster's example.³⁵ Although the people on the frontier formed local militia units and defense associations in response to Indian incursions, they looked to the provincial government for supplies and leadership. When Robert Hunter Morris replaced James Hamilton as Governor in October 1755, he struggled with the Assembly to supply the west with arms. In his first address to the House, Morris pleaded with the members to help the inhabitants of the back counties.³⁶ While the Assembly and Governor argued, a petition from York County arrived claiming that there were many in that county willing to enlist in militia and "bear Arms for the Defence of the Frontiers . . . if they had any Assurance of Arms, Ammunition, and reasonable Pay."³⁷ The petitioners claimed that three quarters of them had no guns or ammunition and lacked any cohesive military leadership.³⁸

Chester County judge William Moore cut to the heart of the dispute growing between pacifists and militants in the province in a 1755 petition to the Assembly: if certain assemblymen would not defend their fellow citizens because of religious conscience, they should relinquish their seats to men who would do their duty as elected officials.³⁹ Thus, in Moore's view, the Quakers' pacifism disqualified them from positions of leadership since it

35. As quoted in GORDON WOOD, *THE AMERICANIZATION OF BENJAMIN FRANKLIN* 55 (2004).

36. See 5 PENNSYLVANIA ARCHIVES, SERIES NO. 8, at 4094-45 (Gertrude MacKinney ed., 1931).

37. See *id.* at 4096.

38. We may never know exactly how many guns there were in colonial America, and this essay makes no effort to substantiate or dismiss the claims of Michael Bellesiles's controversial book. See generally MICHAEL A. BELLESILES, *ARMING AMERICA: THE ORIGINS OF A NATIONAL GUN CULTURE* (West 2003) (2000). Bellesiles argues that American gun culture began not with the frontier and the Revolution, but with industrialization which made firearms cheaper and readily available. See *id.* He bases his thesis on an examination of probate records, which he claims shows that gun ownership was the exception to the rule before the 1820s. See *id.* For more detailed studies of gun numbers that contradict Bellesiles, see James Lindgren & Justin L. Heather, *Counting Guns in Early America*, 43 WM. & MARY L. REV. 1777, 1819-35 (2002); see generally Randolph Roth, *Guns, Gun Culture, and Homicide: The Relationship Between Firearms, the Use of Firearms, and Interpersonal Violence*, 59 WM. & MARY Q. 223 (2002).

39. A Petition of William Moore, and Thirty Five Others, 5 November 1755, 5 PENNSYLVANIA ARCHIVES, SERIES NO. 8, *supra* note 36, at 4099. For the role this debate played in Philadelphia's print culture, see PHILADELPHIA PRINTMAKING: AMERICAN PRINTS BEFORE 1860, at 73 (Robert F. Looney ed., 1977).

prevented them from making effective provisions for the common defense.⁴⁰ Conscious of the rift between the Governor and Assembly, Moore demanded that the House end all “unnecessary Disputes with the Governor, nor, by Reason of their religious Scruples, longer neglect the Defence of the Province.”⁴¹

Moore had long been concerned about the problems of defense. In 1744, upon receiving a colonel’s commission from Governor Sir George Thomas, he lamented he could do little to provide any real protection on the frontier: “The inhabitants very well know we have no militia law and that they are in no manner obliged to obey the command of the officers you may think fit to place over them,” he wrote Thomas.⁴² Although Moore speculated that perhaps “a small number of men” would meet together to drill five or six times a year, he warned that the militia would fail without both regulation and funds from the government.⁴³ His frustration in the 1740s informed his 1755 petition, which called not just for arms and ammunition to be sent to the frontier, but for a redefinition of civic duty. If Quakers could not contribute to the common defense of the province, then they could not fulfill their obligations to civil society and therefore should be barred from sitting in the Assembly.

Pennsylvania was not able to pass a militia bill into law during the French and Indian War, but as violence dissipated on the frontier after 1758, so too did safety petitions to the Assembly. But the House had not solved the issue of how to adequately defend the frontier and it rose once again with Pontiac’s War in 1763. The Assembly responded to the growing violence by drafting a bill authorizing payment to up to seven hundred frontier volunteers to protect the backcountry during the harvest.⁴⁴ The bill was passed in two

40. See 5 PENNSYLVANIA ARCHIVES, SERIES NO. 8, *supra* note 36, at 4099.

41. *Id.*

42. Letter from William Moore to George Thomas (Oct. 25, 1744), *Historical Society of Pennsylvania* (“HSP”), Cadwalader Collection, Series V: Phineas Bond Papers, Box 24. In a letter from October 5, Moore wrote to Thomas that war with the French made it “absolutely necessary that a militia should be formed as well for the defense of this province.” Letter from William Moore to George Thomas (Oct. 5, 1744), *HSP*, Cadwalader Collection, Series V: Phineas Bond Papers, Box 24.

43. Letter from William Moore to George Thomas (Oct. 25, 1744), *supra* note 42.

44. The problem of violence on the frontier was brought to the attention of the Assembly in a July 6, 1763 petition from Colonel Bouquet at Carlisle. See Colonel Bouquet to the Assembly, 6 July 1763, 6 PENNSYLVANIA ARCHIVES, SERIES NO. 8, *supra* note 36, at 5430. Bouquet asked for the Assembly to “send immediately arms and ammunition” to the frontier “to be distributed to the inhabitants, to defend their reapers.” *Id.* The Assembly then put together a committee to draft a bill “for the better Regulation of the Troops lately voted for the Protection of the Frontier Settlement.” *Id.* at 5431.

days, and the Assembly went into recess.⁴⁵ But it was not enough to calm an anxious frontier still reeling from the bloodshed of the 1750s.

II. THE PAXTON RIOTS

Perhaps the most infamous event illustrating the tensions between the Quaker Assembly and the western frontier is the Paxton Riots. In December 1763, a group of mostly Scotch-Irish Presbyterian frontiersmen slaughtered twenty Indians living in Conestoga Manor and the Lancaster workhouse, claiming that these Indians had perpetrated murders along the frontier. The killers then turned their attention to Philadelphia and in early 1764 approximately three hundred men marched fully armed to the capital to air their grievances about the lack of safety on the frontier, and intent on killing the Moravian Indians moved there by the government for protection. On February 2, Governor John Penn asked the Assembly to frame a riot act to enable the government to suppress any further internal threats, which it immediately did.⁴⁶ On the 4th, after getting word that a “very considerable number” of frontiersmen were intending to strike Philadelphia the next day, Penn drafted a letter to the Assembly asking for a militia bill. “I think it my Duty to his Majesty, and to the good People of this Province,” he explained, “to recommend to you to frame a Militia Law . . . as the only natural and effectual Means of preserving the public Tranquility, and enabling the Civil Power to enforce the Laws.”⁴⁷

The Paxtonians’ march on the city threw Philadelphia into utter confusion. What made the situation particularly disorienting was the mustering of an anti-Paxton Quaker militia. The odd sight of armed Quakers did not go unnoticed by even the smallest Philadelphians: a group of small boys followed a prominent Quaker down the street shouting, “Look, look! [A] Quaker carrying a musket on his shoulder!”⁴⁸ Older citizens as well were baffled at the sight of Quakers carrying flintlock muskets and daggers.⁴⁹ As Philadelphia resident Sally Potts later wrote to her sister, “[The Quakers] seem’d as ready as any to take up Arms in such a Cause to Defend the Laws

45. The governor gave his assent to the bill and it was passed into law on July 8, 1763. See 6 PENNSYLVANIA ARCHIVES, SERIES NO. 8, *supra* note 36, at 5434.

46. 7 PENNSYLVANIA ARCHIVES, SERIES NO. 8, *supra* note 36, at 5536.

47. *Id.* at 5540-41.

48. 2 HENRY MELCHIOR MUHLENBERG, THE JOURNALS OF HENRY MELCHIOR MUHLENBERG 20 (Theodore G. Tappert & John W. Doberstein trans., 1945).

49. *See id.*

and Libert[ies] of their Country against a parcel of Rebels.”⁵⁰ A violent confrontation in Philadelphia was avoided when Benjamin Franklin headed up a small delegation of prominent men who met with the Paxton Boys in Germantown, convincing them to write down their grievances and return home.⁵¹

The barrage of pamphlets that circulated in Philadelphia following the riots prompted the Paxton Boys to issue an apology explaining the constitutional reasons they had embarked on their expedition. In language that would be echoed in the 1776 Declaration of Rights, the Apology explained that “the far greater part of our Assembly were Quakers, some of whom made light of our sufferings & plead conscience, so that they could neither take Arms in *defense of themselves or their country*.”⁵² Such actions stood in stark contrast to the Quakers taking up arms against the Paxton Boys, who claimed to be loyal subjects of the King. The Paxton Boys reasserted the claim that the Indians they had killed were indeed guilty of murder on the frontier and thus were enemies of the crown, and submitted six sworn testimonies to support this claim.⁵³ While these testimonies are of dubious veracity, they nevertheless indicate the legal and constitutional approach the Paxton Boys took to the issue of public defense and safety. Indians were enemies, and, even if they were considered to be under the protection of the province, that status did not entitle them to the full benefits of British citizenship.⁵⁴ Indeed, relinquishing their fully independent status as a nation did not make Indians British. “Can any person be so little acquainted with the law of nature,” the Paxton Boys asked, “as to suppose that their giving up this single article to us, would secure to every individual of them the benefit of a trial by our laws?”⁵⁵

The Paxton Rebellion was initially a legal and civil conflict. More than just an attack of the west on the east, or the Presbyterians on the Quakers, the actions of the Paxton Boys brought the province’s legal and civil structure into question. By the mid 1700s, Britons on both sides of the Atlantic appealed to a common constitutional tradition, that is to say, to their rights as

50. John R. Dunbar, *Introduction to THE PAXTON PAPERS* 40 n.2 (John R. Dunbar ed., 1957) (quoting Letter from Sally Potts to Her Sister (Feb. 9, 1764) (on file with the Historical Soc’y of Pa., Soc’y Collection) (first alteration in original)).

51. *THE PAXTON PAPERS*, *supra* note 50, at 45.

52. *The Apology of the Paxton Volunteers Addressed to the Candid & Impartial World*, in *THE PAXTON PAPERS*, *supra* note 50, at 187 (emphasis added).

53. *Id.* at 195-99.

54. *Id.* at 194, 201.

55. *Id.* at 201.

Englishmen.⁵⁶ Clearly, the Paxton Riots were part of this trend.⁵⁷ Indeed, the primary root of the Paxton Boys' discontent was not ethnic or religious, but rather constitutional and civil—namely that the government had failed to protect the natural rights of its citizens, and instead had given protection to “enemy” Indians. In response, the Quakers, who considered order to be a condition of social peace, decried the illegality of the Paxtonians' actions and attempted to use law to bring the incident to a close.⁵⁸ Unfortunately, no one stepped forward to identify the Paxton Boys and no trial was ever held, something which worried Quaker supporters.⁵⁹ Since the government was unable to apprehend the Paxtonians and bring them to justice, the Crown would most certainly force the province to renounce its pacifist past and maintain a military force to support the civil government. This would not be achieved until the Revolution.

56. J. C. D. CLARK, *THE LANGUAGE OF LIBERTY, 1660-1832: POLITICAL DISCOURSE AND SOCIAL DYNAMICS IN THE ANGLO-AMERICAN WORLD* 1-45, 257-60 (1994).

57. Patrick Griffin argues that Ulster Scots, who refused to be labeled as Scots-Irish, appealed to “Britishness” as a way to overcome prejudice by Anglo colonists who looked down on them. GRIFFIN, *supra* note 26, at 172. For Griffin, “[t]he rights discourse employed by the Paxton Boys and their defenders . . . served as a touchstone for group unity.” *Id.* Past historical oversight of Pennsylvania's racial boundaries has recently been remedied in JANE T. MERRITT, *AT THE CROSSROADS: INDIANS AND EMPIRES ON A MID-ATLANTIC FRONTIER, 1700-1763*, at 282-94 (2003). As Merritt argues, by the 1760s, “Pennsylvanians called for new territorial and political boundaries to separate and control people.” *Id.* at 4. Thus, the Paxton Boys appealed to their own rights as citizens, and claimed that Indians were separate nations and therefore were outside British boundaries and protection. *See id.* at 291.

58. As David Hackett Fischer argues, since law was an essential condition for social peace, the Assembly made laws that made their officers (namely sheriffs and coroners) responsible for maintaining “good order.” For a detailed look at Delaware Order Ways, *see* DAVID HACKETT FISCHER, *ALBION'S SEED: FOUR BRITISH FOLKWAYS IN AMERICA* 584-89 (1989); *see generally* James E. Crowley, *The Paxton Disturbance and Ideas of Order in Pennsylvania Politics*, 37 *PA. HIST.: J. MID-ATLANTIC STUD.* 317 (1970).

59. *See, e.g.*, A SERIOUS ADDRESS, TO SUCH OF THE INHABITANTS OF PENNSYLVANIA, AS HAVE CONNIVED AT, OR DO APPROVE OF, THE LATE MASSACRE OF THE INDIANS AT LANCASTER; OR THE DESIGN OF KILLING THOSE WHO ARE NOW IN THE BARRACKS AT PHILADELPHIA 4 (Phila., Anthony Armbruster 1764). “It is a fundamental Law of all *civil Governments*,” the author argued, “that no person shall put another to death by his own Authority.” *Id.* Where the murderers erred was in considering all Indians as part of the same nation. *See id.* As with war in general, “the offences of one nation could not be held against another,” and to kill the children of one nation for “the Crimes of other Nations of the same Colour” was unconscionable. *Id.* The Conestoga, by virtue of the 1701 treaty, had become British subjects, making the crime against them all the more egregious. *Id.* at 5. If the Conestoga were indeed guilty of crimes, then they deserved a trial by jury to answer for their crimes, as had been the case in the past. *Id.* at 6. “If some of them have, now and then, been guilty of Offences,” the author argued, “they were always ready to be apprehended and brought to [trial].” *Id.*

III. THE ASSOCIATOR MOVEMENT

The violence of the French and Indian War and the tensions of the Paxton Riots shaped popular ideas of defense and the essential role government played in providing safety. It was these convictions that shaped Pennsylvania's response to the American Revolution. Indeed, the importance of the events of the 1750s and early 1760s cannot be underestimated when trying to understand the nature of the Revolution in Pennsylvania. The men who had condemned Quaker rule and the Assembly's failure to provide for the common defense soon started playing a leading role in Pennsylvania's radical committees and the associator movement that dominated the push for constitutional reform in Pennsylvania. Most of these men viewed the possibilities open to them with a successful revolt against both provincial and imperial power through the lens of the 1750s and 1760s. Now a responsible state government could be instituted that would recognize and support the right of local communities to defend themselves.

The associators, those willing to enter into voluntary agreements to provide community self-defense, served as a bridge between Paxtonian and Radical Whig ideology. Supported by the emerging Presbyterian Party, they put pressure on the Assembly to adopt a more radical stance to the growing imperial crisis. Ultimately, the Assembly's refusal to pass a viable militia bill would be its undoing as the rumblings of war with Britain turned many Pennsylvanians against the moderate legislature and down a more activist and militant path. Indeed, the popular and successful associator movement after the battles of Lexington and Concord left no room for a Quaker ideology of negotiation and pacifism. Although not all those who joined a militia company in the mid 1770s were western Presbyterians, most of those who did join adhered to the Paxtonian ideology that demanded every man contribute to the common defense. Indeed, the associator movement was the link between the problems of the western frontier during the French and Indian War and the realization of the Paxtonian agenda that fueled the American Revolution in Pennsylvania.

While the Assembly could not bring itself to support a militia in the wake of Lexington and Concord, Pennsylvanians had little compunction about mustering themselves without state sanction. As a result of its hesitant inaction, many now saw the Assembly as defunct and illegitimate. As such, military associations began to play an increasingly important role in Pennsylvania's road to the Revolution. It was through these associations that men who never sat on committees, or were not prominent enough to get elected to the Assembly, could express their political and constitutional views. With news of Lexington and Concord filling the pages of the

Pennsylvania press, military preparations began throughout the province despite the Assembly's inability to promise any money.⁶⁰

When radical Free Quaker Christopher Marshall went to visit his friend James Cannon in April of 1775, he found "He was not there, being gone to [the] State House Yard to help consult and regulate the forming of the militia."⁶¹ Two days later, Marshall noted that "[t]his day a number of the associators to the militia met in each of the wards of the city, to form themselves in suitable companies, and to choose their respective officers."⁶² Advertisements in the local papers asked anyone with firearms to "give public notice thereof, and dispose of them at a moderate price to those who want them."⁶³ Philadelphia, protected from most of the violence of the French and Indian War, had no regular military associations and some residents were learning how to muster for the first time. This was particularly true for a number of young Quakers "who . . . asked leave of the managers to learn the . . . exercise in the factory yard."⁶⁴ The posturing and parading of some members of the upper class came as an amusement to some Philadelphians who mockingly dubbed one company of young gentlemen the "Silk-Stocking Company" and the "Lady's Light Infantry."⁶⁵ However, such monikers did not dampen these men's military spirit. As one member of the association later remembered, "We met morning and evening, and from the earnest and even enthusiastic devotion of most of us to learn the duty of soldiers, the company, in the course of a summer's training, became a truly respectable militia corps."⁶⁶

Philadelphia associators met in late April, agreeing to raise at least two companies for each ward of the city to supplement the two rifle and two artillery companies already being formed. "It is not doubted," the associators were pleased to report, "but we shall have in a few weeks from this date,

60. *Extract of a Letter from Boston, April 19*, PA. GAZETTE, Apr. 27, 1775 (detailing the march of British Regulars to Lexington and Concord).

61. Christopher Marshall, *Diary Entry of April 29, 1775*, in EXTRACTS FROM THE DIARY OF CHRISTOPHER MARSHALL KEPT IN PHILADELPHIA AND LANCASTER DURING THE AMERICAN REVOLUTION, 1774-1781, at 21 (William Duane ed., 1877) [hereinafter DIARY] (second alteration in original).

62. Marshall, *Diary Entry of May 1, 1775*, in DIARY, *supra* note 61, at 22.

63. *Philadelphia, April 29, 1775*, PA. EVENING POST, May 4, 1775, at 177.

64. Marshall, *Diary Entry of May 3, 1775*, in DIARY, *supra* note 61, at 22.

65. STEVEN ROSSWURM, ARMS, COUNTY, AND CLASS: THE PHILADELPHIA MILITIA AND "LOWER SORT" DURING THE AMERICAN REVOLUTION, 1775-1783, at 50 (1987).

66. ALEXANDER GRAYDON, MEMOIRS OF A LIFE, CHIEFLY PASSED IN PENNSYLVANIA, WITHIN THE LAST SIXTY YEARS 108 (Harrisburg, Pa., John Wyeth 1811).

4,000 men, well equipped, for our own defense.”⁶⁷ Of course, participation in a military association was not a guarantee of radicalism. Some men joined or ceased their opposition to militia formation after “being formally introduced to a tar barrel.”⁶⁸ Even Isaac Hunt, who had penned some of the most vicious anti-Paxton pamphlets and had consistently opposed the Presbyterian Party, “asked pardon of the public” for his Tory sentiments when thirty associators showed up on his doorstep.⁶⁹ Others, like James Allen, joined an association to be a voice of moderation, believing that “discreet people mixing with [the associators] may keep them in order.”⁷⁰

The men of the frontier, who had been used to defending themselves since the 1750s, wasted no time in organizing military associations.⁷¹ In mid-May, men gathered in the far western towns of Hannastown and Pittsburgh.⁷² Subscribing their names to a set of resolutions calling for independence, the men organized an association under Colonel Proctor’s command.⁷³ Similar associations sprang up in major towns throughout the province in April and May, even in Moravian Hebron which saw the “whole neighborhood” take on a “warlike appearance.”⁷⁴ As companies sprang up throughout the province, the Northampton Committee of Correspondence urged all freemen to “provide themselves immediately with all necessary arms and

67. *Philadelphia, May 2*, PA. EVENING POST, May 2, 1775, at 172.

68. *Extract of a Letter from a Gentleman in Bucks County*, PA. GAZETTE, May 10, 1775.

69. Marshall, *Diary Entry of September 6, 1775*, in DIARY, *supra* note 61, at 41. Under the circumstances, it is no surprise that Hunt capitulated to the Whigs. Thirty associators, most likely armed, escorted Hunt from his home to the Coffee House, and placing him on a cart, asked him to acknowledge his wrongdoing. *See id.* When he did so, the associators wheeled him through the main streets of Philadelphia, beating drums, and stopping at various places for Hunt to make his declaration once again. *See id.* When the men stopped outside Dr. Kearsley’s house, the doctor opened his window and fired his pistol twice into the crowd. *See id.* The associators rushed into his house, seized the pistol and another Kearsley had in his pocket, wounding him in the hand during the scuffle. *See id.* The men took Hunt out of the cart and escorted him home, then put Kearsley on the cart and wheeled him to the Coffee House. *See id.* He refused to make any apologies, so the associators paraded him around town and eventually back to his house. *See id.* By that time a crowd had gathered demanding that he be tarred and feathered. *See id.* The associators prevented the crowd from physically harming the doctor, but when they left, the crowd vandalized his house. *Id.* at 41-42.

70. *Diary of James Allen, Esq., of Philadelphia, Counsellor-at-Law, 1770-1778*, 9 PA. MAG. HIST. & BIOGRAPHY 176, 186 (1885) [hereinafter *Diary of James Allen, Esq.*].

71. SELSAM, *supra* note 23, at 75.

72. *Id.*

73. *Id.*

74. *Id.* at 76 (quoting J.H. Redsecker, *The Hebron Diary During the Revolutionary Period*, in 1 HISTORICAL PAPERS AND ADDRESSES OF THE LEBANON COUNTY HISTORICAL SOCIETY, 1898-1901 (1902)).

ammunition, and muster as often as possible to make themselves expert in the military art.”⁷⁵ Associators in Berks County raised two companies of men by late April and boasted that in three weeks time there would not be a township in the entire county that would not have “a company raised and disciplined ready to assert, at the risk of their lives, the freedom of America.”⁷⁶ So pervasive was the military spirit in Berks County that eighty Germans, all forty years of age and older, formed the Old Man’s Company under the leadership of a ninety-seven-year-old German veteran.⁷⁷

Despite the rush of Pennsylvanians to arms, the Assembly was slow to respond. Finally on June 30, the House officially approved “the Association entered into by the good People of this Province for the Defence of their Lives, Liberty and Property,” and recommended that the Board of Commissioners send “Firelocks, with Bayonets fitted to them, Cartridge Box[es] . . . and Knapsacks” to city and county militias.⁷⁸ The Assembly likewise recommended that all those opposed to bearing arms “cheerfully assist[] in Proportion to their Abilities.”⁷⁹ However, since the radical elements within the Assembly needed Quaker and German support, this recommendation carried no legal obligation or penalty. In a similar manner, the Philadelphia Committee created a conscientious association whereby those opposed to bearing arms could voluntarily contribute money. With no official militia law or mandated service, some Pennsylvanians felt the Assembly had not done enough. One essayist writing as “Philo-Americanis,” looked to the classical republics to warn the Assembly that their inaction could be costly: When Athens, faced with a siege by Philip of Macedon, refused to listen to Demosthenes and put the city “into an immediate state of defense,” he cautioned, “. . . Philip took the city.—The above needs no comment.”⁸⁰

Those who supported the formation of an official Pennsylvania militia soon had the backing of the Continental Congress. On July 6, the Congress issued a declaration concerning the “causes and necessity of [the colonies]

75. PA. EVENING POST, June 10, 1775, at 242.

76. *Extract of a Letter from Reading (Pennsylvania)*, April 26, PA. EVENING POST, May 4, 1775, at 177.

77. *Philadelphia, June 1*, PA. EVENING POST, June 1, 1775, at 224.

78. 8 PENNSYLVANIA ARCHIVES, SERIES NO. 8, *supra* note 36, at 7245-46. The Assembly distributed 1,500 of each article to the city of Philadelphia and its counties: 300 to Bucks, 500 to Chester, 600 to Lancaster, 300 to York, 300 to Cumberland, 400 to Berks, 300 to Northampton, 100 to Bedford, 100 to Northumberland, and 100 to Westmoreland. *Id.*

79. *Id.* at 7249.

80. *For the Pennsylvania Evening Post*, PA. EVENING POST, July 6, 1775, at 286.

taking up ARMS.”⁸¹ On July 18, the Continental Congress recommended that “all able bodied men, between sixteen and sixty years of age in each colony, immediately form themselves into regular companies of militia.”⁸² Printer and bookseller, R. Aitken, soon began offering copies of Roger Stevenson’s *Military Instructions for Officers Detached in the Field* for six shillings and sixpence from his shop opposite the coffee house on Front Street.⁸³ Quakers, however, mourned the “sorrowful alteration . . . of this once peaceful province.”⁸⁴ In a petition to the Assembly, the Quakers asked that the government carefully “guard against any proposal or attempt to deprive us and others of the full enjoyment of *liberty of conscience*.”⁸⁵ But complete withdrawal from militia duty was fast becoming impossible, as radicals demanded all those who enjoyed the benefits of civil society contribute to the common defense.

By autumn of 1775, a Committee of Privates had formed in Philadelphia, as well as in other counties, to be an advocate for enlisted men. Opposing the Assembly’s moderate stance towards the imperial crisis, these committees pushed for expanded voting rights for enlisted men and demanded that all non-associators be forced to contribute to the common defense through mandatory fines.⁸⁶ In a petition to the Assembly, the Committee asked for a militia law that would “equally extend to all the good people of this province.”⁸⁷ With swelling numbers, the associators were fast becoming a social and political force to be reckoned with. While souring imperial relations forced colonials to evaluate the British government, the Assembly’s reluctance to establish a militia law called its legitimacy into question. “What is government,” Pennsylvanians were asked to consider, “but a trust committed by all . . . [so] that every one may, with the more security, attend upon his own [affairs]?”⁸⁸ If Britain and the Assembly violated that trust, they had to be replaced.

81. *A Declaration by the Representatives of the United Colonies of North America*, PA. EVENING POST, July 11, 1775, at 291.

82. *In Congress*, PA. EVENING POST, July 25, 1775, at 322.

83. PA. EVENING POST, Aug. 12, 1775, at 356.

84. *The Address of the People Called Quakers*, PA. EVENING POST, Nov. 7, 1775, at 511.

85. *Id.*

86. See, e.g., *A Petition from the Committee of Privates*, PA. EVENING POST, Oct. 26, 1775, at 489. In Pennsylvania, only resident men over the age of twenty-one with either fifty acres or an estate worth fifty pounds could vote. See GREGORY T. KNOUFF, *THE SOLDIERS’ REVOLUTION: PENNSYLVANIANS IN ARMS AND THE FORGING OF EARLY AMERICAN IDENTITY* 15 (2004).

87. *A Petition from the Committee of Privates*, PA. EVENING POST, Oct. 26, 1775, at 489.

88. *From Cato’s Letters*, No. 38, PA. EVENING POST, Mar. 28, 1775, at 109.

The same tensions that fueled Pennsylvania's political controversies in the 1750s exploded once again in the fall of 1775. In response to a Quaker petition to the Assembly, an exasperated Philadelphia Committee drew up a counter-petition and remonstrance. For the members of the Committee, refusal to participate in militia service was "unfriendly to the liberties of America" since the Quakers would enjoy full protection without contributing money or time to the "common safety."⁸⁹ Indeed, it was becoming apparent that the civil vision of the Paxton Boys was coming to fruition, a vision in which all citizens contributed to the common defense. Quakers feared that this Paxtonian view would soon become reality if the extra-legal committees took complete control of the government.

Conservatives and moderates in the Assembly were ultimately unable to stem the tide of public opinion and on November 8 adopted a set of resolutions, which effectively turned the Associators into a regular militia. They asked all men from sixteen to fifty years of age to associate if they had not already done so, or to "contribute an Equivalent to the Time spent by the Associators in acquiring military Discipline."⁹⁰ These resolutions were the result of considerable debate and compromise between the Assembly's radical and conservative elements, and as such did not impose fines or sanctions for those who refused to comply. Still, the Assembly had helped codify Pennsylvania's first state-sanctioned militia.

When the Assembly reconvened in February 1776, Philadelphia privates complained of the ease by which men could shirk their military duties.⁹¹ Likewise, the Bucks Committee asked that an additional tax be levied on non-associators to help remedy the problem.⁹² Consequently, the Assembly did what it could to calm associator disaffection throughout the province. Acting upon the recommendation of the Congress, the Assembly ordered all non-associators' arms to be collected and distributed to those who would bear them.⁹³ Finally, on April 5, the Assembly passed thirty-nine "Rules and Regulations for the Better Government of the Military Association in Pennsylvania."⁹⁴ Although these regulations provided a leadership structure,

89. *The Petition and Remonstrance of the Committee of the City and Liberties of Philadelphia*, PA. GAZETTE, Nov. 8, 1775.

90. 8 PENNSYLVANIA ARCHIVES, SERIES NO. 8, *supra* note 36, at 7351.

91. *See The Petition of the Privates of the Military Association of the City and Liberties of Philadelphia*, 8 PENNSYLVANIA ARCHIVES, SERIES NO. 8, *supra* note 36, 7402-07.

92. *The Petition of the Committee of Inspection for the County of Bucks*, 8 PENNSYLVANIA ARCHIVES, SERIES NO. 8, *supra* note 36, at 7422.

93. 8 PENNSYLVANIA ARCHIVES, SERIES NO. 8, *supra* note 36, 7506.

94. *Id.* at 7472-80.

arms for those who could not supply them themselves, a drilling schedule, pay, and financial relief for the families of poor associators, they did compel anyone to serve. And so, despite considerable concessions to the associators, the Assembly was not immune from the Whig agenda. This became readily apparent in May when the Continental Congress passed John Adams' resolution recommending that the colonies adopt governments "as shall . . . best conduce to the happiness and safety" of the people.⁹⁵ Radical Whigs were only too happy to comply.

Associators met throughout the province, drafting declarations in support of the Adams resolution. As the Associators gathered support for a new government, county committees also met and agreed to hold a Provincial Conference in Philadelphia on June 18. When the Assembly reconvened on May 20, it refused to heed the advice of moderate Whig members who had no option but to support the Provincial Convention. As James Allen noted on June 6, "the [radical] [t]ide is too strong."⁹⁶ Once new instructions to Pennsylvania's delegates in the Continental Congress were passed, asking them to protect colonial liberties first and foremost, Whig members stopped attending the Assembly. Indeed, the time of the Assembly was over and a new order was ready to be ushered in.

The radical Whig ideology that galvanized Pennsylvania in the 1770s was not an innovation of the day; it was built on the Paxtonian demand for equal participation in the common defense.⁹⁷ While the Paxton Boys certainly never could have imagined employing an independence movement from Britain to accomplish their goals, they would have been, and possibly were, pleased with the concessions the radicals were able to exact from the Assembly. Some men were undoubtedly caught up in the *rage militaire* that swept the colonies in the wake of Lexington and Concord, but that alone cannot explain the incredible changes that occurred in Pennsylvania by 1776. In the midst of shifting political loyalties, extra-legal committees, and faltering assemblies was the popular constitutionalism forged on the frontier. It is no mistake that the radical Whigs fought for increased representation

95. See JOHN ADAMS, THE WORKS OF JOHN ADAMS, SECOND PRESIDENT, OF THE UNITED STATES 489 (Boston, Little, Brown & Co. 1851).

96. *Diary of James Allen, Esq.*, *supra* note 70, at 179.

97. This is not to say that the Paxton Boys themselves were the innovators of the ideas they championed, but that Pennsylvania's move towards Revolution was greatly influenced by the events and ideas of the western counties. For the impact of Whig ideas on the Revolution as a whole, see BERNARD BAILYN, THE IDEOLOGICAL ORIGINS OF THE AMERICAN REVOLUTION 30-54 (1967). For a comprehensive look at the impact of Bailyn's republican synthesis on the historiography of the Revolution, see Daniel T. Rodgers, *Republicanism: The Career of a Concept*, 79 J. AM. HIST. 11, 15-18, 20-25 (1992).

and mandatory militia service and looked to the western associators to help carry out that agenda. Indeed, the internal revolution against Quaker rule begun in the French and Indian War was about to come to fulfillment with the drafting of a new state constitution.

IV. REVOLUTION AND A NEW CONSTITUTION

In the wake of the Continental Congress' formal Declaration of Independence, county-level committees of safety throughout Pennsylvania mustered men into militia units and gathered supplies to equip them. These associators were asked to supply their own firearms, and those who did not join associations were required to submit their guns to the committee. Those who did not render their guns to the "Collectors of Arms" or who appeared to be "possessed of good firearms, and [did] not deliver them" were given a citation and required to answer for their conduct before the Committee of Safety.⁹⁸ Personal firearms became subject to the needs of a community shaped by notions of safety and defense. This right to bear arms was exercised not by individuals for personal defense, but by citizens for collective self-defense. As such, pacifists and conscientious objectors could no longer refuse to contribute to the common defense. As the Philadelphia Committee of Observation decreed, "in a state of Political Society and Government all Men . . . are obligated to unite in defending themselves."⁹⁹

The constitutional convention first met at the state house in Philadelphia on July 16, 1776 and unanimously chose Benjamin Franklin as President and Colonel George Ross of Lancaster as Vice President. Concern for the safety of the state dominated the proceedings, motivated in part by the very practical concern of gathering the resources necessary to fight the Revolution. But the focus on defense throughout the convention was not solely the result of military practicality. The men who sat in that July convention understood their place in time through the lenses of their personal experiences and beliefs, a mindset shaped by their struggle to secure protection for themselves for more than two decades. Thus, they first invoked the help of God through an Anglican minister's prayer and asked for

98. *In Committee, Bucks County, July 10, 1776*, PA. GAZETTE, July 17, 1776.

99. RICHARD ALLEN RYERSON, *THE REVOLUTION IS NOW BEGUN: THE RADICAL COMMITTEES OF PHILADELPHIA, 1765-1776*, at 117 (1978) (citation and internal quotation marks omitted).

“Divine Grace and Assistance.”¹⁰⁰ Then, they then turned their thoughts to disarming those who would not contribute to the common defense: non-associators and dissidents. Associators, they reasoned, “have freely and bravely gone into the field for the defense of the common liberties of America” while non-associators remained “at home in peace and security.”¹⁰¹ The convention therefore resolved to “render the bur[d]en and expense” equally among all the citizens of Pennsylvania by mandating that all members of civil society be required to “contribute to its defense.”¹⁰² As the delegates reasoned, “the safety and security of the State should at all times call the attention of its members for its preservation.”¹⁰³

A key group of back-country militia supporters played a major role in the constitutional convention by drafting the Declaration of Rights. The biographies of the men who created this document have been relatively unexplored in previous scholarship, an omission that has led many to misconstrue the meaning of the right to bear arms in Pennsylvania. The experiences of George Ross are illustrative of the collective experiences of this group, particularly their struggle to create a militia and provide the people with the means to defend themselves.¹⁰⁴ Ross, a prominent Anglican lawyer, had been an advocate for the protection of the frontiers since the 1750s. In November 1755, Ross sent a petition to Governor Robert Morris

100. *Proceedings of the First Constitutional Convention of Pennsylvania, Held at the State House in Philadelphia, July 15, 1776 to September 28, 1776*, in IX STATUTES AT LARGE, *supra* note 14, at 504-05.

101. *Id.* at 513.

102. *Id.*

103. *Id.* at 513-14.

104. The original members of the committee, besides Ross, were Owen Biddle (a Philadelphia merchant and Free Quaker), Colonel John Bull (commander of the Fifth Battalion of the Pennsylvania County militia), Reverend William Van Horne (a Bucks County militia chaplain), Jacob Morgan (a captain on the frontier during the French and Indian War), Colonel Thomas Smith, Justice of the Peace Robert Martin, Colonel Jacob Stroud, John Jacobs, and Jonathan Hoge. *See* William H. Egle, *The Constitutional Convention of 1776: Biographical Sketches of its Members*, 14 PA. MAG. OF HIST. & BIOGRAPHY 89-98, 225-33, 361-72, 483-84 (1880); William H. Egle, *The Constitutional Convention of 1776: Biographical Sketches of its Members*, 13 PA. MAG. OF HIST. & BIOGRAPHY 96-101, 194-201, 319-30, 438-46 (1879). On July 25, 1776, Free Quaker Timothy Matlack, James Cannon (author of a radical set of essays and key organizer of the Philadelphia associators), Colonel James Potter, David Rittenhouse (astronomer and prominent Philadelphia intellectual), Robert Whitehill (George Bryan’s right hand man), and Colonel Bartram Galbreath were added to the committee. *See* William H. Egle, *The Constitutional Convention of 1776: Biographical Sketches of its Members*, 14 PA. MAG. OF HIST. & BIOGRAPHY 89-98, 225-33, 361-72, 483-84 (1880); William H. Egle, *The Constitutional Convention of 1776: Biographical Sketches of its Members*, 13 PA. MAG. OF HIST. & BIOGRAPHY 96-101, 194-201, 319-30, 438-46 (1879).

pleading for supplies. “There are not one half of the people of this county who have arms and there is not ammunition by any means sufficient for those that have,” he wrote.¹⁰⁵ Ross forged lasting ties with local Presbyterians through the 1750s and 1760s, and on June 4, 1775, he and his men gathered in the Presbyterian Church in Lancaster to hear Reverend John Carmichael preach on the lawfulness of a self-defensive war.¹⁰⁶ Carmichael, who sat in the Constitutional Convention for Westmoreland and belonged to an associator unit, reaffirmed the link between arms and citizenship that frontier Presbyterian ministers had drawn during the violence of the French and Indian War.¹⁰⁷ Even a “minister of the Prince of Peace,” he told Ross and his men, was a “member of civil society” who had to adhere to “public instructions [for] the best service of the people.”¹⁰⁸ In short, Christian belief was not a barrier to taking up arms in defense of the community and the state.

By late July, Ross and his fellow committeemen submitted a draft of the Declaration of Rights to the larger convention for consideration. The language of safety and defense pervaded the Declaration from its very first clause, which guaranteed all Pennsylvanians “life and liberty” as well as the pursuit of “happiness and safety.”¹⁰⁹ Clause III placed the “sole exclusive and inherent right of governing and regulating the [state’s] internal police” in the hands of the people.¹¹⁰ The frontier experience had shown the dangers of a pacifist Assembly and how westerners suffered under the hands of eastern authority. Now the people could regulate their own defense and monitor their own institutions of authority. Clause IV placed the power of government in the hands of the people and claimed that “all power . . . inherent” in

105. Petition from Lancaster, 12 November 1755, in *HSP*, Dreer Collection, No. 904.

106. FRANCIS ALISON, 1756 SERMON BOOK, in *Presbyterian Historical Society*, RG 294, Folder 2.

107. See generally JOHN CARMICHAEL, A SELF-DEFENSIVE WAR LAWFUL (Phila., J. Miller 1775). The best example of the Christian concept of lawful war and community self defense during the 1750s is seen in the sermons of Presbyterian minister Francis Alison. Alison believed that it was essential for good Christians and good citizens to defend the community: “We are prompted by reason and instinct and the social affections as well as by our holy religion and common laws,” he said in a 1756 sermon, “to rejoice in [Pennsylvania’s] prosperity and to promote its welfare, and to defend our rights by our councils, our estates, our persons and even at the expense of our lives.” ALISON, *supra* note 106.

108. JOHN CARMICHAEL, A SELF-DEFENSIVE WAR LAWFUL 6 (Phila., J. Miller 1775).

109. PA. CONST. of 1776, ch. I, cl. I, in IX STATUTES AT LARGE, *supra* note 14, at 586.

110. PA. CONST. of 1776, ch. I, cl. III, in IX STATUTES AT LARGE, *supra* note 14, at 587.

government was derived from the governed.¹¹¹ Clause V was perhaps the most direct attack on colonial Quaker rule, stating that government “is, or ought to be, instituted for the common benefit, protection and security of the people, nation or community.”¹¹² This was not the common benefit of all, but the benefit of all those in the community. By 1776, community had come to be defined by the willingness to take up arms.

The primacy of community defense was reinforced in Clause VIII: “[E]very member of the society hath a right to be protected in the enjoyment of life, liberty and property, and, therefore, is bound to contribute his proportion towards the expense of that protection, and yield his personal service”¹¹³ Those religiously opposed to bearing arms were protected by the law, as long as they paid money to compensate for their lack of military service. No longer could Quakers or other pacifists resist appropriating funds to the defense of the state either personally or in the Assembly. In language borrowed from the frontier petitions of the French and Indian War, Paxton pamphlets, and radical committees, Clause XIII guaranteed the right to bear arms for community safety: “[T]he people have a right to bear arms for the defense of themselves and the State. . . .”¹¹⁴ Clause XIII also discouraged standing armies in peacetime and reinforced the premise of Clause III by stating that “the military should be kept under strict subordination to, and governed by, the civil power.”¹¹⁵

The only glimpse we can get into the deliberations of the Declaration of Rights committee and the constitutional convention is by comparing the July 29 published draft essay to the final version. Half of the sixteen sections remained untouched, but other changes reinforced the Paxtonian vision of civic responsibility. Clause VIII, for example, underwent significant revision

111. PA. CONST. of 1776, ch. I, cl. IV, in IX STATUTES AT LARGE, *supra* note 14, at 587.

112. PA. CONST. of 1776, ch. I, cl. V, in IX STATUTES AT LARGE, *supra* note 14, at 587.

113. PA. CONST. of 1776, ch. I, cl. VIII, in IX STATUTES AT LARGE, *supra* note 14, at 587-88.

114. PA. CONST. of 1776, ch. I, cl. XIII, in IX STATUTES AT LARGE, *supra* note 14, at 588. Although the Pennsylvania convention borrowed language from the recently passed Virginia Declaration of Rights, it was the first state to guarantee a right to bear arms. The constitution’s authors were innovators, and no other state “matched Pennsylvania in translating those [Revolutionary] words into reality.” John K. Alexander, *Pennsylvania: Pioneer in Safeguarding Personal Rights*, in THE BILL OF RIGHTS AND THE STATES: THE COLONIAL AND REVOLUTIONARY ORIGINS OF AMERICAN LIBERTIES 321 (Patrick T. Conley & John P. Kaminski eds., 1992).

115. PA. CONST. of 1776, ch. I, cl. XIII, in IX STATUTES AT LARGE, *supra* note 14, at 588.

from the original to underscore the idea that since all men had a natural right to protection, all men needed to contribute towards that defense:

Draft Essay

That all private Property, being protected by the State, ought to pay its just Proportion towards the Expense of that Protection; but that no Part of a Man's Property can be justly taken from him, or applied to Public Uses, without his own Consent, or that of his legal Representatives: Nor are the People bound by any Laws but such as they have, in like Manner, assented to, for their common Good.¹¹⁶

Final Version

That every member of the society hath a right to be protected in the enjoyment of life, liberty and property and, therefore, is bound to contribute his proportion towards the expense of that protection, and yield his personal service, when necessary, or an equivalent thereto. But no part of a man's property can be justly taken from him, or applied to public uses, without his own consent, or that of his legal representatives. *Nor can any man who is conscientiously scrupulous of bearing arms be justly compelled thereto, if he will pay such equivalent.* Nor are the people bound by any laws but such as they have in a like manner assented to, for their common good.¹¹⁷

Government would protect all men's natural rights, but it was every man's civic responsibility to contribute to that defense. Quakers and other objectors could no longer refuse to take part in the common defense. They could be excused from bearing arms, but only if they paid an equivalent fine. Thus, freedom of religion could not totally excuse anyone from his responsibility to the community.

The Pennsylvania assertion of a right to bear arms was an affirmation of a distinctly eighteenth-century civic conception of rights. Defense was for the community, the citizens as a whole, and the responsibility for ensuring

116. *An Essay of a Declaration of Rights, Brought in by the Committee Appointed for That Purpose, and Now Under the Consideration of the Convention of the State of Pennsylvania* (Phila., Liberty Co. 1776), in 22 BENJAMIN FRANKLIN PAPERS 529, available at <http://franklinpapers.org/franklin/framedVolumes.jsp?vol=22&page=529a>.

117. PA. CONST. of 1776, ch. I, cl. VIII, in IX STATUTES AT LARGE, *supra* note 14, at 587-88.

community security lay on all of its members. To underscore this fact the committee passed an associator ordinance on September 14, 1776.¹¹⁸ Associators, they reasoned, had given their time, money, and bodies to the defense of the country while non-associators had “pursued their [personal] business to advantage.”¹¹⁹ Thus it was ordained that every non-associator from ages sixteen to fifty pay twenty shillings for each month he was not in physical military service.¹²⁰ In addition, every non-associator over twenty was required to pay an additional four shillings for every pound his estate was valued.¹²¹ The money collected would go to support the poor associators throughout the state “who are by the service rendered incapable of supporting themselves and their families.”¹²² Even those above fifty years of age were not exempt.¹²³ Even though they were unable to “bear the fatigue of military duty,” the committee considered it “just and reasonable that they should contribute towards the security of their property.”¹²⁴

V. LOOKING BEYOND PENNSYLVANIA: COLONIAL AND REVOLUTIONARY RHETORIC

Pennsylvania was unique in many ways because of its pacifist government and lack of an organized militia, but Pennsylvanians were not alone in their understanding that the militia played a key role in defending themselves. Contemporary readers would not have been confused by the language of the Pennsylvania Constitution of 1776 or its provisions for the common defense. The colonial experience had convinced many that men needed to unite together to defend themselves. In articulating these ideas, colonial essayists employed a language that focused on collective and not individual defense.

Even with coherent (but not necessarily effective) militias in all the colonies but Pennsylvania, some in Britain lamented that “[o]ur colonies are in very bad condition, being unable to hurt their invaders, or defend

118. Ordinances Passed by the Constitutional Convention, June-September, 1776: An Ordinance for Rendering the Burden of Associators and Non-Associators in the Defense of This State as Nearly Equal as May Be (1776), ch. DCCXXXV, IX STATUTES AT LARGE, *supra* note 14, at 22-27.

119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.* at 27.

124. *Id.*

themselves.”¹²⁵ A proposal in the Boston papers suggested that the British colonies be divided into three regions that had “a natural Connection and Interest in one another,” thus ensuring that the people within these regions would “more readily unite and defend them.”¹²⁶ Indeed, some saw colonial unity as the key to effectively defeating the French. “It is madness ever to imagine,” wrote an essayist to *The Boston Evening Post*, “that a People however numerous or however naturally valiant, will ever be able to defend themselves, unless their Numbers and Force can be united and directed under proper Discipline.”¹²⁷ The author offered the words of Algernon Sidney, “the famous Republican,” to drive his point home: “no numbers of men . . . are able to defend themselves, unless they be well armed, disciplined, and conducted.”¹²⁸

When colonists discussed defending themselves they did so in a collective military context. Colonies other than Pennsylvania were shaped by the violence of the French and Indian War, and many residents on the frontier worried about adequate defense. In 1750, the people of Souhegan West, a frontier town later incorporated as Amherst, Massachusetts, gathered at the meetinghouse and resolved to see “the inhabitants and Proprietors unite and come together to defend themselves.”¹²⁹ Throughout the French and Indian War, newspapers carried many stories from throughout the colonies of people banding together to ward off Indian attacks. For example, the *New York Mercury* told of a group of people in Patonsec, New York, who “assembled together in three or four Houses, . . . to defend themselves against the barbarous enemies.”¹³⁰ This rhetoric continued as the end of the war gave way to the imperial crisis in the 1760s and 1770s, and news of riots, skirmishes, fights, demonstrations, and disturbances filled the pages of the papers. A group of soldiers in New York, surrounded by a number of unarmed colonists, “cast about to look for stones, or some instruments to defend themselves,” before one soldier attacked with his bayonet.¹³¹ “Self preservation,” argued one writer, “makes it necessary that . . . [the colonists]

125. From a 1755 edition of London’s *Universal Magazine*, reprinted in N.Y. MERCURY, Jan. 19, 1756, at 1.

126. *A Proposal for Forming a Triple Union of our Colonies in North America, in Order to Retrieve our Losses, and Prevent the Like for the Future*, BOSTON GAZETTE, Oct. 31, 1757.

127. BOSTON EVENING POST, Nov. 21, 1757, at 1.

128. *Id.*

129. BOSTON EVENING POST, June 25, 1757, at 2.

130. N.Y. MERCURY, Sept. 16, 1757.

131. N.Y. GAZETTE, Feb. 5, 1770.

hold together, and defend themselves.”¹³² The Boston Committee of Correspondence agreed, and one of its members asserted that “the *Law of Nature* with respect to communities, is the same that it is with respect to individuals; it gives the collective body a right to preserve themselves,” and reminded Bostonians that “the power to defend themselves [was] the surest pledge of their safety.”¹³³ Indeed, “men enter into [civil] society for no other end than . . . to defend themselves.”¹³⁴

While no colonial essayist denied that any man had an individual right to defend himself, the focus of the public debate centered on the right of the collective people to defend themselves. Since men had entered into civil society, they were in part responsible for its defense. Some hoped that the colonial unity that seemed so elusive during the French and Indian War would now be realized. “The people of this colony are united and firm as the mountains,” trumpeted one Bostonian, “they are preparing to defend themselves against an attack”¹³⁵ The militia played a crucial role in this defense, an institution whose virtue seemed all the more apparent as Britain deployed more and more troops to Boston and New York. “[T]he Colonies do not need or desire protection from these standing armies,” stated a writer in early 1775, for the colonists are “able and willing to defend themselves”¹³⁶ To that end, New York’s delegates to the Continental Congress recommended that the inhabitants of that state “defend themselves and their property, and repel force by force.”¹³⁷

When Pennsylvanians enshrined a right to defend themselves in their constitution of 1776, they did so in a language familiar to a people who had lived through the French and Indian War and who saw the absolute necessity in all men contributing to the common defense. This conception of defense rang true in other colonies as well, whose newspapers had articulated similar ideas in public letters and essays since the 1750s. While many were disturbed by the oaths and test acts included in the constitution, there was no sustained

132. *From the Connecticut Courant*, ESSEX GAZETTE (Mass.), May 26, 1772.

133. *Extract of a Letter from a Worthy Member of the Committee of Correspondence in Boston*, ESSEX GAZETTE (Mass.), April 6, 1773.

134. *To All Nations of Men, Dwelling upon the Face of the Whole Earth, Especially Those of Great-Britain and Ireland, More Especially the Inhabitants of British North America, and Particularly Those of the Massachusetts Bay in New-England*, MASS. SPY, Nov. 18, 1773.

135. *Extracts of Three Letters from Boston*, DUNLAP’S PA. PACKET, Feb. 13, 1775, at 3.

136. BOSTON EVENING POST, Feb. 20, 1775, at 2.

137. PA. EVENING POST, May 20, 1775.

public discussion of the right to bear arms.¹³⁸ Indeed, the language and concepts of that clause would have been so familiar to the American colonists it would have been taken for granted. For Pennsylvanians, to defend themselves meant that every man would fulfill his civic duty to the common defense.

VI. CONCLUSION

The language of the Pennsylvania Constitution fits neither the modern individual rights nor the collective rights models that have dominated modern Second Amendment scholarship. In every sense, the 1776 Pennsylvania Declaration of Rights affirmed the right to bear arms as part of civic duty to the community. Although the plain sense of the word “themselves” would seem to suggest a more collective understanding, modern scholarship has projected back onto this text the issues at the root of the modern debate over gun control and gun rights. The time has arrived to restore this text to its original historical context. To the frontier people in small exposed settlements in western Pennsylvania, and other colonies, community defense was of the utmost importance. When the Quaker Assembly neglected frontier safety many appealed to their rights as British subjects and to the contradiction Quakers posed to civil society. Assemblymen unable to vote for a militia bill because of religious

138. Debate over the new constitution centered around the unchecked power of the unicameral legislature and the implementation of several oaths of office and test acts. Under the proposed test acts, a voter of questionable loyalty could be asked to swear an oath renouncing allegiance to King George and promising that he would not oppose the establishment of a free government in Pennsylvania. See *THE PROCEEDINGS RELATIVE TO CALLING THE CONVENTIONS OF 1776 AND 1790*, at 39-40, 53-54 (Harrisburg, Pa., John S. Wiestling 1825). As per Congressional instructions, and in an attempt to block Tories and moderates, radical Whigs also demanded that those elected to the constitutional convention swear their support to a government based solely on the authority of the people. See *id.* at 37, 39. The final oath caused the most consternation, a testament of faith “in God, the Father, and in Jesus Christ, His eternal Son, the true God, and in the Holy Spirit, one God blessed for evermore.” 1 *JOURNAL OF THE HOUSE OF REPRESENTATIVES OF THE COMMONWEALTH OF PENNSYLVANIA* 37 (Lancaster, Pa., John Dunlap 1790) (containing a compilation of the proceedings of the several committees and conventions, in particular quoting from Friday, June 21, 1776 entry). In perspective, this religious test kept in line with Pennsylvania’s Charter of Freedoms which guaranteed that no man would be barred from government as long as he believed “in *Jesus Christ*, the Saviour of the World,” and was not more arduous than the attestation of faith Assembly members had taken for decades which excluded Jews and Catholics. See *The Charter of Privileges Granted by William Penn, Esq; to the Inhabitants of Pennsylvania and Territories*, in *A COLLECTION OF CHARTERS AND OTHER PUBLIC ACTS RELATING TO THE PROVINCE OF PENNSYLVANIA* 43 (Phila., B. Franklin 1740).

conscience were considered unfit to serve in the government as their personal convictions denied the right to safety of others. This conception of civic responsibility clashed with the Quaker vision which favored negotiation with Natives as a means to solving violence on the frontier. It was these two competing definitions of civil society that fed into the Revolution, and the men who drafted the Declaration of Rights and new state constitution adhered to the ideas developed on the frontier. Thus, they demanded militia service from all citizens and recognized the right of local communities to defend themselves.

The Pennsylvania experience shows the futility of trying to force the people and rhetoric of the past into the individual or collective model. Certainly Pennsylvanians were concerned about and entitled to personal protection, but an individual right to bear arms was not what they achieved in the constitution of 1776. Nor was the provision that entitled Pennsylvanians to defend themselves solely a protection of the nascent militia. What the members of the constitutional convention were trying to achieve was a redefinition of civic duty heavily premised on bearing arms. The colonial frontier experience had proven the absolute necessity of all men uniting together to provide for the common defense, and the constitution of 1776 was the ultimate realization of the popular constitutionalism born in the violence of the French and Indian War. To be sure, guns played an important role in realizing the Revolution in Pennsylvania. As one essayist argued, an effective new government could only be obtained “by the virtue and unanimity of the people, particularly those who have arms in their hands.”¹³⁹ However, to interpret “defense of themselves” as a guarantee of an individual right to bear arms is bad history and lazy originalism. Since scholars have placed so much emphasis on the efficacy of using state constitutions to understand original intent, particularly the Pennsylvania Constitution of 1776, we must understand the true context of this important document before we make any claims about its relevance to the Second Amendment. As *Parker v. District of Columbia* showed, history has a direct bearing on modern jurisprudence.¹⁴⁰ We must do justice to the past to ensure we have justice in the present.

139. PA. EVENING POST, May 16, 1776.

140. 478 F.3d 370, 386-90 (D.C. Cir. 2007).