

THE RIGHT TO SELF-DEFENSE AND THE RIGHT TO BEAR ARMS: SELF-DEFENSE IS A HUMAN RIGHT; THE RIGHT TO BEAR ARMS IS A LEGAL OPTION/RIGHT

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ABSTRACT

Most citizens would agree that we cannot entrust self-preservation and self-defense to anyone other than oneself. Therefore, many argue that it is necessary to bear arms, for bearing arms makes the weakest and the strongest equals in defending oneself. In 2008 the Supreme Court of the United States of America affirmed the individual's right to own arms for self-defense (District of Columbia v Heller, 5-4, 2008). There seems to be no alternative basis that can ensure *equal defense* in self-defense, except by the right to bear arms. One world view posits that to bear arms in self-defense is a human right (Newt Gingrich, 2012), another world view posits that that right to own guns for self-defense is not a human right (SE Smith, Guardian 2016). While the right to self-defense is a human right, the right to bear arms cannot be a human right –it is to be understood as a derivative legal option, right and privilege. In this paper, it is argued that though we cannot prevent the use of force to defend oneself, gun regulations can prevent gun violence. As such there needs to be gun regulation with *de jure* recognition that includes the following: (1) Gun legislations provide the basis and provision for who can bear arms to protect oneself, (2) Gun legislations define why one can have it, where it is to be held when it can be used to defend oneself and whether it can be used in defending other rights. (3) Gun legislation must ensure a trial when anyone uses arms to kill in self-defense, to ensure that it was indeed done in self-defense. This will ensure the right to self-defense cannot be a pretext to kill anyone. (4) Gun legislatures need to ensure the control of the size, strength and storage of arms for self-defense as a matter of public safety; (5) Gun legislatures must ensure that no individual has power over others in society due to a stockpile of weaponry in the name of self-defense. However, this paper is aware that gun control can only prevent gun violence; as such, it does not attempt to prevent the user from using arms to defend oneself. For no one can be convicted of murder if one kills when one cannot escape or retreat from threat to one's life.

Keywords: Self-defense, human right, derivative human right, gun legislation, second amendment

1.0 INTRODUCTION

We cannot ignore the second amendment of the US constitution¹ nor its interpretations. The right to self-defense is a self-evident human right. Does this right imply that the right to bear arms is a human right as Newt Gingrich argues²? The court's decision –the district of Columbia V. Heller (2008) affirmed the individual's right to own arms for self-defense.³ The right to self-defense is a human right but the right to bear arms while related to the right to self-defense, cannot be understood as a human right,⁴ instead, it should be understood as a legal right, option and privilege. When the right to bear arms has de jure recognition and becomes a legal right, it should be understood as a derivative right. As such, gun ownership is a legal matter and so is gun control. The debate between self-defense as a human right and its relationship to the right to bear arms is a never-ending debate.⁵ While studies reveal that gun violence is mostly related to gang violence,⁶ it does not mean that there is no necessity for gun control and that we should only deal with gang control.

In this paper, it is argued that there needs to be gun control and legislation in place for three reasons: Safety regulations, ownership regulations and licensing regulations as these are fundamental to gun control.⁷ However, gun control can only prevent gun violence; it cannot prevent the use of lethal force to defend oneself, for no one can be convicted of murder if one kills because one cannot escape or retreat from threat to life.⁸ One does not require a license to protect oneself when threatened. Nevertheless, we can cite some good reasons for gun control. (1) To legislate gun ownership rights and its use to define when lethal force can be used to stand your ground.⁹ However, gun legislation must ensure that self-defense cannot be a pretext to kill anyone in revenge. (2) To legislate gun ownership is to control the size, the quality and the quantity of arms used for self-defense. Gun legislature must ensure the unnecessary stockpile of arms in the name of self-defense as a matter of public safety.¹⁰ (3) To control gun ownership is to curtail the power of any particular individual in the society and to prevent the loss of lives upended by gun violence.¹¹ Gun legislature must ensure that no individual has power over others in society due to a stockpile of weaponry in the name of self-defense.

¹ Joshua Feinzig and Joshua Zoffer, A Constitutional Case for Gun Control, *The Atlantic* October, 2819, p. 2. <https://www.theatlantic.com/ideas/archive/2019/10/constitutional-case-gun-control/600694/>

² Newt Gingrich, "The Right to Bear Arms is Human Right." April 18, 2012.

<https://www.gingrich360.com/2012/04/the-right-to-bear-arms-is-a-human-right/>

³R. Betsy Emmert, *Welcome to the Gun Show: Will the Court Make a Killing in the Name of "Self-Defense?" The Circuit Split Over "Core" Rights Under the Second Amendment*, 87 U. Cin.L. Rev.807 (2018)

⁴ SE Smith "Gun Ownership is not a human right" *The Guardian* 29 October 2016

<https://www.theguardian.com/commentisfree/2016/oct/29/gun-ownership-is-not-a-human-right>

⁵ Peter Squires, "Mr Gingrich's Bequest: Globalising the Second Amendment." In *The Second Amendment and Gun Control: Freedom, Fear, and the American Constitution*, (edited by K. Yuill, & J. Street. Abingdon, UK: Routledge). <https://cris.brighton.ac.uk/ws/portalfiles/portal/457023/Gingrich+TEXT+10.6.pdf>

⁶ Brian Lilley, "LILLEY: Trudeau's Rifle Ban Idea Won't Hurt the Criminals," *Toronto Sun*, June 18, 2019, <https://torontosun.com/opinion/columnists/lilley-trudeaus-rifle-ban-idea-wont-hurt-the-criminals>

⁷ Teal Rothschild, *An Ethnography of Gun Violence Prevention Activists*, (Lanham: Lexington Books, 2019), 19-44

⁸ David Degrazia and Lester H. Hunt, *Debating Gun Control How Much Regulation Do We Need? Debating Ethics*. (New York, NY: Oxford University Press, 2016). 166

⁹ Robert J. Spitzer, *Guns Across America*, (New York: Oxford University Press. 2015) 103-8

¹⁰ David Degrazia and Lester H Hunt, *Debating Gun Control How Much Regulation Do We Need?* 1

¹¹ Teal Rothschild, *An Ethnography of Gun Violence Prevention Activists* 19-44

When we understand the right to self-defense in the context of the inalienable right to life, liberty and the pursuit of happiness, it becomes imperative to see the relationship between the right to self-defense with the right to bear arms. It is important to note that the right to life cannot be addressed if one does not have the right to protect that very right. If we cannot detach the right to self-defense from the right to bear arms, then the right to own arms to protect one's life, liberty and property must be understood as a derivative right. But as a derivative right, the right to bear arms is a man-made right as opposed to being a fundamental right like the right to self-defense is. However, it is one thing to kill in self-defense but difficult to argue the same for killing someone when one's liberties are challenged, or if one's property is stolen. Are we justified to kill someone who prevents us from entering our own home? The Castle doctrine holds that the intruders can be shot in self-defense.¹² Ever since Blackstone, self-defense is a valid defense in law,¹³ self-defense cases are "excusable" rather than "justifiable" in judicial decisions because safe escape or retreat was not a possibility.¹⁴ In such circumstances, one has the right to "stand your ground."¹⁵ Further, it is argued that we have a right to protect our self both in private and in public if we had a right to be there and there is no need to retreat.¹⁶ However, is there justification in killing someone for stealing one's vehicle? Should the right to bear arms for self-defense extend to include the right to defend one's liberties? The second amendment of the United States provides constitutional provisions for the safety of the individual, their liberties and their property.¹⁷ The second amendment not only protects oneself from each other but also collectively protects us from the tyranny of repressive governments.

What must be done is to define self-defense as a human right in the context of the right to bear arms as a derivative right? As a derivative right, we can argue for gun control by (1) Establishing *who* can own guns. (2) Authorizing *where* it is to be stored or held. (3) Promulgating *when* it can be used as a lethal force. (4) Purporting *why* gun ownership cannot be passed on or willed to others. (5) Restricting what size and strength of weapons are considered adequate for self-defense.¹⁸ (5) Addressing the question of *whether* guns can be used against tyrannical governments.¹⁹ (6) Ensuring that one does not kill others on the pretext of self-defense or kill others on the pretext of preventing criminal or offensive behavior and (7) Preventing gun owners to act like police officers and killing fleeing criminals.

The relationship between self-preservation and the right to self-defense

¹² Robert Spitzer, *Guns Across America*, 109

¹³ *Ibid.*, 108

¹⁴ *Ibid.*, 108

¹⁵ *Ibid.*, 103-143

¹⁶ *Ibid.*, 110

¹⁷ "A well regulated Militia, being necessary to the security of a free state, the right of the people to keep and bear Arms shall not be infringed". It was ratified in 1791. The second amendment when understood in the light of the inalienable right to life, liberty and the pursuit of happiness gives for some the right to use guns for more than just one's safety.

¹⁸ David Degrazia and Lester H. Hunt, *Debating Gun Control How Much Regulation Do We Need?* 125

¹⁹ *Ibid.*, 3

What is fundamental to all life is the will to live,²⁰ as such self-defense is a fundamental part of self-preservation.²¹ Humans have the right “not to have wrong done to them.”²² This right cannot be entrusted to anyone other than oneself. Each individual is a defender of his or her life. “Self-defence is like breathing,”²³ we cannot prohibit the right to self-defense. The second amendment defines this right as the “right of the people to bear arms,” not “the right to the people to bear arms.”²⁴ How one defends oneself must be easy and effective. Guns not only provide for such defense, but are also the most effective way to defend oneself. When the right to self-defense has *de jure* recognition, it will allow us to use lethal force to protect or preserve life, if or when needed. Nothing is more important than the right to life, liberty and freedom. Both the government and the individual can use lethal force to ensure the safety of the individual and the importance of self-preservation. Because human beings can nullify each other’s right to life, the right to self-defense is of paramount importance. However, While the right to self-defense is a fundamental human right the right to bear arms cannot be a human right –it is to be understood as a derivative legal option, right and privilege.²⁵

What is the relationship between self-defense and the right to bear arms? Since we as individuals are the best to be entrusted with self-defense, bearing arms is a necessary option for guns to make the weakest and the strongest as equals in defending oneself. In 2008 the Supreme Court of the United States of America affirmed the individual’s right to own arms for self-defense (District of Columbia v Heller, 5-4, 2008). The second amendment protects an individual’s right to gun ownership, a right rooted in the relationship between self-defense and individual reliance.²⁶ There seems to be no alternate base that can ensure that the defendant has equal prospects in protecting himself/ herself against his/her attacker except by the right to bear arms. One world view holds that to bear arms in self-defense is a human right.²⁷ Another world view holds that that right to own guns for self-defense is not a human right.²⁸ The rationale to defend oneself with arms is that it is the easiest and effective way to defend oneself. Are guns, being the most effective way to defend oneself, sufficient reason to consider it as a legal (derivative) right? If the means used to defend oneself is the most effective way to defend oneself, then it can provide a *de jure* basis. Like the right to movement is a human right and the right to drive a car is a legal right. Similarly, the right to self-defense is a human right and to bear arms is a legal (derivative) right. Guns are the easiest and the most effective way to incapacitate those who threaten one’s life.

The rationale for bearing arms are: (1) Guns are the first preference and best option for self-defense. They are the most effective way to take care of self-defense. (2) They are the easiest way to take care of self-defense. Especially for those people who are weak and vulnerable and cannot physically defend themselves. (3) Bearing arms is a great equalizer—guns make the weakest and the strongest equals in terms of self-preservation. If there is one thing like

²⁰ Albert Schweitzer, *Reverence for life: Sermon 1900-1919*. (New York: Irvington Publishers, 1993). 104, 116

²¹ Peter Squires, "Mr Gingrich's Bequest: Globalising the Second Amendment."

²² Wesley Cragg, *Contemporary Moral Issues* (Toronto: McGraw-Hill Limited, 1992), 504.

²³ Peter Squires, "Mr Gingrich's Bequest: Globalising the Second Amendment."

²⁴ Robert Spitzer, *Guns Across America*, 58

²⁵ SE Smith, "Gun Ownership is not a human right"

²⁶ Joshua Feinzig, and Joshua Zoffer. "A Constitutional Case for Gun Control." 2

²⁷ Newt Gingrich, "The Right to Bear Arms is Human Right." p2

²⁸ SE Smith, "Gun Ownership is not a human right"

voting that makes us equals, it would be bearing arms hence, it is one of the most difficult rights to challenge or change. The constitutional guarantees provided in many countries make it difficult to repeal, negate, or annul such a right.

The challenges for bearing arms can be traced to its possible uses. (1) First, there is the possibility of using the gun to kill oneself. It can be argued that people have a right to choose to continue to live or choose to exit life. People have a right to exit this life when life becomes unbearable. Owning guns would make such a decision easy and it is hard to monitor such a decision. (2) Second, the possibility of guns being used to not only kill in self-defense but also to kill others on the pretext of self-defense. While we cannot punish someone for killing in self-defense, we must punish those who kill others on the pretext of self-defense. That is why anyone who kills, must have a trial immediately to prove it was for self-defense, and if found guilty, must be punished. (3) Third, the possibility of gun owners acting like police officers and killing fleeing criminals or shooting at criminals. If a gun owner shoots at a criminal, he or she should be found guilty of murder. For only the government can punish the criminal, when found guilty after a trial. Ownership of guns does not make a citizen a police officer. (4) Fourth, the undeniable truth about gun related violence. Possession of guns makes it easy to promote violence.²⁹

The relationship between what is morally/legally right and human rights

Law like morals, deals with what is right, just and lawful, and provides the basis of human rights. What is right, just and good are self-evident truths.³⁰ As such, human rights, by extension, are self-evident truths and such rights are inherent not granted.³¹ When and why does what is understood as being right considered as a human right? When what is right is understood as what is good or just for human beings, it can also be understood as a human right. Some options are considered as being better than other options. Plato highlighted this reasoning when he argued that people after understanding the best and worst scenarios³² come to realize that it is better to be just than to be unjust.³³ What is fundamental to defining what is right is that what is right is self-evident, self-determined and self-imposed. Humans are moral because we either ascribe or subscribe to what is rational, just, good and legal. We, as a society, ascribe notions of right and wrong to things we say and do. Just like we can calculate the area of an irregular space by calculus, we can discern what is right in every situation.³⁴ A right can be a negative or a positive right. If it is understood as a negative right, the emphasis is on refraining from doing something. If it is understood as a positive right, then, the emphasis is on doing something. The right to arm oneself is both a negative right

²⁹ Teal Rothschild, *An Ethnography of Gun Violence Prevention Activists*, 19-44

³⁰ Expert from the Declaration of Independence reads—"we hold these truths to be self-evident, that all men are created equal, that they are endowed by a creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of happiness".

³¹ AJ Willingham. "27 Words: Deconstructing the Second Amendment." CNN. Cable News Network, March 28, 2018. <https://www.cnn.com/2016/08/10/politics/what-does-the-second-amendment-actually-mean-trnd/index.html>

³² The best scenario—being able to hurt someone without any repercussions and the worst case scenario –being hurt and not being able to retaliate.

³³ Plato, "The Ring of Gyges" in George Sher, *Moral Philosophy*, (Belmont: Wadsworth Group, 2001) 16.

³⁴ To Nietzsche this was the true way we can beat Nihilism—simply subscribing to objective truth what ever the course might be does not make sense.

and positive right. It is a negative right in that we have a right to choose to defend oneself with arms without interference from others. It is positive in that we have a right to expect the state to protect us or allow us to defend our self when necessary. This right always also implies the right to buy arms provided by others.

Why do we argue that the right to self-defense is right and *a right*³⁵. What is right is rational and just. A right is considered inalienable or fundamental, positive or moral based on its applicability. Does the right to self-defense mean the right to bear arms and can one bear arms without *de jure* recognition? What kind of right needs this kind of legal sanction? Once we define something as being right, we can consider it as being a right,³⁶ and once we think of it as a right, it implies it has *de jure* recognition. Once what is right has *de jure* recognition, then it can be understood as a derivative right. But since what is right is self-evident, self-determined and self-imposed³⁷ then humans are the authors³⁸ of the laws that they obey. The right to self-preservation and the right to self-defense are fundamental to the human condition.

Alterity posits the notion that we must see the other in each and see each in the other.³⁹ To live with others is to live with the same rights as others.⁴⁰ When we do see each in each other, conflicts that could or would happen would never happen because we embrace alterity. As long we do not see each in each other or kill each other for whatever reason we cite, then we need guns for self-preservation. The day we see each in each other and see the other in each, we will have no need for guns. Natural rights also known as moral rights or inalienable rights, are held by some as not being contingent with the laws, customs, or beliefs of a particular society or polity. Legal rights also known as civil rights or statutory rights as presented by a particular polity and codified into legal statutes by some form of legislature. Even though legal laws cannot create rights, it is only when rights are codified and have *de jure* recognition that we can expect respect for the right to self-defense. Self-evident truths are truths that are comprehensible, definable and believable, but legal recognition requires that rights have legislative guarantees and sanctions. It is this self-evident nature that establishes the rule of law. It is the rule of law that guarantees such rights, not the ruler. Having legal guarantees and sanctions for bearing arms ensures for such rights like the right to self-preservation. Can the notion of bearing arms for self-defense be outdated and be replaced with more modern ways like a 911 call and pepper spray, et cetera? Yes, it can be done, however, bearing arms is the most effective way to defend oneself. This does not mean that all would choose such a provision, but it provides the means for those who deem it necessary. Yes, bearing arms can be considered as a sufficient condition for self-defense, but to die-hard believers of the second amendment, it is a necessary condition. If one sees guns as a necessary condition for self-defense and preservation, then it is hard to provide any alternate

³⁵ Jeffrie G. Murphy and Jules L. Coleman, *Philosophy of Law: An Introduction to Jurisprudence* (United States of America: Westview Press, 1990), 46

³⁶ *Ibid*, 46, 47

³⁷ Thomas. H. Green, *Prolegomena to Ethics*, (Paternoster Row: Oxford University Press Warehouse, 1883), 356

³⁸ *Ibid.*, 354.

³⁹ Julia Kristvea, *Strangers To Ourselves*, (New York: Columbia University Press, 1991), 2,59, 67,75,

⁴⁰ *Ibid.* 2.

option for self-defense. It can never be outdated because self-preservation is always of utmost importance.

Self-defense having *de jure* recognition

All human rights, in general, have guarantees when they have *de jure* recognition. For all rights are rules, but all rules are not rights in that all rules do not have *de jure* recognition⁴¹. Rights that have *de jure* recognition have punitive sanctions attached to them. The question is when and how do human rights have *de jure* recognition. Human rights are considered as self-evident truths that are comprehensible, believable, definable and defensible. However, such rights can be guaranteed only if we can incapacitate those who attempt to deprive others of such rights. We cannot incapacitate individuals without trampling on human rights. Human rights are comprehensible, definable and believable; however, these rights are defensible and enforceable only when they have *de jure* recognition. *De jure* recognition is nothing but guarantees ascribed to human rights. There are three ways in which rights can be justified leading to *de jure* recognition. It can be a self-evident right, like the right to self-defense. It can be a man-made right like the right to bear arms. It can be a legal precedence like being acquitted for shooting someone in self-defense. The right to self-defense is considered as a fundamental right by natural law theorists. The right to bear arms is considered as a derivative right by legal positivists. The right to kill is considered an existential right by legal realists. In 1993, a 92-year-old person named Mrs. Bessie Jones shot an intruder and was acquitted.⁴² Because of the acquittal, we can now argue that anyone can shoot and protect oneself with or without a licence. This judicial precedent is enough for anyone to kill in self-evidence with or without having a permit or a license. Defendants claiming self-defense are entitled to a pre-trial immunity hearing and if the court finds the person is entitled to immunity, then no criminal trial occurs.⁴³

The right to self-defense is a derivative right and if the right to bear arms is the most effective way to incapacitate those who threaten one's life and safety, then the *de jure* recognition gives us the right to incapacitate those who threaten us by the use of a gun. Without legal recognition, there can be no guarantees for such rights. Legal guarantees for human rights are always accompanied by penalty/punishment or the incapacitation of those who do not respect such rights. The right to self-defense is a constant reminder that people have a right "not to have wrong done to them"⁴⁴ and the law basically proposes to punish those who do not promote the right to life. Any form of incapacitation involves some form of nullification of human rights of the incapacitated. Lethal force can be used by the state or by the individual if one's life is in danger. The law protects and prevents us from harm--the gun protects and prevents us from harm in the most effective way possible. The right to self-defense as a private, public and political right and must have *de jure* recognition.

What must be noted about the *de jure* recognition of self-defense is that this right is considered as being natural or moral. But once these rights have *de jure* recognition, they not

⁴¹ Jeffrie G. Murphy and Jules L. Coleman, *Philosophy of law*, (United States: Westview Press,1990) 28-36.

⁴² Peter Squires, "Mr Gingrich's Bequest: Globalising the Second Amendment."

⁴³ Robert Spitzer, *Guns Across America*, 121

⁴⁴ Wesley Cragg, *Contemporary Moral Issues*, 504

only are guaranteed by law but can also be annulled by due process. When human rights have *de jure* recognition, human rights become guaranteed rights. However, just like how we can argue for the *justification* of human rights to have *de jure* recognition, we also have *justification* as to when such rights can be nullified when the right to self-defense is misused. There are different ways we can define and classify human rights. Rights are considered as inalienable or as *prima facie*. Others are understood as being fundamental or natural; still, others are understood as being negative or positive. Rights can also be understood as being moral or legal. The question is what kind of right is the right to self-defense. The right to self-defense is a positive right. This right is not only a state provision but an individual provision. We can either expect the state to provide for the service of protection, or we can choose to protect our self. Self-defense is a human right that can be considered as being rational, natural, moral and worthy of *de jure* recognition. It is the *de jure* recognition that gives humans rights meaning. Why is it necessary that the right to self-defense has a *de jure* recognition? If the right to self-defense has a *de jure* recognition, then the *means* to defend oneself can also be a legal (derivative) right.

Gun rights-- a derivative human right and rationale for gun control

What must be made clear between gun control and gun rights is that gun control must be directed towards gun violence, not against its use in self-defense. Gun control has and will have the effect of gun violence, but what must be noted is that no amount of gun control can convict anyone who uses arms in self-defense when one cannot escape or retreat from danger.⁴⁵ The right to self-defense entails in principle, the right to kill if and when necessary, to protect one's life.⁴⁶ The right to bear arms in the context of its potential use to defend oneself is a derivative right. While the right to self-defense is a human right, the right to bear arms in the context of self-defense is a derivative human right.⁴⁷ However, because it is an imperfect right, it cannot be enforceable. The right to kill someone in self-defense with the use of a gun is derived from the right to life and the right not to be killed. To protect oneself from possible death is natural. Once the rationale for self-evident human rights is established, we can argue for its legal recognition. Further, when we recognize that bearing arms is the best defense, there is, the right to bear arms becomes necessary. But gun use must always be understood in the context of gun control for the following reasons— (1) Guns are considered as the best defense but for only those who are mentally fit. To avoid its misuse, it cannot be a right to all. It is a right only for those who will use it for a just cause—self-defense. Testing for mental health would permit or allow only those who are mentally fit to have the right to have a gun. (2) The nature of human beings is defined by freedom. We have the choice to live or die, kill in self-defense or not and kill others is revenge or not. So, bearing arms makes it easy to kill oneself, kill others in self-defense and to kill others for reasons like revenge. Gun control determines who can own guns, where it is to be held, when it can be used, what type of gun can be used in self-defense and whether it should be used against individuals and whether it includes the right to be used against tyrannical governments.⁴⁸ The nature of human beings is such that it is free; freedom is an integral part

⁴⁵ Robert Spitzer, *Guns Across America*, 108

⁴⁶ Timothy Hall, "Is there a Right to Bear Arms?" *Public Affairs Quarterly*, Vol. 29. No. 4 (Oct., 2006) 246

⁴⁷ *Ibid.*, 297

⁴⁸ Sky news interview with gun owner ---Jan 20, 2020

of human nature. The nature of consciousness is such that to be conscious, one has to choose and one has to choose to be conscious⁴⁹. As such, the nature of intentionality is the basis for the freedom humans have. All consciousness is about what we choose to think, believe, or enact. We have the freedom to think, believe and act. This poses many difficult questions about life. We can not only choose to live or die, but we can also have the choice to kill in self-defense and can also choose to terminate someone's life. This is a big challenge for the law. How do we prevent one from using the gun on oneself or kill another in self-defense or kill someone in revenge? While we can kill with or without guns, access to guns makes it easier to kill each other. Gun rights must be defined in the context of gun control, without which upended gun-violence is a given.⁵⁰ Guns do not kill people, but without gun control, it is a lot easier for people to kill each other. So, who can own guns, where it is to be held, when can it be used and if used, the necessity of a trial to ensure that it was indeed for self-defense, must be regulated. While "the individuals right to gun ownership offers one path, deputizing all people to defend themselves with a firearm at their side,"⁵¹ without gun control, it would be difficult to protect the public at large. For a single shooter can rain bullets on a peaceful political protest.⁵²

Gun laws provide for both protection and prevention. Protection from harm and prevention of harm. While gun laws provide ammunition to protect oneself, it must also prevent (1) A possible gun-race. (2) Prevent over protection. (3) Prevent upended gun-violence and gun-misuse. While we have the right to self-defense, we do not have the automatic right to own guns for self-protection. The right to self-defense is a perfect right,⁵³ in that, it has both de jure recognition and can be enforced, however bearing arms is an imperfect right, in that it can only have de jure recognition but cannot be enforced. We cannot enforce either the right to bear arms or the right not to bear arms. The right to bear arms is a legal option like abortion. We cannot enforce the law to bear arms or enforce the law to not bear arms.⁵⁴ Since the right to bear arms is related to the right to self-defense, which is related to the inalienable right to life, then it is hard to fight against the right to bear arms. But since the right to bear arms is a derivative right, it is an imperfect right. And as an imperfect right, it cannot be imposed or disposed

The role of government in providing protection and provision of gun use

In an ideal world, the government should provide protection for each citizen, prevent violence against citizens and punish those who harm citizens. In the real world, it is not possible to expect the government to prevent harm to fellow citizens. For as long as there are people killing each other, there is a possibility that the government cannot guarantee protection from unwanted killings, which makes bearing arms to protect oneself necessary. Self-preservation cannot be entrusted to the government alone. That is why Newt Gingrich

⁴⁹ Jean Paul Sartre, *Being and Nothingness*, tr. Hazel E. Barnes, (New York: Washington Square Press, 1977) 595

⁵⁰Joshua Feinzig and Joshua Zoffer. "A Constitutional Case for Gun Control." P. [2](#)

⁵¹[Ibid. 4](#)

⁵²[Ibid. 4](#)

⁵³ A perfect right is a right that has both *de jure* recognition and is enforceable as opposed to imperfect rights, that have *de jure* recognition but cannot be enforced.

⁵⁴ R. Betsy Emmert, *Welcome to the Gun Show: Will the court Make a killing in the Name of Self-defence?*" 816

argued that every person on the planet deserves the right to defend themselves from those who exploit, imprison, or kill them.⁵⁵ He further argues that “the second amendment is a right for all mankind.”⁵⁶ What the government can do is to empower each citizen to arm themselves if necessary; this is to take care of one’s safety. However, citizens in many countries of the world do not bear arms to protect themselves—they depend on the government to provide for such protection. But in countries that allow its citizens to protect themselves, the legal provision grants citizens the option if deemed necessary to provide for one’s protection. So, while pepper or bear spray is effective for some, bearing arms is the most effective way to take care of self-defense. Is the best method the most effective means of self-defense? The reality is that all humans do not *need* nor *require* such self-protection, but there are people who want or need this right. However, it is important that the government provides well-regulated provisions for such rights. Provision is necessary so that those who could or would want to bear arms to protect themselves can do so with no pressure put on others to arm themselves. Just like abortion gives people the right to abort without implying that all should abort unwanted children. So, while the government attempts to provide protection for all, it can also make provisions for all those who want to arm themselves, should there be a need to do so.

Gun legislation should always involve gun control—the government has an obligation to know *who* owns guns, *where* it is held, *when* it can be used and be able to establish *whether* it was used to protect oneself in self-defense or used to kill in revenge. While studies reveal that gun violence is mostly related to gang violence⁵⁷ this does not mean that there is no need for gun control. If most of the gun violence is a result of gangs, then *gang control*, not *gun control* is crucial. Yes, it is not guns that kill people it is people that kill people and guns are simply the means used by people to kill people. Is an armed society a safer place than an unarmed society? Again, the question is not whether a society is safer with guns or not. The question is, can the government provide and guarantee self-preservation? No. Only the individual can take care of self-preservation best. That is why bearing arms is related to the right of self-defense.

The government must ensure that gun owners do not kill others on the pretext of self-defense or kill fellow citizens for offensive behavior or potential threats. Does arming citizens make the country safer to live in? Will this lead to people executing each other on the pretext of self-defense or killing each other for offensive behavior? This possibility should concern the government. When a society is armed, two scenarios must be dealt with. The possibility of people killing each other on the pretext of self-defense and more seriously people killing criminals for offensive behaviour without trial. For these two reasons, the role of the government must be made very clear. (1) It is the government that provides the freedom to arm oneself in order to protect oneself and this does not empower citizens who own arms to punish or stop criminal behavior. Extra-legal use of guns must be punishable. It is only the government’s right to punish criminals and only after a trial. The government must prevent

⁵⁵ Michel Ames, "New Gingrich Calls for a Universal right to Bear Arms at NRA Form."

<https://www.thedailybeast.com/newt-gingrich-calls-for-universal-right-to-bear-arms-at-nra-forum>

⁵⁶ Peter Squires, "Mr Gingrich's Bequest: Globalising the Second Amendment."

⁵⁷ Brian Lilley, "LILLEY: Trudeau's Rifle Ban Idea Won't Hurt the Criminals," Toronto Sun, June 18, 2019, <https://torontosun.com/opinion/columnists/lilley-trudeaus-rifle-ban-idea-wont-hurt-the-criminals>

citizens who own guns to kill criminals, for citizens cannot kill each other for criminal behaviour. (2) Since protection is the government's responsibility, those who choose to protect themselves must realize it is a privilege extended from the government to citizens. Just like we expect the police to use force only when necessary, the citizens must also use guns only if necessary. Citizens must use this privilege with utmost caution. (3) Execution is carried out only by the government after a trial. As such, killing in self-defense must always involve a trial to make sure that it was indeed done for self-defense. Here the citizen is guilty until proven innocent.⁵⁸ Anyone who uses guns to protect oneself must be tried. Tried to make sure that the killing was done in self-defense. That is why legislations for both ownership and its use must be extensive and precise. Guns make it easy to defend oneself, but it can also be wrongly used to check criminal behavior or kill on the pretext of self-defense. It is one thing to protect oneself and another for citizens to act like police officers who shoot in order to prevent criminal behaviour. The government's role is significant. The government's provision for gun ownership must not be understood as a message to all to arm themselves. What the provision offers is that it allows those whose lives are in danger to have the option to protect themselves with no intention of wishing others to arm themselves. The right to life implies the right to self-defense, but wanting to own arms is a legal option, privilege and responsibility.

What gun legislature should include

If we cannot detach self-defense from the right to bear arms, then the only way forward is to argue for legislation as to who can have guns; when we can use them; what type of arms is permissible; where can it be held; and why is it understood as a right and privilege. The right to own arms is to regulate ownership and licensing. Just like car ownership and licensing, it must be renewable. It must be permissible only after a certain age, it must be given after one has had gun education like driver education. Current research suggests that gun legislature should include the following: (1) Gun registration like car registration implies there is a record of the weapon in question. It means that it is subject to inspection and maintenance. (2) Gun licensing, like car driver licensing, implies that the owner is always under scrutiny. It implies that the owner is under surveillance. It implies that the yearly check-up of his or her mental and physical health is mandatory and necessary. (3) Gun insurance, like car insurance purports that the owner is responsible for its misuse/abuse either by the owner or whoever is misusing it. Insurance for liability (4) Gun disposals, guns cannot be gifted to others nor can it be willed to others. (5) Guns cannot be used by citizens to punish criminals for offensive behaviour. Citizens cannot shoot a criminal who is running away from a crime. (6) Immediate trial for all shooting involving death in self-defense. All killings in self-defence must be followed by a trial to establish if the killing was indeed done for self-defense or not. If not, the owner should be punished for first degree, second-degree murder, or manslaughter. (7) Who can own guns, when can it be used, where it is to be held, what restrictions are put in place for those who own guns?

Those who choose to kill in self-defense must face a trial. The rule of law demands that the law applies to all and is used against all. So, any killing must be justified. Because (1)

⁵⁸ Legally this is not acceptable, but the seriously of killing someone one in self-defence must be proven beyond reasonable doubt

people can kill on the pretext of self-defense, (2) people can kill on the pretext of preventing crimes from happening and (3) people can kill when their liberties are challenged or when their property is stolen. We should insist on a trial for all killings. Should the right to self-defense extend to the right to defend one's liberties and one's property? To die-hard supporters of the right to bear arms, the right to protect life, liberty and property are all important. Some would argue that the right to own arms is not only to protect life but also to protect one's liberties and one's property. For instance, can one use force to incapacitate someone who refuses to allow you into your own home? Do we call the police or do we use weapons to incapacitate the person? The challenge of gun control is to limit its use to just self-defense and how to record or limit licensing.⁵⁹ In US states, some carry firearms without a permit while others require permits.⁶⁰

Bearing arms can be used to kill oneself, kill others in self-defense, or be a part of the militia against a tyrannical government. The question is not whether we should bear arms, the question is when is it appropriate to use and when is it inappropriate to use arms. Yes, to defend oneself with guns is an accepted means to protect oneself. The questions when it is inappropriate? (1) When we act like police officers and start to kill criminals who are fleeing a crime scene. (2) When we kill on the pretext of self-defense—like in the following scenarios--killing someone who does not allow you entry into your own home or killing someone who attempts to prevent you from making choices or disrespecting the choices one makes. What must be noted is that self-defense is a self-evident truth and no amount of regulation or control can be given or not given for the right to defend oneself. Judicial precedent is such that people can kill in self-defense with or without a licence and cannot be convicted if it was indeed for self-defense. Safety regulations, ownership regulations and licensing regulations cannot negate the right to self-defense because self-defense is an inherent right, not a derivative right. But bearing arms as a derivative right is an imperfect right as such it can be regulated and needs to be circumscribed⁶¹ but it cannot be imposed or disposed. That is why no amount of regulations can restrict the right to defend oneself. Gun regulations can only prevent gun violence, but cannot prevent the right to defend oneself with guns, with or without gun licensing.

CONCLUSION

We cannot entrust self-preservation to anyone except oneself. As such, self-defense is a human right. However, human rights are empty without de jure recognition. When bearing arms has legal, or de jure recognition as the best way to take care of one's defense, then the right to bear arms can be understood as a derivative human right. Guns are not only the most effective way to define self-defense, but are also what makes the weakest and the strongest equals. The relationship between self-preservation and self-defense is such that bearing arms can be understood as either a sufficient or necessary condition for self-preservation. It is a sufficient condition for self-defense, but to die-hard believers of the second amendment, it is a necessary condition. It is considered a necessary condition because it is the most effective way to preserve one's life. If one sees guns as a necessary condition for self-defense and

⁵⁹ R. Betsy Emmert, *Welcome to the Gun Show: Will the court Make a killing in the Name of Self-defence?* 817

⁶⁰ *Ibid.*, 816-817

⁶¹ David Degrazia and Lester H Hunt, *Debating Gun Control How Much Regulation Do We Need?*, 181

preservation, then it is hard to provide any alternate options for self-defense. It can never be outdated because self-preservation is always of utmost importance. The right to self-defense entails in principle the right to kill if and when necessary to protect one's life.⁶² However, the right to bear arms in the context of its potential use to defend oneself is a derivative right. While the right to self-defense is a human right, the right to bear arms in the context of self-defense is a derivative human right. As such, the right to bear arms is an imperfect law. As an imperfect right, it has only de jure recognition but is not enforceable. We cannot enforce the right to bear arms nor can we enforce the right not to bear arms. As such, if it is considered as a legal right, then the right to bear arms like abortion is a legal option and privilege. As a legal option and privilege, a right that cannot be imposed or deposed by the state—it can only be granted.

Gun rights in the context of Gun control must be directed towards gun violence, not against self-defense. While gun control has and will reduce gun violence, what must be noted is that no amount of gun control can convict anyone who kills in self-defense when escape or retreat is not possible. For one can defend oneself in self-defence with or without gun licensing. However, gun ownership requires gun control because bearing arms involves the possibility of killing oneself, killing others in self-defense, or joining the militia in killing tyrannical rulers. The nature of human beings is such that we have the choice and freedom to live or die, kill in self-defense, or kill in revenge. Since bearing arms makes it easy to kill oneself or kill others for reasons like revenge, gun legislation must include: who can own guns, where it is to be held when can it be used, whether it should be used against individuals or whether it can be used against tyrannical governments. Because guns can be used to kill oneself, kill others on the pretext of self-defense, or kill rulers for being a tyrant, gun ownership must always be accompanied by gun control. If we cannot detach the right to self-defense and the right to bear arms, then the only thing that can be done is to legislate laws that regulate its use. Gun legislation and control must include the following. (1) The owner of the gun is culpable for both its use or misuse. Gun owner is held responsible for its use or misuse by oneself or others other than the owner. (2) Gun legislation must define who can own a gun, when can it be used, where it is to be stored, why is it understood as a right and privilege and what is to be restricted and for what reasons. (3) Gun legislation must regulate the size, strength and storage of arms and prevent it as a potential threat to society to the individual and society at large. (4) Licencing must take into consideration of both the physical and mental health of gun owners. (5) Compulsory trials must follow any death caused due to self-defense to ensure that it was indeed for self-defense. To conclude the right to bear arms is a derivative right but an imperfect right, hence not enforceable.

BIBLIOGRAPHY

Ames, Michael. 2012. "Newt Gingrich Calls for Universal Right to Bear Arms at NRA Forum." The Daily Beast. The Daily Beast Company. Last modified July 13, 2017. <https://www.thedailybeast.com/newt-gingrich-calls-for-universal-right-to-bear-arms-at-nra-forum>.

Cragg, Wesley. 1992. *Contemporary Moral Issues*. 3rd Ed. Toronto: McGraw-Hill Ryerson.

⁶² Timothy Hall, "Is there a Right to Bear Arms?" 246

DeGrazia, David and Lester H Hunt. 2016. *Debating Gun Control How Much Regulation Do We Need?* Debating Ethics. New York: Oxford University Press.

Emmert, R. Betsy. 2018. "Welcome to the Gun Show: Will the Court Make a Killing in the Name of "Self-Defense?" The Circuit Split Over "Core" Rights Under the Second Amendment." *University of Cincinnati Law Review* 87, no. 3: 807-829.
<https://scholarship.law.uc.edu/uclr/vol87/iss3/6>

Feinzig, Joshua, and Joshua Zoffer. 2019. "A Constitutional Case for Gun Control." *The Atlantic*. Atlantic Media Company. Accessed April 28, 2020.
<https://www.theatlantic.com/ideas/archive/2019/10/constitutional-case-gun-control/600694/>.

Gingrich, Newt. 2012. "The Right to Bear Arms Is a Human Right." *Human Events*. Accessed April 28, 2020. https://humanevents.com/2012/04/18/the-right-to-bear-arms-is-a-human-right/?utm_referrer=https://www.google.com/.

Government of Canada, Royal Canadian Mounted Police. 2016. "History of Firearms Control in Canada: Up to and Including the Firearms Act." *History of Firearms Control in Canada: Up to and Including the Firearms Act - Royal Canadian Mounted Police*, Accessed April 28, 2020. <http://www.rcmp-grc.gc.ca/cfp-pcaf/pol-leg/hist/con-eng.htm>.

Green, Thomas, H. 1883. *Prolegomena to Ethics*, Paternoster Row: Oxford University Press Warehouse.

Hall, Timothy. 2006. "Is There a Right to Bear Arms?" *Public Affairs Quarterly* 20, no. 4: 293-312. www.jstor.org/stable/40441446.

Hughes, Todd C., and Lester H. Hunt. 2000. "The Liberal Basis of the Right to Bear Arms." *Public Affairs Quarterly* 14, no. 1: 1-25. <http://www.jstor.org/stable/40441243>.

Kristvea, Julia. 1991. *Strangers To Ourselves*, New York: Columbia University Press.

Kurtzleben, Danielle. 2015. "FACT CHECK: Are Gun-Makers 'Totally Free Of Liability For Their Behavior'?" *NPR*. NPR, Accessed April 28, 2020.
<https://www.npr.org/sections/itsallpolitics/2015/10/26/446348616/fact-check-are-gun-makers-totally-free-of-liability-for-their-behavior>.

Kuvaas, Bård. 2009. "A Test of Hypotheses Derived from Self-Determination Theory among Public Sector Employees." *Employee Relations* 31, no. 1: 39–56. <https://doi.org/10.1108/01425450910916814>.

Lilley, Brian. 2019. "LILLEY: Trudeau's Rifle Ban Idea Won't Hurt the Criminals." *Toronto Sun*. Accessed April 28, 2020. <https://torontosun.com/opinion/columnists/lilley-trudeaus-rifle-ban-idea-wont-hurt-the-criminals>.

Martin, Glen. 2019. "So, About That 'Well-Regulated Militia' Part of the Constitution." *Cal Alumni Association*. UC Berkeley. Accessed April 28, 2020.

<https://alumni.berkeley.edu/california-magazine/just-in/2017-08-28/so-about-well-regulated-militia-part-constitution>.

- Murphy, Jeffrie G., and Jules L. Coleman. 1990. *Philosophy of Law: An Introduction to Jurisprudence*. United States of America: Westview Press.
- Open Secrets. n.d. "Gun Rights vs Gun Control." Accessed February 10, 2020. <http://www.opensecrets.org/news/issues/guns>.
- Plato. 2001. "Ring of Gyges." in *Moral Philosophy: Selected Readings*, edited by George Sher. Belmont: Wadsworth Group.
- Richards, B. A. 1969. "Inalienable Rights: Recent Criticism and Old Doctrine." *Philosophy and Phenomenological Research* 29, no. 3 (March): 391-404. <https://doi.org/10.2307/2105661>.
- Rothschild, Teal. 2019. *An Ethnography of Gun Violence Prevention Activists: "We Are Thinking People"*, Lanham: Lexington Books.
- Ryan, Richard M., and Edward L. Deci. 2006. "Self-Regulation and the Problem of Human Autonomy: Does Psychology Need Choice, Self-Determination, and Will?" *Journal of Personality* 74, no. 6 (December): 1557–86. <https://doi.org/10.1111/j.1467-6494.2006.00420.x>.
- Sartre, Jean Paul. 1977. *Being and Nothingness*, tr. Hazel E. Barnes, New York: Washington Square Press.
- Schmidt, Christopher J. 2007. "An International Human Right to Keep and Bear Arms." William & Mary Law School Scholarship Repository. Accessed April 28, 2020. <https://scholarship.law.wm.edu/wmborj/vol15/iss3/8>.
- Schweitzer, Albert. 1993. *Reverence for Life: Sermons 1900-1919*. New York: Irvington.
- Smith, SE. 2016. "Gun Ownership Is Not a Human Right | SE Smith." The Guardian, Guardian News and Media. Accessed April 28, 2020. <https://www.theguardian.com/commentisfree/2016/oct/29/gun-ownership-is-not-a-human-right>.
- Spitzer, Robert J. 2015. *Guns Across America Recognizing gun rules and Rights*, New York: Oxford University Press.
- Squires, Peter. 2017. "Mr Gingrich's Bequest: Globalising the Second Amendment." In *The Second Amendment and Gun Control: Freedom, Fear, and the American Constitution*, edited by K. Yuill, & J. Street. Abingdon, UK: Routledge.
- Tushnet, Mark. 2008. "Interpreting the Right to Bear Arms - Gun Regulation and Constitutional Law: NEJM." *New England Journal of Medicine*, 358 (April): 1424-1426 <https://www.nejm.org/doi/10.1056/NEJMp0801601>.

Willingham, AJ. 2018. "27 Words: Deconstructing the Second Amendment." CNN. Cable News Network. Accessed April 28, 2020.
<https://www.cnn.com/2016/08/10/politics/what-does-the-second-amendment-actually-mean-trnd/index.html>.