

Constitutional rights

Law



Constitutional Rights

The Constitution has granted the public with certain rights and privileges that have been incorporated into the Constitution as the Bill of Rights (Cornell, n. d.). This Bill is in the form of amendments, and each amendment addresses a certain right or a group of rights based on their nature, such as social, political, civil or others. These rights are also classified as natural or technical rights, based on whether they deal with personal or state issues (Subcommittee on the Constitution, 1982).

The 2nd amendment states: “ 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” (Cornell, n. d.). The aim of this paper is to discuss the right to keep and bear arms, and to analyze the tier of classification that is used to scrutinize this right.

The right to bear arms has been, perhaps, the most controversial of all the rights drafted in the Constitution, yet the least studied and researched of all the Constitutional clauses (Subcommittee on the Constitution, 1982). The modern day interpretation and application of this right has been radically changed from the time when it was actually conceived; indeed, today a U. S. citizen can get arrested for two years without trial or probation if caught with an unlicensed gun (Subcommittee on the Constitution, 1982).

The history of this right dates back to 872 A. D., when Alfred the Great established that to bear arms was not only a right, but an obligation of every able individual (Subcommittee on the Constitution, 1982). An important point to be noted here is that the term Militia as used in the amendment had very different connotations then as it does today; instead of referring to just a select group of soldiers like the army or the National Guard of today, it then

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referred to the free populace of the State as a whole (Subcommittee on the Constitution, 1982)_ the concept of a standing army was not only viewed with disdain, but was actually considered to be a threat to the liberty of the common man, (Subcommittee of the Constitution, 1982).

The study of the human rights is often wrought with ambiguities and confusion as to which of the rights are actually Constitutional laws and which are social rights (Equal Protection, 2011). It is often necessary to distinguish between the different classes of rights, especially in regard to legal matters when they are taken up for infringement or repealing. In order to achieve this distinction, rights are often classified into three tiers: the upper, middle, and lower tiers, according to the level of scrutiny that they are afforded by the Court (Equal Protection, 2011).

The right to bear arms can be considered to be an upper tier right. The basis of this placement can be analyzed by studying several cases in which the Court ruled according to upper tier scrutiny. It must be noted that rights that are especially drafted into the Constitution and form clauses of the Bill of Rights are afforded Constitutional protection against infringement by the State, and that this protection is binding on the State (Equal Protection, 2011) as per the Fourteenth Amendment: “ No state shall... deny to any person within its jurisdiction the equal protection of the laws” (Cornell, n. d.).

In *Nunn v. State*, 1 Ga. 243, 251 (1846), the State of Georgia repealed this right by banning the bearing of arms by the citizens (Subcommittee on the Constitution, 1982). This ruling was deemed as “ unconstitutional” (Subcommittee on the Constitution, 1982) by the Supreme Court of Georgia, which maintained “ the right of the whole people, old and young, men,
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women and boys, and not militia only, to keep and bear arms of every description, and not merely such as are used by the militia, shall not be infringed, curtailed, or broken in on, in the slightest degree" (Subcommittee on the Constitution, 1982).

The pertinent discussion becomes even more clear in *United States v. Miller*, 307 U. S. 175 (1939), in which the case against the bearing of a shotgun was dismissed even before trial (Subcommittee on the Constitution, 1982) on the basis of the Constitutional protection afforded to this right by the 2nd Amendment; no evidence was taken as to the nature of the weapon, the reason for bearing it, or the history or background of the bearer (Subcommittee on the Constitution, 1982). This suggests that such a right is viewed as a natural right of an individual (Equal Protection, 2011), and as such the State cannot repeal it. The ratifying of the Fourteenth Amendment further strengthens this protection, extending even to the Federal Constitution under the "due processing of the Law" *Bolling v Sharpe* (1954) (Linder, 2011).

References

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