AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
Howard Gillman • Mark A. Graber • Keith E. Whittington

Supplementary Material

Chapter 5: The Jacksonian Era—Individual Rights/Guns/General Principles

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Nunn v. State, 1 Ga. 243 (1846)

Hawkins Nunn openly carried a breast pistol. This behavior violated a Georgia law directed at "the unwarrantable and too prevalent use of deadly weapons." Unlike most Jacksonian weapon laws, which forbade only concealed weapons, Georgia prohibited some weapons entirely. The state statute banned "Bowie or any other kind of knives. . . : pistols, dirks, sword-canes [and] spears." Persons could carry a horseman's pistol. Nunn was arrested and convicted. He appealed the verdict to the state supreme court. That appeal claimed that the state ban on pistols violated the state and federal right to bear arms.

Joseph Henry Lumpkin, Georgia's first and long-serving chief justice, wrote a unanimous opinion reversing the conviction. Lumpkin ruled that states could not deny people access to arms, even though public officials could regulate how weapons were carried. Consider the following questions when reading the opinion below. Did Nunn *connect the right to bear arms to militia service or to the right of self-defense? Lumpkin asserted that the state may ban concealed weapons. What reason did he give for distinguishing an unconstitutional ban on weapons from a constitutional ban on concealed weapons?*

CHIEF JUSTICE LUMPKIN for the Court.

. . .

It is not pretended that [the defendant] carried his weapon secretly, but it is charged as a crime that he had and kept it about his person, and elsewhere. And this presents for our decision the broad question, is it competent for the Legislature to deny to one of its citizens this privilege? We think not.

. . .

. . . [These] clauses in the State Constitutions . . . confer no new rights on the people which did not belong to them before. When, I would ask, did any legislative body in the Union have the right to deny to its citizens the privilege of keeping and bearing arms in defense of themselves and their country?

If this right, "inestimable to freemen," has been guaranteed to British subjects since the abdication and flight of the last of the Stuarts and the ascension of the Prince of Orange, did it not belong to our colonial ancestors in this western hemisphere? Has it been a part of the English Constitution ever since the bill of rights and act of settlement? And been forfeited here by the substitution and adoption of our own Constitution? No notion can be more fallacious than this! On the contrary, this is one of the fundamental principles, upon which rests the great fabric of civil liberty, reared by the fathers of the Revolution and of the country. . . .

. . .

The language of the second amendment is broad enough to embrace both Federal and State governments—nor is there anything in its terms which restricts its meaning.[1] The preamble which was prefixed to these amendments shows, that they originated in the fear that the powers of the general government were not sufficiently limited. . . . But admitting all this, does it follow that because the people refused to delegate to the general government the power to take from them the right to keep and bear arms, that they designed to rest it in the State governments? Is this a right reserved to the States or to themselves? Is it not an unalienable right, which lies at the bottom of every free government? We do not

[1] See *Campbell v. State* (Ga. 1852) (excerpted on the web).

believe that, because the people withheld this arbitrary power of disfranchisement from Congress, they ever intended to confer it on the local legislatures. This right is too dear to be confided to a republican legislature.

. . . If a well-regulated militia is necessary to the security of the State of Georgia and of the United States, is it competent for the General Assembly to take away this security, by disarming the people? What advantage would it be to tie up the hands of the national legislature, if it were in the power of the States to destroy this bulwark of defense? In solemnly affirming that a well-regulated militia is necessary to the security of a free State, and that, in order to train properly that militia, the unlimited right of the people to keep and bear arms shall not be impaired, are not the sovereign people of the State committed by this pledge to preserve this right inviolate? . . . .

. . . "The right of the people to bear arms shall not be infringed." The right of the whole people, old and young, men, women and boys, and not militia only, to keep and bear arms of every description, and not such merely as are used by the militia, shall not be infringed, curtailed, or broken in upon, in the smallest degree; and all this for the important end to be attained: the rearing up and qualifying a well-regulated militia, so vitally necessary to the security of the free State. Our opinion is, that any law, State or Federal, is repugnant to the Constitution, and void, which contravenes this right, originally belonging to our forefathers. . . .

We are of the opinion, then, that so far as the act of 1837 seeks to suppress the practice of carrying certain weapons secretly, that it is valid, inasmuch as it does not deprive the citizen of his natural right of self-defense, or of his constitutional right to keep and bear arms. But that so much of it, as contains a prohibition against bearing arms openly, is in conflict with the Constitution, and void; and that, as the defendant has been indicted and convicted for carrying a pistol, without charging that it was done in a concealed manner, under that portion of the statute which entirely forbids its use, the judgment of the court below must be reversed, and the proceeding quashed.