

## **HISTORICAL CONTEXT OF THE SECOND AMENDMENT**

The Anglo-American settlers' violent break from Britain in the late eighteenth century paralleled their search-and-destroy annihilation of Delaware, Cherokee, Muskogee, Seneca, Mohawk, Shawnee, and Miami, during which they slaughtered families without distinction of age or gender, and expanded the boundaries of the thirteen colonies into unceded Native territories.

The Declaration of Independence of 1776 symbolizes the beginning of the "Indian Wars" and "westward movement" that continued across the continent for another century of unrelenting U.S. wars of conquest. That was the goal of independence, with both the seasoned Indian killers of the Revolutionary Army and white settler-rangers/militias using extreme violence against Indigenous noncombatants with the goal of total domination. These forces were met with resistance movements and confederations identified with leaders such as Buckongehelas of the Delaware; Alexander McGillivray of the Muskogee-Creek, Little Turtle and Blue Jacket of the Miami-Shawnee alliance; Joseph Brant of

the Mohawk; and Cornplanter of the Seneca, as well as the great Tecumseh and the Shawnee-led confederation in the Ohio Valley. Without their sustained resistance, the intended genocide would have been complete; the eastern half of the continent was “ethnically cleansed” of Native nations by 1850, through forced relocation to “Indian Territory” west of the Mississippi.

The program of expansion and the wars against Native American civilization and the agricultural societies of the vast valley of the Ohio River and the Great Lakes region began before the Declaration with the French and Indian War of 1754–1763,<sup>1</sup> which was the North American extension of the Seven Years’ War between France and Britain in Europe. Britain’s victory over France in 1763 led to its domination of world trade, sea power, and colonial holdings for nearly two centuries. In the Treaty of Paris, France ceded Canada and all claims east of the Mississippi to Britain. In the course of that war, Anglo-American settlers intensified their use of counterinsurgent violence, which the Anglo settler elite dubbed “savage wars,” against Indigenous peoples’ resistance to their incursions into the territories of the Ottawa, Miami, Kickapoo, and the confederations identified with Pontiac’s leadership of the Great Lakes region, spreading to the Illinois and Ohio countries. By the end of the war, significant numbers of Anglo settlers had taken Indigenous lands beyond the colonies’ boundaries, and land speculation was a road to riches for a fortunate few.

To the settlers’ dismay, soon after the 1763 Treaty of Paris was signed, King George III issued a proclamation prohibiting British settlement west of the Allegheny-

Appalachian mountain chain, ordering those who had settled there to relinquish their claims and return to the kingdom's thirteen colonies. Soon it became clear that the British authorities needed far more soldiers to enforce the edict, as thousands of settlers ignored it and continued to pour over the mountains, squatting on Indigenous lands, forming armed militias, and provoking Indigenous resistance. In 1765, in order to enforce the Proclamation line, the British Parliament imposed the Stamp Act on the colonists, a tax on all printed materials that had to be paid in British pounds, not local paper money. The iconic colonial protest slogan "taxation without representation is tyranny" marked the surge of rebellion against British control but it did not tell the whole story, considering what the tax was for: to pay the cost of housing, feeding, and transporting soldiers to contain and suppress the colonies from expanding further into Indian territory. The complaints iterated in the Declaration largely focus on the measures used by King George to prevent his rebellious subjects from grabbing more land: "[King George] has excited domestic Insurrections [slave revolts] amongst us, and has endeavoured to bring on the Inhabitants of our Frontiers, the merciless Indian Savages [Indigenous nations resisting genocidal wars], whose known Rule of Warfare, is an undistinguished Destruction, of all Ages, Sexes and Conditions."

By the early 1770s, terrorism waged by Anglo-American settlers against even Christianized Native communities within the colonies, and violent encroachment on those outside the colonial boundaries, raged, and illegal speculation in stolen Indian lands was rampant. In the southern colonies

especially, farmers who had lost their land in competition with larger, more efficient, slave-worked plantations rushed for Native farmlands over the mountain range. These militant settlers—"rangers"—thus created the framework for the United States to appropriate Native territories and attempt to eradicate Indigenous nations across the continent for the following century. Illegal squatter-settlers, always with practiced Indian killers in the lead, initially depended on colonial militias for support; after the War of Independence they relied on the U.S. military to protect their settlements. During the war years of 1774–1783, the secessionists' parallel wars against Native nations were, in military historian John Grenier's words, "waypoints in the development of the first way of war. In them, we find the same elements—necessity and efficiency, the uncontrollable momentum of extravagant violence, and the quest for the subjugation of Indians—that had defined the first way of war throughout the colonial period."<sup>2</sup>

In a book first published in 1876 but written decades earlier, historian Joseph Doddridge (1769–1826), a minister and early settler in the Ohio Country, wrote:

The early settlers on the frontiers of this country were like Arabs of the desert of Africa, in at least two respects; every man was a soldier, and from early in the spring till late in the fall, was almost continually in arms. Their work was often carried on by parties, each one of whom had his rifle and everything else belonging to his wardress. These were deposited in some central place in the field. A

sentinel was stationed on the outside of the fence, so that on the least alarm the whole company repaired to their arms, and were ready for combat in a moment.<sup>3</sup>

The Second Amendment thus reflects this dependence on individual armed men, not just in terms of a right to bear arms, but also as a *requirement* to bear arms, which was crucial to the integrity of the state and the conception of security achieved through a relationship between state and citizen.

In 1783, the British withdrew from the fight to maintain sovereignty over their thirteen colonies, not due to military defeat, but rather in order to redirect their resources to occupy and colonize South Asia. Britain's transfer of its claim to Indian Country west of the colonies spelled a nightmarish disaster for all Indigenous peoples east of the Mississippi, and ultimately all of North America that would be claimed and occupied by the United States. Britain's withdrawal in 1783 opened a new chapter of unrestrained racist violence and colonization of the continent.

The creation of the United States Constitution began in 1785, but the document was not approved by all the states and in effect until 1791. Meanwhile, the interim Continental Congress got to work on a plan for colonization over the mountain range. The Land Ordinance of 1785 established a centralized system for surveying and distributing land, with seized Native lands being auctioned off to the highest bidder. The "Northwest" (referring to the Ohio country) Ordinance of 1787 set forth a colonization procedure for annexation via military occupation, transforming to civilian

territorial status under federal control, and finally, statehood. These were the first laws of the incipient republic, revealing the motive for those desiring independence. It was the blueprint for the taking of the North American continent, with lines of future settlement reaching the Pacific on the maps. The maps contained in the land ordinances, which laid out land in marketable square-mile plots, were not new; they were the products of pre-Revolutionary colonial elites, including George Washington, who as leader of the Virginia militia took armed surveying teams illegally into Ohio country, making him one of the most successful land speculators in the colonies. The wealthiest colonists were all speculators; acquiring land and enslaving people provided the very basis of the economy of the first nation born as a capitalist state, and by 1850, it was the wealthiest economy in the world.

In 1801, President Thomas Jefferson aptly described the new settler-state's intentions for horizontal and vertical continental expansion as an "empire for liberty," stating: "However our present interests may restrain us within our own limits, it is impossible not to look forward to distant times, when our rapid multiplication will expand itself beyond those limits and cover the whole northern, if not the southern continent, with a people speaking the same language, governed in similar form by similar laws." This vision of Manifest Destiny found form a few years later in the Monroe Doctrine, signaling the intention of annexing or dominating former Spanish colonial territories in the Americas and the Pacific, which would be put into practice during the rest of the century, while carrying out brutal wars of

extermination and expulsion of Native peoples to complete the continental shape of the United States today.

Taking land by force was not an accidental or spontaneous project or the work of a few rogue characters. The violent appropriation of Native land by white settlers was seen as an individual right in the Second Amendment of the U.S. Constitution, second only to freedom of speech. Male colonial settlers had long formed militias for the purpose of raiding and razing Indigenous communities and seizing their lands and resources, and the Native communities fought back. Virginia, the first colony, forbade any man to travel unless he was “well armed.” A few years later, another law required men to take arms with them to work and to attend church or be fined. In 1658, the colony ordered every settler home to have a functioning firearm, and later even provided government loans for those who could not afford to buy a weapon. Similarly, New England colonial governments made laws such as the 1632 requirement that each person have a functioning firearm plus two pounds of gunpowder and ten pounds of bullets. Householders were fined for missing or defective arms and ammunition. No man was to appear at a public meeting unarmed.<sup>4</sup>

These laws stayed on the books of the earliest colonies and were created in new colonies as they were founded. The Second Amendment, ratified in 1791, enshrined these obligations as constitutional law: “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.” The continuing significance of that “freedom” specified in the Bill of Rights reveals the settler-colonialist cultural roots of the

United States that appear even in the present as a sacred right. Several of the colonies that declared independence in 1776—Massachusetts, New Hampshire, New Jersey, Pennsylvania, Vermont, and Virginia—had already adopted individual gun-rights measures into their state constitutions before the Second Amendment was passed at the federal level.

Settler-militias and armed households were institutionalized for the destruction and control of Native peoples, communities, and nations. With the expansion of plantation agriculture, by the late 1600s they were also used as “slave patrols,” forming the basis of the U.S. police culture after enslaving people was illegalized. That is the inseparable other half of the settler-colonial reality that is implicit in the Second Amendment. The first enslaved Africans to be shipped to Britain’s first colony of the eventual thirteen colonies that became the United States took place in 1619, when twenty bonded Africans arrived in Virginia. Most of the labor being used in the first decade of the colony was made up of British and other Europeans who had indentured themselves for varying lengths of time, but African slavery was different. As Howard Zinn points out, “Some historians think those first blacks in Virginia were considered as servants, like the white indentured servants brought from Europe. But the strong probability is that, even if they were listed as ‘servants’ (a more familiar category to the English), they were viewed as being different from white servants, were treated differently, and in fact were slaves.”<sup>5</sup>

Other scholars have presumed that the British settlers in North America were reluctant to enslave Africans, but that too seems a spurious notion. When the Doctrine of



Discovery promulgated by the Vatican in the mid-fifteenth century “legalized” the Portuguese capture and enslavement of the people of West Africa, the trans-Atlantic slave trade took off, first within European markets. Then, in 1492, it reached the Caribbean and had been in effect for over a century when the Virginia seaboard was wrenched from the Indigenous farmers by English usurpers. From the mid-fifteenth century to the mid-twentieth century, most of the non-European world was colonized under the Doctrine of Discovery, one of the first principles of international law promulgated by Christian European monarchies to legitimize investigating, mapping, and claiming lands belonging to peoples outside Europe. It originated in a papal bull issued in 1455 that permitted the Portuguese monarchy to seize West Africa for enslaving those who lived there. Following Columbus’s infamous exploratory voyage in 1492, sponsored by the king and queen of the infant Spanish state, another papal bull extended similar permission to Spain. Disputes between the Portuguese and Spanish monarchies led to the papal-initiated Treaty of Tordesillas (1494), which, besides dividing the globe equally between the two Iberian empires, clarified that only non-Christian lands fell under the discovery doctrine.<sup>6</sup>

This doctrine, on which all European states relied, thus originated with the arbitrary and unilateral establishment of the Iberian monarchies’ exclusive rights under Christian canon law to colonize, enslave, and exterminate foreign peoples, and these were later embraced by other European monarchical colonizing projects, such as the British in North America.

The only barrier to introducing slavery in Virginia and all the other colonies would have been economic, not ethical. The Southern colonies emerged in territory that had been one of seven original birthplaces of agriculture<sup>7</sup> in the world tens of thousands of years before, developed by the Muskogee and other Indigenous agricultural societies. Appropriated by European settlers, these lands would become economies based on enslaved African labor and increasingly on breeding enslaved people for profit, with the Indigenous farmers forced to the peripheries. At the time of U.S. independence, half the population of South Carolina was made up of enslaved Africans, with the other agribusiness colonies having large enslaved populations as well. By the late seventeenth century, onerous slave codes had been developed, which included mandatory slave patrols drawn from the already existing militias.

The wealthy slavers of the Southern colonies, particularly those in Virginia, were most incensed by the British Proclamation following the French and Indian War prohibiting expansion over the Appalachian ridge, since their wealth relied on accessing more and more land as they depleted the soils with intensive monocrop production for the market. They defied the Proclamation, taking survey teams into the Ohio country to map the territory for future settlement, which by definition meant the extension and expansion of slavery. By the time he was in his mid-twenties, George Washington was already a notoriously successful slaver and land speculator in unceded Indian lands.<sup>8</sup>

Washington and the other founders of the United States designed a governmental and economic structure to

serve the private property interests of each and all of the primary actors, nearly all of them slavers and land speculators, with the brilliant Alexander Hamilton as the genius of finance. Like the Indian-killing militias that continued and intensified as the United States appropriated more land for slavers, slave patrols grew accordingly. The ethnic cleansing of Native Americans complete, slavers—with their reserve of capital and enslaved labor—transformed the Mississippi Valley into the Cotton Kingdom that formed the basis for U.S. capitalism and world trade. In the words of Harvard historian Walter Johnson, “The extension of slavery into the Mississippi Valley gave an institution that was in decline at the end of the eighteenth century new life in the nineteenth. In 1800, there were around 100,000 slaves living within the boundaries of the present-day states of Mississippi and Louisiana; in 1840, there were more than 250,000; in 1860, more than 750,000”<sup>9</sup>

The militaristic-capitalist powerhouse that the United States became by 1840 derived from real estate (which included enslaved Africans, as well as appropriated land). The United States was founded as a capitalist state and an empire on conquered land, with capital in the form of slaves, hence the term chattel slavery; this was exceptional in the world and has remained exceptional. The capitalist firearms industry was among the first successful modern corporations. Gun proliferation and gun violence today are among its legacies.