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**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 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). 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 though we cannot prevent the use of force to defend oneself, gun regulation 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 can have it, where it is to be held when it can be used to defend oneself, and whether it an be used in defending other rights. (3) Gun legislation must ensure a trial when anyone who 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 ensure the control of the size, strength, and storage of arms for self-defense as a matter of public safety; (5) Gun legislatures ensure that no individual has power over others in society due to the 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 forcing arms to defend oneself. For no one can be convicted of murder if one kills when one cannot escape or retreat from the threat to one’s life.

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

**Introduction**

We cannot ignore the second amendment nor its interpretations.[[1]](#footnote-1) The right to self-defense is a human right. Does this right imply that the right to bear arms is a human right as Newt Gingrich argues[[2]](#footnote-2). The court's decision –the district of Columbia V. Heller (2008) affirmed the individual's right to own arms for self-defense.[[3]](#footnote-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]](#footnote-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, 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]](#footnote-5) While studies reveal that gun violence is mostly related to gang violence,[[6]](#footnote-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 are fundamental to gun control.[[7]](#footnote-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]](#footnote-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 is to define when lethal force can be used to stand your ground.[[9]](#footnote-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 quantity of arms 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]](#footnote-10) (3) To control gun ownership is to curtail the power of any particular individual in society and prevent the loss of lives upended by gun violence.[[11]](#footnote-11) Gun legislature must ensure that no individual has power over others in society due to the stockpile of weaponry in the name of self–defense.

When we understand the right to self-defense in the context of the inalienable right to life, liberty, and the pursuit of happiness, then 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 human-made right as opposed to being a fundamental right as the right to self-defense. 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 intruders can be shoot in self-defense.[[12]](#footnote-12) Ever since Blackstone, self-defense is a valid defense in law,[[13]](#footnote-13) self-defense cases are “excusable” rather than “justifiable” in judicial decisions because safe escape or retreat was not a possibility.[[14]](#footnote-14) In such circumstances, one has the right to “stand your ground.”[[15]](#footnote-15) Further, it is argued that we have a right to protect oneself both in private and in public places if we had a right to be there, and there is no need to retreat.[[16]](#footnote-16) However, is there justification for 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]](#footnote-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]](#footnote-18) (5) Addressing the question of *whether* guns can be used against tyrannical governments.[[19]](#footnote-19) (6) Ensuring that one does not kill others in the pretext of self-defense or kill others in 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**

What is fundamental to all life is the will to live,[[20]](#footnote-20) as such self-defense is a fundamental part of self-preservation.[[21]](#footnote-21) Humans have the right not to have wrong done to them.[[22]](#footnote-22) This right cannot be entrusted to anyone other than oneself. Each individual is the defender of their life. “Self-defence is like breathing,” [[23]](#footnote-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]](#footnote-24) How one defends oneself must be easy and effective. Guns not only provide for such defense, but it is also the most effective way one can defend himself or herself. 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]](#footnote-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]](#footnote-26) 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 holds that to bear arms in self-defense is a human right.[[27]](#footnote-27) Another world view holds that that right to own guns for self-defense is not a human right.[[28]](#footnote-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 and the reason for the legitimacy[[29]](#footnote-29) for bearing, arms are: (1) Guns are the first preference and best option for self-defense. It is the most effective way to take care of self-defense. (2) It is the easiest way to take care of self-defense. It is simple and easy to carry out the task of self-defense. Especially those who are weak and vulnerable and cannot defend themselves. (3) Bearing arms is a great equalizer—guns make the weakest and the strongest as equals in terms of self-preservation. If there is one thing like voting that makes us as equals, it would be bearing arms. (4) The fact that guns make the weakest and the strongest as equals makes bearing of arms the most difficult 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. Owing 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 kill others in the pretext of self-defense. While we cannot punish someone for killing in self-defense, we must punish those who kill others in the pretext of self-defense. That is why anyone who kills anyone must have a trail 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 shoot at criminals. If a gun owner shoots a criminal, he or she should be found guilty of murder. For only the government can punish the criminal, when found guilty after the trial. Ownership of guns does not make a citizen a police officer. (4) Fourth, the truth about gun violence. Possession of guns makes it easy to promote violence.[[30]](#footnote-30)

**The relationship between what is right and human rights**

Law like morals deals with what is right, just, and lawful, which provides the basis of human rights. What is right just and good are self-evident truths.[[31]](#footnote-31) As such, human rights, by extension, are self-evident truths and such rights are inherent not granted.[[32]](#footnote-32) 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 scenarios[[33]](#footnote-33) come to realize that it is better to be just than unjust.[[34]](#footnote-34) 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.[[35]](#footnote-35) 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 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 oneself 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 it is right and a right[[36]](#footnote-36). To carry arms for self-defense makes the weakest and the strongest as equals in defending onself? 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 rights needs this kind of lethal sanction. Once we define something as being right, we can consider it as being a right,[[37]](#footnote-37) 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 can be understood as a derivative right. But since what is right is self-evident, self-determined, and self-imposed[[38]](#footnote-38) then humans are the authors[[39]](#footnote-39) of the laws that we obey. Humans discern right from wrong and have the freedom to choose right or wrong. The author of obedience is the author of the law. The right to self-preservation, and the right to self-defense is fundamental to the human condition.

Alterity posits the notion that we must see the other in each and see each in the other.[[40]](#footnote-40) To live with others is to live with the same rights as others.[[41]](#footnote-41) When we do see each in each other, conflicts that could or would happen would never happen because we embraced have alterity. As long we do not see each in each other or kill each other for whatever reason se 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 are also called moral rights or inalienable rights, which some hold as not being contingent on the laws, customs, or beliefs of a particular society or polity. Legal rights are called 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 right are codified or that have de jure recognition can we expect respect for the right to self-defense. Self-evident truth are truths that comprehendible, definable, and believable, but legal recognition requires that rights have legislative guarantees and sanctions. It is this that establishes the rule of law. It is the rule of law that guarantees such rights, not the ruler. Having legal guarantees and sanctions ensures such rights as the right to self-preservation by bearing arms. 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 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 options 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 recognition[[42]](#footnote-42). 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 comprehendible believable, definable, and defendable. 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 comprehendible, 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 legal precedence like being acquitted for shooting someone in self-defense. The right to self-defense is considered a fundamental right by natural law theorists. The right to bear arms is considered a derivative right by legal positivist. The right to kill is considered an existential right by legal realists. A point in case, in 1993, a 92-year-old person named Mrs. Bessie Jones shot an intruder and was acquitted.[[43]](#footnote-43) After 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 pretrial immunity hearing, and if the court finds the person is entitled to immunity, then no criminal trial occurs. [[44]](#footnote-44)

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 one’s life by the use of the gun. Without legal recognition, there can be no guarantees for such rights. So when there are legal guarantees for human rights, it is always accompanied by penalty/punishment or the incapacitation of those who do not respect such rights. The right to self-defense is a constant reminded that people have a right not to have wrong done to them[[45]](#footnote-45) 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. 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 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 only are guaranteed by law but also can be annulled by due process. When human rights have *de jure* recognition, human rights become guaranteed rights. However, just like we can argue for the *justification* for human rights to have de jure recognition, we also have *justification* as to when such rights, we can 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 also can 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 expect either the state to provide the service of protection, or we can protect oneself. 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. Bearing arms not only makes self-defense easy and effective but makes the weakest and the strongest amongst us as equals in defending oneself.

**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.[[46]](#footnote-46) The right to self-defense entails in principle, the right to kill if and when necessary, to protect one’s life.[[47]](#footnote-47) 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.[[48]](#footnote-48) 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, then, 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 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 does it include the right to be used against tyrannical governments.[[49]](#footnote-49) The nature of human beings is such that it is free; freedom is an integral part of human nature. The nature of consciousness is such that to be conscious, one has to choose, and one has to choose to be conscious[[50]](#footnote-50). As such, the nature of intentionality is the basis for 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 also have the choice to kill in self-defense and also can 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.[[51]](#footnote-51) 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 only can it be used and if used the necessity for a trial to ensure that it was indeed for self-defense, must be regulated. While “the individual right to gun ownership offers one path, deputizing all people to defend themselves with a firearm at their side,”[[52]](#footnote-52) without gun control would be difficult to protect the public at large. For a single shooter can rain bullets on a peaceful political protest.[[53]](#footnote-53)

Gun laws provide both for 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,[[54]](#footnote-54) 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 not to bear arms.[[55]](#footnote-55) 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 from fellow citizens. For as long as people killing each other is a possibility and the government cannot guarantee protection from unwanted killings, bearing arms to protect oneself is necessary. Self-preservation cannot be entrusted to the government alone. That is why Newt Gingrich argued that every person on the planet deserves the right to defend themselves from those who exploit, imprison, or kill them.[[56]](#footnote-56) He further argues that “the second amendment is a right for all mankind.”[[57]](#footnote-57) 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 in 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 provide well-regulated provisions for such rights. Provision is necessary so that those who could or would want to arm themselves 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 provision all those who want to arm themselves, should there be a need to do so.

Gun legislation should always invovle 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 violence[[58]](#footnote-58) 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 in the pretext of self-defense or kill fellow citizens for offensive behavior or potential criminals. Does the fact that so many armed citizens make the country save to live in. Will this lead to people executing each other in the pretext of self-defense or killing each other for offensive behavior? This should concern the government. When a society is armed, two scenarios must be dwelt with. The possibility of people killing in the pretext of self-defense and more seriously people killing criminals for criminal or offensive behaviour. The possibility of citizens acting like a police officer and executing justice, only here, killing is done without a trial. For these two reasons, the role of the government must be made very clear. (1) It is the government that provides the provision to arm oneself 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 that can punish, and only after a trial. The government must prevent 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 if necessary, then citizens also must 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.[[59]](#footnote-59) Anyone who uses guns to protect oneself must be tried, tried to make sure 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 in the pretext of self-defense. It is one thing to protect oneself, and it is another for citizens to act like police officers who shoot to prevent criminal or offensive behavior. 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 all 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 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 the there is a record of the weapon in question. It means 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 the yearly check-up of his or her mental and physical health is 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 disposal, guns cannot be gifted to others or cannot be willed to others. (5) Guns cannot be used by citizens to punish criminals for offensive behaviour. Citizens cannot shot a criminal who is running from a crime. (6) Immediate trial for all shooting involving death in self-defense. All killing must be followed by a trial to establish if the killing was indeed for self-defense. If not, the owner should be punished for first degree, second-degree murder, or manslaughter. (7) Who can own guns, when it can be used, where it is to be held, what restrictions there 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 used against all. So any killing must be justified. Because (1) people can kill in the pretext of self-defense, (2) people can kill in 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 gun owners, 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 and use your weapon 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.[[60]](#footnote-60) In US states, some carry firearms without a permit. Others have permits required.[[61]](#footnote-61)

Bearing arms can be used to kill oneself, kill others in self-defense, or be part of the militia against a tyrannical government. The question is not whether we should bear arms, the question is when it is appropriate to use and when it is inappropriate to use arms. Yes, to defend oneself is an accepted means to defend 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 in the pretext of self-defense—like in the following scenarios--killing someone who does not allow you 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 can be regulated and needs to be circumscribed[[62]](#footnote-62) 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 it cannot prevent the right to defend oneself with guns, with or without gun licensing.

**Conclusion**

We cannot entrust self-preservation to anyone expect 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 it is also what makes the weakest and strongest as 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 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.[[63]](#footnote-63) 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 like, then the right to bear arms like abortion is a legal option and privilege. It is 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 it can be used, whether it should be used against individuals and whether it can be used against tyrannical governments. Because guns can be used to kill oneself, kill others in 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 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 it can be used, where it is to be stored, why it is 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--in that while it can have *de jure* recognition it is not enforceable.

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13. Ibid., 108 [↑](#footnote-ref-13)
14. Ibid., 108 [↑](#footnote-ref-14)
15. Ibid., 103-143 [↑](#footnote-ref-15)
16. Ibid., 110 [↑](#footnote-ref-16)
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31. Expert from the Declaration of Independence reads—‘”we hold these truths to be self-evident, that all amen 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”. [↑](#footnote-ref-31)
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51. Joshua Feinzig and Joshua Zoffer. “A Constitutional Case for Gun Control.” P. 2 [↑](#footnote-ref-51)
52. Ibid, 4 [↑](#footnote-ref-52)
53. Ibid, 4 [↑](#footnote-ref-53)
54. 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. [↑](#footnote-ref-54)
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59. Legally this is not acceptable, but the seriously of killing someone one in self-defence must be proven beyond reasonable doubt [↑](#footnote-ref-59)
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62. David Degrazia and Lester H Hunt*, Debating Gun Control How Much Regulation Do We Need?*, 181 [↑](#footnote-ref-62)
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