

S T O D D A R D F O R C O N G R E S S

— Utah's 3rd Congressional District —

# WHOEVER BEARS THE SWORD BEARS THE SOVEREIGNTY

*The Iron Law of Politics, and Why the Militia Is the  
Floor Beneath the Constitution — Not a Missing Fourth Pillar Beside It*

*A Policy Position Paper*

*“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.”*

— U.S. Const. amend. II

**Michael R. Stoddard, CPA, CFP®**  
**Libertarian Candidate, U.S. House of Representatives**

---

**A note on this paper.** *The campaign plank “Restore the Peoples’ Militia” states the policy; the companion paper On the Rights and Duties of the Second Amendment reads the text and diagnoses what has been lost. This paper goes one layer deeper — to the structural fact beneath the parchment that the Second Amendment was written to honor. Its claims are descriptive and structural, not partisan: they would hold true under any constitution whatever. The point is simply that ours was built to answer them well, and that we have stopped.*

---

## CONTENTS

- I. The First Political Fact
- II. The Three Hands the Sword Can Rest In
- III. Right, Power, and Duty Are One Thing
- IV. The Floor, Not a Fourth Pillar
- V. Blackstone’s Cage and the American Answer
- VI. The Disarmed People Become Prey
- VII. The Test of “We the People”
- VIII. What the Iron Law Asks of This Campaign
- Reclaiming the Sword: Four Steps
- Works Cited

### I. The First Political Fact

Every political order, whatever its parchment, answers one question before it answers any other: who holds the capacity for organized force? That question is prior to who makes the laws, who enforces them, and who judges them — because each of those powers is, in the last analysis, a claim that someone is able to back it. A statute is a sentence until there is a power behind it; a verdict is an opinion until there is a force to execute it. Constitutions are elaborate arrangements for *directing* force; not one of them *creates* the force it directs. That force they find already in the world, lodged in the bodies of men who may be armed or disarmed, organized or scattered. The first political fact is not the law. It is the distribution of arms.

State it as the law it is: **whoever bears the sword bears the sovereignty**.<sup>1</sup> The maxim is descriptive, not normative.<sup>2</sup> It does not say who *ought* to hold the sword — only that wherever the

---

<sup>1</sup>The maxim distills a long tradition rather than asserting a novelty. Aristotle, *Politics* IV.13 (Bekker 1297b): those able to wield arms decide whether the constitution stands or falls; cf. III.7 (1279a39–b4), that those who possess arms are the citizens, and VII.9 (1329a). The thread runs through Roman law (the *imperium* and the *ius gladii* conferred as one grant), Romans 13:4 (the magistrate who beareth not the sword in vain), Hobbes (covenants, without the sword, are but words), and Max Weber (the state as the monopoly of the legitimate use of force). The rousing line about a court awed by the fear of an armed people, often pinned on Aristotle, is a later misattribution and is not relied upon here.

<sup>2</sup>The verb *to bear* gathers several senses, and one is foundational, for a man cannot bear what he does not possess: to own — to acquire and keep the arm in one’s own hands — is the ground on

sword has gone, sovereignty has already followed, with or without anyone's consent. This is the iron fact beneath the parchment. A constitution does not get to vote on whether the law holds. It gets to answer the one question the law leaves open: *whose hand?*

## II. The Three Hands the Sword Can Rest In

There are three answers to *whose hand?* and they exhaust the field. The sword may rest in *one* hand: the monarch, the autocrat, the man on the curule chair. It may rest in the hands of *the few*: a class, a junta, or a permanent professional body set apart from the people — the standing army and its descendants, the modern default, under which a people are clients of a force they do not constitute and cannot recall. Or it may be retained, in some lawful and recallable form, in the body of *the people themselves*. The third answer has a name. It is the militia<sup>3</sup> — and it is the only one of the three under which the sovereignty a people claims and the sword a people holds are lodged in the same hands, so that *We the People* names a fact and not a memory.

This is why the militia, rightly understood, is not a partisan cause. To prefer the third answer is not to prefer one party's policy to another's; it is to prefer that the words *We the People* continue to refer to something. A republic that lets the sword drift from the third hand into the second has not changed an opinion. It has changed its form of government — quietly, and usually while congratulating itself on its modernity.

## III. Right, Power, and Duty Are One Thing

A right is a claim. **A claim without the power to vindicate it is not a right but a *petition*** — a hope addressed to whoever does hold the power. It follows that a right whose power has been surrendered has already, quietly, ceased to be a right: it has become a *privilege*, revocable at the discretion of its actual holder. From the same root springs an obligation, for a right one is under no duty to preserve is a right one is free to give away, and a freely alienable right is no structural feature of a free people but a disposable convenience.

Right, power, and duty are therefore not three things bolted together. They are one thing seen from three angles, and the armed citizen is the figure in whom they close into a single solid: he is at once the bearer of the right, the holder of the power, and the subject of the duty. Strip any one and the other two collapse. Take away the power and the right decays to a petition; relieve the citizen of the duty and the right becomes alienable; deny the right and the duty and the power have no lawful

---

which the rest stand; upon it, to bring forth or beget (the people generate the armed body from their own substance — the constituent act), to competently carry and wield (operative possession), and to be willing to draw (the readiness to use it at need). The Second Amendment's own pairing, to keep and bear, names the ground and the act in one breath: a sword kept but never drawable is costume — and a sword never kept cannot be borne at all.

<sup>3</sup>The nearest contemporary treatment in the American militia register is Edwin Vieira, Jr., *The Sword and Sovereignty* (2012), which argues the people-held sword as the locus of retained popular sovereignty.

object. This is why Tucker called self-defense not a granted liberty but the first law of nature<sup>4</sup> — first because every other right is downstream of the capacity to keep it. A constitution may inscribe a hundred liberties; it secures none of them in a people that has surrendered the power to defend the inscription.

#### IV. The Floor, Not a Fourth Pillar

Here the most common mistake must be corrected, because it concedes the case while seeming to defend it. The militia is sometimes pictured as a *fourth pillar* — a check standing beside the legislative, executive, and judicial. The picture is too small, and being too small it is wrong. The decisive distinction is the one the French Revolution's clearest theorist drew and our own founders enacted: between the *constituent* power and the *constituted* powers.<sup>5</sup>

The constituted powers are the organs a constitution creates — in our case the three branches — each holding delegated authority and accountable under the document that made it. The constituent power is the authority that makes the document. The constituted powers are held by mere agents who are granted their powers by the principal, the constituent power. And here the whole matter turns on a single fact that quietly settles a quarrel older than the Republic: neither the federal government nor the governments of the several states is sovereign. The federal government is an agent; the state governments are agents; the people are the principal, and the people alone are sovereign. Madison says it without hedging — the governments, state and federal alike, are but different agents and trustees of the people.<sup>6</sup> The two are not rival sovereigns dividing a realm between them. They are two delegates, each exercising authority over a distinct sphere the Constitution assigns, lent and assigned to them by the one sovereign that made them both.

This is why the old quarrel over origin need not be settled here. Whether one reads the several states as having delegated their powers upward, or one people as having instituted both governments at once, on neither reading is either government sovereign; on both, sovereignty is retained by the people. And what is retained must be held in some operative form, or the word is empty. Picture the design, then, not as a set of nested rings but as a building. The foundation is the sovereignty the people never surrendered, kept in operative form as the armed body of the people. Upon that foundation stand two structures, neither subordinate to the other — the federal government and the

---

<sup>4</sup>St. George Tucker, *Blackstone's Commentaries*, 1 App. 300 (1803). Tucker calls the Second Amendment the true palladium of liberty, and separately observes that the right of self-defense is the first law of nature. The two are discrete statements, often run together across an editorial ellipsis; they are kept distinct here.

<sup>5</sup>Emmanuel-Joseph Sieyès, *Qu'est-ce que le Tiers-État?* (1789), drawing the distinction between the *pouvoir constituant* — the nation, which makes the constitution — and the *pouvoirs constitués*, the organs the constitution makes. The constituent power is logically prior to, and not contained within, the order it establishes.

<sup>6</sup>The Federalist No. 46 (Madison): the federal and state governments are but different agents and trustees of the people. See also No. 51 on the compound republic's double security — the surrendered power divided first between two governments, then within each.

governments of the several states — each exercising delegated authority over the distinct spheres the Constitution assigns to it. Within each, the framing is identical: the separation of the three departments. This is Madison’s *double security*: the surrendered power divided first between two governments and then subdivided within each, so that the two check one another while the people control both. The armed citizenry is no fourth department beside the three, and no ring drawn around them. It is the floor beneath both houses — the portion of sovereignty that was never lent to either, on which every delegated structure stands, and the reason it is tolerable to delegate at all.

Madison did not leave this abstract. In the forty-sixth paper he set the militia against the standing army in plain numbers. The largest regular army the federal government could ever field he reckoned at one twenty-fifth of the men able to bear arms — twenty-five or thirty thousand. Against it he set a militia of near half a million citizens with arms in their hands, officered by men chosen from among themselves and conducted by the governments to which the people were attached. Such a militia, he wrote, could scarcely ever be conquered by so small a proportion of regular troops; the armed people, organized through governments of their own, formed a barrier to usurpation more insurmountable than any a simple government could admit.<sup>7</sup> This is the floor named at its full strength: not that a disarmed people might petition against tyranny, but that an armed people, lawfully organized, could not in the last resort be subdued by the force the central government was permitted to raise.

The date is as telling as the arithmetic. Federalist 46 appeared in January 1788 — after the Constitution had been signed, but more than a year before the Second Amendment was even proposed and nearly four years before it became law. Madison was therefore not describing a right the Bill of Rights would later grant. He was describing a check already standing in the structure of the un-amended Constitution: the armed body of the people as the floor beneath the federal and state governments alike. The Second Amendment did not create that floor. It later inscribed, as a retained right, the capacity Madison had already treated as the last security of the whole design. The militia-as-foundation is thus prior to the Second Amendment, not derived from it — which is exactly why the law stated at the outset is structural, and not the gift of any single clause.

---

<sup>7</sup>The Federalist No. 46 (Madison), published January 29, 1788. Madison reckons the largest standing army the federal government could field at one twenty-fifth of those able to bear arms — twenty-five to thirty thousand men — set against a militia of near half a million, officered by men chosen from among themselves and conducted by the governments to which the people are attached; he doubts such a militia could ever be conquered by so small a proportion of regulars. The chronology is decisive: the Constitution was signed September 17, 1787; the Second Amendment was proposed September 25, 1789, and ratified December 15, 1791. Madison’s argument therefore precedes the amendment by roughly four years, and describes a check built into the structure of the un-amended Constitution rather than one the Bill of Rights would later supply.

## V. Blackstone's Cage and the American Answer

The difficulty this poses for any constituted order shows most clearly in Blackstone, who could neither deny the right nor house it. In the natural-law register he concedes it without flinching: the fifth auxiliary right of the subject is that of having arms for their defence, the public allowance of the natural right of resistance when the sanctions of society and laws are found insufficient to restrain the violence of oppression.<sup>8</sup> Resistance, oppression, the failure of law — it is all there in his own hand. Yet in the sovereignty register he must refuse what he has just admitted, because for him the supreme power is Parliament, absolute and uncontrollable, and a legal right to depose the legal sovereign is a square circle.

This is not timidity; it is the logical consequence of locating sovereignty in Parliament rather than in the people. You cannot make the principal an agent. So Blackstone does the only thing left to him: he exiles the right to the margins, conceding the substance and denying it a home. The American founders met the identical tension and resolved it the other way. By relocating sovereignty into the people themselves, they could *retain* the ultimate check instead of banishing it — and the Second Amendment is the textual trace of that retention, Blackstone's fifth auxiliary right sprung from the parliamentary cage that had confined it. Tucker, annotating Blackstone as an American, watched the transformation happen on the page: the English right hedged by rank and religion and the game laws; the American right held without qualification as to condition or degree. He named the result **“the true palladium of liberty”** — and the word is a structural claim, not an ornament. The Palladium was the image on which the survival of Troy was believed to hang; the city fell only after it was carried out. To call the armed people the palladium of liberty is to say this is the one safeguard whose *removal*, not whose mere neglect, brings the walls down.

## VI. The Disarmed People Become Prey

If right, power, and duty stand or fall together, the contrapositive states what a people *becomes* when the power is gone — and the honest word is not less free. It is *prey*. One premise must be named here, because the law does not contain it and the word depends on it entirely: that a human being is owed a standing higher than a resource, and that to reduce a person to one held at another's discretion is a wrong — which the maxim, being descriptive, can describe but never condemn, and which the reader must therefore bring himself. Predation is exactly the relation that obtains between a party holding the capacity for force and a party that has surrendered it: the disarmed are no longer counterparties to a compact but a resource the armed party may draw upon at its discretion. This is why self-defense is the first law of nature and not the last — because in the order of nature a being that cannot defend itself is not a weaker negotiator. It is food.

---

<sup>8</sup>William Blackstone, *Commentaries on the Laws of England* (1765–69), bk. I, ch. 1: the fifth auxiliary right of the subject, that of having arms for their defence, described as the public allowance of the natural right of resistance and self-preservation when the sanctions of society and laws are found insufficient to restrain the violence of oppression.

A polity that dismantles its militia has not merely worn down one check among several. It performs a single act with two faces, and has generally called the result progress. On one side, it silently reclassifies its own citizens — in the eye of any power that cares to notice — from a free people into prey. On the other, in the very same stroke, it reclassifies its own government: the agent who holds the delegated means of force, with no armed people standing beneath him, becomes the very predator the floor was raised to restrain — the trustee turned hunter. The two reclassifications are one reclassification, read from the two ends of the leash: the citizen falls to prey at the instant the trustee rises to predator, and nothing but the floor ever stood between the one and the other. The disarmed citizen keeps the *name* of the right while the *substance* has been handed to whoever retained the means; he holds the deed to a house whose locks now answer to another's key. This is the exact condition Tucker warned of: wherever standing armies are kept up and the people's arms are prohibited under any pretext whatsoever, liberty, if not already annihilated, is on the brink of destruction.

## VII. The Test of “We the People”

A constitution that opens with ***We the People*** makes a claim about where sovereignty resides, and the claim is either a fact or a flattery. The militia power is the instrument that decides which. A people that has retained, in some lawful and recallable form, the capacity to stand behind its own sovereignty has made the words true. A people that has surrendered that capacity to a force it cannot recall has kept the words and lost the thing. There is no third condition. Sovereignty that cannot, in the last resort, be enforced by those who claim it is not sovereignty; it is a grant, held at the pleasure of whoever holds the sword.

### **The strongest objections, met in order.**

*“The people still rule — through the ballot, the courtroom, the jury. The sword is a relic.”* Each of those operates only by the machine's leave. The ballot is tallied and certified by the constituted powers; the lawsuit is heard in their courtrooms; the jury convenes at their summons and rules within their instructions. Indispensable, yes — but every one of them is authority dispensed and supervised by the very apparatus it is meant to restrain. Only the sword is exercised without first asking the apparatus its permission. Strip it away and the rest survive, but as favors rather than checks — tolerated only so long as they stay convenient to whoever now holds the force.

*“Article I places the militia under Congress, so the people cannot be sovereign over it.”* True, and it marks the exact limit of the objection. The Constitution channels the militia; it does not own the people. The organizing power is delegated; the constituent power that may be organized is retained. Congress may call the militia forth, but it cannot own the body that answers.

*“The people are the principal; they cannot be a branch.”* Conceded — and it strengthens the thesis, which calls the militia not a fourth agent but the principal's retained capacity.

*“The militia is obsolete against a professional army.”* The militia was never meant to defeat the army in the field. It was meant to be the one thing a standing army by its nature can never be — the

people's own check against the misuse of that army. To call the check obsolete is to declare the misuse impossible.

*“This licenses private violence — self-appointed bands drilling in the woods.”* The reverse. The constitutional militia is a lawful, state-officered, accountable institution, and its very existence is what renders freelance armed action both needless and illegitimate. Arms borne in common and under lawful officers belong to the people; arms taken up by a self-appointed band belong to a faction — and a faction under arms is the very disease this paper diagnoses, not its remedy.

### **VIII. What the Iron Law Asks of This Campaign**

None of this is a metaphor, and none of it is nostalgia. It is the structural reason the Second Amendment was written as it was, and the structural reason its hollowing is not one grievance among many but the grievance beneath the others. When the militia of the several states was federalized, professionalized, and renamed the National Guard, the sword did not disappear. It moved — from the third hand into the second. The words *We the People* did not stop being recited. They stopped being true.

Here the two registers of this paper must be held apart, because together they name the wound exactly. In law, the people's sovereignty was *retained* — it cannot be signed away, which is the whole point; the deed still reads *We the People*. In fact, its operative form was *allowed to lapse*. The people did not understand, for the most part, what they were letting go; they kept the deed while the locks were quietly re-keyed. That is the condition this paper has described from its first page, now stated plainly: a sovereign that has forgotten it is sovereign, holding title to a power it no longer knows how to exercise.

And here the objection that seems fatal proves the case instead. If sovereignty was lost, someone will say, then the law — *whoever bears the sword bears the sovereignty* — is false, for the people were sovereign and bore no sword. But the law never failed; it kept its books the whole time. The maxim is descriptive: it does not read deeds, it reads who holds the sword, and answers accordingly. The sword drifted into the second hand, and the sovereignty went *with it*, exactly as the law says it must — not vanishing, but relocating. *Real politik* does not refute the maxim; history is one long proof of it. That is the danger in the law, not the comfort: the deed still names the people, while the thing itself answers to whoever holds the sword now.

A forgotten sovereign is left exactly two options. He may reclaim the operative form of what was always his — restore the floor — and so make the deed and the sword name the same thing again. Or he may do what a client does, and complain about which of his two trustees is getting the better of the other. The endless quarrel between the States and the Federal government is the carping of a principal who has mistaken himself for a spectator at his own estate — a contest over delegated turf, conducted by men who have forgotten that the ground both stand on was never either one's to win.

To restore the constitutional militia, then, is not to arm a faction or to invite disorder, and it is not a summons to private arms — it is the lawful, state-officered institution the Constitution still names, and nothing outside it. It is simply to move the sword back into the hand the Constitution names, and so to make a true sentence out of one that has quietly gone false in fact while staying true on paper. The structure is still there in the text, waiting. A duty neglected is not a duty erased, and an institution abandoned is not an institution destroyed. That is the whole of the plank, and this is the law beneath it: ***whoever bears the sword bears the sovereignty***. The sword will rule in either case; the only question a free people ever gets to answer is whose hand bears it. I am running so that the answer can once again be **ours, We The People**.

## Reclaiming the Sword: Four Steps

The law beneath this plank is structural, but the remedy is personal before it is political: a militia is not conjured by statute over a people that has not become one — it is rebuilt, citizen by citizen, in four steps, and only the last of them belongs to Congress.

**First — Own.** Acquire a firearm and keep it in your own hands and under your own roof, for a man cannot bear what he does not possess, and the deed and the sword cannot name the same hand until the sword is in it.

**Second — Master it.** Train until the arm answers a steady will and is no ornament in a drawer; competence is a habit, and habits are built only by practice — a weapon owned but unmastered is half a costume still.

**Third — Train in fellowship.** Join with others to drill — to learn the order and discipline that turn capable individuals into a capable body. This is the old trainband recovered, proficiency built in common; it is the soil a lawful militia grows from, and it is emphatically not a warrant for any self-appointed band to assume the authority that belongs to the constitutional militia alone.

**Fourth — Restore the institution.** Demand the reinstatement of the constitutional militia — the lawful, state-officered, accountable body the Constitution still names — so that the arms, the competence, and the fellowship of the first three steps are lodged where they become legitimate: in an institution convened, officered, and recallable by the people's own lawful organ. This step is the work of law, and **it is the work I am asking your vote to begin**.

## Works Cited

Aristotle. Politics. Bekker references III.7 (1279a), IV.13 (1297b), VII.9 (1329a).

Blackstone, William. Commentaries on the Laws of England. 1765–69. Bk. I, ch. 1.

Hamilton, Alexander, and James Madison. The Federalist, Nos. 29, 46, 51.

Sieyès, Emmanuel-Joseph. Qu'est-ce que le Tiers-État? 1789.

Tucker, St. George. Blackstone's Commentaries: With Notes of Reference. Philadelphia, 1803. 1 App. 300.

Vieira, Edwin, Jr. The Sword and Sovereignty. 2012.

Weber, Max. Politics as a Vocation. 1919.

U.S. Const. amend. II; art. I, § 8, cls. 15–16; 10 U.S.C. § 246.

## **The Argument at Full Length**

### ***The Candidate's Forthcoming Book — Quī Gladium Gerit: The Iron Law of Politics***

The structural claim this paper rests on is not a campaign slogan but the subject of a forthcoming book, in which the law stated here in a single sentence is forged as an instrument and tested against three thousand years of record. Quī Gladium Gerit — “Whoever Bears the Sword” — follows the law from the Munich lecture hall where Max Weber named the state’s monopoly of force, back to Aristotle who first theorized it, and forward through the armed assemblies of Rome, the slow inversion that made emperors of bodyguards, the English crisis of 1688, and the American inscription of 1791, to the disarmed democracies of the present hour: fourteen chapters, one regularity, and a docket of conditions that invites the reader to break it.

This is not a campaign tract. The book names no candidate and argues no policy; it is descriptive history, careful from first page to last that an account of where the sword has gone can never be an instruction about where it should go — and that restraint is exactly what gives it weight. What it offers is the foundation the plank is built on: the structural fact that a nation’s constitution follows the configuration of its arms, on a generational tempo, whatever the parchment says and whoever wishes otherwise — established not by assertion but by the weight of the record. The reader who wants to see for himself whether the floor beneath the Constitution is real is invited to weigh that record and judge.

***Paid for by The Committee to Elect Michael Stoddard for Congress.***