

The Second Amendment and its battle with truth: Viewing how individuals and corporations have hijacked the meaning of the Second Amendment through an empirical lens.

“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.”¹

The Second Amendment is a law that was written into the constitution on December 15th 1791 and instituted one of the most divisive and heated debates of the past several decades. The aim of this essay is not to analyse the morality of the gun debate but to instead measure the historicity of the pro gun movements using the empiricist ‘school’ of thought. Empiricists believe that the past is attainable through the close analysis of primary sources. Leopold Von Ranke, a man often credited for refining and disseminating professional historical standards, once famously said “*weis es eigentlich gewesen*”, Ranke desired to “understand the inner being of the past”². Empiricist historians must understand that “each historical period should be understood on its own terms and not judged by the historians own criterias”³. This essay will attempt to put aside personal biases (that of living in post Port Arthur Australia), in order to analyse the context of the Second Amendment. It assesses differing methodologies used by historians, such as Freedman, Dunbar-Ortiz and Charles to evaluate how History has been constructed, used and misused, specifically by the National Rifle Association (hereafter the NRA) within the second amendment. As over time political and cultural shifts have affected the meaning behind the twenty-six word Amendment.

The gun control debate has been a contentious issue in America for several decades. The debate has arisen because of the growing concern regarding the morality of mass gun ownership in a modern setting. With America averaging over thirty-eight thousand gun deaths every year⁴, Gun violence is the

¹ U.S. Constitution II Amendment

<<https://constitutioncenter.org/interactive-constitution/amendment/amendment-ii>>

²Richard Evans, In defence of history (London, 1997) p.17-18

³ G. Anna, T. Kathleen, The houses of history (Manchester University Press, 1999) p. 14

⁴ Centers for Disease Control and Prevention, 2021

<<https://wisqars-viz.cdc.gov:8006/explore-data/explore/selected-years?ex=eyJ0YmkiOlsiMCIJdLCJpb nRlbnRzIjpbIjAiXS swibWVjaHMiOlsiMjA4MTAiXS wiZXRobmljdHkiOlsiMSI sljliLCIzIl0sInJhY2UiOlsiMSI>>

second biggest cause of death amongst children and adolescence⁵ and gun homicide rates are 25.2% more common in the United States than any other high income country⁶. There are two basic positions to the gun debate (in reality it is not as simple as this, there are countless individual opinions and beliefs surrounding gun control) those who are campaigning for stricter gun control and those who believe in current gun control regulations or would like to see an ease in restrictions.

*The history of gun rights is not really a history at all, at least as understood by historians. Rather it is a historical biased narrative that is researched, written and disseminated with two objectives in mind.*⁷ - Patrick J. Charles

The empiricist school of historical thought believes that, in order to create accurate works of History, the writer must approach histories from the basis that context and customs naturally change and evolve over time⁸. This is pertinent when discussing the Second Amendment, as it was written over two centuries ago. The constitution was written just eight years after the American Revolutionary War had ended. This heavily influenced the Second Amendment as Warren Freedman states, "After the American Revolutionary War the winning ex-colonists commenced to write a constitution that would be a product of their experiences"⁹. This is regarded as a major reason for the proclamation of "a well regulated militia, being necessary to the security of a free state". The newly independent settlers were terrified of British invasion and they desperately needed military weight in order to defend against possible invasion. The soon to be USA was ardently opposed to the vast majority of military weight being in a standing army (a permanent army built with full time members) as it would likely be hugely expensive and controlled and

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kFHRUdQliwibWV0cm8iOlsiMSIsIjliLCIzliwiMiJdLCJ5cGxsQWdlcyI6W119>

⁵ Rebecca M. Cunningham, M.D., Maureen A. Walton, M.P.H., Ph.D., and Patrick M. Carter, M.D. 'Major Causes of Death in Children and Adolescence in the United States', The New England Journal of Medicine, 2018 <<https://www.nejm.org/doi/full/10.1056/NEJMs1804754>>

⁶ 'Annual Report 2018', Small Arms Survey, 2018
<<http://www.smallarmssurvey.org/fileadmin/docs/M-files/SAS-Annual-Report-2018.pdf>>

⁷ Patrick J. Charles, *Armed in America: a history of gun rights from colonial militias to concealed carry* (New York: Prometheus Books, 2018.)

⁸G. Anna, T. Kathleen, *The houses of history*, p. 14

⁹Warren Freedman, *The privilege to keep and bear arms: the Second Amendment and its interpretations* (New York : Quorum Books, 1989)

funded by the government which could infringe upon the “security of a free state”. The founding fathers decided that the best course of action was to create a defence using militias, a decision that was influenced by the success of the minutemen (members of the militia who were able to be called to arms at any time) in the American Revolutionary War¹⁰. Freedmen, influenced by his empiricist focus on primary sources, has argued that an analysis of the meaning of the Second Amendment must be a deeply contextualised reflection of the events of its time, and related to collective rather than individual right to bear arms. This methodology has allowed Freedmen's History to remain impartial as he constantly focuses upon analysis of primary sources.

Roxanne Dunbar-Ortiz's History Loaded offers a different interpretation of the Second Amendment - and approaches analysis from the perspective of an historical materialist¹¹. Historical materialism argues that History is the result of material conditions rather than ideals. Although heavily biased against the Second Amendment, Dunbar-Ortiz uses reputable sources in order to display the behaviours of the early settlers, a source of inspiration when writing a “well regulated militia”, who were influenced by their material culture¹². One of the first uses of the Militias was to continue the genocidal destruction of native land, peoples and culture. The foundation of America was surrounded by the ‘savage war’ declared upon native inhabitants of North America by their colonisers¹³. Savage war is best described by military historian John Grenier; “[it is a military tactic] that accepted, legitimized and encouraged attacks upon the destruction of noncombatants, villages and agricultural resources”¹⁴. These genocidal tactics are not unlike other British conquests of Australia, Canada and India, however the US differed in doctrine as the appropriation of native land became a war of ‘society’ against ‘savagery’¹⁵. These military tactics are deeply embedded in America's military and can be seen in modern conflicts of Iraq, Syria and Afghanistan¹⁶. This is the result of a continuing context of colonial prejudices. Early British settlers would

¹⁰ Patrick J. Charles, *Armed in America: a history of gun rights from colonial militias to concealed carry*

¹¹ Roxanne Dunbar-Ortiz, *Loaded: A Disarming History of The Second Amendment* (San Francisco: City Lights Booksellers & Publishers, 2018)

¹² U.S. Constitution II Amendment

¹³ Roxanne Dunbar-Ortiz, *Loaded: A Disarming History of The Second Amendment* p. 47

¹⁴ John Grenier, *The first war of war, 1607-1814*. (New York: Cambridge University press, 2005) p. 10

¹⁵ Roxanne Dunbar-Ortiz, *Loaded: A Disarming History of The Second Amendment* p. 47

¹⁶ John Grenier, *The first way of war, 1607-1814* p. 5

engage in small skirmishes with the indigenous population and by aiming to outnumber the enemy they would destroy a tribe and occupy the land. Because the indigenous population of America attempted (relatively successfully at first and then less so as the coloniser population, weaponry and organisation grew) to fight back. Using gorilla style warfare, they would attack individual or small groups of colonists. Ortiz believes this created a need for the mass population to be armed, represented by the term militias, leading to the statement “the right of people to keep and bear arms shall not be infringed” resulting in several U.S states enforcing the ownership and carrying of arms¹⁷. Dunbar Otiz uses historical materialism within the gun-control debate to construct the idea of the Second Amendment as evil in its creation and in the ongoing influence that it has had on American society. Whether or not we wish to agree with it, the construction of this interpretation is flawed. Loaded encompasses an individual misuse of historical methodology, as Ortiz is primarily reliant on sources that support her campaign without exploring differing opinions and sources. She is proving her own narrative through selective sourcing.

Fellow U.S historian Patrick J. Charles (a modern historian) finds the segment of the Second Amendment to have been misunderstood when it is actually referencing the right of people of militias, as to ‘bear arms’ is a military term. Charles finds (after an examination of late eighteenth century literature) “in almost every instance, the term ‘bear arms’ was used in distinctive military context - a few outliers used the term broadly”. However, “ there was nothing in them to firmly suggest that ‘bear arms’ was referred to the general carrying of arms for non-military purposes”¹⁸. Charles uses a strictly empiricist approach to History, referencing over 250 pages of sources in his construction of the Second Amendment as an historical artefact, deeply influenced by the context of historians and organisations. As they use the Second Amendment to justify political positions over time and influencing how it is viewed. Although it is not mentioned directly by Charles, the sources he provided and the argument made makes

¹⁷ Warren Freedman, The privilege to keep and bear arms: the Second Amendment and its interpretations p. 20

¹⁸ Armed in America; A history of gun rights from colonial militias to concealed carry (New York: Prometheus Books 2018) p. 12

it clear that by his definition the gun lobbyist campaign that the right to bear arms is individual is a misuse of History.

Although there are two sides to the gun debate this essay will focus on the pro gun faction. Or more specifically the NRA (National Rifle Association) as the pro gun debate uses the historical interpretation of the Second Amendment as being the, contested, individual right to bear arms, as a core basis. While the counter argument is centered around the current trends of gun violence. This demonstrates that although the History of the Second Amendment is important to the NRA, it is not the key role in the argument as of today. The NRA is a non-for profit organisation [Section 501(c)(3)] and is therefore tax exempt. It is important to note that the NRA's biggest corporate sponsors are; Daniel Defence, Ruger, Mossberg and Smith and Wesson¹⁹. All are involved in the production and distribution of guns. The NRA's goal is to preserve the right to own guns, therefore it argues that the Second Amendment encompasses the entire adult U.S. population (rather than only members of militia). As displayed through this RBA published breakdown of the Second Amendment;

“... the phrase “to keep”. These words are the rallying cry for the continuous fight we wage against those laws, ordinances and regulations which would deny the rights of law abiding citizens to purchase and keep rifles, handguns and shotguns in their possession”²⁰

The NRA states, “The Second Amendment is an unalienable liberty; it is not a privilege that can be “balanced” and decayed if the controlling class dislikes it”²¹. The NRA is projecting a political agenda through the use of ‘History’, writing that to impose gun control is to “erode the rights of the people”²². The

¹⁹ ‘Friends of NRA: Corporate Sponsors’, National Rifle Association, 2021
<<https://www.friendsofnra.org/corporate-sponsors.aspx>>

²⁰ Merrit A. Edson, ‘To keep and bear arms’ American Rifleman, August 1952, p.16

²¹ Charles C.W. Cooke, ‘Guns Are Not a Disease’, NRA: America's First freedom, 2021
<<https://www.americas1stfreedom.org/articles/2021/3/10/guns-are-not-a-disease>>

²² Ibid

NRA has no primary sources to prove this, instead relying on emotions in order to affect opinions surrounding the second amendment

It is important then to analyse how context and situations have changed since the Second Amendment was signed into law in 1791 and to then objectively analyse how History has been used and misused. Arguably, the period of time which had the biggest impact on the relevance of the Second Amendment is the nineteenth century or as referred to by J. Charles 'the transformative nineteenth century'²³. During the 1840s mandatory militia service gave way to volunteer militia companies. The ultimate truth is that the founding fathers ideology of a free 'well regulated militia' was unattainable. With one newspaper celebrating the end of compulsory militias writing; 'we congratulate the people of this commonwealth warmly and heartily upon their emancipation from such military duty'²⁴. As militias disbanded, the meaning of the Second Amendment began to change. It was no longer in reference to military defence and instead it related to the individual right of gun ownership²⁵. By 1868, seven of the thirty-six state constitutions maintained individualised 'bear arms provisions'²⁶. This shift towards individualised language surrounding state gun rights legislation has continued where currently; "On the state level, [only] seven U.S. states completely ban any open carry activity. Only eight of the 50 states require that people who own firearms register their weapons with the state."²⁷ Patrick J. Charles's ardent use and analysis of primary sources allows for an accurate representation of the Second Amendment, his use of empiricist methodology, enables for an accurate understanding of the changing contextual interpretation of the second amendment over time.

A second key context shift, that affects the validity of the Second Amendment, is the end of the war against the native northern american populace. After the successful genocide of the native population

²³ Armed in America; A history of gun rights from colonial militias to concealed carry (New York: Prometheus Books 2018) p. 63

²⁴ "New York", Niles national register (Baltimore, MD), June 6, 1846, p.213

²⁵ Armed in America; A history of gun rights from colonial militias to concealed carry (New York: Prometheus Books 2018) p. 63

²⁶ Armed in America p. 141

²⁷'Gun Laws by State', World population review, 2021

<<https://worldpopulationreview.com/state-rankings/gun-laws-by-state>>

(the population originally ten million was around three-hundred thousand in 1900s a 97% death rate²⁸) there was little need for an individual right to carry arms as the chance of native attacks were removed. During the savage war, extreme acts of violence were committed by both sides. With the successful removal of the threat of 'indigenous resistor' combined with increased international security - Europe (America's biggest threat) was gripped by the Napoleonic Wars which heavily reduced their international military weight. During this time of secured peace, America was able to build its Navy to such an extent it was considered a 'major stakeholder in the power struggle'²⁹ - the need for individual rights to own firearms for personal protection and militia conscription had ended. These changes completely alter the meaning of the Second Amendment making much of its content completely redundant when looking through the lens of empirical History.

If we consider however, the construction of History by the NRA, this is not the narrative. The NRA ardently display the continual need for gun rights as a form of protection, based on one interpretation of historical context.

The Second Amendment gives us law-abiding citizens the right to own and bear arms which allows us to protect ourselves and our families - a right many people around the world wish they had. Giving away the right to own firearms has been one of the biggest mistakes millions of people did in the past, and perhaps is best explained in nine simple words: You don't know what you have until it's gone.³⁰

²⁸ 'Genocide of Indigenous Peoples', Holocaust Museum Houston, <<https://hnh.org/library/research/genocide-of-indigenous-peoples-guide/>>

²⁹'An overview of America's National Security Policy', Norwich University, 2017. <<https://online.norwich.edu/academic-programs/resources/an-overview-of-americas-national-security-policy>>

³⁰Gabby Franco, 'Speaking out to the Hypocrites' National Rifle Association, 2017 <<https://www.nrablog.com/articles/2017/1/freedom-journal-gabby-franco-speaking-out-to-the-hypocrites>>

The NRA argues that the Second Amendment was created in order to protect individual rights. This however is inaccurate as: “[during the eighteenth century] in almost every instance, the term ‘bear arms’ was used in distinctive military context”³¹.

In order to maintain the profits of its sponsors, all of whom are involved in the firearms industry, it presents a version of History which demands individual gun ownership and validates it through appeal to historical rights.

A key example of the NRA's misuses in its portrayal of History occurred in 1955, when they tasked staff member Jack Basil Jr with conducting an internal study of the meaning of the Second Amendment: its individual or collective meaning being the central issue. J. Charles describes Basil's research as rudimentary when compared to the historical analysis expected today³². However, ultimately Basil found that “from all the direct and indirect evidence, the Second Amendment appears to apply to a collective, not an individual, right to bear arms”³³. Basil's findings were ultimately ignored by the NRA. In fact, the following month, in an edition of *American Rifleman*, an editorial was published that questioned the research conducted into the Second Amendment; “there has been so much conflicting expert opinions, so many interpretations of constitutional law that it is hardly surprising that widespread confusion exists in the minds of sincerely interested persons... we prefer to believe instead that the simple, straightforward language means exactly what it says”³⁴. The NRA again used emotional motifs in its official language in order to distort the historical facts, as they attempted to undermine the validity of counter arguments in an effort to distort History.

Through an analysis of historical methodology and the uses and misuses of History, the gun debate has shown to be deeply biased and prone to methodological unreliability. Patrick J. Charles' empiricist methodology allowed for an analysis between his version of History (derived from primary sources) and other histories presented by sources such as the NRA and Roxanne Dunbar-Ortiz. The NRA, although

³¹ Armed in America p. 12

³² Armed in American p. 227

³³ Memorandum from Jack Basil to Merritt A. Edson, June 18, 1955, Edson papers, Box 27

³⁴ Marrit A. Edson, “The Right to Bear Arms”, *American Rifleman*, July 1955, p. 14

not the sole company responsible for the current misinterpretation of the Second Amendment, deserves a large proportion of the blame as it has been so active in using and misusing History in order to prove and uphold its message. The context of the interpretations of the Second Amendment, and the differing methodologies of historians interpreting it, have led to changing interpretations of its meaning and distortions of its 'truth' over time. History is a liquid being. It is constantly changing and individuals and corporations affect how topics are being viewed as they attempt to prove their personal or collective opinions. However the empiricist view remains that, through a deep analysis of primary sources, the truth behind the lies of 'History' can be found.

Bibliography

'About Us', The Coalition to Stop Gun Violence, 2021, <<https://www.csgv.org/about-us/>>

'Annual Report 2018', Small Arms Survey, 2018
<<http://www.smallarmssurvey.org/fileadmin/docs/M-files/SAS-Annual-Report-2018.pdf>>

'An overview of America's National Security Policy', Norwich University, 2017.
<<https://online.norwich.edu/academic-programs/resources/an-overview-of-americas-national-security-policy>>

Centers for Disease Control and Prevention, 2021
<<https://wisqars-viz.cdc.gov:8006/explore-data/explore/selected-years?ex=eyJ0YmkiOlsiMCJdLCJpbmRlbnRzljpbjAiXSwibWVjaHMiOlsiMjA4MTAiXSwiZXRobmljdHkiOlsiMSlsljliLCzll0slnJhY2UiOlsiMSlsljliLCzliwiNCJdLCJzZXgiOlsiMSlsljliXSwiYWdlR3JvdXBzTWUljbjAwLTA0l0sImFnZUdyb3Vwc01heCI6WyIxOTkiXSwiY3VzdG9tQWdlc01pbil6WylwIl0sImN1c3RvbUFnZXNNYXgiOlsiMTk5l0sImZyb21ZZWFyljpbjIwMTkiXSwidG9ZZWFyljpbjIwMTkiXSwiYWdlYnV0dG4iOiI1WXliLCJncm91cGJ5MSl6IkJFRUdQliwibWV0cm8iOlsiMSlsljliLCxliwiMiJdLCJ5cGxsQWdlcyI6W119>>

Charles C.W. Cooke, 'Guns Are Not a Disease', NRA: America's First freedom, 2021
<<https://www.americas1stfreedom.org/articles/2021/3/10/guns-are-not-a-disease>>

Craig R. Whitney, 'Living with guns : a liberal's case for the Second Amendment' (New York: Public Affairs, 2012)

Franklin E. Zimring, Gordon Hawkins, 'Crime is not the problem' (Oxford University Press, 1999)

'Friends of NRA: Corporate Sponsors', National Rifle Association, 2021
<<https://www.friendsofnra.org/corporate-sponsors.aspx>>

Gabby Franco, 'Speaking out to the Hypocrites' National Rifle Association, 2017
<<https://www.nrablog.com/articles/2017/1/freedom-journal-gabby-franco-speaking-out-to-the-hypocrites>>

G. Anna, T. Kathleen, The houses of history (Manchester University Press, 1999)
'Genocide of Indigenous Peoples', Holocaust Museum Huston,
<<https://hnh.org/library/research/genocide-of-indigenous-peoples-guide/>>

'Gun Laws by State', World population review, 2021
<<https://worldpopulationreview.com/state-rankings/gun-laws-by-state>>

John Grenier, The first war of war, 1607-1814. (New York: Cambridge University press, 2005)

Memorandum from Jack Basil to Merritt A. Edson, (Edson papers, Box 27 June 18, 1955)

Merrit A. Edson, "The Right to Bear Arms", American Rifleman, July 1955,

Nicholas Johnson, 'Gun Rights are Equal Rights', America's First Freedom, 2021,
<<https://www.americas1stfreedom.org/articles/2021/1/22/gun-rights-are-equal-rights>>

U.S. Constitution II Amendment
<<https://constitutioncenter.org/interactive-constitution/amendment/amendment-ii>>

Richard Evans, In defence of history (London, 1997)

"New York", Niles national register (Baltimore, MD), June 6, 1846,

Patrick J. Charles, *Armed in America: a history of gun rights from colonial militias to concealed carry* (New York: Prometheus Books, 2018.)

Patrick J. Charles, *'The Second Amendment : the intent and its interpretation by the states and the Supreme Court'* (North Carolina: McFarland & Co, 2009)

Paul M. Barrett, *'Glock : the rise of America's gun'*, (New York: Crown Publishers, 2012)

Rebecca M. Cunningham, M.D., Maureen A. Walton, M.P.H., Ph.D., and Patrick M. Carter, M.D. *'Major Causes of Death in Children and Adolescence in the United States'*, *The New England Journal of Medicine*, 2018 <<https://www.nejm.org/doi/full/10.1056/NEJMSr1804754>>

Richard Feldman, *'Ricochet : confessions of a gun lobbyist'* (New Jersey: John Wiley & Sons, 2008)

Richard Meyers *'Reviewed Work: An indigenou Peoples' History of the United states By Roxanne Dunbar-Ortiz'* (University of Minnesota Press, 2017)
<<https://www.jstor.org/stable/pdf/10.5749/wicazosareview.32.2.0123.pdf?refreqid=excelsior%3A1be78ede9b77738ab31221fae628e498>>

Roxanne Dunbar-Ortiz, *'Loaded: A Disarming History of The Second Amendment'* (San Francisco: City Lights Booksellers & Publishers, 2018)

Smyth Frank, *'The NRA : the unauthorized history / Frank Smyth'* (New York: Flatiron Books, 2020)

'Taking On the NRA and The Insurrectionist Reality', The Coalition to Stop Gun Violence, 2021, <<https://www.csgv.org/issues/taking-on-the-nra/>>

Warren Freedman, *The privilege to keep and bear arms: the Second Amendment and its interpretations* (New York : Quorum Books, 1989)