

Gun Rights in America: An Examination of the Evolving Constitutional Argument

By Megan Kern

Professor Thompson

GCPL Reflection Essay

5 April 2019

When it comes to Gun Rights everyone has an opinion; myself included. In particular, the issue of Gun Rights in America today seems extremely two-sided. Either you think it is a person's constitutional right to own and carry guns, or you think that guns should be prohibited from personal private use. This is an over simplification of the different view points regarding Gun Rights, but I feel it accurately represents my basic understanding of the dispute before attending the GCPL seminar. The seminar talk on the constitutional argument regarding Gun Rights in America was very different than any other conversation I had witnessed on the subject. What's more, I discovered a "third solution" for the issue of Gun Rights and gun violence in America that I felt had rarely been voiced as a viable option: policy change. If implemented correctly, policy change could allow for more safety regulations and monitoring systems in regard to firearm possession to be put in place, while also protecting one's right to own and carry firearms if they so choose.

The first thing that surprised me about this seminar is that a group of nearly eighty people *purposefully* congregated on a college campus to have a discussion about Gun Rights. Typically, the concept of Gun Rights falls into the very broad category of "politics", and therefore it is considered proper etiquette to avoid broaching the subject at all costs when in conversation. Furthermore, any other college that would try to hold this seminar would have experienced sit-ins, protests, and other heated reactions that would most likely have prevented the event from actually taking place. Besides my awe and amazement that the event was so well received by the campus and community, I was really impressed with how the dialogue transpired between Professor Koritansky, Mr. Clark Neily, and the attendees of the seminar. I fully expected the conversation to be diplomatic and even cautious at first, and that it would eventually evolve into a somewhat more heated debate about which viewpoint was "correct." To my surprise, that was

not the case in regard to Professor Koritansky and Mr. Neily's conversation, nor the attendees' comments and questions near the end of the seminar.

Even though Professor Koritansky and Mr. Neily were supposed to be arguing on behalf of the two different findings of the District of Columbia vs. Heller court case, I never got the sense that they really disagreed with one another. Instead, they both sought out to better understand where misunderstandings and misreading's may occur when analyzing the second amendment. I think, ultimately, that the discussion was so well received because the issue of "guns" was basically left out of the conversation (despite the title of the seminar talk). The conversation became more of an analytical debate about the literal and interpretive readings of the second amendment. At the beginning of the seminar, the second amendment was projected in large font in the front of the room so that the audience had a frame of reference for the rest of the discussion. The room was silent as we all read what was on the projector, "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 Already, the room filled with slight confusion as we all tried to make sense of the somewhat strange language used in the amendment, and unease as we all thought of or formulated our own opinion on the subject.

Mr. Neily, who was apparently speaking on behalf of Justice Scalia's decision (the winning decision that was in favor of Heller's right to own a licensed handgun)² emphasized that the court case was primarily about *liberty*, not necessarily guns.³ I thought this point was a little peculiar, but ultimately found myself to agree with the point to an extent. The issue was, in fact,

¹ "The Constitution of the United States," Amendment 2.

² "District of Columbia v. Heller, 554 U.S. 570 (2008)." *Justia Law*, supreme.justia.com/cases/federal/us/554/570/

³ Neily, Clark. Lecture presented during the seminar "Gun Rights in America: An Examination of the Evolving Constitutional Argument." Hiram, Ohio. 20 February 2019.

that Heller was denied his constitutional right (or liberty) to own and possess a gun in his home. The gun was merely the object in dispute, but had the object been a knife or a sword, the overall issue would still have been Heller's *right* to own said object. Of course, there isn't an amendment that mentions one's right to own and bear a knife or sword, so arguably the issue is not solely about one's liberty... but I digress.

The issue of one's liberty when it comes to gun ownership seems to stem primarily from the strange wording and preamble of the second amendment. It seems to me, and Mr. Neily, that there are people like Justice Stevens (who lost the ruling in the D.C. vs. Heller case) who are far too concerned with, and therefore over complicate, their understanding of the preamble of the second amendment. Professor Koritansky did concede that the court and Justice Scalia had the "better argument in terms of utilizing the vocabulary of the second amendment."⁴ Nonetheless, Professor Koritansky— who was to argue on the side of Justice Stevens— began his argument in question of the preamble of the second amendment, and in particular *why* it has a preamble at all.⁵ Mr. Neily simply replied that in the founding era of the United States preambles were really common. These preambles in other amendments and cases, however, never influenced the operative clause or scope of the law itself.⁶ Thus, even though we do not necessarily utilize a citizen's militia anymore, that does not mean the second amendment is null or should no longer apply to society today.

Some people argue that even if U.S. citizens may own their own guns, whatever weaponry we are able to possess would not actually aid us in the case of an insurgency against or

⁴ Koritansky, John. Lecture presented during the seminar "Gun Rights in America: An Examination of the Evolving Constitutional Argument." Hiram, Ohio. 20 February 2019.

⁵ Koritansky, John. Lecture presented during the seminar "Gun Rights in America: An Examination of the Evolving Constitutional Argument." Hiram, Ohio. 20 February 2019.

⁶ Neily, Clark. Lecture presented during the seminar "Gun Rights in America: An Examination of the Evolving Constitutional Argument." Hiram, Ohio. 20 February 2019.

by the government. According to Mr. Neily, “You do not need “modern warfare machinery” in order to utilize force and organize a kind of militia.”⁷ I agree with this sentiment, and fully believe that the citizens’ right to protect themselves from their own government and other citizens is very important, and it should not be written off as an impossible feat just because of technological advancements in weaponry. If anything, the technological advancement of weaponry should give us *more* reason to want to be able to own and carry our own firearms. This is not to say that I think private citizens should be able to own hand grenades and tanks, but I do think if someone wants to own a pistol, rifle, or other firearm of the sorts that right should “not be infringed,” as it is specified in the second amendment.

In order to simplify things, Mr. Neily admitted that the second amendment’s utilization of the phrase “to keep and bear arms” does in fact acknowledge one’s right to *own* and *carry* their own guns. Neily also added, however, that the Supreme Court would probably have to say that this is not the case. Yet, what I found important and relevant about Mr. Neily’s statement is his use of the term “acknowledgement.” The Bill of Rights does not create rights, but rather acknowledges rights that already exist.⁸ This distinction solidified my belief that citizens should be able to keep and bear their own arms. I whole-heartedly believe in an individual’s right to live the way they want to live as long as it does not bring harm to another person (i.e. one has the right to own a gun if they so choose as long as them doing so does not bring harm to another person). This is where my libertarian tendencies influence my opinion on gun rights.

I understand that many would argue that gun ownership very easily contributes to one potentially injuring or harming another human being. There are, however, plenty of responsible

⁷ Neily, Clark. Lecture presented during the seminar “Gun Rights in America: An Examination of the Evolving Constitutional Argument.” Hiram, Ohio. 20 February 2019.

⁸ Neily, Clark. Lecture presented during the seminar “Gun Rights in America: An Examination of the Evolving Constitutional Argument.” Hiram, Ohio. 20 February 2019.

and educated gun owners who understand how to safely and appropriately use their firearms and therefore should not have that right stripped away from them. I understand the dangers as well as the benefits to owning a firearm, as I have grown up in a military household where firearms are present. Therefore, due to my background and my political ideologies, I am more inclined to believe that U.S. citizens should be allowed to register for and own licensed guns. I think the second amendment is very specific in the fact that it articulates the right to *keep* and *bear* arms. Therefore it's not the amendment that needs to change, nor do I think it will ever be changed. The only thing that can and will change is policy. I acknowledge that there have been countless acts of gun violence committed in the U.S. and that gun violence continues to grow and pose a threat to every day life (i.e. school shootings). I do also agree that these incidents can be prevented, not necessarily by taking away the citizen's right to own guns, but by requiring more stringent background checks, psych analyses, physical tests, mandatory classes on shooting/ gun safety, as well as mental and physical *follow ups/ check ups*. No one is mentally stable or physically capable enough to handle a firearm indefinitely. Therefore, if new policies and regulations could be put in place like the one's I've mentioned above, I think gun violence could be seriously reduced (especially gun violence that is the result of ignorance or mental illness). I also feel that these precautions will prove to be more beneficial than if gun ownership were to be completely revoked from private citizens. If private gun ownership was banned, the black market would flourish and firearms would still be in circulation. The precautions/ regulations/ procedures listed above, however, can all be very useful tactics in the attempt to diminish or eliminate gun violence while also allowing those who want to and who are physically/ mentally fit to own a gun, do so.

Works Cited

“District of Columbia v. Heller, 554 U.S. 570 (2008).” *Justia Law*,
supreme.justia.com/cases/federal/us/554/570/

Koritansky, John. Lecture presented during the seminar “Gun Rights in America: An Examination of the Evolving Constitutional Argument.” Hiram, Ohio. 20 February 2019.

Neily, Clark. Lecture presented during the seminar “Gun Rights in America: An Examination of the Evolving Constitutional Argument.” Hiram, Ohio. 20 February 2019.

“The Constitution of the United States,” Amendment 2.