

A Controversial Right: Study on the Ambiguity of the Second Amendment to the Constitution of the United States

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ABSTRACT

While the Second Amendment remains an essential constitutional basis for the gun rights in America, its ambiguity has led to different interpretations of gun rights, thus making gun rights controversial in American society. Focusing on this unique ambiguity, this paper analyses its manifestations in the text of the Second Amendment. By investigating the conflicts between the historical context of the Founding Era and the realistic concerns in the contemporary American society, this paper explains the causes of this ambiguity. Finally, from political and cultural perspectives, this paper further examines the consequences of the ambiguity. This paper argues that the tensions of this ambiguity have cultivated American gun culture while perpetuating an irreconcilable confrontation between gun rights and gun control in the shadow of gun violence, and thus acting as a hidden peril that divides and polarizes the American society.

Keywords: Constitution of the U.S., The Second Amendment, Ambiguity, Gun rights, Gun culture.

1. INTRODUCTION

1.1 Research Significance

Gun culture is a signature characteristic of the United States, so is gun violence — Just another day in the US, another day of fire, panic, and fear caused by guns. The year of 2020 again is witnessing gun violence in the U.S., featured by the Covid-19 outbreak. Shootings and murders persist amid the Covid-19 lockdown in the U.S., while the increasing number of newly purchased guns indicates that buying more guns seems to be a reasonable approach for the Americans to cope with their anxiety and fears towards the pandemic. Causing another 'pandemic' of gun violence, these gun-related dynamics have imposed much burden on the public security of America. At the same time, National Rifle Association, the leading gun rights organization in America, has been fighting to keep gun stores open amid the lockdown, viewing the government's Covid-19 response as a threat to Americans' right to arms [1] [2].

Such daily American news, however, may cause confusions to its foreign readers, from whose perspective the American practice of addressing gun violence via gun control debates instead of instituting strict gun regulations is astonishing. All these debates and conflicts over gun rights, seemingly strange to outsiders, have a constitutional basis familiar to Americans — the Second Amendment to the Constitution of the United States, which reads, "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." However, unlike many of its constitutional counterparts, this amendment "...is perhaps one of the worst drafted" of all the constitutional provisions. The Second Amendment has remained in relative obscurity since it was ratified in 1791. It is fundamentally such an ambiguity that forged the long-standing debate over the amendment and the gun rights conferred by it — "what does the right to 'keep and bear arms' afford American people and what is the proper role that firearms should play in the American society?" In legal and political practice, this debate has

transformed itself into different interpretations of the Second Amendment and hence makes the right to arms controversial. Thus, to have a clear understanding of the American society shaped by gun culture and gun rights dynamics, it is quintessential to study the Second Amendment and its unique ambiguity [1] [3] [4] [5].

1.2 Key Points of the Research

This research centres on the unique ambiguity of the Second Amendment to the US Constitution. By analyzing the ambiguous implications in the Second Amendment that lead to different understandings of the scope of the gun rights in the US, this thesis presents the manifestations of the ambiguity in the Second Amendment. The causes of the ambiguity will be explained through a joint examination of both the ratification historical context and the contemporary concerns over gun rights. The consequences of the ambiguity, besides the flourishing of gun culture, is highlighted by the gun rights versus gun control debate on contemporary American political agenda which includes gun violence, gun-related interests groups and election issues. Through all these efforts studying the ambiguity in the Second Amendment, i.e. the constitutional basis for gun rights in the US with an interdisciplinary nature involving socio-historical analysis, politics and legal studies, this thesis will decode the controversy over gun rights and hopefully provide some insights on how this controversial right has been shaping the United States we know today — a nation highlighted by gun culture, gun violence, and the social divisions caused by them.

1.3 Literature Review

The western scholarly world has a rich literature body concerning the Second Amendment and gun right issues associated with it. Remarks on the ambiguity of the Second Amendment to the Constitution are seen almost in every piece of scholarly work dedicated to this subject. Given the established dilemma in gun regulation in the American society from the 1960s, these studies can be divided into two groups. The first group reads the Second Amendment as a provision that confirms the right to keep and bear arms as an individual right, while the second is for the collective right interpretation of this amendment. Some of these works adopted a linguistic approach to support their stances, through analyzing the textual wordings and syntax of the amendment in

an almost word-by-word style. An article titled *What the Framers Intended: A Linguistic Analysis of the Right to "Bear Arms"* analyzed the very term of 'bear arms', arguing that both the verb 'bear' and the noun 'arms' can make a difference on the specific definition of the right. The *Embarrassing Second Amendment*, in which the author analyses the Second Amendment from six different rhetorical structures recognized in 'law talk'. Levinson's work can be seen as a watershed of the western scholarship over the Second Amendment — after Levinson, the individualist interpretation of the Second Amendment became the mainstream opinion within the academia and would finally have itself legally confirmed by the Supreme Court of the U.S. in *District Columbia vs. Heller* in 2008 [4] [6].

Written by D.C. Williams in 1991, *Civic Republicanism and the Citizen Militia: the Terrifying Second Amendment* was a response to Levinson's *The Embarrassing Second Amendment*, for it tried to investigate the Second Amendment in the discourse of Classic Republicanism, justifying the gun rights towards the republican ideas of "common good" and "virtuous citizens" and thus distancing the Second Amendment from the epicentre of present debates over gun rights and gun control. This 'distancing approach' is also seen in Akhil Reed Amar's *The Bill of Rights as a Constitution*, which contextualized the Second Amendment within the Framers' intension through recognizing it as part of the holistic Founding Era Constitutional texts, proposing that the Second Amendment should be identified as part of the "Militia Articles" along with the Third Amendment in the Bill of Rights [7] [8].

There are quite a few studies on the Second Amendment from a historical dimension. The latest one is *Armed in America: A History of Gun Rights from Colonial Militias to Concealed Carry* by Patrick J. Charles, which provided a comprehensive historical research on how the discourse of gun rights has been playing a role shaping the American society ever since its very original existence in the United States. From the dimension of the Militia Clause in the Second Amendment, Saul Cornell did an elaborated historical study on the American militia, providing insights to present gun issues from a perspective that has been long neglected by scholars in their heated debates over gun rights in his *A Well Regulated Militia: The Founding Fathers and the Origins of Gun Control* [1] [9].

Concerning the Second Amendment scholarship in China, unlike its western counterpart, there are rarely debates over gun rights and gun control, for there is no such a social context here. Instead, the domestic academia examines these debates holistically and translates them into the dilemma of gun control in America. The most representative work concerning the right to keep and bear arms and the constitutional amendment would be "Gun Right and the Interpretation and Incorporation of the Second Amendment to American Constitution" This article examined how the Second Amendment incorporated with its fourteenth constitutional counterpart. In this sense, this study embraced a broader context of the mechanics of the American constitutional legislature and the federal system. All these works, along with many others under the gun rights theme by Jiang Zhenchun and Ren Donglai were presented in their essay collection *Gun Control, A Rocky Road to Go*, serving as a structural study on the Second Amendment. In "A Hopeless Dilemma of US Gun Control and the US Political System" by Liang Maoxin, there was a study on the interactions between the Second Amendment and the American political system, unveiling how this country's political system has been creating obstacles to American legal and political practices related to gun violence and regulation. Focusing much on the milestone Supreme Court case *District vs. Heller*, Ao Haijing conducted a case study on the *District Columbia vs. Heller* and post-*Heller* legal interpretations concerning gun rights, suggesting that these interpretations provide an ease for the constructional tensions between pro-gun-rights groups and pro-gun-control groups. In his work titled "A Study on the Second Amendment: Gun Right Clause or Militia Clause", Jiang Yan argued that dividing the Second Amendment into preamble clause and operative clause is only a contemporary construction which neglects the importance of the Militia Clause of the amendment; the Second Amendment has been made into a living fossil of republicanism in the liberalism-oriented society of the US. As a living fossil, the Second Amendment rules out possibility of finding a remedy to gun control issues through itself [10] [11] [12] [13] [14].

2. MANIFESTATIONS OF THE AMBIGUITY

2.1 "A Free State" or "a Free Country"

The very first source of ambiguity in the Second Amendment is the meaning of "a Free State". The word "State" has two different lexical meanings that have accordingly led to different interpretations of the Second Amendment. First, it refers to a frame of people occupying a territory and organized beneath one authority, or the authorities of this type of frame of people. Second, as differentiated via the dictionary, a "state" refers to "one of the constituent devices of a nation that has a Federal Government" [15].

Given the political structure of the US, it is reasonable for one to follow the "a political unit under the federal Government" meaning — a natural understanding for contemporary readers of the Second Amendment. This amendment was brought into ratification due to the anti-Federalist's fear towards a possibly tyrannical Federal Government, suggested one of the DC Circuit judges of *Parker vs. District of Columbia*. Besides in the total 119 times of it using "States" and "State", the Constitution implies a state of the Union for 116 times, except the uses of "foreign State" referring to "foreign country". The pre-ratification drafts of the Bill of Rights proposed by James Madison provide another evidence to support this "States of the Union" view. In his initial proposal for a passage concerning arms in the Bill of Rights, Madison wrote that a well-regulated Militia is necessary to the security of "a free country." As the Committee substituted "country" with "State", the proposed amendment can address more directly to the antifederal solicitude for state security. With such an emphasis, the State is treated as an independent political unit. The amendment thus slightly indicates that the rights to arms conferred by the Second Amendment is a collective right preserved by the individual states within the state militia in case the Federal Government practices any tyranny towards them and deconstruct their militias [16] [17] [18].

There are also arguments suggesting that "a Free State" should be understood as "a free country/nation" In this sense, "the right of the People" refers to the right enjoyed by free individuals in a free country, and therefore the Second Amendment tends to back the individual right to keep and bear arms. This view is supported by Classic Republicanism philosophy that there

should be an armed citizenry to ensure national security when facing foreign invasions. Inspired by Machiavelli, the early Classic Republicans believed that a lawful national Militia was "necessary to the security of a free State", since with such a Militia, foreign invaders could hardly subjugate this state, so that the state can enjoy freedom — "Rome and Sparta were for many centuries well-armed and free. The Swiss are well armed and enjoy great freedom" Meanwhile, concerning the philosophical justification of "a Free State" as "a free country", there is a nuanced voice. As argued by Volokh, the term "Free State" was a frequently used political discourse in writings before and during the framing of the Constitution, meaning "a country free from despotism." As in legal critic William Blackstone's words, "free state" meant "the land of liberty" free from the danger of despotism, instead of any federal governments or foreign powers. Although this point is contradictory to the political design of the early American Republic, since one of the reasons for the framers to draft Bill of Rights was to balance the power of the Federal Government, it shows that the 17th century political thoughts which conveyed an anti-opposition tradition against a tyrannical government, had deeply influenced the Founding Era ideology of government construction; and it was unlikely for the framers to give up the rhetorical discourse of their time and suddenly switched to the States versus Federal Government sentiment [16] [19] [20].

Besides the litigation regarding the Second Amendment, this ambiguity is also manifested in the renditions of the text of the US Bill of Rights. Take the Chinese rendition as an example, many Chinese academic works studying the American constitution equals "a free State" with an independent state of the federal union, based on the authors' understandings of the constitutional function of the Bill of Rights — to clarify the States' rights. At the same time, there are a minority of translated texts in academic works adopted the "country/ nation" meaning of a "State". For example, in the Chinese rendition of Madison's Journal of the Federal Convention, Professor Yin Xuan translated "State" into a Chinese word for "Country" Besides, in the official Chinese rendition of a selected American historical documents from the Public Affair Section to US Embassy in China, "a free State" was translated as "a free country", referring to the entire American nation [12] [18].

2.2 Gun Rights Within Military Service or for Self-defence

While the meaning of "a free State" is ambiguous, it is not at the epicentre of the constitutional gun rights controversy — does this amendment's gun ownership language provide "a personal right to keep firearms for protection and other private purposes such as hunting and recreation" or "a collective right to defend society as a member of the militia?" What it can influence is the administrative scope of the Second Amendment — a constitutional right valid either at the state-level or for all Americans nation-wide for the sake of defending the militia; just as Parker vs. District of Columbia held, no matter what "a free State" means, the Second Amendment does not give gun rights to any individuals unless they are under certain military service. [17] [21]

The text of the Second Amendment often throws its readers into confusion with its absolute construction syntax characterized by a bizarre comma placement between "a well-regulated Militia" and "the People's right to keep and bear arms". As pointed out by Neily, these two phrases are hold accountable the most for this ambiguous for this amendment. Due to the unclear connection between the Militia Clause and "the People" Clause, a number of critical questions were raised concerning the Second Amendment. McAfee and Quinlan had a long list of this issue which can be summarized as "What is the relationship between the Amendment's Militia Clause and Gun Rights Clause?" [22] [23].

However, none of these questions was directly addressed by the US Supreme Court until District of Columbia vs. Heller in 2008, the milestone case concerning the Second Amendment and a personal right to arms.

The Supreme Court identified that the Second Amendment can be divided into two parts — the "Militia" Clause as "the prefatory clause", and the "the People" Clause as "the operative clause". By doing so, the nine judges in this case came to the consensus that the issue they were going to debate was the relation between the two clauses, that is, whether the prefatory clause limits or expands the scope of the operative clause. The opinion of the court held that the Second Amendment protects an individual right to own firearm irrelevant to military service; using the firearm for self-defence at home and traditional recreational ends is also considered as a lawful practice by the Court. To

justify this opinion, Justice Scalia analyzed the text of the Second Amendment in a word-by-word manner, suggesting that the Constitution by its nature needs to be understood by the common voters in the US, so the words chosen by the framers were those frequently used by these voters. Justice Scalia referred to 18th century dictionaries when explaining the phrase "keep and bear arms". He found that neither "keep and bear" nor "arms" is solely connected with military service. The phrase "keep and bear" means "preserve and hold", and "arms" means "weapons of offence, or armour of defence." Thus, "a well-regulated militia" is only one of the purposes of the right to arms, and does not limit this right. But the dissenting Justice Stevens pointed out that the phrase "keep and bear arms" is an idiomatic expression that was frequently used in military contexts in the 18th century, and thus the right to arms is limited to military service [14] [24].

Concerning "the People" in the operative clause, Scalia found that it meant the same as elsewhere in the Bill of Rights, i.e. the First, the Fourth and the Ninth Amendments. In this sense and with some Natural Rights philosophy cited by Justice Scalia, the right to arms is a pre-existing right enumerated in the Bill of rights, a personal right preserved by the people for traditional lawful purposes including self-defence and recreation. On the dissenting side, Justice Stevens, following the Original Intent Theory, pointed out that the drafting of the Second Amendment was rooted in the Framers fear that the Congress would disarm the state militias and establish a standing army to wage despotism over states. "A well-regulated militia" in the Framers' eyes, was the best solution against this despotism. Therefore, the right to keep and bear arms is only for the military purpose with the state militia [24].

2.3 A Perpetual Right or a Changing Right

Besides the ambiguous purpose of gun rights, there are voices further questioning the validity of the entire Second Amendment over time. Some believe that the right to arms is pre-existing and is confirmed rather than conferred by the Second Amendment. These people often recognize arm-bearing as a tradition inherited from their ancestors who were newcomers to the stark wildness of the American continent and therefore had to use firearms for self-defense in an extreme environment where there were wild animals and Indian tribes which threatened their very survival. So, with some extra help from the Natural Right philosophy, the

right to bear arms is believed to be a pre-existing and perpetual right enshrined by the Constitution, like the freedom of speech in the First Amendment. So, according to the Constitutional Originalism, since "the right of the people to keep and bear arms shall not be infringed," any kind of present regulation or prohibition on gun rights is likely to be seen as violation of the Second Amendment.

For those people who question the validity of the Second Amendment, this provision is really about a Militia Clause, rather than a Gun Rights Clause, and it should thus be put together with the Third Amendment as the whole Militia Clauses in the Bill of Rights. In this sense, although the right to arms still exists today, it has no relevance to modern day life in America. Just as there is no longer any soldiers quartering in one's home — the occasion needed to invoke the Third Amendment. The Second Amendment would transform into a constitutional fossil, and the gun rights conferred by it would change accordingly to a dead right enshrined by the Founding Era memories [8] [23].

The second point concerning whether the gun rights is changing right has its ground on a holistic understanding of the Constitution. Since the Bill of Rights is part of the American Constitution, it is supposed to bear the constitutional spirit held in the Preamble of the Constitution. The Preamble of the Constitution provides that, this constitution was established for the sake of "Justice", "domestic Tranquility," "general Welfare" and "the Blessings of Liberty" [25].

Given the words of this Preamble, therefore, gun-control is a rather a constitutional move. In modern days, the prerequisite for the goals listed in the Preamble certainly has changed vastly compared with that of the Founding Era. Therefore, in America nowadays, there are calls for the Second Amendment to be repelled and replaced, and the gun rights, given the realistic situation of gun violence, is more of an obstacle rather than a right that promotes things like "general Welfare." In the Heller case, away from the heated conflicts between Original Meaning Theory used by Justice Scalia and Original Intent Theory used by Justice Stevens, Justice Breyer put forward his dissenting opinion using the interest-balancing approach. Breyer suggested that this approach should be applied to decide whether any gun control measures burden the rights protected by the Second Amendment when these rights confront public security concerns. What Justice Breyer stated in his dissenting opinion in the case of Heller indicates

that there is practicality for the right to arms to be a changing right that can update itself according to the development of the society [24] [11].

Based on these thoughts, some people who are for the "a changing right" view further state a rather radical view, that is, the right to keep and bear arms in America, while still legal, it should be no longer constitutional. Rather, it should change into a normal right just like the right to drive; and since people need a driving license to drive a vehicle, they should need regulation certificates when accessing arms as well.

3. CAUSES OF THE AMBIGUITY

3.1 Struggles Between a Perceived Tyranny and Foreign Invasions

The ambiguous implication of the "a free State" can be explained by the historical context where the Bill of Rights was ratified. During the ratification, the definition of the word "State" was blurred. It was due to the two-sides struggles between a perceived tyranny of the new Federal Government and the external military threats from British forces that the definition of "a free State" swayed between the idea of "a state of the union, free from federal oppression." and the republican philosophy of "a land of liberty/ a free country from despotism."

The fear of standing armies, and in particular of a standing army controlled by a central power, was one of the major if not the leading themes during the ratification conflicts. This fear justified itself by the anti-oppression tradition towards despotism cultivated in the Pre-Independence stage of the American nation. In the Declaration of Independence, the thirteen colonies perceived themselves to be "United States of America"; they legitimized their declaration of independence from the British Empire by accusing the tyrannical abuses imposed by the British Crown, such as keeping standing armies in the colonies without their consent and waging wars against them. Here the definition of "a free State" was "a country free from despotism." This definition persisted without any ambiguity in the Articles of Confederation. And it was unlikely for the Anti-federalists to give up the "free country" rhetoric in the ratification years. But this strong sense of State sovereignty was to be tamed, and "a free State" also started to have the "a unit under the Federal Government" meaning when the political experiment designed in Articles of Confederation failed [19].

The year 1776 marks not only American Independence, but also the beginning of the "Indian Wars" and "westward movement". Although Britain withdrew from the fight to maintain its sovereignty over the thirteen colonies in America and recognized their independence within the diplomatic and political arena, it was not willing to retreat from the entire American continent, but rather attempted a fight-back from its military base in Canada. The British Empire refused to give up the military strongholds it occupied in the north-western United States, such as Oswego, Niagara, Detroit, and Mackinac Island, which remained in British hands. Also, Britain supported Indian raids against the colonies' attempt to expand territory westward. The newly independent colonies were unable to deal with these turbulences with a weak Confederation government, so they sought for a stronger union by establishing a Federal Government. By establishing such a government, the idea of "a free State" emphasized less on sovereignty and independence, since the Federal Government would have more of them. In this sense, the Anti-federalists' State rights concern towards a dangerous standing army had to keep concord with the federal scheme, and "a country free from despotism" thus transformed to "a state free from federal opposition"[26] [27].

Besides, facing and fighting against the foreign invasions after its independence also cultivated a new sense of sovereignty concerning the "free State" phrase, that is, the national identity of the American nation.

Therefore, in the struggles between a perceived tyranny from the Federal Government and foreign invasions, "a free State" has two layers of intertwined meanings, which caused ambiguity in the Second Amendment.

3.2 Different Intentions Towards the Second Amendment

The reason for the Second Amendment to generate an ambiguous implication towards the purpose of the right to arms lies in the different intentions towards the amendment between the framers and Americans of recent decades. To understand the framers' intentions, it is important to look at the ratification process during the Federal Convention. The Second Amendment is in the first place, part of the American Bill of Rights, which was required by the Anti-federalists framers in order to preserve the rights of the states and the people from a possible tyranny exercised by the

Federal Government. To achieve this goal, clarifying the distribution of power within the political frame was thus the primary concern of these Anti-federalists. In terms of the Second Amendment, it was drafted as a check-and-balance to the Militia-related article in the 1787 Constitution.

Article One, Section Eight in the Constitution of 1787 granted the Federal Government the power to assemble, organize and arm the Militia. With such an article, the fear of standing armies, and in particular of a standing army controlled by a central power, became "one of the major if not the leading themes during the ratification conflicts". In the eyes of Anti-federalists, since the Constitution enabled the Congress to prescribe the training discipline, the Congress would eventually destroy the state militia by establishing a "select militia" which would have a similar function as a standing army, and the rest of the state Militia would be disarmed. Sensing this possibility, the Anti-federalists perceived that the Constitution was a final blow to the states' only means of self-preservation. In order to resolve this 'disarming' terror, the Anti-federalist desired a personal right to arms, that is "the People's right to keep and bear arms", so that if the Congress had any intent on disarming the Militia, it would be unconstitutional. Therefore, it is clear that, according to the framers' intent, the Second Amendment had nothing to do with the self-defense end today, rather it was connected again with a collective purpose against tyranny and invasion, which justified itself with the Classical Republican idea of an armed citizenry that unambiguously serves such a purpose [19] [25] [28].

It is true that there were a few Anti-federalists supported a more personal right to arms. But these supporters of a constitutional right to own weapons for individual ends were not a mainstream opinion even within the Antifederalist movement. Therefore, the right to arms for self-defense was at the periphery of the ratification conflicts concerning the Second Amendment, and the issue of public security associated with gun rights for self-defense in the modern context, was not even pronounced on the Framers' ratification agenda [19].

For the Americans today, their primary concern related to the Second Amendment is the public security issue related to guns and gun rights. Therefore, Americans today invented a "prefatory-operative" language which was used in the Heller case, trying to resolve the debate by finding out a definite relation between the two clauses, that is,

whether the so-called prefatory clause limits the scope of its operative counterpart. If it does, the right to arms can be restricted within the military service, and the personal right to keep and use arms for self-defense would be irrelevant to the Second Amendment, and thus the issue of public security can reach a benign end — this was an interpretation elaborated by the dissenting judge Justice Stevens as to reach a benign end of public security. However, the use of the "prefatory-operative" discourse by the Supreme Court was an act that crippled the Second Amendment, since it inevitably shifted the focus of gun rights to the People's right to arms, weakening the Militia perspective in the amendment. This shift indicates that, when reading the Second Amendment, Americans today bear an intension different from their Founding Fathers — while the former's mind has been occupied with the gun rights for self-defense, which has caused turbulences to public security, the latter's primary concern was only to secure the states' rights when confronting the possible despotism from the central government [14].

3.3 A Faded Context for Gun Rights

The faded context for the right to arms to exist is held accountable for both the ambiguous purposes and the questionable validity of timing of the Second Amendment.

As pointed out in last chapter, a right to arms for self-defense was not the primary concern on the framer's ratification agenda. The framers drafted the Second Amendment with a Classic Republican idea of armed citizenry in mind, and the Militia is at the essence of a free republic.

Back to the early years of the American Republic, there was no established police force that could serve to safeguard the public. And due to the framers' shared fear towards tyranny, the standing armies were excluded from their political design. Instead, a militia, in the framers' design, would perfectly serve to ensure public security and fight against foreign invasions. Since the significance of Militia was so pronounced in the existence of the early American Republic in a practical sense, it was reasonable to make the right to arms a constitutional statute back then.

However, in today's America, the Militia context has already faded. In most cases, Americans today enjoy public security thanks to an established police force. Besides, the United States today has the largest standing army in the world,

while there is no longer any American citizen fearing a possibly tyrannical Federal Government because of a standing army. And for the security of individual states, there is the National Guard regulated by State government. Based on these modern developments, the collective military significance has been weakened in today's American society; therefore, for Americans today, what they can associate with the so-called gun rights is nothing like the Founding Era idea of an armed citizenry, where "the People" and "the Militia" was in concord. Instead, modern day Americans understand the Second Amendment in very polarized ways—the right to arms is either for military service within a militia or for private purposes including self-defense and many other recreational ends. As a result of these polarized understandings towards the Second Amendment, there comes the issue of public security connected with modern practices of gun rights. As the collective military context is now weak, and the Second Amendment bears no practical significance to keep its two clauses in concord, it is thus reasonable for many Americans to doubt the validity of it in terms of whether the gun rights should be a constitutional right any longer.

4. CONSEQUENCES OF THE AMBIGUITY

4.1 Guns as a Cultural Totem for American Freedom

Although the Second Amendment is ambiguous, it is a constitutional basis for the gun culture in America.

In 1970, the term "gun culture" was proposed for the first time by US historian Richard Hofstadter in his essay "America as a Gun Culture", connecting the right to arms with American heritage. To many Americans, especially those who own firearms, gun culture represents many traditional American values such as self-reliance, self-defence, and self-determination. These three values, moreover, also represent an American idea of freedom, and guns are enshrined as the totem for this freedom in the course of American history [11] [29].

The American tradition of bearing arms can be traced back to medieval England, where every English freeman were required to provide annually proof of their ownership of arms proportionate to his landholdings. When European colonists came to American continent, what they faced was the

extreme wilderness. Also, they had to fight against the Indians and foreign invasions from European countries. Therefore, the guns bore by these colonists became an essential instrument for survival. Guns symbolize American freedom for the role it played in the American Revolutionary War. One of the reasons for American colonies declared independence was that the British Crown kept standing armies in the thirteen colonies of North America without their content, and the British government also tried to disarm the militias in the colonies. It was with guns that the American colonies won their independence and liberty from the tyranny of the British Empire. Today, a Founding Era minuteman holding a rifle standing ready to fight for liberty is the image most commonly associated with the Second Amendment, and there is a comment on it put by the National Rifle Association, "Where would the USA be if he had been forbidden to bear arms?" Although the NRA's pro-gun-rights stance makes this question more of a gun rights movement slogan, to some extent, it still explains the "give me liberty or give me death" Founding Era spirit of the American nation — the desire for freedom when confronting tyrannical oppression [1] [20].

Following the War of Independence, the westward movement was another thing that contributed to gun culture in America. According to the Frontier Thesis advanced by Frederick J. Turner, instead of Europe, the American West was the true birthplace of American history, and the American democracy was formed by the moving frontier line in the American West. In this movement that constructed "the most Americanised part of America", the significance of guns shifted from a "militia tradition" to a "frontier tradition" that connected the westward expansion with weaponry. Sentiments like "the guns that won the West", "arm[s] that opened the West and tamed the wild land" expressed the importance of guns in this expansion, where American people, with guns in their hands, fought against the hostile Indians and the fierce wildness in the American West [30] [31].

While the Second Amendment could only serve these gun culture heritages before its ratification by enhancing them as an American gun legacy with its constitutional power, the American Civil War the mid-19th century was the milestone that baptised guns and gun rights confirmed by the Second Amendment as a totem for American freedom.

The constitutional right arms in the antebellum years of the United State were in a paradox marked

by inequality. During this period of time, instead of the federal government, the state governments became the tyrannical ones to oppress their people. In the American South where slavery flourished, black people were considered as "dangerous population" who were not allowed to keep and bear arms. In *Dred Scott v. Sandford*, in order to protect slavery, the US Supreme held that black people are excluded from the US citizen membership and thus did not enjoy any constitutional rights. As a result, Scott, who was a black citizen from the free North was considered as a slave and thus his constitutional right as a free citizen to own and use arms was deprived. Later, in the course of civil war, people in the North were encouraged by Lincoln administration to participate in firearm manufacturing and military training, forming a political climate of citizen-soldiers; the civil war also created a narrative that, with guns, the people of the free North would fight to emancipate the slavery South — the Civil War thus finally became a monument on which guns were carved as a totem for freedom [12] [32].

4.2 The Social Division in Gun Politics

The ambiguity in the Second has led to different understandings of gun rights in the United States. These different, or more specifically, opposite understandings thus have generating social division in America when gun control ever stated to become an issue in American politics.

As remarked by Jiang Zhenchun, "The United States is typical as a country whose politics is manipulated by interest groups; to some extent, the American politics is the politics of interest groups." The lasting prosperity of gun culture in the US has made the firearm industry not only a traditional but also a leading sector that contributes to the American economy. According to the *Firearm and Ammunition Industry Economic Impact Report 2020* released by the Firearm Industry Trade Association, the firearm industry created 322,208 jobs in 2020, having a huge impact in economy that equals billions of dollars. In this massive industry, lies the strong interest chain that connects the various bodies of gun rights interest groups, including the gun rights lobbies and their partner, the firearm manufacturers. In order to protect their interests connected with the gun rights confirmed by the Second Amendment, the gun rights interests groups has been working to influence the gun politics in US and trying to lead it to a pro-gun-rights position [11] [33].

The National Rifle Association, as most influential gun rights lobby in the US, has been playing a leading role in manipulating gun politics. By providing research funds to scholars who support the individualist interpretation of the Second Amendment, the NRA has established its influences upon the legal academia and found its academic spokesmen there. For example, during the course from 1991-1992, the NRA gave 38,369.45 dollars to Stephan P. Halbrook, who was for the individualist interpretation of the Second Amendment, to fund his research. In 1992, *Academics for the Second Amendment* was founded under the support of the NRA. With such an academic organization, the NRA has put a group of pro-gun-rights scholars together to form a think tank for the association's crusade for gun rights. This effort is obviously fruitful — in the 1990s, there were at least 58 essays supporting the individualist interpretation of the Second Amendment, whereas only 29 were there for the collective right stance. These manipulations within the legal academia concerning the Second Amendment had itself paid off in the milestone Supreme case *District Columbia vs. Heller*, where the Court cited pro-individualist-interpretation works of legal scholars as materials to support its individualist interpretation on the Second Amendment [11].

Besides, the NRA has been promoting gun rights within the legislative and political arena. In the 1970s, Harlon Carter and Neal Knox, who were enthusiastic supporters of the Second Amendment, started to play a dominating role in the board of the NRA. Since then, NRA has been committed to protecting gun rights. In 1975, the NRA established *Institute for Legislative Action*, which serves as an intelligence department that informs the members of the association on the latest litigation and legislature related to guns. Besides, the *Political Victory Fund* established in 1976 has a main function of providing financial aids to anti-gun-control individuals and groups. According to the NRA, in 2008, the PVF supported 230 races out of the 281 races in the House of Representatives and the Senate House; the organization also supported thousands of elections within the state legislatures in order to have an influence on the gun control legislation [11].

Although the gun rights lobbies led by the NRA is powerful in terms of manipulating gun politics, there are gun control lobbies checking its power. As the largest gun control lobby in the US, the *Brady Campaign to Prevent Gun Violence* has been

crusading for its pro-gun-control stance mainly by influencing the Congress. With the effort of the Brady Campaign, the Congress has passed several gun control acts, including the Brady Bill and the Assault Weapons Ban since 1993 [34].

The social division in gun politics has been widening ever since "the gun issue first surfaced in modern times in party platforms in 1968 reflecting the emergence of the issue at the national level in the late 1960s." Generally, the Republican Party is committed to safeguarding the conservative values characterized by anti-gun-control stance, while the Democrats are gun control advocates. In order to maximize their interests, the gun rights lobbies allied themselves with the Republicans, while the gun control lobbies choose to stand with the Democrats. With the rivalry lobbies supporting the presidential candidates of their side, the social division within gun politics polarizes just like the presidential elections. The NRA abandoned its non-partisan stance by endorsing the Republican candidate Reagan in 1980, the gun-related electoral politics started to advance rapidly. In 1983, Reagan became the first president to mention the NRA in State of the Union address. In the Election of 2008, the NRA spent 40 million, and nearly a half of the money goes to the media in order to depict the Democrat candidate Obama as a threat to the Second Amendment. Compared with its gun rights counterpart, The Brady Campaign appears to be much weaker in the presidential politics, but it still act as a check for the NRA [11] [31].

However, the electoral politics has become more dependent on gun owners since the personal right to arms became a mainstream public opinion in the American society. On 27th June, 2008, a few days after the Supreme Court had its final say in District of Columbia vs. Heller, results of a poll concerning the ownership of gun rights were released by GALLUP. This poll showed that 73% of the Americans believed that the Second Amendment protects all American's rights to own guns, while only 20% thought gun ownership is limited among the members of state militias, such as units of National Guards. This poll indicates that the personal right to own and use arms has been a shared belief among a solid majority of American people. Therefore, for the sake of as many votes as possible to win elections and re-elections, American presidents, regardless of their partisan stance concerning gun policies, will cater for the interests of gun owners in this country. However, for many gun control advocates who count on the Democrat candidates to enact the gun control

legislations they desire, this is a sad compromise. This sentiment, there is another layer of social division in the American gun politics — the distrust pro-gun-control groups towards the leadership in this country, which causes more turbulences within the American society [35].

4.3 The Social Division in Gun Politics

When starting its report concerning the terrorist attack in San Bernardino, California in 2015, BBC pictured a day in the US as another day of gun fire and panic caused by it. With such a cold, outsider's tone, the gun violence in the U.S. is characterised as a norm that can always get itself pronounced in the American society. British magazine The Economist once had a very ironical remark on the issue of gun violence in the US, regarding it as an insolvable problem of the society, and ironically a national norm — the gun violence should be regarded as similar to the air pollution in China, as both of them are something the government fail to address [1] [36].

Such a terror of gun violence is firstly a result of a flood of guns caused by the flourishing gun culture. According to surveys up to 2018, there are 857 million guns owned in civilian hands, while the Americans alone are account for 393 million of them, and these Americans makes up less than 50% of the entire population of the US, meaning that there are more guns than people in this country with a ratio of 120.5 guns every 100 residents. (Ingraham, 2018) With such a terrifying flood of guns comes the terrifying gun violence. The US had the highest level of gun violence in the world, for it has been paying a leading role in the World's total firearm-related death numbers, compared with not only other developed western countries but also developing countries. According to the latest data from Gun Violence Archive, in the United States, during the course from 2013 to May 2020, there are 14,565 deaths caused by gun violence, and the number for injuries is 9875 [31] [37].

However, as the tension between gun-rights and gun-control groups continues to forge dynamics in the arena of American politics, gun control in America will remain in a dilemma, and as a result, gun violence will continue to worsen. Since 1978, gun rights movements have promoted the amending of state constitutions in 12 states, making the right to arms as a constitutional provision. In recent years, the number of provisions permitting the right to bear concealed weapons has been increasing; 29 states have made bearing concealed weapons legal

since 1990. Alongside with the gun rights litigations supported by gun rights groups such as the Heller case and the McDonald vs. Chicago case, by which the personal right to keep and bear arms is confirmed as a constitutional right and should be adopted by the states, it has become more and more unrealistic for the US to address the gun violence issue via gun-control legislation [11].

5. CONCLUSION

The Second Amendment to the American Constitution serves as a constitutional basis for gun rights in the US. The ambiguity in the text of the amendment has not only led to different interpretations of it, but also divisions in the American society when it comes to gun rights and gun control issues. It is true that the gun culture is a featured characteristic of America, but it also brings a flood of guns and the abuse of gun violence in this country. But due to their different understandings of the Second Amendment, the American public is divided into gun rights advocates and gun control advocates. This division, combined with the American partisan politics characterized by a strong color of polarization, has put the debate between gun rights and gun control into an irreconcilable conflict. Thus, one might assume that, the history will repeat itself by letting the controversial gun rights tear the American society apart, just as the slavery once did two centuries ago.

AUTHORS' CONTRIBUTIONS

Jie Li is responsible for the topic selection, structure of the essay, research focus and revision. Zhongni Zeng wrote the manuscript.

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