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Times Have Changed

You are probably not wearing a powdered wig right now. This owes largely to the fact that times have changed since the 1700's. What was true then (e.g. white coiffures being the epitome of fashion) is not necessarily true today. Yes, there is arguably a logical historical basis for the Second Amendment. After all, the original intent of the Amendment was to protect the right of "the people" who made up the militia of the Founding Fathers' day to "keep and bear arms" for the common defense.¹

But we do not live in the 1700s. The American landscape surrounding guns and gun ownership is fundamentally changed. Debate based upon original intent is misplaced. It is distracting. It concerns itself with semantics and centuries-old sentiments, rather than the vastly different and infinitely more pressing issues of modern America. In his dissent in *McDonald v Chicago*, Justice Stevens noted that "...sensitivity to the interaction between the intrinsic aspects of liberty and the practical realities of contemporary society provides an important tool for guiding judicial discretion."² In light of this principle, regardless of whether the Founders intended for the term, "the people" to refer to an individual right or a collective right to "keep and bear arms," it is the duty of the Court to balance this right with the safety and order of American society as a whole. The Supreme Court's 2008 *Heller* decision³ represented a failure of this duty, at a massive and ongoing cost to human life.

The consequences are clear: our homicide rate dwarfs those of other high-income countries, a crisis that finds its roots in the staggeringly high rates of gun-related homicide – around 25 times greater than that of comparable countries, as of 2015.⁴ Eight in ten murders in the United States in 2021 involved a firearm, amounting to almost 21,000 deaths in firearm-related homicides that year.⁵

These figures correspond with our country's extraordinarily high rates of gun ownership.⁶ Here the US fits into a broader international pattern: across high-income countries, higher numbers of civilian gun ownership are directly associated with higher numbers of gun-related deaths.⁷

Of course, correlation does not necessarily imply causation. With so many variables, it is impossible to isolate the number of civilian-owned guns as the sole cause of different numbers of gun-related deaths. Yet we cannot ignore a trend that is so consistently replicated on an international level. The answer, then, seems to be to reduce the number of guns in circulation via restrictive gun policies like those of Australia, which completely banned civilian ownership of all semi-automatic rifles and shotguns after the 1996 Porth Arthur mass shooting,⁸ or Great Britain, which in addition to banning these kinds of long guns, also banned all civilian ownership of handguns after the 1996 Dunblane Primary School mass shooting.⁹ But so long as *Heller* stands, such measures cannot survive in court, even amidst broad public support for increased gun restrictions.

No longer can we allow ourselves to be governed by gun policies that are outdated by more than two hundred years. It is only by evaluating our Constitution in the context of modern America, and accordingly, overturning the *Heller* decision and its progeny, that we can begin to curb the immense human cost of our gun violence epidemic.

¹ U.S. v. Miller, 307 U.S. 174 (1939) (n.d.).

² McDonald v. City of Chicago, No. 3020 (SCt 2010).

³ District of Columbia v. Heller, 554 US (Supreme Court 2008).

⁴ Erin Grinshteyn and David Hemenway, "Violent Death Rates in the US Compared to Those of the Other High-Income Countries, 2015," *Preventive Medicine* 123 (2019): 20–26.

⁵ John Gramlich, "What the Data Says about Gun Deaths in the U.S.," *Pew Research Center* (blog), April 26, 2023, <https://www.pewresearch.org/short-reads/2023/04/26/what-the-data-says-about-gun-deaths-in-the-u-s/>.

⁶ Jonathan Masters, "U.S. Gun Policy: Global Comparisons," Council on Foreign Relations, June 10, 2022, <https://www.cfr.org/backgrounders/us-gun-policy-global-comparisons>.

⁷ German Lopez, "18 Charts That Explain Gun Violence in America," Vox.com, April 16, 2021, <https://volume.vox-cdn.com/embed/7c311cc88>.

⁸ Joel Negin et al., "Australian Firearm Regulation at 25-Successes, Ongoing Challenges, and Lessons for the World," *New England Journal of Medicine* 384, no. 17 (2021): 1581–83.

⁹ Michael J. North, "Gun Control in Great Britain after the Dunblane Shootings," in *Reducing Gun Violence in America: Informing Policy with Evidence and Analysis* (Baltimore: The Johns Hopkins University Press, 2013), 185–93.