



The Fight Over Guns

At a time when the debate over new gun laws couldn't be more divisive, Adam Winkler's 2011 book, *Gunfight: The Battle Over the Right to Bear Arms in America*, has drawn praise from both opponents and advocates of stricter measures. Winkler observes that even during the early years, our Republic had gun controls in place that today's NRA would find objectionable. He also argues that the Second Amendment should be construed as a personal right of self-defense. In April, the UCLA law professor spoke with *California Lawyer* Editor Martin Lasden in Los Angeles. Here are edited excerpts from that videotaped discussion.



Adam Winkler



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Q. First of all, I want to ask a threshold question. And that is, knowing what you know about guns, would you say that klutzy, middle-age men like myself are more safe or less safe with guns in the house?

Well, I guess it depends on how klutzy you are.

Very klutzy. I mean, I probably shouldn't be driving.

Well then, you probably shouldn't have one. But here's the thing: We often hear that guns cause about 30,000 deaths a year. What we don't hear as much about is how often guns are used for self-defense. The estimates range anywhere from 200,000 up to 3 million instances a year.

So does that suggest there's at least a sliver of truth to the claim that the more guns we have, the better?

Well, it's a complicated claim. Certainly, allowing people to carry guns more easily on the street has not led to spikes in crime. In fact, violent crime is now at an all-time low. So while the evidence is not crystal clear that more guns lead to less crime, I think it is pretty clear that more guns haven't led to more crime.

Under the Second Amendment, and in the name of liberty, do I have the right to mount an armed revolt against the federal government?

I don't believe so.

But isn't that what the founding fathers intended?

I don't believe that to be the case. I think those who promote that idea fundamentally misunderstand the nature of a constitution. The Constitution was not designed to give people the means to tear up the Constitution.

But isn't the Constitution giving us mixed signals here? On the one hand, the founding fathers did have a genuine fear of tyranny. But on the other hand, they also had a fear of anarchy. So how do you reconcile this concern about tyranny with other parts of the Constitution that essentially criminalize treason?

Well, I think it's not so difficult, so long as you don't see in the Second Amendment a right to engage in insurrection against the government. I think maybe that's part of the reason why the Supreme Court and courts throughout American history have emphasized that the

Second Amendment is a right to have a firearm for self-defense, maybe writ small in terms of being able to protect yourself. Guns are an unusual item in that they kill, but the idea behind our Bill of Rights is to protect us and to protect our liberties, and I think that when a criminal comes into your home and tries to take your life or take your dignity, that firearm provides you with a means to protect your fundamental liberties.

People often ascribe almost godlike infallibility to our founding fathers. But when they stipulated that a well-regulated militia is necessary for the security of a free state, weren't they clearly wrong? Hasn't our history shown that they were wrong?

Fundamentally, yes. We don't anymore have the citizens' militia that the founding fathers imagined. They were very skeptical of a standing army. They thought the government would use a standing army corruptly in the same way that King George had used his army to impose tyranny on the colonists. And so they were concerned about that. But what we found in the War of 1812 was that we needed a standing army—because the militia performed terribly.

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And, in fact, if England hadn't had a little guy in France named Napoleon to worry about, we probably would have ended up again as English citizens.

You've talked about the flaws of the Supreme Court's 2008 *Heller* decision, which supposedly found on originalist grounds that any number of gun regulations would pass constitutional muster. Yet you've also said that, those flaws notwithstanding, the decision may actually be good for the country. What do you mean by that?

Many people in the gun world wanted the Court to strike down virtually all gun control laws. But I think the Court, by recognizing there was broad leeway for government to regulate guns, provided much more stability than if it had taken a radical approach to this issue and said everyone can have guns anywhere they want.

Last winter, after 20 school children were shot and killed in Newtown, Connecticut, it didn't seem like much of a stretch to suggest that the fight over the right to bear arms had reached a critical turning point. But then in April the Senate failed to pass even a modest expansion of background checks. So where do we go from here?

Even though Newtown didn't lead to new federal laws, if the gun control community can start to activate gun control supporters to be just as intense on guns as those who oppose such controls, it might change the gun debate in the long run. You know, when I was a kid growing up in Los Angeles, everyone smoked everywhere. And the tobacco industry was just like today's National Rifle Association. They never settled a case, they never gave in, they fought tooth and nail. But ultimately the culture changed. And I think that at least part of what's going on with guns today is a culture war. 🗨

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