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Firearms Law Workshop Mini-Symposium, Part III: Framing the Second Amendment: Gun Rights, Civil Rights, and Civil Liberties

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Second Thoughts

A BLOG FROM THE CENTER FOR FIREARMS LAW AT DUKE UNIVERSITY

SCHOLARSHIP / SECOND AMENDMENT

Firearms Law Workshop Mini-Symposium, Part III: Framing the Second Amendment: Gun Rights, Civil Rights, and Civil Liberties

By Timothy Zick on Thursday, August 22, 2019

How we label, characterize, and frame constitutional rights matters. In gun rights discourse, advocates and commentators have referred to the Second Amendment as a “collective,” “civic republican,” “individual,” and “fundamental” right. Gun rights advocates have defended the right to keep and bear arms on “law and order” and anti-tyranny grounds, while gun control proponents have urged regulation based on “public health,” “human rights,” and other concerns. These concepts, vocabularies, and frames have significantly influenced how advocates and institutions have debated, interpreted, and enforced the right to keep and bear arms.

My article focuses on two common frames gun rights advocates have used to construct realities, identify grievances, motivate supporters, and influence the meaning of the Second Amendment. I refer to these as the “civil right” and “civil liberty” frames. I focus on the rhetoric and vocabulary of arms in order to assess how advocates in gun rights debates generate and use frames, what effect these frames have on discourse and lawmaking, and how they affect the Second Amendment’s meaning.

For some time now, gun rights advocates have characterized the right to keep and bear arms as a *civil right*. According to this frame, the Second Amendment is primarily concerned with equality values. The frame highlights the discriminatory purpose and effect of gun control. It emphasizes the “ugly history” of gun control, which includes the disarmament of slaves and freedmen, the violent actions of the Ku Klux Klan, and efforts to disarm the Black Panthers. The civil right frame also relies on supposed analogies between gun control and Jim Crow segregation. It glorifies armed slave rebellions and armed civil rights activists, and imagines the civil rights movement as a gun rights movement. In the courts, gun rights advocates complain of “second-class” treatment of

gun owners and Second Amendment claims, “massive resistance” to *D.C. v. Heller*, and relegating the Second Amendment “to the back of the constitutional bus.” Gun rights advocates have deployed the civil rights frame to press the argument “all gun control is racist.”

Gun rights advocates have also developed and deployed a more familiar *civil liberty* frame. They have grounded this frame primarily in autonomy concerns. The civil liberty frame warns of a well-financed and organized “movement” to disarm law-abiding gun owners. It identifies despotic governments and gun control advocates as “haters of liberty.” The civil liberty frame emphasizes the “first-ness” of the right to keep and bear arms in terms of protecting individual liberty. Prominent gun rights organizations, including the NRA, have used the civil liberty frame to advance extreme positions concerning gun control. The civil liberty frame defines the Second Amendment as absolute, “iron-clad,” and impervious to public safety and other collective concerns.

Framing the Second Amendment in these “discrimination” and “disarmament” terms has deeply affected gun rights discourse and lawmaking. The civil right and civil liberty frames pre-dated *Heller*. Advocates used them to establish an individual right to keep and bear arms. However, they have remained prominent in gun rights discourse after *Heller*. Although they are in tension with one another in certain respects, gun rights advocates have invoked these frames simultaneously. They have used the frames to pursue agendas in the courts, in legislatures, and in public discourse about firearms.

The article critically examines the claims, invocations, and persistence of the civil right and civil liberty frames. Despite the lack of credibility of some of their central claims – including the notion that “all gun control is racist,” courts have treated the Second Amendment as a “second-class” right, and the right to keep and bear arms is an “absolute” – these two frames have persisted and evolved. They are useful tools for constructing political realities, identifying and stoking grievances, and mobilizing participants in the gun rights movement. However, gun advocates’ uses of these frames pose some distinctive challenges for constitutional culture and democratic lawmaking. Some of their claims and premises divide Americans, undermine civic attachments, and contribute to an overheated and dysfunctional gun rights discourse. Given their influence in terms of Second Amendment doctrine, theory, and interpretation, we ought to be paying close attention to the evolution and deployment of these frames.

[Ed. Note: This post is part of [a series](#) on the papers presented at the Center’s [first Firearms Law Works-in-Progress Workshop](#) on August 2, 2019.]