

## The Founding Fathers in the Temporal Imaginaries of Texas Gun Politics

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When Senator Lindsey Graham of South Carolina was asked in 2010 why suspects on the FBI's terrorist watch list could be prevented from boarding a plane but not purchasing an AK-47, he answered with an allusion to the political imaginations of the Founding Fathers: "When the founders sat down and wrote the Constitution, they didn't consider flying."<sup>1</sup> Graham sidestepped the authority of the Founding Fathers by invoking the limits of their imagination. Regarding issues such as wide-scale human flight—which he implied the Founders could not have imagined—Congress need not be constrained by their thought. On the issue of guns, however, the Founding Fathers' ideas remained authoritative. The difference between an AK-47 and a musket hardly mattered to Graham—what was relevant was that both were guns, and thus something that the Founding Fathers could have conceived as part of their vision for the rights of U.S. citizens. The significance of Senator Graham's response—albeit a mere quip—is that it resonates with the larger political discussions around guns in the United States. People involved in the debates have repeatedly invoked the political imaginations of the Founding Fathers to argue positions on either side of the issue, thus politicizing the very act of imagining.<sup>2</sup>

This chapter explores the meta process of imagining the Founding Fathers and their political imaginations in order to support political positions on guns in the present. This tactic is founded on imaginaries, as the Founding Fathers referenced are often not historical reconstructions of lived individuals, but rather imagined entities created for political purposes. The chapter examines how the Founding Fathers have been used in Texas gun debates over the

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- 1 Gail Collins, "Limiting Access to Weapons Gets Congress Up in Arms," *Austin American-Statesman*, May 8, 2010, A13.
  - 2 Jan E. Dizard, Robert Merrill Muth, and Stephen P. Andrews, Jr., eds., *Guns in America: A Reader* (New York: New York University Press, 1999), 1–13; Robert Spitzer, *Guns Across America: Reconciling Gun Rules and Rights* (Oxford: Oxford University Press, 2015), 29–101; Adam Winkler, *Gunfight: The Battle Over the Right to Bear Arms in America* (New York: W.W. Norton, 2011).

last few decades and explicates how they have been conceived as both subjects and objects of political imaginaries. Through this approach, it addresses the larger phenomenon of temporal gun politics, where history becomes a tool for creating larger worldviews and lineages that are used to justify political positions in the present. It examines how history is used as a repertoire for the construction of temporal imaginaries that attempt to normalize certain positions on guns.

I operate via a framework which uses federal-level discussions about guns by legal scholars, judges, and activists to contextualize and analyze two state-level policy shifts around guns in Texas. The first of these is the passage of Concealed Carry legislation in the state of Texas in 1995, which allowed individuals with permits to carry concealed firearms in public areas, with a few notable exceptions.<sup>3</sup> Prior to this, carrying handguns had been historically more strongly legislated in Texas compared to long guns such as hunting rifles and shotguns, which had enjoyed laxer restrictions. Individuals had been allowed to possess handguns, but they could carry them on their person only on their own premises or those under their control (i.e., their home or inside their personal vehicle) or working in a profession such as law enforcement.<sup>4</sup> The second shift was the expansion of this right twenty years later in 2015, when two laws were passed: one to allow concealed weapons into university buildings (Campus Carry) and another to allow open carry of handguns in public areas previously covered by the concealed carry legislation. I connect the Texas discussions around guns at the state level to wider intellectual and ideological trajectories taking place across the nation, especially as they are formulated around one milestone moment in particular: the *District of Columbia v. Heller* decision by the U.S. Supreme Court in 2008 that established the current interpretation of the Second Amendment. According to Robert Spitzer, this was one of Supreme Court's "most history-driven (as opposed to law-driven) decisions

3 These include businesses with permits to sell alcohol; places for sporting or interscholastic activities; correctional facilities; hospitals and nursing homes; amusement parks; places of religious worship; and locations where governmental meetings are taking place. Robert A. McCulloch and Sandra G. Wilkinson, "Concealed Weapon Laws: Their Potential Impact on the Workplace," *The Compleat Lawyer* 13, no. 4 (1996): LN4.

4 Robert G. Newman, "A Farewell to Arms?—An Analysis of Texas Handgun Control Law," *St. Mary's Law Journal* 13, no. 3 (1982): 606; Nate G. Hummel, "Where Do I Put My Gun?: Understanding the Texas Concealed Handgun Law and the Licensed Owner's Right-to-Carry," *Texas Tech Journal of Administrative Law* 6 (2005): 139–63. R. Alan Thompson, "Perceived Effects of Concealed Handgun Ownership by Private Citizens Among Law Enforcement Officers in Texas," *Journal of Police and Criminal Psychology* 12, no. 1 (1997): 61–69; Angela Stroud, *Good Guys with Guns: The Appeal and Consequences of Concealed Carry* (Chapel Hill: University of North Carolina Press, 2015), 4–21.

in modern times.”<sup>5</sup> Through these events, I trace the formation of a set of temporal imaginaries around Texas gun politics, informing understandings at the federal level and then being affected by them in turn.

My approach exemplifies media as the sphere where state- and federal-level imaginaries around guns collide and coexist. If, as Charles Taylor suggests, imaginaries are a form of established collections of notions and symbols that have a communicative purpose for organizing meaning around certain phenomena and tying people together, then media is the site in and through which these connections are formulated, shared, and contested across different groups.<sup>6</sup> There, larger social imaginaries become expressed, refined, and further communicated.<sup>7</sup> It is also a site where different imaginaries are framed in a conflicting relationship as part of a larger ideological struggle unfolding in the United States. From the 1980s to the present, gun debates began to manifest tendencies of the so-called culture wars, a series of cultural conflicts revolving around basic rights and questions of identity coming out of the 1960s.<sup>8</sup> The culture wars channeled anxieties about shifting social hierarchies and changing societal norms into a sense of existential conflict about the meaning of the nation.<sup>9</sup> Guns—deeply woven into the cultural tapestry of both the United States and Texas, to the point where one can hardly imagine either without firearms—were turned into such a front.<sup>10</sup>

This chapter regards guns and the claims made about the Founding Fathers when debating them as terrain in a broader ideological conflict unfolding over the time frame under investigation, from the 1990s to the 2010s. In this conflict, competing ideologies sought to seize the imaginaries surrounding the subject to establish their own ways of understanding the world as the dominant

5 Spitzer, *Guns Across America*, 2.

6 Charles Taylor, *Modern Social Imaginaries* (Durham, NC: Duke University Press, 2004), 23–30, 83–99.

7 Samuel Mateus, “A Communicational Matrix to the Imaginary: Looking into the Media Imaginary,” *Empedocles: European Journal for the Philosophy of Communication* 8, no. 1 (2017): 69–70, 72–73.

8 See Andrew Hartman, *A War for the Soul of America: A History of the Culture Wars* (Chicago: University of Chicago Press, 2015).

9 James Davison Hunter, *Culture Wars: The Struggle to Define America* (New York: Basic Books, 1991); Daniel T. Rodgers, *Age of Fracture* (Cambridge, MA: Harvard University Press, 2012); Corey Robin, *The Reactionary Mind: Conservatism from Edmund Burke to Donald Trump* (Oxford: Oxford University Press, 2018).

10 See Scott Melzer, *Gun Crusaders: The NRA's Culture War* (New York: New York University Press, 2009); Abigail A. Kohn, *Shooters: Myths and Realities of America's Gun Cultures* (New York: Oxford University Press, 2004).

structures under which the topic was being conceived.<sup>11</sup> This occurs partially in and through media, which is a site where symbolic power is organized by its users.<sup>12</sup> The created imaginaries exaggerated tendencies of cultural conflict, embodied particularly in the rise of the legal philosophy of originalism, which argued that, “the Constitution should be interpreted in accordance with its original meaning—that is, the meaning it had at the time of its enactment.”<sup>13</sup> In the decades leading up to the *DC v. Heller* decision, originalism had been embraced by the conservative movement, and heralded especially by Justice Antonin Scalia, who wrote the majority opinion for the case.<sup>14</sup>

This chapter uses both state- and federal-level media materials, the most important source being the *Austin American-Statesman*. It also draws on fieldwork and interviews to further contextualize the dissemination of mediated imaginaries into everyday political thinking around the topic of guns.<sup>15</sup> In its analysis of the ideological trajectories traced in the media materials, the chapter uses key texts produced by legal scholars, political activists, and historians over the studied timeframe. The temporal imaginaries examined concern the ways in which different groups have conceived of themselves as historical subjects participating in historical processes. The questions posed are, in what ways have different actors in political debates conceived of their present as a specific era and how have they related it to the wider trajectories of history that they imagine. By leveraging a shared perception of time, individuals have been able to politically situate themselves in relation to a discrete community with collective power. Similarly, imposing a certain temporal imaginary onto a group of people and conceiving of them as subjects within that temporal frame can be an exercise of political power and subjugation.<sup>16</sup> Thus, temporal imaginaries are sites of tension and political conflict, where different groups vie to establish their own views of the present and its relationship to both an imagined past and future as dominant imaginaries of historical time.

11 Michael Freeden, *The Political Theory of Political Thinking: The Anatomy of a Practice* (Oxford: Oxford University Press, 2013), 22.

12 John B. Thompson, *The Media and Modernity: A Social Theory of the Media* (Cambridge, UK: Polity, 1995), 3.

13 Center for the Study of Constitutional Originality, School of Law, University of San Diego, <http://www.sandiego.edu/law/centers/csco/>, accessed December 14, 2020.

14 Spitzer, *Guns Across America*, 68–69; Marcia Coyle, *The Roberts Court: The Struggle for the Constitution* (New York: Simon & Schuster, 2013), 163.

15 The fieldwork and interviews were conducted by the Academy of Finland-funded Campus Carry research team from the University of Turku.

16 See, for example, Adib and Paul Emiljanowicz, “Colonial Time in Tension: Decolonizing Temporal Imaginaries,” *Time & Society* 28, no. 3 (2019): 1225.

My structure is thematic, although it follows a chronological flow. I trace patterns that resonate, replicate, or are differentiated across the timeframe under study, on both state and federal levels. I begin with the dynamic that I teased in my opening—the idea of the weapon itself as a temporal imaginary that has been constructed in the gun debates. Both the handgun and the assault weapon/rifle<sup>17</sup> have been symbols connected to the political imaginations of the Founding Fathers. In different ways, both were seen as problematic from the point of view of gun rights at various points in time, and thus considered distinct from long guns. From this, I move on to the larger dynamic of forging connections, delineating how and why the actors involved in contemporary gun debates in Texas have sought to trace their temporal lineage to the times and thinking of the Founding Fathers. Finally, I examine how the struggles over meaning have solidified and established themselves in the modern day.

## 1 “Fixing to be Armed”: The Political Imaginaries of Weaponry

The media environment surrounding the passage of the Texas concealed carry legislation in 1995 was rife with temporal imaginaries, with many centering on the particular imagery invoked by the idea of the handgun. The *Austin American-Statesman* marked the passage of the law with a curt note: “Pistol-packin’ Texans won’t be just a cliché any longer.”<sup>18</sup> One “humor column” mocked the idea of a future open carry proposal with an exaggerated description: “This is Texas, for gosh sakes, where men are men, and some of the truck stop waitresses are closing in on it. Let’s get Western. Let’s get macho. If the public is fixing to be armed, let’s strap those guns on in plain sight and show them off as part of our Western attire.”<sup>19</sup> Anxieties about firearms mixed with the

17 The distinction between an “assault weapon” and an “assault rifle” is often blurred in popular gun debates, with the two used interchangeably. Generally speaking, the weapons available for purchase by the civilian population in the U.S. are modified to be semi-automatic-only, which excludes them from the definition of “assault rifle.” “Assault weapon” has become the political terminology to include such weapons. While these terms have a technical basis, it is also within the scope of this chapter to consider the imaginary aspects attached to these terms and how they are given meaning in the media sphere. See Timothy W. Luke, “Counting Up AR-15: The Subject of Assault Rifles and the Assault Rifle as Subject,” in *The Lives of Guns*, eds. Jonathan Obert, Andrew Poe, and Austin Sarat (New York: Oxford University Press, 2019), 92.

18 Michael Holmes, “What Lawmakers Did—And What They Didn’t,” *Austin American-Statesman*, May 30, 1995, B3.

19 John Kelso, “Let’s Wear Guns with Pride Deep in the Heart of Texas,” *Austin American-Statesman*, March 28, 1995, B8.

wider cultural imagery of Texas as a state. The author implied that there was something potentially absurd about Texans walking around with handguns. For those who opposed the law, these depictions sought to differentiate between the lived reality of Texas and the larger cultural imaginaries surrounding it.

Carol R. Lockett, the vice-chairperson of Peaceable Texans for Firearms Rights, wrote to the *Austin American-Statesman* with the express purpose of arguing against these historical imaginaries. She stated that the concealed carry law would not turn Texas into a “Dodge City,” the location of archetypal Wild West gun fights. In making the argument, she invoked the Founding Fathers: “But the NRA is not a disembodied evil forcing its will on the helpless. The NRA is us 3.5 million Americans who believe in our right to ‘keep and bear arms.’ We care about this right and are willing to dedicate time and money to preserve it.”<sup>20</sup> Lockett framed the legislation in terms that resonated with many present gun debates. Thus, instead of moving the nation toward barbarism, the legislation was seen as a move toward the original founding ideals of the nation. It was about rights of the people and the promise of the Constitution, and particularly its Second Amendment, which states: “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.”

According to Waldman, for nearly two hundred years, the Second Amendment received fairly little attention; its meaning, while ambiguous, was considered largely settled, until in the latter half of the twentieth century it began to emerge as one of the defining political points of contention in the country.<sup>21</sup> Writing about the sentiments that underlay the original Second Amendment, Saul Cornell has argued that instead of either of the modern understandings of the legislation that characterized the debate about its meaning—strands which he calls individualist and collectivist understandings of the right to keep and bear arms—the eighteenth-century conception of the law was based around civic duty. In this view, the right to bear arms came coupled with a sense of obligation; it was the duty of the citizen to enlist in a militia to defend their community and to purchase and maintain a functioning firearm for this purpose.<sup>22</sup> Thus, the conception of firearms as a means of protection was not individualistic or intended for personal self-defense. In a potential scenario of threats against one’s person, the individual was supposed to flee

20 Carol R. Lockett, “Weapons Bill Opponents Relying on False Notions,” *Austin American-Statesman*, April 10, 1995, A7.

21 Waldman, *Second Amendment*, xi–xiii.

22 Saul Cornell, *A Well-Regulated Militia: The Founding Fathers and the Origins of Gun Control in America* (Oxford: Oxford University Press, 2003), 2–8.

the situation and guns were only to be used as the last result.<sup>23</sup> Meanwhile, Roxanne Dunbar-Ortiz has highlighted the darker motives behind the Second Amendment, suggesting that it was rooted in the settlers' need to control the black population in the U.S. and to wage war against the indigenous groups on the continent.<sup>24</sup> Negotiating these different interpretations of the Second Amendment and its historical contexts became a means by which political debates around guns were fought. Accordingly, they became materials for the different historical imaginaries that various actors sought to build.

In the 1990s, handguns became an important symbol for the early debates on the communal and the individualistic interpretations of the Second Amendment. A pistol was seen as a personal weapon, not meant for militia use. To carry one was to be prepared for self-defense. Some of the early works of conservative scholarship on the Second Amendment, which would set the tone for gun arguments in the coming decades, were based on this dilemma of the handgun. One such book was Stephen P. Halbrook's *That Every Man Be Armed*, first published in 1986. Its original preface specifically framed it as an objection to recent firearms legislation against handguns. The book placed this in the context of the individual's right to bear arms, summarizing the anti-gun position as: "Even if individuals hold this right, some kinds of arms (such as handguns) are supposedly not really 'arms' at all, and can be banned without infringing on anyone's rights."<sup>25</sup> Halbrook believed that targeted animosity existed toward handguns in contemporary gun debates.

For the pro-gun side of the issue, the basic logic of the argument around handguns can be found in Halbrook's 1986 article, which conducted a "linguistic analysis of the right to 'bear arms'" in order to uncover the intents of the Founders regarding guns. An early example of legal originalism, the article delved into what the Founders might have intended with the expression "bear," suggesting that it specifically meant they had favored the right of citizens to *carry* arms on their person, as opposed to merely having the right to possess them in their own homes. Halbrook argued further that this word meant that the Founding Fathers had favored guns as means of individual and personal

23 Cornell, *A Well-Regulated Militia*. See also Patrick J. Charles, *Armed in America: A History of Gun Rights from Colonial Militias to Concealed Carry* (Amherst, MA: Prometheus Books, 2018).

24 Roxanne Dunbar-Ortiz, *Loaded: A Disarming History of the Second Amendment* (San Francisco: City Lights, 2018), 16–23. See also Carol Anderson, *The Second: Race and Guns in a Fatally Unequal America* (New York: Bloomsbury, 2021).

25 Stephen P. Halbrook, *That Every Man Be Armed: The Evolution of a Constitutional Right* (Albuquerque: University of New Mexico Press, 2013), xvi.

self-defense, rather than a civic or collective right.<sup>26</sup> This definition would become inherently meaningful when debating matters such as the concealed and open carry of firearms. In Halbrook's definition, allowing people to own guns was not enough to satisfy the intent of the Founders. People had to be allowed to carry them on their person.

Another word that Halbrook focused on was "arms." He argued that this was a term intended by the Founders to cover "those weapons used by settlers for both personal and military defense."<sup>27</sup> This included rifles and shotguns (as descendants of muskets and blunderbusses, respectively), pistols (as the best and most affordable tool for personal self-defense), and bladed and blunt instruments. What Halbrook felt to be outside the domains of the word were weapons an individual was incapable of "bearing," such as tanks, nuclear devices, or other heavy ordinance, as well as "other dangerous and unusual weapons, such as grenades, bombs, bazookas, and other devices which, while capable of being carried by hand, have never been commonly possessed for self-defense."<sup>28</sup> This early article by Halbrook is a prime example of how the limits and scopes of the imaginations of the Founders were politically crafted in argumentation. The aim was to demonstrate that when the Founding Fathers envisioned the Second Amendment and imagined the nation it would govern, their conceptualization would have covered the idea of the handgun being carried on one's person in public areas. In this way, the handgun had a symbolic quality in the 1990s when its relationship to the Second Amendment was being debated and contested in the media and by political actors in their works.

This sentiment can be found in both of the two Texas cases examined here. In 1995, guns in general were recognized as having a symbolic value in Texas politics. This was noted, for instance, in the *Austin American-Statesman's* observation that both Governor George W. Bush (who signed the concealed carry law in 1995) and his predecessor Ann Richards (who had vetoed a similar bill in 1993) nonetheless had to pose for photographs with rifles and exclaim their love of hunting when on the campaign trail. "If you can't shoot a shotgun, you can't run for public office in Texas," the newspaper quoted Mark McKinnon, a Democratic political consultant who had worked on Richards's

26 Stephen P. Halbrook, "What the Framers Intended: A Linguistic Analysis of the Right to 'Bear Arms,'" *Law and Contemporary Problems* 49, no. 1 (Winter 1986): 152–57.

27 Halbrook, "What the Framers Intended," 156–57.

28 Halbrook, "What the Framers Intended," 157–60.



1990 campaign.<sup>29</sup> Guns—and particularly rifles used for hunting—were considered part of being a Texan, but handguns, especially concealed ones, were regarded with greater suspicion. They were not part of Texas reality, at least not according to the arguments proposed in the media by those opposed to the legislation.

Later in 2015 also, one writer framed her objections to the passage of open carry and Campus Carry legislations as “Texas lawmakers [grappling] with the presence of guns on society consistently and thoughtfully since Reconstruction.”<sup>30</sup> She recalled the words of Governor Pat Neff, who in 1921 vetoed a bill that would have lifted restrictions on the sale of handguns in Texas: “Man is the masterpiece of the world. He lives a life sublime and dies a death immortal. No legislation should be had that will encourage or make easy the taking of human life.”<sup>31</sup> While tapping into deeper questions about the value of life and freedom in modern times, writing in a wistful tone, the writer objected to what she felt was a common characterization that Texas’s Open Carry prohibition was a “quaint” relic of history that belonged in the past. Instead, she framed the modern law as a new step in an ongoing historical struggle between pro-gun and anti-gun sentiments about the place of handguns in Texas public spaces.<sup>32</sup>

Discussions about handguns and the Second Amendment have actively envisioned the Founding Fathers as having political imaginations of their own. The question behind the argument is whether the Founding Fathers themselves envisioned their words to include handguns. The composition of this kind of historical imaginary is particularly well exemplified over the course of my timeframe in a parallel debate about whether the Founding Fathers could have conceived weapons with the firing capacity of an assault weapon and whether their political opinions could therefore be considered to have weight when legislating such firearms. This issue loomed large over the two cases I have examined here. The Texas bill for concealed carry was implemented against the backdrop of the Federal Assault Weapons Ban put in place by President Bill Clinton in 1994.<sup>33</sup> Meanwhile, the Campus Carry and open carry laws of 2015 were likewise advanced during national gun debates overshadowed by events such as the Sandy Hook Elementary School shooting in 2012, which

29 Stuart Eskenazi, “It’s a Texas Ritual: Candidates Tote Guns, Hunt Votes,” *Austin American-Statesman*, September 1, 1994, A1.

30 Bee Moorhead, “Open-carry Law Latest Shot in Long-Running State Fight,” *Austin American-Statesman*, September 4, 2016.

31 Moorhead.

32 Moorhead.

33 Melzer, *Gun Crusaders*, 236–37; Stroud, *Good Guys with Guns*, 7–8.

inspired calls to reinstate the Federal Assault Weapons Ban that had expired in 2004.<sup>34</sup>

There is a considerable malleability in the notion of “assault weapon,” which has made it a fruitful ground for the construction of historical imaginaries.<sup>35</sup> For this purpose, highlighting the difference between (often illegal) fully military grade weapons and their legal variants, the *Austin American-Statesman* ran an infographic on the question “What makes an assault weapon?”<sup>36</sup> On the webpage of the NRA, the organization notes: “AR-15s and other semi-automatic rifles are not the fully-automatic, military-grade firearms they are often claimed to be by gun control supporters and the media.”<sup>37</sup> At a march in 1994 protesting the Assault Weapons Ban, the main organizer of the event, Ron Long of the Committee of 1776 (a pro-gun organization whose name itself was a startling direct reference to the Founding Fathers) referenced this debate when he said: “Right now, I’d like to introduce the greatest assault weapon in this country: Bill Clinton’s pen, signing away our rights. Time, after time, after time. That is an assault weapon that we cannot let go on.”<sup>38</sup> The speaker turned the term “assault weapon” on its head, moving it from the domain of firearms to the realm of politics.

Robert Spitzer has written about this political dynamic around the term “assault weapon.” He notes that since the 1990s it became commonplace to frame the term as a political term introduced and used by gun control activists.<sup>39</sup> Following this trend, a Texas-based lawyer Carl Haggard exclaimed at the 1994 protest: “Challenge the nice people from the press when they call your weapons ‘assault weapons.’ Inform them that your guns are very sensitive and don’t like to be called names. Mine has a hair trigger, don’t call it a name.”<sup>40</sup> He proceeded to frame “assault weapon” as a hate-word and a tool of propaganda used by gun control activists.<sup>41</sup> However, Spitzer has demonstrated that the term “assault weapon” was actively used by gun manufacturers in their

34 See, for example, Ralph K. M. Haurwitz, “On Eve of Sandy Hook, Rally Calls for Gun Limits,” *Austin American-Statesman*, December 14, 2015, B1.

35 On this, see Timothy W. Luke, “Counting Up AR-15s: The Subject of Assault Rifles and the Assault Rifle as Subject,” in *The Lives of Guns*, eds. Jonathan Obert, Andrew Poe, and Austin Sarat (New York: Oxford University Press, 2019), 92.

36 “What Makes an Assault Weapon?” *Austin American-Statesman*, December 23, 2012, A7.

37 “‘Assault Weapons’ | ‘Large’ Magazines,” NRA-ILA, September 2019, <https://www.nraila.org/get-the-facts/assault-weapons-large-magazines/>, accessed February 14, 2021.

38 “Second Amendment Rally Part 1,” C-SPAN, 15:11–15:26, August 14, 1994, <https://www.c-span.org/video/?59536-1/amendment-rally-part-1%2015>, accessed March 12, 2021.

39 Spitzer, *Guns Across America*, 79–85.

40 “Second Amendment Rally,” 39:00–39:30.

41 “Second Amendment Rally,” 39:00–39:30.

advertising campaigns already during the 1980s, before they started moving away from the terminology in the 1990s.<sup>42</sup>

Aside from the issue of terminology, there was also a question of firepower and whether the Founders could have conceived of portable weapons capable of wreaking the type of havoc caused by an assault weapon. This point was explicitly made, for instance, by Austin-based attorney Claude Ducloix for the *Austin American-Statesman* in a piece titled: “Hamilton, Madison Never Imagined Assault Weapons.” He argued:

As we grapple for lawful ways to restrict access to these devastating weapons of death, we are all beholden to the theories, myths and mysteries of what our framers intended as they crafted the Second Amendment. Curiously, Justice Antonin Scalia argued and championed “originalism”—the idea that we must put ourselves in the framer’s minds as we modernize their intent.<sup>43</sup>

Ducloix continued by describing his visit to an antique store that displayed muskets from the Revolutionary War. Here it truly struck him that the originalist approach must use that kind of weaponry as the basis for its understanding of the clause, rather than modern guns: “These are *assault* weapons, for trained soldiers to use to offensively *assault* the enemy, not defend himself from a burglar.”<sup>44</sup> Indeed, his emphasis called attention to the word “assault” and how, in his mind, a weapon created for that purpose would not fit the intent of the Founders.

On the other end of the debate, pro-gun activists have also sought to answer the question. For instance, the right-wing website *Daily Caller* has compiled a list of repeating weapons to show how the Founding Fathers would have been open to the idea of significant advancements in weapons technology. The article cites William Atwater of the United States Army Ordnance Museum as saying: “[The Founders] lived during the Age of Reason. They celebrated the achievements of the human mind. They had witnessed huge advances in firearms technology.”<sup>45</sup> One of the cases listed was that of Joseph Belton, who

42 Spitzer, *Guns Across America*, 79–82.

43 Claude Ducloix, “Hamilton, Madison Never Imagined Assault Weapons,” *Austin American-Statesman*, February 26, 2018, A11.

44 Ducloix, A11. Emphasis in original.

45 Craig Boudreau, “These Guns Dispel the Notion the Founding Fathers Could Never Have Imagined Modern Assault Rifles,” *Daily Caller*, June 29, 2016, <https://dailycaller.com/2016/06/29/these-guns-dispel-the-notion-the-founding-fathers-could-never-have-imagined-modern-assault-rifles/>, accessed January 26, 2021.

was also referenced by the YouTube channel High Caliber History in their take on the subject. This was an inventor who contacted the Continental Congress in 1777 with a proposal to add a modification to flintlock muskets that would allow them to fire several rounds without the need to reload. His correspondence was used to demonstrate that the imaginations of the Founding Fathers and their contemporaries could have grasped the idea of repeating weaponry.<sup>46</sup>

The debate around assault weapons and the Founding Fathers represents one of the most explicit manifestations of the focus of this chapter. The potential reaches and limits of the imaginations of the Founding Fathers are laid out by the different parties, and the results are used to make arguments about the state of contemporary society. The same dynamic applies to the discussions around the carry of handguns, concealed or otherwise. Political relevance is constructed around the proposition of whether the Founding Fathers envisioned a country where people can walk around armed or not, and whether this vision covered various types of armaments, ranging from handguns to assault weapons. This vision of the Founders' imaginations is used in crafting a historical imaginary of the nation that connects the present day to the imagined past. The question then becomes whether the present day is conceived—whether due to laxity or severity of gun laws, depending on one's political leanings—as a direct continuation of the historical trajectories set forth by the Founding Fathers or an aberration of their vision.

## 2 The Armed Scions of the Founding Fathers

As a constant across the period under study, those pushing for pro-gun legislation often sought to present themselves as inheritors of the legacy of the Founding Fathers. This was the argument of Carol Lockett quoted above, that the NRA was merely representing people seeking to retain the rights granted to them by the Second Amendment.<sup>47</sup> And the organization itself has repeatedly drawn parallels between its activities and the Founding Fathers. For instance, in a fundraising letter sent to its members in 2001, Wayne LaPierre—the CEO and the Executive Vice-President of the organization since 1991—suggested that the financial commitment of the NRA's supporters was comparable to

46 High Caliber History, "The Founding Fathers & Repeating Rifles," YouTube video, 7:51, August 20, 2019, <https://www.youtube.com/watch?v=pHQF3g07TxI>, accessed January 26, 2021.

47 Lockett, "Weapons Bill Opponents," A7.

the sacrifices made by the Founding Fathers in the name of freedom.<sup>48</sup> The 1990s were a time of internal struggle for the organization, as its more extreme elements were looking to push it further toward the right and to frame its objectives in more intense tones. By the second half of the decade, the NRA was leaning heavily toward culture wars logic, depicting the struggle over the Second Amendment as an existential conflict concerning the very soul of the nation, with freedom being at stake.<sup>49</sup> Simultaneously, the “gun gap” traced by Mark R. Joslyn began to form during this time, with gun ownership becoming ever stronger indicator of one’s larger political beliefs.<sup>50</sup>

These fractures were present in the gun debates surrounding the concealed carry legislation in 1995. For instance, one reader writing to the *Austin American-Statesman* disagreed with the proposed law, not because they were anti-gun but because they saw it as a dangerous piece of legislation aimed toward eventual gun control. They felt that the NRA had been fooled by gun control advocates into supporting the legislation:

Those who wish to disarm the American citizen are well known for creating a problem and then offering a solution. In this case the problem is the increase in crime. The “solution” to the problem in Texas is to pass a new law (the concealed carry law) which will register gun owners under the pretense of granting them a permit to exercise a right they already have. Over and over again, registration of guns or gun owners has been followed by confiscation of guns. If the American citizens were to lose their First Amendment rights, those rights could be regained by using Second Amendment rights. If the American citizens were to lose their Second Amendment rights, not only would those rights not be regained, but the other rights in the Bill of Rights would be lost in short order.<sup>51</sup>

The writer clothed their argument in the civic language of citizenship. In their view, the concealed carry legislation was seen as the first step toward gun confiscation. The promises of personal protection granted by the law were seen as a ruse to strip a basic right that in turn guaranteed the existence of other rights. The writer argued that the one thing maintaining basic liberties such

48 Melzer, *Gun Crusaders*, 106.

49 Melzer, 73–74.

50 Mark R. Joslyn, *The Gun Gap: The Influence of Gun Ownership on Political Behavior and Attitudes* (Oxford: Oxford University Press, 2020), 1–6.

51 “Ulterior Motives Warning: A Concealed Carry Law is Not What We Need,” *Austin American-Statesman*, March 1, 1995, A8.

as the freedom of speech was the presence of an armed citizenry. This has also been a consistent theme in the larger frame of gun debates, where firearms are depicted as a liberative tool that can thwart tyranny.

This line of thought, which connected guns to defending the nation against threats, was clearly manifest in the 1990s. For example, anger with the NRA for its perceived propensity to compromise with gun control groups was expressed by the Committee of 1776. The “Second Amendment Rally” held in 1994 in Washington, DC began with a declaration: “One statement for the media: If you misquote us, we will sue you. ... And this is our position: No more compromise! This is not about gun control, this is about the Constitution. We will not compromise on the Constitution.”<sup>52</sup> The first speaker, Larry Pratt of the Gun Owners of America, opened with a prayer session that addressed the gathering as patriots: “Since we’re going to spend our day being politically incorrect, so I’ve been asked to begin with a religious note.”<sup>53</sup> Already within the first few minutes of the rally, the group had depicted themselves as the scions of the Founding Fathers (through their name), as protectors of the Constitution rather than political activists (through the statement on their position), and as mavericks and rebels who dared to go against both the media establishment, who would misquote them, and current popular sentiment, which was critical of their sensibilities. Public prayer was portrayed as a transgressive act against “political correctness,” here invoking a term which had found great currency in U.S. cultural conflicts, particularly among conservatives, since the early 1990s.<sup>54</sup>

The speaker continued to forge a linkage to the Founding Fathers by quoting a biblical passage that he noted was incredibly important to them: “When Isaiah told the people of God that the Lord is our judge, the Lord is our lawgiver, the Lord is our king, it is he who will save us.”<sup>55</sup> Pratt argued that the country’s greatness was based around its godliness—its submission to the supreme will of God—and that the Founding Fathers had understood this. He called this the “spirit that settled America and made America great.”<sup>56</sup> Thus, he concluded, understanding the Constitution meant accepting the significance religion had in the imaginations of the Founding Fathers. Ultimately, this meant distrusting governmental bodies, which—the implication went—would try to usurp the role of God as the supreme lawmaker.

52 “Second Amendment Rally,” 1:50–2:10.

53 “Second Amendment Rally,” 2:25–2:35.

54 See, for example, John Lea, *Political Correctness and Higher Education: British and American Perspectives* (New York: Routledge, 2009).

55 “Second Amendment,” 6:50–7:10.

56 “Second Amendment,” 6:50–7:10.

The entire framing of the event in 1994, from the God-centric morality to the group's self-framing as would-be mavericks speaking against the institutional power structure, conformed to the larger themes and topics of the intensifying culture wars across the nation.<sup>57</sup> It also symbolized a larger shift simultaneously taking place in gun politics—shortly after this event, for example, the NRA stepped up its rhetoric by framing gun debates in terms of the culture wars, in order to incite greater furor in its supporters.<sup>58</sup> Religious worldview, history, and guns were fused in a sacred genealogy. Carl Haggard—a Texan lawyer from the Committee for the Bill of Rights—outlined this in his speech at the rally:

History is a river that flows from God. There are the strains and the tributaries of events that God wills or permits to happen. There is the main body of the river of life flowing into the endless sea of time. ... Our Bill of Rights, our head waters of our freedom. From it springs forth the fountain of our liberty. But the Bill of Rights was originally suppressed by the one world order Federalists who controlled that constitutional convention. They were out to create a strong centralized, government, at the expense of the free and independent state and of individual liberty.<sup>59</sup>

Regarding history in terms of a divine origin, Haggard argued that there was a fundamental tension that extended from the founding of the nation to the present day, one between “one world order Federalists” and “freedom-loving Americans.” Later on in his speech, he elaborated:

We can observe, however, from history the sad truth that we do not win every battle against evil just because right is on our side. ... Because you see there was always in history existing sinister forces of evil attempting to enslave our forefathers—and now us again—by taking away our God-given right to keep and bear arms and thereby our ability—and this is the bottom line—our ability to oppose, by force if necessary, those same sinister forces of evil. But what is the evil of which I speak against which we must be prepared to defend? After all, the modern-day federalists over there tell us that they're grabbing our guns to protect us from criminals who might misuse them. We know the fallacy of that argument throughout history. You must learn history! Evil forces have always

57 Hartman, *War for the Soul*.

58 Melzer, *Gun Crusaders*, 73–74.

59 “Second Amendment Rally,” 19:50–20:45.

attempted to disarm law-abiding citizens in the name of crime control and security.<sup>60</sup>

In the historical imaginary constructed by Carl Haggard, the people gathered at the rally were the descendants of the forefathers who had written the Bill of Rights, and they were opposed by modern-day federalists. This included Bill Clinton and other figures they considered to be in favor of gun control, who were linked to the historical faction. Federalists both modern and old were understood here as manifestations of a deeper plot—the totalitarian “one world order,” depicted as “sinister forces of evil” that remained constant over the centuries.

The rally organized by the Committee of 1776 is useful for demonstrating the early ideological maneuvers that would bear fruit for gun rights activism in the coming decades. It was an event suffused with a shared sense of grievance and persecution. The mentions of Bill Clinton and Congress were met by repeated yells of “Treason!” from the audience. The organizer agreed: “That’s how I feel. ... There are two-hundred-six ... traitors in Congress right now.” By implication, to legislate against guns was a treasonable offense—but also a direct threat to the people. The Washington, DC march was mirrored by local rallies organized across the country, including in Austin, and the cultural imagery of Texas was present in the proceedings when Haggard ended his speech with a call to “remember the Alamo.”<sup>61</sup>

Behind the language used at the event and surrounding the 1995 Texas legislation was a proclamation that would be repeated across the timeframe of this study surrounding gun laws: namely, that the Holocaust and the subjugation of the Jewish people in Nazi Germany had been preceded by the confiscation of weapons. This allowed parallels to be forged between the gun control activists of the modern era and the authoritarian forces of the past. A version of this can be found in right-wing commentator Glenn Beck’s book, *Control: Exposing the Truth About Guns* (2013), which was framed as a series of rebuttals to common arguments made by gun control activists. Addressing the question of Nazis and gun control, Beck argued that while it could not be proven that the Holocaust would not have taken place had German Jews been armed, it was the fact that weapons had to be registered that made the Nazis’ operation

60 “Second Amendment Rally,” 27:45–29:08.

61 Suzanne Gamboa, “Angry at NRA, Gun Advocates Plan to Rally Today at Capitol,” *Austin American-Statesman*, July 2, 1994, B3; “Second Amendment Rally,” 41:13–41:15. For an in-depth exploration of the connections between the myth of the Alamo and Texas gun politics, see Laura Hernández-Ehrisman in this volume.



of subjugation and extermination easier. Thus, the act of creating a registry of guns represented a potential first step toward disarmament and oppression.<sup>62</sup> Beck's source for these historical arguments was Stephen Halbrook, for alongside his work on the Founding Fathers' intentions regarding guns, in which they were aligned with the views of conservative politics in the modern era, Halbrook had also extensively argued the connection between gun control and the perpetration of the Nazi atrocities.<sup>63</sup> Already in 1986, he stated that any demand to register guns would count as an "infringement" and that, "throughout history, firearms registration classically has been required as a prelude to confiscation." That the Nazis used gun registration as a tool "to find and execute gun owners" was "well known."<sup>64</sup>

For figures like Stephen Halbrook, the Second Amendment was closely tied to a sense of U.S. exceptionalism, and Nazi Germany was invoked as an alternative historical trajectory that the country could fall toward if it strayed from its core principles. In his 2013 book specifically on gun control in Nazi Germany, Halbrook would define the right to bear arms as something that "reflects a universal and historical power of the people in a republic to resist tyranny."<sup>65</sup> Through the Founding Fathers, gun laws were thus emblematic of the ideals of the U.S. national community. Guns were the thing that separated the United States from authoritarian nations.

In the timeline under study, the next historical question to acquire deep ideological resonance was the extent to which guns were actually part of the lived reality of the Founding Fathers and their contemporaries. This issue became a fervent point of debate in the late 1990s and early 2000s, leading up to the *District of Columbia v. Heller* decision in 2008, a threshold moment in terms of the historical and modern understandings of the Second Amendment. It established that the right to bear arms set in place by the amendment was not linked to the need for a "well-regulated militia"; thus, states could not infringe upon an individual's right to own a gun for purposes of self-defense.<sup>66</sup> In Texas already in 1999, *United States of America v. Emerson* had established the Second Amendment as an individual right, not a collective one. The ruling was on part based on "a long tradition of widespread lawful gun ownership

62 Glenn Beck, *Control: Exposing the Truth About Guns* (New York: Mercury Radio Arts, 2013), 108–15.

63 Beck, 109.

64 Halbrook, "What the Framers Intended," 161.

65 Stephen P. Halbrook, *Gun Control in the Third Reich: Disarming the Jews and "Enemies of the State"* (Oakland, CA: Independent Institute, 2013), xvii.

66 Waldman, *Second Amendment*, xiii–xiv.

by private individuals in this country.”<sup>67</sup> In the context of the originalist reading of the Constitution to determine the meaning of the Second Amendment, the presence of guns in the daily lives of the Founding Fathers and their contemporaries was not merely a historical question but one that determined the larger place of guns in U.S. culture.<sup>68</sup>

An important conservative articulation regarding the issue came from historian Clayton E. Cramer, who had been cited—among others—in the 1999 Texas case and would again appear in the *District of Columbia v. Heller* decision. In between, he was involved with one of the most notable controversies around guns in U.S. history, one which would establish his prominence as a rightwing gun scholar and cement the tenets of pro-gun arguments regarding firearms and the history of the nation for decades to come. Cramer’s *Armed America: The Remarkable Story of How and Why Guns Became as American as Apple Pie* (2006), written specifically to argue the idea that guns were an inalienable part of U.S. history and national identity, was framed around a culture war-centered conflict of historical interpretation.<sup>69</sup>

The conflict in question was based on a specific argument made by historian Michael A. Bellesiles, first in a 1996 article for the *Journal of American History* and later in his *Arming America: The Origins of a National Gun Culture* (2000). Bellesiles contended that U.S. gun culture was not a natural occurrence but instead had been manufactured by the gun industry in the nineteenth century, meaning that guns had not had a notable presence in the everyday culture of the Founding Fathers.<sup>70</sup> This argument had special significance as the originalist interpretation of the Constitution was undergoing a transition at the turn of the 2000s: as the critics of the originalists increasingly underlined that

67 *United States v. Emerson*, 46 F. Supp. 2d 598 (N.D. Tex. 1999), <https://law.justia.com/cases/federal/district-courts/FSupp2/46/598/2488037/>, accessed March 2, 2021. While the ruling was successfully appealed, the appeal decision specifically maintains the interpretation that the Second Amendment protects the individual’s right to keep and bear arms. *United States of America, Plaintiff-appellant, v. Timothy Joe Emerson, Defendant-appellee*, 270 F.3d 203 (5th Cir. 2001), <https://law.justia.com/cases/federal/appellate-courts/F3/270/203/545404/#fn12>, accessed March 2, 2021.

68 It bears mentioning that Adam Winkler has highlighted the possible dissonance between legal interpretations of the Second Amendment and historical, lived reality of U.S. gun culture. He argues that while legal scholars until the 1960s appeared to have little interest in the legal meaning of the Second Amendment, the interpretation of gun ownership as a personal right existed on a quotidian level. See Winkler, *Gunfight*, Chapter 4.

69 Clayton E. Cramer, *Armed America: The Remarkable Story of How and Why Guns Became as American as Apple Pie* (Nashville, TN: Nelson Current, 2006).

70 Jon Wiener, *Historians in Trouble: Plagiarism, Fraud, and Politics in the Ivory Tower* (New York: New Press, 2005), 73–93.

the Founding Fathers were a conflicted group of people who held no uniform views, this second wave shifted the focus away from the thoughts of the Founding Fathers themselves to instead conceive how average contemporaries of the Founding Fathers would have understood them.<sup>71</sup> The proximity and the general relationship that they had with guns therefore held importance.

A roaring controversy erupted around Bellesiles's book when Cramer uncovered inconsistencies and flagrant errors in the way that it had handled its source materials. Emory University—where Bellesiles was tenured—launched an investigation and found him guilty of “falsification.” The prestigious Bancroft Prize awarded to his book was rescinded. Hounded by the media, Bellesiles became a *persona non grata* in the academic world for over a decade.<sup>72</sup> For Cramer and his ideological allies in the pro-gun movement, Bellesiles's disgrace was a resounding victory, demonstrating what they thought to be undeniably true: that their ideological adversaries in politics, media, and the academia were so keen to embrace any historical depiction that suited their general worldviews that they were willing to bypass standard academic rigor. Bellesiles was portrayed as someone willing to fraudulently twist history to suit their own agenda, and it was only through the indefatigable efforts of those like Cramer that sufficient proof was produced that action had to be taken.<sup>73</sup> As a further consequence, the historical questions raised by Bellesiles's book came to be seen as settled: when Pamela Haag released *The Gunning of America: Business and the Making of American Gun Culture* (2016), which focused on a similar historical argument as that made by Bellesiles, Cramer dubbed it “Bellesiles' Arming America Redux,” dismissing its content as a mere rehashing of the earlier disproven interpretation.<sup>74</sup>

In Jon Wiener's history of the politics of academic fraud, he questions whether Bellesiles's errors truly amounted to purposeful fraud, and he suggests that the level of controversy and consequences that Bellesiles faced were

71 Andrew M. Schocket, *Fighting Over the Founders: How We Remember the American Revolution* (New York: New York University Press, 2015), 171.

72 Tom Bartlett, “Michael Bellesiles Takes Another Shot,” *Chronicle of Higher Education*, August 3, 2010, <https://www.chronicle.com/article/michael-bellesiles-takes-another-shot/>, accessed March 16, 2021; “The Bancroft and Bellesiles,” *History News Network*, <http://hnn.us/articles/1157.html>, accessed February 10, 2021.

73 See, for example, Roger D. McGrath, “The American Gun Culture,” *New American*, June 4, 2018, 17–21.

74 Clayton E. Cramer, “Bellesiles' Arming America Redux: Does the Gunning of America Rewrite American History to Suit Modern Sensibilities?” *Southern Illinois University Law Journal* 41, no. 3 (2016): 403–38, <https://law.siu.edu/academics/law-journal/issues/spring-2017.html>, accessed March 16, 2021.

amplified by the ferocity of the contemporary debates into which his book was injected.<sup>75</sup> Rather than representing a case of poor scholarship, Bellesiles was demonized by his critics as a symbol of disgrace for the entire strand of academic literature that questioned the integral nature of guns to the U.S. national experience.

The case of Bellesiles is especially worth noting when considering the temporal imaginaries constructed around the Founding Fathers in contemporary gun debates. The pro-gun argument worked by envisioning its present-day advocates as the spiritual and political heirs of the Founding Fathers. The past and the present had to be in harmony—at least to the extent of the political propositions being advanced, if not the lived contemporary reality. It was therefore of utmost relevance that the Founding Fathers lived with guns, knew guns, and would appreciate guns that would be openly displayed or discreetly carried today. The function of the rightwing temporal imaginaries around guns was to establish this exact point.

### 3 The Solidification of Temporal Gun Imaginaries

So far, this chapter has traced the trajectory of the struggle over the Founders as empty symbols injected with meaning by different parties seeking to instill their own interpretation as the dominant one. In national gun debates, the Founding Fathers were consistently referenced, in particular to bolster conservative, pro-gun positions. Not only were they recreated as historical entities, but they were then overlaid with imaginaries of their own, thereby delineating the boundaries of what they could and would have conceived. By 2015 and the passage of the Campus Carry and open carry legislations, these imaginaries about the Founding Fathers had largely been established and disseminated. For example, when asked how they would describe the Second Amendment to a foreigner, one of the experts interviewed at UT Austin by the Campus Carry research team gave their view of the historical trajectory that had led to the passage of the SB 11 legislation:

The Second Amendment was written when we did not have a standing army in this country. ... The militias, which is in the first clause to that amendment, were to be funded by the state but raised by the citizens—basically a citizen militia. They had the right to have guns to protect

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75 Wiener, *Historians in Trouble*, 73–93.

themselves from foreign enemies and so forth. ... It's never been interpreted this way before, but since 2008 the Heller decision in the Supreme Court separated that clause and said you have the right to have a gun to protect yourself in your home, regardless of whether it is associated with raising a militia. So, it changed the politics. ... [P]eople interpreted that as "go ahead and do stupid stuff with guns," if I can say it that way.<sup>76</sup>

In this way, the current situation is understood as the result of *District of Columbia v. Heller*. Specifically, the way that decision has been widely interpreted is seen as having changed politics and made guns a more regular part of everyday experience. Likewise, the historical significance of firearms, including the Second Amendment and the Founding Fathers, has solidified. Another member of the campus community interviewed by the research team recalled the town hall meetings leading up to the implementation of the law:

There were some real interesting teachable moments. Students who mean well, I presume, but would say real broad political statements like "the Founding Fathers would want us to have the Second Amendment everywhere." Just like that. And then we have [a UT staff member] who goes up and says, "Well, actually, Thomas Jefferson, who founded the University of Virginia, who is one of the sort of foundiest of the Founding Fathers, he banned guns in his own school. So actually we have really concrete evidence that this is not the case."<sup>77</sup>

This quote reveals the conflicting perceptions of history—namely, the historical context presented by the UT staff member and the assumptions that the students had absorbed and held as commonsensical—but, more importantly in the case of the latter, that the temporal imaginary at the root of the *District of Columbia v. Heller* decision seems to have taken hold.

The quote also demonstrates an inherent problem in originalist thinking: the Founding Fathers were not a singular entity with monolithic views regarding everything. Their political goals were frequently in conflict, and the early republic was continually teetering between the ideal of consensus politics on one side and, on the other, growing ideological fractures between varying factions among the founders. One such factor concerned fundamental questions

76 Interview with research team, University of Texas at Austin faculty, April 10, 2018, notes in possession of author.

77 Interview with research team, University of Texas at Austin faculty, April 25, 2018, notes in possession of author.

about the nature of government, such as whether it should have an active role in public life or whether this would be a threat to individual freedom.<sup>78</sup> Some of these early disagreements were so fierce that they inspired Stephen Prothero to argue that the “culture wars” as a model of cultural conflict was not only applicable to tensions arising since the 1960s—as has commonly been argued—but rather that U.S. history comprises a cycle of heated culture wars about the very meaning of the nation, starting from its founding.<sup>79</sup>

In the 2000s, both ends of the political spectrum repeatedly referenced the Founding Fathers in their speeches: the conservative side to reveal a set of timeless principles that could resonate in the present with the annals of history, the liberal progressives to highlight the fundamental promise at the core of the nation still needing to be realized.<sup>80</sup> Throughout the twentieth century, political figures as dissimilar as President Franklin Delano Roosevelt and President Ronald Reagan had realized that the Founding Fathers were largely an empty symbol in people’s minds and could therefore be invoked to support vastly different ideologies.<sup>81</sup>

For conservative gun rights proponents, the *District of Columbia v. Heller* decision was regarded as a victory on this front. It was the culmination of extensive scholarly work by pro-gun activists, who had attempted to separate the two parts of the Second Amendment: namely, that the Founding Fathers had envisioned guns as a form of individual self-protection, not as a tool of communal defense in the form of a militia. Indeed, Halbrook described these efforts as an uphill battle against the prevailing orthodoxy:

Such scholarship was unfashionable at the time [in the 1980s], to say the least. Hatred of gun rights was pervasive in legal academia. Even more significantly, these lawyers were hopelessly out of date in a world dominated by an academic consensus that treated the original meaning of the Constitution as a quaint irrelevancy. What counted was not the Constitution itself but what judges had said in their opinions and what professors at prestigious law schools were urging judges to say in future cases. All of the early scholarship on the Second Amendment was written by practicing lawyers who took seriously the ideal of law as a learned profession.

78 David Sehat, *The Jefferson Rule: How the Founding Fathers Became Infallible and Our Politics Inflexible* (Riverside, NJ: Simon & Schuster, 2015), 3–37.

79 Stephen Prothero, *Why Liberals Win the Culture Wars (Even When They Lose Elections): The Battles that Define America from Jefferson’s Heresies to Gay Marriage* (New York: HarperOne, 2016).

80 Schocket, *Fighting Over the Founders*, 18.

81 Sehat, *The Jefferson Rule*, 123–78.

The self-satisfied *faux* sophisticates in the legal professoriate only started to awake from their dogmatic slumber after Antonin Scalia joined the Supreme Court and began to make originalism respectable once again.<sup>82</sup>

This quote exemplifies a familiar dynamic to those privy to the inner workings of conservative ideology in the United States. Through its history, figures within the conservative ideological movement have sought to portray themselves as outcasts, rebels, and mavericks going against established truths, shattering all expectations in their way.<sup>83</sup> Academia has received special scorn in this narrative, being often seen as the hotbed of radical leftist professors who hold conservative ideas and ideals in disdain.<sup>84</sup> In depicting the rise of pro-gun scholarship on the Second Amendment as a battle of brave individuals daring to go against the established norms, jolting the dormant powers-that-be from their slumber in the process, Halbrook's account is celebratory; in his view, the insurgency succeeded and the pro-gun conservatives were able to shift the legislative paradigms around the Second Amendment coming into 2008.

The triumph of conservative gun activism which led to the Heller decision and paved the way for the legislation discussed in this volume was linked to the rise of the legal philosophy of originalism in the 2000s, starting as far back as the 1980s. Prior to that, it had been a term of disparagement for a "misconceived quest for the original understanding."<sup>85</sup> But adopted by Reagan's Attorney General Edwin Meese III, among others, and framed in a more positive sense, originalism had an appeal in the conservative political sphere. In practice, it promised the legal philosophy necessary to overturn Supreme Court decisions of past years that were despised by conservatives, such as the *Roe v. Wade* decision on abortion rights in 1973.<sup>86</sup> In this case, the argument was that *Roe v. Wade* was based on a woman's "right to privacy," conceived of as a subset of personal liberty and therefore predicated on the spirit rather than the exact words of the Constitution. The originalist view purported by Justice Scalia and

82 Stephen P. Halbrook, *The Founders' Second Amendment: Origins of the Right to Bear Arms* (Oakland, CA: Independent Institute, 2019), viii.

83 See Kevin Mattson, *Rebels All! A Short History of the Conservative Mind in Postwar America* (New Brunswick, NJ: Rutgers University Press, 2008); Nicole Hemmer, *The Messengers of the Right: Conservative Media and the Transformation of American Politics* (Philadelphia: University of Philadelphia Press, 2016); Robin, *Reactionary Mind*, 55–57.

84 Hartman, *War for the Soul*, 222–52.

85 Paul Brest, "The Misconceived Quest for the Original Understanding," *Boston University Law Review* 204 (1980): 204–38.

86 Cass R. Sunstein, "Originalism," *Notre Dame Law Review* 93, no. 4 (2018): 1673–74.

others stressed that this was a subjective interpretation, and that the Constitution contained no explicit mention of a right to abortion.<sup>87</sup>

According to Andrew Schocket, the conservative approach of originalism “contains all the elements of essentialism: the notion of history as a knowable, fixed truth; the founders as the ultimate authorities on civic affairs; and for many, though not all of its practitioners, a focus on individual liberty and what they call ‘traditional values.’”<sup>88</sup> In this way, it represents a legal interpretation deeply invested in crafting historical imaginaries, needing to conceive the Founders as subjects across history and as thinking in a uniform and unified manner applicable and apparent to the modern mind. Thus, history was regarded as a reservoir of established wisdom that did not require interpretative action to access.

By 2015, the tone of these debates had become established parts of political language. The level of heated rhetoric around the debates was noted with disdain, for instance, by Ken Herman of the *Austin American-Statesman*, who believed that the passion some of the pro-gun activists felt for the Open Carry and Campus Carry bills were turning civics into an “extreme sport.”<sup>89</sup> Although personally in favor of pro-gun legislation, Herman felt uneasy with the level of rancor in firearms debates.<sup>90</sup> This emerged, for example, around another bill introduced in the Texas State Senate in 2015 concerning “constitutional carry,” loosely defined as “not needing any form of permission, from any government, to exercise your natural born right to defend yourself.”<sup>91</sup> The rationale here is that carrying firearms is a right that the state has no provision to permit, regulate, or deny.<sup>92</sup>

The proposed legislation was followed by extremely stark language, such as the suggestion by Kory Watkins of Open Carry Tarrant County that opposition to constitutional carry was a form of treason that could be punishable by death.<sup>93</sup> Again, the will of the Founders was seen as enshrined in the Constitution and going against it was treasonous activity. This statement also revealed

87 Robert Cassidy, “Scalia on Abortion: Originalism... But, Why?” *Touro Law Review* 32, no. 4 (2016): 741–46.

88 Schocket, *Fighting over the Founders*, 168.

89 Ken Herman, “Civics as an Extreme Sport,” *Austin American-Statesman*, February 13, 2015, A1.

90 Herman, A1.

91 USCCA, “What Constitutional Carry Means,” YouTube video, 3:55, February 6, 2014, [https://www.youtube.com/watch?v=LCWONNa\\_ghU](https://www.youtube.com/watch?v=LCWONNa_ghU), accessed March 12, 2021.

92 On the view that bearing arms is a God-given right, see Albion M. Butters in this volume.

93 Chuck Lindell, “Hearing Set on Gun Rights,” *Austin American-Statesman*, February 10, 2015, A7.



that for some, the Open Carry legislation was only a first step in the greater path toward Constitutional Carry. For instance, the website of the advocacy group Open Carry Texas reported: “As of January 1, 2016, Texas moved an inch closer to the constitutional principles both the state and nation were founded upon. While we were successful in getting licensed open carry passed, our ultimate goal will always be constitutional carry.”<sup>94</sup> Thus, both Open Carry and Campus Carry were recognized as stepping stones toward realizing the country’s core constitutional principles.

Calling originalism a form of legal fundamentalism, David Sehat has argued that its difference from other legal philosophies is not a question of interpretation but rather a fundamental break in the conceptualization of time. Accordingly, he outlines the disagreement between historians and originalists—the former being most prominently represented by Saul Cornell, the latter by Lawrence B. Solum—to argue that the divide lies in a basic understanding of the relationship between meaning and historical context. Defending the originalists, Solum finds that the meaning of historical legal texts can be arrived at without considering the historical factors that surround it. This method denies time, suggesting that there is no temporal barrier separating the modern reader from the meaning of past texts.<sup>95</sup> This relationship to history is similar to what Jill Lepore has discussed in terms of the Tea Party movement, which arose around the same time as the *District of Columbia v. Heller* decision: namely, that it was not a retelling but a reenactment of history, such that the movement was driven by “historical fundamentalism” in which the past was immutable and ageless and thus readily accessible in the present.<sup>96</sup>

For this reason, I have framed my discussion primarily around temporal imaginaries rather than historical ones. If historical imaginaries consist of creating constellations of meaning around symbols and events in, across, and through history, then temporal imaginaries use these constellations to imagine one’s relationship to time more generally. Temporal politics around guns created an immediate temporal bridge between the distant past and the present, directly transplanting the dynamics and issues of a bygone era into the modern day. Furthermore, the distinction between the past and the present was essentially eroded. Following François Hartog, who has argued that a key

94 “The Law,” Open Carry Texas, <http://www.opencarrytexas.org/the-law.html>, accessed January 15, 2021.

95 David Sehat, “On Legal Fundamentalism,” in *American Labyrinth: Intellectual History for Complicated Times*, eds. Raymond Haberski, Jr. and Andrew Hartman (Ithaca, NY: Cornell University Press, 2018), 31–33.

96 Jill Lepore, *Whites of Their Eyes: The Tea Party’s Revolution and the Battle over American History* (Princeton, NJ: Princeton University Press, 2010), 7, 16.

feature in an individual's self-conception as a historical being is the existence of estrangement—or “a distance between self and self,” history manifests in the recognition of distance between oneself and another historical period.<sup>97</sup> In the temporal imaginaries forged around guns, this distance often vanished: the struggles of the Founding Fathers against tyranny were the same struggles faced by modern gun rights activists. Simultaneously, the present was turned into a constant, unending crisis, where each moment is an existential threat and one needs to be prepared to fight tyranny at a moment's notice.

#### 4 Conclusion

Thinking about the Founding Fathers in the context of contemporary U.S. gun debates is rarely about history. True, they are historical figures, but the ways they have been used are more about the present and the future than the past. In the examples cited in my discussion, history has a utilitarian function, serving to either reinforce or question modern tendencies by pointing toward ruptures or continuations in the passage of time. Ultimately, the question repeatedly presented in these debates concerns a singular principle: if one were to extrapolate a nation's future based on the political ideals of the Founding Fathers, would the end result be similar to the modern-day United States or not? The imaginaries constructed on the basis of the present, loaded with certain ideological principles which determined how different issues received their contemporary meaning, are thus contrasted against the imaginaries superimposed on the minds of the Founding Fathers.

Often, those on both sides of the gun debate felt that these imaginaries differed, if for opposite reasons. For the anti-gun factions, those on the pro-gun side had hijacked the Second Amendment, instilling it with an individualist meaning it was never meant to have and using it to justify the legality of weaponry that the Founding Fathers could not have conceived. For the pro-gun side, it was the anti-gun groups that had seized the discourse in the past, and modern gun laws were only now inching toward the original vision of the Founding Fathers. According to a more extreme interpretation, contemporary battles about guns signified deep struggles similar to what had been experienced by the Founding Fathers themselves. In this type of historical reenactment, the

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97 François Hartog, *Regimes of Historicity: Presentism and Experiences of Time*, trans. Saskia Brown (New York: Columbia University Press, 2015), xvi; Reinhart Koselleck, *Futures Past: On the Semantics of Historical Time*, trans. Keith Tribe (New York: Columbia University Press, 2004), 93–104.

pro-gun forces saw themselves as direct heirs of the Founders, fighting for the ideals of their ancestors against oppressive forces symbolized by their political adversaries.

The ideological chasms revealed were wide, and they corresponded to conflicting worldviews about the very nature of modern society. The Founding Fathers were used to create and mobilize distinct temporal imaginaries—instilled with a sense of what the nation was *about*—for the debates surrounding guns. Recognizing the incongruences of these different imaginaries is essential to understanding the discord that dominates the U.S. political landscape today. Trends in the federal debates were replicated and amplified at the state level in Texas, but in some cases what happened in Texas informed and anticipated the national conversation. Observations specifically of Texas media in the 1990s reveal the active process by which firearms legislation was connected to the ideological imaginaries of the culture wars, which served as preambles to conflicts that would erupt at the federal level in the coming years. The temporal imaginaries of Texas gun politics thus used the Founding Fathers to naturalize certain conceptions of U.S. nationhood and elevate Texas as the place where the basic promise of the nation could and would be fulfilled.

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