Constitutional Tales of Violence: Populists, Outgroups, and the Multicultural Landscape of the Second Amendment

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Constitutional Tales of Violence: Populists, Outgroups, and the Multicultural Landscape of the Second Amendment

David C. Williams*

Traditionally, populists have claimed the Second Amendment as their particular cultural property; by contrast, outgroups and elites have found the Amendment somewhat culturally alien. Recently, some outgroup members have argued that their groups ought to embrace the Amendment because the right to keep and bear arms can be a valuable way of resisting populist oppression. This Article explores this changing multicultural landscape of the Second Amendment. It recognizes that in particular instances and in the short term, outgroups might need to arm themselves against hate violence. It argues, however, that only a consensus culture on the use of violence will provide any real protection to outgroups in the long run. The new outgroup theories of the Amendment frustrate the creation of such a culture because they rest on a constitutional vision of decentralized violence, premised on the inevitability of mutual suspicion and the fundamentality of relating through arms. Such a regime will ultimately benefit populists more than outgroups. In other words, in the long run, these constitutional tales of violence will actually be counterproductive to the goal of outgroup safety that they seek to secure.

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III. OUTGROUPS, POPULISTS, AND CONSTITUTIONAL VIOLENCE
For some time, the Second Amendment has led a dual life. On one hand, commentators have approached it as a formal rule of law. In this guise, some have interpreted it as protecting arms bearing only within a state militia; others have interpreted it as protecting an individual right to keep and bear arms, for self-defense, hunting, or even resistance to government. Both schools of thought, however, share one conviction: the right to arms does not peculiarly belong to any subculture, any identity group, any race, religion, or gender. On the other hand, commentators have also approached the Amendment as a cultural document. In this guise, the Amendment does have a particular constituency. The “gun culture” has embraced the provision as its special property, interpreting it as a personal right to arms, while other groups have been notably cooler toward the provision.

The gun culture is generally described as masculine, rural, conservative, and nativist—in other words, the general population out of which American populist movements have traditionally grown. Like other populisms, the gun culture has defined itself in opposition to two enemies. First, the culture has overtly opposed liberal, urban, educated, and cosmopolitan elites who would take away its guns; second, the culture has also opposed—overtly in the past, less overtly in the present—various outgroups, including Jews, feminists, and African-Americans. For their part, these various outgroups have generally agreed that they find the Second Amendment, with its implicit threat of private violence, alien to their cultures. Indeed, the Second Amendment has been the site of a conflict that approaches a culture war.

In recent years, however, the cultural landscape of the Second Amendment has become more complicated. Certain Jews, feminists, and African-Americans have begun to argue that outgroups should embrace the Second Amendment, and that the experience of outgroups as oppressed minorities provides a reason to interpret the Amendment as a personal right to arms. In brief, these theorists argue that “if you can’t join ‘em, then fight ‘em.” Because part of America will always be armed and hostile toward outgroups, outgroups should become armed and hostile themselves, using the masters’ tools to dismantle the
masters’ houses. In short, the Second Amendment has become multicultural: populists claim it for themselves, but so do some outgroup members.

Although relatively few in number, these new outgroup theorists of the Second Amendment pose a question that is of enormous, perhaps ultimate, significance to a constitutional republic. In theory, the Constitution promises a scheme of law that is tolerant toward outgroups, protective of individual rights, and resting on the consent of the governed. In practice, however, whether America delivers on those promises depends on the constitutional organization of force. If the means of violence resides in the wrong hands, then the promises will amount to nothing. These outgroup theories of the Second Amendment maintain that America will most likely fulfill its constitutional promises if the means of violence is broadly diffused through the population—and so we should read the Amendment to protect an individual right to keep and bear arms.

This Article considers how we might best interpret the constitutional organization of violence so as to protect outgroups. To do this, the Article analyzes the relationship between outgroups and populists in the new multicultural landscape of the Second Amendment. After surveying the terrain, it argues that culturally, the Second Amendment lends itself most effectively to populist interpretations, because conditions of decentralized violence generally favor armed, violent, and exclusionary populist movements. Outgroup self-arming may in the short term provide a measure of safety, but in the long run, interpreting the Constitution to require decentralized violence will impede the formation of a consensus culture that extends protection to all.

Part I describes the traditional landscape of the Second Amendment. Some commentators have approached the Amendment as an acultural formal rule, as a protection either for state militias or for abstract individuals connected to no particular identity group. In practice, however, the Second Amendment has worn very distinctive cultural clothing. Claiming to be the legatees of the Founders and therefore the true American people, members of the gun culture have adopted the Amendment as the central icon of their vision of America. By contrast, both urban elites and outgroups have rejected the Amendment as alien to their respective cultures.

Part II describes the recent adoption of the Amendment by members of three outgroups—Jews, feminists, and African-
Americans. These outgroup theories share two features. First, they argue that, from the perspective of their respective groups with their history of victimization, the Second Amendment should best be interpreted as protecting a personal right to arms, so that group members can arm themselves against private and public hate violence. Second, they argue that the Second Amendment projects a social world that is fragmented into hostile identity groups; for that reason, outgroup members need a personal right to arms. As a result, although these theories seek to guarantee an individual right to arms, they contemplate that individuals will use their arms in highly political ways. As members of identity groups, they will—severally and collectively—resist attacks by members of other identity groups. In the long run, such self-defense efforts will not only protect individuals; they will also help break the power of anti-Semitism, misogyny, and racism.

Part III analyzes these outgroup theories on their own terms. By way of internal critique, it considers whether interpreting the Second Amendment as an individual right will help to protect outgroups. All of the outgroup theories argue for a scheme of decentralized violence—because the state is incompetent or oppressive, outgroups will flourish best when everyone is armed, allowing outgroups to defend themselves. In fact, however, under conditions of decentralized violence, outgroups typically suffer because such conditions generally encourage and benefit angry populist movements. Outgroup theorists may respond that although decentralized violence may be bad for outgroups, centralized control of violence would be even worse, because the state would fail to protect, or would actively oppress, them. And indeed, these theorists make a persuasive case that outgroups would be unwise to repose perfect trust in the state. For that reason, it might be prudent for outgroup members to arm themselves against the present threat of hate violence, and it might be good policy for the state to permit them to arm themselves.

Because much of this Article is a critique of these outgroup theories, let me reemphasize this point: I am not arguing that as a matter of prudence and policy, outgroup members should go without

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1. At least one gay organization in New York City has also embraced the right to arms as a response to gay bashing. See Alisa Solomon, Fired Up: Should Gays Carry Guns?, VILLAGE VOICE, Nov. 27, 1990, at 43, 43-44. Regrettably, I have been unable to obtain material explaining their interpretation of the Amendment in detail. I also have personal knowledge that some militant Native Americans are also great believers in the Amendment as a personal right to arms. Again, however, I have not been able to find adequate documentary evidence of their view.
guns. Instead, I offer a critique of these outgroup theories, not as counsels of prudence, but as constitutional prescriptions—as constitutional tales of violence. The outgroup theorists ultimately leave outgroups in a hopeless situation—they must choose between decentralized violence, with its threat of private oppression, or centralized violence, with its threat of public neglect or oppression. Outgroups need to strive for a more hopeful third option—a consensus culture that is not filled with hatred. In the absence of such a culture, outgroups will inevitably suffer, no matter who controls the means of violence. These outgroup theories of the Second Amendment, however, frustrate the development of such a culture. The theories do not merely urge outgroups to take up arms against a world presently filled with hatred; they also argue that the Constitution itself assumes that the world will always be filled with hatred. For that reason, according to outgroup theorists, the Second Amendment guarantees to outgroups a permanent right to arms—their ultimate hope for safety in an unsafe world.

We define our hopes and dreams, in part, through the constitutional tales that we tell. The constitutional tales of violence told by these outgroups offer no possibility of redemption; they tell us that we can realistically hope for no more than the present. In so doing, they deny to the Constitution one of its most important roles—that of an ideal of social justice which we may never realize but toward which we are commanded to aspire. Outgroups have always needed the Constitution to fill that role, and they still do, precisely because of the rising tide of hate violence. Angry and exclusive populists may rest content with a fragmented and violent social world because such conditions favor their dominance. Outgroups, by contrast, may prudentially arm themselves in recognition of the present threat, but if they wish for safety, they can never stop dreaming of a better day.

I. THE TRADITIONAL LANDSCAPE OF THE SECOND AMENDMENT

A. The Formal Second Amendment

Traditionally, theorists of the Second Amendment have held two different positions on the provision's formal meaning. First, the states'-rights view places primary emphasis on the introductory clause of the Amendment, "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." In this view, that introductory clause explains the purpose of the Amendment—to protect state militias so that they may resist federal tyranny. Importantly, for those of this position, the Amendment does not convey an individual right to arms for self-defense, hunting, or any other purpose.

By contrast, the individual rights position places primary emphasis on the latter part of the Amendment. They point out that the provision protects a right of "the people," not the state governments, and they further maintain that in the late eighteenth century, the unorganized militia included every male of arms-bearing age. Proponents of this view acknowledge that the Amendment specifies a "well regulated Militia," but they argue that "well regulated" means "well trained," rather than "government-controlled." The Framers of the Amendment believed in the right to arms both because an unorganized militia might need to resist tyrannical government and because individuals possess a right to personal self-defense. Thus, the Amendment conveys the right to bear arms upon all individuals, not a state body like the militia.

Elsewhere, I have offered a third interpretation that combines elements of both positions. In my view, the purpose of the Amendment was to allow the body of the people to make a revolution against tyrannical government. In the Framers' minds, any such revolution would have to be made by the people as a whole, rather than a faction, so that the revolution would be dedicated to the common good, rather than the partial good of a few. For that reason,

5. See JOHN HART ELY, DEMOCRACY AND DISTRUST: A THEORY OF JUDICIAL REVIEW 94-95, 227 n.76 (1980).
7. See Williams, supra note 2, at 558.
9. See Williams, supra note 2, at 558-59.
11. See Williams, supra note 2; David C. Williams, The Militia Movement and Second Amendment Revolution: Conjuring with the People, 81 CORNELL L. REV. 879 (1996).
12. See Williams, supra note 11, at 892.
13. See id. at 904-05.
the Amendment contemplated that the right to arms would belong to the whole of the citizenry—just as the individual rights view maintains.\textsuperscript{14} For the Framers, however, the citizenry must be civic republican in nature; it must exhibit a high degree of consensus and civic virtue.\textsuperscript{15} Importantly, it must not be a collection of atomistic individuals with radically different ends, desires, and values.\textsuperscript{16} Otherwise, any revolution will turn into vicious civil war, rather than a united campaign against erring government. For that reason, for the Amendment to make sense on its own terms, the right to arms may be possessed only by a civic republican citizenry.\textsuperscript{17} In other words, the right to arms does belong to every individual citizen, but only if they are united into a coherent revolutionary people. As I do not believe that Americans presently comprise such a citizenry, I do not believe that the Amendment applies to modern conditions, by its own frame of reference.\textsuperscript{18}

These formal views thus all disagree on important substantive matters, and the disagreement is often quite rancorous.\textsuperscript{19} All of these views, however, share important features. They rest on purportedly universal and objective natural rights of self-defense and revolution, and they assign those rights to abstract individuals, not to groups or individuals defined by their religion, gender, or race. For example, the individual rights view offers a basically liberal/Lockean analysis. All individuals possess a natural right to self-defense, against private parties and tyrannical governments. That right is not a matter of conventional values, particular discourses, or cultural traditions; rather, it is objectively true. In this sense, the Second Amendment did not create a right to arms; it merely recognized a preexisting natural right. For the same reason, the right belongs to all individuals \textit{qua} individuals, regardless of their backgrounds.\textsuperscript{20} In discussing the right to revolution in particular, the individual rights view assumes that Americans constitute a homogeneous, united people capable of making a unified revolution, rather than a severely divided

\begin{itemize}
\item \textsuperscript{14} \textit{See id.} at 904-22.
\item \textsuperscript{15} \textit{See id.} at 906-09.
\item \textsuperscript{16} \textit{See id.} at 904.
\item \textsuperscript{17} \textit{See id.} at 904-09.
\item \textsuperscript{18} \textit{See Williams, supra note 2, at 554}; Williams, \textit{supra note 11}, at 952.
\item \textsuperscript{19} \textit{See Andrew Jay McClurg, The Rhetoric of Gun Control, 42 AM. U. L. REV. 53, 57-59 (1992).}
\item \textsuperscript{20} \textit{See Stephen P. Halbrook, That Every Man Be Armed: The Evolution of a Constitutional Right 24-32 (1984); Kates, supra note 10, at 232-35; Lund, supra note 8, at 117-21; Reynolds, supra note 10, at 466-71.}\
\end{itemize}
population. The states' rights view is somewhat less universal in that the right to arms belongs only to members of state militias, not to all individuals. It assigns the right to militia members, however, in their status as abstract citizens, not as concrete human beings with specific religious, gender, and racial identities. It traces the Amendment, moreover, to a general right to resist tyranny, rather than to anything less universal. My own view is similar in that it bases the right to bear arms on a natural right to resist revolution, and it assigns the right to a united, homogeneous citizenry, not to one riven by religious, gender, and racial wars.

Considered thus as a set of formal propositions, the Second Amendment should be seen not only for what it is, but also for what it is not. First, it is not the cultural property of a particular group in American society. Second, it envisions the social world as composed of deracialized, degendered citizens or individuals, not as a highly fractured collection of particular cultural identities.

B. The Cultural Landscape of the Second Amendment

1. The Gun Culture

If the formal Second Amendment exhibits all of these characteristics, there is nonetheless a very different way to approach the Second Amendment—as a primary cultural text in an ongoing Kulturkampf. So considered, the Amendment is not a culturally neutral rule but the central constitutional provision for a special constituency—the so-called gun culture. Thus, arguments about gun control and the Second Amendment are not just arguments about guns; rather, they are arguments about a whole collection of values, for which guns serve as a symbol. The national discussion on the Amendment and gun control is hence marked by uncommon rancor, because the participants are arguing about the value of different ways of life.

21. See Williams, supra note 11, at 911-15.
22. See, e.g., Ehrman & Henigan, supra note 6, at 33-35.
23. See id.
24. See id.
25. See Williams, supra note 2, at 577-79; Williams, supra note 11, at 904-11.
26. As autobiographical revelation seems to have become the norm in the field of Second Amendment studies, to reveal possible authorial bias, let me offer the following information. I grew up with guns and the gun culture. I have owned guns all my life, and I will probably continue owning them as long as the law allows. I do not believe that guns are inherently evil. I am, however, profoundly weary and suspicious of the culture's claim to superior virtue.
Some years ago, B. Bruce-Briggs offered what has become the classic exposition of this cultural battlefield.\textsuperscript{27} Because of its influence and accuracy, it is worth quoting at some length:

[U]nderlying the gun control struggle is a fundamental division in our nation. The intensity of passion on this issue suggests to me that we are experiencing a sort of low-grade war going on between two alternative views of what America is and ought to be. On the one side are those who take bourgeois Europe as a model of a civilized society: a society just, equitable, and democratic; but well ordered, with the lines of responsibility and authority clearly drawn, and with decisions made rationally and correctly by intelligent men for the entire nation. To such people, hunting is atavistic, personal violence is shameful, and uncontrolled gun ownership is a blot upon civilization.

On the other side is a group of people who do not tend to be especially articulate or literate, and whose worldview is rarely expressed in print. Their model is that of the independent frontiersman who takes care of himself and his family with no interference from the state. They are “conservative” in the sense that they cling to America’s unique pre-modern tradition—a non-feudal society with a sort of medieval liberty writ large for every man. To these people, “sociological” is an epithet. Life is tough and competitive. Manhood means responsibility and caring for your own.

This hard-core group is probably very small, not more than a few million people, but it is a dangerous group to cross. From the point of view of a right-wing threat to internal security, these are perhaps the people who should be disarmed first, but in practice they will be the last . . . . They consider themselves no threat to anyone; they are not criminals, not revolutionaries. But, slowly, as they become politicized, they find an analysis that fits the phenomenon they experience: Someone fears their having guns, someone is afraid of their defending their families, property, and liberty. Nasty things may happen if these people begin to feel that they are cornered.\textsuperscript{28}

Historians Lee Kennett and James LaVerne Anderson offered a similar analysis:

The gun, then, is part of a whole series of traditional attitudes about government, society, and the individual. They run, like so many threads, through the whole tapestry of the national past. In its essence, the gun controversy is a struggle between these attitudes and new ones. The city has spawned the new and negative view of the gun; rural and

\textsuperscript{27} See B. Bruce-Briggs, The Great American Gun War, reprinted in THE GUN CONTROL DEBATE: YOU DECIDE 63 (Lee Nisbet ed., 1990) [hereinafter THE GUN CONTROL DEBATE].

\textsuperscript{28} Id. at 84.
small town America tends to hold to the older, more positive view. There is also evidence of cleavage along class lines.

...[T]he gun controversy [is] a skirmish in the larger battle over the nation's cultural values, a battle in which "cosmopolitan America" is pitted against "bedrock America."... Cosmopolitan America foresees a new age when guns and the need for them will disappear; bedrock America conceives of it as 1984. Cosmopolitan America has always been concerned about its international image; bedrock America has always been nativist.

After examining the writings of the gun press at length, another analyst summarizes the themes of the gun culture thusly: (1) "The gun owner is a patriot"; (2) "The gun owner is social"; (3) "The gun owner appreciates nature"; (4) "The gun owner is able to survive through his weapons"; and (5) "The gun owner respects tradition and the teachings of his elders."

Finally, sociologists James D. Wright, Peter H. Rossi, and Kathleen Daly offer a similar characterization:

The values of this [gun] culture are best typified as rural rather than urban: they emphasize independence, self-sufficiency, mastery over nature, closeness to the land, and so on. Within this culture, the ownership and use of firearms are both normal and normatively prescribed, and training in the operation and use of small arms is very much a part of what fathers are expected to provide to their sons—in short, this training is part and parcel of coming of age.

2. The Gun Culture's Enemies: The Liberal Elite

Both partisans and enemies of the gun culture in America thus agree on one point: a distinctive gun culture does exist, and it is at the center of intense cultural division. There are, however, multiple ways to describe the enemies of the gun culture. One way characterizes the enemy as the liberal power-elite that would take away the gun

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32. Perhaps the most prominent academic partisan is William R. Tonso, a sociologist at the University of Evansville. See, e.g., William R. Tonso, A View from Inside the Gun Culture, in The Gun Culture, supra note 30, at 7.
33. Perhaps the most prominent opponent was the late historian Richard Hofstadter. See, e.g., Richard Hofstadter, America as a Gun Culture, in The Gun Control Debate, supra note 27, at 25.
culture's guns. This characterization emphasizes several fault lines. The first is geographic. The gun culture is predominantly rural and small-town, and its enemies are predominantly urban. Moreover, the South would appear to be a special center of the gun culture. The second fault line is ideological. Cosmopolitan America believes in bureaucratic rationality and state authority, and bedrock America believes in armed self-reliance. The third fault line is class. The gun culture is predominantly working class, its enemies predominantly professional and upper-middle class. The fourth fault line involves internationalization. The gun culture tends toward nativism, suspecting foreign ideas, while its enemies welcome them. The fifth fault line involves control of the production of knowledge. The gun culture believes that its enemies in the media and the academy have created a stereotyped image of gun owners. The sixth fault line is chronological. The gun culture sees itself as the preserver of traditional American values, its enemies as the proponents of liberal new ideas, especially collectivism.

In short, in this description, the cultural landscape of the Second Amendment is divided between bedrock and cosmopolitan America.


35. Some sociologists have argued that the South exhibits a distinctive subculture of violence—a set of family-transmitted values that glorifies violence. See Raymond D. Gastil, Homicide and a Regional Culture of Violence, 36 Am. Soc. Rev. 412 (1971); Sheldon Hackney, Southern Violence, in The History of Violence in America: Historical and Comparative Perspectives 505 (Hugh Davis Graham & Ted Robert Gurr eds., 1969). Others have contested this claim, arguing that the South's rural geography, rather than any distinctive culture, accounts for its gun-loving ways. See Wright et al., supra note 31, at 109-12. In either event, the South is plainly a particular center of the gun culture. Per capita, Southerners own more arms, see id. at 106-07; Bureau of Justice Statistics, U.S. Dep't of Justice, Sourcebook of Criminal Justice Statistics—1987, at 169 tbl.2.50 (Timothy J. Flanagan & Katherine M. Jamieson eds., 1988) [hereinafter Sourcebook]; Wright & Marston, supra note 34, at 95, and commit more violent crimes than other Americans, see David B. Kopel, The Samurai, the Mountie, and the Cowboy: Should America Adopt the Gun Controls of Other Democracies? 159 (1992); Bruce-Briggs, supra note 27, at 80, and Southern politicians vote against gun control in greater percentages, see Balof, supra note 30, at 153-54; Hofstadter, supra note 33, at 33.

36. See supra text accompanying note 29.

37. See Wright & Marston, supra note 34, at 95-99. In fact, while the gun culture may be concentrated in the working class, gun ownership is concentrated in the middle and upper middle classes, no doubt because those classes have the means to purchase guns. See Sourcebook, supra note 35, at 169 tbl.2.50; Wright et al., supra note 31, at 107-08; Wright & Marston, supra note 34, at 95-97.

38. See supra text accompanying note 29.

39. See infra note 44 and accompanying text.

40. See supra text accompanying notes 28-29.
In describing the landscape this way, many commentators emphasize the relative powerlessness of the gun culture.\textsuperscript{41} Today, the culture feels embattled, distant from the centers of power, and disdained by an urban elite.\textsuperscript{42} Thus, Sanford Levinson writes:

For too long, most members of the legal academy have treated the Second Amendment as the equivalent of an embarrassing relative . . . . Those of us who agree with [an] emphasis on the desirability of encouraging different "voices" in the legal conversation should be especially aware of the importance of recognizing the attempts of [gun culture members] to join the conversation . . . . [S]urely the call for sensitivity to different or excluded voices cannot extend only to those groups "we" already, perhaps "complacent[ly]," believe have a lot to tell "us."\textsuperscript{43}

Wright, Rossi, and Daly hit the same note:

To members of the gun subculture . . . , the indictments of gun control advocates must appear to be incomprehensible, if not simply demeaning. We should not be surprised to learn that they may resent being depicted as irresponsible, nervous, [and] potentially dangerous . . . . Indeed, one can only begin to understand the virulence with which gun control initiative[s] are opposed in these quarters when one realizes that what may be at stake is a way of life.

. . . .

A critical issue in modern America is whether the doctrine of cultural pluralism should or should not be extended to cover the members of the gun subculture.\textsuperscript{44}

3. The Gun Culture’s Enemies: Outgroups

In this map of the Second Amendment’s cultural landscape, outgroups as such do not overtly make an appearance. The gun culture’s enemy is an urban elite that, on its face, is not associated with

\begin{footnotes}
\footnote{41. See, e.g., Levinson, \textit{supra} note 10, at 658-59.}
\footnote{42. See id.}
\footnote{43. \textit{Id.} (footnote omitted) (alteration in original).}
\end{footnotes}
a particular religion, gender, or race. Indeed, to the extent that any bloc appears as an outgroup, it is the gun culture itself, powerless and reviled by those in power.

It is possible, however, to observe a different division in the cultural landscape. The gun culture—as part of bedrock America—has always proudly proclaimed itself to be the voice of the true American people. In this self-image, the culture is not an embattled outgroup, but rather the very definition of 100% Americanism. Correlatively, the enemies of the gun culture include not merely urban elites, but everyone who would contest that self-image. This definition embraces outgroups like Jews, feminists, and African-Americans, who would challenge or complicate traditional notions of American identity.

If members of the gun culture today feel embattled, they have not always felt so. Indeed, traditionally, these Americans have seen themselves as the populist defenders of the establishment, the forces of law, order, and authority. As such, members of the gun culture were responsible for policing “deviant” elements within American society. Tracing the origin of the modern gun culture, Kennett and Anderson explain:

[In the development of American society the enemy became internal. Society felt threatened by criminals, ethnic groups, racial groups, rioters, and malcontents.... Violence became more closely associated with the use of firearms.... The Americans of the nineteenth century became armed individuals as a reaction to the increasing diversity and complexity of their society.]

In that environment, pervasive was the idea that the gun helped preserve the social fabric of the nation, “the establishment.” Those who were not in that establishment, notably slaves and Indians were the only people who had no business being armed. Even if they were, their cause was hopeless, for they would be outgunned.... Perhaps this was not the best solution, but it was a distinctly American one, incorporating the idea that the gun is its own antidote.... Elsewhere the armed masses remained a vision of revolutionaries. In America, by a curious inversion, they became a symbol of order and a conservative totem.

45. See KENNETT & ANDERSON, supra note 29, at 163-64.
46. See id.
47. Id.
48. Id. at 251-52.
Richard Hofstadter similarly writes, "[N]in the historic system of the South, having a gun was a white prerogative . . . . [and] an important symbol of white male status."59

In his massive three-volume study of the myth of the frontier, Richard Slotkin exhaustively examines the way that myths of violence have supported dominant groups and subordinated outgroups.50 In particular, he argues that the myth of the frontier—that America takes its special character from its frontier origins—has been one of the central organizing stories of American popular culture.51 Primary components of the myth of the frontier are "regeneration through violence" and "savage war."52 According to this mythology, Americans have achieved progress by separation from civilization on the frontier, regression to a more primitive state, and then redemption by means of violence.53 The most common form of such regeneration is the "savage war": "[I]neluctable political and social differences—rooted in some combination of 'blood' and culture—make coexistence between primitive natives and civilized Europeans impossible on any basis other than that of subjugation. . . . [B]ecause of the 'savage' and bloodthirsty propensity of the natives, such struggles inevitably become 'wars of extermination.'"54 These myths thus originated in the European experience with Indians,55 but later Americans used them as a favorite framework to explain the need to deal violently with resistance of any kind—labor unrest, class warfare,56 African-American unrest,57 the Vietnam War,58 and the drug war.59 In every case, this national mythology provided a rationale for white male
Even in its liberal form, the traditional Myth of the Frontier was exclusionist in its premises, idealizing the White male adventurer as the hero of national history.\(^{60}\)

To this day, the gun culture often portrays itself not as one culture among many but as the true, authentic, and exclusive American culture. This self-portrait is most vicious among members of the militia movement. As I have argued elsewhere, militia writers interpret the Second Amendment as conferring a right to revolution on a unified American people composed of people like themselves and excluding a variety of others—blacks, Jews, secularists, internationalists, non-libertarians, etc.\(^{61}\) That self-portrait, moreover, is not limited to the militia fringe; even moderates in the gun culture describe it as the quintessence of the American experience. Thus, Eugene Balof writes: "Bearing arms is thus seen as not only a defense of the nation, but more importantly, the possession, use, and interest in arms is seen as a uniquely American... trait. The gun owner is an American just as the American is a gun owner."\(^{62}\)

Even law review writers identify the gun culture with a truer or more fundamental American culture. Most often, these writers argue that the gun culture is the legitimate descendant of the Framers’ worldview, and gun culture opponents are therefore cultural auslanders.\(^{63}\) In arguing that the right to arms should be protected through the Ninth Amendment, Nicholas Johnson states: "By many accounts the framers envisioned a rural agrarian based America.... [W]e can usefully ask whether disarmament advocacy is driven by an urban vision that exalts luxury at the expense of individual liberty. To the degree it is, it may be in conflict with our core constitutional values."\(^{64}\) Then, after quoting Bruce-Briggs' description of the culture war reproduced above, Johnson opines:

An individual right to arms fits very comfortably within the vision of rural Americans. Because rural life is not glorified in our society, the rural vision may not be popular. Nonetheless, it remains reasonable to believe that vision of America is more in accordance with that of the Framers than is the urban based view that may be the predominant influence on our popular culture.\(^{65}\)

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60. Id. at 655.
61. See Williams, supra note 11, at 924-46.
62. See Balof, supra note 30, at 158.
63. See Nicholas J. Johnson, Beyond the Second Amendment: An Individual Right to Arms Viewed Through the Ninth Amendment, 24 Rutgers L.J. 1, 24-27 (1992).
64. Id. at 24.
65. Id. at 25-26 (footnote omitted).
Similarly, Don Kates quotes the Bruce-Briggs passage and then observes:

If we assume that most modern scholars fall into the first of the modern value categories described, it becomes understandable why they might find the views of the Founders so foreign, indeed repugnant . . . . For the second of the value categories described accords perfectly with the views of the Founders, except that, as intellectuals themselves, its aura of anti-intellectualism would have struck no responsive chord in them.66

Even as sophisticated, careful, and culturally sensitive an analyst as David Kopel portrays the gun culture in the same general way. In his prize-winning work The Samurai, the Mountie, and the Cowboy: Should America Adopt the Gun Controls of Other Democracies?, Kopel argues that different gun control schemes are appropriate for different countries because they have different cultures.67 Thus, countries like Japan68 and Great Britain69 can tolerate a fairly invasive gun control scheme because their citizens trust the government, especially the police, and they may have good reasons for that trust. By contrast, such a scheme would not work in this country, because guns and distrust of government are too central to the American cultural experience.70 Thus, Kopel emphasizes the importance of careful attention to cultural differences when considering the role of guns and gun control in different countries.71

Unfortunately, Kopel's nuanced appreciation of cultural difference falters when he considers America's gun culture, because he tends to portray it as the fundamental, enduring American culture, rather than merely one among many:72

Whether the framers chose wisely or not, their choice cannot be undone. Indeed, the Second Amendment simply reflected the social reality that Americans were already extremely well armed. Gun culture is too deeply embedded in the American soul to change now . . . .

Foreign gun control . . . postulates an authoritarian philosophy of government and society fundamentally at odds with the individualist and egalitarian American ethos . . . . Even if some Americans want their nation to be more like other countries, America cannot be more like

66. See Kates, supra note 10, at 227.
67. KOPEL, supra note 35, at 431.
68. See id. at 45-46.
69. See id. at 96-97.
70. See id. at 392-93, 422, 431-32.
71. See id. at 431-32.
72. See id. at 419-32.
them. There are too many guns in America, and too much of an individualist gun culture in the American psyche .... Instead of transplanting foreign gun control and culture to America, a realistic American gun policy must accept the permanence of guns in American life.\textsuperscript{73}

In other words, for Kopel, guns reflect a permanent, central, and ineradicable part of American culture; gun control, by contrast, represents a recent and hopeless attempt to graft elements of foreign culture onto America. For that reason, guns cannot be abandoned, but gun control can. Gun culture is the root of America, gun control culture a feeble and alien transplant.

In short, many in the gun culture see no genuine cultural division among real Americans on the subject of guns; instead, they see America (represented by the gun culture) arrayed in battle against its enemies. In this map of the cultural landscape, the essential fault line lies not between bedrock and cosmopolitan America but between a "true" America and everyone else. In this alternative vision, gun owners are not an outgroup despised by an elite but the ultimate ingroup, responsible for controlling cultural outgroups. And they have a story to tell about themselves. Once upon a time, they were America, justly glorified and dominant. In recent decades, their position has changed, as urban elites have come to control America, but the gun culture is still the true American way. Everyone else—not only the urban elite but everyone, including outgroups—should rightly be seen as less central to the American experience.

In this vision, Jews, feminists, and blacks fall outside the gun culture. Individual Jews, feminists, and blacks may own guns; some may even view themselves as part of the gun culture. As a group, however, they fall outside the traditional gun-owning heartland; their status as members of outgroups makes their membership in the gun culture problematical, a hurdle to be overcome. As observed above, the gun culture is heavily masculine, and is centered on the father-son relationship and the male responsibility of protection.\textsuperscript{74} Feminists who would complicate gender roles would not be welcome in this highly patriarchal milieu. Similarly, per capita, Protestants are much more likely than other groups to own arms.\textsuperscript{75} Revealing his own non-Protestant frame of reference, Bruce-Briggs explains, "The first gun at

\textsuperscript{73} Id. at 419, 432.

\textsuperscript{74} See supra text accompanying note 31. Again, statistics bear out this observation. Many more men than women own guns. See SOURCEBOOK, supra note 35, at 169 tbl.2.50; WRIGHT ET AL., supra note 31, at 109, 114.

\textsuperscript{75} See WRIGHT ET AL., supra note 31, at 108.
puberty is the *bar mitzvah* of the rural WASP."76 Given the soil in which the gun culture has grown, this religious identification is not surprising. Rural, conservative, nativist Americans have always been overwhelmingly Protestant, and they have identified Protestantism with the national character.77 Indeed, when the gun culture describes its enemies as the urban, educated, professional, media-oriented liberal elite, it is difficult not to catch at least a whiff of anti-Semitism. Although I cannot document the assertion, I am quite confident, based on considerable exposure to the gun culture, that when many gun-owners imagine the hated "gun-grabbers," they have Jews in mind.78

Similarly, the gun culture originated in the concerns of white citizens to control those of other races, especially blacks and Native Americans.79 Today, the composition of the culture reveals its racial identification. Rural, conservative, nativist Americans have always been white.80 Although blacks own guns in roughly the same percentages as whites81 and arms bearing has been symbolically important to many blacks,82 still African-Americans are not part of the gun culture's "bedrock" America. As I elaborate below, the gun culture has typically posed a threat, not a promise, to black America.83 Racial hierarchy and violence formed an important part of the gun culture in the South in the nineteenth and early twentieth centuries.84 Even today, Southerners own guns in much larger percentages than non-Southerners, and white Southern gun owners display greater racial animus than white Southern non-gun-owners.85 Moreover, racism has always blemished the tradition of rural radicalism that marks one extreme of the gun culture.86

Because stereotyping of opponents is so common in this culture war, I wish to be very clear about this claim. I am not arguing that all or most gun owners are hostile to outgroups. I am not arguing that all

76. See Bruce-Briggs, supra note 27, at 66.
78. Certainly, Jews for the Preservation of Firearms Ownership—presumably a sensitive barometer—thinks so. See infra notes 197-203 and accompanying text.
79. See discussion infra Part III.A.4.
80. See generally, e.g., BENNETT, supra note 77.
81. See WRIGHT ET AL., supra note 31, at 108-09.
82. See, e.g., NATHAN MCCALL, MAKES ME WANNA HOLLER: A YOUNG BLACK MAN IN AMERICA 60-61 (1994).
83. See discussion infra Part III.A.
85. See Wright & Marston, supra note 34, at 98 & n.8.
86. See infra note 488 and accompanying text.
members of the gun culture are hostile to outgroups. And I am not arguing that proponents of the right to arms are hostile to outgroups; indeed, in my experience, most such proponents are libertarians implacably hostile to bigotry as a restriction on liberty. I am arguing that the gun culture, by and large, has imagined itself as the true American people, has excluded outgroups, and has thereby regarded outgroups as less central to the American citizenry.

I am certain that some members of the gun culture would resist this characterization. They would claim that perhaps once the culture excluded outgroups, but no longer. Such a claim, however, bears a heavy burden of persuasion. Populist movements of the common man have always grown from the rich soil of “bedrock America.” As detailed in Part II, those movements have always imagined not one but two enemies—urban elites and outgroups. Moreover, populist violence has typically been directed not at elites but at despised outgroups. Even today, the paradigmatic member of the gun culture is a white, Protestant, rural, conservative, nativist male.

Perhaps that man has undergone a conversion experience, welcoming Jews, blacks, and feminists as equal members in his culture, but it seems unlikely.

4. Outgroup Attitudes Toward the Gun Culture

If the gun culture has exiled outgroups from its embrace, outgroups have typically been voluntary exiles; the suspicion has always been mutual. Generally, outgroup members have maintained that to be a Jew, feminist, or African-American entails opposition to the gun culture. Sometimes these arguments verge on the essentialist claim that outgroups are inherently antigun, but more often they simply claim that outgroups have historically found the gun culture alien and perhaps threatening.

Thus, traditionally, guns have been culturally coded as male and anti-female. The status of guns as phallic symbols is virtually a cliché in these post-Freudian days. Many women first learning to shoot guns find it difficult to overcome their socialization as women—their fear of guns, their aversion to violence, and their sense that guns are a

87. See discussion infra Part III.A.4.
88. See supra notes 27-31, 84-88 and accompanying text.
89. See KENNETT & ANDERSON, supra note 29, at 250. I am here suggesting only that men and women associate guns with penises and therefore with masculinity. I am not arguing for the much broader “priapic” theory of gun ownership—that male gunowners are sexually insecure and buy guns in order to assuage that insecurity. See Don B. Kates Jr. & Nicole Varzos, Aspects of the Priapic Theory of Gun Ownership, in THE GUN CULTURE, supra note 30, at 93, 93-95.
part of male culture off-limits to them. Many feminists, especially cultural and radical feminists, agree that women are either inherently or culturally nurturant and pacifistic, not militarist and violent. Thus, Ann Scales argues that the force inherent in militarism provides the grounding for the silencing of women:

[M]ilitarism normalizes the oppression of women. It supplies the moral authority for relations of dominance and submission.... [T]he militaristic individual has been drilled in the necessity and legitimacy of the use of force.... This kind of force, hanging over our heads at every moment, has "the ability to turn a human being into a thing while he is still alive.".... And that is a definition of woman's otherness. Women have been imitating nothingness for a long time.

Sara Ruddick further argues that "maternal thinking" lends itself to a politics of peace. Ruddick notes the typical, cultural belief that men make wars and women make peace, but she rejects this absolutist distinction, observing that mothers have warlike impulses to support soldiers and to fight for parochial interests. Instead, she offers a more limited and culturally contingent argument. Maternal thinking can, under the right circumstances, act as a basis for a peace politics, because it is rooted in caring labor, especially the care of bodies. By contrast, she argues, militarist thinking abstracts away real human physicality and suffering and so makes violence and cruelty easy.

Wendy Brown offers a feminist analysis of the Second Amendment that rests on this perceived antinomy between women and guns. First, she attacks the formal Second Amendment, particularly "[Sanford] Levinson's vision of an armed citizenry, collectively resisting the excesses of state power on behalf of itself as a community." Brown argues that this superficially universalist vision

90. Militarism is not the same thing as the gun culture. As I explain in the text, however, in objecting to militarism, these feminists are centrally objecting to force as the basis for social relations. See infra text accompanying notes 91-96. Their objection therefore runs to any culture organized around the use of force.


92. See id. at 141-45.

93. See id. at 151-56, 221.

94. See id. at 130-34, 156-84, 205-21.

95. See id. at 185-205.

96. See id. at 141-45.


98. Id. at 665. The reference is to Levinson, supra note 10.
in fact ignores the lived experience of outgroups. She contends that Americans do not presently constitute a unified community and instead live in "an era of thoroughly disintegrated public life and disintegrating social order, and an era of rampant violence within and against the urban poor and against women of all socio-economic classes." Under those conditions, a right to arms will generally hurt the "most routine victims of this 'right': "[U]rban Black men between the ages of sixteen and thirty-four, for whom homicide is the leading cause of death, and women, one of whom is raped every six minutes, one out of three times at gunpoint or knifepoint." She asks rhetorically, seeking to expose the bias of a purportedly universalist interpretation of the Amendment: 'Might there be something a bit 'gendered' about a formulation of freedom that depicts man, collectively or individually, securing his autonomy, his woman, and his territory with a gun[?]’

Having exposed the Amendment as culturally specific, rather than universal, Brown then argues that women, feminists in particular, fall outside of this culture. She makes this argument by means of a personal story. Returning from a long trek in the wilderness, she and some friends discovered that her car would not start. Luckily, two men from a nearby Winnebago were able to help them start the car. Despite this cooperation, however, Brown found herself reflecting that she and the men were at "opposite ends of the political and cultural universe" and did not "share[] much of anything." When she first met the chief rescuer, he was "making his way through a case of beer, flipping through the pages of a porn magazine, and preparing to survey the area for his hunting club." Their reasons for being in the wilderness were thus utterly different—"he preparing to shoot the wildlife that I came to revere, he living out of his satellite-dished Winnebago and me out of my dusty backpack, he sustained by his guns and beer, me by my Nietzsche and trail mix." If she had met him alone, she would have feared rape; "his gun could well have made the difference between an assault that my hard-won skills in self-

99. See id. at 665-66.
100. Id. at 665.
101. Id.
102. Id. at 663-64.
103. See id. at 665-66.
104. See id. at 666.
105. See id.
106. Id.
107. Id.
108. Id.
defense could have fended off and one against which they were useless. In other words, because of the “social positioning and experiences of men and women in our culture,” the right to arms primarily benefits men, as Brown observes by closing with rhetorical questions:

Who is the gun-carrying citizen-warrior whose power is tempered by a limit on the right to bear arms? Is he most importantly a republican citizen, or more significantly, a socially male one? Is his right my violation, and might his be precisely the illegitimate authority I am out to resist?

Similarly, many Jews have traditionally defined themselves as fundamentally nonviolent—gentle, powerless, and rational. In the face of long-term and implacable persecution, these Jews resolved to oppose violence only with reason; some have argued that “speaking truth to power” is a central Jewish activity. Rationality and nonviolence thus became central pillars of Jewish ethics. Perhaps the foremost scholarly exponent of this view is the anti-Zionist writer Michael Selzer, who maintains: “Jewish ethics and purpose derive from the rejection of power, from the actual contempt of power, which pervades the Jewish ethos.” Some attribute theological significance to this ethical norm. God has commanded the Jews to adhere to the covenant, even in the face of persecution, by “representing God’s ways in the world and by serving as God’s spiritual agents in society.”

The identification of Judaism with nonviolence has also permeated popular Jewish culture. In their classic study of shtetl culture, Mark Zborowski and Elizabeth Herzog explain that the culture was “at one in regarding physical violence as ‘un-Jewish’.” In this view of the world, Jews emphasized “intellect, a sense of moderation, [and the] cherishing of . . . rational, goal-directed activities,” and they

109. Id. at 666-67.
110. Id. at 667.
rejected an un-Jewish "emphasis on the body, excess, blind instinct, sexual instinct and ruthless force." In the 1940s, Jean-Paul Sartre famously celebrated this view of Judaism:

The Jews are the mildest of men, passionately hostile to violence. That obstinate sweetness which they conserve in the midst of the most atrocious persecution, that sense of justice and of reason which they put up as their sole defense against a hostile, brutal, and unjust society, is perhaps the best part of the message they bring to us and the true mark of their greatness."  

Finally, Paul Breines describes the continuation of this stereotype in the "Woody Allen figure, that is, the schlemiel: the pale, bespectacled, diminutive vessel of Jewish anxieties who cannot, indeed, must not, hurt a flea and whose European forebears fell by the millions to Jew-hating savagery."  

Given this tradition, it is not surprising that Jews as Jews have generally located themselves outside the gun culture. Jews own guns in very low percentages compared to other groups. All of the leading mainstream Jewish organizations have taken strong positions in favor of gun control, and it may not be a coincidence that the leading advocate of gun control on Capitol Hill, Charles Schumer, is himself Jewish. Indeed, the central elements of the gun culture—violent self-reliance, toughness, a willingness to meet blow with blow—comprise a virtual definition of "un-Jewish" behavior in this view of Jewishness.

Similarly, African-Americans have traditionally fallen outside the parameters of the gun culture. In fact, the relationship of blacks to guns themselves has been complicated and sometimes conflicted. On one hand, there is no tradition of viewing guns as "un-black" in the way that there is for viewing guns as "un-Jewish" or "un-female." Many Southern blacks participated in the outdoors culture from which the gun culture grew. In addition, as a result of the long tradition of

116. Id. (internal quotations omitted).
118. BREINES, supra note 111, at 3.
119. See WRIGHT ET AL., supra note 31, at 108 n.5.
120. See infra text accompanying note 199.
121. Certainly, Jews for the Preservation of Handgun Ownership does not believe it a coincidence that Schumer is Jewish; they denounce him and the whole Jewish culture of nonviolence from which they believe he springs. See infra note 202 and accompanying text.
122. See OWNBY, supra note 84, at 179.
disarming blacks, many African-Americans have seen self-arming as an important form of empowerment. Today, blacks own guns in roughly the same percentages as others, and owning a handgun is a badge of manhood for many inner-city youths. Indeed, many young urban black men romanticize revolutionary violence, especially as they perceive it in the figure of Malcolm X. On the other hand, pacifism also has been a significant part of black culture as well, perhaps most significantly in the work of Martin Luther King and the Southern Christian Leadership Council. Moreover, most blacks are neither revolutionaries nor gang members; rather, most blacks view the presence of guns in the hands of inner-city youth as a pestilence that is destroying their community. Not surprisingly, prominent African-American intellectuals have generally condemned widespread gun ownership among blacks and have called for tighter gun control. Furthermore, as a group, African-Americans are more in favor of gun control, especially handgun prohibition, than whites.

However complicated the relationship of African-Americans to guns, their relationship to the gun culture is much simpler. As suggested above, they have experienced its hostility. Even some of the African-Americans fondest of the gun do not love the gun culture. Black revolutionaries have generally sought to break the white power structure. The first objects of a black revolution would probably be urban, such as the police, but rural, conservative, bedrock America would surely not be far behind. Indeed, Carl Rowan predicts that the next race war will come—and come soon—when blacks take up arms to defend themselves from attack by the white racist members of the militia movement. In fine, black revolutionaries typically have shown no inclination to make common cause with the gun culture, to

123. See discussion infra Part II.C.
125. See McCALL, supra note 82, at 60-69, 72-73; Hofstadter, supra note 33, at 33.
129. See, e.g., id. at 189; Carl T. Bogus, Race, Riots, and Guns, 66 S. CAL. L. REV. 1365, 1383-87 (1993).
130. See Bogus, supra note 129, at 1387.
132. See id. at 110-11, 132.
133. See, e.g., ROWAN, supra note 128, at viii, 282-83.
134. See id.
join with them in celebration of their shared devotion to self-arming; instead, they have seen them as likely opponents.

Recently, Carl Bogus has argued that not only the gun culture in general but the Second Amendment in particular has not benefited African-Americans.\(^{135}\) He joins the collective rights theory in maintaining that the point of the Amendment was to ensure that the federal government would have no power to disarm state militias.\(^{136}\) The concern to safeguard the militia system, however, may have derived from a desire to protect its traditional function as slave patrol:

\[\text{[T]he Second Amendment may have been inspired as much by a desire to maintain a form of tyranny as to provide a means of resisting tyranny...} \]

Why the fear about Congress disarming the militia? ... Northern states would control Congress, and the North was finding slavery increasingly obnoxious. Intentionally or unintentionally, Congress might subvert the slave system by allowing the militia to decay.

... [S]trong evidence suggests that the Southern states' concerns about maintaining the militia for slave control, and the Northern states' desires to relieve the Southern states' anxiety on the matter, were significant forces behind the Second Amendment.\(^{137}\)

In summary, then, until relatively recently, the cultural landscape of the Second Amendment seemed fairly simple. The gun culture on one side, and urban elites and outgroups on the other. In recent decades, however, a loud and dissenting chorus has arisen among outgroups to complicate this simple division. Eloquent and emphatic Jews, feminists, and African-Americans have come to embrace the Amendment. In their view, just as the gun culture has used firearms in the past to control outgroups, those same outgroups can now use firearms to seek and find liberation.

II. THE NEW LANDSCAPE OF THE SECOND AMENDMENT

The essence of the outgroups' case is fairly straightforward. Because outgroups cannot rely on the anti-Semitic/patriarchal/racist state to protect them, they have no choice but to rely on themselves, by self-arming against anti-Semitic/patriarchal/racist oppression by public or private parties. The following subparts present an overview of these arguments. Subpart A examines the analysis of Jews for the Preservation of Handgun Ownership, subpart B examines the Women

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135. See Bogus, supra note 129, at 1367.
136. See id. at 1372-74.
137. Id. at 1373-74 (footnote omitted).
and Guns movement, and subpart C examines the writing of Professors Robert Cottrol and Raymond Diamond, prominent African-American exponents of the right to arms.

In presenting these arguments, I will emphasize two points. First, the outgroups make two kinds of arguments. One argument is a prudential and political claim: individual members of outgroups should exercise the right to arms, and legislatures should respect it, because of the present reality of religious, gender, and racial oppression. The other argument is a constitutional claim: we should interpret the Second Amendment to protect a personal right to arms because, in light of the permanence of government untrustworthiness and private oppression, outgroups badly need such a right. Indeed, for representatives of these outgroups, if the Second Amendment has a special constituency, it is their respective groups, not the gun culture. In short, then, these theorists use a perspective-based mode of constitutional interpretation. They approach the Amendment from the perspective of their membership in outgroups, and they offer reasons for interpreting the Amendment in a particular way drawn from their experience in those groups.

Second, the social world of the Second Amendment, as construed by these theorists, is permanently fragmented into hostile identity groups. The permanence of hate violence is precisely the reason that these theorists believe that a right to arms is so important. As a result, these theories seek to recognize an individual right to arms, but these individuals exist in a world of dissentient collectivities. The very rationale for the right to arms considers individuals as members of collectivities. We should recognize a right to arms precisely because people are not abstract individuals; rather, they have religious, gender, and racial identities and act on malign motives rooted in those identities. Moreover, the individual arms bearer acts for reasons rooted in his or her membership in a collectivity and to effectuate change that will make the world safer for other members of that collectivity. The Jew who resists a genocidal government helps to stop another Holocaust, the woman who foils a would-be rapist helps to break the power of the patriarchy, and the African-American who shoots back at the Klan helps to rid the world of racism.

A. Jews for the Preservation of Firearms Ownership

The tradition of Jewish meekness is only one strand in a rich historical experience. Collectively and individually, Jews have always
exercised power, from Biblical days to the present. There have been Jewish soldiers, gangsters, and even shtetl thugs, the ba'al-guf, though Jewish elites have sometimes tried to suppress the memory of these "deviant" Jews. Through the ages of persecution, many Jews armed themselves to resist, in defiance of the stereotype of Jewish resignation.

During the nineteenth century, Zionism arose as an alternative ideology to assimilation; it sought to replace gentle accommodation with militant nationalism. After World War II and the Holocaust, many Jewish emigrants began to celebrate the martial virtues as they struggled for a homeland in Palestine; Jews, in their view, should fight rather than suffer. Some of these even became terrorists, adopting a vision of warlike unity that had parallels with the fascism from which they had fled.

With Zionism's efflorescence in the State of Israel, then, armed strength again became a culturally respectable Jewish option. In America, however, most Jews did not come quickly to that point of view. Indeed, American Jews may have first come to feel great pride in a powerful Israel only with the Six Days War, and with this pride came a new appreciation for the uses of violence. For many, the image of the enfeebled shtetl Jew rapidly took a back seat to the image of the bronzed, virile sabra warrior or the merciless Mossad agent.

Indeed, some have argued that American Jews have a special attachment to images of Jewish might. Enjoying a safe life in America, endangered only by assimilation, they feel guilty that they are not in Israel, facing hardship and the Arab threat. To compensate, some argue, they become highly devoted to the cause of Israeli security, resenting all criticism of Israeli imperialism. For such Jews, the Holocaust has become a testament to the folly of

138. See generally BIALE, supra note 111; BREINES, supra note 111.
139. See BREINES, supra note 111, at 97-101.
140. See id. at 105-20.
141. See id. at 132-35.
142. See id. at 77, 90, 113.
143. See BIALE, supra note 111, at 72-77; BREINES, supra note 111, at 81-83, 88-90.
144. See BREINES, supra note 111, at 139-49.
145. See id. at 149-67.
146. See id.
147. See id. at 48-49.
148. See id. at 56-73.
149. See id. at 3-4.
150. See id. at 52-53.
151. See id. at 22, 71-73.
Jewish passivity,\textsuperscript{152} the Warsaw uprising\textsuperscript{153} and Masada\textsuperscript{154} have become central stories, and the fundamental pledge has become "Never again."

Jews for the Preservation of Firearms Ownership (JPFO) appears to be a fringe by-product of this large-scale cultural movement. JPFO is a Milwaukee-based organization, headed by Aaron Zelman, Jay Simkin, and Alan Rice, and claims 4000 members.\textsuperscript{155} Its mission is to alert the public to what it believes are the dangers of gun control.\textsuperscript{156} Its major works are \textit{Lethal Laws}\textsuperscript{157} and "Gun Control": \textit{Gateway to Tyranny}.\textsuperscript{158} These works have received generally favorable reviews by mainstream Second Amendment theorists of the individual right school.\textsuperscript{159} Moreover, despite its relatively small numbers, JPFO has received a great deal of media attention,\textsuperscript{160} presumably because of the virulence of its views and its incendiary way of expressing them.

1. Gun Control and Genocide

According to JPFO, gun control "has a down-side. A very nasty one. . . . The down-side of 'gun control' is genocide. There have been at least seven major genocides in this century, involving 50-60 million

\begin{thebibliography}{160}
\bibitem{152} See \textit{id.} at 17-18, 70, 79.
\bibitem{153} See \textit{id.} at 70.
\bibitem{154} See \textit{id.} at 61, 83-84.
\bibitem{156} See \textit{id.}
\bibitem{157} This book's copyright notice requires the following citation: \textit{Lethal Laws}, Jay Simkin, Aaron Zelman, & Alan M. Rice, Jews for the Preservation of Firearms Ownership, Inc., 2872 South Wentworth Avenue, Milwaukee, WI 53207, (414) 769-0760 [hereinafter Simkin et al., \textit{Lethal Laws}].
\bibitem{158} Jay Simkin & Aaron Zelman, "Gun Control": \textit{Gateway to Tyranny} (1993).
\end{thebibliography}
victims .... In every case, a 'gun control' law was in force before the genocide began.\textsuperscript{161} Gun control and genocide thus have a close relationship, although JPFO equivocates on just how close. At a minimum, gun control is a necessity for genocide: "In the [twentieth century] 'gun control' is an essential pre-condition for genocide. Until and unless a hate-driven group gets control of the government mechanism and disarms its intended targets, genocide simply cannot and does not occur."\textsuperscript{162} Even this minimum claim is quite extraordinary: no gun control, no genocide. If armed, the potential victims will always be able successfully to resist.\textsuperscript{163} JPFO, however, sometimes goes even further. It argues that gun control actually tends to precipitate genocide.\textsuperscript{164} Exhibiting the bad manners for which they have become notorious, Simkin, Zelman, and Rice assert: "[T]hose seeking more 'gun control'—or who accept existing 'gun control' laws—need to consider whether or not they still can support a policy that promotes genocide; ... those who back 'gun control'—after reading the lethal laws presented within—must be recognized as supporting genocide."\textsuperscript{165}

This claim that gun control leads to genocide grows directly out of JPFO's basic political philosophy. In its view, the "formula for genocide has three parts: Hatred; Government ... ; [and] Gun control."\textsuperscript{166} Without all three, "genocide does not occur," because genocide occurs only when a hate-driven group seizes control of the government and disarms the people.\textsuperscript{167} Unfortunately, because it is a "basic human emotion," hatred "cannot be banned."\textsuperscript{168} Similarly, although government has an "inherent capacity to do great evil," it "in some form, is a necessity for civilization."\textsuperscript{169} Therefore, "[g]un control is the only part of this formula that need not be present."\textsuperscript{170}

\begin{thebibliography}{9}
\bibitem{161} SIMKIN ET AL., LETHAL LAWS, supra note 157, at 1.
\bibitem{162} Id. at 12 (emphasis omitted).
\bibitem{163} Less often, JPFO hedges this bold claim: "So long as a target group is armed, it has a chance to avoid extermination." Id. (emphasis omitted).
\bibitem{164} See id. at 4.
\bibitem{165} Id. (emphasis added). In a letter to the Atlantic Monthly, Jay Simkin denies that JPFO has argued that gun control causes genocide; rather, "murderous politicians and government bureaucrats plan and carry out genocides." Jay Edward Simkin, Letter to the Editor, ATLANTIC MONTHLY, June 1996, at 12, 12. This denial, however, is either disingenuous or a quibble: certainly, some set of human beings must carry out genocide, but Lethal Laws claims that the existence of gun control, all by itself, "promotes genocide" by such people.
\bibitem{166} SIMKIN ET AL., LETHAL LAWS, supra note 157, at 9 (internal quotations omitted).
\bibitem{167} See id. at 9-10.
\bibitem{168} Id. at 9 (internal quotations omitted).
\bibitem{169} Id.
\bibitem{170} Id. (emphasis omitted) (internal quotations omitted).
\end{thebibliography}
these premises, JPFO's conclusions are ineluctable. Because hatred is always lurking and government is always a threat, the only way to prevent genocide is to ensure that the "people are on guard and armed," if gun control laws disarm the people, it is only a matter of time before genocide occurs.171

JPFO offers many examples of modern genocides made possible by gun control, but the central example—indeed, the experience that drives the analysis—is the Holocaust in Germany.172 Not surprisingly, gun control turns out to be the key to understanding how the Nazi atrocities could have happened. In 1928, the Weimar Republic enacted a permit and registration system,173 and then in 1931 prohibited the public carrying of arms as a hedge against political violence.174 With the passage of these laws, "the fate of Jews in Europe was sealed."175 In 1933, Hitler came to power and "loosed his militia" to terrorize the population.176 The Nazis inherited the Weimar gun control scheme, and it allowed them to achieve "an iron grip on Germany."177 By 1933, the law had discouraged arms ownership, and the registration lists gave the Nazis necessary information to revoke the permits of "anyone they deemed unreliable," especially Jews.178 In 1938, the Nazis authored their own gun control law that forbade Jews to own any weapons and exempted the Nazis themselves from the gun control laws.179 Shortly thereafter followed the stages of the Holocaust: the Kristallnacht pogrom, "Mass Murder by Shooting" in Russia, and ultimately "Mass Murder by Gassing."180

This slaughter was possible only because the Jews had already been disarmed. In Russia,

[that so few could murder so many, so quickly can only be explained in one way: the victims were unarmed. The same "gun control" laws that made it possible for Stalin to murder millions of his real or

171. Id.
172. These examples include the persecutions of Armenians in Turkey (1911-1917), political dissidents in China (1949-1952), Mayans in Guatemala (1960-1981), Christians in Uganda (1971-1979), and opponents of Pol Pot in Cambodia (1975-1979). See id. at 14. JPFO's definition of genocide includes the extermination of a group defined by its political beliefs, hence the inclusion of Chinese and Cambodian dissidents. See id. at 9.
173. See id. at 151.
174. See id. at 152.
175. Id. at 11.
176. See id. at 153.
177. Id.
178. See id. at 153-54.
179. See id. at 11, 156.
180. Id. at 156-58.
imagined opponents, also made it possible for the Nazis to murder millions of Soviet Jews.\textsuperscript{181}

Only the Warsaw ghetto resisted by force of arms, and it ultimately lost because it was “woefully under-equipped.”\textsuperscript{182}

According to JPFO, the risk that gun control will lead to genocide exists everywhere, even in America. The federal government came close to genocide when it interned hundreds of thousands of Japanese-Americans during World War II.\textsuperscript{183} If Japan had been more successful in the war in the Pacific, “Japanese-American internees might then have met with the same fate as Jews in Hitler’s Europe: extermination.”\textsuperscript{184} Today, the infrastructure exists for a massive genocide. That infrastructure has three elements: gun control, especially the Gun Control Act of 1968; databases of information about Americans, which “greatly enhance[] the potential for ‘genocide’ because centralization of information promotes the speedy identification of potential victims”; and a mass media that might “fan the flames of hatred.”\textsuperscript{185}

Indeed, much of JPFO’s language suggests that it believes a Nazi-like genocidal conspiracy is already afoot in America. It argues quite seriously that the 1968 Gun Control Act was “likely based on the Nazi Weapons Law of 18 March 1938.”\textsuperscript{186} Sometimes, JPFO makes the claim even stronger: “[The 1968 Gun Control Act] is identical, word for word, in tone and in content, as that passed by Adolf Hitler in 1938.”\textsuperscript{187} The Library of Congress allegedly translated the Nazi law for Senator Christopher Dodd four months before the American law was passed.\textsuperscript{188} Thus, for JPFO, gun control is a “Nazi cancer” “implanted” in America\textsuperscript{189} in order to “soften the underbelly of the USA for the slice of the Global Government knife.”\textsuperscript{190} JPFO has repeatedly used an image of Hitler with his arm raised in stiff-arm salute next to the words “All in favor of gun control raise your right

\textsuperscript{181} Id. at 157 (emphasis omitted).
\textsuperscript{182} See id. at 158.
\textsuperscript{183} See id. at 21-24.
\textsuperscript{184} Id. at 24.
\textsuperscript{185} Id. at 27-29 (emphasis omitted).
\textsuperscript{186} Id. at 27.
\textsuperscript{187} Vulliamy, supra note 160, at 23 (internal quotations omitted) (quoting Jay Simkin).
\textsuperscript{188} See Strang, supra note 160, at 1B.
\textsuperscript{189} See Camhi, supra note 155, at 29 (quoting JPFO literature).
\textsuperscript{190} Vulliamy, supra note 160, at 20 (internal quotations omitted) (quoting Jay Simkin).
They have distributed pamphlets bearing a swastika and the slogan "Stop Hitlerism in America" in order to oppose pro-gun-control candidates in various states. They compare Sarah Brady to Hitler: "Hitler knew that a lie—endlessly repeated—can win acceptance. So does Sarah Brady." "Brady’s use of Hitler’s tactics leads to a Final Solution for law-abiding gun-owners." They also compare Waco to Warsaw: "We saw the government go into Waco, Texas, pretty much as the Nazis went into Warsaw. As it was in Warsaw, so it was at Waco." One member of JPFO summarized: "Vote only for politicians who trust the people to own all types of firearms and who have a strong pro-Second Amendment voting record. . . . I see creeping fascism in America, just as in Germany, a drip at a time; a law here, a law there . . . soon you have total enslavement."

Arguing that the risk of another Holocaust is alive and real in America today, JPFO viciously criticizes Jewish organizations, leaders, and politicians that support gun control. Indeed, a central purpose of JPFO is “to expose the propaganda and myths used by all anti-gunners, but particularly by some Jewish anti-gunners.” Such Jews have failed utterly to learn from history: “[T]he hardest lesson of the Holocaust . . . is that ‘gun control’ is a lethal policy. Jews have been a major victim of this policy. Yet ‘leaders’ of several Jewish communal groups—e.g., the American Jewish Congress, the B’nai Brith among others—still support ‘gun control.’” In their blindness,
these Jews promote victimhood and subservience as a survival strategy. Aaron Zelman maintains, "Jews who support gun control have learned nothing from history. . . . Jews have always tried to ingratiate themselves to government, but let’s face it. When there’s too much government it’s not good for Jews. It’s just not in the best interests of Jews to be disarmed." Sympathetic columnist Charley Reese explains: "Zelman faults many Jewish organizations that support gun control for either having the passive attitude of the ghetto Jew or, in some cases, for promoting victimization as a means of promoting Jewish unity." According to JPFO, these pro-gun-control Jews are stirring anti-Semitism by their pernicious behavior:

[Pro-gun-control Congressman Charles] Schumer and his collaborators are promoting anti-Semitism and tyranny. Schumer and other Jewish gun-grabbers—notably the B’nai Brith and its Anti-Defamation League . . . cannot see that their gun control activities fuel the fires of real anti-Semitism, as . . . gun owners of all races and creeds increasingly find their civil right to own guns reduced by these pro-criminal Jews.

In short, pro-gun-control Jews, like all “those who back ‘gun control’ . . . must be recognized as supporting genocide”—perhaps the worst charge that one Jew can hurl against another in the late twentieth century.

From this analysis, JPFO derives two conclusions—one prudential and one constitutional. Prudentially, JPFO contends that Americans should arm themselves: "The best way sharply to reduce the likelihood of genocide is for individual citizens, everywhere, to

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201. See Reese, supra note 160, at A8.
203. SIMKIN ET AL., LETHAL LAWS, supra note 157, at 4. Pro-gun-control Jewish leaders have, in turn, accused JPFO of promoting anti-Semitism by these attacks. Rabbi David Saperstein, director of the Religious Action Center of Reform Judaism, charges: “The injection of religious bigotry into public debate is unacceptable in America. The fact that the attack is launched by Jews does not make it any less anti-Semitic.” Holmes, supra note 160, at A2 (internal quotations omitted) (quoting Rabbi David Saperstein). Similarly, Abraham Foxman, National Director of Anti-Defamation League, wrote to The New York Times, “Anti-Semitism has a long and painful history, and the linkage to gun control is a tactic by [JPFO] to manipulate the fear of anti-Semitism toward their own end. . . . It is a campaign that has been viewed with concern by many in the Jewish community.” Foxman, supra note 198, § 4, at 14.
own and to be skilled in the use of firearms, especially military-type rifles.\textsuperscript{204} Such self-arming, in JPFO's view, will be effective, even against modern armies: "It seems sound to conclude that civilians armed with military-type rifles by weight of numbers—if by nothing else—can at least cripple almost any attacking military force.\textsuperscript{205}"

Correlatively, government should allow citizens to arm themselves. To that end, "[n]o government entity should have any kinds of records concerning firearms ownership.\textsuperscript{206}"

More fundamentally, Americans should not accept any kind of gun control, no matter how superficially reasonable it may appear: "That American 'gun control' proponents constantly push for tighter restrictions on private ownership of firearms by the law-abiding suggests that reasonable 'gun control' is a contradiction in terms... The futile effort to bring it about will be lethal. To save millions of lives, we must destroy 'gun control.'\textsuperscript{207}"

2. JPFO's Interpretation of the Second Amendment

Second, as a constitutional matter, JPFO argues that the connection between gun control and genocide provides a basis for interpreting the Second Amendment. According to JPFO, "government can do good only slowly, but can do great harm [such as genocide] quickly.\textsuperscript{208}"

For that reason, the Framers "designed a system based on limiting government's power; ... created a civil right of the law-abiding to be armed; [and] ... did not impose on the government the duty to protect the average person.\textsuperscript{209}"

In other words, according to JPFO—and they make this claim without citing to any historical support—the Framers of the Second Amendment shared JPFO's basic political philosophy. Because they anticipated that gun control leads to genocide, the Framers banned gun control.\textsuperscript{210}

At another point, JPFO maintains that "the way in which the private ownership of firearms is discussed" obscures the fact that "'gun control' is the key to genocide.\textsuperscript{211}"

Discussants tend to focus on unimportant short-term issues (like the abuse of firearms by criminals) or long-term side issues (like the sporting use of firearms), but those issues are not constitutionally significant:

\textsuperscript{204} SIMKIN ET AL., LETHAL LAWS, supra note 157, at 69.

\textsuperscript{205} Id. at 71.

\textsuperscript{206} Id. at 69 (emphasis omitted).

\textsuperscript{207} Id. at 72.

\textsuperscript{208} Id. at 2.

\textsuperscript{209} Id.

\textsuperscript{210} See id. at 3-4.

\textsuperscript{211} Id. at 3.
Use of firearms for self-defence against criminals, or for hunting, is time-honored, lawful, and praiseworthy. But such uses cannot be the main reasons that... the private ownership of firearms was mentioned in the U.S. Constitution...

The Framers of the Constitution did not waste words. They did not state the obvious. They did not deal with trivial matters.

If the Second Amendment had been written only... to create a civil right to use firearms for “sporting purposes,” the Framers would have said so, ... [and] to enable individuals to defend themselves against criminals, that, too, that would have been stated, in plain English.

The Second Amendment plainly was written—as all other parts of the Bill of Rights—to protect individual freedoms from encroachment by government.212

The point of the Second Amendment, then, is not hunting or self-defense; otherwise, the Framers would have said so “in plain English.” JPFO never actually quotes the language of the Amendment, so it never clearly informs readers what the Amendment says “in plain English.” But in the context of its analysis, it is plain that JPFO thinks the underlying purpose was to “protect individual freedoms from encroachment by government”—meaning, to prevent gun control, so as to prevent genocide.213 In short, JPFO urges us not to “miss[] the point—that ‘gun control’ is the key to genocide.”214

JPFO’s interpretive approach to the Second Amendment is thus perspectival, derived from their perspective as late-twentieth-century Jews. JPFO’s stated reason for caring about the Amendment is that it may forestall the sort of genocide that occurred in Germany. Moreover, the political philosophy that JPFO ascribes to the Amendment—without any quotation from the Framers or even the text of the Amendment itself—is a view derived from reflecting on the experience of those threatened with genocide. In short, JPFO offers us a Second Amendment understood through the lense of the Holocaust.

Similarly, the world of JPFO’s Second Amendment is populated not by abstract individuals but by situated selves possessed of ethnicity, group loyalty, and contending cultural agendas. In some respects, JPFO’s message appears highly assimilationist by urging Jews to become part of the gun culture. More fundamentally, however, JPFO’s argument rests on a vision of the inevitability of ethnic balkanization, since social hatred is perennial and endemic.

212. Id. at 3-4 (footnote omitted).
213. Id. at 4.
214. Id.
a. Assimilation to the Gun Culture

On one hand, it is easy to find assimilationist elements in JPFO's interpretation of the Amendment. Formally, Jews with guns enjoy no special rights; rather, they are simply exercising the rights given by the Second Amendment to every American. The anti-genocidal Second Amendment may have special resonance for late-twentieth-century Jews, but it is also relevant to every person who might suffer from government pogroms—which is to say, everyone, since hatred is a given of the human condition. The lesson of the Holocaust, that "gun control" is a lethal policy," is thus a lesson "for Jews and Gentiles alike. Indeed, JPFO argues that the Second Amendment provides a model not only for all Americans but for all nations; "every country should speedily move to imitate America and create a civil right of the law-abiding person to be armed."216

Similarly, it is possible to understand JPFO as an attempt by gun-owning Jews to gain admission into the gun culture. Some have argued that both Zionism and assimilation were attempts to "normalize" the Jews—assimilation, because it was "normal" to be a fully participating citizen of some nation-state, and Zionism, because it was "normal" to have a nation-state of one's own.217 Comparably, JPFO's work would seem to be an attempt to normalize the Jewish experience in America, for what can be more undoubtedly American than loving guns and the freedom that they allegedly procure?218 Notably, JPFO does not discuss Israel's importance for the safety of Jews; instead, it emphasizes the importance of Jews arming themselves in America, to secure safety here.

JPFO finds more in common with the gun culture than with other, more mainstream Jewish organizations. In one interview, Zelman explained that "two factors inspired him to found JPFO: studying the Holocaust and growing up in Tucson, Arizona."219 The reporter "couldn't help wondering which was more formative"—suggesting that the real influence on Zelman was the Arizona gun culture.220 Indeed, in an early advertisement, JPFO proclaimed that "Jewish gun-grabbers . . . cannot see that their gun control activities

215. Id. at 159 (emphasis omitted).
216. Id. at 3.
217. See BREINES, supra note 111, at 47-48.
218. See id. at 114-15 (explaining that in the early twentieth century, some Jews regarded Jewish gangsters with pride, as a symbol that Jews were becoming normalized into American culture).
220. Id.
fuel the fires of real anti-Semitism.221 Presumably, the members of JPFO have seen this anti-Semitism close up, from inside countless gun shops, as some members of the gun culture blame the Jews for their problems. Instead of blaming the members of the gun culture for their anti-Semitism, however, JPFO blames the “Jewish gun-grabbers” for creating this hatred. Seeking acceptance in the gun culture, the founders of JPFO created an organization dedicated to the proposition that Jews can be good American gun owners.222

Structurally, the thinking of JPFO and the militia movement—the most extreme element of the gun culture—have a great deal in common.223 Like JPFO, the militia movement distrusts the media and the government, believes that a conspiracy is afoot to deprive Americans of their constitutional liberties, and argues that the prime purpose of the Second Amendment was to prevent tyranny, not to guarantee hunting or self-defense rights.224 Indeed, the militia movement has adopted a good deal of JPFO’s material. The Hitler flyer appears at militia gatherings; the Free Militia (not to mention the ubiquitous Larry Pratt) reiterates the claim that the 1968 Gun Control Act was copied from the Nazi Weapons Law;225 and more generally,

221. Liberals, supra note 202 (internal quotations omitted) (omission in original) (quoting a JPFO advertisement).

222. JPFO’s leaders have spoken to the NRA, see Smyth, supra note 160, at 58, and to Radio Free World, an outlet for the militia movement and other fringe right-wing crusades, see Vulliamy, supra note 160, at 20. Some parts of the gun culture have been open to such alliance with JPFO, often as a response to charges of anti-Semitism. The leader of the Militia of Montana, John Trochmann, cited support from JPFO when he claimed, “We have good credentials with people who aren’t white folks.” William Petroski, Soviet Threat Lives On, Militia Leaders Believe, DES MOINES REG., Nov. 30, 1995, at 5M (internal quotations omitted) (quoting John Trochmann). Similarly, Larry Pratt, President of Gun Owners of America and Chair of the 1996 Buchanan for President Campaign, repudiated charges of anti-Semitism thus: “I am a member of Jews for the Preservation of Firearms Ownership, . . . [which] recently issued a statement saying that JPFO and Gun Owners of America have worked hand-in-hand to restore the Second Amendment rights of all Americans and will continue to do so.” Larry Pratt, Allegations Are “Outrageously False”, POST & COURIER (Charleston, S.C.), Feb. 26, 1996, at A9. JPFO has warmly welcomed such overtures: according to Aaron Zelman, “JPFO considers Larry Pratt to be cut of exactly the same cloth as the many righteous gentiles who risked their lives during the Holocaust to rescue Jews from the hands of Nazi murderers.” Id. (internal quotations omitted) (quoting Aaron Zelman).

223. The big discrepancy—and it is a very big one—is the anti-Semitism of the militia movement. I discuss the significance of this discrepancy below. See discussion infra Part II.A.2.b.

224. See Williams, supra note 11, at 892-99, 931-44.

225. See id. at 903; see also Crossfire (CNN television broadcast May 3, 1995) (airing remarks of Larry Pratt).
militia members rely on JPFO to buttress their claim that the federal government is preparing a Nazi-like holocaust for gun owners.226

b. Ethnic Particularism

In sum, then, JPFO exhibits a distinct tendency to assimilate to the gun culture, to build bridges and find commonality with other Second Amendment groups and gun-owning Americans generally. At the same time, however, JPFO imagines American culture as a whole as riven by ethnic animosity—united only by a common dedication to guns, suspicion of the government, and mutual distrust. Indeed, the inevitability of that animosity is the whole reason for cherishing our Second Amendment rights. Remember that in JPFO’s vision, the prime reason for arms ownership is not so that abstract individuals can defend themselves against other abstract individuals. Rather, the reason is so that ethnic and religious groups can defend themselves against genocide perpetrated by other groups. JPFO explains:

Hatred between groups of people is the root cause of genocide. Such hatreds are a commonplace. But such hatreds do not usually lead to genocides. A genocide becomes possible when hatred between groups of people reaches a point where one or more parties seek a “final solution” to the problem, a “final solution” that involves murdering the other party or parties.227

Without this constant threat of ethnic balkanization, the whole reason for the JPFO’s version of the Amendment would disappear.

These two elements of JPFO’s thinking—the drive to build bridges to other groups, and the fundamental suspicion of other groups—appear to be in some tension. That tension is especially acute because some of the allied groups are themselves deeply anti-Semitic, and yet JPFO blithely goes on extending the hand of peace to them.228 Several explanations are possible. First, JPFO may just be inconsistent because it has inconsistent motives. Desiring acceptance in the gun culture, it is prepared to overlook the anti-Semitism that should be so offensive. Second, JPFO may simply be constructing alliances of temporary convenience; devoted to gun rights, it is prepared to make common cause with others who are devoted to gun rights, even if at some future date its members may have to shoot at them.

226. See Camhi, supra note 155, at 29.
227. SIMKIN ET AL., LETHAL LAWS, supra note 157, at 10.
228. For discussion of the anti-Semitism of the militia movement, see Williams, supra note 11, at 925-30.
A third explanation, however, appears more plausible. In JPFO's view, genocide is a possibility only when a hate-group seizes control of the government: "Government . . . is the only mechanism by which a group driven by hatred can turn emotion into large-scale actions . . . Until and unless a hate-driven group gets control of the government mechanism and disarms its intended targets, genocide simply cannot and does not occur." Thus, JPFO conjures a world in which only government can threaten armed citizens because only government can effectively disarm them. This myopic focus on public violence has several important consequences for JPFO. First, it allows the organization to build bridges to other groups without particular worry. Unless those groups seize government, they cannot perpetrate genocide; until they do so, they are fundamentally in the same position as JPFO—fearful of a government that wants to disarm them. Second, it makes more plausible JPFO's claim that self-arming can prevent genocide. After all, "[g]overnment officials usually are a tiny minority of the population (about 2% in America in 1991)." Moreover, in America, "[o]rdinary civilians outnumber government armed forces—military and police—by about 100-to-1." As a result, "civilians armed with military-type rifles by weight of numbers . . . can at least cripple almost any attacking military force. As a result, genocides can be prevented if civilians world-wide own military-type rifles and plenty of ammunition." JPFO has thus simplified the social world into a simple duality: average citizens against the government. In so doing, JPFO is reiterating the elements of an age-old American myth: in revolutionary times, the world will be divided between the people and the government. That division, however, dangerously oversimplifies, as JPFO of all groups should know. In this country, private hate-driven violence is an enormous threat to outgroups, and it always has been, thanks in part to the gun culture's own proclivity to take up arms to further political goals. Moreover, the line between private and public violence is itself very fluid. By strategic inactivity, the government can allow, even encourage, private pogroms without getting its own hands dirty. Further, private hatred can become public hatred as a result of elections or coups. Yesterday's militia leader

229. SIMKIN ET AL., LETHAL LAWS, supra note 157, at 10, 12 (emphasis omitted).
230. Id. at 69.
231. Id.
232. Id. at 71.
233. See Williams, supra note 11, at 904, 916, 924-25.
234. See generally discussion supra Part I.B.1, 3.
could quickly become today's senator. Finally, private people often cooperate with public hate violence. Many, perhaps most, ordinary Germans, for example, were willing participants in Hitler's final solution, not disarmed rebels, nor even innocent bystanders.\textsuperscript{235}

In other words, a different vision of the social world is more plausible but more threatening to JPFO's project: a variety of groups existing in some tension and some amicability toward one another. Some have influence in the government, to varying degrees at various times, and some hold privately owned fertilizer bombs. Many of the latter are anti-Semitic, and in troubled times, more may join them, seeking an explanation for their woes and finding it in the Western world's traditional scapegoats. JPFO must know how plausible this vision is, because it often insists that the Jews in Nazi Germany stood alone, without aid from their neighbors or even from Jews in other countries.\textsuperscript{236} Today, it seems much more likely that the militia movement will commit mass murder against American Jews than that the government will do so. This vision of balkanized ethnic groups is actually the world that JPFO itself imagines, except that it steadfastly refuses to recognize the danger of decentralized violence. As I will later argue, if JPFO took that danger seriously, it would be much harder for it to sustain the claim that self-arming is the answer to hatred.

\textbf{B. Women and Guns}

As with Jews, the relationship of women and guns has always been more complicated than simple opposition. Frontier women used guns to defend their families alongside or in lieu of their men. The famous shooter Annie Oakley influenced the women's movement, hoping that one day all women would be able to handle guns "as naturally as they handle babies."\textsuperscript{237} Today, many women in the gun culture would probably find the proposed opposition between women and guns quite odd. Even for these women, guns may be culturally coded as male, but they are nonetheless quite comfortable handling and using guns. As for the men around them, guns seem an


\textsuperscript{236} SIMKIN ET AL., LETHAL LAWS, supra note 157, at 158-59.

\textsuperscript{237} GLENDA RILEY, THE LIFE AND LEGACY OF ANNIE OAKLEY 143 (1994) (internal quotations omitted) (quoting Annie Oakley).
unremarkable part of life, and they own guns in significant percentages.\textsuperscript{238}

In recent years, however, a new feature has appeared in the cultural landscape of the Second Amendment. According to some, urban women have begun to purchase sidearms for self-defense in record numbers, in response to specific fears rather than as a simple cultural expression.\textsuperscript{239} In point of fact, this trend may have been greatly exaggerated.\textsuperscript{240} Faced with slumping membership, the National Rifle Association (NRA) began a public relations and training program aimed at women.\textsuperscript{241} At about the same time, faced with slumping sales, some of the major gun manufacturers began similar advertising campaigns.\textsuperscript{242} Shortly thereafter, Smith and Wesson commissioned a Gallup poll which concluded that the rates of gun ownership by women had skyrocketed.\textsuperscript{243} Other studies have

\begin{footnotes}
\item[238] See Wright \textit{et al.}, \textit{ supra} note 31, at 113-14.
\item[241] This nationwide women's safety program is entitled “Refuse To Be a Victim.” Advertisements for the program (running in women's magazines like \textit{Cosmopolitan} and \textit{Family Circle}) feature a frightened mother, holding a small child and walking through an unlit garage. Those who call a toll-free number receive a safety tips brochure that includes advice on owning a gun. Interested persons can take an NRA safety course that includes discussion of guns as one option among others. See Ellen Neubome, \textit{Cashing In on Fear: The NRA Targets Women}, Ms., May/June 1994, at 46, 47-49.
\item[242] For example, one Smith and Wesson advertisement features “a serious, thirtyish woman poised at a shooting range, with the headline ‘What would Mom think now?’” Blair & Hyatt, \textit{ supra} note 239, at 118 (quoting a Smith & Wesson advertisement). Another Smith & Wesson advertisement asserts, “Independence. . . . As more women have entered the job market, become heads of households, purchased their own homes, they've taken on a whole new set of responsibilities. For their own decisions. For their own—and their families—security.” Letty Cottin Pogrebin, \textit{Neither Pink nor Cute: Pistols for the Women of America}, NATION, May 15, 1989, at 658, 668 (internal quotations omitted) (omission in original) (quoting a Smith & Wesson brochure). A Colt Firearms’ advertisement pictures a younger mother tucking her child into bed. Under this blissful domestic scene are two models of Colt semiautomatic pistols with the headline: ‘Self-protection is more than your right . . . it's your responsibility.’” Carrie Goeme, \textit{Gun Companies Target Women; Foes Call It 'Marketing to Fear'}, MARKETING NEWS, Aug. 31, 1992, at 1 (omission in original) (quoting a Colt Firearms advertisement). Significantly, the Colt advertisement appeared not in a gun magazine but in \textit{Ladies' Home Journal}. See id.
\item[243] Specifically, the poll found that gun ownership among women had increased 53\% between 1983 and 1986, to an estimated 12 million women. As Smith and Wesson interprets the poll results, it also found 15.6 million “potential female gun purchasers” in 1989, twice the number for 1983. See Tom W. Smith & Robert J. Smith, \textit{Changes in Firearms Ownership Among Women, 1980-1994}, 86 J. CRIM. L. & CRIMINOLOGY 133, 136 (1995). Unfortunately, Smith and Wesson has refused to release the poll data for study by independent analysts. See id. at 141. Gallup itself has criticized Smith and Wesson for misusing the data by claiming that 15.6 million women are potential buyers. See id. at 142.
\end{footnotes}
found, by contrast, that the percentage has not increased, and that the typical female gun owner remains a married resident of a rural, relatively safe, hunting household—in other words, a member of the traditional gun culture, not a frightened urban professional.

Whether women actually own guns in greater numbers than ever before, however, may not be as significant as the perception that they do so. The press has issued a blizzard of stories announcing the trend, reporting the results of the Smith and Wesson poll without much scrutiny. Correlatively, few press stories have questioned the reality of the trend. Concurrently, Hollywood has released a series of new movies featuring women with guns as both dangerous and sexy.

Most importantly, women gun owners have themselves become self-conscious about the connections between their gender and their guns. Women in the gun culture are gun owners who just happen to be women. These new gun owners, by contrast, view their gun ownership as a politically significant act, a defiance of ancient and oppressive gender structures. Unlike earlier women gun owners, these new gun proponents tend to be politically liberal and to identify themselves as feminists.

Unlike JPFO, this new self-consciousness is fairly broad-based. The house journal for the movement is *Women & Guns* magazine, which is published by the Second Amendment Foundation, has a

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Instead, Gallup explained that the 15.6 million figure referred to women who said that there “[was] at least some chance” that they would buy a gun. *See id.* In reality, “only 900,000 women could be considered potential purchasers.” *Id.* (quoting Gallup response).

244. Relying on data from the National Opinion Research Center at the University of Chicago, two researchers conclude: “According to the best available data, the ownership of firearms among women is not increasing, the gender gap is not closing, and the level of ownership is much lower than commonly stated, with about 11 to 12% of women owning a gun and 4.5 to 8% owning a handgun.” *Smith & Smith, supra note 243, at 143.* A 1994 study conducted by the Indiana University School of Law found that gun ownership increased only 2.2% from 1980 to 1994. *See Shermach, supra note 240, at 14.* According to one report, the National Science Foundation has found “no increase in female gun ownership in the past decade.” Colleen O’Connor, *Women’s Self-Defense: Big Business*, DALLAS MORNING NEWS, Oct. 24, 1993, at 1F.

245. *See Smith & Smith, supra note 243, at 144.*

246. *See id.* at 134 n.3 (citing sources).

247. *See id.* at 134-40.

248. *See O’Connor, supra note 244, at 1F.*

249. *See discussion infra Part II.B.1.*

readership of 25,000,251 and claims to "function as the only voice for empowerment of women through self-defense choices."252 Across the country, a variety of firearms training seminars for women and generally taught by women have appeared. The seminars seek to offer a supportive environment (free of the masculine culture that usually surrounds firearms) to help women overcome their aversion to guns.253 In a number of states, women have also formed lobbying groups to fight gun control legislation, portraying the right to arms as a women's safety issue.254

Probably the two most prominent figures in this movement are Paxton Quigley and Naomi Wolf. They have achieved prominence in quite different ways. Quigley was once a gun control activist, helping to found the National Committee for Handgun Control and to pass the 1968 Gun Control Act.255 When a friend was raped, she experienced a sea-change in her views about guns.256 She wrote a book, Armed & Female, to make the case that guns are a safe, effective, and constitutionally sanctioned form of self-defense for women.257 The book became a best-seller, and Quigley became a prominent spokeswoman for women and guns.258 Today, she leads popular self-defense seminars for women.259 In sum, she is the guru of the women and guns movement—the very model of a modern, armed, self-reliant woman.

By contrast, it is not at all clear that Naomi Wolf has ever touched a gun; certainly, she is no expert on women's self-defense. Instead, Wolf is a high profile, best-selling feminist author who has celebrated


252. Tartaro, supra note 250, at 50.


254. See Kathryn Casey, Up in Arms, LADIES' HOME J., Aug. 1995, at 89, 98 (Arming Women Against Rape and Endangerment); Tony Semerad, Utah Women for Gun Control? Not This Group, SALT LAKE TRIB., Sept. 5, 1994, at A1 (Women Against Gun Control); Dave Shiflett, Lock and Load, Ladies: Shooting for Some Common Sense to Gun Ownership Laws, ROCKY MNT. NEWS (Denver), Feb. 19, 1995, at 58A (Safety for Women and Responsible Motherhood).

255. See PAXTON QUIGLEY, ARMED AND FEMALE at xvii (1989).


257. See QUIGLEY, supra note 255, at 52-53, 131-38.

258. See Bowman, supra note 253, at B1.

259. See A CALL TO ARMS, PEOPLE, Jan. 10, 1994, at 60, 63.
women's self-arming as part of a new trend in feminism. In *Fire with Fire*, she urges women to abandon what she calls "victim feminism" and instead to embrace "power feminism":

What is power feminism? It means taking practical giant steps instead of ideologically pure baby steps; practicing tolerance rather than self-righteousness. Power feminism encourages us to identify with one another primarily through the shared pleasures and strengths of femaleness, rather than primarily through our shared vulnerability and pain. It calls for alliances based on economic self-interest and economic giving back rather than on a sentimental ... fantasy of cosmic sisterhood.

Rather than remaining ideologically pure in their powerlessness, therefore, power feminists should fight "fire with fire." They should take up "the master's tools"—such as "the electoral process, the press, and money"—because "it is only the master's tools that can dismantle the master's house."

Guns are among those tools. Wolf offers the women and guns movement as evidence to refute "[t]he premise that women are helpless victims." She reports the alleged trend of women buying guns, and she describes the history and content of *Women & Guns* magazine. Her tone is celebratory: "As violence against women reached epidemic proportions, women were not just sitting around. Quietly, carefully, with thorough training and in unprecedented numbers, while they looked after their families and tended their marriages, they were also teaching themselves to blow away potential assailants." *Women & Guns* "addresses the unlabeled power feminism of women in the American mainstream;" in letters to the magazine, "one can hear the pioneer feminism of women who know that no one will take care of them but themselves." For these women, "victim feminism's worldview is far from accurate, and less then useless. The fact is that women are psychologically burning the clothing of victimization."
1. Power Feminism and Guns

Following Wolf's analysis, the women and guns movement is made up of women who generally consider themselves to be "power" feminists, who reject "victim" feminism's association of women with nonviolence. This argument draws heavily on three traditional feminist themes—empowering women, gendering the subject, and maintaining that the personal is political.

a. Empowering Women

The movement's central argument is that gun ownership can empower women to lead full, active lives, with less fear for their safety and fewer restrictions on their movements. For these women, self-arming is only a logical extension of feminism's drive to empower women. Women who fear guns will remain victims; they should instead transcend their fear, take responsibility for their own protection, and stop relying on men. One woman summarized: "In many ways, it's an extension of the women's movement. The same way we've decided we're perfectly capable of taking care of our economic well-being... we're also capable of taking care of... our personal and physical well-being."

Women & Guns advances this theme insistently, relying heavily on the language of choice and empowerment. Julianne Versnel Gottlieb, the publisher of Women & Guns, writes a monthly column entitled Dear Self-Reliant Reader. In it, she takes a consistent position:

We must realize that we, and only we can—and will—be responsible for our personal safety.

I do not choose to be a victim. I choose to be a woman with power and I will use whatever means I need to attain this goal.

I choose to carry a firearm in certain situations.... It is my choice.

269. See, e.g., id. at 216-20.
270. See infra text accompanying notes 300-303.
273. Id. (internal quotations omitted) (quoting a female gun owner).
274. See, e.g., Gottlieb, supra note 250, at 50.
275. Julianne Versnel Gottlieb, Dear Self-Reliant Reader, WOMEN & GUNS, Sept. 1994, at 58, 58. I offer the quoted language as just one example of Gottlieb's position; virtually every column of Dear Self-Reliant Reader includes similar language of choice and empowerment.
Similarly, Paxton Quigley’s self-defense course is called “Women’s Empowerment in the 90s,” and the idea is never far from her lips: “I teach empowerment.” When they learn how to use a gun, and that they can control it and often shoot well, they become empowered. “Women have finally decided they have to protect themselves. It’s the last avenue to independence and liberation.”

Thus, for the women and guns movement, the central reason for arms ownership is self-defense, rather than hunting, target shooting, or revolution. The movement maintains that armed self-defense is important to women in a variety of contexts. For example, the movement argues—against conventional wisdom—that motherhood provides an important reason to be armed: to protect one’s children. Armed self-reliance is also necessary to women’s ability to travel and pursue employment. Perhaps most centrally, guns empower women to resist rape, domestic abuse, and sexual harassment. Paxton Quigley concludes her chapter “Futile Defense” with an admonition:

If, for whatever reason, you think it is time for you to do your share to end the victim status of women, and if you can bear to undertake the attendant responsibilities, you should know that finding a gun in the hand of a potential victim is one of the most feared and avoided

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277. Eigner, supra note 253, at D1 (internal quotations omitted) (quoting Paxton Quigley).
279. Eigner, supra note 253, at D1 (internal quotations omitted) (quoting Paxton Quigley).
281. Julianne Versnel Gottlieb explains:
Ironically, perhaps to some, it is the fact that I have small children that has made me more vehement in my stand to be able to defend them and myself. I do not choose to be a willing victim or allow them to become ones [sic]. Nor do I want to see that choice denied to any other woman or mother. Gottlieb, supra note 250, at 50. Another woman echoes: “More and more women today are separated or divorced, and the responsibility for their children’s safety lies with Mommy alone.” Ruth Bohan, The Firing Line: Women Are Stepping Up, CHI. TRIB., Aug. 15, 1993, at 3 (internal quotations omitted) (quoting a female gun owner).
282. One woman explains: “Women have the right to work, but only in safe areas. They have the right to go on business trips, but not at night. They are denied equal promotion opportunities because these trips require them to travel alone. This robs women of their rights.” Paul Brinkley-Rogers, Guns Can Free Women, NRA Forum Told, ARIZ. REPUBLIC, May 22, 1992, at B1 (internal quotations omitted) (quoting NRA member and feminist Terryl Morgan). Similarly, Women & Guns declaims: “If [women] are to compete successfully in the business world, they must be free to travel without fear. For too long women have accepted the roll [sic] of natural victim. This must stop.” Karen MacNutt, Perpetuating the Victim Status of Women, WOMEN & GUNS, Dec. 1991, at 7.
incidents a felon can imagine—feared and avoided even more than the police.\textsuperscript{283} Naomi Wolf argues: "Women’s relationship to violence is changing. Ordinary women are at a turning point. The fury generated by sexual abuse, which has traditionally been turned inward, is beginning to be directed outward."\textsuperscript{284} Julianne Versnel Gottlieb writes: "[W]omen who are assaulted are victimized twice. Once by the perpetrator of the crime and the second time by the criminal justice system.... You cannot count on anyone to protect you or defend you except yourself."\textsuperscript{285}

Importantly, self-arming allows women to rely on themselves, rather than the men in their lives. One woman colorfully explained: "When there aren’t any warm shoulders of a man to lean on for protection, there’s nothing that feels better than the cold barrel of a gun."\textsuperscript{286} Another insisted: "I don’t have, or necessarily need, a man to protect me."\textsuperscript{287} Similarly, self-arming allows women to rely on themselves rather than on the state, which cannot or will not adequately protect women. One woman took a forgiving tone: "A big part of learning how to use a gun is self-reliance .... The police aren’t psychic. They come when they’re called. We’re socialized to think some man on a white horse is going to come and rescue us. That’s a fairy tale."\textsuperscript{288} Most, however, are more critical. Safety for Women and Responsible Motherhood (SWARM), a lobbying group opposed to gun control, sarcastically instructs: "Call for a cop, an ambulance and a pizza and see who gets there first. The pizza rarely comes in second."\textsuperscript{289} Karen MacNutt, legal consultant for the Second Amendment Foundation and the National Rifle Association, writes a monthly column for \textit{Women & Guns} called \textit{Legally Speaking}.\textsuperscript{290} It stresses the inadequacy of legal mechanisms such as restraining orders
to protect women; instead, MacNutt urges women to become self-reliant by arming themselves.  

Women in the movement have harsh words for those “victim” feminists who equate femaleness and nonviolence, especially feminist proponents of gun control—similar to JPFO’s denouncement of “Jewish gun-grabbers.” Karen MacNutt declaims: “What is truly amazing is the large number of otherwise intelligent, so-called ‘liberated’ women who blandly accept and even promote the idea that women are incapable of defending themselves with these devices.” Peggy Tartaro accuses feminist gun control advocates of elitism and paternalism: “This particular self-described liberalish feminist still thinks women can make up their own minds, thank you very much. And she thinks that while not every woman may want to include a firearm in her own self-defense options, that those who do shouldn’t be subject to ridicule.” When Ms. magazine criticized the idea that guns empower women, Women & Guns magazine responded:

[Naomi] Wolf’s brand of feminism is unacceptable to the Ms. editorial board which apparently believes “feminism” and its attendant vocabulary can only be defined and used by themselves.

In fact, none of the material presented talks directly with women gunowners, preferring to fall back on the victim mythology created by the general media.

Finally, Julianne Versnel Gottlieb virtually chants her personal code:

I am not a victim feminist. I am a power feminist.
I refuse to be a victim. I refuse to be a victim of crime. I refuse to be a victim of discrimination. I refuse to be a victim of someone else.
I have power. I have power against crime. I have power against discrimination. I have power against someone else.
I am self-reliant.

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291. See, e.g., id. ("'Nightmare Ends In Death,' read the headline. Estranged husband violates restraining order to murder wife then kills self. We did all we could, says judge . . .") (omission in original); Karen L. MacNutt, Legally Speaking: Occupational Safety II, WOMEN & GUNS, July 1994, at 40, 42 (“I believe a handgun is the best defense from random violence.”); Karen L. MacNutt, Legally Speaking: Better Late Than Never, WOMEN & GUNS, Sept. 1993, at 38, 38 (describing a hypothetical police officer who tells an abused woman, “We’ve better things to do than to get involved in a lover’s quarrel”).


293. Peggy Tartaro, From the Editor, WOMEN & GUNS, Aug. 1995, at 6, 7.

294. "Ms."—Understanding Women Gunowners, supra note 260, at 8 (emphasis added). Similarly, according to Sonny Jones, “feminism is dying,” because victim “feminists don’t dance. . . . [B]efore you teach a person the art of war, you must teach her the art of dance. In other words, a woman must learn to love life and herself before she can deal with the concept of fighting to preserve that life.” Nadelson, supra note 251, at 14 (internal quotations omitted) (quoting Sonny Jones, founding editor of WOMEN & GUNS).
And I want you to have that choice also.295

b. Gendering the Subject

Like "establishment" feminists, the women and guns movement insists that too often, public policy analysis does not take gender into account, using either a masculine or a "gender-neutral" actor as the subject.296 Instead, analysis of the right to arms should take both a woman's and a man's perspective—it should "gender the subject"—because the right may have different significance for women than for men.297 Indeed, reversing the traditional wisdom, the movement argues that the right to arms is more important to women than to men.298

One of the earliest essays to discuss women and guns, by Ruth Silver and Don Kates, protests the failure of both sides in the gun control debate to consider directly "the viability of women's self-
defense." By contrast, the authors conclude that "a specific discussion of women's armed self-defense is appropriate, because the crimes women fear are particularly deterrable and defensible with handguns." They also argue that women have greater need of guns than do men, because of their relative physical weakness: "[Women's] freedom is made possible by the opportunity to possess a handgun. To paraphrase a saying from the Old West: God didn't make men and women equal, Colonel Colt did." The notion that guns are a gender-equalizer has become a slogan in the women and guns movement.

One gun owner put the idea colorfully: "That's my equalizer with a man that's going to do me bodily harm. That makes us the same, then. We're on equal ground, and that's a good safe feeling. I'd just aim for the crotch and hit the heart."

Similarly, in the movement's view, gun control falls especially heavily on women. This criticism applies to all gun control, because "women are more vulnerable to attack, and have more at stake in battling new controls on guns than men do." Particular forms of gun control also have particular problems. Peggy Tartaro condemns waiting periods as "gender biased" because women are "more likely [than men] to be first time purchasers of guns," and she concludes that "waiting periods ... kill women." One group condemns discretionary licensing statutes because police chiefs tend to grant them primarily to men: "This discrimination against [Colorado's] women is deeply violent." As noted above, women's lobbying groups have sprung up all over the country to fight gun control at the state level.


300. Id. at 140.

301. Id. at 169.


303. Blair & Hyatt, supra note 239, at 123; see also Casey, supra note 254, at 98 (noting that Camille Paglia calls a gun "the ultimate equalizer"); Miguel A. Faria, supra note 302, at 16 ("The gun is the great equalizer for women."); Laura Ingraham, Armed and Empowered, Pittsburgh Post-Gazette, May 19, 1996, at E-1 ("[F]eminist leaders [wrongly] pooh-pooh the notion that guns are 'equalizing forces' for women who are otherwise no match for a would-be attacker."); Walsh, supra note 286, at B3 (quoting the head of Women Against Gun Control, who calls guns "the great equalizer").

304. Semerad, supra note 254, at A1 (paraphrasing the head of Women Against Gun Control).

305. Peggy Tartaro, From the Editor, Women & Guns, May 1993, at 6, 6.


307. See supra note 254 and accompanying text.
c. The Personal Is Political

The women and guns movement also echoes the feminist conviction that the world is not and should not be sharply divided into personal and political spheres. On one hand, the movement seeks to defend an individual right to keep and bear arms; it urges women as individuals to purchase and train with guns for their own personal protection. On the other hand, the movement also hopes that this self-arming will have large and long-term effects in the public realm.

Those political dimensions are several and linked. First, as I have argued above, for the women and guns movement, self-arming rests on a belief that the state cannot or will not protect women, so they must protect themselves. One study concluded of recent women gunowners, "[o]wning a gun for these women is a necessary evil, as well as a political statement. They all expressed doubt that gun control legislation would work and, therefore, defended their right to own a gun." Second, as I have detailed earlier, for the movement, the choice to buy a gun entails a decision not to rely on men for protection. Indeed, many of these women see the purchase of a gun as a way to upset conventional gender roles, by invading the masculine culture of guns and defying the expectation that women will be weak and passive. Paxton Quigley explains:

"Socialization processes that connect femininity to various styles of weakness and helplessness may paralyze many women, teaching them the fear that restricts their ability to defend themselves. . . . Sometimes it takes weeks or even months before these women begin to realize that they are physically and mentally capable of successfully defending themselves against an aggressor."

309. See supra Part II.B.1.a.
310. See, e.g., New Colorado Group Will SWARM Concealed Carry Reform, supra note 306, at 8.
311. See supra notes 288-291 and accompanying text.
312. Blair & Hyatt, supra note 239, at 123.
313. See supra notes 286-287 and accompanying text.
314. While the movement hopes to invade and disrupt the masculine culture of guns, it also plainly hopes to retain a good deal of conventional feminine culture as well. This blending of the two cultures leads to some of the odder elements of the movement. For example, Women & Guns published an article on whether shooting and pregnancy mix (they do), see Carolee Boyles-Sprenkel, Shooting and Pregnancy: Do They Mix?, WOMEN & GUNS, Aug. 1995, at 22, and apparel designers have produced "[g]arter-belt holsters, gabardine business suits, slinky sequined evening gowns, even the trusty headband . . . to comfortably hide a pistol," O'Connor, supra note 244, at 1F.
Moreover, a great many women also dislike and fear guns and consider it normal female behavior to react in that manner. These emotions may be a consequence of a myth that perpetuates the idea that guns belong to men as if they were some sort of cultural prerogative. Some women . . . perceive guns as an extension of a man's masculinity, giving him perhaps an undeserved power.\textsuperscript{315}

Karen MacNutt proudly proclaims that society would consider her a "very bad girl" because, as she explains, "I carry a gun. I have no faith in the protective shield of some Victorian sense of innocence. . . . If my .38 is too small, I'm sure my .45 will do the job."\textsuperscript{316}

Third and cumulatively, although the movement views the right to arms as an individual right, it hopes that general self-arming by women can radically change current gender dynamics. Proponents and opponents of the movement agree that it grows out of a deep well of anger about the oppression of women. \textit{Ms.} magazine explains that women possess "a certain off-the-record vein of vengefulness, a mother lode of anger, a vast buildup of unrequited insults and injuries. . . . Sweet revenge. Women's interest in guns—such as it is—isn't just about fear. It's about fighting back."\textsuperscript{317} One gun dealer made the point in almost identical terms: "Women have suffered from purse snatchings, rapes and all kinds of humiliation. They're absolutely disgusted with government's feeble attempts to do anything for them. And they're getting p---- off."\textsuperscript{318} Supporters of the movement believe that this anger can be successfully channeled into a large-scale resistance movement. Paxton Quigley explains: "If a number of women say 'Enough is enough,' we're going to see a real Take Back the Night movement."\textsuperscript{319} Even critics of the movement see the appeal in this hope. Letty Cottin Pogrebin, founding editor of \textit{Ms.}, acknowledges:

\begin{quote}
[My reaction surprised me. I'm for gun control and nonviolent conflict resolution, yet suddenly I imagined every woman armed, powerful and instantly equalized—not as an aggressor but as a confident defender of her safety and physical integrity. Wait until some guy attacks us on an empty street: POW—one less pervert; BANG—
\end{quote}

\textsuperscript{315.} Quigley, \textit{ supra} note 255, at 37-38.
\textsuperscript{317.} Jones, \textit{ supra} note 295, at 42-43.
\textsuperscript{319.} Japenga, \textit{ supra} note 295, at 57 (internal quotations omitted) (quoting Paxton Quigley).
another rapist blown away.... [P]istol-packin’ mamas will fight back: ZAP—victims no more.320

In this sense, the movement seamlessly blends individual and collective aspects of the right to arms. On one hand, each woman possesses an individual right to arms—she alone has the choice to decide to buy a gun, and she alone must pull the trigger. The movement imagines that the right to arms will generally be exercised in a one-to-one confrontation with an aggressor. On the other hand, these individual exercises of the right to arms are part of a more general movement, and the movement hopes that the meaning and effect of this general self-arming will have immense political significance. In this view, when an individual woman fights off an attacker, she is fighting not only a particular man but the forces of misogyny. When she overcomes her own fear of violence, she is contributing to a large-scale shift in cultural attitudes that consign women to victimhood. And when she joins with other women in gun training classes or in reading Women & Guns magazine, she is affirming that there is strength in armed sisterhood.

The apotheosis of this line of thinking is the common claim that the solution to political violence against women is women’s personal self-arming—echoing JPFO’s claim that the solution to the Holocaust was Jewish self-arming. After recounting the atrocities in Bosnia-Herzegovina, Julianne Versnel Gottlieb protests:

I have never read or heard one reporter—female or male—who has decried the fact that these women have no way to defend themselves. They never comment on, refer to, allude to, or allow that any woman—every woman—should have the right to choose not to be a victim.

....

... It is time for [women’s organizations’] help to expand its outreach to teach women around the world how to choose not to be a victim.321

In a later column, Gottlieb offers the same prescription for other countries:

[T]he same horrendous practices are taking place in Haiti and Rwanda. With each new revelation, the United Nations continues to pass

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320. Pogrebin, supra note 242, at 668. Similarly, a liberal talk-radio host, who finds the “passion about guns in this country... disgusting,” still finds herself conflicted: “If more women purchased guns and learned how to use them, it would be a step toward the end of victimization of women.... I am reacting to centuries of violence against women.... My fears are part of the collective conscious of all the assaults and abuse against women.” Martell, supra note 298, at 1A (internal quotations omitted) (quoting Diana Summers).

economic sanctions and demand the restoration of the "rightful" governments.

It's not working. It's time to do something so that the victims can protect themselves.

... I am not a victim feminist. I am a power feminist.\textsuperscript{322}

Even Naomi Wolf has warm words for women's self-arming in the Balkans:

In the Balkans, women have begun to take part in the violence that has engulfed the region, and to reject their submissive roles in the traditionally patriarchal culture. "Women have changed since the beginning of the war," Sarajevan Jasna Delalic said. "Women have banded together... I will never slave for anybody anymore."

Balkan women are reacting to their victimization with a matter-of-fact military vengefulness. . . . [A Sarajevan doctor explained,] "I've treated eighteen raped women . . . About a third waited to have their gynecological problem resolved and then went out and picked up a gun."\textsuperscript{323}

2. The Second Amendment as an Equal Rights Amendment

The interpretation of the Second Amendment offered by the women and guns movement grows directly out of its analysis of the importance of self-arming to women. In this sense, the interpretation is perspectival—it is the Second Amendment as understood through the lens of power feminism. And it rests on a vision of the social world as deeply divided by gender animus. The reason for the right to arms is that women need to defend themselves against misogynist men, not so that abstract individuals can defend themselves against other abstract individuals. In that sense, for the movement, the Second Amendment is a kind of Equal Rights Amendment. Like Colonel Colt, it equalizes the marginal difference in physical strength between men and women and so gives the latter a real-world freedom of movement and physical integrity.

Paxton Quigley's interpretation of the Amendment exemplifies these characteristics in a somewhat indirect way. Her formal analysis of the Amendment itself is actually quite gender-neutral, sounding very like the standard account offered by the individual rights school and indeed relying heavily on the work of Don Kates.\textsuperscript{324} She begins with a number of standard passages by early American thinkers like

\begin{itemize}
\item \textsuperscript{322} Gottlieb, \textit{supra} note 295, at 58.
\item \textsuperscript{323} WOLF, \textit{supra} note 260, at 220.
\item \textsuperscript{324} See QUIGLEY, \textit{supra} note 255, at 54-65.
\end{itemize}
Samuel Adams, James Madison, and Richard Henry Lee, on the importance of the right to arms.\textsuperscript{325} She then argues, following Don Kates, that the "militia" to which the Amendment refers is the unorganized militia, composed of every private householder.\textsuperscript{326} And she concludes by arguing that the threat of tyranny is still very real, and so we should continue to embrace the Second Amendment.\textsuperscript{327} On the face of things, none of these arguments is overtly connected to perspectivalism or a divided social world. Quigley's interpretation of the Amendment, however, occurs in a book devoted to the idea that women need guns to be free.\textsuperscript{328} Her analysis of the Amendment contains no discussion of the importance of hewing to the Framer's intent or the value of a written constitution. Instead, she values the Amendment, as she interprets it, because it promises to help women in a divided social world—and she thinks that we should value the Amendment for the same reason: "[T]he real issue is not the polemics of guns versus no guns; rather, for some women it is the choice of being victor or victim."\textsuperscript{329}

The editors of \textit{Women & Guns} more directly connect their interpretation of the Amendment to perspectivalism and the vision of a divided social world. The magazine describes itself as "[a] publication primarily for women, primarily by women and presenting a strong proactive stand on the right to keep and bear arms for women."\textsuperscript{330} For better or worse, the state has no constitutional obligation to protect women: "[M]any courts have held that police have no obligation to protect individual citizens."\textsuperscript{331} Fortunately, the Second Amendment guarantees women the right to protect themselves. In the prose of Julianne Versnel Gottlieb, the meaning of the Second Amendment and the concerns of power feminism are so neatly blended that it becomes impossible to divine where one begins and the other ends.\textsuperscript{332} In one column, she denounces Hillary Rodham Clinton for believing that

325. See id.
326. See id.
327. See id.
328. See id. at 1-27.
329. Id. at 91.
331. \textit{Glamour Asks Why?}, \textit{Women & Guns}, July 1993, at 8, 9 (internal quotations omitted) (quoting a letter from a reader); see also Faria, \textit{supra} note 302, at 15 ("[T]he police do not have a legal duty to protect the public against criminals.... [T]here is no constitutional right to be protected by the state against being murdered by criminals or madmen.") (quoting Bowers v. Devito, 686 F.2d 616, 618 (7th Cir. 1982)).
"government is the only entity able to make choices for you and me." By contrast, "I, Julianne Versnel Gottlieb, believe that the individual can make the best choices for the individual." In so doing, she follows in the footsteps of Dolley Madison, wife of "James Madison, the author of the Second Amendment," and "a woman who time and again in her long life made the choice not to be a victim." Similarly, Gottlieb feels a close connection to Eleanor Roosevelt, who "carried a small handgun in her purse. She made a choice not to be a victim." After claiming these women, along with Molly Pitcher, Martha Washington, and Abigail Adams, as spiritual ancestors, Gottlieb then offers her view of the Second Amendment:

If the U.S. Constitution gives me the right of privacy—the right to control the destiny of what occurs to my body—it gives me same right of privacy to choose to protect myself from assault, rape or worse.

I believe that the Second Amendment of the Bill of Rights gives me the individual right to make a choice if, and/or how, I am going to do so.

I believe that as a mother, I have these same rights when it comes to the protection of my children. I believe that as a wife, I have the same rights for the protection of my husband.

In another column, she writes that the Second Amendment was included in the Bill of Rights over 200 years ago to protect us from tyranny from within, as well as from without. It is what I fight for so that you and I do not become victims like those tortured women in Bosnia-Hercegovina today and who knows where tomorrow.

In these passages, Gottlieb offers a power-feminist Second Amendment, predicated on the reality of a misogynist world. In place of Founding Fathers, she offers us a roster of Founding Mothers, each of whom "chose not to be a victim." If the Constitution today protects women's substantive due process rights to reproductive autonomy, then it stands to reason that the Second Amendment also gives women the right to defend themselves—to choose not to be victims. Women may exercise that right as individuals, as mothers, or as wives—and the Second Amendment recognizes and celebrates all of those uses. In other words, this rendering of the Amendment is

333. Id.
334. Id.
335. Id.
336. Id.
337. Id.
338. Gottlieb, supra note 321, at 50.
339. Gottlieb, supra note 332, at 50.
perspectival. It offers us a Second Amendment interpreted with the concerns of power feminism in mind.

Gottlieb's version of the Amendment also rests on a vision of a socially divided world. The reason that women need the Amendment is to defend themselves against "rape, assault, or worse." Indeed, the Amendment offers the only guarantee that Bosnia-like misogynistic violence will not occur here. For that reason, Gottlieb has devoted herself to defending the Amendment—as it defends her and all women. The staff of Women & Guns draw the obvious conclusion: "If we allow the gun-control lobby to chip away at our constitutional rights in the name of crime control we will be taking the first step in guaranteeing that we are victims." And Gottlieb warns, "It is not possible to be selective about the Constitution. . . . This is crucial to realize when responding to the violence that pervades our lives."

Recently, this rendition of the Amendment has made its way from the popular press to the law reviews. Like Don Kates and Ruth Silver, Inge Anna Larish condemns "[the exclusion of women's concerns in the gun control debate [because] women are most in need of guns for self-defense. All else being held equal, women are physically weaker than men and will continue to be victimized by men whether or not men have guns." Moreover, the police have been especially deficient in "preventing the crimes which greatly and disproportionately affect women, such as sexual assault and domestic violence." As a result, gun control falls especially heavily on women. In practice, statutory schemes for carry permits discriminate against women, who generally do not carry large sums of cash and cannot demonstrate need. In addition, a complete gun ban would help "men who perpetrate violent crime against women" because "[f]or most women, men's fists are lethal force."

In Larish's view, the current discussion of the meaning of the Second Amendment wrongly ignores these women's concerns. The Framers wrote the Amendment "in gender-neutral language," but "[a] problem with gender-neutral law is its assumption that such laws

340. See id.
344. Id. at 504.
345. See id.
346. Id. at 505.
concern themselves with women’s interests, when, a closer examination reveals that the interpretation, discussions and application of the law often ignores women." Thus, collective rights theorists completely ignore women’s need for self-defense, reading the Amendment instead to protect only the “states’ right to maintain militias.”

Even historians of the individual rights school “speak in terms of a male right, generally agreeing that one of the primary purposes of the [Second Amendment] was to guarantee an individual’s right to defend ‘himself.’” Larish never describes how she would interpret the Amendment in detail, but it is not difficult to infer from her analysis. If we read the Amendment with women’s needs in mind, we would presumably endorse a very strong personal right to own arms for self-defense, and we would find most gun control statutes unconstitutional. Like Quigley and Gottlieb, then, Larish offers a perspectival Second Amendment (indeed, Larish subtitled her article *A Feminist Perspective on the Second Amendment*), understood through the lense of women’s particular concerns and resting on a vision of a social world saturated with misogynistic crimes against women.

C. An Afro-Americanist Reconsideration

As explained above, most African-Americans may have not found guns alien to the extent that most women and Jews have. In addition, blacks have resisted oppression by force of arms since before the creation of the republic. Before the Civil War, Southern states sought to keep blacks disarmed, but slaves repeatedly rose in revolt, even though, unlike slaves in other parts of the Americas, they may never have developed a clear revolutionary tradition. After the Civil War, blacks formed private militias to resist, usually unsuccessfully, attacks from white supremacist groups. Later, W.E.B. DuBois called for black self-arming as a response to lynching: “[L]ynching of Negroes is going to stop in the South when the cowardly mob is faced by effective guns in the hands of the people determined to sell their souls dearly.”

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347. *Id.* at 472, 503.
348. *Id.* at 503.
349. *Id.*
350. See supra notes 122-126 and accompanying text.
351. See Bogus, supra note 129, at 1370.
353. See Kopel, supra note 35, at 332-35.
Northern blacks organized armed militias to repel the assault of white urban mobs, again usually, but not always, without success.\textsuperscript{355}

During the early years of the civil rights movement, Robert Williams pioneered disciplined, aggressive, and collective self-defense strategies in resisting the Klan;\textsuperscript{356} he later authored the classic tract on the subject, \textit{Negroes with Guns}.\textsuperscript{357} Across the South, blacks organized local chapters of the Deacons for Defense and Justice to similar ends.\textsuperscript{358} As the sixties proceeded, black violence became more widespread and less organized.\textsuperscript{359} In the face of massive racial injustice and the assassination of Martin Luther King, rioting erupted in many of the nation's large cities.\textsuperscript{360} Capping a decade of growing militancy, the perennially controversial Black Panther militia put the Second Amendment at the center of its political platform:

\begin{quote}
\textit{We want an immediate end to POLICE BRUTALITY and MURDER of black people.}

We believe we can end police brutality in our black community by organizing black self-defense groups that are dedicated to defending our black community from racist police oppression and brutality. The Second Amendment to the Constitution of the United States gives a right to bear arms. We therefore believe that all black people should arm themselves for self-defense.\textsuperscript{361}
\end{quote}

\section{Before Cottrol and Diamond}

In short, then, although blacks have never been part of the mainstream gun culture, African-American culture has often produced and celebrated courageous acts of armed resistance. In recent years, legal academics have begun to write a new and important chapter in this tradition. They have begun to craft an interpretation of the Second Amendment that puts black resistance at the center of focus and argues that the right to arms may be especially important to despised groups, like blacks, who have good reason to distrust the state.\textsuperscript{362} For some

\begin{quotation}


\textsuperscript{357}. ROBERT F. WILLIAMS, NEGROES WITH GUNS (Marc Schliefer ed., 1962).

\textsuperscript{358}. See Cottrol & Diamond, supra note 355, at 357-58.

\textsuperscript{359}. See KOPEL, supra note 35, at 338-40.

\textsuperscript{360}. See id. at 339-40.

\textsuperscript{361}. PEARSON, supra note 127, at 110-11.

\textsuperscript{362}. See generally John R. Salter, Jr. & Don B. Kates, Jr., \textit{The Necessity of Access to Firearms by Dissenters and Minorities Whom Government Is Unwilling or Unable to Protect}, in RESTRICTING HANDGUNS: THE LIBERAL SKEPTICS SPEAK OUT, supra note 299, at 185.
\end{quotation}
decades, individual rights theorists have been laying the foundation for this new interpretation. First, many civil rights workers in the 1960s found that a gun was an important tool to resist racist violence, and some of these workers later became central figures in the individual rights school of Second Amendment theory. Don Kates, for example, explains, “As a civil rights worker in a Southern state during the early 1960s, I found that the possession of firearms for self-defense was almost universally endorsed by the black community, for it could not depend on police protection from the KKK.”

Second, theorists of the individual rights school have argued that the purpose of much gun control has been to disarm blacks. In the post-Reconstruction South, some states passed laws banning ownership of cheap handguns, so that only those (overwhelmingly white) people of ample means could own a handgun. In other Southern states, sheriffs simply confiscated the weapons of African-Americans, even in the absence of formal laws banning black ownership. Often, these sheriffs were helped in their confiscation efforts by early registration laws. Still other states imposed very heavy taxes on handgun sales, comparable in effect to poll taxes. And yet others hit upon the most successful scheme of all—a discretionary licensing law, under which the police could grant permits to those whom they favored and deny permits to everyone else, including “undesirables” like blacks.

Some individual rights theorists further maintain that much recent gun control is really motivated by a desire to keep guns out of the hands of blacks and the poor. In this view, for example, the 1968 Gun Control Act does not significantly restrict gun ownership; rather, it primarily makes guns more expensive by restricting the import of cheap foreign guns. For that reason, the 1968 Gun Control Act

363. Id. at 186. Similarly, John Salter reflects on his own experience: “There is no question but that the known existence of pervasive firearms ownership in Southern Black communities prevented much (though not all) massively violent racist retaliation.” John R. Salter, Jr., Social Justice Community Organizing and the Necessity for Protecting Firearms, in THE GUN CULTURE, supra note 30, at 19, 20.


366. See Kates, supra note 364, at 14.

367. See id. at 14-15.

368. See id. at 15.


370. See Kates, supra note 364, at 25.

371. See id.
functions as a "poll tax" on Second Amendment rights. Similarly, many believe that the agitation for a ban on "Saturday Night" specials proceeds from a fear of blacks with guns: "It is difficult to escape the conclusion that the 'Saturday Night Special' is emphasized because it is cheap and is being sold to a particular class of people. The name is sufficient evidence—the reference is to 'nigger-town Saturday night.'" Inferentially, this claim that gun control is often racist contains the heart of the Afro-Americanist reconsideration of the Second Amendment. The sorry history of racist gun control might lead one to conclude that it is unwise to entrust the state with a monopoly of force. Hence, the experience of blacks with gun control argues in favor of an individual rights interpretation of the Amendment.

2. Cottrol and Diamond

While this interpretation has been some years in the making, it has recently found its master expositors in Robert Cottrol and Raymond Diamond. While the women and guns movement may be the product of a large change in popular social consciousness, and JPFO is a small organization on the political fringe, the Afro-Americanist reconsideration of the Second Amendment is largely the work of these two gifted scholars. The impact of their work has already been significant. Their writings have been frequently reprinted, and they have recently been cited by one Supreme Court Justice—perhaps evidence that their views may influence the Court if and when it ever decides the meaning of the Second Amendment.

372. See id.
373. Bruce-Briggs, supra note 27, at 74.
376. See Printz v. United States, 521 U.S. 898, 938 n.2 (1997) (Thomas, J., concurring). In Printz, the majority held that the provision of the Brady Bill requiring local law enforcement officers to conduct background checks on potential gun purchasers violated the Tenth Amendment. See id. at 848-935. Justice Thomas joined that opinion, but he also wrote separately to emphasize that the Brady Bill might also violate the Second Amendment:
The work of Professors Cottrol and Diamond contain two central themes, one historical and the other theoretical, closely blended but analytically severable. First, they develop a careful historical exposition of the relationship of American race relations, on one hand, and the constitutional right to arms and gun control, on the other. In this exposition, they emphasize that gun control has often hurt African-Americans and self-arming has helped them. From this historical evidence, they develop the second of their themes—a theoretical argument that the Second Amendment should be given an individual rights reading, because a personal right to arms is an important safeguard for African-Americans and other despised groups in a country still consumed by bigotry. In language that could stand as a statement of philosophy for every outgroup theorist, Professors Cottrol and Diamond write:

This article explores Second Amendment issues in light of the Afro-American experience, concluding that the individual rights theory comports better with the history of the right to bear arms in England and Colonial and post-Revolutionary America. The article also suggests that Second Amendment issues need to be explored, not only...
with respect to how the right to keep and bear arms has affected American society as a whole, but also with an eye toward subcultures in American society who have been less able to rely on state protection.\textsuperscript{380}

Cottrol and Diamond begin their historical sketch with the colonial background of the right to arms. They demonstrate that by the eighteenth century, English law had come to recognize a right to keep and bear arms, but that right was highly qualified along class and religious lines.\textsuperscript{381} By contrast, the American legal tradition quickly eliminated those distinctions and substituted racial ones.\textsuperscript{382} White citizens, whatever their class or religious status, had a right and usually a duty to be armed, but African-Americans enjoyed only a limited right to keep guns.\textsuperscript{383} The reasons for this change are clear. As America was becoming a society deeply divided by race, white Americans felt threatened by Native Americans on their borders and black slaves in their midst.\textsuperscript{384} As a result, they needed both to arm the white population and to control the access of blacks to arms.\textsuperscript{385}

Next, Cottrol and Diamond summarize the revolutionary ideology of the Second Amendment as they understand it:

If necessity forced the early colonists to arm, the Revolution and the friction with Britain's standing army that preceded it—and in many ways precipitated it—served to revitalize Whiggish notions that standing armies were dangerous to liberty, and that militias, composed of the whole of the people, best protected both liberty and security.\textsuperscript{386}

When the new Federal Constitution gave Congress the power to organize, arm, and discipline the militia,\textsuperscript{387} many feared that Congress would use its new powers "to both destroy state power over the militia and to disarm the people."\textsuperscript{388} As a result, state legislatures proposed a constitutional amendment to protect the right of the population to keep and bear arms:

It is against this background that the meaning of the Second Amendment must be considered. For the revolutionary generation, the idea of the militia and an armed population were related. The principal reason for preferring a militia of the whole over either a standing army

\textsuperscript{380} Id. at 319.
\textsuperscript{381} See id. at 321-23.
\textsuperscript{382} See id. at 323-27.
\textsuperscript{383} See id.
\textsuperscript{384} See id.
\textsuperscript{385} See id.
\textsuperscript{386} Id. at 327.
\textsuperscript{387} See U.S. CONST. art. I, § 8, cl. 15.
\textsuperscript{388} Cottrol & Diamond, supra note 355, at 328.
or a select militia was rooted in the idea that, whatever the inefficiency of the militia of the whole, the institution would better protect the newly won freedoms than a reliance on security provided by some more select body.\textsuperscript{389}

At this juncture, however, the Afro-Americanist reconsideration hits its first serious snag. The presence of violent racism among white Americans before and after the founding generation may lend support to the Afro-Americanist/individual rights theory. Because African-Americans need arms to resist such violence, we should read the Amendment to protect a personal right.\textsuperscript{390} The presence of racism in the founding generation, however, tends to undercut the Afro-Americanist/individual rights theory. Following Carl Bogus's view, the Second Amendment would protect the right of white people to own arms so as to subjugate red and black people.\textsuperscript{391} As Bogus powerfully argues, an Afro-Americanist reconsideration of the Second Amendment would therefore have to reject the Amendment as a vestige of an oppressive and archaic worldview.\textsuperscript{392} The provisions of the Uniform Militia Act make this problem especially pressing for Professors Cottrol and Diamond. Shortly after Congress proposed the Second Amendment, which called for a militia of the whole and hence an armed population, Congress then ostensibly defined the militia of the whole in a racially restrictive way: "The Uniform Militia Act called for the enrollment of every free, able-bodied white male citizen between the ages of eighteen and forty-five into the militia."\textsuperscript{393}

Cottrol and Diamond avoid this problem by arguing that "while [the Uniform Militia Act] specifically included only this limited portion of the population, the statute excluded no one from militia service."\textsuperscript{394} In other words, the statute only seems to be racially exclusive. It requires that white men enroll, but implicitly allows the states to adopt a broader definition.\textsuperscript{395} Cottrol and Diamond offer three sources of evidence to support this reading. First, in the antebellum period, states in both the North and the South sometimes enrolled blacks into their armed forces, especially during times of invasion.\textsuperscript{396} Second, Northern—but not Southern—states generally allowed blacks

\begin{thebibliography}{99}
\bibitem{389} Id. at 330.
\bibitem{390} See id.
\bibitem{391} See Bogus, supra note 129, at 1367-74.
\bibitem{392} See id.
\bibitem{393} Cottrol & Diamond, supra note 355, at 331 (footnote omitted).
\bibitem{394} Id. at 332.
\bibitem{395} See id.
\bibitem{396} See id. at 331-32.
\end{thebibliography}
to own firearms. 397 Third, "[t]he authors of the statute had experience, in the Revolution, with a militia and Continental Army considerably broad in membership" in that older and younger men, black men, and even some women had served, though the last two categories caused considerable controversy. 398 As a result, "it is likely that the framers of the 1792 statute envisioned a militia even broader than the one they specified." 399 Cottrol and Diamond then use this analysis of the Uniform Militia Act to give the Second Amendment a nonracist reading. If the drafters imagined an inclusive militia in the statute, it stands to reason that they intended the same sort of militia in the Second Amendment:

[T]he widespread use of blacks as soldiers in time of crisis and the absence of restrictions concerning the arming of blacks in the northern states may provide another clue concerning how to read the Second Amendment. . . .

[The broad militias envisioned by the 1792 statute suggest] to us how broad the term "people" in the Second Amendment was meant to be. 400

In short, because of the demands of their theory, Cottrol and Diamond must and do portray American culture as violently racist before and after but not during the founding generation. 401 This portion of their historical account seems the least plausible. First, they offer no reason for this break in the historical pattern. Further, they offer no written evidence that the Framers intended a multiracial militia; the best contemporaneous evidence—the Uniform Militia Act—appears on its face to prescribe a uniracial militia. Cottrol and Diamond argued that the Act allowed but did not require a multiracial militia, but they offer no explanation of why the drafters of the statute would concoct such a scheme. The most obvious reason for requiring all whites but not blacks to be members of the militia is that they distrusted blacks, but that reason would lead to excluding blacks altogether. Cottrol and Diamond argue that we can infer that the Act would allow a multiracial militia from the fact that militias sometimes included blacks. 402 As Cottrol and Diamond admit, however, that inclusion was always controversial and occurred only in times of dire

397. See id.
398. Id. at 332.
399. Id.
400. Id.
401. See id. at 324-26, 340-42.
402. See id. at 331-32.
need, as a concession to necessity. Moreover, the militia sometimes included women, but even Cottrol and Diamond do not argue that the Uniform Militia Act permitted a multigender militia. There is a different, and more intuitively plausible, explanation of the language of the Act. In times of need, the militia had included blacks, but that experience had been so controversial that Congress decided to exclude them in peacetime. Should the need arise again, Congress could adopt a more expansive definition.

After this implausible rendering of the founding period, however, Professors Cottrol and Diamond resume their historical account with their customary care and scrupulousness. In the years immediately after the Revolution, American law removed many racial restrictions, but as the nineteenth century slid toward civil war, racism in both the North and South became more virulent and violent. In the South, the white population feared not only slaves but also free blacks, because the latter might give the slaves a desire for freedom or might foment a slave rebellion. As a result, the Southern states actually restricted the access to arms of free blacks more than they did that of slaves, who were presumed to be under the control of their masters. Lest the reader miss the implicit point that gun control has often been a means to racial oppression, Professors Cottrol and Diamond title this section "The Southern Antebellum Experience: Control of Arms as a Means of Racial Oppression."

Professors Cottrol and Diamond use the Northern antebellum experience to illustrate the other side of this coin, that blacks with guns can defend themselves against racist violence. Accordingly, they title this section "The Northern Antebellum Experience: Use of Firearms to Combat Racially Motivated Deprivations of Liberty."

Throughout the North in the years before the Civil War, blacks formed private militia units in the face of widespread mob violence and race riots because they were aware of the "potentially counterproductive nature of individual action." The central example is the Cincinnati riot of September 1841. On the first night, a black militia beat off a white mob; on the second night, the white militia disarmed the

403. See id. at 332.
404. See id. at 332-35.
405. See id. at 335-36.
406. See id. at 336-38.
407. Id. at 335.
408. See id. at 339-42.
409. Id. at 339.
410. Id. at 341.
411. See id. at 342.
African-Americans, and whites returned to inflict personal injury and property damage on the black community. Again, Cottrell and Diamond drive the point home:

The 1841 Cincinnati riot represents the tragic, misguided irony of the city's authorities who, concerned with the safety of the black population, chose to disarm and imprison them—chose, in effect, to leave the black population of Cincinnati as southern authorities left the black population in slave states, naked to whatever indignities private parties might heap upon them, and dependent on a government either unable or unwilling to protect their rights. As a symbol for the experience of northern blacks protecting themselves against deprivations of liberty, the 1841 riot holds a vital lesson for those who would shape the content and meaning of the Fourteenth Amendment [as it relates to the Second Amendment].

After the Civil War, the Southern experience provides yet more evidence of the danger of disarming blacks. The Southern legislatures passed black codes that, inter alia, restricted the access of blacks to arms, so as to keep them helpless before the intimidation of private violence. Concerned, Congress wrote the Fourteenth Amendment in part to ensure that the freedmen would have the right to keep and bear arms to resist such terrorism. The rest of the story is depressingly familiar. The Supreme Court sharply limited the reach of the Fourteenth Amendment, holding that it did not limit the actions of states or private individuals and that it gave Congress no authority to pass civil rights statutes controlling the actions of private parties. As a result,

[w]ith the protective arm of the federal government withdrawn, protection of black lives and property was left to largely hostile state governments. In the Jim Crow era that would follow, the right to possess [sic] arms would take on critical importance for many blacks. This right, seen in the eighteenth century as a mechanism that enabled a majority to check the excesses of a potentially tyrannical national government, would for many blacks in the twentieth century become a means of survival in the face of private violence and state indifference.

In the twentieth century, white violence and the black need for arms continued. In the North, race riots still threatened the safety of
black communities.\textsuperscript{418} In the South, state legislatures enacted Jim Crow laws and tolerated widespread lynching and other sorts of private violence.\textsuperscript{419} Blacks often used firearms to defend themselves, but Professors Cottrol and Diamond frankly concede that such efforts "were often partially successful but were ultimately doomed."\textsuperscript{420} Indeed, the only real hope was collective action: "Although individual efforts of blacks to halt violence to their persons or property were largely unsuccessful, there were times that blacks succeeded through concerted or group activity in halting lynchings."\textsuperscript{421} Accordingly, we should conclude that gun control has not generally helped blacks:

The willingness of blacks to use firearms to protect their rights, their lives, and their property, alongside their ability to do so successfully when acting collectively, renders many gun control statutes, particularly of Southern origin, all the more worthy of condemnation. This is especially so in view of the purpose of these statutes, which, like that of the gun control statutes of the black codes, was to disarm blacks.\textsuperscript{422}

Finally, Professors Cottrol and Diamond close this historical review with a summary of the way that self-defense helped those in the civil rights movement. They recognize that nonviolence "had its adherents among the mainstream civil rights organizations," but they reject the view that nonviolence was a universal credo: "[M]any ordinary black people in the South believed in resistance and believed in the necessity of maintaining firearms for personal protection."\textsuperscript{423} Although some black resistance to white violence was ad hoc, much of it was organized, following in the tradition of black militias of the past.\textsuperscript{424} In particular, as already noted, the Deacons for Defense and Justice spread throughout the South after its founder realized that not only white reactionaries but also the police opposed the civil rights movement.\textsuperscript{425} The Deacons sought to "protect black people from violence, and they did so by extending violence to anyone who attacked. This capability and willingness to use force to protect blacks provided a deterrent to white terroristic activity."\textsuperscript{426} Cottrol and Diamond draw the moral lesson sharply:

\textsuperscript{418} See id. at 350-51.
\textsuperscript{419} See id. at 349-52.
\textsuperscript{420} Id. at 353.
\textsuperscript{421} Id. at 354.
\textsuperscript{422} Id. at 354-55.
\textsuperscript{423} Id. at 356.
\textsuperscript{424} See id. at 357.
\textsuperscript{425} See id.
\textsuperscript{426} Id. at 358 (footnote omitted).
Blacks in the South found the Deacons helpful because they were unable to rely upon police or other legal entities for racial justice. This provided a practical reason for a right to bear arms: In a world in which the legal system was not to be trusted, perhaps the ability of the system's victims to resist might convince the system to restrain itself.\footnote{427}

In conclusion, Professors Cottrol and Diamond analogize the fate of the Second Amendment and African-Americans. Both have traditionally been consigned to the periphery of the attention of courts, policy makers, and scholars. That parallel treatment may not be a coincidence:

Throughout American history, black and white Americans have had radically different experiences with respect to violence and state protection. Perhaps another reason the Second Amendment has not been taken very seriously by the courts and the academy is that for many of those who shape or critique constitutional policy, the state's power and inclination to protect them is a given. But for all too many black Americans, that protection historically has not been available.\footnote{428}

Moreover, even today, the state still does a very poor job of protecting black Americans. The threat of white violence is still real. Although it might seem to be waning, "many fear a decline in the quality of that atmosphere."\footnote{429} In light of the nation's past failure to live up to its promises of equality, "it is not unreasonable to fear that law, politics, and societal mores will swing the pendulum of social progress in a different direction, to the potential detriment of blacks and their rights, property, and safety."\footnote{430}

Perhaps the primary threat to blacks today, however, is no longer "the horrors of white lynch mobs ... [but] the tragic black-on-black violence that plagues the mean streets of our inner cities."\footnote{431} To this point, Cottrol and Diamond have built their case for an individual rights reading of the Second Amendment on the specter of white violence, so this shift from collective white attacks to individual black crime seems an important break. Indeed, Cottrol and Diamond acknowledge that "a case can be made that greater firearms restrictions might alleviate this tragedy."\footnote{432} Nonetheless, they ultimately believe that the recent past gives no real discontinuity and no reason for abandoning the individual rights interpretation of the Second Amendment.

427. \textit{Id.}
428. \textit{Id.} at 359.
429. \textit{Id.} at 360.
430. \textit{Id.} at 361.
431. \textit{Id.} at 359.
432. \textit{Id.} at 361.
Amendment. Whether the threat comes from black or white violence, American governments have never protected their black citizens:

[A] society with a dismal record of protecting a people has a dubious claim on the right to disarm them. Perhaps a re-examination of this history can lead us to a modern realization of what the framers of the Second Amendment understood: that it is unwise to place the means of protection totally in the hands of the state, and that self-defense is also a civil right.433

The interpretation of the Second Amendment offered by Professors Cottrol and Diamond is vastly more sophisticated, careful, and nuanced than those offered by JPFO and the women and guns movement—as I hope the above detailed summary conveys. Nonetheless, this interpretation shares two features with those. First, it is perspective-based, an interpretation from the perspective of African-American history. Professor Cottrol and Diamond are self-conscious about their perspectival approach. Their subtitle is Toward an Afro-Americanist Reconsideration.434 Over and over, they stress their central argument—from an African-American perspective, we should be inclined to favor the individual rights theory of the Second Amendment, because blacks have not been able to rely on the state for protection.

Second, like those versions of the Amendment proffered by JPFO and the women and guns movement, this theory of the Amendment rests on a vision of the social world as fractured along lines maintained by bigotry. Traditionally, in Cottrol and Diamond's view, the reason that blacks have needed personal firearms is the constant threat of racist white violence, and that threat has not disappeared even today. Recently, the primary threat may have shifted to black-on-black violence, a product of intraracial, not interracial, division. But the reason that blacks need personal guns to defend against this intraracial threat is still interracial animus; the state, indifferent to the fate of its African-American citizens, has always failed and still fails to protect them. The vision of the social world in this interpretation of the Second Amendment is thus depressing in its clarity. At worst, all of white America—both government and private groups—has turned a violent hand against its black citizens; at best, the white citizenry will be quiescent and the state indifferent while blacks kill one another. The implicit message to black America is also clear: in matters of violence, you may rely on no one but yourselves.

433. Id.
434. See id. at 309.
III. **Outgroups, Populists, and Constitutional Violence**

The outgroup theories of the Second Amendment all prescribe a scheme of decentralized violence. The state is so incompetent or so perfidious that it cannot claim a monopoly of force. As subpart A explains, however, decentralized violence is usually very dangerous to outgroups. Private ordering of the means of force usually favors self-styled populists who exile traditionally disfavored groups. As subpart B suggests, outgroup theorists might acknowledge the dangers inherent in decentralized violence, but they would insist that centralized violence is even worse. When the state has exercised a monopoly of force, it has generally failed to protect or has actively oppressed outgroups. Subpart C acknowledges the force of this argument. As a matter of policy, perhaps the state should allow outgroups to arm themselves, and as a matter of prudence, perhaps outgroups should do so.

In the world as described by these theorists, however, outgroups must choose between hopeless alternatives. In a scheme of decentralized violence, they will be oppressed by private groups; in a scheme of centralized violence, they will be oppressed or abandoned by the state. The only hope for the better treatment of outgroups would be a consensus culture more protective of outgroups; only in such a culture would the threat from private or public violence abate. In other words, if the problem is hate violence, the only answer is less hatred. These outgroup theories of the Second Amendment, however, actively frustrate the creation of such a culture. The theories do not merely counsel outgroups to take up arms against the present reality of hate violence. They also tell constitutional tales with a profoundly pessimistic story line—Americans will always be divided by hatred and must always prepare for war against one another. Telling and listening to such stories can only ensure that they will come true, and outgroups will be left to choose between hopeless options.

A. **Decentralized Violence**

The analysis of Part II highlights several themes common to the new outgroup interpretations of the Second Amendment. First, the social world of the Second Amendment is fractured into identity groups based on religion, gender, and race. Second, hatred and violence or the constant threat of violence characterize much of the relationship between these groups. Third, because of this hatred and violence, the Second Amendment should be interpreted to guarantee a general right to keep and bear arms, so that outgroup members may
defend themselves. Fourth, control over the means of violence should therefore be decentralized, belonging to all individuals. The state must have no monopoly of violence, either because it threatens hate violence itself or because it tolerates such violence by private parties.

For these outgroup theorists, the Second Amendment thus guarantees a right that is both individual and political/collective. It is individual in the sense that each individual has a right to keep and bear arms. It is political/collective in the sense that these individuals use arms in their status as members of collectivities. People attack them as Jews, women, or African-Americans, and they resist as such. Often, they will organize into groups to resist such violence, and often they will hope to make political change in the world by defeating the forces of anti-Semitism, misogyny, or racism. Even when each individual acts alone in self-defense, however, she acts as part of a collectivity—a Jew or woman or African-American victimized because of her membership in a despised group.

In stressing these commonalities among the various outgroup theories, I do not wish to overlook their differences in emphasis. JPFO's analysis is the most political/collective and the least individual. Simkin, Zelman, and Rice paradigmatically imagine the populace as a whole, and Jews as a group, resisting a tyrannical government, rather than individual Jews defending themselves against individual anti-Semites.435 Because the enemy for JPFO is the government itself, the need for united action is very keen; action by random individuals would do little good. Still, even for JPFO, the right to arms ultimately belongs to individuals as individuals, not as part of some formal organization such as a state militia. The women and guns movement's analysis is the least political/collective and the most individual. The movement's paradigmatic case is an individual woman resisting an individual misogynist.436 Still, even for this movement, the right to arms is deeply political and collective. Misogynists attack women because they are women, and women must resist for the same reason. Further, the movement itself attempts to make large scale political change, by offering women a tool of empowerment, by helping them to overcome their fear of guns, by breaking cultural stereotypes about women and power, by eliminating their dependence on men, and by generally reducing the power of misogynistic violence to oppress women as a class.437

435. See SIMKIN ET AL., LETHAL LAWS, supra note 157, at vi-vii, 159.
436. See discussion supra Part II.B.1.
437. See discussion supra Part II.B.
The Afro-Americanist perspective on the Amendment is somewhere between these two. The paradigmatic exercise of Second Amendment right is less collective than that of JPFO but more collective than the women and guns movement. Cottrol and Diamond’s central historical examples are African-Americans organized into private associations to resist other private associations. Thus, unlike JPFO but like the women and guns movement, the paradigmatic enemy is private, but like JPFO and unlike the women and guns movement, that enemy is organized into an association, rather than being composed of disconnected individuals. For that reason, the collective aspect of the Afro-Americanist perspective on the Amendment is less intense than for JPFO but more intense than for women and guns: when you are fighting private groups rather than government, the need for broad-based action is less significant; when you are fighting an organized enemy, you need some organization yourself. Furthermore, unlike JPFO and the women and guns movement, Cottrol and Diamond imagine a range of appropriate uses of the right to arms, rather than just one paradigm—beyond combating private associations, they also imagine collective resistance to racist governments and individual resistance to racist individuals. In that sense, they more fully cover the continuum between the individual and collective poles.

Despite these differences, however, the commonalities are very important. For all these theories, the social world of the Second Amendment is composed of individuals possessed of the right to arms, divided into hostile identity groups, and relating through violence, with government either contributing to the violence, indifferent to it, or incompetent to suppress it. Presumably, these various groups may also relate through peaceful politics, but these theories do not mention that possibility and do not seek to stress it. In other words, these theories reflect a profound frustration with government and the possibility of deliberative democracy; as a result, they celebrate armed action to achieve political ends when normal politics fail. In that sense, these theories are very much a part of the current social zeitgeist—distrust of government and anger among groups.

In interpreting the Second Amendment in a way that recognizes both individual and collective elements, these theories are perhaps

438. See discussion supra Part II.C.2.
439. See discussion supra Part II.C.2.
closest to those individual rights theorists who stress the right of resistance to government. Both groups of theories locate the right to arms in each individual, but they also imagine that those individuals will band together to use their rights for political ends. Yet, if the outgroup theories are similar to some individual rights theorists in this regard, they are also different from all previous theories. In imagining the social world as composed of violent identity groups, these theories offer something new under the Second Amendment sun.

Earlier formal theories effectively ignored or suppressed such a vision of group discord. As argued above, the individual right of self-defense is a Lockean natural right located in abstract individuals, divorced from their social context.\textsuperscript{441} It ignores the significance of anti-Semitism, sexism, or racism in analyzing the wisdom of an individual right to arms. Similarly, the right of revolution and resistance—for both the individual rights theory and the collective rights theory—is naively populist. It imagines the people, unified and homogeneous, or the state militias, composed of generic citizens, rising up against a tyrannical government. Effectively, the traditional right of revolution divides the world into only two social blocs—the people and the government—and it imagines only one evil—abstract tyranny through oppression of individual rights.\textsuperscript{442}

By comparison, these outgroup theories seem much more realistic about the social world. They acknowledge the existence of multiple, hostile groups among the population, and they fear not just abstract tyranny but traditional bigotry. One might think of these theories as offering a Second Amendment for the real world of the late twentieth century, in which taxation without representation seems less of a threat than violent anti-Semitism, misogyny, or racism.

Unhappily, in offering a realistic vision of the social world, these theories also create new problems, problems that they do not adequately recognize or confront. Centralized control of the means of violence risks state tyranny, but decentralized control of the means of violence risks civil war if the population is not deeply united. As I have argued elsewhere, the Framers of the historical Second Amendment took that threat seriously.\textsuperscript{443} They sought to recognize a right of revolution in the Second Amendment, but only because they believed that Americans were a united, homogeneous, virtuous republican citizenry.\textsuperscript{444} As a result, under conditions of profound

\textsuperscript{441} See supra text accompanying note 20.
\textsuperscript{442} See supra text accompanying note 21.
\textsuperscript{443} See Williams, supra note 2, at 588.
\textsuperscript{444} See id.
social division, the historical Second Amendment—by its own terms—has limited relevance.\textsuperscript{445} My present point, however, is not historical but pragmatic. The Framers were wise to worry about the threat of civil war. Under modern conditions, the use of nonstate violence for political ends most likely portends chaotic private terrorism, not a unified revolutionary movement.

In their responses to the threat of civil war, the militia movement and the outgroup theories are, in a sense, obverses of one another. As I have argued elsewhere, the militia movement implicitly recognizes the threat of civil war, but responds to it by denying the demographic reality of a fragmented citizenry. Instead, it conjures with the people—assuming, against all the evidence, that the American citizenry is highly homogeneous, or restrictively defining the "people" in such a way as to make it highly homogeneous.\textsuperscript{446} By contrast, the outgroup theorists acknowledge that the citizenry is deeply fractured but then fail sufficiently to address the threat inherent in decentralized violence. Under conditions of civil war, outgroups are at great risk. Since the state cannot protect them, they must protect themselves—but for reasons that I will discuss below, they cannot do so.

It is important to remember that these outgroup theories all interpret the Second Amendment to guarantee a general right to arms, not just a right for Jews or blacks or women. The result is that everyone—including anti-Semites, misogynists, and racists—will possess the right to arms. Doubtless, these outgroup theorists would emphasize that they do not endorse anti-Semitic, misogynist, or racist violence. Further, they would argue that they celebrate a right to arms for purposes of self-defense, not aggression against other groups. The "genie" of a personal right to arms, however, is impossible to stuff back in the bottle once it is released. In these theories, everyone—regardless of his politics or motivations—has a right to arms, free of all but incidental state regulation.

Moreover, these theories effectively mandate a state that is not or should not be strong enough to block hate violence. All the theories agree that the government may not disarm militant groups in advance. In addition, for slightly different reasons, all the theories maintain that the state is not or should not be strong enough to deter crime successfully by threat of punishment. For JPFO, the state should not be powerful enough to control violent political activists because the

\textsuperscript{445} See id.
\textsuperscript{446} See Williams, supra note 11, at 915-17, 924-46.
state is even more untrustworthy than those activists.\textsuperscript{447} For the women and guns movement, the state has no obligation to protect the individual and is incompetent to deter crime.\textsuperscript{448} The Afro-Americanist theorists maintain that the state is both incompetent to block crime and too perfidious to be entrusted with a monopoly of violence.\textsuperscript{449} In short, the point in these theories is that the state is either so corrupt or incompetent that citizens must have arms to take up the burdens of personal and collective self-defense. The result is a profound privatization of control over the means of violence— we are on our own. That, however, is a state of affairs that outgroups should fear, not welcome, for three reasons.

1. Outgroups’ Relative Lack of Power

First, outgroups should fear a regime of decentralized violence because they are relatively weak and powerless; they do not have as many guns as their enemies. Saul Alinsky provocatively described the Black Panther militia: “They haven’t got the numbers and they know nothing about revolutionary tactics. What kind of revolutionary is it who shouts that all power comes out of the muzzle of a gun when he knows damn well the other side’s got all the guns?”\textsuperscript{450} Alinsky’s comment is equally applicable to these outgroup theories of the Second Amendment. Blacks and Jews are a small fraction of the population. Women actually constitute a majority, but as a group—and the same could be said for Jews—they own fewer guns, are less comfortable with them, and are more reluctant to use them than others.\textsuperscript{451} The women and guns movement is seeking to change that state of affairs, but despite publicity of an alleged trend, the numbers have probably not changed much.\textsuperscript{452}

In short, as a general matter, decentralization of violence will today inevitably favor those groups with roots in the gun culture—not members of these outgroups. It is not a coincidence that the gun culture has traditionally embraced the Second Amendment; it sees in the provision a constitutional symbol of its right to primacy. Today, the element of the gun culture most likely to exploit vigorously the decentralized regime of violence is the militia movement, a

\begin{itemize}
  \item \textsuperscript{447} See discussion \textit{supra} Part II.A.
  \item \textsuperscript{448} See discussion \textit{supra} Part II.B.
  \item \textsuperscript{449} See discussion \textit{supra} Part II.C.
  \item \textsuperscript{450} PEARSON, \textit{supra} note 127, at 210 (internal quotations omitted) (quoting Saul Alinsky).
  \item \textsuperscript{451} See generally discussion \textit{supra} Part II.B.
  \item \textsuperscript{452} See \textit{supra} note 244 and accompanying text.
\end{itemize}
development unlikely to promote the health and safety of blacks and Jews. Although JPFO has made common cause with the militia movement, and there are even Jewish and black militia members, this alliance is based largely on a shared fear of the government. Such alliance is, however, extremely naive in turning a blind eye to the dangers of private racist and anti-Semitic violence. It is not true that the enemy of my enemy is necessarily my friend.

2. The Link Between Hate Violence and Revolutionary Conditions

Second, beyond just being outnumbered, outgroups should fear decentralized violence, especially when accompanied by attacks on the legitimacy of the state, because it seems to increase feelings of bigotry among the general population. Essentially, these outgroup theories prescribe a state of permanent, incipiently revolutionary conditions. The state can claim no monopoly of force. The state's legitimacy is constantly suspect; indeed, the outgroup theories presuppose the state's illegitimacy vis-à-vis outgroups, as they presume that the state will not provide even the most basic security for its outgroup citizens. Finally, outgroup theorists contend that the Constitution positively empowers private groups to use violence in order to secure political change. Under these conditions, in the absence of a presumptively legitimate state, identity affiliation has typically stepped in to fill the need for order.

Recent events in Europe provide perhaps the most graphic examples of this tendency. To the surprise of many, the breakup of the old autocratic states often gave rise to a revival of ethnic hatred, both public and private, that had in some cases been held in check by a strong central government. Michael Walzer summarizes:

[E]thnic and religious differences survived, and wherever they were territorially based, local agencies, which were more or less representative, retained some minimal functions and some symbolic authority. These they were able to convert very quickly, once the empires fell, into a kind of state machine driven by nationalist ideology and aimed at sovereign power—and opposed, often enough, by established local minorities, the great beneficiaries of the imperial regime and its last and most stalwart defenders.

In Russia, hard-right nationalist sentiment existed even under the Soviet regime, but in the chaotic conditions after the fall of that

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453. See Epstein, supra note 160, at 1A.
regime, such sentiment became a vigorous and significant force.\footnote{See WALTER LAQUEUR, BLACK HUNDRED: THE RISE OF THE EXTREME RIGHT IN RUSSIA 119-296 (1993); DAVID REMNICK, RESURRECTION: THE STRUGGLE FOR A NEW RUSSIA 49 (1997).} Pamyat was only the most notorious of many new, anti-Semitic groups dedicated to the preservation of traditional Russian culture.\footnote{See REMNICK, supra note 455, at 49-50, 100.} Eventually, despite his buffoonery, Vladimir Zhirinovsky became a serious presidential candidate by tapping this well-spring of nationalist, anti-Semitic anger.\footnote{See id. at 88-102.} Similarly, Josip Tito’s oppressively strong central regime managed to hold the various nationalisms of Yugoslavia together; with its demise, the Balkans have again become balkanized, and the phrase “ethnic cleansing” has entered the popular vocabulary.\footnote{See, e.g., MISHA GLENNY, THE FALL OF YUGOSLAVIA: THE THIRD BALKAN WAR 12-14 (1992); ROBERT D. KAPLAN, BALKAN GHOSTS: A JOURNEY THROUGH HISTORY 39-45 (1993). I suspect that JPFO would criticize my use of these examples and argue that while totalitarian regimes may be capable of controlling ethnic hatred (or guns), they could do so only by completely suppressing civil liberties. Therefore, under this argument, if the alternative to decentralized violence is totalitarian oppression, we should choose decentralized violence, despite the risk to outgroups. My response is that I am not arguing in favor of the political regimes of Stalin or Tito. Instead, I am simply arguing that when the legitimacy of the state (whether that state is totalitarian or liberal and democratic) comes under severe attack, the resulting conditions of decentralized violence are conducive to hate violence. If the only alternative to those conditions were totalitarianism, then we would be in a very bad way. As discussed in the next subpart, however, our options are not limited to those two.} Other contemporary examples could be listed in great number.\footnote{For examples of ethnic hatred displacing or arising in the stead of strong state authority from outside of Europe, see ROBERT D. KAPLAN, THE ENDS OF THE EARTH: A JOURNEY AT THE DAWN OF THE 21ST CENTURY (1996).}

Even the history of genocide, on which JPFO relies so heavily, illustrates the tendency of revolutionary change to increase hate violence.\footnote{See SIMKIN ET AL., LETHAL LAWS, supra note 157, at 9-14.} \textit{Lethal Laws} opens with a revealing discussion of “Revolution and Genocide,” a comparative study of twentieth-century genocide by the late Robert Melson of Purdue University.\footnote{See id. at vi (discussing ROBERT MELSON, REVOLUTION AND GENOCIDE: ON THE ORIGINS OF THE ARMENIAN GENOCIDE AND THE HOLOCAUST (1992)).} The authors quote Professor Melson to the effect that domestic genocide has killed more people in the twentieth century than has international war.\footnote{See id.} \textit{Lethal Laws} then faults Melson, however, for failing to explain that gun control causes genocide.\footnote{See id.} In so arguing, JPFO ignores
Melson’s primary thesis about what causes genocide.\textsuperscript{464} This failure is not surprising, because Melson’s thesis directly undermines JPFO’s key contention that decentralized violence is good for Jews.

Melson’s thesis is that the genocides that he examined—including the Holocaust, the Armenian genocide, the destruction of the Russian Kulaks, and the Cambodian autogenocide—were all the products of political revolution.\textsuperscript{465} Melson offers a powerful explanation for this link between revolution and genocide. By his definition, “[e]very revolution results in not only the collapse of a state’s political institutions but also the loss of its legitimacy and the destruction of the political myth that links rulers to the ruled.”\textsuperscript{466} Upon the demise of those old myths, the revolutionary movement must create new ones: “[P]olitical myths are basic to revolutions because, in a compelling manner, they tell the tale of the revolutionary state’s origins; they identify and define the new state’s true citizens, ‘the people’; they target its enemies; and they formulate its goals.”\textsuperscript{467}

This process of revolutionary myth making is very dangerous for outgroups, because in defining the true “people,” these myths need also to define a contrasting class of people—the enemies of the state. Melson explains:

Revolutionary myths and ideologies have implications for genocide in that every revolutionary vanguard that has achieved state power seeks to restructure the state and give it a new basis of support. . . .

. . . Having come to power in a revolutionary situation, a new regime is presented with the opportunity to shape society in its own image and to construct and redefine who is this “people” from whom this revolutionary state will seek its legitimacy. . . .

The impulse to reconstruct and redefine the political community and to exclude from it whole categories derives in part from the exigencies of the postrevolutionary situation. This is always characterized by domestic disorder, a lack of legitimate authority, and often war. . . .

. . . [R]ecasting the political community according to a revolutionary vision implies that groups and classes, whole categories of human beings, will not fit into the postrevolutionary society. These will have to be reshaped, reeducated, reformed, or permanently excluded from the new order.\textsuperscript{468}

\textsuperscript{464} See MELSON, supra note 461, at 17-18.
\textsuperscript{465} See id. at 18, 278.
\textsuperscript{466} Id. at 267.
\textsuperscript{467} Id.
\textsuperscript{468} Id. at 268-69.
In short, then, Melson may or may not believe that gun control is good for Jews—he never clearly indicates one way or the other—but he argues quite powerfully that decentralized violence and the failure of state legitimacy is generally bad for Jews.

In this country as well, political violence has usually taken a racial and ethnic form in the absence of effective government; indeed, it would appear a distinctive aspect of American culture that political violence takes these guises, rather than class-based forms. Ted Robert Gurr, perhaps the most distinguished student of American political violence, explains:

One distinctive feature of the American experience is the relative unimportance of conflict defined in class terms compared with conflict along lines of ethnic, religious, and national cleavage.... [T]he participants in episodes of ethnic and racial rioting saw themselves and their opponents through the lenses of communal identification, not class ones. Communal loyalties and antagonisms were a consequence of ethnic and national diversity in a society established and dominated by English settlers. The dominant Anglo-Americans defined Indians, blacks, Irish, Jews, and Italians as separate and to varying degrees inferior people. Little wonder, then, that if and when the latter groups mobilized in conflict, they did so as communal or identity groups rather than making class alliances across ethnic lines.\(^469\)

Another student of the field offers a similar summary: "Unlike Europe, so little of the violence in the United States [has] been insurrectionary. Most [has] involved one group of citizens against another, rather than citizens against the state. Class conflict [has] been overshadowed to an extraordinary degree by ethnic, religious, and racial conflict."\(^470\)

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A generation of historians has rediscovered the prevalence of ethnic and racial violence in this country's story. A full account would obviously be outside the scope of this Article, but a partial bibliography would include BENNETT, supra note 77; THOMAS J. DAVIS, A RUMOR OF REVOLT: THE "GREAT NEGRO PLOT" IN COLONIAL NEW YORK (1985); MICHAEL FELDBERG, THE TURBULENT ERA: RIOT AND DISORDER IN JACKSONIAN AMERICA (1980); PAUL A. GILJE, THE ROAD TO MOBOCRACY: POPULAR DISORDER IN NEW YORK CITY, 1763-1834 (1987); THOMAS P. SLAUGHTER, BLOODY DAWN: THE CHRISTIANA RIOT AND RACIAL
3. The Failure of Decentralized Violence to Secure Progressive Ends

The third reason that outgroups should fear decentralized violence grows out of the first two. Because outgroups are small and because decentralized violence promotes bigotry, reactionary movements can sometimes successfully use violence for political ends, but progressive elements almost always fail. Ted Gurr summarizes:

The use and threat of violence on behalf of social reform usually has stimulated a backlash of defensive violence. Campaigns of violence to reverse threatening social and political change, however, succeeded in those times and places where their purposes were widely supported. The use of intimidation and violence by the Ku Klux Klan, by lynch mobs, and by vigilantes are cases in point.\textsuperscript{471}

The evolution of the conflict dynamic in the civil rights movement offers perhaps the most familiar and important example of this theme. In broad—and necessarily oversimplified—outline, that evolution occurred thus: in the early years of the movement, demonstrators sought in nonviolent but provocative ways to cause Southern white racists to attack them; appalled at such images of racist violence, whites elsewhere in the nation came to endorse the cause of civil rights. As a result, the movement secured impressive advances, including landmark civil rights legislation.\textsuperscript{472} As the decade of the sixties wore on, however, the conflict dynamic of the movement gradually shifted from nonviolent provocation to violent assault, especially in the form of urban rioting.\textsuperscript{473} This shift stirred a white backlash that led to waning white support for measures to improve the condition of African-Americans.\textsuperscript{474} The lesson in this progression is clear. Outgroups cannot achieve their ends by violence alone. They need the support of others, and the use of widespread violence usually causes them to lose that support.

\textsuperscript{471} Gurr, supra note 469, at 18.
\textsuperscript{473} See Button, supra note 472, at 293-94.
\textsuperscript{474} See id. at 293-94, 297-99, 302-03; McAdam & Moore, supra note 472, at 280-82.
4. The Link Between Populism and the Revolutionary Second Amendment

For all these reasons, it seems no coincidence that as a cultural icon, the Second Amendment has always had a populist cast. As I have argued elsewhere, the Framers' Amendment rested on the idea that the right to revolution inhered in the "body of the people"—a homogeneous, united citizenry that would rise up against a small set of tyrannical usurpers.\textsuperscript{475} As detailed above, today, the primary constituency for the Second Amendment is the gun culture, which claims to be the fundamental culture of the true American people—as opposed to \textit{arriviste} interlopers with European ideas about the role of government.\textsuperscript{476} At its most extreme end, the gun culture shades into the militia movement, which claims to represent the American people against blacks, Jews, international bankers, secular humanists, and others who do not belong.\textsuperscript{477}

Indeed, at the most macroscopic level, it is possible to understand the Second Amendment as an icon of the imperial expansion of northern European culture. In arguing that the Second Amendment is fundamental to the American soul, individual rights theorists stress that early in our history, Americans came to cherish the right to arms while Europeans came to disregard it.\textsuperscript{478} The reason for this American affection was that Americans lived in a frontier society; needing constantly to be armed against attack by hostile Indians, they organized universal militias—the body of the people.\textsuperscript{479} Americans, in other words, came to love guns through hating Indians. Later, these same militias became instruments of slave control,\textsuperscript{480} and still later populist Americans embraced gun ownership as a way to keep deviant elements, such as new immigrants and the labor movement, in line.\textsuperscript{481} Individual rights theorists stress this tradition to emphasize the prominence of guns in the American tradition, but it equally well highlights the close association between gun ownership and populist social control.

As a populist text, the revolutionary Second Amendment shares the advantages and disadvantages of populism generally. On one

\textsuperscript{475} See Williams, \textit{supra} note 2, at 577-81.
\textsuperscript{476} See discussion \textit{supra} Part I.B.1.
\textsuperscript{477} See Williams, \textit{supra} note 11, at 924-46.
\textsuperscript{478} See Williams, \textit{supra} note 11, at 924-46.
\textsuperscript{479} See \textit{Joyce LEE MALCOLM, To KEEP AND BEAR ARMS: THE ORIGINS OF AN ANGLO-AMERICAN RIGHT} 138-41 (1994).
\textsuperscript{480} See \textit{Cottrol & Diamond, supra} note 355, at 323-24.
hand, populism has a democratic and egalitarian face. Members of the people should all enjoy the same fundamental rights and status. In this aspect, populism has arrayed itself in opposition to self-styled elites, and it has often served as a force for the liberation of the common man and even sometimes the common woman. On the other hand, populism has also often had a more sinister, racist, nativist, sexist, and anti-Semitic side. Although some populists sought to extend rights to women, Jews, and blacks, many others sought to keep all those groups in thrall. Thus, American history has witnessed the ironic spectacle of Jacksonian democrats seeking universal enfranchisement for white males and simultaneously insisting on the subjugation of women, blacks, and Indians. Similarly, at the end of the nineteenth century, populists attacked the power of urban wealth while simultaneously defending white supremacy in the South. More recently, George Wallace and Pat Buchanan have built populist movements by tapping a vein of anger among “average” Americans (meaning white, Christian, and working class—in other words, the gun culture) at immigrants, blacks, and others.

This apparent contradiction between egalitarianism and hierarchical elements in American populism is only apparent. Populists believe in democracy and equal rights, but only for members of “the people,” as they define “the people.” Others cannot enjoy equal rights, either because they are inherently inferior or culturally too different—too “unassimilable.” This affection for the people as a political concept is thus the great promise and the great threat of populism. The promise, for those who are unambiguously full

482. See, e.g., id. at 1-2; Stock, supra note 470, at 3-5, 8.
483. See, e.g., Kazin, supra note 481, at 2, 7, 14-15, 34-36, 40-41; Stock, supra note 470, at 5-7, 10-13, 128-31, 139-42, 148-49.
484. See, e.g., Kazin, supra note 481, at 21-22.
485. See, e.g., id.; Stock, supra note 470, at 6, 128-30.
486. See, e.g., Kazin, supra note 481, at 4-5, 222-86; Stock, supra note 470, at 152-53.
487. See Kazin, supra note 481, at 34-36; Stock, supra note 470, at 110-11, 131-35, 142.
488. Catherine McNicol Stock powerfully describes this fusion of promise and threat in rural populism:

[T]he roots of violence, racism, and hatred can be and have been nourished in the same soil and from the same experiences that generated rural movements for democracy and equality. In many places and at many times in the American past, the best and worst, the most forgiving and most vengeful, the most egalitarian and most authoritarian, the brightest and darkest visions of American life were alive in the same men’s souls, nurtured at the same dinner tables, learned in the same schools, and preached from the same pulpits. Not two sets of beliefs, then, but two expressions of the same beliefs and circumstances bound left and right together in an unwavering, desperate, synthetic embrace.
members of the people, has been real self-rule through egalitarian democracy. Even the insistence on exiling "unassimilable" elements grows out of this commitment to democracy, because populists understand that democracies depend on a shared civic culture and politically educated citizens. If egalitarian democracy is populism's great promise, however, oppression of outgroups is its great threat. Some populists have defined the people expansively, but others have deemed outgroups unworthy or less worthy of self-rule—at best, second-class citizens and at worst disenfranchised helots. For outgroups, then, populism is a dangerous game to play, one that can always turn ugly because it contains the lurking potential of exclusion. If some are inside the people, then some must be outside. For that reason, it again seems no coincidence that outgroups traditionally have shied away from populism, preferring instead discourses that stress the rights of individuals, regardless of race, religion, or gender, against the legislative majority.

Populism has generally shown its ugly and exclusive side when it turns violent—in other words, when it embraces the Second Amendment as its master text. Again, the examples are innumerable and the reasons are not difficult to surmise. In a regime of decentralized violence, citizens need some source of order and some basis for legitimacy, and they often find it in primordial affiliation with

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Stock, supra note 470, at 148.

489. See Kazin, supra note 481, at 34-36. Populism's promise of democracy through a shared civic culture and politically educated citizens is by no means an antiquated idea even today. See Todd Gitlin, The Twilight of Common Dreams: Why America Is Wracked by Culture Wars (1995); Robert D. Putnam, Making Democracy Work: Civic Traditions in Modern Italy (1993); Michael J. Sandel, Democracy's Discontent: America in Search of a Public Philosophy (1996). Indeed, the yoking together of radically disparate cultures into a single majoritarian democracy can be threatening for the minority cultures as well. As the polity breaks down into endless culture wars, cultural majorities simply impose their will. For that reason, American Indians have always maintained that they should have the right to self-government within racially and culturally separate tribes. See David C. Williams, The Borders of the Equal Protection Clause: Indians as Peoples, 38 UCLA L. Rev. 759, 841-50 (1991).

490. See, e.g., Stock, supra note 470, at 6.

491. See supra note 469 and accompanying text.

492. Most recently, this discomfort with populist ideologies has appeared in the very lukewarm reception that civic republicanism has received among outgroup thinkers. See, e.g., Derrick Bell & Preeta Bansal, The Republican Revival and Racial Politics, 97 Yale L.J. 1609 (1988); Brown, supra note 97; Linda K. Kerber, Making Republicanism Useful, 97 Yale L.J. 1663 (1988).


494. See, e.g., Stock, supra note 470, at 89, 109-42, 167-76.
their identity groups.\textsuperscript{495} Private violence succeeds primarily when used to defend the conservative order against threatening social cultural changes—such as the movement of Jews, women, and blacks into positions of respect, autonomy, and power.\textsuperscript{496} Finally, populists generally turn to the gun after becoming angry and frustrated with politics, when they believe that the political process has been captured by enemies of the people.\textsuperscript{497} And the best evidence of that capture for populists is that the system no longer seems to value them the way that it once did; instead, it showers traditional outgroups with "special" favors.\textsuperscript{498}

In short, then, the traditional cultural landscape of the Second Amendment actually makes a good deal of sense. The absence of state legitimacy and decentralized violence are conditions prone to produce an angry, exclusive, and belligerent populism. The gun culture might welcome that situation, but for outgroups it should represent great danger. Populism has many attractive aspects, but its great downside is precisely its ambiguous attitude toward outgroups. In other words, it makes best sense for outgroup theorists of the Amendment to issue warnings about the dangers of political violence, rather than to embrace it with enthusiasm.

B. State Monopoly of Violence

Despite the threat that decentralized violence poses to outgroups, outgroup theorists of the Second Amendment devote virtually no attention to how America might eliminate decentralized violence. JPFO myopically confines its concern to genocide and argues that only the state can produce genocide; as a result, JPFO has no cause to pay attention to private violence.\textsuperscript{499} The women and guns movement and the Afro-Americanist theorists, by contrast, dwell at length on the danger of private violence; indeed, it is precisely because of that violence that they promote a right to arms.\textsuperscript{500} Professors Cottrol and Diamond even concede that armed outgroups will usually lose, because their opponents enjoy the benefit of numbers.\textsuperscript{501} Yet despite their acknowledgement of the danger, they propose no way to reduce

\textsuperscript{495} See generally discussion supra Part II.
\textsuperscript{496} See \textit{Stock}, supra note 470, at 163-76.
\textsuperscript{497} See \textit{id}.
\textsuperscript{498} See \textit{id} at 124, 128, 131, 140-42, 163, 171.
\textsuperscript{499} See \textit{supra} notes 161-207 and accompanying text.
\textsuperscript{500} See \textit{supra} notes 270-291, 362-369 and accompanying text.
\textsuperscript{501} See \textit{supra} notes 420-421 and accompanying text.
conditions of decentralized violence; instead, they propose to exacerbate those conditions, by celebrating the private use of arms.

This failure to address the danger of private violence is a charge often leveled at right-to-arms theorists.\textsuperscript{502} In the modern dialogue about gun control and the meaning of the Second Amendment, proponents of control argue that we would all be safer if we were all disarmed.\textsuperscript{503} Thus, Robert Spitzer compares citizen self-arming to the international arms race: "[A] national policy that encourages and implements weapons ownership as a recognized means of self-defense invites a domestic arms race."\textsuperscript{504} He proposes that government should seek to achieve "nonproliferation of new weapons and technologies, combined with arms control for existing weapons."\textsuperscript{505} Similarly, outgroup proponents of gun control argue that outgroup members in particular would be safer under conditions of general disarmament. Carl Bogus, for example, maintains: "The lesson to be drawn from both history and contemporary experience is not that blacks should be armed, but that all citizens should be subject to stricter gun control regulations."\textsuperscript{506}

In fact, outgroup theorists of the Amendment do have a response to this charge. We must consider the alternative to decentralized violence, and in the modern debate, the only serious alternative is a state monopoly of violence. According to the outgroup theorists, we should all fear a state that insists on retaining complete control of violence, but outgroups have special reason to fear. On this point, the thinking of JPFO, the women and guns movement, and Professors Cottrol and Diamond all come together: outgroups cannot trust the state to protect them. At worst, the state may itself launch a campaign of genocide against its outgroup citizens; at best, the state may stand aside—out of indifference, hostility, or incompetence—to allow private violence against outgroups. The state may sometimes be able and willing to protect outgroup members, but it is never wise to count on that protection. Even if a general ban on guns were effective, it would hurt outgroups. Outnumbered, their only chance is to use guns to equalize the discrepancy. The tactic may not always work, but it is better to succeed sometimes than never.

This response is powerful and important, and it should not be ignored. Unfortunately, many gun control proponents do ignore this

\begin{footnotesize}
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\item See id. at 192.
\item Id.
\item Id. at 195.
\item Bogus, supra note 129, at 1367.
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response—an important example of the way that both sides in this dialogue tend to talk past one another. For example, after powerfully documenting the threat of private violence to outgroups, Carl Bogus closes his article with a surprisingly trusting vision of the relative reliability of the state:

This is not to deny that there will be times or circumstances when we mistrust public authorities. We live in an imperfect world—as cynics are fond of saying—and problems are inevitable. However, we will live in a far more imperfect world if private groups are armed and ready to defend "the security of a free state" as they themselves see fit.\footnote{Id. at 1388.}

Bogus' claim here is really only an assertion, not an argument; he has proved that private violence is dangerous, but he has done nothing to show that it is more dangerous than a state monopoly.

To resolve this disagreement between the proponents and opponents of gun control, one would have to weigh carefully the relative risks of state violence and private violence to outgroups. As a practical matter, that determination would probably be very difficult to make. The hypothetical nature of this determination makes it even harder. Control proponents would probably concede that the state has not adequately protected outgroups but then argue that we should focus all of our efforts on making the state sufficiently responsive. Control opponents would respond that the state cannot be made sufficiently responsive; control proponents would respond that it can; and the debate then would swirl off into the increasingly speculative. Perhaps because weighing such imponderables seems impossible, analysts seem to fall back on their basic presumptions about the world. Control proponents insist that the state is generally good and competent; control opponents insist that it is inherently untrustworthy.

As a result, it is perhaps not surprising that the debate on the relative dangers of private and public violence has not really occurred. Nonetheless, it should occur, because it is at the heart of the disagreement on gun control. Moreover, although these outgroup theorists do not themselves compare the relative dangers of state and private violence, they have collected a great deal of evidence suggesting that the failure of the state to protect outgroups might be endemic and inevitable. Frankly, I doubt that anyone could read these accounts and remain untouched. Many of the stories are highly personal and therefore powerful, if only anecdotal. The sheer accumulation of stories by each outgroup theorist only compounds their power, and the further accumulation across outgroups adds still
more. After a careful perusal of all these stories, it becomes difficult to believe that (1) the American state can ever be trusted to want to protect outgroups or (2) the American state will ever do what is necessary to protect them.

C. Constitutional Tales of Violence

1. Prudence and Policy Versus Constitutional Storytelling

I am unable to address the prudential wisdom of outgroup self-arming, because I do not know how to weigh the relative dangers of public and private violence. I am inclined to believe that the judgment would be different in different times and places. In some places, general disarming may be a good policy; it seems to work quite well for Japan and Great Britain. Further, unlike proponents of the gun culture, I am not convinced that the gun culture comprises the permanent fundament of the American soul. As a result, general disarming may be successful in some places in America today; in the future, as the culture changes, it may be successful in more places. On the other hand, it may also be wise for some outgroup members in some places and times to arm themselves. The statistical effectiveness of self-arming is a subject of heated disagreement among social scientists, criminologists, and medical professionals, but these stories are evidence that self-arming may sometimes be useful. Moreover, limited outgroup violence may even provoke widespread political change when carefully used to attract the attention of a sympathetic majority.

In short, then, I plead agnosticism to the wisdom of outgroup self-arming as a matter of prudence and policy. Perhaps outgroups should arm themselves, perhaps not; perhaps the state should allow them to arm themselves, perhaps not. I would like, however, to draw a distinction between outgroup self-arming as a subject of prudence and policy and as a subject of constitutional storytelling. On the former subject, I express no opinion; on the latter, I wish to argue that these outgroup tales of violence actively frustrate the very end that they are


510. See Button, supra note 472, at 302. This view is of course premised on the idea that violence may sometimes be an appropriate response to violence. As Sara Ruddick explains, "[a]lthough she will never celebrate violence, a peacemaker may herself act violently in careful, conscientious knowledge of the hurt she inflicts and of its cost to her as well as her victim." RUDDICK, supra note 92, at 138.
designed to produce—the physical safety of outgroups in the American constitutional republic.

These outgroup interpretations of the Second Amendment leave outgroups with only two options, and each is hopeless. First, outgroups could commit themselves to a state monopoly of violence, only to face the state indifference or hostility documented in these stories. Alternatively, they could commit themselves to decentralized violence, only to face the private hate violence that I have described. Neither path is acceptable. The only viable future is one that these theories never mention—the creation of a consensus culture that welcomes outgroups, prizes their physical safety, and pervades the way that both the state and the private sector use violence. In other words, it does not seem especially useful to consider whether a hate-filled state with a monopoly of violence is worse than a hate-filled society composed of multiple, angry, and armed private groups. Instead, we should ask how to reduce the general level of hatred likely to erupt into violence. Reducing that level of hatred would make both the state and the private sector more trustworthy, and the debate over their relative trustworthiness would become less burning.

In arguing the necessity of such a consensus culture, I do not mean to propose that the culture need be placid, monolithic, or immutable. In fact, such a culture need serve only one end. It must provide a common account of the way that violence should be used to resolve social difference, especially differences between identity groups. As a result, the consensus in this culture may be quite limited in several ways. First, its content may be quite limited. It may address only the use of violence among identity groups, while allowing disagreement on other issues, including religion, gender, and race issues. Second, the consensus need not be universal; it need only include enough of the population effectively to control hate violence. Third, hope for such a consensus need not be predicated on the belief that America can ever eliminate hatred or hate violence, or that the struggle against bigotry can ever cease. By contrast, it is predicated on two more modest beliefs: (1) only general cultural change (as

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511. For further amplification of this point, see discussion infra Part III.C.2. Of course, some general attitudes about religion, gender, and race might inevitably lead to violence against outgroups; such attitudes would therefore be inconsistent with the necessary consensus culture.

512. For that reason, I do not believe that my position is necessarily inconsistent with the view of many critical race theorists that racism will never cease and the struggle against it must therefore be perpetual. See, e.g., Derrick Bell, *Racial Realism*, 24 CONN. L. REV. 363, 377-78 (1992). It may, however, require a belief that racial conditions can be meaningfully improved—a belief that some critical race theorists may not share. See id. at 373-74.
opposed to private arming) can significantly control hate violence and (2) cultural change in the direction of greater intolerance for hate violence is possible. Those assumptions are borne out by history. The level of hate violence in this country has significantly diminished over time, apparently as a result of the general delegitimation of anti-Semitism, misogyny, and racism. In short, the constitutional organization of violence (and, by implication, the interpretation of the Second Amendment) provides a necessary limit to multiculturalism. Americans need a consensus culture to control violence, so as to provide a safe field within which America's many cultures can contend in peaceful ways. Indeed, without agreement on the use of violence, peaceful disagreement and multiculturalism itself would become impossible.

Outgroup theorists, I suspect, might not directly take issue with that position. Instead, they might respond in the following way. Yes, we are in favor of a welcoming consensus culture, but we don't have such a culture now. Moreover, it is unclear whether we ever will have such a culture. In the meantime, in recognition of our current hate-filled state, outgroups should keep their guns. As noted above, I do not know how to gauge that claim as a matter of prudence and policy. Certainly, it has enough force that it cannot be rejected out of hand; maybe outgroup members should hold fast to their guns. As constitutional stories, however, these tales of violence do not simply protect outgroup gun ownership until we arrive at a less hate-filled culture; rather, they actively frustrate the creation of such a culture. They may help in the short-term, but only with unacceptable long-term damage.

2. Hopeless Tales of Constitutional Violence

In the absence of a common language, race, ethnicity, religion, or history, Americans have been in large measure united by their great public professions of faith, and the Constitution has been central among them. We have looked to the constitutional tradition for stories that unite us as a people, delimit the legitimate use of violence, and provide a common culture of inclusion, tolerance, and decency.


515. The late Robert Cover strenuously insisted on the importance of paideic subcommunities in the United States; through the creation of nomic traditions, these
These outgroup tales of violence, by contrast, lead in the opposite direction—to fragmentation and violent anger, not merely as a short-term situation but as a constitutionally mandated state of affairs. To create the necessary culture, we need stories of unification based on justice, but these are stories of violent division rooted in mistrust. These stories share six constituent elements. Taken together and embraced as constitutional storytelling, these elements would sharply circumscribe the possibilities of our common political life.

a. Perspective-Based Interpretations of the Second Amendment

First, these stories all adopt a perspective-based interpretation of the Second Amendment, rooted in the particularities of their group experiences. In doing so, these theories all seem to embrace a central element of postmodernism—truth is inevitably perspective-based, produced and determined by the background of the truth-seeker. Moreover, again like postmodern multiculturalism, these theories maintain that society is fractured into contending identity groups. As a result, consensus is virtually impossible. The best that we can hope for is the coexistence of these various cultures, living next to one another but each perceiving the world in its own way. Concomitantly, we cannot hope for a constitutional culture that would hold across society in delimiting the use of violence.

The struggle to give meaning to the Second Amendment suggests why so many feel the need for something more than perspectival truth-telling. If multiculturalism is to be more than an apology for the dominance of the strong over the weak, it must aim for the peaceful coexistence of different groups. But to have peace, we must also have widely shared norms governing the interaction of groups and specifying when violence might be justified. In other words, to some degree, we must all be uniculturalists on the subject of the

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516. See, e.g., Susan H. Williams, Feminist Legal Epistemology, 8 Berkeley Women's L.J. 63, 68-72, 72 n.28 (1993).
517. See, e.g., WALZER, supra note 454, at 87-90.
518. See COVER, supra note 515, at 105, 109, 153-55.
constitutional organization of violence. Similarly, at some level we must all be proceduralists. Precisely because we may celebrate difference, we need general agreement on peaceful procedures that will allow us to cope with the fact of difference, instead of violently eliminating it. This insight is at the heart of classical liberalism, and it retains its force in the face of modern social fragmentation. When disagreement surfaces, as it inevitably must, societies need shared notions about how to avoid bloodshed. In short, then, a purely perspectival approach to some constitutional provisions may be appropriate, but not to the Second Amendment.

The outgroup theorists might argue that I have overcharacterized their position. They might contend that they approach the Second Amendment from a particular perspective, but they do not deny the possibility of a society-wide "perspective." Such an argument might take either of two forms, but neither would be persuasive. First, they might argue that they are offering their perspective, but they do not intend that their perspective should automatically control. Instead, constitutional interpreters should assemble a range of perspectives to produce a "generic" perspective. The problem with this argument is twofold. First, it is almost certainly not what these outgroup theorists

519. I should distinguish this claim—that a shared culture on the organization of violence is necessary for the safety of outgroups—from two other claims that I do not wish to endorse. First, although it is important that we share a single culture on this subject, it is not necessary, indeed perhaps it is undesirable, that that culture be controlled, produced, and limited by the state. In that sense, following Robert Cover, see id., I do not wish to privilege state tales of violence over others. Second, although a shared culture is necessary for the safety of outgroups, outgroups might nonetheless reject even a protective shared culture for reasons other than safety—such as fidelity to a distinct religious tradition. See id. at 121-31, 144-55. In that case, they might reasonably prefer cultural integrity to physical safety, but in such a scenario, the values of safety and integrity are in tension. These outgroup theories of the Second Amendment, by contrast, promise safety as well as integrity through self-arming, and my point is that those promises are misleading.

520. Again, to use Cover's terminology, the courts must kill some (violent and aggressive) legal stories, so as to create conditions that will allow legal stories in general to flourish; jurispathos is necessary for jurisgenesis. See id. at 155.

521. See, e.g., THOMAS HOBBES, LEVIATHAN 228 (C.B. MacPherson ed., Penguin Classics 1985) (1651) ("[A] Common-wealth ... is One Person, of whose Acts a great Multitude, by mutuell Covenants one with another, have made themselves every one the Author, to the end he may use the strength and means of them all, as he shall think expedient, for their Peace and Common Defence." (emphasis omitted)); JOHN LOCKE, TWO TREATISES OF GOVERNMENT § 90, at 344 (Peter Laslett ed., Cambridge Univ. Press 1960) (1690) ("[T]he end of Civil Society, being to avoid, and remedy those inconveniencies of the State of Nature, which necessarily follow from every Man's being Judge in his own Case, by setting up a known Authority, to which every one of that Society may Appeal ... ." (emphasis omitted)); JOHN RAWLS, A THEORY OF JUSTICE 5 (1971) ("If men's inclination to self-interest makes their vigilance against one another necessary, their public sense of justice makes their secure association together possible.".).
really mean. They argue quite forcefully that we should interpret the Second Amendment to guarantee a personal right to arms because their perspective demands it. They never mention the possibility—and presumably would quite vigorously dispute the idea—that if other perspectives (i.e., those of government bureaucrats, would-be tyrants, or just people who are afraid of guns) counsel a contrary interpretation of the Amendment, then perhaps we should read the Amendment not to protect a personal right to arms. Indeed, as I will argue below, these outgroup theories almost require the rejection of other perspectives than one’s own, because it is never safe to trust the viewpoint of other identity groups in a world beset by hatred. Second, the creation of a single “generic” perspective would be impossible. Because the perspectives of different groups differ on the ultimate question of whether the Amendment should be read to protect a right to arms, it would not be possible simply to agglomerate them. 522

Second, these outgroup theorists might argue that insights derived from their perspectives might appeal to groups from all perspectives. In particular, they might argue that we all might someday be outgroups at the mercy of a tyrannical or indifferent government, and so we all should support a universal right to arms. As a result, they would maintain, their perspectival approach is actually not limited to their perspective at all. The problem with this contention is that the very history of racism, misogyny, and anti-Semitism compiled by these outgroup theorists belies the hope that such an appeal will reach potential oppressors. As Professors Cottrol and Diamond so effectively document, Southern white supremacists enacted legislation to disarm blacks without worrying that someday the government might try to disarm them. 523 Similarly, as JPFO details, the Nazis sought to disarm Jews and other “enemies of the state” without any flicker of concern that they might someday be

522. Alternatively, the outgroup theorists might argue that there is a single privileged perspective—the Framers’—that should form the basis for constitutional interpretation, and luckily, both the Framers’ and the outgroups’ perspectives would lead to the same conclusion, a personal right to arms. Again, this rendition of the outgroups’ argument seems untrue to their intent. If the Framers’ perspective really does control, then the perspective of outgroups is simply irrelevant in interpreting the Second Amendment—at best an interesting digression, rather than a reason to read the provision in a certain way. Both JPFO and the women and guns movement, moreover, seem entirely uninterested in directly examining the Framers’ intent. See discussion supra Part II.A-B. Professors Cottrol and Diamond, who read the Amendment as a protection for hated minorities rather than the right of a revolutionary majority, even acknowledge that the Afro-Americanist perspective would differ from the Framers’ perspective. See discussion supra Part II.C.2.

523. See supra notes 364-369 and accompanying text.
branded enemies of the state themselves.\(^{524}\) Blinded by hate, oppressors do not usually realize that they might someday be on the bottom.

In other words, we will not have a unified constitutional culture on the organization of violence as long as we consult only the perspectives of identity groups as they are presently constituted. A consensus culture can be the product only of careful and prolonged political interaction, in which groups may come to enlarge their perspectives, to accept the necessity of a shared vision, to understand themselves as members not just of identity groups but also of a constitutional republic, and so to redefine their own identity as including the perspectives of other citizens.\(^{525}\) These stories—with their unrelieved focus on a single perspective—give us no hope for such an enlarged sense of perspective. Nor, as the next several subparts explain, do they offer us a vision of the political process through which such a vision might be achieved.

b. The Necessity of Hatred and Suspicion

The social world of the Second Amendment in these theories is composed of multiple, hostile, and violent groups. That vision of the social world is not incidental to these theories of the Amendment; rather, it is at their heart. The whole reason outgroups need guns is hate violence that the state cannot or will not control. If the state could and would control private violence, or if the general culture were safe for them, then outgroups would have no need of the right to arms, and their interpretation of the Amendment would be entirely different. In other words, these theories require the existence of hatred and division to remain viable.

Moreover, these theories require that hatred and division be permanent elements of the social world, not historically contingent. JPFO overtly asserts that such hatred is inevitable, and for that reason, the Constitution guarantees a right to arms.\(^{526}\) The Afro-Americanist theorists admit that racism waxes and wanes, but argue that blacks will always need a right to arms because violent racism will always be an important force in America.\(^{527}\) I have been unable to find any discussion by the women and guns movement on whether misogyny is

\(^{524}\) See supra notes 172-182 and accompanying text.

\(^{525}\) See, e.g., Cass Sunstein, Beyond the Republican Revival, 97 Yale L.J. 1539, 1542-45, 1549-50 (1988).

\(^{526}\) See discussion supra Part III.A.

\(^{527}\) See discussion supra Part III.C.
ineradicable, but an answer seems implicit in its view that the right to arms must be constitutional—and so permanent.528

Even if these theorists might acknowledge that a unified social world might someday be possible, they would argue that we should nonetheless always act as if that world did not exist and were not possible. The whole point in constitutionalizing these stories is that the storm of hatred can always appear, suddenly and violently, even during the calm seas and sunny skies of harmony. Only fools will release their guns and their suspicion just because conditions seem good right now. The Second Amendment constitutionalizes that wisdom. The people—meaning, for these theories, all the discordant groups in society—have a right to arms because they must always keep on their guard, against the state or other private groups. In short, suspicion is the fundamental relationship between each identity group, other identity groups, and the state.

The result of this suspicion is a profound circumscription of our political life together. Collective constitutional vision and action become supremely difficult, perhaps impossible. An effective civic culture depends on the existence of civic trust among citizens.529 For these theories, however, it is only good sense to distrust the motives and perspectives of those from other groups. As a result, these theories implicitly preclude the nurturance of the reciprocal dependence, mutual respect, and dialogic interaction necessary for a welcoming and safe consensus culture. Moreover, even if we could somehow develop a shared constitutional vision, these theories explicitly preclude us from acting on it by collectively organizing violence. For these theories, the Second Amendment gives the right to arms to each individual, to use as he or she sees fit, without the supervision, consultation, or consideration of any other individual or super-individual entity. As a result, to be effective, a consensual culture on the proper use of political violence would have to be virtually unanimous to be effective. Because such unanimity is all but impossible under the best of conditions, some groups will inevitably attack other groups, setting up a round of reprisal and counter-reprisal that will foster hatred and preclude the possibility of ever reaching consensus.

In the stories of these outgroup theories, the right to arms has entirely benign consequences. Women fight off rapists, blacks fight

528. See discussion supra Part III.B.
off the Klan, Jews stop the Holocaust. But in a fractured world, other real-life stories feature the right to arms in a less savory light. In Northern Ireland and the former Yugoslavia, conditions of decentralized violence have resulted in wounds so deep that a consensus constitutional culture may never be possible. Closer to home, violence between blacks and Jews has further poisoned already strained relations between these once allied groups, so that rapprochement appears increasingly unlikely. Indeed, this last example is especially ironic in that the outgroup theorists include both blacks and Jews. The former tell stories of resisting the Klan, and the latter tell stories of resisting the Nazis, but it is equally likely that some members of each group will use their personal arms to kill members of the other group.

\[ c. \quad \text{The Functional Equivalence of All Constitutional Visions} \]

In these outgroup theories, all groups retain the right to keep and bear arms alike, regardless of the malignancy of their constitutional vision. Before the fact, the state may not choose to disarm some, based on the danger that they pose to the commonweal; after the fact, the state cannot or will not punish malefactors. For all practical purposes, then, on the issue of self-arming, the state will treat all constitutional visions as if they were morally equivalent. In this sense, the Second Amendment functions rather like the First Amendment, in that the state may not regulate groups based on disagreement with their ideas. Indeed, in a bizarre sense, all identity groups must treat one another as if they were morally equivalent on the issue of self-arming. To be sure, outgroups may believe that hate groups have an inferior constitutional vision, and they may even take up arms to prove the point. Nonetheless, all share the right to keep and bear arms. No group has the right to insist that the state disarm another group, no matter how threatening that group may be. As a result, all effectively have a right to maintain their point of view by force of arms, and each group has no choice but to meet opposing groups on the field of battle.

530. See generally Kevin Toolis, Rebel Hearts: Journeys Within the IRA's Soul (St. Martin's Press 1996).
531. See generally Glenny, supra note 458.
532. See, e.g., Rowan, supra note 128, at 29-35.
533. See, e.g., id.
In short, before the Second Amendment, all share a functional moral equivalence. This equivalence would appear to grow out of suspicion. No one is in a position to decide who should be armed and who disarmed, because no one is trustworthy enough. We must keep the means of violence decentralized because no one, including the state, holds a privileged position in determining when violence should be deployed for political ends. The result is that the decision to use violence has an irreducibly subjective and fluid quality. As we cannot trust the state or some other putatively authoritative body to make such determinations for us, we must each decide—and those decisions, inevitably, will differ.

In analyzing the actions of the Black Panthers, Professors Cottrol and Diamond seek to repudiate this subjectivity: “The Deacons for Defense and Justice are to be contrasted with the Black Panther Party for Self-Defense. The Black Panther Program included [an assertion of Second Amendment rights]. Yet, the Black Panthers deteriorated into an ineffective group of revolutionaries, at times using arguably criminal means of effectuating their agenda.” 535 In other words, the main difference between the Panthers and the Deacons is that the former may have violated the criminal law; they are objectively in the wrong, whatever their subjective views. Yet this repudiation of subjectivity is inconsistent with the basic premises of Cottrol and Diamond’s approach. They cannot mean that groups should never exercise their Second Amendment rights in such a way as to violate the law of the state; their whole historical exploration is sufficient proof that the state cannot always be trusted to pass just or even constitutional laws. If the state of North Carolina had criminalized the ownership of guns or the use of guns for self-defense, the Deacons for Defense and Justice would have been criminals as surely as the Panthers, yet their cause would have no less good. But if the state cannot be trusted to judge the appropriateness of violent action, then who can? Only individuals, with their personal right to arms, can make such a judgment—and in assassinating police officers, the Panthers were doing exactly that, because from their perspective, assassinations were simple acts of self-defense against the white power structure. 536 Such extreme fragmentation—the result of the moral equivalence of all groups in the eyes of the Second Amendment—would make the creation of a unified, protective culture supremely difficult.

535. Cottrol & Diamond, supra note 355, at 357 n.273 (citations omitted).
536. See Pearson, supra note 127, at 110-11.
d. The Erasure of Political Structures

All of these theories assert that the solution to the political problem of hate violence is personal self-arming by all the individual members of the affected groups. Of necessity, these individuals may sometimes organize to mount collective resistance, as when women develop self-defense classes or blacks enlist in private militias. These associative efforts, however, are only—and, by the premises of these theories, can only be—the product of countless individual wills spontaneously deciding to enlist. Like eddies in the ocean, they form when individuals swirl toward one another, and then they disappear when the perceived need for collective self-defense is past. Only the individual holds Second Amendment rights, and so only the individual can decide when and how to use them.

Collective organizations thus have no rights to arms as such; their legitimacy derives entirely from the will of their members. As a result, these theories express only suspicion about more formal, more permanent, or more powerful collective organizations, such as the state, the army, or the United Nations. At best, these organizations will be ineffectual, and at worst tyrannical. In an old American tradition, Second Amendment associations must follow the model of private voluntarist groups; they must resemble mutual aid societies, religious denominations, or reform movements.

These theories go to great lengths to assert the effectiveness of private armed associations, and the ineffectiveness of political structures, to solve political problems. Thus, JPFO criticizes the United States and international societies for dithering or intentionally ignoring the Holocaust; instead, the answer was to arm the Jews. Women & Guns magazine asserts that international peacekeeping will not solve misogynist violence in Bosnia; instead, the answer is to arm Bosnian women. Even Professors Cottrol and Diamond ignore the fact that only the Union army was effective in suppressing white supremacist violence during Reconstruction; instead, they praise black self-arming after withdrawal of the troops.

537. See discussion supra Part III.C.2.b.
539. See supra text accompanying note 163.
540. See supra text accompanying note 321.
542. See supra text accompanying note 417.
In making these assertions, these theories essentially erase political structures as a mechanism for distributing the means of violence. Indeed, in prescribing the use of guns for political ends, these theories are nonetheless resoundingly silent about the political organization of arms-bearing citizens themselves. First, the theories maintain that the state should not have a monopoly of violence, and second, they maintain that individuals should possess arms for political purposes. At that point, however, their analysis stops; they seem to lose interest in exactly how individuals will collectively organize their armed might—if at all. Apparently, merely rolling back the power of the state and vesting individuals with the right to arms will best blunt the dangers of political violence.

These accounts, then, offer no theory of the collective organization of violence beyond the simple assertion that individuals should act as seems best to them. Indeed, these theories are virtually driven to this conclusion by their starting premises. Because it is unsafe to trust the state—and presumably any other super-individual entity—with authority, only the mass of individuals can assume ultimate control of the means of violence. Thus, these theories explicitly condemn state attempts to control the means of violence, but they also implicitly condemn any association—private or public—that attempts to organize violence except through the spontaneous agreement of individuals. To put the matter another way, these theories reject the use of authoritative political structures as a means of organizing the means of violence. If individuals sua sponte cohere into a political movement, it is well and good; if not, then it is not.\textsuperscript{543}

Earlier, I argued that the women and guns movement echoes the feminist claim that the personal is political; giving women a personal right to arms can have great political significance.\textsuperscript{544} In fact, however, the echo is terribly distorted. The movement—like all of these theories—actually reduces the political to the personal, by insisting that the only effective solution to hate violence is individual self-defense. Mainstream feminism takes exactly the opposite approach. For most feminists, the point in claiming that the personal is political is to seek political solutions to problems traditionally dubbed “private”

\textsuperscript{543}. In this sense, there is an odd echo of Marxist theory in these outgroup interpretations. Only when state power withers away will humankind find its liberation, free at last of the oppression inevitable in any political system. To be sure, unlike Marxism, these theories are not naive. They imagine that a world of decentralized violence will be bloody and hate-filled. But they assert that it is better than what they believe to be the alternative—trusting the state (or other super individual organizations) for protection and thus giving up hope of personal self-defense.

\textsuperscript{544}. See discussion supra Part II.B.1.c.
and thus ignored in the public sphere. Indeed, those feminists may believe that the women and guns movement actually denies that the personal is political, because the movement for all intents and purposes denies that there is a political. In the view of the movement, if police cannot protect women, then women should stop whining and protect themselves. But at that point, misogynist violence once more ceases to be a public concern and disappears again into the hidden world of private relationships.

In short, these theories are so distrustful of the state that they reject any project that would subject the realm of violence to collective ordering. Instead, they cast their lot with the mass of individuals organized only into such structures as they spontaneously generate. They are so sensitive to the concern that state power corrupts that they will instead tolerate a regime of private ordering in the realm of armed power. Such decentralized violence may, in some situations, produce a welcoming and just culture for outgroups. As I have argued above, however, decentralized violence usually leads to hatred and bigotry. If it does so, there is very little that we can collectively do to correct the situation, because these theories have erased political structures as a way of organizing cultural ideas about the just distribution of the means of violence.

e. The Fundamentality of Relating Through Arms

These theories also maintain that violence is more basic than peaceful politics to the life of the state, and, concomitantly, citizens relate to one another more fundamentally through arms than through political participation. In part, this argument is simply a matter of tone. All of these theories repeatedly celebrate the use of guns to combat hate violence; by contrast, they never mention the possibility of changing the culture through politics. As a result, these theories offer no vision of redeeming the culture by making it protective toward outgroups. Instead, they assume the perennial existence of hatred and then urge outgroup members to arm themselves in response. Sometimes, these theories make this tonal argument more explicit. For example, all of these theories condemn the state—and, implicitly, the political process that purportedly controls the state—as unreliable and/or perfidious. By contrast, the theories describe self-arming as the most reliable self-defense tool for outgroups. For that

545. See, e.g., OKIN, supra note 308, at 124.
546. See id. at 111, 124-33.
547. See discussion supra Part III.A.
reason, the theories insist that outgroup members would be foolish to
depend on the state for protection; instead, they should depend only on
themselves and their identity group. Similarly, the theories sometimes
repeat an argument central to the individual rights theory of the
Second Amendment. The right to arms is our most important right,
because it is the practical guarantor of all other rights. If we give up
our guns, we lose control over government, which may then run
roughshod over the Constitution.\footnote{See, e.g., Robert J. Cottrol & Raymond T. Diamond, The Fifth Auxiliary Right, 104 Yale L.J. 995, 1011 (1995) (book review) ("Far from being inferior rights, in the practical constitutional sense, Blackstone understood these auxiliary rights [such as the right to arms] as the mechanisms that protected the subjects' natural or inherent rights."); Faria, supra note 302, at 15 (asserting that the "Second Amendment is the right that secures all others").}

The image of the social world implicit in this constitutional
vision flows from the basic premises of these theories. Underneath the
veneer of peaceful politics lurks a more essential world of primordial
hatred, waiting to boil over. We may participate in politics, but we
should also hold to our guns, ready for assault. Concomitantly, we
may relate to fellow citizens through politics, but we should also
remember that in an instant, they could become our oppressors.
Politics is no more than a precarious holding action against the forces
of hatred; our ultimate bulwark of safety is our personal capacity for
violence.

f. The Constitutional Mandate of These Conditions

This element of the stories is implicit in the foregoing five
themes, but it is so important that it bears separate mention. The social
world described in these stories—one of mistrust, division, and
violence—may be an accurate portrait of the world in which we
presently live. For that reason, as a matter of prudence and policy, it
may be best for outgroup members to arm themselves now. These
stories, however, argue that the Second Amendment requires us to act
as if the social world will always be divided and violent. Indeed, these
theories maintain that this mandate of eternal vigilance is the great
insight of the Second Amendment. The world may look safe now, but
it could change in a moment. Mistrust, division, and violence are thus
not historically contingent elements of our present social order;
instead, they are permanent elements of the human condition in all
times and places. Whatever cultural gains might have been made are
fragile and untrustworthy; only a good gun is real protection.
The Constitution, in this view, is a profoundly "realist" document. It requires us to take people at their worst, to guard against their proclivity to do evil. Thus, this vision emphatically rejects a different model of the Constitution as a redemptive force, a bridge to a better future. These constitutional tales of violence tell us how to deal with a permanently fallen world; they offer no vision of a better one. Outgroups, however, cannot abjure redemptive constitutionalism, because the present and the past are too hopeless. Outgroups will not be safe under conditions of hate-filled decentralized violence, and they cannot trust a hate-filled state monopoly of violence. Their only hope is to reduce the level of hate. That path may seem hopelessly idealistic, but some idealism may be inevitable in hoping that outgroups will ever enjoy safety in a nation presently poisoned with hatred. In that sense, redemptive constitutionalism may actually be much more "realistic" than a constitutional vision that urges outgroup members to celebrate the private ordering of violence.

3. The Futility of Constitutionalizing Outgroup Rights of Violence

Thus, these constitutional stories of violence frustrate the creation of a consensus culture protective of outgroups because they essentially mandate conditions of hatred and violence. This tendency to frustrate the creation of such a culture is not a coincidental feature of these particular tales; we would find a similar tendency in any outgroup interpretation of the Second Amendment as a guarantee of a personal right to arms. The reason is that any such interpretation must imagine the social world as perennially poisoned by hatred; the existence of such hatred is, after all, the reason that outgroups need a personal right to arms. As a result, the Constitution cannot be a redemptive road to a world without hatred; it can only be a compromise with present reality.

In short, then, telling these constitutional tales of violence creates real costs for outgroups. Moreover, these stories will likely create very few gains, for similar reasons. If the culture is protective of outgroups, then presumably the state will either protect them or guarantee them a right to arms as a matter of policy—even without a constitutional right to arms. Thus, constitutionalizing these stories could help outgroups only when the culture is deeply hostile. But in such a culture, it seems wildly implausible that the state will ever actually create, recognize, and protect a constitutional right to arms for outgroups. It defies common sense to believe that the state will allow the killing of outgroups but will carefully protect their Second Amendment rights.

549. For an example of such a vision, see Cover, supra note 515, at 101-03.
As soon as these stories require us to posit a world filled with hatred and violence, they virtually preclude a world scrupulous about fidelity to the Constitution. In short, these tales make sense as stories of guerrilla resistance; they make little sense as constitutional stories.\textsuperscript{550}

The work of Professors Cottrol and Diamond illustrate this problem.\textsuperscript{551} In scrupulous detail, they document the way that gun control statutes have been used to disarm African-Americans, in violation of the Second Amendment as they understand it. They conclude from this survey that gun control statutes generally do not help blacks. Their work, however, might lead to another conclusion. In the face of widespread racism, the Second Amendment has not helped blacks either. Similarly, Professors Cottrol and Diamond argue that both before and after the founding period, white Americans generally feared blacks and, for that reason, sought to disarm them. According to Cottrol and Diamond, however, the founding period was utterly anomalous. In that one brief, shining moment, white Americans sought to guarantee black Americans a permanent right to arms. As I have argued, this argument is the most implausible part of \textit{Toward an Afro-Americanist Reconsideration}.\textsuperscript{552} Apparently, Cottrol and Diamond felt required to make such an implausible claim because their theory makes inconsistent demands on them. On one hand, they must assert that the culture is dangerous to blacks, so blacks need arms to resist; on the other hand, they must also assert that the culture is so benign that it recognizes the right of blacks to keep and bear arms.

In short, on balance, this style of constitutional storytelling offers little long-run hope for outgroups. Such stories undercut the only

\textsuperscript{550} In a few situations, a constitutional right to arms might marginally help outgroups, even in a hate-filled world. First, the state might be internally divided. The courts might seek to protect outgroup rights against a bigoted legislature and executive. That scenario would hold only under the following factual conditions: (1) despite general societal bigotry, the courts are both enlightened and courageous; and (2) despite their bigotry, the political branches will obey the courts' orders. Each of those factual conditions seem implausible, and their combination even more so. Recall the Court's failure to protect Japanese-American internees in World War II, \textit{see Korematsu v. United States}, 323 U.S. 214 (1944), and Andrew Jackson's failure to protect the Cherokee Nation even after the Court had ordered him to do so, \textit{see, e.g.}, 2 \textsc{John Spencer Bassett}, \textit{The Life of Andrew Jackson} 688-92 (1916).

Second, the state might be chronologically divided. At one point, under an enlightened regime, outgroups stockpile private arms; at a later point, they use them to resist oppression. Again, such a scenario seems implausible. For example, as Professors Cottrol and Diamond themselves explain, Reconstruction governments generally did protect the right of blacks to arms; those arms helped very little when southern governments and white supremacist groups later sought to disarm blacks. \textit{See Cottrol & Diamond, supra} note 355, at 1326-29.

\textsuperscript{551} \textit{See} discussion \textit{supra} Part II.C.2.

\textsuperscript{552} \textit{See supra} text accompanying notes 401-403.
long-term hope of outgroups—the creation of a protective, consensual culture on the organization of violence. Correlatively, the stories offer very little short-term hope for outgroups because a constitutional right to arms will be relatively meaningless to outgroups in the absence of precisely such a protective, consensual culture. For outgroups, fighting hatred with guns may be a necessary stopgap in a dangerous world; it cannot be an ultimate constitutional solution. 3

IV. CONCLUSION: POPULISM AND THE SECOND AMENDMENT

Culturally, Second Amendment dreams have been populist dreams. They yearn for the people, organic, democratic, militant, and united, rising up against its enemies. Those dreams, like much of populism, can be noble. They have inspired campaigns for social change. 553. This analysis does not directly apply to one type of outgroup armed organization: secessionist movements. I have argued that for their own safety, outgroups must seek to transform the culture of violence; they must seek to convert the bigots, not merely shoot them. Secessionist movements, however, pursue a different strategy altogether. Rather than trying to defend themselves against the culture, they seek to exit it entirely. As a result, they might not need to transform the culture, because they will have left it behind. In their new nation, these secessionist movements will no longer be outgroups at all but rather the people around whom the nation is constructed. In this sense, secessionist movements demand a right to arms not so much for old outgroups as for new populisms. In addition, the recognition of a right to arms for secessionist movements would be more historically resonant with the original meaning of the Second Amendment—precisely because outgroup secession would involve the separation of one people from another, as happened in the American War for Independence. Again, in this sense, the demand for secessionist rights is really a populist argument and so consistent with the general cultural tradition of the Second Amendment.

In other words, recognition of a right to the exit option would not undermine the importance of a just consensus culture but strengthen it. Groups pursue the option when they have concluded that the only way to create such a culture is separation. It is hoped that they will then produce a new constitution with more unifying tales. As a result, although I have argued for the general futility of a constitutional right to arms as a protection for outgroups, that argument does not directly apply to the special case of outgroup secessionist movements. Such movements are, however, very rare. Some Native Americans and some African-Americans have demanded separate nationhood. See George M. Fredrickson, Black Liberation: A Comparative History of Black Ideologies in the United States and South Africa 286-90 (1995); Paul Chaat Smith & Robert Allen Warrior, Like a Hurricane: The Indian Movement from Alcatraz to Wounded Knee 217-20, 227-28 (1996). Usually, however, when outgroups arm themselves, they are seeking to secure justice within the United States—as are all of the outgroup theorists that I have discussed above. Even separatists, moreover, cannot safely stake their future on the power of the gun. Even if they somehow managed to achieve independence, they would still be perennially unsafe in the face of a hostile American culture around them. Even these secessionist movements, then, must seek to tell constitutional stories that would create a common culture of justice with the United States citizenry. In other words, they would need the kind of relationship that the United States has with Canada, rather than the kind that the United States has with Central America. I will elaborate this analysis in a future article. See David C. Williams, The Second Amendment and the Sovereign State (unpublished, unfinished manuscript, on file with author).
justice, resistance to unjust authority, and at least one revolution—our founding myth, the War for Independence. They hold before us a particular constitutional ideal: "The people" in its most democratic, egalitarian, unmediated, and unstructured guise, taking power into its own hands when the government fails to honor its obligations.

Such dreams, however, can become nightmares. Direct democracy always runs the risk of becoming majoritarian tyranny. The people may be wise, just, and tolerant, but they may also be angry, bitter, and intolerant. Generally, when the people feel betrayed by government and compelled to take up arms, they look for the cause of their felt disempowerment. In an old American tradition, rather than looking for the cause of their distress in an increasingly complex world, they seek out the enemies of the people that have betrayed them. Too often, they find these enemies in outgroups who, in fact, have even less power than they.

Under such conditions, outgroups may have no choice but to arm themselves, and if the state cannot or will not protect them, it may have an obligation to let them protect themselves. Such self-defense efforts, like populist dreams, can be noble. They offer us an ideal of courageous, resolute self-reliance in the face of hatred. But however noble it might be, this ideal is still only an adaptation to an unacceptable reality—a world poisoned with bigotry. While it may be important to retain armed self-reliance as one cultural ideal, it is vitally important that we not transform it into an ultimate constitutional vision. The temptation to do so is great, as the ideal rests on values that we deeply cherish. A people that finds its origin in resistance to tyranny may, perhaps must, find these tales of violence enormously resonant. After centuries of oppression, a group declares that it will suffer no more, resolved to die free men—and women—rather than to live slaves. But like all values, these are only partial, and they must be balanced by a dream even more dear—the search for a society that is peaceful, just, harmonious, cohesive, and protective of all its citizens.

Constitutional structure is one traditional route to that society. Rather than trusting to direct democracy, the Framers sought to create a frame of government that would balance power against power, branch against branch, federal against state governments. These Framers hoped that such a system of checks and balances might better protect minority rights. At least some of the Framers would therefore presumably believe that the government of a constitutional

554. See, e.g., THE FEDERALIST NO. 10 (James Madison).
republic would better protect outgroups than the *populo armato*. Subsequent constitutional amendments further sought to extend protection to outgroups. The Supreme Court has used those provisions to improve the well-being of outgroups, although it has never secured—and may never secure—the dream of perfect equality and safety. In short, many may believe that outgroups are best protected by the state, at least if that state is a constitutional republic.

These outgroup tales of violence, by contrast, highlight just how neglectful and oppressive the state has been to outgroups. In focusing on this treatment, these outgroup theories find in the Second Amendment an insight into their own history. No matter how well designed and carefully balanced a constitutional government might be, it can still become corrupt and oppressive. While the Amendment may accurately diagnose the condition of outgroups, however, its prescription will not serve them well. That prescription is an armed people with the power to intimidate and resist the state. For those who are unambiguous members of the people, that answer may be empowering and inspiring; for others, it may be only terrifying. At times in American history, populists have included all Americans in their definition of the people, but all too often, they have insisted that the only true Americans are people like themselves. Regrettably, the gun culture today continues this tradition, arguing that it alone represents the real American soul.

If outgroups can rely neither on the state nor on an armed citizenry for their ultimate protection, then they must rely on something even more diffuse—a general culture that cherishes the well-being of all Americans. Such a culture would curtail the threat posed to outgroups by either the state or an armed citizenry. Hope for such a culture, however, may seem wildly idealistic, ephemeral, even naive. America’s mainstream culture has generally been racist, misogynist, and anti-Semitic. To depend on that culture for protection from violence may seem like a counsel of suicide. Outgroups, however, have no other hope. With hate violence loose in the world, outgroups are always at peril, and their survival may seem a miracle. In the short-term, self-arming may work as a temporary strategy. But in the long-term, as a subject of constitutional storytelling, it will not bring about a better world—except, perhaps, by allowing outgroups to

555. These same Framers stressed the importance of the armed citizenry but as a populist hedge against tyranny, not as a protection for outgroups. See *The Federalist* No. 46 (James Madison); Akhil Reed Amar, *The Bill of Rights as a Constitution*, 100 Yale L.J. 1131, 1162-75 (1991).

556. See, e.g., U.S. CONST. amends. XIII, XIV, XV, XIX.
go to their graves with dignity. In this country, the long-term gains made by outgroups have generally been the product of changes in the dominant culture, not violence. To hope for such changes may seem wildly idealistic, but to hope for the well-being of outgroups in a world choked with violent hatred may require such idealism. If we do not dream better dreams, we will have to live in a landscape of nightmare.