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2025 Essay Contest

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The Tainted History of the Second Amendment

Reading Supreme Court Justice William O. Douglas's dissent in the *Adams v. Williams* decision led me to question the interpretation of the Second Amendment that is widely accepted today. Douglas's opinion stimulated me to research the origin of the Second Amendment and to ask not only for whom the "right to bear arms" was intended, but for what purpose. In doing so, I found that southern states used "well regulated militias" to suppress slave uprisings.¹ I also found that groups of frontiersmen used firearms to drive "the red man and the beast of the forest" from their lands.² And I discovered that even today, many defenders of the Second Amendment still exhibit racist notions of protecting the United States of America from non-Whites.³

Almost 200 years after the ratification of the Bill of Rights, in the 1972 case of *Adams v. Williams*,⁴ the Supreme Court considered whether the Fourth Amendment right of a Black man, Robert Williams, to protection against unreasonable search and seizure had been violated when a police officer, acting on a tip from an informant but without a warrant, accosted Williams while he was sitting in his car and arrested him for carrying a loaded handgun without a permit in violation of Connecticut law. The Supreme Court ruled in a 6-3 decision that the warrantless search did not violate the Fourth Amendment. Justice Douglas was one of the three dissenters. Although the Second Amendment was not directly at issue in the case, it was the "elephant in the room." Douglas made it clear that his dissent was not based on any claim that Williams had a Second Amendment right to own a handgun. In fact, Douglas took aim at the gun lobby's misrepresentation of the Second Amendment and the resultant ease with which almost anyone can acquire firearms in America. Douglas wrote:

A powerful lobby dins into the ears of our citizenry that these gun purchases are constitutional rights protected by the Second Amendment, which reads,

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"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."

There is under our decisions no reason why stiff state laws governing the purchase and possession of pistols may not be enacted....There is no reason why all pistols should not be barred to everyone except the police.

Justice Thurgood Marshall also joined Justice Douglas in dissenting from the majority opinion in *Adams v. Williams*. In his dissent, Marshall cited previous Supreme Court decisions that noted that any exceptions to the Fourth Amendment protection from unreasonable search and seizure should be "jealously and carefully drawn" and that there must be "a showing by those who seek exemption...that the exigencies of the situation made that course imperative."

I find it startling that the Supreme Court was more willing to erode our Fourth Amendment rights in *Adams v. Williams* than it has been in recent years to curtail the antiquated and severely disrupting influence of the Second Amendment. How I wish that the Court would have used the lens of what "exigencies of the situation" made it "imperative" before a narrow five justice majority ruled for the first time in U.S. history in the 2008 *Heller* decision⁵ that the Second Amendment conferred an individual right to own a gun unrelated even to militia service. Instead, courts now "jealously and carefully" guard the Second Amendment as conferring a broad right to private gun ownership, despite America having the highest rate of gun-related deaths of any high-income democratic nation.⁶

In my research on the origin and original intent of the Second Amendment, I found that there is credible evidence that the Amendment, like four clauses in the main body of the Constitution,⁷ was adopted in order to mollify southern states with large slave populations that were concerned that the northern states would force an end to slavery. The obsession with perpetuating the institution of slavery was evident in Southern states' racist arguments during the drafting of the Constitution, and southern Whites who denied the humanity of their slaves (except to count them as 3/5ths of a person to bolster the numbers of U.S. Representatives their states were allotted) needed armed militias to keep their slaves in submission. One southern slave owner, John Rutledge, who was also Governor of South Carolina, a lawyer who defended fellow slave owners against charges of abuse, the second Chief Justice of the Supreme Court, and one of South Carolina's delegates to the Constitutional Convention, stated during the convention:

If the Convention thinks that N. C [North Carolina]; S. C. [South Carolina] & Georgia will ever agree to the plan, unless their right to import slaves be untouched, the expectation is vain. The people of those States will never be such fools as to give up so important an interest.⁸

As Rutledge acknowledged, slavery was the economic engine of the South.⁹ Slavery was also the defining issue of the Civil War. The social and economic repercussions of slavery are felt to this day.¹⁰ Our current presidential

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administration scapegoats non-White immigrants, falsely claiming that they're responsible for a disproportionate percentage of the violent crime in our country; and promotes the recently-invented Second Amendment right to private gun ownership as being necessary for self-defense.¹¹ Defense against whom? Most gun-related deaths in our country are suicides,¹² and most people who are murdered with a gun are killed by someone they know and someone of their own race.¹³

It's common these days to hear even some of our country's most progressive politicians say that they proudly support the Second Amendment. Anyone who knows the tainted history of the Second Amendment should be more ashamed than proud to support it.

References

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- ² Charles Sumner, “The Crime Against Kansas. The Apologies for the Crime. The True Remedy. Speech of Hon. Charles Sumner in the Senate of the United States, 19th and 20th May, 1856.” (John P. Jewett & Company, 1856), https://www.senate.gov/artandhistory/history/minute/The_Crime_Against_Kansas.htm.
- ³ See, for example: Tom Diaz, *Making A Killing* (New York: The New Press, 1999), 190–91.
- ⁴ *Adams v. Williams*, 407 US 143 (Supreme Court 1972).
- ⁵ *District of Columbia v. Heller*, 554 US (Supreme Court 2008).
- ⁶ Erin Grinshteyn and David Hemenway, “Violent Death Rates in the US Compared to Those of the Other High-Income Countries, 2015,” *Preventive Medicine* 123 (June 2019): 20–26.
- ⁷ Article I, Section 2 stipulated that for the purpose of apportioning U.S. representatives, slaves would be counted as 3/5 of a person; Article I, Section 9, provides that Congress couldn’t ban the importation of slaves prior to 1808 or place an import tax of more than 10 dollars per slave; Article IV, Section 2, provided that runaway slaves who escaped from a slave state to a free state must be returned to their owner in the slave state; and Article V stipulated that none of the above sections could be amended prior to 1808.
- ⁸ Max Farrand, “The Records of the Federal Convention of 1787, Vol. 1,” *Online Library of Liberty*, 1911, 460, <https://oll.libertyfund.org/titles/farrand-the-records-of-the-federal-convention-of1787-vol-2>, 295.
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- ¹¹ Enns and Jardina, “Complicating the Role of White Racial Attitudes and Anti-Immigrant Sentiment in the 2016 US Presidential Election.”
- ¹² “Fatal Injury Data | WISQARS | Injury Center | CDC,” Centers for Disease Control and Prevention, accessed July 1, 2021, <http://www.cdc.gov/injury/wisqars/fatal.html>.
- ¹³ “FBI: UCR - Crime in the United States: Expanded Homicide” (Federal Bureau of Investigation, 2018), <https://ucr.fbi.gov/crime-in-the-u.s/2018/crime-in-the-u.s.-2018/topic-pages/expanded-homicide>.