On Main Street in Dodge City, Kansas, in the 1870s, a large sign declared “The Carrying of Fire Arms Strictly Prohibited.” In Wichita, strangers were told “Leave Your Revolvers at Police Headquarters, Get a Check.” Although many folks owned firearms, gun control laws appeared to be as American as apple pie. And for 200 years, the courts found that they did not violate the Second Amendment to the U.S. Constitution.

In 2008, a 5-4 majority of the Supreme Court proclaimed, for the first time, that the Constitution protects the right of individuals to own guns. Using a methodology based on the “original public meaning” of a statute, Justice Antonin Scalia stated in District of Columbia v. Heller that the Second Amendment “surely elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home.”

In “The Second Amendment: A Biography,” Michael Waldman, the president of the Brennan Center for Justice at the NYU School of Law (and a former director of speechwriting for President Clinton), provides an informative examination of the debates surrounding the adoption of the Second Amendment and its impact on subsequent local, state and federal laws; and an unabashedly partisan yet nonetheless compelling analysis of Scalia’s opinion and its implications.

Waldman demonstrates that the road to Heller was paved with ideological intentions. The majority of recent law review articles asserting an individual’s right to bear arms, he indicates, were written by attorneys who were employed by or had represented the National Rifle Association and virtually always contradicted by professional historians who continued to conclude that concern about militias was the animating force behind the Second Amendment. And Waldman skewers Scalia’s opinion in Heller for its “Wikipedia-like ... hyper-literal readings of words” and cherry-picked historical citations.
Although gun ownership has now been deemed a constitutionally protected right, Waldman points out, we cannot know how Heller “may unspool over time.” After all, the Heller majority agreed that there were limits to that right, not unlike First Amendment jurisprudence, which does not entitle individuals to commit libel or falsely cry “fire” in a crowded theater. Will regulations banning assault weapons, guns in bars or on college campuses pass constitutional muster? Will courts side with disability advocates who believe legally blind people are entitled to carry loaded weapons?

Addressing these questions — and understanding why the number of guns in the United States has gone up while the number of gun owners has gone down; death from gun violence remains high but has declined significantly; and public support for banning handguns has dropped precipitously in the last 50 years — will be especially difficult because Congress has eliminated funding from Centers for Disease Control and the National Institutes of Health budgets for empirically based, peer-reviewed studies of gun violence.

And so, Waldman concludes on a note that may appeal to Americans on both sides of the ideological divide: It’s time, he writes, “to avoid emotionalism, to rely more on research, to find policies that actually work.”

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