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CIVIL RELIGION AND THE SECOND AMENDMENT

A Dissertation

Submitted to the McAnulty Graduate School of Liberal Arts

Duquesne University

In partial fulfillment of the requirements for  
the degree of Doctor of Philosophy

By

M. Shivaun Corry

May 2021

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2021

CIVIL RELIGION AND THE SECOND AMENDMENT

By

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Approved Dec. 18th, 2020

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## ABSTRACT

### CIVIL RELIGION AND THE SECOND AMENDMENT

By

M. Shivaun Corry

May 2021

Dissertation supervised by Dr. Erik Garrett

The American approach to legal hermeneutics emerged from the covenant theology of the Puritans. American civil religion understands the Constitution to be based in natural laws: a secularized conception of God-given rights. To change the text would collapse the epistemological framework of the nation. When a nation sees its constitution as a sacred text, then the answer to contemporary problems cannot be to change that text; rather, it must be to return to the text with an even more fundamentalist hermeneutic. Both gun rights advocate Charlton Heston, and gun control advocate Barack Obama, argued their cases using a fundamentalist hermeneutic, drawing on American civil religious rhetoric.

*Keywords:* Second Amendment, Civil Religion, Hermeneutic Fundamentalism

## DEDICATION

To my mother (the real philosopher of the family) and the other brilliant women whose names remain unknown because they inspired, edited, and often ghost-wrote their husbands' books and dissertations instead of writing their own.

## ACKNOWLEDGEMENT

This dissertation was completed at Duquesne University, which is situated in Pittsburgh, the ancestral territory of the Lenni Lenape, Shawnee, and Hodinöhsönih Confederacy. This acknowledgement is an important rhetorical step in promoting indigenous visibility in what is now The United States of America, but it is only one small step towards the more concrete goal of indigenous political sovereignty and the return of land to indigenous people.

I would like to acknowledge the help of Dr. Andrew Feenberg who encouraged me to pursue this topic, suggested readings in the history of civil religion from Plato to the French Revolution, and helped me understand the connection between the gun control debate and popular philosophies of technology.

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## CHAPTER 1

### INTRODUCTION: HERMENEUTIC FUNDAMENTALISM

...[A]n axiom of African American preaching is that a text without a context is a pretext. And the way the Second Amendment is most regularly cited is without context...

Wilda Gafney (Brite Divinity School) and John Pahl (Berkley Law)

#### **The Black Panthers Create a White Monster**

On May 2<sup>nd</sup>, 1967, The Black Panther Party for Self Defense took an armed delegation to the California state legislature. Bobby Seal, then Chairman of the Black Panthers, read a press release stating that the legislature intended to take away the people's — particularly black people's — constitutionally guaranteed right to bear arms. Up to this point, the Second Amendment had been largely ignored by lawyers, legal scholars, and the American people. Even *American Rifleman*, the magazine of the National Rifle Association, did not mention the Second Amendment until the late 1960s (Abumrad, 2018). Yet, in the fifty years since Bobby Seal made his statement, the Second Amendment has gone from being largely ignored to being the topic of everything from presidential debates to country western songs.

The purpose of this dissertation is not to advocate for or against gun control laws. It is not even to decide whether an individualist or collectivist interpretation of the Second Amendment best matches the Framers' original intent; rather, I seek to understand how the Second Amendment became *so* hallowed that even a group as radical

as the Black Panthers – or as liberal as the Democratic Party, or as populist as the NRA -- could appeal to it to legitimate their interests.

In this dissertation, I argue that the answers to this question lie in the American impulse to what I term the fundamentalist hermeneutic: a devotion to the original text. I argue that this fundamentalist hermeneutic can be traced back to the Puritan covenant theology. This covenant theology was the theological and political philosophy of the earliest European settlers in what is now the United State of America. It remains the epistemological foundation of the nation. In this study, I review this history and demonstrate how both gun rights and gun control advocates have continually applied this fundamentalist hermeneutic and employed sacred rhetoric in their attempts to sway public opinion and mobilize individuals around the issue of gun control in the USA.

### **The Fundamentalist Hermeneutic**

One cannot theorize about the meaning of a legal document -- whether it be a statute, constitution, or judicial opinion-without at least implicitly invoking a theory of interpretation, for interpretation precedes and makes possible the recognition of meaning in a written work. (Mootz, 1988, p. 526)

Hermes. The messenger of the gods. With his winged sandals he moves swiftly and easily between the world of mortals and Mount Olympus, translating the words and deeds of the gods into a form that humans can understand. Hermes is the protector of not just human heralds and orators, but also of tricksters and thieves; the line between interpretation and deception is slim. We all know that it is easy to -- intentionally or unintentionally -- interpret a text in a manner that would disgust its author. As a

language translator myself, I have learned that when this is unintentional, it is often the result of a lack of awareness of the context of the original text, and when it is intentional, it is almost always ideological.

In antiquity, Greece established practices for the interpretation of “oracles, dreams, myths, philosophical and poetical works, but also laws and contracts” (Mantzavinos, 2020). The contemporary Greek philosopher of the social science Mantzavinos argues that the most “remarkable” of these practices was *allegoresis*: which can be translated as meaning simply “saying something different”. As opposed to aiming for a literal interpretation, this approach to hermeneutics aimed at a “deeper meaning” of texts as diverse as the Delphic oracle’s pronouncements, to cannon law, to Homeric epics. Citing the classicist Johnathon Tate’s seminal 1934 essay “On the History of Allegorism,” Mantzavinos states that this approach was taken when authoritative texts, “contained claims and statements that seemed theologically and morally inappropriate or false”. Allegory was used as an interpretive tool when a literal interpretation went against contemporary understandings of morality and theology.

Early references to this allegorical approach to hermeneutics hint at the fact that in the western tradition, hermeneutics has inextricably been tied to the occult and specifically to the interpretation of religious texts. It is not merely coincidence that Schleiermacher is considered the father of modern theology and the father of modern hermeneutics: the fields diverge but they come from the same path. While the *Stanford Encyclopedia of Philosophy* defines hermeneutics broadly as “the methodology of interpretation” (Mantzavinos, 2020), outside of academia, the very word hermeneutics

itself refers to biblical hermeneutics. The first sentence of the entry on hermeneutics in the familiar Encyclopedia Britannica is simply “Hermeneutics [is] the study of the general principles of biblical interpretation.” It goes on to note that “For both Jews and Christians throughout their histories, the primary purpose of hermeneutics, and of the exegetical methods employed in interpretation, has been to discover the truths and values of the Bible” (“Hermeneutics: Definition, History, Types, & Facts,” n.d.).

Scholars have defined four major schools of biblical hermeneutics of varying popularity at various times and places in the history of the Christian church: literal, allegorical, moral, and anagogical. Though Mantzavinos points out how, since antiquity, the allegorical tradition of hermeneutics explicitly is linked to the interpretation of religious texts, the Puritans -- the group that began the colonial religious and legal traditions in what would become the USA -- believed in the literal approach to Biblical hermeneutics. The Puritans did not believe that allegory could be used when the Bible did fit modern conceptions of morality, theology, or reality. Instead, morality, theology, and reality must be re-shaped according to the Bible.

In the USA, a nation deeply rooted in the faith of its founders, the popular understanding of hermeneutics remains an attempt to discover Truth -- with a capital *T*. *The American civil religion takes this from the Biblical hermeneutic tradition.* The literalist hermeneutic which was *the* hermeneutic approach to both legal and religious texts for priests, judges, and lay people in the earliest colonies of what is today the USA and remains a powerful force in American religion, politics, law and society.

This literal approach pays attention to the "plain meaning", grammar, and context of the text. (“Hermeneutics: Definition, History, Types, & Facts,” n.d.) The first of the

church fathers associated with this tradition is St. Jerome, a Latin convert to Christianity who was responsible for the retranslation of the Latin New Testament from Greek manuscripts. Later, and perhaps most influentially, Thomas Aquinas (*Hermeneutics*, n.d.) came to be the standard-bearer of this literal approach. Most importantly for this essay, Martin Luther and John Calvin fiercely defended this literalist interpretation (and accused anyone who did not agree of being heretics and apostates).

Even in the literal hermeneutic tradition of Jerome and Aquinas, *attention is paid to grammar and context*: the situation in which the text was written is worth understanding. The issue of context is where the debates *within* this literal tradition itself arise. In Chapter 5 of this dissertation, I discuss how the Protestant tenet of Sola Scriptura (that the scriptures are the only infallible source of authority) leads to an even more radical literalist tradition which sees the text itself as the only reliable authority. To these proto-Fundamentalists, even histories of biblical times cannot be relied on to further understanding of the Bible: the fundamentalist biblical hermeneutic tradition demands that the text be interpreted in itself, divorced of context.

I use the term hermeneutic fundamentalist to indicate a near total disregard for any other text which might give clues to the authorial context of writing<sup>1</sup>. Today, those who are called fundamentalist Christians regard biblical stories such as the story Noah's Ark to be the historical truth. They do not take into account the context of the creation of the story -- i.e., that legends of great floods were common in the Middle East at the time, and that the story of Noah's ark arose out of this tradition. When I refer to contemporary

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<sup>1</sup> Here, one could draw connections to contemporary literary theory and others who dismiss authorial intent as irrelevant. However, fundamentalist interpreters may think that authorial intent is important, but they certainly believe that one cannot rely on texts outside of the Bible in order to discover authorial intent.

biblical hermeneutic fundamentalists, I mean the people who believe that the story of Noah's ark is an accurate historical account of a man who literally built an actual boat large enough to take a breeding pair of every animal species that existed in the world at that time<sup>2</sup>.

In this dissertation, I argue that this hermeneutic fundamentalism -- a radical subset of the literalist hermeneutic tradition believing in a devotion to the text itself outside of context -- is evident in all of American hermeneutics, most importantly, in the interpretation of legal texts. In “Chapter 4: American Covenant”, I go into greater detail as to why the Puritans came to take this hermeneutic approach based in their covenant theology and how it was historically passed down to later generations. I explain how hermeneutic fundamentalism came to be the foundation of the American social contract itself: America exists as it does today because of the hermeneutic fundamentalist approach to legal hermeneutics, particularly, to the Constitution. We cannot understand the contemporary gun control/ gun rights debate if we do not understand the importance of hermeneutic fundamentalism to the fabric of American society.

### **Legal hermeneutics**

Though many of the world’s religions are based on a rich mix of oral traditions, rituals, and perhaps multiple written text, Judeo-Christian-Islamic monotheism is set apart from other world religions in its stress on the written cannon alone. Though the semi-oral traditions of the Hadith, the Talmud, and stories of the lives of Church

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<sup>2</sup> I understand that it is difficult for many of us in academia to accept that many actually take this view of the Bible and think that they are perhaps misrepresenting their own beliefs for political power, economic gain, or simply consistency. However, to use Joshua Gunn's (2018) analogy, in this dissertation I abide by the Wizard of Oz rule: I do not “pay attention to the man [or woman] behind the curtain” (p. 5). Instead, I trust that the subjects of my study believe what they claim to believe.

patriarchs may slip into some sects on this great monotheistic tradition, the Christian Protestant tradition actively rejects these. As I will detail in the chapter American Covenant, the Bible is the sole source of authority for the Protestant sect. So, too, with the legal tradition of the USA, the largest Protestant country in the world. Unlike other former British colonies such as Canada which incorporate aspects of the civil code tradition (dating back to Byzantium and then revived by Napoleon), the legal system of the United States is based on *stare decisis*: written law and legal precedent. American legal hermeneutics is much more akin to a literalist biblical hermeneutics than it is to Gadamerian hermeneutics and other philosophical hermeneutics which search for meaning.

Though contemporary *scholars* of legal hermeneutics, such as Dr. Tina Botts, ask the following: “are the criteria we have used in the past to ascertain the meaning of a given law the criteria we should still use today?” and “on what basis can one meaning of a given law be justifiably prioritized over another?”, (Botts, n.d.) These are not the questions that American judges ask. The task of the US judge is not to ask such questions, but simply to review legal precedent. The American legal system prides itself on the notion that Lady Justice is blind, she does not take context into account, she gives out objective rulings based on precedent.

As the American critical legal theorist Peter Goodrich explains, though we might trace the intellectual lineage of legal hermeneutics back to the interpretations of classical codifications of Greece, “legal hermeneutics really only developed with the growth and medieval reception of Roman law” (Goodrich, 2016). As Goodrich notes, the task of these medieval hermeneuticians was to apply Roman law to “circumstances far removed

in time and space from the original contexts of the written law”. The American legal hermeneutic tradition is a descendent of this medieval tradition of interpreting the written words of men from a faraway time.

Goodrich (2016) notes that in Europe during the Renaissance era humanism entered the scholarly and legal conversations regarding hermeneutics. He argues that “in place of the glossators’ slavish observance of textual letter and rule, humanism sought to comprehend the law in terms of the *context* of its historical enunciation” (emphasis added). In the late 16<sup>th</sup> and early 17<sup>th</sup> century, English philosophers and jurists such as Francis Bacon began to expand their understanding of legal hermeneutics to include an understanding of the importance of context. Though, as Goodrich notes, legal hermeneutics in the old world remained predicated on “earlier theological and juristic conceptions of construction and interpretation”, there was a move beyond biblical literalist hermeneutic models towards “more secular concerns” of “the place of language and meaning within the efflorescence of legislation and administrative regulation that accompanied the growth of the modern industrial state” (Goodrich, 2016).

However, this trend toward incorporating humanist insights into hermeneutics during the Renaissance in England and the Continent was missed by the Puritans who rejected the importance of context. The subset of the Puritans who sought to completely escape the English (the English Separatist Puritans who would become the American Pilgrims) stuck to their insistence on interpreting the text in itself. In Chapter Two and Four of this dissertation, I discuss how American civil religion further entrenched this disdain of the humanist insistence on the importance of context.



The term civil religion refers to the symbolic system of values, beliefs, heroes, icons and rituals of the contemporary nation-state. Robert Bellah (1967) stressed the unifying character of civil religion. He argued that civil religion has been used to reject non-conformist ideas and groups thereby uniting the populous. However, Bellah's Durkheimian assumption that religion – including civil religion – is always integrative is by no means unchallenged. The tension between religion and society leads us to question if all religion, including civil religion, is necessarily a uniting force.

As the American legal scholar John McNamara (2017) writes, quibbles over “semantic precision” are “endemic” in Constitutional law all over the globe; however, what is different in the United States is that Constitutional law “is perceived and acknowledged as a political inheritance from the all-knowing, near infallible composers” (para. 8). Here, we see the connection between civil religion and the fundamentalist hermeneutic. Civil religion, which I explain in detail in Chapter 2, often gives national founders the status of deities. This can come about organically or as imposed by nationalist lawmakers. Though *scholars* of American legal hermeneutics such as Francis Mootz III argue that there is “merit” in the suggestion that legal hermeneutics “may be as “unscientific” and “subjective” as literary criticism” (Mootz, 1988, p. 526), this is not the opinion of those who follow the fundamentalist hermeneutic. Even such a suggestion is blasphemous. For the jurist who believes wholeheartedly in the American civil religion (which I detail in part 2 of Chapter 2) there is no room for art to enter into legal interpretation: like their view of the Bible itself, the words of the Constitution were divinely inspired and written by civil religious saints, meaning that there is no need to speculate on context. There is no room for speculating on whether the

Founding Fathers had something wrong, or even if the law should be changed given new circumstances; rather, like the Evangelical Protestants' fundamentalist interpretation of the Bible, many American justices, politicians, law-makers, and ordinary people take a fundamentalist hermeneutic approach to the Constitution. Though they may not use a term such as hermeneutic fundamentalists, scholars note that there is a dominant belief in America that a legal text has one clear and precise meaning that is conveyed "on its face," rather than several "competing" meanings" (Mootz, 1988, p. 527). Those who follow an extreme literalist hermeneutic, which I call the fundamentalist hermeneutic, lack the imagination to see that there may be more than one possible interpretation of a text. McNamara refers to this obsessive attention to the founders' intentions as "approaching a type of civil devotion to the heroic initiators of the nation". Just like the fundamentalist Christian preachers who claim the world is 6000 years old, many Americans apply a fundamentalist hermeneutic to their sacred documents civil religious documents including the Constitution and its amendments.

Though the Second Amendment is often discussed as part of the cannon of American civil religion, there has been little to no academic research into *how* the Second Amendment became a part of the cannon of American civil religion and *how it remains* in this place despite the divisiveness of the issue of gun control. This dissertation explores how this secular document became a sacred document which must be approached with a fundamentalist hermeneutic. In addition, I show how both gun rights and gun control advocates have used civil religious rhetoric to attempt to change public opinion of the Second Amendment in America while still remaining within the confines of the fundamentalist hermeneutic.

## Antonin and Me:

### *A Roadmap to this Study and Why I Agree with Scalia*

I begin this dissertation with a philosophical review of the concept of civil religion. In the earliest civilizations, there was no separation between religion and politics: the pharaohs were gods and the emperors sat on heavenly thrones. It is only with the separation of the political and the religious spheres that the idea of civil religion comes about. Western political theorists from Plato on have noted religion's ability to foster an "imagined community" as Benedict Anderson (1991) might say. The Romans incorporated aspects of their subjugated people's regional religions into their own pantheistic civic religion to build their empire — giving a feeling of unity. Political theorists from Machiavelli to Hobbes stressed the utility of a civil religion to control the masses without the use of force. In this section, I pay particular attention to Rousseau's discussion of civil religion and the nation state as this will be important in my later chapter on Obama's use of civil religious rhetoric. I finish this section by moving from the political philosophers to the sociologists, discussing Durkheim's functional view of religion.

In the second part of this chapter, I continue the sociological thread but focus on civil religion in the USA. I begin by discussing Alexis De Tocqueville's *Democracy in America* (1954), then move on to Robert N. Bellah's *Civil Religion in America*. Though I review other scholars' views on American civil religion, it is undoubtedly the work of Robert Nealy Bellah which has been most influential for subsequent scholars of American civil religion, as well as this dissertation. Bellah has been referred to as "the father of American civil religion" (Kazin, 2013). He inspired a generation of scholars,

from the philosopher Jurgen Habermas<sup>3</sup>, to sociologists like Philip Gorski and Robert Wuthnow, to the theologian Marc Andrus. Even politicians such as Bill Clinton note his influence on their own understanding of the USA (Giesen & Suber, 2005, p. 49).

Of all the definitions of civil religion I reviewed while writing this dissertation, I find Bellah's definition the most useful: Bellah defines civil religion as the manner in which people interpret "historical experience in the light of transcendent reality" (1967, p. 3). This definition gives us a new lens for viewing both civil religion which is imposed by the government, and more organic civil religion which emerges from the people. Contemplating how the mundane is given transcendental importance helps us better understand American practices -- from lighting up a Christmas tree to referring to French fried potatoes as "freedom fries". The definition also allows us to critically examine practices which verge on religious nationalism such as putting flags on veterans' graves, and expelling students who kneel during the national anthem.

Most importantly for this dissertation, this definition helps us separate signal from noise in the debate over gun control. How do gun rights and gun control advocates imbue their rhetoric with "transcendental significance"? Looking through Bellah's lens, it became clear to me that rhetors on both sides of the gun control debate attempt to associate their arguments with something that is already sacred, most notably, the Bill of Rights, part of the sacred canon of American civil religion. As Morgan Marietta explains (2012), sacred rhetoric has no need for such information because sacred rhetoric pushes for a quantum, not qualified, leap. Once we approach the rhetoric of the gun control debate with the understanding that rhetors are attempting to make the issue into

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<sup>3</sup> The influence was mutual as Bellah also cited Habermas's work (Sheedy, 2019)

one of transcendental rather than mundane reality, we understand the appeal to the Second Amendment, and rhetors claim on the ‘only’ possible interpretation of the saints words.

In the third chapter, I attempt to put the Second Amendment into the context of American civil religion. I begin with a brief history of the right to bear arms in the 17<sup>th</sup> century English *Bill of Rights*, focusing on its guarantee of the right of protestant militias to bear arms. I then discuss early gun laws in the thirteen colonies, and the passing of the Second Amendment. I focus on the history of the colonial militias as this is crucial to understanding the Framers’ intent in granting the right to bear arms.

I then discuss the hermeneutic traditions associated with the interpretation of the Second Amendment such as the constitutional originalist tradition, the Living Constitution tradition, the individual rights hermeneutic, and the collective rights hermeneutic. I believe it is crucial for us to realize that all interpretations of legal documents come from not just a political weltanschauung, but a particular understanding of hermeneutics itself. All of these traditions embrace a fundamentalist hermeneutic.

The fundamentalist hermeneutic never progressed beyond the Schleiermacherian (Schleiermacher, 1978) attempt to find authorial intent. For Schleiermacher the aim of hermeneutics is to discover the author’s aim through the “divinatory technique” of examining why specific words and phrases were used. With the divinatory technique, the interpreter enters into the mind of the author. As Schleiermacher writes: “By leading the interpreter to transform himself, so to speak, into the author, the divinatory method seeks to gain an immediate comprehension of the author as an individual” (p. 150).

As I will explain in Chapter 3, the individualist interpretation of the Second Amendment believes that we must merely enter a hermeneutic circle: to understand the Second Amendment, we must look at the entire Bill of Rights. They profess that the rest of the rights granted in the Bill of Rights (i.e. the right to free speech, the right to a speedy trial) are individual rights; therefore, the right to bear arms is a collective right.

Yet, Schleiermacher also believed that one should attempt to become familiar with the biographical and historical details of the context of the author. As I will discuss in Chapter 3, both those who follow the individualist and collectivist understandings of the 2<sup>nd</sup> amendment believe that we must understand that they have the one true understanding of the context of the Second Amendment. The collectivists see that, at the time of writing, the militias defended the nation through their collective right to bear arms.

When I began this study, I expected to find that the collective rights interpretation of the Second Amendment was closest to that which the Founding Fathers of the USA intended. The collective rights interpretation of the Second Amendment is the interpretation that was set in legal precedent arguably until 2010 when Justice Anton Scalia's decision ruled in favour of an individualist interpretation in the case of *DC v Heller*. This is to say, until 2010, most cases tried in the US Supreme Court assumed that the right to bear arms guaranteed in the Second Amendment referred to organizations like state militias (including slave patrols) instead of individuals. Through the historical research I conducted in writing chapter three, I have come to believe that the Founding Fathers granted *the collective right to bear arms to the militias* in order to gain and maintain independence from the British Empire. More importantly, I have come to see

that the Founding Fathers granted *the individual right to bear arms to all white settlers* in order to maintain the institution of slavery and to further appropriate land from indigenous peoples. Both the collective and the individual right to bear arms were crucial in the capitalist imperialist project of the United States of America.

In 1970, the Pulitzer-prize winning American historian and public intellectual Richard Hofstadter coined the term “gun culture” (1970). In his article “America as a Gun Culture”, Hofstadter uses the term to describe the American embrace and celebration of weapons. He argued that this gun culture comes complete with its own mythical history, rituals such as rites of passage, and codes of ethics. Like other liberal historians of the day, Hofstadter thinks that the Second Amendment was ‘meant’ to be a collective instead of individual right. He writes, “the Second Amendment was, in effect, a promise that Congress would not be able to bar the states from doing whatever was necessary to maintain well-regulated militias” (para. 17).

However, the critical historian Dunbar-Ortiz (2018, p. 17) notes that what liberal historians like Hofstadter propose is that the one collective right was somehow slipped into the *Bill of Individual Rights*. In the draft of the Virginia Constitution of 1776, which predates the federal Constitution, Thomas Jefferson wrote “No man shall ever be debarred the use of arms”. Respectable liberal historians such as Hofstadter gloss over this obvious statement of an individual right. But the more radical historian Dunbar-Ortiz writes:

Killing, looting, burning, raping and terrorizing Indians were traditions in each of the colonies long before the Constitutional Convention. ‘Militias,’ as in government-controlled units, were institutionalized by Article 1, Section 8, Clause

15 of the US Constitution, and were used to officially invade and occupy Native land. But the Second Amendment (like the other ten amendments) enshrined an *individual* right. The Second Amendment's language specifically gave *individuals* and families the right to form volunteer militias to attack Indians and take their land" (emphasis added, p. 18).

For scholars such as Dunbar-Ortiz, "The violent appropriation of Native land by white settlers was seen as an individual right in the Second Amendment of the U.S. Constitution, second only to freedom of speech". (p. 35)

It is not surprising that we are taught a romanticized version of the founding of the USA, not just in the USA. The founders of all nations become heroes and their lives are sanitized. But the white-washing of American history is particularly disturbing as the Founding Fathers of the USA are held up as heroes by anti-colonialist, anti-monarchist movements around the world. Yet, what those American colonists really considered oppressive, the thing they fought to overthrow, was *not* the British monarchy but the British restrictions on appropriating indigenous land. Though even non-Americans learn about the Boston Tea Party and the colonists cheer of "taxation without representation is tyranny", we rarely discuss what these taxes were paying for (Dunbar-Ortiz, 2018, p. 31). The taxes on the colonies were collected in order to arm, feed, and house British soldiers whose goal was to slow the spread of English settlement on indigenous land west of the Allegheny-Appalachian mountain chain. These British soldiers were by no means heroes, they were agents of a brutal empire, but in this instance, they were paid to stop the illegal appropriation of indigenous land. The early settlers of the American colonies did not want to pay taxes to support their work.



As the study of Biblical hermeneutics has taught us, to understand any document we must understand the historical circumstances of its writers. Authorial intent matters. We must recognize that the purpose of the Second Amendment was to allow settlers the individual right to bear arms in order to continue the institution of slavery and to further dispossess indigenous peoples. To pretend that the Second Amendment was meant as a collective right is to romanticize America's founding and deny its roots as a settler-colonial supremacist imperialist project.

Though this finding was not the purpose of my research, it significantly changed the course of my research, the pages you are about to read, and my view of how the gun control debate in America must proceed. Gun control advocates cannot simply continue to insist that the Second Amendment was meant only to allow Americans to be free of British rule and therefore meant only as a collective right of the militias. As I will display in the chapter on President Obama's rhetoric of gun control, this approach to advocating for gun control has failed. Gun control advocates must realize that the individualist interpretation of the Second Amendment was crucial to the white supremacist imperialist project the Founders undertook in 1776. Again, I stress that this is not the main finding of this project, but I would be remiss not to mention my new understanding and belief that if Americans fail to recognize that their civil religious cannon currently includes a document that guarantees the collective and individual right of every citizen to bear arms, there cannot be reasonable gun laws in the USA.

In the second section of the historical review of the Second Amendment, I focus on the Second Amendment as a civil religious text. I begin by asking the question: why don't Americans simply change the Constitution as the interpretation has been causing

debate for decades? In this section I give the legal answer to this question and begin to explore possible social reasons. Though not all Americans may state this as explicitly as, for example, those who belong to the Church of Latter Day Saints (Wardle, 1989), the Enlightenment ideas of natural laws and rights guaranteed by a divinely-inspired constitution permeate all American civil religious discourse. When one sees one's sacred texts as divinely-inspired, then the answer to contemporary problems cannot be to change the text; rather, it must be to return to the text with an even more fundamentalist hermeneutic. When this is compounded with an individualistic ideology that claims that individual disposition is a more important factor in outcomes than situational factors, we can understand why many, particularly Protestant, Americans see the collectivist interpretation of the Constitution as flawed. If Americans rhetors, such as Obama, wish to change gun laws, the populous must understand the inherent contradiction between absolute democracy and natural laws enshrined in a constitution.

When I began this project, I did not expect that I would be doing a lot of rhetorical, rather than theological research. But I have come to understand that, with regard to American legal rhetoric, hermeneutics cannot be divorced from theology. As I dug into the literature on the Constitution of the USA and on American civil religion, I began to realize that one cannot understand these topics without understanding Puritan covenant theology. I begin the fourth chapter, "American Covenant", by explaining the roots of the covenant in ancient Jewish thought, stressing its relationship to the idea of a 'nation'. I pay specific attention to the structure of these covenants, as I will use this structure as an analytical tool to compare and contrast these covenants to the American founding documents. I then focus on Puritan covenant theology and its impact on

American law from the Mayflower Compact to the present day, stressing the roots of the American fundamentalist hermeneutic in the earliest settlers' Calvinism. I once again bring up and more fully discuss the covenantal principle of limited-authority and the problem of reconciling natural law with popular sovereignty. I stress that understanding this problem is key to understanding the American fervour for limiting government authority: if a government oversteps its bounds it is not just the government but the whole nation which is damned.

The chapter "American Covenant" is perhaps the most important chapter in this dissertation. American civil religion and American gun laws cannot be understood without a thorough understanding of Puritan covenant theology which has been secularized in the American fundamentalist hermeneutic including the importance the Supreme Court of the USA places on legal precedent. This fundamentalist hermeneutic and American civil religion mean that both gun control and gun rights activists must appeal to 'the sacred' rather than facts and data if they want to change public opinion.

The fifth and sixth chapters of this dissertation are rhetorical analyses: one of gun rights rhetoric, and one of gun control rhetoric. The fifth chapter, Moses of the NRA, is an analysis of Charlton Heston's rhetoric of gun rights during his time with the NRA. I begin with the history of how the National Rifle Association changed from a hunting and sport shooting club to a political lobbying group with the aim of promoting the individualist interpretation of the Second Amendment as the only interpretation. I draw on the theories of Durkheim, Eliade, and Berger and Luckman to discuss how the NRA made this interpretation of the Second Amendment sacred. I draw on the work of the contemporary American rhetorical theorist Morgan Marietta (2012) to argue that sacred

rhetoric changes our thinking from qualified to absolute. By using sacred rhetoric, the NRA did not have to offer statistics and logic to back up their arguments, they only needed to draw on the words of the American Civil Religious saints – the founding fathers — to end all arguments.

In the second half of the chapter I analyze the rhetoric of Charlton Heston’s gun rights rhetoric. I dive into Heston’s appropriation of the language of civil rights, and how he attempted to use his association with a more recent civil religious saint, Martin Luther King Jr., to make the individual right to bear arms a sacred right. I end by discussing Heston’s famous phrase “From my cold dead hands!” and why it became a rhetorical meme – reproducing and mutating into everything from rallying cry to sick joke.

In my analysis of Barak Obama’s gun control rhetoric, I argue that Obama attempted to overcome the problem of fleeting engagement by creating a sacred civic obligation to defeat gun violence. I begin with a discussion of Obama’s own study of the American civil religious tradition. Though we tend to associate the American civil religion with Christian Nationalism, and thus right-wing, white Americans, American civil religion was also fundamental to the civil rights movement of the 1960s and has been upheld in the African American churches which have produced some of the finest rhetors in the history of the American civil religious tradition.

After discussing Obama’s place in the American civil religious tradition, I focus specifically on his ‘national eulogies’ following mass shootings. I note that though the national eulogies he gave in his first term followed the classical epideictic structure of eulogies; these eulogies became deliberative following the Sandy Hook massacre. Drawing on the work of memory theorists (ex. Assmann, 2011; Halbwachs, 1992;

Honneth, 2015; Nora, 1989; Özyürek, 2007), I discuss how Obama attempted to use sacred rhetoric to manipulate public memory. While gun control activists generally use facts and data to advocate for gun control from a utilitarian standpoint, Obama, instead, turned to the rhetoric of civil religion. Instead of arguing for the utilitarian necessity of a change of laws in order to save laws, Obama used the fundamentalist hermeneutic to argue that gun control is in keeping with the essence of what it means to be an American. I argue that following the Sandy Hook shooting, Obama attempted to turn gun control supporters into activists by convincing them that it was their civil religious obligation to protect the less fortunate through enacting gun control legislation.

The gun-rights advocate Charlton Heston repeatedly claimed that the only valid interpretation of the Second Amendment is the individualist interpretation: the founders meant to guarantee all men the individual right to bear arms. Gun-control advocates such as President Obama are careful never to dismiss the intent of the founders as irrelevant, as this would violate the American fundamentalist hermeneutic and the practice of taking all law from the sacred cannon of American civil religion. Instead, they stress the prefatory clause of the Second Amendment (“A well regulated militia being necessary to the security of a free state...”) claiming that this clause indicates that the founders intended only a collective right to bear arms.

Neither side of the argument approaches the question of the right to bear arms with a utilitarian solution. Rather, they aim to make the public see “historical experience in the light of transcendent reality” (Bellah, 1967, p. 3). A mass shooting becomes not simply a personal tragedy for the families of the victims, but a rhetorical battle for the soul of the nation. Puritan covenant theology and the Lockean social contract instruct

Americans that they have not just a right, but a duty to overthrow unjust governments. If not, the nation will be damned. For gun control advocates, a government which does not protect children from school shootings damns the nation. For gun rights advocates, a government which takes away a man's God-given right to bear arms is damning the nation. Examining this debate in light of Bellah's understanding of civil religion as well as the history of the American fundamentalist hermeneutic – from the Puritans to the present -- helps us understand the passion on both sides.

### **Conclusion**

In the United States, there are approximately 33 000 fatalities from guns each year (McNamara, 2017). The American rhetorical theorists J. Michael Hogan and Craig Rood (2015) see rhetorical scholars as having a role to play in breaking the impasse surrounding sensible gun control in the USA. They write:

Our answer lies in an approach to rhetorical criticism that is interventionist yet sensitive to political and cultural differences... it holds public advocates on all sides of the debate to higher rhetorical standards... It is an approach with an explicitly pedagogical and public mission – to encourage advocates to deliberate 'in good faith' and citizens to get involved. Such an approach requires that first that we fashion a rhetorical history that helps us understand how the gun debate became so polarized, divisive, and unproductive in the first place. Then we can at least begin to identify the cause of the deliberative stalemate and suggest ways to move the debate forward (p. 360).

I hope that this dissertation will add to this "rhetorical history". I see the role of the rhetorical critic as that of interpreter: without interpreters, people who speak different

languages, regardless of intentions, cannot communicate. Rhetorical critics can help people who come from different worlds communicate. We illuminate, and help people make sense of current events. Through this, we empower people to take action on the governmental, and also the personal level.

As religious scholars Andrew L. Whitehead, Landon Schnabel, and Samuel L. Perry (n.d.) state,

the gun control debate is complicated by deeply held moral and religious schemas that discussions focused solely on rational public safety calculations do not sufficiently address... the issue of gun rights and restrictions in the USA is not a simple matter of calculated public safety but instead a symbolic battleground (p.2).

Gun laws in America affect the globe. It is not just that guns which are legally purchased in the USA are smuggled into neighboring countries (Parsons, 2018), but also that US gun laws and the tone of the gun control debate set an example for other countries. If we, as global citizens, do not understand the ideological roots of US gun laws, they will continue to negatively affect us.

Though I have admitted that I have come to believe that the individualist interpretation of the Second Amendment was the Framers intent, I still believe that the USA needs stricter gun control. The critical historian Roxanne Dunbar-Ortiz, whose primary research changed my own opinion on the Framers intent, quotes Professor David Cole to make the claim that:

Gun control advocates will not make progress until they recognize that the NRA's power lies in the appeal of its ideas, its political engagement and acumen, and the

intense commitments of its members. Until gun control advocates can match these features, they are unlikely to make much progress. That the gun industry may have helped construct modern gun culture does not negate the very real power that culture holds today (Cole; quoted in Dunbar-Ortiz, p. 22).

If I want my daughter to go to a school in the USA where she is not forced to go through mass-shooting drills, I need to help liberals, as well as my fellow radicals, understand the importance of civil religion and the American fundamentalist hermeneutic in the construction of gun laws.

In her personal essay for the National Public Radio program *This American Life*, the British journalist Bim Adewunmi (2020), who came to America to cover the 2016 presidential election campaigns, stated that on her visa application to the United States, she mentioned Alexis De Tocqueville and Alistair Cooke. Like Adewunmi, both these men were foreigners who come to the United States in a time of upheaval to understand the nation and send news back to their home countries. I did not write anything of this sort on my own visa application to the United States in 2014. Barak Obama was the president and I had no idea what a coronavirus was. I had just survived a political uprising in my beloved home of Istanbul and had no intention or desire to be in another. But here I am.

Unlike many immigrants including Adewunmi (a Muslim African-Brit), with some blond hair dye and a little help of the American accent-training cassette tapes I bought in my teens, I can pass for a WASPy American. Because of this, I hear things that other foreigners are not privy to and do things other foreigners cannot do. I believe that



the privilege of 'passing' comes with a moral obligation: to try to figure out what the hell is going in the USA and to tell it to anyone who will listen.

## CHAPTER 2

### LITERATURE REVIEW: CIVIL RELIGION

To the eye of reason... it certainly seems strange. But then the majority of human actions are not meant to be looked at with the eyes of reason.

Aldous Huxley (1974)

To understand the relationship of the United States to guns, we must understand the United States' relationship to its own constitution. And to understand its relationship to its own constitution, we must understand the American Civil Religion. For this reason, this chapter is a literature review of the concept of civil religion and American Civil Religion specifically.

From Gandhi to Ataturk, national myths serve to create heroes of national founders. But perhaps no nation in the world – outside of totalitarian regimes like North Korea – regard the words of its founders as divinely-inspired if not divine in and of themselves. While works of propaganda such as Mao's *Little Red Book* or Hitler's *Mein Kampf* were undoubtedly held up as 'holy' by some, the Constitution of the United States is in a different category: the Constitution is a legal document which is revered as a canon of the American civil religion for more than two centuries. Because it is a canon of civil religion in a nation whose first colonists built a society based on a fundamentalist hermeneutic interpretation of religious texts, the Constitution itself must be approached with this same fundamentalist hermeneutic.

I begin with a quick review of the concept of civil religion from pre-history to modernity, paying particular attention to thinkers such as Plato and Machiavelli who recognized the potential for leaders to subvert religious sentiment to serve rulers. I then begin a lengthy discussion of the importance of civil religion with the emergence of the nation state. The ideas of Enlightenment thinkers like Rousseau, who saw the importance of myths and heroes in nation-building, were influential to the founding of the United States and continue to be influential to nationalist – including post-colonial nationalist – movements around the world.

As I move my review into the modern era, my discussion moves from being political to sociological. In modernity, the sociologist not only studied how rulers used civil religion, but also how it emerged organically within societies. Many of these sociologists took the Durkheimian view that any religion, even civil religion, functions as a glue to bind people into a whole (cited in Henry, 1981). These functionalists saw that in modern times, civil religion, whether artificially constructed by rulers or arising from the people's folk beliefs and practices, served to construct disparate groups into a community.

From this sociological discussion, I focus in on civil religion in America. Robert Nealy Bellah, the “father of American civil religion”(Kazin, 2013) saw that religion had integrative properties. Though I briefly review many of the other important scholars of American civil religion, it is undoubtedly the work of Robert Nealy Bellah which has most influence subsequent scholars of American civil religion, as well as this dissertation. As stated earlier, Bellah's definition of civil religion as a process of imbuing events with “transcendental” meaning has greatly helped me understand why the rhetoric of gun

control in the USA is more often a debate over the interpretation of the Second Amendment rather than saving lives.

Of the theorists who followed Bellah's understanding of civil religion, I draw most heavily on the work of the Michael Angrosino, a scholar of theology and anthropology. I expand on Michael Angrosino's classification of different views of American Civil Religion, from the folk religion of the people to religious nationalism.

From here, I begin to discuss the importance of the canon of American Civil Religion. I draw heavily on the legal scholar Stamford Levinson (1989), who took Bellah's notion of civil religion as giving transcendent meaning to national texts, people, and events, and focused on the Constitution. Here, I begin to connect the notion of civil religion and hermeneutics. The hermeneutic practice of interpreting the canon gives transcendent meaning to these texts. I end the chapter with an extensive discussion on Philip Gorski's (2017) discussion of civil religion. Gorski, a student of Bellah, is perhaps the most respected scholar of American Civil Religion alive today. His discussion of the impact of Puritan covenant theology on contemporary ACR is particularly relevant to this dissertation.

### **Religion and the State from Pre-history to Modernity**

Throughout most of history we can safely assume that religion and the state have been one — or at least that priests and kings (or chiefs and shamans) were intimately connected. In his ethnographic analysis of indigenous Australian society, Durkheim notes that organized religion and civil religion were “undifferentiated” (Coleman, 1970) — that is, they were one institution. So, too, in ancient Europe, the Middle East and China: from the Egyptian Pharaohs to the Emperors of China, political leaders were manifestations of

the divine. In these theocracies, the problem of the tension between religion and politics is solved with the fusion of the two. The concept of civil religion only comes about when there is a separation of these two powers, and, in Western discourse, a discussion of how one might be used to complement the other.

In the Athenian polis, religion was a matter of the state: it is redundant to speak of civil religion in Athens as there was no other kind (Lewis, 2010, p. 22). It was the Ecclesia that condemned Socrates to death, charged with corrupting the youth and *worshipping gods other than those sanctioned by the polis*. The Ecclesia – translated as the “assembly” (from which we get our modern English terms ecclesiastic, Ecclesiastes, etc.) – held ultimate political and religious power over the citizens.

Plato saw state religion as the manner in which the polis could unite and develop character (Lewis, 2010). His ideas about political life are most thoroughly explored in the *Republic* and *Laws*. While *Republic* tells the story of the city of the soul, *Laws* tells the story of the city of the body. Whereas the philosophers in the *Republic* neither have families nor own property, in *The Laws*, the city is governed by men who have children and own property. This “second-best” city is also a religious city (p. 20).

The ‘civic theology’ of the city in the *Laws* includes elements of conventional religion as well as philosophical and political arguments which seem like a ‘conspiracy theory’ to contemporary readers. Plato stresses the political importance of upholding the divine origin of the laws, yet, argues that these laws can be criticized by those ‘in the know’.

...one of the finest is the law that does not allow any of the young to inquire what laws are finely made and which are not, but that commands all to say in

harmony... that all the laws are finely made by gods; if someone says otherwise, there is to be paid no heed at all. And yet if some old man has been thinking over something in your laws, he is to make such arguments before a magistrate and someone his own age, with no young person present.

(Schofield, 2016 634d7 – e6).

As Lewis explains, Plato thought it was a necessity to convince the people as a whole that the laws are divine, infallible, and that young people must never think of attempting to change the laws — or even know that the laws are sometimes changed. However, old men should be encouraged to think about how the laws could be improved and to come forward and “discreetly” discuss the issues with magistrates. Far from our lay perception of Plato as an idealistic philosopher, this use of religious sentiment for political ends seems almost Machiavellian to contemporary readers.

Writing in the 2<sup>nd</sup> century CE, the Greek Historian Polybius discussed the civil religion of the Roman Empire with great admiration. He noted that the Romans’ shared superstitions held them together: people were restrained and united by their fear of the gods and the afterlife. Whereas in *Laws*, Plato idealized the Greek republic, in which older men and magistrates are ‘in on’ the idea that the laws of the city did not have divine origin, Polybius notes that the Roman civil religion made even magistrates act more dutifully (Beiner, 1993, p. 625).

Like Plato, Romans such as Cicero and Seneca saw the utility of civil religion. Particularly, the Romans recognized religion’s ability to unite people and create what Benedict Anderson (1991) later would label an “imagined community” across the empire. Following the lead of the Macedonian Greek imperialist Alexander the Great, the

Roman Empire united its disparate territories with the syncretism of identifying the gods of conquered territories with a god in the Roman pantheon. For example, Middle Eastern goddess worship was incorporated into the cult of Cybele while the Anatolian Sabazios became the Roman Sabazius (Scheid, 1995), just as modern-day Christians have mixed Northern European Shamanic imagery with that of the Byzantine Bishop Saint Nicholas. This syncretism allows peoples to keep their rituals and beliefs, without a fight, as they are incorporated into the greater hegemonic religion.

The Renaissance diplomat, philosopher and author Niccolò di Bernardo dei Machiavelli drew inspiration from the Roman Empire's use of religion for political ends. As Nietzsche's intellectual forefather, Machiavelli admired how the Roman civil religion strengthened human beings and wondered if Christianity could be used in a similar way. Machiavelli stressed Christianity's incredible power to discipline its subjects — to “carve a beautiful statue from rough marble” as he poetically describes it (*The Discourses*, p. 141; cited in Beiner, p. 622). However, Machiavelli thought Christianity's disciplinary potential had been squandered by Christians who taught the value of being humble and the disdain of material possessions and stressed the afterlife over this life. He did, however, leave open the possibility that Christianity might be re-interpreted in a way more fit for his ‘prince’ (p. 624).

Machiavelli thought that a prince should not be religious himself but must make use of religion. The 20<sup>th</sup> century German American political philosopher and classicist Leo Strauss explains that, though Machiavelli was not the first political thinker to theorize religion in terms of political utility, it was novel for this view of religion to be incorporated into a ‘handbook’ for rulers such as *The Prince*. Strauss went on to note

that Machiavelli's view of religion as necessary for republics was widespread until the time of the French revolution (Strauss, 1978).

Like his Florentine predecessor, the English philosopher Thomas Hobbes (1651) thought that Christianity was too obsessed with the afterlife to make a good civil religion for a republic. However, in *Leviathan*, Hobbes lays out the theoretical version of Christianity which could replace the existing forms of the religion in Europe of the 16<sup>th</sup> century. This Hobbesian Christianity would promote "stability and obedience" in the state (Mortimer, 2016). As Oxford University historian Sarah Mortimer explains, both Hobbes' religious ideas and political philosophy are grounded in his understanding that religious belief was "natural to humans, stemmed from anxiety, and needed to be coordinated by a sovereign to prevent strife". Mortimer notes that in *Leviathan*, Hobbes theorizes "an extremely heterodox theology which could enhance the state while destroying the independent authority of the Church".

While Machiavelli saw the solution to the opposition of Christian values and a bellicose state in a return to paganism, Hobbes thought of Judaizing Christianity (Beiner, 1993). Hobbes saw the potential of the Christian narrative to both strengthen and undermine the state (Mortimer, 2016). Hobbes, a Christian himself, believed that the Bible was literally true and, as Beiner states, read the Hebrew Bible as a political instruction manual (Beiner, 1993). According to the Hobbesian interpretation of the old testament, the Jewish theocracy was unstable because priests did not have the authority to decide who was a true prophet (Beiner, p. 625). The Jewish political establishment was not totally "undifferentiated" (Coleman, 1970) from the religion of the people. Hobbes believed that monarchy was the only way to fight the threat of anarchy in the Jewish



theocracy (Beiner, 1993) and argued that kings must be the only authority with the right to decide who is or is not a prophet. As Beiner states, “Hobbes affirmation of undivided temporal authority is, as he sees it, merely a philosophical appropriation of a truth already contained within the narrative of the Old Testament” (p. 625). Hobbes drew on the precedent of the Hebrew Bible to argue for the necessity of the collaboration of church and state.

Early Enlightenment thinkers such as Bacon and Hobbes did not believe in the secularization thesis, but rather, thought that religion was part of human nature. Instead of attempting to get rid of religion, they wanted to craft a civil religion which might fit with modern science. In *De Cive*, Hobbes states that establishment of a civil religion is the duty of the monarch. To Hobbes, this meant that the Christian prince “must affirm God’s existence, must not set up idols, and must affirm that Jesus is the Christ”. He states that beyond these basic Christian principles common to all sects, “the Christian prince can institute any articles of faith and any rites that he cares to” (quoted in Beiner, 1993). However, in *Leviathan*, Hobbes (Hobbes, 2002) gives a more thorough account of what this civil religion must entail. He argues that Jesus should be taken to be King of the Jews in a worldly sense, as David was the King of the Jews. As Beiner explains, Hobbes Judaized Christianity as civil religion by arguing that it should “limit itself to this-worldly claims... until Christ comes again” (pp. 628-629). Here, again, we see the fear that religion can take the subject’s concerns too far from the ‘this world’. But in this Judaized Christianity, Hobbes is proposing “a Christian theocracy (concentrated in the person of the sovereign) [that] offers the advantages of Jewish (Mosaic) theocracy without the pollical drawback of Jewish prophets” (p. 629). That is, Hobbes is, in some sense,

advocating a return to the total consolidation of church and state into one undifferentiated institution: the person of the sovereign.

### **Religion and the Nation State**

In the Enlightenment and early modern era, the nation-state took on many of the roles that the medieval European church had filled. From this shift, the ‘religion of the republic’ emerged. In the Enlightenment period in Europe, civil religion was theorized as a hope to end the wars between Christian sects. One response was to separate religion from public life. Another response was to “dilute” religion (Weed, & Von Heyking, 2012, p. 10) so as to be vague enough that it was acceptable to Christians of all sects, and, perhaps, even Jews and Muslims.

French Enlightenment thinker Jean-Jacque Rousseau saw that religion had caused disunity and intolerance in western societies, including the France of his day; however, he firmly believed in the necessity of religion as a social cement. In book 4, chapter 8, of the *Social Contract* Rousseau states that no state has ever been founded without a religion at its base (Rousseau, 2014, p. 127). Instead of separating religion from the state or privatizing it, as other thinkers of his time proposed, Rousseau thought that some form of civil religion could promote unity in society. He formulated that a civil religion could support “republican morality, society, and politics” (Orhan, 2013, p. 168) in a faith which was vague enough to welcome all sects, yet specific enough to foment national unity.

Rousseau first mentions a “civil profession of faith” in a 1756 letter to Voltaire (cited in Orhan, p. 168). In the letter, Rousseau states,

I would wish, then, that in every State there were a moral code, or a kind of civil profession of faith, containing, positively, the social maxims everyone would be

bound to acknowledge, and negatively, the fanatical maxims one would be bound to reject, not as impious, but as seditious” (quoted in Orhan, p. 168).

Rousseau’s *The Social Contract* expands on these words. The work begins with an overview of religion and politics, noting that ancient Greece, Rome, and Israel all were regimes which combined theology and politics (Rousseau, 2014). Like Hobbes, Rousseau was particularly scared of church leaders challenging political leaders. While Hobbes sees the schism of the ancient Israeli kings and prophets, Rousseau argues that it was with Christianity that this dangerous separation of “the theological kingdom and the political system” emerged (quoted in Orhan, 2015, p. 169). And just as Hobbes saw that the Israelite kings’ inability to appoint and control prophets was dangerous to the Jewish theocracy, Rousseau saw the emergence of the Christian popes as undermining political union.

In Book 4 of *The Social Contract*, Rousseau restates his belief that “a purely civil profession of faith” was needed to satisfy the popular need for belief in, and allegiance to, the transcendent, while not jeopardizing political unity. As Haberski puts it “in philosophical terms, civil religion is the appropriation of religion for political ends” (Haberski, 2018, para. 1). For Rousseau, the purpose of civil religion was to use religious sentiments to foster pro-social behavior in the newly imagined community of the nation state.

Like Machiavelli, Rousseau argued that Christianity was a terrible framework for government, as it encouraged servitude, making men ready for slavery. Moreover, like Machiavelli, he saw that the European brand of Christianity turned people’s attention completely towards the afterlife, undermining the “social spirit” (quoted in Orhan, 2013,

p. 170 translation mine). Rousseau recognized that many established religions, most notably the Catholicism of France in his day, encouraged a withdrawal from public life that runs counter to the ends of the state. However, this did not mean that the state should encourage materialist atheism: rather, Rousseau thought that government had both a right and a duty to uphold and protect certain beliefs –including the belief in a deity and belief in an afterlife in which one is either rewarded or punished. He argued that the belief in a deity and an afterlife would help maintain social order. Beyond these core beliefs, Rousseau stressed that a citizen’s religious beliefs and practices were not a matter of concern for the state. He insisted that the civil profession of faith must include a profession of religious tolerance. This idea of tolerance was crucial as he thought it was impossible to return to the ancient system of an interconnected religion and state, like there had been in ancient Greece and Israel.

Unlike the organic forms of theocracy prominent in anthropological accounts such as Durkheim’s (2001) discussion of indigenous Australians, for Rousseau (2014), civil religion was not an organic phenomenon, but should be constructed and imposed from above in order to promote civic virtue. However, whereas Plato’s conception was implemented and maintained under strict control of the state, Rousseau’s conception “argued for a polity based on the sovereignty of the general will of the people and the necessity for the voluntary agreement of individuals to the conditions of the social contract” (2002, p. 245). Although, like Plato’s conception of civil religion in *Laws*, Rousseauvian civil religion is crafted by those in power, it is not imposed, but rather, agreed upon with the reasoned understanding that it was ‘good’ for the polity as a whole, and thus the individuals within that polity.

## **Modern Study of Civil Religion: The Sociologists**

With the birth of sociology in the late 19<sup>th</sup> century, scholars began to study the *function* of religion. For scholars such as Emile Durkheim, often called the father of sociology, religion offers both cosmological answers and continuity of moral practices leading to social cohesion. This is expressed and maintained through ritual (Durkheim, 2001). This functionalist exploration of religion, as Orhan (2015, p. 172) explains, focuses “on what a religion does rather than what it is”. For functionalists, “any collective experience that transports the individual beyond himself and *binds* him with others has a religious quality to it” (Orhan, p. 172, emphasis added). Durkheim’s student, Talcott Parsons, argued that religion “or its functional equivalent” (Lemert, 1999, 264) continues to be at the core of all societies. Although science may have taken over much of the role religion once held in answering cosmological questions of existence in post-industrial societies, societies still need ritual for social cohesion. In the *The Elementary Forms of Religious Life* (1966), religion is held up as “the prime integrator of society” (Coleman, 1970, p. 67). Symbols and religious rituals reinforce identification with the group and commitment to moral values (Durkheim, 2001). As Coleman writes, civil religion, therefore, uses the integrative force of religion by “lending its sacred aura to bolster the symbol system of nationalism... and commitment to national values such as patriotism, sacrifice for nation, honesty, and business”. As Plato, Machiavelli, Hobbes, and Rousseau all recognized, religion has the power to strengthen political bonds.

As Robert Bellah’s co-author, sociologist Philip Hammond, noted “For Rousseau civil religion is a sensible thing for leaders to create and encourage; for Durkheim it is an

emergent property of social life itself’ (Hammond, 2013, p. 139). For Rousseau, civil religion is a top-down construction for the good of the nation; for Durkheim, civil religion emerges organically from the bottom-up. In the second half of the 20<sup>th</sup> century, researchers of civil religion followed this Durkheimian tradition, but, instead of following Durkheim in the study of ‘primitive’ societies, they turned toward modern societies, particularly civil religion in the United States of America. In the next section, I look at the specific study of civil religion in America.

### **Civil Religion in America**

“Our government makes no sense unless it is founded in a deeply felt religious faith – and I don’t care what it is.” President Dwight Eisenhower (cited in Henry, 1981)

A 2016 Pew Research Poll found that Americans with no religious affiliation are the second largest ‘religious’ demographic – 22.8% of the American population (Cooperman & Smith, 2016). Yet, as Susan Jacoby (Jacoby, 2017) notes in her *New York Times* piece “Sick and Tired of ‘God Bless America’”, “political campaigns are still conducted as if *all* potential voters were among the faithful” (para. 2 emphasis added). Unlike what might be assumed by those outside the United States, Jacoby notes that it is not just the Republicans who use this religious rhetoric. Hillary Clinton and Joe Biden repeatedly mentioned their Christian upbringing and Jacoby notes that even Bernie Sanders – “a cultural Jew not known to belong to any synagogue” once referred to a “belief in God” that informs his attempts to follow the “golden rule”. And, of course, Trump, known for his love of money and porn stars, has quoted “two Corinthians” and used the Bible in a now-infamous photo op (O’Neil, 2020). Echoing the sentiments of

many Americans, Jacoby writes, instead of ending every political speech with “God Bless America” – “Just once in my life, I would like the chance to vote for a presidential candidate who ends his or her appeals with Thomas Paine’s observation that “the most formidable weapon against errors of every kind is Reason.” I’m sure, particularly in this time of division in American society, many Americans would echo this sentiment, hoping for an appeal to reason rather than God.

So why is it that American politicians from George Washington to Donald Trump have made reference to God? For the American sociologist Robert Bellah (1967), it is not because of the dominance of Christianity in America, but because of the unifying strength of the American civil religion. He argues that these references remain ambiguous to implicitly remind us of the Rousseauvian religious tolerance while invoking a Pope-esque divine right to rule. Though Americans may not be familiar with the work of Rousseau or the tenets of the Catholic church, the ideas of religious tolerance and the divinely inspired authority of documents such as the Constitution are deeply imbedded in the American psyche.

The French diplomat Alexis de Tocqueville (1954) was one of the first to examine religion in American through what we would now call a sociological or anthropological, rather than theological, lens. Like Hobbes, Alexis de Tocqueville saw religion as an inextricable part of human nature. Unlike his home of 19<sup>th</sup> century France, De Tocqueville saw that in the United States of America, Christianity was not antagonistic to democracy. In the France of de Tocqueville’s day, Christianity was associated with the pre-1789 regime and the Bourbon Restoration. Yet, in the United States, De Tocqueville saw that Christianity was not antagonistic to democracy but, in fact, served to counter the

dangers of individualism and materialism which he thought could lead to tyranny. He wrote:

The greatest part of British America was peopled by men who, after having shaken off the authority of the Pope, acknowledged no other religious supremacy. They brought with them into the New World a form of Christianity which I cannot better describe than by styling it a democratic and republican religion. (p. 311).

De Tocqueville saw that the Christianity of the pre-civil war America supported democracy and the fledgling republic.

More than a century after de Tocqueville's observations, Robert Bellah's "Civil Religion in America" caused an almost unprecedented burst of excitement among sociologists and scholars of religion. As Jones and Richey explain (1974, p. 5), "[the concept of] civil religion made plausible the claim that religion ought to be studied by the nonreligious". Bellah's work is premised on Durkheim's functional theory of religion, which was further developed by Bellah's mentor, Talcott Parsons. Bellah relays President Eisenhower's comment that "government makes no sense unless it is founded in a deeply felt religious faith – and I don't care what it is". For many who see religion as Truth, this comment makes no sense as it seems like a total "negation of any real religion" (Bellah, 1967, p. 42). However, it makes perfect sense in an anthropological view of religion: it is not a negation of religion because there are common religious beliefs, rituals, values and symbols that all religions share. Religion was important to Eisenhower not because of its theological and cosmological claims, but rather because of its *function* as a social cement.



The rituals, texts, holidays, saints, and values that bond all Americans is what Bellah refers to as American civil religion (1967, p. 42). For Bellah, civil religion in America reflects a nationalistic religion distinct from Christianity yet rooted in it. Bellah explains how both the notion of the Christian God and the institution of the church have influenced what it means to be an American. For Bellah, abstract ideas about god have become reified and drive American civic consciousness. He notes that though it draws from Biblical archetypes such as the Chosen People and the Promised Land, it is “genuinely American” with its own prophets, martyrs, sacred places, rituals, and symbols (Bellah, 1967, p. 18).

Although he has no proof that the founding fathers were influenced by Rousseau in particular, Bellah claims that “it is clear that similar ideas, as part of the cultural climate of the late eighteenth century, were to be found among the Americans”. Authors such as Angrosino (2002) have noted the similarity between Ben Franklin’s self-professed religious beliefs and Rousseau’s creed. As I discussed earlier, Rousseau believed that it was the right and duty of the state to demand a civil profession of faith in the existence of a god and an afterlife in which we are rewarded or punished, and a toleration of all other religious beliefs that hold to these principles – beyond this, religious beliefs were of no concern to the state. In his autobiography, Franklin wrote: “I never doubted... the existence of the Deity... that our souls are immortal; and that all crime will be punished, and virtues rewarded, either here or hereafter. These I esteem’d the essentials of every religion” (quoted in Angrosino, p. 248)

Angrosino refers to this as “the American prototype of Rousseau’s image of civil religion” (p. 248). Franklin and his fellow framers encouraged an American belief in a

deity, an afterlife of reward and punishment, religious tolerance, and a total religious freedom beyond these basic ideas that they saw as common to all religions. Bellah argues that the “words and acts of the founding fathers... shaped the form and tone of the civil religion as it has been maintained ever since”.

Bellah (1967) notes that President George Washington’s farewell address (which may have been written by Hamilton) explains the utilitarian function of religion for the nation. Washington states “Of all the dispositions and habits which lead to political prosperity, Religion and Morality are indispensable supports”. Now we realize the intellectual heritage of presidents that led to Eisenhower’s seemingly shocking statement that government needed religion, but that it didn’t need any particular religion. Like Washington, Eisenhower saw the function of religion as a social cement which upheld a nation. Like Plato, Machiavelli, Rousseau, and Hobbes, the founding fathers were not merely idealists but saw the utility of religious sentiment in founding and maintaining the republic.

Bellah (1967, p. 45) stresses that, for the founding fathers — with the exception of, perhaps, Thomas Paine<sup>4</sup> — American civil religion was never meant to be a substitute for Christianity. The god of American civil religion has a particular concern for America, much like the god of the Old Testament had for Israel. Indeed, the comparison of America to Israel is frequent in the American civil religion from its founding. As Bellah

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<sup>4</sup> While the other founding fathers are noted as seeing the good that Christianity could do in the nation (even if they were not believers themselves), Paine saw Christianity and any other religion that embraced miracles or other supernatural events as detrimental (Marker, 2019).

(p. 8) writes “Europe is Egypt; America, the promised land. God has led his people to establish a new sort of social order that shall be a light unto all nations”. Bellah gives examples of how biblical stories such as Exodus have driven so much of American history from the Puritans to Martin Luther King.

In his discussion of President John F. Kennedy’s inaugural address, Bellah argues that Kennedy’s whole speech is just a recap of the idea, present from the founding of the nation, that Americans have an “obligation, both collective and individual, to carry out God’s will on earth” (67, p. 44). This idea of an American right and responsibility to do God’s work has been part of the American identity since the founding of the nation. But Bellah notes that the American civil religion has not always been “invoked for worthy causes” (p. 14). He notes how the doctrine of manifest destiny was used to gloss over imperialist exploits and the horrific treatment of indigenous peoples. Moreover, he states that an ideology that “fuses God, country and flag” has been used to attack progressive and non-conformist ideals. Yet he also notes that it is difficult to use the words of Washington and Jefferson to “support special interests and undermine personal freedom” — the defenders of slavery came to reject the words of the Declaration of Independence. He argues that despite the patriotic rhetoric of the religious right at his time of writing — 1967 — their relation to the civil religious tradition is “tenuous”.

### **Varieties of Civil Religion in America**

In their discussion of civil religion, Richey and Jones (1974, p. 14) note the differing, often conflicting, meanings of the term civil religion. They report that the term has been used synonymously with “folk religion, religious nationalism, democratic faith, Protestant civic piety, and transcendent universal religion of the nation”. Angrosino

(2002b) states that civil religion can be analyzed as three overlapping frameworks: 1. folk religion of the American people; 2. religious nationalism; and 3. transcendental universal values.

Gehrig notes that, at times, the term American civil religion has been used synonymously with American folk religions (Gehrig, 1981, p. 52); that is, “as emerging from the daily life experiences and expressions of Americans whereby they achieve social integration and the legitimation of American values”. In this definition, civil religion is an organic phenomenon which provides unity for the population and gives authority to popular values. Angrosino terms this “culture religion” and sees this view as coming from the French classical sociology “and its insistence on viewing society itself as a set of collective representations symbolizing a common identity.” Angrosino argues that for those who follow this school of thought, these “representations” can be described, interpreted, and analyzed in the same way that an anthropologist might reconstruct the religious perspective that gives a certain coherence to a traditional folk or tribal society” (Angrosino, 2002, p. 246). Gehrig cites Warner’s 1961 examination of Memorial Day and Herberg’s 1960 discussion of American civil religion as the “deification of the American way of life” as examples of this definition of civil religion (p. 52). As Jones and Richey (Richey & Jones, 1974, p. 8) explain, “Herberg’s civil religion is ‘the operative religion of the American people’ supplying American society ‘with is overarching sense of unity’ amidst conflict...” It is the “folkways” that explain what the people support and also what they are “intolerant about”. For these cultural religion theorists, as Angrosino calls them, the diverse set of sacred symbols allows “for a degree of cooperation, integration, and solidarity” (p. 346). Studying American civil religion as

folk religion allows us to understand the organic values of the population that promote unity and give a sense of identity to ‘common’ Americans.

Agrosino defines myth as “the imaginative truths by means of which people construct their lives and order their thinking” (Angrosino, 2002, p. 249). For Angrosino, the foundational myth of the American people is America as the New World – “pure Eden, a place of fresh starts”. The story echoes biblical story of Exodus in which a people oppressed in a “tradition-bound” society migrate to freedom. Angrosino goes on to explain the importance of myth in the view of civil religion as folk religion. He explains:

The process by which myth becomes civil religion also includes processes of investing symbols with transcendent significance, translating ordinary people into heroic legends, and creating rituals that encourage the celebration of those symbols and people (p. 250).

The American flag signifies freedom itself. Washington is Moses, and July 4<sup>th</sup> a celebration of the new, pure Eden of liberty. Of course, this founding myth leaves out the fact that this “New World” was already occupied, and that, for many, the migration was not voluntary and did not lead to freedom.

Agrosino (2002) notes that in the “culture religion” view of civil religion, civic virtue is inevitably embodied in patriotism. Bellah and Hammond (2013) note the dangerous tendency that patriotism has to identify a certain type of person as, in Agrosino’s words, “the exclusive representatives of a uniquely American community of righteousness” (p. 253). This ideal American is – as Bellah and Agrosino both mention – white, Anglo-Saxon, and protestant. Neither Bellah or Agrosino mention gender;

however, we can assume that though women might be identified as members of this “community of righteousness”, they have no authority to be representatives of, hold authority in, or speak for, this community. Agrosino mentions that the experiences of women and racial minorities “reveal tensions in American culture religion”, and that the “greatest challenge” facing American culture is the willingness to accommodate these ‘others’ (p. 254). In some regions of the country, American folk religion is beginning to venerate one African-American hero (Martin Luther King) – as is evident in the celebration of Martin Luther King, the King Monument in Washington, and the fact that his “I Have a Dream” speech has entered into the ‘cannon’ of American civil religion. However, all women – even white women — and people of other ethnic minorities are excluded from playing leading roles in the narratives of American folk religion.

In the view of civil religion as religious nationalism, the state itself is worshipped (Bellah, 1967, p. 52). In this school of thought, while the power of religious institutions declines with modernization, the religious sentiments themselves do not decline, but are instead shifted to the state. Classic examples of civil religion as religious nationalism are Japanese early 20th century state Shinto, and, in its most extreme form, Nazi Germany. For thinkers such as Angrosino, religious nationalism in the USA comes from the American belief in itself as a nation of “chosen people and their manifest destiny” (Angrosino, 2002, p. 255). For Gehrig (1981), American civil religion makes simply “being America” a quasi-magical state in which one views one’s own existence as having profound significance in the world. These ideas were used to support slavery and justify the extermination of indigenous peoples. More recently, it has supported the ideology of the cold war and the war on terror (p. 255), neo-liberal imperialism

expansion, and one might argue the contemporary demonization of recent immigrants. Most importantly for this study, religious nationalism is the most important predictor of opposition to gun control and support of gun rights organizations such as the National Rifle Association (Whitehead et al., 2018).

For Agrosino, an important stream of religious nationalism in America is that of “republican theocracy” which is associated with 19<sup>th</sup> century Calvinist theologians (2002, p. 255). The 19<sup>th</sup> century Calvinists such as Nathaniel W. Taylor, Timothy Dwight, and Lyman Beecher believed that God could “exercise moral government over the state” (p. 255). God’s laws were seen as being embodied in the American Constitution and Americans themselves as God’s chosen people (p. 256). During the civil war, the republican theocrats of New England saw a “cosmic disruption of the sacred order” (Chidester, 1988, p. 96; quoted in Angrosino, p. 256). Meanwhile, the southern republican theocrats argued that the Constitution itself had betrayed America’s mission by avoiding the direct discussion of God. They saw their own Constitution of the Confederacy as correcting this and setting America back on its divinely chosen path (Angrosino, p. 256). Lincoln is said to have spent much time “in an anguished effort to discern God’s will” and in many of his speeches discusses the notion that God had chosen this time to remove slavery (ex. second inaugural address) (p. 256). Though proponents of religious nationalism see the power of religious sentiment to unify the nation, those who study civil religion as religious nationalism in America stress how it has divided the nation in the past and speculate on how it might divide Americans in the future. These are important theories to keep in mind while we examine the rhetoric of gun rights and control in the coming chapters.

In his article on Civil Religion and the radio genre of the Western, Kip Anthony Wedel cites Bellah to argue that though the American civil religion does not worship the nation, it does “infuse it with transcendent importance” (Wedel, 2012, p. 31). Wedel argues that the Western genre has “served as a vehicle of national mythology” (p. 31). In *The Lone Ranger* “The United States was depicted as an instrument of God’s will in history, and Americans were described as a unique people capable of performing God’s will”. The association of America as a sacred, favored nation with guns and God gained traction through mass media. The Lone Ranger himself was an all American who lived in accord with God’s law and “help[ed] others to do likewise” (p. 33). The Lone Ranger’s eyes, as the narrator stated, had a “light that through the ages lifted the souls of strong men who fought for justice – for God” (quoted on Wedel, p. 33). The individual – and individualistic – American gunman as an earthly embodiment of God’s will became firmly rooted in the American national psyche.

In contrast to both folk religion and religious nationalism, Bellah defines civil religion as the manner in which everyday people interpret “historical experience in the light of transcendent reality” (1967, p. 3). Gehrig (1981) groups Bellah and others of this camp as understanding civil religion as the “transcendent universal religion of the nation”. As Bellah wrote, “American civil religion is not the worship of the American nation” as those who see American civil religion as religious nationalism see it – “but an understanding of the American experience in the light of ultimate and universal reality.” American civil religion is not the worship of the nation, but the elevation of values and a worldview seen as universal.



The definition of civil religion which Bellah himself puts forward is that civil religion honors and celebrates transcendental universal values. Like Durkheim and Parsons, Bellah was interested in the function of religion. Questions of epistemology or theology were not important, rather Bellah paid attention to what religion does: it holds a society together. For Bellah, seeing the mundane events of our life, the lives of our neighbors, and the lives of all our fellow citizens as having a greater meaning, to see all Americans as working on the ‘great experiment’ known as the USA, binds citizens into a community. As we will see in the next chapters, this is very much the view of those such as Obama who attempt to make gun control an American civil religious value by appealing to universal values.

American civil religion emerged from the attempts to reconcile the ideas and practices of the diverse American people “in a land with no provision for the legal establishment of religion” (Agrosino, p. 258). For this reason, it had to focus on the transcendent rather than sectarian particulars. Contemporary politicians and citizens call upon the transcendental ideals of the Constitution such as freedom and equality of opportunity, but also even broader categories such as health and education – categories almost no one could oppose. Angrosino gives the example of how opposing sides of the abortion debate rarely mention the word abortion itself, but rather discuss “choice” and “life”: two universal transcendent values that the state is supposed to defend (p. 258). More important to this study, both sides of the gun control debate invoke this civil religion in their use of the same language of freedom and protection of life. The view of American civil religion as transcendental religion of the nation allows us to examine how

particular positions on current issues are framed in terms of indisputable universal concepts.

For theorists such as Angrosino, who view civil religion in terms of a transcendental universal religion of the state, American civil religion is best understood through Geertz's definition of religion as any:

system of symbols which acts to establish powerful, pervasive, and long-lasting motivations in [a people] by formulating conceptions of a general order of existence and clothing these conceptions with such an aura of factuality that the moods and motivations seem uniquely realistic (Geertz, 1973, p. 90, quoted on Angrosino, 2002, pp. 241–242).

Angrosino notes that this framework “avoid(s) the concepts of the supernatural, so important in other theorists' views of religion, in favor of a framework for studying how people are made to feel and understand, and then to act on their feelings and understandings” (p. 242). I keep these words of Angrosino in mind when examining the information presented by both gun rights and gun control advocates. In avoiding discussion of the supernatural, both sides present their views as ‘common sense’ rather than based on the particular history of American values.

Gehrig (1981) argues that understanding American Civil Religion as the transcendent universal religion of the nation is the “most productive” (p. 54) definition. Seeing civil religion as folk religion which has, in a Durkheimian sense, emerged from the ground up, obfuscates the power of civil religion as a Rousseauvian tool of the elite. While anthropological examinations of the folk religion of the USA offer a deeper understanding of everyday life, these examinations tend to ignore how the powerful have

manipulated ‘the sacred’ either for their own benefit, or for the benefit of the nation itself. Ethnographies of small-town Halloween celebrations or rhetorical analyses of 4H club speeches can miss how rituals and practices often directed by hegemonic forces.

While seeing civil religion as merely folk religion can hide power dynamics, seeing civil religion as merely religious nationalism fails to recognize how it can bind the nation, particularly a national as religiously diverse as USA. Seeing civil religion as merely religious nationalism limits our understanding to the worship of the state itself rather than to its values which transcend history and geography. As Angrosino notes, unlike religious nationalism, Bellah’s understanding of civil religion as aiming at universal transcendence is not the worship of the state itself, but rather “the subordination of the nation to ethical principles that transcend it in terms of which it should be evaluated” (p. 248).

Authors such as Gehrig (1981), Angrosino (2002), and Gorksi (2017) understand that Bellah’s (1967) understanding civil religion as a force which places geographically and historically specific events, people, and practices into a greater transcendent narrative allows us to understand the nation beyond the bounds of specific classes and political leanings. Bellah’s understanding of civil religion is attractive to both liberals and conservatives as it is seen to limit the power of any particular government or the fashionable values of a particular period. Though we will see that both gun control advocates and gun rights advocates quote the Constitution and other texts and people only relevant to the American civil religion, there is an underlying notion of natural law which is universal. The state is constrained by the belief that there are principles that transcend the state.

Not only do these universal principles constrain the state, but they also create the identities and shape the actions of individuals. Symbols such as the American flag or songs such as *The Star-Spangled Banner* evoke notions of universal, timeless values such as freedom and equality of opportunity which in turn influence the actions of individuals, regardless of the particular government in power at that particular time. For Bellah (1967), the term one nation “under god” is significant: “the will of the people is not itself the criterion of right and wrong. There is a higher criterion in terms of which this will can be judged; it is possible that the people may be wrong.” For Bellah, this means that American beliefs and values reveal not just what reality should be, but also how they should all act. Americans actions are shaped by the symbols of the nation state and the universal principles that they evoke. Bellah conceived of writing his essay to promote an aspirational kind of civil religion which was linked to his opposition to the American war in Vietnam. As Kazin (2013) notes in his obituary of Bellah, Bellah’s *Civil Religion in America* cautions that “without an awareness that our nation stands under higher judgments, the tradition of the civil religion would be dangerous indeed”. Let us keep this warning in mind as we hear both gun control and gun rights advocates speak of American exceptionalism without tying it to America’s covenantal duties.

In his 1977 essay on the relevance of Bellah’s conception of civil religion to the secularization thesis<sup>5</sup>, Richard K. Fenn discusses the problem of the double bind of

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<sup>5</sup> The secularization thesis is the assumption, put forward by many in the enlightenment and into modern times, that religion would ‘naturally’ fade away as human beings evolved, and human society progressed.

patriotic Vietnam War protesters. Many of these protesters saw that it was their patriotic duty not to question their own government in a time of war, but also their duty to protest the policies of their government which violated its transcendent values. This is the double bind in which “The same symbols functioned to express both solidarity with American society and support for the official exercise of political power” (Fenn, 1977). If a Vietnam war protestor waved an American flag, were they signaling a complicity with the war in Vietnam, or signaling a duty to honor the universal values the flag represents which might oppose the war? Here, as Fenn state, they are “caught between political dissent and national loyalty by the same symbol”. As we see in the following chapters, this is a problem for supporters of gun control: the feeling that protecting the vulnerable is both a universal and national civil religious value, yet symbols such as the flag, and more importantly, the Bill of Rights, have been repeatedly co-opted in support of uncontrolled gun rights. Because of the confusion of religious nationalism and civil religion, there is a feeling that one cannot express patriotism and commitment to America’s universal values.

One of the transcendent values repeatedly mentioned in the literature on American civil religion is that of utilitarian individualism. For Agrosino, this term can be explained as the ideology that “things are to be used and people are to be useful” (2002, p. 253). This ethos – how things ought to be and how people ought to act – has emerged from the “cultural forces of pragmatism, materialism, and an abiding faith in human progress and technological development” (p. 253). This seems at odds with the Judeo-Christian insistence on the intrinsic worth of an individual. However, Angrosino explains that it has, in fact, created the American assumption that “any religious value must

ultimately be measured and justified in terms of its practical consequence”. Thus, religion of any sort, civil religious or otherwise, is only held up as sacred if it “is capable of cultivating individual self-improvement and civic virtue” (p. 253). This concept of utilitarianist individualism is important to keep in mind when examining contemporary controversial issues in American public discourse such as affirmative action, gun control or public health care as they are essentially issues in which the ethic of individualism is in conflict with collective utilitarianism. Whereas gun rights advocates shout the value of individualism, gun control advocates meekly point out the caveat of utilitarianism.

### **American Civil Religion and Christianity**

Alexis de Tocqueville’s stated that “Americans combine the notions of liberty and Christianity so intimately in their minds that it is impossible to make them conceive of the one without the other” (quoted in Gorski, 2017, p. 60). Such quotations leave us understanding, as Bellah did, that the civil religious tradition in America is deeply connected to religious nationalism, and that the religion of that nationalism is Christianity. But Gehrig (1981) argues that this is not the full story of the historical situation. She argues that the differentiation between American civil religion and Christianity began early in the history of American colonial life: founders including Franklin, Washington, and Jefferson saw there needed to be a separation between American civil religion and the Christian churches. This separation was necessary not just as to avoid sectarian conflict but also to create a void which could be filled with a civil religion. As Sidney Mead stated, “Under religious freedom, because no domination could plausibly claim to be, or to function as ‘the church’ in the new nation, the nation came more and more so to function (Mead, 1967; cited in Coleman, p.

174). The separation of church and state, and the creation of a non-sectarian civil religion, is hailed as both unifying and empowering to the state.

Bellah (1967) noted that though civil religion borrowed from dominant religious traditions, it avoids divisive claims or symbols as it attempts to incorporate a diverse population. In the writer's guidelines for the radio program, it is stated that the Lone Ranger (the embodiment of American values) "is generally visualized as a Protestant, but... he shows respect for ... every denomination, including the Indians' veneration of their own Great Spirits" (p. 33). So too, the ideal American civil religious practitioner is Protestant, but one respectful of other religions values so long as they do not contradict his own.

However, Christianity provided the narratives of the American civil religion including the national martyr Lincoln, "giving his life so that many might become free" and the "the civil holydays [Memorial Day], recalling the truth that from the seed of martyred American soldiers springs the church of freedom" (Coleman, 1970, p. 75). Coleman notes that this reliance on Christian themes can cause problems: "Wherever there is a religious pluralism, a civil religion based on one highly specific world religion is bound to fail to provide integrating national symbols for the whole population in the land" (p. 70). Yet, Christian authors such as Philip Gorski attempt to assure the reader that the civil religious tradition is open to all. In his 2017 work *American Covenant*, Gorski writes "One need not be a Bible believer to draw inspiration from the life or oratory of a great civil theologian like Abraham Lincoln or Martin Luther King Jr" (p. 15). Yet, the reader is left wondering how a tradition so

deeply tied to Christianity could *not* alienate citizens of other religions as well as non-believers.

Bellah argued that “every movement to make America more fully realize its professed values has grown out of some form of public theology” (1967, p. 21). This public theology has Christian roots but attempts to engage with the public and the academy, as well as the state. Angrosino argues that there is a “constant and creative tension” between the conservative and the liberal strains of public theology in America. The conservative brand sees the Christian Bible as the foundation of all law. In their minds, any law that contradicts their Bible is unconstitutional as “the Constitution is tantamount to the Word of God” (p. 261). This is the public theology of gun rights advocates such as the National Rifle Association. Many major conservative Christian sects, particularly those founded in America, such as the Church of Latter Day Saints, view the Bible as divinely inspired if not the word of god itself (Slack, 1994, p. 25-36).

For the liberal strain of public theology, the Constitution is not the final revelation of God. Liberal theologians do not assume that God stopped talking to America in 1789 but instead see the Constitution itself is a “work in progress” (Angrosino, p. 261). This is the public civil religious theology of gun control advocates such as Obama.

Liberal public theologians give human agency a role in the destiny of the nation and argue that it is the people’s responsibility to realize God’s plan. Angrosino (2001) gives the example of differing views on the proliferation of nuclear arms. Though conservatives are generally uninterested in non-proliferation efforts, it is not because they are more bellicose, but rather that they believe a nuclear holocaust could happen only if it



is in God's plan. Liberals, on the other hand, might see working towards non-proliferation as serving God. During the covid-19 pandemic, this is strikingly evident in the debate over mask-wearing. Conservative Christian nationalists see masks as interfering with "God's wonderful breathing system", whereas liberal Christians see mask-wearing as a way of acting out Jesus's ethic of care for the most vulnerable. Similarly, conservative Christians who see the right to bear arms as a God-given right enshrined in the Constitution see gun control as interfering with God's plan. Liberal Christians, on the other hand, see working to make America less violent as a way of serving God.

### **The Canon of American Civil Religion**

After the flood of ethnographic work on American civil religions that immediately followed in the wake of Bellah's *Civil Religion in America*, scholars from outside of sociology and anthropology began to take the notion of American civil religion into their own disciplines. Civil religion memorializes certain texts, people, and values giving them power and authority. The revolutionary period is undoubtedly the era from which American civil religion draws most of its values, heroes, myths, stories, and certainly the written canon. Scholars in disciplines including law and the fine arts began to look at specific works from this era. In 1989, Sanford Levinson's book *Constitution Faith* won the Scribes Book award for the most important work of legal scholarship in the previous year.

A scholar and an activist, Levinson has written extensively on the problems of devotion to the Constitution. Levinson notes that while Madison wrote in 1792 that the Constitution should be treated with "more than common reverence for authority", as time

passed, presidents began to recognize the danger of the sacralization of the Constitution. In 1816, Jefferson complained of how some citizens "look at constitutions with sanctimonious reverence and deem them like the ark of covenant, too sacred to be touched". By 1885, Woodrow Wilson railed against the "almost blind worship" of the constitution.

Levinson draws attention to early 20<sup>th</sup> century recognition of the link between devotion to the constitution, and Protestantism. He notes that in 1937, the Russian-born American journalist Max Lerner. Quoting Lerner, Levinson writes:

It was no coincidence with Lerner that an American culture so influenced by Protestant Christianity would fix on the Constitution: "The very habits of mind begotten by an authoritarian Bible and a religion of submission to a higher power have been carried over to an authoritarian Constitution and a philosophy of submission to a higher law." The United States, whatever the prohibition of the first amendment on an establishment of religion, "ends by getting a state church after all, although in a secular form." (1989, p. 192)

Levinson asks a central question of this dissertation: "What, then, is genuinely learned by reference to the Constitution "worship" or comparing the Supreme Court to the Vatican?" Levinson specifically states that the Constitution creates a "covenanting community". A scholar of law and political science, not sociology, nonetheless cites Bellah to argue that "the lesson has to do with the central role of the Constitution, as declared by the Court, in providing the basis of national unity." That is to say, Levinson recognized the function of the Constitution as binding the nation together, and he also recognized that it is not just the Constitution that does this, but its interpretation by the

Court. If the Constitution was simply a document sitting in the Smithsonian, it would have little power to pull together a community, it is its interpretation that gives it power to make *e pluribus unum*.

These founding documents are not merely unread relics, but documents which form the imagined community of the USA. To become an American, immigrants must pass a test demonstrating their knowledge of the Declaration of Independence, the U.S. Constitution, and the Bill of Rights. If they pass, they must take an oath to support the U.S. Constitution. The political scientist Samuel Huntington (Huntington, 2004) argues that if America abolished the Constitution, the United States itself would cease to exist. At least in law, if not in practice, this allegiance to the civil religious canon supersedes Christianity. In Thomas Grey's article "The Constitution as Scripture" (1984), he notes that Article VI, third clause states that though no public official should be forced to make a religious oath, but they are "bound by oath or affirmation to support this Constitution." These are not texts that were written and forgotten but are the basis of public life and identity in the USA.

The second most important time period from which American civil religion draws inspiration is the civil war era. As Bellah (1967) notes, Abraham Lincoln stated that he "never had a feeling, politically, that did not spring from the sentiments embodied in the Declaration of Independence" (p. 47). Lincoln links the civil religion of the revolutionary era to that of the civil war. Bellah argues that the symbolism of the revolutionary period was Hebraic without being Jewish (p. 48) – Washington was Moses, America the new Israel; but the themes that emerge from the civil war — of sacrifice and rebirth — are undoubtedly Christian in tone (p. 48). Lincoln becomes the national

martyr, Memorial Day became Easter, and the Gettysburg address becomes the “New Testament” of the American civil religion (p. 10). From Bellah’s functionalist perspective, these stories unify the diverse American populous. The Christian themes of sacrifice and renewal thus become part of the national narrative.

In his discussion on the American civil religious cannon, Angrosino (2002) discusses not just documents from the revolutionary period and the civil war — but also how newer additions to the cannon have drawn from these texts. He gives the example of Martin Luther King’s “I Have a Dream” speech, arguing that Dr. King “used the Declaration as a homiletic text, much as he might have used the Bible when preaching in his church” (p. 251). He even argues that, though King’s speech has the cadence of African American Baptist Sermons, its rhetorical pattern is just as much “rooted in the language of the Declaration” (Wills, 1978, p. 175; Raboteau, 1990, cited in Angrosino, p. 251). King’s speech contained echoes of not just these revolutionary period documents, but the rhetoric of the civil war era as well. Angrosino notes how King’s speech drew on Lincoln’s use of the Declaration in the Gettysburg Address “where it stood for the moral underpinning of his vision of the renewed nation”. As Angrosino writes, all religious traditions are built “through a process of accretion and cross-referenced allusions” (p. 251). The American civil religion is no different – the Protestantism covenant theology of the first colonizers echo in the founding fathers’ words which reverberate in the civil war speeches through the civil rights era to today.

For C.K. Chesterton, America was founded on a creed shaped by the Enlightenment ideals and Puritan covenant theology. From the Puritans, Americans get the idea that they are a chosen people with a manifest destiny. From the Enlightenment,

as Agrosino explains, “equality, liberty, and justice” become “theological values” along with faith, hope, and charity as they “are believed to derive from the authority of a divine creator” (p. 252). Chesterton argues:

The creed is set forth with dogmatic even theological lucidity in the Declaration of Independence. It enunciates that all men are created equal in their claim to justice, and that governments exist to give them that justice, and that their authority is for that reason just (quoted in Mead, 1985).

The Declaration of Independence encapsulates the values of the time it was written, holding Americans to these 18<sup>th</sup> century values.

Though he does not directly reference the Protestant doctrine of Sola Scriptura (which I discuss more fully in Chapter 4), Levinson (1989, p. 191) discusses the importance of the Constitution as the “the supremacy of the Constitution over alternate sources of political authority”. He notes that all public officials, as well as naturalized citizens, must swear an oath of allegiance not just to the USA, but to the Constitution itself. He notes that the history of disputes over what he terms “constitutional faith” echo that of the disputes among Christian sects. He observes that of central importance to any religion is the question “what constitutes the body of materials that counts as authoritative teaching for the community organized as a faith community?”. Levinson does not go as far as I do (in chapter 4) to argue that Puritanism shaped the present-day American attitude towards the Constitution; however, he writes:

From an early time the Catholic church invoked the propriety of its own teachings as a supplement to the teachings of the Bible. That propriety, of course, was specifically challenged by those Protestant reformers who took “Only the

Scriptures” as their cry and rejected all non-scriptural teachings as totally without authority.

I see Levinson’s allusion to the link between the importance of the bible as single source of authority, and the reliance of the American legal system and social morals on the Constitution as obvious.

Moreover, Levinson alludes to the analogy of different views of what should be considered *the* Constitution in asking the questions:

What constitutes the Constitution? Is it composed only of the particular words of the canonical text associated with the outcome of the constitutional convention of 1787, as amended thereafter, or does it also include "unwritten" materials that are equally authoritative? Second, does there exist a particular institution whose interpretations of the Constitution (however defined) are treated as authoritative?

Both of these questions allow divergent responses, each of them with their Protestant and Catholic analogues.(Levinson, 1989, p. 93)

Levinson clearly answers these questions by admitting that one strain of American Constitutionalism is “Protestant in as much as it emphasizes... that the Constitution consists only of what is written down”. He notes that though some judges on the Supreme court may take the “Catholic” view of the Court as the “ultimate interpreter” of the Constitution, nonjudges have “have proclaimed the merits of a more Protestant understanding of judicial authority” (Levinson, 1989, p. 191): that is, that every citizen has the right and the duty to interpret the Constitution for themselves .

Scholars such as Pauline Maier (1998) argue that we should not look for our modern version of civil religion in documents such as the Constitution and the Bill of

Rights because of “how much Americans have transformed very secular and temporal documents into sacred scriptures”. Maier writes that the idea of putting the Declaration of Independence, the Constitution, and the Bill of Rights in bronze-framed display cases for tourists to come see would have struck late 18<sup>th</sup> century Americans as “idolatrous, and also curiously at odds with the values of the Revolution”. However, it should be noted that President George Washington, in his Farewell Address, argued that “the Constitution be sacredly maintained” (quoted in Levinson, 1979). But by 1816, Jefferson argued that the Constitution should not be venerated like the “ark of the covenant” and argued that “institutions must advance also” (quoted in Angrosino, 2002, p. 240). Even the ‘saints’ of American civil religion disagreed on the role documents should have in forming the American law, identity and shaping the actions of individual Americans. It is not surprising then, that there is such bitter debate over the Second Amendment’s place in the contemporary USA.

### **Civil Religion in Contemporary America**

Philip Gorski, who complete his PhD under the supervision of Bellah and now teaches sociology and religious studies at Yale University, calls Bellah’s work essentially a “jeremiad’ about the decline of civil religion in America (2017, p. ix). But this doesn’t “seem quite right” to Gorski who sees American civil religion as “evolving, rather than declining”. In the mid-1970s, Bellah described American civil religion as “an empty and broken shell” and thought it held little relevance in the America of his day (1967). However, though most Americans might not recognize the term “civil religion”, in their 1998 discussion based on survey data, Wimberly and Swatos notes that the majority of Americans endorse statements like “America is God’s chosen nation today” and

“Holidays like the Fourth of July are religious as well as patriotic (cited in Angrosino, 2002). Such data seems to indicate that Gorski is right to criticize his mentor, civil religion in America is not on the decline.

Though most positivist sociologists, in the tradition of Comte and Marx, see civil religion as a transitory phase to total secularization, the re-emergence of religious sentiment of any kind in reaction to wide-scale social trauma brings this into question. Angrosino argues that though “interest in civil religion as a way to come to grips with the interface between divinely inspired morality and the sociopolitical realm peaked... during the 1970s” (2002, p. 424), in the wake of 9/11, civil religion in America came back to the fore of American political discourse. For the historian Richard Slotkin, a society experiencing trauma will look back to its myths “for precedents... a way of getting a handle on crisis” (2011; quoted in Angrosino, 2002, p. 240). Troubled people in secular societies seek solace in civil religions for the same reason that people in traditional societies seek solace in traditional religions. As Coleman argues, “At a moment of great social crisis like famine or war or at a time of momentous political transition, solemn religious symbolism – for example in the inauguration of an American president – by reference to what does not change, helps to make change tolerable” (1970, p. 69).

Angrosino argues that religious values come to the fore when a way of life seems threatened (p. 262). He gives the example of the anti-immigrant sentiments of the late 19<sup>th</sup> and early 20<sup>th</sup> centuries. The 1950s saw the formation of the Christian Anti-Communist League and the John Birch society, that not only targeted communism, but also civil rights for African- Americans. For theorists like Angrosino, American civil religion, as both a social movement and an analytical concept, is probably only salient in



the current situation if it provides a moral basis for establishing a new coalition of interests grounded in the traditional values (p. 264). Angrosino notes that while some religious leaders argue that the devastation of 9/11 was evidence that God had “withdrawn his protective shield in anger at America’s moral lapses”, everyday Americans found solace and unity in civil religious principles”. Here, we see a concrete example of Americans returning to civil religion to unite the nation; unfortunately, this unification is often formed through hatred of a common enemy.

Though Gorski (2017) and others dispute Bellah’s 1967 lament that civil religion was in decline, they acknowledge that it is changing. Gorski argues that the contemporary ‘culture wars’ can be seen as the result of changes in civil religious discourse. He argues that Reagan (and his speechwriters) corrupted the civil religious tradition through the omission of “collective sin” (p. 176) – Americans were told to take pride in their country, but never shame. In the coming chapter on Charlton Heston’s rhetoric of gun rights, we see this rhetoric at work. Heston takes great pride in the good in America, never mentioning important facts such as its high gun violence and homicide rates. This poisoned the tradition for many, and, in part, led liberal Democrats to abandon the tradition, though Gorski notes that a liberal civil religious tradition was maintained in the African American church (2017, p. 175). As we will see in my chapter on Obama’s rhetoric, Gorski’s sees Obama’s rhetoric, including his rhetoric on gun control, as part of this continuation of this civil religious tradition.

### **Conclusion**

Political ‘instruction manuals’ from Plato’s *Laws* to Machiavelli’s *The Prince* to Rousseau’s *The Social Contract* discuss the state use of religious sentiment to unify a

diverse public. The founding fathers of the United States of America were aware of this utility and their founding documents continue to form the largest part of the ‘cannon’ of American civil religion. When issues of the day create conflict in American society – from abortion to education to gun control — both liberal and conservative thinkers draw on the American civil religion to shape policy and the actions of individual Americans. Seeing American civil religion not as religious nationalism or folk religion but as the transcendent universal religion of the nation, allows us to analyze current political rhetoric in light of the past with a hope to understand how actions are shaped by symbols.

## CHAPTER 3

### HISTORICAL REVIEW: THE 2ND AMENDMENT AS CIVIL RELIGIOUS TEXT

In this chapter, I attempt to give the Second Amendment some context. I divide the chapter into two sections: the first is a history of the Second Amendment, and the second is on the Second Amendment as civil religious document. I begin with a discussion of the right to bear arms in the 17<sup>th</sup> century English Bill of Rights, early gun laws and the right to bear arms in the colonies, and the passing of the Second Amendment. I then move through Supreme Court decisions on the definition of the right to bear arms, culminating in the 2008 Supreme Court decision of *Heller v. DC*. I then begin to address the history of the Second Amendment as a civil religious text.

Spitzer writes:

much of what people believe about the history and law of guns in America... [is] demonstrably false... If we take the past as any cue to the present, then we should take comfort at least in the knowledge that our past gun history is far more compatible with present dilemmas, and policies, than most realize (2015)

For historians and political scientists like Spitzer, understanding the true history of American gun laws can help Americans solve some of the problems that they face today.

#### **The Right to Bear Arms**

In the late 17<sup>th</sup> century, political life in England was dominated by the issue of the authority of the King to rule without the consent of parliament. In addition, the role of Catholics in a country which was rapidly turning to Protestantism was unclear. In 1688, the Catholic King James the II was overthrown in what has come to be known as

the Glorious Revolution. The Protestants William II and Mary II were put in power, accepting the conditions of the *Bill of Rights*.

The Catholic Kings Charles II and James II had both attempted, with more or less success, to maintain power by using militias loyal to them and disarming Protestants that were “suspected or knowne” of being opposed to the government (Bogus, 1997). For example, in the 1671 *Game Act*, the Catholic King James II had ordered the general disarmament of Protestant regions (Malcolm, 1996, pp. 103–106). The English *Bill of Rights* specifically states that it is an attempt to restore the rights taken away by James II. The Bill states,

Whereas the late King James the Second... did endeavour to subvert and extirpate the Protestant Religion and the Lawes and Liberties of this Kingdome ... by causing several good Subjects being Protestants to be *disarmed* at the same time when Papists were both Armed and Employed contrary to Law ... thereupon the said Lords Spirituall and Temporall and Commons pursuant to their respective Letters and Elections... for the Vindicating and Asserting their ancient Rights Declare ... That *the Subjects which are Protestants may have Arms for their Defence suitable to their Conditions and as allowed by Law* (Participation, n.d. italics added)

The last phrase of the last sentence, (“and as allowed by Law”) stressed the fact that this is not a new right, but rather, a codification of an existing right. As the British constitutional historian Mark Thompson writes, the *English Bill of Rights* did, “little more than set forth certain points of existing laws and simply secured to Englishmen the rights of which they were already legally possessed” (*Glorious Revolution*, 2010). The

American historian Joyce Lee Malcolm notes that both before and after the English Bill of Rights was codified, the government could disarm individuals it deemed dangerous (Malcolm, 1996, p. 51).

The right of Protestants to bear arms, codified in the English Bill of Rights, has long been seen as the predecessor of the Second Amendment (see Dumbauld, 1979, p. 51). There is no doubt that the American founding fathers were heavily influenced by the English *Bill of Rights*; however, to what extent the Second Amendment is a transposition of the right of groups of Protestants not to be disarmed by a King is a subject of debate. That is to say, this is the beginning of the debate as to whether the American framers intended the right to bear arms to be a means for the states to protect themselves against the federal government, or whether it was assured as an individual right.

As the American political scientist Robert J. Spitzer (2015) notes, the history of the gun in what would become The United States of America begins with the earliest European settlers in the 17<sup>th</sup> century in Jamestown and Plymouth. These settlers brought guns with them from Europe. Yet, “in the colonial and early federal period, guns were relatively rare, and seldom associated with interpersonal violence” as guns they were mainly used for hunting.

However, even in the 17<sup>th</sup> century, militias were developing and violent conflicts between indigenous peoples and European settlers continues. By the late 17<sup>th</sup> century, slave patrols were formed from the already existing militias in the colonies. These slave patrols were created with the intent to capture enslaved Africans attempting to escape from slavers. By 1727, the Virginia colony enacted laws requiring the creation of slave patrol militias (Hadden, 2001, pp. 25–28). All able-bodied European adult men were

forced to join these patrols, commandeered by property-owners and slavers (Dunbar-Ortiz, 2018, p. 63). Those who refused to serve faced fines (Hadden, p. 25-28).

We cannot fully understand the original intent of the Second Amendment without understanding what these militias were. To do this, we must first understand the concept of what is referred to as ‘savage war’. The American radical historian Roxanne Dunbar-Ortiz 2018 argues that the irregular forces in the American colonies of Virginia and Massachusetts

sought to disrupt every aspect of resistance as well as to obtain intelligence through scouting and taking prisoners... These voluntary fighting crews made up of individual civilians – “rangers” are the groups references as militias, as they came to be called, in the Second Amendment” (p. 43).

For Dunbar-Ortiz, “The militias referred to in the Second Amendment were intended as means for white people to eliminate Indigenous communities in order to take their land, and for slave patrols to control Black people” (p. 53).

Though many of those who stress the importance of the term *militia* in the Second Amendment, Dunbar-Ortiz (2018), does not only believe that the right to bear arms mentioned in this amendment only applied to militias as a collective entity. Rather, she argues that “Although the US Constitution formally instituted “militias” as state-controlled bodies that were subsequently deployed to wage wars against Native Americans, the voluntary militias described in the Second Amendment entitled settlers, as individuals and families, to the right to combat Native Americans on their own” (p. 53). That is, she believed that the Second Amendment gave all white settlers the individual legal right to bear arms.

During the pre-revolutionary period, the colonial militia was composed of colonists of all political affiliations, including those who supported British rule. These militias were made up of ordinary citizens who were willing to take up arms in order to defend their colony. However, many of those who did not agree with British rule, referred to as the Patriots, began to distrust the Loyalists in the militias. The Patriots formed their own militias which excluded Loyalists and began to stock their own armories. In response, the British placed a weapons embargo on the American colonies (Dunbar-Ortiz, 2018, p. 39). In addition, King George III began disarming colonists, particularly in regions seen as disloyal to the crown. The colonists cited the English *Bill of Rights* and the English Common law right to self-defense (Halbrook, 1989, p. 7) in their attempts to remain armed. The Patriots attempted to use English law against the English crown itself in an attempt to retain the right to bear arms.

In the revolutionary period, guns were far from common. As discontent in the colonies became more obvious to the British, import of guns from Europe became difficult (Spitzer, 2013). American military leaders including George Washington complained that there was a lack of not only firearms, but a lack of service-eligible males with basic knowledge of how to use and maintain a firearm (Spitzer). Spitzer attributes the rarity of guns to the fact that guns were expensive as they were mostly hand-made by blacksmiths. These blacksmiths could only produce perhaps a few dozen firearms a year, and, as they were made of iron, they rusted quickly – lasting perhaps five years if well-maintained. Though we might think of these settlers as being avid hunters in need of guns, most were subsistence farmers whose diets consisted of produce and domesticated

livestock. The guns of the day were expensive and difficult to maintain and operate, meaning the average colonists did not have the knowledge or skill to use a gun.

### **Early Gun Laws in the Colonies**

In addition to the fact that there were few guns, and even fewer people who knew how to use them, the American colonies had their own gun control laws. As Spitzer notes, the government kept tabs on its citizens' gun possession and would "confiscate them for offences ranging from failing to swear an oath of loyalty to the government, to the violation of various hunting restrictions, to the failure to pay an obligatory gun tax" (Spitzer, 2015). There were laws to ensure that the militia was effective, such as laws requiring armed men to muster for weapon inspection (Winkler, n.d.). More importantly, the states reserved the right to take guns, including privately-owned guns. The states also reserved the right "to direct that guns be kept in a central location for rapid accessibility" (Spitzer, 2013, para 5). Spitzer (2015, p. 30) argues that these laws show that "guns in the hands of early Americans to a great degree represented the power of the state... not power against the state". This is to say, though gun rights advocates and present-day militias frequently argue that militias are critical in holding the government to account, an examination of these particular gun laws in the colonies show that militias were formed to empower the state, not the individual.

The second category of gun law Spitzer discusses is the laws that barred gun ownership by various groups including: "slaves, indentured servants, Native Americans, Catholics or other non-Protestants, non-property-owning whites, those who violated hunting laws, and those who refused to swear oaths of loyalty to the government" (2013, para 6). Spitzer notes that the first of these laws were those banning the distribution of



guns to indigenous peoples. He notes that “[a]s early as the 1600s, persons discovered selling guns to Indians could be subject to death” (para 6). In 1777, Pennsylvania enacted a law to take guns away from citizens who refused to swear an oath of allegiance to the government (para. 6). This law alone disarmed up to 40% of the state’s adult male settlers.

The third type of gun law that Spitzer discusses is more familiar: these laws resemble contemporary gun control measures such as restricting certain weapons and hunting regulations. Most states, at some point, enacted laws prohibiting particularly dangerous weapons including pistols. Other laws restricted certain kinds of hunting such as hunting at night by firelight.

The critical historian Dunbar-Ortiz (2018) has a very different take on gun laws of the same era. To Dunbar-Ortiz, the 1776 *Declaration of Independence* symbolized not only the American break from Britain, but the official beginning of the wars of expansion westward across the North American continent. However, the ethnic cleansing of the eastern part of the continent had begun much earlier: the destruction of the agricultural peoples of the Ohio River and Great Lakes region had begun even before the start of the Declaration of the French and Indian War in 1754 (p. 30).

To the dismay of British settlers, in the mid-1760s King George III forbade the expansion of British settlers west of the Allegheny-Appalachian Mountains. Those who had already settled there were told to return to the thirteen colonies and relinquish their claims to land. Unfortunately for the indigenous peoples of the region, it soon became evident that the British did not have enough soldiers to enforce the King’s edict. Not only did many of the settlers remain, but many more came from the east, heading west of the

mountain chain. They appropriated land, formed militias, and provoked wars with indigenous nations. As Dunbar-Ortiz writes,

Male colonial settlers had long formed militias for the purpose of raiding and razing Indigenous communities and seizing their lands and resources... Virginia, the first colony, forbade any man to travel unless he was “well armed.” A few years later, another law required men to take arms with them to work and to attend church or be fined. In 1658, the colony ordered every settler home to have a functioning firearm, and later even provided government loans for those who could not afford to buy a weapon. Similarly, New England colonial governments made laws such as the 1632 requirement that each person have a functioning firearm plus two pounds of gun powder and ten pounds of bullets. Householders were fined for missing or defective arms and ammunition. No man was to appear at a public meeting unarmed (p. 35).

These earliest gun laws were not aimed at merely fighting the oppressive rule of the British. Rather, they were meant to enable America’s own imperialist project. In reference to such laws, Dunbar-Ortiz goes on to state that “The Second Amendment, ratified in 1791, enshrined these *obligations* as Constitutional law” (p. 35). In this respect, the Second Amendment was neither a ‘God-given individual right’ as contemporary gun rights advocates insist, or a collective right meant to ensure freedom from one particular oppressive colonial power, as gun control advocates maintain; rather, the Second Amendment merely enshrined the white, Christian imperialist manifest destiny in law.

## **The Right to Bear Arms in the States**

Even before the federal Second Amendment was ratified in 1791, many of the state constitutions included a right to bear arms, including Pennsylvania, Massachusetts, North Carolina, Vermont, and Virginia. The Pennsylvania Constitution of 1776 states “That the people have a right to bear arms for the defence of themselves and the state; and as standing armies in the time of peace are dangerous to liberty, they ought not to be kept up; And that the military should be kept under strict subordination, to, and governed by, the civil power” (Declaration of Rights, cl. XIII). Like the federal Second Amendment with its references to militias, we see the direct connection between the early right to bear arms and the distrust of standing armies. We can assume that the framers of the Pennsylvania Constitution feared a federal government that might use soldiers to oppress people. Taking their lessons from English history, they believed that the government should only raise an army when necessary to fight a foreign adversary. In 1790, the phrasing of the right to bear arms in Pennsylvania was shortened to “The right of the citizens to bear arms in defence of themselves and the State shall not be questioned” (Art. 1, § 21, enacted 1790, art. IX, § 21).

The state constitution of North Carolina initially included a clause very similar to that in the Constitution of the State of Pennsylvania. The version in the 1776 state Bill of Rights states: “That the people have a right to bear arms, for the defence of the State; and, as standing armies, in time of peace, are dangerous to liberty, they ought not to be kept up; and that the military should be kept under strict subordination to, and governed by, the civil power” (Bill of Rights, § XVII). However, the wording of this clause has changed over the history of the state. In 1868, the article was changed to be more in

fitting with the Second Amendment of the federal Constitution. Indeed, it can be seen as a more complete version of the federal Second Amendment. It read:

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; and, as standing armies, in time of peace, are dangerous to liberty, they ought not to be kept up, and the military should be kept under strict subordination to, and governed by, the civil power” (Art. I, § 24).

In 1875, this sentence, “Nothing herein contained shall justify the practice of carrying concealed weapons or prevent the Legislature from enacting penal statutes against said practice” was added to the 1868 version. In 1971, the current version was enacted stating:

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; and, as standing armies in time of peace are dangerous to liberty, they shall not be maintained, and the military shall be kept under strict subordination to, and governed by, the civil power. Nothing herein shall justify the practice of carrying concealed weapons or prevent the General Assembly from enacting penal statutes against that practice” (Art. 1, § 30: enacted 1971).

With the 1971 version of the North Carolina right to bear arms, we see the progression of the concerns of the people regarding gun rights and regulations: it begins with a discussion of the importance of state militias, then moves to a discussion of standing armies, and ends with restrictions on carrying concealed weapons.

## Passing the Second Amendment

The Second Amendment to the Constitution of the United States of America was passed by Congress on September 25, 1789 and ratified on December 15, 1791. There are several versions of the 2nd amendment, with slightly different grammar and punctuation. The version passed by Congress, prepared by the scribe William Lambert reads:

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.

However, the version that was ratified by the States and authenticated by then-secretary of state Thomas Jefferson reads:

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.

Early state constitutions, such as the constitutions of Pennsylvania and North Carolina, expressed the concern of the colonists regarding standing armies. However, as George Mason Law Professor Nelson Lund and UCLA law professor Adam Winkler explain, the Revolutionary War had shown that militia forces were not enough for national defense. The attendees of the Constitutional Convention thought that the federal government needed the authority to create and maintain a peace-time army, and to regulate militias (Winkler & Lund, n.d.).

This shift in power from the states to the federal government became a major conflict. Anti-Federalists feared that the proposed Constitution would usurp the states means of defense. For Lund and Winkler, the issue was not whether the federal government has a right to disarm citizens, but rather, “whether an armed populace could

adequately deter federal oppression”. Spitzer notes that the debates of the First Congress in 1789 recording the Second Amendment all pertained to “military/militia/national defence matters”. He notes that there was no debate regarding anything to do with a personal right to bear arms aside from service in a militia (p. 70). But this is not to say that it was not a personal right, it was just not spoken of and therefore it doesn’t help us settle any debate. As Lund and Winkler argue, it was not until “long after the Bill of Rights was adopted” that the debate became one of “whether it protects a private right of individuals to keep and bear arms, or a right that can be exercised only through militia organizations”.

### **Gun Rights and Regulation in The Civil War Era**

By the 1840s, America had become a “militaristic-capitalist powerhouse” (Dunbar-Ortiz, p. 39). The nation’s wealth came from the land appropriated from indigenous peoples, the labour of the enslaved Africans who created wealth from this land, and, increasingly, industry. Dunbar-Ortiz notes that the firearms manufacturing industry in America was “amongst the first successful modern corporations”.

During the civil war, millions of American men, black and white, became accustomed to guns during their military service and technological improvements made guns safer, easier to use, and less expensive (Spitzer, 2015, p. 71). As early as the 1850s, manufacturers such as Samuel Colt sold guns to the American public by “extensive advertising campaigns with romanticized and idealized visions of the American West” (Spitzer, 2013). By the end of the 19<sup>th</sup> century, there came to be concern about the number of guns in America. As Spitzer note, “the glut of handguns in America spawned by Colt and his competitors began to prompt calls for government action to stem the

rising tide of gun violence found mostly in eastern cities rather than in the American western frontier” (para 3). Despite what “cowboy films” might lead us to believe, there was very little violence between settlers in the ‘wild west’. As Spitzer notes, during the “height of lawlessness in the legendary cattle town of Dodge City” there was an average of 1.5 deaths per year. Moreover, “In the most violent year in Tombstone, Arizona, home of the celebrated gunfight at OK Corral, five people were killed” (para 8). Most frontier cities had a system of ‘gun checks’ within city and town limits. Those carrying guns would ‘check’ guns at designated locations and receive a ‘claim’ token to reclaim the weapon when they left. Typical Old West towns had “stricter gun laws than many 21st century American states” according to Spitzer’s research.

### **Militias and de facto Slave Patrols**

Anti-police violence groups including Black Lives Matter have long noted the connection between slave patrols and contemporary American police forces. Yet, the connection between slave patrols and contemporary gun rights activist groups such as the NRA are less broadly discussed. Historians Ned and Constance Sublette write that in Virginia “Guns and slavery were intimately associated with each other, all slave-raiding relied on guns, and all slaveholding relied on armed repression” (p. 133). The legacy of slave patrol militias lasted long after the civil war ended, and slavery was formally outlawed in the South. As Dunbar-Ortiz explains:

The thirteenth Amendment abolished legal chattel slavery, but the surveillance of Black people by patrols continued, as the occupying Union army took no concerted action against the patrols in most places (depending on the army

commander), forcing formerly enslaved Africans to remain and work on plantations. (p. 66)

Various groups became de facto militias following the civil war, most famously the Ku Klux Klan (KKK).

The KKK is only one of the many groups that emerged out of slave patrols. Many Confederate combat veterans, Confederate guerillas, plantation owners, and other interested white men formed what were ostensibly private ‘rifle clubs’, which functioned not just as elite country clubs so that those who had been in power before the civil war could reproduce their power through personal affiliations, but also, as slave patrols. Officially, by 1876, South Carolina alone had at least 240 such clubs (Dunbar-Ortiz, p. 67). These clubs allowed those with training using weapons to “mobilize quickly”. Groups like the KKK, though they went against formal US law, “required Freedmen to have written permission to travel from the plantations where many continued to work... established curfews for gatherings of African Americans as well as limits on the number who could gather... burned homes [and] confiscated the guns of freedmen” (p. 69). In many ways, the KKK and other such de facto slave patrols had more ability to torture, maim, and murder African-Americans than before the civil war: when African-Americans were seen as property. These slave patrols would be responsible for the death or permanent disability of formally enslaved people by their former slavers. After the civil war, African Americans lacked the ‘protection of property’ from their slavers, and also lacked any real protection from slave patrols from the police or federal government. As Dunbar-Ortiz grimly concedes, the private ‘rifle clubs’ had “far



more freedom to torture and murder, since the Black body no longer carried monetary value that the murderer would have to compensate for” (p. 69).

In the late 19<sup>th</sup> century, the US Army continued to kill bison and move indigenous people across the west with Winchester rifles (Dunbar-Ortiz, 2018, p. 120). In 1876, the Supreme Court affirmed the previous century’s stance that “The right to bear arms is not granted by the Constitution”. As the critical historian Dunbar-Ortiz notes, there was “no recorded negative reaction to that decision”. But in the next century, things began to change.

### **20<sup>th</sup> Century Gun Legislation**

Spitzer notes that in the 20<sup>th</sup> century, gun laws were created to fight not just general gun-related crime, but assassinations. Under Franklin D Roosevelt, who had been the target of an unsuccessful assassination attempt that killed Chicago Mayor Anton Cermak, the USA saw its first national gun control measure: The National Firearms act of 1934. This law regulated “gangster-type” weapons such as sawed-off shotguns and machine guns (Spitzer, 2013). Four years later, the Federal Firearm Act established a commercial licencing system for the small arms industry including dealers, manufacturers and importers (para 10).

In the 1939 case of *United States v. Miller* 307 US 174, the Supreme Court sided firmly with the collective rights theory of the Second Amendment. The judges ruled that a sawed-off shotgun could be regulated because it did not have “some reasonable relationship to the preservation or efficiency of a well-regulated militia . . .” (quoted in Dunbar-Ortiz, 2018, p. 120). In their decision, the judges ruled that the Framers intended the Second Amendment to support the military not the individual.

By the end of the 1960s, there was a reformulation of constitutional law which meant that the central purpose of the federal government was not to protect individuals from abuse by state governments, but rather to protect them from violence from other individual Americans (Simon, 2004, p. 344; cited in Dawson, 2019, p. 3). Not everyone was comfortable with this power. The Vietnam War was the first major conflict that America had lost, and it shattered many people's faith in their government.

It wasn't until 1968, with a "push" for gun laws following the Kennedy assassination, that a new federal gun control law was enacted. In that year, both Martin Luther King Jr. and Robert F. Kennedy were assassinated, providing the "final impetus" for the Gun Control Act. As Spitzer notes, this act:

prohibited gun sales to minors; strengthened licensing and recordkeeping requirements for dealers and collectors; extended regulations to destructive devices including land mines, bombs, and hand grenades; increased penalties for gun crimes; and regulated importation of foreign-made firearms.

The bill also forbids the interstate shipment of firearms to individuals, which was how Lee Harvey Oswald had obtained the gun used to kill Kennedy. The bill also included gun registration and licensing; however, President Lyndon Johnson cut this provision (para. 11). Many scholars have noted (ex. Dunbar-Ortiz, 2018; Winkler, n.d.) that it wasn't until the 1970s that anyone – reporters, lawyers, judges, or the public – really paid any attention to interpreting the Second Amendment.

Many of the provisions of this 1968 legislation were rolled back by the Reagan administration. In 1986 the Firearm Owner Protections Act was championed by the National Rifle Association and enacted by Congress. This act:

allowed interstate sale of long guns (rifles and shotguns), reduced recordkeeping for dealers, limited government regulatory powers over dealers and gun shows (in particular, limiting inspections of gun dealers to one a year), and barred firearms registration.

However, the act did bar the civilian possession of new automatic weapons (para. 12).

The mass shootings following the 1986 Firearm Owner Protection Act led to calls for tighter gun control. Though many scholars note that the assassinations of the late 1960s seemed like a prime time to pass gun control legislation (Winkler, 2013), substantive gun control legislations was not be passed until the Clinton Administration (Dunbar-Ortiz, 2018). The Democratic Party first included gun control in their election platform during Bill Clinton's 1992 run. The Republican Party responded stating, "We note that those who seek to disarm citizens in their homes are the same liberals who tried to disarm our nation during the Cold War and are today seeking to cut our national defense below safe levels" (quoted in Dunbar Ortiz, p. 21). However, with the election of Bill Clinton and Democratic Control of the white House and Congress, there was no problem passing the "Brady Bill" requiring background checks. The bill was named after Jim Brady, a Republican white house press secretary who was permanently disabled during an attempted assassination of Ronald Reagan in 1991. Brady's wife, Sarah, also a Republican, had worked to get the bill passed under Republican Administrations. The National Instant Criminal Background Check System (NICBCS) has since blocked nearly two million gun sales (Spitzer, 2015, para 13).

## **Columbia V. Heller**

As Lund and Winkler put it, until the case of *Heller V. District of Columbia*, the Second Amendment was “almost a dead letter” to the judiciary (Winkler, 2013). In this case, the judges ruled that a Washington, D.C. handgun ban was in violation of the US Constitution as it restricted an individual’s right to bear arms. Until the *Heller vs. DC* ruling “no gun law had been declared unconstitutional as a violation of the Second Amendment” (Spitzer, 2015, p. 71) As the critical historian Dunbar-Ortiz (2018) noted, “For the First time, the highest court, the ultimate interpreter of the meaning of the United States Constitution, decided that the Second Amendment means “the individual” when it says “people”. (p. 120)

In their ruling, the majority noted that the 1934 case of the *United States v. Miller* was not in violation of the Second Amendment because of the fact that a sawed-off shotgun would not to be used by a citizen for law-abiding purposes or that similar rulings regarding specific weapons would not be in violation of the law. They further noted that this did not mean rulings could not be made to restrict criminals and the mentally ill from possessing weapons or that guns could be taken into “sensitive” places such as schools or government buildings.

In this 5-4 decision, the court ruled that the Second Amendment protected an individual’s right to bear arms for their own defense, not just the right of a militia. Though Scalia and his supporters thought of themselves as originalists, liberal constitutional historians Spitzer argues that the decision “was actually an exercise in a living constitution approach.” (Spitzer, 2015, p. 71). Critics have argued that Scalia’s

opinion did not come from the First Congress’s debates regarding the amendment but that the opinion instead:

relies on a dissenting opinion expressed at the Pennsylvania State ratifying convention of 1788 and similar lone dissenting opinions from the New Hampshire and Massachusetts conventions, all of which were ignored by those who framed and wrote the Second Amendment.... Worse, Scalia relied on sources that were not even from the founding period: two legal treatises written in the nineteenth century and an early-eighteenth-century British case (Spitzer).

However, for more libertarian legal scholars, the *Heller v. DC* decision is a return to reasonable gun laws. For Nelson Lund (n.d.), it was “During the 20th century” – assumedly in the Reagan era — that “the Supreme Court finally started taking the First Amendment seriously”. To support this argument, Lund again draws on the analogy of the first amendment. He passionately argues:

During the nineteenth century, courts routinely refused to invalidate restrictions on free speech that struck the judges as reasonable. This meant that speech got virtually no judicial protection. Government suppression of speech can usually be thought to serve some reasonable purpose, such as reducing social discord or promoting healthy morals. Similarly, most gun control laws can be viewed as efforts to save lives and prevent crime, which are perfectly reasonable goals. *If that’s enough to justify infringements on individual liberty, neither Constitutional guarantee means much of anything.* (Lund, n.d. emphasis added)

In the 2008 opinion of *DC V. Heller*, Scalia wrote that the Second Amendment refers to “the inherent right to self-defence” . However, he does note that this right “is

not unlimited” and that, historically, “the right was not a right to keep and carry any weapon whatsoever in any manner and for whatever purpose”. He gives the examples of weapons “that are most useful in military service – M-16 rifles and the like” as well as the laws which prohibit the possession of firearms by felons, children and the mentally ill, and laws forbidding guns in places like schools. Scalia also argues that the Second Amendment includes weapons “that were not in existence at the time of the founding” (*District of Columbia v. Heller Opinion of the Court*, 2008), a very peculiar inclusion in the decision given the advancement in weapons technologies since the Bill of Rights.

The dissent to Scalia’s opinion was authored by Justice Paul Stevens (*District of Columbia v. Heller*, 2008) with a collective rights hermeneutic. The dissenters argued that the 2<sup>nd</sup> amendment did not protect the right of individuals, but, only, “the right of the people of each of the several States to maintain a well-regulated militia” (para. 3). Moreover, the dissenters argued that even if the Second Amendment did protect the individual right to bear arms for personal self-defense, this did not mean that it should be interpreted as a right for the individual to own handguns in high-crime urban areas.

Though *Heller* may be a radical decision in the history of the Supreme Court, it was not a radical decision with regards to public opinion. Soon after the *Heller* decision, Gallup released a poll that found that 73 percent of those polled believed in an individualist interpretation of the Second Amendment. As Dunbar-Ortiz notes, this is “a far larger percentage” of the American public than just gun owner or NRA members (2018, p. 121). For Dunbar-Ortiz, this is testament to the idea that the success of *Heller* was not just due to the lobbying effort of the NRA and gun manufacturers. Rather, she states, it is the other way around, “the NRA and gun manufacturers success is due to a

larger ideological hegemony that they did not create, but rather have exploited” (p. 121). This is an incredibly important point which is not understood by contemporary gun control activists, including President Obama. The idea that individual Americans have the right to bear arms has ideological roots deeper and further back than the NRA lobbying and Remington TV ads.

### **Post-Heller America**

Since the Heller decision, the Supreme Court has continued to strengthen this individual rights theory of the Second Amendment. The 2010 case of *McDonald v. City of Chicago* (08-1521) affirmed the individualistic interpretation of the right and applied it to the states. Writing five years after the Heller decision, Spitzer (2015, p. 73) notes that there have been over seven hundred challenges to gun laws, based in the Second Amendment, in state and federal courts. Sixty of these have been appealed to the Supreme Court but all of them have been declined (p. 75). However, as Strasser (2008) notes, even since the case of *Heller v. DC*, lower courts have upheld particular restrictions on gun possession including regulations prohibiting weapons on government property (Bennett, 2003) (*US v Dorosan*, 350 Fed. Appx. 874 (5th Cir. 2009), regulations restricting young people and convicted criminals’ access to weapons ( *US v Rene*, 583 F.3d 8 (1st Cir. 2009) regulations requiring a permit to carry a concealed weapon (*Kachalsky v County of Westchester*, 701 F.3d 81 (2nd Cir. 2012). One exception was the 2012 cases from the Seventh Court of Appeals *Moor v. Madigan* in which it was ruled that the state of Illinois must adopt some sort of concealed-carry law. Until this point it had been the only state to completely forbid concealed-carry (p. 75).

Spitzer (2013), a liberal historian in favour of a collectivist interpretation of the Second Amendment, argues that “the predicate of modern American gun politics are mostly built on quicksand.” For Spitzer, it is possible to have a debate about the contemporary issue of gun rights or gun safety without drawing on the past; however, this is not how the debate is progressing currently. As Spitzer notes

The Heller and McDonald rulings established, as a matter of law, an individual rights interpretation of the Second Amendment. But while judges can change the law, they cannot change history, and the historical record largely contradicts the bases for these two recent rulings.

However, the point of this historical review is not to decide the original intent of the Framers of the Constitution. Rather, the point of this examination of gun laws of the last two and a half centuries has been to give us a broader understanding of the interpretation of the Second Amendment and how it has become a canon of American civil religion. I now turn specifically to a discussion of the Second Amendment as a civil religious text.

### **The Second Amendment as Civil Religious Text**

#### **Why Don't Americans Just Change the Second Amendment?**

Throughout this section, I have hinted at reasons why many Americans have a fundamentalist hermeneutic towards their Constitution, and I have hopefully shown that this fundamentalist hermeneutic runs throughout American society, due, at least in part, to the founding of America by Protestants, and the importance of individualism. Yet, I think it is also necessary to look at the particular reasons why Americans don't just change the Constitution rather than take circuitous routes to make the 18<sup>th</sup> century Bill of



Rights fit today's society. In this section, I discuss the *legal* reasons why Americans do not just change a part of the Constitution which seems outdated.

Before I discuss the process of changing the Constitution in the United States, I would like to address how it is changed in other Constitutional democracies around the world. In most parliamentary democracies, the Constitution can be changed via a popular referendum. In Australia, for example, the proposed law must be passed through both houses, and then can be put to a popular referendum. If a majority of voters, in a majority of the states, agree to the amendment, the Constitution will be changed (Bennett, 2003). In other nations with even newer Constitutions, the process is even easier. In Myanmar, for example, a popular referendum is not required for all changes to the Constitution. Instead, in some cases the Constitution can be amended if 75% of the members of both houses of parliament agree to the amendment (*Constitutional Amendment in Myanmar*, 2020).

Amending the Constitution of the USA is outlined in Article V.

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of

the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.

In essence, this means that there are two possible methods for changing the Constitution. In the first method, two-thirds of both houses of congress and three quarters of the State governments must ratify the change. Given the two-party system, particularly in the Trump era, we can see that this would be an incredibly difficult process. On an issue concerning gun control, at the present time, this is impossible. The second method is that two-thirds of State legislatures can request congress to call a Constitutional Convention. At this convention, three-quarters of the state governments must ratify the change. Again, given the division in America, I cannot imagine this happening if the amendment is concerning gun control.

Since 1789, there have been thirty-three amendments approved by Congress via the first method. Of these, twenty-seven were approved by the states and are now part of the Constitution. We see how difficult the task of amending the US Constitution is when we consider that the even the Equal Rights Amendment, which guarantees equal rights to women under the law, a right guaranteed in all other developed nations (including Switzerland, which only guaranteed women equal rights in 1996), has still not been ratified.

In addition to popular referendums to completely change the Constitution, some nations, including Canada, have what is referred to as a “notwithstanding clause” (*la disposition dérogatoire* in French). Section 33 of the Canadian Charter of Rights and Freedoms, which is part of the Constitution of Canada, allows the national parliament or a provincial legislature to temporarily override portions of the Constitution, without

actually changing the Constitution permanently. Often the clause is invoked for temporary circumstances. For example, during an outbreak of a disease, provincial parliaments may pass mandatory vaccinations for children laws *notwithstanding* the fact that these may violate Constitutional right of parents. In addition, the clause is often used by provinces that believe they have a culture which is different from the rest of Canada. For example, politicians in Alberta – the most socially conservative province in the nation — have attempted to pass laws banning same-sex marriage, notwithstanding that this would violate the Constitutional promise of equality. Most controversially, in Quebec – which is steeped in the French tradition of laicity — politicians have banned public officials from wearing religious garments such as hijabs and turbans, notwithstanding that this ban would violate the Constitutional principle of freedom of expression.

In a nation as politically divided as the United States, we can see that getting an amendment through the house and the senate, and then having it pass by popular referendum would be extremely difficult. However, I think it is clear that a temporary suspension of rights guaranteed in the Constitution in various states, might prove to be popular. For example, New York might enforce mandatory vaccinations. California might decide to temporarily enact handgun bans in urban centers, much like DC had until it was overruled by the Supreme Court. But because the United States does not have constitutional clauses like Canada's notwithstanding clause which allows certain regions to temporarily over-ride the constitution, law makers are forced to perform the rhetorical exercise of persuading lawmakers and the public of their desired interpretation of the Constitution.

## **The Second Amendment as Sacred**

One week after Robert Neely Bellah's death in 2013, *The New Republic* published an article entitled "The Father of America's 'Civil Religion' Has Died" (Kazin, 2013). The article begins not with a discussion of Bellah or his work, but with a discussion of Barack Obama's speech at the prayer vigil in Newtown, Connecticut which had been made the previous December. The author, Kazin calls it "one of the best speeches of his [Obama's] presidency". In the speech, Obama grieved and consoled the nation following the Newtown shootings. Obama held back tears stating "we cannot tolerate this anymore. These tragedies must end." As the author, Michael Kazin of Georgetown University, notes, the President concluded in a typical fashion: asking God to bless America.

We most often think of American civil religious rhetoric as coming from conservatives. The concepts of American exceptionalism and the attempts to claim that America was established as a Christian Nation exemplify the right's use of civil religion. But, as Kazin notes "liberals and leftists" – progressives — have also used the tradition to justify protests against the status quo. He brings up a 1955 speech from Martin Luther King Jr. in which he told an audience of bus-boycotters in Montgomery,

we are not wrong in what we are doing. If we are wrong, the Supreme Court of this nation is wrong. If we are wrong, the Constitution of the United States is wrong. If we are wrong, God Almighty is wrong.

In the last section, I discussed Angrosino's notion that while the conservative, right-wing American civil religious tend to see whatever the USA does as in accord with God's plan, the American civil religious left sees that it is America's responsibility to

work to fulfill God's plan. We see this leftist civil religious view clearly in Obama's attempts to control small arms in America. Kazin notes that Barack Obama stated in his second inaugural address that "while freedom is a gift from God, it must be secured by his people here on Earth". Obama sees humanity, and Americans in particular, as having to actively work to fulfill 'God's plan' on earth.

In an op-ed piece in the Seattle Times titled "More Blood at the Alter of the Gun", the professor of comparative religions James K. Wellman Jr. (2017) notes that, after the Las Vegas shooting, Donald Trump was asked about gun control and he dismissed the question saying, "another day". The president's spokeswoman then added that it was "not the time to talk about gun control". In explanation as to why Trump refused to speak about gun control on a day when many considered it the most important topic of discussion, Wellman writes:

the sacred demands silence... And the sacred, in all religions, always demands a sacrifice... The same is true for our sacred, the gun. Does anybody really know why we don't have better gun control that has been proven to prevent these atrocities? Know no one really knows. Because the gun is sacred. And a small group of priests – the National rifle association – guards and protects this sacred ... our high priests are powerful, and they demand the ultimate sacrifice the blood of our citizens ...it is time we rise up and go into the Temple of the NRA and turn over the tables... (Wellman, 2017, para. 6-13)

Wellman's piece is moving, but it is not the whole story. The gun is a sacred symbol to many in the USA, but the Constitution is sacred to even more Americans. In the wake of the shooting at Stoneman Douglas High School on February 14, 2018,

Wayne Lاپierre, executive vice-president of the National Rifle Association, did not call on the sacred status of the gun. Instead, he called on the ‘genius’ of the civil religious cannon.

The genius of those documents [The Declaration of Independence, The Constitution, and The Bill of Rights]... is that all of our freedoms in this country are for every single citizen. And there is no greater personal, individual freedom than the right to keep and bear arms, the right to protect yourself, and the right to survive. It is not bestowed by man, but granted by God to all Americans as our American birthright (C-SPAN 2018; cited in Whitehead et al., n.d., p. 1)

Lاپierre’s statement invokes a long history of the belief that the founding documents of the USA are divinely inspired, and therefore the right to bear arms is a God-given right. As Whitehead et al note, “Claiming that the U.S. Constitution was inspired by God serves to elevate the gun, and the right to own it, to a sacred status bestowed by a Christian God” (p. 1). Because Christian nationalists see The Bill of Rights as a divinely inspired document, “any attempts to revoke or even restrict this right could be interpreted as an attack on the wisdom and providence of the Christian God” (p. 9). Moreover, Whitehead et al note that there is a complex entanglement between the symbol of the gun and what it means to be a “true American” (p. 2).

For much of American history, “general disarmament was impossible for practical reasons” (p. 125). As religious studies scholar Peter Gardella notes:

The need for guns to hold land taken from Indians [sic], to defend against wild animals on farms, and to intimidate slaves created a cult of the gun. There was no

thought of separation between individual gun ownership and the potential to form a militia – or for that matter, a posse or a lynching party (2014, p. 125).

However, Gardella argues that this all changed with urbanization and the rise of organized crime. As I noted in the previous section, in the 1939 case of *United States v. Miller*, the Supreme Court decided that a law to ban sales of sawed-off shot guns did not violate the Second Amendment as this weapon did not have a likely role in a militia (2014, p. 126).

But soon, the gun itself began to take on meaning beyond its utility in defense against animals and appropriating indigenous lands and slave labour. For Gardella, the gun became sacred in American civil religion because it was associated with the “primary sacred value of personal freedom or liberty” (2014, p. 125). He argues that with regards to American sacred values, the importance of the Second Amendment “can be seen in its position, second only to the cluster of personal freedoms in the First Amendment”. Just as the right to privacy grew gradually from the fourth, fifth and fourteenth amendments, “the right of individuals to own guns grew only gradually from the second” (p. 125). The right to own guns means more to the American psyche than just the right to own the object of the weapon itself rather, the gun came “to stand for the inviolability of liberty and the individual person” (p. 126). Any infringement on the right to own and carry a weapon thus becomes a symbolic assault on individual liberty and, for some, an assault on the God who has given them that liberty.

## Christian Nationalism and The Second Amendment

Last night I heard this politician  
Talking 'bout his brand new mission  
'Liked his plans, but they came undone when he got around with God and guns  
I don't know how he grew up  
But it sure wasn't down at the hunting club  
Cause if it was he'd understand a little bit more about the working man  
God and guns  
Keep us strong  
That's what this country  
Was founded on  
Well we might as well give up and run  
If we let them take our God and guns

“God & Guns” by Lynyrd Skynyrd

As Whitehead, Schnabel, and Perry (2018) argue, “the gun control debate is complicated by deeply held moral and religious schemas that discussions focused solely on rational public safety calculations do not sufficiently address”. While many studies have noted the negative association between self-reported religiosity and support of gun control, Whitehead et al. argue that the literature “has not yet grappled with a distinct religious disposition potentially implicated in the belief that guns are a God-given right to Americans” (p. 2). Empirical research shows that opposition to gun control cannot be explained by religiosity alone, but rather that “entrenched opposition to gun control is



grounded in a particular symbolic system about the role of Christianity in the public sphere” (p. 2). Researchers such as Whitehead et al refer to this particular system as Christian nationalism.

In the previous section, I discussed the view of civil religion as religious nationalism. Though I do not find this definition the most productive, it must be addressed in regard to civil religion in America as religious nationalism, specifically Christian nationalism, has such a high impact on policy, including gun control. American Christian nationalists believe that America was founded as a Christian nation and should continue to be so. Whitehead, Schnabel and Perry (2018) define Christian nationalism as “a religious cultural framework that mandates a symbiotic relationship between Christianity and civil society” (p. 1). Moreover, most American Christian nationalists believe that the Founding Fathers were divinely inspired, making the texts that they wrote, if not divine in themselves, then at least divinely inspired.

In their survey analysis, Whitehead et al (2018) found “Americans who desire that religion, specifically Christianity, be officially promoted in the public sphere are deeply opposed to federal gun control laws” (p. 9). They cite Schnabel and Bock to suggest that the idea of American exceptionalism may help explain Americans’ reactions to mass shootings. While other countries around the world turn to gun control in response to mass shootings, Americans are “Setting themselves apart from comparable countries, Americans are turning to ‘Christian values’ instead of gun control to end mass shootings” (p. 9). Research from Public Religion Research Institute showed that 40% of Evangelicals agree with the statement that “putting more emphasis on God and morality in school and society is the most important thing that could be done to prevent future

mass shootings.” As Merino notes (2018, p. 1), in the wake of high-profile shootings, particularly in schools, “content and memes shared on social media often blame a secularizing society and the decline of traditional values”. This blame placement is echoed by conservative media commentators and politicians. After the Sandy Hook shooting, Mike Huckabee stated, “We ask why there’s violence in our schools but we’ve systematically removed God from our schools” (quoted in Merino, 2018, p.

2). Meanwhile, Bryan Fisher of the American Family Association argued, “We have mass school shootings because we don’t have enough God on our campuses and we don’t have enough guns,” (Fisher 2018; cited in Merino, 2018, p. 2.) At the 2018 NRA annual convention, Texas governor Greg Abbott stated, “The problem is not guns. The problem is hearts without God. It is homes without discipline and communities without values” (Mogensen, 2018). For those that believe that the Constitution is divinely inspired, and that the nation of the USA has a divine mission, the answer to contemporary problems cannot be changing the Constitution. Rather, the answer must be that America has somehow veered from the path of the righteous. It must be solved by returning to the divine texts with a fundamentalist hermeneutic.

The social psychologist Stephen Merino (2018) notes that certain ideological factors make protestants more likely to own guns than those of other religions; including Judaism and Islam as well as other Christians and those who identify as not religious. He draws on Stroope and Tom’s (2017; cited in Merino, p. 3) work, to discuss the link between Evangelical Protestants and gun ownership. Stroope and Tom suggest that the emphasis in Evangelical Protestantism on individual autonomy and self-sufficiency relates to gun ownership and gun policy in at least two ways: they correspond to less

government involvement in individuals lives and they make Evangelicals more prone to “dispositional rather than situation attributions for wrongdoing” (Grasmick and McGill, 1994; cited in Merino, p. 3). As Merino explains, this means that Evangelicals are more likely to blame or credit individuals for outcomes “rather than broader social circumstance or social structural factors” (p. 3). This “anti-structuralism” is characterized by a reluctance to attribute an individual’s actions to greater structures. Here we can easily draw ties between attitudes on gun control and philosophies of technology: at least the technology of the gun. Though these questions were not asked in the surveys, the data seem to reveal that Protestants are more likely to hold the philosophy of technological neutrality, rather than technological determinism with regards to guns. This is to say, Protestants believe that ‘guns don’t kill people, people kill people’. The gun is a neutral tool, it is the character of the person holding the gun which is of importance.

Merino draws on Celinksa (2007; cited in Merino, 2018) to situate gun control and gun ownership in the larger discussion of individualism vs collectivism in American society. Evangelicals, as individualists, “emphasize self-reliance and person achievement and possess a lack of faith in the institutionalized, collective means of security” (Merino, p. 3). Accountable freewill individualism is the Protestant Christian ideology which sees individuals as accountable – both to other people and to God — for their own actions (Merino, p. 3). Moreover, Merino notes Evangelical Christians strong belief in traditional gender roles. Evangelicals might see that it is the role of the man to protect his family with a gun without relying on anyone else and particularly not government interference. Finally, Merino cites Stroope and Tom (2003) to note that a “wariness

toward the information provided by secular educational institutions and scientific research could incline Evangelical Protestants to discount expert recommendations regarding gun control and safety procedures” (p. 3). Though Evangelicals may want to do what is best for the society as a whole, their lack of trust in groups which advocate for evidence-based gun laws mean that they do not believe the data showing that gun control reduces violence. Evangelicals, as perhaps the most individualistic religious sect in the world, prefer individual solutions to crime: this includes protecting oneself with a gun rather than trusting government institutions to protect you.

Perhaps religious nationalism itself, rather than specific sectarian positions on freewill can help us understand Evangelicals’ views on gun control. In their study of attitudes towards gun control, religious scholars Landon Schnabel and Samuel L. Perry (cited in Merino, 2018, p. 9) found that opposition to stricter gun control is more closely linked to Christian nationalism, than any other factor with the exception of political orientation (p. 1). Whitehead et al go as far as to argue that, though it has long been assumed that Evangelicalism was associated with opposition to gun control (Winkler & Lund, n.d.) it may be that these “evangelical effects” were driven largely by higher average levels of Christian nationalism among Evangelicals. In fact, it is possible that, at least on certain social issues such as gun control, Evangelicals who are not Christian nationalists could be more different from Christian nationalist Evangelicals than from people in other religious traditions. This is to say that, if survey data were analyzed with race in mind, we might find that African Americans Evangelicals may be both more in favour of gun control, and more opposed to Christian nationalism, than their white co-sectarians. Or, perhaps we would find that it is *rural* Evangelicals who *fully embrace*

*Christian nationalism* that are most opposed to gun control. The evidence suggests that Protestant theological factors cannot be the only explanation to Evangelical opposition to gun control. Instead, we should pay more attention to their identities as religious nationalists rather than Protestant Evangelicals.

Dawson draws links between gun ownership and what I call “sacred masculinity”. Gun owners often see themselves as valuable in that they can defend their families and communities. Obert (2018, p. 148; cited in Dawson, 2019, p. 4) argued that this is related to older notions of civic obligation, particularly that of slave patrols and militia memberships which “linked private effort [with] public order”. Scholars such as Mencken and Froese (2017) note that gun ownership provides an identity which makes them feel valuable and needed. They argue that gun ownership offers a sense of “moral purpose to white males who have lost, or fear losing, their economic footing” (p. 22). In their analysis of surveys of American beliefs around gun control, they found that “white respondents who have undergone or fear economic distress tend to derive self-esteem and moral rectitude from their weapons” (p. 4).

Though scholars such as Gorski (2019) do not stress the masculinity narrative, they do note the importance of the ‘conquest narrative’. The conquest narrative gives the individual, usually the white male, a sense that they are a ‘true American’ because they are able to defend their country either from the historical ‘other’ of other nations, or the contemporary narrative of ‘bad’ (especially black) Americans, or increasingly, from the other of illegal immigrants and Muslims.

## Conclusion

I began this section with a history of Gun Rights and Gun Control in the USA, noting that the English Bill of Rights, which gave Protestant militias the right to bear arms, was the precursor to the Second Amendment. From this, I engaged in an examination of the wording and peculiar grammar of the Second Amendment and the originalist vs. living constitutionalist hermeneutic traditions. Then, I introduced my concept of the fundamentalist hermeneutic. I ended this section with a discussion of the shift in the American Supreme Court's decisions surrounding gun rights, from a collectivist interpretation to an individualist interpretation.

In the second section, I discussed the Second Amendment as a civil religious text. I discussed the right to bear arms as a “god given right”, and Christian nationalism. I stressed the relationship between Evangelical Christianity and opposition to gun control and stressed the importance of individualism to both American Evangelical Christianity, and to gun rights. Yet, as Merino notes, it is not only Evangelicals who possess the “cultural tool kit” of individualism. He notes that though these are “uniquely strong elements of evangelical Protestants’ worldview” (p. 11) these are “widely held schema among [all] Americans” (p. 11). For this reason, we must look elsewhere to understand why so many Protestant Americans hold so dearly to the individual interpretation of the Second Amendment. For this reason, my next chapter is a discussion of the American Covenant.

## CHAPTER 4

### THE AMERICAN COVENANT

Covenants are essential to Jewish thought and the monotheistic religions that followed it. The Torah is based on the concept that Yahweh is the protective but “jealous god” (Exodus 20:2-6) who has made a covenant with the Jewish people: if they are loyal to Yahweh alone, then He will bless them. Since Biblical times the notion of covenant has always been connected to notion of ‘nation’. The Mosaic covenant created the ‘nation’ of Israel, giving land and security to the Jewish people based on obedience. The American Covenant promises to make the USA a ‘shining city on a hill’ for all to admire should the people of the nation obey the ethical stipulations of the founding documents.

In Christian hermeneutics, the covenant is the central interpretive framework for the entire Bible. In addition to the covenant God made with his people, Christians make a covenant with each other “to act together in harmony with the precepts of the gospel (“Covenant,” 2020). The term ‘New Testament’ itself is derived from the Greek term New Covenant. As the concept of the covenant is so central to Christian thought, it is not surprising that it is reflected in the political structure of the Judeo-Christian world.

In this chapter, I explore the history of the concept of the covenant with the hopes of illuminating the influence of the concept of the covenant, and, particularly, covenant theology, on American political documents and practices. I discuss Puritan covenant theology and settler-colonist covenants such as the Mayflower Compact which formed the beginnings of the law in what is now the United States of America. I then discuss the US Constitution as covenant and the connection to the American fundamentalist hermeneutic. I argue that the American hermeneutic fundamentalism is derived from

Puritan covenant theology. I pay particular attention to the problem of reconciling the belief in Natural Law with government by the people: if the Constitution is a documentation of Natural Law that is always-already Truth, then how can it be amended? What are the limits of popular sovereignty within a Lockean Framework?

As David Cayley (2012) explains in “The Myth of the Secular”, secular societies “continually deploy a repertoire of themes and images” from religious sources. Examining the similarities and differences between covenantal theology and secular political practices facilitate a greater understanding of the power these narratives hold over all of us. If we want to understand the political systems in majority Jewish, Christian, and Muslim countries, we must understand covenant theology.

### **Covenantal Structure**

The Old Testament scholar and biblical archeologist J.A. Thompson writes:

The suzerain-vassal concept was deeply impressed on the social and political thinking of the ancient Near East from at least as early as the third millennium BC. To some extent it was an extension of a fundamental concept of human society in the Near East, namely that covenants of some kind were essential to the peaceful continuance and co-existence of the many and varied social groups which inhabited these lands. (1964, p. 1).

A suzerainty covenant is a documentation of the agreed upon relationship between a lord and vassal on an individual level or on a national level. In contemporary geo-political terms, a suzerainty covenant is similar to the legal agreement between a larger nation and a smaller nation such as the protectorate relationship between the United States of America and Puerto Rico. In biblical terms, the Israelites had covenantal



vassal-suzerain relationship with the Hittites, the Egyptians, and the Assyrians. It is therefore not surprising that the covenants in the Bible follow a similar framework to ancient near-eastern suzerain covenants: the Israelites modeled their relationship with their god after their relationship with their suzerains.

I see examining political documents such as the U.S. Constitution in terms of the structure of ancient near-eastern covenants can lead to better understanding of the meaning of these documents. Examining American covenants — from the earliest compacts of the Puritans to the US Constitution to present-day political speeches — in light of this structure will help understand how and why they hold such power over the American populace.

I will now lay out the typical framework of such covenants in the ancient Middle East and an example of these covenants found in the biblical narrative of the Mosaic Covenant (Kline, 1960, 1997). I find this a useful analytical tool to examining the nature of all covenants in the Judeo-Christian world, both ancient and contemporary, religious and secular, including the American covenants from the Mayflower compact to the federal Constitution.

***Kline's (1960, 1997) Structure of Ancient Near Eastern Suzerainty Covenants***

1. Preamble: identifies the parties to the covenant; often identifies the great king (suzerain) and vassal kings which he had conquered and which he is letting exist under his control according to the obligations of the covenant; stresses the greatness of the suzerain
2. Historical Prologue: recounts the relationship of the suzerain and the vassal to date; details how they came together to make the covenant

3. Ethical Stipulations: stresses exclusive loyalty and love; enumerates the specific obligations to maintaining the relationship
4. Witnesses: a list of the gods witnessing the covenant
5. Sanctions: a list of blessing if the covenant is followed, and curses if it is broken
6. Documentation, Administration, and Succession Arrangements: a statement that each party is clear on the guidelines (often that both the suzerain and vassal have a written copy of the covenant); a guide to the continuing the relationship for future generations

***Example of Kline's (1960, 1997) structure from the Biblical narrative as found in the books of Exodus, Leviticus, Numbers, and Deuteronomy***

1. Preamble: "I am Yahweh, your God who brought you out of Egypt, out of slavery, that is who I am and you are my people" (Exodus 20:2)
2. Historical Prologue: the first half of the book of exodus is the historical prologue (often referred to as the "Kingdom Prologue" (Mounce, n.d.); details how the Jews started as a group of seventy people and, with God's help, became thousands of people gathered in the wilderness at Mt. Sinai to make a covenant
3. Ethical Stipulations: the first of the ten commandments stresses exclusive loyalty and love ("You shall have no other Gods before me" (Exodus 20:3); the other nine commandments are specific requirements
4. Witnesses: not needed as Judaism is monotheistic: Yahweh does not need other gods as witnesses
5. Sanctions: – list of curses and blessings in Deuteronomy 27:1-28:68

6. Documentation, Administration and Succession Arrangements: statement that copies of the document are to be placed at religious sanctuaries (Deut. 31:26) with periodic public reading of the document (Deuteronomy 31:9- 13)

As you read the next sections in this chapter, I ask you keep these examples of the ancient near-Eastern and Judeo-Christian concepts of the covenant in mind. However, there is one factor which we have not discussed which is key to American covenants: consent. The definition of covenant given in the American Encyclopedia of Federalism is very similar to the Judeo-Christian definition, but it adds this notion of consent: “A covenant is a morally informed, perpetual, consent-based agreement that depends primarily on the efforts of the covenanting parties themselves for monitoring and enforcement” (Allen, 2006). The conquered vassal nations which took part in suzerainty covenants had little choice but to agree to the terms or to surrender entirely. Similarly, even the marriage covenant was most often not entered into voluntarily, particularly by the bride. This is not the case in contemporary covenants. Whereas a law is forced upon the people from above, in contemporary parlance a covenant is entered into freely by all parties. Although this may not have been an important factor in ancient Jewish life, it was a key element of the early Americans understanding of covenant. These settler-colonists were leaving England voluntarily to create community *freely*.

### **“A City Upon a Hill”: The First Covenant of the USA**

The Puritans understood themselves to be new Israelites. They were founding, at once, a new England and a new Jerusalem. Feeling they were persecuted like the Jews in Egypt; they went forth and found a new land. In the minds of John Winthrop and his companions, they were crossing the Red Sea.

We can trace the idea that settler-colonists were called by God to populate America as far back as Winthrop's sermon "Christian Charity, A Model Hereof" delivered onboard the *Arabella in 1620*. In its most famous passage, Winthrop makes clear the relationship between Puritan covenant theology and the journey of the pilgrims: "Thus stands the cause between God and us, we are centered into a covenant with him for this work... Now if the Lord shall please to hear us, and bring us in peace to the place we desire, then hath he ratified this covenant and sealed our commission" (Winthrop, 1630).

As the Pilgrims sailed to America, they saw themselves as vassals entering into a covenant with their suzerain: their God. If God delivered them safely, thus keeping up His covenantal commitments, the Pilgrims would keep up theirs. Winthrop continues, however, that if the pilgrims failed to obey the terms of the covenant, God would no longer bless them.

[If we, the Pilgrims] shall fail to embrace this present world and prosecute our carnal intentions, seeking great things for ourselves and our posterity, the Lord will surely break out in wrath against us [and] be revenged of such a perjured people and make us know the price of the breach of such a covenant (Winthrop, 1630).

If they were to reach their destination, it would be a sign that they were 'elected' but, it would also be a sign that God would enforce the terms of the covenant into the future. And should they fail to live up to the obligations stated in the covenant, then they would face God's wrath.

God's commitments were clear, He was to guarantee the pilgrims safe passage and land to call their own, just as Yahweh had given the Israelites if the pilgrims fulfilled

their covenantal commitments. So, what were the pilgrims' commitments? The pilgrims were to fulfill their Christian commitments to God, but there was more: this covenant was not just made with God, it was also a covenant that the pilgrims made with each other. This aspect of the covenant can be summarized in one word: charity – which Winthrop stressed in his title, “Christian Charity, A Model Hereof”.

We must knit together in this work as one man, we must entertain each other in brotherly affection, we must be willing to abridge ourselves of our superfluities, for the supply of others' necessities... make one another's conditions our own, rejoice together, mourn together, labor, and suffer together, always having before our eyes our commission and community in the work, our community as members of the same body (Winthrop, 1630).

Though the Puritans wouldn't have kind words for a secular feminist like me who opposes the settler-colonist state, *Winthrop's words* give me goosebumps. Has a greater description of community ever been written? For Winthrop, the terms of the American covenant were clear: individuals must give up their superfluous wants to provide for others' needs. These Puritan colonists were committing to live in charity not as individuals but as one body. And if the terms of the covenant were kept, the Puritans and their fellow voyagers across the sea would be “as a city upon a hill [and] eyes of all people [would be] upon them” (Winthrop, 1630). Winthrop saw the ‘pilgrims’ as New Israelites not just because they were settling a new land, but because they were ‘god’s chosen people chosen to participate in the covenant of charity.

The term ‘chosen people’ is often misunderstood by goyim. When Jews refer to themselves as ‘chosen people,’ it does not mean that they think of themselves as superior;

rather, they were chosen by the god YHWH to enter into a specific covenant. In the Torah, Jews were the nation chosen to receive blessings *and wrath* depending on whether they upheld their commitments outlined in the covenant. So too with the Puritans. The Puritans saw themselves as chosen “not for special blessings but for special judgement” (Gorski, 2017, p. 38). In the American civil religious tradition, Americans, too, are chosen to obey a covenant: from a model of charity and faithfulness to human rights to “The Cops of the World”, as Phil Ochs would say. Winthrop promised that if those early Puritan colonists could sacrifice their own desires for the good of the community, then they would become — as Ronald Reagan stated in 1989 alluding to Winthrop’s sermon — “a shining city on a hill”: a model for all the world to admire.

Though not as eloquent as Winthrop’s sermon, perhaps the most important covenant the Puritan colonists made was the Mayflower Compact: the first ‘legal’ document of what would become the USA. It was signed aboard the Mayflower, on November 11, 1620, just before the ship landed at Plymouth, Massachusetts, it became the ruling document of the Plymouth colony. The document itself grew out of a political storm on board, caused by rough weather. The Mayflower was destined for the Hudson River, however, due to rough seas, it was forced towards Cape Cod. This meant that the passengers were no longer in the jurisdiction of the Virginia Company Charter which had been granted to them in England (*Mayflower Compact*, n.d.). This caused a conflict between the English separatists (whom we now refer to as the Pilgrims) and the rest of

the travellers. To resolve the conflict before landing on Plymouth Rock, the Pilgrims William Bradford and William Brewster drew up the *Mayflower Compact*<sup>6</sup>.

The Compact follows the structure of Ancient Near Eastern Suzerainty Covenants discussed earlier in this chapter. It begins with part 1 of Kline's structure: the naming of God and the King, stressing their greatness.

In the name of God, Amen.

It then discusses the nature of the relationship with God and the King, as well as the signers' relationship to each other.

We whose names are underwritten, the loyal subjects of our dread sovereign lord King James, by the grace of God, of Great Britain, France, and Ireland King, Defender of the Faith, etc. having undertaken, for the glory of God, and advancement of the Christian faith, and honor of our king and country, a voyage to plant the first colony in the northern parts of Virginia,

It then lists the obligations,

do by these presents solemnly and mutually in the presence of God and one of another, covenant, and combine ourselves together into a civil body politic, for our better ordering and preservation, and furtherance of the ends aforesaid; and by virtue hereof to enact, constitute, and frame such just and equal laws, ordinances, acts, constitutions, offices from time to time, as shall be thought most meet and

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<sup>6</sup> The original compact was lost, but the text of the document was recounted in a 1622 account of the Plymouth settlement written by William Bradford (one of the original writers) survives.

convenient for the general good of the colony: unto which we promise all due submission and obedience

and ends with listing the witnesses:

In witness whereof we have hereunder subscribed our names; Cape Cod, the 11th of November, in the year of the reign of our sovereign lord King James, of England, France and Ireland eighteenth and of Scotland fifty-fourth, Anno Domini 1620. (Winthrop, 1630)

It does not go on to part 5 and 6, the final parts of the covenant structure discussed above — the punishments for violation of the covenant and the agreements for succession — but we know that these were worked out upon arrival.

The covenant did not discuss the rights to the land that the colonist settled, but rather, was merely an agreement between the settling parties as to how to behave. Yet, the Mayflower Compact remained the ‘law of the land’ until the colony was absorbed into the Massachusetts Bay Colony in 1691 (*Mayflower Compact*, n.d.). Although it has been noted that, in practice, much of the power in the Plymouth Colony remained in the hands of a few of the elder male founders, the compact is generally agreed to be “an important step in the evolution of democratic government in America” (para. 4).

Thus, the first governing document of the settler-colonists in what is now The United States of America was not a constitution, but a covenant: modeled on the ancient covenants of the Near East. This document was “an adaptation of a Puritan church covenant to a civil situation” (*Mayflower Compact*, n.d., para. 4). The Compact was signed by forty-one of the adult male passengers and bound the disparate groups aboard the Mayflower into a body politic (*Mayflower Compact*, n.d.) It was a promise between



those who have travelled a rough voyage together to abide by any laws which would later be established “for the good of the colony”. And, like the Abrahamic Covenant that founded the Judeo-Christian Faith, we may argue about the Mayflower Compact’s relevance, but it cannot be changed; covenants are eternal. The fact that these texts are — both in their etymology and in practice — covenants is the reason for American Constitutional hermeneutic fundamentalism.

Phillip Gorski (2017) writes that “the Puritan clergy cast themselves as the Latter Prophets, charged with calling the people back to the covenant when they strayed too far from their founding values. Puritan political leaders viewed themselves as latter-day versions of the Biblical “judges” (p. 38). We must keep these ‘founding fathers’ in mind when we hear the speeches of the likes of Heston and Obama: advocates of both gun rights and gun control see themselves and their leader as judges calling Americans back to the covenant when they believe that Americans have strayed too far.

The Puritans entered into a covenant with their God and with each other, to live as one political body, to put aside their own wants in order to fulfill their neighbours’ needs, to toil together and to rejoice in each other, to live in peace with the other settlers and the natives of America. And if they lived up to the terms of this covenant then their god would reward them by making them “a shining city on a hill” (Reagan, 1980) — as Ronald Reagan would later say in his farewell address –for all the world to admire.

### **Puritan Covenant Theology**

As the American legal historian James McClelland (2000) writes, the *Mayflower Compact* “marks the introduction into the American colonies of a compact theory of government which would later serve as the basis for both popularly-based State

Constitutions and the United States Constitution....” *The Mayflower Compact* set the scene for all American government up to and including the present day. As Dunbar-Ortiz writes, the original settlers, who set the historical and ideological tone for the coming centuries up to the present, were: “English Pilgrims, the Scots-Irish, and French Huguenots, Calvinists all, but also German Moravians and English Quakers, who took the land they believed had been bequeathed to them in the sacred covenant that predated the creation of the United states” (p. 116).

These settlers saw themselves as the rightful owners of the land. As Dunbar-Ortiz notes (2018), in place names like Bethlehem, Bethesda, and Mount Carmel we hear the echo of the settlers’ belief that they were the chosen people of the covenant who were sent “into the wilderness to build a new Israel” (p. 117). We cannot understand American history -- from the monument human achievement of representative democracy and human rights, to the horror of indigenous genocide and slavery — without understanding Puritan covenant theology.

While the writers of the Constitution itself were “English patricians, slavers, large agribusiness operators, and otherwise successful businessmen” (Dunbar-Ortiz, 2018 p. 188), the people themselves were farmers and tradespeople from protestant north-western Europe. As discussed in the chapter on the history of the Second Amendment, these protestants were the “yeoman farmers” that Thomas Jefferson romanticized (Dunbar p. 188) for whom the English Bill of Rights guaranteed the right to bear arms and form militias to protect their way of life. They came to America not to make money speculating on appropriated indigenous land as George Washington did, but to merely to worship their god in the promised land and to obey the terms of the covenant.

Though it can be said that the notion of the covenant is central to all Judeo-Christian religion, it is particularly important in Puritan theology. In 1831, the French aristocrat Alexis de Tocqueville showed his lack of understanding of this Protestant stress on the covenant in his profound confusion over the power of the American judiciary. Just as foreigners today are shocked that more is not done to control gun violence in America, de Tocqueville was amazed that American judges did not have to apply laws if they considered them unconstitutional (Hunter, 2014, 2): the Catholic Frenchman could not understand the fundamentalist hermeneutic which arose from the faithful adherence to the founding covenant. France has had dozens of changes of referendums on its Constitution resulting in hundreds of changes, starting with the 1793 referendum, up until the 2014 Alsace single territorial collectivity referendum.

Sometimes referred to as federal theology,<sup>7</sup> covenant theology is rooted in Calvinism and was developed among “the Dutch dissenting Protestants, particularly the Anabaptists, the English Dissenters, especially the Puritans, and Scottish Presbyterians” (Wardle, 1987). These groups made up approximately 80% of the European inhabitants of 17<sup>th</sup> century New England (McLaughlin, 1932, p. 20). The Mormon legal scholar and historian Lynn Wardle points out that that covenant theology came to America not just with the Puritans, but with “virtually all the churches and settlements” in the 17<sup>th</sup> century American colonies.

Puritan covenant theology is based on the idea of the fundamental depravity of humanity and its salvation in Christ. For the Puritans and most other Christian denominations, both Protestant and Catholic, humankind committed *the* original sin by

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<sup>7</sup> From the Latin *feodus* meaning covenant.

breaking the covenant with God in the garden of Eden. The death of Christ is the ‘re-covenanting’ that allows some humans to be saved. Wardle (1989) succinctly explains Christian covenant theology in two sentences:

God had made a *covenant of works* with Adam and Eve, who breached that covenant. Then, in his mercy, God made a *covenant of grace* with the descendants of Adam and Eve by which Christ, having *voluntarily covenanted* with the Father to be the Mediator, paid the penalty for the broken covenant...

Thus, unlike Jewish covenant theology in which the Hebrews must follow the commandments in order to be granted YHWH’s blessings, in Christian covenant theology, salvation is not something one can work towards as it was in under the covenant of works in the garden of Eden; rather, salvation is the fulfillment of the Covenant of Grace. The Puritans believed that Eve broke the covenant of works and so all humans are now fundamentally depraved and none deserve salvation. However, because of the sacrifice of Jesus, God established a covenant of Grace to save some – not all— of humankind. Who is saved and who is damned is not decided by the life they live; rather, one is either pre-destined to be one of the ‘elect’ who is saved by the covenant, or one of the damned by the original sin? In Wardle’s summary of Puritan covenant theology, he is careful to note that Christ “voluntarily covenanted” with God the father to pay the penalty for Eve’s breach of the covenant. God did not have to save anyone. It is only through Christ’s sacrifice that any are saved. This is important because, as I noted in the previous section, before this time in Judeo-Christian history, there had not been such a stress on consent in covenantal theology.

As there was no longer a covenant of works, it didn't matter whether your acts were holy or not. This led to considerable anxiety as to how to know if a person, including oneself, was saved or not. Eventually, material wealth came to be seen as a manifestation of status as one of the 'elect' –predestined to be saved<sup>8</sup>. As Dunbar-Ortiz (2018) notes, “conversely, bad fortune, not to speak of dark skin, were taken as evidence of damnation” (p. 113). We can see how this was an attractive doctrine to these groups of colonists “for one could easily define the natives as immutably profane, and damned, and oneself as predestined for virtue”. (Akenson; quoted in Dunbar-Ortiz, p. 113). The concept of predestination provided an explanation for why some became ill while others thrived, why some races were enslaved while others prospered, and an excuse as to why some people's land could be taken, and labour exploited.

For the Puritans in the American colonies, the concept of the covenant was not limited just to religious doctrines, rather, it was their central way of understanding every aspect of their lives, from marriage to government. The 17<sup>th</sup> century Scottish Presbyterian Reverend Samuel Rutherford was influential in the application of the theological concept of the covenant into the political sphere. He wrote that although “rulers derive authority from God..., God gives this authority to rulers through the people” (quoted in Eidsmoe, 1995, p. 24). In the Americas, as in the rest of the world, political foundations followed religious ideology. As covenant theology was evident in almost every sect of Protestantism in the American colonies, it is not surprising that it became the foundation of the political system in the colonies. Wardle (1989) writes: “It was inevitable that the covenant theologians who wrote about church government and

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<sup>8</sup> I will not go into this process here, but, of course, refer the reader to the definitive explanation presented in Weber's *The Protestant Ethic and the Spirit of Capitalism* (Weber, 1958))

sacred history would also write about the origins and limitations of civil government and would apply the same principles”. (p. 13-14). As they thought that human history itself was a history of covenants with God, it is not surprising that they thought their churches and eventually territorial governments should be organized by covenant.

The Puritans, of course, take their name from their desire to purify the Christian church of Catholic rituals which were not in the Bible itself. This belief came out of their Sola Scriptura hermeneutic. The Sola Scriptura – by scripture alone – hermeneutic was part of the Five Solae of the Protestant Reformation. The Sola Scriptura hermeneutic denies that any authority, whether ecumenical creed or pope, has authority over the Bible. All subordinate authority comes the authority of the Bible and is therefore subject to reform only from the interpretation of the Bible itself. While Catholics see Scripture as equal to tradition, the majority of Protestant churches in The USA cling to the Sola Scriptura hermeneutic. This Sola Scriptura hermeneutic is, of course, the basis of American fundamentalist Christianity and bleeds over into the legal realm with the fundamentalist approach to legal hermeneutics.

**The Second Covenant: *The New Testament of the Declaration of Independence, The Constitution, and the Bill of Rights***

[M]ost nations have had multiple founders, some mythical, some historical, and most somewhere in between. Israel had Abraham, Moses, and David... England had Albion, the Trojans, and King Arthur. The United States is no exception to the rule. It was founded at least twice, once by the New England Puritans, and then again by the American revolutionaries... (Gorski, 2017, p. 37)

In the Torah, the idea of the covenant is entwined with the idea of nation. The nation of Israel was spoken into being with the Abrahamic covenant of circumcision: if Jewish men are circumcised then the fruit of their loins will be blessed, and the promised land would be given to them. With the Mosaic covenant on Mount Sinai, the federal nation of Israel was born. The nation of America was spoken into being with the Puritan covenant of charity: if the settlers were to treat each other with charity, then the land of North America would be given to them. The federal nation of The United States of America was founded with the covenant of *The Declaration of Independence*, *The Constitution*, and *The Bill of Rights*.

### **The Declaration of the King George's Broken Covenant**

In colonial New England, it was the clergy that popularized what has been referred to as “the fundamental principle of American Constitutional law” (Baldwin, 2017, p. 2): the notion that the government itself, and not just the citizens, are bound by the covenant. While the gods of the Greeks and Romans were capricious and obeyed no rules, the God of the Puritans was different: He acted in a predictable manner. Hercules or Aphrodite might curse a human out of jealousy or bless them on a whim. This is not the God of the Puritans. For the Puritans, God Himself must obey the conditions of the covenant.

The universe the Puritan God rules is a “constitutional one” and this constitution is “binding and immutable” (Baldwin, 2017, p. 16). When a secular covenant is set-up, the same rules apply: all must obey the covenant, even the government itself. If the community or the government does not abide by the covenant, the whole nation will be damned.

For the Puritans, if a government exceeds its bounds, it does not have “the sanction of God” (Baldwin; cited in Wardle, 1987) and not only is the government damned, the entire nation is damned. We are beginning to see why so many, then and now, so passionately fight to uphold the Constitution. It is more than just ‘the right thing to do’, it is a duty. Like Muslims who must fast for Ramadan, and Jews who won’t even turn on a light on the Sabbath, the Puritans and their ideological descendants see the fight to uphold the Constitution as a religious obligation.

The Puritans modelled their earthly lives after the kingdom of God. God’s laws existed forever, so, the laws of the nation must as well. Wardle (1989) notes that a pastor in colonial Massachusetts argued that the state must come up with a constitution so that it can be built “upon a permanent foundation that no length of time can undermine” (p. 17). We are now beginning to understand why, unlike many nations that have constitutional referendums, Americans are extremely hesitant to amend their Constitution. The Constitution is not a contract with an expiry date, it is a sacred covenant that is immutable and everlasting.

With this belief in their religious *Weltanschauung*, it is easy to see why many – particularly Evangelical Christians — Americans take the Constitution so seriously: the Constitution is the covenant not just between the people and their rulers, it is between the people and their god. If either the people or their rulers break the covenant, then they will be punished by God. Not only must the people themselves not break the covenant, they must fight to ensure that their rulers do not break the covenant or they all will suffer God’s wrath.



We see this now in many Americans fights to oppose orders such as smoking bans, environmental regulations, or mandatory mask laws. They see this as the government overstepping its bounds. For some, anything that is not in the original covenant – The Declaration of Independence, the Constitution, and the Bill of Rights — is government over-reach. Though these people may or may not be Protestants themselves, the fervor with which they oppose mask laws, or gun control legislation, shows that, whether consciously or unconsciously, they think that the nation will be damned if government power is not limited. For these ideological descendants of the Puritans, the Second Amendment states that they have the individual right to bear arms; therefore, restricting gun rights is breaking the covenant. For the crime of breaking the covenant, the punishment is not just damnation of the individual politician who allows the covenant to be broken, but damnation of the entire nation.

As Wardle writes, “Both religious and secular writers placed special emphasis on the broken covenant as a justification for community resistance to British laws” (1989, p. 21). For a century before the American revolution, the clergy of the colonies had been teaching their churches that it was not just their right, but their duty, to rise up against sovereigns who do not obey the covenants. Both secular and religious writers in pre-revolutionary New England claimed that King George had “unkinged” himself by breaking the social contract (Rossiter; cited in Wardle, p. 21). In *The Declaration and Resolves of the First Continental Congress* (October 4, 1774), the colonial delegates argued that the King had gone beyond the limits of his authority by levying an internal tax on the colonies. Both this document and *The Resolutions of the Stamp Act Congress* of 1765 reference the Magna Carta, calling it the “British Constitution” and

claiming that it applied to them because of their ancestry (Titus et al., 1987). This highlights the colonists' belief that a covenant does not just apply to those who make it, but to the generations that follow. Even at this early point in American history we see the beginnings of the American hermeneutic fundamentalism in arguing that the covenant of the Constitution cannot be changed, only obeyed or disobeyed.

On July 4<sup>th</sup>, 1776, *the Declaration of Independence* was ratified by the Second Continental Congress. This declaration followed the covenantal structure of previous compacts and constitutions within the colonies (Lutz, 1998, p. 114). In Kline's structure of ancient near-Eastern suzerainty covenants, the first section is the preamble which names the parties involved in the covenant and stresses the suzerain's greatness. In the Mayflower compact, I noted that this section stresses greatness of both the Christian God and the English King. The Constitutional framers took a deist twist on this preamble: the first paragraph of *The Declaration of Independence* calls upon the powers of the "Laws of Nature and of Nature's God". In the second paragraph, *The Declaration* stresses the greatness, not of king or God — not even of "Nature's God"— but of "Governments... deriving their just powers from the consent of the governed" (Jefferson et al, 1776).

After this, *The Declaration of Independence* briefly mentions what generally is stated in section five of the suzerainty covenants: the sanctions. This is the list of blessings if the covenant is followed and curses if it is broken. It is easy to understand why the framers decided to 'skip' to this section in only the second paragraph of the declaration: because the purpose of the document is to state that the previous covenant has been broken.

...whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to affect their Safety and Happiness. (para. 2)

The framers continue the second paragraph with this appeal to the covenantal principle of limited authority: the principle which will be key to the founding of America, and to its current controversies from lack of nationalized health care, to anti-mask and anti-vaccine activists, to the lack of gun control and zealous gun rights activist.

But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, *it is their duty*, to throw off such Government, and to provide new Guards for their future security.

For the framers, the principle of limited authority is not just the justification for the *Declaration of Independence*, it is a duty to which all men are bound.

After stating the general covenantal principle of limited authority and stating that all men have a right to it and a duty to uphold it, the declaration gets more specific to the circumstances which necessitated its writing. The second section of the suzerainty covenant structure is the historical prologue that recounts the relationship of the vassal and suzerainty. *The Declaration of Independence* inverts this structure: instead of the suzerain declaring the good he has done for the vassal, the vassals – i.e. the signers of *The Declaration of Independence* – declare, “The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of absolute Tyranny over these States”. *The Declaration* then lists general

complaints against the King (i.e. “He has refused his Assent to Laws, the most wholesome and necessary for the public good”). It then continues with more specific complaints against the suzerain including how King George has deprived them of material good and has violated their legal rights.

For imposing Taxes on us without our Consent:

For depriving us in many cases, of the benefit of Trial by Jury...

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

The third section of the ancient suzerainty covenants structure stresses the ethical stipulations necessary to maintaining the covenant. Again, the colonists invert this. Instead of listing the ethical stipulations to maintaining a relationship with the King, the colonists recount how they had complained to the King that he was not living up to the ethical stipulations of the covenant of citizenship, and how these complaints were ignored. They state “In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury...”

Up until this point, the colonists have only generally stated that men should rebel against a government that oversteps its authority, not specifically which men these are, and which government is being referred to. But after enumerating the complaints against the king, the colonists finally, almost reluctantly, declare the future of their relationship:

We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.

The colonists end by skipping to section 5 of Kline’s covenant structure: the “curses” that will occur should the covenant be broken. In the ancient suzerainty covenants, the suzerains explain the wrath that they will throw upon the vassals should the covenant be violated. But the vassals – in this case, the colonists — are not in a position of power to do this, so instead, they state they are therefore breaking off their relationship with the King.

We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these united Colonies are, and of Right ought to be Free and Independent States, that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved...

Instead of pledging to the king, they now pledge to each other:

And for the support of this Declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our Lives, our Fortunes, and our sacred Honor.

Like the *Mayflower Compact*, *The Declaration of Independence* closes with a similar structure to section four of Kline’s (1956) structure: a list of the ‘gods’ who witnessed the covenanting. Of course, this was the structure in the polytheistic world. In the *Mayflower Compact*, section four consists of the signature of all the adult men aboard the ship. *The Declaration of Independence* closes with a list of the now-saints of the

American civil religious tradition that were in attendance and the vassal states which they represent.

*The Declaration of Independence* itself was not enough to pull the new nation together in covenant. The Congress concurrently began writing the articles of confederation which would serve as the nation's constitution/covenant. In Kline's structure, section six covers the administration and succession arrangements. This is not laid out in *The Declaration of Independence*, for the terms of administration and succession arrangements will not be made with England, but with "We, the people".

### **Natural Law and the Secularization of Covenant Theology**

As Wardle (1989) writes, "after the Americans had declared their independence from Great Britain, the influence of covenant-based theology in political philosophy was directly manifest in the great decade of constitutional writing. Constitutionalism was the logical outgrowth of covenant theology" (p. 22).

The Calvinist covenant theology of the Puritans was founded on the ideas of 16th and 17<sup>th</sup> Scottish theologians such as John Knox and Samuel Rutherford. In the late 17<sup>th</sup> century, the philosopher John Locke secularized ideas of the covenant into the notion of the social contract which emerges from the consent of the governed. Locke, who has been referred to as "America's philosopher" because of his great influence on the founding fathers, was the most cited non-biblical writer in the decade of Constitution writing after the *Declaration of Independence* (Wardle, 1989, (Titus & Thompson, 1987)p. 16). Although we think of him as an Enlightened advocate of secularization, we must remember that Locke, as Wardle poetically notes "rode into New England on the backs of Moses and the prophets." (p. 16). Locke took his parents' Puritan covenant

ideology and the notion of the natural law, secularized them into notions of the social contract and natural rights (Hunter, 2014, p. x) to lay the foundation for the American founding fathers' idea of a national constitution and a bill of rights.

Before going any further in explaining how Locke's work was so critical to the American Constitution, I ought to give a refresher on the most important distinction between camps of English political theorists leading up to the *American Declaration of Independence*. Locke's predecessor, Thomas Hobbes, believed that there was no such thing as law outside of human social norms. As the American historian Kelly Hunter (2014) succinctly explains, for Hobbes, "justice is nothing more than a human contrivance" (p. 30). In a Hobbesian Weltanschauung, terms like 'law' and 'justice' are socially constructed and only make sense if a sovereign is able to enforce them. Though Hobbes' work was reflective of, and influential in, England in the 17<sup>th</sup> and 18<sup>th</sup> century, this was not the case in the colonies. As Hunter notes, "Hobbes' way of thinking could not give rise to the words ... in the *Declaration of Independence* where Jefferson criticizes the king of England for failing to uphold the unalienable rights of men 'endowed by the Creator' rights that preexist all human government" (p. 31). Instead, the colonists turned to Locke.

While human life in the Hobbesian state of nature is famously "nasty, brutish, short" without rhyme or reason, for Locke, nature is a finely tuned clock governed by natural law (Hunter, 2014, p. 31). Concepts like law and justice are not mere social constructions which need to be backed by a powerful sovereign; rather, laws and justice precede not just government, but humans themselves (p. 32). Locke believed that all government should be justified by "preexisting moral principles" (p. 32). Here, we are

beginning to see that, in the Lockean tradition, the Constitution is more than just a legal document: *The Constitution* describes universal moral principles and natural law. The Constitution is therefore timeless and unalterable. As Hunter describes, for Locke and his followers in the colonies, “individual rights of life, liberty, and property [are] absolutes that preexist government” (p. 34).

But Puritan covenant theology was not secularized through Locke’s ideas alone: his ideas, and that of the Enlightenment itself, needed help to spread in these fundamentalist religious communities. Perhaps surprisingly, much of this was done by preachers. By 1780 there were more than nineteen hundred congregations of ‘covenant theology’ including Congregationalists, Presbyterians, and Baptists in the colonies (Wardle, 1987). Though newspapers were circulating in large settlements such as Boston, ‘the news’ was still spread in most parts of this agricultural nation in church settings. In the more-than-a-century since the founding of the colonies, the Puritan religion had taken on an ‘Enlightenment’ character. Preachers in the colonies “taught the political doctrines of Locke and Milton until the members of their congregations held the liberal theories of government which rendered them most sensitive to governmental oppression” (Van Tyne, 45; quoted in Wardle, p. 15). This, of course, complemented their existing rejection of absolute authority, and reinforced the belief that a consensual covenant should be the foundation of an independent America.

### **The U.S. Constitution and Bill of Rights**

*Now it shall come about when [the king] sits on the throne of his kingdom, he shall write for himself a copy of this law on a scroll in the presence of the Levitical priests. And it shall be with him, and he shall read it all the days of his*



*life, that he may learn to fear the Lord his God, by carefully observing all the words of this law and these statutes, that his heart may not be lifted up above his countrymen and that he may not turn aside from the commandment.*

Deuteronomy 17:18-20

Many countries in the world including the United Kingdom, Saudi Arabia, Israel, and even Canada and New Zealand do not have written, codified constitutions. However, the founders of the United States saw a need for a constitution written in the language of the people. As discussed at length earlier, Puritan covenant theology was not limited to the religious sphere, covenants were the method of organizing all matters of life. As Rossiter states, “the traditional American insistence on a written constitution owes something to the insistence of the puritan that higher law could be written law” (quoted in Wardle, 1989, p. 22). If God’s covenants were written on tablets on Mt. Sinai so that they could be examined by all, then the law of the land, too, must be written to be known.

Unlike the Catholics of their day, the Puritans believed they had the right to read the Bible in their own language. There was no need for any intermediaries between the believer and the word of God. Again, as in heaven, so on earth: The Puritans thought that a thorough Constitution, written in the language of the people, could guide the nation as the Bible guides the church. Writing, of course, is a key component of hermeneutic fundamentalism. Oral traditions can bend and twist to suit their environment, but once the sacred text is written, it is stable and must be adhered to as such.

The Declaration of Independence is more than just a documentation of the vassal’s complaints against the suzerain, it ends with the vassals pledging allegiance “to each other our Lives, our Fortunes, and our sacred Honor” (Jefferson et al, 1776). But a

covenant needs more than just a pledge, as Kline's structure informs us, it must also clearly state who the parties partaking in the covenant are, a brief history of their relationship, give the ethical stipulations of the covenant and sanctions if they are broken, and outline the administrations of the document (Kline, 1960, 1997). Although the founding fathers were not as explicit as the Pilgrims in modeling their Constitution on biblical covenants, the influence of Puritan covenant theology in their documents is easy to find. Christian legal scholars Herbert Titus and Gerald Thompson (1987), identify seven biblical covenant principles: "justification of authority, reciprocity (or mutuality), community, irrevocability, limited modifiability, bindingness on future generations, and the legal framework for the administration of law" (para. 1). In this section, I discuss the first five of these principles and how they help to build upon the fundamental structure of all covenants in the Judeo-Christian world to form the complete American Covenant.

1. "Authority": Like the suzerainty covenant, this is found in the preamble. As Titus and Thompson (1987) explain, "The Constitution could have formed "a more perfect Union" only upon ratification by the source of the various states' authority – the people" (Biblical Pattern section, para. 2). We see this in the US Constitutional "doctrine of enumerated powers". They note that "What has not been delegated by the people is retained by them, as expressly acknowledged in the Ninth and Tenth Amendments to the Constitution" (Biblical Pattern section, para. 3)
2. "Mutuality": This is equivalent to "the consent of the governed" in the Declaration of Independence. Again, we see this in the Preamble: "We the people . . . do ordain and establish this Constitution for the United States of America." It can also be

- found in Article VII which states that the people in each state need to ratify the Constitution.
3. “Community”: Along with the references to “the people” (i.e. a single people who become one by ratifying the Constitution), Titus and Thompson argue that the phrase “a more perfect Union” and the reference to Union in Article IV denote community in the biblical sense (Biblical Pattern Section, para. 5). I might add that we can connect the Constitutional notion of federal union of many states in one nation to the twelve vassal tribes united under the suzerain – the god of Israel.
  4. “Irrevocability and bindingness on future generations”: Again, we look to the preamble with “and secure the blessings of liberty to ourselves and our posterity.” In addition, Article VI Clause 1 notes that all Americans are bound to the Constitution forever. As noted in the introduction to this chapter, unlike secular contracts, covenants bind not just those alive today, but their children to come. This is important in understanding the problem of amending a covenant.
  5. “The principle of limited modifiability” “bindingness on future generations”, and “the legal framework for the administration of law”: In Kline’s (1960) structure, the final section is devoted to administration. This has been the most problematic part of the US Constitution due to the principle of limited modifiability. It is also the principle most relevant to the gun control debate. This is, of course, in Article V: the article governing amendments. And it is to this problem that I dedicate the next section.

## **Limited Modifiability, Natural law, and Their Implications for Contemporary Law in the USA**

The Sacred Rights of Mankind are not to be rummaged for among old parchments or musty records. They are written, as with sunbeam, in the whole volume of human nature, by the hand of divinity itself, and can never be erased or obscured by mortal power.

Alexander Hamilton (quoted in Chernow, 2004, p. 60)

Gadamer explains that all of hermeneutics is the problem of creating meaning from materials that foreign to us. As the contemporary legal hermeneutician Peter Goodrich (2016) writes, “The lawyer faces this problem in an acute form, and therefore is forced to resolve it in an exemplary way by reconciling the spirit of the tradition with the needs of contemporary communities” (section 3, para. 4). But there are philosophers, judges, and lawyers in the United States, and all over the world, who do not believe in “reconciling the spirit of the tradition with the needs of contemporary communities”. In this dissertation I have discussed the hermeneutic traditions associated with the interpretation of the Second Amendment such as the constitutional originalist tradition, the living constitution tradition, the individual rights hermeneutic, and the collective rights hermeneutic, not all of which propose that the law *should* be interpreted in order to meet the needs of contemporary communities. In fact, some might argue that the constitutional originalist tradition believes that the words of the Founding Fathers should be applied *despite* the needs of contemporary communities.

The American Political philosopher Kerry L. Hunter (2014, pp. 27–42) uses the case of the Ayatollah Khomeini’s Islamic constitution in order to ‘make the familiar strange’ as the sociologists say. Hunter contrasts and compares Iranian Mullahs with American Supreme Court justices so that we can better understand the contradictions of constitutional originalism.

We often forget that Islam is also a part of the Judeo-Christian tradition, including its legal traditions. Sharia is grounded in the same belief in natural law that grounds not just biblical laws, but the constitutional law of the United States of America. Because the Islamist regime in Iran believes that their constitution is divine (sharia) law, then, of course, it cannot be altered. All that an earthly government can do is interpret and administer that divine law. If, therefore, we truly followed the spirit of the Lockean assumption that there are inalterable rights and natural laws, then there is no need for democracy: we only need a judiciary to interpret and apply laws, we do not need a legislative body to make or change them. As Hunter (2014) notes, this is exactly the system in present day Iran. Though Iran is officially a constitutional democracy, elected officials must all be vetted by the Guardian Council who are merely interpreters of the law. There is no need for elected officials to represent the populous as natural law already dictates the entire governmental system – the government only needs constitutional originalists who act as faithful interpreters of this natural law.

So, is the American Constitution just like Khomeini’s? Are Justice Scalia and his fellow originalists justified in thinking that the Supreme Court should only make ‘neutral’ decisions which arise out of an originalist interpretation of the Constitution? Hunter thinks that if we truly follow through on Locke’s view of natural laws and justice, then,

yes: there is no need for a voice of conscience in the judiciary – judges just need to interpret and apply the laws regardless of whether they seem morally correct. Hunter is not trying to insult Scalia and other originalists by comparing them to the Islamic clerics of the Iranian Guardian Council. Instead, Hunter (2014) is merely pointing out that the system of Iran comes from the same Judeo-Christian roots and embrace the same ideas of God-given laws as the American system.

One major difference between the Iranian legal system and the American legal system is that, unlike the Koran, the Constitution has been amended. Iranian jurists may turn to writings such as the Hadith (reported sayings of Muhammed) when the Koran does not speak on an issue, but Muslims do not believe that the Koran itself has not been, nor can be, changed. There is no document in Islam which can override the Koran in the way that constitutional amendments can override the original text of the constitution.

This, of course, creates enormous problems for those that see the Constitution as divinely-inspired. As I see the fundamentalist hermeneutic as emerging from Puritan covenant theology, I draw parallels between Christians understanding of the Old Testament in light of the New Testament which has been similarly problematic. Most Christians, including the Puritans<sup>9</sup>, do not believe that they are obligated to follow the ceremonial law of the Old Testament, only the moral law is applicable to all. They believe that laws pertaining to cleanliness, diet, and the Levitical priesthood do not need to be followed, but moral laws, such as the ten commandments, must still be obeyed.

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<sup>9</sup> Like Catholics, the Puritans believed that the Mosaic Law is part of the New Covenant. However, there is a distinction between the law and gospel. The sacrifice of Jesus's death means that Christians are not all obliged to follow the Mosaic Laws not mentioned in the New Testament. Passages such as Mark 7:19 ("Thus he declared all foods clean") are cited to show that Jesus taught that particular laws were no longer applicable.

Other Christians believe that none of the Old Covenant applies to Christians; instead, Jesus brought an entirely New Covenant. Only a small minority of Christians believe they must follow the laws of the Torah.

Similarly, constitutional originalists argue over what should and should not be thought of as a ‘God-given’ right guaranteed by the constitution. While I have not come across any constitutional originalists who believe that the Bill of Rights should not be considered part of the constitution<sup>10</sup>, there have been many, throughout American history, that consider any amendments made after the civil war, most importantly Reconstruction Amendments, to be not a part of the ‘true’ Constitution (Brandwein, 2016).

Constitutional fundamentalists believe that the ‘true’ Constitution existed at a certain point in history, but like the sects Anabaptists which disagree as to whether a button is a *modern* technology, these Constitutional fundamentalists do not agree on where to stall Constitutional history.

There is no unified notion of what originalists believe regarding constitutional amendments. The originalist law professor Calabresi has some very surprising views on what he believes with regards to the Fourteenth Amendment. Shockingly, he writes:

Living constitutionalists believe that racial segregation was constitutional from 1877 to 1954, because public opinion favored it, and that it became unconstitutional only as a result of the Supreme Court decision in *Brown v. Board of Education* (1954) – a case in which they think the Supreme Court changed and improved the Constitution. In contrast, originalists think that the Fourteenth Amendment always forbade racial segregation—from its adoption in 1868, to the

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<sup>10</sup> This certainly doesn’t mean they don’t exist – I would guess that there are many individuals out there – it means simply that I haven’t found any while conducting research for this dissertation.

Supreme Court's erroneous decision upholding segregation in *Plessy v. Ferguson* (1896), to the decision in *Brown* in 1954, down to the present day. Living constitutionalists think racial apartheid could become constitutional again if social attitudes toward race evolve. Originalists disagree and think race discrimination will always be unconstitutional unless the Fourteenth Amendment is repealed.

Though we may see Calabresi's suggestion that his fellow originalists believe that the 14<sup>th</sup> amendment "always forbade racial segregation" to be an example of 'retroactive continuity'<sup>11</sup>, what is important for this dissertation is that conservative legal scholars such as Calabresi undoubtedly accept the validity of constitutional amendments which have been passed using the process laid out in the Fifth amendment. Even though he clearly derides the view that the Constitution is a social construct, he accepts that amendments are possible because of Article V. This is to say, even if the Constitution is a part of unchanging natural law, it can be changed because those changes are also a part of natural law. It is an argument I find hard to wrap my head around, but Calabresi is not arguing that the Constitution can never be changed, simply that it must be changed in accord within its own internally consistent framework. However, though Calabresi is self-proclaimed conservative, he is not a radical populist<sup>12</sup> and his definition of originalist is not what I would refer to as fundamentalist. Calabresi argues that originalism serves to "restrain the passions of the moment" but Calabresi does not argue that the constitution cannot be changed or that the rights granted in the Constitution are "God-given".

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<sup>11</sup> Retroactive continuity (retcon) is the term used in television and film studies to denote a text which imposes a new meaning on, or gives a different interpretation of, past events.

<sup>12</sup> Though Calabresi served under Ronald Reagan and George H.W. Bush, he has criticized Trump and even referred to Trump's tweet that he would delay the 2020 election "fascistic" (para. 2).



It is very rare for originalist law professors or Supreme Court judges to refer to any right given in the constitution as ‘God-given’. But, as we know from media coverage of NRA conventions, anti-mask rallies, Make America Great Again campaigns, it is certainly not rare for politicians and activists to refer to the Second Amendment, as well as other rights granted in the Bill of Rights as divinely-granted. Though such a view is not common in academia or amongst mainstream media pundits, it is far from rare amongst the American population as a whole. Scott Bradley – a fundamentalist Mormon university administrator who holds a PhD in Constitutional law (and also unsuccessfully ran for US senate in 2006 and 2010) states the beliefs of many in America: the constitution “is being abused and ignored” by those who want to amend it. For Bradley and others, the answers to the problems in American society are not to create new laws and certainly not to amend the Constitution, rather, he argues, “the solution is to return to it [the Constitution] and apply Article VI (the oath to abide by it), not Article V.” Instead of amending the Constitution, the fundamentalist approach to constitutional hermeneutics is to pledge to abide by it with even greater ferocity.

Locke writes: “The state of nature has a law of nature to govern it, which it obliges everyone: and reason, which is that law, teaches all mankind, who will but consult it” (Locke 1690, chap. 1; quoted in Hunter, 2014, p. 44). For Locke, we just need to consult the natural laws. We come together and grant power to governments solely to do away with the “inconvenience’ of having to personally police one’s own natural God-given rights” (Hunter, p. 44). Now we are beginning to hear — out of the mouth of a 17<sup>th</sup> century British philosopher – the roots of the opinions of ‘the Second Amendment people’ as Trump refers to them (Kamisar, 2016): governments cannot change ‘God-

given' rights, they can only either protect them, or betray them. It doesn't matter if the gun control might save lives and make the USA a better place to live; the Constitution cannot be changed because it is a reflection of natural law. Natural law cannot be wrong.

John Adams wrote that the only responsibility of American legislatures is to protect "rights antecedent to all earthly governments: rights that cannot be repealed or restrained by human laws; rights derived from the Great Legislator of the Universe" (John Adams; quoted in Hunter, 2014, p. 45). Is this any different from Khomeini's decree that the fundamental role of the legislature is merely administrative? As Hunter notes, in John Adams' day, the purpose of congress was merely "to coin money, establish post offices, regulate commerce... There is nothing indicating that Congress is authorized to revise natural law" (p. 46). If Americans want to truly follow the Lockean beliefs of the founding fathers, then they must adopt a system more like Khomeini's ruling councils than today's political parties.

The problem I am stressing which must be addressed is that the ideal of popular sovereignty – so fundamental to the American covenant — is compromised by the notion of natural law which is the basis of that covenant. We see this problem illustrated by center-left politicians such as Obama who, at once, call on the sacred status of the Constitution, and simultaneously attempt to introduce legislation that is not in accord with it. Syrett (1961, p. 122; cited on Hunter, 2014, p. 46) quotes Alexander Hamilton himself to state: "Article V of the Constitution does articulate the means for amending the document, but it would be absurd to conceive Article V as granting authority to rewrite the law Hamilton describes as written "by the hand of divinity itself". Just as "the sacred rights of mankind" cannot "be rummaged for, among old parchment records", they

cannot be created by *new* parchments and *new* records; they “can never be erased or obscured by mortal power’ (Hamilton in Syrett 1961, p. 122)”.

If we accept that the Constitution was written in accord with natural law, then it cannot be changed, for natural law is immutable and everlasting. This is the limit of popular sovereignty: the people can only form laws in accord with the Constitution. How then do we reconcile later constitutional amendments, such as the 13<sup>th</sup> amendment to end slavery, with the belief that the Constitution is the earthly proclamation of natural law? If we suggest that the Constitution was amended to be in better accord with natural law itself, then, as Hunter (2014) notes, we are admitting that “the original document fell woefully short of upholding” the “sacred rights of mankind” (p. 47). Yet, Article V of the Constitution is just that. It is an invitation to see that the original document did not fully encompass all of natural law, or, even, blasphemously to some, that the founding fathers were wrong on some points of what and what is not a sacred ‘God-given’ right.

The ideological descendants of the Puritans, whether mainstream evangelical Protestant or Mormon<sup>13</sup>, stress the need of contemporary Americans to regard The US Constitution as a sacred covenant that can only be interpreted, not changed. The Mormon historian Lynn Wardle argues that the notion of *The Constitution* as sacred covenant “holds enormous significance for such contemporary controversies as whether judges hearing constitutional cases are bound to interpret the Constitution or whether they may take a modern “noninterpretivist” approach”. The Evangelical, born-again Christian legal scholars Titus and Thompson (2017) end their work on the Constitution as covenant stating:

Sad to say, the covenantal heritage of the U.S. Constitution has been largely forgotten. From an evolutionary view<sup>14</sup>, the intent of the framers of the Constitution is unascertainable and irrelevant, so it becomes an eighteenth century legal strait jacket from which modern man seeks escape. Consequently, the perspective championed by Justice Brennan and others that law and the meaning of the Constitution evolve over time is a flimsy security for liberty. But from the perspective of a biblical framework, the covenantal nature of the Constitution is its chief security, by which we obtain the blessings of liberty. Unless we return to honoring the covenants of our ancestors, how can we claim the benefits of a written Constitution which they left to their posterity?

For these Christian legal scholars, even raising the question of amending the Constitution in light of new circumstances is sacrilegious. Rather, as I have attempted to show in this chapter, the American intellectual heritage of Puritan covenant theology and Lockean natural law means upholding the Constitution is more important than anything, even human life. Because what is at risk if we violate the Constitution, for the Puritans and their intellectual descendants, is not just individual life, but the soul of the nation. For these believers, if Americans violate the terms of the covenant, then America is damned to suffer God's wrath.

In their influential work *Reading Law (Scalia & Garner, 2012)*, Justices Scalia and Garner made a case against "activist" judges. They argue that judges should be only neutral interpreters of the Constitution. As Hunter (2014) notes,

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<sup>14</sup> By "evolutionary view" the authors mean the liberal hermeneutic which sees that the Constitution should be interpreted to fit the needs of the current day. This is the opposite of the originalist views of Justices like Scalia and Thomas.

Scalia is not the only member of the court that believes justices are obligated to avoid any moral consideration in their deliberations. Justice Clarence Thomas may be even more committed to this position than Scalia, and Chief Justice John Roberts has publicly proclaimed his commitment to the ideal of judicial neutrality. (p. 4)

Hunter (2014) argues that it is not just the decisions themselves that make the judges of the Supreme Court influential, it is also their originalist rhetoric. “Courts can significantly discourage moral discourse by trumping legislation through carefully crafted legal reasoning that is difficult for the public to comprehend” (p. 5). The rhetoric of the Supreme Court as it is now discourages public engagement in ethics. Whether it is intentional or not, the fact is that in an attempt to maintain “neutrality” – i.e. only interpret the Constitution and not make adjustments to it based on contemporary circumstances — judges can make morally reprehensible decisions and obscure them behind legalese and references to sacred documents.

Hunter gives the-late Justice Scalia as an example of a judge who claimed to be making decisions neutrally: only interpreting the Constitution and not adding his own moral judgments. For Scalia, the Constitution is not a living document subject to possible amendments. For Scalia and others who follow the fundamentalist legal hermeneutic, that would be like amending the Bible – taking out the bits that allow for slavery and celebrate rape, for example. Rather, Scalia announced that the Constitution is “dead, dead, dead” (quoted in Hunter, 2014, p. 5). He even announced that, “[t]he judge who always likes the results he reaches is a bad judge” (p. 6). In essence, Scalia claims that he bases his judgements on the Constitution even if these decisions make him

uncomfortable. He does not go so far as to say that a good judge is one that makes decision that he/she finds immoral, but that is the logical extension of his statements. If I may be melodramatic, Scalia saw his job like the concentration camp guard who is ‘just obeying orders’: the job of a judge is to interpret the Constitution, not to think about the ethics of its application in contemporary circumstances.

Though the justices of the Supreme Court do not have the power to make laws, they hold immense powers of persuasion. Lawmakers listen to Supreme Court Justices, and these lawmakers also listen to the public’s reaction to the Supreme Court’s rhetoric. So, what does it mean if these judges are merely interpreters of a 250-year-old document unconcerned with whether their decisions are moral? As Hunter (2014) explains: “what this means is that anyone interested in preserving the ability for moral arguments to influence policy should prefer a Supreme Court that uses moral reasoning to justify its conclusions” (p. 5). If we think that laws should be guided by our morals, then we should allow our judges to use theirs.

### **Conclusion**

The activist historian Roxanne Dunbar-Ortiz (2018) writes that, “In the forefront of these Second Amendment adherents are the descendants of the old British and Northern European settlers who say that they represent “The People” and have the right to bear arms, the right to have military bases around the world, and the right – even the duty – to overthrow the government that does not, in their view, adhere to the God-given covenant” (p. 107). To understand why America allows these ‘rights’ to exist, we must understand how God’s law was secularized through Locke to become natural law, and the covenant became the Constitution.

Whereas legal constitutions come and go, covenants are made to last forever. The covenant God made with Moses was to last forever; not merely while those who endorsed the covenant were alive, but for generations to come: The Bible cannot be changed or cherry-picked to suit modern day situations. In the same matter, those who see *The Declaration of Independence, The Constitution, And the Bill of Rights* as the American Covenant must approach them with the same fundamentalist hermeneutic – they are eternal and cannot be changed, only interpreted.

## CHAPTER 5

### MOSES OF THE NRA

From the Puritans — who saw themselves as new Israelites — to Martin Luther King Jr.'s invocation of the promised land, the Exodus narrative has been prominent in American history since the first European colonists arrived. Long before I knew anything about the National Rifle Association, I watched the cinematic epic *The Ten Commandments*. Charlton Heston's portrayal of Moses resonated with me as it did with other viewers in America and around the world who saw themselves as persecuted by an unjust government. Along with his oratory skill and his well-known personal faith, Heston's association with the figure of Moses made him the perfect fit to lead the faithful of the National Rifle Association (NRA) through the post-Columbine era.

I begin this chapter by discussing how the NRA changed from a shooting and hunting club to a political lobby group. I then explain the NRA's appropriation of the language of civil rights and begin to discuss their use of sacred rhetoric. However, before attempting to explain how the NRA sacralised the right to bear arms, I detour to explore the concept of the sacred and the process of sacralization drawing on Durkheim (2001), Eliade (1961), and Berger and Luckman (1966). With the help of these theorists, I explore the political ramifications of sacralization. I argue that sacred rhetoric changes an audience's thought process from qualified to absolute: there is no negotiating the sacred. I warn the reader of the dangers of sacralization, drawing on the previous chapter's discussion of the duty to overthrow governments who violate the covenantal principle of limited authority. After fleshing out these concepts, I return to the discussion of the NRA's use of sacred language.



In the second part of this chapter, I discuss Charlton Heston himself and the phrase that has become a rallying cry for gun-rights advocates: “From my cold dead hands!” I discuss Heston as an archetype and his previous gun-rights rhetoric. I conclude the chapter with an analysis of his speech at the 2000 NRA convention, and speculate on why it became a “meme”; loved and hated but not ignored. My argument in this chapter is clear and simple: Heston’s speech is part of a strategy that the NRA leadership has undertaken since 1977 to make the ‘absolutist’ interpretation of the Second Amendment sacred. Heston’s (in)famous line, “from my cold dead hands” sets the sacred limit: the individual right to bear arms is not negotiable.

### **Memory, Forgetting, and the NRA**

In the 1970s, the NRA transformed from a shooting and hunting club to a gun rights advocacy association (Dawson, 2019). In 1975 Harlan Carter became head of the NRA and began to advocate what has been termed “Second Amendment absolutism” (Hodge, 2015, p. 91; cited in Dawson, 2019): an individualist interpretation of the right to bear arms. The fact that both those inside and outside of the NRA refer to this as ‘absolutism’ is important; what is absolute is sacred. There is no mid-point or room for negotiation. It is one or the other. The sacred is a quantum, not incremental, leap. Just as there is no space between life and death, or between being saved and being damned, there is no space to negotiate the terms of the Second Amendment. Second Amendment absolutism is sacred rhetoric.

Following Carter, Neal Knox became the president of the NRA and continued to advocate for individuals’ unrestricted right to bear arms. At the 1977 NRA convention, Knox had helped Carter to orchestrate the “Revolt in Cincinnati” in which the old guard –

primarily hunters and sport shooters who were willing to compromise on issues of gun control – were pushed out by a new guard of politicized members dedicated to the idea of unrestricted gun rights as central to the American way of life. The NRA began to focus their efforts on electing congresspeople who saw the Constitution as the earthly affirmation of individual American’s God-given right to bear arms (Dawson, 2019; Dunbar-Ortiz, 2018; Gorski, 2017).

For Foucault (2007), the desacralization of tradition in postmodernity left a void which is filled with commemorative activity that is manipulated by those in power . Contemporary theorists have continued in the wake of Foucault to argue that collective memory is always a construction of those in power. Foucault’s compatriot, memory theorist Pierre Nora (1989), has argued that, with the decline of traditions in modernity, the elite began to produce “simulations of natural memory” (p. 13): collective memory detached from the past as those in power select, edit and even invent new pasts.

As I noted in the historical review, until the late 1960s, there was not much discussion of the Second Amendment by legal scholars, politicians, or the public. But this changed when the Black Panthers assumed an individualist interpretation in order to assert their right to bear arms and patrol their neighborhoods. The NRA seized on this, assuming an individualist interpretation themselves. Though these Second Amendment absolutists have not always had total political power, they have used their positions of power to push a particular ‘simulation’ of memory forward: they have presented a memory of the framers of the Constitution as fierce Calvinist individualists who believed that the Second Amendment was an individual right like the right to free speech (Scalia & Garner, 2012).

The German archeologist and memory theorist Jan Assmann (2011, p. 335) writes that “[w]hile knowledge has no form and is endlessly progressive, memory involves forgetting. It is only by forgetting what lies outside of the horizon of the relevant that memory can perform an identity-function”. It’s perhaps not surprising that at the NRA headquarters in Fairfax, Virginia, the Second Amendment is written on the lobby wall. But it is only part of the Second Amendment: there is no mention of the militia. The writing on the wall simply reads, “The right of the people to keep and bear arms, shall not be infringed” (Dunbar-Ortiz, 2018, p. 125). The mention of militia is omitted, but the comma remains, leaving two clauses, or one – as the NRA intends – a single strangely-punctuated idea.

Carter and Knox both focused on the goal of enshrining the Second Amendment as an individual right. Carter and Knox did not work on their sacred rhetoric alone in Monk-like solitude; in the 1980s and 1990s a small group of conservative and libertarian lawyers “were able to usher in a flood of individualistic studies so that they outnumbered the total number of militia-centric studies [regarding the Second Amendment] by almost two to one” (Charles 2018, p. 301; quoted in Dawson, 2019, p. 2). In 1997, Knox was replaced as president by Charlton Heston – a firm believer in the sacred status of this absolutist-individualist interpretation of the Second Amendment.

Currently, the NRA has approximately five million members. Millions more Americans support NRA causes but are not members. The NRA has an annual budget of more than \$300 million, but, surprisingly, only about 10% of this actually goes to direct lobbying. Rather, the NRA’s real power rests in the ‘grades’ that it gives to political candidates based on their opinions and past-voting record on gun rights. These “grades”

sway millions of voters (Dunbar-Ortiz, 2018).<sup>15</sup> In 2016, the NRA contributed 30 million dollars towards putting President Trump in the White House. The NRA is often held up as the America’s most powerful special interest organization (*Gangster Capitalism: The Dark Side of the American Dream*, 2020).

### **The Sacralization of the Individual Right to Bear Arms**

*Don’t do x because I say so* has less impact than *don’t do x because God says so*.

(Tetlock, 2003, p. 320)

Before I discuss the NRA’s rhetorical tactic of engaging in the sacralization of the right to bear arm, I need to first discuss what exactly I mean by ‘the sacred’ and how it is constructed. For Emile Durkheim, religion was not defined by belief in an afterlife, the practice of rituals, or a cosmology; instead, religion was the demarcation of the sacred and the profane (Durkheim, 2001). As Durkheim explains, the sacred is “things set apart” (Durkheim, 2001). Mircea Eliade, too, stressed this notion of difference. He writes, the sacred is “the manifestation of something of a wholly different order” (Eliade, 1961). In this definition, the sacred can be religious, but it is not limited to the religious. So, yes, the Pope’s ring is sacred, as is the Torah, but, so might be an intimate sexual relationship: it’s not religious but it is sacred because it is different — set apart — from their other relationships. We see violation of this sacredness as inherently wrong: crossing the border between the sacred and the profane is dangerous. The Koran is like

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<sup>15</sup> I must mention that The NRA is currently embroiled in a leadership scandal regarding the lavish lifestyle of Wayne La Pierre. I will not wade into this discussion as it is not relevant to the topic of civil religion and the Second Amendment. Instead, I refer the interested reader to the excellent investigative journalism on the topic in the Podcast *Gangster Capitalism*, Season 2: The NRA.

no other books for Muslims, a crown is like no other hat for monarchists, and a husband is like no other man for his wife.

In Kenneth Burke's (1966) theory of the ethical negative, our desire for perfection means that we are constantly drawn to create broader and broader categories as our ethical categories are never good enough. He argues that our desire for perfection eventually drives us to place everything into either a positive or negative ethical category. For Durkheim and Eliade, all human cultures tend to envision a binary universe: the sacred and the profane – the positive or negative category. We rhetorically sort our world into sacred and profane. By the middle of the 20<sup>th</sup> century, anthropologists noted that though there is great variety in the beliefs of what is and is not sacred, sacredness “seems to qualify as a functional universal across societies” (Tetlock, 2003, p. 320). Though those in the multicultural and multi-religious nation of America disagree on what qualifies as sacred, all of our cultures have a concept of the sacred.

Though thinkers since the Enlightenment have discussed the disenchantment of the world, even Weber recognized that the sacred not only still exists, but is still becoming. For Eliade, all of humanity dwells in “a world capable of becoming sacred”. Everything – people, ideas, objects, texts — is capable of becoming sacred. When we employ sacred rhetoric, we sort things into one of these two categories and can move something from one realm to the other: we can sacralise or desacralize it. For example, a covenant, as discussed in the last chapter, is one way of making a relationship sacred. The marriage covenant rhetorically makes an existing relationship sacred. At the marriage ceremony, sacred rhetoric is used to persuade us that the relationship is now truly of a different order than other relationships.

Durkheim (Durkheim, 2001, p. 52) recognized that “the circle of sacred objects cannot be fixed once and for all; its scope can vary infinitely.” What is considered sacred in one society may not be considered sacred in another and vice versa. More importantly for this essay, what is considered sacred in one time may not be considered sacred in another. The sacred is constructed rhetorically and must be continually rhetorically maintained as sacred. In this manner an object seems to have always-already been sacred. As Durkheim states (p. xlvi), “Humans acting collectively make and remake this quality of sacredness but then encounter it after the fact as if it had always been built into objects and was ready-made”. Berger and Luckman expand on this in their canonical text *The Social Construction of Reality* (Berger & Luckmann, 1966). They argue that while previous generations have to work to sacralise things, the next generation takes these same things’ sacredness for granted. Indeed, they argue that the process of sacralization “achieves success to the degree that this taken-for-granted quality is internalized”. For Berger and Luckman “the subjective reality of the world hangs on the thin thread of conversation”: the sacred is rhetorically constructed.

Durkheim, Eliade, Berger and Luckman understood that things – objects, people, texts – become sacred through human labour. In a Marxist sense, the fact that things are presented to us as either sacred or profane obscures this fact. Just like the cheap price of a plastic trinket made in China obscures the labour that went into it and the workers who created it, the fact that we see things as absolutely sacred obscures the fact that it took human rhetorical labour to construct them as such.

The sacred is not necessarily tied to religion. As religion declines, it may be that a society replaces the religious sacred, with the secular sacred. Previous generations

labored to make particular values, objects, people, etc. hold sacred value. Saints were once just people, the Pope's hat was once a just fabric and glue, equality of the races was once just a theory, religious freedom was once just an ideal. In appealing to our God-given right to bear arms, the NRA is actively laboring to make the right to bear arms sacred. And this labour takes time, skill, and money.

Berger and Luckman (1966, p. 6) see that Durkheim argued that what is sacred and profane is "inherently precarious and predestined to change". However, Berger and Luckman stress, this does not mean that it is an easy process. Once something in "the humanly-produced world attains the character of objective reality," it is not easy to change our perception of its objective reality rather than the fact it was socially constructed. Once something has become a social fact, it is not easy to undo. It is not an easy process to make a person, an object, a place, or an idea into something sacred. The NRA had to devise a strategy and work tirelessly to construct and to maintain the notion that the right to bear arms was sacred.

Throughout US history, from abolitionist to suffragettes to anti-abortion activists, social movements have associated themselves with the sacred. Instead of completely constructing the sacred anew, the NRA sought to associate itself with what was already considered sacred. Had the US Constitution not already been considered the sacred founding text of the American people, based on natural law, it would have been nearly impossible for the NRA to convince even their own members that the individualist interpretation of the Second Amendment is a God-given right. The sacred rhetoric deployed by the NRA did not create new sacred ideas, but rather, it shifted the meaning

of a document that was already considered sacred. Also, it attempted to expand the language of sacred rights to encompass their definition of an existing sacred right.

In chapter two I discussed the history of civil religion. As we know, for Durkheim, civil religion emerged organically from the bottom up. Yet, for Rousseau, civil religion was an artificial tool used to manipulate the populous. As the Canadian political scientist Philip E. Tetlock (2003) succinctly sums up this Rousseauvian approach to civil religion:

Political philosophers – from Aristotle to Marx and Nietzsche – have long speculated that citizens are more likely to do what they are supposed to do if they believe the moral codes that regulate their lives are not arbitrary social constructions but rather are anchored in bedrock values that transcend the whims of mere mortals.

Why is this such an important strategy for the NRA? What are the political ramifications of pushing a concept from the realm of the mundane to the realm of the sacred? Much as Marxists argue that commodity fetishism obscures human labour, we can see that, for Durkheimians, the Judeo-Christian concept of God's law and the Lockean tradition of natural law (discussed in the previous chapter) obscure the fact that these laws have been rhetorically constructed by human labour. Durkheim's explanation of the construction of the sacred is more in line with a Hobbesian realpolitik than the American Lockean covenantal Constitution founded on the assumption of natural law.

Once something is deemed sacred, it is difficult to de-sacralise. Take, for example, the notion of racial purity. The idea of race is a very modern concept. It is the product of the modernist worldview that sought to categorize everything, even



humans. Once the concept emerged, there were many who then insisted that racial purity was a sacred value which must be upheld through law. Though the idea of racial purity was not a sacred concept in America for very long, there are still many who feel disgust when the boundary between the races is crossed. Though the anti-miscegenation laws in Pennsylvania were dropped more than a century ago, there are still many who see racial purity as somehow sacred. Sacralization ensures that an idea has a long future. Once the fire is lit, it is hard to extinguish.

But perhaps the most important reason that an organization may push for an idea to be deemed sacred is that sacralization alters our thinking. Sacralization does away with utilitarian arguments, statistics and data, even, some might say, logic. Our thinking is changed from consequentialist to absolutist. If the right to bear arms is a God-given right, enshrined in the Constitution, then it doesn't matter that the US has more mass shootings than other countries. If the right to bear arms is sacred, then it doesn't matter than the United States loses more lives to firearms than any other industrialized country. If the right to bear arms is sacred, then it cannot be questioned with facts, data, or even death. It doesn't matter that no one needs a bump stock to go deer hunting. It doesn't matter that epidemiologists tell you that background checks could save thousands of lives every year. What is sacred cannot be qualified.

The NRA has managed to turn "politics into religious obligation" (Friedland, 2001, p. 126; quoted in Dawson, 2019, p. 10). Although they are, in fact, a political lobbying group, the NRA has linked itself not to political power, but to divine power. In announcing their 'God-given' right to bear arms, they are implicitly stating that no secular authority has the right to take *their* right away. In doing this, as Dawson

succinctly states, “the NRA has elevated the defense of the Second Amendment to religious obligation” (p. 10).

As discussed in the previous chapter, for those who believe in the Constitution as covenant, if the government attempts to violate a right, then it is violating the covenantal principle of limited authority and is thus breaking the covenant. If this interpretation is accepted as the true interpretation, then it follows that it is not just a right, but a duty to overthrow that government. For, as we learned in our study of covenantal authority, Jehu had an obligation to overthrow Ahab or the entire nation of Israel would be damned. If the individualist interpretation of the Second Amendment is sacred, and if it is violated, and the people do not rise up to overthrow their government, then the entire nation of the USA will suffer God’s wrath. In their discourse analysis of the magazine *Soldier of Fortune*, Yamane et al (cited in Dawson, 2019, p. 2) note the overwhelming narrative of apocalyptic millennialism among gun enthusiasts in the USA. There are many who believe that God’s wrath is imminent. There are already Americans who believe that unless, in the time of this wrath, we do not rise up to overthrow those who violate the covenant, then the whole nation will be damned.

Finally, sacralization allows for violence. In his discussion of the sociology of terrorism, Austin Turk (2004, p. 271) notes that all of the world’s major religions “permit and even require violence in defense of the faith.” Turk Dawson argues that “The NRA advocated protection of the individual means to engage in violence as a means of ‘restoring the moral order’”. Not only does the American who believes in the individualist interpretation of the Second Amendment have a sacred *right* to overthrow the government which breaks the covenant, they have a sacred *duty* to overthrow

it. Moreover, the sacred gives them permission to use violence. The political ramifications of this sacralization are no joke. Though Trump jokingly threatened Hilary Clinton with “the Second Amendment people”, there is a real threat of violence when we sacralise anything.

Many scholars have looked at the NRA through a religious lens, particularly that of Evangelical Protestant Christianity. Even members of the NRA leadership itself have argued that “you would get a far better understanding if you approached [the NRA] as if you were approaching one of the great religions of the world” (Gibson, 1994, p. 253; cited in Dawson, 2019, p. 2). In her work on the NRA, West Point Professor Jessica Dawson notes how the NRA “capitalized on the religious nationalism that arose in the late 1970s alongside the Moral Majority and has increasingly used religious language to shape the discourse surrounding the Second Amendment” (Dawson, 2019, p. 1). Dawson notes how the NRA repeatedly draws on themes of “evil” as well as “civic obligation”.

In her content analysis of the NRA’s magazine *American Rifleman*, (Dawson, 2019, p. 5) Dawson documents a continual increase in the use of the term “God-given” in *The American Rifleman* from 1977 to 2018. However, she notes that what the term actually referred to changed significantly. In the 1980s, it was often “tied to shooting ability and raw talent” (p. 5). However, in 1994, she notes the term began to refer to the right to bear arms itself. She quotes the magazine’s assertion that there was an attempt by some in the society of the day to turn a “God-given right to a government privilege” (NRA Staff, 1994, p. 52; cited in Dawson, p. 5). The NRA is arguing that the right to bear arms has been an eternal right given by the creator and that the government of the

day [the Clinton Administration] was attempting to claim is just a privilege given by the government.

With secularization of governments, discussion of evil has fallen out of favour. Although politicians on both sides are keen to discuss what is ‘good’, ‘evil’ is a word which even the right rarely uses. Reagan famously referred to the Soviets as the ‘evil empire’, and George Bush drew ire for labelling his enemies the ‘axis of evil’. But even the right tends not to use the word to discuss happenings inside the USA. But for those groups which are attempting to sacralise a belief, then the rhetoric of evil is a necessary tool. There is one group for which the idea of evil has not fallen out of favour, even in domestic discussions: the ‘New Right’<sup>16</sup> including the NRA. From my observations, the rhetoric of the New Right can be characterized by three things: 1. a belief that we are in a state of moral decay which harkens back to the protestant stress on humans as fundamentally depraved; 2. A distrust in government which coming from the Puritan covenantal theological principle of limited authority (even God obeys his laws, so worldly governments must obey the covenant too); and, 3. a belief in evil.

In Dawson’s content analysis of *American Rifleman*, she argues that the concept of evil also serves to merge American civil religion with “the New Christian Right’s rhetoric”, pointing to then-NRA president Neal Knox’s 1979 description of gun control as “evil” laws. In stating that laws can be evil, there is “the implication” that “anyone who would deprive a law-abiding citizen of this fundamental human right is not merely expressing an opposing political view but is also promoting an evil agenda meant to

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<sup>16</sup> I use the term New Right to describe the political movement beginning in the 2<sup>nd</sup> half of the 20<sup>th</sup> century, characterized by leaders such as Ronald Reagan in the United States, “made up especially of Protestants, opposed especially to secular humanism, and concerned with issues especially of church and state, patriotism, laissez-faire economics, pornography, and abortion” (*Definition of NEW RIGHT*, n.d.)

undermine American sovereignty” (p. 9). She notes that later, LaPierre begins to call criminals “evil”. In so doing, criminals were no longer “other citizens subject to the rule of law; they were creatures to be violently removed. The legal institution could no longer be trusted to uphold the moral order, so it was left to the armed, law-abiding citizens to cleanse the streets of evil” (p. 9)

Dawson argues that the notion of asking citizens to take the law into their own hands by removing ‘evil’ “represents another merging of civic and religious obligations” (p.9). We see this in LaPierre’s argument that the “right to self-defence was not invented by the American founders” it is much older and common to every human. It is not just a right but a “sacred responsibility” (LaPierre, 2008, p. 12; cited in Dawson, p. 9). Here, we see the same strategy at play that we saw in the NRA referring to the individual right to bear arms a “God-given right’. LaPierre is attempting to sacralise self-defense. As discussed above, it is easier to sacralise a concept by associating it with another existing sacred than to create a new sacred. LaPierre is associating (or perhaps purposefully conflating) the right to *individual* self-defense with the principle of limited authority that the Puritans held so dear. In the decades following Columbine, the NRA drew more and more on the theme of “sacred responsibility” to, in Turk’s language, “restore the moral order” (Turk, 2004, p. 277)

Dawson notes that this echoes New Right leaders’ attempts to label political opponents as evil. For Jerry Fallwell, who painted his opponents as agents of Satan, political victories were not as important as “dehumanizing” America’s enemies” (Dawson, p. 9). For the NRA, establishing the Columbine shooters as evil was imperative. As Dawson notes, this not only builds on born-again Christians’ belief in evil

and a literal Devil, but also “requires violent defensive actions rather than a reliance on the law to restrain the lawless” (p.9). The sacred permits us to use violence. The NRA attempted to create a narrative in which these boys were unstoppable by law. The boys were not of this world, but totally ‘other’ evil beings. As LaPierre put it, these were not just “kids”, and the guns did not “[make] them do it”. As he stated, the shooters were “not America’s children. They were a stone-hearted giggling death squad” (1997, p. 10; cited in Dawson, p. 10). With these statements, LaPierre fights back against the technological determinism of gun-control advocates. La Pierre argues that guns do not have agency in themselves. For Pierre, at Columbine, the guns did not commit the crimes; the shooters themselves were responsible for the crimes. The shooters are evil, not the guns.

In their 2015 ad, “Demons at the Door”, the NRA characterize all the mass shooters as monsters. They portray a grim world view of an evil ‘them’ out to get ‘us’. Laws cannot stop evil. Only a God-given right can stop this evil. As the organization’s spokesperson says in the 2015 ad, “But when evil knocks on our doors, Americans have a power no other people on our planet share – the full-throated right to defend our families and ourselves with our Second Amendment” (cited in Dawson, p. 10). As Harding (2000, cited in Dawson, p. 10) notes, this portrayal of the mass shooters as evil murders is in line with traditional Protestant notions of the fallen nature of humans.

### **Enter Moses**

In their work, *The Invention of Sacred Tradition*, religious historians James Lewis and Olav Hammer note that “in Weberian terms, emergent movements typically gather around charismatic figures” (2011, p. 4 cited in Dawson, 2019). Charlton Heston is

nothing if not charismatic. Like Reagan, Heston was an actor before delving into advocacy and politics. But while Reagan embodied the archetype of the cowboy explorer, since a very young age, Heston embodied the archetype of the wise warrior. Both Heston himself, and his supporters at the NRA, understood the value in stressing Heston's association with the exodus story of fleeing oppression to freedom.

In the wake of Clinton's 'sex scandal', Heston presented himself as "a model of virtue and moral conviction" (Raymond, 2006, p. 299). Still playing off his 1956 Role as Moses, Heston presented his "Ten Covenants of Courage". In these ten statements, we see an updated version of not just the Mosaic Ten Commandments, but the Puritan covenantal principles and the Lockean natural law of the Constitution. Three of the ten 'covenants' hearken back to the importance of government being "by the people, for the people"

"Find ways to influence government in all its forms."

"Find the way to your loudest possible voice, and speak

"Find myriad avenues to pass on your convictions"

Four of the commandments allude to the importance of standing up for what you think is right and also connote rebellion against a government that breaks the covenant of the Constitution.

"Take absolute and resolute pride in your own values.

Defend America as the peerless ideal – period.

Fiercely preserve all the rights outlined in the Bill of Rights."

More importantly, these commands reinforce sacred rhetoric's call to change our thinking from qualified to categorical.

With his commandment 2. “Be willing to disobey,” Heston does not tell us who or what we are to disobey, but, given his status as president of the NRA, we can assume that he is alluding to disobeying a government which breaks its covenant.

The seventh commandment, “Embrace change” seems like an unusual statement for a conservative who harps on the importance of tradition; however, we must remember that this set of ‘covenants’ was a reaction to Clinton’s scandals (and continued popularity despite scandals) and the alleged liberalism that had ‘overrun’ Hollywood and the White House.

The ninth covenant, “Accept that sacrifice is just part of the deal” can be read many ways. Perhaps Heston is attempting to prepare his followers at the NRA to lose some battles. Perhaps he is alluding that they may have to physically fight for their cause. But whatever is meant by that, it is not alluding to any sort of negotiation. You might lose, but you should not compromise.

The tenth commandment is a simple invocation of religious commitment – wide enough to encompass all people of faith: “Commit to the daily process of private prayer”. Heston did have a strong Christian faith, and he also knew the importance of tying that faith to his public persona. As discussed earlier, it is easier to associate something with the sacred than to make the sacred anew. In associating himself so closely with prayer, he, himself, becomes an object of worship.

Heston also urged NRA members to become active in the ‘culture wars’. During his tenure as president, the NRA “increasingly promoted the upholding of the Second Amendment as reflecting a certain lifestyle – one that respected tradition, individuality, responsibility and masculinity” (Raymond, 2006). The historian Bruce Schullman refers



to this trend as the “Southernization” of America of which the NRA’s role was central (cited in Raymond, 2006, p. 289). This “Southernization” included the promotion of country music, Evangelical Christianity, and NASCAR racing. As Raymond put it, “In walked the ‘Bubba’”. This ‘Bubba’ was set up in opposition to the Bobo – the urban dwelling bohemian yuppie. But Heston himself was not keen to embrace this stereotype. Indeed, while others around him railed against intellectuals, Heston bemoans the fact that ‘elite’ had become a pejorative term in right-wing circles (p. 291).<sup>17</sup> Heston maintained that gun-rights were not merely the norm of uneducated red-necks, but that the right to bear arms was a sacred right associated with men such as Andrew Jackson and Thomas Jefferson, whom he referred to as the only “genius” to have inhabited the White House (p. 292).

Dawson states that in the beginning of the culture wars: “The NRA adopted two critical frames that helped align the Second Amendment with the New Christian Right’s religious nationalism: distrust in the government and rugged individualism” (2019, p. 10). Dawson cites Bellah et al. (2011, p. 16) to argue that that this distrust of government is connected to the protestant idea that “the state and larger society are unnecessary because the saved take care of themselves” Moreover, the rugged individualism draws on this distrust of government and Jeffersonian and Madisonian republicanism which “viewed with hostility not only cities, but also taxation and virtually any function of the

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<sup>17</sup> Later, Heston himself would give in to the cultural pressure to use the term “elite” as a pejorative, though he bemoaned that the terms meaning had been “inverted” and now referred to people with a narrow politically correct agenda.

state”. Though Heston did not embody the rugged individualism of the cowboy, he was still seen as a rugged individual in the sense of a leader who needed no help. Moses brought the tablets down from the Mountain himself, and the saved do not need the government to decide how to spend their money or to limit their guns.

In the September 1997 edition of the NRA magazine *American Rifleman*, Heston echoed Billy Graham’s “Crusade for Christ” by declaring his “crusade to Save the Second Amendment” (Heston, 1999b). In this same article, he states that Wayne LaPierre had asked him to “come back to the arena” (p. 12) with an illusion of the Christians who battled in the Roman arenas. Heston refers to the amendment as “this sacred text”, and to American’s sacred role by declaring that there is “something inherently special about our nation” (p. 32). The article also explicitly declared, and encouraged, the political divide in America by stating that there is “no room in the middle” when it comes to gun rights. He declares that “you must either stand aside or step forward with us in partnership to save the Second Amendment” (p.34). There is no negotiation when it comes to the sacred.

Heston’s media campaign was not just aimed at luring current gun-owners and second-amendment absolutists into the NRA, his mission was much broader. In a letter to the *New York Times* in the first year of his tenure as NRA president, Heston presented the argument that would define that tenure:

The Founder’s intent in framing the Second Amendment is perfectly clear and undeniable. Thomas Jefferson wrote, ‘No man shall ever be debarred the use of arms’. Some anti-gun elitists declare this notion outdated. However... the

Founders intent is clear and irreversible: To ‘keep and bear arms’ is a right for all law-abiding citizens.

We don’t know how much of this letter, or anything else, in Heston’s media campaign was really his own writing. But we certainly do know that Heston was keen to do what the NRA leadership had been doing since 1977 – to promote an individualist interpretation of the Second Amendment and to associate this with the sacred.

### **The Language of ‘Rights’**

With the relative success of the civil rights movement in the late 1960s, many groups and organizations sought to appropriate the language of ‘rights’ for their cause. Many groups including Christian sects, anti-abortion activists, and the NRA began to actively study how the language of rights was invoked and how existing laws had been used to protect the rights of minorities and special interest groups (Waldman 2015; cited in Dawson, 2019, p. 5). They even praised civil rights activists for their sacred qualities of bravery and sacrifice. Jerry Falwell stated that he “hoped Christians would have the kind of backbone to stand up for their rights that Civil Rights people [sic] had” (Harding, 2000, p. 22; cited Dawson, 2019, p. 5) encouraging his followers to both display these sacred qualities, and to appropriate the techniques they used.

As discussed in the previous chapter, we can trace the western conception of rights in the US Constitution back to two sources: the Judeo-Christian tradition and the Enlightenment. The Judeo-Christian conception of God’s law was secularized by Locke and others into the notion of natural law and inalienable rights. While not going as far as fringe religious sects such as the Mormons who proclaim that the Constitution was divinely inspired, the NRA leadership drew on the civil religious sainthood of the of the

framers to establish that the right to bear arms was God-given, and that this God-given right was enshrined in the US Constitution. Moreover, they framed their individualistic interpretation as the framers' original intent. Because they claim the individualist interpretation was the Founding Fathers' original interpretation, and because the Founding Fathers are saints in the civil religion of America, the individualist interpretation is therefore a sacred absolute. There is no other possible interpretation; all others are not just wrong, but heresy. Moreover, those who put forward other interpretations, are not just wrong, but are apostates. They are apostates who are not only damned, but who will damn the whole nation should their beliefs be followed.

As Marietta explains, both the civil rights movement and the gun rights movement "accrued additional advantage" through the use of sacred rhetoric. The gun rights movement sought to further strengthen this advantage by tying itself to the civil rights movement which had already attained sacred status. Do we know if this was a calculated move by the gun rights movement? As we don't have access to the planning meetings of the time, perhaps we will never know, but Marietta notes that the use of sacred rhetoric for political purposes is "often calculated as well as organic" (p. 102).

The visual similarity between Heston's iconic pose, musket raised above his head, and the famous depiction of John Brown with a raised rifle in his right hand is striking. An important difference is that Brown has a Bible in his other hand. But in a metaphorical sense, so did Heston, and so did King. The tie of a secular cause to sacred rhetoric gives it greater power in American politics.

In the mid 20<sup>th</sup> century, Maurice Halbwachs (1992), a student of both Henri Bergson and Emile Durkheim, coined the term "collective memory" – a concept

Durkheim had discussed but a term he didn't actually use. Halbwachs also expanded Durkheim's ideas of totems – which serve as a reminder of collective effervescence – to include commemorative events. But Halbwachs departed from the Durkheimian approach with the development of his idea of instrumental presentism. Presentism stresses that those in power shape collective memory to influence the needs of the present.

In the late 20<sup>th</sup> century and early 21<sup>st</sup> century, historians, memory theorists, and social activist continued to use Halbwachs' notions of instrumental presentism. Theorists such David Lowenthal (1982) argued that national histories are invented to meet the needs of the present while John Bodnar (1992) pushed into the future to argue that official memory is created to allow the status quo to continue into the future. In this chapter we will see how Charlton Heston, the NRA's greatest orator, continually used the civil religious figures not just of the founding fathers, but of perhaps the only African-American civil religious saint, to further his attempt to make the individualist interpretation of the Second Amendment civil religious dogma. He then used this official memory to maintain the status quo of lack of gun control.

At numerous times during his tenure as NRA president, Heston brought up the fact that he had marched on Washington during the civil rights protests of the 1960s. Particularly at universities, Heston used this fact to draw connections between gun rights and civil rights. In his address at Yale in 1999, Heston claimed that "If Dr. King were here today, I think he would agree [that gun rights are civil rights]". Heston was a clever rhetor who knew his audience: it was not enough to associate gun rights with masculinity and patriotism as he had with other audiences, he needed to associate gun

rights with the rights valued by his (presumable liberal, educated, progressive) audience. Heston is implicitly associating gun rights within the “broader realm of social justice. Just as King explicitly connected the newer argument of civil rights to the Founding symbolism of liberty, Heston ties gun rights to both” (Marietta, 2012, p. 93).

Heston, of course, anticipates his audience’s dismay at the idea that King – known for his non-violent stance – would agree with Heston’s opinions on gun rights. So, instead, Heston attempts to associate King’s movement not with civil rights for African Americans particularly, but with a grander notion of ‘liberty’ put forward by the founding fathers. Heston argues that just as King’s movement relied on the First Amendment right of free assembly, he would support the Second Amendment right to bear arms (Heston, 1999).

Again, it is important to note that Heston never mentions the possibility of any other interpretation of the 2<sup>nd</sup> Amendment other than the individualist interpretation. He is setting the sacred binary of being for liberty or against liberty: there is no room for in-between. As Marietta states, Heston “invokes the protected status of nonconsequentialist values, especially freedom... rather than instrumental reasoning or promised benefits, he urges noninstrumentality” (Marietta, 2012, p. 94). This invocation of the sacred means that there is no need for data, statistics, and logic because the decision has already been made: the individualist interpretation of the Second Amendment is an untouchable sacred right.

### **The Sacred Power of the Victim**

One of the strategies of the NRA leadership which began to appear during Heston’s tenure as president was the association of the right to bear arms with the right to

free speech. Marietta notes that Heston repeatedly spoke to elite university audiences. These talks were usually on the theme of ‘political correctness’ as much as they were about gun rights (Marietta, 2012, p. 92). The speeches sought to promote the notion of a sacred duty to disobey. Heston began his 1999 speech at Yale with, “I marched with Martin Luther King in 1963, long before Hollywood found it fashionable.” But actually, it was *extremely* fashionable in Hollywood to march on Washington with King. Indeed, almost every picture we see of Heston during the march he is surrounded by other Hollywood actors and musicians. Since the McCarthy kangaroo courts, we have known that ‘Hollywood’ was, and continues to be, much more liberal than the rest of America. Immediately after telling the Yale audience that he had been at the march, he states, “Supporting civil rights then was about as popular as supporting gun rights now.” Heston is, of course, stating that neither were popular. Yet he is speaking at a time when more than half of Americans believe that the 2<sup>nd</sup> amendment grants the individual right to bear arms. So why does Heston want to make it seem as though civil rights were unfashionable in the early 1960s and gun rights are not popular now? I believe the answer lies in the power of victimhood.

We can assume that Heston saw the audiences at elite universities as unsympathetic to his position on gun rights, so Heston focused on not only on gun rights, but on the idea of liberty. As was *en vogue* at the time, Heston’s boogeyman was “political correctness” and how it violated free speech. In his speech at Harvard University, he called his audience “cowards” for not standing up to this boogeyman – even though he doesn’t give any example of this alleged cowardice. As Marietta states, Heston is “shaming them [his audience] into action rather than reasoning them into

agreement” (Marietta, 2012, p. 95). He uses the language of rights, again, to argue that political correctness stifles free speech, and hints that political correctness is somehow *equivalent to slavery*. In his article on open-carry laws in Texas, the University of Austin professor Joshua Gunn notes, there is a “staged perception of oppression” in many pro-gun speeches: “they’re taking your hap-penis away!” (Gunn, 2016, para. 4). The ‘liberals’ are taking away not just your gun but your masculinity.

In reference to political correctness, Heston asks his audience, “How can you prevail against such pervasive social subjugation?” (Heston, 1999). Once again referencing his march on Washington “with” King, Heston states, “[t]he answer’s been here all along. I learned it 36 years ago, on the steps of the Lincoln Memorial in Washington, DC, standing with Dr. Martin Luther King and two hundred thousand people. You simply disobey” (para. 42). With this, Heston brings up the next theme of his speech: disobedience. As Gunn argues, this “underdog status” shows an important cultural shift: “Insecurity... is now expressed in what amounts to a tantrum...it betrays an inability to accept limitation or the answer “no” (Gunn, 2016, para. 4). Portraying oneself as the victim and then acting out instead of discussing solutions has become a rhetorical strategy. Heston does not lay out reasons to oppose gun control, nor does he encourage his audience to engage in reasoned discourse with those across the political aisle, instead, he just urges them to disobey. Heston states: “When told how to think or what to say or how to behave, we don’t. We disobey social protocol that stifles and stigmatizes personal freedom” (para. 37).

From the speech itself, it’s not really clear what Heston (1999) is telling the Harvard students to disobey. Earlier in the speech he had spoken about freedom of



speech, but as he doesn't actually mention at any time that someone's freedom of speech has been violated, but rather, mentions implicit (not formally written down or stated) "campus speech codes". He seems to be, perhaps, implying that 'political correctness' is stifling people's ability to advocate for gun rights, but despite the fact that I have examined the situation surrounding the speech, I'm still not sure if this is what he means. Heston then states

I learned the awesome power of disobedience from Dr. King, who learned it from Gandhi, and Thoreau, and Jesus, and every other great man who led those in the right against those with might! (para. 39)

Heston is creating a genealogy of sacred disobedience. He then immediately returns to the theme of victimhood. He states, "Disobedience demands that you put yourself at risk: Dr. King stood on lots of balconies" (para. 42). Heston is putting himself not just in the genealogy of sacred disobedience but also sacred victims: Jesus, Gandhi, and King.

In her essay on the Second Amendment, Laura J. Collins called this "demand politics" (Collins, 2014): it is a politics that is addicted to victimhood. The victim cannot reason, it can only demand. Collins warns us this demand politics is addictive, and that addiction, whether personal or political, trends towards violence. The fact that Heston compares the gun rights movement to the stories of Jesus, Gandhi, and King shows his belief in the power of the narrative of martyrdom. As Gunn (2016) notes, the history of the NRA shows this: what started as a sporting association has become "intolerant, aggressive, and mean" (para. 6). Nothing is ever enough. Gunn notes that rather than celebrating Texas's open carry laws, the gun lobby just got even angrier about bans on open carry in other states. With his remark about balconies, Heston is calling on his

audience to put themselves up for sacrifice. He states, “You must be willing to be humiliated, to endure the modern-day equivalent of the police dogs at Montgomery and the water cannons at Selma” (Heston, 1999). It is unclear to me whether Heston is telling the students to disobey political correctness, or to disobey gun control laws. If he is calling on them to disobey political correctness, is he saying that having other students and professors calling them racists, misogynists, homophobes, etc. is the equivalent of police dogs? Or, if he is calling on them to disobey gun control regulations, is being fined or charged with carrying a concealed weapon the equivalent of water-cannons? Heston never clearly states what they are to disobey, or what the punishment for this disobedience will be, because that is not the point of the speech: the goal of his speech is to establish an association between civil rights, freedom of speech, and gun rights.

Later in the speech, Heston (1999) asks the students to not “let America’s universities continue to serve as incubators for this rampant epidemic of New McCarthyism”. He asks them to “disavow cultural correctness” and also “social directives and onerous law that weaken personal freedom”. Again, it’s not clear what the “onerous law” is, but what is clear is that Heston is invoking the Puritan covenantal concept of limited authority. In the beginning of the speech he made the connection between free speech and gun rights, attempting to make both of these sacred for the audience. Now, Heston seems to be making the association between political correctness and gun regulation in that he sees both as overstepping the limitations of government. Perhaps he is arguing that university speech codes are an overstepping of university administrations governing of students, and gun regulations are an overstepping of the state and federal governments’ authority and in so doing, he is invoking the Puritan

idea of Americans' sacred obligation to disobey (and overthrow) government that oversteps its bounds.

Heston (1999) ends his speech saying, "If Dr. King were here, I think he would agree". Heston is creating an enthymeme which the audience needs to complete. Maybe Heston is saying that King would support the right to bear arms in order to protect free speech, or maybe he is saying that King would be against 'political correctness', or maybe he's just stating that King would agree that we should disobey unjust laws.

Gunn (2016), and other rhetorical theorists (ex. Hogan & Rood, 2015), who responded to Collins' examination of the contemporary gun rights movement agree with Collins in that they see that the "adolescent tantrums about guns" from 2<sup>nd</sup> amendment absolutists, "rest on the right to one's feelings". Gunn notes that at the 2019 NRA Convention, the NRA second-in-command Chris Cox declared that, "There has never been a tougher time to believe in American freedom than right here, right now." Using the military analogy of an army under siege, Cox claimed "never in the history of the NRA have so many different groups attacked us on so many different fronts." In my view, Cox's argument is simply counter-factual for at least three reasons: 1. we are living in the wake of the 2008 ruling of *DC v Heller* which, for the first time in the history of the Supreme Court, agreed with the NRA's individualist interpretation of the Second Amendment; 2. the NRA gave thirty million dollars to the Trump campaign to make sure he was elected and supported them once elected; 3. Since the *DC v Heller* ruling, there has been a steady progression of states allowing more powerful weapons to be owned, and expanded open-carry laws. But in sacred rhetoric, facts are not as powerful as feelings. I see this as connected to the contrived victimhood and

unpopularity which Heston so commonly put forth in his argument that gun rights are now “unfashionable” in the same way that civil rights were unfashionable in the early 1960s. Sacred victimhood trumps reasoned argument.

I take my understanding of sacred victimage from Kenneth Burke and from the French philosopher and literary theorist René Girard (1989; René Girard et al., 1987). In Leviticus 16, the ancient Israelites — the model for the Puritans — confessed the sins of the community to a goat, then cast the goat into the desert leaving the community free of sin. The Hebrew term *la-aza'zeyl*, commonly translated as ‘scapegoat’, literally means “the sender away (of sins)”. Unlike the current, popular usage of the term, a scapegoat is not simply an innocent victim, rather, the scapegoat symbolically takes on the sins of the community so that that community can be cleansed, and order can be restored.

Kenneth Burke goes so far as to say that in performing “the role of vicarious atonement,” the scapegoat “serves as the overall category for all human relations” (Carter, 1996, p. 83). Burke’s explanation of the scapegoat mechanism can be simplified to a cycle of order, pollution, guilt, purification, and redemption. In his *Rhetoric of Religion*, Burke (1970) gives this more complex explanation of his general theories using the Old Testament as an example:

One can start with the creation of a natural order (though conceiving it as infused with a verbal principle): one can next proceed to an idea of innocence untroubled by thou-shalt-not’s, one can next introduce a thou-shalt-not; one can depict a new Covenant propounded on the basis of this violation, and with capital punishment; one can later introduce the principle of sacrifice... Then gradually thereafter,

more and more clearly, comes the emergence of the turn from mere sacrifice to the idea of outright redemption by victimage. (p. 216)

The ultimate example of this, at least in Christendom, is Christ himself. Christ and his followers portrayed him as the victim, unjustly vilified. The community blamed all of their sins on him, but when he was killed, their sins were killed as well, and they were thus purified. The Christ, then was elevated to the status of God<sup>18</sup>.

What I am stressing here is not that the NRA want to be literal ritual victims. Rather, I am pointing out what Nietzsche and others have noted for centuries, that western culture, and, particularly, nations like America that rely so heavily on biblical narratives, heroize the victim. With the fall of class solidarity in the neoliberal Reagan-Bush era and the rise of identity politics in the 1990s, the role of victim has taken on an even more heroic status. Heston and his ilk are engaging in the oppression Olympics that they claim to despise so much. So why do they engage in it? Because claiming the role of victim pushes one into the sacred category and thus changes the audience's thinking, securing the future of the movement and doing away with the need for evidence-based arguments.

In his speech at Harvard Law School, Heston (1999) makes his greatest attempt to tie gun rights to the other individual rights granted in the Bill of Rights. Heston states: "Who will guard the raw material of unfettered ideas, if you will not? Who will defend the core value of academia, if you supposed soldiers of free thought and expression lay

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<sup>18</sup> It must be noted that Girard, himself a Christian, argued that Jesus's story was different in that the innocence of the victim is recognized by the text and the writer. The typical scapegoat narrative is built on the lie of the assumption of guilt of the scapegoat (Girard, 1989).

down your arms and plead ‘Don’t shoot me’”(para. 33)? Heston is claiming that we need the right to bear arms in order to guard the right to free speech.

At the NRA conventions, Heston goes even further. He states:

If you like your freedoms of speech and religion, freedom from search and seizure, freedom of the press and of privacy, to assemble and to redress grievances, then you’d better give them that eternal bodyguard called the Second Amendment. The individual right to bear arms is freedom’s insurance policy, not just for your children but for infinite generations to come. (para. 2)

Like the covenant of circumcision marked Jewish men’s reproductive organs<sup>19</sup> as a symbol that even unborn generations were participating in the covenant, Heston repeatedly mentions children and “infinite generations” to stress that the covenant is not just for those in the audience that night. The Constitution is not just a law that can be passed and then changed by the government, the Constitution is a covenant that was made between the people and their God.

### **The Tragedy**

In 1999, two teen-age boys used multiple, legally bought guns to murder twelve students and one teacher at their high school at Columbine High School in Colorado. Though the news media and politicians attempted to blame the mass shooting on everything from Marilyn Manson lyrics to an imaginary “Trench Coat Mafia”, the NRA rightly suspected that they would come under attack too.

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<sup>19</sup> In the ancient Near east it was not known that both sperm and an egg were necessary to produce a child. Rather, it was assumed that all future children were in the *semen* (from the Latin, meaning seed). The only contribution females made to reproduction to offer a womb — a place for the seed to grow. Thus, marking the male reproductive organ (in an act like circumcision) was marking all the future generations.

The 1999 NRA convention was planned to occur a few days after the shooting in Denver, Colorado, just a fifteen-minute drive from the site of the massacre. Many argued that holding the convention would be an insult to the local community. However, the NRA were worried that cancelling the convention was tantamount to an admission of guilt. The NRA decided to take a middle path by continuing to conduct their business meetings but cancelling the gun shows, music concerts, and other events that make the convention feel more like a festival than a meeting of a political lobbying group.

Heston (2000; cited in Raymond, 2006, pp. 5–7) addressed the controversy directly by again invoking Dr. Martin Luther King Jr. He opened his speech:

I have been admonished not to be here, not to speak to you here. It's not the first time. In 1963 I marched on Washington with Dr. Martin Luther King, long before Hollywood found civil rights fashionable. My associates advised me not to go. They said it would be unpopular and maybe dangerous. Thirty-six years later my associates advised me not to come to Denver. They said it would be unpopular and dangerous. But I am here.

Heston repeats the exact words that he had used at Yale, claiming that supporting civil rights in Hollywood in 1963 had not been “fashionable”. Of course, this is not what conservatives of the 1960s were saying: they were accusing Hollywood actresses of being negro-loving degenerates and actors of being pinko queers. Indeed, the fact that so many in Hollywood supported civil rights was one of the reasons McCarthy began his witch hunts. So why is Heston so keen on convincing this audience that what he was doing was and is unpopular? Because Heston wants his audience to feel as though they are the

underdog heroes fighting for justice. This way, when they lose, they become sacred victims.

Later on in the speech, Heston (2000; quoted in 2006, pp. 5–7) elaborates on how unfairly gun owners have been treated by the media and liberal politicians. He states that he thinks the debate is between those who believe in the Second Amendment, versus those who don't. But instead it is spun as those who believe in murder, versus those who don't. A struggle between the reckless and the prudent, between the dimwitted and the enlightened, between the archaic and the progressive, between the inferior citizens and elitists...

Even though he is stating what the imaginary “other” assumes about his audience, Heston is none the less setting up the important binary opposition of us and them. In Burke’s “theory of linguistic diacritics” (or “principle of the social diacritics of identity”) (Carter, 1996, p. 138), we define ourselves in opposition to others, just as we define terms, through opposites (Burke, 1969). Just as, in the previous chapter, we saw how Durkheim and Eliade saw that humans structured their world in terms of the binary opposition, Burke views our own identities as oppositional word-constructions. Burke repeatedly stresses the importance of the negative in identity formation. He notes that etymologically the word country comes from *contra* meaning “over against” (Burke, 1966, p. 423): we are united as a nation by what we oppose. In addition, in keeping with his linguistic theory of perfectionism, we are constantly striving for the perfection of these opposing terms. As noted earlier, our drive for perfection eventually leads us to place everything on one or the other side of the equation; with us or against us. We even



place god on one side, assumedly, our side, leading to the idea that we are god's chosen people (Carter, p. 7).

At the 2019 NRA convention, Chris Crox didn't describe anything about this enemy other than the fact that, "They hate us. They hate our trucks. They hate our plastic straws and, yes, they hate our guns" (quoted in; McGowan, 2019). During Heston's tenure, the tone hadn't quite reached that of hate, but Heston knew how to push the audience's buttons with words like 'dimwitted' (Heston, 1999, para. 2). While arguing that he wants to stop the "Balkanization" of America, he is playing into the audience's fear that the 'elitists' are mocking them. The enemy are not just those who have a different interpretation of the Bill of Rights, they are a secret cabal of these elitists. He states "Somewhere right now, evil people are scheming evil things... But each horrible act [ex. the Columbine Shooting] can't become an axe for opportunists to cleave the very Bill of Rights that binds us" (para. 2). Here, we see Heston set up the imaginary enemy. Scholars such as Burke have followed Aristotle's rhetorical analysis seeing antithesis as an "exceptionally effective rhetorical device... giving dramatic saliency and at least apparent clarity to any issue" (1966, p.19). The audience at the convention and the audience at home can see themselves as unified against this common enemy.

Aside from stressing that the NRA will not accept responsibility for the Columbine shooting, and that the NRA were being unjustly vilified, Heston speech centered on the Bill of Rights. Heston stressed that the Bill of Rights ought to unite the nation, and that the Bill of Rights designates sacred limits which cannot be crossed. Heston criticizes the use of the 'warrant of the dead' in relation to gun control. As I will discuss further in the next chapter, many gun control advocates use the rhetorical tactic of

the warrant of the dead to call for gun control. There is an implicit or sometimes explicit argument that the deaths will not be in vain if we enact gun control. Heston, however, states: “The dirty secret of this day and age is that political gain and media ratings all too often bloom upon fresh graves. I remember a better day, when no one dared politicize or profiteer on trauma” (p. 96).

Heston (1999) ends his speech with his common refrain that the Second Amendment is the most important right in the Bill of Rights because it is necessary to protect all the other rights. He ends his speech by proclaiming:

We cannot let tragedy [the Columbine shooting] lay waste to the most rare and hard-won human right in history... Our essential reason for being is this: As long as there is a Second Amendment, evil can never conquer us. Tyranny, in any form, can never find footing within a society of law-abiding, armed, ethical people. The majesty of the Second Amendment, that our Founders so divinely captured and crafted into your birthright, guarantees that no government despot, no renegade faction of armed forces, no roving gangs of criminals, no breakdown of law and order, no massive anarchy, no force of evil or crime or oppression from within or from without, can ever rob you of the liberties that define your Americanism... The Founding Fathers guaranteed this freedom because they knew no tyranny can ever arise among a people endowed with the right to keep and bear arms (para. 2).

Of course, Heston is invoking the covenantal principle of limited government and arguing that the Second Amendment is necessary to protect it: the right to bear arms is necessary to maintain this Puritan ideal.

In the next section I discuss the importance of maintaining this Puritan ideal. This ideal is not just a matter of the of part of the identity of the nation; it is the totem of the nation. As Durkheim (2001) explains, the repeated worship of the totem is necessary for social cohesion. If the reverence to this totem is not maintained then the nation will be torn apart.

### **Worship the Totem or Be Damned**

The smoke in the air of our Concord bridges and Pearl Harbors is always smelled first by the farmers, who come from their simple homes to find the fire, and fight, because they know that sacred stuff resides in that wooden stock and blued steel — something that gives the most common man the most uncommon of freedoms. When ordinary hands can possess such an extraordinary instrument, that symbolizes the full measure of human dignity and liberty.

Heston (2000; quoted in Smyth, 2020)

Durkheim (2001) saw totemism as the most basic form of all religion. The totem is not just an anthropomorphised creature, or even a god, it is the ultimate symbol of the group's commitment to itself. We sometimes mistakenly think that other cultures' sacred objects are all gods, but this is not usually the case. For example, the totem poles of the indigenous peoples of the Pacific northwest such as the Haida and Nuu-Chah Nulth are carved with images representing figures that symbolize characteristics and embody clans, not gods – for example, an orca may represent strength and an eagle may represent

peace<sup>20</sup>. They do not worship figures like Raven or Bear, rather they are archetypes and references to themselves. The feelings inspired by society are transferred onto the totem. The totem allows us to better imagine our society by distilling and focusing our feelings toward it onto a single thing.

Some more familiar totems to us are the Muslim star and crescent moon, or the Christian cross. Muslims and Christians do not worship these objects, rather, these totems are a short cut for identifying and consolidating beliefs. For Durkheim, the totem was the “flag” of ‘primitive’ (i.e. non-industrial) societies. Unfortunately, Durkheim himself didn’t discuss the flag as our totem. But now, sociologists recognize that objects and symbols such as the flag, the Constitution, and the Lincoln memorial are the totems of the United States. The gun may not yet be the totem of America, but it is the totem of some Americans. As Marietta (2012) explains:

the gun for the NRA can be described as a mild but meaningful form of totemism.

When Heston speaks of “the sacred stuff in that wooden stock and blued steel” he is placing the gun in a particular role, “when ordinary hands can hold such an extraordinary instrument” (p. 99).

Marietta states that although this totemism in the USA is not as developed as the religions of the Australian or North American indigenous peoples, it still holds “two central facets of [Durkheimian] totemism[:] the sacredness of a specific object and the social

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<sup>20</sup> The meanings of these figures differ between tribes and even between time periods.

organization around it by its identifiers” (p. 99). The gun rights movement sees the gun itself as sacred and organizes itself around the gun.

In his inaugural speech, Lyndon Johnson pronounced that America was a nation of “believers who believed in themselves” (quoted in Marvin et al., 1999, p. 18). Inadvertently or not, Johnson was making the Durkheimian pronouncement that nations are defined as believers in the totem of themselves. With the exception of some on the far-left — perhaps including my readers — Americans believe the Constitution, the Lincoln Monument, the ‘dream’ of Martin Luther King Jr., all represent them in abstract form. The NRA is attempting to push the gun into this category of sacred totem: the symbol of America itself. As the American historian and journalist Gary Wills suggests, guns are like the god of Moloch in the Torah – an object of veneration and immune to questioning (cited in Frank, 2014).

Durkheim (2001) argued that the profane routines of daily life weaken commitment of the individual to the group and thus, weaken the power of the totem. For societies to overcome their individualistic tendencies, they must repeatedly come together in ritual to regenerate the power of the totem. With the yearly NRA conventions, the contingent festivities, and their media coverage, Americans are invited to renew their patriotism in the consecration and regeneration of the gun as totem. In regenerating the totem, the group regenerates itself, redefining and strengthening its own identity and values of its covenant.

At the NRA Convention a year after the Columbine shooting, six months before the 2000 presidential election, Heston addressed the shooting again. Regardless of one’s

views on the topic, or opinion on Charlton Heston's character, it is hard to argue against the beauty and power of the speech. Heston (2000) began the speech:

Every time our country stands in the path of danger, an instinct seems to summon her finest first — those who truly understand her. When freedom shivers in the cold shadow of true peril, it's always the patriots who first hear the call. When loss of liberty is looming, as it is now, the siren sounds first in the hearts of freedom's vanguard. (para. 11)

Whether it is advertising or politics, the first thing that modern rhetoricians do to inspire action is establish that there is a problem. It is the same step whether it is a student using Monroe's Motivated Sequence, an infomercial, or a preacher giving a moralizing sermon. Following Luckmann's (2007) categorization of moralizing sermons, this is the predictable introduction, the description of the present evil.

But the audience need not worry, because whether it was in the late 18<sup>th</sup> century revolutionary era, or the present moment, the same hero is alerted: "the patriot... first hears the call"... "the siren sound first in the hearts of freedom's vanguard."

Heston wants his audience of gun-owners to identify with the American revolutionary soldiers; however, Heston is not speaking to an audience of contemporary soldiers. He is speaking to the membership of the NRA and those watching the convention on television. Demographic data shows us that the 'typical' NRA members is white, male, and not from a large city (Parker, 2017). We can guess that those at the convention are wealthy, while those watching Heston's speech on their televisions at home are likely less wealthy and perhaps less educated than the average white American. For this reason, we can understand why Heston valorized "the farmer" with his "simple" home. These men

may not be soldiers, but Charlton Heston wants them to believe that they could be just as heroic as the revolutionary soldiers if they were needed, because they have guns. The reference to the wooden stock and blued steel is a dog-whistle to the Christians who recognize the allusion to the wooden cross and iron nails of the crucifixion. As Marietta states, “this is subtle enough to be missed by the irreligious but clear enough to be maintained for the devout” (p. 102). The gun is the totem of these men as the cross is the totem of Christianity. It is not an item to be worshipped, but a representative summary of all they are and all they believe. Heston goes on to sacralise the gun itself. Like the crucifix - an instrument of Roman state torture - is imbued with the Christian values of sacrifice and brotherly love, the gun – a deadly weapon - becomes a fetish object imbued with the American value of freedom. Heston states “sacred stuff resides in that wooden stock and blued steel”. The gun not just facilitates freedom, it becomes a symbol of freedom itself.

Heston reminds his listeners that they may be “ordinary” now, but gun-ownership magically imbues the bearer with “dignity and liberty.” Heston has created a visual fantasy world in which each of his listeners can insert themselves as the protagonist. They may be “ordinary” “farmers” from “simple homes” but, like the sword that made Arthur King, or the cape that transforms Clark Kent into Superman, the gun can make these “ordinary” men heroes.

Heston had used the visual rhetoric of holding up a musket, accompanied by the phrase “from my cold dead hands” many times before. But, at the convention a year after the Columbine massacre, this defensive rhetoric was particularly powerful as the NRA *did* have valid reason to feel it was being attacked by outsiders – legislatures on

both sides of the aisle were discussing gun control. Heston began the conclusion to his speech by foreshadowing the use of the most iconic phrase of the gun rights movement in America. He begins “That’s why *those five words* issue an irresistible call to us all, and we muster.” Heston then motioned off camera and paused as he was handed a replica flintlock long rifle, an allusion to the weapons used in the American revolutionary war. Heston continued:

So, as we set out this year to defeat the divisive forces that would take freedom away, I want to say those fighting words for everyone within the sound of my voice to hear and to heed, and especially for you, *Mr. Gore*: (para. 12)

At this point Heston raised the musket above his head and cried out:

‘From my cold, dead hands!’(para. 12)

Though the speech is full of poetic allusion, it is the last phrase that became, as we now say, a meme. The phrase was not a new one. It has been used as far back as the 1970s with a campaign by the group The Right to Keep and Bear Arms which distributed bumper stickers with the slogan: “I’ll give you my gun when you pry it from my cold, dead hands”. This is the group whose members that seized leadership of the NRA at the 1977 “Revolt in Cincinnati” (Dunbar-Ortiz, 2018, p. 124) during which the Second Amendment absolutists come to power. Unlike the rest of the speech, which was full of sophisticated historical references, open to fantastic interpretation to the listener, this last sentence is absolute: it is the sacred boundary. It reveals the non-negotiable status of the Second Amendment for gun right activists. There is no negotiation of the sacred. It upholds a sacred set of values while completely dismissing the possibility of any other. The sacred changes our mode of thinking from consequentialist to absolute. Heston



does not need to lay out reasoned consequence, he merely needs to allude to a transcendent authority. Heston's statement sets a sacred limit – as long as I am alive, I will have my right to bear arms.

Politicians have never shied from invoking the sacred limit. In 1775, Patrick Henry declared “give me liberty or give me death” (quoted in Marietta, 2012, p. 7). This was the sacred limit of the American revolution and is the rallying cry of patriotic Americans to this day. Winston Churchill declared: “we shall defend our island, whatever the cost may be... we shall never surrender”. The sacred limit was the island of Great Britain. When Ronald Reagan declared, “Mr. Gorbachev, tear down this wall”, there was no thought of negotiation.

Dr. Martin Luther King Jr. invoked this sacred limit in his “I Have a Dream” speech of August 28<sup>th</sup>, 1963 (which Heston was so fond of saying he witnessed). Marietta (2012) explains that King's speech “invokes explicit boundaries of what can and will be tolerated” (p. 101). King declared:

We can never be satisfied as long as our children are stripped of their self-hood and robbed of their dignity by a sign stating, “For Whites Only”. We cannot be satisfied as long as a Negro in Mississippi cannot vote... No, no, we are not satisfied, and we will not be satisfied until ‘justice rolls down like waters, and righteousness like a mighty stream. (quoted in Marietta, p. 101)

Marietta (2012) goes on to explain that “King explicitly states the nonnegotiable nature of his position, emphasizing the fierce ‘urgency of Now’ as King declares:

It would be fatal for the nation to overlook the urgency of the moment. This sweltering summer of the Negro's legitimate discontent will not pass until there is

an invigorating autumn of freedom and equality. There will be neither rest nor tranquility in America until the Negro is granted his citizenship rights. (quoted in Marietta, 2012, p. 101)

King sets the limit of the sacred with poetic allusions to the Bible, to negro spirituals, and, of course, to the US Constitution and to the Declaration of Independence. Heston too begins his speech with similar poetic allusions. But Heston ends his speech with something entirely different, with an allusion to the statement on a bumper sticker. With the grand oratory style of a Shakespearean actor, Heston's cry of "from my cold dead hands" gives dignity not just to the bumper-sticker, but to all those who feel a kinship with that culture. It is a rallying cry that elevates those who suspect they are being called "dimwitted" by the elite.

Marietta (2012) writes that this "shift in contemporary (American) political discourse from a politics of redistribution to a politics of identity has included the prominence of intense, unyielding, and non-negotiable claims" (p. 8). Though the literature on American political psychology demonstrates a great deal of ambivalence in the citizenry, this is not the case with political rhetoric of the last forty years: "it is unconflicted, extreme, and strident, taking positions that ignore compromise or negotiation, upholding a favored set of values while dismissing others" (p. 8).

The biblical scholar Bart Ehrman (2014) explains that fundamentalism is an "internally coherent system". Ehrman is specifically referring to evangelical Christian Bible literalists and militant mythicist Atheists<sup>21</sup>; however, the same can be said of

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<sup>21</sup> Mythicist atheists believe the 'Christ myth theory' that claims that the story of Jesus's life is a myth and that there is no evidence that a man called Jesus who was crucified in Roman occupied Palestine existed at all. They do not believe that Jesus is the son of God and they believe that the entire biblical story of the man and his disciples is based on myth, lies, and historical inaccuracies (Ehrman, 2014).

anyone who uses the fundamentalist hermeneutic. Looking in from the outside, it may be completely nonsensical, but from the inside, there are no contradictions. There is no room for negotiation because you cannot add or subtract from the closed system of the text. Changing just would mean the entire belief system would fall apart. If Bible literalists accept that, in light of contemporary archeological evidence, we should accept that humans and apes evolved from a common ancestor, then it would mean that the Bible was wrong on this point, and thus could not be the eternal word of an omniscient God. Just one prick would bust the fundamentalist bubble. If constitutional originalists believe that some gun control is necessary in light of advancements in weapons high-powered portable weapons technology, it would mean that the Constitution was not a reflection of eternal natural laws written by divinely inspired hands, all precedent law based on the Constitution is a sham.

### **The Disgust and Comedy of Mingling of the Sacred and the Profane**

The sacred is the thing that we hold non-negotiable. Durkheim (2001) noted that the transgression of the boundary of the sacred and profane is deeply troubling for humans. He writes: “the mind experiences deep repugnance about mingling” (p. 37). Think of the disgust that we feel at the commercialization of Christmas: even those of us who are not religious find something repulsive in the image of the baby Jesus being used to sell Nintendo switch consoles. We even feel disgusted by the use of contemporary values, such as environmentalism, to sell products or promote an unrelated political agenda. Though we may think that the world is rapidly secularizing, when someone attempts to mingle the sacred with the profane, we realize how strongly we feel that these categories should be kept separate. Likewise, even those of us that are not American, or

Christian are disgusted that American patriotism and Christianity are used to promote gun rights.

Perhaps our own disgust at the crossing of the boundary between why Charlton Heston's speech was so roundly mocked by those who do not support his ideology. Heston invoked all the sacred values of America – freedom, self-reliance, distrust of authority — to justify the NRAs policies such as allowing teenagers to buy AR 15s; so, perhaps it is fitting that his speech was met with similarly transgressive and revolting jokes. In perhaps the most transgressive jokes, Heston was implicated in firearms deaths, particularly the deaths of innocents. Anthony Jeselnik (2013) mocked Heston's 'sacred limit' joking: "They can have my gun when they pry it from my curious six-year-old's cold dead hands."

But this was not the joke that brought the most ire from Heston's fans and gun rights advocates. The most hated joke about Heston's "Cold Dead Hands" speech was Jim Carrey's (2013) skit on *Funny Or Die* mocking gun culture and the accompanying parody song "Cold Dead Hand". The skit takes place on a mock episode of *Hee-Haw* with Carrey impersonating Charlton Heston. Carrey uses the same solemn authoritative tone with which Heston began his speech at the NRA convention on "the enemy" (the "evil people scheming evil things"), to begin his talk of *the enemy*. But *the enemy* is not who we expect: it is not the elite; it is not the urban intellectuals who call you 'dimwitted'; the enemy is... aliens. When Carrey, impersonating Heston, brings up aliens the audience immediately understands that Heston's enemy – the liberal elite who call you dimwitted while seeking to take away the freedom — is just as imaginary. The scene then switches, and Carrey is no longer dressed as Heston, but instead, a country and

western singer. As he sings, he roundly mocks every aspect of Charlton Heston's career, personality, physicality, and ideology. Along with the predictable dick jokes (ex. "You're a big, big man with a little bitty gland/ So you need something bigger just to fill/ Your cold dead hand") the chorus mocks Heston's death and supposes that his gun is what denies his entrance to Heaven: "The angels wouldn't take him up to heaven like he planned/ 'Cause they couldn't pry that gun from his cold dead hand".

Not surprisingly, conservative talk radio, Fox news and other right-wing media outlets were figurately up in arms over Carrey's portrayal of Heston. The Fox News Channel host political commentator Greg Gutfeld feigned outrage and victimage at the harm Carrey had caused, calling Carrey, "the most pathetic tool on the face of the earth". Gutfeld attempted to invoke the sacred value of our time, anti-prejudice, to attack Carrey by calling him a "modern bigot". Instead of charging that Carrey was mocking Heston the individual, or gun rights, Gutfeld, a libertarian gun-rights advocate, argued that Carrey was mocking all of "rural America". Carrey clapped back calling "Fux News" a "media colostomy bag that has begun to burst at the seams and should be emptied before it becomes a public health issue" (Bond, 2013).

Viewers, on the other hand were, frighteningly, not just figurately up in arms. As I noted near the beginning of this chapter, the sacred allows, even promotes, violence in its defense. Gorski (2017) argues that moral decline is at the center of religious nationalist rhetoric. The New Christian Right in general, and the NRA specifically, blame moral decline for all of America's problems (Whitehead et al., n.d.). Enforcing the moral order, not gun control, is the answer to society's problem. Carrey became a symbol of this moral decline; in Burke's term, he had violated the moral order, and for it to be restored,

there had to be a sacrifice. As Jennifer Dawson (2019) argued in her analysis of *American Rifleman*, the NRA has promoted vigilante violence in order to restore the moral order for many years. Both Carrey and *Funny or Die* received death threats after the performance. Ironically, Carrey chose to be protected by armed guards (Bond, 2013). Carrey had mocked the un-mockable: the individualist interpretation of the 2<sup>nd</sup> amendment which NRA members believe is a God-given right, enshrined in the divinely inspired Constitution.

### **Conclusion**

Sacred rhetoric changes the way that we think from qualified to categorical. When Heston stated that his gun could only be taken “from his cold dead hands”, he drew a line in the sand: he established that this was the sacred limit. Once the sacred limit has been established there can be no negotiation: believers in 2<sup>nd</sup> amendment absolutism would rather die than give up their guns.

On television and radio aimed at a broad audience, the NRA pays lip service to the idea that Americans are safer if ‘good-guys’ have guns. They state that the proper response to school shootings is not disarming teenagers, but rather, arming teachers, and that if guns are outlawed only outlaws will have guns, etc., etc. But the strength of the NRA arguments is not based in such mundane arguments: it is in its sacred rhetoric. On the National Rifle Association’s website, “every possible argument for gun control is contested based on the exact wording of the Second Amendment, in part by quoting the founders” (Dunbar-Ortiz, 2018, p. 119). Dunbar Ortiz summarizes these examples:

George Mason asked “[W]ho are the militia? They consist now of the whole people.”

Thomas Jefferson said, “No free man shall be debarred the use of arms.”

Patrick Henry said, “The great object is, that every man be armed.”

Richard Henry Lee wrote that, “to preserve liberty it is essential that the whole body of people always possess arms.”

Thomas Paine noted,

“[Arms... discourage and keep the invader and the plunderer in awe, and preserve order in the world as well as property.”

Samuel Adams warned, “The said Constitution [must] never construct to authorize Congress to infringe the just liberty of the press, or the rights of conscience; or to preserve the people of the United States, who are peaceable citizens from keeping their own arms.” (“The Second Amendment”, quoted in; Dunbar-Ortiz, 2018, pp. 119–120)

Unlike gun control advocacy groups’ websites, the NRA website is not full of facts and figures which attempt to change people’s opinions. Quoting the saints of American civil religion is enough. Who needs data when you can quote dogma? Sacred rhetoric changes our mode of thinking from contingent to final. There are no ‘what ifs’ or ‘buts’; the right to bear arms is in the Constitution, the Constitution is sacred and cannot be questioned. End of argument.

## CHAPTER 6

### OBAMA'S TEARS

The best lack all conviction,  
while the worst are full of passionate intensity.

W.B. Yeats

In his address after the shooting at the Charleston African Methodist Episcopal Church in 2015, an exasperated Barak Obama stated only “sporadically, our eyes are open” to the horror of gun violence, then, “[we] slip into comfortable silence again... once the eulogies have been delivered... once the TV cameras move on” (Obama, 2015). As the American rhetorical theorist Jeremy Engels wrote following the failure to pass gun control measures after the Sandy Hook elementary school shooting, “we are moved, and we move on. Moving on, and on, and on, ad infinitum” (quoted in Rood, 2018).

Obama spoke on gun violence dozens, if not hundreds of times during his presidency, often in the wake of mass shootings. And every time, it would take the attention of the media for a few minutes, and then the nation would move on. Obama’s exasperated tone came from his frustration with the lack of sustained attention to the issue. Though, in his first term, President Obama attempted to console the nation following mass shootings with eulogies, things changed after the Sandy Hook shooting which occurred just after he had already won re-election. Once electoral politics were removed, Obama attempted to put each shooting in the context of the greater problem of gun violence in America, and in so doing, make all the dead present at each



speech. Obama attempted to overcome the problem of fleeting engagement by creating a sacred civic obligation to control gun violence.

I begin this chapter with a discussion of Obama and American civil religion drawing on the work of Bellah's student, and now Yale professor, Philip Gorski (2017). I then discuss Obama's national eulogy following the shooting of representative Gabrielle Giffords. I then begin my focus on Obama's address following the Sandy Hook elementary school shooting. I argue that this was the turning point of his rhetoric in the wake of mass shootings. Instead of attempting to console the nation, Obama utilized memory to rouse civil religious sentiment. To do this, Obama used the rhetorical device of the warrant of the dead: Obama attempted to convince the American people that they had an obligation to the dead to enact gun control legislation. Drawing on the work of memory theorists (Assmann, 2011; deTar, 2016; Halbwachs, 1992; Honneth, 2015; Nora, 1989; Nora & Kritzman, 1996; Özyürek, 2007), I then discuss Obama's attempt to put the Sandy Hook deaths into historical context through the strategic use of collective memory. Finally, I discuss Obama's great failure: none of the legislation proposed in the wake of the Sandy Hook shooting became law.

Examining civil religious practices through the lens of instrumental presentism (Halbwachs, 1992) shows us how particular memories of the past are used to meet the political needs of the present. Obama attempted to use collective memory to convince his supporters that it was their sacred civil religious duty to protect the vulnerable through enacting gun control legislation. He failed to do this.

## Obama and the American Civil Religious Tradition

When we think of modern politicians who have drawn on the contemporary civil religious tradition, we tend to think of right-wing populists who encourage religious nationalism or the speeches of those conservatives who exploit the narrative of manifest destiny such as Ronald Reagan's magnificent national eulogy following the Challenger Disaster. However, politicians such as Reagan are seldom the writers of their own speeches and may not be steeped in the civil religious traditions themselves. Philip Gorski (2017) notes that Barak Obama, on the other hand, studied the American civil religion like no other president to date. Gorski notes Obama's reading of the African-American civil religious tradition in high school, his study of the rhetoric of the founding-fathers and the ideas of civic republicanism at Harvard Law School, his exposure to "the modern-day jeremiads of Jeremiah White" (p. 191), and his deep affection for "the Augustinian variant of prophetic Christianity as developed by Reinhold Niebuhr" (p. 194). As Gorski states, "if one were putting together a course of study in America's civil religious tradition, the reading list would look a lot like Obama's own intellectual biography" (p. 191).

Gorski makes this point particularly clearly in his discussion of Obama's speech "More Perfect Union", which was delivered in the midst of the Jeremiah Wright controversy<sup>22</sup>, in the course of the 2008 Democratic Party presidential candidate nomination. Obama (2008) begins:

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<sup>22</sup> In March of 2008 NBC news released footage of Obama's pastor Jeremiah Wright making 'controversial' pronouncement about US domestic and foreign policies including declarations that America

two hundred and twenty-one years ago.... Farmers and scholars; statesmen and patriots who had traveled across an ocean to escape tyranny and persecution finally made real their declaration of independence. (para. 1)

He goes on to state that the document these men produced “was stained by this nation’s original sin of slavery” (para. 2) ; however,

the answer to the slavery question was already embedded within our Constitution – a Constitution that had at its very core the ideal of equal citizenship under the law; a Constitution that promised its people liberty, and justice, and a union that could be and should be perfected over time.

And yet words on a parchment would not be enough to deliver slaves from bondage or provide men and women of every color and creed their full rights and obligations as citizens of the United States. What would be needed were Americans in successive generations who were willing to do their part – through protests and struggle, on the streets and in the courts, through a civil war and civil disobedience and always at great risk – to narrow that gap between the promise of our ideals and the reality of their time. (para. 3 – 4)

Obama begins with a discussion of the founding covenant of the Constitution, the breaking of this covenant through the sin of slavery, the remaking of the covenant in the Civil War, its breaking in the Jim Crow era, and the remaking of the covenant in the civil rights movement. Obama summed up the entire American civil religious narrative in just

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had engaged in “terrorism” in numerous countries around the world including Palestine and South Africa and that the Iraq war had been justified with lies from a corrupt government (Ross & El-Buri, 2008).

a few minutes, poetically and with broad popular appeal. It was clear, from before he was even nominated to be the Democratic Party candidate, that Barak Obama would go on to be one of the great rhetors of the American civil religious tradition.

### **The National Eulogy**

Perelman and Olbrechts-Tyteca (1973, p. 48) note that, in classical times, epideictic rhetoric, including eulogies, were “apparently uncontroversial”. The authors critique this conceptualization of epideictic rhetoric for contemporary times, arguing that it limits the genre to rhetoric “without practical consequences”. Instead, Perelman and Olbrechts-Tyteca argue for a new definition for epideictic rhetoric which inspires audiences to action. In this section, I begin to explain how in his first term in office, Obama followed this classical definition of epideictic rhetoric in his eulogies, but after the shooting at Sandy Hook elementary, Obama, like Perelman and Olbrechts-Tyteca, saw the need to go beyond the classical bounds of epideictic rhetoric to inspire action.

As a rhetorical form, the eulogy is a form meant “to console the bereaved, to affirm the community’s values, and to exhort the audience to be virtuous” (Hewett, 2008, p. 91; cited in Campbell & Jamieson, 2008). In their 2008 work, Karlyn Kohrs Campbell and Kathleen Hall Jamieson discuss “national eulogies”. They state that the form is used when “a traumatic event results in the death of civilians and by so doing calls the nation’s institutions or values into question” (p.102). Campbell and Jamieson argue that the public look to the president after a tragedy to answer, “what does this catastrophe mean, and how is the country to act in order to ensure that it does not recur” (p. 108)? The form usually occurs at the site of the tragedy, creating a *lieu de*

*mémoire* (site of memory) (Nora, 1989), turning victims into heroes (Campbell & Jamieson, 2008).

In the 2014 special issue of *Rhetoric and Public Affairs* devoted to the topic of civility, the American rhetorical theorist D.A. Franks discusses the national eulogies of Lincoln's Gettysburg address, Reagan's address after the Challenger disaster, Bill Clinton's address after the Oklahoma City bombing, and Dr. Martin Luther King Jr.'s speech after the Birmingham church bombing. Frank notes that all these national eulogies "position traumas as serving a teleological purpose" (p. 659). I see all of these eulogies as firmly planted in the strain of American civil religion which sees God as having a divine plan for America. As Frank notes, the eulogists assume "that those who died did so in the cause of that divine purpose".

Unlike those from the NRA, including Heston (discussed in the last chapter), who argued that deaths should not be used to advance political agendas, these eulogists all "deploy those who died as martyrs who require action on the part of the audience" (Frank, 2014). Frank argues that: "[n]ational eulogies should thus help the nation work through trauma by offering theological and political balms for deep wounds as well as narratives that offer hope and steps toward recovery" (p. 659). Frank argues that national eulogies should, indeed, be used to "establish the conditions necessary for policymaking". Unlike those that argue that the wake of tragedy is not the time for political discussion, Frank argues, "a civil society, in the wake of tragedy, ought to use symbolic rituals to work through trauma, doing so to allow for both grieving and subsequent problem solving" (p. 655). Instead of only addressing the past and present — as classical epideictic rhetoric does — public eulogies, whether eulogies of politicians,

celebrities, or national eulogies, become deliberative by attempting to influence the future.

Before Obama, American presidents had treated mass shooting as if they were all aberrations that could not be understood. After the 2007 shooting at Virginia Tech, G.W. Bush, the sitting-president, stated that it was “impossible to make sense of such violence and suffering” (*Condolenses*, 2007, para. 4). The contemporary American rhetorical theorist Craig Rood (2018, p. 56) notes that in his first term, Obama addressed mass shootings in much the same way. Obama’s eulogy following the mass shooting of eighteen people including Representative Gabrielle Giffords followed this thematic tradition by discussing the incomprehensibility of such violence.

The Pulitzer Prize winning liberal American journalist and historian Gary Wills (2011) compared Obama’s Tucson address to Lincoln’s speech at Gettysburg. Wills argues that in this address, Lincoln invited “all Americans to grieve for the tragic war and to share blame for the historical crime of slavery” (para. 4). Like Lincoln, Obama faced a traumatized and grieving audience, which he sought to unite. Obama avoided any divisive discussion of gun control or politics at all, instead turning to the biblical book of Job. The book of Job, of course, is sacred text in both the Jewish and Christian traditions. It is a poetic tale addressing the problem of theodicy which has plagued the Judeo-Christian-Islamic tradition since its beginnings thousands of years ago. The story begins with Yahweh and Satan making a bet. Satan bets Yahweh that he (Satan) can make Yahweh’s faithful servant, Job, curse Yahweh. Satan begins by killing Job’s animals and servants, then Job’s children, and then causes Job to suffer boils all over his body. Like Job, the reader of the Book of Job is never given an explanation as to why God allows

these horrors. The horrors cannot be placed in a historical context because they are merely the result of a ‘bet’ between God and Satan: his suffering is unexplainable because it is caused by Satan’s whim alone. Like Job’s suffering, Obama explained that the evil that had happened in Tucson happened “for reasons that defy human understanding” (Frank, 2014, p. 653). Like this Christian interpretation of the book of Job, Obama’s (Wills, 2011) national eulogy after the Tucson shooting was ultimately hopeful. After he eulogized the six dead, Obama added that Gabrielle Giffords had just opened her eyes for the first time. He then drew attention to the by-standers who had helped prevent the would-be assassination of Representative Giffords and asked the American people to engage in discourse which resisted polarization and blame.

Yet, Obama (2011) ended his national eulogy with a return to the near nihilistic lack of understanding in the book of Job.

Bad things happen, and we have to guard against simple explanations in the aftermath. For the truth is none of us can know exactly what triggered this vicious attack. None of us can know with any certainty what might have stopped these shots from being fired, or what thoughts lurked in the inner recesses of a violent man’s mind. (para. 25)

And then, once again, Obama urged the American public to not let this divide them, stating, “what we cannot do is use this tragedy as one more occasion to turn on each other. That we cannot do. That we cannot do.” Obama leaves us with this repeated anastrophic advice: we cannot let a tragedy divide America. In the next section, I will show how Obama quickly abandoned his own advice.

## The Tragedy That Changed Obama's Rhetoric

On a crisp New England winter morning, a young man woke up, entered his mother's bedroom where she lay sleeping, and shot her in the head four times. He then took his just-murdered-mother's car and drove to Sandy Hook Elementary School, armed with his mother's legally purchased Bushmaster XM15-E2S rifle and ten magazines with 30 rounds each. There, he killed twenty children, six adults, and himself. He had shot all but two of his victims multiple times. The Connecticut State Attorney's office concluded that the shooter's "severe and deteriorating internalized mental health problems ... [and] access to deadly weapons ... proved a recipe for mass murder" (State of Connecticut Office of the Child Advocate, 2014, p. 9)

Maurice Halbwachs (1992, p. 140) argued that "every collective memory unfolds within a spatial framework". Following Halbwachs thought, Pierre Nora developed the idea of *lieu de memoire* (site of memory) (1997). For Nora "[a] *lieu de memoire* is any significant entity, whether material or non-material in nature, which by dint of human will or the work of time has become a symbolic element of the memorial heritage of any community" (p. 14). After the shooting, Obama immediately gave an impromptu address, then travelled to the memory site of Newtown Connecticut to give a scripted national eulogy.

The German archeologist and theorist of memory, Jan Assman (2011), writes that ritual as memory is based on repetition: "each performance must follow a fixed model as closely as possible in order to make the actual performance resemble in every respect the previous one... Repetition is a form of preservation, and thus, memory" (p. 23-24). The



enactment of the same movements in the same space, make the ritual visible. Obama's sentiments immediately after the shooting were repeated in the second address.

Obama did not turn to the Old Testament God of the Book of Job. Instead, he turned to the Pauline Christian God of Corinthians II quoting: "Do not lose heart. Though outwardly we are wasting away, inwardly, we are being renewed day by day". Rather than attempt to create a sacred morality, he draws on the existing religious values of patience, care, and protecting the vulnerable. He argued that the fact this shooting had taken place meant that Americans had not done enough to protect their children. He argued that we all need to work together in order to ensure such a tragedy doesn't happen again. He states that while no one law will eliminate such tragedies entirely "we have an obligation to try". Who do we have an obligation to? He leaves this blank. The audience is allowed to choose whether we have an obligation to our nation, to God, to our children, to all humanity, etc.

Assman (2011, p. 339) notes that "political memory is highly normative, prescribing what must by no means be forgotten in order to form and belong to a political identity". Obama's national eulogies followed the normative model in his first term. As American rhetorical theorist Craig Rood (2018, p. 50) argues, early in his presidency, Obama's speeches "closely followed the norms of epideictic rhetoric; he claimed that we should honor those who died by recommitting to civic values, such as patriotism, rule of law, and respect for one another". Obama's rhetoric brought all Americans together in the singular political identity of American. However, following the Sandy Hook shooting in December of 2012, Obama's tone and message changed. Instead of purely epideictic

national eulogies, Obama began to combine epideictic and deliberative rhetoric. He did not just call for respect of civil values, but instead made specific calls for gun control.

Obama's speech after the Gabrielle Giffords shooting received praise from both sides of the aisle, with even far-right Republicans like Newt Gingrich praising it (Frank, 2014, p. 654). On the other hand, the Newtown speech did not receive such bipartisan support. Those on the right stated that it was inappropriately "political", a dog-whistle way of stating that it urged activism in favour of control. As Frank notes, the eulogy after the Gabrielle Giffords shooting in Obama's first term "provided spiritual and psychological comfort, but little more" (p. 655). However, the Newtown memorial most certainly did more: it called for action. For this reason, it was accused of exploiting the dead for political gain. Obama had crossed the sacred boundary.

### **The Sacred as Qualified: Making Gun Control More Sacred**

Gun control advocates will not make progress until they recognize that the NRA's power lies in the appeal of its ideas, its political engagement and acumen, and the intense commitments of its members. Until gun control advocates can match these features, they are unlikely to make much progress.

David Cole; quoted in Dunbar-Ortiz, 2018, p. 22

It is easy to understand that different cultures, and different people within those cultures, hold different things sacred. For example, in the USA, many hold sacred the belief that marriage is a covenant only between a man and a woman; to others, the marriage covenant itself is sacred, but it can be between any two people regardless of gender; to yet others, the entire concept of marriage has more to do with taxes and insurance than anything sacred. What is more difficult to grasp is the question of whether

the term sacred is categorical or qualified. Although we have, up until now, discussed the sacred in terms of the Durkheimian definition of the sacred as wholly other, this may not be the case for all societies and all individuals at all times. For example, a highly religious individual may have a clear conception of the world in terms of the sacred and the profane, but what about those of us with a more secular *Weltanschauung*? In terms of rights, what about those who do not entirely agree with the Lockean notion of a natural law, and think Hobbes may have been onto something with his social constructionism? One might clearly hold human life to be sacred, but what about a value like education. Surely education is sacred, but less sacred than human life. The border between what is sacred and what is profane might be more porous than Durkheim proposed. Groups such as the NRA leadership understand this. Those who believe in gun control are also beginning to understand this. Obama hoped to convince us that human life is *more* sacred than the right to bear arms.

After the Sandy Hook tragedy, Obama stopped trying to change anyone's mind on gun control. He gave up on convincing the Second Amendment absolutists, who are true believers in gun rights. Instead, he began trying to convince those that already believe that we need gun control to become militants. Obama used civil religion to try to convince the left that their values are sacred too. He hoped that sacred rhetoric would mobilize gun control advocates as much as it mobilizes gun rights advocates. Obama attempted to make gun control a sacred obligation.

### **Obama's Sacred Rhetoric: The Warrant of the Dead**

Though we often think of gun rights advocates as the "true believers", many gun control supporters are true believers in the same manner. As Hogan and Rood (2015)

note, many gun control advocates “assume, rather than prove, the efficacy of various plans for restricting gun ownership [to reduce gun violence]”. After the Sandy Hook shooting, Obama began speaking to these true believers. He did not use statistics and data to try to convince congress, the senate, and voters that gun control was necessary; rather, he used the sacred rhetoric of the warrant of the dead.

A warrant refers to the authority or justification to carry out an action. The warrant of the dead, therefore, is the notion that the dead give authority or justification for action. As Rood explains “the warrant of the dead refers to an explicit or implicit claim that the dead place a demand on the living.” (2018, p. 47). The warrant of the dead is often the justification for social change to lessen the chances of similar tragedies occurring in the future. Rood argues that the warrant is more than simply a “cost-benefit analysis or a pragmatic argument that a particular position might reduce future deaths” (p. 49). Rather, the warrant of the dead is “an ethical claim” (p. 49). It is a call to our moral obligations. It is not qualified, it is absolute. The warrant of the dead is sacred.

In some cases, the warrant of the dead is a call to carry on the work that the dead started. For example, in the wake of the assassinations of peace activists like Martin Luther King Jr. and Gandhi, there were calls for the people to carry on the work of making peace through non-violence. Whereas, in the death of a guerilla rebel in an independence war, there may be calls to fight harder for independence. In both cases, the warrant is often used to encourage activists to honour the legacy of a fallen hero by continuing their work.

But we most often hear the warrant of the dead regarding those who died in tragedies that were not related to their life’s goal or purpose. Rood (2018) gives the

example of the NAMES project AIDS memorial quilt. This quilt, which honoured the individual loved-ones who had died of AIDS, was placed on the Washington Mall to demand government action to address the AIDS crisis. We hear the warrant of the dead in relation to the covid-19 crisis being used to call for better protections for medical workers and universal health care. And of course, George Floyd's last cry of "I can't breathe" calls us to action against police brutality. These voices call us to action, even though the dead themselves may not have been activists. After the events of September the 11<sup>th</sup>, 2001, we heard the warrant of the dead used to call for everything from tighter airport security to the completely unrelated overthrow of Saddam Hussein's government. We can safely assume that those who died in 9/11 had not spent their lives fighting for greater TSA checks or an end to the Baathist regime in Iraq. And today, those who have died of covid-19 may have never even thought about the impact of nationalized health care or public health measures on virus epidemics. Some are outraged that, after his death from covid-19, Herman Cain's social media accounts continued to be used by political operatives to claim that the novel coronavirus was not as deadly as the media was claiming – something that Cain himself had argued before he had died (Voytko, 2020).

As Katherine Verdery (1999, p. 29) notes in her book *The Political Lives of Dead Bodies*, "what gives a dead body symbolic effectiveness in politics is precisely its ambiguity, its capacity to evoke a variety of understanding". The dead are rhetorically useful because they cannot speak. Just like Charlton Heston used Martin Luther King Jr.'s death to advocate for gun rights, we can manipulate the dead to say whatever suits our rhetorical purpose. We will never know what the dead teenagers at Columbine high school thought about their classmates owning assault rifles. We will never know if the

teacher at Newtown thought she would have been safer had she been armed herself. Verdery recognizes that the dead sometimes “present the illusion of having only one significance”. But as Rood (2018, p. 51) states “interpreting or ascribing significance in the aftermath of mass shootings often says less about the dead or the condition of their death than it does about us”. We use warrant of the dead to make our own political goals sacred.

The warrant of the dead is a common feature of national eulogies. At Gettysburg, Lincoln commanded that the deaths of the soldiers “shall not be in vain”. The address is exalted and held up as part of the canon of American civil religion as honouring both the dead and the survivors who fought on both sides of the civil war. Yet, Lincoln clearly used the warrant of the dead to call for a united “nation”: Gettysburg remains “a final resting-place for those who here gave their lives, that *the nation* might live” (Voytko, 2020 emphasis added). Similarly, in making the argument for war following the tragedy of September 11<sup>th</sup>, 2001, Bush stated that “we have suffered great loss. And in our grief and anger we have found our mission” (2001). Presidents throughout American history have recognized that calling on the warrant of American dead, calls Americans to action, whether at home or abroad.

In the last century, the warrant of the dead has been the prime mover of gun control legislation. Particularly, assassinations and attempted assassinations of politicians and activists. The 1968 Gun Control Act came out in the wake of the assassination of J.F. Kennedy in 1963, as well as Martin Luther King Jr. and Robert Kennedy in 1968. The 1993 Brady Handgun Violence Protection Act (the Brady Bill) which mandated federal background checks on firearms purchases and a five-day waiting period, was named after

James Brady, the press secretary who was shot in the head during an attempted assassination on Ronald Reagan in 1981<sup>23</sup>.

The warrant of the dead is frequently invoked after mass shootings in America, and usually is not invoked after other kinds of fire-arms deaths. Though America has one of the worst rates of mass shootings in the world<sup>24</sup>, it actually accounts for a small number of deaths by firearms in the USA – less than 1% by some estimates. About two of the three women killed by former or current male sexual partners *every day* in the USA are killed by guns (Catalano et al., 2009) – a far greater number than women killed in mass shootings. More surprisingly, one (typically a poor, rural) American per week is shot by a toddler (Ingraham, 2017)! Though Americans are beginning to learn about the shootings of African-Americans by police-officers, we rarely hear these shootings discussed in arguments about gun control. Even though the #defundthepolice movement has taken hold around the world, the idea that police need guns is rarely challenged outside of countries like the UK, Norway, and New Zealand. At least from a rhetorical perspective in the gun control debate, the lives of women suffering from domestic violence, African Americans, and even, poor, rural white American, do not matter as much as the lives of suburban kids. For Rood, this highlights the fact that “the warrant of the dead inevitably represents and reiterates power imbalances” (2018, p. 53).

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<sup>23</sup> Reagan himself was shot in the lung but recovered and returned to the White House within two weeks.

<sup>24</sup> It is often noted that American has the highest rates of mass shootings in the world; however, some populist and conservative American media outlets, and even academics rightly note, that it is difficult to find exact numbers on the mass shooting taking place in countries such as Liberia (Lott & Weisser, 2018).

Though there was disagreement about exactly *what* should be done regarding gun control following the 1999 Columbine shootings, both Democrats and Republicans used the warrant of the dead to argue that something must be changed in order to prevent similar school shootings — be it bans on automatic weapons or armed guards at school entrances. At a memorial service in Colorado, Vice President Gore insisted, “All of us must change our lives to honor these children [so that] those who died here this week will not have died in vain” (1999) . Following the Newtown shooting, several parents of the children shot vocally called for gun control, some prioritized mental health issues over gun issue, and one parent even claimed to support the NRA’s efforts to have more armed security in schools (Rood, 2018, p. 51). There was little agreement other than on the fact that ‘something’ must be done. But our attention quickly waned, and nothing was done.

### **‘This is Not the Time’: Politicizing Tragedy**

For post-colonial and critical theorists such as Edward Said, “collective memory is not an inert and passive thing, but a field of activity in which past events are selected, reconstructed, maintained, modified, and endowed with political meaning” (2000, p. 252). Those in power attempt to select what can be remembered when and how. As I discussed in the previous chapter, theorists such as Maurice Halbwachs (1992) noted how the process of forgetting was crucial to this construction of meaning. In that chapter, I also noted how Charlton Heston called out politicians and activists who used the shooting to make a political point. As Rood adds, “gun rights advocates often reject the notion that there is any obligation to the dead by claiming that now is the time for mourning, not action” (2018, p. 55). After the Newtown shooting, NRA executive vice-president Wayne Lapiere (2012) stated that he would not discuss gun control efforts “out of



respect for those grieving families.” He went on to state “while some have tried to exploit tragedy for political gain, we have remained respectfully silent”. Heston and Lapierre attempted to prohibit the memory of mass shootings from being “endowed with political meaning” as Said might say. Moreover, they attempted to invoke our disgust at the mixing of the sacred and the profane: while liberals use the sacred deaths for their secular political purposes, gun rights activists argued that this mixing of the sacred and the profane, regardless of political intent, is in itself a violation of the moral order.

Unlike previous presidents, Obama (2013a) directly challenged this idea that the memory of mass shootings should not be politicized. He invited the families of mass shooting victims to Washington to lobby for gun control. He directly addressed the charge that this was inappropriate by stating:

I’ve heard folks say that having the families of the victims lobby for this legislation was somehow misplaced. ‘A prop’ somebody called them. “Emotional blackmail”, some outlet said. Are they serious? Do we really think that thousands of families whose lives have been shattered by gun violence don’t have a right to weigh in on this issue? Do we think that their emotions, their loss, is not relevant to this debate. (para. 17)

As Rood (2018) notes, “Precluding talk by gun control advocates works to the NRA’s advantage since their primary legislative goal is to resist legislation” (p. 63). Invoking the ‘not now’ rhetorical strategy is useful for those who want to maintain the status quo.

However, on many occasions, including the NRA convention following the Columbine shooting which I discussed in the last chapter, the NRA itself politicized the media moment of a mass shooting. They used it to argue for *more* guns in schools. In his

speech on Dec. 21, 2012, a week after the Sandy Hook massacre, Lapiere argued that armed guards in schools would help protect “our kids” – thus invoking the same paternalistic nation-as-family metaphor that Obama had used. In doing so, the NRA committed the same violation of decorum that they accuse Obama of committing.

### **Presenting the Dead**

Though he did not use the term himself, the discourse of collective memory begins with Emile Durkheim. His notion of “collective effervescence” – the transcendence of the individual – is the force which moves the past into the present using mnemonic tools such as totems and rituals (Durkheim, 2001). Durkheim’s student, Maurice Halbwachs, was the first sociologist to use the term “collective memory”, suggesting that individual memory is constructed within structures and institutions, and that these memories are only understood within social constructions (Halbwachs, 1992). Halbwachs understood that memory enables us to live in groups and communities, and living in groups and communities enables us to build a memory: memory, therefore, is intersubjectively constituted. Halbwachs expanded the Durkheimian notion of the totem to include commemorative events. With Durkheim, he saw that memories faded without continual reinforcement. Totem symbols and repeated rituals are needed to bring the past into the present and, as I argue, actualize memory into civil religious obligations such as the need for gun control. These mnemonic aids are necessary to overcome the problem of fleeting engagement.

Maurice Halbwachs posited that “the past is not preserved but is reconstructed on the basis of the present” (1992, p. 39). Since Halbwachs’ ground-breaking formulation, “the idea that present political and social concerns shape representation of the past has

become a governing assumption in studies of public memory” (deTar, 2016, p. 93). As I noted in the previous chapter, this is referred to as instrumental presentism. Collective memory is actualized in totem reverence and ritual: in contemporary American terms, this means that the needs of the present moment are met by perpetuating memories of the past.

As Susan Sontag (2004) explained, remembering is “an ethical act”. It is an act that “has ethical value in and of itself” (deTar, 2016). Civil religion and sacred rhetoric are intrinsically connected to public memory. A nation’s civil religious obligations are defined, constrained, and actualized by choosing what is remembered. Those with power choose which heroes should be commemorated with statues in public squares, which battles would be remembered on which public holidays, which songs would be sung to remember the values of the nation, which values should be promoted above all. This promotion of particular memories is a rhetorical tool to meet the political needs of the present. This construction of public memory is particularly important in times of crisis when values compete, such as freedom and safety, gun rights and gun control.

The warrant of the dead straddles epideictic and deliberative rhetoric: it commits to contemporary civil religious values, but it is also a call for change. Rood argues that this is true of Obama’s nation eulogies which, regardless of occasion, frequently oscillate between the two rhetorical genres: “[his national eulogies] insist on public action, while [they] praise the dead and blame those who have failed to protect them” (2018, p. 50). As Obama’s presidency progressed, and particularly after he won re-election, he more consistency expressed frustration at the lack of action on gun control. After the

2013 mass shooting at the Washington Navy Yard he stated “Our tears are not enough... If we really want to honor the dead, then we must change gun laws” (2013).

Public memory is not the simple act of recall, but rather, a selective attention to the events that are important to particular agendas. The contemporary protests over confederate monuments in the South of the USA highlight this issue. Most of the statues of the confederate soldiers in the south being argued over today were not erected during the confederacy. Rather, most of them were constructed during the Jim Crow era, after reconstruction until the end of the 20<sup>th</sup> century civil rights era. The fact that they were not erected directly after the civil war makes it abundantly clear that the statues were erected in order to prompt a particular public memory for a particular agenda: they were erected to intimidate African-Americans, not to commemorate the soldiers (Upton, 2017).

Obama attempted to erect rhetorical statues in his speeches. Statues cement people and events into the American collective memory. The term epideictic can be translated as “showing forth” or “to present”: epideictic rhetoric ‘presents’ us with figures and values of the community. To make the warrant of the dead more powerful, Obama conjured the dead. With details of their lives, Obama ‘presented’ the dead to his audiences.

Rood (2018) argues that Obama’s speeches after Sandy Hook had three stages:

- 1. Obama attempted to put each particular shooting in the context of the history of mass shootings, and particularly, our failure to act on them (p. 55). With this, it became evident to the listener that if action had been taken after any of the previous mass shootings, then these lives would have been saved.

- 2. Obama situated the latest particular mass shooting within the broader context of gun violence and all its victims.
- 3. Obama called us to see the dead as is if they were members of our own families and act accordingly (p. 55).

In putting a particular mass shooting within the context of the history of mass shootings, and the history of gun violence in America, we begin to see the shooting not as an aberration, but as a predictable and avoidable event. Following the Durkheimian lineage, German critical theorist Axel Honneth explains that shared recollection expands the community “beyond its current members, establishing relationships of recognition with members who have died as well as with those not yet living” as they are pushed to make a “binding decision about what kind of collective they would like to be respected and remembered by future generations” (Honneth, 2015, p. 323). In this way, Obama (2012) might overcome American’s fleeting attention, and inspire the continuous struggle necessary for legislation and cultural change.

Whether it’s an elementary school in Newtown, or a shopping mall in Oregon, or a temple in Wisconsin, or a movie theatre in Aurora, or a street corner in Chicago – these neighborhoods are our neighborhoods, and these children are our children.

(para. 5)

Obama’s use of polysyndeton shows how history keeps repeating, building “an inductive line of reasoning that builds to generalization: mass shootings are a public problem that requires our attention” (Rood, p. 56). Moreover, if we recognize this event in its historical context, it becomes preventable. This recognition of its preventability calls us to action.

It's important to note that Obama did not just include mass shootings in this list, but also included, "a street corner in Chicago" (2013). Unlike the other examples, he is not talking about a specific instance; rather, just any street corner in one of America's most violent cities. Obama is suggesting that the problem of gun violence is not just limited to mass shootings. As I noted earlier, mass shootings only account for 1% of the more than 30 000 annual deaths from gun violence in America. With just this simple phrase, Obama is 'showing forth' not just the dead of mass shootings, but all those who die of gun violence in America. Obama's use of this phrase to expand public memory was risky. Whereas the warrant of the dead related to school shootings is uncomplicated by race, class, or presumed guilt, the image invoked by the phrase "a street corner in Chicago" most definitely is. We undoubtedly think of a young, poor, African-American male, most likely involved in the drug trade or a related crime. Obama attempted to block this image, and mitigated this risk, by highlighting one death: that of Hadiya Pendleton, a 15-year-old African-American honours student from Chicago. He stated:

... so good to her friends that they all thought they were her best friend. Just three weeks ago, she was here, in Washington, with her classmates, performing for her country at my inauguration. And a week later, she was shot and killed in a Chicago park after school, just a mile away from my house... (para. 85)

In Judith Butler's (Butler, 2009) terms, Obama was making this death 'grievable'.

As I discussed earlier, the fact that, on average, twenty-six people per day in America are shot has become normal. But twenty-six people shot in one day in one single place is, thankfully, not normal yet. Americans still are attentive to mass shootings. In highlighting "a street corner in Chicago" (Obama, 2012) and Hadiya in particular, Obama

is attempting to bring attention to the normal. He hoped that in doing this, we would not only momentarily ‘open our eyes’ but that our attention would be held long enough to make its way from hope to legislation.

### **Durkheimian Vs. Rouseauvian Civil Religion**

Although we tend to think of Rousseau as on the side of enlightened reason rather than religion, Rousseau saw that *civil* religion could support “republican morality, society, and politics” (Orhan, 2013, p. 168). He first mentions a “civil profession of faith” in a 1756 letter to Voltaire (Rousseau, 2018, p. 408). In the letter, Rousseau states,

I would wish, then, that in every State there were a moral code, or a kind of civil profession of faith, containing, positively, the social maxims everyone would be bound to acknowledge, and negatively, the fanatical maxims one would be bound to reject, not as impious, but as seditious (p. 254).

Rousseau’s work *The Social Contract* (2014) expands on these words. The work begins with an overview of religion and politics, noting that ancient Greece, Rome, and Israel all were regimes which combined theology and politics. Rousseau argues that with Christianity came a dangerous separation of “the theological kingdom and the political system” (Orhan, 2013, p. 169). He saw this as undermining political union. For Rousseau this type of “religion of man” — as he called it — meant that laws had no moral support and therefore must be enforced through the threat of force. Moreover, he saw that this type of religion turned people’s attention completely towards the afterlife, undermining the “social spirit” (quoted in Orhan, p. 170).

As Turkish political scientist Özgüç Orhan summarizes, Rousseau was most concerned with the “public utility” of religion (2013, p. 170). Drawing on Coleman’s

work on civil religion, the contemporary German memory theorist Carmen Schmitt succinctly states: “In this view, civil religion is consciously “designed” by leaders to exert social control over the citizenry” (Coleman: especially p. 67; p. 69; cited in Schmidt, 2016). We see here the connection to the Halbwachian notion of collective memory. Where Halbwachs departs from his mentor, Durkheim, is in his “instrumental presentist” approach to memory (Britton, 2012). Halbwachs saw that collective memory is shaped by the issues and understandings of the present. What both Rousseau and Halbwachs recognized is that leaders reconstruct the past, choosing what is to be remembered and what is to be forgotten. For Rousseau, it is advice, for Halbwachs, it was simply an observation.

In Durkheimian thought, religion offers both cosmological answers and continuity of moral practices leading to social cohesion expressed and maintained through ritual. As Orhan (2013, p. 172) explains, functionalism focuses “on what a religion does rather than what it is”. For functionalists, “any collective experience that transports the individual beyond himself and binds him with others has a religious quality to it” (Orhan, p. 172). While for Rousseau, “civil religion is a sensible thing for leaders to create and encourage; for Durkheim it is an emergent property of social life itself (Hammond, quoted in Orhan, 2013, p. 174). For Rousseau, civil religion is the top down manipulation of collective memory for the good of the nation; for Bellah and other Durkheimians, civil religion emerges organically from the bottom-up.

Obama attempted to use memory to construct civil religious obligations. While Obama might be using civil religion in a Rousseauvian way – as a useful tool for making policy – he is not imposing it in the way that Rousseau suggested, or even the way that



the Founding Fathers of the USA did. Obama is not writing documents and erecting statues; instead, Obama is simply reminding the population of past events, which create a sense of obligation. Using enthymematic argumentation, Obama simply reminds his audience of the context of past mass shootings and that no action was taken. The audience is left thinking about whether action in the present could prevent future mass shootings. We can assume that Obama was attempting to use enthymeme so that the audience would create their own, seemingly organic, civil religious obligation to push their leaders for gun control legislation.

### **The Sacred Value of the Family**

Though many note the high level of individualism in developed nations, many of these nations still consider ‘the family’ to be a sacred institution. Though we often quote neo-conservative Margaret Thatcher’s statement that “there is no such thing as society”, we miss out on the second part of that quote: she didn’t follow it with “there are only individuals”; she stated “there are individual men and women and their families” (Staff, 2013). Although Thatcher herself was, of course, British, this statement was a perfect encapsulation of neo-conservative ideology of the time with Thatcher in Britain and the Reagan in the USA. And though Brits celebrated Thatcher’s death, dancing in the streets and singing “Ding Dong the Witch is Dead”, Reagan remains a respected, even beloved figure in much of the USA. The neo-conservative ideology which has embraced individualism, yet not completely abandoned the sacred status of the nuclear family, is still alive in the USA.

Obama’s attempts to bring sustained attention to gun control relied heavily on the sacred status of the family in American culture. After the Sandy Hook shooting, Obama

repeatedly stated that we had to do better for “our” children. His use of this possessive pronoun played a double rhetorical duty: 1. it encouraged parents to fight for a safer nation for their own children; and, 2. it evokes what George Lakoff refers to as the “nation-as-family” metaphor (Lakoff, 1995). Obama wants Americans to see these dead children as their own and to see that they have failed to protect their children. Even more, he wants us to see *all* America’s children, not just the victims of mass shootings, as, in some way, our children. This is one of the few rhetorical devices Obama used in the press conference right after the shooting – indicating that perhaps it was his own spontaneous feeling, rather than one written by a team of speechwriters. At the prayer vigil a few days later, Obama made this sentiment even clearer, stating: “We come to realize that we bear a responsibility for every child because we are counting on everyone else to help look after ours; that we’re all parents; that they’re all our children” (Obama, 2012, para. 12).

A month later, when Obama introduced gun control proposals in the wake of the Sandy Hook shooting, he quoted three of the letters that he had received from children all over the nation concerning the Sandy Hook shooting. Instead of merely quoting them, he invited the children and their parents to come to the White House. During the press conference he mentioned the children by name and asked each one to “go ahead and wave” (Obama, 2013a). As the news cameras panned the audience, showing the children, ‘our children’ were not just rhetorically but visually presented to us.

In referring to the dead as “our children”, Obama attempted to transcend political divisions by using the sacred status of the family. He attempted to make the gun control debate “not between those who support gun control and those who oppose it but between

those who recognize and accept their obligation” to take care of “our children” and those who do not (2013). In a nation as individualistic as America, individual citizens are not expected to take care of each other. But, regardless of individualism, parental responsibility remains a sacred duty in America. In making the dead “our children”, Obama is associating gun control with this sacred responsibility and, hopefully, making ending gun violence a sacred responsibility in itself.

The family metaphor is also a way of extending the limit of memory. While we may pay attention to a mass shooting for only a few days, we do not grieve a child for only a few days. Obama (2013) states:

Hadiya’s mom hasn’t forgotten. The notion that two or three months after something as horrific as what happened in Newtown happens and we’ve moved on to other things, that’s not who we are. That’s not who we are. (para. 2)

At his speech after the Washington Navy Yard shooting the next year, Obama (2013) turned to the similar rhetorical technic of anaphora: “Once more our hearts are broken. Once more we ask why. Once more we seek strength and wisdom through God’s grace” (para. 5). Obama brings up all the mass shootings that we remember. In doing this, he makes all the victims present.

Obama’s use of the warrant of the dead was not confined to his verbal rhetoric, he also used visual and embodied rhetoric to make this warrant clear. At the White House’s 2013 gun control plan, the flag was flown at half-mast to remind us all of the dead. More painfully, the warrant of the dead was made visible as the families of the dead children stood beside him as he spoke about gun control. Obama’s rhetoric not only praised the

dead, but also “blamed those who have failed to protect them” (Rood, 2018, p. 50), including lawmakers like himself who failed to pass gun control legislation (p. 50).

### **The Problem of Sacred Rights**

Like the NRA, who appropriated the language of the civil rights movement, Obama, too, used the language of rights to argue his position. He argued that at Oak Creek in Wisconsin, Sikhs right of freedom of religion was taken from them when an armed man went into their temple on a killing spree. He argued that the fundamental rights to life and liberty were denied to the students at Virginia Tech, Columbine, and Newtown (Obama, 2012). More problematically, Obama put forward a collectivist interpretation of the Second Amendment (Obama, 2013), implying that this was sacred. In doing this, he ignored the fact that the Second Amendment was, at least in part, created to enable white men to enforce slavery through slave patrols. How can a man whose father was African and who is married to the ancestor of slaves, honestly believe that the Bill of Rights is a sacred document? Such engagement with the mythical history of American civil religion is what led many on the left, perhaps most famously including Cornel West, to criticize Obama as an ‘Uncle Tom’ (Capeheart, 2016).

But this is just one of the problems for progressives attempting to engage in ‘rights talk’. Heston brought up the notion of duty in expressing the covenant principle of limited government and the duty to overthrow a government that oversteps its limits. Obama also brings us notions of obligations. The warrant of the dead itself is a sacred obligation. But as I elucidated in my chapter on the Constitution as covenant, there is an inherent contradiction in the idea of rights – which comes from the Lockean natural law tradition — and the idea of democracy. If the people are truly free, then they can decide

to change any law, even if that law is a ‘sacred’ natural law or a ‘God-given right’ enshrined in the Constitution. When Obama stated: “We live in a society, a government of, and by, and for the people” (Obama, 2013) he is implying that we can change the laws. But if this is the case, then what good are sacred rights? If the people are truly free, then no law can be sacred. This is the inherent contradiction of natural law and democracy.

But perhaps the biggest problem with Obama’s sacred rights talk has to do with the problem that all progressives face: we don’t like to talk in such absolute terms. In 2014, Thomas Francesca Smith and Thomas Hollihan guest edited an issue of *Rhetoric and Public Affairs* on civility. Most of the articles in the special issue discussed the gun debate in America. In their own two articles in the issue, they very convincingly argued that we have not had any progress on gun control because conservatives in America engage in rhetorical practices which effectively shut down any chance of debate (Hollihan & Smith, 2014; Smith & Hollihan, 2014). This is not a surprising argument given my analysis of Charlton Heston’s rhetoric in the last chapter. I argued that the NRA had successfully made its audience take a quantum leap. The NRA leadership, with Charlton Heston being its most eloquent example, used rhetoric to push their own individualist interpretation of the Second Amendment into the category of the sacred. Once an idea is sacred, there is no room for facts, data, and reasoned argument. In Hume’s terms, when the ‘is’ slips on the ladder of stasis to become an ‘ought’ there is no turning back. We can have a reasoned discussion of what ‘is’, but only passion will define what ‘ought’ to be.

Many have noted that liberals in America are at a disadvantage because they do not like absolute terms of sacred and profane (ex. Marietta, 2012). This has many proposed reasons: less religious sentiment, more diverse social spheres, more respect of nuance, etc.; regardless of reasons, this means that the left have the added burden of producing evidence of their policy plans to a sound-bite-based audience. Peer-reviewed research doesn't tend to go viral. On the other hand, as Rood notes, gun rights advocates have a "motivational advantage... they do not need to craft or argue about the best plan" (2018, p. 62), all they have to do is oppose any gun control legislation. Their task is simple, and very simply communicated with a reference to the sacred Second Amendment and the God-given right to bear arms.

As Rood discusses, gun control advocates have another particular disadvantage: "there is a gap between accepting responsibility for others and embracing gun control" (2018, p. 62). Heston and the NRA only need to convince gun rights advocates of one thing, that the individualist interpretation of the Second Amendment is sacred. Obama and gun-rights advocates must not just convince Americans that they have a sacred obligation to their fellow citizens, but that gun control is the correct way to fulfill this sacred obligation.

A further disadvantage that gun control advocates have is that their solutions will never completely eliminate the problem. Gun rights advocates have a simple goal, stop gun control legislation. Their only points of discussion are details such as whether minors, criminals, and the mentally ill should be allowed to have guns. But even the most radical legislation proposed by Democratic gun control advocates in America would amount to, at best, a modest decrease in gun violence. Even if guns were completely

outlawed in America – which no one is proposing – people could still smuggle them into the country or, more frighteningly, make guns on 3D printers. Obama even admitted “there is no law or set of laws that can prevent every senseless act of violence completely”. However, he goes on to add that “If there is even one thing we can do to reduce this violence, if there is even one life that can be saved, then we’ve got an obligation to try” (Obama, 2013). As Rood notes, “such incremental progress, even if realistic, is typically not inspiring... Obama has tried to create activists who are paradoxically moderate” (2018, p. 63). Modest, incremental change is not sexy.

Perhaps most importantly, gun rights advocates are more motivated than gun control advocates because the laws affect them personally. If gun owners know if a particular piece of control legislation will have a personal, immediate impact, then: they might face more checks when buying ammunition, they may not be able to take guns across state line, or they may have to return particular pieces such as bump stocks or silencers on guns they own. On the other hand, the exact effects of gun control legislation on gun crime are unknowable, at least on an individual level. We might know that generally that countries with tougher gun control legislation have less gun violence: but we can never know if a specific piece of gun control legislation will prevent a specific crime in the future. If gun control were enacted, statistics might show that the violence in my neighborhood had lessened, but I would never know if it prevented a crime against me, personally. I would never know if a shooting *did not* occur at my daughter’s school because the would-be shooter couldn’t buy an AR-15. Even the families of victims of gun violence are not personally motivated to fight for gun control: no piece of gun control legislation will ever bring back their dead husband, or mother, or son. Gun rights

advocates know if a particular piece of gun legislation pertains to the weapons which they own, so they can fight against legislation that they *know* will affect them personally. But gun rights advocates can never be sure if regulations would actually stop them from being victims of gun violence; therefore, they have no personal reason to become activists. Thus, it is not surprising that gun rights advocates are much more motivated and passionate about their cause than gun control advocates.

### **The Failure**

On April 17, 2013, four months after the Sandy Hook shooting, none of the gun control measures that Obama had proposed passed in congress. It was particularly surprising that even the proposed expansion of background checks didn't pass despite the fact that polls showed that 85% of Americans were in favour of such expansions (Pew Research Center, 2013). The political scientist Kristin Goss (2006) refers to this as the "gun control paradox": a large majority of Americans support more gun control measures such as background checks, yet legislation cannot be passed. But it is not a paradox at all. It's simple, the small number of Americans who do not support background checks are much more organized and politically active than those who don't. Speaking after the senate vote, Obama himself alluded to this. He stated that legislatures were afraid of "a vocal minority of gun owners" who might "come after them in future elections". According to Obama, gun rights advocates are: "Better organized. They're better financed. They've been at it longer. And they make sure to stay focused on this one issue during election time" (quoted in Rood, p. 53). The Pew Research Center (2013) confirms Obama's statement. This is referred to as the "activism gap". Gun rights advocates are twice as likely as to contact a public official about gun rights compared to



gun control advocates and they are four times as likely to have given money to organizations that support their views.

After the failure of legislation following the Sandy Hook shooting, Obama and his advisers began to reconsider their rhetorical strategy. Obama explained that gun control advocates “will have to be as passionate, and as organized, and vocal as those who blocked these common-sense steps”. As Rood succinctly explains, “The Challenge, in short, was for gun control supporters to become gun control activists” (2018, p. 53). Obama had to radicalize gun control activists. He needed to push the notion of gun control from a public good to a sacred commitment. He didn’t accomplish this.

### **Conclusion**

In his first term in office, Obama did little to place individual mass shootings within a greater historical context. However, following the Sandy Hook shooting, Obama reminded his audience of other mass shootings, and of the daily gun violence in America. In doing this, Obama situated these shootings not just in the context of other mass shootings, but in the context of gun violence in the nation as a whole. This showed Americans that these shootings were predictable and thus preventable.

After Sandy Hook, Obama didn’t try to persuade anyone that gun control is necessary. He didn’t point out that every other industrialized nation has stricter gun control than America. He didn’t point out the correlation between lax gun control laws and higher gun violence rates. Instead, he simply asked us to remember the dead. He set these deaths ‘apart’, making them sacred. Sacred rhetoric does not seek to persuade, it seeks to consecrate.

After the failure in congress to pass gun control legislation, despite the support of the overwhelming support of the American people, Obama continued to focus not on persuasion, but on mobilization. Rood argues that Obama “used the warrant of the dead to transform those who support or are open to gun control into activists who are as committed as their opponents are to the rhetorical and political struggle over gun policy.” (2018, p. 55).

At the press conference following the Sandy Hook shooting, Obama cried. After the 2013 mass shooting at the Washington Navy Yard and the failure to pass legislation to prevent this mass shooting, Obama’s message was clear: “Our tears are not enough”, gun laws have to change. He hoped that, like a statue of the virgin Mary that cries every Easter, Obama’s tears would rebirth his followers. Obama didn’t need to *convert* his followers, they needed to be reborn. To be reborn not just as believers but as gun control activists.

After the mass shooting at the Washington Navy Yard, Obama stated, with exasperation in his voice, that Washington had failed to fix the problem and so now, the change would have to come “from the American people” (Obama, 2013c). It didn’t work; American gun control laws are no tougher now than they were before Sandy Hook. Rood (2018, p. 62) concludes his discussion saying, “The warrant of the dead tries to get audiences to authentically feel a sense of responsibility for and obligation toward unknown victims, but, as I have indicated, such challenges make that ethically complicated and rhetorically difficult”.

Obama gave up on using reasoned argument to persuade the American people that gun control measures would save lives; instead, for the four years after the Sandy Hook

shooting Obama turned to sacred rhetoric, not to persuade those who disagreed with him, but to mobilize those who believed he was right. Richard A. Lanham famously noted, rhetoric as “the economics of attention”. Obama reminded us that our attention had not been sustained following the previous mass shootings. In reminding us of this, he implied that the Sandy Hook shootings could have been prevented and he urged us to take action now so that more would not happen in the future. Obama used collective memory to provoke action. His epideictic rhetoric became deliberative. He used the memory of mass shootings and the mention of pervasive gun violence to encourage the civil religious value of safety and paternal care to further his aim of passing gun control legislation.

In the eulogy form, we often see what Kenneth Burke (1984) might refer to as “victimage”. Luke (1990) explains the duality of victimage in that it “creates and then castigates enemies” while simultaneously “sanctifies and then sacrifices heroes” (p. 116). Though Campbell and Jamieson state that in the usual form of the national eulogy, the speaker turns the victims into national symbols of strength. This was not Obama’s rhetorical goal. At the interfaith prayer service following the Sandy Hook shooting, Obama did not seek to turn the dead into martyrs for the nation. Instead, he used the occasion to call for action. Instead of seeking to valorize the dead, Obama focussed on unifying the survivors and the nation. He highlighted what could be gained through the loss, saying that the people of Newtown should be an inspiration for all of us to love our children. But most importantly, instead of referencing the afterlife, Obama focussed on how we could make the USA better for the survivors.

Obama didn't just mourn the dead who had been shot on that particular day — it was more than an epideictic ritual — Obama attempted to use that moment to cement public memory, to connect these deaths to the deaths from gun violence all over the nation. Obama used the national eulogies to make not just those dead New England children present, but to make the presence of all those who have died of gun violence in America known. Obama took a top down, Roussevian approach to civil religion in attempting to make the obligation to care for the most vulnerable through gun control a civil religious value; however, because of his use of enthymematic argument, he made it appear as an organic expression of popular values.

The Obama presidency was a presidency of contradictions. As Dunbar-Ortiz notes (2018, pp. 144–145), Obama called for gun regulations domestically “while fully supporting the unlimited production of bombs, bombers, and drones to kill people” abroad. Perhaps those who might otherwise support gun control, hesitate to associate themselves with Obama for these reasons. Activists tend to come from the extreme of the political spectrum, and Obama was nothing if not a centrist. Although his national eulogy following the Sandy Hook massacre was referred to as “Obama’s Gettysburg Address” (Frank, p. 654), the speech, and the subsequent effect were a failure. As Rood (2018, p. 51) notes “Obama’s effort to transform gun control supporters into gun control activists proved largely ineffective”.

## CHAPTER 7

### CONCLUSION: IDOLS V. IDEALS

If so, then you, the reader, might see in these pages how much fun I had "playing" this Article, in addition to benefiting from your own playful encounter with the printed residue of what was once mine" (Mootz, 1988, p. 524)

When we in academia consider American thought, we undoubtedly think of pragmatism: Peirce, Dewey, James and the rejection of Idealism. But this is not who the general public consider the greatest American thinkers. Instead, civil religious heroes like Martin Luther King Jr., George Washington, Ronald Reagan, and Ben Franklin are considered America's greatest (Wilson, 2005). These men were *idealists*. These were not men who thought that laws were social constructs and that morality should be utilitarian. These were men who believed that, or at least publicly announced that, there are God-given rights granted to all those who they considered fully human, and these rights are enshrined in the Constitution. These men all believed in the same natural laws of life, liberty, and the pursuit of happiness, it is only their conception of who is fully human that has differed.

It is therefore not surprising that the American hermeneutic is not critical<sup>25</sup> or constructionist. Rather, the American hermeneutic is fundamentalist. It believes in the

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<sup>25</sup> There have been attempts to introduce a critical hermeneutic into the American legal tradition, most notably the legal realist movement in "elite law schools" which came into vogue as early as the early 20<sup>th</sup> century (Goodrich, 2016). However, as Goodrich notes, this movement has "focused almost exclusively on the indeterminacies or undecidability of written law". Though Justices such as Ruth Bader Ginsberg could be considered to be a part of the legal realist movement for incorporating insights from feminist and critical race theory into decisions, it is by no means a mainstream hermeneutic in the American legal system.

importance of the authorial intent of those idealist men. It believes that America will be great again if it commits itself to living the ideals of those great men which can be found in the cannon of American civil religion. Both gun control and gun rights advocates have used the sacred status of these idealist men and the fundamentalist hermeneutic to attempt to change minds and mobilize those who already support their cause. This has been extremely successful for gun rights advocates, but gun control advocates have failed to mobilize their supporters enough to enact legislations.

### **Findings**

#### **Puritan Covenant Theology and the Fundamentalist Hermeneutic**

In my historical review of the concept of the right to bear arms, I highlighted the fact that the Second Amendment is part of the American civil religious cannon. Because it is now a sacred document, it can only be approached with a fundamentalist hermeneutic. In the American fundamentalist hermeneutic, authorial intent matters. Gun rights activists attempt to convince us that the ‘historically correct’ interpretation of the Second Amendment is an individualist one. Gun control activists, on the other hand, have argued that the ‘real’ interpretation of the Second Amendment only gives militias the *collective* right to bear arms.

This led me to the question: why does America as a nation hold so strongly to this fundamentalist hermeneutic rather than attempting to make laws for more utilitarian purposes? I argue that this fundamentalist hermeneutic is an outcome of Puritan covenant theology. We cannot understand American history — from the monumental human achievement of representative democracy and human rights, to the horror of mass shootings — without understanding Puritan covenant theology. Puritans see all of history

as a series of covenants God makes with his chosen people. In order to retain God's blessings, his people must follow the obligations of the covenant. If anyone does not follow the rules of the covenant, the entire nation is damned. This is why it is so important to not only ensure that individuals follow the rules of the covenant, but also to make sure that the government does. If the government violates the obligations of the covenant, the whole nation will be damned.

The doctrine of Sola Scriptura, a fundamental tenet of most Protestant denominations, means that no entity has authority over the covenant: no priest, or self-proclaimed prophet, has authority over the Bible. As the notion of the covenant came to inform all life in the USA, not just religious life, the doctrine of sola scriptura also applied to legal and political covenants: no judge or president has authority over the covenant of the US Constitution. If such a ruler attempts to disobey or even misinterprets the covenant, the people have not just the right, but the duty to rise up against them. Covenant theology leads to a fundamentalist hermeneutic in every aspect of life.

Covenant theology is based in the belief that there are God-given rights and laws. This was secularized in the Enlightenment into the concept of natural laws. These laws are not social constructions: they are inalterable and everlasting. However, democracy is based on the notion of popular rule: the people have the right to change the laws. But how can inalterable and everlasting laws be changed? How can a nation like the United States with a Constitution based in the Enlightenment concept of natural laws be a democracy? The answer is that they cannot change the covenant without causing a rupture in the entire epistemic system. To change the covenant would cause the epistemic system to collapse as it would mean that God's

laws are wrong. A rhetor cannot advocate to change the laws without similarly advocating for the collapse of this epistemic system. If rhetors want to avoid this radical proposition, they can only advocate for a different interpretation of those laws. For this reason, gun rights advocates' only device for persuading the populous that individuals have the right to bear arms is to argue that the Founding Fathers intended the document to be read with an individualist hermeneutic. Similarly, gun control advocates must argue that the Founders intended the covenant to be read with a collectivist hermeneutic.

### **Speculations on Why Heston Succeeded and Obama Failed**

As Dunbar-Ortiz (2018, p. 127) explains, “The more that gun-control advocates raise the issue of government regulation, particularly federal government regulation, the more ammunition is provided to those who hold the Second Amendment sacred to stand their ground”. If one believes in the individualist interpretation of the Second Amendment, then gun control is a threat to the entire epistemic system of the United States of America. Gun rights advocates are correct in claiming that changing the Constitution is a threat to the American way of life and America itself. And when people are threatened, they band together. In the year 2000, with Heston convincing Americans that gun rights would be taken away in light of the 1999 Columbine massacre, the NRA membership swelled to a record 4.1 million members (“Timeline of the NRA,” n.d.). By associating himself with figures like Martin Luther King Jr., Heston was able to sacralise the individual right to bear arms. Gun control advocates had no hope of passing gun control legislation. In 2004, Congress let the assault weapons ban expire. In 2005, George W. Bush signed a bill granting the gun industry immunity from lawsuits from victims of gun violence. And most importantly, in the 2008 case of *DC v Heller*, the Supreme Court



of the USA ruled that the Second Amendment grants the *individual* right to bear arms. After the shooting of Gabrielle Giffords and eighteen others, after the Aurora movie theatre shooting, and even after the Sandy Hook Elementary school shooting, no gun control legislation was passed (“Timeline of the NRA”).

Rhetoric is not a science. The psychology of crowds is too complex for us to attribute social change to one speech, or even a whole campaign. And this is not the focus of this project. But I firmly believe that Heston’s rhetoric is what persuaded many Americans that the *individual* right to bear arms is a ‘God-given’ right: a natural law enshrined in the sacred document of the Constitution. In 2018, Chris Hedges, the Pulitzer Prize-winning American journalist *and Presbyterian minister*, wrote that, “A gun reminds Americans that they are divine agents of purification, anointed by God and Western civilization to remake the world in their own image” (Hedges, 2018, p. 8). Heston was instrumental in cementing this in the minds of a generation. What’s more, Heston convinced them if the fight for gun rights was lost, the entire American experiment of democracy and freedom would collapse soon after. Instead of causing an epistemic collapse, Heston convinced them that it would cause a social collapse. He argued that every right guaranteed in the Constitution depended on the American individual’s right to bear arms to protect it. Using an individualist interpretation of the *Bill of Rights*, inserting himself and his cause into biblical and civil religious narratives, he convinced many that the individual right to bear arms is a God-given right and that it is under threat from the enemies of the nation and the American way of life.

In my research, I was hoping that I would find a rhetorical formula for persuading Americans of the need for gun control. I didn’t find that. Obama’s choice to stop

attempting to persuade his opponents, and instead try to turn those who already supported gun control (an estimated 85% of the American public at the time (Goss, 2006)) to become gun control activists seemed reasonable. But this strategy failed. It failed because becoming a radical moderate is an oxymoron.

One reason I speculate that Obama failed is because gun control is not a personal issue to the majority of Americans who do not own a gun. Obama failed because no one knows, or even expects that gun control could save them from being a victim of violence. We do not think about the future in terms of policy choices in the present. For those who have experienced gun violence – such as the parents of mass shooting victims, they might guess that enacting gun control might save someone else’s life, but it won’t heal their own wounds or bring back their own children. None of us have a personal reason to become gun control activists.

This summer, the murder of George Floyd sent millions of protesters into the streets to protest police brutality. Police brutality is a personal issue in the USA. Though only about a thousand Americans a year are killed by police, tens of thousands more are injured: far more than those killed or injured in mass shootings (*Number of Gun Deaths in 2020*, 2020). 21% of African Americans say they, personally, have been a victim of police violence at least once in their lives. Though these numbers are smaller for people of other races, they are not insignificant (Palosky, 2020). The Black Lives Matter movement was able to take the amorphous issue of racism in the United States and focus on one aspect of it that many Americans have second-hand, if not first-hand, experience with. As I noted earlier, only 1% of gun deaths in the United States are the result of a mass shooting. Yet gun control activists have focused their rhetoric on mass shootings

and the control of weapons used in these shootings. We may feel bad for a few moments; we may even feel afraid. But it is difficult to mobilize an audience around an issue which affects so few people in that audience. Rhetoric is not just the art of persuasion, but also the art of making people give you some of their limited supply of time and attention. You only have to look to the reactions of people in states like Iowa in the beginning of the Covid-19 epidemic, when faraway New York City was being decimated, compared to now, when their own cities are being affected, to realize that we don't have enough attention to spend on problems that concern people we don't know.

Gun rights, on the other hand, *are* a personal issue. 30% of Americans report owning a gun, and 43% of Americans report living in a house with a gun (L. Said, 2019). From these numbers, I would guess that everyone in the USA knows someone who is afraid of losing their right to bear arms. On the other hand, there is no way of predicting with certainty who will become a victim of gun violence in the future. Data analysis can predict our *chances* of being a victim of gun violence if we live in a particular area: but it won't tell us *for sure*. Even the most complex social forecasting cannot tell me that I, certainly, will be shot at a certain time at a certain place. And therefore, no matter how sophisticated the computer model of the impacts of legislation, I will never know if a piece of gun control legislation would prevent me from being shot. Therefore, the issue is not a personal one for me. Meanwhile, gun owners know with certainty whether a particular piece of gun control legislation will affect them. It is not surprising that gun owners are more passionate about legislation than someone who guesses that they maybe, might, one day, perhaps be a victim.

Rhetoricians need to discover a way to make gun control a personal issue for Americans. One manner of making it a personal issue is to endow it with sacred meaning. Obama's rhetoric attempted to do this. He invoked the sacred American value of protecting the family. However, this was still done as a reaction to mass shootings. Gun control needs to be part of a sustained set of values. In my historical review of gun laws in the USA, I did not find any gun control legislation that was enacted after mass shootings. Instead, as I noted, in the 1960s, a string of assassinations of political leaders including John F. Kennedy and Martin Luther King Jr. led to strong gun regulations being passed by congress. Moreover, the most comprehensive gun regulations in the last half century came after the attempted assassination of Ronald Reagan. However, Obama was not able to pass legislation after the Gabrielle Giffords shooting. Any guess as to whether an attempted assassination of a higher profile politician or political activist would spark action on gun control would be pure speculation.

I began this investigation by noting how the Black Panthers had created the monster of the individualist interpretation of the Second Amendment. The Black Panthers opened the flood gates in modern times, but as I came to believe through this investigation, both the collectivist and individualist interpretation of the Second Amendment are not a complete historical anomaly. I asked how it was that the Second Amendment became *so* hallowed that even a group as radical as the Black Panthers could appeal to it to gain entrance to the state legislature while armed. I also asked why Americans don't just change their Constitution. Through this investigation, I found the answer to both these questions in what I termed the American fundamentalist hermeneutic: the devotion to the original text – whether religious or legal. I found that

this American fundamentalist hermeneutic emerged from the covenant theology of the Puritans and commands that the nation must abide by the covenant of the Constitution. If the government does not abide by this covenant, the people have a duty to rise up, or else the nation will be damned.

The American civil religion understands the US Constitution to be based in laws that are above human construction. I am not only speaking about American religious organizations, such as the Church of Latter Day Saints, which explicitly state that the Constitution of the United States of America was divinely inspired. Instead, I am referring to the Lockean notion of natural laws and the belief that the rights enshrined in the Constitution are natural laws: 'God-given rights' – not social constructions. This has made the Constitution of the United States a sacred document of the American civil religion. When a nation sees its Constitution as a sacred text, then the answer to contemporary problems cannot be to change that text; rather, it must be to return to the text with an even more fundamentalist hermeneutic. Moreover, to change the text would collapse the epistemological framework of the nation.

### **Implications**

In order to resolve this conflict, to explicate the manner in which the meaning of a text is encountered, it is necessary to move beyond the simplistic dichotomy between "objectivity" and "subjectivity. To recover some notion of legal objectivity without either making the ludicrous suggestion that legal texts are wholly unambiguous or simply surrendering to subjectivism requires an examination of the ontological question which Hans-Georg Gadamer's

hermeneutics poses: how is it that the world reveals meaning to its inhabitants?  
(Mootz, 1988, p. 527)

Even though I now believe that disarming individuals *is* unconstitutional, I don't dismiss the idea of disarming Americans. Why? Because, to me, the Constitution is not a sacred text. I do not approach the document with a fundamentalist hermeneutic. But I now understand why it is so important to so many Americans. Covenant theology is the epistemological basis of the nation of the United States of America.

The contemporary right in the USA assumes a fundamentalist hermeneutic in assuming that the Second Amendment was meant as an individual right for anyone to own a gun in order to protect themselves from 'big government' and from criminals. The contemporary left in the USA assumes a fundamentalist hermeneutic when they romanticize the intent of the Founding Fathers by assuming that the Second Amendment was meant as a collective right of the state militias to fight the British. Neither side recognizes the uncomfortable truth that the Second Amendment was meant to give white male citizens the right to bear arms in order to pursue happiness and maintain power through the appropriation of indigenous land and African slave labour. As Roxanne Dunbar-Ortiz (2018, p. 127) writes:

... because gun-control advocates erroneously misinterpret the Second Amendment provisions as being related only to militias as national guards, they delude themselves, failing to comprehend the history embedded in contemporary US culture and social relations.

American justice has always been, to more or less of an extent, vigilante justice (Hedges, 2018). The story of the white teen, Kyle Rittenhouse, who, in August 2020

took an AR-15 to a Black Lives Matter protest, is not a new one. From anti-British rebel militias, to post-civil war slave patrols, to the strike-breakers hired by the gilded-age robber-barons, the individual right to bear arms has been a staple of this vigilante justice. As Dawson (2019, p. 11) writes, “The Second Amendment may offer a sense of meaning-making that allows men to feel like protectors of their families and their homes against an evil that cannot be contained by the rule of law-abiding citizens.” The distrust of government in the USA is not just a distrust of overreach, it is also a distrust that the government is capable of protecting its citizens against the (now mostly figurative) wilderness. To these vigilantes, the right to bear arms is a God-given right and is therefore above secular law.

This sentiment is echoed by Roxanne Dunbar-Ortiz (2018). Dunbar-Ortiz’s research and synthesis of primary documents changed my own understanding how individual gun rights were needed to establish and maintain colonial imperialism in what is now the United States. She explains that the gun rights movement makes visible how racism and capitalism are celebrated together in America. Dunbar-Ortiz writes: “it was barely news when George Zimmerman openly auctioned the gun he used to kill Trayvon Martin, selling it for \$250 000 dollars to a mother who bought the gun as a birthday present for her son” (p. 168). The rhetoric of gun rights, and the rhetoric of gun control, must be understood within a broader ideological system. Only when both sides of the aisle confront this “text with context” can we expect reasonable gun laws in the United States of America.

In this dissertation, I looked at the rhetoric of the Second Amendment through the lens of the sacred rhetoric of civil religion. I stressed the point that sacred rhetoric

changes our mode of thinking from qualified to absolute. The sacred rhetoric of civil religion feels good. It feels good to think that you are right no matter what the facts are. But this kind of rhetoric doesn't overcome political divides and it isn't good at finding solutions.

In the wake of the Sandy Hook shooting, President Obama and Wayne La Pierre of the NRA both engaged in a discussion of gun reform. In their discussion of "strategic maneuvering" in the gun control debate, Eckstein and Lefevre argue that we must move beyond pathos-filled rhetoric to reasoned debate. Eckstein and Lefevre note that Obama started by assuming that guns are the cause of violence, thus advocating for more gun control. Many liberals, like Obama, take a technologically determinist view of guns: the gun makes an innocent, struggling, inner-city boy commit violence. The boy is a victim of circumstances, with no agency in the decision to become a hero or a thug. While the political right in the USA take the other extreme of technological neutrality: the gun is a neutral tool, just like a pen. One can use a pen to write a love poem, or one can use a pen to calculate the maximum number of Jews that can fit on a freight train to Auschwitz. Just like the pen, the gun has no agency. In short, guns don't kill people, people kill people.

Contemporary philosophers of technology eschew such binary oppositional stances. These extremes fail to take into account the circumstances of the gun's production and the ideology of the society in which it exists (Feenberg, 1999). Weapons production is not just an important part of the American economy, as Chris Hedges explains, the gun "fools the disempowered into fetishizing weapons as a guarantor of political agency" (Hedges, 2018, para.1). Gun rights fit in with the atomized



individualistic ideology of the contemporary USA. Mark Ames (2005; cited in Hedges) notes that guns are promoted as *the* source of political power in America. He writes,

If you think guns, rather than concentrated wealth, equals political power, then you'd resent government power far more than you'd resent billionaires' power or corporations' hyper-concentrated wealth/power, because government will always have more and bigger guns. In fact, you'd see pro-gun, anti-government billionaires like the Kochs as your natural political allies in your gun-centric notion of political struggle against the concentrated gun power of government.  
(para. 2)

Lapierre argued that guns are neutral instruments without agency. For Lapierre, the answer to the problem of American gun violence, therefore, cannot be found in limiting guns, but rather, changing people. Eckstein and Lefevre note that "Neither Obama nor Lapierre was reasonable because they ignored the other's starting point" (Hedges, 2018). We cannot have reasoned debate if we cannot decide on whether guns kill people or people kill people.

More importantly, we cannot have reasoned debate if all we do is argue over interpretation the old covenant: the *US Constitution* and *Bill of Rights*. The Israelites failed to uphold their covenant and so paradise was lost. For Christians, only the sacrifice of God himself could relieve them of their duties of the old covenant. With Christ's blood their sins were washed away and a new covenant begun. Americans have failed in their covenant, and so, all the originalist interpretation of the old covenant will not help them. America needs a new covenant.

For Gorski (2018), civil religion is the middle path between religious nationalism and what he refers to as “radical secularism”. Similarly, Gehrig (1981) recognizes that civil religion appeals to the “everyday” American as it is a happy middle ground between fierce politics and fierce religion. The “civil religionist”, for Gorski, is someone who “sees the civic community as a positive good” (p. 15) and will “strive to build civic friendships with ideological opponents” (p. 16). In the current climate of hyper-partisanship in the USA, I see the potential of civil religion to bridge the radical divide between conservative religious and liberal secular Americans. However, this cannot be done if American civil religion clings to its fundamentalist hermeneutic.

It is possible to admire some of the actions of national heroes, such as the Framers of the Constitution, without assuming that the documents that they produced are too sacred to be altered. It is possible for nations with similar histories to the USA – such as the other former British colonies of Australia, Canada, and New Zealand – to honour their Protestant heritage, and to continue to believe in a foundation of natural laws, without applying a fundamentalist hermeneutic to their founding documents.

Before Americans make a new covenant, they must confront the reality of what the old covenant was built on. Historians such as Dunbar-Ortiz (2018) and Richard Slotkin (2000) argue that we must situate contemporary gun rhetoric in the larger myths regarding the necessity of violence to control indigenous and slave populations. As Richard Slotkin writes in *Regeneration Through Violence*, the first of his trilogy on the mythology of the American West: “A people unaware of its myths is likely to continue living by them” (p. 4). As Slotkin argues, myth “reaches out of the past to cripple, incapacitate, or strike down the living (p.5).” But there is hope in the oft-quoted notion

we will repeat the history that we do not learn. If we learn from the past, and accept the affect it has on the present, then we can change the future. I have faith that once there is acceptance that the covenant of the USA, the Constitution, was written to create and uphold an imperialist white supremacist state, then, for most citizens of the USA, the idea that judges should approach the Constitution with a fundamentalist hermeneutic will dissolve.

### **Gadamerian Hermeneutics and Gun Control as a Part of a National Process of Reckoning and Recovenanting**

The Austrian sociologist Danielle Celermajer (2009) argues that nation states can “recovenant” through collective apology. She sees that formally recognizing the sins of the past allow a nation to clarify its essential character in opposition to these sins. In the wake of WWII, nations came to terms with their complicity with the Nazis through apology. Celermajer argues that Chirac’s official apology for the Vichy era in France, in which he stated that the era was an affront to the essential character of the French nation, helped France define its modern identity in opposition to this era. More recently, nations, particularly those founded in colonialism such as Canada, Australia, and South Africa, have defined themselves anew through a truth and reconciliation processes. In admitting wrongdoing, these nations were reborn with new values better matching the moral character and diversity of their current inhabitants.

The United States of America has not gone through such a process. There have been minor apologies such as George H. W. Bush’s apology for the internment of Japanese Americans during World War Two, but there have been no apologies for America’s dual founding sins: slavery and the seizure of indigenous peoples’ land. For

there to be such a process, and a subsequent ‘reconvenanting’, the USA must first come to terms with the sins of its civil religious heroes like Washington, Jefferson, and even Lincoln. Perhaps then it can stop treating its civil religious canon as everlasting and unalterable divinely-inspired documents. To use the Judeo-Christian term, these are idols. It is not the letter of the text, but the spirit of the text that should be celebrated.

In this process of reconvenanting, the USA could recommit itself to its founding ideals of life, liberty, and the pursuit of happiness, as well as the ideals the Puritans expressed in Winthrop’s *A Model of Christian Charity*. Yes, Winthrop did speak of exceptionalism, but that exceptionalism was not because of the riches from appropriation of slave labour and indigenous lands. Instead, it was an exceptionalism found in exceptional charity, communalism, and unity.

...we must love brotherly without dissimulation, we must love one another with a pure heart fervently. We must bear one another’s burdens. We must not look only on our own things, but also on the things of our brethren (Winthrop, 1630, para. 51).

De Tocqueville observed that religion kept American individualism in check. Perhaps the insistence on the individual right to bear arms is a result of unchecked American individualism. I am not proposing a return to an explicitly Christian America, but, as Bellah suggested, perhaps civil religion can serve the same purpose: to keep individualism in check. As we saw in the last chapter, Obama attempted to use the sacred rhetoric of civil religion to mobilize Americans to care for each other despite individualism. He failed. Perhaps he failed because Obama’s brand of civil religion still approaches everything with a fundamentalist hermeneutic. Perhaps Obama’s brand of

civil religion failed because it attempted to rewrite history with the claim that the Founding Fathers wanted a collectivist interpretation of the right to bear arms. Perhaps a recovenanting is needed.

### **The Australian Example**

I would be remiss to conclude a discussion of gun control without discussing what has come to be called ‘the Australian example’. After a horrific mass shooting in a popular tourist spot on the Australian island of Tasmania, the Prime Minister put forward a strict gun control bill which passed with support of all political parties as well as local governments. An article in the *Journal of the American Medical Association* states:

Following enactment of gun law reforms in Australia in 1996, there were no mass firearm killings through May 2016. [Though overall firearm deaths were already in decline] there was a more rapid decline in firearm deaths between 1997 and 2013 compared with before 1997 (cited in Dunbar-Ortiz, 2018, p. 196).

These gun reforms did more than just completely stop mass shootings for a decade, they also prompted a decline in all causes of death including suicide, which was the largest cause of gun death in Australia, and, it should be noted, the largest cause of gun deaths in the USA (Gramlich, 2019).

Dunbar- Ortiz notes that prior to 1996, Australia had a gun culture similar to America. It was among the top ten purchasers of personal firearms in the world, though it had no manufacturers (p. 197-198). Moreover, Australia had the same history of violent seizure of indigenous land. Yet, the US congress has never been able to pass gun laws like the Australian parliament has. Dunbar-Ortiz writes:

Violence perpetrated by armed settlers, even genocide, were not absent in the other territories where the British erected settler-colonies – Australia, Canada, and New Zealand... but the people of those polities never declared the gun a God-given right; only the founding fathers of the United States did that (p. 202).

Though many liberals disagree, Dunbar-Ortiz suggests that perhaps it is not the lobbying by the NRA and gun manufacturers that keeps America from passing gun laws. While liberals like Obama blame the lobby efforts of these organization, Dunbar-Ortiz notes that the NRA is actually losing the membership of hunters and sportsman because they don't want to be associated with the political right (p. 199). NRA membership has been declining since its high in the year 2000 (Coaston, 2019). Yet Congress has still not passed gun legislation. For Dunbar-Ortiz, gun culture is more fundamental to the USA than any lobbying organization. And until liberals start listening to radicals like Dunbar-Ortiz, it will remain this way.

But Dunbar-Ortiz (2008) also remarks on one major difference between other settler-colonial states like Australia, New Zealand, and Canada: though all of these nations were, like the USA, founded by Anglo, settler colonists who appropriated land from indigenous people, these nations did not have “economies, governments, and social orders based on the enslavement of other human beings”. More specifically, Dunbar-Ortiz is referring to the importance of the labor of enslaved people on plantations in the southern states. She sees this as important because guns were needed to control the large number of enslaved people working under a single colonist.

Dunbar-Ortiz (2018) is proposing that the necessity of guns to the economic system of the early USA is what makes the gun culture so strong. While the majority of

this dissertation has stressed the historico-theological determinants of contemporary gun laws, recognizing the truth in Dunbar-Ortiz's economic determinist model of cultural value reproduction is crucially important in understanding America's relationship with guns.

In the field communication, we are familiar, and even comfortable with technological determinist analysis of culture – from Harold Innis's analysis of the importance of the railroad in Canada, to Marshal McLuhan's mantra of the "medium is the message". Yet we are still hesitant to embrace more orthodox Marxist economic analyses of culture. Dunbar makes an excellent case for the importance of recognizing the present day impacts of the economic model of the plantation. The economic system based on one (white) plantation owner overseeing an economic machine which expropriated labor from sometimes hundreds of enslaved people caused the early USA to generate wealth far beyond that generated in the other former British colonies of the New Zealand, Australia, and Canada with their small-scale direct resource extraction economies. This economic system could not have been possible without firearms. And just as the wealth generated from this system is still visible in the opulent plantation weddings and the Ivy League university campuses, it is still visible in American gun culture.

Though the institution of chattel slavery was forbidden in parts of what is now Canada, New Zealand, and Australia since the late 18<sup>th</sup> century<sup>26</sup>, slavery continued to exist in some parts of what is in now Australia, New Zealand, and Canada until the British Slavery Abolition Act of 1833. However, the economies of nations themselves

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<sup>26</sup> Slavery was abolished in Upper-Canada (what is now Ontario) in 1793.

were never based on the system of many enslaved people working under one colonist. Instead, slaves in Australia<sup>27</sup>, Canada, and New Zealand were mainly used for household labour. The African-Canadian historian Natasha L. Henry notes that the majority of slaves in what is now Canada worked in domestic houses cooking, cleaning, and taking care of other people's children. In fact, in New France (what is now Quebec) the term "domestiques" became a synonymous with African and Indigenous enslaved. In Australia, indigenous enslaved people were transported to colonial centers to be used as porters, household servants, and sex slaves. The reason this is important is because of how easy it would be for a household of colonists to control a few household servants compared to the difficulty of one slave master expropriating the labour of perhaps dozens of enslaved people. Dunbar-Ortiz argues that guns were absolutely integral to the plantation slavery whereas they were not necessary to keep domestic servants 'in line'. Thus, guns facilitated the plantation system and the culture of the American south. There would be no "Gone with the Wind" without guns.

Though some of the men who formed the first governments of Australia, New Zealand, and Canada had familial ties to the transatlantic slave trade<sup>28</sup>, they were not plantation owners and slave masters like George Washington and Thomas Jefferson. The first Prime Ministers of New Zealand, Canada, and Australia were city-dwelling lawyers who, perhaps, never touched a gun. Colonists in these territories did not demand

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<sup>27</sup> It should be noted that Australia was founded as a penal colony and relied on the labor of these convicts – whether this constitutes slave labor is debatable. Dunbar-Ortiz does not discuss this.

<sup>28</sup> For example, recently released documents show that Sir John A. McDonald's father received compensation from the British government for freeing enslaved people from his plantation in the Caribbean.



gun rights as fervently as those in the USA as their economies did not depend on them. For Dunbar-Ortiz, the fact that the saints of the civil religion of Australia, Canada, and New Zealand were not plantation-owners who depended on guns to keep enslaved people working, makes a difference in contemporary attitudes towards the necessity of guns in society. Though we might argue with Dunbar-Ortiz as to whether this explains the difference in attitudes towards guns in former British colonies today, what is clear is that the USA must come to terms with the importance of guns in the perpetuation of slavery in early America and the fact that current legislation, including the Second Amendment, was put in place to help uphold the institution of slavery.

### **Conclusion**

To recover some notion of legal objectivity without either making the ludicrous suggestion that legal texts are wholly unambiguous or simply surrendering to subjectivism requires an examination of the ontological question which Hans-Georg Gadamer's hermeneutics poses: how is it that the world reveals meaning to its inhabitants? It is not necessary to fully develop an ontology -- that is a task reserved for the Heideggers of the world -- but only to bring Gadamer's ontology to bear on the problem of legal interpretation. (Mootz, 1988, p. 526)

In the preface to her work *Approaching the US Constitution*, American legal scholar Kelly L. Hunter (2014) recounts her recent sabbatical in New Zealand. With surprise, Hunter announces that “New Zealanders were able to protect minority rights rather well without the benefit of an American-style Constitution and without allowing judges any authority over their legislature whatsoever”(p. vii)! She seems absolutely

shocked that “Kiwis are able [to] take rights quite seriously without the help of activist judges” (p. viii).

For most citizens of democracies, the idea that in New Zealand an ombudsman — who has no legal authority — spends time understanding the effects of policy on the lives of people, and then makes recommendations to those who have legal authority, and that these recommendations affect laws, seems perfectly reasonable. But for Hunter this was quite a shock! Having spent her adult life studying the American legal system in traditional institutions, Hunter believed that change could only come from partisan, activist judges and others with legal authority. However, Hunter saw with her own eyes that apolitical civil servants were able to make changes. Moreover, they were able to make changes that reflected the changing needs of the nation. As she writes: “Rather than relying solely on legal authority, Aeteoroans [the Maori name for New Zealanders] sense that democracy needs a robust and active living conscience”. You can almost see the raised eyebrows of her surprise. Hunter argues that New Zealanders “sense what the apostle Paul wrote in his letter to the Corinthians, that where the letter of the law kills, the spirit of the law gives life” (p. viii). In an incredibly powerful about face, Hunter admits “*it began to look as if the very presence of the U.S. Constitution was a significant, if not primary, source of the problem*” (original emphasis, p. ix).

The authors of the *The Federalist Papers* (Hamilton, Jay, and Madison) feared that, for the same reasons that I explained in my discussion of the contradiction between natural law and democracy, a written Constitution could be antidemocratic. However, Hunter (2014) explains that the authors of *The Federalist Papers*,

also understood that the way we approach the Constitution matters greatly. If the supreme law of the land is reduced to a legal document then lawyers and judges can be erroneously empowered to use legal technicalities to manipulate the Constitution in ways that serve potentially nefarious ends, violating the very natural law principles that inspired the Constitution's creation... If on the other hand the Constitution is viewed as more than a legal document, as standing for something bigger than law constructed by human hands, it can actually play an important role in furthering the pursuit of classic liberal natural law justice without threatening key democratic principles. And when approaching the Constitution this way, the US Supreme Court can provide the same function as New Zealand's ombudsman does – it can serve as the nation's collective conscience. (pp. xiii – xiv)

In religious terms, this is the difference between worshipping idols and worshipping ideals. The fundamentalist hermeneutic worships the idols instead of paying attention to the ideals. But Hunter's (2014) observations from New Zealand show us that this doesn't have to be the case: the USA can continue to draw on the ideals of the Founding Fathers and move from a fundamentalist hermeneutic to a constructive hermeneutic.

Gadamer likened the hermeneutic experience to that of play: when we play a game, we do not control the game, but rather, transcend it (Stiver, 1996, p. 92). The game cannot be completely controlled despite the most meticulous method. Rather, the truth of the game is revealed in the interaction of the game and the player.

Gadamer uses this metaphor to explore how neither author nor interpreter control the meaning of the text. Contra Schleiermacher, Gadamer did not believe that either the author or the interpreter could step out of history and be sure of authorial intent; rather, as the American theologian Dan Stiver explains, for Gadamer “history and tradition prepare us to know and to understand” (p. 92). Understanding a text without acknowledging our own part that we play in the game is impossible. As another American theologian, David Klemm (1986, p. 181) poetically noted, understanding is the “splendid magic of immediately mirroring the present in the past and the past in the present”. The interpreter’s history shapes the text and the text shapes the interpreter’s history. The fusion of horizons is necessary for any understanding.

As Gadamer explains (2013) our horizon is the limit of our perspective. Different horizons offer different perspectives. A fusion of horizons via a constructive hermeneutic does not dismiss other’s perspectives as untrue; instead, it recognizes that they come from a different vantage point: it recognizes the historicity and situatedness of traditions and texts. The USA does not have to ‘throw out the baby with the bathwater’ but can draw on the ideals of the Founding Fathers without approaching *the Constitution* with hermeneutic fundamentalism. Like Gadamer suggests, with a fusion of horizons we can move on from the search for authorial intent towards understanding of meaning.

Hermeneutics is a philosophy of communication which begins with the question of interpretation and learns from difference. For philosopher of communication Ronald Arnett (1986), a constructive hermeneutic focuses on future possibilities, not present shortcomings. Rather than tear down through deconstruction, a constructive hermeneutic engages with historical tradition or traditions with a dialogic openness to

broaden horizons. As Arnett (2003) explains, a constructive hermeneutic does not claim that it can stand above or outside of history to inform the ignorant. Instead, it situates itself within history.

The lack of a covenantal constitution in nations like New Zealand and Canada has not left them without a moral rudder. Instead, the ideals of *their* Founding Fathers, not so different from the Enlightenment ideals of the Founding Fathers of the USA, have been strengthened by the contributions of immigrants, and most recently, the promotion of the ideals of their indigenous nations. The recent covid-19 pandemic shows how the people of these nations came together to protect the lives of the most vulnerable, acting quickly enough to save lives and protect the economy. Guided by their founding ideals of ‘order, peace, and good-governance’, with a constructive hermeneutic the governments and the people incorporated emerging scientific knowledge and came to reasonable solutions.

Hunter (2014) concedes, as Rawls (1999) understood, we need to have a common theory of justice to have a well-ordered society; however, she writes, we also “must engage in ethical dialogue. We limit ourselves in the most condemning way when we replace ethical debate with a debate over what the words of a text requires of us legally” (p. xv). We mustn’t let a devotion to a fundamentalist hermeneutic be a replacement for morality.

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