

Episode 44: The World Turned Upside Down



National Suicide Prevention Lifeline: 1-800-273-8255.
Music provided by: David “Drumcrazie” Curby
Special thanks to Hogan Lovells, for their long standing legal support
©&©2019 Red, Blue, and Brady

*****Brady legal music*****

Kelly

Hey, everybody, this is the legal disclaimer where we tell you the views, thoughts and opinions share on this podcast belong solely to the person talking to you right now and not necessarily Brady or Brady's affiliates. Please know this podcast contains discussions of violence that some people may find disturbing. It's okay. We find it disturbing too.

*****Brady musical introduction*****

JJ

Hey everybody, welcome back to “Red, Blue and Brady.” And I am so glad to be here again today for our second episode in a series on racial justice, gun violence and gun violence prevention. I am also happy not just because this is a conversation that has to happen, but because I'm joined by one of my favorite people, at Brady, my new guest co-host Kelly Sampson. We're both talking to one of our academic crushes, Dr. Saul Cornell, about the history of gun violence and gun violence prevention in the U.S. Does gun violence prevention have racist roots? What's the difference between gun violence prevention and gun control? Why does

history matter? We have so many questions, and luckily, Dr. Cornell has answers. Then in our "unbelievable, but" segment I'm getting very technological. Finally, we're wrapping up with all the gun violence and gun violence prevention news that we can fit into this episode. Thanks so much for being here, folks. It means a lot.

*****music plays*****

JJ

So I want to be really clear to our listeners. You know, this is the first full length episode in a really important series that Red, Blue and Brady is launching. That I think, is also demonstrative of the work that Brady is doing and plans to be doing, you know, for as long as Brady's around. Which is, you know, considering, amplifying and thinking about gun violence, thinking of gun violence as an intersectional issue and then thinking of gun violence prevention, of course, as being intersectional as well. And so, you know, obviously we don't have all the answers. If I had all the answers, I would be ruling the world. But what we're trying to do is just to introduce as many aspects of the super important conversation about racial justice and gun violence as we possibly can, and give some sort of jumping off points for listeners on discussions that need to happen if we're going to move forward with a safer and more equitable world. So we have so much to talk about. Let's just jump right into it. Um, Dr. Cornell, can you introduce yourself?

Dr. Saul Cornell

Hello, thanks for having me on I'm Saul Cornell, I'm the Paul and Diane Guenther Chair in American History at Fordham University. I'm also an adjunct professor of law at Fordham Law School. And my area of specialization is early American constitutional and legal history.

JJ

And Kelly, how about you? Can you introduce yourself to our listeners?

Kelly

Sure. Hi, everyone, my name is Kelly Sampson. I'm an attorney here at Brady, and I focus on constitutional litigation as well as racial justice.

JJ

So Kelly and I are both, you know, huge fans of your book, A Well Regulated Militia. One of the reasons why we felt like we absolutely had to have you on at the beginning of this series, was, there were a series of images that went out at a recent gun rights rally in Virginia, and there were a couple of protesters that had signs up that said, things like gun control is the new Jim Crow or gun violence prevention is racist, you know, statements like this and that got Kelly and I into talking about, you know, is there a racist history to gun control. And if so, does that mean that there is a racist legacy or racist implication to gun violence prevention? And so we are so excited to have you on here the interest of time I'm gonna start with a hard question: Is violence prevention racist?

Dr. Saul Cornell

So one of the most interesting things about the modern gun debate is the way that it intersects with the history of race relations in America. And there are two narratives that have emerged, both of which you can either view as wrong or partially correct. So the two narratives are The Second Amendment is inherently racist because the ideology that gave us the Second Amendment was part of an effort to use state sanctioned violence to enforce slavery in the South through slave patrols, which were constituted by the state militias and also implicated in genocidal violence against the indigenous population.

Now, whether or not the Second Amendment can actually be linked to those claims, there's no question part of the story of guns in America has to do with the use of guns to perpetrate policies which contributed to the support of slavery and contributed to the expansion of the United States and involved violence against Native Americans. So that story is true. But I think like so often happens in this debate, there's a tendency to reduce the complexity of the history to a kind of sound bite or bumper sticker. So there are certainly ways in which the right to keep and bear arms and the militias were used to enforce control of the populations that posed the greatest threat to Americans in the 18th century, but that also included rebelling farmers in Shay's rebellion and later, after the Constitution, the uprisings in Western Pennsylvania.

So one of the things that I often find so bizarre about the Second Amendment debate is that people think that Second Amendment was in was part of some sort of revolutionary or insurrectionary ideology. But in fact, the well regular militia protected by the Second Amendment was almost always used to put down rebellions. The other story we tell, is that gun control is inherently racist, and why it does that story emerge? Because there have been at gun laws that were aimed to disarm particular populations, particularly African Americans and Native Americans.

JJ

And yes, so this is then I think the difference between gun violence prevention and gun control. Where's with gun violence prevention we're worried about the aftereffects. You know what guns can do to bodies? Whereas with gun control, that seems to me more like laws are designed to keep guns out of the hands of specific populations. So in this case, historically out of, you know, gun control being laws that were specifically designed to keep guns away from people of color from women, you know, does that make sense?

Dr. Saul Cornell

So I used the word gun regulation because I think that's the proper framing of this debate, their variety of laws that deal with guns. And there are laws from the very beginning, there are laws that actually predate the United States. Some of those laws were aimed to disarm racial minorities. But those are not all gun regulations and in fact, the term gun control comes up, I think as a generic term, when it really is a very specific type of gun regulation, one of things we forget is that the problem at the time of the Second Amendment was not that, you know, disarmament would come about by black helicopters and confiscation of weapons the biggest threat to the kind of Second Amendment ideal was the fact that Americans did not own the kind of guns that were necessary for a well-regulated militia. That doesn't mean Americans didn't own a lot of guns. Compared to England, Americans owned the American population was much better

armed. But contrary today they didn't want military style weapons because those weapons were not good for putting food on the table.

Kelly

You were completely correct with the notion of complexity, and I think that something, obviously I'm not a historian, but something that's frustrating for me is that people will put these really quick quips and sound bites, but it's American history itself is complicated, especially when it comes to race. And so, for someone to just kind of like, oh, look, there was a law in the 1800s that was racist, therefore everything is bunk. It's just absurd.

Dr. Saul Cornell

So one of the things that's really hard for Americans to understand about their history, particularly with regard to the problem of guns, regulation and the Second Amendment, is that in the 18th century we didn't have a gun violence problem. If by gun violence, we mean interpersonal violence. In fact, if someone broke into your home and again, remember, this is a rural society where people are not living like they are in modern cities. I mean, you have to actually, in many situations, go a long way to break into someone's home, and you're not gonna, you know, sneak in without making a good deal of noise. So if you actually face that situation, you would most likely...if you happen to have a long gun, you would probably hit the person with it before you would take the time to load it and use it for interpersonal self defense. Randy Roth, a very distinguished historian and a former colleague of mine, Ohio State, has done a very, very persuasive analysis of the history of American homicide, and he really notes that interpersonal violence is not the primary problem that Americans are dealing with in the era of the Second Amendment.

It's not until handguns become cheap, reliable and available during the period of the market revolution during the year that we generally describe as the year of Jacksonian Democracy that you get something like a modern gun violence problem. And that's when you get the first gun regulations that I would call gun control laws. Or weapons control laws because they're also very concerned about deadly and easily concealable knives like Bowie knives. So one of the problems we have is that an 18th century America big problem about guns is first of all, the danger posed by gunpowder, which is, of course, explosive. The danger posed by leaving those guns loaded in domestic dwellings. Because if a fire breaks out and there's a great you know, fire in this in this world, where most dwellings are made of wood is a particularly serious problem. That gun is gonna discharge. So those are very serious problems.

The other big problem is you want to make sure that people are not traveling armed in populous areas. That regulation goes way back to early modern England, even before guns were, they didn't want people traveling with edged weapons in populous areas. The Statute of Northampton goes back to the reign of Edward the third, and that was a ban on traveling and fairs and markets armed. So those kinds of regulations are the ones we generally think about. We also think about actually disarming not just dangerous groups who are outsiders, but also requiring people to take loyalty oaths during the American Revolution, where if you're a loyalist, you can be disarmed if you refused to swear allegiance to your state government and eventually to the new United States of America.

So again, the idea that you have a right to a gun so you can overthrow the government is kind of hard to reconcile with the fact that the Patriots, the people who are actually responsible for drafting the Second Amendment, are going around disarming all kinds of people who refused to take these loyalty oaths. So we don't even get to the problem of gun control until the Jacksonian period. And those laws don't have a lot to do with race. They're mostly about a problem that white Americans are experiencing, which is they're killing each other with handguns. So the first wave of gun control laws as to be distinguished from this other long history of gun regulation has nothing to do with race at all. It has to do with interpersonal violence arising from America's first gun violence problem, which is a handgun problem and, of course, to this day, the vast majority of gun violence is still a handgun problem.

Kelly

Is there anything in American history that is not somehow implicating racism. Cause sometimes it's almost said as like a gotcha. But from what I've seen, there seems to be some of that in almost everything that we've talked about.

Dr. Saul Cornell

That is a wonderful question. In terms of the really important things in American life, issues of race and class and ethnicity and religion and regional cultures. America is a very complicated nation, with a lot of different streams flowing into the great current and ocean that America is. So I wouldn't want to be reductionist and say that everything can be reduced to race, class and gender. But I think after you know 20 or 30 years of scholarship and doing historical research, it does strike me that those are very powerful forces in shaping American history and in most of the really big issues in American life.

When you bring those categories of analysis into it, you generally learn some interesting things that you wouldn't have seen if you just sort of assumed that all Americans were sort of like that fully informed reader who had all the relevant knowledge because that's not how the world works. We are not these ideal constructs. We are very much these historical and social constructs inter shaped by a variety of different forces.

Kelly

So in the early era, in a lot of cases. The black population in the country was enslaved. And so there's a question I think that arises were some of the laws that did regulate guns, to the extent that that was happening in those early eras, is part of the reason why they were not necessarily race conscious because black people didn't have guns. Is that accurate?

Dr. Saul Cornell

So one of the interesting things about the early history of America that we often forget is that slavery was not inevitable in early America. There's a really complicated, interesting historical literature about why slavery develops in the early colonial South. And, you know, there are several different interpretations. One has to do with simple sort of supply and demand kinds of concerns. Another has to do with the fact that you know your people are dying at an alarming rate and there's no incentive to enslave people if they're going to die a couple of years after you

buy them. And the third thing is, there's a sort of fear that basically indentured servants who are not slaves and slaves will rise up against those who are holding them in bondage.

So what happens is after the big rebellion called Bacon's Rebellion at the end of the 17th century in Virginia, you start to see laws that make slavery a racially defined and permanent condition. And you also at that moment see clear efforts to make sure that by marrying someone who's not African American, your children will not escape slavery, making it more difficult for slaves to exercise basic rights that come under English colonists through common law protections. And you start to see laws disarming slaves. Because what another really interesting thing is in the very earliest periods of colonial settlement they in the South, when slavery is starting but is not yet sort of cemented into American law. The judgement is made that it's better to arm slaves than to face a situation where someone who is capable of handling a firearm is not armed when an Indian attack occurs.

But it's really fascinating, and again, you know, I sometimes say it. It's unfortunate that so much political, furor and so much violence and harm is associated with guns in contemporary America. Because if you take out the current issues, the history of this is really one of the most fascinating histories you could tell, because it really illuminates how different power dynamics were at particular moments in American history and how flexible and American history was and how we didn't have to wind up with the current configuration of American life that there was always possibility for different versions of American history to emerge. But they didn't for very contingent historical reasons.

The history of guns in America actually shows how contingent history was, and things could have developed in a very different way, even in what seems to be the argument that somehow guns are embedded in America's DNA. Well, that's actually not true.

JJ

Well, and that, I think, takes me to then the question of you know, you identify as the Jackson Administration being the nation's first gun violence crisis. But I wonder what you would identify as the gun crises that followed before where sort of the modern gun violence prevention typically timeline kicks up.

Dr. Saul Cornell

Good question. So one of the problems about trying to argue that there's only one dynamic that governs race and gun is it doesn't take account of the very different realities that African Americans face at different historical times. So one of the classic arguments about why gun controls racist is because in the reconstruction era in the South after the Civil War, former Confederates are very keen to prevent African Americans from arming themselves and their particularly frightened about the prospect of former union soldiers who are particularly well armed cause they're sporting, not shotgun like weapons. They're sporting the latest Springfield rifle, and they're also properly trained in their use.

So there is no question that in the era of reconstruction there was an effort to disarm the African American community in the South. And that is important. And that is part of the story. What

tends to drop out of the story is that the neo-Confederate groups in the South quickly create paramilitary organizations, the most famous of which becomes the Ku Klux Klan, and in order to counter those paramilitary groups, Republicans in the reconstruction era in the South do two things. One, they recreate militias but allow African Americans to join them, which effectively means they become so called Negro militias just what they're called at the time, because whites will not participate in integrated militia.

And secondly, they pass a series of neutral gun control laws about public carry, aimed at reducing the level of violence in the South, which is horrific, and in trying to make it more difficult to intimidate both African Americans who are recently freed and Republicans who are trying to build these governments in the South. So we often hear about the black codes and their disarmament, and that's an important part in the story. But we don't tend to hear about this other part of reconstruction where Republicans enact a variety of gun control laws and where they strengthen the militia. So the reason I mentioned that is because it shows a couple of things. First of all, once again, it shows need for historical context and complexity, but in a way almost more important, it shows that when government is trying to reduce gun violence and doing so in a racially neutral way and paying attention to the facts on the ground where the threats come from, one can enact gun control laws that make people safer now flash forward to the modern civil rights era, you know, sometimes called the Second Reconstruction.

And there's a lot of new scholarship, that's pretty interesting about how in parts of the Jim Crow south, African Americans, particularly those who've just come back from the Second World War and once again are exposed to ideas and military training and firearms training. Some of these African Americans who gained this valuable experience through their service to America in the Second World War or the Korean War. You know, Medgar Evers and several other prominent civil rights leaders of the Jim Crow era decide that they will use their Second Amendment rights. They will arm themselves and form not militias but groups like the Deacons of Defense. These are armed groups that are protecting civil rights work, so that is often used as an example of “see, you have to have this radical individual gun rights ideology because look at what happened during the Jim Crow South.”

Well, of course, what that ignores is that those Jim Crow governments, unlike the reconstruction era governments, were practicing segregation. So, you know, do I concede that there are certain moments where this kind of individual vision of gun rights ownership might serve interests that are pro civil rights? Well, yes, in the middle of the Jim Crow South, where the government is engaged in apartheid like policies and where it's collaborating with the clan and will not enforce laws neutrally, you've basically dissolved the entire rule of law in the real sense, because the rules laws on Lee applying two parts of the population there, not being protected by the law.

So I recognize that in that situation one might make a historical argument that those people having guns may have helped them. Although in the long run, it's still not clear that if that part of the civil rights movement had dominated and we had not moved to the sort of Martin Luther King nonviolent part of civil rights movement, we probably would have never achieved the kind of progress that we needed to make. Because violence people often forget in guns people often forget are not ends in themselves. Violence. Can it best be a temporary political tool? It's never

gonna be a long term solution to anything. So that's the biggest problem I find when people sort of romanticized or fetishize firearms. They're sort of confusing tools with political solution and ultimately, the founders who wrote the Second Amendment, were not modern gun rights advocates, despite the best efforts to sort of claim their legacy.

They believe that if you had an armed population that was not governed by law, that was going to lead to anarchy. And you know, really what this new story of the civil rights era shows us that we kind of had anarchy in the South, and, you know, that was not a long term solution.

Kelly

One of the tensions that I see when people romanticize the possibility of armed resistance for black Americans during reconstruction or slavery or the civil rights era, or even now, is that there are so many examples of people who did have arms. But nonetheless, because we're a minority group, you can't really shoot your way out of oppression by a majority. So you know Medgar Evers was assassinated. Martin Luther King Jr., had armed guards. He was assassinated. Malcolm X famously posed with a rifle. He was assassinated. And you know, I've seen stories in history where you'll have black families that have rifles. But when 50 Klan members show up to their house, they at the end of the day, they can't really escape that total systematic oppression. So I'm just wondering if you could kind of talk about just the feasibility of using firearms, even if everyone had a gun in a system where the higher kind of structure is backing you into a corner, almost.

Dr. Saul Cornell

No, I think that's a good point. The Tulsa Race Riots are a great example of that because, you know, ultimately, those neighborhoods in Tulsa which included people who had firearms, were torched. And you know, people sometimes romanticize the Warsaw ghetto but ultimately tanks rolled in, and what few firearms they had in the Warsaw ghetto did not level the playing field. So I think you're calling attention to an important point.

The part of the problem we have and part of the difference between modern Second Amendment ideology, which tends to focus on guns and ignore more fundamental political and legal structures in which those guns exist, is that when you have the rule of law, firearms can be absorbed in a way that don't promote anarchy and violence and terror. When you don't have those structures, firearms inevitably lead to exactly those things violence, terror and ultimately, anarchy. What we tend to forget is the militia is not, in the 18th century, the mob. It is not a spontaneous, organic, welling up of the people as it is sometimes romanticized in contemporary politics. It is an institution of the people regulated by law and organized within the existing governmental structures. And when you dissolve those connections, what you get is the reconstruction era south or the kind of violence that you see in in failed states in various parts of the world.

So, you know, my greatest frustration in all of this is that we don't understand the broader context in which these constitutional ideas are articulated and the way they evolve over time. You know, if I had to make two pleas, to people who wanna understand this, they would have to

be. You have to approach the history with some complexity. You have to pay attention to the context, and you have to realize that history is not static. Things do change over time.

JJ

Well, and I think that that static history is difficult because I think one of the things that's come out of modern narratives, particularly from the gun lobby, is that the Second Amendment is one particular thing. And anyone who tries to tell you that it's different is trying to manipulate you and that the militia is a very particular thing. And anyone trying to tell you different is manipulating you and so on.

Dr. Saul Cornell

Yes, well, one of the most amazing things that I find about sort of the popular culture version of the Second Amendment. And, you know, I often tell my students you can talk about constitutional history, which is what happened in our past and how the Constitution was shaped by it and shaped it. This constitutional law, which is what the state of American constitutional law is at the moment, and that's mediated, obviously, by other institutions. And then there's constitutional culture, which includes all kinds of things that are sometimes very weakly connected to either of the other two ways of thinking about the Constitution in American life. So there's no question in my mind.

For instance, you often hear people talk about Second Amendment rights in the plural. Well, if you read the text, it's a right. There's no plural in the Second Amendment yet gun rights ideology in contemporary America has turned what was a singular, unified right, there wasn't a collection of Second Amendment rights. That's not what is written into the Bill of Rights. There was a Second Amendment right, and, the original understanding of the Second Amendment had the right to keep and bear arms in a well regulated militia tied together in a very, very close way. And, of course, my favorite part of the second amendment, which gets almost no attention, is the middle part.

You know, people generally either like the first part about the well regulated militia. While they like the second part about the right to keep their arms shall not be infringed. There's very little attention to the security of a free state, and one thing the founders understood is that there are certain kinds of policies about guns that are not conducive to a free state. They undermine a free state because when the rebels at Shay's rebellion took up arms against their government, that was not conducive to the security of a free state. Now the rebels thought they were acting in a manner that was conducive. But it's interesting. Even if you read what the rebels in Shays Rebellion say they hardly ever talk about the right to keep and bear arms. They talk a lot about themselves assembling collectively, as in the militia.

Now, another problem we have in this debate is, you know, the whole debate between an individual, the collective right that dominated this whole debate until Heller was just kind of wrong headed, as I tried to make clear in my book. It really has nothing to do with the 18th century. It's an artifact of some very bizarre occurrences at the end of the 19th and the early 20th century. So there's no question. And I think this is where Justice Stevens opinion in Heller was really quite astute. Some people, right before Heller was decided were arguing that the whole

individual collective rights thing was just confusing and anachronistic and not helpful. And some people said the best way to think about the right is an individual right constrained by its militia purpose. Other people said it's best understood as an expansive collective right. I tried to say it was best understood as a civic right cause I was desperately trying to find a word that didn't have any baggage that would obscure more than it clarified, that term didn't really catch on.

But in Heller Justice Stevens says something very interesting. And of course I'm paraphrasing. He sort of distinguishes between who holds the right and the scope of the right. And there's no question, in the 18th century, the people who hold the right are citizens, which is not exactly the same as individuals, because a woman in 18th century America had a right of self defense. Unquestionably slaves even had the right of self defense, although it was severely constrained compared to the English common law, right. You know, it mostly existed against other slaves attacking them, and was very feeble when a white person was attacking the slave. And particularly if that attack occurred in the context of so called disciplining a slave.

But the right of self defense, even for slaves, was not completely annihilated under American law, though, it was severely constrained compared to English law. But none of those people were among those who you could say bear arms, yet they all had a right of self defense. So the Heller argument that the right of self defense is what the Second Amendment is about what the right to bear arms about. It's just demonstrably wrong in a multitude of different ways. And, you know, since Heller's decided, we've had a ton of more research that just shows you how completely wrongheaded it was. Now that's not to say that the Heller framework should be tossed out. You know, I think I tell my law students that the really funny thing about Heller is you could justify Heller. You know, whether you agree with the holding or not by a variety of different legitimate constitutional theories, the one theory that you really can't get to Heller as a result is Hunter originalism and that's what makes the decision, so, so bizarre is that Scalia goes to such great lengths to justify his originalist argument, and it just does not hold up under serious historical scrutiny. So, but that's, of course, a subject for a different podcast, isn't it?

JJ

I was gonna say, can you maybe explain a little bit, though, for our listeners what, like an originalist argument in this case when it comes to the Second Amendment, what that actually is?

Dr. Saul Cornell

Right. So of course you know, originalism is a complicated set of theories. You know, the first version of originalism, so called originalism 1-0 was all about the intent of those who enacted whether that was the framers in Philadelphia or the ratification conventions. In the case of the Second Amendment, the enactors would clearly be the first Congress that wrote those amendments and then the states that adopted them so called originalism 2-0, which is kind of what Heller employs is so called public meaning originalism. And that is supposed to be, how does the fully conversant user of 18th century English, with all the relevant legal knowledge, understand the words of the tax? Now, of course, uh, that is a kind of a bizarre fictional construction, the fully conversant user of English, aware of all relevant legal knowledge. Well, who was that person? You know, it's a little...

JJ

Yeah, well, it's also I've yet no offense to you and Kelly, but I have yet to have two lawyers in a room completely agree.

Dr. Saul Cornell

Right, exactly. And you know, if you have two lawyers in the room, you probably get three opinions in most cases, at a minimum. Probably four cause they'll each want to play it both ways.

Kelly

Yep, on one hand. On the other hand...

JJ

Based on your comments, I wonder, what do you find? Particularly maybe striking or even ironic about the modern Second Amendment debate? Considering what you know about the history of the Second Amendment?

Dr. Saul Cornell

You know, in the modern Second Amendment debate that if we actually got their wish, if gun rights people actually got the founders Second Amendment, half the things that they hold dear, would go away, there would be no stand your ground because the rule in the founders era was a duty to retreat. You wouldn't have a choice of what weapon to buy. The government would tell you what weapon to buy. You would have the government inspecting how you store that weapon, requiring you to report for muster and being fined if the gun wasn't properly maintained, it would actually involve much greater intrusion and a much greater narrowing of certain types of gun rights.

And it just strikes me that it's always amazing that people wish we return to the original Second Amendment because it would be their worst nightmare. I mean, there's so much about the Second Amendment debate. That is, just it's the world turned upside down. It's almost the opposite. Like today, everyone wants their military style assault weapons or what The Sports Shooting Federation likes to call modern sporting rifles. Well, in the founders era, people did want those weapons. They wanted hunting guns. They wanted guns that were useful. They resisted having to get those guns. So again, the historical reality is almost the opposite.

And in Heller, for instance, Justice Scalia said, you know, he takes great pains to talk about our US v. Miller was wrong. But then he turns to US v. Miller to justify a claim that's preposterous. That meeting the Second Amendment obligation you could show whatever gun you had. Well, if that were true, we'd all be having tea at four o'clock and singing God save our gracious Queen. Because the fundamental problem they face his people didn't want to acquire the kind of military weapons they needed to fight a ground war in the 18th century.

Kelly

In the modern era, obviously, now that we have the 13th and 14th Amendments, governments can no longer pass race conscious laws. And so you often see the argument that there are race neutral laws, like the laws that then Governor Reagan passed in California after the Black

Panthers demonstrated in front of the Capitol, or Bill Clinton's 1994 law banning guns and federal public housing that, while race neutral on their face, were obviously intended to target communities of color.

And so I was just wondering if you could talk a little bit about what it looks like now when we are in a race neutral era for laws to disproportionately impact groups. And what does that look like going forward? How can we do this in a way that is conscious of the possibility of disproportionate impact don't have malice?

Dr. Saul Cornell

Well, that's another great question. And you're really now addressing an issue that needs a lot more research and a lot more thinking about because the first part of your question, which deals with the ironic impact that the Black Panthers carrying arms in public and exercising, Second Amendment rights, is what converts Ronald Reagan into an advocate of gun control and and that is richly ironic and that is an important story to tell. Now that again, if you take that story in isolation, you could say, well, see, gun control is racist because they're trying to disarm the Panthers. Well, again, that's a, that's the story in a specific historical context. That's not the story today when we are trying to implement racially neutral gun regulations and we're trying to take a cognizance of what you describe as disparate racial impact.

Now that is really one of the most important things we need to think about moving forward. So we have seen numerous instances where gun rights organizations who have been championing gun rights seem to stop championing them when the victims of the violation of their gun rights are African Americans. And that is, you know, if you're going to claim that gun control is racist and not defend the rights of African Americans to carry weapons, it seems to me pretty hard to sustain the argument that your vision of gun rights is not somehow shaded by racism in some significant way.

Now, to be fair, I think that we have a lot of very interesting cognitive science research that suggests that the proliferation of guns in public, in public places is always until we reach a truly post racial society, always going to result in disparate impacts on African Americans who want to exercise those rights. What does that mean in terms of 14th Amendment equal protection claims? If the facts on the ground and if the deeply embedded cultural norms social practices make it impossible for African Americans to ever have access to that right? What are we going to do about that as a society? That is a debate that we need to have, and we certainly are not having it.

JJ

Well, and I think that's an excellent place to end on just sort of this awareness that everything is contextual and yes, that can make things really hard and difficult. But we have to think about how gun rights groups, or even how the gun lobby is approaching racial justice. And if they're not addressing it at all, then you know, do they have the right to hold up a sign saying something like gun violence prevention is racist?

This has been so good. Thank you, Dr. Cornell.

Dr. Saul Cornell

Well, thanks for having me.

*****music plays*****

JJ

Well in this week's "unbelievable, but" I get to talk about the need to balance being cool with being safe. So a reddit user posted how they've modified their Amazon Alexa to open a James Bond-esque cabinet, which was filled with an assortment of firearms. In a posted video, the Reddit user says, you know, "Alexa, we need guns" and the cabinet's top drawer opens, revealing a tray of handguns. But when the user then says "Alexa, we need lots of guns." Music plays as the entire cabinet opens to reveal four rifles and a fair bit of ammunition.

Now, I'm really not gonna lie to you. It does look super cool. I personally really like any hack for Alexa that people come up with. But the difference with this cabinet and say, you know, modifying your Alexa to play your favorite song every morning is that guns are deadly weapons and this isn't very safe gun storage. You know there are no locks. Ammo was right there, and anyone who could say Alexa can get access and I don't know about you, but there are lots of young children in my family, and I think that they know how to work the Alexa better than I do. So we have to be so much better with how we manage gun storage.

*****music plays*****

JJ

In the news this week, we celebrated Sarah Brady's birthday. A lot of people just focus on her husband, James Brady, who as all listeners should know by now was the press secretary to President Ronald Reagan, who was permanently disabled as a result of a gun injury during an assassination attempt on Reagan. But Sarah herself was a prominent advocate for gun violence prevention in the United States. Almost everyone I meet here at Brady has a Sarah story. She was a tough, funny, deeply dedicated woman, and we hear Brady continue to fight in her honor to and in honor of the victims and survivors of gun violence everywhere.

We also recognize the gun violence survivors who were in attendance at this week's State of the Union address, something that's actually been happening for years despite federal inaction on the issue. One survivor, Fred Gutenberg, whose 14-year-old daughter Jamie, was among the 17 people killed in the Marjory Stoneman Douglas High School shooting drew national attention for his well-founded vocal outrage at President Trump's comments about the Second Amendment being under attack and immigrants causing gun violence. Which, by the way, both of those things are false. As a result of speaking out, Gutenberg was escorted out and detained. Supporters took to Twitter using the hashtag I'm with Fred to show solidarity.

Finally, in an effort to end gun violence, House Democrats in Virginia used their majority to advance a bill that would ban assault weapons and high capacity magazines. The House Public Safety Committee voted 12 to 9 to send House Bill 961 to the floor of the House of Delegates.

Now emotions ran really high at the meeting, and when the bill passed, those calling themselves gun rights advocates stood up and chanted quote: "We will not comply!" End quote. Police had to escort them from the room. Final voting on this bill in the full House of delegates must occur by this upcoming Tuesday. We hope that common sense gun legislation continues to pass.

*****music plays*****

Kelly

Thanks for listening. As always, Brady's life saving work in Congress, the courts and communities across the country is made possible thanks to you for more information on Brady or how to get involved in the fight against gun violence, please like and subscribe to the podcast. Come see us online at Bradyunited.org or follow us on social @BradyBuzz, be brave and remember, take action, not sides.

*****Brady musical outro*****

Selected citations:

Cobb, Charles E. Jr. *This Nonviolent Stuff'll Get You Killed: How Guns Made the Civil Rights Movement Possible*. Oxford: Oxford Univ. Press, 2014.

Corley, Cheryl. "Nearly 700 People In The U.S. Die From Gun Violence Each Week; A Memorial Honors Them." NPR. NPR, February 4, 2020.
<https://www.npr.org/2020/02/04/802336681/nearly-700-people-die-from-gun-violence-each-week-in-the-u-s-a-memorial-honors-t>.

Cowen, William. "Father of Parkland Mass Shooting Victim Escorted Out of Trump's SOTU Address." Complex. Complex, February 5, 2020.
<https://www.complex.com/life/2020/02/father-of-parkland-mass-shooting-victim-escorted-out-of-trump-sotu-address>.

Friedenberger, Amy. "Capitol Police Clear Committee Room after Uproar Following Passage of Gun Control Bill." Roanoke Times, February 7, 2020.
https://www.roanoke.com/news/politics/capitol-police-clear-committee-room-after-uproar-following-passage-of/article_849a4fa6-54ad-5737-9034-84254de43a14.html.

“r/Unexpected - ‘Alexa, We Need Guns.’” reddit. Accessed February 7, 2020.
https://www.reddit.com/r/Unexpected/comments/evbmkt/alexa_we_need_guns/.