Planning for this debate has given me an unexpected surprise; I finally know how Rocky Balboa felt when he was plucked out of obscurity to fight Apollo Creed. The Federalist society has brought in a ringer, a former President of the NRA who spends much of her time going from gun control debate to gun control debate. She’s being paid to come here—how, much? No one will tell me. To debate her however, they found me, some local schlub who is willing to give up his lunch hour and do it for free.

The Rocky reference is a useful metaphor for the entire gun control debate because the NRA, a high-powered, exorbitantly-funded ideological organization, regularly steamrolls local public opinion and law enforcement. How strong is their lobby? In the year 2000, the last time there was a serious gun control debate in the U.S., the gun manufacturer Smith & Wesson agreed to settle some lawsuits and comply with new government regulations. In response, the NRA organized a boycott that almost put them out of business. “In the space of six to eight months,… [Smith & Wesson] plants were shut down, production lines were closed, and ultimately, the company changed ownership.”

The NRA will claim that this is what their membership wants, but that’s not true. 74% of NRA members support background checks, 75% believe that conceal carry permits shouldn’t be granted to people who commit violent misdemeanors or assaults, 74% believe gun permits should only be given to people who have completed gun safety training, 68% believe being arrested for domestic violence disqualifies someone from gun ownership, and half support a five-day waiting period. But not the NRA leadership; their position is purely ideological.

My intent is to show that the NRA’s position is untenable. I don’t expect to persuade anyone; I don’t really know if Americans ever change their minds anymore. But what I will argue is that gun control and the second amendment both have histories and that every time gun-rights advocates assert that ownership is guaranteed without qualification, they are wrong. I am not a constitutional scholar or a lawyer. Instead, my career has focused on the intersection between theory and actual events. That’s the approach I will take today.

To begin with, almost everyone in this room is pro-gun control. Most of us believe that people shouldn’t own tanks, surface to air missiles, grenades or Molotov cocktails. So the question is not whether there should be gun control but how much; obviously, I think there should be more. So, incidentally, did the NRA for the vast majority of its history.

The National Rifle Association was founded in 1871 to promote gun skills after witnessing the poor marksmanship of Union soldiers during the civil war. In the 1920’s and 30’s they wrote and lobbied for gun control legislation, leading to the Uniform Firearms Act, which “banned anyone without a permit and a “proper reason” from carrying a concealed gun in public.” It also supported the National Firearms Acts of 1934 and 38, which taxed guns, required registration for some, and created a licensing system for dealers sending guns across state lines. In fact, it wasn’t until the 1960s that the NRA started to change its position, and two decades longer before they got any traction. This is consistent, incidentally, with the history of the United States. It was the South that championed gun control laws in the 19th century, hoping to stop duals and squabbles, and the “wild West” was not so wild. Frontier towns had incredibly strict gun control laws requiring people to check their guns with the Sherriff when they arrived. These towns were also crime free. The famous Dodge City averaged only 1.5 murders per year. There was little rape or theft. Many doors didn’t have locks. They were more like Bowman and Carrington, North Dakota than present day Williston.

Is an organization allowed to change its mind? Certainly. But when it did, it was at the forefront of a major marketing plan led by future Supreme Court Justice Antonin Scalia and the organization he founded, in 1982, to advocate for a fringe form of constitutional interpretation: originalism. That organization is The Federalist Society, the group that sponsors this debate and that paid Ms. Froman’s costs.
today. Justices Alito and Roberts are also long-term members.

Until 1982 then, there was very little discussion about the original intent of the second amendment and almost every single constitutional scholar supported the “militia theory,” that the second amendment exists to guarantee a citizen-based military. For the next decade, Scalia and his group pushed through one hundred twenty five articles on the individual rights approach to the second amendment, almost ten times the amount of articles written on the amendment itself in the previous decade. The advocates dubbed their approach “the standard model,” an Orwellian abuse of language that stuck.

Again, does this mean they are wrong? No. But it shows that the claim that the second amendment defends unqualified individual right has only been around since I was a teenager, and that people believe it, mostly, because of marketing rather than the arguments they provide. The preponderance of evidence suggests the opposite, that the individual rights approach is partisan and extreme.

Now, any good constitutional scholar will point to the legal history of gun rights. To oppose my point of view, he or she will show that after the Glorious Revolution in England, the right of Protestants to bear arms was codified in the English Bill of Rights, and that since this served as a model for America, the Founders had individual rights in mind. He or she will also point to Virginia’s Constitution, and Pennsylvania’s and Vermont’s statutes in 1776 and 77, all of which argued for an individual right for gun ownership based on self-defense. However, what they will not emphasize is that the Founders openly chose to not use the language of the previous laws. None of these previous documents included the qualification that ownership was connected to a well-regulated militia, but the American Bill of Rights did. The Founders intentionally added that sentence; the militia clause is there for a reason.

This was not just theory though; it was a way of life. In “the Revolutionary Era, gun laws were strict…the founders implemented laws that required all free men between the ages of eighteen and forty-five to outfit themselves with musket, rifle, or other firearm suitable for military service…This mandate was enforced at ‘musters,’ public gathering held several times a year where every person eligible for military service was required to attend, military gun in hand.” Again, this doesn’t preclude that individual rights were one of the reason for gun ownership, but it does show that the second amendment is not just about personal protection, and that the first clause can’t be jettisoned as the NRA pretends.

What’s more, a modern version of the militia approach still occurs in Switzerland. The Swiss, gun rights advocates will tell you, have the second-largest ownership of guns outside the United States and one seventh the amount of gun deaths. This, they argue, is proof that guns are not the cause of violence.

What they won’t tell you is that Switzerland has universal conscription—every male is required to join the military when they come of age—and that soldiers bring their arms home during training. While the men are in the military, these firearms are automatic, but when they are discharged, former soldiers are required to modify the guns to fire manually. And gun violence? In Switzerland, nine out of every ten murders where attackers lived in the same household involved firearms and one fifth of the clients at the Zurich Women’s Shelter Association reports being threatened with guns by the spouses and partners. So yes, Switzerland has less gun violence than the States, but the proportion of guns involved in crimes is staggering. Furthermore, gun ownership requires passing an examination; all guns are registered and are now entered into a European-wide digital database of gun owners. I will add, by the way, that Switzerland also has universal health care, seven times the amount of maternity leave mandated in the US, and homeschooling is banned in some areas of the country. Which of these other ideas will the NRA advocate for?

To complicate matters the term militia is also ambiguous. Yes, it referred to the need for national and state defense, but it also referred to the people who enforced slavery, searched slave houses, and returned and punished escaped slaves. At the time, there was a vociferous debate around ratification of the second amendment because there was fear that in the South, where Blacks often outnumbered Whites, the loss of these militias would mean a slave uprising and a destruction of the police state necessary to keep slavery functioning. Patrick Henry was afraid that the new constitution would disband these militias. So James Madison adjusted his first draft of the second amendment to refer to the security of the “state,” not the “country” as he originally wanted. The amendment is about militias.

Now, let’s be clear. I am not suggesting that gun rights advocates are racist. Gun control has been used for racist reasons as well. The KKK supported it to keep guns away from African-Americans. Governor Ronald Reagan, when faced with Black Panthers’
desire to carry weapons responded, “There’s no reason why on the street today a citizen should be carrying loaded weapons...[guns are] a ridiculous way to solve problems that have to be solved among people of good will.” Reagan was a strong supporter of gun control and said that it “would work no hardship in the honest citizen.” He was right of course, but in this instance, for the wrong reason.

Does any of this argue for gun control? No, but it shows that the founders’ intent was likely not to preserve national or state security, not individual rights alone. The originalist approach cannot be defended. Gun control is a question that can only be addressed talking about today’s world, today’s problems, and today’s reality. The NRA’s approach to the second amendment is a fiction wrapped in a marketing campaign, colored with paranoia.

What are the fictions? Let’s take the idea that guns prevent the government from overstepping its bounds. I have heard it said that the Japanese-Americans wouldn’t have been interned in camps during World War Two if they had had guns, and that the Jews would not have been exterminated. These ideas are ludicrous. First, all the Japanese-Americans would have been killed. The combined might of the US military, and the West-Coast police and national guards, would have been used to destroy the “internal threat,” household by household. Second, regarding the Jews, the Germans did not “come for the guns first,” in order to seize power so as many people on television have asserted. The Nazis did not seize anything; they were democratically elected and supported by an “enthusiastic” population. Non-Jewish German citizens had access to many guns, tens of thousands were found in German households by G.I.’s after the war. But more importantly, Jews made up .75% of the population; it took all the Allies and their entire war machine six years and sixty million deaths to stop the Germans.

So, guns do not protect us from over-reaching government. They didn’t protect the people of Ruby Ridge or Waco, Texas, but do they make us safer? Not in schools. Columbine had armed guards and virtually every law enforcement agency tells us that if teachers are armed, if there is an incident, the police don’t know who to shoot. Not on military bases; Malik Hasan shot thirteen people and wounded thirty highly-trained soldiers at Fort Hood. Not if you carry a gun on your person. The odds of an assault victim being shot were 4.5 times greater if he or she carried a gun and the odds of being killed were 4.2 times greater. Not if you’re a woman. In 2010, nearly 6 times more women were shot by husbands, boyfriends, and ex-partners than murdered by male strangers. A woman’s chances of being killed by her abuser increase more than 7 times if he has access to a gun, and women in states with higher gun ownership rates were 4.9 times more likely to be murdered by a gun than women in states with lower gun ownership rates. These figures are confirmed by Switzerland’s experience but two other sets of statistics that stand out. Drivers who carry guns are 44% more likely than unarmed drivers to make obscene gestures at other motorists, and 77% more likely to follow them aggressively. Guns make you hostile; they do not create a polite society. And, in the last thirty years, there has not been a single mass shooting that was stopped by an armed civilian, but in emergency rooms shootings, there is a 20% chance that the gun was actually taken from a guard.

You know what does stop mass shootings? Small-capacity magazines. Gun rights advocates claim that there is little difference between a high-capacity magazine and reloading, but we know this isn’t true. At the Gabrielle Giffords shooting, the assailant was stopped by 61 year-old woman who wrestled a second magazine from the shooter while he was trying to reload. He was then hit over the head with a chair and tackled by a 74 year old man. None of them used guns.

In short, for every time a gun is used in self-defense in the home, there are 7 assaults or murders, 11 suicide attempts, and 4 accidents involving guns in or around a home, facts made most graphic by a statistic that got a lot of recent attention: more Americans have been killed by guns in the US since 1968 than in all its battles since 1775. That’s just in my lifetime.

I’d like to make two more comments; the first to the libertarians in the room. There are two key precepts to any libertarian point of view: freedom of choice and absolute responsibility. But the second has been abandoned by the NRA. Libertarians believe that people are responsible for their own actions and their own property; they do not blame others for their own neglect or choices. Thus, nothing is more consistent with the libertarian point of view than registering guns and including serial numbers on every bullet. It is only when a person’s property is traceable, when we can figure out who shot whom, that we can live in a libertarian world. If you don’t like the idea of serial numbers on bullets, you are not ready for the freedom that libertarianism demands.

Finally, I will say this: the NRA position has no place in a democracy. The United States is built on compromise and we have found the middle ground.
on everything. We compromised on emancipation; slaves never got their 40-acres and a mule, and their descendants have never seen unchallenged affirmative action. We compromised on women’s reproductive rights; no one gets abortion on demand. We compromised on education; it is accessible but not free. Sometimes we have to draft our citizens, property can be seized by eminent domain, children can be taken away from unfit parents. Some of those positions infuriate me, but as an American I accept that public policy is a slow, steady, compromise. The only ones who don’t understand this are the gun-rights ideologues who side with the NRA. They think they’re special. They think the rules don’t apply to them. They think their wants are the only pure ones. They are wrong.

I am willing to compromise on hunting. I’ve said so publicly. I’m willing to compromise on very small-capacity manual-fire weapons for home protection. What are they willing to compromise on? Not background checks, not fully-automatic large-capacity firearms, not…anything. That kind of rigid ideology has no business in a pluralistic country. It has no business in America. And frankly, it has no business at a school dedicated to teaching the immeasurable importance of the rule of law.

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