

Coalition Formation and Flexible Discourse About Gun Rights Among Conservative Interest Groups at the US Supreme Court

Coalition

flexibility for conservative actors: in other words, gun rights' flexibility as an issue is a key mechanism sustaining a broad coalition of conservative interest groups. I unexpectedly find a lack of direct investment in gun rights among two key actors (at Cato Institute and Institute for Justice) who funded and litigated for gun rights in *Heller*. From this, one can infer that the groups utilized the issue as a vehicle for their main ideational objectives. In this instance, gun narratives provide an adaptive discursive vehicle rather than a shared ideational framework. This is explanatory of guns' diverse support in this consequential landmark case. It also provides a promising explanation of guns' diverse appeal on the right more generally. Furthermore, it may provide a generalizable theoretical mechanism of coalitions: i.e. that groups may unify in shared action by combining outward cohesion while retaining ideational differences.

The implications of this study are that co-ordination constitutes a better explanatory model of conservative interest group coalition than shared values in this instance. Co-ordination and shared values are competing models of coalitional behavior in political studies (Hardin, 1982; Parsons 2007). My results yield the general theoretical insight that discursive props, deployed commonly among diverse actors, sustain coalitions in lieu of exact ideational alignment. Discourse must be given sufficient recognition as a mechanism. Of the particularistic dynamics within the Conservative Legal Movement, these results suggest that instrumental narratives may sustain ideational breadth while retaining individual groups' specific ideational agendas. This limits the extent to which values are a necessary binding agent, as discursive mechanisms circumvent this. This negates the necessity of ideational consensus, which is commonly postulated of conservative coalitions. While it appears necessary that a discursive focus, such as gun rights, be ideationally neutral among actors, signifying ideational compatibility is a precondition for coalitions, this constitutes a mechanism rather than ideational consensus. These findings also have the particularistic implication that constitutional originalist jurisprudence and narratives of the Constitution can

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is my finding that the Second Amendment is instrumentalized towards

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victory for the right and originalism (Neily, 2010). Political studies of the Second Amendment are also scarce. Recent studies include Lacombe who proves the importance of group identity as an “ideational resource” to the National Rifle Association’s (NRA) preponderance (2019, 1344). Merry (2018) also demonstrates the NRA’s use of narrative on social media. Goss (2006) has also argued for the importance of narrative in framing gun politics. These studies contribute insights to groups’ use of discourse to generate political and social capital. Hitherto this research has concentrated on gun advocacy groups. Interest groups are less studied. This paper in part compares how interest groups’ interests in this issue differ from gun groups (see 4.2); a question so far overlooked and which pertains more broadly to how political issues may be instrumentalized or reconfigured by agents. It also uses the distinctive tool of ‘discourse’ as well as offering a distinct framework, by doing this, it adds a theoretical dimension to the gun literature in considering mechanisms versus values, which is not addressed nor necessitated by the aforementioned studies.

Secondarily, this case addresses the conservative studies literature’s implicit puzzle of how diverse groups converge in the ‘broad

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This paper observes a phenomenon of *de facto* coalition. It defines coalition here as the simultaneous support among diverse parties. It does not define direct co-ordination as a prerequisite. This definition of coalition is distinct from *de jure*, or active, coalition. This paper maintains that active co-ordination is incidental to the phenomenon of shared action.

While interviews with Levy and Neily yielded significant anecdotal evidence of active co-ordination,

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ii. Implicit connection with interest groups: Heller was conceived, litigated and funded by three staff (Robert Levy, Clark Neily and Alan Gura) at two prominent interest groups (aforementioned) As the case's Question Presented (QP)

Having selected Heller as a case study, I inductively identified the 13 sample by identifying all 47 amici's a) political orientation and b) organizational type, using the criteria was that they i) explicitly identify with a form of conservatism and ii) are a type of interest group who advocate for defined political objectives. I bring together differing organizational types (think tanks, advocacy groups, PILFs) under the rubric of 'interest groups', like conservative litigation scholars. Teles (2008), and Hollis-Brusky and Wilson (2017) include PILFs (e.g. IJ) alongside think tanks (e.g. Cato) within the CLM. These groups also adhere to the aforementioned descriptor. (See Parrilla, Almiron and Xifra, 2016 to verify the establishing practice of discussing think tanks and PILFs under the same umbrella of 'interest groups'.) The 13-sample is the total number of conservative interest group amici in the case. This inductive method found that all groups habitually engage in litigation and/oramicussubmission as normative influencing strategies.

The question of ideational versus co-ordinating mechanisms is particularly appropriate to the subject of interest groups, which commonly participate in political action toward explicit ideological or policy goals. It pertains less well to other amici who do not by nature participate in legal cases with systematic ideational agendas like academics. Campaigning organizations' interests are often positivistic and narrow (see 4.2). Elected representatives, such as the 304 members of Congress, can be reasonably expected to respond to electoral incentives and constraints, which produced different dynamics of coalitional behavior and litigative participation. () TJ ET Q q 0.0000088.266 0 594.96 842.04 re W* n BT /F3 11.04 Tf 1 0 0 1 103.94 370.13 T

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findings about NCR groups' strategic uses of secular litigation, and the spread of common strategies (Teles, 2008; Hansford 2008).

Amici Curiae

Amicus curiae brief submission

Table 1: Interest groups' organization histories

Interest group	Founded	Primary location	Policy priorities	Organization type	Typology
10. Libertarian National Committee	1971	Washington D.C.	Individual/ economic freedom	Committee of political party	i. Libertarian
11. Liberty Legal Institute	1997	Plano, Texas	Religious freedom	Nonprofit legal organization	iv. New Christian Right
12. Mountain States Legal Foundation (MSLF)	1977	Lakewood, Colorado	Free market	Public interest law firm	

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combined in order to compare them. Integrating quantitative word frequency with qualitative content analysis enables identification of a discourse's breadth and depth within briefs and across the sample, whilst retaining a view of arguments in context. Multi-method analysis allows for 'triangulation' (Wesleyey

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originalism.(2) This discourse is distinctive among the interest groups compared to gun groups, which suggests that it is not overdetermined by the

Table3:

Dimension	Key words
ii. Contextuabrigins	“England”, “origins”
iii. Constitutionalinterpretation	“miller”, collectiverightstheory”, “interpretation”

There are implicit challenges in quantitatively determining the threshold at which frequencies constitute discourse. However, crossreferencing this data with a qualitative survey of their arguments affirms that groups makesubstantiative use of originalism in their main arguments. A majority of 9 of 13 (ACLJ, ACRU, ALEC, Cato, CFIF, FML, HI, IJ, MSLF) advances substantiv e originalist arguments for all or most of their main arguments, including the same 7 groups with high frequencies in all four dimensions¹⁰. I use the established definition of originalism (see 2. Case study) to identify its presence in the briefs: i.e. invocations of the historical meaning, intentions, provisions and contextual norms of the constitutional amendments of 1789. I also include

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whilst this argument is not implicitly originalist, it pertains to constitutional interpretation. As a tacit critique of supposed liberal revisionism, this argument ostensibly

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inclusion by Georgia Carry and Gun Owners of America (GOA), and one aforementioned use of all four dimensions (NSSA) with two (2) or one (3) used by the rest (compared to 6 and 7 interest groups using 4 and 3 respectively).

While originalism is used in the gun groups' briefs, it is more diluted, mixed with applied arguments and is not

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Cohesive Discourse Binds Groups with Diverse Value Sets

Is the use of the same discourse indicative of shared values? While the outcome is the same, the briefs indicated different values as their ideational content. In spite of shared discourse, then, does this discourse accommodate such diverse value sets? The paper proposes flexible discourse as a mechanism enabling diverse groups to cohere in shared action; i.e. discourse does not necessarily depend on shared values as a precondition (an analytic distinction).

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diverse parties. Notwithstanding the inductive insights for discourse coalition generally, this suggests that the Constitution possesses a unique capacity to cohere diverse groups. That incidentally implies it is aberrant.

In addition, originalist discourse is employed evenly across types. This suggests that, unless it constitutes a shared value commonly shared by all, its employments not correlated to first principles: i.e. it lacks a permanent normative values content. This, in turn, supports the interpretation of the Constitution as a collection of values rather than a set of principles. Q q 0.000008866 0 594.96 842.04 re W* n BT /F

5. Discussion: A Mechanism for Cohesion

There is sufficient evidence of shared discourse towards differing constituent deontological goals (values) among the conservative interest groups in Heller. This paper offers two key contributions herein: i) discourse (specifically, originalism) is a **mechanism** enabling coalition between diverse parties, which ii) necessarily **limits** the role of **shared values** as a mechanism. Values alignment does not necessarily attend discursive alignment. This is because discourse coheres to potentially divergent first principles. A remaining question

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the ‘conservative coalition’ is not facilitated entirely or even mostly by shared values; a premise that has not been hitherto theoretically framed or received precise analytical tools in answer. While a case study has limited scope for re W* n 1 0 59842.04 re W* n BT /F3 11.04 Tf 1 0 0 1 372.07 775.08 Tm 0 g 0 G [()] TJ 4 Tm r

This case constitutes an example of the Second Amendment's apparent teleological utility on the right, notwithstanding any values-based commitment the actors may have to it. This case implies that strategic considerations at least partially underlie groups' choice to participate. Hitherto this line of inquiry (regarding strategy in action) has been explored in CLM literature in relation to NCR litigation. Strategic selection of "high profile" secular litigation by NCR PILFs is convincingly argued by Hollis-Brusky and Wilson (2017, 128)¹⁶ and Blackwell (2015) explores the teleological approach (my term) of NCR litigation on the Second Amendment specifically. Yet political studies literature on instrumentalism in conservative litigation is scant, and that on the Second Amendment even smaller. This paper extends these insights and applies them to other types of conservative groups. It is evinced in the Heller case by all 13 groups' lack of enthusiasm for the Second Amendment outside of the case and, indeed, the lead litigators' (Levy and Neily) admitted lack of interest in the issue.

Second Amendment: Origins of a Political Issue?

The Second Amendment's compatibility with differing first principles may be a causal variable enabling its rise as a 'hot topic' on the right, as divergent groups are predisposed

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onal mechanism enabling diverse coalitions, aligning with existing literature on this subject such as al. (2003).

tion

umentalism of the Second Amendment and limited values sharing has corresponding implications for of the Constitution in conservative litigation. The Constitution has an apparently cohesive effect on , enabling actors to affect the same rationales for their positions whilst accommodating diverse value .
more, it is not possible to ascertain whether this is an *intentional* effect or *de facto*. However, it does so that its **function** (regardless of actors' intention) is a flexible discursive device.

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(Phillips-Fein) at large, as well as contributing to

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Appendix

Appendix A: Cato Institute's amicus brief submissions 1999-2018 (Cato [website](#) accessed July 2019).

Source: Cato [website](#) [accessed July 2019]

Appendix B: Breakdown

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ACRU
ALEC
Cato

AmericanCivil RightsUnion
AmericanLegislativeExchangeCouncil
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