

[The Libertarian Connection Between Gay Rights and Gun Rights](#)

[Damon W. Root](#) Jan. 3, 2013 9:10 am

The U.S. Supreme Court helped reshape American politics over the last 10 years by tackling two of the most divisive issues of our time. First, in [Lawrence v. Texas](#) (2003), the Court handed the gay rights movement a major victory by striking down that state's sodomy ban for violating the right to liberty protected by the 14th Amendment. Five years later, in [District of Columbia v. Heller](#) (2008), the Court handed a similar victory to the gun rights movement when it nullified Washington, D.C.'s handgun ban for violating the individual right to keep and bear arms protected by the Second Amendment. Writing recently at the *New York Daily News*, Yale law professor Akhil Reed Amar attempts to draw a connection between the two cases, [arguing](#) that liberals might advance their current gun control agenda by taking seriously the Court's ruling in *Heller* while conservatives might strengthen their own claims by embracing the Court's reasoning in *Lawrence*. "Conservative justices could end up helping today's political liberals," Amar contends, "and liberal justices may have given today's conservatives additional ammunition."

It's an interesting argument. Unfortunately, Amar fails to consider the most obvious connection between the two rulings: their libertarianism. *Lawrence* and *Heller* each represent a major victory for the libertarian approach, with individual liberty triumphing over intrusive government in both cases.

Indeed, upon close examination, the two rulings even turn out to share some of the same libertarian DNA. In his majority opinion in *Lawrence*, for example, Justice Anthony Kennedy repeatedly cited the arguments made in a [friend of the court brief](#) submitted by the libertarian Cato Institute. "America's founding generation established our government to protect rather than invade fundamental liberties, including personal security, the sanctity of the home, and interpersonal relations," the Cato brief observed. "A law authorizing the police to intrude into one's intimate consensual relations is at war with this precept and should be invalidated." And so it was.

Several years later, Robert Levy, one of the Cato legal scholars who worked on the *Lawrence* brief, spearheaded the legal challenge that ultimately brought down D.C.'s

gun ban in *Heller*. As Brian Doherty [reported](#) in *Reason*'s December 2008 issue, "prodded on by suggestions from a young lawyer named Clark Neily from the libertarian public interest law firm the Institute for Justice, Robert Levy assembled a team that included his Cato colleague Gene Healy (who dropped out before the case reached the Supreme Court), Neily himself, and the private-practice attorney who eventually argued the case in front of the Court, a Virginia libertarian named Alan Gura."

Professor Amar is surely correct that both liberals and conservatives still have much to learn from the Supreme Court's recent decisions in favor of gay rights and gun rights. The best way to jump start their educations is by studying the key role libertarian ideas played in the two landmark victories.