

SUNDAY

OPINION

PRINTED FROM

BE OUR GUEST

BY DAVID ARMITAGE

All across the nation this weekend, Americans will be hooked on history. The Fourth of July is a time to toast the ragtag rebels who defeated a superpower, to contemplate the nation's fragile founding, and to reflect on the rights enshrined in the Declaration of Independence, the Constitution and the Bill of Rights.

But this Fourth of July should be different. Instead of uncritically celebrating the past as they wave the flag and take in the fireworks, Americans might pause to wonder whether an addiction to history is entirely healthy.

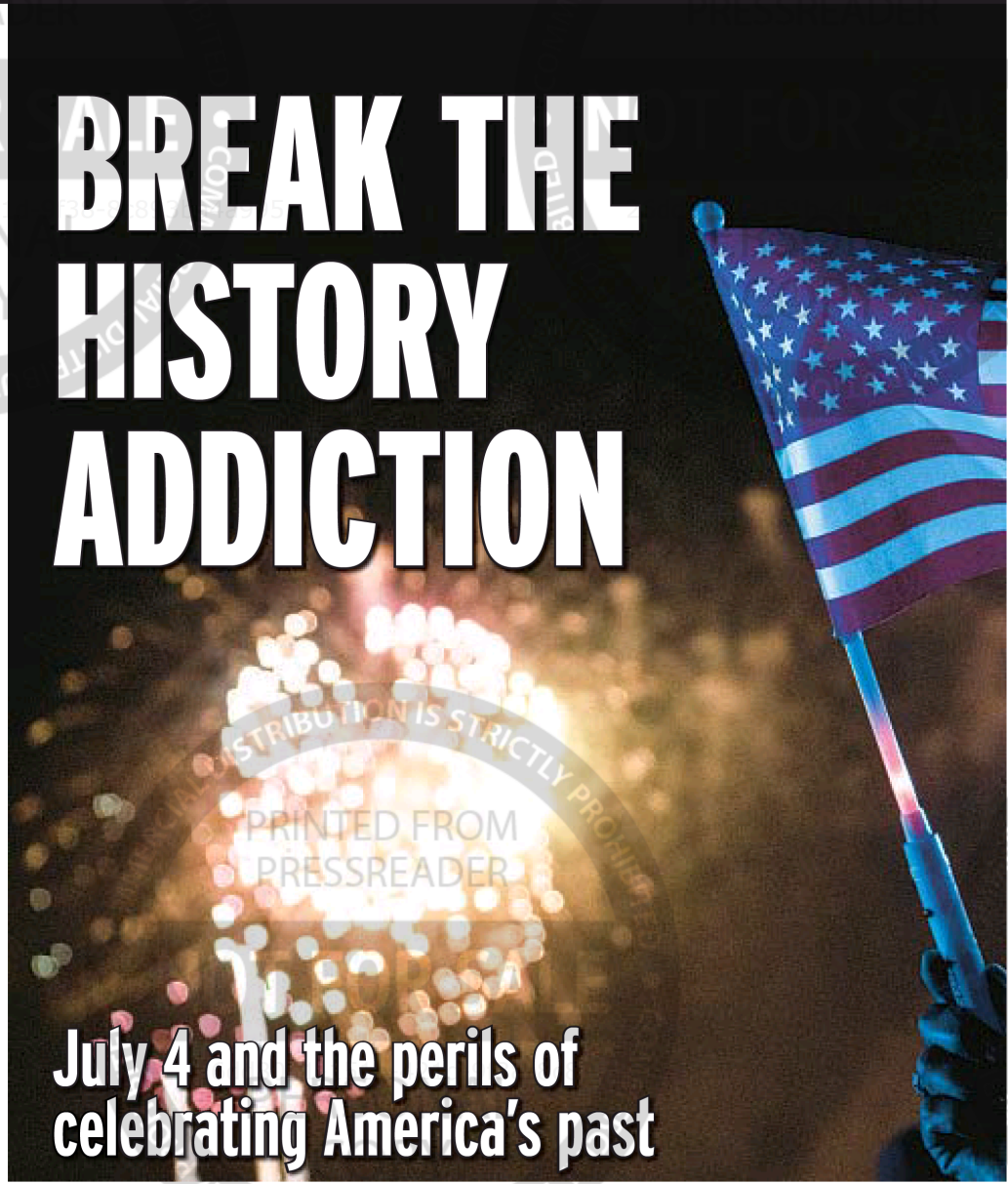
Recent decisions from the U.S. Supreme Court mean that history hangs particularly heavy over this year's holiday weekend. In three of those decisions, *Bruen*, *Dobbs* and *West Virginia vs. EPA*, the court has expanded rights of gun ownership, rolled back the federal right to abortion and made it much harder to mitigate climate change, all in the space of a few days. Its conservative majority has moved mostly in lockstep to determine the future by deploying the past. With a narrow and radical slant on our past, they've mistold the story of how various rights were or weren't protected to argue that constitutional guarantees mean something or nothing.

But how are we supposed to extrapolate from the late 1700s to what should or shouldn't be permissible in a contemporary America with AR-15s, internet gun purchases and medical abortion? Even if history told an uncomplicated story – and it never does – its hold over the present would be limited.

You don't need to be terribly pessimistic to fear that the future will now be darker and more deadly after these rulings, with more mass shootings, more women's lives in danger and more deaths due to extreme weather events. This is all thanks to uneducated justices who have peculiar – and sometimes quite incoherent – understandings of American history.

For long swaths of that history, the U.S. seemed to Americans and foreigners alike to be the land of the future: a beacon of liberty in a world of tyrants, a land of promise for migrants everywhere, an engine of innovation and a hotbed of invention. Yet now, as the country's politics polarizes, trust in its institutions plummets, the economy slows and infrastructure crumbles, the American dream may be turning into a nightmare, as Martin Luther King feared it might in 1967. The land of the future is quickly becoming yesterday's news, a country held back by history and even poisoned by its past.

In *Dobbs*, the majority overturned 50 years of history by ruling that *Roe v. Wade* had been wrongly decided. They did so largely on the grounds that "the right to abortion is not deeply rooted in the nation's history and tradition." To back up this assertion, the majority cited authorities from the English common law going back to the 17th century, state laws from the 19th century onwards, and the situation at the time of the 14th Amendment in 1868 when, it noted, all states then criminalized abortion.



In response, professional historians quickly pointed out that the justices had cherry-picked their evidence and wholly ignored the contexts in which abortion had been banned in the past, for example under slavery. Their English legal authorities, like Sir Matthew Hale and Sir William Blackstone, respectively believed in witches and argued – quite correctly for his own time, though hardly for ours – that wives had no legal personality but were subsumed under their husbands in marriage. Centuries-old misogyny evidently carried greater weight than the decades-long protection of a basic right assured almost everywhere else in the world.

The right to abortion *Roe* protected had to be uprooted because it was not "deeply rooted" in American history and tradition. Just how deep is deep the justices didn't say, but they backed up their ruling by repeatedly citing the yardstick of history and tradition from the court's decisions in two earlier cases, *Washington vs. Glucksberg* and *Timbs vs. Indiana*. Yet *Glucksberg* was decided in 1997; *Timbs* only in 2019.

Apparently, the criterion of being "deeply rooted in the nation's history and tradition" has shallower roots than the federal right to abortion itself. This contradiction would be ironic if its consequences weren't so tragic.

We don't have to go back far in time to find a similarly egregious irony. In fact, just one day before *Dobbs*, in its *Bruen* decision, the court struck down long-standing efforts by the State of New York to regulate the carrying of firearms in public. It did so in the name of protecting the Second Amendment right to bear arms. Most historians who study the Second Amendment, its meaning in the late 18th century, and its context in English and colonial history, would agree that the Framers intended the amendment to help equip "well-regulated" militias rather than guarantee any individual right to bear arms. Indeed, that individual right dates back formally no

AP

PRINTED FROM

PRINTED FROM



ferently revered. Even efforts to “cancel” them – for example, Thomas Jefferson or even George Washington, for treating other humans as property – are a backhanded tribute to their centrality to national life and to their role as models, once positive now negative. Yet history once done can be undone. As a record of the past, it is always under revision, and slurring your opponents as “revisionists” for updating or correcting that record only proves you don’t know how historical research works, let alone how historical memory changes.

The court’s recent decisions go wider and deeper even than obedience to the Framers. Justice Clarence Thomas cited *Dred Scott*, one of the court’s most infamous decisions, in both *Bruen*, to support the individual right to carry arms, and *Dobbs*, to compare deaths from abortion with the sacrifice in blood that secured the Union during the Civil War. And by digging back to 17th-century England, the majority in *Dobbs* seemed to want to in some respects turn back the clock not to the 1960s, as some critics charge, but to the 1660s. This is not just history without nuance. It comes close to being history without a moral compass and certainly without compassion.

As the court goes into recess and the country celebrates the Fourth, we have a good moment to stop and think about the costs of history along with the pride that comes from tradition. History can be used positively, to ground a civic religion in shared values within an expanding circle of rights and liberties. Or it can be abused negatively, not only to halt progress but to roll it back restrictively and ultimately destructively.

Thomas has already hinted that he doesn’t want to stop with *Roe*. If he gets his way, *Griswold*, *Eisenstadt*, *Lawrence* and *Obergefell* and hence rights to contraception, sex between consenting adults and same-sex marriage will all be in question for not being “deeply rooted in the nation’s history and tradition.”

It’s common to call the current majority on the court conservative, as if they see themselves as the guardians of an accumulating tradition. Yet they’re better described as radicals, in the literal sense of that term: activists committed to eradicating whatever they dislike about contemporary mores. They call their targets not “deeply rooted” even though they are the ones who are digging them up.

A little history can be a dangerous thing, especially when wielded as a weapon rather than a tool. In light of the court’s alarming decisions and its subversion of precedent as settled law, maybe now is the time to put a health warning on history. Used properly, with attention to context and complexity, the past forms an essential resource to chart paths towards the future. Abused for partisan purposes, it can do far more harm than good.

Caution: Distorted Historical Reasoning May Be Hazardous to Your Health – and to the health of millions of potential gun victims, women and all the inhabitants of our threatened planet.

Armitage is a history professor at Harvard University and the author of “The Declaration of Independence: A Global History.”

further than the Supreme Court’s decision in *District of Columbia vs. Heller*, handed down in 2008.

Deeply rooted in the nation’s history and tradition? Not so much. Fourteen years suffices for gun rights, but evidently 50 still isn’t enough for abortion rights. Playing fast and loose with history in this way is not only breathtaking in its inconsistency. It is staggering in its hypocrisy.

Most of the justices are not trained historians – though the chief justice, John Roberts, who at least demurred from overturning *Roe* even as he sided with Mississippi, is a distinguished history graduate of my own department at Harvard. In *Bruen*

and in *Dobbs*, the justices in the majority used history to prop up shaky arguments, not to provide genuine illumination. They use evidence, in the words of the English poet and classical scholar A. E. Housman, “as drunkards use lamp-posts – not to light them on their way but to dissimulate their instability.”

We should not expect the justices, or their clerks, to undertake original historical research. But maybe we could still hope for a little more humility or, at the very least, a willingness to admit that they raid the past expediently, to argue a case not to show how things really were.

History is a resource, but it can also be

a weapon. No doubt the majority in *Bruen* would argue a weapon’s main use is defense. But in the wrong hands, any defensive weapon can become lethal. There are no mass shootings without guns. Botched abortions and late-term complications kill women. Climate change will drive millions into poverty and starvation around the globe. History might not seem as dangerous as these threats, but when an activist court weaponizes history, its consequences may indeed be fatal.

Ancestor worship is a peculiar feature of American public life. Perhaps only China places its revolutionaries on such a pedestal and in few other countries are founders so