



Strathmore
UNIVERSITY

STRATHMORE LAW SCHOOL

**THE GUN CULTURE: ANALYSIS OF EXISTING GUN LAWS AND THE RISING
RATE OF MASS SHOOTINGS IN AMERICA.**

Submitted in partial fulfilment of the requirements of the Bachelor of Laws Degree,
Strathmore University Law School.

By

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DECLARATION


I, KANSIIME FAITH, do hereby declare that this research is my original work and that to the best of my knowledge and belief, it has not been previously, in its entirety or in part, been submitted to any other university for a degree or diploma. Other works cited or referred to are accordingly acknowledged.

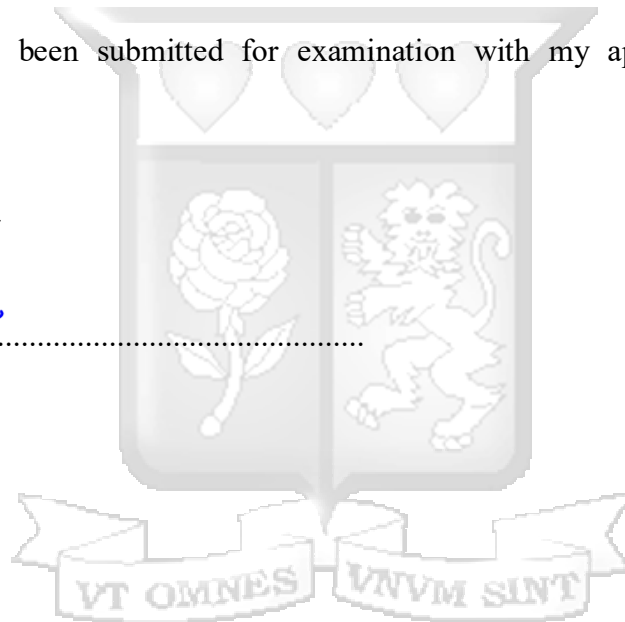
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This dissertation has been submitted for examination with my approval as University Supervisor.

Dr. Elizabeth Mokeira

Signed: 



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I want to start by giving thanks to God for His Favor, grace, and strength. Without Him, I would not be where I am now. Additionally, I would like to thank Dr. Elizabeth Mokeira, my supervisor, who believed in my interests and supported me to see this dissertation to its final completion.

Lastly, I want to express my gratitude to my family and friends for their constant encouragement and belief in me. This dissertation is specially dedicated to my siblings Precious and Junior and to my parents who have given me the best of everything!



LIST OF LEGAL INSTRUMENTS

1. The Constitution of the United States of America.
2. Amendment II, The Constitution of the United States of America, 1787
3. The National Firearms Act (1938)
4. The Brady Handgun Violence Prevention Act of the United States of America (1993)
5. The Code of Laws of the United States of America.
6. Protection of Lawful Commerce in Arms Act./ Public Law 109–92— 26 October 2005

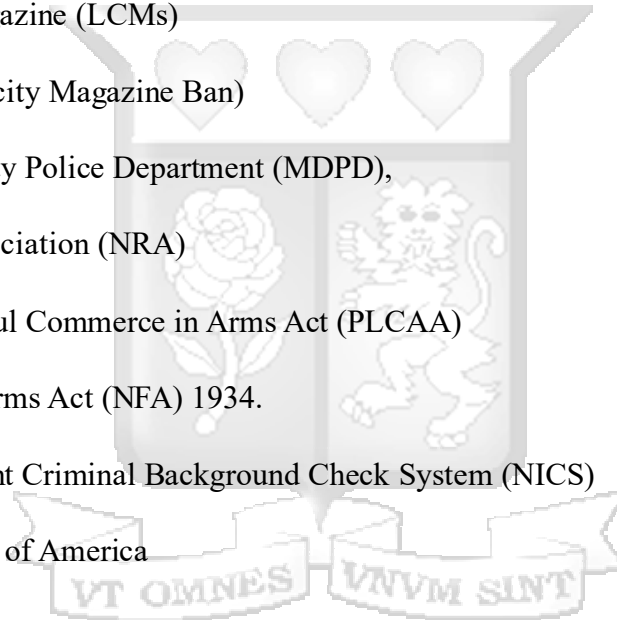


LIST OF CASES

1. Burton vs. Sills, 394 U.S. 812 (1969)394 U.S. 812 - Supreme Court of The United States of America
2. Caetano vs. Massachusetts, 577 U.S. 411 (2016) - Supreme Court of The United States of America
3. Commonwealth vs. Caetano, 26 N.E.3d 688 (Mass. 2015),- Supreme Court of The United States of America
4. District of Columbia vs. Heller, 554 U.S. 570 (2008)- Supreme Court of The United States of America
5. Haynes vs. United States, 390 U.S. 85 (1968)- Supreme Court Of The United States Of America
6. Lewis vs. United States, 445 U.S. 55 (1980)- Supreme Court of The United States Of America
7. Mcdonald vs. City Of Chicago, 561 U.S. 742 (2010)- Supreme Court Of The United States Of America
8. New York State Rifle & Pistol Association (Nysrpa) vs Bruen 597 U. S. (2022) The Supreme Court Of The United States
9. United States vs. Lopez, 514 U.S. 549 (1995)- Supreme Court of The United States of America
10. United States vs. Miller, 307 U.S. 174 (1939)- Supreme Court of The United States of America
11. United States vs Rahimi (2024), 602 U.S. 680. The Supreme Court of The United States
12. United States vs Yancey, No. 18-2935 (7th Cir. 2019)- United States Court of Appeals For The Seventh Circuit.

LIST OF ABBREVIATIONS

- 1.Federal Assault Weapons Ban (FAWB)
- 2.Federal Firearms Act (FFA)
- 3.Federal Firearms License (FFL)
- 4.Firearms Owners' Protection Act of 1986 (FOPA)
- 5.Florida International University (FIU)
- 6.Gun Control Act (GCA)
- 7.GVA-Gun Violence Archive
- 8.Large-Capacity Magazine (LCMs)
- 9.LCMB (Large Capacity Magazine Ban)
- 10.Miami-Dade County Police Department (MDPD),
- 11.National Rifle Association (NRA)
- 12.Protection of Lawful Commerce in Arms Act (PLCAA)
- 13.The National Firearms Act (NFA) 1934.
- 14.The National Instant Criminal Background Check System (NICS)
- 15.USA-United States of America



ABSTRACT

In the United States of America, the Second Amendment allows for the ownership of guns by individuals. However, since this amendment, there have been cases of increase gun violence and looking at the way these cases have been dealt, there is an insufficiency especially to give the families of the victims' justice. This doctrinal legal research uses utilitarian theory to examine whether the rising number of shootings stem from the law which allows for bearing of arms.. The objective of this study is to show the extent to which gun laws have encouraged mass shootings in America and the importance and relevance of making evaluations and reforms to this law to promote maximum safety of the people in America.



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CHAPTER ONE

Background

It is reported that in January 2024 alone, there have been 28 mass shootings so far in the United States of America¹. These numbers are particularly horrific considering the year 2024 has just started. With an average of roughly two mass shootings each day, the rate of mass shootings in 2023 has continuously surpassed that of previous years². According to the Gun Violence Archive, it is estimated that there have been 4684 cases of mass shootings from 2014 to 2023 and 656 mass shootings in the just concluded year 2023³.

The Gun Violence Archive (GVA) defines a mass shooting as an event in which ‘four or more people are shot or killed in a single incident, not including the shooter’. The Second Amendment states that a well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.⁴

The Second Amendment, in its most basic form, guarantees every individual citizen of the United States the freedom to bear arms. Furthermore, the amendment clearly states that the government cannot restrict that liberty⁵. One of the first ten amendments to the Constitution, known as the Bill of Rights, was ratified on December 15, 1791, and it was called the Second Amendment. The rights of law-abiding gun owners are still fundamentally protected by the Second Amendment today.⁶

In particular, following the Sandy Hook Elementary School shooting in 2012, there have been efforts to pass federal legislation on gun regulation, but some laws have still remained lax. Open-carry legislation, which permit open carry of a firearm in public, are among the most

¹ Gun Violence Archive, Mass Shootings in 2023,28th January,2024,1

² Gun Violence Archive, Mass Shootings in 2023,28th January,2024,1

³ Gun Violence Archive, Mass Shootings in 2023,28th January,2024,1

⁴ Bonk M, ‘Denying the Dangerous: Preventing Firearms from entering the Hands of the Dangerously Mentally Ill.’, Noval Post Graduate School, California,2014,15.

⁵ Amendment II, The Constitution of the United States of America,1787

⁶ Kates Jr,‘ Handgun Prohibition and the Original Meaning of the Second Amendment’,82(2) Michigan Law Review,1983,8.

lenient gun regulations⁷. Some states only allow concealed carry⁸. Before acquiring a gun, a person may be required to pass a background check and complete training under some of the most difficult gun restrictions.⁹

The states of Tennessee, Mississippi, Louisiana, New Mexico, Alabama, Wyoming, Alaska, Montana, Arkansas, Missouri, and Tennessee have the laxest gun regulations. States like Illinois, Connecticut, New Jersey, New York, Hawaii, Maryland, and Massachusetts have very tight gun prohibitions. Before someone can purchase a gun, some of these states demand background checks and a waiting period; others require that they complete training. For instance, in Massachusetts, a permit from the local police department is required for the purchase of a firearm. Just this procedure, which calls for documentation, an interview, and a background check, can take weeks. Even after all of that, the chief of police retains the authority to refuse the license. The buyer must pass extra background checks and show their license at the gun store after receiving one.¹⁰

The states with the lowest rates of gun ownership in the US are Massachusetts and New Jersey (14.7%), Hawaii (14.9%), and New York (19.9%). Maryland has the highest rate of gun ownership (30.2%).¹¹

Writing the majority opinion in *District of Columbia v. Heller*,¹² Justice Antonin Scalia rejected the argument that the Second Amendment protects only a right to possess and carry a firearm in connection with militia service. Instead, Scalia found that the Second Amendment supports an individual right to possess guns and to use them for traditionally lawful purposes. A series of Supreme Court decisions since this case has reaffirmed this broad understanding of gun

⁷ Tom McHale, 'What is Open Carry, and which states allow for it,' 1(1), United States Concealed Carry Association,2023

⁸ Tom McHale, 'What is Open Carry, and which states allow for it,' 1(1), United States Concealed Carry Association,2023

⁹ Younge Gary, 'Young People Can't Change US Gun Law Alone-But they could tip the balance', The Guardian, 2018,6

¹⁰ Crace John, 'New Gun Safety Laws take effect around US after over 650 mass shootings in 2023',The Guardian,2023

¹¹ Giffords Law Centre, 'Annual Gun Law Score Card',2023,3

¹² District of Columbia v Heller(2008) , The Supreme Court of the United States.

rights under the Constitution. As a result, legislatures seeking to pass gun control measures for public safety purposes have seen their options shrink sharply.

It should come as no surprise that states with the toughest gun prohibitions typically have the lowest rates of gun ownership. States with stringent gun controls and low gun ownership also have much lower gun deaths. One cannot help but wonder why states with the highest numbers regarding mass shooting do not implement strict gun control laws. Are mass shootings predominant because of an inadequacy in the law or the implementation of the law itself?

The statistics as shown above are clearly daunting and show an escalating problem in America. This study seeks to evaluate the implementation of the existing gun laws in America and how these laws have perpetuated the rising mass shootings in America. In a world where laws are meant to protect the people, it is interesting to see laws in place that threaten the safety of people through their interpretation and implementation.

Problem Statement

The right to bear arms is a fundamental right guaranteed to each and every American citizen by the Second Amendment and cannot be restricted by the government. This right is founded on the Bill of Rights which is a governing law in America.

There is an exceeding amount of mass shootings day by day in America because of the easy accessibility of guns in the country. The access to guns has no restrictions as to whom may buy or possess them as this is a right in law. Guns have thus ended up in the hands of the wrong people such as murderers, mentally unstable people, thieves among others who are allowed access to the guns by the second Amendment and go on to threaten the safety of people. This is seen in the increased incidences of mass shootings. There is thus needed to amend the law to ensure that the gun laws are stricter and access to guns is a strict and thorough process.

This study seeks to examine the extent to which the gun laws in America have caused the increasing rates of mass shootings in America and what reforms can be made to the existing laws to regulate gun ownership and usage in the United States of America.

Research Objectives

- 1.To examine the historical and legal foundations that inform the gun culture in America.
- 2.To evaluate the current legalisations on gun ownership and usage in the United States of America.
- 3.To ascertain the extent to which the interpretation of the current gun laws has led to the increase mass shootings in America.
- 4.Based on the findings, suggested possible reforms to the laws so as to curb the increasing rates of mass shootings in America and promote safety in America.

Research Questions

To achieve the above objectives, the study was guided by the following questions:

- 1.What is the historical and legal foundation informing the gun culture in America?
- 2.What are the current legislations on gun usage and ownership in America?
- 3.To what extent has the interpretation of current legislations on ownership and usage of guns in America encouraged mass shootings in the country?
- 4.What reforms can be made to the laws to ensure they curb the increasing rate of mass shootings in America?

Hypothesis

It is hypothesized that there is a correlation between the current law regarding gun ownership and usage in America and the increasing rates of mass shooting.

Significance of the Study.

This study will contribute to the discussion on the role of the law in advancing the cases of mass shootings in America. Existing literature on the gun culture in America speaks to the historical backing of the second Amendment right that allows for the right to bear arms individually, other literature speaks on the statistics to do with mass shootings in different states

of America and the different gun legislations strict or lax in different states. Little to no literature speaks on the role of the law itself in perpetuating mass shootings in America.

This research focuses on the gun laws themselves which encourage the increasing rates of mass shootings in America. This research seeks to benefit policy makers as it will highlight the need to reevaluate and make reforms to the gun legislations to curb the growing vice of mass shootings. It is important to show that before any other factors the law itself ought to have more stipulations and regulations regarding the right to bear arms to ensure arms are not in circulation in society and cause mass shootings. This study seeks to fill the gap in knowledge regarding the role of the gun legislations in furthering mass shootings. Policy makers and legislators stand the most to benefit from this study as it will shed light on possible reforms and need for evaluation of gun laws in America.

Theoretical Framework

This study is anchored on the theory of utilitarianism. Utilitarianism is based on the idea that a consequence should be of maximum benefit and that the actions to this effect are to maximize overall wellbeing and happiness. The proponents of this theory are Jeremy Bentham and John Stuart Mill. The effect of evaluating and reforming the current gun legislation in America is of far greater importance than upholding and affirming the current legislation as these have encouraged the rising mass shooting cases in America.

If greater harm comes from personal possession of a firearm, utilitarianism is often the ethical theory of choice to restrict access to firearms and this study seeks to look into the maximum action and benefit which would ideally come from evaluating the gun law itself. Using a utilitarian approach, current social statistics show that firearm violence affects a great number of people, and firearm-related fatalities and injuries threaten the utility or functioning of one another.

Critics of this theory argue that a major flaw in the utilitarian argument is that it fails to see the benefit of self-defence as a reasonable benefit. Self-defence is indeed a reasonable benefit however, the right to life in terms of reducing the mass shooting is of far more benefit than one being able to defend themselves. It can also be argued that there are other ways to encourage and enable people to be able to defend themselves than allowing for gun ownership and usage which the law affirms and encourages as a right.

Literature Review

Don B Kates Jr¹³ explained the historical background of the American gun laws stating that The US Constitution's Second Amendment guarantees the right to keep and bear arms. It was ratified on December 15, 1791, together with the Bill of Rights. It reads that "A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." Early in the twenty-first century, there has been much discussion about the Second Amendment's exact meaning and intent. When the law was passed, every state kept a militia made up of regular people who worked as part-time soldiers to defend settlers on Native American-contested land and repel foreign attacks, as some of these countries still held US-claimed territory.¹⁴

He further stated in his article that the Second Amendment is interpreted by opponents of gun regulation as securing each citizen's right to keep and bear arms. He claims that because colonial rule mandated that every home own weapons and that every white male of military age be prepared for both self-defence and military emergencies, the amendment safeguards the rights of the broader public. Thus, the amendment guaranteed firearms for every citizen while also ensuring firearms for the militia. The Second Amendment's "right of the people" is interpreted similarly to the First Amendment, which protects individual liberties such the freedom of assembly and religion, according to opponents of gun regulation.

He further asserts that gun control advocates claim that a lot has changed since the amendment was drafted and discuss some of these interpretations. Proponents of gun restriction in the twenty-first century contend that the amendment was intended to safeguard only a state's ability to arm its citizens for mutual protection, not an individual's freedom to own and carry a handgun anywhere. Additionally, they contend that the amendment defined these militias as "well regulated," which implies that states had laws governing their access to weapons, training, and recurring military drills. This interpretation informs the ongoing debate about the relevance of historical laws to modern society and gun-related violence.

While his article seeks to explain the historical context for the realization of the second amendment right in America, it does not address the long-standing effects of the right on the

¹³ Kates Jr, ' Handgun Prohibition and the Original Meaning of the Second Amendment', 82(2) Michigan Law Review, 1983, 8.

¹⁴ Kates Jr, ' Handgun Prohibition and the Original Meaning of the Second Amendment', 82(2) Michigan Law Review, 1983, 8.

safety of the people. This study seeks to evaluate the interpretation of the second amendment in modern times which has led to the new vice called mass shooting that is actively rising in America.

Paul Leblanc and Annette Choi stated that while many Americans agree that the government has the right to regulate firearms for the sake of public safety, they also support the right to bear arms. The National Rifle Association (NRA) and other gun rights organizations work to prevent new gun control laws and, whenever feasible, to reverse already-enacted ones. The NRA started to have a big impact on state and federal politics in the late 20th century, especially among conservative legislators. As a result, pro-gun control groups like Brady, Giffords, and Everytown for Gun Safety have pushed for the passage of laws that would better control the ownership of firearms. Some of the measures they have proposed include background checks, waiting periods, assault weapon possession restrictions, and gun safety training.¹⁵

Paul Leblanc and Annette Choi further stated that legislative gaps may allow those who would not otherwise be able to purchase firearms to do so. For instance, buying firearms from an unregistered vendor who foregoes background checks is one way to get around the requirement. Even while it's known as the "gun show loophole," these kinds of sales can happen elsewhere, even online. Gun transactions that are inherited or given as presents are usually permitted, as are brief loans of firearms. Interstate sales are forbidden, although transfers of unlicensed firearms within a state are permitted. Juveniles are permitted to purchase long guns from an unlicensed firearms dealer under federal law and in certain states. This includes rifles and shotguns. Child safety activists have long advocated for federal laws that would increase the legal age of purchase for any kind of handgun and for rules designed to keep kids away from firearms in the house.¹⁶ These examples highlight the gaps in current legislation on gun ownership and usage, which continue to allow unregulated access in many circumstances.

Coral Murphy Marcos stated that the number of guns that are privately owned in America is difficult to estimate because there is no national database where people can register their gun ownership, there is a thriving black market for guns due to lax federal laws prohibiting gun trafficking, and people can make their own guns using 3D printers or DIY kits. Additionally,

¹⁵ Leblanc and Choi, 'United States Tops 400 mass shootings in 2023', CNN Politics, July 2023,3

¹⁶ Leblanc and Choi, 'United States Tops 400 mass shootings in 2023', CNN Politics, July 2023,3

the gun lobby has fiercely opposed congressional legislation that would have created a national firearm registration and tracked gun purchases.¹⁷

Coral goes on to state that according to one estimate from the Swiss-based Survey, there were roughly 390 million firearms in use in the United States in 2018, or 120.5 firearms per 100 people. Given that one in five homes bought a gun during the pandemic, that figure has probably increased in the years. In the years afterward, the quantity of firearms produced and imported has likewise significantly increased. Despite this increase, the US still has far higher gun ownership than any other nation. Yemen, which has the second-highest gun ownership rate in the world, has just 52.8 firearms per 100 people, while Iceland has 31.7. This can only mean the US has more guns and more guns means more deaths significantly.¹⁸

In the United States today, possessing a gun for self-defence has surpassed owning one for hunting, recreation, or because it's a work-related or vintage weapon. This is also seen in the skyrocketing sales of handguns, as the main use for them is self-defence rather than entertainment. It has become increasingly challenging to investigate meaningful legislative solutions to gun violence following mass shootings due to the US's culture of gun ownership. The persistence of mass shootings despite increasing regulation efforts indicates that more targeted reforms are necessary to reduce gun violence.

Coral Murphy Marcos's article captures the statistics regarding the gun culture in America and less of the effects of the law on mass shooting which my study seeks to ascertain.

The literature review above has been picked from various sources and categorized into different frameworks to best explain the laws and regulations concerning the laws on gun ownership and usage relating to mass shootings in America.

Methodology

This study shall be undertaken through doctrinal research methodology. This research will rely on primary sources like the United States of America Constitution and statutes and secondary sources like case law, hard copy, online journals, research papers, books, reports ,newspaper articles among others. The research shall analyse the gun legislation in the United States of

¹⁷ Coral Murphy Marco, 'New Gun Safety Laws take effect around US after over 650 mass shootings in 2023', TheGuardian,2023

¹⁸ Coral Murphy Marco, 'New Gun Safety Laws take effect around US after over 650 mass shootings in 2023', TheGuardian,2023

America to ascertain its role in the advancement of mass shootings in America. The study seeks to utilize the relevant statistics to evaluate the trends, correlations and patterns pertaining to the frequency of mass shootings as well as the efficacy and implementation of gun legislations.

Chapter Breakdown

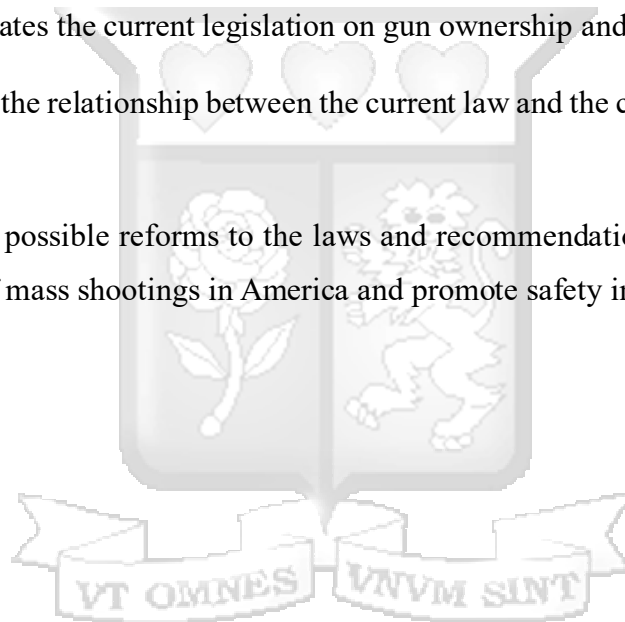
Chapter one forms the first chapter of the study. It constitutes the background, statement of the problem, research objectives and research questions, hypothesis, significance of the study, literature review and methodology.

Chapter two analyses the historical and legal foundation of the gun culture in America.

Chapter three interrogates the current legislation on gun ownership and usage in America.

Chapter four analyses the relationship between the current law and the cases of mass shootings in America.

Chapter five suggests possible reforms to the laws and recommendations to the laws to curb the increasing rates of mass shootings in America and promote safety in America.



CHAPTER TWO: HISTORICAL DEVELOPMENT OF GUN CULTURE IN AMERICA

This chapter addresses the historical and legal foundation of gun culture in America by providing a historical and legal overview of the culture of gun acquisition and ownership. This section is therefore split into 2 sections. The first section provides a historical overview on the culture of gun influence in America while the second section provides a general overview of the legal foundation in which gun culture is rooted and based in America drawing examples from various pieces of legislation that have been enacted to regulate gun usage and ownership in America generally.

Historical development of Gun culture in America

In early America, guns were either antiques, fancy goods, or tools until the 1830s. Rather than being sold to the public, guns were either handmade for individual clients or mass-produced for the military and a common saying, recited "by the best gunmakers," is that no two firearms are alike, not even a shotgun's double barrels.¹⁹

Due to a dearth of gunsmiths, most towns had to rely on blacksmiths to fix their firearms, and these individuals were not always skilled, as even skilled gunsmiths frequently discovered that more general smithing offered significantly more employment opportunities. For example, Buffalo's first gunsmith, David Reese, proudly displayed his "axe-making" abilities and had a sign shaped like a big "axe." From 1800 to 1825, Reese did not manufacture any firearms, although he did repair a few of them. Strangely, this frontier town did not appear to have much of a firearm's market.²⁰ When M. D. Mann came in Buffalo in 1817, he declared that he would start manufacturing and repairing firearms. He filed for bankruptcy and shut down his store in 1819.²¹

¹⁹ Michael A. Bellesiles. *The Journal of American History*, 1996, <https://www.jstor.org/stable/2944942> on 16 October 2024, page 443.

²⁰ Michael A. Bellesiles. *The Journal of American History*, 1996, <https://www.jstor.org/stable/2944942> on 16 October 2024, page 444

²¹ Bingham, 'Early Buffalo Gunsmiths' in Robert W Bingham in 1st edition, Buffalo Historical Society, Buffalo, 1934, 13-18.

Guns of any quality tended to be either rugged and serviceable, made to order for those who made their living from hunting, or beautifully crafted, to grace the study and, on special occasions, the hands of a member of the elite. Most firearms in use were not maintained in functioning order and as a result, most regimes rushed to have the weapons of their militias operational at the start of military engagements. Since 1775, the federal government has attempted to arm its population despite these obstacles, but the country lacked the necessary productive ability.²² Americans had virtually solely depended on Great Britain for weapons during the colonial era, but they never had enough, not even for their most pressing defensive need; even those who desired them were unable to obtain them.²³

Because they did not own or had the ability to buy guns, frontier settlers frequently petitioned local assemblies for firearms during times of conflict, but they were not the only ones experiencing a shortage. Although assemblies were reluctant to spend the required money, they frequently caved in to pressure and dispatched agents to England to buy firearms for both public and private usage.²⁴

Congress banned the export of firearms and eliminated all import taxes on foreign-made firearms to increase the availability of American weapons following the Revolution. Fearing conflict with France, Congress ordered the acquisition of 7,000 muskets in 1792. By 1793, the US government could only purchase 400 firearms from American manufacturers at costs higher than the market. Congress decided to buy weapons from Europe as a result.²⁵ The government did all it could to encourage manufacture, both at its own depository and at privately owned gun stores. No store was too tiny to be subject to government financial inducement initiatives. Nevertheless, despite these attempts, Congress did not arm the militia in any of the years before the Civil War.²⁶

The United States' production levels were unable to meet the demands of Congress and at the start of the War of 1812, just half of the 170,000 weapons that Congress had requested in 1808 had been delivered, and the majority had gone to the Federal army rather than the states in

²²Wallace, 'American Revolution.'2024, <https://www.britannica.com/event/American-Revolution> on 23 October 2024.

²³ Bellesiles M, 'Origins of a Nation Gun Culture' 1st edition, Vintage First Books, America,2001,444

²⁴ Bellesiles M, 'Origins of a Nation Gun Culture' 1st edition, Vintage First Books, America,2001,445

²⁵ Bellesiles M, 'Origins of a Nation Gun Culture' 1st edition, Vintage First Books, America,2001,446

²⁶ Moller, Massachusetts Military Shoulder Arms, 19; Hicks, Notes on United States Ordnance, I, 11-14,42-43.

which for example, none of the 5,688 muskets that were promised had arrived in Massachusetts by 1813.²⁷

In response, the state government tried to buy weapons by withholding taxes from the federal government, which was successful, in that Massachusetts did not receive its entire 1808 allotment until 1817, although it did obtain 2,300 muskets in five shipments. State needs were never met by the size of the allocations in that in 1818, for example, New Hampshire's state militia had 23,399 men, 25% of whom required firearms; 750 musket stands were provided by the federal government. New York acquired 3,522 stands after reporting that 40 percent of its adult white male population, or 109,990 men, needed arms.²⁸

As American arms manufacturers achieved unprecedented levels of efficiency in the 1840s, the initial obstacle to equipping the country was negated. The demand for firearms was stimulated and the supply met by industry.²⁹ With the establishment of several sizable gun manufacturers, including Colt, Sharps, Remington, Robbins and Lawrence, Smith & Wesson, and Winchester, production really took off in the late 1840s and early 1850s.³⁰ As with many other early industries, however, government involvement was essential; the federal government supplied the main market for firearms, as well as funding, protection, and technological know-how.³¹

Increase in gun popularity

Promotion of gun appreciation and interest gradually grew because of the increased output of guns into society with an urban middle class that seemed anxious for the instant status that came with owning a rifle, hunting gained popularity.³² Hunting became a suitable pastime for would-be gentlemen, mostly due to the efforts of William T. Porter's *Spirit of the Times*, which

²⁷ Bellesiles M, 'Origins of a Nation Gun Culture' 1st edition, Vintage First Books, America, 2001, 446

²⁸ Moller, 'Massachusetts Military Shoulder Arms', 1st edition, Andrew Mowbray, Massachusetts, 1988, 49

²⁹ Regele LS, 'Industrial Manifest Destiny: American Firearms Manufacturing and Antebellum Expansion', (1), Cambridge University Press, 2018.

³⁰ Deyrup F, 'Arms Makers of the Connecticut Valley', 1, Editeur non identifié, 1948, 115

³¹ Raber S M, 'Conservative Innovators, Military Small Arms, and Industrial History at Springfield Armory, 14(1), Journal of the Society for Industrial Archaeology, 1988, 14

³² Raber S M, 'Conservative Innovators, Military Small Arms, and Industrial History at Springfield Armory, 14(1), Journal of the Society for Industrial Archaeology, 1988, 15

was first published in 1831, and John Stuart Skinner's American Turf Register and Sporting Magazine, which started publishing in 1829.³³

States hardly ever spent money on maintaining these weapons, even when they appropriated federal weapons, and Congress did not include any procedures for either weapon storage or number verification and as a result, states had complete discretion over what to do with the weapons, most frequently allowing them to decay in subpar storage facilities.³⁴ State militias merely kept the great majority of weapons in the most unsuitable places without routine maintenance, seldom ever fixed damaged ones, and hardly ever disposed of outdated ones. Undoubtedly, the general public's disregard for military and guns issues was reflected in this governmental lack of interest.³⁵

The Civil War

The civil war escalated the slow cultural shift that had been initiated by an increase in arms production in the early 1840's. Most Americans demonstrated a willingness to act on the belief that "possessing a firearm makes one a better man and a patriot equipped to protect the country's freedoms".³⁶ The nation's sensibilities and character were profoundly changed in a single generation by technological advancement and government assistance. These views were permanently entrenched during the Civil War, when it was shown that one American must be able to murder another. In 1865, the army permitted Union soldiers to bring their weapons home. America had been armed by the government at last.³⁷

Prices for firearms decreased, and production levels remained high after the war. "High levels of production resulted in the widespread dissemination of guns, both geographically and socially, along with the growth of advertising that expanded on Samuel Colt's antebellum association of gun ownership and manly security."³⁸ Anyone could now possess a firearm.

³³ Skinner J, 'American Turf Register and Sporting Magazine', Milne Special Collections and Archives Angling Collection at the University of New Hampshire, 1830, 7.

³⁴ James T. Lindgren and Justin Lee Heather "Counting Guns in Early America" Northwestern University School of Law: Law and Economics Papers paper 42 page 20-21-
<<https://law.bepress.com/cgi/viewcontent.cgi?article=1045&context=nwwps-lep>> on 24 October. 24

³⁵ Ebenezer Stone, 'Annual Report of the Adjutant General of the Commonwealth of Massachusetts for the Year ', Senate Document 8 Boston, 1853, 31.

³⁶ Bellesiles M, 'Origins of a Nation Gun Culture' 1st edition, Vintage First Books, America, 2001, 580

³⁷ Trudeau N, 'Out of the Storm: The End of the Civil War', Little Brown & Co; 1st edition, 1994, 8

³⁸ Bellesiles M, 'Origins of a Nation Gun Culture' 1st edition, Vintage First Books, America, 2001, 583.

However, the manufacture of firearms alone was not enough to establish a gun culture; if it were, Britain would have done so before the US.³⁹

The existence of the National Rifle Association (NRA) is evidence that there was no pervasive gun culture during the antebellum era as numerous former Union officers recalled how unfamiliar their soldiers were with weaponry and wished to prevent that from happening again. William Conant Church and George Wood Wingate, two soldiers who founded the National Rifle Association, aimed to keep people familiar with firearms during times of peace.⁴⁰

To do this, "a new generation of American males had to be taught how to shoot".⁴¹ Church and Wingate saw that the new mass-produced breech-loading rifle provided the chance to hone sharpshooting skills, while the conventional muzzle-loading musket made precision unnecessary.⁴² To acquire these skills, however, American men needed to possess and routinely use firearms. The NRA established its first target-shooting range at Creedmore in 1872 with financial assistance from the state of New York, which would subsequently be assumed by the federal government. From Long Island, the NRA's influence and emphasis on private firearm ownership extended westward.⁴³

The Legal Foundation of gun culture in America

Gun control started as early as the Jacksonian era, a period of time where America grappled with the Nation's first gun violence crisis.⁴⁴

The regulation of the Second Amendment can be viewed through the controversial decision of *District of Columbia v. Heller*,⁴⁵ where it was stated that the average American citizen has a

³⁹ Trinity Tedtsen -< https://londonhuawiki.wpi.edu/index.php/US_v._UK:_Gun_Laws> on 23 October 2024.

⁴⁰ Britannica, T. Editors of Encyclopaedia. "National Rifle Association of America." Encyclopedia Britannica, October 22, 2024. <https://www.britannica.com/topic/National-Rifle-Association-of-America>. On 24 October 2024.

⁴¹ Bellesiles M, 'Origins of a Nation Gun Culture' 1st edition, Vintage First Books, America, 2001, 580

⁴² Michael A. Bellesiles. The Journal of American History, Page 453.

⁴³ Trefethen and Serven, 'Americans and their Guns: The National Rifle Association's Story through Nearly a Century of Service to the Nation', Harrisburg, 1967, 8

⁴⁴ Saul Cornell, The Early American Origins of the Modern Gun Control Debate: The Right to Bear Arms, Firearms Regulation, and the Lessons of History, vol 17, Stanford Law & Policy Review, 2006, 567

⁴⁵ District of Columbia v Heller (2008), The Supreme Court of the United States.

constitutional right to possess handguns for personal self-protection in the home.⁴⁶ And in establishing this right, the Court also made clear that the right was by no means unlimited, and that it was subject to an array of legal restrictions, including: “prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.”⁴⁷

These developments as we have come to see would later be refined with the passage of time. Below is a general overview of the evolution of gun regulation in America.

The National Firearms Act (NFA) 1934

The first significant piece of federal gun control legislation in the nation was the National Firearms Act (NFA) of 1934. The law limited the sale and ownership of high-risk weapons like machine guns, taxed the manufacture and sale of firearms, and mandated the registration of some firearms.⁴⁸

The Federal Firearms Act (FFA) 1938

Additional rules were introduced by the Federal Firearms Act (FFA) of 1938, which forbade certain individuals from purchasing firearms and required federal permits for gun makers and dealers.⁴⁹

The Gun Control Act (GCA) 1968

Following the assassinations of Senator Robert F. Kennedy and Dr. Martin Luther King Jr., the Gun Control Act (GCA) of 1968 was the next significant piece of federal legislation pertaining to weapons as both the FFA and the NFA were extended under the GCA.⁵⁰ The law forbade the sale of firearms to minors, convicts, fugitives from justice, drug users, those with mental illnesses, and those dishonourably dismissed from the armed forces and also stopped the mail-

⁴⁶ District of Columbia v Heller(2008) , The Supreme Court of the United States

⁴⁷ Saul Cornell, The Early American Origins of the Modern Gun Control Debate: The Right to Bear Arms, Firearms Regulation, and the Lessons of History, vol 17, Stanford Law & Policy Review,2006,569

⁴⁸ Krawczyk O, *Dangerous and Unusual: How an Expanding National Firearms Act Will Spell Its Own Demise*, 127, 273,2022.

⁴⁹ Section 8, National Firearms Act (1938)

⁵⁰ Zimring F, ‘Firearms and Federal Law: The Gun Control Act’, Journal of Legal Studies,1968,154

order sale of all firearms and ammunition.⁵¹ The Supreme Court reinforced controls and regulations when it upheld New Jersey's strict gun control law in *Burton v. Sills* (1969)⁵² and the federal ban on possession of firearms by felons in *Lewis v. United States* (1980)⁵³

The Firearms Owners' Protection Act 1986

Many of the GCA's prohibitions were loosened by the Firearms Owners' Protection Act of 1986 (FOPA).⁵⁴ Gun control advocates welcomed FOPA's expansion of the sale and possession of firearms, but they still objected to the ban on the production and ownership of machine guns intended for civilian use⁵⁵. The President George H. W. Bush administration said in 1989 that assault rifle imports would be permanently prohibited. Congress outlawed the production and distribution of certain assault weapons in 1994 when it passed the Public Safety and Recreational Firearms Use Protection Act, generally known as the Federal Assault Weapons Ban, the prohibition ended in 2004.⁵⁶

The Brady Handgun Violence Prevention Act 1993

The GCA was amended in 1993 with the passage of the Brady Handgun Violence Prevention Act. The Brady Act, which mandated a five-day waiting period for all handgun transactions during which time a background check would be conducted on any potential buyers, addressed several of the main concerns raised by proponents of gun control. The National Instant Criminal Background Check System (NICS), a database used to confirm a buyer's ability to own a firearm, took the place of this provision when it expired in 1998.⁵⁷

⁵¹ Zimring F, 'Firearms and Federal Law: The Gun Control Act', *Journal of Legal Studies*, 1968, 154

⁵² *Burton v Sills* (1969), Supreme Court of the United States of America.

⁵³ *Lewis v United States of America* (1980), Supreme Court of the United States of America

⁵⁴ Krawczyk O, *Dangerous and Unusual: How an Expanding National Firearms Act Will Spell Its Own Demise*, 127, 273, 2022.

⁵⁵ Saul Cornell, *The Early American Origins of the Modern Gun Control Debate: The Right to Bear Arms, Firearms Regulation, and the Lessons of History*, vol 17, *Stanford Law & Policy Review*, 2006, 569

⁵⁶ *Burton Et Al. V. Sills*, Attorney General of New Jersey, Et Al. Appeal from The Supreme Court Of New Jersey.

⁵⁷ *The Brady Handgun Violence Prevention Act of the United States of America* (1993)

Developments In The 21st Century

The Protection of Lawful Commerce in Arms Act and the Child Safety Lock Act

The Protection of Lawful Commerce in Arms Act (PLCAA) and the Child Safety Lock Act of 2005 laws were passed by Congress in response to lawsuits filed by a few gun violence victims, their families, and other interested parties against gun manufacturers and dealers whose guns were used in criminal activities. When firearms manufactured or sold by their dealers are used in criminal activities, their responsibility is restricted by the first act.

The second legislation mandated the provision of gun storage or safety equipment for anybody licensed to transfer or sell firearms. Democratic presidential candidate Joe Biden advocated for the act's repeal during his 2020 campaign. The NICS Improvement Amendments Act was passed by Congress in 2007.⁵⁸ It was intended to correct flaws in the NICS system that had let a shooter to obtain a firearm despite a mental health condition that disqualified him and which the state of Virginia had neglected to report to NICS. On a college campus in Virginia, the shooter killed thirty-two individuals in addition to himself.⁵⁹

Protect Illinois Communities Act 2023

Chicago's Fourth of July parade was the scene of a mass shooting in 2022 that left six people dead and numerous others injured. As a result, Illinois governor J. B. Pritzker signed the Protect Illinois Communities Act into law in January 2023.⁶⁰ Selling or distributing assault weapons across the state is forbidden by law. Gun rights activists promptly challenged the bill in court, but the Illinois Supreme Court affirmed it twice in August 2023 and a federal appeals court upheld it again in November 2023. As of late 2023, ten additional states have an active ban of a similar nature, including California, New Jersey, New York, and Washington.

⁵⁸ -< <https://www.congress.gov/bill/110th-congress/house-bill/2640>> on 24 October 2024.

⁵⁹ -< <https://www.gale.com/open-access/gun-control>> on 24 October 2024

The Concealed Carry Improvement Act 2022

The Concealed Carry Improvement Act was signed into law by Governor Kathy Hochul in July of 2022 and was drafted in reaction to the court's ruling and unfortunate Buffalo shooting incident. ⁶¹It tightened background checks, raised safety and training requirements, and maintained some criteria for those with concealed carry permits. The law also designated a few "sensitive locations" as areas prohibited from carrying firearms, including government buildings, theatres, schools, voting stations, and health and medical facilities.⁶²

Legislative Gaps

Despite the enactment of the above laws, there remained gaps that allow those who would not otherwise be able to purchase firearms to do so. For instance, buying firearms from an unregistered vendor who foregoes background checks is one way to get around the requirement. Even while it's known as the "gun show loophole," these kinds of sales can happen elsewhere, even online. Generally speaking, transfers of guns that are inherited or given as presents are permitted, as are brief loans of firearms. Interstate sales are forbidden, although transfers of unlicensed firearms within a state are permitted.⁶³

Conclusion

The current trend reflects a gradual shift to the state approach towards guns. Sets of restrictions are being put in place to ensure that a balance is struck between preserving the Second Amendment within reasonably constrainable limits while at the same time ensuring the safety of citizens. This shift is a highly welcome move by some proponents while gun advocates see it as a shift that is slowly eating away the Second Amendment.

⁶¹ Lott, John R. and Moody, Carlisle E. and Wang, Rujun, "Concealed Carry Permit Holders Across the United States, (2023). Available at SSRN: <https://ssrn.com/abstract=4648999> or <http://dx.doi.org/10.2139/ssrn.4648999> on 23 October 2024 page 4

⁶² Kalvis Golde, *New York's updated concealed-carry law returns to the court*, SCOTUS blog (Jun. 4, 2024, 8:22 PM), <https://www.scotusblog.com/2024/06/new-yorks-updated-concealed-carry-law-returns-to-the-court/> on 23 October 2024

⁶³ -< <https://www.usconcealedcarry.com/resources/federal-ccw-law/federal-private-firearm-transfer-laws/>> on 23 October 2024

CHAPTER THREE: CURRENT LEGISLATION ON GUN USAGE AND OWNERSHIP IN AMERICA

Introduction

The legal framework governing firearm ownership and use in the United States is deeply intertwined with its history, dating back to the nation's early years.⁶⁴ The first recorded gun law emerged on July 30, 1619, when the Virginia Colony's inaugural legislative assembly convened.⁶⁵ Among its enactments was a law strictly prohibiting the sale or distribution of firearms, ammunition, or any weapons whether offensive or defensive to Native Americans.⁶⁶ Violators of this statute were declared traitors to the colony and sentenced to execution by hanging, without the possibility of reprieve upon proof of their guilt.⁶⁷ This foundational law, which influenced similar regulations in other colonies, marked the inception of gun control in the United States.⁶⁸

A defining moment in the evolution of gun regulation in the United States occurred on December 15, 1791, with the ratification of the first ten amendments to the U.S. Constitution, collectively known as the Bill of Rights.⁶⁹ Among these was the Second Amendment which established the right to keep and bear arms.⁷⁰ This provision has since been the focal point of ongoing debates and legal interpretations, particularly concerning the balance between individual firearm rights and the scope of regulatory measures.⁷¹

⁶⁴ Spitzer R, 'Gun law history in the United States and second amendment rights', 80, *Law and Contemporary Problems*, 2017, 55

⁶⁵ Mcilwaine H.R & Kennedy J, 'Laws enacted by the first general assembly of Virginia' 1, *Journals of the House of Burgesses of Virginia*, 1905, 9.

⁶⁶ Mcilwaine H.R & Kennedy J, 'Laws enacted by the first general assembly of Virginia', 9.

⁶⁷ Mcilwaine H.R & Kennedy J, 'Laws enacted by the first general assembly of Virginia', 9.

⁶⁸ Kennett L & Laverne J, 'The Gun in America: The Origins of a National Dilemma' 20(3), *The American Journal of Legal History*, 1975, 250.

⁶⁹ Charles J.P, 'Second Amendment to the US Constitution', *Britannica*, 9 December 2024 —

<https://www.britannica.com/topic/Second-Amendment>

⁷⁰ Yassky D, 'The Second Amendment: Structure, History, and Constitutional Change', 99(3), *Michigan Law Review*, 2000, 588

⁷¹ The Editors of ProCon, 'Gun Control: Should More Gun Control Laws be enacted?' *Britannica*, 12 November 2024, —

< <https://www.britannica.com/procon/gun-control-debate> > on 11 December 2024.

This chapter examines the constitutional and federal legal framework that governs firearms in the United States.

1. Constitutional Foundation

The Second Amendment to the United States Constitution, ratified in 1791, states that:

“A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”

This wording has been the focus of significant debate, particularly regarding whether it safeguards an individual’s right to bear arms or a collective right connected to militia service.⁷²

The first case is *United States v. Miller (1939)*⁷³ which addressed the scope of the Second Amendment in the context of federal gun regulation. In this case, Jack Miller and Frank Layton were charged in an Arkansas federal district court with violating the National Firearms Act of 1934 (NFA) by transporting a sawed-off double-barrel 12-gauge shotgun across state lines. Miller and Layton argued that the NFA infringed upon their Second Amendment right to keep and bear arms. The district court agreed with their argument and dismissed the case.

On appeal, the Supreme Court considered whether the Second Amendment protected an individual’s right to possess a sawed-off double-barrel shotgun. The Court unanimously reversed the district court’s decision, ruling that the Second Amendment does not guarantee an individual the right to own such a weapon. Writing for the Court, Justice James Clark McReynolds reasoned that the possession of a sawed-off shotgun lacked a reasonable connection to the preservation or efficiency of a well-regulated militia. Accordingly, the Second Amendment’s protections extended only to weapons that are reasonably related to the functioning of a well-regulated militia. Therefore, the Court held that the government could regulate firearms that do not meet this criterion without violating the Second Amendment.

The precedent established in *United States v Miller (1939)* remained unchanged for nearly 69 years until the landmark case of *District of Columbia v Heller (2008)*.⁷⁴ This case

⁷² Waldman M, ‘How the NRA Rewrote the Second Amendment,’ Politico Magazine, May 19, 2014 — < <https://www.politico.com/magazine/story/2014/05/nra-guns-second-amendment-106856/>> on 12 December 2024

⁷³ *United States v Miller (1939)*, The Supreme Court of the United States

⁷⁴ *District of Columbia v Heller (2008)*, The Supreme Court of the United States

fundamentally redefined the understanding of the Second Amendment in the context of individual gun rights.

The case arose from provisions of the District of Columbia Firearms Control Regulations Act of 1975, which prohibited carrying unregistered firearms and banned the registration of handguns. While the Act allowed the chief of police to issue one-year licenses for handguns, it also required that lawfully owned firearms in the home be kept unloaded, disassembled, or secured with a trigger lock unless used for legal recreational activities or in a place of business. Dick Anthony Heller, a D.C. special police officer authorized to carry a handgun while on duty, applied for a one-year license for a handgun he intended to keep at home for self-defense. His application was denied, prompting Heller to sue the District of Columbia. He sought an injunction against the enforcement of the Act's provisions, arguing that they violated his Second Amendment right to maintain a functional firearm in his home for self-defense. The district court dismissed his complaint, but the U.S. Court of Appeals for the District of Columbia Circuit reversed the decision, holding that the Second Amendment protects an individual's right to keep firearms in the home for self-defense. The Court of Appeals also ruled that the requirement to keep firearms nonfunctional in the home violated this right.

Writing for the majority, Justice Antonin Scalia reasoned that the Second Amendment's reference to a "militia" was a prefatory clause that did not constrain the operative clause guaranteeing the right to keep and bear arms. He argued that the term "militia" historically referred to all able-bodied men capable of being called to service, not just those in a formal military force. To interpret the Amendment as protecting only state-regulated military forces, he contended, would contradict its purpose of safeguarding against state-sponsored oppression.

The Court emphasized that the Amendment must be interpreted according to the plain meaning it held at the time of its drafting, concluding that the operative clause guarantees an individual's right to possess and carry weapons for self-defense and confrontation. The Court also noted that this interpretation aligns with historical legal writings and scholarly analyses. Therefore, the Act's ban on registering handguns—a commonly used class of arms for self-defense—and its requirement to render firearms nonfunctional in the home violated the Second Amendment, particularly because the home is a location traditionally associated with the need for protection.

This decision marked a transformative moment in Second Amendment jurisprudence, affirming the individual's right to keep and bear arms for lawful purposes such as self-defense, while leaving open the possibility for certain regulatory measures.

Two years later, in *McDonald v. City of Chicago (2010)*,⁷⁵ the Supreme Court the Supreme Court expanded the reach of its interpretation of the Second Amendment to state and local governments. The Court held that the Second Amendment's protections are incorporated through the Due Process Clause of the Fourteenth Amendment, making them applicable at the state and local levels. As a result, state and local firearm regulations cannot infringe upon the individual right to keep and bear arms as established in *Heller (2008)*.

The scope of the Second Amendment was further broadened in *Caetano v Massachusetts (2016)*,⁷⁶ where the Supreme Court extended its protections to encompass all bearable arms, including those that did not exist at the time of the Amendment's drafting. The case arose when Jamie Caetano was convicted in Massachusetts state court for possessing a stun gun, which she argued was necessary for self-defense against her abusive ex-boyfriend. On appeal, Caetano claimed her conviction violated her Second Amendment right to possess a stun gun for self-defense.

The Supreme Judicial Court of Massachusetts upheld her conviction, reasoning that stun guns were not covered by the Second Amendment because they were unusual weapons and were not in common use at the time the Amendment was enacted. Caetano appealed to the U.S. Supreme Court, which addressed the question of whether the Second Amendment protects the right to possess a stun gun for self-defense.

The Supreme Court unanimously vacated the Massachusetts court's decision, holding that stun guns, while modern and unusual, fall within the Second Amendment's protections. The Court reasoned that excluding such weapons would conflict with the precedent set in *District of Columbia v Heller (2008)*, which established that the Second Amendment extends to all instruments that constitute bearable arms, regardless of their existence during the founding era.

⁷⁵ *McDonald v City of Chicago (2010)*, The Supreme Court of the United States

⁷⁶ *Caetano v. Massachusetts (2016)*, The Supreme Court of the United States

In *New York State Rifle & Pistol Association v Bruen* (2022),⁷⁷ the Supreme Court revisited and reaffirmed the precedent set in *District of Columbia v Heller* (2008), significantly impacting the framework for evaluating firearm restrictions. The case involved a New York gun control law that required individuals seeking to carry a handgun in public to obtain a license, which was issued on a “may-issue” basis. Under this system, applicants had to demonstrate “proper cause,” or a heightened need for self-protection beyond that of the general population, to be eligible for a license. The decision to grant or deny the license was ultimately left to the discretion of government officials.

The Supreme Court struck down the New York law, holding that the “may-issue” licensing system was unconstitutional because it allowed government officials to arbitrarily restrict an individual’s right to carry a firearm. Thus, the Court concluded, was inconsistent with the central holding of *Heller* (2008), which established that the Second Amendment guarantees an individual’s right to possess arms for self-defense.

The most recent significant case concerning the Second Amendment is *United States v Rahimi* (2024),⁷⁸ which refined the interpretive framework established in *New York State Rifle & Pistol Association v Bruen* (2022). This case upheld federal laws restricting firearm possession for individuals under domestic violence restraining orders while clarifying the application of the “historical tradition” test introduced in *Bruen* (2022). Specifically, the Court held that lower courts should not require exact historical analogues for modern firearm regulations but should instead look for relevant similarities and general principles. The Supreme Court held that the statute is constitutional, affirming that when an individual is found by a court to pose a credible threat to the physical safety of others, temporarily disarming that person is consistent with the Second Amendment. Chief Justice Roberts, writing for the majority and joined by all justices except Justice Clarence Thomas, emphasized that the Second Amendment guarantees a fundamental right but is not unlimited. Applying the “historic tradition” standard from *Bruen*, Roberts clarified that courts should not interpret the framework rigidly, requiring an exact historical precedent, but rather focus on “relevantly similar” analogues.

⁷⁷ *New York State Rifle & Pistol Association (NYSRPA) v Bruen* (2022), The Supreme Court of the United States

⁷⁸ *United States v Rahimi* (2024), The Supreme Court of the United States

2. Major Federal Legislations

The United States has implemented several landmark federal laws aimed at regulating firearm ownership and usage, each designed to address distinct dimensions of gun control. While individual states have enacted a wide array of laws governing the possession, registration, and carrying of firearms,⁷⁹ federal law establishes a foundational regulatory framework that state and local laws cannot contravene.⁸⁰ Within this broader context, this section examines the most significant federal legislation, highlighting their contributions to shaping the nation's legal framework surrounding firearms.

National Firearms Act (1934)

The first significant piece of national gun control legislation in the United States was the National Firearms Act (NFA), enacted on June 26, 1934,⁸¹ as part of President Franklin Delano Roosevelt's "New Deal for Crime." This legislation aimed to combat the rampant gang-related violence of the era, epitomized by events such as the St. Valentine's Day Massacre.⁸²

The NFA introduced a \$200 tax—a substantial sum at the time—along with a registration requirement for certain categories of firearms. In its current state, the National Firearms Act (NFA) governs four important aspects. These are specific defined weapons, registration and identification, taxation and penalties.

Originally, the NFA allowed prosecution of individuals who disclosed possession of firearms through registration if the registration revealed that they were otherwise prohibited from possessing firearms. However, in *Haynes v United States* (1968),⁸³ the Supreme Court held that this compelled disclosure violated the Fifth Amendment's protection against self-

⁷⁹ Shapiro L, Chinoy S, & Williams A, 'How strictly are guns regulated where you live?', Washington Post, 20 February 2018, —

< <https://www.washingtonpost.com/graphics/2017/national/assault-weapons-laws/>> on 12 December 2024

⁸⁰ The Code of Laws of the United States of America Title 18 Part I Chapter 44 Paragraph 927 (18 U.S.C. § 927)

⁸¹ Johnson N, 'A Second Amendment Moment: The Constitutional Politics of Gun Control', 71(2), Brooklyn Law Review, 715

⁸² Editors, 'St. Valentine's Day Massacre', History, 15 April 2014, —

< <https://www.history.com/topics/crime/saint-valentines-day-massacre>>

⁸³ *Haynes v. United States* (1968), The Supreme Court of the United States

incrimination. In response, Congress amended the NFA to ensure that information provided in registration records could not be used as evidence in criminal proceedings for violations occurring before or concurrently with the filing of the records, except in cases involving false information. This amendment addressed the constitutional concerns raised in *Haynes*, and subsequent challenges to the NFA on Fifth Amendment grounds have been rejected by the courts.

Gun Control Act (1968)

Following the assassinations of prominent figures such as President John F. Kennedy (1963), Malcolm X (1965), Martin Luther King, Jr. (1968), and Attorney General and U.S. Senator Robert F. Kennedy, as well as the 1966 University of Texas mass shooting, the GCA was enacted into law on October 22, 1968.⁸⁴ It sought to regulate interstate firearms commerce, and it expanded licensing requirements for dealers and prohibited firearm sales to certain individuals, including felons, minors who were defined to be persons below 21, and those with mental illnesses. The Act also restricted the importation of firearms deemed not suitable for sporting purposes, and required that all manufactured or imported guns have a serial number. The GCA repealed and replaced the FFA, updated Title II of the NFA to fix constitutional issues, added language about “destructive devices” (such as bombs, mines and grenades) and expanded the definition of “machine gun.”

The Gun Control Act (GCA), as it stands today, is not a single statute but a comprehensive and evolving regulatory framework that has been periodically amended since its inception.⁸⁵ Broadly, the GCA governs the manufacture, transfer, and possession of firearms, including categories of weapons that fall outside the purview of the National Firearms Act (NFA).⁸⁶ It establishes the legal parameters for firearm transactions, specifying who is eligible to sell, purchase, and possess firearms, the lawful procedures for these transactions, the types of firearms permitted for possession, and the locations where firearm possession may be restricted.⁸⁷

⁸⁴ The Editors of ProCon, ‘Gun Control: Should More Gun Control Laws be enacted?’ Britannica, 2024

⁸⁵ Foster M, ‘Federal Firearms Laws: Overview and Selected Legal Issues for the 116th Congress’, Congressional Research Service, 2019

⁸⁶ (18 U.S.C. § 921(a)(3))

⁸⁷ 18 U.S.C. § 921(a)(3), (16)

Prohibitions on firearm possession by certain individuals

With regard to the prohibition of firearm possession by certain individuals, the GCA establishes prohibitions on firearm possession for certain individuals⁸⁸ because of risk related characteristics,⁸⁹ including felons, fugitives, drug users, those adjudicated as mentally defective, and individuals under domestic violence restraining orders. It also restricts the possession of firearms in specific locations, such as federal facilities⁹⁰ and school zones,⁹¹ and bans particular firearms, including machine guns and bump stocks. Exceptions apply for government or military use,⁹² and a relief mechanism exists for individuals seeking to restore their firearm rights.⁹³

Background checks for firearm purchases

With regard to background check for firearm purchases, the Brady Handgun Violence Prevention Act (1993), which amends the CGA was enacted into law on November 30, 1993. This Act mandates Federal Firearms Licensees (FFLs) to conduct background checks on prospective firearm buyers to ensure that the purchasers are not prohibited from acquiring firearms under federal or state law.⁹⁴ This check is conducted through the National Instant Criminal Background Check System (NICS), launched in 1998 by the FBI.⁹⁵ NICS relies on three databases: the National Crime Information Center, the Interstate Identification Index, and the NICS Index, which collectively identify individuals prohibited from purchasing firearms.⁹⁶ If a NICS check results in a delay, the sale can proceed after three business days unless the dealer is notified otherwise.⁹⁷

⁸⁸ 18 U.S.C. 922(g)

⁸⁹ *United States v Yancey* (2010), United States Court of Appeals for the Seventh Circuit

⁹⁰ 18 U.S.C. § 930.

⁹¹ *United States v Lopez* (1995) The Supreme Court of the United States

⁹² 18 U.S.C. § 925

⁹³ *Id.* § 925(c).

⁹⁴ 18 U.S.C. § 922(t)

⁹⁵ FBI, 'National Instant Criminal Background Check System (NICS)' —

<https://www.fbi.gov/services/cjis/nics> on 12 December 2024

⁹⁶ Foster M, 'Federal Firearms Laws: Overview and Selected Legal Issues for the 116th Congress', Congressional Research Service, 2019

⁹⁷ 18 U.S.C. § 922(t)(1)(B)(ii). S

There have been two acts: NICS Improvement Amendments Act of 2007; and the Fix NICS Act of 2018. These Acts aimed to enhance record submission and accuracy by incentivizing federal and state agencies to contribute prohibiting records to NICS.⁹⁸ These measures included grant funding, compliance benchmarks, and penalties for non-compliance to improve the efficiency and reliability of background checks.⁹⁹

Additional Federal Legislation Shaping Gun Ownership and Regulation

In addition to the previously discussed federal laws, several other significant statutes have shaped U.S. gun regulation and ownership.

1)The Firearm Owners Protection Act (1986)

This Act revised prior legislations to protect gun owners, prohibiting the establishment of a database of firearms dealer records and limiting ATF inspections without a warrant to once per year unless violations occurred. It also relaxed definitions of “engaging in the business” of selling firearms and allowed licensed dealers to sell at gun shows. Additionally, it removed recordkeeping requirements for ammunition sales but expanded the Gun Control Act (GCA) to ban civilian ownership of machine guns manufactured after May 19, 1986, and redefined “silencer” to include parts intended for their assembly.

2)The Protection of Lawful Commerce in Arms Act (2005) and The Child Safety Lock Act 2005

This Protection of Lawful Commerce in Arms Act (2005) provides civil liability immunity to firearm and ammunition manufacturers, dealers, and distributors, protecting them from lawsuits arising from crimes committed using their products.¹⁰⁰ The Act dismissed pending cases as of October 26, 2005, but allowed exceptions for violations of laws related to firearm sales or marketing. The accompanying Child Safety Lock Act 2005, which amends the Brady

⁹⁸ Foster M, ‘Federal Firearms Laws: Overview and Selected Legal Issues for the 116th Congress’, Congressional Research Service, 2019

⁹⁹ Foster M, ‘Federal Firearms Laws: Overview and Selected Legal Issues for the 116th Congress’, Congressional Research Service, 2019

¹⁰⁰ 15 U.S.C. § 7903(5).

Handgun Violence Prevention Act 1993 makes it unlawful for a licensed manufacturer, importer, or dealer to sell, deliver, or transfer a handgun without a locking device and specified warnings to any person other than a licensed.¹⁰¹ It therefore mandates that all handguns be sold with secure gun storage or safety devices.

3)The Bipartisan Safer Communities Act (2022)

This Act amends the GCA to include enhanced background check requirements for buyers aged 18 to 20, incorporating their juvenile records.¹⁰² It clarifies federal firearms licensing requirements, established penalties for trafficking and straw purchasing, and closed the “boyfriend loophole” by prohibiting firearm possession for five years by those convicted of violent misdemeanors against dating partners. Additionally, the Act allocated funds for state crisis intervention programs, mental health services, and school safety initiatives, demonstrating a comprehensive approach to reducing gun violence.¹⁰³

Conclusion

The comprehensive legal framework governing firearm ownership and use in the United States reflects a complex relationship between constitutional rights, federal regulations, and evolving societal challenges. The Second Amendment serves as the foundation of this framework, while landmark Supreme Court cases have continually redefined its scope, balancing individual rights with public safety concerns. Federal laws, such as the National Firearms Act, the Gun Control Act, and subsequent amendments, have introduced crucial mechanisms to regulate firearm manufacture, transfer, and possession, addressing both historical and contemporary challenges. Additionally, significant legislative measures, like the Bipartisan Safer Communities Act and others, highlight the government’s ongoing efforts to address gun violence while respecting constitutional principles. Together, these laws and judicial

¹⁰¹ Section 5 of Public Law 109–92— 26 October 2005

¹⁰² White House Office of Gun Violence Prevention, ‘A report on the implementation of the bipartisan safer communities act’, (2024)—

< <https://www.whitehouse.gov/wp-content/uploads/2024/06/A-Report-on-the-Implementation-of-the-Bipartisan-Safer-Communities-Act.pdf>>

¹⁰³ White House Office of Gun Violence Prevention, ‘A report on the implementation of the bipartisan safer communities act’, (2024)

interpretations emphasize the delicate balance required to uphold the right to bear arms while ensuring the safety and well-being of society.



CHAPTER FOUR: THE RELATIONSHIP BETWEEN THE INTERPRETATION OF GUN LAWS AND THE INCREASE OF MASS SHOOTINGS IN THE UNITED STATES OF AMERICA

Introduction

The United States has experienced an alarming increase in mass shootings over recent decades, spurring heated debates on their root causes.¹⁰⁴ Scholars, policymakers, and public safety advocates often point to the role of permissive gun laws in driving these tragedies.¹⁰⁵ Multiple studies reveal a compelling correlation between states with relaxed firearm regulations and higher rates of mass shootings.¹⁰⁶ Moreover, judicial decisions have played a pivotal role in shaping the legal and societal framework governing firearm access, frequently tilting the balance toward expanded rights over restrictive measures.¹⁰⁷

This chapter delves into the intricate ways judicial interpretations, public attitudes, and legislative developments converge to influence gun violence. Through an in-depth examination of key court rulings and their implications, the analysis seeks to illuminate the pathways through which legal frameworks affect firearm regulation and accessibility. By unpacking these relationships, this chapter aims to contribute to the broader conversation on creating

¹⁰⁴ Boschma J, 'Mass Shootings in the US Fast Facts', 17 September 2024 — < <https://edition.cnn.com/us/mass-shootings-fast-facts/index.html#:~:text=Between%202019%20and%202020%2C%20the,44%20states%20and%20Washington%2C%20DC.>> on 12 January 2025; BBC, 'How many US mass shootings have there been in 2024?', 17 December 2024 — < <https://www.bbc.com/news/world-us-canada-41488081>> on 12 January 2025

¹⁰⁵ Donohue J, 'The Effect of Permissive Gun Laws on Crime', Research gate, June 2023 — < https://www.researchgate.net/publication/371751568_The_Effect_of_Permissive_Gun_Laws_on_Crime> 12 January 2025; Paul M Reeping, Magdalena Cerdá, Bindu Kalesan, Douglas J Wiebe, Sandro Galea, Charles C Branas, 'State gun laws, gun ownership, and mass shootings in the US: cross sectional time series', BMJ 364 — < <https://www.bmj.com/content/364/bmj.l542>> on 12 January 2025

¹⁰⁶ Paul M Reeping et al, State gun laws, gun ownership, and mass shootings in the US: cross sectional time series' 364

¹⁰⁷ Roskam K, 'Questions and Answers on U.S. v. Rahimi, the Major Gun Case Before the Supreme Court During its 2023–2024 Term', 10 October 2023 — < <https://publichealth.jhu.edu/center-for-gun-violence-solutions/2023/questions-and-answers-on-us-v-rahimi-the-major-gun-case-before-the-supreme-court-during-its-2023-2024-term>> on 12 January 2025

policies that effectively address the escalating crisis of mass shootings while respecting constitutional principles.

Judicial Decisions and Their Evolving Impact on Firearm Regulation

Historical Interpretations of the Second Amendment

As demonstrated in the previous chapter, the interpretation of the Second Amendment has evolved significantly over time, reflecting broader societal and legal shifts. Initially, courts and legal scholars interpreted the amendment as primarily protecting collective rights tied to state militias.¹⁰⁸ This perspective aligned with the historical context in which the amendment was ratified, emphasising the role of a “well-regulated militia” in safeguarding the security of a free state.¹⁰⁹ This understanding was firmly upheld in *United States v. Miller* (1939), where the Supreme Court ruled that the Second Amendment protected weapons with a “reasonable relationship to the preservation or efficiency of a well-regulated militia.” The decision reinforced the collective rights framework, limiting constitutional protections to arms necessary for militia use.

However, by the late 20th century, significant ideological and political changes began to reshape this interpretation.¹¹⁰ Advocacy groups, most notably the National Rifle Association (NRA), mounted sustained campaigns to reinterpret the Second Amendment as safeguarding an individual’s right to bear arms.¹¹¹ These efforts coincided with a growing cultural emphasis on personal liberties and self-defence which challenged the longstanding collective rights

¹⁰⁸ *United States v Miller* (1939), The Supreme Court of the United States

¹⁰⁹ *United States v Miller* (1939)

¹¹⁰ Walker H Douglas, ‘Necessary to the Security of a Free State: Federalism and the Original Meaning of the Second Amendment’ Published Master of Arts Thesis, Georgia Southern University, Statesboro GA, 2011; Editors, ‘National Rifle Association of America’, Britannica, 12 December 2024, — <https://www.britannica.com/topic/National-Rifle-Association-of-America> on 12 January 2025

¹¹¹ Waldman M, ‘How the NRA Rewrote the Second Amendment’, Brennan Centre for Justice, 20 May 2014, — <https://www.brennancenter.org/our-work/research-reports/how-nra-rewrote-second-amendment> 12 January 2025; Editors, ‘National Rifle Association of America’, Britannica, 2024

view.¹¹² This momentum culminated in *District of Columbia v. Heller* (2008), a landmark Supreme Court case that fundamentally redefined Second Amendment jurisprudence.¹¹³

In *Heller*, the Court ruled for the first time that the Second Amendment protects an individual's right to possess firearms unconnected to militia service, primarily for lawful purposes such as self-defense within the home. This decision marked a sharp departure from historical interpretations and set a precedent for evaluating gun control measures against a broader individual rights framework. Critics of the ruling argue that it shifted the balance of power toward unfettered firearm access, complicating efforts to address modern challenges like mass shootings and urban gun violence.¹¹⁴

Landmark Cases and Shifting Interpretations

District of Columbia v. Heller (2008) redefined the interpretation of the Second Amendment by affirming its protection of an individual's right to own firearms, primarily for self-defense. This decision invalidated comprehensive handgun bans and curtailed the authority of local governments to impose regulations on firearm use within private residences. The Court emphasized self-defense as a central constitutional right, a perspective that has significantly influenced gun control legislation across the United States. Many legal analysts argue that this interpretation prioritizes individual ownership rights over public safety, thereby complicating efforts to mitigate firearm-related violence.¹¹⁵ For example, legal challenges to waiting periods and secure storage requirements frequently cite *Heller* as a basis for nullifying these regulations.¹¹⁶

¹¹² Waldman M, 'How the NRA Rewrote the Second Amendment', Brennan Centre for Justice, 2014

¹¹³ *District of Columbia v Heller* (2008), The Supreme Court of the United States

¹¹⁴ American Enlightenment Project, 'Problem Turns Epidemic', American Enlightenment Project, 2024—<
<https://americanenlightenmentproject.org/guns-a-problem-becomes-epidemic/#:~:text=Most%20fundamentally%2C%20by%20empowering%20all,road%20rage%20and%20other%20angry>>

¹¹⁵ American Enlightenment Project, 'Problem Turns Epidemic', American Enlightenment Project, 2024

¹¹⁶ Lagrotteria C, 'Heller's Collateral Damage: As-Applied Challenges to the Felon-in Possession Prohibition', *Fordham Law Review*, 2018, 1963 —<
<https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=5488&context=flr>> on 13 January 2025

Beyond its immediate legal impact, *Heller* established a precedent that has shaped subsequent rulings, broadening the scope of Second Amendment protections.¹¹⁷ It set a standard against which other firearm restrictions are now measured. This precedent has been pivotal in challenges to regulations governing assault weapons and high-capacity magazines, categories of firearms commonly linked to mass shootings.¹¹⁸ Furthermore, the Court's expansive interpretation has encouraged legislative initiatives aimed at easing access to firearms, reshaping the regulatory framework and raising concerns about public safety.¹¹⁹

Following *Heller*, the Supreme Court expanded these protections further in *McDonald v. City of Chicago* (2010).¹²⁰ This ruling applied the Second Amendment to state and local governments through the Fourteenth Amendment, effectively overturning Chicago's longstanding handgun ban. The decision restricted the ability of municipal authorities to craft localized gun control measures tailored to specific urban challenges. Studies indicate that firearm ownership in Chicago increased following the ruling, coinciding with heightened violent crime rates.¹²¹ Analysts of the decision suggest that limiting local regulatory autonomy has hindered efforts to address gun violence effectively in high-risk areas, emphasizing the tension between individual rights and community safety.¹²²

The Court continued to broaden the reach of the Second Amendment with its ruling in *New York State Rifle & Pistol Association v. Bruen* (2022). This decision invalidated New York's "proper cause" requirement for obtaining public carry permits, asserting that public carry constitutes a core Second Amendment right. This ruling facilitated the proliferation of firearms

¹¹⁷ Kristin A. Goss, Matthew J. Lacombe, 'Do Courts Change Politics? Heller and the Limits of Policy Feedback Effects' 69(5) *Emory Law Journal*, 2020, 882

¹¹⁸ Smith J, 'What Part of "In Common Use" Don't You Understand? How Courts Have Defied Heller in Arms-Ban Cases—Again', *Harvard Journal of Law and Public Policy*, 2023, 41—<
<https://journals.law.harvard.edu/jlpp/wp-content/uploads/sites/90/2023/09/Smith-In-Common-Use-vf1-MM.pdf>> on 13 January 2025

¹¹⁹ Charles P, 'The Second Amendment in the Twenty-First Century: What Hath Heller Wrought?', 23(4) *William and Mary Bill of Rights Journal*, 2015 1143

¹²⁰ *McDonald v City of Chicago* (2010), The Supreme Court of the United States

¹²¹ McClelland E, 'Did Overturning the Handgun Law Lead to More Shootings?', 5*Chicago* 13 April 2012 —<
<https://www.nbcchicago.com/news/local/chicago-politics/now-that-handguns-are-legal-in-chicago-were-shooting-each-other-more-often/1954167/>> On 14 January 2025

¹²² Patterson L, 'Sights on the States: A Study on the Influence of *McDonald v. Chicago* on State Gun Legislation', Published Departmental Honours Thesis, Texas Christian University, Fortworth Texas 2013

in public spaces, raising concerns about increased risks of violent confrontations, particularly in densely populated areas.¹²³ Studies indicate that states with permissive public carry laws tend to experience higher rates of gun-related injuries, reflecting the broader societal effects of the *Bruen* decision.¹²⁴ Additionally, the ruling constrained policymakers' ability to regulate public firearm possession, undermining longstanding permitting frameworks designed to balance individual rights with community security.

Expanding the Range of Protected Weapons

The decision in *Caetano v. Massachusetts* (2016) expanded Second Amendment protections to encompass modern weapons such as stun guns, reflecting the Court's recognition of technological advancements in weaponry.¹²⁵ This ruling emphasized that constitutional rights must adapt to include weapons beyond those envisioned during the founding era. Legal scholars, however, raise concerns about the broader implications of this decision.¹²⁶ It has been argued that extending protections to high-lethality weapons has introduced significant challenges for regulatory frameworks, making it harder for policymakers to establish clear boundaries on permissible firearms.¹²⁷

Additionally, this case has fueled debates over the balance between individual rights and public safety.¹²⁸ The inclusion of modern, easily concealable weapons under constitutional protection has heightened fears about their misuse in densely populated areas. For example, the increased prevalence of high-capacity, high-lethality firearms has made mass shootings more

¹²³ McClelland E, 'Did Overturning the Handgun Law Lead to More Shootings?' 2012

¹²⁴ RAND, 'Effects of Concealed-Carry Laws on Violent Crime', Gun Policy in America 2024, —<
<https://www.rand.org/research/gun-policy/analysis/concealed-carry/violent-crime.html>> on 14 January 2025

¹²⁵ *Caetano v. Massachusetts* (2016), The Supreme Court of the United States

¹²⁶ Reyes R, 'Second Thoughts About Stun Guns' 74(2), Washington and Lee Law Review Online, 2018, 450 <
<https://scholarlycommons.law.wlu.edu/cgi/viewcontent.cgi?article=1102&context=wlulr-online>>

¹²⁷ Reyes R, 'Second Thoughts About Stun Guns' 74(2), Washington and Lee Law Review Online, 2018

¹²⁸ Corbin K, 'Constitutional Law - Shocking Results: Upholding the Prohibition against the Civilian Possession of Electrical Weapons - Commonwealth v. Caetano, 26 N.E.3D 688 (Mass. 2015), Vacated and Remanded Sub Nom. *Caetano v. Massachusetts*, 136 S. Ct. 1027 (2016)' 21(1), Suffolk Journal of Trial and Appellate Advocacy, 2016, 436 —< <https://dc.suffolk.edu/cgi/viewcontent.cgi?article=1556&context=jtaa-suffolk>> on 14 January 2025

devastating.¹²⁹ Critics argue that without effective regulatory countermeasures, rulings like *Caetano* could inadvertently contribute to an escalation in such incidents, further complicating the already contentious area of gun control in the United States.¹³⁰ Policymakers and legal experts continue to grapple with the question of how to reconcile Second Amendment protections with the need to address the growing risks posed by advanced firearm technologies.¹³¹

Legislative Trends Influenced by Judicial Decisions

Judicial rulings affirming individual gun rights have driven sweeping legislative changes, particularly in states with permissive gun laws.¹³² A prominent example is the relaxation of concealed carry laws following the *Bruen* decision, which resulted in a substantial increase in public firearm possession.¹³³ This development has sparked debates about the tension between individual rights and the collective need for public safety.¹³⁴ The growing prevalence of concealed carry permits has also led to concerns about whether these laws adequately account for potential increases in gun-related conflicts.¹³⁵ Stand-your-ground laws have further intensified this debate.¹³⁶ These laws, which permit individuals to use deadly force in self-defense without the obligation to retreat, have gained significant traction across the United

¹²⁹ Louis Klarevas, Andrew Conner, David Hemenway, ‘The Effect of Large-Capacity Magazine Bans on High-Fatality Mass Shootings, 1990–2017’, *American Journal of Public Health*, 2019, 1754 — <https://pmc.ncbi.nlm.nih.gov/articles/PMC6836798/pdf/AJPH.2019.305311.pdf> on 14 January 2025

¹³⁰ Gately J, ‘Caetano: A Dangerous Misreading of Unusual in Heller’, *California Law Review*, 2016, 98 —< <https://static1.squarespace.com/static/640d6616cc8bbb354ff6ba65/t/6440d70eabd61b1cce56a199/16819709585/98/98-106-Gately-Final-Online.pdf>> on 14 January 2025

¹³¹ Stevenson Dru, ‘Smart Guns, the Law, and the Second Amendment’, 124(3) *Penn State Law Review*, 2020, 691 —< <https://elibrary.law.psu.edu/pslr/vol124/iss3/3/>>

¹³² Saul Cornell, Emma Cornell, ‘The Second Amendment and Firearms Regulation: A Venerable Tradition Regulating Liberty While Securing Public Safety’, 108(7) *American Journal of Public Health*, 2018, 867

¹³³ *New York State Rifle & Pistol Association (NYSRPA) v Bruen* (2022), The Supreme Court of the United States

¹³⁴ Saul Cornell, Emma Cornell, ‘The Second Amendment and Firearms Regulation: A Venerable Tradition Regulating Liberty While Securing Public Safety’ 2018

¹³⁵ RAND, ‘Effects of Concealed-Carry Laws on Violent Crime’, 2024

¹³⁶ Klawans J, ‘Do ‘stand your ground’ laws protect victims or promote violence?’, *The Week*, 21 April 2023 —< <https://theweek.com/gun-violence/1022821/do-stand-your-ground-laws-protect-victims-or-promote-violence>> on 14 January 2025

States.¹³⁷ Proponents argue that such laws reinforce personal safety and deter criminal behavior.¹³⁸ However, their critics contend that these measures, often justified by precedents like *Heller*, foster environments where violent confrontations become more likely.¹³⁹ Studies indicate that stand-your-ground statutes correlate with increased rates of firearm-related homicides, particularly in states with higher gun ownership rates.¹⁴⁰ This suggests that while these laws aim to enhance individual security, they may inadvertently contribute to escalating violence, raising critical questions about their broader societal implications.

Correlation Between Judicial Rulings and Mass Shootings

The relationship between judicial decisions and the increasing prevalence of mass shootings is multifaceted and warrants thorough examination.¹⁴¹ Empirical studies provide compelling evidence of a strong connection between permissive gun laws, high rates of firearm ownership, and the frequency of mass shootings.¹⁴² For instance, research published in the *American Journal of Public Health* (2019)¹⁴³ found that states with relaxed gun policies experienced 63% higher rates of mass shootings compared to states with stricter regulations. This highlights the significant influence of legal frameworks on trends in gun violence.

Judicial rulings such as *District of Columbia v. Heller* (2008), *McDonald v. City of Chicago* (2010), and *New York State Rifle & Pistol Association v. Bruen* (2022) have reshaped the legislative environment, facilitating broader access to firearms. These decisions have not only undermined existing safeguards, such as universal background checks and waiting periods, but have also emboldened states to enact laws expanding public carry rights. The cumulative effect

¹³⁷ Michelle Degli Espost et al, 'Analysis of "Stand Your Ground" Self-defense Laws and Statewide Rates of Homicides and Firearm Homicides', JAMA Network Open, 2022, — <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2789154> on 14 January 2025

¹³⁸ Klawans J, 'Do 'stand your ground' laws protect victims or promote violence? 2023

¹³⁹ Klawans J, 'Do 'stand your ground' laws protect victims or promote violence?2023

¹⁴⁰ Michelle Degli Espost et al, 'Analysis of "Stand Your Ground" Self-defense Laws and Statewide Rates of Homicides and Firearm Homicides', JAMA Network Open 2022

¹⁴¹ Jaclyn Schildkrau et al, 'Mass Shootings in the United States: Prevalence, Policy, and a Way Forward', 704(1) The ANNALS of the American Academy of Political and Social Science, 2022, 181

¹⁴² Donohue J, 'The Effect of Permissive Gun Laws on Crime' 2023

¹⁴³ Louis Klarevas, Andrew Conner, David Hemenway, 'The Effect of Large-Capacity Magazine Bans on High-Fatality Mass Shootings, 1990–2017', American Journal of Public Health, 2019

of these rulings has been to loosen restrictions on firearm ownership, which many scholars argue has contributed to a rise in gun-related violence.¹⁴⁴

The *Heller* decision remains particularly influential due to its focus on self-defense, a principle that has been cited to challenge bans on assault weapons and similar firearms. By reframing the Second Amendment to prioritize individual rights, *Heller* has limited regulatory tools available to policymakers attempting to address gun violence. Similarly, *McDonald* extended these protections to the state level, significantly weakening local efforts to regulate firearms in urban areas with high crime rates. The long-term consequences of these rulings are evident in several mass shooting incidents, including the tragedies at Sandy Hook Elementary School in 2012 and Robb Elementary School in Uvalde, Texas, in 2022, where perpetrators used legally acquired firearms.

The Court's decision in *Bruen* further expanded Second Amendment protections by striking down New York's "proper cause" requirement for public carry permits. This ruling substantially increased the prevalence of firearms in densely populated areas, raising concerns about the risk of violent altercations. A 2022 study from the Johns Hopkins Center for Gun Violence Solutions reported a clear link between permissive public carry laws and increased firearm-related confrontations, emphasizing the broader societal implications of such policies.¹⁴⁵

These judicial interpretations have had a profound impact on the regulatory and social frameworks governing firearms in the United States. They illustrate the challenges of balancing constitutional rights with the urgent need to mitigate gun violence. Policymakers must address the ripple effects of expanded gun rights by developing strategies that preserve individual liberties while ensuring public safety in an era of increasing mass shootings.

¹⁴⁴ Louis Klarevas, Andrew Conner, David Hemenway, 'The Effect of Large-Capacity Magazine Bans on High-Fatality Mass Shootings, 1990–2017', *American Journal of Public Health*, 2019

¹⁴⁵ Johns Hopkins Center for Gun Violence Solutions, 'Regulation of Public Carry of Firearms' *CentrefFor Gun violence Solutions*, 2024 —< <https://publichealth.jhu.edu/center-for-gun-violence-solutions/solutions/regulation-of-public-carry-of-firearms>>

Challenges in Regulating Modern Firearms

The Supreme Court's rulings have introduced significant complexities in efforts to regulate modern firearms.¹⁴⁶ The decision in *Caetano v. Massachusetts* (2016), which brought advanced weaponry like stun guns under the Second Amendment's protections, highlight the challenges of addressing contemporary firearm technologies within frameworks based on historical interpretation. Similarly, *United States v. Rahimi* (2024) highlighted the difficulties in reconciling adherence to historical analyses with the urgent need to address modern public safety concerns.

A significant challenge lies in determining which modern weapons should be constitutionally protected. As firearm technology continues to evolve, weapons have become increasingly sophisticated, incorporating high-capacity magazines and rapid-fire capabilities that amplify their lethality.¹⁴⁷ These advancements, while offering unprecedented firepower, complicate regulatory efforts, particularly because historical judicial standards often fail to account for the dramatic technological shifts since the drafting of the Second Amendment.¹⁴⁸ Firearms like the AR-15, commonly used in mass shootings, were inconceivable during the 18th century, making it difficult to align historical interpretations with contemporary realities.

Efforts to impose restrictions, such as bans on assault weapons and high-capacity magazines, have faced robust legal challenges, frequently citing rulings such as *Heller* and *Bruen*.¹⁴⁹ Opponents of these measures argue that they infringe upon fundamental constitutional rights, despite mounting evidence linking these weapons to increased fatalities in mass shooting incidents.¹⁵⁰ Without a nuanced approach to modern firearms, legal scholars warn that judicial

¹⁴⁶ Kopel D, 'The Great Gun Control War of the Twentieth Century—and its Lessons for Gun Laws Today', 39(10) *Fordham Urban Law Journal*, 2016, 1527

¹⁴⁷ Smith J, 'What Part of "In Common Use" Don't You Understand? How Courts Have Defied Heller in Arms-Ban Cases—Again', *Harvard Journal of Law and Public Policy*, 2023

¹⁴⁸ Sauer F, 'Autonomy in Weapons Systems and the Struggle for Regulation', *Centre For International Governance Innovation*, 28 November 2022—<https://www.cigionline.org/articles/autonomy-in-weapons-systems-and-the-struggle-for-regulation/> on 16 January 2025

¹⁴⁹ Butler J, 'The Politics of Possession and Gun Violence: The Bruen Decision's Impact on Firearm Regulation', *The Journal of Criminal Law and Criminology*, 2024, 57—<
https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1043&context=jclc_online>

¹⁵⁰ Spitzer R, 'The Politics of Gun Control', 9th ed, Routledge, 605 Third Avenue, New York, 2024, 316

decisions risk reinforcing frameworks that prioritize unrestricted access to advanced weapons at the expense of public safety.¹⁵¹

Another critical issue pertains to the tension between federal and state authority in firearm regulation.¹⁵² Decisions such as *McDonald* have curtailed the ability of state and local governments to craft targeted gun control measures, creating significant obstacles for urban centers that disproportionately experience firearm-related violence. The lack of consistent national standards exacerbates these challenges, leading to regulatory disparities that undermine broader efforts to address the epidemic of mass shootings.

Conclusion

The interpretation of gun laws, particularly through Supreme Court rulings affirming individual rights to firearm ownership, has significantly shaped the legislative and social landscape of firearm regulation in the United States. Decisions such as *Heller*, *McDonald*, *Bruen*, and *Rahimi* have expanded access to firearms while limiting regulatory tools available to lawmakers. These shifts have contributed to an increase in mass shooting incidents, suggesting that legal interpretations expanding access to firearms may inadvertently exacerbate such tragedies. A nuanced understanding of these dynamics is essential for crafting future policies that balance constitutional rights with the imperative of public safety, addressing both historical contexts and contemporary challenges.

¹⁵¹ Spitzer R, 'The Politics of Gun Control', 316

¹⁵² Harwood W, 'Gun Control: State Versus Federal Regulation of Firearms', 11(1) Maine Policy Review, 2022, 58

CHAPTER 5: CONCLUSION AND RECOMMENDATIONS

The premise of this chapter is to present the thesis that mass shootings are preventable. It is important to note that most laws do not regulate mass shootings in the sense of “Mass shootings” themselves. Most gun laws and regulations as highlighted in our previous chapter are aimed at regulating gun ownership as opposed to specific instances of mass shootings.

Conclusion

This dissertation found that the legal and historical foundations of American gun culture stem from early attempts to arm the general population, when there was a shortage of domestic production. As manufacturing improved, gun production businesses gained popularity and consumers demanded for firearms increased over time, particularly after the Civil War, as they were associated with ideas of patriotism and masculinity. Concerns about violence led to changes in the law which limited access to deadly weapons and targeted specific persons. Laws have since been enacted to address issues like background checks, but there are still problems with inconsistent regulations and loopholes, highlighting the continuous conflict between protecting Second Amendment rights and maintaining public safety.

This research also provided a detailed overview of the laws currently in place in America regarding the possession and use of firearms. Numerous elements, including federal laws, ongoing court decisions, and constitutional rights, influence the present gun ownership and use laws in the United States. Although the Second Amendment protects a person's right to keep and bear arms, there are restrictions on this right, such as the ban on gun ownership for minors, convicted felons, and people covered by domestic violence restraining orders.

The Second Amendment has been redefined by significant Supreme Court decisions such as *Heller* (2008), *McDonald* (2010), and *Bruen* (2022), which put individual liberty and self-defence above concerns about public safety. While allowing for more access to firearms, these decisions have limited state and local attempts to regulate firearms, including laws prohibiting assault weapons and restrictions on public carry. Permissive gun regulations are clearly linked to increased incidence of mass shootings, according to statistical data, which also shows that states with fewer restrictions on guns have much higher rates of gun violence. Furthermore, the expanding scope of gun rights has created a regulatory framework that encourages more judicial challenges, making it more challenging for legislators to enact meaningful limits. This research indicates that the decisions have unintentionally contributed to the rise in mass shootings, making it more difficult to find a balance between gun ownership and public safety.

Recommendations

Based on the findings, this section presents policy recommendations to ensure the curbing of mass shootings in America. Some of these recommendations are based on existing approaches employed both in some states in America and outside America to curb instances of mass shootings. They are as follows.

1) Increasing licensing requirements

States requiring permits for firearm purchases experience fewer mass public shootings, potentially reducing these events by 60%.¹⁵³ Webster analysed data spanning 1984 to 2017 using negative binomial regression models to assess the impact of 14 firearm laws, including requirements for in-person licensing or fingerprinting, on mass shootings with four or more fatalities (excluding cases involving offenders or those tied to drugs or gang activity). After accounting for fixed state effects, time trends, and 14 socio-economic factors, the study found that in-person licensing or fingerprinting laws were linked to a 56% decrease in mass shooting occurrences and a 57% reduction in fatalities.¹⁵⁴

2) Implementing an Assault weapon bans

Evidence on the effectiveness of assault weapon bans is inconclusive, with some studies finding minimal impact on reducing mass shootings or fatalities. The Federal Assault Weapons Ban (FAWB) was one of the most effective legislative measures to curb mass shooting. This ban was effective between 1994 and 2004. In this period, research indicates that the ban was successful in stopping mass shootings related to assault weapons. The research also indicates that there was a downward trend in mass shooting incidents associated with assault weapons. The research concluded that the FAWB discouraged individuals from committing mass shootings with assault weapons.¹⁵⁵

¹⁵³ Rockefeller Institute of Government “Policy Solutions to address mass shootings” August 2021, 5.

¹⁵⁴ Webster, Daniel W., Alexander D. McCourt, Cassandra K. Crifasi, Marisa D. Booty, and Elizabeth A. Stuart, “Evidence Concerning the Regulation of Firearms Design, Sale, and Carrying on Fatal Mass Shootings in the United States,” *Criminology and Public Policy*, Vol. 19, No. 1, 2020.

¹⁵⁵ Lundberg A, Fox J, Mohammad H, Mason M, Salina D, Victorson D, Parra-Cardona R, Post L
Public Mass Shootings: Counterfactual Trend Analysis of the Federal Assault Weapons Ban
JMIR Public Health Surveillance 2024;10: e62952 URL: <https://publichealth.jmir.org/2024/1/e62952> DOI:
10.2196/62952

As earlier indicated in the foregoing chapters, there is bipartisan public support for measures like assault weapons bans and universal background checks, but elected officials' decisions often do not reflect their constituents' views, partly due to substantial financial contributions from gun industry lobbyists. These substantial financial contributions often sway attitudes towards assault weapon bans.

However, federal laws banning assault weapons or placing restrictions or universal background checks could potentially lessen the likelihood of mass shootings. It is evident that during the ten years that the Federal Assault Weapons Ban was in place, mortality from firearm-related massacres declined, and the use of assault-style rifles by mass shooters dropped. The decrease in fatalities is a crucial factor to take into account when discussing similar laws, even though the ban did not totally eradicate the usage of these weapons. Attempts to preserve lives are vital because even one person dying in a mass shooting is too many.

3) Implementing large capacity magazine bans

Banning Large-Capacity Magazine (LCMs) correlates with fewer fatalities in mass shootings, reducing fatal victimizations by 38% and non-fatal injuries by 77%.¹⁵⁶ Like the FAWB, this ban takes on a similar approach the reasoning being that laws like those that prohibit large capacity magazines or require a permit to purchase a firearm is obvious: restricting the number of rounds that can be fired quickly and easily and making it more difficult to obtain firearms should lessen the likelihood of mass shootings and the number of people killed if one does occur.¹⁵⁷

While some research also indicates that shooters do not often use large capacity magazines in mass shootings,¹⁵⁸ this would be a positive step in curbing the ability of firearms to fire quickly thereby inflicting harm.

¹⁵⁶ Rockefeller Institute of Government “Policy Solutions to address mass shootings” August 2021, 8

¹⁵⁷ Rockefeller Institute of Government, 8.

¹⁵⁸ Gary Kleck, “Large-Capacity Magazines and the Casualty Count in Mass Shootings: The Plausibility of Linkages,” *Justice Research and Policy* 17, 1 (2016): 28-47, <https://doi.org/10.1177%2F1525107116674926>.

4) Incorporating mental health checks as pre-conditions to gun ownership

Investing in accessible mental health services, including early intervention programs and crisis hotlines, can help identify and support individuals struggling with mental health issues, potentially preventing them from engaging in violent behavior. Studies have shown a correlation between untreated mental illness and mass shootings.¹⁵⁹ This can prevent instances such as the Virginia Tech mass shooting.

This was a case involving a mentally troubled individual. The shooter, a 23-year-old senior, killed 32 people and injured 17 others before taking his own life. Investigations revealed his long-standing mental health issues, including diagnoses of selective mutism and major depression, which worsened during his time at Virginia Tech. His behaviour became increasingly erratic, including stalking female students, making threats, and exhibiting alarming behaviour in classes. If mental health checks were incorporated into gun purchase approval checks, such an occurrence would have been averted.

5) Combating illicit arms trafficking

This would involve a deliberate effort to “abandon event-driven policy in favour of a structural, comprehensive and proactive gun control strategy.” In addition to focusing on the legal framework, such a strategy ought to support the operational capabilities of the organizations who actively combat illegal arms trafficking on a daily basis. Enhancing cooperation between the pertinent national and international agencies, including in the current and possible source nations of illicit weapons, should also be a priority.¹⁶⁰

Combating illicit arms trafficking can prevent instances of attackers obtaining access to firearms from other unvetted, unmonitored and unlicensed sources beyond scrutiny.

¹⁵⁹ Metzl JM, MacLeish KT. “Mental illness, mass shootings, and the politics of American firearms.” *American Journal of Public Health*. 2015 Feb;105(2):240-9. doi: 10.2105/AJPH.2014.302242. PMID: 25496006; PMCID: PMC4318286.

¹⁶⁰ Flemish Peace Institute “Public mass shootings in Europe: How did the weapons fall into the wrong hands?” 3 October 2019. 6

6) Improving law enforcement training programs

To minimize the number of casualties, a shooting must be stopped as quickly as possible. Finding the gunman, confronting them, and preventing the shooting from getting worse should be the top priorities for even one officer.¹⁶¹ Such responses can be attained through a deliberate drive to improve law enforcement personnel physical fitness while enrolling at the academy is necessary.

Anaerobic-based fitness programs have been shown to be more beneficial than aerobic-based fitness, despite the fact that most academies emphasize aerobic-based fitness. Anaerobic-based fitness helps law enforcement agents do physical tasks like victim drags and wall climbs, which are necessary for either stopping a mass shooting or confronting an active shooter, if the job calls for it. While anaerobic-based fitness emphasizes bodyweight exercises and formation runs, anaerobic-based fitness also include power and strength training. However, as a result of large class numbers and lack of available fitness equipment, academies are more likely to emphasize bodyweight exercises and formation runs.¹⁶²

7) Target Hardening

It is worth noting that implementing active shooter safety policies and procedures in places where firearms are prohibited, such as theme parks, theatres, restaurants, and schools, is one method of target hardening. Some educational institutions, like Florida International University (FIU), have put these kinds of programs into place to teach the staff how to handle an active shooter situation, the Miami-Dade County Police Department (MDPD), FIU police, and FIU library personnel held a training exercise in the FIU library in June 2016.¹⁶³

¹⁶¹ Phillips, S. W. (2020). Police response to active shooter events: How officers see their role. *Police Quarterly*, 23(2), 262–279. <https://doi.org/10.1177/1098611119896654>

¹⁶² Alycia Mary Shelton “Mass Shooting Prevention: What can Local Law Enforcement do?” (Unpublished) Liberty University, Lynchburg, 2024, 42-43

¹⁶³ Terrade V, “Mass shootings and offenders’ Motives a comparison of the United States and foreign nations” *ILSA Journal of International & Comparative Law* Vol 23:3, 421

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