



Department of Political Science

Master's Degree in International Relations

Chair of History of the Americas

**The Right to Keep and Bear Arms Dilemma.
The Second Amendment between Constitution, History and Politics.**

SUPERVISOR

Prof. Gregory Alegi

ASSISTANT SUPERVISOR

Prof. Andrea Ungari

CANDIDATE

Francesca Greco

Student ID 621072

ACADEMIC YEAR 2013/2014

*Smile,
even if there is a tangle in your throat.*

*Smile,
even if your heart is full of fears.*

D.G.

Table of Contents

Acknowledgments.....	5
Introduction.....	8
Chapter I - The Origins of the Amendment	12
1. <i>Starring of the Debate</i>	13
2. <i>Back to the Mother-Country: Britain, Militia and Arms</i>	16
3. <i>To have Arms: From duty to right</i>	19
4. <i>Militia and Arms in the Colonies</i>	22
5. <i>Redskins and Blacks</i>	24
6. <i>The Boston turning point</i>	28
7. <i>Building the Amendment</i>	32
8. <i>The destiny of the militia</i>	39
Chapter II - The Amendment in Courts and Codes.....	44
1. <i>A difficult comprehension (or Much Ado about...a comma)</i>	45
2. <i>The Supreme Court Rulings</i>	49
2.1 <i>UNITED STATES v. CRUIKSHANK AND PRESSER v. ILLINOIS</i>	50
2.2 <i>UNITED STATES v. MILLER AND OTHER 20TH CENTURY CASES</i>	54
2.3 <i>DISTRICT OF COLUMBIA v. HELLER</i>	58
2.4 <i>MCDONALD v. CHICAGO</i>	62
3. <i>States' Right to Keep and Bear Arms</i>	64
4. <i>The five Ws of firearms</i>	69
5.1 <i>Right to Carry Laws</i>	73
Chapter III - Reds vs. Blues on Gun Rights.....	78
1. <i>The Democratic Party</i>	80
1.1 <i>Now is The Time</i>	86
2. <i>The Grand Old Party</i>	91
2.1 <i>James Brady, a Republican against guns.</i>	97
3. <i>Organizing for Guns</i>	99
3.1 <i>The National Rifle Association</i>	101
3.2 <i>Mayors Against Illegal Guns</i>	105

Chapter IV - The Dark Side of the Second Amendment.....	108
1. <i>Guns in Numbers</i>	110
2. <i>A Bloody 21st century</i>	114
3. <i>Sandy Hook Elementary School</i>	117
4. <i>Searching for rationale...and scapegoats</i>	120
5. <i>Where is the problem?</i>	122
5.1 Background Checks and Gun Shows	125
5.2 Keeping firearms at home	129
5.3 Assault Weapons: from trenches to houses.....	133
Conclusion	138
Appendix I - Firearms Glossary.....	145
Appendix II - School Shootings in the United States of America (1990-2014).....	151
Appendix III - Firearms Used in the Shootings	162
Appendix IV - Firearms Regulation in Italy	167
BIBLIOGRAPHY	171

Acknowledgments

I wish to acknowledge the support of those who positively contributed to the drafting of this thesis. I would like to express the deepest appreciation to my Supervisor, Professor Gregory Alegi, for his professionalism and constant help he gave me during these months and the enthusiasm he always put in his teaching. His real interest on the topic further encouraged me to do my best. It has been a privilege to have the opportunity to work with him.

This journey lasted five years would have not been possible without persons I learnt to call “friends”. A special thank goes to Federica and Chiara. Together we were able to overcome the years of the Master’s Degree, helping and supporting each other in every situation. As I always said, I wish I knew them before.

Some of them deserve a particular mention. These people have come into my heart and will remain there forever. Michele, Adalberto, Marco and Nanni. They gave me laughs, hugs, advises, support and – in their own way – affection. Each one of them has been to me fundamental to cope with these years far from my home. They became part of my life and I am so glad for that.

Last but definitively the most important acknowledgment is for my family. To Federico, the newest member of it. For the joy you brought into our home and the smile you returned to all

of us. He is our salvation... even if having him wandering around in the house made it difficult for me remain focused on the thesis. Thanks to my sister Rossella that with her whispered love is able to instill in me the courage I need, because in the silence even the smallest drop is a waterfall.

To my dad. I thank him for being the person he is. The person I want to be. His strength, his heart, his kindness, his honesty – especially his honesty.

To my mom, my rock. For the courage that she has - even if she does not know to have it. I thank her for she never gave up, not even for a moment, for having had the courage to let me go and for the way in which she always shows me the right direction.

I thank Her. Wish you were here.

The Second Amendment

*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.*

Introduction

On December 14, 2012 in Newtown, CT, something happened that shocked the United States of America and the world. After having killed his own mother, an armed 20-year-old boy entered Sandy Hook Elementary School and fatally shot twenty children and six adults working at the school. It all happened in a rush. Five minutes of hell. Then, Adam Lanza killed himself. The firearms used in the massacre had been legally purchased by his mother and were kept at home, accessible to the young boy with mental problems.

Unfortunately, the Newtown massacre is not an isolated episode of madness resulting in a school shooting in the U.S. Actually, it is just the last and most horrible of a long list of similar cases. The senseless slaughter of defenseless children in an Elementary school renewed and gave fresh strength to a fifty-year long debate on gun control and the call for restrictions over the Second Amendment right to keep and bear arms. Many Americans wonder what kind of arms the Constitution grants the right to *keep and bear* and complain about the effectiveness of Federal control on the purchase of arms.

The Second Amendment contains one of the most disputed rights among those stated in the 1791 Bill of Rights of the United States of America. It was created to provide citizens of

independent America the means to defend themselves and their country, instead of letting a permanent army do it. However, those two lines containing the right were written in such a way as to create several interpretation problems in following decades.

For 225 years, the Amendment has not had consistent a legal interpretation. For centuries, people have debated on what could be the real purpose of those words. Is it a right of the states to possess a militia or of the people to carry arms? Is it a collective or individual right? Scholars explored the historical background, the lexical meaning, the grammar of the Amendment in order to come to a solution. But it came only in 2008 when the Supreme Court of the United States delivered its definitive opinion on the right, ruling that American citizens have the *individual* right to keep and bear arms for self-defense.

Since the late 18th century, guns became part of American culture and tradition. Indeed, they played an important role in history and continue to shape American values. The victories of the citizen militia fighting against European usurpations and the triumphs of men on horseback conquering the Wild West defeating belligerent “redskins” wrote pages in American history that contributed to transform firearms into cultural symbols. Undeniably, particularly for gun enthusiasts, arms are tools enabling their owners to express his/her will for liberty and throw off the yoke of a supposed oppressor – an overseas King or a new central Government, for example. This is the American conceptualization of the gun created in the years of revolutions, of pioneer expansion, up to the present. Americans still jealously preserve this image of the gun. Their link to firearms is shown through the widespread practices of hunting, collecting, and the high number of shooting ranges all over the country. Almost everywhere in the United States it is possible to smell the scent of gunpowder.

Even – and especially – in politics. Gun rights advocates identify with Conservative-Republican positions, being in some cases single-issue voters, and thus forming a non-negligible part of the electorate capable of moving large portions of votes in favor or against the Party. In the last fifty years, the contrast between the ideal meaning of the right to keep and bear arms – as held by conservatives – and the problems coming from this right exacerbated due to important flaws in the national control system. This has placed the Second Amendment at the center of the internal political debate between Democrats and Republicans, with powerful gun-related organizations like the NRA taking a hand, playing as a shield protecting the Amendment from any attack by gun control advocates.

The purpose of this thesis is to observe the evolution of the Amendment since its adoption and what are the consequences of the – almost unrestricted – right to keep and bear arms in the American reality, trying to figure out what is the real role it plays in the present-day U.S. To this end, the first chapter looks at the origins of the Second Amendment, observing the way in which the right came into the new world and how the states' representatives dealt with it during the drafting of the Bill of Rights at the end of the 18th century. The second chapter examines the path of the Amendment in the Courts in the 19th and 20th century and how it built its legal foundation case after case. From *Cruikshank* and *Presser* to *Heller* and *McDonald*, the main Supreme Court cases are considered to understand how “keep and bear arms” confirmed itself as an individual right. The legal analysis goes on, moving its focus to on the legislation of the states about firearms, in order to understand how states with different – political – backgrounds deal in different manner with the problem of firearms. Passing from the states level to the national one, the third chapter focuses on the

political debate over gun control between the two major United States parties, the Democratic Party and the Republican Party, with a particular attention to the changes occurred since 1968 – date in which the debate enflamed – in parties’ platform during Presidential elections. This part provides also a spectrum of firearms-related national organizations in the U.S, going through the role they play in politics and society and how they can influence Congress dynamics. After having drawn the historical, legal and political frame of the Second Amendment, the fourth chapter, in the end, aims at showing the negative implication of the right to keep and bear arms, considering the number of insane massacres occurred in last 15 years and the flaws in the system allowing all this to happen.

I

The Origins of the Amendment

*“The best we can hope for concerning
the people at large is that they be properly armed”*

Alexander Hamilton, The Federalist Papers, No. 29

The Second Amendment is one of the ten that together form the Bill of Rights containing the fundamental personal freedoms of every U.S. citizen. The amendment at issue states “a well-regulated militia being necessary to the security of a free state, the right of people to keep and bear arms shall not be infringed.” On closer view, it is clear that the amendment is composed by two separate parts, apparently unmatched. The first one protects a collective right (i.e. the right of the states to maintain a well-regulated militia), the other recognizes an individual right to possess and use arms.¹ Two different subjects, two different objectives.

¹ Hardy, David T., “The Second Amendment and the Historiography of the Bill of Rights”, *4 Journal of Law & Politics*, 1987:1

Indeed, the controversies surrounding the interpretation of the Second Amendment concern the question of its very subject matter. Moreover, the whole is made more complex by the words chosen in particular to set the right to arms. What was the real intent of the Framers? Is the Second Amendment a modification to Congress' militia powers or a general limitation of legislative power? If so, who can really keep arms and to what kind of arms the amendment refers?

The two provisions cannot be considered separately, as they cannot explain on their own the meaning of the *entire* amendment. Neither they can be considered as interdependent. The two of them stem from different political trends and represent the legacy of different theoretical underpinnings. In order to understand first the reasons for the ambiguous structure of the amendment and its meaning, and try to answer the first questions, we have to consider the two subjects, militia and arms and the provisions related to them, separately, detect their origins, and finally understand what led to the merging of them.

1. Starring of the Debate

Before beginning the analysis of the origins of the Amendment, it is fundamental to understand the political scenario at the time when the Bill of Rights was drafted. After the Declaration of Independence of July 4, in the United States the political spectrum knew two principal actors, Federalists and Anti-Federalists. This division was the outcome of the disagreement among states' representatives at the Constitutional Convention. The

Federalists, in fact, strongly supported the new Constitution that created a central government and a federation of the newly independent states. Leading figures among federalists were James Madison, George Washington, Alexander Hamilton, and Benjamin Franklin considered the Fathers of the Constitution. On the other side, Anti-Federalists opposed the idea of a federal government, fearing that the power of the states could be swallowed by the federal colossus eventually. Among them Patrick Henry and George Mason of Virginia, Samuel Adams of Massachusetts and Richard Yates of New York.

After the ratification of the Constitution – a victory of the Federalists – and the adoption of the Bill of Rights in 1791 – as requested by the Anti-Federalists – the Federalist movement divided in two other groups, the Democratic-Republicans, led by Madison and Jefferson, and the Hamilton’s Federalist Party. The separation came on the ground of different ideas about the type of federalism pursued. Hamilton wanted a very strong national power. He developed the idea of implied powers² and called for a national bank, tariffs and exalted the role of aristocracy. Indeed, Hamilton always looked with favor to the British monarchy and his proposed draft for the Constitution was rejected on the ground of its too strong similarities with that of the motherland. The Federalist Party had not a long life. It was dissolved in 1824, scoring one presidential victory, in 1797 with John Adams.

Greater fortune had the Federalist Party’s opponent, the Democratic-Republican Party. In its thirty years, the party controlled the majority of states’ governments and the Presidency. Cradle of the Jeffersonian democracy and of the Republican Party, the Democratic-

² Implied powers are those powers that the Congress can exercise even if not expressly contained in the Constitution because implied in the powers explicitly stated in it.

Republican Party based on the ideals of republicanism, equal and individual rights for citizens and inviolability of their freedoms expressed in the Bill of Rights. It favored the states' right and for this feature, it was welcomed in the South, where the Federation was still seen with suspect.

In 1824 Presidential elections, the Democratic-Republicans failed in reaching an agreement on a unique candidate. With Andrew Jackson deprived of the presidency³, the Party knew a further division, the Jackson Democratic Party on one side, and the National Republicans of Quincy Adams on the other. Since that moment, Republicans – later Whigs, then Republicans again – embraced a conservative line, while Democrats adopted the Jeffersonian values of Democracy.

During the Constitutional Convention, there was also the voice of radicals, the best representative of which was Samuel Adams. He was a protagonist during the Second Continental congress, calling for an immediate independence from Britain and their respect for the natural rights of colonists, as he expressed in its 1772 manifesto. Very long after, in 1854 Radicals in Congress gathered in a faction of the Republican Party, calling themselves Radical Republicans. During the troubled years of Civil war and Reconstruction, they fought strenuously against slavery and for the respect of civil right gained by freedmen after the war. Indeed, John Bingham, representative of Ohio, was the principal framer of the Fourteenth Amendment, known as the Civil Rights Amendment.⁴

³ Andrew Jackson won the most votes, but none of the candidates won a majority of the electoral vote. The choice of the new President went to the House of Representatives, which fell on John Quincy Adams. (The other two candidates were William Crawford and Henry Clay)

⁴ Amar, Akhil R., *America's Constitution: a Biography*. New York: Random House, 2005: 362-370

Now that the principal actors have been presented, the following pages will show their role in the long debate over the Second Amendment and give voice to their leading names.

2. Back to the Mother-Country: Britain, Militia and Arms

The most notably ancestor of the right contained in the Second Amendment is the historical evolution of the militia in the mother country and the statement of the right to keep arms in the English Bill of Rights of 1689. The origin of the right to keep and bear arms took place later than the idea of a well-regulated militia, and it can be considered a consequence of the actions of the Kings of England against the militia itself.

The existence of an English militia dates to the twelfth century. At that time, it consisted of the entire male population, to whom the law permitted to have a spear or a dagger. The English had been forced to add to their duties that of law enforcement, since neither standing army nor police force existed until the end of the seventeenth century. They were expected to protect themselves, their family, property, also their neighbors in case of attack. For much of English history, therefore, the emphasis was on extending and fixing the obligation to keep and supply militia weapons, not disarming Englishmen.⁵ Throughout the following centuries, this body of armed citizens grew too much in strength that the Crown began to look at it with growing concern in the fifteenth century. Indeed, the citizens' armament did much to restrain

⁵ Malcom, Joyce L., *To Keep and Bear Arms: The Origins of an Anglo-American Right*, Harvard University Press, 1996: 2-4

excessive royal power. The King of England had to remember that his “gentleman pensioners’ and yeoman of the guard were but a handful, and bills or bows were in every farm and cottage.”⁶ During the Tudor dynasty, this body of armed fellow citizens was trained and perfected. Nevertheless, the Crown did not consider it suited to the needs of the reign, as the Bishops’ War with the Scots in 1638 had shown. Charles I learned at his expense that the seventeenth century militia was not as flexible as required. It could not be taken out of the Kingdom; militiamen were unreliable when they harbored sympathies for the rioters; officials and militiamen would not embrace blindly an unpopular cause. Moreover, with the development on the continent of professional well-drilled armies during the seventeenth century, English Kings were tempted to abandon the militia in favor of a professional force.

The failure of the Bishops’ War turned out to be an important chance for Englishmen to gain a tile in the mosaic of their right to self-defense. The costs of the war forced Charles to summon a Parliament. Among the grievances that the authors of the Great Remonstrance addressed to the Crown was the monopoly of gunpowder. Charles’ opponents presented this monopoly as a way to render people defenseless. They indicated it as “the desperate design of engrossing all the gunpowder into one hand...to leave the several parts of the kingdom destitute of their necessary defense.”⁷ Charles could do nothing but agree to surrender his monopoly and in 1641 approved an act for the free manufacture of gunpowder within the

⁶ Hardy, *4 Journal of Law & Politics*, 1987: 8

⁷ *The Grand Remonstrance*, 1641 Constitutional Documents of the Puritan Revolution at: <http://www.constitution.org/eng/conpur043.htm/>

kingdom. A hit had been struck for the access to ammunition and a prerogative of the Crown on the power of the sword had been removed.⁸

However, a militia composed of citizens was no more an attractive idea for the King. Nor did for the Parliamentarians. The Civil War between Cavaliers and Roundheads⁹ that enflamed England during the kingdom of Charles I in 1642 saw the use of standing armies on both sides. The outcome was a military dictatorship that ended with the restoration of Charles II. The turmoil caused by the war inevitably brought to compare standing army and militia. The Classical Republicans led by James Harrington considered the standing army as incapable of stabilizing a good government, but make a tyrannical one, as the events in the mid seventeenth century had shown. To arm citizens and rely on them, instead, meant to share power with the people and give great advantages to democracy. The theories of Harrington and the Classical Republicans stemmed from the Machiavellian idea of a nation led by a popular prince and based on a national militia. “The chief foundations of all states, new as well as old or composite, are good laws and good arms; and as there cannot be good laws where the state is not well armed, it follows that where they are well armed they have good laws.”¹⁰

Despite the ideas of the Classical Republicans, in the following decades the standing army in England won again the head-to-head with the militia. The successor of Charles II,

⁸ Malcom, *To Keep and Bear Arms*, 1996: 18-20

⁹ “Cavaliers” and “Roundheads” were the names used to refer to the two warring factions. The Cavaliers fought for King Charles I and they were Christian, mostly Anglican. The Roundheads, guided by Oliver Cromwell, were the supporters of the Parliament and they were strongly Puritans. They were so-called because they wore their hair cropped closely cropped round their heads. For an in-depth analysis of the 1642 Civil War in England, see Hibbert, C., *Cavaliers and Roundheads*, New York: HarperCollins, 1994

¹⁰ Machiavelli, N., *The Prince*, translated by Marriott W.K., London: Encyclopaedia Britannica, 1952-1954

James II, was determined to rule absolutely and to advance Catholicism in England, maintaining a large standing army to further his objectives. Nonetheless, his tyrannical manners and repression against the Protestants backfired. In 1688, William of Orange entered London triumphantly.

However, the “Glorious Revolution” and William and Mary’s acceptance of the throne offered by Parliament did nothing to reduce support for a standing army. Both Charles and James succeeded in dismantling the real core of the concept of militia by creating a Royal militia, a body of selected citizens allowed to keep arms.

3. To have Arms: From duty to right

After having been restored to the throne, Charles II ordered the Lord Lieutenants of the militia to disarm all opponents. In 1662, he was able to secure the passage of a Militia Act authorizing the Lieutenants and their deputies to “search for and seize all arms in the custody or possession of any person or persons whom the said Lieutenants or any two or more of their deputies shall judge dangerous to the peace of the Kingdom.”¹¹ Eventually, the Hunting Act was amended in 1671 in order to further restrict arms possession to all but the landed gentry, with the addition of all firearms to the list of contraband and the extension of the ban to all

¹¹ Hardy, *4 Journal Law & Politics*, 1987-1988: 19

people not owning land with an annual rental revenue of 100 sterling pounds¹². The King wanted to weaken the population thwarting their capability to possess arms and defend themselves. James II did not reverse the situation. On the contrary, he reinforced these proscriptions. Moreover, pursuing also his aim of spreading the Christianity, he excluded Protestants from military affairs and included a large number of Catholics to strengthen the allegiance of the military apparatus to him.¹³

However, all these restrictions fuelled the grievances of the English and their claim to get back their right to possess firearms. The arrival of William of Orange in 1688 gave a new turn to the political situation in England. Parliament could now proceed to the drafting of the Declaration of Rights opposed by the King. This document was composed of two parts, the first containing thirteen complaints against the King James II, the second containing as many “true, ancient and indubitable rights.” One of the complaints against James was about the measures adopted by him in order to disarm the Protestants, to which corresponded the restoration of this right in the second part. The first version proposed for item 6 in the Bill was

6. That the Subjects, which are Protestants, may provide and keep Arms for their common Defence

If we look at the terms used, we can see that instead of the assertion that Protestants “*should* provide and keep arms”, the Bill states that Protestants “*may* provide and keep arms”.

¹² *Ibid.*, 13

¹³ Feller, P.B – Gotting, K.L., “The Second Amendment: a Second Look”. *Northwestern University Law Review* 46, (1966-1967): 48

Although superficially identical, this change was substantial. It meant that keeping arms was no longer a positive *duty* but a *right*. Moreover, this version was modified by some last-minute amendment that would have further change the characteristics of the right. The verbs “provide and keep”, were substituted with “have arms” because the former sounded like preparation for a popular rebellion, something that would have turned up William’s nose. “Their defense” replaced “common defense” allowing Protestants to be armed for their own defense and not for that of the community – as was the case with the militia – granting them an individual right.¹⁴

Hence, the final version of the 1689 English Bill of Rights presented to William and Mary read

...Whereas the late King James the Second, by the assistance of divers evil counsellors, judges and ministers employed by him, did endeavor to subvert and extirpate the Protestant religion and the laws and liberties of this kingdom... 6. *by causing several good subjects being Protestants to be disarmed at the same time when papists were both armed and employed contrary to law;* And whereas the said late King James the Second having abdicated the government and the throne being thereby vacant. ... And thereupon the Lords Spiritual and Temporal and Commons, ...being now assembled in a full and free representative of this nation, do in the first place (as their ancestors in like case have usually done) for the vindicating and asserting their ancient rights and liberties declare. ...
6. *that the subjects which are Protestants, may have arms for their defense suitable to their conditions, and as allowed by law.*¹⁵

¹⁴ Malcom, *To Keep and Bear Arms*, 1996: 118-119

¹⁵ The Avalon Project, Yale Law School, English Bill of Rights, 1689 at: http://avalon.law.yale.edu/17th_century/england.asp

The words contained in the Bill of Rights represented the reassertion of an “ancient right” for Englishmen and at the same time it marked the first acceptance of an indisputably individual *right* to bear arms.

In the following years, Parliament amended the Hunting Acts to delete firearms from the contraband list and the House of Commons paralleled this with an amendment to the Militia Act, which repealed all power to seize firearms. Although the bill never came to life because William dissolved the Parliament in 1690, the seed of an individual right to keep arms had been planted which would flourish overseas.

4. Militia and Arms in the Colonies

Keeping arms was not something new in the pre-revolutionary America of the seventeenth century. Since people in the colonies suffered various persecutions – indeed, the first colonists were Protestants seeking refuge in the New World – and there was the need to defend from the Indians, there already existed an interest in authorizing arms. The Statute of Virginia was the main example to which the other colonies would refer. The first law concerning the possession of arms in that colony was enacted in 1623:

24. That no man go or send abroad without a sufficient partie will armed.”¹⁶

¹⁶ Hening’s Statutes at Large: Laws of Virginia, vol. 05 at: <http://vagenweb.org/hening/vol01-05.htm>

This provision, providing that all men going outside the colony should be well armed, was reinforced in the following years, first with a law in February 1631

ACT LI.

ALL men that are fittinge to beare armes, shall bringe their peices
to the church uppon payne of every effence ¹⁷

granting people the possibility to enter in churches with their gun, something that in the same decades the Kings and Queens of England were trying strenuously to forbid. Then again in March 1658

ACT XXV.

Provision to bee made for Amunition.

BEE it enacted that a provident supplie be made of gunn powder and shott to our owne people, and this strictly to bee lookt to by the officers of the militia, (vizt.) That every man able to beare armes have in his house a fixt gunn two pounds of powder and eight pound of shott at least which are to be provided by every man for his family...¹⁸

As we can see from the Virginia case, there was a growing interest in regulating the possession and sale of arms and related items (gunpowder, for example) during those years. In general, from 1629 on and before the statement of the English Bill of Rights, almost all the thirteen colonies adopted laws about firearms. The difference with the changes of the next century lies in the perception of these provisions. Indeed, these were not individual *rights* in a strict sense, but *duties*. As the Virginia law of February 1631 suggests with the use of “shall”, having “serviceable arms” was an obligation for the inhabitants of the colonies, at the point that they did not know limitations neither in religious buildings.

¹⁷ *Ibid.* vol. 17

¹⁸ *Ibid.* vol. 22

Another example was the Newport Colony (Rhode Island) Law of 1639 according to which the obligation to keep arms extended to any public meeting:

None shall come to any public Meeting without his weapon. Upon the default of eyther, he shall forfeit five shillings.

The reason of the “mandatory character” of arms laws is connected with the necessity for the seventeenth century colonies to have all citizens ready to protect the colony – and themselves – in any situation. It was the legal way to the colonial militia system. While the militia as institution declined in Britain, it retained vitality in eighteenth century pre-revolutionary America. Indeed, the militia system fitted better with the needs of the colonies that had neither the economic capability to maintain a standing army nor borders small enough for the use of it to be effective. Moreover, adopting the ideas of Harrington, the colonists believed that an army was capable of corrupting a government into a tyranny. All citizens had to enroll for militia duty and, consequently, could keep arms. This body of armed citizens was fundamental for the protection of the colonies from the internal threat that in that period – and for long time after – worried the whites.

5. Redskins and Blacks

It is necessary to consider two other factors that brought to the Second Amendment, without which the historical frame would be incomplete.

The militia system was highly convenient for the American colonies, not only because it was cost-effective, but also because it was more apt for the needs of the colonists. The primary threat, in fact, was not the encroachment of their lands from European powers but the disputes with local Indian tribes and internal danger of slave uprisings.¹⁹ Hence, it is impossible to overlook these two elements, so significant in the period of the Amendment.

If the eighteenth century in the new world “hosted” troops from France, Spain and England fighting to conquer new territories, there was another group fighting to defend its own lands: the Indian tribes. In the sixteenth and seventeenth centuries, Indians had been a difficult enemy for the colonists coming from Europe. Their modes of warfare were totally different and unknown for the newcomers and entailed struggles for an effective counter attack at the very beginning. Indians had no international aristocracy, no conventions, and had a code of warfare of their own. They struck without warning and were a nightly terror in the remote silence of backwoods cabins.²⁰ The methods of the redskins made it hard for the colonists to give up their individual right to keep arms. The militia was soon adapted for rapid response and long-range patrols.²¹ Moreover, there were clear legal dispositions forbidding the selling of guns and gunpowder to the Indians and any violation was punished. However, Americans could face an attack in every moment and they felt as deeply necessary to have arms for self-defense.

¹⁹ Charles, Patrick J., *The Second Amendment: the intent and its interpretation by states and the Supreme Court*, Jefferson, NC: McFarland & Company Inc., Publishers, 2009: 109

²⁰ Boorstin, Daniel J., *The Americans--The Colonial Experience*, n.p.: Knopf Doubleday Publishing Group, 2010: 347-348

²¹ Fields, W.S., Hardy, D.T., “The Militia and the Constitution: A Legal History” *Military Law Review* 136 , 1992: 23

In eighteenth century, slavery was an already widespread phenomenon, tolerated without many complaints. It began to come under attack just after the Revolutionary War, raising deep concerns in the Southern states fearing for its abolition.²² This “peculiar institution”, indeed, influenced the whole work of the Founding Father in drafting the Constitution – for the representation criteria in the Congress, for example – and it is impossible to exclude it from the writing of the Second Amendment. Southern colonies were those with the largest number of slaves employed in the cotton plantations. Here there was a very high interest in maintaining control over the enslaved blacks and the idea of disarmed patrols was unconceivable for big landowners fearing slave revolts. Hence, according to some recent analysis, one of the reason of the amendment was to preserve militias – the slave patrols in the Southern states – as to secure the Virginia’s vote. During the debate in the Virginia ratifying Convention in 1788, Patrick Henry declared

If the country be invaded, a state may go to war, but cannot suppress insurrections. If there should happen an insurrection of slaves, the country cannot be said to be invaded. They cannot, therefore, suppress it without the interposition of the Congress....Congress and Congress only can call forth the militia.²³

A similar declaration came from a delegate of South Carolina during the Constitutional Convention. In that case, he said

²² Jones, Maldwyn A., *The Limits of Liberty*, New York: Oxford University Press, 1997: 60

²³ Elliot, Johnatan, *The debates in the several state conventions on the adoption of the Constitution*, Washington, 1836

The security the Southern States want is that their Negroes may not be taken from them, which some gentlemen within or without doors have a very good mind to do²⁴

At the time when the Constitution was ratified, hundreds of slave rebellions had taken place across the South, and in many areas, blacks outnumbered whites. The militia in Georgia, South Carolina and Virginia were regulated slave patrols that protected whites against such rebellions.²⁵ Because of the great importance those patrols had, the Southern state wanted them protected by law. Mitigating the fears of Henry, Mason and others, could be the reason for changing the word “country” used by Madison in his first amendment proposal, to “state” as referred to the militia. In this way, each State could count on its own militia and call it whenever “necessary to the security”.

Fear of slave revolts was the reason for the 1757 Georgia law providing for militia training every Sabbath at the place of public worship because Southerners believed times of worship were susceptible of slave insurrections. The same type of order appeared in Ohio, in July 1791. Here the institution of slavery was outlawed, but there was a similar reason for the adoption of this act. While Georgia’s rationale for such a law was to deter slave rebellions, Ohioans believed they were as favorable for Indian attacks. The law’s purpose was to have citizenry armed and ready to face attacks in vulnerable times so that each person enrolled in the militia “shall arm and equip himself as if he were marching to engage the enemy.”²⁶ And

²⁴ Finkelman, Paul, *The Slavery and the Founder: Race and Liberty in the Age of Jefferson*, New York: M.E. Shape, Inc., 2001: 20

²⁵ Love, David A., “Does Slavery have any Place in the Gun Control Debate”, theGrio 23 January 2013. Accessed on May 10, 2014 at: <http://thegrio.com/2013/01/23/does-slavery-have-any-place-in-the-gun-control-debate/>

²⁶ Corey – Fairbank, eds. *Statutes of Ohio and of the Northwestern Territory adopted or enacted from 1788 to 1833, vol.I*, Cincinnati, 1833

while it was illegal to have business on Sunday, the legislation made an exception for militiamen.²⁷

These two components of American life would not disappear soon. Thus the Framers, looking to the future, were certainly concerned with the threat posed to security by Native Americans on one side, and keeping quiet the Southern states on the other, at least for some other decades.

6. *The Boston turning point*

The militia in pre-revolution colonies was conceived to be the proper instrument for providing the defense of these entities and any action by Parliament or the Crown that tended to reduce its effectiveness was contested as an attempt to destroy the liberties of their citizens. Faith in the militia was as strong as distrust for the King's standing army. A distrust that the colonists linked with the British troops in their territory.

As we have seen, in the colonies keeping arms was a duty like in pre-1689 England, rather than an individual *indisputable* right. It began to be perceived as such when the motherland imposed the disarmament of people overseas. The opportunity presented in Boston, the main town of the Massachusetts Bay colony. Here a law of 1645 required "that all inhabitants...are to have arms in their houses fit for service."²⁸ As in any other colony, in

²⁷ Charles, Patrick J., *The Second Amendment*, 2009: 144

²⁸ Halbrook, Stephen P., *The Founders' Second Amendment, Origins of the Right to Bear Arms*, Oakland, California: The Independent Institute, 2012: 11

Boston people used to have arms in their home for the collective and self-defense. More than a century later in 1768, when tension between the colonies and the Crown was near to its peak, rumors about an order to disarm and the imposition of Martial Law were the opportunity for colonists to defend strenuously their *right* to have arms.

It all began in September 1768. On the 8th, Governor Bernard leaked information of some British troops sailing to the colony. The news spread some agitations among the populace that met a few days later in a general assembly at Faneuil Hall to discuss and complain about the mother country's policies. In those days, the populace voted and passed a resolution admonishing every man to provide arms for himself.²⁹ That resolution openly referred to the act of the English Parliament allowing people to keep arms and rely on the principle that the liberties recognized to Englishman had to be granted also to the colonists. On September 26, an anonymous patriot signing as "A.B.C" issued a warning in the Boston Gazette:

It is reported that the Governor has said, that he has three Things in Command from the Ministry...1st, that the Inhabitants of this Province are to be disarmed. 2d, The Province to be governed by Martial Law. And 3d, that a Number of Gentlemen...are to be seized and sent to Great-Britain³⁰.

In a few days, the warning was published in the gazettes of the other colonies fueling apprehension and tensions against Britain. The instrument people overseas had to protect themselves was now in danger and the selectmen of the colonies felt the duty to intervene to stop any attempt to implement the order. In Boston, many grievances were directed to the

²⁹ *Ibid.* p. 10

³⁰ Massachusetts Historical Society, *Boston Gazette*, September 26, 1768, p. 3, cols 1-2. At: www.masshist.org/dorr/volume/2/sequence/271

Governor. In an article he signed “E.A”, Samuel Adams made the most remarkable analysis of the right to keep and bear arms in pre-Revolutionary America. Quoting William Blackstone, England’s leading legal scholar, referring to the results of the Glorious Revolution in 1688, Adams said

At the revolution, the British Constitution was again restor’d to its original principles, declared in the bill of rights...”To vindicate these rights, says Mr. Blackstone, when actually violated or attack’d, the subject of England are entitled... to the right of having and using arms for self-preservation and defence.” These he calls “auxiliary subordinate right, which serve principally as barriers to protect and maintain inviolate the three main great and primary rights of personal security, personal liberty and private property... when the sanctions of society and laws are found insufficient to restrain the violence of oppression.³¹

As this excerpt reveals, Samuel Adams made it clear how the colonists started to consider the right to bear arms, a bulwark to guarantee the *primary rights of personal security, personal liberty and private property*. The Massachusetts Bay selectman extended the right not only to individual preservation but also to collective resistance to oppression.

Once the troops arrived in Boston, the colonists tried to convince the King to reconsider the unpopular presence of the redcoats in the colony, without success. Reports of acts of violence against civilians began to appear. The House of Lords declared the resolution passed at Faneuil Hall in September illegal and unconstitutional and “calculated to excite sedition and insurrections in his Majesty’s province of Massachusetts Bay.”³² Samuel Adams expressed all his concern on how was it possible that something that the British Parliament

³¹ Cushing, H. A.,ed. *Writings of Samuel Adams*, vol. 1, New York: G.P. Putnam’s Sons, 1904:317 at: <http://openlibrary.org/>

³² Halbrook, *The Founders’ Second Amendment*, 2012: 17

itself considered an “indisputable right” could be illegal in the colony. This was a right of the Englishmen, which the colonists held dear.

The turning point came in March 1770. People in Boston was embittered by the heavy taxation imposed by the British Parliament through the Townshend Act in 1768.³³ Massachusetts inhabitants were particularly active in protesting against it and called upon other colonies to join their protest. However, the request to King George III for the repeal of the Townshend Revenue Act fell unheard. In this context of high tension there took place the “Incident on King Street” or “Boston Massacre”. On March 5, five Bostonians killed by British soldiers. The latter – defended by the lawyer and future president John Adams – were tried and acquitted of murder. What is relevant here is in that the trial recognized a right of citizens to arm themselves against abusive soldiers, creating a precedent enunciated also in other judgments of the period.

Although the Townshend Act duties were partially repealed on that very day inaugurating a period of relative calm, for the colonists the situation had become unsustainable. The passage of the Tea Act in 1773 led to renewed rumblings that reached the peak in the Declaration of Independence in 1776.

³³ The Townshend Act took the name from Charles Townshend, the Chancellor of the Exchequer. For analysis on Stamp Act and Townshend Revenue Act controversies see Jones, Maldwyn A., *The Limits of Liberties*, Oxford: Oxford University Press, 1997: Ch. 3

7. *Building the Amendment*

What happened in 1776 in the colonies is fundamental to understand the reasons for the structure of the Second Amendment. The thirteen colonies were summoned to participate to the first Continental Congress and were asked to adopt Constitutions or Bill of Rights. Not all of them did so. The most notable works, useful for this analysis, that became the models on which the framers would rely upon in 1791, were the documents adopted in Virginia, Pennsylvania and Massachusetts. The different points of view and preeminence they gave the militia either the right to have arms influenced the final writing of the amendment.

VIRGINIA

In July 1776, Virginia adopted the first Declaration of Rights of the New World, born out of the skills of George Mason. He and the committee preferred to preserve a more conservative right like that of a well-regulated Militia for the defense of the State. It read

XIII. That a well-regulated Militia, composed of the Body of the People, trained to Arms, is the proper, natural, and safe Defence of a free State; that standing Armies, in Time of Peace, should be avoided, as dangerous to Liberty. ³⁴

The proposal of Thomas Jefferson for an individual right to keep arms expressed in the words “No freeman shall ever be debarred the use of arms” was rejected. This was because the primary intent in 1776 was to establish a stable republic and the best way to do it for the Virginians was to maintain the status quo. The Jefferson draft looked forward to a democracy

³⁴ Halbrook, *The Founder’s Second Amendment*, 2012: 129

that would have placed the stress on the individual liberties. Moreover, there was the threat of black uprisings, since in Virginia the Negro population was the highest among the colonies.

PENNSYLVANIA

A few months later was the turn of Pennsylvania. Here the framers created the most radical constitution of the period. Pennsylvania was the first state to recognize formally a guarantee of the right of the people to bear arms. Here the framers that met from July to September could refer to the Virginia model. In fact, the Pennsylvania Bill of Rights was almost verbatim from that of Virginia. However, the former clearly departed from the latter's approach when it deleted its reference to the well-regulated militias and added a new recognition

That the people have a right to bear arms for the defense of themselves and the State

The individual right to self-defense made thus its first appearance in a Bill of Rights overseas. Recognition of the people's right to bear arms "for the defense of themselves" meant that individuals were entitled to carry arms for personal protection. In this case, the term "bear arms" was not limited to bearing arms in a military force. Bearing arms for self-defense is "a right" of "the people", while bearing arms in a military unit was not "a right". Hence, bearing arms in Pennsylvania was not intended as limited to the militia.³⁵

³⁵ Halbrook, *The Founder's Second Amendment*, 2012: 137

The political distance between the two new states was clearly defined in this particular juncture. In Virginia, the committee was composed – and the rules made – by Republicans, while in Pennsylvania the Radicals repudiated Mason’s Harringtonian model in favor of the Jeffersonian formula of individual right to arms.

MASSACHUSETTS

Massachusetts was again the state where something new was experimented. Here a Constitution appeared later than those of Virginia and Pennsylvania, namely in 1780. Its main author, John Adams, was in the group of Republicans and feared that excessive democracy would leave to anarchy. He remarked that the Pennsylvania constitution of four years earlier was “so democratical that it must produce confusion and every evil work.”³⁶ The Bill of Rights he drafted drew heavily upon that of Virginia. However, he chose a different manner to cope with the issue of arms and militia, by recognizing for the first time a right to “keep” as well as to “bear” arms – as we read today in the Second Amendment. Considering the different meaning of the verbs used, “to keep” and “to bear”, it seems Adams wanted to grant at the same time a right of the people to have their own, private, arms and a right to enter in the militia. Adams’ mistake that brought to reject his proposed solution was to qualify the entire provision by recognizing it only for “common defense”. The Adams’ attempt to

³⁶ The Pennsylvania Constitution was something profoundly different from what the colonists had been experienced until 1776. It established a unicameral government and abolished property requirements for voting as well as for holding office. For an in depth analysis: Poore, Perley, *The Federal and State Constitutions, Colonial Charters, and other Organic laws of the United States*, Washington: Union: Lawbook Exchange Ltd, 2003, vol.1

conciliate the two conflicting parts of the right was ill fated since the limitation included in the second part of the provision makes the first one void of a real liberty for the people.

The outcome of the first Continental Congress was the “Articles of Confederation and Perpetual Union”, formally ratified by all 13 states only in 1781. However, the Articles had a short life. On February 1787, the Congress called a convention aimed at revising some provisions of the Articles. Nevertheless, the states representatives ended up in drafting a completely new Constitution.

Both Federalists and Anti-federalists agreed on the inextricable link between arms and liberty. Indeed, both believed that the main danger to the republic was tyrannical government and the ultimate check on it was an armed population. However, Article 1, section 8 concerning the powers of Congress to raise a standing army and its power over the militia, posed problems. Objections were raised that there was no check against standing armies in time of peace. A check against this danger was provided by the existence of the militia and the Congress was given the power to organize, arm and discipline the militia and to govern such parts as may be called into federal service.³⁷ During the ratification process, both Federalists and Anti-Federalists used pamphlets to influence the decision to ratify or not. Anti-federalists advocated the use of a well-regulated militia maintained by each state providing for the nation’s defense, instead of a standing army. Their fear was that creation of a select militia, armed by and loyal to the federal government would be accompanied by disarmament of people in general.

³⁷ Vandercaay, David E., “The History of the Second Amendment”, *Valparaiso Univ. Law Review*, 1994

This fear was prevalent especially in New York and Virginia, two of the biggest states without the ratification of whom the Constitution could not enter in force even though the minimum of 9 states out of 13 had been reached. The first concern of the Virginian George Mason was the protection of the militia. During the Virginia Convention in June 1788, Mason had a long speech saying that

unless there be some restrictions on the power of calling forth the militia, to execute the laws of the Union, suppress insurrections, and repel invasions, we may very easily see that it will produce dreadful oppressions. It would be to use the militia to a very bad purpose, if any disturbance happened in New Hampshire, to call them from Georgia. This would harass people so much that they would agree to abolish the use of militia and establish a standing army. I conceive that general government ought to have a power over the militia, but it ought to have some bounds. (...) Why should we not provide against the danger of having our militia, our real and natural strength, destroyed? (..) We need not give them [the general government] power to abolish our militia. If they neglect to arm them and prescribe proper discipline, they will be of no use.³⁸

Madison was able to tranquilize the anti-federalists of Virginia promising the adoption of a Declaration of Rights as constitutional amendments. In New York, Alexander Hamilton advocated adopting the Constitution and amending it, if necessary. It ratified, but made clear that the people had a right to keep and bear arms and that the militia was to include all the people capable of bearing arms, not just selected few.

³⁸ Cogan, Neal H., ed. *The complete Bill of Rights: The Drafts, Debates, Sources, & Origins*, New York: Oxford University Press, 1997: 192-194

The new Constitution entered into force in 1789. Now it was the time for the framers to adopt a Bill of Rights, as promised to the Anti-federalists. The first amendment proposed by James Madison was

that the right of the people to keep and bear arms shall not be infringed, a well-armed and well-regulated militia being the best security of a free country.³⁹

Madison inserted the amendment in Article 1, section 9 between clauses 3 and 4 together with the rights to freedom of the press, religion, and speech. Section 9, in fact, concerns limitations on Congress' power over citizens. If he had viewed the right as the states' right, he would have placed the amendment in Article 1, Section 8, clause 16, concerning Congress' militia powers.

Madison knew that the militia statement standing alone would be unacceptable to groups calling for the recognition of an individual right – Pennsylvania minority, New Hampshire majority, Sam Adams and his supporters. On the contrary, an amendment proposing the sole individual right to keep arms would have not been accepted by the militia supporters in Virginia, for example.

Hence, the only path Madison could take was a merge of the two provisions. He had to bring in all the states, satisfying the requests of all of them, or there would have been other oppositions, the ratification of the Bill of Rights in question and the Union jeopardized. The militia component of the text proposed was taken from the Virginia Bill of Right. The right to arms may have been drawn almost verbatim from the Massachusetts Declaration of Rights,

³⁹ *Ibid.*, p. 169

employing its broad reference to rights to keep as well as to bear arms, except for the “for the common defense” qualification. A Medisonian touch adding the words “shall not be infringed” was all that was needed.⁴⁰

The language used by James Madison pleased the delegates of the states. Pennsylvanians had their right to bear arms recognized, the Massachusetts contribution was acknowledged with the words “to keep” in the text, the militia clause satisfied the Harringtonians. Radicals and Conservatives were reconciled in this amendment.

The amendment proposed by Madison underwent some editing, in both the House and Senate. In the House, Madison’s text became

A well-regulated militia, composed of the body of the people, being the best security of a free state, the right of the people to keep and bear arms, shall not be infringed.⁴¹

The provisions were inverted, as if the “shall not be infringed” was not to refer only to the right to keep and bear arms, like in the first proposal, but to the militia statement too. Moreover, the House added a qualification about the composition of the militia. The Senate, instead, replaced the statement that the militia was “the best security” of a free state with a stronger statement that it was “necessary” in that security.

⁴⁰ Hardy, *4 Journal Law & Politics*, 1987-1988: 54-55

⁴¹ Cogan, *The complete Bill of Rights*, 1997: 170

8. *The destiny of the militia*

The militia was, indeed, an important component in American history. Minutemen, citizen-soldiers of the colonial militia are considered as key figures of the 18th century Revolution. They were the first to fight for America and thus they are the symbol of the fight in the name of freedom. Militia can be thought as a means through which the attachment of American society to the right to keep and bear arms grew in 18th century. The ideal of the citizen-soldier, protecting his home and state without relying to a central government, was the best way for the establishment of a democracy and the avoidance of tyranny. It was the bulwark of liberty.

At the Constitutional Convention, the states' militia passed under federal control through Article 1, section 8, clause 15 and 16

The Congress shall have the Power ..
To provide and calling for the Militia to execute the Laws of the Union, suppress Insurrections and repeal Invasions;
To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of Officers, and the Authority of training the Militia according to the discipline prescribed by Congress.⁴²

The 1792 Militia Act established what the militia was intended to be:

That each and every free able-bodied white male citizen of the respective States, resident therein, who is or shall be of age of eighteen years, and under the age of forty-five years (except as is herein after excepted) shall severally and respectively be enrolled in the militia, by the Captain or Commanding Officer of the company,

⁴² *Constitution of the United States of America*, Article I, Section 8. At: http://www.senate.gov/civics/constitution_item/constitution.htm

within whose bounds such citizen shall reside, and that within twelve months after the passing of this Act.⁴³

However, the Revolutionary war were the rise and fall of militias. Indeed, if in 1774 militiamen were the first to embrace their arms to fight the enemy, in 1812 they demonstrated their incapacity to defend the country against regular troops. Federal utilization of militia was based upon the idea that each state had one organized, armed and equipped, and capable of turning out quickly for duty upon the call of the government.⁴⁴ They were nothing of the sort. War in 1812 was the decline of militia and the rise of regular troops. At the end of the conflict, opinion on the credit of the success were conflicting, due to the victory of Andrew Jackson militia in the final battle of New Orleans, thanks to which an almost disastrous performance became a glorious deed.

With the ending of the war, Congress focused its attention on reducing “moderately, limitedly and gradually” the regular army.⁴⁵ The other issue that the House and the Senate had to deal with was which role militia should play in national security. Despite the persistence of the myth, the concept of the militia as a main defense force was eroded in the last three year of war. The Army Reduction Act of 1815 was a step forward toward a professional army and a step behind in national defense for the militia.⁴⁶

⁴³ *The Militia Act*, May 2, 1792. August 28, 2014 at: http://www.constitution.org/mil/mil_act_1792.htm

⁴⁴ Skeen, Carl Edward, *Citizen Soldiers in the War of 1812*, Lexington: University Press of Kentucky, 1999: 39

⁴⁵ *Ibid.*, 176

⁴⁶ *Ibid.*, 176-178

By mid-nineteenth century, compulsory militia training was abolished in the American states.⁴⁷ The number of militiamen extremely decreased and states faced difficulties in raising men in 1846 for the Mexican war. The militia systems of the Union and Confederacy in 1861 presented similar problems. However, in both the North and South, governors and legislatures animated the militia systems by appropriating fund to prepare for war, organizing, equipping and arming volunteer companies.⁴⁸ Some Northern states reactivated their compulsory militia at the dawn of the war.

Nevertheless, once the conflict ended, from 1866 the militia system disappeared. In following thirty years, the state soldiery underwent an alteration that brought to the rise of the National Guard, marked by standing military budgets, organization of local companies into higher-level organizations and state inspection and supervision.⁴⁹ With the outbreak of the Spanish-American War, the National Guard represented the most efficient and best trained, armed and equipped soldiery the states had ever fielded. After the proof of its efficiency, this new settlement was federalized at the beginning of the 20th century, through the 1903 Militia Act. Indeed, the National Guard today exists as both a federal and a state body. As a federal force, it provides ready, trained units as part of America's field forces,⁵⁰ as its motto declares, "Always ready, always there". In its state role, the National Guard

⁴⁷ Delaware abolished compulsory militia training in 1829; Massachusetts in 1840; Rhode Island in 1843; Maine, Vermont, and Ohio in 1844; Michigan and New York in 1846; Connecticut and Missouri in 1847; Pennsylvania in 1849; Louisiana and New Hampshire in 1850.

⁴⁸ Cooper, Jerry, *The Rise of the National Guard: The Evolution of the American Militia, 1865-1920*, University of Nebraska Press, 1997: 17

⁴⁹ *Ibid.*, 20

⁵⁰ Doubler, Michael D., *The National Guard: an illustrated history of Americas citizen-soldiers*, Dulles: Potomac Books, Inc., 2007: 2

protects life and property and preserves peace, order and public safety.⁵¹ Its dual role, at the service of the state and the federation but separate and distinct from the forces of the central government, give the National Guard the old fascination of colonial militia, as protector of the citizens against the abuse of power of the central government. This is far from truth. However, it is one of the myths surrounding the ideal of the American citizen combating alone for his rights of freedom.

Going through this historical analysis it is clear that the intentions of the amendments to the Constitution – including the Second Amendment – were not univocal. There were several elements driving the interests of Americans. Historical heritage, Indian tribes, European troops, slaves, states' interests, federal power. The two provisions were considered as two separate entities, put together to please two opposite factions, whether Radicals and Conservatives, Federalists and Anti-federalists, or Northerners and Southerners. To consider the two parts as a single piece would not enable us to understand its real intentions. Thinking of them as depending on each other would be an error. In particular, to take the right to arms subsumed within militia recognition would annihilate what was intended as an individual right. As David T. Hardy defines it, the Second Amendment is a bridge between the decline of the Renaissance concept of a republic and the rise of the liberal democracy.⁵²

Still, if the amendment was influenced by factors that were extremely relevant at that time giving Americans the right to defend themselves and their territory, what right is it

⁵¹ *Ibid.*

⁵² Hardy, 4 *Journal Law & Politics*, 1987-1988

protecting today? And if it was a bridge between past and future, now that the United States of America has become the liberal democracy par excellence, now that the bridge has been crossed, how do we have to consider the Second Amendment?

II

The Amendment in Courts and Codes

*“A court has no license to make [a text] do
what it was not designed to do”*

Antonin Scalia, *D.C. v. Heller*, Majority Opinion

Since the adoption of the Second Amendment, history has gone forward and society and culture developed. As we have seen, in 1791, the Second Amendment was the result of fears of a despotic central power, soldiers – seen as a threat for the liberty of citizens –, internal and external threats, and the attempt to please antifederalists at the dawn of a new political structure.

More than two hundred years later situation has changed. Those fears have no reason to exist: Indians, slaves, English, Spanish, and French are no longer dangers for the security of citizens and there is no longer a political faction opposing the Union. Nevertheless, the Second Amendment still stands with its uncertainties and syntactical misunderstandings.

Decade after decade, conflicting interpretations came out. Is it a State right? Of the people? And if so, which people? What can they keep and bear? Americans in the twentieth century have wondered what right was actually described in those two lines, detecting the intentions of Founding Fathers and at the same time trying to understand the complex syntax of the amendment.

The Supreme Court played a fundamental role during the 19th and 20th century in orienting the understanding of the amendment, even though groping in the darkness of uncertainty for too long, and coming to a clear and univocal interpretation just in 2008. Meanwhile, the new states of America had to face the issue in their Constitutions and Bill of Rights, deciding whether to include the right to keep and bear arms and, if so, with which reading. Even after having overcome all these centuries-old enigmas, new debates were – are – always around the corner. Crime rates, violence, gun control have been a common ground on which the two parties in America – Democrats and Republicans – fight to gain consensus, becoming a fundamental aspect of their ideologies. In the following pages, cases and debates will be analyzed in order to build the legal and political frame to understand the right to keep and bear arms in the United States.

1. A difficult comprehension (or Much Ado about...a comma)

One of the main reasons of the debate over the right to keep and bear arms consists in the words chosen for the Second Amendment to the Constitution. If at the end of the 18th

century, the solution found to please conservatives, radicals, liberals and others seemed the best one, for contemporary scholars the Amendment is almost a riddle preventing a clear and commonly shared interpretation.

The very syntax of the amendment represents the first lumbering obstacle to this end, being so incline to different readings due to punctuation and meaning of some words. The second comma following the statement “a well-regulated militia, being necessary for a free state,” has been the origin of a long debate. Individual-right readers see in that comma a real break of the sentence in two parts, namely a “perambulatory” – the militia clause – and an “operative” part – the right to keep and bear arms –, the real core of the amendment. On the other side, collective-right readers stress the fact that in 18th century, punctuation was not used as today, and commas usually represented a pause for breathing, therefore the Amendment was intended to be read in its entirety. An example of such a pause is in Article III, section 1 of the U.S Constitution: “The judicial power of the United States, shall be vested in one Supreme Court.”⁵³ In order to understand better the confusion the position of such a comma generates, I would like to draw the attention on Article I, section 17 of the Hawaii Constitution on the right to keep and bear arms. This provision, enacted in 1959, is taken verbatim from the Federal Bill of Rights, with one little difference:

⁵³ Baron, Dennis, *Guns and Grammar: The Linguistic of The Second Amendment*, Paper presented at the annual meeting of the The Law and Society Association, Grand Hyatt, Denver, Colorado, May 25, 2009: 2. Available at <http://www.english.illinois.edu/-people-/faculty/debaron/essays/guns.pdf>

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.⁵⁴

The two lines here are identical to those of the Amendment except for the first comma following “a well-regulated militia”, omitted from the Hawaiian version. The way in which Art.1, section 17 can be read is very different or at least easier, since the first sentence seems to be clearly a sort of preamble for the second operative part.

Another argument advanced by the collective readers that consider the militia clause as a restriction on the right to keep and bear, is that in the 18th century the phrase “bear arms” was tied to military context, not to hunting or self-defense. Indeed, there are many evidences that in the past this phrase primarily meant “military service”. Nineteenth- and twentieth-century dictionaries that record the phrase agree that bear arms refers either to military service or to the wearing of heraldic insignia.⁵⁵ The Oxford English Dictionary (1888, s.v. bear, vb.) defines “bear arms against” as “to be engaged in hostilities with.” Funk and Wagnall’s New Standard Dictionary (1929, s.v. bear, vb.) has “to do military service,” and Webster’s Second New International Dictionary (1934, s.v. bear arms) defines the phrase as, “To serve as a soldier.” More recently, though, Webster’s Third (1961, s.v. bear) moved away from the military reference, perhaps in response to a broadening of the phrase “bear arms” by today’s gun rights advocates, redefining the phrase more generally as “to carry or possess arms.”⁵⁶ In adopting their own Constitutions, Pennsylvania and Ohio seemed to be

⁵⁴ Hawaii Constitution, Article 1, section 17, 1959

⁵⁵ Baron, D., *Guns and Grammar*, 2009:12

⁵⁶ *Ibid.*

aware of the Second Amendment's flaws, seeking a remedy by extending the understanding of "bear arms" to include self-defense. In both cases we can read

That the people have a right [PA: the right of the citizens] to bear arms for the defence of themselves and the state;⁵⁷

Still, these represent rare cases in the scenario of new American States' charters, and the framers of the Federal constitution ignored such a minority, maintaining the original structure in the amendment. The problem over the two words is something that the opponents of gun control bypass responding that there has been no change in the meaning of the words or in the usage that would affect the significance of the amendment. They assume that "bear arms" was to be intended as a synonym of "carrying arms" since the two words had a military meaning only if followed by "against", an analysis expressed in detail by Justice Antonin Scalia in *Heller*, as we will see later.

Another word over which the two parts are in disagreement is "people" in the expression "the right of the people". Collective-right readers consider "people" as a reference to the collective body of citizens, since in the Bill of Rights when a right is conferred to an individual the term "person" is used. Individualists, on the other hand, object that the word is used elsewhere in the Bill of Rights and in the original Constitution – "right of the people" is used in the First, Fourth and Ninth Amendment, granting individual rights.⁵⁸ Thus, "the sentence does not restrict the right to keep and bear arms, nor does it state or imply possession of the right elsewhere or by others than the people; it simply makes a positive statement with

⁵⁷ Ohio Constitution, Art. VIII, section 20, 1802; Pennsylvania Constitution, Art.1, section 21, 1790

⁵⁸ *District of Columbia v. Heller*, 554 U.S. 570, Majority Opinion

respect to a right of the people”, says Professor Roy Copperud – an authority on the use of the English language – conveying the whole idea of the individual-right readers.⁵⁹

In conclusion of this brief analysis, we could say that the individual right view has been predominant, especially due to its historical background. On the other hand, the state’s right position has been adopted very rarely in legal context – only one state and “a half” adopt this position⁶⁰ – and the 2008 decision of the Supreme Court declared the individual-right readers winner of the debate – even if still challenged.

The profound discrepancy among the historical background, the grammar and the legal understanding of the Amendment is clear. It endured that way for long, despite the intervention of the Supreme Court – entitled of the Judicial Review – on the matter. The federal court shed some light on the U.S. in 2008 in the stunning case *District of Columbia v. Heller*. However, the path walked by the nine Justices of the Court was not easy and, as said before, took a very long time.

2. *The Supreme Court Rulings*

Since the adoption of the Bill of Rights in 1791, the Supreme Court had to rule on few legal cases related to the right to keep and bear arms and the Second Amendment, and the

⁵⁹ See the interview to Roy Copperud on the meaning of the text of the Second Amendment “The Unabridged Second Amendment” by Neil J. Schulman, The New Gun Week and Second Amendment Foundation, 1991, available at http://www.constitution.org/211/schol/2amd_grammar.htm

⁶⁰ As figure 1 will show, only Massachusetts and Kansas – until 2010 – interpreted the right as collective. However, Kansas amended §4 of its Bill of Rights by referendum in 2010.

majority of them date back to the last years of the 1800s. In the twentieth century there was just one case, after which a long silence over the matter began, until the turning point of 2008.

Controversies about the right to keep and bear arms arose mainly from 1868, year of the adoption of the XIV Amendment. Section 1 of this amendment contains the Privileges or Immunities clause and the Due Process clause, fundamental since they enshrine the protection at Federal level of the civil rights of citizens. From Amendment XIV, sect. 1

[...] No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law [...]

At the time when the states of America were just out of the Civil War, the *incorporation amendment* represented the will to protect the rights of the newly free blacks from the Black Codes enacted in the Southern states.⁶¹ After the adoption of this amendment, the firearms regulations of states were challenged as violations of the right declared by the Second Amendment.

2.1 *UNITED STATES v. CRUIKSHANK AND PRESSER v. ILLINOIS*

Cruikshank and *Presser*, two cases of 1875 and 1886 respectively, were the first in which the Supreme Court expressed opinions about the Second Amendment, after the

⁶¹ The XIV Amendment was the second of the three Reconstruction amendments (XIII,XIV,XV) ending slavery and granting civil rights to blacks.

adoption of the Fourteenth. The general outcome of the 19th century cases was that the Second Amendment does not prohibit state regulation on firearms.

United States v. Cruikshank (1875) occurred in the state of Louisiana in the Reconstruction era, few years after the end of Civil war, in a difficult period for the settlement of the Freedmen rights. It arose out of the Colfax Massacre, when a group of armed white Democrats killed 100 free blacks. It occurred on April 13, 1873, in Colfax, LA. The reason was the election for the governor of Louisiana of 1872, won by the Republican of African lineage P.B.S. Pinchback. White Democrats, angry over the defeat, vowed revenge. In Colfax Parish, they organized a white militia to directly challenge the mostly black state militia under the control of the governor. On April 13, Easter Sunday, more than 300 armed white men including members of white supremacist organizations such as the Knights of White Camellia and the Ku Klux Klan, attacked the Courthouse building.⁶² The murderers were charged under the Enforcement Act of 1870, also known as the First Ku Klux Klan Act, aimed at combating violations of the civil rights gained by African Americans after the War. Among the charges brought against the group of Democrats there was also the obstruction of the freedmen's right to keep and bear arms.

Nevertheless, the Supreme Court's decision in this case turned out to be against the victims of the massacre. Indeed, as referred to the right to keep and bear arms, the opinion of the Court, delivered by Mr. Chief Justice Waite, was

This is not a right granted by the Constitution. Neither is it in any manner dependent upon that instrument for its existence. The second

⁶² The Colfax Massacre. See Charles Lane, *The Day Freedom Died: The Colfax Massacre, the Supreme Court, and the Betrayal of Reconstruction*, New York: Henry Holt and Company, 2008.

amendment declares that it shall not be infringed; but this, as has been seen, means no more than that it shall not be infringed by Congress. This is one of the amendments that has no other effect than to restrict the powers of the national government, leaving the people to look for their protection against any violation by their fellow-citizens of the rights it recognizes, to what is called, in *The City of New York v. Miln*, 11 Pet. 139, the 'powers which relate to merely municipal legislation, or what was, perhaps, more properly called internal police,' 'not surrendered or restrained' by the Constitution of the United States.⁶³

Thus, the Supreme Court ruling was limited to the statement that the Amendment, while granting an individual right, does not protect such individuals against private actions *infringing* the right but only against Congress.

The Supreme Court in *Presser v. Illinois* gave the same opinion on the Second Amendment. Herman Presser, the plaintiff in error, was indicted on September 24, 1879 in the Criminal Court of Cook County, Illinois, for a violation of the Military Code of that State.⁶⁴ The Article of the Code violated by Presser stated that it was unlawful

for any body of men whatever, other than the regular organized volunteer militia of the State, and the troops of the United States, to associate themselves together as a military company or organization, or to drill or parade with arms in any city, or town, of this State, without the license of the Governor thereof, which license may at any time be revoked.⁶⁵

Therefore, Presser was convicted for parading and drilling in the city of Chicago with a non-recognized military company, without the required license from the Governor of Illinois.

⁶³ U.S. Supreme Court, *United States v. Cruikshank*, 92 U.S. 542 (1875)

⁶⁴ Cottrol, Robert J., *Gun Control and the Constitution. Sources and Explorations on the Second Amendment*, New York & London: Garland Publishing, Inc., 1994: 12

⁶⁵ *Ibid.*

The case was brought to the Supreme Court that rejected the statement⁶⁶ of the plaintiff in error. Indeed, Presser claimed that the Article of the Military Act of Illinois under which he was indicted was against the Constitution of the United States of America. Mr. Justice Woods expressed the opinion of the Supreme Court according to which

[...] the sections under consideration, which only forbid bodies of men to associate together as military organizations, or to drill or parade with arms in cities and towns unless authorized by law, do not infringe the right of the people to keep and bear arms. But a conclusive answer to the contention that this amendment prohibits the legislation in question lies in the fact that the amendment is a limitation only upon the power of Congress and the National government, and not upon the States. [...]⁶⁷

The Supreme Court again declared that the challenged state legislation did not fall within the Second Amendment, since it was not a limitation on the States, but on Congress. The subject matter of the Amendment is only the right of *individuals* to possess arms; constitutional provisions relating to *group* arm bearing appear only in article I, sections 8 and 10.⁶⁸

The doctrine expressed in *Cruikshank* and *Presser* cases was the prevalent 19th century interpretation, when the Bill of Rights was still considered not applicable against the States

⁶⁶ Presser argued the following Federal points: I. the Illinois act is in conflict with Article I section 8, subdivisions 12, 14, 15, 16 and 18 of the Constitution.; II. It is also in conflict with Article 1, section 18, subdivision 3, of the Constitution; III. It is also in conflict with Article II of the Amendment to the Constitution; IV. It is also in conflict with Amendment IX to the Constitution. (*Presser v. Illinois*, 116 U.S. 252, 1886)

⁶⁷ The Supreme Court, *Presser v. Illinois*, 116 U.S. 252

⁶⁸ Kates, Don B. Jr., "Handgun Prohibition and the Original Meaning of the Second Amendment", *Gun Control and the Constitution*, Cottrol, Robert J., ed. New York & London: Garland Publishing, 1994: 108

and the Privileges or Immunities clause of the Fourteenth Amendment was limited to the federal government.

2.2 *UNITED STATES v. MILLER AND OTHER 20TH CENTURY CASES*

In the United States, the 1930s were the years of Prohibition and gang wars. The National Firearms Act of 1934 aimed at reducing crime by regulating the possession of firearms, imposing a tax on certain firearms – the title II weapons like sawed-off shotguns, short-barreled and others, as we will see later – that must be registered at the Bureau of Alcohol, Tobacco, Firearms and Explosives (BATFE). The NFA prohibited the sawed-off shotgun, widely identified at that time as “gangster weapon”⁶⁹ and in general, it made hidden firearms risky and expensive.⁷⁰ The Arkansas and Oklahoma state police stopped Jack Miller and Frank Layton on April 18, 1938, two bank robbers and they were found in possession of an unregistered sawed-off shotgun and arrested for violating the National Firearms Act.⁷¹

The district court dismissed the charges, holding the NFA violated the Second Amendment.⁷² Nevertheless, the Supreme Court reversed the district court decision, stating that the Amendment, although granting the right to keep and bear arms, is applicable only to those weapons commonly used for militia purposes.⁷³ Citing the opinion expressed by Mr. Justice McReynolds

⁶⁹ *Ibid.*, 109

⁷⁰ Frye, Brian L., “The peculiar case of United States v. Miller”, *N.Y.U. Journal of Law & Liberty*, 2008: 61

⁷¹ *Ibid.*, 48

⁷² *Ibid.*, 49

⁷³ Kates, Don B. Jr., “Handgun Prohibition and the Original Meaning of the Second Amendment”, 1994: 110

[...]We cannot say that the Second Amendment guarantees the right to keep and bear such an instrument. Certainly it is not within judicial notice that this weapon is any part of the ordinary military equipment or that its use could contribute to the common defense. [...]⁷⁴

The S.C. statement, the first one entirely focused on the Second Amendment, was widely misunderstood. Indeed, individualists attacked the opinion pointing out that it was rendered on the basis of Government's one-sided briefing alone.⁷⁵ On the other side, collectivists claimed the opinion of the Court to be the proof of their thesis, focusing on the use of the words "military equipment". They thought the Supreme Court opinion meant that since a sawed-off shotgun was not a weapon used by the militia, it was not allowed. Reading the S.C. words in this way it seemed that the Second Amendment interpretation was that only militiamen could bear arms – since only ordinary military arms were permitted. Actually, the federal court did recognize an individual right to keep and bear arms, but not the right to bear *that kind* of weapon. That because the real subject matter of the Amendment is not about *what* kind of weapon people can use. Moreover, the fault in collectivist consideration is clear with the ongoing of the Court's opinion. Mr. Justice Reynolds stated that

The signification attributed to the term Militia appears from the debates in the Convention, the history and legislation of Colonies and States, and the writings of approved commentators. These show plainly enough that the Militia comprised all males physically capable of acting in concert for the common defense. "A body of citizens enrolled for military discipline." And further, that ordinarily when called for service these men were expected to appear *bearing*

⁷⁴ The Supreme Court, *United States v. Miller*, 307 U.S. 174 (1939)

⁷⁵ Kates, Don B. Jr. "Handgun Prohibition and the Original Meaning of the Second Amendment", 1994: 110

*arms supplied by themselves and of the kind in common use at the time.*⁷⁶

From these words, it seems that civilians could own arms, even in time of peace, when militia was not employed. Thus, far from upholding the state’s right position, the Court clearly recognized the defendant’s claim to be under the protection of the Amendment, but at the same time, the Court’s focus on weapons suggests limitations on the kinds of arms that the amendment guarantees to individuals.⁷⁷

Today the opinion of the Supreme Court in *Miller* seems easier to understand, as we are conscious of the evolutions that the right to keep and bear arms has gone through the last decade. Nevertheless, in the aftermath of the Court’s 1939 opinion, an ultimate answer to the question “individual right or state’s right?” was still difficult to get. Fortunately, during the 20th century the Supreme Court has addressed the Second Amendment in nineteen other cases involving other constitutional rights, going through which the position expressed in *Miller* can be better understood. The table below indicates the opinions given on the Second Amendment by the Justices of the S.C., if they supported the individual right view and if the Amendment was quoted with or without the militia clause.

*Table 1 – List of cases of 20th century related to the Second Amendment*⁷⁸

<i>Case name and year</i>	<i>Main issue in case</i>	<i>Supportive of individual right in 2nd Amendment</i>	<i>Main clause quoted without militia clause</i>
---------------------------	---------------------------	-------------------------------------------------------------------	--------------------------------------------------

⁷⁶ The Supreme Court, *United States v. Miller*, 307 U.S. 74 (1939)

⁷⁷ Kates, Don B. Jr., “Handgun Prohibition and the Original Meaning of the Second Amendment”, 1994: 111-112

⁷⁸ The table is taken from Kopel, David B., *The Supreme Court thirty-five other gun cases: what Supreme Court has said about the Second Amendment*, Saint Louis University Public Review, 1999

Adamson v. Calif 1947	Incorporation of 5 th Amendment	Yes	Partial quote
Johnson v. Eisenger 1950	5 th Am. Applied to trial of enemy soldier	Yes	Partial quote
Knapp v. Schweitzer 1958	Incorporation of 5 th Amendment	Yes	Partial quote
Poe v. Ullman 1961	14 th Amendment	Yes	Partial quote
Konigsberg v. State Bar 1961	1 st Amendment	Yes	Partial quote
Malloy v. Hogan 1964	Incorporation of 5 th Amendment	Yes	No quote
Duncan v. Louisiana 1968	Incorporation of 6 th Amendment	Yes	Partial quote
Burton v. Sills 1969	Challenge to state gun licensing law	Ambiguous	No quote
Laird v. Tatum 1972	Justiciability	Ambiguous	Partial quote
Adams v. Williams 1972	4 th Amendment	No	Full quote
Roe v. Wade 1973	14 th Amendment	Yes	Partial quote
Moore v. East Cleveland 1976	14 th Amendment	Yes (But contrary opinion expressed by Justice Powell after retirement)	Partial quote
Lewis v. U.S. 1980	Statutory interpretation of Gun Control Act of 1968	Ambiguous, but probably not. If an individual right, less fundamental than some others	Full quote
U.S. v. Verdugo-Urquidez	4 th Amendment applied to foreign national	Yes	Partial quote
Planned Parenthood v. Casey 1992	14 th Amendment	Yes	Partial quote
Albright v. Oliver 1994	14 th Amendment	Yes	Partial quote
Printz v. U.S.	Federalism	<i>Miller</i> did not decide the issue. Seems to support the individual right	Full quote

Muscarello v. U.S 1998	Federal statute interpretation	Yes	Partial quote
Spencer v. Kemna 1998	Article III case or controversy	Yes, but could possibly be read as referring to rights under state constitutions	No quote

Two outcomes are easy to catch. The individual right view was largely preferred over the collectivist one and the Amendment has been cited without mentioning the militia clause almost every time, pushing the state’s component of the Amendment in the background.

2.3 *DISTRICT OF COLUMBIA v. HELLER*

The case *District of Columbia v. Heller* in 2008 put an end – at least officially – to the centuries-old conundrum about the Second Amendment. In 1976, the new city council of D.C., in order to face a very high crime rate, passed the Firearms Control Regulation Act, the most restrictive gun-control act in the United States. From a legislative perspective, the D.C. Act had two goals, i.e. to reduce the potential for firearm-related crime and accidents, and to monitor more effectively the traffic in firearms.⁷⁹ Hence, it banned handguns and semiautomatic weapons from the District of Columbia. Private citizens had to register handguns they already owned. Guns had to be securely stored away and rifles and shotguns had to be kept unloaded. Log-gun owners had to take their guns apart or keep them locked

⁷⁹ Streissguth, T. *District of Columbia V. Heller: The Right to Bear Arms Case*, Melrose Park: Lake Book Manufacturing, Inc., 2011: 18-19

with a trigger guard, which prevents the gun from firing. For violating the law, gun owners could be fined or jailed, or both.⁸⁰

However, the ban on handguns failed to diminish the violence and murders in the streets of the federal district. Neither Police succeeded in protecting citizens from criminals. Residents in D.C. would go to Maryland or Virginia to buy guns and keep them at home illegally.

After 30 years of smuggling and unlawful holding of guns, the District of Columbia's Act came under the attention of the Supreme Court, when Dick Anthony Heller and five other Washington, D.C. residents⁸¹ challenged its constitutionality. Heller, a licensed Police Officer in the Federal District, who could carry a gun in federal buildings for his job, was not permitted to register or obtain a license to keep a handgun at home for self-defense.⁸² The six cases filed a lawsuit in the District Court but were dismissed by Judge Urbina. Nevertheless, the U.S. Court of Appeals for the D.C. Circuit reversed the decision considering the Firearms Act of 1975 unconstitutional. However, according to Judge Silberman, of the six plaintiffs only Heller satisfied standing requirements and he was the only one allowed to challenge the unfavorable federal trial court decision in the court of appeals.⁸³ In April 2007, the Heller case was brought before the Supreme Court by a petition for rehearing by the District and

⁸⁰ *Ibid.*

⁸¹ In addition to Heller, the five other plaintiffs were: Shelly Parker (active in trying to rid her neighborhood of drugs); Tom G. Palmer (defended himself with a 9mm against two men that offended him for his homosexuality); Gillian St. Lawrence (owner of several handguns, wanted to be able to use them for self-defense); Tracey Ambeau (living in a high-crime neighborhood, wanted a handgun for defense); George Lyon (wanted a handgun for self-defense).

⁸² Carter, Gregg L., *Guns in American Society: An Encyclopedia of History, Politics, Culture and Law – Second Edition*, Santa Barbara: ABC-CLIO, LLC, 2012: 233

⁸³ *Ibid.*, 234

Mayor Adrian Fenty. A long debate on the meaning of the Second Amendment opened again. At this time though, the outcome would have been a clear and definitive decision, unlike *Miller*.

The Supreme Court agreed with the decision of the Court of Appeal, declaring the Firearms Regulation Control Act of District of Columbia unconstitutional as violating the right of the people to keep and bear arms enshrined in the Second Amendment to the Constitution. Senior Associate Justice Antonin Scalia, the longest-serving justice – he was appointed by Ronald Reagan – and anchor of the Court’s conservative wing presented the majority opinion. Mr. Justice John Paul Stevens, more liberal and progressive, represented the dissenting.

Justice Scalia made a long and detailed analysis in order to prove that the Second Amendment protects an individual right to keep and bear arms. The Associate Justice went through a detailed grammatical study and an historical examination that did not omit any inconvenient facts – as Stevens did. On the long debated meaning of “bear Arms” Scalia said that at the time of the founding the word did have an idiomatic meaning of serving as a soldier, but in those cases it was followed by the preposition “against,” which was in turn usually followed by the target of the hostilities.⁸⁴ Then he turned to the historical evidence of the individual character of the right, examining English experience, something that Stevens considered irrelevant because it “contained no preamble or other provision identifying a narrow, militia-related purpose.”⁸⁵ Having dismissed the relevance of the

⁸⁴ Malcom, Joyce L., *The Supreme Court and the Uses of History: District of Columbia v. Heller*, 56 *UCLA Law Review*, 2009: 1388

⁸⁵ *District of Columbia v. Heller*, Supreme Court, 554 U.S. at 96

individual English right, Stevens found that the right to keep and bear arms for service in a state militia was also a pre-existing right, confusing a duty with a right.⁸⁶

Justice Scalia was able to present the majority opinion with great clearness and touching each doubtful point. Nothing was left in the uncertainty of the 20th century. He concluded

We are aware of the problem of handgun violence in this country, and we take seriously the concerns raised by the many amici who believe that prohibition of handgun ownership is a solution. The Constitution leaves the District of Columbia a variety of tools for combating that problem But the enshrinement of constitutional rights necessarily takes certain policy choices off the table. These include the absolute prohibition of handguns held and used for self-defense in the home. Undoubtedly some think that the Second Amendment is outmoded in a society where our standing army is the pride of our Nation, where well-trained police forces provide personal security, and where gun violence is a serious problem. That is perhaps debatable, but what is not debatable is that it is not the role of this Court to pronounce the Second Amendment extinct.⁸⁷

Heller represents a real break in the history of the right to keep and bear arms. Even though the debate is still alive, the Supreme Court of the United States established that the Second Amendment gives to Americans an individual right to have guns in their home. Any states' right ideology now has been demeaned to a secondary opinion.

But the "legal path" of the Second Amendment did not end in 2008. The decision in *Heller* established that the individual right extended to individuals in federal enclaves, such as Washington D.C., but the Court did not say whether the Amendment applies also to states

⁸⁶ Malcom, Joyce L., *The Supreme Court and the Uses of History*, 2009: 1390

⁸⁷ *District of Columbia v. Heller*, Supreme Court, 554 U.S. at 67

and local government.⁸⁸ The answer came two years later in another important case, *McDonald v. Chicago*.

2.4 MCDONALD v. CHICAGO

In 1982, Chicago became the only city in the 20th century to follow the example of the District of Columbia by passing a law banning handgun possession. After the landmark decision in *Heller*, the 1982 law came under attention thanks to some Chicago residents, some of whom had been crime victims that filed a federal suit against the city's ordinance.⁸⁹ Indeed, Chicago prohibits any person from possessing "any firearm unless such person is the holder of a valid registration certificate for such a firearm."⁹⁰ Because the registration of many handguns is prohibited, the law is a *de facto* ban on firearms. In 2010, Otis McDonald, a 76 year-old man who lived in a disreputable neighborhood. After having suffered several robberies, Otis decided to purchase a handgun for self-defense. Since the 1982 law prohibited registration of new guns and requiring at the same time all weapons to be registered, he was unable to legally possess a firearm. Thus, the plaintiff's claim was that the 1982 law violated both the Second and the Fourteenth Amendments, feeling that the Chicago Government deprived them of their privileges as American citizens.

⁸⁸ As we have seen, in previous cases the Second Amendment has been interpreted as a limit on the powers of the Congress and the right to keep and bear arms of the people as a *federal* right. In *D.C. v. Heller* the Supreme Court, even though stating that the Amendment enunciate an individual right and not a collective one, did not say if the right applies just to the District of Columbia that is not a State, thus under *federal* jurisdiction.

⁸⁹ Rose, V., "Summary of the recent McDonald v. Chicago gun case", August 20, 2010. Connecticut General Assembly WebSite, 1

⁹⁰ Chicago, IL, Municipal Code, section 8-20-040 (a) 2009, cited in Rose, V. "Summary of the recent McDonald v. Chicago gun case", since no more available in its original form

Once the case reached the Supreme Court, the question was thus if the guarantee enshrined in the Constitution was applicable also to state and local governments. In a 5-4 decision, the Federal Court decided the Second Amendment incorporated in the Fourteenth's Due Process Clause.⁹¹

The majority opinion, expressed by Justice Alito, focused on the role played in past centuries by the Fourteenth Amendment and in particular the Due Process Clause that protects citizens against arbitrary denial of life, liberty or property and interpreted by the Supreme Court to selectively incorporate various rights, i.e. make them enforceable against the states.

It is interesting to cite also the concurring opinion of Justice Thomas. Thomas, in fact, agreed that the right to keep and bear arms applies also to the states, but he asserts that the incorporation of the Second Amendment should be under the Privileges or Immunities Clause of the Fourteenth Amendment. The difference lies in the fact that an individual right incorporated through the Privileges or Immunities Clause is incorporated as a fundamental right contained in the Bill of Rights. As Thomas said in *McDonald*

I cannot agree that [the right to keep and bear arms] is enforceable against the States through a clause that speaks only to "process." Instead, the right to keep and bear arms is a privilege of American citizenship that applies to the States through the Fourteenth Amendment's Privileges or Immunities Clause.⁹²

⁹¹ Rose, V., "Summary of the recent McDonald v. Chicago gun case", 4

⁹² The Supreme Court, *McDonald v. Chicago* 561 U.S. 742 (2010)

The incorporation through the Due Process Clause, instead, considers a right incorporated against the states not because of the Bill of Rights, but because it is required by definition of due process that could be subject to changes.⁹³

The reason for the use of the Due Process Clause instead of the Privileges or Immunities Clause could be political. Declaring the right to have arms a “privilege” would have been probably too much for a right that is entrenched in American culture, but is also an element of discord between Republicans and Democrats, and the Supreme Court is not exempt from political identities.

3. *States’ Right to Keep and Bear Arms*

“What works in Chicago may not work in Cheyenne”. The words of 2008 Democratic platform give the opportunity to introduce the question of the right to keep and bear arms as regulated by the States of America. As we have seen, the opinion of the Supreme Court and the incorporation of the Second Amendment came only in 2008 and 2010. However, in framing their own Constitutions and Bill of Rights the states had the opportunity to take a stand on the right to keep and bear arms. Hence, looking at the fifty states charters as they were written and interpreted before the landmark S.C. decision, it is possible to detect four groups: a) states adopting individual-right reading, where self-defense right is protected; b)

⁹³ See Lawrence, Michael A., *Second Amendment Incorporation through the Fourteenth Amendment Privileges or Immunities and Due Process Clauses*, Missouri Law Review, 2007

states adopting collective-right reading, defending a state right; c) states with no provision at all; d) states where no decision had been taken.

It leaps out from the map that the majority of states opted for the individual-right interpretation of the right. Forty-one states' Constitutions express the right to self-defense more or less explicitly, mostly rewording the amendment or adding some clauses so as not to give space for misunderstandings. The Alabama constitution for example specifically states

That every citizen has a right to bear arms in defense of *himself* and the state⁹⁴

Six states have no right to arms in their Bill of Rights and in two others – Kansas and Massachusetts – the right was judicially nullified with the incorporation of the Second Amendment.⁹⁵ In Kansas, section 4 of the Bill of Rights used to read

§ 4. Bear arms; armies. The people have the right to bear arms for their defense and security; but standing armies, in time of peace, are dangerous to liberty, and shall not be tolerated, and the military shall be in strict subordination to the civil power.⁹⁶

Indeed, in 1905 case *City of Salina v. Blaksley*, James Blaksley convicted of illegally bearing a gun while drunk, claimed his right to keep and bear an arm under the U.S. Bill of Rights. However, the Kansas Supreme Court announced an innovative interpretation of the state constitutional arms provision: the purpose of the right was to protect the power of the state to control a militia.⁹⁷

⁹⁴ Alabama Constitution, Article I, section 26

⁹⁵ Kopel, D., Cramer, C., “State Court Standards of Review for the Right to Keep and Bear Arms”, *50 Santa Clara Law Review*, Santa Clara University, 2010: 1122

⁹⁶ *Kansas Bill of Rights*, Justia US Law, n.d. accessed 15 July 2014 at: <http://law.justia.com/constitution/kansas/rights.html>

⁹⁷ Kopel, D., Cramer, C. “State Courts Standards of Review”, 2010: 1160

In a 2010 constitutional referendum, Kansas voters approved an amendment to section 4 making clear that individuals' right to bear arms is not linked solely to "their defense and security".⁹⁸ Hence, today the Kansas Bill of Rights reads

§ 4. Individual right to bear arms; armies. A person has the right to keep and bear arms for the defense of self, family, home and state, for lawful hunting and recreational use, and for any other lawful purpose; but standing armies, in time of peace, are dangerous to liberty, and shall not be tolerated, and the military shall be in strict subordination to the civil power."⁹⁹

With this radical change in Kansas, the only case where the right to keep and bear arms is granted for "common defense" is not found in the Constitution of the Commonwealth of Massachusetts where its Article XVII reads

The people have a right to keep and to bear arms for the common defence.¹⁰⁰

Indeed, Massachusetts is the state in which gun ownership is most strictly regulated. All types of firearms need a license for carrying; this can be revoked at any time or restricted by the authority, as it deems proper. In the case *Commonwealth v. Depina* in 2010, the defendant, charged of having infringed the Massachusetts law for carrying a loaded gun without license, invoked the Second Amendment and the unconstitutionality of state laws

⁹⁸ Dinan, John, "State Constitutional Development", The Book of the States 2011, Council of State Governments, 2011: 7

⁹⁹ *Kansas Bill of Rights*, Kansas State Library, n.d. Accessed 12 July 2014 at: <http://kslib.info/826/Kansas-Bill-of-Rights>

¹⁰⁰ Constitution of the Commonwealth of Massachusetts, Article XVII

prohibiting citizens to carry a weapon.¹⁰¹ The judgment was that Article XVII of Massachusetts Constitution was intended to provide for the common defense and does not guarantee an individual right to keep and bear arms.¹⁰² After the incorporation of the Second Amendment in *McDonald v. Chicago* however, a judgment adverse like that in *Depina* is no longer acceptable. Still, the Massachusetts' Constitution has not been amended and Article XVII still enunciates a collective right.

Beyond state Constitutions, in order to further understand the relationship – or, better, the *love affair* – between Americans and weapons, it is necessary to look at gun laws and how firearms are regulated in codes at state and local level.

4. *The five Ws of firearms*

In the first chapter, we have seen *when* and *why* – at least the historical *why* – in the United States, the right to keep and bear arms came to be considered an individual and fundamental right. The next step is to answer the questions *what*, *who* and *where*.

WHAT

The most significant words of the Second Amendment are contained in the phrase “the right to keep and bear arms shall not be infringed”. Hence, what does “arms” mean? In

¹⁰¹ *Commonwealth v. Depina*, 922 N.E. 2d 778 (2010)

¹⁰² *Ibid.*

general, it is defined as a means of offense or defense a man can wear or take in his hands, especially firearms. The 1934 National Firearms Act (NFA) and the 1968 Gun Control Act (GCA), respectively Title II and Title I of Federal firearms law, define the term “firearms” as

“(1)a shotgun having a barrel or barrels of less than 18 inches in length; (2) a weapon made from a shotgun if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length; (3) a rifle having a barrel or barrels of less than 16 inches in length; (4) a weapon made from a rifle if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length; (5) any other weapon, as defined in subsection (e); (6) a machinegun; (7) any silencer (as defined in section 921 of title 18, United States Code); and (8) a destructive device.”¹⁰³

According to this definition, the term “firearms” include machine guns, rifles, shotguns, silencers, destructive devices (DDs) and any other weapon (AOW). The GCA added two further categories of firearms, i.e. short-barreled shotguns (SBSs), short-barreled rifles (SBRs). Today machineguns, silencers, DDs, SBSs, SBRs and AOW are referred to as “NFA weapons” or “Title II” weapons. They encounter several restrictions at Federal level as they require registration with the Bureau of Alcohol, Tobacco, Firearms and Explosives (BATFE), a background check of the applicant and the payment of a \$200 tax for making and transferring. The original purpose was to reduce the use of firearms in gang crimes since the tax amount imposed on NFA weapons was rather prohibitive when the law passed (3,478.64

¹⁰³ National Firearms Act, 26 U.S.C. Ch. 53, §5845, a

in today dollars). Nevertheless, with few exceptions, the tax is unchanged meaning that it has lost its primary purpose.

In 1986, the Firearms Owners' Protection Act (FOPA) revised the GCA. The main provision contained in the new federal law was to ban Machineguns. The ban prevents civilians from owning or transferring new machineguns. Nevertheless, according to the FOPA, an unlicensed civilian may acquire a machine gun with the approval of the BATF, paying the required tax. This means that American citizens can keep and bear any kind of light weapon.

Beyond federal law, many states have their own list of legal and illegal weapons. Nevertheless, significant restrictions are very rare. In Alabama, for example, the only illegal firearms are AOW's disguised as walking canes. In the majority of the United States there is no need for a permit or registration in order to own rifles, shotguns or handguns.¹⁰⁴ Assault Weapons¹⁰⁵ meet a partial ban in some states or require registration and permits for owning. In California to possess, import or purchase of Assault Weapons and .50 BMG rifles is illegal unless they were acquired before 1989.¹⁰⁶ In some states even NFA are prohibited or restricted, such as in Hawaii, Illinois, Indiana (only SBS are prohibited), Iowa, Minnesota, New York, Rhode Island and Vermont (silencers are prohibited).¹⁰⁷ All other state laws mirror federal law.

¹⁰⁴ Data from NRA-ILA, n.d, accessed 05 July 2014 at: <http://www.nraila.org/gun-laws/state-laws/>

¹⁰⁵ There are some controversies about the definition of "Assault weapons". It is a political term for semi-automatic weapons with a certain magazine capacity. It is different from "assault rifles", referred to military selective fire rifles.

¹⁰⁶ California Penal Code, Title 3, Division 10, Ch. 2 §30500 et sq.

¹⁰⁷ US State Pages, Handgunlaw.us, n.d., accessed July 2014 at: www.Handgunlaw.us

WHO

Even in this case, the Gun Control Act represents the main text containing the general rule about persons prohibited from possessing weapons. Quoting from 18 U.S. Code, §922,

d

(d) It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person— (1) is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year; (2) is a fugitive from justice; (3) is an unlawful user of or addicted to marihuana or any depressant or stimulant drug (as defined in section 201 (v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4731 (a) of the Internal Revenue Code of 1954); or (4) has been adjudicated as a mental defective or has been committed to any mental institution

This federal provision is mirrored in all states. Firearms can be owned by 18 or 21 year old citizens, depending on the state provision. It is unlawful to purchase firearms to a person convicted of a felony, mentally ill, drug addicts, alcoholics and so on. However, as we will see in the next chapter, it is difficult to prevent these people from keeping firearms and hurting others, especially if in some states is lawful to keep arms loaded.

WHERE

The last W to explain is *where*. Each state has its own regulations about areas in which arms are not allowed. Most of the United States colleges prohibit carrying guns in their premises. Nevertheless, there are some states where students and personnel are permitted to

bring firearms in classrooms, campus grounds, dormitories or parking lots. In Colorado, Idaho and Utah concealed guns are allowed by law, while only in eleven states the law prohibits to carry guns on campuses – Wyoming, Ohio, Illinois, Michigan, Massachusetts, New York, New Jersey, Missouri, Louisiana, Tennessee and New Mexico. Other states let schools and colleges set their own gun policies.¹⁰⁸

In addition to different policies in schools, on which recent shooting have focused attention in latest years, other places where civilians cannot carry arms are courthouses, detention facilities, prisons and jails, sport events not related with firearms.¹⁰⁹ This means that in any other daily situation, Americans can wear a gun, even during a family dinner in a restaurant, as Jason R. Hanson, a former CIA Officer and author of “The Covert guide of Concealed Carry” explains in one of his articles in which he teaches how to sit exactly in a restaurant when carrying a gun.¹¹⁰

The Hanson lesson leads to another important argument about firearms in the U.S.A. that could answer to *how* keep and bear arms. The way in which people can carry firearms, indeed, is a further argument of debate in U.S. and each state has its own rules about it.

5.1 Right to Carry Laws

Carrying a concealed weapon (CCW) indicates bring a weapon in public in a concealed manner, on his own person or in close proximity, making the firearm not visible to a casual

¹⁰⁸ www.handgunlaws.us

¹⁰⁹ Ibid.

¹¹⁰ Hanson, Jason R., “How to Carry Concealed in a Restaurant”, *USACarry.com*, 2 August 2012. Accessed 10 July 2014 at: <http://www.usacarry.com/how-carry-concealed-restaurant/>

observer. Symmetrically, “openly carrying a firearm in public” means that a person can wear a firearm in plain sight. The debate over concealed v. open carry is especially about which of the two is more effective in reducing crime and violence. Nowadays CCW is considered the basic right-to-carry-law as long as the more effective to this scope.

Individual states regulate in a different manner the right to carry a concealed weapon, depending on whether a permit/license is required and whether the issuing authorities *shall* or *may* grant it. In particular, states can be guarded as “Shall-issue” – meaning that upon completion of specified requirements, a law-abiding person shall be granted a permit to carry concealed firearms¹¹¹ – “May-issue” – meaning the authorities have some discretion over the issuance of a carry permit¹¹² – “**No-issue**” – **where** State law completely prohibits carrying firearms for personal protection outside the home or place of business.¹¹³ But it should also be noted that there are also states in which **no permit is required, i.e.** individuals are allowed to carry concealed firearms for lawful purposes without a permit or license;¹¹⁴

¹¹¹ Right to Carry Laws, NRA-ILA, n.d, Accessed 10 July 2014 at: <http://www.nraila.org/gun-laws.aspx>

¹¹² *Ibid.*

¹¹³ *Ibid.*

¹¹⁴ *Ibid.*

As we can see from the map, there are 36 shall-issue states and then few may-issue states. This shows the diffused idea in America that concealed carry is the best way to deter criminals, because knowing that potential victims may be armed will scare criminals.¹¹⁵ Indeed, in some states like Arkansas, New Jersey and South Carolina open carry is illegal. However, this position is easily disputed because concealed carry could also increase accidental injuries (as Hanson says, it could happen if you do not seat in the right way in restaurants!).

Nonetheless, in the United States, 18/21 year-old residents of a state can carry a concealed gun paying the appropriate license fee – in some cases a paltry \$10 – and in the majority of cases they can also have it loaded.¹¹⁶ In four states – Alabama, Alaska, Arizona, Vermont and Wyoming – residents do not need a permit to carry a concealed weapon. The consequence is no control over the background of possessors, no “economic sacrifice”, no barrier between a person and his/her gun.

On the other hand, in the United States open carry allows citizens within a state to carry firearms in plain sight. The details often vary by state. Some allow virtually unlimited open carry; others require a permit; some restrict where firearms may be carried – California allows open carry in rural areas.¹¹⁷ The right is thought to derive primarily from state

¹¹⁵ Welford, Charles F. et al., *Firearms and Violence: A Critical Review*, Washington, DC: The National Academies Press, 2004: 120

¹¹⁶ The meaning of the term “loaded” is not univocal but varies from state to state. A gun can be considered loaded when (a) a live round of ammunition is in the firing chamber of the weapon; (b) when a magazine with ammunition is inserted in the firearm, regardless of whether or not a round is in the chamber; (c) when a person has both the firearm and its ammunition in his or her possession, without regard as to whether or not a round is in the chamber or a magazine with ammunition is inserted into the firearm.

<www.handgunlaw.us/states>

¹¹⁷ Wilson, Harry L., “Open Carry Laws”, in Carter, Gregg L., *Guns in American Society*, 2012

constitutions and state statutes rather than from the Second Amendment.¹¹⁸ There are several states where open carry is illegal – Illinois, New Jersey, New York, Oklahoma, South Carolina, Texas, California, Florida, and Arkansas. Opinion over open carry is heavily divided. Alan Gottlieb, founder of the Second Amendment Foundation (SAF) said “I just don’t think it’s politically intelligent ... I would like to see gun owners think twice before they go to a rally like that with a firearm strapped on. It doesn’t necessarily put our best face forward.”¹¹⁹ Gottlieb simply stated that walking with a gun in plain sight would not suggest peaceful feelings to observers, hence contributing to create a general sentiment of fear towards armed people. On the other hand, OpenCarry.org – a pro-gun internet community focused on open carry laws – has its motto “a right unexercised is a right lost”¹²⁰ describing open carry as a not respected right of gun owners. The opinion of the pro-open-carry is that a criminal could be more easily discouraged in committing a crime if aware that the potential target is armed.

Concealed or in plain sight, Americans can easily own a gun and either option seems not to discourage criminals and psychopaths from grabbing whatever type of firearm and perpetrate the heinous crimes that in last years have shocked the United States and the world.

¹¹⁸ *Ibid.*

¹¹⁹ *Ibid.*

¹²⁰ www.OpenCarry.org, n.d., accessed 12 July 2014

III

Reds vs. Blues on Gun Rights

*“You will get my gun when you’ll pry it
from my cold dead hands”*

National Rifle Association motto

*“If there is even one thing we can do,
even one life we can save,
we have an obligation to try”*

Barack Obama, 2012

As we have seen, the Second Amendment contains one of the fundamental – and now recognized – individual rights of the American citizen. However, both the history of its origins and the more recent legal vicissitudes of the 21st century, proved that the issue is not one over which the United States agrees on. Indeed, the right to keep and bear arms represents one of the main topics of modern political debate between the Republican Party and the Democratic Party. In the period of the Cold War, the theme of

bilateral confrontation between the U.S. and the Soviet Union was the *leitmotiv* of foreign policy and Presidential debates all dealt with what could be the next move in order to get rid of the soviet threat. In the 1960s, Republicans and Democrats on National Defense showed completely different point of view about possibilities of disarmament. “The Republican Party is pledged to making certain that our arms, and our will to use them, remain superior to all threats. We have, and will continue to have, the defenses we need to protect our freedom,”¹²¹ declared the Republican Party presenting Richard Nixon at the 1960 presidential elections. In the same year, John Fitzgerald Kennedy was the candidate of the Democratic Party, which stated, “A fragile power balance sustained by mutual nuclear terror does not, however, constitute peace. We must regain the initiative on the entire international front with effective new policies to create the conditions for peace. [...]A primary task is to develop responsible proposals that will help break the deadlock on arms control. [...]This requires a national peace agency for disarmament planning.”¹²² The different position declared in National Defense foretold an attitude towards arms that would have mirrored even in an internal issue that at the end of the 1960s would have become a permanent feature of National Party Platforms: gun control. Indeed, with the approval of the 1968 Gun Control Act by the initiative of the Democrats, the Republicans began to feel that the Second Amendment right could be under attack very soon. Gun control measures and protection of the right to keep and bear started to be a permanent feature in political debates.

¹²¹ “The Republican Party Platform of 1960”, July 25, 1960, *American Presidency Project*. Accessed on September 8, 2014 at: <http://www.presidency.ucsb.edu/ws/index.php?pid=25839>

¹²² *Ibid.*

Thus, being pro or against gun control became an important characteristic defining the political profile of candidates to the White House and aspiring Senators and Representatives. Today there are Americans who can be defined “single-issue” voters, whose choice is almost totally led by the position of candidates on gun rights. This helps to understand the importance of the issue at the national level.

Such importance makes it obvious the presence of a large network of gun lobbies and organizations pitching in one side or the other of the dispute. The National Rifle Association (NRA) and its lobbying arm, the Institute for Legislative Action (ILA) is the oldest and most active pro-gun organization in Washington, DC. On the other side, in 2006 New York City mayor Michael Bloomberg created the movement of Mayors Against Illegal Guns, that imposed itself has the most important force as opposed to the NRA.

Hence, there are numerous forces on the field, but how did they move and are moving their pieces?

1. The Democratic Party

The 1960s were years of great turbulence in the U.S.A. People did not welcome the military commitment to South-East Asia, provoking waves of discontent especially in young generations. Civil rights movements, especially by blacks fighting against racial segregation, took often-violent connotations causing public disorders. The crime rate dramatically increased all over the Country.

Table 3.1 Number of violent crime in the U.S. (1960-1969)¹²³

Year	Population	Number of violent crime
1960	179,323,175	288,460
1961	182,992,000	289,390
1962	185,771,000	301,510
1963	188,483,000	316,970
1964	191,141,000	364,220
1965	193,526,000	387,390
1966	195,576,000	430,180
1967	197,457,000	499,930
1968	199,399,000	595,010
1969	201,385,000	661,870

It is clear from the table above how crime increased especially from the mid-1960s on. That is the reason for prevention and control becoming a central issue in internal policy. Moreover, the political assassinations during the decade – John F. Kennedy, Malcom X, Martin Luther King, Jr., and Robert F. Kennedy – enhanced the need for regulation especially in firearms industry. To this end, President Lyndon B. Johnson signed the Gun Control Act into law in 1968.

From that moment, the Democratic Party Platforms began to contain declarations about the growing need for restriction and gun-proliferation control measures. In 1972, the platform for the candidacy of George McGovern put the accent on the honorable victims of crime – one candidate killed, Thomas Eagleton, and two wounded – before stating, “Effective

¹²³ “Uniform Crime Reporting Statistics”, *U.S. Department of Justice, Federal Bureau of Investigation*. Accessed on September 8, 2014 at: <http://www.ucrdatatool.gov/Search/Crime/State/RunCrimeStatebyState.cfm>

legislation must include a ban on sale of handguns known as *Saturday night specials*¹²⁴ which are unsuitable for sporting purposes.”¹²⁵ Far more stark were the words spoken by Jimmy Carter four years later. “Handguns simplify and intensify violent crime. Ways must be found to curtail the availability of these weapons. The Democratic Party must provide the leadership for a coordinated federal and state effort to strengthen the presently inadequate controls over the manufacture, assembly, distribution and possession of handguns.”¹²⁶ Strong words like “curtail” and the will expressed by the use of “must”, were mitigated in a certain way with the affirmation of “the right of sportsmen to possess guns for purely hunting and target-shooting purposes,”¹²⁷ a phrase that sounds like a way to please – and do not lose the votes of – gun enthusiasts.

The next two presidential elections, with Walter Mondale in 1984 and Michael Dukakis in 1988 as Democratic candidates, lacked particular accent on the issue of guns, with two lines dedicated to the need to restrain snob-nose guns in 1984,¹²⁸ and no mention at all in 1988 – indeed Dukakis was often criticized for his detachment from the problem of crime and violence. Very different was the effort showed by Bill Clinton’s platforms in 1992 and 1996. Beyond giving new emphasis to the topic, the Democratic Party for the first time

¹²⁴ "Saturday Night Special" is a slang term generally used to refer disparagingly to relatively compact, less expensive, small-caliber handguns. Nevertheless, since the 1970s federal SNS legislation has sought to prohibit a wide range of handguns, including expensive ones. (Ex., S. 193, by Sen. Barbara Boxer)

¹²⁵ “The Democratic Party Platform of 1972”, July 10, 1972, *American Presidency Project*. Accessed on September 8, 2014 at: <http://www.presidency.ucsb.edu/ws/index.php?pid=29605>

¹²⁶ “The Democratic Party Platform of 1976”, July 12, 1976, *American Presidency Project*. Accessed on September 8, 2014 at: <http://www.presidency.ucsb.edu/ws/index.php?pid=29606>

¹²⁷ *Ibid.*

¹²⁸ “—We support tough restraints on the manufacture, transportation, and sale of snub-nosed handguns, which have no legitimate sporting use and are used in a high proportion of violent crimes.”, The Democratic Party Platform of 1984, July 16, 1984, *American Presidency Project*. Accessed on September 8, 2014 at: <http://www.presidency.ucsb.edu/ws/index.php?pid=29608>

presented the problem of the relation between guns and children: “We will work for swift and certain punishment of all people who violate the country's gun laws and for stronger sentences for criminals who use guns. We will also seek to shut down the black market for guns and impose severe penalties on people who sell guns to children.”¹²⁹ It was an important entry in the debate over gun rights, especially because of what would have happened in later years.

Meanwhile, between the 1980s and 1990s, crime rate continued to rise incredibly, so much as to be defined as “intractable” in the Democratic Platform of 1996. Indeed, compared with that of the 1969, the number of violent crimes in 1992 more than tripled – 1,932,274 out of a population of 255,024,699.¹³⁰ Hence, in 1996 greater attention was devoted to the prevention of crime. Protection of children was put as the first aim and the republican counterparts – Bob Dole, Newt Gingrich and George H.W. Bush – were openly criticized for “holding the Brady Bill hostage for the gun lobby” until Clinton’s win in 1992. Indeed, the Handgun Violence Prevention Act was introduced for the first time in 1987. Then a New York Democrat, Charles E. Schumer, introduced again the act in the House of Representatives on February 22, 1993. The aim of the so-called Brady Law was “to conduct criminal background check before transfer of firearms to non-licensee”¹³¹ that is one of the main instruments of gun control in the U.S. It passed both in the House and in the Senate in

¹²⁹ “The Democratic Party Platform of 1992”, July 13, 1992, *American Presidency Project*. Accessed on September 8, 2014 at: <http://www.presidency.ucsb.edu/ws/index.php?pid=29610>

¹³⁰ “Uniform Crime Reporting Statistics”, *U.S. Department of Justice, Federal Bureau of Investigation*. Accessed on September 8, 2014 at:

<http://www.ucrdatatool.gov/Search/Crime/State/RunCrimeStatebyState.cfm>

¹³¹ “H.R.1025 – Brady Handgun Violence Prevention Act”, section 02, November 29, 1993, at:

<http://www.gpo.gov/fdsys/pkg/BILLS-103hr1025enr/pdf/BILLS-103hr1025enr.pdf> Accessed on September 09, 2014

November and was signed into law by President Clinton on November 30, 1993. Similarly, on September 13, 1994 the President signed the Federal Assault Weapon Ban (AWB), a 10-year-ban on the manufacturing for civilian use of certain semi-automatic guns – Beretta Ar70, INTRATEC TEC-9, TEC-22, Colt AR-15, Steyr AUG and others.¹³²

On August 14, 2000, one year after the Columbine High School massacre and a few months after the accident at the Elementary School in Flint, MI, the Democratic Party presented its platform for the running candidate Al Gore. “A shocking level of gun violence on our streets and in our schools has shown America the need to keep guns away from those who shouldn’t have them,”¹³³ said the Democratic program. “The Columbine tragedy struck America’s heart, but in its wake Republicans have done nothing to keep guns away from those who should not have them.”¹³⁴ Focusing on favorable statistics testifying a 35 per cent decrease of crime after Democratic action of previous years, Al Gore’s party established the goal of “mandatory child safety locks, requiring a photo license I.D., a full background check, and a gun safety test to buy a new handgun in America,”¹³⁵ resolutions that would have disappointed gun conservatives.

The 2004 Presidential elections coincided with the expiry of the AWB and the threat of terrorism alive as ever, the connection between the two things came natural. The alleged free access of terrorists to assault weapons became an important topic in the electoral debate, linking national defense with gun control. John Kerry remembered every time that he was a

¹³² “H.R.3355 – Violent Crime Control and Law Enforcement of 1994”, Title XI, section 110102 accessed on September 9, 2014 at: <http://www.gpo.gov/fdsys/pkg/BILLS-103hr3355enr/pdf/BILLS-103hr3355enr.pdf>

¹³³ “The Democratic Party Platform of 2000”, August 14, 2000, *American Presidency Project*. Accessed on September 9, 2014 at: <http://www.presidency.ucsb.edu/ws/index.php?pid=2961>

¹³⁴ *Ibid.*

¹³⁵ *Ibid.*

hunter and gun owner and he believed that “law-abiding American adults have the right to own guns. But like all of our rights, gun rights come with responsibilities, and those rights allow for reasonable restrictions to keep guns out of the wrong hands. John Kerry went on to state his strong support for all the federal gun laws on the books, and he would take steps to ensure that they are vigorously enforced, cracking down hard on the gun runners, corrupt dealers, straw buyers, and thieves that are putting guns into the hands of criminals in the first place. He will also close the gun show loophole, which is allowing criminals to get access to guns at gun shows without background checks, fix the background check system, which is in a serious state of disrepair, and require that all handguns be sold with a child safety lock.”¹³⁶ His position was to support the Second Amendment rights, with proper restrictions, especially on AW – what he justified with the fact that hunters do not need them.

Barack Obama’s two presidential elections came in particular moments in the timeline of gun massacres in the U.S.A. A few months after the Virginia Tech massacre the first, a few after Aurora bloodbath the second. Gun control has always been a main objective of the 44th President of the U.S.A. Moreover, Obama showed to be sensitive to the problem of different approaches to gun laws in different parts of the country and thus the need to act differently in different context. “We recognize that the right to bear arms is an important part of the American tradition, and we will preserve Americans’ Second Amendment right to own and use firearms,” said the 2008 Democratic platform, “We believe that the right to own firearms is subject to reasonable regulation, but we know that what works in Chicago may

¹³⁶ “John Kerry on Gun Control”, August 8, 2014, *OnTheIssue*. Accessed on September 9, 2014 at: http://www.ontheissues.org/domestic/John_Kerry_Gun_Control.htm

not work in Cheyenne.”¹³⁷ Four years later, the argument expressing the differences and difficulties in finding a common agreement over gun control became a concerned plea, as violence and gun incidents against defenseless people continued to increase. Indeed, in 2012, together with the promise to preserve the Second Amendment right, the Obama program also added “We understand the terrible consequences of gun violence; it serves as a reminder that life is fragile, and our time here is limited and precious. We believe in an honest, open national conversation about firearms. We can focus on effective enforcement of existing laws, especially strengthening our background check system, and we can work together to enact commonsense improvements - like reinstating the assault weapons ban and closing the gun show loophole - so that guns do not fall into the hands of those irresponsible, law-breaking few.”¹³⁸ Indeed, President Obama also tried to renew the ban on Assault Weapon but the proposal failed to pass in the Senate in April 2014.

However, the President’s commitment to gun control flared after the Newtown events in December 2012 and resulted in a plan especially focused on protection of children in schools.

1.1 Now is The Time

“We won’t be able to stop every violent act, but if there is even one thing that we can do to prevent any of these events, we have a deep obligation, all of us, to try.” These are the words used by Barack Obama in the aftermath of the Sandy Hook Elementary School

¹³⁷ “The Democratic Party Platform of 2008”, August 25, 2008, *The American Presidency Project*. Accessed on September 9, 2014 at: <http://www.presidency.ucsb.edu/ws/index.php?pid=78283>

¹³⁸ “The Democratic Party Platform of 2012”, September 3, 2012, *The American Presidency Project*. Accessed on September 9, 2014 at: <http://www.presidency.ucsb.edu/ws/index.php?pid=101962>

tragedy, namely at the opening of his program named “Now is the Time”, which included proposals to:

- Closing background check loopholes to keep guns out of dangerous hands;
- Banning military-style assault weapons and high-capacity magazines, and taking other common-sense steps to reduce gun violence;
- Making schools safer; and
- Increasing access to mental health services.¹³⁹

These four points include the main actions that have always been related to gun control. Particularly, the topic of the renewal of some kind of ban on assault weapons was felt as urgent. The plan noted an increasing use of assault weapons since the ban expired in 2004. The steps to follow according to Obama were:

- Reinstate and strengthen the ban on AW
- Limit ammunition magazines to 10 rounds
- Finish the job of getting armor-piercing bullets off the street¹⁴⁰

The plan also focused on *unfreeze*¹⁴¹ research on gun violence, in order to be better prepared in combating gun violence, including links between video games, media images, and violence, and on encouraging gun owners to live up to their responsibility to store gun safely.¹⁴²

¹³⁹ The White House, Now is the Time: The President’s Plan to Protect Our Children and Our Communities by Reducing Gun Violence 10, Jan. 16, 2013, at:

http://www.whitehouse.gov/sites/default/files/docs/wh_now_is_the_time_full.pdf

¹⁴⁰ *Ibid.* 5

¹⁴¹ From the text: “for years, the Centers for Disease Control and other scientific agencies have been barred by Congress from using funds to “advocate or promote gun control,” and some members of Congress have claimed this prohibition also bans the CDC from conducting any research on the causes of gun violence. However, research on gun violence is not advocacy. The President is directing the CDC and other research agencies to conduct research into the causes and prevention of gun violence, and the CDC is announcing that they will begin this research.”

¹⁴² *Ibid.* 8-10

In order to comply with the third point, that is make schools safer, the plan provided for \$150 million for up to 1,000 school resource officers – i.e. specially trained police officers working in schools – and mental health professionals to prevent student-on-student violence. An additional \$30 million would be given to the states in order to help their school districts develop and implement emergency management plans.¹⁴³ A \$50 million initiative would help 8,000 more schools train teachers and staff to implement strategies for creating safer and more nurturing school climates.¹⁴⁴ The last part of the program was about improving mental health services, in particular improve the early detection of mental illness risks for young people aged between 16 and 25, the training of 5,000 professionals to serve students and young adults and launch a national conversation in order to increase understanding about mental health.¹⁴⁵

“Now is the Time” was a plan about school shootings, the phenomenon in dramatic increasing in the U.S. It translated in 23 executive actions – not legally binding – as a starting point to address gun violence.

Today it is announced that the President and the Administration will:

1. Issue a Presidential Memorandum to require federal agencies to make relevant data available to the federal background check system.
2. Address unnecessary legal barriers, particularly relating to the Health Insurance Portability and Accountability Act that may prevent states from making information available to the background check system.
3. Improve incentives for states to share information with the background check system.

¹⁴³ *Ibid.* 12

¹⁴⁴ *Ibid.* 12-13

¹⁴⁵ *Ibid.* 14-15

4. Direct the Attorney General to review categories of individuals prohibited from having a gun to make sure dangerous people are not slipping through the cracks.
5. Propose rulemaking to give law enforcement the ability to run a full background check on an individual before returning a seized gun.
6. Publish a letter from ATF to federally licensed gun dealers providing guidance on how to run background checks for private sellers.
7. Launch a national safe and responsible gun ownership campaign.
8. Review safety standards for gun locks and gun safes (Consumer Product Safety Commission).
9. Issue a Presidential Memorandum to require federal law enforcement to trace guns recovered in criminal investigations.
10. Release a DOJ report analyzing information on lost and stolen guns and make it widely available to law enforcement.
11. Nominate an ATF director.
12. Provide law enforcement, first responders, and school officials with proper training for active shooter situations.
13. Maximize enforcement efforts to prevent gun violence and prosecute gun crime.
14. Issue a Presidential Memorandum directing the Centers for Disease Control to research the causes and prevention of gun violence.
15. Direct the Attorney General to issue a report on the availability and most effective use of new gun safety technologies and challenge the private sector to develop innovative technologies.
16. Clarify that the Affordable Care Act does not prohibit doctors asking their patients about guns in their homes.
17. Release a letter to health-care providers clarifying that no federal law prohibits them from reporting threats of violence to law-enforcement authorities.
18. Provide incentives for schools to hire school resource officers.
19. Develop model emergency-response plans for schools, houses of worship and institutions of higher education.
20. Release a letter to state health officials clarifying the scope of mental-health services that Medicaid plans must cover.
21. Finalize regulations clarifying essential health benefits and parity requirements within ACA exchanges.
22. Commit to finalizing mental-health-parity regulations.
23. Launch a national dialogue led by Secretaries Sebelius and Duncan on mental health.¹⁴⁶

¹⁴⁶ Ungar R., “Here Are The 23 Executive Orders On Gun Safety Signed Today By The President”, January 16, 2013, *Forbes*. Accessed on September 9, 2014 at: <http://www.forbes.com/sites/rickungar/2013/01/16/here-are-the-23-executive-orders-on-gun-safety-signed-today-by-the-president/>

All these *actions* functioned mainly as a promise for further *legislative* actions. Indeed, later that year, on March 21, 2013, Senator Harry Reid introduced the Safe Communities, Safe Schools Act of 2013 (S. 649). The Senate considered S. 649 and nine amendments that addressed a wide array of gun control issues, ranging from restricting assault weapons to mandating interstate recognition (reciprocity) of state handgun concealed carry laws.¹⁴⁷ Nevertheless, none of the amendments managed to pass in the Senate. The reaction of President Obama was harsh and directed against the propaganda made by the NRA. “This compromise did represent progress. It did represent moderation and common sense. That is why the 90% of the American people supported it. But instead of supporting this compromise, the gun lobby – NRA and its allies– willfully lied about the bill”¹⁴⁸ said Obama in the Rose Garden after the vote. "All in all, this was a pretty shameful day for Washington," he concluded.

In the end, it is possible to see that through Democratic eyes, guns are seen as instrument facilitating and increasing crime. Indeed, Democratic Party position on firearms has been expressed in its Platforms in connection with crime fight under titles like “Preventing

¹⁴⁷ Krouse, William J., “Gun Control Legislation in 113rd Congress”, August 1, 2014, *Congressional Research Service*. Accessed on September 9, 2014 at: <http://fas.org/sgp/crs/misc/R42987.pdf>

¹⁴⁸ Obama, Barack, ”NRA Willfully lied”, April 16, 2013, at: <https://www.youtube.com/watch?v=MQGoyQ-TXwo>

Crime”(1972), “Combating crime”(1992), “Fighting Crime”(1996). However, the other major American party adopted very different ideals.

2. *The Grand Old Party*

The first time the Republican Party Platform included a reference to firearms was in 1972. The running candidate was Richard Nixon, Senator of the state of California, and his position on firearms was quite different from what could be expected by the conservative party. Indeed, he turned out to be favorable to strict gun control laws, “ones much tougher than the Brady Bill.”¹⁴⁹ In an interview reported by the NY Times, he also defined guns as “an abomination.”¹⁵⁰ This could be the reason for the low profile of the Republican Platform on the issue in 1972. “Intensify efforts to prevent criminal access to all weapons. [...]Safeguard the right of responsible citizens to collect, own and use firearms for legitimate purposes, including hunting, target shooting and self-defense.”¹⁵¹ In 1976, President Gerard Ford, substitute of a resigning Nixon in 1974, ran to be re-elected by the American people and he expressed a more conservative opinion about firearms than his predecessor. Despite having been victim of attempted homicide through handguns, Ford was an opponent of handgun control. Namely, he opposed registration of firearms, as useless in reducing crime.

¹⁴⁹ Nixon, Richard, *Seize the Moment*, New York: Simon & Schuster, 1992: 294-295

¹⁵⁰ Safire, W., “An Appeal for Repeal”, June 10, 1999, *NY Times*. Accessed on September 10, 2014 at: <http://www.nytimes.com/1999/06/10/opinion/essay-an-appeal-for-repeal.html>

¹⁵¹ “The Republican Party Platform of 1972”, August 21, 1972, *The American Presidency Project*. Accessed on September 10, 2014 at: <http://www.presidency.ucsb.edu/ws/index.php?pid=25842>

Indeed, the words in the Platform that year were “We support the right of citizens to keep and bear arms. We oppose federal registration of firearms. Mandatory sentences for crimes committed with a lethal weapon are the only effective solution to this problem.”¹⁵²

The Party held the same opinion about registration of firearms in 1980 and 1984, when it ran Ronald Reagan as candidate. In his program there was a call for Congress to remove the requirement of firearms registration contained in 1968 Gun Control Act, for this measure did not have any impact on crime.¹⁵³ Indeed, Reagan was an NRA member and a gun owner. In the book *In the President's Secret Service*, Ron Kessler remembers an anecdote by a former agent, “When Reagan was running for president the first time, he came out of his home in Bel Air to drive to Rancho del Cielo, the seven-hundred-acre Reagan ranch north of Santa Barbara. Another agent noticed that he was wearing a pistol and asked what that was for. –Well, just in case you guys can't do the job, I can help out – Reagan replied.”¹⁵⁴ In his eight year of presidency, the 40th President of the United States left two signs on gun issue. First, he signed into law the 1986 Firearms Owners Protection Act, amending the 1968 GCA in its deemed unconstitutional parts. Second, in 1986 he nominated as Associate Justice of the Supreme Court Antonin Scalia, who, as seen in previous chapter, would lead the legal fight for the recognition of an individual right to keep and bear arms in 2008 in *Heller*.¹⁵⁵

¹⁵² “The Republican Party Platform of 1976”, August 18, 1976, *The American Presidency Project*. Accessed on September 10, 2014 at: <http://www.presidency.ucsb.edu/ws/index.php?pid=25843>

¹⁵³ “The Republican Party Platform of 1980”, July 15, 1980, *The American Presidency Project*. Accessed on September 10, 2014 at: <http://www.presidency.ucsb.edu/ws/index.php?pid=25844>

¹⁵⁴ Kessler, Ron, *In the President's Secret Service*, New York: Crown Publishers, 2009: 87-88

¹⁵⁵ It worth remember that after just 69 days from his first election, Reagan was shot in an attempted assassination after a speaking at the Washington Hilton Hotel in Washington, D.C. In the long time, this changed his position with him supporting some modest gun policies such as the Brady Bill at the beginning of the 1990s, after he left presidential office. (Avlon, J. “What changed after the Reagan shooting”, March 30, 2011, *CNN*. Accessed on September 10, 2014 at: <http://edition.cnn.com/2011/OPINION/03/30/avlon.reagan.shooting/>)

After Reagan, something changed in the GOP Platforms. Stances on firearms' legislations are not expressed in relation to crime anymore, but there is a slide towards an exposed support of the Second Amendment right as a fundamental feature of the American society and there open endorsement of the fight *for* gun rights and gun owners. In 1988, the Republican Party candidate was Reagan's Vice-President George H. W. Bush. He proved to be the most strenuous opponent of gun control. At least at the beginning. First, in the Party's Platform under the section "Individual Rights", the Gun Owners Rights were protected through the words "Republicans defend the constitutional right to keep and bear arms. When this right is abused by an individual who uses a gun in the commission of a crime, we call for stiff, mandatory penalties."¹⁵⁶ Indeed, before the elections he joined the NRA, which invested \$6 million in his campaign. He publicly promised the NRA that he would oppose gun registration, waiting periods, bans on specific guns and other forms of gun control.¹⁵⁷ He always opposed to the Brady Act. After the election, Bush, Sr. softened his position expressing his favor for a ban on the importation of some assault weapons. In May 1989, he enforced the import ban and further proposed a ban on any weapons holding more than 15 rounds of ammunition, what would lead to the creation of the Crime Control Act of 1990.¹⁵⁸ This move enraged the NRA who abandoned him for the 1992 elections, where Clinton defeated him.

¹⁵⁶ "The Republican Party Platform of 1988", August 16, 1988, *The American Presidency Project*. Accessed on September 10, 2014 at: <http://www.presidency.ucsb.edu/ws/index.php?pid=25846>

¹⁵⁷ Pitaniello, L., "George H.W. Bush: Gun Control", n.d., *HighBeam*. Accessed on September 10, 2014 at: <http://www.highbeam.com/topics/george-hw-bush-gun-control-t10740>

¹⁵⁸ *Ibid.*-- This act made provisions to control and punish various crimes, but most notably addressed certain respects of gun control. Specifically, stronger punishments would be meted out for illegal firearm ownership, firearm use, and crimes related to firearms in general. Criminals would be denied ownership of guns, and a background check system would be created to identify felons attempting to purchase a gun.

According to official statistics, there were more than 66 million guns in circulation in the United States in 1992 and most of them, according to their owners, were kept at home as a precaution against random crime.¹⁵⁹ Measures for gun control were necessary, more than ever. In 1996, the response of Republican Robert Dole was expressed in these terms: “We defend the constitutional right to keep and bear arms. We will promote training in the safe usage of firearms, especially in programs for women and the elderly. We strongly support Bob Dole's National Instant Check Initiative, which will help keep all guns out of the hands of convicted felons. The point-of-purchase instant check has worked well in many states and now it is time to extend this system all across America. We applaud Bob Dole's commitment to have the national instant check system operational by the end of 1997.”¹⁶⁰ This part of Republican program was under the title “Individual Rights – Upholding the rights of all” proving again the change occurred in the way republicans saw the right to keep and bear arms, as a fundamental untouchable individual right of all American citizens.

Under the same title was the statement about gun rights in 2000 program for George W. Bush. Like his father, Bush, Jr. also supported the NRA and when he was governor of Texas, he fought for laws that protected the American citizen's right to bear arms and spoke for the traditional American pastimes of hunting and sport shooting.¹⁶¹ The profile of the Bush family, with their link with the NRA and the public statements of the latter organization proud

¹⁵⁹ Jones, Maldwyn A., *The Limits of Liberty*, 1997: 631

¹⁶⁰ “The Republican Party Platform of 1996”, August 16, 1996, *The American Presidency Project*. Accessed on September 10, 2014 at: <http://www.presidency.ucsb.edu/ws/index.php?pid=25848>

¹⁶¹ Lane, H. “George W. Bush: Gun Control”, n.d., *HighBeam*. Accessed on September 10, 2014 at: <http://www.highbeam.com/topics/george-w-bush-gun-control-t10126>

to enjoy the favor of the running president,¹⁶² caused gun rights to be at the center of the political debate – as the detailed platform for Al Gore has shown. Both in 2000 and 2004, Bush and the Republican Party reiterated the opposition to any form of national registration of firearms and federal licensing of gun owners as “a violation of the Second Amendment and an invasion of privacy of honest citizens.”¹⁶³ They spoke about an individual right to keep and bear arms: “Republicans and President Bush strongly support *an individual right to own guns*, which is explicitly protected by the Constitution's Second Amendment. Our Party honors the great American tradition of hunting and we applaud efforts by the Bush Administration to make more public lands available to hunters, to increase access to hunting clinics and safety programs for children and adults, and to improve opportunities for hunting for Americans with disabilities.”¹⁶⁴ Moreover, the year 2004 was the crucial one in which the AWB expired. The newly elected Republican President did not want to extend it. Four years later, in response to the Virginia Tech massacre, Bush signed a bill designed to expand on the criminal background check system used by gun retailers to check the worthiness of those wanting to purchase a gun.¹⁶⁵ This bill was the first gun control measure after years of void in this sense and was almost imposed by the tragic events of 2007.

John McCain’s 2008 platform went further in the fight for the protection of the Second Amendment right. Under the section “Upholding the Constitutional Right to Keep and Bear

¹⁶² During the campaign, a spokesperson for the NRA caused a public stir by commenting that, if Bush was elected as President of the United States, the NRA would have its own office in the White House.

¹⁶³ “The Republican Party Platform of 2000”, July 31, 2000, *The American Presidency Project*. Accessed on September 10, 2014 at: <http://www.presidency.ucsb.edu/ws/index.php?pid=25849>

¹⁶⁴ “The Republican Party Platform of 2004”, August 30, 2004, *The American Presidency Project*. Accessed on September 10, 2014 at: <http://www.presidency.ucsb.edu/ws/index.php?pid=25850>

¹⁶⁵ Lane, H. “George W. Bush: Gun Control”

Arms”, he expressed the voice of Republicans through these words: “We applaud the Supreme Court’s decision in *Heller* affirming the right. [...] We call on the next President to appoint judges who will similarly respect the Constitution.”¹⁶⁶ The open call for the appointment of a conservative Justice when the conservative Associate Justice David Souter had already expressed his will to leave Washington, D.C., represented a determined and strong Republican intention to maintain and defend *Heller*.

Lastly, Mitt Romney in 2012 defined the right on the issue as “law-abiding citizen’s God-given right of self-defense”¹⁶⁷ For the first time, the right to keep and bear arms for self-defense was considered as “God-given”, a fundamental right of all men coming directly from the Lord. As Paul Broun, a Republican of Georgia says, “The Second Amendment is the one that really protects all of our liberties that we are given by our Lord, and our God-given rights, and are protected under the Constitution.”¹⁶⁸

Going through the Republican Party and its candidates for presidential elections’ positions on gun rights, it is possible to observe how they passed from talking preeminently about fighting against crime but protecting the right to keep and bear arms, to presenting the

¹⁶⁶ “The Republican Party Platform of 2008”, September 1, 2008, *The American Presidency Project*. Accessed on September 10, 2014 at: <http://www.presidency.ucsb.edu/ws/index.php?pid=78545>

¹⁶⁷ “The Republican Party Platform of 2012”, August 27, 2012, *The American Presidency Project*. Accessed on September 10, 2014 at: <http://www.presidency.ucsb.edu/ws/index.php?pid=101961>

¹⁶⁸ “Georgia Republican Says New 'Guns Everywhere' Law A 'God-Given' Right”, February 7, 2014, *Huffington Post*. Accessed on September 10, 2014 at: http://www.huffingtonpost.com/2014/07/02/paul-broun-guns_n_5551757.html

Second Amendment right as a fundamental, God-given right whose protection is a Constitutional duty.

2.1 James Brady, a Republican against guns.

As the national political debate between Reds and Blues has shown, between the end of the 1980s and the beginning of the 1990s, a central issue about gun rights was the proposed Handgun Violence Prevention Act, proposed for the first time in 1987. This Act is known as the Brady Bill, as it was named after James Brady, the White House Press Secretary who was shot and seriously injured during the attempted assassination of Ronald Reagan in 1981. He was confined to the wheelchair and unable to resume his duties. He died in August 4, 2014 for the injuries reported in the shooting.

After that day of March 1981, Brady became a great supporter of gun control together with his wife Sarah. Indeed, from 1989 Sarah became the leader of the nonprofit organization founded in 1974 with the name National Council to Control Handguns (NCCH), known as Handgun Control, Inc. from 1980 to 2000, and re-named the Brady Campaign to Prevent Gun Violence in 2001.¹⁶⁹ This organization did fight strenuously in order to make the Handgun Violence Prevention Act become law, which it achieved in 1993. This legislative victory gave strength to the organization that continued his battle for gun control. In particular, in last 15 years, the organization pushed for expanding the range of background checks, especially after Columbine, obtaining in June 2007 the passing of the NICS

¹⁶⁹ “Our History”, *Brady Campaign*. Accessed on September 11, 2014 at: <http://www.bradycampaign.org/our-history>

Improvement Acts.¹⁷⁰ In 2012, the Brady Center launched Lawyers for a Safer America (LSA), a national alliance of lawyers and law firms dedicated to reducing gun violence through the courts.¹⁷¹

James and Sarah Brady made a great contribution to the improvement of gun control laws, coming to be defined by some as the “first family” of gun control.¹⁷² “Jim is a legend at the White House,” President Obama said in a statement after Brady’s death in August, “for his warmth and professionalism as press secretary for President Reagan; for the strength he brought to bear in recovering from the shooting that nearly killed him 33 years ago; and for turning the events of that terrible afternoon into a remarkable legacy of service through the Brady Campaign to Prevent Gun Violence. Since 1993, the law that bears Jim’s name has kept guns out of the hands of dangerous individuals. An untold number of people are alive today who otherwise wouldn’t be, thanks to Jim.”¹⁷³ Indeed, the legacy of Brady family in the fight for gun control represents a milestone especially for all the other organization that today fight for this cause in America.

¹⁷⁰ *Ibid.*

¹⁷¹ *Ibid.*

¹⁷² Thurber, J., “James S. Brady, Reagan’s press secretary and survivor of 1981 shooting, dies at 73”, August 4, 2014, *The Washington Post*. Accessed on September 11, 2014 at: http://www.washingtonpost.com/national/james-s-brady-reagans-press-secretary-and-survivor-of-1981-shooting-dies-at-73/2014/08/04/4af0af70-c5da-11df-94e1-c5afa35a9e59_story.html

¹⁷³ *Ibid.*

3. *Organizing for Guns*

Beyond the Brady Campaign, there are a large quantity of groups gathering gun-owners and enthusiasts or advocates of gun control, each acting on the national field for their ideals.

On the side of the gun control advocates, there are more than twenty groups fighting for a stricter legislation on firearms and combating gun violence. The *Cato Institute – Gun Control*,¹⁷⁴ conducting studies and researches on the Second Amendment to incentive Congress to adopt gun-control measures. The *Coalition to Stop Gun Violence*,¹⁷⁵ seeking to secure freedom from gun violence through effective policy advocacy. *Protest Easy Guns*,¹⁷⁶ *Common Sense about Kids and Guns*,¹⁷⁷ *Gun Free Kids*¹⁷⁸ all seek more effective control on easy access to firearms, in order to protect children and other people from random crime.

On the pro-gun side, the majority of the organizations help increase the understanding of the right to keep and bear arms and its legal basis, as it is the case of the *Second Amendment Foundation* or the *National Association for Gun Rights*, focused on federal legislation. Congressman Ron Paul defined *Gun Owners of America* as “the only no-compromise gun lobby in Washington.”¹⁷⁹ Indeed, GOA has made efforts to differentiate from the NRA, considered as available to compromise on gun rights. Its purpose is to take action to prevent restrictions on gun rights and provided with a huge network of lawyers for defending gun rights in the courts. Like the NRA it rates Senate and House representatives from A+ to F-,

¹⁷⁴ Gun Control|Cato Institute, Accessed on August 30, 2014 at: <http://www.cato.org/research/gun-control>

¹⁷⁵ Coalition to Stop Gun Violence, Accessed on August 30, 2014 at: <http://www.csgv.org/>

¹⁷⁶ Protest Easy Guns, Accessed on August 30, 2014 at: <http://www.protesteasyguns.com/>

¹⁷⁷ Common Sense about Kids and Guns, Accessed on August 30, 2014 at: <http://www.kidsandguns.org/>

¹⁷⁸ Gun Free Kids, Accessed on August 30, 2014 at: <http://www.gunfreekids.org/>

¹⁷⁹ *Gun Owners of America*, Accessed on August 30, 2014 at: <http://www.gunowners.org/>

where getting the maximum grade means to be a “pro-gun leader” , while failure means being an anti-gun leader, carrying anti-gun legislation. Hence, each Presidential candidate is sifted and gets a vote on gun rights issues.

There are also organizations dedicated entirely to women. It is the case of *Second Amendment Sisters: Armed Informed Mothers March*¹⁸⁰ – countering the American ‘moms’ and providing information and education – and *Women’s Firearms Network*¹⁸¹ – even in this case the goal is to provide information on firearms, training and self-defense for women and schedule events and seminars on the issue. Even police officers who believe in freedom, liberty and independence enshrined in the Second Amendment gather in the *Second Amendment Police Department*¹⁸² in order to have a political voice at national level.

Moreover, there are organizations focusing on specific issues, i.e. *Assault Weapon Watch*,¹⁸³ monitoring violence committed through assault weapons, or *OpenCarry.org*,¹⁸⁴ centered on the right to keep and bear arms in a plain sight as a right granted by the same Second Amendment, thus needing to be protected. The *National Shooting Sports Foundation*¹⁸⁵ defends and promotes America’s hunting and shooting traditions. It is the largest trade association for the shooting, hunting and firearms industry.

¹⁸⁰ Second Amendment Sisters: Armed Informed Mothers March, Accessed on August 30, 2014 at: <http://www.2asisters.org/>

¹⁸¹ Women’s Firearms Network, Accessed on August 30, 2014 at: <http://www.womensshooters.com/>

¹⁸² Second Amendment Police Department, Accessed on August 30, 2014 at: <http://www.2ampd.net/>

¹⁸³ Assault Weapon Watch, Accessed on August 30, 2014 at: <http://www.assaultweaponwatch.com/>

¹⁸⁴ OpenCarry.org, Accessed on August 30, 2014 at: <http://www.opencarry.org/>

¹⁸⁵ National Shooting Sports Foundation, Accessed on August 30, 2014 at: <http://www.nssf.org/>

However, this constellation of pro-gun groups could be considered more or less as orbiting around the first, major, most powerful gun rights organization: the National Rifle Association.

3.1 The National Rifle Association

“I’ll give you my gun when you’ll pry it from my cold dead hands”. This is the slogan of the NRA, the greatest and powerful interest group in the United States of America. Founded in 1871 by Colonel William C. Church – editor of the Army and Navy Journal – and Captain George W. Wingate – officer in the NY National Guard – , this association has promoted gun rights and the protection of the Second Amendment for almost 150 years. At the beginning, the NRA’s goal was to improve the marksmanship of its members, especially after the poor skills showed by citizens during the Civil War.¹⁸⁶ At the beginning of the twentieth century, thanks to the favor of incumbent President Theodore Roosevelt, the organization tightened its links with the government and moved to Washington, D.C. In particular, Congress approved giving the NRA surplus rifles and ammunitions, which encouraged rifle enthusiast to join the group.¹⁸⁷ In the 30s, membership grew at incredible levels, but its aim was still rifle training and hunting.

Political positions in the first half of the twentieth century were not as tough as they would have been later. Indeed, the NRA also supported the 1934 National Firearms Act,

¹⁸⁶ Carter, G. L., *Guns in American Society: An Encyclopedia of History, Politics, Culture, and the Law - Second edition*, 2012: 671

¹⁸⁷ *Ibid.*

supporting taxes on machine guns. Nevertheless, after World War II the power of the organization incredibly increased thanks to a new rise in membership and a growing annual budget. The 1968 Gun Control Act shattered the ground of the NRA, which turned its head to the political sphere in order to defend gun rights. That could be considered the moment in which this powerful organization established as main goal the fight against gun control and protection of the Constitutional right to keep and bear arms. In 1975, indeed, it created the Institute for Legislative Action (ILA), “the lobbying arm of the NRA.”¹⁸⁸ The ILA aim is to propose pro-gun legislations and stop restrictive ones. “When restrictive “gun control” legislation is proposed at the local, state or federal level, NRA members and supporters are alerted and respond with individual letters, faxes, e-mails and calls to their elected representatives to make their views known.”¹⁸⁹ The first important success of the ILA was the signing into law of the 1986 Firearms Owners Protection Act (FOPA) by President Reagan. Meanwhile, the NRA has reached 2.5 million members, proving the interests of the Americans gun owners in protecting their rights. Moreover, with the election of George W. Bush, it reached the peak of its political power. The passage of the Brady Bill in 1993 proved to be an important defeat for the leaders of gun right who believed in no link between gun control and reducing of gun crime.

In 1998, the NRA chose the actor Charlton Heston as president of the organization, so that his well-known face became the embodiment of the NRA’s new image, which it advanced aggressively and successfully.¹⁹⁰ Heston speeches became very popular, especially

¹⁸⁸ “NRA-ILA”, *NRA-ILA*. Accessed on September 11, 2014 at: <http://www.nraila.org/about-nra-ila.aspx>

¹⁸⁹ *Ibid.*

¹⁹⁰ Carter, G.L., “Guns in American Society”, 2012: 619

for the slogan used, known in the short form “from my cold dead hands”. In his most famous speech held at the NRA convention in 2000, he said, “when ordinary hands can possess such an extraordinary instrument, that symbolizes the full measure of human dignity and liberty. That is why those five words issue an irresistible call”¹⁹¹, then he picked a rifle and put it high spelling the famous five words.

When in 1999 there was the terrible massacre at Columbine High School, the NRA was severely attacked, especially because few days after the event, it did not cancelled the annual convention of the Association in Denver, CO, proving insensitive to the recent tragedy for some. The same thing happened two years later, after the shooting at Flint. Local people considered the NRA conventions insulting. But this did not bend the powerful organization. Even after Sandy Hook shootings, the NRA continued with its fight, making astonishing statements and provoking reactions among both Republicans and Democrats. At the NRA Press conference held one week later, chief executive Wayne LaPierre suggested to put armed guards in schools, as the only way to protect American children.¹⁹²

The NRA has always been very critical of governmental ability to protect the American people. A criticism that reached levels so high as to cause George W.H. Bush to withdraw his lifetime membership to the organization in 1995, when in a letter – written by the same

¹⁹¹ Heston, Charlton, “Charlton Heston My Cold DEAD Hands NRA Speech Low”, 26, July, 2000 at: <https://www.youtube.com/watch?v=BWCzEwWNNic>

¹⁹² LaPierre, Wayne, “Remarks from the NRA press conference on Sandy Hooks school shooting, delivered Dec. 21, 2012 (transcript)”, December 21, 2012, *Washington Post*. Accessed on September 11, 2014 at: http://www.washingtonpost.com/politics/remarks-from-the-nra-press-conference-on-sandy-hook-school-shooting-delivered-on-dec-21-2012-transcript/2012/12/21/bd1841fe-4b88-11e2-a6a6-aabac85e8036_story.html

LaPierre – federal BATF agents were called “jack-booted government thugs.”¹⁹³ Even slogans on its webpage to invite people join the organization are imbued with skepticism against the government. Phrases like “Can you believe the government can keep you safe?” or “What kind of government spies on its own people?”, “We are surrounded by a world that demands we submit, succumb and believe in nothing”¹⁹⁴ appears as a warning to not believe the Federal institutions and protect against them. Indeed, especially during the presidency of Barack Obama, the NRA-ILA fight for gun rights in Congress has furthered, working particularly on blocking the Assault Weapon Ban. It succeeded in 2013.

However, beyond its political battles, the National Rifle Association continue in its old aim of promoting shooting sports and hunting. In order to do this, it launched many initiatives like the NRA National Firearms Museum and the NRA National Sporting Arms Museum and TV shows like *NRA Gun Gurus*, on Out Door Channel. Here, two gun gurus “bring over a half century of experience in firearm history. Together they travel across the country, making stops at the NRA National Firearms Museum and the NRA National Sporting Arms Museum meeting everyday people who discover whether their old firearm is worth much more than they had imagined or only has sentimental value.”¹⁹⁵

¹⁹³ Associated Press, “NRA Defends Vitriol Towards Federal Agents/ Letter calls them ‘jack-booted thugs’”, May 1, 1995, *San Francisco Chronicle*. Accessed on September 11, 2014 at:

<http://www.sfgate.com/news/article/NRA-Defends-Vitriol-Toward-Federal-Agents-3034757.php>

¹⁹⁴ *The National Rifle Association*, Accessed on September 11, 2014 at: <http://home.nra.org/home>

¹⁹⁵ “NRA Guns Gurus”, n.d., *NRA Museum*. Accessed on August 30, 2014 at:

<http://www.nramuseum.com/nra-gun-gurus.aspx>

While many people support the NRA, there are just as many opposing its extreme position and influence in Washington D.C. Among the latest enemies is a movement gathering all mayors of the U.S. against guns, namely Mayors Against Illegal Guns.

3.2 Mayors Against Illegal Guns

In 2006, mayor of New York, Michael Bloomberg and former Boston Mayor Thomas Menino founded a coalition of fifteen mayors, called Mayors Against Illegal Guns (MAIG). The movement gathers both Democratic and Republican mayors – even if the majority of them are Democrats. Since its foundation, the group has reached more than 1,000 current and former mayors fighting for common sense gun laws and the cities’ right to access data about guns.¹⁹⁶ In 2014, MAIG announced the creation of a new organization “Everytown for Gun Safety” born out of the merging with the organization Moms Demand Action for Gun Sense in America, a gun control advocacy group formed after the Sandy Hook shooting.

Mayors who joined – and want to join – the coalition have to sign its statement of principles, which in the first part says:

Whereas: 30,000 Americans across the country are killed every year as a result of gun violence – including 11,000 who are murdered – destroying families and communities in big cities and small towns; and

¹⁹⁶ “Everytown for gun safety”, *Mike Bloomberg*. Accessed on September 12, 2014 at: <http://www.mikebloomberg.com/index.cfm?objectid=BF28B050-C29C-7CA2-F414FC3F9EC99945>

Whereas: As mayors, we are duty-bound to do everything in our power to protect our residents, especially our children, from harm, and there is no greater threat to public safety than the threat of illegal guns;¹⁹⁷

Then, follows the list of the main goals that mayors have to pursue. Among these, there is the extension of background check requirements to online sales and gun shows and support for local state and federal legislation that targets illegal guns.¹⁹⁸ Indeed, the reason for this great coalition – supported by more than 2 million people – came from the necessity to oppose to the power of the NRA and its ILA lobbying group, in order to counterbalance pro-gun influence in Congress. Bloomberg has in fact announced a \$50 million challenge to NRA, in order to create a network for those Americans who want to fight for gun control.¹⁹⁹

Like the NRA, MAIG pushes for actions in Congress related to its cause. It works, for example, to repeal the Tiahrt Amendment²⁰⁰, a provision prohibiting the BATF from releasing firearms trace data for use by cities, states, litigants and member of the public and from requiring gun dealers their inventories.²⁰¹ Moreover, the Amendment also requires the FBI National Instant Check System to destroy background check records within 24 hours.²⁰² MAIG believes that trace data, the transfer of information and especially NICS records are fundamental elements in preventing criminals and prohibited purchasers from acquiring

¹⁹⁷ “Mayors Against Illegal Guns”, *Everytown for gun safety*. Accessed on September 12, 2014 at: <http://everytown.org/mayors/>

¹⁹⁸ *Ibid.*

¹⁹⁹ Peters, J.W., “Bloomberg Plans a \$50 Million Challenge to the N.R.A.”, April 15, 2014, *NY Times*. Accessed on September 12, 2014 at: http://www.nytimes.com/2014/04/16/us/bloomberg-plans-a-50-million-challenge-to-the-nra.html?_r=0

²⁰⁰ The Tiahrt Amendment took the name from its sponsor Todd Tiahrt, a Republican of Kansas in Congress from 1995 to 2010.

²⁰¹ Consolidated Appropriations Act 2010, Pub. L. No. 111–117, 123 Stat. 3128-3129 (2009) at: <http://www.gpo.gov/fdsys/pkg/PLAW-111publ117/pdf/PLAW-111publ117.pdf>

²⁰² *Ibid.*

firearms. In 2009, they also were on the forefront in the fight against the Thune Amendment that would allow gun owners to carry their concealed weapons from a state to another by requiring these to honor permits issued by other states.²⁰³ MAIG wrote a letter signed by all mayors opposing the amendment, arguing that such a resolution would have made it more difficult for police agents to determine who is legally carrying a firearm.²⁰⁴

The appearance of Mayors Against Illegal Guns, fostered the political debate on gun rights and adds a new voice to the already loud Brady Campaign and NRA. Indeed, organizations on both sides can count thousands memberships, as a proof of the great attention that guns attract in U.S. society, both in a positive and negative manner. Moreover, the number of organizations and of their members demonstrate how the American people are particularly sensitive to the issue of gun rights. The millions of people joining to the NRA gives the dimension of that part of the United States that does not want to give up to its traditions in the name of the glorious – and bloody – fights that brought to the affirmation of freedom and independence as bedrock of the United States of America.

But what is the price?

²⁰³ “Thune Offers Concealed Carry Amendment to Defense Authorization Bill”, July 20, 2009, *John Thune – Press Release*. Accessed on September 12, 2014 at: <http://www.thune.senate.gov/public/index.cfm/press-releases?ID=26677f6a-9285-43c0-8659-f390c282867e>

²⁰⁴ “Mayors Against the Thune Amendment”, July 20, 2009, *Mike Bloomberg*. Accessed on September 12, 2014 at: <http://www.mikebloomberg.com/index.cfm?objectid=F801FB8F-C29C-7CA2-F80CE3504D02DFE3>

IV

The Dark Side of the Second Amendment

*“But who knew that this day wasn't like the rest
Instead of taking a test
I took two to the chest”*

P.O.D, *Youth of the Nation*, Satellite

As many other things, the right to keep and bear arms has two faces. Indeed, if it represents one of the highest achievement in civil rights for Americans, on the other hand in recent years it has drawn attention as a social and moral problem, due to the growing number of homicides and massacres that have made the headlines.

Reports of murders are in the news every day, everywhere. Crimes committed through any type of weapon, knives, hammers, baseball bats, objects killers can easily find at home, in the kitchen or in a closet. One or two persons are the victims. Nevertheless, what if the

weapon that the murderer can *easily* find *at home*, in a drawer, under the bed or in the wardrobe is a handgun or a carbine rifle and targets are defenseless children and students?

In the first decade of the 21st century, there have been 48 school shootings in 25 states counting 91 victims. Among these, 10 in Red Lake Massacre (2005) and 33 in Virginia Tech Massacre (2007). From 2010 until June 2014, there have been 106 school shootings and 103 victims.²⁰⁵ Colorado, California, Virginia, Illinois, Connecticut. Nearly every state have been stage of shocking cases counting tens of persons murdered in a few minutes, almost all of them perpetrated with a legal firearm. If on that Friday morning of December 2012, when into Adam Lanza's head popped the idea of killing his mother and 25 others – including 20 children – he would have found just a stick, or a knife instead of a Bushmaster M4 Type Carbine²⁰⁶, the day probably would have gone differently.

Beyond the individual right to self-defense and the reverse psychology that open and concealed carry can play over criminals, what are implications of the right to keep and bear arms? What is the dark side of the Second Amendment?

²⁰⁵ 74 of 106 school shootings occurred after the Sandy Hook massacre in December 2012 – “School Shootings in America since Sandy Hook” June 6, 2014, *Every Town for gun safety*. Accessed on August 7, 2014 at: <http://everytown.org/article/schoolshootings/>

²⁰⁶ The M4 Type Carbine is a semi-automatic carbine rifle used also by the U.S. Army in the wars in Afghanistan and Iraq.

1. Guns in Numbers

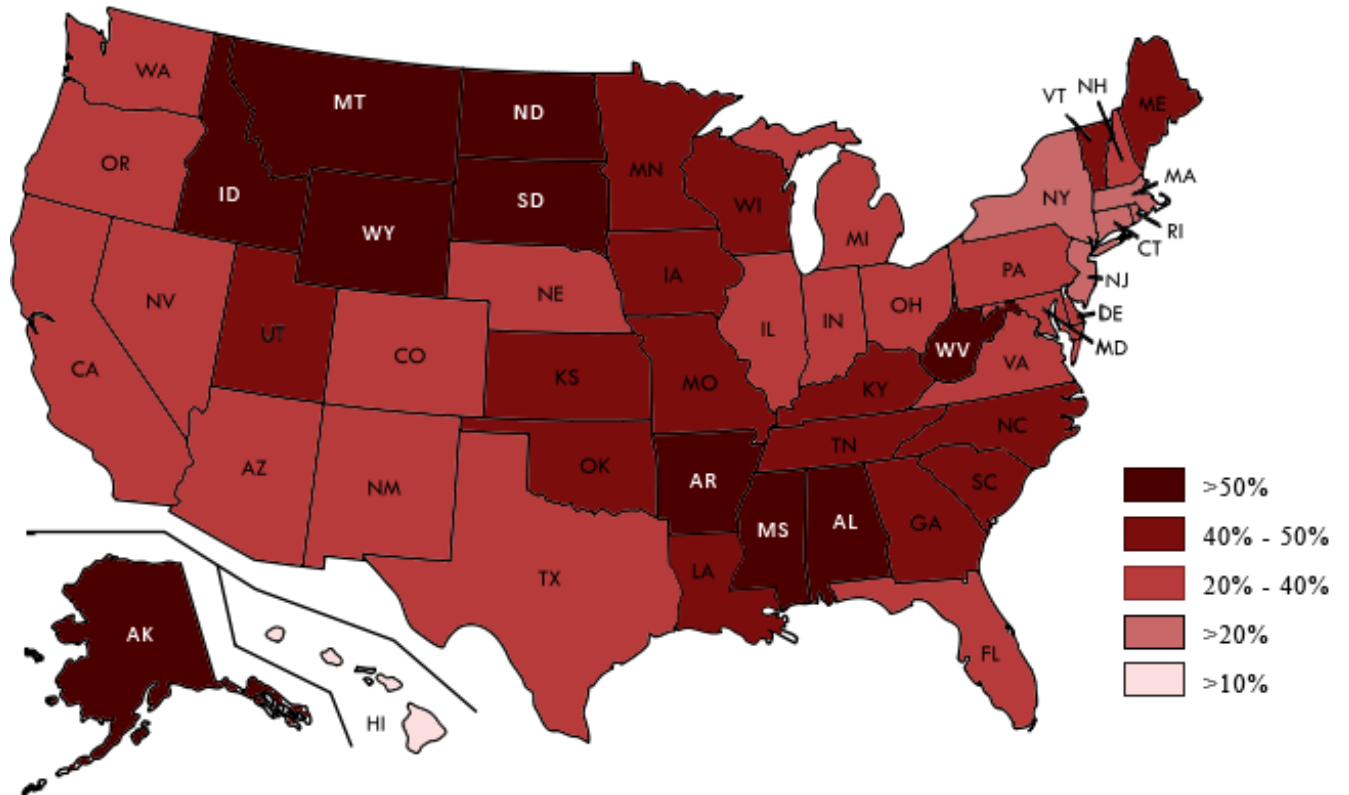
According to a 2007 study, the United States ranks first among 178 other Countries by number of privately owned firearms.²⁰⁷ In the U.S., the average number of civilian firearms is 270,000,000 out of a population around 305,000,000 (2005). Gun owners are around 85,000,000, which means that 3 in 4 Americans have two or more guns.²⁰⁸ Idaho, Minnesota, Wyoming, Nevada, South Dakota Arkansas, Mississippi, Alabama, West Virginia and Alaska are the states with highest gun ownership rate – more than 50% of the population (2009).²⁰⁹ Rates slightly decrease in other states. There are only 12 states where gun owners are less than 30% of the population and just one where they are less than 10%, as the map shows.

²⁰⁷ *Small Arms Survey 2007: Guns and the City*, Chapter 2, Annex 4. Accessed on August 4, 2014 at: <http://www.smallarmssurvey.org/fileadmin/docs/A-Yearbook/2007/en/Small-Arms-Survey-2007-Chapter-02-annexe-4-EN.pdf>

²⁰⁸ “Guns in America: the impact of having more guns in our society”, February 12, 2013. Accessed on August 4, 2014 at: <http://www.numbersleuth.org/guns/>

²⁰⁹ *Ibid.*

Figure 3 - Gun ownership rate by state



Repeated studies have shown that the presence of a gun boosts the risk of gun-related violence in the home.²¹⁰ In fact, if we consider the huge number of firearms held by civilians in the U.S., it seems that the weapon at one's fingertips could be easily a gun. Moreover, having firearms at home increases risks of tragic accidents like the one that occurred in Detroit, MI on January, 2014 when a 4-year-old girl playing in the back bedroom of a home with her equal-in-age cousin found a rifle – loaded and unlocked – underneath the bed. She took it, pointed at the young boy and pulled the trigger killing him.²¹¹ That rifle should not have been there and loaded, but locked in a case, unloaded and out of the reach of a child.

That of Detroit is just one of the more recent gun-related death news. It was an accident, one that could have been avoided through more careful control on house storage of guns. However, cases in which lack of control and the mortality of firearms shocked the United States in the last 15 years are more than might be expected and cast a wide shadow on the most positive and honorable purposes of the right to keep and bear arms for self-defense.

The first case raising a deep bewilderment occurred on April 20, 1999 at Columbine High School in Littleton, CO. At 11.19 a.m. two senior students Eric Harris (18) and Dylan Klebold (17), entered in the High School armed with Hi-Point 995 Carbines, a TEC-DC9 semi-automatic handgun, a Savage 67H pump-action shotgun, Stevens 311-D double

²¹⁰ *Ibid.*

²¹¹ Damron G., Zaniewski A., “4-year-old boy shot by 4-year-old cousin in Detroit”, January 17, 2014, *Detroit Free Press*. Accessed on August 7, 2014 at: <http://www.usatoday.com/story/news/nation/2014/01/17/boy-fatally-shot-by-girl-cousin/4566727/>

barreled sawed-off shotguns, 99 explosives and 4 knives.²¹² They never came out. According to the reconstruction of the events by the police, in approximately 17 minutes - from 11:19 a.m. to 11:36 a.m. – the two perpetrators shot at 34 people, killing 13. Victims were aged between 14 and 18. The massacre ended at 12:08 p.m. when the two perpetrators committed suicide.²¹³

FBI investigations revealed that Harris and Klebold, since not having the legal age to buy a gun, acquired the two Hi-Point carbines thanks to a straw purchase²¹⁴ by an 18-year-old friend of the latter, Robyn Anderson, while two other men supplied the TEC-DC9 and ammunitions.²¹⁵ The two boys turned out to have planned the massacre for several months, recording disturbing messages on videotapes or publishing them on the internet²¹⁶. However, beyond its search for the rationale guiding Eric and Dylan, what America discovered on that April 20 was the easy way in which two young troubled and mentally disturbed boys acquired weapons capable of killing 13 people in 10 minutes.

What happened at Littleton was something more – if possible – than a terrible case of amuck. It raised a deep concern and pleas for gun control, shattering the gun lobby which

²¹² “How they were equipped that day”, November 25, 2009, *CNN*. Accessed on August 7, 2014, at: http://edition.cnn.com/SPECIALS/2000/columbine.cd/Pages/EQUIPMENT_TEXT.htm

²¹³ Hasday, Judy L., *Forty-Nine Minutes of Madness: The Columbine High School Shooting*, Melrose Park: Enslow Publishers, Inc., 2013: 20-30

²¹⁴ A straw purchase occurs when the actual buyer of a firearm is not able to pass the required background check (no legal age, i.e.) and has someone who can purchase it for him/her.

²¹⁵ Pankratz H., Simpson K., “Judge gives Manes 6 years”, November 13, 1999, *Denver Post*. Accessed on August 7, 2014, <http://extras.denverpost.com/news/shot1113.htm>

²¹⁶ The Federal Bureau of Investigation, *Columbine High School Massacre: The FBI Files*, 2007 at: <http://vault.fbi.gov/Columbine%20High%20School%20Columbine%20High%20School%20Part%201%20of%204/view>

feared restrictions on the Second Amendment. Nevertheless, it was just the *opening theme* of a plague upon the United States of America, still too difficult to eradicate.

2. *A Bloody 21st century*

The new millennium opened with a new tragedy in a classroom. On February 29, 2000 in Flint, MI, 6-year-old Dedrick Owens brought his uncle's P-32 .32 caliber handgun at Buell Elementary School. Kayla Rolland, also 6, was one of his classmates, but Dedrick felt no sympathy for her. "I don't like you!" he said before pulling out the perfect pocket gun and shooting her to death.²¹⁷ Dedrick holds the record as the youngest school shooter ever – definitely not the kind of record people like to watch on TV. Jamelle James, cousin of the young killer, was charged with involuntary manslaughter for leaving the loaded gun where it was easy to find.²¹⁸ "I hope this prosecution can send a message to America that those guns that you think can make you safer, can make our community more dangerous," said county prosecutor Arthur Busch.²¹⁹

His hopes were laid down soon enough and in the worst way. One year later, at Santee, CA, Charles Andrew Williams, 15, took the .22-caliber revolver of his father and opened fire

²¹⁷ Rosenblatt, R., "The killing of Kayla", March 5, 2000, *Time*. Accessed on August 8, 2014 <http://content.time.com/time/magazine/article/0,9171,40342,00.html> – Brown, D. L., "A 6-Year-Old Killer Who Had No Place To Call Home", March 21, 2000, *Washington Post*, August 8, 2014, <http://www.washingtonpost.com/wp-srv/WPcap/2000-03/21/085r-032100-idx.html>

²¹⁸ "Child killer gun charges brought", March 3, 2000, *BBC News*. Accessed on August 8, 2014 at:

<http://news.bbc.co.uk/2/hi/americas/664341.stm>

²¹⁹ *Ibid.*

against two students at Santana High School.²²⁰ In 2005, at Red Lake, MN Jeffrey Weise, 16, armed with his grandfather's police weapons killed five students and one security guard at the Red Lake Senior High School, before committing suicide.²²¹ One year and a half later – October 2, 2006 – Nickel Mines, PA, is sadly known for the death of five Amish girls killed by Charles Carl Roberts IV, 32, armed with three guns, two knives and 600 rounds of ammunition.²²²

Police found no breach of law in the possession of such firearms.²²³

However, what happened a few months later in Blacksburg, VA, on April 2007, exactly 8 years after Columbine, once again shocked the United States. Thirty-two students and faculty members at Virginia Tech University were shot and killed by Seung-Hui Cho, aged 23, who committed suicide at the end of the massacre. Apparently, he bought a Glock 9 mm handgun, on March 13 and his second weapon, a .22 caliber handgun, a few days before the massacre.²²⁴ Cho had the legal age for owning firearms and he complied with Virginia gun laws. In fact, he bought the two handguns in the gap of 30 days, as required by law and went through the background check, passing it. He had been declared mentally ill two years before. The insanity of the 23-year-old student manifested at 7:15 a.m. at Ambler Johnston Hall,

²²⁰ "Santana School Shooter", March 1, 2003, *abc News*. Accessed on August 8, 2014, at: <http://abcnews.go.com/Primetime/story?id=132072&page=1&singlePage=true>

²²¹ Randall, K., "Minnesota: Ten killed in deadliest school shooting since Columbine massacre", March 23, 2005, *World Socialist Web Site (WSWS)*. Accessed on August 8, 2014, at: <http://www.wsws.org/en/articles/2005/03/minn-m23.html>

²²² McCaffrey, R. et al., "Five Killed at Pa. Amish School", October 3, 2006, *Washington Post*. Accessed on August 9, 2014, at: <http://www.washingtonpost.com/wp-dyn/content/article/2006/10/03/AR2006100300229.html>

²²³ Kocieniewski, D., Gaetely, G., "Man Shoots 11, Killing 5 Girls, in Amish School", October 3, 2006, *NY Times*. Accessed on August 8, 2014, at: http://www.nytimes.com/2006/10/03/us/03amish.html?pagewanted=all&_r=0

²²⁴ Ross, B., Esposito, R., "First Gun Bought March, 13; No 'Spur of the Moment' Crime", April 17, 2007, *abc News*. Accessed on August 9, 2014, at: http://abcnews.go.com/blogs/headlines/2007/04/first_gun_bough/

where he made the first two victims. Then he returned in his room, where he registered 27 video messages – he also referred to ‘martyrs’ like Harris and Klebold – and took several photographs he mailed at NBC News.²²⁵ Around 9:40 a.m., he moved to Norris Hall where he started moving from class to class shooting students and professors. At 9:51 a.m., he shot himself in the head.²²⁶ 174 rounds and 11 minutes was what Cho needed to kill 30 people and wound 17 others.

After Blacksburg, people in America hoped that no more news about such horrible massacres would come. Yet, episodes of school shootings did not diminish; on the contrary, they became more and more frequent. Columbine and Virginia Tech became examples to be followed by always-younger shooters. As was the case of Steven Kazmierczak, 27, who killed five students at Northern Illinois University and injured 21 with a Remington shotgun, a Glock 9mm handgun, a Hi-Point .380 and a Sig Sauer, on Valentine’s Day, 2008 in DeKalb, IL.²²⁷ All four handguns were bought legally and at least a background check had been performed.²²⁸ Kazmierczak was schizophrenic, depressed and had shown interest for Cho’s actions.

²²⁵ *Mass Shooting at Virginia Tech: Report of the Review Panel*, August 2007. Accessed on August 8, 2014 at: <http://www.washingtonpost.com/wp-srv/metro/documents/vatechreport.pdf> - “Killer’s manifesto: ‘You forced me into a corner’”, April 18, 2007, *CNN*. Accessed on August 8, 2014, at: <http://edition.cnn.com/2007/US/04/18/vtech.shooting/>

²²⁶ Report of the Review Panel, 24-28

²²⁷ “College shooter’s deadly rampage baffles friends”, February 16, 2008, *NBC News*. Accessed on August 8, 2014 at: http://www.nbcnews.com/id/23171567/ns/us_news-crime_and_courts/t/college-shooters-deadly-rampage-baffles-friends/#.U-ZWSaOrMrQ

²²⁸ *Ibid.*

After the DeKlab shooting, for four years, headlines reported no shocking massacres. School shootings continued to be an agonizing characteristic of the United States, but the low number of victims – none in most cases – gave some relief to American hearts.

Then came December 14, 2012.

3. *Sandy Hook Elementary School*

It was a sunny December Friday. Everything seemed to go as usual at Newtown, CT. Moms and dads brought their children to school for the last time before the weekend. Outside Sandy Hook Elementary School, kids ran towards the entrance because doors to the schools are locked at 9:30 a.m. each day. Meanwhile, at 36 Yogananda Street, it was not a morning like others. Adam Lanza, a 20-year-old boy, woke up and went to the weapon arsenal his mother Nancy, 52, stored at home. He chose a .223-caliber Bushmaster XM15-E2S rifle, a Glock 20, 10 mm handgun, 9mm SIG Sauer P226 handgun and an Izhmash Saiga-12, 12 semi-automatic shotgun.²²⁹ He went to his mother's bedroom and shot her.²³⁰ Then he drove for 5 miles to Sandy Hook Elementary School, where he arrived around 9:35 a.m. It all happened in a rush. 5 minutes of hell. Adam shot at the locked doors, entered the school and

²²⁹ “Report of the State’s Attorney for the Judicial District of Danbury on the Shootings at Sandy Hook Elementary School and 36 Yogananda Street, Newtown, Connecticut on December 14, 2012”, November 25, 2013, Office of the State’s Attorney Judicial District of Danbury: 22-23. Accessed August 10, 2014 at: <http://apps.washingtonpost.com/g/page/national/report-on-shootings-at-sandy-hook-elementary-school/616/>

²³⁰ *Ibid.* – “Sandy Hook shooting: What happened?”, December 18, 2012, *CNN*. Accessed on August 10, 2014, <http://edition.cnn.com/interactive/2012/12/us/sandy-hook-timeline/>

armed with that military-style rifle moved from class to class shooting around 154 rounds at defenseless teachers and children. For twenty young students, ages 6 and 7, that was the last day of school. Six staff members were also murdered by the madness of Lanza while trying to protect their pupils. At 9:40 a.m., the Glock 10mm claimed the last victim of that meaningless massacre: Adam himself, who shot himself in the head in Classroom 10.²³¹

Adam Lanza was a boy with psychological problems. At 13, he was diagnosed with Asperger syndrome²³² and other disorders he already suffered when he attended the Sandy Hook Elementary School. After investigations, it came out that he was fascinated with past mass shooting, like that of Columbine and DeKlab.²³³ Due to his problems, his parents decided to home-school Adam when he was 16. Yet, the killer's parents did not seem to consider their son's difficulties as dangerous. Nancy was a gun-lover and she stored a huge arsenal of weapons in her house in Yogonanda Street.²³⁴ In the aftermath of the shooting, investigators found 1,600 unspent rounds in the house of horrors, together with a large number of rifles, handguns and knives of all kind. Some photos showed an infant covered with bullets and holding a gun.²³⁵

²³¹ "Report on the Shootings at Sandy Hook Elementary School", 2

²³² The Asperger syndrome is an autism spectrum disorder characterized by significant difficulties in social interaction and nonverbal communication, alongside restricted and repetitive patterns of behavior and interests.

²³³ According to the Report of the State's Attorney on the Shooting, among the items found in the basement computer/gaming area there was a New York Times article from February 18, 2008 regarding the shooting at Northern Illinois University; three photographs of what appear to be a dead human; photocopied newspaper articles from 1891 pertaining to the shooting of school children.

²³⁴ Jerreat, J., "Disturbing photo of toddler boy gnawing on handgun and Nancy Lanza's huge arsenal of weapons revealed", December 28, 2013, *Daily Mail*. Accessed on August 10, 2014 at: <http://www.dailymail.co.uk/news/article-2530239/Police-files-reveal-picture-gun-obsessed-mother-son-communicated-email-loved-shooting-together.html>

²³⁵ *Ibid.*

Despite the mental problems showed by little Adam, Nancy and Peter, his father, educated him to a *passionate* love for guns, training him to shoot at shooting ranges and giving him guns as gifts.²³⁶ Indeed, the report on the shooting notes that among items found in the Lanza house there was a Christmas check from the mother to the killer to purchase a CZ 83 firearm.²³⁷

After the Virginia Tech massacre, Newtown is the deadliest school shooting in U.S. history and it holds the record for number of young victims. Reading reports and fact sheets there are three shared features between the two cases that leap out: a) the disturbed personality of the perpetrators, b) the extremely easy access they had to firearms, c) the handful of seconds it took to accomplish both the massacres – 11 minutes per 30 people and 5 minutes per 26. Hence, in both cases two young boys with diagnosed mental problems managed to own of semi-automatic firearms and large amounts of ammunition, despite the fact that according to gun laws criminals and mentally-ills are not allowed to possess any kind of firearms. As mentioned before, Cho was also able to pass the background check and legally purchase his weapons, while Lanza had an indisputable free access to any kind of weapon collected by his mother.

²³⁶ Flegenheimer, M., “Final Report on Sandy Hook Killings Sheds New Light on Gunman’s Isolation”, December 27, 2013, *NY Times*. Accessed on August 10, 2014, http://www.nytimes.com/2013/12/28/nyregion/with-release-of-final-sandy-hook-shooting-report-investigation-is-said-to-be-over.html?pagewanted=all&_r=0

²³⁷ “Report on the Shooting at Sandy Hook Elementary School”, 26.

Where is the flaw? What made these insane bloodbaths so easy to do? Is it the system of background checks? Or the laws allowing storing arms at home? Is it the type of firearms civilians can purchase for *self-defense*?

4. *Searching for rationale...and scapegoats*

In the aftermath of the horrific events described above, a dumbstruck America tried to find a reason for such brutality. In days following the Columbine massacre, people stab at violent videogames, films and music that could have pushed the perpetrators towards a growing sadism. Marilyn Manson was the first target of the wave of criticism. Local parents said the rocker influenced both Harris and Klebold in committing the massacre because of his songs “promoting hate, violence, death, suicide, drug use and the attitudes and actions of the Columbine High School killers”, proclaimed a message of the Citizens for Peace and Respect.²³⁸ Even in later cases of school shootings, there was the search for a scapegoat. Shooting games have always been on the black list. In investigations on Sandy Hook, it was reported that Adam Lanza could have been motivated by various videogames he played.²³⁹ And even Hollywood is not safe from accusation of influencing young minds.

²³⁸ “Protests in Denver Over Marilyn Manson Gig”, June 21, 2001 *abc News*. Accessed on August 12, 2014 at: <http://abcnews.go.com/Entertainment/story?id=104105>

²³⁹ Jaslow, R. “Violent video games and mass violence: a complex link”, February 18, 2013, *CBS News*. Accessed on August 12, 2014 at: <http://www.cbsnews.com/news/violent-video-games-and-mass-violence-a-complex-link/>

In May 23, 2014 at Isla Vista, CA, yet another 22-year-old boy murdered six people and wounded 13 other in a killing spree near the Santa Barbara University College.²⁴⁰ Once again, Elliot Oliver Robertson Rodger had legally bought a Glock 34, two Sig Sauer P226 and 400 rounds of ammunition he used during the rampage...and he was under psychiatric treatment. This time the blame was on chilling scenes of “Hunger Games”, the hit movie version of Suzanne Collins’ saga. “Do you know what the ‘Hunger Games’ movies are about? It is teenagers killing other teenagers”, were the words of Rush Limbaugh, a conservative American journalist, a few days after California shooting.²⁴¹

But, video games, Marilyn Manson, Hunger Games had a great success not only in the U.S. People all over the world play Call of Duty and Grand Theft Auto. Marilyn Manson has made world tours and millions of teens watched Hunger Games movies; perpetrators of shootings described above had psychological problems, but mental illness is not something confined to America. Nevertheless, such killing sprees take place only in the U.S. and this phenomenon seems unrestrainable. After the Sandy Hook massacre, the number of school shootings dramatically increased with 74 shootings between January 2013 and June 2014. In

²⁴⁰ Cocca, C., Khan, S., “‘Mass Murder’ Rampage near UC Santa Barbara”, May 25, 2014, *NBC Los Angeles*. Accessed on August 12, 2014 at: <http://www.nbclosangeles.com/news/local/shooting-isla-vista-uc-santa-barbara-260505021.html>

²⁴¹ E.B., “Lies, damned lies and statistics”, June 1, 2014, *The Economist*. Accessed on August 12, 2014 at: <http://www.economist.com/blogs/democracyinamerica/2014/06/gun-control-america>

January 2014 alone, there have been 13 school shootings in 22 days and in 11 different states.²⁴²

5. *Where is the problem?*

The problem seems to lie in something different from the influence of the entertainment industry. Numbers suggest that too young people can purchase a gun and controls on buyers are not effective – neither parental control!

To better understand the extent of the problem, a brief comparison with gun policies of three other countries would be helpful. Japan, Switzerland and European Union policies, indeed, highlight the more controversial aspect of U.S.A. gun laws.

The first country to consider is Japan. Actually, it is the exact contrary of the U.S. Here, in fact, gun possession is allowed only for sport and hunting and citizens have to submit to a very long procedure to obtain the required license.²⁴³ “Applicants first must go to their local police station and declare their intent. After a lecture and a written test comes range training, then a background check. Police likely will even talk to the applicant's neighbors to see if he or she is known to have a temper, financial troubles or an unstable household. A doctor must sign a form saying the applicant has not been institutionalized and is not epileptic, depressed,

²⁴² “School Shootings in America Since Sandy Hook”, June 10, 2010, *Everytown for Our Safety*. Accessed on August 12, 2014 at: <http://everytown.org/article/schoolshootings/>

²⁴³ Alpers, Philip and Marcus Wilson, “2014. Japan Gun Facts, Figures and the Law” Sydney School of Public Health, The University of Sydney, *GunPolicy.org*, July 16, 2014. Accessed on August 13, 2014 at: <http://www.gunpolicy.org/firearms/region/japan>

schizophrenic, alcoholic or addicted to drugs.”²⁴⁴ Hence, even if in Japan guns are used only for sports purposes there is strict control in order to verify that applicants are responsible and will not harm other people.

Switzerland is next. According to *Small Arms Survey 2007: Guns and the City*, Switzerland is the first European country for privately owned firearms. The average of firearms per 100 people is 45.7.²⁴⁵ Nevertheless, gun deaths are incredibly low and in the last 15 years figures decreased – instead of increasing like in the U.S. Moreover, it has to be considered that in Switzerland most firearms are military weapons held by men when they join the conscript militia, but they are not allowed to keep ammunition.

The third and last comparison involves the minimum standards required by the European Union, as set by the European Council Weapons Directive (91/477/EEC amended by Directive 2008/51/CE).²⁴⁶ The European directive states that only licensed persons can purchase and possess firearms and, what is far more interesting, divides firearms in four categories. Citing directly from Annex I of 1991 Directive:

Category A - Prohibited firearms

1. Explosive military missiles and launchers.
2. Automatic firearms.
3. Firearms disguised as other objects.

²⁴⁴ Talmadge, E., “From Brazil to Japan: gun laws around the world”, January 28, 2013, *The Christian Science Monitor*. Accessed on August 13, 2014 at: <http://www.csmonitor.com/World/Latest-News-Wires/2013/0128/From-Brazil-to-Japan-gun-laws-around-the-world>

²⁴⁵ *Small Arms Survey 2007: Guns and the City*, Chapter 2, Annex 4. Accessed on August 4, 2014 at: <http://www.smallarmssurvey.org/fileadmin/docs/A-Yearbook/2007/en/Small-Arms-Survey-2007-Chapter-02-annexe-4-EN.pdf>

²⁴⁶ “Firearms Directive”, February 6, 2014, *European Commission – Enterprises and Industries*. Accessed on August 13, 2014 at: http://ec.europa.eu/enterprise/sectors/defence/legislation/firearms/index_en.htm

4. Ammunition with penetrating, explosive or incendiary projectiles, and the projectiles for such ammunition.
5. Pistol and revolver ammunition with expanding projectiles and the projectiles for such ammunition, except in the case of weapons for hunting or for target shooting, for persons entitled to use them.

Category B - Firearms subject to authorization

1. Semi-automatic or repeating short firearms.
2. Single-shot short firearms with center-fire percussion.
3. Single-shot short firearms with rim fire percussion whose overall length is less than 28 cm.
4. Semi-automatic long firearms whose magazine and chamber can together hold more than three rounds.
5. Semi-automatic long firearms whose magazine and chamber cannot together hold more than three rounds, where the loading device is removable or where it is not certain that the weapon cannot be converted, with ordinary tools, into a weapon whose magazine and chamber can together hold more than three rounds.
6. Repeating and semi-automatic long firearms with smooth-bore barrels not exceeding 60 cm in length.
7. Semi-automatic firearms for civilian use, which resemble weapons with automatic mechanisms.

Category C - Firearms subject to declaration

1. Repeating long firearms other than those listed in category B, point 6.
2. Long firearms with single-shot rifled barrels.
3. Semi-automatic long firearms other than those in category B, points 4 to 7.
4. Single-shot short firearms with rim fire percussion whose overall length is not less than 28 cm.

Category D - Other firearms

Single-shot long firearms with smooth-bore barrels.²⁴⁷

It is possible to see that the EU opted for a very detailed list of firearms and almost all of them require registration or declaration. Some are prohibited. European Union member States may draw stricter distinctions by, for example, removing Category C or D, or

²⁴⁷ “Council Directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of weapons”, September 9, 1991. August 13, 2014 at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31991L0477:EN:HTML>

“upgrade” a type of firearm from a category to another – but not “downgrade” it.²⁴⁸ In the U.S., as seen in Chapter II, the NFA only restricts some categories of firearms that require mandatory registration and a tax.

These three examples of gun policy are useful in order to answer the question about why in America shootings happen so frequently. The United States of America, indeed, seems to be the country with the highest number of privately owned firearms, one of the highest number of gun victims and the weakest control system.

5.1 Background Checks and Gun Shows

In the U.S., the federal background check procedure has many flaws. As events made clear, the mechanism to verify in particular gun owners with mental illness seems to be an important limitation. The obstacle lies in the fact that Federal law cannot require States to make information about ineligible people available to federal or state agencies responsible for the check.²⁴⁹ The FBI’s National Instant Criminal Background Check System was created to respond to the 1994 Brady Handgun Violence Prevention Act. It obtains the records from Federal Agencies and “a limited number of authorized state and local law enforcement will

²⁴⁸ European Commission, *Possible advantages and disadvantages of reducing the classification to two categories of firearms (prohibited or authorized) with a view to improving the functioning of the internal market for the products in question through simplification*, Report from the Commission to the European Parliament and the Council, Brussels 2012. Accessed August 13, 2014 at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0415:FIN:EN:PDF>

²⁴⁹ Case law suggests that a federal statute requiring states to disclose records to the FBI would violate the Tenth Amendment. – “Background Check Policy Procedures”, *Smart Gun Laws*. Accessed on August 13, 2014 at: <http://smartgunlaws.org/background-check-procedures-policy-summary/>

voluntarily contribute records to the NICS Index”.²⁵⁰ Only half of the states have laws allowing or requiring reporting mental health data to the NICS. After the Virginia Tech mass shooting, the lack of records from states was felt as an urgent gap to fill. Cho’s mental illness, in fact, was not reported to FBI, allowing him to buy guns. For this reason, on January 8, 2008 President George W. Bush signed into law the 2007 NICS Improvement Amendments Act (NIAA), amending the 1993 Brady Act. The NIAA provided for a series of federal funds to the states in order to improve the availability of state records.²⁵¹ According to the U.S. Government Accountability Office Report on Gun control, from October 2004 to October 2011, the number of records submitted to the NICS grew by 800 per cent. Nevertheless, it proved not to be as successful as hoped because only three states increased the number by available mental health records by over 150,000 each, while others increased this number of less than 100 records.²⁵² Reasons for this lack of “communication” with the NICS are different and sometimes difficult to overcome. In some cases information are handled by local agencies that do not have a direct link with FBI or its Point Of Contact (POC); technological underdevelopment in some parts of the country makes it difficult to pass required files to the Federal agency; privacy laws in certain states do not allow the sharing

²⁵⁰ NICS, “National Instant Criminal Background Check System Regulations”, October 30, 1998, *Federal Register*. Accessed on August 16, 2014 at: <http://www.fbi.gov/about-us/cjis/nics/federal-register-october-30-1998-on-nics>

²⁵¹ The NIAA funds were directed to the implementation of computer systems in order to make easier the transfer of files to the FBI. Moreover, it included a rewarding and penalty system for submitting records.

²⁵² GAO, “Gun Control. Sharing Promising Practices and Assessing Incentives Could Better Position Justice to Assist States in Providing Records for Background Checks”, July 2012: 10. Accessed on August 16, 2014 at: <http://www.gao.gov/assets/600/592452.pdf>

of these records for the alleged possibility that the information could be used by other agencies related to FBI.²⁵³

Moreover, it is important to consider that federal law definition of mental illness contained in the 1968 Gun Control Act is limited to

[a person that] has been adjudicated as a mental defective or has been committed to any mental institution²⁵⁴

which means that only those who have gone through a court judgment are prohibited from acquiring guns. Due to such a narrow definition, large segments of the population are not captured by the system.²⁵⁵ This was the case of Seung-hui Cho. A magistrate ordered that Cho be evaluated at Carilion Saint Albans Behavioral Health Center on December 13, 2005 but the next day, a special justice approved outpatient treatment for the future killer and he was free to go.²⁵⁶

The so-called “Gun Show Loophole” represents another obstacle to an efficient functioning of background checks system. Gun Shows are events in which private firearm owners can sell weapons without any Federal Firearms License (FFL) and where people can buy guns without undergoing any background check. In 33 states, in fact, gun owners are not restricted from selling guns at gun shows, while buyers are not required to submit to federal

²⁵³ *Ibid.*, 20-34

²⁵⁴ The Gun Control Act, 18 U.S. Code §921 – Definitions, 1968

²⁵⁵ Schmitt, R., “Badly flawed background check system fails to contain firearms sales”, June 23, 2011, *The Center for Public Integrity*. Accessed on August 16, 2014 at: <http://www.publicintegrity.org/2011/06/23/4982/badly-flawed-background-check-system-fails-contain-firearms-sales>

²⁵⁶ Luo, M., “Mental Health and Guns: Do Background Check Do Enough?”, April 19, 2007, *NY Times*. Accessed on August 17, 2014 at: http://www.nytimes.com/2007/04/19/us/19weapons.html?_r=0

background checks.²⁵⁷ Considering the high number of gun shows held in America every year, – about 5,000 – it is clear that these events represent the perfect place where ineligible persons can purchase guns. There are only seven states requiring background checks even during gun shows: California, Colorado, Connecticut, Illinois, New York, Oregon and Rhode Island.²⁵⁸

Between April and May 2009, two bills were introduced in Congress in order to introduce mandatory background checks during Gun Shows, namely the Gun Show Loophole Closing Act and the Gun Show Background Check Act. However, both of them have never come on the floor for the vote.²⁵⁹ Indeed, they are strongly opposed by the gun-owners lobby, NRA-ILA that considers the bills as an attempt to increase bureaucratic restrictions and claims that there is a lack of empiric evidence linking gun shows to gun crimes.²⁶⁰ In 2013, a bill proposing mandatory background checks during gun shows and purchases on the internet, again failed to pass in the Senate. Gun shows represent both a hard obstacle for gun control advocates and an unalienable stronghold for gun-rights defenders. However, it is

²⁵⁷ “Gun Show Rules and Gun Laws”, n.d., *About.com*. Accessed on August 17, 2014 at: <http://usgovinfo.about.com/blgunshow.htm> -- Garret, B. “Gun Shows”, n.d., *About news*. Accessed on August 17, 2014 at: <http://civilliberty.about.com/od/guncontrol/a/Gun-Shows.htm>

²⁵⁸ Other 4 states – Hawaii, Maryland, New Jersey, Pennsylvania – require background checks only for handguns.

²⁵⁹ “Bill Summary & Status: 111th Congress H.R. 2324” and “Bill Summary & Status: 111th Congress S.843”, *The Library of the Congress*. Accessed on August 17, 2014 at <http://thomas.loc.gov/cgi-bin/bdquery/z?d111:S843>: - <http://thomas.loc.gov/cgi-bin/bdquery/z?d111:H.R.2324>:

²⁶⁰ “H.R. 2324: Worse than S.843?”, May 11, 2009, *NRA-ILA*. Accessed on August 17, 2014 at: <http://www.nraila.org/news-issues/fact-sheets/2009/hr-2324-worse-than-s-843.aspx>

indisputable that they are a possible context in which potential criminals or the mentally ill can escape a control system already mined by too many weaknesses.

5.2 Keeping firearms at home

Looking at details of the great number of U.S. school shootings in the 21st century, what shocks is the young age of perpetrators. Starting from the extraordinary shooting case of a 6-year-old child, passing through fresh killers of 14 or 15, to young adults of 20.

As already seen, the legal age to own a gun is 18 or 21, depending on state laws. Hence, in many circumstances, those who held the gun during the shootings were not the legal owners of the firearm. As in the above-cited case of Dedrick Owens, Charles Andrew Williams²⁶¹ or Adam Lanza, weapons were taken from the collection of their parents, grandparents, uncles. People they lived with.

Indeed, according to the right granted by the Second Amendment, American civilians can keep their firearms in their home. But how must arms be kept? Locked? Loaded? Disassembled?

Keeping firearms in the house can be dangerous, especially for children that do not know yet how dangerous a gun can be. Yet, it is difficult to monitor how owners store their gun in the privacy of their home. At federal level, in October 2005 Congress passed legislation making it unlawful for any dealer, manufacturer or importer to sell or transfer any handgun

²⁶¹ C. A. Williams is the perpetrator of the Santana High School shooting on March 5, 2001. Armed with an Arminius .22 caliber and a revolver took from his father cabinet, killed two students and injured 13.

to someone not provided with a secure gun storage or safety device.²⁶² Similar provision was also contained in the executive orders signed by President Obama on January 16, 2013 concerning gun violence and school safety. Among these, a call for reconsidering the effectiveness of gun locks and gun safes.²⁶³

At state level, there is no uniformity about locking devices. Only 11 states – California, Connecticut, Illinois, Maryland, Massachusetts, Michigan, New Jersey, New York, Ohio, Pennsylvania, and Rhode Island – have laws concerning the issue. Massachusetts is the only state that requires all firearms to be stored with a lock in place, while the others limit this condition only to certain situations – in the majority of cases only handguns are required to be locked.²⁶⁴

More attention has lately been given to Child Access Prevention (CAP). Due to the raising number of child with easy access to guns stored at home, 28 states introduced CAP laws. This type of law is mainly focused on the liability of adults for children gaining easy access to firearms. Even in this case, provisions are very strict in some states and weaker in some others. Indeed half of the states adopting CAP laws impose criminal liability on persons who store firearms in a negligent manner, giving the possibility of easy access to children. This is the general provision. Among these fourteen, some states impose criminal liability even regardless if the minor actually accesses the storage or regardless if the weapon has

²⁶² 109th Congress, S.397 “Protection of Lawful Commerce in Arms Act”, Section 5. “Child Safety Locks”, 2005 Accessed on August 19, 2014 at: <http://thomas.loc.gov/cgi-bin/query/D?c109:12:./temp/~mdbskxKHCE::>

²⁶³ The White House, Now is the Time: The President’s Plan to Protect Our Children and Our Communities by Reducing Gun Violence 10, Jan. 16, 2013, at: http://www.whitehouse.gov/sites/default/files/docs/wh_now_is_the_time_full.pdf

²⁶⁴ “Safe Storage & Gun Locks Policy Summary”, September 1, 2013, *Smart Gun Laws*. Accessed on August 19, 2014 at: <http://smartgunlaws.org/safe-storage-gun-locks-policy-summary/>

been used in a crime. The other half of the 28 states opted for a softer ruling, prohibiting persons from intentionally, knowingly and/or recklessly providing some or all firearms to children.²⁶⁵

Table 2 – Child Access Provision per State

<i>State</i>	<i>Criminal</i> “May” or “Is likely to” gain access	<i>Liability</i> Regar dless of whether the Child uses the Firearm	<i>For Negligent</i> Only if Child Uses or Carries the Firearm	<i>Storage</i> Negligent storage of Unloaded Firearms	Preventing persons from intentionally providing firearms to minors
California	✓	✓		✓	
Colorado					Handguns only
Connecticut			✓		
Delaware					All loaded firearms
D.C.	✓	✓		✓	
Florida			✓		
Georgia					Handguns only
Hawaii		✓		✓	
Illinois			✓		
Indiana					All firearms
Iowa			✓		
Kentucky					Handguns only
Maryland		✓			
Massachusetts	✓	✓		✓	
Minnesota	✓	✓			

²⁶⁵ “Child Access Prevention Policy”, August 1, 2013, *Smart Gun Laws*. Accessed on August 19, 2014 at: <http://smartgunlaws.org/child-access-prevention-policy-summary/#state>

Mississippi					Handguns only
Missouri					All firearms
Nevada					All firearms
New Hampshire			✓		
New Jersey		✓			
North Carolina			✓		
Oklahoma					All firearms
Pennsylvania					All firearms
Rhode Island			✓		
Tennessee					Handguns only
Texas		✓			
Utah					All firearms
Virginia					All loaded firearms
Wisconsin					All loaded firearms

What seems clear is that almost half of the American states have laws regulating gun locks and children safety. The other half does not. Moreover, anyone can freely choose whether to store firearms loaded or unloaded. Hence, especially in states where no provision on child access to guns or gun safes exists, is up to gun owners to be careful to the safety of their children. This issue is largely left to general rules and mindsets explaining how to keep firearms safely in order to avoid incidents. The NRA, for example, provides a program developed to prevent children from handling firearms:

If you see a gun:

Stop.
Don't touch.
Leave the area.
Tell an adult.²⁶⁶

These are the simple rules that NRA tries to teach to young kids. However, due to the high number of shootings and incidents where children were major victims, the lack of extended control on gun storage has proven to be a further weakness of American gun laws.

And the four NRA imperatives seems not enough.

5.3 Assault Weapons: from trenches to houses

As reported above, the European Union has set minimum conditions for civil firearms to which each member state of the Union must conform. Category A contains forbidden firearms. Among these are automatic weapons. In the United States, federal law allows the transfer and circulation of machine guns owned prior May 19, 1986, date in which the ban on this type of automatic firearms entered into force. Hence, a high number of them is still legally in circulation and subject to registration.

Machine guns are the only weapons – partially – banned for civilian use in the U.S. However, there is another category of firearms on which public and political opinion is

²⁶⁶ “The Eddie Eagle GunSafe”, October 30, 2003, *NRA Programs*. Accessed on August 21, 2014 at: <http://eddieeagle.nra.org/>

divided, assault weapons (AW). Indeed, assault weapons have been used during several massacres – Columbine, Sandy Hook, Aurora Cinema in 2012²⁶⁷. Giving an univocal definition of assault weapon has become very difficult in recent years since this type of firearms is considered in a differently by gun rights defenders and gun control advocates. This has made almost impossible to apply a definitive ruling about AW. Those favorable to banning this category of firearms, argue that the designation should apply to semiautomatic rifles with detachable magazines and “military” features like pistol grips, flash suppressors and collapsible or folding stocks.²⁶⁸ Firearms owners and defenders of the Second Amendment, on the other side, say that the term should be used only for firearms capable of full automatic fire, like those employed by law enforcement and the military; they prefer the term “tactical rifle” or “modern sporting rifle” for the semiautomatic civilian versions.²⁶⁹ This ambiguity creates an obstacle not easy to overcome for any kind of regulation on assault weapons.

According to a study conducted by Mayors Against Illegal Guns, incidents where assault weapons or large capacity ammunition magazines were used resulted in 135% more people shot and 57% more killed, compared to other mass shootings.²⁷⁰ According to the 2012 CNN/ORC International survey made a few days after Sandy Hook Elementary School

²⁶⁷ On July 20, 2012 in Aurora, Colorado, a man armed with an M&P15 rifle, a Remington 870 and a Glock 22, entered in a Movie theater during the screening of *The Dark Knight Rises* shooting at the audience, killing 12 and wounding 70.

²⁶⁸ Goode, E., “Even Defining ‘Assault Rifles’ is Complicated”, January 16,2013, *NY Times*. Accessed on August 21, 2014 at: http://www.nytimes.com/2013/01/17/us/even-defining-assault-weapons-is-complicated.html?_r=0

²⁶⁹ *Ibid.*

²⁷⁰ Mayors Against Illegal Guns, *Analysis of Recent Mass Shootings*, January 2013. Accessed on August 21, 2014 at: <http://s3.amazonaws.com/s3.mayorsagainstillegalguns.org/images/analysis-of-recent-mass-shootings.pdf>

shooting, 62% of people are favorable to a ban on assault weapons, a percentage of 5 points higher than 3 months before (57%).²⁷¹

Indeed, a federal ban on these military-style weapons no longer exists. In 1994, the 103rd Congress adopted the Public Safety and Recreational Firearms Use Protection Act, subsection of the Violent Crime Control and Law Enforcement Act. The so-called Federal Assault Weapon Ban (AWB) was defined an act

To make unlawful the transfer or possession of assault
weapons²⁷²

It also included definition of semi-automatic assault weapons under section 2, b, providing a list of already existing models of similar firearms and of characteristics to identify them. Nevertheless, section 6 reported

This Act and the amendments made by this Act--
(1) shall take effect on the date of the enactment of this Act; and
(2) are repealed effective as of the date that is 10 years after that
date²⁷³

The sunset provision contained in point 2, made the ban expire on September 13, 2004. After that date – in which assault weapons became legal again – Congress attempted to renew a federal ban without success. Last failure was on April 17, 2013 with a 60 to 40 vote in the Senate.

²⁷¹ CNN/ORC Poll, *December 17-18*, December 2012. Accessed on August 21, 2014 at:

<http://i2.cdn.turner.com/cnn/2012/images/12/19/cnnpoll.december19.4p.pdf>

²⁷² 103rd Congress, *Public Safety and Recreational Firearms Use Protection Act - H.R. 4296*, Sec. 2, b. May 16, 1994. Accessed August 21, 2014 at: <https://www.govtrack.us/congress/bills/103/hr4296/text>

²⁷³ *Ibid.* Sec. 6

The absence of a federal law means that regulating of assault weapons is up to state and local laws. However, there are only seven states and the District of Columbia regulating AW. Following the example of the expired federal ban, six states list the model of weapons considered of like kind. Moreover, as in the case of machine guns, pre-ban weapons can be legally owned.

Table 3. Assault Weapons Ban per State

<i>State</i>	<i>Assault Weapon banned</i>	<i>Grandfathered Weapons: registration required</i>	<i>Grandfathered Weapons: transfer prohibited</i>
California	✓	✓	✓
Connecticut	✓	✓	✓
D.C.	✓	Pre-ban AW not grandfathered	Pre-ban AW not grandfathered
Hawaii	Only assault pistols	✓	✓
Maryland	✓	✗ only assault pistols	✓
Massachusetts	✓	✗	✗
New Jersey	✓	✓	✗
New York	✓	✓	✓

Beyond those in the table, other states also provide some sort of regulation. Minnesota has adopted some statutes prohibiting possession of listed semi-automatic military-style weapons to persons under 18 and determined as ineligible by authorities and imposes restrictions on transfers.²⁷⁴ Virginia limits the intentional possession and transportation of

²⁷⁴ “Minnesota: state firearms laws”, August 1994. Accessed on August 21, 2014 at: <http://cd.textfiles.com/group42/WEAPONS/LAWS/MN.HTM>

certain semi-automatic “assault firearms” to citizens and permanent residents age 18 or older. These weapons may not be carried loaded in public places in certain cities and counties.²⁷⁵

Hence, in forty-one American states, civilian possession of an assault weapon is legal. Beyond the different definition given by the two sides, a military-style weapons, as the word itself suggests, is something that does not easily match with the furniture of a family house in a garden suburb. Hunting or self-defense? A semi-automatic rifle - used also in war – seems a little too much for hunting a deer and not proportioned to the threat for self-defense.

²⁷⁵ “Assault Weapons in Virginia”, January 1, 2012, *Smart Gun Laws*. Accessed on August 21, 2014 at: <http://smartgunlaws.org/assault-weapons-in-virginia/>

Conclusion

The purpose of this thesis was an analysis of the Second Amendment from its origins to present days. In order to do this, the four chapter analyzed it from an historical, legal and political point of view. This made possible a deep understanding of the evolution the Amendment has been through in its almost 230 years of existence and the problems it is causing in the American society.

It has been seen how the right to keep and bear arms arrived in the New World and in particular, how it became a *right* from being a *duty*. The way in which colonists used it as a shield against the possibility of a government corrupted by the power coming from a standing army. The first pages, showed how the Founding Fathers of the Constitution approached the right in different manners, trying to merge opposite opinions to please Federalists and Anti-federalists. These created a riddle solved only two hundred and twenty-five years later. Indeed, to follow, it has been shown how the grammar of the Second Amendment made it difficult to find a solution of the argument between collective-right and individual-right

readings. The legal path of the Amendment in the Supreme Court led to its affirmation as an individual right recognized to all the American citizens and in all the states' codes taken in consideration to detect the lawful foundation of the right at issue, trying to answer questions "Who? What? Where? How?" about firearms today. Moreover, the political debate between Democrats and Republicans showed how differently the right to keep and bear arms is considered and finally what are the perceived flaws in the U.S. system of control on the acquisition of firearms.

The first outcome of this analysis to consider is that nowadays the first part of the amendment related to "a well-regulated militia" has no relevance. For many years, the main argument involving the Second Amendment was about the role played by that first phrase. Long before the SCOTUS decision of 2008, those words seemed to have completely lost importance in defining the right contained in the Bill of Rights. Indeed, the loss of importance in the dynamics of national defense the Militia has been through during the 20th century, made it unavoidable such result. Hence, the Second Amendment is considered in its sole second part.

Having ascertain that and thus focusing purely on the right to keep and bear arms, what seems very clear is that the Second Amendment's meaning has radically changed. It is no more the symbol of the freedom and of the fight against the oppressor it used to be in the 18th century. It is rather a shield protecting a form of silent anarchy. The fight for the defense of gun rights, indeed, shows a mistrust towards the Federal Government and makes people reluctant to give up their right. They prefer to provide for their own defense rather than rely on something far and unknown like a central regime. Especially while analyzing the

background of gun rights supporters' opinion, it comes out that trust in the Federal ability to protect its own people falters. They seem to have kept the 18th century nationalist settlers' fear of a strong central power seen as a tyranny, represented by the British example. Hence, as the Americans guided by George Washington preferred to rely on militia to win their freedom instead of a standing army, so today gun enthusiasts choose to rely on their own firearms to protect themselves.

Another important aspect resulting from this study is the fact that the Amendment has lost his historical value in favor of a complete politicization. In the last fifty years, the right to keep and bear arms became important protagonist of political debate, to such an extent as to become a key feature in the profile of politicians. The powerful forces it is able to move, like the NRA, and the influence this issue can exercises makes the Second Amendment an important piece on the table of political game. At this point, one could wonder what would have happened if in 2008 the Supreme Court would have counted five Democrat Justices and four Republicans, instead of the contrary. Inevitably, when any issue enters in the sphere of politics it becomes almost impossible to understand if any decision is taken because who is deciding truly believes in what he is doing or it is just a matter of power, negotiations and ideological standards. The compromises and the chess game between Democrats and Republicans, indeed, traduced in some controversial moves by Congress.

It is the case of the assault ban riddle. It has been approved just once and for a limited time of ten years and no one has been able to make the ban pass in both the House and the Senate. That of assault weapon is one of the main reason for the debate over the Second Amendment. For gun rights advocates, the right to keep and bear arms continue to preserve

is characteristic as symbol of liberty, of the possibility for every citizen to provide for his own protection, of his family and his house. Since it is written in the Constitution, advocates do not allow any type of restriction on their right. Neither a restriction on a type of arms that are useless for civilian use or for hunting. Trying to take advantage of the emotional wake after the Sandy Hook massacre, Obama proposed the ban on AW, endorsed by a huge portion of the population. But, as seen before, this was not sufficient to defeat pro-gun organizations. However, for what justifiable reason should Americans have the right to have in their home weapons used by soldiers? Apparently, none. It seems to be just a matter of principle. In the first part of the 20th century, the NRA supported some control measures resulted in the 1934 NFA. Nevertheless, when restriction became tougher in 1968 and the matter started to become mainly political, it started to oppose indiscriminately any type of control.

The aspect to keep in mind is that basically the number of those who do not want any type of firearms at all are very few. As the figures of the previous pages prove, almost half of the population has at least one firearm at home. Thus, a “disarmament” of the United States citizenry would be unrealistic. That is the reason why gun control advocates are focusing their attention on restricting a particular category of firearms that does not fit properly with the aim of the Second Amendment itself, and are trying to strengthen controls in order to restrict the number of people who can purchase a gun.

However, the outcome is that there are too many guns around and that they are easily available even to ineligible people. The awareness of the gap in the federal check system, proved by the tragic massacres of 1999, 2007 and 2012, sparked fear in American people, who had to learn that places like schools, which should be harmless, where parents could

imagine their sons and daughter to be safe by the threats, were now dangerous as the streets. Reactions to this new reality have been different. Indeed, the mainstreams about weapons are two, and completely different. Some think that firearms are a deterrent against crime – the more civilians with guns there are the more criminals will fear a reaction by their victims – and those who think that a high quantity of firearms in circulation increases crime and accidents – as shown in recent years. This issue as applied to safety of students – likely victims of recent mass murderers –, implies that the options are either to tighten control in the schools and universities, forbidding firearms in any area of campuses, or allowing students and staff to keep arms in classrooms. But, what could be the outcome if not a reign of terror? It is exactly what a biology and criminal justice professor of the Boise State University, Idaho has expressed in an article in the New York Times. In his open letter to the chief of the Idaho State Legislature, Greg Hampikian asked “In light of the bill permitting guns on our state’s college and university campuses [...] I have a matter of practical concern that I hope you can help with: When may I shoot a student?”²⁷⁶ Hampikian raised a not negligible point. If the right to keep and bear arms aims at giving the possibility to citizens to have means for their self-defense, *when* can someone consider that his/her life is in danger and thus authorized to use lethal force? As Professor Hampikian says, if the entire population can be armed, it means that during an argument – or any other occasion – if someone put his/her hands into the pocket or purse, a gun could easily come out from it at any time. Hence, it is up to someone’s discretion consider if it is time to pull out the gun or not, because beyond any law ruling the use of guns, beyond any Castle Doctrine and Stand Your Ground Law, the

²⁷⁶ Hampikian, G. “When may I shoot to a student?”, February 27, 2014, *New York Times*.

one thing always governing human beings is instinct. And this is something impossible to prevent. Therefore, it is true what they say, “guns do not kill people; people with guns do it.” But it is also true that American system, with all its gaps and compromises, makes it so much easier. Actually, an aspect that leaps out from this analysis is the powerlessness of the Federal government to manage the difficult situation related to firearms. Due to the preemptive power of the states, the central government’s possibilities to curtail the problem of background check, for example, are very little. The decision to collaborate or not with FBI, in fact, is up to the states. However, even in this case the suspicion against the real intentions of Federal enclaves discourage states to give them important information that could save lives.

The Second Amendment waited for more than two hundreds year before having a formal legal interpretation. This interpretation, thus, came in a context completely different from the one in which the amendment was written. By the time of *Heller*, the words of the founding fathers had been voided of their original meanings and had a grammatical structure that left room for interpretation. But how is it possible not to consider the negative consequences of this freedom? Why conservatives let a right thought to be the highest demonstration of trust in population become the means through which so many amuck claim defenseless victims? It has become an arm wrestling between opposite factions. Tradition vs. Present. However, meanwhile, the United States is recording too many firearms victims.

The Second Amendment is one of the most dangerous anachronisms in American history. It has been violently uprooted from its original context and decade after decade it has been given new meanings to adapt to different situations, becoming at the end what it is today, an individual right like those of speech, of religion or to assemble declared by the First

Amendment. America has always been a country at the forefront, the republic of freedom, leader of the democratic world, and yet it is stuck in a historical legacy from which it cannot get away.

The dilemma raised by the Second Amendment proves that the United States has one foot forward and one rooted in the past.

Appendix I

Firearms Glossary

This appendix aims at explaining the recurring features of this thesis and at providing a complete comprehension of the characteristic of firearms cited. Definitions are taken from the 1934 National Firearm Act, 26 U.S.C. Ch. 53, §5845 (b,c,d,e), the 1986 Gun Control Act, U.S.C. Ch. 44, §921 (6,8) and www.handgunlaw.us.

AMMO (AMMUNITION): (Ammo is a shortened version of Ammunition) This generally refers to the assembled components of complete cartridges or rounds i.e., a case or shell holding a primer, a charge of propellant (gunpowder) and a projectile (bullets in the case of handguns and rifles, multiple pellets or single slugs in shotguns). Sometimes called "fixed ammunition" to differentiate from components inserted separately in muzzleloaders.

ANY OTHER WEAPON: The term 'any other weapon' means any weapon or device capable of being concealed on the person from which a shot can be

discharged through the energy of an explosive, a pistol or revolver having a barrel with a smooth bore designed or redesigned to fire a fixed shotgun shell, weapons with combination shotgun and rifle barrels 12 inches or more, less than 18 inches in length, from which only a single discharge can be made from either barrel without manual reloading, and shall include any such weapon which may be readily restored to fire.

ASSAULT RIFLE: By U.S. Army definition, a selective-fire rifle chambered for a cartridge of intermediate power. If applied to any semi-automatic firearm

regardless of its cosmetic similarity to a true assault rifle, the term is incorrect.

ASSAULT WEAPON: Any weapon used in an assault (see WEAPON). – Definition still debated.

AUTOLOADER: A semi-automatic pistol, shotgun, or rifle.

AUTOMATIC: A firearm designed to feed cartridges, fire them, eject their empty cases and repeat this cycle as long as the trigger is depressed and cartridges remain in the feed system. Examples: machine guns, submachine guns, selective-fire rifles, including true assault rifles.

AUTOMATIC PISTOL: A term used often to describe something that actually is a semi-automatic pistol. It is, technically, a misnomer but a near-century of use has legitimized it, and its use confuses only the novice.

BARREL: Rifled or smooth tube that the bullet when fired travels down before exiting the firearm.

BATFE (BATF) (ATF): The BATFE is the Bureau of Alcohol, Tobacco, Firearms, and Explosives. Until recently, they were part of the Department of the Treasury, since their original mandate was handling tax stamps for firearms. Due to the War on Terror, they have been moved within the

Department of Homeland Security. Their mission has become over time less focused on tax collection and more focused on investigation and enforcement of laws.

CALIBER: The nominal diameter of a projectile of a rifled firearm or the diameter between lands in a rifled barrel. In this country, usually expressed in hundreds of an inch; in Great Britain in thousandths, in Europe and elsewhere in millimeters.

CARBINE: A rifle with a relatively short barrel. Any rifle or carbine with a barrel less than 16" long must be registered with the Bureau of Alcohol, Tobacco and Firearms. Shotguns with barrels less than 18" long fall into the same category.

CARTRIDGE: A single, complete round of ammunition.

CPL: Concealed Pistol License. A license to carry a concealed firearm.

CWL: Concealed Weapons License. A license to carry a concealed firearm.

CWP: Concealed Weapons Permit. Permit to carry a concealed firearm.

CHAMBER: The rear part of the barrel that is formed to accept the cartridge to be fired. A revolver employs a multi-

chambered rotating cylinder separated from the stationary barrel.

DEADLY FORCE (Lethal Force): That degree of force, which is likely to cause death or grave bodily injury.

DESTRUCTIVE DEVICES (DD): The term 'destructive device' means (1) any explosive, incendiary, or poison gas (A) bomb, (8) grenade, (C) rocket having a propellant charge of more than four ounces, (0) missile having an explosive or incendiary charge of more than one-quarter ounce, (E) mine, or (F) similar device; (2) any type of weapon by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, the barrel or barrels of which have a bore of more than one-half inch in diameter, except a shotgun or shotgun shell which the Secretary finds is generally recognized as particularly suitable for sporting purposes; and (3) any combination of parts either designed or intended for use in converting any device into a destructive device as defined in subparagraphs (1) and (2) and from which a destructive device may be readily assembled

DOUBLE-ACTION: A handgun mechanism where pulling the trigger retracts and releases the hammer or firing pin to initiate discharge.

DOUBLE ACTION / SINGLE ACTION (DA/SA): DA/SA firearms are designed to operate in double action on the initial shot, and in single action on the second and subsequent shots. Consequently, these guns tend to have a long, heavy trigger pull for the first shot, and a relatively short and light trigger pull for subsequent shots. This is because the first trigger pull gets the internal parts into position, while the energy from the first shot is used to prep the mechanism for follow-up shots.

EXTERNAL SAFETY: A safety device which is placed on the outer surfaces of the firearm and is accessible to the user. Not all external safeties require user attention. For instance, a grip safety is an external safety, but requires no deliberate act on the part of the shooter in order to do its job.

EXPLOSIVE: Any substance (TNT, etc.) that, through chemical reaction, detonates or violently changes to gas with accompanying heat and pressure. Smokeless powder, by comparison, deflagrates (burns relatively slowly) and depends on its confinement in a gun's cartridge case and chamber for its potential as a propellant to be realized.

FIREARM: A rifle, shotgun or handgun using gunpowder as a propellant. By federal definition, under the 1968 Gun Control Act, antiques are excepted. Under

the National Firearms Act, the word designates machine guns, etc. Air guns are not firearms.

GAUGE: The bore size of a shotgun determined by the number of round lead balls of bore diameter that equals a pound

GRIP: The small portion of the stock gripped by the trigger hand.

GRIP SAFETY: In some handguns, such as the venerable .45 Colt semi-automatic pistol, an auxiliary locking device located on the grip prevents firing until it is depressed.

GUN: The British restrict the term in portable arms to shotguns. Here it is properly used for rifles, shotguns, handguns and air guns, as well as cannon.

GUNPOWDER: Chemical substances of various compositions, particle sizes, shapes and colors that, on ignition, serve as a propellant. Ignited smokeless powder emits minimal quantities of smoke from a gun's muzzle; the older black powder emits relatively large quantities of whitish smoke.

HANDGUN: A gun that is generally held in one hand. It may be of the single-shot, multi-barrel, repeating or semi-automatic variety and includes revolvers.

HIGH-CAPACITY MAGAZINE: An inexact, non-technical term indicating a magazine holding more rounds than might be considered "average."

LTC: License to Carry. License to carry a concealed firearm.

MACHINEGUN: The term 'machinegun' means any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger.

MAGAZINE: A spring-loaded container for cartridges that may be an integral part of the gun's mechanism or may be detachable. The gun's manufacturer or other manufacturers may offer detachable magazines with various capacities for the same gun. A gun with a five-shot detachable magazine, for instance, may be fitted with a magazine holding 10, 20, or 50 or more rounds. Box magazines are most commonly located under the receiver with the cartridges stacked vertically. Tube or tubular magazines run through the stock or under the barrel with the cartridges lying horizontally. Drum magazines hold their cartridges in a circular mode. A magazine can also mean a secure storage place for ammunition or explosives.

MAY-ISSUE: may issue (or discretionary issue) laws require that the applicant demonstrate a specific "need", to justify the granting of a license or permit. The issuing authorities decided if the applicant could have the license or not.

MULTI-BARRELED: A gun with more than one barrel, the most common being the double-barreled shotgun

MUZZLE: The open end of the barrel from which the projectile exits.

NO-ISSUE: "No issue" states have no provision in law to allow a citizen to carry a concealed handgun. Likewise, these states will NOT honor a license or permit issued by any other state. Illinois, Wisconsin and the District of Columbia are no-issue jurisdictions.

PISTOL: Synonymous with "handgun."

REVOLVER: A gun, usually a handgun, with a multi-chambered cylinder that rotates to align successively each chamber with a single barrel and firing pin.

RIFLE: The term 'rifle' means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore

for each single pull of the trigger, and shall include any such weapon which may be readily restored to fire a fixed cartridge.

SAFETY: A device that blocks the firing mechanism of a firearm.

SATURDAY NIGHT SPECIAL: A pejorative or slang term used in the United States for any inexpensive handgun. It is called sometimes an SNS in written shorthand. Traditionally, Saturday night specials have often been defined as compact, inexpensive handguns with a barrel length of under three inches (for pistols, overall length of under six inches) and low perceived quality, although there is no official definition of "Saturday night special" under any federal or state law.

SAWED-OFF SHOTGUN/RIFLE: term for federally restricted "short-barreled shotgun (rifle)" i.e. a conventional shotgun with barrel less than 18" (rifle less than 16") or overall length less than 26."

SELECTIVE-FIRE: A firearm's ability to be fired fully automatically, semi-automatically or, in some cases, in burst- fire mode at the option of the firer.

SEMI-AUTOMATIC: A firearm designed to fire a single cartridge, eject the

empty case and reload the chamber each time the trigger is pulled.

SHALL ISSUE: The state must issue an applicant a permit to carry a firearm if they meet the requirements as set forth by the state. The issuing agency has no discretion on issuing permits to carry.

SHORT-BARRELED SHOTGUN: The term "short-barreled shotgun" means a shotgun having one or more barrels less than eighteen inches in length, and any weapon made from a shotgun (whether by alteration, modification, or otherwise) if such weapon, as modified has an overall length of less than twenty-six inches.

SHORT-BARRELED RIFLE: The term "short-barreled rifle" means a rifle having one or more barrels less than eighteen inches in length, and any weapon made from a rifle (whether by alteration, modification, or otherwise) if such weapon, as modified has an overall length of less than twenty-six inches.

SHOTGUN: The term 'shotgun' means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of projectiles (ball shot) or a single projectile for each pull of the trigger, and shall include any such weapon which may be

readily restored to fire a fixed shotgun shell.

SNUB-NOSED: Descriptive of (usually) a revolver with an unusually short barrel.

TRIGGER: The part of a firearm mechanism, which releases the firing pin.

TRIGGER GUARD: A metal loop around the trigger designed to protect it.

WEAPON: Webster defines it as "an instrument of offensive or defensive combat." Thus, an automobile, baseball bat, bottle, chair, firearm, fist, pen knife or shovel is a "weapon," if so used.

Appendix II

School Shootings in the United States of America (1990-2014)

The list of school shootings occurred in the U.S. is too long for citing properly all the cases. In order to understand the extension of the problems concerning this thesis, here there is a list of reported school shootings since the 1990s to the mid-2014. In some cases the name of the perpetrator is unknown either because the information is not available or because – especially in latest cases – police has not found the responsible or there are just suspects.²⁷⁷

STATISTICS

Age of Victims

0 - 9	31 (6%)
10 - 19	300 (59%)
20 - 29	80 (16%)
30 - 39	28 (5%)
40 - 49	33 (6%)
50+	38 (7%)

Age of Shooters

0 - 9	5 (2%)
10 - 19	168 (69%)
20 - 29	36 (15%)
30 - 39	28 (5%)
40 - 49	14 (6%)
50+	9 (4%)

²⁷⁷ The list has been drafted thanks to websites reporting statistics on school shootings:
<http://www.washingtonpost.com/wprv/metro/documents/vatechreport.pdf><http://www.infoplease.com/ipa/A0777958.html>
<http://www.stopheshootings.org/>
<http://everytown.org/article/schoolshootings/>
<http://edition.cnn.com/2014/06/11/us/school-shootings-cnn-number/>

Deadliest Shootings

Virginia Tech	33 fatalities
Sandy Hook Elementary School	28 fatalities
Columbine High School	15 fatalities

(* means the perpetrator is among the Deaths)

<i>Date</i>	<i>Location</i>	<i>Perpetrator</i>	<i>Injuries</i>	<i>Deaths</i>
May 20, 1990	Centerville High School, Centerville, TN	Donald Wayne Givens, 50	-	1
Jan 8, 1991	Richardson High School, Richardson, TX	Jeremy Wade Delle, 15	-	1*
Apr 23, 1991	Ralph J. Bunche Middle School, Compton, CA	Unknown teenager	-	1
Nov 1, 1991	University of Iowa, Iowa City, IA	Gang Lu, 28	1	5*
May 1, 1992	Lindhurst High School, Olivehurst, CA	Eric Houston, 20	10	4
Dec 14, 1992	Simon's Rock College, Great Barrington, MA	Wayne Lo, 22	4	2
Jan 18, 1993	East Carter High School, Grayson, KY	Scott Pennington, 17	-	2
Dec 1, 1993	Revered Associate, Wauwatosa, WI	Leonard D. McDowell, 21	-	1
Dec 17, 1993	Chelsea High School, Chelsea, MI	Steven Leith (teacher)	2	1
Jan 31, 1994	Whitman Middle School, Seattle, WA	Darrell Cloud, 24	-	1
Mar 1, 1994	Kemper Military School and College, Boonville, MO	Dante D. Hayes, 33	-	2

<i>Date</i>	<i>Location</i>	<i>Perpetrator</i>	<i>Injuries</i>	<i>Deaths</i>
Nov 7, 1994	Wickliffe Middle School, Wickliffe, OH	Keith Ledger, 37	4	1
Jan 12, 1995	Garfield High School, Seattle WA	15-year-old student	2	-
Sept 29, 1995	Taveras Middle School, Taveras, FL	Keith E. Johnson, 14	-	1
Nov 15, 1995	Richland High School, Lynnsville	James Rouse, 17	1	2
Feb 2, 1996	Frontier Middle School, Moses Lake, WA	Barry Loukaitis, 14	1	3
Aug 15, 1996	San Diego State University, San Diego, CA	Frederick Martin Davidson, 36	-	3
Aug 26, 1996	University of Texas, San Antonio, TX	Gregory Heath, 25	-	2*
Sept 17, 1996	Pennsylvania State University, State College, PA	Jillian Robbins, 19	2	1
Feb 19, 1997	Bethel Regional High School, Bethel, AK	Evan Ramsey, 16	2	2
Oct 1, 1997	Pearl High School, Pearl, MS	Luke Woodham, 16	7	3
Nov 27, 1997	Conniston Middle School, West Palm Beach, FL	Tronneal Magnum, 14	-	1
Dec 1, 1997	Heath High School, West Paducah KY	Michael Carneal, 14	5	3
Dec 15, 1997	Stamps High School, Stamps, AR	Joseph Todd, 14	2	-
Mar 24, 1998	Westside Middle School, Craighead County, AR	Michael Johnson, 13 Andrew Golden, 11	10	5
Apr 24, 1998	Parker Middle School, Edinburg, PA	Andrew Wurst, 14	3	1

<i>Date</i>	<i>Location</i>	<i>Perpetrator</i>	<i>Injuries</i>	<i>Deaths</i>
May 19, 1998	Fayetteville, TN	Jacob Davis, 18	-	1
May 21, 1998	Thurston High School, Springfield, OR	Kip Kinkel, 15	23	4
Jun 15, 1998	Armstrong High School, Richmond, VA	14-year-old student	2	-
Dec 10, 1998	Detroit, MI	Wlodzimierz Dedecjus, 48	-	1
Apr 16, 1999	Notus Jr. Sr. High School, Notus, ID	Shawn Cooper, 15	-	-
Apr 20, 1999	Columbine High School Columbine, CO	Eric Harris, 18 Dylan Klebold, 17	24	15*
Feb 29, 2000	Buell Elementary School, Flint, MI	Dedrick Owens, 6	-	1
May 26, 2000	Lake Worth Middle School, Lake Worth, FL	Nathaniel Brazill, 13	-	1
Aug 28, 2000	University of Arkansas, Fayetteville, AR	James E. Kelly, 36	-	2
Sept 26, 2000	New Orleans, Louisiana	Darrel Johnson, 13 Alfred Anderson	2	-
Mar 5, 2001	Santana High School, Santee, CA	Charles A. Williams, 15	13	2
Mar 7, 2001	Bishop Neumann High School, Williamsport, PA	Elizabeth Bush, 15	1	-
Mar 22, 2001	Granite Hills High School, El Cajon, CA	Jason Hoffman	5	-
Mar 30, 2001	Gary, IN	Donald R. Burt Jr., 18	-	1
Jan 15, 2002	Martin Luther King, Jr. High School, New York, NY	Vincent Rodriguez, 17	2	-
Oct 28, 2002	University of Arizona, Tucson, AZ	Robert S. Flores, 41	-	4
Apr 24, 2003	Red Lion Area Junior High School, Red Lion, PA	James Sheet, 13	-	2
May 9, 2003	Case Western Reserve, Cleveland, OH	Biswanath Halder, 62	2	1

<i>Date</i>	<i>Location</i>	<i>Perpetrator</i>	<i>Injuries</i>	<i>Deaths</i>
Sept 24, 2003	Rocori High School, Cold Spring, MN	John Jason McLaughlin, 15	-	2
Feb 2, 2004	Washington, DC	Unknown student	-	1
May 7, 2004	Randallstown High School, Randallstown, MD	Two students	4	-
Mar 21, 2005	Red Lake Senior High School, Red Lake, MN	Jeffrey Weise, 16	7	10
Sept 13, 2005	Harlan Community Academy High School, Chicago, IL	15 years-old-boy	1	-
Nov 8, 2005	Campbell Country High School, La Follette, TN	Kenneth Bartley, 15	1	2
Feb 23, 2006	Roseburg High School, Roseburg, OR	Vincent Wayne Leodoro, 14	1	-
Mar, 2006	Pine Middle School, Reno, NV	James Scott Newman, 14	2	-
Aug 24, 2006	Essex Elementary School, Essex, VT	Christopher Williams, 27	3	2
Aug 30, 2006	Hillsborough, NC	Alvaro Castillo	2	-
Sept 27, 2006	Platte Canyon High School, Bailey, CO	Duane Roger Morrison, 54	-	2*
Sept 29, 2006	Weston High School, Cazenovia, WI	Eric Hainstock, 15	-	1
Oct 2, 2006	Amish School, Nickel Mines, PA	Charles Carl Robert IV, 32	3	6
Jan 3, 2007	Henry Foss High School, Tacoma, WA	Douglas Chanthabouly, 18	-	1
Feb 8, 2007	Crook County High School, Prineville, OR	Apparent suicide, 18 years-old boy	-	1
Apr 16, 2007	Virginia Tech, Blacksburg, VA	Seung-Hui Cho, 23	25	33
Oct 10, 2007	SuccessTech Academy, Cleveland, OH	Asa Coon, 14	4	1
Feb 4, 2008	Hamilton High School, Memphis, TN		1	-
Feb 8, 2008	Louisiana Technical College, Baton Rouge, LO	Latina Williams, 23	-	3
Feb 12, 2008	Oxnard, CA	Brandon McInerney, 14	-	1

<i>Date</i>	<i>Location</i>	<i>Perpetrator</i>	<i>Injuries</i>	<i>Deaths</i>
Feb 14, 2008	Nothern Illinois University, DeKlab, IL	Steven Kazmierczack, 27	21	6
Aug 14, 2008	Lakota Middle School Campus, Federal Way, WA	Omero Mendez, 26	-	1
Oct 16, 2008	Henry Ford High School, Detroit, MI	Demon Bell	3	1
Oct 26, 2008	University of Central Arkansas, Conway, AR	Unknown	1	2
Nov 13, 2008	Dillard High School, Fort Lauderdale, FL	Teah Wimberly, 15	-	1
Jan 9, 2009	Dunbar High School, Chicago, IL	Georgio Dukes, 18	5	-
Apr 26, 2009	Hampton University, Hampton, VA	Odane Greg Mayer, 18	3	-
May 18, 2009	Harvard College, Cambridge, MA	Jabrai Copney, 20 Jason Aquino, 23 Blayn Jiggetts, 19	-	1
May 18, 2009	Larose-Cut Off Middle School, Larose, LO	Justin Douchet, 15	-	1
Sep 3, 2009	Skyline College San Bruno, CA	Jermaine Benjamin, 18 Dimaryea McGhee, 20 Jacori Bender, 18	1	-
Feb 5, 2010	Discovery Middle School Madison, AL	Hamad Memon, 14	-	1
Feb 12, 2010	University of Alabama, Huntsville, AL	Professor Amy Bishop Anderson	3	3
Feb 23, 2012	Deer Creek Middle School, Littleton, CO	Bruco Eastwood	2	-
Sept 8, 2010	Mumford High School, Detroit, MI	Steven Jamal Hare, 17	2	-
Sept 28, 2010	University of Texas, Austin, TX	Colton Toley, 19	-	1*
Oct 1, 2010	Alisal High School, Salinas, CA	Jose Daniel Cisneros, 15	-	1
Nov 29, 2010	Marinette High School, Marinette, WI	Samuel Hengel, 15	-	1*
Dec 6, 2010	Aurora Central High School, Aurora, CO	Luis Henrique Guzman- Rincon, 20	1	-
Jan 5, 2011	Millard South High School, Omaha, NE	Robert Butler Jr, 18	2	2*

<i>Date</i>	<i>Location</i>	<i>Perpetrator</i>	<i>Injuries</i>	<i>Deaths</i>
Feb 2, 2011	Schnell Elementary School, Placerville, CA	John Luebbers	-	1
Mar 16, 2011	City College & Del mar High School San Jose, CA	Brandon Wantland, 18	-	1
Mar 25, 2011	Martinsville West Middle School, Martinsville, IN	Michael Phelps, 15	1	-
Mar 31, 2011	Worthing High School, Houston, TX	Multiple gunmen	5	1
May 23, 2011	Highlands Intermediate School, Pearl City, HI	14-years-old male	1	-
Oct 24, 2011	Cape Fear High School, Fayetteville, NC	Charles Underwood, 15	1	-
Dec 8, 2011	Reford University, Blacksburg, VA	Ross Truett Ashley, 22	-	2*
Dec 9, 2011	Harwell Middle School, Edinburg, TX	Unknown	2	-
Feb 27, 2012	Chardon High School, Chardon, Oh	Thomas T.J. Lane, 17	3	3
Mar 6, 2012	Episcopal School, Jacksonville, FL	Unknown	-	2*
Apr 2, 2012	Oikos University, Oakland, CA	One Goh, 43	3	7
Aug 27, 2012	Perry Hall High School, Perry Hall, MD	Robert Gladden, 15	1	-
Sept 26, 2012	Stillwater Junior High School, Stillwater, OK	Cade Poulos, 13	-	1*
Oct 12, 2012	Fairmont Public School, Fairmont, ND	Unknown freshman	1	-
Oct 31, 2012	University of Southern California, Los Angeles, CA	Brandon Spencer, 20	4	-
Dec 14, 2012	Sandy Hook Elementary School, Newtown, CT	Adam Lanza, 20	2	28*
Jan 7, 2013	Apostolic Revival Center Christian School, Fort Myers, FL	Unknown	-	1
Jan 10, 2013	Taft Union High School, Taft, CA	Bryan Oliver, 16	2	-

<i>Date</i>	<i>Location</i>	<i>Perpetrator</i>	<i>Injuries</i>	<i>Deaths</i>
Jan 15, 2013	Steven Institute of Business and Arts, St. Louis, MO	Sean Johnson (part-time student)	2	-
Jan 15, 2013	Hazard Community and Technical College Hazard, KY	Dalton Lee Stidham, 21	-	3
Jan 16, 2013	Chicago State University, Chicago, IL	Two people	-	1
Jan 22, 2013	Lone Star College, Houston, TX	Unknown	3	-
Jan 31, 2013	Price Middle School, Atlanta, GA	Unknown Student	2	-
Feb 1, 2013	Morehouse College, Atlanta, GA	Amir Obafemi, 20	1	-
Feb 13, 2013	Hillside Elementary School, San Leandro, CA	Unknown	-	1
Feb 27, 2013	Henry W. Grady HS, Atlanta, GA	Morgan Tukes, 17	1	-
Mar 8, 2013	University of Central Florida, Orlando, FL	James Oliver Seevakumaran, 30	-	1*
Mar 21, 2013	Davidson Middle School, Southgate, MI	Tyler Nichols, 13	-	1*
Apr 12, 2013	New River Community College, Christianburg, VA	Neil Allen Macinnis	2	-
Apr 16, 2013	Tampani, TX	Unknown Student	-	1*
Apr 16, 2013	Gambling State University, Grambling, LA	Unknown	3	-
Apr 18, 2013	MIT, Cincinnati, OH	Dzhokhar Tsarnaev Tamerlan Tsarnaev	1	2
Jun 7, 2013	Santa Monica College, Santa Monica, CA	John Zawahiri, 23	4	6*
Jun 20, 2013	Alexander Dreyfoos School, West Palm Beach, FL	Unknown	-	2
Aug 20, 2013	Ronald E. McNair Discovery Learning Academy, Decatur, GA	Michael Brandon Hill, 20	-	-
Aug 23, 2013	North Panola High School, Sardis, MS	Three unknown men	2	1

<i>Date</i>	<i>Location</i>	<i>Perpetrator</i>	<i>Injuries</i>	<i>Deaths</i>
Aug 30, 2013	Carver High School, Winston-Salem, NC	18-year-old student	1	-
Sept 28, 2013	Gray-New Gloucester High School, Gray, ME	Gaige McGue, 18	-	1*
Oct 4, 2013	Agape Christian Academy, Pine Hills, FL	Unknown	2	-
Oct 15, 2013	Lanier High School, Austin, TX	Unknown student	-	1*
Oct 21, 2013	Sparks Middle School, Sparks, NV	Jose Reyes, 12	2	2*
Nov 2, 2013	N.C. A&T State University, Greensboro, NC	Unknown	1	-
Nov 3, 2013	Stephenson High School, Lithonia, GA	Unknown	2	-
Nov 13, 2013	Brashear High School, Pittsburgh, PA	Unknown	3	-
Nov 26, 2013	S.D. School of Mines & Technology Rapid City, SD	Alberto Lemut, 37	-	1*
Dec 4, 2013	West Orange High School, Winter Garden, FL	17-year-old student	1	-
Dec 13, 2013	Arapahoe High School, Arapahoe County, CO	Karl Pierson, 18	-	2*
Dec 19, 2013	Edison High School, Fresno, CA	Four teens	1	-
Jan 9, 2014	Liberty Technology Magnet High School, Jackson, TN	Unknown student	1	-
Jan 13, 2014	Hillhouse High School, New Haven, TN	14-year-old boy	1	-
Jan 14, 2014	Berrendo Middle School, Roswell, NM	Mason Campbell, 12	3	-
Jan 17, 2014	Dalawere Valley Charter School, Philadelphia, PA	Raisheem Rochwell, 17	2	-
Jan 20, 2014	Widener University, Chester, PA	Unknown	1	-

<i>Date</i>	<i>Location</i>	<i>Perpetrator</i>	<i>Injuries</i>	<i>Deaths</i>
Jan 21, 2014	Purdue University, West Lafayette, IN	Cody Cousins, 24	-	1
Jan 24, 2014	S.C. State University, Orangeburg, SC	19-year-old student	-	1
Jan 25, 2014	Los Angeles Valley College, Los Angeles, CA	Two gunmen	-	1
Jan 27, 2014	Rebound High School, Carbondale, IL	18-year-old student	1	-
Jan 28, 2014	President Theodore Roosevelt High School, Honolulu, HI	17-year-old student	2	-
Jan 28, 2014	Tennessee State University, Nashville, TN	Unknown	1	-
Jan 30, 2014	Eastern Florida State College, Palm Bay, FL	Three Students	1	-
Jan 31, 2014	North High School, Des Moines, IA	Unknown	1	-
Feb 8, 2014	Bend High School, Bend, OR	Zachary Leyes, 17	-	1*
Feb 10, 2014	Salisbury High School, Salisbury, NC	17-year-old student	1	-
Feb 10, 2014	Charles F. Brush High School, Lyndhurst, OH	Unknown	1	-
Feb 12, 2014	University of Southern California, Los Angeles, CA	Unknown	1	-
Feb 20, 2014	Success Academy, Raytown, MO	Falonzo Davis, 43	-	1
Mar 2, 2014	McDaniel College, Westminster, MD	Unknown	-	-
Mar 7, 2014	Madison High School, Tallulah, LA	<u>Brendan Tarwater</u> , 17	-	-
Mar 21, 2014	University of Delaware, Newark, DE	Alex R. Marshall, 22	-	-
Apr 11, 2014	East English Village Preparatory Academy, Detroit, MI	Unknown	-	1

<i>Date</i>	<i>Location</i>	<i>Perpetrator</i>	<i>Injuries</i>	<i>Deaths</i>
May 4, 2014	Paine College, Griffith, IN	Two men	1	-
May 5, 2014	Paine College, Augusta, GA	Unknown	1	-
May 8, 2014	Georgia Gwinett College, Lawrenceville, GA	Unknown	1	-
May 14, 2014	John F. Kennedy High School, Richmond, CA	Unknown	1	-
May 23, 2014	University of California, Isla Vista, CA	Elliot Rodger, 22	13	7
Jun 5, 2014	Seattle Pacific University, Seattle, WA	Aaron Ybarra, 16	3	1
Jun 10, 2014	Reynolds High School, Troutdale, OR	Jared Padgett, 15	1	2*

Appendix III

Firearms Used in the Shootings

This appendix is dedicated to the specific type of firearms used in the main shootings cited in chapter IV.

COLUMBINE HIGH SCHOOL, Columbine, CO - 1999	
Intratec TEC-DC9 (assault pistol)	
Savage 67H pump-action shotgun	
Double-barrel 311-D sawed-off shotgun	

<p>Hi-Point 995 Carbine (semi-automatic, blowback operated carbine)</p>	
<p>BUEL ELEMENTARY SCHOOL, Flint, MI - 2000</p>	
<p>P-32 .32 (semi-automatic pistol)</p>	
<p>SANTANA HIGH SCHOOL, Santee, CA - 2001</p>	
<p>Arminius .22 caliber revolver (double action revolver)</p>	
<p>RED LAKE, MN - 2005</p>	
<p>.40 caliber Glock 23 (semi-automatic pistol)</p>	

<p>Ruger MK II .22 caliber (semi-automatic pistol)</p>	
<p>Remington 870 12-gauge shotgun</p>	
<p>AMISH SCHOOL, Nickel Mines, PA - 2006</p>	
<p>Springfield XD 9 mm (semi-automatic pistol)</p>	
<p>VIRGINIA TECH, Blacksburg, VA - 2007</p>	
<p>Glock 19 9mm pistol</p>	
<p>Walther P-22 .22 pistol</p>	
<p>NORTHERN ILLINOIS UNIVERSITY, DeKalb, IL - 2008</p>	

<p>12 gauge Remington Sportsman 48 shotgun</p>	
<p>Glock 19 9mm pistol</p>	<p>(see Virginia Tech)</p>
<p>.380 ACP Sig Sauer P232 (semi-automatic pistol)</p>	
<p>.380 ACP Hi-Point CF380</p>	
<p>SANDY HOOK ELEMENTARY SCHOOL, Newtown, CT - 2012</p>	
<p>Bushmaster M4 Type Carbine (assault rifle)</p>	
<p>Glock 10mm handgun (semi-automatic pistol)</p>	
<p>Sig-Sauer P226 9mm handgun (semi-automatic pistol)</p>	
<p>Izmash Saiga-12 12 gauge shotgun (assault rifle)</p>	

AURORA MOVIE THEATER, Aurora, CO - 2012

Smith & Wesson M&P15 (AR-15
Rifle)



Remington Model 870

(see Red Lake)

Appendix IV

Firearms Regulation in Italy

Chapter IV contained some references to firearms regulation in Japan, Switzerland and to the minimum standards required by the European Union. This appendix aims at giving a glance to the regulation in Italy, in order to appreciate how differently guns are regulated and to better understand how difficult is for an Italian to accept the U.S. gun legislation and the U.S. myth of firearms.²⁷⁸

<u>Gun Regulation</u>	
Firearm Regulation Authority	European Commission
Right to Possess Firearms	Not guaranteed by law
Restricted firearms and Ammunition	Automatic firearms, firearms disguised as other objects, armour piercing, incendiary and expanding ammunition.
Regulation of Automatic Weapons	Private possession prohibited
Regulation of Semiautomatic Assault Weapons	Private possession only with a special authorization
Regulation of Handguns	Private possession only with a special authorization
<u>Ownership and Possession</u>	
Only licensed gun owners may lawfully acquire, possess or transfer firearms (<i>Porto d'armi</i> or <i>nulla osta</i> issued by State Police)	
Genuine Reason Required for Firearm Possession	Applicants for gun owner's license are required to prove genuine reason to possess a firearm, i.e. self-defense – in case of proved danger – hunting, sport, work, collecting.

²⁷⁸ The analysis has been conducted thanks the sources:
<http://www.gunpolicy.org/firearms/region/italy>
http://www.poliziadistato.it/articolo/16978-Armi_le_regole_per_essere_in_regola/

Minimum Age	18
Background Check	Applicants must pass a background check considering criminal and mental records
Quantity, Type of Ammunition	<ul style="list-style-type: none"> • 3 common firearms; • 6 weapons classified for sports use both long and short; <ul style="list-style-type: none"> • An unlimited number of rifles and carbines with no less than 5.6 mm caliber with "empty cartridge case" of height not less than 40 mm that are classified as hunting (art. 13 of Law 157 of 1992); • 8 weapons total including: Ancient historical importance produced before 1890 or muzzle-loading, original; art with special finishes or features such as embroidery in gold or precious stones; that are rare in a limited number of copies - it can also be the single weapon tied to a particular event or historical figure (DM April 14, 1982); • 200 cartridges for common weapon (art. 97, TULPS); • 1,500 cartridges for hunting shotguns (art. 97, TULPS);
<u>Firearms Registration</u>	
Civilian Gun Registration	A record of the acquisition, possession and transfer of each privately held firearm be retained in an official register
Gun Dealer Record Keeping	Licensed firearm dealers are required to keep a record of each firearm or ammunition purchase, sale or transfer on behalf of a regulating authority
Gun Manufacturer Record Keeping	Licensed gun makers are required to keep a record of each firearm produced, for inspection by a regulating authority
<u>International Controls</u>	
European Union	As a member of the European Union, Italy is bound by the provisions of the 'EU Firearms Directive' – the 2007 Legislative Resolution on Control of the Acquisition and Possession of Weapons of the European Parliament
Geneva Declaration on Armed Violence and Development	Aimed at addressing the interrelations between armed violence and development. Signed by Italy in 2007

<p>The United Nations Firearms Protocol</p>	<p>The United Nations Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition has been signed and ratified by Italy.</p>
<p>UN Small Arms Programme of Action (UNPoA)</p>	<p>UNPoA Commitment On 21 July 2001, Italy committed to a consensus decision of the United Nations to adopt, support and implement the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects</p> <p>UNPoA Implementation Monitor Score In its UN small arms Programme of Action Implementation Monitor, the Small Arms Survey scored Italy against its commitments to the PoA, then ranked it at No. 75 among 159 Member States</p> <p>UNPoA National Reporting Under the terms of its 2001 commitment to the United Nations small arms Programme of Action, Italy has submitted one or more national reports on its implementation of the UNPoA</p> <p>UNPoA National Point of Contact In Italy, a National Point of Contact to deal with issues relating to the UNPoA has been designated</p> <p>UNPoA National Coordinating Body In Italy, a National Coordinating Body to deal with issues relating to the UNPoA has been designated</p> <p>UNPoA Civil Society Involvement and Support In National Reports of Italy submitted to the UN, a history of substantive cooperation with civil society in support of UNPoA activities is apparent</p> <p>UNPoA International Assistance – Donor</p>

	Funds for UNPoA implementation have been donated ²² by Italy to other UN Member States
--	---------------------------------------------------------------------------------------------------

BIBLIOGRAPHY

Bills, Constitutions, Code and Cases

102nd Congress, *Violent Crime Control and Law Enforcement of 1994 - H.R.3355*, Title XI, section 110102 Consolidated Appropriations Act 2010, Pub. L. No. 111–117, 123 Stat. 3128-3129 (2009)

103rd Congress, *Public Safety and Recreational Firearms Use Protection Act - H.R. 4296*, Sec. 2, b. May 16, 1994.

109th Congress, *Protection of Lawful Commerce in Arms Act - S.397*, Section 5. “Child Safety Locks”, February 15, 2005

111th Congress, *Ammunition Management for More Obtainability Act of 2013 – S. 843*, April 25, 2013

111th Congress, *To repeal the Authorization for Use of Military Force H.R. 2324*, June 11, 2013

112th Congress, *Brady Handgun Violence Prevention Act - H.R.1025*, section 02, November 29, 1993

Alabama Constitution, Article I, section 26

Bill of Rights of the United States of America, 1791

California Penal Code, Title 3, Division 10, Ch. 2 §30500 et sq.

Chicago, IL, Municipal Code, section 8-20-040 (a) 2009, cited in Rose, V. “Summary of the recent McDonald v. Chicago gun case”

Commonwealth v. Depina, 922 N.E. 2d 778 (2010)

Constitution of the Commonwealth of Massachusetts, Article XVII

Constitution of the United States of America, 1789

Council Directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of weapons”, September 9, 1991

District of Columbia v. Heller, Supreme Court, 554 U.S.

English Bill of Rights, 1689, The Avalon Project, Yale Law School,

Firearms Directive, February 6, 2014, *European Commission – Enterprises and Industries*.

Firearms Owners Protection Act, Public Law 99-308, 1986

Gun Control Act, U.S.C. Ch. 44 (1968)

Hawaii Constitution, Article 1, section 17, 1959

Hening's Statutes at Large: Laws of Virginia, vol. 05

Kansas Bill of Rights, Kansas State Library

Minnesota State Firearms Laws, August 1994

National Firearms Act, 26 U.S.C. Ch. 53 (1934)

Ohio Constitution, Art. VIII, section 20, 1802; Pennsylvania Constitution, Art.1, section 21, 1790

Supreme Court of the United States, *McDonald v. Chicago* 561 U.S. 742 (2010)

Supreme Court of the United States, *Presser v. Illinois*, 116 U.S. 252 (1879)

Supreme Court of the United States, *United States v. Cruikshank*, 92 U.S. 542 (1875)

Supreme Court of the United States, *United States v. Miller*, 307 U.S. 174 (1939)

The Grand Remonstrance, Constitutional Documents of the Puritan Revolution, 1641

The Militia Act, May 2, 1792

Books

Amar, Akhil R., *America's Constitution: a Biography*. New York: Random House, 2005

Boorstin, Daniel J., *The Americans--The Colonial Experience*, n.p.: Knopf Doubleday Publishing Group, 2010

Carter, Gregg L., *Guns in American Society: An Encyclopedia of History, Politics, Culture and Law – Second Edition*, Santa Barbara: ABC-CLIO, LLC, 2012

Charles Lane, *The Day Freedom Died: The Colfax Massacre, the Supreme Court, and the Betrayal of Reconstruction*, New York: Henry Holt and Company, 2008

Charles, Patrick J., *The Second Amendment: the intent and its interpretation by states and the Supreme Court*, Jefferson, NC: McFarland & Company Inc., Publishers, 2009

- Cogan, Neal H., ed. *The complete Bill of Rights: The Drafts, Debates, Sources, & Origins*, New York: Oxford University Press, 1997
- Cooper, Jerry, *The Rise of the National Guard: The Evolution of the American Militia, 1865-1920*, University of Nebraska Press, 1997
- Corey – Fairbank, eds. *Statutes of Ohio and of the Northwestern Territory adopted or enacted from 1788 to 1833, vol.I*, Cincinnati, 1833
- Cottrol, Robert J., *Gun Control and the Constitution. Sources and Explorations on the Second Amendment*, New York & London: Garland Publishing, Inc., 1994
- Cushing, H. A., ed. *Writings of Samuel Adams*, vol. 1, New York: G.P. Putnam's Sons, 1904
- Dinan, John, "State Constitutional Development", *The Book of the States 2011*, Council of State Governments, 2011
- Doubler, Michael D., *The National Guard: an illustrated history of Americas citizen-soldiers*, Dulles: Potomac Books, Inc., 2007
- Elliot, Johnatan, *The debates in the several state conventions on the adoption of the Constitution*, Washington, 1836
- Finkelman, Paul, *The Slavery and the Founder: Race and Liberty in the Age of Jefferson*, New York: M.E. Shape, Inc., 2001
- Halbrook, Stephen P., *The Founders' Second Amendment, Origins of the Right to Bear Arms*, Oakland, California: The Independent Institute, 2012
- Hasday, Judy L., *Forty-Nine Minutes of Madness: The Columbine High School Shooting*, Melrose Park: Enslow Publishers, Inc., 2013
- Hibbert, C., *Cavaliers and Roundheads*, New York: HarperCollins, 1994
- Jones, Maldwyn A., *The Limits of Liberty*, New York: Oxford University Press, 1997
- Kates, Don B. Jr., "Handgun Prohibition and the Original Meaning of the Second Amendment", *Gun Control and the Constitution*, Cottrol, Robert J., ed. New York & London: Garland Publishing, 1994
- Kessler, Ron, *In the President's Secret Service*, New York: Crown Publishers, 2009
- Machiavelli, N., *The Prince*, translated by Marriott W.K., London: Encyclopaedia Britannica, 1952-1954
- Malcom, Joyce L., *To Keep and Bear Arms: The Origins of an Anglo-American Right*, Harvard University Press, 1996
- Nixon, Richard, *Seize the Moment*, New York: Simon & Schuster, 1992

Poore, Perley, *The Federal and State Constitutions, Colonial Charters, and other Organic laws of the United States*, Washington: Union: Lawbook Exchange Ltd, 2003, vol.1

Schulman, Neil J., "The Unabridged Second Amendment", The New Gun Week and Second Amendment Foundation, 1991

Skeen, Carl Edward, *Citizen Soldiers in the War of 1812*, Lexington: University Press of Kentucky, 1999

Streissguth, T. *District of Columbia V. Heller: The Right to Bear Arms Case*, Melrose Park: Lake Book Manufacturing, Inc., 2011

Welford, Charles F. et al., *Firearms and Violence: A Critical Review*, Washington, DC: The National Academies Press, 2004

Wilson, Harry L., "Open Carry Laws", in Carter, Gregg L., *Guns in American Society*, 2012

Academic Journals

Baron, Dennis, Guns and Grammar: The Linguistic of The Second Amendment, Paper presented at the annual meeting of the The Law and Society Association, Grand Hyatt, Denver, Colorado, May 25, 2009

Feller, P.B – Gotting, K.L., "The Second Amendment: a Second Look". *Northwestern University Law Review* 46, (1966-1967)

Fields, W.S., Hardy, D.T., "The Militia and the Constitution: A Legal History" *Military Law Review* 136 , 1992

Frye, Brian L., "The peculiar case of United States v. Miller", *N.Y.U. Journal of Law & Liberty*, 2008

Hardy, David T., "The Second Amendment and the Historiography of the Bill of Rights", *4 Journal of Law & Politics*, 1987

Kopel, D., Cramer, C., "State Court Standards of Review for the Right to Keep and Bear Arms", *50 Santa Clara Law Review*, Santa Clara University, 2010

Kopel, David B., The Supreme Court thirty-five other gun cases: what Supreme Court has said about the Second Amendment, *Saint Louis University Public Review*, 1999

Lawrence, Michael A., Second Amendment Incorporation through the Fourteenth Amendment Privileges or Immunities and Due Process Clauses, *Missouri Law Review*, 2007

Malcom, Joyce L., *The Supreme Court and the Uses of History: District of Columbia v. Heller*, 56 *UCLA Law Review*, 2009: 1388

Vandercay, David E., "The History of the Second Amendment", *Valparaiso Univ. Law Review*, 1994

Reports and Programs

"Uniform Crime Reporting Statistics", *U.S. Department of Justice, Federal Bureau of Investigation* at: <http://www.ucrdatatool.gov/Search/Crime/State/RunCrimeStatebyState.cfm>

European Commission, Possible advantages and disadvantages of reducing the classification to two categories of firearms (prohibited or authorized) with a view to improving the functioning of the internal market for the products in question through simplification, Report from the Commission to the European Parliament and the Council, Brussels 2012.

GAO, *Gun Control. Sharing Promising Practices and Assessing Incentives Could Better Position Justice to Assist States in Providing Records for Background Checks*, July 2012

Mass Shooting at Virginia Tech, April 16, 2007. Report of the Review Panel Presented to Governor Kaine, Commonwealth of Virginia, August 2007

Mayors Against Illegal Guns, *Analysis of Recent Mass Shootings*, January 2013. Accessed on August 21, 2014 at: <http://s3.amazonaws.com/s3.mayorsagainstillegalguns.org/images/analysis-of-recent-mass-shootings.pdf>

Office of the State's Attorney Judicial District of Danbury, Report of the State's Attorney for the Judicial District of Danbury on the Shootings at Sandy Hook Elementary School and 36 Yogananda Street, Newtown, Connecticut on December 14, 2012, November 25, 2013

The Federal Bureau of Investigation, *Columbine High School Massacre: The FBI Files*, 2007

The White House, *Now is the Time: The President's Plan to Protect Our Children and Our Communities by Reducing Gun Violence* 10, Jan. 16, 2013

The Republican Party Platform of 1960, July 25, 1960, *American Presidency Project*, at: <http://www.presidency.ucsb.edu/ws/index.php?pid=25839>

The Democratic Party Platform of 1972, July 10, 1972, *American Presidency Project*, at: <http://www.presidency.ucsb.edu/ws/index.php?pid=29605>

The Republican Party Platform of 1972, August 21, 1972, *American Presidency Project*, at: <http://www.presidency.ucsb.edu/ws/index.php?pid=25842>

The Democratic Party Platform of 1976, July 12, 1976, *American Presidency Project*, at:
<http://www.presidency.ucsb.edu/ws/index.php?pid=29606>

The Republican Party Platform of 1976, August 18, 1976, *American Presidency Project*, at:
<http://www.presidency.ucsb.edu/ws/index.php?pid=>

The Republican Party Platform of 1980, July 15, 1980, *American Presidency Project* at:
<http://www.presidency.ucsb.edu/ws/index.php?pid=25844>

The Democratic Party Platform of 1984, July 16, 1984, *American Presidency Project*, at:
<http://www.presidency.ucsb.edu/ws/index.php?pid=29608>

The Republican Party Platform of 1984, August 16, 1988, *American Presidency Project*, at:
<http://www.presidency.ucsb.edu/ws/index.php?pid=25846>

The Democratic Party Platform of 1992, July 13, 1992, *American Presidency Project*, at:
<http://www.presidency.ucsb.edu/ws/index.php?pid=29610>

The Republican Party Platform of 1996, August 16, 1996, *American Presidency Project*, at:
<http://www.presidency.ucsb.edu/ws/index.php?pid=25848>

The Republican Party Platform of 2000, July 31, 2000, *American Presidency Project*, at:
<http://www.presidency.ucsb.edu/ws/index.php?pid=25849>

The Democratic Party Platform of 2000, August 14, 2000, *American Presidency Project* at:
<http://www.presidency.ucsb.edu/ws/index.php?pid=2961>

The Republican Party Platform of 2004, August 30, 2004, *American Presidency Project*, at:
<http://www.presidency.ucsb.edu/ws/index.php?pid=25850>

The Democratic Party Platform of 2008, August 25, 2008, *American Presidency Project* at:
<http://www.presidency.ucsb.edu/ws/index.php?pid=78283>

The Democratic Party Platform of 2012, September 3, 2012, *American Presidency Project* at:
<http://www.presidency.ucsb.edu/ws/index.php?pid=101962>

Newspapers

“Child killer gun charges brought”, March 3, 2000, *BBC News*, at:
<http://news.bbc.co.uk/2/hi/americas/664341.stm>

“Everytown for gun safety”, *Mike Bloomberg*, at:
<http://www.mikebloomberg.com/index.cfm?objectid=BF28B050-C29C-7CA2-F414FC3F9EC99945>

“Georgia Republican Says New 'Guns Everywhere' Law A 'God-Given' Right”, February 7, 2014, *Huffington Post*. Accessed on September 10, 2014 at:
http://www.huffingtonpost.com/2014/07/02/paul-broun-guns_n_5551757.html

“Gun Show Rules and Gun Laws”, n.d., *About.com*, at:
<http://usgovinfo.about.com/blgunshow.htm>

“Guns in America: the impact of having more guns in our society”, February 12, 2013
Numbersleuth, at: <http://www.numbersleuth.org/guns/>

“H.R. 2324: Worse than S.843?”, May 11, 2009, *NRA-ILA*, at: <http://www.nraila.org/news-issues/fact-sheets/2009/hr-2324-worse-than-s-843.aspx>

“How they were equipped that day”, November 25, 2009, *CNN*, at:
http://edition.cnn.com/SPECIALS/2000/columbine.cd/Pages/EQUIPMENT_TEXT.htm

“John Kerry on Gun Control”, August 8, 2014, *OnTheIssue*, at:
http://www.ontheissues.org/domestic/John_Kerry_Gun_Control.htm

“Killer’s manifesto: ‘You forced me into a corner’”, April 18, 2007, *CNN*, at:
<http://edition.cnn.com/2007/US/04/18/vtech.shooting/>

“Mayors Against the Thune Amendment”, July 20, 2009, *Mike Bloomberg*, at:
<http://www.mikebloomberg.com/index.cfm?objectid=F801FB8F-C29C-7CA2-F80CE3504D02DFE3>

“Protests in Denver Over Marilyn Manson Gig”, June 21, 2001 *abc News*, at:
<http://abcnews.go.com/Entertainment/story?id=104105>

“Safe Storage & Gun Locks Policy Summary”, September 1, 2013, *Smart Gun Laws*, at:
<http://smartgunlaws.org/safe-storage-gun-locks-policy-summary/>

“Sandy Hook shooting: What happened?”, December 18, 2012, *CNN*, at:
<http://edition.cnn.com/interactive/2012/12/us/sandy-hook-timeline/>

“Santana School Shooter”, March 1, 2003, *abc News*, at:
<http://abcnews.go.com/Primetime/story?id=132072&page=1&singlePage=true>

“School Shootings in America since Sandy Hook” June 6, 2014, *Every Town for gun safety*. at:
<http://everytown.org/article/schoolshootings/>

“The Eddie Eagle GunSafe”, October 30, 2003, *NRA Programs*, 2014 at:
<http://eddieeagle.nra.org/>

“Thune Offers Concealed Carry Amendment to Defense Authorization Bill”, July 20, 2009, *John Thune – Press Release*, at: <http://www.thune.senate.gov/public/index.cfm/press-releases?ID=26677f6a-9285-43c0-8659-f390c282867e>

Alpers, Philip and Marcus Wilson, “2014. Japan Gun Facts, Figures and the Law” Sydney School of Public Health, The University of Sydney, *GunPolicy.org*, July 16, 2014, at: <http://www.gunpolicy.org/firearms/region/japan>

Associated Press, “NRA Defends Vitriol Towards Federal Agents/ Letter calls them ‘jack-booted thugs’”, May 1, 1995, *San Francisco Chronicle*, at: <http://www.sfgate.com/news/article/NRA-Defends-Vitriol-Toward-Federal-Agents-3034757.php>

Avlon, J. “What changed after the Reagan shooting”, March 30, 2011, *CNN*. Accessed on September 10, 2014 at: <http://edition.cnn.com/2011/OPINION/03/30/avlon.reagan.shooting>

Brown, D. L., “A 6-Year-Old Killer Who Had No Place To Call Home”, March 21, 2000, *Washington Post*, at: <http://www.washingtonpost.com/wp-srv/WPcap/2000-03/21/085r-032100-idx.html>

CNN/ORC Poll, *December 17-18*, December 2012, at: <http://i2.cdn.turner.com/cnn/2012/images/12/19/cnnpoll.december19.4p.pdf>

Cocca, C., Khan, S., “‘Mass Murder’ Rampage near UC Santa Barbara”, May 25, 2014, *NBC Los Angeles*, at: <http://www.nbclosangeles.com/news/local/shooting-isla-vista-uc-santa-barbara-260505021.html>

Damron G., Zaniwski A., “4-year-old boy shot by 4-year-old cousin in Detroit”, January 17, 2014, *Detroit Free Press* at: <http://www.usatoday.com/story/news/nation/2014/01/17/boy-fatally-shot-by-girl-cousin/4566727/>

E.B., “Lies, damned lies and statistics”, June 1, 2014, *The Economist*, at: <http://www.economist.com/blogs/democracyinamerica/2014/06/gun-control-america>

Flegenheimer, M., “Final Report on Sandy Hook Killings Sheds New Light on Gunman’s Isolation”, December 27, 2013, *NY Times*, at http://www.nytimes.com/2013/12/28/nyregion/with-release-of-final-sandy-hook-shooting-report-investigation-is-said-to-be-over.html?pagewanted=all&_r=0

Garret, B. “Gun Shows”, n.d., *About news*, at: <http://civilliberty.about.com/od/guncontrol/a/Gun-Shows.htm>

Goode, E., “Even Defining ‘Assault Rifles’ is Complicated”, January 16, 2013, *NY Times*, at: http://www.nytimes.com/2013/01/17/us/even-defining-assault-weapons-is-complicated.html?_r=0

Hanson, Jason R., “How to Carry Concealed in a Restaurant”, *USACarry.com*, 2 August 2012 at: <http://www.usacarry.com/how-carry-concealed-restaurant/>

Heston, Charlton, “Charlton Heston My Cold DEAD Hands NRA Speech Low”, 26, July, 2000 at: <https://www.youtube.com/watch?v=BWCzEwWNNIc>

Jaslow, R. "Violent video games and mass violence: a complex link", February 18, 2013, *CBS News*, at: <http://www.cbsnews.com/news/violent-video-games-and-mass-violence-a-complex-link/>

Jerreat, J., "Disturbing photo of toddler boy gnawing on handgun and Nancy Lanza's huge arsenal of weapons revealed", December 28, 2013, *Daily Mail*, at: <http://www.dailymail.co.uk/news/article-2530239/Police-files-reveal-picture-gun-obsessed-mother-son-communicated-email-loved-shooting-together.html>

Kocieniewski, D., Gaetely, G., "Man Shoots 11, Killing 5 Girls, in Amish School", October 3, 2006, *NY Times*, at: http://www.nytimes.com/2006/10/03/us/03amish.html?pagewanted=all&_r=0

Krouse, William J., "Gun Control Legislation in 113rd Congress", August 1, 2014, *Congressional Research Service*, at: <http://fas.org/sgp/crs/misc/R42987.pdf>

Lane, H. "George W. Bush: Gun Control", n.d., *HighBeam*, at: <http://www.highbeam.com/topics/george-w-bush-gun-control-t10126>

LaPierre, Wayne, "Remarks from the NRA press conference on Sandy Hooks school shooting, delivered Dec. 21, 2012 (transcript)", December 21, 2012, *Washington Post*, at: http://www.washingtonpost.com/politics/remarks-from-the-nra-press-conference-on-sandy-hook-school-shooting-delivered-on-dec-21-2012-transcript/2012/12/21/bd1841fe-4b88-11e2-a6a6-aabac85e8036_story.html

Love, David A., "Does Slavery have any Place in the Gun Control Debate", theGrio 23 January 2013 at: <http://thegrio.com/2013/01/23/does-slavery-have-any-place-in-the-gun-control-debate/>

Luo, M., "Mental Health and Guns: Do Background Check Do Enough?", April 19, 2007, *NY Times*, at: http://www.nytimes.com/2007/04/19/us/19weapons.html?_r=0

Massachusetts Historical Society, *Boston Gazette*, September 26, 1768, p. 3, cols 1-2. At: www.masshist.org/dorr/volume/2/sequence/271

McCaffrey, R. et al., "Five Killed at Pa. Amish School", October 3, 2006, *Washington Post*, at: <http://www.washingtonpost.com/wp-dyn/content/article/2006/10/03/AR2006100300229.html>

Obama, Barack, "NRA Willfully lied", April 16, 2013, at: <https://www.youtube.com/watch?v=MQGoyQ-TXwo>

Pankratz H., Simpson K., "Judge Gives Manes 6 years", November 13, 1999, *Denver Post*, <http://extras.denverpost.com/news/shot1113.htm>

Peters, J.W., "Bloomberg Plans a \$50 Million Challenge to the N.R.A.", April 15, 2014, *NY Times*, at: http://www.nytimes.com/2014/04/16/us/bloomberg-plans-a-50-million-challenge-to-the-nra.html?_r=0

Pitaniello, L., "George H.W. Bush: Gun Control", n.d., *HighBeam*, at: <http://www.highbeam.com/topics/george-hw-bush-gun-control-t10740>

Randall, K., “Minnesota: Ten killed in deadliest school shooting since Columbine massacre”, March 23, 2005, *World Socialist Web Site (WSWS)*, at: <http://www.wsws.org/en/articles/2005/03/minn-m23.html>

Rose, V., “Summary of the recent McDonald v. Chicago gun case”, August 20, 2010. Connecticut General Assembly at: <http://www.cga.ct.gov/>

Rosenblatt, R., “The killing of Kayla”, March 5, 2000, *Time*, at: <http://content.time.com/time/magazine/article/0,9171,40342,00.html>

Ross, B., Esposito, R., “First Gun Bought March, 13; No ‘Spur of the Moment’ Crime”, April 17, 2007, *abc News*, at: http://abcnews.go.com/blogs/headlines/2007/04/first_gun_bough/

Safire, W., “An Appeal for Repeal”, June 10, 1999, *NY Times*, at: <http://www.nytimes.com/1999/06/10/opinion/essay-an-appeal-for-repeal.html>

Schmitt, R., “Badly flawed background check system fails to contain firearms sales”, June 23, 2011, *The Center for Public Integrity*, at: <http://www.publicintegrity.org/2011/06/23/4982/badly-flawed-background-check-system-fails-contain-firearms-sales>

Stuckey, M., “College shooter’s deadly rampage baffles friends”, February 16, 2008, *NBC News*, at: http://www.nbcnews.com/id/23171567/ns/us_news-crime_and_courts/t/college-shooters-deadly-rampage-baffles-friends/#.U-ZWSaOrMrQ

Talmadge, E., “From Brazil to Japan: gun laws around the world”, January 28, 2013, *The Christian Science Monitor*, at: <http://www.csmonitor.com/World/Latest-News-Wires/2013/0128/From-Brazil-to-Japan-gun-laws-around-the-world>

Thurber, J., “James S. Brady, Reagan’s press secretary and survivor of 1981 shooting, dies at 73”, August 4, 2014, *The Washington Post*, at: http://www.washingtonpost.com/national/james-s-brady-reagans-press-secretary-and-survivor-of-1981-shooting-dies-at-73/2014/08/04/4af0af70-c5da-11df-94e1-c5afa35a9e59_story.html

Ungar R., “Here Are The 23 Executive Orders On Gun Safety Signed Today By The President”, January 16, 2013, *Forbes*, at: <http://www.forbes.com/sites/rickungar/2013/01/16/here-are-the-23-executive-orders-on-gun-safety-signed-today-by-the-president/>

Websites

Assault Weapon Watch, at: <http://www.assaultweaponwatch.com/>

Brady Campaign, at: <http://www.bradycampaign.org/our-history>

Coalition to Stop Gun Violence, at: <http://www.csgv.org/>

Common Sense about Kids and Guns, at: <http://www.kidsandguns.org/>

Gun Control|Cato Institute, at: <http://www.cato.org/research/gun-control>

Gun Free Kids, at: <http://www.gunfreekids.org/>

Gun Law and Policy, at: www.gunpolicy.org

Gun Owners of America, at: <http://www.gunowners.org/>

Handgunlaw.us, n.d., at: www.Handgunlaw.us

National Shooting Sports Foundation, at: <http://www.nssf.org/>

NRA Museum, at: <http://www.nramuseum.com/nra-gun-gurus.aspx>

NRA-ILA, n.d. at: <http://www.nraila.org/gun-laws.aspx>

OpenCarry.org, at: <http://www.opencarry.org/>

OpenCarry.org, at: www.OpenCarry.org

Polizia di Stato, at www.poliziadistato.it

Protest Easy Guns, at: <http://www.protesteasyguns.com>

Second Amendment Police Department, at: <http://www.2ampd.net/>

Second Amendment Sisters: Armed Informed Mothers March, at: <http://www.2asisters.org/>

Smart Gun Laws, at: <http://smartgunlaws.org/>

The National Rifle Association, at: <http://home.nra.org/home>

Women's Firearms Network, at: <http://www.womensshooters.com/>