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**The Ongoing Battle over the Second Amendment:
From Self-protection to Gun Control**

*A Dissertation submitted to the Department of English in Partial
Fulfillment for the Degree of Master in English Languages,
Civilization and Literature.*

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i. Dedication

For my incredible Mother, who helps me keep focused on the important things in life; to my brother Khaled and all my best friends whom I wish success in their lives.

ii. Acknowledgements

I have first to thank Allah, The Almighty.

I am completely thankful to all those who have believed in me and have provided much encouragement to help me carry this work out. No words could faithfully convey my profound gratitude and thankfulness to my Supervisor Dr. Kaid Nassima for her guidance and patience.

A special gratitude is given to the board of examiners for devoting much time reading my present research.

iii. Abstract

The present research will take a historical approach to the origins of the Second Amendment to the US Constitution and gun control in the United States. This research is divided into three Chapters. The first explores the origins of the Second Amendment. This section will show the historical background of the Second Amendment. The second section examines the ruling in *Heller v. District of Columbia* (2008) and how it addresses the right to self-defense, showing the effects that the case had on Americans. This part looks at the different developed nations compared to the U.S., to see if there is a correlation between the number of guns and homicides committed by firearms. Whether controlling guns would prevent mass shootings such as the one in Newtown remains a matter of debate. These sections will seek to assess the potential effects of modern US politics on the legality of gun control legislation in the face of increased violence in the 21st century.

الملخص:

هذا البحث سيتخذ المنهج التاريخي لدراسة أصول المادة الثانية من القانون الأمريكي و تنظيم السلاح في الولايات المتحدة الأمريكية. ينقسم هذا البحث إلى ثلاثة فصول. يستكشف الفصل الأول أصول المادة الثانية. تعالج هذه المرحلة الخلفيات التاريخية للمادة الثانية. يفحص الفصل الثاني قرار المحكمة العليا في قضية المقاطعة الكولومبية ضد هالر (2008) و كيفية مغازلتها لحق الدفاع عن النفس مع إظهار الآثار التي خلفتها هذه القضية للشعب الأمريكي. يهدف هذا الفصل إلى المقارنة بين أمريكا و مختلف الدول المتطورة لإظهار أية روابط محتملة بين عدد الأسلحة و عدد الجرائم المرتكبة بالأسلحة , والنظر في أن تنظيم الأسلحة سيمنع حدوث إطلاق النار في الأماكن العامة أو لا كالتي حدثت في نيوتاون سيؤدي إلى الكثير من الجدل. هذه المراحل تسعى إلى تقييم الآثار الممكنة للسياسات الأمريكية الحديثة على شرعية سن قوانين تنظيم السلاح مقابل العنف المتزايد في القرن الواحد و العشرين.

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General Introduction

During the second half of the 18th century, the United States witnessed an unprecedented period characterized by determination towards protecting people's rights. The first Americans, or the founding fathers, emphasized that America should be based on constitutionalism. Therefore, they set the stage to draft the US constitution. This form of government coincided with a great demand for a limited government and a separation of powers. Accordingly, this means that the central government itself is accountable under the law. The US constitution consists of seven Articles and twenty-seven Amendments. The first ten amendments are called the Bill of Rights. The bill was adopted in 1791 to protect American citizens' fundamental rights such as the right to bear arms guaranteed by the Second Amendment.

The Second Amendment reads "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." ¹ the Second Amendment has been primarily about the meaning of words, in which it created an ongoing battle over its interpretation. In the American constitutional context, the usual question is whether or not the Second Amendment establishes an individual right to keep and bear arms for the purpose of self-defense. The recent landmark decision by the U.S. Supreme Court in *District of Columbia v. Heller* (2008) ² addresses the citizen's Second Amendment right to keep and bear arms. For the most part, the *Heller* decision provides an interpretation of the Second Amendment within a historical context. Nowadays, critics against gun control claim the Second Amendment to the United States Constitution as their number one reason why gun control should not be allowed in the U.S

The Supreme Court in *District of Columbia v. Heller* considers the 2nd Amendment as a constitutionally guaranteed right "to keep and bear Arms." Besides, the right to gun ownership

shall not be violated. Whatever the ambiguity of the language used in drafting the 2nd Amendment, it does not mean that there will be no limits, however. For instance, Peter Squire believes that many researchers still don't fully grasp the authentic meaning of the intent of the 2nd Amendment (2000). Hence, the amendment is subject to several interpretations; where in many cases the confusion lies between "the people," and the "militias." Certainly, there must be a middle ground between the government and the people, each of which has his own rights and duties. That is, using the right to bear gun for logical and lawful purposes, such as self-protection, not for crimes: suicide, mass shootings, and suchlike.

The aim of this research is to make people aware of the right to bear arms in United States. The present study handled the issue of guns and the cost of freedom in modern day American society. This research will attempt to show that the spread of guns everywhere is dangerous to the public safety. More guns lead to more crimes. Most people across America were frightened when gun violence reached its peak just few years after Heller. For example, mass shootings are very common in the US, especially school shooting. It is essential to know why gun control is effective to diminish gun violence, hence, saving lives. This research is aims at using recent statistics to decrease the number of deaths in the US. For example, make it uneasy for mentally-ill citizens to get guns; instead, establishing a mental health system to treat and take care of them. These parameters would have much more attention from political leaders, like President Barak Obama who pushed for new gun reforms, seeking to prevent such events from happening again. The political leaders challenge over passing gun laws remains inconclusive in the long run. In order to decide the legality or the illegality of guns in modern day American society it is important to know the freedoms guaranteed in the US Constitution; especially the questioned right to bear arms included in the Second Amendment. Hence, this study brings some questions to the mind like: Is the Second Amendment right to bear arms limited? For a populated

country like America, what would be the consequence if the Supreme Court rules that the Second Amendment guarantees individual right to own guns? Do more guns lead to more violence?

Taking a historical approach in this study will help explore both the judicial and political interpretation of the law. The data will be collected from the Supreme Court documents targeting the Second Amendment issue. The study will be based on books, articles, reports, daily journals, and presidential speeches concerning the right to bear arms.

The first chapter will attempt to study the historical background of the Second Amendment. This section is an attempt to account the history of gun culture in the United States. In order to explore the framers' intention of drafting this amendment, the amendment will be broken down into its main constituents. Along with this, the amendment's words will be compared to other statutory provisions similar to it. This chapter is an introduction to the Supreme Court case ruling on the Second Amendment grounds.

The second chapter attempts to show the Supreme Court interpretation of the meaning of the amendment and the limitations that should be placed on guns without violating the self-defense right. The objective of this chapter is to draw a connection between the right to bear arms and the right to self-defense. This part tries also to find a relationship between the number of guns and the number of homicides in the US.

The third chapter tries to show the aftermaths of the Heller decision; from self-protection to the rise of violence to gun control in the US. Choosing mass shooting as a case study would give this research more credibility because it seems to create sense of helplessness unless the authorities intervene. Importantly, this chapter will show the reason behind the ongoing debates over the issue of gun control.

Several works have been written on the legacy of the 2nd Amendment and its direct relation to the constitutional rights. These works demonstrate the right to self-protection drafted in the 2nd Amendment. Essentially, these works explained the true guiding principles on the issue of gun control in the United States. Clearly, the Supreme Court would play a major role in running and managing the Constitution. So, with the guidance of the Supreme Court ruling in the recent landmark case of *Heller v. District of Columbia* (2008), the researcher is going to put evidence for explaining the continuing debates over the 2nd Amendment, specifically from self-protection to gun control. The Supreme Court in *Heller* stressed that though the Second Amendment guarantees an individual right to bear arms, it must be subject to some reasonable regulations. Because of the shockingly high incidents of gun-involved murders, suicides and accidental deaths, it is imperative that stricter controls be placed on gun ownership in the United States.

Chapter One:

The Importance of the Second Amendment

I. Introduction

The present chapter aims at showing the significance of the Second Amendment to the US Constitution. This part will focus on highlighting the historical background, as well as some of the most important grounds on which the Second Amendment was written. In order to clarify the meaning of the Second Amendment's words, it is important to compare those words to similar statutory provisions having the same words written at the same time, by the same authors.

Having explained the meaning of the Second Amendment, this chapter will show some of the restrictions that the founders had placed on firearms. Since the right to bear arms included in the Second Amendment conveys a controversy, it is the duty of the Supreme Court to decide whether this right belonged to the militia, or to individuals. For that reason, this section will clarify why the Supreme Court had not directly addressed the Second Amendment since the late nineteenth century.

I.1. Gun culture in the US

In the past, guns were passed on as “*family heirlooms*,” from generation to another, received as a tradition of liberty. (Van Rensselaer 36-53) That is, guns are connected with the American tradition of liberty. Peter Squires say that “[...] *gun culture is not understood as an attribute only of the weaponry itself, but also, significantly, a tradition of the people, an aspect of history and ideology.*” (381) Squires believed that the discussion about guns is not just about guns, it is also a question about freedom and the cost of that freedom in a modern society. Perhaps, guns are a physical representation of that right which is eventually mediated through them. Squires believed that by carrying arms, individuals assert their political position, stability,

and security, and whenever tyrant behavior occurred, or their rights are to be infringed, they might defend themselves. (58) Robert Shalope believed that “*an integral relationship existed between the possession of arms and the spirit and character of the people.*” (604) That is to say, the very character of the people was related to the individual's desire to arm and defend himself against threats to his person. Indeed, having arms is crucial to defend oneself from potential dangers. It is not just the dangers of criminals that may prompt people to own guns, but significantly, the dangers of a too powerful oppressive government, foreign or domestic.¹ For this reason, people were required to be better trained and better disciplined. (Shalope 605) There was a call for more arms; an urgent need to train a well-regulated, a well-disciplined people who would secure their free-states from any tyrannical behaviour.

1.1. Arming the People

The American colonies' experience of British governmental authority prompted them to build a militia system. Patrick Charles claimed that the militia was established specifically in opposition to the tyrannical government. (80) Training in arms began throughout the revolution to regulate the armed forces for the security of the land. (Squires 33-34) Peace and order were maintained by “*the militia,*” a group of ordinary “*civilians*” who were expected to use their own arms “*to meet public emergencies*” for the defense of the community. (Lund 71)

¹ In April, Mr. Benson commented that “the institution of the militia is to enable the individual States to oppose the encroachments which may be made on them by the General Government!” 3 Annals of Congress, 1793; P. 553.

1.2. The Militia

The Dictionary of Americanisms defines “the Militia” as “*The whole body of adult male citizens capable of bearing arms.*” (Mathews, “militia”) Still, Noah Webster Dictionary defines the Militia as the body of armed forces in a state enrolled for discipline, not engaged in actual service but in emergencies. The militia are the able bodied men organized into companies, regiments and brigades,² with officers of all ranks, and required by law to attend military exercises on certain days only, but at other times left to pursue their usual occupations. (Webster 1st Ed.) Notably, to be a member of the militia, Americans must be qualified, by law, to serve in an organized fighting force.

Samuel Adams, a founding father, thought it “dangerous to the liberties of the people whenever the federal government, over which the people have no control, planned to have an army stationed among them.” (Alonzo 230) Importantly, the Framers had proposed that the federal government must not limit the militia from being armed. To do so, they suggested the Second Amendment. The purpose was to prevent the establishment of a standing army, foreign or domestic.³ In other words, they wanted to prevent the federal government from placing restrictions on arming people. The colonies were fearful of the effects a standing army would impose. To suppress such fears, they drafted the Second Amendment.⁴ The form of words concerning the right to carry arms eventually adopted by the US Congress and sent to the state legislatures for ratification as the Second Amendment to the constitution of the United States. (Squires 70)

² Brigade: a large group of soldiers forming part of an army. See Longman Dictionary of Contemporary English, Fifth Edition. (1978-2009).

³ After the Revolution, in December 1790, when Congress was debating the adoption of the National Militia Bill, Jackson stated, “if we neglect the militia, a standing army must be introduced.” Congress could not do this though because “[i]n a Republic every man out to be a soldier, and be prepared to resist tyranny and usurpation, as well as invasion, and to prevent the greatest of all evils — a standing army.” Annals of Congress, 1806: (1791). 211.

⁴ www.yale.edu/lawweb/avalon/federal/fed46.htm.

1.3. The Second Amendment to the US Constitution

On August 17, 1789, the Second Amendment began with the initial reading, “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.” (Cogan, et al 85-86) Madison feared that while a militia was the “best security,” it would also admit a standing army as a secondary choice. (85) In order to fix this, the words “necessary to the” were put in place of “the best.” (188) Thus, as Madison favored it, a “well-regulated militia” was the only “security of a free State.” (175) After all the changes, on September 9, the amendment read, “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.” (II Amd.) Finally, the amendment was adopted in December 15th, 1791. (Young 723) Hitherto, the amendment is still under intense debate since its ratification due, partly, to its “vague” language.

The controversy over the interpretation of the Second Amendment has been primarily a debate about the meaning of words. This controversy is distinctive because the amendment contains its own preamble, and this raises a question to which this statement of purpose should guide the interpretation of the substantive declaration of the final clause. Importantly, the amendment has commonly been read to have two parts or clauses, a prefatory clause and an operative clause. (Charles 5) The prefatory is “A well-regulated militia, being necessary to the security of a free State,” and the operative is “the right of the people to keep and bear Arms, shall not be infringed.” (6) The distinction in the clauses is critical because the way by which the courts have matched the two has resulted in a dilemma as to whether the possession of a firearm is an individual right or a collective right. (Cogan, et al 176)

In interpreting the Second Amendment, the individual right theorists have mentioned that the word “people” refers to an individual’s right to “keep and bear arms.” (Charles 47) Meanwhile, the collective right theorists have confirmed that there was a direct connection between the prefatory and the operative clauses. Thus, the “right to keep and bear arms” is definitively related to the militia service. The polemical tone of the Second Amendment studies seems unlike any other realm of constitution. (Young 730)

In order to understand the Second Amendment, it is important to take its words out of context. The words “people,” “keep,” and “bear arms” stated in the operative clause appeared to have limited meanings in several statutory provisions similar to the Second Amendment. By interpreting these words, one can easily notice the relationship between the operative and the prefatory language, respectively. That is, “the right of the people to keep and bear Arms, shall not be infringed.” is a strong reference to “a well-regulated Militia, being necessary to the security of the free State.” (Charles 62)

1.3.1. The Meaning of “The People”

Individualists have placed greater stress on the operative clause to assert the right of the people to keep and bear arms. (Reynolds 461) Logically, it would be incorrect to interpret the word “people” having one meaning in the First⁵ and Fourth⁶ Amendments and another in the Second Amendment. The use of the word “people” in the operative clause, as the individual right

⁵ The First Amendment states, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peace-ably to assemble, and to petition the government for a redress of grievances.” U.S. Const, Amend I.

⁶ The Fourth Amendment states, “the right of the people to e secure in their persons, houses, papers, and effects, against unreasonable searches and seizure, shall not be violated, and no Warrant shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” .” U.S. Const, Amend IV.

theorists and the Supreme Court majority regard, is primarily incorporated in the Bill of Rights when referring to the individuals. (Charles 135) In order not to misinterpret the other guarantees in the Constitution, the word “people” must essentially be understood in the context that it refers to the individuals, as one body. (Charles 17)

Originally, the right to “keep and bear arms” existed prior to the creation of the Constitution only through militia system. (Smith 178) The militia laws were the means by which “the people” secured themselves from threats, foreign and domestic. Because of these laws, every man’s duty to be armed was stressed. Such laws, therefore, seem to be synonymous with the Founders’ intent in drafting the Second Amendment.

1.3.2. The Meaning of “Keep”

If we examine the acts below, it becomes clear that the word “keep” has a limited definition in the Second Amendment provision; meaning “to maintain” or “to service.”(Charles 28) In 1782, Delaware’s militia act required every militiaman to “keep the same [arms] by him at all Times, ready and fit for Service.”⁷ Thus, “keep” in the context of the militia act obviously equated to “maintain,” not to “own” or “possess.” It is the word “Service” that reinforces the limited military context of the word “keep.” Simply, state legislatures might use “provide” or “furnish” to indicate possession, not the word “keep.”⁸ Hence, the word “keep” in the Second Amendment does not protect a right to own firearms for private use.

⁷ An act for establishing a Militia within Delaware, Sec. 6 (Del., 1782).

⁸ The word “keep” in these sentences is the adverb. For examples, see An Act for regulating and governing the Militia of the Commonwealth of Massachusetts, and for repealing all Laws heretofore made for that Purpose; Sec. 18 (Mass. 1793), An Act for regulating and governing the Militia of the State of Vermont, Sec. 16 (Vt. 1793).

1.3.3. The Meaning of “Bear Arms”

In the eighteenth-century America, the usage of the phrase “bear arms” was very common. There was only one frequent usage of the phrase that it was only incorporated in a way that signifies military service. For example, New Jersey included “all able-bodied Men [...] between the Ages of sixteen and fifty Years” that were “capable of bearing arms” to be enrolled in the militia. New Hampshire required that “all Male Persons from Sixteen Years of Age to Sixty [...] shall bear Arms, and attend all Musters, and Military Exercises.”⁹ In Georgia, it was required that “every male person from the age of sixteen to sixty years” be legally responsible “to bear arms in the regiment, troop, or companies” in the province.¹⁰ The word “bear,” in conjunction with “arms,” always denoted using the latter in a military capacity. (Charles 18) Thus, the word “bear” does not mean “carry.” Ironically, the operative clause does not state, for example, “bearing a letter,” or “bearing gifts,” it provides “bear arms,” a phrase which was distinctly used to describe performance in military duty. Therefore, “bear arms” was only meant to apply to military service, and only referred to the “well-regulated Militia” stated in the prefatory clause.

I.2.The Second Amendment within the Bill of Rights:

It is necessary to place the text of the Second Amendment in its context within the Bill of Rights. When the Bill of Rights was adopted, the Second Amendments was originally the Fourth Article. (Young 743)

⁹ An Act for the Regulating the Militia, Sec. 1 (N.H., 1718). See also An Act for the Regulating the Militia, Sec. 1 (N.H. 1759).

¹⁰ An Act for the better ordering the Militia of this Province, Sec. 15 (Ga., 1765).

This Article limited the way on how both legislative-branch members (the House of Representatives and the Senate) could be compensated for their services.¹¹ Clearly, the Second Amendments placement within this article shows that it was intended to place restrictions on Congress. Specifically, the Second Amendment appeared to oppose Article I, Section 8, of the Constitution, (U.S. Const, Art I, § 8, cl. 16.) which stated that Congress shall have the authority to “provide for organizing, arming, and disciplining the Militia.”¹² The framers feared that giving Congress the option of “arming” their “militias” would not only prevent the states from being able to defend themselves from enemies, foreign and domestic, but more importantly would hinder their ability to protect themselves against an oppressive federal government. (Annals of Congress, 1789: 452)

The Second Amendment’s placement within the Bill of Rights, according to individualists, shows that it was meant to present an individual right to “keep and bear Arms” to every citizen. (Charles 15) They argued that since the Bill of Rights “was almost entirely a declaration of individual rights,” the Second Amendment was only intended to protect individual gun ownership. (16) Collectivists, however, had reasoned that one must consider the “setting” of the Second Amendment in the Bill of Rights that it “reinforces its individual nature.” (Parker 383) In their view, The Second Amendment regarded the rights of people as a militia, “composed of the body of people,” of the “United States,” as one entity for the common defense. (Charles 45) Hence, its words should only be understood in the context that was incorporated in militia service.

¹¹ Article Two stated, “No law varying the compensation for the services of the Senators and Representatives shall take effect, until an election of Representatives shall have intervened,” quoted in Young 744.

¹² Reacting to the universal fear that Congressional control over militia might be misused, James Madison originally proposed the following be instated into Article I, Section 8, of the Constitution: “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.” Annals of Congress, 1789: 451.

I.3.The Limits of the Second Amendment

The Second Amendment clearly states in its language that the armed citizenry must be regulated “well.” (Winkler 609) Besides giving a right to bear arms, the founding era had also laws regulating the armed citizenry by collecting registries of civilian owned guns appropriate for militia service, sometimes conducting door-to-door surveys. (Charles 167) In addition, the founders had broad bans on gun possession by people deemed untrustworthy, including slaves and loyalists. (41-42) The right to keep and bear arms was not a permissive license for anyone to have any kind of firearms, anywhere they wanted, nor did the Second Amendment protect a right to revolt against a tyrannical government. Several Courts in the US have repeatedly held that logical gun laws are constitutionally permissible. (Winkler 609) Nevertheless, those courts allowed limitations guns but without excessively infringing the legitimate interests of individuals in protecting themselves from criminal violence. (Lund 13) The Second Amendment was about ensuring public safety. (Winkler 222) Most gun control laws can be viewed as efforts to save lives and prevent crime, which are perfectly reasonable goals. (256)

I.4.The Supreme Court Interpretation of the Second Amendment

In fact, the Supreme Court had not directly addressed the Second Amendment since the late nineteenth century.¹³ The Supreme Court had been nearly silent¹⁴ on matters related to the

¹³ Presser v. Illinois, 116, U.S. 252 (1886); United States v. Cruikshank, 92, U.S. 542 (1875) (holding that the Second Amendment is an amendment that serves no purpose other than to restrict the powers of the federal government); Miller v. Texas, 153, U.S. 535 (1894) (holding that the Second and Fourth Amendments operate only on the federal power, and have no effect to the proceedings in state courts).

¹⁴ This has caused a divide among state courts regarding the interpretation of the Second Amendment. Seven state courts have held the Second Amendment protects an individual right, among them: State v. Anderson, 2000, WL 1222 18 (Tenn. Crim. App., 2000); Meanwhile, at least ten state courts have held the Second Amendment protects a collective right, among them: Sandidge v. United States, 520, A. 2d 1057 (D.C., 1987).

Second Amendment since the adoption of the Fourteenth Amendment,¹⁵ except in the narrow ruling in *United States v. Miller*.¹⁶ The Supreme Court has interpreted the “right to keep and bear arms” to extend to individual firearm ownership and use for self-defense in the home. A debate about how to interpret the Second Amendment evolved through the decades and remained unresolved until the 2008 *District of Columbia v. Heller* Supreme Court decision.

Conclusion

When exploring the historical background of the Second Amendment, this chapter attempted to account for the history of gun culture in the United States. The framers’ intention of drafting the Second Amendment showed nothing than the need for a militia system in times of war. Moreover, this chapter demonstrated that by breaking down the Second Amendment and comparing its main constituents to similar constitutional provisions, it will be clear that the amendment was only meant to stress the necessity for the militia to ensure the security of the land, both foreign and domestic. This section was an attempt to show that though people possessed arms for cultural practices, it did not mean that the right to bear arms is absolute. Only the supreme court of the US can interpret the law. Hence, this chapter is considered as an introduction to Supreme Court cases ruling on the Second Amendment grounds.

¹⁵ It is believed the Equal Protection Clause of the 14th Amendment would extend the militia’s right to bear arms to every citizen. The Equal Protection Clause is in Section 1 of the 14th Amendment. It states, “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. 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; nor deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const, Amend XIV.

¹⁶ It was in *Miller* that the Court determined that the “possession or use of a shotgun having a barrel of less than eighteen inches in length” was not “any part of the ordinary military equipment” protected by the Second Amendment; 307 U.S. 174-176. (1939).

Chapter Two:

The Inalienable Right of Self-defense

II. Introduction

When America was founded, its citizens recognized that they had certain basic rights such as the freedom of speech and of self-defense. Self-defense is a fundamental right that has been protected throughout history. (Nakaya 13) This chapter is an attempt to discuss the way the Supreme Court upholding the right to self-defense in the decision of the District of Columbia v. Heller (2008). Whether the District of Colombia's gun laws violate the Second Amendment would be answered by the Supreme Court.

Furthermore, this chapter will demonstrate the kinds of restrictions that the Supreme Court placed on the right to gun ownership. In relevance, it is important to see if Americans endorse those limitations passed by the Supreme Court in interpreting the 2nd Amendment. This chapter will use recent statistics to see whether the high rates of gun ownership would result in high rates of gun violence.

II.1. The Supreme Court Decision in the District of Colombia v. Heller (2008)

In order to better understand the Court landmark decision, it seems important to identify both sides of the District of Colombia v. Heller. The District of Colombia had the most restrictive gun laws in the US. (Fluck 2) The District of Colombia had set forward three restrictive laws. [District of Colombia code § 7-2502. 02 (a) (4)] The first law set out a license requirement; [§ 22. 4504] the second law prohibits carrying handguns without a license. [§ 7. 2507.02] While the third one authorized that all lawfully-owned firearms to be kept both unloaded and secured by a trigger lock. [§ 7. 2507.02]

In 2008, Respondent Dick Anthony Heller, a District of Colombia police officer, was allowed to carry his handgun while on duty, but he was denied to carry it outside. This was due to the District of Colombia's restrictive laws. Heller applied a registration certificate to keep his gun at home. In fact, what pushed Heller to apply for a license was his feeling of insecurity after

he found a bullet hole in his own front door. (Parker 103-109) Unfortunately, the District of Columbia rejected Heller's demand on the basis of the first law. In response, Heller filed a law suit in the federal district court, seeking, on 2nd Amendment grounds, to overturn the District of Columbia's requirement for handgun registration. (109)

The District of Columbia argued that "The 2nd Amendment protects a right to keep and bear arms only in relation to service in the militia." (District of Columbia v. Heller 11) It went on to assert that the text and the history of the 2nd Amendment confirm that the right it protects relates only to a "well-regulated militia," not to possess guns for "private purposes." (11) Obviously, the District's claim does not support Heller's claim of "entitlement to firearms to self-defense." (11-12) Whether the right to own firearms is secured by the 2nd Amendment, and whether it addresses to militia service or for private purposes would be answered by the Supreme Court of the U.S.

In 2008, for the first time in the history of the US, the Supreme Court held that "the 2nd Amendment guaranties a right to possess firearms unrelated to service in a well-regulated militia." (Lefflich 6) In a 5-4 decision, the Supreme Court held that the District of Columbia's ban on handgun possession in the home violated the 2nd Amendment. (District of Columbia v. Heller 2787-822) The Supreme Court interpreted the Amendment, based on its text and history, to protect the right of individuals to keep and bear arms "unconnected to service in the militia." (290) Chief justice Anthonin Scalia, writing for the majority opinion,¹⁷ states that,

¹⁷ Scalia, J., delivered the opinion of the court, in which Roberts, C.J., and Kennedy, Thomas, and Alito, JD, joined, Stevens, J., Filed a dissenting opinion, in which Souter, Ginsberg, and Breyer, JJ., joined. See District of Columbia v. Heller, 554 U.S (2008), 128 S. Ct. 2783, at2787.

Just as the First Amendment protects modern forms of communication... and the Fourth Amendment applies to modern form of search... The Second Amendment extends [...] to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding (8).

Scalia believed that there should be a balance between the amendments and the right they protect. Thus, balancing the rights to keep and bear arms to right of free speech based on the text of the constitution, Scalia presumed, “Nowhere else in the constitution does a ‘right’ attributed to ‘the people’ refer to anything other than an individual right [...]” (6-7) Scalia’s analysis of the constitution was strongly in favor of the individual right theorist’s view which states that the Bill of Rights, especially, was meant to protect citizens’ rights. (Leftwich 7-8)

1.1. The Repeal of the District Laws

In reaction to the District of Colombia’s handguns ban, the Supreme Court determined that the “D.C.’s ban on handgun possession in the home violates the 2nd Amendment, as does its prohibition against rendering any lawful firearm in the home operable for the immediate self-defense.” The District of Colombia’s strict laws on firearms were considered evil to gun supporters. Many lobbying organizations emerged as a response to the district laws. The National Rifle Association, or the NRA,¹⁸ for example, the most powerful organization that promotes the individual rights to own guns, insisted that the right to bear firearms is constitutionally guaranteed. (Nakaya 21) The NRA had also a significant impact on the 2nd Amendment. In addition to firearms safety, the NRA strongly supports the right of law-abiding citizens to own and use firearms. The decision of the Supreme Court in Heller helped strengthen

¹⁸ Note: the NRA will be used as the abbreviation of the National Rifle Association throughout this research.
<http://home.nra.org>

the NRA's desire to possess firearms. (21) The Supreme Court found that "the inherent right to self-defense has been central to the 2nd Amendment," and that handguns are "overwhelmingly chosen by American society for self-defense in the home, where the need for self-defense is most acute." (District of Columbia v. Heller 2817) Because the District of Columbia's law contains no exception for self-defense, the Supreme Court succeeded easily in overturning them. (2817)

1.2. The Inalienable Right of Self-defense

Self-defense is mentioned many times in Heller. In the US constitutional context, the usual question is whether the 2nd Amendment establishes an individual right to keep and bear arms for the purpose of self-defense. The right to self-defense is "a natural right that preceded the establishment of the state and its laws." (Sangero 475-76-77) In the state of nature, potential aggressors could arm themselves and threaten you. Similarly, you could also arm yourself and defend if necessarily. In this sense, Michael Huemor denotes that,

In a situation where the potential aggressors (the criminals) are armed, if the State forbids you from arming yourself, and assuming that, it is unable to protect you, in all places and all times, the result is that the State is essentially preventing you from defending yourself, thus rendering the right to self-defense meaningless (297, 307-308)

In an examination of self-defense theory, Sangero concluded that the primary condition to self-defense include the requirement of "necessity and proportionality." (143-50,166-92) The ordinary citizens' necessity to use arms in defending themselves proportionally against criminals may possibly justify the right to bear arms. Proportionality is the appropriateness of the quality of firearms being used for self-defense. (475-76) "Mr. Smith purchases a tank and places it in his front-yard for the purpose of defending himself and his family against burglars." (452) If we take

an example of proportionality: in such a situation of Mr. Smith, it is certainly out of all proportion to the specific danger posed. Hence, the government has the authority to limit citizens from arming themselves in this extreme manner. Based on necessity and proportionality, Mr. Smith would still not be justified in doing so purposes of-defense. (452-53)

Self-defense implies the use of reasonable defensive force against an aggressor. Both in the past and present, self-defense is an undisputed right and “It is justificatory in nature.” (Eser 621-31) In fact, the right to keep and bear arms reinforces the right to self-defense. Having arms in the hands, defense is easier and more effective. Therefore, the right to self-defense is rendered meaningless if a law-abiding citizen is prohibited from bearing arms. However, though the right to self-defense is essential, there are still other considerations that could justify restrictions imposed by the authorities. For example, reducing the number of weapons in the hands of the wrong people in order to reduce the number of accidents is a reasonable limitation. However, studies were presented to the Supreme Court indicating that in many cases, firearms possession does have a beneficial self-defense effect, without causing any physical harm whatsoever. (District of Colombia v. Heller 2858) So, a restriction on firearms is also a restriction on self-defense right.

Scalia issued that because the District of Colombia’s laws absolutely ban the exercise of the right to bear arms in a citizen’s home for the fundamental right to self-defense, the laws violate the 2nd Amendment. (1, 2, 4, 5, 67, 110) Specifically, since Heller is qualified to exercise that right, the District of Colombia must permit him a license to carry it in his home. (2858) However, although the Supreme Court ruled in favor of Heller, this does not mean that there would be no restrictions imposed on the right to bear arms.

1.3. The Limitations of the Right to Bear Arms

The opinion of the court in *Heller* held that the 2nd Amendment grants the right to possess firearms unrelated to service in the Militia, and to use this firearm for “lawful purposes, such as self-defense within the home.” (2788-2816) However, similar to most rights, the 2nd Amendment right is “not unlimited,” (2, 25, 57, 626) and the citizen does not have the right to keep and bear “any weapon whatsoever, in any manner whatsoever and for whatever purpose.” (2816-2817) Scalia had identified some examples where firearm regulations should be legalised. (55) He said,

Nothing in our opinion should be taken to cast doubt on longstanding prohibition on the possessions of firearms by Felons or mentally-ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms (54-55).

Justice Scalia characterized such firearm regulation as lawful regulatory measures. Accordingly, the Supreme Court concluded that the 2nd Amendment is consistent with laws banning “dangerous and unusual weapons,” like, M16 rifles, AK 47 rifles, AR 15 rifles, tanks, and machine guns that are made for military use only. (2817)

Conversely, Justice Breyer¹⁹ explained why the majority opinion was wrong in *Heller*. (2847-70) According to him, it was wrong because the 2nd Amendment protects a “militia-related, not self-defense-related, interests;” (2847) and that the protection provided by the 2nd Amendment is not absolute. That is to say, the government is allowed to regulate the interests that it protects. (2847) Breyer further refers to studies indicating that handguns are the cause of many accidents, that many crimes are committed with handguns, (2854-55) that many murders are committed by persons who previously thought to be law-abiding citizens,(2855) that many

¹⁹ Breyer, J., filed a dissenting opinion, in which Stevens, Souter, and Ginsberg, JJ. , joined.

suicides are committed with handguns,²⁰ (2856) and that handguns are frequently stolen. (2857) According to Breyer, handguns are major threats to the public safety. He believed that gun control is reasonable to improve public safety and that the States should be permitted to regulate the ownership of guns. (2851-52, 2861)

Indeed, even though individual rights are protected by the Constitution, they are not unlimited; they must be balanced with the right of society. As the Supreme Court concluded in *Heller*, similar to all rights, gun possession must have some reasonable regulations for the benefit of society.²¹ The Court recognizes that limitations on constitutional freedom are necessary. (Nakaya 24) As author and political columnist Joe Klein explained, “No right is absolute. No American has the right to own a stealth bomber or a nuclear weapon. Armor-piercing bullets are forbidden. The question is where you draw a reasonable line.” (76) Klein claims that in order to protect the freedom of others, there must be reasonable gun regulations. (77) Erika Christakis, a Harvard college administrator, points out that no constitutional rights are absolute. She says, “Constitutionally protected freedoms are routinely curtailed in the name of public safety.” (146) According to Christakis, even though people have some inalienable rights, they “must be balanced with the right of society.” (148) Public safety is crucial and should be ensured in every state. For the right to bear arms, it is necessary to consider the dangers they might cause.

Relatively, recent statistics show the relationship between the number of guns and the number of gun-related deaths. They found that more guns are risky; they are a threat to the public safety. (Figure 1, 2) The United States, with the highest number of guns in the world, has one of the highest rates of gun-related homicides among many developed nations. (Nakaya 30)

²⁰ <http://www.ojp.usdoj.gov/bjs/pub/pdf/fidc9397.pdf>

²¹ <http://www.jstor.org/stable/10.1525/nclr.2010.13.3.449>

II.2. The US has more Arms than any Other Country

It is widely agreed that compared with other developed countries, the United States has a very large number of guns. According to the most recent statistics, it has the most firearms per person of any country in the world. (Jonathan, Dec. 2012)

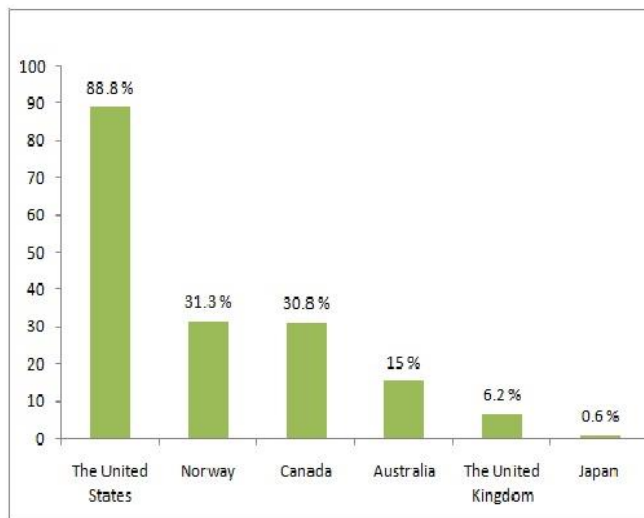


Figure 1: Firearms per 100 people

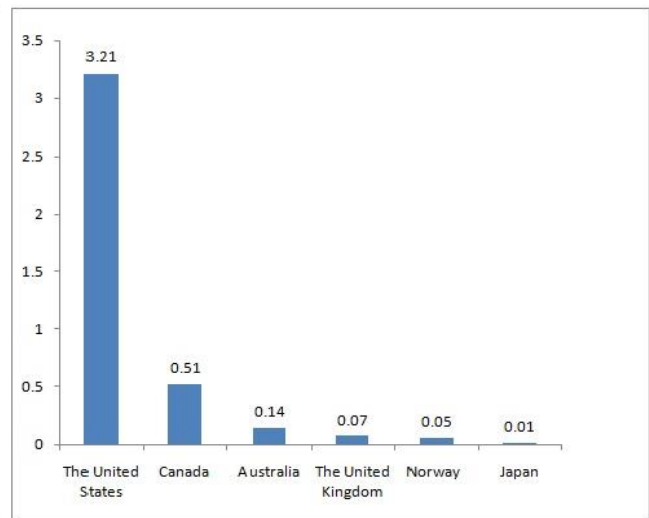


Figure 2: Firearm homicides per 100,000 people

Source: Masters, Jonathan. "U.S. Gun Policy: Global Comparisons," Council of Foreign Relations, December 21, 2012.

www.cfr.org.

Based on the given statistics, the US has the highest number of gun ownership. The first figure shows that the US has nearly 89 guns per 100 people. Although Norway and Canada are ranked second and third, respectively, they are far behind the U.S. in terms of guns ownership per 100 people. In a 2012 investigative report published in Mother Jones magazine, the authors found that in recent years, the number of firearms in the United States has increased more quickly than the population. The report found that between 1995 and 2012, the number of guns increased by about 50 percent, while the population increased by only 20 percent. (Nakaya 7)

In addition to possessing a large number of guns compared with other countries, the United States also experiences a high occurrence of gun-related crime and injury. The second figure shows that the US has the highest rate of gun-related homicides compared to other developed nations. While there are 3.21 firearms homicides per 100,000 people in the US, there is just 0.01 in Japan. Japan has very few guns due to some of the strictest laws in the world. (Jonathan, 2012) Both Figures 1 and 2 above show a clear cause-and-effect relationship between the number of guns and the number of homicides. That is to say, more guns result in more homicides. According to the most recent data reported by the United Nations Office on Drugs and Crime, in 2010 the percentage of homicides committed with firearms was 67.5 in the United States. On an average there are nearly 12,000 gun homicides a year in the US.²²

Journalist Larry Womack Says, “It turns out that guns, outside the hands of the military or law enforcement, just aren’t any good at preventing crime and, in fact, their presence is associated with an increase in the likelihood of tragedy.”²³ Womack’s notion strongly supports the gun violence prevention legislation. He believed that the more guns, the more the gun-related violence will happen. He says that when guns are being possessed easily, the “likelihood” of a crime is possible.²⁴ For example, it is easier for a disturbed individual to obtain a gun and carry out a mass shooting.

While the majority of Americans believe they have a constitutional right to own guns, mostly because of the Supreme Court decision in *Heller*, they also believe that this constitutional right is not absolute and should be balanced against other rights. These graphs show the results of a December 2012 poll of eighteen hundred people.

²² <http://bit.ly/1yVxm4K>.

²³ <http://www.huffingtonpost.com/larry-womack/2012/12/09/>

²⁴ Supra note 7.

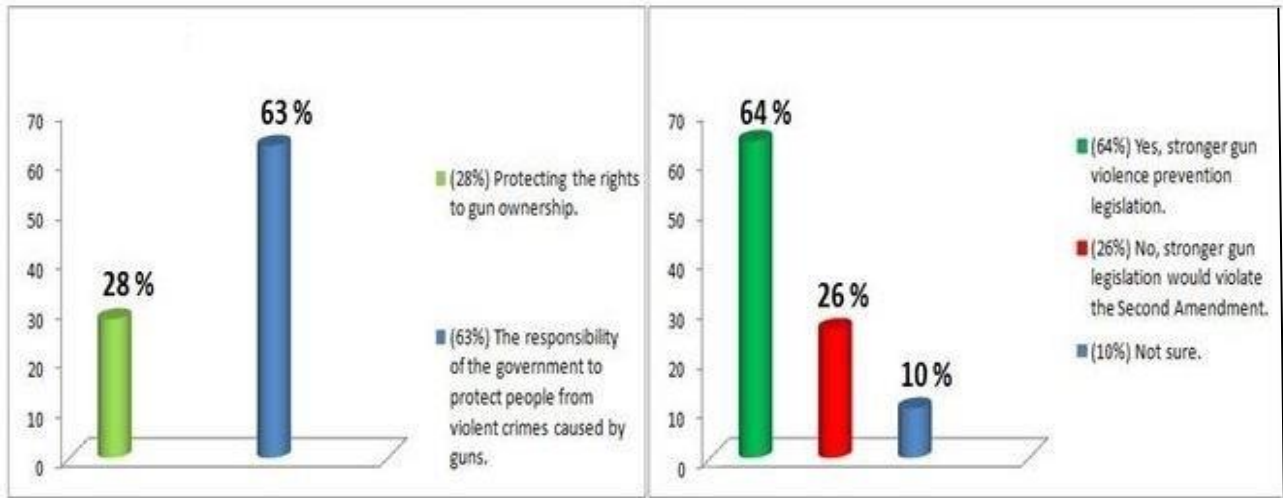


Figure 03: Which is more important? Figure 04: Which position is closer to an American citizen?

Source: Douglas E. Schoen, "National Gun Safety, Interested Parties Memo," January 2013.

<http://libcloud.s3.amazonaws.com>.

In a study conducted in 2013, 63% of the 18,000 people believe that the responsibility of the government to protect its citizens from potential violence caused by guns is more important than protecting the right of gun ownership which represents 28%. While the second graph shows that 64% of the 18,000 people vote for stronger gun violence-prevention legislation. This means that the majority are aware of dangers and violence that firearms might cause. In comparison, 26% believe that gun legislation would violate the Second Amendment.

Conclusion

This chapter demonstrated the Supreme Court decision in *District of Columbia v. Heller* (2008), that the Second Amendment confers an individual right to bear arms. In a 5-4 decision, the Supreme Court concluded that since the District of Columbia denied Heller's application for a registration certificate to own a gun for self-defense, the laws violate the Second Amendment. This part attempted to show the importance of the right of self-defense and the various situations on which this right might extend. It showed that although the Second Amendment is consistent with the right to self-defense, there are still some considerations for limiting the right to bear arms for the sake of public safety. The given statistics show that the majority of Americans believe that the government is responsible for protecting its citizens from gun violence. Statistics also had shown in this chapter that the US has the highest number of guns. Therefore, the present research attempted to find a link between the number of guns and the number of gun-related deaths to see whether controlling guns would reduce crimes or not, especially in the US.

Chapter Three:

The Continuous Debate over Gun Control

III. Introduction

Gun control is one of today's most controversial topics in the American history, bringing about two different arguments. Pro-gun control and Anti-gun control. Advocates for gun control, like President Barak Obama, argue that firearms lead to more deaths and should be restricted to avoid shooting tragedies. Opponents of gun control believe that firearms are essential in deterring crimes. In this chapter, it is not the issue that the Second Amendment guarantees an individual right to bear arms, but rather the rationality of limiting those arms. The present chapter will attempt to show that whenever gun violence occurred, the topic of gun control gets more heated. Hence, this section will highlight some of the Obama's proposals for the purpose of reducing gun-violence. This part will illustrate the existing challenge between both Republicans and Democrats over limiting the right to bear arms, especially after the Sandy Hook Shooting.

III.1. The Debate over Gun control

The ongoing debate over the issue of gun control seems to have no end and remains a stalemate for both Political Parties. Unlike Republicans, the Democrats have strong arguments that gun control reduces gun violence. As the gun control debate has evolved in recent years, a few issues have moved to the forefront of discussion. Bans on the possession of firearms by convicted felons are among the most common types of gun control regulations. In order to reduce gun violence, the United States should enforce universal background checks laws to avoid prohibited individuals from purchasing a gun. Felons, the mentally ill, and drug users are among the major prohibited persons in the US. Hence, it is reasonable for every state court in the modern era to rule on a felon possession ban. (Mason 341; Morgan 1208; Rascon 519) The Court held in Heller that the States should prohibit "the possessions of firearms by Felons or

mentally-ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings.” (District 2816-2817)

In a decision upholding a universal ban on handguns, the Illinois Supreme Court phrased, “because arms pose an extraordinary threat to the safety and good order of society, the possession and use of arms is subject to an extraordinary degree of control.” (Kalodimos 269) The Court said that in order to ensure public safety, there should be gun control. The more the guns, the more the danger will be.

III.2. The Rise of Violence in the US

International evidence and comparisons have long been offered as proof that more guns mean more deaths and that fewer guns, therefore, mean fewer deaths. So, firearms should be restricted to avoid shooting tragedies. (Godwin 281) In 2012, Law Center to Prevent Gun Violence²⁵ succeeded to find a relationship between gun legislation and gun-death rates. It found the following:

²⁵ The Law Center to Prevent Gun Violence is a nonprofit organization that is dedicated to preventing deaths caused by guns. Its website provides information about America’s gun control laws. <http://smartgunlaws.org>.

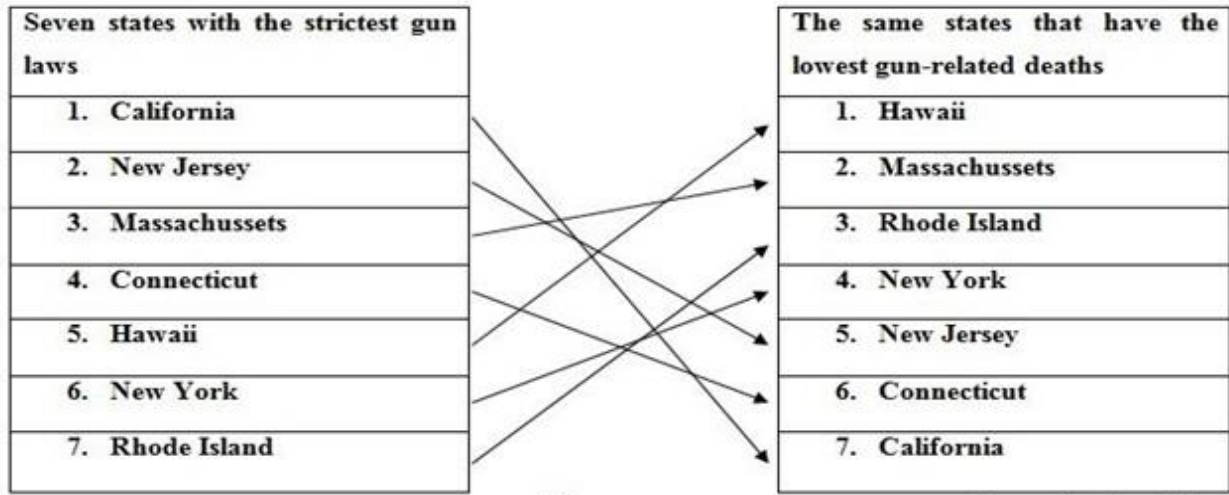


Figure 05: More Guns Mean More Crimes

Source: Law Center To Prevent Gun Violence, “Gun Laws Matter 2012: Understanding the Link Between Weak Laws and Gun Violence,” November 14, 2012. <http://smartgunlaws.org>.

As stated in the chart above, seven States with the strongest gun laws have the lowest gun death rates. If we take Hawaii for example, it has strong gun laws in the US and it is classified the lowest gun-related death State. California, for example, has the strictest gun laws and it is classified the seventh in terms of gun-related deaths. Hence, gun legislation proved more successful in Hawaii. Based on the statistics, these strict laws were also effective in New Jersey, New York, Massachusetts, Connecticut, and Rhode Island. Therefore, the more the guns, the more gun-related deaths will be, and vice versa.

2.1. Mass Shooting in the U.S.

One form of gun-related violence that happens more often in the United States than in any other developed country is mass shootings. (Mother, 2012) the FBI defines ‘mass shooting’ as any incidents where at least four people were murdered with a gun,” (Mayors 1) It’s true that the US has the highest mass shooting in the world. ²⁶ Statistics between 2000 and 2014 show that there have been 133 mass shooting in public populated places in the US, excluding gang violence and terrorism. ²⁷

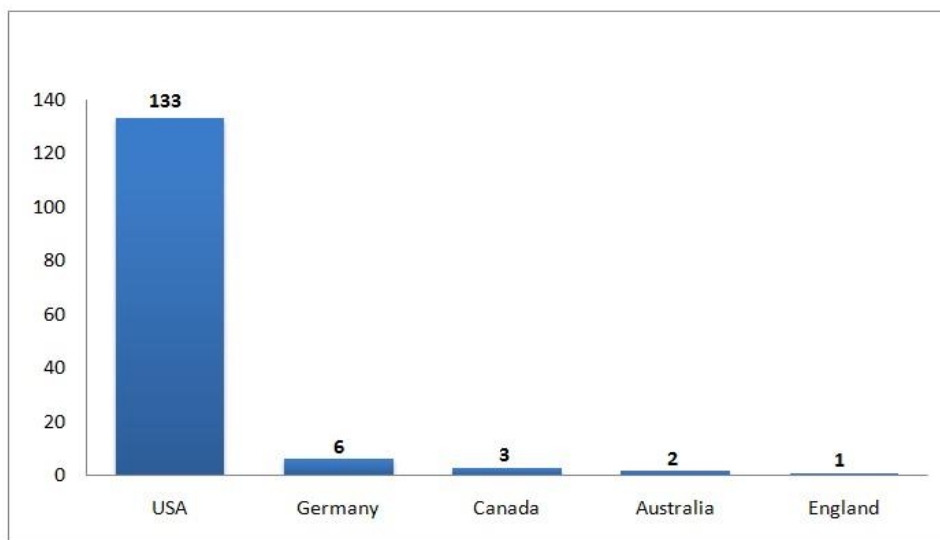


Figure 06: The Number of Mass Shootings between 2000 and 2014

Source: Jaelyn Schildkraut & H. Jaymi Elsass via Politifact Multiple injuries, excluding gang violence & terrorism.

²⁶ <http://www.vox.com/2015/10/3/9444417/gun-violence-united-staes-america/> see <http://www.vox.com/cards/gun-violence-facts/>

²⁷ <http://www.vox.com/cards/gun-violence-facts>.

Mass shootings are defined differently in every country. In a period of 14 years, Germany ranked second with only six mass shootings.²⁸ Canada, Australia, and England had just less than three mass shootings in the same period. Clearly, such a large number of mass shootings in the US create a serious, complicated problem and threat to the public policy.

Actually, when a mentally-ill person gets a gun, the likelihood of committing a crime is possible. Mental illness (or felony) is one of the most focal issues when discussing gun ownership. Even the NRA agreed on some of the Supreme Court limitations placed on felons. It is reasonable to stop the spread of guns everywhere; carried by everybody. If a felon has an access to a firearm, public safety is under threat. (Nakaya 48) An example that remains unforgettable in the minds of Americans is the mass shooting that took place in Newtown, Connecticut. Just few months before the shooting of Newtown, another gunman killed twelve people and injured fifty-eight in Aurora, Colorado. In particular, school shootings have promoted the gun control debate to one of the central political issues in the United States.

In terms of mass shootings listed in the Mayors Against Illegal Guns (MAIG) study, Connecticut was headlined by the Sandy Hook Elementary School tragedy.²⁹ The shooter in this case embodies the reasoning behind the argument that it is not the existence or presence of the weapons that causes these incidents; rather, it is the person who chooses to carry it out. All of the weapons used by the shooter were legally registered to his mother, who he murdered prior to the mass incident. His mental state was questioned, even leading up to the tragedy.

²⁸ Supra note 3.

²⁹ Mayors Against Illegal Guns (MAIG), January 2013. The study analyzes all documented mass shootings in the United States since January 2009, thus the data compiled by MAIG is synchronous with the data retrieved from the FBI. See <http://www.mayorsagainstillegalguns.org/html/federal/federal.shtml>

2.2. The Sandy Hook Elementary School Shooting

On December 14th, 2012, the US was shocked by an overwhelming tragedy at Sandy Hook Elementary School, Newtown, Connecticut. The Newtown Shooting is one of deadliest mass shootings that have ever taken place in American history.³⁰ Adam Lanza, a twenty-year-old who reportedly suffered from profound mental incapacity, (Flitter 2012) used a Bushmaster Model M15 rifle to shoot his mother four times in the head. (Sedensky 5) Next, Lanza forced his way into the elementary school and killed twenty first grade students , as well as six staff members, and finally shot himself to death with the 10mm Glock pistol. (5) In less than five minutes, Lanza fired 155 shots, prompting debate on a new assault weapons ban on firearms with more than ten rounds of ammunition. (5-6) In fact, the shooting of Sandy Hook paved the way for Obama to propose his stricter gun control measures.

III.3. Presidential Response to the Shooting and the Obama's Proposal

Following the 2012 Newtown Elementary School shooting, President Barak Obama urged Congress to pass laws that would help reduce gun violence. Obama was in tears as he addressed the press. Obama called on Congress for an immediate legislative action, in hope of preventing another incident from happening again. Among the steps he and Vice President Joseph Biden have proposed are background checks for all gun sales and a ban on assault weapons and high-capacity magazines. This Democratic program is aiming at reducing gun violence in America.³¹

³⁰ <http://www.sandy-hook-elementary-shool-shooting.com>.

³¹ See The President's Plan: <http://www.whitehouse.gov/sites/default/files/docs/wh-now-is-the-time-full.pdf> .

On January 16, 2013, President Obama announced a number of proposals aimed at reducing gun violence—not just public mass shootings in the United States. (The White House, 2013) In his speech at the National Urban League Convention, Obama says:

I believe the majority of gun owners would agree that we should do everything possible to prevent criminals and fugitives from purchasing weapons; that we should check someone's criminal record before they can check out a gun seller; that a mentally unbalanced individual should not be able to get his hands on a gun so easily. These steps shouldn't be controversial. They should be common sense. (Barak, Jan. 2013)

The Democratic Party is calling for “reasonable regulations” of guns to diminish violence. The goal is not to ban the possession of handguns by law-abiding Americans, but rather to prevent felons and the mentally-ill persons from being able to get them. The proposals focus on four areas: Closing background check loopholes, banning military-style assault weapons and high-capacity magazines, making schools safer, and increasing access to mental health services. (Obama, Jan. 2013) Clearly, these reforms are consistent with the Sandy Hook mass murder and with Adam Lanza, the shooter. Sahito & Slany define a background check as the process of looking up and compiling criminal, commercial and financial records of an individual or an organization. (Vol. 4, No.5) The Violence Prevention Research Program at the University of California, Davis, estimates that identifying prohibited persons through background checks and denying their firearm acquisitions reduces the risk of their committing new firearm-related or violent crimes by approximately 25 percent. (qtd. in Nakaya 70)

Lanza used his mother's M 15 rifle that is designed to cause maximum damage. So, since these assault weapons and high-capacity magazines arms are dangerous, especially in public places, such as schools, they should be forbidden. Along with this, Obama sought to provide

better treatment for mentally unbalanced individuals, like Adam Lanza, by funding the mental health system.³²

III.4. Political Opposition and the Obama Response

Unfortunately, President Obama tried to have Congress pass such legislation in January 2013, but his efforts failed after overwhelming opposition by gun-rights groups such as the NRA.³³ The NRA and many Republican lawmakers are concerned that some Obama's proposals would threaten the Second Amendment and could be used to confiscate firearms. (qtd. In Licata, 2013) Hence, a variety of Obama's bills were blocked by Congress.³⁴ In reaction to the previously rejected proposals by Congress, Obama uncovered everything that happened during the vote on his proposals saying:

All that happened today was the preservation of the loophole that lets dangerous criminals buy guns without a background check. That didn't make our kid safer. Victory for not doing something that 90% of Americans, 80% of Republicans, [and] the vast majority of your constituents [Democrats] wanted to get done. It begs the question, who are we here to represent? [...] Do we really think that thousands of families whose lives have been shattered by gun violence don't have a right to weigh in on this issue? Do we think that their loss is not relevant to this debate? So all in all, this was a pretty shameful day for Washington. But this effort is not over [...] and I see this as just round one [...]our government could bring about meaningful changes that reduce gun violence so long as the Americans don't give up on it. Even without Congress, my administration will keep doing everything it can to protect more of our communities. (Barak, Apr. 2013)

³² Supra note 7.

³³ Obama talks about Republicans and the NRA. See <http://www.ontheissues.org/obama-speech-at-the-rose-garden/13/04/2013>

³⁴ President Obama makes a statement from the Rose Garden following Congress's vote to block common-sense measures to reduce gun violence. April 17, 2013. See supra note 9.

In his speech, Obama wondered why the vast majority of the voters couldn't succeed to pass legislations because of those lobbying members in Congress. He declared that those who disagree to vote for his proposal are making it easier for criminals to get guns. Indeed, without the background check system, the likelihood of the danger will increase. Most importantly, Obama promised that his government would do everything in its power, to prevent future gun violence.

Aside from proposing this legislative agenda, Obama also issued 23 executive orders.³⁵ The major executive orders included: requiring federal agencies to make relevant data available to the federal background check system, Launching a national campaign on safe and responsible gun ownership, and developing model emergency plans for schools.³⁶ (Follman, Feb. 2013) The effectiveness of the orders reflect Obama's stance on the topic of gun control. The measures are a mix of what Obama wanted Congress to take. He says:

Our government can do more if Congress gets its act together, [but if] this Congress refuses to listen to the American people, and pass common-sense gun legislation, then the real impact is going to have to come from the voters. To all the people who support this legislation, law enforcement and responsible gun owners, Democrats and Republicans, urban moms, rural hunters, whoever you are, you need to let your representatives in Congress know that you are disappointed, and if they don't act this time, you will remember come election time [...] I am assuming that our expression of grief and our commitment to do something different to prevent these things [mass shootings] from happening are not empty words. I believe we are going to be able to get this done. Sooner or later, we are going to get this right. The memories of these children [victims of Sandy Hook] demand it, and so the American people (Barak, Apr. 2013).

Fortunately, Obama realized that the White House can accomplish his goals to reduce gun violence without congressional approval, through executive orders.³⁷ It is clear from the

³⁵ The Democratic Party on Gun Control. See <http://www.ontheissues.org/celeb/democratic-party-gun-control.htm>

³⁶ See <http://www.motherjones.com/politics/2012/07/mass-shootings-map?page=2>

³⁷ Supra note 11.

speech that a unified government can do everything to protect its citizens from harm. Obama was calling for Congressional action to prevent at least one tragedy, one life if possible. They have the obligation to try. Importantly, Obama believed that these legislations depend on the voters, and the voters depend on the people they represent. Therefore, in order to reduce gun violence, Americans need to select their own representatives in Congress. (Apr. 2013)

One reason for the Obama proposal's rejection is the NRA. As a Congress powerful lobbying organization, having 4.5 million active members and tens of millions of supporters, the NRA used its power to influence the way the courts and the government view the Second Amendment. (qtd. in Licata, Feb. 2013) in the NRA Press Conference, Wayne LaPierre, Chief Executive Officer of the NRA, insists that, "The only thing that stops a bad guy with a gun is a good guy with a gun." (Dec. 2012) He argues that people need access to their own gun in order to effectively protect themselves in an emergency. He says:

Our society is populated by an unknown number of genuine monsters—people so deranged, so evil, so possessed by voices and driven by demons that no sane person can possibly ever comprehend them [...] Does anybody really believe that the next Adam Lanza isn't planning his attack on a school he's identified at this very moment? (Dec. 2012)

LaPierre argues that people need guns to protect themselves from such monsters. He maintains that if Sandy Hook Elementary School had had an armed security guard, twenty-six children may not have died that day. (Dec. 2012) LaPierre stresses the need for defending one's self in any case of emergency. His notion reflects that the more guns, the fewer deaths will be. However, according to the statistic, this belief does not seem to be the solution to reduce gun violence, but would rather increase the likelihood of violence.

Members of the Republican Party and the NRA seek diminished regulation of firearms; they strongly support the individual right to possess guns without much more strict limitations.

However, The Democratic Party proposal does not deny a Second Amendment right to possess firearms, and in fact, affirms that such a right exists. In his speech at the National Urban League Convention, Obama declares, “I, like most Americans, believe that the Second Amendment guarantees an individual the right to bear arms.” (Barak, July 2012) President Obama does believe that there is a Second Amendment right to bear arms, but seeks to pass legislation that will make gun possession safer and prevent future mass violence.

III.5. The Ongoing Debate over the Second Amendment

The new Republican president, Donald Trump, also takes his own stance on the Second Amendment. Like the majority opinion in *Heller*, he strongly supports the Second Amendment’s individual right to bear arms. (Gabriel, Sep. 2016) Though Obama and Trump have the same view that the Amendment protects an individual right, they disagree on most of the limitations placed on firearms. On May 20, 2016, Donald Trump stakes out his stance on the Second Amendment after receiving the NRA’s endorsement.³⁸ In his harsh criticism for the Democratic candidate Hilary Clinton in Louisville, Kentucky, Trump said that,

Hilary Clinton wants to abolish the Second Amendment [...] They [Democrats] keep cheeping away, they talk about the magazines, they talk about the bullets, and we are going to take care of it [...] The Second Amendment is under a threat like never before. Hilary wants to reverse the Supreme Court *D.C. v. Heller* upholding the right to keep and bear arms (Donald, May 2016).

Trump confirms that the next president will appoint three to five justices and if Hillary gets to appoint her judges, it will not be good for the American citizens. According to Trump, the

³⁸ <http://www.google.dz/amp/amp.timeinc.net/time/4445813/donald-trump-second-amendment-speech-louisville-ky/>
See also <http://www.LibertyPen.com/donald-trump-second-amendment-speech-louisville-ky/>

way the Second Amendment is interpreted is largely dependent on politics. (Nakaya 21) In this regard, journalist and lawyer Jeffrey Toobin says,

What the Second Amendment means is not determined by the Second Amendment, it's determined by who wins presidential elections and gets to appoint their like-minded justices. These decisions about what the Constitution means are deeply political. Always have been, always will be (qtd. in Khan, Dec. 2012).

According to Toobin, Supreme Court decisions about the meaning of the amendment depend on the beliefs of the particular judges in power, and which judges make those decisions depends on who appoints them to their position. Moreover, Trump emphasized Americans' need for guns to defend themselves against violent crimes.³⁹ According to the previously discussed statistics, however, Trump's belief does not ensure public safety. More guns lead to more crimes.

Sincerely, it is not true that Hilary Clinton was going to abolish the Second Amendment.⁴⁰ In her interview with the ABC news on June 27, 2016, Hilary responded to Trump's criticism, believing that,

For most of our history, there was a nuance reading of the Second Amendment until the decision by the late Justice Scalia [...] that localities, states and federal government have a right, as we do with every amendment, to impose reasonable regulations. So, I believe we can have a common-sense gun safety measures consistent with the Second Amendment. What I have proposed is supported by 90% of the American people and more than 75% of gun owners. So, that is exactly what I think is constitutionally permissible (Clinton).

Hilary Clinton stresses the importance of the Supreme Court in *Heller* that paved the way for the federal government to impose common-sense gun laws. She believes that while the vast majority of Americans support gun violence-prevention legislations, then the right to bear arms must have some regulations. Undoubtedly, Clinton wants to develop the Obama's proposals for

³⁹ Supra note 14.

⁴⁰ <http://www.abcnews.com/hilary-clinton-on-second-amendment-right/>

gun regulation to reduce gun violence. Like Obama, she believes in the right to bear arms, but under reasonable limitations.

Conclusion

The ongoing debate over the Second Amendment proves an endless issue in the US. The idea of gun control is still debatable and subject to many objections. Passing Gun laws in order to reduce the number of tragedies is a logical solution. The shock of the Sandy Hook Massacre remains unforgettable in the minds of most Americans. The Obama reaction to such violent crimes proved effective and helpful for a nation seeking peace. However, the rise of victims along the country would not be stopped unless Congress's blockage of the proposals gets repealed. The current political challenge between Republicans and Democrats over the issue of gun control is getting more complicated and seems to have no end. Only the American citizens have the choice to decide their own representatives.

General Conclusion

Throughout this essay, the discussion surrounding the Second Amendment proved to have a great impact in the history of the US. The current study handled the question of guns and the value of freedom in the modern day American society. This investigation has attempted to show that the spread of guns everywhere is dangerous to the public safety. The first chapter explored the history and the origins of the Second Amendment with an emphasis to the true meaning behind those 27 words. The researcher has argued that the Second Amendment has been a debate about the meaning of words. After conducting an in-depth analysis of the amendment by breaking down its wording into small parts and explaining what each word meant to afford, the amendment proved very controversial. The Second Amendment's language and historical and philosophical background demonstrate that it was designed to protect militia's right to keep and bear arms.

Undeniably, self-defense is a fundamental right protected in the Constitution and should not be violated. On the one hand, the second chapter showed that it was the duty of the Supreme Court to decide whether the right to self-defense is incorporated in the Second Amendment. The *District of Columbia v. Heller* (2008) was the first case in the history of the US to decide that the Second Amendment guarantees an individual right to bear arms for self-defense. The only reason why the Supreme Court struck down the District of Columbia's ban on handgun was that the district laws did not exempt the right to self-defense. Of course, since Heller was denied a registration certificate, the laws were pronounced as violation of the Second Amendment. On the other hand, however, the second chapter also teaches us how "self-defense" has to be justified under the requirement of necessity and proportionality. The researcher has argued that no right is

absolute. Nothing can be further from the truth. The Supreme Court ruled that, similar to all rights, the Second Amendment must also be subject to some rational limitations.

Accordingly, this work clarified the impact of the Supreme Court in *Heller* on the American society. However, the rise of gun violence reached its climax just few months after the *Heller* decision, prompting many Americans to demand gun control legislation. The researcher has maintained that the more the tragedy, the more people sided with gun control advocates. So, as shown in the last chapter, the Sandy Hook mass murder was the turning point in the history of gun control. Until then, the majority of Americans were in favor of gun control. The researcher has also sustained that the less the gun, the less the crime will occur. To prove this, the third chapter highlighted the top seven States having both the strictest gun laws and the lowest gun-related deaths at the same time. President Obama said that the US should learn from Sandy Hook tragedy. He introduced a set of proposals seeking to reduce such incidents from happening again. Although Congress blocked many of his proposals, Obama realized that the White House can achieve its goals without any congressional agreement. At the end, the study has shown the continuing challenges, as well as and the intense disagreements that rose between both political parties over the question of gun control.

The work has endeavored to account for the ongoing debate over the Second Amendment and to trace the shift from self-protection to gun control. Yet, future research on the impact of political powers over the judicial sector can be conducted for better understanding the Second Amendment and the right to bear arms. Unfortunately, the right to bear arms guaranteed in the Second Amendment remains in the hands of political powers seeking to interpret it the way it serves them. So, a research on how, for example, the presidents, or the NRA, as political powers, influence the way the Supreme Court interprets the Second Amendment will be fruitful in

showing the reasons behind the ongoing challenge over the issue of gun control. For the time being, taking gun ownership seriously and using guns legally and responsibly would reduce gun violence in the long run. Due to the high incidents of gun murders in the US, it is necessary to place stricter gun control measures to ensure public safety. “More Guns, More Mass Shootings.”

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