

«I Do Not Understand the United States»

Exploring why the gun issue is still so controversial, and why it is so difficult to enforce meaningful legislation in the wake of recent mass shootings

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Motivation and Thesis Questions

Throughout my childhood I was always brought up with a close connection to my family history. Like many other Norwegians, many of my ancestors emigrated to the United States to seek a new and better life. This led me to become fascinated with the country and its culture, language and history at an early age. This interest shaped what ultimately would become my professional path in life, becoming a teacher in both History and English. For a Norwegian it can be difficult to fully understand the complex nature of American culture. It is a country that is so obviously different than other western countries in many aspects, one of which has always stood out to me is the gun rights versus gun control debate.

The gun issue is often the subject of discussion when talking to my American friends and relatives, and the debate continues to challenge my ability to emphasize and accept views that differ greatly from my own opinions. This is perhaps due to the fact that my own cultural framework limits my understanding and acceptance of the American gun culture. To study this highly discussed topic from an outsider's perspective is an interesting experience. It can be difficult to establish an understanding as to why the gun issue is still such a controversial topic in the United States. Especially when American gun policies are in stark contrast to other Western countries, such as the Norwegian gun culture, for instance. It is difficult to fully grasp why conservative American politicians are often those who believe most strongly in capital punishment, gun rights and being tough on crime, yet are those who fight against gun control.

In 1997, Seymour Martin Lipset, American sociologist and political scientist, wrote a book called *American Exceptionalism - A Double-Edged Sword*. Here he explores the unique American creed consisting of values such as individualism, anti-statism and an exceptionalism that separates the country from others. This can be considered both good and bad, similar to a double-edged sword.¹ Like Lipset, historian Ole Moen, professor at the University of Oslo, has written several books detailing the American exceptionalism. He states that the American nation considers itself as different, extraordinary and unlike other nations. Moen seeks to make the country easier to understand by highlighting different aspects of an otherwise complex culture. He has argued that the United States can be

¹ Seymour Martin Lipset, *American Exceptionalism - A Double-Edged Sword* (Norton, 1997).

considered as both a super-modern and a pre-modern nation.² This explains the paradoxical nature of the United States in that it is a country fueled by technological innovations and modern luxuries, yet still has laws and values that other Western nations no longer favor. The death penalty and views on abortions are some examples of why the United States could be considered pre-modern. Another example is the country's gun culture. A deep dive into this issue seemed immensely interesting and fulfilling.

In an interview with CNN's Christiane Amanpour in 2019, New Zealand's prime minister Jacinda Ardern expressed her bafflement at the United States' inability to change their gun laws in the aftermath of so many mass shootings. This was shortly after a lone gunman had killed fifty-one people at two mosques in Christchurch, leading New Zealand to swiftly overhaul their gun laws. The prime minister argued that although New Zealand had a long-standing hunting tradition that did not necessitate private possession of military style, semi-automatic weapons and assault rifles. When asked if other countries might learn from their legislative vigor Ardern replied: «*Australia experienced a massacre and changed their laws. New Zealand has had its experience and changed its laws. To be honest with you, I do not understand the United States.*»³ This highlights just how difficult it is to understand the American gun issue from a foreign perspective. When a leader of another English-speaking country struggles to do so, it leaves little hope for ordinary citizens of other western countries. The aim of this thesis is therefore to provide knowledge of the gun debate in the United States to better understand why American gun policies are so different to those of other Western countries.

In order to gain insight into this topic, the thesis will seek to answer two questions. The first of which is: *Why is the gun issue still so controversial?* The second complements the first by asking: *Why is it so difficult to enforce meaningful legislation in the wake of recent mass shootings?* The study is based on a variety of different source materials. This is to establish a broad understanding of the topic, as it is so complex. It will include existing research on gun violence and federal and state laws and policies. It will include a selection of sources such as works by academic, public policy scholars and political scientists, research conducted by national institutes including studies funded by the US Department of Justice (DoJ), data from

² Ole Moen, *USA: Annerledeslandet i Vest*, Cappelen 2005, 15-16

³ Jacinda Adern, «New Zealand PM on gun laws: I don't understand the US,» Interview by Christiane Amanpour, *CNN*, 2019.

the Centers for Disease Control and Prevention (CDC) and other organizations, as well as articles from academic journals and media reports.

Finding answers to the thesis question required the use of a variety of methods. This is because the study involves both historical events and documents and very recent developments and data, meaning that I have focused both on a quantity of source material yet also a qualitative analytical approach to certain material depending on the topic. I have referenced books written by a selection of scholars and political scientists from both ends of the opinion spectrum. However, the books that have been the most valuable to use in an analysis of this topic have been those that manage to be informative without any apparent bias or agenda, such as William Briggs' *How America Got Its Guns: A History of the Gun Violence Crisis*, and Philip Cook and Kirstin Goss' *The Gun Debate: What Everyone Needs to Know*.

Wherever possible I have close-read court documents, especially in the Supreme Court cases *Heller* and *McDonald*, and analyzed primary sources such as official judicial documents, government documents, official statements, survey data, original research and interviews. In other areas such as historical events where obtaining original source material is difficult, secondary source material such as research articles and books have been used. However, in many such instances the secondary sources have been supplemented with primary source material, such as legislative text. From this the work very much relied on my own interpretation and analysis of the sources I chose to include. Evidence in support of Robert Spitzer's theory of high-profile shootings and the policy gridlock, also echoed by Cook and Goss, regarding the ineffectiveness of mass shootings unless they also coincide with favorable political conditions can be found in this thesis.

America and Its Guns

Chapter 1 - Introduction

«For too long, we've been blind to the unique mayhem that gun violence inflicts upon this nation.»⁴

- Barack Obama

On December 14, 2012, a twenty-one-year old gunman forced his way into Sandy Hook Elementary School in Newtown, Connecticut. In his wake he left the lifeless bodies of twenty first-graders and six educators, before he proceeded to take his own life as well. The tragic reality is that the Newtown shooting is not an uncommon occurrence in the history of American gun violence, as the country has witnessed many high-profile shootings in the past decade.⁵ In the aftermath of this disaster President Barack Obama began his quest for gun reform. America could not tolerate this sort of tragedy any longer, and the time to take meaningful action and reduce gun violence had come.

In the weeks following this event, President Obama announced the signing of twenty-three executive actions to prevent gun violence. Although he had taken matters into his own hands he made it clear that the most important changes in this area would depend solely on Congressional action. He could not, and should not act alone. By this he put pressure on lawmakers, calling out for them to pass extensive gun reforms. The proposed measures included a new assault weapons and high-capacity magazines ban as well as an expansion of background checks.⁶ A new push towards national gun reform had begun. In the years after his battle-call came a series of legislative failures. Most notable of these is the defeat of the Manchin-Toomey gun amendment, which would have extended background checks and established federal funding for research into the causes of gun violence. The President was left disgusted by the inability to enforce meaningful gun legislation after the Newtown-shooting.⁷ Obama's quest for gun control was staggeringly unsuccessful, but why was it so difficult for him to succeed?

⁴ Barack Obama, quoted in Tyler Pager, «6 best excerpts from Obama's moving Pinckney eulogy in Charleston,» *USA Today*, June 6, 2015.

⁵ Jaclyn Schildkraut and H. Jaymi Elsass, *Mass Shootings: Media, Myths, and Realities* (Praeger, 2016), 1.

⁶ Colleen Curtis, «President Obama Announces New Measures to Prevent Gun Violence.» *The White House Blog*, January 16, 2013.

⁷ Jennifer Mascia, «Obama: Country is 'Blind to the Unique Mayhem' of Gun Violence,» *The Trace*, June 26, 2015.

The whole world watches as the American nation is struggling in-between a rock and a hard place as the outcries for stricter gun control are getting louder. The number of gun fatalities amongst the country's younger citizens is growing more rapidly now than ever before. American teenagers are now more likely to die from injuries relating to the use of firearms than any other leading cause of death.⁸ This can be seen quite clearly when comparing fatal injury data from 2016 to 2018. A reputable source, the National Center for Health Statistics within the Centers for Disease Control and Prevention collects data from state coroners' offices.⁹ Data from the NCHS online statistics system shows a total of two-thousand-eight-hundred-and-seventy-eight teenage fatalities from firearms in 2016, increasing to three-thousand-and-seventy-two in 2018.¹⁰ From this a staggering trend emerges.

According to data collected by the Gun Violence Archive, the United States have also experienced a record number of mass shootings, including school shootings, in the past few years.¹¹ Although they only account for a small percent of the overall number of gun related deaths, it is the tragic nature of such events that makes the whole world tune in as children fight for their right to have a safe school environment. Many Americans compare rates of gun violence in their country to those in other western nations and are puzzled by the differences. These individuals recognize that there needs to be a balance between liberty, and law and order.¹² There needs to be a federal reevaluation of the stance on nationwide gun control. This has historically been a difficult area in American politics. In modern times it has developed into a sensitive topic of discussion due to a widening gap between those who are for stricter gun control and those who oppose them.

The right to bear arms is so deeply engrained in the American creed that it is hard to find a middle ground. Without this common ground, enforcing or even passing new legislature restricting gun rights is almost impossible. This can be seen in events that have occurred within the federal government dating back a long time, where few new laws have been passed. Professor emeritus of the University of Colorado, William Briggs notes that Congress

⁸ Centers for Disease Control and Prevention. National Center for Injury Prevention and Control. Web-based Injury Statistics Query and Reporting System (WISQARS) Leading Causes of Death, 2018.

⁹ William Briggs, *How America Got Its Guns : A History of the Gun Violence Crisis* (University of New Mexico Press, 2017), 30.

¹⁰ Centers for Disease Control and Prevention, National Center for Health Statistics. Web-based Injury Statistics Query and Reporting System (WISQARS), Number of Firearm Deaths, 2016, 2018.

¹¹ Gun Violence Archive, «Six Year Review,» May 2020.

¹² Briggs, *How America Got Its Guns*, 265.

has failed to pass truly meaningful legislation in the past eighty years, amounting to about one major act per decade. He states that “*enforcement of federal gun laws has a history of occasional successes combined with off-setting impotency and debacles*». ¹³ The lack of federal regulations in this area, despite the sheer number of weapons in circulation and related fatalities, is astounding. Many of these major legislations that have been passed have since expired or been revised. From this, Amnesty International declared gun violence in the US a *human rights crisis* in 2018, stating that the government prioritizes gun ownership over basic human rights. ¹⁴

In light of these developments, how is it that the United States seem incapable of enforcing meaningful legislation in accordance with most other western countries?

To answer this one must first acknowledge that America is not like most other western countries with regards to gun rights. In their book, *The Gun Debate*, public-policy scholars Philip Cook and Kristin Goss state that:

«The U.S. system starts with the premise that citizens should be allowed to own guns unless there is a compelling reason to bar them from doing so, while other nations begin with the opposite premise—severely restrict or ban ownership unless there is a good reason to allow it.» ¹⁵

This summarizes the situation accurately by highlighting the two very different starting points in the gun debate. A system that will allow its citizens to own guns as default would naturally experience more difficulties in trying to enforce restrictions on gun ownership. Based on court rulings that will be discussed further on in this thesis, we see that it is more difficult to take away any liberty or right that has been in place for a long time, than to loosen restrictions, especially in the area of gun rights.

Understanding the gun debate in the United States is a difficult endeavor as the topic is so contentious and complex in its nature. The next chapters will seek answers in the combination between the unyielding forces that are the different sides in this debate, constitutional rights

¹³ Ibid., 163.

¹⁴ Amnesty International, «Amnesty International report declares gun violence in the United States to be a human rights crisis,» September 12, 2018.

¹⁵ Philip J. Cook and Kirstin A. Goss, *The Gun Debate : What Everyone Needs to Know* (Oxford University Press, 2014), 118.

and Supreme Court rulings, the inconclusive nature of federal gun legislation, and developments in recent years.

Chapter 2 - Forces in the Gun Debate

2.1 Gun Ownership and The Partisan Gap

Gun rights is perhaps the most combustible out of other highly contentious topics such as abortion, immigration and the death penalty. There are many reasons as to why gun rights is such a difficult subject within the country, and the diversity of gun ownership may be a factor. The total number of guns in the United States continues to rise and is estimated to be around two hundred and seventy to three hundred and ten million, almost one gun per person.¹⁶ In a 2019 Gallup poll, forty percent of adult Americans reported a gun in their household or property. Of gun owners, sixty percent listed personal protection as the main reason for possession.¹⁷ Twenty-nine percent of responding gun owners also state that fear of government tyranny is high on the lists of reasons for possession. These individuals, forty-four percent with Republican affiliation, believe that it might be necessary to stage an armed rebellion in the next few years in order to protect their liberties.¹⁸ When looking at data on gun ownership, mainly collected through surveys, it is difficult to see a clear profile of the American gun owner. Briggs summarizes this well by stating:

«In terms of politics, race, education, and economics, gun owners do not cut a clean, homogeneous swath through our society. They form threads woven throughout the American tapestry. To understand guns in America, one must appreciate the number and diversity of gun owners and the extent to which guns have seeped—deeply and broadly—into the culture. This state of affairs only makes the gun debate more complex.»¹⁹

Although gun ownership is diverse there are some main generalizations to be made without excessively stereotyping.

¹⁶ «Small Arms Survey 2007: Guns and the City,» Graduate Institute of International Studies in Geneva, Switzerland (Cambridge University Press, 2007); Detailed in Briggs, *How America Got Its Guns*, 5.

¹⁷ Gallup Organization (2019), «Guns.»

¹⁸ Fairleigh-Dickinson University Public Mind Poll, «Beliefs about Sandy Hook Cover-Up, Coming Revolution Underlie Divide on Gun Control,» 2013.

¹⁹ Briggs, *How America Got Its Guns*, 6.

This is corroborated in a study conducted by Pew Research Center in 2017. The main takeaways from this report includes the fact that gun ownership cuts across demographic groups, but is more concentrated among some. For instance, White adults are more like to own guns than African-American or Hispanics. In addition to this, given that forty-eight percent of white males say they currently own guns, compared with twenty-four percent among women, white males are especially like to be gun owners.²⁰ Gun ownership also tends to vary from state to state, and between the two major political parties. Data from 2014 showed that approximately sixty percent of adults in Wyoming were gun owners, compared to seven percent of adults in Hawaii.²¹ In addition to this, there is also a vast urban-rural divide in gun ownership rates. In 2017, forty-six percent of adults who live in rural areas say they own a gun, compared to twenty-eight percent in suburbs and just nineteen percent in urban areas. Gun ownership is also closely linked to party affiliation. Of Republicans or independents who lean towards the Republican Party forty-four percent say they own a firearm, versus twenty percent amongst Democrats or those leaning towards the Democratic Party. Partisanship is also strongly connected with views regarding gun ownership as a guaranteed right, with Republicans being twice as likely as Democrats to believe gun ownership as essential to their freedom.²²

The gap between Democrats and Republicans with regards to gun policy has continued to widen over the last two decades, amongst ordinary citizens and lawmakers alike. In current times we can summarize each party's position by stating that Democrats generally favor stricter gun legislation, whereas Republicans would rather keep current laws or in some instances repeal them. Some scholars argue that the two main parties' position on gun control versus gun rights is a reflection of their respective bases. This is due to the fact that Republicans are strongest in the South and in rural parts of America where there is a strong tradition of gun ownership related to a culture of individualism and a fundamental distrust of federal power. Democrats are on the other hand generally strongest in more urban areas and amongst women and racial minorities. These groups tend to either lack a gun-owning tradition found in more rural areas, or see the dangers of gun violence up close.²³

²⁰ Kim Parker et al., «America's Complex Relationship With Guns.» *Pew Research Center*, June 22, 2017.

²¹ Rich Morin, «The Demographics and Politics of Gun-Ownning Households,» *Pew Research Center*, July 15, 2014.

²² Parker et al., «America's Complex Relationship With Guns.»

²³ Cook and Goss, *The Gun Debate*, 183-184.

In the last decade gun ownership has become a better predictor of one's political affiliation than any other factor.²⁴ There are always exceptions despite a strong correlation between gun ownership and political party. There are some Democrats who are avid gun rights supporters and Republicans who are pro gun control. These individuals might vote out of the party-line when bills regarding firearms are proposed.²⁵

In his book *How America Got Its Guns*, Briggs often uses the terms *gun control* and *gun rights* to label the opposing viewpoints on firearms, this as a matter of convenience. He acknowledges that this oversimplifies the picture, yet because it does streamline the discussion this thesis will also continue to use both terms when talking about the main sides in this debate.²⁶ With this in mind, what are the gun control and gun rights movements?

2.2 The Gun Rights and Gun Control Movements

Cook and Goss describe the gun rights movement as a combination of different local, state and national organizations that endeavor to prevent or remove any restrictions on gun ownership or use as well as promoting a general positive view of firearms to the public. This includes gun manufacturers, retailers and researchers as well as individual initiatives to challenge federal gun legislation. Yet, one cannot discuss the gun rights without acknowledging the immense presence of organizations such as the National Rifle Association (NRA). The NRA was founded in 1871 and is regarded as the oldest and most dominant organization within the gun rights movement, which in turn gives it a voice of authority in all matters regarding firearms.²⁷ Throughout its existence the NRA has completed the transformation from a regional and militarist club to the most prominent gun lobby in the United States. In modern times the organization represents an ideologically conservative and more politically active part of American society.²⁸

The NRA as we know it today is actually split into three separate organizations. The largest of these is the membership association known as the National Rifle Association. This

²⁴ Nate Silver, «Party Identity in a Gun Cabinet,» *FiveThirtyEight*, December, 18, 2012.

²⁵ Cook and Goss, *The Gun Debate*, 184.

²⁶ Briggs, *How America Got Its Guns*, 9.

²⁷ Cook and Goss, *The Gun Debate*, 190.

²⁸ Alexander DeConde, *Gun Violence in America: The Struggle for Control* (Northeastern University Press, 2001), 104.

branch defines itself as America's longest-standing civil rights organization that together with its five million members are diligent protectors of the Second Amendment, a fact which is proudly stated on their homepage.²⁹ The other branches include the charitable NRA Foundation, in charge of developing gun safety education and granting money to gun clubs and ranges around the country, and the political action committee known as the NRA Political Victory Fund, which gives money to political candidates. Although the NRA is a huge presence in gun debate, the movement as a whole is much broader. Other organizations exist all over the country, filling voids that the NRA might not cover, such as the «no compromise gun lobby» lead by the Gun Owners of America (GOA).³⁰ When discussing the topic of firearms in the United States it is impossible not to see the influence and presence of these organizations, lobbying endlessly on behalf of the gun owning part of American society.

On the other side we have the gun control movement, which is similar to the gun rights side in that it is made up of local, state and national organizations. From these there are some whose sole focus is gun control, and some allied organizations from religious or minority communities that contribute in the event of a major legislative discussion. Gun control groups also share similarities with the gun rights movement in that they try to advance their cause by developing educational material as well as lobbying efforts and other electoral strategies.³¹ In addition to these organizations, the movement as a whole has been expanded by the emergence of research groups like the Violence Policy Center (VPC). Information about the VPC can be found via their web page. The Center was founded in 1988 and conducts research that might be useful for gun control advocates. The Center endeavors to bring an informed perspective to the battle for stronger gun violence prevention policies by being evidence-based and by building relationships with lawmakers at all levels of government.³² The leading organizations within the gun control movement includes the Brady Campaign to Prevent Gun Violence and the Coalition to Stop Gun Violence. Today, both of these groups are membership based, relying on contributions from the public. Historically their combined revenues has amounted to just a small percentage of the total revenue of their counterpart in the NRA, and they are still considerably smaller in both size and reach.³³

²⁹ NRA at <https://home.nra.org/>

³⁰ Cook and Goss, *The Gun Debate*, 190-192.

³¹ *Ibid.*, 203-204.

³² VPC at <https://vpc.org/about-the-vpc/>

³³ Cook and Goss, *The Gun Debate*, 204.

In the last two decades the gun control movement has also seen new members enter. The umbrella-organization Everytown for Gun Safety is a movement to end gun violence and build safer communities. Within it are voices of survivors of gun violence, as well as a student initiative and other organizations such as Moms Demand Action for Gun Sense in America and Mayors Against Illegal Guns (MAIG).³⁴ Cook and Goss state that MAIG has become the chief strategist in the movement for gun control.³⁵ The organization was founded as a bipartisan group in 2006 by then-Mayors of New York City and Boston, Michael Bloomberg and Thomas Menino. Today, more than a thousand mayors all over the United States have joined the research and political advocacy organization and are leading advocates of gun safety reform.³⁶

The fight to level the playing field between the movements for and against gun control is a difficult one. The gun rights lobby is so strong and the gun control movement relatively weak in comparison. The reason for this can be divided into many different variables, such as the powerful NRA, the structure of the gun control movement and the intensity of gun rights supporters.

2.3 The Strong Gun Lobby and the Gun Control Paradox

The National Rifle Association is considered as one of the most powerful interest groups in the fight against gun regulation. Even after mass shootings there is generally vast public approval in favor of the organization. In a study by Pew Research Center after the Sandy Hook shooting in 2012 only around a third of Americans thought that the NRA had too much influence on gun laws. This also means that around half of respondents were under the opinion that the NRA has too little, or just the right amount of influence.³⁷ In 2016 the Journal of Political Sciences & Public Affairs published a research article regarding the impact the NRA has on American policy. The article states that the NRA's main source of power comes from their committed membership base of over five million gun owners who feel passionate about their gun rights and are highly engaged in the political arena.³⁸ From this their annual

³⁴ Everytown at <https://everytown.org/who-we-are/>

³⁵ Cook and Goss, *The Gun Debate*, 205.

³⁶ Mayors Against Illegal Guns at <https://everytown.org/mayors/>

³⁷ Pew Research Center (2012), «After Newtown, Modest Change in Opinion About Gun Control.»

³⁸ Also stated in Cook and Goss, *The Gun Debate*, 193.

revenue exceeds a quarter of a billion dollars. Aside from monetary funds and a large membership base the NRA also employs several former legislators and government officials. This strategy is to ensure access to and close relationships with current policy makers on a federal level.³⁹ Presence in all levels of government is an important part of the structure the gun rights movement is built on.

The structure of the gun lobby is a key factor in its success. Cook and Goss state that the movement has certain advantages within its structure that is leveraged by its leaders to form strategies that are especially effective and successful in American politics. The different organizations in operation all over the country enable the lobby to put pressure on legislators at all levels of government, as well as across all three branches of government. National lobbyists are involved whenever new gun related legislation is being brought up in Congress. Similarly, gun sports organizations and different independent political groups do the same at a state level, putting additional pressure behind lobbying efforts by staging protests or arranging other grassroots activities in state capitols. On a local level there is a plethora of arenas in which gun owners can meet and share information, such as gun shows, firearms stores and shooting ranges. However, the structure would be less relevant if the NRA and other gun rights groups had not also excelled in generating true engagement at a grassroots level. Many gun rights advocates are individuals with the determination, grit and passion who will not be stopped in their mission to prevent stricter gun regulation. This intensity is the traditional resolution to what is known as the *gun control paradox*.⁴⁰

The gun control paradox is the term social scientists have used for many decades to describe the connection between public opinion data and legislative inaction in the gun debate. As early as 1977 Howard Schuman, Professor of Sociology at the University of Michigan, and Stanley Presser, Research Investigator in the Survey Research Center, addressed this topic in a research article. The pair stated that gun control is an issue where the majority of the public has responded consistently for a number of decades, yet the national legislature has not reflected public opinion as closely as one might expect.⁴¹ In simple terms the essence of the gun control paradox is that most Americans would like stronger gun laws but rarely get them despite public opinion remaining the same for such a long period of time.

³⁹ Sam Musa, «The Impact of NRA on the American Policy,» *Journal of Political Sciences & Public Affairs* 4, no. 222 (2016).

⁴⁰ Cook and Goss, *The Gun Debate*, 193-195.

⁴¹ Howard Schuman and Stanley Presser, «Attitude Measurement and the Gun Control Paradox,» *The Public Opinion Quarterly* 41, no. 4 (1977): 427-38.

In the latest survey on this topic the share of Americans in favor of stricter gun laws increased from fifty-two percent in 2017 to sixty percent in 2019.⁴² Despite this, attempts at gun regulation has been fought against at every level and meaningful gun legislature is rarely passed.

Cook and Goss offer a possible explanation to this by stating that although many Americans might support gun control, they do not feel as strongly about it as many gun rights supporters who are willing to base their votes solely on a candidate's position on gun rights.⁴³ There is some basis for the argument. Data collected in the aftermath of the Newtown shooting suggests that gun rights advocates are more likely to not vote for a candidate with whom they disagreed with on gun policy even if they agreed on most other issues. Forty-one percent of those who prioritize gun are single-issue voters in this sense, compared to thirty-one percent of gun control supporters.⁴⁴

As previously stated, this thesis will show that it is more difficult to restrict gun ownership than to loosen regulations, especially in the area of gun rights. In *The Gun Debate*, Cook and Goss offer a similar opinion and explain this by exploring two advantages that the gun lobby might exploit. The first of which is the fact that people generally respond with a more aggressive passion to threats of loss, compared to reactions at potential gains. This is especially true in the gun issue as possible gains are often theoretical and exist in the future whereas gun restrictions are naturally more of an instant bereavement. The second advantage is that the American political system consists of many potential hurdles, or choke points. This means that it is easier to block a new legislative proposal than it is to pass it, such as the event of the filibuster to stop the Manchin-Toomey proposal in 2013, which will be detailed later in this chapter. In addition to blocking new national gun laws, the gun rights movement has quite successfully pushed to enact new laws that relax restrictive provisions in older legislation.⁴⁵ This can be seen quite clearly when studying the history of federal gun legislation. However, in order to discuss the gun issue in modern times it is important to possess knowledge about the constitutional basis for all gun related rights, starting with the Second Amendment.

⁴² Katherine Schaeffer, «Share of Americans who favor stricter gun laws has increased since 2017,» *Pew Research Center*, October 16, 2019.

⁴³ Cook and Goss, *The Gun Debate*, 196.

⁴⁴ Pew Research Center (2013), «Broad Support for Renewed Background Checks Bill, Skepticism about Its Chances.»

⁴⁵ Cook and Goss, *The Gun Debate*, 196.

Chapter 3 - Gun Rights and the Constitution

3.1 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.

- The Second Amendment to the US. Constitution.

3.1.1 The Beginning

Guns have been an integral part of American history since the beginning of the Union. In addition to the arming patriots and militias during the Revolutionary War, guns were essential in colonial life. This especially applies to the settlements near the frontiers.⁴⁶ English colonists brought firearms to be used for self-defense, but also in offensive battles between themselves and Indians, or other rival Europeans.⁴⁷ Many colonies in New England also passed laws that stated that all households had to be armed.⁴⁸ After the Declaration of Independence in 1776 and the development of the US Constitution in 1788, ten amendments were constructed and passed on December 15, 1791. These amendments restricted only the federal government, and not state governments. However, they still became known as the Bill of Rights.

Events like the Boston massacre, a deadly riot between the British and a mob of protesters which led up to the War of Independence, inspired the outline for what would later become the Second Amendment. Founding Father John Adams noted then the significance of a standing army and also saw the necessity in keeping and bearing arms for self-defense. In the time preceding independence and the development of the Bill of Rights, there are many facts that are relevant to the history of the Second Amendment. During this time a common militia was viewed as the most effective and meaningful defense against a standing army of foreign forces. This led to colonists stockpiling firearms and making ammunition, in order to form militias and rebel against the tyranny of the British. As a result the British then started to confiscate arms to hinder the militia organization, thereby violating the English Bill of Rights from 1689 that gave protestants the right to possess firearms for their self defense. Possession

⁴⁶ Briggs, *How America Got Its Guns*, 6.

⁴⁷ DeConde, *Gun Violence in America*, 17.

⁴⁸ McGrath, «A Tradition of Arms,» 34.

of firearms can from this be seen to be very important for the militia, since it was instrument in organizing a counter force to fight British oppression. The period surrounding the development of a new constitution, filled with suspense, was a critical time in American history. The debates on issues like state vs. federal power and the meaning of the right to keep and bear arms were present even in this time.⁴⁹

The Constitution did not include or even mention the right to keep and bear arms before the ratification of the Bill of Rights in 1791. In the original Constitution, federal and state governments were given different areas of responsibility regarding the organization of the militia. The national government had authority to summon, and was in charge of organizing, arming and disciplining the militia, while states would appoint officers and be responsible for training the militia.⁵⁰ Ever since the development of the Bill of Rights, the Second Amendment has been a source of immense controversy as the legislators did not make clear the explicit intent with which the Second Amendment was written.⁵¹

3.1.2 Interpretations

As included at the beginning of this chapter, the Second Amendment to the Constitution says:

«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.»⁵²

Like every written piece throughout our history, the language that was used to form this twenty-seven word long phrase leaves room for interpretations. What exactly was meant by these specific words is ever unclear. Briggs sums this up by asking a number of questions regarding the interpretations of each word and phrases in the amendment. He asks if we are to take *«bearing arms»* to include the carrying of weapons openly out in public or *«using them only for sanctioned military activities»*, whether *«the right»* is affirmed or established by the amendment and if *«the people»* mean each individual or a collection of persons.⁵³ These different interpretations fuel different arguments in both sides of the gun debate. As this is the

⁴⁹ Briggs, *How America Got Its Guns*, 18-25.

⁵⁰ Ibid., 46.

⁵¹ DeConde, *Gun Violence in America*, 34.

⁵² U.S. Const. amend II.

⁵³ Briggs, *How America Got Its Guns*, 8.

constitutional basis of the legal right to bear arms we have to look at these different interpretations in order to fully understand the basis for this discussion.

In *A Well-Regulated Militia: The Founding Fathers and the Origins of Gun Control in America*, Saul Cornell writes about the three general interpretations of the Second Amendment. These are known as the *individual*, *collective* and *civic* rights interpretations. The first of which states that the Second Amendment gives every individual citizen the right to own firearms for personal use. The second interpretation claims that owning and using guns is restricted in the Second Amendment to the functions of the militia. The latter details a view that sits in-between the individual and collective interpretations. In the civic interpretation, the right to have and use firearms brings with it the individual responsibility to fulfill one's civic duty of ensuring the defense and safety of the public.⁵⁴ The gun issue can be boiled down to whether or not the Second Amendment guarantees an individual or collective right to keep and bear arms. Advocates for gun rights would strongly favor the individual interpretation, whereas the gun control advocates would at most be seen to favor the collective interpretation.⁵⁵

A highly discussed part of the second amendment debate is the meaning of *militia*. As stated previously, in colonial times the word referred to a group of armed volunteers who were trained to fight the British and ensure the safety of the public. Cornell details a broader perspective on militias and states that it is not possible to exaggerate the central position of the militia in the daily lives of the American colonists. He describes the lives of people living in the colonies, not to mention near the frontiers, where there were no police forces. In such places militias were immensely important, not only in the defense against external forces but also in preserving public order within the community.⁵⁶ The meaning of the word militia is important when trying to look back on the Founders' intent, mainly when it comes to determining whether the right to bear arms is a collective or individual right. Collective right would then be limited to militia duty and defense of the state whereas the individual right would be extended to the personal use of firearms for self defense. The civic interpretation would add the correlation between privilege and duty to the discussion, claiming that there are

⁵⁴ Saul Cornell, *A Well-Regulated Militia: The Founding Fathers and the Origins of Gun Control in America* (Oxford University Press, 2006).

⁵⁵ Briggs, *How America Got Its Guns*, 170.

⁵⁶ Cornell, *A Well-Regulated Militia*, 13.

two sides to a right.⁵⁷ This view is echoed by historian Saul Cornell as he claims that one had the right to keep and bear firearms in order to then fulfill a duty to society by participating in a militia.⁵⁸

The debate about which of these interpretations is the correct one has lasted for centuries, and was not resolved in the Supreme Court until 2008 with *D.C v. Heller*. There really are no clear cut and simple answers regarding the legal questions that arose in the wake of the Second Amendment.

3.1.3 *District of Colombia v. Heller* - Challenging the Handgun Ban

In the beginning of the twenty-first century, we see an increase of gun rights cases on a state and local level. The pressure on the Supreme Court to grant a hearing in Second Amendment cases increased after the likes of *Silveira v. Lockyer* and *United States v. Emerson* appeared in lower circuit courts. These two cases were gun rights cases that had contradicting rulings, where the first stated that the right to keep and bear arms is a collective right and the latter ruled in favor of the individual rights interpretation.⁵⁹ Despite this, the Supreme Court did not grant an appeal in *Silveira v. Lockyer* in 2002.⁶⁰ The need for the Supreme Court to offer a conclusive answer in Second Amendment cases grew larger, and would finally occur in the heart of the federal nation.

Washington D.C. had what was then known as the oldest and strictest handgun ban in the nation. The law was put in place in 1976 and banned all possession of handguns. This also included possession inside the home. In addition to this the ban required long guns to be stored unassembled and stowed away safely. This strict regulation of personal possession was deemed useless by many gun owners at the time, as the crime rates within the district had continued to rise in spite of the ban being enforced.⁶¹

In newer times, journalist and D.C-attorney Jeffrey Scott Shapiro claims that the ban emboldened criminals as they knew that law-abiding citizens were unarmed and defenseless. He states that annual homicide rates increased from one hundred and eighteen in 1976 to four

⁵⁷ Briggs, *How America Got Its Guns*, 24.

⁵⁸ Cornell, *A Well-Regulated Militia*, 2.

⁵⁹ *Silveira v. Lockyer*, 312 F.3d 1052 (9th Cir. 2002); *United States v. Emerson*, 270 F.3d 203 (5th Cir. 2001)

⁶⁰ Briggs, *How America Got Its Guns*, 178.

⁶¹ *Ibid.*

hundred and fifty four by 1993.⁶² Shapiro's opinion regarding the effect the ban had on crime rates has also been found in statements made by Senator Marco Rubio, a Florida Republican and avid gun rights activist. In an interview with Fox News in 2013, the Senator claimed that violence rates in D.C had skyrocketed after the handgun ban was enforced.⁶³ These statements are in opposition with the conclusion of a 1991 study published in the *New England Journal of Medicine*. The authors of the study state that the restrictive licensing of handguns in the District of Columbia is associated with a swift decline in death rates involving firearms, and that their data suggest that the D.C restrictions actually prevented an average of about forty-seven deaths per year after the implementation of the law.⁶⁴

Briggs states that «*numbers are easily misreported, manipulated, carelessly gathered, lifted from context, and otherwise misused*».⁶⁵ This might render the use of numbers quite meaningless, as both sides in the gun debate believe that their data will settle the score. In light of this it is important to remember that both sides in the gun debate fall victims to the temptation of oversimplifying history, and often cherry-pick facts that support their version of the truth to help their cause. Both data and history are important in the gun debate. However, as it is difficult to establish the causality between different variables, such as gun sales and crime rates, the use of numbers should be met with thoughtful skepticism.⁶⁶

The important thing to understand is that the D.C handgun ban and other federal or state gun legislation do not get challenged in court due to disagreements over the effect they have on crime rates. Although an important factor in legislative endeavors, in this instance a law's effectiveness is largely overshadowed by the question of its *constitutionality*; Does the D.C handgun ban violate citizen's Second Amendment right to keep and bear arms? This question was at the core of the Supreme Court case *D.C. v. Heller* in 2008.

Dick Heller was a was a licensed security guard at a federal building in Washington D.C. He carried a handgun for his job, and had applied for a permit to keep the gun in his private home for self-defense. His application was denied. Heller had therefore been directly affected by the handgun ban which gave him an important standing in the court case to overturn it. A

⁶² Jeffrey Scott Shapiro, «A Gun Ban That Misfired,» *Wall Street Journal*, January 15, 2013.

⁶³ Marco Rubio, interview by Brian Kilmeade, *Fox News*, January 17, 2013.

⁶⁴ Colin Loftin, Ph.D. et al., «Effects of Restrictive Licensing of Handguns on Homicide and Suicide in the District of Columbia,» *New England Journal of Medicine* 325, (1991): 1615-1620.

⁶⁵ Briggs, *How America Got Its Guns*, 27.

⁶⁶ *Ibid.*, 7.

three-judge panel in the Court of Appeals for the District of Columbia Circuit overturned the ban by a 2-1 vote in favor of Heller's right to possess a handgun. The District of Columbia filed an appeal to the Supreme Court. Due to the history of Second Amendment cases in previous years it was unlikely that the Supreme Court would grant a hearing, yet in late 2007 the justices approved the formal request for the case to appear in the High Court later in the term. Both sides gathered a record-breaking total of sixty-seven *amicus curiae* briefs ("*friends of the Court*"). Forty-seven of these briefs were in support of Heller, and came from fifty-five Senators, two-hundred-and-fifty Representatives and then Vice President Dick Cheney.⁶⁷ Support within the cabinet and the sheer amount of support displayed in the amicus briefs would surely have been reassuring to gun rights activists ahead of the oral proceedings which took place in March 2008.

During this time five-four decisions between a majority conservative wing and a minor liberal wing was commonplace, and the Heller-case was no exception. The Court ultimately struck down the D.C handgun ban and recognized an individual right to keep and bear arms unconnected to service in a militia, as well as the right to use a firearm for lawful purposes including self-defense within the home.⁶⁸ In the ninety minutes long hearing, the Supreme Court Justices spent much time conversing about the weight of the *militia* clause versus the *rights* clause in the Second Amendment. Although both sides recognized the militia clause and its purpose of preserving the militia, the majority argued that this was not the only purpose of the Second Amendment. Here, Justice Antonin Scalia pointed to the fact that it was not only plausible but reasonable to assume that the Framers must have had intended for an individual right to keep and bear arms. His argument was based on the assumption that the Framers knew that tyrants had not destroyed militias in the past by passing laws against them, but by taking away people's weapons, examples of which has been detailed earlier in this chapter. Scalia argued that the two clauses therefore went together perfectly: «*Since we need a militia, the right of the People to keep and bear arms shall not be infringed*».⁶⁹

In both the majority opinion and the minority dissent it is clear that the Court was in many ways deeply divided on the central question in *Heller*. Justice Scalia also wrote the majority opinion where he argued that the Second Amendment surely elevated law-abiding citizen's right to use arms in self-defense above all other interests. The dissenting opinion

⁶⁷ Briggs, *How America Got Its Guns*, 208-209.

⁶⁸ District of Columbia v. Heller, 554 U.S. 570 (2008), Supreme Court decision.

⁶⁹ Antonin Scalia, District of Columbia v. Heller, 554 U.S. 570 (2008), Transcript of Oral Argument.

argued that there is a lack of indication that the Framers intended to preserve the common-law of self-defense in the Constitution. The dissents argued that the Amendment only protects the right to keep and bear arms in conjunction with service in a militia, rather than ensuring a right to use and possess arms for non-military purposes as the majority claimed. On overturning the D.C handgun ban the majority stated that the constitutional Second Amendment right, as they interpreted it, necessarily takes away certain policy choices such as the absolute prohibition of handguns possessed and used for self-defense in the home.⁷⁰

A deeply divided court reflected a deeply divided country in the aftermath of this landmark case. NRA's Wayne LaPierre described the outcome of *Heller* as «*a great moment in American history. It vindicates individual Americans all over the country who have always known that this is their freedom worth protecting*».⁷¹ In contrast to LaPierre's opinion, director of the Violence Policy Center, Kristen Rand condemned the decision stating that «*it turns legal logic and common sense on its head*» because it «*ignored our nation's history of mass shootings, assassinations, and unparalleled gun violence*».⁷²

In their comprehensive post-*Heller* account, professors of law at Duke University, Joseph Blocher and Darrel Miller state that although *Heller* ended the debate over Second Amendment interpretations in the matter of constitutional law, it opened a new set of issues with regards to what the amendment allows and forbids.⁷³ Despite being divided in many aspects of the Second Amendment discussion, the Justices were unanimous in concluding that gun regulation is by no means unnecessary in general terms. The *Heller*-decision would therefore not cast any doubts over the standing prohibitions on the possession of firearms by felons or mentally ill people or laws that forbid the carrying of firearms in sensitive areas such as schools and government buildings.⁷⁴ Yet in a matter of legal and practical impact, Blocher and Miller question the *Heller*-decision's individual rights interpretation with regards to gun regulation. The Court established the individual's right to keep and bear arms within vaguely specified bounds. What does the Second Amendment allow and forbid in terms of restrictive

⁷⁰ District of Columbia v. Heller, 554 U.S. 570 (2008), Supreme Court decision.

⁷¹ Wayne LaPierre, quoted in Alan Korwin and David Kopel, *The Heller Case: Gun Rights Affirmed* (Bloomfield Press, 2008), 325.

⁷² Kristen Rand, quoted in Korwin and Kopel, *The Heller Case*, 333.

⁷³ Joseph Blocher and Darrel A.H. Miller, *The Positive Second Amendment: Rights, Regulation, and the Future of Heller*, Cambridge University Press, 2018, 73.

⁷⁴ District of Columbia v. Heller, 554 U.S. 570 (2008), Supreme Court decision.

gun legislation? An answer to this is not offered in *Heller*, and details in this field have been the subject of more than a thousand lawsuits after 2008.⁷⁵

Heller was also inconclusive in one other important aspect. As the case had originated in the nation's capitol, Washington D.C, the decision in *Heller* would only apply to the federal government. This is because the caption is a federally administered city, which means that it is already under the Bill of Rights. Regardless of how you interpret it, the Second Amendment would not automatically protect any right to keep and bear arms from state and local legislation at the time of *Heller*. Leading up to present time, there have been several additions to the ten original amendments in the Bill of Rights. One is of particular importance in relation to the gun debate, and will prove to be crucial to major developments more than a century after its ratification.

3.2 The Fourteenth Amendment

«*Congress shall make no law...*».⁷⁶ This is the beginning phrase in the First Amendment and the Bill of Rights, but also encompasses the intention of the amendments as a whole. Briggs states that the Founders intended for the Bill of Rights to protect the enumerated rights in the Constitution against laws passed by the federal government. These rights include the freedom of speech, religion, bearing arms, press, life, liberty and property. During the ratification process there was consensus on fact that these rights were only protected from laws passed by Congress. In the case of firearm legislation, there was no constitutional measure to prohibit individual states from passing their own restrictions on gun possession. From this point and throughout the 19th century we therefore see many examples of state legislature on gun control.⁷⁷

In 19th century America, like today, there were significant regional differences in gun legislation, particularly between the North and the South. This is due partly to the difference in gun culture but also because different regions might face a different set of challenges to one another. Naturally, this would have to be reflected in legislation. Research in newer times explores public carry and concealed carry laws in America in the 1800s, which provides a

⁷⁵ Blocher and Miller, *The Positive Second Amendment*, 84-85.

⁷⁶ U.S. Const. amend I.

⁷⁷ Briggs, *How America Got Its Guns*, 8-9, 53.

great example of regional differences. Violence was prevalent in the antebellum South, as a central element in slave and honor culture. Public carry was common here, yet there existed a strong cultural opinion on what constituted honorable carrying. Concealed carry was seen to give an unfair advantage whereas open carry was deemed to be noble and to provide equality. From this norm, some Southern legislatures like Kentucky and Louisiana were amongst the first to pass laws that penalized concealed carry whilst permitting open carry. Publicly carrying concealable weapons was not nearly as popular in the North, where many states had broad regulation of public carry. The Massachusetts model enforced a general restriction of open carry, except in a limited amount of instances where a person had a reasonable cause to fear an attack. Many other northern states adopted laws modeled on legislation passed in Massachusetts.⁷⁸ Historically speaking, we can see from this example that state gun laws vary depending on the region's history, culture and demography. According to Briggs, an open carry law in today's America would not make much sense in San Francisco, yet is likely be acceptable in a Wyoming ranching town. This parallel creates a link between past and present, and illustrates just how difficult it would be to pass federal legislation that would apply to every state as one.

In the aftermath of the Civil War, the Fourteenth Amendment was ratified in 1868. This amendment ensures the protection of the rights of citizens against violations from local state laws. This marked a change in the relationship between the ordinary citizens and the federal government with regards to their rights. Oftentimes the amendment appears in talks about African American civil rights during Reconstruction. It did put in place the link between birthright citizenship and civil rights, but also gave the federal government oversight of these rights. This meant that all Americans could appeal to the national government to protect their rights against state violations. From this the amendment could be used to challenge state laws, if they interfered with or violated existing civil rights.⁷⁹ Section one of the amendment states that:

«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

⁷⁸ Eric M. Ruben and Saul Cornell, «Firearm Regionalism and Public Carry: Placing Southern Antebellum Case Law in Context,» *Yale Law Journal Forum* 125 (2015).

⁷⁹ Edwards, «*The Fourteenth Amendment.*»

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.»⁸⁰

According to some scholars, the Fourteenth Amendment was meant to extend the Bill of Rights to apply at state level. The amendment consists of two main clauses that enforce restrictions on state rule. These are known as the *privileges or immunities* clause, and the *due process* clause. The initial question after the ratification was which of these clauses would extend the Bill of Rights to the states. In addition to determining what clause was suitable to limit state and local law, there is also the issue of what enumerated rights in the Bill of Right would be included under the Fourteenth Amendment. This is due to a process called *incorporation*.

It would take the Supreme Court a hundred and fifty years to determine which of the constitutional rights would be incorporated under the Fourteenth Amendment. This is because the Supreme court favored the process of *selective incorporation*, as opposed to *total incorporation*. Selective incorporation details the process where the legislative branch will protect the liberties in the Bill of Rights one at a time, in contrast with total incorporation of all the ten amendments at once.⁸¹ As the interpretation of the Second Amendment was resolved in the Supreme Court in 2008, its incorporation in under the Fourteenth Amendment took place through *McDonald v. Chicago* in 2010.⁸²

3.2.1 *McDonald v. Chicago*

After the Supreme Court's *Heller* decision in June of 2008 several other similar lawsuits started to emerge in other states. *McDonald v. Chicago* were amongst cases that challenged the handgun ban in the city of Chicago. The case was named after one of four individual plaintiffs, Otis McDonald. He was a seventy-six-year old African American working as a building manager at the University of Chicago at the time. Over time the neighborhood he resided in had become quite infested with gang- and drug related activity. McDonald therefore sought to acquire a handgun to keep in his home to protect himself and his family. The

⁸⁰ U.S. Const. amend XIV. Section I.

⁸¹ Hudson Jr., «The Fourteenth Amendment and Incorporation.»

⁸² Briggs, *How America Got Its Guns*, 9.

Chicago handgun law made it virtually impossible for ordinary people to possess handguns. The ordinance, which had been in place since 1982, criminalized possession of unregistered handguns and made registration by ordinary citizens impossible. Therefore the ordinance functioned as a ban. McDonald had tried to register a handgun as was denied as a result.⁸³ The remaining question was whether the higher courts would rule in favor of protecting an individual Second Amendment right against state and local laws as *Heller* had settled the matter for D.C. and the federal government. The Supreme Court granted a hearing in the matter of *McDonald v. Chicago* in late September 2009. The NRA had also filed two lawsuits against the handgun ban the previous year.⁸⁴ Although a hearing had not been granted in these two cases, the Court allowed NRA attorneys to submit a brief and also share time in the oral arguments in *McDonald*.⁸⁵

The technicalities of this incorporation case included two possible ways to protect gun rights from state rule, as mentioned previously in this chapter. These are either by appealing to the Fourteenth Amendment's *privileges or immunities* clause or *due process* clause. Briggs states that gun possession as a fundamental right would seemingly be a clear case of privileges or immunities. Meaning that the *privilege* to possess a gun is *immune* from violation. However, the *Slaughterhouse* cases in the 1870s effectively nullified this approach and so the doctrine of *due process* has evolved into the only successful path to incorporation and has served to make the Bill of Rights effective against the States.⁸⁶ The *McDonald* case would therefore use this pathway to victory.

Another 5-4 decision in Chief Justice Robert's court would reaffirm the ruling in *Heller* and incorporate the Second Amendment under the Fourteenth Amendment. The majority opinion established self defense as a basic right and central component of the constitutional right to keep and bear arms. Justice Breyer wrote a dissenting opinion arguing against incorporation. In this, Breyer explained why the majority had failed to establish that the Second Amendment right is fundamental to the American scheme of liberty. The *McDonald* decision did resolve a legal loose end in the incorporation of the Second Amendment, yet exposed a deeply cleaved court that had not changed since the *Heller* case. One aspect that

⁸³ Briggs, *How America Got Its Guns*, 235-236.

⁸⁴ *NRA v. City of Chicago* (08 C 3697) 617 F. Supp. 2d 752 (2008). *NRA v. Village of Oak Park* (08 C 3696) 617 F. Supp. 2d 752 (2008).

⁸⁵ Briggs, *How America Got Its Guns*, 237.

⁸⁶ Wilson R. Huhn, "The Legacy of *Slaughterhouse*, *Bradwell*, and *Cruikshank* in Constitutional Interpretation," *Akron Law Review* 42, no. 4, article 3 (2009).

had not shifted much was the positive stance on gun regulation to some extent. The majority opinion upheld that there is no constitutional basis for a right to keep and carry every weapon in every manner and for every purpose.⁸⁷ From this it was clear that incorporation did not imperil every gun regulating law. However, as in *Heller*, the decision and opinions were quite abstract in terms of specific guidelines on admissible gun use restrictions. Justice Breyer highlighted this in his opinion by reciting now-famous questions that judges all over the country would be confronted with in trying to interpret thousands of local gun legislations:

*Does the right to possess weapons for self-defense extend outside the home? To the car? To work? What sort of guns are necessary for self-defense? Handguns? Rifles? Semiautomatic weapons? When is a gun semi-automatic? Where are different kinds of weapons likely needed? Does time-of-day matter? Does the presence of a child in the house matter? Does the presence of a convicted felon in the house matter? Do police need special rules permitting patdowns designed to find guns? When do registration requirements become severe to the point that they amount to an unconstitutional ban? Who can possess guns and of what kind? Aliens? Prior drug offenders? Prior alcohol abusers?*⁸⁸

Gun control supporters could at least find some refuge in the fact that both *Heller* and *McDonald* affirmed state right to pass legislation that could protect communities from gun violence, based on the challenges each district faces. For gun rights activists these decisions confirmed an individual right which they had sought for decades. However, the inconclusive nature of both these cases gave both sides grounds for celebration, yet perhaps even more to argue about. Briggs confirms this by pointing to the expectation we have for Supreme Court decisions. He states that we tend to think of Supreme Court decisions as keystones that suddenly lock a complicated puzzle of an issue together with a sense of finality. This might happen in a few unanimous decisions, but does not accurately describe the effect of *Heller* or *McDonald*.⁸⁹

⁸⁷ *McDonald et. al. v. City of Chicago et. al.*, 561 U.S. 3025 (2010), Supreme Court decision, 40.

⁸⁸ *Ibid.*, 12

⁸⁹ Briggs, *How America Got Its Guns*, 251.

Chapter 4 - A History of Federal Gun Legislation

Leading up to these modern-day rulings are a series of legislation and court rulings regarding firearms. In order to discuss the controversy of this issue in present time, the endeavor to possess knowledge about its tumultuous history is important. For this reason, the next section of this chapter will briefly include examples of twentieth century firearm legislation from the *National Firearms Act* to the *Assault Weapons Ban*.

The ability to pass gun legislation is also affected by the federalist system that America is built on. Within this structure any piece of legislation is made and enforced on many different levels. Therefore, laws concerning firearms must at a general level be within the legislative powers of Congress, based in Article I, Section 8 of the Constitution. There are numerous legislative powers given to Congress, but only the power to tax and to regulate commerce would cover firearms. Briggs states that this fact is part of the reason why we seldom see the passing of major firearms laws within the federal government, and that they generally set a minimum requirement for states to meet when they are passed.⁹⁰

The controversy of the gun issue can be traced back through court proceedings and legislation. As established previously, it seems to be more difficult for the United States to pass meaningful gun legislation, and many examples of past legislation have since expired or been revised. Due to the system of checks and balances, the Supreme Court may force legislators to revise laws if they are deemed to be unconstitutional. As contentious as this topic is, any government restrictions on firearms will likely be contested by the gun rights movement. Equally so, any loosening of government regulations will be disputed by the advocates for stricter gun control. Although there is basis for consensus on certain aspects of gun control, and some laws that are deemed less controversial, an inability to compromise will on a large scale fuel this controversy. We see the repetitive cycle of measure and counter-measure in U.S firearms legislation.

4.1 The National Firearms Act and the Gun Control Act

Federal attempts at passing major gun legislation began with the National Firearms Act (NFA) in 1934. This was passed at a time where crime wars had escalated and was an attempted

⁹⁰ Briggs, *How America Got Its Guns*, 123.

measure to keep so called «gangster weapons» off the streets.⁹¹ As Congress was not able to issue an outright ban on machine guns due to the previously mentioned lack of constitutional authority, the law took the form of a tax measure. Included in the NFA was also the establishment of a national gun registry. This registry was to be kept by the Secretary of Treasure and contain identification of the firearm, as well as date of registration and identification and address of the person in possession. The term *firearm* is in this law constricted to automatic weapons such as machine guns. The tax measure was quite effective. However, in the 1968 Supreme Court case *Haynes v. United States* part of the NFA was ruled to be unconstitutional. This was due to the fact that the registration in the gun registry that was required by law could potentially lead to Fifth Amendment, or self-incrimination, violations in certain cases.⁹² This led to the next development in firearms legislation, the Gun Control Act.

After the assassinations of President John F. Kennedy and Martin Luther King, Jr. the Gun Control Act (GCA) was passed in 1968. It was the first major gun control measure in 30 years, since the NFA in 1934. The intent for which Congress passed this act is revealed in the opening lines. Here it is stated that the Act is not intended to place unnecessary or undue restriction on law-abiding citizen regarding the possession, acquisition or appropriate use of firearms. Examples of lawful activities include hunting, target shooting and self-protection. In the legislative text it is clear that the intention is not to eliminate private possession or use of firearms.⁹³

In the *Omnibus Crime Control and Safe Streets Act*, preceding the Gun Control Act, Congress declared that the United States had become a «dumping ground» for excess military weapons deriving from other nations. The lack of Federal control over firearm traffic between states and international borders was acknowledged.⁹⁴ The Gun Control Act that followed a few months later included several measures that would contribute to overturning these facts.

Whatever the intention might have been, the Gun Control Act did include many restrictions that the gun rights movement found to be burdensome.⁹⁵ Paragraph 923 regarding licensing in the legislation text imposed stricter licensing requirements and regulation on the

⁹¹ Briggs, *How America Got Its Guns*, 124.

⁹² Bureau of Alcohol, Tobacco, Firearms and Explosives, «National Firearms Act,» last modified April 7, 2020.

⁹³ Public Law 90–618, Title I, Section 101.

⁹⁴ Public Law 90–351, Title IV, Sec. 901.

⁹⁵ Briggs, *How America Got Its Guns*, 125.

firearms industry by the establishment of the Federal Firearms License. This system is still a part of gun regulation today, and it requires all establishments for the sale of firearms to be licensed within it. Secondly, Paragraph 922 regarding unlawful acts detailed an expanded list of individuals that would be prohibited from purchasing firearms or ammunition, expanding the list of illegal transactions and adding new categories of firearm offenses. The list of prohibited persons included felons, fugitives and addicts.

In addition to these measures, the GCA also requires new firearms to be imprinted with a serial number, and banned the import of guns that did not fulfill a «sporting purpose». Lastly, the law also added to the list of automatic weapons that were being taxed and registered due to the NFA.⁹⁶ Briggs states that the passing of this law was very contentious.⁹⁷ Positions on gun control had not been a part of neither Democratic nor Republican platforms until 1968, and the gap between the two major parties was now clear.⁹⁸ In Congress there were many attempts to stop or change what would become the Gun Control Act, amounting to forty-five actions to amend this legislation on the House floor. Lobbying by interest groups such as the NRA or other organizations was heavy at this time.⁹⁹ The process of passing another major gun law eleven years later would prove to be just as unruly.

4.2 The Firearms Owners Protection Act and the Brady Act

In an article published by the lobbying division of the National Rifle Association (NRA) in 2011, the years after the Gun Control Act are claimed to be branded with a series of violations of Second Amendment rights carried out by the then *Bureau of Alcohol, Tobacco and Firearms* (BATF). The NRA claimed that the Bureau was harassing licensed gun dealers and abusing its power in enforcing the GCA. The organization was a force in support of new legislation, and claimed that the powers of the BATF needed to be restricted.¹⁰⁰

A Government report also showed evidence that approximately 75 percent of gun prosecutions by the BATF were aimed at law-abiding ordinary citizens. These individuals

⁹⁶ Public Law 90–618, 18 U.S.C. § 922-923.

⁹⁷ Briggs, *How America Got Its Guns*, 125.

⁹⁸ Cook and Goss, *The Gun Debate*, 183.

⁹⁹ Robert J. Spitzer, «Gun Control: Constitutional Mandate or Myth?,» in *Moral Controversies in American Politics*, ed. Raymond Tatalovich and Byron W. Daynes (M.E. Sharpe, 2011), 161-195.

¹⁰⁰ Dave Hardy, «No Surrender - The Firearms Owners Protection Act,» *The NRA Institute for Legislative Action*, January 25, 2011.

were said to be enticed by agents into unknowingly committing technical violations, without having any criminal intent. In addition to this, the report stated that the Bureau's claims of focusing on gun possessing criminals and government reforms were nothing but empty words, and argued that reform of federal firearm laws was necessary to protect the constitutional and civil rights of Americans who wished to exercise their Second Amendment rights.¹⁰¹

It took seven years worth of negotiations and deliberations before President Ronald Reagan could sign the *Firearms Owners Protection Act* (FOPA) in 1986. The new law was both celebrated and condemned, which again highlights the contentiousness in passing any legislation regarding firearms.¹⁰²

The law significantly amended the Gun Control Act and relaxed many of the provisions set by it. Amongst the new provisions, the new law allowed licensed gun dealers to sell firearms away from their place of business, at gun shows and conventions within the same state. The law limited the number of warrantless BATF inspections of licensed dealers to once per year. It also prevented the government from keeping a central database of most gun sales and loosened requirements for gun dealers to keep a record of all gun and ammunition sales. Machine guns were already the most regulated class of firearms, and the new legislation enforced additional restrictions on transfers and sales of these weapons.¹⁰³

Many saw this latter provision as a consolation for the gun control advocates. Briggs states that the passing of the Firearms Owners Protection Act confirmed the fact that firearms legislation would never be a painless and easy process.¹⁰⁴ The next development in federal gun legislation introduced mandatory waiting periods and background checks to the gun trade. It would enforce a five-day waiting period and state background checks on all firearm purchases, and was called the *Brady Handgun Violence Prevention Act*.¹⁰⁵

The Brady act signaled an awakening within the gun control community that had been largely overshadowed by the presence of the NRA and the rest of the gun right movement up until this point.¹⁰⁶ The act was named after James Brady, who was Press Secretary to

¹⁰¹ Subcommittee on the Constitution of the Committee on the Judiciary, «The Right to Keep and Bear Arms,» *US Government Printing Office* (1982).

¹⁰² Briggs, *How America Got Its Guns*, 126.

¹⁰³ Public Law 99-308.

¹⁰⁴ Briggs, *How America Got Its Guns*, 126.

¹⁰⁵ Public Law 103-159.

¹⁰⁶ Briggs, *How America Got Its Guns*, 177.

President Ronald Reagan. Brady was seriously injured by a bullet during an assassination attempt on the Presidents life in 1981. Due to the events that led to his injuries and the fact that he would spend the rest of his life partially paralyzed, he became a martyr for the gun control cause. The bill passed in both houses of Congress and was signed by President Bill Clinton in 1993.¹⁰⁷

Background checks and a waiting period had been a part of the Democratic platform in 1992.¹⁰⁸ However, the process of passing new gun legislation in the aftermath of the FOPA was not without its difficulties. Before passing the Brady Act, there had been two attempts at passing similar bills. The first proposal was met with predictable opposition and failed on a House floor vote in 1987. A second reviewed bill failed in the Senate in 1991. The relentless lobbying efforts the opposing NRA led to one important provision.¹⁰⁹ This provision stated that the Attorney General would be required to establish a «*national instant criminal background check system*» (NICS), within a timeframe of five years.¹¹⁰ This would mean that gun dealers would be able to detect prohibited buyers, almost immediately, before making a sale.

4.3 The Assault Weapons Ban

Restrictions on assault weapons had also been a part of Clintons campaign in 1992.¹¹¹ The initiative for action started in 1993, and in 1994 the *Violent Crime Control and Law Enforcement Act* was passed. Title XI of the 1994 act, regarding firearms, became known as the *Assault Weapons Ban* (AWB). This has been described as the most controversial piece of gun legislation ever passed.¹¹² The main restriction in this ban stated that manufacturing, transferring or possessing certain semiautomatic firearms, and weapons with large-capacity magazines was prohibited.¹¹³ The new legislation would not apply to weapons or magazines that had been purchased before its passage.¹¹⁴ The gun rights lobby insisted on adding this

¹⁰⁷ Briggs, *How America Got Its Guns*, 126.

¹⁰⁸ Democratic Party Platform, 1992.

¹⁰⁹ Briggs, *How America Got Its Guns*, 127.

¹¹⁰ Public Law, 103-159.

¹¹¹ Democratic Party Platform, 1992.

¹¹² Briggs, *How America Got Its Guns*, 127-128.

¹¹³ Public Law 103-322, Title XI.

¹¹⁴ *Ibid.*, Section 110103.

important clause to the law. This meant that the estimated one and a half million firearms and twenty-five million magazines in circulation before the ban were not affected. Their value on the second-hand market increased as a result.¹¹⁵

The law itself contained a few practical flaws that would cause much disruption in the gun sphere. The AWB did not properly define what would be classified as an *assault weapon*. In the legislation, assault weapons were not fully automated weapons, like machine guns. These guns had already been effectively banned by the NFA. Assault weapons would include nineteen semiautomatic weapons, like the AK-47 and the Uzi, and any other semiautomatic weapon with at least two characteristics that were included in a long list of features. From this, an otherwise legal semiautomatic weapon could be banned if it for instance had a pistol grip, bayonet or grenade-launcher mount and a flash suppressor. The opposition pointed out that these defining features were in some cases purely cosmetic. It would not in fact make the weapon more lethal.¹¹⁶

The outcome of this flaw was a change in firearms production. Gun manufacturers would change the production of firearms to comply with the new restrictions, making functionally identical weapons, just without these cosmetic features. In 2004 the Violence Policy Center (VPC), who are pro gun control, issued a statement claiming that the gun industry made a mockery of the the federal ban. At that time they estimated that over one million assault weapons had been manufactured since the passage of the ban in 1994.¹¹⁷ 2004 was an important year for the AWB, for reasons that would be displeasing to gun control activists and a delight to the gun rights movement. Section 110105 of the ban, included a ten year sunset provision.¹¹⁸ This means that the law shall cease to have effect after ten years, unless action is taken to extend it.

The Assault Weapons Ban had been so contentious, that when it came up for renewal after ten years, few politicians wanted to be associated with it. Wayne LaPierre, NRA-President at the time, was quoted in a news article claiming that the ban could not raise adequate support that was needed in order to bring in to a vote because several Democrats

¹¹⁵ Briggs, *How America Got Its Guns*, 128.

¹¹⁶ Ibid.

¹¹⁷ Violence Policy Center, «Violence Policy Center Issues Statement on Expiration of Federal Assault Weapons Ban,» September 13, 2004.

¹¹⁸ Public Law 103-322, Title XI, Section 110105.

attributed votes in favor of the AWB with the blame for losing House majority in 1994.¹¹⁹ Not unexpectedly, the Senate voted 90-8 against the extension of the AWB after the NRA fought against it.¹²⁰ Amongst those who wanted to extend the ban were Democratic Senators Dianne Feinstein and Ted Kennedy. Feinstein had sponsored the renewal of the assault weapons ban stating that it had not removed guns from legal gun owners and that it had reduced assault weapon crimes in its ten years. Kennedy acknowledged that the enactment of the assault weapons ban was an uphill battle.¹²¹ After the failed renewal the VPC acknowledged that it would not have been effective in stopping the flood of assault weapons as they were readily available even after the original ban, but that the American public deserve effective legislature banning these types of weapons.¹²²

Butch Otter, then Republican Representative, echoed the voices of protest against the AWB. In an article published by NBC News in 2004, he was quoted stating that: «*President Clinton's so-called 'assault weapons' ban was nothing more than a sop to antigun liberals (...) It provided only the illusion of reducing gun violence, but it did real damage to our liberties*».¹²³ Whether Otter is right in his assessment of the ban's ineffectiveness is difficult to determine. This is due to the fact that the AWB had such a short lifespan, and the sheer amount of pre-existing assault weapons already in circulation. Briggs states that the AWB had less of an effect on gun crimes than one would hope.¹²⁴ Evidence for this is established in a government report.

In 2004, the National Institute of Justice at the Department of Justice funded an assessment report of the federal Assault Weapons Ban. The report found that the number of gun crimes involving automatic weapons had dropped by at least 17 percent in the six cities involved in the study. The report was inconclusive regarding the effect of the AWB. Although it had reduced the use of automatic weapons in gun crimes, the results showed no reduction in the use of large-capacity magazines. This was the reason as to why the report could not clearly credit the ban with any national drop in gun violence. Furthermore, determining the

¹¹⁹ Wayne LaPierre, quoted in NBC News, «Congress lets assault weapons ban expire,» *The Associated Press*, September 13, 2004.

¹²⁰ Briggs, *How America Got Its Guns*, 129.

¹²¹ Craig Broffmann and Joe Johns, «Senate kills bill protecting gun makers,» *CNN International*, March 3, 2004.

¹²² Violence Policy Center, «Statement,» 2004.

¹²³ Broffmann and Johns, «Senate kills bill.»

¹²⁴ Briggs, *How America Got Its Guns*, 129.

overall effect of the ban is difficult because automatic weapons only accounted for eight percent of gun crimes even before 1994, and the results were likely to be too small for reliable measure. The report stated that the exemption of millions of pre-ban weapons would ensure that any effects of the ban would only occur gradually. For this reason the report ultimately concluded that it was too premature to make any definitive assessments regarding the impact such a ban might have on gun violence. The potential effects might not be felt for several years, and could still be unfolding.¹²⁵

4.4 Challenging Federal Rule

In the years after the Assault Weapons Ban ceased to have an effect there were few developments in federal legislation except the *Protection of Lawful Commerce in Arms Act* (PLCAA) in 2005. This was a major win for the gun lobby as it protected the gun industry from most tort liability. Prior to the PLCAA, victims of firearm crimes had some success in suing firearms manufacturers and dealers for the criminal use of their products. A positive for gun control advocates came in the form of the provision known as the Child Safety Lock Act, adopted as a part of the PLCAA. This stated that all handguns had to include a safety lock or come with a safe storage box for the firearm.¹²⁶

Collectively, the laws covered in this chapter have been the only examples of major federal legislation regarding firearms in the last century. The inconsistency and complex nature of federal rule in the gun debate highlight the conflicting cultures of gun rights and gun control within the United States. Briggs summarizes this well by stating:

«Without stereotyping excessively, one culture believes in self-reliance; honors personal liberties, not the least of which is assured by an individualized Second Amendment; and finds gun control laws intrusive and anathema to its idea of a free society. The other culture venerates collective values such as social responsibility and public security; believes that guns on the streets, in the media,

¹²⁵ Christopher S. Koper, «Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence, 1994-2003,» *Jerry Lee Center of Criminology*, July 2004, 2-3, 96-97.

¹²⁶ 15 U.S.C. §§ 7901-7903; Briggs, *How America Got Its Guns*, 129.

or hidden under coats are abhorrent; and, like many non-Americans, thinks America could be more civilized.»¹²⁷

An important value ingrained in American culture has always been the emphasis on the individual and not the collective. The personal initiative to protect one's rights and belief system on an individual level is therefore expected. The preservation of individual rights should also be reflected in legislation, and the focus on laws is derived from the Constitution as well as the Bill of Rights. The immensely complex nature of the federal legislative branch relating to the difficulties with enforcing proper gun reform in the modern era is not a new issue. This can be traced back to the beginning of the union. America has been the most anti-statist nation since its conception, and continues to be so even now.

The ratification of the Bill of Rights saw to the protection of citizens against the abuse of power by government. The American tradition does not encourage blind obedience to the state and law, but rather a disdain for authority and conforming to state rule. Abolishing the Second Amendment right would certainly be seen by many Americans as a federal infringement on individual right. The process of enforcing stricter gun control is by this not as straight-forward as in many other countries around the world.¹²⁸ Although the Supreme Court established the constitutional grounds for some gun regulation in 2008 it has not made the process of enforcing meaningful legislation any less troublesome despite the increase in high-profile mass shootings. Nor has it made the gun issue less controversial in the past decade.

An important factor that highlights the increasing difficulty in enforcing federal gun laws is the emergence of the «Nullification-movement» that has contributed additional tension between federal and state rule. The state of Montana passed the *Firearms Freedom Act* in 2009 to protect all firearms that are made and kept in the state from federal rule.¹²⁹ Since this, «Second Amendment Preservation Acts» have been introduced in more than three-quarters of states, more than half of which have been passed in the first few years after the Newtown massacre.¹³⁰ In response to the Montana Act the federal Bureau of Alcohol, Tobacco, Firearms and Explosives issued an open letter in which they conclude that these state laws are invalid

¹²⁷ Briggs, *How America Got Its Guns*, 183.

¹²⁸ Lipset, *American Exceptionalism*, 20-21.

¹²⁹ Firearms Freedom Act, found at <http://firearmsfreedomact.com/>; Also detailed in Briggs, *How America Got Its Guns*, 199.

¹³⁰ Jessica Boehm and Robby Korth, «Butt Out: State Legislatures Move to Nullify Federal Gun Laws,» *News 21*, August 21, 2014.

because they conflict with provisions in federal laws, such as the GCA and the NFA, that supersede state laws.¹³¹ This position was also upheld in federal court.¹³² Despite this verdict, these nullification laws are an example of the willingness to defy federal rule, which can contribute to the inefficiency of federal gun legislation.

¹³¹ Carson W. Carroll, «Open Letter To All Montana Federal Firearms Licensees,» *Bureau of Alcohol, Tobacco, Firearms and Explosives*, July 16, 2009.

¹³² *Montana Shooting Sports Ass'n v. Holder*, 9th Cir. 2013.

Chapter 5 - After Newtown

For some, the tragic Sandy Hook mass shooting in 2012 was a warning that more had to be done in terms of gun limitation, whereas others took it as proof that gun restrictions did nothing for the general safety of citizens and that more people should be armed to limit the occurrence of such events. This can for instance be seen in the widening gulf of state gun legislation in the wake of the Newtown shooting. There was an immense amount of activity at state level in the first year after Newtown as almost every state enacted at least one new gun law. Out of fifteen-hundred proposals, a-hundred-and-nine were enacted into law. However, seventy of these new gun laws actually expanded the rights of gun owners and loosened restrictions compared to the thirty-nine that tightened them. These pro-gun rights laws were mostly approved in Republican states, whereas restrictive gun laws were more prominent in states where both legislature and governorship were under Democratic control.¹³³ Unlike state governments, the federal government did not see much success in the area of gun control after Newtown, despite a strong push from President Obama. As with other high-profile shootings public support for stricter gun regulation increased, but so did gun sales in states such as California.¹³⁴ Many legislators were interested in passing new laws and several bills were proposed.

5.1 Feinstein's Assault Weapons Ban and the Manchin-Toomey Bill

Dianne Feinstein, Democrat and Senator for California, has long been a proponent of gun control. Most notably she was the architect behind the 1994 Assault Weapons Ban and had advocated for its reinstatement ever since it ceased to have effect in 2004.¹³⁵ After Newtown the Senator proposed a new and improved federal ban on assault weapons. The ban was similar to its predecessors in many aspects. It would prohibit the manufacture, possession and importation of many assault weapons and all semi-automatic firearms. It would also forbid high-capacity magazines with more than a ten-round capacity. In order to give the bill a

¹³³ Karen Yourish et al., «State Gun Laws Enacted in the Year After Newtown,» *New York Times Magazine*, December 10, 2013.

¹³⁴ David M. Studdert, et al., «Handgun Acquisitions in California After Two Mass Shootings,» *Annals of Internal Medicine* 166, no. 10 (2017), 698-706.

¹³⁵ Dianne Feinstein, «Gun Safety,»

standing chance to pass through both houses of Congress it made a concession similar to the 1994-bill. It would exempt all weapons purchased before the enactment of the law. However, despite Feinstein's efforts the 2013 bill was defeated by a sixty-to-forty vote in the Senate.¹³⁶ Feinstein was not the only legislator who had been deeply troubled by gun violence and mass shootings. It seemed that a bill that would seek to strengthen the system of federal background checks would be the best hope for any meaningful gun legislation. After Newtown there were broad public support for expanding background checks to private sales as well as at gun shows.¹³⁷ In a poll of gun owners, half of whom were members of the NRA, eighty-two percent favored background checks on any individual purchasing a gun.¹³⁸ Evidence of public support did little in terms of actually aiding the proposed legislation.

Joe Manchin, former Governor and now Senator for West-Virginia, was deeply transformed by the Newtown-shooting.¹³⁹ The conservative Democrat and long time NRA-member had previously been given an award by a chapter of the organization for his unyielding defense of gun rights.¹⁴⁰ After Sandy Hook, the Senator worked tirelessly with NRA lobbyists and legal experts to design a bill involving universal background checks for commercial sales that would extend background checks to gun shows and internet sales, whilst still being acceptable to gun owners. The endeavor evolved into a bipartisan effort with the addition of Pat Toomey, Republican Senator for Pennsylvania, who had been a-rated and endorsed by the NRA in the previous election.¹⁴¹ The Senators' work resulted in the introduction of the *Public Safety and Second Amendment Rights Protection Act*, better known as the Manchin-Toomey bill, in April 2013.¹⁴²

In his press release Manchin encouraged all gun owners and NRA-members in his home state, as well as all Americans, to read the bill. Regarding the bill itself Manchin states that it simply fixes loopholes in the existing system by preventing criminals and mentally ill persons from purchasing guns. This is done by expanding background checks to apply to all

¹³⁶ Dianne Feinstein, «Feinstein Statement on Assault Weapons Ban Amendment,» April 17, 2013.

¹³⁷ Pew Research Center, «In Gun Control Debate, Several Options Draw Majority Support,» January 14, 2013.

¹³⁸ Frank Luntz, «Gun Owners Support Some Controls,» *Washington Times*, August 9, 2012.

¹³⁹ Briggs, *How America Got Its Guns*, 256.

¹⁴⁰ Robert Draper, «Inside the Power of the N.R.A.,» *New York Times Magazine*, December 12, 2013.

¹⁴¹ NRA-ratings archive at <https://everytown.org/nra-grades-archive/>

¹⁴² Joe Manchin, «Manchin Announces 'Public Safety and Second Amendment Rights Protection Act',» April 11, 2013.

advertised commercial sales. In addition to this it also protects the rights of both gun owners and gun sellers. To assure gun rights advocates Manchin explicitly states that the bill will not infringe upon anyone's Second Amendment rights by taking away their guns or banning any type of firearm or magazine, nor will it create any sort of national registry. In fact, the bill specifically prohibits the creation of a federal gun registry in order to comply with NRA requirements.¹⁴³ Manchin expected little to no opposition from the NRA, yet the plan involving NRA-neutrality unravelled as soon as the bill was introduced. A thorough account of this can be found in an article exploring the power of the NRA, written by journalist Robert Draper and published in the *New York Times* in late 2013.

Throughout the last decades, the National Rifle Association has preferred to stop a bill entirely if it does not align with the organization's values, or apply pressure to pass a favored bill. If however this is not possible, the NRA has strived to be actively involved in the legislative process, lobbying profusely to negotiate deals and find allies on both sides of the political spectrum. The organization claims to not be focused on electing Republicans only, but support anyone who advocates for Second Amendment rights. Whilst not being able to stop the Assault Weapons Ban in 1994, the NRA did work alongside John Dingell and Jack Brooks from Texas, two of its Democratic allies in the House at the time, to weaken the bill if it did pass. From this came the dreaded sunset provision and the limitation of the ban's reach to smaller number of weapons. Being as effective as possible in legislative ventures requires a certain level of compromise that has been a source of ridicule against the NRA ever since the triumph of the Firearm Owner's Protection Act in 1986. This bill did much to protect the rights of gun owners as detailed perviously, however, in order to gather enough votes amongst Democrats the NRA agreed to the provision that would ban the future sale of machine guns. The willingness to cooperate and negotiate with the opposition put the NRA on the receiving end of immense backlash from the «no compromise» fraction of the gun community in the late 80s. This was also the case after rumors started to spread about NRA's involvement in the Manchin-Toomey proposal.¹⁴⁴

A national alert was issued by Gun Owners of America urging every gun owner to call their Senators and demand that they oppose the extended background checks bill. The «no compromise gun lobby» claimed that Senators Toomey and Manchin were betraying gun owners by selling out their interests and described the new proposed bill as even worse than

¹⁴³ Manchin, «Manchin Announces.»

¹⁴⁴ Draper, «Inside.»

the Feinstein gun ban. The GOA claimed that the proposed bill would lead to a national gun registry due to loopholes in the bill, despite Manchin's statement to the contrary.¹⁴⁵ Previously this chapter has explained that the force that is the intensity of gun rights supporters is not to be underestimated. Draper states that the GOA also sent out an email to around a quarter-of-a-million gun rights sympathizers around the nation, informing them that the NRA was conspiring with the opposition and called for all NRA-members to contact the organization and address their grievances to Wayne LaPierre. As pressure increased the NRA made a tactical decision and turned on the bill.¹⁴⁶

«*Guns don't kill! People kill!*» Is the rallying cry of gun rights advocates, focusing on the perpetrators and not the weapons. This argument states that a remedy for gun violence would be to keep guns away from people with mental illness and to fix the mental-health system. This can be done without violating basic gun rights. Today, the mechanism for keeping guns away from people with mental illness is the NICS background check system.¹⁴⁷ As stated previously, the NICS was established by a provision of the Brady bill. Although the Manchin-Toomey bill sought to extend the scope of federal background checks the law would not have prevented the Newtown-shooting as the shooter, Adam Lanza, used firearms that had been legally purchased by his mother. Manchin was aware of this, yet sought to close loopholes in existing legislation to contribute to the prevention of these tragedies in the future.¹⁴⁸

The NRA was involved in the fierce opposition to stop the new gun law. A study conducted by the nonpartisan, nonprofit Sunlight Foundation in late 2012 found that deep and long-lasting allegiances to the National Rifle Association was the primary obstacle to swift action on gun control after Newtown. The study states that fifty-one percent of members of Congress at the time of the Manchin-Toomey proposal had received funding from NRA's political action committee at some point in their careers. In addition to this, forty-two Senators had received contributions in the previous cycle.¹⁴⁹ Despite Manchin and Toomey's lobbying efforts, their proposal effectively died on the Senate floor in what has been

¹⁴⁵ Gun Owners Of America, «Senator Toomey Betrays Gun Owners,» April 10, 2013.

¹⁴⁶ Draper, «Inside.»

¹⁴⁷ Briggs, *How America Got Its Guns*, 220.

¹⁴⁸ Draper, «Inside.»

¹⁴⁹ Lee Drutman, «NRA's Allegiances Reach Deep into Congress,» *Sunlight Foundation*, December 18, 2012.

characterized as a Republican filibuster.¹⁵⁰ The bill needed sixty votes to advance in the Senate and break the filibuster, yet failed to acquire more than fifty-four votes in total. The forty-six votes against the bill included those of four Democratic Senators from states with high rates of gun ownership.¹⁵¹

President Obama heavily criticized the NRA and Senators who voted against the bill for rejecting the bipartisan compromise despite it being supported by a majority of Americans.¹⁵² His opinion was echoed by many others, including victims of gun violence. Amongst these were former Congresswoman, Democrat and long-time supporter of the right to keep and bear arms, Gabrielle Giffords. In 2011 Giffords had been the victim of a terrible shooting attack and was left disabled by a bullet to the head.¹⁵³ Following the mass shooting at Sandy Hook she, alongside her veteran husband, formed an organization to fight the gun violence epidemic now known as *Giffords*.¹⁵⁴ As President Obama reacted to the Manchin-Toomey defeat in the Senate, Giffords released a statement stating that Senators who voted against the proposal had ignored the will of the American people and instead chose to «*obey the leaders of the powerful corporate gun lobby, instead of their constituents*».¹⁵⁵ Both Feinstein's assault weapons ban and the Manchin-Toomey bill failed to pass Congress in the aftermath of Newtown. Senator Feinstein issued a statement in response to the defeat in April 2013:

«The very fact that we're debating gun violence on the Senate floor is a step in the right direction, and I hope my colleagues vote their conscience and approve the underlying bill. But I'm certain that in the coming months and years, we will be forced to confront other incidents like Newtown, where innocents are murdered with one of these weapons of war.»¹⁵⁶

¹⁵⁰ Brad Plumer, «Senate bill to extend background checks killed by filibuster,» *The Washington Post*, April 17, 2013.

¹⁵¹ Dan Berman, «Gun control: Senators who bucked their party,» *Politico*, April 17, 2013.

¹⁵² Ted Barrett and Tom Cohen, «Senate rejects expanded gun background checks,» *CNN*, April 18, 2013.

¹⁵³ Ben Quinn and Paul Gallagher, «US congresswoman Gabrielle Giffords shot as six die in Arizona massacre,» *The Guardian*, January 9, 2011.

¹⁵⁴ Giffords homepage at <https://giffords.org/about/history/>

¹⁵⁵ Gabrielle Giffords, quoted in Barrett and Cohen, «Senate rejects.»

¹⁵⁶ Feinstein (2013), «Statement.»

This last sentence is one that many would hope not to be true, but that unfortunately carries more resemblances to that of a self-fulfilling prophecy. Senator Feinstein would unfortunately be quite correct in her comment about future tragedies. Unbeknown to all, the deadliest mass shootings in modern American history were yet to come.

5.2 The Impact of High-Profile Shootings on Public Policy

The United States had already had its fair share of infamous school shootings before Newtown in 2012. The Columbine disaster in 1999 had seen the killings of twelve students and a teacher at the hands of eighteen- and seventeen-year-old Eric Harris and Dylan Klebold. In 2007, a twenty-three-year-old gunman killed thirty-two and wounded several of his fellow students at Virginia Tech. Whilst not being the only events of their kind, Columbine and Virginia Tech are still amongst the deadliest mass shootings in American History.¹⁵⁷ Gun violence had received relatively little attention before Columbine, and mass shootings were not that frequent. In the aftermath it became a lasting image of gun violence in the US.¹⁵⁸

In popular culture there is a saying that: «*Change happens when the pain of staying the same is greater than the pain of change*». Many gun control advocates would argue that no pain can ever be greater than having to witness the immense despair and horror that characterizes every mass shooting, especially when the victims are innocent school children. Given how little meaningful change has been made to American gun policies after the Newtown massacre and other tragedies, one could ask whether this is due to an actual inability to change or whether high-profile shootings actually have less of an effect on national gun legislation in America than it does in other Western countries. Although history has shown that enforcing meaningful federal gun legislation is difficult, it is technically possible to achieve. Why is there so little legislative success even after disasters such as Newtown?

After high-profile shootings in countries like New Zealand, local lawmakers enforce strict gun control laws. In the United States there is often a more narrow window of opportunity to create change. According to political scientist Robert Spitzer the defining pattern in the gun issue consists of repetitive political scenarios that progress with great fury

¹⁵⁷ CNN Editorial Research, «Mass Shootings in the US Fast Facts,» *CNN*, May 3, 2020.

¹⁵⁸ Briggs, *How America Got Its Guns*, 60.

yet surprisingly little effect, a policy gridlock. Spitzer observes that horrible mass shootings often provoke a cycle of outrage, action and reaction. After such horrific events there is normally a national outpouring of emotion, a demand for change in gun violence rates. Legislators respond to this by considering more restrictive gun laws, which sometimes leads to new laws being passed.¹⁵⁹ Legislative success is never certain after high-profile shootings, as the events after Newtown show. That leads to the conclusion that these shootings are not enough on their own, but need to coincide with other factors.

Alongside Spitzer, Public-policy scholars Philip Cook and Kristin Goss state that mass shootings do not change many peoples' opinions of gun control.¹⁶⁰ Evidence for this view can also be found in public opinion polls after Sandy Hook. A Pew report from December 2012 shows only modest change in the public's attitude toward gun control after Newtown. At that time forty-nine percent of Americans felt that it was more important to control gun ownership, compared to forty-two percent who stated that it is of greater importance to protect citizen's right to own guns. Astonishingly, the percentage in favor of gun control was higher before Obama took office, with fifty-eight percent of people in favor of gun control and just thirty-seven percent who prioritized protecting gun rights.¹⁶¹ Although mass shootings do not change public opinion to the extent one might assume, they tend to intensify both the urgency felt by many gun control advocates and the threat experienced by gun owners who oppose stricter gun laws and fear that their rights will be restricted.¹⁶²

Terrible shootings are not enough to change public opinion nor federal legislation. In some cases they do create the momentum behind new gun laws. The beginning of this chapter showed that the Sandy Hook shootings led to the passage of stricter gun laws in several states. However, this only takes place when high-profile shootings are accompanied by advantageous political conditions. The states that did restrict gun ownership after Newtown were generally Democratic states with a favorable amount of gun legislation already in place, and a comparatively weak gun rights lobbies to the large amount of states that actually relaxed their gun laws.¹⁶³ Cook and Goss state that mass shootings in gun-friendly states, such as the school shootings that occurred in Mississippi and Kentucky in the late 1990s, tend to not

¹⁵⁹ Robert J. Spitzer, *The Politics of Gun Control* (Routledge, 2018), 23-26.

¹⁶⁰ Cook and Goss, *The Gun Debate*, 210.

¹⁶¹ Pew Research Center (2012), «After Newtown, Modest Change.»

¹⁶² Cook and Goss, *The Gun Debate*, 210.

¹⁶³ Yourish et al., «State Gun Laws.»

provoke any response in gun legislation. When discussing the impact of high-profile gun violence on federal regulation they state that when these events make a difference in public policy it is in terms of «*providing the proverbial straw that broke the camel's back*». ¹⁶⁴ This means that they might aid the passage of measures that are already under consideration, yet other times they have no impact at all.

5.3 Active Shooter Incidents After Newtown

A critical review of firearms and violence shows there is a lack of federally funded research in the area of gun violence in the United States from any one authoritative source to aid in the development of public policy. ¹⁶⁵ For this reason many organizations conduct their own research to shape opinions of what would constitute as an effective measure to prevent gun violence. Everytown for Gun Safety started to collect data on gunfire on school grounds after Newtown. This is to better understand how often children and teens are affected by gun violence at schools or colleges as a response to the lack of research and data on the issue. In the six years from 2013 to 2019 they identified a total of five-hundred-and-forty-nine incidents of gunfire on school grounds. This shows that misuse of firearms in American schools happen with alarming frequency. Everytown's analysis of data suggests that although mass shootings on school grounds count for less than one percent of overall gun violence incidents in American schools, they impose an unknown amount of trauma on several generations of students and the communities from which they come. The organization therefore implores officials to intervene in order to prevent these terrible events from taking place. ¹⁶⁶ The misuse of guns on school property are not the only instances that have forced communities and the wider nation to focus on the gun debate after Sandy Hook. Since Newtown, FBI reports identify a total of a-hundred-and-forty-five *active shooter incidents* from 2014 to 2019. This term applies to the events in which one or more people are actively engaged in killing or attempting to kill people in a populated area. Amongst these incidents

¹⁶⁴ Cook and Goss, *The Gun Debate*, 210-211.

¹⁶⁵ Charles Wellford, et al., *Firearms and Violence: A Critical Review* (National Academies Press, 2005).

¹⁶⁶ Everytown for Gun Safety, «Keeping Our Schools Safe: A Plan for Preventing Mass Shootings and Ending All Gun Violence in American Schools,» February 11, 2020.

are the deadliest mass shootings in modern American history, the Orlando and the Las Vegas shootings.¹⁶⁷

With forty-nine people killed and fifty-three wounded, the shooting at Pulse, a gay nightclub in Orlando, in the middle of June 2016 had the highest number of casualties of any mass shooting that year.¹⁶⁸ The perpetrator, twenty-nine-year-old Omar Mateen was later killed in exchange of gunfire after barricading himself with hostages for approximately three hours.¹⁶⁹ It was later described as a well-organized hate crime by the media.¹⁷⁰ The highest number of casualties in any mass shooting occurred during the Route 91 Harvest Festival in Las Vegas in 2017. Fifty-eight people were killed and an additional four-hundred-and-eighty-nine people were wounded in what was later revealed as a meticulously planned attack.¹⁷¹ Sixty-four-year-old Stephen Craig Paddock opened fire from a hotel room into a crowd of people who were attending the festival. Craig had been armed with four rifles, but had access to twenty-three additional weapons in a suite in an adjacent hotel. After maiming as many individuals as possible, Craig committed suicide at the scene before law enforcement could arrive.¹⁷² In the following year, 2018, the FBI designated twenty-seven shootings as active shooter incidents. The highest number of casualties occurred at Marjory Stoneman Douglas High School in Parkland, Florida, where nineteen-year-old former student Nikolas Cruz killed seventeen people and wounded seventeen others in an attack on February 14, 2018.¹⁷³

These three tragic events share commonalities that reach beyond just the sheer amount of horror and despair they leave in their wake. All incidents involve shooters that are armed with tools that allow them to hurt a substantial amount of people in as little time as possible. The Orlando shooter was armed with an assault-style rifle and a semi-automatic handgun, both of which were legally purchased.¹⁷⁴ The nineteen-year-old gunman in Parkland was believed to

¹⁶⁷ Katherine W. Schweit, «Active Shooter Incidents in the United States in 2014 and 2015.»; FBI, «Active Shooter Incidents in the United States in 2016 and 2017.»; FBI, «Active Shooter Incidents in the United States in 2018.»; FBI, «Active Shooter Incidents in the United States in 2019.»

¹⁶⁸ FBI (2018), «Active Shooter Incidents in the United States in 2016 and 2017,» 3.

¹⁶⁹ Ibid., 10

¹⁷⁰ Ralph Ellis, et al., «Orlando shooting: 49 killed, shooter pledged ISIS allegiance,» *CNN*, June 13, 2016.

¹⁷¹ FBI (2018), «Active Shooter Incidents in the United States in 2016 and 2017,» 3.

¹⁷² Ibid., 15.

¹⁷³ FBI (2018), «Active Shooter Incidents in the United States in 2018,» 5, 9.

¹⁷⁴ Spitzer, *The Politics of Gun Control*, 10.

have been armed with an AR-15-style semi-automatic rifle and multiple magazines.¹⁷⁵ The gunman in the Las Vegas shooting used twelve semiautomatic rifles that were equipped with bump stocks, a device that allows them to mimic the fire rate of an automatic rifle. This enabled the shooter to fire a total of one-thousand-and-forty-nine rounds of ammunition at the unsuspecting crowd in just eleven minutes. The shooter lawfully acquired all the weapons he used in the attack. He would also have been able to purchase the bump stocks even if he had been prohibited from owning firearms due to the fact that the devices are classified as accessories and do not require a background check.¹⁷⁶

The fact that these mass shootings are responsible for so much destruction with the use of previously banned weapons is a clear sign for many gun control advocates that restricting assault weapons should be prioritized again. This discussion has continued since the original ban of these weapons in 1994. Following the use of bump stocks in the Las Vegas shooting, several states passed laws banning or restricting the devices.¹⁷⁷ President Trump also signed an executive order that led the ATF to reclassify the term «machine gun» used in the National Firearms Act and the Gun Control Act to include all bump-stock-type devices.¹⁷⁸ Despite promising signs after the bump stocks ban, Congress passed no new gun legislation. Although all three of the included mass shootings did spark a discussion about gun control, legislative action in terms of enforcing new gun laws, such as another assault weapons ban or expanded background checks, is still not a straightforward venture. As stated previously, high-profile shootings are not enough to force through gun restrictive laws unless they coincide with favorable political conditions.

¹⁷⁵ Elizabeth Chuck, et al., «17 killed in mass shooting at high school in Parkland, Florida,» *NBC News*, February 14, 2018.

¹⁷⁶ Miles Kohrman, «The Las Vegas Mass Shooter Had 13 Rifles Outfitted with Bump Stocks. He Used Them to Fire 1,049 Rounds,» *The Trace*, August 3, 2018.

¹⁷⁷ *Ibid.*

¹⁷⁸ Bureau of Alcohol, Tobacco, Firearms and Explosives, «Bump Stocks,» last modified February 21, 2019.

Chapter 6 - Developments in Recent Years

6.1 Unsteady Ground for New Federal Gun Laws

A significant development after the Parkland shooting was the rise of the youth in the fight against gun violence. Through social media the *March For Our Lives* movement soon went viral and revived the struggle for stricter gun control. This was not the first time young students had staged protests against guns. Two years previously, at the University of Texas, students had used provocation as a means to make their voices heard. With the slogan «cocks not glocks» students passed out thousands of sex toys to protest Texan legislation allowing concealed handguns on college campuses.¹⁷⁹ As «one of the largest expressions of popular opposition in the modern era», what made the Parkland-movement so significant was the sheer amount of support it generated all over the world, in addition to the news reporting that many hundred thousand students join the pro-gun control rallies across the United States.¹⁸⁰ The engagement of teenagers who had been directly affected by gun violence resonated with youth all over the world, and many were hopeful that this revival of the gun control movement in popular culture and the outspokenness of the new generation of voters would push government to take action and tighten gun restrictions.

In the aftermath of the 2018 high school shooting in Parkland, Florida, the White House issued support in the effort to strengthen background checks for gun purchases. The proposed law would not expand the reach of federal background checks such as the Manchin-Toomey bill, but would seek to make the National Instant Criminal Background Check System (NICS) function more effectively.¹⁸¹ Manchin stated that the fate of the expanded background checks proposal, which had failed to pass through the Senate both in 2013 and 2015, relied on backing from President Trump. The President had during this time expressed his intention to push for more comprehensive background checks, yet did not at that time elaborate any

¹⁷⁹ Alex Samuels, «UT-Austin Students Snatch Up Free Dildos for Gun Protest,» *Texas Tribune*, August 16, 2016.

¹⁸⁰ Oliver Laughland and Lois Beckett, «March for Our Lives : thousands join anti-gun protests around the world,» *The Guardian*, March 25, 2018.

¹⁸¹ Alex Seitz-Wald and Hallie Jackson, «White House: Trump supports move to strengthen gun background checks,» *NBC News*, February 19, 2018.

details about whether that would extend to the Manchin-Toomey bill.¹⁸² Pat Toomey issued a statement regarding the President's support of new legislation and specifically using Manchin-Toomey as the foundation for change. The statement detailed hope for congressional action and that other legislators would support and co-sponsor a renewal of the proposed bill.¹⁸³

In the beginning of 2019, the Democratic House majority led by House Speaker Nancy Pelosi begun the biggest gun control push since the Assault Weapons ban in 1994. The House passed two measures to strengthen background checks. One would extend the waiting period from three to ten days, and the other would enforce a background check on all gun sales, including online and gun show purchases.¹⁸⁴ Although the measures were not taken up by the GOP-controlled Senate, many gun control advocates accused the President of hypocrisy as he had pledged to veto the legislation even after establishing his support for strong background checks the previous year. After the Parkland-shooting the President indicated that he could support tightening background checks, but withdrew his support in favor of a proposal to arm and train teachers to use guns, calling for an institutionalization of mentally ill people who are believed to be capable of violence.¹⁸⁵ President Trump's position on gun control has been quite difficult to keep track of, as it seems that during some stages during the recent years he has given signs of hope for legislative action, yet in another instant he pivots and fully embraces the Second Amendment protection badge. Of note is the fact that the National Rifle Association spent around thirty-million dollars to support Trump's presidential campaign in 2016. The NRA had also spent in excess of one-and-a-half-million dollars lobbying against laws that would enact stricter background checks during the first half of 2019, including the fight against the proposals that passed through the Democratic-controlled House.¹⁸⁶ At this

¹⁸² Cristiano Lima, «Fate of Manchin-Toomey background check proposal hinges on Trump, lawmaker says,» *Politico*, February 26, 2018.

¹⁸³ Pat Toomey, «Toomey and Manchin Following White House Meeting: "We hope our colleagues will join us in cosponsoring the Manchin-Toomey bill",» February 28, 2018.

¹⁸⁴ Jacob Pramuk, «House passes another bill to strengthen gun background checks as Trump pledges to veto,» *CNBC*, February 28, 2019.

¹⁸⁵ Kristen Welker, et al., «Trump in talks with key senators on gun control legislation,» *NBC News*, August 14, 2019.

¹⁸⁶ Brian Schwartz, «NRA spent \$1.6 million lobbying against background check expansion laws in months leading up to latest mass shootings,» *CNBC*, August 5, 2019.

time the organization issued a statement detailing their opposition to stricter background checks, arguing that they do not stop criminals from getting hold of firearms.¹⁸⁷

Pressure for gun control increased after an increasing number of mass shootings. In early August, 2019, twenty-three people were killed and twenty-two wounded in an attack by twenty-one-year-old gunman armed with a rifle at the Cielo Vista Walmart in El Paso, Texas.¹⁸⁸ The White House reached out to key members of the Senate about potential new gun control legislation in what has been described by the media as the most substantial talks about gun control policy the Trump administration has had to date.¹⁸⁹ Amongst these key members were Senators Joe Manchin and Pat Toomey who once again issued a statement detailing the President's support for using their bipartisan proposal as a framework for future gun legislation. The pair stated that the President showed a willingness to work with them on the issue of strengthening background checks.¹⁹⁰ Developments regarding Senator Feinstein's ban on assault weapons also took place during this time.

The House Judiciary Committee held a hearing on federal assault ban legislation for the first time in over five years in the month after El Paso. In a statement applauding the Committee, Feinstein argues that the original ban saw a thirty-seven percent decline in gun massacres during its ten years, stating that the ban had an effect on gun massacres given the sharp increase in mass shootings a decade after the ban expired. Feinstein claims that the revised Assault Weapons Ban of 2019 would be more effective than its predecessor. The updated ban clearly defines which characteristics would constitute an assault weapon, thereby closing the loophole that enabled the gun industry to bypass the law and manufacture assault style weapons after 1994.¹⁹¹ The future passage of a federal ban on assault weapons is not guaranteed. Polls suggest that the American public is divided on this issue, yet the majority opposition to such a ban has increased in number in the wake of the Las Vegas shooting in 2017.¹⁹² A factor that affects the fate of the potential legislation immensely is the recent developments in the Supreme Court

¹⁸⁷ «Background Checks | NICS,» *NRA-ILA*, January 7, 2019.

¹⁸⁸ FBI, «Active Shooter Incidents in the United States in 2019.»

¹⁸⁹ Welker, et al., «Trump in talks.»

¹⁹⁰ «Manchin, Toomey Statement on President's Support for Background Check Bill,» August 5, 2019.

¹⁹¹ Dianne Feinstein, «Feinstein Statement on House Assault Weapons Ban Hearing,» September 25, 2019.

¹⁹² Megan Brenan, «Snapshot: Majority in U.S. Now Oppose Ban on Assault Rifles,» *Gallup*, October 19, 2018.

6.2 A Gun-Friendly Court

The mid-term elections in 2018 saw a Democratic majority in the House of Representatives for the first time since 2010, meaning that President Trump's ability to steer his program through Congress without any major obstacles is restricted. The Republican Party still control the Senate, ensuring the President's majority to confirm his executive and judicial appointments.¹⁹³ After the appointment of Justice Neil Gorsuch in 2017, Trump introduced his second Supreme Court nominee the following year. His choice fell on Brett Kavanaugh, former clerk to Justice Anthony Kennedy whose seat had become available after his decision to retire.¹⁹⁴

For a decade Justice Kennedy had been the so-called swing vote, which meant that despite being quite conservative he would sometimes pivot and join the more liberal half on certain issues, such as gay rights.¹⁹⁵ Gun control advocates feared that his replacement in Kavanaugh would be the vote needed to tear down some of the remaining gun restrictions in America. This fear was, and still is, due to the fact that Kavanaugh is a strong gun rights advocate. In fact, David Kopel, an attorney and gun rights advocate, stated that the Supreme Court never had a justice with as clear a Second Amendment record. In addition to this, the NRA praised Trump's choice and made it clear that it would mobilize their members all over the United States in support of him.¹⁹⁶ Brett Kavanaugh was officially confirmed as a Justice of the Supreme Court with a fifty-to-forty-eight vote on October 6, 2018. This was the closest call to confirm a justice since 1881.¹⁹⁷

Through *Heller* and *McDonald* the Supreme Court granted a pro-gun rights victory that established an individual right to own guns. Yet, as previously stated, it did clarify that there were some limits to Americans' gun rights despite deeming local handgun bans unconstitutional. Since 2010, the Supreme Court has avoided to clarify the scope of the Second Amendment, declining to hear challenges to gun control laws including state-level assault weapon bans. Although the federal ban seized to have effect in 2004, many states have

¹⁹³ «Mid-term elections: Democrats win House in setback for Trump,» *BBC News*, November 7, 2018.

¹⁹⁴ Kaitlyn Schallhorn, «Who are the Supreme Court justices?» *Fox News*, October 6, 2018.

¹⁹⁵ Amelia Thomson-DeVeaux, «Is The Supreme Court Heading For A Conservative Revolution?» *FiveThirtyEight*, October 7, 2018.

¹⁹⁶ Lois Beckett, «Supreme court pick could make assault weapons ban unconstitutional,» *The Guardian*, July 10, 2018.

¹⁹⁷ Schallhorn, «Who.»

passed similar legislation since then, such as California and D.C.¹⁹⁸ Justice Kavanaugh has previously argued that the D.C ban on assault weapons is unconstitutional, and that the weapons should be allowed as they are in common use.¹⁹⁹ Based on Kavanaugh's opinion it is possible that he might swing the Supreme Court to block these measures if they were ever to be granted a hearing.

As with both *Heller* and *McDonald*, the call was a close 5-4 majority vote. The Court at present time displays a clearer conservative majority, and Kavanaugh might not be as likely to pivot on gun rights issues. However, according to Kopel there is an unclarity regarding whether or not the Justice would give gun rights advocates the vote they need to overturn assault weapons bans and other restrictions. If this were to become reality, and Kavanaugh contributes the final vote needed for a more pro-gun rights Supreme Court, Hannah Shearer, an attorney at Giffords, points out that assault weapons bans and other strict gun regulation might be overturned in a short amount of time.²⁰⁰ The first development to support this would occur not long after Justice Kavanaugh's first day in the Supreme Court.

In early 2019, the Supreme Court granted the first hearing in a Second Amendment case in nearly a decade. The challenge was backed by the NRA, hoping to overturn New York City's strict limits that hinder handgun owners from transporting their firearms outside of their homes, claiming that it violates citizens' Second Amendment rights. Adam Winkler, professor at the University of California Los Angeles School of Law, points out that a ruling in favor of the gun rights movement could be used to set a new precedent that would make it easier for gun rights activists to challenge gun regulation elsewhere in the country.²⁰¹ After it was made clear that the Supreme Court was set to hear the case, New York State and New York City changed their laws to comply with the wishes made clear in the lawsuit. As a result the Supreme Court dismissed the case as moot. News reports describe this as a partial win for the gun control movement, as the possibility of a decision adverse to gun regulation was no longer a threat for the time being. The managing director of Everytown for Gun Safety, Eric Tirschwell, claimed that the NRA had turned its attention to the court as a result of gun

¹⁹⁸ Beckett, «Supreme court pick.»

¹⁹⁹ Brett Kavanaugh, dissent on D.C Assault Weapons Ban, 2011.

²⁰⁰ Beckett, «Supreme court pick.»

²⁰¹ Andrew Chung and Lawrence Hurley, «Supreme Court to hear biggest gun rights case since 2010,» *Reuters*, January 22, 2019.

control movement's victories in state houses.²⁰² In recent years there have been some developments at state level, favorable to gun control advocates. Most notable of which is unfolding in the state of Virginia.

6.3 A Battle at State Level

For the first time in more than two decades, Democrats have gained control of both chambers of legislature in Virginia as a result of local elections in late 2019. As the home of the National Rifle Association, Virginia has historically had traditions that involve a loose regulation of firearms.²⁰³ During the previous election cycle, gun control was a top issue for many voters.²⁰⁴ This caused many Democratic candidates to focus on the need for stronger gun laws as a part of their campaign in order to potentially take advantage of voters' frustration with Republican legislative inaction.²⁰⁵ After the victorious election results, state legislators, including Democratic Governor Ralph Northam, started to prepare new gun control measures. As stated previously, the political landscape is a massive factor in deciding whether or not new gun legislation will be passed. After the Parkland school-shooting only a few moderately progressive laws were passed in Florida. With the momentum of the mass shooting soon gone and as local elections came closer the narrow window of opportunity closed rapidly. Florida's strong NRA gun lobby has also been described as a reason why the state could not pass any major gun laws in the aftermath of Parkland.²⁰⁶ Although gun control proponents in Virginia had gained the opportunity to enforce new gun legislation after the election in the latter parts of 2019, the gun rights movement would soon make clear their discontent at any potential restrictions.

Ahead of the 2020 legislative session in which Democrats hold the majority, a steadily increasing number of Virginia counties declared themselves «Second Amendment sanctuaries». These resolutions are largely symbolic as they do not detail how the counties

²⁰² Nina Totenberg, «Partial Win For Gun Regulation At Supreme Court Could Be Short-Lived,» *NPR*, April 27, 2020.

²⁰³ Claire Hansen, «Virginia Bracing for a Fight Over Guns,» *US News*, January 18, 2020.

²⁰⁴ Gregory S. Schneider, et al., «Poll finds Virginia voters focused on gun policy ahead of pivotal election,» *The Washington Post*, October 4, 2019.

²⁰⁵ Claire Hansen, «'Second Amendment Sanctuary' Movement Grows in Virginia as Democrats Ready Gun Control Measures,» *US News*, December 11, 2019.

²⁰⁶ Noreen Marcus, «Despite Parkland Shooting, Florida Trails Other States in Gun Control Efforts,» *US News*, February 26, 2020.

will actually oppose new state laws. The gesture is mainly to declare their resistance. This backlash is spurred on by Virginia's leftward lean in recent year, because despite changing demographics, the state still consists mostly of rural areas with strong firearm traditions.²⁰⁷ The state has been described as «ground zero» for the fight for gun rights by Gun Owners of America, who urged their members to join gun rights rallies within the state.²⁰⁸ On the 20th of January, 2020, approximately twenty-two-thousand Virginians gathered in the state capitol to protest against restrictive gun control measures.²⁰⁹ In reaction to the staged protests in Richmond, President Donald Trump tweeted: «*The Democrat Party in the Great Commonwealth of Virginia are working hard to take away your 2nd Amendment rights. This is just the beginning. Don't let it happen, VOTE REPUBLICAN in 2020!*»²¹⁰ Despite being in talks with key members of the Senate about potential gun legislation five months previously, the President's assertion made his position in the gun debate quite evident. The gun debate controversy continued to escalate due to the emergence of a global pandemic not long after the beginning stages of unrest in Virginia.

Similar to the months after Sandy Hook, the outbreak of the coronavirus saw a substantial increase in firearm sales and first-time gun buyers. Estimates show that the number of guns purchased in the month of March, 2020, was around two million, making it the second-busiest month for gun sales beaten only by the period just after President Obama's re-election and the Newton shooting.²¹¹ In a BBC news article, law school professor and gun industry expert, Timothy Lytton of Georgia State University spoke about the surge in gun sales and the reasons why the increase occurs after such events. According to Lytton, two factors motivate most new gun sales. The first of which is the concern of a potential erosion of civil society and a breakdown of law and order, necessitating the possession of guns as a means of survival and protection. The second factor is the concern over government infringement on American liberties, such as the constitutional right to keep and bear arms.²¹² This suggests that some

²⁰⁷ Hansen, «'Second Amendment Sanctuary'.»

²⁰⁸ Hansen, «Virginia Bracing.»

²⁰⁹ Veronica Stracqualursi and Karl de Vries, «Virginia gun-rights rally concludes peacefully despite earlier fears of extremist violence,» *CNN Politics*, January 21, 2020.

²¹⁰ Donald Trump, Twitter post, January 20, 2020, 4:43 p.m.

²¹¹ Keith Collins and David Yaffe-Bellany, «About 2 Million Guns Were Sold in the U.S. as Virus Fears Spread.» *New York Times*, April 1, 2020.

²¹² Timothy Lytton, quoted in Max Matza, «How the coronavirus led to the highest-ever spike in US gun sales.» *BBC News*, April 6, 2020.

individuals buy guns because they worry that the government is failing and will not be able to protect them, and others believe that the government is getting too powerful and may limit their freedom. Evidence to support Lytton's reasoning can be found in the previously mentioned opinion polls that suggest that self protection is one of the main reasons for gun ownership, and that fear of government tyranny is also important to many gun buyers.²¹³

The pandemic led many states to enforce public health measures to help combat the spread of Covid-19. In Virginia, Governor Northam issued executive orders in late March that temporarily closed all non-essential businesses, including gun stores, and forced citizens to stay at home.²¹⁴ Stay-at-home orders are naturally restrictive, both to people's movements but also limits what they can buy. To some, these measures are deemed necessary invasions for the protection of public health, whereas others might be fearful and interpret this as potential for government takeover and tyranny. In states such as Michigan, armed protesters rallied due to opposition against coronavirus measures.²¹⁵ The closing of gun stores across all states was actively fought by the NRA. After extensive lobbying efforts, the Trump administration updated the Department of Homeland Security's Cybersecurity and Infrastructure Security Agency guidelines on critical infrastructure. The update now categorized firearms and ammunition dealers as an essential business, allowing them to remain open during state shutdown orders. The NRA celebrated this and issued a statement of appreciation of the President, who had kept his promise to protect the Second Amendment rights of all law-abiding Americans.²¹⁶ Upon his entry into the White House, Trump had vowed to repay gun owners for their support in his 2016 election.²¹⁷

The number of gun sales continued to increase in Virginia, as gun stores were allowed to open.²¹⁸ This coincided with the passage of five new gun laws signed by Governor Northam on April 10th, 2020. The legislation was celebrated by gun control advocates as historical measures to prevent gun violence in Virginia. The Governor signed one bill that would require

²¹³ Fairleigh-Dickinson University Public Mind Poll, «Beliefs about Sandy Hook Cover-Up, Coming Revolution Underlie Divide on Gun Control,» 2013; Gallup Organization (2019), «Guns.»

²¹⁴ «Executive Order 53.» *Commonwealth of Virginia, Office of the Governor*, March 23, 2020; «Executive Order 55.» *Commonwealth of Virginia, Office of the Governor*, March 30, 2020.

²¹⁵ «Coronavirus: Armed protesters enter Michigan statehouse,» *BBC News*, May 1, 2020.

²¹⁶ «President Trump Declares Gun Stores Critical,» *NRA-ILA*, March 23, 2020.

²¹⁷ Anita Kumar, «States were closing gun shops. Activists turned to the White House,» *Politico*, April 1, 2020.

²¹⁸ Peter Coutu and Katherine Hafner, «Gun sales spike across Virginia as people worry about coronavirus,» *The Virginia Pilot*, March 23, 2020.

backgrounds checks on all gun sales within the state, and reinstated the one-handgun-a-month rule to prevent the stockpiling of weapons. Another restriction, commonly known as a «red flag» law, gave the court power to allow police to temporarily remove firearms from individuals when they represent a danger to themselves or others.²¹⁹

The gun controversy in Virginia escalated as President Donald Trump accused the state of using the pandemic to take people's guns away. There had already been several protests against the Governor's stay-at-home order.²²⁰ On the 17th of April the President once again tweeted about the developments in the state: «*LIBERATE VIRGINIA, and save your great 2nd Amendment. It is under siege!*»²²¹ In a press conference the following day, the President continued his attack on Virginia's gun legislation, seemingly linking "gun control bills to the coronavirus pandemic by stating:

*«I think Virginia is a great case though because they are using this, they are trying to take your guns away in Virginia and if people in Virginia aren't careful that's what's going to happen to them.»*²²²

When asked by a Wall Street Journal reporter whether it is the right time to bring in a Second Amendment issue in Virginia during a global pandemic, the President responded:

*«I think when they talk about taking your guns away and if you notice at the beginning of this pandemic there were more guns sold I think that at almost any time in history so it's obviously a big issue and then you have them working and signing documents trying to take your Second Amendment away essentially. So I do think it is an appropriate time to bring it up.»*²²³

²¹⁹ «Governor Northam Signs Historic Gun Safety Legislation into Law,» *Office of the Governor*, April 10, 2020.

²²⁰ Claire Hansen, «Protesters Gather Again in Virginia to Rally Against Stay-At-Home Order,» *US News*, April 22, 2020.

²²¹ Donald Trump, Twitter post. April 17, 2020, 5:25 p.m.

²²² Donald Trump, quoted in Ian Schwartz, «Trump: "An Appropriate Time" To Bring Up Second Amendment, Virginia Using Pandemic To Take Your Guns Away,» *RealClear Politics*, April 18, 2020.

²²³ Donald Trump, quoted in Schwartz, «Trump.»

Northam responded to Trump's remarks and call to protest by stating that he considered this time as inappropriate for protests.²²⁴ At present time the outcome of the Virginia gun control debate remains unclear. What can be stated with absolute certainty based on the developments in recent months is the fact that the discussion is far from settled.

2020 will be a big year for the gun issue. Congress has already set aside funding for gun violence research for the first time in two decades.²²⁵ No one can accurately predict exactly what the year will bring. Given the developments in the Supreme Court with the newly displayed willingness to hear Second Amendment cases it is to be likely that a looming decision in lawsuits challenging firearm legislation will have a wide range of possible implications for restrictive gun regulation across the United States.

The Trace, a nonpartisan, nonprofit newsroom focused on America's gun violence crisis, has been in contact with experts on policy, politics, and science of gun violence to acquire information about what can be expected. Ahead of the election gun laws have been made a Democratic priority in the wake of mass shootings in recent years.²²⁶ Robert Spitzer is amongst those who remain skeptical that guns will be a stomp issue for Democrats in spite of recent developments due to the fact that there are so many other issues surrounding the current political debate, from immigration, security, and the economy to integrity in government and Trump himself.²²⁷ As the first part of this year has shown, the state governments and local communities will likely be an arena where the battle for and against gun legislation will continue to unfold. Experts predict that conservative Republican majorities in different states will implement measures that loosen restrictions on public-carry and expand protection for gun owners who shoot some in self-defense. On the other side, funding for community violence prevention and red flag laws will characterize gun violence prevention measures enforced by Democratic majorities, such as in Virginia.²²⁸ Regardless of party affiliation, the gun issue will remain a priority in years to come.

²²⁴ Connor Perrett, «Virginia governor says 'this is not the time for protest' as Trump links anti-social distancing demonstrations to Second Amendment rights,» *Business Insider*, April 19, 2020.

²²⁵ Will Van Sant, «Congress Will Fund Gun Violence Research for First Time in Two Decades,» *The Trace*, December 16, 2019.

²²⁶ Joseph P. Williams, «Where the 2020 Candidates Stand on Gun Control and Gun Rights,» *US News*, September 12, 2019.

²²⁷ Team Trace, «2020 Will Be a Big Year for the Gun Issue,» *The Trace*, January 3, 2020

²²⁸ *Ibid.*

Chapter 7 - Conclusion

From the topics covered in this thesis it becomes clear that the gun issue provokes strong emotions in many Americans. Cook and Goss attribute this to the fact that the gun debate encompasses all cherished aspects of the American way of life, such as the lives of oneself and family members, private property, shared civic values and cultural heritage. When researching this topic as an outsider looking in, one of the many pitfalls is the alluring tendency to oversimplify and dismiss the gun rights argument as invalid due to a lack of insight into the debate. As much as I have attempted to maintain an unbiased position I must concede that it is nearly impossible for this thesis not to carry influence of my own personal viewpoint in one way or another. I myself chose a selection of source material and interpreted them through my own bias, however much I tried not to. Having acknowledged this, I would argue that embracing one's own predilection and choosing instead to focus on understanding the basis of the opposing view is much more valuable, and it is what this thesis was written for. Despite this I fear that no matter how much knowledge I gain about the underlying reasons for the gun rights viewpoint, it will not enable me to understand why the potential of saving thousands of lives through gun laws is not paramount despite enforcing some restrictions on gun possession; Restrictions for the sake of public health and safety.

Although the gun phenomenon is distinctly American and therefore difficult to comprehend for others, the powerful convictions of the opposing sides should not be underestimated as a result of unintentional ignorance. It is important to understand that the emotions felt by many gun owners are not derived from the physical objects themselves, but rather what they represent as symbols of liberty. Understanding is not synonymous with changing your opinion in favor of the opposition's. The gun debate carries an apparent overload of people fighting to promote their shared opinion, which they so strongly believe is the only legitimate alternative, that in the process they forget that listening and trying to empathize and compromise with the opposition are the only means with which to establish a common ground sorely needed in this debate. However much this is needed, it becomes clear that the gun debate in the United States is anything but simple. The underlying factors in the controversy of the gun issue and the legislative inaction are intertwined.

Breaking the policy gridlock is nearly impossible, at least given the frustratingly predictable pattern surrounding the national political debate in the last half a century. Spitzer's

cycle of outrage, action and reaction after a mass shooting gives an accurate depiction of this.²²⁹ Condemning the horror and bloodshed Democrats will demand congressional action and the enforcement of stricter gun laws, whilst Republicans and the gun lobby will cling to the Second Amendment. There might be discussions and negotiations, but inevitably a standoff will commence, time will pass, nothing will change and the country will keep moving until the next mass shooting sets the gears in motion once more.

I'm under no illusion that the gun rights movement is evil and wishes to maintain gun violence rates. All parties involved would like to see a decline in gun crime, yet disagree on how to achieve this. The gun control movement argues that more gun restrictions would equal less crime, in accordance with other Western countries. On the other side, it is an oversimplification to say that all gun rights activists are pro-guns because they believe that arming people would ensure public safety. Although this might be a reason for some, this thesis has clearly detailed the scope of the Second Amendment right which is a much more central justification for gun ownership. This is a factor that complicates the debate intensely. The freedom to keep and bear arms is immune to a calculation of benefits and damage, thereby introducing a different moral consideration to the gun debate. The constitutional Second Amendment right cannot be violated even if the benefit of such legislation is guaranteed. Meaning, if a potential gun control measure is seen as a violation of the Constitution it will be fought by the gun rights movement at every step, even if the law is one-hundred percent guaranteed to reduce overall gun crime rates. This makes the establishment of a common ground very unlikely. Added to this is the strength and power of the gun lobby, who manages to successfully stop unwanted legislation, such as the 2013 Manchin-Toomey bill. These gun rights organizations are fueled by the instant bereavement felt by gun owners all over the country ahead of potential restrictions. The NRA is powerful and it is likely that its reach will continue to shape the gun issue in the future as well. The main reason for this is that the organization's greatest source of power and monetary means derives from its vast membership base. As long as there are angry gun owners who feel that their constitutional rights are threatened, the NRA is likely to remain influential.

Throughout history the gun debate has been charged with controversy. Ever since the ratification of the Bill of Rights there have been disagreements concerning the interpretation of the Second Amendment as well as arguments over state versus federal rule. The Supreme

²²⁹ Spitzer, *The Politics of Gun Control*, 23-26.

Court cases in 2008 and 2010 were pivotal in the gun debate, establishing individual gun rights and their incorporation through the Fourteenth Amendment. However, as the chapter covering *Heller* and *McDonald* points to, they can be seen as ending a stage in the gun debate, as opposed to providing any sort of closure on a larger scale, although that is what many would want. Any unanimous decision might be more likely to provide such an outcome, yet the five against four votes in both cases exposed a deeply cleaved court, which in many ways reflected the greater American society. The ramifications of these Supreme Court decisions included a new set of questions on which people would disagree, such as the framework for gun legislation. Both *Heller* and *McDonald* upheld the constitutionality of basic gun regulation, the question still remains exactly which restrictions this applies to. In that respect one can argue that since not much time has passed since these major decisions, compared to the centuries of discussion preceding them, the entire American judicial system is still in the process of establishing clear guidelines omitted by the Supreme Court. On account of this, the heated debate is perhaps to be expected.

The appointment of Justice Kavanaugh to the Supreme Court signaled a potential shift within, making the prospect of another Second Amendment hearing all the more likely. Although the hearing regarding the challenge to New York city's restriction never took place, the event signaled to worried gun control advocates that established legislation could potentially be overruled at the highest level, setting a precedence for courts around the country. With a strong gun rights record, Kavanaugh can be the difference that would ensure such a ruling. With a lack of federal gun legislation certain states have passed their own, some more strict than others. Assault weapons have been banned in some states, but as Kavanaugh has previously argued for the unconstitutionality of such a ban it remains to be seen whether or not his vote will be the decider in determining whether such legislation will be repealed.

Tying in with why gun laws are difficult to pass, a law's constitutionality is a factor that greatly affects its passage, but also how long it stays in effect. Major federal legislation in the last century have been characterized by a back and forward motion of measure and counter-measure. There are not many federal gun laws to begin with, and after they were enacted many have since been repealed or revised, either due to pressure from the strong gun lobby or due to its constitutionality. There is seldom a settled law that is allowed time to be effective. Another reason why it is difficult to pass meaningful legislation is the fact that politicians and the opposing sides strongly disagree over what measures would be considered meaningful. The 1994 Assault Weapons Ban is perhaps the best example of this. Senator Feinstein has in

later years argued that the ban had an immense effect on gun violence.²³⁰ Contrarily gun rights advocates have argued the opposite.²³¹ Studies show that both sides are incorrect and that the effect of such a ban is inconclusive.²³² From this it is quite clear that data is being used by both sides to help their argument. This highlights the lack of gun violence research which could have aided in the process of determining what measures would actually bring forth positive change. Yet, because of the position of the Second Amendment right, the passage of such measures are not guaranteed.

After decades of mass shootings and little legislative action a logical conclusion would be that these events have less affect on American gun policy than they have on new legislation in other modern nations. Why they do not have more influence on legislators is hard to accept. Even after the immense engagement shown by youth all over the world after Parkland, little change took place. Seeing these students stand up and fight for their lives ignited a new belief that change could happen sometime in the near future, yet in reality even this had less effect than many had hoped. Cook and Goss state that a high-profile shooting is not enough by itself and needs to coincide with favorable political conditions.²³³ Successful federal legislation is rare, and one must take into account that it is difficult to enact universal laws that would be acceptable to all states as one. This is due to the differences in cultural heritage and history, as well as the variety in values, needs and demographics. Government ability to pass federal gun laws has also been affected by the growing tension between state and federal rule, presented in recent times by the growing nullification movement.²³⁴ Even at a local level, in states like Virginia, where the political landscape enabled Democratic legislators to enforce new gun legislation in the wake of recent mass shootings, the process is not without its share of controversy.

The situation in Virginia escalated further during the coronavirus outbreak earlier this year. Gun sales spiked as those who fear government tyranny or a breakdown of law and order rushed to gun stores, now an essential business, to buy more weapons. This attitude has ties all the way back to frontier times and the fight against British oppression. The United States was founded on a fear of government tyranny, and as Justice Scalia pointed out in *Heller*, the

²³⁰ Dianne Feinstein, «Feinstein Statement.»

²³¹ Broffmann and Johns, «Senate kills bill.»

²³² Koper, «Updated Assessment of the Federal Assault Weapons Ban,» 2-3, 96-97.

²³³ Cook and Goss, *The Gun Debate*, 210-211.

²³⁴ Jessica and Korth, «Butt Out: State Legislatures.»

way tyrants of the past defeated their challengers was by taking away people's weapons.²³⁵ Some gun owners are preparing for a time when government grows too big and seeks to restrain constitutional liberties. Others are fearing for their own safety if there ever comes a time when riots and looting commence, and the establishment fails to protect them any longer. Some of the credit for the growing chaos in Virginia must be allocated to President Trump, who with his public utterances did little to neutralize the situation, and shattered any hope of compromise. Although the lack of common ground is not Trump's doing historically as it emerged long before his inauguration, his gun rights battle calls on social media in recent times contribute little to diplomacy and can be seen as a sure sign that we have not seen the last of this controversy.

After completing this thesis I find myself agreeing with Seymour Lipset's notion of the American exceptionalism as a true doubled-edged sword. The unique and different nature of the American creed is not exclusively positive. I conclude in accordance with Ole Moen's description of American duality as a pre-modern and super-modern society. This became even clearer during the course of the last week. Violent nationwide riots erupted in the aftermath of the death of African American George Floyd, a horrific example of police brutality that once again exposed the nation's proclivity for violence. Paradoxically, this has taken place at the same time as the first ever commercial human spaceflight prepares to launch from the Kennedy Space Center, painstakingly highlighting both pre-modern and super-modern aspects of the United States at the same time.

Innocent people continue to die at the end of a gun barrel, and as horrifying as it is to admit the last century provides little realistic hope for future change. It remains to be seen whether America will ever find its way out of this dreadful cycle, or if we are just witnessing the beginning stage of yet another round. I still do not understand the United States.

²³⁵ Antonin Scalia, *District of Columbia v. Heller*, 554 U.S. 570 (2008), Transcript of Oral Argument.

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