



Nuovi Autoritarismi e Democrazie:
Diritto, Istituzioni, Società

The Battle on the Second Amendment. The Issue of Private Ownership of Guns in the United States

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Abstract

The Second Amendment of the American Constitution arguably contains the formulation of the citizen's right to a private ownership of guns. This amendment, however, has been the protagonist of interpretative battles that have reached the Supreme Court of the United States, and that continue today despite the decision of the Court. The issue of private gun ownership presents itself as a multifaceted interweaving of political, legislative, and social motivations, and is destined to increasingly become one of the factors that highlight the internal fracture of the American society. The essay explores the main elements related to the issue and its socio-political motivations, developments, and consequences.

Keywords: United States of America – Private Ownership of Guns – Second Amendment – Gun Control – Gun Violence – National Rifle Association.

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1. *The Battle on the Meaning of the Second Amendment*

Among the topics that escalate passionate debates throughout the American public is the issue of private ownership of guns, or the right, arguably held by virtually every American citizen, to purchase and hold firearms without having to obtain special authorizations from state authorities. America has such a strong gun culture that, as for now, in the country there are more guns than people. And yet it is estimated that 316 people are shot in the country every day, and 111,551 every year, according to statistics that include both people who die and people who survive because of gunshots, murder, suicide, and accidents¹. The issue of firearms is certainly one of the key points of American politics: it is often a major cause of diatribe in the Senate, with the National Rifle Association (NRA), America's preeminent gun rights organization, being one of the most influential players on the US political stage; also, this issue has been the protagonist of many disputes regarding the correct interpretation of the American Constitution, a question that remains unresolved to this day.

The Second Amendment is claimed to be the amendment in which the constitutional guarantee of the people's right to possess firearms can be found. The text of the Amendment reads as follows: «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»². Unfortunately, the Second Amendment's wording is very unclear, and in addition to that, no notes were made of Senate debates during the time the amendments were being revised to be added to the Constitution; the notes of the House proceedings are also incomplete. The only recorded debate of the House of Representatives over the Second Amendment focused on a clause excepting conscientious objectors from serving in the militia, but on discussions regarding the other aspects of the draft there are no available and complete records. For these reasons, interpreting the real meaning of the amendment is a difficult task, and even today we cannot say that we have definitive answers as to what the founding fathers meant by this amendment.

As far as constitutional interpretation is concerned, the U.S. Supreme Court has addressed the issue only in a few cases. It was attorneys, activists, and scholars who have often done a pioneering work. They started a debate over the Amendment's meaning, which produced two main interpretations.

On one side there is the individual rights theory, whose advocates stress the Amendment's second clause ("the right of the people to keep and bear arms, shall not be infringed"). They maintain that this right has always belonged to the citizens individually, since the body of the Militia corresponded to the body of the people, who were expected to perform in the Militia bringing privately owned weapons whenever called³. It is suggested that the right to own arms belonged traditionally to the British, and that that of owning arms and participating in the militia (which comprehended all able-bodied men

¹ Brady Campaign to Prevent Gun Violence, *Key Statistics*, using data from The Centers for Disease Control (CDC) of the most recent years available (2015-2019). For the consultation of the data, see bradyunited.org/key-statistics.

² Lexisnexis, *The U.S. Constitution*, Abridged Edition, 2013.

³ J.L. Malcolm, *To Keep and Bear Arms: The Origins of an Anglo-American Right*, Harvard University Press, 1994. The Militia, though, consisted of all able-bodied adult white males, excluding groups such as slaves, free Blacks in the South, adult women, minors, or the elderly.

between sixteen and sixty years of age) was a duty of the Englishmen. This English heritage then travelled across the Atlantic. But the American context was different: one of the main themes that the advocates of the individual rights theory usually highlight is that of describing the early American world as a place where arms were common and widespread among the population because of the high number of threats that the settlers had to face (Indians, hostile European forces, blacks). They argue that, because of these internal and external threats, the Americans could not afford to have unarmed citizens, and that the militia was therefore a very important, universal, and active institution on which the survival of the colonies depended. Individual rights proponents admit, though, that the fact that the Amendment itself links the right to own guns to the militia suggests that the two concepts cannot be totally decoupled. But they solve the question by suggesting that the armed citizenry should be viewed as an inchoate militia, that can be called upon in times of emergency, thanks to a proficiency in the use of firearms acquired through personal pursuits.

On the opposite side we find the collective rights theory⁴. Supporters of this theory focus on the Amendment's first clause ("A well-regulated Militia, being necessary to the security of a free State"): they argue that the right to keep and bear arms refers to the Militia only: that implies that the right belongs to the collective body of the people only when performing their duty in a "well-regulated" militia. These advocates suggest that the purpose of the amendment was to help maintain state militias and avoid giving the federal government exclusive access to military power, not to create a universal and indiscriminate right to possess guns for the entire population. The Founders, it is argued, were instead trying to reassure the antifederalists who feared that, since as stipulated in the Constitution it was Congress who had the upper hand in handling the militia, the former would choose to disarm the latter. And once the militia was eliminated, the government would have the power to establish a tyranny. Therefore, James Madison, who introduced the proposed Amendments in Congress, was simply writing the amendment to prohibit the federal government from disarming the militia, hence reassuring the antifederalists about the problem of tyranny.

In addition to that, collective rights theory proponents note that, when Madison was drafting the Bill of Rights, only one of the thirteen states (Pennsylvania) had an individual right to bear arms provision in its Constitution: indeed, Massachusetts and North Carolina had arms bearing clauses in their constitutions too, but they only granted a collective right (while Vermont cannot be added to the list, since it wasn't a state yet). The federalists, who did not want to weaken the government, were the winners of the great Constitutional debate: therefore, collective rights advocates argue, Madison had no reason to introduce a dangerous right (an individual one) that only one state recognized⁵.

⁴ C.T. Bogus, *The Hidden History of the Second Amendment*, in *U. C. Davis Law Review*, No. 2, 1998; P. Finkelman, "A Well Regulated Militia": *The Second Amendment in Historical Perspective*, in *Chicago-Kent Law Review*, Vol.76, 2000.

⁵ P. Finkelman, *The Living Constitution and the Second Amendment: Poor History, False Originalism, and a Very Confused Court*, in *Cardozo Law Review*, Vol.37, 2015.

2. *The Birth of a Gun Culture and Gun Control*

In pre-revolutionary America the number of people who owned firearms was not as high as it is commonly thought; instead, not many Americans owned a gun, and even fewer of them knew how to use it. Indeed, firearms began to be more widely used only in the mid-1830s, when a hunting subculture emerged in America, perhaps because of a desire to emulate the idealized British gentlemen. But it was only during the 1840s and 1850s that a true shift happened: by that time the U.S. government was finally well supplied with arms, and the country did, at last, have quite a large stockpile of guns. Also, because of the Mexican-American war, a vast new area of the country was opened to occupation, and many people decided to head west, and to equip themselves with weapons to face that journey; but guns never dominated frontier life. But even if, during the last decades of the nineteenth century, the number of guns in the hands of civilians was increasing, that did not instantly transform the country: most communities in the United States remained quiet, peaceful places.

And yet, the spread of the United States across the continent, the Mexican War and the consequent growth of the number of gunmakers in the country, added to the improved popularity of guns due mostly to the diffusion of hunting and militarism, fed the enthusiasm of Americans for guns⁶. Indeed, one of the factors that contributed to the scarce presence of weapons in early America was the fact that many of the firearms came from Europe, and the number of gunsmiths in America was incredibly low; also, firearms made of iron rusted and decayed quickly, and it was difficult to maintain them in working conditions. They were also quite expensive, and both urban dwellers and farmers in settled areas had little need for them. But, especially as a consequence of the American Civil War, the American production of firearms increased exponentially, and their quality improved. Samuel Colt was the emblem of this shift: he founded his gun factory in 1848, when pistols were not widespread yet, but much later he tried to link his guns to the image of the innocent travellers, heading west and facing hordes of Native Americans. Colt made available for everyone a beautifully crafted firearm, that he sold along with a series of instructions on how to use it. Hence, given this rise in the production of firearms, for the first time shops specializing exclusively in the sale of arms were opened, and the subculture of gun enthusiasts became more popular.

Subsequently, the roaring twenties witnessed some of the worst gang wars in American history, wars that would have great effect on gun control legislation. In those years, extremely violent confrontations between gangsters, and between gangsters and the police, were becoming so common that a sense of urgency started to emerge: in an era that witnessed a huge growth of information technologies, all the news were filled with crime stories, which heightened the public's distress, especially given the police's ineffectiveness in combating the modern outlaws. That climate helped to solidify the belief that the federal government should do something to fight criminals and their guns, who thrived in the jurisdictional cracks between the states⁷.

⁶ About the issue of firearms during the nineteenth and twentieth century, see: M. Waldman, *The Second Amendment: A Bibliography*, Simon & Schuster, 2014; A. Winkler, *The Secret History of Guns*, in *The Atlantic*, 2011.

⁷ A. Winkler, *Gunfight: The Battle Over the Right to Bear Arms in America*, W. W. Norton & Company, 2011.

This sort of assertions fit perfectly with President Roosevelt's philosophy: his New Deal was meant to extend the government's hand to help all Americans. Traditionally, it was the states who were in charge of most government affairs, and Roosevelt's decisions were aimed at changing this dynamic and have the federal government take on authority over many areas, thus expanding federal power at the expenses of the states. Part of the New Deal were also gun control and the fight to crime: federal crime law was considered indispensable for national recovery. Of course, the traditionalists were opposed to this federal push in the fields of crime and of guns, but the decision sounded overall justified by the nationwide character that crime had assumed in those years. Roosevelt and his attorney general Homer Cummings wanted in fact to expand the government's power to reach over criminals and their weapons.

In order to achieve that goal, gun-control laws were necessary. It's important to notice that not much existed in terms of precedents of federal gun legislation; but the historical moment when Cummings was operating was a delicate one: for forty years the Court had invalidated many federal laws, with the motivation that, in its opinion, Congress was exceeding its authority under the Constitution. And the Constitution doesn't contain provisions that authorize the government to restrict guns. Therefore, Cummings found another way to bypass this problem in order to restrict criminal's access to guns. His proposal was simple: to raise taxes on firearms. In fact, if it is true that the Constitution doesn't explicitly grant the federal government a right to restrict guns, it is also true that it does explicitly grant it a very broad right to tax, and the right to tax can mean the right to eliminate. And by 1934, nearly everyone understood the importance of eliminating the types of guns that were mostly used by criminals.

Hence, the National Firearms Act of 1934 was adopted: it imposed a very high tax on certain types of firearms (machine guns, short-barreled shotguns – known as sawed-off shotguns – and some rifles), and it required owners to register with federal authorities. This latter decision made it so anytime someone was seen carrying those weapons, they could be checked and put in prison for noncompliance in case they weren't registered. Within a few years, almost no law abiding civilians owned those kinds of firearms, and for criminals owning them had become much more dangerous and difficult. That first gun control law was so successful that four years later Congress decided to pass another one: the Federal Firearms Act of 1938. This gun control law served to prohibit felons from buying firearms and to introduce licensing and record-keeping for gun dealers.

After that, the Mulford Act of 1967, along with the federal Gun Control Act and the Omnibus Crime Control and Safe Streets Act (both of 1968) were the strictest gun control laws of the 1960s⁸. These laws were the first serious attempts at gun regulation since the 1930s, and they were born as a backlash against armed blacks. In fact, since the late 1950s, as guns were inexpensive and easily available, those who tried to push new restrictions were quite unsuccessful. A grim example can be found in the failed attempt of Senator John F. Kennedy to introduce a bill to obstruct the importation of surplus military firearms; five years later Lee Harvey Oswald assassinated President Kennedy with an Italian military surplus firearm, purchased by mail-order. But in the 1960s the Black Panthers and other similar extremist organizations inspired some of the strictest gun control laws in American history and caused the birth of the modern gun rights

⁸ P.J. Charles, *Armed in America: A History of Gun Rights from Colonial Militias to Concealed Carry*, Prometheus, 2018.

movement; these laws, advocated by rural white conservatives, mostly aimed at disarming urban black leftist radicals.

Furthermore, the Brady Handgun Violence Prevention Act of 1993 should also be noted as another major gun law. In 1981, at the Hilton Washington Hotel a man named John Hinckley Jr. fired six shots towards President Ronald Reagan, his press secretary James Brady and other two people; no one died, but Brady ended up permanently paralyzed, and his wife became an activist for new gun laws. Her signature proposal was for a law known as the Brady Bill: it required gun purchasers to wait several days before they could receive the purchased gun, and during that time law enforcement had to do a background check on the buyer. The bill was enacted in 1993, and it mandated a five-day waiting period for handgun purchases. At his trial Hinckley was found to be insane, and the waiting period was designed to prevent people who were mentally ill – like Hinckley – or criminals from buying firearms.

3. *The National Rifle Association*

The National Rifle Association (NRA), America's biggest gun rights advocacy group, was founded by George W. Wingate and William C. Church in 1871⁹. Initially the goal of the association was to promote and encourage rifle shooting. The organization's president in the 1930s, Karl T. Frederick, was a hunter and a proponent of gun control; the whole NRA, under his leadership, promoted and even sponsored gun control legislation nationwide, and was a force pushing the country towards more restrictive gun control laws.

And yet, slowly but gradually the organization began to change, until it became America's greatest gun rights advocacy group. This change began in the 1960s, when the momentum for gun control began to shift precisely because of the Black Panthers and because of the wave of race riots that were very hard to repress, given the steady stream of gunfire. In fact, in that period millions of firearms were available, and the percentages of gun-related murders, aggravated assaults and armed robberies were increasing exponentially; in that situation, even federal reports were blaming the easy availability of guns for the riots and were asking for more firearms control.

In that period the leadership of the NRA was still supporting gun control measures and focusing only on the original goals of the association, that were hunting and recreational shooting. Maxwell Rich, who was executive vice president of the NRA in 1976, even decided to sell the association's building in Washington D.C. and to retreat from political lobbying in order to focus on outdoorsman activities and environmental awareness programmes. He wanted to relocate to Colorado Springs, to reflect the association's opinion that guns were primarily about sports, hunting, and marksmanship. That was a decision that was quite unpopular among other members of the association; those unhappy gun rights advocates who had been let down by Rich started to gather around a man named Harlon Carter. Carter and the dissidents valued guns as a means of self-defence, protectors of liberty, instruments to fight back.

⁹ About the history of the NRA, see: L.A. Coleman, *When the NRA Supported Gun Control*, in *Time*, 2016; F. Smyth, *The NRA. The Unauthorized History*, Flatiron Books, 2020; A. Winkler, *Gunfight: The Battle Over the Right to Bear Arms in America*, cit.

At its May 1977 annual meeting, Carter took advantage of one of the NRA's bylaws, which held that the group was required to take into full consideration any motion made by members. The dissidents started to propose a series of changes to modify the way in which the board and the leaders were chosen. The very next day, they managed to get rid of Rich and the old guard, and to elect Carter as the new executive vice president. Under the new leadership, the NRA became an incredibly powerful force committed to a rigid opposition to gun control, that followed the idea that guns were about self-defence, and not just hunting. The membership, fund-raising, and influence of the NRA skyrocketed. Its motto changed, from "Firearms safety education, marksmanship training, shooting for recreation" to "The right of the people to keep and bear arms shall not be infringed."

That shift was possible because during the 1970s, as never before, social issues such as racial integration, civil rights, abortion, the rights of women or homosexuals or the issue of firearms were transformed into political issues capable of polarizing the population¹⁰. Conservatives in the 1970s and 1980s were trying to dismantle the legacy of the New Deal and take control of the Republican Party by creating a coalition of conservative Catholics, Evangelical Christians, and Southern Democrats. And finally, during Reagan's presidency, the right to own weapons became a major conservative claim. Before that, gun ownership had never been a political issue, nor had it been at the centre of a constitutional debate; Malcolm X, a leading Black activist in the 1960s, was one of the first to speak of the Second Amendment and of the right, guaranteed by the Constitution, held by everyone to own firearms. As we have seen, this position was embraced by the NRA only in the late 70s: the struggle for the right to own guns became part of the conservative political party, and even though it was born in the 60s within the Black Power movement, it began to instead distinguish the emerging movement of White Power in the 70s.

The NRA has, since then, strongly opposed every proposal regarding gun control. Wayne LaPierre, Carter's most important successor who became executive vice president in 1991, always presented himself as an extremist when it comes to Americans' right to own guns; in fact, every time someone tried to propose a gun law, LaPierre was quick to warn against the danger of complete confiscation. Furthermore, thorny is the question of financial support for the NRA from the firearm industry. Studies have revealed how the association received tens of millions of dollars from its gun industry partners¹¹. The most generous donors join the "Golden Ring of Freedom", a group of so-called patriots «who are seeking to secure the future of freedom»¹². The industry supports the NRA so that the association can develop and maintain a market for their products.

4. *The Supreme Court*

The U.S. Supreme Court's position has drastically changed over the years too: in *District of Columbia v. Heller* (2008), the Court decided to embrace for the first time the individual rights view regarding the Second Amendment. It was a drastic change

¹⁰ J. Lepore, *These Truths: A History of the United States*, cit.

¹¹ J. Sugarmann, M. Langley, *Blood Money – How the Gun Industry Bankrolls the NRA*, Violence Policy Center, 2011; J. Sugarmann, *Blood Money II – How Gun Industry Dollars Fund the NRA*, Violence Policy Center, 2013.

¹² NRA official website, *Ring of Freedom*, at nraringoffreedom.com/.

considering that «for 218 years, judges overwhelmingly concluded that the amendment authorized states to form militias, what we now call the National Guard. Then, in 2008, the U.S. Supreme Court upended two centuries of precedent»¹³. Indeed, the opinion of the pre-*Heller* Supreme Court was especially visible with glaring clarity in the 1939 case *United States v. Miller*, where the Court established that the right to keep and bear arms was meant to only protect the right of the states to maintain an armed militia. That decision was maintained over the seventy years that followed: and that is, that the amendment protected a collective right. The Court had many opportunities to clarify or modify the meaning of the Second Amendment, but it never did until the *Heller* case.

Advocates of the collective and of the individual rights view hold two very different positions regarding the Supreme Court's behaviour. Individual rights view advocates tend to say that before the 2008 case of *District of Columbia v. Heller* and the subsequent 2010 case *McDonald v. City of Chicago*, the federal courts had simply not been looking at the Second Amendment¹⁴. Or, perhaps, it was taken for granted that the Second Amendment only concerned and limited the federal government, while the states remained free to regulate the possession and carry of firearms at their discretion, even though there wasn't a guaranteed constitutional right that approved of that.

But according to the advocates of the collective rights view, the history of the Second Amendment's interpretation is not so simple and straightforward. The United States Supreme Court did address the Amendment, three times: in 1876 (*United States v. Cruikshank*), in 1886 (*Presser v. Illinois*), and in 1939 (*United States v. Miller*). In these cases, the Court held that the Amendment referred to the militia, and that what the militia is is defined in Article I, Section 8 of the Constitution (according to which the militia is organized by Congress and subject to both federal and state control). Hence, it was the collective right model that remained widely accepted and uncontroversial for all those years. And «from the time law review articles first began to be indexed in 1887 until 1960, all law review articles dealing with the Second Amendment endorsed the collective right model»¹⁵. The very first article advocating the individual right interpretation was a student's article that appeared only in 1960.

It was only between 1970 and 1989 that the articles endorsing the individual right model outnumbered the others (twenty-seven to twenty-five). However, sixty percent of those articles were written by lawyers employed or funded by the NRA or other similar organizations¹⁶.

5. *The Current Situation in the US*

Regardless of how exactly this situation unfolded, it is clear that today in the U.S. the possession of firearms is a widespread phenomenon. In fact, even though only 32% of adults personally own a gun and 44% report living in a household with a gun, only 21%

¹³ M. Waldman, *The Second Amendment: A Bibliography*, cit., XII.

¹⁴ R. J. Cottrol, *Second Amendment: Not Constitutional Dysfunction but Necessary Safeguard*, in *Boston University Law Review*, Vol.94, 2013; R. J. Cottrol, *The resurgent Second Amendment*, in *Tulsa Law Review*, Vol.47, 2011.

¹⁵ C. T. Bogus, *The History and Politics of Second Amendment Scholarship: A Primer*, in *Chicago-Kent Law Review*, Vol.76, 2000, 4-5.

¹⁶ P. Finkelman, *The Living Constitution and the Second Amendment: Poor History, False Originalism, and a Very Confused Court*, cit.

of Americans (39% among Democrats, 8% among Republicans) would support a repeal of the Second Amendment (compared with 60% in opposition)¹⁷; but it should also be noted that almost 60% of registered voters are in favour of stricter gun laws¹⁸. In order to better inquire into this state of affairs, it might be useful to briefly look at the federal rules in force nowadays, and then focus on an ideological analysis on the motivations of the anti-guns and pro-guns deployments.

Federal law requires that people wishing to purchase any type of firearm from licensed gun dealers fill out a Firearms Transaction Form and have their names run through the National Instant Criminal Background Check System (NICS), operated by the FBI and established as a result of the Brady Act (1993) requirements¹⁹. This system is designed to prevent people who have been convicted of a felony, people who have been convicted of domestic violence misdemeanour or are under restraining order, people who are mentally ill, drug addicts, aliens unlawfully in the U.S., fugitives from justice, and people dishonourably discharged from the armed forces from buying a firearm. Everyone else over eighteen years of age is allowed to purchase a long gun, and everyone over twenty-one years of age may purchase a handgun²⁰. Still, gun control measures such as background checks, bans for the mentally ill and felons, and even bans on certain types of firearms (the automatic ones) are agreed upon by almost everyone. The NRA is an exception: although it appears to support the ban regarding mentally ill people, it continues to try to block nearly all firearm restrictions, and there seems to be evidence to support the organization's willingness to allow former felons to have their guns-related rights restored²¹.

This system, however, has enormous loopholes, the biggest of which is probably the fact that private sales are exempt from these regulations. In addition to that, federal agencies must destroy their records relating to approved background checks, because the NRA doesn't want the government to possess a record of gun owners so that, in case the government turns tyrannical, it won't be able to carry out gun confiscation. And in the meanwhile, gun injuries are the leading cause of death among U.S. children, teens and high school students, and people who have access to firearm are at twice the risk of homicide and more than three times the risk of suicide compared to those who do not own or have access to firearms. There are more than 393 million guns in circulation in the United States (120.5 guns for every 100 people)²². We will see later in more detail why gun violence in the U.S. is a huge problem, but first we will introduce an examination of the three main ideological positions regarding the issue of guns. The first to be analysed

¹⁷ The data is obtained from a February 2018 research by the Economist and YouGov, available via the link d25d2506sfb94s.cloudfront.net/cumulus_uploads/document/h8n9gvrqyj/econTabReport.pdf.

¹⁸ Morning Consult + Politico, *National Tracking Poll*, May 2022, available at politico.com/f/?id=00000180-f931-de59-a7ec-f9357da90000&nname=playbook&nid=0000014f-1646-d88f-a1cf-5f46b7bd0000&nrid=0000015c-f033-d1a7-a95c-fa7fc5db0000&nlid=630318.

¹⁹ FBI, *About NICS*, at the website fbi.gov/services/cjis/nics/about-nics.

²⁰ For further information on guns laws, see the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) official website, available at the link atf.gov/rules-and-regulations/laws-alcohol-tobacco-firearms-and-explosives.

²¹ For more information regarding the organization's positions on different topics, see the NRA official website at nra.org/get-the-facts/.

²² For more information, see Small Arms Survey, *Estimating Global Civilian-Held Firearms Numbers*, June 2018, web.archive.org/web/20180620231909/http://www.smallarmssurvey.org/fileadmin/docs/T-Briefing-Papers/SAS-BP-Civilian-Firearms-Numbers.pdf.

will be that of the gun-rights advocates, i.e., those who do not negatively evaluate the presence of so many firearms in the U.S., and who rather support the elimination or reduction of the regulations that concern them. The second position is that of those who are dissatisfied with the American system as far as firearms are concerned, but think that the situation has gotten too out of hand, and can't change. And finally, the gun-control deployment is made up of those who negatively evaluate the presence of guns in the country, and who support those measures aimed at strictly controlling the use and sale of firearms.

6. *The Cultural Factor and the Problem of the Police*

The most popular argument of the gun-rights advocates²³ is represented by the saying “it’s not guns, it’s culture”: in their opinion, guns are not evil *per se*, but are instead just an instrument that can be used with bad or good intentions; in any case, the responsibility falls on the person, not on the gun. Gun rights proponents claim that the problem is, instead of the number of firearms in circulation, the presence of such a large number of criminals and criminal subcultures in America. They argue that a knife too can cause a great deal of damage, but nobody would think of blaming the knife for it; instead, the fault would lie with the people willing to use it with bad intentions. Therefore, they continue, taking the guns out of the hands of the “good people” would not improve the situation: they should be able to protect themselves, and that’s the solution to stop violence. In their opinion that’s precisely what happened in Texas, on December 29, 2019: an armed man entered the West Freeway Church of Christ in White Settlement and shot two people as service began; at that point, a “good man with a gun” used his own weapon and killed him. «When events arise, you’re going to do one of two things. You’re either going to step up and do what’s right or walk away. And I’m not one to walk away», he commented²⁴. Gun-rights advocates therefore believe that it is the level of violence in the U.S. that justifies the American situation: people need their weapons because of all the criminal subcultures that the country hosts.

But the question of whether we can really speak of an American cultural exceptionalism is an insidious and difficult one. If we start from the assumption that it’s possible to compare the U.S. to other western industrial nations because of their similarities – correlating dissimilar societies would make comparisons highly problematic – then the country really does stand out: countries comparable in terms of development have much lower assassination rates due to firearms. And in fact, the U.S. has 5% of the world population, but 40% of privately owned firearms. The country stands out even when considering its Constitution²⁵: as of today, almost no country in the world (except for Mexico, Guatemala, Haiti) has in its constitution a formulation of a citizens’ right to arms. But it is also true that there are other countries that have a very high rate of private firearms possession. And yet, their rates of gun violence are much lower than those of the

²³ Author’s interview to Robert Martin, ex chief of police in Alpine, Texas.

²⁴ Frank Heinz, NBCDFW, ‘*Good guy with a gun’ who stopped church gunman receives Texas’ highest honor*, 13 January 2020, nbcdfw.com/news/local/man-who-took-out-church-gunman-to-receive-states-highest-civilian-honor/2290236/.

²⁵ Constitutional Design Group, *Right to Bear Arms report*, May 2008, available at comparativeconstitutionsproject.org/files/cm_archives/right_to_bear_arms.pdf?6c8912.

U.S. While gun-rights advocates point at culture to explain this fact, the solution might not be as straightforward. Switzerland, for example, not only has a significantly lower number of firearms per person, but we should also take into consideration that most guns in Switzerland are in the hands of people with extensive military training, that automatic weapons are banned, that sale of ammunition is restricted, that those who wish to purchase a gun must get a permit-to-purchase issued by the police (who will thoroughly investigate the applicant's criminal records, addiction problems, psychiatric condition, and so on)²⁶. Therefore, although a culture of responsible gun ownership (or lack thereof) can surely be influential, it seems like, firstly, there is a direct correlation between the number of guns in a country and the rate of gun-related violence (in fact, not surprisingly, Switzerland still has the highest rates of gun violence in Europe), and secondly, the rules in force in a country can greatly influence gun violence rates, with the United States being an atypical example of a country with a high gun presence combined with a not so efficient regulatory system.

However, it is often unclear to the European public why a population could have such a great desire to arm themselves, rather than rely on the police. There are multiple answers for this question: for hunting, for protecting themselves and their families from criminals, for protecting themselves and their families from the government (and sometimes the police themselves).

Gun-control advocates often argue that the average citizen is not prepared to properly handle a situation requiring deadly force in self-defence: they lack the training and the temperament necessary to act responsibly in such a situation. They also argue that genuine cases of successful self-defence are rare, and anyway not worth the carnage caused by the widespread availability of guns that America has. According to gun-rights advocates²⁷, that is simply not true: they affirm that defensive gun use, including brandishing firearms to scare criminals away, is very much exploited and useful. But at the same time, they admit that many estimates²⁸ on this are controversial on the basis of a presumed pro-gun bias and are also highly dubious. Still, according to them, we might have to consider that strict limitations on gun ownership or the right to self-defence might have the consequence of increasing America's homicide rate. Indeed, in some surveys felons have indicated that they have been deterred by armed citizens, and that they often do what they can to avoid houses whose occupants are known to be armed²⁹. The perception that firearms ownership stops a lot of crime is popular among the police too³⁰.

The desire to own weapons, particularly in the nation's more violent zones where the law has failed to protect the people, is strong. It is important to understand that some groups of citizens, especially minorities, feel like the government and law enforcement are not protecting them enough, leaving them with no choice but to take matters into their own hands. «State tyranny can come in other forms, including the deliberate refusal of

²⁶ See the *Order on weapons, weapon accessories and ammunition*, of July 2nd, 2008, available on the website of the Swiss confederation fedlex.admin.ch/eli/cc/2008/767/it.

²⁷ R.J. Cottrol, *Submission is not the Answer: Lethal Violence, Microcultures of Criminal Violence and the Right to Self-Defense*, in *University of Colorado Law review*, Vol.69, 1998.

²⁸ P.J. Cook, J. Ludwig, *Summary Report, Guns in America: Results of a Comprehensive National Survey of Firearms Ownership and Use*, Police Foundation, 1996.

²⁹ J.D. Wright, P.H. Rossi, *Armed and Considered Dangerous: A Survey of Felons and Their Firearms*, National Institute of Justice, 1994.

³⁰ Author's interview to Bill Henderson, detective in Huntingdon, Pennsylvania.

authorities to protect unpopular groups from violence by hostile majorities»³¹. Gun-rights advocates speak about the importance of a right to own arms for those who have long been denied the state's protection. Surely the rate of crime and violence in some American neighbourhoods and its impact for a significant part of the population are huge problems, so much so that homicide has become the leading cause of death of young black men³². And while supporters of firearms regulations contend that this has probably far more to do with the large number of firearms present in these neighbourhoods, gun-rights activists maintain that this catastrophe is linked with a longstanding mutual distrust between poor black communities and the police, sentiments that are fuelled by incidents of police brutality and by hostile encounters. Many residents of the most run-down neighbourhoods believe that the whole criminal justice system and the police are indifferent and unwilling to take action to protect them.

In addition to that, many complain about the alleged transformation of police officers into quasi-soldiers, backed up by armoured vehicles and automatic weapons. While in the past the American military force was the militia, Americans have now learned to rely on a professional police force. Now, the argument goes like this: given that the purpose of the Second Amendment was to provide a popular check against a potentially tyrannical government, isn't it true that this professionalization of community and national security makes the right to own arms even more important? And also: isn't the concept of a militia of the whole worth re-examining³³? Therefore, gun-rights activists go as far as to suggest that private citizens should not only be allowed to own weapons, but that they should also be encouraged to acquire proficiency in the use of arms in order to participate in the defence of the community or the nation (rather than relying on a professional military force, on a separate caste for "survival").

7. Self Defence against the Government and the Problem of Tyranny

There is another reason why gun-enthusiasts oppose disarming citizens. In their opinion, we can see from the many examples that the twentieth century offers us what happens when the state has an unchecked monopoly of force: several millions of people were murdered by their own governments. Although this could be considered a process of oversimplification or distortion of history, they nevertheless affirm that if only, when people like Hitler, Stalin, Mao and Pot Pot gained control of their national governments, there had been millions of armed and resisting citizens, things would have gone differently, and those dictators would not have become mass murderers. They are also convinced of the fact that the nations of the world should not make Americans apologize for their unique situation, but that they should instead learn from it, since the right of citizens to bear arms is a guarantee against an arbitrary government, a safeguard against tyranny.

And when faced with the argument that a population equipped with small arms would be unable to resist effectively to a modern military force, they respond that an armed

³¹ R.J. Cottrol, *Submission is not the Answer: Lethal Violence, Microcultures of Criminal Violence and the Right to Self-Defense*, cit., 848.

³² R.J. Cottrol, R.T. Diamond, *In the Civic Republic: Crime, the Inner City, and the Democracy of Arms – Being a Disquisition on the Revival of the Militia at large*, in *Connecticut Law Review*, No. 5, 2013.

³³ *Idem*, 1622.

population would work as a deterrence, and that it would help avoid such a situation in the first place. And to the argument that in contemporary America, with its democracy and open access to the legislatures and the courts, such considerations are out of place, they answer that even in Nazi Germany few people saw the dictatorship coming, until it was too late. The NRA insinuates that no nation is forever immune from the kinds of evil that have haunted humanity for thousands of years: for that reason, it is argued, people should not render themselves helpless.

From the early 1990s, though, this insurrectionist rhetoric started to attract all kinds of conspiracy theorists. Groups of men and women started to organize themselves to fight off the government, and even to prepare for an eventual invasion of the U.S. by the United Nations. They are united by a conspiratorial view of the government, which they claim is trying to take away their guns in order to subjugate the population (and eventually put in place a new genocide)³⁴.

8. *Guns are Here to Stay*

There is a group of people who don't necessarily cherish the fact that America is so full of firearms, and who are in favour of a series of measures of gun-control to stem the problem; but they are also convinced that taking guns away from the U.S. is simply impossible. Gun-rights advocates, it is argued, should stop being so stubborn and refusing to see how reasonable and needed gun-control measures are, and gun-control advocates should stop making absurd proposals that are not only impossible, but even damaging to the cause.

It is common for the American public and politicians to respond to shootings by asking for meaningful actions to improve the country's safety. For example, on December 14, 2012, after Adam Lanza took his mother's gun, entered the Sandy Hook Elementary School in Newton and killed twenty-six people (most of which were little kids), advocates of gun control answered by proposing to ban guns, and a Senator promised to introduce to Congress a proposal to re-enact an assault weapons law³⁵. On the other hand, the NRA also reacted as usual: after refusing to speak about the shooting for a whole week, LaPierre blamed everything (violent video games, the media, the lack of a better database of mentally ill people, and so on) but Lanza's access to guns for the Sandy Hook tragedy. He also said that the only answer to gun violence was more guns: in his opinion all Americans should arm themselves, and the teachers in the classrooms should be armed too, because a "bad guy with a gun" will only be stopped by a "good guy with a gun".

And yet proponents of firearms regulation argue that the "more guns, less crime" philosophy hasn't really worked that well to protect Americans. And it's also unrealistic to expect to have armed guards at every place where a mass shooting might occur. «Perhaps the mistake begins with the goal of preventing mass killings. [...] In America

³⁴ A. Winkler, *Gunfight: The Battle Over the Right to Bear Arms in America*, cit.

³⁵ There had been already, from 1994 to 2004, an assault weapon law: it was notoriously flawed. The law did not ban all semiautomatic weapons; it simply designated some semiautomatic firearms as "assault weapons" and it regulated or banned only those ones. But those weapons function identically to other semi-automatic rifles: they were characterized as "assault weapons" based almost entirely on their external attachments (which do not change how the gun operates); this means that such laws don't really affect the results of unlawful shootings. Also, since there are many modifications that can be made on weapons, those firearms can still be used when slightly modified.

guns are everywhere and easy for someone with a criminal intent to acquire. Those guns are here to stay, which means -awful as it is to admit- that mass shootings are here to stay as well»³⁶.

There are gun law reforms that hold promise on the front of helping to reduce the daily death toll from guns, for example universal background checks. This would certainly improve the situation, but proponents of this view warn that we should be realistic regarding what we can accomplish: criminals determined to obtain firearms will find other ways. So, the argument goes, it seems like even though some gun control measures would, even if only at the margins, help improve the situation, no reform can hope to make a serious dent in gun deaths. There are just too many guns and too many gun owners unwilling to give them up: other developed nations simply had adopted strict gun control before such a high number of firearms wound up in private hands. Guns are so common that European-style gun bans aren't possible: the vast majority of Americans would not comply with a law requiring them to turn in their guns.

Therefore, it is argued that the probability of getting rid of guns in America is zero. And yet, most gun deaths involve criminals shooting criminals, making it more a gang violence problem. In addition to that, more than half of all firearms fatalities each year are actually suicides. It is therefore claimed that because of this evidence and because we shouldn't blindly deny the existence of an American tradition to own and use guns, wanting to get rid of all guns in America not only is impossible, but it's also not a particularly good idea (plus, the NRA is far too powerful to allow that). Yet, the argument continues, gun control advocates latch onto any proposal popular enough to make it through the legislature, hoping to start a nationwide trend, but what they manage to achieve is something else, and it's more like a backlash: the gun-rights community sees ineffective gun laws as proof that gun-control advocates aren't interested in reducing crime, but in harassing lawful gun owners (and eventually laying the groundwork for disarmament). On the other hand, it is claimed that the "gun rights diehards" won't be dissuaded by the incredibly high murder rate of the country, and that they are committed to the idea that guns reduce crime. They won't admit that mass murderers and criminals aren't easily deterred by other people's guns, and that blindly arming everyone (teachers included) might not be the best solution. And the extreme version of the right to bear arms promoted by the NRA has hurt the organization's longstanding relationship with law enforcement. Policemen didn't appreciate, for example, when the NRA refused to support a law for banning the so called "cop-killer bullets" (bullets so strong that they can penetrate police vests), with the excuse, once again, that that could be the first step toward total gun confiscation.

Therefore, according to this view, both the extremes do not sound reasonable: some gun control advocates want complete disarmament, and some gun rights ones want no laws restricting their right to own weapons; instead, it is argued, it is important to realize that guns are "here to stay", and that while a middle way consisting in the implementation of reasonable gun control laws can improve the situation, there is no "once and for all" solution to America's gun problem.

³⁶ A. Winkler, *Gunfight: The Battle Over the Right to Bear Arms in America*, cit., 12.

9. *Gun-Control Advocates and the Problem of Gun Violence*

Finally, there's an ideological position that hasn't been investigated yet: regardless of how many guns there are in the country, the goal must still be to reduce their number (in addition to implementing new and better laws and also mandatory training), and eventually even disarmament. Those who adhere to this ideological alignment may be more or less skeptical about the possibility of obtaining results in this regard, but they are united in saying that criminals are not the problem: guns are, as they can be used in lethal confrontations, in mass shootings, to commit suicide, in domestic violence, and so on. And the government with its army won't ever fear some people with guns – but in the meanwhile, people are suffering actual, present damage in case of the eventual future occurrence of a government elected by the people and divided into separate branches becoming tyrannical. The truth is, it is argued, that there are too many guns, and that gun lobbies are way too powerful³⁷.

In the current state of affairs, it is as if we are dividing people between those who should be allowed to own firearms and those who shouldn't, and then saying that the goal is to make sure that the second category will be denied access to firearms as a consequence of a good regulatory system. However, according to one of the most prominent gun-control scholars, Carl Bogus, the situation is more complicated than that: even if there was a way of knowing clearly who the trustworthy people are and who the untrustworthy ones, it still wouldn't be possible to create a scheme that would allow us to distinguish between the two (and it would not prevent relatives from taking others' guns, as happened in the Sandy Hook tragedy). It seems like there are two models available, for what concerns guns: either everyone possesses a gun except those who can't, or no one does except those who can. The main difference between the two models is that under the second one there will be far fewer guns in circulation, and that makes all the difference in the world, since the only type of gun control that truly works is reducing the number of guns³⁸.

Carl Bogus focuses primarily on public handgun carrying. The Lott-Mustard study of 1996³⁹, according to which guns work as a deterrent, has long been discredited: more recent and accurate studies have shown how the implementation of right-to-carry law actually increases violent crime. If there are more guns in circulation, there are simply more chances of having episodes of violence happening. Cook and Donohue found⁴⁰ that right-to-carry laws increase firearm homicides by nine percent, while having no effect on homicides committed with other weapons.

More guns doesn't mean more protection: on the contrary, it is precisely this great presence of guns that must be called into question to explain the enormous loss of human life that America is witnessing. The darkest example of the violence that can result from

³⁷ Author's interview to Matt Bennett, co-founder and executive vice president of Third Way.

³⁸ C.T. Bogus, *The Hard, Simple Truth about Gun Control*, in *Guns in Law*, University of Massachusetts Press, 2019.

³⁹ J. Lott, D.B. Mustard, *Crime, Deterrence, and Right-to-Carry Concealed Handguns*, Coase-Sandor Institute for Law & Economics Working Paper, No. 41, 1996.

⁴⁰ P.J. Cook, J.J. Donohue, *Saving lives by regulating guns: evidence for policy*, in *Science*, No. 6368, 2017.

gun ownership is that of mass shootings⁴¹. In 2015 the Washington Post⁴² defined mass shootings as events where four or more people are killed, including the perpetrator; gang killings and killings provoked by other crimes (for example robberies) were not included. They identified 124 such events⁴³. Most of the weapons used were handguns, and it was possible to determine how the killers acquired 180 of them: the 78.3% of them were acquired legally. This begs the question: «can we create a system that will keep guns out of the hands of potential mass shooters while still allowing them to trustworthy people?»⁴⁴. Only twenty percent of mass shooters are suffering from serious mental illnesses; the rest of them may have personality or sociopathic disorders, but they know what they are doing. This means that they can't be identified. So, it is argued, it seems like trying to reduce mass shootings by improving the mental health system or the background check system is quite impossible: because most perpetrators do not suffer from serious mental illnesses, because few mentally ill perpetrators seek treatment, because even if they seek treatment, psychiatrists cannot know who's dangerous and who's not, and because even if we denied people identified as "dangerous" access to firearms, they could still find a way to buy them.

⁴¹ M. Bennett, *The Promise: The Families of Sandy Hook and the Long Road to Gun Safety*, The Brookings Essay, 2013.

⁴² C.T. Bogus, *The Hard, Simple Truth about Gun Control*, cit., 7, quoting research by Bonnie Berkowitz at al.

⁴³ A list of some of the most lethal mass shootings in the U.S. includes:

Austin, TX – 1966 – 18 dead, 32 wounded

McDonald's, San Ysidro, CA – 1984 – 22 dead, 19 wounded

Cleveland Elementary School, Stockton, CA – 1989 – 6 dead, 30 wounded

Luby's Cafeteria, Killeen, TX – 1991 – 24 dead, 20 wounded

Columbine High School, Littleton, CO – 1999 – 15 dead, 23 wounded

Virginia Tech, Blacksburg, VA – 2007 – 33 dead, 17 wounded

Safeway Parking Lot, Tucson, AZ – 2011 – 6 dead, 13 wounded

Sandy Hook Elementary School, Newton, CT – 2012 – 28 dead

Inland Regional Center, San Bernardino, CA – 2015 – 14 dead, 14 wounded

Emanuel A.M.E. Church, Charleston, SC – 2015 – 9 dead

Pulse Nightclub, Orlando, FL – 2016 – 50 dead, 53 wounded

Harvest Music Festival, Las Vegas, NV – 2017 – 59 dead, 441 wounded

Sutherland Springs, TX – 2017 – 26 dead, 20 wounded

Parkland, FL, 2018 – 17 dead, 17 wounded

Thousand Oaks, CA, 2018 – 13 dead, 18 injured

Tree of Life Synagogue, Pittsburgh, PA, 2018 – 11 dead, 6 wounded

Santa Fe High School, TX, 2018 – 10 dead, 13 wounded

Virginia Beach, VA, 2019 – 12 dead, 4 wounded

El Paso, TX, 2019 – 22 dead, 24 wounded

Dayton, OH, 2019 – 9 dead, 27 wounded

San Jose, CA, 2021 – 10 dead

Boulder, CO, 2021 – 10 dead, 2 wounded

Buffalo, NY, 2022 – 10 dead, 3 wounded

Robb Elementary School, Uvalde, TX, 2022 – 22 dead, 18 wounded

Data from Gun Violence Archive, *US Mass Shootings, 1982–2022*, using data from Mother Jones' Investigation. For more information see <https://www.gunviolencearchive.org/reports/mass-shooting>.

⁴⁴ C.T. Bogus, *The Hard, Simple Truth about Gun Control*, cit., 8.

Rather, as far as homicides are concerned, 79% of the murders committed in the US during 2020 (19,384 out of 24,576) involved a firearm⁴⁵. In total, during that year, 45,222 people died from gun-related injuries in the U.S. (including murders and gun suicides, unintentional deaths, deaths that involved law enforcement and those that happened in unknown circumstances; but excluding deaths in which gun-related injuries played a contributing but not principal role), with handguns being the most commonly used firearm.

But the largest category of gun violence is suicide: in 2020, 54% of all gun-related deaths in the U.S. were suicides. Far more people kill themselves with guns than are murdered with one: in 2020, 24,292 people committed suicide with guns, and 19,384 were killed by others⁴⁶. The problem is how lethal firearms are, compared to other suicide methods: about 85 percent of suicide attempts with firearms end in death. The most popular suicide method, which is drug overdose, is lethal in less than three percent of cases. And people who use guns, unlike those who take pills or inhale car exhaust or use razors, do not have time to reconsider. Many people go through periods of depression, and a gun is easy to grab and use; but once the trigger is pulled, there is no turning back. Thus, easy access to guns probably leads to suicides that might not otherwise happen⁴⁷.

Finally, the smallest category of gun fatalities is accidents: in 2020, 535 people died from unintentional shootings. These victims are oftentimes very young because it's usually toddlers who find a gun in the house who accidentally kill themselves, siblings, or playmates⁴⁸. It should also be mentioned that many shootings are not fatal: each year hospitals treat on average 71,000 nonfatal gunshot injuries, imposing a heavy financial cost on the U.S. health care system.

After having looked at this disastrous data, we should consider how many times guns are actually used in self-defence. According to the FBI, handguns were used in 215 justifiable homicides in 2011 (hence, they were used for self-defence and because of that someone was shot and killed): by applying the rule of thumb, there are five to seven non-fatal injuries for every fatal gun injury⁴⁹. In addition to that, there are surely occasions when brandishing a gun is enough to scare off someone: «nevertheless, comparing the number of justifiable handgun homicides to handgun murders is extremely useful in making a cost-benefit analysis of handguns in America. To repeat the figures, there were 215 justifiable homicides and 6,447 murders committed with handguns in 2015. Thus, 96.8 percent of all the killings committed with handguns were murders»⁵⁰.

But of course, many Americans keep their guns because they make them feel safe anyway. Yet a study has shown that for each incident in which a gun in the home was used to shoot an intruder, there are four accidental shootings of either members of the household or their guests, seven criminal assaults or homicides, and eleven attempted or

⁴⁵ Pew Research Center, *What the data says about gun deaths in the U.S.*, J. Gramlich, February 2022, available at [pewresearch.org/fact-tank/2022/02/03/what-the-data-says-about-gun-deaths-in-the-u-s/](https://www.pewresearch.org/fact-tank/2022/02/03/what-the-data-says-about-gun-deaths-in-the-u-s/).

⁴⁶ *Ibidem*.

⁴⁷ Harvard Public Health, Special Report by Madeline Drexler, *Guns & Suicide: The Hidden Toll*, 2021, hsph.harvard.edu/magazine/magazine_article/guns-suicide/.

⁴⁸ C.T. Bogus, *The Hard, Simple Truth about Gun Control*, cit.

⁴⁹ *Idem*, 11.

⁵⁰ *Idem*, 12.

committed suicides⁵¹. This shows, according to gun control advocates, the naivete of the belief that “when guns are outlawed, only outlaws will have guns”. Hence, for Bogus and many others who favor strict regulation of firearms, especially pistols, Americans wouldn’t be protected from gun violence even if the basic regulatory model was improved as much as possible, and the good guy/bad guy model is never going to work.

As Bogus affirms, gun control advocacy groups try to content themselves with fighting off the radical proposals of the NRA, or with proposing some new regulations. The more extreme the NRA gets, the more moderate gun control organizations become, perhaps not to scare off the large part of Americans who are in favour of firearms ownership. They have even started to use the term “gun safety” instead of “gun control”, and many have given up on the goal of taking guns away from America.

Indeed, it is interesting to notice that organizations such as Cease Fire PA, the biggest organization advocating firearms control in Pennsylvania, refuse to take a position on whether not having guns at all would be better or not⁵². The organization starts from the assumption that firearms are simply going to stay, and does not ask for total disarmament, but instead focuses on what can realistically be changed. Many gun-control organizations have simply given up on the goal of taking guns away from the country, and even argue that it’s often bad firearms regulation, and not firearms ownership per se, that creates tragic situations.

The result is that in 1959, the Gallup Poll reported that 60% of Americans favoured banning handguns. By 1975, that percentage was 41%. By 2008, only 29% of Americans thought that handguns should be banned. But if we want to make America safe, Bogus explains, there is only one thing to do, regardless of how unpopular it has become: a decades-long campaign to reduce the number of handguns in circulation. This is a message that many Americans haven’t even heard, because gun control advocates had led them to believe that less “draconian” measures are available. But, he argues, we need to tell the simple, hard truth, because the moderate approach hasn’t led to an improved situation: «The choice is not whether America will have truly effective gun control today. It cannot. That does not mean that nothing can be done under the present system [...]. Nevertheless, our present system is so fundamentally flawed that it can never be truly effective [...]. The public, politicians, and judges can all be educated. That must begin, however, with telling the hard, simple truth about gun control»⁵³.

10. Biden and the Future of the Country

On Biden’s website⁵⁴ it’s possible to read that the President knows and is concerned about the fact that gun violence is a “public health epidemic,” that kills approximately 40,000 people every year, and wounds many more. It is also explained that Biden has taken on the NRA on the national stage and won twice (when he secured the passage of the Brady Act in 1993 and of the ten-year bans on assault weapons in 1994). Following this, there’s a list of constitutional, “common-sense” gun safety policies that the President

⁵¹ D.A. Henigan, *“Guns Don’t Kill People, People Kill People” And Other Myths About Gun Control*, Beacon Press, 2016.

⁵² Author’s interview to Adam Garber, executive director of Cease Fire PA.

⁵³ C.T. Bogus, *The Hard, Simple Truth about Gun Control*, cit.

⁵⁴ See Biden-Harris official website, available at the link joebiden.com/gunsafety/.

would like to implement. The list includes more than 30 proposed policies, and they space from banning assault weapons, to requiring more background checks, to addressing the “deadly combination” of guns and domestic violence, to developing smart guns (which would allow only authorized users to fire a gun, because they require a fingerprint match before use), to tackling urban gun violence, to addressing the epidemic of suicides, to supporting gun-violence survivors, and much more.

The NRA, in the meanwhile, is going through a rough time. In 2020, the New York state Attorney General Letitia James sued the organization and four of its current and former officials. New York’s legal authorities allege that the NRA had improperly made millions of dollars in payments to benefit its executives, disguising them as business expenses. LaPierre, who has led the NRA for the last three decades, is now being investigated and accused of fraud. Not only is the organization accused of having improperly spent its funds to benefit its executives, but also of receiving benefits from other organizations and of failing to disclose all these transactions (for example by trying to disguise trips to the Bahamas as business expenses)⁵⁵. At that point, the NRA filed for bankruptcy, which is a way of halting pending litigation while obtaining more time to pay off creditors. But in May 2021 a federal judge dismissed the NRA’s bankruptcy case after finding that the organization did not file it in good faith. Since the NRA is no longer in bankruptcy, that means that all the lawsuits that were pending before can now resume their course.

But in the summer of 2022 there were further and more important events that brought great news to the discourse on the right to arms. In May, ten people (including the security guard) were killed and other three injured in a supermarket located in Buffalo, New York. The shooter Payton S. Gendron, who livestreamed the attack on Twitch, is an 18-year-old who identifies as a white supremacist⁵⁶. Only ten days later, an even greater tragedy occurred at Robb Elementary School in Uvalde, Texas. Another 18-year-old, Salvador Ramos, shot his grandmother at home, entered the school, shut himself in a classroom, and killed two teachers and nineteen little children (plus, other seventeen people were wounded)⁵⁷. These catastrophic events, added to the many other school shootings⁵⁸ that

⁵⁵ C.D. Leonnig, T. Hamburger, *New York attorney general seeks to dissolve NRA in suit accusing gun rights group of wide-ranging fraud and self-dealing*, The Washington Post, August 2020, available at [washingtonpost.com/politics/nra-lapierre-ny-attorney-general/2020/08/06/8e389794-d794-11ea-930e-d88518c57dcc_story.html](https://www.washingtonpost.com/politics/nra-lapierre-ny-attorney-general/2020/08/06/8e389794-d794-11ea-930e-d88518c57dcc_story.html); also, see *State of New York v. National Rifle Association – Summons and Complaint*, at ag.ny.gov/sites/default/files/summons_and_complaint_1.pdf.

⁵⁶ In his manifesto, he expressed great concern that white birth rates are so low; in his mind, immigrants pouring across the U.S. borders are going to replace the white people, who are failing to reproduce. Payton dreams of a world where each race stays in its country of origin, without mixing with others. And to stop what he sees as ethnic, cultural, and racial replacement (in short, what he calls white genocide), he decided to act in order to incite violence and retaliation and to add momentum to this peculiar period of history, further polarizing society.

⁵⁷ Ramos, a high school dropout with no criminal record or mental health history, announced the imminent massacre on social media, but was killed while trying to escape, and his motive remains unknown. Also, the shooter managed to stay inside the school for an extremely long period of time before being shot by members of the United States Border Patrol Tactical Unit (BORTAC). This raised many critics regarding the actions of law enforcement, who waited on-site for more than an hour before entering the building.

⁵⁸ Education Week’s 2022 School Shooting Tracker, *School Shootings This Year: How Many and Where*, updated: November 18, 2022. Available at <https://www.edweek.org/leadership/school-shootings-this-year-how-many-and-where/2022/01>. In June, there had been approximately 30 school shootings so far. As of November, the number rose to 46.

had occurred in the same year, invigorated the discussion on American gun culture and violence.

Reactions from Democrats and Republicans have been significantly different. On the one hand, the majority of Republicans remained united in their refusal to support gun control measures. U.S. Senator Ted Cruz argued that each time a massacre happens, Democrats and the media try to politicize it, exploit it, and use the momentum to advance their political agendas, whereas in his opinion “restricting” people’s constitutional rights will do nothing to prevent crime. Therefore, following the popular pro-gun argument previously analysed, many within the Republican party seem to think that the solution lies in having more “good guys with guns”, ready to respond when needed. Instead of gun control measures, it is argued, we should focus on increasing security measures in schools: that means, arming teachers, having more police patrolling the schools, and officers restricting entry to buildings⁵⁹.

On the other hand, Democrats tried once again to push for more and better gun control. Following the Uvalde shooting, an anguished Joe Biden called for new restrictions on firearms, asking why Americans are willing to live with this carnage and to keep letting this sort of things happen. In every nation, he argued, mentally unstable people, or simply people filled with anger for some reason, can be found; but no other industrialized nation has to deal with the level of violence present in the United States. And, he continued, we cannot pretend that this has nothing to do with the fact that, in America, an 18-year-old kid can just enter a gun store and purchase assault weapons. «We as a nation have to ask: when in God’s name are we going to stand up to the gun lobby? When in God’s name do we do what we all know in our gut needs to be done?»⁶⁰. Barak Obama commented the events too, arguing that the U.S. is paralysed by a gun lobby and a party that has no interest in preventing these tragedies from happening.

Still, following these tragedies, the fate of gun control remained uncertain⁶¹. Indeed, in 1968, in 1993, and in 1994 (when the three major guns laws in American history were implemented) Democrats controlled all the three branches of government. Biden’s party, on the other hand, had slim control of Congress (at least sixty votes in the Senate would be necessary for passing legislation). Thus, until the recent series of events, Democrats have not been able to garner enough Republican votes to pass gun control legislation.

But finally, a month after the Uvalde shooting, Congress passed the most significant federal gun reform legislation in nearly three decades, which was signed into law by President Biden: the Bipartisan Safer Communities Act. Although many believe that the law contains mostly modest provisions, its passage determines an extremely important political development. The law implements several changes regarding school safety, the mental health system, and “gun safety”. The most important provision of the law is aimed at closing the “boyfriend loophole”, which allowed people with restraining orders, abusive ex-partners and stalkers to have access to guns. Another important provision

⁵⁹ J. Fechter, *Top Texas Republicans resist gun control and push for more armed teachers and police at schools in wake of Uvalde shooting*, The Texas Tribune, May 2022, at texastribune.org/2022/05/24/texas-republicans-uvalde-gun-control/.

⁶⁰ President Joe Biden spoke from the Roosevelt Room on May 24, following the Robb Elementary School mass shooting. The full speech is available at The Washington Post website [washingtonpost.com/video/politics/president-bidens-full-speech-following-texas-school-shooting/2022/05/24/b8d0ffe6-9158-4708-9a6d-eb01e1a17fbd_video.html](https://www.washingtonpost.com/video/politics/president-bidens-full-speech-following-texas-school-shooting/2022/05/24/b8d0ffe6-9158-4708-9a6d-eb01e1a17fbd_video.html).

⁶¹ L. Mascarò, *Will Congress act on guns after Sandy Hook, Buffalo, Uvalde?*, Associated Press News, May 2022, at apnews.com/article/uvalde-texas-school-shooting-gun-politics-0a290e15634cf11aa0faa53ed44caeb0.

concerns the allocation of funds to states to implement red flag laws (which make it possible to confiscate firearms from people deemed dangerous by a judge). The law also requires that more thorough checks be made for gun purchasers under 21, and intends to dedicate funds to help school safety and mental health programs⁶².

But the importance of this law is double fold. The Bipartisan Safer Communities Act was passed almost at the same time as what is considered a great setback for gun-safety: on June 23 the United States Supreme Court struck down a New York law concerning the conceal-carry of firearms. Indeed, the State of New York had a century-old law that required the issuing of a permit for whoever wanted to conceal-carry; the applicants had to demonstrate to have both a proper cause and a good moral character. The Court (following a broad interpretation of the Second Amendment) ruled with a 6-3 decision that the New York State's system violated the Second Amendment, therefore imperilling other similar laws around the country and establishing a constitutional right to carry firearms outside the home⁶³.

Still, Democrats were finally able to win support from some Republicans and to implement a landmark bill designed to restrict gun access for those who could threaten the American communities. Will this have relevant consequences? And will the NRA's legal and financial issues weaken the gun lobby enough to turn the public tide in favour of more restrictions on gun ownership?

Lastly, the midterm elections of 2022 held in November were marked by an unexpectedly tight head-to-head. The Democrats turned out to be more competitive than expected, managing to maintain control of the Senate, but also to greatly contain the loss of seats in the House of Representatives. On the one hand, a Republican-held House of Representatives means the GOP could paralyze Biden's legislative agenda. On the other hand, with these results, it will perhaps still be possible to carry out new legislation on guns over the next two years.

The issue of private ownership of guns remains one of the most controversial topics of contemporary America. Perhaps the gears of the political machine are starting to move, but it's going to be a very long and slow process. In the meanwhile, the debate will go on, and so will the damages caused by firearms. But so will the arguments put forward by scholars – and maybe after all, a cultural shift can happen.

⁶² M. Watkins, *Biden signs bipartisan gun measure negotiated by Sen. John Cornyn after Uvalde shooting*, The Texas Tribune, June 2022, at texastribune.org/2022/06/25/biden-gun-bill-ualde/.

⁶³ A. Liptak, *Supreme Court Strikes Down New York Law Limiting Guns in Public*, The New York Times, June 2022, at nytimes.com/2022/06/23/us/supreme-court-ny-open-carry-gun-law.html.