

## Gun Control-Part II

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In stark contrast to the controversy over gun control in recent years, there have been surprisingly few Supreme Court cases that dealt directly with the issue. For 217 years the Supreme Court held that the 2<sup>nd</sup> Amendment only constrained the federal government, not the states. Cases like *United States v. Cruikshank* (1875) and *Presser v. Illinois* (1886) continued to affirm that view.

It was not until 1934, in response to the rise of gangster culture and the lawlessness it sparked, the federal government stepped in with the National Firearms Act. Using the government's basically unlimited taxing authority (Obamacare anyone?) the NFA enacted a heavy tax and registration requirement on the purchase of certain kinds of weapons, such as automatic machine guns, sawed-off shotguns and silencers. You could still own these weapons but they had to be registered, and the per-transaction tax (equivalent to about \$2525 in today's dollars) put them out of reach of most citizens interested in using them merely for self-defense. Non-compliance was a felony. Four years later the Federal Firearms Act of 1938 established the requirement to have a Federal Firearms License (FFL) to sell guns interstate and prohibited the license holder from selling to convicted felons. All transactions had to be recorded. JFK's assassination by Lee Harvey Oswald using a mail-order rifle, followed quickly by those of Martin Luther King and Robert Kennedy resulted in the 1968 Gun Control Act. License requirements were stiffened, more detailed records had to be kept, interstate handgun sales were restricted and more categories added to the list of people a licensee could not sell to. A key element outlawed the mail order sales of rifles and shotguns. The Crime Control Act of 1990 went so far as to direct the Attorney General to establish criminal penalties for possessing a firearm in a school zone, but was eventually found to be unconstitutional because it based its logic on the Commerce Clause. With the Supreme Court still insisting that the 2<sup>nd</sup> Amendment only applied to the federal government, the states enacted a sometimes puzzling array of state-level legislation. The Brady Handgun Violence Protection Act ("The Brady Bill") established the National Instant Criminal Background Check system. In 1994 an "Assault Weapons Bill" banned the manufacture, possession and importation of certain weapons and large-capacity ammunition magazines. This legislation expired 10 years later and a renewal is now being considered in the wake of Sandy Hook.

Finally in 2008, in *McDonald v. Chicago*, the Court ruled that the incorporation doctrine (we'll return to this contrived doctrine of the Court in a later essay) made the 2<sup>nd</sup> Amendment also apply to the states thus rendering invalid much state and local firearm legislation that had made it essentially impossible to "bear arms" in some localities. The same year, in *District of Columbia v. Heller*, the Supreme Court finally (and for all time, one hopes) settled the issue of whether the right to bear arms is a collective right based on a militia purpose or an individual right (as they decided). Justice Scalia's majority opinion should be read by anyone interested in the Founder's view on the issue.

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