



Preface

This textbook's subject matter has grown dramatically since the first edition was published in 2012. During those six years, Second Amendment litigation has proliferated and the task of framing the canon of sources has become more demanding. Accordingly, much material from the first edition has been condensed or moved to the online chapters (available at firearmsregulation.org).

New material in this edition includes many important recent cases, new developments in social science, and additional historical material that has played an important role in litigation over the evolving constitutional right to arms.

The book is intended to serve as a treatise as well as a casebook. It has become a reference source in litigation, and has been cited in judicial opinions and briefs. To provide starting points for research by professors, judges, students, and other scholars, we cite many primary sources as well as the most important modern scholarship.

As with the first edition, the material in this edition proceeds chronologically. This has proven a natural format for many law school teachers and researchers. However, the book is designed so that users can also choose their own path. Most chapters and parts are sufficiently modular that they can be detached and used as part of more general courses. For instructors who are interested in particular topics, this edition includes discrete treatments of purchase and sale regulations, gun shows, "assault weapons," nonfirearm arms, carrying arms, etc. We continue to use Connection Questions ("CQ") to signal questions that relate to other topics in other chapters.

Chapter 1 has been substantially changed. The first edition's Chapter 1 presented an introduction to firearms technology and an overview of gun regulation. The overview of regulation is now in Chapters 8 (federal) and 9 (state), while the explanation of various types of modern firearms and ammunition has been moved online. Instead, the opening chapter of this second edition is dedicated to a detailed treatment of the empirical social science and commentary surrounding gun ownership, gun use and gun crime. We have found that starting with a basic factual grounding in this material is hugely helpful to students, letting them engage in an informed way with the rest of the material in the course.

Chapters 2 through 7 are unchanged in subject matter since the first edition. However, those chapters have been qualitatively enriched with additional historical research, much of it new and original to this book. In particular,

Chapter 2 has a heavily expanded treatment of the historical right to arms in Great Britain — a topic that was not only important to the American Founders, but remains a part of modern judicial analysis of American rights. We made room for this new British material by moving non-British material (e.g., ancient Greece and Rome) to an online chapter.

Chapters 3 through 7 provide much new material and analysis relating to American history, especially on the colonial period, racial issues, and changing American law and culture in the first half of the twentieth century. All of the history chapters now include concise *technical* segments that explain the evolution of arms technology in each period, because those developments profoundly influenced arms law and culture.

Chapter 8's focus is federal gun regulation under the Gun Control Act of 1968. We greatly condensed the first edition's survey of now-obsolete cases in the decades preceding *Heller*. Along with Chapter 7's Parts C and D (on the National Firearms Act), Chapter 8 is a foundation for students who aspire to practice federal firearms law by advising clients or in criminal court — as many Assistant U.S. Attorneys and federal public defenders are called on to do at times.

Chapter 9 is new. It covers unique issues in state law. Forty-four states have their own constitutional rights to arms, with their own particular interpretations and issues. The chapter also includes a look at state weapons preemption laws.

Chapter 10 presents the modern foundational Second Amendment cases: *District of Columbia v. Heller* and *McDonald v. City of Chicago*. It is mostly the same as in the first edition. One way to read or teach from this book is to begin with *Heller*, in which Justice Antonin Scalia's majority opinion and Justice John Paul Stevens's dissent raise many pro/con arguments on legal history. When students then turn to the history chapters, they can read the historical materials in light of how the *Heller* Justices deployed them. Similarly, *McDonald*, which holds that the Fourteenth Amendment makes the right to arms enforceable against state and local governments, can be read immediately before reading Chapter 6, which covers the period from the Civil War to the end of the 19th century, including the rise and decline of Reconstruction.

The massive Chapter 11 covers the wealth of post-*Heller* Second Amendment case law in the lower courts. We have broken it down into six major topics, each of them suitable for a day or two of classes. For instructors looking for the substance of modern Second Amendment jurisprudence, this is where the action is.

As you will see, even the cutting-edge cases in Chapter 11 return again and again to the question of what the right to arms has been during the full sweep of Anglo-American history. As William Faulkner wrote, "The past is never dead. It's not even past." *Requiem for a Nun* (1951). Understanding the good and the bad parts of our collective past is essential to making the decisions that will shape our future.

This textbook is a starting point for discussion of major contemporary topics — such as regulations on the public carrying of handguns, prohibitions of particular arms, and so on. More broadly, the book invites the reader to consider the fundamental topic of Anglo-American political and legal structure: how to build and secure a society of ordered liberty. From the days of King Alfred the Great to the present, the details have changed, but the same question recurs: how do arms in the hands of individuals enhance — or endanger — community security, personal security, order, and liberty?