**The Regulation of Weaponry in Democratic Society**

**Syllabus**

**Spring Semester 2017**

**Professors James Jacobs & Eric Ruben**

**Week One: Introduction**

Required Readings

Nat’l Research Council of the Nat’l Acads., Firearms and Violence (2004), http://www.nap.edu/openbook.php?record\_id=10881&page=25 (read only the Executive Summary, Wilson Dissent and Response)

Philip J. Cook and Harold A. Pollack, Reducing Access to Guns by Violent Offenders, 3 Russell Sage Found. J. Soc. Sci. 2 (2017), http://www.rsfjournal.org/doi/pdf/10.7758/RSF.2017.3.5.01

Deborah Azrael, et al., *The Stock and Flow of U.S. Firearms: Results from the 2015 National Firearms Survey*, 3 Russell Sage Found. J. Soc. Sci. 38 (2017), http://www.rsfjournal.org/doi/pdf/10.7758/RSF.2017.3.5.02

Justin McCarthy, *More Than Six in 10 Americans Say Guns Make Homes Safer*, Gallup (Nov. 7, 2014)

*Why Own a Gun? Protection is Now Top Reason*, Pew Research Ctr. (Mar. 12, 2013)

Joseph Blocher, *Firearm Localism*, 123 YALE L.J. 82, 90–107 (2013)

Jeff Asher and Mai Nguyen, *Gun Laws Stop at State Lines, But Guns Don’t*, FiveThirtyEight.com (Oct. 26, 2017), https://fivethirtyeight.com/features/gun-laws-stop-at-state-lines-but-guns-dont/amp/

Recommended Reading

Philip J. Cook and Kristin A. Goss, The Gun Debate: What Everyone Needs to Know (2014)

James B. Jacobs, Can Gun Control Work? (2004) (Chapter 2: Existing Gun Controls)

**Week Two: The Second Amendment**

Required Reading

*District of Columbia v. Heller*, 554 U.S. 570 (2008)

Eric M. Ruben & Darrell A.H. Miller, *Preface: The Second Generation of Second Amendment Law & Policy*, 80 L. & Contemp. Probs. 1 (2017) (read only pp. 1-5)

Recommended Reading

Reva Siegel, *Dead or Alive: Originalism as Popular Constitutionalism in Heller*, 122 Harv. L. Rev. 191 (2008)

Joseph Blocher, *Categoricalism and Balancing in First and Second Amendment Analysis*, 84 N.Y.U.L. REV. 375, 379 (2009)

J. Harvie Wilkinson, *Of Guns, Abortion, and the Unravelling Rule of Law*, 95 Va. L. Rev. 253 (2009)

Don Kates, *Handgun Prohibition and the Original Meaning of the Second Amendment*, 82 Mich. L. Rev. (1983)

**Week Three: The Second and Fourteenth Amendments**

Required Reading

*McDonald v. City of Chicago*, 561 U.S. 742 (2010)

Recommended Reading

Adam Winkler, Gun Fight: The Battle Over the Right to Bear Arms in America, 123-148 (2011) (chapter titled “Civil War”)

Nick Johnson, *Firearms Policy and the Black Community: An Assessment of the Modern Orthodoxy*, 45 Conn. L. Rev. 1491 (2013)

Darrell A.H. Miller, *Retail Rebellion and the Second Amendment*, 86 Ind. L. J. 939 (2011)

**Week Four: Self-defense and weaponry**

Required Reading

*District of Columbia v. Heller*, 554 U.S. 570, 592-95 (2008)

Darrell A. H. Miller, *Self-Defense, Defense of Others, and the State*, 80 LAW & CONTEMP. PROBS. 85 (2017)

Joshua Stein, *Privatizing Violence: A Transformation in the Jurisprudence of Assault*, 30 L. & Hist. Rev. 423 (2012)

**Week Five: Prohibiiting “Bad Guns” and Firearms Accessories: Machine Guns, Short-Barreled Shotguns, Silencers, “Saturday Night SSpecials,” “Assault Weapons” & Bump Stocks**

Required Reading

*District of Columbia v. Heller*, 554 U.S. 570, 621-625, 627 (2008) (discussion of *Miller* and two paragraphs beginning “We also recognize another …”)

*New York State Rifle & Pistol Assoc. v. Cuomo*, 804 F.3d 242 (2d Cir. 2015)

*Friedman v. City of Highland Park***,** 784 F.3d 406 (7th Cir. 2015)

*Kolbe v. Hogan*, 849 F.3d 114 (4th Cir. 2017) (en banc)

James B. Jacobs, *Why Ban “Assault Weapons”?*, 37 Cardozo L. Rev. 681 (2015)

Ashley Cannon, *Mayhem Multiplied: Mass Shooters & Assault Weapons*, Citizens Crime Commission of NYC (2017), http://www.nycrimecommission.org/MayhemMultiplied.pdf

**Week Six: Regulating Weapons Other Than Firearms: Knives and Non-Lethal Weapons**

Required Reading

Eugene Volokh, *Nonlethal Self-Defense, (Almost Entirely) Nonlethal Weapons, and the Rights to Keep and Bear Arms and Defend Life,* 62 Stan. L. Rev. 199 (2010)

*Commonwealth v. Caetano*, 470 Mass. 774 (2015) (stun guns)

*Caetano v. Massachusetts*, 136 S.Ct. 1027 (2016) (stun guns)

*State v. DeCiccio*, 315 Conn. 79 (2014) (dirks and police batons)

*City of Seattle v. Evans*, 184 Wash.2d 856 (2015) (kitchen knives)

Recommended

James B. **Jacobs**, James. “The Regulation of **Personal Chemical Weapons**: Some Anomalies in American Weapons Law.” University of Dayton Law Review 15 (1989): .

**Week Seven: Right to Carry (Open and Concealed) —Constitutional Limits**

Required Readings

*District of Columbia v. Heller*, 554 U.S. 570, 581-92 (2008)

*Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012)

*Kachalsky v. County of Westchester*, 701 F.3d 81 (2nd Cir. 2012)

*Peruta v. County of San Diego*, 824 F.3d 919 (9th Cir. 2016) (en banc)

*Wrenn v. District of Columbia*, 864 F.3d 650 (D.C. Cir. 2017)

Recommended Readings

Darrell Miller, *Guns as Smut: Defending the Home-Bound Second Amendment*, 109 Colum. L. Rev. 1278 (2009)

Eugene Volokh, *The First and Second Amendments*, 109 Colum. L. Rev. Sidebar 97 (2009)

Darrell Miller, A Short Reply to Professor Volokh, 109 Colum. L. Rev. Sidebar 105 (2009)

**Week Eight: Recognizing Right to Carry — State Shall Issue Laws and Constitutionalizing**

Required Readings

Ali Rowhani-Rahbar, *Loaded Handgun Carrying Among US Adults, 2015*, 107 Am. J. Pub. Health 1930 (2017)

Nat’l Research Council of the Nat’l Acads., Firearms and Violence (2004), http://www.nap.edu/openbook.php?record\_id=10881&page=25 (read only chapter 6: Right-to-Carry Laws)

John J. Donahue et al., *Right-to-Carry Laws and Violent Crime: A Comprehensive Assessment Using Panel Data and a State-Level Synthetic Controls Analysis*, NBER Working Paper No. 23510 (June 2017)

Eric Ruben, When Guns Speak Louder Than Words, BrennanCenter.org (Aug. 17, 2017), https://www.brennancenter.org/blog/when-guns-speak-louder-words

Geoffrey R. Stone, The Lessons of Charlottesville: Speech and Guns, Huffingtonpost.com (Aug. 21, 2017), https://www.huffingtonpost.com/entry/the-lessons-of-charlottesville-speech-and-guns\_us\_599affa4e4b033e0fbdec648

H.R.38 - Concealed Carry Reciprocity Act of 2017, https://www.congress.gov/bill/115th-congress/house-bill/38/text?q=%7B%22search%22%3A%5B%22concealed+carry+reciprocity+act%22%5D%7D

Recommended Reading

Eric M. Ruben, *Justifying Perceptions in First and Second Amendment Doctrine*, 80 L. & Contemp. Probs. 149 (2017)

**Week Nine: Keeping Guns Out of the Hands of Dangerous and Unreliable Persons**

Required Reading

*District of Columbia v. Heller*, 554 U.S. 570, 626-27 (2008)

Kevin Marshall, *Why Can't Martha Stewart Have a Gun?*, 32 Harv. J. L. & Pub. Pol’y 695 (2009)

*Binderup v. Attorney General*, 836 F.3d 336 (3d Cir. 2016) (en banc)

*Tyler v. Hillsdale Cty. Sheriff’s Dept.*, 837 F.3d 678 (6th Cir. 2016) (en banc)

James B. Jacobs & Zoe Fuhr , *Preventing Dangerous Mentally Ill Persons From Obtaining and Retaining Guns: New York’s SAFE Act*, 14 Geo. J.L. & Pub. Pol'y 77 (2016)

Michael Luo, “Felons Finding It Easy To Regain Gun Rights,” New York Times <http://www.nytimes.com/2011/11/14/us/felons-finding-it-easy-to-regain-gun-rights.html>

**Week Ten: Efficacy of Background Checking**

Required Reading

Brady Campaign, *20 Years of Brady Backgrond Checks: The Case for Finishing the Job to Keep America Safer* (2014), https://www.bradycampaign.org/sites/default/files/Brady-20-years-report.pdf

Danielle, Kurtzleben, *Research Says Gun Background Checks Work, But They’re Not Everything*, NPR.org (January 9, 2016), https://www.npr.org/2016/01/09/462252799/research-suggests-gun-background-checks-work-but-theyre-not-everything

Matt Miller et al., *Firearm Acquisitions Without Background Checks: Results of A National Survey*, 166 Annals of Intern. Med. 233 (2017), http://annals.org/aim/fullarticle/2595892/firearm-acquisition-without-background-checks-results-national-survey

Alvaro Castillo-Carniglia et al., *Comprehensive Background Check Policy and Firearm Background Checks in Three US States*, 2017 Injury Prev. Online (Oct. 6, 2017)

James B. Jacobs & Zoe A. Fuhr, Potential and Limits of Universal Background Checking for Gun Purchasers,” 7 Wake Forrest Journal of Law & Policy 537 (2016) <https://wfulawpolicyjournaldotcom.files.wordpress.com/2017/06/jacobs_universal_background_checking.pdf>

Sheila Devan & Richard Oppel, “For the Military A Long History of Failure to Report Crimes,” New York Times <https://www.nytimes.com/2017/11/07/us/texas-shooting-background-checks.html>

**Week Eleven: Enforcement, Punishment, and Policy**

TBA

**Week Twelve: Criminal Laws Regulating Gun Use**

Required Reading

Saul Cornell, *The Right to Keep and Carry Arms in Anglo-American Law: Preserving Liberty and Keeping the Peace*, 80 L. & Contemp. Probs. 11 (2017)

N.Y. Penal Law §§ 120.14-15 (Menacing)

CA Penal Code § 417 (Brandishing)

18 U.S.C. § 924(c)(1)(A)

United States Sentencing Guidelines

§2A2.2(2).     Aggravated Assault

§2B1.1(15).     Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States

§2B2.1(3)-(4).     Burglary of a Residence or a Structure Other than a Residence

**§2B2.3(2).     Trespass**

§2B3.1(2).     Robbery

**§2D1.1(1).     Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy**

Recommended Reading

Bernard E. Harcourt, Guns, Crime, and Punishment in America (2003)

Benjamin Levin, *Guns and Drugs*, 84 Fordham L. Rev. 2173 (2016)

**Week Thirteen: Suicide and Guns**

Required Readings

Andrew Anglemyer, Tara Hovrath, & George Rutherford, *The Accessibility of Firearms and Risk for Suicide and Homicide Victimization Among Household Members: A Systematic Review and Meta-analysis*, 160 Annals Internal Med. 101 (2014)

Andrew Conner et al., *Public Opinion About the Relationship Between Firearm Availability and Suicide: Results From a National Survey*, Annals of Internal Medicine, 1-3 (Oct. 24, 2017)

Jeffrey W. Swanson, et al., *Implementation and Effectiveness of Connecticut’s Risk-Based Gun Removal Law: Does it Prevent Suicide?*, 80 J. Law & Contemp. Probs. 179 (2016)

**Week Fourteen: Politics and Culture**

Required Readings

Barry Bruce-Briggs, Great American Gun War, The Public Interest (1976), <https://www.nationalaffairs.com/public_interest/detail/the-great-american-gun-war>

Joseph Blocher, *Gun Rights Talk*, 94 Boston U. L. Rev. 813 (2014)

Mark R. Joslyn et al., Gun Ownership and Self-Serving Attributions for Mass Shooting Tragedies, 98 Social Sci. Quart. 429 (2017)

Matthew Lacombe, *This Is How the NRA ‘Politically Weaponized’ Its Membership*, WashingtonPost.com (Oct. 11, 2017), https://www.washingtonpost.com/news/monkey-cage/wp/2017/10/11/this-is-how-the-nra-politically-weaponized-its-membership/?utm\_term=.6007a0017e9e

Recommended Readings

Angela Stroud, Good Guys With Guns: The Appeal and Consequences of Concealed Carry (2016)

Richard Slotkin, Gunfighter Nation: The Myth of the Frontier in Twentieth-Century America (1992)

Dan Baum, Gun Guys: A Road Trip (2013)