CONTENTS

Preface	xx	xi
Acknowledgments	XXXU	rii
Chapter 1 Firearms Facts, Data, and Soci	al Science	1
A. Challenges of Empirical Assessments of F	Firearms Policy	1
B. American Gun Ownership		8
1. Gun Ownership by Number		8
2. Gun Ownership by State	1	14
3. Gun Ownership by Type	1	16
4. Gun Ownership by Demographics	1	16
5. Gun Ownership by Purpose	1	17
C. Defensive Gun Use: Frequency and Resu	ılts 1	19
1. Self-Defense and Victim Welfare: The	Risk of Armed Self-Defense 1	19
2. The Frequency of Defensive Gun Use	2	20
a. The National Crime Victimization S	Survey 2	21
b. Kleck & Gertz Survey	2	21
c. Other Surveys	2	23
D. Firearm Accidents	2	25
 Why Have Fatal Gun Accident Rates— for Children—Plunged? 	9	26
E. Firearm Suicide	2	28
F. Firearm Violent Crime	3	31
1. Homicides	3	31
2. Aggravated Assaults and Robberies	3	31
G. How Criminals Obtain Guns	3	33
H. Race, Gun Crime, and Victimization	3	38
William Oliver, The Structural-Cult A Theory of Black Male Violence	1	38
I. Youth Crime		12
J. Recent Downward Trend of Violent Crim		19
of the American Firearm Inventory		13
1. Some Statistics on the Decline in Viole	ent Grime 4	13

xi

FRRP_FM.indd 11 08-01-2022 12:38:20

xii		Contents
	2. Some Theories About the Cause of the Decline in Violent Crime	44
K.	Does Gun Ownership Reduce Crime?	47
	1. Firearms Ownership as a Factor Reducing Home Invasion Burglary	47
	2. Studies of Criminals and Deterrence	49
	3. Real-World Experiments in Gun Possession as a Deterrent to Crime	50
	4. Police Response as a Factor in the Decision to Own a Firearm	51
	5. Lawful Defensive Carry of Firearms	52
	a. Crime Outside the Home	52
	b. Do Concealed-Carry Laws Affect the Crime Rate?	53
L.	Does Gun Control Reduce Crime?	56
	1. Gun Control Laws and Violent Crime	57
	2. Rand Corporation Metastudy on Gun Control	58
	Rand Corporation, The Science of Gun Policy: A Critical Synthesis of Research Evidence on the Effects of Gun Policies in the United States	59
	3. The Argument for Disarming the Law-Abiding	66
M.	Mass Shootings	69
	1. Defining "Mass Shooting"	69
	2. Are Mass Shootings on the Rise?	71
	3. Comparative Data on Mass Shootings	73
	4. Mass Shootings and "Assault Weapons"	74
	5. Mass Shootings and Large-Capacity Magazines	77
	Exercise: Shotguns as "Assault Weapons"	82
	W. Hays Parks, Joint Service Combat Shotgun Program	83
Ch	apter 2 English Arms Rights, Duties, and Controls	87
A.	Anglo-Saxons, the Militia, and the Posse Comitatus	89
В.	The Responsibility to Possess Arms	93
	Statute of Winchester	
C.	The Responsibility to Bear Arms: Hue and Cry, Watch and Ward, and the <i>Posse Comitatus</i>	94
D.	The Codified Right to Resist Tyranny: Magna Carta	96
	Magna Carta	98
E.	Castle Doctrine: Semayne's Case	101
F.	Arms Carrying	105
	1. The Statute of Northampton	107
	Statute of Northampton	107
	2. Developments in Laws About Bearing Arms	109
	3. Sir John Knight's Case	112
	4. The Right to Carry Arms After 1686	114

FRRP_FM.indd 12 08-01-2022 12:38:20

Co	ontents	xiii
	5. American Application of English Law on Carrying	118
	6. Laws Against Armed Public Assemblies	121
G.	. Restrictive Licensing Attempted: The Tudors, Crossbows, and Handguns	121
	1. Longbows and English Liberty	122
	2. Henry VII and Henry VIII	122
	3. Edward VI	124
	4. Mary & Philip	124
	5. Elizabeth I	124
	a. Handgun Control	124
	b. Elizabeth's Militia	125
	c. Archery	126
	d. Elizabeth and Hunting	126
Н	. Disarmament Rejected: The Glorious Revolution and the Bill of Rights	126
	1. James I and Charles I: The First Stuarts	127
	a. Hunting	127
	b. Arms Restrictions	127
	c. Virginia and New England	128
	d. Gunpowder Monopoly, Saltpeter, and Urine Control	128
	e. The Militia	129
	2. The British Civil Wars and the Interregnum	130
	a. Arms and Ideology During the Civil Wars	131
	b. Arms and Arms Laws of the Interregnum	133
	3. Charles II and James II: Arms Prohibition and the Glorious	
	Revolution	134
	a. The Game Act of 1671	135
	b. The Glorious Revolution	135
	4. The Bill of Rights	137
	5. Legislation and Litigation After the Bill of Rights	139
	6. James Madison and Other Americans on the English Bill of Rights	143
I.	Arms Technology and Ownership in the United Kingdom	147
	1. Matchlocks and Wheellocks	147
	2. The Flintlock and the Brown Bess	148
	3. The Blunderbuss	149
	4. Breechloaders and Repeaters	149
	5. Firearms Prevalence	151
J.	The Eighteenth Century and Beyond	151
	1. Scottish Highlanders	152
	2. Ireland	154
	3. The Gordon Riots	155

FRRP_FM.indd 13 08-01-2022 12:38:20

xiv		Content
	4. The Nineteenth and Early Twentieth Centuries	157
K.	The Philosophy of Resistance	159
	1. Blackstone	159
	William Blackstone, Commentaries on the Laws of England	160
	2. John Locke	161
	John Locke, Second Treatise of Government	162
	3. Algernon Sidney	163
	4. Novanglus	165
	John Adams, Novanglus	166
Ch	apter 3 The Colonies	173
A.	Arms Rights in Colonial Charters	173
В.	Firearms Control in the Colonies	177
	1. Early Arms Mandates	177
	a. Colonial Statutes Mandating Arms Possession	177
	(i) Massachusetts Bay	177
	(ii) Plymouth	178
	(iii) Maryland	179
	(iv) Connecticut	180
	(v) New Hampshire	181
	(vi) Rhode Island	182
	(vii) New York	182
	(viii) New Jersey	183
	(ix) Virginia	183
	(x) North Carolina	184
	(xi) Delaware	185
	(xii) Pennsylvania	187
	(xiii) Overview	187
	b. Colonial Statutes Mandating Routine Arms-Carrying	189
	(i) Virginia	189
	(ii) Connecticut	190
	(iii) Massachusetts Bay	190
	(iv) Plymouth	190
	(v) Rhode Island	190
	(vi) Maryland	191
	(vii) South Carolina	191
	(viii) Georgia	191
	c. Freedom Dues for Indentured Servants	191

FRRP_FM.indd 14 08-01-2022 12:38:20

Coi	ntents	χı
	2. Early Firearms Regulation and Prohibition	193
	a. Safety Regulations	193
	b. Gun Restrictions on Blacks	194
	(i) Virginia	194
	(ii) Maryland	194
	(iii) Delaware	194
	(iv) Rhode Island	194
	(v) Georgia	195
	(vi) Slave Patrols	195
	(vii) Changes during Wartime	196
	c. Sporadic Disarmament of Dissidents	197
C.	Indians: Trade and Resistance	199
	1. European Relations with Indians	202
	a. New Spain: No Guns for You, Except Sometimes	202
	b. Russia: No Guns, Just Forced Labor	203
	c. New Sweden and the Delaware Indians: Progenitors of the American Backwoods Frontiersmen	203
	d. New Netherland: Reluctant Arsenal of the Northeast	205
	e. The United Kingdom and the Iroquois Confederation:	400
	A Powerful Alliance	207
	f. The French and Their Many Friends	208
	2. The American Colonies: Futile Gun Controls	210
	3. The Wampanoag and King Philip's War	212
	4. The Carolinas: The Disastrous Indian Slave Trade	214
D.	Personal and Collective Defense Ideology in Pre-Revolutionary	217
	America	
	1. The Boston Massacre Trial 9. The Coloniets' View of the English Bight to Arms	218 219
	2. The Colonists' View of the English Right to Arms	
	Samuel Adams, E.A., Boston Gazette, Feb. 27, 1769 3. Religion, Arms, and Resistance	220 221
		441
	Jonathan Mayhew, A Discourse Concerning Unlimited Submission and Non-Resistance to the Higher Powers: With Some Reflections on the Resistance Made to King Charles I and on the Anniversary of His Death	224
	Simeon Howard, A Sermon Preached to the Ancient and	
	Honorable Artillery Company in Boston	227
E.	Arms Technology, Tactics, and Culture in the Colonies	237
	1. How Common Were Firearms in America?	237
	2. American Arms	238
	a. Flintlocks	238

FRRP_FM.indd 15 08-01-2022 12:38:20

XV	i	Contents
	b. The Pennsylvania-Kentucky Rifle	238
	c. Breech Loaders and Repeaters	241
	d. Edged Weapons	241
	e. Armor	241
	f. Production Issues	242
	3. Colonial Militias and Temporary Armies	242
	a. Massachusetts	242
	b. Connecticut	245
	c. Plymouth	246
	d. New Hampshire and Maine	247
	e. Rhode Island	248
	f. Virginia	248
	g. South Carolina	250
	4. American versus English Militias	252
	5. Strengths and Weaknesses of the Colonial Militias	254
	a. Intercolony Cooperation	254
	b. Discipline	255
	c. Officer Quality	255
	d. Training	255
	e. Arms Possession and Proficiency	256
	6. A New Culture	257
Ch	apter 4 The American Revolution and Independence	261
A.	The British Crackdown	261
	1. America's Glorious Revolution	261
	2. The Anglo-American Alliance Against France in the	
	Eighteenth Century	264
	3. A Decade of Coercion, and then the Powder Alarm	267
	4. Disarmament Orders from London	274
	5. The Import Ban	275
	6. Calls for Defiance: Patrick Henry and the South	277
	Patrick Henry, The War Inevitable, Speech at the Second Revolutionary Convention of Virginia	278
	7. Defiance in Practice and the Independent Militias	281
В.	Arms and the American Revolution	283
	1. Gun Confiscation at Lexington and Concord	283
	2. Gun Confiscation in Boston	285
	3. Declaration of Causes and Necessity of Taking Up Arms	288
	The Declaration by the Representatives of the United Colonies of North America, July 6, 1775	288

FRRP_FM.indd 16 08-01-2022 12:38:20

Contents	xvi
4. Falmouth Destroyed	292
5. The Declaration of Independence	293
The Declaration of Independence	293
6. Thomas Paine on Self-Defense, Resistance, and Militias	297
7. Acquiring Arms and Ammunition in Wartime	299
8. Disarming the Enemy	300
9. The Militia, the Continental Army, and American Marksmanship	302
C. The Articles of Confederation	307
D. The Right to Arms, Standing Armies, and Militias in the Early State Constitutions and Statutes	308
1. South Carolina	309
2. Virginia	309
3. New Jersey	310
4. Pennsylvania	311
5. Delaware	312
6. Maryland	312
7. North Carolina	313
8. Georgia	313
9. New York	314
10. Vermont	314
11. Massachusetts	316
12. New Hampshire	318
13. Connecticut	319
14. Rhode Island	320
Chapter 5 The New Constitution	325
A. Standing Armies, Militias, and Individual Rights:	
The Constitutional Convention of 1787	326
3. State Ratification Conventions	331
1. Pennsylvania	331
2. Massachusetts	332
3. Maryland	333
7. Acquiring Arms and Ammunition in Wartime 8. Disarming the Enemy 9. The Militia, the Continental Army, and American Marksmanship C. The Articles of Confederation D. The Right to Arms, Standing Armies, and Militias in the Early State Constitutions and Statutes 1. South Carolina 2. Virginia 3. New Jersey 4. Pennsylvania 5. Delaware 6. Maryland 7. North Carolina 8. Georgia 9. New York 10. Vermont 11. Massachusetts 12. New Hampshire 13. Connecticut 14. Rhode Island Chapter 5 The New Constitution A. Standing Armies, Militias, and Individual Rights: The Constitutional Conventions 1. Pennsylvania 2. Massachusetts	334
5. Virginia	335
	342
	343
	345
7. North Carolina	347
Resolution of North Carolina's Proposed Amendments	347

FRRP_FM.indd 17 08-01-2022 12:38:20

xviii		Contents
8. Rhod	le Island	349
	Rhode Island Ratification Message	349
C. Comme	entary During the Ratification Period	350
1. The l	Federalist Papers	350
	The Federalist No. 29 (Alexander Hamilton)	<i>350</i>
	The Federalist No. 46 (James Madison)	<i>350</i>
2. Tenc	h Coxe	351
3. Othe	r Federalists	353
D. The Sec	cond Amendment	354
1. The 9	Second Amendment's Path Through Congress	355
2. Cont	emporaneous Commentary on the Second Amendment	359
E. Arms Te	echnology at the Time of the Second Amendment	368
F. Post-Rat	tification Legislation and Commentary	368
1. The l	Militia Acts	368
	First Militia Act of 1792	369
	Second Militia Act of 1792	<i>370</i>
2. St. G	eorge Tucker	375
a. Tu	acker's Blackstone	375
b. Tu	acker's Early Lecture Notes	378
	Exercise: Constitutional Drafting—Tyranny Prevention	379
Chapter 6	The Right to Arms, Militias, and Slavery in the Early Republic and Antebellum Periods	383
A Wars an	d Rumors of Wars	383
	Crisis of 1798-99	383
	Kentucky and Virginia Resolutions	385
	's Rebellion	386
4. The	Crisis of 1800	387
	Robert H. Churchill, Popular Nullification, Fries's Rebellion,	
	and the Waning of Radical Republicanism, 1798-1801	389
5. Nulli	fication and Interposition	390
6. The V	War of 1812	391
7. Texa	n Independence	393
8. India	ın Wars	394
a. Tr	ade and Frontiers	394
b. Wa	ars	397
c. Th	ne Second Seminole War and Indian Removal	398

FRRP_FM.indd 18 08-01-2022 12:38:20

Coı	ntents	xix
В.	Antebellum Case Law on the Right to Arms Under State and	
	Federal Constitutions	401
	1. A Right to Carry Weapons Openly for Self-Defense	403
	Nunn v. State	403
	2. The "Civilized Warfare" Test: Militia Weapons Only	410
	Aymette v. State	411
	3. A "General Right of Sovereignty" Subject to Legislative Discretion?	418
	4. The Use of Antebellum State Court Decisions to Interpret the Second Amendment	419
	5. Surety of the Peace Statutes	421
	Robert Leider, Constitutional Liquidation, Surety Laws, and the Right to Bear Arms	422
C.	Changes in Arms Technology	430
	1. Knife Controls	431
	2. Firearms Development and the Rise of Machine Tools	432
	a. The Federal Armories	432
	b. The American System of Manufacture	433
	3. Loading, Ignition, and Ammunition	434
	a. Mass Market Breechloaders	434
	b. Ignition	434
	c. Better Bullets	435
	4. The Demand for Accuracy	435
	5. Repeaters	436
	a. Repeating Handguns: Revolvers and Pepperboxes	436
	b. The Metallic Cartridge	436
	c. The Repeating Rifle	437
	6. Conclusion	437
D.	Arms and Southern Culture	438
E.	The Right to Arms versus Slavery	439
	1. Slavery in the Courts	442
	State v. Newsom	442
	Robert J. Cottrol & Raymond T. Diamond, "Never Intended to be Applied to the White Population": Firearms Regulation and Racial Disparity—The Redeemed South's Legacy to a	
	National Jurisprudence?	446
_	2. Slavery for Everyone: Fugitive Slaves and the <i>Posse Comitatus</i>	447
F.	Antebellum Legal Commentary on the Right to Arms	449
	1. William Rawle	449
	2. Joseph Story	450
	a. The Second Amendment in Story's Commentaries	451

FRRP_FM.indd 19 08-01-2022 12:38:20

хx		Contents
	b. The Second Amendment in Story's Familiar Expositionc. Houston v. Moore	452 453
Ch	Chapter 7 The War, Reconstruction, and Beyond	
A.	Disarmament of Whites and Armament of Blacks	455
В.	The Initial Response to Black Freedom	461
	1. The Black Codes	461
	Florida, An Act Prescribing Additional Penalties for the Commission of Offenses Against the State and for Other Purposes	462
	Mississippi, An Act to Punish Certain Offences Therein Named, and for Other Purposes	462
	Landry Parish, Louisiana, Ordinance of 1865	463
	2. The Ku Klux Klan and Other Extralegal Suppression of Freedmen	463
C.	The Congressional Response: The Fourteenth Amendment, the Freedmen's Bureau Acts, and the Civil Rights Act	465
	Thirteenth Amendment	468
	Civil Rights Act of 1866	468
	Second Freedmen's Bureau Act	469
	Fourteenth Amendment	470
	United States v. Cruikshank	471
D.	Indians	477
	1. The Civil War	477
	2. The End of the Plains Wars	478
E.	Labor Agitation and the Repressive Response	479
	Presser v. Illinois	480
F.	Nineteenth-Century Commentary	489
	1. Chief Justice Thomas M. Cooley	489
	Thomas M. Cooley, A Treatise on the Constitutional Limitations Which Rest upon the Legislative Power of the States of the American Union	490
	Thomas M. Cooley, The General Principles of Constitutional	150
	Law in the United States of America	491
	2. Other Commentary	493
	Joel Prentiss Bishop, Commentaries on the Law of Statutory Crimes	493
	Joel Prentiss Bishop, Commentaries on the Law of Statutory Crimes (2d ed.)	495
G.	Technological and Cultural Changes	496
	1. Ammunition	496
	a. Smokeless Powder	496
	b. Jacketed Bullets	497

FRRP_FM.indd 20 08-01-2022 12:38:20

Contents	xxi
2. Repeaters	497
3. The Box Magazine	498
4. Machine Guns and Automatics	498
5. Manufacturing	499
6. Changes in Hunting	499
7. Target Shooting	499
8. Shotgun Shooting	500
H. Late Nineteenth-Century State Laws and Cases	500
1. Tennessee	501
Andrews v. State	501
State v. Wilburn	507
2. Arkansas	511
3. Texas	513
State v. Duke	514
4. Florida, Vigilantism, Lynching, and Winchester Repeaters	519
a. Vigilantism	519
b. Lynching	520
c. Winchesters vs. Lynch Mobs	521
d. Florida's Statute on Handguns, Winchesters, and Repeaters	522
5. Kansas	524
City of Salina v. Blaksley	525
I. State Constitutions at the Turn of the Century	527
J. Self-Defense	529
1. The Self-Defense Cases	529
2. Self-Defense	532
3. Self-Defense by Prohibited Persons	533
4. Self-Defense Against Police Officers	533
5. Stand Your Ground	534
a. The Selfridge Case	536
b. The Zimmerman Case	537
Chapter 8 A New and Dangerous Century	541
A. Aliens	541
Patsone v. Pennsylvania	542
People v. Nakamura	543
B. Changes in the Militia and Other Federal and State Military Forces	547
1. The Organized Militia	547
a. Nineteenth-Century Background	547
b. The Original National Guard	548

FRRP_FM.indd 21 08-01-2022 12:38:20

xxii	Contents
c. The Dick Act and the Modern National Guard	548
2. The Unorganized Militia	549
a. Early Federal Programs to Arm and Train the Militia	550
b. Twentieth-Century Programs to Arm and Train the Militia	550
(i) The National Board for the Promotion of Rifle Practice	550
(ii) Guns in Schools	552
3. Other Federal and State Military Forces	553
a. The United States Armed Forces	553
b. State Defense Forces	554
c. Letters of Marque and Reprisal	554
C. Changes in Arms Technology	557
1. Manufacturing and Affordability	557
2. Semi-automatics	557
a. Handguns	557
b. Long Guns	558
3. Silencers/Suppressors	559
4. Machine Guns	560
5. What Lay in the Future	560
D. New Federal and State Laws	563
1. Social Background	563
2. Concealed Carry	566
3. The Uniform Firearms Act	566
4. Laws on Semi-Automatic and Pump-Action Firearms	568
5. National Law: The Mailing of Firearms Act	569
6. Congressional Legislation for the District of Columbia	570
7. National Law: The National Firearms Act and the Federal Firearm	ns Act 570
National Firearms Act of 1934	573
Federal Firearms Act of 1938	575
Sonzinsky v. United States	576
United States v. Miller	580
8. Two Early and Pivotal Lower Court Interpretations of Miller	587
Nicholas J. Johnson, Heller as Miller	588
United States v. Tot	590
E. National Firearms Act Regulation Today	592
1. The National Firearms Act Statute	592
2. NFA Arms	593
a. Machine Guns	593
b. Combinations of Machine Gun Parts and Conversion Kits	594

FRRP_FM.indd 22 08-01-2022 12:38:20

Contents	xxiii
c. Bump Stocks	596
d. Short Barreled Rifles	597
e. Short Barreled Shotguns	597
f. Silencers/Suppressors	598
g. Destructive Devices	598
h. "Any Other Weapons"	600
3. The NFA Transfer Procedure	601
4. Recent Growth in NFA Ownership	602
5. Modern NFA Cases	603
Staples v. United States	603
United States v. Thompson/Center Arms Company	614
F. Armed Citizens and the Second World War	619
1. The United States	619
a. The Property Requisition Act	619
b. The Militia	620
c. The Civilian Marksmanship Program	620
d. The Arsenal of Democracy	621
e. Rationing and Shortages on the Home Front	622
2. The United Kingdom	623
3. After the War	624
G. Individual and Collective Rights	626
Chapter 9 The Second Amendment and Contemporary Gun Regulation	629
A. The Social and Political History of the Right to Arms in the Modern En	ra 629
1. The Calm Before the Storm	630
2. Racial Tensions	630
3. Comprehensive National Gun Control	635
4. The Rise of the Modern Gun Control Movement and the	
Revolt at the NRA	637
5. Handgun Prohibition	639
6. The NRA Counteroffensive, and the Growing Sophistication of the Gun Control Lobby	641
7. George H. W. Bush	645
8. The Clinton Era	647
9. The Reemergence of the Second Amendment	649
10. Columbine and the 2000 Election	653
11. The Years Preceding Heller and McDonald	655
B. The Second Amendment in the Later Twentieth Century	657
1. Poe v. Ullman: The Right to Arms as a Liberty Interest?	659

FRRP_FM.indd 23 08-01-2022 12:38:20

xxiv	Contents
2. Defining "the People" in the Second Amendment	660
3. Gun Control and the Limits of Federal Power	660
a. Interstate Commerce and Lopez v. United States	660
b. Federalism and Printz v. United States	662
c. Modern Applications of the Twentieth Century Precedents:	
Firearms Freedoms Acts and Second Amendment Sanctuaries	664
C. Modern Federal Regulation of Firearms: The Gun Control Act	666
1. Overview of the Gun Control Act	667
a. Some Basic Rules	667
(i) Purchasing a Gun from a Commercial Dealer	667
(ii) Purchasing a Gun from a Private Seller	668
(iii) Purchases in Various Locations	669
(iv) Gun Shows	669
(v) Gun Sales Documentation	669
(vi) Curios and Relics	670
b. The Gun Control Act Statute	671
2. Due Process and the GCA	672
a. Right to Counsel	672
Lewis v. United States	672
b. Mens Rea and Rehaif	675
c. Extraterritoriality	677
3. Prohibited Persons	678
a. "Convicted in any court of, a crime punishable by imprisonment for a term exceeding one year" (g)(1)	678
b. "Fugitive from justice" (g)(2)	678
c. "Unlawful user of or addicted to any controlled substance" (g) (3)	678
d. "Adjudicated as a mental defective or has been committed to any mental institution" (g) (4)	679
e. Illegal or unlawful aliens; some nonimmigrant visa holders (g) (5)	680
f. "Discharged from the Armed Forces under dishonorable conditions" (g) (6)	680
g. "Having been a citizen of the United States, has renounced his citizenship" (g) (7)	681
h. Intimate party restraining order (g)(8)	681
i. "Convicted in any court of a misdemeanor crime of domestic violence" (g) (9)	682
j. "Under indictment for a crime punishable by imprisonment for a term exceeding one year" (n)	682
k. Limits on handguns for juveniles (z)	682

FRRP_FM.indd 24 08-01-2022 12:38:20

Contents	XXV
4. Regulation of Retail Sales of Ordinary Firearms	683
a. Regulation of Buyers	684
(i) Registration Records and Privacy	684
National Rifle Ass'n of America Inc. v. Reno	682
(ii) Gifts and Straw Purchases	689
United States v. Moore	689
b. Regulation of Sellers	696
United States v. Biswell	69
5. Private Sales and Loans: The Secondary Market and Gun Shows	698
SCOPE, Inc. v. Pataki	69
Chow v. Maryland	70.
6. Firearms Imports and "Sporting Use"	705
Gilbert Equip. Co. v. Higgins	702
7. GCA Penalties	710
a. Statutory Penalties in § 924	710
b. The Sentencing Guidelines	713
8. Restoration of Rights	714
9. Interstate Transportation of Firearms	716
Revell v. Port Authority of New York and New Jersey	710
D. Layers of Regulation: Agency Rules and Agency Guidance	721
E. Suing the Gun Industry and the Legislative Response:	5 01
The Protection of Lawful Commerce in Arms Act	725
City of New York v. Beretta U.S.A. Corp.	720
Chapter 10 The Right to Arms in the States	74 1
A. Modern State Constitutional Decisions	741
State v. Kessler	742
Arnold v. City of Cleveland	74
Norman v. State	75
B. Recent Changes to State Constitutional Right to Arms Guarantees	761
1. Louisiana	762
2. Missouri	762
3. Alabama	763
4. Iowa	763
State in the Interest of J.M.	76
C. State Firearms Preemption Laws	773
City of Cleveland v. State	77
D. Modern State Gun Control Laws	781
1. Purchasing a Gun	781
2. Gun Registration	782

FRRP_FM.indd 25 08-01-2022 12:38:20

xxvi	
3. Keeping a Gun at Home	783
4. Target Shooting	783
5. Hunting with a Gun, and the Right to Hunt	783
6. Carrying a Gun for Protection	785
a. At Home or in One's Place of Business or Automobile	785
b. Concealed Carry in Public Places	786
c. Open Carry in Public Places	787
7. Property Rights and Arms Rights	788
a. Zoning	788
b. Shooting Ranges	789
c. Parking Lots	790
Appendix: The Right to Arms in State Constitutions	791
Chapter 11 The Supreme Court Affirms an Individual Right to Arms	805
A. The Supreme Court Affirms an Individual Right to Keep and	
Bear Arms Against Federal Infringement	806
District of Columbia v. Heller	806
Comment: Corpus Linguistics and the Meaning of "Bear Arms"	861
B. The Supreme Court Incorporates the Right to Keep and Bear	0.00
Arms Against the States	866
Fourteenth Amendment Background	867
McDonald v. City of Chicago	868
Comment: Modes of Constitutional Interpretation and Second Amendment Models	930
Exercise: Constitutional Drafting—Originalism	935
C. Post-McDonald Supreme Court Cases	936
1. Maloney v. Cuomo: Nunchuks	936
2. Caetano v. Massachusetts: Electric Stun Guns	937
Caetano v. Massachusetts	937
3. New York State Rifle & Pistol Association v. City of New York: Stringent Transportation Regulations Challenge Rendered Moot	943
New York State Rifle & Pistol Ass'n v. City of New York	944
4. Dissents from Certiorari Denials	955
a. "Assault Weapon" Ban	956
Friedman v. City of Highland Park	956
b. Concealed Carry in Public	959
Peruta v. California	959
c. Public Carry Only When There Is "Justifiable Need"	963
Rogers v. Grewal	963

FRRP_FM.indd 26 08-01-2022 12:38:20

Co	ntents	xxvii
Ch	apter 12 Standards of Review	973
A.	Rules from Heller and McDonald	974
В.	The Two-Part Test	976
C.	Rules for Intermediate Scrutiny	981
	1. The Government Must Produce Substantial Evidence	981
	2. The Government Must Overcome Rebuttal Evidence	982
	3. The Government Must Prove That the Government Objective Is Achieved More Effectively Through the Regulation	982
	4. The Government May Not Suppress Protected Conduct in the Same Proportion as Secondary Effects	982
	5. The Government Must Choose Substantially Less	
	Burdensome Alternatives, if Available	983
	6. Speculation or Conjecture Do Not Suffice	983
	7. Time, Place, and Manner Restrictions Must Leave	983
D	Open Ample Alternative Channels The Two-Part Test vs. Text, History, and Tradition: Heller II	984
υ.	Heller v. District of Columbia (Heller II)	984
F	Intermediate Scrutiny in Action: Heller III and Murphy v. Guerrero	1012
Ŀ.	Heller v. District of Columbia (Heller III)	1012
	Murphy v. Guerrero	1012
	marphy o. Guerrero	1022
Ch	apter 13 Who? Bans on Persons and Classes	1039
A.	Domestic Violence Misdemeanants	1039
	United States v. Skoien	1039
В.	Persons Convicted of a Crime Punishable by a Felony Sentence of	
	Over One Year or a Misdemeanor Sentence of Over Two	1048
	Binderup v. Attorney General	1049
C.	Persons Under 21	1052
	National Rifle Association of America, Inc. v. Bureau of Alcohol, Tobacco, Firearms, and Explosives	1052
D.	Unlawful Aliens	1064
	United States v. Huitron-Guizar	1064
E.	The Formerly Mentally Ill	1068
	Tyler v. Hillside Cty. Sheriff's Dept.	1068
	Exercise: Litigation Practicalities	1087
	Exercise: Due Process	1087
F.	Persons Suspected of Being Dangerous	1091
	1. Red Flag Laws	1091
	2. Persons on Secret Government Lists	1093

FRRP_FM.indd 27 08-01-2022 12:38:20

xxviii	Contents
3. The Intoxicated	1094
4. Self-Bans	1095
G. Businesses	1097
Chapter 14 Where? Right to Carry	1101
A. Carrying Handguns for Self-Defense in Public Places	1101
Moore v. Madigan	1101
Woollard v. Gallagher	1109
Peruta v. County of San Diego and Young v. State of Hawaii	111e
Palmer v. District of Columbia and Wrenn v. District of Columbia: Public Carry in the Capitol	1118
Robert J. Cottrol & George A. Mocsary, Guns, Bird Feathers, and Overcriminalization: Why Courts Should Take the Second	
Amendment Seriously	1120
B. Location Restrictions	1123
1. Postal Service Property	1124
Bonidy v. United States Postal Service	1124
2. Other Location Restrictions	1134
a. National Parks	1134
b. Army Corps of Engineers Recreational Land	1135
c. Every Federal Government Building	1136
d. Parking Lots of Premises with Liquor Licenses	1136
e. Churches	1136
C. Schools	1138
Exercise: Campus Carry	1139
D. Stop-and-Frisk	1140
Terry v. Ohio	1140
United States v. Williams	1143
Exercise: <i>Terry</i> Stops and the Evolving Right to Keep and Bear Arms	1147
Chapter 15 What? Laws on Types of Arms	1149
A. "Assault Weapon" and Magazine Bans	1149
1. "Assault Weapon" Definitions	1150
2. The AR-15 and Other Named Firearms	1151
3. Legal Challenges to "Assault Weapon" and LCM Bans	1152
Kolbe v. Hogan	1153
Comment: "Assault Weapon" Lethality	1187
Comment: Mass Shootings	1194

FRRP_FM.indd 28 08-01-2022 12:38:20

Contents		xxix
В.	Ban on Assembly from Imported Parts	1199
C.	Nonfirearm Arms	1200
	State v. DeCiccio	1200
	1. Air Guns	1208
	2. Defensive Sprays	1209
	3. Knives	1209
	4. Martial Arts Weapons	1211
D.	New Technologies	1212
	1. Personalization Technologies, "Smart Guns"	1212
	2. Homemade Guns, Computer Numerical Control (CNC), and 3D Printing	1214
	3. Improved Triggers and Other Modifications	1220
E.	Bans by Other Means: Using General Laws or Approved Gun	1440
	Lists to Ban Firearms and Ammunition	1222
	1. Federal Consumer Product Safety Act	1222
	2. Toxic Substances Control Act	1223
	3. Massachusetts Consumer Protection Act	1224
	4. California's List of Permissible Handguns	1224
F.	Body Armor	1227
Ch	apter 16 How and Why? Other Restrictions	1231
A.	Child Access Prevention Laws	1231
	Commonwealth v. Runyan	1232
В.	Serial Numbers	1237
	United States v. Marzzarella	1237
C.	Waiting Periods and Licensing	1243
D.	Emergencies	1246
E.	Gun Control by Nonstate Actors	1251
F.	Training and Ranges	1257
	Ezell v. City of Chicago	1257
	Ezell v. City of Chicago (Ezell II)	1271
G.	Firearm Litigation for New Attorneys	1277
	1. Civil Compliance for Regulated Clients	1278
	2. Status of the Gun Cases	1280
	3. Status of the Person Cases	1281
	4. Resources and Pointers for Firearm Cases	1282
	5. Practice Pointers for Gun Cases	1283
	Concluding Exercises	1284
	Silveira v. Lockyer	1287

FRRP_FM.indd 29 08-01-2022 12:38:20

ONLINE

ONLINE		
Chapter 17	Firearms Policy and Status: Race, Gender, Age, Disability, and Sexual Orientation	
Chapter 18	International Law	
Chapter 19	Comparative Law	
Chapter 20	In-Depth Explanation of Firearms and Ammunition	
Chapter 21	Antecedents of the Second Amendment	
Chapter 22	Arms Laws of the United Kingdom	
Chapter 23	The Evolution of Arms Technology	
Table of Case	28	1293
Table of Authorities		1309
Table of Statutes, Constitutions, and Regulations		1351
Index		1373

FRRP_FM.indd 30 08-01-2022 12:38:20