



How America's Tradition of Localism Could Help Gun Control

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In its landmark 2008 decision in *District of Columbia v. Heller*, the United States Supreme Court held that the Second Amendment protects an individual right to keep and bear arms. But the Court also explained that, like all other constitutional rights, this “right secured by the Second Amendment is not unlimited.” Courts have subsequently worked to specify which kinds of firearms are protected for which groups of people – and to determine under what circumstances guns can be regulated. As issues are parsed, one has been too little explored: the question of whether some kinds of places, such as cities, can do more than others to regulate guns.

This omission is unnecessary and unfortunate. The Second Amendment can and should incorporate the longstanding and sensible practice of regulating guns differently in rural and urban areas. Firearm localism would help us move forward from the current stalled debate.

Recognizing the Urban-Rural Divide about Guns

Although most Americans agree on many Second Amendments precepts, “pro-gun” and “anti-gun” sentiments are not evenly distributed throughout the country.

- Rural areas are centers of both gun ownership and strong opposition to gun regulations. This is understandable, given that rural people enjoy hunting and other recreational gun uses. Such pursuits are primary reasons for gun ownership in rural areas, along with the desire of many people to have means of self-defense in sparsely populated areas where police take a long time to arrive.
- Yet gun violence exacts high human costs in cities, and hunting and other recreational uses for guns are less in vogue in urban areas. City-dwellers are less than half as likely as rural residents to own a gun, and they are twice as likely to support stronger gun controls.

Anyone familiar with today's gun control debate knows how difficult it has been to bridge the divergent values and perspectives of rural and urban residents. For many Americans, in fact, guns are not just a policy question; guns symbolize distinct cultural values and ways of life. This makes compromise – even reasoned argument – difficult to achieve, frustrating both sides.

Localizing Second Amendment Doctrine

Yet America's geographic divide about guns suggests a better way forward. One of the great virtues of the U.S. political system, after all, is the space it offers for local self-governance. Under American traditions of local rule, if people in Montana want to shoot elk with rifles, that should not prevent people in Manhattan from trying to keep residents from shooting each other with handguns. Manhattanites should be able to establish gun regulations to address their own local issues without weakening rural gun rights, either in Montana or in rural upstate New York.

Of course, just because something might make for sensible policy does not make it constitutional. From the perspective of the Second Amendment, we must ask not what kinds of gun control are desirable, but what kinds are *permissible*. In the wake of *Heller*, at least two approaches to the issue of permissibility have emerged:

- The majority of the Supreme Court Justices ruling in *Heller* approved “longstanding prohibitions” such as the possession of firearms by felons and the mentally ill, suggesting that well-established laws have a special claim to constitutionality. And no characteristic of gun control in America is more “longstanding” than the stricter regulation of guns in cities. At the time of the nation's founding, major cities like Boston, Philadelphia, and New York heavily regulated firearms. Boston, for example, prohibited people

from keeping loaded guns at home. Similarly, in the supposedly “wild” nineteenth-century West, frontier towns had gun control laws stricter than any jurisdiction today. Even as guns were used for hunting and self-defense in the countryside, visitors to Dodge City and Tombstone had to check their guns at the city limits.

- Another line of argument was developed by Supreme Court Justice Breyer in his dissent to the majority opinion in *Heller*, and similar arguments have appeared in many federal courts. This approach evaluates the constitutionality of gun control based on the degree to which a given law serves the public interest while protecting private interests. In this way of thinking, the case for local variation in permissible gun regulations is straightforward, because in fact cities and rural areas face different challenges with regard to guns, and their residents have different sets of concerns.

Moving Forward

The largest obstacle to allowing urban areas to have sensible gun controls is not constitutional but statutory. Over the past few decades, most states have passed laws forbidding municipal gun control. Such “preemption” laws do not reach all cities, nor do they forbid all controls, but they do represent an unfortunate break with longstanding American traditions of local self-rule. Especially now that the Supreme Court has articulated an individual right to bear arms, state-wide one-size-fits-all laws are no longer necessary or appropriate. Such state laws should be modified or repealed.

City limits are an important part of the story of guns in America, and the Second Amendment need not ignore this fact – good news for *both* sides of the gun debate. If we insist only on rigid national resolutions, rural residents may some day find their cherished Second Amendment rights diluted, as policymakers maneuver to find ways to allow some level of urban regulation in the name of safety – just as today’s urban-dwelling Americans are frustrated by the imposition of rural gun practices that make their lives less safe. Urban efforts to prevent handgun violence should be able to coexist with the understandable desire of rural residents to use very different kinds of guns for hunting and recreation. The urban-rural divide need not remain a barrier. It could instead make for better neighbors, by enabling a granular compromise that allows rural and urban Americans to regulate themselves and respect one another’s very different gun cultures.

Read more in Joseph Blocher, “**Firearm Localism.**” *Yale Law Journal* 123 (2013).