The Second Amendment task force and the Interaction between law and society, some takeaways from political economy

Rouzbeh Aghaieebeiklavasani[1]

Abstract:

The concept of individual rights within the realm of the Second Amendment emphasized in the Heller case, has ignited a slew of debates concerning negative and positive rights and their far-reaching impact on society. The key to understanding the conflict between federal law and regulations aiming to limit or prohibit the right to hold and bear arms is to shed light on the importance of excludability and its boundaries. Observing this problem through a multidisciplinary approach containing political economy will provide us with an opportunity to address different facets of the United States' constitutional law to see how the legal battle between courts stressing the first-hand nature of the Second Amendment and federal and state laws resembles the notion of club good, which have important implications for this legal conflict in terms of individual rights.

Following President Trump's executive order to review all presidential and agencies' actions from Jan 2021 to Jan 2025 affecting the Second Amendment rights of law-abiding American citizens[2], The DOJ launched a task force aimed at protecting the rights enshrined in the Constitution.[3] In addition to the possible repercussions of this policy in the ensuing months and years, it is important to make a connection between such a notable executive order and the existing circumstance shaping gun crimes and gun rights in the United States.[4]

The Supreme Court's rare decision[5] to uphold the law barring domestic abusers from holding a gun[6] has ignited debates from different perspectives. Within the realm of the US Constitution, however, one of the most important aspects of the decision was the novel boundary demarcated by New York State Rifle & Pistol Association V. Bruen[7], which holds that the Government's decision to place restrictions should fall into consistency with the nation's historical traditions of gun regulations. This decision led the 5th Circuit Court in the state of Texas to rule that domestic violators are allowed to keep their guns; it is important to note that the concept of "the political community" and its association with the scope of the Second Amendment was reflected in the case

[1] Graduated from the Faculty of Law and Political Science, University of Tehran, Iran, Quantitative law analyst
Email: robert12t.robert@gmail.com & rouzbeh.aghaieeb@ut.ac.ir
[2] Presidential Actions, Protecting Second Amendment Rights, the White House. (Feb, 7, 2025), https://www.whitehouse.gov/presidential-actions/2025/02/protecting-second-amendment-rights/
[3]Ashleigh Fields, DOJ establishing task force to push Trump gun agenda, The Hill, (Apr,9,2025), https://thehill.com/homenews/administration/5240581-doj-second-amendment-task-force/
[4] It is important to mention the impact on the overturn of the chevron deference on gun regulations and the problem interpretations of federal agencies. See Jennifer Mascia, How SCOTUS's Chevron Decision Threatens Gun Regulations, The Trace, (Jul 2, 2024), https://www.thetrace.org/2024/07/scotus-chevron-raimondo-atf-gun-laws/
[5] United States v. Rahimi, 144 S. Ct. 1889 (2024)
[6] 18 U.S.C. § 922(g)(8)
[7] New York State Rifle & Pistol Assn, Inc. v. Bruen, 597 US 1(2022)

of Rahimi in the fifth court[8]. Following the case of Bruen, the Court concluded that the Government failed to show the federal statute's consistency with the nation's history of regulations. Based on the Bruen case's new approach and Rahimi's appeal, it raised the problem of the generality of interpreting the Second Amendment in the presence of historical analogy[9]

Notwithstanding the importance of the Supreme Court's rule on Rahimi, we can see the maintenance of Bruen's approach in the case of Rahimi[10]. Consequently, Bruen's text and history serve as a basis for assessing gun regulation issues and can raise some questions about the complexity of this test, for instance, in history[11]. Its implications for various cases, include facing traditions infused with bigotry and discrimination, which was prevalent in the past[12]. Meanwhile, easing regulations in the current administration can raise a question of the burden of the government to bring historical analogies in the gun rights' challenges.[13] Based on the information provided above, one of the most notable characteristics of law is the dynamic nature of our interpretation and the evolution of new cases, which necessitates us to take into account novel ideas to make a reconciliation between the pillars of the law and the challenges arising from the society in which law governs. The problem of gun rights and regulations, specifically after the Supreme Court's landmark decision on the District of Columbia v. Heller case[14], highlights the concept of an individual's right to "hold and bear" guns within the broader view of the government's gun regulations efforts. Based on the Heller rule, "self-defense" is an inseparable right of law-abiding and responsible citizens. In the case of United States v. Duarte[15] in the Ninth Circuit Court of Appeals, the argument over the government's explanations for virtuous citizens and the notion of the national community reflects the fact that the boundaries of the decision in exclusion are vague On the other hand, no one can deny the role of the government's attempts regarding regulation could steer our minds to a structure, like maintaining an enduring equilibrium[16], defining the balance between the government and individuals. Meanwhile, observing the problem of exchange between the Government's efforts and negative rights, the idea of "common good constitutionalism" formulated by Adrian Vermeule emphasizes the flourishing of a well-ordered political community[17], and its application in the Second Amendment[18]. A

---

[8] United States v. Rahimi, 61 F.4th 443, 9 (5th Cir. 2023).

[9] Bianca Corgan, Conundrums of Constraint: United States v. Rahimi and the Future of the Bruen Test, Harv. L. Rev online. (July. 21, 2024), https://harvardlawreview.org/blog/2024/07/conundrums-of-constraint-united-states-v-rahimi-and-the-future-of-the-bruen-test/

[10] Sabrina Talukder and Nick Wilson, In U.S. v. Rahimi, Supreme Court Rules in Favor of Domestic Violence Survivor Safety but Upholds Problematic Bruen Framework, The Center for American Progress, (Jun. 21, 2024), https://www.americanprogress.org/article/in-u-s-v-rahimi-supreme-court-rules-in-favor-of-domestic-violence-survivor-safety-but-upholds-problematic-bruen-framework/

[11] Jacob D, Charles, *The Dead Hand of a Silent Past: Bruen, Gun Rights, and the Shackles of History,* Duke LJ 73 (2023): 67.

[12] Jacob D, Charles, *On Sordid Sources in Second Amendment Litigation*. Stan. L. Rev. Online 76 (2023): 30.

[13] Kevin Schascheck, Trump's Latest Executive Order on Firearms, Duke Center for Firearms Law. (Feb 21, 2025), https://firearmslaw.duke.edu/2025/02/trumps-latest-executive-order-on-firearms

[14] District of Columbia v. Heller, 554 US 570(2008)

[15] United States v. Duarte. 108 F.4th 786 (9th Cir. 2024)

[16] Darrell AH, Miller, *Second Amendment Equilibria*, Nw. UL Rev. 116 (2021): 239.

[17] Adrian, Vermeule, Common *Good Constitutionalism.* Polity, 20,(2022)

[18] Darrell AH, Miller, *Common Good Gun Rights,* Harv. JL & Pub. Pol'y 46 (2023): 1029.

retrospective analysis of the scholarship on gun rights and the scope of the protection of the Second Amendment gives credence to a dynamic version of the concept of "excludability" and its challenges originating from text and traditions. Within this realm and without a sole focus on the idea of "balance" between regulations and rights, we can say that there exists a game of a sort between regulations/prohibitions and the citizens' Second Amendment rights. In other words, it could be defined as the game of not treating the Second Amendment as Second-Class rights[19]

As the Supreme Court in the case of Heller noted, like other rights, the Second Amendment is not unfettered. By observing the "felon-in-possession" cases heard in courts and the lack of agreement on its oddity with the Second Amendment, we can understand the difficulty of the game we mentioned above regarding its boundaries. Based on the game between Governments and courts specifically after Bruen and the necessity of proving consistency with the nation's history and tradition, which gives rise to the validity of exclusion, the characteristic of our structure resembles, albeit to some extent, those of a dynamic club good. In political economy, we have club goods that are referred to as goods that are non-rivalrous but excludable to some degree. Notwithstanding having multiple features like burden-sharing or the optimal size of a club good, we focus on delineating the boundaries, highlighting two things; the nature of the case the problem of coverage, and the Government's justification for the degree of protection. The Government's efforts and federal and state statutes aim to delineate the boundaries of exclusion. The notion of "law-abiding or "virtuous" citizens, or age limits[20] all represent elements seeking restriction "the people" or "to hold and bear" terms. In addition, the notion of "law-abiding" does not reflect a static nature. Rather, it emphasizes a dynamic nature whose boundaries have become nebulous, specifically after Bruen. Attempts at how to define the people and the framework of coverage and protection[21], which describes the scope of inclusion and then the government's justification for regulations or excluding from protections, gives rise to the necessity of observing the problem of a dynamic inclusion/exclusion through a multidimensional lens. Besides, it is necessary to imagine a viable and promising metric to evaluate the excludability with possible routes of evaluation challenges[22], which is prevalent after Bruen. There are two notions of dynamism. First, the flow of any court is subject to a dynamical process with its special elements which form the spatial part of the dynamics. The second is the temporal convergence of cases. Thus, we have a spatiotemporal dynamic behavior. Therefore, the mentioned spatiotemporal is a network of complex dynamics. In such a system, the outcome is the position of the state of the underlying case in a chart that possesses a bandwidth of excludability or the bandwidth of inclusivity. The case's position within the scope of these two bandwidths is true and nudges practitioners to the practical nature of computational thinking in legal decision-making.

---

[19] New York State Rifle & Pistol Assn, Inc. v. Bruen, 597 US 1 6(2022)
Note that

[20] Worth v. Jacobson, 108 F. 4th 677(8th Circuit 2024)

[21] Jacob D, Charles, *Defeasible second amendment rights: Conceptualizing gun laws that dispossess prohibited persons,* Law & Contemp. Probs. 83 (2020)

[22] Clara Fong, Kelly Percival, and Thomas Wolf, Judges Find Supreme Court's Bruen Test Unworkable, The Brennan Center for Justice, (June. 26, 2023), https://www.brennancenter.org/our-work/research-reports/judges-find-supreme-courts-bruen-test-unworkable

The first is the excludability bandwidth which locates the case, and the person of the case, within a spectrum. Less than the lower boundary means the exclusion argument is too weak to exclude the person. Higher than the upper boundary means the exclusion argument, which shifts the burden to the government, is too strong to neglect. When the computed value is located within these two boundaries, the human-based decision is crucial to issue the final verdict. For instance, in the case of United States of America v. Durate, which happened before the SCOTUS rule on Rahimi, the second step or the government's justification failed to show consistency with traditions[23].

The second is the inclusivity bandwidth which locates the case, and the person of the case, within a spectrum. Less than the lower boundary means the inclusion argument is too weak to include people like illegal aliens[24]. Higher than the upper boundary means the inclusion argument is too strong to neglect. When the computed value is located within these two boundaries, the human-based decision is crucial to issue the final verdict. The proximity of the position to boundaries is always a key factor. Note that, the lower and upper limits are not necessarily deterministically strict. Instead, they might form a cloud of distribution. We have the questions of sufficient conditions for inclusivity and necessary conditions for exclusion from the club good specifically after the SCOTUS view on not seeking historical twins[25] for traditions in the case of Rahimi. The inclusion which refers to the first bandwidth is related to the interpretation of constitutional law. The exclusion which refers to the second bandwidth is associated with the federal law and the problem of consistency, and fine interpretation of case history.

In fact, the Government's capability for interpretation in some regulations is the key to bridging law and society to place a special premium on club goods, the social price of membership[26], and Pareto-optimal structures[27]. However, in the post-Chevron era, which holds the distinction between law and policy[28], a new framework for such an interaction is needed.

Conclusion.

Having emphasized the problem of the price of being a law-abiding citizen, we stressed the importance of observing the interaction between courts and the government. Such a multidisciplinary approach can throw an open door to analyzing the societal utility of the Second Amendment right as a version of a club good and the extent to which this right has been treated in this way. Furthermore, the Trump Administration's Second Amendment task force's objectives are aligned with the new realities governing the relationship between negative and positive rights and necessitate us to gain better insight into the boundaries we laid out earlier. Computing the position of a case within these scopes requires related data and a plausible methodology, which

---

[23] United States v. Duarte. 108 F.4th 786 5 (9th Cir. 2024)

[24] United States v. Medina-Cantu, 113 F. 4th 537 (5th Circuit 2024)

[25] United States v. Rahimi, 144 S. Ct. 1889 9 (2024)

[26] It should be kept in mind that this feature lies at the heart of all regulations shaping gun rights.

[27] In this article, we avoid delving into the mathematical analysis of club goods and its subsequent

[28] Thomas, W. Merrill, *"The demise of deference-and the rise of delegation to interpret?." Harv. L. Rev. 138 (2024): 227. P 271*

may clarify some problems to some degree. It sheds new light on the impact of this battle between regulations and courts.

The author has received no funds for this work.

The author declares no conflict of interests.