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Filling the “Historical Tradition” Gap: A New Resource for Post-Bruen Gun Law Cases

In June 2022, the U.S. Supreme Court set a new precedent for determining the constitutionality of firearm regulations. The decision in *New York State Rifle & Pistol Association vs. Bruen* held that any new gun regulation must be “consistent with this Nation’s historical tradition of firearm regulation.”

Since then, more than 1,600 federal and appellate district courts have cited *Bruen* in cases challenging laws that regulate 3D-printed guns, assault weapons, large-capacity magazines, and more. The legal community has tried to clearly define the concept of “historical tradition,” but their efforts are complicated by a lack of scholarly research that focuses specifically on historical gun regulation in America.

The Center for the Study of Guns & Society (CSGS) at Wesleyan University seeks to fill that gap, launching an expansive, two-year historical study of state and local firearms laws in the United States.

“Second Amendment law needs the discipline of rigorous historical scholarship. Without it, there’s a real danger that the law will be shaped by accounts that are incomplete or driven by ideology rather than evidence,” says Jennifer Tucker, founding director of CSGS and Professor of History at Wesleyan.

The project, “Modeling the Application of Historical Methods for Law and Policy in the *Bruen* Era,” engaged a team of 30 professional historians and students to examine nearly 700 state and local gun laws in five sample states between 1750 and 1930. Researchers investigated the historical, technological, and cultural contexts in which California, Connecticut, Mississippi, Ohio, and Oklahoma gun regulations were implemented. The study goes beyond legal statutes to include municipal regulations, court decisions, and more.

Although historians and legal experts are the project’s primary audience, its results will be available to the public at www.firearmslaws.com beginning Oct. 5—coincidentally, the start of the U.S. Supreme Court’s new session. This website will include a searchable database of state laws and ordinances and accompanying field guides for the five sample states analyzed in the project.

How Courts Can Benefit from a Historian’s Perspective

A key aspect of the *Bruen* ruling was its stipulation to find “analogies”—not “historical twins”—of gun regulations to determine whether modern limits on firearms should be allowed. In response, courts are increasingly turning to historians for help interpreting the past. Although the “Modeling the Application of Historical Methods for Law and Policy in the

Bruen Era” project is intended to support those collaborations; Tucker sees this resource as a starting point rather than the definitive guide to navigating this landscape.

“We hope that the project demonstrates the complexities of the ‘history and tradition’ test and provides a roadmap for future research,” she says.

Some of the insights derived from this study of early U.S. gun laws include:

- Strict limits on the use and possession of firearms date back through the founding era across cities and towns.
- Gun regulations were often enacted shortly after the incorporation of cities to reduce violence as populations became denser.
- Firearms laws were often framed as commonsense safety precautions as the circulation of weapons expanded and their ability to injure or kill increased.

Firearms restrictions varied across the sample states, showing that there is no single historical tradition. However, researchers noted that local and state lawmakers consistently sought to limit harm from guns in a way that suited their populations and contexts.

Bridging History and Law for the Cases Ahead

The *Bruen* decision marked a sea change in American jurisprudence, requiring courts to ground Second Amendment rulings in historical analysis. That has made close collaboration between legal experts and historians not just useful but necessary. Judges and attorneys need relevant historical scholarship to meet *Bruen*’s evidentiary demands, and historians bring the training to interpret archival sources responsibly.

Together, the project’s database and field guides offer a theoretical framework and practical handbook for navigating this new legal reality. They give historians and legal professionals a resource for historical research and *Bruen*-related cases.

In addition to Wesleyan University, institutions that advised this project include the University of Maryland, Fordham University, University of California-Berkeley, Huntington-USC Institute on California and the West, University at Buffalo, University of Chicago Law School, The Ohio State University, George Washington University, and Amherst College.

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