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Guns in America, a Comparative Study of Firearm Policies in New York and Texas

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Department of Political Science

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Guns in America, a Comparative Study of Firearm Policies in New York and Texas

I. Introduction:

To the untrained eye, Texas and New York are as unlike as black and white, with different histories, cultures and politics. Despite common stereotypes of liberals and cowboys, both states are quite similar on the surface in regards to firearm policies. Both states have essentially the same structure of government, constitutional/legal protections, a similar legislative history on gun policies and consistent political stability. However, these similarities do not account for New York's generally favoring gun control while Texas prefers gun rights. The main factors that might explain this divide are that Texas treats their laws as a negative right and New York as a positive right and differences in local power/home rule. The first factor suggests that Texas treats gun laws as a fundamental right and New York as more of a privilege. The second factor, home rule may determine how gun control is carried out on a local level but mostly supports what the first factor states. This in turn possibly explains why legislators have different approaches to firearm policies in their respective states because it changes how they view gun laws for different means/purposes.

II. Literature Review:

There has been a lot of research on why certain gun laws pass but no research has looked at this in either Texas or New York. Also there has been little research on what sort of factors, whether political, cultural or legal, influence the passing or failure of firearm policies in either state. The majority of the literature has been focused on two things: the effects of firearm legislation on society and the cultural influences on gun laws. Some examples of the former are the effects of gun laws or type of legislation (either lax or strict) on suicide rates, non-fatal injuries, the availability and usage of guns, and if concealed weapons save lives (Shenassa et al.

2004, Simonetti et al. 2014, Kwon and Baack. 2005, Bronar and Lott 1998). The main point of this research is to figure out if gun laws are reaching the goals that have been set by legislators as well as their general effects on society.

The results of these studies are varied and it is possible to find research that supports either side of a pro or anti-gun argument. For instance, the Shenassa and Simonetti studies say that stricter gun control laws lead to fewer suicides and a lower discharge rate for non-fatal firearm injuries which would suggest that these laws work to some degree (2004 1707-1708, 2014 88-89). However other studies like, Grossman and Lee, argue that the ability to have concealed weapons (a gun right) reduces the crime rate and firearm accidents, which shows that pro-gun right laws also work (2008, 198) . There are some studies that fall in between, like Kwon's, which proposes that gun legislation is not complex enough to reach the roots of gun violence and that labelling states as "pro rights" or "pro control" is not a fair assessment of their effects (2005, 253). Ultimately this type of literature is mixed and does not examine what influenced these laws to pass in the first place, only what effects they may have afterwards.

The other type of research is on cultural influences on gun legislation across multiple states or general geographic areas. For example, one study focuses on how the media influences different groups in society to mobilize after the wake of the Newtown Massacre (McGinty 2016, 3). Others focus on broad "gun cultures" that supposedly characterize the South, Midwest and Southwest and firearm preferences between urban and rural areas (Bogus 2008, 440-443). The studies mentioned lack two things, the relation of these cultural reasons on legislators/the legislative process or cultural factors in relation to other possible variables (structural, political, etc.). This study will try to connect culture and other variables to the legislative

process/legislators of New York and Texas rather than offer a broad analysis over a large geographic area.

To conclude, the research found in this paper will be novel in three ways; the first is it will look at what influences firearm legislation, what influences the legislative process, and why particular gun laws are passed. This study will look at firearm legislation between two states that have never been compared before and how/why these laws came to be. Second, it will look at cultural factors in relation to the legislative process instead of being framed broadly/abstractly as in previous studies. Lastly this paper will go beyond simple cultural factors and look at various variables like political, structural and legal factors in relation to the legislative process. Overall this study will add an important new way of looking at firearm legislation through the legislators that create them.

III. Legislative History

Both Texas and New York have had a similar legislative history of gun laws until the 1990s yet, as this section shows, each state's laws have radically changed over time. The legislative history will prove that both states have a similar background as a consistent factor that both share despite their recent differences in gun laws that will be examined later. The section will start with the oldest, modern and comprehensive gun laws in Texas and New York to demonstrate the similarities between the two states. Next, the newest New York and Texas firearm policies will be examined to show how both states differ and include an in-depth analysis of both legislative processes.

A. History of Gun Laws in New York and Texas

1. The Frontier of Texas and the 1872 Concealed Weapons Act

Texas has the historical stereotype of being a Wild West frontier state rich with outlaws and cowboys. Texas often points to their history of gun loving and armed resistance like the Alamo and resisting Mexican General Santa Anna's attempts to take white settler's guns in the 1830s (Halbrook 1989, 631-640). Not to deny this illustrious past, but the history of having gun-loving cowboys riding into frontier towns does not seem to be supported by the state's legislative history. It was very common in the antebellum period of Texas for local municipalities to ban firearms within their borders (Collins 1999, Winkler 2011). Of course guns were not banned throughout the western territories and bans were definitely not enforced in the wilderness but frontier cities and towns did not feel comfortable with armed men within their limits (Winkler 2011). Places like Dodge, Tombstone, Wichita and Deadwood had visitors check their guns at the local sheriff's office and banned the firing of firearms near towns (the only exception being for self-defense) (Collins 1999, Winkler 2011). People of the Wild West clearly felt more fearful of guns near their municipalities than modern day Texans and gun rights activists who believe that guns make them feel safer (Winkler 2011).

Besides how guns were treated differently in the Wild West, the most shocking part of the legislative history of Texas is the 1871 concealed and carry weapons ban. The law "... prohibited the bearing of all arms other than rifles and shotguns at any place off of one's premises" throughout the entirety of the state (Halbrook 1989, 587-589). The law can be attributed to the battle between northern republicans and southern democrats during the reconstruction period: [explain briefly] (Halbrook 1989, 580-590). Regardless of the source of the 1871 act, the law was used to take away the gun rights of minorities, especially recently freed slaves (Winkler 2011, Collins 1999). To clarify, the law was used to take away the gun rights of everyone but guns were most vigorously taken away from minority groups. The 1871 law was

vaguely worded and allowed law enforcement to target any group that they found dangerous to the state (Hawkins 2016). The white population feared an influx of recently freed African Americans from the south after the Civil War because they thought the freedmen may bring an increase of crime and violence (Halbrook 1989, 570-590). This act was never repealed or taken off the statute books because the northern republicans quickly lost power in the south during the reconstruction period (Halbrook 1989, 570-590). Fortunately it lost its racial undertones over time but the 1871 law is what is currently being debated in Texas today albeit for different reasons. The current debate is concerned about giving current Texans the right to carry concealed weapons or openly carry weapons in public spaces which is far different than the original intentions of the law.

2. The Sullivan Act

New York has a more recent history of gun legislation with the first comprehensive gun law being passed in 1911, over 40 years later than Texas. The first “modern” firearm policy in New York State was the Sullivan Act in 1911 that was a reaction to the rise of gang violence in urban areas. The proverbial straw that broke the camel’s back that culminated with this law was the 1910 attempted assassination of William Gaynor, the democratic mayor of New York City (Platt 2011). Mayor Gaynor was waiting for a steamship in Hoboken, New Jersey in order to go on vacation, but a cantankerous and disillusioned dock worker named John J. Gallagher shot him in the neck (Platt 2011). Fortunately Mayor Gaynor survived but the New York public was left shocked at the seemingly unprovoked and senseless violence that almost killed a respected governmental official (Platt 2011). Fingers were starting to be pointed as people blamed the shooting on everything from immigrants, to unregulated handguns, to the decay of American society (Platt 2011).

During that year, the public was reeling in fear over the actions of the madman Gallagher the namesake of the Sullivan Act, State Senator Timothy D. Sullivan, stepped up to plate with new legislation (Platt 2011). Senator Sullivan was a democrat who proposed legislation to limit the use of handguns by using the novel idea of pistol permits (Beckman 2012). The law was designed around making pistol permits be required when purchasing and possessing a handgun; also special permits were required to carry the weapon openly or concealed (Beckman 2012). The Sullivan Act was clearly based around limiting the availability of handguns by making them harder to obtain and criminalizing citizens who do not have a permit (Beckman 2012). The bill targeted handguns because they were the weapon of choice of gangsters during that time period, Making these weapons harder to obtain would possibly make the crime rate drop (Beckman 2012, Platt 2011).

Despite noble goals of trying to clean up street gangs, the Sullivan Act had some very sinister applications in practice. The democrats of Tammany Hall and other political elites may have reflected the xenophobic fears of white Anglo-Saxons when drafting this bill. The bill supposedly “specifically targeted at Italian immigrants... It is worth noting that the first person convicted under the Sullivan Law was an Italian immigrant... and it has reported that up to 70 percent of those arrested during the first three years after the law was enacted were of Italian descent” (Beckman 2012). This suggests there were some xenophobic goals behind the first comprehensive gun-control act in New York history. Despite the xenophobia disappearing from New York over time, the Sullivan Law is still on the law books and has been amended many times to include more stringent gun control (Beckman 2012).

3. Comparison

The 1871 Concealed Weapons Act in Texas and the Sullivan Act in New York prove that both states have a very similar legislative history. Both laws were used as measures of gun control, especially in cities and towns, with the alternate goal of restricting the gun rights of minorities. These groups were viewed as the ones causing crime and violence within both states and legislators thought the best course of action was to criminalize and limit access to firearms. Modern firearm legislation in Texas and New York is quite different because they dropped their discriminatory practices and now focus more on constructive uses for firearm laws.

B. Modern Firearm Legislation in Texas and New York

1. The New York SAFE Act

The Sandy Hook tragedy in 2012 shook the nation to its core because of the senseless killing of numerous young children and school personnel (Spitzer 2015, 749). The New York Legislature seemed to take this tragedy to heart, perhaps because of its history of gun control, and decided to act (Spitzer 2015, 749). The 2013 New York Safe Act was the state's response to the Sandy Hook tragedy and it passed through the state legislature in a matter of months (Spitzer 2015, 749). Governor Andrew Cuomo was definitely the driver of the New York Safe Act and demanded that the firearm legislation be passed as soon as possible (Spitzer 2015, 749-753). This is evidenced by the Governor calling a legislative emergency allowing the bill to automatically move to the floor of both the State Senate and Assembly instead of beginning with a three day waiting period for the legislators to read over the bill and have hearings (Spitzer 2015, 749-753). The bill was quickly approved in the Democratic controlled Assembly, with a vote of 104 to 43, and Republican controlled Senate, with a vote of 43 to 18 (Spitzer 2015, 749-753).

The main purpose of The Safe Act was to greatly enhance legislation against the use or the sale of assault weapons, weapons usually associated with mass killings due to their lethality

and ammunition clip size (Spitzer 2015, 751-757). Those who bought these types of weapons before 2013 were required to register their weapons and have very limited use of these firearms under penalty of law (Spitzer 2015, 753-760). The law also mandated stricter background checks, for buying weapons from a private owner and for buying ammo (Spitzer 2015, 753-760). Furthermore, the law required mental health professionals to report to state authorities if their patients were a threat to themselves or others (Spitzer 2015, 754-767). State authorities were allowed to look up if the person has a firearm and have a court issue a ruling that their guns should be taken away if they are seen as a threat (Spitzer 2015, 754-767).

It is important to note the backlash against the New York Safe Act happened after the fact due to its speedy passage through the legislature (Spitzer 2016, 749-753). The Act was not widely accepted by all New Yorkers and gun rights activists rallied against the law, resulting in some parts of it being amended. The passage of the New York Safe Act mirrored the passage of the Sullivan Act, both involving the quick adoption of gun control legislation after a tragedy involving firearms. The fear of mass shootings is why the Safe Act was focused on limiting assault weapons just like the Sullivan Act tried to limit gangs' access to handguns over a century before. The main pusher of the bill was Governor Cuomo and he even used a legislative emergency to make sure his bill did not die in the State Legislature. How quickly the bill passed through the Republican controlled Senate proves that politics were not really a factor in the passing of the Safe Act. Republicans, especially in New York are generally viewed to be more pro-gun rights but there are many exceptions to this rule. The Republicans caving may have been because of multiple factors, including popular pressure after Sandy Hook or pressure from the governor. Regardless of the cause Republicans probably did not want to get in the way of the bill because it made have made them unpopular especially because of the urgency set by the

Governor. To conclude the analysis of the Safe Act proves that firearm legislation in New York is far more complex than basic political factors and suggests that there are more cultural and historical factors at play.

2. The Conceal and Carry Debate in Texas

Texas differs significantly in gun legislation compared to New York because they passed multiple legislation in the 1990s while New York only passed one law in 2012. Texas in recent years has had an uphill battle trying to repeal the 1871 Conceal and Carry Act in favor of more gun rights. This uphill battle consisted of Democrats trying to maintain a foothold in Texas as Republicans started to take control of the state government starting in the 1990s. The modern legislation is focused on the concealed carry or open carry (meaning worn on a clearly visible holster) of handguns or pistols rather than long guns or rifles. Ultimately the current debate originates in the 1990s under the governorship of George W. Bush after a shift in political power in the state. It will be discussed more fully in a later section but a recent surge of gun rights in Texas coincided with the rise of the Republican Party in a previously Democratic State (Goldsberry 2014).

Governor Bush was able to finally push a bill through the Texas Legislature that legalized the carrying of concealed weapons throughout the state (Butterfield 1999). To clarify, the Governor legalized the ability of Texans to obtain a license to carry concealed weapons, but did not allow everyone to run around with concealed weapons. Governor Bush ran on the promise that he would legalize concealed weapons and used this to knock the incumbent Democratic Governor out of office who often vetoed such bills (Goldsberry 2014). Bush's being elected with the promise of legalizing concealed weapons and the bill's being quickly passed suggests the rising popularity of gun rights in Texas.

With the concealed weapon ban overturned, it seemed a matter of time that Republicans in Texas would want to legalize open carry after legalization of concealed weapons in 1995. The next Governor, Rick Perry, decided during his term to legalize the castle doctrine, the norm that a homeowner not have a duty to retreat in order to use force when someone is trespassing on their property/premises. The issue of “conceal and carry” popped up again under Republican Governor Greg Abbott with two new bills that were introduced in 2015. The first bill was named HB 910 or Senate Bill 17 that made it legal for those who already had concealed weapon permits to now carry their pistols openly in public in a holster around their waist or shoulders (Price 2015). Another bill that was passed around the same time was Senate Bill 17 that allowed for concealed weapons to be carried on public college campuses and dormitories (Morris 2015).

These bills seem to be the work of Republican legislators using their majority status in both houses of the Texas legislature to their advantage. Guns rights were a main plank in the Republican platform that seemed to resonate more with the people of Texas than the pro-gun control stance held by Democrats (Smith 2015). This can be evidenced by Texas turning into a red state in the 1990s even though it has been a blue state for over a hundred years up to that point (Goldberry 2014). The Republican leadership in the Senate and the Lieutenant Governor Dan Patrick changed a procedural rule that required two thirds of the Senate to approve of a bill before it can come to the floor. (Smith 2015). The procedural change guaranteed that the eleven Democrats in the Senate had no say in what could come to the floor and this greatly diminished their power. Democrats previously were able to block any firearm bills coming to the Senate floor which made the passing of such bills take years to get through the legislature (Smith 2015).

The recent conceal and carry debate in Texas has proved many things: it is a result of the rise of Republican leadership, the repeal of antiquated firearm policies and the popularity of the concept of gun rights among Texans.

IV. Overview of New York and Texas

This section will give background on both states and give a structural, political and legal lay of the land. It will also examine the variables that are similar in Texas and New York besides legislative history which was examined in the previous section.

A. Legal Overview

An analysis of firearms laws between Texas and New York will give background on the legal differences between the two states. The type of gun laws that each state has can be used to determine if the state favors gun control or gun rights. There are numerous types of firearm laws to examine in one single study so only eight types of laws will be examined to best display the legal differences between both states. The laws that will be analyzed include: background checks (for gun shows and transferring weapons between two individuals), state licenses for firearm/ammo dealers, assault weapon/large ammo clip bans, license to own, permit to purchase, permit to carry (as in concealed weapons and openly carried weapons) and the registration of firearms. These eight laws were chosen because they are some of the most common type of firearms laws and the most relevant when talking about gun control/gun rights.

The first type of law is if the state has background checks for the transfer of weapons between individuals in a private sale and/or background checks to buy weapons at a gun show. Background checks are generally checking the criminal or mental health background of an individual by a state or federal agency (Jones 2013). Private transactions are self-explanatory but “gun shows” are generally public or private conventions where both licensed gun sellers and

private individuals sell firearms (Jones 2013). Texas lacks any laws requiring background checks for gun shows or private transactions but New York has laws requiring checks for both (“Search Gun Law by State” 2015). State licenses for firearm dealers require all owners of gun shops to purchase a sales license. These are not required in Texas but legally mandated in New York (“Search Gun Laws by State” 2015). Assault weapons and large ammo clip bans are self-explanatory with New York having very stringent bans (especially after the Safe Act) and Texas having no laws outlawing these types of weapons/clips (“Gun Laws” 2016). “License to own” and “permit to purchase” are very similar because they both require that a potential gun owner needs to have a specific license/permit to be eligible to buy/own that weapon type (pistol, shotgun, etc.) usually after a background check and/or training course (“Gun Laws” 2016). The only difference is that a “license to own” needs to be renewed every couple of years while “permit to purchase” does not need to be renewed if the person does not want to buy anymore firearms. Texas does not require any special license or training to obtain any type of firearms while New York only requires a license for purchasing/owning a handgun (except in New York City where permits are required for all weapon types) (“Gun Law” 2016). Registration of firearms is when a person obtains a gun license or purchases a gun, they must register that weapon (and any other weapons in their possession) into a statewide database (“Search for Gun Laws” 2015). New York requires that all handguns be registered as well as any automatic weapons purchased before the 2013 Safe Act while there is no gun registration in Texas (“Search for Gun Laws” 2015). Conceal and carry is allowing citizens to carry weapons either concealed on their person or openly carried on one’s body if they have the necessary permit. The state of conceal and carry in Texas is examined in the legislative history section while New York does allow conceal and carry but it is very hard to obtain a permit (“Gun Laws” 2016).

It is obvious that New York is very pro-gun control because all of the laws they have seems to limit the availability of guns or at least who has access to them. For example they require that all people who own a gun store, have a gun permit, or purchase a gun must be entered into a statewide registration database. Texas is very pro-gun rights and seems to not care who is able to get a gun or what type of firearm they can obtain. For instance Texas does not ban deadly assault rifles and allows citizens to roam around freely with handguns openly displayed (albeit with some exceptions and only after obtaining a license). This is not an exhaustive list of potential gun legislation but it does seem to paint Texas as more pro-gun rights while New York is more pro-gun control. This analysis clearly illustrates the legal background and standing each state has on particular gun policies which shows how firearms are viewed in each state.

B. Similar and Consistent Factors

1. Structural Similarities

It is important to note that each state has a governmental structure that mirrors the federal system. Both states consist of three branches of government, the judiciary, the legislature and the executive; there is no structural differences between both states that may account differences in firearm legislation. (“State Government Structure” 2016, “Texas State Government at a Glance” 2016).

2. Political Stability

Both states are known for their political stability, meaning that generally one party has remained in charge in government, since at least the 1990s. Political stability means that firearm legislation, whether pro-gun control or pro-gun rights, will remain consistent during each legislative session. There are some periods of exceptions (like 12 years of the Republican

Governor Pataki in New York) but generally Texas has been consistently Republican and New York consistently Democratic during this time period.

As mentioned before, Texas has historically been a Democratic state after a brief period of Republican popularity during the Reconstruction period. Democrats were at the time the party of the south and more in line ideologically to what people see modern-day Republicans today (“History of the Republican Party” 2016). Republicans during that time were viewed as the party of the north and their downfall during the Reconstruction period occurred because southern states started to gain back autonomy after the Civil War (“History of the Republican Party” 2016). The switch from Democrats to Republicans started in the 1995 with the first Republican Governor to be elected in Texas in over a hundred years (“History of the Republican Party” 2016). The Republicans since then have maintained a majority in the both houses in the Texas state legislature and in the governor’s office for the most part (“History of the Republican Party” 2016). The only exception is the short, one term reign of the democratic Governor Ann Richards from 1991 to 1995 before being replaced by George W. Bush.

As for New York, it has been historically democratic since the Governorship of Hugh Leo Carey in 1975 with some important exceptions (“New York: Past Governors Bios” 2016). The first important distinction is even though Democrats have historically held the governor’s office since 1975, the only exception is governorship of George Pataki (“New York: Past Governors Bios” 2016). Governor Pataki was a Republican Governor who was elected multiple terms from 1995 to 2007 and is the only recent exception to New York’s line of democratic governors (“New York: Past Governors Bios” 2016). The second important distinction is that Republicans have usually held a majority in the State Senate until a democratic takeover from 2009 to 2010 (Confessore and Hakim 2008). The democrats have historically held the assembly

and the governor's office while the republicans have held the State Senate besides the exceptions mentioned above (Confessore and Hakim 2008). Therefore both Texas and New York have maintained political stability with one party holding consistent power over the executive and legislative with some exceptions. This is something that is similar between both states and suggests that firearm legislation generally did emerge from years of political stability in the legislature.

V. Possible Explanations for Differences in Gun Rights

A. Legal and Constitutional Protections

A factor that may explain the differences between New York and Texas is how firearms are protected under their state constitution/laws. This will be different than the legal review section because it will look at the explicit language of the statute/constitution rather than simply comparing them. This analysis will reveal that New York generally treated access to firearms as a more positive right and a privilege while Texas treats it as more of a negative and fundamental right. A positive right is when a law or constitution allows a state to do something while a negative right is when the state cannot explicitly do something. Legal/constitution protections are important because they are the basis for all legislation in the state and influences how gun laws are written. The protections will be examined in relation to the statutes mentioned above to show how they influenced the laws. To clarify, this section will talk about the legal/constitutional protections in relation to the right of each state to legislate on firearm policy rather than focusing on an individuals' right to firearms.

A legal or constitutional protection is when there is any part of a constitution or body of law that guarantees a right to firearms, meaning that the state must guarantee such a right. There are two forms of protection: legal, a right guaranteed by a statute, or constitutional, a right

specifically guaranteed by the state constitution. A constitutional protection is generally the higher standard because constitutions are generally venerated as almost holy documents that are nearly impossible to change. A legal protection is held to a lower standard by legal scholars because statutes can generally and easily be changed in a couple of legislative sessions with enough backing. Two protection provisions from both New York and Texas will be analyzed by its language and if it denotes firearms as a positive or negative right. These two will provisions will be looked at because they are the only place in either states' body of laws that have protections for the right to bear arms.

The New York provision can be found in the New York Civil Rights Law, Article 2, Section 4 and states: "A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms cannot be infringed." It is important to note the Civil Rights Law is not a part of the New York State Constitution nor its Bill of Rights. This means that the right to bear arms is not constitutionally guaranteed or protected by the Bill of Rights in New York but it is still protected under Civil Rights Law. The right to bear arms is probably in Civil Law rather than the New York State Bill of Rights because they possibly defer the power to the federal government, Therefore New York cannot decide to take away all their citizens' guns away tomorrow (barring federal law) but the right to bear arms is held to a lower legal standard rather than a constitutional one. New York having a legal protection is implying that they do not hold the right to bear arms to be at the same level of rights as it is in the federal constitution. This is also a word-for-word language copy of the federal second amendment meaning gun rights are seen as a negative right. A negative right implies that a statute or constitution clearly marks out what the state government cannot do, for example the New York statute says the "right of the people to keep and bear arms cannot be infringed."

Texas has their right to bear arms provision in its Constitution and can be found under Article 1, Section 23. The provision states “Every citizen shall have the right to keep and bear arms in the lawful defense of himself or the State; but the Legislature shall have power, by law, to regulate the wearing of arms, with a view to prevent crime.” (Article 1, Section 23). While the New York provision is almost the federal second amendment written verbatim, the Texas provision is worded completely differently. First, Texas considers the right to bear arms to be a constitutionally guaranteed right which suggests that they find the right to be more important than New York. Second, it specifically says in the amendment that guns are used for the self-defense of citizens but this right can be regulated by the state to prevent crime. Texas seems to consider guns to be more central to political life while in New York it is more of a privilege to be enjoyed.

The legislative history and type of laws enacted also supports the assumption that firearms are treated as a fundamental right in Texas and a privilege in New York. As previously mentioned both the Sullivan Act and the New York Safe Law were laws that were passed in response to a tragedy. New York enacted laws in both instances limiting the availability and accessibility to whatever type of firearm the legislators felt to be most dangerous. New York’s laws limit access to guns to only those who prove that they are not dangerous to society. New York treats gun as a privilege that can be heavily regulated and even taken away under the Safe Act if a court finds someone to be dangerous to society. The main impetus for two major examples of New York firearm legislation is the fear of guns and the harm they can cause rather than the positives they can do. This is regardless of the New York Civil Code labels the right to bear arms as a negative right (i.e. “the government shall not infringe on the right to bear arms”) it is not interpreted as an absolute right. The legislative history, gun laws and legal protections

seems to imply that guns are a very dangerous privilege and legislators seem to be more preoccupied with the negatives of firearms rather than the positives. Legislators seem to be motivated to pass legislation that focused on the negatives of guns and the damage it can cause rather than any positives it can do.

Texas is different than New York since the 1990s because they deify the concept of firearms rather than framing them as a privilege like a driver's license (a very dangerous driver's license to boot). The legislative history starting in the 1990s only enhances the firearm rights of their citizens like conceal and carry laws. Texas lacks any laws that seem to inhibit their citizens' access to firearms and lax laws makes them more available to everyone. Despite the constitutional provision being a positive right, gun rights are not an absolute right and they can be regulated by the Texas State government if they choose so. The Texas statute is written as a positive right saying that the state government can do something; in this case it is the right to regulate firearms.

To conclude, the totality of legislative history, type of gun laws and legal/constitutional protections suggest that the New York legislature generally views guns as a privilege while Texas views it more a fundamental right. Texas only focuses on the positives of firearms while creating legislation and New York only focusing on preventing the negatives. Therefore Texas and New York based on their legal/constitutional protections, legislative history and type of gun laws determines how each state legislates firearm legislation.

B. Home Rule

Another explanation for the differences in firearm legislation between Texas and New York is the amount of power they give to local municipalities in regulating firearms. The amount of local power or home rule each state gives to their local governments may determine if the

state has gun control. New York has firearm legislation on both the local and state level of government as long as laws on the local level do not interfere with state laws.

New York has some of the strongest home rule in the nation and gives local municipalities freedom to regulate and pass new gun laws (as long as it does not interfere with the State Law) (“Local Authority to Regulate Firearms in New York” 2015). This gives New York State municipalities some determining power in who gets the privilege of owning guns based on the demographics and needs of their citizens (“Local Authority to Regulate Firearms in New York” 2015). New York views local municipalities as “...the regulation of weapons to be a legitimate exercise of local police power” and therefore an extension of the power of the state (“Local Authority to Regulate Firearms in New York” 2015).

Texas has two types of municipalities, general law municipalities and home rule municipalities, based on size (“Home Rule Charters” 2016). The legislative/regulatory powers of general law municipalities are heavily restricted and home rule municipalities are granted more power (“Home Rule Charters” 2016). Texas prevents local municipalities from passing any sort of gun regulations or laws besides noise ordinances (“Local Authority to Regulate Gun Laws in Texas” 2015). Regardless of status, neither type of municipalities can regulate or ban firearms on the local level regardless of the need or preference of their citizens. Texas treats guns laws as such a fundamental right that it will not even allow its local governments any say on what gun laws affect them. Texas does not seem to trust their local governments with a right as fundamental as access to firearms because it will not allow them to regulate anything besides gun noise ordinances. Texas generally gives very little power to its local municipalities on larger issues like guns or abortion, especially if they are general law municipalities (“Home Rule Charter” 2015). Texas municipalities are allowed to legislate freely on local matters like water

rates and zoning laws but they are not allowed to legislate on any controversial major topic like guns (“Home Rule Charters” 2015).

Looking at local governments in relation to gun policies is a relatively new area of research that needs to be examined more. More research should be done to see if the New York State government and their local governments work together on gun policies or do they clash in interests. Also more should be done to determine why Texas does not seem to trust their local municipalities with gun legislation besides an adherence to a fundamental right. However there is some evidence to prove that home rule as a differing factor can explain why Texas and New York differ in firearm legislation.

Home rule could be a possible explanation for gun control in New York and gun rights in Texas separate from the privilege/fundamental right theory. The argument would be that New York giving its local municipalities more freedom on determining gun laws will somehow lead to more gun control. This assertion is incorrect because it assumes the inverse logic of how state-local government relations work, i.e. that local laws determine state laws. This is proven to be untrue for both New York and Texas because municipalities in both states cannot pass laws that interfere with any state laws. For instance, a local town in New York cannot overturn the assault rifle ban found in the New York Safe Act or a local municipality in Texas cannot create a local gun registry for firearms because this directly conflicts with state law. Even if a local municipality pushes for a law found in the previous example it does not mean the state level will legislate such a law. The state has higher jurisdiction than local municipalities and even if one municipality wants a certain type of gun law does not mean all municipalities want that law. More home rule does not guarantee more gun control because there are municipalities in New York that only have the bare standards laid out to them by the state laws. New York City may

have the strictest gun control in the state but this does not mean a rural area in New York where recreational gun use is popular would legislate the same laws. New York gives its local municipalities the power to give guns to citizens who they deem worthy and necessary to have such a privilege. It does not mean that more freedom in local gun laws will always lead to more gun control, it means that local gun laws can be tailored more the needs of the citizens who inhabit that municipality. Therefore the privilege/fundamental right theory is more supported by home rule than the theory that more freedom on the local level will lead to more gun control.

VI. Conclusion

Legal protections, home rule and culture could be the factors that explain the legislative history between Texas and New York but more research needs to be done to fully determine that. There is so little research on the power of local governments and culture on firearm legislation in both states it is hard to determine if they affect how legislators frame their views on guns. More research should be done to look at why despite the factors that remain constant between Texas and New York (legislative history, political stability and governmental structure) there is such a vast difference in firearm policies between both states. However it can be concluded that the differences are caused by more complex factors than Texas is full of cowboys and New York is full of liberals.

Bibliography

- “Article 1, Section 23.” n.d. Texas State Constitution. Accessed April 14, 2016.
- “Article 2, Section 4.” n.d. New York Civil Rights Law. Accessed April 14, 2016.
- Beckman, James A. 2012. “Sullivan Law.” *In Guns in American Society, an Encyclopedia of History, Politics, Culture and the Law*, edited by Gregg Lee Carter, Vol 1, Second Edition.
- Bogus, Carl T. 2008. “Public Policy Approach: Gun Control and America’s Cities: Public Policy And Politics.” *Albany Government Law Review* 1: 440-481.
- Blocker, Joseph. 2013. "Firearm Localism." *Yale Law Journal* 123, 1: 82-146.
- Bronars, Stephen G. and John R. Lott. 1998. “Criminal Deterrence, Geographic Spillover, and Right-to-Carry Concealed Handguns.” *American Economic Review* 88, 2: 475-479.
- Butterfield, Fox. 1999. On the Record: Governor Bush on Crime; Bush's Law and Order Adds Up to Tough and Popular. *The New York Times*, August 18.
- Collins, Ross. 1999. “Gun Control and the Old West.” History News Network.
- Confessore Nicholas and Danny Hakim. 2008. “Democrats Take State Senate.” *The New York Times*, November 4.
- Goldsberry, Kirk. 2014. “Mapping the Changing Face of the Lone Star State.” *FiveThirtyEight*.
- Grossman, Richard S. and Stephen A. Lee. 2008. “May Issue Versus Shall Issue: Explaining the Pattern of Concealed-Carry Handgun Law, 1960-2001. *Contemporary Economic Policy* 26, 2: 198-206.
- “Gun Laws (Interactive Map).” 2016. National Rifle Association Institute for Legislative Action.
- Halbrook, Stephen P. 1989. “The Right to Bear Arms in Texas: Intent of the Framers of the Bills Of Rights.” *Baylor Law Review* 14, 629-688.

Hawkins, Awr. 2016. "Open Carry in Texas – A Historical Perspective." BreitBart, January 3.

"History of the Republican Party." 2016. Texas State Historical Association.

"Home Rule Charters." 2016. Texas State Historical Association.

Jones, Corienne. 2013. "Background Checks on Gun Sales: How Do They Work?" CNN
Politics, April 10.

Kwon, Ik-Whan G., and Daniel W. Baack. 2005. "The Effectiveness of Legislation Controlling
Gun Usage: A Holistic Measure of Gun Control Legislation". *The American Journal of
Economics and Sociology* 64, 2: 533–47.

"Local Authority to Regulate Gun Laws in New York." 2015. Law Center to Prevent Gun
Violence.

"Local Authority to Regulate Gun Laws in Texas" 2015. Law Center to Prevent Violence.

McGinty, Emma E., Wolfson, Julia A., Sell, Tara Kirk, and Daniel W. Webster. 2016. "Common
Sense or Gun Control? Political Communication and News Media Framing of Firearm
Sale Background Checks after Newtown." *Journal of Health Politics, Policy & Law* 41,
1: 3-40.

Morris, Jason. 2015. "Texas Figuring Out How to Handle Campus Carry Law." CNN, October
10.

"New York: Past Governors Bios." 2016. National Governors Association.

Platt, Daniel. 2011. "New York Banned Handguns 100 Years Ago ... Will We Ever See that
Kind of Gun Control Again?" History News Network, September 7.

Price, Bob. 2015. "In Depth: Open Carry Bill Passes Initial Vote in Texas after 5 HR Debate."
BreitBart, April 18.

"Search Gun Laws by State." 2015. Law Center to Prevent Gun Violence.

Shenassa, Edmond D., Rogers, Michelle R., Spalding, Kirsten L. and Mary B. Roberts. 2004.

“Safer Storage of Firearms at Home and Risk of Suicide: A Study of Protective Factors in a Nationally Representative Sample.” *Journal of Epidemiology and Community Health* 58, 10: 841–48.

Simonetti, Joseph A., Rowhani-Rahbar, Ali, Mills, Brianna, Young, Bessie and Frederick P.

Rivara. 2015. "State Firearm Legislation and Nonfatal Firearm Injuries." *American Journal of Public Health* 105, 8: 1703-1709.

Smith, Morgan. 2015. “Campus Carry Gets Initial OK in Senate.” The Texas Tribune, March 18.

Spitzer, Robert J. 2014. “New York State and the New York Safe Act: A Case Study in Strict Gun Laws.” *Albany Law Review* 78: 749-787.

“State Government Structure” n.d. New York State Division of the Budget. Accessed April 14, 2016.

“Texas State Government as a Glance.” n.d. Texas Transparency, Texas Comptroller of Public Accounts. Accessed April 14, 2016.

Winkler, Adam. 2011. Did the Wild West Have More Gun Control Than We Do Today?” The Huffington Post Politics, September 9.