

THE RIGHT TO ASSEMBLE (FIREARMS)

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INTRODUCTION

In *The Myth of Continuity in American Gun Culture*, Brian DeLay provides important historical context to the ongoing debate regarding Founding-era treatment of firearms.¹ He walks through the history of repeating arms in early America,² as well as how firearms were made at the time,³ and argues that the accounts provided in current Second Amendment litigation do not tell the whole story.⁴ Ultimately, DeLay concludes that the narrative of continuity in our firearms tradition is simply a myth, and that “*discontinuity* would be a much more defensible starting assumption for courts considering firearms challenges.”⁵

But DeLay’s article is curious in one respect: His conclusion that modern amateur gun making falls outside of traditional American practice⁶ is directly belied by the history he spends nearly twenty pages

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1 Brian DeLay, *The Myth of Continuity in American Gun Culture*, 113 CALIF. L. REV. 1 (2025).

2 *Id.* at 20–49.

3 *Id.* at 54–70.

4 *Id.* at 6.

5 *Id.* at 74.

6 *Id.* at 70–71 (“In no sense are the entrepreneurs who sell parts and kits, nor their customers, part of a historical tradition of ‘self-made arms’ that should shield guns from the serialization requirements that have applied to other firearms for more than half a century.”).

describing.⁷ To see why, one must first understand how private gun-makers typically go about constructing a firearm today. The amateur gun builder does not usually build an entire gun from scratch, working every individual component from metal themselves.⁸ Instead, their process involves machining or 3D printing at most a few components.⁹ They then assemble those parts with other, premade ones.¹⁰

Although the actual manufacturing of components is limited, the work done to make them is not insignificant. Consider the case of the unfinished receiver or “80% lower” as they are colloquially called.¹¹ When purchased, these are “little more than a chunk of metal or polymer in the vague shape of a lower receiver.”¹² A private firearm maker must use a milling machine¹³ or similar device to machine out the entire interior cavity of the receiver.¹⁴ They must drill precise holes for things like safety levers and trigger pins.¹⁵ If these machining steps are not performed properly, the firearm will not function. So even with instructions, jigs, and other aids provided, “each of these steps require[s] some level of sophisticated machinery” and skill.¹⁶

Once the receiver (or any other component being handmade) is complete, the modern home-firearm maker can assemble it with other store-bought parts to complete a firearm. For an AR-style weapon, this usually includes trigger assembly components,¹⁷ a grip,¹⁸ a buffer

7 *Id.* at 54–70.

8 Jamie G. McWilliam, *The Unconstitutionality of Unfinished Receiver Bans*, HARV. J.L. & PUB. POLY PER CURIAM, Spring 2022, at 1, 2–3 (“Today . . . the prospective firearm manufacturer has less laborious options for doing so [than crafting each component himself].” *Id.* at 2).

9 *Id.* at 2 (discussing the use of 3D printers or unfinished receivers).

10 *Id.* at 3 (“Only after [performing machine work] can the lower receiver be installed with the requisite components to complete the firearm.”).

11 *See, e.g., 80% Lowers*, 80% ARMS, <https://www.80percentarms.com/80-lowers> [<https://perma.cc/7R2W-BJJJ>] (last visited Sep. 24, 2025).

12 McWilliam, *supra* note 8, at 3.

13 *See* Andrew Piispanen, *How Do Milling Machines Work*, DIRECT MACHS. (Mar. 4, 2021), <https://directmachines.com/blog/how-do-milling-machines-work> [<https://perma.cc/S43D-LX3S>] (describing the functionality of a mill).

14 McWilliam, *supra* note 8, at 3–4.

15 *Id.* at 3.

16 *Id.* at 4.

17 *See, e.g., PSA 2 Stage Nickel Boron Trigger Assembly*, PALMETTO STATE ARMORY, <https://palmettostatearmory.com/psa-2-stage-nickel-boron-trigger-assembly1.html> [<https://perma.cc/2U8H-43KG>] (last visited Sep. 24, 2025).

18 *See, e.g., Hogue OverMolded AR-15 Pistol Grip with Finger Grooves*, MIDWAY USA, <https://www.midwayusa.com/product/1151348749> [<https://perma.cc/TCD2-LZRG>] (last visited Sep. 24, 2025).

tube¹⁹ and stock,²⁰ and a full upper receiver with barrel, bolt, and sights.²¹ If the weapon is a handgun, other parts that are typically purchased are the trigger components,²² a barrel,²³ slide,²⁴ slide lock,²⁵ and slide spring,²⁶ among others. Put it all together, and if you have done everything right, you have a functional firearm.

In other words, the amateur gunmaker today is predominantly a gun *assembler*. And it is that type of individual gun making that fits most neatly within the history described by DeLay. Part I of this paper examines DeLay's historical evidence and concludes that the tradition he describes is one that, though not exclusively one of private arms making, is nonetheless inclusive and supportive of doing so. Part II then argues that the modern amateur gun making community has inherited a continuation of that historical tradition.

I. DELAY'S TRADITION OF ARMS MAKING IN EARLY AMERICA

Although DeLay devotes much space to rebutting the idea that there was a "historical tradition of 'self-made arms,'"²⁷ in practice he presents a positive vision of arms making in early America that includes a place for individuals constructing their own firearms. Certainly, he shows how guns were not completely or primarily made at home for personal use.²⁸ But he does acknowledge the existence of two "cohort[s]" of individual gunsmiths in early America: those "making firearms with a mix of self-made components and imported locks or

19 See, e.g., *Expo Arms Mil-Spec 6-Position Buffer Tube - 7075 Aluminum*, PRIMARY ARMS, <https://www.primaryarms.com/expo-arms-mil-spec-6-position-buffer-tube-7075-aluminum> [<https://perma.cc/ZD9Y-5PJL>] (last visited Sep. 24, 2025).

20 See, e.g., *MOE TR™ Carbine Stock - Mil-Spec*, MAGPUL, <https://magpul.com/moe-tr-carbine-stock-mil-spec.html> [<https://perma.cc/S4H6-HRTX>] (last visited Sep. 24, 2025).

21 See, e.g., *BCM® Standard 16" Mid Length Complete Upper Receiver Group*, BRAVO CO. USA, <https://bravocompanyusa.com/bcm-standard-16-mid-length-upper-receiver-group> [<https://perma.cc/6XU5-RPKG>] (last visited Sep. 24, 2025).

22 See, e.g., *Glock® Compatible Basic Pyramid Trigger - Black*, 80% LOWERS, <https://www.80-lower.com/products/glock-compatible-basic-pyramid-trigger-black> [<https://perma.cc/HHG5-F43G>] (last visited Sep. 24, 2025).

23 See, e.g., *Glock Factory Gen3/4 Barrel*, GLOCKSTORE, https://www.glockstore.com/Glock-Factory-Barrel_2 [<https://perma.cc/3TW4-YHL9>] (last visited Sep. 24, 2025).

24 See, e.g., *Shadow RMR Cut Slide - G19 Compatible*, 80% ARMS, <https://www.80percentarms.com/products/shadow-rmr-cut-slide-g19-compatible> [<https://perma.cc/S63X-JSXF>] (last visited Sep. 24, 2025).

25 See, e.g., *Glock Extended Slide Release & RYG Extended Slide Lock Kit*, GLOCK PARTS, <https://glockparts.com/glock-extended-slide-release-ryg-extended-slide-lock-kit> [<https://perma.cc/JJ2A-D7KJ>] (last visited Sep. 24, 2025).

26 See, e.g., *Glock Recoil Spring Assembly*, GLOCKSTORE, <https://www.glockstore.com/Glock-Recoil-Spring-Assembly> [<https://perma.cc/FKT5-G4DJ>] (last visited Sep. 24, 2025).

27 DeLay, *supra* note 1, at 71.

28 *Id.* at 54–71.

barrels” and those “who made their own firearms from scratch.”²⁹ And he shows how these makers—though not sufficient to arm the entire Continental Army—were encouraged by the revolutionary governments to contribute to the war cause.³⁰

There are two aspects to the history DeLay describes that are helpful to consider: how firearms were built, and who built them. He identifies three types of activities that were lumped together under the term “gunsmithing.”³¹ According to DeLay, “[m]ost gunsmithing in eighteenth century America amounted to repair work.”³² This makes intuitive sense, as the same is true today for most products. To paraphrase DeLay’s own example, there are far more people in America today who repair cars than assemble them from scratch.³³ But there also exist those today who either build cars from kits,³⁴ or functionally build a car from scratch by heavily modifying existing vehicles with aftermarket parts.³⁵ Similarly, the historical fact that most gunsmiths focused on firearm *repair* says little about whether other individuals also engaged in firearm *making*.

DeLay himself acknowledges that a “smaller cohort of gunsmiths had experience making firearms with a mix of self-made components and imported locks or barrels.”³⁶ He describes how hard it was to make certain components like barrels and gun locks.³⁷ Due to the specialized skills, expensive tools and materials, and time involved to make these components, Europe’s more developed industrial base had a strong competitive advantage.³⁸ Because of this, most American gunmakers

29 *Id.* at 61, 63.

30 *See id.* at 65–69.

31 *Id.* at 60 (“Those able to repair firearms were called ‘gunsmiths.’ Those capable of not just repairing but also building firearms from a mix of self-made and imported parts were known as ‘gunsmiths.’ And those with the skills, tools, and materials necessary to manufacture guns entirely from components of their own making were also called ‘gunsmiths.’”).

32 *Id.* at 61.

33 *See id.* at 59 (describing auto repair in the State of Florida).

34 *See, e.g.*, Build School, FACTORY FIVE RACING, <https://www.factoryfive.com/build-school> [<https://perma.cc/F48N-3CGA>] (last visited Sep. 24, 2025) (providing training to complete a number of the company’s kit cars).

35 *Compare* *RX-7 Fortune Model*, VEILSIDE CO., http://www.veilsidejpn.com/en/rx7_fortune.php [<https://perma.cc/C93J-FJWC>] (last visited Sep. 24, 2025) (illustrating a body kit for a Mazda RX-7 that completely changes the look of the car), *with* *Ride Through Three Generations of the Iconic RX-7*, MAZDA, <https://www.mazdausa.com/discover/rx-7-heaven> [<https://perma.cc/N7K2-QSHV>] (last visited Sep. 24, 2025) (showing the evolution of stock RX-7s).

36 DeLay, *supra* note 1, at 61.

37 *Id.* at 55–58.

38 *See id.* at 58–59.

relied on European imports of these components.³⁹ DeLay goes on to describe the process for completing the firearm:

A functional wooden stock would have to be made, a task requiring woodworking tools and expertise. Numerous additional parts would have to be made or purchased, including a butt-plate, side-plate, trigger, trigger guard, trigger plate, trigger pivot, escutcheon, ramrod, ramrod pipes, furniture fastening cross-pins, and a variety of metal and wood screws.⁴⁰

These components would then be assembled, with “[p]arts often ha[ving] to be filed, fitted, re-filed, and re-fitted before they could be put into harmony with one another.”⁴¹

The “third and smallest cohort” of American gunsmiths “made their own firearms from scratch.”⁴² These gunsmiths “usually worked alone or in pairs in small shops.”⁴³ They also possessed a wide variety of materials and tools so they could fashion each of the required components themselves from raw materials.⁴⁴ Given the wide variety of skills and costly materials and tools necessary to make an entire gun from scratch, this group of gunsmiths was understandably small in the grand scheme of early American gunsmithing.

To put it simply, most of the individual gunsmiths who actually made guns—as opposed to just repairing them—assembled them from a mixture of self-made and prebuilt components. The more complex parts, such as the barrel and gun lock, were typically purchased from Europe, while simpler parts such as the stock or furniture could be self-built.⁴⁵ A minority actually built the whole gun from scratch.⁴⁶

Now consider who these “gunsmiths” were. DeLay charges the “American tradition of self-made arms narrative” with “conflat[ing] amateurs with professionals.”⁴⁷ But this divide among gunsmiths is not a clear one, *particularly* in the colonial and revolutionary era. DeLay writes that the American firearm industry “long employed professionals with specialized skills in firearms production.”⁴⁸ Yet one need not be a full-time gunmaker to have those specialized skills. Consider a blacksmith who takes orders for *any* components wrought from metal.

39 See *id.* at 61–62 (describing how Americans used “imported locks or barrels”).

40 *Id.* at 62.

41 *Id.*

42 *Id.* at 63.

43 *Id.*; see also Graham Ambrose, Note, *Gunmaking at the Founding*, 77 STAN. L. REV. 235, 251 (2025) (“Most dedicated full-weapon gunsmiths of the time likely worked out of small cabins, perhaps with another smith or apprentice.”).

44 DeLay, *supra* note 1, at 63.

45 *Id.* at 54–55, 61–62.

46 *Id.* at 63.

47 *Id.* at 53.

48 *Id.*

He might have the specialized skills necessary to make a barrel.⁴⁹ Similarly, a clockmaker might not focus on making gun locks but could possess the specialized skills necessary to do so.⁵⁰ Other tradesmen, from carpenters to cutlers, also possess helpful skills.⁵¹

Indeed, there appears to be good evidence that individuals across a variety of trades were also “gunsmiths” on the side.⁵² Though these people possessed specialized skills obtained through their trades, their focus was not on gunsmithing. When they moonlighted as gunsmiths, in a sense they were acting as amateurs, just as a professional machinist who machines an 80% lower at home to construct a firearm is still building that firearm as an amateur.⁵³ According to DeLay, most of those who engaged in gun making had more skill than the amateur gunmaker today.⁵⁴ But they were also often *not* professional, full-time gunmakers.

Of course, given that *Bruen* places the burden on the government to “demonstrate that the regulation [today] is consistent with this Nation’s historical tradition of firearm *regulation*,”⁵⁵ the most relevant historical fact for litigation purposes is how the government *responded* to those who privately built arms. But DeLay (to paraphrase the author himself) “has almost nothing to say about [regulations of privately

49 See *id.* at 55–56 (“The era’s barrel makers heated iron slabs, laboriously hammered them into shape, and welded them together around a tapered . . . mandrel. . . . The iron wrapped around the mandrel was repeatedly heated and hammered on an anvil cut with grooves corresponding to the desired shape of the barrel. . . . Once the seam had been sealed, the interior had to be bored. A steel bit affixed to a hand-turned drill was twisted into the barrel, scraping out a thin layer of iron with each pass.”).

50 See *id.* at 57–58 (describing the “challenging” process of making quality gunlocks).

51 See *id.* at 62 (showing how a wooden stock would have to be carved and metal components fabricated).

52 Joseph G.S. Greenlee, *The American Tradition of Self-Made Arms*, 54 ST. MARY’S L.J. 35, 66–68 (2023) (collecting sources for people of various trades and professions “engag[ing] in gunsmithing as an additional occupation or hobby,” *id.* at 66). DeLay does not dispute that some tradesmen engaged in “gunsmithing” on the side, but suggests that, to the extent they did, “they almost certainly were dabbling in [the] . . . category of ‘gunsmith’ focused on repairs.” DeLay, *supra* note 1, at 61. The example DeLay addresses with particular derision is that of the attorney Ignatius Leitner, who in 1800 advertised that he also provided gunsmithing services. *Id.* (discussing Greenlee’s claim that “attorneys (yes, attorneys)” sometimes worked as gunsmiths); Greenlee, *supra*, at 68 n.190. DeLay’s claim that individuals like Leitner “almost certainly . . . focused on repairs,” DeLay, *supra* note 1, at 61, is belied by the language of his advertisement itself, which explicitly said he engaged in “making rifles, still cocks, casting rivets, gun mountings, etc. at the lowest prices,” HENRY J. KAUFFMAN, *EARLY AMERICAN GUNSMITHS 1650–1850*, at 61 (1952) (emphasis added).

53 See Greenlee, *supra* note 52, at 66.

54 DeLay, *supra* note 1, at 63.

55 N.Y. State Rifle & Pistol Ass’n v. Bruen, 142 S. Ct. 2111, 2126 (2022) (emphasis added); see also United States v. Rahimi, 144 S. Ct. 1889, 1898 (2024) (requiring consideration of “the principles that underpin our *regulatory* tradition” (emphasis added)).

made arms]. His silence is understandable given that those [regulations] were [largely absent].”⁵⁶ Instead, DeLay focused largely on how colonists failed in their endeavors to build enough guns to arm the entire army.⁵⁷ This is understandably a large task, and one that home gunmakers today would likely fail at too.⁵⁸ But that colonial gunsmiths failed to properly equip the military says nothing about whether the government at the time regulated privately making arms or not.

What DeLay *does* show is how the revolutionary leaders actively incentivized production by these colonial gunsmiths.⁵⁹ He summarizes how many at the Founding shared a (perhaps naïve) sentiment that American smiths would be able to provide the arms necessary to win the revolution.⁶⁰ As DeLay details, Massachusetts “budgeted nearly \$100,000 to pay for domestically produced war material early in the conflict.”⁶¹ “New York offered a bounty of \$444 to anyone willing to start a gunlock factory in the colony”⁶² At least Maryland, Virginia, and Pennsylvania similarly attempted to encourage arms making within their borders.⁶³ That these incentives failed does little to rebut the legal sentiment at the time: That arms making of all stripes—both at scale and by individual smiths—was to be encouraged.

As others have shown, what regulations existed largely attached to the sale of firearms rather than to their manufacture—“typically for quality control or to mitigate the dangers of gunpowder.”⁶⁴ Around the time of the Founding, most laws adjacent to gun making related to the sale of arms to the government. Examples include compelling gunsmiths to make certain types of firearms useful to the revolutionary

56 DeLay, *supra* note 1, at 67 (discussing the position of Greenlee, *supra* note 52, at 54–61).

57 *Id.* at 64–71 (describing the failures of programs designed to provide sufficient military arms through domestic manufacturing).

58 Since privately made arms are not tracked, it is difficult to determine how many are made each year. But the military has been estimated to have around 4.5 million small arms, a number unlikely to be matched by private arms makers. See Sonner Kehrt, *The US Military Vowed to Safeguard its Arsenal. Why Do its Weapons Keep Going Missing?*, THE WAR HORSE (Sep. 6, 2024), <https://thewarhorse.org/us-military-weapons-go-missing-despite-vow-to-protect-arsenal> [<https://perma.cc/XCR8-RYNU>].

59 See DeLay, *supra* note 1, at 65–71. On this point, legal scholars generally seem to agree. See, e.g., Ambrose, *supra* note 43, at 252–55 (discussing efforts to get gunsmiths to make arms during the Revolution); Greenlee, *supra* note 52, at 54–62 (same).

60 DeLay, *supra* note 1, at 66–67.

61 *Id.* at 67.

62 *Id.*

63 *Id.*

64 Greenlee, *supra* note 52, at 80.

cause,⁶⁵ setting certain standards for military arms,⁶⁶ inspecting those arms,⁶⁷ prohibitions on selling arms to enemies,⁶⁸ and setting standards for the storage of gunpowder.⁶⁹ Guns made that were never sold or put into militia or military use seem to have faced little regulation.⁷⁰ And to the extent that laws touched the manufacturing of arms directly, they appear to have primarily been directed at *requiring* the manufacturing of arms.⁷¹

II. CONTINUITY OF PRIVATELY MADE FIREARMS

DeLay makes much of the distinction between “making” guns and “assembling” them, arguing that those who build a firearm using things like an 80% lower “are not making guns” because they are just “*assembling* them.”⁷² He goes on to claim that “these amateurs” could not “belong to a ‘long and storied tradition in America’” of privately building firearms because they do not actually *make* them.⁷³ This argument might make sense⁷⁴ if DeLay spent the next twenty pages showing how gunsmiths at the Founding all built firearms from scratch. If those

65 Ambrose, *supra* note 43, at 273–74 (describing how, leading up to the Revolution, “[p]ublic authorities required gunmakers to make certain guns . . . and to stop making other guns, such as rifles,” *id.* at 274.).

66 *Id.* at 275 (“During the Revolution, local governments commonly set standards for weapons.”).

67 *Id.* at 276 (“States often required inspections of militia arms by public officials one to four times a year.”).

68 *Id.* at 277–78 (describing prohibitions on arming those who refused to “support[] the revolutionaries or who took up arms for the Crown,” *id.* at 277).

69 *Id.* at 278 (“[Gunpowder] regulations were common throughout the Founding era and across states.”).

70 Greenlee, *supra* note 52, at 80 (“While the sale of arms would be subject to regulation during the nineteenth century—typically for quality control or to mitigate the dangers of gunpowder—the manufacture of arms, for personal use or otherwise, was not.”); *see also* Ambrose, *supra* note 43, at 271–78 (describing Founding-era regulations largely related to militia or military service).

71 Ambrose, *supra* note 43, at 265–66 (showing how, in the colonial era, “[a]uthorities could impress gunsmiths . . . and force gunsmiths to abandon other work to make or repair firearms,” *id.* at 265). Similar laws continued during the Revolution. *See, e.g.,* Greenlee, *supra* note 52, at 79.

72 DeLay, *supra* note 1, at 53.

73 *Id.* at 54 (quoting Tom Jackman & Emily Davies, *Teens Buying ‘Ghost Guns’ Online, with Deadly Consequences*, WASH. POST (July 12, 2023) <https://www.washingtonpost.com/dc-md-va/2023/07/12/teens-ghost-guns-deadly-shootings/> [https://perma.cc/HH4A-65UL]).

74 This is, of course, putting aside the fact that very few products are ever built entirely from scratch. Does Toyota not “make” cars because many of its components are sourced from third parties? Does Dell not “make” laptops because its CPUs are supplied by Intel? Is a construction company merely an “assembler” of houses because it purchases lumber pre-cut?

smiths had all hand wrought the barrels themselves, if they all hand-crafted the springs for the gunlocks, if they each fashioned the brass furniture with their own tools—with all those ifs, one might confidently say that the modern amateur gunsmith does not “make” guns in the same tradition as those at the Founding because they purchase many of their components premade from others.

Of course, as described above, DeLay does the exact opposite. The hypothetical gunsmith just described was the *rarest* type according to him.⁷⁵ Instead, DeLay shows that, of the gunsmiths who actually “made” arms, most did so with a mix of handmade and purchased parts.⁷⁶ They would purchase the most complex components from the more industrially established factories in Europe.⁷⁷ They would build certain parts using standard tools.⁷⁸ These components would then be assembled into a completed firearm.⁷⁹

If that description gives the reader déjà vu, it is likely because that sounds *a lot* like the way the modern private arms maker builds their firearm. The amateur gunmaker today can purchase a completed upper receiver or trigger assembly components from a number of established manufacturers.⁸⁰ They then make other components—like the lower receiver or frame—using tools they have at home.⁸¹ Next, they assemble the components into a completed firearm.⁸² This is the same general process most American gunmakers used at the Founding.⁸³

Sure, technology has advanced and power tools now take much of the work out of machining a lower receiver or carving a stock.⁸⁴ 3D

75 DeLay, *supra* note 1, at 63 (describing “[c]olonial Americans who made their own firearms from scratch” as the “smallest cohort of gunsmiths”).

76 *Id.* at 61–62.

77 *Id.*

78 *Id.* at 62 (“A functional wooden stock would have to be made, a task requiring woodworking tools and expertise.”).

79 DeLay argues that this assembly was far more difficult than it is today, and “not the domain of amateurs.” *Id.* at 63, 62–63. But privately making firearms typically still involves making certain components such as the frame or receiver. See McWilliam, *supra* note 8, at 3–4. And while modern manufacturing techniques make this less labor intensive than similar work would have been at the Founding, “particular time and care,” see DeLay, *supra* note 1, at 62, must still be taken in completing this work or the firearm will be either nonfunctional or dangerous to use. McWilliam, *supra* note 8, at 3–4.

80 See, e.g., *AR-15 Uppers*, PALMETTO STATE ARMORY, <https://palmettostatearmory.com/ar-15/barreled-upper-assemblies.html> [<https://perma.cc/A2XM-US9G>] (last visited Sep. 25, 2025); *Trigger Maintenance & Spares*, GEISSELE AUTOMATICS, <https://geissele.com/triggers/trigger-maintenance-spares.html> [<https://perma.cc/386P-5LUE>] (last visited Sep. 25, 2025).

81 McWilliam, *supra* note 8, at 3–4.

82 *Id.* at 3.

83 See DeLay, *supra* note 1, at 61–63.

84 See McWilliam, *supra* note 8, at 2–4.

printers are available to print certain low-stress components.⁸⁵ This opens up arms making to those who previously may not have had the time, resources, or skill to do so. But just as words posted on the internet still receive First Amendment protection even though the average person would not have had the ability to disseminate speech as easily without it, technological advances in manufacturing do not remove arms making from the Second Amendment's protection.⁸⁶ In both the tradition DeLay describes and today, individual gunmakers build some components, purchase others, and assemble them into a completed firearm.

Even if most of the gunsmiths at the Founding focused on repairing firearms, of those who built guns, most did so by *assembling* them.⁸⁷ And instead of stopping these people from doing so—which is the type of evidence the *Bruen* framework largely depends on⁸⁸—the revolutionary governments *supported* these people's endeavors and tried to incentivize more people to do so. That these incentives failed to yield firearms sufficient to arm the entire Continental Army says nothing about whether the underlying conduct was the type they sought to protect through the Second Amendment. Outside of some varying quality control, labor, or administrative military laws, there was no historical tradition of regulating the ability of private individuals to assemble arms in the manner they do today.

CONCLUSION

DeLay's article delivers an important account of gun making at the Founding. He counters many of the historical arguments accepted by courts and legal scholars. But he also affirmatively shows a tradition that is, at the very least, accepting and supportive of the private assembly of arms. And since modern amateur gunsmiths build firearms in fundamentally the same way, that tradition confirms the right to assemble firearms today.

Of those gunsmiths who built entire arms around the time of the Founding, most did so using a mixture of purchased and handmade components. Amateur gunmakers do the same today. At the Founding, they would purchase the most complex parts, like the gun locks or barrels. Today, home gunmakers will often purchase upper receiver

85 *Id.*

86 *See* N.Y. State Rifle & Pistol Ass'n v. Bruen, 142 S. Ct. 2111, 2132 (2022) ("Just as the First Amendment protects modern forms of communications, . . . the Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding." (quoting *District of Columbia v. Heller*, 554 U.S. 570, 582 (2008))).

87 *See* DeLay, *supra* note 1, at 61–63.

88 *Bruen*, 142 S. Ct. at 2133.

assemblies—or similar components, depending on the firearm—pre-assembled from a retailer. In early America, they would make other components like stocks by hand. Today, they might make parts like the lower receiver or frame at home. Then, they would assemble a firearm using those purchased and homemade parts. At the Founding, they did the same.

Rather than respond to private gunsmiths by hampering their ability to make weapons, the colonial and revolutionary governments actually *incentivized* them to assemble arms. Some jurisdictions just mandated gunsmiths to make certain arms. Others provided cash rewards for doing so.⁸⁹ The private manufacture and assembly of arms therefore fell within the Founders' arms tradition—the tradition protected by the Second Amendment. Under the standard laid forth in *Bruen* and *Rahimi*,⁹⁰ the right to assemble firearms is preserved for those modern amateur gunmakers who continue this tradition today.

89 Greenlee, *supra* note 52, at 56–57.

90 United States v. Rahimi, 144 S. Ct. 1889, 1898 (2024) (citing *Bruen*, 142 S. Ct. at 2131–34).

