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Understanding Gun Law History after Bruen: Moving Forward by Looking Back

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UNDERSTANDING GUN LAW HISTORY AFTER BRUEN: MOVING FORWARD BY LOOKING BACK

*Robert J. Spitzer**

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INTRODUCTION

The Supreme Court's 2022 decision in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen* fundamentally disrupted the basis and criteria for judging the constitutionality of contemporary gun laws.¹ Moving beyond the approach taken by the Court in its 2008 decision of *D.C. v. Heller*,² the Court for the first time in history expanded the Second Amendment right to allow citizens to carry a gun in public spaces. Further, it decided that the government would have to show that a gun regulation "is consistent with the Nation's historical tradition of firearm regulation" to uphold its constitutionality.³ The Court also said that "a modern-day regulation" need not be "a dead ringer for historical precursors" for it to be "analogous enough to pass constitutional muster."⁴ Thus, comparisons between old gun laws and current ones now play a critical role in determining the constitutionality of contemporary gun regulations. This new standard has opened the floodgates of legal challenges to all manner of gun laws⁵ and raised collateral controversy about the logic and wisdom of the Court's decision.⁶

This new legal standard is, for example, applied in challenges to state and local laws restricting assault weapons and large capacity magazines (LCMs). The debate over these laws would seem to be a purely contemporary matter, responding to the modern phenomenon of mass shootings and the technologies that led to the development and spread of assault weapons. Indeed, the modern effort to restrict such weapons was sparked in part by a shooting at an elementary school in Stockton, California in 1989, when a man, armed with an AK-47 and a handgun, killed five children and wounded thirty-three others. The assailant fired a total of 105 rounds in about three minutes from a 75-round magazine and a 30-round magazine, both of which

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1. 597 U.S. ___, 142 S. Ct. 2111 (2022).

2. 554 U.S. 570 (2008).

3. *Bruen*, 142 S. Ct. at 2126.

4. *Id.* at 2114.

5. See Jennifer Mascia, *Tracking the Effects of the Supreme Court's Gun Ruling*, THE TRACE (Oct. 14, 2022), <https://www.thetrace.org/2022/08/nysrpa-v-bruen-challenge-gun-regulations/> [https://perma.cc/GJF3-NWJ3]; see also Jennifer Mascia & Will Van Sant, *Bruen Takes Gun Law Back to a Time Before 'Domestic Violence'*, THE TRACE (Feb. 8, 2023), <https://www.thetrace.org/2023/02/restraining-order-gun-ban-constitutional/> [https://perma.cc/59MS-GFDN].

6. See Darrell A.H. Miller & Joseph Blocher, *Manufacturing Outliers*, 2022 SUP. CT. REV. 49, 49–79 (2022).

he emptied before killing himself.⁷ Later that year, California enacted the first assault weapons ban in the country. Five years later, Congress enacted a limited ten-year assault weapons ban that also included a restriction on ammunition magazines holding more than 10 rounds.⁸

As of this writing, ten states plus the District of Columbia have enacted similar bans, as have various localities around the country.⁹ These jurisdictions represent approximately 109 million people, or approximately 32.7% of the U.S. population.¹⁰ 14 states plus the District of Columbia restrict LCMs.¹¹ These jurisdictions represent more than 115 million individuals, or approximately 34.5% of the U.S. population.¹²

These recent efforts to restrict assault weapons and LCMs are simply the latest chapter in a centuries-long effort to promote public safety, protect the public from harm, and dampen weapons-related criminality. The pattern of criminal violence and concerns for public safety leading to weapons restrictions is not new; in fact, it can be traced back to the Nation's

7. See Nelson Kempsey, A Report to Attorney General John K. Van de Kamp on Patrick Edward Purdy and the Cleveland School Killings, 7–8 (1989).

8. See ROBERT J. SPITZER, *THE POLITICS OF GUN CONTROL* 25–26, 205–11 (8th ed. 2021).

9. See *Assault Weapons*, GIFFORDS LAW CTR., <https://giffords.org/lawcenter/gun-laws/policy-areas/hardware-ammunition/assault-weapons/> [<https://perma.cc/S26E-AR7V>] (last visited Sept. 11, 2023); see also ROBERT J. SPITZER, *THE GUN DILEMMA: HOW HISTORY IS AGAINST EXPANDED GUN RIGHTS* 14–15 (2023). The 11 American jurisdictions with assault weapons bans are: California, Connecticut, Delaware, the District of Columbia, Hawaii, Illinois, Maryland, Massachusetts, New Jersey, New York, and Washington State. *Assault Weapons*, *supra*. The Hawaii law applies only to assault pistols. *Id.* The U.S. House of Representatives passed a renewed federal assault weapons ban with magazine limitations in 2022. See H.R. 1808, 117th Cong. (2022).

10. See *National Population Totals and Components of Change: 2020-2022*, U.S. CENSUS, <https://www.census.gov/data/tables/time-series/demo/popest/2020s-national-total.html#partextimage2011805803> [<https://perma.cc/4YL7-TWLH>] (last visited Sept. 11, 2023) (2022 state population estimates). The total population in these jurisdictions is estimated to be 101,000,000 out of a U.S. total of about 333,000,000. See *id.*

11. See *Large Capacity Magazines*, GIFFORDS LAW CTR., <https://giffords.org/lawcenter/gun-laws/policy-areas/hardware-ammunition/large-capacity-magazines/> [<https://perma.cc/CT7N-7B2A>] (last visited Sept. 23, 2023). The 15 jurisdictions are California, Colorado, Connecticut, Delaware, the District of Columbia, Hawaii, Illinois, Maryland, Massachusetts, New Jersey, New York, Oregon, Rhode Island, Vermont, and Washington. *Id.* With four exceptions (Colorado, Delaware, Illinois, and Vermont), all these restrictions impose a ten-round limit on magazines, as did the 1994 federal law. *Id.* The Illinois and Vermont laws limit magazines for long guns to ten rounds, and handguns to 15. *Id.* Colorado law limits all magazines to 15 rounds. Delaware law limits all magazines to seventeen rounds. *Id.* Litigation challenging most of these assault weapon and LCM restrictions is currently pending. See SPITZER, *supra* note 9, at 30.

12. See *National Population Totals and Components of Change: 2020-2022*, *supra* note 10. The total population in these jurisdictions is estimated to be over 115,000,000 out of a U.S. total of about 333,000,000. *Id.* In 2022, the U.S. House of Representatives passed a renewed nationwide assault weapons ban with LCM restrictions. See H.R. 1808, 117th Cong. (2022).

beginnings. While the particular weapons technologies and public safety threats have changed over time, governmental responses to the dangers posed by certain weapons have remained constant. Current restrictions on assault weapons and detachable ammunition magazines are part of a pattern in America's history of legislative restrictions on particular weapons stretching back centuries.

In this Article, I use the current challenges to assault weapons and large capacity magazine limitation laws as the pivot point to examine a series of historical cases of weapons regulations, all of which demonstrate that the historic enactment of government regulations and restrictions on various dangerous weapons occurred throughout America's political development when viable weapons technologies emerged, matured, entered the civil society, and posed a threat to public safety and good order. Each of these steps was a necessary predicate to the next. Part I of this Article first examines state restrictions on fully automatic and semiautomatic firearms in the early twentieth century, including surprisingly extensive regulation of ammunition feeding devices during the same period. It then turns to an examination of pre-twentieth century firearms technologies, incorporating an array of experimental multi-shot weapons dating back several hundred years. Part II examines historical restrictions on fighting knives (most notably the Bowie knife), blunt weapons and clubs, pistols, and trap guns. Part III returns to recent developments in the assault weapons debate.

I. REGULATORY HISTORY OF FULLY AUTOMATIC AND SEMI-AUTOMATIC FIREARMS

A central question pertaining to the regulation of modern semi-automatic assault-type weapons and large capacity magazines is the matter of when feasible multi-shot technologies emerged, and how, or whether, the government responded with regulations. While feasible weapons capable of firing rounds in rapid succession can be traced to guns of the late nineteenth and early twentieth centuries, like the hand-cranked, multi-barreled Gatling gun which could fire up to 200 rounds per minute,¹³ it and its successors were military weapons designed to be used in combat and fired from a tripod or similar supporting apparatus, owing to the Gatling gun's size and weight. Strictly speaking, guns like the Gatling gun were not fully automatic as they did not fire a continuous stream of bullets while depressing a gun trigger.

13. *Gatling Gun*, HISTORY.COM (Sept. 9, 2021), <https://www.history.com/topics/american-civil-war/gatling-gun> [https://perma.cc/N5HU-G42U]. The Gatling gun, a manually operated, hand-cranked machine gun, was adopted by the U.S. Army in 1866, and was utilized in warfare against Native Americans and in the Spanish-American War of 1898. 1 RICHARD W. STEWART, AMERICAN MILITARY HISTORY, THE U.S. ARMY AND THE FORGING OF A NATION, 1775–1917 373 (2d ed. 2009).

The development of a fully automatic machine gun for battlefield use, capable of firing all its rounds from a single barrel and with a single trigger pull, came to fruition during World War I. These tripod-mounted military guns, like the Maxim, operated to devastating effect on the battlefield. They initially fired 200–400 rounds per minute but later 400–600 rounds per minute from a gun weighing roughly 100 pounds.¹⁴ These were, of course, purely military weapons that played no role in civilian life or society.

Out of World War I came a practical, lighter-weight, reliable, hand-held, fully automatic weapon: the Thompson submachine gun, widely known as the Tommy gun. Although it was developed for use in World War I as “purely a military weapon,”¹⁵ it came too late in the war to have much effect. Its inventor, John Thompson, patented his .45 caliber gun in 1920.¹⁶ The Tommy gun was initially unregulated after World War I and was made available for civilian purchase to try to boost anemic sales, typically with either a 20–30 round stick magazine or a 100-round drum magazine (although the Tommy gun could also fire in semi-automatic fashion).¹⁷ The early models of the Tommy gun could fire “an astounding 1,500 rounds per minute. A Tommy gun could go through a 100-round drum magazine in four seconds. Later versions fired 600 to 700 rounds per minute.”¹⁸ The U.S. military showed little interest in acquiring the weapon, as the military largely demobilized and contracted sharply in size after the war.¹⁹ It was only at this point — in the early 1920s — that such hand-held weapons operated reliably, were made available to civilians, and began to circulate in society.²⁰ By 1925, Thompson’s marketing company, Auto-Ordnance, had sold only about 3,000 of the 15,000 it had manufactured up to this point, including to police forces and individuals.²¹ This pattern of anemic sales typified the

14. DONALD M. SNOW & DENNIS M. DREW, FROM LEXINGTON TO DESERT STORM: WAR AND POLITICS IN THE AMERICAN EXPERIENCE 127 (1st ed. 2015); *How the Machine Gun Changed Combat During World War I*, NORWICH UNIV. ONLINE (Oct. 15, 2020), <https://online.norwich.edu/academic-programs/resources/how-machine-gun-changed-combat-during-world-war-i> [<https://perma.cc/6B9U-Q3UB>].

15. WILLIAM J. HELMER, THE GUN THAT MADE THE TWENTIES ROAR 75 (1st ed. 1969).

16. Matthew Moss, *From Gangland to the Battlefield — 15 Amazing Facts About the Thompson Submachine Gun*, MIL. HIST. NOW (Jan. 16, 2015), <https://militaryhistorynow.com/2015/01/16/from-gangland-to-the-battlefield-15-amazing-facts-about-the-thompson-submachine-gun/> [<https://perma.cc/UZY7-9KEB>].

17. See HELMER, *supra* note 15, at 136–37.

18. Moss, *supra* note 16.

19. See JOHN ELLIS, THE SOCIAL HISTORY OF THE MACHINE GUN 149 (2d ed. 1986); HELMER, *supra* note 15, at 161–64.

20. See Peter Suci, *The Thompson Submachine Gun: Made for the U.S. Postal Service*, NAT’L INT. (July 3, 2020), <https://nationalinterest.org/blog/reboot/thompson-submachine-gun-made-us-postal-service-164096> [<https://perma.cc/JH36-NE2J>].

21. See LEE KENNETT & JAMES LAVERNE ANDERSON, THE GUN IN AMERICA: THE ORIGINS OF A NATIONAL DILEMMA 203 (Reprint ed., 1975). Helmer confirms the number of 3000 guns

gun's commercial trajectory: "Despite its initial publicity and later notoriety, the Thompson submachine gun was a failure from the start."²² This was especially true for police forces, to whom Thompson and his company marketed the gun aggressively, even when criminals found the gun appealing. "As a criminal's weapon, the Tommygun was an unqualified success. As a police weapon, it was such a flop that many law-enforcement officials wished sincerely that it had never come off the drawing board."²³ For example, after the notorious 1929 St. Valentine's Day massacre when seven gangsters in Chicago were gunned down by rival gangsters dressed as policemen, a representative of Auto-Ordnance visited Chicago police captain John Stege to offer assistance. Captain Stege "practically ran him out of the office . . . It was Stege's opinion that not even the police should be armed with machine guns," an opinion shared "by many other lawmen in the country."²⁴ Another police chief explained: "It is not possible for a police officer to open a machine gun up on a crowded street . . . because you are going to kill possibly ten innocent people to one criminal."²⁵ Poor military and law enforcement sales forced the company to "peddle the new gun in peacetime" by trying "to think up something else it might be good for." The company's conclusion was to market the gun as "good for anything."²⁶

After 1926, sales began to rise, primarily because of newfound interest by the American military, which started to use the weapon in foreign military operations especially in Nicaragua, and by the Belgian military.²⁷ In 1930, the Auto-Ordnance company closed its sales department because of escalating concerns about its weapons falling into criminal hands, and the attendant bad publicity. All commercial sales were discontinued except to the military and law enforcement.²⁸ The result was that by 1932, sales had fallen to fewer than ten per month. Through 1938, the company reported total sales of 10,300. The company's revival came thanks to World War II.²⁹

Before the early 1920s, these fully automatic weapons were unregulated for the obvious reason that they did not exist or were not circulating widely in society. When they did begin to circulate, however, their uniquely

sold by 1925. HELMER, *supra* note 15, at 74. Helmer says that "sales declined steadily" after 1921. *Id.* at 130.

22. HELMER, *supra* note 15, at 129.

23. *Id.* at 126–28. Helmer quotes numerous police officials denouncing the weapon as useless for the police. *Id.*

24. *Id.* at 126.

25. *Id.* at 126–28. The gun's rare actual use confirmed this fear. In an attack on John Dillinger, for example, FBI agents "mistakenly shot three innocent customers." *Id.*

26. *Id.* at 75.

27. *Id.* at 130–45.

28. *Id.* at 143–44.

29. *Id.* at 167–79.

destructive capabilities rapidly became apparent, especially to the emergent Prohibition-fueled gangster organizations of the 1920s. Another automatic weapon developed for World War I was the Browning Automatic Rifle (BAR). It fired a .30-06 caliber round, could receive a 20-round box magazine, and could fire up to 650 rounds per minute. The BAR first appeared on the battlefield in 1918.³⁰ It was “a heavy machine rifle weighing nearly twenty pounds with bipod and loaded magazine”³¹ It, too, made its way into civilian life and found favor among criminals and gangsters in the 1920s and early 1930s.³² Guns like the Tommy gun and the BAR were used relatively infrequently by criminals, but when they were used, they exacted a devastating toll and garnered extensive national attention, such as their use in the infamous St. Valentine’s Day massacre.³³ Notable use of the Tommy gun by criminals began to occur and receive attention in the news about 1925.³⁴

News reports and exposés, juxtaposed with lurid and sensational accounts of Tommy gun criminality, built pressure on the states to enact anti-machine gun laws and put pressure on Congress to act. A long-stalled bill in Congress to restrict the interstate shipment of guns received renewed interest and support in 1926, eventually leading to congressional enactment of the Mailing of Firearms Act of 1927,³⁵ a limited measure that failed to restrict interstate handgun shipment because it did not affect non-Postal Service shipments.

From 1926 on, news stories were filled with the kind of sensational gangster-related stories that led to the Tommy gun being labeled the weapon that “made the Twenties roar,” and that also led most states to enact anti-machine gun laws. For example, a news article dated November 27, 1928, reported that “Chicago’s war on gangsters and racketeers was reopened tonight with the drafting of a law to prohibit the sale of machine guns.

30. See Paul Richard Huard, *Browning Automatic Rifle: The Most Dangerous Machine Gun Ever?* NAT’L INT. (Nov. 19, 2019), <https://nationalinterest.org/blog/buzz/browning-automatic-rifle-most-dangerous-machine-gun-ever-97662> [<https://perma.cc/6B29-5ZGY>]; *Browning Automatic Rifle*, BRITANNICA (Sept. 8, 2022), <https://www.britannica.com/technology/Browning-automatic-rifle> [<https://perma.cc/XKS5-V85B>].

31. HELMER, *supra* note 15, at 37.

32. See DEREK AVERY, *FIREARMS 12* (1st ed. 1995). The BAR was a favorite of the notorious outlaws Bonnie and Clyde. See Christian Oord, *The Weapons of Bonnie & Clyde & the Guns That Stopped Them*, WAR HIST. ONLINE (Apr. 26, 2019), <https://www.warhistoryonline.com/history/weapons-of-bonnie-and-clyde.html?A1c=1> [<https://perma.cc/AHA6-Y8Y2>].

33. See CHRIS McNAB, *DEADLY FORCE: FIREARMS AND AMERICAN LAW ENFORCEMENT* 97–98 (2009).

34. ELLIS, *supra* note 19, at 152–53; HELMER, *supra* note 15, at 81–82.

35. Mailing of Firearms Act of 1927, 18 U.S.C. § 1715.

‘Tommy guns,’ the bullet spitting little Thompson submachine guns which are inseparable from gang fights, bank robberies, assassinations and other major crimes . . . could be purchased as easily and legally in Chicago as a pound of meat . . . practically every sporting goods establishment in Chicago carried the firearms and sold them readily.”³⁶ Illinois adopted an anti-machine gun law in 1931.³⁷

A. State-Level and Nationwide Attempts to Regulate Automatic and Semi-Automatic Firearms in the Early Twentieth Century

In response to the wider availability of firearms like the Tommy gun and the BAR, between 1925 and 1934, at least 32 states enacted anti-machine gun laws.³⁸ These state (and eventually federal) enactments were anticipated, justified, and promoted by the National Conference of Commissioners on Uniform State Laws, an organization formed in 1892 to provide “non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.”³⁹ In 1923,

36. *Machine Gun Ban Plan of Chicago*, SALT LAKE TRIB., <https://www.newspapers.com/image/542285510/?terms=%22Thompson%20submachine%22&match=1> [https://perma.cc/ZE4Z-EP9D] (last visited Aug. 2, 2023).

37. An Act to Regulate the Sale, Possession and Transportation of Machine Guns, Former Ill. Rev. Stat. ch. 38, ¶¶ 414a–414g (1931).

38. *See, e.g.*, Act effective July 29, 1927, ch. 552, 1927 Cal. Stat. 938; Act of Feb. 25, 1931, ch. 249, 37 Del. Laws 813; Act of July 8, 1932, Pub. L. No. 72-275, §§ 1, 8, 47 Stat. 650, 651–52 (1932) (D.C.); An Act to Regulate the Hunting of Wild Deer etc., § 8, 1913 Fla. Laws 117; An Act to Prevent Throwing of Bombs and the Discharge of Machine Guns Upon, or Across Any Public Road in the State of Florida . . . , ch. 16111, § 1, 1933 Fla. Laws 623; Act of Apr. 27, 1933, No. 120, 1933 Haw. Sess. Laws 117; Act of July 2, 1931, 1931 Ill. Laws 452–53; Act of Mar. 27, 1927, ch. 156, 1927 Ind. Acts 469; Act of Apr. 19, ch. 234, 1927 Iowa Acts 201; Act of Nov. 28, 1933, ch. 62, 1933 Kan. Sess. Laws 76; Act of July 7, 1932, No. 80, 1932 La. Acts 337–86 1927 Md. Laws 156, § 388-B; Act of Apr. 27, 1927, ch. 326, 1927 Mass. Acts 413; Act of June 2, 1927, No. 372, 1927 Mich. Pub. Acts 888–89; Act of Apr. 10, 1933, ch. 190, 1933 Minn. Laws 231–33; Act of June 1, 1929, H.R. No. 498, 1929 Mo. Laws 170; Act of Apr. 29, 1929, ch. 190, 1929 Neb. Laws 674; Act of Mar. 19, 1927, ch. 95, 1927 N.J. Laws 180-81; Act of Apr. 15, 1931, ch. 435, 1931 N.Y. Laws 1033; Act of Mar. 9, 1931, ch. 178, 1931 N.D. Laws 305–06; Act of Apr. 8, 1933, No. 64, 1933 Ohio Laws 189–90; Act of Mar. 10, 1933, ch. 315, §§ 2–3, 1933 Or. Laws 488, 489; Act of Apr. 25, 1929, No. 329, 1929 Pa. Laws 777; Act of Apr. 22, 1927, ch. 1052, 1927 R.I. Pub. Laws 256; Act of Mar. 2, 1934, No. 731, 1934 S.C. Acts 1288; Uniform Machine Gun Act, ch. 206 §§ 1–5, 1933 S.D. Sess. Laws 245–46; Act of Oct. 25, 1933, ch. 82, 1933 Tex. Gen. Laws 219–20; An Act to Prohibit the Use of Machine Guns and Automatic Rifles in Hunting, § 1, 1923 Vt. Acts and Resolves 127; Act of Mar. 7, 1934, ch. 96, 1934 Va. Acts 137–39; Act of Mar. 6, 1933, ch. 64, 1933 Wash. Sess. Laws 335–36; Act of June 5, 1925, 1925 W. Va. Acts 24, 30–32 ((First) Extraordinary Sess.); Act of May 28, 1929, ch. 132, 1928–1929 Wis. Sess. Laws 157.

39. *About Us*, UNIF. L. COMM’N, <https://www.uniformlaws.org/aboutulc/overview> [https://perma.cc/M453-Z5YC] (last visited Sept. 23, 2023). Today, the organization is known as the Uniform Law Commission. *Id.*

the Commission organized a special committee to draft a “Uniform Act to Regulate the Sale and Possession of Firearms.”⁴⁰ In 1928, it issued a model law calling for the prohibition of the possession of “any firearm which shoots more than twelve shots semi-automatically without reloading.”⁴¹ In 1930, it issued a model firearms act focusing on “guns of the pistol type.”⁴² In 1932, it issued a model act “intended not only to curb the use of the machine gun, but to make it unwise for any civilian to possess one of the objectionable type.”⁴³ The Commission explained that, between 1923 and 1930, “the infant industry of racketeering grew to monstrous size, and with it the automatic pistol replaced the revolver, to be in turn displaced by a partly concealable type of machine gun — the Thompson .45 inch caliber submachine gun becoming most popular”⁴⁴

Congress enacted a machine gun ban for the District of Columbia in 1932 which defined a machine gun as “any firearm which shoots automatically or semiautomatically more than twelve shots without reloading.”⁴⁵ The National Rifle Association endorsed D.C.’s ban, stating “it is our desire [that] this legislation be enacted for the District of Columbia, in which case it can then be used as a guide throughout the states of the Union.”⁴⁶ In his testimony before Congress in 1934 on the bill that became the National Firearms Act, NRA vice president Milton A. Reckord extolled his organization’s role in passing the 1932 D.C. law, saying, “the association I represent is absolutely favorable to reasonable legislation. We are responsible for the uniform firearms act . . . in the District of Columbia. It is on the books now.”⁴⁷

In 1934, Congress enacted the National Firearms Act, which imposed a series of strict requirements on the civilian acquisition and general circulation of fully automatic and other weapons. The National Firearms Act imposed a tax on the manufacture, sale, and transfer of listed weapons, including machine guns, sawed-off shotguns and rifles, silencers, and “any

40. Report of Firearms Committee, Handbook of the National Conference on Uniform State Laws and Proceedings of the 38th Annual Meeting 422–23 (1928).

41. *Id.*

42. *Uniform Machine Gun Act*, National Conference of Commissioners on Uniform State Laws, Forty-Second Annual Conference, Washington, D.C., Oct. 4–10, 1932, http://www.titleii.com/bardwell/1932_uniform_machine_gun_act.txt [<https://perma.cc/8CTP-2UV9>] [hereinafter *Uniform Machine Gun Act*].

43. *Id.*

44. *Id.*

45. National Firearms Act: Hearing(s) on H.R. 9066 Before the Comm. on Ways and Means, 73rd Cong. 45 (1934) [hereinafter Hearings Before the Committee on Ways and Means]; 47 Stat. 650, ch. 465, §§ 1, 14 (1932).

46. S. REP. NO. 72-575, at 4–6 (1932).

47. Hearings Before the Committee on Ways and Means, *supra* note 45, at 36.

other weapons” with certain firing capabilities.⁴⁸ Such weapons had to be registered with the Treasury Department, and the owners fingerprinted and subject to a background check, with the payment of a \$200 tax.⁴⁹

In his opening statement to the Ways and Means Committee of the U.S. House of Representatives, Attorney General Homer Cummings made clear that the bill under consideration was designed to fight the epidemic of gun crime where criminals could evade capture by crossing state lines:

The development of late years of the predatory criminal who passes rapidly from State to State, has created a situation which is giving concern to all who are interested in law and order . . . there are more people in the underworld today armed with deadly weapons, in fact, twice as many, as there are in the Army and the Navy of the United States combined . . . In other words, roughly speaking, there are at least 500,000 of these people who are warring against society and who are carrying about with them or have available at hand, weapons of the most deadly character.⁵⁰

As one member of the committee observed, “The question in my mind and I think in the majority of the committee is what we can do to aid in suppressing violations by such men as [John] Dillinger and others.”⁵¹

To address the problem, the original version of the bill proposed regulating both semi-automatic and fully automatic firearms, in that it defined restricted machine guns as did the 1932 D.C. law, with its emphasis on outlawing guns that could fire rapidly and repetitively without reloading, whether semi-automatically or fully automatically: “The term ‘machine gun’ means any weapon designed to shoot automatically or semiautomatically 12 or more shots without reloading.”⁵² The final version of the bill limited this language to fully automatic firearms without citing any shot limit.

During the same time period, in addition to the National Firearms Act’s restrictions on fully automatic weapons, at least seven states plus the District of Columbia, and as many as ten states plus D.C., enacted laws restricting semi-automatic weapons.⁵³ The reason for restricting semi-automatic firearms is not hard to discern. These restrictions all appeared in the same

48. I.R.C. § 53.

49. *Id.*

50. Hearings Before the Committee on Ways and Means, *supra* note 45, at 4. The version of the bill that appears on page 1 of the Hearings had this definition of machine gun: “The term ‘machine gun’ means any weapon designed to shoot automatically or semiautomatically twelve or more shots without reloading.” *Id.* at 1.

51. Hearings Before the Committee on Ways and Means, *supra* note 45, at 42.

52. Hearings Before the Committee on Ways and Means, *supra* note 45, at 52.

53. See Robert J. Spitzer, *Gun Law History in the United States and Second Amendment Rights*, 80 L. & CONTEMP. PROBS. 55, 68–71 (2017). The language of the restrictions in Louisiana, Illinois, and South Carolina was ambiguous regarding whether they applied to semi-automatic weapons. *Id.*; SPITZER, *supra* note 9, at 32–33.

statutes as those restricting fully automatic weapons, which utilize the same fundamental firearms technology: an action that automatically loads a new round into the chamber after each shot is fired, potentially with the use of detachable ammunition magazines or similar feeding devices, and is capable of firing numerous rounds without reloading.⁵⁴ During the time that Thompson and his company were developing and marketing the Tommy gun (which, as noted, could fire in semi- or full-auto modes⁵⁵), they were also developing the Thompson Autorifle, a “strictly . . . semiautomatic rifle” for which the military showed greater interest than it did for the Tommy gun.⁵⁶ The Autorifle was also promoted to police and military organizations, though it was overshadowed by the attention focused on the Tommy gun.⁵⁷

As the prior discussion reveals, the regulation of fully automatic and semi-automatic weapons in the 1920s and 1930s was closely tied to the enhanced firing capacity of these weapons and their use by criminals. By that time, gun technology was available that made it possible for ammunition to be reliably fired in rapid succession and guns to be reloaded through interchangeable ammunition magazines or similar devices. Again, the lesson is the same: once these technologies began to spread in civil society and be used for criminal or other dangerous purposes, and because of the belief that it was “unwise for any civilian to possess” such weapons,⁵⁸ regulatory efforts ensued.

B. State Regulation of Ammunition Feeding Devices

Restrictions on fully automatic and semi-automatic firearms were closely tied to restrictions on ammunition magazines or their equivalent, as both automatic and semi-automatic weapons are predicated on some kind of mechanical loading function or device that automatically feeds new rounds into the firing chamber after the previous round is fired. As is the case with contemporary state limitations on ammunition magazine capacity, state laws enacted early in the twentieth century imposed restrictions based on the number of rounds that could be fired without reloading, ranging from more than one in Massachusetts and Minnesota, and up to a high of eighteen in Ohio.

54. See SPITZER, *supra* note 9, at 32–33. In 1913, Florida enacted this measure: “It shall, at any time, be unlawful to hunt game in Marion County with guns — known as Automatic guns.” While an automatic weapon fires a continuous stream of bullets when the trigger is depressed, a semi-automatic weapon fires a single shot with each pull of the trigger. *See id.*

55. See HELMER, *supra* note 15, at 48–49, 255–56.

56. *See id.* at 37, 50.

57. *See id.* at 50, 161. Ultimately, the military opted for the semiautomatic M1 Garand over the Autorifle. *Id.*

58. *Uniform Machine Gun Act*, *supra* note 42.

Magazine capacity/firing limits were imposed in three categories of state laws.⁵⁹ Ten states plus the District of Columbia regulated semi-automatic and fully automatic weapons: California, District of Columbia, Massachusetts, Michigan, Minnesota, New Jersey, North Carolina, Ohio, Rhode Island, South Dakota, and Virginia;⁶⁰ 11 states regulated fully automatic weapons only, where the regulation was defined by the number of rounds that could be fired without reloading or by the ability to receive ammunition feeding devices: Illinois, Louisiana, Minnesota, New Jersey, North Dakota, Oregon, Pennsylvania, South Carolina, Texas, Vermont, and Wisconsin;⁶¹ and four states restricted all guns that could receive any type of ammo feeding mechanism or round feeding device and fire them continuously in a fully automatic manner: California, Hawaii, Missouri, and Washington State.⁶²

59. *See infra* Table 1.

60. 1933 Cal. Stat. 1169; Act of July 8, 1932, Pub. L. No. 72-275 §§ 1-8, 47 Stat. 650, 651-52 (1932) (D.C.); 1927 Mass. Acts 413-14; 1927 Mich. Pub. Acts 887-88; 1933 Minn. Laws 231-32; 1933 Ohio Laws 189-90; 1927 R.I. Pub. Laws 256 §§ 1, 4, 7-8; 1933 S.D. Sess. Laws 245-47; 1934 Va. Acts 137-39 §§ 1, 7. Two of these states enacted early laws focused on such weapons' use in hunting. New Jersey had a 1920 law making it "unlawful to use in hunting fowl or animals of any kind any shotgun or rifle holding more than two cartridges at one time, or that may be fired more than twice without reloading . . ." 1920 N.J. Laws 67. North Carolina made it "unlawful to kill quail with any gun or guns that shoot over two times before reloading" in 1917. 1917 N.C. Sess. Laws 309.

61. 1931 Ill. Laws 452-53; 1932 La. Acts 337-38; 1927 N.J. Laws 180-81; 1931 N.D. Laws 305-06; 1933 Or. Laws 488; 1929 Pa. Laws 777; 1934 S.C. Acts 1288; 1933 Tex. Gen. Laws 219-20; 1923 Vt. Acts & Resolves 127; 1931-33 Wis. Sess. Laws 245-47.

62. 1927 Cal. Stat. 938; 1933 Haw. Sess. Laws 117; 1929 Mo. Laws 170; 1933 Wash. Sess. Laws 335-36.

TABLE 1⁶³

AMMUNITION MAGAZINE RESTRICTIONS IN 23 STATES, 1917–1934		
Semi-automatic and Fully Automatic Firearms (restricted firearms holding more than the listed number of rounds or more without reloading)	Fully Automatic Firearms (restricted firearms capable of firing the listed number of rounds or more without reloading or that could receive ammunition feeding devices)	Any Firearms (weapons capable of receiving rounds through certain named round-feeding devices)
<ul style="list-style-type: none"> - California (10 rounds; 1933) - District of Columbia (12 rounds; 1932) - Massachusetts (1 round; 1927) - Michigan (16 rounds; 1927) - Minnesota (1 round; 1933) - New Jersey (2 rounds; hunting only; 1920) - North Carolina (2 rounds; hunting only; 1917) - Ohio (18 rounds; 1933) - Rhode Island (12 rounds; 1927) - South Dakota (5 rounds; 1933) - Virginia (7 rounds; 1934) 	<ul style="list-style-type: none"> - Illinois (8 rounds; 1931) - Louisiana (8 rounds; 1932) - Minnesota (12 rounds; 1933) - New Jersey (any removable device holding rounds; 1927) - North Dakota (loadable bullet reservoir; 1931) - Oregon (2 rounds; 1933) - Pennsylvania (2 rounds; 1929) - South Carolina (8 rounds; 1934) - Texas (5 rounds; 1933) - Vermont (6 rounds; 1923) - Wisconsin (2 rounds; 1933) 	<ul style="list-style-type: none"> - California (1927) - Hawaii (1933) - Missouri (1929) - Washington State (1933)

63. Including the District of Columbia. Note that California, Minnesota, and New Jersey appear twice in this table. The dataset from which this information is drawn ended in 1934, so it does not include any states that might have enacted similar restrictions after 1934. See *Repository of Historical Gun Laws*, DUKE L. CTR. FOR FIREARMS L., <https://law.duke.edu/gunlaws/> [<https://perma.cc/J58P-8875>] (last visited Sept. 14, 2023).

A 1927 California law, for example, prohibited the possession of any “machine gun,” where that term was defined to include:

[A]ll firearms known as machine rifles, machine guns or submachine guns capable of discharging automatically and continuously loaded ammunition of any caliber in which the ammunition is fed to such gun from or by means of clips, disks, drums, belts or other separable mechanical device.⁶⁴

The other three states in this category, Hawaii, Missouri, and Washington, utilized this same description.⁶⁵ In all, at least 23 states enacted 26 gun restrictions based on the regulation of ammunition magazines or similar feeding devices, and/or round capacity.

The original version of the legislation that became the National Firearms Act of 1934, as noted earlier, included this definition of machine gun that encompassed both semi-automatic and fully automatic firearms: “The term ‘machine gun’ means any weapon designed to shoot automatically or semiautomatically 12 or more shots without reloading.”⁶⁶ Regulations concerning removable magazines and magazine capacity were thus common as early as the 1920s — the period of time when these weapons and devices began to make their way into civilian life and also contributed to violence and criminality, as illustrated by the Tommy gun narrative and other weapons discussed here. These regulations were adopted by nearly half of all states, representing approximately 58% of the American population at that time.⁶⁷

C. Lessons from the Regulation of Automatic and Semi-Automatic Firearms and Ammunition Feeding Devices

The lesson from this sequence of events early in the twentieth century is indicative of our nation’s history of weapons regulations, whereby changes in weapons policy followed a series of steps that respond to developments in firearms (or other weapons) technologies and their filtration into society, each dependent on the previous step. *First*, a new gun or gun technology is invented. *Second*, it may then be patented, though the patenting of a design or idea by no means assures that it will proceed beyond this point. *Third*, it is often developed with a focus on military applications and supplying military needs, not directly for civilian acquisition or use. *Fourth*, some military-designed weapons may then spread to, or be adapted to, civilian

64. 1927 Cal. Stat. 938.

65. See 1933 Haw. Sess. Laws 117; 1929 Mo. Laws 170; 1933 Wash. Sess. Laws 335–36.

66. Hearings Before the Committee on Ways and Means, *supra* note 45, at 52.

67. *Historical Population Change Data (1910-2020)*, U.S. CENSUS (Apr. 26, 2021), <https://www.census.gov/data/tables/time-series/dec/popchange-data-text.html> [<https://perma.cc/75YM-B5ZU>] (using 1920 census data).

markets and use. *Finally*, if such weapons then circulate sufficiently in society to pose a safety, violence, or criminological problem or threat, calls for government regulation or restriction then may lead to gun policy and law changes. New gun laws are not enacted when firearm technologies are invented or conceived. They are enacted when those technologies mature and circulate sufficiently in society to spill over into criminal or other harmful use, presenting public safety concerns that governments attempt to address through their police and policy-making powers.

This lesson is significant because some argue that the absence of government gun regulations in history — at the time of the invention of various weapons or weapons developments — means that regulations now are unjustifiable or have no historical basis. For example, David Kopel argues that “[m]agazines of more than ten rounds are older than the United States.”⁶⁸ Drawing on examples like a firearm “created around 1580” capable of firing sixteen “‘superposed’ loads” (with each round stacked on top of the other); the Puckle gun said to fire eleven shots and patented in 1718; the Girandoni air rifle, invented in the late 1700s; and the Pepperbox pistol of the early 1800s,⁶⁹ Kopel suggests that “magazines of more than ten rounds are older than the Second Amendment.”⁷⁰ Therefore, by Kopel’s reckoning, since these weapons existed early in (or even before) the country’s existence, and were not specifically regulated, *ipso facto*, today’s governments have no basis under the Second Amendment to regulate contemporary assault weapons, like AR-platform rifles, or magazines exceeding certain capacities (typically, a ten-round limit).⁷¹ More to the point, Kopel’s claim that ammunition magazines holding “more than ten rounds” were “very commonly possessed in the United States since 1862” and were “owned by many millions of law-abiding Americans” dating back to the “mid-nineteenth century”⁷² is simply false, as this Article demonstrates.

68. David B. Kopel, *The History of Firearm Magazines and Magazine Prohibitions*, 78 ALB. L. REV. 849, 851 (2014–15).

69. *Id.* at 852–54.

70. *Id.* at 853.

71. *Id.* at 871–72 (“[A] court which today ruled that [10-round] magazines are ‘dangerous and unusual’ would seem to have some burden of explaining how such magazines, after a century and a half of being ‘in common use’ and ‘typically possessed by law-abiding citizens for lawful purposes,’ became ‘dangerous and unusual’ in the twenty-first century.”).

72. *Id.* at 871. Kopel insists “that [10-round] magazines” have been “‘in common use’ and ‘typically possessed by law-abiding citizens for lawful purposes’” for “a century and a half.” *Id.* at 871–72. This claim is both false and unverified by his article.

Kopel's and similar arguments⁷³ fail for two sets of reasons. First, as explained in the following section, this sort of narrative misrepresents the feasibility, availability, and capabilities of these early weapons. Second, the account fails to understand the relationship between firearms' technological development, their spread into civil society, and government gun policy. As one gun history expert noted, "the guns of 1830 were essentially what they had been in 1430: single metal tubes or barrels stuffed with combustible powder and projectiles" where "[a]fter every shot, the shooter had to carry out a minimum of three steps: pour powder into the barrel; add a projectile . . . ; then ignite the gunpowder and send the projectile on its way."⁷⁴

D. The History of Pre-Twentieth Century Firearms Technologies

Single-shot, muzzle-loaded firearms were the ubiquitous guns from the time of America's initial settlement by Europeans until the latter part of the nineteenth century.⁷⁵ Yet as researchers and experts of gun history have noted, experimental multi-shot guns existed in the eighteenth century (with multi-shot experimental designs dating back as much as two centuries earlier).

For example, a firearm from the late 1500s that could fire up to sixteen rounds is described in a book titled, *Firearms Curiosa*. But this book's very title indicates why this narrative is irrelevant to the modern gun debate. The definition of "curiosa" is something that is rare or unusual. As the book's author, Lewis Winant says, his book is about "oddity guns" and "peculiar firearms."⁷⁶ That is, they were anything but common, ordinary, reliable, or found in general circulation. Winant's description of the sixteen shot gun from the 1500s is that "the first pull of the trigger" fires "nine Roman candle charges, a second pull will release the wheel on the rear lock and set off six more such charges, and finally a third pull will fire the one remaining shot."⁷⁷ A "Roman candle" charge was defined by Winant as one where "the operator had no control of the interval between shots; he could not stop the firing once he had started it."⁷⁸ In other words, this firing process was more like lighting

73. See Declaration of Ashley Hlebnsky in Support of Plaintiffs' Motion for Preliminary Injunction at 6, *Miller v. Becerra*, Case No. 3:19-cv-01537-BEN-JLB, (S.D. Cal. Sept. 27, 2019) [hereinafter *Hlebnsky Declaration*].

74. JIM RASENBERGER, *REVOLVER: SAM COLT AND THE SIX-SHOOTER THAT CHANGED AMERICA* 3–4 (2021).

75. See Kevin Baez, *Weapons of War (1600-1800)*, SMITHSONIAN LEARNING LAB (Dec. 6, 2021), <https://learninglab.si.edu/collections/weapons-of-war-1600-1800/HuoHq60eaAj1Ukyz> [https://perma.cc/RAA2-Z4LX].

76. LEWIS WINANT, *FIREARMS CURIOSA* 8–9 (1955).

77. *Id.* at 168.

78. *Id.* at 166.

the fuse of a string of firecrackers, where their ignition occurs in a manner that cannot be controlled by the operator once the initial charge is ignited. Roman candle firing was one type of “superposed” or “superimposed” firing. The other type was controlled, where the gun “was charged with one load on top of another, but the operator had control of the interval between shots. It might have one movable lock or several fixed locks. Each shot would be fired by trigger pull, presumably when the operator felt he had the proper aim.”⁷⁹ Winant concludes: “Of all the ideas for producing multishot firearms the scheme of superimposing loads in one barrel is probably the oldest, the most discredited, the most frequently recurring, and also the most readily accepted as new.”⁸⁰ Several “multi-shot” guns invented prior to the perfection of the revolver and repeating rifle relied on this flawed strategy, which had a number of defects all stemming from the difficulty and danger of loading multiple charges in one barrel, with potentially catastrophic results should a charge go off before it was supposed to.

An early multi-shot gun, the “Puckle Gun,” patented in 1718 in London by James Puckle, reputedly could fire nine rounds per minute (hardly comparable to the firing capabilities of semi- and fully automatic weapons of the twentieth and twenty-first centuries). The patent drawing of this weapon shows it sitting on a tripod on the ground.⁸¹ It was not a hand-held weapon. In the patent, Puckle described it as “a Portable Gun or Machine (by me lately Invented) called a DEFENCE.”⁸² As Winant says, it was a military weapon: “Of the oddities among military weapons none has received more publicity than the Puckle gun. . . . The Puckle invention was probably the first crank-operated machine gun. It embodied several elements that closely resemble construction features of Gatling, Hotchkiss and other manually-operated machine guns.”⁸³ Winant continued, “[i]t is doubtful that any of the Puckle guns that may have been actually produced ever saw service.”⁸⁴ A different account of this weapon says: “There is in fact no record of such a gun ever having been built,”⁸⁵ although there are claims to the contrary. “A contemporaneous poet, commenting on ‘Puckle’s Machine Company’, wrote ‘Fear not, my friends, this terrible machine. They’re only wounded who have shares therein.’”⁸⁶ This weapon “never advanced

79. *Id.*

80. *Id.*

81. *Id.* at 220.

82. *Id.* at 219.

83. *Id.* at 219–20.

84. *Id.* at 21.

85. ELLIS, *supra* note 19, at 13.

86. WINANT, *supra* note 76, at 221; *see also* Forgotten Weapons, *The Puckle Gun: Repeating Firepower in 1718*, YOUTUBE (Dec. 25, 2016), <https://www.youtube.com/watch?v=GPC7KiYDshw> [<https://perma.cc/2D2J-G2YS>].

beyond the prototype stage.”⁸⁷ Among its problems: “the flintlock mechanism[s] that ignited the cartridges were unreliable, which is highly important when trying to fire shots in rapid succession.”⁸⁸ As one analyst concluded, the gun “was absolutely rubbish and made zero sense.”⁸⁹ And it certainly never made its way to American shores.

In short, it was an experimental weapon designed for military use, and the patent’s reference to “DEFENCE” was clearly a reference to military defense, not personal defense. As this account confirms, it was likely never even manufactured beyond perhaps a prototype.⁹⁰ It was a failed effort, even though later gun inventors learned from its failure.

Another example is the case of Joseph Belton, an inventor who corresponded with Congress in 1777, claiming that he could produce and provide a flintlock that could fire as many as 16 to 20 consecutive rounds without reloading. After showing preliminary interest on May 3, Congress balked at Belton’s proposed “extraordinary allowance” and decided on May 15 that the idea “be dismissed.”⁹¹ Belton reportedly demonstrated the rifle, which by his account fired projectiles a distance of 20 to 30 yards, to several government officials, including General Horatio Gates, Major General Benedict Arnold, and scientist David Rittenhouse. These individuals, and some others, signed a cautiously worded letter submitted by Belton to Congress on July 10 saying that “Muskets of his Construction with some small alterations, or improvements might be Rendered, of great Service, in the Defense of lives, Redoubts, Ships &c, & even in the Field”⁹² That same day, however, Congress decided again that “the petition of Thomas [Joseph] Belton be dismissed.”⁹³

The problems with Belton’s scheme were evident. It relied on “superposed loads” as a firing method, a “discredited” and dead-end technology.⁹⁴ Despite Belton’s offer to demonstrate the gun, not only are

87. RASENBERGER, *supra* note 74, at 3.

88. See Jack Dunhill, *The Puckle Gun: The First “Machine Gun” from 1718 That Fired Square Bullets*, IFLSCIENCE (Mar. 6, 2023), <https://www.iflscience.com/the-puckle-gun-the-first-machine-gun-from-1718-that-fired-square-bullets-67831> [<https://perma.cc/U4EA-M4ZN>].

89. *Id.*

90. Two prototypes of the gun might have been produced and sold. See David Smith, *The Puckle Gun: A ‘Machine Gun’ From 300 Years Ago*, WIDE OPEN SPACES (Feb. 4, 2020), <https://www.wideopenspaces.com/the-puckle-gun-machine-gun-from-300-years-ago/> [<https://perma.cc/7J5U-BNJF>].

91. *Correspondence between John Belton and the Continental Congress*, WIKISOURCE, https://en.wikisource.org/wiki/Correspondence_between_John_Belton_and_the_Continental_Congress [<https://perma.cc/8HND-ZDNM>] (last visited Sept. 13, 2023).

92. *Id.*

93. *Id.*

94. See *supra* Sections I.C–D (discussing “superposed loads”).

there “no known surviving examples of Belton’s gun,” but “the only evidence” of the gun’s existence is “the correspondence between Belton and Congress.”⁹⁵ From this account, there is no reason to believe that the gun “had been produced, and was possible to produce in quantity” at a reasonable price.⁹⁶ In all, Belton’s claims about his experimental weapon bore no relationship to actual firearms in circulation in America — since Belton’s weapon was never proven feasible, much less reproduced, much less distributed — during this time. For anyone to claim based on the Belton case that “our Founding Fathers . . . knew about repeating rifles” and therefore “the Second Amendment was . . . designed to protect the right to own a repeating rifle”⁹⁷ is not only an unsupported claim, but a preposterous claim.

Kopel notes that an advertisement appeared in a South Carolina newspaper in 1785 placed by a gunsmith offering for sale four-shot repeating guns, though Kopel offers no further explanation or information.⁹⁸ The ad, however, was an apparent reference to “imported Belgian or French-made Segales pistols which had four rifled barrels.” Two of the four barrels could be discharged by pulling two triggers; the barrels could then be rotated to

95. *Belton Flintlock*, MIL. WIKI, https://military-history.fandom.com/wiki/Belton_flintlock [<https://perma.cc/W56N-VM9Y>] (last visited Sept. 13, 2023). Harold L. Peterson similarly noted that the only evidence of the alleged existence or operation of the Belton gun was his “meager description” of it, from which “it is impossible to determine exactly how the Belton improvement operated.” HAROLD L. PETERSON, *ARMS AND ARMOR IN COLONIAL AMERICA, 1526–1783* 218 (2000).

96. David Kopel, *The Founders Were Well Aware of Continuing Advances in Arms Technology, The Volokh Conspiracy*, REASON.COM (May 26, 2023), <https://reason.com/volokh/2023/05/26/the-founders-were-well-aware-of-continuing-advances-in-arms-technology/> [<https://perma.cc/TY4R-RXU6>].

97. Logan Metesh, *As a Matter of Fact, the Founding Fathers Did Know About Repeating Rifles*, TRUTH ABOUT GUNS (Nov. 24, 2019), <https://www.thetruthaboutguns.com/founding-fathers-knew-repeating-rifles-bill-rights-drafted/> [<https://perma.cc/49V4-6YZB>]; see also Dave Durringer, *Founding Fathers Knew About Repeating Rifles Before Bill of Rights*, LAWNEWS.TV (July 17, 2016), <https://lawnews.tv/founding-fathers-knew-about-repeating-rifles-before-bill-of-rights/> [<https://perma.cc/3NFC-HS2S>]; Eli D. Camacho, *5 Myths About the 2nd Amendment and the AR-15*, MEDIUM (Apr. 2, 2018), <https://medium.com/@EliDCamacho/5-myths-about-the-2nd-amendment-and-the-ar-15-a080a94e9a2c> [<https://perma.cc/7KN8-GDXG>]. Kopel makes the similar, meaningless claim that the country’s Founders “were well aware” of these pioneering, experimental, but unproven multishot technologies, as though this “awareness” somehow means that they would have disapproved of contemporary regulations of multi-shot weapons. See Kopel, *supra* note 96. The Founders’ “awareness” that such experimental weapons existed centered around their hope that the weapons might eventually be suitable for military use, a prospect that in any case never came to fruition. Kopel also conflates early American leaders’ abiding interest in the government funding, advancing, and reproducing new weapons technologies for the country’s military forces, on the one hand, with the notion that it had anything whatever to do with private citizen gun acquisition and use, on the other. See *id.*

98. The ad appeared in the *Columbian Herald* of Charleston on October 26, 1785. Kopel, *supra* note 96.

discharge the other two. Yet this exotic weapon suffered from the same technological and safety problems as similar guns of the time, and no evidence has been offered to suggest that these European-made guns were widely replicated, much less circulated in early American society.⁹⁹

Isaiah Jennings' multi-shot flintlock rifle from 1821, capable of firing up to twelve "superposed" shots before reloading,¹⁰⁰ is also cited as an early multi-shot gun. Yet according to *Flayderman's Guide to Antique American Firearms*, its production quantity was so small as to be "unknown" and therefore is "extremely rare," unsurprising since it utilized fatally defective "superposed" firing (discussed earlier) relying on twelve individual touchholes.¹⁰¹ By one account, "probably not more than 100 rifles of this type [were] manufactured."¹⁰² Similar problems plagued or doomed multi-shot flintlock pistols of the early nineteenth century. According to Carl P. Russell: "Flintlock revolving pistols had been given trials and some practical use very early in the nineteenth century, but the loose priming powder in the pan of each cylinder constituted a hazard that was never eliminated."¹⁰³

Another example often cited is the Girandoni (or Girardoni) air rifle, a military weapon developed in Europe in the late 1700s for marksmen in the Austrian army that was capable of firing up to 20 rounds. One of these made its way to the U.S. where it was taken along on the Lewis and Clark expedition of 1804–1806.¹⁰⁴ But these guns were a rarity, as they were extremely expensive, fragile, and complex, and few were made — no more than about 1,500.¹⁰⁵ As one writer noted: "The Girandoni air rifle is a might-have been; a footnote to military history."¹⁰⁶ In fact, the rifles never caught on as they proved to be impractical on the battlefield, and even more so for civilian use. To wit:

99. Declaration of Kevin M. Sweeney in Support of Defendants' Opposition to Plaintiffs' Motion for Preliminary Injunction, *Del. State Sportsmen's Ass'n v. Del. Dep't of Safety and Homeland Sec.*, No. 1:22-cv-00951-RGA, Dkt. No. 41, at 19 (D. Del. Jan. 31, 2023).

100. Kopel, *supra* note 68, at 853.

101. NORM FLAYDERMAN, *FLAYDERMAN'S GUIDE TO ANTIQUE AMERICAN FIREARMS* 683 (9th ed. 2007).

102. *Isaiah Jennings, LITTLE GUN*, <https://www.littlegun.info/arme%20americaine/artisan%20i%20j%20k%20l/a%20jennings%20gb.htm> [https://perma.cc/226V-C7GB] (last visited Sept 13, 2023).

103. CARL P. RUSSELL, *GUNS ON THE EARLY FRONTIERS: A HISTORY OF FIREARMS FROM COLONIAL TIMES THROUGH THE YEARS OF THE WESTERN FUR TRADE* 91 (1957).

104. See Frederick J. Chiaventone, *The Girandoni Air Rifle: The Lewis and Clark Expedition's Secret Weapon*, *WARFARE HIST. NETWORK* (Jan. 2013), <https://warfarehistorynetwork.com/article/lewis-and-clarks-girandoni-air-rifle/> [https://perma.cc/3QA4-U8RL].

105. Mike Markowitz, *The Girandoni Air Rifle*, *DEF. MEDIA NETWORK* (May 14, 2013), <https://www.defensemedianetwork.com/stories/the-girandoni-air-rifle/> [https://perma.cc/DM4T-P3NJ].

106. *Id.*

Leather gaskets needed to be constantly maintained and swelled with water to sustain pressure. Once empty the reservoirs required a significant effort and 1500 strokes to restore full power. A supply wagon was subsequently outfitted with a mounted pump to readily supply soldiers but this negated one of the key features—mobility. The rudimentary fabrication methods of the day engineered weak threading on the reservoir neck and this was the ultimate downfall of the weapon. The reservoirs were delicate in the field and if the riveted brazed welds parted the weapon was rendered into an awkward club as a last resort.¹⁰⁷

First introduced to the Austrian army in the late 1700s, “[t]he guns became inoperable after a very short time” of use and were “entirely phased out” by 1810.¹⁰⁸ One American manufacturer, Isaiah Lukens of Pennsylvania, apparently produced perhaps four such weapons.¹⁰⁹ The rest were made and used in Europe. And while Lewis and Clark did bring a Girandoni with them, they never intended to use it in combat or battle, but to impress and deter the Native Americans they encountered (which it did). Whenever they planned to fire the gun, they were careful to prepare it before encountering Native Americans so that the Native Americans were not aware of the extensive pre-fire preparations needed.¹¹⁰

To take another example, the Volcanic repeating pistol, patented in 1854, was said to have the ability to fire up to “ten or greater rounds.”¹¹¹ The Volcanic Repeating Arms Company was founded in 1855, and it experimented with several design innovations. But the company was “short lived” and went “defunct” in 1866, even though its partners included Horace Smith, Daniel B. Wesson, and Courtlandt Palmer.¹¹² Its patent and technological work were important for subsequent developments, especially for Smith and Wesson’s later work, but the actual weapons produced by Volcanic were few, flawed, and experimental,¹¹³ dubbed “radical defects”

107. John Paul Jarvis, *The Girandoni Air Rifle: Deadly Under Pressure*, GUNS.COM (Mar. 15, 2011), <https://www.guns.com/news/2011/03/15/the-girandoni-air-rifle-deadly-under-pressure> [https://perma.cc/4SFC-674F].

108. Chiaventone, *supra* note 104.

109. Nancy McClure, *Treasures from Our West: Lukens Air Rifle*, BUFFALO BILL CTR. OF THE WEST (Aug. 3, 2014), <https://centerofthewest.org/2014/08/03/treasures-west-lukens-air-rifle/> [https://perma.cc/XU9T-EYZP].

110. See STEPHEN E. AMBROSE, *UNDAUNTED COURAGE passim* (1st ed. 1996).

111. *Hlebinsky Declaration*, *supra* note 73, at 6.

112. These men formed what became the Smith & Wesson gun company. See PAMELA HAAG, *THE GUNNING OF AMERICA: BUSINESS AND THE MAKING OF AMERICAN GUN CULTURE* 51 (2016); *Volcanic Repeating Arms*, FANDOM, https://military-history.fandom.com/wiki/Volcanic_Repeating_Arms [https://perma.cc/44ZC-P537] (last visited Sept. 13, 2023).

113. See *Volcanic Repeating Arms*, *supra* note 112; FLAYDERMAN, *supra* note 101, at 303–05.

by Winchester himself.¹¹⁴ In 1857 and 1858, Volcanic produced 3,200 “flawed” repeaters, most of which “collected dust for many decades” until the company finally sold them for fifty cents each to employees.¹¹⁵

Another account laboring to establish early gun firing provenance asserts that “[s]emi-automatic technology was developed in the 1880s” with the “Mannlicher rifle . . . generally attributed to be the first semi-automatic rifle.”¹¹⁶ Yet this “development” was initially a failure: “Ferdinand von Mannlicher’s Model 1885 self-loading rifle design” was “a failure, never seeing anything even resembling mass production.”¹¹⁷ The true semi-automatic weapon did not become feasible and available until the beginning of the twentieth century, and a primary market was the military.¹¹⁸

The more well-known “pepperbox” was a multi-shot handgun where the number of shots capable of being fired repeatedly coincided with the number of barrels bundled together (the barrels were turned by hand after each shot). The gun found some civilian market popularity in the early 1800s, but it was rapidly eclipsed by the superior Colt revolver, owing to pepperboxes’ “frightening flaws.”¹¹⁹ The reason: pepperboxes were “heavy, lumpy, and impractical.”¹²⁰ The addition of more barrels added more weight, and less practicality, to the gun, resulting in an inverse relationship between more barrels and less gun utility. By another account, “because of its small bore, short range, and lack of accuracy, the pepperbox was by no means as satisfactory as a revolver for military use.”¹²¹ Further, “[t]hey also had a nasty habit of discharging all their barrels at once. No shooter could be certain he would not get two or three innocent bystanders, as well as his intended victim.”¹²² Indeed, the Colt revolver was “the first widely used

114. HAAG, *supra* note 112, at 56.

115. *Id.* at 60.

116. *Hlebinsky Declaration*, *supra* note 73, at 8.

117. Ian McCollum, *Mannlicher 1885 Semiauto Rifle*, FORGOTTEN WEAPONS (May 6, 2015), <https://www.forgottenweapons.com/mannlicher-1885-semiauto-rifle/> [https://perma.cc/6TGT-B2YA].

118. See Philip Schreier, *A Short History of the Semi-Automatic Firearm*, AMERICA’S 1ST FREEDOM (June 28, 2022), <https://www.americas1stfreedom.org/content/a-short-history-of-the-semi-automatic-firearm/> [https://perma.cc/5N9S-MLQ3].

119. *Pepperbox Pistols: Last Line of Defense*, RELICRECORD, <https://relicrecord.com/blog/pepperbox-pistols-last-line-of-defense/> [https://perma.cc/8AJU-6XT8] (last visited Aug. 26, 2023).

120. RASENBERGER, *supra* note 74, at 54.

121. LEWIS WINANT, PEPPERBOX FIREARMS 30 (Greenberg Publ’g Co. ed., 1952).

122. LARRY KOLLER, THE FIRESIDE BOOK OF GUNS 154 (Simon and Schuster ed., 1959). By another account, “it was a disconcerting but not uncommon experience to have all six barrels go off in unison.” WINANT, *supra* note 121, at 32.

multishot weapon,”¹²³ although it took decades for this and similar revolvers to catch on.

Colt’s technological developments notwithstanding, single shot guns were the ubiquitous firearm until after the Civil War, although some long gun repeaters appeared late in the Civil War.¹²⁴ Even so, the “standard infantry weapon [in the Civil War] remained the single-shot, muzzle-loaded weapon.”¹²⁵ Historian James M. McPherson concurred that, even though some repeating rifles appeared in the Civil War as early as 1863, single-shot muzzle-loaders “remained the principal infantry weapons throughout the war.”¹²⁶

As noted, the idea of an available, affordable, reliable multi-shot firearm did not arise until the development of Colt’s multi-shot revolver, patented in the 1830s. Indeed, Colt biographer Jim Rasenberger says that Colt’s pistol was the first practical firearm that could shoot more than one bullet without reloading.¹²⁷ Even then, Colt could not readily manufacture multi-shot weapons for many years because he could find no market for them, either from the government or the public. The government, in fact, dismissed such firearms as mere “novelties.”¹²⁸ After an 1837 test of Colt’s gun and others the government concluded that it was “entirely unsuited to the general purposes of the service.”¹²⁹ The government also rejected the weapon after tests in 1836, 1840, and 1850.¹³⁰ Colt’s early failure to cultivate either a military or a civilian market in the U.S. drove him to bankruptcy and then to market his guns to European governments in the 1840s.¹³¹ The gun made appearances in the pre-Civil War West, yet even during the Civil War,

123. RASENBERGER, *supra* note 74, at 401.

124. David Kopel, *The History of Magazines Holding 11 or More Rounds: Amicus Brief in 9th Circuit*, WASH. POST (May 29, 2014, 10:01 P.M.), <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/05/29/the-history-of-magazines-holding-11-or-more-rounds-amicus-brief-in-9th-circuit/> [<https://perma.cc/LS4J-XBJU>]; KENNETT & ANDERSON, *supra* note 21, at 112–13.

125. SNOW & DREW, *supra* note 14, at 90.

126. JAMES M. MCPHERSON, *BATTLE CRY OF FREEDOM* 475 (Oxford Univ. Press ed., 1988).

127. RASENBERGER, *supra* note 74, at 3–5, 401. The Colt revolver was a six-shot weapon, though the company experimented with other shot capabilities. Kyle Mizokami, *Meet the Colt Single Action Revolver: The Most Famous Gun of All Time?*, NAT’L INT. (Jan. 24, 2019), <https://nationalinterest.org/blog/buzz/meet-colt-single-action-revolver-most-famous-gun-all-time-42352> [<https://perma.cc/4MXP-RFTK>]. Though the six-shot was the standard, gun companies experimented and produced revolvers of varying round capacity. Colt, for example, produced a poor-selling seven-shot revolver in the 1870s. HAAG, *supra* note 112, at 173–74.

128. HAAG, *supra* note 112, at 24.

129. RASENBERGER, *supra* note 74, at 136.

130. *Id.*

131. *Id.*

“Colt’s revolver was a sideshow through most of the war”¹³² And though the Colt-type revolver “had proved itself, the official sidearm of the United States Army [in the Civil War] remained a single shot pistol.”¹³³ It took the Colt’s limited use during the Civil War to finally spur the post-Civil War proliferation of the Colt-type revolver and similar firearms into society.¹³⁴

While inventor Benjamin Henry claims credit for developing the first practical, lever action repeating rifle (patented in 1860), his competitor Winchester “defly gutted” the Henry Arms Company, coopting it to form the Winchester Arms Company in 1866, paving the way for Winchester’s dominance.¹³⁵ The Winchester rifle could fire up to fifteen rounds without reloading. Yet the widely known Winchester 1873, “was designed for sale to the Government as a military arm.”¹³⁶ A gun whose legendary status wildly outdistanced its actual production and impact, it was nevertheless an important firearm in the late nineteenth century, although this “quintessential frontier rifle flourished later, in the ‘post-frontier’ early 1900s. Its celebrity biography backdated its diffusion and even its popularity.”¹³⁷ In fact, the slogan stating that the Winchester “won the West” was invented by Winchester executive Edwin Pugsley as a marketing ploy in 1919.¹³⁸ Further, “the notion of the Winchester and the Colt as iconic frontier guns is ‘as much a fiction as the sources from which it is drawn.’”¹³⁹ An analysis of production runs of Henrys and Winchesters from 1861–1871 concluded that they produced a total of 74,000 guns.¹⁴⁰ Most of them — about 64,000 — were sold to foreign militaries, leaving about 9200 for domestic American sales.¹⁴¹ Of those, 8,500 were acquired by Union soldiers, leaving a very small supply of guns for domestic civilian acquisition.¹⁴² By comparison, about 879,000 Springfield “trap-door” single shot rifles were manufactured

132. *Id.* at 390.

133. KENNETT & ANDERSON, *supra* note 21, at 91.

134. HAAG, *supra* note 112, at 34–37, 46–65. As Haag said, “the Civil War saved” the gun industrialists. *Id.* at 65.

135. *Id.* at 96.

136. KOLLER, *supra* note 122, at 112.

137. HAAG, *supra* note 112, at 179.

138. *Id.* at 353.

139. *Id.* at 175.

140. HERBERT G. HOuze, WINCHESTER REPEATING ARMS COMPANY: ITS HISTORY & DEVELOPMENT FROM 1865 TO 1981 21, 36–41, 51, 59, 65–66, 71, 73, 75 (2004); Letter from Tom Hall to D. C. Cronin, New Haven (May 18, 1951); Box 8, folder 16, Winchester Repeating Arms Company, Office files (MS:20), McCracken Research Library, Cody, WY.

141. *See* HOuze, *supra* note 140, at 21, 36–41, 51, 59, 65–66, 71, 73, 75.

142. *See* HOuze, *supra* note 140, at 21, 36–41, 51, 59, 65–66, 71, 73, 75.

from the 1860s through 1877.¹⁴³ Additionally, the Winchester was not a semi-automatic firearm; it was a lever-action rifle that required the shooter to manipulate a lever in a forward-and-back motion before each shot.¹⁴⁴ And when the gun was emptied, it had to be manually reloaded, one round at a time.¹⁴⁵ The Winchester Model 1905, then called a “self-loading” rifle, was a true semi-automatic firearm.¹⁴⁶ It could receive a five or ten round box magazine, although from 1905 to 1920 only about 30,000 of the guns were made (yielding a yearly average production of 1875 guns per year).¹⁴⁷ Even in World War I, soldiers primarily used bolt-action one shot rifles that could fire about twelve rounds per minute.¹⁴⁸

With all this, the Winchester was by no means universally embraced by civilian long gun users. Indeed, “a good many westerners would have nothing to do with the early Winchesters or other repeaters, for reasons they considered very sound, and not until the 1880s did the repeating rifle assert its dominance over the single-shot breechloader.”¹⁴⁹ According to A.C. Gould, writing in 1892, single-shot rifles were: “less complicated, and less

143. See *Serial Number Ranges for Springfield Armory-Manufactured Military Firearms*, NAT’L PARK SERV., <http://npshistory.com/publications/spar/serial-nos.pdf> [https://perma.cc/NEG7-MCX8] (last visited Aug. 27, 2023). Some of the data in this report is aggregated and printed at the Springfield Armory U.S. National Park Website. See *U.S. Springfield Trapdoor Production*, NAT’L PARK SERV. (last updated Mar. 14, 2022), <https://www.nps.gov/spar/learn/historyculture/u-s-springfield-trapdoor-production-serial-numbers.htm> [https://perma.cc/NE8G-PRRL]. According to an account of the Springfield, “[t]he end of the Trapdoor series came in 1892, when the government adopted a bolt-action repeating rifle known as the Krag-Jorgensen.” *The Trap Door Rifle*, NAT’L PARK SERV. (July 22, 2020), <https://www.nps.gov/spar/learn/historyculture/trapdoor-rifle.htm> [https://perma.cc/8EXC-6LF7].

144. See *Rifle, WINCHESTER REPEATING ARMS*, <https://www.winchesterguns.com/products/rifles.html> [https://perma.cc/AWM7-Z6RA].

145. See *id.*

146. *Winchester Model 1905*, WIKIPEDIA, https://en.wikipedia.org/wiki/Winchester_Model_1905 [https://perma.cc/PT53-UX8E] (last visited Sept. 13, 2023).

147. *Id.*

148. Robert Johnson & Geoffrey Ingersoll, *It’s Incredible How Much Guns Have Advanced Since The Second Amendment*, YAHOO! FIN. (Dec. 17, 2012, 12:49 PM), <https://finance.yahoo.com/news/incredible-much-guns-improved-since-174927324.html> [https://perma.cc/NJ4B-HA5Y]; Phil Bourjaily, *Blast From the Past: Winchester Model 1905*, FIELD & STREAM (Jan. 11, 2019), <https://web.archive.org/web/20221108014109/https://www.fieldandstream.com/blast-from-past-winchester-model-1905/>. About three-fourths of American soldiers in WWI were armed with M1917 Enfield bolt-action rifles; the other quarter were armed with the Springfield 1903 bolt-action rifle. Travis Pike, *M1917 Enfield: The Forgotten Rifle that Won World War One*, SANDBOX (Aug. 31, 2021), https://www.realcleardefense.com/2021/08/31/m1917_enfield_the_forgotten_rifle_that_won_world_war_one_792331.html [https://perma.cc/87WP-MK6C].

149. LOUIS A. GARAVAGLIA & CHARLES G. WORMAN, *FIREARMS OF THE AMERICAN WEST, 1866-1894* 129 (Univ. of N.M. Press ed., 1985).

liable to get out of order; will shoot a greater variety of ammunition; will shoot uncrimped ammunition, patched or unpatched bullets; will permit the use of a longer barrel; an explosive bullet can be used; a greater range of rear sights on tang can be used.”¹⁵⁰

Following the Civil War, revolvers were heavily marketed to the civilian population. For example, when Smith & Wesson’s near-monopoly over the manufacture of cartridge revolvers ended with the expiration of its Rollin White patent in the 1870s, “dozens of other [gun] makers”¹⁵¹ entered the market. Soon these other manufacturers were producing abundant cheap revolvers at low cost to the consumer. As Kennett and Anderson noted, Colt’s initial revolvers sold for \$35, but by 1900 the “two dollar pistol” was a fixture in American life.¹⁵² Further, as the mail order business boomed from the 1870s on, companies like Montgomery Ward and Sears began selling revolvers through their catalogs—especially small, cheaper, lighter-weight models that cost less to mail. Cheap handguns were advertised not only through catalogs, but also through newspaper and magazine advertisements.¹⁵³

The rise in the circulation of multi-shot handguns in society was accompanied by the rapid spread of concealed carry restrictions, especially in the post-Civil War period, precisely because of their contribution to escalating interpersonal violence.¹⁵⁴ By the end of the nineteenth century, virtually every state in the country prohibited or severely restricted concealed gun and other weapons carrying.¹⁵⁵ In addition, in the late 1800s and early 1900s several states barred possession of various weapons outright, regardless of other circumstances.¹⁵⁶

150. *Id.* at 131 (citation omitted). A tang sight is an aperture or “peep” sight mounted on the tang end of a rifle (that is, the portion of the rifle extending behind the receiver) that is used to more accurately aim the rifle. It normally folds and is made of metal. See *Vernier Tang Sight*, HALLOWELL & CO. ILLUSTRATED FIREARMS DICTIONARY, https://www.hallowellco.com/vernier_tang_sight.htm [<https://perma.cc/H4BS-CC6H>] (last visited Aug. 27, 2023).

151. KENNETT & ANDERSON, *supra* note 21, at 98.

152. *Id.* at 99.

153. *Id.* at 99–100; see also HAAG, *supra* note 112, at 251–55.

154. See generally DICKSON D. BRUCE, VIOLENCE AND CULTURE IN THE ANTEBELLUM SOUTH (1979); see also RANDOLPH ROTH, AMERICAN HOMICIDE 218–19 (Harvard Univ. Press ed., 2009).

155. Spitzer, *supra* note 53, at 63–67.

156. See e.g., Illinois Act of Apr. 16, 1881, Ill. Stat. Ann., Crim. Code, chap. 38 § 4 (1885) 88; GEORGE R. DONNAN, ANNOTATED CODE OF CRIMINAL PROCEDURE AND PENAL CODE OF THE STATE OF NEW YORK AS AMENDED 1882-5 172 (4th ed. 1885) § 410; GEOFFREY ANDREW HOLMES, COMPILED ORDINANCES OF THE CITY OF COUNCIL BLUFFS, AND CONTAINING THE STATUTES APPLICABLE TO CITIES OF THE FIRST-CLASS, ORGANIZED UNDER THE LAWS OF IOWA 206–07 (1887) § 105; WILLIAM H. BAILY, THE REVISED ORDINANCES OF NINETEEN HUNDRED OF THE CITY OF DES MOINES, IOWA 89–90 (1900) § 209; An Act to Amend the Penal Law, in

As noted earlier, the problems with arguments claiming that historical multi-shot weapons were both viable and commonly possessed before the late nineteenth century are two-fold: they misrepresent and exaggerate the actual past of the weapons cited, and even more importantly fail to understand the connection between gun technology developments and the steps leading up to changes in gun-related public policy to regulate threats posed by those developments. As noted, that process has occurred, both historically and in the modern era, through a series of sequential steps.

First, a new gun or gun technology must be invented. *Second*, it is then normally patented, noting that there are many steps between a patent, actual gun production, distribution, and dissemination. As Lewis Winant sardonically observed, “Many patents are granted for arms that die a-borning.”¹⁵⁷ And as gun expert Jack O’Connor wrote, “many types of guns were invented, produced and discarded through the early years of the development of the United States.”¹⁵⁸ *Third*, weapons development is historically tied to military need and military acquisition, not directly for civilian use or self-defense applications. Military weaponry is developed without consideration of potential civilian use and the consequences of dissemination in the civilian market.¹⁵⁹ *Fourth*, some military-designed weapons may then spill over into, or be adapted to, civilian markets and use. *Fifth*, if such weapons then circulate sufficiently to pose a public safety or criminological problem or threat, calls for government regulation or restriction then may lead to gun policy/law changes. This general sequence is echoed in works like the *Buyer’s Guide to Assault Weapons*, a standard reference work on assault weapons.¹⁶⁰

Again, to simply assert or assume that past firearms design/development, invention, or patenting equals commonality, viability, or a measurable

Relation to the Sale and Carrying of Dangerous Weapons, Ch. 195 § 1 1911 N.Y. Laws 442–43; 1915 N.D. Laws 96, ch. 83, §§ 1–3, 5; 1931 N.Y. Laws 1033, ch. 435, § 1. Not included in this list are other state laws that barred weapons possession to specific groups (enslaved persons, minors) or that criminalized weapons possession by individuals if they committed a crime with the listed weapons.

157. WINANT, *supra* note 76, at 36.

158. JACK O’CONNOR, COMPLETE BOOK OF RIFLES AND SHOTGUNS 42 (1961).

159. *See generally* NORM FLAYDERMAN, THE BOWIE KNIFE 485–86 (Andrew Mowbray ed., 2004). Note that the third step, and perhaps the second, do not apply to non-firearms weapons discussed here — in particular the Bowie knife and various clubs. These weapons were mostly not developed for military use, though Bowie knives, for example, were brought by some soldiers to Civil War service (though they were not military issue). Knives and clubs are far simpler technologically compared to firearms (and of course do not rely on ammunition) and thus were much more easily made, reproduced, and circulated.

160. PHILLIP PETERSON, BUYER’S GUIDE TO ASSAULT WEAPONS 4–7 (2008). Peterson’s Foreword summarizes a similar relationship between weapons development and subsequent calls for regulation. *Id.*

presence or impact on society, is a leap in logic without historical foundation. It would be as logical to reject modern governmental regulation of electric power through such government agencies as state power commissions and the Federal Energy Regulatory Commission because no such regulation was enacted around the time of Benjamin Franklin's experiments with electricity in the mid-eighteenth century. The fact that inventors worked on new firearm designs and modifications tells us nothing about the consequences of such designs for society and public policy. And the existence of such designs does not equal technological viability or reliability, much less general availability, much less societal circulation and use of these weapons. Other weapons subject to government restriction in our history, discussed in Part II, further illustrate these principles. Before turning to them, however, it is useful to clarify aspects of contemporary commentary about assault weapons.

E. Clarifying Terms and Concepts about Assault Weapons and LCMs

Opponents of assault weapons and LCM laws often assert that “[p]rior to 1989, the term ‘assault weapon’ did not exist in the lexicon of firearms. It is a political term, developed by anti-gun publicists to expand the category of ‘assault rifles’ so as to allow an attack on as many additional firearms as possible on the basis of undefined ‘evil’ appearance.”¹⁶¹

Such assertions are incorrect. The terms “assault weapon” and “assault rifle” were the very terms used by the gun companies that first produced, marketed, and sold such weapons to the public.¹⁶² Gun industry use of the terms “assault weapons” and “assault rifles” appeared in the early 1980s (and even earlier), before political efforts to regulate them emerged in the late 1980s and early 1990s.¹⁶³

A study of the marketing strategies employed by gun manufacturers and gun publications from the time that such weapons emerged in the American civilian market in a significant way in the early 1980s verifies this by

161. *Stenberg v. Carhart*, 530 U.S. 914, 1001 n.16 (2000) (Thomas, J., dissenting).

162. *The Militarization of the U.S. Civilian Arms Market*, VIOLENCE POL'Y CTR., at 34 (2011), <http://www.vpc.org/studies/militarization.pdf#page=33> [<https://perma.cc/YKM6-DAW6>]; see also *Assault Weapons and Accessories in America*, VIOLENCE POL'Y CTR. (1988), <http://www.vpc.org/studies/awacont.htm> [<https://perma.cc/8528-H3Y5>]; *That Was Then, This is Now*, VIOLENCE POL'Y CTR. (1998), <http://www.vpc.org/studies/thatintr.htm> [<https://perma.cc/VS7Q-EZ5C>]. An ad for an “FN Browning Semi-auto Assault Rifle” appeared in the *American Rifleman* magazine in June 1961. Drew McKeivitt (@drewmckevitt), TWITTER (Mar. 23, 2021, 6:12 PM), <https://twitter.com/drewmckevitt/status/1374484156701241344?lang=en> [<https://perma.cc/6A6G-K3EB>].

163. See *supra* note 156 and accompanying text.

reference to company advertisements and gun magazines.¹⁶⁴ Examples include: Heckler and Koch selling its “HK 91 Semi-Automatic Assault Rifle;” ads for the “Bushmaster assault rifle;” the AKM “imported assault rifle;” the Beretta M-70 that “resembles many other assault rifles;” the AR10/XM-10 (made by Paragon S&S Inc.) advertised as a “Famous Assault Rifle is Now Available in a Semi Auto Civilian Legal Form!;”¹⁶⁵ the “AMT 25/.22 Lightning Carbine” that was advertised as an “assault-type semi-auto;” Intratec extolling its TEC-9 as one that “clearly stands out among high capacity assault-type pistols;”¹⁶⁶ and the after-market supplier Assault Systems that appealed to civilian owners of “assault weapons,” among many other examples. The use of military terminology, and the weapons’ military character and appearance, were key to marketing the guns to the public.¹⁶⁷ *Guns & Ammo* magazine described the “success of military assault rifles in the civilian market” in its July 1982 issue.¹⁶⁸ In 1984, *Guns & Ammo* advertised a book called *Assault Firearms* that the magazine extolled as “full of the hottest hardware available today.”¹⁶⁹

As a standard buyer’s guide on assault weapons noted, the “popularly-held idea that the term ‘assault weapon’ originated with anti-gun activists, media or politicians is wrong. The term was first adopted by the manufacturers, wholesalers, importers and dealers in the American firearms industry”¹⁷⁰ The more expansive phrase “assault weapon” is generally used over “assault rifle” because “weapon” also includes not only rifles but some shotguns and handguns that were also subject to regulation in the federal 1994 assault weapons ban and subsequent laws.

An article in *Outdoor Life* belied the claim that assault weapons are limited only to firearms that fire fully automatically. That article urged its readers to share its information with non-shooting friends to dispel “myths” about “assault weapons.” In its account, it correctly noted that “the term ‘assault weapon’ . . . generally referred to a type of light infantry firearm initially developed in World War II; a magazine-fed rifle and carbine suitable

164. TOM DIAZ, MAKING A KILLING (1999); TOM DIAZ, THE LAST GUN 11 (2013).

165. ARFCOM, <https://www.ar15.com/forums/ar-15/-/123-560230/&page=1#https://perma.cc/W38F-JX6P> (last visited Sept. 24, 2023).

166. IFUNNY, <https://br.ifunny.co/picture/higher-tec-at-two-thirds-the-weight-and-price-offer-BL2rb9Q29> [https://perma.cc/A2WM-CRAG].

167. DIAZ, MAKING A KILLING, *supra* note 164, at 124–28, 230–31; DIAZ, THE LAST GUN, *supra* note 164, at 142–43; RYAN BUSSE, GUNFIGHT 8 (2021).

168. *Wooters Chooses the 10 Best Gun Designs*, GUNS & AMMO, at 58, 68 (July 1982); DIAZ, MAKING A KILLING, *supra* note 164, at 126.

169. Erica Goode, *Even Defining ‘Assault Rifles’ Is Complicated*, N.Y. TIMES, at A1 (Jan. 17, 2013), <https://www.nytimes.com/2013/01/17/us/even-defining-assault-weapons-is-complicated.html> [https://perma.cc/9WUZ-TCPB].

170. PHILLIP PETERSON, GUN DIG. BUYER’S GUIDE TO ASSAULT WEAPONS 11 (2008).

for combat, such as the AK-47 and the M16/M4. These are selective-fire weapons that can shoot semi-auto, full-auto, or in three-round bursts.”¹⁷¹

The effort to rebrand “assault weapons” as something more benign and severed from its military origins was seen in the publication struggles of Phillip Peterson, whose book, titled as recently as 2008, *Gun Digest Buyer’s Guide to Assault Weapons*,¹⁷² is a well-known reference work on the subject. As Peterson explained, the gun industry “moved to shame or ridicule” those who used the phrase “assault weapons,” insisting that the term should now only apply to fully automatic weapons. Peterson noted that the origin of the term “assault weapon” was the industry itself.¹⁷³ He found that the NRA refused to sell his book until he changed the title, which in 2010 he renamed *Gun Digest Buyer’s Guide to Tactical Rifles*.¹⁷⁴ The very same pattern played out in Canada, where gun companies also used the term “assault rifle” in the 1970s and 1980s until political pressure began to build to restrict such weapons in the aftermath of a mass shooting in Montreal in 1989. By the 1990s, gun companies marketing guns in Canada and their allies also adopted terms like “modern sporting rifles.”¹⁷⁵

Similar claims are also made about the term “large capacity magazine,” again calling it “politically charged rhetoric,” and rebranding such magazines as “standard capacity.”¹⁷⁶ Identifying a large capacity magazine as one that holds more than ten rounds is not arbitrary, for at least three reasons.

First, the LCM definition of one holding ten or more rounds dates back to at least 1989, when this early version of the law Congress eventually passed in 1994 defined “a large capacity magazine or belt as one which holds over ten rounds.”¹⁷⁷ Since that time, ten states plus the District of Columbia have

171. John Haughey, *Five Things You Need to Know About ‘Assault Weapons’*, OUTDOOR LIFE (Mar. 19, 2013), <http://www.outdoorlife.com/blogs/gun-shots/2013/03/five-things-you-need-know-about-assault-weapons> [<https://perma.cc/KL3T-67N5>].

172. PETERSON, *supra* note 170.

173. Goode, *supra* note 169.

174. PETERSON, *supra* note 170.

175. According to Blake Brown, Canadian newspapers ran ads from gun companies selling weapons like the “AR-15 semi-automatic assault rifle,” the “Colt AR-15 Semi Auto Assault Rifle,” and the “SKS Assault Rifle” among others, in 1976, 1982, 1983, 1985, and 1986 from dealers and companies including MilArm, Colt, and Ruger. *Gun Advocates’ Changing Definition of ‘Assault Rifles’ is Meant to Sow Confusion*, TORONTO GLOBE & MAIL (May 21, 2020), <https://www.theglobeandmail.com/opinion/article-gun-advocates-changing-definition-of-assault-rifles-is-meant-to-sow/> [<https://perma.cc/J9TH-SMKH>].

176. *See, e.g.*, Complaint at 7, *Rocky Mountain Gun Owners v. Town of Superior*, No. 22-cv-1685 (D. Colo. July 7, 2022).

177. Assault Weapon Control Act of 1989, S.386, 101st Cong. (1989-1990), <https://www.congress.gov/bill/101st-congress/senate-bill/386> [<https://perma.cc/3DT7-LZB5>]. The 1994 law’s definition was “a magazine, belt, drum, feed strip, or similar device that has a capacity of, or that can be readily restored or converted to accept, more than 10

adopted the LCM ten round limit (see earlier discussion). Second, the definition of LCMs based on a ten round limit has been and is widely accepted and used in the scholarly literature in criminology and other fields examining such devices.¹⁷⁸ Third, as Table 1 and the accompanying discussion in this Article shows, from 1917 to 1934 roughly half of the states in the U.S. enacted laws that restricted various ammunition feeding devices, or guns that could accommodate them, based on a set number of rounds, though the numerical cap for gun firing without reloading was not uniform. Thus, the idea of restricting removable magazines by capping the number of rounds dates back at least a century.

II. HISTORICAL HARDWARE RESTRICTIONS ON KNIVES, BLUNT WEAPONS, PISTOLS, AND TRAP GUNS

Similar to government regulation of certain types of firearms and ammunition feeding devices in the early twentieth century, which occurred only after the weapons technologies matured, entered the civilian market, and threatened the public through criminal use, government regulation of weapons typically followed a version of this trajectory during the 1700s and 1800s. Even though, as discussed herein, serious crimes became more widespread in the early 1800s, specific crime-related concerns that involved dangerous weapons led to legislative enactments in the late 1700s and early 1800s. For example, from 1780-1809, at least four states, Connecticut, Ohio, New Jersey, Maryland, enacted measures that increased the penalties for burglaries or other crimes if the perpetrators were armed.¹⁷⁹ At least three

rounds of ammunition . . .” Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (1994).

178. See, e.g., GUNS IN AMERICAN SOCIETY: AN ENCYCLOPEDIA OF HISTORY, POLITICS, CULTURE, AND THE LAW 777 (2d ed. 2012); Jaclyn Schildkraut & Tiffany Cox Hernandez, *Laws That Bit The Bullet: A Review of Legislative Responses to School Shootings*, 39 AM. J. CRIM. JUST. 358, 361 (2014); Luke Dillon, *Mass Shootings in the United States: An Exploratory Study of the Trends from 1982-2012* 19 (May 22, 2014) (M.A. thesis, George Mason University) (on file with the Mason Archival Repository Service, George Mason University), <http://mars.gmu.edu/xmlui/handle/1920/8694> [<https://perma.cc/2BHZ-MM6B>]; Jaclyn Schildkraut, *Assault Weapons, Mass Shootings, and Options for Lawmakers*, ROCKEFELLER INST. OF GOV'T (2019), <https://rockinst.org/issue-area/assault-weapons-mass-shootings-and-options-for-lawmakers/> [<https://perma.cc/K4JF-BN5F>]; Christopher Koper, *Assessing the Potential to Reduce Deaths and Injuries from Mass Shootings Through Restrictions on Assault Weapons and Other High-Capacity Semiautomatic Firearms*, CRIMINOLOGY & PUB. POL'Y 147, 149 (2020); PHILIP J. COOK & KRISTIN A. GOSS, *THE GUN DEBATE* 201 (2d ed. 2020).

179. An Act for the Punishment of Burglary and Robbery, 1783 Conn. Pub. Acts 633; An Act for Suppressing and Prohibiting Every Species of Gaming for Money or Other Property, and for Making Void All Contracts and Payments Made in Furtherance Thereof, ch. 13 § 4, 1788-1801, 1788 Ohio Laws 42; An Act Respecting Slaves, § 9 1799 N.J. Laws 474; 1809 Md. Laws 465.

states, New York, Ohio, and Maryland, enacted laws to punish the discharge of firearms near populated areas.¹⁸⁰ At least four states, Virginia, Massachusetts, North Carolina, Tennessee, criminalized public arms carrying.¹⁸¹ Other examples of restrictions of specific types of weapons are discussed in this section.

Note at the outset that knives and blunt objects like clubs are not firearms. They are, however, weapons, and “arms” as that term is used in the debate over gun policy and the Second Amendment.¹⁸² Clearly, knives and clubs do not pose the same threat today as they did in the nineteenth century and before, but the fact that they were identified as a significant threat to public safety and order, and were the subject of extensive and varied legislative restrictions makes them directly relevant to this discussion. This conclusion is further supported by the fact that fighting knives, types of clubs/blunt objects and pistols were invariably treated together in laws to restrict them enacted by the states as discussed in this Article.

A. Historical Restrictions on the Bowie Knife and Similar Long-Bladed Knives

The Bowie knife is generally credited with having been invented by the brother of adventurer Jim Bowie, Rezin Bowie. The knife was named after Jim Bowie, who reputedly killed one man and wounded another using the “big knife” given to him by his brother in the alternately notorious or celebrated “Sandbar Duel” in 1827.¹⁸³

180. An Act to Prevent the Firing of Guns and Other Fire-Arms Within This State, On Certain Days Therein Mentioned, 1785 Laws of N.Y. 152; An Act for Suppressing and Prohibiting Every Species of Gaming for Money or Other Property, and for Making Void All Contracts and Payments Made in Furtherance Thereof, 1788 Ohio Laws 42; A Supplement To An Act Entitled, An Act to Improve and Repair the Streets in Elizabethtown, in Washington County, and For Other Purposes Therein Mentioned, 1792 Md. Laws 22.

181. An Act Forbidding and Punishing Affrays, 1786 Va. Laws 35; An Act to Prevent Routs, Riots, and Tumultuous Assemblies, and the Evil Consequences Thereof, 1786 Mass. Sess. Laws 502; 1792 N.C. Laws 60, ch. 3; 1801 An Act for the Restraint of Idle and Disorderly Persons § 6, in JUDGE EDWARD SCOTT, LAWS OF THE STATE OF TENNESSEE 710 (1821).

182. See Stephen P. Halbrook, *What the Framers Intended: A Linguistic Analysis of the Right to “Bear Arms”*, 49 L. & CONTEMP. PROBS. 151, 158 (1986); District of Columbia v. Heller, 554 U.S. 570, 582 (2008); see also Eric Ruben, *The Gun Rights Movement and ‘Arms’ Under the Second Amendment*, BRENNAN CTR. FOR JUST. (June 2021), <https://www.brennancenter.org/our-work/research-reports/gun-rights-movement-and-arms-under-second-amendment> [<https://perma.cc/J7MB-RHMS>].

183. See *Bowie Knife*, ENCYCLOPEDIA OF ARK., <https://encyclopediaofarkansas.net/entries/bowie-knife-2738/> [<https://perma.cc/UY5Z-XG55>] (last visited Sept. 24, 2023); see also WILLIAM C. DAVIS, THREE ROADS TO THE ALAMO 207–08 (1998) (Davis persuasively dismisses the claim of a blacksmith, James Black, that he invented or styled the distinctive knife for Rezin Bowie); *id.* at 676–77 (David Kopel says,

The “Bowie knife” rapidly became known beginning in the 1830s for the distinctive type of long-bladed and usually single-edged knife with a hand guard identified with Bowie, the man after whom the knife was named. While Bowie knives initially “came in a variety of forms — with or without guards, with differently shaped blades,” they eventually became more standardized as “a large knife with a cross guard and a blade with a clipped point.”¹⁸⁴ The distinctive traits of the Bowie knife are revealed in Robert Abels’s book, *Bowie Knives*, which includes pictures of nearly one hundred such knives made between 1835 and 1890.¹⁸⁵ The Bowie legend, the explosive growth and spread of Bowie-related mythology (only magnified by his death at the Alamo in 1836), and the knife’s distinctive features, encouraged its proliferation,¹⁸⁶ referred to by one historian as “the craze for the knives.”¹⁸⁷ As was true of other knives with long, thin blades,¹⁸⁸ they were widely used in fights and duels, especially at a time when single-shot pistols were often unreliable and inaccurate.¹⁸⁹ Indeed, such knives were known as “fighting knives”¹⁹⁰ that were “intended for [interpersonal] combat.”¹⁹¹ In the early nineteenth century “guns and knives accounted for a growing share of the known weapons that whites used to kill whites.”¹⁹² In 1834, for example, a grand jury in Jasper County, Georgia deplored:

the practice which is common amongst us with the young the middle aged and the aged to arm themselves with Pistols, dirks knives sticks & spears

erroneously, that “Jim Bowie used a traditional knife at a famous ‘sandbar fight’ on the lower Mississippi River in 1827.”); David Kopel, *Bowie Knife Statutes 1837-1899*, VOLOKH CONSPIRACY (Nov. 20, 2022), <https://reason.com/volokh/2022/11/20/bowie-knife-statutes-1837-1899/> [<https://perma.cc/ED2T-WGY7>] (Rezin Bowie had just developed the distinctive knife his brother used in the fight, so it could not have been “traditional.”).

184. Bowie Knife, *supra* note 183.

185. ROBERT ABELS, *BOWIE KNIVES* 3 (Abels ed., 1979).

186. See VIRGIL E. BAUGH, *RENDEZVOUS AT THE ALAMO: HIGHLIGHTS IN THE LIVES OF BOWIE, CROCKETT, AND TRAVIS* 39–63 (1985).

187. DAVIS, *supra* note 183, at 583.

188. Other such long-bladed, thin knives of varying configurations typically named in laws barring their carrying included the Arkansas toothpick, the Spanish stiletto, dirks, daggers, and the like. See, e.g., 1841 Ala. Acts 148–49; see also An Act Defining And Punishing Certain Offenses Against The Public Peace § 1, 1889 Ariz. Sess. Laws 16; An Act to Prevent the Carrying of Concealed Weapons, Aug. 10, 1871, *reprinted in* LAWS OF THE DISTRICT OF COLUMBIA: 1871-1872, Part II, 33 (1872); An Act Prohibiting The Carrying Of Weapons Concealed Or Otherwise ch. 61 § 25, 1853 N.M. Laws 406.

189. DAVIS, *supra* note 183, at 164, 208; BAUGH, *supra* note 186, at 42; Karen Harris, *Bowie Knives: The Old West’s Most Famous Blade*, OLDWEST, <https://www.oldwest.org/bowie-knife-history/> [<https://perma.cc/P7EV-R8VF>] (last visited Sept. 24, 2023); FLAYDERMAN, *supra* note 159, at 485; PAUL KIRCHNER, *BOWIE KNIFE FIGHTS, FIGHTERS, AND FIGHTING TECHNIQUES* 35–44 (Paladin Press ed., 2010).

190. ROTH, *supra* note 154, at 218.

191. FLAYDERMAN, *supra* note 159, at 59.

192. ROTH, *supra* note 154, at 218.

under the specious pretence of protecting themselves against insult, when in fact being so armed they frequently insult others with impunity, or if resistance is made the pistol dirk or club is immediately resorted to, hence we so often hear of the stabbing shooting & murdering so many of our citizens.¹⁹³

Homicide rates increased in the South in the early nineteenth century, as did laws restricting concealed weapons carrying. Dueling also persisted during this time, even as the practice was widely deplored by religious and other groups, in newspapers, by anti-dueling societies and political leaders.¹⁹⁴ Bowie knife writer Norm Flayderman provides abundant and prolific evidence of the spread and early criminal use of Bowie knives in the 1830s, quoting from dozens of contemporaneous newspaper and other accounts, and providing references to literally hundreds of additional articles and accounts attesting to the widespread use of Bowie knives in fights, duels, brawls and other criminal activities.¹⁹⁵ Flayderman concludes that, as early as 1836, “most of the American public was well aware of the Bowie knife.”¹⁹⁶ Very much like the allure of contemporary assault weapons to some,¹⁹⁷ the Bowie knife’s notorious reputation also, if perversely, fanned its sale and acquisition.¹⁹⁸ All this contributed to widespread enactment of laws prohibiting dueling in the states.¹⁹⁹ In 1839, Congress passed a measure barring dueling in the District of Columbia.²⁰⁰ Both pistols and knives were prominently used in such affairs.²⁰¹

At least three state court cases dealt in some manner with fighting knives like the Bowie knife. In the 1840 case of *Aymette v. State*²⁰² the Supreme Court of Tennessee upheld the conviction of William Aymette for wearing a

193. *Id.* at 218–19.

194. BAUGH, *supra* note 186, at 51.

195. FLAYDERMAN, *supra* note 159, at 25–64, 495–502.

196. FLAYDERMAN, *supra* note 159, at 43.

197. See RYAN BUSSE, GUNFIGHT 12–15, 65 (2021); see also David Altheide, *The Cycle of Fear that Drives Assault Weapon Sales*, THE GUARDIAN (Mar. 2, 2013), <https://www.theguardian.com/commentisfree/2013/mar/02/cycle-fear-assault-weapon-sales> [<https://perma.cc/VJ9L-GTAB>]; Rukmani Bhatia, *Guns, Lies, and Fear*, AM. PROGRESS (Apr. 24, 2019), <https://www.americanprogress.org/article/guns-lies-fear/> [<https://perma.cc/8WCR-EYX2>].

198. FLAYDERMAN, *supra* note 159, at 46.

199. See *Repository of Historical Gun Laws*, *supra* note 63. A search for the word “duel” in the Duke Center for Firearms Law database of old gun laws yields 35 results.

200. *Joint Resolution Prohibiting Dueling*, HIST., ART & ARCHIVES: U.S. HOUSE OF REPRESENTATIVES, https://history.house.gov/Records-and-Research/Listing/lfp_032/ [<https://perma.cc/4JAD-7DJC>] (last visited Sept. 24, 2023).

201. ROTH, *supra* note 154, at 180–83, 210–17.

202. See *District of Columbia v. Heller*, 554 U.S. 570, 613 (2008) (citing *Aymette v. State*, 21 Tenn. 152 (Tenn. 1840)).

Bowie knife concealed under his clothes under a state law of 1837–1838, ch. 137, sec. 2, providing:

that, if any person shall wear any bowie-knife, or Arkansas toothpick, or other knife or weapon that shall in form, shape, or size resemble a bowie-knife or Arkansas toothpick, under his clothes, or keep the same concealed about his person such person shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined in a sum not less than two hundred dollars, and shall be imprisoned in the county jail not less than three months and not more than six months.²⁰³

In its decision, the court concluded that the prohibition against wearing the named weapons was well justified in that they “are usually employed in private broils, and which are efficient only in the hands of the robber and the assassin.”²⁰⁴ The court continued, “The Legislature, therefore, have a right to prohibit the wearing or keeping weapons dangerous to the peace and safety of the citizens”²⁰⁵ Further, the court added that the state law existed “to preserve the public peace, and protect our citizens from the terror which a wanton and unusual exhibition of arms might produce, or their lives from being endangered by desperadoes with concealed arms”²⁰⁶

Four years later, the Tennessee Supreme Court again dealt with a Bowie knife law violation and challenge. In the case of *Haynes v. Tennessee* (1844),²⁰⁷ Stephen Haynes was indicted for carrying a concealed Bowie knife. He was convicted of wearing a knife that resembled a Bowie knife but appealed his conviction on the grounds that he was actually carrying a “Mexican pirate knife,” which reputedly had a shorter, narrower blade. (At the trial, witnesses disagreed as to the proper name for the knife in question.) He also argued that the state law, in listing various types of knives including those “similar” to Bowie knives, was “too indefinite” and could therefore lead to “absurd consequences” that “must follow its enforcement”²⁰⁸ On appeal, the court upheld his conviction and commended the Tennessee state legislature’s enactment: “The design of the statute was to prohibit the wearing of bowie knives and others of a similar description, which the experience of the country had proven to be extremely dangerous and destructive to human life; the carrying of which by truculent and evil disposed persons but too often ended in assassination.”²⁰⁹ The court continued: “The design, meaning, and intent was to guard against the

203. *Aymette*, 21 Tenn. at 153.

204. *Id.* at 156.

205. *Id.* at 157.

206. *Id.*

207. 24 Tenn. 120 (1844).

208. *Id.* at 122.

209. *Id.*

destruction of human life, by prohibiting the wearing [of] heavy, dangerous, destructive knives, the only use of which is to kill”²¹⁰ The court noted that the state law “wisely provides against bowie knives, Arkansas tooth picks, or any other weapon in form, shape or size, resembling them.”²¹¹ Noting the similarity among knives and the possibility of an unjust outcome where, say, a person might be convicted of carrying a mere pocket knife, the court posed this question: “what is to protect against conviction, when the words of the statute cover the charge, and its true spirit and meaning does not?” Their answer: “the judge and jury who try the case.”²¹² As the author of a book on Bowie knives noted, “the fact that the term ‘bowie knife’ had never been precisely defined did not help his [Haynes’s] case.”²¹³

A third state court case relevant to the legal status of Bowie knives is *Cockrum v. State of Texas*, 1859.²¹⁴ The *Cockrum* case involved John Cockrum, who was charged with the murder of his brother-in-law, William Self, with a Bowie knife.²¹⁵ Under Texas law, “a homicide, which would otherwise be a case of manslaughter, if committed with a bowie-knife or dagger, shall be deemed murder and punished as such”²¹⁶ The court upheld the added penalty provision of the law relating to use of a Bowie knife, despite the court’s very expansive interpretation of the right to bear arms, but reversed and remanded the man’s conviction because of an error

210. *Id.* at 123.

211. *Id.* at 122.

212. *Id.* at 123.

213. KIRCHNER, *supra* note 189, at 43.

214. *Cockrum v. State*, 24 Tex. 394, 401 (1859). David Kopel says that a fourth case, *Nunn v. State*, 1 Kelly 243 (1846), is a “major state supreme court case[]involving Bowie knives.” David Kopel, *The Legal History of Bans on Firearms and Bowie Knives Before 1900*, VOLOKH CONSPIRACY (Nov. 20, 2022), <https://reason.com/volokh/2022/11/20/the-legal-history-of-bans-on-firearms-and-bowie-knives-before-1900/> [<http://perma.cc/QS59-ZZKD>]. But *Nunn* involved a man who was prosecuted for carrying a pistol (openly, not concealed), not a knife. 1 Kelly at 243. A state law criminalized concealed carry of various named weapons, including pistols and Bowie knives, whereas a different provision allowed for open carrying of named weapons, including Bowie knives, but failed to include pistols on that list. *Id.* Noting the “great vagueness” in the statute’s wording, the court reversed the man’s conviction and wrote that there was a constitutional right to open carry “for the important end to be attained: the rearing up and qualifying a well-regulated militia, so vitally necessary to the security of a free State.” *Id.* at 246, 251. By contrast, the court upheld the constitutionality of the concealed carry restrictions and noted that those restrictions were enacted “to guard and protect the citizens of the State against the unwarrantable and too prevalent use of *deadly weapons*.” *Id.* at 246.

215. *My Genealogy Home Page: Information About John T. Cockrum*, GENEALOGY.COM <https://www.genealogy.com/ftm/p/i/l/Karen-Pilgrim-TX/WEBSITE-0001/UHP-0254.html> [<https://perma.cc/DWF7-E6VP>] (last visited Sept. 14, 2023). *Excerpts From the Trial of John Cockrum*, SELF ROOTS (Feb. 17, 2015), <http://www.selfroots.com/revel5.htm> [<https://perma.cc/DM5A-JVRU>].

216. *Cockrum*, 24 Tex. at 394

related to statutory changes and jury instructions. It described the Bowie knife as “an exceeding destructive weapon,” an “instrument of almost certain death,” and “the most deadly of all weapons in common use.”²¹⁷ Further, the court said: “He who carries such a weapon . . . makes himself more dangerous to the rights of others, considering the frailties of human nature, than if he carried a less dangerous weapon.”²¹⁸

All of these cases underscore courts’ recognition of the dangerous nature and nefarious use of Bowie knives not only by their characterizations of them, but by the fact that they are treated in the same restrictive and prohibitory manner in law as other dangerous, deadly weapons including pistols and various named clubs.²¹⁹

The ubiquity of the concern about the criminological consequences of carrying Bowie knives and other, similar long-bladed knives is seen in the widespread adoption of laws barring or restricting these weapons.²²⁰ In the 1830s, at least six states enacted laws barring the carrying of Bowie knives by name.²²¹ From then to the start of the twentieth century, every state plus the District of Columbia (with the sole exception of New Hampshire) restricted Bowie knives: a total of at least 42 states (including the District of Columbia) barred or restricted Bowie knives by name; and another eight

217. *Id.* at 402–03. Kopel says, incorrectly, that “Bowie knives . . . were regulated the same as a butcher’s knife.” See Kopel, *supra* note 183. According to the Duke Center for Firearms Law Repository of Historical Gun Laws six states had laws that restricted butcher knives by name, whereas 42 states restricted Bowie knives by name. See *infra* App’x A; *Repository of Historical Gun Laws*, *supra* note 63.

218. *Cockrum*, 24 Tex. at 403.

219. Among the notorious incidents attached to the Bowie knife was its use by two of the conspirators in the Lincoln assassination in 1865. The plan was to assassinate President Lincoln, Vice President Andrew Johnson, and Secretary of State William Seward. The man assigned to attack Seward, Lewis Powell, entered the Seward home armed with a pistol and a Bowie knife. When one of Seward’s sons tried to stop him, Powell tried to shoot him, but his gun misfired, so he used it as a club against the son. When he encountered another son, Powell slashed him with his Bowie knife, the weapon he then used to attack Seward who, thanks to a neck collar, survived. See David Morgan, *Lincoln Assassination: The Other Murder Attempt*, CBS NEWS, (May 10, 2015), <https://www.cbsnews.com/news/lincoln-assassination-the-other-murder-attempt/> [perma.cc/2H9F-MWS6]; *William Seward*, HISTORY (updated Aug. 21, 2018), <https://www.history.com/topics/american-civil-war/william-seward> [https://perma.cc/6LQZ-6K2C]. John Wilkes Booth also carried what was later identified as a Bowie knife which he used to slash the man who accompanied Lincoln to the theater and who tried to stop Booth after he shot the president. Booth slashed the man in the arm with his knife to make his escape. See also Dave Taylor, *Cloak and Daggers: Cutting Through the Confusion of the Assassination Knives*, LINCOLNCONSPIRATORS.COM (Dec. 31, 2018), <https://lincolnconspirators.com/2018/12/31/cloak-and-daggers-cutting-through-the-confusion-of-the-assassination-knives/> [https://perma.cc/4RSX-LAAT].

220. The near-immediate effort in the states to restrict Bowie knives was noted, for example, in DAVIS, *supra* note 183, at 582. See also FLAYDERMAN, *supra* note 159, at 53–54.

221. A seventh state, Massachusetts, criminalized the carrying of fighting knives using labels that would have included the Bowie knife in an 1836 law. See 1836 Mass. Acts 750.

states enacted laws barring the category or type of knife embodied by the Bowie knife but without mentioning them by name totaling 49 states plus the District of Columbia.²²² For example, 15 states banned all carrying of Bowie knives (by banning both concealed carry and open carry), while others imposed taxes on individuals' acquisition or possession of them. Georgia sought to stamp out Bowie knife circulation (as well as that of other named weapons) in an 1837 law: "it shall not be lawful for any merchant, or vender of wares or merchandize in this State, or any other person or persons whatsoever, to sell, or offer to sell, or to keep, or to have about their person or elsewhere, any of the hereinafter described weapons . . . Bowie, or any other kinds of knives, manufactured and sold for the purpose of wearing, or carrying the same as arms of offence or defense, pistols, dirks, sword canes, spears, &c."²²³ The desirability and utility of concealed-carry restrictions were precisely that they pushed dangerous weapons out of public spaces and places, improving public safety through the deterrent and punishment effects of such laws, and also discouraging the settlement of private grievances and disputes in public through weapons-fueled violence.

States were imaginative and persistent in their effort to suppress fighting knives and other weapons. For example, an 1881 Arkansas law combined no-carry provisions (whether concealed or openly) applying to any dirk, bowie knife, sword, spear in a cane, brass or metal knuck[le]s, razors, "or any pistol of any kind whatever" with another provision in the same law that made it a misdemeanor to "sell, barter or exchange, or otherwise dispose of, or in any manner furnish to any person" the aforementioned weapons, including "any kind of cartridge."²²⁴ Even though the law allowed persons to have the weapons on their own premises, it begs the question of how, exactly, a person could legally obtain such weapons in the first place if they were not already owned within a family before the 1881 law was enacted.

States relied on a variety of regulatory techniques to suppress Bowie knife carrying: 29 states enacted laws to bar their concealed carry; 15 states barred their carry whether concealed or openly; seven states enacted enhanced criminal penalties for those who used the knives to commit a crime; four states enacted regulatory taxes attached to their commercial sale; three states imposed a tax for those who owned the knives; ten states barred their sale to

222. Bowie law enactment by decade: 1830s: six states; 1840s: four states; 1850s: 11 states; 1860s: 13 states; 1870s: 19 states; 1880s: 20 states; 1890s: 21 states; 1900s: 13 states. *See infra* App'x A–B.

223. An Act to Guard and Protect the Citizens of this State, Against the Unwarrantable and too Prevalent use of Deadly Weapons, § 1, 1837 Ga. Acts 90.

224. The law also made exceptions for military weapons, for officers, and legal transport for people on a journey, a common exception in such laws. An Act to Preserve the Public Peace and Prevent Crime, chap. XCVI (96), §§1-3, 1881 Ark. Acts 191.

specified groups of people; and four states enacted penalties for brandishing the knives.²²⁵

The extensive and ubiquitous nature of these Bowie knife prohibitions raises a further question: given the universal agreement that these knives were dangerous, why not simply ban their possession outright? The answer is two-fold. First, America was a developing nation-state in the nineteenth century. The federal and state governments did not yet possess the maturity, powers, tools, or resources to implement any measure as sweeping as a knife ban, especially since knives are technologically very simple to produce. After all, the front-line administrative entity on which we today rely for law enforcement, the police, barely existed in the way we think of policing today in the early nineteenth century (up to this time policing fell to a haphazard mix of the watch system, constables, militias, and vigilantes). Modern police forces only came in to being in a handful of large cities before the Civil War.²²⁶ Second, the chief remedy enacted by the states to address the problem of knife fighting was far more focused and feasible: to bar the carrying of knives, along with the other two categories of weapons that also threatened public safety, clubs and pistols. The fact that all three types of weapons were consistently treated together is conclusive evidence that all were considered so dangerous and inimical to public safety that they were subject to anti-carry laws and bundled together in legislative enactments.

B. Historical Restrictions on Clubs and Other Blunt Weapons

Among the most widely and ubiquitously regulated harmful implements in U.S. history were various types of clubs and other blunt weapons.²²⁷ Most were anti-carry laws, which also generally encompassed pistols and specific types of knives, although some of the laws extended prohibitions to these weapons' manufacture, possession, sale, or use in crime.²²⁸ As the table in Appendix A shows, at least six distinct types of clubs and blunt objects were regulated in the United States. Notably, every state in the nation had laws restricting one or more types of clubs. According to a detailed reference book on the subject of these blunt instruments by Robert Escobar, they were

225. *See infra* App'x A.

226. CHRIS MCNAB, DEADLY FORCE 13–24 (2009). Boston created a police force in 1838, New York City created a standing police force in 1845, followed by Chicago in 1851, Philadelphia in 1854, and Baltimore in 1857. *See id.* At 23; McNab and Jill Lepore emphasize the role of slavery and suppression of the enslaved as key to the development of policing. *See* Jill Lepore, *The Invention of the Police*, THE NEW YORKER (July 13, 2020), <https://www.newyorker.com/magazine/2020/07/20/the-invention-of-the-police> [<https://perma.cc/5U57-U4QD>].

227. *See infra* App'x A.

228. *See, e.g.*, 1917 Cal. Stat. 221–25; 1923 Cal. Stat. 695.

considered “objectionable objects, once feared but now forgotten.”²²⁹ Escobar provides what he calls “a family history” of these blunt weapons, but adding that “[i]t’s a disreputable family to say the least, black sheep even within the study of weaponry.”²³⁰ They have been described as “wicked, cowardly, ‘Soaked in blood and cured in whiskey.’”²³¹ Those who carried them (excluding police) “were called vicious, devils and lurking highwaymen.”²³² These club-type blunt objects compose a family of objects used for striking others, and while they vary in name and construction, the categories are “somewhat fluid.”²³³

Among the six types of clubs regulated in U.S. laws, 15 states barred bludgeon carrying. A bludgeon is a short stick with a thickened or weighted end used as a weapon.²³⁴ The earliest state anti-bludgeon law was in 1799; 12 such state laws were enacted in the 1700s and 1800s, and four in the early 1900s (as with each of these chronological categories, the state law total exceeds the total number of states because some states enacted the same or similar laws in multiple centuries).

A billy²³⁵ club is a heavy, hand-held rigid club,²³⁶ usually made of wood, rubber, plastic, or metal,²³⁷ that is traditionally carried by police, often called a nightstick or baton.²³⁸ Escobar cites an early reference to the billy club in an 1854 New Orleans newspaper article in the *Daily True Delta* that referred

229. ROBERT ESCOBAR, *SAPS, BLACKJACKS AND SLUNGSHOTS: A HISTORY OF FORGOTTEN WEAPONS 1* (Gatekeeper Press ed., 2018).

230. *Id.* at 2.

231. *Id.*

232. *Id.*

233. *Id.* at 1.

234. *Bludgeon*, MERRIAM WEBSTER, <https://www.merriam-webster.com/dictionary/bludgeon> [<https://perma.cc/HR4M-TTLB5YpV-XDTF>] (last visited Sept. 13, 2023).

235. Billy club is sometimes spelled “billie club.”

236. *Billy Club*, MERRIAM WEBSTER, <https://www.merriam-webster.com/dictionary/billy%20club> [<https://perma.cc/U9ES-5JH6>] (last visited Sept. 13 2023).

237. Some versions were made to have some flexibility to increase their striking power. *See* ESCOBAR, *supra* note 229, at 118–19. Escobar discusses a Civil War veteran and later police officer, Edward D. Bean, who experimented with various types of billy clubs to improve their striking power and durability by utilizing leather, often adhered to wood, to reduce the likelihood that the club would break on use. *See id.* One of the earliest references to a “billy” was an 1857 newspaper article describing “an indiscriminate attack with slung-shot, billies, clubs, &c.” DELAWARE REPUBLICAN (June 15, 1857), <https://bit.ly/3V9nVO7> [<https://perma.cc/87NG-Z5Q3>]. Modern billy clubs are usually made of plastic or metal. Kirk Maltbee, *How to Make a Police Billy Club*, HOMESTEADY, <https://homesteady.com/12274619/how-to-make-a-police-billy-club> [<https://perma.cc/QE5U-68SC>] (last visited Oct. 6, 2023).

238. ESCOBAR, *supra* note 229, at 2, 69–70, 105–06, 113–28.

to “police armed with batons,”²³⁹ a synonym for a billy club. As this reference suggests, police have long adopted the billy club, or similar striking implements, as part of their on-duty weaponry. At least 16 states had anti-billy club laws, totaling 46 laws;²⁴⁰ the earliest law appears to have been enacted in Kansas in 1862,²⁴¹ followed by a New York law in 1866.²⁴² 14 states enacted such laws in the 1800s; 11 states did so in the early 1900s.²⁴³ At least 14 states barred the carrying of “clubs” more generically, without specifying the type.²⁴⁴ The oldest anti-club law was 1664; seven states enacted these laws in the 1600s-1700s, seven states in the 1800s, and two in the early 1900s.²⁴⁵

Anti-slungshot laws were enacted by 43 states, with 71 laws enacted in the 1800s and 12 in the 1900s.²⁴⁶ A slungshot (or slung shot), also referred to as “a type of blackjack,”²⁴⁷ is a hand-held weapon for striking that has a piece of metal or stone at one end attached to a flexible strap or handle that was developed roughly in the 1840s (the first “known use” of slungshot was 1842).²⁴⁸ By one account, “[s]lungshots were widely used by criminals and street gang members in the 19th Century. They had the advantage of being easy to make, silent, and very effective, particularly against an unsuspecting opponent. This gave them a dubious reputation, similar to that carried by switchblade knives in the 1950s, and they were outlawed in many jurisdictions. Their use as a criminal weapon continued at least up until the early 1920s.”²⁴⁹ Escobar concurs that slungshots and blackjacks “were a regular part of criminal weaponry . . . and gangsters could be merciless in their use.”²⁵⁰ In a criminal case considered the most famous of those involving lawyer Abraham Lincoln, the future president defended a man charged with murdering another using a slung shot. In the 1858 trial of

239. *Id.* at 105.

240. *See infra* App’x A.

241. *See* Leavenworth, Kan., An Ordinance Relating to Misdemeanors § 23 (1863).

242. *See* N.Y. Laws of 1866, ch. 716, 2512.

243. *See infra* App’x A.

244. *See id.*

245. *See id.*

246. *See id.*

247. ESCOBAR, *supra* note 229, at 228.

248. *See* *Slungshot*, MERRIAM WEBSTER, <https://www.merriam-webster.com/dictionary/slungshot> [<https://perma.cc/B37K-ZqHE>] (last visited Sept. 14, 2023). Escobar agrees with this rough date. *See* ESCOBAR, *supra* note 229, at 67.

249. *Slungshot*, MILITARY HISTORY FANDOM, <https://military-history.fandom.com/wiki/Slungshot> [<https://perma.cc/EZU6-NKTX>] (last visited Sept. 14, 2023).

250. ESCOBAR, *supra* note 229, at 86.

William “Duff” Armstrong, Lincoln succeeded in winning Armstrong’s acquittal.²⁵¹

These weapons were viewed as especially dangerous or harmful when they emerged in society, given the ubiquity of state laws against carrying them enacted after their invention and their spreading use by criminals and as fighting implements. These devices were invented and appeared in society during an identifiable period of time in the mid-nineteenth century, sparking subsequent wide-ranging prohibitions. The earliest anti-slungshot law was enacted in 1850; 43 states legislated against them in the 1800s (including the District of Columbia), and 11 states in the early 1900s (note this incorporates multiple laws enacted in more than one century by a few states).²⁵²

Sandbags, also known as sand clubs, were also a specific focus in anti-carry laws as well. Consisting of nothing more than sand poured into a bag, sack, sock, or similar tube-shaped fabric (although the weight could also be something dense and heavy, like a lock in the end of a sock),²⁵³ their particular appeal was that they could be dispensed with by simply pouring the sand out, leaving nothing more than an empty cloth bag. Alternately, they could be made heavier by adding water to the sand. The first anti-sandbag law was 1866, with ten states enacting such laws — seven in the 1800s and seven in the early 1900s.²⁵⁴ Only four states did not have any prohibitions in any of these six categories, but three of those four (Montana, Ohio, and Washington State) had blanket legislative provisions against the carrying of any concealed/dangerous/deadly weapons.²⁵⁵ One state, New Hampshire, may not have enacted such a law during this time but did at some point.²⁵⁶

251. Lincoln was able to discredit the testimony of a witness who claimed to see Armstrong strike the victim with a slung shot at night because of the full moon. Lincoln used as evidence an Almanac to prove that on the night in question, there was no full moon. *See* Judson Hale, *When Lincoln Famously Used the Almanac*, ALMANAC (Feb. 9, 2023), <https://www.almanac.com/abraham-lincoln-almanac-and-murder-trial> [https://perma.cc/AY6A-BKGT].

252. *See infra* App’x A.

253. *Dangerous Weapons in Nevada*, FERRIS LAW, <https://www.ferrislawnv.com/criminal-defense/weapons-offenses/dangerous-weapons/> [https://perma.cc/V3XR-R6X9] (last visited Sept. 13, 2023); ESCOBAR, *supra* note 229, at 20–22. Escobar dates the earliest reference to sandbags as weapons to the 1600s. *Id.* at 22.

254. *See infra* App’x A–C.

255. *See infra* App’x A–C.

256. Up to 2010, New Hampshire had this law on the books: “159:16 Carrying or Selling Weapons. Whoever, except as provided by the laws of this state, sells, has in his possession with intent to sell, or carries on his person any stiletto, switch knife, blackjack, dagger, dirk-knife, slung shot, or metallic knuckles shall be guilty of a misdemeanor; and such weapon or articles so carried by him shall be confiscated to the use of the state.” N.H. Rev. Stat. § 159:16 (2023). In 2010, the law was amended when it enacted HB 1665 to exclude stilettos, switch

C. Historical Restrictions on Pistol and Gun Carrying

Carry restriction laws were widely enacted from the 1600s through the start of the twentieth century, spanning over three centuries. As early as 1686, New Jersey enacted a law against wearing weapons because they induced “great Fear and Quarrels.”²⁵⁷ Massachusetts followed in 1750.²⁵⁸ In the late 1700s, Virginia and North Carolina passed similar laws.²⁵⁹ In the 1800s, as interpersonal violence and gun carrying spread, 43 states joined the list; four more did so in the early 1900s.²⁶⁰ The enactment of laws restricting concealed weapons carrying followed the rise of homicides and interpersonal violence described by historian Randolph Roth, who noted that restrictions on firearms from the colonial period to the start of the Revolution were few because homicide rates were low.²⁶¹ When homicides did occur, guns were seldom used, in large part because of the time involved loading them, their unreliability, and (especially for pistols) their inaccuracy.²⁶² After the Revolutionary period, the spread of violence tied to concealable percussion cap pistols and fighting knives led to the enactment of anti-concealed carry weapons laws.²⁶³ Concealed carry laws normally targeted pistols as well as the types of fighting knives and various types of clubs discussed here. In addition, at least three-fourths of the states enacted laws that penalized public brandishing or display of weapons. At least four states did so in the 1600s, two in the 1700s, 27 states in the 1800s, and three more in the early 1900s.²⁶⁴ As of 1938, “the carrying of concealed pistols is either prohibited absolutely or permitted only with a license in every state but two.”²⁶⁵ Thus, the widespread enactment of concealed carry law restrictions

knives, daggers, and dirk-knives. *C.f.*, N.H. Laws Ch. 67 (H.B. 1665) (2010). In 1923, New Hampshire enacted an extensive licensing system for handgun carrying. N.H. Laws 138 (1923).

257. An Act Against Wearing Swords, Etc., 1686 N.J. Laws 289, 289 ch. IX.

258. An Act for Preventing and Suppressing of Riots, Routs and Unlawful Assemblies, chap. 17, § 1, 1750 Mass. Acts 544.

259. See 1786 Va. Acts 35; see also 1792 N.C. Laws 60, ch. 3.

260. Including D.C. See Spitzer, *supra* note 53, at 63–67; An Act Against Carrying Concealed Weapons, 1892 Vt. Acts & Resolves 95; 1923 N.H. Laws 138; *infra* App’x C.

261. See ROTH, *supra* note 154, at 216–21; Randolph Roth, *Why Guns Are and Aren’t the Problem: The Relationship between Guns and Homicide in American History*, in A RIGHT TO BEAR ARMS? 116–17 (Jennifer Tucker et al. eds., 2019); ROGER LANE, MURDER IN AMERICA 344–45 (1997).

262. See ROTH, *supra* note 154, at 216–21.

263. See *id.*

264. See SPITZER, *supra* note 9, at 77–80; Robert J. Spitzer, *To Brandish or Not to Brandish: The Consequences of Gun Display*, in NEW HISTORIES OF GUN RIGHTS AND REGULATION: ESSAYS ON THE PLACE OF GUNS IN AMERICAN LAW AND SOCIETY (Joseph Blocher, Jacob Charles, & Darrell A.H. Miller eds., forthcoming 2024).

265. Sam B. Warner, *The Uniform Pistol Act*, 29 J. CRIM. L. & CRIMINOLOGY 529, 530 (1938).

was the public policy remedy to the emergent crime problem described here. In addition, and consonant with a maturing society, at least 29 states also broadened their laws to restrict open weapons carrying between the 1830s and the early 1900s. Further, at least 22 states enacted laws restricting the carrying of long guns between the 1850s and the early 1900s.²⁶⁶

D. Historical Restrictions on Trap Guns

Not to be confused with firearms used in trapshooting, trap guns were devices or contraptions rigged in such a way as to fire when the owner was not present to operate the gun. Typically, trap guns could be set to fire remotely by rigging the firearm to be fired with a string or wire which then discharged when tripped.²⁶⁷ This early law from New Jersey in 1771 both defines and summarizes the problem addressed by this law:

Whereas a most dangerous Method of setting Guns has too much prevailed in this Province, Be it Enacted by the Authority aforesaid, That if any Person or Persons within this Colony shall presume to set any loaded Gun in such Manner as that the same shall be intended to go off or discharge itself, or be discharged by any String, Rope, or other Contrivance, such Person or Persons shall forfeit and pay the Sum of Six Pounds; and on Non-payment thereof shall be committed to the common Gaol of the County for Six Months.²⁶⁸

Also sometimes referred to as “infernal machines,”²⁶⁹ the term “trap gun” came to encompass other kinds of traps designed to harm or kill those who might encounter them, including for purposes of defending property from intruders. Unlike the other weapons restrictions examined here, opinion was initially more divided on the relative merits or wisdom of setting such devices, with some arguing that thieves or criminals hurt or killed by the devices had it coming,²⁷⁰ though the weight of opinion seemed mostly against such devices because of the likelihood that innocent persons could be injured or killed, and also because such devices represented an arbitrary

266. See *infra* App’x C.

267. See Spitzer, *supra* note 53, at 67.

268. See 1771 N.J. Laws 346.

269. See, e.g., An Act Defining an Infernal Machine, and Prescribing Penalties for the Construction or Contrivance of the Same, or Having Such Machine in Possession, or Delivering Such Machine to Any Person . . . , 1901 Utah Laws 97-98.

270. For example, this small item appeared in the Bangor, Maine Daily Whig on October 27, 1870: “A burglar while attempting to break into a shop in New York, Monday night, had the top of his head blown off by a trap-gun so placed that it would be discharged by any one tampering with the window. A few such ‘accidents’ are needed to teach the thieves who have lately been operating in this city, a lesson.” BANGOR DAILY WHIG AND COURIER FROM BANGOR (Maine), Oct. 27, 1870, <https://www.newspapers.com/image/663175190/?terms=%22trap-gun%22&match=1> [<https://perma.cc/TRM4-UX5K>].

and excessive meting out of private, vigilante-type “justice” that was unjustifiably harsh — to seriously wound or kill a person — for crimes like stealing food or similar commodities.²⁷¹ Those who set gun traps typically did so to defend their places of business, properties, or possessions. An 1870 newspaper account from an incident in New York City provides an example where a burglar was killed by a gun trap set by a shopkeeper, who was then prosecuted: “As there is a statute against the use of such infernal machines, which might cause loss of life to some innocent person, the jury censured Agostino.”²⁷² After the verdict, the man continued to be held under \$2,000 bail.²⁷³

Inevitably, the traps wound up hurting or killing innocents, even including the person who set the trap. For example, an 1891 newspaper account from Chillicothe, Missouri illustrated the problem: “George Dowell, a young farmer, was fined \$50 under an old law for setting a trap-gun. Dowell set the gun in his corn-crib to catch a thief, but his wife was the first person to visit the crib and on opening the door was shot dead.”²⁷⁴

In all, at least 18 states had anti-trap-gun laws.²⁷⁵ The earliest such law encountered was the 1771 New Jersey law (above). 11 laws were enacted in

271. This is the Author’s observation based on my reading of historic newspaper accounts from the late 1800s and from the number of anti-trap-gun laws enacted. As policing became more consistent, professional, and reliable, support for vigilante-type actions like setting trap guns seems to have declined.

272. *The Man Trap*, THE BUFFALO COM., Nov. 1, 1870, at 4, from the N.Y. STANDARD, October 29, 1870, <https://bit.ly/3yUSGNF> [<https://perma.cc/EUB9-8JGP>].

273. *Id.*

274. *Shot by a Trap-Gun*, S. BEND TRIB., Feb. 11, 1891, at 3, <https://bit.ly/3CtZsfk> [<https://perma.cc/2529-EYY5>].

275. 1910 Md. Laws 521 § 16c; An Act To Prevent The Setting Of Guns And Other Dangerous Devices, 1875 Mich. Pub. Acts 136; 1931 Mich. Pub. Acts 671; 1869 Minn. Laws 993 §§ 64–65; An Act to Revise and Amend the Fish and Game Laws, 1915 N.H. Laws 180–81; An Act for the Preservation of Deer and Other Game, and to Prevent Trespassing with Guns ch. 539 § 10, 1771 N.J. Laws 346; 1891 N.D. Laws 193; 1895 N.D. Laws 1259; An Act Prohibiting the Placing of Spring-Guns or Set-Guns, and Providing a Penalty Therefor, ch. 31, §§ 1-2, 1925 Or. Laws 42; 1890 R.I. Pub. Laws 17; 1892 R.I. Pub. Laws 14; Hunting, General Provisions § 21, in EDMUND WILLIAM MCGREGOR MACKAY, THE REVISED STATUTES OF THE STATE OF SOUTH CAROLINA 404 (1873); 1909 S.D. Sess. Laws 450, ch. 240, §§ 21–22; 1931 S.C. Acts 78, § 1; An Act in Relation to Crimes and Punishment, Ch. XXII, Title VII, Sec. 102 (1865), in HENRY MCEWAN, ACTS, RESOLUTIONS AND MEMORIALS PASSED AT THE SEVERAL ANNUAL SESSIONS OF THE LEGISLATIVE ASSEMBLY OF THE TERRITORY OF UTAH 59 (1866); 1901 Utah Laws 97–98, ch. 96, §§ 1–3; An Act Relating To Traps § 1, 1884 Vt. Acts & Resolves 74; An Act Revising, in Amendment of and in Addition to the Fish and Game Laws, 1892 Vt. Acts & Resolves 89–90; 1912 Vt. Acts & Resolves 261; An Act Relating to Crimes and Punishments and the Rights and Custody of Persons Accused or Convicted of Crime, and Repealing Certain Acts, ch. 249, ch. 7, § 266, pts. 1–3, 1909 Wash. Sess. Laws 973; Of the Preservation of Fish & Game § 37, in 2 DAVID TAYLOR, THE REVISED STATUTES OF THE STATE OF WISCONSIN, AS ALTERED AND AMENDED BY SUBSEQUENT LEGISLATION 1964 (1872); An Act . . . Relating to Wild Animals, ch. 530, § 1, 1921 Wis. Sess. Laws 870; *Shot*

the 1700s-1800s, and nine in the early 1900s (counting states that enacted multiple laws across the centuries).

III. RECENT DEVELOPMENTS

A profound change in firepower occurred in the U.S. in the 1980s, when semi-automatic handguns, and a new generation of more expensive and more deadly guns, entered the criminal market.²⁷⁶ According to criminologists Alfred Blumstein and Richard Rosenfeld, writing in the 1990s about the period from 1985–1993 and the dramatic rise in gun crime and homicides during that period, “[o]ver the last decade the weapons involved in settling juveniles’ disputes have changed dramatically from fists or knives to handguns, with their much greater lethality.”²⁷⁷ More specifically, Blumstein attributed this deadly crime spike in the 1980s to “the advent of crack cocaine, semiautomatic handguns and gangs” which “sparked the surge in killings by teen-agers.”²⁷⁸ Blumstein noted that “[b]eginning in 1985, there was steady growth in the use of guns by juveniles in committing murder, leading to a doubling in the number of juvenile murders committed with guns, with no shift in the number of non-gun homicides.”²⁷⁹ These “young people are less likely to exercise the restraint necessary to handle dangerous weapons, particularly rapid-fire assault weapons.”²⁸⁰

This shift to greater firepower is consistent with the fact that “from 1973 to 1993, the types of handguns most frequently produced” were “pistols

by a Trap-Gun, *supra* note 274 (discussing trap gun law in Missouri); *The Man Trap*, *supra* note 272 (discussing trap gun law in New York); *How a Melon Thief Came to Grief*, WELLINGTON ENTER., Sept. 21, 1881, <https://www.newspapers.com/image/171228605/?terms=%22trap%20gun%22&match=1> [<https://perma.cc/27A3-KQRU>] (discussing trap gun law in Ohio); WRIGHTSVILLE STAR, Mar. 7, 1873, at 3, <https://www.newspapers.com/image/774191522/?terms=%22trap%20gun%22&match=1> [<https://perma.cc/PE24-KJYE>] (discussing trap gun law in Pennsylvania).

276. The prevailing crime handguns of the 1970s and early 1980s were so-called “Saturday night specials,” cheap, smaller caliber, short-barreled, easily concealable revolvers that accounted for much gun crime. See *Frontline Hot Guns*, PBS (June 3, 1997), <https://www.pbs.org/wgbh/pages/frontline/shows/guns/etc/script.html> [<https://perma.cc/HX2S-PH7A>]; Interview with Garen Wintemute, *Frontline Hot Guns*, PBS, <https://www.pbs.org/wgbh/pages/frontline/shows/guns/etc/script.html> [<https://perma.cc/9U23-6NCB>].

277. Alfred Blumstein & Richard Rosenfeld, *Explaining Recent Trends in U.S. Homicide Rates*, 88 J. CRIM. L. & CRIMINOLOGY 1175, 1191 (1998).

278. Fox Butterfield, *Guns Blamed for Rise in Homicides by Youths in 80’s*, N.Y. TIMES (Dec. 10, 1998), <https://www.nytimes.com/1998/12/10/us/guns-blamed-for-rise-in-homicides-by-youths-in-80-s.html> [<https://perma.cc/A93H-X3B8>].

279. Alfred Blumstein, *Violence by Young People: Why the Deadly Nexus?*, 229 NAT’L INST. JUST. J. 2, 5 (1995), https://www.ojp.gov/pdffiles/nijj_229.pdf [<https://perma.cc/DA8W-4KGP>].

280. See *id.*

rather than revolvers. Pistol production grew from 28% of the handguns produced in the United States in 1973 to 80% in 1993.”²⁸¹ Pistols “generally contain cartridges in a magazine located in the grip of the gun. When the semiautomatic pistol is fired, the spent cartridge that contained the bullet and propellant is ejected, the firing mechanism is cocked, and a new cartridge is chambered”²⁸² whereas a revolver is defined as a “handgun that contains its ammunition in a revolving cylinder that typically holds five to nine cartridges”²⁸³

In testimony before Congress on what became the assault weapons ban of 1994, law enforcement representatives discussed the rise in criminal firepower they witnessed in the 1980s. For example, the executive vice president of the National Association of Police Organizations, Tony Loizzo, offered this testimony:

In the past, we used to face criminals armed with a cheap Saturday Night Special that could fire off six rounds before loading. Now it is not at all unusual for a cop to look down the barrel of a TEC-9 with a 32 round clip. The ready availability of and easy access to assault weapons by criminals has increased . . . dramatically The six-shot .38 caliber service revolver, standard law enforcement issue for years, it just no match against a criminal armed with a semi-automatic assault weapon.²⁸⁴

John Pitta, executive vice president of the Federal Law Enforcement Officers Association testified similarly with respect to the 1994 bill: “[t]he TEC-9 assault pistol is the undisputed favorite of drug traffickers, gang members and violent criminals. Cities across the country confiscate more TEC-9s than any other assault pistol.”²⁸⁵ The ultimate result was congressional enactment of a ten-year restriction on assault weapons and also on ammunition magazines capable of holding more than ten rounds.²⁸⁶

CONCLUSION

What does the law say, and what should the law be, regarding the regulation of firearms and other harmful or dangerous weapons and accessories, in the light of the Supreme Court’s history-centric ruling in the *Bruen* decision? Given the importance of history, especially, though not limited to, the founding era and the Reconstruction era, the lesson is abundantly clear.

281. Marianne W. Zawitz, *Guns Used in Crime*, BUREAU OF JUST. STATS., at 3 (July 1995), <https://bjs.ojp.gov/content/pub/pdf/GUIC.PDF> [<https://perma.cc/U5QU-92ZN>].

282. *Id.* at 2.

283. *Id.*

284. H.R. REP. NO. 103-489, 103d Cong., 2d Sess. (1994), 1994 WL 168883 at 33–34.

285. *Id.* at 34.

286. SPITZER, *supra* note 8, at 205–11.

As the series of examples examined here illustrate, gun policy changes occur in and through a sequential process. *First*, a new gun or gun technology is invented. *Second*, it may then be patented, though the patenting of a design or idea by no means assures that it will proceed beyond that point. *Third*, it is often developed with a focus on military applications and supplying military needs, not directly for civilian acquisition or use. *Fourth*, some weapons may then spread to, or be adapted to, civilian markets and use. *Finally*, if such weapons then circulate sufficiently in society to pose a safety, violence, or criminological problem or threat, calls for government regulation or restriction then may lead to gun policy/law changes. New gun laws are not enacted when firearm technologies are invented or conceived. They are enacted when those technologies circulate sufficiently in society to spill over into criminal or other harmful use, presenting public safety concerns that governments attempt to address through their police and policy-making powers.

Beyond that, firearms and other dangerous weapons were subject to remarkably strict, consistent, and wide-ranging regulation throughout our history. This historical record spanning four centuries, as seen in the examples examined here, is even more remarkable given that the United States was an evolving and developing nation-state that could not claim to have reached maturity until the twentieth century. The historical record summarized here makes clear that contemporary restrictions of firearms among the states are merely the latest iteration of a centuries-long tradition of weapons regulations and restrictions.

Gun ownership is as old as the country. But so are laws restricting guns and other dangerous weapons, which have adapted to changes in threats to public safety. If this history teaches anything, it is that the state has no less an abiding interest in preserving public safety today by restricting the tools that magnify violence than it did in prior centuries.

**APPENDIX A: DANGEROUS WEAPONS RESTRICTIONS
(YEARS OF ENACTMENT)²⁸⁷**

State	Bowie Knife	Bludgeon	Billy/ Billie Club	Club	Slung Shot	Sand Bag/ Sand Club	Pistol	Any Concealed /Deadly/ Dangerous Weapon
Ala.	1837 1839 1841 1867 1876 1877 1879 1892			1805	1873		1839 1841	
Alaska	1896 [†]				1896- 1899		1896	1896
Ariz.	1867 1889 1901				1873 1889 1893 1901		1889	1867
Ark.	1871 1875 1881			1835	1871		1820 1837	
Cal.	1855 1896	1849 1853 1876	1917 1923		1864 1923	1917 1923	1850 1864	1849
Colo.	1862 1867 1877 1881	1876			1886		1862	1862
Conn.	1890 [†]				1890		1890 1923	
Del.	1881 [†]			1797			1852	

287. In addition to state laws, this chart provides the year of enactment of local ordinances adopted within the states. *See Repository of Historical Gun Laws, supra* note 63 (search type of weapon then select laws restricting their use).
[†]States that prosecuted, regulated or barred knives more generally without specifically mentioning Bowie knives.

State	Bowie Knife	Bludgeon	Billy/ Billie Club	Club	Slung Shot	Sand Bag/ Sand Club	Pistol	Any Concealed /Deadly/ Dangerous Weapon
D.C.	1858 1871 1892				1871		1857 1871	
Fla.	1835 [†] 1838 1847 1868 1893 [†]		1888		1868 1888		1887	
Ga.	1837 1860 1873	1816			1860		1837	
Haw.	1852 1913				1852 1913		1913	
Idaho	1864 [†] 1875 1879 1909	1875			1879		1909	1864
Ill.	1876 1881	1845			1881 1893		1881	
Ind.	1859			1804 1855 1881 1905	1875 1905		1820	1831
Iowa	1882, 1887 1900		1882		1882	1887 1900	1882 1887 1897 1929	
Kan.	1862 1863 1868 1883 1887		1862 1887		1883 1887 1899		1901	
Ky.	1859			1798	1859		1812 1813	
La.	1870						1813	1813 1842

State	Bowie Knife	Bludgeon	Billy/ Billie Club	Club	Slung Shot	Sand Bag/ Sand Club	Pistol	Any Concealed /Deadly/ Dangerous Weapon
								1870
Me.	1840 1841 1884 [†]			1786			1840	1841
Md.	1872 1886 1888 1890	1809 1874 1886	1872 1874 1884 1886 1890 1927		1886	1890	1872	
Mass.	1836 [†]			1750	1850 1927		1751	
Mich.	1891	1927 1929	1887 1891 1927 1929	1913	1887 1891 1929	1887 1891 1927 1929	1887	
Minn.	1882				1882 1888	1888	1881	1882
Miss.	1837 1838 1878 1880 288			1799 1804	1878		1838 1878	
Mo.	1871 1897 1917 1923		1871 1897 1923	1818 1923	1883 1888 1897 1917		1873	
Mont.	1864 1879 1885	1887					1864 1865	1888
Neb.	1877 1890 1899	1858	1872 1890 1899		1890		1881	

288. JOSIAH A. PATTERSON CAMPBELL, *THE REVISED CODE OF THE STATUTE LAWS OF THE STATE OF MISSISSIPPI 776-77* (1880); 1880 Miss. Laws 776-77.

State	Bowie Knife	Bludgeon	Billy/ Billie Club	Club	Slung Shot	Sand Bag/ Sand Club	Pistol	Any Concealed /Deadly/ Dangerous Weapon
Nev.	1873	1872			1881		1881 1925	
N.H.							1923	
N.J.	1871 1895 1905	1799 1877 1927	1871 1927		1871 1873 1927	1871 1927	1686	
N.M.	1852 [†] 1853 1859 1864 1887	1887			1853 1859 1869 1887		1852 1853	
N.Y.	1866 1885 1911 [†]	1911 1913 1931	1866 1881 1884 1885 1900 1911 1913 1931	1664	1866	1866 1881 1900 1911 1913 1931	1891	
N.C.	1840 1856 1858 1860 1879				1879		1792 , 1840	
N.D.	1895 1915 [†]	1915	1915		1895	1915	1895	
Ohio	1859 1880 1890						1859	1788 1859 1880
Okla.	1890 1891 1903		1890 1891		1890 1891 1903	1890	1890	
Or.	1885 [†]		1898 1917		1885 1917	1917	1853	
Pa.	1897		1897		1851		1851	

State	Bowie Knife	Bludgeon	Billy/ Billie Club	Club	Slung Shot	Sand Bag/ Sand Club	Pistol	Any Concealed /Deadly/ Dangerous Weapon
R.I.	1893 1896 1908		1893 1908		1893 1896		1893	
S.C.	1880 1923				1880		1880	
S.D.	1903 [†]				1877 1903		1877	
Tenn.	1838 1856 1863 1867 1871 1881 1893				1879 1882 1893		1821	
Tex.	1856 1871 1879 1897			1899	1871 1879 1889 1897 1899		1870	
Utah	1877						1877 1888	
Vt.	1892 1895 [†]				1895		1895 1897	
Va.	1838 1887			1792	1887		1794	
Wash.	1854 1859 1869						1881	1854 1859 1869 1881 1883 1892 1896 1897
W.Va.	1870 1882		1870 1882		1891		1870	

State	Bowie Knife	Bludgeon	Billy/ Billie Club	Club	Slung Shot	Sand Bag/ Sand Club	Pistol	Any Concealed /Deadly/ Dangerous Weapon
	1891 1925		1891 1925					
Wis.	1883 1896				1883 1888		1858	1883
Wyo.	1884 1890 1899 1925	1876 1893			1884 1890 1899		1876	
Total States	50 (incl. D.C.)	15	16	13	43	10	50	13
Total Laws	137	25	44	17	79	21	66	24

APPENDIX B: BOWIE KNIFE LAWS BY TYPE²⁸⁹

State	No Concealed Carry	No Carry	Greater Criminal Penalty	Tax/ Punish for Sale	Tax Ownership	No Sale to Barred Groups <small>290</small>	No Brandish
Ala.	1839 1841 1876 1879		1837	1837 1897	1837 1867	1876	
Ala- ska							
Ariz.	1893 1901	1889					
Ark.	1875	1881	1871	1881			

289. Table excludes laws that punish carry or use of “knives” or “sharp or dangerous weapons” but does not mention Bowie knives by name. *See Repository of Historical Gun Laws, supra* note 63 (source for all data unless otherwise noted).

290. Barred groups included Native Americans, enslaved and non-enslaved people of African descent, and minors. *See id.*

State	No Concealed Carry	No Carry	Greater Criminal Penalty	Tax/Punish for Sale	Tax Ownership	No Sale to Barred Groups ²⁹⁰	No Brandish
Cal.	1896					1896	1855 1858
Colo.	1862 1877	1881					
Conn.							
Del.							
D.C.	1871						
Fla.				1838 ²⁹¹			
Ga.	1837 ²⁹² 1873			1837 ²⁹³		1860	
Haw.		1852 1913					
Idaho	1909	1879					
Ill.	1876 1881 1883					1881	
Ind.		1859					
Iowa	1882 1887 1900						
Kan.	1862 1863 1887					1883	
Ky.						1859	
La.	1855	1870					
Me.							
Md.	1872 1884						

291. See Kopel, *supra* note 183; 1838 Fla. Laws 36.

292. See Kopel, *supra* note 183; HOWELL COBB, A COMPILATION OF THE PENAL CODE OF THE STATE OF GEORGIA, WITH THE FORMS OF BILLS OF INDICTMENT NECESSARY IN PROSECUTIONS UNDER IT, AND THE RULES OF PRACTICE 210 (1850), <https://dlg.galileo.usg.edu/georgiabooks/pdfs/gb0439.pdf> [<https://perma.cc/39HW-B9D9>].

293. See COBB, *supra* note 292, at 210.

State	No Concealed Carry	No Carry	Greater Criminal Penalty	Tax/Punish for Sale	Tax Ownership	No Sale to Barred Groups ²⁹⁰	No Brandish
	1886 1890						
Mass.							
Mich.	1891						
Minn.	1884						
Miss.	1878 1896 ²⁹⁴		1837 1838 1888 ²⁹⁵		1841 ²⁹⁶ 1892 ²⁹⁷		1840
Mo.	1871 1883 1890 1897	1917 1923					
Mont.	1864		1879				
Neb.	1890 1899	1872					
Nev.			1873				
N.H.							
N.J.	1895						
N.M.	1859 1887						
N.Y.		1885					
N.C.	1879				1856 1858	1846 ²⁹⁸	
N.D.							
Ohio	1859 1880						
Okla.	1890 1903	1890 1891					
Or.							

294. See Kopel, *supra* note 183; 1896 Miss. Laws 109–10.

295. PATTERSON CAMPBELL, *supra* note 288, at 775.

296. 1841 Miss. Laws 51–52.

297. See Kopel, *supra* note 183; 1892 Miss. Laws 198.

298. See Kopel, *supra* note 183; 1846 N.C. Sess. Laws 75.

State	No Concealed Carry	No Carry	Greater Criminal Penalty	Tax/Punish for Sale	Tax Ownership	No Sale to Barred Groups 290	No Brandish
Pa.	1897						
R.I.	1893 1896 1908						
S.C.						1923	
S.D.							
Tenn.	1838 1863 1867	1869 1881 1893	1838 1856	1838 1867		1856 1867	
Tex.		1871	1856			1897	
Utah		1877					
Vt.		1892					
Va.	1838 1867 1887		1838				
Wash.							1854 1859 1869
W.Va.	1870	1882 1891 1925					
Wis.	1883						
Wyo.							1884
Total States	29	17	8	5	3	10	4
Total Laws	58	23	11	7	6	11	7

**APPENDIX C: TYPES OF CARRY RESTRICTION LAWS
(YEARS OF ENACTMENT)²⁹⁹**

State	No Concealed Carry Laws	No Open/Any Carry Laws	No Carry Long Guns
Ala.	1839, 1841		
Alaska	1896		
Ariz.	1889	1889, 1901, 1901	1901
Ark.	1820, 1837	1875, 1881	
Cal.	1850, 1864	1878, 1917	1878, 1917
Colo.	1862		
Conn.	1890, 1923	1890	1890
Del.	1852		
D.C.	1857, 1871	1858	1858
Fla.	1887	1838, 1868	1868
Ga.	1837	1837, 1873	1873
Haw.	1913	1852, 1913	1852, 1913
Idaho	1909		
Ill.	1881		
Ind.	1820		
Iowa	1882, 1887, 1897, 1929		
Kan.	1901	1868, 1872, 1881, 1899	1868, 1881, 1899
Ky.	1812, 1813		
La.	1813	1870	1870
Me.	1840		
Md.	1872	1874, 1886	1874, 1886
Mass.	1751	1891, 1903, 1927	1891, 1903, 1927
Mich.	1887	1927, 1929	1929
Minn.	1881		
Miss.	1878	1878	
Mo.	1873	1923	1923
Mont.	1864, 1865		
Neb.	1881	1872	1872

299. See *Repository of Historical Gun Laws*, *supra* note 63.

State	No Concealed Carry Laws	No Open/Any Carry Laws	No Carry Long Guns
Nev.	1881, 1925		
N.H.	1923		
N.J.	1686	1871, 1873	1871, 1873
N.M.	1852, 1853		
N.Y.	1891		
N.C.	1792		
N.D.	1895	1895	
Ohio	1859		
Okla.	1890	1890, 1890	1890, 1891
Or.	1853	1898, 1917	
Penn.	1851	1851	1851
R.I.	1893		
S.C.	1880	1901	
S.D.	1877	1877	
Tenn.	1821	1867, 1869, 1879, 1881, 1893	1869, 1881, 1893
Tex.	1870	1871, 1879, 1879	1871, 1879
Utah	1877, 1888	1877	1877
Vt.	1895, 1897	1895	
Va.	1794, 1838		
Wash.	1881		
W. Va.	1870	1882, 1891, 1925	1882, 1891, 1925
Wis.	1858		
Wyo.	1876	1876, 1893	1893
Total States	50 (plus D.C.)	29	22
Total Laws	66	53	36