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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
12 CIVIL DIVISION
13

14 **KIM RHODE et al.,**

15 Plaintiffs,

16 v.
17

18 **ROB BONTA, in his official capacity**
as Attorney General of the State of
19 **California, et al.,**

20 Defendant.
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3:18-cv-00802-BEN-JLB

**DECLARATION OF JENNIFER M.
MCCUTCHEN**

Courtroom: 5A
Judge: Hon. Roger T. Benitez
Action Filed: May 17, 2017

DECLARATION OF JENNIFER M. MCCUTCHEN

I, Jennifer M. McCutchen, declare under penalty of perjury that the following is true and correct:

1. I have been asked by the Office of the Attorney General of the California Department of Justice to prepare a declaration on the history of firearm and gunpowder restrictions applicable to certain groups, particularly Native peoples, during the colonial and Early Republic eras. This declaration is based on my own personal knowledge and research, and, if I am called as a witness, I could and would testify competently to the truth of the matters discussed in this declaration.

PROFESSIONAL QUALIFICATIONS

2. I am an Assistant Professor of History at the University of St. Thomas in St. Paul, Minnesota. I assumed this position on September 1, 2022. From September 1, 2019, to August 31, 2022, I was an Assistant Professor of History at the University of Southern Maine. I regularly offer courses in the colonial and Early Republic eras of United States History, the history of the American Revolution, and Native American History.

3. I have a Ph.D. in History from Texas Christian University, awarded in 2019. My expertise includes the history of trade, exchange, and diplomacy between Native peoples and Europeans in the eighteenth century, with a specific focus on gunpowder and firearms. I have several publications in this field including peer-reviewed articles in the academic journals *Terrae Incognitae* and *Studies in Eighteenth-Century Culture*. I also have a peer-reviewed article in *Ethnohistory* published in July 2023 titled “‘They Will Know in the End that We are Men’: Gunpowder and Gendered Discourse in Creek-British Diplomacy, 1763–1776.” I am currently completing an 80,000-word book manuscript, based on my dissertation research, which uses the gunpowder trade as a lens to explore diplomacy between members of the Creek Confederacy and British/American

1 officials during the second half of the eighteenth century. The manuscript proposal
 2 is currently under review with the University of Oklahoma Press. My current
 3 curriculum vitae is attached as **Exhibit A** to this declaration.

4 4. I have provided written expert testimony in *Nguyen v. Bonta*, No. 3:20-
 5 cv-02470 (S.D. Cal.).

6 5. I am being compensated at a rate of \$200 per hour.

7 **PROFESSIONAL OPINIONS**

8 6. I have been asked to provide an overview of the history of firearm,
 9 gunpowder, and ammunition restrictions applicable to certain demographic groups,
 10 particularly Native peoples, during the late colonial and founding/Early Republic
 11 eras of the United States. I use the terms “gunpowder” and “ammunition”
 12 frequently in this declaration, and sometimes interchangeably. Gunpowder refers to
 13 black powder, which during the eighteenth-century consisted of 75% saltpeter, 15%
 14 charcoal, and 10% sulfur. Ammunition is defined as “cartridge cases, primers,
 15 bullets, or propellant powder designed for use in any firearm.”¹ Below, I make
 16 three basic points:

17 7. First, firearms could not (as they cannot today) be used without proper
 18 ammunition and because gunpowder (the projectile component of ammunition in
 19 the historical period discussed) could not be produced in large quantities in North
 20 America, gun owners in the colonial and Early Republic eras were consistently
 21 concerned with securing stable access to gunpowder. These gun owners included
 22 large numbers of Native peoples, upon whose labor empires depended to support
 23 their hunting-based colonial trade economies, as well as enslaved people, free
 24 African Americans, and non-Protestant white settlers.

25
 26 ¹ ATF.gov, “Firearms Gun Control Act Definitions – Ammunition,” Bureau
 27 of Alcohol, Tobacco, Firearms, and Explosives, last modified April 26, 2018,
 28 accessed August 7, 2023, <https://www.atf.gov/firearms/firearms-guides-importation-verification-firearms-gun-control-act-definition-ammunition>.

1 8. Second, in the seventeenth and early eighteenth centuries, individual
2 colonies looked to English legislation to prohibit Native peoples from accessing
3 guns and accompanying ammunition accessories, like gunpowder, gunflints, and
4 bullets. This was largely due to perceived public safety risks associated with
5 trading guns and ammunition with Native peoples, who existed outside of the
6 English colonial polity. Similarly, seventeenth-century firearms and gunpowder
7 restrictions targeted non-Native groups, such as non-Protestant settlers and enslaved
8 African Americans, who colonial governments deemed “dangerous” to the safety
9 and security of white, Anglo-American populations.

10 9. Third, by the second decade of the eighteenth century, colonial
11 governments no longer sought to fully prohibit Native peoples from obtaining arms
12 and ammunition. Rather, they used seventeenth-century English law as precedent
13 to more strictly regulate *how* Native peoples acquired guns, gunpowder, and
14 ammunition. This shift proved crucial for colonies that relied upon both the labor
15 of Native hunters and Native consumers to fuel their economies. It also created a
16 space for Patriots and Loyalists, respectively, to use gunpowder as a bargaining
17 chip to secure alliances during the American Revolution and provided a foundation
18 from which the new United States attempted to use gunpowder and ammunition to
19 secure Native dependence through the early nineteenth-century. During this period,
20 laws restricting access to guns and gunpowder for enslaved African Americans
21 persisted and did not undergo any notable modifications until after the founding of
22 the United States. Access to guns, gunpowder, and ammunition for members of the
23 above groups was not always controlled in the same manner or for the same
24 reasons, but colonial and state governments felt these populations posed enough of
25 a public safety risk to necessitate governmental oversight over their access to
26 firearms and the tools that rendered them operational.

**I. BACKGROUND ON GUNPOWDER, AMMUNITION, AND
NATIVE PEOPLES AND OTHER POPULATIONS IN THE
COLONIAL ERA**

10. Anyone who used firearms during the colonial era (1600–1763), including colonial settlers and Native peoples, relied on the limited resource of gunpowder. Gunpowder was a non-renewable resource that could not be manufactured in large quantities in North America during the colonial era of United States history. It was difficult to produce, heavily subject to the skill of the manufacturer, and susceptible to damage by water, moisture, and other environmental factors. The final product also depended on the quality of its ingredients which consisted of carbon (for combustion), sulfur (for instantaneous ignition), and saltpeter, or potassium nitrate (which provided the oxygen needed to facilitate an explosion). Of the major components, carbon was the easiest to obtain, with sulfur a close second; Charcoal was readily available in English woodlands, and sulfur could be obtained from domestic mineral springs or imported from Southern Italy. Saltpeter, the chief component of gunpowder and the rarest of the three, occurred naturally in crystallized form on the walls of caves and damp cellars or as a side effect of the bacterial break down of animal dung or guano.²

11. While the English began producing gunpowder in London as early as the fourteenth century, gunpowder manufacture increased in the sixteenth century under the reigns of Henry VIII and Elizabeth I. The Crown's appetite for saltpeter grew alongside the empire's expanding scale of warfare and increasing weapons

² Guano is excrement from bats, sea birds, and seals. Bird guano, which contains the highest nitrogen levels of the three, can be found largely in South America, particularly in coastal Peru. During the colonial period, as well as today, South American guano was used primarily for fertilizer. While bat guano can be found in caves throughout North America, its use in large-scale gunpowder manufacture did not emerge until the last decade of the eighteenth century. See David Cressy, *Saltpeter: The Mother of Gunpowder* (New York, NY: Oxford University Press, 2012), 10.

1 arsenal, and parliament understood the need for a self-sufficient gunpowder
 2 economy that did not depend on imported saltpeter supplies. The Renaissance had
 3 encouraged alchemists, natural philosophers, and individuals in the military arts to
 4 think critically about pyrotechnics, creating a field of scientific and technical
 5 literature that brought mining, the extraction and refining of numerous metals and
 6 alloys, and knowledge of explosive-producing compounds to a wider audience.³ By
 7 the seventeenth century this field of study had encouraged English parliament to
 8 introduce “saltpeter ordinances,” which allowed the government to dig for Saltpeter
 9 under private “pigeon houses, Stables, Cellars, Vaults, empty Ware-Houses, and
 10 other Out-houses.”⁴ The need for saltpeter was a significant motivator of English
 11 colonization in the South Pacific and North America from the sixteenth through
 12 eighteenth centuries. By the second half of the seventeenth century, imported
 13 saltpeter from India replaced the need for home-sourced supplies.⁵ Parliament

14 ³ Vannoccio Biringuccio, *The Pirotechnia of Vannoccio Biringuccio: The*
 15 *Classic Sixteenth Century Treatise on Metals and Metallurgy*, ed. Cyril Stanley
 16 Smith and Martha Teach Gnudi (Mineola, NY: Dover Publications, 1990); Cyprian
 17 Lucar, *Three bookes of colloquies concerning the arte of shooting in great and*
 18 *small peeces of artillerie* (London: Thomas Dawson, 1588), accessed August 7,
 19 2023,
 20 [https://quod.lib.umich.edu/e/eebo2/A13381.0001.001/1:6.2.12?rgn=div3;view=fullt](https://quod.lib.umich.edu/e/eebo2/A13381.0001.001/1:6.2.12?rgn=div3;view=fulltext)
 21 [ext](https://quod.lib.umich.edu/e/eebo2/A13381.0001.001/1:6.2.12?rgn=div3;view=fulltext); Cressy, *Saltpeter*, 13-14. It was Lucar who suggested that saltpeter could be
 22 extracted from the earth by digging “out of floors in cellars vaults, stables, ox-stalls,
 23 goat or sheep cotes, pigeon houses, or out of the lowermost rooms in other houses.”
 24 Lucar, *Three books concerning the arte of shooting*, Appendix 5-11. Also quoted in
 25 Cressy, *Saltpeter*, 20.

26 ⁴ An Ordinance enabling Saltpeter-men to make Gun-Powder, British History
 27 Online, last modified February 7, 1646, accessed August 7, 2023,
 28 [https://www.british-history.ac.uk/no-series/acts-ordinances-interregnum/pp828-](https://www.british-history.ac.uk/no-series/acts-ordinances-interregnum/pp828-830)
[830](https://www.british-history.ac.uk/no-series/acts-ordinances-interregnum/pp828-830). At the height of its war with Spain, Elizabethan England consumed close to
 100 tons of gunpowder per year. By the 1630s, Charles I peacetime forces needed
 more than 250 tons of gunpowder. This increased to 647 tons per year during the
 Seven Years’ War and 1,600 tons per year during the American Revolution.

⁵ Between 1601 and 1801, each British East India company ship devoted an

1 hoped North America would prove a similarly fruitful source of saltpeter,
 2 expressing confidence that their newly acquired colonies contained saltpeter “as
 3 good and as plentifully as any place in the world.”⁶ But while Jamaica and Antigua
 4 had saltpeter deposits, and some islands off the coast of New England contained
 5 guano, none were abundant enough to produce allow for large-scale export and
 6 gunpowder manufacture.

7 12. The lack of saltpeter in eastern North America posed a significant
 8 challenge to colonial ambitions, and it forced all who utilized firearms throughout
 9 the continent to depend on gunpowder manufactured in Europe. This included
 10 enslaved peoples, non-Protestant white settlers, and large numbers of Native
 11 American men.⁷ The Jamestown settlers introduced guns to the Powhatan
 12 confederacy shortly after their arrival in North America in May 1607.⁸ Firearms
 13 became widely accessible to Native peoples a few decades later when Dutch traders
 14 from Long Island and the Connecticut River Valley introduced the flintlock musket
 15 to Native communities in the region. Native groups like the Iroquois and the
 16 Pequot used these weapons to displace and subjugate nearby Native rivals,
 17 launching what historian David Silverman calls an Indian arms race.⁹ They also

18 average of sixteen percent of its cargo space to saltpeter. The average weight of
 19 saltpeter on any given voyage was 452.8 cubic meters, or 1.6 metric tons. See
 20 James W. Frey, “The Indian Saltpeter Trade, the Military Revolution, and the Rise
 of Britain as a Global Superpower,” *The Historian* 71, no. 3 (Fall 2009): 507.

21 ⁶ Cressy, *Saltpeter*, 153.

22 ⁷ Enslaved peoples’ responsibilities could include shooting vermin, hunting
 23 animals for food, and protecting the slaveholder’s property, all of which required
 24 their use of firearms, gunpowder, and ammunition.

25 ⁸ John Smith, *The Generall Historie of Virginia, New England, and the
 Summer Isles* (Glasgow: James MacLehose and Sons, 1907), 1: 158–59.

26 ⁹ David J. Silverman, *Thundersticks: Firearms and the Violent
 27 Transformation of Native America* (Cambridge, MA: Harvard University Press,
 28 2016), 23.

1 employed these weapons to challenge English colonial expansion as demonstrated
 2 in two violent conflicts: the Pequot War (1636–1637) and King Philip’s War
 3 (1675–1676). These patterns of gun-induced Native violence transformed the
 4 Indian world and deeply influenced cross-cultural interactions between Native
 5 peoples and European colonizers. The Carolina colony’s first English settlers, for
 6 example, recounted meeting large groups of Natives who had traveled to Charles
 7 Town from the interior seeking any means of defense against the neighboring
 8 Westos, who “having guns and powder and shot . . . come upon these Indians here
 9 in the time of their crop and destroy all by killing, carrying away their corn and
 10 children.”¹⁰

11 13. By the late seventeenth and early eighteenth centuries, Native men had
 12 become critical consumers of British guns, ammunition, and gunpowder, proving
 13 both a boon and bane for colonial officials. Arms manufacturers in Birmingham
 14 and London, England, began manufacturing lightweight, flintlock muskets known
 15 as “trade guns” specifically for Native customers. In addition, many colonies relied
 16 upon Native hunters to sustain their eighteenth-century economies in lieu of stable
 17 cash crops, and the demands of the pelt, deerskin, and slave trades necessitated
 18 Native access to guns and ammunition.¹¹ Colonial officials understood the public

19 ¹⁰ Stephen Bull, “Stephen Bull to Lord Ashley, September 12, 1670,” in *The*
 20 *Shaftesbury Papers: South Carolina Historical Society*, ed. Langdon Cheves,
 21 192–96 (Charleston, SC: Home House Press, 2010), 194; Matthew Jennings,
 22 “‘Cutting One Anothers Throats’: British, Native, and African Violence in Early
 23 Carolina,” in *Creating and Contesting Carolina: Proprietary Era Histories*, ed.
 Michelle LeMaster and Bradford J. Wood (Columbia, SC: The University of South
 Carolina Press, 2013), 114.

24 ¹¹ European colonization of North America can be defined as trade
 25 colonialism, a relationship in which the colonial periphery feeds the metropole with
 26 raw materials, and the metropole manufactures finished goods to sell in its colonies.
 27 Government-imposed tariffs regulate trade to ensure that capital accumulates in the
 28 mother country. In colonial North America, Native peoples served as primary
 producers of raw goods and consumers of finished goods, often acquired through

1 safety risks associated with arming large, potentially hostile, Native groups, and
 2 over the course of the eighteenth century put considerable effort into determining
 3 how many of their Native neighbors owned guns. For example, estimates of Creek
 4 gun ownership ranged from 2,000 in the early 1700s, to 6,000 at the turn of the
 5 nineteenth century.¹² Each Native gunman needed approximately two pounds of
 6 gunpowder per year to sustain their hunting yields. Thus, during their peak era of
 7 firearms ownership, members of the Creek Confederacy needed 12,000 pounds of
 8 gunpowder annually to meet the demands of the Euro-American deerskin trade.¹³

9 14. Gunpowder in this historical period is commonly referred to as black
 10 powder and is not to be confused with modern smokeless powder. The quantity of
 11 gunpowder needed to fire a “trade gun”—the lightweight, .60 caliber flintlock
 12 muskets created for Native consumers in the eighteenth century—depended on

13 diplomatic mediation. Colonizers understood that to achieve their goals, they would
 14 have to provide Native peoples with tools that could expedite their labor—guns and
 15 gunpowder. The danger, however, was that Native peoples could also use these
 16 tools to wage war on their enemies, both Indigenous and non-Indigenous. For an
 17 overview of colonial theory, see Nancy Shoemaker, “A Typology of Colonialism,”
 18 [https://www.historians.org/research-and-publications/perspectives-on-](https://www.historians.org/research-and-publications/perspectives-on-history/october-2015/a-typology-of-colonialism)
[history/october-2015/a-typology-of-colonialism](https://www.historians.org/research-and-publications/perspectives-on-history/october-2015/a-typology-of-colonialism).

19 ¹² South Carolina enumerated 2,619 Creek gunmen in 1715. A French report
 20 of a few years later put the number of gunmen at 2,500. In 1764, John Stuart, who
 21 served as British Superintendent of Indian Affairs from 1762 until 1779, reported
 22 the number of Creek gunmen at 3,600. In 1773, Governor Wright of Georgia
 23 reported that there were 4,000 Creek gunmen. By the end of the eighteenth century,
 24 American estimates placed Creek military strength between 5,000 and 6,000
 25 warriors. Kathryn Holland Braund, *Deerskins and Duffels: The Creek Indian Trade*
 26 *with Anglo America, 1685–1815* (Lincoln, NE: University of Nebraska Press,
 1993), 9; Kenneth Coleman and Milton Ready, eds., *Colonial Records of the State*
 27 *of Georgia: Volume 28, Part 2: Original Papers of Governor Wright, President*
 28 *Habersham, and Others, 1764–1782* (Athens, GA: University of Georgia Press,
 1979), 189.

¹³ Braund, *Deerskins and Duffels*, 71–72.

1 several factors, namely the quality of the powder and its granularity. Native
2 gunowners usually received coarser and less desirable black powder than their
3 Euro-American counterparts, which required them to use slightly more gunpowder
4 on each shot. A general rule of thumb for determining gunpowder use, however, is
5 one grain of powder for each numerical degree of caliber.¹⁴ Consequently, Native
6 trade gun owners would need 60 grains of powder for each shot if using a .60
7 caliber flintlock musket, allowing a Native gun owner to fire approximately 116
8 bullets per pound of gunpowder. Historian Kathryn E. Holland Braund
9 conservatively estimates that the average Creek hunter killed about one hundred
10 deer per year—fifty for the European trade and fifty for home consumption.
11 Because flintlock muskets were less accurate than rifles, however, it usually took
12 more than one shot for even the most experienced Native hunter to achieve a kill.¹⁵
13 Thus, a Creek gunman in the late colonial and founding eras would need a
14 minimum of two pounds of gunpowder annually to simply sustain their hunting
15 yields. This amount increases when accounting for priming, spillage, and other
16 forms of loss, as well as additional gunpowder for warfare, protection, and
17 tattooing. Thus, gunpowder was a limited commodity in high demand by all people
18 who used firearms in the colonies, including Native peoples.

21
22 ¹⁴ The grain is an English unit of weight equating to 1/7000 of a pound.

23 ¹⁵ While Native men preferred rifles for their long-range accuracy, these
24 firearms produced larger holes in deerskins, potentially devaluing them. Rifles
25 were also more dangerous to Indigenous enemies, posing a greater threat to colonial
26 populations. Thus, colonists enacted laws and regulations to ensure that all
27 weapons traded to Native Americans were inferior to those owned by whites, with
28 late colonial-era trade restrictions coming to specify that rifles could not be traded
to Native peoples. Angela R. Riley, “Indians and Guns,” *The Georgetown Law Journal* 100 (2012): 1690.

II. LAWS REGARDING THE TRADE OF GUNPOWDER, AMMUNITION, AND FIREARMS TO NATIVE AMERICANS AND OTHER POPULATIONS IN THE EARLY COLONIAL ERA

15. During the early colonial era (1600-1720), laws were enacted and enforced that restricted the trade of gunpowder, ammunition, and firearms to Native Americans, enslaved peoples, and non-Protestant settlers. Early North American gun legislation focused predominantly on Native Americans, though these laws were complicated by the financially lucrative nature of the eighteenth-century Native American firearms trade. Figures of firearm and gunpowder use in the eighteenth-century Creek Confederacy reflect usage patterns of other North American Native groups during the period.¹⁶ These figures provide insight as to why colonies implemented strict laws regarding the trade of firearms and gunpowder to Native peoples in the seventeenth century, and why these laws shifted to allow limited Native access to gunpowder through government-controlled channels during the eighteenth and early nineteenth centuries.

16. Because firearms were expensive and existing guns were reusable and repairable, North American gun owners came to prefer constant and reliable access to gunsmiths, as well as the tools that rendered firearms operational: gunpowder, ammunition, and gunflints. Demand for gunpowder and ammunition came to shape cross-cultural diplomacy between Native peoples and European officials over the course of the eighteenth century. The centrality of these goods to Native life, along with the Native peoples' inability to produce them, led colonial—and later, American—officials to view these commodities as tools through which they could attempt to control Native populations, force them to adhere to imperial interests, and secure Native American dependence. But while colonial trade relationships rendered Native people dependent upon guns and gunpowder, they never became

¹⁶ This is particularly true of Southeastern deer hunting groups, but also of confederacies in the Great Lakes region (like the Haudenosaunee/Iroquois), and in New England (like the Algonquian and Wabanaki peoples).

1 politically or economically dependent on colonial or imperial states. In addition,
 2 most Native peoples remained well armed though the American Revolution and
 3 founding eras, sometimes owning better guns, and firing better shots, than their
 4 Euro-American enemies.¹⁷ This prompted widespread fear among settler
 5 populations and stimulated the creation of numerous laws aimed at limiting and
 6 controlling Native access to gunpowder and ammunition to protect public safety.

7 17. Laws restricting the sale or trade of gunpowder and ammunition to
 8 Native Americans, and other “undesirable” populations, began to appear largely in
 9 the seventeenth century but were preceded by English laws that prohibited the
 10 possession and use of weapons by certain populations. One of the earliest examples
 11 is the 1181 Assize of Arms in which King Henry II of England outlined “the
 12 obligation of all freemen of England to possess and bear arms in the service of the
 13 King and realm and to swear allegiance to the king.” Essentially restoring the
 14 ancient Anglo-Saxon militia system, the Assize “stipulated precisely the military
 15 equipment that each man should have according to his rank and wealth” to defend
 16 the crown. Every knight, for example, “was to arm himself with a coat of mail, and
 17 shield and lance; every freeholder with lance and hauberk; every burgess and
 18 poorer freeman with lance and iron helmet.”¹⁸ The Assize also established religious
 19 restrictions on weapons possession, stipulating that “Jews may not take up arms or
 20 armor in pledge.”¹⁹ A later law, passed in 1403, prohibited the use of armor or
 21

22 ¹⁷ Vanessa Holden, “Firearms and the Violent Transformation of Native
 23 America,” SHEAR: Society for Historians of the Early American Republic,
 24 <https://www.shear.org/2016/12/27/firearms-and-the-violent-transformation-of-native-america/>.

25 ¹⁸ Thomas Haughton, *The Student’s Summary of the Principal Events in*
 26 *English History with Notes* (London: George Philip and Son, 1887), 78.

27 ¹⁹ Joseph Jacobs, “Notes on the Jews of England under the Angevin
 28 Kings,” *The Jewish Quarterly Review* 4, no. 4 (July 1892): 639.

1 arms in sensitive places by people not allowed by the king.²⁰ By the sixteenth
 2 century, English authorities saw a need for legislation to control the ownership and
 3 use of firearms and other weapons. This included a piece of legislation that limited
 4 the use of guns or crossbows to people who either possessed Royal permission or
 5 “[held] property to the value of 300 Marks.”²¹ In 1541, Parliament’s passage of
 6 “An Act Concerning Crossbows and Handguns” ordered that “no person or persons,
 7 other than such as have land, tenement, fees, annuities or office, to the yearly value
 8 of one hundred pounds aforesaid . . . shall carry or have . . . any crossbow bent or
 9 gun charged or furnished with powder, fire, or touche for the same, except it be in
 10 time and service of war.”²² A 1662 English law allowed Crown officials to seize all
 11 guns from any person “judge[d] dangerous to the peace of the Kingdom.” Even
 12 after the English Bill of Rights established a right of the people to arm themselves,
 13 “the right was given only to Protestants, based on a continued belief that Catholics
 14 were likely to engage in conduct that would harm themselves or others and upset
 15 the peace.”²³

16
 17
 18 ²⁰ 4 Hen 4 c 29, Duke Center for Firearms Law,
 19 <https://firearmslaw.duke.edu/laws/4-hen-4-c-29/>.

20 ²¹ “An Acte Avoidyng Shooting in Crossebowes and Gonnes,” in Tom
 21 Warlow, *Firearms, the Law, and Forensic Ballistics*. (New York: CRC Press,
 2005), 17.

22 ²² 33 Hen. 8, c. 6, § 1, Duke Center for Firearms Law,
 23 <https://firearmslaw.duke.edu/laws/33-hen-8-c-6-§-1-an-act-concernin-crossbows-and-handguns-1541/>.

24 ²³ 1689, 1 W. & M. st. 2, c. 2, Duke Center for Firearms Law,
 25 <https://firearmslaw.duke.edu/laws/1689-1-w-m-st-2-c-2/>; An Act for the better
 26 secureing the Government by disarming Papists and reputed Papists, 1 W. & M. ch.
 27 15, Duke Center for Firearms Law, <https://firearmslaw.duke.edu/laws/an-act-for-the-better-secureing-the-government-by-disarming-papists-and-reputed-papists-1-w-m-ch-15-1689/>.
 28

18. By the end of the seventeenth century, a significant number of Englishmen, at least on paper, were prohibited from owning guns or accessing gunpowder. These laws served as precedent for those in colonial North America that sought to restrict access to guns and firearms on the grounds of religion or race. Early legislation included a Massachusetts law from 1637 aimed at disarming the followers of an extremist Puritan preacher named John Wheelwright. The law required any individual who expressed “opinions & revelations” that “seduced & led [others] into dangerous errors” to turn in all “guns, pistols, swords, powder, shot, & match.”²⁴ A 1756 Maryland law allowed the Justice of the Peace to disarm any Catholic, and a Virginia law from the same year permitted the disarmament of any Catholic or Papist who refused to take an oath of loyalty to the colonial government.²⁵

19. Seventeenth-century restrictions on firearms ownership were also racially motivated, with the exception of a 1665 Connecticut law that prohibited the sale of guns, gunpowder and ammunition to Dutch and French men.²⁶ A 1639 Virginia

²⁴ Nathaniel B. Shurtleff, *Records of the Governor and Company of the Massachusetts Bay in New England* (Boston: William White, 1853), 211–12. Accessed August 12, 2023, <https://archives.lib.state.ma.us/handle/2452/802285>.

²⁵ An Act to Prevent Popery within this Province, Votes and Proceedings of the Lower House of Assembly of the Province of Maryland, Duke Center For Firearms Law, <https://firearmslaw.duke.edu/laws/an-act-to-prevent-popery-within-this-province-votes-and-proceedings-of-the-lower-house-of-assembly-of-the-province-of-maryland-22-may-1756/>; An Act for Disarming Papists, and Reputed Papists, Refusing to Take the Oaths to the Government (1756), in 7 William W. Hening, *The Statutes at Large, Being a Collection of all the Laws of Virginia* 35–36 (Richmond: Franklin Press, 1809).

²⁶ The Public Records of the Colony of Connecticut, Duke Center For Firearms Law, <https://firearmslaw.duke.edu/laws/the-public-records-of-the-colony-of-connecticut-prior-to-the-union-with-new-haven-colony-may-1665-page-113-114-image-125-126-1850-available-at-the-making-of-modern-law-primary-sources/>. This was based on the grounds that “the Dutch and French do sell and

1 law mandated that all persons, “except Negroes,” were to be “provided with arms
 2 and ammunitions.”²⁷ A New York Law from 1664 deemed it illegal “for any slave
 3 to have or use any gun, pistol, sword, club, or any other kind of weapon
 4 whatsoever, but in the presence of his her or their Master or Mistress, and in their
 5 own ground” with a penalty of twenty lashes.²⁸ A 1694 New Jersey law prohibited
 6 enslaved people from carrying “any gun or pistol . . . into the woods,” without their
 7 slaveholder’s consent.²⁹ A violent rebellion of enslaved peoples in New York City
 8 in April of 1712 resulted in the enactment of harsher slave codes, including a
 9 prohibition on “any Negro, Indian, [or] Mulatto Slave from having or using any gun
 10 or pistol outside of their master’s presence.”³⁰ This set a precedent for other
 11 colonies, with Maryland enacting a law in 1715 that banned “negro[es] or other
 12 slaves . . . [from] carry[ing] any gun or any other offensive weapon, from off their
 13 master’s land, without license from their said master.”³¹ Laws disarming enslaved
 14 trade to the Indians guns, pistols, and warlike instruments.”

15 ²⁷ PBS.org, Africans in America Part 1 – Colonial Laws,
 16 <https://www.pbs.org/wgbh/aia/part1/1h315t.html>.

17 ²⁸ The Colonial Laws of New York From the Year 1664 To The Revolution,
 18 Duke Center for Firearms Law, <https://firearmslaw.duke.edu/laws/the-colonial-laws-of-new-york-from-the-year-1664-to-the-revolution-including-the-charters-to-the-duke-of-york-the-commissions-and-instructions-to-colonial-governors-the-dukes-laws-the-laws-of-the/>.

20 ²⁹ The Grants, Concessions, And Original Constitutions of the Province of
 21 New Jersey, Duke Center for Firearms Law. <https://firearmslaw.duke.edu/laws/the-grants-concessions-and-original-constitutions-of-the-province-of-new-jersey-page-341-image-345-1881-available-at-the-making-of-modern-law-primary-sources/>.

23 ³⁰ An Act for the suppressing and punishing the conspiracy and insurrection
 24 of Negroes and other Slaves (1712), New York Slave Laws: Colonial Period,
 25 <https://www.famous-trials.com/newyorkplot/367-slavelaws>.

26 ³¹ An Act For The Speedy Trial of Criminals, and Ascertaining Their
 27 Punishment in the County Courts, Duke Center for Firearms Law,
 28 <https://firearmslaw.duke.edu/laws/1715-md-laws-117-an-act-for-the-speedy-trial-of-criminals-and-ascertaining-their-punishment-in-the-county-courts-when->

1 African Americans were part of a larger effort to disarm individuals of diverse
 2 religious, racial, and socioeconomic backgrounds based on judgment of character,
 3 morality, and perceived threats to public safety.

4 20. Laws banning the trade and sale of gunpowder to Native peoples make
 5 up most legislation in this area. They appear as early as 1619, when Virginia
 6 passed legislation prohibiting individual settlers from selling or gifting arms and
 7 ammunition to Indians.³² During the colonial period, individual colonies
 8 formulated their own laws and policies regarding trade between settlers and Native
 9 peoples based on local-level needs. Through the seventeenth century, laws
 10 prohibiting the trade of guns, gunpowder, and ammunition to Native Americans
 11 emerged in the New England colonies, which saw the rapid immigration of
 12 English-Protestant families after 1620. Their settlement on Native lands produced
 13 violent cross-cultural conflicts like the Pequot War (1636) and King Philip's War
 14 (1675), producing legislation like a 1633 act from the Massachusetts Bay Colony
 15 which mandated "no person . . . shall . . . sell, give or barter, directly or indirectly,
 16 any gun or guns, powder, bullets, shot, lead, to any Indian whatsoever, or to any
 17 person inhabiting out of this jurisdiction."³³

18 21. The Mid-Atlantic colonies also passed numerous laws barring the sale of
 19 guns or gunpowder to Native peoples, with many of Virginia's laws emerging

20 _____
 21 [prosecuted-there-and-for-payment-of-fees-due-from-criminal-persons-chap-26/](#).

22 ³² H.R. McIlwaine and John P. Kennedy, eds., "1619: Laws Enacted by the
 23 First General Assembly of Virginia," Online Library of Liberty, last modified
 24 August 1619, accessed August 8, 2023, <https://oll.libertyfund.org/page/1619-laws-enacted-by-the-first-general-assembly-of-virginia>.

25 ³³ The Charters And General Laws Of The Colony And Province Of
 26 Massachusetts Bay, Duke Center for Firearms Law,
 27 <https://firearmslaw.duke.edu/laws/the-charters-and-general-laws-of-the-colony-and-province-of-massachusetts-bay-page-133-image-140-1814-available-at-the-making-of-modern-law-primary-sources/>.
 28

1 during a twenty-year period of warfare between English settlers and members of the
 2 Powhatan confederacy.³⁴ A 1633 Virginia law stated that any individual person
 3 selling “guns, powder, shot, or any arms or ammunition unto any Indian or Indians
 4 within this territory” would face imprisonment.³⁵ A January 1639 Virginia act
 5 reduced the punishment for general trading with the Indians, but stipulated that the
 6 trade of arms and ammunition would remain a felony.³⁶ Punishment for trading
 7 guns to the Natives expanded in 1642 to include the forfeiture of one’s estate.³⁷ A
 8 1649 Maryland law banned its inhabitants from selling or exchanging guns,
 9 ammunition, or “any other kind of martiall Armes” to Native peoples.³⁸ New
 10 Netherland passed a law in 1645 prohibiting all persons from trading “any
 11 munitions of war with the Indians,” and forbade their importation to the colony
 12 without explicit permission. Punishment, the act stipulated, could include death.³⁹

13
 14 ³⁴ These conflicts are called the Anglo Powhatan Wars and took place
 15 between approximately 1622 and 1644.

16 ³⁵ 1633 Va. Acts 219, Duke Center for Firearms Law,
<https://firearmslaw.duke.edu/laws/1633-va-acts-219/>.

17 ³⁶ *Statutes at Large: Collection of Virginia Laws from 1619*, archive.org,
 18 226; <https://archive.org/details/statutesatlargeb01virg/page/226/mode/2up>; 1639
 19 Va. Acts 224, Duke Center for Firearms Law, [https://firearmslaw.duke.edu/](https://firearmslaw.duke.edu/laws/1639-va-acts-224-acts-of-january-6th-1639-act-xvii/)
[laws/1639-va-acts-224-acts-of-january-6th-1639-act-xvii/](https://firearmslaw.duke.edu/laws/1639-va-acts-224-acts-of-january-6th-1639-act-xvii/).

20 ³⁷ 1642 Va. Acts 255, Duke Center for Firearms Law,
 21 [https://firearmslaw.duke.edu/laws/1642-va-acts-255-acts-of-march-2nd-1642-act-](https://firearmslaw.duke.edu/laws/1642-va-acts-255-acts-of-march-2nd-1642-act-xxiii/)
[xxiii/](https://firearmslaw.duke.edu/laws/1642-va-acts-255-acts-of-march-2nd-1642-act-xxiii/).

22 ³⁸ William Hand Browne, ed., *Archives of Maryland* (Baltimore: Maryland
 23 Historical Society, 1885), vol. 1: 250.

24 ³⁹ A 1656 New Netherland law also prohibited the admission of armed
 25 Indians into cities, villages, and houses. 1656 N.Y. Laws 235, Duke Center for
 26 Firearms Law, <https://firearmslaw.duke.edu/laws/1656-ny-laws-235/>; 1645 N.Y.
 27 Laws 47, Duke Center for Firearms Law, [https://firearmslaw.duke.edu/laws/1645-](https://firearmslaw.duke.edu/laws/1645-n-y-laws-47-by-the-director-and-council-of-new-netherland-further-prohibiting-the-sale-of-firearms-etc-to-indians/)
[n-y-laws-47-by-the-director-and-council-of-new-netherland-further-prohibiting-the-](https://firearmslaw.duke.edu/laws/1645-n-y-laws-47-by-the-director-and-council-of-new-netherland-further-prohibiting-the-sale-of-firearms-etc-to-indians/)
[sale-of-firearms-etc-to-indians/](https://firearmslaw.duke.edu/laws/1645-n-y-laws-47-by-the-director-and-council-of-new-netherland-further-prohibiting-the-sale-of-firearms-etc-to-indians/).

1 In 1676, the Plymouth colony also enacted a law against individual trading or
 2 selling arms and ammunition to Indians, a practice deemed to be “very poisonous
 3 and destructive to the English.”⁴⁰ Like New Netherland’s law, anyone convicted of
 4 selling, bartering, or trading guns and ammunition to Native Americans could be
 5 put to death.⁴¹ A Virginia law, also enacted in 1676, made it a capital offense to
 6 sell guns or ammunition to the Indians, and declared that any colonist found within
 7 any Indian town or three miles without the English plantations with more than one
 8 gun and ten charges of powder and shot for his necessary use would be considered
 9 guilty of selling to the Indians, and punished accordingly.⁴²

10 **III. LAWS REGARDING THE TRADE OF GUNPOWDER,** 11 **AMMUNITION, AND FIREARMS TO NATIVE AMERICANS** 12 **AND OTHER POPULATIONS IN THE LATE COLONIAL AND** **FOUNDING ERAS**

13 22. While eighteenth-century laws continued to prohibit the private trade of
 14 guns and gunpowder with Native Americans, legislation did not seek to completely
 15 ban Native peoples from obtaining arms and ammunition. Rather, colonies used
 16 existing English law as precedent for regulating the ability of Native peoples to
 17 acquire firearms and gunpowder because of their roles as hunters within colonial
 18 economies. During this time, however, colonial governments continued to heavily
 19 restrict the ability of other groups, including enslaved peoples, from acquiring and

20 ⁴⁰ 1675 Records of the Colony of New Plymouth, Duke Center for Firearms
 21 Law, [https://firearmslaw.duke.edu/laws/records-of-the-colony-of-new-plymouth-in-](https://firearmslaw.duke.edu/laws/records-of-the-colony-of-new-plymouth-in-new-england-page-173-image-179-1856-available-at-the-making-of-modern-law-primary-sources/)
 22 [new-england-page-173-image-179-1856-available-at-the-making-of-modern-law-](https://firearmslaw.duke.edu/laws/records-of-the-colony-of-new-plymouth-in-new-england-page-173-image-179-1856-available-at-the-making-of-modern-law-primary-sources/)
[primary-sources/](https://firearmslaw.duke.edu/laws/records-of-the-colony-of-new-plymouth-in-new-england-page-173-image-179-1856-available-at-the-making-of-modern-law-primary-sources/).

23 ⁴¹ 1675 Records of the Colony of New Plymouth, Duke Center for Firearms
 24 Law, [https://firearmslaw.duke.edu/laws/records-of-the-colony-of-new-plymouth-in-](https://firearmslaw.duke.edu/laws/records-of-the-colony-of-new-plymouth-in-new-england-page-173-image-179-1856-available-at-the-making-of-modern-law-primary-sources/)
 25 [new-england-page-173-image-179-1856-available-at-the-making-of-modern-law-](https://firearmslaw.duke.edu/laws/records-of-the-colony-of-new-plymouth-in-new-england-page-173-image-179-1856-available-at-the-making-of-modern-law-primary-sources/)
[primary-sources/](https://firearmslaw.duke.edu/laws/records-of-the-colony-of-new-plymouth-in-new-england-page-173-image-179-1856-available-at-the-making-of-modern-law-primary-sources/).

26 ⁴² William Waller Hening, *The Statutes at Large; Being a Collection of All*
 27 *the Laws of Virginia, from the First Session of the Legislature, in the Year 1619*
 28 (New York: R. & W. & G. Bartow, 1823), vol. 1: 441.

1 possessing firearms and gunpowder. This shows that colonial and state
 2 governments believed these populations posed enough of a public safety risk to
 3 necessitate governmental regulation over their access to firearms and gunpowder,
 4 though they implemented control in different ways.

5 23. A series of late seventeenth-century English legislative measures
 6 prohibited the importation of foreign weapons and associated goods with the goal
 7 of preventing “any design of Traitorous and factious persons who may by this
 8 [method] furnish themselves with . . . arms from beyond the state.”⁴³ These laws,
 9 put forth under the guise of public safety, “kept all malcontents, fanatics, and
 10 sectaries disarmed and under constant surveillance.”⁴⁴ The Game Act of 1671
 11 further limited individual access to firearms and ammunition by raising property
 12 and wealth requirements to own guns to fifty times the level required to vote.⁴⁵
 13 While it primarily sought to reserve hunting as a sport for the nobility and gentry,
 14 the Game Act of 1671 also was the first piece of hunting-related legislation to

15 ⁴³ National Archives, London, “Proclamation Prohibiting the Importation of
 16 Firearms,” Anglo American Legal Tradition, last modified September 4, 1661,
 17 http://aalt.law.uh.edu/AALT7/C2/PC2no55/IMG_0190.htm; Joyce Lee Malcom, *To*
 18 *Keep and Bear Arms: The Origins of an Anglo-American Right* (Cambridge, MA:
 19 Harvard University Press, 1996), 48.

20 ⁴⁴ Malcom, *To Keep and Bear Arms*, 49. This included a series of concurrent
 21 Crown proclamations which declared that all who had fought for Parliament in the
 English Civil War were prohibited from carrying firearms.

22 ⁴⁵ Diarmuid F. O’Sannlain, “Glorious Revolution to American Revolution:
 23 The English origin of the Right to Keep and Bear Arms,” *Notre Dame Law*
 24 *Review* 95, no. 1 (December 2019): 402. After 1430, English men were franchised
 25 to vote by virtue of possessing property of an annual rent of at least forty shillings,
 26 or two pounds. These men were called “forty-shilling freeholders.” This standard
 27 remained unaltered in the seventeenth century. The basic requirement to hunt with
 28 firearms after 1671 was income of at least 100 pounds per year on “freehold
 estates” or 150 pounds per year on “leaseholds.” Malcom, *To Keep and Bear Arms*,
 71; William Blackstone, *Commentaries on the Laws of England: In Four Books*
 (Book 4) 175 (Oxford: Clarendon Press, 1770): 175.

1 include guns on the list of prohibited devices, drawing a connection between
 2 wealth, status, and access to firearms and ammunition. Together, these laws
 3 allowed the Crown to selectively disarm English subjects who they deemed a public
 4 safety risk, while effectively granting the government complete control over the
 5 production and distribution of firearms in the empire.

6 24. Consequently, eighteenth-century colonial legislation began to explicitly
 7 state that only private trade was punishable by law; government-sponsored trade of
 8 arms and ammunition, regulated through a license from a specific colony, was
 9 acceptable. This allowed colonies to design, implement, and manage their own
 10 trade to ensure that Native hunters had access to the goods they needed while
 11 restricting the actions of oft-unscrupulous private citizens. Such a shift proved
 12 crucial for colonies that relied upon both the labor of Native hunters and the larger
 13 consumer patterns of Native communities to fuel their economies. A 1723
 14 Connecticut law, for example, prohibited all unlicensed persons within the colony
 15 from lending guns, ammunition, or associated goods to Native Americans.⁴⁶ A
 16 1763 Pennsylvania law explicitly banned unlicensed private citizens from
 17 exchanging guns, gunpowder, shot, bullets, lead, or other warlike stores to Native
 18 peoples. Offenders were subject to “pay the sum of five hundred pounds . . . and
 19 shall be whipped with thirty-nine lashes on his bare back, well laid on, and be
 20 committed to the common goal [jail] of the county, there to remain twelve months
 21 without bail or mainprise.”⁴⁷ A Maryland law from 1763 prohibited “any Person or
 22 Persons within this Province to Sell or give any Indian Woman or Child any Gun

23
 24 ⁴⁶ 1723 Connecticut Acts 292, Duke Center for Firearms Law,
 25 <https://firearmslaw.duke.edu/laws/1723-conn-acts-292-an-act-for-preventing-lending-guns-ammunition-etc-to-the-indians/>.

26 ⁴⁷ 1763 Pa. Laws 319, Duke Center for Firearms Law,
 27 <https://firearmslaw.duke.edu/laws/1763-pa-laws-319-an-act-to-prohibit-the-selling-of-guns-gunpowder-or-other-warlike-stores-to-the-indians/>.
 28

1 Powder Shot or lead Whatsoever[,]” but allowed individuals to trade ammunition to
 2 Native men as long as the quantity did not exceed one pound of gunpowder or six
 3 pounds of shot or lead at any one time.⁴⁸ Laws restricting free and enslaved
 4 African Americans from accessing guns and ammunition did not change much from
 5 the seventeenth to eighteenth centuries. Legislation generally continued to require
 6 that enslaved people have a ticket or license from their master. It was not until the
 7 founding that state legislatures began enacting laws completely banning enslaved
 8 people from accessing guns and ammunition.

9 25. As part of their efforts to control Native access to gunpowder and
 10 firearms, colonies also sought to ensure that weapons and accompanying goods
 11 traded to Native Americans were inferior to those owned by whites. A 1756 report
 12 from Indian agent Daniel Pepper illuminates British colonial concerns regarding
 13 Native access to rifles. Pepper reported that the Cherokee and Upper Creeks were
 14 “getting into the Method of using Riffle Guns instead of Traders [trade guns] . . . as
 15 they can kill point blank at 200 yards distance. This, in my humble opinion, puts
 16 them too much upon an equality with us in case of a breach.” As for legal
 17 ramifications, Pepper noted “the People who sell them to the Indians are generally
 18 poor, their Gun being the greatest part of their estate, a fine would be of little or no
 19 effect. Imprisonment or something of corporal punishment would creat[e] a greater
 20 Dread.”⁴⁹ A 1764 draft trade regulation corroborates Pepper’s concerns:

21 Rifled Barreled Guns should certainly be prohibited; the Shawanese and
 22 Delawares, with many of their neighbours are become very fond of them
 23 [rifles], and use them with such dexterity, that they are capable of doing
 24 infinite damage, and as they are made in some of the frontier Towns, where
 25 the Indians will procure them at any Price . . . all white persons should be

26 ⁴⁸ *Archives of Maryland*, vol. 58, 420.

27 ⁴⁹ William L. McDowell, Jr., ed., *Documents Relating to Indian Affairs,*
 28 *1754–1765 (South Carolina)* (Columbia, SC: South Carolina Department of
 Archives and History, 1970), 256.

1 restricted on a very severe penalty from selling them to any Indians.⁵⁰

2 26. The examples above indicate that laws prohibiting the sale of firearms
3 and gunpowder to Native peoples took on many forms in the late colonial period,
4 depending largely upon local political and/or economic needs. Allowing each
5 colony to establish its own trade laws supported local-level authority and broad
6 government control, but a lack of unified Indian trade legislation led to limited
7 imperial oversight in an empire whose identity was deeply intertwined with
8 commerce. This became a major concern for the Crown after the French and Indian
9 War when the British increasingly sought to control the actions of both colonial and
10 Native populations. The Plan of 1764 imposed new, universal trade regulations
11 aimed at demonstrating the empire's socio-economic and political dominance over
12 North America's colonial and Native populations. New policies provided the
13 British Board of Trade executive authority to establish universal protocols for
14 commerce with the Natives. Individual colonies, who for most of the century had
15 determined trade laws with nearby Native peoples, were now expected to follow
16 imperial laws and regulations.

17 27. Colonial officials quickly realized that a lack of local-level autonomy
18 over Native trade laws created space for large numbers of corrupt, illegal traders to
19 cross into Indian territory to conduct unauthorized exchange; something that
20 motivated previous colonial policies aimed at government regulation. A 1766 letter
21 from Georgia's governor James Wright detailed how the Creeks and other
22 Southeastern Native peoples, were "over Stock'd with goods by the great number of
23 traders that go amongst them," and who were also "generally the very worst kind of
24

25
26
27 ⁵⁰ Angela R. Riley, "Indians and Guns," *The Georgetown Law*
28 *Journal* (2012), 100: 1690.

people.”⁵¹ In February 1768, Indian Commissary Roderick McIntosh complained that the Upper Creek towns were swarmed with traders, whom he regarded as “notorious villains” for trading guns and gunpowder to Native men at prices below the established exchange rate.⁵² Thus, despite Britain’s efforts to standardize Indian trade policies, the colonies’ inability to make and enforce trade laws led to a significant uptick in illegal arms trading and, subsequently, Native violence. The British Board of Trade’s decision to return the management of the Indian trade to the colonial governments in late 1768 marked a return to policies that embraced local-level lawmaking to better control the actions of both traders and Native peoples.⁵³ This elucidates that colonial officials felt Native access to gunpowder, guns, and ammunition posed a public safety threat significant enough to warrant legal action, but that laws needed to be created and enforced on the colonial level to control the actions of private citizens and traders whose attempts to trade with Native Americans outside of governmental oversight proved an equally significant threat.

28. War also impacted trade customs and laws. Before the American Revolution, Euro-American officials occasionally threatened to cut off the trade of gunpowder and firearms to Native peoples. During the French and Indian War, for example, British General Jeffrey Amherst set forth a decree prohibiting representatives authorized to interact with Indian tribes on behalf of the colonies

⁵¹ Coleman and Ready, *Colonial Records of Georgia* v 28, 157.

⁵² Roderick McIntosh, “McIntosh to Stuart,” February 8, 1768, Document 104, Thomas Gage Papers, William L. Clements Library, The University of Michigan, Ann Arbor, MI.

⁵³ Richard White, *The Roots of Dependency: Subsistence, Environment, and Social Change among the Choctaws, Pawnees, and Navajos* (Lincoln, NE: University of Nebraska Press, 1988), 72.

(Indian agents) from trading or gifting gunpowder and firearms to Native men, declaring both the dangers of this practice and the high financial cost to the British government.⁵⁴ His proposal never came to fruition, however, as the complete stoppage of the trade would have signaled a declaration of war to Native peoples.

29. During the American Revolution, Patriots and Loyalists attempted to use gunpowder and ammunition as a bargaining chip to secure Native support. To be successful, officials from both sides needed to continue enforcing existing trade laws to ensure that access to guns, gunpowder, and ammunition reached Native Americans through government-regulated channels, and not through uncooperative or self-minded traders. Though only limited records survive, a quantitative analysis of gunpowder imports reveal that the American colonies received an enormous amount of gunpowder—1,030,694 pounds total—during the three-year period of 1769 to 1771. Later sources indicate that a significant portion of this gunpowder was earmarked for the Indian trade; in 1775 a group of South Carolina Patriots confiscated 13,000 pounds of gunpowder from the Loyalist cargo ship *Philippa*. They gave 8,000 pounds to the Georgia Provincial Congress, who promptly sent 2,000 pounds—or 25% of their haul—to neighboring Creeks and Cherokees. The Provincial Congress stated directly that this gunpowder was a gift “not from the *King* or from the [royal] *Government* or from the *Traders*, but from the *People of the Province* [the rebels].”⁵⁵

30. The above example highlights how Patriots, Loyalists, and Native Americans used gunpowder as a tool of diplomatic negotiation during the Revolutionary period, a strategy that is reflected in several laws from the era. At the same time, local jurisdictions enacted laws that sought to regulate access to

⁵⁴ Colin Calloway, *Pen, Ink, and Witchcraft: Treaties and Treaty Making in American Indian History* (New York, NY: Oxford University Press, 2013), 22.

⁵⁵ Sheldon S. Cohen, “The *Philippa* Affair,” *The Georgia Historical Quarterly* 69, no. 3 (Fall 1985): 350–51.

guns and gunpowder for “high risk” individuals, often noted in the documentary record as white men who were deemed to be insufficiently loyal to the civil government. A 1776 Pennsylvania law required all white males to take an oath of allegiance “before some one of the justices of the peace of the city or county where they shall respectively inhabit.” Failure to do so would result in their disarmament “by the lieutenant or sublieutenants of the city or counties respectively.”⁵⁶ A 1776 Massachusetts law similarly resolved to disarm “such persons as are notoriously disaffected to the cause of America, or who refuse to associate to defend by arms the United American Colonies.”⁵⁷ Three acts from Pennsylvania (1777, 1778, and 1779) and another from Virginia (1777) required white male gun owners to swear an oath of allegiance if they wished to retain their guns, with disarmament serving as punishment.⁵⁸ Loyalty oaths allowed Patriots to regulate access to guns and

⁵⁶ *Military Obligation: The American Tradition* (1947), 23.

<https://firearmslaw.duke.edu/wp-content/uploads/2023/04/1777-PA-An-Act-to-regulate-the-Militia-of-the-Common-Wealth-of-Pennsylvania-§-9-10.pdf>.

⁵⁷ Robert J. Spitzer, “Gun Law History in the United States and Second Amendment Rights,” *Law and Contemporary Problems* 80, no. 2 (2017): 72, accessed August 8, 2023, <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4825&context=lcp> 72; 1776 Pa. Laws 11, Duke Center for Firearms Law, <https://firearmslaw.duke.edu/laws/1776-pa-laws-11-an-ordinance-respecting-the-arms-of-non-associators-§-1/>; Statutes at Large of Pennsylvania from 1682 to 1801 vol. 9, 11, <https://babel.hathitrust.org/cgi/pt?id=mdp.39015051124082&seq=17>; Act of Mar. 14, 1776, Duke Center for Firearms Law, <https://firearmslaw.duke.edu/laws/act-of-mar-14-1776-ch-vii-1775-1776-mass-act-at-31-32-35/#>.

⁵⁸ 1777 Pa. Laws 61, Duke Center for Firearms Law, <https://firearmslaw.duke.edu/laws/1777-pa-laws-61-an-act-obliging-the-male-white-inhabitants-of-this-state-to-give-assurances-of-allegiance-to-the-same-and-for-other-purposes-therein-mentioned-ch-xxi-§§-2-4/>; 1778 Pa. Laws 123, Duke Center for Firearms Law, <https://firearmslaw.duke.edu/laws/1778-pa-laws-123/>; 1779 Pa. Laws 193, Duke Center for Firearms Law, <https://firearmslaw.duke.edu/laws/1779-pa-laws-193/>; Act of May 5, 1777, Duke Center for Firearms Law, <https://firearmslaw.duke.edu/laws/act-of-may-5-1777-ch->

1 gunpowder for settler populations and gave rebel governments the authority to
2 disarm “high risk” peoples, revealing that Patriots used access to gunpowder and
3 firearms as tools of coercion and control in their attempts to secure support for the
4 Revolutionary cause.

5 31. While the end of the American Revolution brought independence to
6 Britain’s former North American colonies, the new United States inherited the
7 Crown’s unresolved questions about relationships with Native nations. To answer
8 these questions, United States policymakers looked to colonial-era laws regulating
9 the trade of gunpowder and firearms to Indians. With Native diplomacy now under
10 the jurisdiction of the federal government, Congress reworked existing local-level
11 laws for national use. The resulting Indian Trade and Intercourse Act (1790)
12 established that private individuals needed a license to conduct trade with Native
13 peoples and were required to renew their license every two years. Sections of the
14 Indian Trade and Intercourse Act heavily emulated earlier, colonial-level firearms
15 regulations. The 1796 “Act for Establishing Trading Houses with the Indian
16 Tribes,” however, authorized the president to establish designated facilities—
17 known as “factories”—for the “purpose of carrying on a liberal trade with the
18 several Indian nations,” and appoint agents to run them. By providing goods to
19 Native peoples at-cost, these trading houses aimed to push out any illegal or foreign
20 competition while asserting control over the quality and quantity of goods Native
21 peoples acquired. But Indian factories were not intended to be profit-seeking
22 ventures; they existed to impose federal authority over the 150,000 Native peoples
23 living between the Appalachian Mountains and the Mississippi River. More
24 affordable than warfare against Native peoples, historian David Nichols describes
25

26
27 [3-in-9-henings-statutes-at-large-281-281-82-1821/](#).
28

1 the Indian factory system as “conquest on the cheap,” riddled with abuse and
2 misconduct on the part of factory agents.⁵⁹

3 32. Notably, section seven of the 1796 “Act for Establishing Trading
4 Houses” addresses firearms and associated goods. Instead of placing a restriction
5 upon private traders, it specifically prohibits agents from “purchas[ing], or
6 receiv[ing] of any Indian, in the way of trade or barter, a gun or other article
7 commonly used in hunting,” imposing a one-hundred-dollar penalty for each
8 offense. This indicates that the success of factory system depended upon the sale of
9 cheaply made goods to Native peoples, inferior to those made for white American
10 populations. By prohibiting factory agents from purchasing firearms, gunpowder,
11 or ammunition from Native people, U.S. officials sought to curb the sale of arms
12 outside the purview of the federal government. Because it was not uncommon for
13 Native peoples to access better-quality firearms from Spanish Florida or British
14 Canada, factory agents could acquire these weapons and re-sell them to bolster their
15 income. Later laws included restrictions upon the sale of guns and gunpowder by
16 private citizens, as evidenced by an 1807 Mississippi Territory law that prohibited
17 white settlers from purchasing or trading guns or any tool used in hunting “with any
18 Indian.”⁶⁰ Such actions would challenge U.S. efforts to control Native peoples

19 _____
20 ⁵⁹ David Andrew Nichols, *Engines of Diplomacy: Indian Trading Factories*
21 *and the Negotiation of Empire* (Chapel Hill: University of North Carolina Press,
22 2016), 1. Nichols writes that in 1821, Senator Thomas Hart Benton of Missouri
23 accused the factors of “abuse and misconduct” characterizing the merchandise from
24 Indian factories as “the rubbish of Georgetown retail stores.” Benton argued the
25 system had achieved none of its goals and branded it “worse than useless.” The
26 federal government disbanded the Factory system in the same year.

27 ⁶⁰ Harry Toulmin, *The Statutes of the Mississippi Territory, Revised and*
28 *Digested by the Authority of the General Assembly*, Duke Center for Firearms
Law. <https://firearmslaw.duke.edu/laws/harry-toulmin-the-statutes-of-the-mississippi-territory-revised-and-digested-by-the-authority-of-the-general-assembly-page-593-image-612-natchez-1807-available-at-the-making-of-modern-law-prima/>.

1 through access to guns and gunpowder, and undermine their efforts to navigate the
 2 long-standing contradiction of providing firearms and ammunition to potentially
 3 dangerous outsiders.

4 33. Federal regulation of the Indian trade occurred in conjunction with a
 5 rapidly expanding “cotton kingdom” in the American South. With increasing
 6 numbers of enslaved people, early nineteenth century laws regarding gun use and
 7 ownership reflect a tightening of restrictions over both free and enslaved African
 8 Americans. Unlike earlier laws which generally permitted limited gun use among
 9 enslaved individuals, legislation passed after the founding, particularly in Southern
 10 states and territories, frequently prohibited all enslaved African Americans from
 11 possessing guns, ammunition, or gunpowder.⁶¹ Subsequent legislation from
 12 Southern states and territories followed suit, severely restricting the abilities of

14 ⁶¹ Some northern states retained exceptions for enslaved peoples with their
 15 masters’ permission. One example is seen in a 1797 Delaware law which
 16 prohibited “any Negro or Mulatto slave” from possessing any gun, ammunition, or
 17 weapon without their master’s license. 1797 Del. Laws 104, An Act for the Trial of
 18 Negroes Ch. 43, §6, Duke Center for Firearms Law,
 19 [https://firearmslaw.duke.edu/laws/1797-del-laws-104-an-act-for-the-trial-of-](https://firearmslaw.duke.edu/laws/1797-del-laws-104-an-act-for-the-trial-of-negroes-ch-43-§6/)
 20 [negroes-ch-43-§6/](https://firearmslaw.duke.edu/laws/1797-del-laws-104-an-act-for-the-trial-of-negroes-ch-43-§6/); Charles Nettleton, Laws of the State of New Jersey Page
 21 370–71, Duke Center for Firearms Law, [https://firearmslaw.duke.edu/laws/charles-](https://firearmslaw.duke.edu/laws/charles-nettleton-laws-of-the-state-of-new-jersey-page-370-371-image-397-398-1821-available-at-the-making-of-modern-law-primary-sources/)
 22 [nettleton-laws-of-the-state-of-new-jersey-page-370-371-image-397-398-1821-](https://firearmslaw.duke.edu/laws/charles-nettleton-laws-of-the-state-of-new-jersey-page-370-371-image-397-398-1821-available-at-the-making-of-modern-law-primary-sources/)
 23 [available-at-the-making-of-modern-law-primary-sources/](https://firearmslaw.duke.edu/laws/charles-nettleton-laws-of-the-state-of-new-jersey-page-370-371-image-397-398-1821-available-at-the-making-of-modern-law-primary-sources/). This law prohibited
 24 “any negro or other slave” from hunting or carrying a gun on the first day of the
 25 week, or Sunday subject to imprisonment. Other states enacted harsher restrictions
 26 upon free African Americans, generally prohibiting them from carrying firearms or
 27 other weapons without a license or special permission. See 1806 Md. Laws 44, An
 28 Act To Restrain The Evil Practices Arising From Negroes Keeping Dogs, And To
 Prohibit Them From Carrying Guns Or Offensive Weapons, ch. 81, Duke Center
 for Firearms Law, [https://firearmslaw.duke.edu/laws/1806-md-laws-44-an-act-to-](https://firearmslaw.duke.edu/laws/1806-md-laws-44-an-act-to-restrain-the-evil-practices-arising-from-negroes-keeping-dogs-and-to-prohibit-them-from-carrying-guns-or-offensive-weapons-ch-81/)
[restrain-the-evil-practices-arising-from-negroes-keeping-dogs-and-to-prohibit-](https://firearmslaw.duke.edu/laws/1806-md-laws-44-an-act-to-restrain-the-evil-practices-arising-from-negroes-keeping-dogs-and-to-prohibit-them-from-carrying-guns-or-offensive-weapons-ch-81/)
[them-from-carrying-guns-or-offensive-weapons-ch-81/](https://firearmslaw.duke.edu/laws/1806-md-laws-44-an-act-to-restrain-the-evil-practices-arising-from-negroes-keeping-dogs-and-to-prohibit-them-from-carrying-guns-or-offensive-weapons-ch-81/); 1806 Va. Acts 51, ch. 94,
 Duke Center for Firearms Law, [https://firearmslaw.duke.edu/laws/1806-va-acts-51-](https://firearmslaw.duke.edu/laws/1806-va-acts-51-ch-94/)
[ch-94/](https://firearmslaw.duke.edu/laws/1806-va-acts-51-ch-94/).

1 African Americans, both free and unfree, from carrying or possessing firearms and
 2 ammunition.⁶² Thus, during the founding era, firearms restrictions applicable to
 3 Native peoples exhibited greater nuance than the strict prohibitions applicable to
 4 free African Americans and enslaved populations.

5 CONCLUSIONS

6 34. During the late colonial and founding eras, gun owners were consistently
 7 concerned with securing stable access the tools that rendered their firearms
 8 operational: gunpowder and ammunition. Securing gunpowder was a challenge, as
 9 a lack of saltpeter in Eastern North America ensured that it could not be produced
 10 in large quantities in the colonies. Gun owners in colonial America who sought
 11 stable access to gunpowder were diverse and included enslaved people, non-
 12 Protestant white settlers and large numbers of Native Americans, whose labor
 13 empires depended on to support their hunting-based colonial trade economies. In
 14 the seventeenth and early eighteenth centuries, individual colonies looked to
 15 English legislation to enact numerous restrictions on Native peoples from accessing
 16 guns, and accompanying ammunition accessories, like gunpowder, gunflints, and
 17 bullets. This was largely due to perceived public safety risks associated with
 18 trading guns and ammunition to Native Americans, who existed outside of the
 19 English colonial polity.

21 ⁶² These laws include: 1804 Miss. Laws 90-91, An Act Respecting Slaves,
 22 § 4, Duke Center for Firearms Law, [https://firearmslaw.duke.edu/laws/1804-miss-](https://firearmslaw.duke.edu/laws/1804-miss-laws-90-91-an-act-respecting-slaves-§-4/)
 23 [laws-90-91-an-act-respecting-slaves-§-4/](https://firearmslaw.duke.edu/laws/1804-miss-laws-90-91-an-act-respecting-slaves-§-4/); Harry Toulmin, A Digest of the Laws of
 24 the State of Alabama, Duke Center for Firearms Law,
 25 [https://firearmslaw.duke.edu/laws/harry-toulmin-a-digest-of-the-laws-of-the-state-](https://firearmslaw.duke.edu/laws/harry-toulmin-a-digest-of-the-laws-of-the-state-of-alabama-containing-the-statutes-and-resolutions-in-force-at-the-end-of-the-general-assembly-in-january-1823-to-which-is-added-an-appendix-conta/)
 26 [of-alabama-containing-the-statutes-and-resolutions-in-force-at-the-end-of-the-](https://firearmslaw.duke.edu/laws/harry-toulmin-a-digest-of-the-laws-of-the-state-of-alabama-containing-the-statutes-and-resolutions-in-force-at-the-end-of-the-general-assembly-in-january-1823-to-which-is-added-an-appendix-conta/)
 27 [general-assembly-in-january-1823-to-which-is-added-an-appendix-conta/](https://firearmslaw.duke.edu/laws/harry-toulmin-a-digest-of-the-laws-of-the-state-of-alabama-containing-the-statutes-and-resolutions-in-force-at-the-end-of-the-general-assembly-in-january-1823-to-which-is-added-an-appendix-conta/); Henry S.
 28 Geyer, A Digest of the Laws of Missouri Territory, Duke Center for Firearms Law,
[https://firearmslaw.duke.edu/laws/henry-s-geyer-a-digest-of-the-laws-of-missouri-](https://firearmslaw.duke.edu/laws/henry-s-geyer-a-digest-of-the-laws-of-missouri-territory-comprising-an-elucidation-of-the-title-of-the-united-states-to-louisiana-constitution-of-the-united-states-treaty-of-session-organic-law/)
[territory-comprising-an-elucidation-of-the-title-of-the-united-states-to-louisiana-](https://firearmslaw.duke.edu/laws/henry-s-geyer-a-digest-of-the-laws-of-missouri-territory-comprising-an-elucidation-of-the-title-of-the-united-states-to-louisiana-constitution-of-the-united-states-treaty-of-session-organic-law/)
[constitution-of-the-united-states-treaty-of-session-organic-law/](https://firearmslaw.duke.edu/laws/henry-s-geyer-a-digest-of-the-laws-of-missouri-territory-comprising-an-elucidation-of-the-title-of-the-united-states-to-louisiana-constitution-of-the-united-states-treaty-of-session-organic-law/).

1 35. By the second decade of the eighteenth century, however, colonial
2 governments no longer sought to fully prohibit Native peoples from obtaining arms
3 and ammunition. This was because most North American colonies, and the larger
4 English empire, depended upon Native laborers to support their hunting-based trade
5 economies. Consequently, colonial governments began to use seventeenth-century
6 English law as precedent to more strictly regulate *how* Native Americans acquired
7 guns, gunpowder, and ammunition. This legislative shift, which was not mirrored
8 with respect to enslaved populations, proved crucial for Patriots and Loyalists, who
9 used gunpowder as a tool of negotiation to secure alliances during the American
10 Revolution. It also provided a foundation from which the new United States
11 attempted to use the sale of guns, gunpowder, and ammunition in conjunction with
12 their Indian Factory System to secure Native dependence through the early
13 nineteenth-century.

14 36. This brief account of laws regarding the sale, trade, and exchange of
15 gunpowder and ammunition demonstrates that colonial governments, state
16 governments, and the federal government viewed the trade and sale of gunpowder
17 and firearms to certain racial, religious, or socioeconomic populations as a threat to
18 public safety and the social moral character of their colonies. Yet when it came to
19 Native Americans, they did not seek to fully prohibit them from accessing these
20 goods. Rather, they understood the public safety risks associated with the
21 unregulated trade of gunpowder and firearms to Native Americans, and created
22 laws that restricted the ability of private citizens to trade these goods to Native
23 peoples and other potentially dangerous individuals. This allowed eighteenth and
24 early nineteenth lawmakers to control not only how Native Americans gained
25 access to gunpowder and other associated goods, repressing public safety concerns,
26 but also exercise authority over diplomatic negotiations and alliance formation in
27 ways that could possibly result in Native subordination and dependence. While
28 access to guns, gunpowder, and ammunition for members of the above groups was

1 not always controlled in the same manner, colonial and state governments felt these
2 populations posed enough of a public safety risk to necessitate governmental
3 regulation over their access to firearms and gunpowder.

4 I declare under penalty of perjury that the foregoing is true and correct.

5 Executed on August 16, 2023 at St. Paul, MN.

6
7 
8 Jennifer M. McCutchen

EXHIBIT A

JENNIFER MONROE McCUTCHEN

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EDUCATION

Ph.D., History (United States to 1877), Texas Christian University, Fort Worth, Texas, August 2019.

Doctoral Dissertation: *Gunpowder and the Creek-British Struggle for Power in the Southeast, 1763-1776.*

Dissertation Committee: Alan Gallay (chair), Steven C. Hahn, Susan Ramirez, Alex Hidalgo.

M.A., History, Texas Christian University, Fort Worth, Texas, May 2014.

B.A., History (with honors), John Carroll University, University Heights, Ohio, May 2012.

PROFESSIONAL EXPERIENCE

University of St. Thomas

Assistant Professor of History

September 2022 - Present

University of Southern Maine

Assistant Professor of History

Coordinator – History Undergraduate Internship Program

September 2019 - August 2022

Minnesota State University, Mankato

Adjunct Professor of History

August 2018 - May 2019

Texas Christian University

Graduate Assistant

August 2012 - May 2017

ACADEMIC RESEARCH AREAS and FIELDS OF STUDY

Native American History, Ethnohistory, United States History to 1877, Atlantic World, Colonial and Revolutionary America, Gender and Women's History.

PEER-REVIEWED PUBLICATIONS

Journal Articles

“‘They Will Know in the End that We are Men’: Gunpowder and Gendered Discourse in Creek-British Diplomacy, 1763 - 1776.” *Ethnohistory* Vol. 70:3 pp. 259 - 278 (July 2023).

“Gunpowder and Creek Diplomacy in the Pre-Revolutionary Native South.” *Studies in Eighteenth-Century Culture* Vol. 52, pp. 163-174 (March 2023).

“‘More Advantageous to be With Spaniards’: Gunpowder and Creek-Spanish Encounters in Cuba, 1763-1783.” *Terrae Incognitae: The Journal for the Society of the History of Discoveries and Exploration* 52:3, pp. 1-16 (December 2020).

WORKS CURRENTLY UNDER PEER-REVIEW

Book Chapter

“Playing the Old Game of Double’: Creek and Spanish Conceptualizations of Sovereignty in the Post-Revolutionary Gulf Region.” (Co-Authoring with Chad McCutchen, Ph.D.) Submitted to the edited volume *Claiming Land, Claiming Water: Borders and the People Who Crossed Them in the Early Modern Atlantic*. Rachel Herrmann and Jessica Choppin Roney, eds.

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WORKS IN PROGRESS

Book Manuscript

Gunpowder Diplomacy: Commodities, Culture, and Power in the Eighteenth-Century Creek Confederacy. (Proposal under peer-review with the University of Oklahoma Press, submitted March 2023).

Edited Collection

Gender in the Native South: A Reinterpretation of Women, Men, and Two-Spirit Peoples Before 1850. Co-Edited with Jamie Myers-Mize, Ph.D. (Proposal under peer-review with the University of Nebraska Press, submitted June 2023).

Chapter Contribution

"Horns, Beads, and Brass Tacks: A Gendered Investigation of Gunpowder Accessories in the Post-Revolutionary Native South." For submission to the edited volume *Gender in the Native South: A Reinterpretation of Women, Men, and Two-Spirit Peoples Before 1850* Jamie Myers-Mize and Jennifer Monroe McCutchen, eds.

Journal Article

"AI Meets AI: ChatGPT as a Pedagogical Tool to Teach American Indian History." (Co-Authored with Jeff Washburn, Ph.D.) Proposal accepted by *Critical Humanities* (peer-reviewed journal).

OTHER PUBLICATIONS

Online Journal

"What a Historical Analysis of Gunpowder can Teach us About Gun Culture in the United States." *The Panorama: The Digital Extension of the Journal of the Early Republic*. (Accepted, forthcoming Fall 2023).

Book Reviews

Samantha Seeley, *Race, Removal and the Right to Remain: Migration and the Making of the United States*. Chapel Hill: University of North Carolina Press, with the Omohundro Institute of Early American History and Culture, 2021. *American Nineteenth Century History* (2022).

Richard W. Edwards, *Indigenous Life Around the Great Lakes: War, Climate, and Culture*. South Bend: University of Notre Dame Press, 2020. *H-War* (September 2021).

Claudio Saunt, *Unworthy Republic: The Dispossession of Native Americans and the Road to Indian Territory*. New York: W.W. Norton and Company, 2020. *H-AmIndian* (February 2021).

Strother E. Roberts, *Colonial Ecology, Atlantic Economy: Transforming Nature in Early New England*. Philadelphia: University of Pennsylvania Press, 2019. *American Indian Quarterly*, 44:4 (Fall 2020).

Mikaëla M. Adams, *Who Belongs? Race, Resources, and Tribal Citizenship in the Native South*. New York: Oxford University Press, 2016. *H-Atlantic*. (April 2020).

Reference Works and Encyclopedia Entries

"The Life of Mary Musgrove." *Women Who Changed The World: Their Lives, Challenges, and Accomplishments Through History*, ed. Candice Goucher. Santa Barbara, CA: ABC-CLIO Publications (February 2022).

"Hunting (American Indian)." *World of Antebellum America: A Daily Life Encyclopedia*, ed. Alexandra Kindell. Santa Barbara, CA: ABC-CLIO Publications (2018).

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“Gender Relations (American Indian).” *World of Antebellum America: A Daily Life Encyclopedia*, ed. Alexandra Kindell. Santa Barbara, CA: ABC-CLIO Publications (2018).

“The French and Indian War.” *The Digital Encyclopedia of George Washington*, ed. Joseph F. Stoltz III. Mount Vernon, VA: The Fred W. Smith National Library for the Study of George Washington and George Washington’s Mount Vernon Association (2017).

“The Proclamation Line of 1763.” *The Digital Encyclopedia of George Washington*, ed. Joseph F. Stoltz III. Mount Vernon, VA: The Fred W. Smith National Library for the Study of George Washington and George Washington’s Mount Vernon Association (2017).

FELLOWSHIPS, GRANTS, and AWARDS

Fellowships (External)

The William L. Clements Library at the University of Michigan, Howard H. Peckham Short-Term Research Fellowship on Revolutionary America (2020-2021 academic year).

The David Library of the American Revolution, Residential Research Fellowship (2018-2019 academic year).

Fellowships (Internal)

Osher Map Library and Smith Center for Cartographic Education at the University of Southern Maine, Teaching With Maps Faculty Fellowship (2019-2020 academic year; 2021-2022 academic year).

Texas Christian University Department of History, Departmental Dissertation Fellowship (2017-2018 academic year).

Grants (External)

Samuel and Marion Merrill Graduate Student Grant, The Organization of American Historians (2019).

American Society for Ethnohistory Graduate Student Grant (2017 and 2016).

Culturally Relevant Pedagogy Curriculum Development Grant. The Minnesota Historical Society and the Inquiry in the Upper Midwest Grant Program (2018).

Federal Pell Grant (2008-2012).

Grants (Internal)

Faculty Research Grant, University of St. Thomas (2023-2024 academic year).

Open Educational Resources Curriculum Development Mini Grant, University of Southern Maine (2020).

Adjunct Faculty Improvement Grant, College of Social and Behavioral Sciences, Minnesota State University, Mankato (2019).

Game-Based Learning Professional Development Mini Grant, The Center for Excellence in Teaching and Learning, Minnesota State University, Mankato (2019).

Boller-Worcester Graduate Student Travel and Research Grant, Texas Christian University (2019, 2018, 2017, 2016, 2015, and 2013).

Graduate Student Senate Travel and Research Grant, Texas Christian University (2017 and 2015).

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Awards

Provost's Recognition of Doctoral Candidate Research, "Gunpowder Diplomacy: Trade, Alliance Formation, and Creek Indian Policymaking in the Atlantic World." Selected by Dr. Bonnie Melhart, Associate Provost for Research and Dean of Graduate Studies and University Programs, Texas Christian University (November 2017).

Best Paper of the Fifth Annual Texas Tech University History Graduate Student Conference, "Speaking With Two Tongues: Navigating Native American Power and Colonial Alliances in the Revolutionary Atlantic World, 1775-1776." Awarded by the Department of History and the History Graduate Student Organization, Texas Tech University (February 2016).

TEACHING EXPERIENCE

University of St. Thomas

Early America in a Global Perspective (HIST 113)
History of the American Revolution (HIST 353)
Native American History (HIST 292)

University of Southern Maine

United States History to 1800 (HTY 121)
United States History to 1877 (HTY 131)
Native American History, 1450 - 2000 (HTY 143/HON 103)
Indigenous Peoples in the Atlantic World (HTY 144)
History Internship (HTY 300)
Colonial and Revolutionary America (HTY 350)
Gender in Native North America, 1450-1850 (HTY 353/WGS 355)
From Jefferson to Jackson (HTY 354)

Minnesota State University, Mankato

United States History Since 1877 (HIST 191)

Texas Christian University

United States History Since 1877 (HIST 10613)

Concurrent Enrollment and Secondary Education Experience

University of Southern Maine, History Graduate Certificate Development Committee (September 2019 – May 2022).

Online History Content Grader, United States History from 1492 to 1865 and United States History from 1865 to the Present. OnRamps Dual-Enrollment Program, The University of Texas at Austin (September 2018 - May 2019).

"We the People" Educational Outreach Program, program coordinator and classroom instructor, Cleveland and East Cleveland Public School Systems. Grades 11 and 12, Shaw High School (2010-2012).

"Project Citizen" Government and Citizenship Educational Program, program coordinator and classroom instructor, Cleveland and East Cleveland Public School Systems. Grades 7 and 8, Heritage Middle School (2011-2012).

SCHOLARLY CONFERENCE PRESENTATIONS

"Gunpowder Accessories and Firearm Furnishings in the Late Eighteenth-Century Creek World – A Gendered Reinterpretation." The American Society for Ethnohistory Annual Conference, Tallahassee, Florida (November 2023).

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"An Environmental Study of the Gunpowder Trade in the Eighteenth-Century Native South." The Northern Great Plains History Conference, Sioux Falls, South Dakota (September 2023).

"Horns, Beads, and Brass Tacks: A Gendered Investigation of Gunpowder Accessories in the Post-Revolutionary Native South." Native American and Indigenous Studies Association Conference, Toronto, Canada (May 2023).

"Native Peoples, American Colonialism, and the U.S. Constitution: A Roundtable Discussion." Native American and Indigenous Studies Association Conference, Toronto, Canada (May 2023).

"Sovereignty, Commodities, and Indigenous Autonomy in the Revolutionary Native South." Consortium on the Revolutionary Era Annual Meeting, Ft. Worth, Texas (February 2023).

"'Almost like two distinct people': Creek Women and Men as Economic Policymakers in the Colonial Native South." The Northern Great Plains History Conference, Fargo, North Dakota (September 2022).

"Mapping Commodity Encounters: Ethnohistory in the Undergraduate Classroom" The Northern Great Plains History Conference, Fargo, North Dakota (September 2022).

"Gunpowder Diplomacy: Commodities and Power in the Eighteenth-Century Native South." The American Society for Ethnohistory Annual Conference, Lawrence, Kansas (September 2022).

"To Enjoy the Advantages of a Neutrality": Gunpowder and the Creek Play-Off Strategy in the American Revolution, 1774-1776." The Society for Historians of the Early American Republic Annual Conference, New Orleans, Louisiana (July 2022).

"Beads, Baldrics, and Bandolier Bags: The Impact of European Commodities on Clothing and Culture in the Eighteenth and Nineteenth-Century Native South." The American Society for Ethnohistory Annual Conference, via Zoom (November 2021).

"Exploring Native Women's Roles in the Late Eighteenth and Early Nineteenth-Century Gunpowder Trade." New England Historical Association Fall Conference, via Zoom (October 2021).

"Creeks, Guns, and Citizenship in the Early American Republic." The Society for Historians of the Early American Republic Annual Conference, via Zoom (Organizer) (July 2021).

"Rethinking Commodities, Culture, and Power in the Eighteenth-Century Creek Confederacy." The Southeastern American Society for Eighteenth-Century Studies Annual Conference, via Zoom (February 2021).

"Gendered Commodities and Projections of Masculinity in Creek-British Diplomacy, 1763 - 1776." The Allen Morris Forum on the Native South. Hosted by the Florida State University Department of History, via Zoom (October 2020).

"Gunpowder and the Gendering of British Indian Policy in the Southeast." New England Historical Association Fall Conference, via Zoom (October 2020).

"They Will Know in the End That We Are Men." Gunpowder, Power, and Masculinity in the Creek Confederacy, 1763-1776." The American Society for Ethnohistory Annual Conference, State College, Pennsylvania (September 2019).

"'Deprive Them of Ammunition and They Will Become Easy Prey': Commodities, Southeastern Indian Policy, and Creek-British Power Dynamics Following the Seven Years' War." The Organization of American Historians Annual Meeting, Philadelphia, Pennsylvania (Organizer) (April 2019).

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“For They Have Their Politicks Like Other Men’: Gendered Aspects of the Gunpowder Trade in the Spanish Borderlands, 1763-1773.” New and Emerging Studies of the Spanish Colonial Borderlands Workshop, The Huntington Library, San Marino, California (March 2019).

“Gunpowder and Its Impact on Creek-British Diplomacy in the Revolutionary Southeast, 1763-1783.” The Southern Historical Association Annual Meeting, Birmingham, Alabama (November 2018).

“Competing Narratives of North American Native History in World History Textbooks.” The Northern Great Plains History Conference, Mankato, Minnesota (September 2018).

“Gendered Neutrality: Rethinking Social Relations and Cross-Cultural Politics in the Eighteenth-Century Creek Confederacy.” The American Society for Ethnohistory Annual Conference, Winnipeg, Manitoba (October 2017).

“A Tool of Negotiation and Persuasion: Gunpowder as a Source of Power Among Male Creeks in the Eighteenth-Century Southeast.” Gulf South History and Humanities Conference, Pensacola, Florida (October 2017).

“Seeking Supplementary Trade Relationships: Gunpowder and its Influence on Native Diplomacy.” The Rocky Mountain Council for Latin American Studies Annual Conference, Salt Lake City, Utah (April 2017).

“The Expansion of Creek Influence in the Atlantic World: The Gunpowder Trade in the Revolutionary Era.” American Society for Ethnohistory Annual Conference, Nashville, Tennessee (November 2016).

“Lowlands of Colonial Conflict: Indians, Spaniards, Colonists, and the Florida-Georgia Borderlands, 1700-1763.” North Central Texas Phi Alpha Theta Conference, Texas Wesleyan University, Ft. Worth, Texas (April 2016).

“Speaking With Two Tongues: Navigating Native American Power and Colonial Alliances in the Revolutionary Atlantic World, 1775-1776.” Texas Tech University History Graduate Student Organization Annual Conference, Texas Tech University, Lubbock, Texas (February 2016).

“Corporeal Conversions: Gender, Catholicism, and the Amerindian Christian Experience.” The Rocky Mountain Council for Latin American Studies Annual Conference, Tucson, Arizona (Organizer) (April 2015).

INVITED PUBLIC TALKS

Guest, “Historians on Housewives” Podcast. Recorded November 19, 2022.

“My Son’s Behavior Has Covered Me With Shame’: Gunpowder’s Impact on Generational Notions of Masculinity in the Creek Confederacy.” Fall History Symposium, University of Maine, Orono, Maine, via Zoom (September 2021).

“Rethinking Wabanaki History in Maine and New England.” History Lecture Series, Biddeford Historical Society, Biddeford, Maine, via Zoom (October 2020.)

“Indians of the Southeastern United States.” Senior Citizens Lunch and Learn Program, Lake Crystal Area Recreation Center, Lake Crystal, Minnesota (February 2018).

“Kinship, Alliance, and Violence Among Indian Tribes in the Texas and New Mexico Borderlands.” History Guest Lecture Series, Tarrant County Community College, Ft. Worth, Texas (April 2014).

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SCHOLARLY CONFERENCE PANEL PARTICIPATION AS A CHAIR OR COMMENTATOR

Chair/Commentator, *Indigenous Cultural Influence, Resistance, and Revival*. The Northern Great Plains History Conference, Sioux Falls, South Dakota (September 2023).

Commentator, *The Civil War Era and Historical Memory in the Late 19th and Early 20th Centuries*. The Northern Great Plains History Conference, Sioux Falls, South Dakota (September 2023).

Commentator, *South Carolina: Right-Sized for Revolution*, Consortium on the Revolutionary Era Annual Meeting, Ft. Worth, Texas (February 2023).

Chair, *Teaching Early America in Turbulent Times*, The Southeastern American Society for Eighteenth-Century Studies Annual Conference, via Zoom (February 2021).

Chair and Commentator, *Pop Culture in American History*. New England Historical Association Fall Conference, via Zoom (October 2020).

Commentator, *Topics in Native American History: From Canada to the Southwest*. The American Society for Ethnohistory Annual Conference, Oaxaca, Mexico (October 2018).

Chair, *Ongoing Problems in Teaching World History*. The Northern Great Plains History Conference, Mankato, Minnesota (September 2018).

SERVICE to the COMMUNITY, PROFESSION, and INSTITUTION

Community

Guest Speaker in Angela Jill Cooley's "History in Black and White" course, Minnesota State University, Mankato (January 2022).

Judge, Maine History Day, Regional Contest, via Zoom (2022, 2021, and 2020).

Judge, Maine History Day, State Contest, via Zoom (2020).

Guest speaker in Todd Little-Siebold's Wabanaki History Research Seminar, College of the Atlantic, Bar Harbor, Maine, via Zoom (April 2020).

Judge, Minnesota History Day, South Central Region. Minnesota State University, Mankato (2019 and 2018).

Profession

Women's History Interest Group Coordinator, Northern Great Plains History Conference Executive Council (April 2023 – Present).

Member (elected position), Executive Council, H-Net: Humanities and Social Sciences Online (January 2023 - Present).

Senior Editor, H-AmIndian. H-Net: Humanities and Social Sciences Online (August 2022 - Present).

Network Editor, H-AmIndian. H-Net: Humanities and Social Sciences Online (May 2021 – August 2022).

Reviewer, Oxford Bibliographies (2022).

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Institution

Co-leader, "Tools of Engagement" Lunch and Learn Seminar. STELAR University of St. Thomas (January 2023).

Faculty Representative, The Gloria S. Duclos Convocation Committee, University of Southern Maine (October 2020 – May 2022).

Member, "Decolonizing USM" (a committee to develop a Native American Studies minor and a more inclusive campus environment for Native students) (October 2020 – May 2022).

Member, Social Justice Minor Development Committee, University of Southern Maine (September 2020 – May 2022).

History Department Faculty Liaison, Teacher Education Pathways Program, University of Southern Maine (September 2020 – May 2022).

Member, Women and Gender Studies Faculty Council – University of Southern Maine (November 2019 – May 2022).

SPECIAL PROJECTS

Second Amendment Expert-Witness Services, California Department of Justice (April 2023 – Present).

United States History Subject Matter Expert and Content Reviewer, MindTap Digital Learning Tool, Cengage Learning (July 2020 – March 2021).

SELECTED PROFESSIONAL DEVELOPMENT

Queering St. Thomas Faculty Learning Community (2022-2023 Academic Year).

Institute for Constitutional Studies Summer Seminar: Native Peoples, American Colonialism, and the U.S. Constitution. Sponsored by the NYU - Yale American Indian Sovereignty Project, New Haven, Connecticut (June 2022).

Supporting Students in Distress. Counseling Services, University of Southern Maine (November 2021).

Supporting the Success of Remote Learners. Center for Technology Enhanced Learning, University of Southern Maine (July 2020).

Advising Students on the Autism Spectrum. The Center for Collaboration and Development, University of Southern Maine (November 2019).

Writing Across the Curriculum Writing Fellows Program. Minnesota State University, Mankato (August - December 2018).

Game Based Learning Professional Development Program. Minnesota State University, Mankato (August - December 2018).

Culturally Relevant Pedagogy Curriculum Development Program. The Minnesota Historical Society and the Inquiry in the Upper Midwest Grant Program, Beloit College (August 2018).

Certificate in Teaching Fully Online for Faculty and Graduate Students. Koehler Center for Teaching Excellence, Texas Christian University (April 2017).

JENNIFER MONROE McCUTCHEN

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INSTITUTIONAL RESEARCH and PUBLIC HISTORY EXPERIENCE

The Office of Institutional Research at Texas Christian University. Internship in Special Collections (2014).

The Cleveland Memory Project, in affiliation with Cleveland State University. Internship in Digital History, Preservation, and Public History (2011-2012).

The South Euclid Historical Society, South Euclid, Ohio. Researcher and presenter for the History of South Euclid Community Symposium (2011).

The Western Reserve Historical Society, Cleveland, Ohio. Internship in Research Studies, Public History, and Museum Programming (2011).

PROFESSIONAL AFFILIATIONS and MEMBERSHIPS

Native American and Indigenous Studies Association

The Society for Historians of the Early American Republic

The American Society for Ethnohistory

The Northern Great Plains History Conference - Executive Council Member

H-Net – Executive Council Member