

1 ROB BONTA, State Bar No. 202668
Attorney General of California
2 MARK R. BECKINGTON, State Bar No. 126009
Supervising Deputy Attorney General
3 LARA HADDAD, State Bar No. 319630
Deputy Attorney General
4 300 South Spring Street, Suite 1702
Los Angeles, CA 90013-1230
5 Telephone: (213) 269-6250
Fax: (916) 731-2124
6 E-mail: Lara.Haddad@doj.ca.gov
Attorneys for Defendant Attorney General
7 *Rob Bonta*

8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10
11
12 **MARK BAIRD and RICHARD**
13 **GALLARDO,**

14 Plaintiffs,

15 v.

16 **ROB BONTA, in his official capacity**
17 **as Attorney General of the State of**
18 **California, and DOES 1-10,**

19 Defendants.

2:19-cv-00617-KJM-AC

EXPERT REPORT AND
DECLARATION OF BRENNAN
RIVAS

EXPERT REPORT AND DECLARATION OF BRENNAN RIVAS

BACKGROUND AND QUALIFICATIONS

I am a Ph.D. historian and independent scholar. During the 2021-2022 academic year, I was the Lloyd Lewis Fellow in American History at The Newberry Library. From 2020 to 2021, I was a Bill & Rita Clements Fellow for the Study of Southwestern America within the Clements Center for Southwest Studies at Southern Methodist University. From 2019 to 2020, I was a Lecturer in American History at Texas Christian University (TCU). My educational background includes a Ph.D. in History from TCU, where my dissertation was on the development, evolution, and enforcement of gun and weapon policy in Texas from the era of Mexican independence to the 1930s.

My expertise includes historical weapon regulations in the United States. I have authored multiple publications on this topic, including peer-reviewed articles in the *Southwestern Historical Quarterly* and a chapter in an edited collection forthcoming by Oxford University Press; in 2022, my article, “Enforcement of Public Carry Restrictions: Texas as a Case Study” (June 2022), was published in the *UC Davis Law Review*. I am currently completing a book manuscript based upon my dissertation research.

I have provided expert witness declarations or reports in *Miller v. Bonta*, No. 19-cv-01537 (S.D. Cal.); *Angelo v. District of Columbia*, No. 22-cv-01878 (D.D.C); *Duncan v. Bonta*, 17-cv-1017 (S.D. Cal.); *Brumback v. Ferguson*, No. 22-cv-03093 (E.D. Wash.); *Christian v. Nigrelli*, No. 22-cv-00695 (W.D.N.Y.); *Frey v. Nigrelli*, Case No. 21 Civ. 5334 (NSR) (S.D. N.Y.); *Brumback v. Ferguson*, No. 1:22-cv-03093-MKD (E.D. Wash.); *Siegel v. Platkin*, No. 22-cv-7463 (RMB) (AMD) (D.N.J.); *NAGR v. Campbell*, No. 1:22-cv-11431-FDS (D. Mass.); *Oregon Firearms Federation, Inc. v. Kotek* No. 2:22-cv-01815-IM (D. Or.); *NSSF v. Jennings*, No. 22-cv-01499-RGA (D. Del.); *Jones v. Bonta*, 3:19-cv-01226-L-AHG (S.D. Cal.); *Weise v. Bonta*, No. 2:17-cv-00903-WBS-KJN (E.D. Cal.); *Nguyen v.*

1 *Bonta*, No. 3:20-cv-02470-WQH-BGS (S.D. Cal.); *Nichols v. Bonta*, No. 11-cv-
2 09916-SJO-SS (C.D. Cal.); and *Rupp v. Bonta*, No. 8:17-cv-00746-JLS-JDE (C.D.
3 Cal.). I am currently working on potential expert witness reports and declarations that
4 may be provided in other jurisdictions. I have been deposed and testified at trial in
5 one matter, *Oregon Firearms Federation, Inc. v. Kotek*, No. 2:22-cv-01815-IM (D.
6 Or.).

7 A true and correct copy of my current curriculum vitae is attached as **Exhibit A**
8 to this declaration. It contains all publications that I have authored within the last ten
9 years. I am currently being paid a rate of \$130/hour for research, \$150/hour for
10 document preparation, and \$200/hour for deposition and trial testimony.

11 **OPINIONS**

12 Throughout the nineteenth century, Americans defined *deadly weapons* in
13 contradistinction to militia arms and regulated their presence in public spaces. Laws
14 regarding the carrying or concealment of such weapons in public spaces were
15 statutory enactments derived from longstanding English common law customs.
16 Nineteenth-century Americans enacted these laws to preserve order, protect the
17 peace, and reduce violent crime. Rates of homicide and crime fluctuated over time
18 and by locale, but were generally made worse by easier access to inexpensive
19 weapons like bowie knives and pocket pistols that were not only conducive to
20 concealment, but designed for it. The proliferation of these weapons, and particularly
21 pocket pistols, in the post-Civil War era unleashed a staggering wave of gun crime
22 which American communities tried to staunch through a host of regulatory measures.
23 Public carry laws were foundational to their efforts and often coexisted with other
24 regulations pertaining to taxing and selling deadly weapons.

25 Nineteenth-century public carry laws explicitly prohibited *concealed* weapons
26 because the primary mode of carrying bowie knives, pocket pistols, brass knuckles,
27 and other deadly weapons was concealed in one's pocket. These were weapons
28 designed for concealment, not open-carry akin to the militiaman's musket, rifle, or

1 cavalry sabre. But the existence of these laws should not be interpreted to mean that
2 Americans have historically approved of open-carry. Primary source evidence from
3 the period strongly shows that Americans generally condemned the habitual carrying
4 of weapons for preemptive self-defense—even if those weapons were carried openly.
5 To carry a pistol or knife openly was to invite the intervention of local officers of the
6 law and would have been an indication of an emergency, as is described further
7 below.

8 It has not been uncommon in American history for towns and cities to be subject
9 to different deadly weapon policies than the state more broadly. There are examples
10 of cities enacting local public carry ordinances within states that lacked a public carry
11 law. Many of these examples come from the state of California and involve licensing
12 requirements for carrying deadly weapons. Public carry laws, for both concealed
13 weapons and the open-carry of weapons, have often reserved special exemptions for
14 “travelers” as defined under state law, reinforcing the idea that population density
15 was a factor in developing and enforcing weapon policies in the nineteenth century.

16 This report identifies the various knives and pistols referred to as *deadly*
17 *weapons* during the nineteenth century, and explains how they were typically carried,
18 and how their development and accessibility affected rates of interpersonal violence,
19 such that regulatory responses were needed. It then turns to various regulatory
20 measures, including public carry laws that targeted open- as well as concealed-carry
21 of weapons, and licensing laws, and examines stronger restrictions in more populated
22 areas as compared to more rural jurisdictions.

23 **DEFINING DEADLY WEAPONS & THE CONTEXT OF** 24 **AMERICAN VIOLENCE**

25 **Deadly Weapons and Their Uses**

26 Americans living in the nineteenth century generally distinguished between two
27 types of weapons: arms suitable for militia service or hunting, and concealable
28

1 weapons associated with interpersonal violence and known as *deadly weapons*.¹ In
2 the decentralized, agricultural environments that characterized early American life,
3 hunting knives, rifles, muskets, and shotguns were important tools present in most
4 rural homes. Men used these firearms for militia service and for the occasions when
5 they were required to participate in local policing efforts through the *posse comitatus*;
6 but otherwise, they would have much more frequently used such weapons for
7 hunting—be it killing predatory animals, driving birds away from their crops, or
8 hunting for meat. Firearms borne for these purposes were carried openly, by a
9 shoulder strap or attached to a saddle. Various accoutrements necessary for them to
10 function, such as powder flasks, were also visible. Rifles, muskets, and shotguns that
11 could not readily be concealed on a person were not likely to be used in the
12 commission of crimes, especially crimes of passion that resulted in murder or
13 manslaughter. Those offenses were much more likely to be committed with bare
14 hands, blunt instruments, or other types of weapons such as concealable knives and
15 pistols.²

16 A series of socio-economic and political factors prompted Americans of the
17 nineteenth century to be more likely to publicly carry and use deadly weapons such
18 as dirks, bowie knives, and pocket pistols. Rates of homicide, violence, and crime
19 were rising in many parts of the country, and weapon technology rose in tandem. The
20 greater prevalence of deadly weapons in public spaces, and the bloody consequences
21 of it, prompted American people across the country to turn to weapon regulations as

22
23 ¹ There are some exceptions to this tendency, such as sales restrictions that applied to all
24 firearms rather than just pistols, or certain sensitive place laws that prohibited all firearms in
25 addition to deadly weapons. *See* Ohio 1880 at 79–80, establishing a minimum age for the sale of
26 “any air-gun, musket, rifle-gun, shot-gun, revolver, pistol, or other firearm, of any kind or
27 description whatever, or ammunition for the same.” *See also* John A. Hockaday, et al, *Revised*
28 *Statutes of the State of Missouri* (Jefferson City: Carter & Regan, State Printers, 1879), 224 § 1274,
prohibiting the carrying of “any firearms, bowie-knife, dirk, dagger, slung-shot, or other deadly
weapon” at “public assemblages.” Nonetheless, this distinction between deadly weapons and
militia or hunting weapons was foundational to nineteenth-century regulatory policies.

² Guns were used in less than half of the murders of unrelated adults, and less than ten
percent of marital murders during the seventeenth and eighteenth centuries. *See* Randolph Roth,
American Homicide (Cambridge: Belknap Press of Harvard University Press, 2009), 115.

1 a solution. These regulations tended to focus upon readily concealable “deadly
2 weapons” like knives and pistols rather than the firearms used for militia and hunting
3 purposes, which were openly carried. Unlike militia arms, deadly weapons tended to
4 be carried concealed—in fact, they were designed for such a purpose. A characteristic
5 feature of deadly weapons was their association with crime and needless bloodshed;
6 as a result, the people habitually carrying them were presumed to be ruffians, burglars,
7 and assassins—those ready to settle personal difficulties with blood rather than by
8 reason and law. Some states listed and defined deadly weapons by code or statute.
9 An 1892 edition of the Mississippi Penal Code carried forward a public carry law
10 from 1888 as Sec. 1026, entitled “Deadly weapons; carrying of concealed.”³ The
11 other feature shared by deadly weapons was their suitability for concealment; in fact,
12 deadly weapons were often referred to as “concealed weapons” for the
13 straightforward reason that they were designed to be carried concealed.⁴ For example,
14 Article 47, Chapter 25 of the Oklahoma Territory Penal Code was titled “Concealed
15 Weapons” and its first two sections enumerated “prohibited weapons” that were not
16 to be carried upon the person or concealed.⁵

17 During this time “deadly weapons” primarily included large knives, “pocket
18 pistols,” and, later, revolvers ranging from 4-shot to 6-shot. They are addressed below.

21 ³ R. H. Thompson, et al, *Annotated Code of the General Statute Laws of the State of Mississippi* (Nashville: Marshall & Bruce, 1892), 326 § 1026.

22 ⁴ For example, see “What They Think of It: The State Press on the Carrying of Concealed
23 Weapons,” *Daily Constitution* (Atlanta, Georgia), April 11, 1879, 4; and “Concealed Weapons:
24 What Is Thought of the Practice by the Press of the State,” *Daily Constitution* (Atlanta, Georgia),
25 March 27, 1879, 1. The articles quote numerous other newspapers from Georgia which condemn
26 carrying deadly weapons in terms that associate going armed and carrying deadly weapons with
27 the habit of carrying concealed weapons.

28 ⁵ Will T. Little et al, compilers, *Statutes of Oklahoma, 1890* (Guthrie, OK: State Capital
Print Co., 1891), Art. 47, “Concealed Weapons,” 495 § 1–2. It is worth noting that these provisions
prohibited not only carrying concealed, but carrying about the person generally. See *Ex parte Thomas*, 1908 OK 155. A later section within Article 47 (§ 5) even went so far as to specify the
circumstances in which rifles and shotguns could be carried publicly in the Territory of Oklahoma:
“for the purpose of hunting, having them repaired, or for killing animals, or for the purpose of using
the same in public muster or military drills, or while travelling or removing from one place to
another, and not otherwise.”

1 **A. Large Knives**

2 Prior to the widespread availability of revolvers near the mid-nineteenth century,
3 large knives were considered the most dangerous weapon around. There were so
4 many different styles and names of knives that Americans sometimes struggled to
5 define them and distinguish them from one another. The “dirk knife” originated in
6 Scotland as a knife carried into battle or for martial ornamentation by soldiers. It has
7 come to be identified as having a straight blade. “Dagger” is an older word, and
8 generally connotes a double-edged blade. Bowie knives were often associated with
9 long blades that curved and became double-edged near the tip. An “Arkansas
10 toothpick,” on the other hand, was more likely to be a knife that was as long as a
11 bowie, double-edged, and sharply tapered. The narvaja was of Spanish origin and
12 tended to refer to a large folding blade.⁶

13 By far the Bowie knife became the style most widely known, used, and
14 discussed by Americans in the nineteenth century. These knives could be easily
15 concealed within a pocket or tucked into a waistband, notwithstanding their length.
16 In 1827, Jim Bowie, for whom the blade is named, used it to great effect in a duel
17 that turned into a melee and became the subject of nationwide news coverage.⁷ His
18 death at the Alamo in 1836 cemented the legend of his namesake knife,⁸ which
19 became one of the most widely denounced deadly weapons of the antebellum
20 nineteenth century.

21 Fighting knives were certainly not new in the 1830s, and the exact styling of the
22 original Bowie knife remains unknown, but Bowie’s life story became a vehicle for

23 ⁶ To make matters even more complicated, these definitions might vary geographically,
24 change over time, and were not set in stone during the nineteenth century. Worthen, *Arkansas*
Made, I:267–268.

25 ⁷ “Terrible Recontre,” *Niles’ Register* (Baltimore, Maryland), November 17, 1827, 182:
https://archive.org/details/sim_niles-national-register_1827-11-17_33_844/page/182/mode/1up
26 The same article was also reprinted here:
<https://chroniclingamerica.loc.gov/lccn/sn83045110/1827-10-31/ed-1/seq-2/>.

27 ⁸ William R. Williamson, “Bowie, James,” *Handbook of Texas Online*, accessed February
28 25, 2023, <https://www.tshaonline.org/handbook/entries/bowie-james>. Published by the Texas
State Historical Association.

1 Americans to discuss and address the growing problem of knife-violence. As rates of
 2 violence rose during the nineteenth century, people were more likely to carry and use
 3 large knives, both concealed and openly carried; the increased presence of knives—
 4 even if ostensibly carried for personal defense—had the regrettable consequence of
 5 exacerbating the problem.⁹ This was especially notable in southern areas, where “so
 6 certain, indeed, is the bowie-knife to appear in a quarrel, that the great anxiety of a
 7 disputant in the South seems to be always to strike the first blow.”¹⁰

8 The response on the part of Americans confronting knife-violence was the
 9 regulation of such weapons. Going back to 1801, nineteenth-century weapon
 10 restrictions regulated the presence of knives larger than a regular pocket knife in
 11 public places, as described in the footnote and further below in this report.¹¹ As
 12 homicide rates increased and the popularity of bowie knives grew, so did laws
 13 restricting bowie knives, as described further below in this report.¹²

14
 15
 16 ⁹ See “Another Victim of the Bowie Knife,” *Cheraw Gazette* (Cheraw, South Carolina),
 17 September 6, 1837, 3: <https://chroniclingamerica.loc.gov/lccn/sn88084121/1837-09-06/ed-1/seq-3/>.

18 ¹⁰ “The Bowie-Knife In the South,” *San Francisco Evening Bulletin* (San Francisco,
 19 California), October 18, 1861.

20 ¹¹ Tenn. 1801 ch. 22 § 6 (prohibiting “privately” carrying “any dirk, large knife, pistol or
 21 any other dangerous weapon.”). Similar laws existed in numerous states during the antebellum
 22 nineteenth century, including: Florida, which clearly distinguished between fighting knives and
 23 pocket knives, *see* 1846 Fla., ch. 75 (“any dirk, pistol or other arm or weapon, except a common
 24 pocket knife”); Virginia, *see* 1838 Vir., ch. 101 (“any pistol, dirk, bowie knife, or any other
 25 weapon of the like kind, from the use of which the death of any person might probably ensue”);
 26 Alabama, *see* 1840 Ala., ch. 7 (“a bowie knife, or knife or instrument of the like kind or description,
 27 by whatever name called, dirk or any other deadly weapon, pistol or any species of fire arms, or air
 28 gun”); Indiana, *see* 1819 Ind., ch. 23 (“any dirk pistol, sword in cane, or any other unlawful
 weapon”); Mississippi, *see* 1821 Miss., ch. 49 (“any pistols, dirk or other such offensive
 weapons”); Kentucky, *see* 1812 Ken., ch. 89 (“a pocket pistol, dirk, large knife, or sword in a
 cane”); Louisiana, *see* 1813 La., ch. 5 (“any concealed weapon, such as a dirk, dagger, knife,
 pistol, or any other deadly weapon,”) Wisconsin, *see* Revised Statutes, Wisconsin, 1849, Title
 XXXI, Ch. 142, “Of Proceedings to Prevent the Commission of Crime,” Sec. 18 (“a dirk, dagger,
 sword, pistol or pistols, or other offensive and dangerous weapon”); and Michigan, *see* Revised
 Statutes, Michigan, 1846, Title XXXI, Ch. 162, “Of Proceedings to Prevent the Commission of
 Crime,” Sec. 16 (“a dirk, dagger, sword, pistol, or other offensive and dangerous weapon”).
 This is not an exhaustive list.

¹² As a general rule, public carry laws included knives within their purview, and some
 jurisdictions prohibited the sale of bowie knives as well. *See infra*, pp. 17–24, 29, 36–39.

B. Pocket Pistols Pre-1836

Another weapon that came to be associated with lawless violence in the antebellum period was the “pocket pistol.” Prior to the mid-nineteenth century, most of the pistols available on the American consumer market were single-shot, muzzle-loading pistols modeled after designs that appeared in the eighteenth century.¹³ Reloading took upwards of fifteen seconds.¹⁴ The largest of these muzzle-loading pistols were called “horse” pistols, measuring a foot or more in length and carried in holsters attached to a saddle; they had been adapted to cavalry and dragoon¹⁵ service and were not designed to be carried on the person.¹⁶ Mid-sized pistols, on the other hand, were designed to be carried either on the belt (sometimes attached by a ring on the firearm), in the pocket of a greatcoat, or in a portable case. One of the main uses of these seven-to-ten-inch pistols prior to the nineteenth century was for defensive purposes while traveling.¹⁷ The smallest size, measuring approximately five or six inches in length, was the pocket pistol. As the name suggests, these firearms were purposefully designed to be carried within the pockets of everyday attire.¹⁸ The most famous of these was the deringer pistol, named for its designer, Henry Deringer, and notorious as the gun used to assassinate Abraham Lincoln. Deringers (often misspelled as “derringers”) were capable of firing large calibers, which made them exceedingly lethal at close range—often more lethal than mid-sized navy revolvers.¹⁹

¹³ Claude Blair, ed., *Pollard's History of Firearms* (New York: Macmillan Publishing Company, 1983), 114–116.

¹⁴ For example, see the websites: <https://timothyrevealand.com/how-to-load-and-fire-a-musket-or-flintlock-pistol-explained-briefly-with-appropriate-jargon/>; and <https://www.quora.com/How-long-did-it-take-to-load-a-flintlock-pistol>.

¹⁵ Dragoons emerged in the early modern era as a type of unit that could fight both mounted and dismounted. In many instances, they rode to battle on horseback but fought on foot. Dragoon units within the US Army were organized in 1833 and stationed in the West (initially Fort Smith, Arkansas) where Indian conflicts necessitated mounted warfare. *See* <https://www.nps.gov/fosc/learn/education/dragon5.htm>

¹⁶ Blair, *Pollard's History*, 104, 119.

¹⁷ *Id.* at 117–118. In most instances, these weapons would have been at least partially obscured by coats, waistcoats, pockets, etc.

¹⁸ *Id.* at 116–118; *id.* at 117 (“These [pocket pistols] were intended to be carried in the pocket of a person wearing normal civilian attire.”).

¹⁹ Lee A. Silva, “Henry Deringer’s Popular ‘Pocket Cannons’ Packed a Wallop from California to Washington, D.C.,” *Wild West* (April 2002), 12–13.

1 While pocket pistols were less frequently the targets of popular outrage in the
2 early nineteenth century, they were still regulated alongside other deadly weapons
3 like bowie knives. Small, concealable pistols lent themselves to the same violent ends
4 as fighting knives, and it was a single-shot, muzzle-loading pocket pistol used in the
5 assassination of Abraham Lincoln in 1865. Public carry laws generally included
6 “pistols” within their purview, and other regulatory strategies attempted to
7 discourage their presence in public spaces.

8 **C. Revolvers and Pocket Pistols Post-1836**

9 The year 1836 proved to be a turning point in the history of firearm development
10 and a major catalyst for both a proliferation of interpersonal violence and
11 intensification of firearm regulation in the nineteenth century. That was the year that
12 Samuel Colt patented his first revolver design. The patent extended until 1857, by
13 which time his revolvers had received U.S. military contracts and penetrated
14 American consumer markets. Other manufacturers pounced upon the opportunity to
15 manufacture revolvers, and the Civil War Era stretching from 1850 to 1870 saw a
16 dramatic rise in the availability of these weapons. Even though it took several decades,
17 the revolver eventually overtook dirks and bowie knives as the weapon considered
18 most problematic in American communities.²⁰

19 The Colt revolver diverged from pistols widely available at the time in two
20 critical ways. First, it was breech-loading, meaning that ammunition did not need to
21 be inserted through the end of the barrel (muzzle-loading). Second, it provided
22 multiple shots without reloading; the standard design eventually settled at six
23 rounds.²¹

24 Revolvers were produced in the three historical sizes or styles: “horse,” “belt,”
25 and “pocket” models. By Colt’s era, “horse” pistols tended to be called “army” or

26 ²⁰ On the life of Samuel Colt and the history of his firearm manufacturing companies, see
27 Jim Rasenberger, *Revolver: Sam Colt and the Six-Shooter that Changed America* (New York:
Scribner, 2020).

28 ²¹ Revolvers’ firing capacity could range anywhere from four to seven shots depending on
the manufacturer and design of the firearm in question.

1 “holster” pistols because they were used by mounted soldiers and kept in saddle
2 holsters. Army pistols became slightly smaller and more conducive to being worn on
3 the person by officers beginning in the 1870s, and they remained the largest gun in
4 Colt’s pistol lineup and carried a higher caliber; they were issued in large numbers
5 by the United States Army and Navy during the Civil War and postbellum eras,
6 including civilian models that circulated widely. The “belt” or midsized pistol would
7 have been worn in a hip holster attached to the belt, usually concealed. The first
8 pocket pistol produced by Colt was released in 1848 and had five shots.²² In later
9 decades, pocket revolvers could be purchased in small sizes and calibers and at a
10 relatively low cost.²³

11 **D. Slung Shots and Other Deadly Weapons**

12 There were other deadly weapons which Americans tended to regulate in the
13 nineteenth century. These included sword-canes and loaded canes, as well as metal
14 knuckles (often referred to as “knucks”) and slung shots. A slung shot was a
15 makeshift weapon associated with organized crime and street gangs. Unlike a sling
16 shot that we might think of today, a slung shot was “a shot, piece of metal, stone, etc.,
17 fastened to a strap or thong, and used as a weapon.”²⁴ Like large knives and pocket
18 pistols, slung shots, sword-canes, and metal knuckles were weapons associated with
19 crime and interpersonal violence rather than militia service or communal policing;
20 they were typically concealed when worn.

21 **CONTEXT OF AMERICAN VIOLENCE**

22 Rates of violence and homicide fluctuated during the nineteenth century, largely
23 as a result of political and socio-economic factors. Where Americans failed to unite

24 ²² Haven and Belden, *Colt Revolver*, 63–73.

25 ²³ On size, variability, and manufacture of Colt pistols, see Jim Rasenberger, *Revolver: Sam
26 Colt and the Six-Shooter that Changed America* (New York: Simon and Schuster, 2021); Martin
27 Rywell, *Colt Guns* 66–67, 84–93 (Harriman, TN: Pioneer Press, 1953); R. L. Wilson, *The Colt
28 Heritage: The Official History of Colt Firearms from 1836 to the Present* 173 (New York: Simon
& Schuster, 1979).

²⁴ This is the definition of the nineteenth-century American phrase from the *Oxford English
Dictionary*.

1 together based upon common interests and principles, and where they viewed
2 governing institutions with skepticism, violence tended to rise.²⁵ The southern
3 society predicated upon racial slavery made slaveholding states more violent places
4 than northern counterparts. Across the nineteenth century, pervasive racism, rural
5 poverty, and unrepresentative state and local governments meant that violence
6 remained a staple of southern life. Northern cities and states were not immune from
7 high levels of homicide and crime, either. They saw a sharp uptick in violence and
8 homicide from about 1840 through the end of the Civil War, and then again in the
9 closing decades of the century. Ethnic tension, political conflict, and the effects of
10 industrialization (urbanization, poverty, lack of resources, etc.)—all of which eroded
11 the cohesion of communities and citizens—fueled this trend.²⁶

12 The American Civil War was a time of violence, turmoil, and political
13 instability. It coincided with the United States' divergence from the rest of the
14 Western world in terms of homicide rates. When the nations of Western Europe were
15 becoming less violent and homicidal, Americans were becoming more so. The most
16 severe violence occurred in the former Confederate States, where military defeat,
17 emancipation, and reconstruction inflamed white supremacism and set the stage for
18 racist paramilitaries, lynchings, and widespread electoral fraud. Even northern and
19 midwestern areas that had previously been relatively peaceful saw more murders and
20 violent assaults during the era of the war than earlier in the century. A lack of faith
21 in governing institutions and a failure to become a cohesive citizenry drove both the
22 war itself and the coinciding bloodshed.²⁷ The proliferation of revolvers during the

23 ²⁵ Historian Randolph Roth has shown that four correlates contribute to rates of homicide:
24 stability of government; confidence in government and officials; a sense of patriotism or kinship;
and a legitimate social hierarchy. *See* Roth, *supra* note 2, at 17–26 (2009).

25 ²⁶ On homicide in American history, particularly as broken down into northern and southern
26 regions, *see* Roth, *supra* note 2, at 297–326, 386–88 (for trends in northern areas); at 185 (for data-
27 supported charts showing trends in homicide for large cities across the entire nineteenth century);
at 184 (complicating data from pp. 185 by showing that some rural northern areas experienced
28 sharp rise in crime after 1865 and therefore emulated what took place in the American South during
that time).

²⁷ On homicide in American history, particularly as broken down into northern and southern

1 same time period exacerbated these problems, rendering armed encounters even more
2 deadly than they had been before. War Department patronage of gun-maker
3 companies grew exponentially during the Civil War. By the time the conflict was
4 over, gun-makers like Colt, Smith & Wesson, and Remington had achieved a
5 tremendous capacity to manufacture firearms in staggering numbers. Some of their
6 factories were producing thousands of guns per month.²⁸

7 But when the armies stopped fighting, the chief buyer of these firearms—the
8 United States military—no longer needed such a large supply. Manufacturers turned
9 to the civilian market, promoting revolvers to potential buyers across the country.
10 They marketed pocket pistols, which were primarily carried concealed, heavily. For
11 instance, Colt produced both a “ladies’ model” as well as a “house” pistol.²⁹ The
12 explosion in production was all the more pronounced by the entry of imitation brands
13 of pocket pistols sold at much lower prices.³⁰

14 But the structural forces driving Americans to be more violent and homicidal
15 did not go away in the post-Civil War period. Northern states experienced a brief
16 reduction in homicide rates immediately following their victory (inspired largely by
17 renewed faith in the American experiment), but socio-economic forces subsequently
18 turned the tide once again toward instability, violence, and homicide.
19 Industrialization, class stratification, urban living conditions, labor unrest, and ethnic
20 division all combined to make American cities and manufacturing centers more

21 regions, see Roth, *American Homicide*, 297–326, 386–388 (for trends in northern areas); 185 (for
22 data-supported charts showing trends in homicide for large cities across the entire nineteenth
23 century); 184 (complicating data from pp. 185 by showing that some rural northern areas
experienced sharp rise in crime after 1865 and therefore emulated what took place in the American
South during that time).

24 ²⁸ Bridesburg, a smaller company, produced 5,000 muskets per month during a part of the
war. See Smith, *Warman’s Civil War Weapons*, 128–29. On firearms and revolvers as critical to
25 industrialization and the American System of Manufacture, see Rasenberger, *Revolver*, 113–15,
287–88.

26 ²⁹ For example, see *The Pistol as a Weapon of Defence in the House and on the Road: How
to Choose It and How to Use It* (1875), 23 (referring to pocket pistols, including “the house pistol
27 brought out some years ago by the Colt Arms Company, and rendered famous by the fact that it
was the pistol used by [Edward] Stokes in the murder of [robber baron Jim] Fisk”).

28 ³⁰ See *supra*, n. 30.

1 dangerous places than in the antebellum era. Poverty begat crime, and the ease with
2 which the criminally inclined could acquire pocket pistols led to more armed
3 robberies and armed assaults.³¹ In the southern states, rates of violence and homicide
4 remained high throughout the Reconstruction and the Jim Crow eras.³²

5 The introduction of pocket revolvers into these political, racial, personal, and
6 criminal conflicts was profound. The causes and kinds of violence were largely the
7 same—racism, classism, desperation, manly honor, etc.—but the ease with which
8 pocket pistols could be acquired made these conflicts more likely to be *armed*
9 conflicts. Low prices, easy access, and concealable sizes also acted to encourage men
10 to carry a revolver in public (often contrary to law) even when they had not done so
11 previously; having it about one’s person was a great temptation to use it in a moment
12 of anger, which ruined the lives of the combatants as well as their families.³³ The
13 situation had a significant impact upon the justice system by forcing jurists,
14 lawmakers, and even jurors to reevaluate the law of self-defense and the “heat of
15 passion” defense. Eventually, legal opinion coalesced around the idea that having
16 deadly weapons upon one’s person “raises a presumption of guilt,”³⁴ regardless of
17 whether they were openly carried or concealed, and regardless of whether the carrier
18 intended to use them in an assault or not.³⁵

19 ³¹ Roth, *American Homicide*, 386–88.

20 ³² Roth, *American Homicide*, 386–88.

21 ³³ See “The Deadly Revolver,” *Stephenville Empire* (Stephenville, Texas) April 5, 1884, 2;
22 reprinted from *Houston Post* (Houston, Texas) (that “the law of the land cannot afford to make the
23 distinction” between “a murderer with a malice aforethought, and a homicide, whose hand in an
24 unguarded moment pulls the trigger and discharges the contents of a deadly weapon into an
25 adversary, even before the nature of the act is realized.”).

26 ³⁴ *State v. Reams* 121 N.C. 556 (1897) (“The offence of carrying a concealed weapon about
27 one’s person and off his own premises consists in the guilty intent to carry it concealed and not
28 upon the intent to use it; and the possession of the weapon raises the presumption of guilt, which
presumption may be rebutted by the defendant.”).

29 ³⁵ Some legal guidebooks asserted that intent or motive for carrying deadly weapons was
30 immaterial, while other commentators advocated inferring malicious intent from the act of carrying
31 weapons in much the same way that carrying lockpicks and other tools of burglary were evidence
32 of intent to burglarize. See “Concealed Weapons,” *Criminal Law Magazine and Reporter* 8, no. 4
33 (October 1886), 412; “Entirely Too Many Revolvers,” *Albany News* (Albany, Texas), August 22,
34 1884, 5 (“The man who, while drunk, shoots and kills another may not be hanged, because he was
35 not competent to premeditate. He was, however, competent to premeditate against all mankind

1 The post-Civil War period became the country’s first experience with rampant
2 gun violence, leading Americans to discourage the carrying and use of guns through
3 state and local regulations, as discussed below.

4 **NINETEENTH CENTURY VIEWS ON CARRYING DEADLY WEAPONS**

5 Nineteenth-century Americans (North and South) criticized the everyday
6 carrying of deadly weapons. Even though they were particularly opposed to the
7 concealment of them beneath one’s clothes, there was an overarching opposition to
8 having weapons in public at all—even when carried openly. The habitual carrying of
9 deadly weapons on one’s person (openly or concealed) was the behavior of
10 “ruffians”—bullies who imposed their will on others through force or intimidation,
11 and who engaged in unforgivably brutal behavior in order to do so. Ruffians carried
12 bowie knives and used them to stab someone who insulted them, and ruffians turned
13 a minor conflict into a melee by drawing a pocket revolver and shooting their
14 opponents.³⁶ To carry weapons was also described as a relic of barbarism—“that
15 most barbarous of all customs, the habit of wearing concealed weapons.”³⁷
16 Commentators later in the century described pistol-toting as a “relic of barbarism”³⁸
17 and rallied to the cry, “The revolver must go!”³⁹ Denunciations of carrying deadly

18 when he armed in sober moment with a weapon which could be intended for no other purpose than
19 to kill or seriously injure.”); “Toy Pistols and Concealed Weapons,” *The Sun* (Baltimore,
20 Maryland), July 19, 1881, 2 (“but the mayor contends that any man carrying a concealed deadly
21 weapon in Philadelphia ‘carries it for a purpose not self-defense.’”); “War on the Pistol,”
Philadelphia Enquirer (Philadelphia, Pennsylvania), July 25, 1881, 2 (Mayor’s proclamation
stating, “Whosoever carries *concealed* deadly weapons carries also the *concealed* thought of
murder.”).

22 ³⁶ For example, see *The ‘Science of Defence,’* Public Ledger (Philadelphia, PA) August 5,
1840 (carrying swords as “refined ruffianism.”); *The Ruffian Foote*, Barre Patriot (Boston, MA)
23 April 26, 1846 (Sen. Henry S. Foote of Mississippi as a “ruffian” for being armed in the Senate
chamber, bullying an enemy, and pulling a knife on him in the presence of the full Senate); *Shocking*
24 *Outrage*, The Miners’ Express (Dubuque, Iowa) September 24, 1851, at 2 (“some ruffian or ruffians
unknown” stabbed a pair of stabled horses, killing one). See
<https://chroniclingamerica.loc.gov/lccn/sn86083363/1851-09-24/ed-1/seq-2/>.

25 ³⁷ *Concealed Weapons*, Daily Picayune (New Orleans, Louisiana) February 28, 1845, at 2.

26 ³⁸ *The Cattlemen*, Fort Worth Daily Democrat, March 5, 1883. See also *Brenham Daily*
Banner (Texas), March 7, 1883.

27 ³⁹ See “The Revolver Must Go,” *Clarksville Weekly Chronicle* (Tennessee) May 24, 1884,
at 1 (reprinted from *Gainesville Register* (Texas)): <https://chroniclingamerica.loc.gov/lccn/sn88061082/1884-05-24/ed-1/seq-1/> ; *Personals*, Chicago Daily Tribune,
28

1 weapons were widespread, with critics comparing the practice to “barbarism” and
2 evil intent.⁴⁰ Commentators opposed the idea of preemptively arming oneself—the
3 “vicious custom of going armed so as to be ‘ready for an emergency’.”⁴¹ In the words
4 of a Georgia resident: “The habitual carrying of deadly weapons on the ground of
5 self-defense in a peaceful and enlightened community of the nineteenth century is
6 simply nonsense. The thousands who do not choose to load themselves down with
7 weapons need protection on the other hand from the few who are at once a terror, a
8 disgrace and a nuisance to the community.”⁴² To the retort that the right to bear arms
9 protected such behavior, the response was that “it is certain that in no sense was that
10 provision [the Second Amendment] intended to authorize a wanton disregard of the
11 sacredness of human life and defiance of the laws and peacefulness of an orderly and
12 well-disposed community,” and that “such a construction of the necessary right to
13 bear arms in defense of home and country should not be tolerated.”⁴³

14 The fact that nineteenth-century Americans discussed *concealed* weapons and
15 legislated specifically against *concealing* weapons has invited some modern readers
16 to interpret them as de facto protecting the open carrying of pistols, knives, and other
17 deadly weapons. This idea is largely a result of simplified interpretations of the
18 nineteenth-century case law surrounding public carry statutes that emphasize judges’

19 _____
20 March 29, 1879, at 5 (mocking the movement developing in the South by saying, “Southern papers
21 say the revolver must go—go off?”), <https://chroniclingamerica.loc.gov/lccn/sn84031492/1879-03-29/ed-1/seq-5/>; *Current Opinion*, Rocky Mountain News (Colorado) March 26, 1879 (“If the
22 west and south would rally around the sentiment, ‘The revolver must go,’ it would be one more
23 step in the interests of civilization.”).

24 ⁴⁰ For example, see “A Remnant of Barbarism,” *The Sun* (Baltimore, Maryland) March 22,
25 1879, 2; “Carrying Deadly Weapons,” *The Independent* (New York, New York), August 18, 1881,
26 17, (“The man who arms himself with a concealed weapon and carries it with him as he mingles
27 with others assumes a quasi-belligerent position toward human society. He prepares himself for a
28 combat beforehand.”).

⁴¹ “Carrying Deadly Weapons,” *Washington Post* (Washington, D.C.) January 20, 1887, 2.

⁴² “Carrying Deadly Weapons,” *Daily Constitution* (Atlanta, Georgia) February 13, 1879,
2. The author associates weapon carrying with barbarism saying, “Let the cowardly barbaric
practice be stamped out.”

⁴³ “A Remnant of Barbarism,” *The Sun* (Baltimore, Maryland) March 22, 1879, 2. This
writer also stated that: “It is simply inexcusable for men in civilized communities, and where they
have police authorities, courts and juries, and intercourse with newspapers and railroads and
telegraphs . . . to wear pistols or bowie-knives as part of their daily raiment.”

1 protection of openly carrying deadly weapons without considering the narrow
2 context in which such behavior would have occurred.

3 **APPROACHES TO PUBLIC CARRY REGULATION IN THE NINETEENTH** 4 **CENTURY**

5 **1. Restrictions on Public Carry and Exceptions for Self-Defense and** 6 **Emergencies**

7 In the early nineteenth century, state legislatures began enacting new statutes
8 against the carrying of weapons in response to rising levels of violence, as discussed
9 above, often focused on the regulation of carrying concealed weapons. Some of these
10 statutes were challenged in state courts as violations of either the Second Amendment
11 or an analogous state right. With a few exceptions⁴⁴, the case law that developed held
12 that concealed carry statutes did not violate the right to bear arms. There were two
13 strains of thought leading to this conclusion. One, which was invoked much less
14 frequently, held that the open carrying of deadly weapons was permissible within the
15 context of self-defense, and that statutes prohibiting such activity violated a person's
16 right to self-defense.⁴⁵ The other strain of thought, which was far more common
17 across the country, held that concealed carry laws were constitutional because the
18 Second Amendment and state analogues protected appropriate uses of militia arms,
19 not the carrying of deadly weapons.⁴⁶ This second strain of thought gained ground
20 across the nineteenth century as the societal problems posed by ready access to

21 ⁴⁴ The most significant of these few exceptions was *Bliss v. Commonwealth*, 12 Ky. 90
22 (1822) (“...there is no difference between a law prohibiting the wearing concealed arms, and a
23 law forbidding the wearing such as are exposed; and if the former be unconstitutional, the latter
24 must be so likewise.”).

25 ⁴⁵ An excellent example of this strain of thought is *Nunn v. State*, 1 Ga. 243 (1846) (“...so
26 far as the act [contested] seeks to suppress the practice of carrying certain weapons *secretly*, that
27 it is valid, inasmuch as it does not deprive the citizen of his *natural* right of self-defence, or of his
28 constitutional right to keep and bear arms.” Emphasis in original). See also *State v. Reid*, 1 Ala.
612 (1840) (“...the Legislature cannot inhibit the citizen from bearing arms openly, because it
authorizes him to bear them for the purposes of defending himself and the State, and it is only
when carried openly, that they can be efficiently used for defence.”).

⁴⁶ For example, see *Amyette v. State*, 21 Ten. 154 (1840); *State v. Buzzard*, 4 Ark. 18
(1842); *English v. State*, 35 Tex. 473 (1872); *Hill v. State*, 53 Ga. 472 (1874); *Ex parte Thomas*,
21 Okla. 770 (1908).

1 pocket pistols accelerated in the post-Civil War era. Especially influential were the
2 writings of legal scholar Joel Prentiss Bishop, who explained that “the keeping and
3 bearing of arms has reference only to war, and possibly also to insurrections wherein
4 the forms of war are as far as practicable observed,” and “not to broils, bravado and
5 tumult, disturbing the public repose, or to private assassination and secret revenge.”⁴⁷
6 He observed that such behavior was not necessary to the security of a free state, and
7 “[n]or yet are dirks, bludgeons, revolvers and other weapons which are not used in
8 war, ‘arms’.”⁴⁸ Bishop’s explication of the right to bear arms, and his explanation as
9 to why deadly weapon statutes did not violate it, aligned with the reigning view that
10 such laws were an acceptable strategy to reduce gun violence.

11 Even though nineteenth-century case law generally coalesced around the
12 principle that concealed weapon laws were constitutional, that did not mean that
13 people wishing to *openly* carry deadly weapons as a form of preemptive self-defense
14 were engaging in what was considered constitutionally protected behavior—or
15 acceptable behavior at all. The text of public carry laws themselves, when taken
16 together, show quite plainly that nineteenth-century Americans did not understand
17 concealed carry laws to de facto allow everyday open-carrying of deadly weapons.
18 Some states specifically prohibited open carry, and others tailored open-carry
19 exceptions to be as narrow as possible in order to prevent people engaging in
20 everyday open carry as a mode of preemptive self-defense.⁴⁹ But more importantly,

21 ⁴⁷ Joel Prentiss Bishop, *Commentaries on the Law of Statutory Crimes* (Boston: Little,
22 Brown & Co., 1873), § 793. Bishop’s following point is worth quoting: “Moreover, there is no
23 species of property, and no private right, the ‘keeping’ and ‘bearing’ of which may not be
regulated by legislation for the public good. Hence, in reason, statutes [about carrying weapons]
do not violate any of our constitutions.”

24 ⁴⁸ *Ibid.*

25 ⁴⁹ For example, see 1882 West Virginia ch. 110, 317 § 8; 1871 Texas ch. 34, “An Act to
26 Regulate the Keeping and Bearing of Deadly Weapons,” 25–27; 1870 Tenn. 13, p. 28-29. In
27 response to appellate court decisions, lawmakers in Arkansas and Tennessee enacted public carry
28 laws with an open-carry exception that was as tightly restricted as possible. Their “open in his
hands” exception allowed open-carry only in a real emergency (not preemptive armed self-defense
as a matter of course) and only applied to certain kinds of firearms (not pocket pistols). *See* 1871
Tenn. 90, p. 81-82; Ark. 1881 ch. 96. A public carry law from the Florida Territory (1835) allowed
for open carry, but the legislation proved to be ineffective—presumably because so many people

1 the everyday open carrying of deadly weapons was not particularly common in the
2 nineteenth century, and primary source evidence shows that it was not socially
3 acceptable outside of emergency circumstances.

4 Deadly weapons like knives and pistols were designed to be carried concealed,
5 so concealed carry regulations struck at the primary, preferred mode of carrying
6 them. A commentator writing in 1877 said, “The very fact that men are careful to
7 conceal their revolvers argues that they are doubtful as to the propriety of carrying of
8 them,” and that if a young man were to walk along the street “with his silver-mounted
9 deringer hanging from his waist belt, he would expose himself to unlimited
10 ridicule.”⁵⁰ The tendency toward concealing deadly weapons rather than carrying
11 them openly was in fact so strong that in the latter nineteenth century, men’s trousers
12 were often sold with a *pistol pocket* sewn into the rear hip.⁵¹

13 In 1856, a Louisiana court reasoned that partially exposed weapons were “the
14 result of accident or want of capacity in the pocket to contain, or clothes fully to cover
15 the weapon, and not the extremely unusual case of the carrying of such weapon in

16 _____
17 were choosing to avail themselves of the open carry exception. In 1838, lawmakers enacted a
18 prohibitively high tax upon anyone wishing to engage in open carry, showing that Floridians and
19 their elected lawmakers did not view unrestrained open carry as a benign activity and indeed tried
20 to discourage the behavior as much as possible. 1835 Florida ch. 860, “An Act to prevent any
21 person in this Territory from carrying arms secretly,” 318; 1838 Florida, ch. 24. The title of the
22 1838 tax was “An Act in addition to An Act, (approved January 30, 1835) entitled “An Act to
23 prevent any person in this Territory from carrying arms secretly.”

24 ⁵⁰ “Carrying Concealed Weapons: True Comment on an Almost Universal American
25 Custom,” *Daily Constitution* (Atlanta, Georgia), May 23, 1877, 1. Reprinted from *Baltimore*
26 *American*. Some of the manners and etiquette books of the nineteenth century also addressed the
27 impropriety of carrying deadly weapons. For example, see William A. Alcott, *Advice to a Young*
28 *Gentleman on Entering Society* (Philadelphia: Lea and Blanchard, 1839),
147-149, https://books.google.com/books?id=430_rAHEPn8C&newbks=1&newbks_redir=0&source=gbs_navlinks_s.

⁵¹ Scott Way, “A Few Random Remarks about Pockets,” *Puck* 16 (January 1885), 294 (“We
will merely glance at the pistol-pocket, in which a concealed deadly weapon is often carried,
especially in Prohibition districts, and then pass on to the coat-tail pocket.”); “The Pistol Pocket,”
Chicago Daily Tribune (Chicago, Illinois), February 11, 1885, 3 (“An important step toward
securing an abolition of the practice of pistol-carrying, a Galveston (Tex.) paper suggests that the
pistol-pocket should be prohibited by law.”); “The Hygiene of Pockets,” *Phrenological Journal*
and Science of Health (March 1886), 176 (“It is common now-a-days for trousers to be made with
a pocket placed little below the band in the back part of the garment. It is commonly termed the hip
or pistol pocket.”).

1 full open view, and partially covered by the pocket or clothes.”⁵² An Arkansas case
2 from 1879 upheld the idea that a partially exposed weapon constituted an attempt at
3 concealment.⁵³

4 There was some acceptance of the idea that a true emergency situation might
5 justify the open carrying of a deadly weapon temporarily. A version of Delaware’s
6 1881 concealed carry law provides some insight into what nineteenth-century
7 Americans understood their concealed carry laws to allow in terms of open carry.
8 The law as-passed ended up being substantially different from the version
9 summarized by a newspaper while the legislature was still debating and amending
10 the bill, and that earlier bill version contained a level of detail and context rarely
11 found in historical public carry laws.⁵⁴ The bill prohibited concealed carry and also
12 prohibited anyone “to carry a gun or other deadly weapon in the street, except in a
13 vertical position, and with the muzzle pointed toward the zenith.”⁵⁵ This is the kind
14 of open carry which certain drafters of the bill envisioned—one that prioritized public
15 safety and precluded habitual open carry as an acceptable mode of preemptive self-
16 defense. Other elements of the bill, some of which ended up in the law that passed,
17 addressed other impermissible ways of using, carrying, and handling firearms. “It is
18 likewise unlawful for any person to point a gun or other firearm at any person, either
19 in jest or earnest,” and there were specific penalties for anyone who might draw a
20 concealed weapon in a crowd or display one in public.⁵⁶

21 Nineteenth-century public carry laws were also understood to coexist with the
22 right defend oneself. In Texas, where deadly weapons could not be carried in public

23 _____
24 ⁵² *State v. Smith*, 11 La. Ann. 633 (1856).

⁵³ *Carr v. State*, 34 Ark. 448 (1879).

25 ⁵⁴ Text of a bill in the Delaware legislature, quoted in “Doings of the Legislature,” *Smyrna*
Times (Smyrna, Delaware), March 30, 1881, 2,
26 <https://chroniclingamerica.loc.gov/lccn/sn84020422/1881-03-30/ed-1/seq-2/>.

⁵⁵ *Id.*

27 ⁵⁶ *Id.* For the law as passed, see 1881 Delaware ch. 548 “Of Offenses Against Public
28 Justice: An Act providing for the punishment of persons carrying concealed deadly weapons,”
716-717.

1 at all, a self-defense exception was actually written into the law.⁵⁷ A weapon-carrier
2 who was technically breaking the law simply by carrying could plead self-defense,
3 show a judge or jury that his/her circumstances justified the behavior, and receive an
4 acquittal or dismissal. Public carry laws were designed to stop individuals from
5 preemptively going out armed on a habitual basis, not foreclose people in deadly
6 emergencies from defending themselves in accordance with the law of self-defense.

7 Where gun-toters were convicted despite a plea of self-defense, it typically
8 resulted from a failure to demonstrate that they had actually engaged in lawful self-
9 defense—such as occasions where personal conflicts and wounded pride led to
10 violence. Appellate rulings and legislative enactments aimed to preclude men in such
11 circumstances from pleading self-defense. This happened to an Alabama man in 1840
12 who argued that he needed to conceal a weapon in order to defend himself from an
13 attack; the court disagreed, stating that, “If the emergency is pressing, there can be
14 no necessity for concealing the weapon, and if the threatened violence, will allow of
15 it, the individual may be arrested and constrained to find sureties to keep the peace,
16 or committed to jail.”⁵⁸ The nineteenth-century tendency toward not specifically
17 outlawing the open carrying of deadly weapons is more a byproduct of that era’s
18 persistent and torturous acceptance of a violent male honor culture than it is evidence
19 of widespread acceptance of the open-carry of weapons for preemptive armed self-
20 defense.

21 In Arkansas and Tennessee, post-Civil War public carry restrictions were part
22 of a back-and-forth between legislatures and appellate courts, illustrating a
23 commitment to restricting public carry that understood open-carry to be primarily

24 ⁵⁷ 1871 Texas, ch. 34, § 2 (“Any person charged under the first section of this act, who may
25 offer to prove, by way of defense, that he was in danger of an attack on his person or unlawful
26 interference with his property, shall be required to show that such danger was immediate and
27 pressing, and was of such a nature as to alarm a person of ordinary courage; and that the weapon
28 so carried was borne openly and not concealed beneath the clothing; and if it shall appear that this
danger had its origin in a difficulty first commenced by the accused, it shall not be considered as a
legal defense.”).

⁵⁸ *State v. Reid*, 1 Ala. 612 (1840).

1 related to militia service and secondarily reserved for emergency situations. Both
2 states enacted laws that prohibited the public carrying of pistols with very limited
3 exceptions.⁵⁹ Courts in both states struck down early versions of the laws because
4 they applied to all revolvers, including those being issued to certain classes of soldiers
5 by the United States military.⁶⁰ But the respective legislatures of Arkansas and
6 Tennessee quickly changed the rule to exclude “army and navy pistols”—those types
7 or models in use by the US military—when carried openly in the hand. By exempting
8 these models, Arkansas and Tennessee lawmakers made their gun policies comport
9 with the reigning Second Amendment jurisprudence of their day, which held that
10 militia arms were to be regulated differently than deadly weapons.⁶¹ The revised
11 Tennessee law held that “it shall not be lawful for any person to publicly carry a dirk,
12 sword cane, Spanish stiletto, belt or pocket pistol, or revolver, other than an army
13 pistol, or such as are commonly carried and used in the United States army, and in
14 no case shall it be lawful for any person to carry such army pistol publicly or privately
15 about his person in any other manner than openly in his hands.”⁶² Arkansas’s

16 ⁵⁹ See 1869-1870 Tenn. Pub. Acts, 2d. Sess., An Act to Preserve the Peace and Prevent
17 Homicide, ch. 13, § 1; 1874-1875 Acts of Ark., An Act to Prohibit the Carrying of Side-Arms, and
18 Other Deadly Weapons, at p. 155, § 1.

19 ⁶⁰ *Andrews v. State*, 50 Tenn. 165 (1871); *Wilson v. State*, 33 Ark. 557 (1878).

20 ⁶¹ Unlike today, where laws generally prevent the civilian sale of military-grade weapons
21 while carving out protections for self-defense weapons, Americans of the nineteenth century did
22 just the opposite; case law at that time held that a citizen’s militia obligation conferred upon certain
23 kinds of firearms, especially muskets and rifles, a protected status under the law as “militia arms,”
24 while those smaller weapons which lent themselves to concealability and were more conducive to
25 interpersonal violence could be prohibited. This view of arms and their place in society changed
26 in the twentieth century as a result of substantial alterations to the militia system (and the
27 development of the National Guard) as well as the advent of automatic weapons (capable of firing
28 repeatedly with a single pull of the trigger) and select-fire weapons (capable of either automatic or
semiautomatic fire) for military use.

⁶² 1871 Tenn. Pub. Acts 81, An Act to Preserve the Peace and to Prevent Homicide, ch. 90,
§ 1; *State v. Wilburn*, 66 Tenn. 57, 61 (1872). It is worth noting that even the exempted army/navy
pistols could not be carried concealed, or even visible within a waistband or hip holster; the only
way to carry legally exempted pistols was to hold them in one’s hand. The purpose of this additional
phrase was to curtail as much as possible the carrying of these weapons in public spaces so that a
person would only do so in the event of a real emergency.

1 replacement statute was similar to that of Tennessee.⁶³ Tennessee and Arkansas
2 courts did not strike down these revised public carry statutes as they had done
3 previously.⁶⁴

4 Interpreted within the context of rising levels of gun violence and political
5 instability in the American South in the post-Civil War era, these laws and their
6 tightly restricted open-carry exceptions illustrate a widespread social contempt for
7 publicly carrying deadly weapons. These statutes represented the best efforts of
8 lawmakers to emulate the kind of comprehensive public carry prohibition that was in
9 force in Texas⁶⁵ while also respecting the parameters set forth by their state supreme
10 courts. The amendatory statutes did not simply provide an exemption for army/navy
11 pistols—it specified that even those pistols could not be carried in public unless
12 openly in the hand. Just like today, it was not common at that time to see a person
13 walking along a public street carrying a gun in hand; such behavior would have been
14 understood as an emergency requiring the intervention of local officers of the law.

15
16 ⁶³ 1881 Ark. Acts 191, An Act to Preserve the Public Peace and Prevent Crime, chap. XCVI,
17 § 1-2 (“That any person who shall wear or carry, in any manner whatever, as a weapon, any dirk or
18 bowie knife, or a sword, or a spear in a cane, brass or metal knucks, razor, or any pistol of any kind
19 whatever, except such pistols as are used in the army or navy of the United States, shall be guilty
20 of a misdemeanor. . . . Any person, excepting such officers or persons on a journey, and on his
premises, as are mentioned in section one of this act, who shall wear or carry any such pistol as i[s]
used in the army or navy of the United States, in any manner except uncovered, and in his hand,
shall be guilty of a misdemeanor.”).

21 ⁶⁴ See *State v. Wilburn*, 66 Tenn. 57, 61 (1872); *Haile v. State*, 38 Ark. 564 (1882).

22 ⁶⁵ Texas featured a comprehensive deadly weapon law that prohibited the open or concealed
23 carrying of “any pistol, dirk, dagger, slung-shot, sword-cane, spear, brass-knuckles, bowie knife,
24 or any other kind of knife manufactured or sold for the purposes of offense or defense.” There were
25 a few exceptions, such as for travelers, peace officers, and anyone who “has reasonable grounds
26 for fearing an unlawful attack on his person, and that such ground of attack shall be immediate and
27 pressing.” *General Laws of Texas*, ch. XXXIV, §1 (1871). The original statutes in Arkansas and
28 Tennessee indicate legislative intent to enact a comprehensive law like this one, but the decisions
from their state courts in *Wilson* and *Andrews*, respectively, prevented them from doing so; in
Texas, on the other hand, cases *English* and *Duke* upheld the constitutionality of the deadly weapon
law without requiring an army/navy exception. See *English v. State of Texas*, 35 Tex. 473 (1872);
State of Texas v. Duke 42 Tex. 455 (1874).

1 Concealed carry laws did not automatically protect open carry as a mode of
2 being preemptively armed in public. In fact, preemptive arming is precisely what
3 nineteenth-century Americans condemned. An 1838 Virginia statute prohibited
4 “habitual” carrying of deadly weapons—its purpose was to penalize those who
5 carried weapons as an everyday matter of course.⁶⁶ An 1813 Louisiana statute
6 included a lengthy preamble explaining why the legislature was taking this action. It
7 is worth quoting in full:

8 Whereas assassination and attempts to commit the same, have of late
9 been of such frequent occurrence as to become a subject of serious alarm
10 to the peaceable and well disposed inhabitants of this state; and whereas
11 the same is in a great measure to be attributed to the dangerous and
wicked practice of carrying about in public places concealed and deadly
weapons, or going to the same [public places] armed in an unnecessary
manner⁶⁷

12 An appellate judge in North Carolina went so far as to say that “there is
13 scarcely a man in the community who does not own and occasionally use a gun of
14 some sort,” but that “No man amongst us carries it about with him, as one of his every
15 day accoutrements—as a part of his dress—and never we trust will the day come
16 when any deadly weapon will be worn or wielded in our peace loving and law-
17 abiding State, as an appendage of manly equipment.”⁶⁸ Public carry laws, whether
18 they used the terms “concealed” or “open,” were fundamentally about protecting
19 public spaces by keeping deadly weapons away from them.

20
21
22
23
24 ⁶⁶ 1838 Virginia ch. 101, “An Act to prevent the carrying of concealed weapons,” 76 § 1
25 (“That if any person shall hereafter habitually or generally keep or carry about his person any pistol,
26 dirk, bowie knife, or any other weapon of the like kind, from the use of which the death of any
27 person might probably ensue, and the same be hidden or concealed from common observation . . .
28 .”).

⁶⁷ 1813 La. Acts 172, An Act Against Carrying Concealed Weapons, and Going Armed in
Public Places in an Unnecessary Manner § 1.

⁶⁸ *State v. Huntley*, 25 N.C. 418 (1843).

2. Regulation of Public Carry Through Penal Code and Criminal Code Enactments

Even though the English common law inherited by the colonies had provided an avenue for disarming public spaces through the Statute of Northampton, nineteenth-century Americans chose to address the problem of weapon-carrying through new criminal enactments. Some of the earlier statutes and ordinances originated in southern and southwestern⁶⁹ areas and spread across much of the country by the Civil War Era. Regulations carried on unabated in the postbellum era.

An early example of an American state government translating a common law violation of the Statute of Northampton into a state-level statute occurred in Massachusetts in 1795. Justices of the peace were empowered to “cause to be staid and arrested” anyone who disturbed the peace, engaged in assault or affray, or “shall ride or go armed offensively, to the fear or terror of the good citizens of this Commonwealth.”⁷⁰ Much of the statute’s text repeated phrasing and clauses from within the Statute of Northampton, and prohibited the carrying of arms into public spaces without a justifiable reason. Anyone violating this rule would have been subject to questioning by local officials and “bound” to the peace through a peace bond or surety, which was itself part of the common law inheritance.⁷¹ Decades later,

⁶⁹ In the antebellum era, the Old Southwest stretched from Louisiana to Missouri, Kentucky, and Alabama.

⁷⁰ 1795 Mass. Ch. 2, 436; from *Acts and Laws Passed by the General Court of Massachusetts: Begun and held at Boston, in the County of Suffolk, on Wednesday the Twentieth Day of May, Anno Domini 1794; and from thence continued by adjournment, to Wednesday, the Fourteenth of January, 1795*. The act was passed on January 29, 1795.

⁷¹ The peace bond was one of many processes inspired by America’s common law heritage. See Laura Edwards, *The People and Their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South* (Chapel Hill: University of North Carolina Press, 2009), 73–74, 96; Saul Cornell, “History, Text, Tradition, and the Future of Second Amendment Scholarship: Limits on Armed Travel under Anglo-American Law, 1688-1868,” *Law and Contemporary Problems* 83, no. 3 (Summer 2020), 73-95; Saul Cornell, “Right to Carry Firearms outside of the Home: Separating Historical Myths from Historical Realities,” *Fordham Urban Law Journal* 39, no. 5 (October 2012), 1719-1723. Edwards’s passage on peace bonds is worth quoting at length: “Peace bonds threw enforcement back on the community, summoning family, friends, and neighbors to police the troublemakers. Bonds required one or more other people to put up the

1 Delaware adopted a nearly identical policy.⁷²

2 The 1795 Massachusetts law, which addressed going armed within the context
3 of riot, affray, and disturbing the peace, was translated into a penal code edition
4 published in 1836, and in that process the “going armed” portion was isolated into its
5 own section. It read: “If any person shall go armed with a dirk, dagger, sword, pistol,
6 or other offensive and dangerous weapon, without reasonable cause to fear an assault
7 or other injury, or violence to his person, or to his family or property, he may, on
8 complaint of any person having reasonable cause to fear an injury, or breach of the
9 peace, be required to find sureties for keeping the peace, for a term not exceeding six
10 months, with the right of appealing as before provided.”⁷³ The statute clarified the
11 law by showing that “going armed” was a separate offense from disturbing the peace,
12 riot, and affray.

13 The early nineteenth century was a time when many states were drafting legal
14 codes—making the law known and accessible to the people, which was part of the
15 democratic spirit of the age. In undertaking that process, numerous states adopted
16 verbatim the penal code version of the Massachusetts public carry law. It was
17 repeated in Wisconsin (1839), Maine (1840), Michigan (1846), Virginia (1847),
18 Minnesota (1851), and Oregon (1853).⁷⁴ Much like Massachusetts, Maine had a

19 _____
20 amount, making them liable if the accused broke the peace again. That economic obligation
21 represented the signers’ promise to keep the offender in line. Peace bonds put everyone else in the
community on notice as well, investing them with the responsibility of policing the peace until the
end of the probation period.”

22 ⁷² *Revised Statutes of the State of Delaware, to the Year of Our Lord 1852* (Dover: S.
Kimme, 1852), Title XV, ch. 97, 333 § 13. “Any justice of the peace may also cause to be
23 arrested and bind to surety of the peace all affrayers, rioters, breakers and disturbers of the peace,
and all who go armed offensively to the terror of the people, or are otherwise disorderly and
24 dangerous.”

25 ⁷³ *Revised Statutes of the Commonwealth of Massachusetts, Passed November 4, 1835*
(Boston: Dutton & Wentworth, 1836), ch. 134, 70 § 16. This section cites “Persons who go armed
26 may be required to find sureties for the peace &c., 1794, 26 § 2,” which appears to be a reference
to 1795 Mass. ch. 2, 436; *see also supra*, n. 41.

27 ⁷⁴ 1838-1839, Wisconsin, *Statutes of Wisconsin*, “An Act to Prevent the Commission of
Crimes,” 381 § 16; *Revised Statutes of the State of Maine, Passed October 22, 1840* (Augusta: W.
28 R. Smith, 1841), ch. 169, “Of Proceedings for the Prevention of Crimes,” 709 § 16; *Revised Statutes*

1 preexisting statute vesting justices of the peace with necessary powers to arrest and
2 penalize affrayers and disturbers of the peace.⁷⁵ But for Wisconsin, Michigan,
3 Minnesota, and Oregon, this was their first public carry law.

4 Virginia, like Maine, had previously enacted a public carry law; but unlike
5 Maine, that statute was not identical to the Massachusetts approach adopted in 1836.
6 In 1838, Virginia had enacted a different type of law—one that explicitly prohibited
7 the carrying of concealed weapons and punished such behavior by fine and/or jail
8 time.⁷⁶ The extent to which this 1838 statute coexisted and overlapped with the 1847
9 statute remains unknown⁷⁷, but the example of Virginia highlights the fact that there
10 were different approaches to public carry legislation during the antebellum
11 nineteenth century. The other approach—which was more common in southern
12 states—also grew out of the Statute of Northampton, but tended to prohibit *concealed*
13 weapons and require criminal penalties for violation rather than sureties to keep the
14 peace.

15 A good example of the southern, concealed-carry approach to public carry
16 legislation comes from Tennessee. An 1801 public carry law made use of
17 longstanding common law language and phrases providing that anyone who “shall
18 publicly ride or go armed to the terror of the people, or privately carry any dirk, large

19 _____
20 *of the State of Michigan, Passed and Approved May 18, 1846* (Detroit: Bagg & Harmon, 1846),
21 Title 31, ch. 162, “Of Proceedings to Prevent the Commission of Crime,” 692 § 16; 1847 Virginia,
22 1847-1848 Session, Title 3, ch. 14, “Of Proceeding to Prevent the Commission of Crimes,” 129,
23 §16; *Revised Statutes of the Territory of Minnesota, Passed at the Second Session of the Legislative
Assembly, Commencing January 1, 1851* (St. Paul: J. M. Goodhue, 1851), ch. 12, “Of Proceedings
to Prevent the Commission of Crimes,” 528 § 18; 1853 Oregon, General Laws, 5th Regular Session,
220 § 17.

24 ⁷⁵ 1821 Maine ch. 76, “An Act describing the power of Justices of the Peace in Civil and
Criminal Cases,” 285, §1.

25 ⁷⁶ 1838 Virginia ch. 101, “An Act to prevent the carrying of concealed weapons,” 76 § 1.
26 “That if any person shall hereafter habitually or generally keep or carry about his person any pistol,
dirk, bowie knife, or any other weapon of the like kind, from the use of which the death of any
person might probably ensue, and the same be hidden or concealed from common observation”

27 ⁷⁷ It is unclear whether the 1847 Virginia penal code section pertaining to going armed
28 effectively repealed the statute put in place in 1838.

1 knife, pistol or any other dangerous weapon, to the fear or terror of any person” would
2 be required to post a bond, go to jail, or “be punished as for a breach of the peace, or
3 riot at common law.”⁷⁸ An updated statute from 1821 read: “Every person so
4 degrading himself by carrying a dirk, sword cane, Spanish stiletto, belt or pocket
5 pistols, either public or private, shall pay a fine of five dollars for every such
6 offence.”⁷⁹ The language had been simplified substantially, and the list of prohibited
7 weapons (a deviation from the traditional Statute of Northampton and common law
8 phrasing) formed the basis for the statute.

9 Tennessee was not the only state to adopt this language to regulate public carry
10 during the early nineteenth century. Corresponding weapon restrictions were enacted
11 in Louisiana and Kentucky in 1813, at a time when both states were experiencing
12 dramatic population growth and economic expansion as a result of river
13 transportation.⁸⁰ Like Tennessee, their statutes provided a list of prohibited deadly
14 weapons that could not be concealed on the person and penalized violators with a
15 fine and/or jail time.⁸¹ States and territories following this model included: Indiana

17 ⁷⁸ Judge Edward Scott, *Laws of the State of Tennessee: Including Those of North Carolina*
18 *Now in Force in this State: From the Year 1715 to the Year 1820, Inclusive* Page 710, Image 714
(Vol. 1, 1821), *The Making of Modern Law: Primary Sources*.

19 ⁷⁹ Robert Looney Caruthers, *A Compilation of the Statutes of Tennessee, of a General and*
20 *Permanent Nature, from the Commencement of the Government to the Present time: With*
21 *References to Judicial Decisions, in Notes, to Which is Appended a New Collection of Forms* Page
22 100, Image 105 (1836) available at *The Making of Modern Law: Primary Sources*.

23 ⁸⁰ *See* 1813 La. Acts 172, *An Act Against Carrying Concealed Weapons, and Going Armed*
24 *in Public Places in an Unnecessary Manner* § 1 (“any person who shall be found with any concealed
25 weapon, such as a dirk, dagger, knife, pistol, or any other deadly weapon concealed in his bosom,
26 coat, or in any other place about him that do not appear in full open view . . .”); 813 Ky. Acts 100,
27 *An Act to Prevent Persons in this Commonwealth from Wearing Concealed Arms, Except in*
28 *Certain Cases*, ch. 89 § 1 (“any person in this Commonwealth, who shall hereafter wear a pocket
pistol, dirk, large knife, or sword in a cane, concealed as a weapon, unless when travelling on a
journey, shall be fined in any sum, not less than one hundred dollars . . .”);.

⁸¹ Kentucky mandated a fine of not less than \$100, half of which to go to the informer.
Louisiana provided for a fine of \$20 to \$50, with half to go to the informer; violations occurring
before a court received a find of not less than \$100 and imprisonment up to six months. *See* 1813
Ky. Acts 100, *An Act to Prevent Persons in this Commonwealth from Wearing Concealed Arms,*
Except in Certain Cases, ch. 89 § 1; 1813 La. Acts 172, *An Act Against Carrying Concealed*
Weapons, and Going Armed in Public Places in an Unnecessary Manner § 1.

1 (1819), Florida (1835), Georgia (1837), Virginia (1838), Alabama (1839), Ohio
2 (1859), and New Mexico (1859).⁸²

3 In the post-Civil War period, when access to pistols and political instability
4 were fostering a rise in gun violence, a first step in many communities was to enact
5 or strengthen public carry laws. Jurisdictions that did not already have such laws
6 began enacting them, and those using the older mechanism of sureties to keep the
7 peace often transitioned toward the implementation of criminal statutes mandating
8 fines and/or jail time for violators.⁸³ The closing third of the nineteenth century saw
9 a flurry of this activity as states and municipalities tried new penalties, added new
10 weapons to the lists of prohibited weapons, and generally attempted to eliminate
11 small, easily concealable weapons from the public sphere.⁸⁴ By the turn of the
12 twentieth century, no fewer than sixteen more states and territories had enacted public

13
14 ⁸² 1819 Indiana ch. 23, “An Act to prohibit the wearing of concealed weapons,” 39; 1835
15 Florida ch. 860, “An Act to prevent any person in this Territory from carrying arms secretly,” 318;
16 1837 Georgia, “An Act to guard and protect the citizens of this State, against the unwarrantable and
17 too prevalent use of deadly weapons,” 90; 1838 Virginia ch. 101, “An Act to prevent the carrying
18 of concealed weapons,” 76; 1838 Alabama ch. 77, “An Act to suppress the evil practice of carrying
19 weapons secretly,” 67-68; 1859 Ohio “An Act to prohibit the carrying or wearing of concealed
20 weapons,” 3:56; 1859-1860 New Mexico “An Act prohibiting the carrying of Weapons, concealed
21 or otherwise,” 94–99 (English and Spanish).

22 ⁸³ The Repository of Historical Gun Laws, a database maintained by the Duke Center for
23 Firearms Law, reflects that American state and local governments enacted statutes and ordinances
24 specifically relating to “carrying weapons” in large numbers during the period from the close of
25 the Civil War in 1865 through the end of the nineteenth century. *See*
26 <https://firearmslaw.duke.edu/repository/search-the-repository/>.

27 ⁸⁴ In the second half of the nineteenth century, items like metal knuckles and razor blades
28 became targets for proscription alongside bowie knives, pistols, and sword canes. For example, see
1883 Ariz., ch. 36 (“dirk, dirk-knife, bowie-knife, slung-shot, brass-knuckles, or pistol . . .”); 1882
W.V., ch. 85 (“revolver or other pistol, dirk, bowie knife, razor, slung shot, billy, metallic or other
false knuckles, or any other dangerous or deadly weapon of the like kind or character . . .”); 1871
Tex., ch. 34 (“any pistol, dirk, dagger, slung-shot, sword-cane, spear, brass-knuckles, bowie-knife,
or any other kind of knife manufactured or sold for the purposes of offense or defense . . .”); 1886
Md., ch. 375 (“any pistol, dirk-knife, bowie-knife, slung-shot, billy, sand-club, metal knuckles,
razor or any other dangerous or deadly weapon of any kind whatsoever, (penknives excepted) . .
.”); 1873 Penn., ch. 810 (“any pistol, dirk-knife, slung-shot or deadly weapon . . .”); 1879 N.C., ch.
127 (“any pistol, bowie-knife, dirk, dagger, slung-shot, loaded cane, brass, iron or metallic
knuckles, or other deadly weapon of like kind . . .”); 1866 N.Y., ch. 716 (“any instrument or weapon
of the kind commonly known as slung-shot, billy, sand club or metal knuckles, and any dirk or
dagger (not contained as a blade of a pocket knife), or sword cane or air gun . . .”). This is not an
exhaustive list.

1 carry laws—in other words, at least 35 of the 50 states and territories (including the
 2 District of Columbia) in existence as of 1899 had public carry laws.⁸⁵ Hawaii, which
 3 became a territory in 1900, had enforced public carry regulations since 1852.⁸⁶ Those
 4 states which did not have public carry laws generally had local ordinances on the
 5 subject in the larger towns or had other statutes pertaining to carrying weapons with
 6 intent to assault, burglarize, etc.⁸⁷

7 **3. Taxation and Sensitive Places Statutes as Regulations on Public Carry**

8 Other methods of gun and weapon regulation than public carry existed in the
 9 nineteenth century, including taxation policies and disarmament requirements at
 10 certain sensitive places. These laws often coexisted with public carry laws, adding

11
 12 ⁸⁵ See *supra*, pp. 17–24 and corresponding citations; 1862 Colorado ch. 4, “An Act to
 13 Prevent the Carrying of Concealed Deadly Weapons in the Cities and Towns of this Territory,” 56;
 14 1863 California ch. 485, “An Act to prohibit the Carrying of Concealed Weapons,” 748-749; 1864
 15 Montana ch. 43, “An Act to Prevent the Carrying of Concealed Deadly Weapons in the Cities and
 16 Towns of this Territory,” 355; 1864 Dakota Territory *Penal Code* § 455; 1871 Texas ch. 34, “An
 17 Act to Regulate the Keeping and Bearing of Deadly Weapons,” 25–27; Harvey B. Hurd, editor,
 18 *Revised Statutes of the State of Illinois* (Springfield: Illinois Journal Co., 1874), ch. 38 § 56,
 19 “Disturbing the Peace”; 1878 Mississippi ch. 46, “An Act to prevent the carrying of concealed
 20 weapons, and for other purposes,” 175–76; Guy A. Brown, compiler, *Compiled Statutes of the State
 21 of Nebraska* (Omaha: Gibson, Miller & Richardson, 1881), ch. 5, “Offenses Against Public Peace
 22 and Justice,” § 25; Washington (State), *Code of Washington* (Olympia: C. B. Bagley, 1881), 181 §
 23 929; 1882 West Virginia ch. 110, 317 § 8; 1883 Missouri 76; 1888 Idaho “An Act Regulating the
 Use and Carrying of Deadly Weapons in Idaho Territory,” 23; 1889 Arizona ch. 13, “An Act
 Defining and Punishing Certain Offenses Against the Public Peace,” 30–31; 1890 Oklahoma
 “Crimes and Punishment,” ch. 25, Art. 38, “Of Crimes Against the Public Health and Safety,” 476
 § 20; “To Punish the Carrying or Selling of Deadly or Dangerous Weapons within the District of
 Columbia, and for other Purposes,” ch. 159, 52 Congress, Public Law 52–159, 27 Stat. 116 (1892),
 116-117; *Revised Codes of the State of North Dakota* (Bismarck: Tribune Co., 1895), “Penal Code:
 Public Health and Safety,” 1293 § 7313; Fred F. Barker, *Compilation of the Acts of Congress and
 Treaties Relating to Alaska: From March 30, 1867 to March 3, 1905* (Washington, D.C.: U.S. Gov.
 Print. Off., 1906), “Appendix A.,” ch. 6, “Offenses Against the Public Peace,” 139–140 § 118.

23 ⁸⁶ “An Act to Prevent the Carrying of Deadly Weapons,” *Hawaii: Kingdom of
 Kamehameha*, III-V, Regular Sessions (1852), 19.

24 ⁸⁷ Jersey City, New Jersey had local public carry and registration laws, illustrating the
 25 approach of using ordinances in the larger cities of states without a public carry statute. See
 26 *Ordinances of Jersey City, Passed by the Board of Aldermen since May 1, 1871* (1874), 41, 86–87.
 27 California also pursued what was essentially a local option for license-to-carry programs. See *infra*,
 28 pp. 47–48 and corresponding citations. New York used the approach of penalizing being in
 possession of certain weapons with intent to commit a crime. See John W. Edmonds, editor,
Statutes at Large of the State of New York (Albany: Weed, Parsons & Company, 1874), ch. 716,
 “An Act to prevent the furtive possession and use of slung-shot and other dangerous weapons,”
 810–811.

1 another regulatory layer to Americans’ relationships to their weapons and their
2 communities. These policies were designed to protect the public by discouraging
3 people from being armed in public spaces, or established standards for dealers in
4 firearms that could appropriately regulate the trade in and access to deadly weapons
5 within American communities.

6 **a. Taxation**

7 One mode of regulating weapons during the antebellum nineteenth century
8 involved taxation.⁸⁸ The taxing power exists to raise revenue, but it has also
9 historically been exercised as part of the police power. Sometimes taxes were
10 straightforward attempts to prohibit the carrying of weapons without saying so
11 explicitly. This approach was practiced in Florida during its territorial phase and
12 remained a policy option for much of the nineteenth century.⁸⁹ In 1835, the territorial
13 government enacted a public carry law with a steep fine of \$50 to \$500 for violations
14 and an exemption for “carrying arms openly, outside of all their clothes.”⁹⁰
15 Unsatisfied with the public carry law, leaders established a new series of prohibitive

16 ⁸⁸ The Duke Repository of Historical Gun Laws identifies more than one hundred
17 “taxation/registration” laws across the colonial period to 1930. Further research has uncovered
18 (and will likely continue to uncover) additional laws, at both the state and local level. *See*,
19 *e.g.* Dave Kopel, “Bowie Knife Statutes,” *The Volokh Conspiracy* (November 20, 2022),
20 [https://reason.com/volokh/2022/11/20/bowie-knife-statutes-1837-1899/\(describing_personal_taxes_upon_weapons_not_in_Repository\)](https://reason.com/volokh/2022/11/20/bowie-knife-statutes-1837-1899/(describing_personal_taxes_upon_weapons_not_in_Repository)). But some example regulations from the Repository
21 include: Chas. Ben. Darwin, Ordinances of the City of Burlington, with Head Notes and an
22 Analytic Index Page 149–50, Image 149–150 (1856) available at *The Making of Modern Law: Primary Sources* (taxing shooting batteries within the city); 1851 R.I. Pub. Laws 9, An Act In
23 Amendment Of An Act Entitled An Act Relating To Theatrical Exhibitions And Places Of Amusement §§ 1, 2 (levying an annual tax of no more than \$200 on anyone owning rifle galleries or pistol galleries in the city); John W.A. Sanford, *The Code of the City of Montgomery*, Prepared in Pursuance of an Order of the City Council of Montgomery Page 7–9, Image 12 (1861) available at *The Making of Modern Law: Primary Sources* (levying an annual tax of unspecified value upon pistol galleries within the city).

24 ⁸⁹ In some ways, possession taxes came close to being carry taxes or even proto-licensing
25 policies. Taxation as a form of public carry regulation was considered in Texas in 1866 as well as
26 in Tennessee in 1893. *See infra*, n. 124; “Tennessee State News,” *Bolivar Bulletin* (Bolivar, Tennessee) February 10, 1893, 1, <https://chroniclingamerica.loc.gov/lccn/sn89058007/1893-02-10/ed-1/seq-1/>.

27 ⁹⁰ John P. Duval, *Compilation of the Public Acts of the Legislative Council of the Territory of Florida, Passed Prior to 1840* Page 423, Image 425 (1839) available at *The Making of Modern Law: Primary Sources*. *See supra*, nn. 53, 57.
28

1 taxes designed to further reduce the presence of deadly weapons in public. This 1838
2 enactment held that anyone who chose “to vend dirks, pocket pistols, sword canes,
3 or bowie knives” had to first pay an annual tax of \$200, “and all persons carrying
4 said weapons openly shall pay...a tax of ten dollars annually.”⁹¹ In 2023 dollars, the
5 annual occupation tax would amount to approximately \$6,300, and the annual open
6 carry tax would amount to approximately \$320.⁹² In a sparsely populated, rural
7 environment, these taxes were clearly designed to discourage trade in and public
8 carry of deadly weapons. The architects of the statute saw it as intrinsically connected
9 to the previously enacted concealed carry restriction—as a way of more effectively
10 reducing the number of weapons carried in public spaces.⁹³

11 Some southern states also placed annual taxes upon the owners of deadly
12 weapons. Real property exceeding certain thresholds would be taxed, “intangible”
13 property like investments were taxed, and moveable property (especially luxury
14 goods or items associated with vices) could be taxed at standard rates as well.⁹⁴
15 Bowie knives, dirks, and pistols sometimes made their way into the lists of taxable
16 items.⁹⁵ A North Carolina revenue measure from 1850 provides an example of
17 moveable property taxes in the antebellum South. The law spanned nine pages and
18 included nineteen sections spelling out which forms of property could be taxed, at

20 ⁹¹ 1838 Fla., ch. 24.

21 ⁹² The amounts reach \$319.14 and \$6,382.73. See: <https://www.in2013dollars.com/us/inflation/1838?amount=200>.

22 ⁹³ The title of the 1838 tax was “An Act in addition to An Act, (approved January 30, 1835,) entitled An Act to prevent any person in this Territory from carrying arms secretly.” See *supra*, n. 68.

24 ⁹⁴ Brian Sawers, “The Poll Tax before Jim Crow,” *American Journal of Legal History* 57, no. 2 (June 2017), 175–78.

25 ⁹⁵ For example, see 1850 NC, ch. 121; 1856 N.C., ch. 34; 1866 N.C. ch. 21; Anderson Hutchinson, *Code of Mississippi: Being an Analytical Compilation of the Public and General Statutes of the Territory and State, with Tabular References to the Local and Private Acts, from 1798 to 1848*, Page 182, Image 182 (1848) available at The Making of Modern Law: Primary Sources. This is not an exhaustive list. Mississippi repealed its tax upon “Bowie-knives, Sword-canes and Dirk-knives” during the first year of fighting in the Civil War. 1861 Miss. Ch. 125.

1 what rates, how they were to be paid, the manner in which tax information should be
2 reported, and the penalties for failure to comply with the law.⁹⁶ Section 5 provided
3 for ad valorem taxes upon “plate, jewelry, vehicles, &c.,” a category that included
4 items like buggies, pianofortes, watches, billiard tables, and playing cards alongside
5 pistols and bowie knives.⁹⁷ The items on the list were decidedly *not* necessities, and
6 they included accoutrements associated with gambling, drinking, sumptuous living,
7 and the reckless carrying of weapons—in other words, items associated with
8 extravagance, vice, and irresponsibility.⁹⁸ The rate of tax upon pistols and knives was
9 relatively high: \$1 on all pistols (“except such as shall be used exclusively for
10 mustering”) and bowie knives, and \$0.50 on all dirks and sword canes.⁹⁹ One dollar
11 was the same rate of taxation as that for buggies and carriages valued at \$100-200.
12 The relatively high tax rate on knives and pistols seems to have prompted the addition
13 of a proviso that limited its scope to “only such pistols, bowie knives, dirks, and
14 sword canes, as are used, worn or carried about the person of the owner.”¹⁰⁰ In other
15 words, a person wanting to avoid the tax upon these deadly weapons need only leave
16 them at home rather than carry them habitually. This North Carolina tax was not
17 necessarily prohibitive, but it certainly incentivized public disarmament through
18 potential tax savings. In this way, the 1850 North Carolina possession tax functioned
19 much like the 1835 Florida open carry tax in its purpose of discouraging the public
20 carry of deadly weapons.

21 Occupation taxes and sales taxes were another taxation method employed by

22
23 ⁹⁶ 1850 North Carolina, ch. 121.

24 ⁹⁷ *See id.* § 5.

25 ⁹⁸ Law and policy scholars writing about taxation have historically understood the tax power
26 as being invoked sometimes for the raising of revenue and at other times for the discouragement of
27 problematic activities or behaviors. *See supra*, n. 65.

28 ⁹⁹ There was an exception for these weapons that were “kept in shops and stores for sale.”
See supra, n. 75.

¹⁰⁰ *Id.*

1 postbellum lawmakers. For instance, an occupation tax in Alabama applied to
2 “dealers in pistols, or pistol cartridges, or bowie-knives, or dirk-knives, whether
3 principal stock in trade or not.” The dealer had to pay an annual licensing fee of \$300
4 in order to legally conduct business, which amounts to nearly \$10,000 today.¹⁰¹ In
5 1894, Georgia enacted a new occupation tax law that applied to “dealers in pistols
6 and other weapons.” A dealer in “pistols, toy pistols shooting cartridges, pistol or
7 rifle cartridges, dirks, bowie-knives, or metal knucks” had to pay twenty-five dollars
8 per place of business—which would be nearly \$900 today.¹⁰²

9 In the early twentieth century, members of the Texas legislature put in place a
10 50% tax on the gross receipts from the sale of pistols. All dealers had to report
11 quarterly the number sold along with payment, which functioned as an occupation
12 tax for them to remain in business.¹⁰³ The intention of the measure was to make
13 pistols prohibitively expensive. Dealers and buyers found loopholes, which the
14 lawmakers did not attempt to close. But a trade organization representing gun dealers
15 opposed the law and challenged it in state court. A Texas appellate court upheld the
16 stringent sales tax, describing the business of selling pistols as one “hurtful to the
17 welfare of society” and among that class of occupations “detrimental to the health,
18 morals, or good order of society.” As a result, the court reasoned that the legislature
19 “would have the right, not only to levy an excessive tax, which would be prohibitory

20
21 ¹⁰¹ See 1892 Alabama ch. 95, 183; and Robert C. Brickwell, et al, *Code of Alabama*,
22 *Adopted by Act of the General Assembly Approved February 28, 1887* (Nashville: Marshall &
23 Bruce, 1887), ch. 9, Art. I § 629. The \$300 licensing fee was in effect some time prior to 1887, and
24 an 1892 amendment closed a loophole for dealers in “pistol cartridges.” The subsequent Article
25 specifies that all licenses expire annually; see ch. 9, Art. II § 634.

26 ¹⁰² Acts of the General Assembly of the State of Georgia (1894) available online from the
27 Digital Library of Georgia; see
28 https://dlg.usg.edu/record/dlg_zlgl_75343012/fulltext.text and https://dlg.usg.edu/collection/dlg_zlgl?range%5Byear_facet%5D%5Bbegin%5D=1880&range%5Byear_facet%5D%5Bend%5D=1899&sort=year+desc. Also, there were likely many more occupation taxes, though they have not been comprehensively indexed as of yet. Twenty-five dollars in 1894 would be \$874.53 in 2023 dollars. See <https://www.in2013dollars.com/us/inflation/1894?amount=25>.

¹⁰³ 1907 Texas ch. 18, “An Act providing for the levy and collection of an occupation tax” 485 § 12.

1 thereof, but could go further and absolutely prohibit any one from engaging
2 therein.”¹⁰⁴

3 **b. Sensitive Places**

4 Statutes disarming certain sensitive places date to the colonial era and were
5 already longstanding by the 1870s, but the escalating gun violence prompted an overt
6 expansion of that policy to meet the needs of the day. Where historical laws had
7 protected polling places and court buildings (which were the major occasions for
8 public gatherings in rural early America—not just sites of government activity),
9 updated laws added theaters, open-air presentations, and even private parties to the
10 assemblies protected through disarmament. In 1869, Tennessee lawmakers
11 prohibited the carrying of deadly weapons “concealed or otherwise” at elections or
12 “any fair, race course, or other public assembly of the people.”¹⁰⁵ Similarly in 1870,
13 Georgia lawmakers prohibited the carrying of deadly weapons “to any court of
14 justice, or any election ground or precinct, or any place of public worship, or any
15 other public gathering in this State, except militia muster-grounds.”¹⁰⁶ A law from
16 Texas prohibited all deadly weapons, including “fire-arms, wither known as a six
17 shooter, gun or pistol of any kind” at a host of events ranging from churches to polling
18 places “or other social gathering composed of ladies and gentlemen.”¹⁰⁷ Laws in
19

20 ¹⁰⁴ *Caswell & Smith v. State*, 148 S.W. 1159 (Tex. App. 1912).

21 ¹⁰⁵ Ch. 22, 1869 Tenn. Pub. Acts 23[22] (36th Assembly, 1st Sess.), “An Act to Amend the
22 Criminal Laws of the State,” § 2 (Ex. M). The section read in full: “That it shall not be lawful for
23 any qualified voter or other person attending any election in this State, or for any person attending
24 any fair, race course, or other public assembly of the people, to carry about his person, concealed
25 or otherwise, any pistol, dirk, Bowie-knife, Arkansas toothpick, or weapon in form, shape, or size
26 resembling a Bowie knife or Arkansas tooth-pick, or other deadly or dangerous weapon.” The
27 following section (§ 3) stated: “That all persons convicted under the second section of this act shall
28 be punished by fine of not less than fifty dollars, and by imprisonment, or both, at the discretion of
the court.”

¹⁰⁶ Act No. 285, 1870 Ga. Laws 421 (Ex. N). The list of prohibited weapons included “any
dirk bowie-knife, pistol or revolver, or any kind of deadly weapon.” There was also no implicit or
explicit exception for open carry. Violators convicted received a fine (\$20–50), imprisonment (10–
20 days), or both.

¹⁰⁷ 1870 Tex. Gen. Laws 63, ch. 46 § 1.

1 effect in Missouri in 1879 and Oklahoma Territory in 1890 were nearly identical to
 2 it.¹⁰⁸ Vermont and Mississippi both prohibited weapons inside schools, with the
 3 Mississippi legislature prohibiting students at colleges from possessing deadly
 4 weapons on campuses or within two miles of them (effectively disarming college
 5 students within the limits of college towns).¹⁰⁹ Other laws prohibited the carrying of
 6 weapons within the general vicinity of polling places, churches, and parks.¹¹⁰

7 LICENSING PUBLIC CARRY IN CALIFORNIA HISTORY

8 As structural forces like industrialization and urbanization propelled the growth
 9 of more sophisticated governmental administration in the United States, gun policies
 10 evolved in ways that increased official oversight of weapon sales and carrying. The

11 _____
 12 ¹⁰⁸ *Revised Statutes of the State of Missouri* (1879), ch. 24 § 1274; 1890 Okla. Stat. 495–

13 ¹⁰⁹ *Annotated Code of the General Statute Laws of the State of Mississippi* (1892), “Crimes
 14 and Misdemeanors,” § 1030. “A student at any university, college, or school, who shall carry, bring,
 15 receive, own, or have on the campus, college or school grounds, or within two miles thereof, any
 16 weapon the carrying of which concealed is prohibited, or a teacher instructor, or professor who
 17 shall knowingly suffer or permit any such weapon to be carried, or so brought, received, owned, or
 18 had by a student or pupil, shall be guilty of a misdemeanor, and, on conviction, be fined not
 19 exceeding three hundred dollars or imprisoned in the county jail not exceeding three months, or
 20 both.” *Laws of Vermont*, Special Session (1891), No. 85 § 2. “A person who shall carry or have in
 21 his possession while a member of and in attendance upon any school, any firearms, dirk knife,
 22 bowie knife, dagger or other dangerous or deadly weapon shall, upon conviction thereof, be fined
 23 not exceeding twenty dollars.” It is worth noting that disarmament laws and policies had been in
 24 effect at both public and private colleges long before this time. For example, *see* The Minutes of
 25 the Senatus Academicus of the State of Georgia, 1799–1842, at 86 (1810); University of Virginia
 26 Board of Visitors Minutes, 6–7 (October 4–5, 1824); Acts of the General Assembly and Ordinances
 27 of the Trustees, for the Organization and Government of the University of North Carolina, Laws
 28 for the Government of the University, at 15 Chapter V (1838). This is not an exhaustive list.

¹¹⁰ 1870 La. Acts 159–60, “An Act to Regulate the Conduct and to Maintain the Freedom
 of Party Election,” § 73 (no carry concealed or unconcealed within a half mile of polling places on
 election day or registration places on days of voter registration); George Washington Paschal, *A*
Digest of the Laws of Texas, 3rd ed. (1873) II: 1317–1318 (no carry concealed or unconcealed
 within a half mile of polling places on election day or registration places on days of voter
 registration); John Prentiss Poe, *The Maryland Code: Public Local Laws, Adopted by the General*
Assembly of Maryland March 14, 1888 (Vol. 2, 1888), 1457 (no carry by any person in Kent County
 on days of an election); 1886 Md. Laws 315, An Act to Prevent the Carrying of Guns, Pistols, Dirk-
 knives, Razors, Billies or Bludgeons by any Person in Calvert County, on the Days of Election in
 said County, ch. 189 § 1 (no carry by any person in Calvert County within 300 yards of polls on
 election day); 1877 Va. Acts 305, Offenses Against The Peace § 21 (no weapons in church during
 services, or anywhere beyond one’s on premises on Sundays); Oscar F. Greene, *Revised*
Ordinances of the City of Boulder (1899), 157 (no one save city police officers shall carry weapons
 into public parks).

1 sales registries enumerated above placed special requirements on dealers, but their
2 intention was to empower police and other officials to solve crimes by providing
3 them with information.¹¹¹ In a similar way, licensing either for purchase of a pistol
4 or for public carry of one grew out of American traditions of regulating deadly
5 weapons.

6 One of the earliest proponents of licensing as a way of regulating the carrying
7 of pistols was California. The state had enacted a public carry law that prohibited
8 concealed deadly weapons, but residents grew frustrated that it did not seem to be
9 effective. In 1866, members of the state legislature divided over what to do about the
10 problem.¹¹² One camp proposed issuing licenses to people who needed a pistol for
11 personal protection. The state did not adopt their proposal and instead repealed the
12 public carry law. In the aftermath of that decision, California municipal governments
13 began passing ordinances that provided for licensing in order to carry a pistol in
14 public.¹¹³ The policy proved popular, and by the turn of the twentieth century a
15 majority of California residents lived in municipalities that had implemented a
16 permitting process for the public carry of concealed weapons.¹¹⁴ Municipalities
17 elsewhere during the nineteenth century implemented licensing policies: Jersey City,

18 _____
19 ¹¹¹ The examples cited above (*supra*, n. 151, n. 152) included requirements that registries
be open for the review of police and others.

20 ¹¹² Theodore Henry Hittell, *The General Laws of the State of California, from 1850 to*
21 *1864, Inclusive* (1868), “An Act to prohibit the carrying of concealed weapons,” 261 § 1–2. On
22 frustration among the public, see “Concealed Weapons,” *Morning Union* (Grass Valley,
23 California), February 20, 1869 (“The object was to prevent indiscriminate shooting among a class
about whose welfare there need not have been any extraordinary solicitude; but the result has
been to place the law-abiding portion of the community at the mercy of night-prowlers, footpods,
and garroters.”).

24 ¹¹³ For example, see Ordinance No. 84: Prohibiting the Carrying of Concealed Deadly
25 Weapons, Apr. 24, 1876, reprinted in R. M. Clarcken, editor, *Charter and Ordinances of the City*
26 *of Sacramento* (1896), 173; Prohibiting the Carrying of Concealed Deadly Weapons, Sep. 17,
1880, reprinted in *General Orders of the Board of Supervisors Providing Regulations for the*
Government of the City and County of San Francisco (1884), 8; “Concealed Weapons,” *Napa*
Daily Register (Napa, California), November 10, 1880, 2. This is not an exhaustive list.

27 ¹¹⁴ Saul Cornell, “The Right to Regulate Arms in the Era of the Fourteenth Amendment,”
28 *UC Davis Law Review Online* 55 (September 2021), 84.

1 New Jersey did so in 1873 and the District of Columbia in 1892.¹¹⁵

2 **NINETEENTH-CENTURY DISTINCTIONS BETWEEN URBAN** 3 **AND RURAL LOCALES**

4 In American history, it has been common for people to draw distinctions about
5 the relative dangers of deadly weapons in urban versus rural locales. Public carry
6 laws often featured modified rules for long-distance travelers venturing beyond the
7 safety of their local communities. When exposed to the dangers of the highway
8 bushwhacker or the prowling coyote that went along with nineteenth-century
9 horseback travel, laws generally allowed the carrying of weapons—including those
10 statutorily restricted as deadly weapons.¹¹⁶ But these travel exceptions were closely
11 guarded by appellate courts, who typically required the travel to last overnight, cross
12 county lines (which was a much more significant marker of distance in then than it
13 is now), or otherwise take a person beyond his “circle of neighbors.”¹¹⁷ Another
14 requirement was often that a traveler check his weapons upon arriving to a town or
15 to depart town as soon as his business was finished without visiting shops or
16 restaurants.

17 ¹¹⁵ *Ordinances of Jersey City, Passed by the Board of Aldermen since May 1, 1871* (1874),
18 “An Ordinance in Relation to the Carrying of Dangerous Weapons,” § 3 (*supra*, n. 116); *supra*, n.
19 115 § 2.

20 ¹¹⁶ 1840 Ala., ch. 7, “Of Miscellaneous Offenses,” 148-149 (“Every one who shall hereafter
21 carry concealed about his person, a bowie knife...or any other deadly weapon, pistol or any species
22 of fire arms, or air gun, unless such person be...setting out on a journey...”); 1878 Mississippi ch.
23 46, “An Act to prevent the carrying of concealed weapons, and for other purposes,” 175–76 (“That
24 any person not...traveling (not being a tramp) or setting out on a journey...who carries concealed,
25 in whole or in part, any bowie knife, pistol, brass knuckles, slung shot or other deadly weapon...”);
26 1871 Texas ch. 34, “An Act to Regulate the Keeping and Bearing of Deadly Weapons,” 25–27, §
27 1 (“Provided, that this section shall not be so construed as...to prohibit persons traveling in the
28 State from keeping or carrying arms with their baggage.”); 1831, Indiana – Revised Laws, 15th
Session, Chapter 26, “An Act relative to Crime and Punishment, 180-199 at 192, §58 (“That every
person, not being a traveller, who shall wear or carry any dirk, pistol, sword in a cane, or other
dangerous weapon concealed...”); 1871Tenn., ch. 90, “An Act to preserve the peace and prevent
homicide,” 81-82, § 3 (“That the provisions of the first section of this Act shall not apply to...any
person who is on a journey out of his county or State.”).

¹¹⁷ *Carr v. State*, 34 Ark. 448 (1879); *Eslava v. State*, 49 Ala. 355 (1873); *Smith v. State*, 50
Tenn. 511 (1872); *Darby v. State*, 23 Tex. Ct. App. 407 (1880). See also, John Thomas Shepherd,
“Who Is the Arkansas Traveler: Analyzing Arkansas’s Journey Exception to the Offense of
Carrying a Weapon,” *Arkansas Law Review* 66, no. 2 (2013): 463-484.

1 There are examples of cities and towns, many of them in California, enacting
2 local public carry ordinances in jurisdictions that did not have statewide laws.
3 Between 1870 and 1917, California did not have a statewide public carry law. Instead,
4 municipalities themselves—ranging in size from Los Angeles and San Francisco to
5 Lompoc and St. Helena—issued licenses to applicants who could show that they were
6 particularly vulnerable to attack and therefore in need of a weapon for self-defense.¹¹⁸
7 In the immediate aftermath of the Civil War, several towns of varying size within
8 Texas enacted ordinances against the carrying of weapons.¹¹⁹ At that time, the state
9 did not have a public carry law; rather than try to stop the cities from pursuing policies
10 that promoted safety, the legislature provided protection to their public carry laws.
11 For instance, Galveston’s public carry law went into effect in 1865¹²⁰, and the
12 following year state lawmakers issued a new charter to the City of Galveston,
13 granting its leadership the power “To regulate the carrying of weapons, and prevent
14 the carrying of the same concealed.”¹²¹ It was not until 1870-1871 that Texas pursued
15 a statewide gun-safety policy by enacting a sensitive places law along with a public
16 carry law. Kansas’s deadly weapon policy specifically authorized towns to regulate
17 the carrying of weapons “concealed or otherwise.”¹²²

18 And in the American West more broadly, different rules often applied in
19 organized towns than in the expansive countryside beyond their borders. Colorado,

21 ¹¹⁸ See Saul Cornell, “The Right to Regulate Arms in the Era of the Fourteenth Amendment:
22 The Emergence of Good Cause Permit Schemes in Post-Civil War America,” *US Davis Law Review*
23 *Online* 55 (September 2021), 65-90 at 84-85 (see Table 3: Municipalities with Permit Schemes in
24 Post-Civil War California).

25 ¹¹⁹ “Proceedings of the City Council,” *Flake’s Bulletin* (Galveston, Texas), December 28,
26 1865; “Ordinances Passed,” *Goliad Intelligencer* (Goliad, Texas) March 17, 1866; “Ordinance
27 Concerning Deadly Weapons,” *Texas Countryman* (Hempstead, Texas) August 10, 1867.

28 ¹²⁰ *Ibid.*

¹²¹ 1866 Texas ch. 173, “An Act to Reincorporate the City of Galveston,” Title 4: Of the
City Council—Its General Powers and Duties, § 27, 13th,320, quoted in H. P. N. Gammel, ed., *The*
Laws of Texas, 1822-1897, vol. 5 (Austin: Gammel Book Company, 1898),1540.

¹²² See *Salina v. Blaksley*, 72 Kan. 230 (1905); 1881 Kan. Sess. Laws 92, c. 37, § 24.

1 Idaho, Montana, Arizona, New Mexico, and Wyoming explicitly prohibited the
2 carrying of concealed weapons in towns and settlements.¹²³ Dodge City, Kansas and
3 some of the other cattle towns at western railheads famously prohibited the carrying
4 of guns within city and town limits.¹²⁴ While it may be tempting to interpret these
5 laws as allowing an “anything goes” attitude toward deadly weapons outside of towns
6 and cities, such a conclusion would be a mistake. People traveling in isolated areas
7 may have carried a bowie knife or pistol on their belt for protection, and such
8 behavior would be in line with the longstanding travel exceptions that had been in
9 force in much of the country for decades. But more importantly, a person traveling
10 long distances and subject to attack from bushwhackers or wild animals would be
11 much more likely to turn to a rifle for self-preservation than a pistol. Breech-loading
12 rifles were becoming the national standard in the post-Civil War period and could
13 fire several shots before needing to reload. The Winchester rifles of the late 1860s
14 and early 1870s could hold upwards of ten rounds in their fixed magazines attached
15 below the barrel of the gun. These firearms could shoot farther and more accurately
16 than a pistol, and generally carried a higher caliber. Though not commonly possessed
17 in the US during Reconstruction, Americans venturing into the rural West as
18 immigrants or hunters would certainly have turned to a rifle for protection, and their
19 exemption for carrying deadly weapons in uninhabited or sparsely inhabited zones
20 was essentially a recapitulation of the exemption for travelers that had taken root in
21 some Old Southwest states (Texas, Arkansas, Missouri, etc.).

23 ¹²³ 1852 New Mexico, “An Act Prohibiting the carrying of a certain class of Arms, within
24 the Settlements and in Balls,” 67-70 (in English and Spanish); 1862 Colorado ch. 4, “An Act to
25 Prevent the Carrying of Concealed Deadly Weapons in the Cities and Towns of this Territory,” 56;
26 1864 Montana ch. 43, “An Act to Prevent the Carrying of Concealed Deadly Weapons in the Cities
27 and Towns of this Territory,” 355; 1888 Idaho “An Act Regulating the Use and Carrying of Deadly
28 Weapons in Idaho Territory,” 23; 1889 Arizona ch. 13, “An Act Defining and Punishing Certain
Offenses Against the Public Peace,” 30–31.

¹²⁴ For the famous photo and a brief explanation of Dodge City and other western
ordinances, see Matt Jancer, “Gun Control Is as Old as the Old West,” *Smithsonian Magazine*,
February 5, 2018, <https://www.smithsonianmag.com/history/gun-control-old-west-180968013/>.

1 When considering how nineteenth-century Americans viewed the urban-rural
2 distinction and its consequences for gun policy, sensitive places laws are particularly
3 helpful. They identified as protected spaces those spaces of gathering and assembly
4 that define life in an organized, incorporated community—meeting halls,
5 entertainment venues, educational facilities, city parks, and social parties. These laws
6 often prohibited *all firearms* in addition to deadly weapons, and effectively turned
7 any gathering space into a de facto disarmed zone; they show us that nineteenth-
8 century Americans believed that gatherings—the quintessential feature of town or
9 city life—and guns simply did not go together.

10 CONCLUSION

11 Public carry laws are an integral part of the American tradition of regulating the
12 presence of deadly weapons in public spaces—those carried openly as well as those
13 carried concealed. These weapons were generally defined by law and had in common
14 the fact that they were not only concealable, but designed to be carried concealed.
15 The term *deadly weapons* generally referred to pocket pistols, bowie knives, metal
16 knuckles, slung shots, and other weapons that were associated with crime rather than
17 civic service. Technological developments made pistols simultaneously smaller and
18 more lethal, and socio-political events encouraged Americans to view one another
19 and their institutions with suspicion rather than respect. This confluence of events
20 created an increase in weapon-carrying and crime which Americans addressed by
21 enacting public carry statutes.

22 In addition, weapon policies might distinguish between urban versus rural
23 locales, and these differences speak to a nineteenth-century understanding of towns
24 and cities as areas deserving of special protection. When considered in conjunction
25 with overlapping sensitive places requirements and municipal ordinances, public
26 carry laws demonstrate that Americans have historically recognized that assemblies,
27 entertainment venues, and other social gatherings are intrinsic to community life and
28 endangered by the presence of weapons. Exemptions for persons outside of settled

1 areas, which were fairly common in the American West, operated like the traveler
2 exemptions that were in force in other states. Those travel exemptions were about
3 providing some security to people who were exposing themselves to potentially lethal
4 situations involving bushwhackers or predatory animals, not an unmitigated license
5 to engage in behaviors that were customarily condemned and otherwise prohibited
6 by law.

7
8 I declare under penalty of perjury under the laws of the United States of America
9 that the foregoing is true and correct.

10 Executed on June 9, 2023, at Fort Worth, Texas.

11
12 *Brennan Rivas*

13 Dr. Brennan Rivas
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit A

Brennan Gardner Rivas

Curriculum Vitae · Oct 2022

Employment

Lloyd Lewis Fellow in American History, The Newberry Library, 2021-2022
Bill & Rita Clements Fellow for the Study of Southwestern America, Southern Methodist University, Clements Center for Southwest Studies, 2020-2021
Lecturer in American History (full-time), Texas Christian University, Department of History, 2019-2020

Education

Ph.D., History, Texas Christian University, 2019
Thesis: “[The Deadly Weapon Laws of Texas](#): Regulating Guns, Knives, & Knuckles in the Lone Star State, 1836-1930”
Advisor: [Gregg Cantrell](#)
M.A., History, Texas Christian University, 2013
Thesis: “Texas Antitrust Law: Formulation and Enforcement, 1889-1903”
B.A. with Honors, History, Oklahoma State University, 2010

Publications

Refereed Journal Articles

“[An Unequal Right to Bear Arms](#): State Weapons Laws and White Supremacy in Texas, 1836-1900,” *Southwestern Historical Quarterly* 121 (Jan 2018): 284-303.

Law Articles

“Strange Bedfellows: Racism and Gun Rights in American History and Current Scholarship” in Joseph Blocher and Jake Charles, eds., *New Histories of Gun Rights and Regulation: Essays on the Place of Guns in American Law and Society* (New York: Oxford University Press, forthcoming)

“[Enforcement of Public Carry Restrictions: Texas as a Case Study](#),” *U.C. Davis Law Review* (May 2022)

“[The Problem with Assumptions: Reassessing the Historical Gun Policies of Arkansas and Tennessee](#),” *Second Thoughts*, Duke Center for Firearms Law (Jan 2022)

Short Pieces

“Charles F. Cooley,” in [Wanted in America: Posters Collected by the Fort Worth Police Department, 1898-1903](#), edited by LeAnna Schooley and Tom Kellam. Fort Worth: TCU Press, 2019.

Review of David R. Berman, *George Hunt: Arizona’s Crusading Seven-Term Governor*, in [Southwestern Historical Quarterly](#) 114, no. 3 (January 2016): 327-329.

Public History

“[In the Past, Americans Confronted Gun Violence by Taking Action](#),” *Washington Post: Made by History Blog* (Jun 2022)

- ~ Op-ed showcasing open-mindedness of 19th century Americans about experimenting with new gun control measures
- “[The Origin of Public Carry Laws in Texas](#),” *Texas Gun Sense Blog* (Feb 2021)
- “[Texas Gun Laws](#),” Online Primary Source Collection, hosted by [Omeka](#)
 - ~ Online collection featuring primary sources from my research; feature exhibit titled “Crafting a Public Carry Law”
- “[The Deadly Weapon Laws of Texas](#),” Preserving Our Past: Community History Workshop, Center for Texas Studies at TCU (Nov 2020)
 - ~ Public lecture featuring special insights for genealogical researchers
- “The Deadly Weapon Laws of Texas,” Graduate/Undergraduate Public History Seminar, Tarleton State University (Sept 2020)
 - ~ Research presentation focusing on interpretation of county court records
- “[When Texas Was the National Leader in Gun Control](#): How the Land of Gunslinger Mythology Regulated Weapons to Reduce Violence,” *Washington Post: Made by History Blog* (Sept 2019)
 - ~ Op-ed highlighting long history of weapon regulation in Texas

Fellowships and Awards

- Lloyd Lewis Fellowship in American History, 2021-2022
 - ~ Awarded by the Newberry Library to scholars using its collection to research topics in American history
- Bill & Rita Clements Fellowship for the Study of Southwestern America, 2020-2021
 - ~ Awarded by the SMU Clements Center for Southwest Studies to two scholars of Texas, the Southwest, or the U.S.-Mexico borderlands who are developing first books
- The Benjamin W. Schmidt Memorial Scholarship, 2018-2019
 - ~ Awarded by the TCU Department of History to a PhD candidate who shows exceptional professional promise; highest departmental prize for graduate students
- Texas Christian University Department of History, Shinko and Thomas McDonald Research Prize in Texas History, 2019, 2017
 - ~ Awarded by the TCU Department of History to a graduate student with the best research on antebellum Texas history

Works in Progress

The Revolver Must Go: The Rise and Fall of a Gun Control Movement in Texas

Aim: Scholarly monograph exploring the rise of a gun control movement in nineteenth-century Texas and the regulatory strategies which it embraced. Widespread acceptance of strict, ambitious gun control laws in the “Wild West” belies current assumptions about Texas and challenges the reigning interpretation of the Second Amendment as a guarantor of expansive gun rights

Status: Editing manuscript

“The Texas Anti-Trust Movement: Antimonopoly, Populism, and Reform in the Long Progressive Era”

Aim: Scholarly article interpreting Texas antitrust policy an example of innovative reform in the Great Plains and trans-Mississippi West

Status: Research and writing in progress

University Teaching Experience

Instructor of Record

Lecturer in American History, Texas Christian University 2019-2020
“American History to 1877: Social Movements & the Politics of Slavery” (HIST 10603)
“American History since 1877: The Quest for Equality” (HIST 10613)
“History of Texas: A Transnational Look at the American Southwest” (HIST 40743)

Graduate Student Instructor

Teaching Assistant, Texas Christian University 2017-2018
American History to 1877 (HIST 10603)
American History since 1877 (HIST 10613)

Teaching Interests

American History, Legal History, Southwestern Borderlands, Civil War Era, American West, Gilded Age & Progressive Era, Women’s History

Conference Presentations & Invited Talks

“Reassessing Assumptions about Historical Arkansas and Tennessee Handgun Regulations,”
Race and Guns Roundtable, Duke Center for Firearms Law, Durham, North Carolina,
November 2021
“Enforcement of Public Carry Restrictions: Texas as a Case Study,” The Second Amendment at
the Supreme Court: 700 Years of History and the Modern Effects of Guns in Public, Davis,
California, October 2021
“Race & Guns,” Newberry Library Colloquium, Chicago, Illinois, October 2021
“Unlawful Carrying: Enforcing the Pistol Law in Texas, 1870-1920,” Texas State Historical
Association Annual Meeting, Corpus Christi, Texas, February 2019
“Regulating Deadly Weapons in Nineteenth-Century Texas,” Invited Lecturer, Los Bexareños
Hispanic Genealogical and Historical Conference, San Antonio, Texas, September 2018
“Impregnable Citadels of Capital: American Monopolies in the British Radical Press,” Southern
Conference on British Studies Annual Meeting, St. Pete Beach, Florida, November 2016
“Dating Violence in Texas: Why the State Family Code Obstructs Accurate Reporting about
Sexual Assault,” TCU Women & Gender Studies Research Symposium, 2015

Service

Invited Guest, “How to Make the Most of Your Time in Graduate School,” Dept. of History
Orientation Day, 2020
~ Advise incoming graduate students on strategies for success in the PhD program,
emphasizing importance of intellectual development
Panelist, “Everything You Wanted to Know about TCU but Were Too Afraid to Ask,” Dept. of
History Orientation Day, 2016
~ Provide honest and confidential information to prospective graduate students
Graduate Student Mentor, 2015
~ Informal departmental program designed to ease the transition for incoming graduate
students

Professional Memberships

Society for Historians of the Gilded Age and Progressive Era
Texas State Historical Association
Southern Historical Association
American Historical Association

Languages

Spanish (Proficient)
Latin (Proficient)

CERTIFICATE OF SERVICE

Case Name: **Baird, Mark v. Rob Bonta** No. **2:19-cv-00617-KJM-AC**

I hereby certify that on August 18, 2023, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

EXPERT REPORT AND DECLARATION OF BRENNAN RIVAS

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on August 18, 2023, at Los Angeles, California.

Lara Haddad
Declarant

Lara Haddad
Signature