

1 ROB BONTA
 Attorney General of California
 2 MARK R. BECKINGTON
 Supervising Deputy Attorney General
 3 ROBERT L. MEYERHOFF
 Deputy Attorney General
 4 State Bar No. 298196
 300 South Spring Street, Suite 1702
 5 Los Angeles, CA 90013-1230
 Telephone: (213) 269-6177
 6 Fax: (916) 731-2144
 E-mail: Robert.Meyerhoff@doj.ca.gov
 7 *Attorneys for Defendants Rob Bonta in*
his official capacity as Attorney
 8 *General of the State of California and*
Allison Mendoza in her Official
 9 *Capacity as Director of the Bureau of*
Firearms

10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE EASTERN DISTRICT OF CALIFORNIA
 12 SACRAMENTO DIVISION
 13

14
 15 **WILLIAM WIESE, et al.,**
 16 Plaintiffs,
 17 v.
 18 **ROB BONTA, et al.,**
 19 Defendants.

Case No. 2:17-cv-00903-WBS-KJN

**DECLARATION OF DENNIS BARON IN
 SUPPORT OF DEFENDANTS'
 OPPOSITION TO MOTION FOR
 SUMMARY JUDGMENT AND COUNTER-
 MOTION FOR SUMMARY JUDGMENT**

Date: July 10, 2023
 Time: 1:30 p.m.
 Courtroom: 5, 14th Floor
 Judge: Hon. William B. Shubb

DECLARATION OF DENNIS BARON

I, Dennis Baron, the undersigned, declare as follows:

1. I have been retained by the Office of the Attorney General of the California Department of Justice to provide expert opinion and testimony regarding Corpus Linguistics research. I am being compensated at a rate of \$350 per hour. I have examined the historical use of the terms *arms* and *accoutrements* in order to determine whether magazines, including large-capacity magazines (henceforth, LCMS), were considered arms during the Founding Era (1750–1820) and the period surrounding Reconstruction and the ratification of the Fourteenth Amendment (1868–1890). The term “magazine” was not generally used to describe a ‘bullet container’ until well into the nineteenth century, and that use of “magazine” did not become common until the early twentieth century. I therefore evaluated the lexical evidence for the analogous ammunition cases in use before “magazine” became the common term: “cartridge case,” “cartridge box,” or “cartouch case, or box.”

2. I have also examined the lexical evidence for “repeater air guns,” which are sometimes referred to as “wind guns,” and the rare terms “magazine wind-gun” and “magazine gun” in the Founding Era. “Air guns” used compressed air instead of gunpowder to propel a ball. Repeater air guns were capable of firing multiple shots before requiring the user to reload the weapon.

3. The lexical evidence leads me to conclude that (1) magazines (including what we would call LCMS today), as well as ammunition cases, cartridge cases, boxes and other ammunition storage containers, were considered accoutrements or accessories and not arms during the Founding and Reconstruction Eras; (2)

1 although a few artisans did invent air guns capable of firing
2 multiple balls without reloading the ammunition or recharging the
3 air cylinder, such guns were rare in England and America; (3)
4 although magazine guns were patented as early as 1860, they
5 remained military weapons during and shortly after the Civil War,
6 with only a few references to them in the corpora before the 1880s.

7 **BACKGROUND AND QUALIFICATIONS**

8 4. I am currently Professor Emeritus and Research Professor
9 at the University of Illinois, where I have served as a member of
10 both the Department of English and the Department of Linguistics
11 since 1975. I served as Head of the Department of English for six
12 years and before that as Director of Rhetoric at the University
13 for 11 years. I earned my Ph.D. in English language and literature
14 from the University of Michigan in 1971, with a dissertation on
15 historical aspects of the English language from Old English to
16 Present-Day English, and I continue to publish widely on matters
17 of historical language use, in addition to topics related to
18 language and law. I am a life member of the Linguistic Society of
19 America, the American Dialect Society, and the Modern Language
20 Association, as well as a member of the National Council of Teachers
21 of English. I have held a Fulbright Fellowship (to France), a
22 National Endowment for the Humanities Fellowship for work on a book
23 on language and law, and, most recently, a Guggenheim Fellowship
24 for work on my latest book on language and law. I have also
25 published books on language reform, on usage, and on gender in
26 language.

27 5. Most relevant for this report, I published two books on
28 language and law: *The English-Only Question: An Official Language*

1 *for Americans?* (Yale Univ. Press, 1990) and *You Can't Always Say*
2 *What You Want: The Paradox of Free Speech* (Cambridge Univ. Press,
3 2023). In addition, I served as lead author on what came to be
4 called "the Linguists' Brief" in *District of Columbia v. Heller*,
5 554 U.S. 570 (2008), a brief cited both by Justice Scalia in the
6 majority opinion, and by Justice Stevens in his dissent. I was a
7 co-author on another brief by professors of linguistics and corpus
8 linguistics, cited in *New York State Rifle and Pistol Ass'n. v.*
9 *Bruen* (No. 20-843, 2022), which Justice Breyer cited in his
10 dissent. In that dissent, Justice Breyer also quoted directly from
11 my essay "Corpus Evidence Illuminates the Meaning of 'Bear Arms'"
12 (*Hastings Constitutional Law Quarterly*, 46.3: 2019). I have spoken
13 about historical meaning and the Second Amendment at the Federalist
14 Society at the University of Chicago Law School, at the Neubauer
15 Symposium on Historical Semantics at the University of Chicago, at
16 Brigham Young University Law School, at Stanford University, and
17 at the conference "*Heller* after Ten Years" at Hastings College of
18 Law. I have also written opinion essays on historical meaning and
19 the Second Amendment for the *Washington Post* and the *Los Angeles*
20 *Times*. And I have submitted the following declarations and reports
21 in the following cases: *Ocean State Tactical, LLC, et al. v. State*
22 *of Rhode Island* (Case No. 1:22-cv-00246-JJM-PAS) (D. R.I.); *Hanson,*
23 *et al, v. District of Columbia, et al.* (Civil Action No. 1:22-cv-
24 02256-RC); *Delaware State Sportsmen's Association, Inc., et al.,*
25 *v. Delaware Department of Safety and Homeland Security; Nathaniel*
26 *McQueen, Jr.* (C.A. No. 1:22-cv-00951-RGA, Consolidated); *National*
27 *Association for Gun Rights and Capen v. Baker* (Massachusetts, C.A.
28 No. 22-cv-11431-FDS); *NAGR and Flanigan v. Lamont, et al.*

1 (Connecticut: C.A. No. 3:22 CV 1118); *National Association for Gun*
2 *Rights, et al., v. Lopez* (Hawai’I, C.A. No. 1:22-cv-404-DKW-RT);
3 *Oregon Firearms Federation, et al, v. Kotek, et al.*, (lead case
4 with three additional, consolidated, Oregon, Case No. 2:22-cv-
5 01815-IM); and declarations on behalf of the State of California
6 in *Rupp, et al. v. Bonta* (Case No. 8:17-cv-00746-JLS-JDE), *Duncan,*
7 *et al. v. Bonta* (Case No. 3:17-cv-01017-BEN-JLB), and *Fouts, et*
8 *al.v. Bonta* (Case No. 3:19-cv-01662-BEN-JLB). In the past twenty
9 years I have also served as an expert in fourteen cases involving
10 document interpretation.

11 6. My recent essay, “Look It Up in Your *Funk and Wagnalls:*
12 *How Courts Define the Words of the Law,*” an analysis of how judges
13 incorporate information from dictionaries and digitized corpora as
14 they ascertain legal meaning, appears in *Dictionaries: Journal of*
15 *the Dictionary Society of North America*, vol. 43.2 (2022): 95–144.

16 7. This report is made based on my professional knowledge
17 and expertise, and on my research using accepted scientific
18 linguistic methodology in the field of Corpus Linguistics, the
19 analysis of one or more large, digitized corpora consisting of many
20 millions of words.

21 OPINIONS

22 SUMMARY OF OPINIONS

23 8. Historical evidence from a number of large textual
24 databases, or corpora, shows that during the Founding Era and the
25 Reconstruction Era, “arms” is used as a general term for weapons
26 (typically swords, knives, rifles, and pistols), but arms does not
27 include ammunition, ammunition containers, flints, scabbards,
28 holsters, armor, or shields, which are included in the category

1 "accoutrements." Nor does "arms" refer to parts of weapons, for
2 example the trigger of a gun, the hilt of a sword, or the cartridge
3 box or fixed or removable magazine that holds the bullets.

4 9. Instead, when this additional equipment is mentioned, we
5 find phrases like "arms and ammunition"; "arms and accoutrements";
6 or "arms, ammunition, and accoutrements." The phrase "arms and
7 accoutrements" is frequently used in military contexts to
8 distinguish weaponry and related equipment from the rest of a
9 soldier's or militia member's equipment. For example, militia
10 requirements often specify that soldiers have certain arms
11 (pistols, swords, rifles, according to their rank) as well as
12 certain "accoutrements" (the word is typically plural), including
13 horses, saddles, cartridge cases or boxes, scabbards, flints, and
14 so on. "Cartridge boxes" and "cartouch boxes" are the terms used
15 for ammunition containers in the eighteenth and nineteenth
16 centuries and are analogous to today's "magazines." When "arms and
17 accoutrements" occurs as a phrase, there is a clear distinction
18 made between weapons themselves and the soldier's cartridge boxes
19 or cartouch boxes, which are typically identified as accessories
20 along with scabbards, saddles, holsters, belts, caps, pouches, and
21 the rest of a soldier's equipment. When the term "accoutrements"
22 occurs alone, as in "the accoutrements of a soldier," it functions
23 as a general term that may include both arms and accessories.

24 10. I have found no lexical evidence that repeater air guns
25 were used as military weapons in England or America in the Founding
26 Era, or that they were used as weapons of personal self-defense at
27 that time.

28

THEORY AND METHODOLOGY

1
2 11. Corpus linguistics as a field developed in the late
3 1960s, when scholars began using computer programs to analyze large
4 bodies of digitized text. Initial work in corpus linguistics did
5 not typically involve legal issues. Literary scholars, taking
6 advantage of the ability of computers to search large digitized
7 databases, facilitated their analysis of print materials by
8 developing computerized concordances to the works of Shakespeare,
9 Milton, and other major English writers. They plotted the frequency
10 of words and phrases in order to develop a picture of an author's
11 style, and to determine authorship of a particular work when the
12 provenance was in doubt. Soon, in addition to solving literary
13 mysteries, linguists successfully applied computerized textual
14 analysis in a number of criminal cases in the United States and in
15 England involving, for example, the authorship of a ransom note or
16 an email. Lexicographers, who began compiling analog databases of
17 text in the late nineteenth century, began to digitize their
18 analogue data and to add to that material, assembling computerized
19 databases of historical and contemporary text and, more recently,
20 of spoken language as well, in order to arrive at more precise
21 definitions of the multiple senses of words and phrases.

22 12. The Oxford English Dictionary (OED) is the standard
23 dictionary of the English language compiled on historical
24 principles. As a graduate student at the University of Michigan in
25 1970, I coded analog texts from the relevant OED files to help
26 build the computerized database for the Dictionary of Early Modern
27 English, the period from 1500–1800 that is particularly relevant
28 to the language of the Founding Era. Today, major dictionaries like

1 the OED and the Merriam-Webster suite of dictionaries rely on
2 public databases of oral and written language, as well as their
3 own proprietary databases, in order to revise older definitions
4 and to track the spread of new words and meanings. The major
5 dictionary makers working on other languages use similar databases
6 in their own work.

7 13. Over the past twenty years, legal corpus linguistics
8 (LCL) has developed as a subset of corpus linguistics. LCL involves
9 the analysis of digitized corpora of current and historical English
10 to establish meaning—often referred to as “original public meaning”
11 —in statutes and in the Constitution. LCL often provides more
12 information about the meaning of words and phrases than can be
13 gleaned from dictionary definitions. Over the past decade, LCL has
14 become an important tool in helping to determine original public
15 meaning when such meaning is in doubt. In *Muscarello v. United*
16 *States*, 524 U.S. 125 (1998), we find an early use of computer
17 searching to help determine the meaning of a word in a statute. In
18 *Muscarello*, the Supreme Court considered whether “a person who
19 knowingly possesses and conveys firearms in a vehicle, including
20 in its glove compartment or trunk, can be deemed to be within the
21 scope of the statutory phrase ‘carries a firearm.’” To answer that
22 question in the affirmative, Justice Breyer searched two
23 computerized newspaper databases (Lexis/Nexis, for the *New York*
24 *Times*, and Westlaw, for “US News”) to clarify the meaning of the
25 words “carry,” “vehicle,” and “weapon.” In 2012, Judge Richard
26 Posner, of the Seventh Circuit, was perhaps the first jurist to
27 use a general internet search in order to determine a word’s meaning
28 in a statute. Not satisfied with the dictionary definition that

1 the government relied on in the case before him, Judge Posner ran
2 a Google search to confirm that the word "harbor" in the Immigration
3 Act of 1917 does not mean 'shelter,' as the government claimed,
4 but rather 'hide, conceal from view,' as he felt it must mean in
5 the context of the statute. *United States v. Costello*, 666 F.3d
6 1040 (7th Cir. 2012).

7 14. More principled, scientific database searches soon
8 followed, and in 2018 Justice Thomas Lee, of the Utah Supreme
9 Court, a long-time champion of corpus linguistics, together with
10 the legal scholar Stephen Mouritsen, summarized the latest research
11 in corpus linguistics and LCL as a way to determine ordinary
12 meaning, and more specifically, original public meaning, with more
13 clarity (Thomas Lee and Stephen Mouritsen, "Judging Ordinary
14 Meaning," *Yale Law Journal* 127(2018): 788–879). Jurists over the
15 past few years have found that in several cases, LCL proves more
16 useful than the period dictionaries (for example, the dictionaries
17 of Samuel Johnson and Noah Webster) that courts have often relied
18 on to determine historical meaning. LCL often supplements the
19 historical interpretations found in older dictionaries and in the
20 Oxford English Dictionary, as well, allowing a more precise
21 interpretation of historical text data.

22 15. In addition to the publication of several significant
23 law review articles by experts in the field of corpus linguistics,
24 there have been several conferences on legal corpus linguistics in
25 the past few years, and a number of continuing-education seminars
26 on LCL are now offered for judges and lawyers. As a result, corpus
27 linguistics has drawn increased attention from the courts,
28 including recent mentions in decisions in the Sixth, Seventh, and

1 Ninth Circuits, as well as a comment by Justice Alito in his
2 concurrence in *Facebook, Inc. v. Duguid*, 141 S. Ct. 1163 (2021),
3 where he suggested that LCL may one day provide a useful alternative
4 to the canons of interpretation.

5 16. Several large databases have come online in the past few
6 years that facilitate LCL research. Brigham Young University's
7 Center for Law and Corpus Linguistics hosts the Corpus of Founding
8 Era American English (COFEA), with more than 126,000 texts,
9 comprising close to 137 million words and covering the years 1760–
10 1799. BYU's Corpus of Early Modern English (COEME), with data from
11 1475–1800, contains over 40,000 texts and 1.1 billion words. For
12 the nineteenth century, the Corpus of Historical American English
13 (COHA), initially developed at BYU but now independent of that
14 institution, currently contains 475 million words of text from
15 1820–2020. The size of these databases continues to grow as more
16 works are digitized, coded, and added to the corpora. In compiling
17 this report, I reviewed each of these databases. Some of the corpora
18 provided data for some lexical searches, but not for others. The
19 examples cited in this declaration specify which corpus they are
20 drawn from.

21 17. Critics of LCL have objected that databases like COFEA
22 and COEME contain only texts written by "elites," whose language
23 may differ from that of "ordinary people" who do not write at all,
24 or who for various reasons do not write texts likely to be included
25 in the available corpora. It is certainly the case that many printed
26 books and periodicals, along with documents like the Constitution,
27 its amendments, and state and federal statutes, tend to be written
28 by educated specialists and professional writers. Although

1 "ordinary people" are expected to understand the language of the
2 Constitution, the Declaration of Independence, and other founding
3 documents, as well as the laws that govern the nation, such texts
4 typically require specialized knowledge. A reading-difficulty
5 formula like the commonly used Flesch-Kincaid scale suggests that
6 the Declaration of Independence and the Constitution require a
7 fifteenth-grade reading level, while according to one comprehensive
8 study, *Adult Literacy in America* (National Center for Education
9 Statistics, U.S. Department of Education, 1993;
10 <https://nces.ed.gov/pubs93/93275.pdf>), the average American adult
11 tends to have a seventh- or eighth-grade reading level. The
12 National Center for Education Statistics no longer uses "grade
13 level," instead rating literacy levels for Americans between ages
14 16 and 65 on a scale from 1 to 5; measurements conducted in 2003
15 showed no significant change from the 1993 NCES report; and the
16 most recent data, from 2014, confirm that most adult Americans
17 still test at or below level 2, with 4.1% testing *below* level 1
18 (<https://nces.ed.gov/pubs2019/2019179/index.asp>).

19 18. In order to counter any "elite" bias that may be found
20 in databases like COFEA, COEME, and COHA, I rely as well on five
21 digitized newspaper databases covering the period 1750–1900,
22 focusing for this report on the Founding Era and on the period of
23 Reconstruction after the passage of the Fourteenth Amendment.
24 Newspapers of the eighteenth and nineteenth centuries were the
25 principal means of communicating news and information. As such,
26 they embodied much of the language of the "ordinary people" who
27 read them. These early newspapers also provide researchers with
28 more data for the nineteenth century than a corpus like COHA, which

1 covers the same period but tends to focus on literary and
2 specialized texts rather than material for the general reader.
3 Because of changes in print technology and the spread of literacy,
4 Founding Era newspapers differed from the newspapers of the post-
5 Civil War era. Print technology remained relatively static between
6 the 1450s, when printing presses first appeared in Europe, and the
7 early nineteenth century, when the Industrial Revolution
8 drastically changed printing methods. The first printing press was
9 adapted by Gutenberg from the design of the traditional wine press,
10 and for centuries, printing was a slow and labor-intensive process.
11 As a result, newspapers in the founding era were small, averaging
12 four to eight pages. Publication was less frequent as well. Papers
13 tended to appear weekly or semi-weekly, rather than daily. Even
14 so, newspapers in the Founding Era and later, during
15 Reconstruction, provided average Americans with their principal
16 access to all the critical events and documents of their time,
17 along with coverage of local and international news. Although
18 newspaper subscribers tended to be "elites," newspaper content was
19 widely shared by word of mouth: ultimately, most Americans in the
20 Founding Era, including those who would be classified as illiterate
21 or poorly educated by today's standards, got their news from
22 newspapers.

23 19. Since the 1960s, database compilers have been able to
24 track contemporary spoken English more successfully, though none
25 of the databases for the Founding Era and for the post-Civil War
26 period cover the spoken language of Americans. Although scholars
27 can reconstruct some of that oral language, we are always doing so
28

1 through the lens of print versions purporting to represent or
2 comment on ordinary speech.

3 20. The newspaper databases that I have examined are Readex
4 Historical American Newspapers; Chronicling America (newspapers
5 digitized by the Library of Congress); the British Newspaper
6 Archive (compiled by the British Library); and two private
7 subscription services, newspapers.com and newspaperarchive.com.
8 For this report, both Readex and newspapers.com provide the most-
9 complete picture of the language of the Founding Era newspapers as
10 well as the ordinary language of the later nineteenth century.

11 21. All the databases contain some duplicates. COFEA and
12 COEME digitize multiple editions of the same work; and the
13 newspaper databases not only duplicate some, though not all, of
14 one another's content, but they also contain a number of duplicate
15 stories because, particularly in the period of newspaper growth
16 during the nineteenth century—in an age before the wire services
17 and syndication appeared, and before the larger papers began to
18 set up news bureaus in key areas around the country and around the
19 world—newspapers routinely printed each other's stories, sometimes
20 acknowledging their source and sometimes not (I exclude duplicate
21 citations from all my corpus searches). The databases often offer
22 more insight into the meaning of words and phrases than simply
23 going to a dictionary. Jurists from Learned Hand and Felix
24 Frankfurter to Frank Easterbrook and Richard Posner have warned
25 their colleagues not to make a fortress of the dictionary. Like
26 dictionaries, corpora are by necessity incomplete. LCL does not
27 replace dictionaries, but it does provide an important supplement
28 to them. Typical LCL analyses are conducted using a keyword and a

1 few words surrounding it, to supply context. Sometimes a limited
2 specific citation is ambiguous. And sometimes, a search of the data
3 set returns only small number of citations, perhaps ten or twenty
4 rather than a few hundred. In such cases, I supplement my use of
5 LCL with a reading of the full context of the citations in order
6 better to determine the keyword's meaning and the relevance of the
7 citation to the search question.

8 **THE MEANING OF ARMS AND ACCOUTREMENTS IN THE DATABASES**

9 22. In this report I look at the meaning of "arms" and
10 "accoutrements" as used individually, along with the phrase "arms
11 and accoutrements" in the Founding Era and during the period
12 following the adoption of the Fourteenth Amendment. I focus on
13 whether the term "magazine" as used today falls within the meaning
14 of the term "arms" when used on a standalone basis during those
15 eras, or whether the magazine and its earlier analogues, the
16 cartridge case and cartouch box, are treated as accessories or
17 accoutrements, rather than arms. I look as well at lexical evidence
18 in the Founding Era on the "air rifle," or "air gun," and assess
19 any lexical evidence about the availability and popularity of the
20 repeater air gun and the use of the term "magazine" in association
21 with such guns.

22 23. In the eighteenth and nineteenth centuries, "magazine"
23 was a word that meant "storehouse, depot." A magazine was a place,
24 often a building or warehouse, to store goods and supplies. When
25 used in a military sense, a magazine was a building designated for
26 storing gunpowder, and because gunpowder was an explosive
27 substance, it was subject to strict regulation: some towns banned
28 or heavily regulated the storage of gunpowder within city limits.

1 The word "magazine" was not typically used to refer to the
2 compartment of a gun containing bullets until late in the
3 nineteenth century. Although the term "magazine" appears in the
4 phrase "magazine wind gun" in 1744, that usage is marked as "rare"
5 by the Oxford English Dictionary, which also marks the phrase
6 "magazine wind gun" as "obsolete." References to "magazine guns,"
7 "magazine rifles," or "magazine carbines" appear as early as 1860,
8 when C. M. Spencer received a patent for a "magazine gun" (U.S.
9 Patent No. 27,393, March 6, 1860). B. T. Henry patented a "magazine
10 fire arm" that same year (U.S. Patent No. 30,446, Oct. 16, 1860).
11 And N. King patented another "magazine fire arm" in 1866 (U.S.
12 Patent 55,012, May 22, 1866).

13 24. Although patents for guns with "magazines" capable of
14 holding multiple bullets appear as early as 1860, in its separate,
15 main entry for "magazine," the OED gives the earliest use of
16 "magazine" meaning 'a bullet storage container' as 1868, typically
17 associated with weapons designed for military rather than civilian
18 use.

19 25. The data suggests that "cartridge boxes," analogous to
20 today's LCMs, would have been viewed as accoutrements, the
21 ancillary equipment associated with soldiering, or service in the
22 military.

23 26. The OED defines "accoutrements" as, "items of apparel;
24 (more generally) additional pieces of dress or equipment,
25 trappings; (Military) the outfit of a soldier other than weapons
26 and garments." [OED online, s.v. "accoutrement"; the word typically
27 appears as a plural.]
28

1 27. Thus, the military sense of “accoutrements” generally
2 refers, not to weapons, but to other accessories worn or carried
3 by soldiers. The OED illustrates this second, military, sense, with
4 an example from the Duke of Wellington’s dispatches in 1813: “In
5 order to collect the wounded and their arms and accoutrements.”
6 Here Wellington, widely recognized as a consummate soldier, and
7 who would soon defeat Napoleon at the Battle of Waterloo in 1815,
8 makes a clear distinction between “arms” and “accoutrements.”

9 28. The OED definitions are instructive. But in order to
10 determine more specifically whether the term “accoutrements”
11 included “cartridge boxes,” the predecessor to modern magazines, I
12 consulted two digitized historical databases: COFEA and COEME. A
13 COFEA search returns these examples where “cartridge boxes” and
14 “cartouch boxes” are specifically included in the category of
15 accoutrements, not arms:

- 16 a) 1774 – “The cartouch boxes and other military
17 accoutrements belonging to the noncommissioned officers
18 and privates....” (Journals of the Continental Congress).
- 19 b) 1774 – “The cartouch boxes and every other species of
20 military accoutrements annexed to the persons of the
21 officers and soldiers of General Burgoyne’s army.”
22 (Journal of the Continental Congress).
- 23 c) 1776 – “The General is surprised to find the Militia
24 applying for Cartouch Boxes and other Accoutrements.”
25 (George Washington, General Orders, February 17).
- 26 d) 1777 “Many of their Arms are indifferent, and almost
27 the whole [of Washington’s troops] are destitute of
28 pouches and Other necessary Accoutrements.” (George
Washington, Letter to John Hancock, October 10–11; the
pouches in question are ammunition holders).
- e) 1777 – “The officers and men were to ... deliver up their
arms, the cartouch boxes and other military
accoutrements....” (William Duer, Congressional
Resolution: A State of Facts, December).

1 f) 1778 – “[T]he board, on the 17th of April, impowered
2 a Capt. Starr of Middleton in Connecticut to receive a
3 quantity of public leather of Colo. Trumbull, and get it
4 made up into shoes and accoutrements, half of each, the
5 cartridge boxes upon the new model; and to send on both
6 to the main army...” (Timothy Pickering, Letter to George
7 Washington, June 9, 1778. At the time, cartridge boxes
8 were made of wood or leather, or a combination of the
9 two).

10 g) 1783 – “And as to cartridge boxes and other leathern
11 accoutrements, saddles & other furniture for dragoons...”
12 (Timothy Pickering, Letter to George Washington, April
13 22).

14 29. And COEME adds this example, where “cartridge box”
15 appears in a list that includes “accoutrements” but not “arms”:

16 a) 1788 – “If you could only tell us how to keep papa at
17 home, my drum, spontoon, cartouch box, and accoutrements,
18 should all be yours.” (*The Children’s Friend, Translated
19 from the French*).

20 30. My review of the corpora also confirmed that
21 “accoutrements” are regularly referred to separately from “arms.”
22 A COFEA search for the occurrence of “accoutrements” within 6 words
23 of “arms” returned 873 hits (including a small number of
24 duplicates). A similar search of COEME returned 126 hits, the
25 earliest from 1656. I determined that the two search terms, “arms”
26 and “accoutrements,” often appear together as a single phrase,
27 “arms and accoutrements,” typically in military contexts having to
28 do with an army or militia unit. “Accoutrements” often occurs in a
list alongside, but separate from, ammunition: “arms,
accoutrements, (and) ammunition,” though when ammunition is not
listed separately, the term “accoutrements” will generally include
ammunition. The second OED citation for “accoutrements,” dated
1902, differentiates “ammunition” from “accoutrements”: “When they
landed they brought on shore besides a quantity of ammunition

1 and accoutrements...and large stores of flour, sugar and tobacco,
2 &c." (G. S. Whitmore *Last Maori War* i. 4).

3 31. "Arms" as a stand-alone term refers to weapons. "Arms"
4 almost never includes ammunition or ammunition storage containers
5 such as cartridge boxes. These are the three examples that a COHA
6 search returns:

7 a) 1821 - "It is necessary to obtain ammunition, arms and
8 accoutrements, and as many horses as you can get"
9 (William Dobein James, "A Sketch of the life of Brig.
Gen. Francis Marion and a history of his brigade").

10 b) 1909 - "Lyon was ordered to deliver to Governor Yates
11 10,000 stand of arms with accoutrements and ammunition."
12 (Robert J. Rombauer, "The Union Cause in St. Louis in
1861).

13 c) 1949 - "It will be necessary that arms,
14 ammunition, accoutrements, tents and camp equipage be
15 deposited there for them the troops." (Francis F. Beirne,
"War of 1812").

16 32. The "cartridge box" or "cartouch box"—the precursor to
17 today's "magazine"—is typically mentioned in lists of
18 accoutrements, often in connection with other items worn with a
19 soldier's uniform. The "cartridge box" almost never appears to be
20 included among a soldier's weapons. The OED defines "cartridge box"
21 as "a box for storing or carrying cartridges; the case in which a
22 soldier carries his supply of cartridges" (OED online; this
23 definition covers "cartouch box" as well). The OED cites the
24 definition in Smyth and Belcher's *Sailor's Word-Book* (1867) to
25 illustrate its function. Here is the full definition of "cartridge-
26 box" in that dictionary of navy terminology: "a cylindrical wooden
27 box with a lid sliding upon a handle of small rope, just containing
28 one cartridge, and used for its safe conveyance from the magazine

1 to the gun-borne to and fro by the powder-monkeys (boys) of old.
2 The term is loosely applied to the ammunition-pouch" (Admiral W.
3 H. Smyth and Vice-Admiral Sir E. Belcher, *The Sailor's Word-Book:
4 An Alphabetical Digest of Nautical Terms*, London, 1867; see ¶ 55,
5 below, for the authors' definition of "magazine" as a gunpowder
6 storeroom either on land or on a ship). The OED offers an 1892
7 citation for "magazine" as the equivalent of a cartridge box,
8 calling such usage "obsolete and rare": "W. W. Greener, *Breech-
9 loader* 184 Cartridges are best carried in a magazine of solid
10 leather" (OED online, s.v. magazine, IV (d)). By that time,
11 "magazine" was more typically used in the sense we use it today,
12 "A container or (detachable) receptacle in a repeating rifle,
13 machine-gun, etc., containing a supply of cartridges which are fed
14 automatically to the breech" (OED online, s.v. magazine, sense IV
15 (b)).

16 33. A search of Readex America's Historical Newspapers for
17 "cartridge box," and the synonymous "cartouch-box," for the
18 Founding Era years 1750–1790 returns 176 citations. including
19 multiple duplicates. A Readex search for the period after the
20 adoption of the Fourteenth Amendment, from 1868–1890, returns 1,306
21 citations, also with many duplicates. The following examples show
22 instances where "cartouch boxes" or "cartridge boxes," are
23 categorically separate from arms or appear in the list of
24 accessories to arms (examples (a), (b), (d), (e), (g), (h), (i).
25 Note that in example (d) the list separates small arms from
26 cutlasses as well. And examples (f), (j), (k), (l), (n), (o), (p),
27 (q), and (r) clearly show that cartridge boxes are accoutrements,
28 not arms:

- 1 a) 1756 – “Every such Male Person . . . provide himself with
2 one well fixed Musket, or Fuzee, with a Worm and Priming
3 Wire, one Cartouch Box, with nine charges of Gun Powder,
4 and Ball suitable therein, and three good Flints ... and
5 shall keep such Arms and Ammunition by him, in good
6 Order.” *Pennsylvania Gazette*, May 13, 1756.
- 7 b) 1774 – “That each man be provided with a good firelock
8 and bayonet fitted thereon, half a pound of powder, two
9 pounds of lead, and a cartouch box, or powder-horn and
10 bag for ball, and be in readiness to act on any
11 emergency.” *Proceedings of the Continental Congress*,
12 *Pennsylvania Journal*, December 21, 1774.
- 13 c) 1775 – “That each Inhabitant, or Person, as aforesaid,
14 who shall provide Arms for himself, well fixed with a
15 good Bayonet and Cartouch-Box, shall be paid a minimum
16 of 10s.” *The Massachusetts Gazette*, May 19, 1775.
- 17 d) 1775 – “We hear from Charlestown, South-Carolina, that
18 on the 21st of March, at Night, about eight Hundred Stand
19 of Small Arms, 2 Hundred Cutlasses, and all the Cartouch-
20 Boxes, fit for Service, with several Bundles of Match &
21 some Flints, were taken out of the public Armoury.” *New
22 Hampshire Gazette*, June 2, 1775.
- 23 e) 1775 – “Deserted from Colonel Woodridge’s regiment . . .
24 Martin Nash . . . carried away a long gun of Gen.
25 Pomeroy’s make, a cartridge box and good stock of
26 ammunition belonging to the province.” *New England
27 Chronicle*, November 9, 1775.
- 28 f) 1778 – “numbers of the cartouch-boxes and several other
articles of military accoutrements annexed to the persons
of the non-commissioned officers and soldiers in General
Burgoyne’s army, have not been delivered up.”
Massachusetts Spy, February 19, 1778.
- g) 1778 – “List of Necessaries and Accoutrements for each
Horseman: 1. A well-tempered sword . . . 2. A carbine,
fusee, or short blunderbuss . . . 3. A pair of pistols
and holsters. 4. A sword-belt—a belt for the carbine . .
. 5. A cartridge-box to buckle round the waist, with
twelve tin pipes for the cartridges. 6. A helmet . . .
7. A saddle...” *New-Jersey Gazette* March 25, 1778.
- h) 1785 – “A Neapolitan officer was killed in the same
engagement by a cartouch box taking fire while charging
the guns.” *South-Carolina Weekly Gazette*, August 4, 1785.

- 1 i) 1787 – Abstract from the Militia Law. “That every non-
2 commissioned officer and private soldier of the said
3 militia . . . shall equip himself . . . with a good fire-
4 arm, with a steel or iron ramrod, a spring to retain the
5 same, a worm, priming wire and brush, a bayonet fitted
6 to his fire-arm, and a scabbard and belt for the same, a
7 cartridge box that will hold fifteen cartridges at least,
8 six flints, one pound of powder, forty leaden balls
9 suitable for his fire-arm, a haversack, blanket, and
10 canteen.” *Massachusetts Gazette*, February 2, 1787.
- 11 j) 1787 – “All persons liable to do Militia Duty . . . must
12 provide themselves with proper arms and accoutrements,
13 viz. a musket and bayonet, a cartouch box or pouch that
14 will contain twenty-four cartridges.” *State Gazette of
15 South Carolina*, July 16, 1787.
- 16 k) 1868 – “Government Sale at Watertown Arsenal Mass. . . .
17 Lot of cavalry accoutrements, consisting of Cartridge
18 Boxes, Pistol Holsters, Sabre Belts, Knots, &c.: lot of
19 Infantry accoutrements, consisting of Bayonet Scabbards,
20 Cap Pouches, Cartridge Boxes, Gun Slings.” *Evening Star*
21 (Washington, D.C.), January 9, 1868. [Perhaps the
22 clearest and most direct citation specifying cartridge
23 boxes as accoutrements.]
- 24 l) 1868 – Another government sale lists weapons (carbines,
25 muskets, rifles, and pistols) followed by a list of items
26 that are separate from weapons: “254 carbine cartridge
27 boxes,” carbine slings, cavalry sabre belts, bayonet
28 scabbards, cap pouches, “1,619 cartridge boxes,” “257
cartridge-box Belts,” gun slings, waist belts, “and
various other articles.” *Daily Morning Chronicle*
(Washington, D.C.), April 22, 1868.
- m) 1869 – This account describes the new French
“Mitrailleuse,” a field weapon which would seem to be
analogous to what we call a machine gun today, and the
cartridge box would be the equivalent of what today we
call a removable magazine. The Mitrailleuse is “a new
'ball syringe' in the shape of a small cannon. . . . It
contains thirty-seven common infantry cartridges,
arranged like cigars in a bundle. As soon as it is
attached to the breech of the cannon, the Mitrailleuse
is loaded. A man sitting on the carriage fires it by
turning a crank. . . . The crank is turned once more and
the cartridge box is removed from the cannon; a man to
the right takes it, removes it from the 'cigar box'; the
men to the left put a new one in.” *Daily Albany Argus*,
November 6, 1869.

- 1 n) 1870 – In this description of the French National Guard,
2 the writer notes the importance of rapid-fire rifles for
3 defense against the Prussian troops. Several paragraphs
4 later, the cartridge box is listed along with a guard's
5 uniform requirements: "a uniform will be obligatory for
6 all. Each one must be provided with a weather-proof
7 knapsack. . . , a cartridge-box or pouch, and a half-
8 woolen covering of the material of a tent." *New York*
9 *Tribune*, November 5, 1870.
- o) 1871 – Article about a memorial statue in which the
10 cartridge box is identified as part of the soldier's
11 uniform: "a soldier dressed in full uniform (overcoat,
12 cartridge box, belt, etc.,) leaning on his musket."
13 *Boston Journal*, November 12, 1870.
- p) 1872 – This list of government ordnance and ordnance
14 stores for sale groups weapons and accoutrements
15 separately, with cartridge boxes clearly identified as
16 accoutrements. The weapons for sale are muskets, rifled
17 muskets, and revolvers, followed by this comment, "Nearly
18 all the Starr's Revolvers and about two-thirds of the
19 other arms are in fair order." After the arms list comes
20 the list of accoutrements, consisting of cap pouches,
21 waist belts, bayonet scabbards, "cartridge box and belt
22 plates," musket and pistol appendages, "and an assortment
23 of other accoutrements and appendages." *Daily Morning*
24 *Chronicle* (Washington, D.C.), February 3, 1872.
- q) 1876 – In this description of a dead body of a soldier
25 found on a beach, the cartridge box is described as an
26 article of the deceased's uniform: "The body was clothed
27 in a blue overcoat and pants, and had on waist-belt,
28 cross-belt and cartridge-box." *Wilmington Morning Star*
(North Carolina), February 8, 1876.
- r) 1879 – The cartridge box forms part of a new military
uniform: "In the rest of the brigade the multiplicity of
belts is done away with, and in place is substituted a
simple body belt to which the bayonet scabbard and
cartridge box is attached. Equipped in such a uniform .
. . the brigade will present a solid and soldierly
appearance." *New Haven Register*, July 28, 1879.

1 34. In sum, in the vast majority of examples, arms referred
2 to weapons. Arms generally did not include ammunition or other
3 weapon accessories, including the cartridge box, the historical
4 analogue to the magazines. Instead, "cartridge boxes" and "cartouch
5 boxes" were considered "accoutrements," or accessories, like the
6 other military equipment (scabbards, belts, and so forth) that was
7 separate from, and did not include, arms.

8 35. But English usage is never simple. As linguists often
9 put it, "all grammars leak"—which is to say, there are always a
10 few counterexamples in the data. The existence of such outliers
11 does not invalidate the data or undercut an interpretation, it
12 simply shows that although the users of a language share a common
13 sense of what words and grammatical constructions mean, variation
14 in meaning and usage occurs in all human language. Given the volume
15 of samples, that is not surprising. Thus, for example, as in this
16 example from COFEA, "accoutrements" may occasionally encompass
17 arms:

18 1789 – A few years since, some boys, equipped in mock
19 military accoutrements, such as paper-caps, paper-belts,
20 wooden swords, &c. were beating up for recruits in
21 Parliament-street, Boston. [*The American jest book*: Part
I[-II]; emphasis added; here military accoutrements
includes toy swords.]

22 In these four citations from the Readex newspaper corpus, it is
23 not always clear from the context whether cartridge boxes are
24 arms or accoutrements, or they are simply not being categorized:

25 a) 1753 – "[E]very listed Soldier and other Householder .
26 . . . be always provided with a well-fix'd Firelock . . .
27 a Snapsach, Cartouch Box, one Pound of Powder, twenty
28 Bullets fit for his Gun, twelve Flints, a good Sword or
Cutlass, a Worm and Priming Wire, on penalty of six
Shillings for want of such Arms as is hereby required,

1 and two Shillings for each other Defect." *Boston Post-*
2 *Boy*, April 30, 1753. Considering citation (c), below,
3 dated 1756, it is likely that the fine for not having a
4 cartouch box in this example would not be the higher
fine for a weapons defect, but rather the lower fine of
2s. levied for "other defects."

5 b) 1755 – "whoever provides himself a good Firelock, Sword
6 or Hatchet, Belt and Cartridge-Box, to receive 16s.
7 more but the Arms to be returned when the
8 Service is over." *Boston Gazette*, April 21, 1755. It is
9 not clear from the context whether the cartridge boxes
10 are part of the arms that must be returned. In other
11 articles, cartridge boxes are treated as personal
12 items. They may bear a variety of decorations, and they
13 are sometimes listed along with other uniform items in
14 a description of a soldier's funeral.

15 c) 1756 – "That every Male Person . . . shall . . .
16 provide himself with one well fixed Musket, or Fuzee,
17 with a Worm and Priming Wire, one Cartouch Box with
18 nine Charges of Gun Powder, and Ball suitable therein,
19 and three good Flints . . . and shall keep such Arms
20 and Ammunition by him, in good Order, and fit for
21 Service, at all Times . . . under the Penalty of Twenty
22 Shillings for Want of a well fixed Musket or Fuzee,
23 with a Worm and Priming Wire, and Two Shillings for the
24 Want of every Cartouch Box, and Two Shillings for the
25 Want of nine Charges of Gun Power and Ball, and three
26 Flints, or any of them." *Pennsylvania Gazette*, May 13,
27 1756. The larger fine for lack of arms, along with
28 lower fines for missing Cartouch Boxes and ammunition,
suggest that cartouch boxes and cartridge boxes do not
belong to the category "arms" but are instead a form of
accessory.

21 d) 1785 – "His European weapons consisted of a musket,
22 bayonet and cartouch-box; a fowling piece; two pair of
23 pistols; and two or three swords or cutlasses." *History*
24 *of Capt. Cook's Voyage, Massachusetts Centinel*, January
25 15, 1785. Here cartouch box appears among the list of
26 weapons carried by an islander that Cook encountered.

25 36. Another cite, from 1777, refers to firearms and other
26 military accoutrements, implying, too, that arms may be a
27 subcategory of "accoutrements":
28

1 "any drafted soldier . . . who is unprovided with a fire-
2 arm, and other military accoutrements prescribed by the
3 militia law." Massachusetts, Acts & Laws, March Session,
4 Colony of Massachusetts Bay, 1777, p. 10 (but see Par.
5 38, ex. a).

6 37. But the fact that "arms" are sometimes included as a
7 subcategory of accoutrements, when "accoutrements" is used in its
8 most general sense, referring to 'the equipment of a soldier,' does
9 not mean that "arms" includes accessories or other "accoutrements."

10 38. Despite a handful of exceptions like those just cited,
11 in literally hundreds of cases, "arms" and "accoutrements" are
12 treated as separate categories of military gear. Here are some
13 typical examples from the Founding Era:

14 a) 1776 – "The Sum of ten Shillings ... to purchase said Fire
15 Arms and Accoutrements" (Acts and Laws March Session,
16 Colony of Massachusetts Bay; here arms and accoutrements
17 are separate, unlike the citation from 1777, above, from
18 the same source, where arms and accoutrements are lumped
19 together).

20 b) 1780 – "arms, ammunition, accoutrements, drums and fifes
21 in possession of the respective regiments" (George
22 Washington, General Orders January 22).

23 c) 1783 – "Such of the Noncommissioned officers and privates
24 ... shall be allowed the fire arms and accoutrements as an
25 extra reward" (George Washington, General Orders, May
26 1).

27 d) 1795 – "you will march ... with arms and accoutrements in
28 good order." (*Incidents of the Insurrection in the
Western Part of Pennsylvania, in the year 1774*. This
example is from COEME; the other examples in this list
are from COFEA).

e) 1798 – "To hold his powder and his ball, his gun,
accoutrements and all"[*French Arrogance, or, "The Cat
Let Out of the Bag*." This poetic example shows that the
idiomatic phrase arms and accoutrements has become part
of the general language available not just to military
specialists but also to poets and novelists.]

1 39. A newspapers.com search for “accoutrements” returns
2 1,392 hits. There are 692 matches for the exact phrase “arms and
3 accoutrements.”

4 40. Here is a mid-eighteenth-century British example from
5 the newspapers.com corpus where “arms” and “accoutrements” are
6 separate categories, as is “ammunition”: “This Militia shall
7 receive their Arms, Accoutrements, and Ammunition from the
8 Ordnance.” *Derby Mercury*, March 19, 1756, p. 3.

9 41. Similarly, there is this “ploughshares into swords”
10 example of a Cambridge University library to be converted to
11 military use: “[T]he new Building intended for a publick Library .
12 . . may be converted into a Barrack, and be supplied with
13 Provisions, Arms, and Accoutrements, at the Expence of the
14 University” (*Jackson’s Oxford Journal*, March 20, 1756, p. 2).

15 42. A search of “arms and accoutrements” in the Readex
16 database of America’s Historical Newspapers returns 3,103 hits from
17 1750–1800; and 2,036 hits from 1868–1880. This early example from
18 the colonial period appeared in the *Boston Evening Post* in 1750.
19 It distinguishes “arms” from uniforms, “accoutrements,” and other
20 military equipment: “All Gentlemen Volunteers [in Nova Scotia] . .
21 . shall be completely Cloathed in blue Broad Cloth, receive Arms,
22 Accoutrements, Provisions, and all other Things necessary for a
23 Gentleman Ranger.”

24 43. This cite from the *Pittsburgh Gazette* in 1789 reflects a
25 clear sense that “arms” and “accoutrements” are distinct categories
26 in the new nation as well: “The militia . . . must be considered
27 as the palladium of our security ... The formation and discipline
28 of the militia of the continent should be absolutely uniform; and

1 that the same species of arms, accoutrements, and military
2 apparatus, should be introduced in every part of the United
3 States.”

4 44. The text of a bill in Congress to establish a uniform
5 militia appeared in the *New York Journal* in 1790. It confirms the
6 Founding-Era sense that “arms,” “ammunition,” and “accoutrements”
7 make up distinct and separate elements of a soldier’s kit: “There
8 shall be appointed an adjutant general for each state ... whose duty
9 it shall be to ... report[] the actual situation of their arms,
10 accoutrements, and ammunition... Every non-commissioned officer or
11 private ... for appearing at such meeting or rendezvous without his
12 arms, ammunition, or accoutrements, as directed by this act, shall
13 pay the sum of twenty-five cents.”

14 45. And this cite from 1868 clearly distinguishes what counts
15 as “arms,” and what counts, separately, as “accoutrements”: “At
16 Watertown Arsenal, Massachusetts ... the following Arms, &c., will
17 be sold:10,699 rifled and smooth-bore Muskets ... ; 261 Carbines ... ;
18 305 Sabres ... ; lot of cavalry accoutrements, consisting of Bayonet
19 Scabbards, Cap Pouches, Cartridge Boxes, Gun Slings, Waist Belts,
20 &c.” *Daily Morning Chronicle* (Washington, DC).

21 46. The newspaper data parallels that of COFEA: the phrase
22 “arms and accoutrements” is almost always military. The phrase
23 sometimes occurs alongside “ammunition” as a separate list item.
24 “Accoutrements,” when it appears alone in a military context in
25 these newspapers, is a more general term, used for gear and rarely,
26 for arms as well.

27 47. It is clear that “arms and accoutrements” was, during
28 the eighteenth and nineteenth centuries, a common military phrase,

1 in both England and America. English often yokes terms commonly
2 found together into idiomatic pairings, sometimes called binomials,
3 like "bacon and eggs" or "salt and pepper." Such pairs take on the
4 characteristics of a formula and often appear in the same order
5 (this order may be dictated by logical succession of events, or it
6 may be random). "Eggs and bacon" is rarer than "bacon and eggs."
7 Such ordered pairs are called "irreversible binomials," though
8 there is often nothing but custom to prevent anyone from reversing
9 the order.

10 48. The word "accoutrements" typically occurs in a list after
11 "arms" (more rarely, it may occur before "arms" as well), and it
12 is typically a separate category from "arms" (though not always,
13 as the above examples show).

14 49. There are over 47,000 citations in newspapers.com for
15 "arms" or "accoutrements" in the period 1868–1900, and 15,799 cites
16 for the exact phrase "arms and accoutrements." Examining a
17 selection of the 15,799 citations of the phrase confirms that both
18 in England and the United States, "arms" and "accoutrements" are
19 separate categories. Here is one example from Gloucestershire, in
20 England, in 1868: "[A] letter was received from the Home Secretary,
21 pointing out the danger of permitting an accumulation of arms and
22 accoutrements to take place in prisons, and requesting, if there
23 were any arms or munitions of war stored in the prison, that they
24 should be removed to the nearest military depot." *Gloucester*
25 *Chronicle*, January 4, 1868, p. 2.

26 50. A similar cite from Iowa in 1868 states, "Persons having
27 in their possession any arms, accoutrements or ammunition belonging
28 to the State, are requested to return the same at once to the

1 Adjutant General, as proper places have been provided by the State
2 for the safe keeping of all such property." *Cedar Falls Gazette*
3 (Cedar Falls, Iowa).

4 51. And this, from Stroudsburg, Pennsylvania, also 1868,
5 states: "More than half of the Seventh Cavalry (Custer's) decamped
6 with their horses, arms, and accoutrements, and probably made their
7 way to the gold regions of Colorado and Montana." *The Jeffersonian*
8 (Stroudsburg, Pennsylvania).

9 52. The circa-1868 data confirmed the Founding Era data that
10 "accoutrements" is primarily a military term, and that when
11 "accoutrements" co-occurs with "arms," the terms refer to separate
12 categories of equipment.

13 53. One final note on "accoutrements": the United States
14 Supreme Court's recent decision in *New York State Rifle and Pistol*
15 *Association v. Bruen* (No. 20-843, 2022) references *North Carolina*
16 *v. Huntley* (25 N.C. 418, 1843), a decision by the North Carolina
17 Supreme Court affirming Huntley's conviction for carrying a shotgun
18 illegally "to the terror of the people," as forbidden by the Statute
19 of Northampton in 1328. In that decision, the North Carolina
20 Supreme Court stated, "A gun is an 'unusual weapon,' wherewith to
21 be armed and clad. No man amongst us carries it about with him, as
22 one of his everyday accoutrements—as a part of his dress."

23 54. In the citation above, "accoutrements" does not refer to
24 weaponry, but to the more general category of "everyday attire, or
25 clothing." The court is saying that it may be normal to wear a
26 shirt, or a belt, or shoes, but it is not normal to wear a gun in
27 North Carolina in 1843. It is legal—the court agrees—to carry a
28 gun for any lawful purpose, "either of business or amusement"—but

1 it is not normal or typical to do so. In affirming Huntley's
2 conviction, the court noted that his purpose in carrying a shotgun
3 was not a legal one.

4 **SOME EARLY USE OF THE WORDS "MAGAZINE" AND "MAGAZINE WIND GUN," ALONG**
5 **WITH INSTANCES OF REPEATER OR MAGAZINE GUNS IN THE FOUNDING ERA AND THE**
6 **YEARS 1860–1880**

7 55. Although most uses of the word "magazine" today still
8 refer to printed periodicals, during the nineteenth century, one
9 sense of the term "magazine" narrows, referring more and more to
10 an "ammunition container," a primary sense of the word in reference
11 to firearms today. The OED defines *magazine*, sense IV b, as "A
12 container or (detachable) receptacle in a repeating rifle, machine-
13 gun, etc., containing a supply of cartridges which are fed
14 automatically to the breech," with the earliest citation in this
15 sense from 1868 (OED online). It is noteworthy that as late as
16 1867, the British naval dictionary *The Sailor's Word-Book* retains
17 the older definition of "magazine" as a gunpowder storage facility
18 on land or at sea: "A place built for the safe-keeping of
19 ammunition; afloat it is confined to a close room, in the fore or
20 after part, or both, of a ship's hold, as low down as possible; it
21 is lighted occasionally by means of candles fixed in the light-
22 room adjoining it, and no person is allowed to enter it with a lamp
23 or candle" (Admiral W. H. Smyth and Vice-Admiral Sir E. Belcher,
24 *The Sailor's Word-Book: An Alphabetical Digest of Nautical Terms*,
25 London, 1867; the authors suggest that the placement of the
26 magazine room "as low down as possible" minimizes the risk of a
27 direct hit by enemy fire, and they note as well that no one is
28 permitted to carry a lighted flame into the ship's magazine room
to minimize the risk of an accidental explosion; see ¶ 32, above,

1 for the authors' definition of the term "cartridge-box" to refer
2 to the box or pouch used for transporting ammunition to a small
3 arm or a large gun). In addition, Smyth and Belcher define
4 "repeating fire-arm" as "One by which a number of charges,
5 previously inserted, may be fired off in rapid succession, or after
6 various pauses. The principle is very old, but the effective
7 working of it is new." Their definition—which does not mention
8 "magazine" in connection with such guns—acknowledges the existence
9 of earlier repeater guns, but judges them to have been ineffective.
10 Only the repeater guns designed and manufactured in quantity during
11 the period just before the dictionary's publication in 1867 are
12 actually judged to be "effective." The earliest example in COHA of
13 "magazine" referring to the ammunition compartment of a firearm is
14 dated 1882: "Solitary travelers still find it prudent to make a
15 display of a magazine rifle, and to keep a sharp eye on any roving
16 bands" (E. V. Smalley, "The New North-West," *Century*, September,
17 1882, pp. 769–79). COHA lists only 40 examples of "magazine rifle,"
18 most of them between 1890 and 1930. "Magazine gun" appears in the
19 COHA data 16 times between 1920–2010. And an 1893 editorial in the
20 *New York Times* refers to the army's "new magazine rifle" ("New
21 Powder for the Army," *New York Times*, December 7, 1893, p. 4).
22 However, as with a very few instances of "accoutrements" including
23 "arms," there are an extremely small number of early
24 counterexamples between 1744 and 1820 where "magazine" refers to
25 the bullet compartment of a gun—not a pistol or rifle using
26 conventional gunpowder and bullets, but an air gun.

27 56. The common, single-shot "wind gun" or "air gun" used
28 compressed air rather than ignited gunpowder to propel a ball, and

1 was much quieter than a traditional gun. Although the air gun did
2 not require powder or a match, the user had to re-charge the
3 compressed air cylinder once the air had been expended. The writer
4 Oliver Goldsmith found air guns to be useful for experiments in
5 physics, adding, "THIS, however, is but an instrument of curiosity,
6 and sometimes of mischief" (Oliver Goldsmith, *A survey of*
7 *experimental philosophy, considered in its present state of*
8 *improvement*, 1776). This newspaper story from the same period
9 reports that the scientist Joseph Priestley was injured by an
10 accidental discharge of an air gun: "We hear from Birmingham, that
11 the celebrated Dr Priestley, in a late trial of some experiments
12 with an air gun, was badly wounded by an accidental discharge of
13 it; the ball with which it was loaded, passing thro' one of his
14 hands, and shattering it to pieces" (*The Leeds Intelligencer and*
15 *Yorkshire General Advertiser*, June 5, 1781, p. 3).

16 57. A number of newspaper references suggest that its
17 relative quietness made the air gun popular with criminals, and
18 many references to air guns refer either to accidental discharges
19 or to criminal assaults (to cite an example of the latter, numerous
20 newspaper accounts in 1785 suggested that the weapon which broke a
21 window in an attack on King George III's carriage was an air gun).

22 58. Air guns typically fired a single shot. However, there
23 are references in the corpora to approximately eight inventors
24 between 1744 and 1820 who built air guns capable of firing anywhere
25 from 9 to 50 balls without reloading the ammunition or recharging
26 the compressed-air cylinder. Lexical evidence suggests almost all
27 of these repeater air guns were experimental models rather than
28 guns available for military or civilian use.

1 59. The OED dates the term “magazine wind-gun” to 1744 in a
2 reference to an air gun capable of firing more than one shot without
3 reloading. “Magazine wind-gun” is the term used by its inventor, a
4 man named L. Colbe. I have found no other examples of the term
5 “magazine wind gun” in any database, suggesting that the phrase is
6 a *hapax legomenon*, or “oncer,” terms that lexicographers use to
7 define a word that merits a definition, but that does not appear
8 anywhere else. Colbe also uses the term “magazine gun” for his
9 device, and that term does occur twice more in the data, suggesting
10 that it was never a common term. In an entry separate from its
11 entry for “magazine,” the OED marks the usage of both “magazine
12 wind gun” and “magazine gun” as “rare” and “obsolete”:

13 †magazine wind-gun *n.* *Obsolete rare* a type of wind-gun
14 fitted with a magazine of bullets. 1744 J. T. Desaguliers
15 *Course Exper. Philos.* II. 399 An ingenious Workman
16 call'd L. Colbe has very much improv'd it [sc. the old
17 Wind-Gun], by making it a Magazine Wind-Gun; so that 10
Bullets are so lodg'd in a Cavity...that they may
be...successively shot. [Oxford English Dictionary Online,
s.v. magazine wind-gun.]

18 60. The OED citation is from John Theophilus Desaguliers, *A*
19 *Course of Experimental Philosophy* (London, 1744), vol. II: 399–
20 402. Desaguliers, an assistant to Isaac Newton, was a member of
21 the Royal Society who specialized in mechanics and hydraulics. In
22 his treatise, Desaguliers offers an elaborate description of the
23 common, single-shot wind gun, more typically referred to as an air
24 gun, along with a three-page description of Colbe’s so-called
25 “Magazine Wind-Gun,” accompanied by a detailed drawing of the
26 mechanism of that gun. I have found no biographical information
27 about L. Colbe, inventor of the gun, and I have found no lexical
28

1 evidence that Colbe made more than one such gun, or if he did, that
2 it was produced in any significant numbers. Although Desaguliers
3 suggests that this “magazine gun” may be “the best Defence against
4 Highway-men, or Robbers that Travellers are aware of because when
5 they have cause to suspect them, they may make five or six
6 Discharges before a Thief can come within Pistol-Shot” (p. 402),
7 there is no evidence in any of the corpora that Colbe’s invention
8 was ever used either by the military or by civilians for individual
9 self defense. And there is no lexical evidence that the other
10 repeater air guns invented before the mid-nineteenth century were
11 ever more than curiosities until workable models of what we now
12 call machine guns or automatic weapons, using conventional
13 gunpowder and bullets, not compressed air and balls, were produced
14 during and after the Civil War.

15 61. As further confirmation that the magazine wind gun was
16 an anomalous and uncommon term, the OED definition of “magazine,”
17 updated most-recently in 2022, gives the earliest date of the sense
18 of the word as ‘a bullet-container’ as 1868. The corpus evidence
19 confirms that the magazine wind gun is correctly dated by the OED
20 as 1744, and I have found only two references to “magazine guns”
21 in the 1790s and early 1800s, confirming that this usage of the
22 word remained rare. “Magazine wind-gun” and “magazine gun” do not
23 appear in the COEME or COFEA corpora. I have found no information
24 in the corpora on the availability or popularity of such guns, but
25 the sparse lexical data suggests that they were not in common use.

26 62. A small number of references to later repeater wind guns
27 indicate they were made, not by armorers, but by clockmakers and
28 other highly-skilled artists or artisans. There is no indication

1 in the lexical evidence that repeater air guns were ever mass
2 produced or publicly available in the Founding Era. Several of the
3 citations I found treat these guns as curiosities and their owners
4 charge a small fee to anyone interested in looking at them (and in
5 one case, trying the gun out). Like Colbe's wind gun, they seem to
6 be rare inventions or curiosities, not weapons commonly available
7 to the military or to the American or English public. Besides
8 Colbe's gun, there are only two examples from the data that use
9 the word "magazine" in connection with a repeater air gun:

- 10 a) 1784 – "An artist of this town [Birmingham, Eng; the
11 artist is also identified as a compass maker] has lately
12 invented a magazine gun, that will discharge 45 bullets
13 separately in two minutes and a half, each bullet would
14 kill an ox at 40 yards distance; it is only charged once,
15 and aim is taken with more certainty than with the
16 fowling piece" (*New York Packet and American Advertiser*,
17 New York, NY, August 5, 1784).
- 18 b) 1815 – Advertisement for "one magazine Gun, when once
19 loaded can be discharged ten times in a minute" (*New York
20 Gazette*, Aug. 30, 1815).

21 63. The corpora contain just nine other references to
22 repeater air guns, none of them using the word "magazine":

- 23 a) 1783 – "Vienna. A watchmaker has invented an Air Gun,
24 which, without recharging, fires 15 times successively.
25 A corps of Hunters are to be armed with these guns." (*The
26 Newcastle Weekly Courant* (England), May 10, 1783, p. 3).
27 There is no follow-up to indicate whether the corps of
28 Viennese hunters did employ such a weapon.
- 29 b) 1792 – A number of American newspapers report on the
30 invention by a man, only identified as someone from Rhode
31 Island, of a repeating air gun capable of firing twenty
32 times without reloading. Here is one: "A person in Rhode
33 Island has invented an Air-gun, which can be discharged,
34 to do execution, 20 times, each time it is loaded.–As
35 nothing is cheaper, and easier to be transferred, than
36 the ammunition for the above pieces; and as saving much
37 expense, they recommend themselves strongly to the

1 Secretary at War, to be used in the approaching campaign
2 against the Indians" (*National Intelligencer: National*
3 *Gazette*, April 26, 1792, p. 3). There is no indication
4 that the Secretary of War knew of the invention or acted
5 on this suggestion. In fact, the following advertisement
6 suggests that the repeater air gun in question was
7 treated as a curiosity to be admired in a museum:

8 c) 1792 - "An air-gun, made by a young man, a native of
9 Rhode-Island, but now resident in this city [New York],
10 and which has been purchased by the subscriber, with a
11 view eventually to make it the property of the American
12 museum but wishes to reimburse himself in the following
13 manner, viz. He will exhibit it to the examination of
14 all persons desirous of viewing it, and of discharging a
15 shot, for which they shall pay six-pence. This gun, when
16 properly filled with air, will do execution twenty times,
17 without renewing the charge, and for several times will
18 send a ball thro' an inch board, at the distance of sixty
19 yards, to be seen at the subscribers, No. 13 Maiden Lane,
20 every day in the week, from 10 to 12 in the forenoon,
21 and from 3 to 5 in the afternoon, Tuesday and Friday
22 afternoons excepted, at which time it may be seen at the
23 Museum. Gardiner Baker, Keeper of the Museum" (*New York*
24 *Daily Advertiser*, February 9, 1792).

25 d) 1796 - "This carabine, lighter and smaller than the
26 common ones, is composed of two barrels, the smallest of
27 which contains 25 balls: and by a slight movement, they
28 pass from the one to the other; which ball, by lowering
the firelock, goes off with the same rapidity and carries
further than if fired with powder, without the least
noise, and that as often as a hundred times alternately,
during the space of 8 or 10 minutes; after which, the
reservoir being exhausted, it requires to pump in fresh
air, which takes up at most, 16 minutes (*The Independent*
Gazetteer (Philadelphia), August 6, 1796, p. 1). This
report adds that the repeater air gun, invented in the
reign of Emperor Joseph II (reg. 1765-1790), was
distributed to German troops, and that a sample weapon
was given to the Prince of Wales. The writer suggests
such guns would be useful at sea, since they are not
affected by dampness. But there is no indication in the
corpora that the Royal Navy ever considered such a
weapon.

e) 1797 - "An Air GUN has been constructed by Messrs.
Darlings and Wilkinson, of Cumberland, Rhode Island, upon
a plan entirely new. It can be discharged twelve times
with once loading, and will do execution with great

1 exactness, at fifty yards distance" (*Columbian Centinel*
2 (Boston), June 21, 1797).

3 f) 1801 – Multiple newspapers run the story of a repeater
4 air gun invented by a man known as Girardami, identified
5 as a peasant, artist, and watchmaker, and variously
6 referred to in gun history articles as Girandoni or
7 Girardoni (those spellings do not appear in the corpora
8 that I consulted): "Girardami, a Tyrolese peasant, and
9 self-taught artist, has invented an air-gun, which may
10 be discharged fifty times without pumping again. The
11 first twenty shots penetrate through a door at an
12 uncommon distance. Girardami makes these air-guns
13 himself, and likewise very good wooden watches" (*The*
14 *Caledonian Mercury* (Edinburgh), March 2, 1801, p. 2).

15 g) 1802 – The Newly-Invented Philosophical Air Gun That can
16 be used as Gun or Pistol, and discharge 20 balls with
17 one loading of the globe [that is, the compressed-air
18 cylinder], unless the charge of air is let out at once.
19 To be seen at Mr. Wyant's tavern, Market street, both
20 night and day. Admittance one fourth of a dollar
21 (*Telegraphe and Daily Advertiser* (Baltimore), March 17,
22 1802). "Philosophical" in this sense is often used to
23 refer to physicists experimenting with air guns to
24 measure air temperature, pressure, and volume, among
25 other things (see, for example, the work of Desaguliers
26 and the experiments of Goldsmith and Priestley mentioned
27 above).

28 h) 1807 – An ad for an auction includes, among other items,
"an air gun in compleat order which, when loaded will
discharge twenty five times after being pumped" (*American*
Citizen (New York, NY), May 28, 1807).

i) 1814 – One article in the corpora refers to a repeater
air gun taken by Lewis and Clark on their expedition to
the Pacific some eight years earlier, though the article
itself has nothing to do with the expedition. Instead,
this letter to the newspaper, criticizing a politician
for repeating the same things that he has been saying
for years, suggests as well that the Lewis and Clark
repeater air gun was used not for hunting or warfare but
rather to dazzle the Indians that the explorers
encountered with their "great medicine," thereby
ensuring a peaceful encounter: "he [the politician in
question], forthwith, becomes a "great medicine," as the
Shoshones called captain Lewis' air gun" (*National*
Advocate, Mar. 23, 1814). This article was written ten
years after the start and eight years after the

1 completion of the expedition. I did not find any
2 contemporaneous articles or firsthand accounts in the
3 corpora of such a gun or how it may have been used.

4 j) 1819 – Finally, there is an ad for a French repeater air
5 gun, for sale at 90 crowns: “which discharges 20 times
6 before the air is expended” (*Salem Gazette*
7 (Massachusetts), February 5, 1819).

8 64. To summarize: the corpus data shows that the terms
9 “magazine gun,” “magazine wind gun,” and “magazine air gun” are
10 extremely rare, occurring a mere three times in the corpora, along
11 with nine instances of repeater air guns that do not include the
12 word “magazine.” In contrast, there are approximately 1,200
13 references to the single-shot “air gun” in the several databases
14 that I consulted. Subtracting an estimated 150 duplicates, that
15 leaves about 1,050 references to a single-shot air gun. Two of the
16 references, ¶ 63 (b) and (d) in the list above, suggest that they
17 would be useful weapons for the military; one, ¶ 63 (a) above,
18 recommends their use to hunters; and one writer, Desaguliers, in
19 1744 (above, ¶ 60), speculates that the weapon could be useful
20 for self-defense. But for the most part, the references listed
21 above to early repeater guns seem to be treated as curiosities:
22 marvels of engineering constructed by clockmakers or other skilled
23 artisans, items to be seen in a museum or exhibited at a tavern
24 (see examples ¶ 63 (c) and (g) above). There is no lexical evidence
25 that they were manufactured in quantity. Their mechanisms were
26 complex, requiring a clockmaker’s skill to design, make, and
27 repair. And it took time to re-charge the air cylinder (one source
28 in the list above, ¶ 63 (d), suggests sixteen minutes for one such
repeater air gun, which would render them suboptimal in battle

1 situations). A couple of entrepreneurs charged admission to view
2 them (¶ 63 (c) and (g) above), and in one case, in ¶ 63 (c) above,
3 patrons may pay six pence to try shooting the gun. The writer who
4 cites the Lewis and Clark repeater gun (¶ 63 (i)) suggests that
5 the explorers used the gun to “impress” potentially hostile Native
6 Americans rather than as a weapon against them. It too may have
7 been a one-off. Furthermore, only three of the twelve references
8 to repeater air guns refer to the bullet container as a “magazine,”
9 a further indication that this usage of “magazine” is extremely
10 rare before 1820 (see ¶¶ 59 and 62, above).

11 65. With advances in the design and manufacture of guns and
12 ammunition, by the mid-nineteenth century, the term “magazine”
13 starts to appear in the sense ‘ammunition container’ (gradually
14 replacing the earlier terms “cartridge box” or “cartridge case”),
15 not in air guns but in ones using gunpowder and bullets.

16 66. COFEA and COEME do not cover the period past 1800. COHA,
17 which does have nineteenth century coverage, turns up only a
18 handful of uses of “magazine” in collocation with bullets, guns,
19 rifles, or weapons in the 1890s, and only three such uses cited
20 above before 1820. Most COHA cites for “magazine” refer to print
21 magazines; a smaller number from 1820–1880 refer to gunpowder
22 storehouses.

23 67. Searching the word “magazine” in newspapers.com results
24 in more than 3.3 million hits, the vast majority of them also
25 referring to print journals. It is not currently possible to tease
26 out the subset of these citations to determine exactly how many
27 refer to weapons rather than print journals. In addition to the
28 patents granted in 1860 (see above), I have found twelve citations

1 in newspapers.com for "magazine carbine" and "magazine rifle" from
2 1860 to 1880:

- 3 (a) 1864 – Advertisement for "Henry's Magazine Rifle, 15
4 shots" along with other firearms. Chicago Tribune,
5 January 25, 1864, p. 1.
- 6 (b) 1864 – The War Department establishes a Board of
7 Officers "for the purpose of examining, testing and
8 recommending for adoption a suitable breech-loader for
9 muskets and carbines, and a repeater or magazine
10 carbine." New York Times, Dec. 22, 1864. A few other
11 newspapers carry notices of this commission and later
12 report on its findings.
- 13 (c) 1865 – "The Meriden Manufacturing Company have a
14 contract for 5,000 breech-loading magazine carbines,
15 Trippett's patent, for the State of Kentucky." Sunbury
16 (Pennsylvania) Gazette, June 3, 1865, p. 3. No follow-up
17 information in the corpora.
- 18 (d) 1866 – "The Board would be unwilling to dispense
19 entirely with magazine arms, and as these same can be
20 used ordinarily as single-loaders." The military Board of
21 Officers (see (a), concluded that the repeater gun
22 patented by Spencer had promise, though it was not yet
23 ready for service until improvements could be made to the
24 mechanisms. Chicago Tribune, Dec, 19, 1866, p. 4.
- 25 (e) 1868 – Report of another trial of various weapons under
26 the auspices of the Board of Officers, including
27 "magazine and single breech loaders," (one of them
28 patented by Spencer), . New York Daily Herald, July 7,
1868, p. 8.
- (f) 1873 – Marksmanship contest sponsored by the National
Rifle Association includes one contestant firing a
"magazine carbine" and 36 contestants firing other
rifles. Brooklyn Daily Eagle, September 1, 1873, p. 4.
- (g) 1874 – Another NRA-sponsored contest at Creedmoor
offers a second prize in one competition for NY State
National Guard members, "an elegant Ward-Burton magazine

1 carbine" valued at \$50. New York Times, September 17,
2 1874, p. 2.

3 (h) 1877 – A museum in Birmingham, England, displays
4 Russian and Turkish rifles, including one Turkish
5 "Winchester magazine gun." Birmingham Daily Post,
6 December 29, 1877, p. 5.

7 (i) 1878 – A display in Sidney, Australia, of a variety of
8 firearms, including "some novelties from America . . .
9 [including] the Evans Magazine carbine." Sydney Morning
10 Herald, April 29, 1878, p. 5.

11 (j) 1879 – Under "Military Items," this notice: "An invoice
12 of Hotchkiss Magazine Carbines were received here this
13 week." Vancouver (Canada) Independent, August 14, 1879,
14 p. 5.

15 (k) 1880 – Under the heading "Maryland Military Affairs,"
16 report on the Maryland National Guard. "Each infantry
17 organization is armed with . . . breech-loading magazine
18 carbines." Baltimore Sun, January 16, 1880, p. 1.

19 (l) 1880 – Advertisement of F. Lassetter & Co. includes
20 "Evans' Magazine Military Carbines [that] will carry
21 twenty-two rounds." Otago (New Zealand) Witness, May 15,
22 1880, p. 1. The advertisement ran on multiple days in
23 multiple newspapers.

24 A number of these references are optimistic about the future of
25 such weapons, but several note that single-shot weapons will
26 predominate until the repeater mechanisms of these new rifles are
27 improved. Perhaps because the term "magazine" was largely
28 associated with military weapons, it remained relatively rare until
the 1920s. In any case, before mid-nineteenth century, bullets were
kept in "cartridge boxes," sometimes called "cartouch boxes," or
"cartridge cases" or pouches, and these bullet storage containers
were part of the general category of military accoutrements, not
arms.

1 68. I did try to estimate, indirectly, the frequency of the
2 gun-specific use of "magazine" by running a Google n-gram search.
3 Google's n-gram viewer searches the corpus of digitized Google
4 Books. It can give a rough approximation of a word's frequency in
5 relation to the other words in the Google Books corpus. The results
6 appear as a graph. The n-gram viewer is capable of showing the
7 relative frequency of several words on the same graph. My n-gram
8 search showed that between 1750–1880 the word "magazine" occurs
9 with a frequency of 0.0005121511% in 1789 and a frequency of
10 0.0007324368 in 1880.¹ A search for "magazine gun" returns no hits
11 for that same period. But a search for "magazine rifle" shows that
12 it does not appear in the database before 1813; there are few
13 instances from 1813 to 1820, with a frequency of 0.0000000185%;
14 and then a sharp rise between 1863 and 1880, when the frequency
15 reaches a high of 0.000000936%, reflecting both the increased use
16 of the revolver and the invention of repeating rifles and machine
17 guns during the Civil War.² Searching "magazine carbine" from 1860–
18 1880 shows the term to be even rarer than "magazine rifle," with
19 no occurrences in 1860, a peak frequency in 1866 of 0.0000002185%,
20 and a sharp drop thereafter.³ In contrast, an n-gram search for
21 "carbine" during those years shows that "carbine" occurs about 370
22 times more frequently than "magazine carbine" in the Google Books
23 corpus.⁴ The Google n-gram data shows that the use of "magazine"

24 _____
25 ¹https://books.google.com/ngrams/graph?content=magazine&year_start=1750&year_end=1880&corpus=en-2019&smoothing=3).

26 ²(https://books.google.com/ngrams/graph?content=magazine+rifle&year_start=1750&year_end=1880&corpus=en-2019&smoothing=3).

27 ³https://books.google.com/ngrams/graph?content=magazine+carbine&year_start=1860&year_end=1880&corpus=en-2019&smoothing=3

28 ⁴https://books.google.com/ngrams/graph?content=carbine&year_start=1860&year_end=1880&corpus=en-2019&smoothing=3

1 in the Founding Era was not associated with guns. By 1880, the
2 association with guns had become more common. Comparing the use of
3 "magazine" in 1880 in all contexts with the use of "magazine rifle"
4 that same year, it appears that the gun-related sense of "magazine"
5 represents approximately 0.0012% of the occurrences of the word
6 "magazine." In other words, the association exists in the period
7 surrounding the ratification of the Fourteenth Amendment, but it
8 is still a rare term.

9 69. The n-gram estimate, together with the sparse evidence
10 in COHA and the OED, all suggest that "magazine" in the sense
11 'device for holding bullets' forms only a very small subset of the
12 3.3 million occurrences of "magazine" in the newspaper corpora.
13 Although "magazine" in the gun-related sense shows a distinct rise
14 between 1864 and 1880, it took another thirty to forty years for
15 the 'bullet holder' sense of the word "magazine" to become more
16 common. Even then, text references to ammunition magazines often
17 appear, not in general discourse, but in legislation passed early
18 in the twentieth century restricting their size or use.

19 70. Most militia laws and regulations from the Founding Era
20 specify minimum requirements for soldiers' weapons, ammunition,
21 and accoutrements. In contrast, most laws regulating weapons in
22 the mid-nineteenth century restrict or ban specific kinds of
23 weapons, often enumerating them, sometimes in terms we find
24 colorful today but which were common at the time (Arkansas
25 toothpicks, Bowie knives, slung shots, swords in canes, pistols
26 capable of being concealed in a pocket). Occasionally, these laws
27 further identified such weapons as those used by "brawlers,"
28 thieves robbers, or others bent on illegal activities. Other

1 weapons restrictions follow the English tradition of limiting
2 possession of weapons by social class, nationality, or race.

3 71. I surveyed the gun regulations in the Duke Historical
4 Database (firearmslaw.duke.edu) from the early medieval period
5 through 1885 to see what terminology was used. Although militia
6 laws do specify weapons and other required accoutrements or pieces
7 of military equipment, including horses for the officers, those
8 laws that prohibit certain kinds of weapons during the two critical
9 periods (1776–1810; 1868–1880) do not single out *parts* of weapons.
10 Here is one exception, from a 1776 Maryland statute: “Resolved,
11 that no muskets or rifles, except by the owner thereof on his
12 removal to reside out of this province, or any gun barrels, gun
13 locks, or bayonets, be carried out of this province, without the
14 leave of the council of safety for the time being.” [Proceedings
15 of the Conventions of the Province of Maryland Held at the City of
16 Annapolis, in 1774, 1775, & 1776, 147]

17 72. None of the laws that prohibit weapons, aside from the
18 Maryland statute mentioned above, specifies a gun part or
19 ammunition case or accoutrements of any kind. Although many present
20 a list of banned or prohibited weapons, usually without defining
21 them (the assumption is that the reader knows what they refer to),
22 none of the laws mention cartridge boxes, bullets, barrels, or
23 other parts of any weapons.

24 73. Later however, in the decades after the introduction of
25 “magazines” as ‘carriers or holders of one or more bullets,’ laws
26 and regulations prohibiting or limiting their nonmilitary use
27 started to appear. A 1919 Maine law bans guns with loaded magazines:
28 “No person shall have a rifle or shotgun, either loaded or with a

1 cartridge in the magazine thereof, in or on any motor vehicle while
2 the same is upon any highway or in the fields or forests." [1919
3 Me. Laws 193, Possession of loaded shotgun or rifle in motor vehicle
4 on highways, fields or forests prohibited; penalty.]

5 74. Laws banning "machine guns" or firearms with "magazines"
6 capable of firing multiple times without reloading appear in
7 Vermont (1923 Vt. Acts and Resolves 127, An Act to Prohibit the
8 Use of Machine Guns and Automatic Rifles in Hunting, § 10); Rhode
9 Island (1927 R. I. Pub. Laws 256, An Act to Regulate the Possession
10 of Firearms), and Massachusetts (1927 Mass. Acts 145, An Act
11 Relative to Machine Guns and Other Firearms, ch. 326), among other
12 states. In defining "machine gun," Rhode Island's law bans
13 magazines which fire automatically or which hold more than twelve
14 rounds: "'machine gun' shall include any weapon which shoots
15 automatically and any weapon which shoots more than twelve shots
16 semi-automatically without reloading."

17 75. A 1933 Texas law bans "machine guns" capable of firing
18 "more than five (5) shots or bullets." [1933 Tex. Gen. Laws 219–
19 20, 1st Called Sess., An Act Defining "Machine Gun" and "Person";
20 Making It an Offense to Possess or Use Machine Guns, ch. 82]

21 76. Finally, the Federal Firearms Act of 1934, which
22 introduced a nationwide system of taxes, fees, and registration
23 requirements for the transfer of certain types of guns, specifies
24 in great detail the nature of the "firearms" covered by the statute,
25 including their barrel length and type of firing mechanisms: "(a)
26 The term 'firearm' means a shotgun or rifle having a barrel of less
27 than eighteen inches in length, or any other weapon, except a
28 pistol or revolver, from which a shot is discharged by an explosive

1 if such weapon is capable of being concealed on the person, or a
2 machine gun, and includes a muffler or silencer for any firearm
3 whether or not such firearm is included within the foregoing
4 definition." Note that the muffler or silencer is listed separate
5 from the firearm.

6 77. The Act also provides a specific definition of "machine
7 gun": "(b) The term 'machine gun' means any weapon which shoots,
8 or is designed to shoot, automatically or semiautomatically, more
9 than one shot, without manual reloading, by a single function of
10 the trigger." [48 Stat. 1236. 73rd Congress, 2nd Session, Ch. 757,
11 HR 9741].

12 **CONCLUSION**

13 78. To repeat, there is virtually no lexical data that I have
14 found showing that "arms" includes "accoutrements," "cartridge
15 boxes," "cartouch boxes," "magazines," or any parts of weapons. To
16 the contrary, while "arms" is used as a general term for weapons
17 (typically swords, knives, rifles, and pistols), it does not
18 include ammunition, ammunition containers, flints, scabbards,
19 holsters, armor, or shields, which are included in the category
20 "accoutrements." And there is no evidence from the small number of
21 mentions of the repeater air guns in the databases before the Civil
22 War that such guns were used in the Founding Era by the American
23 or British military, or that they were widely available in that
24 period to civilians for hunting or self-defense.

25 //

26 //

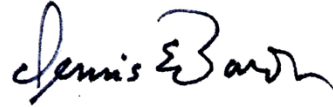
27 //

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

Executed on April 25, 2023, at Champaign, IL.



Dennis Baron