

Historical Thoughts on the Evolution of Firearms Regulations in the Late Nineteenth Century

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Abstract

The following paper is taken from Chapter 4 of my forthcoming book *Bearing Arms: A History of Gun Rights from Colonial Militias to Concealed Carry* (Prometheus Books, 2017). Chapter 4 addresses how the right to arms gradually transformed in the nineteenth century. Chapter 4 begins by examining how exactly the Founding Fathers' civic republicanism model of the right to arms transformed into a mere armed citizenry model. From this juncture, Chapter 4 explores how the right to arms also came to be associated with individual self-defense and preparatory armed carriage. While such a conception of the right to arms was recognized in the Antebellum Era South, the same could not be said in the North. It is here the paper begins.

Looking at the Antebellum Era as a whole, the historical takeaway is there were essentially two conceptions as to whether the right to arms embodied a right to preparatory armed carriage. While northerners, by and large, did not recognize such a right, particularly as it pertained to public places, many southerners perceived a preparatory right to armed carriage as being embodied within either the Second Amendment or their respective state constitution's "bear arms" provision. But as the United States came out of the Civil War and into the Reconstruction Era, southerners began to assimilate northern ideas and attitudes on the right to arms, the law, and armed carriage.¹ The South's gradual embrace of northern ideas and attitudes can be largely attributed to the increase of lawlessness and violence across the country.²

¹ A correspondent with New Orleans, Louisiana based newspaper *The Daily Picayune* captured this assimilation and noted how southern opinions on the "habit of carrying deadly weapons secretly or openly" had transformed following the Civil War. "Mid-Day Homicides," *The Daily Picayune* (New Orleans, LA), Apr. 5, 1871, pg. 6. The correspondent added, "Ninety-nine men in a hundred, trusting to the law for defence and protection, not being subject to personal fear, not intending or dreading attack or insult, unwilling to be loaded down with hardware, and fully sensible of their liability in moments of irritation and passion to say and do what they may be sorry for, have agreed to leave their arms at home—all save that best of defensive weapons, a civil tongue well-guarded." Ibid.

² In 1865 for instance, relying on the New York City Police Commissioners' Report which revealed a notable increase in deadly affrays, assaults, and batteries, the *New York Times* called for additional armed carriage restrictions. "The Police: Report of the Board of Metropolitan Police for 1864," *New York Times* (New York, NY), Jan. 5, 1865, pg. 8. A year later, when the 1866 New York City Police Commissioners' Report was released, the *New York Times* once again called for additional armed carriage restrictions. The *New York Times* rationalized if dangerous weapons were not so readily accessible in the midst of public affrays, assaults, and batteries, there would be less loss of human life. "The Police Commissioners' Report," *New York Times* (New York, NY), Jan. 5, 1866, pg. 4. See also "The Pistol and Crime," *Daily Arkansas Gazette* (Little Rock, AR), Jul. 27, 1881, pg. 2.

Southern legislators initially responded by modifying their respective constitutions.³ The southern states of Georgia, Texas, Tennessee, Missouri, Louisiana, North Carolina, Mississippi, and Kentucky, as well as the states of Colorado, Idaho, Utah, and Montana, adopted express constitutional language reinforcing the legislature's authority to regulate armed carriage, particularly weapons that could be concealed.⁴ This was followed by state and local governments introducing and enacting new legislation to curtail the practice of carrying dangerous weapons in public places.⁵ In Texas for example, Article I, Section 13 of the 1869 state constitution provided that "Every person shall have the right to keep and bear arms, in the lawful defence of himself or the State, under such regulation as the legislature may prescribe."⁶ Subsequently, relying on this very constitutional provision, Texas Governor Edmund J. Davis urged the state legislature to pass new armed carriage restrictions, stating:

I would, in this respect of prevention of crimes, call your attention to the provisions of section thirteen of the Bill of Rights, on the subject of bearing arms. The legislature is there given a control over the privileges of the citizen, in this respect, which was not in the old constitution. There is no doubt that to the universal habit of carrying arms is largely to be attributed the frequency of homicides in this State. I recommend that this privilege be placed under such restrictions as may seem to your wisdom best calculated to prevent the abuse of it. Other than in a few of the frontier counties there is no good reason why deadly weapons should be permitted to be carried on the person."⁷

³ See, e.g., Texas Constitution of 1869 art. I, § 13; Tennessee Constitution of 1870 art. I, § 26; Florida Constitution of 1885 art. I, § 20; Georgia Constitution of 1868 art. I, § 14. New states also included such provisions. See Idaho Constitution of 1889 art. I, § 11; Utah Constitution of 1896 art. I, § 6.

⁴ See Eugene Volokh, "State Constitutional Rights to Keep and Bear Arms," *Texas Review of Law and Politics* 11 (2006): 192, 211-14.

⁵ Brief of Thirty-Four Professional Historians and Legal Historians as Amici Curiae in Support of Respondents, at 15-18, *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010) (No. 08-1521).

⁶ Texas Constitution of 1869 art. I, § 13.

⁷ Edmund J. Davis, Message from Governor, April 29, 1870, *House Journal of the Twelfth Legislature of Texas: First Session* (1870): 19.

Strict armed carriage legislation was even passed within those states that did not maintain a police power or regulatory proviso in their constitution.⁸ Eventually, these new armed carriage laws were challenged in southern courts, but were generally upheld as a constitutional exercise of police power. Comparing and contrasting these Reconstruction Era court decisions from their Antebellum Era counterparts, there was a noticeable shift in legal language and doctrine. Again, during the Antebellum Era, some southern courts held that the legislature could prohibit the concealed carriage of dangerous weapons, but could not outright prohibit open carriage. But these courts were generally silent as to whether state and local governments could regulate aspects of open carriage—that is in what manner could the state and local governments restrict the open carriage of dangerous weapons? Did it matter whether the law restricted carriage in private, public or both? In the Reconstruction Era, southern courts began providing the answers and there developed a consensus that state and local governments could restrict the carrying of dangerous weapons in public places.⁹

Take for instance the Georgia Supreme Court, where previously in *Nunn v. State* the court was forthright in declaring the legislature could not prohibit the carriage of arms openly, but was silent as to whether the legislature could regulate any facet of open carriage.¹⁰ Nearly three decades later, the court addressed the matter in *Hill v. State*. At issue was an 1870 law that prohibited any person from carrying “any dirk, Bowie-knife, pistol or revolver, or any kind of deadly weapon, to any court of justice of any election ground or precinct, or any place of public worship, or any other public gathering...except militia

⁸ Brief of Thirty-Four Professional Historians and Legal Historians as Amici Curiae in Support of Respondents, at 15-18, *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010) (No. 08-1521).

⁹ See, e.g., Joel Tiffany, *A Treatise on Government and Constitutional Law* (1867): 394 (the “right in the people to keep and bear arms, although secured by...the constitution, is held in subjection to the public safety and welfare.”); John Norton Pomeroy, *An Introduction to the Constitutional Law of the United States* (1868): 152-53 (“But all such provisions, all such guarantees, must be construed with reference to their intent and design. This [Second Amendment] is certainly not violated by laws forbidding persons to carry dangerous or concealed weapons, or laws forbidding the accumulation of quantities of arms with the design to use them in a riotous or seditious manner.”). See also John Forrest Dillon, “The Right to Keep and Bear Arms for Public and Private Defense,” *Central Law Journal* 1 (1874): 259, 287 (“the peace of society and the safety of peaceable citizens plead loudly for protection against the evils which result from permitting other citizens to go armed with dangerous weapons.”).

¹⁰ 1 Ga. at 251.

muster grounds.”¹¹ By the time the Georgia Supreme Court was presented with *Hill*, the judges had become cognizant to the growing problem of southern violence. “I have always been at a loss to follow the line of thought that extends the guarantee to the right to carry pistols, dirks, Bowie-knives, and those other weapons of like character, which, as all admit, are the greatest nuisances of our day,” wrote Judge McCay.¹² But more importantly, the court significantly curtailed its pronouncement in *Nunn*.¹³ What the court rationalized is that any right to carry weapons did not supersede the right to peacefully assemble, vote, and worship in the public concourse “unmolested by terror, or danger, or insult.”¹⁴ For it to be the other way around—that is for the right to carry arms to be the equivalent of the rights to peacefully assemble, vote, and worship—would mean the “whole scheme of law and order, and government and protection, would be a failure, and that the people, instead of depending upon the laws and the public authorities for protection, were each man to take care of himself, and to be always ready to resist to the death, then and there, all opposers.”¹⁵

In *Andrews v. State*, the Tennessee Supreme Court arrived at virtually the same conclusion.¹⁶ At issue was a law that prohibited the carriage of a “dirk, sword-cane, Spanish stiletto, belt or pocket pistol or revolver” in both public and private.¹⁷ As it pertained to the carriage of such arms in private, the court concluded the law was unconstitutional because it would have punished individuals that purchased such weapons and carried them to their residence.¹⁸ In other words, the law was deemed unconstitutionally broad because it needlessly intruded into the right to keep and maintain such weapons.¹⁹ But as it pertained to the

¹¹ *Hill v. State*, 53 Ga. 472, 474 (1874). For the full statute, see *Public Laws Passed by the General Assembly of the State of Georgia, at the Session of 1870, with an Appendix*, Augustus Flesh ed. (1870): 42.

¹² *Hill*, 53 Ga. at 475.

¹³ It is worth noting that the *Hill* court would have dismissed the case outright if it wasn’t for the precedent set in *Nunn*. *Ibid.*, 474. (“Were this question entirely a new one, I should not myself hesitate to hold that the language of the constitution of this state, as well as that of the United States, guarantees only the right to keep and bear the “arms” necessary for a militiaman.”).

¹⁴ *Ibid.*, 478.

¹⁵ *Ibid.*

¹⁶ 50 Tenn. 165 (1871).

¹⁷ *Ibid.*, 171. For the full statute, see *A Compilation of the Statute Laws of the State of Tennessee*, vol. 2, Seymour D. Thompson and Thomas M. Steger eds. (1873): 91.

¹⁸ *Andrews*, 50 Tenn. at 178.

¹⁹ *Ibid.*, 179.

prohibition in public, the court found the law to be a constitutional exercise of government police power.²⁰ “While the private right to keep and use such weapons as we have indicated as arms, is given as a private right, its exercise is limited by the duties and proprieties of social life, and such arms are to be used in the ordinary mode in which used in the country, and at the usual times and places. Such restrictions are implied upon their use as are thus indicated,” wrote Judge Freeman.²¹ Even in Texas, known for its frontier way of life, it was concluded that state and local governments could prohibit the carrying of dangerous weapons in public. Relying on a combination of precedent, contemporaneous legal commentary, and the historical genesis of the Statute of Northampton, the Texas Supreme Court concluded that the state’s armed carriage law did not violate the Second Amendment.²² The court reasoned that if anything the law promoted liberty: “It is useless to talk about personal liberty being infringed by laws such as that under consideration. The world has seen too much licentiousness cloaked under the name of natural or personal liberty; natural and personal liberty are exchanged, under the social compact of states, for civil liberty.”²³

Then there was the Missouri Supreme Court case of *State v. Reando*. The issue before the court was the constitutionality of an 1874 state law that prohibited the concealed carriage of any firearms or dangerous weapons into “any church or place where people have assembled for religious worship, or into any schoolroom or into any place where people may be assembled for educational, literary or social purposes, or to any election precinct, on any election day, or into any court room, during the sitting of court, or into any other public assemblage of persons met for other than militia drill...”²⁴ The law was subsequently challenged on the grounds it violated Article I, Section 8 of the Missouri Constitution of 1865, which provided the “right of the citizens to bear arms in defence of themselves and the lawful authority of the State.”²⁵ Judge Elijah H. Norton, a delegate to the Missouri Constitutional Convention of 1861 and the

²⁰ Ibid., 182.

²¹ Ibid., 181-82.

²² 35 Tex. 473, 475-81 (1872).

²³ Ibid., 477.

²⁴ *The Revised Statutes of the State of Missouri, 1879*, vol. 1 (1879): 224. The law also prohibited the general carriage of firearms or dangerous weapons “when intoxicated or under the influence of intoxicating drinks...” Ibid.

²⁵ Missouri Constitution of 1865 art. I, § 8.

father of the Missouri Constitution of 1875, upheld the law as a constitutional exercise of government police power.²⁶ While Norton recognized the court was merely presented with a challenge to a concealed carriage law, he noted that the practice of carrying dangerous weapons habitually, whether open or concealed, was so repugnant to the “moral sense of every well-regulated community” that society would be “shocked by any one who would so far disregard it, as to invade such places with fire arms and deadly weapons...”²⁷ Judge Norton then concluded his opinion by noting the presumptive constitutionality of public firearm regulations in general:

The statute in question is nothing more than a police regulation, made in the interest of peace and good order, perfectly within the power of the legislature to make. Such, or similar statutes, have been upheld in all the States, so far as we have been able to ascertain...

The right to keep and bear arms necessarily implies the right to use them, and yet acts passed by the legislature regulating their use, or rather making it an offense to use them in certain ways and places, have never been questioned...

The constitution protects a person in his right of property, and instances are numerous where the legislature has assumed to regulate and control it. A person has a right to own a mischievous or dangerous animal; yet under our statute, if the owner thereof, knowing its propensities, unlawfully suffer it to go at large or shall keep it without ordinary care, and such animal while so at large and not confined, kill any human being, such owner is liable to be punished as for manslaughter in the third degree. It is provid[ed] in the constitution of the United States that the freedom of speech and of the press shall not be abridged by any law of Congress, and yet this provision has never been so

²⁶ “The Supreme Court: On Carrying Concealed Weapons,” *The State Journal* (Jefferson City, MO), Apr. 12, 1878, pg. 2. This is the only copy of the opinion that seems to have survived. The case cannot be found in the Missouri Supreme Court Historical Database, but was briefly reported in a contemporaneous issue of *The Central Law Journal*. See “Abstract of Decisions of the Supreme Court of Missouri: October Term, 1877,” *The Central Law Journal* 6 (1878): 16 (“The act of the legislature prohibiting the conveying of fire-arms into courts, churches, etc....is constitutional. It is a police regulation not in conflict with the provisions of the organic law....*State v. Reando*.”).

²⁷ “The Supreme Court: On Carrying Concealed Weapons,” *The State Journal* (Jefferson City, MO), Apr. 12, 1878, pg. 2.

construed as to deny to Congress the power to make it offence for libelous matter to be published, rendering the offender liable to prosecution and punishment for the libel so published...²⁸

The overarching point Norton was trying to make is that all rights are subject to some form of reasonable regulation in the interest of the public good. This is particularly the case whenever freedom of action can negatively impact the community at large. Ultimately, what the decisions in *Hill v. State*, *Andrews v. State*, *English v. State*, and *State v. Reando* historically inform is, as the United States progressed into the Reconstruction Era, southern courts gradually came to embrace northern attitudes on the law and armed carriage. This is not to say each and every southern court fully expounded on the law and armed carriage. In a number of cases, the respective court was only faced with the constitutionality of a concealed carry prohibition, and summarily upheld the law on the grounds it did not prohibit all forms of armed carriage.²⁹ But as southern armed carriage laws evolved to encompass aspects of open carriage, so too did its jurisprudence.³⁰ This in turn led to the formulation of a national standard on the law and armed carriage. This national standard provided that state and local governments retained broad police power to regulate dangerous weapons—that is so long as the legislature did not utterly destroy the armed citizenry model of the right to arms or fail to allow for armed self-defense in extreme cases.³¹ As jurist John Forrest Dillon summarized the matter in the first law review article to address the right to arms: “It is within common experience that there are circumstances under which to disarm a citizen would be to leave his life at the mercy of a treacherous and plotting enemy. If such a state of facts were clearly proven, it is obvious it would be contrary to all our notions of right and justice to punish the carrying of arms [in that instance],

²⁸ Ibid.

²⁹ See, e.g., *Ex Parte Cheney*, 90 Cal. 617 (1891); *State v. Speller*, 86 N.C. 697 (1882); *State v. Wilmorth*, 74 Mo. 528 (1881); *Fife v. State*, 31 Ark. 455 (1876).

³⁰ In addition to the aforementioned cases, see Joshua H. Hudson, “How to Put a Stop to Murder,” *The Weekly News and Courier* (Charleston, SC), Jan. 12, 1898, pg. 5 (South Carolina Judge of the Courts of Common Pleas writing: “There is no constitutional right guaranteed to the citizen to carry on the person, openly or concealed, pistols, dirks, daggers, razors or brass knuckles.”).

³¹ See, e.g., *Andrews*, 50 Tenn. at 188-89; *Commonwealth v. McNulty*, 28 Legal Intelligencer 389 (Pa. Oyer & Termin. Phila. Co. 1871). See also “The Bullet and the Law,” *New York Times* (New York, NY), Aug. 15, 1870, pg. 4 (“Carrying firearms about the person should, unless a most satisfactory reason were assigned for the act, be treated as a breach of the law sufficient to justify the arrest of any person so offending, whatever his social status or influence.”).

although it may have infringed the letter of some statute.”³² In all other cases, however, Dillon noted state and local governments were acting within their authority “to regulate the bearing of arms in such manner as [they] may see fit, or to restrain it altogether.”³³

Michigan Supreme Court Chief Justice Thomas M. Cooley delivered a similar legal exposition on the law and armed carriage. In *A Treatise on the Law of Torts*, while acknowledging the prevalence of the armed citizenry model, Cooley noted how the right to arms did not necessarily extend to the carriage of dangerous weapons in public, particularly concealable weapons:

Neither military nor civil law can take from the citizen the right to bear arms for the common defense. This is an inherited and traditionary right, guaranteed also by the State and federal Constitutions. But it extends no further than to keep and bear those arms, which are suited and proper for the general defense of the community against invasion and oppression, and it does not include the carrying of such weapons as are specially suited for deadly individual encounters. Therefore, State laws which forbid the carrying of such weapons concealed are no invasion of the rights of citizenship.³⁴

At the same time a national standard was developing on the law and armed carriage, state and local government stepped up efforts in regulating the sale of dangerous weapons. The first laws proliferated in the Antebellum Era and prohibited the sale of certain concealable weapons.³⁵ They were followed by laws restricting the sale of dangerous weapons to minors.³⁶ Generally speaking, these laws sought to stem the

³² Dillon, “The Right to Keep and Bear Arms for Public and Private Defense”: 286.

³³ *Ibid.*, 296.

³⁴ Thomas M. Cooley, *A Treatise on the Law of Torts: Or the Wrongs which Arise Independent of Contract* (Callaghan and Company, 1879): 301.

³⁵ See, e.g., *Acts Passed at the First Session of the Twenty-Second General Assembly of the State of Tennessee: 1837-38* (1838): 200-201. See also “More Stabbing and Comment Upon Bowie Knives,” *Public Ledger* (Philadelphia, PA), Dec. 13, 1836, pg. 4 (“If we have no laws against selling [Bowie knives], let us enact them. To sell Bowie knives ought to be both penal and infamous, as much as selling poison for the purpose of poisoning.”); “From the N.Y. Evening Post,” *Columbian Register* (New Haven, CT), Aug. 19, 1837, pg. 8 (calling for the removal of Bowie knives from New York City store fronts).

³⁶ See, e.g., *Supplement to the Public Statutes of the Commonwealth of Massachusetts*, C.A. Merrill ed. (1890): 156; *The Revised Statutes, Codes and General Laws of the State of New York*, vol. 3, Clarence F. Birdseye ed. (1890):

tide of firearm related injuries at the hands of minors, and in essence prevents from purchasing and using firearms without the consent or supervision of a parent.³⁷ Other laws regulating the sale of deadly weapons were proposed from the mid to late nineteenth century. For instance, the *Albany Journal* proposed a law that would have prohibited “dealers in arms” from selling of dangerous weapons to persons of “villainous aspect.”³⁸ Much like laws regulating the sale of poisons decreased the number of suicides; the *Albany Journal* thought that such a law would ultimately decrease the number of homicides.³⁹ Then there was the

3330; *The Code of the State of Georgia*, R.H. Clark et al eds. (1882): 1186; *Revised Ordinances of the City of Galesburg, Illinois*, W. Selden Gale et al eds. (1896): 71; *The Charter and Ordinances of the City of Salem* (1896): 168; *The Code of Ordinances of the City Council of Montgomery, with the Charter*, William S. Thorington ed. (1888): 240; *A Digest of the Laws and Ordinances of the City of Philadelphia*, Frank F. Brightly ed. (1887): 726. See also “The Right of the Citizen...,” *People’s Advocate* (Washington, DC), Aug. 18, 1883, pg. 4 (“At present gunmakers and pistol sellers sell these weapons to anybody without asking questions. That indiscriminate sale can be stopped. It must be stopped. Boys, for instance, have no business at all with revolvers. They are, however, allowed to buy them freely.”); “Women with Pistols,” *St. Louis Globe-Democrat* (St. Louis, MO), Jan. 10, 1882, pg. 11 (stating how many “small stores” and “pawn shops” sell dangerous weapons to boys and that there ought to be a law prohibiting the sale of dangerous weapons to minors).

³⁷ Supporters of these laws felt that parents should be held liable for the actions of their children. See, e.g., “Handling Firearms,” *Salt Lake Daily Telegraph* (Salt Lake City, UT), Nov. 3, 1866 (“If a parent has no compunction against intrusting fire-arms to his own children, so far as accident to them is concerned, still he has no right to endanger the lives of his neighbor’s children, as such a course can scarcely fail to do, and in case of accident therefrom, he must be considered little less than an accessory before the fact. Guns and pistols are not things to play with, for either boys or men, they are instruments for practice, careful practice, or for work, serious and deadly work. When neither careful practice nor serious work is on hand or probable, then fire-arms are out of character and can be profitably dispensed with.”). See also “Report of the Territorial Grand Jury,” *Weekly Arizona Miner* (Prescott, AZ), Jun. 15, 1877, pg. 2 (“In the matter of the alleged infant murderer, we find the evidence insufficient to warrant a criminal charge, but believe it their duty to reprimand the mother of the child murderer, and to charge her of being guilty of criminal carelessness in allowing her children to have and use deadly weapons while at their play.”); “Accidental Shootings,” *Inter Ocean* (Chicago, IL), Jan. 21, 1876, pg. 4 (detailing instances where children have killed others by playing with or carrying deadly weapons); “Toy Pistols,” *The New York Times* (New York, NY), Apr. 20, 1875, pg. 6 (detailing an instance where a 13 year old shot his eye out with a toy pistol); “Selling Weapons to Minors,” *The Wheeling Register* (Wheeling, WV), Nov. 4, 1891, pg. 5 (discussing an instance where an arms dealer was prosecuted and convicted of selling dangerous weapons to minors); “Toy Pistols and Concealed Weapons,” *The Sun* (Baltimore, MD), Jul. 19, 1881, pg. 2 (“Seventeen deaths from the toy pistol in the hands of children have been recorded in this city within the past two weeks.”); “The Law in Regard to Deadly Weapons,” *The Sun* (Baltimore, MD), Jul. 12, 1883, pg. 4 (discussing the legislative history and enforcement of the law prohibiting the sale of dangerous weapons to minors); “Pistols in School,” *The Philadelphia Inquirer* (Philadelphia, PA), Mar. 1, 1884, pg. 2 (detailing instance where seven boys brought weapons to school and were charged for unlawful carriage). For a late nineteenth century sportsman exposition on the handling of firearms by children, see “Shall the Boy Have a Gun?,” *Field and Stream* 33 (Dec. 23, 1889): 445.

³⁸ “The Suggestion of Crime,” *Albany Journal* (Albany, NY), Dec. 29, 1856, pg. 1. See also “Attention Was Recently...,” *New York Times* (New York, NY), Nov. 9, 1881, pg. 4 (requesting an ordinance “restricting the indiscriminate sale of firearms” to help “put a stop to much of the violence and bloodshed that is now noted daily.”).

³⁹ “The Suggestion of Crime,” *Albany Journal* (Albany, NY), Dec. 29, 1856, pg. 1. See also “Accidental Shootings,” *The Phrenological Journal* (May 1882): 269 (“In some of the states a license is required for the general sale of gunpowder; the same logic is applicable to the instruments that utilize the gunpowder. Next to a statute prohibiting the sale of alcoholic beverages, a law restricting the sale and wearing of deadly weapons would be beneficial, we think, in reducing the number of crimes against the person which keep our police so busy.”); “The Law Interferes...,”

New Orleans Times, which proffered a law requiring that individuals obtain a license from the mayor or chief of police before being able to purchase “small arms of any kind,” and that arms dealers register and record all their sales.⁴⁰ Similar laws were proffered by other newspapers.⁴¹ This included the *New York Times* proposing the following:

The proper way [to prevent rogues from going armed in public] is to begin at the beginning, and regulate the sale of such weapons so that they may fall as nearly as possible only into proper hands. Let every gun-shop keeper...be forbidden, under suitable penalties, to sell a pistol to any person who does not present a permit from the police authorities. He should be required also to keep a record of the name and address of the purchaser, and to transmit a copy of the same, say once a month, to the Police Board.⁴²

By the close of the nineteenth century, laws requiring arms dealers to register and record all sales started appearing on the statute and ordinance books.⁴³ The same could not be said for the other retail laws

New-York Tribune (New York, NY), Feb. 22, 1884, pg. 4 (“The law interferes to regulate the sale of poisons. Why can it not be employed to regulate the sale of others things dangerous to the public? There are plenty of places in this city where so-called toy-pistols...are sold at prices which bring them within the reach of the boy of the period, and he certainly ought not to be trusted with deadly weapons.”).

⁴⁰ “The Ready Revolver,” *The New Orleans Times* (New Orleans, LA), Jun. 19, 1878, pg. 4.

⁴¹ See, e.g., “State Press Review,” *The Daily Dallas Herald* (Dallas, TX), Jul. 22, 1881, pg. 7 (“It should be the duty of dealers in deadly weapons to make a return to the authorities of all sales. As much care should be taken in this as in the sale of [drugs]. If a citizen buys a pistol or a rifle with an honest purpose he will have no difficulty in making that purpose known. If there should be any question as to that or as to the character of the person who makes the purchase the police should know the fact and be satisfied.”); “Restricting Sales of Weapons,” *Tri-Weekly Statesmen* (Boise City, ID), Aug. 18, 1881, pg. 2 (“We think that the growing evil of shooting men for trivial provocations calls for some legislation with regard to the sale of weapons...there should be some restriction on their sale, especially to persons under the limits of lawful age.”); “Concealed Weapons,” *The Dallas Weekly Herald* (Dallas, TX), Oct. 20, 1881, pg. 5 (reprinted from *The North American*) (“There should be a rigid statute forbidding the sale of pistols to boys and persons whose responsibility is not vouched for, and the same law should compel every trader who vends pistols to take the name and residence of every person whom a pistol shall be sold. The register should be delivered daily to the police authorities.”); “Concealed Weapons,” *The Wheeling Register* (Wheeling, WV), Mar. 9, 1891, pg. 2 (“Of course, if the community wished to resort to extreme measures, it might call upon all dealers for a registry of deadly weapons sold, with the names of purchasers.”); “In the Course of...,” *The Interior Journal* (Stanford, KY), Oct. 14, 1881, pg. 2 (proposing a “tax of \$25 be levied on the vendor of fire-arms for every weapon sold, a license tax of \$20 on every person who carries a revolver, and a \$50 fine on every person who carries a pistol without license”). See also “The Pistol—It Must Go—Off!,” *The Raleigh Register* (Raleigh, NC), Mar. 5, 1884, pg. 1 (grand jury calling for a law subjecting “pistols, and other deadly weapons,” to a license tax).

⁴² “The Sale of Deadly Weapons,” *New York Times* (New York, NY), May 19, 1873, pg. 4

⁴³ See, e.g., *Statutes of the United States of America, Passed at the First Session of the Fifty-Second Congress, 1891-1892, and the Recent Treaties and Executive Proclamations* (1892): 117; *Laws of the State of Illinois, Enacted by the*

proposed, to include laws requiring a license or permit to purchase certain firearms. It was not until the early twentieth century that these types of laws gained a foothold in the statute and ordinance books. Laws requiring a license or permit to carry dangerous weapons, however, were well-known by the close of the nineteenth century. This is because starting in the mid nineteenth century cities across the United States began the first “good cause” or “may issue” armed carriage licensing laws.⁴⁴ The laws essentially mirrored

Thirty-Second General Assembly (1881): 73. See also “Regulating the Sale of Deadly Weapons,” *St. Louis Globe-Democrat* (St. Louis, MO), Mar. 21, 1883, pg. 12 (showing similar law was voted by members of the Missouri Senate); “Dealers Do Not Like It,” *Daily Inter Ocean* (Chicago, IL), Jun. 9, 1889, pg. 7 (showing dissatisfaction among small arms dealers in Chicago regarding the law); “Dealers Must Keep Tab,” *The Morning Times* (Washington, DC), Dec. 29, 1895, pg. 8. In the case of the District of Columbia, persons engaged in the “business of selling, bartering, hiring, lending, or giving” of any weapon were required to first obtain a “special license” from the Commissioners of the District of Columbia. *Statutes of the United States of America, Passed at the First Session of the Fifty-Second Congress*: 117. See also *The Kentucky Statutes Containing All General Laws Including Those Passed at Session of 1898*, vol. 1 (1899): 1434 (requiring vendors selling pistol to obtain a \$25 license from the state, and vendors selling other deadly weapons to obtain a \$50 license); “Board of Mayor and Aldermen,” *The Clarion* (Jackson, MS), May 26, 1886, pg. 3 (city of Jackson, Mississippi ordinance requiring “each person or firm dealing in pistols or dirks, or sword canes, or other deadly weapons, (shot guns and rifles excepted),” to obtain a license of \$50).

⁴⁴ *Ordinances of the Mayor, Aldermen and Commonalty of the City of New York, in Force January 1, 1881*, Elliott F. Shepard and Ebenezer B. Shafer eds. (1881): 214-15; *Laws and Ordinances for the Government of the City of Wheeling, West Virginia* (1891): 206 (1881 ordinance requiring a “permit in writing from the mayor” to carry “any pistol, dirk, bowie knife or weapon of the like kind,” as well as prohibiting certain concealed weapons); *The General Ordinances of the City of Milwaukee to January 1, 1896: With Amendments Thereto and an Appendix*, Charles H. Hamilton ed. (1896): 692-93; *The Municipal Code of St. Louis*, Eugene McQuillin ed. (1901): 738 (1892 revised ordinance prohibiting concealed carriage unless the individual is a government official or obtained “written permission from the mayor”); *The Revised Ordinances of Salt Lake City, Utah*, Joseph Lippman ed. (1893): 283 (1888 ordinance prohibiting concealed carriage of deadly weapons unless the individual obtained the “permission” of the mayor); *An Ordinance in the Revision of the Ordinances Governing the City of Kansas*, Gardiner Lathrop and James Gibson eds. (1880): 264 (prohibiting concealed carriage unless the individual is a government official or obtained “special permission from the Mayor”); *Charter and Ordinances of the City of Stockton* (1908): 240 (1891 ordinance prohibiting concealed carriage unless the individual is a government official or obtained a “written permit to do so from the Mayor”); *General Municipal Ordinances of the City of Oakland, California*, Fred L. Button ed. (1895): 218 (1890 ordinance prohibiting concealed carriage unless the individual is a government official or obtained a “written permit...granted by the Mayor for a period of not to exceed one year to any peaceable person whose profession or occupation may require him to be out at late hours of the night to carry a concealed deadly weapon”); *Compiled Ordinances of the City of Omaha*, Champion S. Chase ed. (1881): 70 (ordinance prohibiting the carriage of concealed weapons, with exceptions to government officers and “well known and worthy citizens, or persons of good repute...going to or from their place or places of business, if such business be lawful”); *The Municipal Code of the City of Spokane, Washington*, Rose M. Denny ed. (1896): 310 (1895 ordinance prohibiting concealed carriage of dangerous weapons or “any instrument by the use of which injury could be inflicted” unless the individual is a government official or obtained a “special written permit from the Superior Court”); “Ordinance No. 79,” *Adams County News* (Ritzville, WA), Jun. 14, 1899, pg. 2 (ordinance prohibiting concealed carriage unless the individual is a government official or obtained a “written permit from the Town Marshal”); “Democratic Platform,” *Democratic Northwest* (Napoleon, OH), Jul. 28, 1881, pg. 3 (calling for the amendment of the present law prohibiting concealed carriage by increasing the penalty and providing for a permit licensing scheme for “persons whose business keeps them out at night, and those in charge of money”); “Board of Supervisors,” *Daily Evening Bulletin* (San Francisco, CA), Jul. 7, 1875, pg. 1 (discussing the adoption of an armed carriage permit ordinance by the San Francisco City Council); see also *Municipal Ordinances of the City of Troy* (1905): 425 (1905 ordinance prohibiting concealed carriage except for “peace officers” and requiring “any person...who has occasion to carry a loaded revolver, pistol or firearm for [their] protection” to apply for permit from the “commissioner of public safety”); *General Ordinances*

the Massachusetts Model, albeit with one important modification. Rather than individuals deciding when it was in fact necessary to carry dangerous weapons in public—that is the offending individual having to demonstrate to the court an “imminent” or “reasonable” fear of injury to their person, family or property—a government official would prematurely decide the matter for them and issue a permit.⁴⁵ Much like other armed carriage laws, licensing laws spread at the urging of the press, and were supported by both proponents and opponents to armed carriage restrictions.⁴⁶ As one newspaper correspondent put it, “good cause” or

of the City of Binghamton, New York, John Marcy, Jr., and W. Earl Weller eds. (1919): 128 (showing a permit issued by the chief of police was required to “carry pistols” in the city); *General Revised and Consolidated Ordinance and Special Ordinances of Lincoln, Nebraska*, Thos. H. Pratt and D.J. Flaherty eds. (1908): 68-69 (ordinance prohibiting concealed carriage except for “officers of the law discharging their duties” and “persons whose business or occupation may seem to require the carrying of weapons for their protection, and who shall have obtained from the Mayor a license to do so.”); *Revised Charter and Ordinances of the City of Tacoma, Washington*, L.W. Roys ed. (1905): 81 (ordinance prohibiting the concealed carriage of any “revolver, pistol or other firearms” unless the individual is a government official or had obtained a “written permit” from the chief of police); “License to Carry Weapons,” *The Denison Review* (Denison, IA), Jun. 11, 1913, pg. 3 (ordinance prohibiting the general carriage of “offensive and dangerous weapons” unless the individual is a government official or obtained a permit from the mayor, sheriff or chief of police); “For Concealed Weapons: John Holt Had License to Tote Pistol, But Carried Same Concealed,” *Gainesville Daily Sun* (Gainesville, FL), Aug. 14, 1905, pg. 5 (discussing ordinance prohibiting concealed carriage, but permitting open carriage with a license so long as weapon is “carried in full view, and on the front of the body or person”); “City Ordinance,” *The Paducah Evening Sun* (Paducah, KY), Sep. 8, 1909, pg. 6 (ordinance prohibiting the carrying of firearms “within any park, boulevard, avenue, street, parkway, or driveway of this city under the control or supervision of the Board of Park Commissioners, except under a permit”); P.F. Skinner, “Suggests New Weapon Laws,” *The Washington Herald* (Washington, DC), Mar. 26, 1922, pg. 4 (calling for a revision of the District of Columbia’s armed carriage law that allows for a permit and stating “[n]o man with a permit to carry should object to a search when he knows such an action means his safety”); “Reports on Weapons Carrying,” *Evening Times-Republican* (Marshalltown, IA), Sep. 6, 1913, pg. 6 (grand jury calling on the mayor, chief of police, and sheriff to be more cautious when “granting permits to the present holders of such to carry guns and conclude[ing] that it can not overlook the want of care exhibited in the issuance of permits granting so dangerous a privilege to any person in the community”); “Kills Ten in a Second,” *The Columbus Journal* (Columbus, NE), Sep. 8, 1909, pg. 4 (“America is a civilized country whose cities and towns are—or—should be—sufficiently orderly and sufficiently policed to safeguard life and protect property, it must also be conceded that law-abiding citizens are not called upon to carry concealed weapons for their own protection. To carry weapons so concealed without a permit is itself unlawful.”).

⁴⁵ See, e.g., “The Order Prohibiting the Carrying of Concealed Weapons,” *Daily Evening Bulletin* (San Francisco, CA), Jun. 8, 1875, pg. 3 (describing the debate among the San Francisco’s Board of Supervisors concerning the adoption of an armed carriage permit scheme); “Concealed Weapons—Should the Present Law be Modified,” *Daily Evening Bulletin* (San Francisco, CA), Dec. 29, 1869, pg. 2 (proffering a licensing scheme that “granted to the County or District Judges” the power to grant annual to “persons to carry deadly weapons on proof of good character,” and the power to “revoke the license whenever it should appear that the privilege granted was misused or abused.”).

⁴⁶ For instance, *The Salt Lake Herald* advocated for an “ordinance forbidding the carrying of concealed weapons, except with special permits issue by the Mayor or City Marshall.” “Concealed Weapons,” *The Salt Lake Herald* (Salt Lake City, UT), Jun. 4, 1887, pg. 4. The newspaper was of the opinion that the city council retained “the right to frame and adopt such an ordinance,” and pointed to other cities that have adopted “ordinances similar... and they are believed to be useful laws, operating in the interest of peace and good order.” Ibid. In the same vein, two Ohio based newspapers, the *Toledo Democrat* and *The Democratic Northwest*, advocated for a new armed carriage law that would allow for “persons, whose business keeps them out at night, and those in charge of money,” permission to “carry a pistol on application in writing, sworn to, before some constituted authority, whose duty it shall be to give a written permit...” “We are in Favor...,” *The Democratic Northwest* (Napoleon, OH), Jul. 28, 1881, pg. 3. For some other

“may issue” licensing laws were preferred to existing armed carriage restrictions because they permitted “law abiding persons to go armed” when “forced to do so by imperative circumstances,” and placed them “under legal responsibility in reference to the methods of its employment,” yet denied the “highwayman, the burglar, the thief, the town brawler, and the known loafer and vagabond” the privilege.⁴⁷ From the mid to late nineteenth century, state and local governments considered a variety of licensing laws.⁴⁸ At one point, the Nevada legislature deliberated adopting a licensing law that would have required the applicant to provide a \$1,000 bond surety before being issued an armed carriage permit.⁴⁹ In the case of New York City, New York the city council adopted an ordinance requiring the applicant to prove their good character

examples, see Ignoramus, “Carrying Concealed Weapons: The Other Side of the Question,” *Evening Star* (Washington, DC), Jul. 26, 1881, pg. 4 (questioning the effectiveness of armed carriage prohibitions, but supporting armed carriage licensing laws); Sinex, “Should We Carry Deadly Weapons? Should They Be Licensed?,” *The Galveston Daily News* (Galveston, TX), Feb. 6, 1881, pg. 2 (same). *But see* Citizen, “Carrying Concealed Weapons,” *Evening Star* (Washington, DC), Aug. 2, 1881, pg. 4 (responding to Ignoramus’s editorial in the *Evening Star*); Western Market, “Concealed Weapons,” *Evening Star* (Washington, DC), Aug. 11, 1881, pg. 4 (“It would appear to me that the best way to dispose of the matter would be for the District Commissioners, upon proof of the necessity for a weapon and of the respectability of the applicant to grant him permissions, provided that he give bond in one or two hundred dollars, and said bond or a portion thereof to be forfeited upon evidence of intoxication within in possession of or carelessness in the sue of such weapon. Then make the penalties as heavy as possible for those who persist in carrying weapons without such a permit...”); “In a Charge...,” *The Somerset Herald* (Somerset, PA), Aug. 24, 1881, pg. 4 (“The Recorder [in New York] held that in any civilized city there is no necessity for carrying such weapons and that every person who desires to go armed should apply for a license and they will be duly registered. We quite agree with the learned Recorder.”).

⁴⁷ “Carrying Deadly Weapons,” *Albany Journal* (Albany, NY), Jan. 29, 1867, pg. 2. *See also* “Carrying Pistols,” *Albany Journal* (Albany, NY), Jan. 30, 1867, pg. 2.

⁴⁸ *See, e.g.*, Western Market, “Concealed Weapons,” *Evening Star* (Washington, DC), Aug. 11, 1881, pg. 4 (“It would appear to me that the best way to dispose of the matter would be for the District Commissioners, upon proof of the necessity for a weapon and of the respectability of the applicant to grant him permissions, provided that he give bond in one or two hundred dollars, and said bond or a portion thereof to be forfeited upon evidence of intoxication within in possession of or carelessness in the sue of such weapon. Then make the penalties as heavy as possible for those who persist in carrying weapons without such a permit...”); “In a Charge...,” *The Somerset Herald* (Somerset, PA), Aug. 24, 1881, pg. 4 (“The Recorder [in New York] held that in any civilized city there is no necessity for carrying such weapons and that every person who desires to go armed should apply for a license and they will be duly registered. We quite agree with the learned Recorder.”); “The General Assembly: Concealed Weapons Debate,” *The Weekly News and Courier* (Charleston, SC), Feb. 5, 1896, pg. 9 (detailing an armed carriage licensing law proposed by a member of the South Carolina legislature that would have granted to the county supervisors the authority to issue licenses to persons “known” by them to be “peaceable and sober”); Ignoramus, “Carrying Concealed Weapons: The Other Side of the Question,” *Evening Star* (Washington, DC), Jul. 26, 1881, pg. 4 (questioning the effectiveness of armed carriage prohibitions, but supporting armed carriage licensing laws); Sinex, “Should We Carry Deadly Weapons? Should They Be Licensed?,” *The Galveston Daily News* (Galveston, TX), Feb. 6, 1881, pg. 2 (same). *But see* Citizen, “Carrying Concealed Weapons,” *Evening Star* (Washington, DC), Aug. 2, 1881, pg. 4 (responding to Ignoramus’s editorial in the *Evening Star*).

⁴⁹ “Carrying Concealed Weapons,” *Daily Evening Bulletin* (San Francisco, CA), Jan. 19, 1877, pg. 2. *See also* “Personal Liberty,” *The Lake Charles Echo* (Lake Charles, LA), Jul. 29, 1882, pg. 1 (calling for the amendment of the present armed carriage law by “granting a license to carry weapons upon the furnishing of a good peace bond”).

and the reason why the permit should be granted.⁵⁰ Meanwhile, in Sacramento, California an ordinance was adopted requiring the applicant to show the police commissioner that they were a “peaceable person, whose profession or occupation” required them “to be out at late hours of the night...”⁵¹

In recent years, “good cause” or “may issue” licensing laws have been assailed by gun rights proponents as infringing upon the Second and Fourteenth Amendments. But for Americans living from the mid to the late nineteenth century, this line of argument was quite odd and legally deficient. West Virginia Circuit Judge Henry Brannon, who would later be appointed to the West Virginia Supreme Court and write one of the most comprehensive legal treatises on the Fourteenth Amendment, noted as much in what may have been the only nineteenth century legal challenge to armed carriage licensing laws.⁵² At issue was the constitutionality of an 1882 Wheeling, West Virginia ordinance prohibiting any person from carrying concealed “any pistol, dirk, bowie knife, or weapon of the like kind, without a permit in writing from the mayor to do so.”⁵³ The defendant’s counsel claimed that the licensing law was unconstitutional because it

⁵⁰ “Why People Carry Pistols,” *St. Louis Daily Globe-Democrat* (St. Louis, MO), Mar. 29, 1878, pg. 2. It seems New York City’s first attempt at implementing an armed carriage licensing regime was thwarted by its own police commissioners. In 1868, for a few days, the police commissioners were instructed to serve as the licensing authority to carry pistols. However, after being “overwhelmed with applications from gamblers, thieves, rowdies, saloon-keepers,” and other individuals of “less repute,” the police commissioners refused to take part in the licensing process because they may have been held responsible for the consequences. “Carrying Concealed Weapons,” *New York Times* (New York, NY), Aug. 16, 1868, pg. 4. Later, in 1878, when a new licensing law was passed, only New York City police officers were permitted to carry firearms in public without a license. “Carrying Concealed Weapons,” *The New York Herald* (New York, NY), Feb. 20, 1878, pg. 5. The law may have been prompted at the suggestion of New York Supreme Court Justice John R. Brady. See “Scraps and Facts,” *Yorkville Enquirer* (Yorkville, SC), Feb. 10, 1876, pg. 2. Justice Brady would continue to lobby for such a law at the state level. See “A Life Sentence for Lovitz: Judge Brady Hopes it May be Made a Felony to Carry a Pistol Without a License,” *The Sun* (New York, NY), Feb. 26, 1891, pg. 9.

⁵¹ *Charters and Ordinances of the City of Sacramento, Together with Such Statutes as are Especially Important* (1896): 173.

⁵² See Henry Brannon, *A Treatise on the Rights and Privileges Guaranteed by the Fourteenth Amendment to the Constitution of the United States* (W.H. Anderson & Co., 1901). In the treatise, Judge Brannon reiterated how neither the Second nor Fourteenth Amendments guaranteed a right to armed carriage in public: “The second [amendment] does not grant the right to carry a weapon...[nor does it] impair the state power of regulation and police in this respect.” *Ibid.*, 92. See also *ibid.*, 290.

⁵³ *Laws and Ordinances for the Government of the City of Wheeling, West Virginia*: 206. In 1891, *The Wheeling Register* reported that Mayor Charles W. Seabright was no longer taking the armed carriage licensing law as seriously as his predecessors: “Yet despite [the licensing law] the Mayor of the city has printed blanks, which only need to be filled out and signed by that official ‘permitting’ the holder to carry a deadly weapon.” “Concealed Weapons,” *The Wheeling Register* (Wheeling, WV), Mar. 9, 1891, pg. 2. A similar situation presented itself in Kansas City, where the mayor granted virtually every application for a permit. See “When A Kansas Man Desires to Carry a Pistol...,” *The Atchison Globe* (Atchison, KS), Apr. 22, 1882, pg. 2. In the case of St. Louis, Missouri, the mayor, at one point,

infringed upon the Second Amendment and violated the Fourteenth Amendment's Privileges and Immunities and Equal Protection Clauses. Like other mid to late nineteenth century courts, Judge Brannon's opinion embraced the armed citizenry model of the Second Amendment, as well as the "civilized warfare" test regarding what types of arms were constitutionally protected. However, Judge Brannon rejected the claim that the licensing law was in conflict with either the Second Amendment or the Fourteenth Amendment's Privileges and Immunities Clause:

In this case it is urged that this act is void, because in violation of the Second Amendment of the Federal Constitution, which provides that "a well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed, and also because it grants the right to carry weapons for self-defense only to persons who are quite and peaceable citizens of good character and standing, and thus that all citizens stand equal before the law: and violates that provision of the Fourteenth Amendment prohibiting States from passing "any law which shall abridge the privileges or immunities, or deny to any person within their jurisdiction the equal protection of the laws."

It is a very grave act for a court to overthrow and defeat an act of the Legislature, and should be done only when its unconstitutionality is manifest. Where the repugnance to the Constitution is undoubted, the judge must yield to that high duty of respecting the highest law, the will of the people expressed in the Constitution, rather than the will of the Legislature; but never where he is doubtful, and all doubts go in favor of the act...

Is it the right of the citizen to wear abroad the small and insidious arms prohibited by this act? Or does the second amendment only guarantee the right to bear large arms, such as are useful in war and in defense of liberty against arbitrary power? Clearly the latter only. In days of tyranny long

revoked every armed carriage permits and refused to issue new ones. "No Deadly Weapons in St. Louis," *The Daily Picayune* (New Orleans, LA), Nov. 12, 1893, pg. 16.

ago, when non archical power sought supreme way and to trample down freedom, history tells us that one of its favorite methods was the disarming of the people and wrenching from their hands and homes those arms useful and effective in defense of liberty and dangerous only to tyrants. In this free country this amendment was incorporated [via the Fourteenth Amendment's Privileges and Immunities Clause] to avoid the dangers of the past. Another reason for its adoption was this: Standing armies had been engines of oppression in the past, and American sentiment was opposed to them, and as a substitute reliance was placed on the citizen-militia, and to render it efficient it was desirable to train it to the use of arms common in war. The intimate connection in the amendment of this provision about learning arms with the language, "a well regulated militia being necessary to the security of a free state," shows that military efficiency and popular liberty were in the mind of its draftsman rather than individual privilege. It intended, it defends individual privilege to save the right of the citizen to keep at his home and premises arms ordinarily used in war, and has no reference to small weapons which may be hidden in in the pocket and first seen when drawn to people and the public peace are the highest objects of protection of the law, and this act has these high objects in view. The pistol, the bowie-knife, the stiletto, the slung shot, the billy, and the knuckles are weapons of the ruffian and law breaker, are used in the riot or affray, are dangerous in moments of anger or intoxication, and from them a vast amount of murder, bodily injury and family disasters arise, and from them many a bitter tear has flowed. Certainly it was never intended by the constitution to prohibit the Legislature from protecting the lives of the people and the public peace from their greatest foes; it was not intended to withhold the power to regulate within the bounds of prudence and usefulness the bearing of these weapons. It certainly cannot be converted into a license to the evil disposed to make their persons walking arsenals to run rampant over the peace of the State, and disarm the Legislature of power to regulate or check it. Such a construction would make the Constitution defend lawlessness, tumult, and anarchy, and sacrifice law, order and public security. I cannot wield to this dangerous construction. The construction of law must be

reasonable. The act is wise and salutary, is doing good in this State, and the courts should sustain it...

...Remember that this act recognizes the right to keep and carry a pistol about one's dwelling house or premises, carrying it from the place of purchase [to] home, and from home to a place of repair and back again, and only prohibits their carriage on the premise of others and in public places. For the purposes of self-defense in immediate danger it[] allows a peaceable citizen of good character to carry weapons. These exceptions in the act are useful and necessary; but who will say that it is a useful or necessary privilege to the citizen to go abroad through the land wearing these deadly weapons?⁵⁴

From this point, Judge Brannon addressed the argument that the licensing law violated the Fourteenth Amendment's Equal Protection Clause. Hereto though, given the broad police powers afforded to state and local governments, Judge Brannon did not find the defendant's argument legally sufficient:

[I]t is argued...that the act discriminates between citizens, by allowing persons of good character the right of self-defense, while denying it to others. It does not deny the right of self-defense, for if a person of the worst character were assailed and in such danger as to warrant the exercise of the right of self-defense and with his pistol were to slay his adversary, he could plead self-defense on trial for murder, whilst he might be indicted for carrying a pistol beforehand. It is not a denial of the plea of self-defense; it only denies to bad, dangerous persons the right to arms beforehand and carry weapons, because they are a danger to the place, whereas the law-abiding are not.

The power of regulation visited in the Legislature for police purposes and the maintenance of morals, law and order for the good of society are necessarily wide, even though it may seem to work discrimination between persons...

⁵⁴ "Concealed Weapons: Judge Brannon's Decision on This Subject," *Wheeling Register* (Wheeling, WV), Oct. 15, 1883, pg. 1.

...Liberty to the citizen is a great attribute and deserving of all protection; but it must be liberty regulated by law and consistent with the behests of organized civil society, not mere self-willed, arbitrary license.⁵⁵

At this juncture, it is worth noting that licensing laws were just one of many armed carriage regulatory schemes proposed from the mid to the late nineteenth century. Some state and local governments continued the Antebellum Era regulatory model of prohibiting the carriage of dangerous weapons in public places, whether the arms were concealed, open or both.⁵⁶ In the case of Los Angeles, California, an 1859 ordinance

⁵⁵ Ibid.

⁵⁶ For cities that adopted general prohibition on going armed in public, whether concealed, open or both, see; *Charter and Revised Ordinances of the City of San Jose* (1882): 91 (1882 ordinance prohibiting the general carriage of “slung shot, or knuckles, or instruments of the like,” and the concealed carriage of any “pistol, dirk, or other dangerous weapon” unless the individual is a government official); *The Revised Ordinances of the City of Sedalia, Missouri*, John Cashman ed. (1894): 330 (ordinance prohibiting the concealed carriage of “any pistol or revolver, slung-shot, cross knuckles...or other dangerous or deadly weapon” unless the individual is a government official); *Compiled Ordinances of the City of St. Paul, Minnesota*, Hiram David Frankel ed. (1908): 78 (1882 ordinance prohibiting the concealed carriage of “dangerous or deadly weapon[s]”); *Revision of the Ordinances and Municipal Laws of the City of Covington, Kentucky*, Walker C. Hall ed. (1900): 254 (1900 ordinance prohibiting the concealed carriage of dangerous weapons “other than an ordinary pocket knife,” except for government officers, mail carriers, or express messengers); *Digest of the Laws and Ordinances of the City of Little Rock*, John H. Cherry ed. (1882): 168 (1881 ordinance prohibiting the concealed carriage of “any pistol or colt...bowie-knife, dirk-knife, or dirk or dagger...or any other dangerous weapon”); *Charter and General Ordinances of the City of Albany* (1887): 110 (ordinance prohibiting the carriage of “any deadly or dangerous weapons of any kind whatever in a concealed manner,” but excepting “peace officers”); *The Charter and Ordinances of the Town of Covington, Virginia* (1896): 33 (1896 ordinance prohibiting the concealed carriage of “any pistol, dirk, bowie knife, razor, slung-shot, or any weapon of the like”); *The Municipal Code of the City of Toledo*, Irvin Belford and Charles T. Lewis eds. (1885): 170, 276 (1868 ordinance prohibiting the concealed carriage of “any pistol, bowie knife, dirk, or any dangerous weapon”); *The Ordinances of a General Nature of the City of Youngstown, Ohio*, A.E. Knight ed. (1885): 52 (ordinance prohibiting the concealed carriage of “any pistol, bowie knife, dirk, or any dangerous weapon”); *Charter and Revised Ordinances of Fort Worth, Texas* (1900): 196 (ordinance prohibiting the general carriage of “any pistol, dirk, dagger, slung-shot, sword cane, spear or knuckles...bowie knife, or any other knife manufactured or sold for the purpose of offense or defense”); *Digest of the Charter and Ordinances of the City of Memphis, Together with the Acts of the Legislature Relating to the City, with an Appendix*, William H. Bridges ed. (1863): 190 (ordinance prohibiting the concealed carriage of “any pistol, Bowie-knife, dirk or other deadly weapon,” including requiring policemen to obtain a permit from the mayor to do so); “The Carrying of Concealed Weapons,” *Memphis Daily Appeal* (Memphis, TN), Dec. 1, 1872, pg. 2 (opinion editorial applauding the strict enforcement of Memphis’s armed carriage ordinance); *Charter and Ordinances of the City of Syracuse* (1877): 192 (ordinance prohibiting the carriage of “any dirk, bowie knife, sword or spear cane, pistol, revolver, slung-shot, jemme, brass knuckles, or other deadly and unlawful weapon”); *General Ordinances of the City of Providence and the Rules of the Board of Aldermen as Revised in the Year 1899* (1900): 219 (ordinance authorizing policemen to “arrest without warrant...any person...being unduly armed with a dangerous weapon”); *The General Ordinances of the City of Saint Joseph*, Charles S. Shepherd ed. (1897): 508 (ordinance prohibiting the carriage of concealed weapons); *Compiled Ordinances of the City of Omaha*, Champion S. Chase ed. (1881): 70 (ordinance prohibited the carriage of concealed weapons, with exceptions to government officers and “well known and worthy citizens, or persons of good repute...going to or from their place or places of business, if such business be lawful”); *Revised Ordinances of the City of Seattle* (1893): 186 (ordinance prohibiting the concealed carriage of “any dangerous or deadly weapon”); *Revised General Ordinances of the City of Sioux City, Iowa*, M. Lloyd

prohibited all persons, except those “actually traveling, and immediately passing through,” from wearing or carrying “any dirk, pistol, sword in cane, slung-shot, or other dangerous weapon, concealed or otherwise, within the corporate limits” of the city.⁵⁷ Other state and local governments modified their respective armed carriage laws by eliminating discretion of enforcement.⁵⁸ As a result, law enforcement officials could be

Kennedy ed. (1894): 109 (1889 ordinance prohibiting the concealed carriage of dangerous weapons except for government officials in the “proper discharge of [their] official duties”); *The Laws and Ordinances of the City of Portland, Oregon*, W.T. Hume ed. (1892): 22 (ordinance prohibiting the concealed carriage of “dangerous weapons”); *Charter and Ordinances of the City of New Haven, Together With Statutes Relating to the City* (1870): 133 (ordinance prohibiting the general carriage of “brass knuckles, or any slung shot, or weapon of similar character,” as well as “any weapon concealed on his person”); *Ordinances of the City of Nashville*, William K. McAlister, Jr. ed. (1881): 340 (1873 ordinance prohibiting the carriage of any “pistol, bowie-knife, dirk-knife...or other deadly weapon”); *The Revised Ordinances of the City of Jacksonville*, C. Harry Dummer ed. (1884): 92 (1877 ordinance prohibiting the concealed carriage of any “pistol or revolver...dirk, knife, bowie knife, or any other dangerous deadly weapon,” except for government officials carrying out their duties); *Charter and Ordinances of the City of Waterbury Together with Statutes Relating to the City* (1874): 144 (ordinance prohibiting the carriage of “any steel, iron, or brass knuckles, or any slung shot or weapon of similar character, or...any weapon concealed on his person”) “A War on Pistols,” *The Daily Dispatch* (Richmond, VA), Jul. 6, 1880, pg. 3 (reprinting four opinion editorials in other newspapers which detail the national increase of armed carriage laws, as well as call for more armed carriage laws); see also *Code of the City of Augusta, Georgia*, C.E. Dunbar ed. (1909): 187, 296 (prohibiting the carriage of concealed weapons); *Duluth City Charter and Ordinances*, J.B. Richards ed. (1905): 471 (1904 ordinance prohibiting the concealed carriage of any “slung-shot, sand-club, metal knuckles, dagger, dirk, pistol or other firearm, or any dangerous weapon within the city”); *The Revised Code Ordinances of the City of Houston of 1914*, E.P. Phelps ed. (1914): 267 (1913 ordinance prohibiting the general carriage of “any pistol, dirk, dagger, sword cane, spear, slung shot, [or] knife”); “Ordinance No. 88,” *The Williams News* (Williams, AZ), Sep. 21, 1916, pg. 2 (ordinance prohibiting the concealed carriage of any “revolver, pistol, bowie knife, dirk...or any other dangerous weapon”); “Deputy Sheriffs Must Obey the Law,” *Albuquerque Morning Journal* (Albuquerque, NM), Nov. 12, 1905, pg. 1 (Albuquerque sheriff clarifying that not even “deputy sheriffs” were permitted to carry concealed weapons at all times unless in pursuit of criminal or was “necessary for the public safety”); “Unloaded Weapons are Contrary to Law Also,” *Los Angeles Herald* (Los Angeles, CA), Jul. 30, 1907, pg. 7 (announcing that the Los Angeles city council amended its prohibition on carrying concealed weapons to be applicable to both unloaded and loaded firearms). In the cases of Pawtucket and Providence, Rhode Island, the police retained discretion to arrest all that were “unduly armed.” *Ordinances of the Town of Pawtucket, as Revised in 1877* (1882): 65; *Providence City Documents for the Year 1892*, vol. 1 (1882): 247. For a statewide law covering populated areas, see *1887 Acts of the Legislative Assembly of the Territory of New Mexico, Twenty-Seventh Session* (1887): 55 (“That any person who shall hereafter carry a deadly weapon, either concealed or otherwise, on or about the settlements of this territory, except it be in his or her residence, or on his or her landed estate, and in the lawful defense of his or her person, family or property, the same being threatened with danger, or except such carrying be done by legal authority...shall be punished by a fine of not less than fifty dollars, nor more than three hundred, or by imprisonment not less than sixty days...”).

⁵⁷ William M. Caswell, *Revised Charter and Compiled Ordinances and Resolutions of the City of Los Angeles* (1878): 83. A decade later, the city of Los Angeles, California explored an ordinance that would have given the Board of Police Commissioners the authority to grant armed carriage permits. See “The Salary of Chief of Police and Mounted Officers Raised—Good Citizens Will Soon Be Permitted to Carry Concealed Weapons,” *Los Angeles Times* (Los Angeles, CA), Dec. 28, 1887, pg. 2.

⁵⁸ A number of nineteenth century writers and commentators merely called for the strict enforcement of existing armed carriage laws. See, e.g., “Carrying Concealed Weapons,” *Columbus Daily Enquirer* (Columbus, GA), Apr. 12, 1884, pg. 2; “Carrying a Pistol,” *Columbus Daily Enquirer-Sun* (Columbus, GA), May 11, 1883, pg. 2; “Concealed Weapons,” *Cincinnati Daily Gazette* (Cincinnati, OH), Nov. 8, 1882, pg. 4; “Reckless Shooting in the Public Streets,” *Daily Evening Bulletin* (San Francisco, CA), May 5, 1863, pg. 2; “Crime and Concealed Weapons,” *The Daily Picayune* (New Orleans, LA), Dec. 29, 1855, pg. 1.

fined or even fired for failing to arrest individuals that violated the law.⁵⁹ There were also armed carriage proposals that imposed severe punishment to the offending carrier.⁶⁰ Some considered making the carriage of concealed weapons a felony or penal offense.⁶¹ Supporters of this approach believed that such a reform would not only curtail the deadly practice of carrying dangerous weapons in public, but would also make “human life...much safer...”⁶² Others went a step further by proposing the death penalty whenever a person shall “carry and use weapons to kill...”⁶³ Meanwhile, there were those that thought the solution was to make the possession of a weapon *prima facie* evidence of a crime.⁶⁴

What this variance of armed carriage laws historically informs is there was some disagreement as to which regulatory approach was best suited to put a stop to public violence and needless death. But despite

⁵⁹ See, e.g., *Digest of the Charter and Ordinances of the City of Memphis*: 190; *A Digest of the Statutes of Arkansas Embracing All Laws of a General Nature* (1894): 506; “Carrying Arms,” *Georgia Weekly Telegraph and Georgia Journal & Messenger* (Macon, GA), Jan. 6, 1874, pg. 2 (discussing a Nashville, Tennessee ordinance making it the “duty of the police to arrest every person carrying arms, and making dismissal from the [police] service the penalty of neglect or failure to make the arrest.”); Caswell, *Revised Charter and Compiled Ordinances and Resolutions of the City of Los Angeles*: 83 (“It is...the duty of each police officer of this city, when any stranger shall come within said corporate limits wearing or carrying weapons, to, as soon as possible, give them information and warning” about the ordinance prohibiting the carrying of deadly weapons). See also “Deadly Weapons: A Very Bad Habit Becoming Too Popular for the Personal Safety of Law-Abiding People,” *Daily Arkansas Gazette* (Little Rock, AR), May 30, 1876, pg. 4 (calling for the full enforcement of Arkansas’s armed carriage law that eliminated law enforcement discretion).

⁶⁰ See, e.g., “Kansas City and Murder,” *Memphis Daily Appeal* (Memphis, TN), Sep. 17, 1881, pg. 2 (calling for both the fine and imprisonment of every person found in violation of armed carriage laws); Ignoramus, Jr., “Carrying Concealed Weapons: Another Display,” *Evening Star* (Washington, DC), Aug. 8, 1881, pg. 4 (calling for enhanced sentencing should a criminal be found armed); “Deadly Weapons,” *New Haven Evening Register* (New Haven, CT), Jul. 23, 1881, pg. 2 (calling for the severe punishment of those crimes to “which the practice of carrying deadly weapons leads, and the practice itself would soon die out”); “The War on Weapons,” *The Daily Picayune* (New Orleans, LA), Jun. 8, 1881, pg. 1 (“If the men who shoot and stab, and make deadly assaults with little or no provocation, were promptly and severely punished, that would do more to stop the evil of carrying deadly weapons than all the laws that ever were enacted against pistols and knives.”).

⁶¹ A number of nineteenth century writers and commentators proffered making the carriage of concealed weapons in public a felony or penal offense. See, e.g., “It Ought to be a Felony,” *The Morning Times* (Washington, DC), Dec. 29, 1895, pg. 4; “Concealed Weapons—Should the Present Law be Modified,” *Daily Evening Bulletin* (San Francisco, CA), Dec. 29, 1869, pg. 2; “The Law Against Carrying Concealed Weapons,” *Daily Evening Bulletin* (San Francisco, CA), Jun. 26, 1863, pg. 2; “More Stabbing and Comment Upon Bowie Knives,” *Public Ledger* (Philadelphia, PA), Dec. 13, 1836, pg. 4.

⁶² “Governor Nye’s Message,” *Daily Evening Bulletin* (San Francisco, CA), Oct. 4, 1861, pg. 2.

⁶³ “The Reign of Violence,” *New York Times* (New York, NY), Sep. 6, 1868, pg. 4.

⁶⁴ See, e.g., Citizen, “Carrying Concealed Weapons,” *Evening Star* (Washington, DC), Aug. 2, 1881, pg. 4; “The Right to Carry Arms,” *New York Times* (New York, NY), Feb. 27, 1866, pg. 4; “Carrying Deadly Weapons,” *Public Ledger* (Philadelphia, PA), May 24, 1850, pg. 2; “Deadly Weapons, and Bloody Affrays,” *Portsmouth Journal of Literature and Politics* (Portsmouth, NH), Aug. 19, 1843, pg. 2; “Unlawful Weapons,” *Public Ledger* (Philadelphia, PA), Sep. 17, 1836, pg. 2.

the variance of armed carriage laws, by the late nineteenth century, the American public was in virtual agreement that state and local governments retained broad police powers to regulate the carrying of dangerous weapons in public. This included the authority to prohibit individuals from marching and carrying firearms in public under the guise they constituted the militia.⁶⁵ Wide public acceptance of armed carriage restrictions can be found in a number of relevant sources. Consider again that many mid to late nineteenth century state constitutions contained provisions expressly recognizing the legislature's authority to regulate armed carriage.⁶⁶ This was followed by a number of city charters containing similar provisions.⁶⁷ In the case of Minneapolis, Minnesota, the charter recognized the city council's authority to "license, prohibit, regulate and control the carrying of concealed weapons and provide for confiscation of the same."⁶⁸ The charter of Dallas, Texas recognized the city council's authority to "regulate, control, and prohibit the carrying of firearms and other weapons within the city limits."⁶⁹ Likewise, the entire state of

⁶⁵ Presser v. Illinois, 116 U.S. 252, 267-68 (1886); Josh Blackman, Brian L. Frye, and Michael McCloskey, "Justice John Marshall Harlan: Lectures on Constitutional Law, 1897-98," *George Washington Law Review Arguendo* 81 (2013): 12, 307-309 (summary of Presser v. Illinois as lectured by Supreme Court Justice John Marshall Harlan): "The Right to Bear Arms," *Salt Lake Evening Democrat* (Salt Lake City, UT), Jan. 9, 1886, pg. 2 ("not much attention is likely to be paid to [Presser v. Illinois] which, as soon as passion gave place to reason, all must have seen was inevitable. The police power of the States is absolute, and, in exercising it for the common safety, rights guaranteed by the constitution are not invaded, but preserved. It is not denying or abridging the right of the people to bear arms to insist that they shall satisfy the State authorities that their purposes are lawful, for otherwise they have no rights in the premises."); "State Authority Over Assemblages—Various Decisions by the U.S. Supreme Court," *New-York Tribune* (New York, NY), Jan. 5, 1886, pg. 2 (summarizing the holding in Presser as "the right of the State to prevent the armed assemblage of its citizens and their parading as military companies when not organized as such under the laws of the State or the United States"); "Untitled," *New Ulm Weekly Review* (New Ulm, MN), Jan. 20, 1886, pg. 2 (summarizing the holding in Presser as "a state of the Union has the right to prevent the armed assemblage of its citizens and their parading as military companies when not organized as such under the laws of the state or the United States"). See also "Carried a Gun: Murphy's Conviction Sarsfield Guards Case Stands," *Boston Daily Advertiser* (Boston, MA), May 23, 1896, pg. 10; "To Bear Arms: The Murphy Case Before the Full Supreme Bench," *Boston Daily Advertiser* (Boston, Massachusetts), Mar. 31, 1896, pg. 10; *Commonwealth v. Murphy*, 166 Mass. 171 (1896); *Dunne v. People*, 94 Ill. 120 (1879). See also *City of Salina v. Blaksley*, 83 P. 619, 620 (1905) (stating as a militia right the right to bear arms does not permit individuals to carry arms "so that in case of an emergency they would be more or less prepared"); Brannon, *A Treatise on the Rights and Privileges Guaranteed by the Fourteenth Amendment to the United States Constitution*: 81 (Military parades "are very common. Though a privilege, they are within the control of the state, as such privileges is not one attending federal citizenship, and a state may regulate the privileges and immunities of its own citizens, if it does not abridge those of citizens of the United States.").

⁶⁶ Volokh, "State Constitutional Rights to Keep and Bear Arms": 211-14.

⁶⁷ See, e.g., *A Digest of Laws and Ordinances for the Government of the Municipal Corporation of the City of Harrisburg, Pennsylvania in Force August 1, 1906* (1906): 62; *A Digest of the Laws and Ordinances for the Government of the Municipal Corporation of the City of Williamsport, Pennsylvania in Force August 1, 1900* (1900): 46; *The Ordinances of the City of Norfolk and the Acts of the Assembly of Virginia* (1885): 10.

⁶⁸ *Minneapolis City Charter and Ordinances*, Chas. F. Haney ed. (1892): 58.

⁶⁹ *Charter of the City of Dallas* (1899): 42.

Kansas authorized its cities to “prohibit and punish the carrying of firearms, or other deadly weapons, concealed or otherwise...”⁷⁰

Wide-ranging public acceptance can also be found in print literature from the mid to late nineteenth century, where writers frequently condemned the practice of carrying dangerous weapons.⁷¹ Certainly, each and every critic maintained their own reasons why they opposed the practice, and in many cases those reasons have been lost to time. However, based on the evidentiary record that has survived, most mid to late nineteenth century Americans detested the practice on the grounds it violated the social compact, needlessly induced homicides and murders, and contradicted Christian theology.⁷² One must also consider how the weekly, sometimes daily, news reports of people dying from the carriage of pistols, revolvers, and other dangerous weapons impacted public attitudes. It was in fact common for such events to result in local or statewide condemnation of the practice. But it was not until the assassination of President James A. Garfield that the practice received concurrent nationwide condemnation.⁷³ This included Philadelphia

⁷⁰ *General Statutes of the State of Kansas 1897*, vol. 1 (1897): 421.

⁷¹ See, e.g., “The Practice of Carrying Firearms,” *The Sun* (Baltimore, MD), Jul. 17, 1884, pg. 2 (“The practice of carrying firearms and other deadly weapons in civilized communities is one which is condemned both by law and public sentiment...”); “Reform in Kentucky,” *Cincinnati Daily Gazette* (Cincinnati, OH), Aug. 8, 1882, pg. 4 (“The law and order people...are moving against other practices that are, relics of barbarism. There is a State law, recently enacted, against carrying deadly weapons, and public sentiment is rapidly coming to the support of the law.”); “Enforce the Law,” *The Charlotte Democrat* (Charlotte, NC), Aug. 5, 1881, pg. 3 (calling for strict enforcement of the “law against carrying concealed weapons”); “The Arkansas Hip Pocket,” *Cincinnati Daily Gazette* (Cincinnati, OH), Feb. 11, 1881, pg. 5 (“A strong, healthy sentiment is growing up in the State against the barbarous practice of carrying deadly weapons.”); “Concealed Weapons,” *The Indianapolis Daily Sentinel* (Indianapolis, IN), Sep. 12, 1879, pg. 4 (same).

⁷² See, e.g., “Deadly Weapons: A Presbyterian Pastor’s Views on Firearms and Dueling,” *The Philadelphia Inquirer* (Philadelphia, PA), Apr. 26, 1880, pg. 8; Rev. J.T. Brown, “The Pistol Packer,” *The Independent*, Sep. 7, 1899, pg. 2435; “The Right of Self-Defence,” *Manifesto*, Jul. 1895, pg. 169; “Homicide—Concealed Weapons,” *Knoxville Daily Chronicle* (Knoxville, TN), Oct. 28, 1882, pg. 2; “The Law Against Carrying...,” *Iron County Register* (Ironton, MO), Sep. 1, 1881, pg. 5; “Armed Security,” *Friends Review; A Religious, Literary and Miscellaneous Journal*, Aug. 22, 1863, pg. 813. See also “The Revolver for Personal Protection,” *Cincinnati Daily Gazette* (Cincinnati, OH), Dec. 23, 1878, pg. 8 (calling into question the effectiveness of carrying a revolver for individual self-defense).

⁷³ See, e.g., “Talmage on the Pistol,” *The Daily Inter Ocean* (Chicago, IL), Oct. 8, 1881, pg. 4; “In a Recent Sermon on the Attempted Assassination of the President...,” *Frank Leslie’s Illustrated Newspaper* (New York, NY), Sep. 24, 1881, pg. 51 (“Armed police, sheriffs and frontier officers, sworn to execute the law, are well enough; but, citizens, snap your sword-canes and fling away your revolvers.”); “An Anti-Pistol Crusade,” *Milwaukee Daily Sentinel* (Milwaukee, WI), Jul. 12, 1881, pg. 4; “Can it be Prohibited?,” *Georgia Weekly Telegraph and Georgia Journal & Messenger* (Macon, GA), Aug. 26, 1881, pg. 6; “Concealed Weapons,” *The Jackson Daily Standard* (Jackson, OH), Sep. 23, 1881, pg. 1 (“A well directed public opinion, we are glad to observe, is not getting abroad touching the dangerous habit of carrying concealed deadly weapons.”).

Mayor Samuel G. King issuing the following proclamation condemning the practice and mandating that the city's police search each and every person suspected of carrying dangerous weapons:

The class who go ready armed to answer the word with a death-shot must be taught an abiding lesson of obedience to the supremacy of the law; and a proper respect for the rights of personal safety of others. To go armed in a great city, where the officers of the law are constantly within call, is a standing menace by the criminal and thoughtless classes against the peace and order of society which shall no longer be tolerated. The recent attempt to assassinate the President of the United States, suddenly crushing down a whole Nation in sorrow and uncertainty, demands of me, as chief magistrate of a city of nearly a million inhabitants, the immediate and continuous enforcement of the law.⁷⁴

Mayor King's proclamation received high praise across the country.⁷⁵ *The New York Herald* referenced the proclamation in concluding: "To go armed in a great city where the officers of the law are constantly within call is a standing menace by the criminal and thoughtless classes against the peace and order of society..."⁷⁶ *The Macon Telegraph and Messenger* also signaled its support of Mayor King's proclamation by publishing its own condemnation of carrying pistols in public: "Peace and security...are better found,

⁷⁴ "Carrying Concealed Weapons: Mayor King, of Philadelphia, Issues a Proclamation Against It," *New York Times* (New York, NY), Jul. 24, 1881, pg. 7.

⁷⁵ See, e.g., "Deadly Weapons: Address of the Pennsylvania Peace Society to Mayor King," *The Philadelphia Inquirer* (Philadelphia, PA), Sep. 7, 1881, pg. 3; "The Heinous Practice...", *The Somerset Herald* (Somerset, PA), Aug. 17, 1881, pg. 2; "Mayor King of Philadelphia...", *The Sedalia Weekly Bazaar* (Sedalia, MO), Aug. 16, 1881, pg. 4; "The Mayor of Philadelphia...", *Nebraska Advertiser* (Brownville, NE), Aug. 11, 1881, pg. 8; "Carrying," *The New Bloomfield, Pennsylvania Times* (New Bloomfield, PA), Aug. 9, 81, pg. 4; "Mayor King of Philadelphia...", *Orleans County Monitor* (Barton, VT), Aug. 1, 1881, pg. 2; "The Mayor of Philadelphia...", *Towanda Daily Review* (Towanda, PA), Jul. 27, 1881, pg. 2; "Against Pistol Carrying," *Evening Star* (Washington, DC), Jul. 23, 1881, pg. 5; "Toy Pistols and Concealed Weapons," *The Sun* (Baltimore, MD), Jul. 19, 1881, pg. 2; "The Hip-Pocket Business," *The North American* (Philadelphia, PA), Jul. 16, 1881, pg. 2; "A Model Mayor," *St. Louis Globe-Democrat* (St. Louis, MO), Jul. 16, 1881, pg. 4; "An Anti-Pistol Crusade," *Milwaukee Daily Sentinel* (Milwaukee, WI), Jul. 12, 1881, pg. 4. *But see* B., "The Carrying of Concealed Weapons: The Rights of Citizens," *Evening Star* (Washington, DC), Aug. 5, 1881, pg. 4 (questioning the legality of Mayor King's proclamation). For Mayor King's response to the nationwide support, see "The Mayor Pleased," *The Philadelphia Inquirer* (Philadelphia, PA), Jul. 5, 1881, pg. 2.

⁷⁶ "Carrying Deadly Weapons: Mayor King Determined to Put a Stop to the Dangerous Custom," *The New York Herald* (New York, NY), Jul. 24, 1881, pg. 7.

where people live and die out of sight of pistols.”⁷⁷ Meanwhile, *The Philadelphia Inquirer* commended Mayor King for taking a proactive approach towards maintaining the peace, ensuring public safety, and tending to the “well-being of society...”⁷⁸ Generally speaking, those that supported Mayor King’s proclamation—and those that agreeably condemned the practice of carrying dangerous weapons in public places—were not seeking to outright forbid the preparatory carriage of dangerous weapons at all times, places, and manners. Rather, they understood there were instances where an individual’s life could be in danger, which therefore may require an individual to be armed. Such instances, however, were viewed as being few and far between and in no way excused the habitual carrying of dangerous weapons.⁷⁹ Moreover, in densely populated areas, such as the city of Philadelphia, supporters of armed carriage restrictions felt that the legal system, particularly the laws pertaining to the surety of the peace afforded a sufficient remedy. As the editors of the Philadelphia based newspaper *The North American* put it: “A man so believing [his life is in danger] can always bring the person whom he believes to entertain designs against his life into a court on a summons, and upon a proper showing can compel that person to enter surety to keep the peace. And if the person so summoned cannot find surety, he must go to jail as a disturber of the peace and dignity of the Commonwealth. This covers the need of the private citizen.”⁸⁰

⁷⁷ “Jolly Pistol,” *The Macon Telegraph and Messenger* (Macon, GA), Jul. 27, 1881, pg. 2. In the late nineteenth century, there was public sentiment against pistols in general. One of the rationales given was the pistol’s sole purpose was the taking of human life. See, e.g., “Carrying Concealed Weapons,” *The Idaho Avalanche* (Homedale, ID), Jan. 16, 1886, pg. 1.

⁷⁸ “Mayor King’s Proclamation,” *The Philadelphia Inquirer* (Philadelphia, PA), Jul. 25, 1881, pg. 4. See also “Revolt Against the Revolver,” *The Philadelphia Inquirer* (Philadelphia, PA), Jul. 18, 1881, pg. 4.

⁷⁹ See, e.g., “Mayor King’s Proclamation,” *The Philadelphia Inquirer* (Philadelphia, PA), Jul. 25, 1881, pg. 4 (“There may be special causes for carrying concealed deadly weapons in self-defense, in a few instances; but they form scarcely one in a hundred of the cases in which such weapons are carried; and it is the pretense that arms are needed in self-defense rather than a reality that creates some of the worst dangers...”); “Revolt Against Revolver,” *The Philadelphia Inquirer* (Philadelphia, PA), Jul. 18, 1881, pg. 4 (“There should be no mawkish sentimentality displayed in connection with this subject. The principle asserted in the clause of the Constitution of Pennsylvania, which declares that ‘the right of citizens to bear arms in defense of themselves and the State shall not be questioned,’ is not infringed in any essential point by such action as Mayor King proposes here. It is neither to defend themselves nor the State that the bulk of those who are in the habit of carrying concealed weapons endanger the lives of many...”). See also “When Will the Community...,” *Northern Christian Advocate* (Auburn, NY), Jun. 25, 1885, pg. 4 (“it is hardly possible...to carry deadly weapons, except under circumstances of positive danger...If the law has any function to fulfill it is to give security to the lives of innocent and unoffending people, and to this end every person should be prohibited under heavy penalties from carrying concealed deadly weapons, excepting for self-defense in circumstances of danger.”).

⁸⁰ “The Mayor’s Proclamation,” *The North American* (Philadelphia, PA), Jul. 25, 1881, pg. 2.

Similar expositions on the law, armed carriage, and the public sphere were published across the United States.⁸¹ This is not to say] everyone in the late nineteenth century agreed that state and local governments retained the authority to restrict armed carriage, or that state and local governments could regulate the ownership and use of dangerous weapons in general. The legal challenges alone bring this point to light. Additionally, there was literature advancing that the protections afforded by the Second Amendment and state constitutional “bear arms” provisions were broad in scope.⁸² This understanding of the right to arms, however, was not accepted by the general public. Rather, it was a firmly held belief by an insular minority—a minority that was geographically divided and dispersed without an organized platform to share their attitudes and opinions. But the unceasing growth of firearms restrictions in the early twentieth century ultimately gave rise to a national gun rights platform. It is a topic that is taken up in the next chapter.

⁸¹ See, e.g., “State Press Review,” *The Daily Dallas Herald* (Dallas, TX), Jul. 22, 1881, pg. 7 (“Circumstances may arise and are constantly arising where the possession of a deadly weapon is proper. In dangerous and out-of-the-way places—on our frontiers where lawless persons congregate—in the pursuit of avocations which lead a citizen to suspected quarters, and in many other obvious cases it is proper [that] arms should be carried. But in a well governed community where there is a good police force and where society is organized to preserve order, no private person should be allowed to arm himself unless with the knowledge and consent of the authorities.”); “Carrying Weapons,” *Cincinnati Daily Gazette* (Cincinnati, OH), Sep. 24, 1881, pg. 4 (“The man who has been threatened with an assault has the right to arm himself, but this does not touch the practice of carrying weapons...The law which makes this an offense is founded in reason, for he who habitually carries deadly weapons habitually entertains a deadly purpose.”); “When and Where May a Man Go Armed,” *Daily Evening Bulletin* (San Francisco, CA), Oct. 26, 1866, pg. 5 (“The law ordains that no person shall carry deadly weapons within the city limits. Now, these limits are according to the law and city maps, all that tract of land between the Pacific ocean and the bay, and from North Beach to a point 12 miles south. This tract is laid out in our charts into beautiful streets, etc. This is the ideal San Francisco—such as it doubtless will be in 1966. The present San Francisco, however, is about one-sixth part of this great domain, whilst the remainder is nothing but a wilderness...We do not meet with many inhabitants...over this waste...In the thickly settled part of the town, where the police are in sufficient number to protect the citizen against the evil-minded, I can understand the justice of the regulation. But to prohibit the carrying of weapons beyond our western hills and in the solitudes of Lone Mountain and the Mission, is something that must be pronounced unjust.”).

⁸² See, e.g., David A. Curtis, “The Right to Bear Arms: It Shall Not Be Infringed, Says the Constitution,” *Los Angeles Herald* (Los Angeles, CA), May 22, 1891, pg. 6 (calling into question whether armed carriage laws and permit licensing schemes violate the Second Amendment); Guy Rivers, “Plea for the Hip-Pocket,” *The Rock Island Argus* (Rock Island, IL), Nov. 2, 1881, pg. 2 (questioning the constitutionality of armed carriage laws, as well as their purported purpose); Thomas Calahan, “The Right to Bear Arms,” *Iron County Register* (Ironton, MO), Aug. 25, 1881, pg. 1 (defending the constitutionality of concealed carriage restrictions, but questioning the constitutionality of open carriage restrictions); B., “The Carrying of Concealed Weapons: The Rights of Citizens,” *Evening Star* (Washington, DC), Aug. 5, 1881, pg. 4 (conceding the constitutionality of concealed carriage restrictions, but proclaiming open carriage to be constitutionally protected). See also “[Reply to Thomas Calahan’s] The Right to Bear Arms,” *Iron County Register* (Ironton, MO), Sep. 22, 1881, pg. 1 (responding to Thomas Calahan’s opinion editorial on the right to carry arms).

