

The Right to Arms in America
before
the American Revolution

National Firearms Law Seminar

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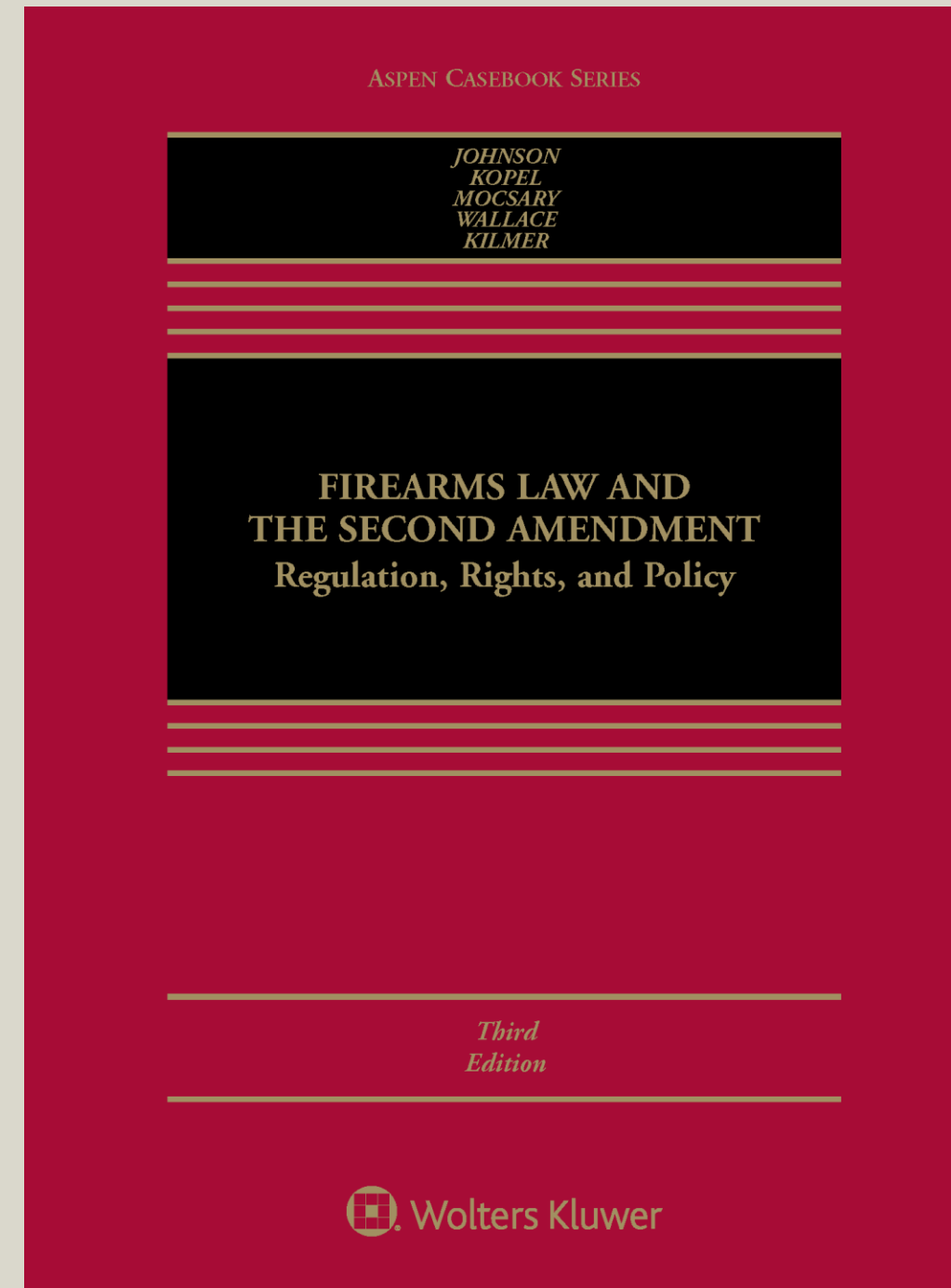
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Learning objectives

- Learn the legal bases for the American right to arms before independence.
- Survey arms mandates in colonial America.
 - For militia
 - And for nonmilitia, such as travelers and female householders.
- Examine groups that were excluded from the right to arms.
 - In the context of changes in English law on religious liberty.
 - In the context of wars with Indian nations.
 - In the context of slavery of Indians and Africans.

Presenter's background

- University of Wyoming College of Law, Firearms Research Center, senior fellow.
- Research Director at the Independence Institute (Denver); adjunct scholar at the Cato Institute (D.C.).
- Coauthor of the first law school textbook on the Second Amendment. *Firearms Law and the Second Amendment: Regulation, Rights, and Policy* (Aspen Pubs. 3d ed. 2022).
- Oral argument team in *Heller*.
- Cited in *Heller*, *McDonald*, & *Bruen*.
- Cited in 7 Supreme Court cases, and 130 cases by lower courts.



PART I

*The First Written Right to Arms in the
Anglo-American World*

The Virginia Charter

- Virginia Colony founded in 1607.
- Based on a royal charter of April 10, 1606, issued by James I.
 - To create a Southern Colony — the future Virginia, and all future colonies or states south or west thereof.
 - And a Northern Colony — everything else in the future continental United States.
- The charter set forth the reciprocal rights and responsibilities of the colonists and the king.
 - For example, the colonies were allowed to coin money — something that local governments in England had no right to do.
 - Massachusetts did coin its own money for a while during the British Civil Wars of the mid-17th century.
 - Due to the scarcity of coins, Massachusetts also made balls of ammunition into legal tender.
 - The Charter presumed that the colonies would have to be self-sustaining and mostly self-governing, and would not be supported by the English military.
 - In contrast to the French and Spanish incipient colonies, which were mainly trading posts directly ruled by the king and with on-site national army and navy for protection.
- Source for original documents: *Federal and State Constitutions Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies Now or Heretofore Forming the United States of America* (Francis Newton Thorpe ed., 1909).

Arms Rights in the Virginia Charter

- The king, binding his “Heirs and Successors” forever, gave “full Power and Authority” to the leaders of the Virginia Company and “so many of our subjects as shall willingly accompany them,” for all of them to bring:
 - “sufficient Shipping, and Furniture of Armour, Weapons, Ordinance, Powder, Victual, and other things necessary for the said Plantations and for their Use and Defence there: Provided always, that none of the said Persons be such, as shall hereafter be specially restrained by Us, our Heirs or Successors.”
 - In other words, a perpetual right to import arms, ammunitions, and other necessities.
- A right for everyone who settles in Virginia, not just for the Virginia Company itself.
- Exception for persons who have been “specially restrained” by the king, presumably because of some sort of dangerousness. *Cf. Garland v. Rahimi*, 602 U.S. 680 (2024) (affirming gun bans for persons individually determined to be dangerous after a hearing with due process).

Virginia Charter details

- The English crown perpetually guaranteed to allow the Virginia Company's leaders and "their Associates . . . by their Deputies, Ministers, and Factors," to import goods from England, Ireland, and other royal dominions.
 - In particular, "the Goods, Chattels, Armour, Munition, and Furniture, needful to be used by them, for their said Apparel, Food, Defence or otherwise."
 - For the first seven years, there would be no taxes on these Virginia-bound exports.
- Although the English who lived in England had no written guarantee of arms rights until the 1689 English Bill of Rights, the Virginians had their guarantees from the start: to bring arms for their use and defense, and to import arms for "defence or otherwise" — such as hunting.
- The colonies had the right "from time to time, and at all times forever hereafter, for their several Defences," to "encounter, expulse, repel and resist, as well by Sea as by Land, by all Ways and Means whatsoever," any persons who should attempt to inhabit the colonies without permission, or anyone who attempted "the Hurt, Detriment, or Annoyance of the said several Colonies or Plantations." The colonial governments' right of self-defense against invaders or criminals would in practice need to be exercised through the collective action of the colonists, there being no British army anywhere nearby.
- The above rights were reiterated in Virginia's second charter, in 1609, but not in later charters.
 - Yet the 1606 Charter rights were expressly perpetual.

The New England Charter

- The Northern Colony got going in 1620.
 - The settlers were given letters patent by the holders of the 1606 charter rights for the north, thus ensuring that New Englanders had the 1606 rights.
 - These rights were restated in the 1620 Charter of New England.
- it shall be lawful for “our loving Subjects, or any other Strangers who become our loving Subjects,” to “att all and every time and times hereafter, out of our Realmes or Dominions whatsoever, to take, load, carry, and transports in . . . Shipping, Armour, Weapons, Ordinances, Munition, Powder, Shott, Victuals, and all Manner of Cloathing, Implements, Furniture, Beasts, Cattle, Horses, Mares, and all other Things necessary for the said Plantation, and for their Use and Defense, and for Trade with the People there.”
- The New England Charter repeated the guarantee of no customs duties, “inwards or outwards” for the aforesaid goods for seven years.
- Also repeated was the exception to the right: persons who now or in the future were “by special Name restrained” by the king or his successors.
- Likewise reiterated was the collective defense right, under the direction of the government of New England:
 - “for their severall Defence and Safety, encounter, expulse, repel, and resist by Force of Arms, as well as by Sea as by Land, and all Ways and Means whatsoever,” all persons who attempted to inhabit New England without the government’s permission.
 - Also affirmed was the right to resist any persons who attempted the “Destruction, Invasion, Detriment, or Annoyance of said Collony and Plantation.”
- **To induce settlement of Virginia and New England, the king further guaranteed that the settlers and their descendants would forever have all the rights of Englishmen.** All of the king’s subjects who dwelled in the colonies, “and every of their children” born there, **“shall have and enjoy all Liberties, Franchises and Immunities within any of our other Dominions, to all Intents and Purposes, as if they had been abiding and born, within this our Realm of England, or any other of our said Dominions.”**

Territorial scope of American arms rights

Based on the boundaries of the territories in the Virginia and New England charters:

- It could be argued that the charters extended all the way to the Pacific coast. At the least:
- The 1606 Virginia Charter is one of the founding legal documents of all 13 original states —plus West Virginia and Kentucky (both formerly part of Virginia) and Maine (formerly part of Massachusetts).
- The 1620 New England Charter is one of the founding legal documents of the New England states
 - except Vermont,
 - but including New York, New Jersey, and Pennsylvania.
- Guarantees of the rights of Englishmen were common in other American colonial charters.
- **So when English rights were restated in the 1689 English Bill of Rights, those rights — including the right to “arms for their defence” — applied to Americans, too.**

William Cobbett explains the differences between England and America

- The rights that grew in American soil would not be identical to their English ancestors.
- In the early nineteenth century — two centuries after the Virginia charter, and four decades after American independence — English journalist William Cobbett would contrast life in England and America.

Hunting

- The game laws of England were used to keep commoners from hunting, and, during the reigns of Charles II and James II in the latter 17th century, from having firearms at all.
- But in America, wrote Cobbett, “As to game-laws, there are none, except those which appoint the times for killing. People go where they like, and, as to wild animals, shoot what they like.” Hunting was “the sport which is the most general favourite.” William Cobbett, *Cobbett's America* 200 (J.E. Morpugo ed., 1985).
- Americans believed that they all had the right to hunt, and they mocked the hunting restrictions in England.

Militia

- “there is no sort of resemblance between the American and the English militia. These militia in America receive no pay, no clothing, no arms, from the government. Every man goes out in his own ordinary array, and carries his own arms and accoutrements. . . . In short, it was a body of the people, voluntarily assembled, and acknowledging no superior not of their own electing.”
- The frugal U.S. federal government having only a small standing army, and the American people being so well armed, the federal “government could not stand a week, if it were hated by the people” *Id.* at 212.

The Great Seals of Virginia



The 1606 colonial seal

According to King James's first charter for Virginia, the seals of the Virginia colonies would contain:

- the king's coat of arms on one side.
 - On left of the royal coat is a rampant lion wearing a crown.
 - On the right, a rampant unicorn.
- the king's portrait on the reverse.
- The words in Latin for "Royal seal of Great Britain, France, and Ireland."

The 1776 seal of the independent Commonwealth of Virginia

The independent Commonwealth of Virginia created a new seal and put the same design on its flag.

- Virginia's 1776 seal and flag also had "arms," but of a different sort.
- At the bottom of the seal and flag is the prostrate body of a man, representing tyranny. A crown has fallen from his head. He holds a broken chain in one hand, and a scourge in the other.
- Above him, with one foot placed on his chest, is Virtus, the Roman goddess of bravery and military strength. She holds a spear in one hand, and a sheathed sword in the other. The orientation of the weapons indicates that her triumph is complete, and peace has been restored.
- The motto is Sic semper tyrannis ("Thus always to tyrants").

PART II

Colonial Statutes Mandating Arms Possession

Massachusetts Bay Colony

- In 1628, a group of Puritans established the Massachusetts Bay Colony.
 - They received a royal charter in 1629.
 - That same year, King Charles I prorogued Parliament and intensified persecution of the English Puritans, thereby triggering the Great Migration to New England.
- On March 22, 1631, the Massachusetts Bay Colony adopted a law mandating that all adult males be armed. *Records of the Governor and Company of the Massachusetts Bay in New England* (Nathaniel B. Shurtleff ed. 1853).
 - Massachusetts' arms mandates were not limited to the militia. A 1645 order of the General Court (the governing body) declared that "all inhabitants" must "have armes in their howses fitt for service, with powder, bullets, match, as other souldiers."
- The law also established "trained bands," who were an elite unit of the militia and trained more frequently than the general militia.
 - The trained bands were required to have "ether full musket boare, or basterd musket at the least, & that none should be under three foote 9 inches."
- The Massachusetts Bay Colony had a strict law on children and guns. A 1645 statute provided
 - "all youth within this jurisdiction, from ten yeares ould to the age of sixsteen yeares, shalbe instructed, by some one of the officers of the band, or some other experienced souldier . . . upon the usuall training dayes, in the exercise of armes, as small guns, halfe pikes, bowes & arrows."
 - However, children were not required to so exercise "against their parents minds."

Plymouth

- A separate colony from Massachusetts until 1692, while always very culturally similar, including in arms law.
 - Massachusetts: founded by English Puritans who migrated directly.
 - Plymouth, founded by Brownian Separatists who had originally moved to the Netherlands.
- Plymouth's first written arms mandate came in 1632:
 - "[E]very freeman or other inhabitant must provide for himselfe and each under him able to beare arms a musket and other serviceable peece with bandeleroes and other apurtanances," plus two pounds of powder and ten pounds of bullets. *The Compact with the Charter and Laws of the Colony of New Plymouth* 31 (William Brigham ed., 1836).
- Male indentured servants who had completed their period of service, and other male singles, could not set up their own households unless they possessed the requisite arms and ammunition. If they did not, they had to work for someone who would buy the arms and ammunition for them.
- During emergencies, military commanders could fine persons who lacked required arms. Gunsmiths were required to repair arms speedily, and to accept corn for their services, at reasonable rates.

Maryland

“[H]is her or their house”

- In 1639, Maryland required
 - “that every housekeeper or housekeepers within this Province shall have ready continually upon all occasions within his her or their house for him or themselves and for every person within his her or their house able to bear armes one Serviceable fixed gunne of bastard muskett boare.”
 - Plus one pound of gunpowder, four pounds of pistol or musket shot, “match for matchlocks” or “flints for firelocks.” 1 *Archives of Maryland* 77 (William Hand Browne ed., 1885).
 - Relaxed in 1642 to allow any type of firearm:
 - Revised in 1658: “[E]very householder provide himselfe speedily with Armes & Ammunition according to a former Act of Assembly viz 2 [pounds] of powder and 5 of shott & one good Gun well fixed for every man able to bear Armes in his house.” *Id.* at 345.
- A “firelock” is a wheellock or a flintlock, although in American usage it almost always means a flintlock.
- Nearly four centuries after the enactment of Maryland’s 1639 statute, the phrase “his her or their” has modern resonance. As it shows, Maryland wanted the whole population armed, not just one sex.

Immigration rules

- The colony wanted to encourage immigration, and to ensure that the immigrants could take care of themselves. A 1641 statute thus stated that any person wishing to acquire title to Maryland land must bring;
 - “Armes and Ammunition as are intended & required by the Conditions above said to be provided & carried into the said Province of Maryland for every man betweene the ages of sixteene & fifty years w[hilch] shalbe transported thether.”
 - The arms minimum was “one musket or bastard musket with a snaphance lock,” ten pounds of gunpowder, 40 pounds of “Lead, Bullets, Pistoll, and Goose shot.”

Militia

- Maryland imposed additional arms mandates on militiamen.
- A 1715 statutory compilation includes the requirement that every militiaman “appear and bring with him one good serviceable Gun, fixed, with Six Charges of Powder.”
- Militia cavalrymen were to “find themselves with Swords, Carbines, Pistols, Holsters and Ammunition.”

Connecticut

Mandate

- In 1650, the colony ordered
 - “[t]hat all persons that are above the age of sixteene yeares, except magistrates and church officers, shall beare arms . . . ; and every male person within this jurisdiction, above the said age, shall have in continuall readines, a good muskitt or other gunn, fitt for service, and allowed by the clark of the band.”

New Haven

- A separate colony until 1662.
- Required males aged 16-60 to have
 - “a good serviceable gun . . . to be kept in a constant fitness in all Respects for service.”
 - Also required a “a good sword,” bandoleers, a powder horn, worm, scourer, priming wire, shot bag, charger, “and whatsoever else is necessary for such service.”

Cleaning tools

- As the American colonies developed, arms mandates increasingly included cleaning tools and other accessories.
- Worm. A corkscrew-shaped device attached to the end of a ramrod that is used for cleaning and for extracting unfired bullets and other ammunition components from firearms.
- Ramrod, also called a “scourer.”
- Priming wire. Also called a “picker.” To clean the flashpan and the touch hole (the small hole where the fire from the priming pan connects with the main powder charge).

New Hampshire

- First militia act in 1687:
 - “that no person whatsoever above Sixteene yeares of age remaine unlisted.” Equipment was “a well fixed musket” with a barrel at least three feet.
 - The caliber was large: “the bore for a bullett of twelve to the pound.”
 - This is 12 gauge, or .75 caliber for a smoothbore musket.
 - Also necessary were bandoliers and a cartridge box, plus bullets and powder.
 - Officers had the option of allowing their men to have “a good pike and sword” instead of the musket. ¹ *Laws of New Hampshire: Province Period* 221 (Albert Stillman Batchellor ed., 1904).
- The next act, in 1692, changed the militia from all “persons” over 16 to all males over 16. *Id.* at 537.
- In 1718, an upper age limit was introduced, 60 years.
- **The 1718 arms mandate applied not just to males, but also to every “Housholder,” such as an unmarried woman who lived on her own, or a man who had a house and was 60 years or older.**
- The new law required gun cleaning tools, as well as “a good Sword or Cutlash [Cutlass].” ² *Id.* at 285 (1913).
- As America developed the trend was to require an edged weapon in addition to a firearm.
- The New Hampshire statute reflected a common American practice. Whenever a small town was attacked, everybody who was able would fight as needed, including women, children, and the elderly. Steven C. Eames, *Rustic Warriors: Warfare and the Provincial Soldiers on the New England Frontier, 1689-1748*, at 28-29 (2011).

Rhode Island and Providence Plantations

Origin

- Created as a refuge for religious nonconformists in 1636.
- Granted a charter by Parliament in 1644, during the English Civil War.
- The only place at the time in the Western world with complete freedom of religion.

Mandate

- “every Inhabitant of the Island above sixteen or under sixty years of age, shall always be provided with
 - a Musket,
 - one pound of powder,
 - twenty bullets, and
 - two fadom [2 fathom, *i.e.* 12 feet] of Match,
 - with sword, rest, bandoleers all completely furnished.”
- As for persons who were defective in arms, the town councils were empowered to cause them “to be supplied in an equal way according to Estate and strength.”
Acts and Orders of 1647, in Colonial Origins of the American Constitution: A Documentary History 183-84 (Donald S. Lutz ed., 1998).

New Netherland/New York

Origin

- New Netherland was founded in 1614 by the Dutch West India Company.
- At its height, New Netherland stretched from Fort Orange (Albany) down to Delaware, with a trading zone along Long Island and southern New England.

Who?

- The company promised prospective settlers that the company would defend them at its own expense.
- Even after the promise became obviously untenable, and militias were created, New Netherland's scattered settlements lacked a strong sense of community for which to fight and were too weak even if they had been willing.
- When the British navy showed up in 1664, Dutch Governor Peter Stuyvesant received little support from the inhabitants, and so he had to surrender without firing a shot. Merrill Jensen, Introduction to *9 English Historical Documents: American Colonial Documents to 1776*, at 29 (David C. Douglas gen. ed., Merrill Jensen ed., 1955).
- British King Charles II gave the colony to his brother James Stuart, the Duke of York. So, the city of New Amsterdam became the city of New York, and the colony of New Netherland became New York.

Militia mandate

- The form of government in New York was the most autocratic in the colonies.
- Back in England, the Duke of York and his brother the King favored gun control, but that was not practical for New York.
- In 1671 and 1676 New York's Royal Governor issued militia laws requiring that towns and individuals each have their own arms supply.
- All males sixteen to sixty had to have a firearm and appropriate accessories and ammunition.
- If they were freeholders (landowners, rather than tenants), they had to supply the equipment "at their own."
- If they were "sons or Servants," their "Parents and Masters" were responsible for providing the arms.
- Any "good Serviceable Gun" plus "a good sword" approved by the local militia officer would suffice.
- The gun had "to be kept in Constant fitness for present Service." 1 *The Colonial Laws of New York from the Year 1664 to the Revolution* 49-50 (1894).
- The militia starting age was lowered to 15 in 1691 and raised back to 16 in 1702. *Id.* at 231, 500.
- The maximum age was lowered to 50 in 1775.

Mandate for nonmilitia

- A 1684 statute ordered that persons exempt by law from militia training (e.g., certain occupations) still had to keep the same arms. *Id.* at 161.

New Jersey

Origin

- In 1638-55, Southern N.J. was part of New Sweden, whose stronghold was the lower Delaware River.
- Taken by New Netherland in 1655.
- Then by the United Kingdom in 1664.
- Shortly after English conquest, it was separated from New York.
- From 1674 to 1702, East Jersey — the part closest to New York City — was a separate colony from West Jersey.

Immigration

- The lords proprietors — the high English aristocrats who had been granted title to New Jersey — in 1664 offered land to any freeman who came
 - “arm’d with a good musket”
 - plus 10 pounds of gunpowder, 20 pounds of bullets, match, bandoleros, and six months of food.
- For the second year of English settlement, the schedule was 90 acres of land to plant, for “**every free man and free woman**” who brought the requisite arms and supplies. The Concession & Agreement of the Lords Proprietors of the Province of New Caesarea, or New Jersey, to & with all and every of the Adventurers & all such as shall settle or plant there (1664), in *The Grants, Concessions & Original Constitutions of the Province of New Jersey* 20–23 (1881).

Origin

- After reunion in 1702, New Jersey enacted an arms mandate for militiamen.
- All men 16 to 50 were in the militia, and each one “shall be sufficiently armed with one good sufficient Musquet or Fusee well fixed, a Sword or Bagonet [bayonet], a Cartouch [cartridge] box or Powder-horn, a pound of Powder, and twelve sizeable Bullets.”
- Militiamen “shall appear in the Field, so armed, twice every year.” This was a “muster,” to check that everyone possessed the proper arms.
- There were exemptions for ministers, doctors, schoolmasters, legislators, slaves, and “Civil Officers of the Government.” Legislative exemptions were controversial because legislators would not bear the burdens of warfare that they might vote to initiate.

Virginia

Presumption of arms

- Long before Virginia expressly required people to possess arms, it assumed that they already did. For example, a 1619 statute mandated arms carrying, as did numerous follow-up statutes extending the places where arms must be carried, as will be described in Part III.

Mandates

- The surviving records of the 1639 Assembly are lost, but a manuscript in the possession of Thomas Jefferson summarized the year's enactments, including "ALL persons except negroes to be provided with arms and ammunition or be fined at pleasure of the Governor and Council." William Waller Hening, 1 *The Statutes at Large; Being a Collection of all the Laws of Virginia, from the First Session of the Legislature, in the Year 1619*, at 226 (1823).
- Based on the summary, it is possible but not certain that the bill's text covered women as well as men.
- 1656: Every man able to bear arms had to have "a fixt gunn" plus two pounds of powder and eight pounds of shot.
- Delinquents would be fined 50 pounds of tobacco, to be sold by the county courts and used to provide "a common stock of ammunition for the county." *Id.* at 525.
- 1684: required both a bladed arm and a firearm. Free Virginians had to "provide and furnish themselves with a sword, musquet and other furniture fitt for a soldier." 3 *id.* at 13.
- 1705: every foot soldier must acquire "a firelock, muskett, or fusee well fixed." *Id.* at 338.
- In 1748, all militiamen were required to have "arms and ammunition." 6 *id.* at 116.
 - Militiamen without enough money to provide their own arms would be given arms "out of his majesty's magazine." *Id.* at 116-18.
 - Cavalry officers had to buy themselves "holsters and pistols well fixed." *Id.* at 537 (1755).
- A requirement that persons exempted from militia service — such as college professors — must possess militia-type arms was added in 1762. 7 *id.* at 534, 537.

Immigration

- To promote settlement of the frontier, 500-acre land grants were offered starting in 1701, provided that the grantee keep
 - "upon the said land one christian man between sixteen and sixty years of age perfect of limb, able and fitt for service."
 - Such men should be "continually provided with a well fixt musquett or fusee, a good pistoll, sharp simeter [scimitar sword], tomahauk," and ammunition. *Id.* at 205-07.

North Carolina

Origins

- The Carolina colony was given a charter in 1663.
- In 1712, South Carolina was split off from North Carolina because the North and South developed differently from the start, North Carolina being much less aristocratic.

Immigration

- To encourage settlement, the eight original Carolina proprietors offered prospective immigrants a strong legislature, religious freedom, and generous land grants.
- In return, immigrants had to bring six months of provisions. Every man had to “always . . . be armed with a good musket full bore, 10 pounds powder and 20 pounds of bullet.”
- A free woman immigrant could instead have an armed servant.
- Bonus lands were granted to every additional person in an immigrant group who was “above the age of fourteen years” and had “a good firelock or matchlock.”

Militia

- North Carolina’s 1715 militia law was for freemen between 16 and 60.
- They were obligated to appear at militia musters “with a good Gun well-fixed Sword & at least Six Charges of Powder & Ball.”
- Then in 1746, “a Gun, fit for Service, . . . and at least Twelve Charges of Powder and Ball, or Swan Shot, and Six spare Flints.”
- North Carolina’s militia always included free blacks, who served without discrimination.

Delaware

Origins

- New Sweden was established Fort Cristina in 1638. It covered the northern part of Delaware Bay (part of the future State of Delaware), plus the area around the southern Delaware River, which divides New Jersey from Pennsylvania.
- The Swedes relied on militia for defense. Leon de Valinger, Jr., *Colonial Military Organization in Delaware 1638-1776*, at 7-21 (1938).
- New Sweden fell to Dutch New Netherland in 1655. Then in 1664, the English seized New Netherland from the Dutch.
- After 1664, Delaware was initially governed as part of greater New York, and thus covered by the 1671 N.Y. law required “every Person that can beare Arms from 16 to 60 years of Age” to have arms. Militiamen who could not afford their own would be given arms from the colonial magazine. *Id.* at 22-23.
- When Pennsylvania was created as a separate colony in 1681, Delaware was included in the grant. Pennsylvania proprietor William Penn allowed the “Three Lower Counties” (modern Delaware) their own assembly, but they shared a governor with Pennsylvania.

Militia

- Delaware's Swedish, Finnish, and English settlers were not predominantly Quakers, unlike most early settlers of Pennsylvania, so they did not hesitate to embody militias when necessary.
- However, as in South Carolina, Delaware's legislature was chary of putting the power of the sword in the hands of the governor, so colonial militia laws were enacted on a temporary basis during periods of necessity.
- In the War of Jenkins' Ear (1739-42), Great Britain fought Spain and France. Delaware mandated “**every Freeholder and taxable Person**” to have “One well fixed Musket or Firelock, one Cartouch-Box, with Twelve Charges of Gun-Powder and Ball therein, and Three good Flints....”
- The militia law would sunset after three years or the end of the War of Jenkins' Ear, whichever came first. *Laws of the Government of New-Castle, Kent and Sussex Upon Delaware 171* (1741).
- A freeholder owned land outright, and could be male or female, of any color.
- A “taxable person” was someone subject to a capitation tax. In some states, white females were exempted.
- Although many people had to be armed, the Delaware militia comprised a subset: males 18-50. Masters of indentured servants had to make them enlist. Like other colonies, Delaware exempted certain occupations from routine militia service, but still ordered them to be armed and ready to serve in an emergency.
- King George's War (1744-48) was known in Europe as the War of the Austrian Succession, again pitted Britain against Spain and France. Delaware enacted no new militia law, but instead sent voluntary companies of “associators” to join the fighting near Albany, New York.
- On the eve of the American Revolution, new and permanent militia laws were enacted in 1774-75.

Religious exemption

Delaware Quakers, who by the mid-eighteenth century were mostly but not entirely pacifists, did not have to own guns, serve in the militia, nor perform the nightly watch duties required in some towns.

- To obtain the exemption, Quakers (Society of Friends) had to pay a fee of two shillings six pence each day on which they would ordinarily be required to serve in the militia or watch. The fee was deposited in the Poor Fund, to respect Quaker scruples about being taxed for specific military purposes. Ministers were exempt from all arms-related rules and did not have to pay a fee.
- A new militia law was passed for the French and Indian War (1754-63) provided that Quakers did not have to pay a fee for their exemption.

Pennsylvania

- Early eastern Pennsylvania was part of New Sweden/New Netherland/New York and was covered by New York's 1676 militia law.
 - Even beforehand, some towns had formed their own militia.
- Pennsylvania was created as a separate colony in 1681 by the Quaker William Penn.
 - In settlement of the enormous debts that the Duke of York (the future King James II) owed Penn's father.
 - "Pennsylvania" means "Penn's woods."
- The Pennsylvania colony was long unique, never mandating that anyone be armed, nor establishing a colonial militia.
- After Quakers lost political control of the colony in 1755-56, there were intense political conflicts over the creation of a militia.
 - There were always volunteer militias,
 - Some local governments did raise local militias,
- Not until 1776 was a statewide militia obligation created, pursuant to the new Pennsylvania Constitution. Pa. Const. of 1776, § 5.
- Further reading: Samuel J. Newland, *The Pennsylvania Militia: The Early Years, 1669-1792* (1997); C. Hale Sipe, *The Indian Wars of Pennsylvania* (1931).

Summary of scope of arms possession mandates

Militia scope

- The standard age for militia duty in the colonial period was 16 to 60.
 - Over the years, some states or colonies had set an upper age as low as 45 or 50, and some had no upper limit.
- Although the most common lower bound was 16, statutes ranged from 15 to 18.
 - The only colony that excluded 18- to 20-year-olds from the militia was Virginia, from 1738 to 1757.
 - For young people who still lived with their parents, statutes usually required the parents to ensure that their children had the requisite arms. The same was true for servants.
- No colony or state restricted arms possession by males who were too young or too old for the militia, nor by females.
- Some colonies or states put older males, males not physically fit for militia service, or the occupationally exempted on the alarm list. They would not train or march off with the militia, but they were required to have militia equipment and defend their community if it were attacked.
- No state authorized female service in the militia, but several — Massachusetts, Maryland, Virginia, Delaware, New Hampshire, Vermont, and Connecticut — at least sometimes required female householders to have the same arms as militiamen.
 - Like males who were militia-exempt because of age or occupation, armed females were part of their communities' emergency defense.
 - The female mandate (like the mandate for males with medical or occupation exemptions) was to promote self-defense, and to maximize the number of community defenders in an emergency.

Militia arms

- During the colonial period, arms mandates grew in detail and went well beyond just requiring gun ownership.
 - The later statutes almost always required an edged weapon, such as a bayonet or sword.
 - They usually mandated certain quantities of gunpowder and bullets,
 - Plus accessories for carrying and loading, for casting lead bullets, and for gun cleaning and repair.
- Pole arms, such as pikes, lances, or spontoons, were sometimes required. Militiamen on horseback might have to have a saddle, holsters to attach to the saddle, and other tack.
- For a full list and citations of all mandated arms in every colony, see David B. Kopel & Joseph G.S. Greenlee, *The History of Bans on Types of Arms Before 1900*, 50 *Journal of Legislation* 223, 243-54. (Notre Dame) (2024).

Other Duties of Armed Colonists

- Outside the Militia and the Alarm List, Americans had additional duties to bear arms and use force in community service.
 - The duties were based on English common law, and sometimes expressed in a colony's statutes.
 - The law presumed that individuals would bring to these duties would be whatever arms they kept at home.

Hue and Cry, to pursue fleeing criminals

- The hue and cry could be raised by a victim, or by a government official such as a sheriff, constable, or justice of the peace.
- By common law, all able-bodied men from 15 or 16 to 60 were obliged.
- Pursuing citizens were allowed to use deadly force if necessary to prevent escape.

Watch and Ward, guard duty for towns and villages

- "Ward" was the daytime activity, and "watch" the nighttime activity.
- The patrols would be arranged by a government official.

Posse Comitatus

- The term refers to the power of the sheriff, coroner, magistrate, or other officials to summon all able-bodied males to assist in keeping the peace.
- Posse service could include a few men helping a sheriff serve a writ or could include many men helping a sheriff suppress a riot.
- For the posse, the traditional minimum age was 15 or 16.
- Some commentators said the upper age limit was 70, whereas others said there was no limit.
- Shortly before being appointed to the U.S. Supreme Court by President Washington, James Wilson stated in 1790 that "No man above fifteen and under seventy years of age, ecclesiastical or temporal, is exempted from this service."

Differences between England and the American Colonies

- On the above duties, the laws of England and the American colonies were all solidly established by statutes and common law..
- Yet America and England were very different in practice. Only in America did governments promote:
 - armed women,
 - land grants for armed settlers, and
 - a general militia rather than a select militia.
- Only in America was the right to arms guaranteed by written law right from the start.
- In England, the duty to bear arms arose in special situations.
 - Militia duty might be a couple days a month or several months in a row, but it would be the exception to ordinary life.
 - Keeping watch and ward would be according to a schedule.
 - A typical day would not involve following the hue and cry, nor serving in a posse comitatus.
 - In England, arms carrying in everyday situations had been regulated in varying degrees, but never required.
- Some American colonial laws did mandate bearing arms in routine situations, such as going to church, traveling, or farming. As detailed in the next Part.

Part III:

Carry Mandates

Virginia Carry Mandates

- Originally governed in a military style, Virginians created the first legislative assembly in America.
- The first session of the Virginia House of Burgesses in 1619 required:
 - “all suche as beare armes shall bring their pieces, swords, powder and shotte” to church on Sundays.
 - To the same effect was 1632’s “All men that are fittinge to beare arms, shall bring their pieces to the church.” 1 Hening at 198.
- Four years later came a traveler’s mandate: “That no man go or send abroad without a sufficient partie well armed.” *Id.* at 127.
- The next year, for farmers:
 - “That men not go to worke in the ground without their arms (and a centinell upon them).” And “That the commander of every plantation take care that there be sufficient of powder and amunition within the plantation under his command and their pieces fixt and their arms compleate.” *Id.* The church, travel, and farming mandates were reiterated in 1632. *Id.* at 173.
- In 1665, the Assembly worried that “the careless Manner” of people “going unarmed to Churches, Courts, and other public Meetings, may probably, in Time, incite the Indians, to make some desperate Attempt upon them.”
 - Accordingly, the legislature requested that the governor tell militia officers “to take care and prevent the same.”
- After Bacon’s Rebellion, the legislature in 1676 declared that although “liberty is granted to all persons to carry their armes wheresoever they goe,” a group of more than five would be considered riotous. *Id.* at 381.

Connecticut Carry Mandate

- When going to church:
 - “To prevent or withstand such sudden assaults as may be made by Indeans upon the Sabbath or lecture dayes, It is Ordered, that one person in every several howse wherein is any souldear or souldears, shall bring a musket, pystoll or some peece, with powder and shott to elalch meeting.”
- The New Haven Colony, which was separate until 1662, passed its own carry mandate in 1644.

Massachusetts Bay & Plymouth Carry Mandates

Massachusetts Bay

- A 1637 Massachusetts law mandated carry at all public assemblies, not just church services:
 - All persons over 18, except for magistrates and church elders, must “come to the publike assemblies with their muskets, or other peeces fit for servise, furnished with match, powder, & bullets.” 1 Mass. Bay Recs. at 190. It was repealed the next year. 2 *id.* at 38. Then in 1643, the highest ranking militia officer of each town was ordered to “appoint what armes to bee brought to the meeting houses on the Lords dayes, & other times of meeting.” 2 *id.* at 38 (1853); 1 *id.* at 190.
- Like Virginia, Massachusetts wanted travelers armed.
 - Beginning in 1631, Massachusetts ordered persons traveling to the adjacent Plymouth Colony not to go “without some armes, though 2 or 3 togeathr.” 1 *id.* at 85.
 - The mandate was expanded in 1636 so that “no person shall travel above one mile from his dwelling house, except in places wheare other houses are neare together, without some armes, upon paine of 12 d. for every default.”

Plymouth

- Militiamen had to bring guns to church on Sundays, from April 1 through November 30.
- One-quarter of them had to bring powder and bullets for after-church practice that might be required. *Plymouth Laws* at 102 (enacted 1656); *id.* at 115 (enacted 1658) (changing April 1 to March 1).
- During King Philip's War (1675-76), the requirement was made year-round, and everyone had to bring at least six rounds of ammunition. *Id.* at 176 (enacted 1675).

Rhode Island Carry Mandates

- In 1639, Rhode Island directed:
 - “noe man shall go two miles from the Towne unarmed, eyther with Gunn or Sword; and that none shall come to any public Meeting without his weapon.”
 - 1 Records of the Colony of Rhode Island and Providence Plantations, in New England 94 (John Russell Bartlett ed., 1856).
- Portsmouth, Rhode Island, enacted a similar law in 1643. *Id.* at 79.
- Thus, a wide-ranging carry mandate, like Virginia and Massachusetts Bay.
 - Broader than the church-only mandates in Connecticut and Plymouth.

Maryland, South Carolina, Georgia

- In 1642, Maryland mandated arms carrying for church meetings *and* travel:
 - “Noe man able to bear arms to goe to church or Chappell . . . without fixed gunn and 1 Charge at least of powder and Shott.” Further, “Noe man able to bear arms to goe . . . any considerable distance from home without fixed gunn and 1 Charge at least of powder and Shott.” 3 *Archives of Maryland* at 103
- The South Carolina mandate was church-only:
 - “every white male inhabitant of this Province, (except travelers and such persons as shall be above sixty years of age,) who . . . is . . . liable to bear arms in the militia of this Province” who shall “go and resort to any church or any other public place of divine worship” had to “carry with him a gun or a pair of horse-pistols . . . with at least six charges of gun-powder and ball.”
 - Church officials had to report persons who failed to bring arms to church, and were authorized to require parishioners to display their arms.
 - The carry mandate did not apply in Charlestown, where instead the entire watch and ward was supposed to be on duty on Sundays.
 - The stated purpose of the law was “for the better security of this Province against the insurrections and other wicked attempts of Negroes and other Slaves.” The “other Slaves” were enslaved Indians.
- Georgia was similar to South Carolina.
 - Per a 1770 Georgia statute, everyone “liable to bear arms in the militia” had to carry one long gun or two handguns to church.
 - The guns could not be left outside; everyone had to “take the said gun or pistols with him to the pew or seat,”
 - The “inhabitants of the sea port towns” could instead carry any “side arms” — swords, knives, handguns, or other arms worn on the side. imposing fines on those in the militia who came to church unarmed. 19 (pt. 1) *The Colonial Records of the State of Georgia 137-40* (Allen D. Candler ed., 1904).

Part IV:

Some of the Colonial Period Gun Controls

Servants

Categories of servants

- Free servants. People who work for an employer pursuant to mutual agreement. In the arms-bearing context, the relevant free servants lived in the employer's household.
- Servants for a term of years.
 - Legally unfree.
 - Often, "indentured servants." That is, persons who signed a transferable labor contract for a term of years, in exchange for passage to America. Once docked in America, the transport ship officers would sell the contracts at dockside. A person who owned a contract could resell it.
 - Some were convicted criminals who had been offered the choice of execution in England or transportation to America.
 - Others were Indians, Irish, or Africans who had been captured and sold.
 - Originally, captives were required to serve only for a period of years, but this had changed by the latter 17th century.
- Servants for life.
 - A euphemism for slaves.
 - Unlike servants for a term, service for life was hereditary.
 - Most African and Indian slaves had been captured by other tribes and then sold to slave traders.

Militia status

- In the colonies, free servants were almost always in the militia.
 - The American policy contrasted with the English select militia under the Stuarts in the seventeenth century.
 - There, the militia technically included all able-bodied males, but militia training was reserved for people who owned their own land, freeholders.
 - If a servant showed up for English militia training, the servant was probably a substitute sent by his land-owning master.
- The colonial norm was also to include indentured servants in the militia.
- Whether a servant was free or indentured, the servant's master was often legally responsible for providing the servant with arms.
- Four colonies — North Carolina, Virginia, Delaware, and Maryland, — for part but not all of their histories excluded indentured servants from the militia.

Freedom Dues for Indentured Servants

- When an indentured servant or apprentice finished his or her term of labor, the master had to provide some goods, known as “freedom dues,” so that the person could begin independent life. Some colonies specified that firearms were part of freedom dues.
- Maryland required masters to give discharged male servants, “One Gun of Twenty Shillings Price, not above Four Foot by the barrel, nor less than Three and a Half; which said Gun shall, by the Master or Mistress, in the Presence of the next Justice of the Peace, be delivered to such Free-man, under the Penalty of Five Hundred Pounds of Tobacco on such Master or Mistress omitting so to do. . . .” *22 Archives of Maryland* 548 (William Hand Browne ed., 1902) (enacted 1699).
 - A 1704 amendment fined a former servant who sold his gun within the ensuing 12 months. 26 *id.* at 256 (William Hand Browne ed., 1906).
- In North Carolina, a 1715 statute told the master to discharge his or her obligation by giving the freed servant three barrels of Indian corn and two suits of clothes, or one suit of clothes and “a good well-fixed Gun, if he be a Manservant.” *The Earliest Printed Laws of North Carolina, 1669-1751*, at 63 (John D. Cushing ed., 1977).
 - A 1741 statute revised the freedom dues and ended the arms mandate. *Id.* at 165.
- Virginia’s freedom dues for males included “one well fixed musket or fuzee, of the value of twenty shillings, at least.”
- By custom, in sparsely settled South Carolina, freedom dues were 50 acres of land and a firelock musket.
- In Massachusetts Bay and Plymouth, a former servant (of any type) could not set up his own household until he had his own firearm. The laws likely encouraged that freedom dues in those colonies include a firearm.

Safety regulations

False alarms

- Besides being weapons, firearms were also an important tool for rapid communication. For example, on the night of April 18, 1775, Paul Revere and William Dawes rode through Massachusetts towns to warn that the British were coming. The alarm was spread from farm to farm, town to town, far beyond the sound of the riders' voices, by the firing of guns. Gunfire was the standard method of raising an alarm. Accordingly, inappropriate gunfire could raise a false alarm.
- Thus, in 1656, Virginia banned shooting "any guns at drinkeing (marriages and funerals onely excepted)" because "frequent shooting of gunns in drinking" caused false alarms about Indian attacks. 1 *Hening* at 401-02.
- Maryland , 1642: "No man to discharge 3 guns within the space of hour . . . except to give or answer alarm." 3 *Archives of Maryland* at 103.
- Plymouth forbade nighttime gunfire, except for shooting wolves "or for the finding of some man lost." *Plymouth Laws* at 56 (1636).

Tripwires

- In England, setting up guns triggered by tripwires was a common anti-poaching tactic. Plymouth in 1670 outlawed setting guns except in enclosures and required a warning to the neighbors.

More safety regulations

Discharge in big cities

- In 1713-14, the Massachusetts assembly determined that “by the indiscreet firing of guns laden with shot and ball within the town and harbour of Boston, the lives and limbs of many persons have been lost, and others have been in great danger, as well as other damage has been sustained.” Accordingly, the legislature outlawed shooting any “gun or pistol” in Boston, “the islands thereto belonging excepted.”
 - The Act expired by its own terms in three years and had an exception of militia training under the supervision of an officer, and any other target shooting authorized by a militia, but there was no explicit exception for self-defense.
- In Pennsylvania, colonial legislation fined anyone who “shall fire any gun or other fire arms . . . within the city of Philadelphia.”
 - Likewise, it was illegal to “wantonly, and without reasonable occasion, discharge and fire off any hand-gun, pistol or other firearms” in inhabited areas on New Year’s Eve. Violators were fined. *An Abridgment of the Laws of Pennsylvania, 1700-1811*, at 173-74 (John Purdon ed., 1811).

Trespass

- Pennsylvania also punished anyone who “shall presume to carry any gun, or hunt” on the land of others without permission, or who “shall presume to fire a gun on or near any of the king’s highways.” *Id.* at 208.
- Some other colonies had similar statutes.

Carrying to terrify

- Four colonies by statute, and the rest by common law, punished carry in a manner that was intended to cause public terror, such as by riding a horse into a courthouse while waving a pistol.

Virginia Restrictions on Blacks

- In 1680, Virginia forbade “any negroe or other slave [*i.e.*, an enslaved Indian] to carry or arme himselfe with any club, staffe, gunn, sword or any other weapon of defence or offence.” 2 *Hening* at 481.
- In early Virginia, free blacks and Indians were part of the militia, later excluded, and then reincluded in 1723.
- Black or Indian militiamen, as well as blacks or Indians who lived in their own house, could have one gun. 4 *id.* at 131.
- Blacks and Indians who were “not house-keepers, nor listed in the militia” were prohibited arms.
- Nonhouseholder blacks and Indians living on frontier plantations could possess arms if they were granted a license.
- Virginia’s period of armed black and Indian militiamen ended in 1738. Although they were still required to serve in the militia, a new statute demanded that they “shall appear without arms.” 5 *id.* at 17.
- During the American Revolution, military necessity pressed Virginia to allow free blacks in the state’s military.

Restrictions in other Colonies

Maryland

- Maryland adopted a licensing law that would become typical in slave states during the nineteenth century. “[N]o negro or other slave, within this province, shall be permitted to carry any gun or any other offensive Weapon, from off their master’s Land, without licence from their said Master.”

Delaware

- Blacks were excluded from the Delaware militia in 1741 because of the discovery that same year of a slave plot to burn New York City.

Rhode Island

- Free blacks were part of the militia pursuant to a 1667 statute.
- But after 1708, they were only allowed to serve in unarmed roles, such as musicians or laborers. René Chartrand, *Colonial American Troops 1610-1774* (1), at 23 (2002).

Georgia, Overview

Georgia

- Founded in 1733 by James Oglethorpe as a place where debtors could make a new start, instead of being sent to debtors' prison in England.
 - He intended for the colony to have no slaves, but that plan did not work out.
- A 1755 statute, revised in 1768, forbade slave possession or carrying of "Fire Arms or any Offensive Weapon whatsoever," unless the slave had written permission from his or her master, mistress, or overseer to hunt.
 - Slaves could also carry guns without written permission when accompanied by a white of at least 16 years old, or when hunting destructive birds on their master's plantation during daytime. However, no slaves could bear arms between sunset Saturday and sunrise Monday.

Overview

- Slavery existed in all 13 colonies before the Revolution, although the percentage of the population that was enslaved varied widely.
- The most common approach was for slaves' arms to be left to the discretion of the master. Some masters saw no problem with allowing slaves to have gun for hunting.
- A few colonies added formality, to the discretionary system by requiring the slave to carry written permission, presumably to facilitate enforcement against unauthorized carrying.
- Only in Virginia did the legislature override the master's discretion, by categorically forbidding slave armament.
- In the 19th century, categorical bans or government licensing became common in states that still had slavery.

Slave Patrols

- The Georgia statute limiting arms carrying by slaves also created slave patrols, with the duty of “Searching and examining any Negroe house for Offensive Weapons Fire Arms and Ammunition.”
 - The Georgia statute was modeled on South Carolina law. Sally E. Hadden, *Slave Patrols: Law and Violence in Virginia and the Carolinas* 24 (2001). The South Carolina patrols were separate from the militia for many years, then integrated after 1740.
- Virginia’s slave patrols were created by statute in 1727 and revised in 1738.
 - The statute arose from the general laxity of Virginia slave owners in enforcing legal restrictions on slaves. While the slave patrols were part of the Virginia militia, they tended to operate only on holidays, when large numbers of slaves would gather. *Id.* at 29-32.
- Slave patrols were created in North Carolina in 1753, also because of the unreliability of private enforcement of the slave laws. The North Carolina patrols were separate from the militia and run by the county courts. In North Carolina, participation in the slave patrol garnered an exemption from militia duty. *Id.* at 32-40.
- Slave patrols searched for slaves who were off their masters’ property without written permission and also searched slave quarters for illegal arms.
 - The North Carolina patroller’s oath was to be a “searcher for guns, swords, and other weapons among the slaves in my district.” *Id.* at 78.
 - Many slave owners greatly resented patrollers entering their land or whipping their slaves without permission. *Id.* at 130-31.
 - All the slave patrols long post-dated general law enforcement entities, such as sheriffs, justices of the peace, town constables, and so on, all of which had very deep roots in English law.

In the North and during Wartime

- For Pennsylvania and all colonies to the north and east, there were no slave patrols
- In New England, slaves were a tiny part of the population.
- The more common use of the militia was to suppress riots by whites, which the militia did well, except when it refused because it agreed with the rioters' grievances. John Shy, *Toward Lexington: The Role of the British Army in the Coming of the American Revolution* 40 (1965).
- Throughout the colonies, military needs often led to formal changes in laws, or relaxed enforcement.
 - For example, during the French & Indian War (1754-63).
 - When the need was great enough, even slaves were sometimes armed and enrolled in colonial militias.

Legal background for Disarmament of Dissidents

- Before 1689, there were no specific constitutional protections for religious minorities, except per the law of individual colonies such as Pennsylvania and Rhode Island.
- 1689 English Bill of Rights, following England's Glorious Revolution:
 - **“That the Subjects which are Protestants, may have Arms for their Defence suitable to their Conditions, and as allowed by Law.”** 1 Wm. & Mary ch. 2, §7.
 - Per colonial charters, Americans entitled to all the rights of Englishmen.
- Thus, no arms discrimination based on political disagreement, or against Protestants.

Disarmament before 1689

- The American colonies never experienced the pervasive attempts to disarm almost all the free population that took place in England during the seventeenth century under the “wicked” Stuart kings. (“Wicked” is from *Nunn v. State*, 1 Ga. 243 (1846).)
- In 1637, long before the 1689 Bill of Rights protected arms rights for all Protestants, theocratic Massachusetts Bay Colony issued an ex parte decree with no due process, disarming 75 Antinomian followers of Anne Hutchinson.
 - Antinomians believe that grace liberates Christians from obedience to the Mosaic Law.
- In 1643 Virginia, the royal governor imprisoned, disarmed, and banished 118 recent Puritan immigrants; they moved to Maryland. See Charles Campbell, *History of the Colony and Ancient Dominion of Virginia* 211-12 (1860).
- Following Bacon’s Rebellion, a 1676 Virginia statute affirmed “that all persons have hereby liberty to sell armes and ammunition to any of his majesties loyall subjects inhabiting this colony.” 2 *Hening* at 403. The wording implied that it was illegal to sell arms or ammunition to disloyal persons.

Disarmament after 1689

- After an attempted assassination of King William III in England in 1696, the royal governor of New York confiscated the firearms of all ten Catholic men in the colony.
 - Per the English Bill of Rights, Catholics had no constitutional arms rights, although in England by statute they were allowed arms at home or to carry by license if they would take a loyalty oath.
- Near the beginning of French & Indian War in 1756, the royal governor of New Jersey, in defiance of the rights of “the Subjects which are Protestants,” confiscated firearms from Moravians, a Protestant pacifist denomination who owned hunting guns.
 - The governor called the Moravians “snakes” and likely wanted their guns for the colonial government’s magazine.

Catholics and the French & Indian War

- Alone among the colonies, Maryland had a large Catholic minority.
- In 1754, a global war began between which the U.K. and France.
 - Known in America as the French & Indian War, on both sides the war was treated as Protestant versus Catholic.
- In 1756, the Maryland legislature considered but not did not enact a statute to disarm Catholics.
- In Virginia, if a Catholic would not sign a loyalty oath, his arms would be taken and given to the militia, except for arms “necessary” for “the defence of his house or person.” 7 Hening at 35 (enacted 1756).
- Also in 1756, Pennsylvania confiscated “papist” arms to distribute to the militia. 5 *The Statutes at Large of Pennsylvania from 1682 to 1801*, at 627 (Ray ed., 1898).
- The Canadian island province of Nova Scotia was under British rule, but the population was mostly French. During the war, many “Acadians” who refused to swear an oath to King George were deported.
 - Some were sent to Georgia as indentured servants.
 - A 1756 Georgia law forbade an indentured Acadian “to have or use any fire Arms or other Offensive Weapons otherwise than in his Masters Plantation or immediately under his Inspection. . . .” 18 *Georgia Recs.* at 190-91.

Indians

- American colonial legislatures often attempted to prevent some or all Indians from acquiring guns.
 - But they could not stop Indians from buying directly from the French, Dutch, or Swedish colonies, or from middlemen tribes.
 - Moreover, the price that Indians would pay for the colonists' guns was so high that suppressing the arms trade was impossible.
 - Legally, most Indians were members of their own nations, and thus not subject to any of rights or duties of the American colonists.
- As the frontier moved westward, concern in the original colonies about armed Indians declined. For example, by 1763, after the Anglo-American victory in the French and Indian War, Maryland felt safe enough to allow limited sales — no more than one pound of gunpowder and six pounds of lead to an Indian man within a six-month period. Sales to Indian women and children were not allowed.

Virginia

- Virginia went to both extremes.
 - The House of Burgesses in 1619 declared that giving Indians any arms, “offensive or defensive,” was treason and would be punished by hanging. *Colonial Records of Virginia 25-26 (1874)*. The penalty was mitigated in 1658, to forfeiture of one's “whole estate.” Further, anyone who discovered an Indian in possession of gun, powder, or shot could confiscate it. 1 *Hening* at 441.
 - Yet the next year, the legislature repealed the ban, “it is manifest that the neighboring plantations both of English and [foreigners] do plentifully furnish the Indians with guns, powder & shot, and do thereby draw from us the trade of beaver to our great loss and their profit, and besides the Indians being furnished with as much of both guns and ammunition as they are able to purchase, It is enacted, That every man may freely trade for guns, powder and shot: It derogating nothing from our safety and adding much to our advantage.” *Id.* at 525.
- Later, after the Dutch lost New Netherland, Virginia attempted to resume its restrictive policy. In 1676, the frustrated legislature observed that “the traders with Indians by their avarice have so armed the Indians with powder, shot and guns, that they have been thereby emboldened.” So the legislature again provided capital punishment for violations. Further, any Virginian found “within any Indian town or three miles without the English plantations” and carrying more than one gun or more than “ten charges of powder and shot for his necessary use” was presumed to be have be illegally trading with the Indians. 2 *id.* at 336-37.

Plymouth

- The situation was especially complex in southern New England.
- By 1670, the population was about three-quarters European-American and one-quarter Indian.
- For decades the various tribes had been adept in their political relations with the various colonies, playing one colony against the other.
- Given the growing power and numbers of the English, many Indians had sworn allegiance to the English king, and some of them had cooperated with English efforts to get them to settle in towns and convert to Christianity in at least a partial sense, becoming “praying Indians.”

Plymouth

- A 1644 Plymouth statute barred the repairing of Indian arms. *Plymouth Laws* at 76. Gun sales to Indians were only allowed to those who worked for the colonists.
 - To facilitate firearms sales, some Plymouth settlers would hire (or pretend to hire) Indians as servants for a month.
 - The colony cracked down in 1651, prohibiting the furnishing of arms to Indians servants except for those who had served for “divers years and who are in good measure civilized and approved of by the Governor and his assistants.” *Id.* at 94.
 - Indians were also forbidden to raise an alarm by shooting, unless necessary. *Id.* at 100.
- Plymouth repealed its ban on selling gunpowder and shot to Indians in 1665. *Id.* at 148. The ban was revived in 1667 and repealed again in 1669. *Id.* at 152, 158. An even stronger ban was enacted in 1671, against any direct or indirect furnishing of arms or ammunition. The penalty was 20 times the value of what had been furnished. Further, Indians who “manifestly appear to be unfaithful and treacherous to us” shall forfeit their arms. *Id.* at 288. Then a 1675 law forbade lending guns to Indians. *Id.* at 175.
- The Plymouth Colony’s attempt to disarm the neighboring Wampanoag Indians precipitated King Philip’s War in 1675-76.
- The Wampanoag’s initiation of war in 1775 was justifiable for precisely the same reason as the American Revolution a century later: Disarmament is a plain indication of a plan to reduce a people to helpless servitude.
- Finally, a 1682 enactment prohibited colonists from buying guns, tools, or clothes from Indians. *Id.* at 200.

Other New England

Massachusetts Bay

- Massachusetts Bay went through similar changes, although not quite as frequently as Plymouth did. Whenever Indian arms decontrol in Massachusetts Bay allowed arms sales to Indians, Plymouth had to follow, as the availability of arms in Massachusetts made prohibition in Plymouth impossible.
- In 1642 Massachusetts Bay outlawed the sale to Indians of guns, gunpowder, shot, lead, or shot molds, and also outlawed white repair of Indian guns.
 - Yet in 1652 Massachusetts Bay enrolled “Indians inhabiting with or servants to the English” in the militia.
 - Then in 1656, they were excluded from the militia.
- Given the impossibility of stopping the arms trade, Massachusetts Bay attempted to control it by confining it only to authorized persons. The colony in 1668 licensed fur traders to sell guns and ammunition to Indians “not in hostility with us or any of the English in New England. . . .”

Connecticut

- Early Connecticut outlawed gun sales to Indians the same year Massachusetts did. 1 *Pub. Recs. of Conn* at 79-80 (1642). Additional laws attempted to make the prohibition effective.
- If Indians carried arms into town, the arms could be seized. *Id.* at 351 (1660).
 - This was modified to allow the friendly Tunxis Indians to “have free liberty to carry their guns, through the English towns, provided they are not above 10 men in company.” *Id.* at 375 (1661).

Rhode Island

- Free-thinking Rhode Island’s arms trade law limited sales only to “the Indians that are or may prove offensive to this Colonie, or any member thereof.”
- The colony of Rhode Island and Providence Plantations maintained strong friendship with the Narragansett Indians, who warred with the nearby Wampanoag and Pequot (who were originally allied with Plymouth Colony), but lived amicably with the Rhode Islanders.
- Rhode Island founder Roger Williams was a very devout Puritan.
 - Central to his Christian faith, was freedom of conscience — “soul liberty” — for everyone, Indians included.

Key Takeaways

- Right from the start, arms rights and the exercise thereof in the American colonies were more robust than in England.
 - Pursuant to the 1606 charters, Americans had an explicit right to arms long before their English cousins did.
 - Because colonial charters guaranteed Americans “the rights of Englishmen,” the 1689 English Bill of Rights amplified the arms rights of Protestant Americans.
- Colonial laws required the vast majority of males 16 and over to possess arms for militia duty and other legal duties, such as posse comitatus.
 - Many colonial laws also required female householders and men exempt from militia service because of profession or old age to possess the same arms as militiamen.
- Many colonial laws required arms carrying when going to church or other public meetings, when working in the fields, or when traveling.
- Gun controls for the free, peaceable colonists were close to nil.
 - Unlike in England, there were no class-based restrictions on hunting.
- Indentured servants typically had to be provided by their master with firearms for militia service and sometime given a firearm as “freedom dues” at the end of their term of service.
- Slaves, whether African or Indian, were typically allowed arms only with their master’s consent.
 - The aggressive slave patrol system in the South was generally considered vexatious by slaves and masters alike.
- Indians for the most part were members of legally independent nations and thus governed by neither the rights nor duties of the colonists.
 - Most colonies attempted, with little success, to restrict arms trade with potentially hostile Indians.
- Colonial laws restricted firearms misuse, such as using firearms to terrify the public, or causing false alarms.