

# Gun Law History in America

ROBERT J. SPITZER

# I. WHY SO MUCH RECENT INTEREST IN GUN LAW HISTORY?

- History always matters. Old gun laws are being discovered and digitized.
- Something new: the Supreme Court's rulings in 2008 (*D.C. v. Heller*) and 2022 (*NYSRPA v. Bruen*) created new, history-based criteria for judging the constitutionality of current gun laws based on “historical analogues” —that is, are there similar old gun laws?
- Deciding on the constitutionality of modern gun laws based on whether similar old gun laws existed hundreds of years ago is highly debatable.

## II. GUN LAW HISTORY

- The modern gun debate:
  - A zero-sum, see-saw battle between two opposing beliefs:
    - Gun rights
    - Gun laws
- Our own history tells a different story:
  - Guns and gun ownership as old as the country
  - But so are gun laws
  - In most of our history, the two were compatible

# A. Thousands of Early Gun Laws bar/restrict/regulate:

- Native Americans, slaves, indentured servants, vagrants, non-Protestants, those who refused to swear an oath of loyalty to the government, felons, foreigners, minors, numerous recreational restrictions.
- Laws regulated firearms' use, storage, and transport; barred dangerous or unusual weapons, regulated the manufacture, inspection, and sale of firearms; gun storage and discharge restrictions; prohibited the firing of firearms in or near towns, after dark, on Sundays, in public places, cemeteries, or near roads; punished firing that wasted gunpowder/shot, or under the influence of alcohol.
- **What about Virginia?**

# The House of Burgesses

- The House of Burgesses, the first legislative assembly in the American colonies, held its first meeting in the choir at Jamestown Church in the summer of 1619.
- Its first order of business: setting a minimum price for the sale of tobacco.



Jamestown Church

Burgesses were elected representatives.

Only white men who owned a specific amount of property were eligible to vote for Burgesses.

# Virginia House of Burgesses, 1619

“That no man do sell or give any Indians any piece, shot, or powder, or any other arms offensive or defensive, upon pain of being held a traitor to the colony and of being hanged as soon as the fact is proved, without all redemption.”

- “1619: The Laws Enacted by the First General Assembly of Virginia,” at [http://oll.libertyfund.org/index.php?Itemid=264&id=1049&option=com\\_content&task=view](http://oll.libertyfund.org/index.php?Itemid=264&id=1049&option=com_content&task=view)

# Virginia Discharge Restrictions, 1623, 1631, 1632

- “No commander of any plantation, shall either himself or suffer others to spend powder unnecessarily, that is to say, in drinking or entertainments.”

# Virginia, 1631: Gun Census

- “. . . the commanders of all the several plantations . . . yearly do likewise upon the first day of December, take a muster of their men, together with the women and children, and their ages, counties, and towns, where they were born, with the ships they came in, and year of the Lord, as also of arms and munition . . . .”



# Virginia, 1631

## ACT XLVI.

- ALL trade with the Savages prohibited, as well publique as private.

## ACT XLVII.

NOE man shall goe or send abroad without a sufficient party well armed.

## ACT XLVIII.

- NOE man shall goe to worke in the grounds without their armes, and a centinell uppon them."

# Virginia Unlawful Shooting, 1642

- “. . .for the better observation of the Sabbath and for the restraint of diverse abuses committed in the colony by unlawful shooting on the Sabbath day as aforesaid, unless it shall be for the safety of his or their plantations or corn fields or for defense against the Indians, he or they so offending shall forfeit for his or their first offense . . . the quantity of twenty pounds...”

# Virginia, 1651-52

13thly. That all amunition, powder and arms, other then for private use shall be delivered up, securitie being given to make satisfaction for it.

# Virginia 1655: Guns + Alcohol = No Guns, Except...

“What persons or persons soever shall after publication hereof, shoot any guns at drinking (marriages and funerals only excepted) that such person or persons so offending shall forfeit 100 lb. of tobacco to be levied by distress in case of refusal and to be disposed of by the militia in ammunition towards a magazine for the county where the offense shall be committed.”

1655 Virginia Acts 401, Acts of **March 10, 1655**, Act XII

# Virginia Legal Manual, 1736

“Every Constable . . . . He may take away Arms from such who ride or go offensively armed, in Terror of the People, and may apprehend the Persons, and carry them, and their Arms, before a Justice of Peace.”  
[weapons brandishing]

“The Profession of Belief . . . .  
Popish Recusants Convict, are liable to Grievous Fines, Penalties, and Disabilities, laid upon them, by divers Statutes; among which, these are some, viz . . . .  
They shall not bear Arms, nor keep Weapons, or Ammunition, without Allowance of the Justices, in Open Court. Arms, &c. otherwise kept, may be seized, by Warrant from Two Justices, &c.”

Virginia legal manual: George Webb, *The Office and Authority of a Justice of Peace* (Williamsburg, VA: William Parks, 1736).

# Guns on College Campuses?

Laws and Regulations of the College of William and Mary, Volume 276 (1830):

“29. Students are strictly forbidden to keep, or to have about their person, any dirk, sword or pistol. Firing squibs or [fire]crackers in and about College or elsewhere is also strictly forbidden.”

# Virginia State Laws, 1839

CHAP. 80. – An ACT to prevent the **destruction of wild fowl** in the counties of Accomack and Fairfax. (Passed April 9, 1839.)

1. *Be it enacted by the general assembly,* That no person whatsoever shall at any time shoot or **kill wild fowl** in the waters of, or within the jurisdiction of the counties of Accomack and Fairfax, by or with the aid of **skiffs**, and any person being convicted of a violation of this act before any justice of the peace of said county of Accomack, shall forthwith **surrender his gun and skiff** to the said justice, who shall cause the same to be **sold; one half of the proceeds thereof shall go to the commonwealth for the use of the literary fund, and the other half to the informer.**

# III. OUR ANCESTORS LOVED GUN CONTROL

- The default in American history was gun and weapons regulations, not the reverse.
- Not only guns, but also fighting knives (e.g. Bowie knives) and clubs (billy clubs, slung shots, bludgeons).
- From the 1600s to the start of the 1900s:
  - Every state in the U.S. restricted the concealed carrying of weapons
  - At least  $\frac{3}{4}$  of the states enacted laws against public weapons brandishing or even simple weapons display
  - At least 29 states restricted open weapons carrying
  - At least 22 states restricted carrying of long guns (rifles, shotguns)



## A. “Wild West” Not So Wild

- In the 19<sup>th</sup> century, restrictions on the carrying of concealed weapons (as well as open gun carrying in some states) were widely adopted, especially in the so-called “Wild West” frontier towns and territories, although exceptions were generally made for travelers who were just passing through, military, law enforcement.
- Far more gunfights in movies, stories, and novels than in the actual frontier West.

## B. Bar Concealed Gun/Weapons Carry

- New Jersey colony, 1686 enacted a law against the wearing of weapons because they induced “great Fear and Quarrels.”
- Massachusetts followed in 1751;
- Virginia in 1786;
- North Carolina in 1792;
- In the 1800s, 43 states (inc. D.C.) joined the list
- 4 more in the early 1900s

- The reasons for enacting concealed carry restrictions clearly stated in the laws:
  - Tennessee’s 1837 law referred to “[e]ach and every person so degrading himself” by carrying pistols or other named weapons.
  - The preamble of Georgia’s 1837 law: “AN ACT to guard and protect the citizens of this State, against the unwarrantable and too prevalent use of deadly weapons.”

- Alabama’s 1839 concealed carry law reflected similar antipathy to the practice it was prohibiting: “AN ACT To suppress the evil practice of carrying weapons secretly.”
- “The mission of the concealed deadly weapon is murder. To check it is the duty of every self-respecting, law-abiding man.” (Texas governor Jim Hogg, Message to State Legislature, 1893)
- CC restrictions appeared rapidly in antebellum Southern states and Midwestern states/territories because of rise of interpersonal violence.

# Wyoming Territory, 1876

1876 Wyo. Comp. Laws ch. 52 § 1, as codified in Wyo.; Rev. Stat., Crimes (1887).

Carrying concealed weapon.

SEC. 980. Hereafter it shall be **unlawful** for any resident of any city, town or village, or, for any one not a resident of any city, town or village, in said territory, but a sojourner therein, **to bear upon his person, concealed or openly, any fire-arm or other deadly weapon**, within the limits of any city, town or village.

# Dodge City, Kan. 1879



# Tombstone, Ariz. 1881 Law

(gunfight at OK Corral was October 1881; Wyatt Earp, his brothers, and Doc Holliday, try to arrest Clanton-McLaury gang members)

- Ordinance No. 9, Tombstone, Arizona (approved April 19, 1881).
- "An Ordinance to Provide against the Carrying of Deadly Weapons"
- "Section 1: It is hereby declared to be **unlawful to carry, in the hand or upon the person, or otherwise, any deadly weapon** within the limits of said City of Tombstone, without first **obtaining a permit** in writing for such purpose (and upon good cause shown by affidavit) from the presiding officer for the Board of Police Commissioners.
- Section 2: This prohibition does not extend to persons immediately entering or leaving said city, who in good faith and within reasonable time are proceeding to deposit, or take from the place of deposit such deadly weapons.
- Section 3: **All firearms of every description and bowie knives and dirks**, are included within the prohibition of this ordinance.
- Section 4: Any person or persons violating the provisions of this ordinance shall be deemed guilty of a misdemeanor, and on conviction thereof shall be **fined** in a sum not to exceed two hundred and fifty dollars and costs, or **imprisonment** in the city jail for a period not to exceed five months, or both at the discretion of the court."
- Source: Paul Lee Johnson, *The McLaurys in Tombstone, Arizona* (2012), p. 323

# Where/When is this law from?

- “An Act providing for the registration of all fire arms and weapons and regulating the sale thereof”:
- “Within thirty days from the passage and approval of this act, every person within the state of \_\_\_\_\_, who owns or has in his possession any fire arms or weapons shall make a full, true and complete verified report upon the form hereinafter provided to the sheriff of the county in which such person lives, of all fire arms and weapons which are owned or possessed by him or her or are in his or her control, and on sale or transfer into the possession of any other person such person shall immediately forward to the sheriff of the County in which such person lives the name and address of that purchaser and person into whose possession or control such fire arm or weapon was delivered. . . .”



Answer:

Montana, 1918 (*Montana Laws 6*)

# IV. CONCEALED CARRY CHANGES

- As noted, by start of the 20<sup>th</sup> century, every state had enacted laws bar/restrict concealed weapons carrying.
- State concealed carry laws as of 1981:
  - 19 states/DC = no concealed carry allowed
  - 29 states = “may issue” (state discretion)
  - 2 states = “shall issue” (must issue pistol permit unless felon, mentally ill, etc.)
  - 1 state = NO permit needed (Vermont)

- State concealed carry laws 2023:
  - 0 states barred concealed carry
  - 23 states some version of “shall issue” (training may be required; also judge whether applicants “suitable” or “good moral character”)
  - 27 states NO permits needed

# V. CONCLUSION

- The first “gun grabbers” were not 1960s Chablis drinking liberals, but 17<sup>th</sup> century rum guzzling pioneers.
- The confrontation between gun regulations and gun rights is false. If American history shows anything, it is that, through most of our history, the two went hand in hand.

# V. TRANSITION TO THE MODERN ERA OF GUN POLICY:

**McKinley assassinated by anarchist Leon Czolgosz  
at Buffalo Exposition, September 6, 1901; died  
September 14**



**NYC Mayor William Gaynor, Aug. 9, 1910, moments after being shot in the throat by James Gallagher, an embittered former employee of the NYC Dock Department. Bearded man at left bears uncanny resemblance to Robert Todd Lincoln, son of Abraham Lincoln. Gaynor survived, but died in 1913. (NY Sullivan Law enacted 1911.)**



Culmination of gang wars, 1929: 4 Al Capone men dressed as police officers entered Chicago gangster Bugs Moran's HQ, line up 7 against wall and open fire. No one ever convicted. Capone jailed in 1931 on tax evasion.





**Dubbed the St. Valentine's Day Massacre, Feb. 14, 1929: 7 Bugs Moran henchmen killed using 2 Tommy guns, sawed-off shotgun, .45 handgun**



# Tommy gun; sawed-off shotgun



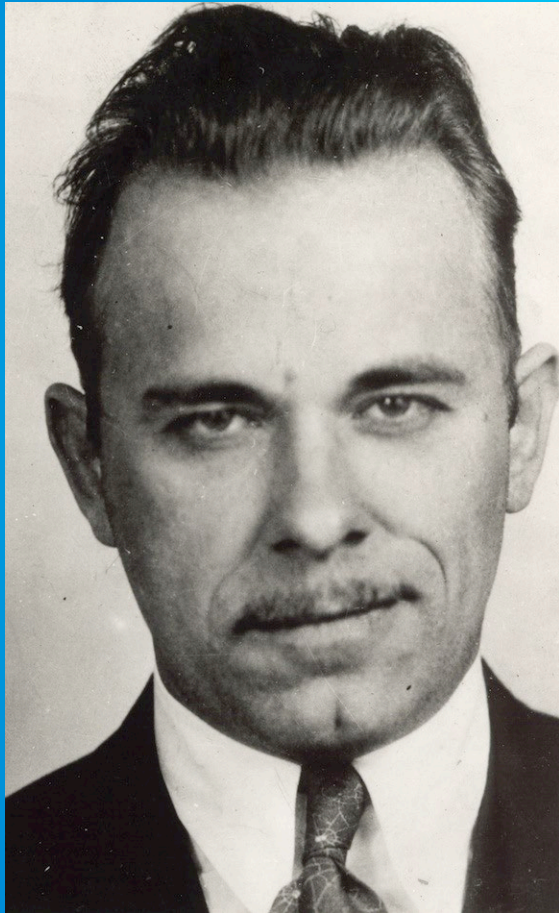
# Assassination attempt: FDR, Feb. 15, 1933, Miami, Fl. by unemployed bricklayer Giuseppe Zangara; misses FDR, kills Chicago Mayor Anton Cermak.



**Notorious outlaws Bonnie Parker and Clyde Barrow, killed May 23, 1934 in Louisiana (they killed at least nine police officers, and several civilians)**



**Gangster John Dillinger killed July 22, 1934  
outside the Biograph Theater in Chicago  
(National Firearms Act signed into law June  
26, 1934)**



# THANK YOU!

Questions,  
comments (no  
speeches please)?

Remember to fill out  
course evaluations!

*The Gun Dilemma* (Oxford University Press,  
2023)

