HISTORIANS' ROUNDTABLE ON
HISTORY AND SECOND AMENDMENT JURISPRUDENCE IN AMERICA

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Pembroke College, Oxford University

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Discussion Document

In the American constitutional system, judges hold the power to invalidate Acts of Congress or executive actions that conflict with the Constitution. And, according to the U.S. Supreme Court, "a permanent and indispensable feature of our constitutional system" is the principle that "the federal judiciary is supreme in the exposition of the law of the Constitution."[1] In other words, judges are the final arbiters of whether legislative or executive action can stand. This feature of the constitutional system makes the question of how to interpret the Constitution an urgent and necessary task. There are many theories of interpretation, but the one most prevalent among a majority of justices of the current Supreme Court is called originalism.

Originalism is a theory of constitutional interpretation that holds that the text of the Constitution should be construed as it stood at the time of ratification. Although there are nuances, the main version of the theory argues that a constitutional provision—such as the Second Amendment—means what the original informed public would have understood it to mean. History, then, is the crux of the originalist enterprise. In the case that launched the modern understanding of the Second Amendment in 2008, *District of Columbia v. Heller*, the late Justice Antonin Scalia took an avowedly originalist approach. As he explained, "[i]n interpreting this text, we are guided by the principle that the Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning. Normal meaning may of course include an idiomatic meaning, but it excludes secret or technical meanings that would not have been known to ordinary citizens in the founding generation." He then surveyed historical sources and concluded that the original public meaning of the Second Amendment was that every law-abiding citizen had a right to keep and carry guns for purposes of self-defense. Importantly, Justice Scalia determined that the right codified in the Second Amendment was a pre-existing, historical right derived from ancient English liberties.

Because of this historical focus in Second Amendment cases, advocates and judges since *Heller* have mined history for insight into how the right to keep and bear arms was understood in 1791, what historical regulations on weapons existed throughout Anglo-American history, and whether historical analogues exist to various forms of modern gun regulations. Some of this work has been derided as "law-office history" that fails to apply proper historical methodology. Lacking

any formal training in historiography, courts and counsel have fallen prey to the temptation to cite historical sources selectively, plucked from their context, and imbued with modern sentiments and understandings. For these reasons, getting the history right has never been more important.

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The research below was compiled by an excellent research assistant, Catie Carberry, who works with the Center for Firearms Law. It surveys how American courts and litigants dispute major areas of British or Irish law and history, and that history's relevance to modern Second Amendment cases. The survey is by no means exhaustive, but we hope it will serve to stimulate a discussion about how the American legal community is using or misusing history in its arguments.

- **Second Amendment Text (1791)**

  "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."

- **Carrying Firearms in Public**

  - **Declaration of Right (1689)** (see appendix pp. 1-5)
  - **Statute of Northampton (1328)** (see appendix pp. 6-7)
  - **Sir John Knight's Case (*Rex v. Knight*) (**see appendix pp. 8-9)

  - Statute of Northampton and Enforcement: There are two opposing interpretations of the Statute of Northampton: a narrow interpretation and a broad interpretation. Scholars and courts who interpret the statute more narrowly point to it as evidence that it was lawful to carry common weapons in public, including guns, at the time of the founding.[2] Those who interpret it more broadly use the Statute to show that there were expansive gun regulations at the time of the founding.[3]

	Narrow Interpretation	**Broad Interpretation**
Argument: Below is the evidence both sides point to in support of their argument.	The Statute of Northampton only applied to (i) dangerous and unusual weapons, which are inherently terrifying, and (ii) common weapons carried in a manner apt to terrify or with intent to terrify. The Statute therefore did not apply to the public carrying of common weapons. [4]	The Statute of Northampton - outside of narrowly circumscribed exceptions - prohibited the bare act of carrying arms in public.[5]
Blackstone: The contested language is, "[t]he offence of riding or going armed	This prohibition was understood to cover carriage of uncommon, frightening weapons only.[6]	The phrase "dangerous or unusual weapons" was widely understood to include handguns.[7]

with dangerous or unusual weapons is a crime against the public peace."		
Serjeant Hawkins: The contested language is, "no wearing of arms is within the meaning of this Statute, unless it be accompanied by circumstances as are apt to terrify the People."	This language shows that only weapons which were dangerous and unusual were prohibited. It therefore supports a general right to carry. [8]	Hawkins rejected a general right to carry,[9] and later explained that the contested language referred to the customary practice of allowing high-ranking nobles to wear ceremonial armor or swords in the "common fashion."[10]
Rex v. Knight (Sir John Knight's Case)	*Knight* held that only the carrying of arms "in affray of the peace," that is, in such manner as would cause fear or terror among the populace, violates the Statute. Knight was acquitted because, though he was armed, it was not in a manner that would cause terror. [11]	*Knight* confirms that "going armed" *itself* was a "great offence" because it suggested that "the King w[as] not able or willing to protect his subjects." Knight was acquitted only because, as a government official, he was exempt.[12]
The 1689 Declaration of Rights, which provided "[t]hat the Subjects which are Protestants may have Arms for their Defence suitable to their Conditions and as allowed by Law."	This declaration recognized the general right to keep and bear arms.[13]	The Statute of Northampton remained in full force and was still understood to sharply limit the freedom to carry arms in public.[14]
Other arguments	Origin of firearms: The Statute of Northampton was enacted merely two years after the earliest record of firearms in Europe and centuries before the right to keep and bear arms was recognized in England. As firearms became more common, "understandings of Northampton's reach dramatically narrowed." [15]	Exceptions Within the Statute: "The statute expressly exempted the King's officers, as well as those assisting law enforcement, and implicitly exempted the carrying of swords by nobles for ceremonial purposes. If the statute prohibited public carry only when accompanied by menacing conduct these exceptions would be entirely unnecessary."[16] Enforcement by Monarchs: Monarchs used the Statute of Northampton to prohibit the carrying of common weapons.[17]

- Hunting Regulations:
  - **Game Act (1671)** (see appendix p. 11)
  - **Black Act (1722)** (see appendix pp. 12-15)

        - Debate: There is a disagreement about the purpose of the game acts, particularly the 1671 Game Act. Some scholars have argued that the purpose of the Act was directly tied to hunting: it was intended to conserve natural resources,[18] strengthen hunting rights of the nobility and to stop hunting by commoners.[19] Others have argued that the Game Act (as well as the Black Act) was a tool of disarmament and oppression.[20]
        - Why it matters: Those who construe the Game Acts as tied to hunting point to games laws as evidence that there were broad restrictions on the right to arms recognized in the 1689 Declaration of.[21] Those who construe it as a tool of disarmament generally argue that the Game Acts were the reason Protestants demanded a codified right to arms, and so the right recognized protected against such acts in the future.[22]
    - Licensing
        - Debate: Scholars disagree over the degree to which licensing allowed for gun ownership. Some scholars argue that English Monarchs "limited the free use of firearms to noblemen and to commoners who had an annual income of at least one hundred pounds."[23] Others emphasize that licenses were freely given, and so the right to use guns was not limited.[24]

❖ **Peace Keeping and Law Enforcement**

- Notion of the King's Peace
    - Background: Courts have held that officers of the Crown had the power to disarm anyone they judged to be "dangerous to the Peace of the Kingdom."[25] Scholars have argued that the King's Peace asserted a monopoly on legitimate violence. Any unauthorized use of arms could be taken as a claim to governing authority and a challenge to the crown.[26]
    - Debate: The narrow reading versus the broad reading of the Statute of Northampton creates a disagreement over what constituted a danger to the King's Peace:
        - Narrow reading of Northampton: Carrying 'dangerous and unusual weapons,' and carrying common weapons in a manner apt to terrify or with intent to terrify violated the King's Peace. Otherwise, carrying common weapons did not.[27]
        - Broad reading of Northampton: The mere act of traveling armed outside of a small number of exceptions violated the King's Peace.[28]
- Hue and Cry
    - Debate: The disagreement between scholars relates to the type of arms that were required to meet the duty of raising a hue and cry:

- Those arguing in favor of broader gun rights contend that all men, both free and bonded, were required to have arms as they were bound to be ready to assist the sheriff, and other civil magistrates, in the execution of the laws and the preservation of the public peace. The hue and cry is one example of this. In order to comply with these duties, scholars argue that there was a broad right to arms.[29]
- Other scholars argue that the arms used to meet this public responsibility were determined by social position. Accordingly ownership of firearms was largely limited to members of the gentry.[30]

- Surety Bonds
  - Background: The history of surety bonds have been used in relation to "good reason" laws.[31] "Good reason" laws require applicants for a license to carry to show a good reason for carrying, such as a special need for protection distinguishable from the general community. The controversy is whether surety bonds were a precursor to "good reason" laws.
  - History typically provided: "These laws provided that if Oliver carried a pistol and Thomas said he reasonably feared that Oliver would injure him or breach the peace, Oliver had to post a bond to be used to cover any damage he might do, unless *he* proved he had reason to fear injury to his person or family or property."[32]
  - Debate
    - Surety bonds were not a precursor to "good reason laws" as "they did not deny a responsible person carrying rights unless he showed a special need for self-defense. They only burdened someone reasonably accused of posing a threat. And even he could go on carrying without criminal penalty. He simply had to post money that would be forfeited if he breached the peace or injured others—a requirement from which he was exempt if *he* needed self-defense."[33]Surety bonds were a precursor to "good reason" laws. The posting of surety did not give license to continue violating the law. [34] In fact, violation of the terms of the bond resulted in a more onerous bond and could also result in criminal sanctions, including imprisonment.[35]

❖ **Weapons Technology**
- Kinds of weapons
- **Proclamation of Queen Elizabeth I Prohibiting the Use and Carriage of Daggs, Birding Pieces, and Other Guns Contrary to Law (1600)** (appendix pp. 16-17)

- **<u>Proclamation of King James I against the Use of Pocket Dags</u> (1612)** (appendix p. 18)

    - Both the Tudors and the Stuarts forbade the possession of small guns that are easily hidden because they threatened the peace.
        - In 1559 Queen Elizabeth outlawed the possession of pocket dags because men were riding "with handguns and dags, under the length of three quarters of a yarde" and committing robberies and murders.[36]
        - In 1613 King James Stuart forbade people from carrying guns with a barrel less than twelve inches. He feared assassination, and was motivated by reports of Spain smuggling pocket pistols into England.[37]
- Production of weapons
    - Both Queen Elizabeth and King James Stuart also forbade the manufacture of nonconforming guns.[38]

❖ **Prohibitions on the Types of Persons Able to Have Firearms**

- **<u>An Act for the Better Securing the Government, by Disarming Papists</u> (1688)** (appendix pp. 19-21)
    - Virtue is often used to explain disarming select groups within the population for the sake of public safety. The debate is whether these groups were actually excluded from the right to bear arms at the time of the founding.
        - Some courts have pointed to historical evidence that shows "'the right to arms was inextricably and multifariously linked to that of civic virtue (i.e., the virtuous citizenry),' and that '[o]ne implication of this emphasis on the virtuous citizen is that the right to arms does not preclude laws disarming the unvirtuous citizens (i.e., <u>criminals</u>) or those who, like <u>children</u> or the <u>mentally imbalanced</u>, are deemed incapable of virtue.'"[39]
        - Others have held the following:
            - <u>Felons</u>: Some courts have held that historical practice does not support the legislative power to categorically disarm felons because of their status as felons.[40]
            - <u>Age</u>: Some historians have pointed to the history of the militia to show that young men commonly were armed from a young age.[41]
- Religious/ Political affiliations

        - Some historians and courts have pointed to the disarmament of Catholics as evidence that early legislatures had the power to disarm groups that posed a threat to public safety.[42]
    - Class
        - Debate: There is a disagreement concerning the degree to which English gun rights were restricted by property requirements to own a firearm. Some historians argue that discriminatory gun control based on class kept weaponry out of the hands of most of the lower class.[43] Others point to the militia,[44] the requirement of raising a hue and cry[45] and licenses[46] to show that gun possession was more widespread.

❖ **Regional Variation**

- England and the Colonies
    - Some courts and historians use the historical relationship between England and the colonies as evidence of expansive gun rights. For instance, some have argued that the colonies had expanded gun rights as compared to England.[47] Others relatedly have argued that "The [Second] amendment ... was adopted with some modification and enlargement from the English Bill of Rights of 168[9]."[48]
- Ireland, Scotland and Wales
    - Ireland
        - In 1695 a statute was passed which forbade Irish Catholics in Ireland from carrying or possessing arms and ammunition. The statute was consistent with the English Bill of Rights as the Bill of Rights only recognized an arms right for Protestants.[49]
        - At 1739 statute revoked all Irish Catholic arms licenses, ordered the surrender of arms and "that law enforcement officials conduct annual searches for arms possessed by Catholics in their jurisdiction."[50]
    - Scotland
        - Parliament imposed the Disarming Act of 1715 in response to the Jacobite Rebellion. The Act forbade Highlanders to have guns or any other warlike weapon in public.[51]
- City and the Country
    - Some scholars have argued that England broadly restricted public carry, but that prohibition did not extend to the countryside.[52] This argument is often used as a means of supporting the argument that England restricted public carry in populated areas. Alternatively, others have argued that the Statute of Northampton was an early version of the "sensitive places" rule announced by the U.S. Supreme Court in Heller: there is a general right to

carry arms, but not in "sensitive places such as schools and government buildings."[53] With that understanding, there is no countryside "exception" as there is already a broad right to carry.

❖ **Purposes for Owning Firearms**

- Self-defense
  - Background: In *Heller* the Supreme Court held that the Second Amendment codified a pre-existing, individual right to keep and bear arms and that the central component of the right is self-defense.[54] Heller also noted that this inherited right of armed self-defense was "by the time of the founding understood to be an individual right protecting against both *public* and private violence."[55]
  - Debate: From this, some lower courts have held that the Second Amendment protects the right to preemptively arm for self-defense in public, and they have supported that interpretation by looking to the English right to arms. Often, they cite Blackstone who noted in his *Commentaries on the Laws of England* that the "the right of having and using arms for self-preservation and defense" had its roots in "the natural right of resistance and self-preservation."[56] Others have argued that English law did not allow public carry for self-defense even when threatened.[57]
- Militia
  - Debate: Some scholars use the history of the English militia to support the idea that historically the English were broadly armed.[58] Such historians often argue that the duty to serve in the militia applied to most of the population[59] and that there were various mandates which required Englishmen practice with arms.[60] Others argue that in spite of the militia gun rights were largely limited to the upper class.[61]

[1] Cooper v. Aaron, 358 U.S. 1, 17 (1958).
[2] *See, e.g.*, NICHOLAS J. JOHNSON ET. AL., FIREARMS LAW AND THE SECOND AMENDMENT 99 (2d ed. 2018) ("Carrying 'common weapons' was an offense only when done in a manner 'apt to terrify'").
[3] *See, e.g.*, Peruta v. Cty. of San Diego, 742 F.3d 1144, 1182 (9th Cir. 2014) (Thomas, J., dissenting) ("Restrictions on the carrying of open and concealed weapons in public have a long pedigree in England"); Brief of Amicus Curiae Everytown at 4, Wrenn v. Dist. of Columbia, 864 F.3d 650, 660 (D.C. Cir. 2017) (No. 16-7025) ("The 'weight of the historical evidence' in fact shows that English law - outside of narrowly circumscribed exceptions - prohibited the bare act of carrying arms in public").
[4] *See, e.g.*, Wrenn v. Dist. of Columbia, 864 F.3d 650, 660 (D.C. Cir. 2017) ("Northampton was understood to ban only the wielding of arms with evil intent or in such a way as 'to terrify the King's subjects'").

[5] *See, e.g.*, Peruta v. Cty. of San Diego, 742 F.3d 1144, 1184 (9th Cir. 2014) (Thomas, J., dissenting) ("Thus, in England, as in ancient Athens, it was an offense simply to go armed—or, at least, armed in a dangerous manner—in public areas").
[6] Peruta v. Cty. of San Diego, 742 F.3d 1144, 1154 (9th Cir. 2014).
[7]Brief of Amicus Curiae Everytown at 8–9, Wrenn v. Dist. of Columbia, 864 F.3d 650, 660 (D.C. Cir. 2017) (No. 16-7025) ("wearing arms in public *itself* constituted 'circumstances as are apt to terrify the People'").
[8] *See, e.g.*, Peruta v. Cty. of San Diego, 742 F.3d 1144, 1154 (9th Cir. 2014); Wrenn v. District of Columbia, 864 F.3d 650, 660 (D.C. Circuit 2017).
[9] Brief for the Dist. of Columbia at 20, Wrenn v. Dist. of Columbia, 864 F.3d 650 (D.C. Cir. 2017) (No. 16-7025) ("Hawkins recognized that one could not 'arm[] himself with dangerous and unusual weapons' - like pistols – 'in such a manner as will naturally cause a terror to the people,' and quoted the Statute's prohibition on 'rid [ing] armed ... in fairs' and 'markets.' Hawkins thus understood that such behavior was itself terrifying").
[10] Brief of Amicus Curiae Everytown at 8, Wrenn v. Dist. of Columbia, 864 F.3d 650, 660 (D.C. Cir. 2017) (No. 16-7025).
[11] *See, e.g.*, Brief of Amici Curiae Historians at 7–8, Wrenn v. Dist. of Columbia, 864 F.3d 650 (D.C. Cir. 2017) (No. 15-7057) ("The word 'affray,' used as a noun, meant 'the state produced by sudden disturbance or attack; alarm; fright; terror.' In accordance with that accepted usage, 'The Chief Justice said, that the meaning of the statute ... was to punish people who go armed *to terrify the King's subjects*'").
[12] *See, e.g.*, Peruta v. Cty. of San Diego, 742 F.3d 1144, 1183 (9th Cir. 2014) (Thomas, J., dissenting)
[13] *See, e.g.*, Brief of Amicus Curiae NRA at 10, Wrenn v. Dist. of Columbia, 864 F.3d 650 (D.C. Cir. 2017) (No. 15-7057) ("by the time the right to keep and bear arms entered the English constitutional pantheon in this way, the Statute of Northampton was well-understood as regulating that right in a narrow and peripheral way, to the extent it had any continuing vitality at all").
[14] Peruta v. Cty. of San Diego, 742 F.3d 1144, 1183 (9th Cir. 2014) (Thomas, J., dissenting).
[15] Brief of Plaintiffs-Appellees at 26, Wrenn v. Dist. of Columbia, 864 F.3d 650 (D.C. Cir. 2017) (No. 16-7067) (stating that *Rex v. Knight* is an explicit recognition of the statute's limited scope by 1686). *But see* ALEXANDER DECONDE, GUN VIOLENCE IN AMERICA 15 (2001) ("[E]fforts in Europe to exercise some form of control over guns expanded in correlation with their availability").
[16] Brief of Amicus Curiae Everytown at 9, Wrenn v. Dist. of Columbia, 864 F.3d 650, 660 (D.C. Cir. 2017) (No. 16-7025).
[17] *See, e.g.*, Peruta v. Cty. of San Diego, 742 F.3d 1144, 1183 (9th Cir. 2014) (Thomas, J., dissenting) ("Queen Elizabeth I called for the enforcement of the Statute of Northampton and other laws prohibiting the carrying of 'Dagges, Pistolles, and such like'").
[18] *See* NICHOLAS J. JOHNSON ET. AL., FIREARMS LAW AND THE SECOND AMENDMENT 126 (2d ed. 2018) ("To some in Parliament, the Game Act was more about hunting than about firearms. The British Civil Wars had devastated England's many large forests. The Royal Forests had been harvested to build ships, or to provide fuel for the furnaces that built cannons. Private forests had been drastically thinned… '[G]ame had been destroyed wantonly, parks were ravaged of their deer'")
[19] *See* NICHOLAS J. JOHNSON ET. AL., FIREARMS LAW AND THE SECOND AMENDMENT 126 (2d ed. 2018) ("The Act helped the rural gentry reassert its social superiority, following the disruptions of the British Civil Wars and the Interregnum")
[20] See, e.g., Dist. of Columbia v. Heller, 554 U.S. 570, 593 (2008); NICHOLAS J. JOHNSON ET. AL., FIREARMS LAW AND THE SECOND AMENDMENT 126 (2d ed. 2018) ("The overt purposes of the 1671 Game Act were to strengthen hunting rights of the nobility, and to stop hunting by commoners… Preventing future revolutions may have been an unexpressed purpose"); JOYCE LEE MALCOLM, GUNS AND VIOLENCE: THE ENGLISH EXPERIENCE 64–71 (2002) (describing the Black Act as "draconian" and "repressive").
[21] *See, e.g.*, Brief of Robert Leider as Amicus Curiae at 24, NYSRPA v. New York (No. 18-280) ("[the privilege guaranteed] 'under various pretences . . . ha[d] been greatly narrowed,' and by the time of the Framing, was more nominal than real… For example, under the game laws, Parliament denied any person whose lands did not produce an annual income of £100 or who was under a certain social rank from 'hav[ing] or keep[ing] for themselves or any other person or persons any Guns, Bowes, [or other hunting equipment]'")
[22] See, e.g., Dist. of Columbia v. Heller, 554 U.S. 570, 593 (2008) ("Under the auspices of the 1671 Game Act, for example, the Catholic Charles II had ordered general disarmaments of regions home to his Protestant enemies. These experiences caused Englishmen to be extremely wary of concentrated military forces run by the state and to be jealous of their arms. They accordingly obtained an assurance from William and Mary, in the Declaration of Rights, that Protestants would never be disarmed")

[23] ALEXANDER DECONDE, GUN VIOLENCE IN AMERICA 9 (2001).
[24] NICHOLAS J. JOHNSON ET. AL., FIREARMS LAW AND THE SECOND AMENDMENT 105–06 (2d ed. 2018) ("Under the Tudor arms statutes, a person who did not meet the income minimum for handguns or crossbows could be issued a license from the monarch. The Tudor monarchs handed out many such licenses -- including to commoners whom the king wanted to reward, and to nobility who wanted their servants to be able to use the arms outside the home… In 1537, England's first handgun shooting association, the Guild of St. George, was formed. The group encouraged handgun practice, and had the legal authority to license anyone in England, regardless of income level, to have handguns or crossbows").
[25] Kanter v. Barr, 919 F.3d 437, 456 (7th Cir. 2019).
[26] Guyora Binder & Robert Weisberg, "What Is Criminal Law About?," 114 Mich. L. Rev. 1173, 1183 (2016).
[27] See, e.g. Eugene Volokh, *The First and Second Amendments*, 109 Colum. L. Re. Sidebar 97, 102 (2009)
[28] *See, e.g.*, Peruta v. Cty. of San Diego, 742 F.3d 1144, 1184 (9th Cir. 2014) (Thomas, J., dissenting) (arguing that carrying weapons in public violates the statute, regardless of whether doing so actually breached the peace).
[29] *See, e.g.*, Brief of Amici Curiae Historians at 10–12, Wrenn v. Dist. of Columbia, 864 F.3d 650 (D.C. Cir. 2017) (No. 15-7057) ("The Recorder of London… confirmed that having arms was 'by the ancient laws of this kingdom, not only as a *right*, but as a *duty*; for all the subjects of the realm, who are able to bear arms, are bound to be ready, at all times, to assist the sheriff, and other civil magistrates, in the execution of the laws and the preservation of the public peace.")
[30] *See, e.g.*, **"**Statute of Winchester (13 Edw. I), Michaelmas, 1285" in Rothwell, ed., *English Historical Documents*, 462; Henry Summerson, "The Enforcement of the Statute of Winchester 1285-1327" *The Journal of Legal History Vo*l. 13, No. 3 (1992):232-250.
[31] *See, e.g.*, Wrenn v. Dist. of Columbia, 864 F.3d 650, 661 (D.C. Cir. 2017).
[32] Wrenn v. Dist. of Columbia, 864 F.3d 650, 661 (D.C. Cir. 2017).
[33] Wrenn v. Dist. of Columbia, 864 F.3d 650, 661 (D.C. Cir. 2017).
[34] See Reply Brief of the District of Columbia and Metropolitan Police Department Chief Cathy Lanier at 16, Wrenn v. Dist. of Columbia, 864 F.3d 650 (D.C. Cir. 2017) (No. 16-7067).
[35] STEVE HINDLE, THE STATE AND SOCIAL CHANGE IN EARLY MODERN ENGLAND, 1550-1640, 100 (2002).
[36] NICHOLAS J. JOHNSON ET. AL., FIREARMS LAW AND THE SECOND AMENDMENT 109 (2d ed. 2018).
[37] NICHOLAS J. JOHNSON ET. AL., FIREARMS LAW AND THE SECOND AMENDMENT 115 (2d ed. 2018).
[38] NICHOLAS J. JOHNSON ET. AL., FIREARMS LAW AND THE SECOND AMENDMENT 109, 115 (2d ed. 2018) (stating that Queen Elizabeth outlawed the manufacture of pocket dags and King James forbade the domestic manufacture and sales of guns with a barrel of less than twelve inches).
[39] National Rifle Ass'n of America, Inc. v. Bureau of Alcohol, Tobacco, Firearms and Explosives, 700 F.3d 185, 201
[40] Kanter v. Barr, 919 F.3d 437, 458 (7th Cir. 2019).
[41] *See, e.g.*, NICHOLAS J. JOHNSON ET. AL., FIREARMS LAW AND THE SECOND AMENDMENT 75 (2d ed. 2018) ("England's militia was based on the old Saxon tradition of the *fyrd*, in which every male aged 16 to 60 bore arms to defend the nation"); Brief of Amici Curiae Historians at 12, Wrenn v. Dist. of Columbia, 864 F.3d 650 (D.C. Cir. 2017) (No. 15-7057) ("On pain of a fine, every family was required 'to provide each son, at the age of seven, with a bow and two shafts and to see to it that the child knew how to use them'").
[42] Kanter v. Barr, 919 F.3d 437, 458 (7th Cir. 2019) ("In sum, founding-era legislatures categorically disarmed groups whom they judged to be a threat to the public safety"); ALEXANDER DECONDE, GUN VIOLENCE IN AMERICA 14 (2001) ("Shortly after [the Bill of Rights] became law, Parliament voted to disarm Catholics, declaring they had no right to possess weapons. It thereby denied gun ownership by law selectively on a collective rather than an individual basis").
[43] ALEXANDER DECONDE, GUN VIOLENCE IN AMERICA 8–9 (2001).
[44] See, e.g. Brief of Amici Curiae Historians at 10–11, Wrenn v. Dist. of Columbia, 864 F.3d 650 (D.C. Cir. 2017) (No. 15-7057) ("So keen were monarchs to develop a citizen-army that by 1252 not only freemen but the richer villeins were ordered to be armed, and in the years that followed unfree peasants were included as well").
[45] See, e.g. Brief of Amici Curiae Historians at 10–11, Wrenn v. Dist. of Columbia, 864 F.3d 650 (D.C. Cir. 2017) (No. 15-7057).
[46] NICHOLAS J. JOHNSON ET. AL., FIREARMS LAW AND THE SECOND AMENDMENT 105–06 (2d ed. 2018).
[47] *See, e.g.*, NICHOLAS J. JOHNSON ET. AL., FIREARMS LAW AND THE SECOND AMENDMENT 115–16 (2d ed. 2018) ("[T]he king's royal charter for Virginia company granted the colonists, their descendants, and anyone else whom they allowed to come to Virginia, the perpetual right to bring arms there, and to import arms from England, 'for defense or otherwise.' The 1606 Virginia charter appears to be the first written recognition of a right to arms in

English law… In America, there were no game laws, and everyone who wanted to hunt could hunt. There were no limits on arms possession based on income")

[48] Brief of Amicus Curiae of Gun Owners of America at 17, NYSRPA v. New York (2019) (No. 18-280) ("The right to keep and bear arms was recognized in nascent form in the English Bill of Rights, but with three limitations — protecting only firearms 'suitable to their conditions,' that the right of self-defense applied only for Protestants, and only 'as allowed by law.' The Second Amendment removed those qualifiers, acknowledging that this full right belonged to all the People, and employing the categorical prohibition found in the words 'shall not be infringed.' This reflected the change from the English tradition where the king had been sovereign, to the American system premised on the sovereignty of the People — and the necessity of preserving an armed citizenry in order to protect that sovereignty").

[49] NICHOLAS J. JOHNSON ET. AL., FIREARMS LAW AND THE SECOND AMENDMENT 150 (2d ed. 2018)

[50] NICHOLAS J. JOHNSON ET. AL., FIREARMS LAW AND THE SECOND AMENDMENT 150 (2d ed. 2018)

[51] NICHOLAS J. JOHNSON ET. AL., FIREARMS LAW AND THE SECOND AMENDMENT 147 (2d ed. 2018)

[52] Brief of Amicus Curiae Everytown at 4, Peruta v. Cty. of San Diego, 742 F.3d 1144 (9th Cir. 2014) (No. 10-56971) (This prohibition "did not extend to the realm's unpopulated and unprotected enclaves," however, because "English law generally made exceptions for the use of arms in the countryside")

[53] NICHOLAS J. JOHNSON ET. AL., FIREARMS LAW AND THE SECOND AMENDMENT 92 (2d ed. 2018).

[54] *See* Dist. of Columbia v. Heller, 554 U.S. 570, 599 (2008).

[55] *See* Dist. of Columbia v. Heller, 554 U.S. 570, 594 (2008) (emphasis added).

[56] *See, e.g.*, Peruta v. Cty. of San Diego, 742 F.3d 1144, 1154 (9th Cir. 2014)

[57] Brief of Amicus Curiae Everytown at 4, Peruta v. Cty. of San Diego, 742 F.3d 1144 (9th Cir. 2014) (No. 10-56971) ("'But [a man] cannot assemble force,' Coke continued--including by carrying firearms-- even 'though he [may] be extremely threatened, to go with him to Church, or market, or any other place, but that is prohibited by [the Statute of Northampton].' *Id.*4 William Hawkins, in writing about the law, likewise explained that 'a man cannot excuse the wearing [of] such armour in public, by alleging that such a one threatened him, and he wears it for the safety of his person from his assault,' but he may assemble force 'in his own House, against those who threaten to do him any Violence therein, because a Man's House is as his Castle'").

[58] *See, e.g.*, Joyce Lee Malcolm, To Keep and Bear Arms 4 (1994) ("[f]or much of English history ... the emphasis was on extending and fixing the obligation to keep and supply militia weapons, not disarming Englishmen").

[59] *See, e.g.*, Brief of Amici Curiae Historians at 11, Wrenn v. Dist. of Columbia, 864 F.3d 650 (D.C. Cir. 2017) (No. 15-7057) ("'So keen were monarchs to develop a citizen-army that by 1252 not only freemen but the richer villeins were ordered to be armed, and in the years that followed unfree peasants were included as well.' It was said that the state 'pays little heed to the line between free and bond, it expects all men, not merely all freemen, to have arms'").

[60] David Kopel, *English Legal history and the right to carry arms*, The Wash. Post (Oct. 31, 2015) https://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/10/31/wrenn-history/?noredirect=on&utm_term=.a9b2fafd624a "[T]he Tudor monarchs of the 16th century mandated that all towns and villages maintain public target ranges. Parents were required to teach their children how to use arms, and various Sunday amusements were outlawed, in order to remove distractions from target practice. The target mandates at first were for long bows, and later for muskets").

[61] ALEXANDER DECONDE, GUN VIOLENCE IN AMERICA 9 (2001) ("Monarchs, though, disliked the idea of an armed citizenry even as protection for the state. In 1541 England's Henry VIII, for one, tried to check the enthusiasm of "divers gentlemen, yeomen, and serving men for firearms, especially to use for criminal purposes. In a codified form of discriminatory gun control based on class, he limited the free use of firearms to noblemen and to commoners who had an annual income of at least one hundred pounds").