

Pistols, Crime, and Public Safety in Early America

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There is currently a rather vigorous debate under way about the meaning of the Second Amendment. Does it protect an individual right to possess and perhaps carry firearms? What are the limits of that right? What “arms” does it protect? The District of Columbia, in its attempt to defend its 1976 gun control law, has argued that the widespread possession of handguns represent an especially serious public safety hazard, and that even if arguendo, the Second Amendment protects an individual right, it would not extend to pistols, which it characterizes as “uniquely dangerous weapons” that present “unique dangers to innocent persons.”¹

¹ Petition for Writ of Certiorari, *District of Columbia v. Heller*, No. 07-(whatever it is) (U.S. Supreme Court),

This paper examines what the history of pistols in early America tells us about what was likely the Framers original intent in protecting “the right of the people to keep and bear arms” with no apparent limitations concerning handguns and concludes that, unlike radio or nuclear power, repeating firearms (of some sort) were not only foreseeable but expected.

Guns, Arms, Fire-Arms, Pistols: Some Definitions

A few definitions are appropriate, because there have been some subtle changes in the meaning of some of the terms over the last two centuries. “Gun” had a more restricted meaning in the eighteenth century than it does today, referring in some contexts to privately owned cannon,² but also what today we call long guns: weapons designed to be fired with two hands, both smoothbore and rifled barrels. The smoothbore weapons included fowling pieces, blunderbusses, and muskets, all of which could—and often did—fire either shot or lead balls. The only real distinction between a fowling piece and a musket was that muskets were of higher caliber, and intended for more powerful charges of gunpowder, capable of firing a lead ball that would be deadly at a greater distance. Blunderbusses, with the characteristic belled muzzle, were short-range antipersonnel weapons, putting an enormous quantity of shot in a broad pattern—the assault weapon of their day in terms of lethality and the number of persons that they could kill or wound.

22-23.

² See “two great guns” aboard a ship in “An Inventory of the Estate of Mr. William Whiting, deceased,” J. Hammond Trumbull, ed., *Public Records of the Colony of Connecticut* (Hartford, Conn.: Brown & Parsons, 1850), 1:497.



18TH CENTURY BLUNDERBUSS³

That “gun” did not include “pistol” is demonstrated by the number of statutes that include both “gun” and “pistol” on a list of arms. Colonial statutes requiring churchgoers to be armed in South Carolina (1743) and Georgia (1770) both distinguish between “a gun” and a pair of pistols.⁴ Perkin & Coutty of Philadelphia advertised in 1781 that they made firearms “in all its branches, where Gentlemen may be supplied with **Guns and Pistols** of the neatest and best quality, on the shortest notice...”⁵ As late as 1828 this distinction appeared in a proclamation from Washington, D.C. Mayor Joseph Gales: “WHEREAS it has been too much the habit of idle and inconsiderate persons, on Christmas and New Year's Day and Eve to indulge in firing off **guns, pistols**, squibs, and crackers, and burning of gun-powder in divers other ways, to the great annoyance of the peaceable inhabitants of this city, and to the manifest danger of their persons and

³ Courtesy of the Idaho Historical Museum and the J. Earl Curtis Exhibition at the Old Idaho Penitentiary.

⁴ David J. McCord, *Statutes at Large of South Carolina* (Columbia, S.C.: A. S. Johnson, 1840), 7:417-19, available at <http://www.claytoncramer.com/primary/militia/SCStatAtLarge7-417.jpg>, <http://www.claytoncramer.com/primary/militia/SCStatAtLarge7-418.jpg>, and <http://www.claytoncramer.com/primary/militia/SCStatAtLarge7-419.jpg>; Allen D. Candler, comp., *The Colonial Records of the State of Georgia* (Atlanta, Ga.: Chas. P. Byrd, 1911), 19(part 1):137-40, available at <http://www.claytoncramer.com/primary/militia/GA1770BringGunsToChurch.pdf>

⁵ *Pennsylvania Gazette*, May 2, 1781.

property....”⁶

The term “fire-arm” was also more restricted in meaning than today. Even though there are no examples in the Oxford English Dictionary, we know from contemporary documents that as early as 1775, and as late as 1806, the term “fire-arm” included muskets, but not pistols, or blunderbusses. At the start of the Revolution, General Gage ordered the people of Boston to turn in their arms. As an incentive, General Gage offered passes to leave Boston to all who turned in their weapons, because no weapons or ammunition were allowed to leave Boston. On April 27th, “the people delivered to the selectman 1778 **fire-arms**, 634 **pistols**, 973 bayonets, and 38 **blunderbusses**...”⁷ An 1806 Congressional committee report used the phrase “**fire arms** and **rifles**,” suggesting that “fire arm” may have been used the sense of “military musket,” rather than the broader definition in use today.⁸

Like today, “arms” was not limited to firearms in the Colonial or Revolutionary periods, although most “arms” that appear in official documents are firearms (in the modern sense of the word—something that uses gunpowder to shoot projectiles). For example, Massachusetts purchased 948 small arms in the first months of the Revolution for which we have both a count and a price.⁹ Of these, some are explicitly identified as firearms, while

⁶ “A proclamation. Mayor's office, Washington Dec. 23, 1828.” Printed Ephemera Collection; Portfolio 193, Folder 10, Library of Congress, available at <http://hdl.loc.gov/loc.rbc/rbpe.19301000>.

⁷ Richard Frothingham, *History of the Siege of Boston, and of the Battles of Lexington, Concord, and Bunker Hill*, 6th ed. (Boston: 1903), 94-95.

⁸ United States Congress, *American State Papers: Military Affairs*, 1:198, available at <http://memory.loc.gov/llsp/016/0200/02040198.tif>.

⁹ Massachusetts Provincial Congress, *The Journals of Each Provincial Congress of Massachusetts in 1774 and 1775* (Boston: Dutton and Wentworth, 1838), 536-37, 584-93; Peter Force, ed., *American Archives: Consisting Of A Collection Of Authentick Records, State Papers, Debates, And Letters And Other Notices Of Publick Affairs...* (1837-53; reprinted New York: Johnson Reprint Co., 1972), 4th ser. 2:1347, 1349, 1353, 1357-62, 1367.

others are simply “arms” or “small arms.” Firearms (n=341, standard deviation=0.21841) have an average purchase price of 1.680 pounds sterling. Other arms (n=607, standard deviation=0.07642) average 1.638 pounds sterling. At a 95% confidence interval, there is no overlap in pricing between the two groups. This suggests that while there might well have been some firearms in the “arms” or “small arms” category, it is unlikely that this category was entirely firearms.¹⁰

While pistols were not included in the category of “guns,” they were certainly “arms,” along with a number of impact and edged weapons of the time. As Webster’s *A Dictionary of the American Language* (1828) defined arms, “In law, arms are any thing which a man takes in his hand in anger, to strike or assault another.”¹¹ The OED definitions for “arms” are more specific than Webster’s:

Instruments of offence used in war; weapons. *fire-arms*: those for which gunpowder is used, such as guns and pistols, as opposed to *swords*, *spears*, or *bows*. *small-arms*: those not requiring carriages, as opposed to *artillery*.

¹⁰ In at least one early Colonial source, “armed” means “with armor,” because the soldiers under Indian attack are described as “some ten only (who had pieces which could reach them) shot” and yet later, “they shot only one of ours, and he was armed, all the rest being without arms.” John Winthrop, James Kendall Hosmer, ed., *Winthrop’s Journal: “History of New England” 1630-1649* (New York: Charles Scribner’s Sons, 1908), 1:191.

¹¹ Webster, *An American Dictionary of the English Language*, I, s.v., “Arms”.

But all the examples cited in the OED of the usage of the word “arms,” from 1300 to 1870, conform to the definition given by Webster—those which can be taken in the hand.¹²

Pistol Regulation

There are almost no regulatory distinctions between pistols and long guns in statutes before 1791.¹³ When Colonial statutes refer to pistols, it is usually as part of a list of other arms, with no indication that they were treated differently. As an example, in 1684, Virginia passed a law that sought to encourage private ownership of guns by exempting privately owned guns from being impressed for public service. To encourage the inhabitants to be “well and compleatly furnished when commanded to musters” all “swords, musketts... **pistolls**, carbines, guns, and other armes and furniture, as the inhabitants of this country shall provide and furnish themselves with, for their necessary use and service, shall henceforth be free and exempted from being impress[ed] or taken from him or them...”¹⁴ A statute adopted at the Massachusetts 1713-14 legislative session complained, “Whereas 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...” the legislature prohibited firing of any “gun or **pistol**” in Boston (“the islands thereto belonging excepted”).¹⁵

¹² OED, 1:634.

¹³ Generally, see Clayton E. Cramer, *Armed America: The Remarkable Story of How and Why Guns Became as American as Apple Pie* (Nashville, Tenn.: Nelson Current, 2006).

¹⁴ William Waller Hening, ed., *The Statutes at Large; Being a Collection of all the Laws of Virginia, from the First Session of the Legislature, in the Year 1619*. (New York: R. & W. & G. Bartow, 1823), 3:13.

¹⁵ *Acts and Resolves, Public and Private, of the Province of the Massachusetts Bay...* (Boston: Albert J. Wright, 1878), 3:305-6.

Measures that sought to disarm blacks also made no distinctions between categories of arms. Pennsylvania's 1700 "Act for the Trial of Negroes" provided that "if any Negro shall presume to carry any guns, swords, **pistols**, fowling-pieces, clubs or other arms or weapons whatsoever, without his master's special license for the same" he would receive twenty-one lashes on his bare back.¹⁶

A 1743 South Carolina statute required "every white male inhabitant of this Province" under 60 years old "who [are] liable to bear arms in the militia of this Province" who attended "church or any other public place of divine worship" to "carry with him a gun or a **pair of horse-pistols**... with at least six charges of gun-powder and ball...." Those who failed to do so would be fined twenty shillings—a week's wages for many colonists.¹⁷ (Georgia adopted a very similar statute in 1770.¹⁸)

¹⁶ James T. Mitchell and Henry Flanders, ed., *Statutes at Large of Pennsylvania from 1682 to 1801* (Harrisburg, Penn.: William Stanley Ray, 1898), 2:77-79.

¹⁷ McCord, *Statutes at Large of South Carolina*, 7:417-19.

¹⁸ Candler, *The Colonial Records of the State of Georgia*, 19(part 1):137-40.

The only examples of laws that treat pistols differently from other arms suggest that pistols were regarded as either *less* dangerous than long guns, or perhaps, that they enjoyed some protected status as weapons of self-defense. In January of 1776, the Maryland Revolutionary government ordered those not prepared to associate with the Revolutionary cause to turn over their firearms for the use of the militia—with one notable exception. The counties were told to order all freemen to “deliver up to the committee of observation for this county, all fire-arms, if he hath any, **except pistols...**” Even with all the concerns about Loyalists who might take advantage of the arrival of British troops to cause mischief, there was apparently no need to disarm them of their pistols.¹⁹ A similar exception allowing those not entirely trusted with long guns—but trusted with pistols—occur in Maryland as late as 1781.²⁰

Gilbert’s examination of post-Revolutionary gunpowder manufacturing mentions an incident that suggests that the carrying of handguns was not particularly restrictive in Maryland. “An earlier explosion occurred on October 17, 1783, in the yard of a Mrs. Clement in Baltimore, where some gunpowder had been placed to dry. Three boys, two of them Negroes, went into the yard to clean their pistols. One of them carelessly fired his pistol near the powder, causing it to blow up. One boy was killed and the other two seriously injured.”²¹

¹⁹ William Hand Browne, ed., *Archives of Maryland* (Baltimore: Maryland Historical Society, 1885), 78:75, 110, available at <http://www.msa.md.gov/megafile/msa/speccol/sc2900/sc2908/000001/000078/html/am78--75.html> and <http://aomol.net/megafile/msa/speccol/sc2900/sc2908/000001/000078/html/am78--110.html>.

²⁰ Browne, *Archives of Maryland*, 203:278 available at <http://aomol.net/megafile/msa/speccol/sc2900/sc2908/000001/000203/html/am203--278.html>.

²¹ Arlan K. Gilbert, “Gunpowder Production In Post-Revolutionary Maryland,” *Maryland Historical Magazine*, 52:3 [September, 1957], 188 n. 7.

A Boston ordinance from 1786 that prohibited keeping a variety of loaded weapons in buildings makes no apparent distinctions between different categories of weapons. It prohibited loaded “fire-arms, or any bomb, granade, or other shell... in any house, outhouse, barn, stable, store, ware-house, shop, or other building...” Other sections apply this to “cannon, swivels, mortars” and other military ordnance.

Saul Cornell has pointed to this law as evidence that there was no individual right to keep and bear arms at the time: “This is a law that effectively makes it illegal in the city of Boston to have a loaded firearm. To have a loaded firearm in the city of Boston in the 1780s is against the law. The founding fathers were willing to ban loaded guns in the city of Boston.”²² One would think that if there were other laws or ordinances regulating the possession of loaded firearms, Cornell would not have been silent about it. The absence of other examples suggests that Boston’s ordinance was somewhat remarkable.

²² Center to Prevent Handgun Violence, *Second Amendment Symposium: After the Emerson Decision, Setting the Record Straight on the Second Amendment*, 64, available at <http://www.gunlawsuits.org/pdf/defend/second/symposium.pdf>, last accessed September 25, 2004.

A careful reading of the statute, however, reveals that its purpose was not a general ban on loaded guns in Boston, but leaving them unattended: “Whereas the depositing of loaded arms in the houses of the town of Boston, is dangerous to the lives of those who are disposed to exert themselves when a fire happens to break out in the said town...”²³ The statute did not prohibit *carrying* loaded firearms within the city of Boston—only taking them into a building, and as the preamble makes clear, this law was for the protection of those fighting fires. Unloading a flintlock firearm (except by firing it) was a tedious task, and it is easy to see why the city felt that it was appropriate to require guns not be kept loaded and unattended. That Boston felt the need for such a law, however, suggests that gun ownership was also common, as was having loaded firearms in one’s home or business. Fires were more common than today, but if only 10% of homes had a gun, and only 10% of those homes had a *loaded* gun, the intersection of houses on fire and houses with loaded guns in them would have been very small indeed. The law also clearly considered the possession of firearms, cannon, and grenades to be unremarkable, and the carrying of loaded firearms a sufficiently common practice as to need regulation—but not completely prohibited, and not prohibited while walking the streets of Boston.

There also remains the question of whether *pistols* were included among “fire-arms” in this Boston ordinance. They certainly were not explicitly listed, and previous usage (such as the inventory of weapons turned over to General Gage) would arguably suggest that pistols were not included.

Why Were Pistols Treated So Cavalierly?

There are a number of possible explanations for why the Colonial and Revolutionary periods treated pistols like other firearms. One possibility is that pistols were relatively

²³ “An Act in Addition to the Several Acts Already Made For The Prudent Storage of Gun-Powder Within the Town of Boston” (1786). Professor Cornell provided me a copy of the ordinance, September 22, 2004.

scarce, and therefore might not have attracted particular regulatory attention. The evidence is very clear, however, that pistols were *not* scarce in the Colonial period, during the Revolution, or into the early Republic. Seventeenth century colonial probate inventories reveal that while pistols were not as commonly owned as long guns, they were also not particularly rare. One analysis of all Plymouth Colony probate inventories through the 1670s found that of 339 listed firearms, forty-four, or thirteen percent, were pistols, and 54.5 percent of lead projectiles recovered from Plymouth Colony digs were pistol ammunition.²⁴

Ads offering pistols for sale appear throughout the Colonial period, although less commonly than long guns. At least one ad offering guns for sale, including pistols, appears among the surviving 1720 issues of the *Boston Gazette*.²⁵ Sampling *Boston Gazette* ads from the 1741-1742 period reveals at least two different merchants offering pistols for sale, one of whom Samuel Miller, identified himself as a gunsmith.²⁶

Similarly, merchants offer pistols for sale in the *South Carolina Gazette* on occasion.²⁷ Ads specifically for pistol-powder (finer grained so that it would burn more rapidly in a shorter barrel) appear as well.²⁸ At least one gunsmith identifying himself as working on pistols also appears in the *South Carolina Gazette*: “*John Scott Gun Maker from London who performs all sorts of Gun or **Pistol** Work for ready Money only.*”²⁹

²⁴ Plymouth Archaeological Rediscovery Project, “Firearms in Plymouth Colony” (2002), Tables 2 and 4, available at <http://plymoutharch.tripod.com/id73.html>, last accessed October 14, 2007.

²⁵ *Boston Gazette*, May 30, 1720.

²⁶ Issues of the *Boston Gazette* with at least one ad offering pistols (and in some issues, two different ads offering pistols): November 17, 1741, December 8, 1741, February 2, 1742, May 11, 1742, May 18, 1742, May 25, 1742, July 13, 1742, August 10, 1742, August 24, 1742, August 31, 1742, [September 13?], 1742.

²⁷ *South Carolina Gazette*, October 25, 1735, September 18, 1736, February 26, 1741, March 5, 1741, September 5, 1741, September 12, 1741, October 10, 1741, December 19, 1741.

²⁸ *South Carolina Gazette*, January 13, 1733, September 14, 1734, July 28, 1733, May 24, 1735, March 8, 1740.

²⁹ *South Carolina Gazette*, March 8, 1740.

The *Pennsylvania Gazette* showed a number of pistols for sale in the eighteenth century. Philadelphia merchants advertised pistols for sale repeatedly from 1744 onward.³⁰ A Robert Towers offered as part of his selection, “rifle double barrel and smooth bore guns, **pistols**, flints, bullet and shot molds....”³¹ Specifically pocket pistols were offered for sale as well in 1750, showing that concealable handguns were known, lawful—and likely carried concealed.³² In 1772 and 1773, Heinrich Diebenberger advertised in Pennsylvania newspapers that he sold pistols,³³ as did Henry Deabarear, who sold “**pistols** for holsters and the pocket....”³⁴ Ads offering gunpowder specifically for pistols appear as well in the *Pennsylvania Gazette*.³⁵ In 1748 New York City, Edward Annely advertised his services as a gunsmith and dealer in imported guns. “He likewise makes guns and **pistols** as any gentleman shall like....”³⁶

Pocket pistols also appear to have been carried by those out exploring the natural wonders of America. A 1772 account of a natural bridge in Virginia includes this description of the echo characteristics of the area: “[A]fter this I fired a Pocket **Pistol** under the Arch, the Report of which was louder than a Swivel [a type of small mounted artillery used on ships].”³⁷

³⁰ *Pennsylvania Gazette*, November 1, 1744; September 26, 1745; October 3, 1745; October 17, 1745; February 11, 1746; July 17, 1746; July 30, 1747. May 5, 1748, May 12, 1748; September 15, 1748; October 25, 1750; November 27, 1755; August 2, 1759; February 11, 1762; April 14, 1763; May 19, 1763; April 12, 1764; April 19, 1764; May 28, 1772; February 17, 1773.

³¹ *Pennsylvania Gazette*, September 6, 1764.

³² *Pennsylvania Gazette*, June 21, 1750, September 27, 1750.

³³ September 4, 1772 and September 14, 1773, *Wochtenlichter Pennsylvanische Staatsbote*, translated and quoted in James Whisker, *The Gunsmith's Trade* (Lewiston, N.Y.: Edwin Mellen Press, 1992), 159-160.

³⁴ *Pennsylvania Gazette*, August 16, 1770, September 15, 1773, December 24, 1778.

³⁵ *Pennsylvania Gazette*, August 25, 1748, May 5, 1748, November 10, 1748, November 16, 1749, March 6, 1750, May 24, 1750, June 14, 1750, November 1, 1750.

³⁶ *The New York Gazette Revived in the Weekly Post-Boy*, August 1, 1748, quoted in Henry J. Kauffman, *Early American Gunsmiths: 1650-1850* (New York: Bramhall House, 1952), 4.

³⁷ *Pennsylvania Gazette*, November 25, 1772.

While pistols were usually imported before the Revolution (typically from Britain), they were also made in America. Medad Hills made a pair of pistols for William Smith in 1771.³⁸ Surviving pistols that were apparently made in Colonial America include a pistol owned by Peter Grubb, who made gun barrels for the Lancaster Committee of Safety during the Revolution. The lock is apparently English-made, but the rest of the pistol appears to have been made in Pennsylvania, perhaps by I. Perkins of Philadelphia, or by Grubb himself. While other pistols are uncertain as to maker, William Antes is clearly the maker of one surviving Colonial period American-made pistol. Antes signed both the barrel and the lock, suggesting that he made the entire pistol.³⁹ Another surviving signed pistol of the Colonial period was made by Matthew Sadd of Hartford, Connecticut, “in the middle 1700s.”⁴⁰ Other surviving examples include a pistol made by Cornelius Atherton in New England; surviving pistols by Henry Mauger of Berks County, Pennsylvania, and by William Shenner of Reading, Pennsylvania;⁴¹ and pistols by Nathan Bailey (made for Connecticut).⁴²

The previously mentioned count of firearms surrendered to General Gage by the citizens of Boston also indicates that pistols were fairly common: 18.5% of the 3423 firearms surrendered.⁴³

³⁸ George A. Stickels, “The William Smith Pistols Made by Medad Hills,” *The Gun Report*, September, 1979, 10-12.

³⁹ Frank Klay, *The Samuel E. Dyke Collection of Kentucky Pistols* (Highland Park, N.J.: The Gun Room Press, 1972), 4-9.

⁴⁰ Merrill Lindsay, *The New England Gun: The First Two Hundred Years* (New Haven, Conn.: New Haven Colony Historical Society, 1975), 64.

⁴¹ Klay, *Samuel E. Dyke Collection of Kentucky Pistols*, 10-15; Michael H. Lewis, *The Gunsmiths of Manhattan 1625-1900: A Checklist of Tradesmen* (Alexandria Bay, N.Y.: Museum Restoration Service, 1991), 6.

⁴² Lindsay, *New England Gun*, 52, 54, 56, 61, 64.

⁴³ Richard Frothingham, *History of the Siege of Boston, and of the Battles of Lexington, Concord, and Bunker Hill*, 6th ed. (Boston: 1903), 94-95.

On May 30, 1775, the New York Provincial Congress recommended “to the Inhabitants of this Colony in general, immediately to furnish themselves with necessary Arms & Ammunition...”⁴⁴ On August 22, 1775, it ordered calvarymen to provide themselves with a horse, saddle, “a case of **pistols**... one pound of gunpowder and 3 lbs. of sizeable bullets,... and a carabine.....” Like the infantry, calvarymen were to “be provided... with 1 lb of pow[d]er and 3 lbs of bullets.” While not explicit as to who would provide the gunpowder and bullets, it is clear that every man 16 to 50 was to “furnish himself” with either a long gun or “a case of pistols.”⁴⁵

On May 2, 1787, the Continental Congress ordered public auction of a collection of military odds and ends: “413 old militia Arms... 365 old militia gun barrels... 985 old gun locks... 2000 damaged muskets... **700 pistols**... 1194 damaged muskets... 1066 damaged carbines... 4446 damaged musket barrels...” and a bit more than thirteen tons of damaged powder.⁴⁶ Pretty clearly, the government believed that there was a market for pistols, and didn’t suffer from modern fears of selling surplus handguns to the population.

⁴⁴ May 30, 1775, Berthold Fernow, ed., *Documents Relating to the Colonial History of the State of New York* (Albany, N.Y.: Weed, Parsons & Co., 1887; reprinted New York: AMS Press, Inc., 1969), 15:5.

⁴⁵ December 20, 1775, Fernow, *Documents Relating to the Colonial History of the State of New York*, 15:42-43. A May 21, 1775 letter from a committee in Tryon County, complaining of a shortage of ammunition—but saying nothing about a shortage of firearms—has a similar implication. See Force, *American Archives*, 4th ser., 2:665-6.

⁴⁶ May 2, 1787, Worthington C. Ford, *et al.*, ed., *Journals of the Continental Congress, 1774-1789* (Washington, D.C., 1904-37), 32:244-6, available at [http://memory.loc.gov/cgi-bin/query/r?ammem/hlaw:@field\(DOCID+@lit\(jc03268\)\)](http://memory.loc.gov/cgi-bin/query/r?ammem/hlaw:@field(DOCID+@lit(jc03268))).

John Nicholson, gunsmith, offered a variety of firearms for sale in November of 1781, including “**Pistols**...upon the most reasonable terms.”⁴⁷ Edward Pole advertised his “Military Laboratory” where “Owners and Commanders of Armed Vessels may be supplied, for either the use of Small Arms or Cannon, at the shortest notice, with ever species of Military Stores.” Among the items for sale included “Musket’s [sic] and **pistol**’s [sic].” That Pole’s customers included civilians is suggested by the offering of “Musket cartridges in blank, for the exercise of the militia.”⁴⁸

In 1785, Anthony Desverneys, Jr., of South Carolina advertised that he “continues to make and repair all sorts of guns, **Pistols** and generally everything that belongs to the Gunsmith’s Business.”⁴⁹ Francis Brooks in 1791 Philadelphia advertised himself as a “**Pistol** Maker.”⁵⁰ John Miles’s 1798 advertisement in the *Pennsylvania Packet* made it clear that there was a civilian market for pistols: “Gun and **Pistol** Manufactory... Where Merchants, Captains of vessels, and others may be supplied with all sorts of small arms, on the lowest terms and shortest notice.”⁵¹

⁴⁷ *Pennsylvania Journal*, November 24, 1781, quoted in Henry J. Kauffman, *Early American Gunsmiths: 1650-1850* (New York: Bramhall House, 1952), 71.

⁴⁸ Edward Pole, *Military Laboratory, at No. 34...* (Philadelphia: R. Aitken, [1789]), in Library of Congress Printed Ephemera Collection, Portfolio 147, Folder 9a, available at <http://hdl.loc.gov/loc.rbc/rbpe.1470090a> . Also, see Pole’s similar ad in the *Pennsylvania Packet*, November 28, 1778.

⁴⁹ *South Carolina Gazette & Public Advertiser*, October 13, 1785, quoted in Kauffman, *Early American Gunsmiths*, 23.

⁵⁰ *Federal Gazette*, September 21, 1791, quoted in Kauffman, *Early American Gunsmiths*, 14.

⁵¹ *Pennsylvania Packet (Claypoole’s American Daily Advertiser)*, April 26, 1798, quoted in Kauffman, *Early American Gunsmiths*, 66.

Lost pistol ads from the Revolutionary period also suggest that they were not particularly rare. An October 24, 1781 *Pennsylvania Gazette* ad offers a reward: “Was **LOST** on the Commons, A Silver mounted **Pistol** . Whoever has found the same, and will bring it to the Sheriff Office, shall receive ONE GUINEA REWARD.”⁵² Other ads throughout the period for lost pistols suggest that people must have been carrying them often, both to have them fall out of a belt or pocket, and that they were sufficiently concealable that there was no loud “thunk” as the pistol hit the ground: “**LOST** , on Saturday, the 5th instant, A Silver mounted **PISTOL** , with a brass barrel, on the road between Chester and this city.”⁵³ “WAS **lost** , on the evening of the 25th of January last, on the road leading from Philadelphia to the Lower Ferry, a very neat Pocket **Pistol....**”⁵⁴

Various accounts in the first few years of the early Republic suggest that the possession and carrying of pistols remained common. Isaac Weld’s account of his travels in North America between 1795 and 1797 described how in the backcountry, “The people all travel on horseback, with **pistols** and swords....”⁵⁵

When Aaron Burr was tried for his criminal conspiracy to detach the Southwest into its own country, one of the pieces of evidence used against him was a meeting of a Mr. Blannerhassett with a number of other conspirators—all of them armed. Burr’s defense attorney argued that gun ownership was the norm in the early Republic:

If there were evidence of a merely friendly meeting, it would be the same as if there were no assemblage. If they were to give evidence that Blannerhassett and some of those with him were in possession of arms, as people in this country usually are, it would not be sufficient of itself, to prove that the meeting was military.

⁵² *Pennsylvania Gazette*, October 24, 1781.

⁵³ *Pennsylvania Gazette*, June 9, 1784.

⁵⁴ *Pennsylvania Gazette*, April 6, 1774.

⁵⁵ Isaac Weld, *Travels Through the States of North America, and the Provinces of Upper and Lower Canada, During the Years 1795, 1796, and 1797* (London: John Stockdale, 1807), 1:234.

Arms are not necessarily military weapons. Rifles, shot guns and fowling pieces are used commonly by the people of this country in hunting and for domestic purposes; they are generally in the habit of pursuing game. In the upper country every man has a gun; a majority of the people have guns everywhere, for peaceful purposes. Rifles and shot guns are no more evidence of military weapons than **pistols or dirks used for personal defence**, or common fowling pieces kept for the amusement of taking game. It is lawful for every man in this country to keep such weapons.⁵⁶

It is difficult to argue that pistols were loosely regulated because of their scarcity with this body of evidence.

Were Pistols Less Misused in the Eighteenth Century?

Were pistols less misused in the Colonial and Revolutionary periods? It is conceivable that if pistols were rarely misused, the Framers might have neglected to exclude pistols from the “arms” that “the people” had a right to keep and bear. However, references to criminal and violent uses of pistols occur occasionally in the Colonial and Revolutionary era, and are *never* treated as unusual or surprising because of the type of weapon.

John Winthrop makes several references to pistols in New England in the nineteen years that his journal covers. A 1641 theological dispute at Pascataquack (now Dover, New Hampshire) soon led the factions to arm themselves and march, at least one member identified as armed with a pistol. There were murders with pistols at Stamford, Connecticut and at Penobscott in 1644, and an attempted murder with a pistol at Cape Sable in 1646.⁵⁷ Winthrop never expressed any surprise or disgust over the presence of pistols—and he was not a man inclined to withhold his moral revulsion at the actions of his fellow Englishmen.

Eighteenth century accounts also mention pistols, and their presence is never surprising. Eliza Lucas Pinckney describes the suicide of Anne LeBrasseur with a pistol as “melancholy and shocking,” but newspaper accounts suggest that what was shocking about her suicide was not the weapon, but that she was “a Disciple of Mr. Whitefield’s” (the noted Anglican

⁵⁶ David Robertson, *Reports of the Trials of Colonel Aaron Burr...* (Philadelphia: Hopkins and Earle, 1808; reprinted New York: Da Capo Press, 1969), 1:582.

⁵⁷ John Winthrop, James Kendall Hosmer, ed., *Winthrop’s Journal: “History of New England” 1630-1649* (New York: Charles Scribner’s Sons, 1908), 2:27, 153, 180, 275.

evangelist).⁵⁸ There are other suicides in this period by pistol, and apparently never surprising for the choice of method.⁵⁹ A similar account of a planned suicide involving pistols also appears as a result of a fatal hunting accident.⁶⁰ Accidental deaths involving pistols occasionally appear, never with any note of surprise.⁶¹

The September 7, 1749 *Pennsylvania Gazette* reported that, “Sunday night last, about eight a Clock, Richard Green, coming to Town from Kensington, was stopt on the Road, and his Money demanded, by two Men with Pistols....”⁶² There are other examples available in the *Pennsylvania Gazette*; criminal misuse of and accidental deaths from pistols was never expressed as surprising.⁶³ A gang of robbers, having terrorized New York City, moved on to Philadelphia in 1749. A newspaper account of their crimes reported that, “two Men, unknown, were lately at Mr. Rush's, a Gun smith, enquiring for six Pair of Pocket Pistols, to make up twelve Pair, having as they said, got the six Pair at some other Place.”⁶⁴

A 1765 account from the *Pennsylvania Gazette* reprints a report from Boston:

Last Wednesday Evening, just after seven o'Clock, as a Man was going over Boston neck, he was stopped by a Fellow, who presenting a Pistol to his Breast, bid him deliver, swearing he would send a *Brace* of Balls thro'him instantly if he refused; but the Man replying he had but 3 Pistareens about him, he ordered him to go about his Business, and then ran of --- doubtless apprehending a Pursuit, as there were a Number of People hastening towards them. He was a little Fellow, had on a surtout Coat, wore his Hat slapped before, and had a Pair of *Pistols*.⁶⁵

There are other examples available in which robbers are described as using pistols, or who are taken in custody while armed with pistols,⁶⁶ or what might be categorized today as

⁵⁸ Eliza Lucas Pinckney, Elise Pinckney, ed., *The Letterbook of Eliza Lucas Pinckney* (Columbia, S.C.: University of South Carolina Press, 1997), 42, 42 n. 55.

⁵⁹ *Pennsylvania Gazette*, December 27, 1759, August 22, 1765.

⁶⁰ *South Carolina Gazette*, May 29, 1736.

⁶¹ *South Carolina Gazette*, November 27, 1740.

⁶² *Pennsylvania Gazette*, September 7, 1749.

⁶³ *Pennsylvania Gazette* (accidental discharge of a pistol causes death), October 31, 1745; (criminal shooting from inside a barricaded home), April 20, 1749; (attempted robbery in Lancaster County, Penn.) October 27, 1763; (attempted robbery in Bush Hill, Va., with a pistol and blunderbuss) June 27, 1787.

⁶⁴ *Pennsylvania Gazette*, August 31, 1749.

⁶⁵ *Pennsylvania Gazette*, February 7, 1765.

⁶⁶ *Pennsylvania Gazette*, December 10, 1751, March 5, 1783, July 2, 1783.

crimes of passion.⁶⁷

Accidental deaths appear as well, expressed as tragic, but not shocking:

Monday Evening last a very melancholy Accident happen'd in this City, when a young Gentleman having been on board the Clinton Privateer, then going out, had a *Pair of Pistols* given him; which on his coming on Shore he carried into a Publick House, among some of his Acquaintance, where one of them was found to be loaded; upon which several Attempts were made to discharge it; but it missing Fire, he sat down in order to amend the Flint; in doing of which, the Pistol unhappily went off, and shot Mr. Thomas Cox, Butcher, through the Head, in such a Manner that some of his Brains came out, and he fell down dead without speaking a Word.⁶⁸

Pistols appear repeatedly among the South Carolina Regulators and the criminals to whom they administered frontier justice in the 1760s.⁶⁹ Foolish persons engaged in duels appear in newspaper accounts, and the presence of pistols is not a surprise.⁷⁰ Nor was there any surprise when pistols appear in the hands of the law-abiding, such as a description of Rev. Whitfield preaching in Massachusetts, “he was attended by many Friends with Muskets and Pistols on Account of the Indians....”⁷¹

Pistols appear in the hands of non-militia members who engage in guerilla warfare against the British at the start of the Revolution. “Samuel Whittemore, aged eighty years,” upon seeing British soldiers marching towards Concord, prepared by oiling “his musket and pistols and sharpening his sword.” When the soldiers returned,

Whittemore had posted himself behind a stone wall, down Mystic Street about four hundred and fifty feet.... The distance seemed an easy range for him, and he opened fire, killing the soldier he aimed at. They must have discovered his hiding place from the smoke-puff, and hastened to close in on him. With one **pistol** he killed the second Briton, and with his other fatally wounded a third one. In the meantime, the ever vigilant flank guard were attracted to the contest, and a ball from one of their muskets struck his head and rendered him unconscious. They rushed to the spot, and clubbed him with their muskets and pierced him with their bayonets until they felt sure he was dead.... Whittemore lived eighteen more years, dying in 1793 at the age of ninety-eight.⁷²

⁶⁷ *South Carolina Gazette*, July 24, 1736.

⁶⁸ *Pennsylvania Gazette*, October 31, 1745.

⁶⁹ Richard Maxwell Brown, *The South Carolina Regulators* (Cambridge, Mass.: Harvard University Press, 1963), 35, 40, 54.

⁷⁰ *South Carolina Gazette*, September 6, 1735.

⁷¹ *Pennsylvania Gazette*, August 15, 1745.

⁷² Frank Warren Coburn, *The Battle of April 19, 1775*, 2nd ed. (Lexington, Mass.: n.p. 1922; reprinted Port Washington, N.Y.: Kennikat Press, 1970), 141-42. Abram English Brown, *Beneath Old Roof Trees* (Boston: Lee & Shepard, 1896), 262-3, recounts much the same story, but along with the stories told by Whittemore's

Enough pistols were present in private hands in Pennsylvania in 1774 for the legislature to include handguns in a law regulating New Year’s Day festivities. This statute made it illegal for “any person or persons shall, on any thirty-first day of December, or first or second day of January, in every year, wantonly, and without reasonable occasion, discharge and fire off any **handgun, pistol**, or other firearms, or shall cast, throw or fire any squibs, rockets or other fireworks, within the inhabited parts of this province....”⁷³

Could the small town nature of Colonial and Revolutionary America play a part? America really only had three cities of any size in 1791: Philadelphia, New York, and Boston—none of which would even be a city by current standards. Could the Framers simply not have envisioned the dangers that handguns might create in a city of several hundred thousand inhabitants? Many of the Framers had spent time in London, and it seems likely that many of those who had not were aware of the problems of urban crime there. Yet a sampling of the criminal cases of the Old Bailey covering the period 1674-1789 shows that pistols appear commonly in these records.⁷⁴

decade	pistol OR cases	pistols sampled	criminal misuse	stolen	accidental death	lawful use
1670s	16	16	12	1	1	0
1680s	38	5	4	0	0	0
1690s	80	8	3	1	2	0
1700s	11	11	9	0	0	1
1710s	58	6	5	1	0	0
1720s	113	12	7	3	0	1
1730s	185	10	6	1	0	0
1740s	135	10	7	1	0	0
1750s	139	10	8	1	0	1
1760s	128	10	6	2	0	0
1770s	286	10	7	3	0	0

descendants, Brown also quotes Whittemore’s February 6, 1793 *Columbia Sentinel* obituary, which reports very nearly the same facts as Coburn.

⁷³ *Pennsylvania Gazette*, December 28, 1774.

⁷⁴ *Proceedings of the Old Bailey, 1674-1834*, <http://www.oldbaileyonline.org/search/>, last accessed November 29, 2007. The term “pistol” appears occasionally to refer to a Spanish or French coin, and more rarely, used an adjective to describe something small or short.

1780s	336	10	5	3	0	1
totals	1525	118	79	17	3	4
%		7.74%	66.95%	14.41%	2.54%	3.39%
projected			1020.97	219.7	38.77	51.69
std.dev.			2.39	1.08	0.62	0.49
years covered	116					
incidents/year			8.8	1.89	0.33	0.45

Technology Marches Onward

One argument for treating the Second Amendment’s protection as obsolete is that the technology of firearms has advanced so dramatically since 1791—that a modern pistol provides so much destructive potential that the Framers, were they present today, would recognize the absurdity of allowing ordinary law-abiding persons to possess or carry such a weapon. Alternatively, those with a mirthful spirit suggest that the Second Amendment should protect only the type of weapons available in 1791, when the states ratified the Second Amendment.

It is certainly true that firearms technology has advanced since 1791—but not as much as some would like to think. Repeating, magazine-fed firearms date back to at least the 1600s;⁷⁵ concealable “pepperbox” handguns firing five to seven shots without reloading were in use by the end of the eighteenth century,⁷⁶ with some indications that multibarrel handguns were in development in the seventeenth century as well.⁷⁷ There are surviving multibarrel repeating firearms from the late seventeenth century, and at least one six shot flint-lock pistol from the first half of the eighteenth century.⁷⁸ Some British soldiers were

⁷⁵ Claude Blair, ed., *Pollard’s History of Firearms*, (New York: Macmillan Co., 1983), 207, 214; William Wellington Greener, *The Gun And Its Development*, 8th ed. (London: Cassell and Co., 1907), 80-81.

⁷⁶ Claude Blair, ed., *Pollard’s History of Firearms*, (New York: Macmillan Co., 1983), 207, 214. While most surviving pepperbox handguns are percussion system, and therefore nineteenth century, there are occasional references to flintlock pepperbox handguns. “\$150 Paid For Flintlock,” *New York Times*, November 19, 1919, <http://query.nytimes.com/gst/abstract.html?res=9F05E1DB153BEE32A2575AC1A9679D946896D6CF>, last accessed December 30, 2007.

⁷⁷ Charles Edward Chapel, *Guns of the Old West: An Illustrated Guide* (Mineola, N.Y.: Dover Publications, 2002), 84; Greener, *The Gun And Its Development*, 509.

⁷⁸ Greener, *The Gun And Its Development*, 82-83.

issued magazine-fed repeating guns as early as 1658.⁷⁹



AN ALLEN & THURBER PEPPERBOX, EARLY 19TH CENTURY⁸⁰

The development of the percussion system in 1816 encouraged further development of the pepperbox, by making revolving handguns more practical—but the concept of a repeating handgun was certainly known in 1791, if still unrefined. Even the development of the modern revolver by Samuel Colt did not suddenly render the pepperbox obsolete; Americans continue to use pepperboxes for self-defense for several decades after Colt's invention,⁸¹ and there are indications from medico-legal texts published as late as 1895 that they are not just curiosities.⁸²

⁷⁹ A. V. B. Norman and Don Pottinger, *English Weapons & Warfare: 449-1660*, (New York: Dorset Press, 1979), 206-7.

⁸⁰ Photograph courtesy C.W. Slagle of Scottsdale, Arizona. There were *dozens* of similar early pepperboxes at the gun show where I photographed this one.

⁸¹ John S. Mosby, Charles Wells Russell, ed., *The Memoirs of Colonel John S. Mosby* (Boston: Little, Brown, and Co., 1917), 8; John A. Joyce, *A Checkered Life* (Chicago: S.P. Rounds, Jr., 1883), 135; Anson Uriel Hancock, *Silhouettes from Life on the Prairie, in the Backwoods* (Chicago: C.H. Kerr, 1893), 155; William Elsey Connelley, *Quantrill and the Border Wars* (Cedar Rapids, Ia.: Torch Press, 1910), 399; Frank Hickenlooper, *An Illustrated History of Monroe County, Iowa* (Albia, Ia.: n.p., 1896), 257.

⁸² Medico-Legal Society of New York, *Bulletin of the Medico-Legal Congress, Held at the Federal Building in the City of New York, September 4th, 5th and 6th, 1895* (New York: Medico-Legal Journal, 1898), 168.

Even with respect to single shot pistols, the technological advance is less dramatic than it first appears. Pocket pistols of the Revolutionary era were often surprisingly compact, such as this example owned by Paul Revere.



PAUL REVERE'S POCKET PISTOL⁸³

Being so compact, those who were expecting trouble might carry two, four, or even six single shot pistols on their belt. This was a sufficiently common practice that pistols were often sold (or stolen) in pairs⁸⁴—and sometimes as a case of pistols or a brace of pistols.⁸⁵ The phrase “brace of pistols” frequently appears in eighteenth century documents to describe this solution to the single shot problem.⁸⁶

⁸³ Courtesy of the Massachusetts Historical Society.

⁸⁴ Purchase records: William Hand Browne, ed., *Archives of Maryland* (Baltimore: Maryland Historical Society, 1885), 42:63; William P. Palmer, ed., *Calendar of Virginia State Papers and Other Manuscripts, 1652-1781, Preserved in the Capitol at Richmond* (Richmond: 1875), 1:81. Stolen pairs of pistols listed in runaway ads: April 15 to April 27, 1737, [Williamsburg,] *Virginia Gazette* (Parks), in Thomas Costa, ed., *Virginia Runaways: Runaway Slave Advertisements from 18th-century Virginia Newspapers* (<http://www.wise.virginia.edu/history/runaways/>); *South Carolina Gazette*, March 8, 1740; *Pennsylvania Gazette*, May 24, 1733, April 2, 1752, October 25, 1753, December 5, 1754, August 10, 1774, May 10, 1775, January 8, 1767, March 29, 1780, December 5, 1781, May 19, 1784, June 27, 1787. Ads offering pairs of pistols for sale in the *Pennsylvania Gazette*, August 31, 1749, September 19, 1751, October 1, 1761, October 21, 1762, December 14, 1774, April 15, 1776, January 24, 1778.

⁸⁵ *Pennsylvania Gazette*, October 1, 1761, September 1, 1779.

⁸⁶ *Pennsylvania Gazette*, May 20, 1756; “Some Account of the Loss of the *Hartwell* East-Indiaman,” *The Annual Register, or a View of the History, Politics, and Literature, for the Year 1787* (London: J. Dodsley, 1789), 253; “Account of the Disaster that befell his Majesty’s Ship *Guardian*, Lieutenant *Riou*, Commander,” *The Annual Register, or a View of the History, Politics, and Literature, for the Year 1790* (London: J.

A criminal carrying six single shot pistols in his pockets and on his belt in 1791 would admittedly not be as quick to fire those six shots as his 2007 counterpart using a revolver or semiautomatic pistol. A reasonably skilled wielder of a modern pistol could expect to *accurately* shoot perhaps 20 to 40 bullets in about 60 to 90 seconds (assuming that the shooter reloads without being shot by a bystander). The 1791 equivalent might fire six bullets in about ten seconds. This is an order of magnitude enhancement in the ability to kill.

On the other side of the equation, advances in medical, communication, and protective technology have more than kept pace with the improvement in handgun technology. An abdominal wound in 1791 was nearly a guarantee of death from peritonitis. Improvements in surgical technique and the ability to rapidly move victims to a hospital have also dramatically improved the chances of surviving gunshots.

Perhaps a more meaningful question than whether the improvement in weapons technology obsolesces the Second Amendment is whether *any* provision of the Bill of Rights could survive such a test. The technology of mass communications in 1791 limited a publisher to printing a few hundred “dangerous opinions” an hour; modern broadcasting and the Internet make it possible to NBC to promote a particular viewpoint to tens of millions of people in a few minutes. Would this dramatic technological advance justify a more restrictive view of the First Amendment’s freedom of the press?

Similarly, should we use the dramatic improvements in the technology of travel as an excuse to declare obsolete the Eighth Amendment’s guarantee of bail in non-capital cases? Does the increased risk of terrorism in an age of biological and radiological weapons justify excluding telecommunications from the Fourth Amendment’s protections against warrantless search and seizure? There are legitimate questions that might be asked about how technological change may render the concepts of 1791 out of date—but if this is true,

Dodsley, 1793), 260; Jasper Sprange, *The Tunbridge Wells Guide...* (London: J. Sprange, 1797), 247; Matthew Gregory Lewis, *The Monk: A Romance* (Waterford: J. Saunder, 1796), 1:203; Robert Bisset, *Douglas; or, The Highlander* (London: T. Crowder, 1800), 189.

then the courts should treat the entire Bill of Rights in a consistent way.