

# Texans and Their Guns

State Weapons Laws and White Supremacy, 1836-1923

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Dissertation Prospectus  
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An association between Texas and guns runs deep. From the infamous “Come and Take It” flag raised at the Battle of Gonzales and Davy Crockett firing “Old Betsy” at the Alamo to the pistol-carrying cowboy and the storied Texas Ranger, firearms have been an integral part of Texas history and the Texas mystique. Or so it would seem. In reality, although guns have certainly played a prominent role in defining Texas culture, it turns out that for most of its history, the Lone Star State has had relatively stringent gun regulations. Contemporary politics, however, is in the process of bringing to the fore a new dimension of this legendary connection between Texans and their guns. Beginning in 1995 with the permission for licensed concealed carry, the Texas legislature embarked on a piecemeal dismantling of the state’s gun regulations. Since that time, the Republican-dominated Texas legislature has made access to weapons licenses easier, tried to nullify federal gun laws within the state’s borders, and famously joined the ranks of the dozens of states that permit some form of openly carried weapons. Tea-party organizations, Texas secessionists, and politicized gun lovers have supported the stripping of state regulations out of a perceived fear of weapon confiscation by the federal government. Now “Come and Take It” flags often feature an assault rifle rather than a brass cannon, indicating that those sympathetic to the message are afraid of federal power and defensive about states’ rights to regulate gun ownership. The purveyors of this new, modernized Texas gun mythos have allowed assumptions about gun-toting Texas frontiersmen to overshadow the history of the laws governing the ownership and carrying of firearms. In fact, gun regulations in Texas are as old as the state, even predating statehood and independence. Moreover, in 1870 Texas became the first state to champion comprehensive arms-control measures when lawmakers banned the carrying of deadly weapons outside the home. Indeed the stereotype of nineteenth-century Texas as a gun-lover’s paradise mistakes the past for the present.

Until 1870, Texas, like most other states, did not prohibit white men from carrying deadly weapons like knives and pistols; but from the early years of the Republic of Texas, laws limited slaves' and Indians' access to arms and circumscribed the legal uses of weapons. The 1870 ban on carrying weapons in public remained on the books and substantively unchanged until 1973. Throughout the eras of Jim Crow and Civil Rights, this strict measure could be selectively enforced at the local level to reinforce white supremacy. The spirit of the law lived on for another twenty years in the state's revised penal code before finally being dismantled in 1995. Though there is a vast literature on weapons laws in the early republic, this body of work has generally omitted serious analysis of both Texas and the late-nineteenth century.<sup>1</sup> National controversy over federal gun regulations has produced a body of scholarship that is preoccupied with constitutionalism, national narratives, and early America when the nation's enduring gun restrictions originated in the South during Reconstruction and the Jim Crow Era. This project is an attempt to relocate the historiographical conversation about arms regulation to a region and a time period whose significance have been consistently overlooked.

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<sup>1</sup> Carl P. Russell, *Guns on the Early Frontiers: A History of Firearms from Colonial Times through the Years of the Western Fur Trade* (Berkeley: University of California Press, 1957); Clayton E. Cramer, *For Defense of Themselves and the State: The Original Intent and Judicial Interpretation of the Right to Keep and Bear Arms* (Westport, CT: Praeger, 1994); Cramer, *Concealed Weapon Laws of the Early Republic: Dueling, Southern Violence, and Moral Reform* (Westport, CT: Praeger, 1999); Michael A. Bellesiles, *Arming America: The Origins of a National Gun Culture* (New York: Knopf, 2000); see also revised edition: Bellesiles, *Arming America: The Origins of a National Gun Culture* (Berkeley: Soft Skull Press, 2003). For criticism and rebuttal of Bellesiles, see Robert H. Churchill, "Gun Ownership in Early America: A Survey of Manuscript Militia Returns," *The William and Mary Quarterly* 60, no. 3 (July 2003): 615-642; Cramer, *Armed America: The Remarkable Story of How and Why Guns Became as American as Apple Pie* (Nashville: Nelson Current, 2006). For legal scholarship on the subject, see Stephen P. Halbrook, *A Right to Bear Arms: State and Federal Bills of Rights and Constitutional Guarantees* (New York: Greenwood Press, 1989); Halbrook, *The Founders' Second Amendment: Origins of the Right to Bear Arms* (Chicago: Ivan R. Dee [in association with the Independent Institute], 2008).

## Project Summary

This project takes as its starting point an examination of arms-related laws, bills, resolutions, and reports compiled by the Texas legislature from the founding of the Republic of Texas in 1836 to 1923. Though arms regulations existed in Mexican and Spanish Texas, they are peripheral to the story I want to tell and will likely not receive more than a mention in passing. I intend to begin with antebellum gun and weapon laws, but I expect the intellectual core of my dissertation to begin with presidential Reconstruction in the 1860s. The closing date for this project is not yet as obvious as its opening, but I am tentatively tying it to the emergence of the white primary. This strategy makes sense to me for two reasons: First, I see Texas gun laws, like the white primary, as political evidence of white Texans' exertion of social control over African Americans. If the heyday of the white primary in the 1920s is the high-water-mark of white supremacy in Texas, it is important to consider how it was physically achieved at the local level and whether gun laws, selectively enforced against a vulnerable population, played some role in bringing it about. Second, focusing on the era of Reconstruction through 1923 comes close to approximating the periodization used by Walter Buenger in *Path to a Modern South*, his important study of Northeast Texas during a time of political and economic modernization. His work (and his chronology) should help me remember the ways in which Texas differed from other Southern states, and avoid the trap of imagining Texans from this era to be traditional or retrograde people. Thus 1923 serves as a tentative terminus that is both convenient and intellectually stimulating for me. The research that I have already conducted through *Gammel's Laws of Texas*, which extends to 1905, has revealed forty-one arms-related laws passed between 1836 and 1905. I expect to find additional laws from the post-1905 period which may reveal a more suitable closing date than 1923.

The research that I have already conducted indicates that the politics of race were inextricably linked to Texas weapons laws. Antebellum laws were overtly racial in nature and mainly consisted of prohibitions against selling arms and ammunition to Indian tribes and preventing slaves from illegally obtaining weapons. The post-1865 laws, however, used race-neutral language to accomplish a racially motivated goal. Most of these laws attempted to disarm black Texans, but some from the 1870s sought to curb the racial violence of the Ku Klux Klan by disarming everyone. For instance, a part of the Texas Slave Code prohibited slaves from carrying a gun without written permission from a master or overseer, and a law passed in 1866 prohibited laborers from carrying firearms onto a plantation without the owner's consent; in race-neutral language the 1866 law achieved the same result as the Slave Code without specifically declaring that African Americans should be disarmed—their arming was conditional, subject to the authorization of an interested white party.<sup>2</sup> Similarly, the state's first comprehensive weapons-control law did not use racially charged language, but left enforcement in the hands of local officials who could apply it selectively against “uppity” blacks or white vigilantes, depending on which political party controlled those local offices. In both cases the language of the law seemed unbiased, but the consequences for people on the ground could vary dramatically depending on the whims of the law's enforcers. In a society dominated by white supremacy, those whims undoubtedly worked against black Texans.

The success of this project depends upon whether I can demonstrate that local officials enforced the state's gun regulations in a biased way in order to achieve their party's political goals. This is the crucial element and great challenge of my proposed dissertation. I plan to

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<sup>2</sup> Fifth Legislature of the Republic of Texas, “An Act Concerning Slaves,” in H. P. N. Gammel, *Gammel's Laws of Texas* (Austin: Gammel Book Co., 1898), 2: 345-346; Eleventh Legislature of the State of Texas, “An Act to prohibit the carrying of Fire-Arms on premises or plantations,” in Gammel, *Gammel's Laws of Texas*, 5: 1008; Twelfth Legislature of the State of Texas, “An Act to regulate the keeping and bearing of deadly weapons,” in Gammel, *Gammel's Laws of Texas*, 6: 927.

approach this puzzle by examining county-level criminal records for several demographically and economically different areas of Texas. State lawmakers designed the weapons-control measures to be enforced at the municipal or county level, so their effectiveness as tools for upholding the Radical Republican administration in the early 1870s and the Democratic governments in subsequent decades must be evaluated in light of local-level criminal records. Arms-control laws could be used to support a statewide policy of defeating the Klan or establishing white supremacy, but they could also be valuable tools for settling local conflicts. By investigating the enforcement of gun laws I hope to contribute to the growing body of literature that emphasizes local-level analysis as the best method to attain a proper understanding of Reconstruction and the rise of Jim Crow in Texas.<sup>3</sup>

I plan to put together a diverse list of four Texas localities based on a combination of available sources about the area and its suitability as an example. I was inspired to adopt this approach by reading Randolph B. Campbell's *Grass-roots Reconstruction in Texas*, which consisted of six separate studies of demographically disparate counties throughout Texas. Two of the counties included in Campbell's book are strong contenders for inclusion in my project: Dallas County and Harrison County. Many records for Dallas County have been preserved and are available, its major newspaper has already been digitized, and it was the home of one of the fastest growing cities in the Southwest; Harrison County was one of the few black-majority counties in Texas and has been the subject of much scholarly attention upon which my work can build.<sup>4</sup> I am also interested in including Karnes County, which had a substantial

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<sup>3</sup> For instance see, Randolph B. Campbell, *Grass-roots Reconstruction in Texas, 1865-1880* (Baton Rouge: Louisiana State University Press, 1997); Cynthia Skove Nevels, *Lynching to Belong: Claiming Whiteness through Racial Violence* (College Station: Texas A&M University Press, 2007); Barry A. Crouch, Larry Peacock, and James M. Smallwood, *Murder and Mayhem: The War of Reconstruction in Texas* (College Station: Texas A&M University Press, 2003).

<sup>4</sup> In addition to Campbell's chapter on Harrison County in *Grass-roots Reconstruction*, he has published numerous books and articles about Harrison County, including Campbell, *A Southern Community in Crisis: Harrison County*,

Hispanic/Mexican population as well as the first Polish immigrant community in Texas. Unlike Dallas and Harrison Counties, Karnes County depended heavily upon ranching rather than farming and had several small towns rather than one large county seat. It was also the site of the 1850s Cart War, which pitted Anglos against Mexican teamsters, as well as the Butler-Elder feud, a once notorious family vendetta from the 1880s that has not received much scholarly attention. An additional county from West Texas or the Blackland Prairie would round out my project in terms of geography and demographics.

This dissertation begins with legislative and criminal records but its final component is cultural analysis of using and carrying guns in Texas from the 1830s through the half-century following the Civil War. Guns and weapons were (and still are) masculine objects used in “manly defense.” Rifles and muskets served important military functions in protecting white Texans from Indian attacks and Union invaders while pistols served important personal functions as dueling weapons, officers’ sidearms, and concealable firearms that empowered their carriers in public spaces. The prospect of black men, who violated important precepts of white masculinity, wielding guns frightened white Texans throughout the nineteenth century. The black sheriffs and state policemen active during Reconstruction only added fuel to the fire by wearing badges and uniforms—additional tokens of white civic manhood. The abundance of Lost Cause literature published in the late-nineteenth and early twentieth centuries provides a window into the minds of Southerners and Texans who remembered proudly their disarming of black residents and the “redemption” of their state. The importance of disarming African Americans to the memory of Redemption cannot be overstated, and the works of Lost Cause

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*Texas, 1850-1880* (Austin: Texas State Historical Association, 1983), and Campbell, “Fighting for the Confederacy: The White Male Population of Harrison County in the Civil War,” *Southwestern Historical Quarterly* 104 (October 2000): 226-239. See also Andrew F. Lang, “‘Upon the Altar of Our Country’: Confederate Identity, Nationalism, and Morale in Harrison County, Texas, 1860-1865,” *Civil War History* 55 (June 2009): 278-306; Kenneth M. Hamilton, “White Wealth and Black Repression in Harrison County, Texas: 1865-1868,” *The Journal of Negro History* 84, no. 4 (Autumn 1999): 340-359.

authors preserved that connection. For instance, the climactic scene in Thomas Dixon's *The Clansman* (and in *Birth of a Nation*) is the "peaceful" disarming of the county's black population by the Klan.<sup>5</sup> By tapping into the gendered cultural significance of carrying and using guns, I hope to shed some light on the ideas and images which formed the worldview of Texans who embraced gun regulations.

## Conclusion

Though this project is about Texas gun laws and focuses on Texas political history, it promises to reach out to several fields of historical scholarship. The core of the project will be a new look at Reconstruction and the rise of Jim Crow in Texas, told through the story of the state's weapons laws.<sup>6</sup> But I also intend to draw conclusions about the role of guns in reflecting and informing Texans' culture during this time period by drawing from an exciting field of gender history and literary analysis. Finally, I plan to engage the main field of gun-law-history that has been dominated by the Bellesiles controversy and pro-gun pundits. The scholars who have written about the late-nineteenth century and Texas have not fully addressed the historical questions of the intent, passage, and enforcement of gun laws in Texas or any other state.<sup>7</sup>

Unlike other studies, constitutional issues and legal theory are not the primary concerns of this

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<sup>5</sup> See Thomas Dixon, Jr., *The Clansman: An Historical Romance of the Ku Klux Klan* (New York: A. Wessels Co., 1907), 327-328, 340.

<sup>6</sup> The field of Reconstruction and the rise of Jim Crow in Texas has been dominated primarily by local studies, though there are a few exceptions. See, Carl H. Moneyhon, *Texas after the Civil War: The Struggle of Reconstruction* (College Station: Texas A&M University Press, 2004). But the field is ripe for additional analysis that integrates racial violence and the growing power of the regulatory state.

<sup>7</sup> The most extensive work on Texas gun laws is Halbrook, "The Right to Bear Arms in Texas: The Intent of the Framers of the Bills of Rights," 41 *Baylor Law Review*, 629-88 (1989): 630-688. Though filled with high-quality legal analysis, the Halbrook's work leaves something to be desired in the realm of historical interpretation. A few other works with a national or regional focus include information on Texas on Texas postbellum gun laws, but their focus remains outside the state. See Halbrook, *Freedmen, the Fourteenth Amendment, and the Right to Bear Arms, 1866-1876* (Westport, CT: Praeger, 1998); Cramer, *For Defense of Themselves and the State: The Original Intent and Judicial Interpretation of the Right to Keep and Bear Arms* (Westport, CT: Praeger, 1994).

project, so my conclusions about Texas weapons laws promise to add meaningful scholarship to a larger, national conversation about the history of gun regulation.

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