



Locating Historical Gun Laws: The Wild West of Legal History Research

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Several months ago, a Western movie I was watching made me wonder if there might be any firearms regulations that existed outside of the normal structure of municipal corporations in the old West. For example, did private organizations that existed at the time seek to regulate firearms, just as many Western territorial governments did through public law?

I began to research the question, and I eventually came across mentions of various agricultural associations. Using a home-made bash script and the Internet Archive's API,^[1] I was eventually able to locate a short pamphlet with the title *List of Members, By-laws, and Reports of the Wyoming Stock Growers Association*. That pamphlet includes the following regulation on "Carrying Firearms":

WHEREAS, The custom of carrying firearms by those engaged in the round-up and in working the cattle ranges is productive of great evil and frequently results in the damage of persons and property; be it therefore

Resolved, That the custom of carrying firearms, except in the immediate vicinity of Indian reservations, should be discountenanced, and it is hereby made the duty of the members of this Association, foremen of round-ups, and foremen of ranges, to use every effort in their power to prevent the carrying of firearms by cattle men at all times and places except when absolutely necessary.

Resolved, That the members of this Association hereby pledge themselves as far as in their power to carry out the spirit of this resolution.

This example illustrates the unique challenges associated with locating specific historical firearm regulations within a universe of potential sources that has yet to be fully catalogued, mapped, digitized, or analyzed. Given the ease with which we can summon information today, I understand the quizzical looks I get when explaining that my job is to locate and compile historical laws. We expect that, by leveraging basic technological assets, it should be a simple matter to exhaustively compile a complete list of *anything*. While technology is an invaluable asset (and one that we extensively employ at the Duke Center for Firearms Law), technology cannot work its magic without data that is organized and centrally accessible, and therein lies the catch. Historical laws are not terribly well organized, and they are far from centrally accessible.

This would be a mere inconvenience if it were a strictly academic matter. But legal doctrine is being constructed on the erroneous impression that historical gun laws are easy to locate, and therefore lacunae in the historical body of laws is evidence a regulation did not exist. A more nuanced and accurate view of the situation emerges when we appreciate how difficult it is to locate the majority of these laws.

Imagine that a person was asked to present all of the 11-sided grains of sand in a bucket as evidence that such sand exists. Of course, there is a very good chance that these grains *do* exist; however, they cannot be presented without serious effort. Now imagine that there are thousands of buckets, scattered around the country, and you can appreciate the difficulty facing legal historians in the current moment.

This state of affairs stems from the fact that there was never a centralized place where authorities at different levels could or would all store their laws, if those laws were even preserved for future generations at all. Instead, we have a patchwork of databases and archives with a smattering of accessible laws, and a vast ocean of local records sprawled across countless libraries and offices throughout the country. Moreover, especially when dealing with laws that were only published in newspapers, editors **may not have selected** materials for reasons of transparency or comprehensiveness but rather based on a desire for profit.

For a researcher interested in historical gun laws, the lowest hanging fruit are those laws and regulations that are stored in commercial databases. These databases are convenient, electronically available, easy to use, and broad in scope. This makes them both the most popular source for information and, for the same reasons, dangerously misleading. By combining searches through several databases, it is possible to get something that begins to approach complete coverage of state session laws, but most municipal laws remain hidden, tucked away in nooks and crannies far from the digital realm.

In 1900, there were 2,136 cities with a population greater than 2,500 **in the United States,**^[2] and an uncountable number of towns with populations smaller than this. Some of these towns relied only upon those laws laid out in the town charter, others kept hand-written or hand-typed laws in filing cabinets, many published newly passed laws in local newspapers for the benefit of their citizenry, and a few large cities that could afford to do so published their municipal codes in standard monographs.

It is possible to categorize extant gun laws according to the format (and thus venue) in which they can be found. The first of these are monographs, which include town charters, town codes, state laws of all kinds, and some institutional bylaws and regulations. Such laws are the easiest to find, and most state-level laws can be found using major database providers. Those that cannot be

found in major databases can often be accessed through open-access (or partly-open-access) sources such as the Internet Archive, Google Books, or the Hathi Trust. These digital providers have APIs that make it possible to search their titles *en masse*, and, in this way, it becomes possible for a well-equipped researcher to compile a large number of monographs that are likely to contain laws about firearms. Sifting through these (frequently non-OCR[3]) materials and locating said laws, is another story altogether, and presents even more technical challenges with which few researchers are equipped to deal.

A second venue is newspapers. Most average-sized towns would have published their local ordinances in newspapers as opposed to monographs.[4] Being ephemeral in nature, physical newspapers are a source that has eroded over time. Further, the scanned copies of historical newspapers that are preserved are often hidden behind paywalls or, more likely, located in local archives. One of the few available sources for historical local newspapers is the [“Chronicling America” project](#), created by the Library of Congress. Like open-access monograph repositories, Chronicling America includes an API and advanced search functionality. While it may seem that an appropriately trained team of researchers could confidently collect all the gun laws in the sample provided by the Chronicling America project, in practice this database turns out to be more difficult to access than monographs. The first reason is the limited search capability of the API itself, which struggles to return more than a few pages of results at a time (this is understandable, given that the API must search through well over [16 million](#)[5] pages of newspapers). The second, and more intractable issue, comes back to OCR (Optical Character Recognition). Newspapers were printed using lower quality materials than statutory monographs, utilized smaller text, had no standard format, and are often in poorer condition compared to monographs. As a result, only a small portion of the papers can be searched algorithmically by computers. Until OCR technology improves, there is no way around this, and many of the laws hidden in poorly preserved newspapers will likely remain undiscovered for quite some time.

The final venue in which one might expect to find historical gun laws is in archives. National and state archives frequently have a portion of their materials accessible in an electronic format; however, even these limited selections are often handwritten, and thus, they cannot be OCR’d. As a result, the only way to locate the many hand-written gun laws kept in archives is to manually

search the archives in person. This is an exceptionally labor-intensive way of locating laws, especially when compared to the computational methods available for the parts of the historical record that are electronically accessible.

I have spent hundreds of hours scouring the information landscape within which these laws existed, and the rough and ready description provided in this short blog post is a poor reflection of the true difficulties that researchers of historical gun laws face. Even such a distorted and constrained presentation of the facts, however, should make it clear that the small sample of laws that we have been able to put together thus far in the **Repository** represent only the metaphorical tip of the iceberg. One should thus not mistake the absence of a law on a given topic in the Repository for the absence of such a law in the historical record. In reality, the most that we can say about the laws in the Repository is that they are a snapshot of the laws that existed historically. Like any picture, they capture only the field of view that happens to be within the frame of the camera. In time, we will augment this picture with other views. We may even be able to eventually create a rough panorama of sorts. At this stage, though, we are only beginning to understand the legal landscape that existed around guns during our nation's formative years.

[1] An API, or Application Programming Interface, is a set of protocols that allows different software applications to communicate with each other. It acts as an intermediary, enabling one software application to access the data of another application, service, or platform.

[2] Cities are first noted by the US Census Bureau **when they reach a population of 2,500**.

[3] OCR stands for "Optical Character Recognition" and allows a user to search a file for a specific word. Unless a PDF has been OCR'd, a computer treats the PDF like a picture. It is thus unable to search the text and users must either OCR the text themselves or inspect the index and table of contents in an attempt to locate firearms laws by manually flipping through pages.

[4] In fact, even as late as 1942, “probably 85 per cent of the municipalities of the United States under 30,000 population [had] no systematic, up-to-date statement of the local laws under which they function[ed].” Similarly, in 1926, “of 352 Wisconsin villages not more than 25 or 30 (about 8 or 9 per cent) had their ordinances published” in a monograph of any kind.

[5] That is as of 2020. The current number is certainly far higher.