# The Young and the Armed: History for Litigating Firearms Age Restrictions in a Post-*Bruen* World

KELLEN HENIFORD*

*The Supreme Court's 2022 ruling in* New York State Rifle and Pistol Ass'n v. Bruen *has dramatically reshaped Second Amendment jurisprudence. That decision, bucking precedent, created an entirely new, history-based standard for adjudicating the constitutionality of firearms restrictions and has led to a flurry of challenges to long-standing local, state, and federal gun laws. Among these challenges, cases involving age restrictions on the purchasing, possessing, and carrying of weapons have proven especially vexing to courts. While some recent rulings have validated age laws, others have come down on the side of the plaintiffs. At issue in these cases, per* Bruen*'s requirements, has been the question of an American "tradition" of limiting minors' access to deadly weapons.*

*This Article seeks to provide a detailed account of the historical context surrounding the passage of age-based firearms restrictions in the decades following the Civil War. It argues that it was in the post-war Reconstruction years that the United States first faced a then-novel (but now-familiar) problem of youth gun violence and unintentional injury—a problem brought on by a confluence of several large-scale changes in American society and political economy. The focus here is narrowed to discuss transformations in the money economy of early America, which allowed those locked out of traditional barter and credit agreements to access markets; developments in labor practices and contract law that granted minors a degree of freedom and an ability to purchase for themselves that had been previously unimaginable; mechanization and industrialization, and their concomitant effects on the firearms industry's mass production capacity; and, finally, the ways that gunmakers' postbellum efforts to sell their products to new sectors of the market led to the targeting of children specifically.*

*In elaborating on this history, the present Article speaks to* Bruen*'s admonition that "unprecedented societal concerns . . . may require a more nuanced analysis" of a regulatory tradition. When youth gun violence emerged as a novel social ill, lawmakers across the country moved to address it by passing regulations limiting young people's access to firearms. Under* Bruen*, challenges to modern age-based regulations must contend with this wealth of historical evidence.*

---

* Visiting Scholar in History at Wesleyan University. PhD in U.S. History, Columbia University. I am grateful first and foremost to Mark Anthony Frassetto for his assistance on this Article. He stepped up in the context of a last-minute health issue and was immeasurably helpful in bringing this piece across the finish line. I have benefited enormously from his wealth of historical and legal knowledge and—just as importantly—his generosity. Thanks go too to Kari Still, who was extremely engaged with this project in the early stages of this research and who helped think through its presentation during the writing phase as well. I would also like to acknowledge Bill Taylor and Sarah Pearlman Shapiro, who offered comments on this piece, as well as Saul Cornell and Brennan Rivas, as conversations with them were generative in my thinking on the history discussed here. Finally, I greatly appreciate the feedback I received when I presented a version of this Article at the Annual Conference of the Wesleyan University Center for the Study of Guns and Society in October 2025.

INTRODUCTION ........ 57
I. THE MONEY ECONOMY OF EARLY AMERICA ........ 61
II. THE CHANGING NATURE OF CONTRACTS ........ 67
III. THE TRANSFORMATION OF THE GUN INDUSTRY ........ 72
IV. SELLING GUNS TO CHILDREN ........ 77
V. THE YOUTH GUN VIOLENCE CRISIS ........ 84
CONCLUSION ........ 90

## INTRODUCTION

One of the most contentious areas of constitutional litigation in the years since the Supreme Court's landmark 2022 decision in *New York State Rifle and Pistol Ass'n v. Bruen*[1] concerns restrictions on the possession, purchase, or carry of firearms by people between the ages of eighteen and twenty-one.[2] In *Bruen*, the Court laid out a new standard for adjudging the constitutionality of regulations challenged on Second Amendment grounds. If a challenged law regulates conduct within the Second Amendment's plain text, litigants are then required to analogize between that law and the United States' historical tradition of firearms regulation. In creating the new test (and also when refining it in *United States v. Rahimi* in 2024),[3] the Court declined to clarify whether that tradition should be pegged to the Second Amendment's ratification in 1791 or incorporation in 1868.[4] And, crucially, the majority also underscored the importance of adopting "a more nuanced approach" to analogy when "unprecedented societal concerns or dramatic technological changes" are implicated.[5]

Where challenges to age-based regulations have been successful, judges have often focused on the landscape of (known) colonial and Founding Era firearms regulations.[6] At that time, there were few restrictions on minors using firearms, while some militia laws actually stipulated minors' armed participation. However, beginning in the middle of the nineteenth century, many states began to adopt prohibitions on the purchase, possession, and carrying of firearms by those under twenty-one.[7] Dozens of such historical laws are publicly known.[8] The first of these

---

1. 597 U.S. 1 (2022).
2. *See, e.g.*, Rocky Mountain Gun Owners v. Polis, 121 F.4th 96, 113 (10th Cir. 2024); Lara v. Comm'r Pennsylvania State Police, 125 F.4th 428, 431–34 (3d Cir. 2025); Reese v. Bureau of Alcohol, Tobacco, Firearms, & Explosives, 127 F.4th 583, 586–88 (5th Cir. 2025); Nat'l Rifle Ass'n v. Bondi, 133 F.4th 1108, 1111–15 (11th Cir. 2025).
3. *See* 602 U.S. 680, 691–93 (2024).
4. *See Bruen*, 597 U.S. at 37–38.
5. *Id.* at 27.
6. *See Lara*, 125 F.4th at 444–45; *Reese*, 127 F.4th at 592–96.
7. Robert J. Spitzer, *Historical Weapons Restrictions on Minors*, 76 RUTGERS U. L. REV. COMMENTS. 101, 121–24 (2024).
8. *See id.*; *Age Restrictions*, EVERYTOWN LAW, https://everytownlaw.org/everytown-center-for-the-defense-of-gun-safety/age-restrictions/#historical-laws [https://perma.cc/H4UC-TVY4].

were passed in the South beginning in 1856[9]—homicide rates were already higher there than in much of the rest of the country[10]—and dozens of other jurisdictions followed suit in the aftermath of the Civil War.

This Article offers a survey of the historical conditions that necessitated the institution of these sorts of age-based weapons restrictions. The hope is that, in so doing, it may provide courts, litigators, and scholars the kind of context that is necessary for a well-rounded discussion of the age issue. As explained here, the postbellum emergence of dozens of laws governing minors' access to weapons was no historical accident—instead, it was a direct response to social circumstances that changed dramatically over the course of the nineteenth century. By the Reconstruction Era, minors had an unprecedented ability to purchase their own firearms and use them without supervision; the result was a completely new crisis of youth gun violence that legislators across the country scrambled to contain.

Other scholars have covered in some depth the relationship between minors (or infants, as they were called in that era) and firearms at the time of the Founding.[11] While minors did sometimes have access to firearms, it was generally in circumstances in which they were being supervised—by a father, by a militia commander, by a school official, or similar.[12] These scholars have similarly made

---

9. *See* Act of Feb. 2, 1856, No. 26, § 1, 1856 Ala. 5th Biennial Sess.; Act of Feb. 26, 1856, ch. 81, sec. 1, § 2, 1855–1856 Tenn. Acts 1st Sess. 31. A small number of restrictions from late eighteenth and early nineteenth century New York, Delaware, and South Carolina listed in Spitzer's collection criminalize young people who fire weapons under certain circumstances; however, these laws are in many important ways different than restrictions on purchase, possession, and carrying.

10. *See* RANDOLPH ROTH, AMERICAN HOMICIDE 200–20 (2009).

11. *See, e.g.*, Megan Walsh & Saul Cornell, *Age Restrictions and the Right to Keep and Bear Arms, 1791–1868*, 108 MINN. L. REV. 3049, 3049–120 (2024); Spitzer, *supra* note 7, at 110–24; Saul Cornell, *"Infants" and Arms Bearing in the Era of the Second Amendment: Making Sense of the Historical Record*, YALE L. & POL'Y REV. (2021), https://yalelawandpolicy.org/inter_alia/infants-and-arms-bearing-era-second-amendment-making-sense-historical-record [https://perma.cc/T2TY-BLWT]. On infancy, T. E. James wrote in 1960, "A child is regarded, in common parlance, as a person under the age of twenty-one years. In the eyes of the common law, all persons were esteemed infants until they attained this age . . . ." T. E. James, *The Age of Majority*, 4 AM. J. LEGAL HIST. 22, 22 (1960) (footnote omitted). For most of U.S. history, dating back to the colonial era, that age was twenty-one:

> The immediate historical origins of the U.S. age of majority lie in the English common law tradition. The American colonies, then the United States, adopted age twenty-one as the near universal age of majority. The U.S. age of majority remained unchanged from the country's founding well into the twentieth century. In 1942 wartime needs prompted Congress to lower the age of conscription from twenty-one to eighteen, a change that would eventually lead to the lowering of the age of majority generally.

Vivian E. Hamilton, *Adulthood in Law and Culture*, TULANE L. REV. 55, 64 (2016). For more on the historical concept of infancy and its relation to modern firearms age regulations, see Nat'l Rifle Ass'n v. Bondi, 133 F.4th 1108, 1117–20 (11th Cir. 2025).

12. *See* Walsh & Cornell, *supra* note 11, at 3049–120; Spitzer, *supra* note 7, at 110–24; Cornell, *supra* note 11.

clear that while, in times of military necessity, minors were called into the militia and required to serve with a weapon, this responsibility was not equivalent to and did not imply a corresponding general right to bear arms.[13] It is also well-established that, at the Founding, children did not reach the age of majority, and thus were not considered full persons under the law, until the age of twenty-one.[14] This Article seeks to build on the extant scholarship to describe the changes in American society, economy, and politics that led to the passage of dozens of separate age-related restrictions in the postbellum period.[15]

Between the Founding Era and the close of the nineteenth century, the lives of minors (and, indeed, the population as a whole) changed significantly.[16] America in 1791 was overwhelmingly rural, and individual households were the central nodes for social and economic reproduction. Parents, and specifically fathers, had strict dominion over those households, in both a cultural and a legal sense.[17] Rural households, in turn, were deeply embedded in community networks of reciprocity and exchange.[18] But as America industrialized and urbanized, these lifeways began to change, especially in the Northeast and the Old Northwest.[19] Rural areas of the

---

13. *See* Walsh & Cornell, *supra* note 11, at 3049–120; Spitzer, *supra* note 7, at 110–24; Cornell, *supra* note 11. For analysis on how militia laws may additionally corroborate the view that minors were unable to independently acquire and carry weapons, see *Bondi*, 133 F.4th at 1119–20.

14. *See* Walsh & Cornell, *supra* note 11, at 3049–120; Spitzer, *supra* note 7, at 110–24; Cornell, *supra* note 11; Hamilton, *supra* note 11, at 64.

15. *See* Spitzer, *supra* note 7, at 110–24 (discussing some of these transformations in brief and listing over 100 age-related restrictions).

16. The developments described in this paragraph are, necessarily, simplified in the interest of space. The changes in the American political economy over the course of the nineteenth century are innumerable and complex, and they are additionally varied across space and time. What this Article hopes to convey are general trends.

17. *See, e.g.*, STEPHANIE MCCURRY, MASTERS OF SMALL WORLDS: YEOMAN HOUSEHOLDS, GENDER RELATIONS, AND THE POLITICAL CULTURE OF THE ANTEBELLUM SOUTH CAROLINA LOW COUNTRY 5–36 (1997); Melvin Stokes, *Introduction* to THE MARKET REVOLUTION IN AMERICA: SOCIAL, POLITICAL, AND RELIGIOUS EXPRESSIONS, 1800-1880, at 1, 7 (Melvyn Stokes & Stephen Conway eds., 1996); Barbara M. Tucker, *Liberty Is Exploitation: The Force of Tradition in Early Manufacturing*, 19 OAH MAG. HIST., May, 2005, at 21, 22–24.

18. *See, e.g.*, Christopher Clark, *Rural America and the Transition to Capitalism*, 16 J. EARLY REPUBLIC 223, 224–26 (1996); Christopher Clark, *Household Economy, Market Exchange and the Rise of Capitalism in the Connecticut Valley, 1800-1860*, 13 J. SOC. HIST. 169, 173–75 (1979) [hereinafter Clark, *Household Economy*]; Michael Merrill, *Cash is Good to Eat: Self-Sufficiency and Exchange in the Rural Economy of the United States*, RADICAL HIST. REV., Winter 1977, at 42, 57–61.

19. Industrial capital came to the South in the aftermath of the Civil War and emancipation; these changes progressed in that region as well, but on a delayed timeframe. *See, e.g.*, Harry L. Watson, *Slavery and Development in a Dual Economy: The South and the Market Revolution*, *in* THE MARKET REVOLUTION IN AMERICA: SOCIAL, POLITICAL, AND RELIGIOUS EXPRESSIONS, 1800-1880, at 43, 46–68 (Melvyn Stokes & Stephen Conway eds., 1996); C. VANN WOODWARD, ORIGINS OF THE NEW SOUTH 107–41 (1964). It is worth noting, however, that the extent of "modernization" in the South was limited, even through the first decades of the twentieth century, in no small part thanks to conflicts between industrial and

country increasingly turned away from subsistence farming towards market-oriented production—which loosened the ties of community interdependence that had marked earlier periods of American life and undermined, to a degree, the authority of the male head of household within his own domain.[20] Urban areas, meanwhile, experienced explosive growth—"[c]ity and town populations nearly doubled during the 1840s, and then increased by about 75 percent (from a larger base) in the 1850s."[21] Between 1880 and 1900 alone, the population of U.S. cities grew by over fifteen million people.[22] These rapidly growing cities offered young Americans more anonymity and more opportunity to escape supervision, so when minors were able to access weapons, they often did so without parental approval.[23] In one historian's summation, "Paternalism and the force of traditional social relations gave way under changing conditions."[24] The control of both the family and the wider community over minors, and particularly underage boys, diminished over the course of the nineteenth century, and in this context emerged a completely new crisis of youth gun violence.

To be sure, greater opportunity for unsupervised firearms use would not necessarily in itself create such a crisis. Additional, large-scale transformations in American political economy, law, and society over the course of the nineteenth century conspired to create a perfect storm of sorts. These transformations included the introduction of a stable and relatively centralized (but not uncontroversial) national paper currency;[25] major evolution in contract theory and law;[26] an

---

planter elites. ERIC FONER, RECONSTRUCTION: AMERICA'S UNFINISHED REVOLUTION, 1863–1877, at 596–600 (1st Perennial Classics ed. 2002). The western parts of the country were colonized and settled during this period—they did not have a preexisting Anglo-American tradition besides that which was brought along with the settlers themselves. As the nineteenth century progressed, urban and industrial centers emerged on the West Coast—although, again, more slowly than in the Northeast and the Old Northwest. David J. St. Clair, *The Gold Rush and the Beginnings of California Industry*, 78 Cal. Hist. (Special Issue) 1, 185–206 (1999/2000); DAVID ALAN JOHNSON, FOUNDING THE FAR WEST: CALIFORNIA, OREGON AND NEVADA, 1840-1890, at 238, 269–70 (1992).

20. *See* DANIEL VICKERS, FARMERS AND FISHERMEN: TWO CENTURIES OF WORK IN ESSEX COUNTY, MASSACHUSETTS, 1630–1850, at 261–324 (1994); Tucker, *supra* note 17, at 23–24.

21. Stuart M. Blumin, *Driven to the City: Urbanization and Industrialization in the Nineteenth Century*, 20 OAH MAG. OF HIST., May 2006, at 47, 51.

22. *See City Life in the Late 19th Century*, LIBR. OF CONG., https://www.loc.gov/classroom-materials/united-states-history-primary-source-timeline/rise-of-industrial-america-1876-1900/city-life-in-late-19th-century/ [https://perma.cc/7W72-924U].

23. ROGER LANE, VIOLENT DEATH IN THE CITY: SUICIDE, ACCIDENT, AND MURDER IN NINETEENTH-CENTURY PHILADELPHIA 83 (1979); Spitzer, *supra* note 7, at 108–09.

24. Tucker, *supra* note 17, at 24.

25. *See, e.g.*, JOSHUA R. GREENBERG, BANK NOTES AND SHINPLASTERS: THE RAGE FOR PAPER MONEY IN THE EARLY REPUBLIC 171–88 (2020); *A History of American Currency*, AM. NUMISMATIC SOC'Y, https://numismatics.org/a-history-of-american-currency/ [https://perma.cc/F8EA-J8V8]; WILLIAM L. PRESSLY, AMERICA'S PAPER MONEY: A CANVAS FOR AN EMERGING NATION 179–200 (2023).

26. *See, e.g.*, AMY DRU STANLEY, FROM BONDAGE TO CONTRACT: WAGE LABOR, MARRIAGE, AND THE MARKET IN THE AGE OF SLAVE EMANCIPATION x–xii, 1–59 (1998); HOLLY

acceleration of industrial capacity, and especially the introduction of new forms of mechanized commodity production;[27] and the inception of new forms and modes of advertisement that emerged alongside a rapidly expanding consumer market.[28] All of these developments occurred in tandem with one another, and all of them influenced the growth of the gun industry and its relationship with young Americans. These utterly novel social conditions engendered a novel public health problem—an epidemic of youth gun violence—and state and local governments enacted new laws to meet the moment. This Article traces the history of those new conditions.

## I. THE MONEY ECONOMY OF EARLY AMERICA

America in the colonial era had a radically different relationship to money than it does in the modern era. This was true at both the large and small scale. Broadly, specie—or metallic coinage in either silver or gold—was scarce.[29] Even when it was available, the unbalanced trading relationship fostered by the metropole meant that most specie returned almost immediately to Britain in exchange for goods.[30] In lieu of gold and silver, which were considered valuable on their face, colonists bought and sold in currencies that were both accessible and of obvious value to them—namely, commodities.[31] In the words of one economic historian, "Each colony adopted its main product as money."[32] In the early years of settlement in tobacco-rich Carolina and Virginia, for example, the pungent plant functioned as currency—indeed, Virginia's leaders for a time even calculated the colony's budget "in pounds of tobacco."[33]

On the local level, as historian Christopher Clark explains, "[r]ather than relying on the market, rural families supplied their wants by producing their own goods for consumption and by entering into complex networks of exchange relationships with their neighbors and relatives."[34] Port towns like Boston or New York, where individual households were not producing to fill most of their own needs, were still small enough that families there were still tangled in what one historian has called

---

BREWER, BY BIRTH OR CONSENT: CHILDREN, LAW, AND THE ANGLO-AMERICAN REVOLUTION IN AUTHORITY 231–37 (2005); MORTON J. HORWITZ, THE TRANSFORMATION OF AMERICAN LAW, 1780–1860, at 160–210 (1977).

27. *See, e.g.*, Jeremy Atack, Robert A. Margo & Paul W. Rhode, *"Automation" of Manufacturing in the Late Nineteenth Century: The Hand and Machine Labor Study*, 33 J. ECON. PERSPS. 51, 51–53 (2019).

28. *See, e.g.*, PAMELA WALKER LAIRD, ADVERTISING PROGRESS: AMERICAN BUSINESS AND THE RISE OF CONSUMER MARKETING 28, 31, 53–54 (1998).

29. *See* SHARON ANN MURPHY, OTHER PEOPLE'S MONEY: HOW BANKING WORKED IN THE EARLY AMERICAN REPUBLIC 17 (2017).

30. *See id.*; Dror Goldberg, *Easy Money: The Invention of Modern Currency in 1690 Massachusetts*, FIN. HIST., Spring 2023, at 16, 17.

31. *See* MURPHY, *supra* note 29, at 17; Goldberg, *supra* note 30, at 16–17.

32. *See* Goldberg, *supra* note 30, at 17.

33. *See id.*; *see also* MURPHY, *supra* note 29, at 17. Even Delaware, with its comparatively meager tobacco production capabilities, used tobacco as currency in its early colonial history. *See* WILLIAM H. WILLIAMS, SLAVERY AND FREEDOM IN DELAWARE, 1639–1865, at 44–45 (1999).

34. *See* Clark, *Household Economy*, *supra* note 18, at 173.

"webs of dependence."[35] And even in these places, cashless transactions were often preferred over the exchange of colonial paper money, the value of which fluctuated significantly and the supply of which often expanded or contracted rapidly.[36] Sometimes exchanges were literal, on-the-spot barters, but often they were more like new nodes in an intricate web of IOUs that entwined entire communities together. Producers and sellers had account books where they would note the money value of their various debts and credits, which were often settled not with actual cash, but with goods or services of equivalent value at a later date.[37] Because members of a community were interdealing with each other in this way, sometimes a debt between two persons might be settled by transferring the goods or labor from a third.[38] In all cases, the legal responsibility for debts taken on by family members ultimately fell to the male head of household.[39] Whether a purchased good would be paid for through services rendered (for example, the buyer fixing a seller's shoes or aiding in

---

35. On "webs of dependence" among women and households in New York, see SERENA R. ZABIN, DANGEROUS ECONOMIES: STATUS AND COMMERCE IN IMPERIAL NEW YORK 32–56 (2011). On Boston and Newport, Rhode Island, see SARA T. DAMIANO, TO HER CREDIT: WOMEN, FINANCE, AND THE LAW IN EIGHTEENTH-CENTURY NEW ENGLAND CITIES 1–5 (2021).

36. *See* DAMIANO, *supra* note 35, at 2–5, 10–13. However, as Damiano explains, people on the margins of early America's small cities, towns, and communities were often unable to access these networks due to their lack of status and standing:

> Urban free blacks and Natives tended to live in relative poverty, and, increasingly demarcated by white residents as outsiders, they largely lacked the social connections necessary to participate in formal credit transactions. As historians have documented, cash and in-kind trading were especially important to such marginalized individuals. They made frequent, small purchases rather th[a]n enter into standing credit relationships.

DAMIANO, *supra* note 35, at 17.

37. Historian James Henretta explains the use of cash value as a placeholder as follows:

> [T]his price system was not sovereign; it was often subordinated, in the conduct of daily existence, to barter transactions based on exchange value—what an item was worth to a specific individual. Some goods could not be purchased at any price because they were spoken for by friends, neighbors, or kinfolk.

James A. Henretta, *Families and Farms: Mentalité in Pre-Industrial America*, 35 WM. & MARY Q. 3, 16 (1978) [hereinafter Henretta, *Families and Farms*]; *see also* DAMIANO, *supra* note 35, at 2; Clark, *Household Economy*, *supra* note 18, at 173–74; Katie A. Moore, *The Blood That Nourishes the Body Politic: The Origins of Paper Money in Early America*, 17 EARLY AM. STUD. 1, 14 (2019); Merrill, *supra* note 18, at 62–63. *See also* James A. Henretta, *The "Market" in the Early Republic*, 18 J. EARLY REPUBLIC 289, 294–97 (1998) [hereinafter Henretta, *The "Market" in the Early Republic*] (describing the slow transition from barter economy to cash economy in small communities in the first half of the nineteenth century).

38. *See* Clark, *Household Economy*, *supra* note 18, at 174.

39. *See* DAMIANO, *supra* note 35, at 24–25. Of course, not all households had a male head—widows are especially relevant here. In these cases, adult women had more freedom to engage in market exchange, although that freedom was not absolute. *See id.* at 22, 31–39.

a seller's upcoming harvest)[40] or through goods exchanged (for example, the provision of a portion of a buyer's farm product, which a seller might not expect to receive for months, depending on the time of year),[41] the person ultimately responsible for settling the balance owed was the husband or father.[42] In the context of these economic norms, of course sellers did not engage in dealings with minors—who would be, in effect, directly bargaining their father's labor or produce.

Even when dealing in "cash," though, early Americans were not buying and selling in one centralized currency. The earliest and most rudimentary form of paper money in the British mainland colonies emerged in Massachusetts at the turn of the seventeenth century, in the form of paper certificates that could be used to satisfy tax requirements.[43] Other colonies also issued paper money in a sporadic manner, especially in the interest of financing wars with Indigenous peoples, but British authorities repeatedly took action to discourage this practice, and the intermittent and inconsistent nature of money-printing made the value of the currency extremely unstable.[44] The pattern continued with the outbreak of the Revolution, when the individual colonies' money-printing activities led to the wide-scale devaluation of those currencies and the accumulation of significant war debts.[45] By the time of the Founding, many at the Constitutional Convention were distrustful of paper money, given the inflationary experiences of the Revolutionary Era, and chose to sanction the production of a national currency only in specie form.[46] Unfortunately, however, the federal government minted precious-metal coins at a rate far below that necessary to make them usable in regular purchases or even, in many cases, large-scale exchange.[47] Gold and silver were relatively scarce in the new nation; so, too, necessarily, were gold and silver coins.[48]

---

40. *See* Merrill, *supra* note 18, at 55–59; Clark, *Household Economy*, *supra* note 18, at 173.

41. *See* Merrill, *supra* note 18, at 55–57; Clark, *Household Economy*, *supra* note 18, at 173.

42. *See* Henretta, *Families and Farms*, *supra* note 37, at 21, 32.

43. *See* Goldberg, *supra* note 30, at 16–19; PRESSLY, *supra* note 25, at 7; Moore, *supra* note 37, at 23–24.

44. *See* MURPHY, *supra* note 29, at 19; DAMIANO, *supra* note 35, at 10–11.

45. Donald F. Swanson, *"Bank-Notes Will Be but as Oak Leaves": Thomas Jefferson on Paper Money*, 101 VA. MAG. OF HIST. AND BIOGRAPHY 37, 39–41 (1993).

46. *See A History of American Currency*, *supra* note 25; Ann Marsh Daly, *"Every Dollar Brought from the Earth": Money, Slavery, and Southern Gold Mining*, 41 J. EARLY REPUBLIC 553, 555 (2021); PRESSLY, *supra* note 25, at 21; GREENBERG, *supra* note 25, at 4; Cynthia L. Krom & Stephanie Krom, *The Whiskey Tax of 1791 and the Consequent Insurrection: "A Wicked and Happy Tumult,"* 40 ACCT. HISTORIANS J. 91, 92–93 (2013); Henretta, *The "Market" in the Early Republic*, *supra* note 37, at 297–98.

47. *See* Joshua R. Greenberg, *The Era of Shinplasters: Making Sense of Unregulated Paper Money*, *in* CAPITALISM BY GASLIGHT: ILLUMINATING THE ECONOMY OF NINETEENTH-CENTURY AMERICA 53, 56 (Brian P. Luskey & Wendy A. Woloson eds., 2015); Daly, *supra* note 46, at 555.

48. Of course, the United States did eventually locate precious metals within its (expanding) borders. On the nation's "first gold rush" in the late 1820s, in which enslaved laborers panned gold for eventual use by the U.S. Mint, see Daly, *supra* note 46, at 553–86.

The result was that private entities—most frequently individual banks, but even corporations like hotels, insurers, and, later, railroad companies—created their own promissory notes that were exchanged and traded, functionally, as paper money.[49] As historian Ann Marsh Daly explains, these bills were "essentially promises that the issuing bank [or other institution] would exchange them for precious metal. In practice, a bill's value depended on how confident the bearer was in the bank's ability to redeem the note for coin."[50] And that ability could not be taken for granted in early America: Some banks, for example, simply failed, even as their notes stayed in circulation, or else they did not actually have the cash on hand to pay out as their bills promised.[51] Keeping track of any given issuer's solvency was no small task, as at least 8000 different institutions issued bills between the Founding and the Civil War.[52] Long-distance trade also made cash exchange tricky, as the further a banknote strayed from its issuing institution geographically, the more difficult it would be for an individual to actually redeem it, and thus the less valuable it would become.[53] To further confuse things, up to forty percent of the bills in national circulation were likely counterfeit.[54] All of these factors made dealing in cash exceedingly complicated.

The actual importance of paper money to local economies varied across time and space. At the beginning of the nineteenth century, specie was prioritized for use in large-scale national and trans-Atlantic trade networks, not to be traded between low-level buyers and sellers, while cash was more useful locally—although it was severely under-distributed in the rural areas where most of the country still lived and worked.[55] In addition, when rural Americans did have access to currency, they often prioritized it for the payment of excise taxes, as the U.S. government did not accept tax returns in the form of tobacco, cloth, or spirits.[56] So, even as waged labor became increasingly common, and even as consumer goods began to penetrate small communities in greater numbers, the merchants and storekeepers in those small communities often continued to accept traditional forms of payment, such as produce, dairy, timber, or other raw materials.[57] In frontier areas of the new nation, where actual money was scarce, landlords would often accept whiskey as rent from their tenant farmers.[58] One historian who reviewed ledgers and advertisements from

---

49. *See* PRESSLY, *supra* note 25, at 2, 21.

50. Daly, *supra* note 46, at 555.

51. *See* Greenberg, *supra* note 47, at 55–56.

52. *See* PRESSLY, *supra* note 25, at 2.

53. *Id.* at 37; *see* Henretta, *The "Market" in the Early Republic*, *supra* note 37, at 302.

54. PRESSLY, *supra* note 25, at 37.

55. *See* HOWARD BODENHORN, STATE BANKING IN EARLY AMERICA: A NEW ECONOMIC HISTORY 48–52 (2003); Henretta, *The "Market" in the Early Republic*, *supra* note 37, at 297.

56. *See* Clark, *Household Economy*, *supra* note 18, at 173; *cf.* Moore, *supra* note 37, at 14 (describing how *colonial* Americans "paid their taxes in corn, cattle, and pelts"). Famously, the demand that Western whiskey producers pay a tax on whiskey in cash, rather than in the product itself, led to one of the first major political crises of the Early Republic: the Whiskey Rebellion. Krom & Krom, *supra* note 46, at 101.

57. PRESSLY, *supra* note 25, at 21; Clark, *Household Economy*, *supra* note 18, at 177–78.

58. WILLIAM HOGELAND, THE WHISKEY REBELLION: GEORGE WASHINGTON, ALEXANDER HAMILTON, AND THE FRONTIER REBELS WHO CHALLENGED AMERICA'S NEWFOUND SOVEREIGNTY 67 (2006); Krom & Krom, *supra* note 46, at 100–01.

stores in the Connecticut Valley has reported that through the Civil War, rural shopkeepers were still willing to receive farm goods in lieu of cash.[59]

In the words of esteemed economist John Kenneth Galbraith, "[B]y the time of the Civil War, the American monetary system was, without rival, the most confusing in the long history of commerce and associated cupidity."[60] Historians have generally agreed that dealing in the antebellum cash market required significant financial knowledge, well beyond what is required to buy and sell in the United States today.[61] And any paper money-based exchange, however small, necessitated "confidence in the person on the other side of the transaction and the value of their money."[62] These uncertain economic circumstances alone might have been enough for early American sellers to avoid contracting with minors as a matter of course.

However, after the Civil War, things began to change. The Constitution had expressly forbidden the states from issuing their own individual currencies, but its stance on a national paper money system was less clear. The United States had, during the War of 1812, previously issued war bonds that were traded as money, but in the 1860s, there was no tradition of a peacetime federal currency outside of the minted gold and silver coins that remained scarce.[63] During the Civil War, both the Confederacy and the Union printed money to keep their armies funded.[64] After the conflict ended, and after the decades of financial uncertainty that had accompanied the haphazard development of an informal paper money exchange in the country, many in the federal government believed it would be wise to centralize the nation's monetary system by keeping the government-circulated bills (colloquially called "greenbacks") in use—but whether this move would be constitutional or not was an open question.[65]

**Figure 1**: A Treasury-Issued One-Dollar Bill (1862)[66]

59. Clark, *Household Economy*, *supra* note 18, at 177–78.

60. JOHN KENNETH GALBRAITH, MONEY, WHENCE IT CAME, WHERE IT WENT 88–89 (1975).

61. *See* GREENBERG, *supra* note 25, at 42–47; PRESSLY, *supra* note 25, at 39.

62. GREENBERG, *supra* note 25, at 46.

63. *Id.* at 159–62; PRESSLY, *supra* note 25, at 4, 39.

64. GREENBERG, *supra* note 25, at 171–75; PRESSLY, *supra* note 25, at 39.

65. *See* GREENBERG, *supra* note 25, at 182–88.

66. A "Greenback"; One Dollar Bill, 1862, LIBR. OF CONG., https://search.catalog.loc.gov/instances/cd40f4fd-a309-5f65-bb9d-

Quickly after the close of the war, the Supreme Court would answer that question definitively. Between its decisions in *Veazie Bank v. Fenno* (1869) and the so-called "Legal Tender Cases," the Court indicated that the federal government did indeed have broad authority to control the nation's paper money supply.[67] The Court in *Veazie* determined that Congress had "undisputed constitutional powers . . . to provide a currency for the whole country,"[68] while the Legal Tender Cases (specifically *Knox v. Lee* and *Parker v. Davis*, both 1871) confirmed that Congress could require sellers and creditors to accept federally-issued bills as payment for debts.[69] The introduction of monetary innovations like the Federal Reserve was still decades away, but with the advent of a federally-administered legal tender system in the 1870s, the U.S. economy had become significantly more streamlined and modern.[70]

A person under twenty-one in colonial or Founding Era America was unlikely to be able to transact with others in their community without parental supervision. The networks of debts that kept small, local economies functioning implicated only adults, and most frequently adult male heads of household, in their functioning. Minors could not bargain with their parents' crops, goods, or labor—but cash might be more easily exchanged.[71] However, even as privately-issued paper money permeated American society, it took time for young people to become marketplace actors in meaningful ways. The complexity of the early paper money system, the trust required between two parties to engage with it together, and the persistent power of the paternalist norms that entitled fathers to their children's wages all worked together to limit minors' ability to buy and sell goods well into the nineteenth century. The situation had changed significantly by the postbellum period, though. With federally-issued greenbacks now widely available and, thanks to the Supreme

---

b2002e85ce7e?option=lccn&query=2023635002 [https://lccn.loc.gov/2023635002].

67. GREENBERG, *supra* note 25, at 185–88.

68. Veazie Bank v. Fenno, 75 U.S. (8 Wall.) 533, 549 (1869); *see also* GREENBERG, *supra* note 25, at 187.

69. Legal Tender Cases, 79 U.S. (12 Wall.) 457, 457–58; *see also Legal Tender Cases*, BRITANNICA (2024), https://www.britannica.com/event/Legal-Tender-Cases [https://perma.cc/L3QZ-EH3C] ([T]he Court . . . assert[ed] that the Legal Tender Act represented a justifiable use of federal power at a time of national emergency."). *Hepburn v. Griswold*, 75 U.S. (8 Wall.) 603 (1870) is sometimes considered to be one of the "Legal Tender Cases," although in this case the Court found differently than it later did in *Knox* and *Parker*. *See* GREENBERG, *supra* note 25, at 182. The reasons that the Court overturned *Hepburn* after just one year are complex and beyond the scope of this Article.

70. While the legal tender system was a massive step toward normalizing the economy, the U.S. government struggled to control interest rates or to head off economic depressions in the years preceding its establishment of the Federal Reserve. *See* George A. Selgin & Lawrence H. White, *Monetary Reform and the Redemption of National Bank Notes, 1863–1913*, 68 BUS. HIS. REV. 205, 205–06, 243 (1994); Douglas Craig, *Success Has Many Fathers: The Federal Reserve Act of 1913, the Battle of the Memoirs, and the Growth of Federal Competence*, AUSTRALASIAN J. AM. STUDS., Dec. 2018, at 1, 4 (2018); J. Lawrence Broz, *Origins of the Federal Reserve System: International Incentives and the Domestic Free-Rider Problem*, 53 INT'L ORG. 39, 39 (1999).

71. *See* Henretta, *Families and Farms*, *supra* note 37, at 21, 31–32.

Court, officially legal tender, it was easier than ever before for minors to interact with the formal economy. These developments, coupled with the changes in contract relations discussed in the next section, meant that it was now much simpler for a child to independently acquire a gun.

## II. THE CHANGING NATURE OF CONTRACTS

The nineteenth century has long been understood as "the age of contract," as it was during this era that modern contract law emerged and took on central importance in the structuring of both the American economy and society.[72] Contract undergirded the sale and purchase of "land, labor, money, and commodities," and the smooth exchange of all of the above greased the wheels of increasingly sophisticated industrial capitalist networks in both Europe and the Americas.[73] As legal historian Morton J. Horwitz explains, the demands of capital pushed contract law to evolve "not to assure the equity of agreements but simply to enforce only those willed transactions that parties to a contract believed to be to their mutual advantage."[74] A volatile market began to set the price for goods and services without the customary attention to a "socially imposed standard of value" that had long governed contract relations under Anglo-American law.[75] As American and European economies became increasingly financialized in the late eighteenth and early nineteenth centuries, more flexible contract law began to emerge, allowing for the maturation of futures markets and speculative investments.[76]

To understand the import of the "age of contract" for the development of firearms law, it is important to start with the basic idea that purchasing something in colonial America was understood as literally "contracting for" that thing.[77] As Part I suggests, this sort of transaction required, literally, entry into an agreement for the equal exchange of goods or services—it frequently did not take the form of an on-the-spot cash transfer. And, as a matter of course, minors were not allowed to enter into contracts. In early America, people under the age of twenty-one could "not be held liable for failing to uphold their side of a contract over goods, even when other persons had performed their part."[78] In other words, a seller who chose to provision a minor with a trade item (for example, a firearm) had no legal right to expect that they would ever receive payment for that item. As Founding Era jurist Zephaniah Smith explained, the common law only allowed minors to contract for what were called "necessaries"—that is, "diet[,] apparel, education, and lodging," but state laws

---

72. STANLEY, *supra* note 26, at 26; *see also* HORWITZ, *supra* note 26, at 160 ("Modern contract law is fundamentally a creature of the nineteenth century."); BREWER, *supra* note 26, at 237 ("The late eighteenth and early nineteenth centuries have been called the period of the 'rise of contract.'").

73. STANLEY, *supra* note 26, at 13–18.

74. HORWITZ, *supra* note 26, at 181.

75. *Id.* at 184.

76. *Id.* at 180–85.

77. Walsh & Cornell, *supra* note 11, at 3065; Note, *Tortious Interference with Contractual Relations in the Nineteenth Century: The Transformation of Property, Contract, and Tort*, 93 HARV. L. REV. 1510, 1512 (1980).

78. BREWER, *supra* note 26, at 265.

could go further and make minors incapable of entering into any contract alone.[79] Firearms and other weapons were, notably, not considered necessaries—as a South Carolina court elaborated, "liquor, pistols, powder, saddles, bridles, whips, fiddles, [and] fiddle-strings" would not fall under the category of "necessaries for an infant."[80] One of Zephaniah Smith's English contemporaries put it bluntly: any non-necessary exchanged with an infant was, in essence, "a gift for the infant."[81]

Contract law, of course, involves more than the exchange of property—the contract relationship was also central to the development of an American wage-based economy. Beginning in the colonial period and through the early nineteenth century, the household was the normative nexus of production: The family often operated as an economic unit, and much of what the household produced went towards subsistence.[82] Other types of labor relations existed in this constellation as well: Some workers, like artisans or professionals, took on apprentices; indentures bound workers to certain kinds of servitude for a certain number of years; and, across the colonies and, later, many of the states, a system of racialized chattel slavery forced African laborers into hereditary bondage.[83] The gradual shift away from these economic arrangements and towards wage labor, especially in the Northeast, has been discussed by historians and legal scholars alike as part of the transition from a "status"-based order to a "contract"-based order.[84] As John T. Nockleby has explained, "Many employment agreements were not thought of as contracts, but as status relations," even into the nineteenth century.[85] As time went on, however, the demands of an urbanizing and industrializing society created new pressures and opportunities that prompted the expansion of the contractual wage relationship.[86]

---

79. 1 ZEPHANIAH SWIFT, A SYSTEM OF THE LAWS OF THE STATE OF CONNECTICUT 216 (1795); *see also* Walsh & Cornell, *supra* note 11, at 3065.

80. Saunders Glover & Co. v. Ott's Adm'r, 12 S.C.L. (1 McCord) 572 (1822). Thanks to Saul Cornell and Mark Anthony Frassetto for bringing this case to my attention.

81. 1 SAMUEL COMYN, A TREATISE OF THE LAW RELATIVE TO CONTRACTS AND AGREEMENTS NOT UNDER SEAL: WITH CASES AND DECISIONS THEREON IN THE ACTION OF ASSUMPSIT : IN FOUR PARTS 150 (1807), https://babel.hathitrust.org/cgi/pt?id=uc2.ark:/13960/t55d8wd4z&seq=7 [https://hdl.handle.net/2027/uc2.ark:/13960/t55d8wd4z]; *accord* BREWER, *supra* note 26, at 267–68.

82. Henretta, *Families and Farms*, *supra* note 37, at 21–29; Allan Kulikoff, *The Transition to Capitalism in Rural America*, 46 WM. & MARY Q. 120, 122–23 (1989).

83. On the development of a system of chattel slavery in the British colonies, see, for example, ERIC WILLIAMS, CAPITALISM AND SLAVERY 1–21 (3rd ed. 2021) and ROBIN BLACKBURN, THE AMERICAN CRUCIBLE: SLAVERY, EMANCIPATION AND HUMAN RIGHTS chs. 2–3 (2011). Note that English colonists (and other Europeans) also held Native Americans in bondage, although that practice had largely died out by the time of the Founding. *See, e.g.*, ALAN GALLAY, THE INDIAN SLAVE TRADE: THE RISE OF THE ENGLISH EMPIRE IN THE AMERICAN SOUTH, 1670–1717, 40–69, 199–344 (2002); WILLIAM L. RAMSEY, THE YAMASEE WAR: A STUDY OF CULTURE, ECONOMY, AND CONFLICT IN THE COLONIAL SOUTH 13–53 (2008).

84. *See, e.g.*, BREWER, *supra* note 26, at 231–32; Note, *supra* note 77, at 1513; MICHAEL GROSSBERG, GOVERNING THE HEARTH: LAW AND THE FAMILY IN NINETEENTH-CENTURY AMERICA 19 (1985).

85. Note, *supra* note 77, at 1513.

86. ROBERT J. STEINFELD, THE INVENTION OF FREE LABOR: THE EMPLOYMENT RELATION

Labor, increasingly, moved out of the home and into the manufactory, and this new category of worker—the employee—required the development of a new and more sophisticated employment model.[87]

The labor question is important here because labor demands gave structure to the kinds of contracts that minors were allowed or expected to make. In the colonial period, children who worked mostly did so either within their own family unit or outside the home as bound (that is, unwaged) workers.[88] Of course, thousands of bound workers were born into slavery, a status in which neither enslaved children nor their parents had any say.[89] The other significant group of bound minors in this era were indentured or apprenticed—although indentured servitude became increasingly rare as time progressed.[90] Generally, an agreement between parents or guardians (usually fathers, or in the case of orphans or indigent children, local authorities) and masters governed apprenticed children, who received food, shelter, and education—but not wages—in exchange for their labor.[91] Children who were "bound out" in this way became "free" at an appointed age (often at twenty-one, but sometimes older).[92] This history, as James D. Schmidt explains, "does not mean that

IN ENGLISH AND AMERICAN LAW AND CULTURE, 1350–1870, at 4–9 (1991).

87. Jonathan Prude, *Capitalism, Industrialization, and the Factory in Post-Revolutionary America*, 16 J. EARLY REPUBLIC 237, 249 (1996); Clark, *Household Economy*, *supra* note 18, at 169. In considering this transition, Barbara M. Tucker's words are worth bearing in mind: "The transition from agriculture to manufacturing was neither an even nor an easy process." Tucker, *supra* note 17, at 21. This Article necessarily simplifies a very complex transformation.

88. Gloria L. Main, *Reflections on the Demand and Supply of Child Labor in Early America*, *in* CHILDREN BOUND TO LABOR: THE PAUPER APPRENTICE SYSTEM IN EARLY AMERICA 199, 199–200 (Ruth Wallis Herndon & John E. Murray eds., 2009); James D. Schmidt, *"Restless Movements Characteristic of Childhood": The Legal Construction of Child Labor in Nineteenth-Century Massachusetts*, 23 LAW & HIST. REV. 315, 317 (2005).

89. In historian Amy Dru Stanley's words, "The absence of a contract marked the slave." STANLEY, *supra* note 26, at 9.

90. *See* JAMES D. SCHMIDT, FREE TO WORK: LABOR LAW, EMANCIPATION, AND RECONSTRUCTION, 1815–1880, at 8, 13–14, 62–63 (1998). Note that one context in which indentures persisted was in the transition away from slavery in many of the middle states. Unsurprisingly, people who were emancipated by their enslavers often were not able to afford housing or other necessities upon becoming free and entered themselves or their children into indentures as a way to survive. Frequently they indentured themselves to the very people who had just been holding them in bondage. In addition, some enslavers who chose emancipation actually *mandated* this period of indenture—in other words, they granted enslaved people legal freedom under the condition that they continue to serve as indentured laborers for an additional stipulated number of years. On this issue, see GARY B. NASH & JEAN R. SODERLUND, FREEDOM BY DEGREES: EMANCIPATION IN PENNSYLVANIA AND ITS AFTERMATH 173–81 (1991); JAMES J. GIGANTINO II, THE RAGGED ROAD TO ABOLITION: SLAVERY AND FREEDOM IN NEW JERSEY, 1775-1865, at 23 (2014); SARAH L. H. GRONNINGSATER, THE RISING GENERATION: GRADUAL ABOLITION, BLACK LEGAL CULTURE, AND THE MAKING OF NATIONAL FREEDOM 28–29 (2024).

91. Schmidt, *supra* note 88, at 317, 319–20, 329; SCHMIDT, *supra* note 90, at 62–63; PETER W. BARDAGLIO, RECONSTRUCTING THE HOUSEHOLD: FAMILIES, SEX, AND THE LAW IN THE NINETEENTH-CENTURY SOUTH 102–04 (1995); Main, *supra* note 88, at 199–200.

92. NASH & SODERLUND, *supra* note 90, at 102, 194–95. As Nash and Soderlund suggest

young people never worked for wages, [but] *normal and legitimate* child labor occurred only in bound relationships that were regulated by statute."[93]

However, the relationship between children and the field of contract law began to change in the decades following the Founding. Apprenticeships increasingly fell out of favor as waged labor became the norm, and courts started to see "minors as legal persons, capable of making contracts for work in their own right."[94] People under the age of twenty-one made up a significant portion of the wage-earning labor force at revolutionary new workplaces like the Lowell mills, which employed teenage girls as well as adult women at their Massachusetts campuses.[95] In Pennsylvania, meanwhile, one factory owner estimated that possibly half of his workers were younger than twelve.[96] In the first decades of the nineteenth century, working children still remained enmeshed in familial networks, bound both by law and by tradition to the norms of filial piety. Minors were to hand wages over to their parents unless they first either bought or were granted their own legal emancipation; the "mill girls" of Lowell and other, similar enterprises, by default had their earnings sent to their families.[97] However, this state of affairs would change in the decades after the first of the Lowell mills was founded in 1814. By 1860, as historian James D. Schmitt explains, Massachusetts courts had

> fashion[ed] two new rules about children's labor contracts. One, "implied emancipation" (or "implied assent") supplied a fictional way around parental control of minors' earnings. A second rule allowed minors to break their agreements at-will while holding their employers bound to their half of the bargain. In reaching this conclusion, the court began to erode children's legal incapacity, increasingly envisioning and legitimating young people as agents in a capitalist labor market."[98]

By the time that jurist William Champ Rodgers published *A Treatise on the Law of Domestic Relations* at the close of the nineteenth century, the legal relationship between parents and children had loosened significantly.[99] A total emancipation was not necessary for a minor to "leave home, take work and support himself from his earnings while away."[100] In other words, a parent was not automatically entitled to

---

here, these rules applied primarily to white children. Gradual emancipation statutes worked similarly, binding the children of enslaved women to work for their mother's enslaver for a period of years before becoming free and often also requiring the provision of education to the children affected by these statutes. *See e.g.*, *id.* at 111; GIGANTINO, *supra* note 90, at 6–7, 91; GRONNINGSATER, *supra* note 90, at 1–3. Local authorities often bound out Native children as apprentices, including in circumstances where state governments claimed "guardianship" of entire tribes. Schmidt, *supra* note 88, at 323–24.

93. Schmidt, *supra* note 88, at 317 (emphasis in original).

94. *Id.* at 335.

95. Tucker, *supra* note 17, at 21; Thomas Dublin, *Women, Work, and the Family: Female Operatives in the Lowell Mills, 1830-1860*, 3 FEMINIST STUD. 30, 30–31 (1975).

96. Tucker, *supra* note 17, at 23.

97. *See* Henretta, *Families and Farms*, *supra* note 37, at 32.

98. Schmidt, *supra* note 88, at 329.

99. *See* W.C. RODGERS, A TREATISE ON THE LAW OF DOMESTIC RELATIONS 440 (1899).

100. *Id.*

the wages of a working child, nor was a parent released from his (or her, but primarily his) responsibilities for providing necessaries to a working child should the child not be able to acquire them without assistance.[101] A parent's consent was still necessary for an infant to take on employment outside the home, but that consent did not have to be in writing or even expressed directly to an employer—indeed, "assurance from the child that his father had given consent for him to find work" was enough to shield an employer from any claims of impropriety with regard to contracting with the child.[102] Under these circumstances, it was not difficult for minors to find waged employment for themselves.

The life of Barilla Adeline Taylor offers a look into the world of working minors. Taylor was the fourth born of twelve siblings and lived on a farm in rural Maine with her fourteen-person immediate family, as well as her grandparents.[103] While her exact reasons for seeking work outside the home are not known to historians, we do know that the large Massachusetts mills operation sent recruiters throughout New England encouraging girls and women to seek employment and that local publications promoted the operations to their readers.[104] Whatever her motivations, Taylor departed for Lowell, Massachusetts, in 1843, signing a one-year employment contract at the Hamilton Manufacturing Company mills soon after she turned fifteen.[105] In so doing, she joined a small but growing cohort of young workers (most of them, at that point, in the Northeast) who were starting to earn wages for themselves.[106] Despite the remonstrances in her sister Florena's letters that she be thoughtful with her spending, receipts from a nearby "Fancy Goods" store show that Taylor purchased beads and multiple items of jewelry for herself while working at the mills.[107] She was employed at Hamilton Manufacturing for just under two years, and while she worked long and taxing hours and lived under strict supervision at her girls' boardinghouse, she also enjoyed a specific kind of financial freedom that just a few decades earlier would have been unimaginable for working-class American children.[108] Taylor's ability to sign a contract, to receive wages, and to use those wages to purchase goods for herself was a wholly new thing in U.S. history—one

---

101. *Id.* at 440, 442–44. On the duties of mothers, see *id.* at 452–56.

102. *Id.* at 497–98.

103. Liza Stearns, *The World of Barilla Taylor: Bringing History to Life through Primary Sources*, OAH MAG. HIST., Fall 1997, at 38, 39.

104. *Id.* at 39–40; *see also* Dublin, *supra* note 95, at 30 (describing the prevalence, motivations, and recruitment of young women working at the Lowell mills).

105. Stearns, *supra* note 103, at 40.

106. *See* JOHN A. FLITER, CHILD LABOR IN AMERICA: THE EPIC LEGAL STRUGGLE TO PROTECT CHILDREN 18–22 (2018); JONATHAN A. GLICKSTEIN, CONCEPTS OF FREE LABOR IN ANTEBELLUM AMERICA 72 (1991). For the very different timeline in which these changes unfolded in the South, see JAMES D. SCHMIDT, INDUSTRIAL VIOLENCE AND THE LEGAL ORIGINS OF CHILD LABOR xvii–xviii (2010).

107. Stearns, *supra* note 103, at 40. For more on the ways that girls and young women working in the mills in 1840s Lowell used their wages, see Sylvia Jenkins Cook, *"Oh Dear! How the Factory Girls Do Rig Up!": Lowell's Self-Fashioning Workingwomen*, 83 NEW ENG. Q. 219, 219–49 (2010).

108. *See* Stearns, *supra* note 103, at 40–41.

that gradually spread to minors across the country, in fits and starts, from the mid-nineteenth century through the aftermath of the Civil War.[109]

By Reconstruction, then, two major shifts had taken place. First, the American economy had become increasingly cash-centric, meaning purchasing an item was now more likely to be a matter of the impersonal exchange of legal tender rather than an interaction deeply embedded in community and kin networks of obligation and mutual dependence. Second, and relatedly, contract law had expanded rapidly, becoming increasingly complex and ensnaring ever more Americans in the relationships it formalized. These shifts were certainly evident in the case of the millions of formerly enslaved people who joined the nation's growing cohort of waged workers in the aftermath of the Civil War and emancipation.[110] But it was also true of minors, who were able to formally contract for goods and services. While, at the Founding, a child could not walk into a gun store and purchase a firearm, he now could do just that—because of changes in the monetary system, because of changes in contract norms, and, as we will see in the next subsection, because of changes in the firearm industry, as well.

## III. THE TRANSFORMATION OF THE GUN INDUSTRY

The forces of economic development that were implicated in the growing importance of cash exchange and in the evolving field of contract law and employment practice also gave new shape to the nascent domestic gun industry. The waves of industrialization and market reorientation began to crash on American shores around the turn of the nineteenth century, and the change they heralded was enormous.[111] While skilled artisans or outwork laborers had once been responsible for the nation's manufactured goods, increasingly that sort of productive work moved into factories.[112] Governments and corporations built roads, canals, and eventually railroads to transport raw materials, products, and people across the country.[113] This new infrastructure helped bring displaced job seekers to cities, which

---

109. Unfortunately, this life came with significant risks. The average age of death in Lowell, Massachusetts, in 1845 was 20.68 years. *Id.* at 40. Infectious disease spread quickly in the cramped mills, and there were also industrial accidents to worry about, with disabling or fatal injuries from the mill machinery a concern for even the most experienced workers. *Id.* at 40–41. As for Barilla Taylor, she died in 1845, less than two months after her seventeenth birthday. *Id.* at 41.

110. The new status of freedpeople as contract workers marked a major shift in the labor relations of the former slave states. This transition was contentious—while Black people fought mightily to control their own labor, the former enslaving class fought mightily to preserve their long-held rights to Black people's labor (and bodies). The latter tried to extend certain unfree labor relations into the postbellum period with a variety of different techniques. These included exploitative sharecropping agreements, indentures of adults and children who were branded vagrants, wage theft, and the use of bound prison labor. For more on these tactics, and the ways that freedpeople in the South responded, see, for example W. E. B. DU BOIS, BLACK RECONSTRUCTION IN AMERICA 1860-1880, at 130–43, 166–235 (1935); FONER, *supra* note 19, at 102–10, 153–75; STANLEY, *supra* note 26, at 138–74.

111. *See* Watson, *supra* note 19, at 45.

112. Stokes, *supra* note 17, at 4.

113. PAUL A. C. KOISTINEN, BEATING PLOWSHARES INTO SWORDS: THE POLITICAL

began to grow more rapidly.[114] Wage laborers, no longer producing for themselves, had to purchase their needs—but they also began to buy consumer goods, which the developing economy was increasingly ready to manufacture.[115] To be clear, these changes occurred in fits and starts over the course of a century, and the American economy developed unevenly across space and time.[116] The U.S. firearms industry, across the whole of the nineteenth century, weathered these changes with aplomb. Over the first hundred years of the United States's existence, a domestic gun industry emerged from almost nothing to become a global powerhouse—and, just as important for our purposes, to make guns both easily accessible and cheaply purchasable for anyone who wanted one.[117]

During the colonial period, most firearms in the mainland American colonies were actually smithed in Britain.[118] The "gunsmiths" of the era were mostly involved in upkeep and repair, working to prolong the lives of the complex and fragile arms that had made the long trip across the Atlantic.[119] Before industrialization, the production of firearms was incredibly time intensive and required considerable skill and training.[120] Even the most sophisticated of the "American-made" muskets frequently relied on locks produced overseas, because the colonies simply had not cultivated the capacity to produce those complicated pieces at scale.[121] The outbreak of the Revolutionary War—a war American colonists took up against their primary arms suppliers—required the mass purchase of armaments from France and highlighted the American deficit in arms-making capacity.[122] Almost twenty years after the outbreak of the Revolutionary War, Congress recognized that there remained a "want of a competent source of supplying the militia," as domestic firearms manufacturers still lagged and the state faced ongoing hostilities with Native peoples, intermittent skirmishes with backwoods settlers, and persistent post-war tensions with Great Britain.[123] When those tensions boiled over into the War of 1812, the federal government invested heavily in private and public arms manufactories, kickstarting the American firearms industry in earnest.[124]

---

ECONOMY OF AMERICAN WARFARE, 1606-1865, at 73 (1996).

114. Watson, *supra* note 19, at 45.

115. Jonathan Prude, *Capitalism, Industrialization, and the Factory in Post-Revolutionary America*, 16 J. EARLY REPUBLIC 237, 245 (1996).

116. Christopher Clark, *The Consequences of the Market Revolution in the American North*, *in* THE MARKET REVOLUTION IN AMERICA: SOCIAL, POLITICAL, AND RELIGIOUS EXPRESSIONS, 1800-1880, at 23, 29–30 (Melvyn Stokes & Stephen Conway eds., 1996).

117. PAMELA HAAG, THE GUNNING OF AMERICA: BUSINESS AND THE MAKING OF AMERICAN GUN CULTURE 8–20, 235–45 (2016).

118. ROBERT F. SMITH, MANUFACTURING INDEPENDENCE: INDUSTRIAL INNOVATION IN THE AMERICAN REVOLUTION ix-xiv (2016).

119. Brian DeLay, *The Myth of Continuity in American Gun Culture*, 113 CALIF. L. REV. 1, 59–62 (2025).

120. *Id.* at 62–63.

121. *Id.* at 68.

122. SMITH, *supra* note 113, at ix-xiv; LINDSAY SCHAKENBACH REGELE, MANUFACTURING ADVANTAGE: WAR, THE STATE, AND THE ORIGINS OF AMERICAN INDUSTRY, 1776-1848, at 1–2, 19–22 (2019).

123. *Id.* at 48.

124. *Id.* at 59–61, 70–75.

Still, the production of weapons remained relatively modest in the early years of the country's history. Manufacturers in the 1810s still struggled to produce weapons at scale, and the capacity for industrial production was limited.[125] However, all of this would change over the course of the next several decades—and by the close of the Civil War, the nation's firearms industry would look radically different. One of America's most iconic gun manufacturers exemplifies the transition the industry underwent over the course of the nineteenth century:

> When Remington had embarked on the gun business in 1816, he had made guns on a customized and individual basis for customers, as gun smiths had, on demand. . . . In the 1870s, guns were being mass-produced, in the hands of the industrialist and not the gun smith, in a more complex corporate economy; each Winchester was machined to within 1/1,000th of an inch and made with interchangeable parts by machine, and rifles achieved unprecedented diffusion.[126]

These changes had enormous consequences for the ways that young people interacted with firearms.

Indeed, the use of machines to manufacture interchangeable parts was an important step forward in the modernization of American industry, and gunmakers were among the first to begin implementing these new systems of production.[127] The adoption of these methods began in the second quarter of the nineteenth century, and their effects were made obvious during the Mexican-American War (a conflict the United States initiated in 1846 in order to lay claim to borderlands around the recently annexed Republic of Texas).[128] American combatants were equipped with what one historian has called "the latest in firearm technology, including the first conventional musket made entirely of interchangeable parts."[129] Firearm production capacity was advancing rapidly.

Perhaps the most enthusiastic early adopter of mechanization among domestic gun manufacturers was Samuel Colt.[130] While some American soldiers fighting against Mexico in the 1840s brought early-model Colts to battle with them, Samuel Colt nevertheless struggled to secure large government contracts through the 1850s.[131] Meanwhile, Oliver Winchester's repeating rifles represented a

---

125. *Id.* at 100.

126. HAAG, *supra* note 117, at 185.

127. DAVID A. HOUNSHELL, FROM THE AMERICAN SYSTEM TO MASS PRODUCTION, 1800-1932: THE DEVELOPMENT OF MANUFACTURING TECHNOLOGY IN THE UNITED STATES 3–4, 49–50 (1985).

128. SEAN WILENTZ, RISE OF AMERICAN DEMOCRACY: JEFFERSON TO LINCOLN 581–86 (2006).

129. Lindsay Schakenbach Regele, *U.S. Expansion and the Development of a National Firearms Industry*, *in* NEW HISTORIES OF GUN RIGHTS AND REGULATION: ESSAYS ON THE PLACE OF GUNS IN AMERICAN LAW AND SOCIETY 9, 22 (Joseph Blocher, Jacob D. Charles & Darrell A. H. Miller eds., 2023).

130. *Id.* at 49–50.

131. *See* HAAG, *supra* note 117, at 8–20, 235–45. Outside the United States though, other nations were taking notice of Colt's work. For example, he was invited to speak before a British parliamentary committee in 1854 on the possibilities that mechanized processes

technological advancement not unlike that of Colt's revolvers—Winchester, too, found new factory-style production methods invaluable for their production, and he, too, was largely rebuffed by the state in his early efforts to obtain contracts.[132] But the dawn of the Civil War in 1861 led to an explosion of growth in the domestic market for arms, hastening the large-scale adoption of mechanization.[133] Machine-assisted production promised both precision—as factory-manufactured rifles were exact copies of one another, with interchangeable parts[134]—and efficiency, as "one worker using conventional hand tools turned and fitted one musket stock per ten-hour day, whereas using specialized machines and dividing the tasks between them, three workers could turn and fit between 125 and 150 musket stocks per day, a 40- to 50-fold gain in labor productivity."[135] Both were necessary to produce enough weapons to arm the almost three million men who served in the Civil War.[136]

With the country riven in half, the preexisting federal government and the newly formed Confederate States of America scrambled to acquire sufficient weaponry.[137] Individual states, too, worked to procure firearms for their men, and some soldiers brought their own arms into battle.[138] Most of the nation's established foundries were in the North, so the Confederacy was particularly pressed to quickly obtain and distribute firearms.[139] Both of the national governments sought arms abroad, as did individual states. The Governor of Texas made inquiries to European, Mexican, and Cuban gunmakers in an attempt to provide for his state's soldiers.[140] The Confederate government purchased hundreds of thousands of arms from European sources, including roughly 600,000 Enfield rifles from Britain, while almost half a million Enfields went to the Union.[141] Especially in the North, however, foreign imports declined as domestic production ramped up.[142] The American government had long been involved in promoting gun manufacturing for its military ends,[143] and in the nation's short history, the need for weapons had never been more dire. Millions of

---

offered for the production of arms. HOUNSHELL, *supra* note 127, at 17–20.

132. Pamela Haag, *How Connecticut-Made Guns Won the West*, 15 CONN. EXPLORED 26, 27 (2016); HAAG, *supra* note 117, at xv.

133. HAAG, *supra* note 117, at 65.

134. Haag, *supra* note 132, at 29.

135. Atack et al., *supra* note 27, at 52.

136. *See Civil War Records Basic Research Sources*, NAT'L ARCHIVES (Dec. 20, 2024), https://www.archives.gov/research/military/civil-war/resources [https://perma.cc/9D7E-4G6E].

137. Mark R. Wilson, *The Business of Civil War: Military Enterprise, the State, and Political Economy in the United States, 1850-1880*, 4 ENTER. & SOC'Y 599, 601 (2003).

138. JACK COGGINS, ARMS AND EQUIPMENT OF THE CIVIL WAR 34, 38 (2004).

139. *The Arms of the Confederacy*, NAT'L PARK SERV. (July 20, 2021), https://www.nps.gov/spar/learn/historyculture/arm-confederacy.htm [https://perma.cc/8VXR-QCYC].

140. Richard D. Steuart, *Texas Arms Manufacturing During the Civil War*, TEX. STATE HIST. ASS'N (Jan. 23, 2020), https://www.tshaonline.org/handbook/entries/gun-manufacturing-during-the-civil-war [https://perma.cc/7BMB-6R8K].

141. KOISTINEN, *supra* note 113, at 162, 241; CHARLES WINTHROP SAWYER, FIREARMS IN AMERICAN HISTORY: OUR RIFLES 161 (1920); *The Arms of the Confederacy*, *supra* note 139.

142. KOISTINEN, *supra* note 113, at 166–67.

143. REGELE, *supra* note 122, at 2–13.

firearms were assembled on either side of the Mason-Dixon over the course of the five years of war.[144]

This production, of course, generated immense profits. Daniel Wesson co-founded Smith & Wesson in 1856, just in time to take advantage of the conflagration that would erupt five years later; demand for the company's revolvers far outstripped supply during the Civil War.[145] By 1870, Wesson's personal net worth was some 350 times larger than it was just before the war began.[146] Remington, too, prospered immensely. Historian Brian DeLay estimates that the company brought in roughly three million dollars—an impressive sum at the time—from its deals with the federal government during the war.[147]

Unfortunately for manufacturers, the boom times could last only as long as the conflict itself. In the words of Pamela Haag, "The war created the demand that gun capitalists desperately sought—and then abruptly withdrew it at war's end, while also leaving thousands of surplus rifles drifting through the country in its wake to depress commercial demand."[148] In fact, some government contracts were fulfilled after the war's close—as, for example, in the case of the Union purchase of 25,000 Starr revolvers, many of which actually arrived after the Confederate surrender at Appomattox in April 1865.[149] What to do with the millions of firearms that were now languishing in possession of the federal and state governments was not the most pressing question at the end of the Civil War, but it was nevertheless a question that needed answering.

As American soldiers began to return home, the Department of War ordered that honorably discharged Union veterans be allowed to keep their weapons, should they be willing to pay for them.[150] Congress then authorized the Secretary of War to sell "the old cannon, arms, and other ordnance stores now in possession of the War Department" that it deemed "unsuitable" to the aims of the military,[151] which began demobilizing in large numbers in 1865.[152] The government found itself with such an excess of arms that it began to destroy large quantities of munitions in order to sell

144. KOISTINEN, *supra* note 113, at 163–67; Sarah Stewart Taylor, *A Museum That Tells the History of Manufacturing from Civil War Rifles to Modern-Day Retail*, HUMANS., https://www.neh.gov/humanities/2018/summer/feature/museum-tells-the-history-manufacturing-civil-war-rifles-modern-day-retail [https://perma.cc/VFD6-4P4Q].

145. B. Zorina Khan, *The Impact of War on Resource Allocation: "Creative Destruction," Patenting, and the American Civil War*, 46 J. INTERDISC. HIST. 315, 342 n.18 (2015).

146. *Id.* at 341.

147. Brian DeLay, *The American Public Has Power over the Gun Business – Why Doesn't It Use It?*, THE CONVERSATION (Feb. 16, 2018, at 17:10 EST), https://theconversation.com/the-american-public-has-power-over-the-gun-business-why-doesnt-it-use-it-92005 [https://doi.org/10.64628/AAI.c4vatvs6g].

148. HAAG, *supra* note 117, at 65.

149. JOHN WALTER, THE GUNS THAT WON THE WEST: FIREARMS ON THE AMERICAN FRONTIER, 1848-1898, at 98 (1999).

150. General Orders, No. 101, E.D. Townsend, Assistant Adjutant Gen., Adjutant Gen.'s Off., War Dep't (May 30, 1865), https://babel.hathitrust.org/cgi/pt?id=umn.31951002285679j&seq=1 [https://hdl.handle.net/2027/umn.31951002285679j].

151. Act of July 20, 1868, No. 61, 15 Stat. 259, 259.

152. MARK L. BRADLEY, THE ARMY AND RECONSTRUCTION, 1865-1877, at 15–16 (2015).

the remains as scrap—but still, many items went on the market in excellent condition.[153] They also went on the market for cheap: One store in New York, for example, boasted surplus military carbines at 69 cents each.[154] By 1870, arms dealers looking to make a quick buck on resale had purchased well over one million firearms from the War Department.[155] And despite listing its wares at bargain-bin prices, the federal government made $17 million on munitions sales in the first six years after the war.[156] The oversupply of weapons after the war was such that American arms dealer Francis Bannerman was still advertising Civil War-era surplus rifles for sale in his catalog as late as 1903—and not as antiques, but as usable personal arms.[157] The low prices for firearms, whether newly produced or army surplus, meant that "revolvers . . . were available to all."[158]

One of the lesser-known consequences of the Civil War is the postbellum proliferation of firearms throughout American society. Literally millions of new weapons entered the domestic market in a short period of time, making guns more abundant and less expensive than ever before. For the first time, an average American "could easily afford to purchase and own several guns."[159] This, combined with minors' newfound ability to contract and the movement of the American economy toward cash exchange, might have, on its own, been enough to catalyze a crisis of youth firearm abuse unlike anything seen before in U.S. history. But another development made that crisis all but inevitable—firearms manufacturers began explicitly promoting their products to minors.

## IV. SELLING GUNS TO CHILDREN

Gun manufacturers' own efforts to turn children into purchasers played an important role in hastening the passage of restrictions on the sale of firearms to minors. The marketing of firearms to youth gained speed in the postwar period, with manufacturers taking advantage of the new advertising technologies as well as the new markets made accessible by industrialization, technological advances, and a transportation revolution. Besides just selling guns to children, arms makers also turned guns into toys—deadly toys, though, that often scarcely differed from the models sold to adults. While the developments explored in the previous sections help explain why minors were, by the last quarter of the nineteenth century, able to buy firearms, this section details the various ways that they were encouraged to do so.

The postwar gun glut created extremely unfavorable conditions for arms manufacturers—neither the U.S. military nor the civilian population was likely to purchase newly-made guns with so many from the war floating around at low

---

153. Joseph E. Persico, *The Great Gun Merchant*, AM. HERITAGE (1974), https://www.americanheritage.com/great-gun-merchant [https://perma.cc/V6EA-RK9L].

154. WALTER, *supra* note 149, at 84; Persico, *supra* note 153.

155. DeLay, *supra* note 147.

156. HAAG, *supra* note 117, at 295.

157. Persico, *supra* note 153; FRANCIS BANNERMAN SONS, INC., CATALOGUE OF MILITARY GOODS FOR SALE BY FRANCIS BANNERMAN 4 (1903), http://archive.org/details/francis-bannerman-military-goods-catalogue-1903 [https://perma.cc/X448-FX2C].

158. LANE, *supra* note 23, at 61.

159. JAMES B. WHISKER, ARMS MAKERS OF MASSACHUSETTS: 1610-1900, at 8 (2013).

prices.[160] The saturated market was not the only economic force arrayed against firearms manufacturers in the aftermath of the Civil War. The Panic of 1873, which catapulted the United States into a depression lasting years, meant just as much trouble for the gun business as it did for any other American industry.[161] Indeed, what we now call the "Panic" was referred to as the "Great Depression" until the collapse of the American economy again in 1929.[162] In such difficult business conditions, many of the country's small firearms makers collapsed or were bought out by larger corporations.[163]

The companies that survived did so because they found lifeboats to carry them through the rough waters of the postbellum era. Winchester, for example, turned to foreign markets to stay afloat.[164] It sold roughly 10,000 of its repeating rifles for use in the Civil War—not a huge number compared to other suppliers, but enough to keep the upstart company alive.[165] After the war, the corporation's profits cratered; it recorded about 500 total rifle sales in 1866.[166] Luckily for Winchester and other American manufacturers, however, European demand for U.S.-made guns was high, as Europe was both experiencing internal upheaval and waging multiple colonial wars in Asia and Africa.[167] Willing buyers could be found in Central and South America as well.[168] Business abroad was good—for those able to capitalize on it. The gun manufacturers that succeeded in foreign markets bought themselves time to find new, creative ways to approach the flagging domestic market.[169] Another survival strategy was to turn a factory that made guns into a factory that made other kinds of consumer goods.[170] To weather the storm of deteriorating gun sales, Remington leaned heavily on its other products, including agricultural machinery, sewing machines, and, of course, its famous Remington typewriters.[171]

The trajectory of John P. Lovell's Boston-based firearms company is illustrative of the kind of transformations a smaller manufacturer needed to undergo in order to survive in the post-Civil War era. Lovell began his career while still a minor, serving as an apprentice to a Boston gunsmith named Aaron Fairbanks.[172] By 1840, he had become Fairbanks's business partner; then, upon Fairbanks's death in 1841, he

---

160. HAAG, *supra* note 117, at 65.

161. *Id.* at 109, 172.

162. FONER, *supra* note 19, at 512.

163. DeLay, *supra* note 147; HAAG, *supra* note 117, at 106, 111, 165–66.

164. HAAG, *supra* note 117, at 112–42.

165. WALTER, *supra* note 149, at 83–84. Note that the name for the Winchester Repeating Arms Company before 1866 was "New Haven Arms Company;" but, for the sake of clarity, this Article refers to the corporation simply as "Winchester."

166. *Id.* at 84.

167. HAAG, *supra* note 117, at 114–27.

168. *Id.*

169. *Id.* at 142.

170. *Id.* at 110.

171. Robert A. Henning & Terrence H. Witkowski, *The Advertising of E. Remington & Sons: The Creation of an Iconic Brand*, *1854-1888*, 5 J. HIST. RSCH. MKTG. 418, 434–35 (2013).

172. 7 AM. BIOGRAPHICAL SOC'Y, THE BIOGRAPHICAL DICTIONARY OF AMERICA 50 (Rossiter Johnson & John Howard Brown eds., 1906).

joined with another gunmaker to take over the firm.[173] Between 1841 and the collapse of the company in 1900, its name changed multiple times, with iterations including Grover & Lovell, J.P. Lovell Arms Co., and J.P. Lovell & Sons.[174] This in itself was not unusual; the mid-to-late nineteenth century was a time of corporate upheaval, with mergers, acquisitions, failures, and reopenings complicating many businesses' trajectories over time.[175] Lovell's postbellum success where other small firearms makers failed rested in part on the firm's diversification strategy. His company produced a variety of different manufactured consumer goods, including the "'Lovell' roller skate," which strapped onto a person's shoe,[176] and the "Lovell Diamond" bicycle, which found considerable consumer success.[177] In addition to broadening its range of manufactures, the Lovell company also opened a storefront where it offered customers a wide range of sporting goods, both of its own make and from other producers.[178]

But regardless of these other ventures, John P. Lovell began as an arms manufacturer, and that remained a central feature of his company's work—even during the downtimes of the 1870s. In 1878, for example, he sent 100 of his factory's pistols and revolvers for display alongside other American manufactures at that year's World's Fair in Paris.[179] The Lovell company moved into the toy gun space, as well. In addition to its iconic "Champion"-branded single-barrel shotgun, Lovell also produced Champion-branded air guns, which it marketed to children alongside its roller skates.[180] And the "Royal Top Spinning Pistol," a bizarre contraption that Lovell marketed as "the greatest novelty of the age," was a toy gun that both fired a cap and shot off a spinning top with a single pull of the trigger.[181]

---

173. *Id.*

174. WHISKER, *supra* note 159, at 177; Kathryn Onos DiPhilippo, *A Widow on the Past – John P. Lovell Company and Superintendent, Lyman H. Cobb*, PORTLAND PRESS HERALD (Mar. 3, 2022), https://www.pressherald.com/2022/03/03/a-window-on-the-past-john-p-lovell-company-and-superintendent-lyman-h-cobb/ [https://perma.cc/NV3U-UEKX].

175. Jack High, *Economic Theory and the Rise of Big Business in America, 1870-1910*, 85 BUS. HIST. REV. 85, 86–88 (2011); Richard B. Du Boff, *Business Demand and the Development of the Telegraph in the United States, 1844-1860*, 54 BUS. HIST. REV. 459, 461–63 (1980); NAOMI R. LAMOREAUX, THE GREAT MERGER MOVEMENT IN AMERICAN BUSINESS, 1895-1904, at 1–11 (1985).

176. *The "Lovell" Roller Skate*, PEABODY WKLY. REPUBLICAN, Nov. 28, 1884, at 4, https://newscomwc.newspapers.com/image/484550646/ [https://perma.cc/V2D8-VTK6].

177. *See generally* JOHN P. LOVELL ARMS CO., *LOVELL DIAMOND CYCLES: ARE THE BEST STRICTLY HIGH GRADE* (1895), https://digitalcollections.library.northwestern.edu/items/dea139ae-42ea-4398-a650-e0bb5a0f2b10 [https://perma.cc/Z8TX-WNM8] (advertising bicycle in catalogue).

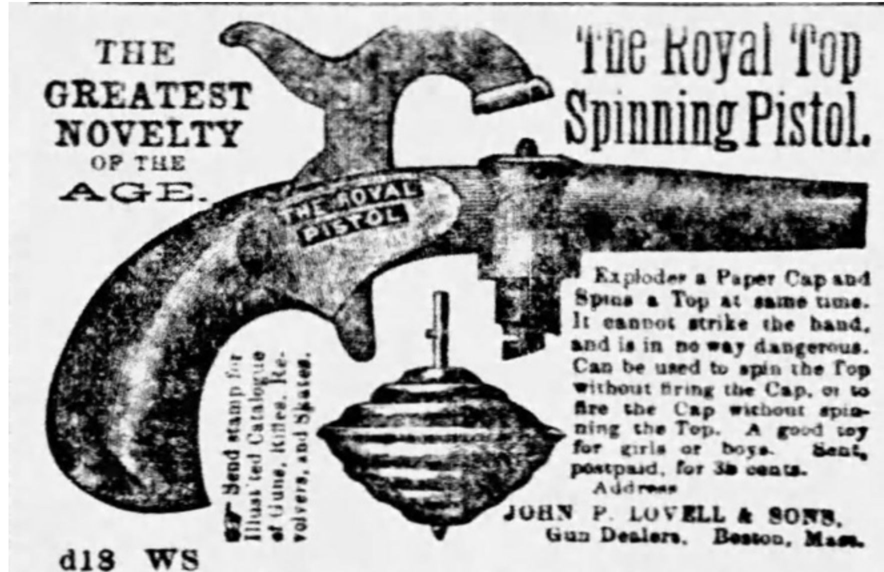
178. Billhead for the John P. Lovell Arms Co., Fire Arms, 147 Washington Street & 131 Broad Street, Boston, Mass*., dated October 2, 1895*, HISTORIC NEW ENG., https://www.historicnewengland.org/explore/collections-access/gusn?gusn=246588 [https://perma.cc/3NDX-GNXG].

179. *Local Summary*, BOS. POST, Feb. 23, 1878, at 3, https://newscomwc.newspapers.com/image/71794521 [https://perma.cc/XT5N-KWU6].

180. *Skates*, BOS. GLOBE, Dec. 21, 1878, at 3, https://newscomwc.newspapers.com/image/428235692/ [https://perma.cc/KRC9-NDBB].

181. *The Royal Top Spinning Pistol*, BOS. GLOBE, Dec. 21, 1878, at 3,

**Figure 2:** Advertisement for the "Royal Top Spinning Pistol" (1878).[182]




Even though some of the toy pistols of the postbellum period were outlandish novelties,[183] many of them were legitimately very dangerous. These cast iron firearms were miles away from the brightly-colored, plastic toy guns that line the shelves of modern stores, and the ammunition they used was not at all like the soft

---

https://newscomwc.newspapers.com/image/428235692/ [https://perma.cc/KRC9-NDBB]. While the Lovell company appears to have been the only seller of the toy pistol, it is not clear from extant documents if the manufacturer was Lovell or Iver Johnson, to whose local factory Lovell sometimes subcontracted its production while keeping the Lovell company name on the products. In the 1890s, even as Johnson continued to oversee some of the Lovell company production in Massachusetts, Lovell moved much of its manufacturing capacity to Maine, and the storefront remained active in Boston. When the Lovell business cratered at the turn of the century, Johnson's company began manufacturing the Champion brand rifles under the Iver Johnson name. INLAND MASSACHUSETTS ILLUSTRATED 72 (1891), https://babel.hathitrust.org/cgi/pt?id=loc.ark:/13960/t79s23z7c&seq=5 [https://hdl.handle.net/2027/loc.ark:/13960/t79s23z7c]; DiPhilippo, *supra* note 174.

182. John P. Lovell & Sons, Gun Dealers, Advertisement, *The Royal Top Spinning Pistol* (1878), https://newscomwc.newspapers.com/image/428235692/ [https://perma.cc/KRC9-NDBB].

183. For images of other odd toy pistols, see O'BRIEN'S COLLECTING TOYS: IDENTIFICATION & VALUE GUIDE 374, 379, 381, 386 (Elizabeth A. Stephan, ed., 10th ed. 2001). Some of the more elaborate toy pistol models reflected the racism of their makers—for example, an 1887 "Sambo" cap gun by Ives featuring a caricature of a Black man's face, and an 1879 pop gun that, instead of firing a projectile upon trigger pull, mechanically kicked a Chinese man in the crotch. *Id.* at 386; GARY CROSS, KIDS' STUFF: TOYS AND THE CHANGING WORLD OF AMERICAN CHILDHOOD 98 (Revised ed. 1999).

foam projectiles of today.[184] Many items marketed as "toy" guns were "essentially blank pistols, loaded with copper-jacketed cartridges that didn't contain bullets, but did contain explosive powder and cloth or paper wads that held the powder in."[185] Indeed, they looked and felt much the same as the pistols they emulated; little surprise, as they were often manufactured by the very same companies.[186] And extant arms manufacturers were not the only entities involved in the production of these dangerous items. As toy expert Elizabeth Stephan explains, "When toys began to be mass-produced after the Civil War, toy guns were among the first to appear on the market," and toymakers like Ives and J. & E. Stevens entered the ring with a variety of toy firearms for children.[187] By the 1880s, some toy guns, supposedly engineered to shoot blanks, also fired "live rounds of the same caliber," which created an even more dire situation for parents and legislators trying to keep dangerous weapons out of the hands of children.[188]

Manufacturers tweaked their advertisements to appeal to the new youth market they were courting by directing ads at boys and their parents.[189] In Boston, the Lovell company boasted that its storefront offered a "Great Variety of Goods from which to choose Christmas presents" including "air pistols and air rifles" that could serve as gifts "[f]or children."[190] The *South-Bend Daily Tribune* informed its readers that they could purchase a toy gun by the name of the "Little Joker" at the *Tribune*'s own store.[191] It was, the paper promised, "strong and serviceable, . . . the best boy's pistol

184. Catie Carberry, *The Origin of Toy Guns in America*, DUKE CENTER FOR FIREARMS LAW (July 18, 2019), https://firearmslaw.duke.edu/2019/07/the-origin-of-toy-guns-in-america [https://perma.cc/M4GG-TJUD]; O'BRIEN'S COLLECTING TOYS: IDENTIFICATION & VALUE GUIDE, *supra* note 183, at 373.

185. Sangamon Cnty. Hist. Soc'y, *'Toy-Pistol Tetanus,'* SANGAMONLINK (Jan. 22, 2018), https://sangamoncountyhistory.org/wp/toy-pistol-tetanus/ [https://perma.cc/QW8U-WL99]; *accord* Greg Hand, *Countless Cincinnati Children Died Agonizing Deaths Caused by an Illegal Toy*, CINCINNATI MAG. (Feb. 14, 2023), https://www.cincinnatimagazine.com/article/countless-cincinnati-children-died-agonizing-deaths-caused-by-an-illegal-toy/ [https://perma.cc/X6S3-WN2M].

186. RICHARD O'BRIEN, THE STORY OF AMERICAN TOYS: FROM THE PURITANS TO THE PRESENT 25 (1990); Marc Fisher, *Bang: The Troubled Legacy of Toy Guns*, WASH. POST (Dec. 22, 2014), https://www.washingtonpost.com/lifestyle/style/bang-the-troubled-legacy-of-toy-guns/2014/12/22/96494ea8-86f8-11e4-9534-f79a23c40e6c_story.html [https://perma.cc/48W2-KTH4].

187. O'BRIEN'S COLLECTING TOYS: IDENTIFICATION & VALUE GUIDE, *supra* note 183, at 373.

188. Hand, *supra* note 185. The mayor of Harrisburg, Pennsylvania, cited his concern about toy guns that shot not just blanks, but live bullets, in making his 1881 promise to enforce the statewide ban on the sale of toy guns capable of firing cartridges in his city. *See Deadly Toys*, HARRISBURG TEL., June 13, 1881, at 1, https://newscomwc.newspapers.com/image/44048645/ [https://perma.cc/7YB3-T34N].

189. Advertisements indicate that sellers usually imagined their targets to be not children broadly but specifically boys.

190. *A Great Variety of Goods*, BOS. EVENING TRANSCRIPT, Dec. 19, 1894, at 7, https://news.google.com/newspapers?nid=sArNgO4T4MoC&dat=18941219&printsec=frontpage&hl=en [https://perma.cc/NN4L-MJSF].

191. *Jottings About Town*, SOUTH-BEND DAILY TRIB., May 20, 1876, at 4, https://www.newspapers.com/image/513113530/ [https://perma.cc/7L63-943W].

in the market."[192] Guns were used as advertisements, too: When *Our Young Folks*, a youth-oriented periodical, sought to drum up subscribers in 1874, it promised to raffle off a series of prizes, including "200 Boy's Pocket Pistols" to its readers.[193]

As the post-war years passed, advertisements—directed at children and adults—became more sophisticated. In the words of historian Pamela Walker Laird, "Accelerating population concentrations, growing income levels that allowed increasing levels of discretionary spending, the growth of transportation systems (particularly the railroad networks), and the rapid growth of communication systems (telegraph, the postal system, and the press)" all contributed to the development of new advertising methods between 1870 and 1900.[194] Firearms manufacturers were quick to adopt these new methods. Print advertisements became larger and incorporated more images, rather than just type copy. In 1872, Remington marked multiple advertising firsts: In March, a new half-page ad, its largest advertisement ever and the first ever advertisement featuring more than one illustration, debuted in the *Army and Navy Journal*.[195] Then, in November of that same year, the company outdid itself again, publishing a full-page ad with even more illustrations in the same outlet.[196] Catalogs represented another modernization in advertising. Before the Civil War, Americans mostly bought consumer goods locally or through traveling agents.[197] While city dwellers had access to the large dry goods stores like Marshall Fields that began to open in the middle of the century, rural customers remained stuck with products sourced through middlemen—until the advent of the catalog, which, with the help of the country's expanding network of railroads, brought the department store straight to the buyer.[198] While Sears and Roebuck set the gold standard for late nineteenth century catalogs,[199] firearms sellers created catalogs of their own. For example, in the 1890s, Boston's John P. Lovell Arms Company began producing an "Illustrated Catalogue" where it showcased the rifles and revolvers it produced in-house alongside bicycles, baseball equipment, and an "air pistol" billed as a "parlor game" suitable for "all ages."[200]

The dime novel was another innovation—quickly written and cheaply produced, it brought a new kind of literature into the hands of the masses thanks to the ever-growing production capacities of the American economy.[201] It also provided yet

192. *Id.*

193. *Boys*, NEB. REP., Sep. 3, 1874, at 3, https://www.newspapers.com/image/751392329/ [https://perma.cc/3397-5SQB].

194. LAIRD, *supra* note 28, at 32.

195. Henning & Witkowski, *supra* note 171*,* at 429.

196. *Id.* at 431.

197. LAIRD, *supra* note 28, at 17–18, 23–25.

198. *Id.* at 28–29; Vicki Howard, *The Rise and Fall of Sears*, SMITHSONIAN MAG. (Jul. 25, 2017), https://www.smithsonianmag.com/history/rise-and-fall-sears-180964181/ [https://perma.cc/DBX4-JT47].

199. LAIRD, *supra* note 28, at 50–51; Howard, *supra* note 198.

200. Manufacturers and Dealers in Guns, Sporting Goods, Skates and Police Goods Catalogue, Lovell, John P., Arms Co., cover, 60 (1892) (on file with Smithsonian Inst., Warshaw Collection of Business Americana Subject Categories: Sports, Box 3, Folder 12).

201.

another means for gun manufacturers to push their product to young people.[202] Perhaps the most popular genre of the dime novel was the western; just as the frontier began to "close," it also began to be memorialized in popular culture.[203] It is difficult to overstate the profusion of the dime western. Publishers frequently put out up to 70,000 copies in a novel's first run, to say nothing of reprints.[204] "Buffalo" Bill Cody alone was the subject of at least 500 separate titles.[205] Of course, Buffalo Bill and the other cowboy heroes were never without their firearms, as shootouts with outlaws or Indigenous villains were often the most exciting parts of their stories.[206] The primary consumers of these novels were working class, adolescent boys,[207] and they certainly internalized the books' messaging around firearms: "The dime western put Winchester, if not the rifle itself, in the back pockets of boys who repeated its catechism of the frontier, perhaps without knowing exactly what it meant: 'Crack crack crack went the Winchester and fifteen Indians bit the dust.'"[208]

Closely related to the dime novel (and just as important for reaching minors) was the open-air show, especially the program Buffalo Bill's Wild West.[209] The show, created by "Buffalo" Bill Cody himself, featured displays of trick riding and

---

> In the summer of 1860 the House of Beadle and Adams (HBA) launched their first dime novel, starting a genre filled with sensational, typically Western adventure stories woven with a delicate layer of romance and lessons about Victorian morality and racial stereotypes. The first among many rival dime novel publishers, HBA's inaugural novel, *Malaeska, Indian Wife of the White Hunter* (June 9, 1860) by Ann Sophia Winterbotham Stephens, chronicles the relationship between Malaeska and her mixed-blood son. Two days before *Malaeska*'s release, the publishing house ran an advertisement in the *New York Tribune*: "BOOKS FOR THE MILLION! A dollar book for a dime." Before they shut down their printing presses in 1898, HBA alone published 3,158 separate dimes.

Rebecca S. Wingo, *The "Forgotten Era": Race and Gender in Ann Stephens's Dime Novel Frontier*, 38 FRONTIERS: A J. WOMEN STUD. 121, 121 (2017).

202. HAAG, *supra* note 117, at 187.

203. Historian Frederick Jackson Turner first presented his "frontier thesis" in 1893, noting that the closing of the continent's western frontier to U.S. state expansion had "closed the first period of American history." FREDERICK JACKSON TURNER, THE FRONTIER IN AMERICAN HISTORY 38 (1920). Turner's thesis rested on the inevitability of white settler conquest, an inevitability that was played back for American consumers via "westerns"—in the form of novels, radio dramas, television shows, or films—through the twentieth century. On this point, see JOHN G. CAWELTI, THE SIX-GUN MYSTIQUE 64–65 (2d ed. 1984).

204. Wingo, *supra* note 201, at 123.

205. HAAG, *supra* note 117, at 192.

206. CAWELTI, *supra* note 203, at 82–83, 85–86.

207. *Id.* at 40–41; Della T. Lutes, *Erastus F. Beadle: Dime Novel King*, 22 N.Y. HIST. 147, 148 (1941). While the heroes of these novels were almost always white, the novels' readership was racially and ethnically diverse. Additionally, girls and young women also consumed dime novels, although they often favored "rags-to-riches, Cinderella-esque dime novel narratives." Wingo, *supra* note 201, at 124.

208. HAAG, *supra* note 117, at 193.

209. DON RUSSELL, THE WILD WEST: A HISTORY OF THE WILD WEST SHOWS 17 (1970).

sharpshooting and claimed to recreate famous battles and events of the so-called "Indian Wars."[210] The productions were immensely popular; Cody's performance in Chicago in 1884 drew over 40,000 spectators.[211] And just like the dime novels that traded on similar subject matter, Buffalo Bill Cody's Wild West and its competitors also created new advertising opportunities for gun manufacturers. As historian Martin Woodside explains,

> Buffalo Bill used the rifle as a kind of marketing tool from his earliest days as a performer. He, along with the other sharpshooters in Buffalo Bill's Wild West, had sponsorship agreements with different arms makers throughout the show's long tenure. . . . [P]rograms in the late 1870s often noted that Buffalo Bill used only Winchester rifles. By the 1890s, Winchester ads were prevalent in show programs, and the 1898 program highlights a Columbian air rifle described as "a great source of amusement for men and boys."[212]

Manufacturers of toy guns also took advantage of Buffalo Bill-mania to promote their products to boys and adolescents, and a number of different companies produced toy pistols and rifles bearing Buffalo Bill's name.[213] For example, in 1885, toy manufacturer Milton Bradley released a Buffalo Bill-branded toy gun, which, while advertised to children, was also promoted as being powerful enough to "kill small birds."[214]

These advertisements bore bitter fruit. An Ohio probate judge remarked as much during an arraignment hearing in 1888, complaining that "firearms in the hands of boys who read wild-west stories, were very dangerous, as the lads were apt to practice what they had read."[215] Indeed, weapons—whether "real" guns or just "toy" guns capable of firing both blanks and bullets—increasingly found their way into young people's hands outside of their parents' supervision. The next section discusses the youth gun violence crisis that resulted—a new social reality even in a country that had always known guns.

## V. THE YOUTH GUN VIOLENCE CRISIS

All of the foregoing historical developments created the circumstances for an unprecedented crisis of youth gun violence to emerge in the last quarter of the nineteenth century. More and more frequently, as contemporary commenters observed, children were armed and unsupervised. Grade school students acquired

---

210. Paul Fees, *Wild West Shows: Buffalo Bill's Wild West*, BUFFALO BILL CTR. OF THE W., https://centerofthewest.org/learn/western-essays/wild-west-shows/ [https://perma.cc/MLS3-BJLL].

211. RUSSELL, *supra* note 209, at 19.

212. MARTIN WOODSIDE, FRONTIERS OF BOYHOOD: IMAGINING AMERICA, PAST AND FUTURE 172–73 (2020).

213. *Id.*

214. INEZ MCCLINTOCK & MARSHALL MCCLINTOCK, TOYS IN AMERICA 264 (1961).

215. *A Boy and a Pawn Broker Get into Trouble*, SUMMIT CNTY. BEACON (Ohio), Mar. 7, 1888, at 1, https://newscomwc.newspapers.com/image/228850031/ [https://perma.cc/UJ2M-GWGP].

pistols and played around with them, often accidentally shooting themselves, family members, or friends. Teen boys, adults complained, had started to carry firearms as a kind of accessory—and they seemed unafraid to use them, too. The civilian market had been flooded with weapons, and minors were being treated as legitimate consumers. The consequences were deadly.

Although they may sound unthreatening to modern Americans, toy guns were a significant part of the problem. Ads for the toys often revealed just how dangerous they could be; indeed, they were sometimes marketed to adults, as well.[216] An 1875 "toy gun" patent promised that the product could as easily "be placed in the hands of children as a plaything" as it could be "employed to kill rats or birds."[217] Unfortunately, they were just as frequently turned against fellow humans.

Examples of toy pistol casualties abounded in the late-nineteenth-century press. A seven-year-old Cincinnati child died when a friend shot him in the face with a toy pistol—newspapers reported that the "ball struck the . . . boy in the left cheekbone and penetrated the brain."[218] A few years later, reporting on another toy-gun fight that ended in grave injuries, a Cincinnati journalist remarked that "[t]he idea of allowing mere boys the privilege of playing with pistols is, to say the least, a dangerous one, and that danger [has been] illustrated a hundred times."[219] In New York, a thirteen-year-old made news for shooting another boy with, in the derisive words of the *New York Times*, "what the lawyers agreed to call a toy pistol."[220] Toy or not, it took the victim's eye out.[221] A widely circulated article on the explosion of children's shooting deaths and injuries featured a particularly strident message from a judge: "Pistols are made into toys, and children slay one another with them. Parents who permit their children to have such playthings deserve fine and imprisonment."[222] A *Harper's Weekly* column joked that a new publication named "The Undertaker's

216. CROSS, *supra* note 183, at 24.

217. *Improved Toy Gun*, 33 SCI. AM. 95, 102 (1875).

218. *The Deadly Toy Pistol*, CINCINNATI COM. GAZETTE, Oct. 21, 1885, at 5, https://infoweb.newsbank.com/apps/readex/doc?p=EANX&docref=image/v2%3A1233E9DEDC3D81AB%40EANX-12522D27B2DF8388%402409836-12522D2812C6EE38%404&hlterms=%22the%20deadly%20toy%20pistol%22 [https://perma.cc/L4J7-84PS]; *see also The Deadly Toy*, CINCINNATI POST, Oct. 30, 1885, at 2, https://www.newspapers.com/image/761232340/ [https://perma.cc/MK4N-NWTW] (showing a depiction of a toy gun, providing "a correct picture of the one with which . . . Edgar, aged seven, lost his life").

219. *Harry Prues' Pistol*, CINCINNATI ENQUIRER, July 24, 1880, at 8, https://www.newspapers.com/image/31353589/ [https://perma.cc/D86Q-H45D].

220. *Toy Pistols*, N.Y. TIMES, Apr. 20, 1875, at 6, available at ProQuest Historical Newspapers: New York Times (1851–2013), https://www.proquest.com/docview/93436869?accountid=11620&parentSessionId=PZpR7LyIZ2AWaI4m5DjwFK2t5tt%2B5nIaapgI5WKZROk%3D&sourcetype=Newspapers [https://perma.cc/GS8B-7GKS].

221. *Id.*

222. *Courting With a Gun*, PLAIN DEALER (Ohio), Mar. 15, 1882, at 5, https://infoweb.newsbank.com/apps/readex/doc?p=EANX&docref=image/v2%3A122AFBBA107AC9E4%40EANX-125FDEDCC5627B53%402408520-125FC8C62FB8A6FF%404&hlterms= [https://perma.cc/C7GZ-JKKJ] (this article was originally published in a New York paper).

Assistant" might be better entitled "The Toy Pistol."[223] Less humorously, a Rochester journalist referred to the toy gun as a "Small Boy Annihilator."[224]

Even when the injury itself did not immediately kill, wounds from toy pistols frequently resulted in lockjaw (or tetanus, as it is more commonly called today), which, before the advent of the tetanus vaccine, was often a death sentence.[225] Children's dying from toy-pistol-induced tetanus was common enough that when Louis Anatole Lagarde, a former U.S. Army Medical Corps colonel, published *Gunshot Injuries: How They are Inflicted, Their Complications and Treatment*, he included an entire section on what he called "Toy-pistol Tetanus."[226] As Colonel Lagarde explained it, "toy-pistol wounds and wounds from blank ammunition deserve special consideration" as they comprised an outsized proportion of overall U.S. tetanus cases.[227]

The Fourth of July in the late nineteenth century was, as today, a holiday that was often accompanied by a spike in gun-related deaths.[228] Toy guns played a significant role in these repetitious Independence Day tragedies. An 1882 article from Cincinnati remarked on the striking tally of child fatalities from the festivities on that year's July Fourth:

> The last fourth of July celebration is beginning to bear fruit in the usual number of cases of lock-jaw, or tetanus, from wounds made by toy pistols. Several cases have been reported in this city, five in Covington, one in Newport, and yesterday's dispatches told of six deaths in Boston, two in Rhode Island, and two in Dayton, Ohio.[229]

More than a decade and a half later, the pattern remained. A contributor for *Harper's Weekly* reflected contemptuously on the deadly tally from July 4, 1899, writing that

> [t]he harvest of lockjaw following the celebration of the Fourth of July has been unusually full this year. On July 17 the Chicago *Tribune*

---

223. *Waifs and Strays*, 27 HARPER'S WKLY. 39, 39 (1883), https://archive.org/details/sim_harpers-weekly_1883-01-20_27_1361/page/38/mode/2up?q=toy+pistol [https://perma.cc/VN74-3J97].

224. *The Toy Pistol's Method*, DEMOCRAT AND CHRON. (N.Y.), June 11, 1883, at 4, https://www.newspapers.com/image/135082539/ [https://perma.cc/5CCR-7HRM].

225. *Battling Tetanus*, SMITHSONIAN, https://www.si.edu/spotlight/antibody-initiative/battling-tetanus [https://perma.cc/75CN-YAW9] ("In the early 1900s, medical organizations reported that untreated tetanus killed up to 85% of those infected.").

226. LOUIS ANATOLE LAGARDE, GUNSHOT INJURIES: HOW THEY ARE INFLICTED, THEIR COMPLICATIONS AND TREATMENT 133–39 (1915).

227. *Id.* at 109.

228. *See* Alex Leeds Matthews & Dakin Andone, *July Fourth and Fifth Have the Most Mass Shootings of Any Days of the Year*, CNN (July 5, 2023, at 14:00 EDT), https://www.cnn.com/2023/07/04/us/july-4-holiday-mass-shootings-dg/index.html [https://perma.cc/8TVU-F9UH].

229. Hand, *supra* note 185 (quoting *The Last Fourth of July Celebration*, PENNY PAPER (Ohio), July 15, 1882, at 2, https://cincinnati.newspapers.com/image/761091600 [https://perma.cc/L59F-73N7].

> estimated that the keeping of the Fourth had up to that time cost 141 lives, and that eighty-three deaths were due to lockjaw, mostly resulting from wounds made by toy pistols. Many other deaths have since been reported.[230]

Because of the danger posed by these weapons, and because they were specially marketed to and sold to children ill-equipped to handle them (or to understand the gravity of their own actions more generally), multiple states and municipalities moved to ban their sale or use.[231] In his 1915 treatise on treating gunshot wounds, Colonel Lagarde reflected positively on the effects of the toy pistol bans of the late nineteenth century: "Now that some of the state legislatures have prohibited the use of the toy-pistol, the yearly number of [tetanus] cases is not so large as formerly."[232] These toy gun prohibitions, often passed alongside prohibitions on minors' access to traditional firearms, have made their way into both scholarship and the legal record. Included in Robert Spitzer's long list of historical firearms regulations are toy gun regulations from New York and Ohio;[233] the now-vacated *Bondi* panel opinion cited similar laws from Iowa and Kansas, as well as a broad range of newspaper clippings indicating popular support for such measures.[234]

However, it was not only toy pistols that young people used to cause trouble in postbellum America. Minors' newfound easy access to traditional firearms engendered a public health crisis all its own. Newspaper reports about shocking crimes brought the problem of youth gun violence into every home in America. An Ohio teenager robbed his own father at gunpoint and fled to Pennsylvania.[235] In New York City, an eighteen-year-old with a gun attempted to kill a girl who rejected his marriage proposal.[236] This incident prompted the reflection from one local journalist that "[t]he notion that to refuse the hand of an objectionable suitor should be instantly made a capital offense is becoming far too common among a certain class of young men, who always go armed and are always ready to use their weapons."[237] When a California boy was charged with murdering his father in 1883, a firearms store owner was brought on as a witness at the trial.[238] He testified, "Defendant bought a pistol at my store on January 8th. Think the pistol exhibited is the one I sold him. I loaded the

---

230. E.S. Martin, *This Busy World*, 43 HARPER'S WKLY. 737, 737 (1899), https://archive.org/details/sim_harpers-weekly_1899-07-29_43_2223/page/736/mode/2up [https://perma.cc/5W9M-46EY].

231. Spitzer, *supra* note 7, at 121–24.

232. LAGARDE, *supra* note 226, at 136.

233. Spitzer, *supra* note 7, at 123.

234. *See* Nat'l Rifle Ass'n v. Bondi, 61 F.4th 1317, 1329–30, 1333–38 (11th Cir. 2023), *vacated on reh'g*, 72 F.4th 1346 (11th Cir. 2023).

235. *A Young Hopeful*, CINCINNATI DAILY GAZETTE, Feb. 21, 1882, at 5, https://infoweb.newsbank.com/apps/readex/doc?p=EANX&docref=image/v2%3A11AA36D3199EFD90%40EANX-11B0227BC08EEDD8%402408498-11B01DD4135D8500%404&hlterms= [https://perma.cc/R938-XZ6A].

236. *The News This Morning*, N.Y. DAILY TRIB., Aug. 23, 1884, at 4, https://www.newspapers.com/image/467757116/ [https://perma.cc/R7ET-DA3P].

237. *Id.*

238. *The Brooke Murder*, MORNING TIMES (Cal.), Jan. 27, 1883, at 3, https://www.newspapers.com/image/998465727/ [https://perma.cc/U94P-L7VC].

pistol; sold him a box of cartridges. . . . He gave me what I asked for the pistol; it was a fair price."[239] The seller's testimony made clear how things had changed since the Founding—unsupervised minors could now enter a gun store, hand over cash, walk out with a firearm, and kill.

There were accidents, as well, that captured the public's attention and helped make clear the necessity of legislation limiting young people's access to firearms. The stories were tragic. In 1876, for example, papers reported on a small child in St. Joseph, Missouri, who shot himself in the head "while playing with a pistol"[240] and a teen who accidentally killed his younger brother in a similar manner on the other side of the state in Fayette.[241] Reports abounded of boys who watched their mothers die after unintentionally shooting them.[242] Children killed and maimed their playmates and classmates.[243] In Fresno, California, a pre-teen seemed surprised after shooting his friend in the head—reportedly telling the police that before the accident, he was "snappin' the pistol at everything, and didn't think the derned [sic] thing would go off."[244] A particularly horrifying incident in North Carolina involved the death of John Aldridge, a child who succumbed to a grizzly gunshot wound to the face: The offending weapon was "a pistol which he [i.e., Aldridge] wished to purchase"—and it went off as the ten-year-old inspected it before buying.[245]

Elected officials, health workers, and journalists all registered their horror at the crisis of injury and death resulting from young people's misuse of firearms. In San Francisco, the city's leadership fretfully noted that gun homicides were reported at a

---

239. *Id.*

240. *Casualties*, DAILY J. COM. (MO.), July 15, 1876, at 1, https://www.newspapers.com/image/666687031/ [https://perma.cc/GA6W-YYKP].

241. *Terrible Casualty*, KAN. CITY TIMES, Mar. 29, 1876, at 1, https://www.newspapers.com/image/649721655/ [https://perma.cc/R4N7-J734].

242. *See Boy and Pistol*, MANHATTAN DAILY REPUBLIC, Sep. 12, 1888, at 4, https://www.newspapers.com/image/254211203/ [https://perma.cc/62BK-3NJM]; *Crimes and Casualties*, BUTLER TIMES-PRESS (MO.), Jan. 7, 1882, at 1, https://www.newspapers.com/image/999254956/ [https://perma.cc/TNV4-7E47]; *All Around Us*, KAN. CITY TIMES, Mar. 15, 1872, at 4, https://www.newspapers.com/image/649208530/ [https://perma.cc/Q2RM-KLFK].

243. *See Children and Fools, etc.*, DAY (Conn.), Dec. 27, 1882, at 4, https://www.newspapers.com/image/968207936/ [https://perma.cc/AL3E-67T8]; *Shot His Playmate*, AKRON DAILY BEACON, June 8, 1886, at 4, https://www.newspapers.com/image/228167864/ [https://perma.cc/684M-RQL2]; *A Boy's Rusty Pistol*, BROOKLYN DAILY EAGLE, Mar. 7, 1886, at 3, https://www.newspapers.com/image/50463227/ [https://perma.cc/8V48-FPVD; *Boy and Pistol*, DAY (Conn.), Oct. 26, 1885, at 1, https://www.newspapers.com/image/968351676/ [https://perma.cc/QG3B-2PY4].

244. *The Boy and the Pistol*, FRESNO REPUBLICAN, June 6, 1885, at 3, https://www.newspapers.com/image/707517690/ [https://perma.cc/Z84G-D2H7].

245. *State News*, COMMONWEALTH (N.C.), Aug. 15, 1883, at 2, https://www.newspapers.com/image/912658361/ [https://perma.cc/VQ2H-HJTL]. The news roundup that included this story also carried a similar one from Alamance County, North Carolina: Two boys were "looking at a pistol" and "handling it carelessly" when one was shot in the cheek. *Id.*

rate over 500% higher in 1877 than in 1864, just before the Civil War's end.[246] To those looking for an explanation, the coroner offered the following: "The answer is quite plain. There are so many in our midst, and, to a great extent (I am sorry to say) among the youth, who do not . . . call upon a friend unless they have a revolver hung to their side."[247] Most cities in the immediate postbellum decades lacked the kind of sophisticated mortality data collection methods San Francisco employed,[248] so while actual statistics on gun deaths from other locations are scarce, evidence of the underlying concern about the proliferation of weapons and the dangerousness of youth firearm possession is not. A reporter in small-town Pennsylvania diagnosed the problem in much the same way that the San Francisco coroner did:

> To the best of our recollection we had not even seen half a dozen pocket pistols when we were twenty years old, and we have traveled on horseback and in other ways on the western verge of civilization with nothing more formidable in our pocket than a common pen-knife. . . .
>
> Shooting cases by boys [today] have become quite "too numerous to mention." The papers are full of them. They are of every day occurrence. . . .
>
> . . . The revolver, like the [ci]gar, has come to be considered an essential part of the outfit of a boy, and he seems to be expected and privileged to use the one about as freely as the other.[249]

The *New-York Tribune* published a similarly grim assessment from a New York City coroner, who told the paper, "A good deal of the crime in this city can be traced to the habit of boys and young men carrying pistols."[250] Indeed, he continued, "I would be willing to wager that out of 15 young fellows, 7 carry pistols."[251]

Whether firearms were intended as toys or otherwise, they increasingly ended up in the hands of minors. The result was a crisis of injury and death—suffered by both the youths who wielded the weapons and the people around them. In an increasingly urbanized America, crowded streets and little green space meant firearms were especially dangerous. But the problem of youth gun violence was not restricted to cities; all across the country, legislators faced the question of how to address the problem posed by minors' increasingly easy access to weapons.[252] Quickly, one policy answer became obvious—and it even appealed to some in the firearms

---

246. S.F. BD. OF SUPERVISORS, SAN FRANCISCO MUNICIPAL REPORTS FOR THE FISCAL YEAR 1881-82, at 38, 56 (1882), https://babel.hathitrust.org/cgi/pt?id=umn.31951002254347v&seq=7 [https://hdl.handle.net/2027/umn.31951002254347v]. Thank you to Kari Still for pointing me to this source.

247. *Id.*

248. *See* LANE, *supra* note 23, at 56–58; Manning Feinleib, *Health Statistics, History of*, *in* ENCYCLOPEDIA OF BIOSTATISTICS 1, 5–6 (Peter Armitage & Theodore Colton eds., 2005).

249. *Put Down That Pistol*, MONONGAHELA VALLEY REPUBLICAN, July 1, 1880, at 3, https://www.newspapers.com/image/363399159/ [https://perma.cc/WR42-WJ2P].

250. W.H. Kennedy, *Carrying Concealed Weapons*, N.Y. DAILY TRIB., July 26, 1884, at 4, https://www.newspapers.com/image/467756173/ [https://perma.cc/CFS7-N6PB].

251. *Id.*

252. *See* Spitzer, *supra* note 7, at 121–24.

industry. As a principled St. Louis gun seller reflected in 1882, "There ought to be a law against selling a pistol to a minor. Not a week, hardly even a day passes, in which I do not have to refuse to sell a revolver to a boy."[253]

## CONCLUSION

As scholars and courts have recognized, those laws were indeed passed, just as the Missouri gun merchant suggested they should be. The emergence of age restrictions in the mid-to-late nineteenth century was a rational response to the emergence of youth gun violence and the collapse of the preexisting restraints on young people's ability to obtain their own weapons.[254] As the Eleventh Circuit panel in *NRA v. Bondi* explained: "When the common-law regime became less effective at restricting minors' access to firearms, statutes increasingly did the work."[255]

In *Bruen*, the Supreme Court made clear that when Second Amendment questions "implicat[e] unprecedented societal concerns or dramatic technological changes," those undertaking the historical analysis required by the second step of the *Bruen-Rahimi* test should employ "a more nuanced approach."[256] The problem of youth gun violence is not, in fact, timeless. At the Founding, minors with firearms generally did not represent a serious public safety threat. Their access to weapons tended to be supervised by parents or adults in the community, whether through militias or at school, and they were generally unable to purchase guns themselves. However, significant developments in fiscal policy and in the labor market gave young people access to the economy in completely new ways by the mid-to-late nineteenth century; meanwhile, the industrial capacity of manufacturers increased by leaps and bounds. When the millions of firearms produced during the Civil War began to make their way to the civilian population, minors were able to scoop up much of the surplus. For the first time in American history, young people had unsupervised access to cheap guns.

The result was an unprecedented crisis of youth gun violence and a nationwide rash of accidental firearm injuries and deaths. State and local governments, and eventually the federal government, responded to these changes and dangerous conditions by enacting literally dozens of laws intended to keep firearms out of minors' hands.[257] When the *Bruen* Court left space for "a more nuanced" analysis in the face of "dramatic technological changes" and "unprecedented societal concerns," they envisioned just such an issue as this.[258] As demonstrated here, there is a deep and long-standing tradition of regulating the sale of firearms to people under twenty-one, and it dates all the way back to the Reconstruction Era, when youth gun violence emerged as a national crisis.

---

253. *Women With Pistols*, ST. LOUIS DAILY GLOBE-DEMOCRAT, Jan. 10, 1882, at 11, https://www.newspapers.com/image/570521297/ [https://perma.cc/2CF8-2HRX].
254. Spitzer, *supra* note 7, at 121–24.
255. Nat'l Rifle Ass'n v. Bondi, 133 F.4th 1108, 1122 (11th Cir. 2025).
256. N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1, 22 (2022).
257. Spitzer, *supra* note 7, at 121–24.
258. *Bruen*, 597 U.S. at 27.