

I. FIREARM LAWS IN CHICAGO

In examining the development of legal restrictions on firearms in Chicago, a number of interesting points emerge. In 1982 the city enacted some of the strictest controls on gun purchases and possession in the country—particularly in regard to handguns. As of October 30, 1983, civilians were allowed to own handguns only if the weapon had been previously registered with the city prior to the effective date. Civilians were permitted to register rifles and shotguns, but the only handguns that could be registered include those in accordance with statute, or if done by an individual specifically exempted by the statute—such as peace or correctional officers and persons licensed to manufacture or sell firearms. There was much attention given to the city of Morton Grove in 1981, when a ban on the possession of all handguns was passed and implemented.¹⁶

As noted by Lindberg, when the town of Chicago was formed in 1834, one of the first laws passed was a ban on firearms.¹⁷ While the specific nature of this statute was unidentified, it provided the foundation for a trend that continues to be followed. Three years later when the city was granted a municipal charter, Section 1 of the Municipal code of 1837 prohibited the discharge of firearms (the firing of weapons containing blank cartridges was allowed at the discretion of the Mayor or head of the Common Council, presumably for ceremonial purposes) within a specified area of the city. The penalty for this offense was a fine ranging between five and twenty-five dollars.

¹⁵ LARSON, *supra* note 1. See also National Rifle Ass'n, *New U.S. Gun Laws Piled High By Now*, 116 AM. RIFLEMAN 43 (1968).

¹⁶ See CAROLYN REBECCA BLOCK, et al, GUIDE TO ILLINOIS FIREARM DATA, (1992). See also CHL., ILL., CODE ch.11 § 1 (1983).

¹⁷ LINDBERG, *supra* note 7, at 2.

Furthermore, section 5 of the 1837 code regulated—primarily for fire concerns—the storage of gunpowder.¹⁸

That early restrictions were placed on firearms is rather interesting, particularly when viewed in the context of state law. Illinois, unlike several other states, had not yet placed restrictions on the carrying of concealed weapons.¹⁹ A number of states, beginning with Kentucky in 1813, regulated the carrying of concealed weapons.²⁰ Illinois, on the other hand, appears to have employed a different approach. In 1820 the state executed a duelist.²¹ As such, many believed it was unnecessary to regulate concealed weapons because this action (the execution) served to show that such actions would not be tolerated, thereby serving as a general deterrent.²²

Returning to laws in Chicago, the Municipal Code of 1849 placed additional restrictions on the storage and sale of gunpowder and gun cotton.²³ However, the 1881 code reflects significant changes in at least two areas. Sections 1215 through 1223 of Article 14 of the city code of 1881 not only prohibited the carrying of a concealed handgun, but an added measure required a permit to carry a concealed weapon. The concealed weapon permit was to be approved by the mayor and issued by the city clerk.²⁴ In 1905 the concealed weapon law was further strengthened to allow the city to confiscate firearms possessed in violation of statutes.²⁵ As such, these modifications (particularly 1881) are in some ways similar to the often-cited Sullivan Law (1911) of New York, which made ownership of a handgun illegal unless an adverse possession permit was obtained from police.²⁶ Events associated with Prohibition were defi-

¹⁸ CHI., ILL., LAW AND ORDINANCES § 5 (1837).

¹⁹ CLAYTON E. CRAMER, CONCEALED WEAPON LAWS OF THE EARLY REPUBLIC: DUELING, SOUTHERN VIOLENCE, AND MORAL REFORM 47–48 (1999). Philip D. Jordan notes that under the Ordinance of 1787, the “disorderly” discharge of firearms was prohibited in the Northwest Territory, which included restrictions on firing weapons in communities. PHILIP D. JORDAN, FRONTIER LAW AND ORDER: TEN ESSAYS 12 (1970). Jordan further suggests that a number of Midwestern states subsequently enacted statutes based upon this ordinance. *Id.*

²⁰ CRAMER, *supra* note 19, at 47–48.

²¹ *Id.* at 83.

²² *Id.*

²³ Chi., Ill., Ordinance to regulate the Keeping and Conveying of Gun Powder and Gun Cotton, *reprinted in* CHI., ILL., CHARTER OF THE CITY OF CHICAGO AND AMENDMENTS WITH RULES OF COUNCIL AND ORDINANCES 67–69 (1849).

²⁴ CHI., ILL., CODE, ch. 14, art. XIV, § 1217–1223 (1881).

²⁵ CHI., ILL., CODE, ch. 72, § 2454–2469 (1905).

²⁶ Don B. Kates, Jr., *Toward a History of Handgun Prohibition in the United States*, in RESTRICTING HANDGUNS: THE LIBERAL SKEPTICS SPEAK OUT (Don B. Kates, Jr., ed. 1979).

nately influential in the passage of federal legislation that at least in theory increased firearm regulation.²⁷ By the early 1930's, the reputation of Chicago was well established as a place where firearms could be obtained easily. While the city did attempt to place restrictions on the sale and possession of firearms, many surrounding towns did not, and laws were further weakened because weapons, ammunition, and accessories could be purchased by mail order.²⁸ For example, in 1922, law enforcement discovered that silencers could be purchased by mail order.²⁹

Clearly, legal restrictions on the ownership and possession of firearms—particularly concealed weapons—increased during the period. As noted previously, as early as 1813, states began placing restrictions on the carrying of concealed weapons.³⁰ Because southern states were primarily the first locations to do so, it has been argued that one of the underlying motivations was to keep firearms away from blacks and poor whites.³¹ In a similar vein, it is not surprising that during the 1880's, attempts to enhance handgun restrictions in Chicago coincided with the increased presence of immigrants and instances of civil unrest. Specifically, there was concern among the predominantly Anglo-Protestant establishment that immigrants and anarchists would utilize firearms in subversive attempts to undermine the existing social order.³² Some evidence exists that substantiates these claims. For example, Peterson suggests that by 1886, approximately 3000 anarchists resided in the city—and that members of these groups were often encouraged to stockpile weapons.³³

In response to these concerns, it appears that many citizens contributed supplies of both firearms and ammunition to the city for possible use in retaliation against individuals and groups deemed threat-

²⁷ *Id.* at 22.

²⁸ LEE KENNETT & JAMES LAVERNE ANDERSON, *THE GUN IN AMERICA: THE ORIGINS OF A NATIONAL DILEMMA* 189 (1975). The authors note that following the formation of the Chicago Crime Commission in 1919, an attempt was made to enforce more rigorously the city's ban on carrying concealed firearms. *Id.* However, two subsequent court cases considerably weakened the concealed gun law. *See People v. O'Donnell*, 223 Ill. App. 161 (1921) (holding that permits issued in other Illinois cities must be recognized as valid in Chicago); *City of Chicago v. Thomas*, 228 Ill. App. 65 (1923) (holding that municipal penalty for concealed weapons conviction cannot exceed that authorized by the State).

²⁹ KENNETT & ANDERSON, *supra* note 28, at 202.

³⁰ *See National Firearms Act*, *supra* note 12.

³¹ Kates, *supra* note 26, at 12.

³² *Id.* at 16–18.

³³ VIRGIL PETERSON, *BARBARIANS IN OUR MIDST: A HISTORY OF CHICAGO CRIME AND POLITICS* 50 (1952).

ening.³⁴ In 1877, upon hearing of incidents in Pittsburgh where mobs successfully robbed gun stores and pawnshops to obtain weapons and fearing similar occurrences in the city, the Superintendent of the Chicago Police Department issued a request that gun dealers and pawnshop brokers secure store firearms.³⁵ Many businesses complied, and a number of merchants turned in weapons and ammunition to the city for safekeeping. During the civil unrest of that year, a mob surrounded a gun store on State Street, but it was dispersed by the Chicago Police Department without incident. On the other hand, a gun store located at 522 Halsted Street was robbed.³⁶ The owner, M.J. Privy, did not comply with the aforementioned request of the Superintendent and a large number of weapons—including those displayed in storefront windows—were taken.³⁷ However, it appears that the Chicago Police Department realized some success in confiscating a large number of firearms before they could be used. In an effort to avoid further violence during riots occurring during 1877, the Chicago Police Department confiscated 125 stands of government-owned weapons that were stored at a hall owned by the McCormick Company.³⁸ At the time of the arrest of leaders of the Haymarket Riot in 1886, a large number of weapons were secured as well—one of many instances in which weapons were confiscated by law enforcement.³⁹

II. THE CONTROVERSY OVER GUN AVAILABILITY

There is some debate over the extent to which firearms were available to and accessible by the public, particularly during the nineteenth century. Inquiry into this matter is complicated further by the difficulty of identifying specific sources of firearms. However, placing this question in historical context provides some clarification. Prior to the 1830's, there were few guns produced domestically. In fact, the federal government and state militias frequently were unable to arm their troops adequately.⁴⁰ During this time blacksmiths produced some of the firearms available, many of which were of ques-

³⁴ See JOHN S. FLINN, *HISTORY OF THE CHICAGO POLICE* (1973).

³⁵ *Id.* at 165.

³⁶ *Id.* at 164–65.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* at 323.

⁴⁰ ALEXANDER DECONDE, *GUN VIOLENCE IN AMERICA: THE STRUGGLE FOR CONTROL* 47 (2001).

tionable quality and also difficult to maintain.⁴¹ In particular, guns made of iron were, without care, subject to rusting—which would increase the potential for malfunction. Courtwright suggests that not only was malfunction commonplace, but also that a greater number of firearm deaths could be attributed to accidental shooting than to murder.⁴² For the average person, firearms also involved a significant financial investment, often several months' wages, an amount that many could not afford.⁴³

In addition to the importance of the Civil War in terms of its influence on the supply of weapons, this conflict also had an important impact on attitudes relating to violence and the use of guns. Not only did the war provide an opportunity for many to gain access to become versed in the use of guns, but it also, from a cultural perspective, reinforced the notion that carrying a firearm was acceptable and/or necessary.⁴⁴ In that regard, these experiences served to desensitize many to violence, particularly in situations when its use was perceived to be warranted—such as in maintaining order or when one's honor or reputation had been questioned.⁴⁵ Coupled with dramatic population growth and the social disorganization that accompanied it, that the potential for violence increased should not be surprising.⁴⁶ While a small portion of the post Civil War homicides were committed by any of the estimated 26,000 Chicagoans who served during the war,⁴⁷ the resulting impact on attitudes via culture should not be forgotten.

Peterson has suggested that circumstances particular to the city prior to and following the war encouraged many persons to carry weapons for protection.⁴⁸ One of the many economic downturns experienced in the United States during the nineteenth century culminated in the Panic of 1857. Many of those experiencing unemployment turned to crime and Peterson states that "desperados, petty criminals, and just plain riff raff" moved to the city.⁴⁹ Once the war ended, many former soldiers came to Chicago, allegedly lured by the

⁴¹ KENNETT & ANDERSON, *supra* note 28, at 39–40.

⁴² DAVID T. COURTWRIGHT, *VIOLENT LAND: SINGLE MEN AND SOCIAL DISORDER FROM THE FRONTIER TO THE INNER CITY* 37 (1996).

⁴³ Kates, *supra* note 26, at 11.

⁴⁴ KENNETT & ANDERSON, *supra* note 28, at 152–53.

⁴⁵ *Id.* at 151.

⁴⁶ Jeffrey S. Adler, "My Mother-in-Law is to Blame, but I'll Walk on Her Neck Yet": *Homicide in Late Nineteenth-Century Chicago*, 31 *J. SOC. HIST.* 253, 253–54 (1997).

⁴⁷ *Id.* at 265.

⁴⁸ PETERSON, *supra* note 33, at 25.

⁴⁹ *Id.* at 34.

city's abundance of gambling and prostitution establishments. As a consequence, it appears that citizens began to arm themselves due to fear of becoming the victim of a crime.⁵⁰

Kennett and Anderson note that production of firearms increased dramatically during the war.⁵¹ Improvements in technology made it easier to produce better quality and smaller, more efficient guns at a lower cost.⁵² Not only did production increase, but Union soldiers were also permitted to keep their weapons after the war ended—an important point, given that the Union used approximately four million small arms during the war.⁵³ After the conflict ended, the U.S. government canceled all outstanding orders for firearms. In some instances, the government sold surplus weapons back to the manufacturer for less than the original cost. A large number of these surplus weapons were made available for sale to the public. Gun manufacturers, eager to reduce their inventories, dramatically lowered prices. For the first time, firearms were within the financial means of many Americans.⁵⁴

According to Marohn, between 1855 and 1895, there were very few gunsmiths or powder/ammunition dealers in the city of Chicago. By 1895 there were fewer than twenty each of gunsmiths or gun dealers listed in the city directory. Recall from the previously cited example involving Al Capone, however, that hardware stores sold firearms, as well as department stores such as Sears and Montgomery Ward, and sporting goods stores.⁵⁵ In a number of instances large manufacturers purchased small-scale producers and gunsmiths. It was during this period that gun manufacturers and retailers began utilizing newly developed mass media outlets to advertise their products in newspapers and other periodicals. These advertisements, which frequently contained testimonials from satisfied customers, could be found in a variety of print publications. Inexpensive and cheaply made handguns, some referred to as “suicide specials” by collectors, were standard fare. Initially, firearm manufacturers and retailers hoped these ads would lure prospective buyers to local out-

⁵⁰ *Id.* at 25.

⁵¹ KENNETT & ANDERSON, *supra* note 28, at 91.

⁵² *Id.* at 97.

⁵³ *Id.* at 91.

⁵⁴ *Id.* at 93; Kates, *supra* note 26, at 13. See *American Firearms: Effect of the McKinley Tariff*, N.Y. DAILY TRIB., Sept. 12, 1892, at 4 (commenting on dramatic increase in production following passage of the McKinley Act, which placed a tariff on imported weapons).

⁵⁵ Richard C. Marohn, *The Arming of Chicago Police in the Nineteenth Century*, 13 CHI. HIST. 41, 46 (1982).

lets. However, it became apparent that the developing railroad system and postal service made direct transactions possible, thus further expanding the potential market.⁵⁶

It was during the final decade of the nineteenth century that an important yet controversial outlet for purchasing firearms made them more accessible than ever before: mail order. While a number of companies were involved in the sale of firearms via mail, Sears, Roebuck, and Company is generally regarded as being at the forefront of this enterprise. In 1892, six years after the first Sears catalog was issued, handguns were offered for the first time.⁵⁷ The one page layout was devoted to a Smith and Wesson revolver.⁵⁸ Over the next decade, firearms, ammunition, and accessories became featured items and assumed a more prominent position in the catalogs. One year later, the 1893 catalog devoted seven pages to firearms and accessories.⁵⁹ By 1905, the apparent peak of mail order handgun sales for Sears, six pages of the 63-page sporting goods section were devoted to revolvers and ammunition.⁶⁰ In fact, by this time Sears even owned a factory that produced firearms and customers were permitted to redeem profit sharing certificates for firearms.⁶¹

The sale of handguns via mail did, however, prove to be quite controversial. For example, firearm manufacturers discovered that Sears would frequently sell handguns for less than the retail price. In turn, certain manufacturers (Winchester in particular) would attempt to either limit sales to Sears or refuse to fill requested orders. Sears responded by placing orders through dummy companies and this dispute continued for a number of years.⁶²

Secondly, that mail order sales were, in a manner of speaking, anonymous, also proved controversial. Apparently, prior to 1915 Sears made no effort to determine if the sale of a firearm via mail violated local statutes or if the purchaser possessed a permit (if re-

⁵⁶ KENNETT & ANDERSON, *supra* note 28, at 99. See also COURTWRIGHT, *supra* note 42, at 43.

⁵⁷ BORIS EMMET & JOHN E. JUECK, CATALOGUES AND COUNTERS: A HISTORY OF SEARS, ROEBUCK AND COMPANY 35 (1950).

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ DAVID L. COHN, THE GOOD OLD DAYS: A HISTORY OF AMERICAN MANNERS AS SEEN THROUGH THE SEARS ROEBUCK CATALOGS, 1905 TO THE PRESENT 431-47 (1940); EMMET & JUECK, *supra* note 57, at 37, 106 (the sporting good section consisted largely of firearms and accessories).

⁶¹ EMMET & JUECK, *supra* note 57, at 77.

⁶² KENNETT & ANDERSON, *supra* note 28, at 100.

quired). That year, Sears began to request that the purchasers provide their ages, occupations, and the names of two character references.⁶³ In 1922, however, Sears required proof of permit if required locally.⁶⁴ Two years later Sears discontinued sales of handguns via mail. While reasons for this decision included an apparent decline in sales, the difficulty of complying with the increasing number of local restrictions on handguns and negative publicity were important as well.⁶⁵

In sum, evidence suggests possible explanations for how the supply of weapons increased in Chicago, particularly following the Civil War. Be it from greater availability through advancing technology/production or weapons kept following the war, it does not appear that during the latter half of the nineteenth century guns could be obtained if desired. In addition to outlets such as dealers, department stores, hardware stores, and mail order, it appears that a secondary market existed as well. Adler shows that weapons could be purchased at pawnshops or even at saloons. In fact, there are recorded instances in which guns were borrowed from saloonkeepers and subsequently used in homicides.⁶⁶

⁶³ COHN, *supra* note 60, at 441–42. Included is a Notice to Purchasers from the 1915 catalog, which reads:

We keep a record of the name, caliber and serial number of every revolver and pistol we sell, together with the name and address of the purchaser and the date of purchase. This record is open at all times to any accredited peace officer. We solicit only the trade of responsible and reputable persons who have a legitimate right to purchase and own a revolver or pistol. We particularly solicit the trade of policemen, sheriffs, constables, game wardens, forest rangers, express and bank messengers and sportsmen of unquestionable character. To enable us to properly discriminate in the filling of orders for pistols, we must insist that purchasers comply with the following requests: Give age. (We do not sell to minors). Give occupation. Give name of two citizens of your town as character witnesses.

⁶⁴ KENNETT & ANDERSON, *supra* note 28, at 194.

⁶⁵ COHN, *supra* note 60, at 442 (suggesting that newspaper coverage of homicides began to use the phrase “cheap mail order pistol” with increasing frequency).

⁶⁶ Adler, *supra* note 46, at 261; Jeffrey S. Adler, “If We Can’t Live in Peace, We Might as Well Die”: Homicide–Suicide in Chicago, 1875–1910, 26(1) J. URBAN HIST. 12 (1999).