

---

---

## THE STATUTE OF NORTHAMPTON BY THE LATE EIGHTEENTH CENTURY: CLARIFYING THE INTELLECTUAL LEGACY

*Patrick J. Charles\*Φ*

In an article examining the “myths and realities about early American gun regulation,” Saul Cornell provides new insight as to how the right to arms outside the home evolved in Antebellum law.<sup>1</sup> Cornell’s article is arguably the first to seriously examine this legal development and I do not challenge his general findings in this regard.<sup>2</sup> Where we seemingly diverge is the role that the Statute of Northampton served in this process, particularly its intellectual impact by the turn of the nineteenth century.<sup>3</sup>

---

\* Patrick J. Charles is the author of numerous articles on legal history and standards of review. Mr. Charles received his J.D. from Cleveland-Marshall College of Law, and his B.A. in History and International Affairs from the George Washington University. He is a historian for the United States Air Force Special Operations Command 352nd Special Operations Group stationed at Mildenhall, United Kingdom. The contents of this article are not those of the United States Air Force or the Department of Defense, and solely the author’s.

Φ Suggested citation: Patrick J. Charles, *The Statute of Northampton by the Late Eighteenth Century: Clarifying the Intellectual Legacy*, 41 *FORDHAM URB. L.J. CITY SQUARE* 10 (2013), <http://urbanlawjournal.com/the-statute-of-northampton-by-the-late-eighteenth-century/>.

1. See Saul Cornell, *The Right to Carry Firearms Outside the Home: Separating Historical Myths From Historical Realities*, 39 *FORDHAM URB. L.J.* 1695, 1696, 1707-19 (2012).

2. See *id.* at 1726.

3. Cornell does not take a position on the Statute of Northampton. He leaves that question open, writing it is “likely” that the founding generation maintained a “range of views” as to its prosecutorial scope. *Id.* at 1713. It was not uncommon for nineteenth century American commentators to cite to the Statute when discussing the subject of public carriage. See, e.g., FRANCIS WHARTON, *A TREATISE ON THE CRIMINAL LAW OF THE UNITED STATES* 527-28 (Phila., J. Kay, Jun. & Bro. 1846). Furthermore, every nineteenth century court that used to cite the Statute to weigh the constitutionality of concealed carry prohibitions upheld the provision as a lawful exercise of State power. See Patrick J. Charles, *The Faces of the Second Amendment Outside the Home: History Versus Ahistorical Standards of Review*, 60 *CLEV. ST. L. REV.* 1, 37-39 (2012) (citing *State v. Huntly*, 25 N.C. 418, 421-22 (3 Ired. 1843); *English v. State*, 35 Tex. 473, 474 (1872)).

In terms of its understanding and application in the late eighteenth century, Cornell sidesteps the issue, writing:

[William] Hawkins formulation of [the Statute of Northampton]'s prohibition cast the prohibition in terms of traveling with unusual and dangerous weapons. This formulation was slightly different than Sir William Blackstone's gloss on the law. Blackstone did not describe the crime of affray in terms of traveling with "dangerous and unusual weapons," but described the statute's prohibition in terms of carrying "dangerous or unusual weapons." The Founders were familiar with both English commentators and it seems likely that there may have been a range of views on interpreting this question.<sup>4</sup>

Cornell is correct to point out that one may find a myriad of views on the same legal subject in any historical era.<sup>5</sup> However, as Cornell well knows, this does not mean that each and every view was correct or dominant. Here, Cornell points to a slight difference in language between Hawkins and Blackstone. The former described the Statute of Northampton in terms of "dangerous *and* unusual weapons,"<sup>6</sup> while the latter wrote "dangerous *or* unusual weapons."<sup>7</sup> This variation in Statute of Northampton restatements was not uncommon, as many early American treatises touching upon the subject attest to.<sup>8</sup>

More importantly, Hawkins and Blackstone's difference in language did not result in competing interpretations. Hawkins clearly understood the historical scope of the Statute, writing that "any Justice of the Peace, or other person . . . impowered" may "seize the Arms" of "any Person in Arms contrary" to the law.<sup>9</sup> This included the seizure of arms for preparatory self-defense in the public concourse. In Hawkins words, "a Man cannot excuse the wearing such Armour in Publick, by alledging [sic] that such a one threatened him, and that he wears it for the Safety of his Person from his

---

4. Cornell, *supra* note 1, at 1713.

5. See, e.g., Saul Cornell, *The People's Constitution vs. The Lawyer's Constitution: Popular Constitutionalism and the Original Debate Over Originalism*, 23 YALE J.L. & HUMAN. 295 (2011).

6. 1 WILLIAM HAWKINS, A TREATISE OF THE PLEAS OF THE CROWN 135, ch. 63, § 4 (London, Eliz. Nutt 1716) (emphasis added).

7. 4 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 148-49 (Dublin 1769) (emphasis added).

8. See, e.g., Wharton, *supra* note 3.

9. 1 Hawkins, *supra* note 6, § 5.

Assault.”<sup>10</sup> There were three exceptions to the general prohibition. The first was home bound self defense, or what is commonly known as the castle doctrine.<sup>11</sup> The second applied to persons carrying arms with the license of government.<sup>12</sup> And the last exception was the assembling of the hue and cry, *posse comitatus*, or militia, which was also at the license of government.<sup>13</sup>

Blackstone’s writings do not deviate from this legal understanding. Indeed, Blackstone was less descriptive than Hawkins, writing, “[t]he offence of *riding* or *going armed*, with dangerous or unusual weapons, is a crime against the public peace, by terrifying the good people of the land; and is particularly prohibited by the statute of Northampton . . . .”<sup>14</sup> However, unlike Hawkins, Blackstone illustrated the scope of the Statute of Northampton with a historical parallel. The Statute was similar to the “laws of Solon” where “every Athenian was finable who walked about the city in armour.”<sup>15</sup> Here we find that Blackstone viewed the Statute of Northampton according to its historical terms; as a prohibition on carrying dangerous weapons in the public concourse without the license of government, because in such instances an individual’s security was vested with the laws and the police power enforcing it.<sup>16</sup>

This interpretation is strengthened upon examination of Blackstone’s other sections. For instance, when discussing the hue and cry—the doctrine applicable to pursuing criminals—Blackstone wrote that any person raising it “must acquaint the constable of the vill[age] with all the circumstances which he knows of the felony, and the person of the felon” before the pursuit could be approved.<sup>17</sup> The castle doctrine was the exception to the rule.<sup>18</sup> But even the castle doctrine was limited in scope. It applied to only the “mansion or

---

10. *Id.* at 136, § 8.

11. *See id.* (“[B]ecause a Man’s House is . . . his Castle,” there shall be no penalty for a person “assembling his Neighbours and Friends in his own House, against those who threaten to do him any Violence therein . . . .”)

12. *See id.* § 9; *see also* Charles, *supra* note 3, at 26.

13. *See* 1 HAWKINS, *supra* note 6, at 136, § 10.

14. 4 BLACKSTONE, *supra* note 7.

15. *Id.* at 149.

16. *See* Charles, *supra* note 3, at 11-23.

17. 4 BLACKSTONE, *supra* note 7, at 291.

18. *Id.* at 223.

dwelling house” and those buildings that were its “parcel[,]” not to “distant barn[s], warehouse[s], or the like . . .”<sup>19</sup>

The text of the Statute of Northampton and its 1396 amendment certainly impacted Hawkins and Blackstone’s restatements.<sup>20</sup> At the same time, one cannot discount the different restatements published from the late sixteenth through the early eighteenth century. The earliest came in 1419 when John Carpenter wrote the *Liber Albus* or *The White Book of the City of London*. It stipulated “no one, of whatever condition he be, go armed . . . , or carry arms, by day or night, except the vadlets of the great lord of the land . . . , and the serjeants-at-arms . . . , and the officers of the City, and such persons as shall come in their company in aid of them, at their command, for saving and maintaining the peace.”<sup>21</sup> However, Carpenter’s treatise was before the advent of the printing press. Therefore, William Lambarde’s 1576 treatise *Eirenarcha* was arguably the first print distributed restatement.<sup>22</sup> Lambarde, one of the most prominent Elizabethan lawyers of the time, penned the Statute of Northampton under the following terms:

Yet may an affray be without worde or blow given as if a man shall sh[o]w himself furnished with armour or weapon, which is not usually worne and borne, it will strike a feare to others that be not armed as he is: and therefore both the Statute of *Northampton* . . . made against the wearing of Armour and weapon and the Writte thereupon grounded, doe speake of it, by the words, *effrey del pays*, an, *in terrorem populi*.<sup>23</sup>

Twenty years later and just a year after his death, Lambarde’s view of the Statute was republished in the 1602 treatise *The Duties of Constables*:

---

19. *Id.* at 225.

20. For text as adopted by Parliament, see 2 Edw. 3, c. 3 (1328) (Eng.), available at <http://press-pubs.uchicago.edu/founders/documents/amendIIs1.html>; 20 Rich. 2, c. 1 (1396-97) (Eng.).

21. JOHN CARPENTER & RICHARD WHITINGTON, *LIBER ALBUS: THE WHITE BOOK OF THE CITY OF LONDON* 335 (Henry Thomas Riley trans., London, Richard Griffin & Co. 1861).

22. See generally WILLIAM LAMBARDE, *EIRENARCHA: OR OF THE OFFICE OF THE JUSTICES OF PEACE, IN TWO BOOKES* (London, Ralf. Newbery and H. Binneman 1582). For more on William Lambarde, see generally Wilfrid Prest, *William Lambarde, Elizabethan Law Reform, and Early Stuart Politics*, 34 J. BRIT. STUD. 464 (1995).

23. LAMBARDE, *supra* note 22, at 134-35.

[I]f any person whatsoever (except the Queenes servants and ministers in her presence, or in executing her precepts, or other offices, or such as shall assist them: and except it be upon Hue and Crie made to keep the peace, and that in places where acts against the Peace do happen) shall be so bold, as to go, or ride armed, by night, or by day, in Faires, Markets, or any other places: then any Constable, or any other of the saide Officers, may take such Armour from him, for the Queenes use, & may also commit him to the Gaole. And therefore, it shall be good in this behalf, for the Officers to stay and arrest all such persons as they shall find to carry Dags or Pistols, or to be appared with privie coates, or doublets: as by the proclamation [of Queen Elizabeth I] . . . .<sup>24</sup>

Lambarde's restatements on the Statute of Northampton proved rather influential.<sup>25</sup> They were cited, reprinted, or paraphrased by a number of prominent commentators to include Abraham Fraunce, Michael Dalton, Edward Coke, William Hawkins, and others.<sup>26</sup> In the case of Abraham Fraunce, a Cambridge University fellow and barrister, Lambarde's restatement was reprinted verbatim.<sup>27</sup> Meanwhile in 1619, Michael Dalton's *The Countrey Justice* cited to and expanded upon Lambarde, writing:

If any person shall ride or goe armed offensively, before the Justices, or any other the Kings officers; Or in Faires, Markets, or elsewhere (by night, or by day) in affray of the Kings people (the Sheriffe, and other the Kings Officers, and) every Justice of the peace . . . may cause them to be stayed and arrested, & may binde all such to the peace, or good behaviour . . . And the said Justices of the P. (as also every Constable) may seize & take away their Armour, and other weapons . . . .

24. WILLIAM LAMBARDE, THE DUTIES OF CONSTABLES, BORSHOLDERS, TYTHINGMEN, AND SUCH OTHER LOW AND LAY MINISTERS OF THE PEACE 13-14 (London, Thomas Wight 1602). For more on Queen Elizabeth I's proclamation and other royal decrees enforcing the Statute of Northampton broadly, see Charles, *supra* note 3, at 16-17, 21-23, 25.

25. The founding generation was quite familiar with Lambarde and his writings were generally available. See, e.g., Joe W. Kraus, *Private Libraries in Colonial America*, 9 J. LIBR. HIST. 31, 32 (1974). John Adams and Thomas Jefferson are two notable examples of this familiarity. See Stanley R. Hauer, *Thomas Jefferson and the Anglo-Saxon Language*, 98 PMLA 879, 895 (1983); 1 DIARY AND AUTOBIOGRAPHY OF JOHN ADAMS 251-52 (L.H. Butterfield ed., 1961).

26. See *infra* notes 27-48, 60 and accompanying text.

27. See ABRAHAM FRAUNCE, THE LAWIERS LOGIKE EXEMPLIFYING THE PRAECEPTS OF LOGIKE BY THE PRACTISE OF THE COMMON LAWE 56 (London, William How 1588).

---

---

So of such as shall carry any Daggs or Pistols that be charged: or that shall goe appareled with privie Coats or Doublets . . . .

And yet the Kings servants in his presence; and Sheriffes and their officers, in executing the Kings processe, and all others in pursuing the Hue and Crie, where any felony, or other offences be done, may lawfully beare Armour or weapons.<sup>28</sup>

Dalton was the first legal commentator to employ the word “offensively” in a Statute of Northampton restatement and it is this language that hastily leads Standard Model writers to the rather poor understanding that the Statute only applied to the carrying of arms with the specific intent to terrify.<sup>29</sup> Such a reading makes the rest of Dalton’s discussion of the Statute, particularly his list of legal exceptions, superfluous, because prohibiting only such specific intent would not require exceptions.<sup>30</sup> The Model’s interpretation also fails on the grounds that Dalton applied the Statute to firearms.<sup>31</sup> This brings us to a more plausible reading in line with the text and history of the Statute of Northampton—Dalton was distinguishing non-dangerous weapons from dangerous weapons. In terms of non-dangerous weapons the person would have had to employ them “offensively.” At the same time, “offensively” would have also implied the general carriage of dangerous weapons. Meaning when it came to dangerous weapons like guns, pistols, and firearms in the public concourse, the prohibition was general and at the discretion of

---

28. MICHAEL DALTON, *THE COUNTRY JUSTICE, CONTEYNING THE PRACTICE OF THE JUSTICES OF THE PEACE OUT OF THEIR SESSIONS* 30 (London, 1618) [hereinafter DALTON, 1618]. Dalton’s treatise published multiple editions throughout the seventeenth and the eighteenth centuries. For instance, in the following year the word “Gunns” was added to the list of dangerous weapons as to read “Gunns, Daggs, or Pistolls.” MICHAEL DALTON, *THE COUNTRY JUSTICE, CONTAINING THE PRACTICE OF THE JUSTICES OF THE PEACE OUT OF THEIR SESSIONS* 31 (London, 1619) [hereinafter DALTON, 1619]. Most changes, however, were negligible. *See id.*

29. *See Amicus* Brief of Academics for the Second Amendment in Support of Petitioners at 15-17, *Kachalsky v. Cacace*, 133 S. Ct. 1806 (2013) (No. 12-845), 2013 WL 127179 (discussing how this author’s interpretation of the Statute of Northampton is wrong on these grounds). It is worth noting that the National Rifle Association funds and supports Academics for the Second Amendment. *See id.* at 1 n.1; Carl T. Bogus, *The History and Politics of Second Amendment Scholarship: A Primer*, in *THE SECOND AMENDMENT IN LAW AND HISTORY: HISTORIANS AND CONSTITUTIONAL SCHOLARS ON THE RIGHT TO BEAR ARMS* 1, 6-7 (Carl T. Bogus ed., 2000).

30. *See* DALTON, 1618, *supra* note 28, at 30.

31. *See supra* note 28 and accompanying text.

the Justice of the Peace or constable to enforce.<sup>32</sup> This interpretation gains further support in Dalton’s section on the Surety of the Peace:

[The peace may be enforced to] All such as shall go or ryde armed (offensively) in Fayres, Markets, or elsewhere; or shall weare or carry any Daggess or Pistolls charged: it seemeth any Constable seeing this, may arrest them, and may carrie them before the Justice of the Peace. And the Justice may binde them to the peace, yea though those persons were so armed or weaponed for their defence; for they might have had the peace against the other persons: and besides, it striketh a feare and terror into the Kings subjects.<sup>33</sup>

What Dalton and Lambarde’s treatises make abundantly clear is that the act of carrying dangerous weapons was sufficient to amount an affray, “strike a feare[,]”<sup>34</sup> or “striketh a feare[,]”<sup>35</sup> not some fabricated Standard Model particularized conduct.<sup>36</sup> Although Dalton and Lambarde would go on to influence a number of subsequent restatements, citations to their work are noticeably absent from Sir Edward Coke’s discussion titled “Against going or riding armed” in *The Third Part of the Institutes of the Laws of England*.<sup>37</sup> Coke paraphrased the Statute of Northampton’s text as follows:

It is enacted, that no man, great or small, of what condition soever he be, (except the Kings servants in his presence, and his ministers in executing . . . their Office, & such as be in their company assisting them, and also upon a Cry made for armes to keep the peace, and the same in such places where such things happen) be so hardy to come before the Kings Justices, or other the Kings Ministers doing their office, with force and armes, nor bring force in affray of the people, nor to goe nor ride armed by night nor by day, &c. before the Kings Justices, or in any place whatsoever, upon paine to forfeit their armor to the King, & their bodies to prison at

32. This was indeed the purpose of the Statute of Northampton—the prohibition of dangerous or lethal weapons among the public concourse. *See Charles, supra* note 3, at 20, 43.

33. DALTON, 1618, *supra* note 28, at 129.

34. LAMBARDE, *supra* note 22, at 134-35.

35. DALTON, 1618, *supra* note 28, at 129.

36. *See supra* note 29 and accompanying text. Standard Model writers invoke Sir John Knight’s Case, (1686) 90 Eng. Rep. 330 (K.B.), to support their hasty reading, but the facts, history, and holding in that case only further undermine their claims. *Compare supra* note 28 and accompanying text, *with Charles, supra* note 3, at 27-30 (showing Knight was acquitted because he fell under the government officer exception in the 1396 amendment to the Statute of Northampton).

37. EDWARD COKE, *THE THIRD PART OF THE INSTITUTES OF THE LAWS OF ENGLAND* 160-162 (London, M. Flesher 1644).

the Kings pleasure, and to make fine, and ransome to the King,  
&c.<sup>38</sup>

Given Coke directly borrowed from the Statute itself,<sup>39</sup> his use of language is noticeably different from that of Lambarde and Dalton. Coke did not employ the word “offensively,” nor did he list firearms as being prohibited in the public concourse.<sup>40</sup> Instead he distinguished between “force and armed,” bringing “force in affray of the people,” and the act of going and riding armed.<sup>41</sup> Still, there is nothing in Coke’s variance in language to suggest he maintained a different view from Lambarde and Dalton. This conclusion is supported by a number of historical observations. First, Coke correctly distinguished between the misdemeanor Statute of Northampton and the felony 25 Edw. 3, stat. 5, c. 2 § 13,<sup>42</sup> which maintained a *mens rea* element and was to be “judged . . . according to the laws of the realme of old time used, and according, as the case requires.”<sup>43</sup> Second, Coke understood and stated the general exceptions to the rule—government officials, military duty, and the hue and cry.<sup>44</sup> He then proceeded to list the castle doctrine as an exception,<sup>45</sup> and emphasized that preparatory self-defense with dangerous weapons did not fall within the exceptions.<sup>46</sup>

Third and lastly, Coke provided a case on point where Sir Thomas Figett went armed to “safegard” his life.<sup>47</sup> At no point did Coke characterize Figett as having carried the arms recklessly, unusually,

---

38. *Id.* at 160.

39. See 2 Edw. 3, c. 3 (1328) (Eng.), available at <http://press-pubs.uchicago.edu/founders/documents/amendIIIs1.html>.

40. See COKE, *supra* note 37, at 160.

41. *Id.*

42. Compare 2 Edw. 3, c. 3 (1328) (Eng.), with 25 Edw. 3, stat. 5, c. 2, § 13 (1350) (Eng.).

43. COKE, *supra* note 37, at 160. For more on the importance on this difference when interpreting the Statute of Northampton’s scope, see Charles, *supra* note 3, at 10, 18.

44. See COKE, *supra* note 37, at 161 (noting the exception for “the Kings servants in his presence, and his ministers in executing des mandements le Roy, or of their Office, & such as be in their company assisting them, and also upon a Cry made for armes to keep the peace, and the same in such places where such things happen . . .”).

45. See *id.* at 161-162.

46. *Id.* at 162 (“But he cannot assemble force, though he be extreemly threatned, to goe with him to Church, or market, or any other place, but that is prohibited by this Act.”).

47. *Id.*

with the intent to terrify or otherwise. Instead Figett forfeited the arms due to the act of carrying and was imprisoned according to the text of the Statute of Northampton.<sup>48</sup> And while there is certainly a linguistic argument to be made that Coke understood the Statute differently than his intellectual predecessors, subsequent restatements suggest otherwise.

The commentators that followed each read the Statute of Northampton as including a prohibition on the carriage of dangerous weapons in the public concourse. Moreover, these commentators cited to and incorporated aspects of Lambarde, Dalton, and Coke in the process. For instance, Richard Crompton paraphrased the Statute of Northampton, writing: “Any (except the Kings Officers and their companie doing their service) riding or going armed, or bringing force in affray of the people, are to be imprisoned, and lose their armour.”<sup>49</sup> William Sheppard and Joseph Keble included the prohibition on firearms, but omitted “offensively.”<sup>50</sup> George Meriton and Robert Gardiner included “offensively” and referenced the prohibition on firearms.<sup>51</sup> Meanwhile, John Layer omitted any reference to firearms, yet included “offensively[.]”<sup>52</sup> But even in Layer’s case, it is important to note that he listed the legal exceptions—government officials, military muster, and the

48. *See id.*; *see also* 2 Edw. 3, c. 3 (1328) (Eng.), *available at* <http://press-pubs.uchicago.edu/founders/documents/amendIIIs1.html>.

49. RICHARD CROMPTON, *A MANUALL: OR, ANALECTA* 19 (London, James Flesher 1660).

50. *See* JOSEPH KEBLE, *AN ASSISTANCE TO JUSTICES OF THE PEACE, FOR THE EASIER PERFORMANCE OF THEIR DUTY* 147, 224 (London, W. Rawlins, S. Roycroft, & H. Sawbridge 1689); WILLIAM SHEPPARD, *THE OFFICES AND DUTIES OF CONSTABLES, BORSHOLDERS, TYTHING-MEN, TREASURERS OF THE COUNTY-STOCK, OVERSEERS FOR THE POORE, AND OTHER LAY-MINISTERS* 39-40 (London, Ric. Hodgkinsonne 1641). By the fourth edition the restatement was streamlined, but still listed “Dags or Pistols.” WILLIAM SHEPPARD, *THE OFFICES OF CONSTABLES, CHURCH-WARDENS, OVERSEERS OF THE POOR, SUPRAVISORS OF THE HIGH-WAYES, TREASURERS OF THE COUNTY-STOCK; AND SOME OTHER LESSER COUNTRY OFFICERS, PLAINLY AND LIVELY SET FORTH* ch. 8, § 2, no. 4 (London, Ric. Hodgkinsonne 1657); *see also* WILLIAM SHEPPARD, *A NEW SURVEY OF THE JUSTICE OF PEACE HIS OFFICE* 10-11 (London, J.S. 1659).

51. ROBERT GARDINER, *THE COMPLEAT CONSTABLE* 18 (London, The Assigns of Richard & Edward Atkins, Esquires 1692); GEORGE MERITON, *A GUIDE FOR CONSTABLES, CHURCHWARDENS, OVERSEERS OF THE POOR, SURVEYORS OF THE HIGHWAYS, TREASURERS OF THE COUNTY STOCK, MASTERS OF THE HOUSE OF CORRECTION, BAYLIFFS OF MANNOURS, TOLL-TAKERS IN FAIRS, & c.* 22 (London, 1669).

52. JOHN LAYER, *THE OFFICE AND DUTIE OF CONSTABLES, CHURCHWARDENS, AND OTHER THE OVERSEERS OF THE POORE* 15-16 (Cambridge, Roger Daniel 1641).

assembling of the hue and cry.<sup>53</sup> Then there were commentators like Edmund Wingate. In one restatement Wingate merely cited to and applied the Statute of Northampton's text.<sup>54</sup> In a later restatement, however, Wingate incorporated Lambarde and Dalton, writing:

Any that shall ride or go armed offensively before the Kings Justices or any of the Kings Officers or Ministers, doing their Office, or in any publick manner, as in Fairs, or elsewhere (by night or day) in disturbance or affray of the Kings people . . . .

Any that shall carry charged Pistols Daggs, or Guns, or arrayed with privy Coats, the Justices may take away such weapons . . . .<sup>55</sup>

By the turn of the eighteenth century some commentators began substituting "offensive weapons" in lieu of "offensively." The phrase, as understood in the eighteenth century, encompassed dangerous weapons such as guns, pistols, firearms, hangers, cutlasses, and bludgeons.<sup>56</sup> For instance, in the 1707 treatise *A Compleat Guide for Justices of Peace*, John Bond wrote the Statute of Northampton stands for the legal proposition that "Persons with offensive Weapons in Fairs, Markets or elsewhere in Affray of the King's People, may be arrested by the Sheriff, or other the King's Officers."<sup>57</sup> Bond made sure to clarify that the prohibition applied to persons "that carry Guns charged."<sup>58</sup> William Forbes also streamlined the legal principle, writing, "By the *English* law, a Justice of Peace . . . may cause [to] Arrest Persons with offensive Weapons in Fairs, Markets, or elsewhere in Affray . . . and seize their Armour."<sup>59</sup>

---

53. *Id.* at 16.

54. EDMUND WINGATE, AN EXACT ABRIDGEMENT OF ALL STATUTES IN FORCE AND USE 25 (London, John Streater, James Flesher, & Henry Twyford 1666).

55. EDMUND WINGATE, JUSTICE REVIVED BEING THE WHOLE OFFICE OF A COUNTRY JUSTICE OF THE PEACE 20-21 (London, E. C. 1661).

56. See Charles, *supra* note 3, at 34 n.181; see also 2 RICHARD BURN, THE JUSTICE OF THE PEACE, AND PARISH OFFICER 79 (6th ed., London, H. Lintot 1758) (classifying "fire arms" as "offensive weapons"); 2 LORD HENRY HOME KAMES, SKETCHES OF THE HISTORY OF MAN 89 (W. Creech 1774) (distinguishing between "offensive weapons" of war and "defensive arms").

57. JOHN BOND, A COMPLEAT GUIDE FOR JUSTICES OF PEACE 42 (3d ed., London, the Assigns of Richard & Edward Atkins, Esquires 1707); see also *id.* at 181 ("A person going or riding with offensive Arms may be arrested by a Constable, and by him be brought before a Justice . . .").

58. *Id.* at 43.

59. WILLIAM FORBES, THE DUTY AND POWERS OF JUSTICES OF PEACE, IN THIS PART OF GREAT-BRITAIN CALLED SCOTLAND 26 (Edinburgh, Heirs & Successors of Andrew Anderson 1707) (citations omitted).

Taken altogether these restatements support three historical conclusions. First, the Statute of Northampton and regulations touching upon public carriage were alive and well in the eighteenth century. Second, commentators restated the Statute's legal tenets differently, but the dominant view was that the carrying of dangerous weapons in the public concourse could be prohibited and enforced by the constable or Justice of the Peace. This rule of thumb was particularly applicable to guns, firearms, and charged pistols, unless the person carrying them was a government official, performing military duty, or responding to the hue and cry. The legal rationale as to why these exceptions did not violate the Statute was because each was with the license of government.

Third and most importantly, these restatements would go on to influence writers like Hawkins, Blackstone, and others, as well as the American legislative assemblies that expressly codified the Statute of Northampton into their respective legal system.<sup>60</sup> This included American commentators. For instance, James Davis's *The Office and Authority of a Justice of the Peace* cites to Dalton and reads: "Justices of the Peace . . . may apprehend any Person who shall go or ride armed with unusual and offensive Weapons, in an Affray, or among any great Concourse of the People . . ." <sup>61</sup> George Webb's 1736 treatise, published four decades earlier, similarly drew upon Dalton, stipulating that constables "may take away Arms from such who ride, or go, offensively armed, in Terror of the People, and may apprehend the Persons, and carry them, and their Arms, before a Justice of the Peace."<sup>62</sup> Then there was John Haywood who borrowed from Blackstone's *Commentaries*, writing that "riding or going armed with dangerous or unusual weapons, is a crime against the public peace, by terrifying the good people of the land, and is prohibited by statute upon pain of forfeiture of the arms."<sup>63</sup>

---

60. William Hawkins' *A Treatise of the Pleas of the Crown* provides citations in the margins. 1 HAWKINS, *supra* note 6, at 134-35, ch. 63, §§ 1-5. In terms of the section discussing the Statute of Northampton, Hawkins cites to William Lambarde, Michael Dalton, and Joseph Keble—all of whom read the Statute according to its terms. *See id.*

61. *See* JAMES DAVIS, *THE OFFICE AND AUTHORITY OF A JUSTICE OF THE PEACE* 13 (Newbern, James Davis 1774).

62. *See* GEORGE WEBB, *THE OFFICE AND AUTHORITY OF A JUSTICE OF THE PEACE* 92-93 (Williamsburg, William Parks 1736).

63. *See* JOHN HAYWOOD, *THE DUTY AND OFFICE OF JUSTICES OF THE PEACE, AND OF SHERIFFS, CORONERS, CONSTABLES, &C.* 10 (Halifax, Abraham Hodge 1800); 4 BLACKSTONE, *supra* note 7, at 148-49.

Associate Justice James Wilson, in his lectures on the law, copied directly from Hawkins' *A Treatise on Pleas of the Crown*, writing, "In some cases, there may be affray, where there is no actual violence; as where a man arms himself with dangerous and unusual weapons, in such a manner, as will naturally diffuse a terrour among the people."<sup>64</sup> Meanwhile, Harry Toulmin, a Mississippi judge and English immigrant, seems to have been influenced by multiple commentators when he penned "there may be an affray, where there is no actual violence; as when a man arms himself with dangerous and unusual weapons, in such a manner as will naturally cause terror to the people."<sup>65</sup> Richard Starke followed suit, but cited to Hawkins for the proposition that "it is holden not a sufficient Excuse for a Person going armed in publick to say that he has been challenged or threatened, and expects to be attacked, or is armed in his own Defence."<sup>66</sup>

The variety of language in these restatements takes nothing away from prosecutorial scope of the Statute of Northampton. It becomes abundantly clear once the Statute is placed in historical context that the carrying of dangerous weapons in the public concourse—without the license of government—is what placed the people in great fear or terror,<sup>67</sup> not some particularized conduct as Standard Model writers opine.<sup>68</sup> Michael Dalton's *The Countrey Justice* expounds this point.<sup>69</sup> The prudential reason for the prohibition was that the people could always seek the assistance of the constable to have "the Peace against the other persons" enforced, or the Surety of the Peace.<sup>70</sup>

---

64. 2 JAMES WILSON, *THE COLLECTED WORKS OF JAMES WILSON* 1138 (Kermit L. Hall & Mark David Hall eds., 2007).

65. HARRY TOULMIN, *THE MAGISTRATE'S ASSISTANT* 5 (Natchez, Miss., Samuel Terrell 1807).

66. RICHARD STARKE, *THE OFFICE AND AUTHORITY OF A JUSTICE OF THE PEACE EXPLAINED AND DIGESTED, UNDER PROPER TITLES* 6 (Williamsburg, Alexander Purdie & John Dixon 1774). Starke correctly recognized the castle doctrine was the exception to this rule. *See id.* at 15 ("Any Person though prohibited from going armed, under Pretence of Security to his Person from a threatened Assault, may yet use Arms against those who shall come to do him any Violence in his own House, which is his Castle.").

67. This history of the Statute of Northampton's enforcement supports this conclusion. *See Charles, supra* note 3, at 16-22, 25, 32-33.

68. *See supra* note 29 and accompanying text.

69. MICHAEL DALTON, *THE COUNTRY JUSTICE CONTAINING THE PRACTICE OF THE JUSTICES OF THE PEACE OUT OF THEIR SESSIONS* (London, William Rawlins & Samuel Roycroft 1705).

70. *Id.* at 264.

“And besides,” wrote Dalton, it is the act of going or riding armed that “strikereth a fear and terror into the King’s Subjects.”<sup>71</sup>

The variance in language was not limited to restatements. Massachusetts, North Carolina, and Virginia expressly adopted the Statute of Northampton and the common law rules concerning public carriage, yet each state’s law was worded differently. Massachusetts, for instance, statutorily reaffirmed the Justice of the Peace’s common law power to stay and arrest “all affrayers, rioters, disturbers, or breakers of the peace, and such as shall ride or go armed offensively, to the fear or terror of the good citizens of this Commonwealth.”<sup>72</sup> North Carolina began its statute by listing the exceptions—government officials in performance of their duty and the hue and cry—then stipulated that no one shall bring “force in an affray of peace, *nor* to go nor ride armed by day nor by night, in fairs, markets, nor in the presence of the King’s Justices, or other ministers, nor in no part elsewhere . . . .”<sup>73</sup> Meanwhile, Virginia’s statute differed slightly from North Carolina. Like North Carolina, Virginia began its restatement with the exceptions to the rule.<sup>74</sup> But Virginia incorporated different operative language by stipulating that no one should bring “force and arms” to government officials, “nor go nor ride armed by night nor by day, in fairs or markets, or in other places, in terror of the Country.”<sup>75</sup>

As it stands today, Standard Model writers discount this historical evidence by asserting that the American Colonies — subsequently the United States — rejected statutes like these,<sup>76</sup> that they were never enforced,<sup>77</sup> or that they would have only applied to “shooting in a

71. *Id.*

72. 2 JOSIAH THOMAS, *THE PERPETUAL LAWS, OF THE COMMONWEALTH OF MASSACHUSETTS, FROM THE ESTABLISHMENT OF ITS CONSTITUTION TO THE SECOND SESSION OF THE GENERAL COURT, IN 1798*, 259 (Worcester, Josiah Thomas 1799).

73. FRANCOIS-XAVIER MARTIN, *A COLLECTION OF STATUTES OF THE PARLIAMENT OF ENGLAND IN FORCE IN THE STATE OF NORTH CAROLINA* 60–61 (Newbern, 1792) (emphasis added).

74. *A COLLECTION OF ALL SUCH ACTS OF THE GENERAL ASSEMBLY OF VIRGINIA, OF PUBLIC AND PERMANENT NATURE, AS ARE NOW IN FORCE* 33 (1794)

75. *See id.* (emphasis added).

76. *See, e.g.*, John C. Frazer, *Home, Sweet Home?: The Second Amendment and the Right to Carry Firearms in Public*, 4 *REGENT J.L. & PUB. POL’Y* 1, 19–20 n.111 (2012).

77. *See* NICHOLAS J. JOHNSON, DAVID B. KOPEL, GEORGE A. MOCSARY, AND MICHAEL P. O’ SHEA, *FIREARMS LAW AND THE SECOND AMENDMENT: RIGHTS, REGULATION, AND POLICY* 81–82 (Wolters Kluwer Law & Bus. 2012); Brief *Amicus*

criminal, nuisance, or unsafe manner, or carrying arms in ways that caused public terror.”<sup>78</sup> They do not provide *any* examples in historical context to support these claims. The truth of the matter is such claims are based on debunked historical scholarship and the Standard Model’s ideological predilections,<sup>79</sup> for apparently there were no laws regulating “peaceful carrying [of firearms] for self-defense or otherwise.”<sup>80</sup> Not true. The fact of the matter is that these Standard Model claims fly directly in the face of the historical evidence.<sup>81</sup> For one, the prosecutorial scope of the Statute of Northampton included the carrying of dangerous weapons in the public concourse.<sup>82</sup> Even more importantly, the text of these late eighteenth century state laws does not support the reading that Standard Model writers and gun advocates advance. To the intellectual historian, Massachusetts’ use of the phrase “armed offensively” can be traced to Dalton’s treatise, which articulated a

---

*Curiae* of Academics for the Second Amendment in Support of Petitioners at 2, Woollard v. Gallagher, 712 F.3d 865 (4th Cir. 2012) (No. 13-42).

78. See *Amicus* Brief of Academics for the Second Amendment in Support of Petitioners, *supra* note 29, at 17.

79. In response to the claim that American law rejected the Statute of Northampton, Standard Model writers have yet to produce one evidentiary source supporting this claim. See, e.g., Frazer, *supra* note 76, at 19-20 n.111. The fact that the Statute of Northampton was restated by numerous American legal commentators and expressly adopted by Massachusetts, North Carolina, and Virginia contradicts such a claim. See *supra* notes 72-74 and accompanying text. The Standard Model claim that the Statute of Northampton was never enforced can be traced back to the writings of Joyce Lee Malcolm. See JOYCE LEE MALCOLM, TO KEEP AND BEAR ARMS: THE ORIGINS OF AN ANGLO-AMERICAN RIGHT 104-5 (Harvard Univ. Press 1994). However, as this author has shown in previous articles, Malcolm never researched the history or enforcement of the Statute of Northampton, which makes such a claim unsupported. See Patrick J. Charles, *The Second Amendment in Historiographical Crisis: Why the Supreme Court Must Reevaluate the Embarrassing “Standard Model” Moving Forward*, 39 FORDHAM URB. L.J. 1727, 1800-7 (2012); Charles, *supra* note 3, at 7-36. To be clear, the claim the Statute of Northampton was never enforced is a myth that contradicts the historical record.

80. See *Amicus* Brief of Academics for the Second Amendment in Support of Petitioners, *supra* note 29, at 17.

81. The laws touching upon the discharging of firearms alone undermines the emphasis the founding generation placed on preventing injury and advancing the public good. See Patrick J. Charles, *Scribble Scrabble, the Second Amendment, and Historical Guideposts: A Short Reply to Lawrence Rosenthal and Joyce Lee Malcolm*, 105 NW. U. L. REV. 1821, 1833-35 (2011).

82. See *generally* Charles, *supra* note 3, at 7-31 (detailing the importance of the Statute of Northampton in analyzing the Second Amendment outside the home, the Statute’s origins, and its role in seventeenth and eighteenth century England and America).

broad application of the Statute of Northampton.<sup>83</sup> And if one wants to be a strict textualist, the Massachusetts statute authorized the staying and arresting of “breakers of the peace.”<sup>84</sup> As a number of restatements attest to, breaches of the peace included the carrying of dangerous weapons in the public concourse to include guns, firearms, and pistols.<sup>85</sup> The same interpretation applies to North Carolina and Virginia’s statutes. Not only does their language coincide with the Statute of Northampton’s text and Coke’s *Institutes*,<sup>86</sup> but the strict textualist must acknowledge that the statutes distinguish between “force in affray” and going armed in the public concourse.<sup>87</sup>

There is little doubt that Standard Model writers will continue to assert this historical account is mistaken. However, the fault lies not with this account, but with the Model’s failure to appreciate the dichotomy between public and private self-defense—including its common law complexities—as it developed in Anglo-American law. In the fourteenth century the Statute of Northampton was an important turning point in the formation of this system.<sup>88</sup> The Statute was essential in extending the King’s courts of justice. But the extension did not affect the castle doctrine. As historian Frederick Pollock informs us, the castle doctrine, which declared every man’s home is his castle, maintained a “special and privileged” place in English law.<sup>89</sup> As to the exact origins of the castle doctrine, Pollock points to ancient Germanic law,<sup>90</sup> but early English commentators offered any number of origins. In 1643 for example, one anonymous legal commentator associated the castle doctrine with the Magna Charta.<sup>91</sup> Meanwhile, Thomas Digges thought the castle doctrine was

---

83. See 2 THOMAS, *supra* note 71; DALTON, 1618, *supra* note 28, at 30-31.

84. 2 THOMAS, *supra* note 72.

85. See, e.g., DAVIS *supra* note 61.

86. COKE, *supra* note 37, at 160-62.

87. See A COLLECTION OF ALL SUCH ACTS OF THE GENERAL ASSEMBLY OF VIRGINIA, *supra* note 74; MARTIN, *supra* note 73.

88. See Anthony Verduyn, *The Politics of Law and Order During the Early Years of Edward III*, 108 ENG. HIST. REV. 842, 850 (1993). See generally Bertha Haven Putnam, *The Transformation of the Keepers of the Peace into the Justices of the Peace 1327-1380*, 12 TRANSACTIONS ROYAL HIST. SOC’Y 19, 21-48 (1929);

89. Frederick Pollock, *Expansion of the Common Law III: The Sword of Justice*, 4 COLUM. L. REV. 96, 109 (1904).

90. *Id.*

91. FREE-MEN INSLAVED, OR, REASONS HUMBL Y OFFERED TO THE RIGHT HONORABLE THE COMMONS OF ENGLAND IN PARLIAMENT ASSEMBLED FOR THE TAKING OFF THE EXCISE UPON BEER AND ALE (n.p. 1643) (stating the power of

linked to every nation's right of self-preservation and resistance,<sup>92</sup> particularly the subject's military duty to repel foreign invasions and secure the national defense.<sup>93</sup>

Whenever and however the castle doctrine developed is up for historical debate, but what is known is the doctrine was not absolute. Dependent upon the makeup of one's property, the castle doctrine did not always extend to its four corners. In Blackstone's words, it only applied to the "mansion or dwelling house" and those adjacent buildings that are its "parcel."<sup>94</sup> There were also variations requiring some form of retreat in one's home on the basis that the government retained an interest in preventing needless injury. As one late seventeenth century commentator reasoned, the "*Laws of the Kingdom*, that admit, every Man's *House* as his *Castle*, for a Just Defence of his *Propriety*" are not absolute because it is "a *Maxim* in our *Law*, that all *Laws* are made for the *Benefit*, not the *Hurt* of the *People* in general."<sup>95</sup>

The full scope of the castle doctrine will not be explored here. Instead, the historical point to be made is that the castle doctrine retained a privileged status in the late eighteenth century. The same cannot be said for public armed self-defense. Not only does the evidence convey that carrying dangerous weapons in the public concourse was subject to regulation since the thirteenth century, but

---

magistrates to enter one's home at "unseasonable times" is a "great disturbance, contrary to Magna Charta, which saith Everyman's House is his Castle").

92. See THOMAS DIGGES, ENGLANDS DEFENCE, A TREATISE CONCERNING INVASION, OR A BRIEF DISCOURSE OF WHAT ORDERS WERE BEST FOR REPULSING OF FOREIGN FORCES, IF AT ANY TIME THEY SHOULD INVADE US BY SEA IN KENT, OR ELSEWHERE, at i (London, 1680) ("I hope neither Divine nor Lawyer will deny, seeing the end of Government is to preserve the People...and upon an Invasion People may forthwith rise and defend themselves, for every Man's House is his Castle..."). For more on the development of the right of self-preservation and resistance in intellectual thought, see generally 2 QUENTIN SKINNER, THE FOUNDATIONS OF MODERN POLITICAL THOUGHT: THE AGE OF REFORMATION 302-48 (1978) (discussing the rise of the doctrine through the late sixteenth century); Patrick J. Charles, *The Right of Self-Preservation and Resistance: A True Legal and Historical Understanding of the Anglo-American Right to Arms*, 2010 CARDOZO L. REV. DE NOVO 18 (2010) (discussing the evolution of the doctrine from the seventeenth century to the late eighteenth century).

93. See DIGGES, *supra* note 92.

94. 4 BLACKSTONE, *supra* note 7, at 225.

95. A. HARGRAVE, REASON IN SEASON: OR, A WORD ON THE BEHALF OF THE NON-COLLEGIATE PHYSICIANS AND OF THE RIGHT OF THE PEOPLE IN THE CHOICE OF THEIR PHYSICIANS 5 (n.p. 1676).

the retreat rule dominated late eighteenth century legal thought.<sup>96</sup> These historical facts severely call into question classifying the Second Amendment as a broad right to “carry weapons in case of confrontation.”<sup>97</sup>

Of course, this does not mean that the Statute of Northampton was enforced everywhere and anywhere.<sup>98</sup> In the late eighteenth century, the majority of Americans lived outside city centers, towns, and other populated enclaves.<sup>99</sup> When traveling on unprotected highways or through the unsettled frontier, it would certainly have been common for late eighteenth century Americans to arm themselves in some form or fashion. These historical observations, however, do not negate the fact that it was within the purview of the government to regulate the public carriage of arms to prevent public injury. This was the entire purpose behind the Statute of Northampton and other late eighteenth century laws touching upon dangerous weapons. None of these ideas were called into question as a violation of the Second Amendment or a right to bear arms.

The fact of the matter is that the United States of the twenty-first century is not that of the late eighteenth. There is no longer an

---

96. See RICHARD MAXWELL BROWN, *NO DUTY TO RETREAT: VIOLENCE AND VALUES IN AMERICAN HISTORY AND SOCIETY* 3-5 (1991); Garrett Epps, *Any Which Way but Loose: Interpretive Strategies and Attitudes Toward Violence in the Evolution of the Anglo-American “Retreat Rule”*, 55 *LAW & CONTEMP. PROBS.* 303, 307-08 (1992) (discussing thirteenth century regulation of killing in self defense). For some late eighteenth century treatises attesting to this rule of law, see DAVIS, *supra* note 61, at 203 (“Self-Defence is excusable only upon inevitable Necessity: The Party assaulted must giv[e] Back as far as he can, without endangering his own Life, and the mortal Wound must not be given till after such Retreat, otherwise it is Manslaughter.”); HAYWOOD, *supra* note 63, at 108 (“the law requires that the person who kills another in his own defence, should have retreated as far as be conveniently or safely can to avoid the violence of the assault, before he turns upon his assailant”); *id.* at 107 (“This right of natural defence does not imply a right of attacking, for instead of attacking one another for injuries past or impending, man need only have recourse to the proper tribunals of justice. They cannot therefore legally exercise this right of preventive defence . . . .”); WEBB, *supra* note 62, at 177 (“Self-Defence is excusable only upon inevitable Necessity: The Party assaulted must give back as far as he can, without endangering his own Life, and the mortal Wound must not be given ‘til after such Retreat, otherwise ‘tis Manslaughter.”).

97. *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008).

98. Charles, *supra* note 3, at 35-36.

99. See, e.g., ST. GEORGE TUCKER, *VIEW OF THE CONSTITUTION OF THE UNITED STATES WITH SELECTED WRITINGS* 44 (Liberty Fund 1999) (stating America was different from previous republics, like Athens and Rome, in that it consisted of “an agricultural people, dispersed over immense territory . . . whose population does not amount to one able bodied militia man for each mile square . . .”).

unsettled and lawless frontier, the overwhelming majority of the people live in densely populated areas, law enforcement officials are not limited to cities and towns, and the hue and cry is utterly extinct. Furthermore, one must consider that the firearms of today are not those of the founding generation. A trained late eighteenth century marksman could fire no more than three shots in a minute with an effective firing distance of 200 yards, and a pistol was only effective at close range.<sup>100</sup> Meanwhile, modern firearms hold thirty round ammunition clips, travel great distances, and discharge piercing or tumbling rounds that are far more lethal than their late eighteenth century counterparts.<sup>101</sup> When one places these facts in the constraints of what the Statute of Northampton prohibited—the carrying of dangerous weapons in the public concourse to include firearms—it is implausible to argue that the modern firearms licenses, whether they be “may issue” or “shall issue,” are an infringement of the Second Amendment in late eighteenth century terms.<sup>102</sup>

#### CONCLUSION

The historical record can be glossed over or misunderstood if not fully unpacked. In the case of armed public carriage, Saul Cornell and I are in agreement on the most important point—regulations touching upon public carriage are part of a longstanding tradition.<sup>103</sup> The historical evidence is irrefutable despite the attempts of Standard Model writers who persistently claim otherwise.<sup>104</sup> Where Cornell and I differ is the extent to which the Statute of Northampton influenced late eighteenth and early nineteenth century perceptions of what was lawful. Cornell glosses over the record in this regard and opines that there “may have been a range of views on interpreting this question.”<sup>105</sup> Hopefully, this Article’s findings will convince Cornell, historians, and legal commentators otherwise. Whether this Article’s findings will convince the courts is another matter. Given

---

100. See Charles, *supra* note 3, at 47 and accompanying footnotes.

101. *Id.*

102. My findings on this point are limited to history and tradition. One may assert a Living Constitution argument and arrive at a different conclusion. See, e.g., David B. Kopel, *The Right to Arms in the Living Constitution*, 2010 CARDOZO L. REV. DE NOVO 99 (2010).

103. See Cornell, *supra* note 1.

104. See, e.g., Nelson Lund, *The Second Amendment, Heller, and Originalist Jurisprudence*, 56 UCLA L. REV. 1343, 1368 (2009).

105. Cornell, *supra* note 1, at 1713.

that the Standard Model won the day in *District of Columbia v. Heller* a number of courts have been forced to wrestle between what the historical record provides and *Heller's* dictum.<sup>106</sup> For those courts that apply the Standard Model wholesale, especially outside the home, it must be noted that they are not advancing the rule of law as it was understood in the late eighteenth century. Instead they are advancing a modern perception of the Second Amendment that developed within the past four decades.<sup>107</sup>

---

106. See 554 U.S. 570 (2008); see also Charles, *supra* note 79, at 1728-32, 1842-64. To date, two Circuit Courts of Appeal have weighed the historical record and there is a divide as how it applies to future Second Amendment cases and controversies. See *Kachalsky v. County of Westchester*, 701 F.3d 81 (2d Cir. 2012) (considering the Statute of Northampton while upholding New York's handgun licensing scheme); *Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012) (refusing to reexamine the historical record concerning arms carrying as it applies outside the home).

107. See generally Charles, *supra* note 79.